

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**EXCISE APPEAL NO. 53531 OF 2018
WITH
EXCISE MISCELLANEOUS APPLICATION NO. 50363 OF 2019**

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-227-18-19 dated 28.06.2018 passed by the Commissioner (Appeals), CGST & Central Excise (Appeals), Raipur]

**Principal Commissioner, Central Goods
& Service Tax & Central Excise, Raipur**
GST Bhawan, Tikrapara, Raipur (C.G.)

Appellant

Versus

M/s Hira Ferro Alloys Limited, Unit-II
Plot No. 490/1, 490/2, 491,
Urla Industrial Complex,
Raipur (C.G.)

Respondent

APPEARANCE:

Shri Sanjay Kumar Singh, Authorised Representative for the Department

Shri Krishnamohan K. Menon & Ms. Parul Sachdeva, Advocates - for the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 12.07.2022
DATE OF DECISION : 06.09.2022**

FINAL ORDER NO. 50816/2022

P. V. Subba Rao

This appeal has been filed by the Revenue assailing the order in appeal dated 28.06.2018 passed by the Commissioner, Central

Excise (Appeals), Raipur where whereby he modified the order of the lower authority dated 29.3.2018 reducing the proportionate credit to be recovered from the respondent to Rs. 12,35,667/- from Rs. 1,66,45,239/-.

2. The respondent is engaged in manufacture of Ferro Alloys falling under Chapter 72 of the Central Excise Tariff. It also has another unit in the same area and both units have separate central excise registrations and both are maintaining separate statutory records. The appellant's records were audited by the Department for the period December 2011 to March 2016 and several points were raised by the audit. The only one which remains to be decided is regarding the Cenvat credit on the inputs /input services used by it for providing of electricity part of which it supplied its sister unit. According to the Revenue, the respondent is entitled to Cenvat credit on the inputs and input services used in manufacture of its final product but not the inputs and input services which go into production of electricity which it supplied to its sister unit. The appellant had sold part of the electricity to the Chattisgarh State Power Distribution Company Limited and had to that extent reversed the Cenvat credit on the inputs and input services. However, the appellant had not reversed Cenvat credit to the extent it had supplied the power to its own sister unit which has a separate central excise registration.

3. Accordingly, a show cause notice dated 29.11.2016 was issued to the appellant seeking to recover an amount of Rs.

1,66,45,239/- under Rule 14 of the Cenvat Credit Rules, 2004¹ read with Section 11A of Central Excise Act along with interest under Section 11AA. It was further proposed to impose penalty upon it under Rule 15 of CCR read with Section 11AC (1)(c).

4. The Additional Commissioner has passed an order dated 29.3.2018 confirming the demand along with interest and imposing penalties. On appeal, the Commissioner (Appeals) has passed the impugned order holding that in his considered view, the appellant was not required to reverse proportionate Cenvat credit in respect of power which it supplied to its sister unit during the period and to that extent the demand had to be reduced. Accordingly, he modified the order of the lower authority as discussed above.

5. Revenue's submissions are as follows:

- (a) Cenvat credit can be availed by a manufacturer in terms of CCR which allows it to take credit on inputs or input services used for manufacture/production of dutiable goods by it. There is no provision under which the Cenvat credit can be availed on the inputs or input services which are used by a sister unit with a separate central excise registration;
- (b) The respondent's contention that the supply of electricity to its sister unit is not sale has no bearing in this case. It is immaterial whether the goods produced (electricity in this case) is supplied free of cost or sold

¹ CCR

to its sister unit. There is no distinction between the inputs or input services which were used for production of electricity which is sold to the Power Distribution Company and which is supplied to its sister units and so long as the inputs/input services are not used in manufacture of final products by the appellant, no Cenvat is admissible;

- (c) Cenvat credit can be availed by manufacturing unit only on the inputs or input services used for goods manufactured by it. It cannot avail the Cenvat credit on the inputs or input services which are used for manufacture of final products by sister unit;
- (d) Rule 3 of CCR clearly specifies that it is the manufacturer of final products who is allowed to take the Cenvat credit of the duty paid on any inputs/capital goods or input services.

6. Learned Authorized Representative vehemently argued that Cenvat Credit Rules make no distinction between the goods which are sold and goods which are supplied free. If the inputs or input services are used for manufacture of final product by the unit they qualify for Cenvat and not otherwise. If a company has two or three units credit on the inputs or input services used in one factory for manufacture of final products cannot be availed by another factory. The reason for this is that Cenvat credit is intended to offset duty payable on the final products or service tax payable on the output services by the duty paid or service tax paid on the

inputs/input services. He relies on the judgment of Supreme Court in **Maruti Suzuki Limited Vs. Commissioner of Central Excise, Delhi-III**². It has been held by the Supreme Court in paragraph 20 of this as follows:

“20. To sum up, we hold that the definition of “input” brings within its fold, inputs used for generation of electricity or steam, provided such electricity or steam is used within the factory of production for manufacture of final products or for any other purpose. The important point to be noted is that, in the present case, excess electricity has been cleared by the assessee at the agreed rate from time to time in favour of its joint ventures, vendors etc. for a price and has also cleared such electricity in favour of the grid for distribution. To that extent, in our view, assessee was not entitled to CENVAT credit. In short, assessee is entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they are using the produced electricity within their factory (for captive consumption). They are not entitled to CENVAT credit to the extent of the excess electricity cleared at the contractual rates in favour of joint ventures, vendors etc., which is sold at a price.

7. Learned Authorized Representative, therefore, submits that the law laid down by the Supreme Court is that the assessee is entitled to Cenvat credit to the extent they are used for generation of electricity which is used within its factory. The order of the Commissioner (Appeals) is contrary to the law laid down by the Supreme Court.

8. Learned Counsel for the respondent submits that the judgment of the Supreme Court in **Maruti Suzuki** does not apply to this case because it was a case of electricity being sold by the company to joint ventures, vendors etc. whereas in this case they

2 2009 (240) ELT 641 (SC)

are using the electricity for their own use though in his sister concern. He relied on the following case laws:

- (a) **Sanghi Industries Ltd. Vs. Commissioner of Central Excise, Rajkot³;**
- (b) **Bilag Industries P. Ltd. Vs. Commissioner of Central Excise, Daman⁴;**
- (c) **Hindustan Zinc Ltd. Vs. Commissioner of Central Excise & Service Tax, Jaipur-II⁵;**
- (d) **Commissioner of Central Goods & Service Tax, Jaipur Vs. Shree Cement Ltd⁶;**

9. He also submits that the as show cause notice was issued on 29.11.2016 covering the period December 2011 to March 2016 a large portion of the demand is beyond the normal period of limitation and, therefore, in the absence of evidence of fraud or collusion or willful mis-statement or suppression of facts or violation of Act or Rules with an intent to evade payment of duty, the demand cannot be sustained. He, therefore, prays that the Revenue's appeal may be dismissed.

10. We have considered the arguments on both sides and perused the records.

11. We find that the case of the Revenue is that as per CCR, CENVAT credit can only be allowed on the duty paid on inputs and service tax paid on input services. The definitions of 'inputs' in Rule 2 (k) of CCR is as follows:

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- 3 2014 (302) ELT 564 (Tri.-Ahmd.)
 - 4 2014 (310) ELT 533 (Tri.-Ahmd.)
 - 5 2015 (329) ELT 834 (Tri.-Del.)
 - 6 2018 (16) GSTL 196 (Raj.)

(k) —input means —

(i) all goods used in the factory by the manufacturer of the final product;
or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam or pumping of water for captive use; or

(iv) all goods used for providing any [output service, or;

(v) all capital goods which have a value upto ten thousand rupees per piece.

12. The case of the appellant Revenue is that since part of the electricity is transferred to sister unit, the inputs used in generating it to that extent is an input for the sister unit as it is relatable to the goods manufactured by it and they are not inputs relatable to the final products of this respondent. Each unit is separately registered and is a separate assessee as far as central excise is concerned. To the extent the electricity is sold to outsiders, the respondent has reversed the CENVAT credit. We find that on identical issue, High Court of Rajasthan had, in **Shree Cements Ltd.**, allowed CENVAT credit on the inputs used in production of electricity which is supplied free of cost to the assessee's sister unit. A bench of this Tribunal has also taken similar view in **Sanghi Industries, Bilag Industries, and Hindustan Zinc Ltd.** We find no reason to take a different view in this case. Accordingly, we hold that the respondent is entitled to CENVAT credit to the extent the inputs are used for production of electricity which is transferred free of cost to its sister unit.

13. Accordingly, the appeal filed by the Revenue is rejected and the impugned order is upheld. The Miscellaneous application also stands disposed of.

(Pronounced in open Court on **06.09.2022**)

(Justice Dilip Gupta)
President

(P.V. Subba Rao)
Member (Technical)

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