



प्रधानमन्त्री कृषि आसुरीकरण योजने अन्तर्गत कृषि उत्पादन वित्तिय सुधार
 OO THE PRINCIPAL COMMISSIONER, APPEALS, GST & CENTRAL EXCISE



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पत्राचार क्रमांक / No. of Letters

क्र. / No.	पत्राचार क्रमांक / No. of Letters	दिनांक / Date	पत्राचार क्रमांक / No. of Letters
1	15/274, 275 & 276-Raj/2019	15.05.2019	15.05.2019
			219-Raj/2019
			218-ST-Raj/2019

क. अपील क्रमांक / Appeal No.

RCU-EXCUS-000-APP-046-TO-048-2019

दिनांक / Date of Order: 24.03.2019
 दिनांक / Date of Issue: 31.03.2019

द्वारा जारी के गये आदेश / Order Issued by:
 Principal Commissioner, Excise, GST & Central Excise, Rajkot

आदेश क्रमांक / Order No.: RCU-EXCUS-000-APP-046-TO-048-2019
 दिनांक / Date: 24.03.2019
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: ORDER - IN - APPEAL :

M/s. Adani Wilmar Ltd., Village - Dhruv, Taluka: Mundra, District - Kutch, Pin Code - 370 421 (a merchant exporter-hereinafter referred to as 'the appellant') has filed Appeals No. V2/274/PAJ/2013; V2/275/RAJ/2013 and V2/276/RAJ/2013 against Orders-In-Original No. 217/ST/REF/2013; 218/ST/REF/2013 and 218/ST/REF/2013 dt dated 15.05.2013 respectively (hereinafter referred to as 'the impugned orders') passed by the Assistant Commissioner, Service Tax Division, Rajkot, (hereinafter referred to as 'the lower adjudicating authority').

2. The vital facts of the case are that the appellant had filed refund claims of (1) Rs. 65,61,794/- for the period from October, 2011 to December, 2011, (2) Rs. 1,23,72,060/- for the period from December, 2011 to March, 2012 and (3) Rs. 53,99,167/- for the period from June, 2011 to September, 2011 respectively (total period is from June, 2011 to March, 2012) with the lower adjudicating authority under Notification No. 17/2009-ST dated 07.07.2009 (hereinafter referred to as 'the said notification'), who rejected refund claims, inter alia, mainly on the ground that their various branches at Indore, Chennai, Mumbai, Kanpur, Lucknow, Karadol etc. did not fall within the jurisdiction of the office of the Assistant Commissioner, Service Tax Division, Rajkot as these branches were not registered under STC No. AABCA8055GST003 and hence, they have not followed the conditions of the said notification.

3. Being aggrieved with the impugned orders, the appellant preferred the present appeals, inter alia, on the following grounds:

(1) The department issued centralized registration certificate on 07.03.2009, which was applied by them on 13.03.2010; that centralized billing for all branches and payment of service tax was allowed as per the service tax department, at Mundra w.o.f. 2006; that no reason shown in the impugned order for accepting the fact of these registrations; that the lower adjudicating authority resorted to rejecting refund claims on the ground that the premises of Indore, Mumbai, Chennai etc. branches were not registered whereas the appellant has centralized registration since 2006, which covered their

branches at Indore, Chennai, Mumbai etc. and they have been taking central credit of GST for all these branches at Mumbai and also paying service tax for all these branches at Mumbai only since 2008; that the requirement of registration for refund is only for the administrative convenience and such administrative aspects cannot be made basis for rejection of refund, when export of goods by them is not in doubt; that the grant of registration is the function of the department; that having accepted the 'centralized' status of registration for availment of central credit and payment of service tax the department cannot treat the same otherwise for rejection of refund claims; that the online amendment in registration was also finally allowed by the department on 07.03.2012 by granting centralized registration online on their application submitted on 13.03.2010.

(ii) The appellant was registered and holding centralized registration for all branches. Only the procedural aspect appropriate endorsement etc. on registration certificate was not made, which was also amended subsequently by the department. Such correction has been given retrospective effect by the department. Therefore, it is incorrect to observe that during relevant time, the registration was not available.

(iii) The purpose behind the exemption is to implement the policy of the Government that taxes are not to be exported. Once the fact of goods being exported is not in doubt, then the taxes paid on such goods must be refunded. The exemption notification only provides mechanism to implement this policy. Thus, it is not the exemption notification in its conventional sense but is the notification to implement the policy of not levying the taxes on the goods to be exported. Once this object is kept in mind, the interpretation of various conditions of the exemption notification would fall into places. The principle of interpretation in such case is to extend the benefit and not to deny the same. The technicalities should not come in the way of denying substantial benefit. It does not lie in the mouth of the Government to raise such objection to deny and burden the assessee with taxes not leviable.

(iv) The question of registration, with reference to claim of refund is only the administrative convenience and such administrative aspects cannot be made the basis for rejection of refund which is a substantial

right due to the appellant.

(v) The provision of the predecessor Notification No. 41/2007 was the same as per Notification No. 17/2007. In respect of Notification No. 41/2007, the Board had issued clarification vide Circular No. 101/4/2009-ST dated 12.05.2008 in which the language and intent of both the notification, as regards place of claiming refund is concerned, is the same. The subsequent notification was issued only to further streamline the procedure for refund. Therefore, the clarification issued in respect of earlier notification would apply with full force even in respect of subsequent notification. The provisions of the notifications as well as the clarification issued by CBEC suggest that wherever exporter is registered with the department, either as manufacturer or as service provider, the claim should be made with the jurisdictional office where from the registration is obtained. Thus, the officer-in-charge of the registered assessee should be the jurisdictional officer at place of registration.

(vi) The lower adjudicating authority followed the earlier order without examining the period and changes in the facts. The registration has been granted subsequent to the earlier orders and the period covered under the present matter is subsequent to their application for registration.

4. The appeals were kept in Cal Book on the ground that the appellant had filed Appeal No. ST/12887/2013 before the Hon'ble CBEST, Ahmedabad in similar matter of their own case, which was pending for decision. The present appeals cannot be kept in Cal Book as per clarification given by the Board vide Circular No. 1028/16/2016-CX dated 28.01.2016 as because this appeal has been filed by the appellants. These appeals are, thus, now taken out of Cal. Book for passing appropriate orders.

4.1 Personal hearing in the matter was addressed by Shri S. J. Vyas, Advocate, who reiterated the grounds of appeal and submitted that the appellant had applied for centralized registration in 2010 on 12.03.2010 but department granted centralised registration in 2012 on 09.03.2012, that the period of refund of these appeals are from June, 2010 to March, 2012; that the department giving centralized registration in delayed manner and then rejecting refund on the grounds not correct and a law in law that they have central filing registration

at Mumbai since 2005 with Income, Chennai, Mutual on. as Finance; that CBEC Circular No. 101/4/2008-ST dated 12.05.2008 in Para 4 has allowed to file refund claims in such cases at Mumbai, where they were registered for service tax payment for the service availed to export the goods; that in the facts of these cases, their claims need to be allowed.

4.2 However, there was no response from the department despite P.H. notices/invoices sent/mailed to the Comptroller General.

4.3 The appellants vide their letter dated 04.02.2019, inter alia, submitted that the appellant was registered and holding central registration during the material period; that the appellant had specifically referred to Circular No. 101/4/2008-ST dated 12.05.2008 to establish eligibility of central registration was held by them at Mumbai; that the circular is speaking place where the application for refund can be filed, but the circular very clearly says that once there is central registration at Mumbai for all their branches, the refund application for export from all branches can be filed at such place i.e. Mumbai; that the central registration is sufficient and each place of business of exporter need not be registered; that the place of filing claim is more in the nature of administrative convenience since the claim is required to be scrutinized by/on record, the authorities, at any place, would have the same records to examine and defend as the claims; therefore, the place of claim has no impact of effect qua exporters; that presuming that the applications were filed before incorrect authorities, the department was bound to send the claims to the appropriate authority, therefore, the rejection of the claims is not correct and proper; that the claims are based on the principle that taxes are not to be exported and only the goods/services are to be exported; that the appellant submitted central registration dated 13.12.2005, which also shows registration to be from 07.08.2005. This certificate conclusively shows that the appellant was holding central registration from 2005; that the appellant invites specific attention to Rule 4(5) of the Service Tax Rules, 1994 which provides no deeming provision for grant of registration after a delay of application; that the appellant specifically invites attention to their 2010 application submitted online and a letter applications filed from time to time for addition of various places across India for payment of service tax.

4.4 The appellant vide their letter dated 04.02.2019 (received on 12.02.2019), inter alia, submitted as under:

(ii) that the vide letter dated 29.11.2011 elaborately explained the status of centralized registration of all the branches at Mundra port, from initial registration application to periodically updation in registration by submission of SI-1 forms (registration form) with highlighting incidence of electronic registration under ACES, a order by the department was issued dated 07.08.2006, said order which treated centralized registration as single promise registration; that the appellant provided documentary evidences about payment of service tax related to all the branches as well as filing of returns related to all the branches having been submitted under the centralized registration with the department since 2004/05 on regular basis; that considering all these submissions the department has allowed appellant's request and regularized the registration and the order no. 1034/JR dated 07.08.2006.

(iii) that the appellant encloses copy of SI-1 dated 15.02.2010 which specifically mentioned amendment of centralized registration for inclusion of a new service; that the previous registration certificate SI-2 was also attached to the SI-1 which was issued dated 18.01.2010; there were much after activation of online registration under ACES by the department; that whereby manual registration updations were also submitted as also online registration updations; that this was also considered by department during regularization of centralized registration.

(iv) that the appellant drawn attention to enclosed documents submitted in relation to some other procedure under Notification No. 18/2009, however, the documents are specifically related to and supporting to existence of the centralized registration; that according to the notification any assessee intending to avail exemption, related to service tax payable under reverse charge in relation to export commission paid to foreign parties, has to file particulars in EXP-2 on half yearly basis; that accordingly, the appellant had been filing periodic EXP-2 with the department and sample copy enclosed; that addresses of only those branches in relation to water expense claiming exemption were paid during particular period, were being mentioned, in EXP-2.

(v) that the Honble CESTAT vide Order No. AP/1120-1123/2013 dated 28.07.2013 passed an identical order in the case of the appellant whereby the case was remanded back considering argument of the appellants for substantiation of acceptance of payment of service tax related to various branches and not allowing refund matter to export from some branches was considered.

Findings:

5. I have carefully gone through the facts of the case, the impugned orders and Annexal Memoranda. I find that the issue to be decided in present three appeals is whether the appellants are entitled to refund of service tax paid at Mundra for the service used for export of goods under Notification No. 17/2009-ST, exported from their branch offices located at Indore, Chennai, Mumbai, Karnal, Ludhiana, etc.

6. It is a fact that the appellants had filed refund claims of service tax paid on the specified services utilized by their branches towards export of the goods from June, 2011 to September, 2011 for refund of Rs. 57,99,157/-, from October, 2011 to December, 2011 for refund of Rs. 85,82,754/-, and from December, 2011 to March, 2012 for refund of Rs. 1,23,72,003/- (total period is from June, 2011 to March, 2012) under Notification No. 17/2009-ST which granted refund of service tax paid on the services used to export the goods. The lower adjudicating authority rejected their refund claims, *inter alia*, holding that their branches, from where export had been made, were not registered with their division and hence, did not fall under the jurisdiction of the lower adjudicating authority during the period under consideration.

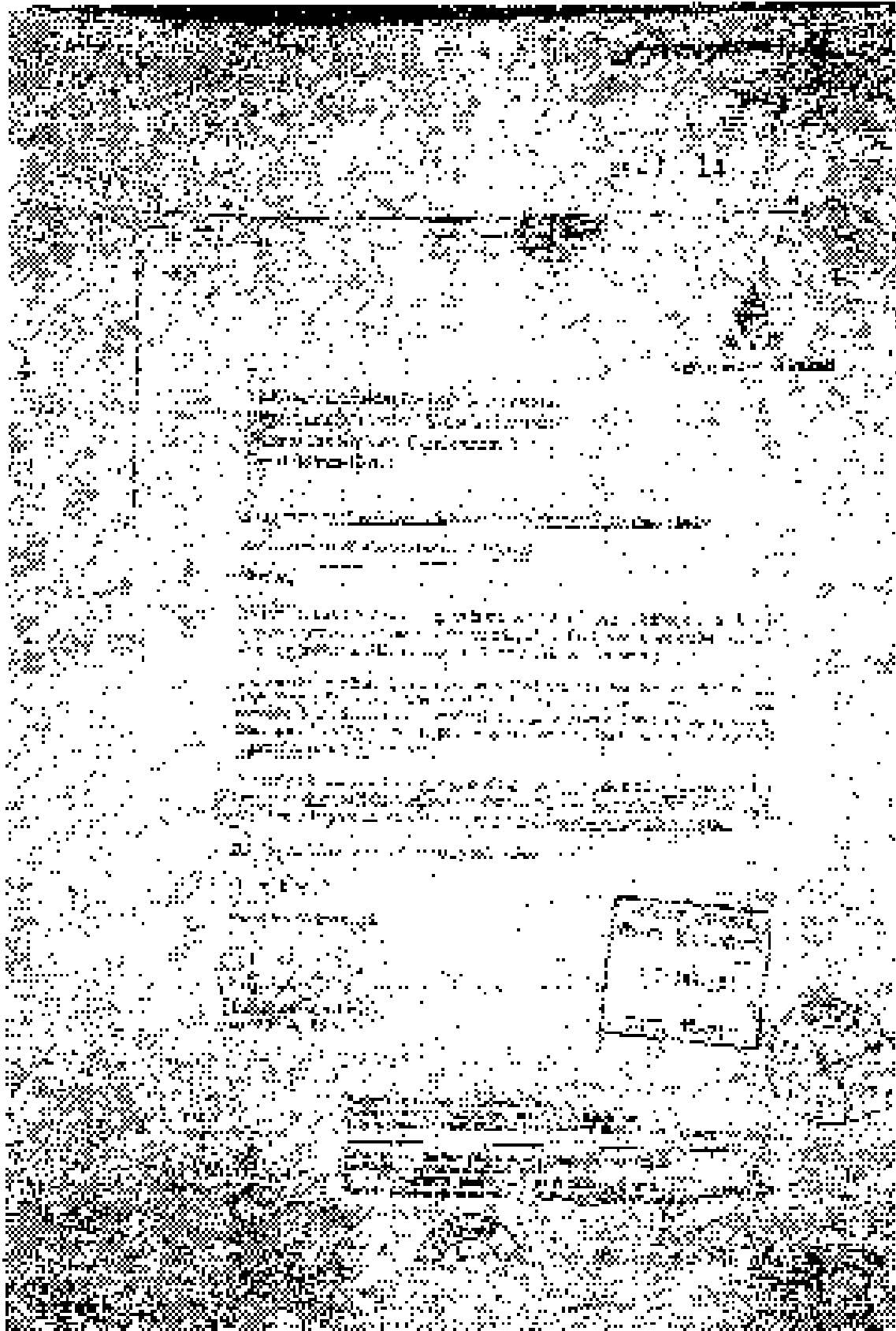
7. It is also that the appellants has contended that the department had executed central registration for Mundra for all their branches with effect from 29.01.2005 and had allowed central billing and accounting to be made at Mundra since 2005 and also for taking credit of CTA for all their branches and also to pay service tax on GTA at Mundra only for all their branches since 2005; that the department issued online centralized registration certificate to them on 07.03.2017 with all their branches, which was applied by them online on 12.03.2010; that since they were already operating on central billing and payment of service tax on GTA for all their branches at Mundra only since 2005-06, online registration in 2017 can't be made basis to deny their refund of service tax paid by them on the services utilized for export of goods under Notification No. 17/2009-ST dated 07.07.2009.

7.1 I find that the impugned refund claims cover period from June, 2011 to March, 2012 as detailed as Para 6 involving refund of Rs.

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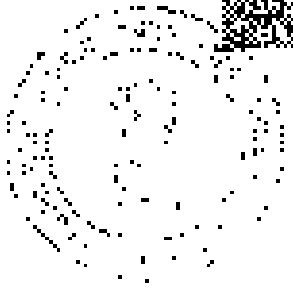
2,63,53,014/-). Notification No. 17/2009-ST required the applicant to have been registered at Mundra for all their branches for which they claimed refund like Mysore, Chennai, Mumbai, Kanya, Luckhiana, etc. and they have produced documents evidencing that they were registered at Mundra for all these branches since 2005 as a evdnt from their letter dated 27.01.2005, acknowledged by Range Superintendent on 28.01.2005, scanned copy is reproduced below:

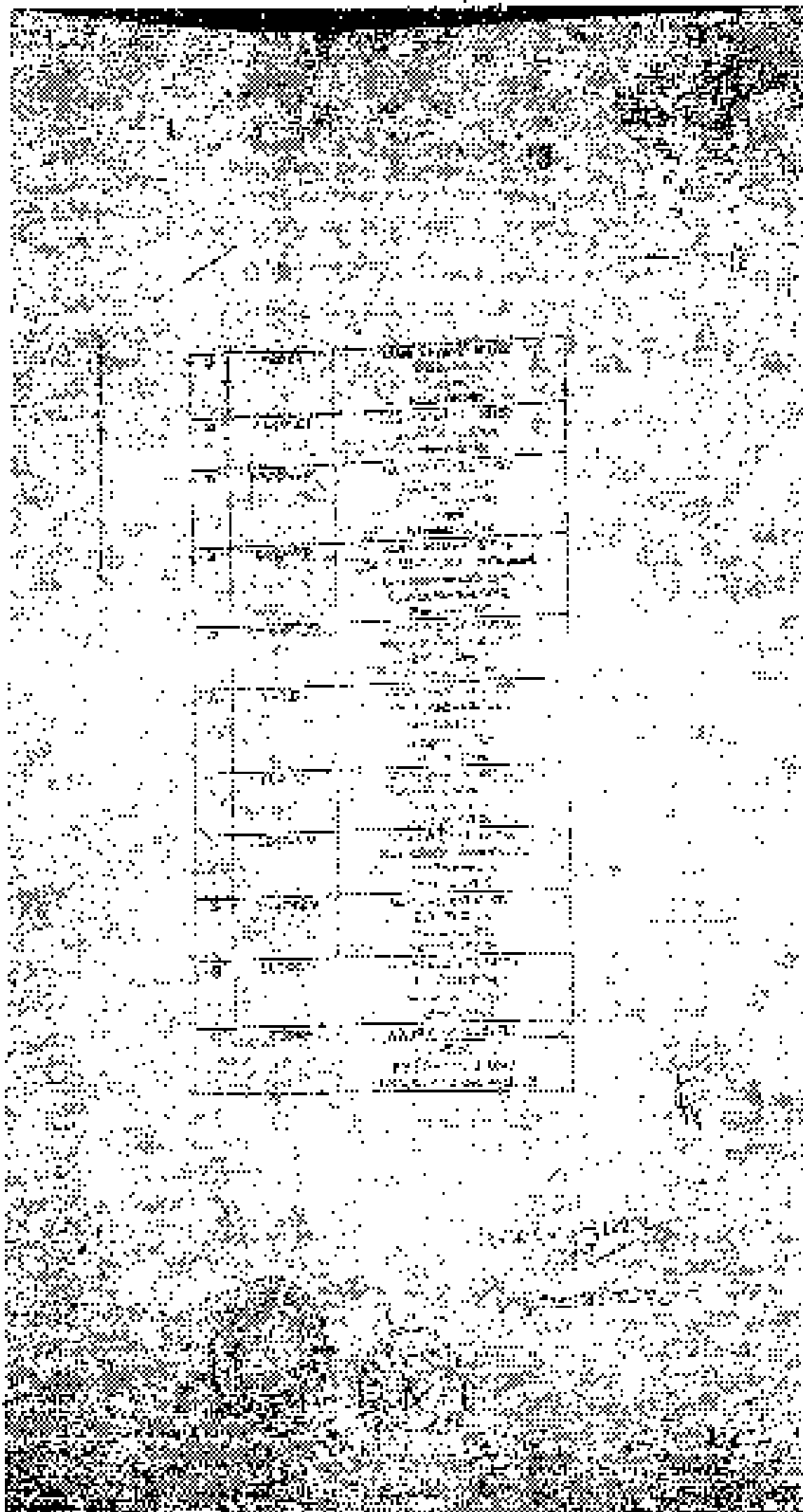


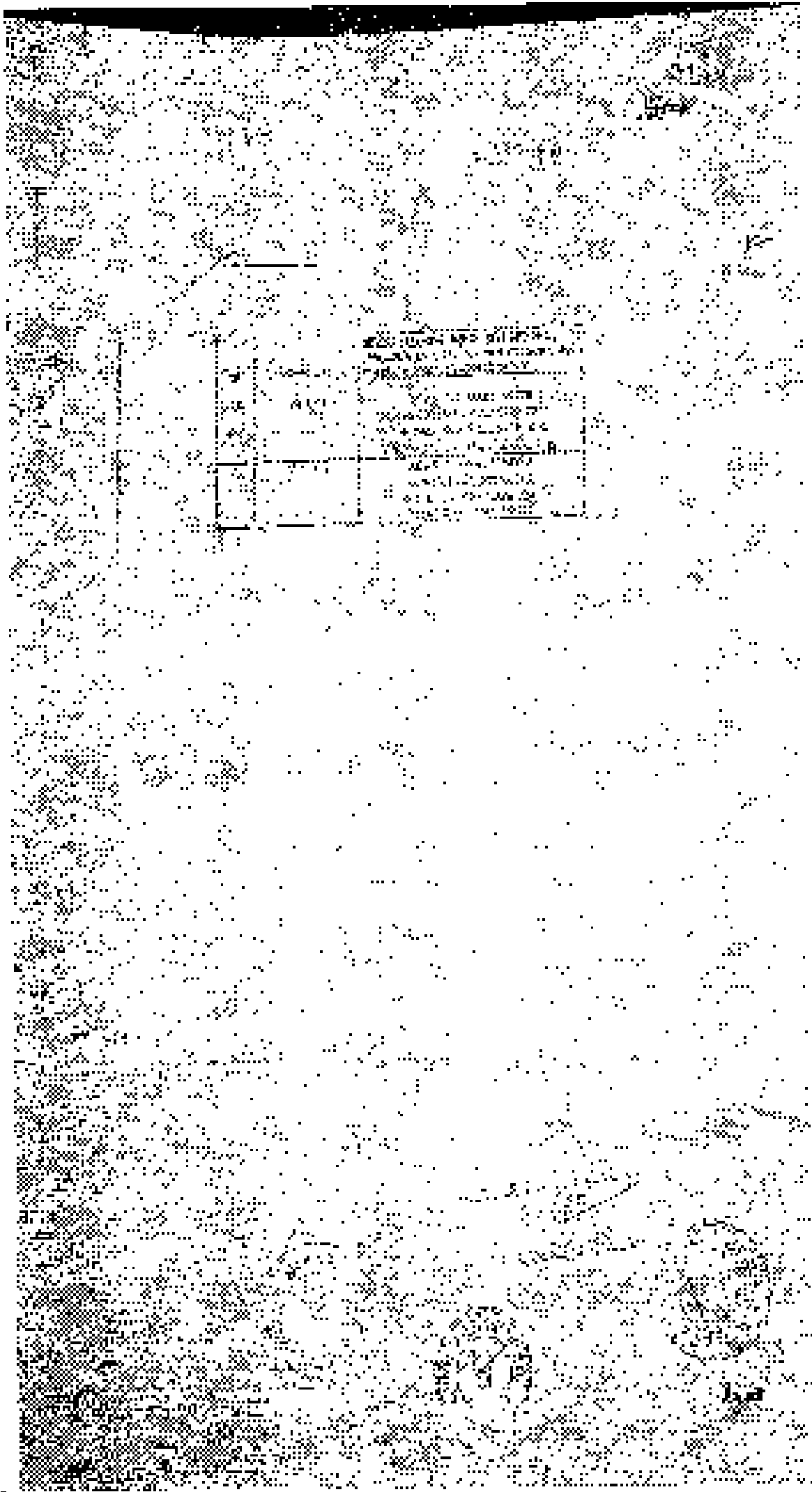
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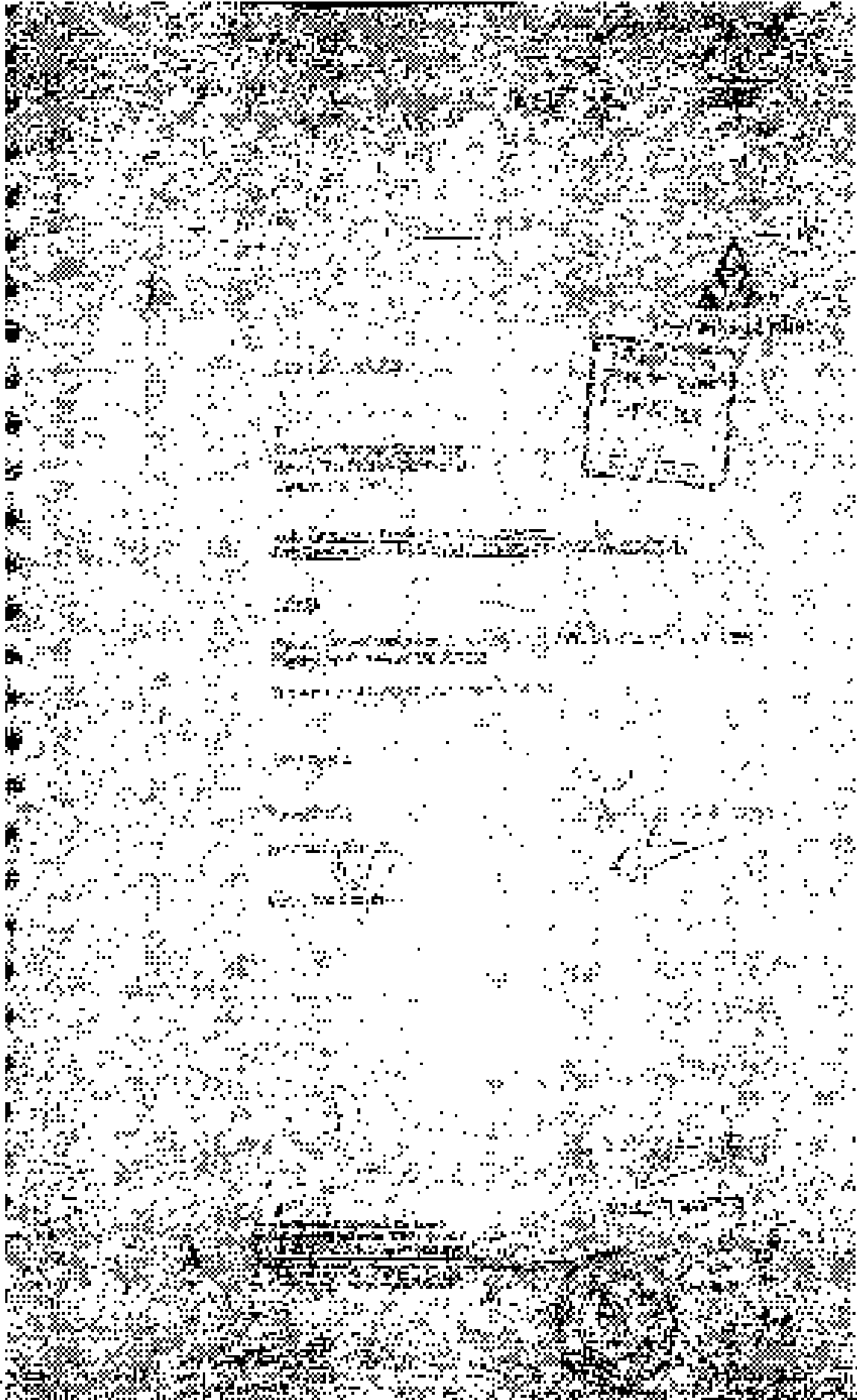
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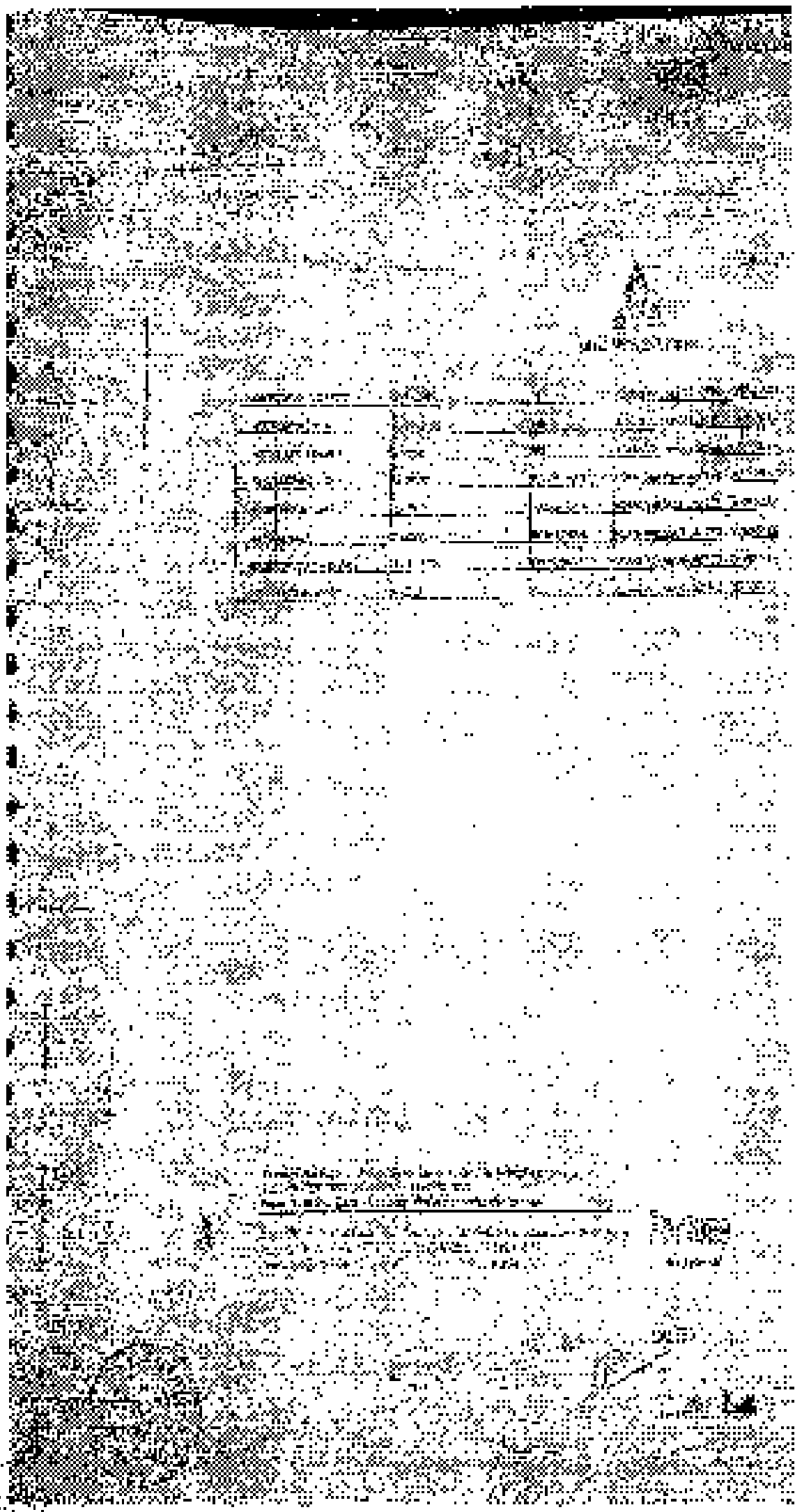






7.7 The appellant has been submitting revised branches list from time to time, as is evident from their letter dated 09.07.2008, which had been produced as per






7.3 I also find that these documents were submitted during adjudication also but for reasons not stated the adjudicating authority preferred not to look into these vital documents. When online registration under ACES started in the department in 2009-10, the appellant applied for online registration on 15.03.2010. However, department took about 7 years to grant them online centralized registration and for this delay the appellant can't be faulted with. Hence in my considered view, there is no justification whatsoever to reject refund claims of the appellant for the period from June, 2011 to March, 2012 involving refund of Rs. 2,63,53,014/- which is export of goods, the services utilized for export of the goods and payment of service tax on these services are not in dispute. There is no justification at all in the impugned orders for rejecting these refund claims on the ground that Mundra Division has no jurisdiction over all their branches located all over India when Mundra Division has allowed payment of service tax for all their branches by the appellant at Mundra only. In other words, the appellant has paid service tax for the services used in the export of goods from their branches in India and they sought refund at Mundra for that service tax paid by them at Mundra only.

7.4 Since refund is substantial benefit and use of the said services by the appellant in export of goods and payment of service tax by the appellant at Mundra on these services for all their branches are not under dispute, I have no option but to hold that the refund is admissible to the appellant.

8. In view of above, I set aside the impugned orders and allow these appeals.

9. अतिरिक्त टार डॉक्यूमेंट्स अपीलकर्ता निपटार करीके सबीके से किये गारा है।
 9. The appeals filed by the appellant stand disposed off in above terms.


 Anil Kumar Singh
 Revenue Officer (Appeals)
 District Collector (Appeals)

By Sd/- Smt. MD.

M/s. Adani Wharves Ltd., Village
 Dhruv, Taluka: Mundra, District
 Bhavnagar, Pin Code - 370 421

गे अदालत किलनर सी
 वरिष्ठ अति. तालुकल किलनर,
 जिल्ला कच्छ, जिन पिनकोड - 370 421



Copy to:

- 1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information please.
- 2) The Commissioner, CGST & Central Excise, Kutch Commissionerate, Gandhidham for necessary action.
- 3) The Assistant Commissioner, CGST & Central Excise, Division-Mundra for further necessary action.
- 4) Guard File.
- 5) S. No. V2/275/RAC/2013
- 6) S. No. V2/276/RAC/2013

