::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/18/EA2/BVR/2016 6302 To 6305	BHV-EXCUS-000-JC-025 to 26-2016-17	03.08.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-065-2017-18

आदेश का दिनांक / Date of Order: **01.12.2017** जारी करने की तारीख / Date of issue: **05.12.2017**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & **Respondent** :-
M/s Gujarat Pipavav Port Ltd., Pipavav, Uchhaiya,, Taluka : Rajula Dist : Amreli,,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

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 and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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 demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated 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/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
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
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना 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-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
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.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गएँ है।/
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.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया 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.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क 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, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

The Principal Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as "appellant") has filed the present appeal against Order-in-Original No. BHV-EXCUS-000-JC-25 to 26-2016-17 dated 03.08.2016 (hereinafter referred to as "impugned order") passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as "lower adjudicating authority") in the case of M/s. Gujarat Pipavav Port Ltd., Pipavav, Uchhaiya, Tal. – Rajula, Dist. – Amreli (hereinafter referred to as "respondent").

2. Briefly stated, facts of the case are that, audit revealed that the respondent has wrongly availed cenvat credit of Rs. 17,88,643- during the period 2005-06 to 2007-08 on 'Rent-a-cab' service provided by various operators which was mainly used for administrative staff and as such not related to manufacture and not an input service. SCN No. V/15-127/Dem/HQ/2008 dated 06.01.2009 was issued to the respondent for recovery of wrongly availed cenvat credit of Rs. 17,88,643/- by invoking extended period along with interest under Rule 14 of Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") read with Section 73/75 of Finance Act, 1994 (hereinafter referred to as "Act") and to impose penalty under Rule 15(3) of CCR, 2004 read with Section 76/78 of the Act. Periodical SCN No. V/15-67/Dem/HQ/2009 dated 06.10.2009 was also issued for the period 2008-09 for recovery of wrongly availed cenvat credit of Rs. 6,20,388/- along with interest and to impose penalty. The lower adjudicating authority vide impugned order dropped the proceedings initiated vide both the said SCNs dated 06.01.2009 and 6.10.2009.

3 Being aggrieved by the impugned order, appellant preferred the present appeal, *interalia,* on the grounds that "Rent-a-Cab Operator's service' received by the respondent does not appear to be input service and has not been used in relation for providing output services. The said service was mainly used for administrative staff and part of the same were used/receiver beyond the port area as such not related to their business activities within port area and thus, not an input service. Therefore, it appears that such services do not fall within purview of definition of 'input service' as provided in Rule 2(l) of CCR, 2004 and not admissible under Rule 3 of CCR, 2004. The respondent has not submitted any documentary evidences in support of their claim that the expenditure were incurred for various travelling facilities and not limited to administrative staff as alleged in the SCN. Since these services have been used for commuting between various places outside port area and not in the port area, these cannot be considered to be availed in connection with manufacture or business and upto the place of removal, hence, cannot be considered as an input service.

4. The respondent has filed Memorandum of Cross Objections, *interalia,* on the following grounds: -

(i) The term 'input service' is defined under Rule 2(l) of CCR, 2004 to mean any service used by a provider of taxable service for providing output service. Therefore, any services which are used by a service provider for providing output service should be treated as input service. In support of the contention that 'rent a cab scheme operator's service' are used in relation to provision of output service i.e. port service, the respondent submitted that the port is located in a remote area where necessary public transportation facilities are not easily available to travel from city or residential area to the port; that the port is spread in wide area and hence the same facilities are required to commute within port; that the said services are provided to all employees; that the facilities are also available to Customs officers as well as to company's executive travelling from the Airport/Railway station to port and the above facility is not limited to the administrative staff only. Hence, it is necessary to provide travelling facilities since the same is very crucial to operate the business efficiently and without availing this service, the respondent will not operate and provide port services in a smooth manner. The respondent relied on following case-laws:

- Visteon Automotive Systems India (P) Limited – TS-538-HC-2016(MAD)-ST
- Cable Corporation of India Ltd. – 2008-TIOL-1180-CESTAT-MUM
- J.K. Cements – 2009-TIOL-411-CESTAT-DEL
- Mundra Port & Special Economic Zone Ltd. – 2009 (13) STR 178 (Tri.-Ahmd.)
- Haldyn Glass Gujarat Ltd. – 2009-TIOL-379-CESTAT-AHM
- Hindustan Coca-Cola Beverages (P) Ltd. – 2010 (18) STR 57 (Tri. – Bang.)
- Dr. Reddy's Lab – 2010 (19) STR 71 (Tri. – Bang.)
- Caliber Point Business Solutions Ltd. – 2010 (18) STR 737 (Tri. – Mumbai)
- HEG Ltd. – 2010 (18) STR 446 (Tri. – Del.)
- Beekay Engg. & Castings Ltd. – 2009 (16) STR 709 (Tri. – Del.)
- J.K. Cement Works – 2009 (14) STR 538 (Tri. – Del.)
- Stanzn Toyotetsu India Pvt. Ltd. – 2009 (14) STR 316

(ii) The administrative staff is the team of employees who supports the entire business operations of the organization by providing various administrative services to the respective division and perform various functions for smooth operation of business which otherwise would have been performed by the operation division etc. The respondent relied on following case laws.

- Hindustan Zinc Ltd. – 2016-TIOL-943-CESTAT-DEL.
- ITC Ltd. – 2009-TIOL-1199-CESTAT-BANG.
- APM Terminals India Private Limited – 2013-TIOL-2195-CESTAT-MUM

(iii) The department has contended that since the respondent has availed rent a cab services outside the port premises i.e. not upto the place of removal, credit should be disallowed. It is submitted that the last leg of the definition of 'input service' refers to the transportation of inputs and capital goods and not any other input services and therefore the same is not applicable to service provider.

(iv) The definition of 'input service' is divided in two parts one contains the words 'means' and other part starting with the word 'includes'. When the definition clause contains the words 'means' and 'includes', the words following the expression 'includes' have the effect of enlarging the scope of the definition preceding thereto. The respondent relied on following case-laws: -

- Coca Cola India Pvt. Ltd. – 2009-VIL-06-HC-BOM-ST
- Gramophone Co. of India – 1991 (52) ELT 247
- High Land Coffee Works – 1991 (3) SCC 617
- Good Year India Ltd. – 1997 (95) ELT 450
- All India Federation of Tax Practitioners – 2007-TIOL-149-SC-ST
- GTC Industries Ltd. – 2008 (12) STR 468 (Tri. - LB)
- Delloite Tax Services India Pvt.Ltd. – 2008 (11) STR 266 (Tri. – Bang.)

5. The department has submitted comments on Memorandum of Cross Objections wherein it has been submitted that it is clear from the definition of 'input service' under Rule 2(l) of CCR, 2004, that cenvat credit can be allowed only in respect of input services, relating to business, which are specifically used directly or indirectly, in or in relation to the manufacture of final products within the ambit. The services of travelling facility from city to port for various business-related requirements, from airport/public place to port or vice versa for travelling of company's executives and others are the facilities beyond the port area and hence, the services cannot be considered as input services. The respondent could not establish their plea that specific services used in connection with their business activities only. Since, all the services have been used for commuting between various places outside port area, such services cannot be considered to be availed in connection with manufacture or business and upto the place of removal, hence these services cannot be considered as input services.

6. Personal hearing in the matter was attended to by Ms. Bansari Popat, Chartered Accountant, who reiterated the submissions made in Memorandum of Cross Objections and contended that the order passed is correct and is also in line with the orders passed by CESTAT in the matter; that the order should be upheld and the department appeal should be rejected.

FINDINGS: -

7. I have carefully gone through the facts of the case, impugned order, appeal memorandum and submissions made by the appellant. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed by the lower adjudicating authority dropping proceedings initiated vide SCNs dated 06.01.2009 and dated 06.10.2009, is correct or not.

8. I find that the definition of "input service" under Rule 2(l) of Rules, 2004, is in two parts. Clauses (i) and (ii) of Rule 2(l) cover the "service provider" and the "manufacturer" respectively. The present case relates to output service provider. I would like to reproduce the definition of 'input service' under Rule 2(l) of CCR, 2004, as it was prevailing at the material time, so far as it may relevant for service provider, which reads as under: -

> *(l) "input service" means any service, -*
>
> *(i) used by a provider of taxable service for providing an output service, or*
>
> *(ii) .....,*
>
> *and includes services used in relation to setting up, modernization, 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, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;*
>
> *(Emphasis supplied)*

8.1 It could be seen from the above definition that the expression "any service", if read with "used by a provider of taxable service for providing an output service" in clause (i) of Rule 2(l) of the Rules, 2004 has widened the scope of "input service" in respect of output service provider. Thus, it is clear that any service used by a service provider for providing an output service and includes services used in activities relating to business, is an 'input service' for the service provider. It is well-settled that literal interpretation would prevail, where the plain words of statute are clear and unambiguous.

8.2 The department has contended that rent a cab services have been used by the respondent for commuting between various places outside port area and not in the port area and therefore, these cannot be considered to be availed in connection with manufacture or business and upto the place of removal, hence, cannot be considered as an input service. The respondent has countered this argument that the term 'input service' is defined under Rule 2(l) of CCR, 2004 to mean any service used by a provider of taxable service for providing output service and that any services which are used by a service provider for providing output service should be treated as input service. It has also been contended by the respondent that travelling facilities is very crucial to operate the business efficiently and without availing this service, the respondent cannot operate and cannot provide port services in a smooth manner. I find that the respondent is a service provider providing port services and rent a cab services have been used for transportation of their officials from city to port and within port to provide their taxable services i.e. port services without which they cannot efficiently carry out their business. The

definition of 'input service' does not contain that the services must have been used within the place of removal by the provider of taxable service. I find that Hon'ble High Court of Punjab & Haryana in the case of Maruti Suzuki India Limited reported as 2017 (49) STR 261 (P&H) dismissed department appeal involving identical grounds. The relevant paras of the said decision are re-produced as under:-

> *Cenvat credit - Availment of - Rent-a-Cab services used by executives of assessee for travelling for business meetings, visits to dealerships, visits to vendor sites, dealers meet, business promotion activities, vehicles launch, conferences, etc. - HELD : This expenditure was related to business as it was incurred to promote sales and for efficient running of business - Hence, assessee was entitled to avail Cenvat credit of Service Tax paid thereon - Rule 3 of Cenvat Credit Rules, 2004.*
>
> ***2.*** *The appeal was admitted for consideration of the following substantial questions of law arising out of the order dated 14-5-2015 passed by the Customs Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (for the short 'the Tribunal') in Excise Appeal Nos. 3614-3615 of 2012 pertaining to the assessment years 2009-10 and 2010-11.*
>
> *"(i) Whether the respondent can avail Cenvat credit on account of Service Tax paid on Mandap Keeping Services and Rent-a-Cab Services by treating the same as input services?*
>
> .....
>
> .....
>
> .....
>
> ***24.*** *Similarly, the Rent-a-Cab services used by the executives of the respondent for the purpose of travelling required for business meetings, visits to the dealerships, visits to the vendor sites, dealers meet, business promotion activities, vehicles launch, conferences, etc. is a an expenditure in relation to business being incurred by the respondent in order to promote the sales and for efficient running of the business for which they are entitled to avail Cenvat credit.*
>
> *(Emphasis supplied)*

8.3 The Hon'ble High Court of Karnataka in the case of Tata Auto Components Systems Limited reported as 2012 (277) ELT 315 (Kar.) dismissed the appeal filed by the department. The relevant paras of the said decision is reproduced as under: -

> *Cenvat credit of Service tax - Transportation service provided in the factory of assessee, to their staff for pick up and drop from their residence to the factory and vice versa, is an input service, in or in relation to manufacture, whether directly or indirectly of the final products within the meaning and comprehension of Rule 2(l) of Cenvat Credit Rules 2004 - Service tax, so paid for receiving the transportation services by assessee, eligible for availment and utilization in terms of Rule 3 read with Rules 2(l) and 9 ibid. [paras 4, 5]*
>
> *This appeal is by the revenue being aggrieved by the order of the Tribunal holding that the assessee is entitled to avail Cenvat credit on the Service tax paid on the transportation services provided by the assessee to their staff for pick up and drop from the residence to the factory and vice-versa.*

2. The assessee are holders of Central Excise Registration Certificate for manufacture of motor vehicle parts and accessories. Accordingly, the assessee is availing Cenvat credit of duty paid on inputs, capital goods and input services. The assessee was availing Cenvat and utilizing input tax credit relating to transportation services (Rent-a-Cab Service). Hence, the show cause notice was issued to them as to why the input Service tax availed and utilized on transportation services should not be treated as wrongful availment and utilization of input service credit and the same should not recovered. The assessee replied to the same. However, the assessing officer confirmed the demand. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Appeals who rejected the same. Aggrieved by the same, the assessee preferred an appeal before the Tribunal.

3. The Tribunal by relying on the decision in the case of Stanzen Toyotetsu Private Limited v. C.C.E. reported in 2009 (14) S.T.R. 316 (Bangalore) held that the assessee is entitled for availment of Cenvat credit on the Service tax paid on transportation services provided to their staff. Aggrieved by the same, the revenue has preferred this appeal.

4. This appeal was admitted to consider the following substantial question of law: -

"(1) Whether the transportation service, provided in the factory of the M/s. Tata Auto Comp. Systems Ltd., to their staff for pick up and drop from their residence to the factory and vice versa, was an input service, in or in relation to manufacture, whether directly or indirectly of the final products within the meaning and comprehension of Rule 2(1) of the Cenvat Credit Rules, 2004?

(2) Consequently whether the Cenvat credit of the Service tax, so paid for receiving the transportation services by them for pick up and drop from their residence to the factory and vice versa, was eligible for availment and utilization in terms of Rule 3 read with Rule 2(1) and Rule 9 thereof?"

The identical question of law came up for consideration before this Court in the case of Commissioner of Central Excise v. M/s. Stanzen Toyotetsu India (P) Ltd., reported in C.E.A. No. 96/2009 and connected matters [2011 (23) S.T.R. 444 (Kar.)]. This Court took the view that the transportation/Rent-a-Cab service is provided by the assessee to their employees in order to reach their factory premises in time which has a direct bearing on manufacturing activity. In fact, the employee is also entitled to conveyance allowance which would form part of his condition of service. Therefore, by no stretch of imagination it can be construed as a welfare measure by denying the availment of Cenvat credit to the assessee for providing transportation facilities as a basic necessity which has a direct bearing on the manufacturing activity. While so holding the Court held that if the credit is availed by manufacturer then the question is what are the ingredients that are to be satisfied for availing such a credit. That the said service should have been utilized by the manufacturer directly or indirectly in or in relation to the manufacturer directly or indirectly in or in relation to the manufacturer of final products or used in relation to activities relating to business. If any of the test is satisfied then the service falls under input service and the manufacturer is eligible to avail Cenvat credit and the Service tax paid on such credit.

(Emphasis supplied)

8.4 The Hon'ble CESTAT, New Delhi in the case of HCL Technologies Limited reported as 2015 (40) STR 1124 (Tri. – Delhi) held as under: -

4. The learned counsel for appellants urged that the refund has been wrongly denied. The disputed period is from October, 2010 to December, 2010. Cenvat credit of Rs. 76,463/- on Rent-a-Cab services has been denied stating the reason that the same has no nexus with the provision of output services. It is seen observed by the authorities below that Rent-a-Cab and tour operator were used by a particular person/guest though on a regular basis and that vehicles are used in the night also. The learned counsel, Ms.

Sukriti Das, appearing for the appellants explained that appellants are a BPO Company and these services are utilized for the purposes of transportation of its employees to and from the workplace and their homes and also for business meetings. Further, that for the safety of lady employees the vehicles are used and plied in the night also. The appellants being a BPO Company the odd working hours and transportation employees, especially the lady employees is a service necessary and indispensable for the activities in which the Company is engaged. The amendment brought forth in the definition of input services w.e.f. 1-4-2011 excludes Rent-a-Cab services. But the department vide Circular No. 943/04/2011-CX, dated 29-4-2011 has clarified that the credit on such services shall be available if its' provision had been completed before 1-4-2011. According to the appellants the credit was availed for the period October, 2010 to December, 2010. They also relied upon the judgments rendered in CCE, Bangalore v. Bell Ceramics - 2012 (25) S.T.R. 428 (Kar.), CCE, Bangalore v. Stanzen Toyotetsu India (P) Ltd. - 2011 (23) S.T.R. 444 (Kar.) and KPMG v. CCE, New Delhi - 2014 (33) S.T.R. 96 (Tri.-Del.). The learned DR reiterated the findings in the impugned order and contented that credit cannot be availed as these services have no nexus with the output services. On hearing the submissions and perusal of records, the instant case stands covered by the decisions rendered in the above judgments which are held in favour of the assessee. The requirement for availing credit is that the input service must be used for providing the output service. The appellants being a BPO, where the employees have to work in shifts even during night hours, I cannot agree with the view of the authorities below that the such services have no nexus with the output services provided. The refund on these services is allowed.

(Emphasis supplied)

8.5 In view of above factual and legal position, I find no reason to interfere with the findings of the lower adjudicating authority allowing cenvat credit of service tax paid on 'rent a cab' services under Rule 2(l) of CCR, 2004 and therefore, I uphold the impugned order and reject the appeal.

९. डिपार्टमेंट द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the department stands disposed off in above terms.

1/12/2017

(कुमार संतोष)
आयुक्त (अपील्स)

By **Regd. Post AD**

To,

M/s. Gujarat Pipavav Port Ltd., Pipavav, Uchhaiya, Tal. – Rajula, Dist. – Amreli	मे. गुजरात पिपावाव पोर्ट लीमीटेड, पिपावाव, उछाइया, तालुका – राजुला, डिस्ट्रिक्ट – अमरेली

Copy to:

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2) The Commissioner, GST & Central Excise Commissionerate, Bhavnagar
3) The Assistant Commissioner, GST & Central Excise Division, Bhavnagar.
4) Guard File.