



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



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
टेलीफोन : 079-26305065 टेलीफैक्स : 079 - 26305136

रजिस्टर डाक ए.डी. द्वारा

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- क फाइल संख्या (File No.) : **V2(85)30 /North/Appeals/ 2018-19**
- ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-52-18-19**
दिनांक (Date): **27-Aug-18** जारी करने की तारीख (Date of issue): 11/9/2018
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Uma Shanker , Commissioner (Appeals)**
- ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No **07/AC/Dem/2017-18/RTP** Dated: **28/02/2018**
issued by: **Assistant Commissioner-Central Excise (Div-V), 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 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 (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 न्याधिकरण 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/- फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फीस भेजनी होगी । फीस 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 । स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस 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 पट्टी 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 मामलो 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 Pvt Ltd, Block A (97 & 98), Shree Rajlaxmi Logistic Park, N H 8A, Village:Ta.Bavla, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.07/AC/Dem/2017-18/RTP dated 28.02.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division-V, Ahmedabad North.

2. The facts of the case are during the course of audit, it was noticed that the appellant had availed CENVAT credit of service tax amounting to [i] Rs.21,70,792/- paid on outdoor catering service provided by M/s Awadh Services, Gandhinagar to their employees and [ii] Rs.18,11,179/- paid on transportation service provided by M/s Rao Tourist service P Ltd, Gurgaon for transport of employees from and to the factory, which is not eligible to them as per definition of Rule 2(l) of CENVAT Credit Rules, 2004 (for short-CER). It was also observed that the appellant had cleared various capital goods without reversing CENVAT credit after proper determination of CENVAT credit as per method prescribed under Rule 3(5A) of CCR and thereby short paid CENVAT credit of Rs.2,17,285/-. Therefore, a show cause notice dated 09.06.2017 was issued to the appellant for recovery of said CENVAT credit wrongly availed with interest and imposition of penalty. Vide the impugned order, the adjudicating authority has confirmed the recovery of CENVAT credit supra with interest and imposed penalty equal to the CENVAT credit wrongly availed under Section 15(2) of CCR read with Section 11 AC of Central Excise Act, 1994.

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

- As per Rule 3 of CCR, the appellant is eligible to CENVAT credit and such services are covered by definition of input services as per Rule 2(l) of CCR and have been used directly or indirectly in or in relation to the manufacture and clearance of final products, which is the key requirement for availing CENVAT credit.
- The documents available with them are in terms of rule 9 of CCR and the cost have been included in the value of final product or output services which has suffered payment of duty or output service tax.
- The said services have not been used by the employees of the appellant for the personal benefit but for appellant's work and it is quite evident from the service provider's bill on appellant's name.
- The appellant relied on Hon'ble Tribunal's decision in case of M/s Hindustan Coca Cola Beverages Pvt Ltd-2014-TOIL-2460 CESTAT Mum and other case laws in support of their arguments.
- As regards reversal of CENVAT credit on capital goods cleared, they submitted that since the capital goods were for use in manufacture of excisable goods at receiving plant, and in fact whatever duty shown on invoice has been availed as CENVAT credit in receiving plant on receipt of



such goods, the entire exercise is of revenue neutral since the duty paid would be available as credit at receiving plant of the same company.

4. Personal hearing in the matter was held on 03.08.2018. Shri Anant Bhide and Shri Yogesh Jadeja appeared for the same and reiterated the ground of appeal.

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 limited point to be decided in the matter is relating to

[i] eligibility of CENVAT credit amounting to [i] Rs.21,70,792/- paid on outdoor catering service provided by M/s Awadh Services, Gandhinagar to their employees;

[ii] Rs.18,11,179/- paid on transportation service provided by M/s Rao Tourist service P Ltd, Gurgaon for transport of employees from and to the factory; and

[iii] non-reversal of CENVAT credit amounting to Rs.2,17,285/- properly while clearing the capital goods from their factory as per method prescribed under Rule 3(5A) of CCR.

6. As regard [i] and [ii] above, I observe that the appellant had availed CENVAT credit on outdoor catering services and on transportation service which were used by their employees.

7. The definition of input service under Rule 2(I) of CCR is as under:

"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 modernisation, 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)

(a)

(b)

[(B).....

[(BA)

(a)

(b)

(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*



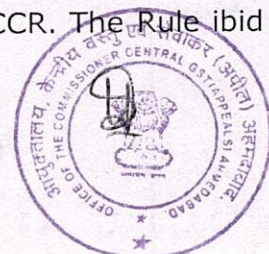
services are used primarily for personal use or consumption of any employee;]

8. From the above definition with effect from 01.04.2011, I observe that the wordings of exclusion part is very much clear and says that if there is any service which is used for the consumption of employees then such service cannot be termed as "input service". In the instant case, there is no dispute that the outdoor catering service and transportation service were used by their employees and the burden of such service was transferred on employees. The definition is extended by providing the inclusive as well as exclusive clauses. The exclusion clause was effective w.e.f. 01-04-2011 and Clause (C) of the said exclusion specifically excludes the services provided in relation to outdoor catering and transport services, etc when such services are used primarily for personal use or consumption of any employees. In the instant case, the said services were used for consumption of appellant's employees. As such, I find no justifiable reason to allow the credit in respect of the two disputed services

8.1 The appellant has heavily relied on the decision of M/s Hindustan Coca Cola Beverages Pvt Ltd [2014-TIOL-2460-CESTAT Mum], wherein credit on such services has been allowed. However, I observe that the Hon'ble Tribunal, Bangalore in case of M/s AET Laboratories Ltd [2016 (42) S.T.R. 720 (Tri. - Bang)] has taken a different view that such credit is not eligible as the services are not covered under the definition of "input service". I further observe that, the while deciding the issue in case of M/s Wipro Ltd [2018 (9) G.S.T.L. 285 (Tri. - Bang.)], The Hon'ble Tribunal has referred the matter to Larger Bench. In the circumstances, I am bound to follow the provisions as laid down in the statute. Accordingly, I uphold the confirmation of denial of Cenvat credit and demand of interest thereon.

8.2 As regards penalty imposed, I observe that though the statutory provisions denied taking the credit on the said services, the appellant had taken and utilized the credit without informing the department. Further, I find that the Hon'ble Tribunal's had pronounced eligibility of CENVAT credit on various items. Despite th Legislature being aware of these judgments/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]. 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 against the credit availed/utilized. Hence, do not require any interference.

9. As regards [iii] above, I observe that the appellant had not reversed the credit of Capital Goods as prescribed under Rule 3(5A) of CCR. The Rule ibid reads as under:



5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(i) for computers and computer peripherals @
2.5% for each quarter :

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value

The adjudicating authority has contended that the appellant has not followed the prescribed procedure under Rule *supra*, which is not disputed by the appellant. The appellant's contention is that the entire exercise as contended by the department is of revenue neutral since the duty paid would be available as credit at receiving plant of the same company. The liability of reversal of credit on removal of capital goods lies with the appellant as per prescribed procedure under Rule 3(5A) *ibid*. Taking CENVAT credit by the receiver party has no relevancy with the payment/reversal of CENVAT credit by the appellant. Therefore, the said argument is not tenable. Therefore, I uphold the confirmation of reversal of amount of CENVAT credit to Rs.2,17,285/- in this regard.

9.1 As regards penalty imposed in this regards, I do not find any merit to interfere the same as the adjudicating authority has imposed the penalty, looking into the facts and circumstances of the case which is correct and acceptable.

10. In view of above, ~~the~~ reject the appeal filed by the appellant. The appeal stands disposed of in above terms.

उमा शंकर

(उमा शंकर)
आयुक्त
केन्द्रीय कर (अपील्स)

Date: / /2018

Attested

Mohanan V.V.
(Mohanan V.V)
Superintendent,
Central GST (Appeals),
Ahmedabad.

By R.P.A.D.

To
M/s Yazaki India Pvt Ltd,
Block A (97 & 98), Shree Rajlaxmi Logistic Park,
N H 8A, Village:Ta.Bavla, Ahmedabad

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: V, Ahmedabad (North).
5. ~~Guard File.~~
6. P.A.