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

CEA 69/2019 (O&M)
Date of decision:22.10.2019.

Principal Commissioner of Central Goods and Service Tax, Ludhiana

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

v.

M/s Jindal Stainless Ltd.,Delhi Road, Hisar.

..............Respondent

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

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

Jaswant Singh,J.

Revenue has filed the instant appeal under Section 35G of the Central Excise Act,1944 (for short the Act) assailing the order dated 13.10.2017 (A-5) passed by CESTAT whereby appeal filed by the Revenue was dismissed.

In the instant appeal, following substantial questions of law have been raised:-

i) Whether Cenvat Credit availed in respect of inputs needed to be proportionately reversed under rule 14 of the Cenvat Credit Rules 2004 for contravening rule 2 and 3 thereof,in a situation when inputs are not used in or in relation to manufacture/production of specified final products within the factory of production? Here electricity generated from inputs on which Cenvat Credit has been availed, had been wheeled out to the grid of State Electricity Board i.e. a place outside the factory of production for a consideration.

ii) Whether CESTAT Final Order No.A/62031/2017-EX[DB] dated 13.10.2017 is legally correct and proper in the light of legal provisions under Cenvat Credit Rules,2004 and also after taking into consideration the facts and grounds stated above;if not, the final order A/62031/2017[DB] dated 13.10.2017 may kindly be set aside.

iii)Any other order/relif as the Hon'ble High Court may deem fit.

Facts emerging out of averments made in the appeal are that respondent Company is engaged in the manufacture of various products of stainless steel. For the purpose of manufacturing it procures furnace oil for use in its captive power plant installed in the factory premises. Certain portion of power so generated is exported to the Grid of State Electricity Board. It is case of the appellant that Cenvat Credit to the respondent company is admissible only on the fuel used in generation of power for its manufacturing process and not for the exported electricity. Accordingly,show cause notice was issued. The Adjudicating Authority vide orders dated 27.2.2007, 4.1.2008 and 31.7.2008 confirmed the demand of duty/imposed penalty for different different period,as tabulated at page 12 of the paperbook. Aggrieved against the same, Revenue went in appeal which was dismissed by CESTAT vide impugned order dated 13.10.2017 (A-5). Hence the present appeal.

The appeal is pending hearing.

In the meanwhile CM 21234-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 duty involved in the appeal being Rs.66,30,293/- 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.69/2019 is dismissed as withdrawn.

(Jaswant Singh)
Judge

22.10.2019. **(Lalit Batra)**
joshi **Judge**

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