

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)132 /A-II/2015-16 / 2699-2703

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-0126 -16-17

दिनांक Date : 27.10.2016 जारी करने की तारीख Date of Issue 08/11/16

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-158/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 मैन्टल 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 रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 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. file

(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 सकेंगी 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 39फ 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 रूपए 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 अर्जी 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**

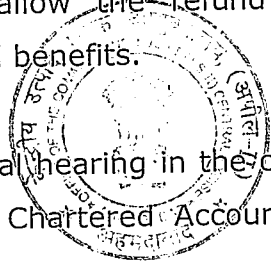
This order arises on account of an appeal filed by M/s. Adani Power Ltd., Shikhar Building, Near Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad (hereinafter referred to as "the appellants"), against Order-in-Original number SD-02/Ref-158/DRM/2015-16 dated 29.10.2015 (hereinafter referred 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 ₹ 65,67,160/- on 22.10.2010 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-72/2011-12 dated 27.01.2012, sanctioned an amount of ₹ 49,63,823/- (out of the total refund claim of ₹ 65,67,160/-) and rejected rest of the amount of ₹ 16,03,337/-. The appellants subsequently filed an appeal before the than Commissioner (Appeals-IV). The than Commissioner (Appeals-IV), vide Order-in-Appeal number 174/2013(STC)/SKS/Commr.(A)/Ahd. dated 08.08.2013, allowed an amount of ₹ 6,24,546/-, disallowed an amount of ₹ 6,63,365/- and remanded back the case to the adjudicating authority for an amount of ₹ 3,06,373/-. The adjudicating authority, vide the impugned order, rejected the entire amount of ₹ 3,06,373/-.

4. Being aggrieved with the impugned order of rejecting the refund amount of ₹ 3,06,373/-, the appellants filed the present appeal. The appellants have submitted that the adjudicating authority was not correct in rejecting the amount of ₹ 3,06,373/- 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 ₹ 3,06,373/- 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 ₹3,06,373/- citing reasons which are mentioned below;

(a) ₹22,646/- and ₹2,75,438/- were rejected on the ground that the claims were hit by limitation of time.

(b) ₹8,289/- was rejected on the ground that the services of renting of cab were availed outside the SEZ.

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

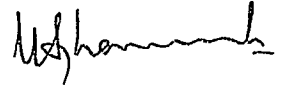
8.1. I will now take up the first issue which is rejection of ₹22,646/- and ₹2,75,438/- on the ground that the claim was hit by the limitation of time. The adjudicating authority has quoted, in the impugned order, that the actual dates of payment were 09.09.2010, 15.09.2010 and 27.09.2010 and the date of filing of refund claim was 22.10.2011. Therefore, the refund claim was beyond one year period and hence, it does not qualify for sanction under Section 11B of Central Excise Act, 1944. In this regard, I find that in the very first paragraph of the impugned order, the adjudicating authority has mentioned the date of filing the refund claim to be **22.10.2010**. On being asked, the appellants had submitted before me a photocopy of the acknowledgement of the filing of the refund claim received from the department (Central Excise, Rajkot). The said acknowledgement very clearly shows the date of filing the claim to be 22.10.2010. This shows the prejudiced approach of the adjudicating authority towards the appellants. The discretionary powers given to the Assistant Commissioner have to be exercised by application of mind to the facts of the case. Unconcealed misuse of power by the adjudicating authority is clearly undemocratic and condemnable. Thus, as the claim is found to be within the period of one year, I assert that the refund of ₹22,646/- and ₹2,75,438/- is admissible to the appellants and I allow the appeal for refund of the same.

8.2. The next issue amounts to ₹8,289/-, 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, Shree Yamuna Travels, M/s. Sanjari Marine Service 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, Surendranagar, 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, Surendranagar, Rajkot etc. In view of the above, I partially allow the refund claim of ₹ 6,097/- and reject ₹ 2,192/-.

9. Regarding the impugned order, issued by the adjudicating authority, I would like to comment that the order has been prepared in a very casual manner. With intent to reject the claim, the adjudicating authority has utilized all the non-options present in his bag. The impugned order is full of wrong information and misprint. In the order portion (paragraph 14), the adjudicating authority, instead of rejecting ₹ 3,06,373/-, rejects an amount of ₹ 6,63,265/-. Interestingly, ₹ 6,63,265/- was already rejected by my predecessor vide Order-in-Appeal number 174/2013(STC)/SKS/Commr.(A)/Ahd. dated 08.08.2013. These types of orders may not only make the department laughing stock before the trade but also convey a wrong signal showing shallowness and misuse of power.

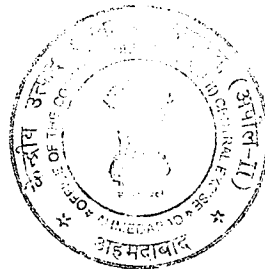
10. In view of the above discussion, I allow the appeal of the appellants amounting to ₹ 3,04,181/- with consequential benefit and reject an amount of ₹ 2,192/-. The appeal is hereby disposed off in terms of the discussion held above.



(UMA SHANKER)

COMMISSIONER (APPEAL-II)

CENTRAL EXCISE, AHMEDABAD.



**ATTESTED**

  
(S. DUTTA)

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.

