

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Tax Case No. 48 of 2016**

Commissioner, Central Excise, Customs & Service Tax Raipur.

---- Appellant**Versus**

M/s. Godawari Power and Ispat Ltd. Industrial Growth Centre, Siltara, Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Shri Vinay Pandey, Advocate.
For Respondent	: Shri Krishna Mohan Menon and Shri Rahul Tamaskar, Advocates.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****08/05/2017**

1. The following questions have been formulated while admitting this appeal under Section 35-G of the Central Excise Act, 1944, on 09.11.2016 :

“(i) Whether the CESTAT is legally correct in holding that there is no cause for initializing action for recovery of 8% or 10% of the value of such electricity sold outside the factory when the Respondent failed to follow the procedure laid down under Rule 6(1), 6(2) and 6(3) of the CENVAT Credit Rules, 2004, inasmuch as it has neither maintained separate inventory of inputs and input services used in the manufacture of dutiable and exempted goods nor filed option not to maintain such separate inventory, and availed the entire CENVAT credit used in the manufacture of dutiable and exempted final product; and there is nothing on record in support of the Respondent's claim that it had reversed the attributable credit availed on all the inputs and input services utilized in the manufacture of exempted excisable goods (electricity) and sold outside the factory ?”

(ii) Whether the CESTAT was justified in extending the benefit of the retrospective amendment of Rule 6 of the CENVAT Credit Rules by Section 73 of the Finance Act, 2010 (By placing reliance in the case of Standards Intl. Precision Engineers P. Ltd. Vs. CCE, Bangalore-II) despite the fact that the Respondent had neither filed any option with the Commissioner of Central Excise nor

had furnished the requisite certificate from any Cost Accountant or Chartered Accountant as prescribed under the said provision ?

(iii) Whether the Hon'ble CESTAT, being a statutory body, can go beyond the statutory provision of law?"

2. We have heard learned counsel for the Appellant-Department and the learned counsel for the Respondent-Assessee including on the issue as to whether any question of law as formulated at the time of admission arises for decision on the facts and in the circumstances of the case.
3. The issue relates to the Respondent whose activity, going by the original order issued by the Additional Commissioner, Central Excise, is that it is a manufacturer of sponge iron and that it generates electricity inside its premises for production of Sponge Iron, MS Ingots, Billets and Dolochar. It avails credit of Cenvat duty paid on inputs used for generation of electricity.
4. In paragraph 6 of the original order, it was noticed that for the relevant periods, the Respondent-Assessee had sold particular quantities of electricity described in that paragraph of the original order. The original authority proceeded as if the duty was leviable on the said sale value of electricity as required in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2002 and 2004 alongwith interest and that such amount is recoverable. Penalty was also proposed. The Respondent-Assessee carried it in appeal before the Commissioner. In paragraph 8 of the Commissioner's order, it was specifically noted that a small portion referred to in paragraph 6 of the original order of the Additional Commissioner is sold to various parties outside the factory premises, from out of the electricity generated by the Respondent-Assessee for its purposes. The Commissioner interfered with the findings in the original order that the

duty is leviable on the said sale of electricity to various parties. The fundamental reason to hold so was that in terms of the Central Excise Tariff, there is no excisable commodity. Resultantly, the proposal made through the original order was set aside. The Appellant-Department carried that in appeal to the CESTAT which in turn affirmed the finding of the first appellate authority.

5. The learned counsel for the Appellant-Revenue argued that there was absolutely no foundation for CESTAT to have stated in paragraph 4 of the impugned order that it is an admitted fact that the Respondent had calculated and debited the credits attributable to the electricity sold by it and that such debit was made before issuance of the notice by the original authority. It was also argued that no separate accounts having been maintained and therefore it was impermissible for the Respondent to claim any credit for the quantity of electricity sold out to other units. As noticed hereinbefore, the original authority and the first appellate authority had pointedly considered and discussed the quantification of the electricity which was sold out from the Respondent's Establishment. This is demonstrated by the specific reference made by us hereinabove to paragraph 8 of the first appellate authority's order and para 6 of the original authority's order. With such finding of fact having been rendered by the first appellate authority, there is no dispute as to the quantum of electricity which was sold out by the Respondent. This is obviously the reason why the CESTAT had proceeded as if the said fact situation is an admitted one. It does not depend upon any admission or concession made by the representative of either the Revenue or the Respondent before the CESTAT.

6. On the aforesaid admitted factual premise, taking into consideration that the electricity is not an item for which any particular rate of duty is fixed in the Tariff Act, none can be criticized for not having raised the issue of maintaining separate accounts either before the first appellate authority. The original order and its preceding notice of proposal including as to penalty, were not dealt with, or based on any issue relating to non-maintenance of separate accounts. In fact, we see no consideration of any objection by the Department to the noticee's appeal before the Commissioner on a ground referable to the question as to whether separate accounts ought to have been maintained. The fact of the matter remains that maintaining of separate accounts as was sought to be raised did not impress the CESTAT, having regard to the quality of the findings it rendered on the facts particularly when the quantification of the electricity sold out by the Respondent was an admitted situation as far as the authority which generated the original order and the first appellate authority are concerned. At the best, this issue is a mixed question of facts and law which has been answered by the CESTAT on the basis of materials on record. That having been done, we do not see that any substantial question of law arises for decision in this appeal under Section 35-G of the Central Excise Act, 1944. This appeal therefore fails.
7. In the result, this appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE