GSTAT

State Bench Dehradun

Division Bench Court No. Court I

APL/18/DHR/2026

PRIYAJA DHONDIYAL **.....Appellant**

Versus

THE COMMISSIONER CGST DEHRADUN, THE COMMISSIONER, E BLOCK NEHRU COLONY DEHRADUN & ORS. **.....Respondent**

Quorum

Hon'ble Naresh Katyal, Member(Judicial)
Hon'ble Amand Shah, Member (Technical)

Counsel for Appellant
RAJESH GUPTA, CA

Counsel for Respondent
AJAY SINGH KUNDU, AC
ANUPAM JOSHI, AC

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order: No

Order reference no.: ZA050421026000129H **Date of order:** 14/10/2026

1.	GSTIN/Temporary ID/UIN – 052300000009RFF	
2.	Appeal Case Reference no. - APL/18/DHR/2026	Date - 24/06/2026
3.	Name of the appellant - PRIYAJA DHONDIYAL, hkumar8oct@gmail.com, 9720245653	

4.	Name of the respondent - 1. Ramesh Kumar Vyas (Assistant Commissioner), rhl.yadava@gov.in, 9634313908 2. The Commissioner CGST Dehradun
5.	Order appealed against -
	(5.1) Order Type - Refund Order
	(5.2) Ref Number - DDN/CGST/000/APPL/143/2024-25 Date - 24/04/2025
6.	Personal Hearing - 14/10/2026, 16/09/2026 & 02/09/2026
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - Order in Appeal No. DDN/CGST/000/APPL/143/2024-25 dated: 24.04.2025 passed by the Joint Commissioner CGST (Appeals), Dehradun, was challenged before GST Appellate tribunal, Dehradun by the aggrieved appellant vide Appeal Number APL/18/DHR/2026. The said order dated 24.04.2025 is rejected. The Appeal is allowed.

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	0		0		0		0		0	0

(b) Interest	0		0		0		0		0	0
(c) Penalty	0		0		0		0		0	0
(d) Fees	0		0		0		0		0	0
(e) Others										0
(f) Refund		216112.50		216112.50		0		0		432225

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Erroneous refund	The refund is barred by limitation.	The appeal is allowed.

Place: DEHRADUN

Date: 15.10.2026

Signature

DEHRADUN Naresh Katyal

Designation: Member

Jurisdiction: Dehradun

ORDER

Per: Naresh Katyal

Unsuccessful appellant Priyaja Dhondiyal is in appeal. Legality of Order in Original dated 21.03.2024 passed by Assistant Commissioner CGST Division Dehradun (Adjudicating Authority) and Order in Appeal dated 24.04.2025 passed by Joint Commissioner CGST (Appeals), Dehradun has been assailed by her through this appeal. She has been non suited by both these authorities, as her refund claim has been rejected.

2. Brief facts:

2.1 The appellant herein had booked a flat, identified as Flat No. C-401, in residential project 'Green View Blossom' situated at Main Sahastradhara Road, Dehradun, Uttarakhand 248013. The project was being developed by M/s Phoolchand Infrastructure Private Limited (hereinafter referred as "Developer"), holding GSTIN 05AAGCP0200Q1ZK.

2.2 Under terms of a tripartite agreement; appellant opted for Construction - linked payment plan and made payments amounting to Rs 36,01,875/- towards basic value of booked flat, along with Rs 2,16,112.50/- as CGST and Rs 2,16,112.50/- as SGST. Subsequently, upon cancellation of said agreement, appellant had received Rs 35,03,400/- as being the refund of amount from Builder. However, no refund was received for amount paid towards GST, as the statutory time limit for issuing a credit note under Section 34 of the CGST Act, 2017, had lapsed. Hence, she claimed refund of Rs 4,32,225/- under Category of "Refund for unregistered persons". This refund amount was regarding GST Component as said amount was deposited by Developer, in shape of CGST and SGST, each amounting to Rs 2,16,112.50/-. Appellant had already received Rs 35,03,400/- from Builder / Developer, *sans* Rs. 4,32,225/- the amount paid towards CGST and SGST.

2.3 The Assistant Commissioner CGST Dehradun (Adjudicating Authority) vide order dated 21.03.2024 has rejected her refund claim by holding that appellant is not eligible for Refund of Rs 4,32,225/-. The appellant went in appeal. The first appellate authority vide order dated 24.04.25 has affirmed the order dated 21.03.2024 of Adjudicating Authority. This is how, the instant 2nd appeal has been filed before this Tribunal.

3. Submissions / Arguments:

3.1 We have heard learned Representative appealing on behalf of appellant and learned representative of department at considerable length. Learned Representative of Appellant has contended that appellant always remained vigilant of her legal rights to claim refund of GST paid by developer under CGST And SGST each amount to Rs 2,16,112.50/-. She received communication dated: 16.01.2023 from Developer regarding cancellation of Tripartite agreement cancelled on 01.11.2019. Prior thereto, as per contention, appellant had filed claim on CM Portal to seek refund of GST paid and in furtherance thereto, she was conveyed by Department vide communication dated: 17.01.2023 to take necessary action as per Circular No 188/20/2022-GST dated 27.12.2022. Soon thereafter, on 09.03.2023 appellant filed refund claim, which has been erroneously rejected on the ground of limitation, being time barred. Per contra, learned representative of Department has supported both the impugned orders viz. order dated 21.03.2024 (OIO) and order dated 24.04.2025 (OIA) by urging that both these orders are in conformity with statutory provisions and Government Instruction/Circulars.

4. Findings:

4.1 The *short-poser before this Tribunal is as to whether the Appellant's refund claim filled on 09.03.2023 was time barred or not?*

4.2 Admittedly, appellant is an individual, who on the strength of a tripartite agreement dated 06.09.2017 had booked a flat in a Residential Project viz. "Green view Blossom" to be developed by developer i.e. Phoolchand Infrastructure Private Ltd. Admittedly, she had paid Rs 36,01,875/- towards basic value of flat and Rs 4,32,225/- as GST amount comprising of Rs 2,16,112.50/- towards CGST and Rs 2,16,112.50/- toward SGST.

4.3 The tax amount was being deposited by developer while filing GST returns from time to time. The Project flopped; the tripartite agreement was cancelled on 21.11.2019 and developer had intimated regarding cancellation of project vide its letter dated: 16.01.2023. The developer vide communication dated: 09.03.2020 has also intimated the appellant about revocation of "flat builder buyer agreement and tripartite agreement". It has also been conveyed to appellant that full amount, excluding GST, has been refunded to her and GST collected from her was deposited in Government account. Consequently, appellant received Rs 35,03,400/- from developer, but nothing was on count of GST, as time limit for issuance of credit note had already expired.

4.4 Vide Grievance No 174456 dated 23.05.2021, the appellant moved through CM Helpline to seek refund of Rs 4,32,225/-. Vide letter dated: 23.09.2022, the CGST Division – Dehradun had conveyed her that an enquiry against developer has been initiated about details of said amount collected and claim of it being deposited with Government Exchequer. The department communicated to appellant on 17.01.2023 in response to her grievance lodged on 23.05.2021 at CM Portal to take action as per Circular No. 188/20/2022-GST dated: 27.12.2022 by inviting her attention to this circular. Meaning thereby, the appellant, even though has not submitted her refund claim in a manner as prescribed vide Circular No. 188/20/2022-GST dated: 27.12.2022, yet, none-the-less, she duly submitted her refund claim at CM Helpline on 23.05.2021 vide Grievance No. 174456, to seek refund of Rs 4,32,225/- as department was responding to her in furtherance to her grievance lodged at CM Portal. Consequently, in our considered opinion, the communication sent to her on 17.01.2023 by department, by inviting her attention to this circular and take necessary action accordingly, more or less, pales into insignificance. Even otherwise, the appellant may not be aware of niceties of law, though, she acted vigilantly, promptly and without delay, while pursuing her genuine claim of refund of GST. We are not oblivious of the fact that, Tripartite agreement was cancelled on 01.11.2019. Circular No. 188/20/2022 got the light of its day on 27.12.2022. Hence also, this circular cannot be made operative retrospectively, in order to prejudice the rights of appellant. This circular, nowhere mentions that it is retrospectively applicable. Still further, clause 5 of this circular No. 188/20/2022 -GST, dated 27.12.2022, expressly stipulates as under;

Relevant date for filing of refund:

As per sub-section (1) of section 54 of the CGST Act, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under section 54 of the CGST Act. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in instalments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under section 54 of the CGST Act, ***date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier*** *will be considered as* the date of receipt of the services by the applicant.

4.5 The cause of action has accrued in favour of appellant for the first time on 01.11.2019 and secondly on 09.03.2020. Prior to 01.11.2019, the tripartite agreement was subsisting and thus there was no cause of action accrued in her favour to seek refund of GST amount paid by developer. If limitation period of two years in terms of Section 54(1) of CGST Act is reckoned from 09.03.2020 then, in ordinary sense, the limitation period would have expired on 09.03.2022. Likewise, if limitation period of two years in terms of Section 54(1) of CGST Act is reckoned from 01.11.2019 then, in ordinary sense, the limitation period would have expired on 01.11.2021.

4.6 Period from 01.03.2020 to 28.02.2022 has been excluded from computation of period of limitation for filing of refund application as per Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs Notification No. 13/2022-Central Tax dated: 05.07.2022, which has been deemed to have come into force with effect from 01.03.2020. The relevant extract of this Notification is reproduced below;

(iii) excludes the period from 1st day of March, 2020 to the 28th day of February 2022 for computation of period of limitation for filing refund application under Section 54 or Section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from 01.03.2020.

4.7 There is no denying fact that appellant had filed her refund application on 09.03.2023 to seek refund of GST amount of Rs. 4,32,225/-. By applying the above Notification at legal pedestal; her application for refund of GST amount cannot be treated as time barred. Since, the tripartite agreement was revoked on 01.11.2019, so from 02.11.2019 till 01.03.2020; limitation period of 4 months had been consumed. From 01.03.2020 to 28.02.2022 the limitation period was stopped on the force of above Government Notification, palpably due to Covid 2019 pandemic. On 09.03.2023, the appellant filed her refund claim. Meaning thereby, in strict legal sense, she had filed refund claim of GST amount after 1 year 4 months and 9 days i.e. within these prescribed limitation period of two years. Hence, in our opinion, the Government Notification dated: 05.07.2022 has formed a formidable and acceptable base. Curiously enough, both the authorities below have not considered the legal implications flowing form Notification No. 13/2022-Central Tax dated: 05.07.2022, issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, which has caused gross, obvious and manifest in justice to appellant.

4.8 Having decided that claim of Appellant is not barred by limitation set under provisions of Section 54(1) of the CGST Act 2017, we now proceed to address the issue of admissibility of instant refund on its merits. We reiterate that we have

gone through the relevant records, especially the copies of impugned allotment letter, the Agreement, GST receipt vouchers issued by developer, the ledger account of appellant maintained by developer in his book of accounts, initial cancellation letter, Statement 8 and Refund claim filed by appellant in form RFD-01 in course of appreciating the facts of this case.

4.9 On careful examination of records, we find that the appellant, who had booked a flat in residential project being developed by M/s Phoolchand Infrastructure Private Limited under construction linked payment plan, had duly deposited all instalments, due from time to time, and as demanded by developer. We find that the appellant had made total payment of Rs 36,01,875/- towards basic value of flat and Rs. 2,16,112.50/- towards CGST and Rs. 2,16,112.50/- towards SGST and the said amounts of CGST and SGST have, in turn, been deposited with the Government by developer while filing GST returns from time to time.

4.10 We further find that agreement between buyer and developer was subsequently cancelled. On this cancellation, as flowing consequence, Rs. 35,03,400/- was returned by developer to buyer, i.e. the Appellant, *sans* some minor cancellation charges and more significantly, the amount of GST paid in respect of the said flat, which the developer had already deposited with the Government.

4.11 We have perused the contents of Circular number 188/20/2022-GST dated 27.12.2022 issued by CBIC, Government of India. We also find that this is a case where the refund claim, filed on 9.3.2023 by the appellant, in any case, could not have been filed by her before issue of circular dated 27.12.2022 which lays down the manner of filing such refund claim by buyers of flats in similar circumstances. Actually, she has been asked by department through its communication dated: 17.01.2023 to file refund claim as per above circular, though she had already filed her grievance regarding refund of GST on 23.05.2021 at CM Helpline. We find that this circular squarely applies to the case of appellant, since she had borne the incidence of tax in respect of the booked flat. We also take note of the fact that the said circular is binding on department and its officers for all intents and purposes.

5. Conclusion:

5.1 On the issue of payment of GST by developer, we find that the ledger account of appellant, maintained by developer, clearly shows that GST has been paid. Further, we find that information required in terms of Statement 8 is already on record and that all substantive conditions of Rule 89(2) of the CGST Rules stand satisfied. It is an admitted phenomena that the developer had duly deposited full

amount of tax (CGST and SGST), and that said tax had been borne by appellant. We find and accordingly hold that refund claim filed by the appellant is in order and also within the prescribed limitation period. In wake of these facts, we opine that the refund claim of appellant merits acceptance and the GST amount has to be paid/refunded to appellant. Consequently, we allow this appeal. As a sequel thereto, we set aside the Order in Appeal dated:24.04.2025 and also set aside the Order in Original dated: 21.03.2024 and order payment of the refund of GST amount *(Rs. 4,32,225/- i.e. Rupees Four Lac Thirty-Two Thousand Two Hundred and Twenty-Five)* to appellant. As we find that appellant is a buyer of residential flat being an ultimate consumer, there is no question of this being a case of unjust enrichment. Therefore, we order that GST amount *(Rs. 4,32,225/- i.e. Rupees Four Lac Thirty-Two Thousand Two Hundred and Twenty-Five)* be paid/refunded to appellant forthwith along with interest reckoning from 60 days of date of filing of refund claim, i.e. from 09.03.2023 at applicable rates.

Announced in open Court.

(Naresh Katyal) (Amand Shah)

Dated: 14.10.2026