IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CEA No.31/2019
Date of decision:14.10.2019.

Commissioner of Central Excise Commissionerate,Rohtak

..............Appellant.

v.

M/s J.S.L.Stainless Limited

..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Ms.Jaishree Thakur

Present:- Mr.Sourabh Goel,Senior Standing Counsel for the appellant-Revenue.

Jaswant Singh,J.

Since there is delay of 176 days in refiling the present appeal, CM 7225-CII/2019 has been filed seeking condonation of said delay.

Similarly,there being delay of 2035 days in filing the appeal, CM 7226-CII/2019 has been filed seeking condonation of said delay.

Main case.

Respondent Company is engaged in manufacture of stainless steel slabs,ingots,blooms etc. It was availing Cenvat Credit on inputs used in the manufacture of said excisable goods. It is also procuring furnace oil of Low Viscosity for use in generation of electricity in their captive power plant installed in the factory premises, part of which is used in factory and part of which exported to DHBVNL,Hisar. The electricity so exported to DHBVNL was adjusted by latter in the monthly electricity bill of the respondent. As per case of the Revenue the respondent was not reversing the proportionate Cenvat Credit taken on fuel consumed by it for generation of electricity exported/injected to/cleared from their factory to the power grid of DHBVNL. Accordingly,show cause notice was issued to the respondent for reversal of Cenvat Credit availed on proportionate fuel used for generation of electricity exported outside the premises. The Adjudicating Authority vide Order-in-Original dated 3.12.2010 (A-2) disallowed the Modvat/Cenvat Credit allowed on the fuel used for generation of exported electricity and also imposed penalty. Aggrieved against the same,respondent filed appeal which was allowed by Commissioner(Appeals)vide order dated 30.6.2010 (A-3). The appellate order A-3 was challenged by the Revenue in appeal which was dismissed by CESTAT vide order dated 17.4.2012(A-4). Hence the present appeal wherein following substantial questions of law have been raised:-

i) Whether 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 inadmissible under the provisions of Rule 2(k) (ii) of Cenvat Credit Rules,2004 as held by the CESTAT in the final order?

ii) Whether the Ld.Tribunal committed a grave error in relying upon the order against which the department appeal is still pending before this Hon'ble Court?

At the time of hearing,learned counsel for the appellant admits that in view of instructions dated 22.8.2019 issued by Ministry of Finance,Department of Revenue, Central Board of Indirect Taxes and Customs (Judicial Cell) the instant appeal would not be maintainable before this Court, as amount of revenue involved i.e. Rs.12,168/- is below the monetary limit of Rs. 1 Crore.

In view of the said instructions dated 22.8.2019 learned counsel for the appellant prays for withdrawal of the instant appeal, however the question of law raised would remain open.

Dismissed as withdrawn with liberty aforesaid.

Since the appeal stands dismissed as withdrawn no orders are being passed on the application seeking condonation of delay.

(Jaswant Singh)
Judge

14.10.2019. **(Jaishree Thakur)**
joshi **Judge**

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