



కస్టమ్స్ మరియు సెంట్రల్ ట్యాక్స్ మిషన్ రాజ్ కలయం) అప్పీల్స్-II)
7వ అంతస్తు, GST భవన్ :LB స్టేడియం రోడ్, బషీర్ బాగ్, హైదరాబాద్, పిన్-500004

सीमा शुल्क व केन्द्रीय कर (अपील्स) आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX (APPEALS-II)
सातवाँ तल, केन्द्रीय शुल्क भवन 7th Floor, Kendriya Shulk Bhavan,
एलबीस्टेडियम रोड के सामने, बशीरबाग, हैदराबाद – 500 004
opp. L.B. Stadium, Basheerbagh, Hyderabad-500 004
Tel No. 040-23234219 / e-Mail: cgst.hydappeals2@gov.in

अपील सं: Appeal No. 06/2024-SC-ST

OIA No. 107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024

DIN: 20240856DN000000F330

841

ORDER-IN-APPEAL No: HYD-SVTAX-SC-AP2-298-24-25

तारीख Date. 20.08.2024

जारीकर्ता : श्री.पी.देवराज, आयुक्त, सीमा शुल्क व केन्द्रीय कर (अपील्स)
Passed by Shri P. Devaraj, Commissioner, Customs & Central Tax (Appeals-II)

प्रस्तावना PREAMBLE

1

आदेश जिनके नाम जारी किया गया है उस व्यक्ति के निजी उपयोग के लिए ह प्रतिमुफ्त में दी जाती है। This copy is granted free of cost for the private use of the person to whom it is issued.

2.(a) कोई भी निर्धारित इस आदेश से असहमत हो तो वे वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत सीमा शुल्क, उत्पाद शुल्क व सेवा कर अपील अधिकरण, क्षेत्रीय बेंच, प्रथम तल, हैदराबाद मेट्रो जल आपूर्ति और सीवरेज बोर्ड इमारत (पीछे के हिस्से), खैरताबाद, हैदराबाद, तेलंगाना-500004 के समक्ष अपील दायर कर सकते हैं।

Any assessee aggrieved by this order may file an appeal under Section 86 of the Finance Act, 1994 to the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench 1st Floor, HMWSSB Building (Rear Portion), Khairatabad, Hyderabad, T.S.-500004.

2.(b) केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 एफ के खंड (iii) के अनुसार, धारा 85 की उप-धारा (5) में संदर्भित आदेश या निर्णय के विरुद्ध अपील के लिए, अपीलकर्ता को निर्णय या जिस आदेश के विरुद्ध अपील की गई हो उसके अनुसरण के लिए एक रकम, ऐसे मामले में जहां कर या कर और दंड विवादित हो, या दंड का, जहां ऐसा दंड विवादित हो, दस प्रतिशत जमा करना होगा : सेवा कर के मामले में, एफए, 1994 की धारा 83 के प्रभाव से अधिनियम की धारा 35 एफ लागू है।

As per clause (iii) of Section 35F of the CEA, 1944, the appeal against the decision or order referred to in sub-section (5) of section 85, the appellant has to deposit ten per cent of the tax, in case where tax or tax and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Section 35F of the Act is applicable to service tax case by virtue of Section 83 of FA, 1994.

3. उपधारा (1) [या उपधारा (2) या उपधारा (2ए)] के अंतर्गत प्रत्येक अपील जिस आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निर्धारित द्वारा प्राप्त करने की तारीख से तीन/चार महीने के भीतर (मुख्य आयुक्तों या आयुक्तों की समिति) के समक्ष, जैसे भी मामला हो, दायर किया जाना चाहिए।

Every appeal under sub-section (1) [or sub-section (2) or sub-section (2A)] of Section 86 of FA, 1994 shall be filed within three/four months of the date on which the order sought to be appealed against was received by the assessee / the [Committee of the Commissioners], as the case may be.

4. पैरा 2 में उल्लिखित अपील एसटी 5/ एसटी 7 प्रोफॉर्म में चार प्रतियों में जिस आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निर्धारित के पास पहुँचने की तारीख से तीन/चार महीने के भीतर किया जा सकता है। जिस आदेश के विरुद्ध अपील किया जाना चाहता हो और अपील करने के लिए लिखित मूल आ

OIA No: HYD-SVTAX-SC-AP2-298-24-25 Date. 20.08.2024

देशकीउसआदेशकीचारप्रतियाँसंलग्रहोनेचाहिए (जिसमेंसेएकप्रतिप्रमाणितप्रतिहोनेचाहिए)।

The appeal, as referred to in Para 2 above, should be filed in S.T.5/S.T.-7 proforma in quadruplicate; within three/four months from the date on which the order sought to be appealed against was communicated to the party /Deptt., preferring the appeal and should be accompanied by four copies each (of which one should be a certified copy), of the order appealed against and the Order-in-Original which gave rise to the appeal.

5.

अपीलकेसाथट्रिब्यूनलकेदक्षिणीबेंचकेसहायकरजिस्ट्रारकेपक्षमेंजहांट्रिब्यूनलस्थितहैवहाँकेकिसीभी राष्ट्रीयकृतबैंककीशाखासेप्राप्तकिएगएरेखांकितमांगड्राफ्टसंलग्रहोनेचाहिएऔरअधिनियमकीधारा 86 केअंतर्गतविनिर्दिष्टशुल्ककेभुगतानकाप्रमाणभीसंलग्रहोनेचाहिए।देयशुल्कनिम्नलिखितहै।

The appeal should also be accompanied by a crossed bank draft drawn in favour of the Assistant Registrar of the Tribunal, drawn on a branch of any nominated public sector bank at the place where the Tribunal is situated, evidencing payment of fee prescribed in Section 86 of the Act. The fees payable are as under:-

(क)

जिसमामलेसेअपीलसंबन्धितहोउसमामलेमेंमांगागयासेवाकरऔरव्याजतथाकिसीभीकेन्द्रीयउत्पादशुल्कअधिकारीद्वारालगायागयादंडरुपयेपाँचलाखाउससेकमहोतो, रुपयेएकहज़ार; (a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(ख)

जिसमामलेसेअपीलसंबन्धितहोउसमामलेमेंमांगागयासेवाकरऔरव्याजतथाकिसीभीकेन्द्रीयउत्पादशुल्कअधिकारीद्वारालगायागयादंडरुपयेपाँचलाखसेअधिक, लेकिनरुपयेपचासलाखसेकम, होतो, रुपयेपाँचहज़ार; (b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(ग)

जिसमामलेसेअपीलसंबन्धितहोउसमामलेमेंमांगागयासेवाकरऔरव्याजतथाकिसीभीकेन्द्रीयउत्पादशुल्कअधिकारीद्वारालगायागयादंड, रुपयेपचासलाखसेअधिकहोतो, रुपयेदसहज़ार; (c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees;

5(i) उसीकीधारा 86 कीउपधारा (4) के अंतर्गत बता एगए कुल आपत्तियों केज्ञापनकेसंबंधमेंकोईशुल्कदेयनहींहै।

No fee is payable in respect of the Memorandum of Cross Objections referred to in Sub-Section (4) of Section 86 ibid.

6. अपीलीयट्रिब्यूनलकेसमक्षप्रस्तुतकिएगएसभीआवेदनपत्रकेसाथ: Every application made before the Appellate Tribunal:

(क)

रोककीमंजूरीकेलिएअपीलयागलतीकोसुधारनेकेलिएअथवाकिसीअन्यप्रयोजनकेलिएआवेदनपत्र; या (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(ख) किसीअपीलयाआदेशकोपुनः स्थापितकरनेकेलिएउसकेसाथरुपएपाँचसौकाशुल्कहोनेचाहिए।

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees:

6(i) इसउपधाराकेअंतर्गतआयुक्तद्वारादायरकिएगएआवेदनकेमामलेमेंकोईशुल्कदेयनहींहै। No fee is payable in case of an application filed by Commissioner this sub-section.

7. केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 और केन्द्रीय उत्पादशुल्कनियमावली, 2002 तथासीमाशुल्क, केन्द्रीय उत्पाद शुल्क वसेवाकरअपीलीय ट्रिब्यूनल (प्रक्रिया) नियमावली, 1982 में शामिल इससेऔर अन्य संबन्धित मामलोंको नियंत्रित करने वालेप्रावधानोंकीओरध्यानआकर्षितकियाजाताहै।

Attention is invited to the provisions governing these and other related matters, contained in the Central Excise Act, 1944 and Central Excise Rules, 2002 and the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

BEFORE THE COMMISSIONER OF CENTRAL TAX, HYDERABAD
APPEAL No. 06/2024-SC-ST

M/s Alpine Estates,
 5-4-187/3 & 4, II Floor, Soham Mansion,
 MG Road, Secunderabad-500003.

--Appellant

Vs

The Additional Commissioner of Central Tax,
 Secunderabad GST Commissionerate.

--Respondent

This is an appeal filed by M/s. Alpine Estates, 5-4-187/3&4, II Floor, Soham Mansion, MG Road, Secunderabad - 500003 (herein after referred to as 'Appellant') against the Order-In-Original No.107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024 (herein after referred to as 'the impugned order'), passed by the Additional Commissioner of Central Tax, Central Tax, Secunderabad GST Commissionerate, Hyderabad (herein after referred to as 'respondent'). The appellant is registered with the department vide ST-2 vide STC. No. AANFA5250FST001.

2. The brief facts of the case in the instant case is that the Department has initially issued a Show Cause Notice vide HQPOR No.82/2010 dated 16.06.2010 covering the period January 2009 to December 2009 ("First SCN") proposing to demand service tax of Rs.31,10,377/- on amounts received towards construction agreement and the said SCN was adjudicated vide OIO No.44/2010-ST dated 15.10.2021 confirming the said demand. Aggrieved by the above, the Appellant had preferred an appeal before Commissioner (Appeals). Further the Commissioner (Appeals) vide OIA No.08/2011(H-II) dated 31.01.2011 has dismissed the said appeal. Aggrieved by the same, the Appellant had preferred an appeal before CESTAT. Further, the Hon'ble CESTAT vide Final order No. A/30172-30178/2019 dated 31.01.2019 set aside the demands raised in the above Oder-In-Original holding that service tax is not applicable on sale of flats prior to 01.07.2010.

3. Further, two more periodical Show Cause Notice under Section 73(1A) for the period January 2010 to December 2011 were issued vide OR.No.62/2011-Adjn (ST) dt.23.04.2011 for the period Jan, 2010 to Dec, 2010 for Rs.35,03,113/- and OR.No.51/2012-Adjn(Addl Commr) dt.24.04.2012 for Rs.48,33,495/- for the period Jan, 2011 to Dec, 2011. The SCN's were adjudicated vide a common Order-In-Original No.49/2012-Adjn ST-ADC dated 31.08.2012 and the demands proposed in the show cause notices were confirmed. Aggrieved by the above, the Appellant had filed appeal with the Commissioner (Appeals) who after due process vide Order-in-Appeal No.38/2013 (H-II) S. Tax dated 27.02.2013 upheld the OIO but remanded the matter for re- quantification.

4. Aggrieved by Order-in-Appeal, the Appellant has filed appeal before Hon'ble CESTAT, Hyderabad. The CESTAT, Hyderabad has heard the matter and set aside the demand for the period January 2010 to June 2010 and remanding the matter after the period 01.07.2010 to the Adjudicating Authority for reconsideration. The Adjudicating Authority in such remand proceedings shall also reconsider the issue of penalty. The appeal is partly allowed and partly remanded in the above terms with consequential relief if any.

5. Further, the Appellant filed a *Rectification of Mistake Application* against the above referred Final Order and a clear finding has been provided by the CESTAT, Hyderabad vide Misc. Order No. M/30226/2022 dated 11.03.2022 wherein it is held at Para 5 as under:

5. "After hearing the submissions of Learned A.R, we are of the view that the matter requires to be reconsidered as to whether the amounts included in the sale deed value of immovable property would be subject to levy of service tax under construction services. The computation in the Order-In-Original has to be looked into on the basis of the sale-deed executed by the Appellant with the customer which includes the semi-finished flats. Other charges like Registration Fee, VAT, etc., needless to say will not be subjected to service tax as being reimbursable expenses"

6. The Adjudicating authority in light of the above directions and after due process of law dropped the proposed demand in the notices for the period from January, 2010 to June, 2010 and proceeded for Denovo proceedings for the demand of tax for the period from July, 2010 to December, 2011 based on the ledger details submitted by the Appellant and arrived at the tax liability of Rs.8,99,823/- for the period July, 2010 to December, 2010 in respect of SCN OR.No.62/2011-Adjn(ST) dt.23.04.2011 and Rs.22,83,554/- for the period January, 2011 to December, 2011 in respect of SCN OR.No.51/2012-Adjn(Addl Commr) dt.24.04.2012, totaling to Rs.31,83,377/- along with interest and penalties.

7. Being aggrieved against the OIO, the appellant has filed the present appeal on the grounds that various submissions on facts and law were made before the Ld. Adjudicating authority which was not considered. Hence, the impugned order being non-speaking should be set aside on this ground alone. There is no short payment of tax since the Appellant has already discharged the service tax liability Rs.21,95,524/-, Rs.36,958/- and Rs.19,72,916/- totaling to Rs. 42,05,398/-, which is in excess of Rs.10,22,020/- of the actual demand of Rs.31,83,377/-. Hence there is no short payment.

8. A personal hearing was held in which their authorized representative had appeared before me on behalf of the Appellant. During the personal hearing he stated that the Appellant has paid the entire demand during the disputed period and same has been appropriated in the Order-In-Original. Hence, there is no short payment.

9. I have carefully gone through the records of the case and submissions made by the appellant in their appeal memorandum and during the personal hearing. The issue before me for a decision is whether the appellant is liable to pay the demand of Rs.31,83,377/- confirmed vide the impugned Order-In-Original or not.

10. In the instant case, the Adjudicating Authority has confirmed the demand as the amount and challans details of payment is not mentioned in the ST-3 returns and also the Appellant has not submitted any other documentary evidence to prove the payment is made towards the demand raised for the period July, 2010 to December 2011 and further as the Cenvat Credit debit claimed by them is not reflecting in the ST-3. However, the appellant has contended that the impugned order is passed without appropriately considering the challans paid towards the liability and documents on record, but creating its own assumptions, presumptions and surmises, ignoring the statutory provisions.

11. As regard to the above, on verification of the records, I find that Appellant has already paid Rs. 21,95,524/- towards the demand raised for the period July,2010 to December, 2011 vide Cheque/Challan No. 267251 dated 10.06.2011 & 435410 dated 13.02.2012. payment of Rs.36,958/- is debited through CENVAT credits availed in the books of accounts, and Rs.19,72,916/- paid vide challan no. 922747 dated 13.01.2013

as per the directions of the Appellate authority in compliance with stay application No. 63/2012 (H-II) S.Tax dated 07.12.2012 before Commissioner (Appeals). Hence there is no short payment. I allow the appeal 06/2024-(SC)-ST, filed by M/s. Alpine Estates, against the Order-In-Original No.107/2023-24-Sec-Adjn-ADC(ST) dated 27.03.2024, passed by The Additional Commissioner of Central Tax, Central Excise and Service Tax, Secunderabad GST Commissionerate.

12. In view of the above discussions and findings, I pass the following order.

ORDER

The appeal is allowed and the impugned order is set aside.



To,

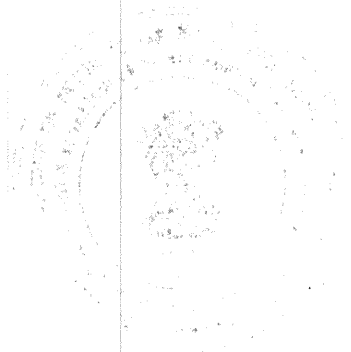
M/s Alpine Estates,
5-4-187/3 & 4, II Floor, Soham Mansion,
MG Road, Secunderabad-500003. **(By Speed Post)**

Copy submitted to the Chief Commissioner of Customs & Central Tax, Hyderabad Zone, Hyderabad.

Copy to:

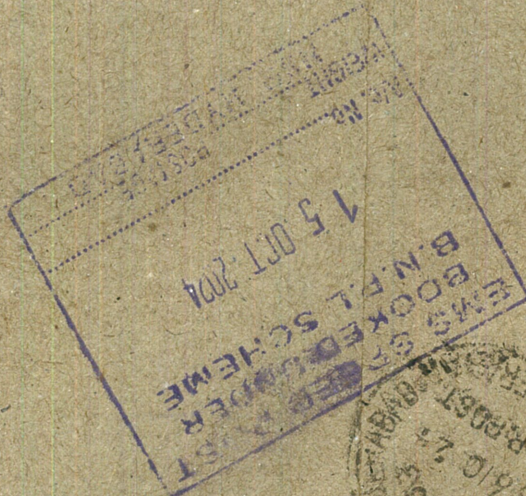
1. Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad.
2. Additional Commissioner of Central Tax, Secunderabad GST Commissionerate, Hyderabad.
3. Office Copy/ Guard File.

आयुक्त / COMMISSIONER



rom.
Office of the Commissioner of
Customs & Central Tax
Appeals-II Commissionerate
7th Floor, GST Bhavan, L.B. Stadium Road
Basheerbagh, Hyderabad-500 004.

EMS SPEED POST
A/c. No: 1742
Customer ID: 200 000 1681



EMS SPEED POST

A/c. No: 1742

Customer ID: 200 000 1681



JD422416329IN

Office of the Commissioner of
Customs & Central Tax
Appeals-II Commissionerate
7th Floor, GST Bhavan, L.B. Stadium Road
Bhubaneswar - 751 004

केवल भा.स.से पर
ON I.G.S. Only

स्पीड पोस्ट
SPEED POST

841,

To, M/s. Alfine Estates,

5-4-187/3 and 4,

II Floor, Soham Mansion,

Mb. Road, Secunderabad = 500003,