



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL 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/ 15 & 16/RAJ/2020	20 to 21/DC/KG/2019-20	30-12-2019

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

RAJ-EXCUS-000-APP-054-TO-55-2020

आदेश का दिनांक / Date of Order:	24.04.2020	जारी करने की तारीख / Date of issue:	24.04.2020
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-

M/s Atul Auto Ltd., Near Microwave Tower, Rajkot-Gondal Highway, Jamnagar-361140.

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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिकां, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 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 मांग, ब्याज की मांग 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 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 रजिस्टार के नाम से किसी भी सार्वजनिक 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित हानी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग 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 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 रजिस्टार के नाम से किसी भी सार्वजनिक 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- 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 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 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 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, वशर्ते 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" में 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
- वशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। / 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 को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 छूट (रिवेट) 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) मूनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट 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 समयावधि पर या बाद में पारित किए गए 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 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।
जहां संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 आदेशों 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 न्यायाधिकरण को एक अपील या केन्द्रीय 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

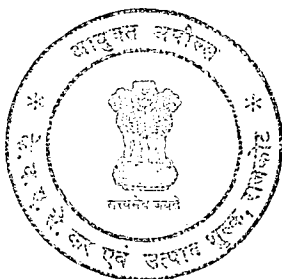


:: ORDER-IN-APPEAL ::

M/s. Atul Auto Ltd, Rajkot(*herein after referred to as "Appellant"*) has filed appeal Nos. V2/15-16/Raj/2020 against Order-in-Original No. 20-21/DC/KG/2019-20 dated 30.12.2019(*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Central GST Division-II, Rajkot (*hereinafter referred to as 'adjudicating authority'*).

2. The brief facts of the case are that during audit of the records of the Appellant, it was observed that the Appellant had availed Cenvat credit of service tax paid on the services provided by the financial institutions under the category of 'Banking and Financial Services'. The said finance companies granted loans to the customers of the Appellant for purchase of 'Three Wheeled Auto Rickshaw' manufactured by the Appellant and recovered 'Subvention charges/ Incentive' from the Appellant along with service tax. It appeared to the Audit that the Appellant had received services from the said financial institutions after the goods were cleared from their factory and reached to their dealers. Thus, the services availed by the Appellant had no relation, directly or indirectly with the manufacture of their final products and hence, said Cenvat credit of service tax paid on 'subvention charges/incentive' was wrongly availed by them and consequently not covered within the definition of 'input service' under Rule 2(l) of the Cenvat Credit Rules, 2004. Hence, Show Cause Notices were issued to the Appellant covering the period from November, 2011 to March, 2015.

2.1 On scrutiny of ER-1 Returns, it was found that the Appellant had continued the practice of availment of Cenvat credit of service tax paid on 'Subvention Charges / Incentive' for subsequent period also. Hence, Show Cause Notice No. V.87/AR-Shapar/Div-II/ADC/191/2015-16 dated 9.3.2016 for the period from April, 2016 to January, 2017 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 32,97,342/- wrongly availed and utilized should not be disallowed and recovered from them along with interest under Rule 14 of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR,2004'*) and proposed imposition of penalty under Rule 15 of CCR,2004 read with Section 11AC of the Central Excise Act, 1944.

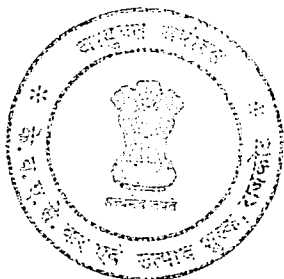


2.2 Further, Show Cause Notice No. IV/3-39/2017-18 dated 1.3.2018 for the period from February, 2017 to June, 2017 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 26,59,131/- wrongly availed and utilized should not be disallowed and recovered from them along with interest under Rule 14 of 'CCR,2004' and proposed imposition of penalty under Rule 15 ibid.

2.3 The aforesaid Show Cause Notices were adjudicated by the Adjudicating Authority vide the impugned order who confirmed the wrongly availed Cenvat credit totally amounting to Rs. 59,56,473/- under Rule 14 of 'CCR,2004' along with interest under Rule 14 ibid and imposed penalty totally amounting to Rs. 59,56,473/- under Rule 15 of CCR,2004 read with Section 11AC of the Central Excise Act, 1944.

3. Aggrieved, the Appellant has filed the present appeals, inter alia, on following grounds:

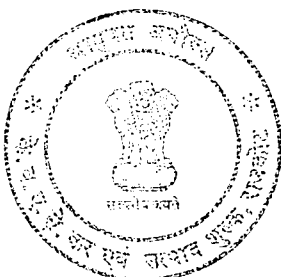
(i) The impugned order is untenable in law inasmuch as the same is against the doctrine of judicial discipline; that the doctrine of judicial discipline requires that, whenever, in a case, the judgments of higher courts / tribunals / authorities are cited, the lower courts / authorities are bound to consider and follow said judgments / orders; that on the very same issue, two show cause notices dated 18.07.2014 and 11.11.2014, covering period November, 2011 to April, 2013 and November 2013 to July, 2014, were issued to the appellant proposing disallowance of Cenvat Credit. The Commissioner (Appeals) decided the issue in their favour but the Department filed appeals before the CESTAT, Ahmedabad who dismissed the appeals vide Order No. A/10168-10169/2018 dated 19.1.2018 by holding that the Appellant was eligible to avail Cenvat credit of service tax paid on 'Subvention Charges/ Incentive', since the same was in relation to sales promotion activities. They relied upon the said Order of the Tribunal but, the adjudicating authority discarded their contention by observing that the said CESTAT order was accepted by the department only on monetary limit and not on merits and therefore has no precedence value; that the said CESTAT order was passed on merits and since the department has not challenged the said CESTAT order, it has attained finality and the adjudicating authority was bound to follow the said CESTAT order.



(ii) That the disputed Cenvat credit of service tax pertains to services provided by the financial institutions and these services are specifically covered under the 'main part' of the definition of 'input service' under Rule 2(l) of CCR,2004, wherein, any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of the final products has been made eligible for cenvat credit; that inclusive part of the definition includes services used in relation to 'Sales Promotion'.

(iii) that in automobile industry, around 90% of vehicles are sold under some financial scheme like loan, hire purchase, etc. provided by various banks and other financial institutions and therefore, every manufacturer of automobiles has to make some arrangements for financing the products manufactured by them so that the ultimate customer can purchase the same without much financial hardship and if they don't enter into such financing understanding with these financial institutions, it will be impossible for them to sale / market their products. Thus, such financial arrangements with these financial institutions are integrally connected with manufacture and sale of three wheeler vehicles manufactured by them because unless and until, these financial institutions finance vehicles manufactured by them, the same cannot be sold by their dealers and consequently, they will not be able to manufacture the same end therefore, there is direct correlation between finance made available by these financial Institutions to ultimate customers and goods manufactured by them. Thus, the services rendered by the financial institutions to enhance sale of their final products are nothing but 'sales promotion' for the Appellant and therefore service tax paid on subvention charges is available as Cenvat credit since the same is covered under 'inclusive part' of 'input service' and relied upon case law of Coca Cola India Pvt Ltd- 2009 (15) STR 657 (Bom.), wherein the Hon'ble High Court allowed the Cenvat credit of service tax paid on advertisement services to M/s. Coca Cola India Pvt. Ltd., even though, the products for which advertisements were made, were not at all manufactured by the said company.

(iv) That the impugned order imposing penalty upon them is unwarranted and not sustainable since the disallowance of cenvat credit itself is



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unsustainable in law on merit; that it is settled legal position that penalty should not be levied when the matter involves interpretation of law, as in the present case.

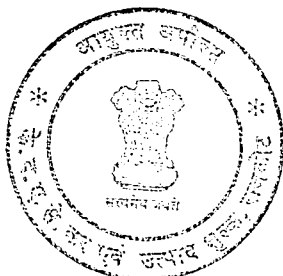
4. In hearing, Shri Dinesh Kumar Jain, Chartered Accountant, appeared on behalf of the Appellant and reiterated the grounds of appeal and requested to allow their appeal.

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submission made at the time of personal hearing. The issue to be decided in the present appeal is whether the impugned order denying Cenvat credit of service tax paid on 'Subvention charges / Incentive' and imposing penalty under Rule 15 of CCR, 2004, is correct, legal and proper or not.

6. On going through the records, I find that the Appellant had entered into agreements with financial institutions for financing 'Three Wheeled Auto Rickshaw' manufactured by them when sold from their dealer's premises. The said financial institutions recovered 'Subvention Charges / Incentive' from the Appellant for providing the said services along with service tax under the category of 'Banking and Financial Service'. The Appellant had availed Cenvat credit of service tax paid on said 'Subvention Charges / Incentive' considering the services rendered by the said financial institutions as their 'input service' in terms of Rule 2(l) of CCR, 2004. The adjudicating authority denied the said Cenvat credit on the ground that services rendered by the financial institutions were not sales promotion and consequently not covered within the definition of 'input service' under Rule 2(l) of CCR, 2004.

7. I find that the issue in the present appeals is covered by the Order passed by the Hon'ble CESTAT, Ahmedabad in Appellant's own case vide Order No. A/10168-10169/2018 dated 19.1.2018, wherein the Hon'ble Tribunal has held that,

"7. On a plain reading of the terms of the above arrangement/agreement between the Respondent and the financial companies, it is clear that the amount of Rs 1500/- was paid towards subvention charges against each of the financial facility offered by the companies on each of vehicle by the



customers of the Respondent. Ld. A.R. for the Revenue referring to the scope of services rendered by the financial companies as mentioned at Clause (3) of the said arrangement vehemently argued that the consideration paid by the Respondent to the financial companies is in the nature of sales commission and not sales promotion as erroneously observed by the Id. Commissioner' (Appeals) in the impugned order. I do not find merit in the said contention of the Id. A.R. for the Revenue inasmuch as, the object of arrangement itself speaks clearly and loudly that It is meant to enhance the sale of the manufactured goods of the Respondent through attracting customers by providing financial option to the respective customers and for the said purposes, they had approached the financial companies since they do not have such inhouse finance facility. Therefore, in my opinion, this arrangement has been rightly considered by the Id. Commissioner (Appeals) as a sale promotion activity and accordingly eligible input service. Also, there is merit In the contention of the Id. Advocate for the Respondent inasmuch as the financial companies had levied the service tax under banking and financial service and such classification of the service and payment of service tax being not disputed by the jurisdictional authority, therefore, denying credit on the service tax paid in the hands of the Respondent, considering the same as business auxiliary service also not sustainable in law in view of the judgments cited by the Id. Advocate for the Respondent. In the result, the impugned order is upheld and the Appeals filed by the Revenue are dismissed."

8. I find that the Appellant had relied upon the said Order of the Tribunal before the adjudicating authority but the same was discarded by the adjudicating authority on the ground that CESTAT order was accepted by the Department on monetary limit and not on merits and therefore has no precedence value. I find that the adjudicating authority erred in taking such stand. When the Department did not file appeal against the said CESTAT order before higher appellate forum, the said CESTAT order attained finality and it is binding upon all the lower appellate authority and adjudicating authority. Under the circumstances, the judicial discipline required the adjudicating authority to follow the said CESTAT order. It is open for the Department to challenge the issue before appellate forum in appropriate case but the adjudicating authority was bound to follow the said CESTAT order, which has not been done in the present case. The impugned order is, therefore, not sustainable.



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9. In view of the above, I hold that the Appellant has correctly availed Cenvat credit of service tax paid on 'Subvention Charges/ Incentive'. I, therefore, set aside the impugned order and allow the appeals.

10. 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.


(GOPI NATH) 24/4/2020
Commissioner(Appeals)

Attested



(V.T.SHAH)
Superintendent(Appeals)

By RPAD

To, M/s. Atul Auto Ltd. Gondal Road, Shapar (Veraval), District Rajkot.	सेवामें, मैसर्स अतुल ऑटो लिमिटेड, गोंडल रोड, शापर(वेरावल), जिल्ला राजकोट।
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प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-2 मण्डल, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

