

**AFR**



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**OTAPL No. 19 of 2024**

*Principal Commissioner, CGST and .... Appellant*  
*Central Excise, Bhubaneswar*

*-versus-*

*M/s. Indian Metal and Ferro Alloys .... Respondent*  
*Limited, Odisha*

**Advocates appear in the case:**

For appellant: Mr. T.K. Satapathy,  
Senior Standing Counsel (Income Tax)

For respondent: Mr. Jagabandhu Sahoo, Sr. Advocate  
Mrs. Kajal Sahoo, Advocate

**CORAM:**

**THE HON'BLE MR. JUSTICE ARINDAM SINHA  
AND  
THE HON'BLE MR. JUSTICE M.S. SAHOO**

**J U D G M E N T**

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**Date of hearing and Judgment: 3<sup>rd</sup> September, 2024**  
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**ARINDAM SINHA, J.**

1. Revenue seeks to prefer appeal under section 35G in Central Excise Act, 1944. Mr. Satapathy, learned advocate, Senior Standing Counsel appears on behalf of revenue and submits, substantial questions of law arise from impugned final order dated 4<sup>th</sup> August,



2023 passed by Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in Excise Appeal no.75101 of 2017.

2. He draws attention to impugned final order to demonstrate that revenue's contention was, the surplus electricity supplied free of cost by respondent to its another unit does not entitle it to cenvat credit on input and input services in respect thereof. Therefore, periodical show cause notices were issued to respondent, to deny credit of input and input services used for generation of the electricity. Revenue was successful before the appellate authority but, the Tribunal erred on facts and in law, to set aside the appellate order.

3. Substantial questions of law arise regarding impugned final order, when definition of 'factory' in section 2 (e) of the Act is read with rules 2(k)(iii) and rule 3 in Cenvat Credit Rules, 2004. He submits, the appeal be admitted on substantial questions of law suggested in the memorandum or to be framed by us.

4. Mr. Sahoo, learned senior advocate appears on behalf of respondent and seeks service and audience. Mr. Satapathy opposes on submission, the appeal is on threshold of admission, only after which respondent is entitled to notice.

5. We made queries of Mr. Satapathy to ascertain the facts as appearing from impugned final order. Respondent has two units in the State, separated by approximately 500 kilometers. It is engaged in



manufacture of high carbon ferro chrome and chrome ore briquette. The units of respondent are engaged in manufacture of the products. One unit also manufactures electricity for captive use. Admittedly, part of surplus production was sold to Gridco and cenvat credit obtained, reversed. Respondent also used part of the surplus electricity by transmitting it to its other unit, engaged in the line of manufacture to produce the final products. They are dutiable goods.

6. Both units of respondent correspond or come within the meaning of ‘factory’ given in the Act. Input includes all goods used for generation of, inter alia, electricity for captive use. Apart from surplus electricity sold to Gridco, electricity that was surplus in the generating unit was transmitted to the other unit for use in manufacture of the dutiable goods. Hence, it cannot be said that the transmitted electricity was not captively used.

7. The Tribunal, by impugned final order relied on final order made in **M/s. Shree Cement Ltd. v. CCE, Jaipur-II [2017 (6) TMI 502 – CESTAT New Delhi]**, we reproduce below a passage from relied upon final order.

*“... .. The admitted fact is that the Cenvat credit on input services used in the generation of power is eligible to the appellant as long as the electricity is used in the manufacture of dutiable final product. The only dispute is relating to the usage of electricity captively within the*



*plant of generation or also outside the generation unit by the same manufacturer. Considering that the electricity has been used in the manufacture of dutiable final products and also the fact that all units belong to the appellant the denial of credit is not justifiable in the present case. ... .. ”*

Aforesaid final order was affirmed by the Rajasthan High Court, noted by the Kolkata Bench in impugned order.

8. We do not find any substantial question of law arises regarding use of the electricity manufactured in one unit of respondent but transmitted for use by another for use in manufacture of dutiable goods, to obtain cenvat credit.

9. The appeal is dismissed.

***(Arindam Sinha)***  
***Judge***

***(M.S. Sahoo)***  
***Judge***

*Radha/Gs*