



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20221164SW000000C5C9

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/16/2022 / 11991-95
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-075/2022-23
दिनांक Date : 21-11-2022 जारी करने की तारीख Date of Issue 22.11.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Ref-03/Addis Infra/AC/DAP/2021-22 दिनांक: 07.09.2021
passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- The Assistant Commissioner
CGST, Division VI, Ahmedabad South
3rd Floor, APM Mall, Anand Nagar Road,
Satellite, Ahmedabad - 380015

Respondent

- M/s Addis Infrabuild LLP
32, 3rd Floor, Roopa Building,
Sona Roopa, Opposite Lal Bunglow,
C.G. Road, Ahmedabad - 380009

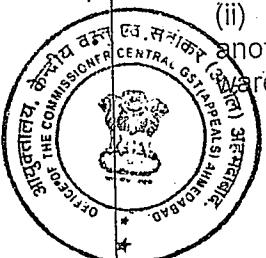
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

- (1) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।
- (i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :
- (ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।
- (ii) In case of any loss of goods where the loss occur 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.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

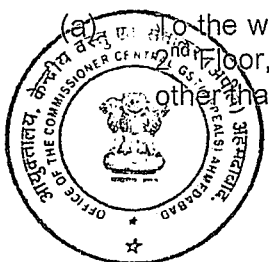
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) to the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i). (a) above.



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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (50) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

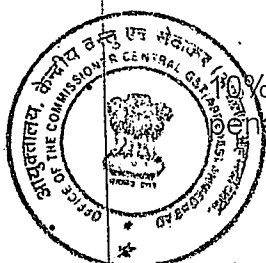
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (cxxxiii) amount determined under Section 11 D;
- (cxxxiv) amount of erroneous Cenvat Credit taken;
- (cxxxv) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, 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."



ORDER-IN-APPEAL

The present appeal has been filed by the Assistant Commissioner, CGST, Division-VI, Commissionerate- Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 40/2021-22 dated 15.12.2021 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. CGST-VI/Ref-03/Addis Infra/AC/DAP/2021-22 dated 07.09.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VI, Commissionerate- Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Addis Indrabuild LLP, 32, 3rd Floor, Roopa Building, Sona Roopa, Opposite Lal Bungalow, C.G. Road, Ahmedabad – 380 009 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that the respondent were holding Service Tax Excise Registration No. ABAFA3593MSD001 and engaged in providing Construction Services other than Residential Complex, including Commercial/Industrial Buildings or Civil Structures, Construction of Residential Complex Services etc. The respondent had filed an application on 28.09.2020 for refund of an amount of Rs.53,41,867/- in respect of the service tax paid by them on account of cancellation of booking of units in a commercial project scheme named 'Addor Aspire'. Booking by the prospective members were made before 01.07.2017 and amounts in advance for such bookings were made before implementation of GST. The said member/buyers cancelled their booking after 1.07.2017. The respondent claimed that since the service tax had been paid but the output service was not provided in these transactions, the service tax was no longer payable and accordingly, they applied for the refund of the service tax paid.

3. The said refund claim was rejected vide OIO NO. CGST-VI/Ref-44/Addis Infra/DC/Neetu Singh/2021 dated 30.12.2020. Being aggrieved, the respondent preferred appeal before the Commissioner (Appeals),



Ahmedabad, who vide OIA NO. AHM-EXCUS-001-APP-088/2020-21 dated 30.03.2021 set aside the said OIO and remanded the matter back to the adjudicating authority with a direction to decide the matter after examining the applicability of the decision in OIA dated 29.05.2017 in the case of Panchratna Corporation, Ahmedabad.

3.1 Accordingly, the respondent filed an application on 08.06.2021 for refund of Rs.53.41.867/-. On scrutiny of the refund claim and the documents submitted by the respondent, it was observed that proportionate cenvat credit was not reversed by the respondent as required in terms of Rule 6 (3) of the Cenvat Credit Rules, 2004 (hereinafter referred to as CCR, 2004). Therefore, the respondent were issued Show Cause Notice No. CGST/WS06/Ref-03/Addis Infra/2021-22 dated 24.08.2021, wherein it was proposed to reject the refund claim as they had failed to reverse the proportionate credit in terms of Rule 6(3) of the CCR, 2004.

3.2 The said SCN was adjudicated vide the impugned order wherein the refund of Rs.33,14,327/- was sanctioned after adjusting an amount of Rs.20,27,540/- in terms of Rule 6 (3) of the CCR, 2004.

4. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :

- i. The adjudicating authority has erred in sanctioning the refund by merely relying upon the order dated 29.06.2017 of the Commissioner (Appeals), Ahmedabad in the case of M/s. Panchratna Corporation, Ahmedabad.
- ii. However, the view of the adjudicating authority is contrary to law, facts and evidences on record inasmuch as the respondent had made payment of the said amount by GAR-7 Challan under Major Head 0044, which is nothing but service tax.
- iii. The service provider has shown receipts of consideration for providing construction services in the ST-3 returns and accordingly



paid service tax on the advances toward construction services which is a continuous supply of service. Therefore, the amount paid by the service provider was not a deposit but service tax.

- iv. The statute does not provide that the liability to pay service tax would arise only after the service is provided, rather it provided that service tax is payable once payment towards the service is received. Therefore, the service tax was paid by the service provider on the amount received from the respondent and its refund would be governed by Section 11B of the Central Excise Act, 1944.
- v. The service tax was paid between 2014 and 2016 without any protest and the refund claim was filed on 28.09.2020 i.e. after more than four years from the relevant date of payment of service tax. Since the refund claim was filed under Section 11B of the Central Excise Act, 1944, all the provisions of the said section are attracted and the claim filed by the respondent is hit by limitation. Therefore, the refund was erroneously sanctioned.
- vi. The adjudicating authority, at Para 10 of the impugned order, is of the view that all the buyers had cancelled the booking of units after the appointed date of implementation of CGST Act, 2017 and thus the respondent was not in a position to make adjustments under the erstwhile Rule 6 (3) of the Service Tax Rules, 1994. However, the view of the adjudicating authority is contrary to the facts and evidences on record inasmuch as Office No.209 was cancelled on 06.10.2016 i.e. before implementation of GST.
- vii. Further, 6 out of the 20 buyers had cancelled their bookings after BU permission was obtained by the respondent. Rule 6(3) of the Service Tax Rules, 1994 provides for taking credit of excess service tax paid for services not provided either wholly or partially for any reason. However, after issuance of BU certificate, the sale of offices by the respondent would not attract service tax and the proportionate cenvat credit needs to be reversed on the units sold after BU permission in terms of Rule 6(3) of the Cenvat Credit Rules, 2004.

viii. As 14 out of the 20 units were re-sold after BU permission, the respondent was required to reverse cenvat credit in terms of Rule



6(3) of the Cenvat Credit Rules,2004. The adjudicating authority failed to calculate and adjust the said amount attributing to exempted service in terms of Rule 6(3) of the Cenvat Credit Rules,2004 from the total refund sanctioned.

- ix. The decision in the case of C.C.E & S.T, Bhavnagar Vs. Madhvi Procon Pvt. Ltd - 2015(38) STR 74 (Tri.-Ahmd.) has been distinguished in the case of Benzy Tours & Travels Pvt. Ltd. Vs. Commissioner of S.T., Mumbai-I - 2016 (43) STR 625 (Tri.-Mum.).
- x. The adjudicating authority has failed to appreciate the judgment in the case of Assistant Commissioner of S.T., Chennai Vs. Nataraj and Venkat Associates - 2015 (40) STR 31 (Mad.).

5. Personal Hearing in the case was held on 31.10.2022. Shri Abhishek Shah, Chartered Accountant, appeared on behalf of respondent for the hearing. He stated that all the cancellations had occurred before BU permission and hence, no service was provided. He further stated that the issue of limitation has been decided by various judicial pronouncements in similar matter. He stated that he would make a written submission in the case.

6. The respondent filed their cross-objections on 14.11.2022, wherein it was, inter alia, contended that :

- The application for refund was already rejected once on the ground of limitation and the matter is discussed in details in the appeal filed by them earlier and it was decided in their favour. However, the appeal has been filed on the same grounds.
- They had paid service tax at the time of collection of advance from the buyer. The intended service was never completed as the buyer cancelled the booking before the construction was completed and the possession and title was handed over. Accordingly, the amount that was paid by them was never meant to be paid a tax.
- The order in the case of Natraj and Venkat Associates - 2015 (40) STR 31 (Mad.) has been discussed in the earlier order and the same



was taken into consideration and the order was passed in their favour.

- Regarding the applicability of Benzy Tours and Travels P. Ltd, it is stated in the order passed by the Commissioner (Appeals) that the judgment issued by the jurisdictional appellate authority would prevail when two contrary decisions are issued in cases of similar facts.
- One of the unit i.e. Unit 209, in respect of which refund is sought, was canceled during the service tax regime. The adjudicating authority has held that we should have taken credit of the tax paid and not claimed refund. While Rule 6 of the Service Tax Rules, 1994 allowed them to take credit, it was an optional provision. Therefore, even during the service tax regime, the assessee had an option to take credit or not.
- They were under discussion with the buyer to make him continue with the booking and, hence, were not sure if the cancellation was final. It was finalized post the service tax regime and they had not choice but to apply for refund.
- The contention that Rule 6 will be applicable on the 14 units which were sold after BU, and hence, credit has to be reversed, has no merits. These are different aspects of taxability as well as taking back the credit of the tax paid earlier, which is now not payable. The fact that these units are not resold post BU will have no bearing on whether they are eligible for refund or not.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the cross-objections filed by the respondent and the material available on records. The issue before me for decision is whether the impugned order sanctioning refund of an amount of Rs.33,14,327/- is legal and proper.

8. The appellant department have raised the issue of applicability of limitation in terms of Section 11B of the Central Excise Act, 1944. However, I find this issue has been already decided by the Commissioner,



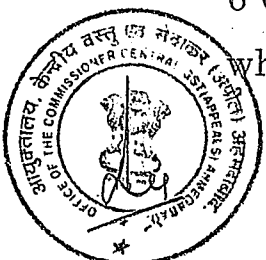
CGST Appeals, Ahmedabad in the case of Panchrathna Corporation vide OIA No. AHM-SVTAX-000-APP-023-17-18 dated 29.05.2017. In the said case, it was held at Para 10 of the OIA that “I find that no service at all has been provided the relevant date of one year and date of payment a per Section 11B of Central Excise Act 1944 cannot be made applicable in the instant case”. There is no material on record to indicate that the said OIA has been reversed by any higher appellate authority.

8.1 It is further observed that the impugned order has been passed in the remand proceedings ordered vide OIA No. AHM-EXCUS-001-APP-88/2020-21 dated 30.03.2021 passed by the Commissioner (Appeals), Ahmedabad. The relevant part of the said OIA is reproduced below :

“11. In view of the above discussions, I find it appropriate to remand the matter to the adjudicating authority to decide it afresh, after examining the applicability of the decision of the Commissioner (Appeals), Ahmedabad dated 29.05.2017 (issued on 29.06.2017) in case of M/s. Panchratna Corporation, Ahmedabad, to the present case and to issue a fresh order, following the principles of natural justice”.

8.2 Considering the above directions, the adjudicating authority has, by following the OIA in the case of Panchratna Corporation supra, held at Para 15.2 of the impugned order that the limitation prescribed under Section 11B of the Central Excise Act, 1944 is not applicable. There is nothing on record to show that the appellant department had challenged the OIA dated 30.03.2021 before any higher appellate authority. Therefore, the said OIA has attained finality and, consequently, the issue of limitation cannot be raised by the appellant department by way of the present appeal. In the result, I hold that the issue of limitation raised by the appellant department is not legally tenable.

9. The appellant department has also contested the impugned order on the grounds that the respondent was required to reverse the cenvat credit, in respect of the units sold after BU permission, in terms of Rule 6(3) of the Cenvat Credit Rules, 2004. In this regard, I find that the issue of whether the respondent are liable to reverse cenvat credit in terms of Rule 6 (3) of the CCR, 2004 or otherwise is an issue extraneous to the issue of whether the respondent are eligible to refund. Therefore, the issue of



whether the respondent is required to reverse cenvat credit in terms of Rule 6 (3) of the CCR, 2004 is not being dealt with in the present appeal. If the appellant department is of the view that the respondent are required to reverse cenvat credit, separate proceedings should be initiated under the appropriate provisions of law. The appellant department cannot seek determination of this issue in the course of deciding the refund claim of the respondent. In view thereof, I am of the considered view that there is no merit in this contention of the appellant department and, the same is accordingly rejected.

10. The appellant department has also challenged the impugned order on the grounds that one of the units i.e. Unit No.209 was cancelled on 06.10.2016 i.e. before implementation of GST. In this regard, I find that vide OIA dated 30.03.2021, the adjudicating authority was directed to carry out re-verification of the factual details. Para 10.5 of the said OIA is reproduced below :

“10.5 Further, it is also observed that as per the details mentioned in the table under Para-6 of the impugned order, the date of cancellation in case of the buyer at Sr. No.15 (Unit No.209) is shown as 06.10.2016 i.e. prior to implementation of GST. Whereas, I find that the discussion and findings of the adjudicating authority as per Para-7 and 9 of the impugned order is based on the fact that the buyers had cancelled the bookings, after the appointed date of implementation of the GST Act, 2017 which is factually incorrect, in the case of above mentioned buyer (Unit No.209). Accordingly, I find that the factual details, mentioned in the impugned order also need to be reverified.

10.1 It is seen that the case was remanded back to the adjudicating authority with a direction to re-verify the factual details of the date of cancellation of the bookings by the buyers of the respondent. However, the adjudicating authority has, in total disregard of the directions contained in the OIA supra, passed the impugned order without re-verification of the factual details and sanctioned the refund claim of the respondent even in respect of the cancellation of bookings done prior to the implementation of GST. This is an act of judicial indiscipline on the part of the adjudicating authority. The amount of refund admissible to the respondent can be decided only after the re-verification of the factual details is carried out. Consequently, the impugned order is set aside and remanded back to the adjudicating authority to decide the matter afresh after complying with



the directions contained in Para 10.5 of OIA No. AHM-EXCUS-001-APP-88/2020-21 dated 30.03.2021 passed by the Commissioner (Appeals), Ahmedabad.

11. In view of the above facts, I set aside the impugned order and allow the appeal filed by the appellant department by way of remand.

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

The appeal filed by the appellant stands disposed of in above terms.

Akhilesh Kumar
21st November, 2022

(Akhilesh Kumar)
Commissioner (Appeals)
Date:21.11.2022.

Attested:

N. Suryanarayanan. Iyer
(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

The Assistant Commissioner,
CGST, Division VI,
Commissionerate : Ahmedabad South.

M/s. Addis Infrabuild LLP,
32, 3rd Floor, Roopa Building,
Sona Roopa, Opposite Lal Bungalow,
C.G.Road,
Ahmedabad – 380 009

Appellant

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.



