CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI.

PRINCIPAL BENCH, COURT NO. II

Excise Appeal No. 52813 of 2018-SM

(Arising out of order in appeal No. BHO-EXCUS-002-APP-254-18-19 dated 18.07.2018 passed by the Commissioner (Appeals), Central goods, Service Tax, Central Excise & Customs, Raipur).

M/s Shri Nakoda Ispat Limited **Appellant**
Plot No. 109, Sitara Indl. Area, Phase-II
Raipur (CG)

Versus

Commissioner of Central Goods, Service Tax and Customs, Raipur. **Respondent**

APPEARANCE:

Sh. Kamaljeet Singh, Advocate for the appellant
Sh. P. Juneja, Authorised Representative for the respondent

Date of Hearing: 08.03.2019
Date of pronouncement: 22.04.2019

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Final Order No. 50546/2019

ANIL CHOUDHARY:

The issue in this appeal is whether iron ore fines, generated during the process of manufacture of Sponge Iron and cleared by the appellant are to be considered as 'exempted goods' for the purpose of the provisions of Rule 6 of Cenvat Credit Rules, 2004.

2. The brief facts are that the appellant is engaged in the manufacture of Sponge Iron, classifiable under Chapter 72 of Central Excise Tariff Act, 1985. The appellant is also availing the

credit of service tax paid on input services and duty paid in respect of input & capital goods in terms of Cenvat Credit Rules, 2004. In the manufacture of Sponge Iron, iron ore lumps of different sizes are firstly subjected to crushing and thereafter iron ore fines are taken out /screened out from the raw material handling plant. The screened out iron ore fines which are in powder form, cannot be used in the manufacture of sponge iron. According to the Revenue, the appellant has taken cenvat credit on inputs & input services, which has been used in the manufacture of dutiable final products (sponge iron) and exempted goods (iron ore fines) and further the appellant has not complied with the provisions of Rule 6 of Cenvat Credit Rules, therefore, a show cause notice dated 26 June, 2017 has been issued to appellant to pay duty of Rs. 28,55,291/- being 6% of the total price of the exempted finished goods (iron ore fines) as per Rule 6(3) of Cenvat Credit Rules, 2004. Further, interest & penalty has been proposed. The show cause notice was adjudicated on contest. The learned Adjudicating Authority dropped the show cause notice. The revenue filed the appeal before the Commissioner (Appeals), whereby the learned Commissioner (Appeals) allowed the appeal of the revenue & set aside the Order-in-original. The appellant- assessee is before this Tribunal against the impugned order-in-appeal.

3. The learned Counsel for the appellant submitted that the Rule 6 is not applicable to the appellant, even after the amendment vide Notification No. 06/2015-CE(NT) dated 01.03.2015 & further Notification No. 13/2016 dated 01.03.2016. He submitted that

appellant is engaged in the manufacture of sponge iron. Upto the stage when the iron ore fines are obtained, no cenvatable inputs have been used by the appellant and these iron ore fines have emerged only after carrying out the physical processes of crushing and sieving of iron ore. The only input which has been used till this stage is iron ore classifiable under Chapter 26 of Central Excise Tariff Act which is also exempt from duty of excise by virtue of Notification No. 12/2012 dated 17.03.2012. Since no common cenvatable inputs have been used, the provisions of Rule 6 of Cenvat Credit Rules, 2004 are not attracted in this case. He further submitted that iron ore fines cannot be said to be manufactured exempted goods. He places reliance on the following judgments to support his case.

(i) CCE, Raipur vs. Aarti Sponge & Power Ltd.-2017 (350) ELT 268 (Tri. Del.)
(ii) JSW Steels Ltd vs. CC&CE- Belgaon. F.O. No. 20206/2019 dt. 25.02.2019
(iii) CCE, Raipur vs. Seleno Steels Ltd – 2013 (287) ELT 93 (Tri. Del.)
(iv) Rallis India Limited vs. UoI-2009 (233) ELT 301 (Bom)
(v) CCE, Meerut-II vs. Maa Mangli Ispat Pvt. Ltd.,-2013 (293) ELT 380 (Tri. Del.)

4. Learned Authorised Representative on behalf of the Revenue reiterated the findings of the impugned order.

5. Having heard the rival contentions, I find that the issue in the present appeal is covered by the decision of this Tribunal in the case JSW Steels Ltd vs. CC&CE- Belgaon. F.O. No. 20206/2019 dt. 25.02.2019(supra), wherein the Tribunal after considering the amendment of 2015, has held as follows:

> "After considering the submissions of both the parties and perusal of the material on record, I find that this issue is no more *res integra* and has been settled by various decisions of the High Courts and the Supreme Court as stated supra wherein it has been consistently held that even after the amendment from 01.03.2015, Rule 6 shall not be applicable to by-products/ waste products produced during the manufacture of dutiable final products. Therefore, by following the ratio of the above said decisions, I am of the considered view that the impugned order is not sustainable in law and therefore the same is set aside by allowing the appeal of the appellant."

6. I also find that 'iron ore fines' is not a manufactured product. Thus on this score also, Rule 6 of Cenvat Credit Rules is not applicable. By following the aforesaid precedent ruling, I hold that Rule 6 of Cenvat Credit Rules, 2004 is not applicable to the present case. Accordingly, I set aside the impugned order & allow the appeal with consequential relief, if any.

(Pronounced on 22.04.2019).

(Anil Choudhary)
Member (Judicial)

Pant