

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)128 /A-II/2015-16 2122 to 2125

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-0115 -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-154/DRM/2015-16 Dated 28.10.2015

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

ध 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 मैनटल 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.

C. Jindal



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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 होगा।

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,

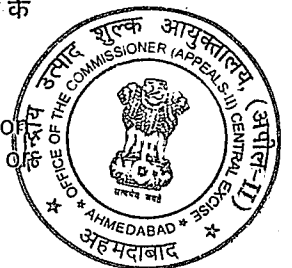
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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, or penalty, where penalty alone is in dispute.



ORDER-IN-APPEAL

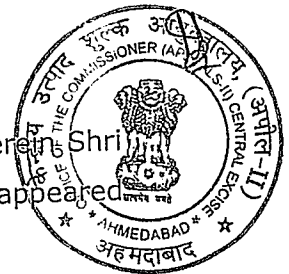
This order arises on account of an appeal filed by M/s. Adani Power Ltd., Shikhar Building, Near Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad (hereinafter referred to as "the appellants"), against Order-in-Original number SD-02/Ref-154/DRM/2015-16 dated 28.10.2015 (hereinafter referred 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 ₹56,14,310/- on 07.02.2011 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-76/2011-12 dated 01.02.2012, sanctioned an amount of ₹28,84,159/- (out of the total refund claim of ₹56,14,310/-) and rejected rest of the amount of ₹27,30,151/-. The appellants subsequently filed an appeal before the than Commissioner (Appeals-IV). The than Commissioner (Appeals-IV), vide Order-in-Appeal number 88/2013(STC)/SKS/Commr.(A)/Ahd. dated 30.04.2013, allowed an amount of ₹3,22,955/-, disallowed an amount of ₹10,42,217/- and remanded back the case to the adjudicating authority for an amount of ₹12,99,953/-. The adjudicating authority, vide the impugned order, sanctioned an amount of ₹8,552/- and rejected the remaining amount of ₹12,91,401/-.

4. Being aggrieved with the impugned order of rejecting the refund amount of ₹12,91,401/-, the appellants filed the present appeal. The appellants have submitted that the adjudicating authority was not correct in rejecting the amount of ₹12,91,401/- 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 ₹12,91,401/- 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 ₹12,91,401/- citing reasons which are mentioned below;

(a) ₹17,419/- was rejected on the ground that the appellants had claimed refund under Management or 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) ₹1,073/- was rejected on the ground that the appellants had paid Service Tax on interest under banking and Financial Service. As the appellants had wrongly paid the Service Tax on interest, the refund was not admissible to them.

(c) ₹10,75,062/- 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) ₹30,900/- was rejected on the ground that the appellants could not produce requisite documents to substantiate that the services availed were related to authorized operation.

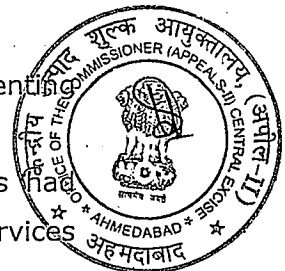
(e) ₹2,698/- was rejected on the ground that the appellants could not produce requisite documents to substantiate that the services availed were related to authorized operation.

(g) ₹9,607/- was rejected on the ground that the invoice issued wrong address of the appellants and the documents submitted by the appellants appeared to be contradictory.

(h) ₹38,586/- was rejected on the ground that the appellants had availed manpower services but were unable to testify that the said service was used in relation to the authorized operation.

(i) ₹3,938/- was rejected on the ground that the services of rental of cab were availed outside the SEZ.

(j) ₹29,355/- was rejected on the ground that the appellants availed services under the category of supply of manpower services



but were unable to testify that the said service was used in relation to the authorized operation.

(k) ₹77,250/- was rejected on the ground that the claim submitted by the appellants was classifiable under Legal Consultancy Service and the Legal Consultancy Service was not covered under the approved list of specified services at that particular time.

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 ₹17,419/- on the ground that the appellants had claimed refund under Management or 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 ₹17,419/- is admissible to the appellants. Thus, I allow the appeal for refund of ₹17,419/-.

8.2. Regarding the second issue of rejection of ₹1,073/-, I find that the appellants had paid Service Tax on interest under the category of Banking and Financial Service. The adjudicating authority had rejected the claim stating that Service Tax on interest is not payable and also the interest was paid by the appellants due to delay in payment to the service receiver and hence any refund arising due to the lapse on the part of the appellants is not legally tenable. In view of the above, I find that the payment of Service Tax on interest may be treated as wrong payment of Service Tax. The interest



falls under Negative List and hence, any wrong payment of Service Tax is liable for refund and as it may be treated as a deposit, the conditions of Section 11B will not be applicable to it. In view of the above, I allow the appeal amounting to ₹ 1,073/- to the appellants on condition that the appellants should produce an NOC to the adjudicating authority received from the service provider. The adjudicating authority is directed to sanction the claim of ₹ 1,073/- on proper verification of all the related documents pertaining to the appellants and the service provider.

8.3. The fifth issue pertains to the rejection of ₹ 10,75,062/- 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. They had even submitted copies of log book before my predecessor who had mentioned this in his OIA. I find that my predecessor in his order in OIA number 88/2013(STC)/SKS/Commr(A)/Ahd dated 30.04.2013 at page 23 has categorically mentioned that "*I find that the service under discussion was consumed in relation to the authorized operation of the SEZ, service tax was paid. And required documents were provided by the appellant*". Thus, I believe 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 ₹ 10,75,062/- to the appellants.

8.4. The fourth issue of rejection of ₹ 30,900/- is based on the ground that the appellants could not produce requisite documents to substantiate that the services availed were related to authorized operation. In this regard, I fail to understand what requisite documents, other than concerned invoices, were needed to be filed by the appellants. When the adjudicating authority was unable to draw link between the service provided and its relation to the authorized operation, he could have always asked for more evidences from the appellants. In the impugned order, the adjudicating authority has not mentioned as to which documents were needed by him to understand the invoices. My predecessor, in paragraph 3(X) of the OIA number 88/2013(STC)/SKS/Commr.(A)/Ahd. dated 30.04.2013, has stated that he



was convinced that the said service was consumed in relation to the authorized operation and required documents were provided by the appellants. He remanded back the claim directing the adjudicating authority to go through the documents. Surprisingly, the adjudicating authority, in the impugned order, quotes that the appellants did not submit any document except the invoices. Instead of confirming from the appellants regarding the documents he simply preferred to reject the claim. This is a clear violation of the principles of natural justice on the part of the adjudicating authority. Therefore, keeping in mind the verdict of my predecessor, I allow the appeal of ₹30,900/- to the appellants.

8.5. Regarding the fifth issue amounting to ₹2,698/-, the adjudicating authority has rejected the refund claim on the ground that the appellants could not produce requisite documents to substantiate that the services availed were related to authorized operation. In this issue, I find that the refund pertains to the expenses occurred in the process of photocopy of documents. In this regard, I believe that the appellants were not involved in any business other than the authorized operation in the SEZ. Thus, the activity of photocopy of documents was bound to be in relation to the authorized operation. In case of doubt, the adjudicating authority could have asked for more evidences from the appellants. Therefore, as per my discussion in paragraph 8.4, I allow the appeal of ₹2,698/- to the appellants.

8.6. Regarding the sixth issue amounting to ₹9,607/-, the adjudicating authority has rejected the claim on the ground that the invoice issued wrong address of the appellants and the documents submitted by the appellants appeared to be contradictory. I find that there was a contradiction on the part of the appellants where, they initially submitted that they were situated at floor number 4, 6, 7 and 8 and later they claimed that they were situated at floor number 4, 5, 7 and 8. The only inconsistency was of 5th and 6th floor and a very flimsy excuse for rejection of the claim. The adjudicating authority has neither denied the receipt of the service by the appellants nor was its authenticity in doubt. In view of the above, it would be unfair in the part of the department to withhold the refund to the appellants. Therefore, I allow the appeal of ₹9,607/- to the appellants.

8.7 Regarding the seventh issue amounting to ₹38,586/-, the adjudicating authority has rejected the refund claim on the ground that the appellants had availed manpower services but were unable to testify that the said service was used in relation to the authorized operation. In this regard, I hold that the service of manpower supply is an approved service and in relation to the authorized operation and the invoice is very clear about it



when it mentions 'project manpower provision charge'. It is not the fault of the appellants if the adjudicating authority is unable to understand the same. Without much mayhem, I allow the appeal for the refund of ₹ 38,586/-.

8.8. The eighth issue amounting to ₹ 3,938/- where the adjudicating authority has rejected the claim of on the ground that the services of renting of cab were availed outside the SEZ and not in relation to authorized operation. The service of Rent-a-Cab was provided by M/s. Akbar Travels and M/s. Bhoomi Tours & Travels. The appellants have submitted copies of all the invoices before me. On going through the said invoices, I find that in many instances the cabs were used in the city of Ahmedabad (viz. Guest House, Residence, Sambhav Press, Airport etc.) only or from Ahmedabad to other cities Mundra, Vadodara, Patan, Dahej, Radhanpur, Rajkot etc. For the places other than Mundra and their Head Office, the appellants cannot justify their case as the authorized operations cannot be performed in residence, guest house, Vadodara, Patan, Rajkot or Dahej. In view of the above, I partially allow the refund claim of ₹ 2,443/- and reject ₹ 1,495/-.

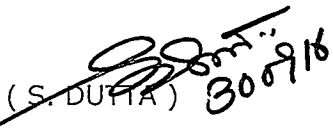
8.9. The final issue pertains to the rejection of ₹ 29,355/- on the ground that looking to the invoice and non-submission of any other document, the adjudicating authority was unable to deduce that the supply of manpower service availed by the appellants was in relation to the authorized operation. In this regard once again I reiterate that if the adjudicating authority was unable to draw any link between the services shown in the invoices and the approved services for authorized operation, he could have asked the appellants to submit more evidences. The adjudicating authority failed to do that thus denying the appellants their right for natural justice. In view of the above, I allow the appeal of ₹ 29,355/- to the appellants.

9. In view of the above discussion, I allow the appeal of the appellants amounting to ₹ 12,89,906/- with consequential benefit and reject an amount of ₹ 1,495/-. The appeal is hereby disposed off in terms of the discussion held above.


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 30/9/16
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.



