



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015
☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN-20220164SW0000611036

5805 to 5809

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/119/2021-Appeal-O/o Commr-CGST-Appi-Ahmedabad

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-60/2021-22**
दिनांक Date : **11.01.2022** जारी करने की तारीख Date of Issue : **12.01.2022**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**

ग Arising out of Order-in-Original Nos. **01/Supdt./SRN/2020** dated **30.12.2020**, passed by the
Supdt., Central GST & Central Excise, Range-V, Division-IV, Ahmedabad-North.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Leamak healthcare Pvt. Ltd., Sarkhej Bavla Highway, Matoda,
Ahmedabad.

Respondent- Superintendent Central GST & Central Excise, Range-V, Division-IV,
Ahmedabad-North.

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 :

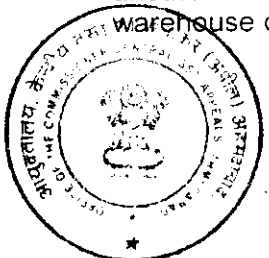
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को
उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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।

(c) 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 दिनांक 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 रुपये या उससे कम हो तो रुपये 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.

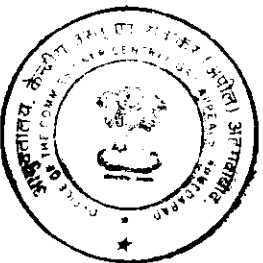
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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. Registrar 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 आदेश 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 है।

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 notwithstanding the fact that the one appeal to the Appellate 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 a court fee stamp of Rs.6.50 paise 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 is 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत. शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

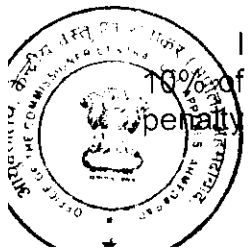
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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."

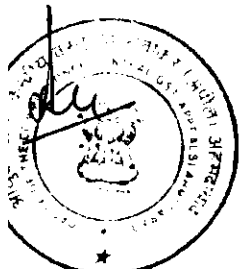


ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Leamak Healthcare Pvt. Ltd., Sarkhej-Bavla Highway, Matoda, Ahmedabad (hereinafter referred to as 'appellant') against Order in Original No. 01/Supdt/SRN/2020 dated 30.12.2020 (hereinafter referred to as 'the impugned order') passed by the Superintendent, CGST & Central Excise, AR-V, Division-IV, Commissionerate:Ahmedabad-North (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant was holding Central Excise Registration No. AAACL6538KXM001 and engaged in the manufacture of goods viz. Medicaments and Sugar Boiled Confectionery falling under Chapter 30 & 17 of the Central Excise Tariff Act, 1985. During the course of audit of the financial records of the appellant, it was observed that they had taken Cenvat Credit of Service Tax on various services utilized towards their Wind Mill, considering such services as "input services". The said services were towards Rent Certification, Operation & Maintenance (O&M) and insurance of the Wind Mill, which are installed in Kutch District of Gujarat, which is far away from the factory premises. In pursuance of the issuance of Audit Report No. 302 of 2012-13 dated 26.04.2013, the appellant was issued Show Cause Notice dated 03.06.2014 demanding an amount of Rs. 1,73,136/- for the period from June, 2011 to February, 2014 and also a Show Cause Notice dated 06.02.2015 demanding an amount of Rs. 78,358/- for the period from March, 2014 to November, 2014.

2.1 Thereafter, the appellant vide their letters dated 23.10.2015 & 16.11.2016 informed that they have not availed the Cenvat Credit of Service Tax on said services for the period from December, 2014 to September, 2015 & October, 2015 to October, 2016. Subsequently, the appellant vide their letter dated 04.07.2017 informed that they had availed the Cenvat Credit on input services, related to Wind Mill, amounting to Rs. 1,47,147/- for the period from November, 2016 to June, 2017. Accordingly, a Show Cause Notice vide F.No. AR-V/Leamak SCN-Wind Mill/2017-18 dated 25.09.2017 was issued to the appellant under Section 11A(7A) of the Central Excise Act, 1944, demanding Cenvat Credit of Rs. 1,47,147/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, alongwith interest under Section 11AA of Central Excise Act, 1944. Penalty was also proposed on the appellant under the provisions of



Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2.2 The Show Cause Notice issued from F.No. AR-V/Leamak SCN-Wind Mill/2017-18 dated 25.09.2017 has been adjudicated by the adjudicating authority vide the impugned order, as briefly reproduced below:

- (i) He disallowed the Cenvat Credit of Service Tax of Rs. 1,47,147/- wrongly availed by the appellant in respect of services viz. Rent Certification, Operation and Maintenance and Insurance of the Wind Mill, which is installed far away from the factory premises and ordered to recover the same from them under the provisions of Section 11A(5) of Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004, alongwith interest thereon at the applicable rate under the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.
- (ii) Penalty of Rs. 1,47,147/- has been imposed on the appellant under the provisions of Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal, on the following grounds, as reproduced below:

3.1 The matter is directly covered in favor of the appellant by Larger bench of Tribunal Order dated 29.07.2015. The Larger bench of Tribunal Order is based on the Bombay High Court decision in the case of Endurance Technologies. Following the Larger Bench Order, the Tribunal in the case of Meghdev Enterprise and others have allowed the appeal and permitted the credit.

3.2 The matter is also covered by decisions dated 22.09.2017 and 12.12.2017 in the appellant's own case.

3.3 The adjudicating authority has chosen to rely on all earlier decision which has resulted into reference to Larger Bench. The earlier decisions will not apply in view of later Larger Bench decision. Further, the order of Gujarat High Court relied upon in the impugned order is only order for admission of Tax Appeal and admission of appeal has no precedential value.

3.4 The matter in the present case is identical and since the issue is directly covered on merit by precedent decision of Larger Bench of Tribunal as well as the Bombay High Court, appellant has not made detailed



submissions. Appellant craves leave to make detailed submissions, if required.

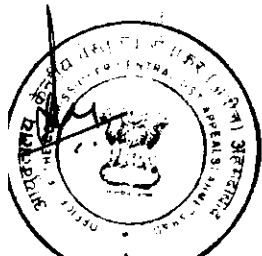
3.4.1 As per the policy announced by Govt. of India, of incentive for private investment in wind energy, an industrial undertaking can set up wind farm for captive generation of electricity at the identified sites. The Gujarat Electricity Board (GEB) has agreed for wheeling arrangement where under it will transmit the power generated by the wind farm to the factory site of the industrial undertaking at a fixed wheeling charge irrespective of distance from the wind farm. As per the arrangement with GEB, the electricity generated at wind farm will be supplied to GEB which in turn supply the electricity to the factory after deducting wheeling charges. GEB bills for the electricity consumed by the factory, however, give adjustment of the electricity supplied by the wind farm. Once it is established that the appellant are given credit of the electricity generated at wind farm, it is clear that the electricity generated at wind farm is used in the manufacture of dutiable products and also it is clear that electricity so generated at wind site is used captively by the appellant.

3.4.2 The services received at wind mill will qualify as input service under the Cenvat Rules. Rule 2(l) of the Cenvat Credit Rules, 2004 defines 'input service' as follows:

"(l) 'input service' means any service
(i) used by a provider of [output service] for providing an output service; or
(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,
and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

In view of the first clause of the above definition, every service used directly or indirectly, in or in relation to the manufacture of final products. The place where the input service is received or used is immaterial for the purpose of this clause.

Further, the scope of the term "in or in relation to", as mentioned in the above definition of 'input service' is very wide and expansive. The



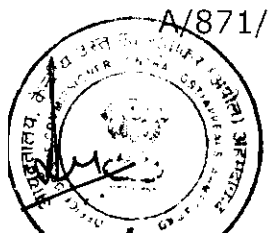
appellant relied upon judgments of (i) Hon'ble Supreme Court in case of Collector of Central Excise Vs. Rajasthan State Chemical Works [1991 (55) ELT 444 (S.C)]. (ii) Union of India Vs. Ahmedabad Electricity Co. Ltd. [2003 (158) ELT 3 (SC)] (iii) Hon'ble CESTAT in case of Union Carbide India Ltd. Vs. CCE, Calcutta [1996 (86) ELT 613]

Accordingly, the appellant submit that the services availed in respect of power plant are covered by the definition of 'input service' as such services are used in or in relation to the manufacture of the final product. Further, in order to fall under the definition of 'input service', it is not required that such service should be received in the factory of the manufacture of the final products as provisions of the rules, as regards input service are qua the manufacturer and not qua the factory. Hence, the operation, maintenance or repair services received in respect of the wind mill plant will qualify as 'input service'.

3.4.3 As per the provision of Rule 4(1) of the Cenvat Credit Rules, 2004, Cenvat Credit can be availed when the inputs are received in the factory. Similar restrictions do not exist as regards Cenvat Credit on input services. Further, in terms of the provisions of Rule 3(1) of the Cenvat Credit Rules, 2004 also, unlike in respect of the Capital Goods or Inputs, it is not necessary that input services should be received in the factory of manufacturer. Hon'ble CESTAT in case of Indian Rayon Limited [2006 (4) STR 79], while allowing the Cenvat Credit on mobile phone services has held that in order to qualify under the definition of 'input service' it is not required that the service has to be received in the factory of production.

3.4.5 The appellant relied upon the judgment of Hon'ble Supreme Court in case of Vikram Cement reported in [2006 (197) ELT 145] wherein it is held that the capital goods used in the captive mines will be eligible for Cenvat Credit. The appellant submit that the entire electricity generated in wind mill is exclusively used by them for manufacturing of dutiable products. It is not the case of the department that the electricity generated in the wind farm is supplied to third party. Accordingly, the law laid down by the Hon'ble Supreme Court in the case of Vikram Cement will be squarely applicable to the facts of the present case. Hence, the Cenvat Credit availed on the input services received at wind mill site cannot be denied.

3.4.6 The appellant also relied upon the judgments of Hon'ble CESTAT in case of Sanghi Industries Ltd. Vs. CCE, Rajkot wherein Hon'ble Tribunal vide Final Order No. A/872/WZB/Ahd/08 and also vide Final Order No. A/871/WZB/Ahd/08 held that the services received in the captive power



plant would qualify under the definition of 'input service':

3.4.7 The appellant further submitted that any service received and which is commercially required for the benefit or for carrying on of the business of the manufacturer, is covered by the expression 'activities relating to business'. In the present case, erection of the power plant was very much required for effective functioning of the factory of production as power is a major input for manufacturing the final products which is being generated in the wind farm. The entire electricity generated in the captive power plant is sent to the factory and is used in the manufacture of final products. Therefore, the services received in respect of operation and maintenance of power plant, which generate electricity, would fall within the scope of 'the activities relating to business' and hence, the services received by the appellant do qualify as 'input service'.

3.5 The appellant further submitted that when the duty is not payable, question of interest or penalty does not arise. Further, the intimation letter dated 29.05.2013 is on record with the office of Deputy Commissioner. Subsequently, the department had also sought for information and same were supplied under letter dated 05.03.2014. Therefore, it cannot be said that the appellant had availed credit without intimation to the department. It is submitted that when as far back in 2013, the appellant had intimated the fact of availing credit, the Show Cause Notice dated June, 2014 covering the period from June, 2011 to February, 2014 is barred by limitation. The extended period is not available to the department.

3.5.1 Even otherwise, the issue was debatable and there are contrary judgments as to availability of Credit. The matter was, therefore, referred to larger Bench. This also shows that two views were possible and therefore, the matter being interpretation of law involving possible different views, no penalty can be imposed.

4. The appellant was granted opportunity for personal hearing on 26.10.2021 through video conferencing. Shri S. J. Vyas, Advocate, appeared for personal hearing as authorised representative of the appellant. He reiterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum, oral submissions made by the appellant at the time of hearing and the case laws relied upon by the appellant in support of their contentions. The issues to be decided in the present appeal are as under:



- (i) Whether the demand confirmed against the appellant vide the impugned order, disallowing the Cenvat Credit of Rs. 1,47,147/- availed in respect of services viz. Rent Certification, Operation and Maintenance and Insurance of the Wind Mill, which is installed far away from the factory premises, under the provisions of Section 11A(5) of Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004, alongwith interest thereon under the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 is legally correct or otherwise?
- (ii) Whether the Penalty of Rs. 1,47,147/- imposed on the appellant under the provisions of Section 11AC of the Central Excise Act, 1944 readwith Rule 15(2) of the Cenvat Credit Rules, 2004, is legally correct or otherwise?

6. It is observed from the case records that the Show Cause Notice issued in the present case demanding 'Wrongly availed Cenvat Credit on O&M Charges and Insurance of Wind Mill' for the period from 'November, 2016 to June, 2017' is a periodical Show Cause Notice issued under Section 11A(7A) of the Central Excise Act, 1944, which has been issued in continuation of the earlier Show Cause Notice dated 03.06.2014 demanding an amount of Rs. 1,73,136/- [for the period from June, 2011 to February, 2014] and Show Cause Notice dated 06.02.2015 demanding an amount of Rs. 78,358/- [for the period from March, 2014 to November, 2014].

6.1 It is further observed that the appellant has also made contention that the matter has been decided in their favour for earlier period. Besides that the judicial pronouncements of Larger Bench of Tribunal is in their favour. In this regard, I find that the Commissioner (Appeals), Central Tax, Ahmedabad vide OIA No. AHM-EXCUS-002-APP-69-17-18 dated 22.09.2017 [covering the demand for the period from June, 2011 to February, 2014] and also vide OIA No. AHM-EXCUS-002-APP-108-17-18 dated 12.10.2017 [covering the demand for the period from March, 2014 to November, 2014], relying on the decision of the Hon'ble High Court, Mumbai, in the case of CCE, Aurangabad Versus Endurance Technology Pvt. Ltd. reported at [2015-TIOL-1371-HC-MUM-ST] and decision of the Larger Bench of Hon'ble Tribunal, Ahmedabad in the case of Parry Engg. & Electronics P. Ltd. reported at [2015(40) STR 243 (Tri.-LB)], has decided the case in favour of the appellant and held that the appellant are entitled for Cenvat Credit of Service Tax on rent certificate, operation and maintenance of their Wind Mill, situated at Dist-Kutch, Gujarat, away from their factory.



6.2 Further, I find that there are no such details available on records showing that the abovementioned Orders of the earlier Commissioner (Appeals) dated 22.09.2017 and also dated 12.10.2017 have been challenged by the department before the higher appellate forum. Accordingly, I find that the issue has attained the finality in respect of the appellant. Further, there is no dispute raised by the adjudicating authority at any point of time, about the receipt and utilization of said services and payment of service tax on the said services by the appellant. There is no change in legal provisions or judicial pronouncements contrary to above findings, which the adjudicating authority has brought on records.

6.3 In view of the above, I find that the impugned order issued in the present case, confirming demand of Rs. 1,47,147/- against the appellant, is not legally sustainable and liable to be set aside. Further, when the demand is not sustainable and set aside, question of demand of interest and penalty does not arise.

7. In view of the discussion in foregoing paras, I set aside the impugned order and allow the appeal filed by the appellant.

8. The appeal filed by the appellant stands disposed off in above terms.

Akhil Kumar
 11th January, 2022.
 (Akhil Kumar)
 Commissioner (Appeals)
 Date: 11TH JANUARY, 2022

Attested

M.P. Sisodiya

(M.P. Sisodiya)
 Superintendent (Appeals)
 Central Excise, Ahmedabad



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1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, Central Tax, Commissionerate: Ahmedabad-North.
3. The Deputy Commissioner, CGST, Div-IV, Ahmedabad-North.
4. The Deputy Commissioner (Systems), CGST, Ahmedabad-North.
5. Guard file
6. PA File