



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



सत्यमेव जयते

**रजिस्टर्ड डाक ए.डी.द्वारा :-**

क	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/130, 131, 132/RAJ/2019	09 to 11/DC/KG/2019-20	30/09/2019

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

**RAJ-EXCUS-000-APP-032-TO-034-2020**

आदेश का दिनांक /  
Date of Order: **12.02.2020** जारी करने की तारीख /  
Date of issue: **12.02.2020**

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/  
Passed by **Shri Gopi Nath, 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 सृजित: /  
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 **Appellants** & Respondent :-

**M/s Rolex Rings Pvt Ltd, Near Rajkamal Petrol Pumps, Gondal Road, Vvia: Kotharia, Rajkot .**

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 360016 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

(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, रूपे 5 लाख या उससे कम, 5 लाख रूपे या 50 लाख रूपे तक अथवा 50 लाख रूपे से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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/- रूपे का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रूपे 5 लाख या उससे कम, 5 लाख रूपे या 50 लाख रूपे तक अथवा 50 लाख रूपे से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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/- रूपे 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) 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 प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in 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 (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं 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 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 कोपनरीक्षण आवेदन :

**Revision application to Government of India:**

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

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

- (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 समयावधि 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 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 से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति 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 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 टिकिट 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 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](http://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](http://www.cbec.gov.in)

**:: ORDER IN APPEAL ::**

**M/s Rolex Rings Pvt. Ltd.**, Near Rajkamal Petrol Pump, Gondal Road, Village: Kotharia, Rajkot. (hereinafter referred to as '**the appellant**') filed the present appeals against OIO Nos. 9 to 11/DC/KG/2019-20 dated 30.09.2019 (hereinafter referred to as the '**impugned orders**') passed by the Deputy Commissioner, GST & Central Excise, Division, Rajkot-II (hereinafter referred to as the '**adjudicating authority**').

2. During the course of audit of the financial records of the appellant by the Departmental audit officers and IAAD/CERA officers, Ahmedabad, it was observed that the appellant had wrongly availed Cenvat credit of service tax paid on Operation & Maintenance of Wind Mill Farm and Certification and other charges. The appellant had availed cenvat credit for Management, Repair and Maintenance of Wind Mill Services on the strength of invoices issued for the service provided by the service providers. The service provider had collected service tax from the appellant for the services provided for the Wind Mills situated at Village-Gandhavi/Bhogat, Dist: Jamnagar. The appellant had availed Cenvat Credit of Service Tax paid on such services which has no connection with the unit situated at Gondal Road, Rajkot, whether directly or indirectly, in or in relation to manufacture of final products of the unit. It was also observed that the electricity generated through the said Wind Mills was sold out to M/s Paschim Gujarat Vij Company Ltd., which is a State Government Body, which is a part of their commercial and trading activity and thus, there is no nexus between the said wind mill and manufacturing activity of their manufacturing unit. Therefore, the following Show Cause Notices were issued to the appellant:

SCN /SOD No.	Date	Period	Amount involved (Rs.)
C.EX./AR-I/Div-I/Rolex-U-II/Wind Mills/2016-17 (Unit-II)	04.01.2017	October-2015 to November-2016	4,29,792
C.Ex./AR-I/Div-I/Rolex-U-I/Wind Mills/2016-17 (Unit-I)	02.01.2017	October-2015 to November-2016	6,03,182
SOD NO. 02/2018	09.04.2018	December-2016 to June-2017	7,37,910



2.1 The said SCNs were decided vide the impugned orders. The Adjudicating authority has confirmed the said demand alongwith interest and penalty under Rule 15 of CCR 2004 read with Section 11AC of the C.Ex. Act, 1944.

3. Aggrieved, the appellant filed the present appeal *interalia* on the following grounds:

(i) that the appellant installed various Wind Mills purchased from M/s Suzlon Energy Ltd.; that the said company provided services for Operation and Maintenance of the said Wind Mills and charged service tax.

(ii) that the installation of Wind Mill is not as per the free will of the person concerned but is governed by the provisions of Electricity Act, 2003 and under the said provision the Hon'ble Government has created some entity through which only, windmill can be installed for generation of electricity; that the person desirous to install Wind Mill has to enter into an agreement with the company distributing electricity as permitted by the Gujarat Electricity Development Agency (**hereinafter referred to as 'GEDA'**) and while executing an agreement has an option to either sell the electricity so generated or has an option to wheel the same and get set off against the electricity supplied to the unit; that the appellant chose to wheel the electricity so generated.

(iii) that they have submitted specimen copy of the agreement entered with Gujarat Energy Transmission Corporation Limited (**hereinafter referred to as 'GETCO'**) and Gujarat Electricity Board (**hereinafter referred to as 'GEB'**); that both the entities are permitted to enter into an agreement with the appellant by the GEDA; that they have also submitted specimen copy of electricity bill issued by the Paschim Gujarat Vij Company (**hereinafter referred to as 'PGVCL'**) through which the said company has transmitted power so generated by the appellant; that they had not agreed to sell electricity to PGVCL or any other Company with whom an agreement is entered into but has agreed to wheel the electricity generated which has been given credit of by the said company while raising invoice for the electricity supplied.

(iv) that the appellant was bound to install Wind Mill at the place determined by the Government and enter into an agreement as per the policy and the electricity so generated through Wind Mill was transferred to the manufacturing plant through the facility available and for such transfer the appellant was paying some charge either to the Government or to the respective



company formed by the Government, but was ultimately used in or in relation to manufacture of final product. Therefore, they requested to set aside the proceedings. In support to their claim, they relied on the following case laws:

- (1) Rajratan Global Wires Ltd. Versus Commissioner of C.Ex., Indore 2012 (26) S.T.R 117 (Tri.-Del.)
- (2) Commissioner of C.Ex., Nagpur Vs Ultratech Cement Ltd. 2011 (21) S.T.R 297 (Tri.-Mumbai)
- (3) Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs Com. of C.Ex., Belapur 2013 (32) S.T.R 532 (Bom.)
- (4) Maharashtra Seamless Ltd. Vs Commissioner of C. Excise, Raigad 2012 (286) E.L.T. 93 (Tri. -Mumbai)
- (5) Parry Engg. & Electronics P. Ltd. Vs CCE & S.T, Ahmedabad I-II-III 2015-(40)STR 243(Tri.-LB)

(v) that have further relied upon various judgments with regard to imposition of penalty; that the demand is barred by limitation in as much as the department has full knowledge of the fact that the appellant was availing cenvat credit of service tax paid on such services; they have requested to set aside the impugned order and allow their appeal.

4. In Hearing, Shri Paresh V. Sheth, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal and requested to allow the appeals.

5. I have gone through the records of the case, the impugned order, the grounds of appeals and written submission filed by the appellant. The issue to be decided in the instant case is whether the appellant is eligible to avail and utilize Cenvat Credit of Service tax paid on services i.e. Management, Repair and Maintenance and Certification charges of wind farm projects installed for generation of electricity at various locations far away from the registered factory premises and where no manufacturing activity has been carried out.

6. I find that the adjudicating authority has confirmed the demand concluding that there is no nexus between the electricity generated in the windmills and the manufacturing process, hence the appellant has wrongly availed and utilized the cenvat credit of service tax on installation, repair and maintenance of Wind Mills.



6.1 I find that the appellant has availed Cenvat credit on Service Tax paid on the services of Management, Repair and Maintenance utilized at Windmills situated at distant place from the registered premises of the appellant. The contention of the adjudicating authority is that the services being utilized at a distant place, hence Cenvat credit not available to the appellant. Therefore, 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:-

***"input service" means any service, -***

- (i) used by a provider of [output service] for providing an output service; or*
- (ii) used by a 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 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]

6.2 From the definition of 'input service' supra, it is clear that input service covers all services used by a manufacturer directly or indirectly in or in relation to the manufacture of final product and clearance of final product upto the place of removal. In the present case, as per the Government policy the electricity so generated through Wind Mill is transferred to the manufacturing plant and the same is ultimately used in or in relation to manufacture of final product. Thus, the transaction of delivery of power from windmill to PGVCL and in turn credit given by PGVCL to the appellant can be considered to be used in the manufacturing activity either directly or indirectly in or in relation to the manufacture of final products and services availed for maintenance of



wind mill falling under the ambit of definition of 'input service' under Rule 2(l) of Cenvat Credit Rules, 2004.

6.3 I find that Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by manufacture of final product would be eligible to cenvat credit. I also find that there is no restriction under Cenvat Credit Rules, 2004 that the services should be utilized within the factory premises only. In the present case, it is not disputed that electricity generated at windmills were not used for manufacture of final product and therefore, denial of Cenvat credit is not sustainable.

6.4 The appellant has contended that they are bound to install Wind Mill at the place determined by the Government and enter into an agreement as per the Government policy.

I find that, undoubtedly, the windmills cannot be located at any place, and it is to be erected, wherever the wind power is available. Therefore, such an interpretation if to be accepted, would defeat the very concept of generation of power. Therefore, I accept the contention of the appellant in this context.

7. I find that the matter is no more *res integra* in view of the decisions in the case of (i) Commissioner of Central Excise and Service Tax Vs M/s Ashok Leyland Ltd. decided on 06.12.2018 by the Hon'ble High Court of Madras (ii) M/s Endurance Technology Pvt. Ltd. decided by the Hon'ble Bombay High Court and reported at 2017 (52) S.T.R. 361 (Bom) (iii) the Larger Bench of CESTAT in the case of Parry Engg. & Electronics P Ltd reported at 2015 (40) S.T.R. 243 (Tri.-LB).

7.1 I find that the Hon'ble High Court of Madras in a recent judgment dated 06.12.2018 in the case of Commissioner of Central Excise and Service Tax Vs M/s Ashok Leyland Ltd. allowed the Credit on lease rentals, operations and maintenance of windmills used for generation of electricity, outside factory as electricity generated by the windmills is exclusively used in the manufacturing unit for final products.. The Hon'ble High Court has 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 01.04.2011, 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.*

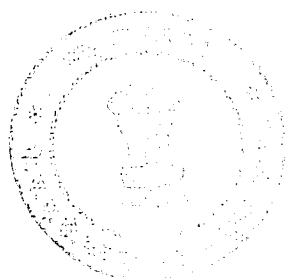
*Therefore, this would be the correct manner of interpreting Rule 2(l) of the Rules."*

[Emphasis supplied]

I also find that there is no restriction under Cenvat Credit Rules, 2004 that the services should be utilized within the factory premises only.

8. Further, I find that the appellant has quoted many case laws and the ratio laid down in the said case laws are squarely applicable in the instant appeal except for the case law relied by the appellant at Sr. No. (4) i.e the case of Maharashtra Seamless Ltd. Vs Commissioner of C. Excise, Raigad wherein, it is the decision of 3rd Member allowing stay against pre-deposit. Therefore the said case law is not applicable to the present case.

9. In light of above, I hold that the appellant is eligible to take Cenvat Credit of Service Tax on the services utilized for Management, Repair and Maintenance of Windmills, even if it is situated at a distant place from the factory premises. Since, the Appellant had correctly availed Cenvat credit, confirmation of demand in the impugned order is not sustainable and the same is required to be set aside and I do so. Since demand itself is not





sustainable, question of interest and penalty does not arise. I, therefore, set aside the impugned order and allow the appeals filed by the appellant.

१०. अपीलकर्ता द्वारा दर्ज की गई अपीलओं का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeals filed by the Appellant are disposed off as above.

सत्यापित

*(Handwritten Signature)*

अ. अ. अ. अ. अ.  
अपीलकर्ता (अपीलकर्ता)

*(Handwritten Signature)*

(Gopi Nath)

Commissioner (Appeals)

By Regd. Post AD  
To,

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

**मे. रोलेक्स रिंग्स पी. ली.,**  
राजकमल पेट्रोल पम्प के पास, गोंडल रोड, गाऊँ:  
कोठरिया, राजकोट।

**Copy to:**

- 1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, CGST & Central Excise Commissionerate, Rajkot.
- 3) The Deputy Commissioner, CGST & Central Excise, Division, Rajkot-II.
- 4) Guard file.