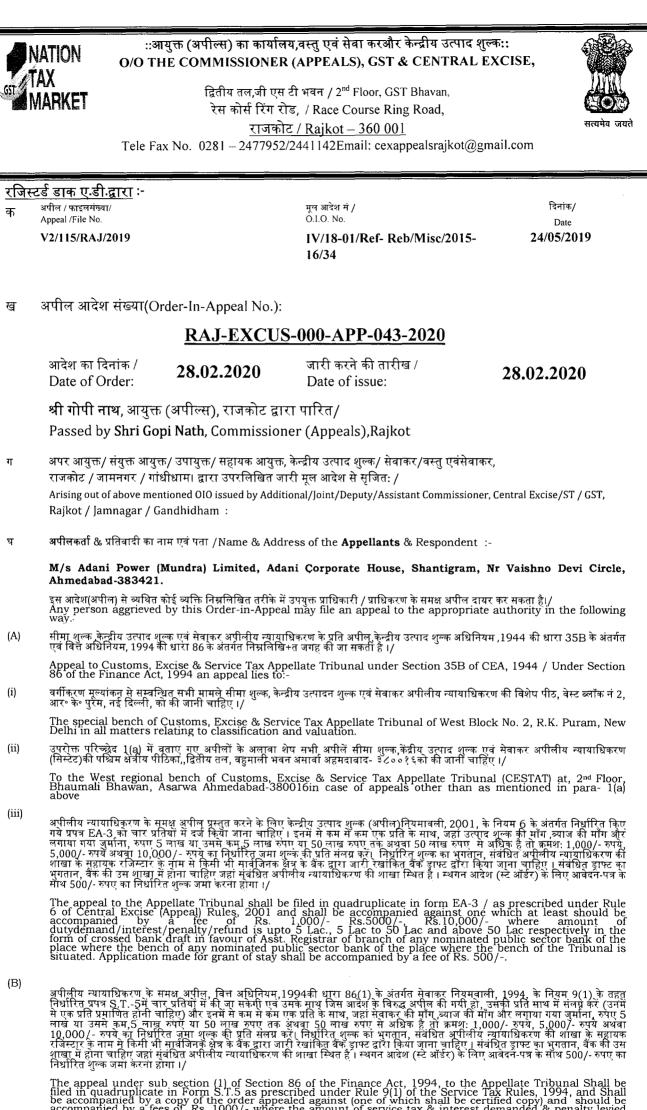
Ł

1



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 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 fit and the service tax and the ser

वित्त अधिनियम,1994की 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 प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क द्वारा प्रारेत आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलिय 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 Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

ľ

1

Commissioner of Central Excíse/ Servíce Tax to file the appeal before the Appellate Tribunal. 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%), जव मांग एवं जुर्माना विवादित है, या जुर्माना, जव केवल जुर्माना विवादित है, का भुगतान किया जाए, वशर्ते 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" मे निम्न शामिल है (i) धारा 11 डी के अंतर्गत रकम (ii) सेनवेट जमा लि गई गलत राशि (iii) सेनवेट जमा लि गई गलत राशि (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम - वशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थयान अर्जी एवं अपील को लागू नहीं होग।// 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 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 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. **मारत सरकार कोपन तीक्षण आवेदन :** (ii)

## (C)

(i)

भारत सरकार कोपुनरीक्षण आवेदन : Revision application to Government of India: इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मंत्रालय, राजम्व 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:

- 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 फिर 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 (i)
- भारत के वाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिवेट) के मामले में, जो भारत के वाहर 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. (ii)
- यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गूए है।/ (iv) 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.
- उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्द्रिष्ट है, 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 निधोरित 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 OlO 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. (v)

- पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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. (vi)
- यदि इस आदेश में कई मूल आदेशों का समाबेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पही कार्य से चचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers 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. (D)
- यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुमूची-I के अनुमार 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-I in terms of the Court Fee Act,1975, as amended. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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. (F)
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट 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 (G)



...2...

## :: ORDER-IN-APPEAL ::

M/s. Adani Power (Mundra) Limited (hereinafter referred to as "appellant") filed appeal No. V2/115/RAJ/2019 against letter F.No. IV/18-01/Ref-Reb/Misc/2015-16 dated 24.5.2019 (hereinafter referred to as "impugned letter") issued by the Asst. Commissioner, Central GST Division, Morbi-II, Rajkot Commissionerate (hereinafter referred to as "refund sanctioning authority").

2. The brief facts of the case are that the appellant was co-developer of Special Economic Zone at Mundra and was also operating a power plant in the said SEZ. The Appellant had procured stores, spares and consumables on payment of Central Excise duty. The Appellant filed refund claim dated 25.01.2018 before the refund sanctioning authority which was returned on 20.04.2018 on the ground that neither the registered office of the Appellant nor the thermal power plant of the Appellant fall under the jurisdiction of Central Excise, Division-II, Rajkot.

2.1 The Appellant re-submitted the refund claim on 04.03.2019 justifying the issue of jurisdiction matter. The refund sanctioning authority again returned the refund claim vide impugned letter on the ground of lack of jurisdiction.

3. Aggrieved, the appellant preferred the present appeal on the following grounds, inter alia, contending that,

(i) The refund claim was submitted to proper jurisdictional authority. As per Rule 47(5) of the SEZ Rules, 2006, refund claim is to be submitted to jurisdictional Customs/ Central Excise authorities; that they procured goods from a unit situated under Rajkot Commissionerate and accordingly they submitted refund claim before the Asst. Commissioner, Central Excise Division –II, Rajkot and relied upon CESTAT, Kolkatta's order passed in the case of Adani Power Ltd.- 2018 (364) E.L.T. 319 (Tri. - Kolkata).

(ii) That their refund claim was returned by the refund sanctioning authority without issuance of Show Cause Notice or without giving them opportunity to explain their case and thus the impugned letter is liable to be set aside.

(iii) That the Appellant had procured various inputs required for authority operations i.e. for generation of electricity in thermal power plant situated within SEZ on payment of Central Excise duty; that as per SEZ Act, **20**05 and rules

made thereunder, they were not required to pay any Customs or Central Excise duty on the goods imported /procured indigenously for carrying out their authorized operations.

(iv) That they are eligible for interest for delayed payment of refund from the date of filing of refund claim till date of payment of refund amount.

4. Personal Hearing in the matter was given on 26.11.2019, 02.12.2019, 14.01.2020, 28.01.2020, 12.02.2020 & 20.02.2020 but no one from the appellant side has appeared for the same. Therefore, the instant case is to be decided *exparte* on the basis of available records.

5. I have carefully gone through the facts of the case, the impugned order, and grounds of appeal memorandum. The issue to be decided in the present appeal is whether the refund sanctioning authority has correctly return refund claim filed by the Appellant on the ground of lack of jurisdiction or otherwise.

On going through the records, I find that the Appellant was co-developer of 6. Special Economic Zone at Mundra and was also operating a power plant in the said SEZ. The Appellant had filed claim before the refund sanctioning authority for refund of Central Excise duty paid on stores, spares and consumables used in power plant within SEZ. The refund sanctioning authority returned the refund claim on the ground of lack of jurisdiction by observing that refund of SEZ unit/developer is to be processed by jurisdictional Central Excise authorities as per Notification dated 5.8.2016 issued by Ministry of Commerce and Industries but Appellant's unit situated at Mundra SEZ as well as Appellant's registered office situated at Ahmedabad were outside his jurisdiction. On the other hand the Appellant has contended that refund claim is to be submitted to jurisdictional Central Excise authorities as per Rule 47(5) of the SEZ Rules, 2006 and since they had procured goods from a unit situated under Rajkot Commissionerate, they correctly filed refund claim before the refund sanctioning authority and relied upon case law of Adani Power Ltd.- 2018 (364) E.L.T. 319 (Tri. - Kolkata).

7. I find that sub-rule (5) was inserted in Rule 47 of the SEZ Rules, 2006 vide notification dated 5.8.2016 issued from F.No. D.6/40/2012-SEZ issued by the Ministry of Commerce and Industry, which is reproduced as under:

in and the second

Page 4 of 6

"(5) 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".

7.1 I find that jurisdictional Central Excise authorities envisaged in Rule 47(5) of the SEZ Rules, 2006 supra can only be Central Excise authorities having jurisdiction over respective SEZ unit/developer and can never be jurisdictional Central Excise authorities of suppliers. This is due to reason that SEZ Rules are applicable to SEZ unit/developer and any reference to jurisdictional Central Excise authorities in the SEZ Rules, 2006 would be SEZ unit/developer and by no stretch of imagination it can be suppliers. In the present case, it is not disputed that refund sanctioning authority is not having jurisdiction over Mundra where SEZ is situated. Considering the legal and factual position, I am of the opinion that the refund sanctioning authority has correctly returned the refund claim of the Appellant for lack of jurisdiction citing Notification dated 5.8.2016 referred supra.

8. I have also examined case law of Adani Power Ltd.- 2018 (364) E.L.T. 319 (Tri. - Kolkata). In the said case, refund claim was rejected on the ground that SEZ unit is considered as situated outside India and hence, claim cannot be entertained by jurisdictional Central Excise officers. In that backdrop, the Hon'ble CESTAT, by referring to the provisions of Notification dated 5.8.2016, held that jurisdictional Central Excise officers having jurisdiction over SEZ can deal with the refund claim of the Appellant therein. Thus, facts of the said case law are different and distinguishable from the facts involved in the present case and hence, the said case law is not applicable in the present case.

In view of above, I uphold the impugned letter and reject the appeal.

9.

7

Appeal No: V2/115/RAJ/2019

٩

- 10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 10. The appeal filed by the Appellant is disposed off as above.

Attested p 2020 (S.D

(GOPI NATH) Commissioner (Appeals)

Superintendent(Appeals)

By RPAD

To, M/s Adani Power (Mundra) Ltd Adani House, Shantigram, Near Vaishnodevi Circle, Abmedabad	सेवा में, मे॰ अदानी पावर (मुँदरा) लिमिटेड, अदानी हाउस, शांतिग्राम,
Ahmedabad.	वैष्णोदेवी सर्कल के पास,
	अहमदाबाद।

<u> प्रति:-</u>

- प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, क्रीयक्रम को आवश्यक कार्यवाही हेतु।

3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-2 मण्डल, र्राजकोट, को आवश्यक कार्यवाही हेत्।

गार्ड फ़ाइल। 4)



Page 6 of 6