



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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**By Regd. Post**

DIN NO. : 20211264SW000031313A

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/688/2020-APPEAL / 5012 To 5017
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-74/2021-22 and 08.12.2021
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	08.12.2021
(ङ)	Arising out of Order-In-Original No. CGST/Div-VII/A'bad North/01/GST Refund/Manav/2020-21 dated 09.10.2020 issued by The Deputy Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Manav Infrastructure Pvt. Ltd. (GSTIN - 24AAHCM0966H1ZG) Address :- 4 <sup>TH</sup> Floor, Shree Balaji Mall, Visat-Gandhinagar Highway, Motera, Ahmedabad, Gujarat - 380005

(A)	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.	
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.	
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017	
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.	
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.	
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.	
(ii)	The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President of the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.	
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate.	

**ORDER-IN-APPEAL****Brief Facts of the Case :**

M/s. Manav Infrastructure Private Limited, 4<sup>th</sup> Floor, Shree Balaji Mall, Visat-Gandhinagar Highway, Motera, Ahmedabad, Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal against the Order No. CGST/Div-VII/A'bad North/01/GST Refund/Manav/2020-21 dated 09.10.2020 (*hereinafter referred as 'impugned order'*) issued by the Deputy Commissioner of CGST & C. Ex., Division - VII, Ahmedabad North Commissionerate (*hereinafter referred as 'adjudicating authority'*) vide which rejected the refund claim of Rs.1,50,00,000/- & Rs.2,64,14,286/-.

**2(i).** The *appellant* is holding GST Registration - GSTIN No. 24AAHCM0966H1ZG. The *appellant* has paid Tax detected by DGGI as admitting the tax liability. Accordingly, DGGI, AZU has closed the inquiry under the provision of Section 73(5) & 73(6) of the CGST Act, 2017. Thereafter, the *appellant* has preferred refund claim of said amount of Tax so paid, which was rejected by the *adjudicating authority* vide aforesaid '*impugned order*'. Being aggrieved with said order the *appellant* has preferred present appeal before this appellate authority on 04.12.2020. As per the appeal memo the *appellant* has submitted that -

1. *the appellant is engaged in business of providing works contract services by way of construction of housing projects and as such they were awarded two contracts by (i) Vadodara Urban Development Authority for development of integrated group housing facilities under slum rehabilitation programs, at Madhavnagar & Keshavnagar and (ii) Vadodara Municipal Corporation for construction of affordable housing under Public Private Partnership at Sama Sanjaynagar.*
2. *As per scheme of Government as applicable to the Project, the Appellant was required to construct the specified residential units which will be allotted to the habitants by the authority.*
3. *In lieu of the services of construction provided by 'Appellant' to the Authority, specified vacant free hold land parcels were to be conveyed in favour of the 'Appellant' by the Authority.*
4. *Brief facts relating to project are as under :*
  - a. *"Madhavnagar & Keshavnagar Project"*
    - *Letter for approval on 19.09.2016*
    - *Agreement on 17.12.2016*
    - *Conveyance Deed of Free hold Land on 06.06.2017*
  - b. *"Sama Sanjaynagar Project"*
    - *Letter for Approval on 10.03.2014*
    - *Agreement on 17.12.2015*
    - *Conveyance Deed of Free hold Land on 31.03.2017*



5. Services of construction provided by 'Appellant' to the Authority were in nature of works contract services, exempted from payment of Service Tax under erstwhile Chapter 5 of Finance Act, 1994 by virtue of Notification No. 25/2012-ST dated 20.06.2012.
6. Consideration was actually received by the 'Appellant' prior to introduction of GST in form of land parcels conveyed by the Authority in favour of 'Appellant' alongwith ownership and possession by way of duly executed and registered conveyance deeds. Having no consideration received post introduction of GST, question of payment of GST did not arise.
7. On 23.01.2019 a search was conducted by DGGI at Appellant's premises. It was pointed out by DGGI that services provided by 'Appellant' are taxable services and point of taxation as per Notification No. 04/2018 - Central Tax (Rate) is in the GST regime, hence 'Appellant' is liable to pay tax of Rs.4,14,14,286/- as detected by DGGI. Accordingly, 'Appellant' has debited said amount from electronic credit ledger and incorporated the same in their GSTR 3B returns filed for the month of March, 2019.
8. After being consulted the experts about legality of the issue, the 'Appellant' realized that they have wrongly paid the tax detected by DGGI. Accordingly, the 'Appellant' had filed Refund claims of Rs.1,50,00,000/- & Rs.2,64,14,286/- as under :

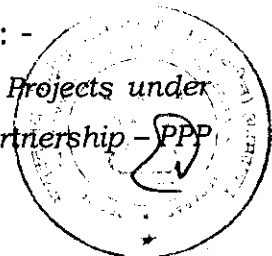
Sr. No.	ARN No. and Date	Amount of Refund Claimed
1	AA240720108383N / 31.07.2020	Rs. 1,50,00,000/-
2	AA240720094977R / 28.07.2020	Rs.2,64,14,286/-

**2(ii).** In response to aforesaid refund claims a Show Cause Notice was issued to the appellant by the Assistant Commissioner, CGST, Div-VII, Ahmedabad North on 31.08.2020 from F. No. Div-VII/A'bad-North/SCN/Refund/19-20. It was alleged in the SCN that -

- the DGGI has conducted a search at the appellant's premises and detected short/non payment of tax;
- the appellant has admitted the same and subsequently paid the said Tax and informed DGGI about same;
- since the appellant has admitted the taxability and paid all dues, no SCN was issued by the DGGI in this regard;
- hence no refund appears to be arises.

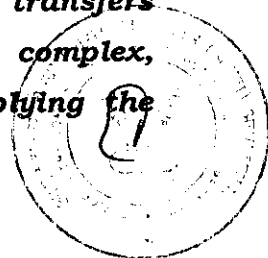
After being heard on 15.09.2020 the said SCN was adjudicated and refund was rejected by the 'adjudicating authority' vide 'impugned order'. As per said impugned order the adjudicating authority has given findings as under : -

- Claimant is engaged in construction of Affordable Housing Projects under Pradhanmantri Awas Yojana - PMAY under Public Private Partnership - PPP Model.



- Claimant has claimed refund of tax paid for two projects (details of projects mentioned at para 2.1 above).
- As per agreement 17.12.2015 as mentioned in conveyance deed, the said services provided were taxable as per Notification No. 06/2015-ST, dated 01.03.2015. Further, as per Service Tax Rules, the actual transaction took place on 17.12.2015, when the agreement has been executed and not the date of two Conveyance deeds. Further, when said services were taxable during the period under Finance Act, 1994, as amended, the same prevails during the enactment of CGST Act, 2017.
- Taxability of said projects is determined by the department based on point of taxation and the point of taxation in terms of Notification No. 04/2018 Central Tax (Rate) dated 25.01.2018 read with Section 140 of the CGST Act, 2017 occurs when the transfer of possession of the said projects has happened. The transfer of possession in both the projects has happened during GST regime i.e. after 01.07.2017 and therefore, said services are taxable under GST. However, the said claimant has submitted that they were not liable to pay tax as the conveyance deed was executed before enactment of the Act.
- Relevant portion of Notification No. 04/2018 dated 25.01.2018 reproduced as under :
  - o G.S.R.....(E).- In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely :-
    - (a) registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
    - (b) registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case **the liability to pay central tax on supply of the said services**, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, **shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the**

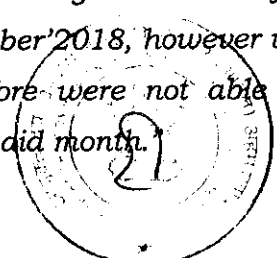


**development rights** by entering into a conveyance deed or similar instrument (for example allotment letter).

- From the above it is clear that liability to pay Central Tax shall arise at the time when said developer, builder, construction company or any other registered person transfers possession or right in the constructed complex, building or civil structure to the person supplying the development rights.

**2(iii).** Further, as the appellant has paid the Tax in question during the course of investigation of DGGI, AZU (Ahmedabad Zonal Unit), the adjudicating authority while deciding the refund claims has called for details / report from the DGGI, AZU. It is mentioned in the impugned order that the DGGI, Ahmedabad Zonal Unit vide reply F. No. DGCEI/AZU/12(4)79/2018-19 dated 30.07.2020 has informed to the adjudicating authority as under :

- The appellant themselves have informed to the DGGI vide letter dated 26.03.2019 & 22.04.2019 that the projects in question were handed over on 26.03.2019 and in December-2018.
- These projects were assessed under the provision of Section 7 read with Section 15 of the CGST Act, 2017 and also read with Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended. The point of taxation was determined in terms of Notification No. 04/2018-Central Tax (Rate) dated 25.01.2018 read with Section 140 of the Act which prescribes that the liability to pay tax shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfer possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter)..."
- The appellant had further stated to the DGGI that
  - o "As per Notification No. 4/2018-CT(Rate) dated 25.01.2018 the liability to pay GST on supply of construction service in respect of Slum Rehabilitation Scheme by M/s. Manav Infrastructure Private Limited arose when we handed over the possession of building constructed for Slum Rehabilitation on Land Parcel A to VMC/VUDA. We handed over possession of building constructed for Slum Rehabilitation on Land Parcel A under Sama Project and Oddnagar Project in December'2018 but the intimation of the same from VMC was given to us vide their letters dated 12.03.2019. Similarly, the possession of building constructed for Slum Rehabilitation on Land Parcel A under Mahadevnagar and Keshavnagar Project was handed over to VUDA on 26.03.2019. Though the handing over dates for Sama Project and Oddnagar Project is in December'2018, however we had no knowledge of the same and therefore were not able to discharge our GST liability on the same in the said month."



Considering the above facts the *adjudicating authority* has given findings that it is the *appellant's* own submission that the transfer of possession of projects happened in GST regime. Further, the *appellant* has calculated the tax liability and discharged the same and incorporated it in their GSTR-3B for the month of March-2019. **'Appellant' has also paid the interest liability and requested for waiver of penalty on the same as well as prayed for closure of inquiry in the matter.** Accordingly, the *adjudicating authority* held that "as the appellant has accepted the liability of both projects, discharged the same and requested to close inquiry I do not find the payment of duty to be erroneous." As regards to argument of no SCN was issued in the matter, the *adjudicating authority* has referred Section 73(5) & 73(6) of the CGST Act, 2017 in the *impugned order*, same is reproduced as under :

**73(5)** *The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

**73(6)** *The proper officer, on receipt of such information, shall not serve any notice CHAPTER XV DEMANDS AND RECOVERY 108 under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

In view of foregoing findings the *adjudicating authority* has rejected the refund claims of Rs.1,50,00,000/- & Rs.2,64,14,286/-.

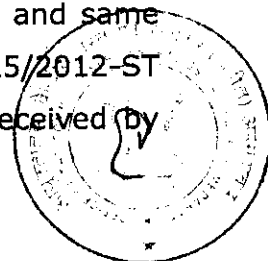
Being aggrieved with the said '*impugned order*', the '*appellant*' has filed the present appeal on 04.12.2020 on the grounds mentioned at para 2(i) above.

### **Personal Hearing :**

**3.** Personal Hearing in the matter was through virtual mode held on 17.11.2021. Shri Jigar Shah, Advocate, appeared on behalf of the '*appellant*'. During PH he has asked to submit additional information/submission. Accordingly, he has submitted the additional written submission on 24.11.2021. In the additional submission the appellant has reiterated the submissions made till date.

### **Discussion and Findings :**

**4(i).** I have carefully gone through the facts of the case available on records, submissions made by the appellant in the Appeal Memorandum as well as additional submission made on 24.11.2021. I find that the *appellant's* main contention is that the services provided by them were in nature of works contract services and same were exempted from payment of Service Tax under Notification No. 25/2012-ST dated 20.06.2012. The considerations for the said services were also received by



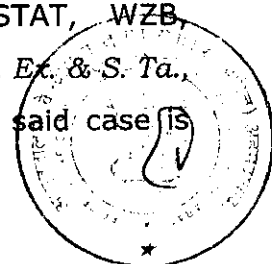
them prior to introduction of GST. So, the tax amount so paid by them as detected by the DGGI may be refunded to them.

**4(ii).** As regards to Revenue/Department's point of view I find that the DGGI, AZU has conducted a search at the appellant's premises on 23.01.2019. During the search proceedings DGGI had noticed that the appellant has been awarded the projects by (1) Vadodara Urban Development Authority for development of integrated group housing facilities under slum rehabilitation programs, at Madhavnagar & Keshavnagar and (2) Vadodara Municipal Corporation for construction of affordable housing under Public Private Partnership at Sama Sanjaynagar. The DGGI, AZU had observed that these projects were handed to the authority in GST regime and thus appellant was liable to pay Tax in terms of Notification No. 04/2018-Central Tax (Rate) dated 25.01.2018 read with Section 140 of the Act which prescribes that the liability to pay tax shall arise at the time when transfers possession or the right in the constructed complex, building or civil structure. Further, I find that the appellant has also admitted the said tax liability and discharged the same and incorporated it in their GSTR-3B for the month of March-2019. In this regard, I find that the '*adjudicating authority*' has clearly mentioned about the same in the *impugned order* at para 18, the same is reproduce as under :

*Further, I find that the claimant has calculated the tax liability and discharged the same and incorporated it in their GSTR-3B for the month of March-2019. The claimant had also paid interest liability and requested waiver of penalty on the same. With this the claimant had prayed for closure of inquiry in the matter. **The claimant has no where protested the payment of duty at the time of inquiry.** I further find that the claimant in their letter dated 22.04.2019 and 26.03.2019 to DGGI, AZU accepted the liability of both projects, discharged the same and requested to close inquiry in the matter. Thus, I do not find the payment of duty to be erroneous.*

In this regard, I find that as the appellant has discharged the entire dues and requested for closure of inquiry, the DGGI has closed the inquiry in terms of Section 73 of the CGST Act, 2017. Further, I find that it is clearly mentioned in the impugned order that the appellant has requested for closure of inquiry and the DGGI has closed the inquiry without issuing SCN, but I do not find any objection about the same in appellant's submission. Thus, I find that since the inquiry has been closed without issuing of Show Cause Notice, now raising the issue with refund claims is contrary to the provisions.

**4(iii).** Further, I referred order of the Hon'ble CESTAT, WZB, Ahmedabad in case of *M/s. Amar Engineering Co. V/s. Commissioner of C. Ex. & S. Ta., Vadodara-I* [2019 (26) G.S.T.L. 116(Tri. - Ahmd.)]. The issue involved in said case is mentioned as under :



*"The issue involved in the present case is that whether the appellant is entitled for refund of duty, interest and penalty paid during the course of audit and with request that the payment was made voluntarily and for not issuing the SCN, the matter should be closed, an undertaking was also given that no refund claim shall be made in future. Thereafter, the appellant is of the view that the amount paid by them is not payable and accordingly, the refund was filed*

The hon'ble CESTAT has held that once the assessee paid Service Tax & interest voluntarily and requested department for close of matter and coming for refund at later period is absolutely contrary to the provisions. The para 5 of said order is reproduced verbatim :

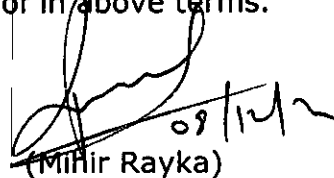
5. As per the above Section, once the appellant opted for voluntary payment of service tax and interest and intimate to the department, the matter shall stand closed and the department has no liberty to issue any SCN, that means the issue stand closed. Neither the assessee can dispute the same nor the department has opportunity to issue any SCN. Therefore, at a later period coming with the refund is absolutely contrary to the provision of Section 73(3) of the Finance Act, 1994. Therefore, I do not find any substance in the refund issue of the appellant. Accordingly, the impugned order is upheld and the appeal is dismissed.

In this regard, I find that in the present case the DGGI has detected short/non payment of tax and same has been admitted by the appellant and paid the tax with interest. Also I find that the appellant has requested for closure of inquiry without SCN. Now, later on coming with claim of refund is absolutely contrary to the provisions. Accordingly, the ratio of aforesaid case is very much applicable to the present case.

5. In view of the above discussions, I do not find any merit in the contentions of the appellant on their claim of refund and accordingly the appeal of the appellant is rejected

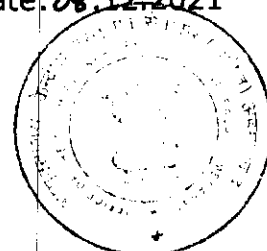
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

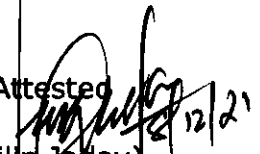
6. The appeals filed by the appellants stand disposed of in above terms.

  
(Mihir Rayka)

Joint Commissioner (Appeals)

Date: 08.12.2021



Attested  
  
(Dilip Jadav)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,  
M/s. Manav Infrastructure Private Limited,  
4<sup>th</sup> Floor, Shree Balaji Mall,  
Visat-Gandhinagar Highway, Motera,  
Ahmedabad

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VII, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File

