

78



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE.



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142

Email: cevappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/211/BVR/2017

मूल आदेश सं /  
O.I.O. No.  
V/18-29/Refund-Adani  
Power/16-17

दिनांक /  
Date  
22.03.2017

ख अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-197-2017-18**

आदेश का दिनांक /  
Date of Order: 06.03.2018

जारी करने की तारीख /  
Date of issue: 16.03.2018

16.03.2018

Passed by **Shri P. A. Vasave, Commissioner, CGST & Central Excise, Kutch(Gandhidham)**

अधिसूचना संख्या २६.१७ दिनांक (टी.एन) शु.उ.के-२०१७/१० २०१७ के साथ पढ़े बोर्डे ऑफिस आदेश सं .  
दिनां .टी.एस-२०१७/०५क १६ ,के अनुसरण में २०१७.११.श्री पी. ए. वसावे ,आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं  
केन्द्रीय उत्पाद शुल्क,, कच्छ (गांधीधाम), को वित्त अधिनियम १९९४ की धारा ८७ केन्द्रीय उत्पाद शुल्क .  
के ३५ की धारा १९४४ अधिनियम अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से  
अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri P. A. Vasave, Commissioner, CGST & Central Excise, Kutch(Gandhidham), has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम/ भावनगर। द्वारा उपरोक्त जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham/ Bhavnagar :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**

**M/s Adani Power Ltd., Achalraj Opp : Mayor Bunglow, Law Garden Ahmedabad 380 006**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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 is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied 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. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।/

For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।  
In case of any loss of goods, where the loss occurs 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
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है।  
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.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संमायाविधि पर या बाद में पारित किए गए हैं।  
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट हैं, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपील न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /  
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.
- (G) उच्च अपील न्यायाधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

**:ORDER-IN-APPEAL:**

**M/s. Adani Power Ltd, Achal Raj, Opposite Mayor Banglow, Law Garden, Ahmedabad (hereinafter referred to as 'the Appellant'** had filed the present appeal against the Order-in-Original No.V/ 18-29/ Refund- Adani/ 2016-17 dated 22.03.2017 (wrongly mentioned as 22.03.2016) passed by the Assistant Commissioner, Central Excise, City Division Bhavnagar (hereinafter referred to as '**the adjudicating authority**').

2. Briefly stated the facts of the case are that the Appellant is a co-developer in the multi product Special Economic Zone situated at Mundra and has been authorized by the Board of Approval to undertake generation of power through 4620 MW of power plant for the authorized operations in the SEZ.

3. The Appellant filed a refund claim dated 15.02.2017 on 15.03.2017 along with interest, under Section 47(5) of SEZ Rules,2005 for refund of Central Excise Duty paid by its suppliers on the goods supplied to the Appellant. The adjudicating Authority vide impugned order rejected the refund claim on the grounds that as the Appellants unit is not registered with their office the request for refund of excise duty paid in inputs procured in SEZ for authorized operations cannot be considered. Aggrieved by the impugned order the Appellant has filed the present appeal.

4. The personal hearing in the matter was fixed on 01.02.2018 but the Appellant vide e-mail dated 01.02.2018 requested that in addition to their submission in Appeal memorandum they would like to further submit that in the similar issue in their own case Hon'ble CESTAT Kolkata has allowed their appeal and submitted the copy of CESTAT Order dated 25.07.2017.The Appellant vide above mail also requested to decide the appeal on merits.

5. The Appellant raised following points in their appeal memorandum in support of their appeal:-

- (i) that the impugned Order dated 22.03.2017 is ex-facie illegal, bad in law and deserves to be quashed and set aside. The Respondent has completely erred in returning the claim for refund filed by the Appellant by passing the impugned Order without putting the Appellant to notice of the grounds raised therein as also without granting a hearing to them. It is submitted that if the Appellant was put to notice that the Respondent was seeking to return the refund claim on the basis of the grounds raised in the impugned Order and granted a hearing in respect thereof, it would have filed a detailed reply and abundantly dealt with all the said grounds and sufficiently establish that the Respondent was the correct jurisdictional authority before whom the claim for refund was required to be filed by the Appellant as also that it was entitled to said refund.
- (ii) that they rely upon the case law of Asstt. Commissioner of Commercial Tax versus Shukla & Bros, reported in 2010 (254) ELT 6 (SC) in which it has been

laid down by the Hon'ble Supreme Court that principles of natural justice have twin ingredients, the first being that the person who is likely to be affected by the action should be given a Show Cause notice thereof and granted an opportunity of hearing; the second being that the order passed by the authority should give reasons for arriving at the conclusion, showing proper application of mind. Failure of either of these would vitiate the order.

- (iii) that the Appellant further drew the attention towards the Supreme Court ruling in the case of **Dharmpal Satyapal Ltd. Versus Dy. CCE, Gauhati [2015(320) E.L.T. 3 (S.C.)]** wherein the principles of natural justice were explained to mean:
- a. Rule against bias;
  - b. Opportunity of being heard to the concerned party;
  - c. It is duty to give reasons in support of decision, namely, passing of a "reasoned order"
- (iv) that in the present case, the Appellant submit that none of the aforementioned principles were followed while passing the impugned order. The Respondent has completely erred in holding in the impugned Order that it was not the correct jurisdictional authority before whom the refund ought to have been filed. The Notification dated 05.08.2016 issued by the Ministry of Commerce, which inserted Rule 47(5) in the SEZ Rules, the matters relating to the authorized operations of the SEZ Act shall be made by the Jurisdictional Customs/Central Excise Authorities. The Respondent has concluded that since the unit of the Appellant was not registered in the Respondent's jurisdiction, the refund claim does not fall within its jurisdiction and hence was rejected.
- (v) that it is important to note that Rule 47(5) of the SEZ Rules provides that the refund, demand, adjudication, review and appeal with regard to matters relating to authorized operations under SEZ Act, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under. The Appellant submits that the expression 'jurisdictional Excise Authorities' would obviously refer to that Jurisdiction in which duty has been paid. The Respondent has failed to appreciate that a Special Economic Zone is outside the jurisdiction of the Excise Act and consequently there cannot be any jurisdictional Central Excise Authority qua an SEZ. The only logical and reasonable construction would be that the authority where the duty is being paid and the refund is being sought. In this regard, reliance is placed on the Supreme Court ruling in the case of **Oswal Chemicals & Fertilizers Ltd. CCE, Bolpur [2015 (318) E.L.T 617 (S.C.)]** whereby, an inference could be drawn that refund could be claimed in the jurisdiction where the tax has been paid.
- (vi) that without prejudice to above, it must be noted that it is a settled legal position that even though the refund claim is lodged in a different jurisdiction the same cannot be rejected only for want of right Jurisdiction. In this regard, the Appellant places reliance on the following rulings:

- a. CCE, Pune-I vs Fujitsu Consulting Pvt. Ltd [2016 (14) S.T.R 728 (Tri.-Mumbai)];
  - b. Devasthan Vibhag vs CCE, jaipur-I [2008(10) S.T.R 415 (Tri.-Del.)];
  - c. Sahara power Products vs CCE, (Appeals-II), Bangalore [2015 (40) S.T.R. 536 (Tri.-Bang.)]
- (vii) that in the case of Sahara Power Products (supra), the Tribunal observed that the Central Excise officer before whom the refund claim had been filed should have forwarded the refund claim to the jurisdiction Commissioner who was empowered to sanction the refund or should have sectioned the refund himself since the evidence was available.
- (viii) that without prejudice to the above, it is relevant to note that the authority before whom the claim for refund in respect of authorized operations in the SEZ could have been filed has been notified only with effect from 05.08.2016. Prior to this date, there was utter confusion as to who would be the competent authority to grant the refund. The eligibility to refund arose in the instant case on the goods having been used for authorized operations which, as can be seen from the aforesaid Chartered Accountant's Certificate dated 10.02.2017.
- (ix) that in view of the above submissions, your Honour will appreciate that Respondent ought to have sanctioned the refund claim considering the legal position put forth before him. It appears that respondent has not examined the legality of the case but has simply returned the refund claim only on the sole ground of jurisdiction, which is not proper, correct and legal and is in violation of the principle of natural justice.

6. I observe that in this case the impugned order is dated 22.03.2017 & received by the Appellant on 27.03.2017 and the appeal has been filed on 26.05.2017. Hence I find that the appeal has been filed in time.

6.1. I have gone through the impugned order, the grounds of appeal filed by the Appellant, written submission made by the appellant at the time of filing appeal along with additional submission dated 01.02.2018 made by them. The brief issue to be decided in this appeal is whether impugned order, rejecting the claim of refund on jurisdictional grounds by the adjudicating authority is correct, legal or otherwise.

6.2. I notice that the adjudicating authority has rejected the refund claim stating that, as per Notification dated 05.08.2016 by Ministry of Commerce, Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under.

6.3. As per above para the adjudicating authority interpreted that the Jurisdictional Central Excise and Customs authority under which SEZ falls becomes the proper

73

jurisdictional authority to accept and sanction the refund claim. And as appellant's unit was not registered with his office, the request for refund of excise duty paid in input(s)/procured in SEZ for authorised operation was turned down. Accordingly the adjudicating authority directed the Appellant to approach Jurisdictional Customs and Central Excise Authorities for sanction of their refund claim in accordance with the relevant provisions.

7. The contention of the Appellant that the impugned order was issued without giving any Show cause Notice and opportunity of being heard is not without any conviction. Had the Appellant got the opportunity to present their case it would have been possible that the Appellant may have succeeded in establishing that the lower authority was the correct jurisdictional authority before whom the claim of refund was required to be filed. I observe that the Appellant have been devoid of a fair opportunity to plead their case. The lower authority has not followed the principal of Natural Justice in deciding the refund claim.

8. I also observe that Rule 47(5) of the SEZ Rules,2006 provides that the refund, demand, adjudication, review and appeal with regard to matters relating to authorized operations under SEZ Act, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under.

8.1. The Appellant in their grounds of appeal submitted that the expression 'jurisdictional Excise Authorities' would obviously refer to that Jurisdiction in which duty has been paid. The Respondent has failed to appreciate that a Special Economic Zone is outside the jurisdiction of the Excise Act and consequently there cannot be any jurisdictional Central Excise Authority qua an SEZ.

8.2. In this regard I find that Ministry of Commerce & Industry has issued Notification dated 05.08.2016 by which sub rule 47(5) has been inserted in Special Economic Zone Rules 2005 through which it has been clarified that *refund, demand, Adjudication Review and Appeal with regard to matters relating to authorized operations under SEZ Act,2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under.*

9. The Hon'ble CESTAT Kolkata in the similar matter of Appellant in another jurisdiction has held as under:-

*Para 8. We also note that jurisdiction issue has been under consideration with the Ministry of Finance as well Ministry of Commerce and ultimately Ministry of Commerce issued Notification*

dated 05.08.2016. This Notification specified that the refund, demand jurisdiction, review and appeal with reference to various operations under SEZ Act, 2005 shall be with a jurisdiction of Central Excise Authorities in accordance with the relevant provisions of Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994. We find that the said Notification makes the position amply clear on the question of Jurisdiction of Central Excise officers to deal with the claim in the present matter.

9.1. The Hon'ble High Court in its Order dated 20.01.2016 in the case of Roxul Rock wool Insulation India Pvt Ltd Versus Union of India reported in ELT, 2016(334) E L T 412 (Guj.) in the matter of jurisdiction of refund of Customs duty with respect to units situated in SEZs held that as long as the duty in the nature of Customs duty has been collected, the refund would be payable only in terms of Section 27 of the Customs Act, 1962. Since the statute also prescribes the authority competent to entertain such an application, refund application would be maintainable before such authority. Unless there is amendment in law, the respondent cannot prevent the competent officer from exercising statutory powers, in fact, duties.


9.2. In the present case also I find that the duty on inputs supplied to SEZ has been collected by Jurisdictional Central Excise Authorities falling under the lower adjudicating authority.

10. In view of the above and keeping in mind the infirmity suffered in impugned order as discussed in para 7 and in light of the clarificatory provisions as contained in Notification dated 05.08.2016 of Ministry of Commerce, it seems a fit case to be remanded back to lower authority to decide the matter of jurisdiction of refund claim by giving a fair opportunity of being heard to the Appellant and pass a suitable order in the case.

11. Keeping above in mind and without going into details of merits of the case I pass the following Order:-

**:ORDER:**

I remand the case back to lower authority to hear the case afresh by giving an opportunity of being heard to the Appellant and pass a suitable order keeping in mind the provisions as contained in the Notification dated 05.08.2016 issued by Ministry of Commerce.

  
(Pramod A Vasave)  
Commissioner (Appeals)/  
Commissioner  
GST & Central Excise, Kutch

To

M/s. Adani Power Ltd,  
Achal Raj, Opposite Mayor Banglow,  
Law Garden,  
Ahmedabad

Copy to-

1. The Chief Commissioner GST & C.Ex, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & C.Ex. Bhavnagar.
3. The Assistant Commissioner, GST & C.Ex. City Division, Bhavnagar.
4. Guard File.