



सत्यमेव जयते

**::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद**

**शुल्क::**

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,  
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन,  
पोलिटेकनिक के पास,  
आम्बवाडी, अहमदाबाद : 380015



7<sup>th</sup> Floor, Central Excise  
Building,  
Near Polytechnic,  
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रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(85)16 /Ahd-II/Appeals-II/ 2016-17/2452 + 2456  
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 11-17-18  
दिनांक (Date): 30.05.2017, जारी करने की तारीख (Date of issue): 08/06/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित  
Passed by Shri Uma Shanker, Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी  
मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
Arising out of Order-In-Original No. 50-51/ADC/2015/MKR Dated: 15/02/2016  
issued by: Additional Commissioner Central Excise (Div-), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

**M/s Yazaki India Pvt. Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 Government of India; Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार 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

(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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

*u. file*



- (c) 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 हो।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

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

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

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

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

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

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

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

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील. अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

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

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

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

- (6) सीमा शुल्क, केन्द्रीय 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)

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. 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 सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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."



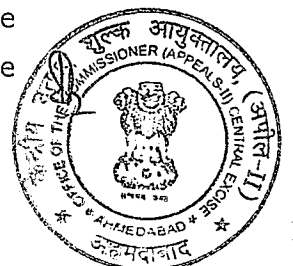
**ORDER-IN-APPEAL**

M/s Yazaki India Ltd, A-4, Tata Motors Vendor Park, S. No. 1, North Kotpura, Sanand, Viroch Nagar, Ahmedabad, Gujarat (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order-in-Original No 50-51/ADC/2015/MKR dated 15/17.02.2016 (hereinafter referred to as 'impugned orders') passed by the Additional Commissioner of Central Excise, Ahmedabad-II, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, the appellant are register with the Central Excise Department having registration no. AAAct5570FEM007 and engaged in Wiring Harness falling under chapter 85 of Central Excise Traiff Act, 1985. The Internal Audit party of the department has audited the appellant records for the period April-2010 to June-2013 and July-2013 to October-2014. The audit party on the basis of records available proposed to deny service tax credit taken on various services. On the basis of Audit Para department issued two show cause notices. The same was adjudicated vide impugned order. The adjudicating authority rejected the following service tax credit as the same is not in the preview of Input Services. Equivalent penalty was also imposed and interest was also demanded.

Sl NO	Name of the services	Amount of credit taken
1	Canteen Service and Bus Transport Services for employee	60443+273455=333898
2	Epoxy Flooring Services	42050+3226=45276
3	Construction Services	1398504
4	Travel Agent, Hotel Stay and Ticket Booking Services	337345+6475=343820
5	Other Services (Not Specified by the appellant in their CENVAT A/c)	506863
6	Water Testing, Courier Services, and Civil Certification Services	41108
	Total	2386313+283156

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that the above service are valid input service as they are used directly or indirectly in or in relation to final product. The cost of such input services is included in the value of final product which has suffered payment of Tax. The appellant specifically submitted that few credits which were taken by them are of prior of 1.4.2011 (change in the definition of input services). The service wise submission is as under:-



(1) Canteen Service and Bus Transport Services for employee-: They have not availed the credit on employee recovery. The partial credit is taken before 1.4.2011. They have relied on various judgments. Further reliance is also made on Circular No 934/4/2011 dated 29.04.2011.

(2) Epoxy Flooring Services-: The service is related to make dust free floor which is necessary for manufacturing. The partial credit is taken before 1.4.2011.

(3) Construction Services-: The credit is taken before 1.4.2011. Further reliance is also made on Circular No 934/4/2011 dated 29.04.2011.

(4) Travel Agent, Hotel Stay and Ticket Booking Services-: The service is related where employee have gone to business trip.

(5) Other Services (Not Specified by the appellant in their CENVAT A/c)-: The credit belong was taken after doing reconciliation and found that less credit is taken.

(6) Water Testing, Courier Services, and Civil Certification Services-: The service is used in or in relation to manufacture of final product.

The appellant further submitted that the adjudicating cannot invoke extended period as appellant have already shown in the ER-1 that the credit is taken.

4. Personal hearing in the case was granted on 28.02.2017 which was attended by Appellant representative. Written submission was also submitted at the time of personal hearing.

5. I have carefully gone through the facts of the case on records, grounds of the appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

6. In the instant case, I observe that the appellant has filed the present appeal on the ground that adjudicating authority while deciding the SCN have not consider the fact that most of the service was availed before the amendment of the definition of input i.e 1.4.2011 but credit in books was availed after 1.4.2011. The adjudicating authority was in a view that all the service shown above does not fall in the ambit of definition of input service.

7. Now issue to be decided is whether all such credit which are taken by the appellant are eligible or otherwise. I will take up the matter issue wise as shown above in the list.

(1) Canteen Service and Bus Transport Services for employee-: I find that adjudicating authority has rightly denied the credit taken by the appellant as canteen is a mandatory infrastructure to be provided by the employer in required in the factory act. Further after verification of ledger account adjudicating authority found that a sum of Rs 250 was collected from each employee for canteen service



as well as Bus Transport Services. Therefore where the cost of service is born by the employee therefore credit cannot be allowed. Therefore credit availed by them is rightly denied.

(2) Epoxy Flooring Services-: I find the appellant is manufacturing Automobile Wire Harness Sets which is critical component and required dust free environment. The epoxy paint is applied on the floor to made it dust free. The same is essential component for their manufacturing. Therefore the credit availed by them is correct.

(3) Construction Services-: I find that the adjudicating authority has denied the said credit on the ground that the appellant has not specified that when the service was availed and the payment was made and the credit was taken. No documentary evidence was submitted. However during the personal hearing they submitted the R A Bills. However it does not clear the issue. I therefore direct the adjudicating authority to re-adjudicate this issue after giving reasonable opportunity to the appellant to submit all the relevant documents. The appellant is also directed to cooperate the department by way of submitting all relevant data.

(4) Travel Agent, Hotel Stay and Ticket Booking Services-: I find that the appellant has not produce any specific document in support of credit taken on Travel Agent, Hotel Stay and Ticket Booking Services. It is no where submitted to the adjudicating authority as well as before me that such services were availed in relation to business purpose. Therefore credit availed by them is rightly denied.

(5) Other Services (Not Specified by the appellant in their CENVAT A/c)-: I Find that appellant in their submission submitted that during the reconciliation of the accounts they found that they have taken less credit during the financial year 2010-11 and 2011-12. Therefore they availed such credit however with no heading in the ER-1. If this credit were proper the appellant would have submitted a certificate issued either by their Chartered Accountant or from their Jurisdictional Range officer. Both the above authorities would have issued such certificate after proper verification. Therefore credit availed by them is rightly denied.

(6) Water Testing, Courier Services, and Civil Certification Services-: I find that Appellant has availed Cenvat credit on Water Testing, Courier Services and Civil Certification Services as they are essential and used in or in relation to final product. Taking one by one the Water Testing is required as per norms issued Gujarat Pollution Control Board and if not followed the appellant may face the shut down. The courier service is used for business purpose. The Civil Certification Services is in respect of construction take place in the factory. The Credit availed on Water Testing, Courier Services is correct however the credit availed on Civil Certification Services is to be verified by the adjudicating authority as I have discussed the same in point no 3 above.



In respect of limitation I find that Government has introduced the SRP procedure as they have faith in the trade. The Trade themselves decide whether credit is to be availed or otherwise. Therefore adjudicating authority has rightly invoked the extended period. The penalty is proportionately reduced for all such Cenvat credit which are allowed. The appeal stands disposed of in above terms.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
8. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

*S S Chowhan*  
6/11/2017

(S S Chowhan)  
SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.

To,  
M/s Yazaki India Ltd,  
A-4, Tata Motors Vendor Park,  
S. No. 1, North Kotpura,  
Sanand, Viroch Nagar, Ahmedabad

**Copy To:-**

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-I, Ahmedabad.
3. The Dy. /Assistant Commissioner, Central Excise Division-III, Ahmedabad-II, Ahmedabad.
4. The Assistant Commissioner(Systems), Central Excise, Ahmedabad-II, Ahmedabad
5. Guard File.
6. P.A. File.



