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. III

DATE OF HEARING/DECISION : 24/04/2017.

Excise Appeal No. 1221 of 2012

[Arising out of the Order-in-Appeal No. 04/RPR-II/2012 dated 16/02/2012 passed by The Commissioner (Appeals – II), Central Excise & Customs, Raipur.]

M/s Steel Authority of India Limited — Appellant

Versus

CCE, Raipur — Respondent

Appearance

Shri Rahul Tangri, Consultant – for the appellant.

Shri Dharam Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54110/2017 Dated : 24/04/2017

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 16/02/2012 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur.

2. Brief facts of the case are that the appellants is engaged inter-alia in the manufacture of Iron and Steel goods falling under Chapter 72, 73 and 84 of the Central Excise Tariff Act, 1985. The appellant had installed the captive power plant within

its factory premises for meeting its electricity requirement for manufacturing of the final products. The captive power plant was transferred by the appellant to M/s BESCL, which is a 50% - 50% joint venture between the appellant and NTPC. During the disputed period the appellant had cleared Sulphuric Acid to the captive power plant without payment of Central Excise duty or reversal of Cenvat credit. Non-payment of Central Excise duty was objected to by the Central Excise Department on the ground that the goods were supplied to a separate legal entity and accordingly, the appellant is liable to pay Central Excise duty on the removal quantity of Sulphuric Acid from its factory.

3. The learned Consultant appearing for the appellant submits that the issue arising out of the present dispute is no more res-integra in view of final order No. 52648/2015 dated 20/08/2015 passed by this Tribunal in the case of appellant itself.

4. The learned AR for Revenue reiterates the findings in the impugned order and further referring to paragraph 5 and 6 in the impugned order submits that removal of goods from one legal entity to other legal entity should be considered as removal of excisable goods and Central Excise duty liability is required to be discharged on such removal.

5. Heard both the sides and examined the case records.

6. We find that in an entirely identical matter in the appellant's own case for the earlier period, this Tribunal vide final

order dated 20th August 2015 has held that the power plant even after its transfer, remains part of the same factory, and thus, it cannot be said that any excisable goods is removed from the factory. The relevant paragraph in the said decision are extracted herein below :-

> "2. During the course of argument, the learned Counsel for the appellant stated that there is no removal of goods outside the factory and the captive power plant continues to remain as integral part of the factory of production of the appellant. Whatever inputs manufactured/purchased by the appellant and supplied to the power plant are fully utilized in the generation of electricity which in turn is fully utilized by the appellants. The transfer of ownership of the power plant to a JV unit will not in any manner affect their eligibility for non-payment of duty or credit to the purchased inputs. Even otherwise the provision of Rule 4 (5) (a) of Cenvat Credit Rules are available to them for clearance of these inputs to the power plant owned by Joint Venture for generation of electricity. This position is confirmed by the Tribunal in **Haldia Petrochemicals Ltd. vs. CCE, Haldia** reported in **2006 (197) E.L.T. 97 (Tri. – Del.)**. The learned Counsel for the appellant pleaded that Notification No. 67/1995-CE dated 16/03/1995 is also rightly available to them in respect of capital goods and inputs. The learned AR on the other hand reiterated the findings of the lower Authorities and stated that when the ownership of the power plant is transferred to another legal entity the same should be considered as another factory and the procedure as applicable for clearance from one factory to another factory has to be followed.
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> 3. Heard both the sides and examined appeal records carefully. The short point for decision is whether or not the

appellants are eligible for concessions available for the goods manufactured/purchased by them when transferred to the power plant owned by another entity inside their factory premises. The Revenue held the view that this will amount to removal outside the factory and as such the liability arose. We find that the factory premises as licenced under Central Excise provisions in respect of the appellants continued to be unaffected and no separate Central Excise licence with de-marketed premises was given to the power plant separately. In such situation, the Revenue cannot take a stand that the power plant is another factory and not to be considered as within the factory of the appellant. The appellant's case is further strengthened in view of the fact that all the inputs transferred to the power plants by the appellant are fully utilized in or in relation to the manufacture of electricity which in turn is fully used captively by the appellants. As such, we find the impugned order of the lower Authorities is not sustainable and accordingly we set aside the same and allow the appeal with consequential relief, if any".

7. In view of settled position of law, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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