NATION : : आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE, MARKET द्वितीय तल, जी एस टी भवन / 2 nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,					
	Tele Fax N	and a state of a state of the s	<u>z / Rajkot – 360 001</u> 2/2441142Email: commrappl3- 0	सत्यमेष जगते cexamd@nic.in	
<u>रजिस्ट</u>	र्ड डाक ए.डी. द्वारा :-		DIN - 20210564SX000000A0	68	
क	अपील / फाइलसंख्या/ Appeal /File No. V2/92/RAJ/2020		मूलआदेशमं / OIO No. 2/D/Supdt/2020-21	दिनाक/ Date 26.6.2020	
ख	अपील आदेश संख्या(Orde	r-In-Appeal No.):			
		RAJ-EXCU	S-000-APP-14-2021		
	Date of Order: श्री अखिलेश कुमार, आ	•		27.05.2021	
	Passed by Shri Rajkot	Akhilesh Kur	nar, Commissioner (A	Appeals),	
ग	अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपयुक्तलिखित 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 Appellant & Respondent :-				
	0	372	und, Ganjiwada Road, Rajkot. से उपयुक्त प्राधिकारी / प्राधिकरण के समस् al may file an appeal to the app	न्न अपील दायर कर सकता है।/ propriate authority in the following	
(A)	way. 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 निम्नलिखि+त जगह की जा सकती है।/				
(i)	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:- वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ परम, नई दिल्ली, को की जानी चाहिए।/				
	The special bench of Cu Delhi in all matters relat	stoms, Excise & Ser ing to classification	vice Tax Appellate Tribunal of W and valuation.	Vest Block No. 2, R.K. Puram, New	
(ii)	पश्चिम क्षेत्रीय पीठिका, ,द्वितीय त	ल, बहुमाली भवन असावों	अहमदाबाद- ३८००१६को की जानी चाहि		
	To the West regional be Bhaumali Bhawan, Asar	ench of Customs, 1 wa Ahmedabad-380	Excise & Service Tax Appellate 016in case of appeals other that	ribunal (CESTAT) at, 2 nd Floor, n as mentioned in para- 1(a) above	
(iii)	लगाया गया जुमोना, रुपए 5 ला रुपये, 5,000/- रुपये अथव न्यायाधिकरण की शाखा के सहार संबंधित ड्राप्ट का भुगतान, बैंक ब लिए आवेदन-पत्र के साथ 500/	ख या उससे कम,5 लाख र ा 10,000/- रुपये का नि क रजिस्टार के नाम से वि जि उस शाखा में होना चाहि - रुपए का निर्धारित शुल्व	पए या 50 लाख रुपए तक अथवा 50 ल गेधरित जमा शुल्क की प्रति संलग्न करें। त्सी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी ए जहां संबंधित अपीलीय न्यायाधिकरण की ब्जमा करना होगा।/	2001, के नियम 6 के अंतर्गत निर्धारित किए हां उत्पाद शुल्क की माँग, क्याज की माँग और तख रुपए से अधिक है तो क्रमश: 1,000/- निर्धारित शुल्क का भुगतान, संबंधित अपीलीय रेखोंकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के	
	The appeal to the Appell of Central Excise (Appe accompanied by a dutydemand/interest/p of crossed bank draft in where the bench of any in Application made for gra	ate Tribunal shall b cal) Rules, 2001 ar fee of Rs. enalty/refund is up favour of Asst. Reg nominated public se int of stay shall be a	e filed in quadruplicate in form nd shall be accompanied again 1,000/- Rs.5000/-, Rs. to 5 Lac., 5 Lac to 50 Lac and ab istrar of branch of any nominat ctor bank of the place where the accompanied by a fee of Rs. 500	EA-3 / as prescribed under Rule 6 hast one which at least should be 10,000/- where amount of ove 50 Lac respectively in the form ted public sector bank of the place e bench of the Tribunal is situated. /	
(B)	एक प्रति प्रमाणित होनी चाहिए) लाख या उससे कम,5 लाख रुपए 10,000/- रुपये का निर्धारित रजिस्टार के नाम से किसी भी सा शाखा में होना चाहिए जहां संबंधि का निर्धारित शुल्क जमा करना ह	और इनमें से कम से कम ' या 50 लाख रुपए तक अ जमा शुल्क की प्रति संलग्न वीजेनक क्षेत्र के बैंक द्वारा ज त अपीलीय न्यायाधिकरण गा।/	एक प्रति के साथ, जहां संवाकर की मांग, व थवा 50 लाख रुपए से अधिक है तो क्रमश करें। निर्धारित शुल्क का भुगतान, संबंधित तारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना च की शाखा स्थित हैं। स्थगन आदेश (स्टे ऑर्ड	नियमवाली, 1994, के नियम 9(1) के तहत गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से याज की मॉग और लगाया गया जुमाना, रुपए 5 : 1,000/- रुपये, 5,000/- रुपये अपवा अपीलीय न्यायाधिकरण की शाखा के सहायक ताहिए। संबंधित डाफ्ट का भुगतान, बैंक की उस र) के लिए आवेदन-पत्र के साथ 500/- रुपए	
and the second	The appeal under sub set in quadruplicate in For accompanied by a copy accompanied by a fees o Rs 5 Lakhs or less, Rs. than five lakhs but not demanded & penalty ley Assistant Registrar of th situated. / Application r	ection (1) of Section of the order appea f Rs. 1000/- where 5000/- where the a exceeding Rs. Fifty ied is more than fift ie bench of nominat nade for grant of sta	86 of the Finance Act, 1994, to t led under Rule 9(1) of the Serv led against (one of which shall the amount of service tax & interest of / Lakhs, Rs.10,000/- where the ty Lakhs rupees, in the form of ied Public Sector Bank of the pl ay shall be accompanied by a fee	he Appellate Tribunal Shall be filed ice Tax Rules, 1994, and Shall be be certified copy) and should be erest demanded & penalty levied of lemanded & penalty levied is more e amount of service tax & interest crossed bank draft in favour of the ace where the bench of Tribunal is e of Rs.500/	

केन्द्रीय

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वित्त अधिनियम, 1994की 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/ संवाकर, 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. (i)

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 चित्तीय 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%), अब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशतें के 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 कि ली गई गलत राशि (iii) सेनवेट जमा जिसमावली के नियम 6 के अंतर्गत देय रकम (iii)

(C)

मारत सरकार कोपूनरीक्षण आवेदन : Revision application to Government of India: इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, औवन 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-11000 f, 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:

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 अंडार 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 (i)

- भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के बिनिर्माण 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. (ii)
- 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. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए 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. (iv)
- 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 (v) 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.
- पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ सलग्न 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. (vi)
- 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या कैदीय सरकार को एक आवेदन किया जाता है। / In case if the order covers variousnumbers 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. (D)
- 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 दिकिट लगा होना चोहिए। / 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. (E)
- (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 और 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.
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, बिस्तृत 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 (G)



:: ORDER-IN-APPEAL ::

M/s. Bhavani Industries, Rajkot (hereinafter referred to as "appellant") has filed Appeal No. V2/92/RAJ/2020 against Order-in-Original No. 2/D/Supdt/2020-21 dated 26.6.2020 (hereinafter referred to as "impugned order") passed by the Superintendent (Adjudication), Central GST & Central Excise, Rajkot-I Division (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that the appellant was engaged in the manufacture of goods falling under Chapter No. 84 and 87 of the Central Excise Tariff Act, 1985 and was registered with Central Excise Department having Registration No. AAFC8046RXM004. During the course of Audit of the records of the Appellant undertaken by the Departmental officers, it was observed that they had availed Cenvat credit of Service Tax paid on outdoor catering service. It appeared that 'Outdoor Catering Service' was specifically excluded from the definition of 'input service' in terms of clause (ii)(c) of Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR,2004") and therefore, the Appellant was not eligible to avail said Cenvat credit of service tax. Show Cause Notices were issued to the Appellant during the period from April, 2011 to November, 2016.

2.1 Since the Appellant continued to avail Cenvat credit of service tax paid on 'Outdoor Catering Service' during the period from December, 2016 to June, 2017, a Statement of Demand bearing No. V.84(4)-11/MP/D/Supdt/2018-19 dated 12.12.2018 was issued to the appellant for recovery of wrongly availed Cenvat credit of Rs. 4,12,850/- along with interest under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 and proposing imposition of penalty under Rule 15 read with Section 11AC of the Act.

2.2 The above Statement of Demand was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 4,12,850/- and ordered for its recovery along with interest, under Rule 14 of CCR, 2004 read with Section 11A of the Central Excise Act, 1944 and imposed penalty of Rs. 4,12,850/- under Rule 15 of CCR, 2004 read with Section 11AC of the Act.

3. Being aggrieved, the appellant preferred the present appeal on the following grounds, *inter alia*, contending that,

(i) That the then Commissioner (Appeals), Rajkot vide Order-in-Appeal No RAJ-EXCUS-000-APP-141-2018-19 dated 21.6.2018 and Order-in-Appeal No. RAJ-EXCUS-000-APP-107-2018-19 dated 30.5.2018 has allowed their appeals in the self-same case for previous period holding that appellant is entitled for Cenvat credit of service tax paid on Outdoor Catering Service. In that view, for subsequent period in the self-same case, the adjudicating authority could not have proceeded to pass order contrary the order of the higher authority which he was bound to follow. Apart from merits, the impugned order is contrary to judicial discipline and is therefore also not sustainable.

(ii) That the issue is covered by the decision of Hon'ble Tribunal in the case of Hindustan Coca Cola Beverages Pvt. Ltd. V. CCE, Hyderabad, 2017
(49) S.T.R. 88 (Tri.-Hyd.) and decision of the Hon'ble Madras High Court passed in the case of Ganesan Builders Ltd - 2018 (10) TMI 269.

(iii) Since there are decisions in favour of appellant, it cannot be said that appellant wilfully suppressed any facts from the department or that appellant intended to evade payment of duty, in that view question of invoking larger period of limitation or imposition of penalty does not arise.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 23.4.2021. Shri Rahul Gajera, Advocate, appeared on behalf of the Appellant. He reiterated the submissions made in grounds of appeal memorandum and stated that demand for earlier period was already dropped by the Commissioner (Appeals).

5. I have carefully gone through the facts of the case, the impugned order, and grounds of appeal memorandum. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing Cenvat credit of service tax paid on 'Outdoor Catering Service' is correct, legal and proper or not.

6. I find that the Appellant had availed Cenvat credit of service tax paid on 'Outdoor Catering Service' during the period from December, 2016 to June, 2017. The adjudicating authority disallowed said Cenvat credit of service tax on the ground that 'Outdoor Catering Service' was specifically excluded from the definition of 'input service' in terms of clause (ii)(c) of Rule 2(l).

6.1 The appellant has contended that the then Commissioner (Appeals), Rajkot has allowed their appeals for previous period vide Order-in-Appeal No RAJ-EXCUS-000-APP-141-2018-19 dated 21.6.2018 and Order-in-Appeal No. RAJ-EXCUS-000-APP-107-2018-19 dated 30.5.2018 by holding that they were entitled

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for Cenvat credit of service tax paid on Outdoor Catering Service. Hence, the adjudicating authority should not have issued contrary order for subsequent period ignoring the order of the higher appellate authority which he was bound to follow. The Appellant has also relied upon case law of Hindustan Coca Cola Beverages Pvt. Ltd. reported as 2017 (49) S.T.R. 88 (Tri.-Hyd.) and decision of the Hon'ble Madras High Court passed in the case of Ganesan Builders Ltd - 2018 (10) TMI 269.

7. I find that the Appellant was issued Show Cause Notice dated 29.1.2016 for the period from 2011-12 to 2014-15 for wrong availment of Cenvat credit on 'Outward Catering Service'. The matter was decided by the then Commissioner (Appeals), Rajkot vide Order-in-Appeal RAJ-EXCUS-000-APP-141-2018-19 dated 21.6.2018 holding that the Appellant was eligible to avail said Cenvat credit. The Appellant was issued another Show Cause Notice for subsequent period from April, 2015 to December, 2015, which was decided in Appellant's favour vide Order-in-Appeal No. RAJ-EXCUS-000-APP-77-2018-19 dated 8.5.2018. The Appellant was again issued Show Cause Notice dated 27.12.2016 for the period from January, 2016 to November, 2016, which was decided vide Order-in-Appeal No. RAJ-EXCUS-000-APP-107-2018-19 dated 1.6.2018. In the said Orders-in-Appeal, it has been observed by the appellate authority that the outdoor catering service was provided by the Appellant to their employees in terms of Factory Act, 1948, and that it was mandatory for the Appellant to provide such service under the Factory Act, 1948 and hence, the Appellant was eligible to avail Cenvat credit of service tax paid on 'Outdoor Catering Service'.

8. It is not forthcoming from the Statement of Demand dated 12.12.2018 whether there was any change in facts or legal position, which required issuance of demand for subsequent period of December, 2016 to June, 2017, when demand for earlier period were set aside by the then Commissioner(Appeals), Rajkot. The adjudicating authority has also not brought on record whether said Orders-in-Appeal were reversed by higher appellate authority or there was any order of higher appellate authority which prompted him to confirm the demand ignoring that demands for the previous period were set aside by the Commissioner (Appeals), Rajkot. The adjudicating authority erred in not following Orders-in-Appeal passed in Appellant's own case for previous period, ignoring binding precedent. The impugned order is, therefore, not legally sustainable as it has been passed in violation of judicial discipline.

9:10 L bave also examined relied upon case law of Hindustan Coca Cola Beverages Pvt Ltd reported as 2017 (49) STR 88 (Tri. Hyd.), wherein the Hon'ble Page 5 of 7

Tribunal has held that,

"7. The appellants contend that canteen/outdoor catering services is provided within the factory premises in compliance to the provisions of the Factories Act, 1948. It is also submitted that such services are not used primarily for personal use or consumption of employee. In P. Ramanathan Aiyar's Advanced Law Lexicon 3rd edition, the word primarily is defined as "that which is first in order, rank or importance, anything from which something else arises or is derived." The word means something which is more proximate or more important. When outdoor catering services, beauty treatment, health services, etc. used for personal use or consumption of an employee, it would not qualify as 'input service'. In the instant case, as per Factories Act, 1948, the appellants are compelled to provide food facilities inside the factory. It is more importantly used by the appellant to comply with the mandatory requirement under Factories Act. If they do not comply with such provision of the Factories Act, the appellants will definitely not be able to engage in the production/manufacture of final products. Therefore outdoor catering services are used by appellant in relation to the business of manufacture and not for any personal use or consumption of employee.

8. In view thereof following the decision laid in the appellants' own case as well as the decision of the Tribunal in *Yazaki Wiring Technologies India (P) Ltd.* case and *Reliance Capital Asset Management* case (supra), I hold that the disallowance of credit is not legal or proper. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any."

10. In view of the above, confirmation of demand vide the impugned order is not legally sustainable. I, therefore, set aside the confirmation of demand of Rs. 4,12,850/-. Since, demand is set aside, recovery of interest and imposition of penalty of Rs. 4,12,850/- are also required to be set aside and I order accordingly.

11. In view of above, I set aside the impugned order and allow the appeal.

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

12. The appeal filed by the Appellant is disposed off as above.

Sa Akhilesh Kumar)

Commissioner (Appeals)

(V.T.SHAH) Superintendent (Appeals)



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Appeal NO: VI (921921) 2020

By RPAD

To,	सेवा में,	
M/s Bhavani Industries,	मेसर्स भवानी इंडस्ट्रीज़,	
Behind PTD Ground,	पीटीडी मैदान के पीछे.	
Ganjiwada Road, Rajkot.	गंजीवाड़ा रोड, राजकोट ।	

प्रतिलिपि :-

- मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-1 मण्डल, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



