



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

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टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

DIN:20210264SW0000111BA2

क फाइल संख्या : File No : V2(ST)16/Ahd-South/2020-21

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP- 68/2020-21

दिनांक Date : 09-02-2021 जारी करने की तारीख Date of Issue

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No CGST-VI/Ref-54/MK/AC/APML/2019-20 dated 27.02.2020 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South.

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

**M/s Adani Power (Mundra) Limited, Adani House, Near Mithakhali Circle, Navrangpura, Ahmedabad-380009.**

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 issued under the Central Excise Act 1944, 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, 4<sup>th</sup> 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.

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



(ख) 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।

(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.

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

(c) 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।

(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) 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) केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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.

- (24) 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)

- (25) 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:

(xxxi) amount determined under Section 11 D;

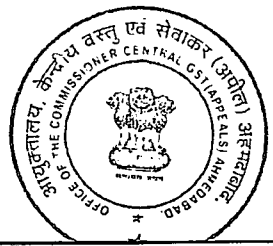
(xxxii) amount of erroneous Cenvat Credit taken;

(xxxiii) 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।

6(l) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to states) Act, 2017, may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



**ORDER-IN-APPEAL**

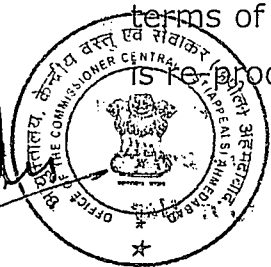
1. This order arises out of an appeal filed by M/s. Adani Power (Mundra) Limited, Adani House, Near Mithakhali Circle, Navrangpura, Ahmedabad-380009 (hereinafter referred to as '*appellant*') against Order in Original No. CGST-VI/REF-54/MK/AC/APML/2019-20 dated 27.02.2020 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner of Central Tax, Division-VI, Ahmedabad-South (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant is holding approval/status as co-developer for setting up of generation, transmission, distribution of power and related infrastructure facility in the multiproduct SEZ developed by Mundra Port SEZ Ltd. and also having Service Tax Registration No. AANCA2426JSD001. The Mundra Power Generation Undertaking, alongwith all its assets and liabilities which also includes the tax refunds, has been transferred to the appellant, pursuant to the Scheme of Arrangement between M/s. Adani Power Limited and the appellant in terms of the sanction of the National Company Law Tribunal vide orders dated 03.11.2017.

2.1 The appellant had initially filed refund claim for an amount of Rs. 1,42,44,193/- with the adjudicating authority on 30.09.2019 in terms of the Notification No. 12/2013-ST dated 01.07.2013 in respect of the services received from M/s. Karnavati Aviation Pvt. Ltd.[covered under total 68 nos. of invoices] falling under the service category of "Transport of passengers by air" which have been used for their authorized operations in SEZ and payment thereof have been made during the period from October-2018 to December-2018. Subsequently, the appellant had requested to modify/reduce the refund claim amount to Rs. 1,22,60,320/- from the initial claim amount of Rs. 1,42,44,193/-, as they have not made payment to their vendor in respect of one of the Invoice No. 201 dated 21.11.2014 [involving Service Tax of Rs. 19,83,873/-] and withdrawn the claim to that extent.

3. The adjudicating authority while considering the refund claim of the appellant, has observed that some of the invoices had been issued after thirty days from the date of completion of provision of service and in such cases, the point of taxation will be the completion of Service rendered in terms of the provisions of Rule 3 of the Point of Taxation Rules, 2011 which

is reproduced as below:



"3. Determination of point of taxation- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

(a) the time when the invoice for the service provided or agreed to be provided is issued:

Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service."

Further, the adjudicating authority has mentioned in the impugned order that the following invoices were issued after thirty days from the date of completion of provision of service and the claim is not admissible to the appellant (inadmissible amount is Rs. 7,86,096/-).

| Name of Service Provider: KARNAVATI AVIATION PVT. LTD.      |             |                          |                               |                                |
|---|-------------|--------------------------|-------------------------------|--------------------------------|
| Description of taxable service: Air Transport of Passengers |             |                          |                               |                                |
| Sr.No.  | Invoice No. | Date of issue of invoice | Date of completion of service | Amount of Service Tax (in Rs.) |
| 1   | 95          | 17.07.2014               | 15.06.2014                    | 85,696                         |
| 2   | 93          | 17.07.2014               | 10.06.2014                    | 1,43,376                       |
| 3   | 92          | 17.07.2014               | 09.06.2014                    | 1,92,816                       |
| 4   | 96          | 17.07.2014               | 16.06.2014                    | 1,00,116                       |
| 5   | 90          | 17.09.2014               | 06.06.2014                    | 1,37,196                       |
| 6   | 121         | 01.09.2014               | 25.06.2014                    | 1,26,896                       |
|   |             |                          | TOTAL                         | 7,86,096                       |

3.1 The adjudicating authority has vide impugned order finally sanctioned refund claim of the appellant to the extent of Rs. 1,14,74,224/- [after deducting an amount of Rs. 7,86,096/- from the refund claim of the appellant for Rs. 1,22,60,320/-] under Notification No. 12/2013-ST dated 01.07.2013 readwith Section 11 B of the Central Excise Act, 1944 as made applicable in case of Service Tax matter vide Section 83 of the Finance Act, 1994.

4. Being aggrieved with the impugned order to the extent of rejection/reduction of an amount of Rs. 7,86,096/- by the adjudicating authority, the appellant preferred this appeal on the grounds that:

- (i) The adjudicating authority has allowed the refund claim except sum of Rs. 7,86,096/- alleging that the invoices involving the said amount were not eligible for refund as the invoices were not issued within the time limit specified in Point of Taxation Rules, 2011. As it emanates from the



*impugned order, it appears that the contention of revenue to reject the refund claim to the extent of Rs. 7,86,096/- is solely on ground of limitation which has been computed with reference to the date which could have been the date of invoice according to the Point of Taxation Rules, 2011.*

- (ii) *In the present case, the refund is being claimed by the recipient of the said services under Notification No. 12/2013 whereas the invoices were issued by the service provider. Nothing contained in the said Notification requires the claimant to claim refund with respect to the invoices raised as per Point of Taxation Rules, 2011 only. The condition at Para (e) of the said Notification No. 12/2013 clearly provides that:*

*"the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit".*

- (iii) *The issuance of invoices as per Point of Taxation Rules, 2011 has no relevance as to eligibility of the refund claim as per Notification No. 12/2013. Further, the adjudicating authority has nowhere in the impugned order categorically contended as to why the refund claim shall not be admissible under Notification No. 12/2013 if the invoices were raised by the service provider on belated basis.*
- (iv) *It emanates from the impugned order that the adjudicating authority has determined date of completion of the service and accordingly counted the period of limitation. The adjudicating authority has no jurisdiction or power to determine date of completion of service while adjudicating a matter pertaining to the recipient. Determination of date of completion is dependent upon various factors and the Point of Taxation Rules, 2011 which cannot be determined without taking into consideration all the facts and circumstances belonging to the service provider and without giving an opportunity of representation to the service provider. Accordingly, the very basis of determination of date of completion in the impugned order fails to survive and hence, the claim of refund is not liable for rejection.*

5. The appellant was granted opportunity for personal hearing on 18.12.2020. Shri Rahul Patel, Chartered Accountant, appeared for personal hearing. He re-iterated the submissions made in Appeal Memorandum.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in appeal memorandum and oral submissions made by the appellant at the time of hearing. The issue to be decided in the case is whether the adjudicating authority was right in rejecting the refund claim to the extent of Rs. 7,86,096/- in respect of the invoices issued after



thirty days from the date of completion of provision of service in terms of the provisions of Rule 3 of the Point of Taxation Rules, 2011.

6.1 It is observed from the details mentioned in the impugned order that the appellant has filed the refund claim under Notification No. 12/2013-Service Tax dated 01.07.2013. The relevant provisions of the said Notification are re-produced below:

**"2.** *The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:*

*Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.*

**3.** *This exemption shall be given effect to in the following manner:*

*(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.*

*(II) The ab-initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-*

- (a) .....*
- (b) .....*
- (c) .....*
- (d) .....*
- (e) .....*

***(III) The refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which ab-initio exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:-***

*(a) the service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] shall be distributed amongst the SEZ Unit or the Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the Central Credit Rules. For the purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorised operation during the relevant period.*

*(b) the SEZ Unit or the Developer shall be entitled to refund of the service tax paid on (i) the specified services on which ab-initio exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).*

*(c) the SEZ Unit or Developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to*



*the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;*

*(d) the amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;*

*(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;*

*(f) the SEZ Unit or the Developer shall submit only one claim of refund under this notification for every quarter:*

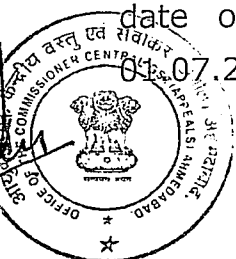
*Explanation.-For the purposes of this notification "quarter" means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.*

*(g) the SEZ Unit or the Developer who is not so registered under the provisions referred to in clause (c), shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994.*

*(h) if there are more than one SEZ Unit registered under a common service tax registration, a common refund may be filed at the option of the assessee."*

6.2 As per the facts recorded by the adjudicating authority in the impugned order, it is observed that the appellant is exclusively engaged in the business as per their approved list of operations in the SEZ and all the input services, in respect of which refund claim is filed, have been used by them for authorized operations only. Further, it is also mentioned in the impugned order that the Unit Approval Committee in their meeting held on 24.06.2013 granted approval in respect of "Service of Transport Passengers by Air" as specified service with effect from 01.07.2010, as per the letter F. No. MPSEZ/P&C/5/74/2006 VOL-II dated 03.06.2013 issued by the Specified Officer, APSEZ, Mundra and accordingly, it is observed that all the invoices for which refund claim was filed are very well covered by the list of specified services, duly authorized by the competent authority.

6.3 As per the findings of the adjudicating authority recorded in the impugned order, it is undisputed fact that the appellant had made payment of the services in respect of all the invoices and the refund claim has been filed in the prescribed manner and within the time limit of one year from the date of payment specified in the Notification No. 12/2013-ST dated 07.07.2013.





6.4 Further, I also find that there was no objection or allegation as against the fact that the appellant has neither availed Cenvat Credit of the said amount of service tax nor they have not passed the amount of service tax to their customers or collected the amount of service tax from customers and shown the refund claim as service tax receivable from the service tax department in the books of accounts as on 31.03.2019.

6.5 Accordingly, in the present case, I find that there is no dispute raised or any contrary facts produced by the adjudicating authority as regards the fact that the appellant has filed refund claim as per the Notification No. 12/2013-ST dated 01.07.2013, duly following the procedures prescribed therein and also fulfilled all the conditions including time limit prescribed in the said notification.

7. In the present case, it is observed that the adjudicating authority has rejected the refund claim of the appellant to the extent of Rs. 7,86,096/-in respect of the invoices issued after thirty days from the date of completion of provision of service in terms of the provisions of Rule 3 of the Point of Taxation Rules, 2011.

7.1 Accordingly, I find it proper to examine the provisions of Rule 3 of the Point of Taxation Rules, 2011 to understand the applicability of the same, if any, in the present case. The relevant provisions of the said rules are reproduced as below:

*"In exercise of the powers conferred under[sub-section (2) of section 67A and](Inserted vide Notification 10/2016- Service Tax to be in effect from the date of enforcement of Finance act ,2016)clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994, **the Central Government hereby makes the following rules for the purpose of collection of service tax and determination of rate of service tax, namely,-***

*1. Short title and commencement.-*

*(1) These rules shall be called the Point of Taxation Rules, 2011.*

*(2) They shall come into force on the 1st day of April, 2011.*

*2. Definitions.- In these rules, unless the context otherwise requires,-*

*(a) .....*

*.*

*.*

*.*

*(f) .....*

*2A. Date of payment.- For the purposes of these rules, "date of payment" shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:*



Provided that –

(A) .....

(B) .....

3. *Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-*

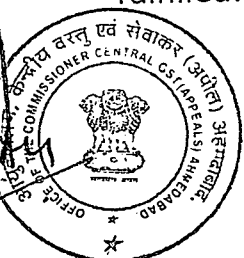
*(a) the time when the invoice for the service provided or agreed to be provided is issued:*

*Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service."*

On going through the provisions of Point of Taxation Rules, 2011, it is observed that the same are primarily made for "the purpose of collection of service tax and determination of rate of service tax". Further, it is observed in the present case that the refund has been claimed by the appellant [being SEZ Unit/Developer] as a recipient of the said services as provided under the Notification No. 12/2013-ST dated 01.07.2013, whereas the invoices were issued by the service provider and as such, there is no bar prescribed in the said Notification to claim refund with respect to the invoices raised as per Point of Taxation Rules, 2011 only.

7.2 Accordingly, I find that the issuance of invoices as per Point of Taxation Rules, 2011 has no relevance as to eligibility of the refund claim by the recipient SEZ unit or Developer in terms of the Notification No. 12/2013-ST dated 01.07.2013. In the present case, it is also observed that the adjudicating authority has nowhere categorically contended in the impugned order as to why the refund claim shall not be admissible under the said Notification No. 12/2013-ST dated 01.07.2013 in case of the invoices which were raised by the service provider on belated basis.

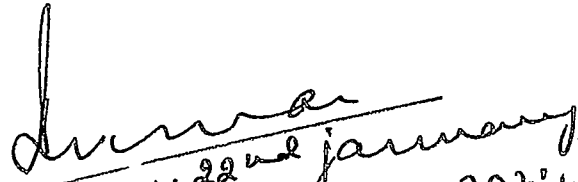
7.3 Further, in the present case, I find that there is no dispute raised or any contrary facts produced by the adjudicating authority as regards the fact that the appellant has filed refund application in terms of the provisions of the Notification No. 12/2013-ST dated 01.07.2013 following the prescribed procedure within the limit period, as specifically prescribed in the said notification and all other conditions mentioned therein have also been fulfilled.



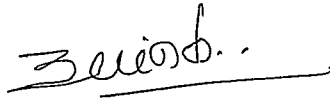
8. In view of the above, I find that the decision of the adjudicating authority issued vide impugned order as regards the rejection of the subject refund claim of the appellant to the extent of Rs. 7,86,096/- [pertaining to the invoices which were not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994] is not legally sustainable.

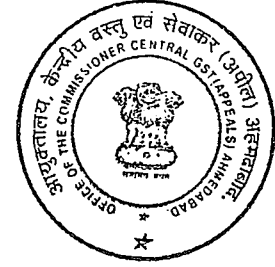
9. Accordingly, I hereby allow the appeal filed by the appellant and also set aside the impugned order passed by the adjudicating authority to the extent of rejection of an amount of Rs. 7,86,096/- from the refund claim of the appellant.

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

  
 22<sup>nd</sup> January 2021  
 (Akhilesh Kumar)  
 Commissioner (Appeals)

Attested

  
 (M.P. Sisodiya)  
 Superintendent (Appeals)  
 CGST, Ahmedabad



By Regd. Post A: D  
 M/s. Adani Power (Mundra) Limited,  
 Adani House, Nr. Mithakhali Circle,  
 Navrangpura,  
 Ahmedabad-380009

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner CGST and Central Excise, Commissionerate-Ahmedabad-South.
3. The Deputy /Asstt. Commissioner, Central GST, Division-VI, Commissionerate-Ahmedabad South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File

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