

MARKET

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 / 2<sup>nd</sup> 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

दिनांक /  
Date  
28.02.2017

रजिस्टर्ड डाक ए. बी. द्वारा :-  
क अपील / फाइल संख्या /  
Appeal / File No.  
V2/169/RAJ/2017

7108 / 269  
7126 / 280  
7132 / 285  
मूल आदेश सं /  
O.I.O. No.  
70/D/AC/2016-17

ख अपील आदेश संख्या (Order-In-Appeal No.):  
आदेश का दिनांक /  
Date of Order:

**RAJ-EXCUS-000-APP-203-2017-18**  
30.01.2018

जारी करने की तारीख /  
Date of issue:

02.02.2018

Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या 26/2017-के.उ.शु. (एन.टी.) दिनांक 18.10.2017 के साथ पढ़े बोर्ड ऑफिस आदेश सं.  
04/2018-ए.टी. दिनांक 16.11.2017 के अनुसार में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद  
जोनल यूनिट को वित्त अधिनियम 1994 की धारा 86, केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 34 के  
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 Gopi Nath, Additional Director  
General of Audit, Ahmedabad Zonal Unit, Ahmedabad 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  
/ गंधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant  
Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :  
घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**  
**M/s Rolex Rings P. Ltd., Near Rajkamal Petrol Pump, Gondal Road Village : Kotharia,  
Rajkot-360004**

इस आदेश(अपील) से व्यक्ति 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 अपील 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 उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण  
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 अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं  
सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा  
अहमदाबाद- 380016 को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at,  
2<sup>nd</sup> 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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 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 हानी 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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/- 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 हानी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- (ii) धारा 11 डी के अंतर्गत रकम
- (iii) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विवादाधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

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

Under Central Excise and Service Tax, "Duty Demanded" shall include :  
 (i) amount determined under Section 11 D;  
 (ii) amount of erroneous Cenvat Credit taken;  
 (iii) amount payable under Rule 6 of the Cenvat Credit Rules  
 - provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैरालेग के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA, 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (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 संसोधित विधि 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 केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त 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 को 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 अपील 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, notwithstanding 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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील 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.



ORDER IN APPEAL

M/s Rolex Rings Pvt. Ltd., Near Rajkamal Petrol Pump, Gondal Road, Village: Katharia, Rajkot (hereinafter referred to as "the appellant") had filed the present appeal against Order-in-Original No.70/D/AC/2016-17 dated 27/28.02.2017 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Central Excise, Division-I, Rajkot (hereinafter referred to as "the Adjudicating Authority").

2. The brief facts of the case are as under:-

(i) The appellant are engaged in the manufacture of excisable goods viz. Forgings and Forged Products Rings, Alloy Steel Forged Rings/Machine Rings and Automobiles parts for gear box and holding common Central Excise Registration No. AACCR3790BXM002. During the course of audit, it was observed that the appellant had availed cenvat credit of service tax paid on Operation & Maintenance charges of Wind Mill Farm, certification charges. Later on, with reference to earlier audit objection, on being called for by the Range Officer the details regarding cenvat credit taken for Management, Repairs & Maintenance of Wind Mill services, Certification and other charges, the appellant vide letter dated 04.12.2015 provided the details for the period from April, 2015 to September, 2015 for the services provided by M/s Gujarat Energy Transmission Corporation and three others. It was noticed that on the strength of the invoices issued by the said service providers, the appellant had wrongly availed cenvat credit of service tax totally amounting to Rs.7,06,126/- paid on the services Viz. Wind Mill Repair & Maintenance charges and Wind Mill lease rent & Certification charges (herein after referred to as "the said services") which were paid by the appellant as a part of their trading & commercial activities which had no nexus with the manufacturing activity of their unit whether directly or indirectly, in or in relation to the manufacture of finished goods. Further, the said services were used at their Wind Mills which are far away from their registered factory premises and the said services do not fall within the preview of the main or inclusive part of the definition of "Input service" under Rule-2(l) of the Cenvat Credit Rules, 2004. These facts culminated into a Show Cause Notice dated 10.02.2016 issued to the appellant.

(ii) The Adjudicating Authority under the impugned order disallowed cenvat credit totally amounting to Rs.7,06,126 and confirmed the demand under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 A of Central Excise Act, 1944 and ordered for interest under Rule 14 ibid read with Section 11AA ibid with imposition of penalty of Rs. 70,600/- under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11 AC of Central Excise Act, 1944 .

3. Being aggrieved by the impugned order, the appellant had filed present appeal on the grounds interalia mentioned as under:-

(i) The Adjudicating Authority has erred in holding that the said services under consideration are not covered by the definition of the "input service", without appreciation of the

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documents submitted and relevant decisions referred by them. The reliance is placed by the appellant on the decision of the Hon'ble CESTAT, Ahmedabad (LB) in the case of Parry Engineering and Electronics reported at 2015(40) STR 243 and also on various decisions of the higher judicial forum in support of their contention that service tax charged for the Maintenance and Repair of Wind Mill is an input service and cenvat credit thereof is available.

(ii) The Adjudicating Authority has erred by relying on the decision of the Hon'ble Supreme Court as also the decision of the Hon'ble High Court of Gujarat. The observation that the documents submitted do not establish nexus with the manufacturing activity and the same is not directly delivered at the manufacturing premises cannot qualify for cenvat credit, is not proper and justified and hence, liable to be set aside.

(iii) The Adjudicating Authority has erred by confirming the demand on the ground that the electricity generated is not excisable item and is not captively consumed in the manufacture of excisable goods. The settled principle of law clarifies beyond doubt that the credit claimed is available.

(iv) The Adjudicating Authority has erred by imposing penalty in view of the above grounds as well as it is settled law that where the issue involved is of interpretation of relevant provisions and when decisions are in favour of the assessee, no penalty can be imposed. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention.

(v) The Adjudicating Authority has erred by ordering interest without considering the facts that they had reversed the cenvat credit immediately after availment. Since they had not utilized the said cenvat credit and as per settled law, no interest can be ordered.

4. The Assistant Commissioner, Central excise, Division-I, Rajkot (herein after referred to as "the said officer") on being sent the appeal memorandum, has submitted their comments vide letter dated 18.05.2016 wherein it is interalia contended as under:

(i) The appellant has availed cenvat credit of service tax paid on Maintenance & Repairs of Wind Mill which are situated far away from the appellant's factory premises; that there is no nexus between credit availed of service tax paid on the services used in the maintenance of Wind Mill at distance place whereas the manufacturing is being carried out at Rajkot factory and since power generated from the Wind Mill do not wired directly to the manufacturing plant.

(ii) The electricity generated is not an excisable item and no central excise duty is involved and hence, the credit is not admissible.

(iii) The reliance placed by the appellant on the decision of the Hon'ble Tribunal (LB) in the case of Parry Engineering and Electronics reported at 2015(40) STR 243, however in the similar matter in the case of M/s Echjay Industries Pvt. Ltd, Rajkot, the department has preferred an appeal before the Hon'ble High Court, Gujarat which is pending.

(iv) The appellant's contention that they had reversed the cenvat credit immediately

after availment and hence no interest can be charged, is not correct as they had only paid Rs.53,000/- vide Challan CIN No.03500681204201700009 dated 12.04.2017 as pre deposit @ 7.5%.

5. Hearing was held on 27.12.2017, wherein Shri Paresh V. Sheth, Advocate appeared on behalf of the appellant and reiterated the grounds taken up in the appeal memorandum and also submitted a copy of OIA passed by Commissioner (Appeals) in their favour and also the invoices proving that the units generated at wind mill are given credit of while raising electricity bill and requested to decide the case in the view of these documents.

6. I have gone through the appeal memorandum, written and oral submission made as well as documents submitted during personal hearing. I proceed to decide the case on merits since the appellant has made payment of mandatory deposit of Rs.52,960/- (7.5% of the Cenvat Credit of Rs.7,06,126 vide Challan No.03500681204201700009 dated 12.04.2017 and thus, complied the requirement of fulfillment of mandatory pre deposit in pursuance to the amended provisions of Section 35F of the Central Excise Act, 1944 made applicable to Service Tax matter in terms of the Section 83 of the Finance Act, 1994 effective from 06.08.2014.

7. I have gone through the facts of the case, the Show Cause Notice and also the impugned order issued in this case. I have also gone through the evidences placed on records and the submission made by the appellant in this regard. The issue to be decided in the present appeal is that whether the cenvat credit of service tax paid on Wind Mill Repair & Maintenance charges and Wind Mill lease rent & Certification charges, availed by the appellant is available to the appellant or otherwise. I find that there is no dispute about the receipt and utilization of said services and payment of service tax on the said services by the appellant. I find that the Adjudicating Authority had disallowed the cenvat credit of service tax paid on the said services interalia on the grounds that the said services have been availed at the Wind Farm which is situated at a long distance away from the manufacturing unit; that the Wind Mill generates electricity which is non-excisable item and such electricity is supplied to the State Electricity Grid and not captively consumed in the manufacture of excisable goods in the factory; that the services utilized had no nexus with the manufacturing activity of their unit whether directly or indirectly, in or in relation to the manufacture of finished goods; that the said services do not fall within the preview of the main or inclusive part of the definition of "Input service" under Rule-2(i) of the Cenvat Credit Rules, 2004. Reliance is placed by the Adjudicating Authority on the decision of the Apex Court in the case of Maruti Suzuki Ltd V/s Commissioner of Central Excise, Delhi-III reported at - 2009(240) ELT 641 (S.C.) as well as on the decision of the Gujarat High Court in the case of Commissioner of Central Excise V/s Gujarat Heavy Chemicals Ltd. reported at 2011(22) STR 610 (Guj.). The appellant had contended on the various grounds as interalia detailed at para-3 above and the said officer of the department has also submitted their comments as interalia detailed at para-4 above.

8. Before coming to the main issue, I find that the appellant contended as interalia

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mentioned at para- 3(v) above that they had reversed the cenvat credit immediately after availment and they had not utilized the said cenvat credit, I find that the said officer of the department submitted as interalia mentioned at Para 4(iv) that the appellant's contention about their reversal of the cenvat credit immediately after availment and hence no interest can be charged, is not correct as they had paid only Rs.53,000/- vide Challan No.03500681204201700009 dated 12.04.2017 as pre deposit @ 7.5%. I find force in the submission of the said officer of the department. Nothing is submitted by the appellant before me as well as in the appeal memorandum that they have reversed the cenvat credit involved in the present case. Hence, this contention of the appellant is rejected.

9. I find that the appellant has relied heavily on the decision of the Hon'ble CESTAT, Ahmedabad (LB) in the case of Parry Engineering and Electronics reported at 2015(40) STR 243 and also on various decisions of the higher judicial forum, in support of their contention. I find force in it. The issue is well settled by the Hon'ble CESTAT, Ahmedabad (LB) in the case of Parry Engineering and Electronics reported at 2015(40) STR 243 (Tri.-LB) wherein reliance is also placed on the decision of the Hon'ble High Court, Mumbai in the case of Commissioner of C.Ex., Aurangabad V/s Endurance Technology Pvt. Ltd- reported at 2015-TIOL-1371- HC-Mumbai-ST and at 2017(52) STR 361 (Bom.), wherein the Hon'ble High Court categorically held that *"on perusal of these Rules, it becomes clear that 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 provides that any input or capital goods received in the factory or any input service received by the manufacturer of the final product would be susceptible to CENVAT credit. Rule does not say that the input service received by a manufacturer must be received at the factory premises"*. In view of the above, I hold that cenvat credit on the said services are available to the appellant.

9.1 I find that the Adjudicating Authority has relied on the on the decision of the Apex Court in the case of Maruti Suzuki Ltd V/s Commissioner of Central Excise, Delhi-III reported at- 2009(240) ELT 641 (S.C.) as well as on the decision of the Gujarat High Court in the case of Commissioner of Central Excise V/s Gujarat Heavy Chemicals Ltd. reported at 2011(22) STR 610 (Guj.). However I find that the said decisions are not applicable on the facts and law in the present case in as much as the issue involved in the case of Maruti Suzuki Ltd was regarding input credit on fuel which is utilized in generation of excess electricity cleared for a price/contractual rate to sister units or cleared in favour of Grid and in the case of Gujarat Heavy Chemicals, the issue involved is of security service being voluntary in nature provided at residential quarters whereas the decisions and judgements in the case of Parry Engineering and Electronics reported at 2015(40) STR 243 (Tri.LB) and in the case of Commissioner of C.Ex., Aurangabad V/s Endurance Technology Pvt. Ltd- reported at 2015-TIOL-1371- HC-Mumbai-ST and at 2017(52) STR 361 (Bom.) are relevant being on the issue involved in the present case.

9.2 Further, I also find that during the personal hearing the appellant had produced the copy of OIA passed by Commissioner (Appeals-III), Central Excise, Rajkot- OIA

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No. RAJ-EXCUS-000-APP-232 & 233-16-17 dated 31.03/10.04.2017 in support of their contention. I find that in the case of appellant for the earlier period on the same issue, the learned Commissioner, (Appeals), after relying on the decision of the Hon'ble High Court, Mumbai and decision of the Larger Bench of Tribunal, Ahmedabad in the cases as mentioned at para-9 above, has decided the case in favour of the appellant.

9.3 Further, the said officer of the department submitted as interalia mentioned at Para 4(i) and (ii) is of no help to him in view of discussion herein at para-9 above. Further, with regard to their contention that in the matter of M/s Echjay Industries Pvt. Ltd, Rajkot, the department has preferred an appeal before the Hon'ble High court, Gujarat which is pending, I find that the issue involved in the said case is of cenvat credit on input services used *in installation of windmill* for generation of electricity [ref.- Principal Commissioner V. Echjay Industries Pvt. Limited -2017(47) STR J41 (Guj.)], whereas in the present case it is the issue of cenvat credit of service tax paid on Wind Mill repair & maintenance charges and Wind Mill lease rent & certification charges. Thus, this contention of the said officer is of no help to them.

10. In view of the facts and discussion herein above, I set aside the impugned order disallowing the cenvat credit and also the order for Interest as well as imposition of penalty.

11. Thus, the appeal filed by the appellant is allowed in above terms.

*Gopi Nath*  
3971118

(Gopi Nath)  
COMMISSIONER (APPEAL)/  
ADDITIONAL DIRECTOR GENERAL(AUDIT)

**BY R.P.A.D.**

To,  
M/s Rolex Rings Pvt. Ltd.,  
Near Rajkamal Petrol Pump,  
Gondal Road, Village: Katharia,  
Rajkot.

**Copy To:-**

1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Principal Commissioner/ Commissioner, CGST, Rajkot
3. The Commissioner (Appeals), Rajkot.
4. The Assistant Commissioner, CGST, Division-I, Rajkot.
5. The Assistant Commissioner (Systems), CGST, Rajkot.
6. Guard File.
7. P.A. File.