**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CEA 85/2009 (O&M)
Date of decision:23.10.2019.

Commissioner of Central Excise
.............Appellant

v.

Sh.RK Gupta,General Manager(Excise)
.............Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra

Present:- Mr.Tajender Joshi,Advocate for the applicant/appellant.

Mr.Sandeep Goyal,Advocate for the respondent.

Jaswant Singh,J.

Revenue is in appeal under Section 35(G) of the Central Excise Act,1944 against the order dated 21.8.2008 (A-2) passed by CESTAT,New Delhi whereby appeal of the respondent-assessee was accepted and it was held that demand with regard to payment of duty on the inputs used in generation of electricity,cleared outside the factory of production was not sustainable.

The following substantial questions of law have been raised in the instant appeal:-

1. Whether the electricity so generated and cleared/sold to the grid outside the factory can be treated as captively used for the manufacture of final products and the Cenvat Credit availed on inputs used in the power so generated is admissible under the provisions of Rule 57A,57B of Central Excise Rules,1944, 57AB,

57AA of Central Excise (2nd amendment)Rules,2000 and Rule 2 and 3 of the CENVAT Credit Rules,2001 and 2002 and thereby availed inadmissible Modvat/CENVAT Credit,as held by the Ld.CESTAT in para 5 of the Final Order?

2. Whether the Penalty is imposable under Rule 209A of the Central Excise Rule,1944 read with Rule 13(1) of Central Excise Rules 2001 and 2002 upon Shri R.K.Gupta,General Manager of the Company being responsible for these ommission and commission.?

Facts in brief are that respondent-Mr.RK Gupta is General Manager of M/s Jindal Strips Ltd (for short JSL). JSL is engaged in the manufacture of goods such as Slabs,Blooms,Ingots, HR Strips/Coils of Statinless Steel etc. It is availing MODVAT/CENVAT credit facility on duty paid in inputs/raw materials and capital goods. It has installed a captive power plant for generation of electricity wherein fuel namely, R.O.,R.F.O.,H.P.S., and L.D.O., is used after availing Modvat/Cenvat Credit on the same. Some part of the electricity so generated was being cleared to HSEB, now DHBVNL. Revenue raised demand denying credit on the ground that the electricity generated was cleared to HSEB without payment of duty. It accordingly issued show cause notice to JSL. The Adjudicating Authority vide order dated 30.11.2005, besides confirming demand imposed penalty of Rs.5 lacs on the respondent. JSL and respondent filed appeal before CESTAT which was allowed vide impugned order A-2. Hence the present appeal.

Notice of motion was issued and the appeal is pending hearing.

In the meanwhile CM 21711-CII/2019 has been filed seeking permission to withdraw the appeal. It is averred in the application that Central Board of Indirect Taxes and Customs has issued instruction dated 22.8.2019 and revised the monetary limits for filing appeal before this Court to Rs.1.00 Crore and the said instructions are applicable to pending appeal. It is further averred that office of Commissioner of Central Goods and Service Tax,Rohtak has sent instruction to the effect that personal penalty involved in the appeal being Rs.5 lacs is below prescribed threshold limit and as such prayer for withdrawal of the appeal.

The application is supported by an affidavit of counsel for the appellant-Revenue.

In view of the averments made in the application, the same is allowed and appeal bearing CEA No.85/2009 is dismissed as withdrawn.

(Jaswant Singh)
Judge

23.10.2019. **(Lalit Batra)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**