IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 31.1.2017

Appeal No. E/935/2011-EX.(DB)

(Arising out of Order-in-Original No. Commissioner/RPR/01/2011 dated 27.1.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur)

M/s Godawari Power and Ispat Ltd. Appellant

Vs.

CCE, Raipur Respondent

<u>Appearance</u>

Shri K.M. Menon, Advocate - for the appellant

Shri Yogesh Agarwal, D.R. - for the respondent

CORAM:**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50633/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in- Original No. Commissioner/RPR/01/2011 dated 27.1.2011. Period of dispute is March 2008 to January, 2010.

2. The brief facts of the case are that the appellant is engaged in the manufacture of sponge iron, H.B. wire, ferro alloys etc. falling under Chapter Heading 7202 of the Central Excise Tariff Act. The appellant used various items such as cement, TMR bars, CTD bars in the machinery used therein and availed Cenvat credit of the duty

paid on the same as inputs/capital goods during the relevant period. But the same was denied by the Department. Being aggrieved, the appellant has filed the present appeal.

3. With this background, heard Shri K.M. Menon, ld. Advocate for the appellant and Shri Yogesh Agarwal, ld. DR.

4. After hearing both the sides and on perusal of the record, it appears that the identical issue has come up before the Tribunal in the case of Jagdamba Power and Alloys Ltd. Vs. CCE (Appeal No. E/2516/2011 dated 8.11.2016), where the ratio laid down in the case of ***SKS Ispat and Power Ltd. Vs. CCE, Raipur*** – 2016-TIOL-2769-CESTAT-DEL was followed.

5. By following the ratio laid down in the cases (supra), the Cenvat credit on cement is not allowable. However, the Cenvat credit is allowed on the steel items. But the fact remains that the said provisions for availing the Cenvat credit was amended with effect from 7.7.2009. Thus, following the decision of ***SKS Ispat and Power Ltd.*** (supra), the assessee is entitled for the Cenvat credit up to this date on steel items only. We find that the order of the lower authorities did not allow the Cenvat credit even for the period up to 7.7.2009. When it is so, then we deem it fit to restore the matter to the adjudicating authority to decide the issue regarding the

allowability of Cenvat credit on steel items for the period after 7.7.2009. Thus, for the period post 7.7.2009, the matter is remanded back to the original authority to decide the issue de novo after verifying the use of the goods. Impugned order is set aside. The appellant shall be provided an opportunity of being heard. Additional evidence, if need be, may be admitted.

6. In the result, the appeal is modified and the appeal is partly allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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