

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 : 079-26305065		टेलिफैक्स : 079-26305136

रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.): V2(84)8 /North/Appeals/ 2017-18 / 1859-10/1863  
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-326-17-18  
 दिनांक (Date): 22-Feb-2018 जारी करने की तारीख (Date of issue): 23/02/18  
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित  
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी  
 मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
 Arising out of Order-In-Original No 01 to 04/AC/Demand/17-18 Dated: 11/05/2017  
 issued by: Assistant Commissioner Central Excise (Div-I), Ahmedabad North

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

**M/s Mazda Limited**

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 धारा 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।

O.C



- (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 :-

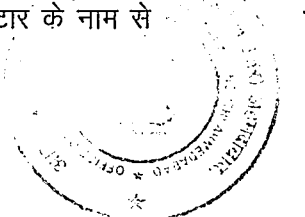
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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, 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 न्यायाधिकरणों की गई अपील के विरुद्ध 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. 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 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 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।

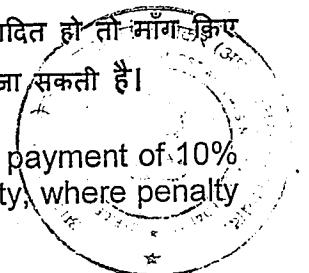
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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.

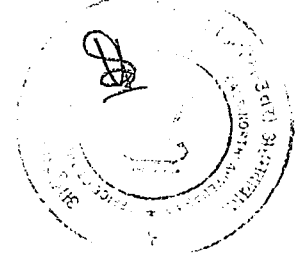
इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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 Mazda Limited (Bio Tech Division), situated at 11/12 Hitendranagar Audhyogic Sahkari Vasahat, Near National highway No. 8, Kubernagar, Naroda, Ahmedabad – 382 340 (hereinafter referred to as 'the appellant') is engaged in the manufacture of excisable product 'Ejector Vacuum System, Fruit Jam, Food Colors etc' falling under Chapter 84, 20 and 21 of the first schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as 'CET, 1985'). During the course of audit conducted by the officers of the department it was noticed that the appellant had availed input service credit of Service Tax paid on services like Travel Agent service, Maintenance and Repair of vehicles, Maintenance and Repair of Air Conditioning machine, Rent of Head Office situated at Panchwati, Ahmedabad and services like Custom House Agent service, Clearing & forwarding Agent service, Foreign Bank Charges etc. used in relation to export of goods. A Show Cause Notice F.No.V.84/15-129/OA/2014 dated 24/11/2014 (hereinafter referred to as 'the SCN') was issued to the appellant for recovery of CENVAT credit amounting to Rs.16,09,351/- under Rule 14 of Cenvat Credit Rules, 2004 (CCR, 2004) read with Section 11A(5) of the Central Excise Act, 1944 (CEA, 1944) along with interest under Rule 14 of CCR, 2004 read with Section 11AA of the Central Excise Act, 1944 (CEA, 1944). An amount of Rs.19,914/- paid by the appellant was proposed to be appropriated and penalty was proposed to be imposed on the appellant under Rule 15(2) of CCR, 2004 read with Section 11AC(1)(b) of CEA, 1944. This SCN was adjudicated *vide* O.I.O.No. 01 to 04/AC/DEMAND/17-18 dated 11/05/2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise Division-I, Ahmedabad-II (hereinafter referred to as 'the impugned order'). The adjudicating authority has allowed the CENVAT credit amounting to Rs.23,760/- availed on 'Car Renting, 'Travel Agent', Repairing of Air-conditioner', 'Hotel charges' and 'Business Promotion' and denied CENVAT credit amounting to **Rs.16,352/-** availed on '**Car Renting**' and '**Hotel Charges**' availed on or after 01/04/2011. The adjudicating authority has denied the CENVAT credit amount of **Rs.10,23,255/-** availed on '**Custom House Agent**' and '**Clearing and Forwarding Agent**' services as the period involved was after the amendment of Rule 2(l) of CDR, 2004 w.e.f. 01/04/2008. The adjudicating authority has allowed CENVAT credit of Service Tax on Foreign Bank service holding the same as falling under the activity of 'financing' in the inclusive portion of the definition of input service under Rule 2(l) of CDR, 2004. The CENVAT credit of Service Tax paid on Office Rent and distributed by Input Service Distributor has been allowed by the adjudicating authority following the ratio of Order-in-Appeal No.AHM-EXCUS-001-APP-041-2016-17 dated 22/12/2016 passed by Commissioner (Appeals), Ahmedabad. Thus out of a total demand of Rs.19,07,031/-, the demand of **Rs.10,39,607/-** has been confirmed invoking extended period along with interest and equivalent penalty while the amount of Rs.8,67,424/- has been dropped.



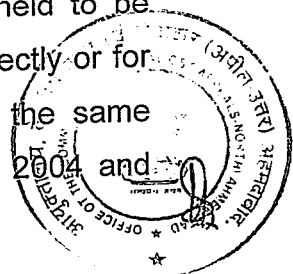
2. The appellant has preferred the instant appeal against the impugned order mainly on the following grounds:

- a) The impugned order is clearly non-reasoned and non-speaking and in clear violation of the principles of natural justice as the adjudicating authority has not dealt with the submissions made before him. It is submitted that the services pertaining to CHA and C&F services are denied by the adjudicating authority that were received for export of goods wrongly relying on the judgment of Hon'ble Supreme Court in the case of M/s ISPAT Industries that was pertaining to valuation of goods as to whether freight charges are includible in the assessable value of the goods. It is submitted that the dispute pertaining to availability of CENVAT credit on CHS services is settled by various judgments including in the case of M/s Dynamic Industries by the Hon'ble Gujarat High Court, where it has been held that in the case of export of goods, all expenses incurred by the exporter up to the port are CENVATable. The adjudicating authority has further disallowed CENVAT credit on car repairing services which are being used for transportation of employees of the company to the factory and office. The distance between office of the appellant and its factory is approximately 25 kms. The appellant has to make arrangement for transportation of employees to the factory as well as office. For this purpose the appellant has brought Cars which require services as well as repairing. It is submitted that the credit on authorized service station services is clearly admissible as the service is directly used by employees for transportation between factory and office. The appellant had relied upon order of Hon'ble Tribunal in the case of M/s Reliance Industries Ltd., wherein identical services were allowed but the adjudicating authority has not discussed the ratio in the impugned order. It is submitted that the appellants had used Hotel charges for its marketing as well as servicing / installation etc. The appellant had made detailed submissions and had relied upon the direct order in the case of M/s Reliance Industries Ltd. allowing credit on such service.
- b) The appellants had further submitted that credit was sought to be denied invoking extended period of limitation. However, no objection was raised against availment of credit on aforesaid services during the course of audit for earlier period. The demand for Hotel service was clearly barred by limitation. The appellant submit that even otherwise, the demand is barred by limitation. The appellant had taken credit openly showing the credit in its records and the demand is also issued on the basis of audit of records. Hence when the entire details were available on records, it cannot be held that there was any suppression with *mala fide* intention to evade payment of duty and hence extended period of demand cannot be invoked and 100% penalty cannot be imposed on the appellant.

3. Personal hearing in the case was held on 13/02/2018. Shri Nirav Shah, Advocate attended and reiterated the grounds of appeal. He submitted copies of citations Commissioner vs Dynamic Industries Ltd. – 2014 (307) ELT 15 (Guj.) and Reliance Industries Ltd. vs CCE & ST, LTU, Mumbai – 2016 (45) STR 383 (Tri.-Mumbai).

4. I have gone through the contents of the impugned order as well as the grounds adduced by the appellant in the present appeal. In the present appeal the appellant has challenged the denial of input credit of Service Tax in respect of (i) Car repairing service w.e.f. 01/04/2011; (ii) Hotel charges w.e.f. 01/04/2011 and (iii) Custom House Agents (CHA) and Clearing and Forwarding (C&F) Agents in respect of export goods w.e.f. 01/04/2011. I take up the impugned services for discussion as follows:

- i. **Car Repairing Service:** The appellant has claimed CENVAT credit on Car Repairing services on the ground that the Cars were used for transportation of the employees to the factory and office. Such service cannot be held to be service used in or in relation to manufacture, whether directly or indirectly or for clearance of final products upto the place of removal. Therefore, the same cannot be considered as an input service under Rule 2(l) of CCR, 2004 and CENVAT credit of Service Tax on such service is not admissible.



- ii. **Hotel charges:** The CENVAT credit with regards to Hotel charges is not admissible as the same cannot be considered as input service under the amended Rule 2(I) of CCR, 2004.
- iii. In the light of the above discussion, the demand confirmed in the impugned order along with interest and penalty in respect of Car Repairing Service and Hotel charges is upheld as sustainable. As regards the invoking of extended period for confirming demand in respect of Car Repairing Service and Hotel Charges, it is clear that the ineligible credit was detected only because of the audit of the records by the officers of the department. After amendment of CCR, 2004, there was no reason for the appellant to continue availing CENVAT credit on the said services disregarding the amendment. The appellant had never intimated its desire to the department to avail the impugned credit, which it had reason to believe was not admissible. Therefore, the ingredient of suppression of facts with intent to evade duty is present in the instant case, justifying the invoking of extended period and imposition of penalty under Rule 15(2) of CCR, 2004.
- iv. **CHA and C&F:** The services towards CHA and C&F were used towards export of goods. The adjudicating authority has denied CENVAT credit on CHA and C&F holding that the place of removal for export goods is factory which is not correct and is not sustainable because the place of removal for export of goods is the place where documents are presented for export i.e. the port of export. The CHA and C&F charges are incurred at the Port and hence CENVAT credit on the same is admissible. The confirmation of demand in respect of CENVAT credit on CHA and C&F services along with interest and penalty are set aside.

5. 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*

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: / / 2018

Attested

*(K. P. Jacob)*  
(K. P. Jacob)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad.

By R.P.A.D.

To  
M/s Mazda Limited (Bio Tech Division),  
11/12, Hitendranagar Audhyogic Shakari Vasahat,  
Near National High Way No. 8., Kubernagar, Naroda,  
Ahmedabad – 382 340.

Copy to:

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

