

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)130 /A-II/2015-16 / 2116 to 2120

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-0114 -16-17

दिनांक Date : 29.09.2016 जारी करने की तारीख Date of Issue 05/10/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No SD-02/REF-156/DRM/2015-16 Dated 29.10.2015

Issued by Asstt. Commr., STC, Div-II, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Adani Power Ltd. Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

A. Sir



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(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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, penalty, where penalty alone is in dispute.



ORDER-IN-APPEAL

This order arises on account of an appeal filed by M/s. Adani Power Ltd., Shikhar Building, Near Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad (hereinafter referred to as "the appellants"), against Order-in-Original number SD-02/Ref-156/DRM/2015-16 dated 29.10.2015 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Division-II, Service Tax, Ahmedabad (hereinafter referred to as the "Adjudicating Authority").

2. The facts of the case, in brief, are that the appellants are registered with service tax department having registration number AABCA2957LST001. The appellants had originally filed a refund claim of ₹51,34,913/- on 07.05.2010 in terms of Notification No. 09/2009-ST dated 03.03.2009.

3. The adjudicating authority after scrutiny of the claim, vide Order-in-Original number SD-02/Ref-71/2011-12 dated 27.01.2012, sanctioned an amount of ₹34,31,395/- (out of the total refund claim of ₹51,34,913/-) and rejected rest of the amount of ₹17,03,518/-. The appellants subsequently filed an appeal before the then Commissioner (Appeals-IV). The then Commissioner (Appeals-IV), vide Order-in-Appeal number 82/2013(STC)/SKS/Commr.(A)/Ahd. dated 30.04.2013, allowed an amount of ₹3,73,822/-, disallowed an amount of ₹9,91,577/- and remanded back the case to the adjudicating authority for an amount of ₹3,36,380/-. The adjudicating authority, vide the impugned order, rejected the entire amount of ₹3,36,380/-.

4. Being aggrieved with the impugned order of rejecting the refund amount of ₹3,36,380/-, the appellants filed the present appeal. The appellants have submitted that the adjudicating authority was not correct in rejecting the amount of ₹3,36,380/- as they have submitted all required documents to show that their claim is well covered by the terms and conditions of the Notification number 09/2009-ST dated 03.03.2009 read with Section 11B of the Central Excise Act, 1944. They further stated that the adjudicating authority did not appreciate the fact that the appellants did not own or carry out any business other than the authorized operations in the SEZ during the said period. The appellants further clarified that they had not generated any separate income other than the authorized operation. They pleaded to allow the refund of ₹3,36,380/- with interest and other consequential benefits.

5. Personal hearing in the case was granted on 04.07.2016 wherein Shri Rahul Patel, Chartered Accountant, on behalf of the appellants appeared



before me and reiterated the contents of appeal memorandum. He also tabled additional submission before me.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants at the time of personal hearing. Now, let me examine the reasons of rejection and the defense reply given by the appellants.

7. To start with, I find that the adjudicating authority has rejected the refund amount of ₹3,36,380/- citing reasons which are mentioned below;

(a) ₹45,063/- was rejected on the ground that the appellants had claimed refund under Business Consultancy Service but looking to the conditions surrounding the issuer of the invoice, the service should have been correctly classifiable under Legal Consultancy Service and the Legal Consultancy Service was not covered under the approved list of specified services at that particular time.

(b) ₹23,175/- was rejected on the ground that the appellants had claimed refund under Consulting Engineers Service but looking to the conditions surrounding the issuer of the invoice, the service should have been correctly classifiable under Scientific & Technical Consultancy Service and Scientific & Technical Consultancy Service was not covered under the approved list of specified services at that particular time.

© ₹1,41,625/- was rejected on the ground that the appellants had claimed the refund falling under the service related to Transport of Passenger Embarking in India for International Journey. However, the invoice was unable to clarify whether the said service was used in relation to the authorized operation or otherwise. The appellants had failed to produce any corroborative evidence to prove so.

(d) ₹18,676/- was rejected on the ground that the appellants had claimed refund under Business Support Service but looking to the conditions surrounding the issuer of the invoice, the service should have been correctly classifiable under Training and Coaching Service and the latter was not covered under the approved list of specified services at that particular time.

(e) ₹57,592/- was rejected on the ground that the claim was related to a Debit Note and the same was not a sufficient evidence to prove relation with the authorized operation and moreover, the debit note was issued to the Ahmedabad office of the appellants.

(g) ₹28,840/- was rejected on the ground that the invoice was issued to the appellants by National Institute of Oceanography under the category of Scientific & Technical Consultancy Service which was



covered under the approved list of specified services at that particular time.

(h) ₹ 21,409/- was rejected on the ground that the appellants had failed to provide any concrete evidence to justify that the service was provided in relation to authorized operation of the SEZ.

Now I will discuss all the above issues point wise in detail.

8.1. I will now take up the first issue which is rejection of ₹ 45,063/- on the ground that the appellants had claimed refund under Business Consultancy Service but looking to the conditions surrounding the issuer of the invoice, the service should have been correctly classifiable under Legal Consultancy Service and the Legal Consultancy Service was not covered under the approved list of specified services at that particular time. This is strange that just because the invoices were issued by legal entities the adjudicating authority has concluded that the said services would fall under the category of Legal Consultancy Service. The argument that any service provided by any law firm in any branch of law is liable for classification under Legal Consultancy Service is not acceptable. The adjudicating authority has not clearly discussed as to how the service can not fall under Business Consultancy Service. Further, if at all, we agree that the said services should fall under Legal Consultancy Service, I find that the said service was approved as an authorized service in the approval list of authorized services, dated 24.05.2012. The appellants have submitted before me the old approval list of authorized services, dated 26.06.2009, and the new approval list of authorized services, dated 24.05.2012. In the old list, the Legal Consultancy Service was not approved but in the new list it has been approved. The adjudicating authority, in his own Order-in-Original number SD-02/Ref-163/DRM/2015-16 dated 06.11.2015, in paragraph 14, has allowed the refund for the service category 'Commercial Training and Coaching Service' on the ground that same has been approved by the approval list dated 24.05.2012. In view of the above, I assert that the refund of ₹ 45,063/- is admissible to the appellants. Thus, I allow the appeal for refund of ₹ 45,063/-.

8.2. Regarding the second issue of rejection of ₹ 23,175/-, I find that the appellants had claimed refund under Consulting Engineers Service but looking to the conditions surrounding the issuer of the invoice, the adjudicating authority classified the said service under Scientific & Technical Consultancy Service and the said service was not covered under the approved list of specified services at that particular time. In this regard the appellants have produced before me the new approval list of authorized services, dated 24.05.2012 which includes the said service. Thus, as the



service was approved and included in the list of authorized services on 24.05.2012, we cannot reject the refund of the appellants. Thus, in regard to my view and discussion in paragraph 8.1, I allow the appeal for refund of ₹ 23,175/-.

8.3. The fifth issue pertains to the rejection of ₹1,41,625/- on the ground that the appellants had claimed the refund falling under the service related to Transport of Passenger Embarking in India for International Journey. However, the invoice was unable to clarify whether the said service was used in relation to the authorized operation or otherwise. The appellants had failed to produce any corroborative evidence to prove so. It is strange that the adjudicating authority has tried to find relation in the invoice with the service provided to the authorized operation. The invoice issued by M/s. Karnavati Aviation Pvt. Ltd. shows the details of destination, fare and Service tax. To relate the same with the authorized operation, the adjudicating authority should have called for other documents from the appellants. The appellants stated before me that they had submitted all the related documents before the adjudicating authority. I find that the business trip was conducted by the employees of M/s. Adani Power Ltd. therefore; it certainly has relation with the authorized operation of the appellants. In view of the above, I allow the appeal of ₹1,41,625/- to the appellants.

8.4. The fourth issue of rejection of ₹18,676/- is based on the ground that the appellants had claimed refund under Business Support Service. However, looking to the conditions surrounding the issuer of the invoice, the service should have been correctly classifiable under Training and Coaching Service and the latter was not covered under the approved list of specified services at that particular time. Once again, my views would be same as in paragraph 8.1. Moreover, the adjudicating authority, in his own Order-in-Original number SD-02/Ref-163/DRM/2015-16 dated 06.11.2015, in paragraph 14, has allowed the refund for the service category 'Commercial Training and Coaching Service' itself on the ground that same has been approved by the approval list dated 24.05.2012. Thus, I allow the appeal for refund of ₹ 18,676/-.

8.5. Regarding the fifth issue amounting to ₹57,592/-, the adjudicating authority has rejected the refund claim on the ground that the refund claim was related to a debit note issued to the appellants by M/s. Adani Wilmer Ltd. The adjudicating authority stated that no invoice was issued in the case which is a breach of the guidelines laid in Rule 4A of the Service Tax Rules. Also, it was not clear what kind of service was provided to the appellants and also the debit note was issued to their Ahmedabad office. In view of the above, I would like to enunciate that debit note is a valid document as per Rule 4A of the Service Tax Rules, 1994. As per Rule 4A of Service tax Rules,



1994, Every person providing taxable service shall not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier issue an invoice, a **bill** or, **as the case may be**, with following requirements :-

- It shall be **serially numbered** and shall contain following details,
- the name, address and the registration number of such person
- the name and address of the person receiving taxable service
- description and value of taxable service provided or agreed to be provided
- the service tax payable thereon

As per Rule 9(1)(f) of Cenvat Credit Rules, 2004, an invoice, a bill or a challan issued by a provider of input service on or after the 10th day of, September, 2004 shall be a valid documents for Cenvat.

In a Simplified reply to the above queries, it is held by various judgments that where the above particulars are duly disclosed on "any document (even if named as debit note)" the same shall envisage to be a proper cenvat document even if all the particulars are not disclosed on one page but as annexure to the main page of such debit note.

Further, I find that the said debit note indicates the charges against Rent and Electricity. At the very period, the appellants were involved only in the business related to the authorized operation in the SEZ and as per Notification number 9/2009-ST dated 03.03.2009, the taxable services received by the appellants may be provided outside the SEZ but should be related to the authorized operation. In this case, the services were provided in their Ahmedabad office and hence the appellants are very much eligible for refund of the same. In view of the above, I allow the appeal for refund of ₹ 57,592/- to the appellants.

8.6. On the next issue, the adjudicating authority has rejected the claim of ₹28,840/- on the ground that Scientific & Technical Consultancy Service was not falling under the approved list of services. I find that, my predecessor had remanded back the issue to the adjudicating authority vide OIA number 82/2013(STC)/SKS/Commr.(A)/Ahd. dated 30.04.2013 directing him to verify whether M/s. National Institute of Oceanography had deposited the Service Tax, received from the appellants, in the Govt, treasury or otherwise. My predecessor had also provided the Service Tax registration number of M/s. National Institute of Oceanography to the adjudicating authority. The adjudicating authority was audacious enough not to heed the direction received from the than Commissioner (Appeals-IV). Without going to the verification of above fact, he simply rejected the claim stating that Scientific

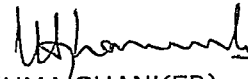


& Technical Consultancy Service was not falling under the approved list of services. However, without going to much mudslinging, I deplore this cavalier attitude of the adjudicating officer. His act amounts to judicial indiscipline. I have noted such defiance in his other adjudication orders also. In view of the above, I allow the appeal of ₹28,840/- on the ground that Scientific & Technical Consultancy Service was approved by the committee and included in the list of authorized services on 24.05.2012.

8.7 Regarding the final issue amounting to ₹21,409/-, the adjudicating authority has rejected the refund claim on the ground that the appellants had failed to provide any concrete evidence to justify that the service was provided in relation to authorized operation of the SEZ. In the impugned order, the adjudicating authority has failed to establish as to what kind of concrete evidence the appellants had failed to provide for the absence of which the claim has been rejected. This is once again an outlandish ground on the part of the adjudicating authority. He could have always asked the appellants to provide additional evidence in support of their claim. In view of the above discussion, I allow the appeal for the refund of ₹21,409/-.

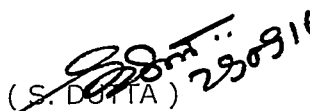
9. Regarding the impugned order, I am pained to say that it was a non-speaking one and oozing with prejudice. The than Commissioner (Appeals-IV) had remanded back the case quoting certain guidelines which the adjudicating authority was supposed to follow. The adjudicating authority failed to comply with the directions of my predecessor. The adjudicating authority has travelled beyond his jurisdiction while delivering the verdict. In case of any doubt, he could have opted for the assistance of the appellants or other concerned agencies. He flatly failed to provide justice to the appellants by delivering a biased verdict.

10. In view of the above discussion, I allow the appeal of the appellants amounting to ₹3,36,380/- with consequential benefit. The appeal is hereby disposed off in terms of the discussion held above.



(UMA SHANKER)
COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 29/09/16
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.



BY R.P.A.D.

To,
M/s. Adani Power Ltd.,
Shikhar Building, Near Adani House,
Near Mithakhali Six Roads, Navrangpura,
Ahmedabad -380 009

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Assistant Commissioner, system, Service Tax, Ahmedabad
4. The Asstt./ Deputy Commissioner, Service Tax, Division-II, Ahmedabad.
5. Guard File.
6. P.A. File.



