• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास, आमबाबाडि,
अहमदाबाद – 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/89/Ahd-I/2015-16 / 4154-4158
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-041-2016-17**
दिनाँक **22.12.2016**जारी करने की तारीख Date of Issue ________

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग DEPUTY Commissioner, Div-V केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
MP/06/Dem/2015-16 दिनाँक: **14-10-2015,** से सृजित

Arising out of Order-in-Original No. **MP/06/Dem/2015-16** दिनाँक: **14-10-2015** issued by DEPUTY Commissioner,Div-V Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Mazda Limited
Ahmedabad

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 a 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 :

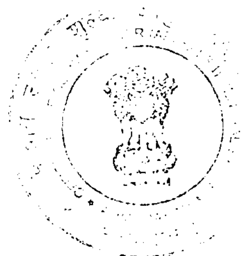
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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, 4th 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.

(b) 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.

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



(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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

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

(c) 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 डयूटी केडिट 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।

(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 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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.

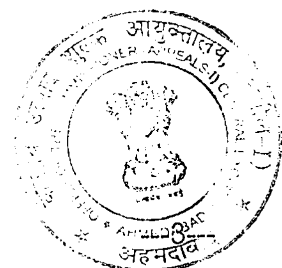
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 रू.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 in 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 अपीलो 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.

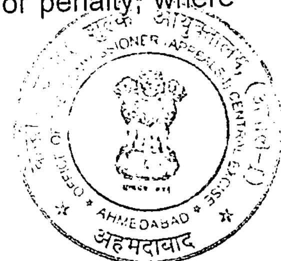
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

(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 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

M/s. Mazda Limited, Plot No. C-1/A/5, GIDC, Odhav, Ahmedabad–382 415 [*for short - 'appellant*] has filed this appeal against OIO No. MP/6/Dem/2015-16 dated 14.10.2015, passed by the Deputy Commissioner, Central Excise, Division-V, Ahmedabad-I Commissionerate [for short - '*adjudicating authority*'].

2. Briefly stated, the facts are that a show cause notice dated 6.4.2015 was issued to the appellant, dis-allowing CENVAT credit of input service of Rs. 2,75,010/- in respect of service tax paid on rent towards hiring of head office, relating to the period from April 2011 to January 2015. The show cause notice, was issued based on an audit objection, raised vide FAR No. 358/2013-14 dated 4.7.2014. This notice was adjudicated vide the impugned OIO dated 14.10.2015, wherein the adjudicating authority disallowed the CENVAT credit and further ordered payment of interest and penalty.

3. Feeling aggrieved, the appellant has filed the appeals on the following grounds:

- that the Hon'ble Tribunal in the case of M/s. Tiru Arooran Sugars Limited [2013(32) STR 435] has held that the office of the factory is directly related with each and every operation of the manufacturing at factory;
- the appellant has taken registration for providing various services at their head office and they are registered as input service distributor under the Service Tax;
- that except for manufacturing activity all other activities pertaining to marketing, sales, purchase, accounts, HR are being conducted at the head office premises; that head office operations are not only directly related with manufacturing operations but due to the work done at Head office, the manufacturing operations become possible;
- as per clause (ii) the service used by the manufacturer is indirectly in or in relation to manufacture and is therefore, eligible as CENVAT credit;
- it is illogical to suggest that if the manufacturer undertakes modernization, renovation, repair of an office he is eligible for CENVAT; that for the rent of an office he is not eligible for credit;
- that no information required to be furnished was suppressed from the department; that there is no requirement under the law to inform the department about availment of CENVAT on various services individually; that it cannot be said that the appellants have suppressed substantial information.

4. Personal hearing was held on 20.12.2016. Shri Nirav Shah, Advocate, appeared on behalf of the appellant, and reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case, the grounds mentioned in the appeals and the submission made by the appellants. The question to be decided in the appeal is whether the appellant is eligible for CENVAT Credit in respect of service tax paid on rent in respect of their head office located at Panchwati, Ahmedabad.

6. The adjudicating authority in his findings disallowed the CENVAT credit on the grounds that:

- the services of renting of immovable property used by the appellant are used neither directly not indirectly in or in relation to the manufacture of their final products;
- the service has been availed by the appellant after the clearance of finished goods from their factory gate i.e. beyond the place of removal;
- service of renting of immovable property by landlord has no relation with the manufacturing activity and also does not appear to fall within the ambit of definition of input services as defined under Rule 2(l) of CENVAT Credit Rules, 2004; that this service does not fall within the main or inclusive parts of the definition of input service;

- that the rent paid cannot be said to have been used directly or indirectly in relation to the manufacture of final products and clearance of final products from the place of removal;
- the service rendered by the landlord is not analogous to the activities mentioned in the definition and hence would not fall within the ambit of expression activities relating to business;
- all activities relating to business which are input services used by the manufacturer in relation to the manufacture of final product and clearance of final product upto the place of removal would only be eligible for credit; that services utilized beyond the stage of manufacturing and clearance of the goods from the factory cannot be treated as input services;
- as the services of renting of immovable property was utilized beyond the factory gate, the nexus theory and relevance test, as discussed by the Hon'ble SC in the case of Maruti Suzuki, is not established
- The Tribunal has held that no credit can be allowed unless the appellant provides evidence to establish the nexus between the services and manufacture of the final products;

7. The main grouse of the appellant is that the adjudicating authority did not follow the order of the Tribunal in the case of M/s. Tiru Arooran Sugars Limited, *ibid.* I find that the adjudicating authority has distinguished this case law in para 28.1 of the impugned order by holding that the case law deals with CENVAT credit in respect of services, which are not a part of the present dispute. However, the Hon'ble Tribunal in the said order, has made some observations, which I feel would have a considerable impact, as far as the present dispute is concerned. The relevant extracts are quoted below, for ease of reference:

> *The argument of the Revenue is that decisions in respect of transportation from residence to factory and back will not apply to transportation of executives and employees from residence to corporate office and back. This argument is almost like the argument that a factory worker may take during wage negotiation that the entire business depends on them which is not correct. If there is no management by the corporate office, a manufacturing organization cannot survive - finance cannot be procured, raw materials cannot be purchased, manufactured goods cannot be sold and so on. So the argument to separate the corporate office from manufacturing activity, for the purpose of deciding eligibility to Cenvat credit on services received, is flawed especially having regard to the fact many services usually received by corporate office is listed specifically in the inclusive portion of the definition of input service. The concept of "input service distributor" as defined in Rule 2(m) of the Cenvat Credit Rules, 2004 also implies allowing credit of services availed by an office which cannot utilize the credit as in the case of a corporate office. In the first place as per the definition, "input service" means service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The scope of this expression is further expanded by an inclusive portion mentioning specific services to remove any ambiguity in the definition in respect of these services.*
>
> [emphasis supplied]

8. The appellant in his grounds has mentioned that except for manufacturing all other activities pertaining to marketing, sales, purchase, accounts, HR are being performed at the head office. It is availment of CENVAT credit of service tax paid on the rent of this premise, [where the head office is located] which is the core of the dispute.

9. Since the dispute revolves around input service, the definition is reproduced below for ease of reference:

> *[(l) "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) 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

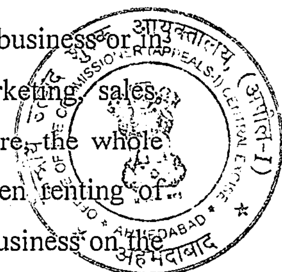
(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(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;]

[refer notification Nos. 3/2011-CE(NT) dated 1.3.2011 & 18/2012-CE(NT) dated 17.3.2012]

10. The appellant is a manufacturer, engaged in the manufacture of heavy machineries and food products. As per the definition reproduced *supra*, 'input service' means any service 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. The definition thereafter, lists certain inclusions and certain exclusions. The adjudicating authority has disallowed the CENVAT credit, based on the fact that there is neither direct or indirect relation to the manufacture of final products; that the said service is availed after clearance of finished goods from their factory gate i.e. beyond the place of removal; that the said service is not analogous to the activity mentioned in their definition.

11. However, the argument/finding of the adjudicating authority does not appear to be correct or logical. I would like to refer to the order of the Tribunal in the case of M/s. Tiru Arooran Sugars Limited, ibid [*refer para 7*], where on a slightly different dispute pertaining to CENVAT credit, it was held that "*If there is no management by the corporate office, a manufacturing organization cannot survive - finance cannot be procured, raw materials cannot be purchased, manufactured goods cannot be sold and so on. So the argument to separate the corporate office from manufacturing activity, for the purpose of deciding eligibility to Cenvat credit on services received, is flawed especially having regard to the fact many services usually received by corporate office is listed specifically in the inclusive portion of the definition of input service.* The appellant has stated that except for manufacturing, the ancillary activities which form a core of the business or in other words, without which the business cannot survive or run, i.e. marketing, sales, purchase, accounts, HR are being performed at the head office. Therefore, the whole argument of the adjudicating authority that there was no relation between renting of immovable property [the CENVAT credit of which is in question] to the business on the grounds that the said service are used neither directly nor indirectly in or in relation to the manufacture of final produce is not tenable. The argument, that the service is availed after



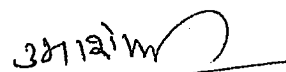
the clearance of finished goods from the factory, fails since even purchase is being looked after by the head office. I find that the Tribunal has already settled the issue.

12. I further find that the appellant's head office is registered as an input service distributor [*for short – ISD]* with the department. The appellant has enclosed copy of their registration as an ISD. The function of the ISD is to distribute the CENVAT credit in respect of service tax paid on input service to its manufacturing unit or units. An ISD can also distribute credit in respect of those services, which are received in the head office. Hence, it would be a travesty if the head office is allowed to distribute credit of services received in their head office but the appellant is not allowed to avail credit in respect of service tax on rent paid in respect of the said head office.

13. In view of the foregoing, and following the logic set forth in the order of the Tribunal in the case of M/s. Tiru Arooran Sugars Limited, *ibid*, the impugned order dated 14.10.2015, is set aside and the appeal is allowed.

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

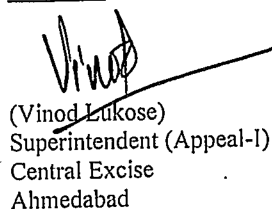
14. The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)
आयुक्त (अपील्स - I)

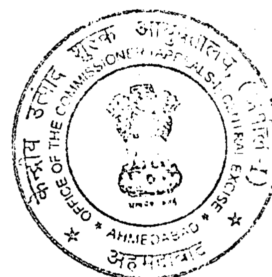
Date : 22.12.2016

Attested



(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise
Ahmedabad

BY RPAD.



To,
M/s. Mazda Limited,
Plot No. C-1/A/5,
GIDC, Odhav,
Ahmedabad–382 415.

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Principal Commissioner, Central Excise, Ahmedabad-I.
3. The Deputy/Assistant Commissioner, Central Excise Division-V, Ahmedabad-I.
4. The Joint/Additional Commissioner, System, Central Excise, Ahmedabad-I.
5. Guard File.
6. P.A.