E .	MARKET दवितीय TAX दवितीय TAX दवितीय TAX	ISSIONER (APPEAL तल, जी एस टी भवन / कोर्स रिंग रोड, / Race राजकोट / Rajkot		& EXCISE,	and and
रजि क	स्टर्ड डाक ए. डी. द्वारा :- ज्येस अग्रम मध्या Amout) File No. V2/22/BVR/2017	ý3	मूल अदेश में / -010 Sa AC/JND/05/2016	Вліж / рас 30.12.20	16
ख	अपील आदेश संख्या (Order-In-/	Appeal No.):			
	BHV-EX	CUS-000-AP	P-069-2017-18	3	
	आदेश का दिनांक / 11.12.2 Date of Order:	017 जारी का Date of	ाने की तारीख <i>ा</i> 'issue:	14.12.2017	l.
	कुमार संतोष , आयुक्त (अपील Passed by Shri Kumar S			Raikot	
ग	जपर आधुकार संयुक्त आधुकतः उत्तपुकार तला मूल आदेश के मुजिल ?		and all the second of		डिंग जाति
	Arising out of above mentioned CIO is: Rajkot / Jamnagar / Gandhidham	sued by Additional/Joint/De	puly/Assistant Commissione	r, Central Excise / Serv	/ce Tax,
घ	अपीलकर्ता & प्रतिवादी का नाम	एवं पता /Name&Add	dress of the Appella	ants & Responder	it :-
	M/s Max Precision Bearing Crossing, Shapur - 362 2051	P. Ltd., Junagadh-V			
	इस आदेश(अपील) से ड्यांडिल कोई त्यांबिल जिल्ल Any person aggrieved by this Order In-A	सिवित तरीके में उपयुक्त प्रापि ppeal may file an appeal t	स्तारी / प्रातिकरण के समक्ष अपी to the appropriate authority i	न राज्य का संबद्धन है।/ In the following way	
(A)	सीमा गुल्क फेन्द्रीय उत्पाद गुल्क एवं राजकार अपीलीत ल्यायाधिकरण के प्रति अपील केन्द्रीय उत्पाद गुल्क अधिलियम .1944 की घारा 358 के मान्सेत एवं फिल अधिनियम 1994 की प्रांग 86 के अत्योत निरंभाईनिक्षित प्रयह की जा मकती है // Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 356 of CEA. 1944 / Under Section 86 of the Finance Act. 1994 an appeal lies to				
60	तनीकरण मूल्यांकन से सम्बन्धित लगी मामने गीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं प्रेयाकर अपीलेंग स्वायाधिकरण की विशेष पेठ, वेस्ट ध्लॉक स 2, आर. के. पुरस, नई दिल्ली, को की जाली पाछिए ए' 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				
(11)	उपरोक्त परिष्ठदेद 1(a) में बनाए गए जपीलों के जलवा तेष सभी उन्होंने सीमा मुन्क, केंद्रीय उत्पद मुल्क एव लेखकर अपीलीय त्यायाधिकरण (मिस्टेट) की परियम बीतीय पीठिका, - दुवितीय तस, ब्युजाली मबल जलवी अइसदाबाई- २८००१६ को की जय्ती खाहिए ए				
	To the West regional bench of Customs Asarwa Ahmedabed-380016 in case of a	, Excise & Service Tex Appeals other than as ment	pellate Tribunal (CESTAT) ioned in para- 1(a) above	at, 2 st Floor, Bhaumali i	Bhawan.
(ii)	अपीसीय ल्याथाप्रिक्शा के समक्ष अपीस प्रश्तन । गर्थ प्रेयत EA-3 को सार प्रतियों में दात्रे किया : और समाया मया जूमोना, स्पर 5 लाख या उसवे स्पर्ये, 5,000/- क्येंग्रे क्रांशा 10,000/- ल्यें : ल्यायाप्रिकरण की शाखा के संस्थान रजिल्हा के संबंधित ड्राफ्ट का मुगलान, बैंक की उस शाखा में स्विंधि अवेदल-यह के शाथ 500/- क्या का लियोग्रे	बान चार्कर । इनमें से कम से 1 बम, 5 लाख तपर वा 50 ल हा निधारित जमा हाल्क की नाम से किसी थी सामेजितक थे होना वांचिर जमा म्हायिन अप्रै	कम एक पनि के शांध, अर्थ 3 पर स्पर लंक अध्या 50 लाख श पनि सलगत को। जिथारित 1 के देव ग्यापा जारी किल्लीकेन	त्पाद शुल्क की सीम इयाज पर में अधिक हे तो कराज एक का अुगताल, संबंधित	की जॉग 1.000/- अपीलीय
	The appeal to the Appellate Tribunal sh Excise (Appeal) Roles, 2001 and shall b 1,000- Rs 5000-, Ns 10,000- where an above 50 Lac respectively in the form o sector bank of the place where the benc is situated. Application made for grant of	e ecompanied against on sount of duty demand/inte if crossed bank draft in fa h of any nominated outlic	e which at least should be rest/penalty/refund is upto voor of Asst Registrar of t sp(50) park of the otaca a	sccompanied by a fee 5 Lac. 5 Lac to 50 L	of Rs. ac and
(8)	अधीलींग ल्यायाधिकरण के सगक अपील, तिता विधीरित प्रथा S.T.5 में बार प्रतियों में की ज (उनने से एक पति प्रसामित होनी पाहिए) और जुमीमा, रूपए 5 लाख वा उसने कम, 5 लाख क रूपये अथवा 10,000- रुपये का निर्धातिन जमा र महायक रजिस्टार के नाम से विभन्ने भी सार्वजिसक वैंक की उस शाखा में होना पाहिए जहा सकरित 500/- रुपए का निर्धातिन मुख्य जमा बनना होगा	अधिनियम, 1994 की घला 86 सकेनी एवं उसके साथ जिस इतमें ते कम से कम एक धी गए या 50 लाख स्पए तक आ एक की पनि लगान करें। जिस क्षेत्र के बैंक एक्ला जरी देखाँ सींग के बैंक एक्ला जरी देखाँ	(1) के अंतर्थत मेवाका लियमवा आदिम के विरुद्ध प्रचील की मधी र के लाय, जहां सेवाकर की मां पंचा 50 लाख रुपर से प्रविक है दिन होग्ल का मुरातान, संबधित	हीं उसकी पति साथ में भं र स्थाज की मॉय और स्थ ली कम्मन 1,000+ गय्य अपीलीय स्वायाधिकरण की	सन्भ आहे ग्वा नामा ३.000/- गान्द्रा के
	The appeal under sub section (1) of 5 quadruplicate in Form S.T.5 as prescribes copy of the order appealed against (one 10004- where the amount of service tax 2 amount of service tax 3 interest demans Rs.10,0004- where the amount of service form of crossed bank draft in fevour of 1 where the bench of Tribonal is stuated (of which shall be certifie 5 minimum demanded & po- let & penalty leviad is tax & minimum demanded the Assistant Remetration	service Tax Rules, 1994, at d copy) and should be a nully levied of Rs. 5 Lakins more than five lakins but r & penalty levied is more t the benefit	nd Shall be accompanie companied by a fees o or less. Rs.5000/- whi tot exceeding Rs. Fifty than fifty Lakhs ruppes.	d by a of Rs. ers the Lakts, in the

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- वित्तन अधिनियम, 1994 की धारा 85 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की रुपी अपील, संग्राकर नियमदाती, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्णाधित प्रयत्र 5.T.-7 में की जा सकेगी एवं उसके लाग आयुक्त केन्द्रीय उत्पाद गुल्क तयवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा मारित अददेश की वरियां सामाल को (उनमें में एक पनि प्रसाणित होनी पाहिए) और आयुक्त द्वारा करणक आयुक्त अध्या उत्पाद कुल्वर सेताकर, को अपीलीय स्वायाधिकरण को अवेदल दर्ज करने का निर्देश देने जले आदेश की पति भी सल्प के सलस्य करनी होगी । / The appeal under sub section (2) and (2A) of the section 35 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 only of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एव सेककर अपीनीय प्रायिकाण (मेंग्रेटेट) के चलि अपीनी के मामले में केन्द्रीय उत्पाद शुल्क अपिनियम 1944 की धारा 35एक के अगर्मत, जो की जिल्लीय अपिनियम, 1964 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के पनि अपीनीय प्रायिकरण में अपील करते समय उत्पाद शुल्क/देश कर मांग के 10 प्रतिषात (10%), जब मांग एवं जुलॉना विद्यादित है, वा जुर्मना, जब केवल जुलॉना जिलादित है, का मुयलन किया लग, बहानें कि इस धारा के संगर्भत जमा कि जाने वालों अपेक्षित देव गांगे दर्गर स्थाप में अधिक न हो। (11)
 - केन्द्रीय उत्पाद युवक एवं रोडाकर के अंतर्गत फरन किंग गए तुव्का में जिसन सामिल हे धारा 11 डी में अंतर्गए रक्षम
 - 611

to file the appeal before the Appellate Tribunal

- सेमदेह जमा भी जी गई मागत तरि 筋
- र्शतहेह जमा हिंचमातले के लियम 6 के अल्पेत हेय (कम (8) · अन्नती यह कि इस प्राण के पालपाल जिल्लीय (# 2) अधिनियल 2014 के आरंध से पूर्व किसी ल्पीलीय पाछिकारी के समक्ष विचाराधील स्थमन अजी एवं अपील को सागृ नहीं होने।/

For an appeal to be filed before the CESTAT under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall be before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would he subject to a ceiling of Rs. 10 Crores.

- Under Central Excise and Service Tax, "Duty Demanded" shall include
- amount determined under Section 11 D. 101
- amount of erroneous Cervat Credit taken: 60
- amount payable under Rule & of the Convot Credit Rules (41)

provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appeilate authority prior to the commencement of the Finance (No.2) Act. 2014.

आरत जरकार को पलरीक्षण आवेटन

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Revision application to Government of India: इस आदेश की प्रतीक्षण माणिका जिल्लानिश्चित सालतों में केंग्रेंग उत्पाद त्यक अधिजियाल, 1994 की पता 35EE के प्रयम परंतक के अतर्पत जवर अधिन, भारत सरकार, पुनरोक्षण अधेदल इंकाई, जित्त संजनस, राज्यक डिमिया, जोयो लॉजेल, जीवन दीप भवन, संसद साले, नई फिल्ली-110001, को किंगा जामा सालिए। /

A revision application lies to the Under Sebretary, to the Government of Indui, Revision Application Unit, Ministry of Finance, Department of Revenue. 4th Floor, Jaevan Deep Building, Parliament Street, New DePi-110001, under Section 35EE of the CEA 1944 is respect of the following case, governed by first proving to sub-section (1) of Section-35B ibid.

यदि साम के किसी सुरुवान के सामने में, जहां तुक्याज किसी साल को किसी कारध्यमें से सारा गुढ़ के पारतमन के दौरान का किसी जन्म कारखाने था किर किसी एक संदार गुढ़ से दूसरे सेडम गुढ़ पारतितन के दौरान, या किसी क्रांस गुढ़ में या संवारण में माल के प्रसाकरण के दौरान, किसी वारखाने जा किसी संवार गुढ़ में साथ के मुरुवान के सामने 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 111

warehouse

- अपरत के बाहर किसी राष्ट्र या क्षेत्र को लियोल कर रहे साल के डिप्रियोण जे प्रयुक्त करने लास पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के सामले से, जो सारत के बाहर किसी राष्ट्र या क्षेत्र की नियोज की संघी है। / (ii)
 - In case of vetane of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- वदि डायाद युल्क का मुगलभ किंग बिता मारत के बाहर, लेपाल या मुदान को मान नियोत किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty (11)
- सुनिधियन उत्पाद के उत्पादन शुलक के मुखलान के लिए जो हुयुरी केवंट इस अधिनियन एवं इसके विभिन्न पावधानी के तकरा मान्य की मई है और ऐसे अंग्रेज जो आध्यकर (अपील) के देवारा वित्त अधिनिथान (न. 2), 1988 की एका 109 के दुशारा निधन की गई लगीख जण्या समायविधि पर या बाद में पारित किए मई है।! (iv)

Credit of any duty allowed to be utilized lowards payment of excise duty on linul 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.

- उपरोक्त आवेदन की दो प्रतियां प्रपण गंडाया EA.8 में, जो की केन्द्रीय उत्पादन शुल्क (अपीए) जियमावली, 2001, के नियम 9 के अंतर्गत विभिर्द्रिष्ट है. इस आदेश के मधेषण के 3 माल के अत्यता की जाती चाहिए । उपगोलन आवेदन के लाय गुल आदेश व अपील आदेश की दो प्रतिया संपरज की जाती वाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 के घात 35-EE के तरल निर्धापित शुल्क की अदायगी के लाख के जीर पर TR-6 की प्रति (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 accompanied against is communicated and shall be accompanied by two copies each of the OIG and Order-In-Appeal. It should also be accompanied by a copy of TR-5 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account, संस्था की जानी साहिए।)
- प्रमोकिण आवेदन के साथ जिन्नत्रियित निर्धापित कुल्क की अध्ययनों की जानी चाहिए । जहां साध्यन रक्त एक लाख करवे या इसने कम ही तो रूपये 2004 का जुनतान किया। अप और यदि संस्थन रक्तम एक लाख रूपये से ज्यादा हो लो (vi) The revision applicator shall be accompanied by a fee of Rs. 2007 where the amount involved in Rupees One Lac or less and Rs. 10001- where the amount involved is more than Rupees One Lac. श्रेवर्षे १००० -/ का भुगतान किया जाए ।
- ਸ਼ਹਿ ਤਸ ਸਾਣੇਗ ਜੋ ਜਨ ਸਾਣੇ ਸੱਚ ਸਕਦੇਸ਼ ਨੇ ਜੋ ਸਟਦੇਸ਼ ਸੱਚ ਸਾਣੇ ਸੱਚ ਸਿੰਘ ਗੁਰਜ ਦਾ ਸੁਰਜਨਾ, ਤਰਵੇਸ਼ਨ ਤਸ ਸੇ ਜਿਹਾ ਜਾਂਗੇ ਸ਼ਹਿਰੋ। इस तथ्य के ਗੱਜੇ ਰੁਪ ਸੀ ਜੀ ਸਿੰਘਾ ਸਫ਼ੀ ਜਾਂਦੇ ਸੇ ਜਾਂਦੇ कੇ ਜਿੰਦ ਸਬਾਇੰਸੀ ਤਿਸ਼ੇਰੀਸ਼ ਸੰਸਾਇਜ਼ਦਾ ਜੋ ਪਰ ਤਾਇਜ ਦੀ ਜੋੜੀ ਸਨਾਜਾ ਜੋ ਪਰ ਜਾਇਨ ਜਿੰਦਾ ਜਾਂਗੀ i (i) In case, if the order covers various numbers of order, in Original, fee for each OLO should be paid in the abresaid mannet, not withstanding the fact that the one appeal to the Appellant Tobunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 Takh fee of Rs. 100/- for each. (D)
- यशासंबोधित त्यापालय बुल्क अधितिषण, 1975 के अनुबुधीन के अनुवार सुध आदेश एवं त्यापत आदेश की पनि पर जियोरित 6.50 वपदे का त्यापालय युव्क दिशिद और होना पहिए। / 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)
- গীনা সুনন্দ, ইনটোৰ ব্ৰহমায় ব্যুক্ত তথ্ৰ নিৰাজন প্ৰশীনীত নথামান্টিকেংগে (কাওঁ বিটিং) টোময়ামানী, 1982 में প্ৰতিক তথ্ প্ৰদান মঞ্জলিয়ে নগৰাকী কা মন্দিনজিন কৰে বান সিম্মনা কা और और औ মনান প্ৰাৰ্জনিয় জিলা নানা 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 (F)
- उत्तव अपीक्षीय प्राणिकारी को अपील हासिक काने से लंबपित गाएक, वित्रमून और नवीजातत प्रावधानों के प्रिए, अपीलायी विमागीय वेबलाइट (G) For the elaborate, detailed and latest provisions relating to filling of appeal in the higher appellate authority, the appellant may refer to the Departmental website www.clinc.gov.in

Appeal No: V2/22/BVR/2017

:: ORDER IN APPEAL ::

M/s. Max Precision Bearings P. Ltd., Junagadh-Veraval Highway, 8-D, Near Koyli Railway Crossing, Shapur – 362 205, Dist : Junagadh (hereinafter referred to as **'the appellant'**) has filed the present appeal against the Order-In-Original No. AC/JND/05/2016 dated 30.012 2016 (hereinafter referred to as **'the impugned order'**), passed by the Assistant Commissioner, Central Excise, Division, Junagadh (hereinafter referred to as **'the lower adjudicating authority'**).

2. The brief facts of the case are that the appellant is registered with Central Excise and it was revealed that they had availed Cenvat credit of Rs. 1,81,818/- on repair and maintenance of wind mills, even when the windmills were situated outside the factory at a far distance place and the said windmills could not be used in relation to manufacture or clearance of final products whether directly, or indirectly.

2.1 Show Cause Notice F. No. VI/8(a)-113/EA-2000/AP-IV/14-15 dated 05.02.2016 covering period from June, 2012 to December, 2015 was issued by the Assistant Commissioner, Circle-V, Audit-III, Rajkot proposing recovery of Cenvat Credit of Rs. 1,81,818/- under Rule 14 of the Cenvat Credit Rules, 2004 (herein after referred to as "the CCR, 2004") read with Section 11A(5) of the Central Excise Act, 1944 (hereinafter referred to as "the Act")

2.2 The said show cause notice was adjudicated by the lower adjudicating authority, who disallowed Cenvat Credit of Rs. 1,81,818/-, ordered to pay interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Act and also imposed penalty of Rs. 90,910/- under Rule 15(2) of the CCR, 2004 read with Section 11AC of the Act on the appellant.

 Being aggrieved by the impugned order, the appeliant preferred the present appeal mainly on the following grounds:

(i) The demand of Cenvat credit confirmed under the impugned order by the lower adjudicating authority is not correct; that he failed to maintain judicial discipline by not following the binding decision of Hon'ble Larger Bench of CESTAT in the case of Parry Engg. & Electronics P. Ltd. reported as 2015



Page 3 of 7

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(40) S.T.R. 243 (Tri. – LB); that the lower adjudicating authority has travelled beyond the scope of Show Cause Notice by unduly referring the provisions of capital goods.

(ii) That lower adjudicating authority placed reliance on the judgments of Apex Court in the case of Maruti Suzuki Ltd reported as 2009(240) ELT 641(S.C.) and Gujarat Heavy Chemicals Ltd., reported as 2011 (22) S.T.R. 610 (Guj.), whereas these are no longer applicable now.

- (iii) That lower adjudicating authority placed few old judgments of CESTAT, Ahmedabad like Rajhans Metals P. Ltd., Atul Auto Limited, Ellora Times Ltd.,.
- (iv) Amendment has been made in definition of "input service" w.e.f. 01.04.2011 which makes no difference as far as present issue is concerned, only change has been made in the definition and 'exclusion clause' is incorporated, which has nothing to do with the issue in question.
- (v) The SCN was issued on two grounds i.e. (1) windmill installed outside factory premises, service could not qualify as 'Input Service. (2) as electricity generated is not received at the appellant's factory and hence Cenvat credit is not admissible. These points have been directly answered by the Hon'ble Larger Bench of CESTAT reported as 2015 (40) S.T.R. 243 (Tri. LB) in favour of appellant.

4. Personal hearing in the matter was held wherein Shri Devashish K. Trivedi, Advocate reiterated grounds of appeal and submitted that the issue has also been decided now by Hon'ble Bombay High Court in Endurance Technology Pvt. Ltd and by Larger Bench of CESTAT in the case of Pary Engineering & Electronics & other: that these judgments though are for the period prior to 2011 amendment but applicable in this case also as this does not fall under exclusion clause of the Rule and SCN/ impugned order has not alleged any exclusion; that distance of 300Kms is not relevant as long as services are utilized for maintenance of windmills to provide electricity, which is issued in the manufacture of the final products; that the appeal should be allowed in



Page 4 of 7

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view of above fact & legal position.

FINDINGS

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submission made during the personal hearing. The issue to be decided in the present case is as to whether the appellant was eligible for Cenvat credit of Service Tax paid by them on maintenance and repairs of windmills, or otherwise.

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6. I find that the appellant has availed Cenvat credit on service tax paid on maintenance and repairs services utilized at the windmill. The windmill is situated at far place from the registered premises of the appellant. The contention of the Department is that the services being utilized at distance place, such Cenvat credit was not available to the appellant. At the same time, the appellant has pleaded that the definition of input service covers such services. The definition of input service as defined under Rule 2(I) of the CCR,2004 during the period is produced below for ready reference:

(I) "input service" means any service,-

 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;

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6.1 It is a fact that the generation of electricity is taking place at a windmill at a place away from the factory and the electricity so generated, is transferred to the electricity authorities, who in turn, supplies electricity at the manufacturing unit of the appellant as per agreed formulae which is utilized at factory for manufacture of the final products of the appellant. In view of these facts, Cenvat credit on service tax paid on repairs and maintenance service of wind mill is available as per rules stated above.

6.2 I find that the matter is no more res integra in view of the decisions of the Hon'ble High court of Bombay in the case of Endurance



Page 5 of 7

Appeal No: V2/22/BVR/2017

Technology Pvt. Ltd reported at 2017 (52) S.T.R. 361 (Bom) and Larger Bench 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 factory premises only.

6.3 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 this, 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 and wheeled out to joint ventures and vendors by Maruti. Whereas, in the instant case the wheeled energy is adjusted by PGVCL by giving set off in periodical bills of the appellant 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 February, 2012 to December, 2015. The definition of input service was amended in the year 2008, 2011 and 2012. Therefore, the facts of the case on hand and that of Maruti Suzuki Ltd. are different and hence, the case law relied upon by the lower adjudicating authority is not justified at all.

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

7. In light of the above discussion. I hold that the appellant is eligible to take Cenvat credit on repair and maintenance services on windmill even if situated at a distant place. Once Cenvat credit is held to be legally



Page 6 of 7

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tenable, levy of interest and imposition of penalty do not arise. Accordingly, I set aside the impugned order and allow the present appeal.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है । 19.2

The appeal filed by the appellant is disposed of in above terms. 7.1

(कुमार संतोष)

आयुक्त (अपील्स)

By R.P.A.D.

To,

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M/s. Max Precision Bearings P. Ltd., Junagadh-Veraval Highway, 8-D, Near Koyli Ralway Crossing, Shapur – 362 205, Dist : Junagadh	मेसर्स मेक्स प्रिसिसन बेरिंग प्रा. लिमिटेड, जूनागढ-वेरावल हाइवे, ८-डी, कोयली रेल्वे क्रॉसिंग के पास, शापुर - ३६२ २०५, जिल्ला जनागढ	
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Copy to:

- The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, 1) Ahmedabad.
- The Commissioner, GST & Central Excise, Rajkot.
 The Assistant Commissioner, GST & Central Excise, Division I, Rajkot.
- 4) Guard File.

