



# आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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क फाइल संख्या File No : GAPPL/ADC/GSTD/6.16/2023-APPEAL /u3su - 55

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 09 /2024-25

दिनांक Date :19.04.2024 जारी करने की तारीख Date of Issue : 22.04.2024

श्री अदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain. Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. 100/AC/DIV- I/HKB/2023-24 dated 19.05.2023 issued by The Assistant Commissioner, CGST, Division – I Rakhial, Ahmedabad South Commissionerate.

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

| Appellant   | Respondent   |
|---|--|
| The Assistant Commissioner, CGST, Division – I Rakhial, Ahmedabad South Commissionerate | M/s. SE Transstadia Private Limited, 96, The Arena, Near Kankaria Lake, Gate No. 03, Kankaria, Ahmedabad, Gujarat-380022 |

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.

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.

(i) 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

(ii) 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 दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को 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 Assistant Commissioner, CGST, Division I, Ahmedabad South (hereinafter referred to as the '*Appellant/Department*') in terms of Review Order No. 33/2023-24 dated 21.11.2023 issued under Section 107 of the CGST Act, 2017, has filed the appeal against Order-in-Original No. 100/AC/Div-1/HKB/2023-24 dated 19.05.2023 (hereinafter referred to as the '*Impugned Order*') passed by the Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South (hereinafter referred to as the '*Adjudicating Authority*') in the matter of M/s. SE Transstadia Private Limited, 96, The Arena, Near Kankaria Lake, Gate No. 03, Kankaria, Ahmedabad, Gujarat-380022 (hereinafter referred to as the '*Respondent*').

2. Briefly stated the facts of the case is that M/s. SE Transstadia Private Limited having GSTIN 24AAMCS6557PIZH are engaged in supply of services like hospitality service, sponsorship service, restaurant, health club, fitness center, mandap keeper, Business Auxiliary Service etc. A Show Cause Notice dated 30.03.2022 was issued to the Respondent wherein it was proposed that as to why-

- i. (a) the tax amounting to Rs. 4,59,934/- for non-reversal of ITC under Rule 42 and (b) the tax amounting to Rs. 27,95,410/- for non-payment of GST on Electricity and Chilled water supply and reimbursement thereof; (Total tax amounting to Rs. 32,55,344/-), should not be demanded and recovered from them under the provisions of Section 74(1) of the Act read with the provisions of Section 20 of the IGST Act ;
- ii. interest should not be charged and recovered from them, under the provisions of Section 50(1) of the Act read with the provisions of Section 20 of the IGST Act on the proposed demand and appropriation at (i) above;
- iii. penalty should not be imposed upon them, under the provisions of Section 74(1) of the Act read with the provisions of Section 122(2)(b) of the Act and Section 20 of the IGST Act on the proposed demand of tax at (i) above.

3. Further, after having gone through the SCN and submissions of the Respondent, the adjudicating authority has confirm the demand of Rs. 2,86,997/- of IGST that is short reversed as per Rule 42 of CGST Rules 2017 and made short payment of tax, under the provisions of Sections 74(1) of the Act read with the provisions of Section 20 of the IGST Act and dropped the demand of tax amounting to 29,68,347/-(Rs. 78,329/-IGST, Rs. 14,45,009/-CGST and Rs. 14,45,009/-SGST) on the following grounds:

- that the noticee have submitted the table of the ITC attributable to the Taxable Supply Wherein they have added the following Invoices of the service providers which were not taken into concern in the respective table of the SCN due to which the ITC attributable to taxable supplies enhanced than that of data mentioned in the SCN.

| Sr. No. | Name of the Service Provider | Type of Service   | IGST     | CGST     | SGST     |
|---------|------------------------------|---|----------|----------|----------|
| 1       | D. Rajgopalan                | Retainership for stadium project                              | -        | 2,88,000 | 2,88,000 |
| 2       | Fida J Shaw                  | Consultancy services for tying up with clubs                  | 2,34,000 | -        | -        |
| 3       | Papaya's Garden Service Co   | Terrace Garden/Pitch Grass/Suites Garden maintenances charges | 4,27,302 | -        | -        |
| 4       | West India Infratech Pvt ltd | Electrical work for multi-purpose stadium                     | -        | 1,89,513 | 1,89,513 |
| Total   |                              |   | 6,61,302 | 4,77,513 | 4,77,513 |

- that the Noticee has produced the copy of the above mentioned Invoices and also put forth their argument for the same from which I find that all the above Invoice are attributable to taxable supplies only and hence, the ITC of the said Invoice should be deducted from the total Credit before applying the Rule 42 of CCST Rules 2017. Hence, I find that the demand of ITC of Rs. 1,72,937/- (IGST Rs. 78,329/- + CGST Rs. 47,304 + SGST Rs. 47,304/-) is required to be dropped and the demand of short Reversal of IGST of Rs. 2,86,997/- under Section 74(1) read with the provisions of Section 20 of the IGST Act is required to be confirmed.

Regarding Non-Payment of GST amounting to Rs. 27,95,410/- on Reimbursement of Electricity Charges and Chilled water supply Charges, I find that the noticee has submitted the worksheet i.e.- bifurcation of Reimbursement of Electricity Charges and Chilled water supply Charges;

- Regarding the Reimbursement of Electricity Charges, I find that the noticee have submitted calculation sheet month wise for the reimbursement of Electricity Charges in which they have calculated the rate of per unit from the Electricity bill they have received main connection of and then they have recovered from the tenant as per the sub-meter reading installed at the premises of tenant at the derived rate of per unit;
- That on going through the Electricity Bill for the month of December, 2018 it is noticed that the electricity charges was Rs. 44,82,230/= against 404425 KWH Unit Consumption. Accordingly, the rate per unit comes to Rs. 11.08 (Bill amount Rs. 4082230/404425 Unit Consumed). Further the worksheet submitted by the noticee also indicates the recoverable amount from their tenants is Rs. 11.08 per Unit. Hence, I find that the same falls within the purview of Pure Agent as defined under Rule 33 of CGST Rules, 2017;



- that in the SCN it is also mentioned the taxpayer has also installed the D.G. set for continues supply of electricity in case of any failure or fluctuation in the main line. In this regard, the noticee has submitted that the D.G. Set is not even connected to the sub-meters of Torrent Power Limited installed at the premises of Tenant, No D.G. Sets facility are provided for running the business of tenant, the facility of D.G. Set is for common use where parking, passages and lifts are covered & For the same they have again referred the LOI where it is mentioning power backup is only in common areas. In this regard, I find that the connection of D.G. Set is not given to the tenant sub-meters, the question of reimbursement of Electricity expense for the same does not arises. Hence, I find that the reimbursement of Electricity Expenses by the method mentioned in Para 10.2 Supra are falls within the purview of pure agent as defined under Rule 33 of CGST, Rules, 2017 and hence the same is exempted from the GST;
- Regarding the Reimbursement of Chilled Water Charges, the noticee has argued that as per Sr. No. 99 of Notification No. 2/2017 – Central Tax (Rate) dt. 28.06.2017 which grants exemption to all kinds of water (other than aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container) falling under heading, 2201 from GST and the chilled water is ordinary natural water and hence shall merit classification under the said heading and hence the supply of the chilled water for consideration shall not be liable to tax;  
that the noticee has provided the Service of Renting of immovable property on which they have paid the GST and the noticee reimbursed the Electricity Charges and Chilled water Charges from the tenant to whom such facility is given. In this regard, I find that the reimbursement of Electricity Charges and Chilled Water Charges are exempted from GST and hence the condition (ii) of the definition of “Composite supply” is not satisfied. In this case, the condition no. (ii) of the definition of is not satisfied, it is cleared that the supply by the noticee not covered under the 'Composite supply', Hence, the condition no. (iii) is not required to discussed here;
- that in this case, if the Renting of Immovable Property taken as Principal supply, the reimbursement of Electricity charges and supply of Chilled Water is required to be a naturally bundled and supplied in conjunction with each other in the ordinary course of business which is actually not in the ordinary course of business and the premises which is required to be rented out may have their separate electricity connection and there is no need of chilled water hence the same cannot be treated as naturally bundled;
- In this case also as per sample copies of Letter of Intent, I find that (i) one of the Tenant have taken their separate connection of electricity from electricity distribution company, hence there is no reimbursement of Electricity Charges in the said case. Hence it can be said there is no compulsion of the Tenant that



they have to installed sub-meter from the connection of the noticee. (ii) From one of the Letter of Intent it can be seen that the Chilled water Charges are not mentioned hence, there is no compulsion of the Tenant that they have to installed the Centralized Air Condition and get the Chilled water from Tenant they can installed their own Air Conditioning System or not to use Air Conditioner. Hence, the condition (iii) of the definition of the Composite supply is also not satisfied. In view of the same the demand also not sustained on the said ground also.

3. During Review of the said 'Impugned Order' dated 19.05.2023 the department has observed that the adjudicating authority has vacated the tax demand of Rs 11,21,426/ considering the 'supply of chilled water' as an exempted supply covered under Entry No. 99 of the Nod. No. 02/2017-Central Tax (Rate) dated 28.06.2017 and thus, a non-taxable supply and accordingly filed the present appeal on 30.11.2023 on the following grounds:

- the decision appears to be incorrect as the authority took the supply of chilled water at its face value whereas in reality, the taxpayer was found to be providing the facility of air-conditioning to their tenants on charge basis. The taxpayer was not providing water to their tenants either in real/physical form or for their direct consumption, rather the said chilled water was being used by the taxpayer in their chilled water air conditioning system, and thereby, they were providing airconditioning facility through centralized air conditioning system, to those tenants who had opted for such facility on charge basis at the rate of Rs. 9 per sqr. Ft. per month;
- They were claiming to supply chilled water which is measured in square feet basis (which is an area unit), whereas the common unit to measure water is litre/cm<sup>3</sup> (a volume unit). This perspective also supports the analysis that no water in actual form is supplied by the taxpayer to their recipients or rather water supplied is for air conditioning. Since there was no water supply as such, to the service recipients, the claim of exemption from GST under Noti. No. 02/2017-CT (Rate) dated 28.06.2017 does not appear to be legally correct;
- that the taxpayer has deliberately resorted to artificial bifurcation of such charges under the name of chilled water supply charges by excluding it from the rental charges received from their tenants in order to artificially reduce their tax liability;
- Since, no water is supplied in the said transaction, the claim of exemption from GST under-Nod. No. 02/2017-CT (Rate) dated 28.06.2017 by the taxpayer is not legally correct as same is not exempted supply. Rather it is a taxable supply;



- that as per Section 15(1) of the CGST Act, 2017 charges collected by the taxpayer from their tenants in the form of reimbursement in lieu of supplying air-conditioning facility is liable to be included in the value of taxable supply of the transaction which includes two components, - one the supply of renting of immovable property and the second, -provision of air conditioning facility on charge basis
- the supply of air conditioning facility is an ancillary supply to the main supply of service of renting of immovable property for those tenants who opt for air conditioning facility, provided by the taxpayer on charge basis, and for better enjoyment of rented property. Therefore, the charges collected as reimbursement of air conditioning facility under the name of 'chilled water supply' is liable to be included with the proceeds received by the taxpayer for supplying services of renting of immovable property under the Section 15 of the CGST Act, 2017 and accordingly, same are taxable under Section 9 of the CGST Act, 2017.

In view of above, the *appellant/department* has made prayer as under:

- i. To set aside the impugned order to the extent, vacating the demand of tax of Rs. 11,21,426/- [Rs. 5260,713/- as CGST + Rs. 5,60,713/- as SGST] payable on reimbursement charges received from their tenants for supply of air-conditioning facility under the name of chilled water supply.
- ii. to pass an order for recovery of Rs 11,21,426/- [Rs. 5,60,713/- as CGST + Rs. 5,60,713/- as SGST] with interest and impose penalty.
- iii. to pass any other order(s) as deemed fit in the interest of justice.



#### **Personal Hearing:**

4. Personal Hearing in the matter was fixed 04.01.2024, 18.01.2024, 24.01.2024, 09.02.2024, 27.02.2024 and 06.03.2024, wherein no one appeared on behalf of the *Respondent* as authorized representative. As on 12.03.2024 they have sent a mail and attached written submissions in which they have taken objection that the Ld. Assistant Commissioner has filed the appeal dated 29.11.2023 against the order dated 19.05.2023 and is being barred by limitation.

#### **Discussion and Findings :**

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is (i) whether the appeal has been filed within the prescribed time- limit and (ii) whether the appellant is liable to pay GST on reimbursement charges received from their tenants for supply of air-conditioning facility under the

name of chilled water supply amounting to Rs. 11,21,426/- (CGST Rs. 5,60,713 and SGST Rs. 5,60,713/-).

7. At the foremost, it is observed that in the instant case the "impugned order" is of dated 19.05.2023 and the present appeal is filed on 30.11.2023. As per Section 107(2) of the CGST Act, 2017, the appeal is required to be filed within six months time limit. It is observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(2) of the CGST Act, 2017. Though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of the Section 107 of the CGST Act, 2017. In the present case, the 'impugned order' is of dated 19.05.2023. Further, looking to the provisions of condonation of delay, for a further period of one month as per provisions of sub section (4) of Section 107 of the CGST Act, 2017 the last date for filing of appeal comes on 19.12.2023, whereas the present appeal is filed on 30.11.2023. In view of the above, in the instant case, I am inclined to condone the delay in filing of appeal for one month period. Therefore, I find that the present appeal is filed within stipulated time limit. Accordingly, I am proceeded to decide the case.



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 in the present case appeal is filed against impugned order wherein adjudicating authority has vacated the tax demand of Rs 11,21,426/ considering the 'supply of chilled water' as an exempted supply covered under Entry No. 99 of the Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017 and thus, a non-taxable supply. In this regard, the Notification No. 02/2017- Central Tax Rate dated 28.06.2017 which provides the list of Exemption in GST, where in Sr. No. 99 specifies the taxability on water which is re produced as under:

| Sr. No. | Chapter Heading<br>Sub-Heading Tariff item | Description of Goods  |
|---------|--|---|
| 1       | 2201                                       | Water (other than aerated mineral purified, distilled, medicinal, ionic, battery, de-mineralized and water sold sealed container) |



**8(ii).** However, in the instant case it is observed that the adjudicating authority took the supply of chilled water at its face value, whereas the respondent was providing the facility of air-conditioning to their tenants on charge basis. The respondent was not providing water to their tenants either in real/physical form or for their direct consumption, rather the said chilled water was being used by the respondent in their chilled water air conditioning system, and thereby, they were providing air conditioning facility through centralized air conditioning system, to those tenants who had opted for such facility on charge basis at the rate of Rs. 9 per sq. ft. per month. In view of the above, it is observed that no water in actual form is supplied by the respondent to their recipients or rather water supplied is for air conditioning. Since there was no water supply as such, to the service recipients, the claim of exemption from GST under Nod. No. 02/2017-CT (Rate) dated 28.06.2017 does not found to be legally correct.

**8(iii).** The relevant paras of Sections 15 of the CGST Act, 2017 refer to the value of taxable supply is re-produced as under:

Section 15. Value of Taxable Supply.-

(1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include-*

(a) .....

(b) .....

(c) *incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

(d) .....

(e) .....

In view of the above it is observed that the charges collected by the respondent from their tenants in the form of reimbursement in lieu of supplying air-conditioning facility and is liable to be included in the value of taxable supply of the transaction which includes two components, one the supply of renting of immovable property and the second, provision of air conditioning facility on charge basis. In the present case, the supply of air conditioning facility is an ancillary supply to the main supply of service of renting of immovable property for those tenants who opt for air conditioning

facility, provided by the respondent on charge basis. Therefore, the charges collected as reimbursement of air conditioning facility under the name of "chilled water supply" is liable to be included with the proceeds received by the respondent for supplying services of renting of immovable property under the Section 15 of the CGST Act, 2017 and accordingly, same are taxable under Section 9 of the CGST Act, 2017.

9. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside in respect of non - payment of GST on reimbursement charges received from their tenants for supply of air-conditioning facility under the name of chilled water supply amounting to Rs. 11,21,426/- (CGST Rs. 5,60,713 and SGST Rs. 5,60,713/-). Accordingly, the appeal filed by the 'Department' is allowed and the '*impugned order*' is set aside to the above extent.

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.

*Adesh Kumar Jain*  
19/04/2024

(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 19.04.2024

Attested

*Sandheer Kumar*  
19/04/24

(Sandheer Kumar)  
Superintendent,  
CGST (Appeals), Ahmedabad



By R.P.A.D.

To,  
The Assistant / Deputy Commissioner,  
CGST, Division - I (Rakhial), Ahmedabad South.

Appellant

M/s. SE Transstadia Private Limited,  
96, The Arena, Near Kankaria Lake,  
Gate No. 03, Kankaria, Ahmedabad,  
Gujarat-380022

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 Dy/Asstt. Commissioner, CGST, Division-I (Rakhial), Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File