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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. V2/47,48,49,50 & 51/BVR/2017	मूल आदेश सं / O.I.O. No. 13/Demand/2016-17	दिनांक / Date 28-12-2016
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ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-133 TO 137-2017-18

आदेश का दिनांक / Date of Order:	22.02.2018	जारी करने की तारीख / Date of issue:	27.02.2018
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Passed by **Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar.**

अधिसूचना संख्या २६१७ दिनांक (टी.एन) शु.उ.के-२०१७/१० २०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. दिनां. टी.एस-२०१७/०५६६ के अनुसरण में २०१७.११., श्री सुनील कुमार सिंह, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क., गांधीनगर, को वित्त अधिनियम १९९४ की धारा ८५ केन्द्रीय उत्पाद शुल्क, के ३५ की धारा १९४४ अधिनियम अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar, has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

- ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम/ भावनगर। 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/ Bhavnagar :
- घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
M/s Meghdev Enterprises, 101/2-3-4 A, GIDC Wadhwan City Surendranagar.

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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 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

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- (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 मांग, ब्याज की मांग 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 क्रमशः 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 रजिस्टार 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 नियमवाली, 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 मांग, ब्याज की मांग 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 क्रमशः 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 रजिस्टार 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/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों 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 (सेस्टैट) 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

- धारा 11 डी के अंतर्गत रकम
- सेनवैट जमा की ली गई गलत राशि
- सेनवैट 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 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 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 :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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 मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैराग्राफ 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:

- (ii) 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
- (iii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केंद्रीय 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 an 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए 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 आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केंद्रीय 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 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 ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक 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-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, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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 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

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ORDER IN APPEAL

Sr. No.	Name of the Appellant	Address	Appeal No.
01	M/s Meghdev Enterprises,	101/2-3-4 A, GIDC, Wadhwancity, Surendranagar	47/BVR/2017
02	M/s Meghdev Enterprises,	101/2-3-4 A, GIDC, Wadhwancity, Surendranagar	48/BVR/2017
03	M/s Meghdev Enterprises,	101/2-3-4 A, GIDC, Wadhwancity, Surendranagar	49/BVR/2017
04	M/s Meghdev Enterprises,	101/2-3-4 A, GIDC, Wadhwancity, Surendranagar	50/BVR/2017
05	M/s Meghdev Enterprises,	101/2-3-4 A, GIDC, Wadhwancity, Surendranagar	51/BVR/2017

The subject appeals are filed by M/s Meghdev Enterprises, 101/2-3-4 A, GIDC, Wadhwancity, Surendranagar (hereinafter referred to as "the appellant") against Order in Original No. 09 to 13/Demand/2016-17 dated 28.12.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise, Division-Surendranagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case in brief are that the appellant is engaged in the manufacture of Paper based Decorative Laminate & Industrial Sheet falling under Chapter No.48 of the Central Excise Tariff Act, 1985 (hereinafter referred as CETA-1985) and availing benefit of Cenvat Credit under Cenvat Credit Rules, 2004. During the period from February-2012 to March-2015, the appellant had availed the Cenvat credit of Service Tax of Rs.3,33,051/, which was paid by them for the installation of windmill at (1) Village Motisindhodi and (2) Village Nanisindhodi at Kutch. In these places, the appellant had installed 0.60 MW Windmill for generating electricity and electricity so generated was supplied to GEB who in turn supplied to the appellant by way of rendering the quantum of electricity supplied to their factory to the extend of the quantum of electricity generated in the wind farm.

3. Five show cause notices dated 31.01.2013, 04.09.2013, 30.12.2013, 14.10.2014 and 04.06.2015 were issued to the appellant for recovery of cenvat credit with interest and penalty on the grounds that they had wrongly availed Cenvat Credit of service tax paid on installation, erection and commissioning charges of Wind Mill located in the district of Kutch, which is far away from the factory premises of the appellant located in Surendranagar as the said services were not used either directly or indirectly in or in relation to the manufacture of final products. Further, the appellant was also selling the part of electricity generated by them and they had not utilized it in the manufacture of their final product, hence, they were not eligible for the Cenvat credit on the wind mills.

Signature

4. The transaction of the noticee's delivery of power to the GEB at Kutch and supply of power by the GEB at Surendranagar to the noticee are two independent transactions and there is no direct nexus between the services received in the power plant at Kutch and the items manufactured in the factory at Surendranagar belonging to the noticee. Generating electricity at the wind mill and transferring the same to the GEB at Kutch is one activity and supplying electricity in the factory of the noticee is another activity.

5. All the show cause notices were decided by AC, C. Ex., Division: Surenderanagar vide OIO No. 09 to 13/Demand /2016-17 dated 28.12.2016 wherein he confirmed the demand holding that there was no direct or indirect relation between such availment of service at Kutch and manufacture of final product at Surendranagar hence the input services were not used within the factory premises as well as well as not used directly or indirectly in the manufacture of final product. The adjudicating authority further held that electricity being non excisable goods, the input services used for such electricity cannot be further passed on or utilized at the factory premises. Out of total cenvat credit of Rs.3,33,051/-, wrongly availed by the appellant, the adjudicating authority disallowed the credit of Rs.1,01,152/- also on the ground that the same was not available to them being used for generation of electricity which was subsequently sold to the PGVCL (Gujarat Electricity Board).

6. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following grounds:

(i) The adjudicating authority has overlooked the Judgment of Larger Bench of Tribunal, Ahmedabad, passed in the case of Parry Engg. & Electronics P. Ltd. vs. CCE & ST, Ahmedabad-I, II & III, as reported in 2015 (40) STR 243 (Tri-LB) as well as Order No. A/11551-11560/2015 of regular bench of Tribunal, Ahmedabad applicable to this case wherein Tribunal has answer the reference in favour of the Appellant. The point of reference before Larger Bench of Tribunal in the case of Parry Engg. & Electronics P. Ltd. vs. CCE & ST, Ahmedabad-I, II & III reported in 2015 (40) STR 243 (Tri-LB) was that whether Cenvat credit of service tax paid on input services viz. erection, commissioning or installation of windmill, management, maintenance, repairing of windmill, received for the windmills installed far away from the registered factory wherein the excisable goods were being manufactured could be availed by the said manufacturer or not.

(ii) Further, the appellant have reversed inadmissible credit of service tax of Rs.1,01,152/-, on their own account, availed against generation of electricity, which was sold by them to the Gujarat Electricity Board.

Srinivas

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(iii) In view of this, the appellant requested to allow their appeal by setting aside the impugned order.

7. A personal hearing in the matter was held on 18.01.2018 and Shri Devashish K. Trivedi, Advocate appeared before me on behalf of the appellant. He tendered a write up dated 18.01.2018 against all 05 appeals filed by the appellant and reiterated the content of these appeals. Shri Trivedi in his submission dated 18.01.2018 contended that the issue is no more res-integra and is squarely covered in favour of appellant also reiterated the case laws relied upon by appellant in their appeals.

8. In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, I, Sunil Kumar Singh, Commissioner of CGST & Central Excise, Gandhinagar have been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994. Hence, in view thereof, I take these appeals for decision.

9. It is observed that out of total demand of Rs.3,33,051/-, the appellant had already reversed inadmissible Cenvat Credit of Rs.96,228/- with interest of Rs.17,321/-, hence the appellant is not required to make further pre-deposit under Section 35F(i) of the Central Excise Act, 1944.

10. I have carefully gone through the facts of the case and the submission made by the appellant in the appeal memorandum as well as by the advocate at the time of personal hearing. It is observed that the appellant has already admitted the Cenvat Credit of Rs.1,01,152/- was not admissible to them as the same was availed by them for services used against the generation of electricity which were sold to the GEB and also reversed part portion i.e. Rs.96,228/- with interest of Rs.17,321/- out of total demand of Rs.3,33,051/-. Hence, I uphold the impugned order to this extent. Now, the issue under consideration in these appeals is whether Cenvat credit of service tax paid on installation of windmill, away from the factory premises, is admissible to a manufacturer of dutiable final product in terms of Rule 2(1) of Cenvat Credit Rules, 2004, who manufactured and clears goods from his factory on payment of duty. It is observed that the appellant had taken the credit of service tax amount paid in connection with services utilized for installation of windmill at Kutch which is far away from the factory premises and the services were not used directly or indirectly in the manufacture of the final product in the factory premises and further the electricity generated at wind mill is non excisable and intangible product. The adjudicating authority in the impugned order has denied the credit holding that the services availed by the appellant at Kutch and credit of the Service Tax paid for such service was not admissible at unit situated at Surendranagar as there was no direct or indirect relation between such

Sunil Kumar Singh

availment of service at Kutch and manufacture of final product at Surendranagar. Further, the services of installation, erection & maintenance of windmills have resulted into production of electricity and being non excisable, the availment and utilization of said input services is not admissible to them.

11. I find that the issue is no more res-integra in view of catena of judgments wherein it has been held that the services were used for installation and erection of Windmills at remote location to generate electricity. Since, the electricity generated through these Windmills were used in or in relation to manufacture of final products and hence said services are covered under the provision of Rule 2 (1) of Cenvat Credit Rules, 2004. The Larger Bench of Tribunal, Ahmedabad in the case of Parry Engg. & Electronics Pvt. Ltd. vs CCE & ST, Ahmedabad-I, II & III as reported at 2015 (40) S.T.R. 243 (Tri-LB) wherein the appellant was one of the party has answer the reference in favour of the assesseees. I find that the point of reference before Hon'ble Larger Bench of Tribunal was that whether an assessee is eligible to avail Cenvat credit of an amount paid as Service Tax by service provider in respect of installation and erection, maintenance or any other services rendered at Windmills, which are located away from the factory premises and the electricity generated out of such Windmills is consumed at the factory premises after such power is put through the common grid. The LB of Tribunal by relying on the decision of Hon'ble Bombay High Court, as reported at 2015-TIOL-137-HC-MUM-ST, has held that Cenvat credit is eligible on installation, erection, maintenance or repair services of Windmills, located away from the factory. Hon'ble Bombay High Court at para 5 has held that:

"5. On perusal of these Rules, it becomes clear that the management, maintenance and repair of windmills installed by the respondents is input service as defined by clause "I" of Rule 2. Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by manufacture of final product would be susceptible to CENVAT credit. Rule does not say that input service received by a manufacturer must be received at the factory premises."

12. It is further observed that Windmills are installed at remote places far away from the factory as these can be installed only at a place where there is heavy wind available. It is pertinent to note that due the above reasons, the definition of Capital Goods given under Cenvat Credit Rules, 2004 was amended vide Notification No. 03/2011-CE (NT) dated 01.03.2011 effective from 01.04.2011 defining that 'Capital Goods' includes the goods used outside the factory for manufacture of the final product for generation of electricity for captive use within the factory. Since, the Windmills which are used for generation of electricity for captive use within the factory, service used for installation, erection and maintenance or repair of the same is also eligible as input services.

13. So, far as nexus of generation of electricity with manufacturing is

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concerned, it is pertinent to note that electricity generated at Wind Mill is wheeled through Gujarat Electricity Board (PGVCL) used to give credit of units generated after wheeling in the electricity bill charged from the appellant. In electricity bills, unit generated after wheeling is shown separately. Since the electricity generated at Wind Mill is used for manufacturing of the final products and hence, said services are well covered in the definition of input services.

14. Since, I hold that demand is not maintainable, hence the interest is not applicable. Further, as the appellant has correctly availed the Cenvat Credit of service tax paid on installation and maintenance of Windmills at the remote place which is away from the factory premises, I hold that no penalty is imposable on them under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

15. In view of the foregoing discussion and findings, I partially set aside the impugned order and allow all the 05 (five) appeals.

16. All the 05 (five) appeals, tabulated at para 1 above, filed by the appellant stand disposed off in above terms.

Sunil Kumar Singh
(Sunil Kumar Singh)
Commissioner (Appeals)/
Commissioner,
CGST & Central Excise,
Gandhinagar

F. No. (i)	V2/47/BVR/2017	(ii)	V2/48/ BVR/2017	Date: 22.02.2018
(iii)	V2/49/ BVR/2017	(iv)	V2/50/ BVR/2017	
(v)	V2/51/ BVR/2017			

To,
M/s. Meghdev Enterprises,
101/2-3-4 A, GIDC,
Wadhwanacity, Surendranagar

Copy to:

- (1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
- (2) The Commissioner, CGST & Central Excise, Bhavnagar
- (3) The Commissioner (Appeals), CGST & Central Excise, Rajkot
- (4) The Assistant Commissioner, CGST & C. Ex., Division: Surendranagar
- (5) The Assistant Commissioner (Systems), CGST, Rajkot.
- (6) The Superintendent, CGST & Central Excise AR-I, Surendranagar
- (7) Appeal File No. V2/47/BVR/2017 of M/s Meghdev Enterprises
- (8) Appeal File No. V2/48/BVR/2017 of M/s Meghdev Enterprises
- (9) Appeal File No. V2/49/BVR/2017 of M/s Meghdev Enterprises
- (10) Appeal File No. V2/51/BVR/2017 of M/s Meghdev Enterprises
- (11) PA to Commissioner of CGST & Central Excise, Gandhinagar.
- (11) Guard file