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

26305065-079 : टेलेफैक्स26305136 - 079 :

DIN-20220464SW000071287A
स्पीड पोस्ट

क फाइल संख्या : File No :GAPPL/COM/STP/1045/2021 /729 - 733

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-053/2021-22**
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-32/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 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 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.

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

(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."

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

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-32/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 Authorized 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.2,62,42,961/- on 23.04.2010 in terms of Notification No.09/2009-ST dated 03.03.2009for 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-74/11-12 dated 27.01.2012 wherein an amount of Rs.2,17,96,236/- was sanctioned and the rest of the amount of Rs.44,46,725/- 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.151/2013 (STC)/SKS/Commr.(A)/Ahd. dated 19.07.2013 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.15,12,709/- rejected by the appellate authority vide OIA No.151/2013 (STC)/ SKS/Commr.(A)/Ahd. dated 19.07.2013 with reference to the refund claim of Rs.2,62,42,961/- filed on 23.04.2010. 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:

- Ld. Adjudicating authority has rejected the refund with respect to Financial Services, more particularly described in Annexure C, by contending that the Financial Services were not in relation to the authorized operations in SEZ and therefore refund claim was not admissible. Appellant wishes to submit that Bank Guarantee was given pursuant to the Order passed by the Hon'ble High Court for the purpose of payment of customs duty on clearance of power from SEZ; the service availed from the Bank for issuance of Bank Guarantee cannot be said that the same has not been used in relation to Authorized Operation. The sale of power is one of the activities mentioned under the Authorized operation. Central Government Notification No.25/2010 dated 27.02.2010 levied customs duty on clearance of the power from SEZ to DTA. The appellants challenged the said Notification before the

Hon'bleHigh Court. The Hon'ble High Court vide interim order permitted the appellants to clear the power without payment of duty subject to submission of Bank Guarantee. The appellants approached the bank for issuance of the Bank Guarantee. Since the Bank Guarantee has been issued for securing the customs duty on sale of power to DTA and sale of power is one of the activities of Authorized Operation, finding of the Ld. Adjudicating Authority that services availed from bank is not in relation to Authorized operation is contrary to the facts since the Services are used exclusively for authorized operations of SEZ;

- The refund claim with respect to services, more particularly described in Annexure D, was rejected by contending that the services procured by way of the stated transactions were not in the Approved List. It is to submit that the Appellant had made a categorical submission to ld. Adjudicating Authority separately for each of the transactions stated in the Annexure and explained the true nature of transactions and demonstrated that the said service duly covered by the approved list. Ld. Adjudicating authority was therefore not justified in ignoring the plausible explanations provided by the Appellant while dealing with the refund claims;
- 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.9/2009-ST dated 03.03.2009 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 as per Annexure C & D to the appeal is Rs.3,98,392/- involving service tax paid on different services, which are grouped by the appellant under the said Annexures on the basis of grounds of rejection cited by the adjudicating authority. I take up the issue accordingly one by one.

7.1 With reference to the claim for refund of service tax of Rs.14,070/- on 'Banking or Financial Services', as detailed in Annexure-C to the appeal, it is observed that the claim pertained to expenses like travelling, communication and convenience charges, etc. incurred by the service provider while providing services to the appellant. The said expenses were collected by the service provider from the appellant as reimbursement of out of pocket expenses. The adjudicating authority has rejected the refund by observing that the said expenses were not in relation to the authorized operation in SEZ and hence refund is not admissible. The appellant in their grounds of appeal in the present appeal has contended the impugned services pertained to services received in relation to issuance of Bank Guarantee which was to be given pursuant to the Order passed by the Hon'ble High Court for the purpose of payment of customs duty on clearance of power from SEZ and that since the Bank Guarantee had been issued for securing the customs duty on sale of power to DTA and sale of power is one of the activities of Authorized operation, finding of the respondent that services availed is not in relation to Authorized operation is contrary to the facts. In this regard, I find that the above contention raised by the appellant in the case is out of context and has no relevance to the issue under dispute. In the facts of the present case, the services in question were not received with reference to issuance of any Bank Guarantee and nor the service provider in the case was any Bank. As per facts available on records, the refund claimed in the case indisputably pertained to out of pocket expenses collected by the service provider viz. M/s SBI Capital Markets Ltd. with reference to provision of services for procurement of Advances/ other funds. I find that the expenses under dispute in the present case were expenses incurred by the service provider which were re-imbursed by the appellant as out-of-pocket expenses. The services, to which these expenses were related to, were received and used by the service provider or its employees and not by the appellant. Therefore, such out-of-pocket expenses in no way can be considered as done in relation to the authorized operations in SEZ. Further, such services received and used by the service provider were not qualified for exemption under Notification No.9/2009-ST dated 03.03.2009 for being not covered there under. The exemption envisaged under the said Notification is applicable only to those taxable services which are received by a Developer or units of Special Economic Zone. When the services, to which the expenses under dispute in the case relates to, were

not eligible for exemption under Notification No.9/2009-ST dated 03.03.2009, no case of refund arises in the matter as what is granted as refund under the said Notification was nothing but the exemption envisaged therein. In view thereof, the refund of service tax claimed by the appellant on out-of-pocket expenses in the case is not admissible to them in terms of Notification No.9/2009-ST dated 03.03.2009 ibid, and, is liable for rejection. Further, it is observed that the reliance placed by the appellant on Rule 5 of Service Tax (Determination of Value) Rules, 2006 during the adjudication proceedings does not help their cause in the case for being not tenable in view of the Hon'ble Supreme Court's decision in the case of Union of India and Anr. Vs. Inter Continental Consultants and Technocrafts Pvt. Ltd. [2018 (10) GSTL 401 (SC)] wherein provision of Rule 5(1) ibid was held as *ultra vires* Section 67 of the Act for the period prior to 14.05.2015. The Hon'ble Supreme Court in their above decision has categorically held that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service and the service tax is to be paid only on the services actually provided by the service provider. 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.

7.2 As regards the refund of service tax claimed on services as detailed in Annexure-D to the appeal, it is observed that the claim pertained to different services received viz. Air Travel Agent Service, Maintenance or Repair Service, Erection, Commissioning or Installation Service, Information Technology Software Service, Business Support Services, Banking or Financial Services and Consulting Engineering Services under the cover of 13 invoices wherein the total amount of service tax involved is Rs.3,84,322/-.

7.2.1 Of the thirteen invoices, two invoices issued by M/s SBI (stated to have reflected at Sr.No.441 & 442 of Work Sheet as per Table-A of Para 14 of the impugned order) pertained to Bank Charges collected by the Bank for their role as lender's agent and TRA agent in respect of services provided with reference to borrowing of funds for the appellant for their Phase-III project through banks of consortium finance. The adjudicating authority has rejected the refund by observing that the subject invoices were for the charges paid for out of pocket expenses and hence found not in relation to the authorized operation in SEZ. The appellant has contended that since the subject services from SBI have been availed for authorized operations, they are entitled to get refund under the Notification. I find that the services in question in the present case were availed by the appellant for the purpose of borrowing of funds for their project and that obviously has no relation whatsoever to the authorized operations in the SEZ. The exemption envisaged vide the Notification under reference is applicable only to specified services provided in relation to authorized operations **in the SEZ**. The act of borrowing

of funds cannot be considered as part of authorized operations in the SEZ or in relation thereto. Therefore, it is observed that the impugned services were provided not in relation to authorized operations in the SEZ. Further, the appellant has not produced any documentary evidence to establish that the services rendered in the case were consumed in relation to the authorized operation in the SEZ. In view thereof, the exemption and the consequent refund claimed by the appellant in respect of the impugned services under Notification N0.9/2009-ST dated 03.03.2009 is not admissible and hence is liable for rejection.

7.2.2 It is observed that in respect of five invoices against the refund claimed under the category of 'Maintenance & Repair' in the Annexure, two invoices issued by M/s Infinium Motors Pvt. Ltd. and one invoice issued by M/s B. Mangatram& Co. (stated to have reflected at Sr.No.55 & 98 of Work Sheet as per Table-A of Para 14 of the impugned order) pertained to the service of repair and maintenance of motor cars. The appellant has contended that the services were used for transportation of employees of the company and thereby are used for authorized operation and further services of authorized service station is specified under the list approved by the Committee and hence refund ought to be sanctioned. The adjudicating authority has rejected the refund claimed on the ground that the appellant could not produce any documentary evidence to show that the said cars were used for transportation of the employees to establish its use in relation to authorized operation of SEZ and hence refund is not admissible. I find that the services under dispute were of repair of vehicles and it appeared that the said services were not utilized by the appellant in relation to the authorized operations in the SEZ. Since the appellant could not produce any documentary evidence to show that the vehicles repaired under the service were used for transportation of the employees, the use of the impugned services in relation to the authorized operations in the SEZ is not established owing to which the admissibility of the refund claimed in the case is not proved by the appellant. The refund granted vide Notification No.9/2009-ST dated 03.03.2009 is nothing but exemption which is given by way of refund and it is settled law that the onus to prove the admissibility of the exemption claimed is on the person who is claiming it. Therefore, in the facts of the case, the appellant is not eligible for the exemption and the refund thereon claimed against the three invoices discussed above.

7.2.2.1 The remaining two invoices in the case were issued by M/s Leal Enterprises (stated to have reflected at Sr.No.312 & 331 of Work Sheet as per Table-A of Para 14 of the impugned order) and they pertained to maintenance and repair services provided under Annual Maintenance Contract (AMC) for all types of air conditioners installed in the office of the appellant situated at 'Adani House', Navrangpura, Ahmedabad. The adjudicating authority has rejected the refund on the ground that the service related to the maintenance and repair of the air conditioners at Adani House, Navrangpura, Ahmedabad

where office of the other group of the appellant is also located and they could not produce any document which can show that services were used by the employees of the claimant and therefore he cannot distinguish if the service was used by the claimant alone or by other group companies and hence refund is not admissible. The appellant has contended that the services pertained to all types of air conditioners installed at Sambhav Office and since that office is their administrative office, the service is in relation to the authorized operations of SEZ and refund ought to be sanctioned. I find that as per the finding of the adjudicating authority, the documents/invoices in question pertained to services provided at Adani House and, therefore, the appellant's contention of the services having rendered at their office at Sambhav House did not appear to be factually correct. No evidence of any kind is submitted by the appellant in support of their contention. Further, in the facts of the case, it is undisputed that the impugned services were received and used at their Ahmedabad offices, which are not in the SEZ. It is, therefore, apparent that the impugned services were utilized not in relation to the authorized operations in the SEZ. The exemption envisaged vide the Notification under reference is applicable only to specified services provided in relation to authorized operations **in the SEZ**. Therefore, the services provided for use outside the SEZ would clearly be out of purview of the above exemption. In the facts of the present case, it is amply clear that the said services were provided not in relation to authorized operations in the SEZ but were for maintenance of the appellant's offices in Ahmedabad. Further, the letter dated 26.06.2009 issued by the Office of the Development Commissioner, MPSEZ on the subject of 'Approval of list of Specified Services for Authorized Operations' granted the approval on the condition that '*This approval list of services **is not for providing services of the delineated area of Mundra Port & SEZ***'. In view thereof, the exemption and the consequent refund claimed by the appellant in respect of the impugned services under Notification No.9/2009-ST dated 03.03.2009 is not admissible and hence is liable for rejection.

7.2.3 In respect of the refund claimed against the invoice issued by M/s Indian Electrical and Electronic Manufacturer Association (stated to have reflected at Sr.No.422 of Work Sheet as per Table-A of Para 14 of the impugned order)and the two invoices issued by M/s Bharat Heavy Electricals Ltd. (stated to have reflected at Sr.No.268& 455 of Work Sheet as per Table-A of Para 14 of the impugned order), the services provided pertained to training activities for the employees of the appellant. The adjudicating authority has rejected the refund on the ground that the services received are classified as 'Commercial Training or Coaching Service', which is not a specified service approved by the approval committee of SEZ. It was the contention of the appellant that the training was given to the employees for their overall development which is ultimately beneficial to the business and since the services were provided to support business activity and for smooth running of operation at the plant, correct classification of the service category is

'Business Support Service'. It is their further submission that the service category 'Commercial Training or Coaching Service' has been approved by the Approval Committee by letter F.No.MPSEZ/P&C/5/ 74/06/Vol.II/157 dated 24.05.2012 and thus it does not matter under which category the service tax is charged as both categories are approved by the approval committee and since it is used in relation to authorized operation, refund ought to be sanctioned. I find that the service provided in the case is of "Training and Coaching Service" and it is an undisputed fact that the said service was not approved by the MPSEZ at the time of availment of exemption/filing of refund claim by the appellant on 23.04.2010. The disputed service came to be approved only later vide letter dated 24.05.2012 referred above. Further, it was not open for the appellant to change the classification of the service received at their will to suit their convenience. The refund granted vide Notification No.9/2009-ST dated 03.03.2009 is nothing but exemption which is given by way of refund and the said exemption is provided only to specified services viz. services approved by the Approval Committee. To avail the exemption, the assessee must fulfill the conditions of the Notification at the time of availing the exemption. In the instant case, admittedly the appellants had not got the impugned services approved by the Approval Committee at the time of availing the exemption viz. at the time of filing of refund claim and therefore impugned services cannot be considered as a specified service for the purpose of exemption under Notification No.9/2009-ST dated 03.03.2009. In such situations, the refund of service tax paid on such services is not admissible in terms of the Notification ibid.

7.2.4 As regards the refund claimed against invoice issued by M/s Ashtech Infotech Pvt. Ltd.(stated to have reflected at Sr.No.291 of Work Sheet as per Table-A of Para 14 of the impugned order), it is observed that the service availed with reference to the said invoice pertained to supply of manpower for maintenance of hardware installed in the Shikhar Building of the appellants. The appellant has contended that Shikhar Building is the registered office of the appellants and various IT equipment are being used by the employees at that office. The adjudicating authority has rejected the refund on the ground that the services were rendered at their Shikhar Builiding, Navrangpura Office where the offices of the other companies of the same group are also located and they could not produce any document which can show that services were used by the employees of the appellant and therefore he cannot distinguish if the service was used or not by other group companies and hence refund is not admissible. I find that the service under dispute pertained to maintenance of hardware installed at the appellant's Ahmedabad Office situated at Shikhar Building, Navrangpura and was utilized there. Since the said premises, where the services were utilized, also houses other group companies of the appellant, it is hard to ascertain as to what part of service provided is related with the appellant's office. The appellant failed to provide any such details. Further, in the facts of the case, it is undisputed that the impugned services were

received and used at their Ahmedabad office, which is not in the SEZ. It is, therefore, apparent that the impugned services were utilized not in relation to the authorized operations in the SEZ. As stated earlier, the exemption envisaged vide the Notification under reference is applicable only to specified services provided in relation to authorized operations **in the SEZ**. Therefore, the services provided for use outside the SEZ would clearly be out of purview of the above exemption. In the facts of the present case, it is amply clear that the said services were provided not in relation to authorized operations in the SEZ but were for maintenance of the appellant's office in Ahmedabad. Hence, the exemption and the refund claimed under the Notification under reference against the impugned service is not admissible.

7.2.5 In respect of refund claimed against invoice issued by M/s Masibus Automation and Instrumentation Pvt. Ltd. (stated to have reflected at Sr.No.454 of Work Sheet as per Table-A of Para 14 of the impugned order), it is observed that the claim pertained to service provided for workshop on Boiler System Engineering. The appellant has submitted that the service was necessary for smooth running of operations at Mundra Plant and was in relation to the authorized operations of SEZ and that the refund claimed ought not to be denied merely due to fault of service provider in mentioning certain details on the invoice. I find that the service provided in the case is of the nature of "Commercial Training or Coaching Service" and it is an undisputed fact that the said service was not approved by the MPSEZ at the time of availment of exemption/filing of refund claim by the appellant on 23.04.2010. Therefore, the claim of exemption/refund against the said invoice is not admissible for the very same reasons discussed in Para 7.2.3 above. Further, the invoice in the case also found to be not in accordance with Rule 4A of the Service Tax Rules, 1994 for not containing service tax registration details of the service provider and the service tax amount involved which are required to verify the authenticity of the service tax paid in the case.

7.2.6 It is observed that the remaining invoice in the Annexure-D issued by M/s Riya Holidays Pvt. Ltd. (stated to have reflected at Sr.No.48 of Work Sheet as per Table-A of Para 14 of the impugned order) pertained to services provided as Air Travel Agent for visit to China for official purpose to procure the materials required for Power project. The appellant has contended that the persons visited China were their employees and hence the services were in relation to authorized operation of SEZ. The adjudicating authority has rejected the refund claimed on the ground that they appellant has not produced documentary evidence to prove their contention. It is observed from the records that the issue under dispute pertained to service received in case of one person who was not the employee of the appellant. The appellant has not produced any material evidence to prove that the person, whose name is mentioned in the invoice at Sr. No.48 of the Work Sheet, is their employee. In such scenario, the service provided against the said

invoice cannot be considered as in relation to the authorized operations in the SEZ. Therefore, the exemption and the refund claimed against the impugned invoice is clearly not admissible and is liable for rejection.

7.3 I further find that the total amount of refund under dispute as per Annexure – C & D to the appeal is Rs.3,98,392/- out of the total amount of refund of Rs.15,12,709/- rejected vide the impugned order. There is no specific challenge to the rejection of refund of the remaining amount of Rs.11,14,317/- 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 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. It is observed that it is a basic requirement that the invoice submitted for claiming exemption in the case should have been issued in the name and address of the appellant and such invoice has to be in accordance with the provisions of Finance Act or the Rules made thereunder. Being a claimant of exemption, it is for the appellant to ensure that the document for claiming benefit is genuine and proper and contains all the details/particulars stipulated under the law as the basic vital facts on the admissibility of the benefit claimed are verified from the said documents. Further, the

refund claimed in the case is rejected not solely on the ground of deficiencies in the Invoice but for other reasons also. Hence, the appellant's above contention does not carry any merit or 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.

25th 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.