



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एम 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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :- **DIN-20200964SX00008ND4C4**

क्र	अपील फाइल नम्बर Appeal/File No	मूल आदेश नं / OIO No	दिनांक/ Date
	V2/70/RAJ/2020	3/D/2020-21	16/07/2020

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

RAJ-EXCUS-000-APP-100-2020

आदेश का दिनांक / Date of Order:	22.09.2020	जारी करने की तारीख / Date of issue:	24.09.2020
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Gopi Nath, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot / Jamnagar / Gandhidham :

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

M/s. Ajanta LLP (Formerly known as Ajanta Private Ltd) Orpat Industrial Estate, Rajkot-Morbi Highway, Morbi.

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.

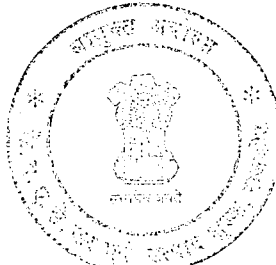
(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यों के सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद 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.

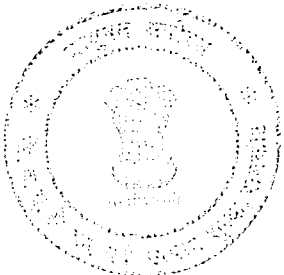
(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्ट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए 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, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति मंलग करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किमी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी खातांक 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 (स्ट ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय 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 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आवेदन के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में मंलग करे (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, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति मंलग करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किमी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी खातांक 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 (स्ट ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय 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 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) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अन्तर्गत अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ अनुसूचित रूप में उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहेगी)। उपर्युक्त द्वारा न्यायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण का आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रतियाँ भी साथ में संलग्न करनी होंगी। / The appeal under sub section (2) and (2A) of the section 86 of 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 अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35ए के अन्तर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अन्तर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने 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, यहाँ तक कि इस धारा के अन्तर्गत जमा कि जाने वाली अपेक्षित राशि कम करीब रूप से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अन्तर्गत "समाप्त किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 की के अन्तर्गत रकम
(ii) सेनबेट जमा की ली गई गलत राशि
(iii) सेनबेट जमा नियमावली के नियम 6 के अन्तर्गत देय रकम
- यहाँ तक कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकरण के समक्ष विवादों में स्थगन अर्जी एवं अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall be before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपर्यन्त के अन्तर्गत अवर मुक्ति, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, समद 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, जहाँ नुकसान किसी मात्र 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 कूट (रिवेट) 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 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 माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) संश्लिष्ट उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश को आयुक्त (अपील) के द्वारा विन अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किया जाए। / 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अन्तर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अन्तर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्यम 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, उपर्युक्त ढंग में किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य में वचन के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना 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) यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित 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 प्राधिकरण को अपील दाखिल करने में 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. Ajanta LLP, Morbi (*herein after referred to as "Appellant"*) filed appeal No. V2/70/Raj/2020 against Order-in-Original No. 3/D/2020-21 dated 16.7.2020 (*hereinafter referred to as 'impugned order'*) passed by the Dy. Commissioner, Central GST, Division-I, Morbi (*hereinafter referred to as 'adjudicating authority'*).

2. The brief facts of the case are that during audit of the records of the Appellant, it was observed that the Appellant had availed Cenvat credit of service tax paid on 'repair and maintenance service' and 'insurance service' of wind mills during the period from August, 2016 to April, 2017; that said windmill were installed for generation of electricity at a location far away from the factory premises of the Appellant; that services availed for windmill has no nexus with manufacturing activities of the Appellant and hence, not covered under the definition of 'input service' in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR,2004'*).

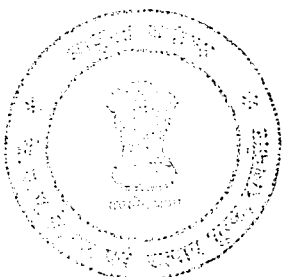
2.1 The Show Cause Notice No. IV/3-1/D/2017-18 dated 5.9.2017 was issued to the Appellant calling them to show cause as to why Cenvat credit of service tax of Rs. 9,28,702/- should not be demanded and recovered from them along with interest under Rule 14 of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR,2004'*) and proposed penalty under Rule 15 of CCR, 2004.

2.2 The above Show Cause Notice was adjudicated by the Adjudicating Authority vide the impugned order who disallowed and confirmed demand of wrongly availed Cenvat credit of Rs. 9,28,702/- and ordered for its recovery along with interest under Rule 14 of CCR, 2004 and imposed penalty of Rs. 9,28,702/- under Rule 15 *ibid*.

3. Aggrieved, the Appellant has filed the present appeal, *inter alia*, on following grounds:

(i) The impugned order passed by the adjudicating authority is incorrect on facts as well as law.

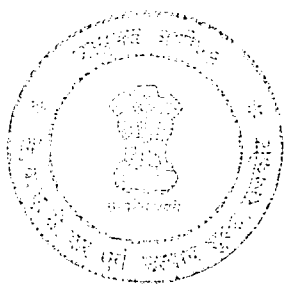
(ii) The Appellants have set up wind farms in Jamnagar district for generation of electricity for captive consumption in manufacture of dutiable products; that



the electricity so generated at wind mill. It is given to PGVCL only for the purpose of transmission to the factory of production. Instead of setting up their own transmission line, a facility owned by the State Govt. is used for transmitting electricity from one place to another. It is not in dispute that the electricity so transferred by the Appellant is being given back to the Appellant.

(iii) That the definition of term 'input service' given under Rule 2(i) of CCR, 2004 is broadly in three parts. First is the means part, second is the inclusive part and third part covers exclusions. First leg of the definition which is commonly called 'means' portion would cover every service used directly or indirectly, in or in relation to manufacture of final products and clearance of final products up to the place of removal; that the services in dispute, viz. maintenance and repair service and insurance service at windmill are used in relation to manufacture of the final products. Hence, the said service would be covered under the "means" part of the definition; that it is a settled position of law that the definition of input service is very wide and also covers under its scope, services which are related to post manufacturing activity and are always received outside the factory premises, such as services of sales promotion, advertisement etc. Unlike in the case of inputs, it is not necessary that the input services must be received in the factory of manufacture. Since in the Rules, the place of the input service to be received is not specified, the services availed by the them at any location which qualify as the definition of input service would be available as Cenvat Credit; that the definition of input service is qua the manufacturer and not qua the factory. Hence the Cenvat credit of the services which qualify under the definition of input service can be availed by the manufacturer even though the same are not received in the manufacturing premises. Hence, the impugned order being void of the correct interpretation of law is liable to be set aside.

(iv) That the issue regarding availment of Cenvat credit of service tax paid in respect of windmill is no longer res integra and stand decided by the Hon'ble Bombay High Court in the case of Endurance Technology Pvt Ltd- 2015-TIOL-1371-HC-MUM-ST, wherein it has been held that the electricity generated at the windmill can be said to have been used for manufacture of final product since such electricity is adjusted to the electricity sued by the assessee at their manufacturing premises; that as a matter of judicial discipline, the judgment rendered by the highest court is binding on lower authorities unless the said



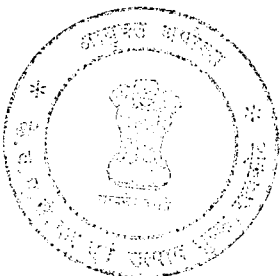
judgment is stayed by a higher court. Thus, the law laid down by the Hon'ble Bombay High Court in Endurance Technology (supra) would be binding on all lower authorities; That they relied upon said High Court judgment as well as Order-in-Appeal No. RAJ-EXCUS-000-236-237-16-17 dated 31.3.2017 passed by the then Commissioner (Appeals) in their own case. However, the adjudicating authority erred in not following the said case laws and relied upon the Hon'ble Supreme Court's judgement passed in the case of Kamlakshi Finance Corporation - 1991 (55) ELT 433 (SC).

(v) That for imposing penalty, there should be an intention to evade payment of excise duty, or there should be suppression or concealment. The penal provisions are only a tool to safeguard against contravention of the rules. It is submitted that the Appellants have always been and are still under the bona fide belief that they had rightly availed the credit of input services based on the invoices issued by the service providers. Such bona fide belief was based on the grounds given above; that the Appellants had no intention to evade payment of duty. Hence, no penalty is imposable on them.

4. Hearing in the matter was conducted in virtual mode through video conferencing with prior consent of the Appellant. Shri S.P. Singh, Auhtorised Person appeared on behalf of the Appellant and reiterated the grounds of appeal and requested to allow their appeal.

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submission made by the Appellant at the time of hearing. The issue to be decided in the present appeal is whether the impugned order confirming demand for wrong availment of Cenvat credit of Rs. 9,28,702/- and imposing penalty of Rs. 9,28,702/- is correct, legal and proper or not.

6. On going through the records, I find that the Appellant had availed Cenvat credit of service tax of Rs. 9,28,702/- paid on repair and maintenance service and Insurance service of wind mills during the period from August, 2016 to April, 2017. The adjudicating authority denied the said Cenvat credit on the ground that windmills were installed for generation of electricity at a location far away from the factory premises of the Appellant and that services availed for windmill has no nexus with manufacturing activities of the Appellant and hence, not covered under the definition of 'input service' in terms of Rule 2(l) of 'CCR,



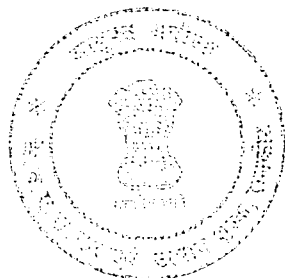
7. I find that the Appellant had availed services for repair and maintenance and insurance service in respect of wind mills and had availed Cenvat credit of service tax paid on such services. It is on record that the electricity so generated from the said wind mills was fed into grid of PGVCL and equal number of units of electricity were received by them in their factory for manufacture of their excisable goods, as per findings recorded in para 11.2 of the impugned order. Though, wind mills were installed at a far away location from the factory where repair and maintenance service and insurance service were availed but there is no bar in availing services beyond factory premises. The electricity generated from wind mills were exclusively utilized by the Appellant in their factory, and therefore, the repair and maintenance service and insurance service availed by the Appellant has nexus with the manufacturing activities of the Appellant. I, therefore, hold that repair and maintenance service and insurance service were 'input service' for the Appellant and Cenvat credit of service tax was correctly availed by them. I rely on the decision rendered by the Hon'ble Madras High Court in the case of Ashok Leyland Ltd. reported as 2019 (369) E.L.T. 162 (Mad.), wherein it has been held that,

"25. As already pointed out, there is no dispute that the electricity generated by the windmills are exclusively used in the manufacturing unit for final products, there is no nexus between the process of electricity generated and manufacture of final products and there is no necessity for the windmills to be situated in the place of manufacture. Further, as already noticed, the definition of "input service" is wider than the definition of "input". Furthermore, if one takes a look at the Rules, more particularly Rule 2(k), as it stood prior to 1-4-2011, which defines "input", the following has been specifically inserted.

"within the factory of production".

However, these words are physically missing in Rule 2(l), which defines "input service" and it would mean any service used by a provider of taxable service for providing an output service or used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal. Though the definition of "input service" has to be widely construed, and in terms of Rule 3, which allows the manufacturer of final products to take the credit of service tax inputs or capital goods received in the factory of manufacture of final products, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of final products. Therefore, this would be the correct manner of interpreting Rule 2(l) of the Rules.

26. In the light of the above, we are of the considered view that the decision in the case of *Ellora Times Ltd.* (supra) does not lay down the correct legal position and we agree with the decision of the High Court of Bombay in *Endurance*



Technology Pvt. Ltd. (supra), which has been followed by the Larger Bench of the *Tribunal in Parry Engg. & Electronics P. Ltd.*”

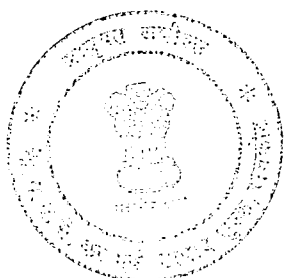
8. The Appellant has contended that the adjudicating authority erred in not following the judicial discipline, as relied upon Order-in-Appeal dated 31.3.2017 passed by the then Commissioner (Appeals), Rajkot in their own case as well as decision rendered by the Hon'ble Mumbai High Court in the case of Endurance Technology Pvt Ltd were not considered by the adjudicating authority on the grounds that said case orders were accepted by the Department on monetary limits and not on merits. I find that the adjudicating authority discarded their contention by observing as under:

“12.1 I further find that the case citations put forth by the noticee vide their written submission related to the issue cannot be taken precedence and have not attained finality, as the issue was concluded on monetary ground.”

8.1 I do not agree with the findings of the adjudicating authority. Once the Department accepted the Order-in-Appeal and decision of the High Court, they attained finality. Even though the said orders were accepted on monetary limit, fact remains that said orders have not been reversed by higher appellate authority and consequently binding on the adjudicating authority. The judicial discipline required the adjudicating authority to have followed the said orders in letter and spirit. It is pertinent to mention that when any order is accepted on monetary limit, the Department may agitate the issue in appropriate case in other appeal proceedings, but it is not open for the adjudicating authority to pass order on merit disregarding binding precedent. The adjudicating authority may distinguished relied upon decision, if there is change in facts or change in legal position. However, the adjudicating authority has not brought on record as to how said orders are not applicable to the facts of the present case.

8.2 My views are supported by the Order passed by the Hon'ble CESTAT, New Delhi in the case of RGL Converters reported as 2015 (315) E.L.T. 309 (Tri. - Del.), wherein it has been held that,

“10. It is axiomatic that judgments of this Tribunal have precedential authority and are binding on all quasi-judicial authorities (Primary or Appellate), administering the provisions of the Act, 1944. If an adjudicating authority is unaware of this basic principle, the authority must be inferred to be inadequately equipped to deliver the quasi-judicial functions entrusted to his case. If the authority is aware of the hierarchical judicial discipline (of precedents) but chooses to transgress the discipline, the conduct amounts to judicial misconduct, liable in appropriate cases for disciplinary action.



11. It is a trite principle that a final order of this Tribunal, enunciating a ratio decidendi, is an operative judgment per se, not contingent on ratification by any higher forum, for its vitality or precedential authority. The fact that Revenue's appeal against the judgment of this Tribunal was rejected only on the ground of bar of limitation and not in affirmation of the conclusions recorded on merits, does not derogate from the principle that judgment of this Tribunal is per se of binding precedential vitality qua adjudicating authorities lower in the hierarchy, such as a primary adjudicating authority or a Commissioner (Appeals). This is too well settled to justify elaborate analyses and exposition, of this protean principle.

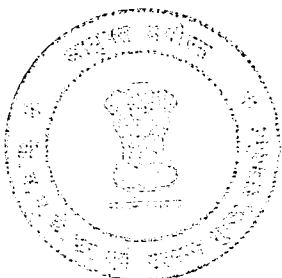
12. Nevertheless, the primary and the lower appellate authorities in this case, despite adverting to the judgment of this Tribunal and without concluding that the judgment had suffered either a temporal or plenary eclipse (on account of suspension or reversal of its ratio by any higher judicial authority), have chosen to ignore judicial discipline and have recorded conclusions diametrically contrary to the judgment of this Tribunal. This is either illustrative of gross incompetence or clear irresponsible conduct and a serious transgression of quasi-judicial norms by the primary and the lower appellate authorities, in this case. Such perverse orders further clog the appellate docket of this Tribunal, already burdened with a huge pendency, apart from accentuating the faith deficit of the citizen/assessee, in departmental adjudication."

8.3 I rely on the decision rendered by the Hon'ble Gujarat High Court in the case of *Claris Lifesciences Ltd.* reported as 2013 (298) E.L.T. 45 (Guj.), wherein it has been held that,

"8. The adjudicating officer acts as a quasi judicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction. If his order is thought to be erroneous by the Department, the Department can as well prefer appeal in terms of the statutory provisions contained in the Central Excise Act, 1944.

9. Counsel for the petitioners brought to our notice the decision of the Apex Court in the case of *Union of India v. Kamlakshi Finance Corporation Ltd.* reported in 1991 (55) E.L.T. 433 (S.C.) in which while approving the criticism of the High Court of the Revenue Authorities not following the binding precedent, the Apex Court observed that :-

"6...It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The more fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result



will only be undue harassment to assesseees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35D confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs (Direct Taxes) comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

8.4 I also rely on the decision rendered by the Hon'ble Madras High Court in the case of Industrial Mineral Company (IMC) reported as 2018 (18) G.S.T.L. 396 (Mad.), wherein it has been held that,

"8. This Court is of the view that when the order passed by the Tribunal has not been stayed or set aside by the Hon'ble Supreme Court, it is the bounden duty of the Adjudicating Authority to follow the law laid down by the Tribunal. Since a binding decision has not been followed by the Adjudicating Authority in this case, this Court can interfere straightaway without relegating the assessee to file an appeal."

9. In view of above discussion, I hold that the Appellant had correctly availed Cenvat credit of service tax paid on repair & maintenance service and insurance service in respect of wind mills. The confirmation of demand of Rs.



9,28,702/- is not sustainable and requiring to be set aside and I do so. Since, demand is set aside, recovery of interest and imposition of penalty of Rs. 9,28,702/- under Rule 15 of CCR, 2004 are also set aside.

10. I set aside the impugned order and allow the appeal.

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

11. The appeal filed by the Appellant stand disposed off in above terms.

(GOPI NATH)

Principal Commissioner (Appeals)

Attested



(V.T. SHAH)


Superintendent (Appeals)

BY RPAD

To, M/s. Ajanta LLP (Formerly known as Ajanta Private Ltd) Orpat Industrial Estate, Rajkot-Morbi Highway, Morbi.	सेवा में, मैसर्स अजंता एलएलपी ओरपट इंडस्ट्रियल इस्टेट, राजकोट- मोरबी हाइवे, मोरबी।
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प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मोरबी-1 मण्डल, को आवश्यक कार्यवाही हेतु।

 गार्ड फ़ाइल।

