IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Excise Appeal No.E/1109/2010 [SM]

[Arising out of Order-in-Appeal No.25/RPR-II/2010 dated 25.02.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

M/s.HEG Limited **...Appellant**

Vs.

C.C.E., Raipur **... Respondent**

Present for the Appellant : Ms.Surbhi Sinha, Advocate
Present for the Respondent: Mr.K. Poddar, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 14/11/2017

FINAL ORDER NO. 58055/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 25.02.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Sponge Irons, M.S. Billets, falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellant has also installed a captive power plant within its factory premises for generation of electricity, which is captively used for manufacture of the said final products. The appellant

avails Cenvat credit of Central Excise duty paid on input and capital goods and Service Tax paid on the input services. During the disputed period, the appellant used generated electricity for its own captive consumption as well as sold electricity to the Grid as per the contractual norms. Since the entire quantity of electricity generated in the captive power plant were not meant for use in the manufacture of the final product, the Department initiated proceedings under Rule 3, 6 (5) and Rule 9 of Cenvat Credit Rules, 2004 against the appellant for denial of the Cenvat benefit. The matter was adjudicated in confirming the Cenvat demand against the appellant alongwith interest and penalty was imposed on the appellant. On appeal, the ld. Commissioner (Appeals) vide the impugned order has dropped the penalty imposed in the adjudication order and only confirmed the adjudged demand with regard to the denial of Cenvat Credit.

3. During the course of hearing today, the ld. Advocate appearing for the appellant submitted the letter dated 29.02.2010 addressed to Jurisdictional Superintendent of Central Excise and Service Tax, furnishing the brake-up of the consumption of electricity within the factory and that wheeled out to Grid. She further submitted that in respect of the electricity wheeled out to Grid, the appellant had calculated the proportionate credit and the same was reversed from the Cenvat account and due interest liability was discharged by the appellant. Thus, it is her submission that electricity used captively for manufacture of the finished products within the

factory should not be denied on the ground that Cenvat Credit statute specifically permits utilization of electricity for manufacture of the final product.

4. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. On perusal of the letter dated 29.12.2010 of the appellant, addressed to the Jurisdictional Range Superintendent alongwith the statement and Chartered Accountant's Certificate, I find that the appellant had reflected the percentage of electricity consumed within the factory and that wheeled out to Grid against receipt of monetary consideration. However, since such certificate was produced by the appellant after adjudication of the matter, I am of the view that the original authority should verify the certificate alongwith the statement produced before the Tribunal, for ascertaining the fact, whether the percentage of generated electricity reflected in the statement were actually sold to the Grid. For arriving at the conclusion regarding captive consumption of generated electricity and that sold out to grid, the appellant should produce adequate records to demonstrate such factual aspects. On verification of the documents, if the original authority is satisfied that the quantum of electricity generated were captively used by the appellant for manufacture of the final product, the Cenvat benefit on such quantum of electricity should be made available to the appellant. The original authority should also verify the claim of the appellant that it had reversed the proportionate Cenvat

credit and paid interest for delayed reversal of Cenvat credit on account of electricity wheeled out to Grid.

6. In the result, the appeal is allowed by way of remand to the original authority.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita