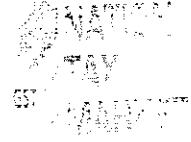




आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015
☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN-20211264SW0000014174

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स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1355/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-48/2021-22**
दिनांक Date : **22.12.2021** जारी करने की तारीख Date of Issue : **22.12.2021**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **Div-VII/North/13/Refund/Adani/20-21** dated **21.01.2021**,
passed by the Deputy Commissioner, CGST & C. Ex., Div-VII, Ahmedabad-North.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Adani Total Gas Ltd., 8th Floor, Heritage building, Ashram Road,
Usmanpura, Ahmedabad-380059.

Respondent-The Deputy Commissioner, Central GST & Central Excise, Div-VII, Ahmedabad-North.

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 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) 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.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 दिनोंक 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.

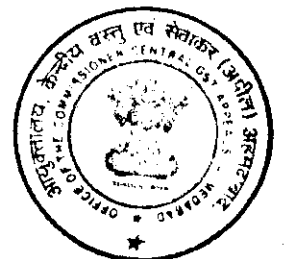
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 111) 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।

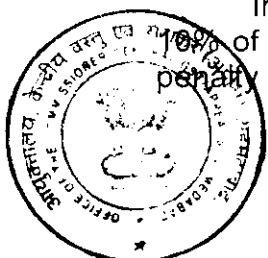
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

This appeal has been filed by M/s. Adani Total Gas Limited (formerly known as M/s. Adani Gas Ltd.), 8th Floor, Heritage Building, Ashram Road, Usmanpura, Ahmedabad-380014 (in short '*appellant*') against the O-I-O No: Div-VII/North/13/Refund/Adani/2020-21 dated 21.01.2021 (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief are that M/s. Adani Energy Ltd had filed an application before Hon'ble High Court of Gujarat for de-merger of its City Gas Distribution business into a separate company namely M/s. Adani Energy (U.P.) Ltd. The Hon'ble High Court of Gujarat vide Order dated 09.12.2009, approved the demerger. Later, M/s. Adani Energy (U.P.) Ltd changed its name to M/s. Adani Gas P. Ltd. This name was further changed to M/s. Adani Gas Ltd.

2.1 Subsequent to this de-merger, M/s. Adani Gas Ltd (now M/s. Adani Total Gas) decided to avail the Cenvat credit of Rs.6,86,88,707/- lying unutilized in the account of M/s. AEL M/s. AGL, therefore, on 18.02.2011, under Rule 10 of the Cenvat Credit Rules (CCR), 2004, made a request to the erstwhile jurisdictional Assistant Commissioner, Service Tax Division-II, Ahmedabad, to allow them to avail Cenvat Credit pertaining to services received at various CNG stations of the erstwhile M/s. Adani Energy Ltd., on account of de-merger.

2.2 The then A.C. of Service Tax, Division-II vide letter dated 20.05.2011, rejected the request made vide dated 18.2.2011. Being aggrieved, M/s. AGL filed an appeal and the Commissioner (Appeals) vide OIA No.283/2011(STC)/K.ANPZHAKAN/ Commr.(A)/Ahd dated 09.11.2011, set-aside the letter dated 20.05.2011 of A.C., Div-II and remanded the matter to the adjudicating authority with certain directions. Aggrieved by the O-I-A, M/s. AGL filed an appeal before Hon'ble CESTAT Ahmedabad, on the contention that the findings of Commissioner (A) holding that they have been rightly denied Cenvat credit as details regarding Cenvat credit taken and utilized were not declared in their ST-3 returns during the disputed period, was erroneous.

2.3 Hon'ble Tribunal vide Final Order No. A/10309/2015 dated 08.04.2015, remanded the matter to the adjudicating authority directing to also consider the submissions of the appellant regarding the Cenvat Credit taken and utilized in their ST-3 returns as mentioned in Para-6 of the impugned O-I-A. Pursuant to Hon'ble Tribunal's order, the adjudicating authority vide OIO No.CGST/A'bad/Div.VII/ST/02/2020-21 dated 16.09.2020 allowed the Cenvat Credit amount of Rs.5,86,96,096/- and rejected the Cenvat credit of amount Rs.99,92,711/-.

2.4 Accordingly, the appellant filed a claim of Rs.5,86,96,096/- under Section 142(6) of CGST Act, 2017, seeking refund of Cenvat credit allowed, in cash. On scrutiny of the claim, it appeared that the appellant could have availed the credit in their Cenvat register instead of applying for cash refund. A SCN No: VII/North-179/Refund-Adani/18-19 dated 17.12.2020, was, therefore, issued proposing rejection of the said claim. The notice was adjudicated vide the impugned order, wherein it was held that the cash refund cannot be granted to the appellant under CGST, Act as they were



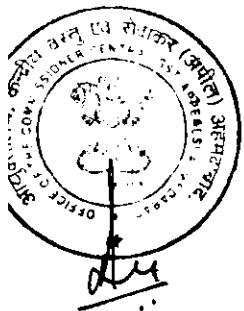
availing Cenvat credit for discharging their Central Excise duty liability towards clearance of their finished goods i.e. Compressed Natural Gas ('CNG' a product of Natural Gas). He observed that in terms of Rule 3 of the CCR, 2017, a manufacturer or provider of final product shall be allowed to take Cenvat credit of duty of excise specified in the Fourth Schedule to the Excise Act, as leviable under the said Act. Thus, Cenvat credit can be taken and utilized in respect of the goods covered in Fourth Schedule which also covers Natural Gas. Petroleum products are currently outside the scope of levy of GST and since the provisions of Central Excise Act and Rules made there under are still in existence for Natural Gas, therefore, the appellant can discharge their central excise duty liability on CNG, by utilizing such Cenvat credit. He, therefore, held that Section 142(6) of the CGST Act, 2017, cannot be invoked in present case for converting Cenvat credit into cash refund. He also recorded that as department is in appeal against O-I-O No. CGST/A'bad/ Div.VII/ST/02/2020-21 dated 16.09.2020, wherein the Cenvat credit was partially allowed and partially rejected, therefore, the claim for cash refund arising out of said O-I-O, cannot be allowed at this stage.

2.5 Aggrieved by the impugned order, the appellant preferred the present appeal mainly on following grounds:-

- ~ The Cenvat credit availed under present CGST regime is limited to the duty of excise paid as per Fourth Schedule to CEA, 1944, as in force and does not include the credit available under the past rules. As Cenvat credit claimed relates to past rules and on the duties/taxes paid on inputs and input services, other than the goods covered under Fourth Schedule, such credit is not covered in Rule 3 of the CCR, 2017. Therefore, in terms of Section 142 (6) of CGST Act, 2017, every proceedings relating to claim of Cenvat credit shall result into refund in cash, if credit found to be admissible.
- ~ Section 38B is a transitional provision incorporated in CEA, 1944, which replaces the references to First Schedule by references to Fourth schedule and not vice versa. Hence Section 38B shall have no implication in the interpretation of Rule 3 of present rules.
- ~ Adjudicating authority has referred Section 146(2) of the CGST Act, 2017 which does not exist hence para-19, is inoperative.
- ~ The refund was rejected on the ground that OIO dated 16.09.2020 has been reviewed, such ground is not permissible. It is settled law that further challenge to the order is no ground to withhold the refund. Reliance placed on 2017(350) ELT 519 Bom, 2020(374) ELT 710, 2018 (10 GSTL 544 (P&H).

3. Personal hearing in the matter was held on 27.10.2021 through virtual mode. Shri Rahul Patel, Chartered Accountant appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

4. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in their appeal memorandum and the submissions made by Shri Rahul Patel,



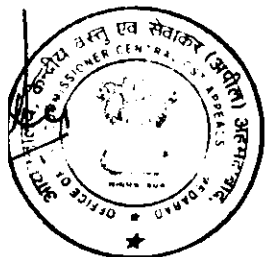
C.A., at the time of personal hearing and evidences available on records. The issue to be decided under the present appeal is whether the refund of Rs.5,86,96,096/- claimed by the appellant under Section 142(6) of CGST Act, 2017, is admissible or not ?

5. I find from the case records that, M/s. AGL vide letter dated 18.02.2011, made a request to jurisdictional D.C. that in terms of Rule 10(2) of the CCR, 2004, they may be allowed to transfer and avail the unutilized Cenvat credit, lying in the accounts of M/s. AEL, in terms of Hon'ble High Court's Order dated 09.12.2009. The Deputy Commissioner, Central GST, Division-VII, Ahmedabad North dis-allowed the Cenvat credit amount of Rs.99,92,711/- [Rs.32,58,793/ under Civil Work and Rs.67,33,971/- under Commission on CNG sales] and allowed the Cenvat Credit of Rs.5,86,96,096/-. Consequently, the appellant filed a claim seeking refund of the Cenvat Credit amount of Rs.5,86,96,096/- allowed, in cash, which was rejected, therefore, the present appeal.

5.1 It is observed that the refund of Rs.5,86,96,096/- has arisen consequent to the O-I-O No. CGST/A'bad-North/Div-VII/ST/03/2020-21 dated 07.10.2020. Therefore, before taking up the present appeal, it would be pertinent to emphasize on the fact that the said O-I-O dated 07.10.2020 was appealed before me, both by the department and as well as by M/s. AGL. The department was in appeal against the Cenvat Credit amount of Rs.5,86,96,096/-, allowed to the appellant and M/s. AGL has appealed against the disallowed Cenvat credit amount of Rs.67,33,971/- under Business Auxiliary Service, held inadmissible. However, M/s. AGL did not dispute the Cenvat credit amount of Rs.32,58,740/- disallowed under Construction service. Both these appeals were decided by me, vide OIA No: AHM-EXCUS-002-APP-43 & 44/2021-22 dated 30.11.2021, wherein the department's appeal was allowed whereas the appeal filed by M/s. AGL was rejected by way of setting aside the O-I-O No CGST/A'bad-North/Div-VII/ST/03/2020-21 dated 07.10.2020.

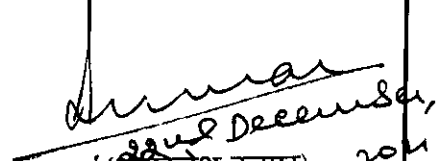
5.2 Now, since the O-I-O dated 07.10.2020, allowing the Cenvat Credit of Rs.5,86,96,096/- and disallowing Cenvat credit amount of Rs.67,33,971, has been set-aside by me on the grounds that mere reflecting the Cenvat credit as 'Cenvat credit receivables' cannot be construed as Cenvat credit taken, especially when erstwhile M/s. AEL at relevant time neither availed the Cenvat credit of Rs.6,86,88,707/- in their books of account of the F.Y. 2007-08, 2008-09, 2009-10 and nor did they reflect it in their statutory ST-3 returns. M/s. AGL also could not produce any documentary evidences to establish that the input service in respect of which the Cenvat credit was claimed, in fact were received by M/s. AEL and were used in manufacture of CNG or for rendering taxable output services, at the relevant time.

5.3 In view of the fact that the O-I-O dated 07.10.2020, allowing the Cenvat Credit of Rs.5,86,96,096/-, in itself has been set-aside, therefore, the refund arising out of such order becomes infructuous. It also goes without saying that the consequent impugned O-I-O dated 21.01.2021, rejecting such refund claim and the appeal challenging such impugned O-I-O, has also become infructuous. I, therefore, do not find any justification in examining the merits of the present appeal filed against the impugned order.



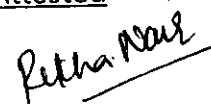
6. Thus, in view of the above discussions and findings, I, therefore, reject the appellant's appeal.

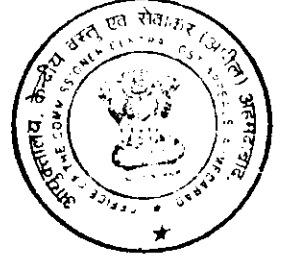
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal stand disposed off in above terms.


(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: 12.2021

Attested


(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Adani Total Gas Ltd.,
8th Floor, Heritage Building,
Ashram Road, Usmanpura, Ahmedabad

- **Appellant**

The Deputy Commissioner
CGST, Division-VII
Ahmedabad North
Ahmedabad

- **Respondent**

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)

4. Guard File.