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

**Date of Hearing/Order: 4.1.2018**

## Appeal No. E/59789/2013-SM

(Arising out of Order-in-Appeal No. 162/RPR-1/2013 dated 25.6.2013 passed by the Commissioner (Appeals), Central Excise, Raipur)

M/s Indus Smelters Ltd. — Appellant

Vs.

CCE & ST, Raipur — Respondent

**Appearance**

Shri Manish Saharan, Advocate - for the appellant

Shri G.R. Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

## Final Order No. 50375/2018

**Per S.K. Mohanty :**

This appeal is directed against the impugned order dated 25.6.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur.

2. The brief facts of the case are that the appellant is engaged in the manufacture of MS ingot and Re-rolled products falling under Chapter 72 of the schedule to the Central Excise Tariff Act, 1985. The appellant avails Cenvat credit of Central Excise duty paid on the inputs and capital goods received in its factory. During the course of audit of records in the factory of the appellant for the period March 2009 to Feb. 2010, the Central Excise officers observed that the appellant had availed Cenvat credit on plate cutting CAT-I and

defective PM plates as inputs/capital goods. The audit officers concluded that the said goods cannot be considered as input for manufacture of iron and steel products by the appellant. Accordingly, after issuance of the show cause notice, the matter was adjudicated vide order dated 16.11.2012, against the appellant wherein Cenvat credit taken on the disputed goods was disallowed and penalty was imposed on the appellant.

3. The ld. Advocate appearing for the appellant referred to the show cause notice, wherein the statement of the appellant has been extracted, stating that the disputed goods were used for melting and producing ingots. Thus, he submits that since the submission of the appellant regarding use of the disputed goods in the manufacturing process were not considered by the authorities below, the Cenvat demand confirmed against the appellant cannot be sustained.

4. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that the appellant has not produced any documentary evidence to show that the subject goods were in fact used for the manufacture of the final product. Thus, he submits that the Cenvat benefit in respect of the plate cutting and defective PM plates will not be available to the appellant.

5. Heard both sides and perused the records.

6. I find that the submissions made by the appellant before the audit officers were referred to in the show cause notice dated 2.9.2011. In the said statement, the appellant had stated that the defective plate are raw material for their rolling mill; that they had rolled the item and manufactured their final product; that since defective PM plates was totally defective, it was used for melting and producing ingot. However, such submission of the appellant were not considered in proper prospective by the authorities below in arriving at the conclusion that those goods cannot be considered as either input or capital goods for the appellant. Since, the duty paid character of the disputed goods, their receipt and utilization in the factory of the appellant have not been specifically alleged or addressed by the department, the submissions made by the appellant before the audit officers should be considered for the purpose of conclusion that the defective goods are input for the appellant.

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

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

RM