



**आयुक्त ( अपील ) का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
**Central GST, Appeal Commissionerate, Ahmedabad**  
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
 07926305065- टेलिफैक्स 07926305136



**DIN: 20220964SW000042474B**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/CEXP/703/2021-Appeal / 3595-3600
- ख अपील आदेश संख्या Order-In-Appeal Nos. : **AHM-EXCUS-002-APP-31/2022-23**  
 दिनांक Date : 02.09.2022 जारी करने की तारीख Date of Issue 05.09.2022
- आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **AR-IV/TML/Supdt/SSM/03-04/2021-22** दिनांक: **23-06-2021**,  
 issued by Superintendent, CGST, AR-IV-Sanand, Division-III, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

**1. Appellant**

**M/s Tata Motors Ltd**  
**Revenue Survey No. 1,**  
**Village Northkotpura, Taluka Sanand,**  
**Ahmedabad, Gujarat - 382170**

**2. Respondent**

**The Superintendent**  
**CGST, Range-IV, Division-III(Sanand), Ahmedabad North**  
**2<sup>nd</sup> Floor, Gokuldhham Arcade,**  
**Sarkhej-Sanand Road, Ulariya,**  
**Sanand, Ahmedabad - 382110**

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 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।
- (i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।
- (ii) 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.





(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of 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.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.





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 अनुसूचि-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.

- (23) 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.

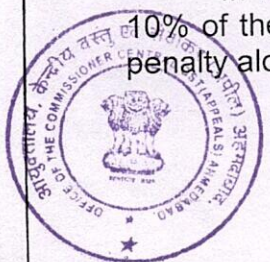
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (lii) amount determined under Section 11 D;
- (liiii) amount of erroneous Cenvat Credit taken;
- (liiv) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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 Ltd and M/s. Tata Motors Ltd. (PCBU Spare Part Division), Survey No.01, Village: North Kothpura, Sanand, Ahmedabad-382170 (hereinafter referred to as '*the appellant*') against the OIO No.AR-IV/TML/Supdt/SSM/03-04/2021-22 dated 23.06.2021 (in short '*impugned order*') passed by the Superintendent, Central GST, & Central Excise, AR-IV-Sanand, Division-III, Ahmedabad North (in short '*the adjudicating authority*').

2. During the course of audit, conducted by LTU, Audit, Mumbai Commissionerate, on verification records of the appellant, it was observed that the appellant are engaged in manufacture of excisable goods viz. motor vehicles, parts of motor vehicles and were also providing various taxable services. Auditors observed that during the F.Y. 2011-12 to F.Y.2014-15, the appellant had availed Cenvat credit on Renovation services, Rent and Manpower services used at the premises of various authorized dealers, one among them was M/s. Concord Motors (India) Ltd (CMIL for brevity). As per the agreement executed between the appellant and CMIL, the appellant has appointed CMIL as their authorized dealer to sell their passenger vehicles, spare parts, accessories after sales services and value added services to the customers. CMIL shall provide services as independent entity; they shall place their own employee at the dealership and shall be responsible for directing and controlling their work/activities; they shall at their own expense maintain such organization for the efficient sale of the products and services. It was also observed that CMIL was also engaged in activities of selling of used cars, parts and accessories i.e. activities other than acting as a Depot/Dealer of New Tata Vehicle.

2.1 The definition of input service defined in Rule 2(l) of the CCR, 2004, includes services used in relation to modernization, renovation or repairs of a factory, premises of output service provider or an office relating to such factory or premises only. It appeared that the renovation services, rent and manpower services used at the dealer's premises would not be admissible as input service for availing Cenvat credit for which earlier two Show Cause Notice (SCNs) were issued to the appellant for the F.Y. 2011-12 to F.Y. 2014-15 and April, 2015 to October, 2016, by LTU Mumbai for wrong availment of Cenvat credit.

2.2 Subsequently, a periodical SCN No. IV/Tata Motors/LUT-Mumbai/TML-Pimpri/Audit/2017-18 dated 21.08.2018 was issued by Superintendent, AR-IV, Division-III, CGST, Ahmedabad in terms of Section 11A(7A) of the CEA, 1944, proposing recovery of inadmissible Cenvat credit of Rs.8,23,396/- availed by the appellant during November, 2016 to June,2017, in respect of aforesaid services used at CMIL. Recovery of interest and imposition of penalty was also proposed. The said SCN was adjudicated vide the impugned order, wherein the Cenvat credit of **Rs.8,23,396/-** was held inadmissible and ordered to be recovered alongwith interest. Equivalent penalty was also imposed on the appellant.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal against the confirmed demand, primarily on following grounds:-

- OIO is silent on the basic and vital submissions made by them. Rent/manpower support given to the dealers was ignored, as no speaking order was passed in this respect.





- Definition of input service is very wide and not only includes the services used in manufacture of final products but also covers services used in post manufacturing activities like advertisement or sales promotion, market research, storage upto the place of removal, recruitment and quality control, legal services etc.
- In the Dealer's agreement, there is no restriction on providing additional support to the dealers so as to motivate them to take additional sales drive or enhancing the customer experience which directly benefits the appellant in terms of increased sales which is associated with clearance of final products. Additional support is provided to the dealers as a part of initiatives taken by the appellants to enhance customers experience besides boosting the sales of a product and services which is intrinsically linked with the manufacture and clearance of final product. There is catena of judgments wherein it is held that any service used directly or indirectly in or in relation to the final product is eligible for credit.
- The advertisement and sale promotion services provided by the dealers to the appellant though consumed beyond the place of removal are eligible as input service.
- They placed reliance on following case laws:
  - Ultratech Cement Ltd- 2010 (260) E.L.T. 369 (Bom.)
  - Bharat Co-op Bank – 2007 (4) SC 685
  - Micro Labs Ltd- 2011 (270) ELT 156 Kar.
  - Parth Poly Woven (P) Ltd- 2012 (25) STR 4 Guj
  - Solaris Chemtech Ltd.- 2007(214) ELT 481 (SC)
- When demand is not sustainable, interest is not liable to be paid.
- As there is no contravention of provisions with intent to evade payment of duties, penalty under section 11AC cannot be imposed.

4. Personal hearing in the matter was held on 17.08.2022 through virtual mode. Shri S.C.Ekhande, Dy. General Manager (Indirect Taxation), appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as in the submissions made at the time of personal hearing. The issue to be decided under the present appeal is whether the renovation, rent and manpower services utilized by authorized dealer are eligible as input service credit to the appellant. The period involved in the dispute is November, 2016 to June, 2017.

6. The adjudicating authority held that the dealer CMIL and the appellant are independent entity and have transaction on principal to principal basis. Therefore, maintenance, repairs and renovation services consumed at the dealer's premises cannot be considered to be consumed at the factory or office of the appellant, hence, credit is not admissible. It was also held that there is no obligation on the dealer to promote the sale of the goods as dealer purchases the goods on invoices from the appellant and subsequently sells them under his invoice to the customer. The activity carried out by the dealer for furtherance of sales on his own account cannot be construed as sales promotion activity by the appellant even if such expenses are reimbursed by the appellant. Thus, the services used by the dealer have no nexus with the sales promotion. The appellant on the other hand are arguing that the modernization, repair or renovation activities carried out at the dealer premises was to motivate the dealers to take up sales drive which is a sales promotion activity associated with clearance of final products. Such





additional support provided to the authorized dealer was an initiative taken by appellant to enhance the customers experience besides boosting the sales and services which is intrinsically linked with manufacture and clearance of final product.

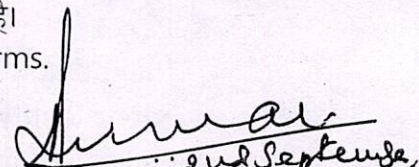
**6.1** On going through the facts of the case, it is noticed that on the same issue, the Pune Unit of the appellant situated at Pimpri, Pune having Service Tax Registration No.AAACT2727QST003, were issued two show cause notices by LTU Audit Mumbai Commissionerate. The SCN bearing No.LTU-Audit/Mum/AG-B-TML-QST-003/ISD/229/2015-16 dated 18.10.2016, involving amount of Rs.4,22,33,656/- was issued by the Commissioner, LTU, Mumbai and the SCN bearing No.01/Jt.Commr/GLT-4/TML/CEND/N-CERA/2017-18 dated 03.04.2017, involving amount of Rs.52,46,938/- was issued by the Joint Commissioner, LTU, Mumbai. Status of both the aforesaid show cause notices is not forthcoming either in the present SCN or in the impugned order. The show cause notice in the case has been issued under Section 11A (7A) of the CEA, 1944, based on the allegation of two earlier show cause notices issued in the matter. Moreover, the appellant also failed to bring on record about the outcome of the adjudication of aforesaid two SCNs issued by LTU Audit Mumbai. As in the present appeal, the appellant are contesting the demand covered in the periodical SCN, covering similar matter which has been adjudicated by the authority lower in hierarchy to the authorities before whom SCNs covering earlier period are for consideration it, therefore, becomes imperative to know the stand taken by the revenue in the earlier adjudication proceedings pertaining to SCN dated 18.10.2016 and 03.04.2017.

**6.2** As the present SCN issued under Section 11A(7A) of the CEA, 1944, by the Superintendent was subsequent to the earlier two SCNs issued by higher adjudicating authorities, hence, decision taken by the higher adjudicating authorities shall have bearing on the present case. As the impugned order is silent on the outcome of the adjudication of the earlier two SCNs passed by the respective jurisdictional authorities, it is not forthcoming whether the principle of *res judicata* was followed in the present case. Therefore, I find that the matter needs to be remanded back to the adjudicating authority for re-examining the issue considering the above aspects.

**6.3** In view of the above discussion, I remand the matter to the adjudicating authority, with a direction to examine the view taken by higher adjudicating authority in the matter and pass a speaking order accordingly.

**7.** Accordingly, the impugned order is set aside and appeal is allowed by way of remand.

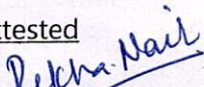
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed off in above terms.

  
(Akhilesh Kumar) 2nd September, 2022

Commissioner (Appeals)

Date: 09.2022

Attested

  
(Rekha A. Nair)

Superintendent (Appeals)  
CGST, Ahmedabad





**By RPAD/SPEED POST**

To,  
M/s. Tata Motors Ltd  
Survey No.01,  
Village North Kothpura, Sanand,  
Ahmedabad-382170  
Naroda Road,  
Ahmedabad-380025

- **Appellant**

The Superintendent  
CGST, Range-IV, Division-III  
Ahmedabad North  
Ahmedabad

- **Respondent**

**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner, CGST, Division-III, Ahmedabad North
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
- ✓ 5. Guard File.





