
	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
वस्तु एवं सेवा	कर भवना	GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015	
सत्यमेव जयते			
सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		टेलिफैक्स : 079-26305136	
079-26305065			

क फाइल संख्या : File No : **V2/143/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-137-18-19**

दिनांक Date : **17-12-2018** जारी करने की तारीख Date of Issue:

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग **अपर** आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **07/D/GNR/NK/2018-19**
दिनांक : **29-08-2018** से सृजित

Arising out of Order-in-Original: **07/D/GNR/NK/2018-19**, Date: **29-08-2018** Issued by:
Assistant Commissioner, CGST, Div: Gandhinagar, Gandhinagar Commissionerate,
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Effective Teleservices 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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

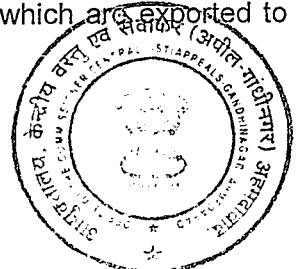
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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- ण0बी/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 दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

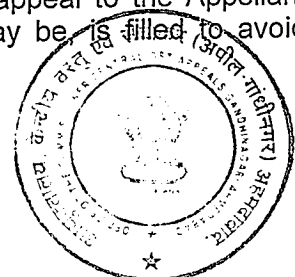
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों 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 रूपर 5 लाख या उससे कम है वहां रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहां रूपर 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 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 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2018(2018 की संख्या 29) दिनांक: 06.08.2018 जो की वित्तीय अधिनियम, 1998 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 अर्ज़ी 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:

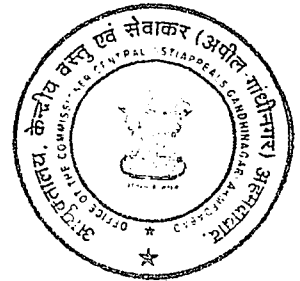
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This appeal has been filed by M/s. Effective Teleservices, 101 to 103, 1st floor, Infotower -4, Infocity, Nr. Indroda Circle, Gandhinagar- 382 009 [*appellant-for sake of brevity*] against OIO No. 7/D/GNR/NK/2018-19 dated 29.08.2018 passed by Assistant Commissioner, CGST, Gandhinagar Division, Gandhinagar Commissionerate.

2. Briefly, the facts of the case are that during the course of audit, it was observed that the appellant had availed CENVAT credit of Rs. 24,36,666/- on rent a cab service during the period from May 2012 to March 2016. A show cause notice was therefore issued to the appellant *inter alia* alleging that they had wrongly availed the CENVAT credit because they have availed CENVAT credit on 'rent a cab' services received from various clients, which is not an input service in terms of Rule 2(l) of CENVAT Credit Rules, 2004. The notice also proposed demanding interest along with imposition of penalty on the appellant.

3. This notice was adjudicated vide the impugned OIO dated 29.8.2018, wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty on the appellant under Rule 15(3) of the CENVAT Credit Rules, 2004 read with Section 78(1) of the Finance Act, 1994.

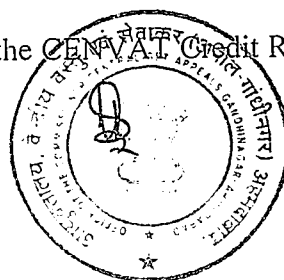
4. The appellant feeling aggrieved has filed this appeal raising the following averments:

- that they are engaged in service of software development, call centre and support service in relation to the information technology service on 24 x 7; that while providing service in relation to services of rent a cab has been availed by them for the pickup and drop of the employees;
- that the aforementioned services were used for the part and parcel of their output service;
- that the appellant would like to rely on circular No. 943/4/2011-TRU dtd 29.4.2011 & 354/73/2011-TRU wherein it is clear that the input service were disallowed because the service were availed and utilized primarily for personal use of consumption of employees; that the CENVAT availed by the appellant has not been for the personal use of the employee and is eligible for CENVAT credit;
- that they would like to rely on the case of Hindustan Coca Cola [2016(38) STR 129], Stanzen Toyotetsu India [2011(23) STR 444], Bell Ceramics Ltd [2012(25)STR 428] and Paramount Communication Ltd [2013(287) ELT 70];
- that the entire demand is time barred;
- that no penalty can be imposed in the present case.

5. Personal hearing in the case was held on 12.12.2018 wherein Shri Vipul Khandhar, CA appeared on behalf of the appellant and reiterated the grounds of appeal. Shri Khandhar also stated that the decision of Coco Cola covered the issue.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments raised during the course of personal hearing. The question to be decided is whether the appellant is eligible for the CENVAT credit on rent a cab service which was availed during the period from May 2012 to March 2016.

7. Now, input service is defined under Rule 2(l) of the CENVAT Credit Rules, 2004, which states as follows:



[(l) "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 modernisation, 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, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes];-

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or*
- (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]*

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*
- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]*

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

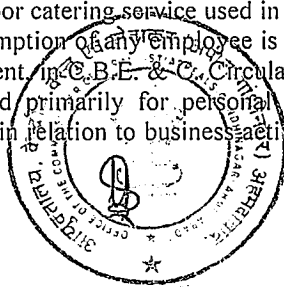
[Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]

Now B was inserted in the definition vide notification No. 18/2012-C.E. (NT) dated 17-3-2012 and subsequently amended vide notification No. 28/2012-C.E. (N.T), dated 20-6-2012, with effect from 1.7.2012. As per the definition, *supra*, input service means any service used by the provider of output service for providing an output service. The definition has inclusions and exclusions. Talking about the exclusion, the input service as is evident, excludes services provided by way of renting of motor vehicle in so far as they relate to motor vehicle which is not a capital goods. Clearly, the CENVAT credit was therefore availed by the appellant in violation of the definition of input service.

8. The appellant during the course of personal hearing and in his grounds has relied upon certain case laws to substantiate his claim that CENVAT credit was correctly availed. The case laws cited are

[a] Hindustan Coca Cola [2016(38) STR 129]. The head notes of the said case law is reproduced for ease of reference.

Cenvat credit of Service Tax - Input service - Outdoor catering service used in relation to business activities - Services primarily used for personal use or consumption of any employee is excluded under clause (C) of Rule 2(l) of Cenvat Credit Rules, 2004 - Government of India, C.B.E. & C. Circular No. 943/4/2011-CX., dated 29-4-2011, specifically used words such as "used primarily for personal use or consumption of any employee" - Cost of outdoor catering service used in relation to business activities for part of cost of final



product, fact not rebutted by Revenue - Cost of such services admittedly borne by appellant and not by employee - Cenvat credit not deniable. [paras 4.1, 4.2]

The appellant's reliance on the case law is not tenable because the credit availed is in violation of B of the definition supra and not BA.

[b]Stanzen Toyotetsu India [2011(23) STR 444]. The period involved is not mentioned which is of paramount importance because the definition of input service underwent a sea change post 2012 as far as the service on which credit was availed is concerned. However, it is observed that the judgement is dated 8.4.2011, which clearly shows that dispute pertained to a period prior to 2012.

[bc]Bell Ceramics Ltd [2012(25)STR 428]. The period involved is not mentioned. However, it is observed that the judgement is dated 15.9.2011, which clearly shows that dispute pertained to a period prior to 2012.

[d]Paramount Communication Ltd [2013(287) ELT 70]. The period involved is not mentioned. However, it is observed that the judgement is dated 5.6.2012, which clearly shows that dispute pertained to a period prior to 2012.

9. In view of the foregoing, I find that the adjudicating authority was correct in holding that the CENVAT credit was wrongly availed. The appellant's other contention regarding penalty and extended period cannot be accepted since had the audit not pointed it out, it would never have seen the light of day. In view of the foregoing, I uphold the invocation of extended period, the confirmation of the demand along with interest and imposition of penalty on the appellant. The appeal filed by the appellant is rejected.

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

उमाशंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: .12.2018

Attested

Vinod
(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

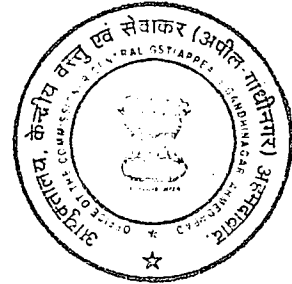
By RPAD.

To,

M/s. Effective Teleservices,
101 to 103, 1st floor, Infotower -4,
Infocity, Nr. Indroda Circle,
Gandhinagar- 382 009

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .



2. The Commissioner, Central Tax, Gandhinagar Commissionerate.
3. The Assistant Commissioner, Central Tax Division- Gandhinagar, Gandhinagar Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Gandhinagar Commissionerate.
5. Guard File.
6. P.A.

