



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन, 7<sup>th</sup> Floor, Central Excise Building,  
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,  
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

585670  
5860

क फाइल संख्या (File No.): V2(85)112 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-14-18-19

दिनांक (Date): 24-May-18 जारी करने की तारीख (Date of issue): 28/5/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No 23-24/AC/D/BJM/2017 Dated: 28/12/2017

issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

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



(b) In case of rebate or duty or 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.

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

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-  
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



(ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016.

(b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फ़ीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फ़ीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फ़ीस भेजनी होगी । फ़ीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टेट के लिए आवेदन-पत्र रुपए ५००/- फ़ीस भेजनी होगी ।

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.5000/-, 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(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 चाहिये इस तथ्य के होते हुए भी की 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 १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये ।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear 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 सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।

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



## ORDER IN APPEAL

This appeal has been filed by M/s Yazaki India Ltd., A-4, Tata Motors Vendor Park, S. No. 1, North Kotpura, Sanand, Viroch Nagar, Ahmedabad (herein after referred to as the appellants) against the OIO No. 23-24/AC/D/BJM/2017 dtd. 28.12.2017 (herein after referred to as the impugned order) passed by the Assistant Commissioner, Division-III, CGST, Ahmedabad North (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants were engaged in manufacturing wiring harness and were availing the benefits of cenvat credit as per Cenvat Credit Rules, 2004 (for brevity "CCR"). The appellants were issued show cause notice dtd. 06.07.2017 for availing cenvat credit on House Keeping Service, Staff Bus Service, Canteen Service, Travel Agent Service and Vendor Park charges amounting to Rs. 20,99,641/-. The adjudicating authority found that the appellants were entitled for cenvat credit amounting to Rs. 5,41,337/- on house-keeping service but the rest of the services did not fall in the definition of input services as defined in Rule 2 (I) of CCR and accordingly, rejected the cenvat credit amounting to Rs. 15,58,304/-.

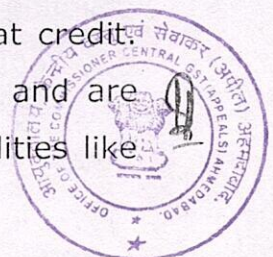
3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That they are entitled for cenvat credit as per Rule 3 of the CCR and such services are covered by definition of "input services" as per Rule 2 (I) of the CCR; they have service tax invoice which is the document available with them in terms of Rule 9 of the CCR and the said costs have been included in the value of final product or output service;
- b) That the service of staff bus and canteen services have not been used by the employees for the personal benefits but the said travels have always been for the appellant' work;
- c) That in case of input services, its tangible presence in the final product is not feasible so as to establish nexus;
- d) That the persons who use the said services are from production and production planning department, purchase department, marketing department, quality control department, design and development department etc who directly contribute to the manufacturing and clearance of final products in the factory;
- e) That in the negative list the words used are "predominantly used for personal use" which means that if such services are not



predominantly used for personal use, then it will be covered within the scope and ambit of input services;

- f) As far as canteen services are concerned, it is mandated by law to maintain canteen under the Factories Act, 1948 and hence when the statute demands maintenance of canteen for the employees, it becomes a mandate to do so and the cenvat credit cannot be denied;
- g) That they are not recovering entire amount paid for the bus and canteen facility. They rely on the case laws of M/s Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Excise, Nasik – 2014-TIOL-2460-CESTAT-MUM, Commissioner of Central Excise, Delhi-III vs. M/s Bajaj Motors – 2015-TIOL-2636-CESTAT-DEL, M/s Fiem Industries Ltd vs. Commissioner of Central Excise, Chennai-III – 2016-TIOL-1451-CESTAT-MAD, Commissioner of Central Excise, Delhi-III vs. Pricol Ltd. – 2016 (41)STR-649 (Tri. Del) and M/s Delphi Automotive Systems Pvt. Ltd. vs. Commissioner of Central Excise, Noida – 2015 (315)ELT-255 (Tri. Del);
- h) That travel agent service is also not covered by the exclusion list of services indicated therein and such services are inevitable part of business. When the audit team had visited, all the documents were produced and if the audit team had any reservation, they ought to have raised query by giving a specific letter. They rely on the case laws of M/s HCL Technologies Ltd. vs. Commissioner of Central Excise & Cus., Noida – 2015 (40)STR-1124 (Tri. Del), M/s Vidyut Metallics Pvt. Ltd. vs. Commissioner of Central Excise, Mumbai-III-2012 (27)STR-305 (Tri. Mum), M/s Allcargo Global Logistics Ltd. vs. Commissioner of Central Excise, Raigad – 2013-YIOL-323-CESTAT-MUM, Indswift Laboratories Ltd. vs. Commissioner of Central Excise & ST, Chandigarh-II – 2015 (38)STR-522 (Tri. Del), One Advertising & Communication Services Ltd. vs. C.S.T., Ahmedabad-2012 (27)STR-344 (Tri. Ahmed);
- i) That as far as vendor park services are concerned, they are input services which are integrally connected to the business of manufacture and clearance of final product and on the very same activity, the Addl. Commissioner by Order In Original No. 50-51/ADC/2015/MKR dtd. 15.02.2016 has allowed the cenvat credit. Further their unit is situated in Tata Motors Vendor Park and are required to pay maintenance charges on the common facilities like



road, street light and others and they claim cenvat credit for the service tax paid;

j) That the penalty is not imposable on them as there has been no contravention of any rules and provisions.

4. The personal hearing in the case was held on 17.05.2018 in which Shri Anant Bhide, Consultant and Shri Yogesh appeared on behalf of the appellants. They reiterated the grounds of appeal.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issues to be decided in the instant case is whether the cenvat credit has been rightly rejected by the adjudicating authority on the ground mentioned in the impugned order.

7. First of all, I take up the case of rejection of cenvat credit availed for Staff bus services, Canteen services, Travel agent services and tour operator services. The rule 2 of the Cenvat Credit Rules, 2004 deals with the various definitions for the purpose of allowing or otherwise cenvat credit. The main part of the definitions with which we are concerned in the instant case is Rule 2 (I) which defines "input service". After the Notification No. 3/2011-C.E. (N.T.) dtd. 01.03.2011, the exclusion clause (C) which deals with the category of input services on which cenvat credit will not be allowed, reads as under:

*"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;**" (emphasis provided)*

On going through the definition of the input services and reading that with the specific exclusion of certain category of input services which are used primarily for personal use or consumption of any employee, it leaves no doubt that the cenvat credit taken on staff bus expenditure, canteen services and travel agent services and tour operator services cannot be held admissible. I find no documentary evidence to suggest that the travel agent services and tour operator services were used for business purpose. For claiming any benefit, the appellants have to prove their entitlement beyond any doubt.



Moreover the interpretation cannot add words to the definition, where definition is unambiguous and crystal clear. The Hon'ble High Court of Bombay in the case of Nicholas Piramal (India) Limited [2009(244) ELT 321 (Bom)], has on the question of interpretation of Rules, made the following observation:

*"We may only mention that hardship cannot result in giving a go-by to the language of the rule and making the rule superfluous. In such a case it is for the assessee to represent to the rule making authority pointing out the defects if any. Courts cannot in the guise of interpretation take upon themselves the task of taking over legislative function of the rule making authorities. In our constitutional scheme that is reserved to the legislature or the delegate.*

*Hardship or breaking down of the rule even if it happens in some cases by itself does not make the rule bad unless the rule itself cannot be made operative. At the highest it would be a matter requiring reconsideration by the delegate.*

*It is never possible for the Legislature to conceive every possible difficulty. As noted a provision or a rule can occasion hardship to a few, that cannot result in the rule being considered as absurd or manifestly unjust.*

*In our opinion, the rule must ordinarily be read in its literal sense unless it gives rise to an ambiguity or absurd results."*

8. I find that the Hon'ble Tribunal's had pronounced eligibility of CENVAT credit on various items, before 2011. Despite the Legislature being aware of these judgements/orders, yet it chose to restrict the credit by changing the eligibility in 2011, by excluding these items. Hon'ble Supreme Court has very categorically stated that *"Courts cannot add words to a statute or read words into it which are not there"* (Parmeshwaran Subramani [2009(242)ELT 162(SC)]). Moreover, in the guise of interpretation, no intention can be added, when intention of legislature is very clear. In view of the foregoing, I agree with the view taken by the adjudicating authority that the CENVAT credit was wrongly availed by the appellant as far as this issue is concerned.

9. As regards the cenvat credit availed on vendor park services, I find that the services are necessary for maintaining the place of business and without them; the appellants cannot carry on their manufacturing activity. I find support from the case of Commissioner Of C. Ex. & S.T., Bangalore III Vs. Jindal Aluminium Ltd. cited at 2017 (5) G.S.T.L. 307 (Tri. - Bang.). I therefore find no reason to disallow the cenvat credit availed on the services of vendor park services.



10. As regards imposition of penalty, in view of the fact that the cenvat credit on vendor park services has been allowed, the penalty is also reduced proportionately.

10. The appeal is disposed off accordingly with consequent relief.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

*उमा शंकर*

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)  
अहमदाबाद

दिनांक:

सत्यापित

*धर्मेन्द्र उपाध्याय*

(धर्मेन्द्र उपाध्याय)  
अधीक्षक (अपील्स),  
केंद्रीय कर, अहमदाबाद



**By R.P.A.D.**

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, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Astt. Commissioner, CGST, Div.-III (Sanand), Ahmedabad (North),
- (4) The Dy./Astt. Commissioner (Systems), CGST, Ahmedabad (North),
- (5) Guard File,
- (6) P.A. File.