केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते

केंद्रीय उत्पाद शुल्क भवन, सातवीं मंज़िल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : **V2(84)109 /Ahd-II/Appeals-II/ 2016-17**/2036 to 2040

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 115-17-18**

दिनांक (Date): **25.09.2017** जारी करने की तारीख (Date of issue): 30-10-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं---------- दिनांक _----------से सृजित

Arising out of Order-In-Original No .__28-29/JC/2016/GCJ__**Dated: 25.11.2016** issued by: Joint Commissioner Central Excise (Div-I), Ahmedabad-II

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

M/s Ingersoll Rand (India) 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 पूवोक्त 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 |

Cont...2

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

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

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

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

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

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

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

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

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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

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. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall 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), 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. 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 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

M/s Ingersoll Rand (India) Ltd., Plot No.21-30, G.I.D.C., Naroda, Ahmedabad – 382 330 (hereinafter referred to as 'the appellant') has filed the present appeal against **Order-in-original No.28-29/JC/2016/GCJ dated 21/04/2016** (hereinafter referred to as 'the impugned order') passed by Joint Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated, the facts of the case are that the appellant is holding Central Excise Registration ECC No.AAACI3099QXM003 and is engaged in the manufacture of **Air Compressors, Air Motors, Spares for Air Compressors, Bus Air Conditioning Systems and parts thereof,** falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant is availing CENVAT credit of inputs and capital goods used in or in relation to the manufacture of its final products, under Cenvat Credit Rules, 2004 (CCR, 2004). During the course of audit it was observed that the appellant was availing CENVAT credit of Service Tax paid on **'Courier Service'** and input service credit of Service Tax paid on **'Maintenance and Repair Service'** and **'Business Auxiliary Service' (BAS),** that were provided by the Distributors of the appellant at the end of the customer. Therefore, two Show Cause Notices (SCNs) were issued to the appellant, the details of which are as follows:

Sl. No.	SCN No. & date	Details of Demand		Period
		Impugned service	Amount	
1.	2.	3.	4.	5.
1.	F.No.V.84/15-123/OA/2015 Dated 15/01/2016	B.A.S.	Rs.6,18,925/-	January-2015 to June-2015
		Courier Agency	Rs.86,352/-	
		Maintnce.& Repairs	Rs.23,37,543/-	
		TOTAL	**Rs.30,42,820/-**	
1.	F.No.V.84/15-74/OA/2016 Dated 02/08/2016	B.A.S.	Rs.6,73,418/-	July-2015 to March-2016
		Courier Agency	Rs.1,38,443/-	
		Maintnce.& Repairs	Rs.1,26,68,043/-	
		TOTAL	**Rs.1,34,79,904/-**	

Both the above SCNs were decided by the adjudicating authority *vide* the impugned order confirming both the demands in terms of Section 11A (10) of the Central Excise Act, 1944 (CEA, 1944) under Rule 14 of Cenvat Credit Rules, 2004 (C.C.R.-2004) read with proviso to Section 11A (1) of CEA, 1944, along with interest under Rule 14 of CCR, 2004 read with Section 11AA of CEA, 1944. Penalties have been imposed with regards to both the SCNs under Rule 15(1) of CCR, 2004 read with Section 11AC (1)(a) of CEA, 1944.

3. Being aggrieved by the impugned services, the appellant has preferred the instant appeal, mainly on the following grounds:

i. The impugned order is non-speaking order mechanically disallowing CENVAT credit on the impugned services by simply stating that they have no nexus with manufacturing, without giving any reason or dealing with the defence

submissions of the appellant. The impugned order being a non-speaking order has been passed in gross violation of principles of equity, fair play and natural justice. The services received by the appellant towards Repair and Maintenance services, Business Auxiliary service and Courier service were used in relation to manufacture and clearance of final products from place of removal and are covered under 'means' part of definition of 'input service'. The definition of 'input service' by its very nature is an inclusive one and all services used in relation, directly or indirectly in manufacture of final products and clearance of such products up to the place of removal are covered. The words 'in or in relation to' have been interpreted by the Supreme Court in the case of CCE vs Rajasthan State Chemical Works – 1999 (55) ELT 444 (SC) and U.O.I. vs Ahmedabad Electricity Co. Ltd. – 2003 (158) ELT 3 (SC) where it has been held that such words widen and expand the scope, meaning and content of expressions and services that are integrally connected with the process of manufacture without which such manufacture would be impossible or commercially inexpedient shall be covered within the definition of 'input service'. The scope of the words 'directly or indirectly' as well as 'in or in relation to manufacture' has been explained by Hon'ble Supreme Court in the decision of Doypack Systems (P) Ltd. vs UOI – 1988 (36) ELT 201 SC wherein it has been held that 'in relation to' is a very broad expression, equivalent to or synonymous with as to 'concerning with' and 'pertaining to'. Moreover, it is very well settled that the word 'includes' is an inclusive definition and expands the meaning; that the expression 'in the manufacture of goods' should normally encompass the entire process carried out by the dealer in converting raw materials into finished goods; that the Supreme Court has relied on the principle of commercial expediency and held that if a process is so commercially expedient that without which manufacture of the goods would not be viable, then such process will be integral to the manufacturing process. The definition of input services has two parts namely the means part and the inclusive part and both have to be read harmoniously with each other. In UOI vs Hansoli Devi – 2002 & SCC 273, Hon'ble Supreme Court has observed that the legislature never wastes its words or says anything in vain and a construction which attributes redundancy to legislation will not be accepted except for compelling reasons. No one-to-one co-relation between the input services and the final products manufactured needs to be established by the appellant. Each of the service mentioned in the impugned SCN has been allowed CENVAT credit by Tribunal / Court decision.

ii. The adjudicating authority has denied credit on B.A.S. on the ground that the appellant had failed to establish the functional utility of B.A.S. Major portion of the services rendered by the distributors are classified as B.A.S. and apart from that, services for indirect support taken for production are also received and categorized on the basis of invoices and services for which the appellant is registered with Service Tax department. In the cases of CCE, Salem vs ITC Ltd.-

2011 (268) ELT 89 (Tri.-Chennai); Vishal Natural Food Products vs CC, Bangalore – 2011 (266) ELT 369 (Tri.Bang.) and Sanghi Industries Ltd. vs CCE, Rajkot – 2009 (234) ELT 367 (Tri.-Ahmd.), it has been held that input service credit is available on B.A.S. Circular No. 943/4/2011-CX dated 29/04/2011 issued by department clarifies that input service credit is available on B.A.S.

iii. As regards Maintenance & Repair services, the appellants are using third party services in order to provide after sales services to the customers during the warranty period. Such credit has been allowed by Hon'ble Tribunal in the case of Carrier Air-conditioning & Refrigeration Ltd. vs CCE, Gurgaon – 2016 (41) STR 1004 (Tri.-Del.). The adjudicating authority has not given any finding on the case laws cited by the appellant during the course of adjudication.

iv. As regards 'Courier Service', the same was used by the appellant in the course of daily business operation. In the case of Jaypee Rawa Plant – 2010 (17) STR 519 (Tri.-Del.), Hon'ble Tribunal has decided that CENVAT credit was available on Courier service. Similar position has been held in many other decisions by Tribunal and Courts and hence the said input service credit was admissible. CENVAT and Service Tax are value added taxes and consumption taxes. CBEC Circular No.56/5/2003 dated 25/04/2003 issued in the context of export of services clarified that service tax is a consumption tax. Hon'ble Supreme Court in the case of All India Federation of Tax Practitioners vs UOI – 2007 (7) SCC 527 have held that VAT, which is a destination based consumption tax on commercial activities and not a charge on business but on the consumer would logically be leviable only on service provided within the country. Service Tax is a value added tax. The interpretation advanced by the department is against the very core and genesis of CENVAT credit scheme and such an interpretation is unacceptable. The expenditure incurred by the appellant on aforesaid services forms part of the cost of the final product. The appellant encloses a certificate issued by the Chartered Accountant certifying that the cost incurred on such input services form a part of the assessable value of the final products.

v. The charging of interest under the provisions of Rule 14 of the Rules read with Section 11A A of CEA, 1944 is not proper or legal since the denial of CENVAT credit itself is not sustainable. The appellant had not contravened any provisions of the Rules and therefore, penalty could not be imposed on the appellants. The appellant was always and still is under the *bona fide* belief that they had rightly availed credit of input services based on the invoices issued by the service providers and there was no intention on its part to evade duty. Therefore, no penalty is imposable. The appellant relies on the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs The State of Orissa – 1970 (SC) 253 followed in Kellner Pharmaceuticals Ltd. vs CCE – 1985 (20) ELT 80 to hold that proceedings under Rule 173Q are quasi-judicial in nature and there being no intention to evade duty, imposition of penalty was not justified.

4. Personal hearing was held on 22/08/2017. Ms Madhu Jain, Advocate appeared on behalf of the appellant. The ld. Advocate reiterated the grounds of appeal. She also submitted case laws.

5. Having carefully gone through the impugned order as well as the grounds of appeal, I find that the disputed issue pertains to CENVAT credit of Service Tax availed on the services of Courier Agency and on sales support services like Maintenance and Repair service and Business Auxiliary service provided by the distributors on behalf of the appellant during the warranty period of the goods sold by the appellant. The adjudicating authority has held that the definition of input service under Rule 2(l) of CCR, 2004 has to be understood and applied in the context of the decision of Hon'ble Supreme Court in the case of MARUTI SUZUKI LTD. vs CCE, DELHI – 2009 (240) E.L.T. 641 (S.C.), where it has been held that the use of input service must be integrally connected with the manufacture of the final product and it has to be necessarily established that the input service has been used in or in relation to the manufacture of the final product. The CENVAT credit has been denied on all the three impugned services by the adjudicating authority on the ground that the appellant had failed to establish the functional utility of activities covered under BAS, Maintenance & Repair as well as Courier service directly or indirectly with regards to the manufacture of final products and clearance of the products upto the place of removal. The appellant on the other hand have raised the contention in the grounds of appeal that the impugned services are covered under 'the means' part of the definition of input service, which is very expansive in scope because of the word 'includes' and that every commercially expedient process is integral to manufacture and thus CENVAT credit was admissible on the impugned services.

6. As regards 'Business Auxiliary service' (B.A.S.), it is forthcoming from paragraph 16 of the impugned order that the appellant had failed to establish the functional utility of the activities treated as B.A.S. such as modification of piping work, printing job, designing of environment, health and safety posters, cleaning and binning of material and further services like labour of painting charges, O&M Work at Tata Motor Ltd., electrification bills for package works etc. Further, it has been held that a few services were not availed upto the place of removal. However, this ground is not valid enough to deny or allow the impugned credit. Therefore, for determining the functional utility of the impugned services as to whether they have been used in or in relation to the manufacture of the final product up to the place of removal is required to be verified and ascertained and a reasonable order has to be issued in this regard. The matter for determining the admissibility of CENVAT credit on B.A.S. is remanded back to the original to determine the issue after according the appellant fair chance to produce the evidences regarding its claim.

7. As regards the admissibility of CENVAT credit on *'Courier service'*, the Hon'ble CESTAT, WZB, Ahmedabad in case of Tufropes Pvt. Ltd V/s C.C.E., Vapi reported at 2012 (277) E.L.T. 359 (Tri. - Ahmd.) has held as follows:

> **"2.** *Learned counsel submits that courier service has been utilized for sending documents/invoices etc. to various customers other plants and offices and submits that all these documents/invoices are relatable to the manufacture of the products by the appellants and therefore credit is admissible. I find that sending documents/invoices to various customers, other plants, offices is definitely relatable to manufacture and therefore credit is admissible. The learned counsel relied upon the decision of the Tribunal in the case of Hindalco Industries Ltd. vide Order No. A/2147/WZB/AHD/11, dated 2-12-2011. Since I find that appellants are eligible for the benefit, the appeal is allowed with consequential relief to the appellants."*

As per the above decision, courier service being concerned with sending documents to various customers, other plant and offices is relatable to manufacture and hence qualifies as input service. Therefore, respectfully following the above decision, I allow the credit of Service Tax paid on courier service. The impugned order confirming recovery of CENVAT credit availed on Courier Service along with interest and penalty thereon are not sustainable and is therefore set aside.

8. As regards the *'Maintenance and Repair services rendered by Contractors as part of warranty period service at the buyer's premises after the sale of the goods'*, it is undisputed that such service has been provided by third party at the premises of the buyer after the clearance of goods from the place of removal. The appellant has relied on case laws reported in Zinser Textile Systems Pvt. Ltd. vs CCE, Ahmedabad – 2014 (33) S.T.R. 301 (Tri. Ahmd.); Gujarat Forging Ltd. vs CCE, Rajkot – 2014 (36) S.T.R. 677 (Tri.Ahmd.) which is based on CCE, Vadodara vs Danke Products – 2009 (16) S.T.R. 576 (Tri.Ahmd.) and Samsung India Electronics P. Ltd. vs CCE, Noida -2009 (16) S.T.R. 570 (Tri.-Del.). I find that the question whether the impugned service has nexus with manufacture has been decided in favour of the appellant by Hon'ble Tribunal in the case of ZINSER TEXTILE SYSTEMS PVT. LTD. vs CCE, AHMEDABAD – 2014 (33) s.t.r. 301 (Tri. – Ahmd.) in the following terms:

> **"2.** I find that the issue involved before me is squarely covered by the decision of the Tribunal cited by the learned counsel. In this case also warranty is provided by the appellant and a service provider is ensuring repairs and maintenance during the warranty period and the service provider has been engaged by the appellant only. The obligation to ensure smooth running of the machinery supplied by them during the warranty period is on the appellant only and not on the service provider. The service has been provided to the appellant only in view of the above position. Having regard to the facts and circumstances of this case which are similar to the facts and circumstances in the case of *Danke Products*, I consider that the appellant is eligible for the Cenvat credit availed by them. Accordingly, appeal is allowed with consequential relief to the appellants."

From the above extracts, it is forthcoming that Hon'ble Tribunal has agreed with the contention of appellant that it is the manufacturer who is obliged to ensure that the machinery installed by them works smoothly and effectively during the warranty period and to fulfill this obligation, the service of the service provider is received by them. Therefore, this activity is directly attributable to the manufacturing activity since any

customers would expect warranty to be provided for a specific period and this is standard industry practice. Further, in O.I.A. KCH-EXCUS-000-APP-50-15-16 dated 22/03/2016in the case of M/s B.M. Auto Link, Gandhidham, in the context of sale of cars and free services provided by the dealer for a certain period, I have already upheld the decision of Hon'ble Tribunal in the case of KIRAN MOTORS LTD. vs CCE, VADODARA – 2009 (16) S.T.R. 74 (Tri. – Ahmd.) that as far as the buyer is concerned, the free services are part of a indivisible contract and the component of free services cannot be segregated or else the buyer would have claim to rebate in case of services not availed. In the instant case, the services during warranty cannot be segregated from the manufacture and sale of goods by the appellant. It is immaterial that the service is provided by third parties because the obligation to provide the services of Maintenance and Repairs is squarely on the manufacturer. The services rendered by the third parties are services rendered to the appellant who is the manufacturer and not to the buyer. Therefore, the impugned credit is admissible and consequently the demand for CENVAT credit, interest and penalty with regards to *'Maintenance and Repair services rendered by Contractors as part of warranty period service at the buyer's premises after the sale of the goods'* is not sustainable and the same is set aside.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.

(उमा शंकर)
आयुक्त
केन्द्रीय कर (अपील्स)

Date: / /2017

Attested

(S.S. Chowhan)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

1) To
M/s Ingersoll Rand (India) Ltd.,
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Ahmedabad -382 330.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: I, Ahmedabad (North).
5. Guard File.
6. P.A.