



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय उत्पाद शुल्क भवन, 7<sup>th</sup> Floor, Central Excise Building,  
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,  
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



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क फाइल संख्या (File No.): V2(27)22 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-2-18-19

दिनांक (Date): 24-Apr-18 जारी करने की तारीख (Date of issue): 29/5/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No MP/33/17-18/Refund Dated: 12/06/2017  
issued by: Assistant Commissioner Central Excise (Div-V), Ahmedabad North

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

**M/s Adani Gas Ltd**

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 हैं।



Cont...2



- (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 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-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.

- (ख) 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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 यथार्थिती 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 यथार्थिती 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 दाखिल 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. 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 सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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

**M/s Adani Gas Limited** (formerly known as M/s Adani Energy Ltd.), CNG Station, near Helmet Circle, Near AMTS Depot, Memnagar, Ahmedabad – 380 052, having its office at Heritage Building, 8<sup>th</sup> Floor, Ashram Road, Usmanpura, Ahmedabad-380014(hereinafter referred to as 'the appellant') was engaged in the manufacture of Compressed Natural Gas (CNG) falling under CTSH 27112900 of the first schedule to the Central Excise Tariff Act, 1985.

2. Briefly stated, the facts leading to the instant appeal are that the appellant had filed an appeal with CESTAT, WZB, Ahmedabad against O.I.O. No. 27-28/Commr/HKJ/AHD-II/2010 dated 27/08/2010 passed by the Commissioner of Central Excise, Ahmedabad-II along with a Stay application, wherein Hon'ble Tribunal had granted conditional stay vide order No. S/1689-1691/WZB/AHD/2011 dated 15/12/2011 directing the appellant to deposit **Rs.60,000,00/-** that was deposited by the appellant vide Challan no. 00067 dated 16/01/2012. Thereafter, Hon'ble Tribunal issued final Order No. A/10317-10320/2017 dated **30/01/2017** (hereinafter referred to as 'the appellate order') setting aside the demand of Rs.45,24,039/- and penalty imposed on the company and Mr. Dharmesh Parekh and remanding the matter back to the adjudicating authority in respect of the demand of Rs.1,89,66,610/-. Consequently, the appellant requested for refund of the pre-deposit amount of Rs.60,00,000/- in terms of C.B.E.C. Circular No. 984/08/2014-CX dated 16/09/2014. The Assistant Commissioner, Central Excise, Division-V, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority') has issued Order-in-Original No. MP/33/17-18/Refund dated 12/06/2017 (hereinafter referred to as 'the impugned order') sanctioning the refund of pre-deposit of Rs.60,00,000/- but denying interest holding that as per paragraph 1.2 of C.B.E.C. Circular No. 984/08/2014-CX dated 16/09/2014, the amended provisions of section 35FF mandating interest on pre-deposit apply to appeals filed after 06/08/2012 whereas all pending appeals / stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile provisions and as the pre-deposit in the present case was made on 16/01/2012 i.e. prior to the commencement of the Finance (No.2) Act, 2014, interest was not liable to be paid.

3. Aggrieved by the impugned order, the appellant has filed the instant appeal mainly on the following grounds:

- 1) The adjudicating authority had fallaciously treated the pre-deposit as refund of duty. Where it is clear that the payment is characterized as a pre-deposit, the payment would fall foul of the purview of section 11B of CEA, 1944 as clarified in the board Circular. As a result, the process for calculating interest in terms of Section 11 B would not be applicable in the present case. Following from the above, the relevant date for calculation of interest would be date of making the deposit to the date of refund in terms of section 35FF of CEA, 1944. Accordingly, the appellant is entitled to interest on the pre-deposit as calculated from the date of making the deposit to the date of refund.

*[Handwritten signature]*





2) Without prejudice to the above, the appellant submits that the respondent has committed a grave error in not awarding the interest on sanctioned refund amount by completely overlooking the express provisions of section 35FF as they stood prior to its amendment by the Finance (No.2) act, 2014 dated 06/08/2014. The appellant submits that it was still entitled to interest for a period of 42 days beyond the period of three months from the date of the order of the Tribunal as per the then provisions of section 35 FF which have been completely ignored. Accordingly, in the present case, the appellant was entitled to interest for a period of 42 days, being the period beyond three months from the date of communication of the order. The rate of interest has been specified by the government of India *vide* Notification No. 67/2003-CE (NT) dated 12/09/2003 to be @ 6% per annum. In view of this, interest @ 6% per annum was required to be paid for the delay of 42 days in sanctioning the refund claim. The appellant in support of its above plea also invites kind attention to Board's Circular F.No.387/5/2001-JC dated 08/12/2004 wherein the Board has after looking into the instances of non-refund of pre-deposit amount as a consequence of Appellate order has directed all the field formations to sanction refund within three months from the date of the order passed by the Appellate Tribunal / Court or other final authority failing which interest shall be payable and the same may be recoverable from the concerned officers. In view of this very specific direction by C.B.E.C., it was incumbent upon the Assistant Commissioner to sanction interest for the delay beyond the period of three months in sanctioning the refund and the impugned order is liable to be set aside to this extent. The appellant also refers to recent decisions of the Madras, Gujarat and Allahabad High courts among plethora of such judgments where it has been held that it is settled proposition that interest is required to be paid on delayed refund of pre-deposit i.e. refund sanctioned beyond the statutory period of three months.

i) *Estee Auto Pressings Pvt. Ltd., vs Commissioner of C.E. – 2017 (346) ELT 72 (Mad.)*

ii) *Prempreet Textile Industries Ltd. vs U.O.I. – 2013 (293) ELT 523 (Guj)*

iii) *V.P.I. (P) Ltd. vs CCE – 2013 (292) ELT 45 (All)*

The appellant submits that in view of the express provisions of Section 35FF of CEA, 1944, Board's circular dated 08/12/2004 date 08/12/2004 and various decisions of several High Courts, the impugned order is liable to be set aside to the extent that it does not sanction interest for the period of 42 days beyond the period of three months in sanctioning the refund.

4. Personal hearing was held on 17/04/2018. Shri Rahul Patel, C.A., appeared on behalf of the appellant and reiterated the grounds of appeal. He submitted that interest is not paid even after 90 days for pre-deposit made before amendment in 2014.

5. I have carefully gone through the contents of the impugned order as well as the grounds of appeal filed by the appellant. In the impugned order dated **12/06/2017**, the adjudicating authority has sanctioned the refund of pre-deposit arising consequent upon the issuance of the Final order No. A/10317-10320/2017 dated **30/01/2017** passed by CESTAT, WZB, Ahmedabad (the appellate order). However, the adjudicating authority has rejected the claim of interest holding that the amended provisions of section 35FF mandating interest on pre-deposit apply to appeals filed after 06/08/2012 i.e. after the enactment of the Finance (No.2) Act, 2014 as per paragraph 1.2 of C.B.E.C. Circular No. 984/08/2014-CX dated 16/09/2014 and all pending appeals / stay applications filed till the enactment shall be governed by the erstwhile provisions. The adjudicating authority has come to the conclusion that as the pre-deposit in the instant case was filed





on 16/01/2012 i.e. prior to the enactment dated 06/08/2012, the provisions relating to interest provided under the amended Section 35FF was not applicable to the claim of the appellant and no interest was payable.

6. The interest provisions under the amended Section 35FF are reproduced below for ease of reference:

**"Section 35FF. Interest on delayed refund of amount deposited under Section 35F.**

Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount.

**Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act."**

From the above proviso it is clear that the provisions of amended Section 35FF mandating payment of interest from the date of payment of pre-deposit till the date of refund of such amount are not applicable in the instant case as pre-deposit in the instant case was made prior to the commencement of the amended Section 35FF. The pertinent fact, however remains that interest was payable on delayed refund of pre-deposit even under erstwhile Section 35FF as settled by Hon'ble Supreme Court, as can be seen from the following extracts from the case of U.O.I. vs Tata SSL Ltd. – 2007 (218) E.L.T. 493 (SC):

[Order]. - The point in dispute in the present appeals is as to whether the pre-deposit made as a condition precedent for the hearing of the appeals under the Central Excise Act, 1944 was, on the assessee being ultimately successful, refundable to the assessee with interest. The said point is concluded by a judgment of this Court in the case of *Commissioner of Central Excise, Hyderabad v. I.T.C. Ltd.* - 2005 (179) E.L.T. 15 decided on 2nd December 2004. Moreover, subsequent to the said judgment, the Central Board of Excise & Customs has also issued a circular bearing No. 802/35/2004-CX. dated 8th December 2004 allowing payment of interest on delayed refund of amount of pre-deposit.

Further, as per the proviso to the amended Section 35FF, the pre-deposit in the instant case is governed by the erstwhile provisions of the Section 35FF as was in force at the time of pre-deposit, which is as follows :

**"Section 35FF. Interest on delayed refund of amount deposited under Section 35F.**

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to Section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a



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superior court or tribunal, there shall be paid to the appellant interest at the rate specified in Section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

Thus as per the erstwhile provisions of Section 35FF, interest is payable after the expiry of three months from the date of communication of the order of the appellate authority till the date of refund of the pre-deposit amount and the rate of interest would be as specified in Section 11BB, which pertains to interest on delayed refunds. The decision of Hon'ble Madras High Court in the matter of Estee Auto Pressings (P) Ltd. vs Commissioner of Central Excise, Chennai-II – 2017 (346) E.L.T. 72 (Mad.) also confirms that interest is payable on refund of pre-deposit sanctioned beyond three months from the receipt of the appellate order for the period starting from the date of receipt upto the date of payment of refund of pre-deposit. The relevant extract is as follows:

10. In the circumstances, going by the admitted fact that the pre-deposit was made in terms of Section 35F of the Act, the question of invoking Section 11B of the Act to reject the claim of the petitioner as time-barred, does not arise. As pointed out in the circular dated 2-1-2002, when the claim can be made even by a simple letter along with attested xerox copy of the order in appeal, the question of the Department further adjudicating the matter invoking Section 11A of the Act, hence, does not arise. The Circulars of the Board are binding on the respondents who have the responsibility of respecting the same. More so, in the context of the decision of the Apex Court, the question of re-agitating the issue now does not arise. In the circumstances, accepting the case of the petitioner, the writ petitions are allowed. The respondents are directed to refund the amount within a period of eight weeks from the date of order along with interest at 6% per annum from the date of receipt of the order till the date of payment. No costs. Consequently, M.P. Nos. 1 and 1 of 2010 are closed.

On considering the refund of pre-deposit in the impugned order in the light of the provisions of erstwhile Section 35FF and the decision of Hon'ble Madras High Court cited *supra*, if the refund was sanctioned beyond three months from the receipt of the appellate order, interest is payable for the period from the date of receipt of the appellate order till the date of payment. This being the settled law, there is no merit in one of the pleas made by the appellant in its grounds of appeal that interest is liable to be paid from the date of pre-deposit to the date of payment. Similarly, the finding in the impugned order that no interest was payable in view of the amended Section 35FF is also not tenable in law once it is established that the refund of pre-deposit was not made within three months from the communication of the appellate order. The date of communication of the appellate order to the department is not forthcoming in the records of the instant appeal. The appellant has indicated in the grounds of appeal that there was a delay of 42 days, which is required to be confirmed at the jurisdictional level. Therefore, the matter is allowed by way of remand to the original authority to determine whether there was any delay in sanctioning of the refund beyond three

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months from the date of receipt of the appellate order and if yes then to sanction payment of interest in terms of Section 11BB in above terms.

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

उमा शंकर

(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 24 / 04 / 2018

Attested



(K.P. Jacob)  
Superintendent,  
Central Tax (Appeals),  
Ahmedabad.

By R.P.A.D.

To

1. M/s Adani Gas Limited,  
CNG Station, Near Helmet Circle,  
Near A.M.T.S. Depot,  
Memnagar,  
Ahmedabad

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: VI, Ahmedabad (North).
5. Guard File.
6. P.A.

