::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय 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: commrappl3-cexamd@nic.in

रजिस्टर्डडाकए.डी.द्वारा DIN-20210864SX0000023459

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/6/EA2/BVR/2020	3/2020-21	14/09/2020

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

BHV-EXCUS-000-APP-004-2021

आदेश का दिनांक / Date of Order:	30.07.2021	जारी करने की तारीख / Date of issue:	03.08.2021

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar,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 theAppellant&Respondent :-

M/s. Makson Pharmaceuticals (I) Pvt Ltd, Rajkot Highway, Surendranagar.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके मे 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा 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 रजिस्ट्रार के नाम से किसी भी सार्वजिनक 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 the Tribunal is situated. 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 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 रजिस्ट्रार के नाम से किसी भी सार्वजिनक 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 is more 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 नियमावली, 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 अर्जी एवं अपील को लागू नहीं होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार 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 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 आदेशो 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 निम्न पड़ी कार्य में 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 umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scripteria 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 ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते है। /
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 ::

The Assistant Commissioner, CGST Division, Surendranagar has filed Appeal No. V2/6/EA2/BVR/2020 on behalf of the Commissioner, Central GST & Central Excise, Bhavnagar (hereinafter referred to as "Appellant Department") in pursuance of the direction and authorization issued under sub-section(2) of Section 35E of the Central Excise Act,1944 (hereinafter referred to as 'Act') against Order-in-Original No. 3/2020-21 dated 14.9.2020 (hereinafter referred to as 'impugned order') passed by the Asst. Commissioner, CGST Division, Surendranagar (*hereinafter referred to as* 'adjudicating authority') in the case of M/s Makson Pharmaceuticals (I) Pvt Ltd, Surendranagar (*hereinafter referred to as* 'Respondent')

2. The facts of the case, in brief, which are relevant for the purpose of present proceedings, are that the Respondent was engaged in the manufacture of Sugar Confectionery falling under CETSH 17049020 of the Central Excise Tariff Act, 1985 and was registered with Central Excise Department. During the course of audit of the records of the Respondent by the officers of the Department, it was observed that they had availed Cenvat credit of service tax paid for maintenance and repair service and security service of Wind Mills during the period from July, 2016 to June, 2017. It was observed that four windmills were installed for generation of electricity at a locations far away from the factory premises of the Respondent. It was further observed that electricity generated at Windmills were not used by them at their factory but was sold to Gujarat Urja Vikas Nigam Ltd (GUVNL), Paschim Gujarat Vidyut Company Ltd (PGVCL) and to Madhya Pradesh Power Ltd (MPPL) by transferring to their grids as per agreements. The Respondent was receiving payment for electricity so generated as per prescribed rate. It appeared that services availed at Windmills have no connection with goods manufactured at their factory, whether directly or indirectly and hence, said services were not covered under the definition of 'input service' in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR, 2004').

2.1 It was further observed by the Audit that sale of electricity is an exempted service in terms of Rule 2(e) of CCR, 2004 and the Respondent had availed and utilised common input service meant for dutiable as well as exempted service without maintaining separate records as envisaged under

Rule 6 of CCR, 2004 and hence, the Respondent was required to reverse 7% of value of exempted service in terms of Rule 6 of CCR, 2004.

2.2 Based on audit observations, the Show Cause Notice No. CGST. Audit/CR-V/CET/AC-14/2019-20 dated 21.10.2019 was issued to the Respondent calling them, inter alia, to show cause as to why Cenvat credit of service tax for an amount of Rs. 13,41,082/- should not be demanded and recovered from them along with interest under Rule 14 of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR, 2004') and why Cenvat credit of Rs. 2,63,637/- used for providing exempt service should not be recovered from them under Rule 14 of CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944. The SCN also proposed penalty under Rule 15(2) of CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

2.3 The above Show Cause Notice was adjudicated by the Adjudicating Authority vide the impugned order who dropped the demand of Cenvat credit of Rs. 13,41,082/-; ordered to recover Cenvat credit of Rs. 1,89,219/- along with interest under Rule 14 of CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944 and dropped the remaining demand of Rs. 74,418/-. The impugned order imposed penalty of Rs. 1,89,219/- under Rule 15(2) ibid read with Section 11AC of the Central Excise Act, 1944.

3. The above order was reviewed by the Appellant Department and appeal has been filed on the grounds that,

(i) The adjudicating authority erred in dropping the demand of Rs. 13,41,082/- vide the impugned order.

(ii) The adjudicating authority has erred in holding that the Respondent had availed services of maintenance and repair and security of wind mills and had availed CENVAT Credit of Service Tax paid on such services correctly. It is also mentioned in the impugned order that the electricity was generated at the windmill which was far away from the factory. The electricity so generated was transmitted to the electricity authorities, who in turn, supplied electricity at the manufacturing unit of the Respondent, as per agreed formulae. The generated electricity was utilized at the factory for manufacture of the final products of the Respondent. As per the adjudicating authority, wind mills were installed

at a far away location from the factory where repair and maintenance service was availed but there is no bar in availing services beyond factory premises. Further, since the electricity generated from wind mills were exclusively utilized by the Respondent in their factory and sold by them, and therefore, the maintenance and repair or management and security service availed by them has nexus with the manufacturing activities of the Respondent.

(iii) The Adjudicating Authority has erred to appreciate the fact as much as the electricity was generated at the wind mill located at different places viz., Shikarput (Kutch District), Kadoli (Navsari), Visavada (Porbandar District), Navadara (Jamnagar District) far away from the Respondent's factory premises at Surendranagar, which was not used by them at the factory, but was sold out to M/s GUVNL or PGVCL or MPPL electricity board and was transferred in their grid as per their agreements. This activity is clearly a trading activity having no nexus whatsoever with the Respondent's manufacturing activity. Further, the wind mill farm is neither the part of Respondent's registered manufacturing premises, nor has any nexus with the manufacturing activity in the premises of the Respondent. Moreover, the electricity generated in the wind farm is not delivered at the manufacturing premises as such. Accordingly, dropping the demand of Rs. 13,41,082/- against wrongful availment of CENVAT Credit by the Adjudicating Authority is not correct, legal and proper. Reliance is placed on the following case laws:

(a) Rajhans Metals Pvt. Ltd - 2007 (8) STR 498
(b) Ellora Times Ltd - 2009 (235) ELT 661
(c) Atul Auto Ltd - 2009 (237) ELT 102

4. Respondent filed cross objection vide letter dated 18.9.2020, *inter alia*, contending that,

(i) The adjudicating authority correctly dropped the demand because grounds of issuance of SCN was very vague, presumptuous, unintelligible and unsustainable. The entire SCN was issued on the ground of consumption of electricity generated at the Wind Mills located/installed far away from the factory and no direct consumption of Electricity generated by Wind Mill in the manufacturing of the product. It is obvious that wind mills are always located far away from the factory where

maximum electricity can be generated from wind, no one prefer to install wind mill where minimum electricity can be generated (especially in the area like Surendranagar where our factory is located)due to less wind. Further, no one can shift entire factory to the place where wind mill installed.

(ii) It is a fact that the generation of electricity is taking place at wind mill at a place away from the factory and the electricity so generated, is wheeled to the electricity authorities, who in turn, supplied electricity at the manufacturing unit, as per agreed formulae, and that electricity was utilised at the factory for manufacturing of the final product, therefore SCN was issued merely on the assumption presumption basis and on mis-understanding of officer. In this case, the officer was of the opinion that if some wire and cable connected from wind mill to their factory then they allow the credit of wind mill, but they failed to understand that there is no any logic to pull wire and cable from 1000km away, when alternatives and technologies are available to use electricity generated through windmill located far away from the factory, therefore this SCN was very bad, very vague, presumptuous, unintelligible, and not sustainable and the adjudicating authority did justice by dropping the SCN No. CGST-Audit/CR-V/CE/AC14/19-20 dated 21.10.2019, accordingly appeal No. V2/6/EA2/BVR/2020 is required to be dismissed.

(iii) Moreover, the appeal filed on the date 30.12.2020 is also hit by limitation prescribed under Section 35 of the Central Excise Act, 1944. The last date with respect to securing various compliances (including filling of Appeal) under the Customs, Central Excise, and Service Tax laws, was extended due to COVID-19 pandemic, by virtue of the Taxation And Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, dated 29.09.2020 read with Notification dated 30.09.2020, issued by the Ministry of Finance CBIC does not apply to this case. The appeal is not filed within time limit hence, hit by time barred, needs to be dismissed.

5. Personal Hearing in the matter was conducted in virtual mode through video conferencing on 8.6.2021. Shri Wilson Christian, authorized person appeared on behalf of the Respondent and reiterated the submission made in

cross objection dated 4.6.2021.

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum, cross objection filed by the Respondent as well as oral submission made at the time of hearing. The issue to be decided in the present appeal is whether the Respondent had correctly availed Cenvat credit of service tax of Rs. 13,41,082/- paid on maintenance and repair service and security service of windmills or not.

7. I first take up the contention of the Respondent that the appeal filed by the Appellant Department is barred by limitation provided under Section 35 of the Act. I find that the impugned order was passed on 14.9.2020, which was received by the Appellant Department on 24.9.2020. The last date to make order under Section 35E(2) of the Act was within 3 months from the receipt of order as provided under Section 35E(3) of the Act i.e. on or before 24.12.2020. The appeal has been filed on 30.12.2020. However, as per Notification No. G.S.R. 601(E) dated 30.9.2020 issued under the provisions of Taxation And Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, time limit for filing appeal stand extended upto 31.12.2020. Hence, the appeal filed on 30.12.2020 is within the time limit extended vide Notification dated 30.9.2020 *supra*. The contention of the Respondent is, thus, not sustainable and hereby discarded.

8. Now, coming to merit of the case. On perusal of the records, I find that the Respondent had availed Cenvat credit of service tax for an amount of Rs. 13,41,082/- paid on maintenance and repair service and security service of Wind Mills during the period from July, 2016 to June, 2017. The Show Cause Notice was issued to the Respondent on the basis of Audit observations that the electricity generated at Windmills were not used by them at their factory but was sold to Gujarat Urja Vikas Nigam Ltd (GUVNL), Paschim Gujarat Vidyut Company Ltd (PGVCL) and to Madhya Pradesh Power Ltd (MPPL) by transferring to their grids and hence, services availed at Windmills have no nexus with goods manufactured at their factory, whether directly or indirectly and consequently said services were not covered under the definition of 'input service' in terms of Rule 2(l) of 'CCR, 2004'. The adjudicating authority dropped the demand by relying upon the case laws of Endurance Technology Pvt Ltd - 2017 (52) STR 361 and Parry Engg and Electronics Pvt Ltd- 2015 (40) STR 243.

8.1 The Appellant Department has, *inter alia*, contended that electricity generated at windmills was not used by the Respondent at their factory but was sold out to M/s GUVNL or PGVCL or MPPL electricity boards, which is clearly a trading activity having no nexus whatsoever with the manufacturing activity of the Respondent and hence, they were not eligible to avail Cenvat credit of service tax paid in respect of windmills. On the other hand, the Respondent has argued that electricity generated at wind mills was wheeled to the electricity authorities, who in turn, supplied electricity at their manufacturing unit, as per agreed formulae, and that electricity was utilised at the factory for manufacturing of the final product, therefore, SCN was wrongly issued.

9. I find it is pertinent to examine the facts narrated at para 3 and para 4 of the Show Cause Notice, which are reproduced as under:

> "3. Whereas on inquiry during audit, it was clarified by the authorized person of Makson that they own 4 windmills situated at different places viz. Shikarpur (Kutch District), Kadoli (District Navsari), Visavada (District Porbandar) , Navadara (District Jamnagar) for generating electricity through wind. It was noted that all these windmills were situated hundreds of kilometers away from their manufacturing factory located in the Surendranagar District. It was clarified that the electricity generated there at wind mills was not used by them at factory but was sold to Gujarat Urja Vikas Nigam Limited (GUVNL) or Paschim Gujarat Vidyut Company Ltd. (PGVCL) or to Madhya Pradesh Power Limited (MPPL) electricity board and was transferred in their grid as per their agreements. It was stated that GUVNL or other parties calculated the electricity generated on monthly basis and based on the quantum of electricity generated and rate per unit fixed for them as per government policy, they get payment from them for the sale of electricity by Makson.
>
> 4. Whereas on scrutiny of Invoice issued by Makson to GUVNL, it is noticed that it indicates quantity generated at windmill and which was received at their grid at District Kutch and rate per unit of electricity produced. The said invoice nowhere indicates any connection with the use of said electricity in manufacture of goods in the factory of Makson at Surendranagar. Even said invoice do not refer to any set off or any such condition in connection with electricity generated at windmill and electricity used at factory and there was no prima facie set off for electricity consumed at factory. Thus, it appears that there are two different transactions and they have no interconnection and thus,

electricity generated at wind mills and input services availed at windmills has no connection with the goods manufactured in manufacturing unit and its manufacturing activities at Surendranagar -whether directly or indirectly and hence, such credit appeared to be not admissible for availing of credit as input service in terms of provisions of Rule 2(l) of Cenvat Credit Rules, 2004."

9.1 As recorded in the Show Cause Notice, the Respondent had sold electricity generated at windmills to various electricity boards by transferring the electricity to their grids and had also issued invoice for sale of such electricity. If that be the case and if the electricity so generated at windmills was not wheeled back for use in the manufacture of goods at their factory as recorded in Show Cause Notice, then services availed by the Respondent in connection with windmills have no nexus with manufacturing of goods and such services cannot be said to have been utilised in or in relation to manufacture of goods. Consequently, said services availed by the Respondent are not covered within the definition of 'input service' under Rule 2(l) of CCR, 2004 and the Respondent was not eligible to avail Cenvat credit of service tax paid on maintenance and repair service and security service of Wind Mills.

10. I find that the Respondent has contended in the cross objection that the electricity generated at wind mills was wheeled to the electricity authorities, who in turn, supplied electricity at their manufacturing unit and that electricity was utilised in their factory for manufacturing of the final product. However, the Respondent has not substantiated their claim with any documentary evidences in the form of agreement entered with respective electricity authorities and quantum of electricity generated at windmills and transferred to grid and quantum of electricity taken as set-off at their manufacturing unit. Under the circumstance it is not possible for me to verify the authenticity of this claim. However, on going through the reply to Show Cause Notice furnished by the Respondent and reproduced in the impugned order, I find that the Respondent had admittedly sold entire electricity generated at windmill located at Kadoli. The Respondent is, therefore, not eligible to avail Cenvat credit of service tax paid on services availed at said Windmill. Further, the Respondent had partially sold electricity generated at windmill located at Visavada. Hence, the Respondent shall not be eligible to avail Cenvat credit proportionately considering total electricity generated at said windmill and quantum of

electricity sold. In respect of remaining two windmills located at Navadara and Shikharpur, the Respondent claimed before the adjudicating authority that entire electricity generated at said windmills were consumed at their factory. If electricity generated at said two windmills were transferred to grid and equivalent electricity were received at their factory as set-off and used in the manufacture of goods, as claimed by the Respondent, then services availed at said two windmills can be said to have been used in or in relation to the manufacture of goods and the Respondent is eligible to avail Cenvat credit of service tax paid on such services, as held by the Hon'ble Madras High Court in the case of Ashok Leyland Ltd. reported as 2019 (369) E.L.T. 162 (Mad.). In absence of any documentary evidences furnished by the Respondent, it is not possible for me to arrive at any conclusion. I, therefore, remand the matter to the adjudicating authority for *de novo* adjudication for limited purpose of verifying relevant documents in order to ascertain whether electricity generated at windmills located at Navadara and Shikharpur were utilised in the manufacture of goods in the factory of the Respondent. I direct the Respondent to furnish agreements entered with respective electricity authorities for transfer of electricity to their grids as well as documentary evidences showing that equivalent electricity was given to them as set off by electricity authorities for use in their factory. Needless to mention that principles of natural justice should be adhered while passing de novo order.

11. The Respondent has not challenged confirmation of demand of Rs. 1,89,219/- and recovery of interest under Rule 14 of CCR, 2004 and imposition of penalty of Rs. 1,89,219/- under Rule 15(2) ibid, vide the impugned order. I, therefore, uphold the impugned order to that extent.

12. In view of above discussion, I set aside the impugned order to the extent of dropping of demand of Rs. 13,41,082/- and dispose the appeal by way of remand. I uphold the remaining impugned order.

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

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

सत्यापित,

दिपुल शाह
अधीक्षक (अपील)

(AKHILESH KUMAR)
Commissioner (Appeals)

30th July, 2021.

By RPAD

To, M/s. Makson Pharmaceuticals (I) Pvt Ltd, Rajkot Highway, Surendranagar.	सेवा में, मैसर्स मैकसन फार्मास्युटिकल्स (इंडिया) प्राइवेट लिमिटेड, राजकोट हाईवे, सुरेंद्रनगर.

प्रतिलिपि :-

1) 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, सुरेंद्रनगर मण्डल, को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।