



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

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142

Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/5 /EA2/GDM/2017	मूल आदेश सं / O.I.O. No. 09 &10/AC/2016-17	दिनांक / Date 23/02/2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**KCH-EXCUS-000-APP-011-2018-19**

आदेश का दिनांक / Date of Order:	<b>10.05.2018</b>	जारी करने की तारीख / Date of issue:	<b>16.05.2018</b>
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Passed by **Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री सुनील कुमार सिंह, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीनगर, को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है..

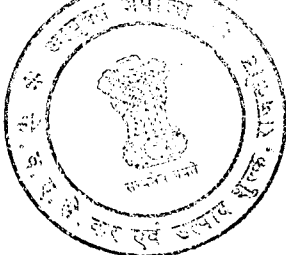
In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar, has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम/ भावनगर। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham/ Bhavnagar :  
घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-  
**M/s Sumilon Industries Ltd., Plot No. 43 & 46/2 N.H. 8-A, Near PSL, Varsana., Dist : Kutch. -370 220**

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 बताया 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 असावा अहमदाबाद- 380016 को की जानी चाहिए।/

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



- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- 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 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, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- 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, 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 For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति 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 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.



**ORDER IN APPEAL**

The subject appeal no. 5/EA2/GDM/2017 is filed by Assistant Commissioner, Central Excise Division, Gandhidham (hereinafter referred to as 'the appellant' or 'the department' ) against Order in Original No. 09 & 10/AC/2016-17 dated 23.02.2017 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Central Excise, Division: Gandhidham (Kutch) (hereinafter referred to as 'adjudicating authority') in the case of M/s Sumilon Industries Limited, Plot No. 43 & 46/2, N. H. 8-A, Near PSL, Varsana, Tal-Anjar, Kutch (hereinafter referred to as 'the respondent').

2. The facts of the case in brief are that the respondent is engaged in the manufacture of Plain Polyester Film CETSH No.3920.6931, Polyester Film-Metalized CETSH No. 39219093, Epoxy Resin CETSH No. 39073010 etc. of the Central Excise Tariff Act, 1985 (hereinafter referred as CETA-1985) and availing benefit of Cenvat Credit under Cenvat Credit Rules, 2004. During the period from April-2012 to December-2013, the respondent had availed the Cenvat credit of Service Tax of Rs.12,47,133/-, which was paid by them on input services on the basis of Bills/ invoices issued by the service providers in the name of M/s Sumilon Industries Ltd., Delhi Gate, Vairangini Wadi, Surat. Further, the said invoices/ bills issued by the service providers were under the category of 'Management, Repair and Services' of wind mills which were installed for generation of electricity at various location / site, viz. Village-Sikarpur Varshamedi (Maliya Miyana) which were far away from the respondent's registered factory premises as the registered factory premises of the respondent is located at Village-Varsana (Anjar). The respondent had paid the wrongly availed cenvat credit of Rs.12,47,133/- through PLA on 31.03.2014 under protest. Further, the respondent had also availed cenvat credit of service tax of Rs.1,90,654/-, paid on the said service, during January, 2014 to June-2014. However, they reversed the said amount of Rs.1,9,654/- in the month of July-2014, under protest.

3. The electricity generated through the said wind mills was sold out to Paschim Gujarat Vij Company Ltd. (PGVCL), which is a commercial & Trading activity of the respondent and there is no nexus between the said wind mills and manufacturing activity of the respondent's manufacturing unit at Village-Varsana (Anjar). It appeared from the definition of the



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input service that the service in question had never been used in the process of manufacture of final products. Under the circumstance, the input service has no nexus with the final products and hence, it was not valid input service for availment of credit thereof.

4. In view of the above, a show cause notice was issued to the respondent by Joint Commissioner, Central Excise, Gandhidham for recovery of wrongly availed cenvat credit of Rs.14,37,787/- (i.e. Rs.12,47,133/- for the period from April-12 to Dec-13 + Rs.1,90,654/- for the period from Jan-14 to June-14) alongwith interest. Penal action was also proposed in the said SCN.

5. Another show cause notice was issued to the respondent by the Assistant Commissioner, Circle-I, Audit-III, Gandhidham (at Rajkot) for the period January-2014 to December-2014 for the amount Rs.1,90,654/- in the same issue. They had paid the amount of Rs.1,90,654/- on 31.03.2015 under protest.

6. These show cause notices were decided vide impugned order wherein the adjudicating authority has dropped the demand.

7. Being aggrieved with the impugned order, the department filed appeal on the following grounds:

- (i) The adjudicating authority has erred in coming to the conclusion that the law laid down by the Hon'ble High Court in the case of CCE & Cus. Aurangabad vs Endurance Technology Pvt. Ltd.-2015 (6) TMI 82 is squarely applicable. Further, the aforesaid decision has been accepted by the department on monetary grounds.
- (ii) The consumption of electricity by the respondent in their factory premises and the adjustment given by the PGVCL in the form of credit of amount to offset the power received from their windmill farm unit at village -Sikarpur/ Varshamedia (Maliya Miyanan) by way of compensation is another independent transaction and is in no way related to the availment of input credit / input service credit under Cenvat Credit Rules, 2004.
- (iii) The term 'input service' as explained under Rule 2(I)(ii) of Cenvat Credit Rules, 2004 stipulated that any input service used by the manufacture, whether directly or indirectly, in or in relation to the

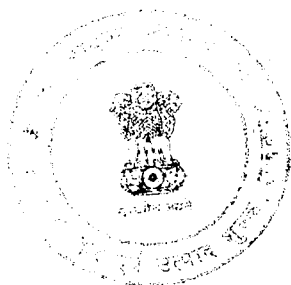
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manufacture of final product and clearance of final products from the place of removal applies to the input services availed by the manufacturer. In the present case, the manufacture i.e. the respondent is having manufacturing unit at Vill-Varsana (Anjar) wherein they have not used any services in the factory at Vill-Varsana (Anjar) in or in relation to manufacture of final product nor they have used in relation to setting up, modernization, renovation or repairs of a factory etc. at their factory premises so as to claim any input service credit. The respondent having adjustment of electricity in the form of credit with the PGVCL cannot be treated as input services rendered in or in relation to manufacture of final products under the Cenvat Credit Rules, 2004 and are in no way entitled for availing the service tax credit pertaining to maintenance of windmill farm unit at Jamnagar. The appellant relied upon the case laws passed in the case of (i) M/s Ellora Times Ltd. vs CCE, Rajkot-2009 (13) STR 168 (Tri-Ahmd), (ii) M/s Rajhans Metals (P) Ltd. vs CCE, Rajkot-2007 (8) STR 498 (Tri-Ahmd) and (iii) M/s Atul Auto Ltd. vs CCE, Rajkot-2009 (237).

- (iv) Further, the cenvat credit is not admissible to the respondent as the invoices raised by the service providers, on which the respondent has taken credit, are not in the name of the respondent, but in the name of M/s Sumilon Industries Ltd.; Delhi Gate, Vairangini Wadi, Surat.

8. The respondent filed cross-objections dated 9.10.2017 against the department appeal, wherein they have contended that:

- (i) The Bombay High Court has decided the issue on merit in the case of CCE, Aurangabad vs Endurance Technology Pvt. Ltd.-2015 (6) TMI 82. Therefore, whether the department has accepted the said order on monetary limit or otherwise has no relevancy & thus the ground of appeal of the department is not proper & not acceptable.
- (ii) The selling of extra power generated & sold to the PGVCL has no relevancy with the cenvat credit admissibility to them. On the contrary it is a help to the nation to supply power to needy person by GEB & department should appreciate their action in helping nation. It appears that the department has filed the appeal just for filing the same and throwing the burden on the appellate authority.



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Thus the ground of appeal of revenue is irrelevant and not acceptable.


- (iii) Department has disputed that the invoice raised by the service provider on which they took credit bears the address, Sumilon Industries Ltd., Delhi Gate, Vairagini Wadi, Surat. This address is of their head office, which is situated at Surat. There is plethora of judgement over the issue that character of service tax paid & receipt & consumption thereof in the windmill is not in dispute & in such cases cenvat credit availed cannot be denied. They placed reliance upon the following case laws:

- (1) Essar Oil Ltd. vs CCE-2014 (209) ELT 336
- (2) CCE vs Chemplat Scanner 2007 (S) STR 18

- (iv) In view of this, the respondent requested to dismiss their appeal by setting aside the impugned order.

9. A personal hearing in the matter was fixed on 22.03.2018. However, the respondent vide letter dated 17.03.18 requested for adjournment. Another personal hearing in the matter was fixed on 06.04.2018. The respondent vide letter dated 05.04.2018 again requested for adjournment. Another personal hearing in the matter was fixed on 01.05.2018 and Shri Navin Gheewala, consultant appeared on behalf of the respondent. He reiterated the defence submitted vide cross objection and requested to set aside the appeal filed. He further pleaded that SCN did not have any content similar to the point no. 2 and 3 of grounds of appeal filed and hence travelled beyond SCN itself.

10. I have carefully gone through the facts of the case, grounds of appeal filed by the department and the cross-objection filed by the respondent as well as defence put forth by the consultant at the time of personal hearing. The issue under consideration in this appeals is whether Cenvat credit of service tax paid under the category of "Management, Repair and Services" of windmills, installed away from the factory premises, is admissible to a manufacturer of dutiable final product in terms of Rule 2(1) of Cenvat Credit Rules, 2004, who manufactured and clears goods from his factory on payment of duty. It is observed that, during the period from April-2012 to December-2014, the respondent had taken the cenvat credit of service tax amount of Rs.



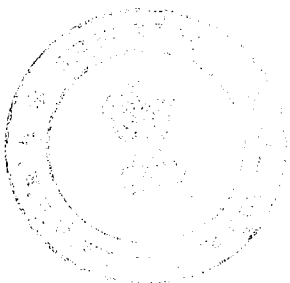
(C) **भारत सरकार को पुनरीक्षण आवेदन :**

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक 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:

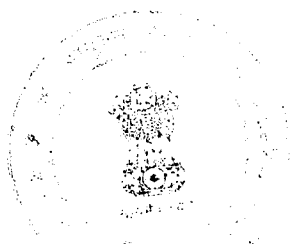
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान 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 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) 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 समयाविधि 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 पंजी 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 various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed 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 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 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)



14,37,787/-, under the category 'management , repair and services; of windmill, on the basis of invoices raised by various service providers who have provided services for windmill installed for generation of electricity at various locations / sites, viz. Village -Sikarpur/Varshmedi (Maliya Miyana) which are far away from the factory premises. It has been alleged in the show cause notice that the services were not used directly or indirectly in the manufacture of the final product in the factory premises. Further, the electricity generated through the said wind mills was sold out to Paschim Gujarat Vij Company Ltd. (PGVCL), which is a commercial and trading activity of the respondent and there is no nexus between the said windmills and manufacturing activity of the respondent's manufacturing unit at Varsana (Anjar). Further, credit was availed on the strength of the invoices issued by the service providers in the name of M/s Sumilon Industries Ltd., Delhi Gate, Vairangini Wadi, Surat. The adjudicating authority in the impugned order has allowed the credit holding that the services availed by the respondent at Village - Sikarpur/Varshmedi (Maliya Miyana) and credit of the Service Tax paid for such service was admissible at unit situated at Varsana (Anjar) in view of the judgement of Hon'ble High Court of Bombay in the case of CCE vs Endurance Technology (P) Ltd.-2015-TIOL-1371-HC-MUM-ST.

11. I find that the issue is no more res-integra in view of catena of judgments wherein it has been held that the services were used for installation and erection of Windmills at remote location to generate electricity. Since, the electricity generated through these Windmills were used in or in relation to manufacture of final products and hence said services are covered under the provision of Rule 2 (I) of Cenvat Credit Rules, 2004. The Larger Bench of Tribunal, Ahmedabad in the case of Parry Engg. & Electronics Pvt. Ltd. vs CCE & ST, Ahmedabad-I, II & III as reported at 2015 (40) S.T.R. 243 (Tri-LB) has answer the reference in favour of the parties. I find that the point of reference before Hon'ble Larger Bench of Tribunal was that whether an assessee is eligible to avail Cenvat credit of an amount paid as Service Tax by service provider in respect of installation and erection, maintenance or any other services rendered at Windmills, which are located away from the factory premises and the electricity generated out of such Windmills is consumed at the factory premises after such power is put through the common grid. The LB of Tribunal by relying on the decision of Hon'ble Bombay High Court, as reported at 2015-TIOL-1371-HC-MUM-ST [2017(52) S.T.R.

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361(Bom.)], has held that Cenvat credit is eligible on installation, erection, maintenance or repair services of Windmills, located away from the factory. Hon'ble Bombay High Court at para 5 has held that:

"5. On perusal of these Rules, it becomes clear that the management, maintenance and repair of windmills installed by the respondents is input service as defined by clause "I" of Rule 2. Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by manufacture of final product would be susceptible to CENVAT credit. Rule does not say that input service received by a manufacturer must be received at the factory premises."

12. It is further observed that Windmills are installed at remote places far away from the factory as these can be installed only at a place where there is heavy wind available. It is pertinent to note that due the above reasons, the definition of Capital Goods given under Cenvat Credit Rules, 2004 was amended vide Notification No. 03/2011-CE (NT) dated 01.03.2011 effective from 01.04.2011 defining that 'Capital Goods' includes the goods used outside the factory for manufacture of the final product for generation of electricity for captive use within the factory. Since, the Windmills which are used for generation of electricity for captive use within the factory, service used for installation, erection and maintenance or repair of the same is also eligible as input services.

13. So, far as nexus of generation of electricity with manufacturing is concerned, it is pertinent to note that electricity generated at Wind Mill is wheeled through Paschim Gujarat Vij Company Ltd. (PGVCL) used to give credit of units generated after wheeling in the electricity bill charged from the respondent. In electricity bills, unit generated after wheeling is shown separately. Since the electricity generated at Wind Mill is used for manufacturing of the final products and hence, said services are well covered in the definition of input services. Hence, I find that the cenvat credit is admissible to the respondent to this extent.

14. Accordingly, I hold that the adjudicating authority has correctly held that the respondent is eligible to avail the Cenvat credit of service tax in respect of 'input service' received for repair and maintenance of windmill situated outside the factory premises.

15. However, it is observed that the department in its appeal has stated that the electricity generated through the said windmills was sold

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out to Paschim Gujarat Vij Company Ltd. (PGVCL) which is a commercial & trading activity of the respondent. I find force in the contention of the department because electricity being non-excisable commodity, its outright sale is a commercial and trading activity attracting nil rate of duty. Further, the respondent in its cross-objection has also admitted they had generated extra power and sold the goods to PGVCL. Hence, Cenvat credit to this extent is not admissible to the respondent as the same was availed by them for services used against the generation of electricity which were sold to the PGVCL. Hence, I hold that the Cenvat credit availed by respondent for services used against the generation of electricity which were sold to PGVCL is required to be recovered from them with interest and penalty. Since, the bifurcation of quantum of electricity sold to PGVCL is not available with this office, hence I remand the case back to adjudicating authority only for limited purpose of re-quantification of generation of electricity which were sold to the PGVCL on commercial basis and to recovered the inadmissible Cenvat credit with interest availed by respondent for services used against such generation of electricity. I also hold that the respondent is also liable to pay penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of the CEA, 1944 which would be equal to Cenvat credit to be recovered from them after re-quantification by adjudicating authority. The adjudicating authority is directed to complete the exercise of re-quantification at the earliest. Further, the respondent is also directed to submit all the documents to adjudicating authority related to sale of electricity for commercial purpose and also electricity used for manufacturing of dutiable final products and was wheeled through PGVCL who used to gave credit of units generated after wheeling in the electricity bill charged from the respondent.

16. Regarding availment of Cenvat credit on the strength of invoices issued by service providers in the name of M/s Sumilon Industries Ltd. Delhi Gate, Vairangini Wadi, Surat, I find that the respondent in its cross objection has stated that this address is of there head office situated at Surat and further the character of service tax paid & receipt & consumption thereof in the windmill is not in dispute and in such cases credit availed cannot be denied as held in plethora of judgments. I find there is force in the argument put forth by the respondent that if there is no dispute on service tax paid, receipt & consumption thereof in the windmill, the Cenvat credit is not deniable merely on the ground that the

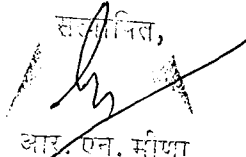


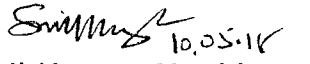
*Sumi*

invoice is issued in the name and address of head office instead of assessee's factory address. My findings are supported by following case laws apart from the case laws cited by respondent:

- (i) Bridal Jewellery MFG Co. vs CCE, Noida as reported at 2018(10) G.S.T.L. 70 (Tri.-All)
- (ii) Madhya Pradesh Consultancy Organization Ltd. vs CCE, Bhopal as reported at 2017(4) G.S.T.L. 100 (Tri-Del)
- (iii) Hindustan Zinc Ltd. vs CCE, Jaipur-II as reported at 2013(291) E.L.T 464 (Tri-Del)

17. In view of the foregoing discussion and findings, I partially allow the appeal filed by the department which stands disposed off in above terms.

सुनील,   
आर. एन. मीणा  
अधीक्षक (अपील्स)

  
(Sunil Kumar Singh)  
Commissioner (Appeals)/  
Commissioner,  
CGST & Central Excise,  
Gandhinagar

F. No.V2/5/EA2/GDM/2017

Date: 10.05.2018

To,

The Commissioner, CGST & Central Excise,  
Kutch (Gandhidham)  
"Central Excise Bhavan", Plot No.82, Sector-8,  
Opp. Ramlila Maidan, Gandhidham.

Copy To:

- (1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
- (2) The Commissioner (Appeals), CGST & Central Excise, Rajkot
- (3) M/s Sumilon Industries Ltd., Plot No.43 & 46/2, N. H. 8-A, Near PSL, Varsana, Anjar, Gandhidham.
- (4) The Assistant Commissioner, CGST & C. Ex., Division \_\_\_\_\_
- (5) The Assistant Commissioner (Systems), CGST, Rajkot.
- (6) The Superintendent, CGST & Central Excise AR-\_\_\_\_\_.
- (7) PA to Commissioner of CGST & Central Excise, Gandhinagar.
- (8) Guard file.

