



::आयुक्त (अपील-III) का कार्यालय,केंद्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,
द्वितीय तल, केंद्रीय उत्पाद शुल्क भवन / 2nd Floor, Central Excise Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360001



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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील संख्या / Appeal / File No.	मूल आदेश सं / O.O. No.	दिनांक / Date
	V2/182 /RAJ/2016	04/D/2016-17	23.05.2016

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

RAJ-EXCUS-000-APP-005-2017-18

आदेश का दिनांक /
Date of Order: **27.04.2017** जारी करने की तारीख /
Date of issue: **02.05.2017**

श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /
Passed by Shri Uma Shanker, Commissioner (Appeals-III)

ग अथवा अधिकांश संयुक्त/अनुयुक्त/उपायुक्त/सहायक आयुक्त, केंद्रीय उत्पाद शुल्क सेवाभवन, राजकोट / जामनगर / गान्धीधाम। द्वारा उपरोक्तित्त जारी मूल आदेश से सूचित।

Arising out of above mentioned O/O 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 Appellant & Respondent :-**

M/s. Kelvin Plastics Pvt. Ltd., S.No. 108/P, National Hghway - 8, Bhunava, Taluka Gondal, Dist : Rajkot,

इस आदेश(अपील) से व्यक्ति 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, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केंद्रीय 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) इलीकरण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, अर. 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 अपील के अलावा सभी अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ, ओ.20, न्यू मेंटल हॉस्पिटल कंपाउंड, मेघानी नगर, अहमदाबाद-380016, को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केंद्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को याद धरितियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अथवा की सीमा और लताया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्निट बैंक ड्रफ्ट द्वारा किया जाना चाहिए। संबंधित ड्रफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में याद प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उसमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा अथवा की सीमा और लताया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्निट बैंक ड्रफ्ट द्वारा किया जाना चाहिए। संबंधित ड्रफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान 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/-

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दायें की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा S.T.-7 में की जा सकती एवं उसके साथ अनुकर, केन्द्रीय उत्पाद शुल्क अध्याय अनुकर (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (जहाँ से एक प्रति प्रामाणिक होनी चाहिए) और अनुकर द्वारा सहयोग अनुकर अध्याय अनुकर, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपील न्यायाधिकरण को आवेदन दायें 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 Form 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 अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील 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 अपील न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवाकर का मूल्य के 10 प्रतिशत (10%), जब मूल्य 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 रुपय से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'जमा किया गए शुल्क' से निम्न शामिल है
- (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेजवैट जमा की गयी गई सख्त राशि
 - (iii) सेजवैट जमा प्रियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील न्यायाधिकरण के द्वारा विचारणीय मामला नहीं एवं अपील को लागू नहीं होगी।

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 be 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 मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारंतक के अंतर्गत अथवा अधिव, भारत सरकार, पुनरीक्षण आवेदन ईक्टू, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन् दीप भवन, सराई काली, 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-35 ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहाँ नुकसान किसी माल को किसी कारखाने से अंतर गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंतर गृह से दूसरे अंतर गृह परिवहन के दौरान, या किसी अंतर गृह से या अंतराल में माल के प्रसंकरण के दौरान, किसी कारखाने या किसी अंतर 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 का रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के रूफ (रिबैट) 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 an 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 इच्छुटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अनुकर (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लॉजिक अथवा समावधि पर या बाद में पारित किए गये हैं। / 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 प्रतियाँ धारा संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के संकेपन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के संकेप 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 is 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 आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त इन से किया जाना चाहिए। इस तथ्य के होने हुए भी की निम्न पढ़ी कार्य से बचने के लिए प्रामाणिक अपील न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) प्रशासकीय न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसूचा मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कच्चे विधि) नियमवली, 1982 में उल्लिखित एवं अन्य संबंधित मामलों को ध्यान में रखते हुए अपील न्यायाधिकरण की और भी ध्यान आकर्षित किया जाना 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 अपील न्यायाधिकरण को अपील दायें करने से संबंधित दायक, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकरण 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

M/s. Kelvin Plastic Private Limited, Survey No. 108/P, National High-way-8, Bhunava, Tal. Gondal, District - Rajkot (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-In-Original No.04/D/2016-17 dated 23.05.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise Division - II, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. Briefly stated facts of the case are that during the course of audit, it was noticed that during the period from May-2012 to March-2013, the appellant had wrongly availed Cenvat credit of service tax paid against invoices raised by M/s Sahaj Services for providing Outdoor Catering Service as the same was falling under the exclusion clause of definition given under the Rule 2(l) of the Cenvat Credit Rules, 2004. Accordingly, show cause notice dated 29.03.2016 was issued for recovery of wrongly availed cenvat credit of Rs. 80,031/- under Rule 14 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR, 2004) readwith Section 11A (5) of the Central Excise Act, 1944 alongwith interest under Rule 14 of the CCR, 2004 readwith Section 11AA of the Act and for imposition of penalty under Rule 15(2) of the CCR, 2004 read with Section 11AC of the Act. The show cause notice was decided by the adjudicating authority vide the impugned order wherein he disallowed the Cenvat Credit and ordered its recovery alongwith interest and penalty at the rate of 50% of credit amount.

3. Being aggrieved by the impugned order, the appellant preferred the present appeal mainly on the grounds that the adjudicating authority has erred in confirming the demand of Rs. 80,031/- on the ground that the credit on outdoor catering is not available in terms of the definition of the word 'input service' ignoring the fact that the services availed by the applicant cannot be categorized under the description of "outdoor catering"; that the department had full knowledge of the fact that the applicant has availed credit of caterer and further the appellant is maintaining huge credit balance and hence it cannot be said that the appellant had any intention to evade payment of duty and is therefore clearly barred by limitation; that the adjudicating authority erred in confirming the demand on the ground that the decisions referred are not applicable, since the services provided is in relation to the business activity and is provided within the factory premises, it cannot be said that the same is covered by the word 'outdoor catering service' and hence credit as claimed is correctly availed; that the adjudicating authority has also erred in imposition of penalty on the grounds mentioned hereinabove.



4. A personal hearing in the matter was fixed on 22.03.2017 which was attended by Shri Paresh Sheth, Advocate on behalf of the appellant. He reiterated the Grounds of Appeal.

5. I observe that the lower adjudicating authority has disallowed the Cenvat Credit of service tax paid against Outdoor Catering Service for the reason that the present case pertained to the period after amendment in the definition of 'input services' vide Notification No. 3/2011-CE (NT) dated 01.03.2011 and would fall under the exclusion of the definition of 'input services'. The 'input services' as per Section 2 of the Cenvat Credit Rules, 2004 w.e.f. 01.04.2011 reads as under:

"(l) 'input service' means any service -

- (i) used by a provider of taxable 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 services.-***

(A) specified in sub-clauses (p), (zn), (zzi), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for -

- (a) construction 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) specified in sub-clauses (d), (o), (zo) and (zzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; 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."

6. As can be seen from the above that vide Notification 3/2011-CE (NT) dated 01.03.2011, outdoor catering services have been specifically excluded from the definition of 'input services' and therefore, the same can not be treated as eligible input service in terms of the exclusion clause given in the definition under Rule 2(l) of Cenvat Credit Rules, 2004. The appellant has however contended that

the services availed by them cannot be categorized under the description of "outdoor catering". I observe that the said plea has already been addressed by the adjudicating authority vide para 7 of the impugned order, since I am in agreement with the same, I do not reiterate the same. I also find that vide Notification 3/2011-CE (NT) dated 01.03.2011, expression "activities relating to business" has been deleted from the definition of 'input services'. Further, the Board vide Circular No. 943/4/2011-CX., dated 29th April, 2011 had clarified as under:

S. No.	Issue	Clarification
2.	Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative?	The list is only illustrative. The principle is that cenvat credit is not allowed when any goods and services are used primarily for personal use or consumption of employees .

From the above clarification, a clear-cut principal has been laid down describing the circumstances where the Cenvat Credit is not allowed particularly in the case when any goods and services are used primarily for personal use or **consumption of employees**. The Board while issuing the clarification has clearly observed that expenses borne by an assessee in respect of outdoor catering are used primarily for personal use or **consumption of employees**. I find that the catering service is for "**consumption of employees**", which will take it to the excluded category. In this background, I am also of the view that outdoor catering services are in fact one kind of extra benefit to their employees and therefore cannot be considered to be services used in or in relation to manufacture of final products. I therefore do not find any infirmity in the impugned order.

7. I also observe that the Hon'ble High Court of Bombay in the case of Ultratech Cement Limited reported at 2010 (260) ELT 369 (Bom.) and CESTAT, Principal Bench, New Delhi in the case of Hindustan Coco Cola Beverages Ltd. reported at 2011 (274) ELT 196 (Tri.-Del.) allowed the cenvat credit on outdoor catering service holding that outdoor caterer services engaged to comply with Factories Act, 1948 and therefore the same has to be held as activity related to manufacturing business. The said judgments have been pronounced in the context of the definition of "input services" existed prior to 01.04.2011. The legislation was in knowledge of the ratio of the said decisions. It was also in the knowledge of the government that these are the requirement under the Factories Act. However, the legislation consciously amended the definition of input service vide

Notification No. 3/2011-CE (NT) dated 01.03.2011, putting outdoor catering services under the exclusion clause (C) of the definition of "input service" provided under Rule 2(l) of Cenvat Credit Rules, 2004. Therefore, the intention of the legislation is very clear not to allow cenvat credit on outdoor catering services when such services are used primarily for personal use or consumption of employees of the appellant, even if such services are provided in requirement of any other Act. Thus, I am of the considered view that the appellant is not entitled for cenvat credit of service tax paid on outdoor catering services. Hon'ble Apex Court has very clearly stated that the rules of interpretation in following cases:

NICHOLAS PIRAMAL (INDIA) LTD, 2009 (244) E.L.T. 321 (Bom.)

Interpretation of statutes - Hardship, relevance in construction of rule - *Hardship cannot result in giving a go-by to language of the rule and making rule superfluous - Assessee to represent to rule making authority pointing out defects - Court in the guise of interpretation cannot take upon task legislative function - Difficulties in few cases cannot result in departing from normal rule of construction. - The rule must ordinarily be read in its literal sense unless it gives rise to an ambiguity or absurd results. [paras 21, 22, 23]*

Statutory provisions - Rules when not absurd or unjust - Not possible for Legislature to conceive every possible difficulty - Provision or rule can occasion hardship to a few, that cannot result in rule being considered as absurd or manifestly unjust. - *Hardship or breaking down of the rule even if it happens in some cases by itself does not make the rule bad unless the rule itself cannot be made operative. [para 2]*

DHARAMENDRA TEXTILE PROCESSORS 2008 (231) E.L.T. 3 (S.C.)

Interpretation of statutes - Principles therefor - *Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous* - A statute is an edict of the legislature - Language employed in statute is determinative factor of legislative intent.

PARMESHWARAN SUBRAMANI 2009 (242) E.L.T. 162 (S.C.)

Interpretation of statutes - Legislative intention - *No scope for court to undertake exercise to read something into provisions which the legislature in its wisdom consciously omitted* - Intention of legislature to be gathered from language used where the language is clear - Enlarging scope of legislation or legislative intention not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate - Courts cannot add words to a statute or read words into it which are not there - Court cannot correct or make assumed deficiency when words are clear and unambiguous - Courts to decide what the law is and not what it should be - Courts to adopt construction which will carry out obvious intention of legislature. [paras 14, 15]

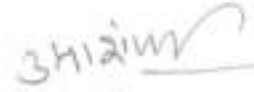
I find that in the citations submitted by the appellant, statute has been interpreted in such a way which makes the necessary amendment irrelevant which is contrary to the decisions cited above.

8. The appellant has also contended that they are maintaining huge credit balance and hence it cannot be said that they had any intention to evade payment of duty and is therefore clearly barred by limitation. I find that the appellant had at no point of time disclosed the facts that they have availed cenvat credit of service tax paid on outdoor catering services. The department comes to know only when audit has pointed out the same. Further, the appellant has not furnished any document in support of their above contention. Therefore, I find that the arguments are devoid of merits and cannot be accepted.

9. In view of the above, I uphold the entire impugned order and reject the appeal filed by the appellant.

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

10. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - III)

By Speed Post

To,
M/s. Kelvin Plastic Private Limited,
Survey No. 108/P, National High-way-8,
Bhunava, Tal. Gondal, District - Rajkot

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Principal Commissioner, Central Excise & Service Tax, Rajkot.
- 3) The Assistant Commissioner, Central Excise Division - II, Rajkot.
- 4) The Superintendent, Central Excise, AR - Gondal, Rajkot.
- 5) PA to Commissioner (Appeals-III), Central Excise, Ahmedabad.
- 6) Guard File.