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2025:GUJHC:65515-DB

Reserved On : 15/10/2025
Pronounced On : 13/11/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 1564 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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REAL STRIPS LTD
Versus
COMMISSIONER OF CENTRAL EXCISE - II

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Appearance:
MR SUDHANSHU BISSA FOR MR PARESH M DAVE(260) for the Appellant(s) No. 1
MS HETVI H SANCHETI(5618) for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Sudhanshu Bissa for learned advocate Mr. Paresh M.

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Dave for the appellant and learned advocate Ms. Hetvi H. Sancheti for the respondent.

2. This Tax Appeal is filed under section 35G of the Central Excise Act, 1944 (For short “the Act”) arising out of the final order dated 02.08.2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad (For short “the Tribunal”) in Appeal No.E/576/11.

3. The appeal is admitted by this Court vide order dated 15.02.2012 for consideration of the following substantial questions of law:

> “a) In view of the definition of “input service” as provided in Rule 2 of the CENVAT Credit Rules, 2004, whether the Tribunal below

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committed substantial error of law in holding that CENVAT Credit of service tax paid on services, like installation, commissioning and civil works as well as maintenance for a windmill comes within the purview of Rule 3 of the said Rules.

(b) Whether the Tribunal below committed substantial error of law in denying the CENVAT credit of service tax paid on services, like installation and commissioning as well as civil works and maintenance of a windmill only because the windmill was located at a place other than the factory premises and electricity generated at the site of windmill was not excisable."

4. Brief facts of the case are that the appellant is a company situated in Ahmedabad and is engaged in the manufacture of goods like H.R. Coils and C.R.Coils and has installed a Windmill in Kutch District for generating electricity using wind energy.

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5. For installation and commissioning of this windmill, the appellant has availed erection, commissioning and installation services on which the Agency providing the above services has paid service tax of Rs.2,87,122/- inclusive of Education cess. Subsequently, the appellant after receiving invoices of the erection, commissioning and installation has availed credit of this amount of service tax in its RG 23A Part II. It is the case of the appellant that these transactions were also duly reflected in the Cenvat register and extracts thereof were also submitted with the monthly returns of the above period. Further, it is the case of the appellant that no objection was raised by the Range and Divisional Officers in this regard.

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6. It is the case of the appellant that, after the said agency installed, commissioned and erected the windmill and after windmill started operating successfully, Gujarat Energy Development Agency (GEDA) has also issued certificates for commissioning of windmill so as to certify that the appellant had done all that was necessary under the Government policy for setting up a wind farm for generating wind energy. The appellant having started producing electricity using the above windmill, the units of electricity so generated were given to Gujarat Energy Transmission Corporation Limited (GETCO) who transferred electricity so generated through the State Government grid line, and the certificates

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in appellants favour for quantity i.e. units of electricity generated by the appellant and units of electricity allowed to the appellant for being utilized in its factory after adjusting 4% wheeling charges have also been issued by GETCO on regular basis.

7. It is the case of the appellant that on the basis of these certificates, the appellant has been allowed to utilize the specified number of units of electricity at its factory in relation to manufacturing and other related operations, and no electricity charges or duties have been recovered from the appellant on these units of electricity under the above policy.

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8. However, the Central Excise EA-2000 Audit Party found availment of the above cenvat credit objectionable and therefore, a Show Cause Notice came to be issued by the Assistant Commissioner of Central Excise, dated 02.03.2010 proposing to deny and recover Cenvat credit of Rs.2,87,122/- on the ground that credit of service tax and Education cess paid on erection, commissioning and installation services for windmill was not available because windmill was installed at a place other than the factory and hence, availment of credit was in contravention of Rules 3(1) and 4(1) of Cenvat Rules.

9. The appellant filed a reply to the above Show Cause Notice. However, the Assistant Commissioner of Central Excise.

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Division-IV, Ahmedabad-II passed Order-in-Original dated 01.11.2010 thereby confirming that credit of Rs.2,87,122/- was not admissible to the appellant, and also ordered for appropriation and adjustment of the amount of Rs. 2,87,122/- along with interest of Rs.12,364/- already deposited by the appellant during the intervening period, and a penalty of Rs. 2,87,122/-.

10. Being aggrieved by the Order-in-Original, the appellant preferred an appeal before the Commissioner (Appeals), Ahmedabad who by Order-in-Appeal dated 19.01.2011 upheld the demand of cenvat credit along with interest but reduced the penalty to Rs.2000/-. The Commissioner (Appeals) while passing the order-in-

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appeal placed reliance upon the decisions of the Tribunal in cases like Rajhans Metals Pvt. Ltd. (supra) and Atul Auto Ltd. -2009 (237) ELT 102 etc. wherein the Tribunal has held in all such cases that credit of service tax paid on services availed in respect of installation, erecting, commissioning and maintenance of Windmills was not admissible because the Windmills were installed at a far away place and not in the factory premises and because the electricity generated by using Windmills was not excisable and accordingly the services used at the site of the Windmills could not be held as input services for the manufacturing unit located elsewhere.

11. Being aggrieved, the appellant filed

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an appeal before the Tribunal against the above order of the Commissioner (Appeals). The Tribunal vide order 02.8.2011 upheld the order as regards denial of cenvat credit and recovery of interest alongwith penalty of Rs.2,000/- observing as under:

> "M/s. Real Strips, Ahmedabad are engaged in manufacture of H.R. Coils and C.R. Coils falling under Chapter Heading No.72 of Central Excise Tariff Act, 1985. They had availed credit of Rs.2,87,122/ in respect of service tax paid on services namely installation and and civil work, maintenance of the wind mill installed for generation of electricity considering such services as input service. The department issued a show cause notice stating that their activity does not fall under the definition of input service given in Rule 2(1). It was the view of the department that the wind mill located at Kutch cannot be considered as input service as the same is not used by the manufacturer. The original adjudicating authority confirmed the demand and appropriated the amount of credit reversed along

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with interest and imposed a penalty. The appellant filed an appeal before Commissioner (Appeals) who also upheld the demand and interest but reduced the penalty. They aggrieved with the order of Commissioner (Appeals) and filed this appeal along with the stay petition.

2 The definition of "input service" as provided under Rule 2(1) is as follows:

input service" means any service

(1) used by a provider of taxable service for providing an output service, or

(11) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from and includes services used in relation to setting up. inward transportation of inputs or capital goods and outward transportation upto the place of removal".

3. As is clear from the above definition, "input service" means service which is used by the manufacturer of final products and clearance of final products up to the place of removal. Therefore, a

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service can be treated as input service only when it is used by the 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.

4 In the instant case, the wind mill is located at Kutch and therefore cannot be considered as input service as the same are not used by the manufacturer directly or indirectly. Further more the power generated is an exempted product and different activity altogether and not related to manufacture. Therefore the availment of credit is not sustainable.

5. In fact the issue has been already decided by this Tribunal in the case of M/s. Real Strips Ltd. Vs. CCE Ahmedabad vide order No.A/619/WZB/AHD/2011 dated 25.03.11. The order of the Tribunal clearly denied the service tax credit and upheld the order. I have also gone through the following judgments cited by the learned advocate:

1. Rajhans Metals (P) Ltd. Vs. CCE Rajkot [2007 (8) STR 498 (Tri. Ahmd.)]

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> 2. Atul Auto Ltd. Vs. CCE Rajkot [2009 (237) ELT 102 (Tri. - Ahmd.)]
>
> 3. Ellora Times Ltd. Vs. CCE Rajkot [2009 (13) STR 168 (Tri. Ahmd.)]
>
> 4. Lanxess ABS Ltd. Vs. CCE Vadodara [2010 (259) ELT 551 (Tri. Ahmd.)]
>
> 6. It is very clear that the appeal is not sustainable legally. therefore dismiss the appeal and uphold the order of the Commissioner (Appeals).”

12. Learned advocate Mr. Sudhanshu Bissa appearing for the appellant submitted that only ground on which Cenvat Credit is denied by the respondent authorities and as upheld by the Tribunal is that the electricity was being generated in Wind Mills far away from the factory premises and as electricity is not excisable, Cenvat Credit is not available even at the premises of the Wind Mills.

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13. It was submitted that the electricity generated by the Wind Mills was utilised by the appellant in its manufacturing unit through GEB. It was submitted that the agreement with GEB was only for the purpose of utilising the power generated by the Wind Mills for consumption at factory for manufacturing purpose which is connected through GEB Power Grid/High tension supply lines.

14. It was submitted that the appellant was already paying charges for excess use of power from GEB in addition to power generated by the Wind Mills transmitted through GEB power grid. It was therefore, submitted that there is nexus between the power generated through Wind Mills and the goods manufactured as three activities i.e

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sale, supply and consumption takes place immediately even though place of generation and manufacturing are different and therefore, the appellant is entitled to avail the credit of service charges incurred in relation to the Wind Mills. In support of his submission, reliance was placed on the following decisions:

1) **Commissioner of Central Excise v. Excel Crop Care Ltd.** reported in 2018 (12) STR 436 (Guj.).

2) **C.C.E. & Cus., Aurangabad v. Endurance Technology Pvt. Ltd.** reported in 2017 (52) S.T.R. 361 (Bom.)

3) **Commissioner of C. Ex. & S.T., Chennai v. Ashok Leyland Ltd.** reported in 2019(369) E.L.T. 162 (Mad.)

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4) **Parry Engg. & Electronics P. Ltd. v. C.C.E. & S.T., Ahmedabad-I,II,III** reported in 2015(40) S.T.R. 243 (Tri.-LB)

5) **Endurance Technologies P. Ltd. v. Commr of C. Ex., Aurangabad** reported in 2011 (273) E.L.T. 248 (Tri.-Mumbai)

15. It was submitted that this Court in case of **Excel Crop Care Ltd.**(supra) after considering the provisions of the Act and the Rules and more particularly, definition of “input service” as defined in Rule 2(l)(i) of the Rules held that mobile service provider, who is liable to pay service tax and recovers the same by adding such service tax in his bill, is the person providing taxable service and is rendering “output service” so as to

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constitute “input service” in the hands of respondent assessee. It was therefore, submitted that the service tax paid by the appellant on the installation and erection of the Wind Mill is required to be given credit under the provisions of the Rules.

16. Reliance was also placed on Circular No.97/8/2007-S.T. dated 23.08.2007 more particularly, clause 8.3 thereof in which doubt raised regarding the admissibility of the Cenvat Credit on service tax paid in respect of mobile phones was answered to the effect that in the Rules, no condition has been prescribed with regard to admissibility of credit of service tax only on telephone connection installed in the business premises. It was therefore, submitted that the for the electricity utilised for manufacturing by the

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appellant provided by GEB against supply of electricity generated by Wind Mills, the appellant was entitled to the credit of service tax.

17. On the other hand, learned advocate Ms. Hetvi Sancheti for the respondent reiterated the contentions raised before the Tribunal and submitted that there is no connection between the electricity generated at the place of installation of Wind Mills by the appellant and the manufacturing activity taking place at its factory as the electricity is being received through GEB. It was pointed out that the electricity itself is not excisable and therefore, service tax credit is rightly rejected by the Tribunal.

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18. Having heard the learned advocates for the respective parties and having considered the facts of the case, the issue on hand has already been decided by this Court by order of even date in Tax Appeal No.1037 of 2008, wherein it has been held as under:

> "18. Having heard the learned advocates for the respective parties and having considered the facts of the case, it would be germane to refer to the relevant provisions of the Act and the Rules.
>
> **Finance Act, 1994:**
>
> **"65(29)** – "commissioning and installation agency" means any agency providing service in relation to erection, commissioning or installation."
>
> **"(39a)** "erection, commissioning or installation" means any service provided by a commissioning and installation agency, in relation to,-
>
> (1) erection,

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commissioning or installation of plant, machinery or equipment; or

(ii) installation of-

(a) electrical and electronic devices, including wirings or fittings therefor; or

(b) plumbing, drain laying or other installations for transport of fluids; or

(c) heating, ventilation or air-conditioning including related pipe work, ductwork and sheet metal work; or

(d) thermal insulation, sound insulation, fire proofing or water proofing; or

(e) lift and escalator, fire escape staircases or travelators; or

(f) such other similar services;”

Cenvat Credit Rules, 2004 :

“Rule 2(l)"input service" means any service, -

(i) used by a provider of taxable service for

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providing an output service, or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, modernization, 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, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

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> **Rule (4)** Conditions for allowing CENVAT credit (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service."

19. Definition of term "input service" as appearing in Rule 2(l) of the Rules would also include any service used by a provider of taxable services for providing an output service, or used by the manufacturer, whether directly or indirectly, in relation to the manufacture of final products and clearance of final products from the place of removal.

20. In the facts of the case, the appellant has utilised the electricity supplied by GEB against the electricity generated by Windmills and therefore, service tax paid by the appellant on the installation, erection and services in connection with maintenance of the Wind Mills are exclusively used in relation to manufacturing activity and therefore, the same would be squarely covered under the

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definition of “input service”, as the management, maintenance and repair of Windmills installed by the appellant would fall within “input service” as defined by clause (l) of Rule 2 read with Rule 4 of the Rules which provides that any input or capital goods received in factory or any input services received by the manufacturer of final product would be susceptible to Cenvat Credit.

21. It is pertinent to note that there is no provision in the Rules which stipulates that input services received by the manufacturer must be received by the manufacturer at the factory premises.

22. This Court in case of **Excel Crop Care Ltd.** (supra) while considering the question as to the allowability of Cenvat Credit on mobile services after considering Rule 2(l) of the Rules held that the mobile service provider who is liable to pay service tax and recovers the same by adding such service tax in his bill, is the person providing taxable service and is rendering output service so as to constitute input service in the hands of the assessee and therefore, the ground on which the credit was disallowed as the phones were not installed in the

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factory premises was held to be a ground not germane to the provisions of the Rules.

23. The Hon'ble Bombay High Court in case of **Endurance Technology Pvt. Ltd.**(supra) on similar issue of allowability of Cenvat Credit on electricity generated from the Windmills has held 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.

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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. The words 'directly or indirectly'

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and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(1) initially provides that input service means any services of the description falling in subclauses (i) and (ii). Rule 2(1) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex facie

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contrary to the provisions contained in Rule 2(1). The first part of Rule 2(1) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(1) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(1). Rule 2(1) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(1). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on

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any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(1). The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process."

6. In view of this discussion, we have no hesitation to hold that the answer to question No. (1) is in affirmative. Despite this settled position, learned counsel for the appellant tried to submit that the judgment cited at Sr. No. (2) is

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being challenged before Supreme Court. This submission does not really help us in deciding the appeals. Both appeals are dismissed."

24. Similarly, Hon'ble Madras High Court in case of **Ashok Leyland Ltd.**(supra) after considering the decision of Bombay High Court in case of Endurance **Technology Pvt. Ltd.** (supra) held as under:

"17. Thus, we are to consider as to whether there has been any nexus between the energy generated and the manufacturing activity of the assessee. This very issue was considered in Endurance Technology Pvt. Ltd. (supra). In fact, we find two substantial questions of law framed for consideration in Endurance Technology Pvt. Ltd. (supra), which are more or less identical to that of the questions of law framed in these appeals. The first question framed for consideration was whether the assessee is entitled to avail Cenvat credit on management, maintenance or repair services provided

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on services to windmills installed and situated away from the factory premises. The second question was whether electricity generated on two different places far away could be said to have been used for manufacture of the final product of the assessee in its factory at Aurangabad.

18. So far as the second substantial question of law is concerned, it was answered in the affirmative in the light of the stand taken that admittedly, such electricity generated at those two different locations was adjusted to the electricity used in the factory at Aurangabad and this adjustment was admitted by the Revenue and accordingly, the second question was answered in favour of the assessee. In the case on hand also, in the show cause notice, the adjudicating authority does not dispute the fact that equivalent quantity, that is, the quantity generated is the same as

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the quantity drawn by the assessees from the TNEB grid. On the first question of law, with regard to the availment of cenvat credit on input services, the Hon'ble Supreme Court referred to the decisions of the High Court of Bombay in the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement, 2010 (20) S.T.R. 589 (Bom.); Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd., 2010 (260) E.L.T. 369 (Bom.); and Deepak Fertilizers & Petrochemicals Corporation Ltd. v. C.C. Ex. Belapur, 2013 (32) S.T.R. 532 (Bom.). The Hon'ble Supreme Court, after taking note of the relevant rules, held that it becomes clear that management, maintenance and repair of windmills installed by the respondents is input service as defined in Clause I of Rule 2. It was held that Rules 3 and 4 provide that any input or capital goods received in the factory or any input

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service received for manufacture of final product would be susceptible to Cenvat credit. Further, it was held that Rule does not say that input service received by a manufacturer must be received at the factory premises and the decisions relied on also interpret the word "input service" in similar fashion.

19. Further, by referring to the decision in Commissioner of Central Excise, Nagpur v. Ultratech Cement, 2010 (20) S.T.R. 589 (Bom.) (supra), it was 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. Further, the expression "activities" in relation to business was also discussed in the said decision following the

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decisions of the Apex Court.

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25. As already pointed out, there is no dispute that the electricity generated by the windmills are exclusively used in the manufacturing unit for final products, there is no nexus between the process of electricity generated and manufacture of final products and there is no necessity for the windmills to be situated in the place of manufacture. Further, as already noticed, the definition of "input service" is wider than the definition of "input". Furthermore, if one takes a look at the Rules, more particularly Rule 2(k), as it stood prior to 1-4-2011, which defines "input", the following has been specifically inserted.

"within the factory of production".

However, these words are physically missing in Rule 2(1), which defines "input

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service" and it would mean any service used by a provider of taxable service for providing an output service or used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal. Though the definition of "input service" has to be widely construed, and in terms of Rule 3, which allows the manufacturer of final products to take the credit of service tax inputs or capital goods received in the factory of manufacture of final products, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of final products. Therefore, this would be the correct manner of interpreting Rule 2(1) of the Rules.

26. In the light of the above, we are of the considered view that the decision in the case of Ellora Times Ltd. (supra)

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does not lay down the correct legal position and we agree with the decision of the High Court of Bombay in Endurance Technology Pvt. Ltd. (supra), which has been followed by the Larger Bench of the Tribunal in Parry Engg. & Electronics P. Ltd."

25. In view of above settled legal position and in absence of words "within the factory of production" in Rule 2(l) which defines "input service" which would mean that any service used by a provider of taxable service for providing an output service or used by the manufacturer whether directly or indirectly, or in relation to the manufacture of final product and clearance of final product from the place of removal, the definition of 'input service' has to be widely construed and therefore, the appellant would be entitled to the credit of service tax paid on inputs or capital goods or services received for Windmills for goods manufactured in the factory because only stipulation is that the input service should be received by the manufacturer of products.

26. Therefore, in view of decision of this Court in case of **Excel**

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Crop Care Ltd. (supra) we are in respectful agreement with the decision of Hon'ble Bombay High Court in case of **Endurance Technologies P. Ltd.** (supra) as well as decision of Hon'ble Madras High Court in case of **Ashok Leyland Ltd.** (supra).

27. In view of foregoing reasons, we answer the questions of law in favour of the appellant assessee and against the Revenue. Appeal is accordingly allowed.

19. Adopting the same reasoning, we answer the questions of law in favour of the appellant assessee and against the Revenue. Appeal is accordingly allowed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR