

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench**

Excise Appeal No. 89290 of 2018

(Arising out of Order-in-Appeal No. NGP1/APPL/145/2018 dated 09.05.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Nagpur-I)

M/s. Aurangabad Electricals Ltd.

Appellant

Plant III, Gut No.120/122, Paithan Road,
Village Pangra, Tq. Paithan,
Dist. Aurangabad, Maharashtra

Vs.

Commissioner of C.E. & S.T., Aurangabad

Respondent

N-5, Town Centre, CIDCO,
Aurangabad 431 030, Maharashtra

Appearance:

Ms. Pradnyali Deshpande, Advocate, for the Appellant
Shri N.N. Prabhudesai, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 11.05.2022

Date of Decision: 11.05.2022

FINAL ORDER NO. A/85599/2022

The appeal is directed against the Order-in-Appeal No NGP-1/APPL/145/2017-18 dated 09.05.2018 of the Commissioner (Appeals), Central Goods and Service Tax & Central Excise, Nagpur-I. By the impugned order, the Commissioner (Appeals) has held as follows:

"ORDER

The appeal is partially allowed as discussed above. Accordingly,

- i. *The Demand of disallowed credit shall be reduced to Rs. 1,68,054/-*
- ii. *The penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with proviso to section 1TAC (C) shall stand reduced to Rs.84,027) (50% of Rs.1,68.054)*
- iii. *The interest on the demand of Rs. 1,68,054/- is recoverable under the provisions of Rule 14 of the Cenvat*

Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944”.

2.1 The appellant are engaged in the manufacturing of Motor Vehicles Parts classifiable under Chapter Heading No. 87141090, 87089900, 84814100 and 84814900 of the Schedule I to The Central Excise Tariff Act 1985. They are also availing Cenvat Credit on Inputs, Capital Goods and Input Services under CENVAT Credit Rules, 2004.

2.2 During the scrutiny of records of the appellant by the Central Excise Officers, for the period from January, 2012 to May, 2015, it was noticed that they were availing Cenvat Credit in respect of Service Tax paid on inadmissible services viz. Vehicle insurance; Vehicle Repair, Construction services, Manpower Services provided in Guest House,, Rent a cab services, Repairing services, Business Auxiliary Services, Sponsorship and Club Member etc. The said services are not falling under the definition of input service under Rule 2(I) of the Cenvat Credit Rules, 2004 and therefore, the credit availed on the said services is inadmissible in terms of Rule 3 of Cenvat Credit Rules, 2004 as the said Rule permits availment of the credit of service tax paid on input service only.

2.3 Further, these services are excluded from the definition of input service under the provision of Rule 2(I) of Cenvat Credit Rules, 2004 with effect from 01.04.2011 as provided by amendment in Rules ibid by Notification No. 3/2011-CE (NT) dated 01-03-2011. The appellant have availed such CENVAT Credit amounting to Rs.4,27,593/- during the period from January,2012 to May,2015 in respect of the services mentioned in para 2.2 above.

2.4. The services utilized by the appellant are not covered under the definition of 'input service as the said services are neither used in or in relation to the manufacture or clearances of final products nor can it be said to be an activity relating to business. Therefore credit availed on said services is not admissible in terms of Rule 3 of Cenvat Credit Rules, 2004 and needs to be recovered under Rule 14 of Cenvat Credit Rules, 2004. Thus a show Cause Notice dated 06-10-2015 was issued to them, asking them to show cause as to why

- (i) *the CENVAT Credit amounting to Rs.4,27,593/- - should not be demanded and recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(5) of the Central Excise Act, 1944*
- (ii) *interest should not be charged and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act. 1944 and*
- (iii) *penalty should not be imposed upon them under Rule 15(2) of Cenvat Credit Rules, 2004 read with under Section 11AC of the Central Excise Act, 1944.*

2.5 The show cause notice was adjudicated by the Assistant Commissioner, Aurangabad Division-IV, ordering for recovery of inadmissible Cenvat credit amounting to Rs.4,27,593/-- under provisions of Rule 14 of the Cenvat: Credit Rules, 2004 read with Section 11A(5) of the Central Excise Act, 1944 along with interest as per Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 . A penalty of Rs.2,13,797/-- (50% of Rs.4,27,593/-) under the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC (c) of the Central Excise Act, 1944.

2.6 Aggrieved appellants filed a appeal before Commissioner (Appeal) which was partly allowed modifying the order in original by the impugned order as referred in para 1, above.

3.1 I have heard Ms Pradnyali Deshpande, Advocate for the Appellants and Shri N N Prabhudesai, Superintendent, Authorized Representative for the revenue. Both the sides have also filed written submissions in the matter.

3.2 Arguing for the appellants learned counsel submits that:

- The factory of appellant is located 20 to 30 km away from city therefore guest house is required for stay of visitors including executives of customers, auditors etc. Therefore, appellant has taken rented premises as a guest house for accommodation or stay of customers. As a part of sales promotion activity, they have to take proper care of their customers and guests. For the same purpose Appellant has availed services of manpower supply at guest house to

provide proper hospitality. They would rely on the following decisions in their support.

- ACG ASSOCIATED CAPSULES P. LTD. [2019 (20) G.S.T.L. 346 (Bom.)]
 - R.K. MARBLE PVT. LTD.[2017 (49) S.T.R. 434 (Tri. - Del.)]
 - L'OREAL INDIA PVT. LTD. [2011 (22) S.T.R. 89 (Tri. - Mumbai)]
 - ISMT LTD. [2015 (40) STR 596 (Tri-Mumbai)]
 - Innovassynth Technology Pvt Ltd [2018 (363) ELT 1184 (Tri-Mum)]
 - JSW STEEL (SALAV) LTD.[2016 (46) S.L.R. 863 (Tri. - Mumbai)]
 - MAHINDRA & MAHINDRA LTD. [2016 (46) S.T.R. 51 (Tri. - Mumbai)]
 - EXL SERVICE.COM INDIA PVT. LTD.[2016 (43) S.T.R 294 (Tri. - All.)]
 - DCM SHRIRAM CONSOLIDATED LTD[2014 (36) SIR! 1120 (Tri. - Del.)]
- They had availed the Manpower supply services at Bajaj Auto limited Waluj, which is one of the customer of appellant which helps them in sales promotion of their finished products. Though the Manpower service is availed at Bajaj Auto limited Waluj it is directly relating to business promotion and development and customer care service of Appellant and have direct nexus with business activity of appellant and therefore CENVAT credit is rightly eligible to them as per the decision in case of M/s Eskay Kaycee Industries Pvt. Ltd {FINAL ORDER NO.75204/2022}.
- They had taken the membership of ACMA i.e. 'Automotive Components Manufacturers Association Membership subscription fees paid is nothing but the expense towards market research for facilitating manufactured products generating more sales.
- Pam Pharma. & Allied Machinery Co. P. Ltd. [2016 (42) S.T.R. 757 (Tri. - Mumbai)]
 - Zensar Technologies Ltd. [2016 (42) S.T.R. 570 (Tri. - Mumbai)]

- Overseas Infrastructure Alliance (I) Pvt. Ltd. [2021 (44) G.S.T.L. 379 (Tri. - Mumbai)]
- During the disputed period Appellant had availed repairs and maintenance services within their factory premises for fencing the outer walls of the factory, Precoated Partition for Compound wall, Chain link work- to safeguard the finished goods and other machineries installed in the factory premises. repairing, renovation and modernization like oil painting and Fabrication and fixing work within factory premises. To safeguard such machinery and other ancillary equipments Appellant has availed such services. Also safety measures are required to be taken as it is a mandatory requirement under Factories Act, 1948.
 - International Combustion (I) Ltd. [2016 (44) S.T.R. 110 (Tri. - Mumbai)]
 - Ucal Fuel Systems Ltd. [2017 (48) STR 167 (T-Chennai)]
 - Raymond Uco Denim Pvt Ltd [2017 (7) GSTL 346 (T-Mum)]
- Appellant being an automotive components manufacturer requires water in abundance to carry out manufacturing activities. Appellant submits that during that period there was scarcity of water in that region where Appellant operates. Due to such scarcity, supply of water was inadequate as the ground water level was at very deep because of shortage of rainfall. Appellant availed consultancy services to study the water level to avoid any shortage of water in future as faced during that year. Therefore, consultancy services have been availed by the Appellant to check the feasibility of water, which was necessity in facilitating the manufacturing process at that time. PEPSICO INDIA HOLDINGS PVT. LTD. [2013 (31) S.T.R. 499 (Tri. - Bang.)]
- Sponsorship Service Appellant participated inter-industries cultural event and availed services of Sponsorship by Lokmat Media Pvt Ltd. Appellant being a Sponsor gets certain benefits inter-alia includes, displaying of name of the Appellant on banners during the event. Appellant gets the advantage of advertising their brand and getting

recognition by various other potential customers or prospective buyers. Appellant submits that during such event, they also display their various products for seeking attention of visiting persons/industry representatives in order to expand their ! brand and advertise their products. Therefore, such service is having direct impact on the business of the Appellant. Accordingly, CENVAT Credit on tax paid on such services cannot be denied. Hindustan Coca-Cola Beverages Pvt. Ltd. [2018 (363) EL.T. 1087 (Tri - Kolkata)] ARM Embedded Techonologies Pvt Ltd [2016 (46) STR 133 (T-Bangalore)].

- They has inadvertently availed CENVAT Credit in respect Rent a Cab services and services availed in Plant –I. They reversed the credit so availed along with interest voluntarily before filing the appeal before Commissioner (Appeals)
- The period involved in the present matter from January 2012 to May 2015 and SCN has been issued on 06/10/2015 invoking extended period of limitation. Hon'ble Apex Court also held that "extended period of five years applicable only when something positive other than mere inaction or failure on the part of manufacturer is proved - Conscious or deliberate withholding of information by manufacturer necessary to invoke larger limitation of five years". They rely on following decisions:
 - Chemphar Drugs & Liniments [1989 (40) E.L.T. 276 (S.C.)]
 - Gujarat Guardian Limited [2016 (46) STR 737 (Tri-Ahmedabad)]
 - Saurashtra Cement Ltd. [2016 (42) S.T.R. 632 (Guj.)]
 - Accurate Chemicals Industries [2014 (300) E.L.T. 451 (Tri. - Del.)]
 - Dynamic Industries Ltd. [2014 (307) E.L.T. 15 (GUJ.)]
 - Meghmani Dyes & Intermediates Limited [2013 (288) ELT 514 (GUJ)]
 - Ballarpur Industries Ltd [2010 (17) STR 101 (Tri-Mum)]

- Sai Sahmita Storages (P) Ltd. [2011 (23) S.T.R. 341 (A.P.)]
- Singhal Strips Ltd [2010 (256) E.L.T. 15 (P.& H)]
- Manglam Cement Ltd. [2004 (163) ELT 177 (Tri-Del)]

3.3 Arguing for the revenue, learned authorized representative while reiterating the findings recorded in the impugned order, submits that:

- The issue is related to the wrong availment of Cenvat credit on services which are not 'input service' as defined under Cenvat Credit Rules, 2004.
- A statement of Shri Achyut Gundo Joshi, Assistant General Manager, Taxation and Authorised Signatory of the assessee was recorded on 14/1/2015 about the services on which credit was wrongly availed. .
- By the impugned order Commissioner (Appeal) has confirmed the demand of Rs.1,68,054- along with interest in respect of the services viz.
 - Manpower Service (Guest House) Rs. 17,718/-
 - Manpower Service (BAL) Waluj Rs 12,576/-
 - Repairing Services (Civil) Rs 1,13,183/-
 - Rent a Cab Rs 687/-
 - Club Membership, Rs 16,611/-
 - Services used at Plant – I, Rs 830/-
 - Consultancy for rain water Harvesting, Rs 3090/-
 - Sponsorship Fees, Rs 3459/-
- For confirming the above demands Commissioner (Appeal) relied on the following decisions:
 - Manikgarh Cement [2010 (20) S.T.R 456 (Bom)]
 - Ajanta Transistors Clock Mfg. [2013 (29) S.T.R. J21 (Guj.)]
 - Vikram ispat [2012 (277) ELT 218 (Tri. - Mumbai)]
 - Sundaram Clayton Ltd. [2016 (42) S.T.R. 741) (Tribunal)]
 - Godawari Power & Ispat Ltd.
- As per Rule 9(6) of CCR, 2004 the burden of proof regarding admissibility of Cenvat Credit lies on the manufacturer taking such credit.

- On facts it can be seen that the above said services are not eligible for credit. It is evident from the manner of utilization of the disputed services explained by the Appellants, that there is no nexus of the said services with the manufacturing activities of the Appellants. The appellants have not given specific utilization of the said services and tried to give vague justification.
- In case of Manpower Service at Guest House, at Bajaj Auto Ltd., Waluj how these services are having nexus with manufacturing has not been explained. The Appellants in respect of Repairing Service (Civil) tried to justify it as repairing of machines. However, in the statement dated 14/1/2015, Shri Joshi, Assistant Gen. Manager, Taxation of the assessee inter alia stated that they have used the services of repairs, management, maintenance etc. at their Wind Mill situated in a different Taluka viz. Parner. Since, the service used there in Parner Wind Mill has nothing to do with manufacturing carried out at Plant III in Paithan Taluka, the same is not eligible for credit. No explanation given as to how the club membership or Sponsorship would have nexus with manufacturing activity. The Rain Water Harvesting consultancy whether implemented or otherwise is not forthcoming and the same has no nexus with manufacturing. As Rain Water Harvesting was not done and only consultancy was availed, there is no nexus with manufacturing activities, (as held in Rashtriya Ispat Nigam Ltd 2020-TIOL-809-CESTAT-HYD). The assessee in Plant III manufacture Aluminium Pressure Die Cast parts, dies and fixtures which are generally for industrial use. Thus their claim that sponsoring a cultural program etc. would be helpful in their business is not correct. Further, the phrase 'business activity' is removed from 'Input service' definition in 2011 only. In respect of Club membership and Rain Water Harvesting, Shri Joshi in his statement stated that these were actually expenses towards advertisement or sales promotion expenses. However, these services were not meant for advertisement or business promotion. The benefit the assessee expect from a service has nothing to do with the nature of

service. The nature of service decides whether it is eligible for credit or not. This clearly shows that the assessee is putting forth lame excuses to justify their wrong availment of credit. In all the cases, no evidence is given by the Appellants in support of their vague claims of utilization of disputed services.

- Appellants relied upon a few case laws but the same are not related to the issue under consideration in the instant case and were pertaining to the period prior to the amendments.
- In his support he would rely on the following decisions:
 - Gujarat Heary Chemicals Ltd. (2011 (22) S.T.R. 610 (Guj.))
 - Eimco Elecon (India) Ltd. [(2017 (52) S.T.R. 316 (Tri. -Ahmd.)]
 - Nectar Beverages Pvt Ltd [2015-TIOL-512-CESTAT-BANG]
 - Gujarat State Fertilizers & Chemicals Ltd. [(2016 (41) S.T.R. 191 (Tri. Ahmd.)] This decision is upheld by Gujarat High Court in 2016 (41) S.T.R. 794 (Guj.).
 - Maruti Suzuki Ltd [(2009 (240) E.L.T. 641 (S.C.)) (copy enclosed) held that Inputs falling in inclusive part must have nexus with manufacture of final product and that all the three parts of definition, namely specific, inclusive and place of use to be satisfied before an input becomes an eligible input. It was also held that mere fact that item, a packing material, whose value included in assessable value of final product not entitles manufacturer to take
- The claim of the Appellants about bona fide belief is not admissible as bona fide belief is not a blind belief. The Hon'ble Tribunal in the case of Continental Drugs Company Pvt Ltd. Vs Commissioner Service Tax Mumbai (2015 (39) STR 154 (T-MUM)], held that Bona fide belief is not blind belief but has to be based on reasonable measures taken to entertain such belief. There is nothing in the records to show that the appellant consulted either the department or obtained any legal opinion as their liability towards service tax. In the absence of any such evidence, it is difficult to

accept this contention of the Appellants. He would also rely on the following decisions

- Hanuman Sahakari Dudh Vyvasaik Krushi Purak Seva Sanstha [2014 (309) E.L.T. 273 (Tri. - Mumbai)]
- Sona Paper Boards Ltd. [2014 (313) E.L.T. 721 (Tri. - Del.)]
- Hon'ble Allahabad High Court in the case of Bajaj Hindustan Ltd. Versus Union of India (2013 (295) E.L.T. 20 (All.)) upheld penalty under Section 11AC, for taking Cenvat credit in violation of Cenvat Credit Rules, 2004.
- In Rathi Steel & Power Ltd. [2015 (321) E.L.T. 200 (All.)] that the assessee's reply to show cause notice stating that there is no provision in Central Excise Law to disclose details of credit or to submit duty paying documents, is false and an attempt to deliberately contravene provisions of Central Excise Act, to evade payment of duty.
- In the case of FL Smidth Pvt Ltd [(2014-TIOL-2186-HC-MAD-CX)} Hon'ble High Court upheld extended period because the appellant had not disclosed the availment of inadmissible input service credit and it came to the knowledge of the Department only on verification of the documents.
- In the case of Mahindra Sona Ltd [2016-TIOL-1174-CESTAT-MUM) in the era of self assessment, the onus of taking credit correctly has been put on the appellant, thus extended period is rightly invoked.

4.1 I have considered the impugned order along with submissions made in appeal, during the course of arguments and in the written submissions filed.

4.2 The issues to be decided in this case are regarding admissibility of Cenvat credit on the services as detailed in table below:

Table:- Service wise demands upheld against the Appellants		
S No	Name of service	Amount
1	ACMA Club member	16,611
2	Manpower Service (Guest house)	17,718

3	Manpower Service {Bal Waluj}.	12,576
4	Repairing Service in factory premises	1,13,183
5	Consultancy for Rain Water Harvesting	3,090
6	Sponsorship	3,459
7	Rent a cab	687
8	Services availed in Plant 1	830
	Total	1,68,154
	Amount Reversed before OIA	1517
	Net Amount in dispute	1,66,637

4.3 The definition of input services as per Rule 2(l) or Cenvat Credit rules, 2004 at the relevant time is reproduced below

"(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 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. accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit ruling, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes, -

(A) service portion in the execution of a works contract and construction services including service listed under clause (h) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for - (a) construction or execution of works contract of a

building or a civil structure or a part thereof; or (1) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or services provided by way of renting of a motor vehicles, in

(B) so far as they relate to a motor vehicle which is not a capital goods; or service of (BA) general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;.

4.4 In the first instant I observe that in respect of four head of services namely those mentioned at Sl No 5, 6 ,7 & 8 in table in para 4.1 above, the amount involved is less than Rs 10,000/-. The proviso to Section 35 B (1) of the Central Excise Act, 1944 reads as follows:

Provided *further that] the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -*

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of

assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) the amount of fine or penalty determined by such order, does not exceed ⁷[two lakh rupees];

Looking into the quantum of disputed quantum of credit involved in these four service which even taken together is less than Rs 10,000/- I am not inclined to admit and determine the issue with regards to admissibility/ inadmissibility of the credits in respect of these services without prejudicially impacting the interests of the appellant. Hence appeal to the extent of these four services is held to be non maintainable in terms of above referred proviso and dismissed accordingly.

4.5 I also find that the issue in respect of the Club Membership fees, is no longer res-integra. Allowing the credit in respect of such club membership fees tribunal has in the case of Pam Pharma & Allied Machinery Co P Ltd., referred to by the Counsel for the appellant has held as follows:

"8. I have gone through the various judgments cited by both the sides. The only issue involved in the present appeal is of denial of Cenvat credit of service tax paid on club membership of Association known as Entrepreneur Organisation. The contention of the department is that the said services are not in relation to the manufacturing of final product; whereas the contention of the appellant is that the membership of such an organisation is essential for the purpose of promoting their final product and to get the knowledge with respect to the availability of inputs from right source across the globe and also to facilitate the meetings of entrepreneurs for exchange of their knowledge and information. The present organisation is not an entertainment club and purely a business club. The Id. Counsel for the appellant also cited the following judgments of this Tribunal on the same point wherein this Tribunal has allowed the Cenvat credit of membership fee of the business club. The following are the judgments :

(a) Finolex Cables Ltd. vide Order No. A/2056/15/SMB, dated 30-6-2015

(b) *Racold Tharmo Ltd. vide Order No. A/3698/15/SMB, dated 30-10-2015*

(c) *Zensar Technologies Ltd. vide Order No. A/85123-85130/15/SMB, dated 27-11-2015*

9. *On the other hand, Id. AR submitted that the appellant has failed to establish the nexus between the club and the business of the appellant.*

10. *After hearing the Id. Counsel for the parties, and perusal of the records, I find that the membership of the business club like the Entrepreneur organisations is indirectly related to the promotion of the business of the appellant. I also find that the expenses incurred on membership of the club are forming part of the assessable value and as per the judgment in the case of Coca Cola P. Ltd. (supra) wherein the Hon'ble High Court in para 43 has observed that "Once the cost incurred by the service has to be added to the cost, and is so assessed, it is a recognition by Revenue of the advertisement services having a connection with the manufacture of the final product. This test will also apply in the case of sales promotion." Therefore keeping in view the judgments cited (supra), I am of the considered opinion that the expenses incurred on the membership of the business club is an 'input service' and appellant can legally take Cenvat credit of the expenses incurred on the membership of the club."*

The ratio of this decision has been followed by the tribunal in subsequent decisions also. I do not find any reason to differ with this decision and am inclined to follow the same.

4.6 Commissioner (Appeal) has while denying the credit in respect of services under the category of repairing services in factory premises has recorded as follows:

"106 Fourthly, I decide whether Cenvat credit of Rs.113183/ availed on repairing services (Civil | is admissible:

The appellant in their grounds of appeal mentioned that they had availed repair and maintenance services in the premises of factory. However, I find that the lower authority in Para 7(ii) of his impugned order mentioned that the appellant in their

statement dated 14-01-2015 slated as under - " *They are eligible to avail Cenvat Credit of service tax paid by them wherein vendor has charged said service tax for various services provided (including repairs, management and maintenance and allied/other services thereof) at their windmill situated at plot of land at Supa Site, village. Pimpalgaon, Tq. Parner, Dist. Ahmednagar, Maharashtra. Please refer decision in the matter of Maharashtra Seamless Ltd vs Commissioner of Central Excise,, Mumbai, [2012 (276) ELT 209, Tri. Mumbai.]*".

From the statement of the authorized signatory of the appellant, it is crystal clear that the appellant had received the said services outside the premises of their factory. For availing of the credit of repairing services (Civil), the services should be provided within the premises of the factory. Thus, I find that the appellant has not fulfilled the said condition stipulated in the definition. It is also observed that the electricity generated by the wind mill is not exigible to central excise duty nor the same electricity finds use in or in relation to the manufacture of goods. It is also not the appellant's case that windmill is their final product.

*In this light I find no infirmity in the order of the lower authority in this regard while denying the credit on repairing service (civil). In this regard I draw support from the Hon'ble High Court order in case of M/s **Ajanta Transistors Clock Mfg. co versus Commissioner** (2013(29) S.T.RJ 211 Guj)]."*

Having considered the above observation I do not find myself in agreement with the same. The findings recorded by the Commissioner (Appeal) do not follow from the order in original or from the facts available on records. In any case tribunal has in case of Maharashtra Seamless Ltd, decided the issue stating as follows:

"6. Input services were rendered for maintenance of wind mills for generation of electricity is not in dispute. The electricity so generated is used in the manufacture of final product. Therefore, the service falls under the definition of input service. As regards input service used at a different place it is pertinent that there is no mandate in law that it should be used in the factory unlike

inputs, which is clear from Rules 4(1) and 4(7) of the Cenvat Credit Rules, 2004 reproduced herein :-

"Rule 4(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 :

Provided that in respect of final products, namely, articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.

Rule 4(7) - The CENVAT credit in respect of input service shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or, as the case may be, challan referred to in Rule 9."

7. The Tribunal in the case of Indian Rayon & Ind. Ltd. (supra) has held that no such stipulation regarding receipt of input service, which is separately defined under the Rules, is provided. The Hon'ble High Court in the case of Ultratech Cement Ltd. (supra) has held that the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. - 2010-TIOL-1227- CESTAT-MUM = 2011 (21) S.T.R. 297 (Tri. - Mum.), this Tribunal has held that the denial of CENVAT credit on the ground that services were not received by the respondent in factory premises is not sustainable.

8. So far as contention of the department that the same quantum of electricity has not been received in the factory for manufacturing of final products, I find force in the contention of

the learned Counsel that this was not an issue in any of the proceedings of the department. The appellant has paid service tax on the input services is also not in dispute. As regard the reliance placed by the learned JDR in the case of Rajhans Metals (supra) and Asian Tubes Ltd. (supra), I note that decision of the Hon'ble High Court of Bombay in the case of Ultratech Cement Ltd. (supra) was not before the Tribunal in both the cases."

The decision of Hon'ble Gujarat High Court referred to by the Commissioner (Appeals) is not a final order in the appeal filed before it as is evident from the following:

"Cenvat credit of Service Tax — Input service — Maintenance and Repair services received in wind energy plant situated 200 kms from factory, producing electricity

The Gujarat High Court Bench comprising Hon'ble Mr. Justice K.A. Puj and Hon'ble Mr. Justice Rajesh H. Shukla on 29-1-2010 admitted the Tax Appeal No. 319 of 2009 filed by Ajanta Transistors Clock Mfg. Co. against the CESTAT Final Order Nos. A/815-816/2008-WZB/AHD, dated 29-4-2008 as reported in 2009 (13) S.T.R. 168 (Tri.-Ahmd.) (Ellora Times Ltd. v. Commissioner). While admitting the appeal, the High Court passed the following oral order :

"The appellant has filed this Tax Appeal under Sec. 35-G of the Central Excise Act, 1944 proposing to formulate the following substantial questions of law for determination and consideration of this court:

- (1) Whether on the facts and circumstances of the case, the CESTAT is correct in holding that the services received in respect of operation, maintenance of captive wind mill plant are not entitled for the Cenvat credit under Rule 2(I) of the Cenvat Credit Rules, 2004?*
- (2) Whether on the facts and circumstances of the case, the CESTAT is correct in rejecting the appeal of the appellants 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 CESTAT is correct in rejecting the appeal of the appellants on the*

ground that the services received in respect of generation of electricity which is used in or in relation to the manufacture of dutiable products, are not entitled for Cenvat credit?

Mr. A.P. Nainawati, the learned advocate appearing for the appellant, has submitted that earlier in appellant's own case this court has admitted a tax appeal involving identical issue and the same questions were formulated by the court. He places on record a copy of the order passed by this Court in Tax Appeal No. 1679 of 2008 on 28-8-2009.

In the above view of matter, this Tax Appeal is admitted and the questions of law referred to hereinabove are formulated for determination and consideration of this court.

Notice to the other side. Additional paper-book, if any, to be filed within 3 months from today.

To be heard with Tax Appeal No. 1679 of 2008."

The Appellate Tribunal in its impugned order had held that input services have been received in the power plant belonging to the applicants but the power had been delivered to the Electricity Board. The transaction of delivery of power to the Electricity Board and sale of power by Electricity board with assessee are two independent transactions. The Electricity Board is only giving credit for the power received in the grid and it does not mean that there is a direct nexus between the services received in power plant and the items manufactured in the factory belonging to the appellants. In view of totally independent transactions unrelated to each other and in view of fact that power produced at the wind mill and power requirement of factory also need not have to be matched or tallied, appellants are not eligible for benefit of Service Tax credit.

[Ajanta Transistors Clock Mfg. Co. v. Commissioner - 2013 (29) S.T.R. J21 (Guj.)]"

The decision of tribunal against which the tax appeal has been admitted by the Hon'ble Gujarat High Court has been subsequently over ruled by the Hon'ble Madras High Court in case of Ashok Leyland Ltd [2019 (369) ELT 162 (Mad)]stating as follows:

"12. The argument of the Learned Counsel is that the windmill is situated far away from the manufacturing plant, there is no nexus and the type of transaction between the assessee and the TNEB is a barter system and it is, in effect, a sale of electricity at one point and purchase of electricity at the other. Therefore, it is submitted that there are two distinct and independent transaction and they had no nexus with each other and therefore, the question of giving credit, with regard to input services, does not arise. To support his argument, the learned counsel relied on a decision of the Tribunal in the case of *Ellora Times Ltd. v. Commissioner of Central Excise, Rajkot, 2009 (13) S.T.R. 168 (Tri. - Ahmd.)*.

13. Further, by referring to the decision in *Maruti Suzuki Ltd. (supra)*, it is contended that the Court though was examining a case with regard to inputs, the Hon'ble Supreme Court has observed that electricity generation is a separate and distinct activity, it is an independent activity, it has its own economics and it does not form part of the process in which inputs are transformed into separate identifiable commodity, though it may stand connected to such processes. Further, it was held that electricity generation is an ancillary activity, it is an activity, which is anterior to the activity of the process of manufacture of the final product. Therefore, it is submitted that this is to be borne in mind to consider as to whether the input services on which credit has been availed could at all be availed especially when there is no direct nexus between the electricity generated and the manufacturing activity.

14. The Learned Counsels appearing for the assessees on the other hand submitted that much of the arguments of the Learned Counsel for the Revenue is beyond the allegations made in the show cause notice, which they are not entitled to do especially in an appeal filed under Section 35G of the CEA, 1944. It is their submission that the allegation in the show cause notice is that the windmill is situated far away from the factory and therefore, there is no nexus. Further, it is submitted that the decision in the case of *Endurance Technology Pvt. Ltd. (supra)* having attained finality, the same would bind the Revenue.

15. In terms of Section 35G of the CEA, 1944, the High Court can entertain an appeal against the order of Tribunal, if it is

satisfied that the case involves a substantial question of law. Sub-Section 3 empowers the High Court to formulate a substantial question of law, if the same is involved and the appeal shall be heard only on the question so formulated. The substantial questions of law formulated in these appeals stem out of the case, which were taken for adjudication, which especially involve factual details. Therefore, we are not persuaded by the contentions raised by Mr. A.P. Srinivas to travel beyond the allegation made in the show cause notice against the assessee. If that is to be done, then it would not only amount to an exercise being without jurisdiction, but it would also violate the principles of natural justice. Furthermore, this would expand the scope of the allegation against the assessee, which cannot be done at this stage. Therefore, we will have to answer the substantial questions of law framed for consideration on the allegations, which were set out against the assessee in the show cause notice.

16. As pointed out earlier, the adjudicating authority did not dispute the fact that the assessee had drawn equal quantity of electricity from the TNEB grid equivalent to the amount which it had generated through windmills and supplied to the TNEB. Therefore, we are not required to go into the question as to whether there was any excess energy generated, whether it was sold to third parties or whether the assessee had sold it to the Electricity Board on costs, etc., and these issues become hypothetical in the instant case because, there is no such allegation against the assessee on any excess generation than what was utilised. The only allegation against the assessee is with regard to the fact that the windmills are located far away from the manufacturing unit. Undoubtedly, the windmills cannot be located at any place, and it is to be erected, wherever the wind power is available. Therefore, such an interpretation if to be accepted, would defeat the very concept of generation of green power in the country. Therefore, this interpretation should lean towards the sustenance of such environmental friendly measures for which the Government has granted certain special concessions.

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 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 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.

20. By placing reliance on the decision in the case of Deepak Fertilizers & Petrochemicals Corporation Ltd. (supra), the first question was answered in the affirmative. At this juncture, it would be beneficial to refer to the operative portions of the said judgment.

"4. Question No. 1 is main bone of contention between the parties. Even the law on this subject is very well settled by at least three prominent judgments of our High Court reported in [1] 2010 (20) S.T.R. 589 (Bom.) in the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement [2] 2010 (260) E.L.T. 369 (Bom.) = 2010 (20) S.T.R. 577 (Bom.) in the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. And [3] 2013 (32) S.T.R. 532 (Bom.) in the case of Deepak Fertilizers & Petrochemicals Corporation Ltd. v. C.C. Ex. Belapur. The question between the parties is whether the respondent was entitled to credit on management, maintenance or repair services provided on windmills installed by the respondents. The answer lies in interpretation of Rule 2(B)(k), (l) (m), 3 and 4 of Cenvat Credit Rules, 2004.

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(I) initially provides that input service means any services of the description falling in sub-clauses (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 Rules 2(I). The first part of Rule 2(I) 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(I) 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(I). Rule 2(I) 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(I). Moreover as we have noted earlier, whereas Rule 3(I) 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 final product. 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 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. (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."

21. In Deepak Fertilizers & Petrochemicals Corporation Ltd. (supra), which has been quoted in Endurance Technology Pvt. Ltd. (supra), the contention advanced by Mr. A.P. Srinivas, was taken note of and it was held that the input services were directly or indirectly in or in relation to the manufacture of final products.

22. The decision in the case of Endurance Technology Pvt. Ltd. (supra) was followed by a Larger Bench of the Tribunal, in the case of Parry Engg. & Electronics P. Ltd. v. C.C.E. & S.T., Ahmedabad-I, II, III, 2015 (40) S.T.R. 243 (Tri. - LB).

23. We are informed that there is a Larger Bench's decision of the Tribunal, which also has not been appealed and the said decision has attained finality.

24. The decision in the case of Maruti Suzuki Ltd. (supra) cannot be applied to the facts of the present case, as it was a

case where the Court was considering as to whether electricity can be construed as an input. The facts in the case would be very important because, the allegation against the assessee therein was that they had generated electricity in their factory and wheeled out portion of the electricity to its joint ventures and the question was whether the extent of the clearance of excess electricity outside the factory to the joint ventures, vendors, grid etc., would be admissible for Cenvat credit, as it is cleared for a price. This question was answered against the assessee. However, the facts of the case on hand are totally different and therefore, the Revenue would not be justified in referring to the observations of the Hon'ble Supreme Court in the said judgment about the concept of generation of electricity, as we have to test the correctness of the impugned order on the given facts and circumstances of the case.

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(l), 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(I) 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.

27. Mr. A.P. Srinivas, placed reliance on the decision of the High Court of Bombay in *Bharti Airtel Ltd. vs. Commissioner of Central Excise, Pune-III*, 2014 (35) S.T.R. 865 (Bom.). In the said decision, the question to be decided was whether the assessee was entitled to credit of duty paid on cell phone towers, green shelter, printers and office chairs and they being immovable property do they qualify capital goods or inputs as defined under the Rules.

28. We find the said decision cannot be applied to the facts of the present case, which is entirely different, more so on account of the admitted position that whatever has been generated by the assessee in their windmills has been the equal quantity of electricity drawn from the power grid of the TNEB to the factory of the assessee. Thus, for the above reasons, we find that the Tribunal rightly allowed the assessee's appeal."

In view of the discussions as above I do not find any merits in the order of the Commissioner (Appeal) in respect of these services and hence set aside the same.

4.7 For disallowing the credit in respect manpower service availed at Guest House and BAL Waluj, impugned order observes as follow:

"104. Secondly I discuss whether Cenvat credit of Rs.17718/-availed on Manpower Service (Guest house) is admissible

The appellant have availed Cenvat credit of Rs. 17718/- on services of manpower supply at the guest house of the factory. The appellant in their grounds of appeal stated that the guest house is used by various guests and customers for business

purpose. Therefore, to maintain proper cleanliness and to ensure proper care of visiting persons, manpower services are availed by them. It has direct nexus with the business activity of them. The lower authority has however disallowed this credit.

I find that the said service is not covered under the definition of 'Input Service' as the said service is neither used in or in relation to the manufacture or clearances of final products nor can it be said to be an activity relating to business. In other words nexus needs to be proved in addition to establishing that input service was in fact used by the said manufacturers directly or indirectly as provided in law The appellant failed to adduce any substantial evidence that the said input service have direct nexus with the manufacturing activities and is absolutely in relation to business of them. I therefore find no infirmity in the order of the lower authority in this regard while denying that credit on manpower service (Guest house). In this connection I draw support from the order of CESTAT, Mumbai in respect of Commissioner of Central Excise, Nagpur versus Manikgarh Cement 2010(20) STR 456 BOM(HC)''

105. Thirdly I discuss whether Cenvat credit of Rs. 12576/- availed on BAL, Waluj is admissible.

The appellant in their grounds of appeal stated that they had availed the services of manpower supply at BAL Waluj, which helps them in sales promotion of the final products. The concerned employee takes care of the problems faced by the customer and also provides information to customer regarding new products which helps in promoting and advertisement of the products.

I find that the said service is not covered under the definition of 'Input Service' as the said service is neither used in or in relation to the manufacture or clearances of final products nor can it be said to be an activity relating to business. In other words nexus needs to be proved in addition to establishing that input service was in fact used by the said manufacturers directly or indirectly as provider in law The appellant failed to adduce any substantial evidence that the said input service have direct nexus with the manufacturing activities and is absolutely in relation to business of them. I therefore find no infirmity in the order of the lower

authority in this regard while denying that credit on manpower service (Bal Waluj)."

It is evident from the above that impugned order do not records any reasoning for disallowing the cenvat credit availed in respect of these services. The order only records that appellant has failed to adduce any substantial evidence to establish that these input services have direct nexus with the manufacturing activities and is absolutely in relation to business of them. I find appellants have taken a stand before the adjudicating authority as well as the Commissioner (Appeal), in respect of the admissibility of this credit and in respect of nexus with their manufacturing and business activities. The stand of the appellant that these services are in respect of the various activities undertaken by them at the premises of their customer in relation to promotion of their business. Without countering the said argument/ stand lower authorities are not justified in rejecting the claim made by the appellants. Appellants have specifically stated that the manpower deployed by them at the premises of their customer is for the purpose of, -

- Segregation of the products sent buy them,
- Replacement and touch up of defective products,
- Communicate the issues of Customer with them and resolve the problems. Also to provide information to the customer regarding new products.

In my view without negating the stand taken by the appellant, that there direct or indirect nexus of these services with their business activities, revenue is not justified in denying this credit. Till the time such nexus is established credit will be admissible. The impugned order in respect of these services cannot be sustained. Further the decision relied upon by the Commissioner (Appeal) do not support the case of the revenue as the said decision is in respect of the services provided welfare services provided to the employees. In para 8 Hon'ble Bombay High Court has observed that:

"8. In our opinion, establishing a residential colony for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such an expenditure may be allowable under

the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in Rule 2(l) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee."

In my view these services have the nexus with the business activities of the appellant and the credit cannot be denied in respect of these services.

4.8 Since I am not available to sustain the impugned order in respect of the services mentioned at Sl No 1, 2, 3 & 4, in the table in para 4.2 above I do not discuss the issue of limitation and the penalty raised by the appellant. As demands in respect of these services is set aside on merits itself the demand of interest and penalties imposed in respect of these services is set aside. A lot of decisions have been referred by both the sides in their submissions made which I do not intend to discuss individually as they do not impact the decision arrived by me herein.

4.9 In short the appeal filed by the appellant in respect of the services mentioned at Sl No 1 to 4 in the table in para 4.2 is allowed and in respect of the services mentioned at Sl 5, 6, 7 & 8 is held to be not maintainable.

5.1 Appeal is partly allowed as indicated in para 4.9 above.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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