



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20230164SW000000CF6A

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2653/2022 / 263--24
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-143/2022-23
दिनांक Date : 23-01-2023 जारी करने की तारीख Date of Issue 25.01.2023.
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Ref-06/DAP/APML/2022-23 दिनांक: 27.04.2022 passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Adani Power (Mundra) Limited
Adani Corporate House, Shantigram,
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 हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो 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.

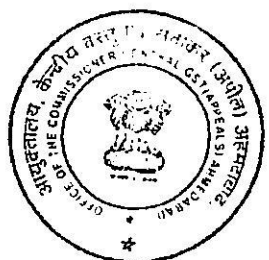
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, 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.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

20th सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

- (cccxxii) amount determined under Section 11 D;
(cccxxiii) amount of erroneous Cenvat Credit taken;
(cccxxiv) 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



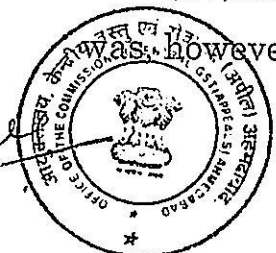
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Adani Power (Mundra) Limited, Adani Corporate House, Shantigram, S.G. Highway, Ahmedabad – 382421 (hereinafter referred to as the “appellant”) against Order in Original No. CGST-VI/Ref-06/DAP/APML/2022-23 dated 27.04.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division – VI, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant had initially filed a refund claim on 18.12.2017 for an amount of Rs.13,37,50,113/- under Notification No.12/2013 for the 2nd Quarter (July to September) of F.Y. 2017-18, which was rejected vide OIO No.CGST-VI/REF-23/ADANI POWER/18-19 dated 30.05.2018. Being aggrieved, the appellant had filed an appeal before the Commissioner (Appeals), Central Tax, Ahmedabad who, vide OIA No. AHM-EXCUS-001-APP-018 to 021 -2019-20 dated 24.05.2019, remanded the matter back to the adjudicating authority to decide the matter afresh after following the principles of natural justice. Thereafter, the appellant have filed a revised refund claim on 30.12.2021 for an amount of Rs.6,06,00,228/-. The refund claimed was bifurcated as below :

- a. Rs.5,03,71,491/- - towards Service Tax paid on Ocean Freight under reverse charge;
- b. Rs.37,57,838/- - towards Services, other than Ocean Freight, used for O&M of the plant prior to 16.02.2016; and
- c. Rs.64,70,899/- towards Services, other than Ocean Freight, used for O&M of the plant to the extent of electricity consumed within the SEZ from 16.02.2016 to 30.06.2017.

3. In the remand proceedings, the refund claim was adjudicated vide the impugned order and appellant was sanctioned refund amounting to Rs.64,70,899/-. The refund amounting to Rs.5,03,71,491/- and Rs.37,57,838/- was, however, rejected.



4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :
- i. The adjudicating authority was not justified in rejecting the refund amounting to Rs.37,57,838/- though all the terms and conditions of the Notification were duly complied with and satisfied by them.
 - ii. The adjudicating authority has travelled beyond the scope, jurisdiction and power in rejecting the refund claim, which was otherwise allowable as per the Notification.
 - iii. The adjudicating authority ought to have appreciated that nothing contained in the Power Guidelines- 2015 shall have applicability or enforceability while adjudicating their refund claim under the Notification. Further, in view of the subsequent clarification to the Power Guidelines – 2015 that power plants approved prior to 27.02.2009 were no longer required to be demarcated in the Non-Processing Area (NPA).
 - iv. The adjudicating authority failed to appreciate that the Power Guidelines- 2015 has been superseded vide Power Guidelines- 2016 and, thus, inapplicable to the refund claim of Rs.37,57,838/-.
 - v. The adjudicating authority failed to appreciate that the Power Guidelines-2015 were lacking the authority and powers available under the SEZ Act, 2005 and the Rules made thereunder. He ought to have appreciated the vires and validity of the Power Guideline-2015 while relying upon it in a case involving refund of service tax.
 - vi. The impugned order has been passed rejecting the refund claim in violation of Article 265 of the Constitution of India. The adjudicating authority has failed to appreciate that the refund claim, which was otherwise allowed and granted by statute, is a vested right which cannot be taken away.
 - vii. Regarding rejection of the refund amounting to Rs.5,41,29,329/-, the adjudicating authority erred in law in depending upon the judgment in the case of Mafatlal Industries Ltd. Vs. UOI – 1997 (89) ELT 247 which had no applicability in the context on hand.



- viii. The adjudicating authority has erred in law in relying upon the decision in the case of Casa Granada Co-operative Housing Vs. Commr. Appeal which has no applicability in the context on hand.
- ix. The adjudicating authority has erred in holding that the Central Excise Officer does not have power to refund the amount collected as tax and held to be unconstitutional. The power to refund inherits from the power to collect and retain tax.
- x. The adjudicating authority has, by rejecting the refund, disrespected the judgment of the Hon'ble High Court of Gujarat in the case of SAL Steel Ltd. and thus flouted judicial discipline.
- xi. The rejection of refund of Rs.5,41,29,328/- on the basis of allegation for which no opportunity of hearing and explanation was given to them is violative of *audi alteram partem*.
- xii. The adjudicating authority was not correct in refraining from sanctioning interest on the refund claim. The claim was lodged on 18.12.2017 and was finally adjudicated on 27.04.2022. Therefore, refund ought to have been sanctioned along with interest.

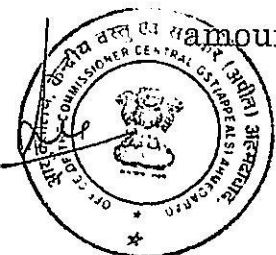
5. Personal Hearing in the case was held on 05.01.2023. Shri Rahul Patel, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing as well as the materials available on records. The issues before me for decision are :

A. Whether the impugned order, rejecting the claim of the appellant for refund of an amount of Rs.5,03,71,491/- in respect of the service tax paid on Ocean Freight under reverse charge, is legal and proper.

B. Whether the impugned order, rejecting the claim of the appellant for refund of an amount of Rs.37,57,838/- in respect of the services used for O&M of the plant prior to 16.02.2016, is legal and proper.

C. Whether the appellant are eligible to interest on the refund amounting to Rs.64,70,899/- sanctioned to them.



7. Regarding the issue of refund amounting to Rs.5,03,71,491/- in respect of the service tax paid on Ocean Freight under reverse charge, it is observed that the adjudicating authority has rejected the refund claim on the grounds that in terms of the judgment of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. UOI – 1997 (89) ELT 247 (SC) the only way to get refund of taxes held to be unconstitutional is by filing Writ Petition or Civil Suit.

7.1 It is observed in this regard that the appellant has filed the claim for refund under Notification No. 12/2013- ST dated 01.07.2013. In terms of the said Notification, services received by a unit located in the SEZ or Developer of SEZ, and used for authorized operation are exempted from the whole of the service tax in terms of Notification No.12/2013-ST dated 01.07.2013. If the admissible exemption is not claimed *ab inito*, refund of the service tax paid is admissible subject to the conditions prescribed in the said Notification. Accordingly, the appellant had claimed refund of the service tax paid on Ocean Freight, under reverse charge, in terms of the said Notification. Therefore, irrespective of the constitutional validity of the levy of service tax on Ocean Freight, which is before the Hon'ble Supreme Court on an appeal by the department in the case of SAL Steel Ltd., the appellant are eligible to refund of the service tax paid in respect of the services used in the SEZ for authorized operations in terms of the said Notification. Therefore, the adjudicating authority ought to have examined the refund claim filed by the appellant on merits.

7.2 In the instant case, it is observed that it is not disputed that the Ocean Freight services have been received and used in the SEZ by the appellant. Accordingly, the appellant are eligible for refund of the service tax paid on Ocean Freight, subject to fulfilment of the conditions specified in Notification No.12/2013-ST dated 01.07.2013. There is no finding in the impugned order as to whether the appellant have fulfilled the condition specified in the said Notification. Also in the absence of the requisite documents and details, it is not possible for this authority to decide on this aspect. Therefore, the matter pertaining to the refund claim amounting to



Rs.5,03,71,491/- is remanded back to the adjudicating authority only for the limited purpose of verifying the documents and ascertaining whether the appellant have satisfied the conditions specified in the said Notification to determine their eligibility to refund of the service tax paid on Ocean Freight under reverse charge. The appellant are directed to submit the relevant documents and details, in support of their claim for refund, before the adjudicating authority within 15 days of the receipt of this order.

8. Regarding the refund claim amounting to Rs.37,57,838/-, it is observed that the appellant had, in terms of Notification No.12/2013-ST dated 01.07.2013, claimed refund of the service tax paid on the services received and used for the Operations and Maintenance (O&M) of the power plant in the SEZ, in terms of the said Notification. The adjudicating authority has rejected the claim for refund on the grounds that as per Letter F.No.P.6/3/2006-SEZ dated 06.04.2015, the power plants situated in the processing area of SEZ were demarcated as situated in non-processing areas and operation and maintenance benefits were withdrawn in respect of such power plants. The appellant have, on the other hand, contended that the said guidelines dated 06.04.2015 has no applicability or enforceability while adjudicating their refund claim under the Notification and that vide the subsequent clarification dated 16.02.2016, the power plants approved prior to 27.02.2009 were no longer required to be demarcated in the Non-Processing Area (NPA). The appellant have also contended that the guidelines dated 06.04.2015 has been subsequently withdrawn vide letter dated 16.02.2016.

9. As the rejection of the claim for refund is based on the guidelines issued by the Ministry of Commerce & Industry, Department of Commerce (SEZ Division), I find it pertinent to refer to the Guidelines issued for Power Generation in SEZ vide Letter F.No. P.6/3/2006-SEZ dated 06.04.2015, the text of which is reproduced below :

“With reference to subject cited above, I am directed to inform that the above mentioned guidelines issued vide this Department’s letter of even number dated 21st March, 2012 have been withdrawn by the Government with immediate effect i.e 1st April, 2015. Further, the Power Guidelines issued vide this Department’s letter of even number dated 27th February, 2009 have been reported. A copy of the communication in this regard is enclosed.



2. In pursuance of the above cited decision, you are informed that henceforth setting up of power plants shall be allowed only in the Non-Processing Area of SEZs. Further, those power plants which are presently situated in Processing Areas of SEZs, shall be demarcated as Non-Processing Areas and no operation and maintenance (O&M) benefits will now be available for such power plants.”

9.1 Further, the Department of Commerce (SEZ Division) vide Letter F.No. P.6/3/2006-SEZ (vol.III) dated 16.02.2016, issued fresh guidelines, in supersession of all previous guidelines issued on 27.02.2009, 21.03.2012 and 06.04.2015. The relevant Para (vi) of the guidelines dated 16.02.2016 is reproduced below :

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

Henceforth, such power plants will be allowed O&M benefits only with regard to the average monthly power supplied to entities within the SEZ during the preceding year. Henceforth, no O&M benefits including service tax exemption will be allowed for power supplied to DTA/other SEZs/EOUs from such power plants.”

9.2 It is also pertinent to refer to the Department of Commerce (SEZ Division) Letter F.No. P.6/3/2006-SEZ (Vol III) dated 30.05.2017 addressed to the Development Commissioner, APSEZ, the text of which is reproduced below :

“I am directed to refer to your letter no. APSEZ/09/OM Refund/APL/2016-17/2 dated 04.04.2017 on the subject cited above and to say that there is no mention or differentiation of ‘auxiliary power’ either in the DOC Power Guidelines dated 16.2.2016 or in the Customs Notification dated 16.2.2016. Also, the Power Guidelines in sub para (vi) states that those Mega power plants approved in SEZs prior to 27.2.20109 will be allowed O&M benefits only with regard to the average monthly power supplied to entities within the same SEZ during the preceding year. It also provides that no duty is payable by these power plants for supply of power to DTA.

2. Therefore, it is clear that the power supplied captively to entity within SEZ (Adani Power Plant being an entity within the APSEZ) is eligible for O&M benefit.”

9.3 From a plain reading of the Guidelines dated 16.02.2016 which superseded all previous guidelines, including that dated 06.04.2015, it is evident that O&M benefits including service tax exemption are sought to be denied ‘henceforth’. This indicates that the O&M benefits including service



tax exemption, prior to the issuance of the new Guidelines dated 16.02.2016, are admissible to the power plants in the SEZ approved prior to 27.02.2009. The Guidelines dated 16.02.2016 by the words employed therein are indicative of the fact that they have prospective effect. The refund claimed by the appellant in the instant case pertains to the period prior to 16.02.2016. Consequently, the appellant are eligible for refund of the service tax paid on the services received and used by them in O&M of the power plant in the SEZ.

9.4 I find it pertinent to refer to the judgment of the Hon'ble Delhi High Court in the case of Moser Baer India Ltd. Vs. UOI – 2022 (379) ELT 145 (Del.), wherein it was held that use of the word 'henceforth' indicates that the decision is to be applied prospectively. Para 45 of the said judgment is reproduced below :

“45. It is material to note that two letters dated 6-4-2015 have been placed on record. The First Letter communicates the decision of the Government of India to withdraw the 2012 Guidelines with effect from 1-4-2015. The second paragraph of the said letter communicates the decision to restore the 2009 Guidelines and further directs that the same would “henceforth, be the basis for relevant policy and operational decisions”. There is no ambiguity in the language of this letter. The use of the word 'henceforth' clearly indicates that the decision as communicated in the said letter is required to be applied prospectively and the 2009 Guidelines would be the basis for all relevant policy and operational decisions.”

9.5 In view of the above facts and considering the judgment of the Hon'ble Delhi High Court, I am of the considered view that the appellant are eligible for refund of the service tax paid on the services received and used in the O&M of the power plant in the SEZ. Accordingly, the impugned order rejecting the refund amounting to Rs.37,57,538/- is set aside.

10. Regarding the issue of eligibility of the appellant to interest on the refund amounting to Rs.64,70,899/- sanctioned to them, it is observed that the appellant had originally filed refund claim on 18.12.2017, which was rejected by the adjudicating authority. On an appeal by the appellant before the Commissioner (Appeals), the matter was remanded back to the adjudicating authority vide OIA dated 24.05.2019. The appellant, thereafter, filed a revised refund claim on 30.12.2021 which was decided



vide the impugned order dated 27.04.2022 and the appellant was sanctioned refund of an amount of Rs.64,70,899/-.

10.1 In terms of the provisions of Section 11BB of the Central Excise Act, 1944, where the amount claimed is not refunded within three months from the date of receipt of the application, interest at the rate notified by the Government is required to be paid to the applicant from the date immediately after the expiry of three months from the date of receipt of the application till the date on which refund is granted. In the instant case the appellant was sanctioned the refund on 27.04.2022. Therefore, in terms of the provisions of Section 11BB of the Central Excise Act, 1944, the appellant are entitled to interest on the amount of refund from the date on which the refund claims were received by the department till the date on which the refund was sanctioned and paid to the appellant. My view finds support from the judgment of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd Vs. UOI – 2012 (27) STR 193 (SC) and the judgment of the Hon'ble Bombay High Court in the case of Swaraj Mazda Ltd. Vs. UOI - 2009 (235) ELT 788 (Bom.). It was held by the Hon'ble Courts in these judgments that interest under Section 11BB becomes payable on the expiry of three months from the date of receipt of application for refund.

10.2. In view of the facts discussed herein above, I am of the considered view that the appellant are entitled to interest under Section 11BB of the Central Excise Act, 1944.

10.3 In view of the facts discussed hereinabove, the impugned order in so far as it pertains to rejection of refund amounting to Rs.5,03,71,491/- is set aside and the appeal filed by the appellant is allowed by way of remand in terms of the directions contained in Para 7.2 above. The impugned order pertaining to rejection of refund amounting to Rs.37,57,838/- is set aside and the appeal filed by the appellant is allowed with consequential relief. The appellant are also eligible for interest on the refund of Rs.37,57,838/- and Rs.64,70,899/- in terms of Section 11BB of the Central Excise Act, 1944.

In the remand proceedings, if it is found that the appellant are eligible for



refund amounting to Rs.5,03,71,491/-, they would also be eligible for interest in terms of Section 11BB of the Central Excise Act, 1944.

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

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

Akhilesh Kumar
23rd January, 2023
(Akhilesh Kumar)
Commissioner (Appeals)

Date: 23.01.2023



Attested:

(Signature)
(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ) (Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Adani Power (Mundra) Limited,
Adani Corporate House, Shantigram,
S.G. Highway, Ahmedabad – 382421

Appellant

The Assistant Commissioner,
CGST, Division- VI,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
5. P.A. File.