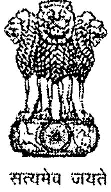


::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,
द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN-20200864SX00006O8B27

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/ 29/RAJ/2020	**23 to 27/DC/KG/2019-20**	**14-01-2020**

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

RAJ-EXCUS-000-APP-089-2020

आदेश का दिनांक / Date of Order:	**24.08.2020**	जारी करने की तारीख / Date of issue:	**25.08.2020**

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 एवंसेवाकर, 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 **Appellant** & Respondent :-

M/s Radhe Renewable Energy Development Pvt Ltd, Plot no. 2621/22, Lodhika GIDC, Kalawad Road, Village Metoda-360021.

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 निम्नलिखि+त 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

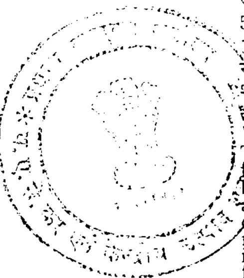
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(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 माँग ,ब्याज की माँग 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 माँग ,ब्याज की माँग 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



(i) वित्त अधिनियम,1994की 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 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 Commissionerauthorizing 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 है

(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 अर्ज़ी एवं अपील को लागू नहीं होगे।/

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 कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर 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 छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of 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 outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case,if the order covers variousnumbers 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-I 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 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

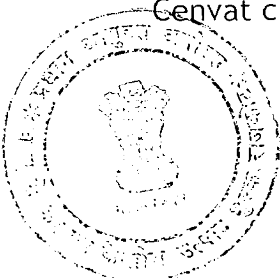
:: ORDER-IN-APPEAL ::

M/s Radhe Renewable Energy Development Pvt Ltd, Rajkot (*hereinafter referred to as* "Appellant") filed Appeal No. V2/29/RAJ/2020 against Order-in-Original No. 23 to 27/DC/KG/2019-20 dated 14.1.2020 (*hereinafter referred to as* 'impugned order') passed by the Dy. Commissioner, CGST Division-II Rajkot, (hereinafter referred to as "adjudicating authority").

2. The brief facts of the case are that the Appellant was engaged in manufacture of Gasifier Plant falling under Chapter 84 of the Central Excise Tariff Act, 1985. During audit of the records of the Appellant, it was found that the Appellant had availed services of M/s Turbo Multi Service Pvt Ltd for carrying out Erection, Commissioning and Installation of Plant manufactured by them at their buyers' premises; that the Appellant availed Cenvat credit of service tax on the basis of invoices raised by M/s Turbo Multi Service Pvt Ltd. It appeared to the Audit that said 'Erection, Commissioning and Installation Service' was availed at buyer's premises after clearance of finished goods from factory and that the said service had no direct nexus with manufacture of final product and consequently cannot be considered as 'input service' in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR,2004'); that the Appellant had wrongly availed Cenvat credit of service tax.

2.1 Show Cause Notices covering the period from November,2007 to March, 2011 were issued to the Appellant to disallow and recover wrongly availed Cenvat credit of service tax. The demand raised in the said Show Cause Notices were confirmed by the then adjudicating authority. The matter reached to the Hon'ble CESTAT, Ahmedabad who vide its Order No. A/11982/2014 dated 14.11.2014 decided the issue in favour of the Appellant by holding that the Cenvat credit of service tax paid on 'Erection, Commissioning and Installation Service' was correctly availed by the Appellant. The said Order of the Hon'ble CESTAT was not accepted by the Department and Tax Appeal was filed before the Hon'ble Gujarat High Court, which was subsequently withdrawn on monetary limit.

2.2 In the meantime, it was noticed that the Appellant was still availing Cenvat credit of service tax paid on 'Erection, Commissioning and Installation Service'. Hence, five Show Cause Notices covering the period from May, 2013 to October, 2015 were issued to the Appellant calling them to show cause as to why Cenvat credit totally amounting to Rs. 31,35,732/- should not be disallowed and



recovered from them under Rule 14 of CCR,2004 read with Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as "Act"*) along with interest under Rule 14 *ibid* read with Section 11AA of the Act and proposing imposition of penalty under Rule 15(1) of CCR,2004.

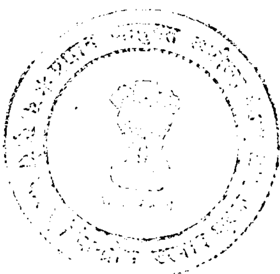
2.3 The said Show Cause Notices were adjudicated by the adjudicating authority vide the impugned Order, which confirmed demand of Cenvat credit totally amounting to Rs. 31,35,732/- and ordered for its recovery along with interest under Rule 14 of CCR, 2004 and imposed penalty of Rs. 31,35,732/- under Rule 15(1) *ibid*.

3. Aggrieved, the Appellant has preferred the present appeal on various grounds, *inter alia*, as below :-

(i) That issue involved in the present case has already been decided by the CESTAT, Ahmedabad vide Order No. A/11985/2014 dated 14.11.2014 pertaining to earlier period. In view of legal position, demand notice for the further period should not have been issued. By virtue of above order, they were eligible to avail Cenvat credit on invoices raised by M/s Turbo Multi Services Pvt Ltd for carrying out 'Erection, Commissioning and Installation' of machines at their buyer's premises.

(ii) That they are manufacturing and installing Gasifier plants at the site of the Client; that the comprehensive contracts with the customer, which includes activities from Designing, Engineering, Manufacturing, Transporting, Erection, Installation and Commissioning of 'Gasifier Plant' at the customer's premises; that they charged contracted amount to their customers including all the elements and excise duty is paid on the entire amount is recovered. There is a specific Clause in the contract that it is the responsibility of the Applicant to depute engineers for Erection, Installation and Commissioning of 'Gasifier Plant' free of cost.

(iii) That contract was entered into with their buyers for a lump sum amount and the sale price is inclusive of installation and commissioning charges; that they selected the agency to do this work and once the purchaser enters into an agreement for supply of the machine including the erection and commissioning charges, the responsibility for erection and commissioning is of the manufacturer. Therefore, they are not only selling machines but also providing the service of erection and commissioning. Once erection and commissioning cost is included, in the transaction value, the natural conclusion that would



emerge is that the processes undertaken at the buyer's premises are actually incidental to manufacturing activity undertaken in the manufacturer's premises. What has been sold in this case is the complete machine duly erected, commissioned, and operational. The incidental process of erection and commissioning being incidental to manufacture, has to be treated as continuation of the earlier process which started in the manufacturer's premises. It is also not disputed that appellants have paid the Central Excise duty on the entire value and have not claimed any deduction on account of installation and commissioning charges. In fact, no segregated amount stands arrived at in the contract towards installation or commissioning charges and relied upon following case laws:

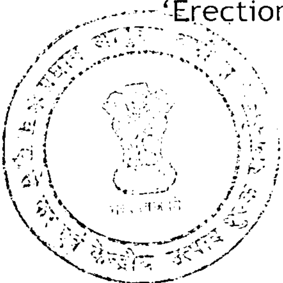
(a) Ultratech Cement Limited 2010 (260) ELT. 369 (Bom)
(b) Autoprint Machinery Mfr. Pvt. Limited -2010 (19) S.T.R. 428 (Tri-Chennai)
(c) Alidhara Taxspin Engineers -2010 (20) S.T.R. 315 (Tri Ahmd.)
(d) Gujarat State Petronet Limited-2010 (20) S. T.R. 366 (Tri. Ahmd.)
(e) Veena Industries Limited- 2012 (28) S. T.R. 14 7 (Tri-Ahmd.)

(iv) The definition of input service under Rule 2(l) of CCR, 2004 does not required that service has to be rendered at the factory of the manufacturer for the purpose of eligibility for service tax credit. Thus, Cenvat credit on 'input service' is also admissible if the same is availed beyond the 'place of removal', provided such service is availed in relation to manufacture of final product.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing with prior consent of the Appellant. Shri Chetan Dethariya, Chartered Accountant appeared on behalf of the Appellant for virtual hearing, who reiterated submission of appeal memorandum and requested to allow their appeal.

5. I have carefully gone through the facts of the case, the impugned order and ground of appeal submitted by the appellant in the memorandum of appeal. The issue to be decided is whether the Cenvat credit of Rs. 31,35,732/- availed by the Appellant on 'Erection, Commissioning and Installation Service' 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 paid on 'Erection, Commissioning and Installation Service' in respect of installation of their final product at their buyer's premises. The adjudicating authority disallowed said Cenvat credit on the grounds that 'Erection, Commissioning and Installation service' availed by the Appellant was

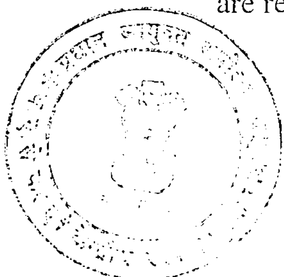


post manufacturing activity and was not used in or in relation to manufacture of final products and hence, it was not covered under the definition of 'input service' in terms of Rule 2(l) of CCR, 2004.

6.1 The Appellant has contended that they entered into contract with their buyers for sale of 'Gasifier Plant' for a lump sum amount and the sale price is inclusive of installation and commissioning charges; that it was their responsibility for erection and commissioning of 'Gasifier Plant'; that once erection and commissioning cost is included in the transaction value, the processes undertaken at the buyer's premises were incidental to manufacturing activity undertaken in the manufacturer's premises; that incidental process of erection and commissioning being incidental to manufacture, it has to be treated as continuation of the earlier process which started in the manufacturer's premises; that they have paid Central Excise duty on the entire value and have not claimed any deduction on account of installation and commissioning charges and relied upon various case laws including CESTAT, Ahmedabad's Order dated 14.11.2014 passed in their own case.

7. I find that the issue involved in the present case is stand decided by the Hon'ble CESTAT, Ahmedabad vide Order No. A/11982/2014 dated 14.11.2014 passed in Appellant's own case pertaining to earlier period from Nov, 2007 to March, 2011. The Hon'ble Tribunal has held that,

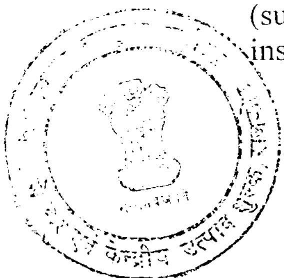
> "4.2 It is observed from the case records that appellant enters into comprehensive contracts with the customers which includes activities from Designing, Engineering, Manufacturing, Transporting to Erection, Installation and Commissioning of 'Gasifier Plant' to the customer's premises. A lump sum amount as contracted is charged by the appellant from the customers including all the elements and excise duty is paid on the entire amount so recovered. There is a specific Clause in the contract that it is the responsibility of the appellant to depute engineers for Erection, Installation and Commissioning of 'Gasifier Plant' free of cost. There is no evidence on record that any extra amount is recovered by the appellant from the customer. Therefore, reliance placed by the first appellate authority, in Para 8 of the OIA, dated 6-6-2012, upon some general clauses printed on the invoices is not proper. First appellate authority has also observed in this Para that appellant has failed to submit the relevant contracts whereas Para 2.6 of the OIO, dated 15-12-2011, containing defence submissions of the appellant, clearly convey that such contract copies were provided to the lower authorities. In view of the express clauses of the contracts and in the absence of any documentary evidence that any extra amount is recovered for erection, installation and commissioning, it has to be held that entire transaction from the designing to manufacturing and installation is one. In this regard the observation made by this Bench, in Paras 4.1 and 4.2 of the case law of *CCE, Vapi* v. *Alidhara Textool Engineers Pvt. Limited* [2009 (14) S.T.R. 305 (Tri.-Ahmd.) = 2009 (239) E.L.T. 334 (Tri.-Ahmd.)], are very relevant and are reproduced below :-



"4.1 In this case erection and commissioning charges have been included in the cost of the machines sold. The appellants have selected the agency to do this work and once the purchaser enters into an agreement for supply of the machine including the erection and commissioning charges, the responsibility for erection and commissioning is of the manufacturer. Therefore, what is happening in this case is that the supplier of the machine is not only selling the machine but is also providing the service of erection and commissioning. Once erection and commissioning cost is included, in the transaction value, the natural conclusion that would emerge is that the processes undertaken in the buyer's premises are actually incidental to manufacturing activity undertaken in the manufacturer's premises. What has been sold in this case is the complete machine duly erected and commissioned and operational. The incidental process of erection and commissioning being incidental to manufacture, has to be treated as continuation of the earlier process which started in the manufacturer's premises. In this case even though the position of the machine in CKD condition gets transferred to the buyer when it is removed from the factory as per the contract, the question to be examined is whether such a service is related directly or indirectly to the manufacture of their goods in question. As already mentioned by me earlier, the process of erection and commissioning at the buyer's premises is incidental to the manufacture of the machine and therefore, the erection and commissioning services provided also can be said to be in relation to the manufacture, since the process in this case is complete only after the erection and commissioning takes place. As rightly pointed out by the Learned Advocate, Rule 2(l) of Cenvat Credit Rules does not require that service has to be rendered at the factory of the manufacturer for the purpose of eligibility for Service Tax credit. Therefore, the stand of the revenue that since the service was provided at the buyer's premises credit is not admissible cannot be accepted. What has to be examined is whether the service provided is in or in relation to manufacture.

4.2 Another point that has been relied upon by the revenue is that Service Tax credit is not admissible since the erection and commissioning activity is a post removal/post manufacturing activity. I have already mentioned earlier that in the case of Service Tax what is required to be examined is whether the service has been used in or in relation to manufacture directly or indirectly. While the eligibility for Service Tax credit on outward transport services is to be examined in connection with place of removal, there is no such requirement as regards other services. In respect of other services what is to be examined is whether they can be held to be rendered in or in relation to manufacture directly or indirectly. Once the whole transaction of manufacture of the machine, erection and commissioning and supply is treated as one transaction and excise duty is charged on the whole transaction value, services rendered for the purpose of completion of this whole transaction has to be treated to have been rendered in or in relation to the manufacture."

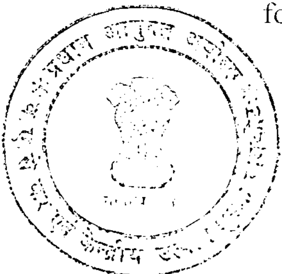
4.3 The above case law was also followed by Chennai Bench in the case of *Autoprint Machinery Manufacturer Pvt. Limited* v. *CCE, Coimbatore* [2010 (19) S.T.R. 428 (Tri.-Chennai)] and by this bench in the case of *Alidhara Texspin Engineers* v. *CCE, Vapi* (supra). It is observed from the decision of this Bench in the case of *CCE, Vapi* v. *Alidhara Textool Engineers Pvt. Limited* (supra) that in a contract of composite nature the activities of erection and installation have to be considered as an activity in relation to manufacture. It is



not a case for interpreting the inclusive part of the definition given in Rule 2(l) of the Cenvat Credit Rules, 2004 but the present case of the appellant is covered by the main body of definition of 'Input Service' given in Rule 2(l) of the Cenvat Credit Rules, 2004. This part of the definition has not undergone any change either before 1-4-2008 or after 1-4-2008. Case law of *CCE, Ahmedabad-II* v. *Cadila Healthcare Limited* (supra) relied upon by the Revenue rather fortifies the above view. In Para 5.1(xix) Hon'ble Gujarat High Court has observed as follows :-

> "5.1(xix) In the facts of the present case the assessee is engaged in the manufacture of medicaments. By their very nature, the drugs manufactured by the assessee prior to final production thereof are required to be subjected to technical testing and analysis before entering into commercial production. For such purpose, the products are manufactured in small trial batches and thereafter, sent for testing and analysis purpose. Undisputedly, when the goods are removed for testing and analysis, excise duty has been paid thereon. Since production of medicaments are subject to approval by the regulatory authorities of various countries to which such drugs are exported, the assessee is required to obtain approval before starting commercial production. Thus the final product can be manufactured only upon approval of the regulatory authority after the product undergoes technical testing and analysis. Under the circumstances, it cannot be gainsaid that the activity of testing and analysis of the trial batches is in relation to the manufacture of final product. Unless such testing and analysis is carried out, it would not be possible to produce the final product inasmuch as unless the trial batches are sent for testing and analysis and approval is obtained, the final product cannot be manufactured. Under the circumstances, the services availed in respect of technical testing and analysis services are directly related to the manufacture of the final product. The contention of the department that unless the goods have reached the commercial production stage, Cenvat credit is not admissible in respect of the technical testing and analysis services availed in respect of the product at trial production stage, does not merit acceptance. Besides, the learned counsel for the assessee is justified in contending that when the product which is sent for testing and analysis is subject to payment of excise duty, the respondents cannot be heard to contend that Cenvat credit is not admissible on the Service Tax paid in respect of such service. Under the circumstances, the Tribunal was justified in holding that the assessee was entitled to avail of Cenvat credit in relation to Service Tax paid in relation to technical testing and analysis services availed by it."

In the above case law certain services availed by M/s. Cadila Healthcare Limited with respect to Research and Development activities outside the factory were also held to be admissible for Cenvat credit when the drugs were not even commercially manufactured. In the light of the above observations I do not find any justification in taking a different view than what is taken by this bench in the case of *CCE, Vapi* v. *Alidhara Textool Engineers Pvt. Limited.* Appellant's case is thus covered by the main body of the definition of 'Input Services' and it has to be held that services availed by the appellant are in relation to the manufacturing of the excisable goods. The case laws of *Quality Steel Tubes (P) Limited* v. *CCE, UP* (supra), *Thermax Limited* v. *CCE* (supra) and *Maruti Suzuki Ltd.* v. *CCE, Delhi-III* (supra), relied upon by the learned AR are not applicable to the facts and circumstances of the present proceedings as the same were delivered either with respect to eligibility of Cenvat credit as 'Inputs' or for determining assessable value under Section 4 of the Central Excise Act,



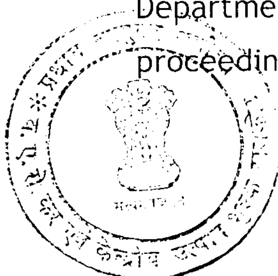
> 1944 and were not with respect to eligibility of Cenvat credit on 'Input Services'. It is now a settled legal position that Cenvat credit on 'Input Services' is also admissible if the same are availed beyond the 'place of removal' provided such services are availed in relation to manufacture. On merits case goes in favour of the appellant and against the Revenue.
>
> 5. Appellant has also raised the issue of time bar. Adjudicating authority in Para 3.3 of OIO, dated 15-12-2011 has observed that before 1-4-2008 the wording used in the definition of 'Input Service' was 'from the place of removal'. Further, the issue was contentious one and was decided by this bench in January 2009 in the case of *CCE, Vapi* v. *Alidhara Textool Engineers Pvt. Limited* (supra) and no evidence is brought to the notice of the bench that ratio of this case law has been reversed. Reliance placed on this case law decided by this Bench by other CESTAT benches, also fortifies the view that the interpretation made by the appellant could also be possible. In view of the facts and circumstances of this case, extended period cannot be invoked and accordingly, there is no point in imposition of penalties upon the appellant.
>
> 6. Based upon the above observations appeal filed by the appellant is allowed on merits as well as on time bar."

7.1 Though period involved in the present case is from May, 2013 to October, 2015, I find that there is no material change in the definition of 'input service' provided under Rule 2(l) of CCR, 2004, so as to warrant a different view. I, therefore, hold that the Appellant's case is covered by the Hon'ble CESTAT's Order *supra* and they have correctly availed Cenvat credit of service tax paid on 'Erection, Commissioning and Installation Service'.

8. I find that the Appellant had relied upon CESTAT's Order *supra* passed in their own case during adjudication proceedings. However, the adjudicating authority discarded their contention by observing that,

> "9.2 I find from the case records that as the Department has withdrawn the Tax Appeal on monetary ground and not on merits, therefore, the precedence of the CESTAT Order No. A/11982/2014 dated 14.11.2014 which has been challenged by the Department cannot be taken. Thus, the discussion on merits is still open".

8.1 I do not agree with the findings of the adjudicating authority. Once the Department withdrew the Tax Appeal from the Hon'ble Gujarat High Court, the CESTAT's Order dated 14.11.2014 attained finality. Even though the Tax Appeal was withdrawn on monetary limit, fact remains that CESTAT's Order has not been reversed or stayed by higher appellate authority and consequently binding on the adjudicating authority. The judicial discipline required the adjudicating authority to have followed the CESTAT's Order *supra* in letter and spirit. It is pertinent to mention that when any appeal is withdrawn 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



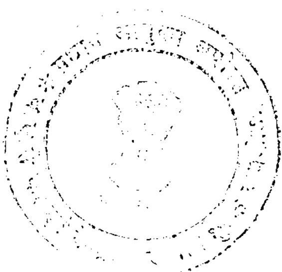
merit disregarding binding precedent. The adjudicating authority may distinguished relied upon decision, if there is change in facts or change in legal position. However, the adjudicating authority has not brought on record as to how said CESTAT's Order dated 14.11.2014 is not applicable to the facts 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 a 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.

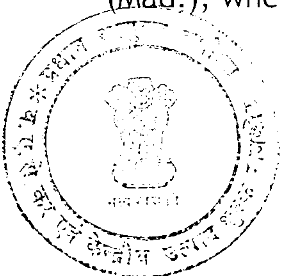


9. Counsel for the petitioners brought to our notice the decision of the Apex Court in the case of *Union of India* v. *Kamlakshi Finance Corporation Ltd.* reported in 1991 (55) E.L.T. 433 (S.C.) in which while approving the criticism of the High Court of the Revenue Authorities not following the binding 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 assessees 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 confirmation of service tax demand totally amounting to Rs. 31,35,732/- is not sustainable and required to be set aside and I do so. Since, demand is set aside, recovery of interest and penalty of Rs. 31,35,732/-imposed under Section 78 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 is disposed off as above.

(GOPI NATH)
Commissioner(Appeals)

Attested

(V.T.SHAH)
Superintendent(Appeals)

By R.P.A.D.

To, M/s Radhe Renewable Energy Development Pvt Ltd, Plot No. 2621/22, Lodhika GIDC, Village Metoda, Rajkot.	सेवा में, मे॰ राधे रिन्यूएबल एनर्जि डेव्लपमेंट प्राइवेट लिमिटेड, प्लॉट न॰ 2621/22, लोधीका जीआईडीसी, मेटोडा, राजकोट।

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, राजकोट-II मण्डल, राजकोट को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।