आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN : 20230364SW00008185E0

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2347/2022 /36 To 40

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-200/2022-23**
दिनाँक Date : **30-03-2023** जारी करने की तारीख Date of Issue 31.03.2023

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **37/CGST/Ahmd-South/JC/NB/2021-22** दिनाँक: **25.03.2022** passed by Joint Commissioner, CGST, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Devdiya Reality Pvt Ltd
Iscon House, Behind Remtrandt Building,
C.G. Road, Opposite Associate Petrol Pump,
Navrangpura, Ahmedabad - 380009

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन , असरवा , गिरधरनागर, अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor,Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

9ण सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(cxxiv) amount determined under Section 11 D;
(cxxv) amount of erroneous Cenvat Credit taken;
(cxxvi) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Devdiya Reality Private Limited, Iscon House, Behind Rembrandt Building, C.G. Road, Opposite Associate Petrol Pump, Navrangpura, Ahmedabad – 380 009 (hereinafter referred to as the "appellant") against Order in Original No. 37/CGST/Ahmd-South/JC/NB/2021-22 dated 25.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were not registered with the Service Tax department. They were engaged in the business of real estate development, viz. development and selling of plots/units under various schemes with an assurance of provision of certain amenities and common facilities. The said activity undertaken by the appellant appeared to fall under the definition of 'Works Contract Service' in terms of Section 65B(54) of the Finance Act, 1994. Information shared by the Central Economic Intelligence Bureau (CEIB) with the Directorate General of Goods & Service Tax Intelligence (DGGI) indicated that search and seizure proceedings were conducted by DGIT (Inv), Unit-1(3), Income Tax, Ahmedabad on 25.02.2016 against M/s. J.P. Iscon Group (JPI). The appellant was one of the companies of JPI and they were also covered in the search and seizure proceedings carried out by the Income Tax department. In the course of the search proceedings, evidences of receipt of substantial cash were unearthed. The evidences indicated that JPI was also receiving sale consideration in cash in addition to the amount received by cheque and the Sale Deeds were made only for the amount paid through cheque. The books of accounts also recorded only the amounts received by cheque. Consequently, such unaccounted receipts were neither considered for computing the taxable value for filing ST-3 returns nor the applicable service tax was paid by the appellant.

2.1 Based on the above information, inquiry was initiated against the appellant by DGGI, Ahmedabad and an inspection of records was conducted at the premises of the appellant on 08.07.2019 and further information was also called for from Income Tax department. The Income Tax department had

provided the documents/evidences and soft copies of the excel files seized by them, which revealed that the appellant had, during the period from April, 2014 to June, 2017, received an amount of Rs. 29,62,64,525/- in cash from the buyers of plots/units in their project 'Iscon Palmspring', which was not accounted for in the books of accounts. Scrutiny of the documents revealed that the appellant was selling the plots with an undeniable condition of development of amenities and common facilities such as electric supply, drainage, water supply, club house etc. which amounted to provision of 'Works Contract Service', having a service component and another component of transfer of property in goods. Accordingly, it appeared that the appellant was required to pay service tax. It was further revealed that the appellant had collected an amount of Rs. 1,06,83,674/-, which was recorded in their books of accounts, in addition to the cash amount, as receipts from buyers of the plots/units in Iscon Palmspring. The appellant had collected a total amount of Rs. 30,69,48,199/- (cash + cheque) from their buyers for provision of Works Contract Service during the period from April, 2014 to June, 2017.

2.2 In the course of the inquiry by DGGI, inspection of the records was carried out at the office of the appellant and relevant documents were sought from the appellant. During the inquiry, the appellant informed that they had filed an application before the Income Tax Settlement Commission against the notice issued to them by the Income Tax department for Assessment Year 2011-12 to Assessment Year 2016-17 and the same was accepted.

2.3 Scrutiny of the Sale Deeds indicated that the plots are sold by the appellant with an undeniable condition of development of amenities and common facilities. Thus, it appeared that there is a provision of service involved along with the sale of plots. On a plain reading of the sale deeds, it appeared that it is a composite contract involving sale of land as well as sale of services. Accordingly, the transaction appeared to be Works Contract coupled with sale of immovable property. Therefore, the appellant appeared to be liable to pay service tax amounting to Rs. 1,33,78,570/- on the total amount of Rs. 30,69,48,199/- received as advances from their buyers from development/sale of plots in Iscon Palmspring.

3. On conclusion of the investigation, the appellant were issued Show Cause Notice bearing No. DGGI/AZU/Gr.A/36-148/2019-20 dated 11.11.2019 wherein it was proposed to :

a) Demand and recover the service tax amounting to Rs. 1,33,78,570/- under the proviso to Section 73 (1) of the Finance Act, 1994 in respect of the taxable services viz. Works Contract Service, along with interest under Section 75 of the Finance Act, 1994.

b) Impose penalty under Sections 76 and/or 78 of the Finance Act, 1994.

c) Impose penalty under Sections 77(1)(a), 77(1) (b) and 77(1)(c)(i) of the Finance Act, 1994.

3.1 Shri Sanjay J. Patel and Shri Ankit A. Shah, Directors of the appellant were also called upon to show cause as to why penalty should not be imposed upon them under Section 78A of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein :

I. The demand of service tax amounting to Rs. 1,33,78,570/- was confirmed along with interest.

II. Penalty amounting to Rs. 10,000/- each, was imposed under Section 77(1)(a), 77(1) (b) and 77(1)(c)(i) of the Finance Act, 1994.

III. Penalty amounting to Rs. 1,33,78,570/- was imposed under Section 78 (1) of the Finance Act, 1994.

4.1 Penalty amounting to Rs. 1,00,000/- each was imposed on Shri Sanjay J. Patel and Shri Ankit A. Shah, Directors of the appellant.

5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds :

i. Where the statute confers the same power on different officers, especially when they belong to different departments, they cannot exercise their powers in the same case. Where one officer has exercised his powers of assessment, the power of re-assessment must also be exercised by the same officer or his successor.

ii. Reliance is placed upon the judgment in the case of Commissioner of Customs Vs. Sayed Ali – 2011 (265) ELT 17 (SC); Canon India (P) Ltd.

Vs. Commissioner of Customs – 2021-VIL-34-SC-CU; Consolidated Coffee Ltd. & Anr. Vs. Coffee Board, Bangalore – (1980) 3 SC 358; Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd. – (2001) 3 SCC 609.

iii. The SCN issued by DGGI, Ahmedabad is without jurisdiction and contrary to the provisions of the Finance Act, 1994.

iv. Section 73(4B) of the Finance Act, 1994 prescribes that show cause notice, where it is possible to do so, shall be adjudicated within a period of six months or one year from the date of notice, as the case may be. Since the present SCN was issued on 11.11.2019 and personal hearing was held on 24.12.2021, the impugned SCN is not sustainable as the time period of one year has lapsed.

v. Reliance is placed upon the judgment in the case of Sunder System Pvt. Ltd. Vs. UOI & Ors. – 2020 (1) TMI 199- Delhi High Court; National Building Construction Co. Ltd. Vs. UOI – 2019 (20) GSTL 515 (Del.).

vi. They had submitted their reply to the SCN dated 11.11.2019 on 24.03.2021. However, the notice for personal hearing was issued after one year from the date of issuance of SCN had expired. Therefore, the impugned order is to be set aside on this ground alone.

vii. In applying the analogy of the said judgment, the revenue has lost sight of the fact that the issue under consideration in the case of K. Raheja was construction of apartments or commercial complexes and the applicability of Works Contract Service was examined considering such fact.

viii. The facts of their case are different as they have not undertaken to construct either a residential apartment or commercial complex in respect of the activity of sale of plot. They have merely sold vacant plot, no construction activity has been undertaken nor has been agreed to be undertaken at a future date on the said vacant plots.

ix. In the absence of any construction activity on the vacant plots, the question of transfer of property in goods does not arise.

x. They had purchased land and designed plotting on their own accord and no contractee was in existence at the time of purchase of land and designing the plotting. Thus, the question of entering into a contract with the client is ruled out. The notice also fails to bring on record that they had entered into a contract with any contractee. The impugned order nowhere mentions that they entered into a contract with the contractee

and also fails to bring on record any such contract. Thus, the allegation of having provided Works Contract Service fails on this ground alone.

xi. In view of the definition of 'goods' as per Section 65B (25) of the Finance Act, 1994, it can be construed that goods are movable property. In the instant case, they have sold vacant plots which are immovable property. The impugned order dwells on the premises that the element of transfer in property in goods is fulfilled as the scheme consists of common amenities which are described in the Conveyance Deed. The inference drawn is that they had not only sold plots but have also provided common facilities, and, thus, it has an element of provision of service.

xii. The important element for consideration is that the customer is not offered ownership of any of the amenities listed in the Conveyance Deed and the same is stated in the Sale Deed. Only the right to use has been offered to the customer. Therefore, the question of transfer of property in goods is out of question.

xiii. As the condition of transfer of property in goods is not fulfilled in the activity of sale of plots, the allegation of providing Works Contract Service is not sustainable.

xiv. For the sake of argument if the sale deed is assumed to be contract, the same is not for the purpose of carrying out construction, erection, commissioning, installation, completion etc. of any immovable property.

xv. As regards interpretative principles of a contract are concerned the same has been enunciated in the case of Super Poly Fabriks Ltd. – 2008 (10) STR 545 (SC) and Mahindra & Mahindra Ltd. – 1995 (76) ELT 481 (SC).

xvi. The purported contract is not for carrying out construction, erection, commissioning etc. of the immovable property i.e. the plot, but is merely a sale of vacant plot. The common amenities offered for use are incidental to the sale of plot.

xvii. They have not provided or agreed to provide services as defined under Section 66E(h) of the Finance Act, 1994.

xviii. Judicial principles does not allow any deviation from the allegations levelled in the notice. It is a settled principle of law that the adjudicating authority cannot traverse beyond the scope of the notice. Reliance is placed upon the judgment in the case of Sunrise Structurals & Engg. Pvt. Ltd. – 2002 (148) ELT 503 (T) which was affirmed by the Supreme Court;

Reliance Ports and Terminals Ltd. – 2016 (334) ELT 630 (Guj.); Kandarp Dilipbhai Dholakia – 2014 (307) ELT 484 (Guj.).

xix. As per the definition of service under Section 65B(44) of the Finance Act, 1994, sale of immovable property involving transfer of title has been specifically excluded.

xx. In the impugned order reference has been made to 'bundled services'. For any transaction to be treated as a bundled service, there has to be services in a contract. In the contract of developed plot, there are two elements i.e. plot of land and infrastructural support (common amenities).

xxi. Which element has an essential character in a contract depends upon the dominance and intention of the buyer in a contract. Here, the buyer is not concerned with the type and level of amenities, rather the significance is of the plot of land the buyer is purchasing.

xxii. In the impugned order reliance has been placed upon the judgment in the case of Narne Construction (P) Ltd. Vs. UOI – 2013 (2) TMI 298-Supreme Court. However, the said judgment is not applicable to their case as the definition of service is different in both the Acts, the facts of the case are different and the Hon'ble Supreme Court has not said that the activity is Works Contract Service, but merely stated that there is service element as per the definition of services in Consumer Protection Act, 1986.

xxiii. Levy of tax depends upon the element having dominance over the contract. How composite contract are to be treated is explained in the case of Bharat Sanchar Nigam Ltd. Vs. UOI – 2006 (3) TMI 1 –Supreme Court.

xxiv. Under CGST, the treatment of the said transaction remains the same. Reliance is placed upon the ruling passed by Haryana AAR in the case of Informage Realty Pvt. Ltd.; Madhya Pradesh AAR in the case of Bhopal Smart City Development Corporation Ltd. – 2021(12) TMI 39 AAR; AAR Goa in the case of Shantilal Real Estate Services – 2022 (1) TMI 659 –AAR.

xxv. It has been held at Para 26.2 of the impugned order that there was transfer of property in goods from the assessee to the association of buyers. It is submitted that there is no association of buyers mentioned anywhere in the facts of the case or the documents submitted. It has also

been mentioned at Para 29 that ownership rights of the plot are transferred to the association of buyers i.e. Iscon Group Association.

xxvi. The existence and formation of Association comes into picture only after development of land, sale of plots. Contract with a non-existent party is not a valid contract. For classification of services as Works Contract Service, presence of a valid contract is a pre-requisite.

xxvii. The documents/evidences shared by Income Tax department are the only evidence relied upon by DGGI to allege recovery of unaccounted cash. There is no corroborative evidence produced by the department. No investigation has been conducted by DGGI while levelling allegations against them. Only the statement of Shri Venkartrmana Ganesan has been recorded.

xxviii. The search was undertaken on entities of JPI group. In the appeal of J.P. Iscon Pvt. Ltd. Vs. CCE, Ahmedabad –I – 2022 (3) TMI-1320-CESTAT Ahmedabad, the Tribunal had decided the matter in favour of the party. On the basis of the above order of CESTAT, Ahmedabad, demand should be dropped as the search proceedings as well as other facts are same. Different treatment to the same matter should not be given as it would be against the principles of natural justice.

xxix. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in the case of Common Cause & Others Vs. UOI in IA No. 3 and 4 of 2017 in W.P. (Civil) No. 505 of 2015; Samta Khinda Vs. Asst. Commr. of IT – 2016 (11) TMI 1366 ITAT Delhi.; CCE Vs. Magnum Steels Ltd. – 2017 (357) ELT 266 (Tri.-Del.); Ruby Chlorates (P) Ltd. Vs. CCE – 2006 (204) ELT 607 (Tri.-Chennai); Charminar Bottling Co. (P) Ltd. Vs. CCE – 2005 (192) ELT 1057 and Nagubhai Ammal & Ors Vs. B. Shama Rao – AIR 1956 SC 593.

xxx. It is settled principle of law that in the absence of corroborative evidence, when the only relied upon document is disputed by the assessee, the assessee cannot be penalized for the same. Reliance is placed upon the judgments of the Hon'ble Tribunals in this regard.

xxxi. The demand pertains to the period from April, 2014 to June, 2017 and service tax has been calculated by applying the highest rate of 14.5% and 15% which is not justifiable.

xxxii. When no service tax is payable, the question of interest does not arise.

xxxiii. As per Section 80, no penalty under Section 77,78 or 78A can be imposed if the appellant proves that there was a reasonable cause for default or failure under these sections.

xxxiv. Penalty under Section 78 can be imposed only if there is fraud, collusion, wilful misstatement, suppression of facts of contravention of the provisions with intent to evade payment of tax and can be imposed by invoking larger period of limitation.

xxxv. No penalty shall be imposable for any failure, if the noticee proves that there was reasonable cause for the said failure. Reliance is placed upon the judgment in the case of CCE, Meerut-II Vs. On Dot Couriers & Cargo Ltd. – (2006) 6 STJ 337 (CESTAT, New Delhi).

xxxvi. Reasonable cause has been interpreted by various courts. They rely upon the judgment in the case of Municipal Corporation of Delhi Vs. Jagannath Ashok Kumar – (1987) SIR 2316 (Supreme Court); Commissioner of Wealth Tax Vs. Jagdish Prasad Choudhary – (1996) AIR 58 (Patna); Gujarat Water Supply & Sewerage Board V. Unique Erectors (Gujarat) Pvt. Ltd. – (1989) AIR 973 (Supreme Court); Ram Krishna Travels Pvt. Ltd. Vs. CCE, Vadodara – 2007-TMI-977-CESTAT, Mumbai.

xxxvii. According to Section 67(2) of the Finance Act, 1994 where the gross amount charged by a service provider for the service provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to gross amount charged.

xxxviii. They rely upon the judgment in the case of Commissioner of Central Excise & Customs, Patna Vs. Advantage Media Consultant & Anr.- 2008 (10) TMI 570 –SC; Commissioner of Service Tax, Mumbai-I Vs. Allied Aviation Ltd. – 2017 (4) TMI 438- CESTAT, Mumbai; Commissioner of Central Excise, Delhi Vs. Maruti Udyog Ltd. – 2012 (141) ELT 3 (SC).

6. Personal Hearing in the case was held on 20.01.2023. Shri Rashmin Vaja, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions

made during the personal hearing and the materials available on records. The issues before me for decision is whether the appellant had provided Works Contract Service by selling plots with common amenities in their project Iscon Palmspring and that whether they are liable to pay service tax amounting to Rs. 1,33,78,570/-, as confirmed vide the impugned order. The demand pertains to the period F.Y. 2014-15 to June, 2017

8. It is observed that the SCN issued to the appellant alleges that they are selling plots in their project Iscon Palmspring with an undeniable condition of development of amenities and common facilities, such as electric supply, drainage, water supply, clubhouse etc. Therefore, it was alleged that the activity undertaken by the appellant amounts to Works Contract Service, as defined under Section 65B(54) of the Finance Act, 1994, as there was a service component and another component of transfer of property in goods.

8.1 It is observed from the materials available on record that the appellant is developing and selling vacant plots to their buyers. The department has, in support of their contention that the appellant is providing Works Contract Service, relied upon Sale Deed No. 18647/10/7/2019. The relevant part of the said Sale Deed is reproduced at Para 8.1 of the impugned order. Clause IV of the said Sale Deed is reproduced below :

> "The Purchaser is desirous, willing and agrees in a personal capacity to become a member of 'Iscon Group Association' (IGOA), as and when formed by the vendor and to GMMC undertaking the maintenance of the 'Scheme' consisting of plots thereof and the common amenities and common areas so defined in the Schedule –B of the Deed..."

8.2 The conclusion drawn by the department, in the SCN, from the above is that the appellant have not only sold the plot but also provided common facilities and, thus, it has an element of provision of service as well and thereby, the transaction would be covered under the Works Contract Service. The adjudicating authority has, at Para 26.2 of the impugned order, concluded that "*The sale deeds made by the assessee for the purpose of the sale of the developed plot alongwith undivided share and right in common amenities, with the buyers of such plots is thus required to be considered as the Works Contract in as much as they were also contracts for construction of immovable property (common amenities) and there was transfer of property in goods (construction materials) from the assessee to the Association of buyers*". Further, at Para 27

of the impugned order, the adjudicating authority has held that " *I also find that in the present case the presence of provision of service is intricately involved with the sale of plot especially when the plot is offered for sale with the assurance of development of infrastructure and accordingly this transaction would be a 'works contract' coupled with a transaction involving sale of immovable property*".

8.3 The above findings and conclusions of the adjudicating authority, in my considered view, are totally erroneous. From the materials available on record, it is clearly evident that what is sold by the appellant to their buyers are only vacant plots and no construction of any kind is undertaken by the appellant, on the plots, on behalf of the buyers. The common facilities and amenities developed by the appellant are not sold to the buyers of the plots and neither are the buyers of the vacant plots entitled to claim ownership of the same. On the contrary, Clause IV of the Sale Deed clearly states that the purchaser of the plot would be a member of the IGOA, and GMMC, as and when formed, would undertake the maintenance of the common amenities. This clearly indicates that the common amenities do not belong to the buyer of the vacant plot but to the IGOA. Therefore, what the buyer is purchasing and has entered into a contract with the appellant is only the purchase of vacant plot and not the common amenities.

8.4 The issue of whether development of the project with common amenities and common facilities amounts to a taxable service or not is not being dealt with, as it is not a subject matter of either the impugned SCN or the impugned order. The issue on hand is required to be examined only in light of the charge leveled in the SCN that the appellant are providing Works Contract Service by selling plots along with providing common amenities. The definition of Works Contract Service is provided under Section 65B(54) of the Finance Act, 1994 and the same is reproduced below :

> " "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property".

8.5 In the instant case, it is observed that the appellant are selling vacant plot to their buyers and the sale deed executed by the appellant with their buyers is only in respect of the vacant plot and what is transferred to the buyer by way of the Sale Deed is only the vacant plot. Therefore, the contract between the appellant and the buyer involves only transfer of property i.e. the vacant plot. Even the sale deed relied upon by the department nowhere stipulates that the common amenities are transferred to the buyer of the plot. Further, there is no contract between the buyer of the plot and the appellant for carrying any of the activities specified in the definition of Works Contract Service under Section 65B (54) of the Finance Act, 1994. When the contract i.e. the sale deed between the appellant and their buyer provides for only sale of the plot, it cannot be said that there is a contract for the purpose of carrying out construction, commissioning, erection etc. on the said plot. The construction of common amenities carried out by the appellant in the common areas of their project cannot be linked to or attributed to the sale deed executed for sale of the vacant plot. Neither has any evidence been put forth in the impugned SCN to show that there is any separate contract between the appellant and their buyers for construction of the common amenities for which the appellant is charging any amount from the buyers. Consequently, it cannot be said that there exists a contract between the appellant and their buyer involving transfer of property in goods and such contract is for the purpose of carrying out construction, commissioning, erection etc.

8.6 In view of the above, I am of the considered view that there is no merit in the finding of the adjudicating authority, in the impugned order, that the appellant has, by selling plots along with providing common amenities and facilities, provided the taxable service of Works Contract Service as defined under Section 65B (54) of the Finance Act, 1994.

9. It is further observed that the appellant had, in the course of the personal hearing before the adjudicating authority relied upon a judgment of the Hon'ble Tribunal. The appellant have in their appeal memorandum also relied upon the said judgment in the case of J.P. Iscon Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad-I – 2022(63) GSTL 64 (Tri.-Ahmd.). I have perused the said judgment and find that the issue involved in the said case is identical to that in the present appeal. In the said case, the department was in appeal

before the Hon'ble Tribunal, Ahmedabad against OIO No. AHM-EXCUS-001-COM-002-21-22 dated 28.04.2021 passed by the Commissioner of CGST and Central Excise, Ahmedabad-I. The Commissioner had vide the said OIO dropped the demand of Rs. 2,98,55,000/- in respect of Works Contract Service, against which the department, being aggrieved, had appealed before the Hon'ble Tribunal. The relevant part of the said OIO dated 28.04.2021 is reproduced in the Final Order dated 17.03.2022 of the Hon'ble Tribunal at Para 30, which is reproduced below :

> **"30.** As regard the appeal filed by the department, we conclusively hold that the Revenue could not establish the charge of cash receipt beyond doubt, accordingly entire demand raised in the show cause notice will not sustain even without going to the grounds of the department's appeal. However, without prejudice to our above finding we are of the view that the Learned Principal Commissioner after examining the facts and legal provisions given a very detailed finding which is reproduced below :
>
> > "25.4.3 "in the instant case, the only available piece of documents on records is the Sales Deed and therefore the transaction between the assessee and the customers has to be examined in terms of the tone and tenor of the said document. As already discussed above, the sale deed reveals that the same is for the sole purpose of sale of vacant plot and is definitely not for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of immovable property. Therefore, in this case it cannot be said that the assessee have entered into a contract with their customers for the purpose as specified under the definition of the term 'works contract'.
> >
> > 25.5 In the light of above discussion, it is clearly seen that none of the limbs of the definition of 'works contract' as defined under Sec. 65B(54) of the Finance Act, 1994 have been satisfied in the instant case inasmuch as :
> >
> > - There is no contract entered into between the assessee and the customers for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of immovable property; AND
> > - There is no transfer of property in goods involved in the transaction between the assessee and their customers.
>
> Thus, the transaction at hand viz., sale of vacant plot is not covered under the ambit of the term 'works contract' as defined under Sec. 65B(54) of the Finance Act, 1994.
>
> 26. The show cause notice has relied upon the ratio of the case law of *M/s. K. Raheja* reported at 2006 (3) S.T.R. 337 (S.C.) which was affirmed in the case of *M/s. Larsen & Toubro Ltd.* reported at 2014 (303) E.L.T. 3 (S.C.) to drive home the point that an agreement to sell an immovable property could also be treated as 'works contract'. The assessee have contended that the analogy of the case of *M/s. K. Raheja* is not applicable to the facts of the case since the factual matrix of the same is entirely on a different footing than the case at hand inasmuch as the activity undertaken

by M/s. K. Raheja was construction of residential apartments and commercial complexes. The following text of the said ruling also supports the contention of the assessee to the effect that the issue under construction in the said case was construction of residential and commercial complexes :

> 2. Briefly stated the facts are as follows :
>
> The Appellants carry on the business of real estate development and allied contracts. They are having their office at Bangalore. They enter into development Agreements with owners of lands. Thereafter they get plans sanctioned. After approval of the plans they construct residential apartments and/or commercial complexes. In most cases before they construct the residential apartments and/or commercial complexes they enter into Agreements of Sale with intended purchasers. The Agreements would provide that on completion of the construction the residential apartments or the commercial complex would be handed over to the purchasers who would get an undivided interest in the land also. The owners of the land would then transfer the ownership directly to the society which is being formed under the Karnataka Ownership Flats (Regulation of Promotion of Construction, Sales, Management and Transfer) Act, 1974.
>
> In the case of construction of residential apartment and a commercial complex which is sold, the element of transfer of property in goods is involved inasmuch as the residential apartment/commercial complex would be comprised of various building materials which are transferred as property in goods during the execution of the agreement. In such circumstances the judgment is in harmony with the definition of 'works contract'. However, in the instant case the agreement is for the sale of vacant plot on which no construction work has been undertaken and as such the element of transfer of Property in good is missing in the transaction under consideration. Thus, I find considerable force in the contention of the assessee to the effect that the analogy of the case of *M/s. K. Raheja* supra cannot be made applicable to the effect of the case at hand.

27. The show cause notice also make a reference to the judgment in the case of *M/s. Narne Construction P. Ltd.* reported at 2019 (29) S.T.R. 3 (S.C.) wherein Hon'ble Supreme Court had held that the activity involving offer of plots for sale to its customers/members with an assurance of development of infrastructure/amenities, lay-out approval etc. was a 'Service' within the meaning of Clause (o) of Section 2(1) of the Consumer Protection Act. The assessee have argued that the said judgment would not be applicable to their case since the definition of the term 'service' under the Consumer Protection Act was different from the definition under Sec. 65B(44) of the Finance Act, 1994. Further it has been contended that in the case of *M/s. Narne Constructions,* separate amount as development charges had been collected from the customers which was not so in the present case. In support of their argument, the assessee relied upon para 9 of Writ Petition 429 of 2010 of High Court of Andhra Pradesh which read as under :

> "Although as per the allotment, Rs. 90/- per square yard alone was to be paid towards development charges, the opposite party unilaterally enhanced to Rs. 75000/- *i.e.* at Rs. 150 per square yard which the complainant paid. The opposite party again enhanced the said charges to Rs. 1,25,000/- at Rs. 250/- per square yard"

In the instant case, there is nothing on record to indicate that the assessee had collected a separate charges towards development of the common amenities and other infrastructure. Further, the copies of sale deed in respect of the plotting scheme viz. Iscon Greens which have been relied upon in SCN and marked at Sr. No. 13 to Annexure-G1 of the SCN does not in any manner indicate that the assessee have collected separate charges for development of the plot. Thus the fact of the present case are not identical to the facts in the case of *M/s. Narne Constructions.* Moreover, in the case of *M/s. Narne Construction,* the matter was being examined in the light of the definition in clause (o) of Section 2(1) of the Consumer Protection Act, whereas in the instant the show cause notice has made specific charges to the effect that the activity of sales of plot is 'Works Contract' in terms of the provisions of Section 65B(54) of the Finance Act, 1994 and such activity would be a 'declared service' in terms of the provisions of Section 66E(h) of the Finance Act, 1994. This is very much evident from para 18.1 of the show cause notice which is reproduced under for ease of reference :

Now therefore M/s. J.P. Iscon Pvt. Ltd., Iscon House, B/h Remtrandi Building, CG Road, Opp. Associate Petrol Pump, Navarangpura, Ahmedabad-380009 are hereby called upon to show cause notice to the Principal Commissioner of Central Goods and Services Tax, Ahmedabad South Commissionerate, Ahmedabad, having his office at 1st Floor, Central GST Bhavan, Ambawadi, Ahmedabad-380015 as to why :

> (viii) the activity carried out by them viz. selling the plot with undeniable conditions of development of amenities and common facilities such as electric supply, drainage, water supply, Club house etc., should not be construed to as 'works contract service' under the provisions of Rule 65B(44) read with Rule 66E(h) of the Finance Act, 1994
>
> (iii) The amount of service tax evaded to the tune of Rs. 2,98,55,000/- in respect of taxable service viz., "works contract service" supplied by then during the period from 1-4-2014 to 30-6-2017 as detailed in said Summary appended to this notice should not be demanded & recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 174 of the GST Act, 2017.

by way of making the above charges, the Revenue has narrowed down the compass of adjudicating authority to mere examination of the fact whether the activity of sale of plots with undeniable condition of development of amenities and common facilities such as electricity supply, drainage, water supply, club house etc. can be construed as "Works Contract" or otherwise.

27.1 In the light of specific charges, I cannot examine the issue under a different category of service or any other aspect. This is so because the well settled judicial principles do not permit the adjudicating authority to travel beyond the show cause notice. I would like to refer to a few of such judicial pronouncements as under :

> (a) In the case of *M/s. Sunrise Structurals & Engg. Pvt. Ltd.* as reported at 2002 (48) E.L.T. 503 (T) which is affirmed by the Hon'ble Apex Court as reported at 2003 (154) E.L.T. A241 (S.C.), the Tribunal had made the following observations :
>
> "However, the notice proceeded on the footing that what was to be added was the profit of the job worker. Therefore, any finding that what was to be included any element other than these would be beyond the scope of the notice, and therefore impermissible".

(b) In the case of *M/s. Reliance Ports and Terminals Ltd.* reported at 2016 (334) E.L.T. 630 (Guj.), the Hon'ble High Court of Gujarat has held as under :

> "Under the circumstances, in the light of the settled legal position as emerging from the above referred decisions of the Supreme Court, that the show cause notice is the foundation of the demand under the Central Excise Act and that the order-in-original and the subsequent orders passed by the appellate authorities under the statute would be confined to the show cause notice, the question of examining the validity of the impugned order on grounds which were not subject matter of the show cause notice would not arise."

(c) In the case of *M/s. Kandeep Dilipbhai Dholakai* reported at 2014 (307) E.L.T. 484 (Guj.), the Hon'ble High Court of Gujarat has ruled as under :

> "In view of the above and for the reasons stated above and on the aforesaid ground alone and without further expressing anything on merits in favour of either parties and as it is found that the impugned orders are beyond the scope of show cause notice to the extent stated hereinabove, impugned orders passed by the respective authorities denying/rejecting the refund/rebate claim to the petitioners are hereby quashed and set aside"

(d) In the case of *M/s. Ajanta Manufacturing Ltd.* reported at 2019 (369) E.L.T. 1067 (T), the Ahmedabad Tribunal has held as under :

> "With regard to the other issue *i.e.* change in classification of the subject goods during the course of adjudication proceedings, we are of the view that since classification made in the assessment order was not proposed in the Show Cause Notice, the said order cannot go beyond the scope and ambit of the Show Cause Notice and should only confine to the findings, whether the proposals made in the Show Cause Notices for different classification should sustain or not. Since the Adjudicating Order had entirely changed the classification of the product, as proposed in the Show Cause Notice from 6914 90 90 to 6909 90 90, without issuing any notice to the appellant, we are of the view that differential duty confirmed under the changed classification should also not stand for judicial scrutiny. Accordingly, it is held that the impugned order confirming the differential duty is not proper and justified."

In the light of above judicial pronouncement, I find that the examination of the matter has to be confined merely to the aspect of whether the activity of sale of plots with undeniable conditions of development of amenities and common facilities such as electricity supply, drainage, water supply, club house etc. can be construed as "works contract" or otherwise. In light of the elaborate discussion hereinabove, I find that such activity cannot be construed as "works contract" inasmuch as the activity is not covered within the four corners of definition of 'works contract' in terms of the provisions of Section 65B(54) of the Finance Act, 1994.

27.2 Now the second part of the show cause notice is the demand part wherein the service tax has been demanded on the taxable service viz., 'works contract service' Since the activity has been found to be out of the purview of "works contract", the said activity cannot be said to be a 'declared service' in terms of the provisions of Section 66E(h) of the Finance Act, 1994 inasmuch as the said declared service is restricted to the service portion in execution of work contract Resultantly the said activity is not covered within the ambit of work contract service as defined under Section 66E(h) of the Finance Act, 1994. Once a service has been classified under a particular head and the same is not found to be covered under the head under which the show cause notice proposes to classify the same, the demand becomes unsustainable. This principle has been laid down in the following case laws which have been relied upon by the assessee in their defence reply -

(a) *M/s. J.S.E.L. Securities Ltd.* reported at 2017 (4) G.S.T.L. 8 (T) wherein has been held as under :

> "Ld. Counsel for the appellant contested the proceedings before the lower authorities mainly on the ground that the same are beyond the scope of the show cause notice. The show cause notice proposed Service Tax from the appellant under a specific category of "lease circuit service" referring to the statutory provisions applicable to the same. Whereas the Original Authority held that the appellant not being "Telegraph Authority" cannot be taxed under the said category. We note that after recording such finding, the Original Authority proceeded to levy the tax on the said income under "Stock Broker Service". We find that such proceedings are beyond the scope of the show cause notice as no reference regarding Service Tax liability of the appellant in respect of V-SAT charges was sought to be levied under "Stock Broker Service". On this legal infirmity itself, the proceedings will fail. Accordingly, we set aside the impugned order and allow the appeal"

(b) *M/s. Swapne Nagari Holiday Resort* reported at 2019 (21) G.S.T.L. 559 (T) where it has been held as under :

> "We have gone through the facts of the case and the impugned order. At the outset we find that the demand against the appellant was proposed under the category of 'Business Support Service' but was confirmed under category of 'Renting of Immovable Property Service'. Clearly the demand was confirmed by going beyond the scope of show cause notice."

(c) *M/s. Vaatika Construction Pvt. Ltd.* reported at 2020 (43) G.S.T.L. 533 (T), it has been held by the Delhi Tribunal as under :

> 12. Thus, it was not permissible for the Revenue to issue a notice demanding service tax under "construction of complex services" as defined under Section 65(105)(zzzh) of the Finance Act, 1994 [the Finance Act] when the nature of activity was of "works contract". In this connection, it would also be pertinent to refer the following decisions of the Tribunal as follows :-
>
> (i) *M/s. Jambeshwar Construction Co.* v. *Commissioner of Central Excise and Service Tax, Jaipur-II* [2019 (3) TMI 39-CESTAT, New Delhi].
>
> (ii) *M/s. Choudhary Stone Crushing Co.* v. *Commissioner of Central Excise and Service Tax, Jaipur-II* [2019 (3) TMI 38-CESTAT, New Delhi]

(iii) *CGST - Delhi-III* v. *Lattice Interiors (Vice-Versa)* [2019 (2) TMI 1308-CESTAT, New Delhi].

(iv) *M/s. Srishti Constructions* v. *Commissioner of Central Excise and Service Tax, Ludhiana* [2018-TIOL-337-CESTAT-CHD].

13. In *M/s. Choudhary Stone Crushing Company,* the Tribunal observed as under :-

> 8. For period commencing on 1-6-2007, the composite services would be liable for classification under Works Contract Service only. But we note that Show Cause Notice has proposed the demand for service tax under the category of Commercial and Industrial Construction Service as well as Repair and Maintenance Service. Hence we are of the view that the confirmation of demand under the category of WCS will not be proper particularly in view of the decision of the Tribunal in case of *Ashish Ramesh Dasarwar* (supra) wherein Tribunal has taken the view that demand for Service Tax is to be set aside if the Show Cause Notice proposed a classification different from WCS for construction activity;
>
> "6. As regards the period after 1-6-2007, since the demand was raised under 'commercial or industrial construction service, whereas admittedly the service is correctly classifiable under works contract service, demand raised under wrong head of service cannot sustain."
>
> 9. Consequently, we set aside the demand for service tax made under the (CICS) category for Construction of foundation/roads as well as repair of roads."
>
> 14. Likewise, a demand of service tax under a particular category could not have been confirmed under a different category. Thus, in Service Tax Appeal No. 53251 of 2015, the demand of service tax could not have been confirmed under "works contract" when the show cause notice was issued under "construction of complex services".

27.3 All the above case laws are identical to the facts of the present case inasmuch as the service tax has been demanded under the category of 'works contract service' and hence, now it would not be open for the Revenue to confirm the demand of Service tax under the some other head of Service. Thus the ratio of all the above case laws is applicable to the facts of this case.

28. In view of above discussions, I find that demand of Rs. 2,98,55,000/- fails to survive due to the fact that the activity under consideration is neither covered under the category of 'works contract' as defined under Section

65B(54) of the Finance Act, 1994 nor under the definition of 'declared service' as defined under Section 66E(h) of the Finance Act, 1994.

.....

.....

30. On going through the above findings, we find that the Adjudicating Authority with careful application of mind dealt with the issue on facts and statutory provisions for dropping of part demand. Therefore, we do not find any infirmity in the finding of the impugned order, except the finding on receipt of cash. Accordingly, the same is upheld to the above extent. Consequently, the Revenue's appeal is liable to be dismissed."

9.1 The view of this authority detailed in Para 8 above is aligned with the view of the Commissioner, CGST & Central Excise, Ahmedabad-I in OIO dated 28.04.2021. Further, considering the fact that OIO dated 28.04.2021, which was upheld by the Hon'ble Tribunal, Ahmedabad, involved an identical issue. Further, also considering the fact that there is no material on record to indicate that the Final Order dated 17.03.2022 has been overturned by any higher appellate authority, I do not find any reason to take a different view. Further, in terms of the principles of judicial discipline, the judgment of the jurisdictional Tribunal is binding upon this authority. In view thereof, I set aside the impugned order and allow the appeal filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

30 March, 2023.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 30.03.2023

Attested:

(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.

BY RPAD / SPEED POST
To

M/s. Devdiya Reality Private Limited, — Appellant
Iscon House,
Behind Rembrandt Building,
C.G. Road, Opposite Associated Petrol Pump,
Navrangpura, Ahmedabad – 380 009

The Joint Commissioner, — Respondent

CGST,
Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.