



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)230/North/Appeals/ 2018-19 / 10680 to 10684
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-12-19-20
 दिनांक (Date): 17/05/2019 जारी करने की तारीख (Date of issue): 23/05/2019
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III(AR-IV)), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No AR-IV/JBM Auto/SUPDT/SSM/04-05/2018-19 Dated: 31/12/2018
 issued by: Supdt Commissioner-Central Excise (Div-III(AR-IV)), Ahmedabad North,

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

M/s JBM Auto 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 हैं



Cont...2

(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, मेघाणी 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 न्यायधिकरण 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 आदेशो का समावेश होता है तो प्रत्येक मूल आदेश के लिये फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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

M/s. JBM Auto Ltd., Plot No. B-2, Survey No. 1, Tata Motor Vendor Park, Sanand, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against Order-in-Original number AR-IV/JBM Auto/SUPDT/SSM/04-05/2018-19 dated 31.12.2018 (*hereinafter referred to as 'impugned order'*) passed by the Superintendent, AR-IV, Division-III, Central GST, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of motor vehicle parts and accessories for which they were holding erstwhile Central Excise registration number AAACJ9630NEM008. During the course of audit, it was observed that the appellants had availed Service Tax credit paid on invoices issued by M/s. Tata Motors Ltd., Sanand in respect of vendor park maintenance expenses. The said expenses included road maintenance of the vendor park, street light bill of the vendor park, main gate security guard expenses etc. As the appellants did not agree to the audit objection, a show cause notice was issued to them. The said show cause notice was adjudicated vide O-I-O number 35/AC/D/BJM/2016 dated 25.01.2017, wherein the Assistant Commissioner dropped the entire demand against the appellants. Being aggrieved, the department filed an appeal before me on 26.04.2017 against the said O-I-O. I, vide the O-I-A number AHM-EXCUS-002-APP-285-16-17 dated 25.01.2018, allowed the departmental appeal and set aside the O-I-O number 35/AC/D/BJM/2016 dated 25.01.2017. As the appellants continued with the same practice, a show cause notice, dated 05.06.2017, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, following my directions given in the O-I-A number AHM-EXCUS-002-APP-285-16-17 dated 25.01.2018, disallowed the Cenvat credit of ₹1,43,666/- and ₹31,549/- for the periods from October 2015 to December 2016 and January 2017 to June 2017 respectively and ordered to recover the same from the appellants, under Rule 14(1)(ii) of the erstwhile Cenvat Credit Rules, 2004 read with Section 11A(1)(a) of the erstwhile Central Excise Act, 1944. He also ordered to recover interest at appropriate rate under Rule 14(1)(ii) of the erstwhile Cenvat Credit Rules, 2004 read with Section 11AA of the erstwhile Central Excise Act, 1944. The adjudicating authority further imposed penalty under Rule 15(1) of the erstwhile Cenvat Credit Rules, 2004 read with Section 11AC of the erstwhile Central Excise Act, 1944.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the adjudicating



authority had failed to appreciate the geography of the factory which is located inside the vendor park which houses a cluster of vendors of M/s. Tata Motors Ltd. The vendor park, according to the appellants, is surrounded by a boundary wall which has an arrangement of security at the gate. Within the boundary wall, there is an area common to all vendor units where the facilities of electricity, water, common water treatment and common effluent treatment are managed. This area, for the maintenance purpose, is under the control of M/s. Tata Motors Ltd. The appellants claimed that the said facilities, along with roads in the common area and street light, are used in or in relation to the manufacture of finished goods.

4. Personal hearing in the matter was granted and held on 09.05.2019 wherein Shri Alpesh Kothari, Chartered Accountant, appeared before me and reiterated the contents of appeal memo and stated that for earlier period, the case has been decided by the Hon'ble Tribunal in their favour. Shri Kothari has submitted copy of the said order.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. At the very onset, I would like to state that, vide O-I-A number AHM-EXCUS-002-APP-285-16-17 dated 25.01.2018; I allowed the departmental appeal and set aside the previous O-I-O. However, I find that the appellants had approached the Hon'ble CESTAT, West Zonal Bench, Ahmedabad who, vide Final Order number A/10770/2018 dated 12.04.2019, accepted the contention of the appellants and allowed their appeal. I reproduce below the related portion of the said judgment, verbatim, for better understanding;

"3. Ld. AR relies on the impugned order. He pointed out that these services are availed outside the factory premises. Therefore, credit on the same is inadmissible. He also argued that services are not or in relation to manufacturing of goods.

4. I have considered rival submissions. I find that the appellant has relied on the decision of the Tribunal in the case of Cummins Technologies India Pvt Ltd. wherein credit was denied for similar services provided by M/s. AKVN in respect of such common services. In para 7 of the order, following has been observed:

"7. Otherwise also it is apparent from the lease deed itself that the said maintenance charges though are for the maintenance of the industrial area beyond the impugned factory but are calculated at the rate per square meter of the leased factory wherein the final product of the appellant has to be manufacture. Availability of suitable industrial plot is an essential requirement for the



manufacture of the goods of the appellant (excisable) as has also been held by Final Order No. 53300/2018 dated 02.11.2018 as passed by the Coordinate Bench of this Tribunal. Thus, the findings are erroneous on the face of the record. Finally relying upon the decision in the case of Mahle Engine Components Pvt. Ltd. Vs. C.G.S.T., C.E. & S.T., Indore reported as 2019 (1) TMI 771 - CESTAT New Delhi having similar facts wherein it was held:

"5. It is the admitted fact that the manufacturing activity of appellant is carried from the premises as are taken on rent. It is apparent from record that the impugned E/53226/2018 [SM] 5 maintenance charges are the part of lease/ rent charges. M/s AKVN i.e. the leaser is also charging the service charges in their lease bills raised for lease amount and maintenance amount. Though the maintenance is for roads, street lights, drainage etc. i.e. for facilities being provided beyond the manufacturing/ factory premises of appellant but the simultaneous fact is that such services are charged on the basis of per square meter of business premises occupied by the appellant. Hence, were very much the part of lease/ rent of the impugned premises. The lease/ rent charge are the eligible inputs, so are to my opinion the maintenance charges. I draw my support from the decision of Hon'ble Apex Court in Karnani Properties case as was relied upon by Tribunal Mumbai in the decision reported in 2016 (46) STR 30 wherein it is held that without maintenance of adjoining roads, etc. the business premises cannot continue. Therefore, I am of the opinion that these charges are indirectly related to business and they fall in the main part of the definition of input services. The findings of Order-In-Appeal are therefore held incorrect. Hence, are set aside."

I hereby hold that the maintenance charges are also the eligible inputs. The decision of Hon'ble Apex Court in Ultratech Cement (supra) is not applicable to the facts and circumstances of the present case that being about the clearance of goods from the place of manufacture whereas in the impugned matter. It is the maintenance charges as input service for the place of manufacture which are in consideration. As a result of entire above discussion, Order under challenge is set aside. Appeal accordingly stands allowed."

4.1 Relying on the aforesaid decision, I hold that appellants are entitled for the Cenvat Credit on the maintenance services provided by Tata



Motors Ltd. in respect of maintenance activities in respect of Tata Vendor Park. The appeal is consequently allowed."

6. In view of above discussion, following judicial discipline, I set aside the impugned order and allow the appeal filed by the appellants.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

7. The appeal filed by the appellants stands disposed off in above terms.

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

S. Dutta
230519
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



To,

M/s. JBM Auto Ltd.,

Plot No. B-2, Survey No. 1,

Tata Motor Vendor Park,

Sanand-382 170.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Superintendent, Central Tax, AR-IV, Div-III, Ahmedabad-North.
4. The Assistant Commissioner (System), HQ, Ahmedabad-North.
- ✓ 5. Guard file.
6. P.A file.

