**Reserved On : 15/10/2025****Pronounced On : 13/11/2025****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 1037 of 2008****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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RAJHANS METALS PVT. LTD.**Versus****COMMISSIONER OF CENTRAL EXCISE**

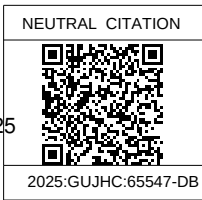
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Appearance:**MR ANAND NAINAWATI(5970) for the Appellant(s) No. 1****MR ANKIT SHAH(6371) for the Opponent(s) No. 1**

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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. Anand Nainawati for the appellant and learned advocate Mr. Ankit Shah for the



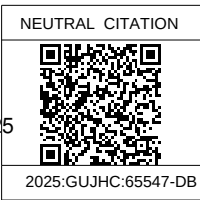
respondent.

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 07.09.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad (For short "the Tribunal") in Appeal No.E/696/2007.

3. The appeal is admitted vide order dated 25.06.2009 for consideration of the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the CESTAT is correct in holding that the services received in respect of setting up the captive wind mill plant are not entitled for the Cenvat Credit under rule 2(l) of the Cenvat Credit Rules, 2004?

2. Whether on the facts and circumstances of the case, the CESTAT is correct in rejecting the

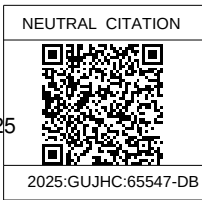


appeal on the ground that in order to qualify under the definition of input service, the service has to be received in the factory of production?

3. Whether on the facts and circumstances of the case, the Appellate Tribunal is correct in rejecting the appeal of the Appellants on the ground that the services received in respect of generation of electricity a non excisable product which is used in or in relation to the manufacture of dutiable products, are not entitled for Cenvat credit?"

4. Brief facts of the case are that the appellant was engaged in manufacture of alloy products falling under Chapter 74 of Central Excise Tariff Act, 1985 (For short "the Act,1985") at its factory at Plot No. 21/3, GIDC Industrial Estate, Shanket Tekri, District Jamnagar, Gujarat.

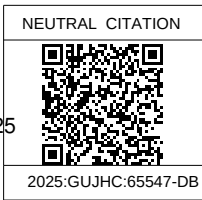
5. The appellant was availing Cenvat Credit of inputs, capital goods and input



services under the provisions of the Act and under the Cenvat Credit Rules, 2004 (For short "the Rules"). The appellant was regularly filing monthly ER-1 return along with other returns as prescribed under the Rules.

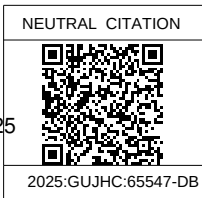
6. The appellant decided to install Wind Mills to generate electricity to be used for manufacturing of excisable goods by way of "Wheeling Agreement" entered with M/s. Gujarat Energy Transmission Corporation Ltd. (GETCO) in view of progressive power policy of the Gujarat Government.

7. The appellant purchased Windmill devices/equipments along with all necessary accessories from M/s. ENERCON



(India) Ltd. and also authorised them for services of erection and commissioning of Wind Mills along with necessary civil construction.

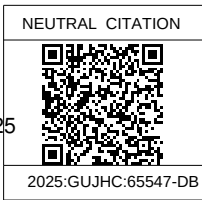
8. Accordingly, while setting up of the Windmills, the appellant availed the services for the purpose of installation, erection and commissioning of the Windmills. The electricity generated at Windmills were fed to grid of Gujarat Electricity Board (GEB) on the basis of an agreement and the appellant received equal quantity of electricity fed by them from GEB at the factory site and whatever quantity of electricity is used in excess of what was produced was charged to the appellant by the GEB. The appellant claimed Cenvat Credit of the services



availed at the Windmill station.

9. The adjudicating authority held that service tax paid in relation to the services availed for the purpose of the erection, commissioning of Wind Mills away from the factory site, cannot be taken as credit and the same was upheld by the Commissioner (Appeals) in the appeal preferred by the appellant.

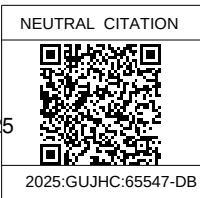
10. Being aggrieved, the appellant preferred an appeal before the Tribunal contending that in terms of Rule 2(l) of the Rules, any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final product and clearance of final product from the place of removal is to be treated as input service and



therefore, electricity was an input required in manufacturing and though generated by the appellant at the Wind Mills installed away from the factory and transferred for its manufacturing purpose through GEB power grid, the appellant was entitled to credit of service tax paid by the appellant on the services availed for installation of windmills.

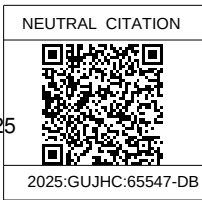
11. The Tribunal however, dismissed the appeal observing as under:

“6. I have fully considered the submissions made by both sides. If it is the case of generation of electricity with the help of the windmills within the factory premises, there should be no doubt about extending service credit tax claimed by them. In this case, the electricity is being generated in wind mills far away from the factory premises. The electricity as such is not excisable. The electricity is generated by them



at place away from the factory. The electricity generated by them is surrendered to the Electricity Board. The quantum of electricity which is going to be used by them need not be exact quantity of electricity produced in their windmills. The services used at the site of the windmills cannot be held as input services by the unit in Jamnagar. As electricity is not excisable, the cenvat credit is not available even at the premises of the windmills. Cenvat credit claimed is inadmissible and the order of the Commissioner in this regard deserves to be upheld."

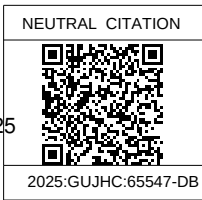
12. Learned advocate Mr. Anand Nainawati appearing for the appellant submitted that the respondent authorities and the Tribunal have committed an error by not allowing Cenvat Credit only on the ground that the electricity was being generated in Wind Mills far away from the factory premises and as electricity is not excisable, Cenvat Credit is not available even for service tax paid for installation



of the Wind Mills.

13. It was submitted that the electricity generated by the Windmills was utilised by the appellant in its manufacturing unit through GEB as per the agreement with GEB for the purpose of utilising the power generated by the Windmills 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 to GEB in addition to power generated by the Windmills transmitted through GEB power grid. It was therefore, submitted that there is nexus between the power generated through Windmills and the goods manufactured as three activities

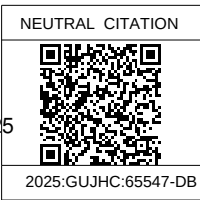


i.e. sale, supply and consumption take place immediately even though place of generation of electricity by Windmills and manufacturing factory site are different and therefore, the appellant is entitled to avail the credit of service tax incurred in relation to the Windmills. In support of his submissions, 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.)

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)

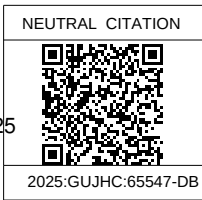
5) **Endurance Technologies P. Ltd. v. Commr of C. Ex., Aurangabad** reported in 2011 (273) E.L.T. 248 (Tri.-Mumbai)

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 has held that mobile service provider, who is liable to pay service tax and recovers the same by adding such service tax in the bill, is the person providing taxable service and



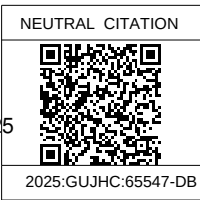
is rendering "output service" so as to constitute "input service" in the hands of respondent assessee. It was therefore, submitted that the service tax paid by the appellant on the installation and erection of the Windmills is required to be given credit under the provisions of the Rules.

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 similarly, for the



electricity utilised for manufacturing by the appellant provided by GEB against supply of electricity generated by Windmills, the appellant was entitled to the credit of service tax.

17. Per contra, learned advocate Mr. Ankit Shah 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 Windmills 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.



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."

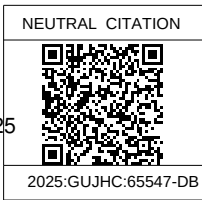
"(39a) "erection, commissioning or installation" means any service provided by a commissioning and installation agency, in relation to, -

(1) erection, 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;"

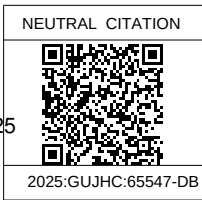
Cenvat Credit Rules, 2004 :

"Rule 2(1)"input service" means any service, -

(i) used by a provider of taxable service for 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,

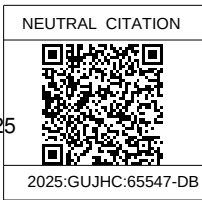
and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales



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;"

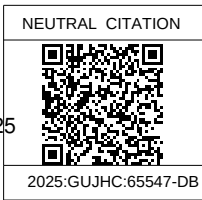
Rule (4) Conditions for allowing CENVAT credit (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service."

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.

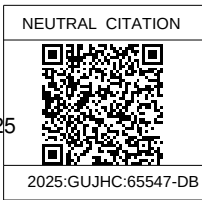
20. In the facts of the case, the appellant has utilised the electricity supplied by GEB against the electricity generated by Windmills and therefore, service tax paid by the appellant on the installation, erection and services in connection with maintenance of the Wind Mills are exclusively used in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

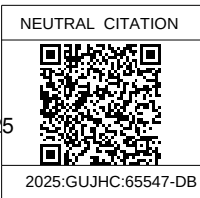
22. This Court in case of **Excel Crop Care Ltd.** (supra) while considering the question as to the allowability of Cenvat Credit on mobile services after considering Rule 2(l) of the Rules held that the mobile service provider who is liable to pay service tax and recovers the same by adding such service 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 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



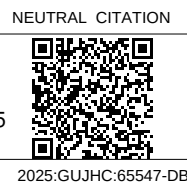
manufacturer must be received at the factory premises. The judgments referred to above, also interpret the word "input" service in similar fashion.

In the case of Commissioner of Central Excise, Nagpur v. 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.

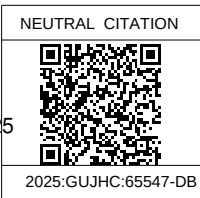
In the case of Deepak Fertilizers & Petrochemicals Corporation Ltd. v. C.C.Ex. Belapur [cited supra) the Division Bench held as under:

"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' 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 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 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

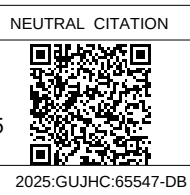


in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process."

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

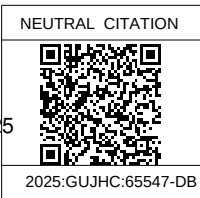
24. Similarly, Hon'ble Madras High Court in case of **Ashok Leyland Ltd.**(supra) after considering the decision of Bombay High Court in case of Endurance **Technology Pvt. Ltd.**(supra) held as under:

"17. Thus, we are to consider as to whether there has been any nexus between the energy generated and the manufacturing activity of

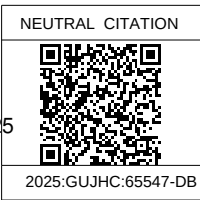


the assessee. This very issue was considered in Endurance Technology Pvt. Ltd. (supra). In fact, we find two substantial questions of law framed for consideration in Endurance Technology Pvt. Ltd. (supra), which are more or less identical to that of the questions of law framed in these appeals. The first question framed for consideration was whether the assessee is entitled to avail Cenvat credit on management, maintenance or repair services provided 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 the quantity drawn by the assesseees 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 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 decisions of the Apex Court.

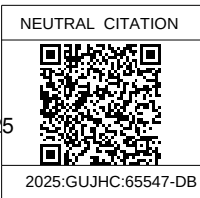
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25. As already pointed out, there is no dispute that the electricity generated by the windmills are exclusively used in the manufacturing unit for final products, there is no nexus between the process of electricity generated and manufacture of final 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.

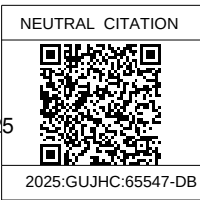
"within the factory of production".

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

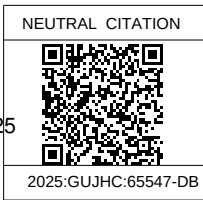
25. In view of above settled legal position and in absence of words "within the factory of production" in Rule 2(l) which defines "input service" which would mean that any service used by a provider of taxable service for providing an output service or used by the manufacturer whether directly or indirectly, 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 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.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR