

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7th Floor, GST Building, Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

Ambayadi, Ahmedabad-380015

75: 079-26305065

टेलेफेक्स : 079 - 26305136

7537 to 7544

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)95/Ahd-South/2018-19 Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-087-2018-19

दिनाँक Date: 30-10-2018 जारी करने की तारीख Date of Issue

7/12/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/ref-51/Adani/18-19 दिनाँक: 25.06.2018 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाग एवं पता Name & Address of the Appellant / Respondent

Adani developers Pvt Itd Ahmedabad

कोई व्यवित 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 a 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 प्रकिया 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.

(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.

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





- (अ) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिवेट के गामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (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.
- (শ) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया गाल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केंडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के गुताविक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियक्त 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) कन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेपित आदेश के प्रति आदेश प्रेपित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ राचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित की 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) िविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 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 अंतर्गतः—
 - Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-
- (क) जन्तिखित परिच्छेद २ (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय जल्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ—20, न्यू भैन्टल हारिपटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद—380016
- (a) 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.



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. Registar 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.

गिंद इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युवत (3)हंग 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 हैं।

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.

न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि—1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या (4)मूल आवेश यथारिथति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क िकट 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-litem of the court fee Act, 1975 as amended.

इन ओर रांबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, (5)केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलों के मामले में कर्तव्य गांग (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) -

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

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 predeposit 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:

amount determined under Section 11 D; (i)

amount of erroneous Cenvat Credit taken; (ii)

amount payable under Rule 6 of the Cenvat Credit Rules.

(iii) 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 हैं।

In view of above, an appeal against this order shall lie before the Tribunal or payment of 10% of the duty demanded where duty or duty and penalty are in dispute, of the penality alone is in dispute."

ORDER-IN-APPEAL

This appeal has been filed by M/s Adani Developers Pvt Ltd., Adani House, Near Mithakhali Circle, Navrangpura, Ahmedabad [hereinafter referred to as "the appellant"] against Order-in-Original NO.CGST-VI/Ref-51/Adani/18-19 dated 25.06.2018 [for short-impugned order] passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South [for short-adjudicating authority].

- 2. The appellant has filed a refund claim amounting to Rs.3,38,67,924/- on 28.03.2018. The chronological events leads to the appellant to file the said refund claim are as under:
 - [i] The appellant is engaged in providing of service of construction of residential/commercial complex.
 - [ii] In pre-GST regime, they raised demand letters to the purchaser of the residential/commercial complex towards installments due towards construction of the said complex and based on the said letters, the purchaser has paid the dues with service tax.
 - [iii] Due to some reasons, the purchasers expressed their inability to complete the transaction and requested to cancel the letter of intent and booking of complex.
 - [iv] Accordingly, the appellant cancelled the documents and returned the full amount which was received from the purchasers.
 - [v] Since the said returned money born incidence of service tax paid by the appellant, they filed the refund of such service tax paid.

The adjudicating authority has raised many queries and also asked certain documents related to filing of refund claim, vide letter dated 08.06.2018. Later on he rejected the claim for non-compliance of queries and non submission of documents which said to be essential for sanction of refund.

- 3. Being aggrieved, the appellant has filed the instant appeal, wherein, they, inter-alia stated that the adjudicating authority has not followed the principles of natural justice; that the case was decided without granting personal hearing and without granting sufficient time to submit their reply to query memo. They further contended that the adjudicating authority has not passed a speaking order.
- 4. Personal hearing in the matter was held on 11.10.2018. Shri Rahul Patel and Praveen Sheth, Chartered Accountant appeared for the same and reiterated the grounds of appeal. He also invited attention to the cancellation deed and details of returned amount.
- 5. At the outset, I observe that the adjudicating authority has rejected the claim, vide impugned order without granting proper opportunities of natural justice and without waiting proper reply from the appellant in connection with query memo dated 08.06.2018. In the impugned order, the adjudicating authority has contended that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents asked are essential to arrive at whether the pre- GST regime that the documents are the pre- GST regime that the pre- GST regime that the pr

from all aspect; that as the appellant failed to submit the said documents, he rejected the claim. In the circumstances, I am of the opinion that the instant refund applicable needs to be verified again, in view of proper reply received from the appellant in connection with the said query memo. The appellant is hereby directed to file proper reply along with relevant records pertains to the query memo before the adjudicating within one month from the receipt of this order. The adjudicating authority shall grant necessary opportunities of natural justice to the appellant before deciding the case and pass a speaking order in this regard.

7. In view of above discussion, I remand the case to the adjudicating authority for considering the refund in question afresh. The appeal stands disposed of in above terms.

(उमा शंकर) आयुक्त (अपील्स) Date: .10 .2018

क्षेबाकर (

<u>Attested</u>

(Mohanan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.

By RPAD.

To, M/s Adani Developers Pvt Ltd., Adani House, Near Mithakhali Circle, Navrangpura, Ahmedabad

Copy to:-

- 1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
- 2. The Principal Commissioner, Central Tax, Ahmedabad-South.
- 3. The Joint Commissioner, Central Tax, Ahmedabad-South
- 4. The Assistant Commissioner, System, Central Tax, Ahmedabad South.
- 5. The Assistant Commissioner, CGST, Div-VIII, Ahmedabad South
- Guard File.
- 7. P.A.

