



सत्यमेव जयते

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

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DIN- 20221164SW000000BEBF

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/119/2022 -APPEAL / 5439 - 44

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-168 /2022-23**

दिनांक Date : **30-11-2022** जारी करने की तारीख Date of Issue : **30-11-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

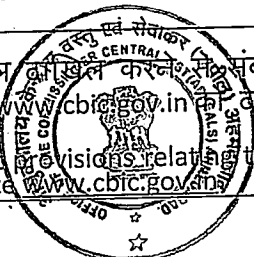
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **CGST/WS08/Ref-01/ST/KSZ/21-22 DT. 24.09.2021** issued by Assistant Commissioner, CGST & CX, Division-VIII, Ahmedabad South

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

Appellant	Respondent
Assistant Commissioner, CGST & CX, Division-VIII, Ahmedabad South	Shri Sachin Agarwal, 25, Mukti Mangal Tenament, Opp. Jain Derasar, Thaltej, Ahmedabad-380054

(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 or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दायर करने के संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in



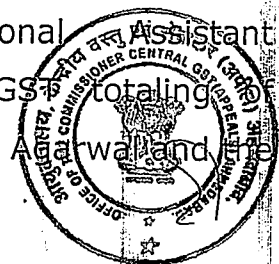
ORDER-IN-APPEAL**Brief Facts of the Case :**

The following appeal has been filed by the Assistant Commissioner, CGST, Division - VIII, Ahmedabad South (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against Order-In-Original dated 24.09.2021 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST, Division - VIII, Ahmedabad South (hereinafter referred as '*adjudicating authority*') in the case of **Shri Sachin Agarwal**, 25, Mukti Mangal Tenament, Opp. Jain Derasar, Thaltej, Ahmedabad - 380054 (hereinafter referred as '**Respondent**').

Appeal No. & Date	Review Order No. & Date	OIO No. & Date
GAPPL/ADC/GSTD/119/2022- APPEAL Dated 10.01.2022	46/2021-22 Dated 30.12.2021	CGST/WS08/Ref-01/ST/KSZ /21-22 Dated 24.09.2021

2(i). Brief facts of the case are that the '*Respondent*' and his wife Smt. Ruchika Agarwal had jointly purchased a residential property at Orchid Heaven, Unit Number E/2/31, Shaila, Ahmedabad from the service provider namely M/s. Goyal Safal Developers and for the said residential unit they have made total payment of Rs.61,43,575/- to M/s. Goyal Safal Developers towards the provision of services of construction of residential complex and additional amount of Rs.67,179/- towards Service Tax and Rs.5,63,655/- towards GST which was borne by them. Thereafter, they had cancelled the contract for services of construction of residential complex with the service provider. The Respondent and service provider have agreed that due to non-provision of service, the service provider shall refund the consideration paid towards service to be provided. However, the amount of Service Tax of Rs.67,179/- and GST of Rs.5,58,084/- recovered and deposited with the Government is not repaid back to the Respondent. Accordingly, the Respondent has filed a refund claim of Rs.6,25,263/- (Rs.67,179/- of Service Tax and Rs.5,58,084 of GST) on 19.04.2021.

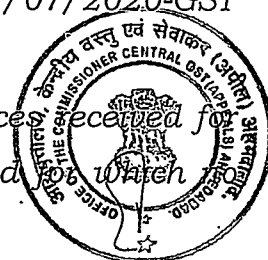
2(ii). On verification the Jurisdictional Assistant Commissioner found that the Service Tax and GST totaling Rs.625263/- was borne by the claimant i.e. Shri Sachin Agarwal and the



refund of said amount has not been claimed by M/s. Goyal Safal Developers. Accordingly, the refund claim was sanctioned to Shri Sachin Agarwal.

The subject OIO No. CGST/WS08/Ref-01/ST/KSZ/21-22 dated 24.09.2021 was examined by the competent authority under review proceedings. It was observed that refund filed by buyer is not maintainable in terms of Section 31(3)(e) of the CGST Act, 2017 and Board's Circular No. 137/07/2020-GST dated 13.04.2020 and only the registered person i.e. builder in this case can file refund claim under Section 54(1) of the CGST Act, 2017 by following the procedures, as prescribed under Rule 89(1) of the CGST Rules, 2017 or can adjust the tax amount paid as per Rule 56(3) of the CGST Rules, 2017. Accordingly, the order passed by the adjudicating authority in respect of refund amount of Rs.5,58,084/- (GST) sanctioned to buyer is not legal, proper and bad in law on the following grounds. :

- *The claimant had filed manual refund claim of amount of GST alongwith amount of Service Tax on account of cancellation of booking of property. Refund of Service Tax amount and refund of GST amount governed under different act and rules and claimant had filed common refund application without following proper procedure laid down under CGST Act, 2017. In respect of amount of GST Refund, the application for refund required to be done electronically as stipulated under CGST Act/Rules.*
- *For filing refund application electronically, the applicant has to be registered under Rule 8 of the CGST Rules, 2017 read with Section 25 of the CGST Act, 2017. Accordingly, an unregistered person can not apply for refund. In view of above, person not registered under GST, cannot file refund application manually.*
- *Section 31(3)(e) of the CGST Act, 2017 which read as follows :
(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment.*
- *Further, attention drawn to Board's Circular No. 137/07/2020-GST dated 13.04.2020 wherein para 2(2) states that :
"In case GST is paid by the supplier on advance payment for an event which got cancelled subsequently and*



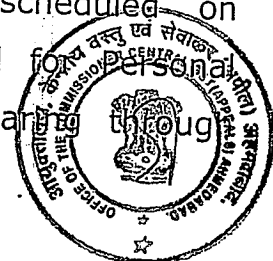
invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax'."

- In view of above section 31(3)(e) of the CGST Act and Board's Circular No. 137/07/2020-GST dated 13.04.2020, the builder i.e. M/s. Goyal Safal Developers should have issued a refund voucher of payments made by the buyer and subsequently adjust the GST amount against their outward liabilities. And in case, where the builder could not adjust the GST amount which was returned to the buyer, he could have filed for refund of tax in form RFD-01 under the category 'refund of excess payment of tax', as he is a registered taxpayer. However, the buyer had filed for refund claim and the adjudicating authority had incorrectly sanctioned the refund claim without application of mind and without going through the relevant provisions of the Act as discussed above.
- Further, as per Rule 56(3) of the CGST Rules, 2017, every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto. Accordingly, the registered person i.e. builder M/s. Safal Goyal Developer in this case could have adjusted the credit of tax on account of cancellation of booking of residential flat instead of keeping deposited the tax amount in govt. account. However, the buyer of the residential flat had filed a refund claim of GST manually violating Rule 89(1) of the CGST Rules, 2017 and Adjudicating Authority has erred in sanctioning GST Refund which is not maintainable.
- Thus, in view of above, OIO No. CGST/WS08/Ref-01/ST/KSZ/21-22 dated 24.09.2021 became non est and is not legal and proper.

In view of above grounds the appellant has requested to set aside the impugned order wherein the adjudicating authority has sanctioned the refund amount of Rs.5,58,084/- under Section 54 of the CGST Act, 2017 and to pass any order(s) as deemed fit in the interest of justice

Personal Hearing :

3. Personal Hearing in the matter was scheduled on 24.08.2022 & 06.09.2022 however, no-one appeared for Personal Hearing on scheduled dates. Thereafter, personal hearing through



virtual mode for third time was scheduled on 19.09.2022. Shri Rahul Patel, CA was appeared on behalf of the 'Respondent' as authorized representative and submitted the written submission dated 19.09.2022. Further, during PH he has asked for 05 working days for additional submission, which was duly granted.

The Respondent through submission dated 19.09.2022 submitted the copies of extracts of following Rules and Sections -

- Rule 97A of the CGST Rules, 2017 in connection with manual filing and processing.
- Section 54 of the CGST Act, 2017 and Rule 90 of the CGST Rules, 2017 as well as Constitution of India - Article 265.
- Submitted the copies of following case laws :

o M/s. Anaya Pharma Limited Versus Union of India - 2022 (5) TMI 860 - Gujarat High Court

o Platinum Holdings Private Limited Versus Additional Commissioner of GST & Central Excise (Appeals-II), Assistant Commissioner of GST & Central Excise - 2021 (10) TMI 630 - Madras High Court

o M/s. Comsol Energy Private Limited Versus State of Gujarat - 2021 (6) TMI 827 - Gujarat High Court

o Parijat Construction Versus Commissioner of Central Excise, Nashik - 2018 (9) G.S.T.L. 8 (Bom.)

o E Infotech Versus CESTAT, Chennai - 2018 (18) G.S.T.L. 410 (Mad.)

Thereafter, the Respondent has submitted the Cross Submission on 27.09.2022. The Respondent has submitted that -

- *Limited issued raised by the Revenue that whether the Adjudicating Authority was justified in allowing claim filed by Respondent manually and without furnishing refund claim electronically.*
- *It is contentions of Revenue that Respondent is unregistered under the provisions of CGST Act, 2017 and thus cannot lodge the refund claim electronically which is thus not in accordance with the provisions of Rule 89(1) of the CGST Rules, 2017 and thus not admissible.*

- *Moreover, Revenue has contended in present appeal that M/s. Safal Developers ought to have issued an advance voucher in terms of Section 31 of the CGST Act, 2017. Respondent was not entitled to refund claim*



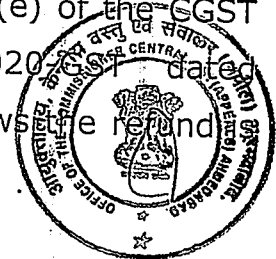
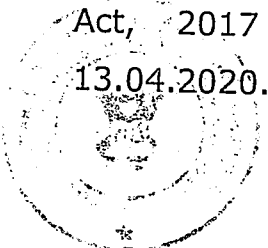
- *The incidence of Tax sought to be refunded was fully borne by the Respondent and not the Builder.*
- *Referred case of M/s. Platinum Holdings Private Limited as well as case of Comsol Energy and M/s. Ayana Pharma Limited as mentioned in their submission dated 19.09.2022.*
- *Referred Section 54 of the CGST Act, 2017 and Rule 97A of the CGST Rules, 2017.*

In light of above submissions the Respondent has requested to reject the appeal filed by department and upheld the Order-in-Original.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case, grounds of appeal, submissions made by the Respondent and documents available on record. I find that the present appeal was filed to set aside the impugned order on the ground that the adjudicating authority has sanctioned the refund to the Respondent, however said refund claim filed by buyer is not maintainable in terms of Section 31(3)(e) of the CGST Act, 2017 and Board's Circular No. 137/07/2020-GST dated 13.04.2020. I find that in the present matter the Respondent had purchased a residential property from M/s. Goyal Safal Developers which was subsequently cancelled by the Respondent. However, M/s. Goyal Safal Developers has not repaid back the GST amount of Rs.5,58,084/- to the Respondent on cancellation of purchase of residential property. The said GST amount of Rs.558084/- was paid by the Respondent in connection with purchase of said residential property. Accordingly, the Respondent had claimed the refund of said GST, which was sanctioned by the adjudicating authority vide impugned order. Accordingly, the department has filed the present appeal on the grounds that the refund claim is not maintainable in terms of Section 31(3)(e) of the CGST Act, 2017 and Board's Circular No. 137/07/2020-GST dated 13.04.2020.

4(ii). The Respondent in support of their defense in the present appeal cited the case laws as mentioned at para 3 above. On carefully going through the said case laws I find that in none of the case laws refund claim is rejected in terms of Section 31(3)(e) of the CGST Act, 2017 and Board's Circular No. 137/07/2020-GST dated 13.04.2020. Further, I find that in none of the case laws the refund



rejected on the ground of claimant being unregistered. Therefore, I am of the view that facts and circumstances of said case laws are completely different from the facts and circumstances of present case. Hence, ratio of said judgments of Hon'ble Courts does not apply in present case.

4(iii). Since, the Appellant is contending that the refund claim is not maintainable in terms of Section 31(3)(e) of the CGST Act, 2017 and Board's Circular No. 137/07/2020-GST dated 13.04.2020, the same is reproduced as under :

***Section 31. Tax invoice.-**

(3) Notwithstanding anything contained in sub-sections (1) and (2)-

(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed;

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;



The relevant para of Board's Circular No. 137/07/2020-GST dated 13.04.2020 -

S. No.	Issue	Clarification
1.	An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.
2.	An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax"

In view of above, I find that in the matter of advance received by the supplier for a Service contract which got cancelled subsequently, it is nowhere mentioned in the above provisions that buyer can file refund claim. It is mentioned that registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01. Further, as per the prescribed procedure as mentioned above in terms of section 31(3)(e) of the CGST Act and Board's Circular No. 137/07/2020-GST dated 13.04.2020, the builder i.e. M/s. Goyal Safal Developers should have issued a refund voucher of payments made by the buyer and subsequently adjust the GST amount against their outward liabilities. Further, if the builder could not adjust the GST amount which was returned to the buyer, he could have filed for refund of tax in form RFD-01 under the category 'refund of excess payment of tax', as he is a registered taxpayer. However, in the present matter the buyer had filed the refund claim and the adjudicating authority has sanctioned the same vide impugned order. Therefore, I am of the view that the refund is sanctioned to the Respondent with the following:



prescribed procedure as laid down by the CBIC vide aforesaid Circular dated 13.04.2020. Further, I find that the adjudicating authority has not followed the provisions of Section 31(3)(e) of the CGST Act, 2017 while sanctioning the refund claim in present matter.

5. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the 'Department' is allowed and set aside the '*impugned order*'.

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

The Appeal filed by 'Department' stand disposed off in above terms.

Prescribed pro

dated 13.04.20

not received in

within conditions

Attested

(Dilip Jadhav)
Superintendent (Appeals)
Central Tax, Ahmedabad
By: R.P.A.D.

(Mihir Rayka)
Additional Commissioner (Appeals)
Date: 30.11.2022



To,
The Assistant / Deputy Commissioner,
CGST, Division - VIII,
Ahmedabad South.

Appellant

Shri Sachin Agarwal,
25, Mukti Mangal Tenament,
Opp. Jain Derasar, Thaltej,
Ahmedabad - 380054

Respondent

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-South.
4. The Deputy/Assistant Commissioner, CGST, Division-VIII, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File

The Assistant
CGST, Division
Ahmedabad South

Shri Sachin Ag
25, Mukti Mang
Opp. Jain Dera
Ahmedabad - 3

Copy to:

The Assistant



