IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

DATE OF HEARING/DECISION:31.10.2018

Excise Appeal No. 52567/2018-SM

[Arising out of the Order-in-Appeal No.BHO/EXCUS/002-APP-220-18-19 dated 31.05.2018 passed by the Commissioner, (Appeals), Central Tax, Central Excise & Customs, Raipur.]

M/s. S.K. Sarawagi & Co.(P) Ltd. Appellant

Versus

CCE, Raipur Respondent

Appearance

Shri H.V. Ghirnikar, CA – for the appellant.

Ms. Tamana Alam, DR– for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**

Final Order No.53301/2018

Per. Anil Choudhary :-

Brief facts of the case are that the appellant is engaged in the manufacture of sponge iron & M.S. Billets falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellant generates electricity within its factory premises for captive use in the manufacture of the final product. The surplus electricity generated is wheeled out to Chhattisgarh Grid on payment of consideration. The appellant avails Cenvat credit of Central Excise duty paid on inputs and capital goods and service tax on the input services. Since Cenvat credit taken on the input, input services and capital goods were not fully utilized in the manufacture of the final product and some quantity of the generated electricity is wheeled out from the factory, the

Department objected to the availment of entire amount of Cenvat credit. The show cause notice dated 29.06.2017 issued by the Department was adjudicated vide order-in-original dated 15.11.2017, wherein an amount of Rs.36,45,245/- was confirmed under Rule 6(a) of CCR, 2004. Besides Rs.18,22,623/- of penalty under Rule 11 AC (1)(c) of Central Excise Act and also interest under Section 11AA of the Central Excise Act, 1944 were imposed on the appellant. Aggrieved, the appellant preferred the appeal before the ld. Commissioner (Appeals), which was dismissed.

2. Heard both the sides and examined the case record.

3. Cenvat Credit Scheme permits a manufacturer to take credit of duties and service tax paid on the input and input services used in or in relation to manufacture of the dutiable final product. Where the manufacturer is engaged in manufacture of both dutiable and exempted final product, Rule 6 of the Cenvat Credit Rules, 2004, provides the obligation/conditions which a manufacturer has to follow. Since Rule 6 ibid deals with manufacture of dutiable final product and exempted final product, it is required to ascertain whether electricity is falling under either of the category of goods. The fact is not under dispute that electricity though is classified as excisable goods under Central Excise Tariff Act, 1985, but no rate of duty has been prescribed for such goods. Further, electricity is neither 'nil' rated nor exempted from payment of Central Excise duty. Therefore, electricity cannot be considered as 'exempted goods' as per the definition contained in Rule 2(d) ibid. Therefore, the embargo created in Rule 6 ibid has no application for payment of amount

of 6% on the electricity wheeled out from the factory. However, it is an admitted fact that the electricity generated by using the input and input services was not fully captively consumed for manufacture of the final product in entirety. Since some portion of generated electricity has been sold by the appellant to the grid on receipt of consideration, in my opinion, Cenvat credit attributable (proportionate) to the electricity wheeled out from the factory will not be available for the Cenvat benefit. The learned Consultant appearing for the appellant fairly concedes that the generated electricity has not been entirely used within the factory for manufacture of the finished product and some portion has been wheeled out from the factory. Since the quantum of generation of electricity and actual use within the factory captively have not been discussed in the adjudication order and no documents were produced by the appellant to that effect, I am of the view that the matter should go back to the original authority for ascertaining such aspect.

4. It is also held that power used by different Departments/Division, with the same registered premises, does not result in sale of electricity, there being no two persons involved.

5. Therefore, the impugned order is set aside and the appeal is remanded to the original authority for ascertaining the quantum of electricity wheeled out from the factory. The appellant should reverse proportionate Cenvat credit of the electricity not used within the factory, after adjusting amount

already reversed or deposited, if any, for the intended purpose. Penalties are set aside. The appeal is allowed in above terms.

6. The appellant is directed to file calculation chart of cenvat required to be reversed, with evidence of reversal/deposit before the Adjudicating Authority showing jurisdiction.

(order dictated & pronounced in the open court.)

(Anil Choudhary)
Member (Judicial)

Ckp.