



सत्यमेव जयते

आयुक्त ( अपील ) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ 07926305065- टेलिफैक्स 07926305136



DIN:20230464SW00004934AE

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1280/2022-APPEAL /369-23
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-224/2022-23  
दिनांक Date : 31-03-2023 जारी करने की तारीख Date of Issue 12.04.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/A'bad North/D-VII/ST/DC/118/2021-22  
दिनांक: 08.02.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VII,  
Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Hawk secret services,  
514, The Golden Traingle,  
Opp. Sardar patel Stadium, Naranpura,  
Ahmedabad

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad  
North, 4<sup>th</sup> Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

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 :

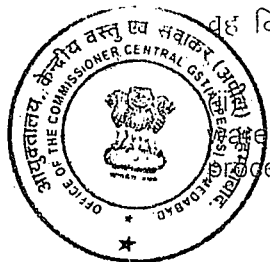
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

(1) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतत नीचे बताए गए मामलों के बारे में पूर्वोक्त 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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

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

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

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

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule; 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

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

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

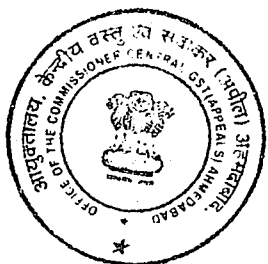
सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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 मामलों में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

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

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

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall 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 और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

- (7) सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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)

केंद्रीय 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 .

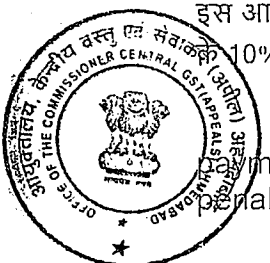
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT: (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 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. Hawk Secret Services, 514, The Golden Triangle, Opp. Sardar Patel Stadium, Naranpura, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/118/2021-22 dated 08.02.2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated the facts of the case are that the appellant are engaged in providing services viz. Security / Detective Agency Services and are holding Service Tax Registration No. AFTPM5240GST002. During the course of audit of the financial records of the appellant, for the period from October-2015 to June-2017, conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad, the observation as given in subsequent paragraph was raised in Final Audit Report No. CE/ST-724/2020-21 dated 01.02.2021.

2.1 The appellant had availed credit of Service Tax amounting to Rs. 29,154/- paid on (i) Mobile Bills, which are registered at different address; (ii) Vehicle servicing / insurance invoices; (iii) personal credit card bills, during the period from October-2015 to March-2017. It is observed that such services used for personal use or consumption of employee are excluded from the definition of input services as provided under Rule 2(l) of the Cenvat Credit Rules, 2004.

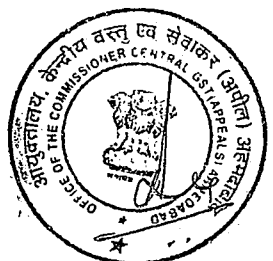
2.2 The above observation were not accepted by the appellant. Hence, a SCN bearing No. CTA/04-408/Cir-VII/AP-45/2019-20 dated 30.03.2021 was issued to the appellant proposing demand of Service Tax amount of Rs. 29,154/- in terms of proviso of Section 73(1) of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 along with interest under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 and proposing penalty under Section 78(1) of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules, 2004.

2.3 The said SCN was adjudicated by the adjudicating authority vide impugned order wherein the demand of Service Tax amounting to Rs. 29,154/- proposed in SCN was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 along with interest under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 and penalty of Rs. 29,154/- was also imposed on the appellant under Section 78(1) of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules, 2004.



3. Being aggrieved with the impugned order, the appellant have preferred the present appeal alongwith application for condonation of delay on the following grounds:

- The appellant is engaged in providing Security/Detective Agency Services and holding Service Tax Registration No. AFTPM5240GST002.
- During the audit of their financial records, the audit party disallowed some of the Input Tax credit availed based on the following three grounds:
  - (i) Invoices issued on personal name, not in the name of Hawk Secret Services and different address available on invoices: In this regard appellant submitted that during the provision of security services, appellant are required to constant and repeatedly talk with employees and service recipient, so appellant are using two mobile number one for business usage and another for personal use only. The appellant have availed input tax credit on invoices raised on business mobile number only and not availed ITC on personal mobile number. For the confirmation of the same, the appellant attached invoice copy of business telephone bill and personal telephone bill.
  - The audit party has raised objection that invoices were raised on personal name and not on trade name and invoices issued on different address. In support of their claim, they submitted that in the case of proprietary firm, firm (trade name) and proprietor (legal name) are the same and only one person, so income tax department is also not issuing the different PAN card for firm like issue different PAN card in Partnership firm. Therefore, it does not make any difference whether invoices are issued in the trade name or legal name, because both are same and only one.
  - Further, in same line, another objection was invoices issued in different address. In this regard the appellant clarified that address available on the invoice is not exactly match with the services tax registration certificate in ST-2, but city name and state is matched. So substantial benefit of the Law cannot be withdrawn due to some minor mismatched on the address available on invoices. In this regard they relied upon the judgment of Crisil Limited Vs. Commissioner of Service Tax, Mumbai reported at 2018 (10) TMI 759 - CESTAT MUMBAI and M/s. Vodafone South Limited (Now known as Vodafone Mobile Services Pvt. Ltd.) Vs. Commissioner of Central Tax, Bengaluru reported at 2018 (6) TMI 194 - CESTAT BANGALORE.



(ii) ITC availed on Personal Credit Card Expense: In this regard, the appellant submitted that in few months appellant did not receive the timely payment from services recipient and hence for the timely payment of salary to employees, he had availed personal loan from the bank. bank has charged services tax on his services. He was availed Cenvat credit on all bank invoices as loan was utilized for the business purposes only. The audit party has disallowed the said Cenvat on the ground that appellant have availed personal loan, without considering the fact that this loan is used for business purposes only. As per the definition of Input services, it includes services in relation with the finance services but exclude services which is primarily used for personal or consumption of any employee. In the present case, the appellant availed Cenvat on interest charged on loan, which is used for business purpose only.

(iii) ITC availed on Vehicle insurance or maintenance services: In this regard the appellant submitted that they were providing services in whole state of Gujarat, and as per the service agreement with the services recipient or in some emergency situation, appellant required to travel at various business places like Surat, Vadodara, Ahmedabad, Rajkot and other. For this business travelling, the appellant availing services like Vehicle Repairing and Maintenance Service, Car Insurance Services and he has availed Cenvat on all this expenses. The audit party has disallowed this Cenvat although this all services utilised for the business purpose only.

- In the present case the appellant has no any intention of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax and hence extended period of time cannot be invocable.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 08.02.2022 and received by the appellant on 11.02.2022. In terms of the Order dated 10.01.2022, issued by the Hon'ble Supreme Court of India in case of M.A. No. 21 of 2022, the prescribed period of two months for filing present appeal have been completed on 30.04.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 10.05.2022, i.e. after a delay of 10 days. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the delay occurred due to reasons that (i) Bank was not aware about how to file Challan for pre-deposit of 7.5% of duty amount; and (ii) Consultant was out of station for 7 to 8 days.



4.1 Personal hearing in the matter of Application for condonation of delay was held on 24.01.2023. Shri Munesh Maheshwari, Proprietor, appeared for hearing. He re-iterated submission made in application for condonation of delay in filing appeal.

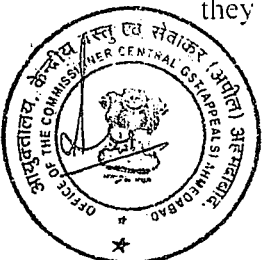
4.2 Before taking up the issue on merits, I proceed to decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the dates of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 10 days and take up the appeal for decision on merits.

5. Personal hearing in the case was held on 06.03.2023. Shri Munesh Maheshwari, Proprietor, and Shri Mehul Patel, Chartered Accountant, appeared for personal hearing. They reiterated submission made in appeal memorandum.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the Cenvat credit availed and utilized by the appellant on the following category of invoices are permissible as input services or otherwise. The demand pertains to the period October-2015 to March-2017.

- (i) Invoices issued on personal name, not in the name of the appellant i.e. M/s. Hawk Secret Services and different address available on invoices.
- (ii) Cenvat credit availed on invoices in respect of Personal Credit Card of the appellant.
- (iii) Cenvat credit availed on Vehicle insurance or maintenance services.

6. It is observed that the main contentions of the appellant are that (i) the appellant have availed Cenvat credit on invoices raised on business mobile number only and not availed on personal mobile number, in the case of proprietary firm, firm (trade name) and proprietor (legal name) are the same and only one person and hence Cenvat cannot be denied due to some minor mismatch in the address; (ii) he had availed personal loan from the bank and utilizes for the business purposes only; and (iii) they were providing services in whole state of Gujarat, and as per the service agreement with the services recipient or in some emergency situation, they were required to travel at various business places for which they have availed services



like Vehicle Repairing and Maintenance Service, Car Insurance Services and all services utilised for the business purpose only.

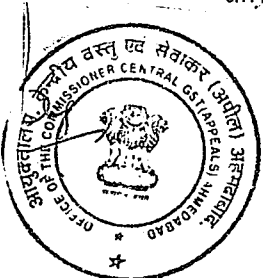
7. It is also observed that the adjudicating authority in the impugned order, while confirmed the demand of wrongly availed Cenvat credit, discussed as under:

18. *I find that proprietor and his proprietorship concern are called one and the same entity. The assessee further clarified that the said mobile services are used for company purposes only and for their personal use they had another number. Further, for the vehicle insurance and maintenance, the assessee informed that they have been providing security guards all over Gujarat and to conduct surprise visits or checks or for disbursing the salaries to security guards they need to travel and the said vehicle is used for company purpose only. Further, related to credit taken on Personal Credit Card expenses, the assessee informed that being a proprietorship concern they do not get any credit facility from banks and sometimes to make timely payments to security guards, they had to take personal loan from the bank when they were short of funds.*

19. *I find that, letter dated 26.10.2020 was again written to the assessee to submit documentary evidences in support of their claim, to which the assessee vide their letter dated 27.10.2020 received on 28.10.2020 submitted a copy of appointment letter given by the bank and also enclosed copies of travelling vouchers, copies of toll receipts as well as copies of food bills. However, such documents do not justify the claim of the assessee that the travels have been made for business purposes of that the vehicles have only been used for business purposes.*

20. *Input service is defined under Rule 2(1) of the Cenvat Rules as under: ..... ..*

21. *I find that services used primarily for personal use or consumption of any employee has been specifically excluded under clause (C) of the definition of input service provided under Rule 2(1) of Cenvat Credit Rules, 2004. Clause (C) of the definition of input service excludes services 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. The list is only illustrative. The principle is that CENVAT credit is not*





allowed when any goods and services are used primarily for personal use or consumption of employees.

22. I find that the assessee has availed credit on service tax paid on mobile & telephone bills, Credit Card, Insurance & maintenance of vehicle and other services meant primarily for the personal use or consumption, which does not constitute input services. As per exclusion clause (C) of Rule 2(1) of the Cenvat Rules, it is seen that mobile & telephone bills, Credit Card and Insurance & maintenance of vehicle and other services which are used primarily for personal use or consumption any employee, are excluded and hence are not input services as defined under Rule 2(1) of the Cenvat Rules. It, therefore, appears that the cenvat credit of Rs. 29,154/- availed on mobile bills, food bills, vehicle servicing/Insurance invoices and personal credit card bills and other services for personal use is inadmissible to the assessee."

8. For ease of reference, I reproduce the relevant provision of Rule 2(1) of the Cenvat Credit Rules, 2004 as amended, which reads as under:

"Rule 2(1) "input service" means any service, -

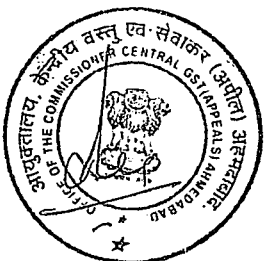
(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products 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 services,-

(A) specified in sub-clauses (p), (zn), (ztl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction 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) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; 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;"*

9. I find that the main contention of the department for denial of the Cenvat credit on all such invoices were that all the invoices were in personal name; that such services were primarily used for the personal use or consumption and, therefore, do not fall within the definition of the input services as defined under Rule 2(1) of the Cenvat Credit Rules, 2004. However, I find that in case of the proprietorship firm, the proprietor and firm both are the same person in law and the services used by the proprietor cannot be said to be used for personal use, without adducing any contrary evidences. Therefore, as far as the contention of the department that all the invoices were in personal name, I find that the same is not legally sustainable, as the appellant is proprietor of the firm.

9.1 As regards, the Cenvat availed on mobile bills, I find that the appellant have submitted that he has two mobile number, one for personal use and one for business purpose and he has availed Cenvat credit on the mobile bills of mobile number, which is for business purpose. The contention of the appellant is legally tenable and I am of the considered view that the Cenvat on such mobile bills is admissible to the appellant.

9.2 As regards, the other invoices, viz. credit card bills and vehicle insurance and vehicle maintenance service invoices, I find that the appellant have contended that the same was used for business purpose. However, the appellant have failed to produce any evidence in this regard. I also find that from the show cause notice as well as impugned order passed by the adjudicating authority, it is not clear that whether the said credit card loan accounted for by the appellant for the purpose for which it has been contended or otherwise and it is also not clear whether the vehicle for which insurance and maintenance and repair carried out by the appellant is in name of the appellant or firm or otherwise and whether the said vehicle were capitalized by the appellant in their books of account or otherwise. In my considered view, all such information and relevant documents required for decide the issue of admissibility of the Cenvat credit that whether the said invoices used for the appellant for personal use or for

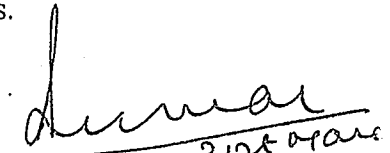


business activity. Therefore, I am of the considered view that in aforesaid circumstances and in interest of natural justice, the matter is required to be decided a fresh after examining the aforesaid aspects.


10. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice. The appellant is also directed to produce the relevant documents before the adjudicating authority for verification within 15 days of receipt of this order.

11. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.

12. अपील कर्ता 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.

  
(Akhilesh Kumar)  
Commissioner  
(Appeals)

Attested

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

**By RPAD / SPEED POST**

To,  
M/s. Hawk Secret Services,  
514. The Golden Triangle,  
Opp. Sardar Patel Stadium, Naranpura,  
Ahmedabad

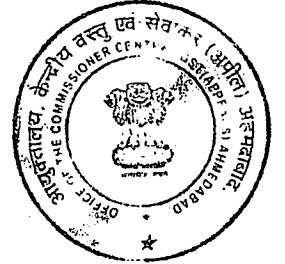
The Deputy Commissioner,  
CGST, Division-VII,  
Ahmedabad North

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Deputy Commissioner, CGST, Division VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)

- 5) Guard File
- 6) PA file

Date :



Appellant

Respondent

