आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

सत्यमेव जयते

NATION TAX MARKET

☎ 26305065-079 : टेलेफैक्स26305136 - 079 :

DIN-20220464SW00005025CC

स्पीड पोस्ट

क फाइल संख्या : File No :GAPPL/COM/STP/1041/2021 6HH – 6H8

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-049/2021-22**
दिनाँक Date : 25.03.2022 जारी करने की तारीख Date of Issue : 29.04.2022.

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

ग Arising out of Order-in-Original No.CGST-VI/Ref-42/APML/DC/DRS/2020-21 dated 18.12.2020 passed by the Deputy Commissioner, Central GST, Division-VI, Ahmedabad South Commissionerate.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Adani Power (Mundra) Ltd.,
Adani Corporate House, Shantigram,
Vaishnodevi Circle, S.G.Highway,
Ahmedabad-382421.

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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गतः–

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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.

(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 adjudicating authority shall bear 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 contained 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 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 House, Near Mithakhali Circle, Navrangpura, Ahmedabad-380009 [New address: Adani Corporate House, Shantigram, Vaishnodevi Circle, S.G. Highway, Ahmedabad-382421] (hereinafter referred to as "*the appellant*") against Order-in-Original No.CGST-VI/Ref-42/ APML/DC/DRS/2020-21 dated 18.12.2020 (hereinafter referred to as the "*impugned order*") passed by the Deputy Commissioner, CGST, Division-VI, Ahmedabad South (hereinafter referred to as the "Adjudicating Authority").

2. The appellant is a Co-Developer and was registered as service recipient in terms of the provisions of Section 68(2) of the Finance Act, 1994 (hereinafter referred to as '*the Act*') having Registration No. AABCA2957LST001, under the taxable category of services viz. 'Management Consultancy Service', 'Consulting Engineering Service', 'Underwriting Service', 'Banking & Financial Service', 'Scientific & Technical Consultancy Service', 'Sponsorship Service', 'Transport of Goods by Road Service', 'Online Information and Data Service', 'Renting of Immovable Property Service', 'Erection, Commissioning & Installation Service', etc.

2.1 Briefly stated, the facts of the case are that the appellant is a subsidiary of M/s Adani Power Ltd. (in short '*APL*'), who is a co-developer of multi-product Special Economic Zone, viz. Adani Ports and Special Economic Zone (in short '*SEZ*'), which has been set up in the village of Tundra and Siracha, Taluka-Mundra, Distt. Kutch, Gujarat. In terms of a scheme of arrangement between APL and the appellant, which has been sanctioned by the National Company Law Tribunal vide their Common Orders dated 03.11.2017, APL has transferred their Mundra Power Generating Undertaking along with all its assets and liabilities to the appellant on a going concern on slum exchange basis effective from the appointed date of 31.03.2017. APL's request for transfer of the Letter of Approval including Authorised Operations, assets & liabilities pertaining to its Mundra Power Plant facilities to the appellant was approved by the Board of Approval of Ministry of Commerce and Industry, Department of Commerce, Government of India subject to conditions mentioned in letter dated 15.12.2017. Therefore, the right to the refund of tax in the present matter had been transferred to the appellant and accordingly, the present refund has been filed.

2.2 APL had originally filed a refund claim for an amount of Rs.7,77,778/- on 03.07.2012 in terms of Notification No.17/2011-ST dated 01.03.2011 for refund of service tax paid on the various services received and utilized for authorized operation in the SEZ. The said refund claim was adjudicated vide Order-in-Original No.SD-02/Ref-01/RRB/2013-14 dated 30.03.2013 wherein the entire amount of refund was rejected. On being aggrieved, they had filed an appeal before the Commissioner (Appeals-IV), Central

Excise, Ahmedabad who vide Order-in-Appeal (in short '*OIA*') No.AHM-SVTAX-000-APP-026-14-15 dated 24.04.2014 partially allowed and partially rejected the appeal filed by the appellant. Being aggrieved with the rejection part of the OIA, an appeal was filed by the appellant before the Hon'ble Tribunal, Ahmedabad. The said appeal filed was decided by the Hon'ble CESTAT, Ahmedabad vide their Order No.A/10147-10187/2016 dated 02.02.2016 along with other appeals filed by the appellant as well as department on similar issue pertaining to different period. The Hon'ble Tribunal, vide their said Order dated 02.02.2016, has disposed off the appeals filed by the appellant by way of remand to the adjudicating authority and has rejected the appeals filed by the department. Based on the Hon'ble Tribunal's above mentioned order, the appellant had filed a refund claim for an amount of Rs.1,36,00,379/- on 10.08.2018, which covered amounts of refund rejected in eighteen (18) refund claims originally filed by them in the matter. The said claim was rejected by the adjudicating authority vide Order-in-Original No.CGST-VI/Ref-114/SKC/Adani Power/18-19 dated 30.11.2018 on the ground of time limit as prescribed under Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act,1994. On an appeal filed by the appellant against the said OIO dated 30.11.2018, the Commissioner (Appeals), Ahmedabad vide OIA No.AHM-EXCUS-001-APP-069-2019-20 dated 29.11.2019 issued on 03.12.2019 has remanded back the case to the adjudicating authority for re-examining the whole issue on merit in de-novo proceeding. Accordingly, the adjudicating authority has passed the impugned order in de-novo proceedings, which pertained to the refund for an amount of Rs.2,37,001/- rejected by the appellate authority vide OIA No.AHM-SVTAX-000-APP-026-14-15 dated 24.04.2014 with reference to the refund claim of Rs.7,77,778/- filed on 03.07.2012. The adjudicating authority, during de-novo proceedings, found the refund claimed as not admissible and hence rejected the same.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the following grounds against rejection of refund claim for an amount of Rs.1,43,994/- as detailed in Annexure-C to the appeal:

- Ld. Deputy Commissioner grievously erred in law as well as facts in rejecting the refund claim with respect to services of transportation of passengers by Air, more particularly described in Annexure C. It is the contention of ld. Adjudicating Authority that the category of service was inserted in the approved list w.e.f. 01.07.2010 whereas the invoices were issued prior thereto and therefore refund claim was not tenable. The services of transportation of passengers by air was included in the list of approved services with effect from 01.07.2010 vide Letter dated 03.06.2013 bearing No.MPSEZ/P&C/5/74/00 Vol II, copy of which was already available on record with ld. Adjudicating Authority. It was, therefore, gravely incorrect and false on part of ld. Adjudicating Authority that the service of transportation of passengers by air was not included in the list of approved services.

Transactions for which refund claim was sought by the appellant were undisputedly in the nature of transportation of passengers by air and therefore, the appellant rightly claimed the refund. It is to submit for sake of abundant clarity that ld. Adjudicating authority had not disputed the primary facts i.e. nature of services, actual receipt of services for authorized operations, payment of tax, etc. and no infirmity has been found in claim of refund by the ld. Adjudicating authority with regard thereto. The ld. Adjudicating authority has failed in paying due respect to the ratio decided by Hon'ble Tribunal in their own case. From plain reading of the findings of Hon'ble Tribunal, it clearly transpires that Hon'ble Tribunal has prima facie appreciated and accepted eligibility of the refund claim subject to verification. Nowhere Hon'ble Tribunal had denied the eligibility of the refund claimed or expressed ineligibility of whatsoever nature. Ld. Adjudicating authority must not have attempted to review the primary aspect concerning to the transaction which has otherwise been appraised by Hon'ble Tribunal. Without prejudice to foregoing, it is to further submit that ld. Adjudicating authority has completely overlooked and disregarded the decision in Order-in-Appeal No.AHM-SVTAX-000-APP-051-14-15 dated 28.05.2014 allowing the refund claim for identical facts. Ld. Adjudicating authority is ought to have violated the principles of judicial discipline inasmuch as he departed from the decision already taken in favour of the appellant and brought to his notice by the appellant. In case of the appellant the issue cannot be deemed to be *res integra* and therefore ld. Adjudicating authority was bound by the decision of Commissioner (Appeals). Hence, the very act of rejecting the refund claim on arbitrary and frivolous ground and departure from the settled position by disregarding the decision of higher forum is appearing to be a bias and prejudiced decision and therefore liable to be assailed;

- The ld. Adjudicating Authority failed to appreciate that the service tax as involved in the refund claim was exemption from payment by virtue of the provisions of Special Economic Zones Act, 2005. Provisions of the Special Economic Zones Act, 2005 are non-obstante inasmuch as taxation is concerned and therefore it is the mandate of the parliament to the taxpayer. Appellant being governed by the provisions of Special Economic Zones Act, 2005 entitled for the exemption as well as the benefit arising from the exemption is unconditional and non-qualifying manner. It is no matter of dispute in the entire refund claim that the services were procured by the Appellant as SEZ and thus all such services were subjected to the provisions of Special Economic Zones Act, 2005 and hence entitled for exemption. Ld. Adjudicating Authority has, in the impugned Order, attempted to deprive the Appellant from the substantive benefit of exemption otherwise granted by the statutory provisions which is sheer violation on his part. Moreover, it is to submit that Article 265 of the Constitution of India required that the tax shall not be collected otherwise than by way of an

authority of law. In the present case, the tax collected and retained by the exchequer is in sheer contradiction to the provisions of law;

- Ld. Adjudicating Authority had travelled beyond his powers and jurisdiction in rejecting the refund claim on premises of minor deficiencies in the invoices prepared and issued by the Service Provider. The appellant had satisfied all the conditions of Notification, which is a self-contained code and does not deny the benefit of refund for minor or venial mistakes/deficiencies in the invoices. It was also to be appreciated by Ld. Adjudicating Authority that the services were duly received by the Appellant for authorized operations in SEZ and the facts clearly emanated from the invoices. Hence, the very act of rejecting the refund claim was in sheer contravention of the Notification and therefore liable to be assailed. It is also to be appreciated that the preparation and issuance of the invoice was beyond the control of the Appellant being a recipient. Responsibility to prepare and issue the Invoice as per Rule 4A was on the Service Provider and the Appellant being recipient of service cannot control. Hence, the mistakes made by the Service Provider cannot be the basis to deny substantive benefit otherwise available to the Appellant;

- Ld. Adjudicating Authority ought to have sanctioned the refund claim along with interest as applicable from the date of refund claim originally filed; and

- Ld. Deputy Commissioner, Division-VI, Ahmedabad-South failed to appreciate that all the transactions involved in the refund claim were used for the authorized operations in SEZ and satisfied the conditions of the Notification and falling within the list of approved services and hence act of denial of refund without fortifying plausible reasons and corroborative evidences is ought to be in violation of law.

4. Personal hearing in the matter was held on 27.10.2021. S/Shri Rahul Patel, Shyam Makwana, Praveen Shetty and Sachin Agarwal, Chartered Accountants, appeared on behalf of the appellant for hearing. They reiterated the submissions made in the grounds of appeal.

5. I have carefully gone through the facts of the case available on records and submissions made by the appellant in the Appeal Memorandum and oral submissions made at the time of personal hearing. The issue to be decided in the case is whether in the facts and circumstances of the case, the impugned order passed by the adjudicating authority rejecting refund of service tax claimed by the appellant in terms of Notification No.17/2011-ST dated 01.03.2011, as amended, is legally correct and proper or not.

6. It is observed that the refund under dispute in the present case was rejected by the appellate authority in the earlier round of litigation and the same came to be re-examined and decided again in denovo adjudication in terms of directions of the Hon'ble Tribunal vide their Order No.A/10747-10187/2016 dated 02.02.2016. The said Order of the

Hon'ble Tribunal was with reference to various appeals filed by the claimant (viz. appellant) as well as department on similar issue pertaining to different period. The Hon'ble Tribunal vide their said order dated 02.02.2016, has disposed off the appeals filed by the claimant by way of remand to the adjudicating authority and has rejected the appeals filed by the department. While remanding the matter under appeals filed by the appellant, the Hon'ble Tribunal has observed as under:

> *" 22. The learned Senior Advocate submits that there is a subsequent development on these issues, which they have stated in their respective appeals, such as; rejection of refund on the documents of M/s Karnavati Aviation Pvt. Ltd., considering the service under the category of "passenger embarking in India for international journey". Subsequently, it was classified by the Revenue under the category of "Supply of Tangible Goods". We find that the Commissioner (Appeals) already remanded some portion of the refund for verification. So, it is appropriate that the Adjudicating authority should also examine the above issues on merit in de-novo Adjudication."*

7. I find that the amount of refund claim under dispute/challenge in the present appeal is Rs.1,43,994/- which pertained to service of 'Air Transport of Passengers" received from M/s Karnavati Aviation Pvt. Ltd. as detailed in Annexure-C to the appeal. The adjudicating authority has rejected the refund claimed in the case on the ground that as per Para 3 (f)(ii) of Notification No.17/2011-ST dated 01.03.2011, the appellant has to submit the original invoices at the time of filing the refund claim and in the present case, the appellant has not submitted the original copy of the relevant invoices and hence refund claimed is not admissible. It is observed that the adjudicating authority has rejected the refund in the case only on the above ground of non-submission of original invoices. The appellant has contended that the services of transportation of passengers by air was included in the list of approved services with effect from 01.07.2010 vide Letter F.No.MPSEZ/P&C/5/74/00 Vol II dated 03.06.2013 and, therefore, the adjudicating authority's view that the said service was not included in the approved list of services was gravely incorrect and false. It was further contended that transactions for which refund claim was sought by the appellant were undisputedly in the nature of transportation of passengers by air and therefore, the appellant rightly claimed the refund. I find that the above contention raised by the appellant in the case has no relevance to the issue under dispute. The refund claim in the case was not rejected on the ground stated by the appellant in their contention. There was no dispute whatsoever in the present case as to whether the service in question was approved or not. As stated earlier, the refund in the case was rejected only on the ground of non-submission of original invoices. Even in the previous round of litigation also, the said refund was rejected on the same ground.

The appellant in the appeal under consideration has not contested or addressed this ground/issue on the basis of which the refund in question was rejected. They are contesting the rejection of refund completely on a different footing or perspective which in fact were not under dispute in the facts of the present case and hence have no bearing on the decision of rejection taken by the adjudicating authority in the case. Since the grounds for rejection of the refund by the adjudicating authority is not contested/challenged by the appellant, the decision of the adjudicating authority based on the same becomes final and I have no reason to interfere with the said decision being a matter not under dispute before me. In view thereof, I do not find any merit in the contentions raised by the appellant in the case and they are rejected being not relevant to the facts of the case.

7.1 I further find that the total amount of refund under dispute as per Annexure – C to the appeal is Rs.1,43,994/- out of the total amount of refund of Rs.2,37,001/- rejected vide the impugned order. There is no specific challenge to the rejection of refund of the remaining amount of Rs.93,007/- vide the impugned order and therefore, the same is upheld.

8. The appellant has further contended that they, being governed by the provisions of Special Economic Zones Act, 2005, are entitled for the exemption as well as the benefit arising from the exemption in unconditional and non-qualifying manner and the adjudicating authority has attempted to deprive the appellant from the substantive benefit of exemption otherwise granted by the statutory provisions, which is violation on his part. It is observed that the appellant in the present case has claimed the benefit of exemption as provided under the Notification No.9/2009-ST dated 03.03.2009 and not as per the provisions of SEZ Act, 2005. Therefore, the eligibility and admissibility of the exemption claimed has to be examined and decided in terms of the Notification under which it was claimed. There is no scope for an alternative claim that the exemption claimed was even otherwise eligible as per another/different law or notification. It is settled law that an exemption notification has to be construed in a strict manner and it is the for the claimant to prove that they fall within the four corners of the exemption claimed. The Hon'ble Supreme Court in their decision in the case of Commissioner of Customs (Import), Mumbai Vs. M/s Dilipkumar & Company [2018 (361) E.L.T. 577 (SC)] has settled the legal position in this regard wherein it was held that *"Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification*". Further, the eligibility/admissibility of the exemption in terms of SEZ Act is not an issue under dispute in the present case. In view thereof, I do not find any merit in the above contention raised by the appellant in the case.

9. It is further observed that the appellant has also raised a contention that the refund claim was rejected on the ground of deficiencies in the Invoice issued by the Service Provider vis-à-vis Rule 4A. I find that in the impugned order there is no such ground for rejection of the refund claim in the case and hence the said contention of the appellant does not have any relevance to the facts of the present case and accordingly, it is rejected.

10. In view of the above discussions, I do not find any merit in the contentions raised by the appellant in the appeal. As such, I find no reason to interfere with the decision taken by the adjudicating authority vide the impugned order. Accordingly, the impugned order is upheld and the appeal filed by the appellant is rejected for being devoid of merits.

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

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

25 March, 2022

(**Akhilesh Kumar**)
Commissioner (Appeals)
Date: 25.03.2022

Attested

(Anilkumar P.)
Superintendent (Appeals),
CGST, Ahmedabad.

BY R.P.A.D./SPEED POST

To

M/s. Adani Power (Mundra) Ltd.,
Adani House, Near Mithakhali Circle,
Navrangpura, Ahmedabad380009.

[New Address: Adani Corporate House, Shantigram, Vaishnodevi Circle, S.G.Highway, Ahmedabad-382421]

Copy To:-

1. The Chief Commissioner, Central GST & Central Excise, Ahmedabad zone.
2. The Principal Commissioner, Central GST & Central Excise , Ahmedabad South.
3. The Assistant Commissioner (System), Central GST & Central Excise, Ahmedabad South.
4. The Deputy / Asstt. Commissioner, Central GST , Division-VI, Ahmedabad South.
5. Guard File.
6. P.A. File.