CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

Excise Appeal No. 53339 of 2018

[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-242-18-19 dated 11/07/2018 passed by The Commissioner, Central Excise, Customs & Service Tax, Raipur (C.G.).]

M/s SKS Ispat & Power Ltd., **Appellant**
Industrial Growth Centre, Siltara Phase II,
Raipur (C.G.) – 493 111.

VERSUS

Commissioner of Central Excise and Service Tax, **Respondent**
Central Excise Building, Dhamtari Road, Tikrapara,
Raipur (Chhattisgarh) – 492 001.

APPEARANCE

Shri Manish Saharan, Advocate – for the appellant.

Shri V.B. Jain, Authorized Representative (DR) – for the Respondent

CORAM :**HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)**
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50698/2020

DATE OF HEARING : 06/11/2019.
DATE OF DECISION : 10/06/2020.

C.L. MAHAR :-

The brief facts of the matter are that the appellants are engaged in manufacture of iron and steel products falling under Chapter Heading 72 of the Central Excise Tariff Act, 1985. The appellants have been availing the facility of the Cenvat credit of the central excise duty paid by them on inputs, capital goods and service tax paid by them on input services as per the provisions of the Cenvat Credit Rules, 2004. The Department has been of the view that in the manufacture of the sponge iron, iron ore lumps of different sizes are first subjected to crushing and thereafter iron ore fines are taken out and screened. During the course of screening of the iron ore fines certain quantities of iron ore fines which are in the powder form further cannot be used for manufacture of the sponge iron. These quantities of iron ore fines in the form of powder are being sold by the appellant to other persons, however, no central excise duty has been paid nor any reversal of the Cenvat credit has been affected by the appellant. The Department has been of the view that as per the provisions of Rule 6 (3) of the Cenvat Credit Rules, 2004 that manufacture who manufactures both exempted and non-exempted goods shall follow the procedure of reversal of the Cenvat credit as provided under Rule 6 of the Cenvat Credit Rules, 2004. It has also been mentioned that since the appellant have not followed the laid down procedure they need to pay central excise duty @ 6% of the value of the exempted goods on the iron ore fines which are exempted goods cleared by them from their factory premises during April 2015 to June 2016. Accordingly, a show cause notice dated 17 November 2017 have been issued to the appellant wherein a reversal of the 6% of the total value of the iron ore fines cleared by them for above-mentioned period amounting to Rs. 47,73,113/- has been demanded under Rule 6 (3) (i) of the Cenvat Credit Rules, 2004 readwith Rule 14 of the Cenvat Credit Rules alongwith Section 11A of the Central Excise Act, 1944. The provision pertaining to interest as well as penalty under Section 11AC (1) readwith Rule 15 (2) of Cenvat Credit Rules, 2004 have already been invoked. The matter has been adjudicated by the learned Assistant Commissioner vide its order-in-original No. 89-90/ADJ/AC/D-I/2017 dated 2 February 2018. The learned Assistant Commissioner has primarily dropped all the charges of the show cause notice holding that the product namely iron ore fines emerging during the process of the manufacture is not a manufacture goods and, therefore, not excisable and therefore he held that the provisions of Rule 6 (3) of the Cenvat Credit Rules, 2004 are not applicable in this case.

2. The Department has preferred an appeal against the above-mentioned order-in-original of the Assistant Commissioner before Commissioner (Appeals). The learned Commissioner (Appeals) vide his order-in-appeal No. BHO-EXCUS-002-APP-242-18-19 dated 11 July 2018 has allowed the appeal of the Department holding that the appellant are required to reverse Cenvat credit as provided under Rule 6 (3) (i) of the Cenvat Credit Rules, 2004 on the value of the iron ore fines cleared by them. The learned Commissioner (Appeals) has held that iron ore fines which emerged during the course of manufacture of sponge iron falls under the category of exempted goods and hence the provisions of Rule 6 of the Cenvat Credit Rules are very much applicable in this case. The appellant is before us against above-mentioned impugned order-in-appeal.

3. We have heard rival contentions and find that issue is no longer res-integra as it has already been decided in several decisions of this Tribunal that iron ore fines which emerges during the course of manufacture of sponge iron ore are in unavoidable and inevitable by-product and therefore same does not fall under the category of manufacture goods and accordingly same are not excisable. Thus, such goods cannot be considered as exempted goods and provisions of Rule 6 of the Cenvat Credit Rules, 2004 are not applicable. We rely on the following decision of the Tribunal while holding the above view. **Commissioner of Central Excise, Raipur (C.G.) versus Sarda Energy and Minerals Ltd.** reported under **2014 (34) S.T.R. 618 (Tri. – Del.)**. The relevant para is reproduced below :-

> "5. I have considered the submissions from both the sides and perused the records. The Iron Ore Fines emerge at the stage of crushing of Iron Ore and thereafter Iron Ore fines are taken out from the raw material handling plant. Neither the show cause notice nor the order passed by the original adjudicating authority mention as to which Cenvat credit availed inputs and/or input services have been used up to this stage. When the show cause notice and the order-in-original do not even mention as to which common Cenvat credit availed inputs/input services have been used up to the stage of crushing of Iron Ore at which stage Iron Ore Fines emerge, on this very ground itself, the demand under Rule 6(3) would be liable to be set aside. Moreover in this case, even if, there are some

> common inputs/input services and the assessee wants to comply with the provisions of sub-rule (2) of Rule 6 by maintaining separate account and inventory of input and input services meant for dutiable and excisable product, it is not possible as the Iron Ore Fines emerge as an unavoidable and inevitable by-product. The provisions of Rule 6(2) read with Rule 6(3) cannot be interpreted to cast an obligation on an assessee which is impossible and thereafter penalize him for failure to discharge an impossible obligation. *Lex Non Cogit ad impossibilia* is a well settled legal principle which is applicable to taxation matters also. For this reason also, the impugned order is not sustainable. In view of this, the department's case is not sustainable. I, therefore, do not find any infirmity in the impugned order. Revenue's appeal is dismissed".

4. We also take note of the decision of this Tribunal in the case of **Nav Durga Fuels Pvt. Ltd. versus Commissioner of Central Excise, Raipur** reported under **2016 (340) E.L.T. 526 (Tri. – Del.)**. The relevant para is reproduced below :-

> "4. In the process of screening and handling of iron ore, some fines generated, which the appellant sold to its customers. Generation of iron ore fines cannot be considered as separate excisable commodity, since no manufacturing activity is involved for emergence of the same out of iron ore by the appellant. Further, iron ore fines is not exempted from payment of duty in terms of notification issued by the Central Govt. Thus, in our view, iron ore fines will not be considered as "exempted goods" and the embargo created in Rule 6(3)(b) of the Cenvat Credit Rules, 2004 will not apply for removal of iron ore in fines form from the factory. Therefore, confirmation of demand on the appellant by the authorities below is not proper and justified. Accordingly, after setting aside the impugned order, we allow the appeal in favour of the appellant".

5. Since the facts in the matter at hand are identical to the issue decided by above-mentioned decisions, we follow the same and hold that impugned order-in-appeal is devoid of the merits and therefore deserves to be set aside. We set aside the same and appeal is accordingly allowed.

(Order pronounced in open court on 10/06/2020.)

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

PK