

	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), GENERAL TAX,		
वस्तु एवं सेवा	कर भवन	GST Building, 7 <sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015	
सत्यमेव जयते			
	सातवीं मंजिल पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
 079-26305065		टेलीफोन नं: 079-26305136	

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क फाइल संख्या : File No : V2/82/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-101-18-19

दिनांक Date : 16-10-2018 जारी करने की तारीख Date of Issue: 25/10/2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

*C. file*

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
19/D/2010-11/CE दिनांक : 25-02-2011 से सृजित

Arising out of Order-in-Original: 19/D/2010-11/CE, Date: 25-02-2011 Issued by: Deputy Commissioner, CGST, Div: Kalol, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. Scutz Carbon electrode Pvt. Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

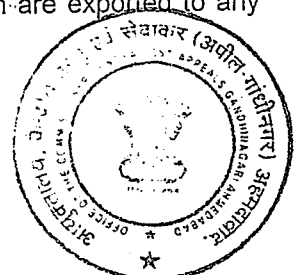
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ए0बी/35-इ के अंतर्गत:-

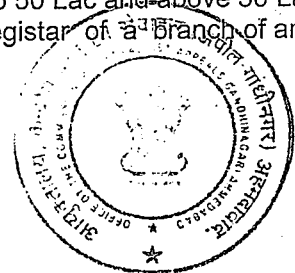
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a Branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 है

- (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 अर्जों एवं अपील को लागू नहीं होंगे।

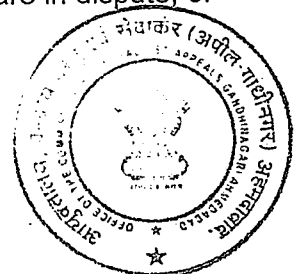
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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.

(6)(i) 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।

(6)(i) 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."

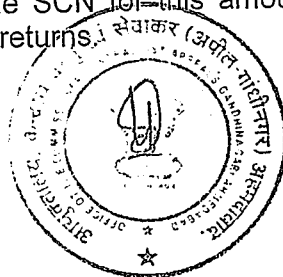


### ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Schutz Carbon Electrodes Pvt. Ltd., 43, GIDC Estate, Kalol(N.G.) 382725 (in short 'appellant') against Order-in-Original No.19/D/2010-11/CE dtd. 25.02.2011 (in short 'impugned order') passed by the then Deputy Commissioner, Central Excise, Division-Kalol, Ahmedabad-III (in short 'adjudicating authority').

2. Briefly stated that during the course of audit, it was observed that that the appellant had availed Cenvat credit on **input services viz. insurance service of the vehicle, vehicle maintenance & repair, insurance service of directors and employees, travel agent, CDM Consultancy service for wind power project, O&M Charges of GETCO**; availed the Cenvat credit for those bills which were in the name of marketing office situated at Calcutta on the **services viz. telephone, servicing of vehicles, advertisement and courier service**; availed the Cenvat credit on **Outward Freight**. As per Rule 2(l)(ii) of the Cenvat Credit Rules, 2004, said services on which service tax was paid and availed by the appellant had no relation with manufacturing activity. Hence, SCN dtd.18.08.2010 was issued to the appellant for wrong availment of Cenvat credit of service tax paid on said services during the period from **April-2008 to October-2009** as these services had no nexus with the manufacture and clearance of final product from the place of removal being not 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004. This SCN was adjudicated by the adjudicating authority vide impugned order disallowing said Cenvat credit and confirmed the demand of Rs.92,433/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944; ordered for payment of interest under Section 11AB ibid and also imposed penalty of Rs.92,433/- under Rule 15 ibid read with Section 11AC ibid.
3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, stated that:

- All the said services are input services because it is used in or in relation to manufacture of goods and/or promotion of sale and their cost is included in the sale price of final products manufactured by them.
- The SCN issued for the period July-2007 to March-2009 is beyond the limitation period as these service tax credit was shown in ER-1 returns and previous audit party had audited their records and no objection was raised.
- As regards denial of service tax of Rs.13,648/- paid on outward freight, their sale is on FOR basis, they have paid c.ex.duty on freight and rely on Board's circular no.97 dtd.23.07.2008. The SCN for this amount is also time-barred as they had shown it in ER-1 returns.



- As regards Rs.30,022/- (being CDM Consultancy service for Wind Power project and O&M Charges for GETCO) reversed by them as advised by the Audit Party in fact not payable by them being input service used in or in relation to manufacture of final product and also for promotion of sale.
- Interest and penalty is not recoverable as there is no short levy or short payment or non-payment of excise duty with intent to evade payment of duty.

4. Personal hearing in the matter was held on 24.08.2018. Shri Bipinbhai Patel, Director, appeared on behalf of the appellant and reiterated the grounds of appeal and submitted that for earlier period there is no SCN. For later period, SCN has been dropped (for outward freight) and filed additional written submission.

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the appellant is entitled to Cenvat credit of service tax paid on services mentioned in para 2 supra including Outward Freight services availed during the relevant period or otherwise? I also find that there are three categories of input services on which the appellant has availed Cenvat credit of service tax viz.

- (a) Insurance service of the vehicle, vehicle maintenance & repair, insurance service of directors and employees, travel agent, CDM Consultancy service for wind power project, O&M Charges of GETCO.
- (b) Telephone, servicing of vehicles, advertisement and courier service incurred by marketing office situated at place other than 'place of removal', and
- (c) Outward Freight.

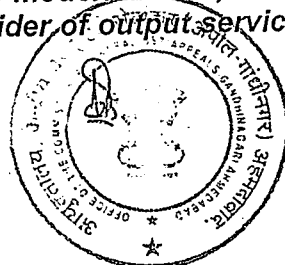
I find that period involved for all above services is from April-2008 to October-2009. Accordingly, I proceed to decide the case on merits.

6. As regards 5(a) supra, I find that during relevant time, the definition of 'input service' defined in Rule 2(l) of the CCR, 2004 stood as under:

***"input service" means any service, -***

- (i) ***used by a provider of [output service] for providing an output service; or***
- (ii) ***used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,***

***and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an***

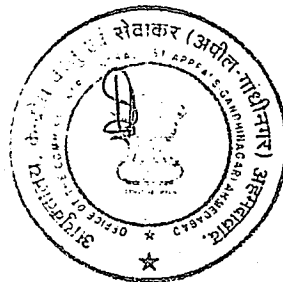


***office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal; "***

So, it is ample clear that in the main part of the definition, while defining input service for a manufacturer, it is said that 'input service' means any service used by a manufacturer whether directly or indirectly, in or in relation to the manufacture of final products and while defining the same for a service provider, it is said that 'input service' means any service used by a provider of taxable service for providing an output service. Thus while the words 'directly or indirectly' have been used in context of a manufacturer, the same have not been used in context of a service provider. This may be in the light of the fact that the goods being tangible, it is possible to establish direct or indirect nexus of input services to the output goods, but the services being intangible, establishing nexus of input services with output services may not be a feasible option all the time and also may not be warranted for determining good input credit. Thus, the main part of the definition provides that input service is any service used for the provision of output service which can practically lead to an interpretation where all legitimate input services procured for business can get covered under the definition. I find that in series of judgments of the higher appellate forum it is categorically held that the credit of service tax paid on activities although not directly or indirectly related to manufacture of goods, is admissible as input service credit treating the same as 'activities relating to business'. In this regard, I find that in case of :-

(a) Birla Corporation Ltd. Vs. CCE, Bhopal reported in 2016 (46) S.T.R. 430 (Tri. - Del.) the Hon'ble CESTAT, New Delhi has held as under:

***"Cenvat credit of Service Tax - Input service - Eligibility - Credit of Service Tax in respect of 'insurance auxiliary service' (motor vehicle insurance) and 'authorised service station service' (motor vehicle repair) denied - Expenditure incurred in legitimate use of vehicle, i.e., obtaining statutory insurance and periodical service of vehicle would be input and Service Tax paid could be lawfully treated as input service on which credit could be availed - Impugned order unsustainable and quashed - Rule 3 of Cenvat Credit Rules, 2004. [paras 3, 4, 6]."***



- (b) Vinayak Steels Ltd. Vs, CCE&ST, Hyderabad-II reported in 2017 (4) G.S.T.L. 188 (Tri. - Hyd.) the Hon'ble CESTAT, Hyderabad has held as under:

**"Cenvat credit of Service Tax - Input service - Vehicle maintenance (cars), vehicle insurance, vehicle insurance & servicing used by manufacturer of TMT Bars on which Excise duty paid - Vehicles used for transportation of staff from place of residence to factory and vice versa and also used by Directors and Managing Directors to travel from residence to factory premises - All vehicles owned and registered in name of assessee - Service Tax paid on all these services eligible to be availed as Cenvat credit prior to 1-4-2011".**

- (c) Manikgrah Cement Vs. CCE & C, Nagpur, reported in 2012 (284) E.L.T. 607 (Tri. - Mumbai) the Hon'ble CESTAT, Mumbai has held as under:

**"Insurance premium on vehicles - Input service - Appellant used the vehicles owned by them either for transportation of their employees or for transportation of goods which is an integral part of business of appellant firm - Service tax paid on insurance premium of such vehicles is an 'input service' as defined under Rule 2(l) of Cenvat Credit Rules, 2004. [para 7]."**

- (d) Robert Bosch Engg. & Business Solutions Ltd. Vs. CCE, C&ST, Bangalore-LTU reported in 2017 (51) S.T.R. 329 (Tri. - Bang.) the Hon'ble CESTAT, Bangalore has held as under:

**"Cenvat credit - Input service - Air Travel Agent's service - Air Transport services availed by employees to travel various places to perform job of company eligible to input service credit - Rule 2(l) of Cenvat Credit Rules, 2004. [para 5.6] "**

- (e) KLA Tencor Software India Pvt. Ltd. Vs. CST, Chennai-III reported in 2016 (45) S.T.R. 242 (Tri. - Chennai) the Hon'ble CESTAT, Chennai has held as under:

**"Refund - Cenvat credit of Service Tax - Input service - Maintenance and Repair service, Consulting service, Courier service, CHA service, Professional service, Insurance service, Visa transaction fees, Rent-a-cab service, Freight charges - Services being activities relating to business, covered within the inclusive definition of 'input service' prior to 1-4-2011 - Rules 2(l) and 5 of Cenvat Credit Rules, 2004. [2016 (40) S.T.R. 168 (Tribunal) relied on]. [paras 8, 9] "**

- (f) Comm. Value Systems (I) (P) Ltd. Vs. CCE&ST, Hyderabad-IV reported in 2016 (44) S.T.R. 664 (Tri. - Hyd.) the Hon'ble CESTAT, Hyderabad has held as under:

**"Refund of Cenvat credit - Services such as Security service, Courier service, Telecommunication service, Management, Maintenance or Repair services, Manpower Recruitment and Supply Agency services, Air Travel agent's services, Business Support services, Customs House Agents services and Logistics services, Commercial Coaching or Training services and Chartered Accountant's services whether used for providing output services -**



**Period involved is prior to 1-4-2011 when the definition of input services had a wide ambit as it included the words 'activities related to businesses' - Services in question mentioned in the inclusive portion of definition - Refund of Cenvat credit available under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 5/2006-C.E. (N.T.). [para 3] "**

- (g) Sai Life Sciences Ltd. Vs. CCE, C&ST, Hyderabad-IV reported in 2017 (51) S.T.R. 55 (Tri. - Hyd.) the Hon'ble CESTAT, Hyderabad has held as under:

**"Cenvat credit - Input service - Management Consultancy service - These services utilized for obtaining advice, consultancy or assistance from experts on issues which affect business of company - Credit admissible - Rule 2(l) of Cenvat Credit Rules, 2004. [para 4] "**

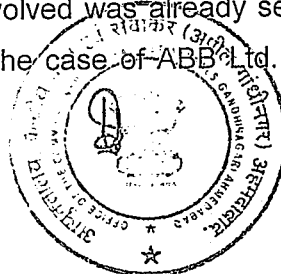
In view of the above, the denial of such credit by the adjudicating authority is illegal and without any justification, I do not agree with the views of the adjudicating authority and demand confirmed alongwith interest and penalty imposed vide impugned order is set-aside to this extent.

6(a) As regards 5(b) supra, I find that the definition of 'input service' stated supra do not requires that credit can be taken only if the service is received in factory premises of the manufacturer. I find that receipt of services by the appellant is not challenged in the SCN. So, when the genuineness of transaction and duty paying documents not being in doubt, Cenvat credit is admissible. Cenvat being a beneficial piece of legislation enacted for removing cascading effect, denial of credit sighting procedural irregularities is unsustainable as held by the Hon'ble CESTAT, Chennai in case of L.G. Balakrishnan & Bros. Ltd. Vs. CCE, Coimbatore reported in 2010(20) STR-48 (Tri. Chennai). Similarly, in case of Adbur Pvt. Ltd. Vs. CST, Delhi [2017 (5) G.S.T.L. 334 (Tri. - Del.) the Hon'ble CESTAT, Delhi has held as under:

**"Cenvat credit of Service Tax - Documents for availing credit - Credit availed on invoices issued in the name of own branch offices not registered with Service Tax Department - Eligibility of input service for availability of credit to appellant not disputed - Credit not to be denied merely because of a different address on documents - Rule 9 of Cenvat Credit Rules, 2004. [para 9]"**

Hence, I find that said Cenvat credit cannot be denied in terms of Rule 9 of the CCR, 2004. Accordingly, the demand confirmed alongwith interest and penalty imposed vide impugned order is set-aside to this extent.

6(b). As regards 5(c) supra, I find that the issue involved was already settled by the Hon'ble CESTAT, Chennai Larger Bench in the case of ABB Ltd. Vs.

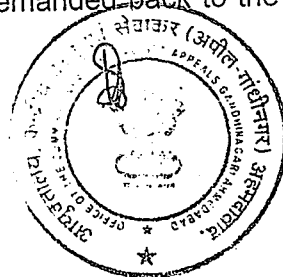




CCE & ST, Bangalore [2009(15) STR-23(Tri.LB)]. However, in the appeal before the High Court of Karnataka by the deptt against the said judgment of the CESTAT, the Hon'ble High Court of Karnataka upheld the decision of the Larger Bench of the Tribunal. As against this order of the High Court of Karnataka, the department filed Civil Application No.11402/2016 against ABB Ltd. before the Hon'ble Supreme Court of India. This civil application was tagged with Civil Appeal No.11710/2016 filed by CCE, Belgaum Vs. M/s. Vasavadatta Cements Ltd. The Hon'ble Supreme Court of India vide judgment dated 18.01.2018 [ reported in 2018(11) GSTL-3 (SC)] on the subject matter has categorically discussed the words and phrase "from the place of removal" as it stood in the definition of 'input service' in Rule 2(l) ibid prior to amendment w.e.f. 01.04.2008 and held as under:

***"Cenvat credit - Input services - GTA services - Outward Transportation of manufactured product - Place of removal - Definition of input services as it existed prior to amendment in 2008, included term "from place of removal" - Certainly it has to be upto a certain point - Thus GTA services used for outward transportation of goods from place of removal, i.e., factory gate up to first point of delivery viz. a Depot or a Customer's premises covered under input services - However, post 1-4-2008 amendment, said term having been substituted by term "upto the place of removal", credit beyond such place not admissible - There being no error in concurrent orders of CESTAT Larger Bench and High Court, impugned order sustainable - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 5, 6, 7, 8]"***

I find that in the instant case, period involved is from April-2008 to October-2009. The Apex Court has clearly held that post 01.04.2008 amendment, the said term having been substituted by term " upto the place of removal", credit beyond such place not admissible. It is also held clearly that there being no error in concurrent order of CESTAT Larger Bench and High Court. However, I find that in the additional written submission dtd.21.08.2018 filed by the appellant it is submitted that they rely on Board's Circular No.999/6/2015-CX dated 28.02.2015. In this regard, I find that said circular deals with determining 'place of removal' for export of goods. I also find that the appellant has no where submitted that they have cleared the goods for export or FOR destination basis. I also find that the Board had already issued Circular No.97/8/2007-ST dated 23.08.2007 on the subject matter. Since the period involved is from April-2008 to October-2009, it would be appropriate to examine the issue in light of the Board's Circular dtd. 23.08.2007 by the adjudicating authority. Hence, to this extent, the case is remanded back to the adjudicating



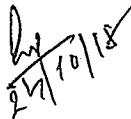
authority to decide afresh after following the principle of natural justice within 30 days of communication of this order.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)  
केन्द्रीय कर आयुक्त (अपील्स)

Attested:

  
(B.A. Patel)  
Supdt.(Appeals)  
Central GST, Ahmedabad.

BY SPEED POST TO:

M/s. Schutz Carbon Electrodes Pvt. Ltd.,  
43, GIDC Estate,  
Kalol(N.G.) 382725.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Gandhinagar (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division Kalol.
- (4) The Asstt. Commr(System), CGST , Gandhinagar. (for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

