



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



DIN: 20220964SW0000813138

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2240/2022-APPEAL / 3467
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-37/2022-23
दिनांक Date : 23-09-2022 जारी करने की तारीख Date of Issue 26.09.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST-06/Refund/09/AC/JRS/Dev/2021-22 दिनांक:
30.07.2021, issued by Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Dev procon Ltd.
Dev House, Besides Rajpath Club,
Sarkhej Gandhinagar Highway,
Ahmedabad-380054

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad
North , 7th Floor, B D Patel House, Near Sardar Patel Statue, Naranpura,
Ahmedabad - 380014

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 पूर्वोक्त 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 हानि कारखाने 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 में हो माल की प्रकिया के दौरान हुई हो।

(iii) 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 मामलों 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 ड्यूटी क्रेडिट 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 दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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. Registrar 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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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 notwithstanding the fact that the one appeal to the Appellate 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) 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

This appeal has been filed by M/s. Dev Procon Ltd, Dev House, Besides Rajpath Club, Sarkhej Gandhinagar Highway, Ahmedabad-3800054 (hereinafter referred to as '*the appellant*') against the OIO No.GST-06/Refund/09/AC/JRS/Dev/2021-22 dated 30.07.2021 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (in short '*the refund sanctioning authority*').

2. The facts of the case, in brief, are that the appellant, engaged in the business of Construction of Residential and Commercial Complex had filed a claim amounting to Rs.3,20,550/- on 16.07.2021, seeking refund of service tax paid on booking of residential complex which were subsequently cancelled by their buyers.

2.1 On scrutiny of the refund claim, it appeared that Form-SVLDR-4 was issued to the appellant under the category of "Litigation" depicting Tax dues of Rs.3,78,67,302/- confirmed vide OIO no.AHM-SVTAX-000-COM-002/16-17 dated 28.07.2016, against which an appeal has been filed by them before CESTAT, citing the period F.Y. as 2010-11 to 2015-16. Another SVLDRS-4 was also issued under category of 'Litigation' depicting Tax dues of Rs.55,77,793/- which pertained to the fallout of ST FAR No.2306/2018-19 dated 13.08.2019 covering period 04/2014 to 06/2017. As the present refund claim period was overlapping with the period covered under SVLDRS-4, the claim appeared to be inadmissible in terms of Section 130(1)(b) of the SVLDRS, 2019. Further, it was also noticed that the appellant earlier too had filed refund claim but subsequently was withdrawn by them vide letter dated 10.12.2019 and consequently, discharge certificate under SVLDR scheme was issued to the appellant.

2.2 A Show Cause Notice (SCN) No.GST-06/04-1154/R-Dev/2021-22 dated 27.07.2021 was, therefore, issued to the appellant proposing rejection of refund amounting to Rs.3,20,550/- under Section 11B of the CEA, 1944.

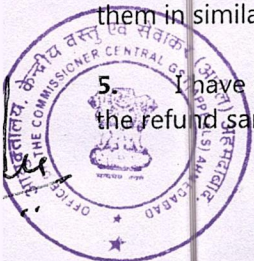
2.3 The said SCN was adjudicated vide the impugned order wherein the refund claim was rejected as inadmissible under Section 11B of the Central Excise Act, 1944.

3. Aggrieved by the impugned order, the appellant is in appeal contesting the impugned order on following grounds;

- The refund claimed was in respect of the service tax involved in cancellation of bookings. Since tax was paid at the time of booking, any subsequent cancellation of booking shall entitle them for refund in terms of Rule 6(3) of the Service Tax Rules, 1994. Therefore, opting of SVLDR should not be a ground for rejection of such claim.
- The adjudicating authority has wrongly applied Section 130 and 131 of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and ignored the material evidence on records including the facts that earlier also refund order was passed in their own case for the same facts of the case.

4. Personal hearing in the matter was granted on 07.06.2022, 21.07.2022, 17.08.2022 and 23.09.2022. The appellant, vide email dated 19.09.2022, has requested to decide the matter ex-parte and in accordance with the decisions taken in earlier appeals filed by them in similar issues.

5. I have carefully gone through the facts of the case, the impugned order passed by the refund sanctioning authority and submissions made in the appeal memorandum. The



issue to be decided under the present appeal is whether the refund claim amounting to Rs.3,20,550/- filed by the appellant is admissible or not?

6. It is observed that the adjudicating authority, in Para 6 of the impugned order had observed that the SVLDRS-4 was issued to the appellant, under the category 'Litigation' depicting Tax dues of Rs.55,77,793/- for F.Y. 2010-11 to F.Y. 2015-16, which was the fallout of OIO No.AHM-SVTAX-000-COM-002/16-17 dated 28.07.2016, against which an appeal has been filed by them before CESTAT. Further, the SVLDRS-4 was also issued under category of 'Litigation' depicting Tax dues of Rs.55,77,793/- which was the fallout of ST FAR No.2306/2018-19 dated 13.08.2019 covering period 04/2014 to 06/2017. He also observed that the period covered in the present refund claim was overlapping the period of aforesaid period of litigation, for which the claimant has already availed the benefit of SVLDR Scheme, 2019. He further finds that the claimant had filed refund claim earlier too which was subsequently withdrawn vide their letter dated 10.12.2019. Thus, the SVLDRS-4 certificates were issued only after the claimant opted to withdraw their erstwhile refund claim. He has held that in terms of Section 130(1) (b) & Section 131 of the SVLDR Scheme, 2019, the amount paid under the said scheme cannot be refunded and nothing contained in this scheme shall be construed as benefit or concession in other cases. As the present refund claim being part of the litigation for which the claimant has already availed the benefit of SVLDR, 2019, he, therefore, held the refund as inadmissible considering the amount claimed as refund stands settled under SVLDRS, 2019 and cannot be reopened under any circumstances.

6.1 The appellant, in their written submission dated 30.07.2021, made before the adjudicating authority had claimed that all the service tax liability was discharged by them under SVLDR Scheme. As some of the bookings were cancelled subsequently, the money was returned to the customer. The refund sought is in respect of tax which was paid on cancelled booking amount. They claim that they ended up paying tax to the government exchequer under SVLDR scheme on such returned booking amount for which no service was rendered. Therefore, they are eligible for credit in terms of Rule 6(3), but after 01.07.2017, such credit is not admissible hence sought refund.

6.2 On examining the facts of the case, I find that two SVLDRS-4 certificates were issued to the appellant. SVLDR-4 dated 16.10.2019, depicted the Tax dues of Rs.55,77,793/- under the category 'Investigation'. Similarly, another SVLDR-4 dated 31.12.2021 issued, involving Tax dues of Rs.3,78,67,302/- (upheld vide OIO No. AHM-SVTAX-000-COM-002-16-17 dated 28.07.2016) was shown under the category 'Litigation'. In both the cases, since the amount was already paid, the payable amount was shown as 'zero'. So, both the SVLDRS-4 certificates were issued under different categories. Further, the findings that the period of claim overlaps the period covered under the SVLDR-4 is also not supported by any documentary evidence because the period for which the claim has been preferred is not forthcoming either from the SCN or from the impugned OIO or from the Form SVLDR. Therefore, it would not be possible to examine whether the period covered under refund claim overlaps the period covered under the SVLDR scheme. Moreover, the appellant has also failed to submit any supporting documents countering the said findings of the adjudicating authority, so deciding this aspect in the present appeal, without supporting documents, would not be feasible.

6.3 Another argument put forth by the appellant is that they are eligible for CENVAT credit in terms of Rule 6(3) of the Service Tax Rules, 1994 and, therefore, in terms of Section 142 of the CGST Act, they are eligible for refund in cash. I find that the claim was filed under Section 11B, seeking refund of service tax paid on cancelled booking amount in term of Rule 6(3). However, neither the SCN nor the impugned order has disputed the



payment of tax made on such cancelled booking amount. Moreover, in terms of Section 145(2) of the CGST Act, any claim filed under existing law has to be disposed off in accordance with the provisions of existing law and in terms of the provision of Section 11B, which I find was not examined and the claim was rejected by the adjudicating authority. In order to examine the aspect whether the claim filed in terms of Rule 6(3) of STR, 1994, overlaps the period of SVLDRS, it would proper to remand the case back to the adjudicating authority to inspect the relevant documents and bring the same on records.

6.4 Further, the appellant has also claimed that earlier under the same facts of the case, refund was sanctioned to them which the adjudicating authority has ignored. The appellant is, therefore, directed to produce supporting documents to substantiate their claim before the adjudicating authority and on verification of the factual details the adjudicating authority may decide the case on merits.

7. In view of the above discussion, without expressing any opinion on the merits of the case, I remand the matter back to the adjudicating authority to reconsider the issue afresh and pass a speaking order after following the principles of natural justice.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.

Suman
(अखिलेश कुमार)
आयुक्त (अपील्स)
23rd September
2022

Date: 9.2022

Attested

Rekha Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Dev Procon Ltd,
Dev House, Besides Rajpath Club,
Sarkhej Gandhinagar Highway,
Ahmedabad-3800054,

The Assistant Commissioner
CGST, Division-VI, Ahmedabad North,
Ahmedabad

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. Guard File.



Appellant

Respondent