

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I**

Application No. ST/S/86161 & 86164/2018

In Appeal No. ST/82923 & 87925/2018

(Arising out of Order-in-Appeal No. SK/GST(Audit-II)/MUM/17-21/Appeals-III/2018 dated 05.03.2018 passed by the Commissioner of CGST & Central Excise , Audit-II, Mumbai).

Commissioner of GST & Central Excise, Mumbai West	Appellant
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Vs.

M/s Sodexo Food Solutions India Pvt. Ltd.	Respondent
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Appearance:

Shri M.K. Sarangi, Jt. Commissioner (AR)	for Appellant
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Shri Prasad Paranjape, Advocate	for Respondent
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CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)	HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)
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Date of Hearing: 09.10.2018

Date of Decision: 09.10.2018

ORDER NO. **M/86004-86005/2018**

Per: Dr. D.M. Misra

Heard both sides.

2. These two applications are filed by the Revenue seeking stay of operation of the Order-in-Appeal No. SK/GST(Audit-II)/MUM/17-21/Appeals-III/2018 dated 05.03.2018 passed by the Commissioner of CGST & Central Excise , Audit-II, Mumbai.

3. Learned AR for the Revenue submits that the learned Commissioner (Appeals), without following the principles of law laid down by the Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Madras Vs. Addison & Co. Ltd. – 2016 (339) ELT 177 (SC)*, has allowed the refund claim, instead of transferring the same to the Consumer Welfare Fund.

4. Responding to the said argument, the learned Advocate Shri Prasad Paranjape for the respondents submits that the said decision of the Hon'ble Supreme Court is distinguishable on facts, hence, the ratio is not applicable to the present case. Besides, the same has not been referred before the learned Commissioner (Appeals). Also learned Advocate submits that pursuant to said order, the amount had already been sanctioned and refunded to them.

5. On going through the orders, *prima facie*, we do not find that the order is *ex-facie* illegal or it was passed without jurisdiction. In the impugned order, while deciding the issue, the learned Commissioner (Appeals) has recorded reasons; the correctness of which would be tested at the time of disposal of the appeal. At this stage, we do not find a *prima facie* case has been made out by the Revenue warranting stay of the operation of the impugned order. In the result, the Revenue's stay applications are dismissed. The grounds raised by the Revenue in their appeals would be considered at the time of disposal of the appeals.

(Dictated and pronounced in Court)

(C.J. Mathew)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)