IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. E/15/2011 [DB]

[Arising out of Orders in Original No. Commissioner/RPR/55/2010 dated 07.10.2010, passed by Commissioner, Central Excise & Service Tax, Raipur]

For approval and signature:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Godawari Power & Ispat Limited ….Appellant

vs.

Commissioner of Central Excise & ST., Raipur ….Respondent

Appearance:

Shri K. M. Menon, Advocate for the Appellant
Shri H.C. Saini, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 09.01.2017

FINAL ORDER NO. 50236/ 2017 -CU [DB]

Mr. Justice (Dr.) Satish Chandra

The present appeal is filed against the impugned Order-in-Original No. Commissioner/RPR/55/2010 dated 07.10.2010.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Sponge Iron, MS Ingots, Billets and H.B. Wires. The appellant also generates electricity for captive consumption. The appellant is availing credit on inputs, capital goods and input services. The period involved is August 2008 to May 2009. Show cause notice dated 19.08.2009 was issued alleging that the Iron Ore Fines, Coal Fines and Waste and Slag cleared from the factory along with the main products, are exempted goods. It was the allegation that since input

services on which credit is availed are used commonly in taxable and exempted final products, 10% of the value of the exempted goods is to be paid along with interest and penalty.

3. By the impugned order, the Commissioner has confirmed the entire demand on the ground that excisability of the fines and slag is irrelevant while determining that they are exempted goods. Consequently, he has confirmed that 10% of value of exempted goods is payable as per rule 6 (3)(b) of Cenvat Credit Rules, 2004. Aggrieved by the order, the appellant has filed the instant appeal.

4. Heard Shri K.M. Menon, ld. Advocate for the appellant and Shri H.C. Saini, ld. DR for the Revenue and perused the appeal record.

5. After hearing both the sides and perusal of the record, we find that identical issue has come up before the Tribunal in the cases, *N.S. Ispat Pvt. Limited vs. CCE, Raipur – 2016 (335) ELT 540 (Tri. Del.) and Salasar Sponge and Power Limited vs. CCE, Raipur – 2016-TIOL-2692-CESTAT-DEL,* where the issue was decided in favour of the assessees by following the decision of the Hon'ble Supreme Court in the case of ***UOI vs. Hindustan Zinc Ltd – 2014-TIOL-55-SC-CX.***

6. In the light of the well settled legal position and for the reasons mentioned in the above mentioned case laws, we set-aside the impugned order and allow the appeal.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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