



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20221264SX00009479AF

क	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	V2/11/BVR/2022	BHV-EXCUS-000-JC-LD- 006-2021-22	02-12-2022

अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-103-2022

आदेश का दिनांक / Date of Order:	30.11.2022	जारी करने की तारीख / Date of issue:	02.12.2022
------------------------------------	------------	--	------------

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham:

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

M/s. Tree Top Resorts & Spa Pvt. Ltd., LS. No. 222/P-1,,Plot No. A2 &3, Budhel,Bhavnagar 364002

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। / Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to: -

(i) वर्गीकरण मूल्यांकन से सम्बंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर के पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above.

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /

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.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- (C) भारत सरकार कोपुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs 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

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

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.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

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

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समाप्ति तिथि पर या बाद में पारित किए गए हैं। /

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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000/- का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त दृंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखी पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 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 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों को और भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Tree Top Resorts & Spa Pvt. Ltd., Land S. No. 222 P-1, Plot No. A2 & 3, Budhel, Bhavnagar (hereinafter referred to as "Appellant") has filed Appeal No. V2/11/BVR/2022 against Order-in-Original No. BHV-EXCUS-000-JC-LD-006-2021-22 dated 18.01.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that on the basis of intelligence, the officers of the DGGI, Rajkot unit visited the premises of the Appellant and it was revealed that the Appellant was engaged in providing accommodation hotels, Inn, Guest House, Club or Camp site, Restaurant Service and provided both taxable as well as non taxable services. The Appellant neither filed Service Tax Returns nor paid Service Tax and for the period from April-2016 to June-2017 they have filed ST-3 returns but short paid the service tax. A statement of Shri Mahendragiri Goswami, Director of the Appellant was recorded on 19.12.2019 wherein he stated that his firm is engaged in providing accommodation in hotels, Inn, Club service and Restaurant Service and supply of food or any other articles of human consumption or any drink in a restaurant since establishment of the Appellant firm. The Appellant firm was registered with Service Tax Department having registration No. AADCT1544NSD001. He agreed that the Appellant firm had not paid the service tax for the period from October-2014 to March-2016 and short paid the service tax for the period from April-2016 to June-2017 and he was ready to pay the same. The Appellant firm already filed all GST Returns viz. GSTR-1 & GSTR3B etc. for the period from July-2017 to December-2017 and discharged the GST liability. He was not aware of the amended notification and not discharged service tax liability on the contract on or after 01.03.2015.

2.1 The DGGI asked for some documents vide summons dated 26.02.2020, 16.06.2020 and dated 24.06.2020 in response to which the Director of the Appellant failed to appear due to some health problem but finally he appeared on 10.08.2020 to give his statement. During the statement he agreed with the total service tax liability of Rs. 54,86,553/- and stated that they have already paid Rs. 47,35,496/- vide CTIN No. 1912116520 and 2001141300 and he will pay the remaining service tax liability of Rs. 7,51,057/- within two days. He further stated that they had made application under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 vide ARN No. LD2612190006870 dated 26.12.2019, issued FORM SVLDRS-1 and FORM SVLDRS-3 and submitted the copy of the same.

3. The Show Cause Notice No. DGGI/AZU/Gr-E/36-39/2020-21 dated 29.09.2020 proposing to demand Service Tax of Rs. 54,86,553/-, including all



(Signature)

cess under Section 73(1) read with Section 73(A) of the erstwhile Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act from the Appellant was issued to the Appellant. Since the Appellant had already paid Service Tax of Rs. 54,86,553/-, it was proposed to appropriate the same against their service tax liability. It was also proposed to impose penalty under Section 76 and/or Section 78 of the Act, penalty under Section 77 of the Act for failing to keep, maintain or retain books of account and other documents.

3.1 The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 54,86,553/- under Section 73(1) along with interest under Section 75 of the Act and appropriated the said service tax since the Appellant paid the same. The adjudicating authority also imposed penalty of Rs. 54,86,553/- under Section 78 of the Act and penalty of Rs. 10,000/- under Section 77 of the Act.

4. Being aggrieved, the Appellant has preferred the present appeal on various grounds as stated below:

(i) The Show Cause Notice dated 29.09.2020 is time barred as same has been issued under Section 73(1) after the normal period of limitation of thirty months. The period of demand pertains to October-2014 to June-2017 and Show Cause Notice is issued on 29.09.2020. There is no fraud or collusion or suppression on their part as all the figures in the show cause notice has been taken from their records only.

(ii) The entire service tax of Rs. 54,86,553/- was paid and is also recorded at Para 1.12 of the impugned order at page No. 6 and they had no intention to evade taxes or to run away from the responsibility of the compliance. Since the entire service tax was paid before issue of the show cause notice, they requested to invoking provisions of Section 80 of the Act to drop the huge penalties imposed upon them.

(iii) The applied for SVLDRS Scheme effective from 01.09.2019 before the designated committee under SVLDRS, 2019 and also filed SVLDRS-1 on 26.12.2019 under the category of voluntary disclosure well within time and declared an amount of Rs. 42,35,496/- as payable tax dues. The designated committee issued FORM SVLDRS-3 dated 07.01.2020 accepting the application and confirming the amounts payable as Rs. 42,35,496/- for the period from October-2014 to June-2017, which was paid vide challan CIN No. 20200108163143081580 dated 08.01.2020. The first summons was issued by the DGGI on 26.02.2020. The AC/ Member of designated committee rejecting SVLDRS-1 application was issued on 27.08.2020 and the show cause notice was



Am

issued on 29.09.2020. Once he the amount as per SVLDRS-3 issued by the designated committee, then as per the Section 127, the designated committee has no option but to issue SVLDRS-4 discharge certificate within 30 days from the date of payment. They are eligible under SVLDRS Scheme and are not covered under the exclusion clause to Section 125(1) of the Scheme. The Designated Committee failed to issue discharge certificate under Section 127(8) within 30 days from the actual payment date i.e. 08.01.2020. The entire period covered under SCN/ impugned order has been covered under the SVLDRS Scheme.

5. Personal hearing in the matter was held virtually on 10.11.2022. Advocate Shri R. Subramanya appeared for personal hearing in virtual mode and reiterated the submissions made in the appeal. He submitted that the SVLDRS-2019 availed by them stipulated that no enquiry should be pending as on the cut-off date of 30.02.2019 for the benefit of the scheme. In the present case they have filed their application in December-2019 and the enquiry was initiated in February-2020, which cannot come in way of their eligibility. Since SVLDRS-3 was issued to them on 07.01.2020 and they had paid the entire amount payable on 08.01.2020, rejection of their application vide order dated 27.08.2020 was not proper. Since they were eligible for the benefit of SVLDRS, the entire proceedings launched after filing of their application are unlawful and without jurisdiction. He further submitted that as entire Service Tax was paid before issue of Show Cause Notice, Section 80 of the Finance Act, 1994 should have been invoked to drop the penalty. Therefore, he requested to set aside the Order-In-Original and allow relief due to them.

6. I have carefully gone through the case records, Show Cause Notice, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is that whether the Appellant is liable for interest and penalties since the service tax amount has not been disputed by them and paid before issuance of Show Cause Notice.

7. On careful examination of the show cause notice, impugned order and appeal memorandum, it is seen that the DGGI team had visited Appellant's premises on 19.12.2019 and also recorded statement of the Director. The Appellant had not paid the Service Tax for the period from October-2014 to March-2016 and short paid the Service Tax for the period from April-2016 to June-2017 and was ready to pay the short paid Service Tax. The Director of the Appellant submitted annual audit report for the period from F.Y. 2014-15 to 2017-18 and copies of Service Tax paid challans. Since the Director of the Appellant had not submitted all the documents called for in his statement dated 19.12.2019, summons dated 26.02.2020 were issued to him and in response, he submitted few documents viz. year wise trial balance for the year 2014-15 to



Shri

2017-18, copy of SVLDRS-1, SVLRDS-3 and Tax paid summary for Rs. 42,38,496/- . Since they had not submitted sales ledger, copy of bills etc., summons dated 16.06.2020 and 24.06.2020 were again issued to appear on 23.06.2020 & 30.06.2020, respectively but the Appellant vide letter dated 10.07.2020 & 16.07.2020 informing health problem had not appeared for tendering statement. The Director of the Appellant appeared on 10.08.2020 to give statement wherein he stated that the Appellant firm established hotel business on 01.04.2012 and not filed ST-3 Returns for the period from October-2014 to March-2016 and have filed ST-3 returns for the period from April-2016 to June-2017 and also filed GSTR-1, GSTR-3 up to the month of October-2019. During the recording of his statement, he agreed that their total service tax liability for the period from October-2014 to June-2017 comes to Rs. 54,86,553/-. He also deposed that for waiver of interest and penalty, they applied in SVLDRS scheme 2019 vide ARN No. LD2612190006870 dated 26.12.2019 and issued FORM SVLDRS-1 and FORM SVLDRS-3. The Assistant Commissioner (SVLDRS), Designated Committee, Bhavnagar has informed the Appellant vide letter F.No. IV/16-820/SVLDRS/2019-20 dated 06.07.2020 and 27.06.2020 that the Appellant was not eligible under SVLDRS in terms of the Section 125(1)(f)(i) read with Section 121(m) of the Finance Act, 2019-SVLDRS, as the conditions prescribed under SVLDRS, 2019 have not been satisfied and the Designated Committee rejected the subject declaration of the Appellant on merit.

8. I find that the first contention of the Appellant is that the Show Cause Notice issued on 29.09.2020 for the period from October-2014 to June-2017 is time barred. It is beyond dispute that the Appellant has not filed any ST-3 returns for the period from October-2014 to March-2016. They have filed ST-3 returns for period from April-2016 to June-2017 but against their service tax liability of Rs. 22,70,737/- they have paid service tax of Rs. 4,05,822/- only i.e. showing less taxable value and less service tax liability in the statutory returns filed with the Department. These facts were not in the knowledge of the Department till the DGGI officers visited their premises on 19.12.2019. Thus, there is a clear case of fraud/ collusion/ willful mis-statement/ suppression of the material facts from the Department with an ulterior motive to evade the payment of Service Tax. As the Appellant has not filed ST-3 returns for the period from October-2014 to March-2016, due date for filing ST-3 return for the period from October-2014 to March-2015 was 25.04.2015 and hence the last date of issuance of Show Cause Notice after invoking extended period of limitation would have been on 24.04.2020 in normal course. However, in view of spread of pandemic COVID-19, the President of India was pleased to promulgate the Ordinance in exercise of powers conferred under Clause (1) of the Article 123 of



[Handwritten signature]

the constitution of India vide Section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020 issued by the Ministry of Law & Justice, the Government of India, relaxing time limits in specified Acts which fell during the period from 20.03.2020 to 29.06.2020 for completion or compliance of such actions and extended it to 30.06.2020. By virtue of Section 6, the Central Government has been empowered to specify the dates after the 30th day of June, 2020 for completion or compliance of actions which has not been made. In exercise of the power conferred by Section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020, the Central Government vide Notification dated 27.06.2020 extended the time limit for completion or compliance of action for issuance of notice to 30.09.2020. Under the circumstances, the last date of issuance of Show Cause Notice after invoking extended period of limitation would be 30.09.2020. These provisions have been kept in force in the GST era vide Section 142 & 174 of the CGST Act, 2017 also. Thus, the present Show Cause Notice issued on 29.09.2020 is well within time after invoking provisions of extended period. Therefore, the extended period under Section 73(1) of the Act has rightly been invoked in the show cause notice and correctly confirmed in the impugned order. The contentions of the Appellant regarding Show Cause Notice being hit by limitation is not tenable, being devoid of any merits.

9. The second contention of the Appellant is to invoke the provisions of Section 80 of the Act and drop the liability of interest and penalties imposed upon them.

"80. Penalty not to be imposed in certain cases . – Notwithstanding anything contained in the provisions of section 76, section 77, section 78 or section 79, no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure."

The provisions of Section 80 were omitted w.e.f. 14.05.2015 and hence at this juncture, the benefit of Section 80 of the Act is not admissible to the Appellant. Thus, the arguments advanced by the Appellant are baseless, mis-interpreted and mis-conceived which are liable to be discarded.

10. The Appellant contested that they are eligible for the benefit of SVLDRS scheme for which they have filed the application with designated authority. I find that it is on record that the application under SLVDRS scheme was rejected by the designated authority vide letter F.No. IV/16-820/SVLDRS/2019-20 dated 06.07.2020 and 27.06.2020, holding that the Appellant was not eligible under SVLDRS in terms of the Section 125(1)(f)(i) read with Section 121(m) of the Finance Act, 2019-SVLDRS as the conditions prescribed under SVLDRS, 2019 have



Handwritten signature

not been satisfied and the Designated Committee had rejected the subject declaration of the Appellant on merit. It is not forthcoming whether the Appellant contested the rejection of their application under SLVDRS scheme or otherwise. Once the declaration of the Appellant was rejected on merits and same has not been challenged before proper authority, it has attained finality. I find that this authority is not empowered to decide any dispute arising out the SVLDRS, 2019, hence, no findings can be recorded in this regard at this juncture. Thus, the Appellant plea is devoid of any merits and liable to be rejected in toto.

11. In view of discussions and finding, I uphold the impugned order and reject the appeal filed by the Appellant.

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

12. The appeal filed by Appellant is disposed off as above.

प्रमाणित / Attested



Superintendent
Central GST (Appeals)
Rajkot

(शिव प्रताप सिंह)/(Shiv Pratap Singh),
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To, M/s Tree Top Resorts & Spa Pvt. Ltd., Land S. No. 222 P-1, Plot No. A2 & 3, Budhel, Bhavnagar	सेवा में, मे. ट्री टॉप रिसोर्ट एवं स्पा प्रा° लि°, सर्वे संख्या 222, P-1, प्लॉट संख्या A2 एवं 3, बुधेल, भावनगर।
--	--

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

