



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,

Ambavadi, Ahmedabad-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)41/Ahd-South/2018-19  
Stay Appl.No. /2018-19

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ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-035-2018-19  
दिनांक Date : 23-08-2018 जारी करने की तारीख Date of Issue \_\_\_\_\_

*11/19/2018*

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/03/IIM/17-18 दिनांक: 25.04.2018 issued by Assistant  
Commissioner, Div-I, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Indian Institute of Management  
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 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।

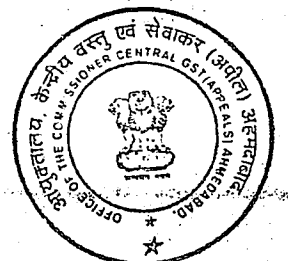
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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।

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... 2 ...



(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 मामलों 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 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।

(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 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.

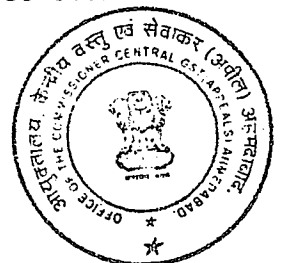
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 Appellate 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।

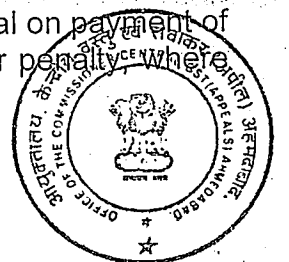
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This appeal has been filed by M/s. Indian Institute of Management Ahmedabad, Dr. Vikram Sarabhai Marg, Near Andhajan Mahamandal, Vastrapur, Ahmedabad 380 015 [for short – ‘appellant’] against OIO No. CGST VI/03/IIM/2017-18 dated 28.3.2018, issued by the Assistant Commissioner, CGST, Division VI (Vastrapur), Ahmedabad South Commissionerate (for short – “adjudicating authority”).

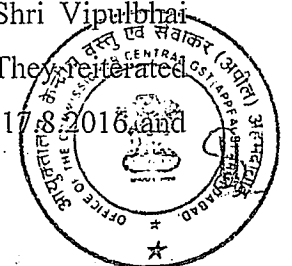
2. Briefly, the facts are that CERA raised an objection, that the appellant had wrongly availed CENVAT credit of Rs. 4,99,097/- in respect of input services viz. health insurance, general insurance, maintenance and repair of vehicles, boarding/stay charges of individuals, visa fee to individuals, on the grounds that they were not eligible to avail CENVAT credit in terms of exclusion clause (c) of Rule 2(1) of the CENVAT Credit Rules, 2004. Consequently, a show cause notice dated 19.10.2016 was issued to the appellant *inter alia* asking him to show cause as to why the CENVAT credit wrongly availed should not be recovered along with interest by invoking the extended period. The notice further proposed penalty on the appellant under rule 15(1) and 15(3) of the CENVAT Credit Rules, 2004 read with sections 76 and 78 of the Finance Act, 1994.

3. This notice was adjudicated vide the impugned OIO dated 28.3.2018, wherein the adjudicating authority after disallowing the CENVAT credit wrongly availed ordered recovery of the same along with interest and further imposed penalty under Rule 15(3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994. No penalty was however imposed under section 76 of the Finance Act, 1994.

4. Feeling aggrieved, the appellant has filed this appeal raising the following contentions:

- that the health insurance was taken to cover the future risk of employee during working hours;
- that the general insurance has been availed to insure property of IIMA;
- that the credit on maintenance and repair of vehicle has been availed for the vehicles owned by the appellant for usages during working hours of the institute;
- that boarding and stay charges service has been availed for the stay of student and professor outside the IIMA during education programme;
- that the visa service has been availed for the visiting of the professor and student for the management consultancy and education;
- that these services were used for providing the taxable output service and has a direct nexus with the output service;
- that here insurance has been availed as a part of the employment terms which is not related to any non working place;
- the definition has exclusion only in case the insurance service are used for personal use or consumption of any employer; that here insurance service has been availed as a part of the employment terms which is not related to any non working place;
- that since the appellant has opted for rule 6(3) of the CENVAT Credit Rules, 2004 and has proportionately reversed the CEVNAT credit, the reversal of CENVAT credit separately is not sustainable.
- that penalty cannot be imposed under section 78 of the Finance Act, 1994.

5. Personal hearing in the matter was held on 25.7.2018 wherein Shri Vipulbhai Khandhar, CA and Ms. Kalapai Shah, CA, appeared on behalf of the appellant. They reiterated the grounds of appeal and also relied upon my earlier OIA no. 78/2016-17 dtd 17.8.2016, and



further submitted a copy of the same. The Learned CA requested to remand the matter for verification as done in the earlier OIA.

6. The only issue to be decided in the matter is whether the appellant is eligible for the CENVAT credit of service tax paid on health insurance, general insurance, maintenance and repair of vehicles, boarding/stay charges of individuals, visa fee. The adjudicating authority has held that CENVAT credit on these aforementioned items were specifically excluded as per the definition of *input services* as defined under CENVAT Credit Rules, 2004; that the case laws cited are not applicable in the instant case; that the wrongly availed CENVAT credit is required to be recovered along with interest as per the show cause notice.

7. What is not disputed is that the CENVAT credit was availed during the period from 2011-12 to 2013-14 on the items mentioned above. Now the definition of input services as defined under CENVAT credit rules, 2004, states as follows:

*[(1) "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 -*

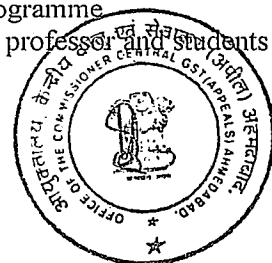
*(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*

*(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;.]*

8. In page 13 of the appeal papers, the appellant has explained the availment of CENVAT credit on the various items as follows:

- Health insurance of employee has been taken to cover future risk of employee during the working hours. No insurance for the family member of the employee (i.e. personal nature).
- General Insurance has been availed to insure the property of IIMA and is not in the nature of personal one.
- Maintenance and repair of vehicle- it has been availed on the vehicle owned by the IIMA for usages during the working hours of the IIMA.
- Boarding and stay charges service has been availed for the stay of student and professor outside the IIMA during the education programme.
- Visa service has been availed for the visiting of the professor and students for the management consultancy and education.



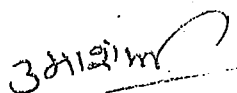
9. On going through the definition of 'input service' as reproduced above, I am very clear on one fact that the definition clearly prohibits availment of CENVAT credit in respect of the three items mentioned supra viz. Health insurance of employee, General Insurance and Maintenance and repair of vehicle. So as far as these three services go, I agree with the view taken by the adjudicating authority that in terms of the definition of input service, the appellant is not eligible to avail CENVAT credit on the said items.

10. As far as rejecting the CENVAT credit availed by the appellant in respect of Boarding and stay charges service and Visa service is concerned, I find that since these two services are used primarily for personal use or consumption of employee, the same is not eligible for availment of CENVAT credit in terms of the definition under input services. The appellant has also not provided any proof to substantiate the claim that the services were used for providing taxable services. In view of this, I agree with the view taken by the adjudicating authority that in terms of the definition of input service, the appellant is not eligible to avail CENVAT credit on the said items also.

11. The appellant has relied upon certain OIAs to put forth his ground that since in the earlier cases wherein they were proportionately reversing credit under Rule 6(3) of the CENVAT credit Rules, 2004, they were not required to reverse the CENVAT credit. The appellant it appears has mixed the matter. Since in the present dispute the CENVAT credit is not admissible in the first place, the question of non reversal because they were reversing under rule 6(3) of the CENVAT Credit Rules, 2004, is not a tenable argument. The contention is therefore, rejected.

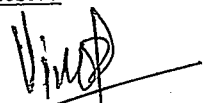
12. In view of the foregoing, I do not find any merit in the matter and reject the appeal.

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

  
(उमा शंकर)  
आयुक्त (अपील्स)

Date: 23.08.2018

Attested

  
(Vinod Lukose)  
Superintendent (Appeal)  
Central Tax, Ahmedabad.

BY R.P.A.D

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