आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST
DIN:- 20230364SW000000E1A7

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/377/2022-APPEAL /9760-64
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-137/2022-23 and 02.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	06.03.2023
(ङ)	Arising out of Order-In-Original No. AC/S.R./06/CE/Kadi/2022-23 dated 31.05.2022 passed by the Assistant Commissioner, CGST, Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Johnson Controls-Hitachi Air Conditioning India Ltd. [Formerly M/s Hitachi Home & Life Solutions (India) Ltd.], Hitachi Complex, Near Tulsi Petrol Pump, Karannagar, Kadi, Mehsana – 382727

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 : -

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 क़िसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

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।

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।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 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 संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

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.

(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।

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."

अपीलिय आदेश / ORDER-IN-APPEAL

M/s Johnson Controls-Hitachi Air Conditioning India Limited, [Formerly known as M/s Hitachi Home & Life Solutions (India)Ltd.], Hitachi Complex, Near Tulsi Petrol Pump, Karannagar, Kadi, District Mehsana-382727 (hereinafter referred to as the 'appellant') have filed the present appeal against Order-in-Original No. AC/S.R./06/CE/ KADI/2022-23, dated 30.05.2022 (hereinafter referred to as 'the impugned order'), issued by the Assistant Commissioner, CGST & C.Ex., Kadi-Division, Gandhinagar (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the facts of the case are that the Appellants were registered with the Central Excise Department [Registration No.AABCA2392KXM003] for manufacturing of Air conditioners & Trading of Refrigerators falling under Chapter 84 of CETA, 1985 as well as with the Service Tax Department [Registration No.AABCA2392KST001]. They were paying applicable duties of Central Excise and Service Tax and also availing CENVAT credit of inputs, input services and capital goods.

2.1 During the course of audit on the records of the appellant conducted by CERA Audit Officers, Ahmedabad, it was observed that the Appellant had received the ***'sponsorship services'*** and paid Service Tax amount of Rs.13,80,673/- under Reverse Charge Mechanism [RCM] on the assessable value of Rs.98,61,964/. It was also observed that the Service Tax so paid has been availed as CENVAT credit and utilized for payment of Central Excise duty. It appeared that the said CENVAT credit was not used in relation to the manufacture of final products and clearance of final products upto the place of removal and, hence, was incorrectly availed in view of the provisions under Rule 2(1) of the Cenvat Credit Rules, 2004.

3. Consequently, the appellant was issued a Show Cause Notice vide F.No. GEXCOM/ADJN/CE/53/2020-CGST-DIV-KADI, dated 28.09.2020, wherein it was proposed to:

- Disallow the CENVAT credit amounting to Rs.18,46,984/- availed and utilized during the period from Dec-2014 to July-2017, in respect of Sponsorship services, under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act, 1944.

- Demand and recover Interest Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944.
- Impose penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 readwith Section 11AC of the Central Excise Act, 1944;

4. The said Show Cause Notice was adjudicated vide the impugned order wherein:

- Cenvat credit amount of Rs.18,46,984/- was disallowed under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act, 1944.
- Interest was imposed to be recovered under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944.
- Penalty of Rs.18,46,984/- was imposed under Rule 15(2) of the Cenvat Credit Rules, 2004 readwith Section 11AC of the Central Excise Act, 1944;

5. Being aggrieved, the appellant filed the present appeal wherein they, *inter alia,* contended that:-

i) Sponsorship service (an alternate form of advertisement) is an input service as per CCR, 2004. The appellant submitted that the definition of input services is inclusive definition with specific exclusions. This definition of the term 'Input service' has three parts viz., main part, inclusive part and exclusive part.

ii) The appellant submitted that if a particular service falls under the 'includes' part and not specifically under the 'means' part, it will still qualify as an input service. They relied upon the judgment delivered by Hon'ble Supreme Court in the case of ***Ramala Sahkari Chini Mills Ltd, - 2010 (260) ELT.321 (SC),*** whereby it was held by the larger bench of Apex Court that the word 'include' in the statutory definition of 'input' is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction. Hence, the appellant contended that, the definition of the term 'input service' is very wide which covers within its ambit **all services received by the manufacturer unless it is specifically excluded.**

iii) Appellant submitted that, in the impugned order, the adjudicating authority has disallowed CENVAT credit on sponsorship service on a sole ground that

the sponsorship services are neither used directly *or* indirectly, in *or* in relation to the manufacture of final products. The appellant contended that the adjudicating authority has not given cognizance to the fact that in order to determine CENVAT eligibility, the inclusive part of the definition should also be taken into consideration, which is the precise point pronounced by the Hon'ble Bombay High Court in the case of ***Ultratech Cement Ltd-2010 (260) ELT 369 (Bom.)*** and hence, the said ratio is squarely applicable in the Appellants' case.

iv) The appellant argued that the primary reason for disallowance seems to be absence of correlation of sponsorship service with that of manufacture of final products. This specific issue has also been settled in the case of ***M/s Global E-Business Operations Pvt. Ltd. - 2018 VIL 40 CESTAT BLR ST.*** contended that Hon'ble CESTAT Bangalore while allowing CENVAT credit to the assessee, held that even after the amendment in the definition of input service, there is no requirement of correlation between the input and output services (Para 6 of the order). Accordingly, in absence of requirement to establish correlation/ nexus between sponsorship services with that of manufacture of final products, the CENVAT availed on sponsorship services should be allowed, as the same is specifically getting covered by the inclusion part of the definition of the input service.

v) The appellant submitted that, in view of the foregoing submissions, it can be inferred that that the courts while deciding ambit of CENVAT credit on input service, have already decided on the following points, for a service to qualify as input service:

a) The word *'include'* in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction,

b) There is no need to establish nexus between input activity and output activity,

c) The definition of 'input service' not only covers services, which fall in the substantial part, but also covers services, which are covered under the inclusive part of the definition

Since, the sponsorship service is covered by the inclusive part of the input service definition; the appellant contended that, CENVAT credit on the same is admissible.

vi) The Appellant further submitted that the service of advertisement qualifies as the input services as the same is explicitly mentioned in the definition of the input service. As per the scope document on Sponsorship services issued by Central Board of Indirect Tax & Customs ("CBIC"), the sponsorship is an alternate form of advertisement. Basis the above document, as clarified by CBIC, a sponsorship is an alternate form of advertisement. Hence, it can be inferred that sponsorship (being advertisement only) is specifically mentioned in the inclusion part of the Rule 2(1), and hence the same qualifies to be input service. Accordingly, CENVAT credit on the same can be availed legitimately.

vii) Without prejudice to the foregoing submission, the appellant submitted that issue of eligibility of CENVAT credit on sponsorship services is no longer *res-integra.* Various courts have allowed eligibility of CENVAT credit on the sponsorship services. They relied upon the following case laws:

- *M/s Xilinx India Technology Services Pvt. Ltd.-2016 VIL 443 CESTAT HYD ST.*
- *M/s SAP Labs India Private Ltd. - 2021 VIL591 CESTAT BLR ST.*
- *M/s JSW Steel Ltd. - 2021 VIL 711 CESTAT BLR CE.*
- *M/s Arm Embedded Technologies Pvt. Ltd - 2016 VIL 1113 CESTATBLRST.*
- *M/s Force Motors Ltd. - 2018 (1) TMI 1202 – CESTAT Mumbai.*

viii) Appellant further submitted that the judgment delivered by ***Bombay High Court in case of Coca Cola (India) Pvt. Ltd.,*** has been wholly misinterpreted and incorrectly referred by the adjudicating authority. The issue on hand before the Hon'ble Bombay High Court was to analyze as to whether **services of advertising** and marketing procured by the assessee in respect of advertisements by the definition of the words 'input services' as defined in Rule 2(1) of the CCR, 2004. The Hon'ble High Court while deciding matter in favour of assessee, observed that every limb of input service definition has to be analyzed separately and if the underlying services are getting covered in any of the limb of the definition, the CENVAT

credit should be allowed even if the conditions mentioned in the other limb of the definition are not fulfilled.

ix) The appellant submitted that the impugned order has been passed without appreciating the correct position of law. The adjudicating authority has not analyzed the judicial precedents relied upon by the Appellants and simply ignored the same in the OIO. Further, the point regarding non-applicability of extended period of limitation for Dec 2014 has not been given consideration in the impugned order.

x) The appellant further submitted that even if the availment and utilization of CENVAT credit on sponsorship service is by reason of fraud or collusion or any wilful mis-statement or suppression of facts, still the demand raised for the period Dec 2014 is barred by limitation. Hence, the last date for issuing any SCN in respect of ER-1 of Dec-2014 filed on 07.01.2015 would be 07.01.2020 (prior to starting of COVID-19 exclusion period). Accordingly, the SCN and the demand order to the extent of raising demand for Dec-14 is liable to be set aside on expiry of limitation period only, as the same has been raised after 07.01.2020.

xi) The Appellant submitted that the extended period of limitation is not invokable in the present case as there was no suppression of facts with intent to incorrectly avail and utilize the CENVAT credit. Therefore, the demand for the period March, 2015 to March, 2017 is barred by limitation.

xii) The Appellant submitted that they were and are under *bona fide* belief in view of the decisions referred supra, that as the sponsorship service qualifies to be input services, the CENAVT credit on the same is rightly availed. Therefore, there is no suppression on the part of the Appellants and hence the same is not liable for reversal of CENVAT credit.

xiii) The appellant further submitted that no interest is chargeable and no penalty is imposable on them.

6. Personal hearing in the case was held on 10.02.2023. Shri Jenish Kothiwala, Chartered Accountant, authorized representative of the appellant, appeared for the hearing. He reiterated the submissions made in appeal memorandum.

7. I have carefully gone through the facts of the case and the submissions made in the grounds of appeal as well as oral submissions made at the time of personal hearing. The issue before me for decision is as to whether the impugned order disallowing the Cenvat credit amounting to Rs.18,46,984/- taken in respect of the Service Tax paid under reverse charge mechanism on sponsorship service, along with interest and penalty, is legal and proper *or* otherwise. The demand pertains to the period from December, 2014 to June, 2017.

8. I find it pertinent to refer to Rule 2(l) of Cenvat Credit Rules, 2004 where the term 'input service' is defined. Rule 2(l) reads as under:

(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.]

9. The appellant, in their grounds of appeal, have contended that the service of advertisement qualifies as the input services as the same is explicitly mentioned in the definition of the input service. As per the scope document on Sponsorship services issued by Central Board of Indirect Tax & Customs ('CBIC'), the sponsorship is an alternate form of advertisement. In this regard, I find that 'advertisement or sales promotion' is specifically mentioned in the inclusive part of the definition of *'input service'* under Rule 2(l) of Cenvat Credit Rules, 2004.

10. I further find that the definition of *"input service"* has been widened in the Cenvat Credit Rules, 2004, vide Notification No.03/2011-C.E.(N.T.), dated 01.03.2011 and the exclusion clause was inserted with effect from 01.04.2011. I further find that the adjudicating authority, while interpreting the definition of input service, has erred in relying upon the decision of Hon'ble High Court of Bombay in case of Coca *Cola (India) Pvt. Ltd., Vs. Commissioner of C.Ex., Pune-III. [2009 (242) ELT 168 (Bom)].* It is observed that the decision of Cola Cola supra in the matter of the Order dated 31.07.2006 of the Commissioner of C.Ex., Pune-III, was delivered when the exclusion clause in the definition of *"input service"* was not in existence. No uncertainty remained regarding the eligibility of Cenvat credit on *"Advertisement or Sales Promotion service"* after amendment in the Cenvat Credit Rules, 2004 and introduction of exclusion clause, excluding the specific services, with effect from 01.04.2011. In view of the above, I find that the adjudicating authority, during the adjudication proceedings, has not considered the definition of input service which was amended with effect from 01.04.2011.

11. Now the question arises as to whether sponsorship is ***advertisement or sales promotion*** so as to consider it as *'input service'*. In this regard, I find that Service Tax on Sponsorship service was first introduced in the Union Budget, 2006 and while explaining the new services, it has been clarified by the Ministry of Finance [D.R.] vide letter D.O.F. No. 334/4/2006-TRU, dated. 28.02.2006, at paragraph 3.10, as under:-

> *"3.10- SPONSORSHIP SERVICE: Body corporates or firms involved in business or commerce sponsor events with an intent to obtain commercial benefit or bringing their name or products or services in public image to public attention by associating with a popular or successful event.* ***This is an alternate form of advertisement.*** *Consideration is normally paid in return*

for naming of the event after the sponsor or displaying the sponsoring company's logo or trading name or giving the sponsor exclusive or priority booking rights. Service tax is leviable only when the sponsor is any body corporate or firm. Sponsorship of sports events is excluded from the scope of this levy. Proposal is also to collect service tax under reverse charge method from the recipient of service namely the body corporate or firm who sponsors the event. It may be noted that the organizers of events are not liable to pay service tax under sponsorship service."

12. Similarly, in the case of *Xilinx India Tech. Services Pvt Ltd-2016 (44) S.T.R. 635 (Tri. - Hyd.),* it is held at paragraph 4(xiii) as under:

"xiii. ***Sponsorship Services***

These services are basically for the purpose of enhancement of visibility of the organization and are advertisement services provided by them. This would therefore, very much in the nature of advertisement or sales promotion, which finds place in the inclusive portion of the definition of input service. I, therefore, hold that the appellants are eligible for the refund of credit on this service."

12.1. Further, the Hon'ble Tribunal, Kolkata has, in the case of Hindustan Coca-Cola Beverages Pvt. Ltd. Vs C.C.E. & S.T., Bhubaneswar-I [2018 (363) E.L.T. 1087 (Tri. - Kolkata) held as under:-

"5. For better appreciation of facts, the definition of Sponsorship Service as per Section 65(104b) is reproduced below :-

> *[(99a) "sponsorship" includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors;]*

6. In view of the above discussion, I find force in the submissions made by the Ld. Counsel. In my considered view the definition of input service, as intended by the Legislature, is illustrative and not exhaustive. I, therefore, hold that the appellants are eligible to avail credit on sponsorship service. Accordingly, the appeal filed by the appellant is allowed. "

13. In view of the above, it is amply clear that sponsorship is an alternate form of advertisement and the same is specifically mentioned in the inclusive part of the definition of 'input service' under Rule 2(l) of Cenvat Credit Rules, 2004. Therefore, I hold that 'Sponsorship service' is falling under the definition of 'input service' and the appellant has appropriately availed the Cenvat credit of Service Tax paid by them on 'Sponsorship service' under reverse charge mechanism. As a result, the impugned order denying Cenvat credit on 'sponsorship' service has suffered from

legal infirmity and accordingly, I set aside the impugned order. Since the demand of Cenvat Credit fails to sustain, the question of interest and penalty does not arise. Hence, the same are also set aside.

14. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

15. 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.

2nd March, 2023.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 02.03.2023

Attested

6/3/2023

(Ajay Kumar Agarwal)
Assistant Commissioner [In-situ] (Appeals)
Central Tax, Ahmedabad.

BY RPAD / SPEED POST

To,
M/s Johnson Controls-Hitachi Air Conditioning India Limited,
[Formerly known as M/s Hitachi Home & Life Solutions (India) Ltd.],
Hitachi Complex, Near Tulsi Petrol Pump,
Karannagar, Kadi,
Distt. Mehsana, PIN 382727, Gujarat.

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Assistant Commissioner, CGST & C.Ex., Division-Kadi, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.