**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**EAST REGIONAL BENCH : KOLKATA**

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**Appeal No. Ex/75403/2014**

Arising out of order-in-appeal No. 40/CE/BBSR-I/2013 dated 18.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.

Maithan Ispat Limited

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Customs & Service Tax, BBSR-I

RESPONDENT (S)

APPEARANCE

Shri. K. K. Achariya, Advocate for the Appellant (s)

Shri. D. Haldar, A.C. (AR) for the Respondent (s)

**CORAM:**

**SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER**

Date of Hearing/Decision:-15.02.2018

ORDER NO. FO/A.75777/2018

**Per Shri P. K. Choudhary :**

Briefly stated the facts of the case are that the appellant is engaged in the manufacture of Sponge Iron, MS Billets, Bars and Rods classifiable under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. A Show Cause Notice dated 28.06.2010 was issued alleging that on scrutiny of the ER-I Returns for the month of July 2009 to December 2009, it was noticed that the appellant availed Input Credit abnormally higher than what they have availed as the normal credit for manufacture of final products. It has proposed to deny the CENVAT Credit on Beams, M.S Channels, M.S. Angles etc. all articles of Iron &

Steel. The Adjudicating authority disallowed the CENVAT Credit of Rs.4,40,546.00 alongwith interest and imposed penalty of equal amount of CENVAT Credit. By the impugned order, the Commissioner (Appeals) upheld the Adjudication Order. Hence, the appellant filed this appeal.

2. Heard both sides and perused the appeal records.

3. The Learned Advocate appearing on behalf of the appellant submitted that the lower authorities have passed the Order without considering the material evidence namely Certificate issued by the Chartered Engineer and other documents.

4. I find from the impugned order that the appellant had admitted that a small quantity of steels have been used for construction of factory shed in this context. In my considered view, the lower authorities should have examined the Chartered Engineer's Certificate for proper appreciation of the facts of the case.

5. In view of the above, the impugned order is set aside. The matter is remanded to the Adjudicating authority to decide afresh after considering the submission of the appellant and to pass Order in accordance with law. The appeal filed by the appellant is allowed by way of remand to the adjudicating authority

(Operative part of the order all ready pronounced in the open court)

**(P. K. CHOUDHARY)**
**MEMBER (JUDICIAL)**

T.K.