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- टेलेफैक्स07926305136

NATION TAX MARKET

स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)176/Ahd-South/2018-19/13681 To 13685

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-092-2019-20**
दिनाँक Date : **17-01-2020** जारी करने की तारीख Date of Issue 22/01/2020

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

ग Arising out of Order-in-Original No. **CGST-VI/Ref-120/SKC/Adani Infra/18-19** दिनाँक: **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 Infrastructure & Developers Pvt Ltd
10th Floor, Shikhar
Near Adani House
Near Mithakhali Circle

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 पूवोक्त 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 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 अपीलः–
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) 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.

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

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.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश 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 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.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलो 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 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."

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

ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s Adani Infrastructure & Developers Pvt Ltd., 10th Floor,Shikhar, Near Adani House, Mithakhali Circle, Navrangpura, Ahmedabad (hereinafter referred to as the *appellant*) against Order in Original No. CGST-VI/Ref-120/SKC/Adani infra/18-19 dated 30.11.2018 [hereinafter referred to as *the impugned order*) passed by the Assistant Commissioner of Central Tax, Division VI, Ahmedabad South, Ahmedabad-380015 (hereinafter referred to as *the adjudicating authority*).

2. Facts of the case, in brief, are that the appellant is engaged in providing taxable service under the category of Construction of Residential Complex Service and were holding Service Tax Registration number AAFCA9521JST001. The appellant has filed a claim for refund amounting to Rs. 4,65,487/- of service tax paid under "Construction of Residential Complex services" on advances for the period July 2017 to March 2018. It was claimed that in pre GST regime, they raised demand letter towards instalments due for under construction of residential complex services to prospective purchaser. Based on the demand letter, they paid service tax to the Central Government on due date. However, due to some reason, the purchaser expressed its inability to complete the transaction and has requested to cancel their booking. Accordingly, the appellant issued cancellation documents and returned the entire amount to the purchaser on account of cancellation of booking of residential complex, which tantamount to service not provided to the purchaser.

3. Adjudicating authority rejected the claim vide the impugned order on the following grounds:

i) The appellant did not submit the proper documents viz. Sale agreement, cancellation agreement, detailed work sheet of payment received and service tax collected and paid, individual ledger account showing the financial transaction, ST-3 returns along with copy of challans, statement of reconciliation , bank statement;

ii) The appellant did not attend the personal hearing nor requested the adjournment.

4. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds:

a) *The adjudicating authority has not served any letter/notice dated 28.11.2018 fixing hearing on 30.11.2018.Hence no opportunity for personal hearing was given to them.*

b) *No show cause notice was served to the appellant before rejecting the refund claim;*

c) *Proper documents were submitted by the appellant and hence it was wrong on the part of adjudicating authority to hold that the refund was ineligible;*

d) *Fair opportunity for personal hearing was not granted by the adjudicating authority.*

5. The appellant also relied upon the :

i) The Supreme Court Judgement in case of Union of India V/s Hanil Era Textiles Limited-2017(349) ELT 384;

ii) Master Circular on Show Cause Notice No.1053/2/2017-CX dated 10.03.2017.

6. Personal Hearing in the case was held on 07.01.2020. Shri Rahul Patel, Chartered Accountant, attended Personal hearing on behalf of the appellant and reiterated written submissions made in Ground of Appeal.

7. I have carefully gone through the facts of the case on record, grounds of appeal and oral submissions made by the appellant at the time of hearing.

8. I find that the appellant is providing service under the category of Construction of Residential Complex Service and booking the units after receiving payments from the prospective buyers of the units. The appellant has claimed to have discharged the service tax liability properly and timely. However, some of the units were cancelled by the prospective buyers hence the booking amount was claimed to have been fully refunded to them. Since, the service tax was already paid against the advances received therein and no adjustment of the tax amount paid was allowed after 01.07.2017, they were having no option under law other than claiming refund of such amount. Hence, the appellant filed the impugned refund claim. The appellant's claim was rejected by the adjudicating authority vide the impugned order.

9. I find that the appellant has, in their grounds of appeal mainly argued that they were denied natural justice by the adjudicating authority by not issuing show cause notice and by not considering their submission before rejecting the claim. I find from the impugned Order-in Original that the adjudicating authority has rejected the refund claim on ground that the appellant has not furnished any documentary evidences in support of their claim, though they were issued query memo.

10. I further find that the appellant has relied on the Board's Circular No.1053/2/2017-CX dated 10.03.2017, wherein it has been clarified that the issuance of SCN is a mandatory requirement according to the principles of natural and no one should be condemned unheard. Since the appellant has not replied the query memo dated 22.10.2018 raised by the adjudicating authority and even not attended personal hearing granted on 30.11.2018, I find that the matter was decided by not hearing the appellant's version.

11. Hence, considering the principles of natural justice, the version of appellant needs to be on record and the matter needs to be remanded back. The appellant is also directed to file proper reply along with relevant records pertaining to the query memo before the adjudicating authority within one month from the receipt of this order. The adjudicating authority shall verify all the relevant documents to be submitted by the appellant and decide the refund claim afresh after ensuring the principle of natural justice.

12. In view of foregoing discussion, I remand the case to the adjudicating authority.

13. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निप टारा उपरोक्त तरीके से किया जाता है।

13. The appeal filed by the appellant stands disposed of in above terms.

17th January 2020

(Akhilesh Kumar)
Commissioner (Appeal)
CGST,Ahmedabad
Date. 17. 01.2020

ATTESTED

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

BY R.P.A.D.

To,
M/s Adani Infrastructure & Developers Pvt Ltd , 10th Floor Shikhar, Near Adani House, Mithakhali Circle, Navrangpura, Ahmedabad

Copy To:-

1.The Chief Commissioner, CGST, Ahmedabad zone.
2.The Commissioner, CGST ,Ahmedabad South.
3.TheAsstt. Commissioner, Central Excise, Division-VI, Ahmedabad-South.
4.The Assistant Commissioner, System, Ahmedabad South
5.Guard File
6.PA file