



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



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 टेलिफैक्स : 079 - 26305136

Post Speed By द्वारा

क फाइल संख्या (File No.) : V2(28)59/North/Appeals/ 2018-19 / 10984 to 10988
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-26-19-20
दिनांक (Date): 24/05/2019 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-), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No **LTU/MUM/CX/GLT-6/SEZ Refund/ABNL/124/2016-17** Dated: **03/06/2017**
issued by: **Assistant Commissioner-Central Excise (Div-), Ahmedabad North, Service Tax, Mumbai LTU**

घ अपीलकर्ता/प्रतिवादी का नाम एवम 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 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 ।



(b) In case of rebate or duty or 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 इयूटी 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 (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 रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- फीस 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, केन्द्रीय 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



- (ख) उक्तिलिखित 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 विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रूप 5 लाख या ५० लाख तक हो तो रूप ५०००/ फीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रूप ५० लाख या उससे ज्यादा हो तो रूप 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 सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रूप 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 आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए 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 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 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 रूप ६.५० पैसे का न्यायालय 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 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 सम्बंधित मामलो को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।
- (6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.



ORDER IN APPEAL

M/s. Adani Power Ltd., Revenue Survey No. 1, North Kotpura, Sanand, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number LTU/MUM/CX/GLT-6/SEZ Refund/ABNL/124/2016-17 dated 06.03.2017 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner (GLT-6), Central Excise & S. Tax, LTU, Mumbai (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants had filed a refund claim of ₹ 1,05,390/- before the adjudicating authority. The said refund was filed towards Central Excise duty paid on excisable goods received in their SEZ unit situated at Mundra from Aditya Birla Nuvo Ltd., Veraval. The adjudicating authority, vide the impugned order, returned back the said refund claim directing the appellants to file the said claim before the jurisdictional Central Excise office as he was not the proper authority to sanction the said refund in view of the notification dated 05.08.2016 issued by the Ministry of Commerce and Industry.

3. Being aggrieved with the impugned order the appellants filed an appeal before the Commissioner (Appeals), LTU, Mumbai. However, as the LTU section has been subsequently abolished, the appeal, filed by the appellants, has been transferred to this office. This office received the documents on 07.05.2018. The appellants stated that the impugned order is *ex-facie* illegal, bad in law and deserves to be quashed aside. The adjudicating authority has returned their claim without putting them to notice of the grounds raised therein as also without granting a hearing to the appellants.

4. Personal hearing in the matter was granted on 12.09.2018, 24/26.10.2018, 19.11.2018, 13.12.2018 and 17.01.2019. 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. They also submitted a copy of the judgment of Hon'ble CESTAT, Kolkata in their own case.

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 purely on the basis of merit.

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. I find that the adjudicating authority has rejected the refund claims on the ground that he was not the authorized person to process the said refund claim. The adjudicating authority, vide the impugned



order, had returned the case and asked the appellants to file the said claim before their jurisdictional Central Excise authority. He has quoted the notification dated 05.08.2016, issued by the Ministry of Commerce and Industry, as per sub-rule (5) of Rule 47 of Special Economic Zone Rules, 2006, in support of his claim. The said notification has very categorically clarified that the refunds pertaining to Special Economic Zones are to be filed before the jurisdictional Central Excise officers. I would like to reproduce below the contents of the said notification for better understanding;

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

NOTIFICATION

New Delhi, the 5th August, 2016

G.S.R. 772(E).—*In exercise of the powers conferred by section 55 of the Special Economic Zones Act, 2005, the Central Government hereby makes the following rules further to amend the Special Economic Zones Rules, 2006, namely:-*

1. Short title and commencement: -

(1) *These rules may be called the Special Economic Zones Rules (Amendment) Rules, 2016.*

(2) *They shall come into force on the date of their publication in the Official Gazette.*

2. In the Special Economic Zone Rules, 2006 (herein after referred to as the principal rules) in rule 47, after subrule (4), the following sub-rule shall be inserted, namely: -

"(5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under."

3. In the principal rules, after rule 78, the following rule shall be inserted, namely: -

"79. Audit in Special Economic Zones for indirect taxes- All the authorised operations under Special Economic Zones Act, 2005 and transactions relating thereto in Special Economic Zones and Units in the Special Economic Zones shall be audited by the Customs officers from a panel drawn by the Jurisdictional Development Commissioner in consultation with the Jurisdictional Chief Commissioner of Customs and Central Excise."

[F.No. D. 6/40/2012-SEZ]

ALOK VARDHAN CHATURVEDI, Addl. Secy."

7. Thus, looking above, it is very clear to understand that the appellants had approached the wrong authority for grant of the refund. Further, when the adjudicating authority returned back their claim with proper instruction, the appellants, instead of following the same, approached the Commissioner

(Appeals), LTU, Mumbai by filing an appeal. As the LTU section has been abolished, their appeal has been transferred to this office and I find that the appellants have submitted before me a photocopy of the Order No. F/076332-76339/2017 dated 13.07.2017 (similar issue) where the Hon'ble CESTAT, East Regional Bench, Kolkata has pronounced that the original adjudicating authority has to decide the refund claim on merit. However, in the present case, as the LTU section itself has been abolished, the appellants have no way left but to approach the jurisdictional Central Excise authority for refund.

8. In view of the above, I direct the appellants to file their claim of refund before their jurisdictional Central Excise officer (appropriate authority) and the said authority is also directed to decide the case on merit in respect of all the concerned documents following the principles of natural justice.

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

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

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

(S. DUTTA) 27/05/19

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.



To,
M/s. Adani Power Ltd.,
Revenue Survey No. 1,
North Kotpura, Sanand,
Ahmedabad-382 170.

Copy to:

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



