आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

सत्यमेव जयते

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
: 079-26305065 **टेलेफैक्स** : 079 - 26305136

Post Speed By **द्वारा**

क फाइल संख्या (File No.) : **V2(18)91/North/Appeals/ 2018-19** / 10989 to 10993

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-22-19-20**
दिनांक (Date): **23/05/2019** जारी करने की तारीख (Date of issue): 04/06/2019
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 **31/Ref/I/17-18** Dated: **19/04/2018**
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 Power (Mundra)

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 पूवोक्त 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 |**

केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद, OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD

Cont...2

(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 है ।

(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 क्रेडीट 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- फ़ीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000/- फ़ीस भुगतान की जाए ।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-

Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and

आयुक्तालय, केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद. OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD.

(ख) उक्तिलखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी नगर, अहमदाबाद-380016.

(b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यधिकरण की गई अपील के विरूद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फ़ीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फीस भेजनी होगी । फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप ,में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजिनक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी ।

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.5000/-, 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(3) यदि इस आदेश में कई मूल आदेशो का समावेश होता है तो प्रत्येक मूल आदेश के लिय फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय 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 not withstanding 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 scriptoria work if excising Rs. 1 lacs fee of Rs. 100/- for each.

(4) न्यायालय शुल्क अधिनियम १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायलय शुल्क टिकट लगा होना चाहिय ।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer 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 सम्बंधित मामलो को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एंव सेवाकर अपीलीय न्याधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।

(6) Attention in invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

आयुक्त (अपील), केन्द्रीय कर एवं सेवाकर, अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD

ORDER IN APPEAL

M/s. Adani Power Ltd., Mundra Power Thermal Power Project, Adani Power SEZ, Village: Tunda & Siracha, Mundra *(hereinafter referred to as 'appellants')* have filed the present appeal against the Order-in-Original number 31/Ref/I/17-18 dated 19.04.2018 *(hereinafter referred to as 'impugned order')* passed by the Assistant Commissioner, CGST & CE, Division-V, Ahmedabad-North *(hereinafter referred to as 'adjudicating authority')*.

2. The facts of the case, in brief, are that the appellants had filed a refund claim of ₹ 14,51,300/- before the adjudicating authority. The said refund was filed towards Central Excise duty paid for purchase of controller assembly received in their SEZ unit for authorized and Operation & Maintenance (O&M) of the power plant. The adjudicating authority, vide the impugned order, rejected the entire claim stating that the appellants had not submitted the required original documents, no procedure has been followed, neither by the manufacturer/supplier and nor by the appellants as recipients of the goods and lastly, the appellants are not entitled for any O&M benefits.

3. Being aggrieved with the impugned order the appellants filed the present appeal before me. The appellants stated that the impugned order has been issued *ex-parte* as they were not granted any opportunity of personal hearing which is in complete violation of the principles of natural justice. Regarding the issue of procurement of inputs without payment of duty, they claimed that in terms of SEZ Act, 2005 and rules made there under, the appellants were not required to pay any duty including Customs/Central Excise duty on goods imported/procured in SEZ for carrying out authorized operations. The appellants also demanded interest for delayed payment of their refund.

4. Personal hearing in the matter was granted on 12.09.2018, 24/26.10.2018 and 19.11.2018. However, the appellants did not turn up to avail the benefit of personal hearing. Meanwhile, this office received a letter from the appellants requesting to decide the case on merit.

5. Meanwhile, the case was transferred to Call Book on 31.01.2019 in want of certain clarification from the senior authorities. Now that the issue has been clarified, I have ensured that the case is retrieved back, without any delay, for the purpose of disposing it off.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and other submissions made by the appellants. As the appellants have denied the benefit of personal hearing, I take up the case *ex-parte* purely on the basis of merits.

7. Regarding the issue that the appellants were not given any opportunity to represent their case properly as per the principle of natural justice as no opportunity of personal hearing was allotted; I consider that the adjudication proceedings shall be conducted by observing principles of natural justice. The principles of natural justice must be followed by the authorities at all levels in all proceedings under the Act or Rules and the order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Natural justice has certain cardinal principles, which must be followed in every proceeding. Judicial and quasi-judicial authorities should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of an enquiry unknown to the party, but should decide on the basis of material and evidence on record. Their decisions should not be biased, arbitrary or based on mere conjectures and surmises. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. The orders passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. The Supreme Court in the case of S.N. Mukherjee vs Union of India [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under;

> *".....If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every*

quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ...".

The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated. Therefore, I believe that the case needs to be remanded back so as to enable the appellants to get proper justice under the principles of natural justice.

8. Regarding the issue of non-following of proper procedure either by the supplier of the goods or by the appellants, I find that the appellants have stated that they were not required to file ARE-1 as the goods were exempted. In paragraph 27 of their grounds of appeal, the appellants have claimed that in a case where the goods are brought in to the SEZ without claiming any upfront exemption at the time when they are brought into the SEZ, there is no requirement of filing ARE-1 or Bill of Export. I find that the adjudicating is mute about the said issue. In paragraph 6 and 7 of the impugned order, the adjudicating authority has quoted Rule 30 of the SEZ Rules, 2006 and concluded that the appellants had not followed the procedure. But how the adjudicating authority has jumped to this conclusion is not discussed in the impugned order. Thus, looking to the above, I very strongly feel that the impugned order is quite incomplete and a non-speaking one and therefore, the case is required to be remanded back for fresh verification and proper discussion on the part of the adjudicating authority.

9. Now comes the final issue, i.e., the appellants were not entitled for any O&M benefits. Once again, I find that the adjudicating authority has wrapped up the case by just alleging the same. He should understand it very clearly that when he has tabled some allegation, onus lies on him to prove himself correct. Mere allegation without any supporting evidence and discussion is utter fruitless and converts the impugned order into a non-speaking order. In view of the above, once again, I feel that the case needs to be remanded back for want of a proper speaking order.

10. In light of the above discussion, I remand back the matter to the present adjudicating authority to decide the case afresh following the principle of natural justice and issue a speaking order as per the discussion above. The appeal filed by the appellants stands disposed off on the above terms.

11. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

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

(उमा शंकर)
CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

(S. DUTTA)
SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,
M/s. Adani Power Ltd.,
Adani House, Nr. Mithakhali Six Roads,
Navrangpura,
Ahmedabad-380 009.

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad zone.
2. The Commissioner, Central Tax, Ahmedabad (North).
3. The Assistant Commissioner, CGST, Div-V, Ahmedabad (North).
4. The Asstt. Commissioner, Central Tax, Systems, Ahmedabad (North).
5. Guard File.
6. P.A. File.