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

COURT NO. IV

DATE OF HEARING : 18/05/2017.
DATE OF DECISION : 18/05/2017.

Excise Appeal No. 1596 of 2012 (SM)

[Arising out of the Order-in-Original No. COMMISSIONER/RPR/CEX/De-NOVO/2012 dated 16/03/2012 passed by The Commissioner, Central Excise & Customs, Raipur.]

M/s Steel Authority of India Ltd. Appellant

Versus

CCE, Raipur Respondent

Appearance

Ms. Sukriti Das, Advocate – for the appellant.

Shri K. Poddar, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 53370/2017 Dated : 18/05/2017

Per. B. Ravichandran :-

The appeal is against order dated 16/03/2012 of Commissioner of Central Excise, Raipur. The appellants are engaged in the manufacture of Iron and Steel items liable to Central Excise duty. They were availing credit of duty paid on inputs, capital goods and service tax paid on input services in terms of Cenvat Credit Rules, 2004. The dispute in the present appeal is with reference to liability of the appellant to pay Central Excise duty on Pitch Creosote Mixture (PCM) arising in their manufacturing process and cleared to the captive power plant, located within their factory premises. The Revenue held a view that the captive power plant is a separate legal entity, a joint venture with 50-50 participation between the appellant and M/s NTPC. Such clearance of raw material/fuel to the power plant, which is a separate legal entity, was held to be not covered under the category of captive consumption and the provisions of Cenvat Credit Rules also was held to be not applicable.

2. The present impugned order was passed as per the directions of the Tribunal by a final order No. 625/2011 – CE (DB) dated 20/07/2011. The said remand order of the Tribunal mentioned only the issue relating to reversal of credit availed on common inputs used both for exempted as well as dutiable final products. In view of the retrospective amendment in the legal provisions of Rule 6 of Cenvat Credit Rules, 2004, the Original Authority was directed to examine the issue afresh. In the present impugned order the Commissioner dropped a demand of Rs. 21,06,89,873/- applying the statutory provision made applicable retrospectively. There is no further dispute on this. However, he confirmed the Central Excise duty liability of Rs. 11,13,760/- on PCM cleared by the appellant to the captive power plant. The Commissioner held that in the PCM cleared by the appellant to the power generating unit is liable to Central

Excise duty. Penalty of equivalent amount was also imposed on the appellant in terms of Section 11AC of the Act.

3. The learned Counsel for the appellant submits that PCM is cleared by them to the power generating unit situated within the factory and the same has been used in the generation of the electricity which in turn is used by them in the manufacture of excisable goods. As such, no duty is liable to be paid by them on the fuel used for generation of electricity in the captive power plant. The learned Counsel relied on various decided cases in support of her submission.

4. The learned AR submitted that the power generating unit is a separate legal entity and the PCM is cleared on consideration, by way of book adjustment between the parties. As such, it cannot be said that PCM is an input used by the appellant in the generation of electricity by them. Accordingly, he supported the findings of the Original Authority.

5. I have heard both the sides and perused the appeal records. Admittedly, PCM is an excisable product. The said PCM is cleared by the appellant to the power generating unit for being used in the generation of electricity. Admittedly, the said power generation facility is located within the premises of the appellant. The same fact is recorded by the lower Authorities also. The Central Excise duty on PCM is confirmed only on the ground that the power generating unit is a separate legal entity. I note that the appellants are claiming this PCM to be input in terms of

Cenvat Credit Rules, 2002 and, as such, captive usage of such inputs will not attract duty liability. The term input has been defined in Rule 2 (g) of the Cenvat Credit Rules, 2002. According to the said definition,

> "input" means all goods except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products, goods used as paints, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production".

6. From the above definition, it is clear that goods used as fuel or for generation of electricity, used for manufacture of final products or for any other purpose, within the factory of production is eligible to be called as input. Further, PCM is used within the factory premises of the appellant is also an admitted fact. The said PCM is used in the generation of electricity which in turn used in the manufacture of final products by the appellant. I find that the legal identity of the manufacturer of electricity cannot be a reason for denial of the concession available to the appellant, for the product used within the factory premises in the generation of electricity, which is captively used in the manufacture of final product.

7. The Tribunal in the appellant's own case reported in **2016 (332) E.L.T. 825 (Tri. – Del.)** held that all inputs transferred to power plant used in or in relation to manufacture of electricity used captively by the appellant are eligible for concession available to the goods captively used in or in relation to the manufacture of final product. Reference can also be made to the decision of the Tribunal in **Reliance Industries Ltd. vs. CCE, Raigad** reported in **2007 (215) E.L.T. 413 (Tri. – Chennai)** and in **Dalmia Cements (Bharat) Ltd. vs. CCE, Tiruchirapalli** reported in **2008 (224) E.L.T. 484 (Tri. – Chennai)** upheld by the Hon'ble Madras High Court in **2015 (323) E.L.T. 290 (Mad.)** and **Haldia Petrochemicals Ltd. vs. CCE, Haldia** reported in **2006 (197) E.L.T. 97 (Tri. – Del.)**. I also find force in the appellant's plea of alternate argument of applicability of Rule 4 (5) (a) of the Cenvat Credit Rules, 2002.

8. In view of the above discussion and analysis, I find that the impugned order is without merit and accordingly set aside the same. The appeal is allowed.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member (Technical)

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