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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील फाइल संख्या Appeal File No	मूल आदेश सं / O.I.O. No	दिनांक / Date
	V2/20/BVR/2017	07 to 08/Demand/2016-17	19-12-2016

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

BHV-EXCUS-000-APP-064-2017-18

आदेश का दिनांक / Date of Order: **01.12.2017** जारी करने की तारीख / Date of issue: **04.12.2017**

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

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

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

घ **अपीलकर्ता &** प्रतिवादी का नाम एवं पता /Name&Address of the **Appellants &** Respondent :-
Ardeec Eng(Sau) Pvt Ltd.., Industrial Area ..

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 अपीले सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावो अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ जहां सेवाकर की माँग ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" 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
- बशर्ते 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 होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन 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 अदा की गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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.

(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 आवेदनें के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समादेश 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 न्यायाधिकरण को एवं अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

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

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

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते है । /
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.

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:: ORDER IN APPEAL ::

M/s. Ardeec Engineering (Sau) Pvt. Ltd., Industrial Area, Trolley Road, Wadhwancity, Surendranagar (hereinafter referred to as 'the appellant') has filed this present appeal, against Order-in-Original No. 07 to 08/Demand/2016-17 dated 19.12.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise Division, Surendranagar (hereinafter referred to as 'the lower adjudicating authority').

2. Briefly stated facts of the case are that audit noticed that the appellant had availed cenvat credit of service tax paid on erection, commissioning and installation services used at Wind mill located at Kalyanpur Village in Jamnagar District, far away from registered factory premises situated at Surendranagar. Cenvat credit of service tax paid on erection, commissioning and installation of the said Wind mill was alleged to be not admissible as the said services were not used directly or indirectly in or in relation to the manufacture of excisable final products of the appellant. Electricity generated by Wind mill at Kalyanpur was/is non-excisable product, which was transferred to Gujarat Electricity Board at Jamnagar and in turn Gujarat Electricity Board provided electricity at factory premises situated at Surendranagar. It was alleged that the appellant had sold some part of electricity generated through Wind mill, which meant the said part of electricity so sold was not used in manufacture of excisable final products. It was observed that electricity supplied to GEB at Kalyanpur, Jamnagar and electricity received from GEB at factory premises, Surendranagar are two independent transactions and there is no direct nexus between the services received at Wind mill and final products manufactured in the factory. It was noticed that the appellant had availed cenvat credit of Rs. 44,033/- vide Invoice No. 22 dated 04.04.2012 issued by M/s. SIDBI, Rajkot in absence of any valid duty paid document as prescribed under Rule 9 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR"). Show Cause Notices dated 30.06.2014 and dated 22.04.2015 were issued alleging that the appellant had availed cenvat credit which was not in accordance with the provisions of Rule 4 of the CCR as they availed cenvat credit without receiving the input service in their manufacturing premises. It was also alleged that the cenvat credit was taken and utilized on the services availed at Wind mill, which do not qualify as Input Service defined under Rule 2(l) of the CCR. The lower adjudicating authority has decided both SCNs vide impugned order, wherein he has confirmed demand of wrongly availed

cenvat credit of Rs. 1,68,221/- under Rule 14 of the CCR read with proviso to Section 11A of the Central Excise Act, 1944 and confirmed recovery of interest under Rule 14 of the CCR read with Section 11AA of the Central Excise Act, 1944 and imposed penalty of Rs. 1,68,221/- under Rule 15(2) of the CCR read with Section 11AC of the Central Excise Act, 1944. The option of reduced penalty @ 25% of penalty imposed was given by the lower adjudicating authority in terms of amended Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal inter-alia, on the following grounds:-

3.1 The appellant had availed cenvat credit of service tax paid on input services used in or in relation to manufacture of final product; that the appellant had purchased Wind mill and installed in area of Kalyanpur Village in Jamnagar District under proper agreement entered with Gujrat Energy Development Agency (GEDA); that the appellant opted for wheeling of electricity generated with option of sale of excess generation of such electricity and got the credit of such electricity generated during the period under consideration; that the appellant had installed Wind mill in the area specified and electricity so generated was wheeled through PGVCL as per rules and regulation of the state government; that the adjustment of electricity so generated at Wind mill was given at factory while raising invoices by the PGVCL that means the electricity so generated at Wind mill is used in or in relation to manufacture of final product within factory premises and hence cenvat credit of service tax paid on services availed at Wind mill cannot be denied to the appellant; that the appellant can avail cenvat credit of service where ever availed for the purpose of manufacture of excisable goods. The appellant argued that the lower adjudicating authority has erred in confirming the demand without considering above relevant facts as well as agreement entered with the relevant agency.

3.2 The lower adjudicating authority has erred in confirming the demand on the ground that the services availed cannot be treated as input service; that the installation of Wind mill is governed under provisions of Electricity Act, 2003; that the appellant is bound to install Wind mill at the place allotted by the government and bound to enter into an agreement as per the policy declared by the government and consequently electricity so generated has to route through the system adopted and established by the government; that in other word the electricity so generated through

Wind mill is being transferred to the manufacturing unit through facility available and for such transfer the appellant is paying some charges to either government or to the respective company formed by the government, but it is ultimately used in or in relation to manufacture of final product and therefore it cannot be said that the services used at Wind mill are not used in or in relation to manufacture of final products and it is not input service. The appellant relied upon following decisions:

(i) Rajratan Global Wires Ltd. – 2012 (26) STR 117 (Tri.-Del.);

(ii) Ultratech Cement Ltd. – 2011 (21) STR 297 (Tri.-Mumbai);

(iii) Deepak Fertilizers & Petrochemicals Corpn. Ltd. – 2013 (32) STR 532 (Bom.);

(iv) Maharashtra Seamless Ltd. – 2012 (286) ELT 93 (Tri.-Mumbai);

(v) Parry Engg & Electronics P. Ltd. – 2015 (40) STR 243 (Tri. LB)

3.3 The appellant further submitted that availment of cenvat credit of service tax paid on services utilized for Wind mill far away from factory is nothing but question of interpretation of law and hence penalty proceedings initiated is improper and unjustified when issued under consideration is in dispute and involves question of interpretation, in support to this, the appellant relied upon following decisions:

(i) Sundaram Brake Linings Ltd. – 2014 (299) ELT 342 (Tri.-Chennai);

(ii) S. C. Enviro Agro India Pvt. Ltd. – 2013 (298) ELT 257 (Trbi.-Mumbai);

(iii) Jayco India (P) Ltd. – 2013 (294) ELT 236 (Tri. Del.);

(iv) Mexim Adhesive Tapes Pvt. Ltd. – 2013 (291) ELT 195 (Tri.-Ahmd.);

(v) Mastech Technologies Pvt. Ltd. – 2013 (293) ELT 311 (Tri.-Del.)

3.4 The appellant argued that the lower adjudicating authority has erred in relied upon on the decision of Hon'ble Supreme Court in case of Maruti Suzuki Ltd. reported as 2009-240-ELT-641 as the said decision has been differed by the Hon'ble Supreme Court as reported at 2010-260-ELT-321; that the lower adjudicating authority has erred in confirming the demand by relying upon decisions referred in para 21 of the impugned order which no more goods law in view of the decision of the Hon'ble CESTAT in case of Parry Engg & Electronics P. Ltd.; that the department had knowledge of all the facts and hence demand for the period 2012-13 is time barred.

4. Personal hearing in the matter was attended by Shri Paresh Sheth, Advocate, who reiterated the grounds of appeal and also submitted a copy of Orders-In-Appeal dated 10.04.2014 on this matter. Personal hearing notice was also sent to the jurisdictional Assistant Commissioner, however, none appeared from Department

side.

Findings:

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant including at the time of personal hearing. The issue to be decided in the present appeal is whether cenvat credit of service tax paid in relation to services utilized for installation of Wind mill at Kalyanpur Village in Jamnagar District far away from the factory premises, is admissible to the appellant or not.

6. I find that the lower adjudicating authority has denied cenvat credit of service tax paid on services utilized for installation of Wind mill, inter-*alia,* on the grounds: -

(i) that electricity generated at Wind mill was being supplied to GEB and in lieu of the electricity so generated, GEB was providing set-off to the appellant in their factory at Surendranagar and therefore, it had no direct or indirect relation to manufacture of final product at Surendranagar, as required under Rule 2(l) of the Cenvat Credit Rules, 2004;

(ii) that the input services have been used towards erection and maintenance of Wind mill which produce electricity, which is not excisable and is intangible and, therefore, the services have resulted into production of electricity being non-excisable goods, the availment and utilization of the said input service, is not admissible electricity being non-excisable as chain of cenvat credit of the said input services is broken once non-excisable goods emerged as per Rule 6 of the CCR, 2004;

(iii) that the transaction of transferring of power to the GEB and sale of power of offsetting of power by the GEB with the appellants, are two independent transactions and therefore both are unrelated act to each other and therefore services availed at Kalyanpur Village in Jamnagar District and credit of the service tax paid for service is not admissible at the manufacturing unit situated at Surendranagar, as there is no direct or indirect relation between such availment of service at Jamnagar and the manufacture of final product at Surendranagar;

(iv) that the appellant has sold part of electricity to PGVCL which is in excess to their captive consumption, which has not been utilized in the factory

premises. Therefore, the appellant is not eligible for cenvat credit of input used for generation of electricity sold by the appellant and therefore proportionate credit which is attributable to the electricity, not used / supplied in the factory premises would not be available and credit of Rs. 81,616/- out of total cenvat credit of Rs. 1,68,221/- would not be available to the appellant in terms of Rule 2(l) of the CCR.

(v) The appellant has availed cenvat credit of Rs. 44,033/- on 31.03.2012 prior to the issuance of central excise invoice No. 22 dated 04.04.2012 which is in contravention of Rule 9 of the CCR.

7. I find that the appellant has availed cenvat credit on service tax paid on installation and erection services utilized at the Wind mill situated at distant place from the registered premises of the appellant. The contention of the department is that the services being utilized at a distant place, hence cenvat credit was not available to the appellant whereas, the appellant has pleaded that the definition of 'input service' covers such services. I would like to examine, definition of input service as defined under Rule 2(l) of the CCR, 2004 during the relevant period which is produced below for ready reference: -

"(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 upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, 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;

(Emphasis supplied)

7.1 It is a undisputed fact that the generation of electricity is taking place at

Wind mill at a place away from the factory and the electricity so generated, is wheeled to the electricity authorities, who in turn, supplied electricity at the manufacturing unit of the appellants, as per agreed formulae, and that electricity was utilized at the factory for manufacture of the final products of the appellant. I find that the matter is no more *res integra* in view of the decisions of the Hon'ble Bombay High Court in the case of Endurance Technology Pvt. Ltd reported at 2017 (52) S.T.R. 361 (Bom) and the Larger Bench of CESTAT in the case of Parry Engg. & Electronics P Ltd reported at 2015 (40) S.T.R. 243 (Tri.-LB). I also find that there is no restriction under Cenvat Credit Rules, 2004 that the services should be utilized within the factory premises only.

7.2 I find that the lower adjudicating authority has relied upon the decision in the case of Maruti Suzuki Ltd. Vs CCE, Delhi-III as reported at 2009 (240) E.L.T. 641 (S.C.). On study of this judgments, I find that the dispute in the Maruti case was relating to cenvat credit on inputs used in generating electricity, whereas in the case on hand, dispute is relating to cenvat credit on input services. Further, the part of electricity so generated was sold/wheeled out to joint ventures and vendors by the Maruti, whereas, in the instant case the wheeled energy is adjusted by PGVCL/GEB by giving set off in periodical bills of the appellants only. Also, the period covered in the above Maruti case is from January, 2003 to March, 2004, whereas in the present case, the period covered is from March, 2012 to February, 2015 and the definition of input service was amended in 2008, 2011 and 2012. Therefore, the facts of the case on hand and that of the Maruti Suzuki Ltd. *supra* are different and hence, the case-law relied upon by the lower adjudicating authority, is not correct at all.

7.3 The lower adjudicating authority has also relied upon the decision in the case of CCE Vs Gujarat Heavy Chemicals Ltd as reported at 2011 (22) S.T.R. 610 (Guj.). I find that in the case of Gujarat Heavy Chemicals Ltd, the Hon'ble High Court of Gujarat disallowed cenvat credit on security services provided at residential quarters of their workers, which had no connection with the manufacture of their final products, whereas, in the case on hand until and unless the Wind mill is installed/maintained, the appellant cannot produce electricity and the electricity so generated from the said Wind mill has been used to manufacture the final products of the appellant. Since, electricity received by the appellant has been used in manufacture of the final products of the appellant there is direct nexus. Therefore, this case law relied upon by the lower adjudicating authority also is not correct and

applicable in the instant case at all.

7.4 Regarding the issue of the disallowance of proportionate cenvat credit of Rs. 81,616/- on account of sale of part of electricity so generated at Wind mill as held at para 25 of the impugned order, I find that denial of cenvat credit of service tax has been worked out on proportionate basis on account of sale of part of electricity. It is settled position of law that Cenvat credit can be taken on inputs/input service to the extent actually used/utilized in the manufacture of the final products. Since this is a case of selling of electricity, which has not been used for manufacture of final products and accordingly cenvat credit of input service attributable to quantum of electricity sold to PGVCL is not admissible to the appellant. Therefore, I find that denial of proportionate cenvat credit of Rs. 81,616/- on account of the sale of electricity is correct, legal and proper.

7.5 As regard to disallowance of cenvat credit of Rs. 44,033/- availed on 31.03.2012 without valid document, I find that the lower adjudicating authority has correctly held that cenvat credit of Rs. 44,033/- is not admissible to the appellant as they not having valid document as provided under Rule 9 of the CCR. I further find that the appellant has neither raised any argument on this before the lower adjudicating authority nor in Appeal Memorandum and hence, denial of cenvat credit of Rs. 44,033/- is justified.

7.6 Regarding interest liability and penal action for disallowance of cenvat credit, I find that the appellant had wrongly availed and utilized cenvat credit of Rs. 81,616/- by way of contravention of provisions of Rule 2(l) of the CCR as any cenvat credit of input service is admissible to extent the said service has been actually used/supplied to the factory premises. In the instant case, input services involved in the electricity so sold were not used/supplied to the factory premises. The findings of the lower adjudicating authority categorically mentioned that at the time of personal hearing, the appellant had admitted that they sold part of the electricity and this fact at no point of time disclosed by the appellant but came on record when specifically asked at the time of personal hearing held during adjudicating proceeding. I further find that the appellant had availed cenvat credit of Rs. 44,033/- on 31.03.2012 without having valid document as per Rule 9 of the CCR, which specify that the cenvat credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the

basis of an invoice, a bill or challan issued by a provider of input service and this fact came into knowledge at the time of audit. In view of above, I find that the appellant has wrongly availed and utilized cenvat credit and hence the appellant is required to pay appropriate interest under Rule 14 of the CCR read with Section 11AA of the Central Excise Act, 1944 and penalty under Rule 15 of the CCR read with Section 11AC of the Central Excise Act, 1944 in respect of disallowance of cenvat credit as discussed above.

8. In light of the above discussion and findings, I hold that the appellant is eligible to take cenvat credit of service tax on installation of Wind mill even if situated at a distant place from the factory premises. However, it can be allowed only to the extent actually used/utilized in the manufacture of the final products. Hence, denial of cenvat credit of Rs. 81,616/- and Rs. 44,033/- on account of sale of electricity and non-availability of valid document respectively, is justified and I uphold the same.

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

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

11/12/2017

(कुमार संतोष)
आयुक्त (राजकोट)

By R.P.A.D.

To,

M/s. Ardeec Engineering (Sau) Pvt. Ltd., Industrial Area, Trolley Road, Wadhwancity, Surendranagar	M/s. अरदीक इंजीन्यरिंग (सौ.) प्रा. ली., इंडस्ट्रियल एरिया, ट्रोलि रोड, वढ़वानसिटी, सुरेन्द्रनगर.

Copy to:

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

:: ORDER IN APPEAL ::

M/s. Ardeec Engineering (Sau) Pvt. Ltd., Industrial Area, Trolley Road, Wadhwancity, Surendranagar (hereinafter referred to as 'the appellant') has filed this present appeal, against Order-in-Original No. 07 to 08/Demand/2016-17 dated 19.12.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise Division, Surendranagar (hereinafter referred to as 'the lower adjudicating authority').

2. Briefly stated facts of the case are that audit noticed that the appellant had availed cenvat credit of service tax paid on erection, commissioning and installation services used at Wind mill located at Kalyanpur Village in Jamnagar District, far away from registered factory premises situated at Surendranagar. Cenvat credit of service tax paid on erection, commissioning and installation of the said Wind mill was alleged to be not admissible as the said services were not used directly or indirectly in or in relation to the manufacture of excisable final products of the appellant. Electricity generated by Wind mill at Kalyanpur was/is non-excisable product, which may transferred to Gujarat Electricity Board at Jamnagar and in turn Gujarat Electricity Board provides electricity at factory premises situated at Surendranagar. It was alleged that the appellant had sold some part of electricity generated through Wind mill, which meant the said part of electricity so sold was not used in manufacture of excisable final products. It was observed that electricity supplied to GEB at Kalyanpur, Jamnagar and electricity received from GEB at factory premises, Surendranagar are two independent transactions and there is no direct nexus between the services received at Wind mill and final products manufactured in the factory. It was noticed that the appellant had availed cenvat credit of Rs. 44,033/- vide Invoice No. 22 dated 04.04.2012 issued by M/s. SIDBI, Rajkot in absence of any valid duty paid document as prescribed under Rule 9 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR"). Show Cause Notices dated 30.06.2014 and dated 22.04.2015 were issued alleging that the appellant had availed cenvat credit which was not in accordance with the provisions of Rule 4 of the CCR as they availed cenvat credit without receiving the input service in their manufacturing premises. It was also alleged that the cenvat credit was taken and utilized on the services availed at Wind mill, which do not qualify as Input Service defined under Rule 2(l) of the CCR. The lower adjudicating authority has decided both SCNs vide impugned order, wherein he has confirmed demand of wrongly availed cenvat credit of Rs. 1,68,221/- under Rule 14 of the CCR read with proviso to Section 11A of the Central Excise Act, 1944 and confirmed recovery of interest under Rule 14 of the CCR read with Section 11AA of the Central Excise Act, 1944 and imposed penalty of

Rs. 1,68,221/- under Rule 15(2) of the CCR read with Section 11AC of the Central Excise Act, 1944. The option of reduced penalty @ 25% of penalty imposed was given by the lower adjudicating authority in terms of amended Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal inter-alia, on the following grounds:-

3.1 The appellant had availed cenvat credit of service tax paid on input services used in or in relation to manufacture of final product; that the appellant had purchased Wind mill and installed in area of Kalyanpur Village in Jamnagar District under proper agreement entered with Gujrat Energy Development Agency (GEDA); that the appellant opted for wheeling of electricity generated with option of sale of excess generation of such electricity and got the credit of such electricity generated during the period under consideration; that the appellant had installed Wind mill in the area specified and electricity so generated was wheeled through PGVCL as per rules and regulation of the state government; that the adjustment of electricity so generated at Wind mill was given at factory while raising invoices by the PGVCL that means the electricity so generated at Wind mill is used in or in relation to manufacture of final product within factory premises and hence cenvat credit of service tax paid on services availed at Wind mill cannot be denied to the appellant; that the appellant can avail cenvat credit of service where ever availed for the purpose of manufacture of excisable goods. The appellant argued that the lower adjudicating authority has erred in confirming the demand without considering above relevant facts as well as agreement entered with the relevant agency.

3.2 The lower adjudicating authority has erred in confirming the demand on the ground that the services availed cannot be treated as input service; that the installation of Wind mill is governed under provisions of Electricity Act, 2003; that the appellant is bound to install Wind mill at the place allotted by the government and bound to enter into an agreement as per the policy declared by the government and consequently electricity so generated has to route through the system adopted and established by the government; that in other word the electricity so generated through Wind mill is being transferred to the manufacturing unit through facility available and for such transfer the appellant is paying some charges to either government or to the respective company formed by the government, but it is ultimately used in or in relation to manufacture of final product and therefore it cannot be said that the services used at Wind mill are not used in or in relation to manufacture of final products and it is not

input service. The appellant relied upon following decisions:

(i) Rajratan Global Wires Ltd. – 2012 (26) STR 117 (Tri.-Del.);

(ii) Ultratech Cement Ltd. – 2011 (21) STR 297 (Tri.-Mumbai);

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3.3 The appellant further submitted that availment of cenvat credit of service tax paid on services utilized for Wind mill far away from factory is nothing but question of interpretation of law and hence penalty proceedings initiated is improper and unjustified when issued under consideration is in dispute and involves question of interpretation, in support to this, the appellant relied upon following decisions:

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3.4 The appellant argued that the lower adjudicating authority has erred in relied upon on the decision of Hon'ble Supreme Court in case of Maruti Suzuki Ltd. reported as 2009-240-ELT-641 as the said decision has been differed by the Hon'ble Supreme Court as reported at 2010-260-ELT-321; that the lower adjudicating authority has erred in confirming the demand by relying upon decisions referred in para 21 of the impugned order which no more goods law in view of the decision of the Hon'ble CESTAT in case of Parry Engg & Electronics P. Ltd.; that the department had knowledge of all the facts and hence demand for the period 2012-13 is time barred.

4. Personal hearing in the matter was attended by Shri Paresh Sheth, Advocate, who reiterated the grounds of appeal and also submitted a copy of Orders-In-Appeal dated 10.04.2014 on this matter. Personal hearing notice was also sent to the jurisdictional Assistant Commissioner, however, none appeared from the Department. side

Findings:

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant including at the time of personal hearing. The issue to be decided in the present appeal is whether cenvat credit of service tax paid in relation to services utilized for installation of Wind mill at

Kalyanpur Village in Jamnagar District far away from the factory premises, is admissible to the appellant or not.

6. I find that the lower adjudicating authority has denied cenvat credit of service tax paid on services utilized for installation of Wind mill, inter-*alia,* on the grounds: -

(i) that the electricity generated at the Wind mill was being supplied to GEB and in lieu of the electricity so generated, the GEB was providing set-off to the appellant in their factory at Surendranagar and therefore, it had no direct or indirect relation to manufacture of the final product at Surendranagar, as required under Rule 2(l) of the Cenvat Credit Rules, 2004;

(ii) that the input services have been used towards erection and maintenance of Wind mill which produce electricity, which is not excisable and is intangible and, therefore, the services have resulted into production of electricity being non-excisable goods, the availment and utilization of the said input service, is not admissible electricity being non-excisable as chain of cenvat credit of the said input services is broken once non-excisable goods emerged as per Rule 6 of the CCR, 2004;

(iii) 4444443344444444334444444433444433444455667788991010444433444444433 power of offsetting of power by the GEB with the appellants, are two independent transactions and therefore both are unrelated act to each other and therefore services availed at Kalyanpur Village in Jamnagar District and credit of the service tax paid for service is not admissible at the manufacturing unit situated at Surendranagar, as there is no direct or indirect relation between such availment of service at Jamnagar and the manufacture of final product at Surendranagar;

(iv) that the appellant has sold part of the electricity to PGVCL which is in excess to their captive consumption, which has not been utilized in the factory premises. Therefore, the appellant is not eligible for cenvat credit of input which used for generation of electricity which sold by the appellant and therefore proportionate credit which is attributable to the electricity, not used / supplied in the factory premises would not be available and therefore credit of Rs. 81,616/- out of total cenvat credit of Rs. 1,68,221/- would not be available to the appellant in terms of Rule 2(l) of the CCR.

(v) The appellant has availed cenvat credit of Rs. 44,033/- on 31.03.2012 prior to the issuance of central excise invoice No. 22 dated 04.04.2012

which is in contravention of Rule 9 of the CCR.

7. I find that the appellant has availed cenvat credit on service tax paid on installation and erection services utilized at the Wind mill situated at distant place from the registered premises of the appellant. The contention of the department is that the services being utilized at a distant place, hence cenvat credit was not available to the appellant whereas, the appellant has pleaded that the definition of 'input service' covers such services. I would like to examine, definition of input service as defined under Rule 2(l) of the CCR, 2004 during the relevant period which is produced below for ready reference: -

"(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 upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, 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;

(Emphasis supplied)

7.1 It is a undisputed fact that the generation of electricity is taking place at Wind mill at a place away from the factory and the electricity so generated, is wheeled to the electricity authorities, who in turn, supplied electricity at the manufacturing unit of the appellants, as per agreed formulae, and that electricity was utilized at the factory for manufacture of the final products of the appellant. I find that the matter is no more *res integra* in view of the decisions of the Hon'ble Bombay High Court in the case of Endurance Technology Pvt. Ltd reported at 2017 (52) S.T.R. 361 (Bom) and the Larger Bench of CESTAT in the case of Parry Engg. & Electronics P Ltd reported at 2015 (40) S.T.R. 243 (Tri.-LB). I also find that there is no restriction under Cenvat Credit Rules, 2004 that the services should be utilized within the factory premises only.

7.2 I find that the lower adjudicating authority has relied upon the decision in the case of Maruti Suzuki Ltd. Vs CCE, Delhi-III as reported at 2009 (240) E.L.T. 641 (S.C.). On study of this judgments, I find that the dispute in the Maruti case was relating to cenvat credit on inputs used in generating electricity, whereas in the case on hand, dispute is relating to cenvat credit on input services. Further, the part of electricity so generated was sold/wheeled out to joint ventures and vendors by the Maruti, whereas, in the instant case the wheeled energy is adjusted by PGVCL/GEB by giving set off in periodical bills of the appellants only. Also, the period covered in the above Maruti case is from January, 2003 to March, 2004, whereas in the present case, the period covered is from March, 2012 to February, 2015 and the definition of input service was amended in 2008, 2011 and 2012. Therefore, the facts of the case on hand and that of the Maruti Suzuki Ltd. *supra* are different and hence, the case-law relied upon by the lower adjudicating authority, is not correct at all.

7.3 The lower adjudicating authority has also relied upon the decision in the case of CCE Vs Gujarat Heavy Chemicals Ltd as reported at 2011 (22) S.T.R. 610 (Guj.). I find that in the case of Gujarat Heavy Chemicals Ltd, the Hon'ble High Court of Gujarat disallowed cenvat credit on security services provided at residential quarters of their workers, which had no connection with the manufacture of their final products, whereas, in the case on hand until and unless the Wind mill is installed/maintained, the appellant cannot produce electricity and the electricity so generated from the said Wind mill has been used to manufacture the final products of the appellant. Since, electricity received by the appellant has been used in manufacture of the final products of the appellant there is direct nexus. Therefore, this case law relied upon by the lower adjudicating authority also is not correct and applicable in the instant case at all.

7.4 Regarding the issue of the disallowance of proportionate cenvat credit of Rs. 81,616/- on account of sale of part of electricity so generated at Wind mill as held at para 25 of the impugned order, I find that denial of cenvat credit of service tax has been worked out on proportionate basis on account of sale of part of electricity. It is settled position of law that Cenvat credit can be taken on inputs/input service to the extent actually used/utilized in the manufacture of the final products. Since this is a case of selling of electricity, ~~the same cannot be held~~ which has not been ~~that~~ used for manufacture of final products and accordingly cenvat credit of input service attributable to quantum of electricity sold to PGVCL is not admissible to the appellant. Therefore, I find that denial of proportionate cenvat credit of Rs.

81,616/- on account of the sale of electricity is correct, legal and proper.

7.5 As regard to disallowance of cenvat credit of Rs. 44,033/- availed on 31.03.2012 without valid document, I find that the lower adjudicating authority has correctly held that cenvat credit of Rs. 44,033/- is not admissible to the appellant as they not having valid document as provided under Rule 9 of the CCR. I further find that the appellant has neither raised any argument on this before the lower adjudicating authority nor in Appeal Memorandum and hence, denial of cenvat credit of Rs. 44,033/- is justified.

7.6 Regarding interest liability and penal action for disallowance of cenvat credit, I find that the appellant had wrongly availed and utilized cenvat credit of Rs. 81,616/- by way of contravention of provisions of Rule 2(l) of the CCR as any cenvat credit of input service is admissible to extent the said service has been actually used/supplied to the factory premises. In the instant case, input services involved in the electricity so sold were not used/supplied to the factory premises. The findings of the lower adjudicating authority categorically mentioned that at the time of personal hearing, the appellant had admitted that they sold part of the electricity and this fact at no point of time disclosed by the appellant but came on record when specifically asked at the time of personal hearing held during adjudicating proceeding. I further find that the appellant had availed cenvat credit of Rs. 44,033/- on 31.03.2012 without having valid document as per Rule 9 of the CCR, which specify that the cenvat credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of an invoice, a bill or challan issued by a provider of input service and this fact came into knowledge at the time of audit. In view of above, I find that the appellant has wrongly availed and utilized cenvat credit and hence the appellant is required to pay appropriate interest under Rule 14 of the CCR read with Section 11AA of the Central Excise Act, 1944 and penalty under Rule 15 of the CCR read with Section 11AC of the Central Excise Act, 1944 in respect of disallowance of cenvat credit as discussed above.

8. In light of the above discussion and findings, I hold that the appellant is eligible to take cenvat credit of service tax on installation of Wind mill even if situated at a distant place from the factory premises. However, it can be allowed only to the extent actually used/utilized in the manufacture of the final products. Hence, denial of cenvat credit of Rs. 81,616/- and Rs. 44,033/- on account of sale of electricity and non-availability of valid document respectively, is justified and ~~upheld~~. I upheld the same.

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

9. The appeal filed by the appellant stand disposed off in above terms.

(कुमार संतोष)
आयुक्त (राजकोट)

By R.P.A.D.
To,

M/s. Ardeec Engineering (Sau) Pvt. Ltd., Industrial Area, Trolley Road, Wadhwancity, Surendranagar	M/s. **अरदीक इंजीन्यरिंग (सौ.) प्रा. ली., इंडस्ट्रियल एरिया, ट्रोलि रोड, वढ़वानसिटी, सुरेन्द्रनगर.**

Copy to:

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