



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)177/Ahd-South/2018-19/13162 To 13166
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-069-2019-20
दिनांक Date : 29-11-2019 जारी करने की तारीख Date of Issue 03/12/2019
- श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri. Gopi Nath, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST-VI/Ref-114/SKC/Adani power/18-19 दिनांक:
30.11.2018 issued by Assistant Commissioner, Div-VI, CGST, Ahmedabad-South
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Adani Power (Mundra) Limited
Adani corporate house
Shantigram vaisnodevi circle
S G Highway ahmedabad 382421

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथति 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 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.



(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 हों।

(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 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 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 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, 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 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 order arises on account of an appeal filed by M/s. Adani Power (Mundra) Ltd., Adani Corporate House, Shantigram, Vaisnodevi Circle, S G Highway, Ahmedabad-382421 (hereinafter referred to as "the appellant"), against Order-in-Original number CGST-VI/Ref-114/SKC/Adani Power/18-19 dated 30.11.2018 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South (hereinafter referred to as the "Adjudicating Authority").

2. The facts of the case, in brief, are that the appellant is registered with service tax department having registration number AABCA2957LST001. The appellant had filed a refund claim of ₹1,36,00,379/- on 10.08.2018 for refund of service tax paid on the various services received and utilized for authorized operation in the SEZ in terms of the Order A/10147-10187/2016 dated 02.02.2016 passed by the CESTAT Ahmedabad.
3. The said Appellant had filed the various refund application for different period with the adjudicating authorities in terms of Notification No. 09/2009 dated 03.03.2009 and Notification No.15/2009 dated 20.05.2009 .It is observed from the documents submitted by the said appellant that refund applications during relevant period was decided and refund was partly sanctioned & partly rejected on the basis of merits of various types of services utilized by the said appellant. The said appellant had preferred an appeals before the Commissioner(Appeals) against the OIOs during relevant period and refunds were partly allowed & partly rejected for specific services by the Commissioner(Appeals),Ahmedabad vide different OIAs . The Appellant had again filed refund claim on the basis of OIAs for which refunds were allowed and also filed an appeals before CESTAT ,Ahmedabad for refunds rejected by Commissioner(Appeals),Ahmedabad. Further the department had also preferred appeals before the CESTAT ,Ahmedabad against the sanction of the refunds vide OIAs. The total 41 orders of OIOs & OIAs issued against the various refund claimss of service tax claimed for ₹ 1,36,00,378/- were disposed vide Hon'ble CESTAT Order No. A/10147-10187/2016 dated 02.02.2016 by the way of remand to the original Adjudicating authority and rejected the departmental appeals. Hon'ble CESTAT directed the original adjudicating authority to examine the issues on merit. Whereas,the original adjudicating authority, vide the impugned order , rejected the claim of Refund of ₹1,36,00,379/- on the ground of time limit as prescribed under Section 11B of the Central Excise Act,1944 read with Section 83 of Finance Act,1994.
4. Being aggrieved with the impugned order, the appellant has filed the present appeal. The appellant has submitted that the refund rejected by the adjudicating authority was incorrect as they had submitted all required documents to adjudicating authority, thereby , their claim was well covered by the terms and



conditions of the Notification number 09/2009-ST dated 03.03.2009 read with Section 11B of the Central Excise Act, 1944. They further stated that the adjudicating authority has not granted the claimer fair chance of personal hearing or issuing of show cause notice and failure of which shall amount to violation of principle of natural justice. They also stated that adjudication authority has passed the impugned order without proper examining and verifying the refund claims in light of direction of higher authorities and it resulted into breach of judicial discipline. The appellant further stated that refund arises was well within the provision of law and used in relation to special Economic Zone which is evident from documentary evidences. They has pleaded to allow the refund of ₹1,36,00,379/- with consequential relief.

5. Hearing in the case was granted wherein Shri Rahul Patel, Chartered Accountant, on behalf of the appellant appeared before me and reiterated the contents of appeal memorandum. He also tabled additional submission before me.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellant at the time of hearing. The issue to be decided in this case is whether the OIO passed by the adjudicating authority regarding the refund claim is legally correct or alternative.

7. To start with, I find that the adjudicating authority has rejected the refund claim amount of ₹1,36,00,379/- citing reasons which are mentioned below;

i) the rejection of refund claims in respect of decided 41 appeals and the services mentioned at para 8 & para 5 of the impugned order respectively have been discussed in various OIOs & OIAs in length on merits of case by giving details reasoning of adjudicating & appellate authorities and present adjudicating authority has fully agreed with the findings for rejection of entire claims and the refund became inadmissible .

ii) The rejection of refund claim has been taken on the ground of time limit under section 11B of the Central Excise Act, 1944 as the date of order of Tribunal i.e 02.02.2016 and date of filling of refund application i.e 10.08.2018 which is the beyond the time limit of one year.

8. I find that rejection of refund claims under various services were arise by the adjudicating authorities and appellate authority due to certain ambiguity i.e whether whole of the service had been consumed within the SEZ and services should not be beyond the scope of Authorized operation in SEZ. In this aspect,



Hon'ble CESTAT Ahmedabad vide Order No. A/10147-10187/2016 dated 02.02.2016. has clearly held that the whole of the services were consumed within the SEZ under the head of authorized operation and admissibility of refund under various services were allowed & the appeals filed by the revenue were rejected . It is also mentioned in the Hon'ble CESTAT's order that the Commissioner (Appeal) had already remanded some portion of the refund of Services Tax for verification to the adjudicating authority under the category of "Passenger embarking in India for International Journey" provided by M/s Karnavati Aviation Pvt. Ltd and Hon'ble CESTAT order has given the direction to adjudication authority for examining the issue on merit in de-nova adjudication. However the adjudicating authority has failed to examine the same before passing the impugned order. So I find in this instant case that the adjudicating authority has travelled beyond the direction of Hon'ble CESTAT while delivering the verdict . In support of forgoing discussions, reliance is placed on the decision of Hon'ble Gujarat High Court in the case of Milcent Appliances Pvt. Ltd. Vs. Union of India -2006(205)ELT 130 wherein it is categorically laid down by Hon'ble Court that

:Judicial discipline - Direction given by superior forum - It cannot be disregarded by inferior forum in any manner whatsoever. [para 8]

Further. In this case , reliance is also can placed on the decision of Hon'ble Allahabad High Court in the case of CCE Vs. Okay Glass Industries-2015(330)ELT 872 wherein it was decided that "when finding in remand order of appellate authority has reached to finality , it is not open to adjudicating authority to pass order ignoring remand direction and confirmed demand on the same ground as taken in first Order in Original". Therefore, the adjudicating authority has passed the impugned order without properly examining and verifying the refund claims in light of direction of higher appellate authority including Hon'ble Tribunal which resulted into breach of Judicial discipline.

9. I also find that the refund claim is rejected on the ground of time limit of one year under section 11B of Central Excise Act,1944. The adjudicating authority has contended that the appellant filed the refund application on 10.08.2018 against the Tribunal's order dated 02.02.2016, hence the same hits by limitation under the provisions of Section 11B of CEA. The said argument is not correct and unlawful, looking into the facts and circumstances of the case. I find that the Hon'ble Tribunal has remanded the case to adjudicating authority to decide the original refund claims filed by the appellant before the original adjudicating authority. In the circumstances, it is the responsibility of the adjudicating authority to bring back the case for decision as per order of the Hon'ble Tribunal. The application or request dated 10.08.2018 submitted by the appellant to decide case as per Hon'ble Tribunal's decision cannot be considered as fresh application for refund. So, the time limit of one year from the date of appellate order shall not apply to this case and rejection of refund under section 11B of the said Act, is bad in law and the



adjudicating authority has wrongly applied the provisions of Section 11B of CEA in this case.

10. As per para 22 of the CESTAT Order dated 02.02.2016, Hon'ble member of CESTAT had given a direction to the original adjudicating authority for examining the issue on merit related to service under the category of "Passenger embarking in India for International journey" which was subsequently classified by the department under the category "Supply of Tangible Goods " and for that reason the Commissioner (Appeal) already remanded the same for verification. I find that the original adjudicating authority has not taken note in his findings before issuing the order. The than Commissioner (Appeals) & CESTAT had remanded back the case quoting certain guidelines which the adjudicating authority was supposed to follow but the adjudicating authority failed to comply with the directions of appellate authority.

11. The appeal has been preferred only on the ground that no fair chance of opportunity of personal hearing was granted to the appellant before passing the order rejecting the refund claim and hence principles of natural justice have been violated. The appellant has argued that in absence of proper communication of hearing, the contention of adjudicating authority for non attendance of hearing was baseless and false. In this regard I find that the appellant was informed vide letter dated 28.11.2018 to appear for personal hearing which was fixed on 30.11.2018. Such a short notice would definitely not serve the purpose for which it is communicated. I consider that the adjudication proceedings shall be conducted by observing principles of natural justice. 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. 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 Show Cause Notice is the first limb of this principle. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. The Hon'ble Supreme Court has 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."

12. 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. In the instant case, the lower authority failed to provide the appellant opportunity to rebut the material if any in their favour and order has been passed in abnormal rashness. Therefore the plea of the appellant on non-providing with natural justice is acceptable.

13. In view of the above discussion, I remand back the appeal to the adjudicating authority for re-examine the whole issue on merit in de-novo proceeding.

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

14. The appeal filed by the appellant stand disposed off in above terms.

(GOPI NATH)

COMMISSIONER (APPEALS)
CGST, AHMEDABAD.



ATTESTED

(ATANU KUNDU)
SUPERINTENDENT (APPEALS),
CGST, AHMEDABAD.

BY R.P.A.D.

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

Copy To:-

1. The Chief Commissioner, CGST, Ahmedabad zone.
2. The Commissioner, CGST ,Ahmedabad South.
3. The Assistant Commissioner, System, Ahmedabad South
4. The Asstt./ Deputy Commissioner, CGST , Division-VI, Ahmedabad South.
5. Guard File.
6. P.A. File.