आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबादं
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
सत्यमेव जयते
07926305065- टेलेफैक्स07926305136

DIN: 20230164SW0000221346

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/1/2022-APPEAL/7467-72

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-114/2022-23**
दिनाँक Date : **16-01-2023** जारी करने की तारीख Date of Issue 19.01.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **13/AC/D/KMV/21-22** दिनाँक: **28.08.2021/24.09.2021**, issued by Assistant Comissioner, Division-III, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Yazaki India Pvt. Ltd.,
A4, Tata Motors Vendor, Survey No. 1,
North Kotpura, Viroch Nagar, Ahmedabad- 382170

2. Respondent
The Assistant Commissioner, CGST, Division-III, Ahmedabad North , 2nd Floor, Gokuldham Arcade, Sarkhej-Sanand Road - 382210

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 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।
(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) cf 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 नें, 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.

(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

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

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।

(c) 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–बी/35–इ के अंतर्गतः–

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

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

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

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 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 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 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.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, 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.

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."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Yazaki India Pvt. Ltd., A4, Tata Motors Vendor Park, Survey No. 1, North Kotpura, Viroch Nagar, Ahmedabad– 382170 (*hereinafter referred to as "the appellant"*) against Order-in-Original No. 13/AC/D/KMV/21-22 dated 28.08.2021/24.09.2021 (*hereinafter referred to as "the impugned order"*) passed by the Assistant Commissioner, Central GST, Division III, Ahmedabad North (*hereinafter referred to as "the adjudicating authority"*).

2. Briefly stated, the facts of the case are that the appellant are engaged in the manufacture of Wiring Harness falling under Chapter Sub-heading 85443000 of the Central Excise Tariff Act, 1985. They were holding Central Excise Registration No.AAACT5570FEM007 and Service Tax Registration No.AAACT5570FSD007. During the course of audit of the financial records of the appellant, for the period from April-2016 to June-2017, the officers of the Central GST, Audit Commissionerate, Ahmedabad, made following observations under Final Audit Report No.1474/2019-2020 dated 21.05.2020:

Revenue Para 1: Non-payment of interest on duty paid after the due date: On verification of the returns filed by the appellant, it was observed that they had paid differential duty in cases, where the assessable value had been revised upward after the initial clearance of goods from the premises. The appellant had raised supplementary invoices for payment of such differential excise duty, after the due date. The appellant, however, had failed to pay the nterest on the late payment of differential duty, paid after the due date. Accordingly, total interest liability amounting to Rs.1,71,136/- was worked out for violation of the provisions of Rule 8(3) of the Central Excise Rules, 2002.

Revenue Para 2: Non-payment of Service tax credit availed on income generated for providing services of Training to Team lease Skill University [Labour Supplier]:

The appellant was found to be engaged in receiving service falling in the category of 'Manpower Recruitment and Supply Agency' service from Team Lease Skill University. The University imparted training to trainees on behalf of the appellant and the appellant discharged the service tax liability under RCM on said services. However, it was noticed that after the training, the services of these trained personnel were never used by the appellant in any manner in any activity related to the manufacture of final product or providing any output service up to the place of removal concerned with the appellant. After getting the training, the personnel used to leave and the appellant never employed such trainees as their regular staff. Therefore, it appeared that the credit availed by the appellant under Rule 2(l) of the Cenvat Credit Rules, 2004, was improper and needed to be reversed. The appellant was, therefore, asked to pay the total amount of ineligible credit availed to the tune of Rs. 4,09,278/-.

2.1 The above observation were not accepted by the appellant. Hence, a SCN bearing No.288/2019-20 dated 03.06.2020 from F.No.VI/1(b)-29/AP-39/Cir-VI/2017-18, was issued to the appellant proposing demand of ineligible Cenvat credit amounting to Rs. 4,09,278/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(5) of the Central Excise Act, 1944 along with interest under Rule 14 of the Cenvat Credit Rules,

2004 and proposing penalty under Rule 15(2) of the Cenvat Credit Rules, 2004. Recovery of interest of Rs.1,71,136/- on late payment of differential duty under Rule 14 of the Cenvat Credit Rules, 2004 and penalty for the same under Section 11AC of the Central Excise Act, 1944 was also proposed.

2.2 The said SCN was adjudicated vide impugned order wherein the demand was confirmed along with interest. Penalty of Rs.4,09,278/- was also imposed on the appellant under Rule 15(2) of the Cenvat Credit Rules, 2004. The interest liability of Rs. 1,71,136/- on late payment of differential duty under Rule 14 of the Cenvat Credit Rules, 2004 was also confirmed along with imposition of equivalent penalty under Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds elaborated below:-

- The issuance of supplementary invoice was disclosed in the ER-1 Return filed for the period April-2016 to June-2017. Therefore, suppression cannot be invoked. As the impugned SCN covering period April, 2016 to June, 2017 was issued in 2020 i.e. beyond a period of two year, the demand is time barred. They placed reliance on various citations and Board's Circular:-
  - Dye Chemicals – 75 (ELT) 177 (SC)
  - Emmar MGF Land Ltd – TS-403-CESTAT-2021-ST
  - Easland Combines, Coimbatore- 2003 (3) SCC 410
  - Cosmic Dye Chemical- 1995 (75) ELT 721 (SC)
  - CBIC Circular No.1053/02/2017-CX

- The services provided by (Team lease) to the appellant was under the category of 'Manpower Recruitment and Supply Agency' Services. As per the contract the appellant had reimbursed the amount of stipend paid to the trainees. The individuals who were imparted training were deployed on shop floor so the question whether the trainees are permanent or not does not arise, as in terms of the inclusive part of the definition of 'input service', coaching and training services shall be eligible as input service and credit of service tax paid on such service would be admissible. In support their contention they placed reliance on following citations;
  - E I Dupont India P Ltd- 2018-TIOL-226-CESTAT-AHM
  - J K CEMENT- 2013 (31) STR 687
  - Monnet Ispat Energy Ltd- 2010 (19) STR 417

- Where the issue involves question of law and interpretation of statue, penalty cannot be imposed. They placed reliance on Apex Court judgment passed in the case of Uniflex Cables Ltd- CA No.5870 of 2005 dated 24.08.2011; Maa Kamakhya Marbles (P) Ltd -2004 (170) ELT 580. The SCN has been issued for recovery of interest on supplementary invoices and not to recover excise duty on supplementary invoice. In the absence of any demand of excise duty, penalty cannot be imposable. Thus, the penalty of Rs,1,71,136/- is ultra vires hence should be set-aside.

4. Personal hearing in the matter was held on 06.01.2023. Shri. Manish Nim (Head Indirect Taxation), Authorized Representative, appeared on behalf of the appellant. He re-reiterated the submissions made in the appeal memorandum and submitted copies of following judicial pronouncements during hearing.

- Gujarat Borosil Ltd- 2019 (368) ELT A337 (SC)
- Parnax Lab Pvt. Ltd.-2012 (278) ELT 95 (Tri-Ahm)
- Central Warehousing Corporation- 2016 (41) STR 106-(Tri-Ahm)
- Surya Life Science- 2019 (368) ELT 148 (Tri-Ahm)
- KaybeeTex Spin Ltd.- 2022 (381) ELT 407 (Tri-Ahm)
- Adani Port & Special Economic Zones Ltd – 2016 (42) STR 1010 (Tri-Ahm)

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandumas well as during personal hearing. The issues to be decided in the present case are as to;

a) Whether the recovery of interest to the tune of Rs.1,71,136/- on late payment of differential duty and imposition of equivalent penalty is sustainable or not?

b) Whether the Cenvat credit demand of Rs 4,09,278/- alongwith interest and equivalent penalty, confirmed in the impugned order is sustainable or not?

The demand pertains to F.Y. 2016-17 (upto June, 2017).

6. Before taking up the issue on merits, I will first take up the issue of limitation. The appellant have vehemently contended that the SCN is time barred in terms of Section 11A of the CEA, 1944, as the same was issued after the expiry of normal period of limitation i.e after two year from the relevant date of filing the ER-1 return for the period April, 2016 to June, 2017. They claim that the issuance of supplementary invoice was disclosed in the ER-1 Return filed, hence suppression cannot be invoked. It is observed that the present demand notice is the outcome of Final Audit Report No.1474/2019-2020 dated 12.05.2020. It was during audit, that the auditors noticed non-payment of interest and penalty and proposed their recovery. But the appellant contested the point on the argument that suppression cannot be alleged as the assessing officer was aware of the issuance of supplementary invoice since the same was reflected in ER-1 Return filed.

6.1 I find merit in appellant's argument. Though the details of supplementary invoices are not required to be reflected in ER-1 Returns, but the argument that the demand of interest on short payment of duty should have been raised within the period of limitation prescribed under Section 11A, is sustainable. I place reliance on Master Circular No. 1053/02/2017-CX [F.No. 96/1/2017-CX.I] dated the 10th March, 2017, wherein at **Para 3.8,** it is clarified that;

> *3.8 Applicability of limitation in demanding interest: In cases where duty and interest is demanded, it is quite clear that limitation prescribed in Section 11A applies. However, it may be noted that in cases where the duty has been paid belatedly and interest has not been paid, interest needs to be demanded and recovered following the due process of demand and adjudication. In such cases, the period of limitation as prescribed in Section 11A applies for demand of interest. Section 11A (15) may be referred in this regard.*

6.2 Further, I also place reliance on the decision of Hon'ble CESTAT, Principal Bench, New Delhi passed in the case of **KAILASH AUTO BUILDERS PVT. LTD.- 2017 (357) E.L.T. 803 (Tri. - Del.).** The relevant text is reproduced below.

> *"7. The short question involved in this appeal for consideration is, as to* ***whether, extended period of limitation in terms of the Proviso to Section 11A ibid can be invoked for recovery of interest on delayed payment of principle amount; and penalty can be imposed where there is no element of suppression, fraud, misstatement, etc., with intent to evade payment of duty.***
>
> *8. It is an admitted fact on record that the differential duty was paid by the appellant on pointing out the mistake by the department on 11-1-2005 and thereafter the SCN was issued on 15-4-2008, seeking recovery of the interest amount and for imposition of penalty. The said SCN has been issued under the proviso to Section 11A ibid. The facts regarding finalization of the provisional price, issuance of supplementary bills, payment of differential duty, etc. were known to the department, and in such eventuality, the department should have issued the SCN within one year from relevant date i.e. 10-1-2006. In this case, since admittedly the SCN was issued on 15-4-2008, the same in my considered view, is barred by limitation of time. In this context, this Tribunal in the case of Emco Ltd. (supra) by placing reliance on the judgment of* ***Hon'ble Supreme Court in the case of CCE v. TVS Whirlpool Ltd. - 2000 (119) E.L.T. A177 (S.C.) has held that period of limitation not only applies to the principal amount but also the same applies for recovery of interest****. The relevant paragraph in the said decision is extracted herein below.*
>
> *11. The Central Excise Act provides a time limit of one year from the relevant date for demand of duty in normal circumstances and a time limit of five years for demand of duty in cases where fraud, suppression of facts, collusion, etc. are involved. In the instant case, there is no allegation that the assessee delayed payment of duty on account of any of these elements. On the other hand, it is very clear that the assessee had discharged the differential duty liability on their own. The differential duty payments were made during the period from May, 2004 to March, 2009 and were also reflected in the corresponding monthly returns filed by the assessee. Thus, the department was fully aware that the assessee was raising supplementary invoices for recovery of differential prices subsequent to the clearance of the goods and they were also discharging differential duty liability on issue of supplementary invoices. Therefore, it was incumbent on the department to recover interest which the assessee had failed to pay within a reasonable period. In a similar case, the Hon'ble Apex Court in the case of Commissioner v. TVS Whirlpool Ltd. [2000 (119) E.L.T. A177 (S.C.)] held as follows -*
>
> ***"It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon."***
>
> *Respectfully following the said decision, we hold that when the normal time limit prescribed is one year from the relevant date, (the date of filing of return) for recovery of the principal amount, (excise duty, in this case), it will be reasonable to adopt the same period for recovery of interest as well."*
>
> *9. The departmental appeals against the decision of Tribunal in EMCO Ltd. (supra) was affirmed by the Hon'ble Bombay High Court reported in 2015 (325) E.L.T. A104 (Bom.). Thus, I am of the view that interest liability confirmed in the impugned order will not stand for judicial scrutiny.*
>
> *10. In this case, the authorities below have imposed equal amount of penalty of Rs. 5,57,885/- under Rule 25 read with Section 11AC of the Central Excise Act. On perusal of the records, I find that the authorities below have not specifically brought on record any evidence regarding the mala fides on the part of the appellant to defraud the Government Revenue. Since Rule 25 ibid is subject to the provisions of Section 11AC ibid, which clearly provides that in case of fraud, collusion, wilful misstatement, suppression of facts, equal amount of penalty shall be imposed, and in absence of any specific findings to that effect by the authorities below, I am of the view that penalty imposed in the adjudication order and confirmed in the impugned order is not sustained in the eyes of law.*
>
> *11. In view of the above, the appeal is allowed to the extent of setting aside the amount of interest and penalty confirmed in the impugned order."*
>
> *[Emphasis supplied]*

Thus, applying the ratio of above decision and the clarification issued by the Board vide Circular dated 10.3.2017, I find that the notice proposing recovery of interest, on delayed payment of differential duty during the period April, 2016 to June, 2017, is time barred, as the same was issued beyond the period of limitation i.e. 1 year.

6.3 When the demand for interest is not sustainable, question of penalty does not arise as no suppression can be invoked in view of the fact that the appellant had suo moto made the duty payment on the differential invoice value, hence the same also needs to be set-aside.

7. On the second issue, the demand of **Rs.4,09,278/-** has been raised on the allegation that the credit of service tax paid under RCM on 'Manpower Recruitment or Supply Agency' service received for imparting training to several trainees is not admissible to the appellant, as the trained employees were never employed by the appellant as their regular staff. The auditors observed that the Team Lease Skill University provided necessary stipend alongwith Administrative Fees and Recovery Fees on which service tax was levied, which was discharged by the appellant under RCM and credit availed. The appellant, however, claim that services provided by Team Lease Skill University was as per the contract wherein the appellant had to reimburse the amount of stipend paid to the trainees. The individuals, who were imparted training, were deployed on shop floor so the question whether the trainees are permanent or not does not arise, as in terms of the inclusive part of the definition of 'input service', coaching and training services shall be eligible as input service and credit of service tax paid on such service would be admissible.

7.1 It is observed that the 'Manpower Recruitmentor Supply Agency' are generally supplying manpower, individuals for use of services of an individual, employed by him to another person for a consideration. They provide services from the initial stage of selecting / identifying man-power required for any prospective employment, till the stage of actual selection for the same. In the instant case. the Team Lease Skill University were providing training to the individuals who were deputed in the appellant company. The training imparted was Technical and non-Technical training in the designated trade provided by the Company, at the premises of the appellant. The Team Lease Skill University would provide certificate to the trainees and based on the experience and course completion certificate, suitable officers may get absorbed in to the appellant Company as per scheme during the contractual period. The appellant claim that such training was on job training, hence, should be considered as a coaching and training which is covered within the inclusive definition of input service.

7.2 I find that the dispute covers period April, 2016 to June, 2017. After June, 2012 there were changes in the legal provisions as service tax regime shifted from selective taxation to comprehensive taxation. From 01.07.2012, 'declared services' under Section 66E, the term 'service' under Section 65B (44) and 'Negative list of services' under Section 66D, were introduced. The terms 'service' is defined as;

*(44) **"service"** means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

7.3 So, any activity carried out by a person for another for consideration, including a declared service, unless specified in the negative list, is a taxable service under Section 65B. In the present case, it is not in dispute that the appellant was paying service tax under RCM on Manpower Recruitment or Supply Agency service. The only dispute is that the said service is not used either directly or indirectly in relation to manufacture of final product and clearance thereof or used for providing any taxable output service as the trainees were not employed by the appellant on regular basis. I find that the appellant before the adjudicating authority had stated that the trained individuals/trainees based on their experience were deployed on shop floor as per contractual agreement, which I find, was not countered by the adjudicating authority in the impugned order. So far as the payment of service tax is not disputed, the argument put forth by the appellant cannot be brushed aside merely because the trainees were not absorbed by the appellant as regular employees.

7.4 It is observed that vide Notification No. 03/2011-CE(NT) dated 01.03.2011, amendments were made in the CENVAT Credit Rules, 2004 and CENVAT Credit (Amendment) Rules, 2011 was introduced. The amended definition of 'input service' under Rule 2(l) was made effective from 01.04.2011 and the same is reproduced below;

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

(i) used by a provider of taxable 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 up to 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 up to 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 up to the place of removal; but excludes, -*

(A) services portion in the execution of a works contract and construction services including service 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 manufacture 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

In terms of above definition of 'input service', I find that the recruitment, coaching and training activity is covered under the inclusive definition of input service and, therefore, the trainees employed by the appellant for shop floor, based on their technical know-how shall be considered as their input service. As the appellant has paid service tax under reverse charge mechanism on said service, the same shall be eligible for the Cenvat credit. Further, regarding the dispute that such services being provided to the contract employees who are not employed by the appellant on regular basis, I find that so far as there is no such differentiation made in the said inclusive clause, in respect of the regular employees or the contract employees, I do not agree with the interpretation given by the adjudicating authority. Hence, the Cenvat credit of service tax of Rs.4,09,278/- paid by the appellant is admissible and accordingly, the demand is not sustainable on merits.

7.5 Hon'ble Bombay High Court in *Commissioner of C. Ex., Nagpur* v. *Ultratech Cement Ltd.* [2010 (20) S.T.R. 577 (Bom.) = 2010 (260) E.L.T. 369 (Bom.)], after considering the earlier judgment of the Bombay High Court in *Coca Cola India,* took the view that the definition of 'input service' in Rule 2(l) of the 2004 Rules, consists of three categories of services, and Cenvat credit of service tax paid on all such services would be available to an assessee. The relevant portion of the judgment of the Bombay High Court is reproduced below:

"27. The definition of "input service" as per rule 2(l) of 2004 Rules (insofar as it relates to the manufacture of final product is concerned), consists of three categories of services. The ***first category,*** *covers services which are directly or indirectly used in or in relation to the manufacture of final products. The* ***second category,*** *covers the services which are used for clearance of the final products up to the place of removal. The* ***third category,*** *includes services namely :*

(a) Services used in relation to setting up, modernization, renovation or repairs of a factory,

(b) Services used in an office relating to such factory,

(c) Services like advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(d) Activities relating to business such as, accounting, auditing, financing,

recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Thus, 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."

7.6 In light of the above decision, it was held that the definition of 'input service' in Rule 2(l) is wider than the definition of 'input' in Rule 2(k) and that it not only covered input services having nexus with the manufacturing of the final product but also covered services used prior to/during the course of/after the manufacture of the final products. Unlike in the case of 'input', where nexus was required to be established with the manufacture of the finished goods, the nexus in so far as 'input service' is concerned has to be established with the manufacture of the final product or the business of manufacture. In the instant case, so far as the appellant have used the services for the contractual employees employed at shop floor, it has to be treated as service used in relation to business activity. In view of above decision and discussion, I find that the demand of Rs.4,09,278/- is not sustainable on merits.

8. When the demand is set-aside, there is no question of recovery of interest and imposition of penalty, hence the same are also set-aside.

9. Accordingly, the impugned order is set-aside and the appeal filed by the appellant is allowed.

अपीलकर्ताद्वारादर्जकीगईअपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।
The appeal filed by the appellant stands disposed off in above terms.

16 January, 2023

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 1.2023

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Yazaki India Pvt. Ltd., - **Appellant**
A4, Tata Motors Vendor Park,
Survey No. 1, North Kotpura, Viroch Nagar,
Ahmedabad – 382170

The Assistant Commissioner, - **Respondent**
CGST, Division-III,

Ahmedabad North

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. Guard File.
5. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.