रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद– 380015. :

क फाइल संख्या : File No : **V2(29)73/Ahd-III/2016-17/Appeal-I** 1504 to 1509

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-297-16-17**

दिनाँक Date : **30.03.2017** जारी करने की तारीख Date of Issue 7/4/17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-DSN-021-16-17**Date: **22.09.2016**
Issued by: Additional Commissioner, Central Excise, Din: Kadi, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Ambuja Intermediates Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपएं 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे 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 adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

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

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ 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, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.**

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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."

ORDER-IN-APPEAL

This appeal has been filed by M/s Ambuja Intermediates Ltd., SurveyNo.1152/1 to 5, Ahmedabad-Mehsana State Highway, Rajpur, Kadi, Mehsana (Gujarat) [hereinafter referred to as "the appellant"] against Order-in-Original NO.AHM-CEX-003-ADC-DSN-021-022-16-17 dated 22.09.2016 [impugned order] passed by the Additional Commissioner of Central Excise, Ahmedabad-III [adjudicating authority].

2. Briefly stated, during the course of audit of the records, it was noticed that apart from manufacturing of excisable goods, the appellant were engaged in generating electrical energy at three wind mills located at different location and was being sold to Gujarat Energy Transmission Corporation (GETCO); that they were availing input service credit on common input services used in manufacture of excisable goods at their factory plant as well as for the generation of Electricity Energy at three wind mills located at different places; that since the electricity energy is an exempted excisable products and no excise duty paid thereon, they were required to pay 6% of the value of electricity energy sold, in terms of Rule (3) of Cenvat Credit Rules, 2004 [CER]. It was also noticed that the appellant had availed Cenvat Credit on Maintenance & Repairs Service and Work Contract Services for maintenance and repair of the said Wind Mills located different locations, which is not admissible in terms of explanation –II to Rule 6(3) of CER. Accordingly, [i] show cause notice dated 19.02.2016 for recovery of amount of Rs.21,01,270/- equal to 6% value of the exempted goods/exempted service in terms Rule 6(3) of CERA and Rs.4,71,245/- for wrong availment of input service credit on Maintenance & Repairs Service and Work Contract Services of Wind Mills for the period from April 2014 to February 2015 with interest; and [ii] show cause notice dated 30.03.2016 for recovery of amount of Rs.25,57,265/- equal to 6% value of the exempted goods/exempted service in terms Rule 6(3) of CERA and Rs.5,18,664/- for wrong availment of input service credit on Maintenance & Repairs Service and Work Contract Services of Wind Mills for the period from March 2015 to January 2016 with interest. The show cause notices also proposes for imposition penalty under Rule 15(1), 15(2) of CER read with Section 11 AC of Central Excise Act, 1944. Vide impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty of Rs.12,86,258/- and Rs.3,07,593/- respectively.

3. Being aggrieved, the appellant has filed has filed the present appeal on the grounds that:-

- The electricity energy generated on the wind mills is not the final product but such electricity is used in relation to manufacture of excisable goods by the appellant in the factory of them and various goods manufactured by utilizing such electricity have been removed on payment of excise duty; that electricity energy is not a final product but a intermediate product further used in the manufacture of excisable goods..
- M/s Gujarat Energy Transmission Corporation Ltd (GETCO) has been allowed to function as State Transmission Utility under Wind Power Generation Policy 2002 and the electricity generated on wind mills located at various specified areas is distributed by GETCO using grid lines belongs to State Government; that any person who generates electricity by windmill set up in the specified area is allowed to utilize electricity at its factory without any charges after deducting "wheeling charges" under the scheme;
- The appellant has set up and installed three wind mills at the said location and started producing electricity and the units of electricity so generated were given to GETCO who

transferred such electricity through State Government grid line and allowed to the appellant for being utilized in their factory at the specified number of units.

- The appellant is not selling electricity to GETCO but the electricity energy produced by the appellant at the appellant's wind mills are allowed to be utilized by GETCO, after deducting "wheeling charges", at the appellant's factory where excisable goods are manufactured; that the adjudicating authority has formed an erroneous view in holding that the appellant has sold electricity to GETCO.
- The decisions of Hon'ble CESTAT Mumbai in case of M/s Endurance Tech Pvt Ltd and CESTAT's Larger Bench, Ahmedabad in case of M/s Parry Engg. & Electronics Pvt Ltd [2015 (40) STR 243]has put an end to the controversy about admissibility of Cenvat Credit of Services used in respect of Wind Mills;
- The demand is time barred and extended period cannot be invoked.

4. A personal hearing in the matter was held on 15.03.2017. Smt Shilpa P Dave, Advocate appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The following issues to be decided in the instant case.

[i] Whether the appellant is required to be paid 6% of the value of the Electricity said to be sold to GETCO, in terms of Rule 6(3) of CER or otherwise;

[ii] Whether input service credit on Maintenance and Repair Service and Works Contract Services provided for maintenance and repair of Wind Mills located at different locations is admissible or otherwise.

6. As regards [i] above, the adjudicating authority has contended that the Electricity Energy generated by the appellant at Wind mills located at various locations were sold to GETCO as revealed from the books and accounts which shown the income as "Wind Mill Income"; hence, being a non –excisable goods, in terms of Rule 6 (3) of CER, they were required to pay 6% of the value of the Electricity Energy sold to GETCO as they were availed Cenvat Credit on common input services which were used in both excisable goods and non excisable goods. On the other hand, the appellant has contended that they were not selling the said Electricity Energy to GETCO but the electricity energy produced by them were allowed to be utilized by GETCO, after deducting "wheeling charges", at the appellant's factory where excisable goods are manufactured, as per their agreement with GETCO. Therefore, the prime issue to be decided in the matter is as to whether the appellant has sold the said Electricity Energy to GETCO as held by the adjudicating authority or the electricity so generated were given to GETCO, who transferred such electricity through State Government grid line and allowed to the appellant for being utilized in their factory at the specified number of units, as argued by the appellant.

7. I observe that the appellant had entered with an agreement with GETCO, wherein GETCO has agreed to wheel the power on behalf of the appellant in accordance with the Policy as per terms and conditions filed by the appellant with Gujarat Energy Development Agency (GEDA). As per the said agreement, I observe that GETCO is functioning as "State Transmission Utility" under the Electricity Act, 2003. According to the agreement, the appellant is compensating GETCO for such wheeling of power 4% point in the form of Energy for

Wheeling Power from the Wind Farm to its companies. Para 7 of the said agreement mentioned that "No duty shall be payable on the sale of Energy by Wheeling to the group of companies or directly to GETCO". This clause clearly emphasize that the appellant have all right to sale the Electricity Energy and the income shown in the books of account mentioning "Wind Mill Income" support that they had received such sort of income. Further, the appellant has not submitted any clarification in this aspect. Therefore, it indicates that the appellant is not only using electricity so generated in their manufacturing activities but also selling Electricity Energy to GETCO/its group of companies. In the circumstances, there is merit in the contention of the adjudicating authority that apartment from the manufacturing activities, the appellant were selling electricity charges to GETCO or its group of companies and Rule 6(3) of CER is applicable in such cases.

8. In the instant case, I observe that the appellant had availed credit on common input service viz. Banking & Financial services, Business Support Services, Charterred Account Services, Courier Service etc in connection with manufacture of excisable goods and non excisable goods viz Electricity Energy. In the circumstances, it was imperative on the appellant, to either, not take CENVAT credit in respect of input service used in exempted goods or maintain separate accounts as per Rule 6(2), *ibid.* However, as is already mentioned, the appellant took CENVAT credit in respect of input service used in such exempted goods and also failed to maintain separate accounts. Therefore, the provisions of Rule 6 (3) of CCR clearly attracts in appellant's case.

9. Further, I observe that the JS (TRU), CBEC, New Delhi has issued a letter no. 334/8/2016-TRU dated 29.2.2016 on the basis of amendment in Rule 6 *ibid.* The relevant extract of which are reproduced below:

> *(h) Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.*
>
> *(i) sub rule (1) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.*
>
> *(ii) sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.*
>
> *(iii) sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, Page 33 of 38 then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted*

services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).

(iv) The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

10. I understand that the amendment to CENVAT Credit Rules, is not retrospective. However, this amendment reflects the interpretation and intent of the Government. In-fact Joint Secretary himself states that the rules are *being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.* Even otherwise to demand an amount under Rule 6 which is more than the CENVAT credit availed would clearly be against the spirit of reversal.

11. In view of above, the Cenvat credit demanded is not more than the credit availed. In the instant case, I observe that the demand of Rs.21,01,270/ for the period of April 2014 to February 2015 and Rs.25,57,265/- for the period of March 2015 to January 2016 were raised on the basis of percentage of the value of exempted goods which is not correct in view of above discussion. Since the demand would not be more than the credit availed, the Cenvat credit availed on such exempted goods is required to be determined. In the circumstances, I feel that this issue is required to be considered by the adjudicating authority afresh for determining the Cenvat credit availed by the appellant on such exempted goods, as such, I remand back the issue to the adjudicating authority for considering the matter in view of above discussion.

12. Now I takes the issue mentioned at [ii] regarding input service credit taken on Maintenance and Repair Service and Works Contract Services provided for maintenance and repair of Wind Mills located at different locations.

13. I observe that as per amendment in the Cenvat Credit Rules, 2004 with effect from 01.04.2011, vide notification No.03/2011-CE (NT) dated 01.03.2011, capital goods includes the goods used outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory. As discussed in above, the undisputed facts revealed the appellant has installed Wind Mills at different location for generation of electricity which was being used by them in relation to their manufacturing activities. Therefore, nexus with manufacturing activities are unquestionable. In the circumstances, service availed for maintenance of repairs and work contracts service in respect of Wind Mills is very well covered in the definition of input service and credit availed by the appellant is legally correct. Further, I observe that the Hon'bleTribunal, Ahmedabad (Larger Bench) has decided a similar issue in case of M/s Parry Engg. & Electronics Pvt Ltd [2015 (040) STR 243-LB]. The relevant para is as under:

4. The another Co-ordinate Bench of the Tribunal in the case of Endurance Technologies Pvt. Ltd. (supra) had taken diametrically opposite view which was followed by the Tribunal in the case of Rajratan Global Wires Pvt. Ltd. - 2012 (26) S.T.R. 117 (Tri.-Del.). The learned Advocate on behalf of the appellant submits that the

Revenue filed appeal before the Hon'ble Bombay High Court against the decision of the Tribunal in the case of Endurance Technologies Pvt. Ltd. (supra) which was dismissed as reported in 2015-TIOL-1371-HC-MUM-ST (CCE Aurangabad v. Endurance Technology Pvt. Ltd.). The question of law before Hon'ble High Court in the case of Endurance Technology Pvt. Ltd. (supra) are as under : -

"I. Whether the CESTAT is correct in holding that the assessee is entitled to avail the CENVAT Credit on "management, maintenance or repair services" provided on services provided to Windmills installed and situated away from factory and factory premises?

II. Whether electricity generated at Supa and Satara, situated far away, could be said to have been used for manufacture of the final product of the assessee at Waluj, Aurangabad."

5. Hon'ble High Court answered the question No. 2 in favour of the assessee. ...

6. The other issue is whether the assessee was entitled to avail Cenvat credit on the input services namely Management, Maintenance or Repair Service on Windmills installed by the manufacturer far away from the factory premises. The Hon'ble High Court observed as under :-

"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. The judgments referred to above, also interpret the word "input" service in similar fashion.

In the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. [cited supra], the Division Bench of this Court held that the definition of "input service" is very wide and covers not only services which are directly or indirectly used in or in relation to manufacture of final product but also includes various services used in relation to business of manufacture of final product. The expression "activities" in relation to business is also discussed in this judgment by referring to judgment of Apex Court.

In the case of Deepak Fertilizers & Petrochemicals Corporation Ltd. v. C.C.Ex. Belapur [Cited supra] the Division Bench held as under :

"The definition of the expression 'Input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products..... This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(I). The input services in the present case were used by the appellant whether directly or indirectly, in relation to the manufacture of final products. The appellant, it is undisputed, manufactures the dutiable final products and the storage and use of ammonia is an intrinsic part of that process."

7. We find that the Hon'ble Bombay High Court in the case of Endurance Technologies Pvt. Ltd. (supra) held that Cenvat credit is eligible on maintenance or repair services of Windmills, located away from the factory. It is well settled that the decision of Hon'ble High Court is binding on the Tribunal. It was pointed out at the time of hearing that the definition of "input service" credit was subsequently amended in 2011. We find that the present appeals are involving for the period 2006-2007. In any event, this issue is not before the Larger Bench. Hence, the view taken by the Tribunal in the case of Endurance Technologies Pvt. Ltd. (supra) is correct."

8. In view of this discussion, we have no hesitation to hold that the answer to Question No. (I) is in affirmative. Despite this settled position, learned Counsel for the appellant tried to submit that the judgment cited at Sr. No. (2) is being challenged before Supreme Court. This submission does not really help us in deciding the appeals. Both appeals are dismissed."

14. In view of above, I am of the considered view that the appellant is eligible for Cenvat Credit on service tax paid on inputs service viz. Maintenance & Repairs Service and Work Contract Service in relation to Wind Mills.

15. In view above discussion, as regards issue in respect of [i] of para 5 above, I remand the case to the adjudicating authority for considering afresh according to para 11. As regard issue in respect of [ii] of para 5, I decide in favour of the appellant as discussed in para 13.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)
Date : .03.2017

Attested

(Mohanan V.V)
Superintendent (Appeals-I)
Central Excise, Ahmedabad

By R.P.A.D
To
M/s Ambuja Intermediates Ltd.,
SurveyNo.1152/1 to 5, Ahmedabad-Mehsana State Highway,
Rajpur, Kadi, Mehsana

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Additional Commissioner, Central Excise, Ahmedabad-III
4. The Deputy/Assistant Commissioner, Service Tax division, Mehsana.
5. The Assistant Commissioner, System-Ahmedabad -III
6. Guard File.
7. P.A. File.