**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI**

<u>COURT-IV</u>

Appeal Nos. E/1685/2011

[Arising out of the Order in Appeal No. 56/RPR-I/2011 dated 04.04.2011 passed by Commissioner (Appeals), Central Excise, Raipur]

M/s. SKS Ispat & Power Limited … Appellant

Vs.

Commissioner of Central Excise & S.T., Raipur … Respondent

<u>Appearance</u>:

Rep. by - Shri Manish Saharan, Advocate for the appellants.
Rep. by - Shri R.K. Manjhi DR, for the respondent

**Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)**

Date of Hearing/ Decision : **28.02.2017**

Final Order No. <u>52008/2017</u>-DB

<u>Per V. Padmanabhan</u>

The appellant has directed this appeal against the impugned Order in Original No. 25/2012 dated 26.03.2012 passed by Commissioner, Central Excise, Raipur.

2. The appellant is manufacturer of Sponge Iron for which they used iron ore as the main input. The appellant is taking Cenvat credit of inputs. The appellant is taking Cenvat credit on inputs, capital goods as well as on input services. In the course of manufacture of sponge iron, 'Lumps Iron Ore Fines' emerged

which was cleared and sold. The appellant did not maintain separate accounts for the use of common input services used in dutiable (Sponge Iron) and non-dutiable products (Iron Fine). Since they failed to maintain separate accounts, Revenue raised the demand for payment of an amount equal to 10% of the value of exempted products under Rule 6(3)(b) of Cenvat Credit Rules, 2004. The said demand was confirmed by the adjudicating authority and upheld vide the Order-in-Appeal, which is impugned before us.

3. Heard and Shri Manish Saharan, ld. Advocate for the appellant as well as Shri R.K. Manji, ld. DR for Revenue.

4. We find that the issue involved is no more *res-integra* and stand settled in favour of the appellant through several decisions of the Tribunal. Ld. Advocate has brought to our notice the decision of *Nav Durga Fuels Pvt. Limited vs. CCE, Raipur – 2016 (340) ELT 526 (Tri. Del.) and Assistant Commissioner of Cus. & Central Excise, Visakhapatnam vs. Hygrade Pallate Limited – 2010 (249) ELT 266 (Tri. Bang.),* wherein the issue stands decided in favour of the appellant. In the *Nav Durga Fuels Pvt. Limited* case, the Tribunal held as follows:-

> **"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.

We find no reason to take a different view in the instant case.

5. By following the precedent decision of the Tribunal, the impugned order is set-aside and the appeal is allowed.

[Order dictated & pronounced in open court]

(**M.V. Ravindran**)
Member (Judicial)

(**V. Padmanabhan**)
Member (Technical)

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