SPEED POST
REGISTERED POST

सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 199/01/WZ/2019-RA/2528 Date of Issue: 21.06.2022

ORDER NO. 64/2022-ST (WZ) /ASRA/MUMBAI DATED 10 -6-2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Principal Commissioner of Central Tax, Pune-I.

Respondent : M/s Eaton Industries Pvt. Ltd.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.PUN-EXCUS-001-APP-420/18-19 dated 12.11.2018 passed by the Commissioner, Central Tax (Appeals-I), Pune.

ORDER

This Revision Application is filed by the Principal Commissioner of Central Tax, Pune-I (hereinafter referred to as "the Department") against the Order-in-Appeal No. PUN-EXCUS-001-APP-420/18-19 dated 12.11.2018 passed by the Commissioner, Central Tax (Appeals-I), Pune.

2. The brief facts of the case are that M/s Eaton Industries Pvt. Ltd. (hereinafter referred to as "the Respondent"), situated at 145, Off Mumbai-Pune Road, Masulkar Colony Road, Pimpri, Pune-411018, having Service Tax registration No. AABCE4323QSD003, are engaged in providing and exporting taxable service under the category of 'Consulting Engineer' and 'Management Maintenance or Repair Services'. The Respondent filed a rebate claim for an amount of Rs.1, 04, 38,333/- for the period April to June, 2017 under the provisions of Notification No. 39/2012-ST dated 20.06.2012 issued under Rule 6A of Service Tax Rules, 1994. The Adjudicating Authority vide his Order-in-Original No. P-I/D-II/Ref-88/18-19 dated 11-07-2018 sanctioned the rebate claim of Rs.1,01,82,444/- and rejected an amount of Rs.2,55,889/- on the grounds that the Respondent had incorrectly availed Cenvat credit on input service invoices in respect of Outdoor Catering/Canteen Service and Rent-a-cab service since these services are excluded in the definition of input service as defined under Rule 2(l) of Cenvat credit Rules, 2004.

3. Aggrieved by the aforesaid Order to the extent of Rejected claim, the Respondent filed appeal with the Commissioner Appeal. The Commissioner Appeal vide his OIA No. PUN-EXCUS-001-APP-420/18-19 dated 12.11.2018 held that the Respondent is eligible for the rebate claim rejected by the adjudicating authority and modified the OIO to that extent.

4. Aggrieved by the Commissioner Appeal's Order in allowing the rebate claim in respect of Service tax paid on input services viz Canteen and Rent-a-cab Service, the department filed the present Revision Application on the following grounds:

A) In respect of Outdoor catering service:

4.1. The relevant portion of Notification No. 39/2012-S.T dated 20.06.2012 reads as under:

"In exercise of the powers conferred by rule 6A of the Service Tax Rules, 1994 (hereinafter referred to as the said rules), the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all input services (hereinafter referred to as 'input services'), used in providing service exported in terms of rule 6A of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter

2. Conditions and limitations:

(a) that the service has been exported in terms of rule 6A of the said rules;

(b) that the duty on the inputs, rebate of which has been claimed, has been paid to the supplier;

(c) that the service tax and cess, rebate of which has been claimed, have been paid on the input services to the provider of service;

Provided if the person is himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.

(d) the total amount of rebate of duty, service tax and cess admissible is not less than one thousand rupees;

(e) no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and

(f) that in case,

(i) the duty or, as the case may be, service tax and cess, rebate of which has been claimed, has not been paid; or

(ii) the service, rebate for which has been claimed, has not been exported; or

(iii) CENVAT credit has been availed an inputs and input services or which rebate has been claimed,

the rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994)

3. Procedure.

3.1 Filing of Declaration. The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,

(a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;
(b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.

3.2 Verification of declaration. The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration

3.3 Procurement of input materials and receipt of input services. - The provider of service to be exported shall,
(i) obtain the inputs required for use in providing service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;
(ii) receive the input services required for use in providing service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

3.4 Presentation of claim for rebate.
(a) (i) claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the service has been exported;

(ii) such application shall be accompanied by,

(a) invoices for inputs issued under the Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under the Service Tax Rules, 1994, in respect of which rebate is claimed;

(b) documentary evidence of receipt of payment against service exported, payment of duty on inputs and service tax and cess on input services used for providing service exported, rebate of which is claimed;

(c) a declaration that such service, has been exported in terms of rule 6A of the said rules, along with documents evidencing such export.

(b) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, having regard to the declaration, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

Explanation 1. - For the purposes of this notification "service tax and cess" means,

(a) service tax leviable under section 66 or section 66B of the Finance Act, 1994 (32 of 1994);

(b) education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and

(c) Secondary and Higher Education Cess on taxable services levied under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007).

Explanation 2. For the purposes of this notification "duty" means, duties of excise leviable under the following enactments, namely:

(a) the Central Excise Act, 1944 (1 of 1944);

(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(d) National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003), section 3 of the Finance Act, 2004 (13) of 2004) and further amended by section 123 of the Finance Act, 2005 (18 of 2005);

(e) special duty of excise collected under a Finance Act;

(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);

(g) Education Cess on excisable goods as levied under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004); and

(h) the additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005)

(i) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007)

4.2. The relevant portion of notification no. 23/2004-CE (N/T) dated 10.09.2004 vide which the Cenvat Credit Rules, 2004 were notified reads as under:

"In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely"

4.3. The Finance Act, 1994 and the Service Tax Rules, 1994 do not give definition of Input Service but Rule 2(cb) of the Service Tax Rules, 1994 the said rules defines INPUT SERVICE DISTRIBUTOR' as under:

"(cb) "input service distributor" has the meaning assigned to it in clause (m) of rule (2) of the CENVAT Credit Rules, 2004;)"

4.4. The Rule 2(1) of Cenvat Credit Rules 2004 reads as under:

(l) "input service" means any service,

(i) used by a provider of output service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], -

((A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for

(a) construction or execution of works contract of a building or a civil structure or a part thereof, or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) [services provided by way of renting of a motor vehicle), in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by –

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

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty. treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

4.5. The department submitted that on perusal of above provisions it is evident as under:

(I) The benefit of Notification No. 39/2012-S.T. dated 20.06.2012 is subject to conditions, limitations and procedures specified in the notification. It implies that if the conditions / limitations / procedures are not followed then the benefit will not be available.

(II) The Condition 2(e) and 2(f) reveal that no rebate will be granted if the CENVAT Credit is availed on input services on which rebate has been claimed. If rebate is granted then it shall be recovered along with interest.

(III) The Cenvat Credit Rules, 2004 have been notified under Section 37 of the Central Excise Act, 1944 (1 of 1944) and Section 94 of the Finance Act, 1994 (32 of 1994). Hence, they are equally applicable to Excise and Service Tax.

(IV) The Finance Act, 1994 the Service Tax Rules, 1994 do define the term 'Input Service'. Hence the definition given in the Rule 2(l) of CCR will have to be taken.

(V) The Clause 'C' Rule 2(1) CCR, inter-alia specifically excludes outdoor catering. Hence, the outdoor canteen services provided in the present case cannot form an input service under the CCR, 2004. Thus the rebate on the said service is not admissible.

4.6. The department placed reliance on the judgement of CESTAT in the case of AET Laboratories Vs C.C.E., Cus. S.T., Hyderabad-1 2016(42) S.T.R. 720 (Tri-Bang). The para 5 of the said Judgments reads as under:-

"5. I have considered the submissions made by both the sides. There is no dispute about the factual or the legal position. The period involved in the present appeal is admittedly after 1-4-2011 and the amendment of the provisions of Rule 2(l) defining the input service came into existence w.e.f. 1-4-2011 only. The definition is extended providing the inclusive as well as exclusive clauses. The exclusion clause effective w.e.f. 1-04-2011 and Clause (C) of said exclusion specifically excludes the services provided in relation to outdoor catering and health insurance or life insurance, etc. Admittedly such services, prior to 1-4-2011, have been held to be covered by the definition of input services. In fact, the need for would arise only when the services are otherwise covered by the definition Legislation, in its wisdom, has excluded certain services from the availment of Cenvat credit w.e.f. 1-4-2011, when such services are otherwise covered by the main definition clause of input service. To interpret the said exclusion clause, in such a manner, so as to hold that such services have direct or indirect nexus with the assessee's business and thus would be covered by the definition, would amount to defeat the legislative intent. It well settled that legislative intent cannot be defeated by adopting an interpretation which is clearly against such intent. As such, I find no

justifiable reason allow the credit respect of the two disputed services and I uphold the confirmation of denial of Cenvat credit and demand of interest thereon."

4.7. Further, in the definition of input service, Government has specifically used the words such as "used primarily for personal use or consumption of any employee", and every word has its meaning in the law. The same was also held by the Hon'ble Supreme Court in the case of Union of India Vs. Hansoli Devi in Civil Appeal No. 9477 of 1994, wherein it has observed that "the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons".

The intention of exclusion of such services by the Government appears to be to negate claims for expenses that are passed off as business expenses, but are personal in nature.

4.8. The Appellate Authority chose to ignore the fact that, the Hon'ble CESTAT, Mumbai (Jurisdictional Tribunal) vide Final Order No. A/91709/2017 dated 15.12.2017, in the case of M/s Empire Industries Ltd. Vs CCE, Mumbai-III [2018-TIOL-228-CESTAT-MUM] has taken a contrary view on the issue and has held that;

Para 4: *On plain reading of the exclusion Clause it is clear that Outdoor Catering Services when used primarily for personal use or consumption for any employee is excluded. The fact of the present case is that the Outdoor Catering Services provided in the factory of the appellant is exclusively meant for use by employee of appellants factory. Therefore it is clearly covered under the exclusion. As regard the learned Counsels submissions, the cost of catering services is absorbed in the expenses of the company, I find that this fact of inclusion in the expenditure is the secondary issue. Primarily the service should be first covered under the definition of the input service. Once a service is not covered due to exclusion irrespective of fact whether the cost of services has been taken as expenditure in the books of account does not render the services as admissible for CENVAT credit. Similarly, the submission of the learned Counsel it is necessity for running the factory under three shifts and it is a requirement*

under the statute of Factory Act, 1948 does not make eligible such services for CENVAT credit when Outdoor Catering Services excluded from definition of input service. No doubt the Outdoor Catering Services is a necessity but once said service is excluded, the use of such service whether statutorily required or otherwise does not render the services eligible for cenvat. As regard the judgment of Hon'ble Bombay High Court in the case of CCE, Goa Vs. Hindustan Coca Cola Beverages Pvt. Ltd. 2015 (39) STR 360 (Bom (supra), I find that as per the fact of this judgment the period involved prior to 01.04.2011 from which date service was excluded for the subsequent period, therefore the judgment cited is not applicable. As regard decision of this Tribunal in the case of Hindustan Coca Cola Beverages Pvt. Ltd. us. CCE Nasik [2014-TIOL-2460-CESTAT-MUM, I find that this decision of the Tribunal is based on the interpretation that service was not used by the personal use or consumption of any employee but used by company. In the fact of the present case, there is no dispute the Outdoor Catering Services is exclusively used for the employee of the company, ever though the expenses were borne. Therefore Outdoor Catering Services for personal use, accordingly clearly covered under the exclusion provided under the Clause (C). As per the above discussion, the appellant is not eligible for cenvat on Outdoor Catering Services.

4.9. Further reliance is placed on the judgement of Hon'ble CESTAT, South Zonal Bench, Bangalore's Final Order No. 20494/2018 dated 22.02.2018 in the case of Wipro Ltd. Vs C.C.E. & S.T. The para 5 of the said judgement reads as under:

Para 5. "*After considering the submissions of the both the parties, I find that though the Larger Bench vide Interim Order dated 09.02.2018 has held that Outdoor Catering after 01.04.2011 is not an input service and therefore, cenvat credit is not available, but in the present case one of the invoices is prior to 01.04.2011 and service tax of Rs. 34,315.91 was paid on Catering Services prior to 01.04.2011 and therefore, in view of the decision of the Tribunal in the case of Hindustan Coca Cola Beverages cited supra, I am of the opinion that the appellant is entitled to the cenvat credit of Rs. 34,315.91 as the same relates to the period prior to 01.04.2011. Consequently the appeal is allowed to the extent of Rs. 34,315.91*".

4.10. Further, the Order-in-Appeal No. PUN-EXCUS-001-APP-963/17-18 dated 27.12.2017 and PUN-EXCUS-001-APP-0119 & 0120/17-18 dated 20.06.2018 passed by the Commissioner (Appeals-1), Central Tax, Pune in the assessee's own case holding Canteen Services to be input service has not been accepted by the Department and a Revision Application has already been filed with the Revisionary Authority, Government of India.

(B) RENT-A-CAB SERVICE:

4.11. The Appellate Authority has erred in allowing the rebate on Rent-a-Cab service, in as much as, in terms of Notification No 3/2011 CE(NT) dated 1.3.2011 (made applicable from 01-04-2011), 'rent-a-cab' input services are not eligible for Cenvat credit. The relevant provision of Rule 2(1) of Cenvat Credit Rules, 2004 w.e.f. 01.04.2011 till 31.03.2012 are as follows:

"but excludes services,

(A) ..... or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) 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 e credit on motor vehicle is available as capital goods;"

4.12. Vide Notification No. 18/2012 dated 17th of March 2012 (made applicable from 01-04-2012) the changes effected are:

"but excludes services,

(A)

or

(B) specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods;"

On perusal of above, it is evident that Clause 'B' of Rule 2(1) of CCR, 2004) inter-alia specifically excludes "services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods". The Cenvat credit of service tax paid on rent-a-cab service is not available since 01-04-2011. Further, with effect from 01-07-2012, a company, as a service receiver is required to pay service tax on reverse charge basis for the rent-a-cab services received from specified service providers

4.13. In this regard reliance is placed on the following judgements:

a) 2016 (46) STR 858 (Tri-Mum) in the case of M/s. Oceans Connect India Pvt. Ltd., wherein the assessee had themselves given up the claim for cenvat credit on rent-a-cab.

b) 2016(46) STR 854 (Tri-Del) in the case of M/s. Orient Paper Mills. The relevant paras read as under:

"*5. As regards the Cenvat credit on the service tax paid on the Rent-a-Cab for the period from 1-1-2011, I find that provisions of Rule 2(1)(B) of Cenvat Credit Rules, 2004, excludes the category of rent-a-cab for availment of Cenvat credit.*

6 In view of the unambiguous provisions, I find that the appellant is not eligible to avail Cenvat credit of service tax paid on rent-a-cab service for the period subsequent to 1-4-2011. The said amount is to be recovered from the appellant along with interest."

4.14. Further, the Order-in-Appeal No. PUN-EXCUS-001-APP-1057/2017-18 dated 06.02.2018 and PUN-EXCUS-001-APP-0119 & 0120/2017-18 dated 20.06.2018 passed by the Commissioner (Appeals-I), Central Tax, Pune in the assessee's own case holding Rent-a-Cab Service to be input service has not been accepted by the Department and a Revision Application has already been filed with the Revisionary Authority, Government of India.

4.15. In view of the aforesaid grounds, the department filed the Revision Application to determine the points arising out of the impugned Order, as specified above and with a request to:

(a) Set aside the Order-in-Appeal No. PUN-EXCUS-001-APP-420/18-19 dated 12.11.2018, so far as it relates to allowing the appeal filed by the claimant in respect of admissibility of rebate of Service Tax paid on Outdoor Canteen Services and Rent-a-Cab Services modifying the Order-in-Original No. P-I/D-II/Ref-88/18-19 dated 11.07.2018;

(b) Uphold the Order-in-Original No. P-I/D-II/Ref-88/18-19 dated 11.07.2018, passed by the Deputy Commissioner, Central Tax Division-II (Pimpri), Pune-1 Commissionerate to the extent of modification related to Canteen Services and Rent-a-Cab Services which has been allowed by the impugned OIA.

5. Personal hearing in the matter was granted on 25.01.2022. Shri Raj Kumar Yadav, Assistant Commissioner, Pimpri appeared online for the hearing and submitted that both services, Outdoor Catering and Rent-a-cab service are not input services. He pointed out CESTAT Larger Bench Division in the case of Wipro dated 22-02-2018 and M/s Ocean Connect India, (2016(46) STR 858 (Tri. Mum)) in his support. He requested to allow application of Department. The Respondent did not attend the hearing and they were again given a hearing on 9.02.2022 or 16.02.2022. They did not attend the hearing

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

7. On perusal of the records, Government finds that the Respondent had filed the rebate claim for the period April to June 2017 for an amount of Rs.1,04,38,333/- under the provisions of Notfn. No. 39/2012-ST dtd 20.06.2012, for the duty paid on input services used in providing the said Output service viz 'Consulting Engineering' and Management Maintenance or

Repair Service'. The adjudicating authority rejected the rebate claimed on the service tax paid on Outdoor Catering/ Canteen Service and Rent-a-cab service amounting to Rs 2, 55,889/- on the grounds that these services come under the exclusion clause of the definition of 'input service' as defined under Rule 2(l) of the Cenvat Credit Rules, 2004 and hence do not qualify as 'input service'. The rest of the amount was sanctioned. The Respondent filed appeal against the said Order to the extent of rejection of the rebate claim in respect of Outdoor Catering and Rent-a-cab service. The Commissioner Appeals allowed the party's appeal. Aggrieved by the same the department has filed the said Revision Application. Government observes that the issue to be decide in this case is whether the rebate allowed by the Commissioner Appeal on the service tax paid on the input services viz Outdoor Catering/ Canteen service and Rent-a-cab service are admissible or otherwise.

8. In this connection, Government observes it is necessary to note the definition and restriction provided for the input service under Rule 2(l) and clause (B) & (C) of Rule 2(l) as contained in the Cenvat Credit provisions. The same is reproduced below:

Rule 2(l) "Input Service' means any service,

(i) used by a provider of output service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to 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 up to 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 up to the place of removal;

but excludes. -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred as specified services insofar as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) ***Services 'provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not a capital goods;*** *or*

(BA) Service of general insurance business, servicing, repair and maintenance insofar as they relate to a motor vehicle which is not a capital goods, except when used by

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

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) ***such as those provided in relation to outdoor catering****, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;*

9. As per the above definition of input service (w.e.f 1.4.2011), the following points are very clear:

a) '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 as restricted by the exclusion clause at (A), (B) and (C).

b) The exclusion clause at clause (B) restricts the service provided of renting of motor vehicles which do not qualify as capital goods.

c) The exclusion clause at (C) excludes Outdoor Catering Services "used primarily for personal use or consumption of any employee". The above exclusive clause clearly debars the outdoor catering service which are for the consumption of any employee.

d) The statutory provisions of Rule 2(l) of Cenvat Credit Rules, 2004 excludes the input services viz Rent-a-cab and Outdoor catering service to be defined as 'input service'.

10. Government finds that the Commissioner Appeal in his Order has observed that the Canteen is run for the welfare of the employee so that the employee performs well and hence there is a nexus with the provision of output service. It is evidently clear in the definition that any services which are meant primarily for the personal use or consumption of the employees will not become input service which are directly or indirectly related to the manufacturing process. The services used for employees for their personal uses which are exclusively impacting self of employees in any form, would not have any effect on activity of employees related to business.

11. Government relies in a similar case of the Hon'ble High Court of Karnataka in case of C.E.A. Nos. 36 of 2018 and 7 of 2019, decided on 21-4-2021, TOYOTA KIRLOSKAR MOTOR PVT. LTD. Versus COMMR. OF C.T., BANGALORE 2021 (50) G.S.T.L. 286 (Kar.) wherein it was held as under:

*"**.....16.** Heavy reliance has been placed upon a judgment delivered by the Madras High Court in the case of Ganeshan Builders Ltd., (supra). In the aforesaid case, there was an insurance in existence and it was not an insurance in individual worker's name. The Madras High Court has held that the insurance policy was assessee's specific and not employee's specific and as there was a mandatory duty casted upon the assessee to establish a canteen under the Building and Other Workers (Regulation of Employment and Conditions of Service) Act, 1996, has allowed the writ petition,*

whereas, in the present case no such contingency is involved. ***In the present case though the expenses incurred in respect of the canteen services for providing food and beverages in canteen maintained and run by the employer is included towards the total cost of the product and it is certainly required to establish under the Factories Act, 1948 (Section 46), but the fact remains, the canteen has been established primarily for personal use or consumption of the employees. There is no ambiguity in the statute and therefore, as it is a taxing statute, this Court cannot add or substitute words in the statutory provisions while interpreting the statutory provision.*** *.....*

.....23 Resultantly, this Court has to look squarely at the words of the statute and interpret them. ***A Taxing Statute has to be interpreted in the light of what is clearly expressed, it cannot imply anything which is not expressed, it cannot merge provisions in the statute so as to supply any assumed deficiencies.***

24. *Resultantly, this Court does not find any reason to interfere with the order passed by the Tribunal. The question of law is answered in favour of the revenue and against the assessee. The appeal stands dismissed accordingly."*

12. This case was affirmed by the Hon'ble Supreme Court vide S.L.P. (C) Nos. 17903-17904 of 2021, decided on 18-11-2021 (2021 (55) G.S.T.L. 129 (S.C.)) wherein it was held that:

"....2. The statutory provision - Rule 2(1) defining "Input Service" post 1-4-2011 is very clear and the out-door catering services when such services are used primarily for personal use or consumption of any employee is held to be excluded from the definition of "Input Service".

3. *In that view of the matter, it cannot be said that the High Court has committed any error in denying the input tax credit and holding that such a service is excluded from input service."*

13. In view of the above Government holds that the rebate claimed by the Respondent for the said two services are found to be ineligible.

14. Further Government also observes that the Respondent has also not discharged their onus of admissibility of Cenvat credit taken on the impugned

input services enumerating with the definition of Rule 2(l), ibid, inasmuch as, the definition of Rule 2(l) clearly contains exhaustive list of services that falls under its purview. Thus, the input services on which Cenvat credit is allowed by the appellate authority is not legal.

15. In view of above discussions, Government holds that in the instant case rebate claim in respect of the Input services viz Outdoor Catering and Rent-a-cab service is inadmissible and allows the departmental appeal. The Order-in-Appeal No.PUN-EXCUS-001-APP-420/18-19 dated 12.11.2018 passed by Commissioner, Central Tax (Appeals-I) is set aside.

12. This Revision application is disposed off on the above terms.

Shrawan 10/6/22

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 64/2022-ST (WZ) /ASRA/Mumbai Dated 10.6.2022

To,
The Principal Commissioner of Central Tax, Pune-I,
2nd Floor, GST Bhawan, 41/A, Sassoon Road,
Opp. Wadia College, Pune-1

Copy to:

1. M/s Eaton Industries Pvt. Ltd., 145, Off Mumbai-Pune Road, Masulkar Colony Road, Pimpri, Pune-411018;
2. The Commissioner (Appeals-I), Central Tax, Pune, Office of the Commissioner (Appeals-I), Central Tax, Pune, F-Wing, 3rd Floor, ICE House, 41/A, Sasson Road, Opp. Wadia College, Pune-411001;
3. The Deputy Commissioner, Central Tax, Dn-II(Pimpri), Pune-I, 1st Floor, Excise Bhawan, Akurdi, Pune – 411044;
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Notice Board.