

# Refund of service tax on cancellation of flat booking allowed under GST

16 September 2020



## Summary

The Commissioner of GST and Central Excise (Appeals), Mumbai [Commissioner (A)], has recently allowed refund of service tax paid on cancellation of flat booking under the GST law. The Commissioner (A) observed that in the present case, since the consideration has been returned, no service has been provided to the appellant. Therefore, it held that in such cases, refund becomes admissible under the GST law.

### Facts of the case

- The appellant<sup>1</sup> booked a flat in a project and had paid applicable service tax, including Swachh Bharat Cess (SBC), on the amounts paid to the builder.
- The appellant cancelled the booking subsequently, however, the builder didn't return the service tax paid by the appellant.
- Therefore, the appellant claimed refund of service tax paid<sup>2</sup>.
- The adjudicating authority rejected the refund claim on the ground that it is time-barred and was subject to the doctrine of unjust enrichment.
- Aggrieved the appellant filed the present appeal.

### Commissioner (A) observations and ruling<sup>3</sup>

- **No restriction in law for claiming refund:**  
The law does not provide that refund can be

claimed only in provisional assessment cases or refund cannot be claimed if assessment is final.

- **No service was provided:** No service has been provided to the appellant in this case as the consideration for service was returned and the service contract got terminated. Once service is not provided refund<sup>4</sup> becomes admissible.
- **FAQ by CBIC:** Referring to a recent FAQ issued by CBIC<sup>5</sup>, the Commissioner (A) stated that it has been specifically clarified that any service paid on or before 30 June 2017 for the services to be provided but subsequently not provided shall be eligible to claim refund. The FAQ recognises that all claims for non-provision of service in respect of which adjustment/credit would have been available under erstwhile laws<sup>6</sup> would merit to be honoured in the GST

<sup>1</sup> Mr. Haresh V Kagrana (HUF)

<sup>2</sup> under the provisions of Section 11B of the Central Excise Act, 1944 as applicable to service tax under section 83 of the Finance Act, 1994

<sup>3</sup> Order-In-Appeal No. NA/GST/A-III/MUM/84/2020-21 dated 25 August 2020

<sup>4</sup> U/s 142(5) of the CGST Act, 2017

<sup>5</sup> FAQs on Insurance and Stockbrokers Updated as on 27 December 2018

<sup>6</sup> Rule 6(3) of Service Tax Rules, 1994

regime<sup>7</sup> as well. Thus, if a taxpayer is entitled to credit under erstwhile law then refund under GST regime shall be granted.

- **Service tax paid in nature of deposit:** No service has been provided to appellant in this case and therefore the provision of relevant date of one year and date of payment<sup>8</sup> cannot be made applicable in present case. The service tax paid by the appellant is in the nature of deposit and not service tax.
- **Cancellation date shall be relevant date:** Even if payment is in the nature of service tax, the date of cancellation of flat will be considered as the relevant date for calculating the time limit of one year as the event that led to the refund of taxes is the cancellation by the buyer. If cancellation would not have happened, the refund claim would not have arisen at all.
- **Doctrine of unjust enrichment not applicable:** It is clear that the appellant has borne the incidence of service tax whose refund is being claimed. Therefore, the claim is not hit by the doctrine of unjust enrichment.
- **Appeal allowed:** Therefore, the Commissioner (A) set aside the impugned order and allowed the appeal.

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<sup>7</sup> U/s 142(5) of the CGST Act, 2017

### Our comments

Subsequent cancellation of flat bookings is a common phenomenon in the real estate industry. However, in such situation, generally the buyers have to suffer as the builders refuse to refund the tax components paid by the buyers.

This is a welcome judgement by the GST authorities and would provide clarity and relief to such buyers. Further, the Commissioner (A) has also made an important observation that if a taxpayer is entitled to credit under erstwhile laws, refund under GST law shall be granted.

However, this ruling is likely to be challenged in higher courts. Accordingly, the taxpayers will have to wait until the matter attains finality.

<sup>8</sup> Section 11B of the Central Excise Act, 1944

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