

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

**CM 22655-CII/2019 in/and
CEA 31/2017
Date of decision:20.11.2019.**

Commissioner, Central Excise Delhi-IV

.....Appellant.

v.

Star Wire India Limited.

.....Respondents

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

Present:- Mr.Sharan Sethi,Advocate for the appellant.

Jaswant Singh,J.

Revenue is in appeal under Section 35 G of the Central Excise Act,1944 against the final order dated 20.9.2016 (Annexure A-6) passed by CESTAT,Chandigarh whereby demand of appellant from respondent for recovery of CENVAT Credit availed on cenvatable inputs has been rejected.

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

- i) Whether electricity so generated and cleared to the grid outside the factory be treated as transaction of 'sale' defined in section 2(h) of the Central Excise Act,1944 as held by the adjudicating authority in its O-I-O or not, as held by the CESTAT in its final order.*
- ii) Whether electricity so generated and cleared/sold to the grid outside the factory premises 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 CESTAT in para 7 of the final order.*
- iii) Whether the Hon'ble CESTAT,Chandigarh was correct in passing the final order*

No.A/61419/2016-Ex(DB) dated 20.9.2016 through which department's appeal was dismissed and upheld the O-I-A No.112-113/CE/Apl/DLH-IV/2006 dated 12.01.2017 passed by the Commissioner (Appeal),not taking into account the provisions mentioned in Rule 57A, 57B of Central Excise Rules,1944, 57AB, 57AA of Central Excise (2nd Amendment) Rules 2000 and Rule 2 and 2 of the Cenvat Credit Rules,2001 and 2002.

iv) Whether the judgment of Hon'ble CESTAT Court was sustainable in law?

The appeal is pending decision.

Now application bearing CM 22655-CII/2019 has been filed on behalf of the appellant with the averments that vide instructions dated 22.8.2019, the Central Board of Indirect Taxes and Customs (CBIC) has prescribed the monetary limits for filing and prosecuting appeals in this Court at Rs.1 crore and above. It is further stated therein that vide email dated 23.10.2019,counsel for the appellant has received instructions for withdrawal of the present appeal since the duty amount involved in this matter is Rs.53,09,892/- and thus below the monetary limit prescribed by CBIC. In the end prayer has been made to grant permission to appellant to withdraw the appeal. The application is supported by an affidavit of the counsel for the appellant.

In view of the contents of the application, supported by an affidavit of the counsel for the appellant, CM 22655-CII/2019 is allowed and CEA No.31 of 2017 is dismissed as withdrawn.

(Jaswant Singh)
Judge

20.11.2019.
joshi

(Lalit Batra)
Judge

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