IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/1062,1236/2004
E/CO/392,393/2004

(Arising out of Order-in-Appeal No. RJB/M-III/489/2003 dt. 11.11.2003 & OIA No. SDK/M-VII/01/2004 dt/ 17.03.2004 passed by the Commissioner (Appeals) Central Excise, Mumbai-III)

For approval and signature:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Global Boards Ltd. : **Appellant**

VS

Commissioner of Central Excise, Raigad. : **Respondent**

Appearance

None for Appellant

Shri V. K. Agarwal, Addl. Commr. (A.R) for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of hearing : 27/02/2017
Date of decision : 27/02/2017

ORDER NO. A/85651-85652/2018

Per : Ramesh Nair

The issue involved in the present case is that whether the cenvat credit is admissible in respect of fuel used for generation of electricity in the assesse's factory in terms of Rule 6(1) of Cenvat Credit Rules, 2002.

2. None appeared on behalf of the appellant.

3. Shri V.K. Agarwal, Ld. Addl. Commr.(A.R.) appearing on behalf of the Revenue submits that on this issue the Hon'ble Supreme Court in the case of *Commissioner of C. Ex. Vs. Gujarat Narmada Fertilizers Co. Ltd.* 2009 (240) E.L.T. 661 (S.C.) held that Rule 6(1) shall apply to all inputs including fuel inputs therefore the cenvat credit on fuel used in

respect of manufacture of exempted goods is not admissible. However subsequently in the case of *C.C.E. Vs. Vadodara Vs. Gujarat Narmada Valley Fertilizers Co. Ltd.* 2012 (286) E.L.T. 481 (S.C.)the Hon'ble Supreme Court after considering the aforesaid judgment referred the issue to the Larger Bench of the Supreme Court. He further submits that even after reference to the Larger Bench, Hon'ble Gurat High Court in the case of *Gujarat Narmada Valley Fertilizers Co. Ltd. Vs. Commr. Of C. Ex. & Cus.* 2014 (306) E.L.T. 315 (Guj.) decided that the input used as fuel are not eligible for cenvat credit as per Rule 6(1) of Cenvat Credit Rules, 2002.

4. We have carefully considered the submissions made by both the sides, we find that when the matter is pending before the Larger Bench of the Hon'ble Supreme Court, we are of the view that no purpose will be served if any judgment on the merit is passed by this Tribunal, therefore it will be appropriate that the matter be decided only after Larger Bench of the Hon'ble Supreme Court resolved the conflict on the issue. We therefore set aside the impugned order and remand the matter to the adjudicating authority who shall decide the matter afresh on the line of the outcome of the Larger Bench of Hon'ble Supreme Court decision as and when decision given. Appeals are disposed of by way of remand to adjudicating authority. Cross-objections also stand disposed of.

(Pronounced in court)

(C.J.Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.