IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/86443/2016

[Arising out of Order-in-Appeal No: SK/176/TH-II/2016 dated 22/03/2016 passed by the Commissioner of Central Excise (Appeals), Mumbai – I.]

Tata Steel Co Ld …***Appellant***

versus

Commissioner of Central Excise
Thane – II …***Respondent***

<u>*Appearance:*</u>

Shri Rajesh Ostwal, Advocate for the appellant

Shri N.N. Prabhudesai, Superintendent (AR) for the respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 14/03/2018
Date of decision: 14/03/2018

<u>ORDER NO: A/85664 / 2018</u>

This appeal is directed against Order-in-Appeal No: SK/176/TH-II/2016 dated 22/03/2016 passed by the Commissioner of Central Excise (Appeals), Mumbai – I.

2. Heard both the sides and perused the records.

3. The facts that arise for consideration, after filtering out unnecessary details are, that the appellant are manufacturer of goods and were availing CENVAT credit on inputs i.e. imported GI wires of CVD and SAD paid; were clearing the said GI wires, after process of testing and re-packing, on payment of Central Excise duty as a manufactured product. Revenue authorities were of the view that the activity undertaken by the appellant does not amounts to manufacture. Accordingly, show cause notice was issued for reversal of CENVAT credit so availed. The adjudicating authority confirmed the demands raised along with interest and imposed equivalent amount of penalty. The appeal preferred by appellant before the first appellate authority was also rejected.

4. Learned Counsel submits that CENVAT credit availed on such imported GI wire was ₹ 38,57,458/- and appellant had paid approximately ₹32 lakhs duty when they cleared the GI wire as a manufactured product. It is his submission that the balance amount of ₹ 6 lakhs was also subsequently paid at the time when the matter was before the first appellate authority. It is his submission that if GI wires are removed on payment of duty as a manufactured product it would amount to reversal of CENVAT credit which is the law as has been settled by the Hon'ble High Court in the case of *Commissioner of Central Excise, Pune – III v. Ajinkya Enterprises* [*2013 (294) ELT 203 (Bom.)]*. It is his submission since the entire amount of ₹ 38 lakhs

stands paid by them there is no need for confirming the demand by the lower authorities.

5. Learned Authorised Representative reiterates the findings of the first appellate authority.

6. On careful consideration of the submissions made by both the sides, I find that the fact is that the appellant imported GI wires and did not use the same for manufacturing activity, after conducting an activity of testing, repacked the same and cleared the GI wires as manufactured product. It is also not in dispute that while clearing the repacked GI wires they discharged Central Excise duty approximately to the tune of ₹ 32 lakhs while the CENVAT credit availed was approximately ₹ 38 lakhs. The law on this issue is settled by the Hon'ble High Court of Bombay in the case of *Ajinkya Enterprises (Supra)*, which is, if any amount is paid as Central Excise duty considering the goods as manufactured and if CENVAT credit is sought to be reversed on the same, the duty disallowed is as good as reversal of the same is equal or more to such credit availed and no demand arises. It is also a question of fact, has been admitted that appellant has paid the balance amount of ₹ 6 lakhs during the course of proceedings before the first appellate authority. Respectfully following the *ratio* of judgment of Hon'ble High Court, it is to be held that the entire CENVAT credit availed of ₹38,57,458/- stands

reversed.

7. I also do find any force in the contention made by the Learned Authorised Representative that the appellant is required to pay interest on the amount which has been reversed, but only on the amount of ₹ 6,31,590/- which was paid during the proceedings before the first appellate authority. To that extent the impugned order is upheld and held that the appellant is required to discharge interest on the amount of ₹ 6,31,590/- in accordance with law.

8. Coming to the question of penalty imposed under the provisions of Rule 15 of the CENVAT Credit Rules, 2004, I do find that there is contravention of the provisions of CENVAT Credit Rules as well as Central Excise Rules. Considering the issue holistically, I find that the penalty of ₹ 50,000/- imposed would be sufficient to meet the ends of justice.

9. The appeal is disposed off in the above terms.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

**/as140321032203*