



रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/260 /RAJ/2016	34/D/AC/2016-17	05.10.2016

62784/6260
19/12/20

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

RAJ-EXCUS-000-APP-130-2017-18

आदेश का दिनांक / Date of Order:	01.12.2017	जारी करने की तारीख / Date of issue:	04.12.2017
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**कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अगर आयुक्त/समुक्त आयुक्त/उप-आयुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गांधीधाम/दक्षिण उपरविधित जारी मूल आदेश से मुक्ति /

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

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**

**M/s. Mahadev Manufacturers, Survey No. 265/P2, Railway Crossing Road, Village :
Kothariya,Rajkot.-360004**

इस आदेश(अपील) से उपरिष्ठ 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 अपीलार्थ 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 सेवाकर अपीलार्थ 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 बतलाए गए अपीलार्थ के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (सिस्टेट) की परिधिगत क्षेत्रीय पीठों पर, द्वितीय तल, भूमाली भवन अथवा 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

(iii) अपीलार्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001 के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रकम, प्रयाज की रकम 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति अलग-अलग की। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक 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 अपीलार्थ 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) अपीलार्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की रकम, प्रयाज की रकम 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति अलग-अलग की। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक 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 अपीलार्थ 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 दंडों की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित पत्र ST-7 में की जा सकती एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्याय आवृत्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आवृत्त द्वारा सहायक आवृत्त अध्याय आवृत्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दंड 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) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 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 राशि के 10 प्रतिशत (10%), जब राशि एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त 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 'सांग किए गए शुल्क' से निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेमवेट जमा की गई राशि
(iii) सेमवेट जमा नियमवली के नियम 6 के अंतर्गत देय रकम
- बशर्त कि इस धारा के प्राधान्य वित्तीय (स. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारणीय स्थिति अर्थात् 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 Cervat Credit taken;
(iii) amount payable under Rule 6 of the Cervat 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 प्राधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारंतक के अंतर्गत अर्थात् सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन टॉप भवन, संसद भवन, 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 भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की जाती है। /
In case 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 ह्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आवृत्त (अपील) के द्वारा वित्त अधिनियम (स. 2), 1995 की धारा 109 के द्वारा निर्यात की गई तारीख अथवा समावृत्ति 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 प्रार संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघर्ष 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 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 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 दंड से किया जाना चाहिए। इस लक्ष्य के होते हुए भी की तिखा पढ़ी करों से बचने के लिए सहायिकी अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय 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 Appellate 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) सहायिकी न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं संघर्ष 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-I in terms of the Court Fee Act, 1975, as amended.
- (F) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सर्व विधि) नियमवली, 1982 में वर्णित एवं अन्य सम्बन्धित मामलों को सम्बन्धित करने वाले विधियों की और 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

:: ORDER IN APPEAL ::

M/s. Mahadev Manufacturers, Survey No. 266/P2, Railway Crossing Road, Village - Kotharia, Rajkot 360 004 (hereinafter referred to as "Appellant") filed this appeal against Order-In-Original No.34/D/AC/2016-17 dated 06.10.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (hereinafter referred to as 'the lower adjudicating authority').

2. Briefly stated, the facts of the case are that during the period from April, 2015 to February, 2016, the Appellant availed Cenvat credit of Service Tax in respect of Invoices No. 2147554203 dated 28.05.2015 and No. INV/DR/002/2015-16 dated 28.05.2015, both issued by Ms. Wind World (India) Limited, for supply of materials and labour for erection, testing and commissioning of Windmill as well as for Development Rights for setting up of 08.MW of wind energy converter at Lalpur site of Windmill.

2.1 The Show Cause Notice has alleged that the appellant had availed Cenvat Credit which was not in accordance with the provisions of Rule 3 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the Rules") 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 Mills, which do not qualify as Input Services defined under Rule 2(l) of the Rules .

2.2 The above facts led to issuance of Show Cause Notice, which was decided by the impugned order, where under the demand of Rs. 2,90,409/- for irregular availment of the Cenvat Credit of Service Tax taken (i) for supply of material and labour for erection, testing and commissioning of WEG and erection of wind energy converter, erection of 33KV internal lines, grid interfacing etc and (ii) on transfer of developmental rights for setting up 0.8.MW of wind energy converter i.e. process leading to installation of Windmills was confirmed under Rule 14 of the read with proviso to Section 11A of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), along with interest and penalty under the provisions of Rule 15(1) of the Cenvat Credit Rules, 2004.

3. Being aggrieved with the impugned order, the appellant preferred appeal, inter alia on ground that the lower adjudicating authority has failed to properly interpret the issue, as Rule 3 of the Rules provides that manufacturer can avail Cenvat Credit of any input service received by the manufacturer of final products or by the provider of output service for use in, or in relation to the manufacture of the final products; that services received for generation of excisable goods, i.e. electricity which in turn was transmitted to their unit falls under definition of input service, as there exists direct nexus in the manufacture of the final product; that Hon'ble CESTAT while deciding the issue has

observed that it may not be possible to locate windmill in close vicinity of factory, as wind power generators have to be located at places where wind with sufficient speed is available throughout year and it has been held that windmills are mentioned as captive plant and service of erection, installation, commissioning, repair, maintenance and insurance used in respect of the same are eligible for Cenvat Credit; that in the case of M/s. Edurance Technology Pvt. Ltd. reported as 2015-TIOL-1371-HC-MUM-Service Tax it has been *inter alia*, held that Rule 3 and Rule 4 of the Rules provide that any input or capital goods received in the factory or any service received by the manufacturer of the final products would be susceptible to Cenvat credit and it does not stipulate that input is required to be received at the factory premises; that the electricity generated outside factory premises is adjusted against electricity used in factory and therefore it can be contended that electricity generated outside factory tantamount to electricity used in the factory premises; that the decision in the case of M/s. Endurance Technology *supra* was relied upon by the Hon'ble CESTAT in the case of M/s. Parry Engg. & Electronics Pvt. Ltd. reported as 2015 (40) S.T.R. 243 (Tri. - LB).

3.1 The appellant further contended that imposition of penalty is not justified when the matter involves interpretation of statute; that as per Section 11A(2) of the Act no notice is required to be issued when duty is paid before issuance of show cause notice; that lower adjudicating authority has not offered any findings on the above submission and imposed penalty which is not legal,

4. Personal hearing in the matter was attended to by Shri Rishi Upadhyay, Chartered Accountant, who reiterated the submissions made in the grounds of appeals and further contended that they generate electricity with the help of windmill, which is used in the manufacture of their final products, through PGVCL; that CESTAT in case of M/s. Jindal Aluminum Ltd. has allowed Cenvat Credit to maintain their windmills, reported as 2016-TIOL-2998-CESTAT-Bang. Personal hearing notice was sent to Department, however, none appeared.

Findings :-

5. I have carefully gone through the facts of the case on record, the impugned order, Appeal memorandum, as well as submissions made during personal hearing. 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 and commissioning of Windmills, at a place far away from the factory premises, is correct or not.

6. I find that the adjudicating authority has denied Cenvat credit of Service Tax paid on services utilized for installation and commissioning of Windmills, *inter-alia*, on the grounds :-

- (i) that as per definition of 'input services' given under Rule (l) of the Rules the Cenvat credit can be allowed only in respect of input services, relating to business which are specifically used directly or indirectly in or in relating to the manufacture of final products;
- (ii) that as per Rule 3 of the Rules Cenvat credit in respect of input services received by the manufacturer for use in or in relation to manufacture of the final product can only be treated as eligible input service for availment of Cenvat credit;
- (iii) that there is no nexus between the said windmill and manufacturing activity of their manufacturing unit;
- (iv) that the services were utilized at a distant place and not within the factory premises, hence Cenvat credit not available; and
- (v) there is no direct or indirect relation between such availment of service at windmill site away from factory and the manufacture of final product within factory premises.

7. I find that the appellant has availed Cenvat credit on Service Tax paid on the services of installation, erection and commissioning services utilized at Windmills situated at distant place from the registered premises of the appellant. The contention of the lower adjudicating authority is that the services being utilized at a distant place, hence Cenvat credit 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 undisputed fact that the generation of electricity is taking place at Windmills at a place though far away from the factory and electricity so generated, is wheeled to the grid, which supply electricity at the manufacturing unit of the appellant, as per agreed formula, and electricity has been utilized by the appellant at the factory for manufacture of the final products. 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 reported as 2009 (240) E.L.T. 641 (S.C.). I find that the dispute in the Maruti case was relating to Cenvat credit on inputs used in generating electricity, whereas in the case at hand, dispute is relating to Cenvat credit on input services. Further, part of electricity so generated was sold/wheeled out to joint ventures and vendors by Maruti, whereas, in the instant case the wheeled energy is adjusted by PGVCL/GEB by giving set off in the bills of the appellant only. Also, the period covered Maruti case was from January, 2003 to March, 2004, whereas in the present case, the period covered is from April, 2015 to February, 2016 and the definition of input service has been 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 reported as 2011 (22) S.T.R. 610 (Guj.). I find that in this case, the Hon'ble Gujarat High Court disallowed Cenvat credit on security services provided at the 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 windmill installed / maintained has produced electricity and the electricity so transferred from the said windmill 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 is not applicable in the instant case.

8. In light of above, I hold that the appellant is eligible to take Cenvat Credit of Service Tax on the services utilized for installation and commissioning of Windmills, even if situated at a distant place from the factory premises. I, therefore, allow the appeal.

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.

R. P. A. D.
11/12/2012
(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Mahadev Manufacturers, Survey No. 266/P2, Railway Crossing Road, Village- Kotharia, Rajkot 360 004	मेस्सेर्स महादेव मनुफ़क्टुरेर्स, सर्वे नो. 266/P2, रेल्वे क्रॉससिंग रोड, विल्लेज - कोठरिया, राजकोट - 360 004.
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Copy to:

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