OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
PLOT NO. 6776/B1, "SIDDHI SADAN" BUILDING,
NARAYAN UPADHAYAY MARG,
BHAVNAGAR-364 001.

F. No. V/15-27/Dem/HQ/2009.

Date of order: 05.12.2011
Date of issue: 27.12.2011

Passed by Shri Harcharan Singh, Additional Commissioner

Order-in-Original No. 13/BVR/ADC/2011

This copy is granted free of charge for private use of the person(s) to whom it is sent.

Any person(s) deeming himself aggrieved by this Order may appeal against this order to the Commissioner Central Excise(Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 within 60 days from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.

The appeal should be filed in form EA 1 in duplicate, as per the provisions of Section 35(1) of the Central Excise Act, 1944 read with Rule 3 of the Central Excise (Appeals) Rules, 2002. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeal) Rules, 2002.

- It should be accompanied with the following:

- Copy of appeal in duplicate

Copies of the order, one of which shall be certified copy **OR** the other must bear a court fee stamp of Rs 2.50/- paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.

Sub :- Show Cause Notice Number F. No. V/15-27/Dem/HQ/2009 dated 08.04.2009.

Brief facts :

Executive Engineer, Gujarat Electricity Transmission Corporation Ltd, Construction Division, Limbadi (hereinafter referred to as "the said assessee") engaged in providing the service of "Erection, Commissioning or Installation Service" are registered with Service Tax Department for providing the said services of "Erection, Commissioning or Installation Service" and are having Service Tax Registration No. BVN/STAX/SNR/XX/1/ECS/01/05-06 under Section 69 of the Finance Act, 1994.

2.1 The assessee is the part of the Company namely Gujarat Electricity Transmission Corporation Ltd. (hereinafter referred as **GETCO**), commonly known as GETCO. The main business activity of GETCO was transmission of electricity. Apart from the transmission activity, the GETCO undertook execution of contracts for erection, installation or commissioning etc. of transmission line for various customers. For this purpose, they have taken Service Tax Registration in the name of the said assessee i. e. Executive Engineer, GETCO, Construction Division, Limbadi. The said assessee were also availing the benefit of Cenvat Credit facility.

2.2 On the inquiry made by the Range Superintendent, Service Tax Range, Surendranagar (hereinafter referred to as "the **JRS**", for the sake of brevity) as to whether the services on which they are taking Cenvat Credit is used for providing output service, the said assessee did not reply correctly till 23.03.2009. JRS further asked the assessee to provide the information proving that the Services on which they have taken Cenvat Credit is input Services as per the definition of input service given in Cenvat Credit Rules, 2004 but assessee failed to prove the same.

2.3. On the scrutiny of the ST-3 Return filed by the said assessee for the period of **October-2007 to March-2008,** it was noticed that the CENVAT Credit taken by them was abnormally high when compared to the value of the output service provided by them with

reference to quantum of tax paid i. e. 20%. They have also wrongly shown opening balance of Rs.8,65,821/- in the month of October, 2007 while they have not taken any credit during the period April, 2007 to September, 2007. Also, the closing balance of the Cenvat Credit lying in balance in the ST-3 Return for the period of April, 2007 to September, 2007 was NIL. Further, JRS vide letter dated 25.9.2008 asked the said assessee to clarify the same who gave reply vide CDL/Acct/ST/275 dated 23.01.2009 stating that they have correctly taken the CENVAT Credit and also gave the clarification regarding wrongly shown opening balance that through inadvertence the same was shown as opening balance in the month of October, 2007; that few credits were left to be taken while filing the return for the period October, 2007 to March, 2008.

2.4. JRS made correspondence with the said assessee but they failed to prove that the Credit taken on services are Input Services as per the definition given in the Cenvat Credit Rules, 2004. Assessee had submitted copies of docket voucher form/ challans/ Running Account Bill-C / bill of M/s Shakti Engineering Co. of some services on which they have taken Cenvat Credit. They had furnished only one copy of a document showing details of deposit received from Executive Engineer (Project). They have not supplied the details of work, which are their output services. They have stated in their letter that regarding the bills/invoices in respect of credit taken as per the Return, it will take some time. They also requested to give them time of at least one month to prepare the details.

3. As per the Rule 9 (6) of the Cenvat Credit Rules, 2004, the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacture or provider of output service taking such credit and the said assessee have taken the credit on Service Tax paid on work of construction of sub-station, raising of lines, erection of line which are not used for providing the output service namely Erection, Commissioning or Installation Service to their customer. Further, these services were used for providing their main business activity i. e. Transmission of Electricity of GETCO but not their specific output service namely Erection, Commissioning or Installation Service of the said assessee for which they were charging payment from customers. Since, the work of Erection of lines, rising of lines was used for their own purpose and also for providing the output service to their customer, the said assessee was required to prove that which are those services used for providing output service namely Erection, Commissioning or Installation Service to their customer for which, they were charging from their customer and for which service tax was required to be paid by them and which was consumed by themselves for their main business activity of GETCO i.e. Transmission of Electricity. The assessee failed to prove the same. Therefore the credit taken on these services was inadmissible to the said assessee. Further, the work of construction of sub-station was used for the main business activity of GETCO. This service was not used for their output service namely Erection, Commissioning or Installation Service provided to their customer for which, they were charging from their customer and for which service tax was required to be paid by them. Hence, these services were not input service for said assessee's output service. Therefore, the Cenvat Credit taken on above discussed services were not admissible to them and required to be recovered from them. Further, the said assessee contravened the provision of Rule 3 (1) of the Cenvat Credit Rules, 2004 by taking credit on the services, which were not input services for them as per the definition of Input Service given in Cenvat Credit Rules, 2004.

4.1 Further, the said assessee have not produced all the duty paying documents as mentioned in the Rule 9(1) of the Cenvat Credit Rules, 2004 to the Range office for the verification for the total Credit of Rs.17,59,889/-. Further, Bill nos. and name of the service provider shown in the Annexure filed along with the ST-3 Return and letter dated 23.01.2009 was not matching with the bill Nos and service provider shown in the statement filed along with the letter dated 03.03.2009. On the scrutiny of the invoices/bills produced by the said assessee, it was found that the same were not proper document mentioned in the Rule 9(1) of Cenvat Credit Rules, 2004. Invoice No. / Bill No. and Service Tax Registration No. were not mentioned on the invoice/bills produced by them. Therefore, the Cenvat Credit taken by them was not admissible to them on improper documents. Hence, they have contravened the provision of Rule 9(1) of the Cenvat Credit Rules, 2004.

4.2. From the foregoing discussion, it was evident that the assessee has not provided the information and documents proving that the Cenvat credit taken by them was admissible to them. They had intentionally refrained to present the material facts which were necessary to prove the

admissibility of Cenvat Credit taken by them. Further, they have also not provided the correct information in the ST-3 Return filed by them for the period October, 2007 to March, 2008. They have shown Opening Balance as Rs 8,65,821/- in the month of October, 2007 whereas there was no credit taken by them during the past period. Also the closing balance of the Cenvat Credit lying in balance, in the ST-3 Return for the period of April, 2007 to September, 2007 was NIL. They have also not shown correct debit figure in correct column and row. They have also not shown the correct balance figure in the ST-3 Return for the said period. These omissions tantamount to mis-declararion on the part of the said assessee.

4.3. On the basis of statement filed by them alongwith the ST-3 Return for the period October, 2007 to March, 2008, statement filed by them alongwith the letter dated 23.01.2009 and statement filed by them alongwith letter dated 03.03.2009, it was found that they have taken Cenvat Credit of **Rs. 17,59,889/-** (including Education Cess and H.S.E. Cess) out of which they have utilized Rs. 2,76,022/- (including Education Cess and H.S.E. Cess) for payment of Service Tax and Education Cess and Higher Secondary Education Cess.

4.4. From the forgoing paras, it was observed that that the assessee has wrongly taken the Cenvat Credit of Rs.17,59,889/- on the ground that the Credit taken on the Service Tax paid on those Services which were not their input services as per the definition given in the Cenvat Credit Rules, 2004 for their output service namely Erection, Commissioning or Installation Service. In other words, the services were not used for providing the output service namely Erection, Commissioning or Installation Service. Further, it was also not admissible on the ground that they have not taken the credit on the duty paying document mentioned in the Rule 9(1) of the Cenvat Credit Rules, 2004.

4.5. Further, the said assessee was failed to furnish information called for by the officer in accordance with the provisions of the Cenvat Credit Rules, 2004 and also failed to produce documents called for by the JRS vide letter F. No. SNR/STAX/GETCO /ECS/2008 dated 02.02.2009 in accordance with the provisions of the Cenvat Credit Rules, 2004. Therefore, they were liable for penalty under Section 77 (c) of the Finance Act, 1994.

4.6. Further, the said assessee did not submit the material facts called for by the JRS which prevented JRS from scrutinizing the credit taken on the so called input services without giving references to output services. This suppression on the part of the said assessee also prevented department from ascertaining whether the said assessee was providing any other taxable services and also the value thereof. They have thus contravened various provisions of Rule 9(1) and Rule 3(1) of the Cenvat Credit Rules, 2004 with intention to evade Service Tax by utilizing the wrongly availed Cenvat Credit, for payment of service tax as discussed in the forgoing paras.

5. Therefore, M/s Executive Engineer, Gujarat Electricity Transmission Corporation Ltd., Construction Division, Limbadi were issued a Show Cause Notice requiring to show case as to why;

i. Cenvat Credit amounting to **Rs.17,59,889/-** (Rs. Seventeen lacs, fifty nine thousand, eight hundred and eighty nine only) (out of which Rs 2,76,022/- have been utilized by them), wrongly taken and utilized by them should not be recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73 of the finance Act, 1994.

ii. Interest on the amount mentioned at (i) at the appropriate rate should not be recovered from the said assessee under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994, till the date of actual payment.

iii. Penalty should not be imposed upon them under Rule 15 (3) of the Cenvat Credit Rules, 2004.

iv. Penalty should not be imposed upon them under Rule 15 (4) of the Cenvat Credit Rules, 2004, read with Section 78 of the Finance Act, 1994.

v. Penalty should not be imposed upon them under Section 77 (c) of the Finance Act, 1994.

Written submission :

6. The Noticee vide letter dated 27.5.2009 submitted reply to Show Cause Notice wherein interalia stated as under :-

1. The whole text of the show cause notice was developed to create a superficial Cenvat credit reversal demand from the Noticees. The Noticees are an organization and is committed to provide services to their clients with utmost sincerity for growth of the nation as a whole. Transmission of electricity is cardinal to the economic growth of the nation or state as the case may be. GETCO has also diversified into the filed of erection, installation or commissioning etc. of transmission line for various customers in order to utilize their expertise in this field and generated revenue for their main line business i.e. transmission of electricity.

2. The Noticees are registered with the Service Tax Department for the business of erection, installation or commissioning etc. of transmission line for various customers apart from transmission of electricity through out the state of Gujarat. They were paying Service Tax on the gross value of the services being charged by them from their customers at the rate applicable from time to time. They were also eligible to take credit of input services being utilized towards the provision of output services, attracting service tax as per the provisions of Cenvat Credit Rules, 2004. They were a huge organization being monitored by various agencies and hence the expenditure and income were under regular scrutiny by one or the other Government / Energy Audit agency. As documents pertaining to purchases and sales or income were required by each such agency, it sometimes got difficult to provide required Information or records immediately as is the case in this notice. Also as the majority correspondences of this company were made in local language, the information provided to the service tax department in English language cannot be ruled out to be imperfect as far as bill no. or name of the party is concerned. They has no intention to avoid payment of Service Tax or to avail inadmissible Cenvat credit for reducing the service tax liability, as alleged in the impugned notice.

3. It was also alleged that they had taken the credit on service tax paid on work of construction of sub-station, raising of lines, erection of line which were not used for providing the output service namely Erection, Commissioning or Installation to their customers, which appeared to be a totally contradictory statement. All the services mentioned above were basically input services for providing Erection, Commissioning or Installation to their customers or clients. They enclosed copies of work order / contract executed by them with their customers during the period October 2007 to March 2008 (Exhibit-A) as supporting evidence and stated that the nature of output service provide and the input services required for the same were clearly evident from the content of these contracts.

4. They believe that these were also input services for their main business of transmission of electricity but the same expertise was being utilized by them to generate additional revenue from services provided to their outside customers. Both the divisions were separate and accounting procedures / records were also mutually exclusive.

5. They had taken due care to avail Cenvat credit on the input services and only after satisfying themselves about the admissibility, such credit had been entered in the Cenvat Credit Account register. They had not contravened any provision of Rule 9(1) which said that the CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents namely :-

(a) an invoice issued by –
  (i) a manufacturer for clearance of -
    (i) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or not behalf of the said manufacturer;

(ii) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(b) a supplementary invoice issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of , the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of non-levy or short-levy by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation :- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax by the person liable to pay service tax under [sub-clauses (iii), (iv), (v) and (vii)] of clause

6. They submitted that they had not contravened Rule 9(6) of the Cenvat Credit Rules, 2004. The said rule states that 'the manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit." As required, in the manner as much as, the Noticees were maintaining proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded. The same was provided to the department on demand but still the department did not seem to be satisfied with the information. The Noticees were always ready to cooperate in the matter but time was a constraint, as can be seen from the facts mentioned in the notice. Service tax being a new levy, there was expected to be some difficulties in compliance. The procedural lapses are condonable in their case as there was no mens-rea behind such procedural lapses with intent to evade payment of service tax. Moreover, it was only an issue of mis-interpretation of the definition of input services which was the major allegation in the impugned show cause notice. The issue was no more res integra and has been settled by the Tribunal by various decisions. Hence, they cannot be penalized under the provisions of Rule 15(4) of Cenvat Credit Rules, 2004. they relied upon the following case laws which squarely cover the case also as far as the scope of input services is concerned :-

(i) Force Motors Ltd. Versus Commissioner of Central Excise, Pune-I – 2008(011) STR 0287 (Tri. Mumbai) – Appellants engaged in the manufacture of Tractors, Three Wheeler Motor Vehicles, Motor Vehicle parts etc. CBEC Circular No. 96/8/2007-ST has clarified that credit of service tax paid on mobile phone admissible. Appellants contended that Motor Vehicles are provided to their

officers and employees for use in carrying on appellant's business for coordinating manufacturing, materials procurement, inter plant material movement and other allied activities pertaining to their business of manufacturer of vehicles, tractors and parts thereof as per the terms and condition of employment of these employees and officers. Definition of 'input service' as per the Cenvat Credit Rules 2(1) is illustrative and not exhaustive and includes virtually all services which are used whether directly or indirectly in or in relation to manufacture of final products and clearance of final products from the place of removal. Prima facie, force in submission of appellants. Appeal of the assessee allowed.

(ii) Force Motors Ltd. Versus Commissioner of Central Excise, Pune – 2009 (013) STR 0692 (Tri. – Mumbai) – Aircraft stationed at the airport is used by the appellant for business activities. Aircraft is used for business activities, services rendered by airport authority and service tax charged by them would get covered under the definition of input services as enshrined Rule 2(1) of Cenvat Credit Rules. Impugned order denying the cenvat credit to appellant on the service tax paid by Airport Authority of India is not correct and is liable to be set aside. Appeal of the assessee allowed.

(iii) Commissioner of Central Excise, Nagpur Versus Manikgarh Cement – 2009 (163) ECR 0245 (Tri.-Mumbai) – The repairs maintenance, civil construction, manpower recruitment, cleaning services are services relatable to business, these are input services and Cenvat credit thereon is admissible. Appeal of revenue rejected.

(iv) Manikgarh Cement Versus Commissioner of Central Excise & Customs, Nagpur – 2008 (009) STR 0554 (Tri.- Mumbai) – Appellants' contention as reflected in the reply to the show cause notice that their factory situated at a remote place where no facilities were available for stay of their engineers and workmen, and it was necessary to construct a residential colony for the employees for being available on the spot in order to maintain continuity in the process of the cement manufacture, has not been disputed. The service provided is relatable to business and credit of service tax is admissible as the service in respect of repairs and maintenance, civil construction in relation to the residential colony are input services. The credit on this admissible. Appeal of the assessee allowed.

7. They submitted that the information was submitted after delay of some time due to the reasons discussed in para 2 above. The allegations under Section 77(c) regarding failure to:

   a. Furnish information called by an officer in accordance with the provision of this Chapter or rules made thereunder ; or
   b. Produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or Rules made thereunder; or
   c. Appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

   which were abrupt and hypothetical conclusions arrived at without following the principle of natural justice. They cannot be held liable for imposition of penalty under Section 77(c) of the Finance Act, 1994, once the desired information is submitted to the Department.

8. As regards allegation that non-furnishing of information and documents which prove that the Cenvat Credit is admissible to them, they submitted that they had shown the opening balance as Rs. 8,65,821/- whereas no credit taken by them during the past period, also, the closing balance of the Cenvat Credit in the ST-3 return for the period of April-2007 to Sept-2007 was shown as NIL. They had also not shown correct debit figure in correct column and row. They had also not shown the correct balance figure in the ST return for the said period. All these are clerical mistakes and not the substantive in nature and such accounting mistakes are likely to happen, while performing the accounting functions.

9. In view of their above submission, the demand is not sustainable and therefore the penalty proposed under Rule 15(3) of Cenvat Credit Rules, 2004 & Section 77(c) of Finance Act, 1994, proposed to be imposed upon them also needs to be dropped.

10. They requested that they would like to be heard in person before the matter is decided.

Personal Hearing :

7. Shri Dhaval K. Sheth, Advocate appeared on behalf of the noticee for personal hearing on 06.06.2011 wherein he reiterated the written submission dated 20.07.2009. He further relied upon judgement delivered by the Bombay High Court in the case of CCE, Nagpur Vs. Ultratech Cement reported in 2010 (20) STR 577 (Bom) and stated that credit taken by the assessee is correctly taken in view of aforesaid judgement. He has further requested to condone any clerical error and benefit of credit should not be denied for any error. He lastly requested that no penalty should be levied as the assesse is government undertaking and there was no intention to evade duty.

Discussion & Findings:

8. I have gone through the notice, records of the case, written submissions of the said assessee and submissions made at the time of hearing.

9. This notice has been issued to the said assessee proposing to recover CENVAT credit alleged to have been wrongly availed on the ground that the credit of Service Tax paid on the services provided to the said assessee are not "Input services" within the meaning of Rule 2 of CENVAT Credit Rules, 2004. On the other hand, the said assessee have claimed that services on which they have availed credit are their "Input Sevices." Therefore, short point for consideration of this notice would be whether the services on which credit availed by the said assessee are their "input services" within the meaning of CENVAT Credit Rules, 2004?

10. I find that the said assessee are primarily engaged in transmission of electricity in the state of Gujarat and have also utilised their expertise in the field to render erection, installation or commissioning of transmission lines etc. They have also registered themselves with the Service Tax and are paying tax thereon. It is undisputed that transmission of electricity is not taxable services within the meaning of Finance Act, 1944 for the impugned period. Availment of credit by manufacturer or provider of taxable service is governed by CENVAT Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or provider of taxable service shall be allowed to take credit of Service Tax leviable under Section 66 of the Act paid on any input service received by the provider of output services. Rule 2(l) of the CENVAT Credit rules, 2004 (as it stood at the material time) defines "input services" *means any service,-*

(i) used by a provider of taxable service for providing an output service, or
(ii) used by the manufacturer..... ....."

11. It is forthcoming from the above that so far as the availment of credit by the said assessee is concerned, the same is consistent with Rule 3 but whether services on which credit availed are "input services" requires further examination. As can be seen from the definition of "input services", any services used by a provider of taxable service for providing output service can be said to be "input services". Here use of service by a provider of service is qualified by words 'for providing an output service', therefore it is clear that any service received by a provider of service should be used for the purpose of providing an output service. Now, "Output Service" has been defined in Rule 2(p) as "*means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person as the case may be, and the expressions 'provider' and 'provided' shall be construed accordingly.*" This makes it clear that output service has to be a taxable service. Here, since the transmission of electricity for the relevant period was not taxable, the same cannot be said to "output service" within the meaning of CENVAT Credit Rules, 2004 but erection, installation or commissioning would qualify as "output service". A plain reading of these provisions reveals that the credit of Service Tax paid on only those services can be taken which are used in providing taxable service. Therefore, Service Tax paid on services which are exclusively used for providing non-taxable

service cannot be claimed as credit under CENVAT Credit Rules, 2004. Though one to one correlation of input service and output service is not warranted to avail credit under this scheme but availment of credit on services which are exclusively used for providing non-taxable service shall be against the very essence of the CENVAT Credit Rules, 2004, the basic purpose of which is to negate the cascading effect of the tax. In view of this, the Service Tax paid on the services exclusively used in providing transmission of electricity cannot be availed as credit.

12. Now, the said assessee, in their defence reply submits that it is contradictory statement in the notice that credit taken on Service Tax paid on work of construction of sub-station, raising of lines, erection of line are not used for providing the output service to their customers. They further submit that all these are basically input services for providing erection, installation or commissioning services and as supporting evidences they have submitted copies of certain work order/ contract executed by them. The services like construction of sub-station, raising of lines, erection of line etc., are provided to the said assessee by other service providers for transmission of electricity, apparently, these services cannot be used for provision of their output services viz. erection, installation or commissioning services. Therefore it is imperative to make a careful reading of the copies of certain work order/ contract executed by the said assessee and submitted here as supporting evidence. Perusal of these work orders/contracts reveal that all these are issued for either shifting/ raising of existing transmission lines and only one has been issued for erection of new lines. This is evident from subject of all these work orders, which is reproduce below for ready reference.

Sr. No.	Work Order No.	Date	Subject
1.	ACE (R&C)/D-1/EE-C/638	29.05.2007	Estimate for erection of 66 KV transmission Network for evacuation of 25 MW Wind farm generation from Wind farm of M/s. Natenco Wind Power Pvt. Ltd. At Village Ratabhe Tal. Halvad, Distt. Surendranagar to 66 KV Dungarpur S/S of GETCO.
2.	ACE (C&R)/EE-C/434	16.04.2007	Approval for the work of raising / shifting of 66 KV S/C dhrangadhra – Dhrangadhra-2 line for Rajya Marg Yojna Vibhag, Rajkot under Deposit scheme. Ref.:-NTC/Tech-1/2938 Dtd. 10.4.2007
3.	ACE (C&R) / EE – C / D-1/91/1418	20.12.2007	Approval for the work of shifting / height raising of existing 66 KV Halved – Halved S/C line No. 2 for M/s. GSRDCL under Deposit scheme. Ref.:-STC/Tech-1/939 dtd.22.11.2007.
4.	ACE (C&R) / EE – C/ D-1/88/1465	20.12.2007	Approval for the work of shifting / height raising of existing 66 KV Dhrangadhra – Chuli S/C line for M/s. GSRDCL under deposit scheme. Ref.:-STC/Tech-1/939 dtd.22.11.2007.
5.	ACE (C&R) / EE – C / D-2 / 96 / 1481	24.12.2007	Approval for the work of raising / shifting of 66 KV Surendranagar-Dudhrej-Rajsitapur line & 66 KV Surendranagar-Lakhtar-Rajsitapur line for M/s. SSNL Saurastra Branch Canal under deposit scheme near village Mulchand Ref.: STC/TECH-1/15 Dtd. 04.01.2008.
6.	ACE (C&R) / EE – C/58 / 797	06.07.2007	Approval for the work of shifting / raising of 66 KV Halvad-Ranakpur line crossing

			to Dhrangadhra Branch Canal between Loc. No. 13A, 14B, 15A near village Halvad for SSNNL Dhrangadhra Ref.: NTC/Tech-1/4982 Dtd. 19.06.2007
7.	ACE (C&R) / EE-C / 61 / 837	19.07.2007	Approval for the work of shifting / raising of 66 KV Halvad-Sarambhada line crossing to Dhangadhra Branch Canal near village Halvad for SSNNL Dhrangadhara. Ref.:NTC/Tech-1/4978 Dtd. 19.06.200
8.	(1) ACE (C&R) / EE-C / D-2/ 92/1469	20.12.2007	Approval for the work of raising / shifting of (1) 66 KV Limbdi-Sayla S/C line, (2)132 KV LImbdi Sitagadh D/C line, (3)) 220 KVChoraniya-Gondal S/C line for M/S SSNL, Botad Branch Canal under deposit Scheme. Ref.:STC/TECH-1/17 Dtd. 04.01.2005.

13. I fail to understand how the shifting/raising of the existing transmission lines, the entire cost of which is borne by the organisation or person who has requisitioned such a change can be equated with their primary services- "Transmission of electricity". It is interesting to note that even initial erection, installation or commissioning of the transmission lines is not their output service, therefore any comparison between these two services viz. "Transmission of electricity" and "erection, installation or commissioning" is misplaced. Examination of the acceptance letters of work orders/contracts (copies of which provided by the said assessee in reply to this notice) of the services provided to the said assessee and the credit of tax paid on such services has been availed by them, reveal that almost all the work/services are for initial erection of transmission lines. It is evident that such service provided to the said assessee are clearly for transmission of electricity and cannot be said to have been used in providing the output service viz. "erection, installation or commissioning" of the said assessee. Though, the said assessee have claimed the services on which they have taken credit as "input services" but they have not been able to adduce any convincing evidence to the effect that any of these "input services" have been used for the purpose of providing their 'output service'- erection, installation or commissioning.

14. In view of the above, it is abundantly clear that services on which the said assessee have taken credit cannot be termed as "input services" within the meaning of CENVAT Credit Rules, 2004 and therefore CENVAT credit of Service Tax paid on such services cannot be taken as credit.

15. The said assessee further pleads that they have taken due care to avail credit and only after satisfying themselves they have taken the credit and that they have not contravened the provisions of Rule 9 of the CENVAT Credit Rules, 2004. This plea of the said assessee is not acceptable in as much as taking of credit of the services which have no nexus with their output service is a blatant violation of the provisions of CENVAT Credit Rules, 2004 and merely verifying the particulars in invoices of service providers would not absolve them of the charges. The said assessee also submits that this is only mis-interpretation of definition of input service and no penalty is imposable under Rule 15 of the Rules. They have cited case laws in case of Force Motors 2008 (11) STR 287 (Tri-Mum), 2009 (013) STR 692, CCE vs. Manikgarh Cement-2009 (163) ECR 245 (Tri-Mum) in support of their plea. I am not inclined to accept this submission for the simple reason that availment of credit on services which have no nexus with the output service cannot be termed as mis-interpretation of law and hence case laws relied upon by the said assessee are not relevant. The said assessee is an organisation with ample resources and manpower at their disposal but still the information called for by the department was either not provided in time or was inadequate. Moreover, information in the statutorily prescribed ST-3 Returns was not correct. Therefore, in view of the above, the said assessee have contravened the provisions of Rule 9(1) and Rule 3(1) of the CENVAT Credit Rules, 2004 with intention to evade tax, hence extended period under section 73 of the Finance Act read with Rule 14 of

CENVAT Credit Rules, 2004 has been rightly invoked in the notice to recover the wrongly availed credit and they are also liable penalty under Rule 15 of the Rules. Also, the inordinate delays in providing information called for by the department would render them liable for penalty under Section 77 (c) of the Act.

16. In view of the above discussion, I pas the following order:

ORDER

(i) I disallow the Cenvat Credit amounting to Rs.17,59,889/- (Rs. Seventeen lacs, fifty nine thousand, eight hundred and eighty nine only) wrongly taken and utilized by the said assessee. The same shall be recovered from them alongwith the interest at the appropriate rate under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73 of the finance Act, 1994.

(ii) I impose penalty of Rs. 10,000/-(Rupees Ten thousand only) upon the said assessee under erstwhile Rule 15 (3) of the Cenvat Credit Rules, 2004.

(iii) I impose penalty of Rs.17,59,889/- (Rs. Seventeen lacs, fifty nine thousand, eight hundred and eighty nine only) upon the said assessee under Rule 15 (3) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance act, 1994.

(iv)I impose penalty of Rs 10,000/- (Rupees Ten thousand only) upon the said assessee under Section 77 (c) of the Finance Act, 1994.

Sd/-

ADDITIONAL COMMISSIONER

To,
M/s Executive Engineer
GETCO, Construction Division
N H. No. 8 A,
220 KV Sub-station Compound
Limbadi,
District Surendranagar 363 421.

Copy to:-
1. Commissioner, Central Excise, Bhavnagar.
2. Assistant Commissioner, Service Tax Division Bhavnagar
3. Superintendent, AR Service Tax, Surendranagar.
4. Guard File.

27/12/2011
ADDITIONAL COMMISSIONER

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
PLOT NO. 6776/B1, "SIDDHI SADAN" BUILDING,
NARAYAN UPADHYAY MARG,
BHAVNAGAR – 364 001.

F.No.V/15-58/DEM-ST/HQ/2009 DATE: 18.04.2012

M/s. Tejas Agency,
C/o Yogeshwar Agro Centre,
Opp : S.T.Stand,
Veraval – 362 266.

Sub: (1) ORDER-IN-ORIGINAL NO.20 / BVR / JT.COMMR / 2011 Dated 25.10.2011 passed by the Joint Commissioner, Central Excise, Bhavnagar in case of M/s Tejas Agency, Veraval.

(2) ORDER-IN-APPEAL No. 11 / 2012 (BVR) / COMMR(A) / RBT / RAJ dated 16.02.2012 passed by Commissioner (Appeals), Rajkot in case of M/s Tejas Agency, Veraval.

1 Please refer to above subject.

2 In view of directions contained in para 13 of Order-in-Appeal No.11/2012(BVR)/COMMR(A)/RBT/RAJ dated 16.02.2012 passed by Commissioner (Appeals), Rajkot, the amount of Service Tax on Provident Fund for the period from March-2007 to December-2008 and penalty thereon shall be as under :

a) The amount of Service Tax payable on Provident Fund amount Rs.10,85,861/- paid directly by M/s GHCL for the period **March-2007** to **December -2008** shall be as under :

March -07	39,623	12%	4,755	2%	95	-	-	4,850
April -07	45,873	12%	5,505	2%	110	-	-	5,615
May -07 to December-08	10,00,365	12%	1,20,044	2%	2,401	1%	1,200	1,23,645
Total	10,85,861		1,30,304		2,606		1,200	**1,34,110**

b) The amount of penalty under Section 76 of the Finance Act, 1994 shall be

i) Rs.200/- for every day under Section 76 of Finance Act, 1994 for the period March-2007 to 09.05.2008 during which the failure to pay the Service Tax on (a) above continued or at the rate of two per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of the Service Tax ;

c) The amount of penalty under Section 78 of the Finance Act, 1994 shall be

i) for the period from 10.05.2008 to December -2008 equal to the Service Tax at (a) above not levied or paid or short –paid. If the amount of Service Tax payable on the Provident Fund At (a) above is paid within 30 days from the receipt of this communication alongwith the interest payable then a per proviso to Section 78, the penalty will be only 25% of the Service Tax determined at (a) above . The benefit of reduced penalty shall be available only if the amount of penalty so

determined has also been paid within the period of thirty days from the receipt of this communication.

18/4/12

(IMAMUDDIN AHMED)
Joint Commissioner
Central Excise, HQ Bhavnagar

Copy to :

1. The Commissioner, Central Excise, Bhavnagar (RRA Section).
2. The Assistant Commissioner, Central Excise (AE),HQ Bhavnagar
3. The Assistant Commissioner, Service Tax Division, Bhavnagar
4. The Superintendent, Service Tax, Range-Junagadh with direction to initiate the recovery immediately.
5. Guard File