

CENVAT credit available on inputs used in the production of electricity supplied to Sister Unit FOC

The CESTAT in *Principal Commissioner v. M/s Hira Ferro Alloys Limited [Excise Appeal No. 53531 of 2018 with Excise Miscellaneous Application No. 50363 of 2019 dated September 6, 2022]* held that the assessee is entitled to Central Value Added Tax (“CENVAT”) credit to the extent that the inputs are used for the production of electricity which is transferred free of cost to its sister unit for excisable goods.

Facts:

M/s Hira Ferro Alloys Limited (“**the Respondent**”) is the manufacturer of Ferro Alloys. It also has another unit in the same area and both units have separate central excise registrations and both are maintaining separate statutory records.

Further, according to the Revenue Department (“**the Appellant**”), the Respondent is entitled to CENVAT credit on the inputs and input services used in the manufacture of its final product but not the inputs and input services that go into the production of electricity that it supplied to its sister unit.

Moreover, the Appellant had sold part of the electricity to the Chhattisgarh State Power Distribution Company Limited and to that extent, reversed the CENVAT credit on the inputs and input services. However, the Appellant had not reversed CENVAT credit to the extent it had supplied the power to its sister unit which has a separate central excise registration.

Therefore, a show cause notice dated November 29, 2016 (“**the SCN**”) was issued to the Appellant seeking to recover an amount of Rs. 1, 66, 45,239/- under Rule 14 of the CENVAT Credit Rules, 2004 (“**the CCR**”) read with Section 11A along with interest and also penalty under Rule 15 read with Section 11AC (1) (c) of the Central Excise Act.

The Additional Commissioner has passed an order dated March 29, 2018 (“**OIO**”) confirming the demand along with interest and penalties.

Further, on appeal, the Commissioner passed the order (“**OIA**”) or (“**the Impugned order**”) stating that the Appellant was not required to reverse proportionate CENVAT credit in respect of power which it supplied to its sister unit during the period and to that extent the demand had to be reduced.

Therefore, the Appellant filed an appeal in the CESTAT against the Impugned order.

Issue:

Whether or not CEN dated January 17, 2018 VAT Credit available on inputs used in the production of Electricity supplied Free of Cost?

Held:

The CESTAT in ***Excise Appeal No. 53531 of 2018 with Excise Miscellaneous Application No. 50363 of 2019 dated September 6, 2022***, held as under:

- Relied upon the case of ***Commissioner of Central Goods and Service Tax, Jaipur Versus Shree Cement Limited [D.B. Central/Excise Appeal No. 134 / 2017 dated January 17, 2018]*** in which the Hon’ble High Court of Rajasthan allowed CENVAT credit on the inputs used in the production of electricity which is supplied free of cost to the Respondent’s sister unit used for excisable goods. Further, the CESTAT in the present case observed that each unit is separately registered as far as central excise is concerned. To the extent the electricity is sold to outsiders, the Respondent has reversed the CENVAT credit.
- Observed that, as per the CCR, CENVAT credit can only be allowed on the duty paid on inputs and service tax paid on input services. Therefore, the Respondent is entitled to

CENVAT credit to the extent the inputs are used for the production of electricity which is transferred free of cost to its sister unit to the extent of excisable goods.

- Therefore, the appeal filed by the Respondent was rejected by the Tribunal. The Impugned order was upheld. Also, the miscellaneous application was disposed of.

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