



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

कर भवन,

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015



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टेलिफैक्स : 079 - 26305136

- क फाइल संख्या : File No : **V2/54/GNR/2019-20** / 14945 TO 14949
- ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-021-20-21**
दिनांक Date : **17-06-2020** जारी करने की तारीख Date of Issue: **25/06/2020**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad
- ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **V/18-06/REF/CGST/19-20**
दिनांक : **12-Jun-19** से सृजित
Arising out of Order-in-Original: **V/18-06/REF/CGST/19-20**, Date: **12-Jun-19** Issued by:
Assistant Commissioner, CGST, Div: Gandhinagar, Gandhinagar Commissionerate,
Ahmedabad.
- घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
Name & Address of the **Appellant** & Respondent
M/s. Adani Power Ltd.

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

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर 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 हानि कारखाने 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 प्रकिया 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.

(ख) 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।

(b) 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.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

घ 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।

- (d) 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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 हो तो 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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 दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

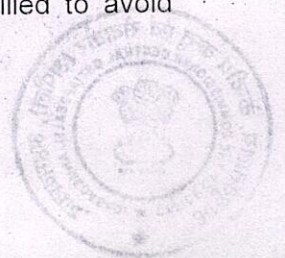
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scripps work if excising Rs. 1 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय 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 bear 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.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

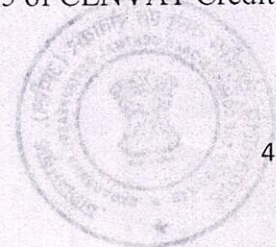


ORDER-IN-APPEAL

The appeal under consideration is filed by M/s Adani Power (Mundra) Ltd., Adani Corporate House, Shantigram, Nr. Vaishnodevi Circle, Ahmedabad-383421 (in short 'Appellant') against order/decision conveyed vide letter dated 12.06.2019 (in short 'impugned letter') issued by the Assistant Commissioner, CGST, Gandhinagar Division, Gandhinagar Commissionerate (in short 'the respondent authority') from F.No.V/18-06/Ref/CGST/19-20/530 whereby the respondent authority had returned the refund claim filed by the appellants on the ground of lack of jurisdiction to deal with such claims and that the said claim is to be filed with the jurisdictional Customs and Central Excise Authorities of Mundra.

2. Briefly stated, the facts of the case is that the appellant is a subsidiary of M/s Adani Power Ltd. (in short 'APL') who is a co-developer of multi-product Special Economic Zone viz. Adani Ports and Special Economic Zone (in short 'SEZ') which has been set up in the village of Tundra and Siracha, Taluka-Mundra, Distt. Kutch, Gujarat. In terms of a scheme of arrangement between APL and the appellant which has been sanctioned by the National Company Law Tribunal vide their Common Orders dated 03.11.2017, APL has transferred their Mundra Power Generating Undertaking along with all its assets and liabilities to the appellant on a going concern on slum exchange basis effective from the appointed date of 31.03.2017. APL's request for transfer of the Letter of Approval including Authorised Operations, assets & liabilities pertaining to its Mundra Power Plant facilities to the appellant was approved by the Board of Approval of Ministry of Commerce and Industry, Department of Commerce, Government of India in their meeting on 17.11.2017.

2.1 As per clause 26.2 of the Scheme of Arrangement , dealing with Taxes, all refund claims relating to the Mundra Power Generating Undertaking shall be treated as refund claims of the Appellant. Accordingly, the appellant has filed refund claims of central excise duty paid by M/s APL in respect of goods viz. stores, spares and consumables procured from Central Excise Units falling under the jurisdiction of erstwhile Gandhinagar Central Excise Division, Ahmedabad-III Commissionerate for undertaking authorized operations in the SEZ on the grounds that there was an exemption from payment of excise duty in respect of goods supplied in the SEZ for authorized operations and that they did not claim any exemption, drawback or concession in respect of the goods so procured and the same were brought to SEZ on the strength of invoices and transportation documents issued by the suppliers. They filed refund claims of the duty of excise with the office of the Assistant Commissioner, CGST, Gandhinagar Division, Gandhinagar Commissionerate, being the competent authority in terms of Rule 47(5) of the Special Economic Zone Rules 2006 (in short 'SEZ Rules'). The said refund claims filed on 25.01.2018 were returned by the respondent authority on 23.02.2018 stating that the appellant do not fall under the jurisdiction of his division; that as per Section 2(i) of SEZ Act, they do not fall under the category of DTA unit and they are not eligible for refund under Rule 18 of Central Excise Rules, 2002 or Rule 5 of CENVAT Credit



Rules, 2004; and that under Section 2(o) of the SEZ Act, the goods received in SEZ are considered as import and the duty paid on such import cannot be termed as Central Excise duty. The appellant re-submitted refund claims on 27.02.2019 justifying issue of jurisdiction matter along with other justification for grant of refund, to the respondent authority. The refund claims re-submitted were also returned by the respondent authority vide the impugned letters stating that the jurisdictional Customs and Central Excise Authorities mentioned in the Rule 47(5) of the SEZ Rules is the jurisdiction of the SEZ entity and not the vendors of the SEZ entity and therefore their jurisdictional authorities would be the jurisdictional Customs and Central Excise Authorities of Mundra and directed the appellant to file their refund applications with the proper jurisdictional authorities.

3. Aggrieved with the above decision of returning of their refund applications vide the impugned letters, the appellant has filed the present appeals mainly on the following grounds:

- As per Rule 47(5) of SEZ Rules, 2006 as inserted from 05.08.2016, claim is to be submitted to jurisdictional customs/central excise authorities. The appellant procured goods from units situated under Gandhinagar Commissionerate and submitted refund claim to a division under Gandhinagar Commissionerate and therefore, claim submitted is within jurisdictional division. They rely on the judgments of Hon'ble High Court of Gujarat in the case of Anita Export Vs. Union of India [2015 (320) ELT 713 (Guj.)] and Roxul Rockwool Insulation India Pvt. Ltd. Vs. Union of India [2016 (334) ELT 412 (Guj.)] in this regard;
- They also rely on the decision of Hon'ble CESTAT, Kolkata in the case of Adani Power Ltd. Vs. CCE & ST, Bhubaneshwar-I and the order of the Commissioner (Appeals-II), Central Tax, Pune vide OIO No.PUN-CT-APPII-000-053-18-19 dated 18.06.2018 on similar issue. In view the above legal position, the appellant have correctly claim with the proper jurisdiction;
- No Show Cause Notice was issued to the claimant of refund and the respondent have not given opportunity to reply objection raised by him, which is in complete violation of the principles of natural justice in view of settled law laid down by the Hon'ble Supreme Court in the case of Assistant Commissioner of Commercial Tax Vs. Shukla & Bros. [2010 (254) ELT 6 (SC)]; and
- When no duty is leviable on goods procured into SEZ for carrying out authorized operation as per SEZ Act and the Rules made there under, collection thereof is unlawfull and requires to be refunded.

4. The appellants were granted opportunities of Personal Hearing on 19.12.2019, 09.01.2020, 27.02.2020 and 20.03.2020. No one appeared on behalf of the appellant for the hearing. Hence, I proceed to decide the case on the basis of facts and evidences available on records.



5. I have carefully gone through the facts of the case, Appeal Memorandum and evidences available on records. I find that the issue to be decided in the case is as to whether the respondent authority is the proper competent authority to decide the refund claim filed by the appellant or otherwise?

6. It is observed that the appellant has filed the refund claim with the respondent authority contending that as per Rule 47(5) of the SEZ Rules, 2006, he is the competent authority to consider their refund claim for having jurisdiction of the units from where the goods have been procured by them. However, the respondent authority was of the view that the jurisdictional Customs and Central Excise Authorities mentioned in the Rule 47(5) of the SEZ Rules is with reference to the jurisdiction of the SEZ entity and not the vendors of the SEZ entity and therefore the competent authority in the case of refund claimed would be the jurisdictional Customs and Central Excise Authorities of Mundra, where the SEZ entity is located.

6.1 On the issue of jurisdiction, the appellant has relied upon the decision of the Hon'ble CESTAT Bench of Kolkata in the case of M/s Adani Power Ltd. Vs. Commissioner of Central Excise, BBSR-II [2018 (364) E.L.T. 319 (Tri. - Kolkata)] on similar issue, wherein the Hon'ble Tribunal has held that:

“ 7. The next point is for jurisdiction to prefer to such claim. The lower authorities held that in terms of SEZ Act, the appellant is situated outside territory of India and no claim can be entertained by the jurisdictional Central Excise Officers. We note that the similar issue has come up before the Hon'ble Gujarat High Court in the case of Anita Exports v. Union of India : 2015 (320) E.L.T. 713 (Guj.) and Roxul Rockwool Insulation India Pvt. Ltd. v. Union of India : 2016 (334) E.L.T. 412 (Guj.). The Hon'ble High Court after examining the claim for refund under Customs Act, 1962, held that when the duty is collected by the Customs authorities, excess, if any has to be dealt with by the said authorities only. In the present case, the duty of excise has been paid by M/s. Mahanadi Coal Field Ltd., though by applying the relevant provisions of law, they ought not to have paid the duty as the supplies are to be recognized SEZ unit/developer. Regarding the duty paid nature of the product, receipt of the said product by the appellant, there are no disputes. In fact, the ld. Counsel for the appellant, submitted that the details of duty paid on coal covered by the various documents has been certified by the specified officer-in-charge of the appellant in the SEZ.

8. We also note that the jurisdiction issue has been under consideration with the Ministry of Finance as well as Ministry of Commerce and ultimately the Ministry of Commerce issued Notification dated 5-8-2016. This Notification specified that the refund, demand, jurisdiction, review and the appeal with reference to various operations under SEZ Act, 2005, shall be with a jurisdiction of Central Excise authorities in accordance with the relevant provisions of Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994. We find that the said Notification makes the position amply clear on the question of jurisdiction of Central Excise officers to deal with the claim in the present matter.



9. *In view of the above discussions and analysis, we set aside the impugned order and direct the original authority to examine the claim afresh on merit along with the connected documents and pass a fresh order on the claim made by the appellants, keeping in view the above observations."*

It is clear that the Hon'ble Tribunal in their above decision has referred to Rule 47(5) of the SEZ Rules, 2006 inserted vide Notification No.GSR 772(E) dated 05.08.2016 of the Ministry of Commerce and Industry and Department of Commerce and has given their decision on the issue interpreting the same. Needless to say, the above decision of the Hon'ble CESTAT clearly settles the issue in favour of the appellant.

6.2 Further, it is observed that as per provisions of Section 11B of the Central Excise Act, 1944, refund of duty of excise paid, can be claimed by any person including a buyer, if he has borne the duty of incidence. The appellant's claim for refund of excise duty in the present case, therefore, also seems to be sustainable as a buyer of the excisable goods. The CBEC's Excise Manual of Supplementary Instructions in Chapter 9 at Para 1.1 states that "*The refund claim can be filed within one year from the relevant date in the specified Form by an assessee or even a person who has borne the duty of incidence, to the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of manufacturer*". Obviously, the jurisdiction referred here would refer to that jurisdiction in which duty has been paid. In this regard, reliance is placed on the Hon'ble Supreme Court decision in the case of *Oswal Chemical & Fertilizers Vs. CCE, Bhopur* [2015 (318) ELT 617 (SC)]. The Hon'ble CESTAT in the case of *M/s Adani Power Ltd. Vs. Commissioner of Central Excise, BBSR-II supra*, has also discussed the issue of claim of refund by a buyer and observed that:

*" 5. Regarding the claim of refund of Central Excise duty, we note that Section 11B states "any person claiming refund of any duty of excise". No distinction has been made that the claimant should be the manufacturer or the person, who paid the duty to the Government, in this regard, we refer to the decision of the Hon'ble Supreme Court in the case of *Oswal Chemicals & Fertilizers Ltd. v. Commr. of Central Excise, Bolpur : 2015 (318) E.L.T. 617 (S.C.)*, wherein the Apex Court observed that the appellant, who had paid the Excise duty to the manufacturer, had the locus standi, to file the application claiming the refund of duty. In the said case also, the claim was not filed by the manufacturer, who discharged the duty on the goods, but by the buyer of the goods. Similar ratio has been followed by the Hon'ble Allahabad High Court in the case of *Indian Farmers Fertilizers Co-operative Ltd. v. Commr. (K-II), Central Excise - 2016 (331) E.L.T. 386 (All.)*.*

6. In such situation, we note that the appellants do have locus standi to prefer the claim for refund, if the same is not payable/paid in excess, as authorized by law."

6.3 The respondent authority's view on the jurisdiction aspect, therefore, does not seem to be correct in view of the above decision of the Hon'ble Tribunal. Further, Special Economic

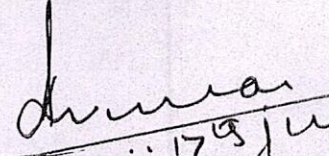


Zones are outside the jurisdiction of Central Excise Act, 1944 and hence there can not be any jurisdictional Central Excise Authority for a SEZ.

7. In view of the above discussions and by following the ratio of the above referred decisions, it is to observe that the appellant as the ultimate person aggrieved with payment of duty, can seek its refund from the jurisdictional excise authority where the duty was paid which would be the central excise authorities of the jurisdiction where the units, from whom the goods were purchased, are located. In the present case, the goods had been purchased by the appellant from the units falling under the jurisdiction of the respondent authority and for that reason, the respondent authority is the proper competent authority to deal with the refund claim under dispute. Therefore, it is observed that the appellant has claimed the refund under dispute with the respondent authority rightly and the rejection of the refund claim by the respondent authority by out rightly returning the same on the ground of lack of jurisdiction is legally not correct and sustainable.

8. Accordingly, the order/decisions issued by the respondent authority vide the impugned letter is set aside for being not legal and proper and the appeal of the appellant is allowed by way of remand to the original authority. The appellant is directed to approach the original authority with their claim for refund with supporting documents within 15 days of the receipt of this order. The original authority has to examine the claim afresh on merit as a competent authority to decide the matter and pass a reasoned order on the claim so made by the appellant.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 17.06.2020.

Attested:



(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s Adani Power (Mundra) Ltd.,
Adani Corporate House,
Shantigram, Nr. Vaishnodevi Circle,
Ahmedabad-383421.

Copy to:-

1. The Principal Chief Commissioner, CGST , Ahmedabad Zone..
2. The Commissioner, CGST, Gandhinagar.



3. The Deputy Commissioner, CGST Division-Gandhinagar, Gandhinagar.
4. The Asstt. Commissioner, CGST (System), HQ, Gandhinagar.
(for uploading OIA on website)
5. Guard file.
6. P.A. File



