



सत्यमेव जयते

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(SEZ)133&134/Ahd-South/2019-20/14409 701443
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-011&012-2020-21
दिनांक Date : 20-04-2020 जारी करने की तारीख Date of Issue 03/06/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST-VI/Ref-110&111/SKC/Adani power/18-19 दिनांक:
30.11.2018 , issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Adani Power (Mundra) Limited
Ahmedabad

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 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 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 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. 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, अपील 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 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 duty demanded where duty or duty and penalty are in dispute, or penalty, where alone is in dispute."



ORDER-IN-APPEAL

Two appeals have been filed by M/s Adani Power Ltd (now M/s Adani Power (Mundra Ltd), Achairaj, Opp.Mayor Bunglow, Law Garden, Ahmedabad [hereinafter referred to as "appellant"] against Orders-in Original as per details given below, passed by the Assistant Commissioner of CGST, Division-VI, Ahmedabad South Commissionerate [hereinafter referred to as "adjudicating authority"]. The details of the appeals are as under:

S No	Appeal No	Orders-in-Original No	Refund amount involved
1	113/19-20	CGST-VI/Ref-110/SKC/Adani Power/18-19dated 30.11.2018	Rs.43,337/-
2	114/19-20	CGST-VI/Ref-111/SKC/Adani Power/18-19dated 30.11.2018	Rs.91,768/-

2. Facts of the case, in brief, are that the appellant have a Thermal Power Plant in SEZ Mundra as approved by the Director, Ministry of Commerce & Industry, Department of Commerce (SEZ) Section, New Delhi. They have procured duty paid inputs/spares/equipments from the registered manufacturer for authorized operation and maintenance of their Power Plant. Since no Customs Duty/Central Excise Duty was required to be paid by them on the inputs/spares/equipments for the authorized operation, in terms of Section 26 of the SEZ Act, 2005 and Rule 27 of the SEZ Rules, 2006, they have filed above mentioned two refund claims with the Department on 19.02.2018 and 06.01.2018 respectively in respect of Central Excise duty paid on such raw materials. On scrutiny of the said claims, it was observed that [i] the appellant have not submitted the required original documents; [ii] no procedures were followed neither by the manufacturer/supplier of the raw materials nor by the recipient i.e appellant; [iii] the appellant have not submitted the list of approval of goods from the Development Commissioner in respect of goods removed to SEZ; and [iv] they were not entitled for any Operation & Maintenance benefits and therefore, the refund filed by the appellant is not proper as per Rule 30 of the SEZ Rules. Therefore, a Show Cause Notices dated 20.03.2018 and 05.02.2018 were issued to the appellant for denying the said two refund claims. After considering the replies filed by the appellant to the Show Cause Notices, the refund claims were rejected by the adjudicating authority, vide Orders-in-Original.

3. Aggrieved with the Orders-in-Original, the appellant has filed by the instant appeal on the grounds that:

- In a case where the goods are brought in to the SEZ without claiming any upfront exemption at the time when they are brought into the SEZ, there is no requirement of filing ARE-1 or Bill of Export; that there is no requirement of procedure for endorsement of any other documents by the specified/authorized officer evidencing entry of goods into the SEZ.



- They submitted copies of invoices and lorry receipts, showing the goods were received from units which are situated in DTA; that certificate from Chartered Accountant was also submitted along with refund claim which show that the goods covered under the refund claims were accounted for in the books of accounts and utilized for undertaking authorized operations.
- Once it is an admitted fact that the inputs have been used for authorized operations in the SEZ, the refund cannot be denied on the ground of alleged technical and venial lapse. The benefit of exemption not be denied where it is established that the inputs have been utilized for their intended purpose. They relied on various case laws in this context.
- In terms of SEZ Act and Rules, they were not required to pay any duty; when no duty is leviable on goods procured into SEZ for carrying out authorized operation, collection there of un law and required to be refunded.
- Interest also to be given for delayed payment.

4. Personal Hearings in the matter were granted on 09.10.2019, 11.11.2019, 07.01.2019, 04/25..02.2019. However, the appellant has neither availed the opportunity of Personal Hearing nor sought any adjournment. Therefore, the appeals are taken for decision ex-parte on the basis of available records.

5. I have carefully gone through the facts of the case available on records and submissions made by the appellant in Appeal Memorandum. I find that that the refund claims filed by the appellant are relating to Central Excise duty paid on inputs/spares/equipments procured by them from Central Excise registered manufacturers under the cover of invoice. The said goods supplied to appellant for authorized operations and maintenance of their Power Plant were contended to be exempt from payment of duty under Section 26(1) (c) of SEZ Act, 2005 read with Rule 27(1) of SEZ Rules, 2006. The adjudicating authority has denied the refund claims in question on the grounds mentioned in the Show Cause Notices that [i] no original documents in respect of transaction made for procuring the goods from DTA manufacturers/suppliers was submitted by them; [ii] they had not submitted ARE-1/tax invoices and retail invoices of the supplier as prescribed under Rule 30 of the SEZ Rules. Besides that, the adjudicating authority has denied the refund claim also on the grounds that as per EPCES Circular No. 202 dated 06.04.2015 and Circular No.225 dated 17.02.2016 issued by the Ministry of Commerce and Industry, no Operation and Maintenance benefit including duty free benefits/Service Tax exemption on raw materials, consumable etc used in operation and maintenance of power plant.



6. I find that the duty paid inputs/spares/equipments received by the appellant from the registered manufacturer/suppliers were used for authorized operations in the Power Plant which is not disputed by the adjudicating authority. The only dispute raised by the Department is that original documents/ARE-1s in respect of transaction made for procuring the goods from DTA manufacturers/suppliers, as prescribed under Rule 30 of the SEZ Rule, were not submitted by the appellant. Rule 30 of the SEZ Rules, 2006 stipulates procedure for procurements of goods from the Domestic Tariff Area. As per the said Rule, the DTA manufacturer/supplier shall clear the goods, as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of ARE-1 referred to in Notification number 42/2001-Central Excise (NT) dated the 26.6.2001[superseded by Notification No.19/2004-CE (NT), 20/2004 (NT)] and also prescribed other conditions. The said Notification prescribes procedure to enable the recipients of excisable goods/taxable services to claim refund of the duty paid goods/Service Tax, assessed and collected by the Department or remitted by the manufacturer/service provider. It is a settled law that once the receipt of the goods and their utilization for the authorized operations is not disputed, the refund/rebate on duty paid goods cannot be denied for procedural infraction like filing of original documents viz. Invoice, ARE-1s and Bill of Export etc.

6.1 However, it is also observed that besides above, there are other reasons also involved in rejection of refund claims. In para 10 of the Orders-in-Original, the adjudicating authority has discussed Export Promotion Counsel's (EPCES) Circular No. 202 dated 06.04.2015 and Circular No.225 dated 17.02.2016, issued by the Ministry of Commerce & Industry in respect of Power Plant set up by Developer/Co-Developer of SEZ. As per Circular No.202 dated 06.04.2015, the revised guidelines for generation, transmission and distribution of power in SEZ states that:

"Power Plants can be set up by developer/co-developer in an SEZ only in the Non Processing Area of SEZ and will be entitled to fiscal benefits only for its initial setting up and no fiscal benefit would be admissible for its operation and maintenance in terms of Rule 27(3) of the SEZ Rules. There will be no obligation to achieve positive Net Foreign Exchange earning for such Power Plants".

The Circular No.225 dated 17.02.016 states that:

"(vi) Those Power Plants in SEZs which were approved prior to 27.02.2009, and subject to issue of Power Guidelines and provisions of SEZ Act & Rules, either as an infrastructure facility by Developer/Codeveloper or as a unit in the Processing Area, will be permitted to operate. It is relevant that during period of installation of such plants, duty benefits on capital investment of mega power plants were available under the then prevalent policy guidelines even in the DTA area.

Henceforth, such power plants will be allowed O&M benefits only with regard to the average monthly power supplied to entities within the same SEZ during the preceding year. Henceforth, no O&M benefits including service tax exemption will be allowed for power supplied to DTA/other SEZs/EOUs from such power plants. The surplus power generated in such power plants may be transferred to DTA, without payment of duty, keeping in consideration of the fact that no duty free benefits on raw materials, consumables, etc., have been availed for generation of such power. However, those power plants not having the capacity of the mega power plant, as given in DoR Notification No. 21/2002-Customs dated 1.03.2002, will be required to



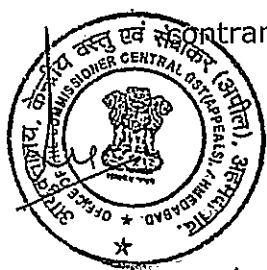
pay duty for sale in DTA, on account of duty free import of capital goods, as determined by DoR".

In this regard, Department of Revenue has issued Notification No. 9/2016-Customs dated 16.2.2016 which stipulates that exemption from Customs Duty on electrical energy supplied from SEZ to DTA is available only subject to conditions No.103 of the Notification. The condition No.103 of the said Notification states that "The power producer shall produce a certificate from the jurisdictional Development Commissioner in the Department of Commerce, Ministry of Commerce and Industry, that no benefit of customs duty and excise duty, as well as fuel-transportation related service tax has been availed by the said power producer towards raw materials and consumables used in operation and maintenance of the power plant".

7. Under the above circumstances, the refund/rebate on duty paid inputs/consumables/equipment used in Operation and Maintenance of Power Plant is not admissible to the appellant and such claims are in violation to the Circulars mentioned above and Notification No.9/2016-Customs supra.

8. Further, I find that the Government of India in case of M/s Intas Pharma Ltd [2014 (311) ELT 983] has decided an issue relating to sanction of rebate under Rule 18 of the Central Excise Rules, 2002, wherein, it has been held that SEZ unit cannot be treated as export in terms of Section 2(m) of SEZ Act and cannot file rebate claim under Rule 18 of the Central Excise Rules, 2002. In the decision, the Government of India has quoted CBEC's Circular No. 29/2006-Customs, dated 27-12-2006 issued for implementation of SEZ Act, 2005 and SEZ Rules, 2006. As per Para 3(a) of the said Circular, under Section 2(m) of the SEZ Act, supplying goods or providing services, from DTA to a SEZ unit or a SEZ Developer, has been defined to constitute "export". Based on the said Circular, the Government of India further clarifies that *"applicant, who is receiving the goods from DTA supplier, cannot be treated as exporter nor he has exported any goods in terms of said Section 2(m) of the SEZ Act. The SEZ Unit, the applicant is an importer of said goods in this case. Hence applicant cannot file the rebate claim under Rule 18 of Central Excise Rules, 2002. As such the rebate claim is rightly held inadmissible to the applicants on this count"*.

8.1 Further, I find that the Commissioner (Appeals), Ahmedabad has decided an identical issue in appellant's own case, vide Order-in-Appeal No.AHM-EXCUS-002-APP-343-344-17-18 dated 27.02.2018. In the said OIA, the Commissioner (Appeals) has upheld the order passed by the lower authority and rejected the refund claim in respect of Central Excise duty paid on raw materials procured from DTA, in view of above cited Circular/Notification and decision of Government of India. The appellant has not opposed or made any comments contrary to observation of the Commissioner (Appeals).



9. In view of above discussion and following the Government of India's decision supra, I do not find any merit in the appeal filed by the appellant and accordingly, I reject both the appeals mentioned above. The appeals stands disposed of in above terms.

Akhilesh Kumar
 20th April, 2020
 Akhilesh Kumar
 Commissioner (Appeals)
 /04/2020

Attested

Zankh
 (Mohanani V.V)
 Superintendent (Appeals),
 CGST, Ahmedabad.



To,

M/s Adani Power (Mundra Ltd),
 Achairaj, Opp.Mayor Bunglow, Law Garden,
 Ahmedabad

Copy To:-

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