



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: ceaxappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/136/BVR/2016	मूल आदेश सं / O.I.O. No. BHV-EXCUS-000-JC-31-2016- 17	दिनांक / Date 16.09.2016
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ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-070-2017-18

आदेश का दिनांक / Date of Order:	18.12.2017	जारी करने की तारीख / Date of issue:	20.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा परित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग इस आदेश/अपील/ संवत्त आयुक्त/ उत्पाद शुल्क/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेक्टर, राजकोट / जयनगर / गान्धिधाम द्वारा उपरोक्तित जारी मूल आदेश से सुनि. /

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 Appellant & Respondent :-**
M/s Investment & Precision Castings Limited, Nari Road,, Bhavnagar 364 006, ..

इस आदेश/अपील/ से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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 सेक्टर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेक्टर 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 पैराग्राफ 1(a) में बताए गए अपीलों के अलावा बीच सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेक्टर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठियां, , द्वितीय तल, बहामनी भवन अशाही अहमदाबाद, 360016 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 दायर करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को धार परिशिष्टों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रकम असाज की रकम और असाज राशि असाज, राशि 5 लाख या उससे कम, 5 लाख राशि या 50 लाख राशि तक असाज 50 लाख राशि से अधिक है तो असाज: 1,000/- राशि, 5,000/- राशि असाज 10,000/- राशि का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का असाज, 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 असाज, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। असाज आदेश (स्टै ऑर्डर) के लिए असाज-पत्र के साथ 500/- राशि 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 अन्तर्गत सेक्टर नियमावली, 1994, के विधि 9(1) के तहत निर्धारित फॉर्म S.T-5 में धार परिशिष्टों में की जा सकती एवं इसके साथ वित्त आदेश के विरुद्ध अपील की गई हो, उसकी प्रति साथ ही संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेक्टर को रकम असाज की रकम और असाज राशि असाज, राशि 5 लाख या उससे कम, 5 लाख राशि या 50 लाख राशि तक असाज 50 लाख राशि से अधिक है तो असाज: 1,000/- राशि, 5,000/- राशि असाज 10,000/- राशि का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का असाज, 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 असाज, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। असाज आदेश (स्टै ऑर्डर) के लिए असाज-पत्र के साथ 500/- राशि 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/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्जे की गई अपील, सेवाकर विधायिका, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा अपील, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न कीं (उपरोक्त में एक प्रति प्रमाणित प्रतियाँ चाहिए) और आयुक्त द्वारा महाकर्म आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को अपील दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994 shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सेक्टर) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35ए के अंतर्गत, जो कि वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर साथ के 10 प्रतिशत (10%), जब मात्र एवं नुमांदा विवादित है, या नुमांदा, जब केवल नुमांदा विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अंशित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'आयुक्त किल ग्रा शुल्क' में विभक्त शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेक्टर जमा की गई रकम राशि
(iii) सेक्टर जमा विधायिका के नियम 6 के अंतर्गत देय रकम
- बशर्त कि इस धारा के अंतर्गत वित्तीय (नं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपील न्यायाधिकरणों के समक्ष विचारार्थीन स्थगन अर्जी एवं अपील को लागू नहीं होगी।
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 5 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 अपील:
Revision application to Government of India:
इस आदेश की पुनरीक्षण प्रार्थना निम्नलिखित शर्तों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के तहत परंतुक के अंतर्गत उक्त अधिनियम, भारत सरकार, पुनरीक्षण अपील इकाई, वित्त मंत्रालय, राजस्व विभाग, राष्ट्रीय राजधानी, जीवन टॉप भवन, लॉड रोड, 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 मात्र के किसी भूखण्ड के अंतर्गत में, जहां भूखण्ड किसी मात्र को किसी कारखाने से अंतर गृह के कारखाने के टॉपज या किसी अन्य कारखाने या फिर किसी एक अंतर गृह से दूसरे अंतर गृह परिवहन के टॉपज, या किसी अंतर गृह में या अंतर गृह में मात्र के परिवहन के टॉपज, किसी कारखाने या किसी अंतर गृह में मात्र के भूखण्ड के अंतर्गत 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 का रहे मात्र के विनिर्माण में प्रयुक्त कच्चे ताल पर भी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के अंतर्गत 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 मात्र निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) अधिनियम उत्पाद के उत्पादन शुल्क के अंतर्गत के लिए जो सुप्रीम कोर्ट द्वारा अधिनियम एवं इसके विभिन्न प्रावधानों के तहत लागू की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समावृत्ति पर या बट में परिवर्तित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त अपील की दो प्रतियां प्रथम संख्या EA-8 में, जो कि केन्द्रीय उत्पादन शुल्क (अपील) विधायिका, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के संप्रेषण के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त अपील के साथ मूल आदेश न 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 अदावती के साथ-साथ 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 Cheilan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण अपील के साथ निम्नलिखित निर्धारित शुल्क की अदावती की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो 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 समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त धारा में किया जाना चाहिए। इस लागू के होते हुए भी की विचार नहीं करनी है करने के लिए स्थापित अपील न्यायाधिकरण को एक अंशित या केन्द्रीय सरकार को एक अपील 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) प्रमाणोपि न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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-1 in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (अपील) विधायिका, 1982 में वर्णित एवं अन्य संबंधित मामलों को ध्यान में रखते हुए अपील करने वाले नियमों की भी भी ध्यान अवगत 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 अपील न्यायाधिकरणों को अपील दर्ज करने से संबंधित विषयक, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकरण वेबसाइट: www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

M/s. Investment & Precision Castings Ltd., Nari Road, Bhavnagar, Gujarat - 364 006 (hereinafter referred to as "the appellant") filed this appeal against Order-In-Original No.BHV-EXCUS-000-JC-31-2016-17 dated 16.09.2016 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Central Excise, Bhavnagar (hereinafter referred to as 'the lower adjudicating authority').

2. Briefly stated the facts of the case are that Audit pointed out that the appellant had wrongly availed Cenvat credit on input services of Rs. 12,15,708/- in respect of Windmills during the period from 01.04.2008 to 31.03.2012, as Windmills were situated at far away places near Porbander and Dwarka and hence, Cenvat credit not admissible as per Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the Rules"). It was also pointed out that the appellant had failed to produce copies of the invoices on the basis of which they had availed disputed Cenvat credit and therefore they contravened provisions of Rule 9 of the Rules. Show Cause Notice issued was confirmed demanding Cenvat credit of Rs. 12,15,708/- under Rule 14 of the Rules, read with provisions of Sub-section 4 of Section 11A of the Central Excise Act, 1944 (hereinafter referred to as "the Act") along with interest and imposing penalty of Rs. 12,15,708/- under Rule 15(2) of the Rules read with Section 11AC of the Act.

3. Being aggrieved with the impugned order the appellant preferred appeal, inter alia, contending that the lower adjudicating authority has erred in denying Cenvat credit on maintenance / repair charges of Windmills and invoking the extended period of demand; as also by imposing penalty of Rs. 12,15,708/- under Section 11AC of the Act read with Rule 15(2) of the Rules.

4. Personal hearing in the matter was attended by Shri Gaurang Sanghvi, Chartered Accountant wherein he reiterated the grounds made in the Appeal Memorandum and submitted compilation of case laws including of the Hon'ble High Court of Bombay in the case of M/s. Endurance Technologies Pvt. Ltd.; that there was no ground to invoke suppression of facts, as all records had been audited, statutory returns filed and therefore no penalty under Section 11AC of the Act could be imposed. He also submitted a paper book containing further written submissions, case laws and documents. Personal hearing notice was also sent to the Department, however, none appeared from the department side.



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4.1 In written PH submission, he submitted that the lower adjudicating authority has failed to appreciate that input under consideration was power/electricity, which was needed by the appellant for the purpose of manufacture of excisable product; that expenses made to maintain and sustain such power/electricity source, i.e. Windmills has to be considered as input service; that maintenance and repairs services of Windmills have been held as input service by several judicial authorities and they fall within the inclusive definition of Rule 2(I) of the Cenvat Credit Rules 2004.

4.3 Regarding the second ground for denial of Cenvat credit for non - submission of relevant tax invoices, the appellant contended that at para 1.4 & 2.1 of the impugned order and from the statement & bills submitted by them indicated that the relevant invoices were supplied; that the electricity units consumed by the appellant was far greater than the number of units generated by Windmills and hence there was no question of the appellant selling the power generated by Windmills; that presumption drawn by the lower adjudicating authority is contrary to the facts on record; that the entire electricity was transmitted through the transmission mechanism and infrastructure set up by the Government; that electricity/power is abstract and power could only be identified in terms of units; that since the power generated at Windmills is transmitted through governmental agencies and infrastructure, claim for Cenvat credit cannot be denied; that as per the agreement with the government, the power generated by Windmills would be transferred to a common grid and the appellant in turn got credit set off against the units so consumed by it; that power/electricity consumed by the appellant at the factory was power/electricity used for the manufacturing of the excisable products; that observations of the lower adjudicating authority that the power/electricity generated at Windmills was not being consumed fully and being sold is a presumption, as they have consumed more power/units than that generated by Windmills.



4.4 The appellant referred to the definition of the input services as provided under Rule 2(I) of the Rules, which is reproduced under :- .

"Input service" means any service-

- (i) used by provider of taxable service for providing an output service; or
- (ii) used by the manufacturer, whether directly or indirectly,
- (iii) in or in relation to the manufacture of final products and clearance of final products up to the place of removal.



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4.4.1 Relying upon the definition the appellant submitted that the interpretation of the department that the Cenvat credit for input services in the case of manufacturing would be available to the manufacturer only if the same was used in the factory premises i.e. up to the place of removal was incorrect; that inference drawn by the department regarding the phrase "upto the place of removal" would be applicable to both "clearance of final products" and to " manufacture of final products"; that this interpretation by the Department is erroneous, as the said Rule uses phrases "in or in relation to" and at the end of the phrase "manufacturing of final products" is used; that would mean that in terms of the rules of interpretation "up to the place of removal" would apply only to "clearance of final products" and not to the earlier limb being "manufacturer of final product"; that this interpretation is supported by the fact that the word "Input Service" stands qualified by the words "any service" and consequently legislature intended to ascribe a broad and exhaustive meaning to the definition of Input services.

4.5 The appellant also submitted that the definition of "input service" as per Rule 2(I) of the Rules, consisted of three categories of services, the first category, covers services which are directly or indirectly used in or in relation to the manufacture of final products, second category, covers the services which are used for clearance of the final products up to the place of removal and third category, includes services namely;

- (a) Services used in relation to setting up, modernization, renovation or repairs of a factory,
- (b) Services used in an office relating to such factory,
- (c) Services like advertisement or sale promotion, market research, storage up to the place of removal, procurement of inputs,
- (d) Activities relating to business such as, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal.

4.5.1 Relying upon above, the appellant has contended that the definition of 'input service' not only covers services, which fall in the substantial part, but also covers services, which were covered under the inclusive part of the definition; that charges paid for repairs and maintenance of Windmills which generated electricity which were used by the Appellant in the manufacture of its final products was covered under the first category part of the definition of "input service"; that the services covered under the

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inclusive part of the definition of input service were services which were rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory), as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and included services rendered in relation to business such as auditing, financing etc.; that the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products; that the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products, but also includes various services used in relation to the business of manufacture of final products; that unlike the definition of input as laid down in Rule 2(k) of the Cenvat Credit Rules, 2004, which is restricted to the inputs used directly or indirectly in or in relation to the manufacture of final products, and qualified by the words "within the factory of production", the definition of "input service" not only means services used directly or indirectly in or in relation to manufacture of final products, but also includes services used in relation to the business of manufacturing the final products; that in support of their contention they relied upon para 8.3 of CBEC Circular No. 97 dated 23/08/2007 under which CBEC has clarified that :-

"8.3 A doubt has been raised regarding admissibility of CENVAT credit on service tax paid in respect of mobile phones. In the Service Tax Credit Rules, 2002, it was prescribed that credit of service tax was admissible only on telephone connection installed in the business premises. A clarification to this effect was also issued vide circular No. 59/8/2003-ST, dated 20.6.2003, in the context of the Service Tax Credit Rules, 2002. However, in the CENVAT Credit Rules, 2004 no such condition has been prescribed. Therefore, w.e.f. 10.9.2004, credit of service tax paid in respect of mobile telephone service is admissible, provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods"

4.5.2 Relying upon above circular, the appellant submitted that credit on mobile phone used for providing output service in relation to the manufacture would be available to a manufacturer; that there is no mention to the effect that the said mobile phone must be used within the factory production premises; that mobile phone service is neither used in the manufacture of final product nor it is specifically included in the definition of input service nor it can be confined within the premise of factory of production,

even then, CBEC has interpreted the definition of input service widely so as to cover not only the services specifically enumerated in the definition of input service but also to cover all services which are used in relation to the business of manufacturer of final product.

4.6 The appellant relied upon the following case laws in support of their contention that Cenvat Credit on maintenance and repair of Windmills was allowable to a manufacturer of excisable products;

- (i) Endurance Technologies Pvt. Ltd. 2017(52)STR 361 – Mum-HC;
- (iii) Deepak Ferti. & Petro. Corp Ltd 2013(32)STR532–Bom.
- (iv) Maharashtra Seamless Ltd. 2010(276) ELT 209 (Tri Mumbai)
- (v) ZF Steering Gear (India) Ltd. 2015 (317) ELT 580-Tri-Mumbai-

The appellant submitted that the lower adjudicating authority has relied upon the decision of the Hon'ble CESTAT in M/s. Rajshanti Metals & other cases (*supra*) which is contrary to the ratio of the decision of the Hon'ble Mumbai High Court in M/s. Endurance Technologies case *supra*.

4.7 The appellant submitted regarding invocation of the extended that as per the provision of sub clause (a) of sub-section (1) of section 11A of the Central Excise Officer has to issue the show cause notice within one year from the relevant date where any recovery is to be made as per law; that sub-section (4) to section 11A extends the time period from 1 year to 5 years; that the extended period provided for vide sub-section (4) to section 11A can be invoked only subject to the establishment of facts relating to fraud, collusion, etc.; that the lower adjudicating authority at para 3.8 of the impugned order has stated that since particulars of Cenvat credit are not detailed out in the ER-1 return and the Cenvat credit availed by the appellant is wrongly availed and the fact came to light only during audit by the department, the extended period as provided in section 11A(4) is invocable is not proper and legal; that as far as claim of Cenvat credit on Windmills was concerned the said claim has been upheld by various judicial authorities including Hon'ble Mumbai High Court in the case of M/s. Endurance Technology's case (*supra*) and hence it could be stated that the claim of the appellant is correct; that the appellant had been regularly filing ER-1 returns, showing therein all the details as so prescribed under the Act; that it was not the case of lower adjudicating authority that the appellant did not submit all the details as prescribed by the law, but what the lower adjudicating authority has stated is that the details submitted in the ER-1 and prescribed by the Act did not contain the nature and the details of the Cenvat credit availed by the appellant; that what has

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to be provided for in ER-1 returns is to be prescribed under the Act and rules which had been approved by the legislature; that the decision of the Hon'ble Kolkata CESTAT in the case of ITC Ltd – 2013 (291) ELT 377 in similar set of facts struck down the invocation of the extended period

4.7.1 The appellant further submitted that the observation made in the SCN and confirmed in the impugned order that the said claim of Cenvat credit on Windmills came to light only during Audit carried out from 13th to 16th of February of 2012, is also contrary to the facts, there were 3 audits carried out on prior dates and it cannot be said that the department was not aware of the claim of the said Cenvat credit.

4.7.2 The appellant further submitted that neither in the SCN nor in the impugned order it has been brought on record to establish that said claim of Cenvat credit was based on fraud, collusion, willful-misstatements, suppression of facts or contravention of any provision with an intent to evade taxes; that the appellant placed reliance on the following decisions:-

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|-----|-----------------------------------|--------------------------|
| (1) | Tamilnadu Housing Board | (1994) 74 ELT 9 (SC); |
| (2) | Pushpam Pharmaceuticals Co. | (1995) 78 ELT 401 (SC), |
| (3) | Jaiprakash Industries v. CCE | (2002) 146 ELT 481(SC), |
| (4) | Surat Textiles Mills Ltd. | (2004) 167 ELT 379(SC) |
| (5) | <i>Elite Detectives Pvt. Ltd.</i> | (2006) 4 STR 583; |
| (6) | Damnet Chemicals Pvt. Ltd. | (2007) 216 ELT 3 (SC); & |
| (7) | Naresh Kumar & Co Pvt. Ltd. | (2015) 37 STR 451 (Cal), |

4.8 The lower adjudicating authority vide Para 3.10 of the impugned order has directly reached conclusion that the appellant has contravened the provisions of Section 11AC, read with rule 15(2) of the CENVAT credit rules making the appellant liable to penalty under the section; that the lower adjudicating authority vide para 3.8 and para 3.9 of the impugned order has alleged that the appellant has irregularly availed Cenvat Credit on the repairing and maintenance of windmills by levying penalty of Rs.12,15,708/- under Section 11AC of the Act, read with rule 15(2) of the CENVAT Credit Rules, 2004; that the lower adjudicating authority in the impugned order has not clarified the sub clause under which the said penalty is being levied; that the lower adjudicating authority at Para 3.1 has referred to "Intent to wrongly avail" on the part of appellant, the appellant presumes that the penalty is levied under sub-clause (a) to sub section (1) of the 11AC.

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4.8.1 The appellant placed reliance on the following decisions wherein the various judicial fora have held that penalty under Section 78 of the Act, which is *para materia* with Section 11AC of the Central Excise Act, 1944 cannot be levied in a routine manner without establishing that there was an intent to evade taxes coupled with fraud, misstatement & willful suppression of facts.

- Pepsi Foods Ltd. (2010) 260 ELT 481 (SC),
- Singh Transporters (2012) 27 STR 488 (Tri-Delhi),
- Landis + Gyr Ltd (2013) 42 GST 226 (T- Kol),
- New Allenberry Works (2014) 35 STR 544 (Tri-Delhi),
- In CCE, Puducherry Commissionerate V/s Customs, Excise and Service Tax Appellate Tribunal (2014) 44 GST 182 (Madras),
- O.P. Sharma v. Union of India (2014) 36 STR 1258 (Allahabad),
- Indian Coffee Workers Co-op. Society Ltd. (2014) 45 GST 343 (Allah),
- Busy Bee (2015) 37 STR 932 (Madras).

Findings :-

5. I have carefully gone through the facts of the case on record, the impugned order, the grounds of appeal raised by the appellant in Appeal memorandum, as well as oral and written submission made by them during personal hearing.

5.1 The issue to be decided in the appeal is whether the impugned order denying Cenvat credit of Service Tax paid on the services utilized for installation of Windmills at far away places at Porbandar and Dwarka, is proper or not.

5.2 As regards, denial of Cenvat credit of Service Tax paid for non-submission of the relevant invoices by the lower adjudicating authority, I find that it is not correct, inasmuch as at Para 2.1 of the impugned order it has been, inter alia stated as follows :-



"2.1 The Noticee vide their letter dated 12.08.2013 submitted their defence reply. The Noticee also submitted self attested copies of the invoices No. 790220402, 790221408, 7902220835, 7902210840, 7902221259, 7902211271 and 303 under which they had taken Cenvat credit to the tune of Rs. 84,47,478/- which were earlier not available due to modification work at their main office at the material time."

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8. The appellant has availed Cenvat credit on Service Tax paid on repairs and maintenance services utilized in relation to Windmills situated at distant places from the registered factory premises of the appellant. The contention of the adjudicating authority is that the services being utilized at a distant place, hence Cenvat credit is not available to the appellant, whereas, the appellant has submitted that the definition of 'input service' covers such services, irrespective of the distance. 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 Windmills at a place away from the factory and the electricity so generated, is wheeled to the electricity grid, and then supplied at the manufacturing unit of the appellant, 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 M/s. Endurance Technology Pvt. Ltd reported at 2017 (52) S.T.R. 361 (Bom) and the Hon'ble Larger Bench of CESTAT in the case of M/s. 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 decisions of the Hon'ble CESTAT in the cases of M/s. Asian Tubes Ltd.; M/s. Rajhans Metal (P) Ltd. and M/s. Rajshanti Metals (P) Ltd. and M/s. Ellora Times Ltd. for confirming demand. All these are judgments prior to the judgment of M/s. Parry Engg. & Electronics Pvt. Ltd. of larger bench of CESTAT and of M/s. Endurance Technology Pvt. Ltd. by the Hon'ble High Court and hence the

case laws referred to by the lower adjudicating authority cannot be made applicable.


7.3 In light of above discussion and findings, I hold that the appellant is eligible to take Cenvat Credit of Service Tax on repairs and maintenance of Windmills even if situated at a distant place from the factory premises.

7.4 Once Cenvat credit on the maintenance and repairs of Windmills is allowed, demand of interest and imposition of penalties need to be set aside.

8. In view of above, the impugned order is set aside and appeal is allowed.

९. अपीलकर्ताओ 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.


 (कुमार संतोष)
 आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Investment & Precision Castings Ltd., Nari Road, Bhavnagar, Gujarat - 364 006	मेस्सेस इन्वेस्टमेंट अंड प्रीसिशन कास्टिंग्स लिमिटेड, नारी रोड, भावनगर, गुजरात - 364 006.
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Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Bhavnagar.
- 3) The Joint Commissioner, GST & Central Excise, Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise, Rural Division, Bhavnagar.
- 4) Guard File.