



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2608/2833/2023 / 9520-26
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-100 to 101/2023-24 and 22.11.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.12.2023
(ङ)	Arising out of Order-In-Original No. ZM2405230197242 dated 12.05.2023 and ZM2406230277998 dated 19.06.2023 passed by The Assistant Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Adani Total Gas Limited (GSTIN: 24AAFCA3788D1ZS), Plot No. 76/1 and 77, Adanit Total Gas Limited, Maninagar Road, Opp. Fire Brigade, Maninagar, Ahmedabad, Gujarat-380008

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s. Adani Total Gas Ltd.(GSTIN-24AAFCA3788D1ZS) having principal place of business Plot No 76/1 and 77, Adani Total Gas Limited, Maninagar Road, Opp. Fire Brigade, Maninagar, Ahmedabad, Ahmedabad, Gujarat, 380008 (hereinafter referred to as the "Appellant") has filed following appeals against RFD-06 orders mentioned against the appeals (herein after referred as the "impugned order") issued by the Assistant Commissioner, CGST & C.Ex., Division VII, Ahmedabad-North Commissionerate, Ahmedabad.

Sl. No.	Appeal No. and date	RFD-06 Order No. & date	Month for which refund claimed	Refund Amt. applied for	Refund amount considered as Inadmissible
01	GAPPL/ADC/GSTP /2608/2023 dated 07.08.2023	ZM2405230197242 dated 12.05.2023	February-21	Rs. 47,242/-	Rs. 47,242/-
01	GAPPL/ADC/GSTP /2833/2023 dated 12.09.2023	ZM2406230277998 dated 19.06.2023	March-21	Rs.36,000/-	Rs.36,000/-

2. Brief facts of the case are that the Appellant registered under GSTIN-24AAFCA3788D1ZS is engaged in the business of laying gas pipeline networks across the country for transportation/supply of gas. The Appellant has paid GST of Rs. 47,242/- (CGST Rs. 23,621/-, SGST Rs. 23,621/-) and Rs.36,000/- (CGST Rs. 18,000/-, SGST Rs. 18,000/-) for the period February-2021 and March-2021 respectively on the services under RCM towards the road restoration charges to Government organizations i.e. Municipal authorities. Subsequently, the Appellant filed Refund claims in Form RFD-01 vide ARN Nos. AA240323053750M dated 17.03.2023 and AA2404230880488 dated 20.04.2023 with the adjudicating authority, realising that there was no Liability to discharge GST on the amount paid by them to the Municipal Corporation towards restoration/repair charges. The refund sanctioning authority examined the claim and found that the restoration charges paid to the Municipal Corporation is an amount paid to a local authority engaged as a public authority, which as per the Notification No. 12/2017 and 1/2017 is not allowed. Hence, show cause notices in Form RFD-08 bearing Nos. ZM2404230210263 dated 17.04.2023 and ZG2406230167521 dated 12.06.2023 was issued to them.

3. The adjudicating authority vide the impugned orders has ordered that the said amount of Rs. 47,242/- and Rs. 36,000/- paid as GST by the

Appellant towards the services provided by the Municipal authorities, therefore the Appellant had correctly paid tax in respect of the services received from the Municipal authorities, in terms of entry No.5 of the Notification No.13/2017-CT (rate) dated 28-06-2017.

4. Being aggrieved with the impugned orders, the Appellant filed above two appeals on the grounds that:

"1. Ld. Adjudicating Authority grievously erred in law as well as in facts while contending that the claim of the Appellant that the Road Cutting Charges were covered by Sovereign Notification was wrong. Ld. Adjudicating Authority also erred while contending that the Road Cutting Charges collected by Corporation does not fall under Article 243W of the Constitution. Ld. Adjudicating Authority failed to appreciate that the Road Cutting Charges were towards the functions entrusted to the Corporation as per Twelfth Schedule of Constitution.

2. Ld. Adjudicating Authority failed to prove that the amount of Rs. 47,242/- and Rs. 36,000/- paid by the Appellant was tax leviable under sub-section (1) of section 9 of the Act.

3. Ld. Adjudicating Authority failed to prove that the Road Cutting Charges were paid by the Appellant to the Corporation in lieu of a 'supply' as defined in sub-section (1) of section 7 of the Act.

4. Ld. Adjudicating Authority ought to have referred to SI no 47 of Notification No. 12/2017-CTR for considering the Road Cutting Charges to be exempt from payment of tax.

5. Ld. Adjudicating Authority grievously erred while contending that the Road Cutting Charges were falling within the scope of RCM Notification. Ld. adjudicating Authority failed to appreciate that the RCM Notification merely prescribes the manner in which tax shall be paid by the specified person but does not create the levy of tax which is otherwise governed by the provisions of section 9 read with section 7 of the Act.

6. Ld. Adjudicating Authority was not justified in passing impugned order without affording an opportunity of personal hearing to the Appellant. Ld. Adjudicating Authority has passed the impugned Order in violation of the doctrine of audi alteram partem.

7. Ld. Adjudicating Authority grievously erred in rejecting the refund claims of Rs. 47,242/- and Rs. 36,000/- lodged by the Appellant."

Personal Hearing :

5. Personal hearing in the both the appeals were granted on (1)6.10.2023 & 17.10.2023, (2)19.10.2023 & 01.11.2023, (3)30.10.2023 & 21.11.2023 and (4)9.11.2023 and (last) 21.11.2023. However, neither the appellant nor any authorized person, on behalf of the appellant appeared before me. Hence, as per the extant Rules, I am proceeding to decide the cases, ex-party.

6 Discussion and Findings:

6.1. I have carefully gone through the facts of the case and the submissions made by the Appellant in their grounds of appeal and find that the Appellant is mainly contesting with the amount of GST Rs. 47,242/- and Rs. 36,000/- for the period February-2021 and March-2021 respectively paid by them under R.C.M. on the amount of Demand Notes raised by the Municipal Corporation of Ahmedabad & Kheda for recovery of Road restoration charges to the tune of Rs.2,62,452/- and Demand Notes raised by the Municipal Corporation of Surendranagar for recovery of Road restoration charges to the tune of Rs.2,00,000/- respectively however subsequently the Appellant realized that the activities undertaken by the Central Government, State Government and Local authorities with respect to functions entrusted under Article 243 W and/or Articles 243G of the Constitution of India are neither treated as supply of goods nor supply of services by virtue of Notification No.14/2017-CTR, as amended. The Road cutting charges paid to the Corporations was evidently and undisputedly falling within the scope of the Sovereign Notification and accordingly did not attract the provisions of Section 9 of the GST Act,2017.

6.2 So the issue to be decided in the present appeal is:

Whether the refund orders passed by the adjudicating authority rejecting the amount of Rs. 47,242/- and Rs. 36,000/- vide the impugned orders, are proper or otherwise?

6.3 At the foremost, I observe that in the instant case the "impugned orders" are of dated 12.05.2023 and 19.06.2023 and the present appeals are filed online on 07.08.2023 and 12.09.2023 respectively. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. I observed that in the instant case the appeals have been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the cases.

6.4 I find that M/s. Adani Gas Ltd. having its principal place of business at Ahmedabad, and holding GST registration number 24AAFCA3788D1ZS is engaged in the business of laying gas pipeline networks across the country for transportation/supply of gas. These pipelines are generally laid towards the edge of the roads. The permission was granted by the respective Municipal Authorities/Panchayats in various states/urban areas where the pipelines are sought to be laid. The permission granted by the respective Municipal Corporations/Panchayats/Nagar Palikas interalia specifies the co-ordinates of the area (road) where the pipe laying work is to be undertaken and authorizes

Appellant for cutting the road, digging, barricading etc. for the same. Permissions were granted to Appellant further requires them to restore the road to its original condition after undertaking the road cutting work, or alternatively, Appellant is required to pay to the respective Municipal Corporations/ Panchayats/ Nagar Palikas other government authority such as forest department, a charge for restoration/repair of road. For recovering the road restoration/repair charges, the Municipal, Authorities/Panchayats/Nagar Palikas raise a demand note on Appellant, based on which the requisite amount is paid by Appellant to the Municipal Authorities/Panchayats/Nagar Palikas. M/s Appellant has interalia received permission from the Municipal Corporation of Navsari & Surat as well as Municipal Corporation of Porbandar for laying a gas pipeline network. The respective Municipal Corporations in this respect, raised demand notes, on Appellant for recovery of road restoration charges totaling to the tune of Rs.2,62,452/- and Rs.2,00,000/- respectively and Appellant paid GST under RCM amounting to Rs. 47,242/- (CGST Rs. 23,621/-, SGST Rs. 23,621/-) and Rs.36,000/- (CGST Rs. 18,000/-, SGST Rs. 18,000/-) respectively. Subsequently, the Appellant filed Refund claims with the adjudicating authority, realising that there was no Liability to discharge GST on the amount paid by them to the Municipal Corporations towards restoration/repair charges. According to the Appellant, the services provided by the Municipality towards restoration of damaged roads caused by excavation work done by M/s Appellant fall under the purview of Article 243W of the Constitution and hence exempted under Notification No.14/2017-CT(Rate) dated 28-06-2017 amended vide Notification No.16/2018-Central Tax(Rate) dated 26-07-2018. The text of the same is as under:



Notification No.14/2017-CT(Rate) dated 28-06-2017:

"G.S.R.....(E).-In exercise of the powers conferred by sub-section (2) of section 7 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that the following activities or transactions undertaken by the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service, namely:-

Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution"

In the above Notification, the following was further substituted vide Notification No.16/2018-Central Tax(Rate) dated 26-07-2018 with effect from 27th of July, 2018:

"In the said notification, in the first paragraph-

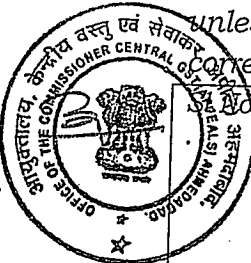
(i) after the words "State Government", the words "or Union territory" shall be inserted;

(ii) after the word "Constitution", the words "or to a Municipality under article 243W of the Constitution" shall be inserted."

6.5 Further according to the Adjudicating authority, as per entry(d) of Sl.No.6 of the Notification No.12/2017-CT (Rate), for the services provided by the Municipality, the Appellant are not eligible for any exemption under GST. Hence as per the entry No.5 of the Notification No.13/2017-Central Tax (Rate) dated 28-06-2017, the text of the same is reproduced here under, the Appellant had correctly paid the tax in respect of the services received by them from the Municipal authorities.

Text of entry (d) of Sl.No.6 of the Notification No.12/2017-CT(Rate):

"G.S.R.....(E).-In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:



Chapter, Section Heading, Group or Service Code (Tariff)	Description Service	Rate (per cent)	Condition
6 Chapter 99	Services by the Central Government, State Government, Union territory or local authority excluding the following services- (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities	Nil	Nil

Text of entry No.5 of the Notification No.13/2017-Central(Rate) dated 28-06-2017:

"GSR.....(E).-In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council hereby notifies that on

categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:

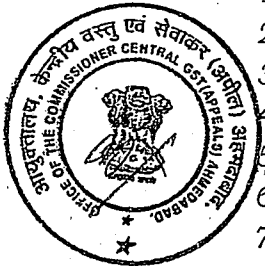
Sl.N o.	Category of Supply Services	Supplier service	Recipient of service
(1)	(2)	(3)	(4)
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding- (1) Renting of immovable property and (2) Services specified below- (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, state Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

Text of the Twelfth Schedule of the Constitution of India:

Twelfth Schedule

(Article 243W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. **Roads and bridges.**
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.



6.6 I therefore, refer Twelfth Schedule of Article 243W of the Constitution, Notification No.12/2017-CT(Rate) dated 28-06-2017, Notification No.13/2017-CT(Rate) dated 28-06-2017, and Notification No.14/2017-CT(Rate) dated 28-06-2017 amended vide Notification No.14/2017-CT(Rate) dated 28-06-2017, which are already quoted in the above paragraphs.

6.7 From the plain reading of the Twelfth Schedule of Article 243W of the Constitution, it is seen that it covers Road and Bridges, Further as per Notification No.14/2017-CT (Rate)dated 28-06-2017 as amended vide Notification No. 16/2018-CT (Rate) the following activities or transactions undertaken by the Central Government or State Government or Union territory or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service.

"Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W"

6.8 From the above, it is amply clear that the services under article 243W/243G of the Constitution, which includes "Roads"; if undertaken by the Central Government or State Government or Union territory or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service.

Here it is pertinent to note that the services undertaken by the authority laid down in the Notification ibid in which they are engaged as public authority meaning thereby the activity undertaken by them for Roads etc., which is a function entrusted to them, for the use by general public, is exempted. In this regard, if the activity is undertaken, the demand won't be raised to any business entity but the authority themselves will bear the cost of the construction and/or repairs of Roads, for which they are eligible for exemption from payment of GST.

6.10 I find that the scenario in the present case is different. The services of restoration of roads are not received by the Municipal authorities. The roads are already there, however the restoration of roads is undertaken by the Municipality authorities on behalf of the Appellant due to permission granted for digging of roads for laying pipelines to the Appellant for transportation /supply of gas to their customers i.e. for the purpose of the business which they are carrying out and it was the responsibility of the Appellant to restore the road to its original condition after undertaking the road cutting work, or alternatively, Appellant is required to pay to the respective Municipal authority, a charge for restoration/repair of roads. It is for such service for which the

demand Notes have been raised by the Municipality to the Appellant. It is made clear in the Notification No.12/2017 dated 28-06-2017, at Sl.No.6,point No.(d) that any service, other than services covered under entries (a) to (c) if provided to the business entities are not exempted. Here the services are provided by the Municipal authorities to the Appellant as explained above, as per my view the same are covered under entry (d) of the Sl.No.6 of the Notification No.12/2017 dated 28-06-2017, hence not entitled for exemption from payment of GST.

6.11 It is undisputed fact that the payments made by the Appellant were in relation to restoration of roads which are damaged by them while laying of pipelines. However, claim of the Appellant that the payments made by the Appellant to the Municipal Corporations in relation to the road are to be deemed as the payments for functions carried out by it under Article 243W. Here if the said restoration of roads was suo moto conducted by the Panchayat/Municipal Authority due to any reason other than the road damaged for laying of cables, pipes, etc. by any business entity, falls under article 243W/243G of the constitution and hence exempted from payment of GST as it is neither supply of goods nor supply of services.

6.12 In the present case, I find that, had the Appellant not dug the road for laying the pipelines for transportation /supply of gas to their customers, the question of restoration of roads would have not arisen. The Whole act of digging, laying of pipelines for transportation of gas through it to their customers and restoring the roads to its original is nothing but part of their business activity. It is not possible to supply gas through pipeline without undertaking the said activity. Therefore, restoration of the roads conducted on account of it is also part of furtherance of their business, hence liable for payment of GST on the services so received from the Municipal Authority.

6.13 As regards contention of the Appellant that the adjudicating authority passed the impugned order without going through their submission, without any ground without affording any opportunity of personal hearing to them, I observe that as regard to Appeal filed for March-21, show cause notice dated 12.06.2023, PH was fixed on 16.06.2023 but the appellant replied on 19.06.2023 and requested to rely on attached documents, however no attachment was found along with reply by the adjudicating authority. Hence the Appellant's contention that the impugned order was passed without according any personal hearing, is not genuine. Further, as regards to Appeal filed for Feb-2021, Show-cause-notice dated 17/04/2023, defence reply of the appellant filed on 01.05.2023 has already been taken by the adjudicating authority in the impugned order dated 12.05.2023.

6.14 In view of the discussions above, I am of the view that the service under dispute does not qualify under Article 243W of the Constitution, hence not eligible for exemption under the Notification No. 12/2017 dated 28-06-2017. I am of the view that Appellant had rightly paid the GST amounting to Rs.47,242/- (CGST Rs. 23,621/-, SGST Rs. 23,621/-) and Rs. 36,000/- (CGST Rs. 18,000/-, SGST Rs. 18,000/-) for the period February-2021 and March-2021 respectively on the amount of services charged by the Municipal Authority, under the Reverse Charge Mechanism as per entry No.5 of the Notification No.13/2017 dated 28-06-2017.

7. In view of the foregoing facts & discussion, I do not find any infirmity in the impugned orders and the impugned orders passed by the adjudicating authority are legal and proper and as per the provisions of law. Accordingly, I reject the present appeals of the "Appellant".

8. अपीलकर्ताद्वारा दर्ज की गई अपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

8. The appeal filed by the Appellant stands disposed of in above terms.

Adesh Kumar Jain
22/11/2023

(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

Attested

Sunita D. Nawani
(Sunita D. Nawani)
Superintendent,
CGST & C.Ex.,
(Appeals), Ahmedabad



By R.P.A.D.

To:

M/s. Adani Total Gas Limited, Plot No 76/1 and 77,
Maninagar Road, Opp. Fire Brigade, Maninagar, Ahmedabad,
Ahmedabad, Gujarat, 380008. (GSTIN-24AAFCA3788D1ZS)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Pr./Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Additional Commissioner (Systems) CGST & C.Ex., Ahmedabad-North Commissionerate.
5. The Dy./Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North Commissionerate,
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/ P.A. File.

