



सत्यमेव जयते

::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7th मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise
पोलिटैकनिक के पास, Building,
आम्बवाडी, अहमदाबाद : 380015 Near Polytechnic,
Ambavadi,
Ahmedabad:380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(27)11/EA2 /Ahd-II/Appeals-II/ 2015-16 and V2(27)33/
/Ahd-II/Appeals-II/ 2015-16 / 3179-3183

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 061 and 062-16-17

दिनांक (Date): 18.11.2016, जारी करने की तारीख (Date of issue): 29/11/2016

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No as per order issued by: Add. Commissioner, Ahd-II
Central Excise (Div-), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Adani Gas Limited

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

Any person an aggrieved by this Order-in-Appeal 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

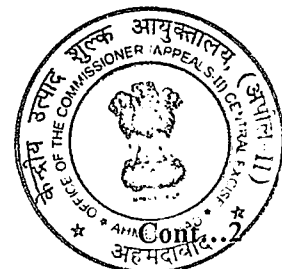
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो ।

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है ।

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(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.

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 विल्ट 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-बी/35-इ के अंतर्गत:-

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

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria 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 रु.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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील वाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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."



Order in Appeal

The subject appeal is filed by the department Under Section 35(2) Of Central Excise Act,1944, against OIO No. 04/ADC/2015/DSN Dtd.15/5/2015 (hereinafter referred to as 'the impugned order) passed by The Additional Commissioner, Central Excise, Ahmedabad-II,(hereinafter referred to as 'the adjudicating authority') in case of M/s. Adani Gas Ltd. (formerly known as M/s Adani Energy Ltd.) CNG Station, Helmet Circle,Memnagar,Ahmedabad-380052,(hereinafter referred as 'the respondent')the respondent is engaged in the manufacture of excisable goods falling under chapter 29 of the First Schedule to the Central Excise Tariff Act,1985 [hereinafter referred as CETA-1985].

Also an appeal is filed by M/s. Adani Gas Ltd. against above said OIO .

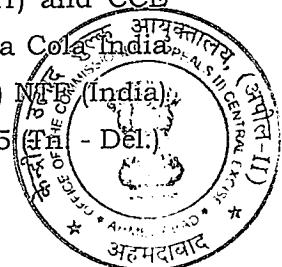
2. Briefly stated the fact of the case is, during the course of the audit by department , it was noticed that appellant had availed Cenvat Credit on House Keeping Services which have no relation with the production activities. They had availed credit Rs.5,60,880/- for the period from 2010- 11 to 2012-13. that said Cenvat Credit availed do not fall under the scope of input services as provided in rule 2 (I)(ii) of the Cenvat credit Rules, 2004. As the same has not been used by the said appellant directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal as provided in the CCR 2004. They are not entitled to such credit under the Cenvat Credit Rules 2004. SCN was issued and vide above order dropped the demand of Rs.90088/-and confirmed rest of demand with interest and penalty of Rs.238281/-.

3. Being aggrieved by the above said OIO the department filed appeal to set aside above order on the ground that, as per Rule 2(1)(ii) of the definition uses the words "*directly or indirectly, in or in relation to*". any services which are not directly or indirectly used in relation to manufacture of the final products are not covered under the definition of input service. Hence, Cenvat credit not admissible.

The appellant M/s. Adani Gas Ltd. has filed appeal on the following main grounds;

That the said input service was availed at CNG Station to ensure that the premises are in good condition to clean Compressing/dispensing of CNG which is chargeable to Central excise Duty. Further, as per Section 11 of the Factories Act, 1948, it is a statutory requirement for the factories to keep the factory premises neat and clean.

Rule 2(1)(ii) of the definition uses the words "*directly or indirectly, in or in relation to*". Any services which are directly or indirectly used in relation to manufacture of the final products are covered under the definition of input service. they relied on following citations, In the case of *Doypack Systems (Pvt.) Ltd. V. Union of India* [1988 (36) ELT 201 (SC)] Further, in the case of *Union Carbide India Ltd. v. Collector of al Excise, Calcutta-I* reported in 1996 (86) E.L.T. 613 (Tr) and *CCE Nagpur V. Ultratech Cement Ltd.* 2010 (260) ELT 369 (Bom), and *Coca Cola India Pvt. Ltd. V Commissioner of C Ex., PuneIII*, 2009 (242) E.L.T. 168 (Bom.) *NIFE (India) Pvt. Ltd. V Commissioner of Central Excise, Delhi-III*, 2013 (30) S.T.R. 575



The Notice was issued on 11.06.2014 for the disputed period from 2010-11 to 2012-13.; that the extended period of limitation can be invoked only on those grounds which are specifically provided under the statute. That they had filed ER-1 returns and declared details under as required under the law including the amount of CENVAT credit availed and utilized by them. They relied on citations C.Ex Vs Kumbhi Kasari Sahakari Karkhana Ltd. -2011 (266) ELT 87 (T) The demand for interest along with penalty also cannot sustain and no penalty can be imposed on them. The judgment of the Hon'ble Supreme Court in CCE vs. HMM Ltd. reported in 0995 (76) ELT 497 (SC)]

4. A personal hearing was granted to the appellant on dated 19-8-16 wherein shri Rahul Patel CA and Gopal Chugh appeared on behalf of the appellant and reiterated the GOA and copies of citations submitted. They have filed written cross submission on dated 9-9-16. I have gone through all records placed before me in the form of the impugned order and written submissions .I have to decide the issue of admissibility of Cenvat credit on housekeeping services.

5. I find that, the appellant had hired house-keeping service for cleaning of CNG Station premises and allied areas where the activity of manufacture of Compressed Natural Gas was undertaken; said services were availed to ensure that the premises are in good condition as compressing and dispensing of CNG is chargeable to duty; that in terms of Section 11 of the Factories Act, 1948, there is a statutory requirement to keep the factory premises neat and clean and in order to comply with the said provision, the services were hired. In view of the above, the appellant has contended that the services in question have been used directly or indirectly in relation to manufacture of final products and therefore, the credit should be admissible for the entire period.

6. I find that, the demand is raised in this case pertains to the period from 2010-11 to 2012-13. Prima facie, I find this service indirectly connected with the manufacture of the final products or the clearances thereof to claim a nexus with production. Any decision on the admissibility of credit would depend on the definition of the term "input service", as prevailed during the relevant period. the definition, as it existed during the period up to 31.03.2011 is reproduced below;

Rule 2(1) - "Input service" means any service -

- (i) used by a provider of taxable service for providing an output service; or
 - (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal;
- and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and Security, inward transportation of inputs or capital goods and outward transportation up to the place of removal.



7. I find that the inclusive clause in the definition specifically mentioned the term activities relating to business such as", which expanded the scope and as a result many activities came to be qualified for the definition of input service. Therefore, even though "house-keeping" is not specifically mentioned in the definition, I find that the same can be considered as one activity that would qualify for the term "activities relating to business" because in the course of manufacture and clearance of the final products, this service is used in the premises. I rely on the caselaw of *Ultratech Cement Ltd.* decided by the Hon'ble High Court of Bombay 2010 (260) E.L.T.369 (Bom.) 2010 (20) S.T.R. 577 (Bom.) and *Hon'ble Bombay High Court in the case of Coca Cola India Pvt. Ltd - 2009 (242) ELT 168 (Bom)* Therefore, the activity of house-keeping qualifies for the definition of input service. Accordingly, I find that the credit availed during the period 2010-11 is admissible.

8. Further, The definition of "input service" was changed with effect from 01.04 .2011 vide Notification No. 3/2011 -Central Excise (N.T.) dated 1-3-2011. The new definition is reproduced as below:

input service" means any service, -

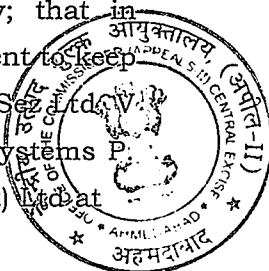
(i) used by a provider of taxable service for providing an output service; or manufacture of final products and clearance of final products upto the place of removal,

and includes

services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

I find that, the term "activities relating to business such as" has been omitted in the new definition. As a result, such activities which claimed inclusion only by virtue of they being an "activity related to business", have been excluded from the definition from 01.04.2011 onwards. In the present case, I find that, during the period of dispute this service was used in their premises in the course of manufacture and clearance of the final products. Therefore, the credit of service tax availed during 2011-12 to 2012-13 is also admissible to them.

9. I find that, they had hired house-keeping service for cleaning of CNG Station premises and allied areas where the activity of manufacture of Compressed Natural Gas was undertaken; said services were availed to ensure that the premises are in good condition as compressing and dispensing of CNG is chargeable to duty; that in terms of Section 11 of the Factories Act, 1948, there is a statutory requirement to keep the factory premises neat and clean. I rely on the case of *Adani Ports & Seaports Ltd. V CST Ahmedabad 2016[42]STR 1010 [TRI AHMD] 2. Delphi Automotive Systems Pvt. Ltd. V CCE Noida 2015[315]ELT255[Tri-Del]* and 3. *Doypack Systems (Pvt) Ltd at*



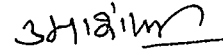
1988 (36) ELT 201 (SC). In view of the above, I hold that, the services in question have been used directly or indirectly in relation to manufacture of final products and therefore, Cenvat credit is admissible for the entire period.

10. Further, I find that, the appellant has complied with the provisions of the Cenvat Credit rules while taking credit of said service. With reference to the penalty imposed, I find that they have not disregarded the definition of input service and not violated any rules. therefore; penalty imposed is set aside.

11. In view of the foregoing discussion and findings, I reject the departmental appeal. I allow the appeal filed by the appellant M/s. Adani Gas Ltd.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



[K.K.Parmar]

Superintendent (Appeals-II)

Central Excise, Ahmedabad

By Regd. Post A. D

M/s. Adani Gas Ltd.

CNG Station, Near Helmet Circle,

Near AMTS Depot,

Memnagar,

Ahmedabad-380052,

Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Divi- V, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
- ✓ 5. Guard file.
6. PA file.



