केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा कर भवन, सातवीं मंजिल,पॉलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

GST Building ,7th Floor,, Near Polytechnic, Ambavadi, Ahmedabad-380015

सत्यमेव जयते

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क फाइल संख्या :File No : **V2/12/GNR/2019-20** 13125 TO 13130

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-46-19-20**

दिनाँक Date :**18/11/2019** जारी करने की तारीख Date of Issue: 28,11,2019

आयुक्त (अपील) द्वारा पारित

Passed by Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश **: AHM-CEX-003-ADC-JN-13 to 17-18-19** दिनाँक : **31/12/2018** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-JN-13 to 17-18-19,** Date: **31/12/2018** Issued by: Additional Commissioner,CGST, Div:RRA, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Hitachi Home and Life Solutions 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 पूवोक्त 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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 इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 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 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 रू.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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।

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/Goods and Services Tax Act, 2017/Integrated Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

ORDER-IN-APPEAL

M/s. Hitachi Home & Life Solution (I) Ltd., Karannagar, Tal-Kadi, Mehsana (henceforh, "*appellant*") has filed the present appeal against the Order-In-Original No.AHM-CEX-003-ADC-JN-013 to 017-18-19 dated 31.12.2018 (henceforth,"*impugned order*") issued by the Additional Commissioner, Central GST & CX, Gandhinagar(henceforth, "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant, a manufacturer of Room/Split/Package type Air Conditioners falling under chapter head 8415 of the schedule to Central Excise Tariff Act,1985 and parts thereof having Central Excise Registration for the same as well as Service Tax Registration. On scrutiny of record, it was observed that Cenvat credit of input service availed by the appellant on 'maintenance & repair' service provided by their Authorized Dealer/Franchisees to the customers during warranty period of the product were not admissible to them. The show cause notices issued for recovery of such Cenvat credit availed during the period from April 2013 to March 2016 were decided under impugned order disallowing the same.

3. Aggrieved, the appellant preferred this appeal contesting *inter alia,* that the department's appeal in the appellants own case on the issue was dismissed under order dated 07.09.2017 by the tribunal; that tax appeal filed by the department against said decision of Tribunal was also dismissed on monetary limit ground by Hon'ble High Court of Gujarat and hence impugned order is not maintainable; that question of availing credit arose because payment was made by service provider; that the fact that actual repairing is done to the goods of customer, it does not mean that service is provided to them; that tribunal in case of CCE,Mumbai v/s GTC Ind Ltd reported in 2008(12)STR 468(Tri-LB) held that in principle, credit of tax on those taxable services would be allowed that go to form a part of the assessable value of which excise duty is paid; that cost of warranty charges is included in total cost; that when the cost includes the service, the service becomes input service and hence credit is admissible; that the definition of 'input service' not only covers services which falls in substantial part, but covers services which are covered under inclusive part of the definition; that the definition of 'input service' includes services used in relation to business of manufacturing the final product; that by applying the ratio of Apex Court in case of Maruti Suzuki

Ltd., it cannot be said that the definition of 'input service' is restricted to the services used in relation o manufacture of final products, because it is wider than definition of 'input'. The service in question is covered under the inclusive part of the definition; that the substantive part of the definition of 'input service' covers services used directly or indirectly in relation to manufacture of the final product, whereas the inclusive part covers various services used in relation to the business of manufacturing the final products; that the definition of 'input service' is not restricted to services used in or in relation to manufacture of final product but extends to all services used in relation to the business of manufacturing the final product; that the services are covered mainly by the clause 'activities relating to business'.

4. That services like advertisement, sales promotion, market research .....etc have no relation with manufacturing activity even then credit is specifically permitted. therefore, definition itself envisages host of activities not having nexus directly or indirectly with manufacturing activity and despite this credit is permissible and hence interpretation of the department not allowing credit is incorrect; that impugned services is very much essential for business; that the definition does not authorize the department to sit in judgment over the business decision of the organization and cannot apply yard stick of whether a particular activity/expenditure is essential or not and therefore, such expenses are covered as activities relating to business; that when component of cost is included in value for payment of duty, tax paid should be available as credit; they relied on case law Collector of C.Ex v/s Rajasthan State Chemical Works 1991 (55) ELT 444(SC), Union Carbide India Ltd v/s CCE, Calcutta 1996 86 ELT 613 for interpretation of the word "in relation to manufacture"; that cenvat credit is available even where input service are received in head office/regional office or any other place of business of manufacture; that expenditure commercially required with a view to benefit the trade, will be allowed as deduction under section 37 of IT Act,1961; that services received and commercially required to benefit of business of manufacture is covered under 'activities relating to business. Etc.,

5. In the Personal hearing held on 10.10.2019 Shri SJ Vyas, consultant reiterated the submissions of appeal memo and requested to allow the appeal.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, oral and written submissions made at the time of personal hearing. The appeal documents were also sent to jurisdictional Commissionerate for comments. However, no comments have been received so far. I further observe that The issue requiring determination is whether cenvat credit of input service on 'maintenance & repair' service provided by authorized dealer/franchisees to the customers during warranty period of the product was admissible to the appellant or not. I observe that cenvat credit availed were denied to the appellant on the grounds that actual service were provided by the authorized dealer/franchisees to the customers and not to the appellant, said service were not used by appellant for providing output service and authorized dealer/franchisees paid service tax because they were liable_to pay the same. In order to avail cenvat credit of input service, it is essential for any service to fall under the criteria of 'input service' as defined under Rule 2(l) of Cenvat Credit Rules,2004 which is reproduced below:

> [(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.]

7. So far as admissibility of credit on input service by manufacture is concerns, plain reading of above definition stipulates that it must be 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.

8. In addition to that it also includes services used in relation to modernisation, renovation or repairs of a factory or office relating to such factory and services used in relation to 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.

9. I observe that the said list of the services provided under the definition is not exhaustive as well as the fact that 'maintenance & repair' is not figuring therein, the matter of admissibility of cenvat credit on the same to the appellant in the capacity of manufacturer needs to be examined in light of its use only. I also observe that cenvat credit on the service in question was held inadmissible to the appellant by the adjudicating authority on the **three grounds** i.e.(i) actual service were provided by the authorized dealer/franchisees to the customers and not to the appellant (ii) said service were not used by appellant for providing output service and (iii) authorized dealer/franchisees paid service tax because they were liable to pay the same. In view of this backdrop, it needs to be determined whether the adjudicating authority was right in denying the credit on said three count and the grounds advanced by the appellant are acceptable or not.

10.1 I observe that the present appeal can be justified by addressing the arguments made by the appellant against each of the above count

individually. So far as the ground(i) i.e actual service were provided by the authorized dealer/franchisees to the customers is concerned and (ii) service were not used by appellant for providing output service above are concerned, I observe that the appellant has not disputed the fact that said service were not provided by dealer/franchisees to their customers. The flow of the service 'maintenance & repair' took place from authorized dealer/franchisees to the customers of the appellant only. In other word, it remained an undisputed fact that the manufacturer appellant has not received service in question **directly**. The appellant has also not claimed that said service was received by them directly. Therefore, it further needs to be ascertain whether said service was received by the appellant **indirectly** and if so does it qualify to be considered as 'input service' in term of Rule 2(l) of Cenvat Credit Rules,2004. In order to arrive at the conclusion that said service was used indirectly by the appellant in or in relation to the manufacture of final products and clearance of final products upto the place of removal, the nexus of the said service and the product manufactured/cleared needs to be established. Looking to the nature(and name) of the service in question, indisputably it turn out to be an after sale service. Therefore, I observe that the same is not used **indirectly** by the appellant in or in relation to the manufacture of final products and clearance of final products upto the place of removal. This observation makes it clear that the service is not covered in part (ii) of the definition which considers as 'input service' to those services which are used by the 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.

10.2 Further, the 'maintenance & repair' service is also not figuring in the list of other services included in the list at the end of part (ii) of the definition. Said phrase further reads as under;

> " 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;"

10.3 Since the above phrase starts with - **and includes the services** use in relation to..... , I observe that said list of services are exhaustive and it need not require reading with the main phrase i.e. *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 meaning thereby that claim of any service as 'input service' under this phrase needs to be considered only if name of said service is mentioned therein or it is used in relation to services mentioned in the said list which is exhaustive/complete. I observe that the 'maintenance & repair' service is neither mentioned in said list nor used in relation to services mentioned in said list, the same do not qualify to be considered as 'input service' in term of Rule 2(l) of Cenvat Credit Rules,2004.

10.4 In view of above observations, the further argument of the appellant that the definition of 'input service' not only covers services which falls in substantial part, but covers services which are covered under inclusive part of the definition; that the substantive part of the definition of 'input service' covers services used directly or indirectly in relation to manufacture of the final product, whereas the inclusive part covers various services used in relation to the business of manufacturing the final products etc do not deserve merit and cannot be accepted. It is also pleaded by the appellant that when the cost includes the service, the service becomes input service and hence credit is admissible. However, I observe that for considering any service as 'input service' eligible for availing cenvat credit, the first and primary qualification is that it must fall under the definition of 'input service' as provided under 2(l) of Cenvat Credit Rules,2004 which the service in question has not satisfied. Therefore, consideration of said service with reference to other parameters related to inclusion of its cost etc becomes secondary and cannot be considered as the service didn't qualify in primary parameter of definition. Further, the appellant has not made arguments with reference to the third/last count related to the observation of the adjudicating authority that authorized dealer/franchisees paid service tax because they were liable to pay the same and hence the finding of the adjudicating authority in this regard also stands affirm.

11. The appellant further contested that the definition does not authorize the department to sit in judgment over the business decision of the organization and that the department cannot apply the yardstick of whether a particular activity/expenditure is essential or not. Said argument of the appellant is not in consonance with the provisions meant for the manufacturer/service provider willing to avail the facility of cenvat credit. Said argument is also in violation to the set principle of adjudication by which quasi judicial authorities are empowered to take decision in such

cases. It is one of the argument of the appellant that cenvat credit is available even where the input service are received in Head Office or any Regional Office or any other place of business of the manufacturer. In view of the observation that the service in question could not qualify as 'input service', the argument of the appellant is not acceptable. Further, the argument of the appellant that the expenditure commercially required with a view to benefit the trade, will be allowed as deduction under section 37 of IT Act,1961 are irrelevant in as much availability of cenvat credit on input service in question is governed by the provisions of Cenvat Credit Rules,2004. A further argument that services received and commercially required to benefit of business of manufacture is covered under 'activities relating to business' are also not acceptable as the service in question failed to be qualify as 'input service'. The case laws cited by the appellant in support of their claim are on different footage, cannot be made applicable to the present case. It is also pleaded that the department's appeal in the appellants own case on the issue was dismissed under order dated 07.09.2017 by the tribunal and further pleaded that the tax appeal filed by the department against said decision of Tribunal was also dismissed on monetary limit ground by Hon'ble High Court of Gujarat and hence impugned order is not maintainable. In this regard I observe that since Hon'ble High Court has dismissed the tax appeal on monetary limit ground and not on merit, ratio of the same cannot be applied in a case of impugned order which is found maintainable on merit.

12. In view of the observations above, the impugned order does not require any interference. The grounds advanced by the appellant are not acceptable. The appeal filed by the appellant is rejected.

13. 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.

(Gopi Nath) 18/11/19
Commissioner,CGST(Appeals)
Date:

Attested

(D.A.Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s. Hitachi Home & Life Solution (I) Ltd.,

Hitachi Complex,Karannagar, Tal-Kadi,Dist-Mehsana.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Gandhinagar.
3. The Additional Commissioner, Central Tax (System),Gandhinagar.
4. The Asstt./Deputy Commissioner, CGST Division-IV,Gandhinagar.
5. Guard File.
6. P.A. File