



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.): V2(87)137 /North/Appeals/ 2018-19 /10551 to 10555
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-212-18-19
दिनांक (Date): 25/03/2019 जारी करने की तारीख (Date of issue): 14/05/2019
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 08/AC/D/BJM/2017 Dated: 27/07/2018
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 Tata Motors 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



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानेक क्षेत्र के बैंक का 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।

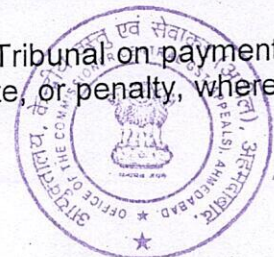
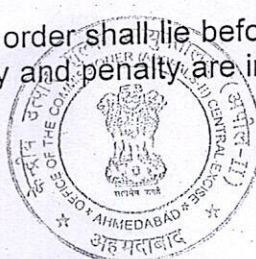
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

This appeal has been filed by M/s Tata Motors Limited, Survey No.1, Village Northkotpura, Taluka-Sanand, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 08/AC/D/BJM/18-19 dated 27.07.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of CGST, Division-III, Ahmedabad-North (hereinafter referred to as "the adjudicating authority").

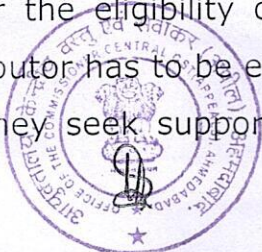
2. The appellant is engaged in manufacturing of Motor Vehicles falling under chapter 87 of CETA, 1985. Based on EA 2000 Audit, a show cause notice dated 28.01.2015 for the period of January, 2014 to November, 2014 was issued to the appellant for denying CENVAT credit amounting to Rs. 48,47,017/- in respect of input service credit on services viz. (i) Construction service; (ii) Erection, Commissioning and Installation Service; (iii) Maintenance and housekeeping; (iv) Mandap Keeper and Banquet Services; (v) Services provided by Confederation of Indian Industry and (vi) Travel Agent Service. The grounds for denying the said credit is that the input services availed by the appellant are not falling under definition of "Input Service" as defined under Rule 2(I) of CENVAT credit Rules, 2004 (CCR). The show cause notice also proposed for recovery of interest and imposition of penalty under 15 (1) of CCR. Vide impugned order, the adjudicating authority has confirmed the demand with interest except in respect of service viz. Erection, commissioning and installation amounting to Rs. 13,52,623/- and for maintenance and housekeeping amounting to Rs. 2,02,097/- and ordered its recovery with interest. He also imposed penalty of Rs. 3,29,230/-.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- a) Input services in dispute fall in the definition of "input service" as prevailing during the relevant period and thus credit was rightly availed by them. The input service in dispute was availed in the course of manufacture & clearance of final product and therefore they are entitled to avail input service tax credit. They seek support from the case law of CCE vs. Parth Poly Woven (P) Ltd. - 2012 (25) STR-4 (Guj.), CCE, Nagpur vs. Ultratech Cement Ltd. - 2010-TIOL-745-HC-MUM-ST;
- b) Out of total CENVAT credit, cenvat credit availed on construction service is related to work carried out for renovation, modernization and repair work of existing factory premises. Hence input service in



- dispute falls in the definition of input service prevailing for relevant periods;
- c) That the correct legal position of Rule 2A of Service Tax (Determination of Value) Rules, 2006 only prescribes for determination of value of service portion in the execution of works contract and it has no bearing on admissibility or non-admissibility of cenvat credit on input services. The definition of input service nowhere restricts cenvat credit on original works contracts;
- d) That they are submitting illustrative copies of the 65 invoices on the strength of which they have taken cenvat credit of Rs. 8,53,113/- and from perusal of them, it is clear that they have taken cenvat credit for work carried out for renovation, modernization and repair work of existing factory premises. They seek reliance on the case law of Red Hat India (P) Ltd. vs. Pr. Commissioner, ST- 2016-TIOL-1300-CESTAT-MUM and Mahanagar Gas Ltd. vs. Commissioner of C.Ex., Mumbai- 2018-TIOL-1973-CESTAT-MUM, Circular No. 943/04/2011-CX dated 29.04.2011;
- e) Erection, Commissioning and installation services are related to maintenance support to Robot, installation and commissioning of ASU panels, etc which is directly relating to the manufacturing of activity at paint shop.
- f) That as regards denial of cenvat credit amounting to Rs. 18,63,886/- in respect of 9 invoices, it is submitted that nature of service involved in these invoices are related to dies modification, software development etc. and these services are not disputed in the show cause notice and hence demand confirmed is beyond the scope of show cause notice;
- g) CENVAT credit on Travel Agent Service, Event Management Service, Translation Service, Mandap Keeper and banquet Service and Service provided by CII are available as none of these services were appearing in the exclusion list of amended definition of input service.
- h) As regards denial of cenvat credit on the ground that it was taken on debit notes, the fact can be ascertained from the invoices enclosed and submitted for perusal. They seek support from the case laws of DGP Hinoday Industries Ltd. vs. CCE , Pune - 2017 (349) ELT-503 (Tri.Mum.), Sachin Gandhi vs. CCE & ST,- 2016 (339) ELT-73 (Tri.Ahm.). Further the eligibility of cenvat credit distributed by the input service distributor has to be examined at the end of input service distributor only. They seek support from the case laws of C. of ST,



Ahmedabad vs. Godfrey Philips India Ltd. – 2009 (14) STR-375 (Tri.Ahm.);

- i) That entire travel related expenses are incurred by them only for the business and official purposes. They seek reliance on case law of Bharat Coop. Bank (Mumbai) Ltd. vs. Coop. Bank Employees Union – (2007) 4-SCC (685) and C. Of C.Ex. vs. Solaris Chemtech Ltd. – 2007 (214) ELT-481 (S.C.);
- j) That the intention of the legislature was that these activities should be relating to business;
- k) That many valid and legal submissions made by them have not been dealt with by the adjudicating authority;
- l) That when in view of the above submissions, the demand of central excise duty is not sustainable, interest and penalty cannot be imposed.

4. Personal Hearing in the matter was held on 20.11.2018. Shri Rajesh B Shukla and Shri Bhairav Vaishnav, authorized representatives of the appellant appeared for the same and reiterated the grounds of appeal. They submitted further additional submission which comprised of copies of relied upon case laws and relevant extract of central excise manual.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is relating to admissibility of input service credit in respect of following input services, availed by the appellant during January 2012 to May 2013.

- [i] Construction Service
- [ii] Erection, Commission or installation service
- [iii] Event Management service
- [iv] Mandap Keeper and Benquit service
- [v] Travel Agent service
- [vi] Translation service
- [vii] Service provided by Confederation of Indian Industry
- [viii] Management and maintenance service.

6. The adjudicating authority has denied all the above input service credit mainly on the grounds that none of the said services fall under the definition of "Input service" as defined under Section 2(I) of CCR 2004. On other hand, the appellant has contended that the credit in question in respect of above services is eligible to them as they utilized the same directly or indirectly in the course of manufacturing activity and business activity.

7. During the relevant period under dispute, Rule 2(I) of CCR 2004 defined "input service" as under:



(I) "input service" means any service, -

(i) used by a provider of [output 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 modernization, 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], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract 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) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; 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;]

The definition of "input service" consists of categories viz. [i] services which are directly or indirectly used in or in relation to the manufacture of final products; [ii] services which are used for clearances of the final products up to the place of removal; [iii] inclusive part of services such as used in relation to modernization, 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; and [iv] and exclusive part of service such as service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for (a) construction or execution of works contract 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. Therefore, the services which were taxable and used by the manufacturer in relation to the manufacture of final product and clearance of the final product up to the place of removal would be eligible as 'input services'. After the final products are cleared from the place of removal, there would be no scope for subsequent use of service to be treated as input service. Services beyond the stage of manufacturing and clearance of the goods cannot be considered as input services. Thus, for the purpose of ascertaining the admissibility of CENVAT credit on services, the nature of service availed should be in consonance with the above parameters.

8. Now, I take the eligibility of CENVAT credit in respect of above referred service utilized by the appellant.

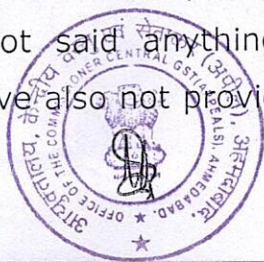
8.1 Construction Service: The appellant has contended that they availed the said service in relation to carrying out work related to renovation, modernization and repair work of already existing factory premises and therefore, the said service falls under inclusive clause of the definition of "input service" and not falls under the exclusion clause. They submitted details of bills. However, the adjudicating authority has not agreed with the argument of the appellant and based on the rate of central excise duty paid and by applying reverse calculation method and after studying the provisions related to works contract service, held that the appellant has in fact availed the cenvat credit of duty paid for works contract services for original work of civil construction for their plant and does not pertain to renovation, modernization and repair work.

I find that as per definition of "input service", the exclusive clause states that service portion in the execution of a works contract and



construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for - (a) construction or execution of works contract 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. On clause perusal of bills submitted by the appellant, I find that the bills are pertaining to Civil Work done at various places in their plant. Looking into the nature of work done by the appellant as detailed in the invoices, I find that the appellant has availed service of works contract which are specifically excluded from the definition of input services eligible for cenvat credit. Hence, the adjudicating authority has correctly denied the credit as per definition of "input service" and I also uphold the order.

8.2 Erection, Commission or installation service: I find that the adjudicating authority has disallowed cenvat credit of Rs. 23,06,197/- based on the findings that the invoices pertained to various other plants located at locations other than the present location i.e. at Sanand. The appellant has contended that the said services are related to installation and commissioning of RO-dip Skid, RFID equipment, electrical, hydrants and pipelines etc. which is directly relating to the manufacturing of activity at paint shop. I find that the credit of Rs. 18,63,886/- has been denied on the ground that the invoices pertained to various other plants located at locations other than the present location involved in this appeal and in some cases involving cenvat credit of Rs. 1,13,955/-, invoices were not produced and in one case only debit note was produced making the verification of the service involved impossible. In some cases involving cenvat credit of Rs. 1,96,278/-, the nature of service was works contract and in some invoices involving cenvat credit of Rs. 1,25,712/-, only goods were supplied and there was no service involved. The appellants have not provided any explanation or argument about the reasons put forth by the adjudicating authority and in view of my findings about works contract above, I agree with the findings of the adjudicating authority and uphold the impugned order to this extent. As regards disallowance of cenvat credit on the ground that the invoices pertained to plants other than the present one. In the instant case, I find that the credit on these services has been denied because the invoices for these services were in the name of their plants situated at other locations and not the present one i.e. Sanand. I also find that the appellants have not said anything about where exactly these services were utilized and have also not provided any documentary evidence



that the services were utilized by their Sanand unit. In my view this is a primary requirement. It is essential that they prove the connection between the services and the manufacturing activity. It has been specifically held that the invoices involving cenvat credit of Rs. 18,63,886/- pertained to Pimpri, Chikali and Pune plants and not their Sanand plant. I further find that Rule 2(I) of CCR 2004 defined "input service" as under:

(I) "input service" means any service, -

(i) used by a provider of [output 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..**" (Emphasis supplied)

From the plain reading of the provisions of the concerned rule, I find that it is absolutely clear that the services on which cenvat credit is to be taken, have been used whether directly or indirectly in or in relation to the manufacture of final products. In view of this, I find that the cenvat credit on telephone service has been rightly denied and I uphold this part of the impugned order.

As regards disallowance of cenvat credit of Rs. 6,366/- availed on hotel charges, airfare and local conveyance, travelling time etc. are concerned, I find that these are integral part of any business and they have direct connection with the business whether it may be for the purpose of sale, purchase or modernization or training etc. so I find no reason to disallow the cenvat credit and accordingly set aside the impugned order as far as it relates to this issue.

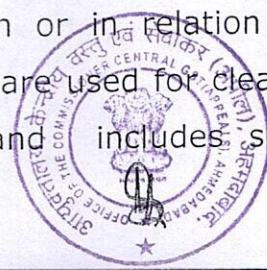
8.3 Mandap Keeper and Banquet service; Travel Agent service and Service provided by Confederation of Indian Industry: The adjudicating authority has denied the credit to the appellant in respect of all these input service by relying the decision of Hon'ble Supreme Court in case of M/s Maruti Suzuki Ltd [2009 (240) ELT 641 and held that none of the services have been used in relation to the manufacture of final products and clearance of final products upto the place of removal. On other hand, the appellant has contended that none of these services are appeared in exclusion clause of the definition of "input service", hence credit cannot be denied. I observe that the Hon'ble Supreme Court in case of M/s Maruti Suzuki Ltd supra held that :



"All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product..... Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety."

8.4 The above said decision was deferred by the Hon'ble Supreme Court in case of M/s Ramala Sahkari Chini Mills Ltd [2010 (260) E.L.T. 321 (S.C.)]. In the said decision, the Hon'ble Court has held that "Goods to fall under 'inputs' as per said decision must be (i) used in or in relation to manufacture of final product whether directly or indirectly, and whether contained in final product or not; (ii) covered within six enumerated categories in Rule 2(g) of Cenvat Credit Rules, 2002 and (iii) used within factory of production - First and third parts namely specific part and location of use to be satisfied for goods to be inputs - Supreme Court's ruling relating to confining goods only to inclusive part of definition, that is to the six specified categories, not agreed with - Prima facie, restricting definition of inputs to six categories not intended by legislature - Phrase "and includes" not intended by legislature to impart restricted meaning to definition of inputs - Interpretation of such term in Maruti Suzuki case requires reconsideration by Larger Bench." Therefore, the eligibility of credit will be depending upon the basis of services having nexus with business of manufacture of final products.

8.5 The definition of "input service" supra covers services which are directly or indirectly used in or in relation to the manufacture of final products; the services which are used for clearance of the final products up to the place of removal; and includes services used in relation to



modernization, 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. Therefore, I find that the inclusive part of the definition of "input" is restricted to the inputs used in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" extends to services used prior to/during the course of/after the manufacture of the final products. Accordingly, the services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would qualify to be input service under Rule 2(I) of CCR. In view of above discussion, I find that the services mentioned in para 8.3 above directly or indirectly have nexus with the manufacture of the final products of the appellant as well as the business of manufacture of final products. In the circumstances, I do not find any justification for denying the credit availed by the appellant in respect of such services, especially, the adjudicating authority has not categorically denied the credit by stating that such services have no nexus with the manufacturing activity. Therefore, I allow the credit in respect of said services mentioned in para 8.3 above.

9. In view of above discussion, I disallow the credit availed by the appellant in respect of Construction Service and Erection, Commission and installation service and uphold the demand with interest. In respect of services viz, Mandap Keeper and Banquet service; Travel Agent service and Service provided by Confederation of Indian Industry and cenvat credit of Rs. 6,366/- availed on hotel charges, airfare and local conveyance, travelling time etc., I set aside the demand and allow the credit availed by the appellant.

10. As regards penalty imposed, I find that the adjudicating authority has imposed penalty under Rule 15 of CCR read with Section 11 AC (1)(a) of the Central Excise Act, 1944. The appellant has contended that they have not suppressed the facts with an intention to evade the duty. As regards the cenvat credit wrongly availed by the appellant in respect of services confirmed in forgoing paras, penalty is required to be imposed on them as they have failed to discharge their responsibility by contravened the



provisions of CCR. In the impugned order, the adjudicating authority has widely discussed the circumstances under which the penalty was imposed and no interference required in respect of penalty imposed on the credit wrongly availed against the service. Therefore, I uphold the same.

11. In view of above discussion, I partly allow the appeal. The appeal stands disposed of accordingly.

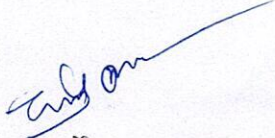
31/12/19

(उमा शंकर)

आयुक्त (अपील्स)

Date : . . 2019

सत्यापित



(धर्मेन्द्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कार, अहमदाबाद



By RPAD.

To,
M/s Tata Motors Limited,
Survey No.1, Village Northkotpura, Taluka-Sanand,
Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad North,
3. The Assistant Commissioner, System, Central Tax, Ahmedabad North
4. The Assistant Commissioner, CGST, Division-III , Ahmedabad North
5. Guard File.
6. P.A.

