IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Excise Appeal No.75101 of 2017

(Arising out of Order-in-Original No.CCE/BBSR-I/07/2016 dated 16.09.2016 passed by Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Indian Metal & Ferro Alloys Limited
(P.O. Choudwar, Dist: Cuttack-754071, Odisha.)

...Appellant

VERSUS

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

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

WITH

Excise Appeal No.75740 of 2018

(Arising out of Order-in-Original No.11/Commr.Audit/C.Ex/BBSR/2017-18 dated 26.12.2017 passed by Commissioner (Audit), GST & Central Excise, Bhubaneswar.)

M/s. Indian Metal & Ferro Alloys Limited
(P.O. Choudwar, Dist: Cuttack-754071, Odisha.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bhubaneswar Commissionerate

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

AND

Excise Appeal No.77139 of 2019

(Arising out of Order-in-Original No.COMMR/BBSR/CE/03/2019 dated 12.07.2019 passed by Commissioner, GST & Central Excise, Bhubaneswar.)

M/s. Indian Metal & Ferro Alloys Limited
(P.O. Choudwar, Dist: Cuttack-754071, Odisha.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bhubaneswar Commissionerate .....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

APPEARANCE

Shri Deepro Sen, Advocate & Ms.Payal Bharwani, Chartered Accountant for the Appellant (s)

Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76381-76383/2023

DATE OF HEARING : 4 August 2023
DATE OF DECISION : 4 August 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned orders seeking the appellant to reverse Cenvat credit on the quantum of electricity produced in the factory of the appellant and supplied to another unit of the appellant for use of in manufacturing of the final product of such other unit.

2. The facts of the case are that the appellant is engaged in the manufacture of High Carbon Ferro Chrome and Chrome Ore Briquette. The appellant is having captive power plant for generation of electricity and the surplus electricity generated at the captive power plant was -

a) supplied free of cost to another unit of the appellant located at Therubali for use in manufacturing final products.

b) sold to GRIDCO.

c) consumed in township.

With regard to Cenvat credit of inputs and input services for generation of electricity which has been sold to GRIDCO or to use in township, the appellant reversed the Cenvat cedit. The surplus electricity supplied to free of cost to another unit of the appellant which ultimately was used in manufacturing of the final product, the appellant availed 50% Cenvat credit on inputs and input services in the month of receipt and the remaining 50% in the subsequent month. The Revenue is of the view that the surplus electricity supplied free of cost to another unit is not entitled to Cenvat Credit on inputs and input services, therefore, periodical show cause notices were issued to the appellant to deny credit of input and input services which have been used for generation of electricity and the ultimately the electricity was supplied to appellant's another unit which has been used in manufacture of final product. The matters were adjudicated, demand on account on availment of Cenvat credit on inputs and input services which has been used in generation of electricity which has been transferred to their other unit free of cost was confirmed along with interest. Against the said orders, the appellant is before us.

3. Heard the parties, considered the submissions.

4. We find that the issue has been dealt by this Tribunal in the case of M/s. Shree Cement Ltd. Vs. CCE, Jaipur-II [2017 (6) TMI 502 – CESTAT NEW DELHI], wherein this Tribunal has observed as under:-

> *"5. On careful consideration of the submissions made by both sides and perusal of records we find that the issue is regarding reversal of Cenvat Credit attributable to the power generated but transferred to their sister concerns. It is the case of the Revenue that the inputs and input services are not used in respect of power which is generated and captively consumed. We find no merits in the arguments put forth by the adjudicating authority in denying the cenvat credit to the appellant as in an identical issue, in respect of very same assessee, but situated at Chittorgarh, Rajasthan, this bench vide Final Order No.A/5189551899/2016 held as under:*
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> > *"Heard both the sides and examined the appeal records. The short point for decision is whether or not the appellant is eligible to avail the credit*

on input services used in the generation of electricity which is partly cleared to their sister units who are also engaged in the manufacture of dutiable final products. The admitted fact is that the Cenvat credit on input services used in the generation of power is eligible to the appellant as long as the electricity is used in the manufacture of dutiable final product. The only dispute is relating to the usage of electricity captively within the plant of generation or also outside the generation unit by the same manufacturer. Considering that the electricity has been used in the manufacture of dutiable final products and also the fact that all units belong to the appellant the denial of credit is not justifiable in the present case. Further, it is a fact that if the appellant were to follow the procedure for input service distribution the credit eligibility on part of the electricity cleared to sister unit could not have been questioned and the credit could have been passed on to the unit which is actually using the electricity or retained fully by the appellant himself without proportionate distribution. Such being the factual position, I find that the impugned orders are not sustainable. Further, the reliance placed in the impugned order on the ratio of Hon'ble Supreme Court in Maruti Suzuki Ltd. vs. CCE, Dlehi-III (supra) is not appropriate. In fact the appellate Authority records that the facts are different in both the cases but stil goes ahead and applies the ratio. As mentioned earlier in this order, the Hon'ble Supreme Court was dealing with the sale of electricity to outside parties and not to clearance of electricity to another manufacturing unit of the appellant. The input service credits attributable to the electricity sold to utility companies are not available to the appellants as held by the Hon'ble Supreme Court. This, the appellants are not contesting and have already reversed the amount towards such input service credits."

6. Since the issue is no more res integra we follow the decision of the Tribunal in the earlier case in an identical issue and hold that Cenvat Credit on input and input services proportionate to the power transferred to sister concerns through the Central electricity grid, need not be reversed.

7. In view of the above, the appeals filed by the Revenue are rejected and the appeals filed by the assessee are allowed."

5. The said order has been affirmed by the Hon'ble Rajasthan High Court as reported in 2018 (9) TMI 822 –RAJASTHAN HIGH COURT.

6. In that circumstances, we hold that the appellant has correctly taken the Cenvat credit on inputs and input services, which has been used for generation of electricity. The said electricity is supplied free of cost to the appellant's sister unit for manufacturing of final product. Therefore, no demand is sustainable against the appellant as they have correctly taken the Cenvat credit.

In view of the above observation, we set aside the impugned orders and allow the appeals with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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