

**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST REGIONAL BENCH AT MUMBAI**

***Application No. ST/S/86166 to 86168/2018 In  
Appeal No. ST/87928,87929 & 87931/2018***

***Arising out of:*** Order-in-Appeal No.SK/GST(Audit-II)/MUM/17 to 21/Appeals-III/2018 dt. 05.03.2018

***Passed by :*** Commissioner of CGST & Central Excise, Audit-II, Mumbai

**Date of hearing : 13/12/2018**

**Date of decision : 13/12/2018**

**Commissioner of GST  
Mumbai West**

***Applicant Appellant – Represented  
by:***

Shri M.K. Sarangi,  
Jt. Commissioner (A.R.)

***Versus***

**M/s. Sodexo Facilities Management  
Services India Pvt. Ltd.  
M/s. Sodexo Facilities Management  
Services India Pvt. Ltd.  
M/s. Sodexo Food Solutions India  
Pvt. Ltd.**

***Respondent – Represented by:***  
Shri Suyog Bhawe, Advocate

**CORAM**

**Hon'ble Dr. D.M. Misra, Member (Judicial)  
Hon'ble C.J. Mathew, Member (Technical)**

**ORDER NO. M/86297-86299/2018**

**Per : Dr. D.M. Misra**

Heard both sides.

2. These three 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 Suyog Bhave 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

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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.

(Operative portion of the order pronounced in Court)

**(C.J. Mathew)**  
***Member (Technical)***

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

SM.