IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No. 187 of 2021

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Commissioner of Central GST and Excise, Patna II, Fourth Floor, C.T.T.C. Building, Sanchar Parishar, Buddha Marg, Patna-800001.

... ... Appellant/s

Versus

M/s Harinagar Sugar Mills Ltd. Harinagar, West Champaran, Bihar-845103.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. K. N. Singh, Sr. Advocate
		Mr. Anshuman Singh, Advocate
		Mr. Shivaditya Dhari Sinha, Advocate
		Mr. Abhinav, Advocate
For the Respondent/s	:	Mr. Rahul Dhanuka, Advocate
		Mr. Sanjeev Kumar, Advocate
		Mr. Rishabh Mishra, Advocate
		Mr. Radha Raman, Advocate
		Mr. Ramesh Kumar Agrawal, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 24-07-2026

1. The present Miscellaneous Appeal under Section 35G of the Central Excise Act, 1944 has been preferred by the Commissioner of Central GST & Central Excise, Patna-II,

questioning the legality and correctness of the Final Order No. 76870/2019, dated 11.12.2019, passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (hereinafter referred to "the Tribunal") in Excise Appeal No. 76323 of 2018. By the said order, the Tribunal allowed the appeal preferred by M/s Harinagar Sugar Mills Limited and set aside the Order-in-Original No. 02/M.P./Ayukt/2018, dated 29.01.2018, passed by the Commissioner, Central GST & Central Excise, Patna-II.

2. The Court admitted the appeal on the following Substantial Questions of Law formulated for consideration:

(i) Whether the act of the Learned CESTAT, Kolkata of superseding its own decision made in the favour of the appellant in a similar matter is characterized by lack of due regard to the law or the facts and is fit to be categorized as *per incuriam* order, which has been decided without reference to a statutory provision or earlier judgment which would have been relevant?

(ii) Whether the Learned CESTAT, Kolkata has grossly ignored and improperly correlated various relevant provisions of law, which includes several Rules under the CENVAT Credit Rules, 2004 such as Rules 2, 3 and 6 as well as its Sub-Rules with regard to the case of the Appellant herein?

(iii) Whether the Learned CESTAT, Kolkata is justified in neglecting the relevant precedents set out by the Hon’ble Supreme Court as well as by several Hon’ble High Courts which include judgments as already mentioned in the aforesaid paragraphs that not only squarely cover the case of the Appellant herein and also have been decided in the favour of the Appellant herein?

(iv) Whether the CESTAT, Kolkata, setting aside the impugned Order-in-Original No. 02/M.P./Ayukt/2018, dated 29.01.2018, vide its order, dated 11.12.2019 and allowing the appeal of the respondent herein, is legal and proper?

3. Since all the aforesaid substantial questions of law arise out of the common order passed by the learned Tribunal and are interconnected, they are taken up together for consideration. However, for the sake of convenience, the issues shall be dealt with separately wherever necessary.

4. The respondent-assessee, M/s Harinagar Sugar Mills Limited, is a public limited company engaged in the manufacture of sugar, molasses, denatured ethyl alcohol, rectified spirit and other excisable products. Its manufacturing

unit is situated at Harinagar in the district of West Champaran, Bihar. The respondent holds a single Central Excise Registration in respect of its factory premises, which comprise the sugar division as well as the Captive Power Plant (CPP).

5. During the course of manufacture of sugar, bagasse emerges as an inevitable by-product. The respondent utilizes bagasse as fuel in the Captive Power Plant established within its factory premises for generation of electricity. It is not in dispute that the electricity so generated is primarily consumed within the factory for manufacture of sugar, molasses and other finished excisable products. The surplus electricity, whenever available, is supplied to the Bihar State Electricity Board (BSEB) under an arrangement entered into by the respondent with the Board. According to the respondent, such supply is made only to the extent of surplus power and at a nominal price intended to recover the cost of generation.

6. The dispute in the present appeal relates to the financial years 2009-10 and 2010-11. During audit of the respondent's Central Excise records, the Department noticed that the respondent had availed CENVAT credit in respect of certain capital goods installed in the Captive Power Plant,

specified input services, and certain iron and steel items such as joists, angles, channels and plates. The audit also noticed that waste and scrap arising from capital goods had been cleared during the relevant period. Since a portion of the electricity generated from the Captive Power Plant was supplied outside the factory to the Bihar State Electricity Board, the Department formed the view that the respondent had contravened the provisions of the CENVAT Credit Rules, 2004 by availing credit in respect of goods and services allegedly used in relation to generation of exempted goods.

7. Consequently, a Demand-cum-Show Cause Notice dated 30.04.2014 came to be issued by the Commissioner of Central Excise & Service Tax, Patna proposing recovery of CENVAT credit together with interest and penalty. Broadly stated, the notice proposed: (i) recovery of CENVAT credit amounting to Rs. 3,16,59,172/- availed on capital goods and input services used in the Captive Power Plant; (ii) recovery of CENVAT credit amounting to Rs. 33,32,155/- in respect of certain iron and steel items alleged to be ineligible for credit; (iii) recovery of Central Excise duty amounting to Rs. 4,05,110/- in relation to clearance of waste and scrap; besides consequential interest and penalty under

the provisions of the Central Excise Act, 1944 and the CENVAT Credit Rules, 2004.

8. Upon receipt of the show cause notice, the respondent submitted a detailed reply denying the allegations. The respondent asserted that the Captive Power Plant formed an integral part of its manufacturing unit and that electricity generated therein was predominantly consumed within the factory for manufacture of dutiable final products. It was contended that generation of electricity through the Captive Power Plant was an inseparable component of the manufacturing process and that mere supply of surplus electricity outside the factory could not deprive the respondent of the benefit of CENVAT credit otherwise available under law. The respondent also disputed the proposed denial of credit on structural steel items and contested the demand relating to clearance of waste and scrap.

9. After considering the reply submitted by the respondent, affording personal hearing and examining the materials placed on record, the Commissioner, Central GST & Central Excise, Patna-II, passed the Order-in-Original dated 29.01.2018. By the said order, the adjudicating authority substantially confirmed the demands proposed in the show

cause notice together with interest and penalties, while dropping only a limited portion of the proposed demand. Being dissatisfied with the adjudication order, the respondent carried the matter in appeal before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata.

10. The Tribunal, by its Final Order dated 11.12.2019, allowed the appeal preferred by the respondent and set aside the Order-in-Original. In doing so, the Tribunal examined four distinct issues, namely: (i) admissibility of CENVAT credit on capital goods installed in the Captive Power Plant; (ii) admissibility of CENVAT credit on specified input services covered by Rule 6(5) of the CENVAT Credit Rules, 2004; (iii) admissibility of CENVAT credit on iron and steel items used for repair and maintenance of plant and machinery; and (iv) liability of the respondent in respect of duty on clearance of waste and scrap. The Tribunal answered all the aforesaid issues in favour of the respondent and consequently set aside the demands confirmed by the adjudicating authority.

11. Aggrieved by the order of the Tribunal, the Revenue has preferred the present appeal under Section 35G of the Central Excise Act, 1944 contending that the Tribunal

has misinterpreted the provisions of the CENVAT Credit Rules, 2004 and has erroneously extended the benefit of CENVAT credit to the respondent in circumstances where, according to the Revenue, such benefit was not admissible under law. It is these rival claims which fall for consideration in the present appeal.

12. Pursuant to the audit conducted in respect of the respondent's records for the financial years 2009-10 and 2010-11, the Department formed an opinion that the respondent had wrongly availed CENVAT credit in contravention of the provisions of the CENVAT Credit Rules, 2004. On the basis of the audit objections, a Demand-cum-Show Cause Notice dated 30.04.2014 was issued calling upon the respondent to explain why the CENVAT credit alleged to have been wrongly availed, together with interest thereon, should not be recovered and why penalty should not be imposed under the provisions of the Central Excise Act, 1944 and the CENVAT Credit Rules, 2004.

13. The show cause notice broadly proceeded on four allegations. First, it alleged that the respondent had availed CENVAT credit amounting to Rs.3,16,59,172/- on capital goods and specified input services used in the Captive

Power Plant, although the electricity generated therein was treated by the Department as exempted goods and a portion thereof had admittedly been supplied outside the factory to the Bihar State Electricity Board. Secondly, it proposed denial of CENVAT credit amounting to Rs.33,32,155/- on iron and steel items such as joists, angles, channels, plates and similar structural materials on the ground that, after the amendment brought into effect from 07.07.2009, such goods no longer answered the description of either "capital goods" or "inputs" under the CENVAT Credit Rules, 2004. Thirdly, it alleged that the respondent had wrongly availed credit on specified input services covered by Rule 6(5) of the Rules. Lastly, the notice proposed recovery of duty amounting to Rs. 4,05,110/- on the clearance of waste and scrap arising from capital goods, together with consequential interest and penalty.

14. The respondent submitted a detailed reply disputing each of the allegations. It asserted that the Captive Power Plant formed an integral part of its manufacturing unit and that the electricity generated therein was substantially consumed within the factory in the manufacture of dutiable final products. It was further contended that only the surplus electricity was supplied to the Bihar State Electricity Board

and that such circumstance did not disentitle the respondent from availing CENVAT credit. In relation to the structural steel items, the respondent maintained that the goods had been used for repair and maintenance of existing plant and machinery and were, therefore, eligible for credit. The respondent also disputed the proposed demand relating to waste and scrap and denied any liability to interest or penalty.

15. The adjudicating authority afforded an opportunity of personal hearing to the respondent and thereafter proceeded to determine the issues arising from the show cause notice. By Order-in-Original No. 02/M.P./Ayukt/2018 dated 29.01.2018, the Commissioner substantially accepted the case advanced by the Department.

16. In so far as the first issue was concerned, the Commissioner held that the capital goods and the specified input services in question had been used in the generation of electricity, which was treated as exempted goods under the CENVAT Credit Rules, 2004. Since a portion of the electricity generated from the Captive Power Plant was admittedly cleared outside the factory, the adjudicating authority concluded that the respondent was not entitled to avail CENVAT credit in respect of such capital goods and input

services and confirmed the demand, subject only to a minor correction on account of a clerical error.

17. While dealing with the second issue, namely the admissibility of credit on iron and steel items, the Commissioner observed that the goods in question, namely joists, angles, channels, plates and similar structural items, were essentially structural materials of general use employed in repair, maintenance or support structures and did not satisfy the definition of either “capital goods” or “inputs” after the amendment to the Rules with effect from 07.07.2009. On that reasoning, the adjudicating authority disallowed the credit claimed by the respondent on those goods.

18. In respect of the third issue relating to waste and scrap, the Commissioner held that the respondent had admittedly cleared waste and scrap arising from capital goods during the relevant period and was, therefore, liable to discharge duty under Rule 3(5) of the CENVAT Credit Rules, 2004. The demand of duty on this count was accordingly confirmed along with applicable interest, and penalty was also imposed.

19. Consequent upon the above findings, the adjudicating authority confirmed recovery of CENVAT credit

to the extent found admissible in the order, directed recovery of interest under the relevant provisions of the Act and the Rules, and imposed penalties upon the respondent. However, one component of the proposed demand, amounting to Rs.6,23,188/-, was dropped by the Commissioner for the reasons recorded in paragraph 21 of the Order-in-Original.

20. Feeling aggrieved by the Order-in-Original dated 29.01.2018, the respondent preferred Excise Appeal No. 76323 of 2018 before the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata, questioning the correctness of each of the findings recorded by the adjudicating authority. The manner in which the Tribunal dealt with those issues and the reasons which weighed with it in allowing the appeal shall now be noticed.

21. Aggrieved by the Order-in-Original dated 29.01.2018, the respondent-assessee preferred Excise Appeal No. 76323 of 2018 before the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata. Before the Tribunal, the respondent questioned the correctness of the findings recorded by the adjudicating authority in relation to denial of CENVAT credit on capital goods and input services used in the Captive Power Plant, denial of credit on iron and

steel items, and confirmation of duty on the clearance of waste and scrap.

22. Upon hearing the parties, the Tribunal identified four issues for determination, namely: (i) whether CENVAT credit amounting to Rs.3,09,46,548/- availed on capital goods used in the Captive Power Plant was admissible under the CENVAT Credit Rules, 2004; (ii) whether CENVAT credit amounting to Rs.7,12,624/- on the specified seventeen input services covered under Rule 6(5) of the CENVAT Credit Rules, 2004 was admissible; (iii) whether CENVAT credit amounting to Rs.33,32,155/- on iron and steel items used in repair and maintenance of plant and machinery was admissible; and (iv) whether the respondent was liable to pay duty amounting to Rs.4,05,110/- under Rule 3(5) of the CENVAT Credit Rules, 2004 on the clearance of waste and scrap.

23. While dealing with the first issue relating to capital goods used in the Captive Power Plant, the Tribunal noticed that it was not disputed that a substantial part of the electricity generated in the Captive Power Plant was consumed within the factory in the manufacture of dutiable final products, namely sugar and molasses. Proceeding on that

admitted factual position, the Tribunal held that the capital goods installed in the Captive Power Plant could not be regarded as having been used exclusively in the manufacture of exempted goods so as to attract the embargo contained in Rule 6(4) of the CENVAT Credit Rules, 2004. The Tribunal observed that electricity generated in the Captive Power Plant assumed the character of an intermediate product to the extent it was captively consumed in the manufacture of dutiable final products and, therefore, denial of CENVAT credit on the entire capital goods was not legally justified. While arriving at the said conclusion, the Tribunal placed reliance upon CBEC Circular No. 665/56/2002-CX dated 25.09.2002 and the decision of the Chhattisgarh High Court in Union of India v. HEG Ltd.

24. In relation to the second issue concerning input services covered by Rule 6(5) of the CENVAT Credit Rules, 2004, the Tribunal observed that the services in question belonged to the category of specified services enjoying an overriding treatment under Rule 6(5). It further held that such services could not be said to have been used exclusively for manufacture of exempted goods merely because a part of the electricity generated from the Captive Power Plant was

supplied outside the factory. Having regard to the admitted position that electricity generated in the Captive Power Plant was substantially consumed in the manufacture of dutiable final products, the Tribunal concluded that denial of credit on those services was unsustainable.

25. On the third issue relating to iron and steel items, the Tribunal accepted the respondent's contention that the goods in question had been utilized for repair and maintenance of existing capital goods and machinery installed in the factory. The Tribunal held that the use of such items was directly connected with the functioning and upkeep of the manufacturing plant and, relying upon the authorities cited before it, came to the conclusion that the credit had been wrongly denied by the adjudicating authority. It, accordingly, set aside the demand relating to CENVAT credit on those items.

26. In so far as the fourth issue concerning waste and scrap was concerned, the Tribunal held that the demand confirmed under Rule 3(5) of the CENVAT Credit Rules, 2004 was not sustainable on the facts of the case. Consequently, the demand of duty amounting to Rs. 4,05,110/- together with the consequential interest and penalty was also set aside.

27. In the result, the Tribunal allowed the appeal in its entirety, set aside the Order-in-Original, dated 29.01.2018 and granted consequential relief to the respondent in accordance with law. It is the correctness of the aforesaid findings recorded by the Tribunal which has been questioned by the Revenue in the present appeal under Section 35G of the Central Excise Act, 1944.

28. Assailing the impugned Final Order dated 11.12.2019 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, Kolkata, learned Senior Standing Counsel appearing for the appellant-Revenue submitted that the Tribunal has committed a manifest error in setting aside the Order-in-Original dated 29.01.2018. According to the learned counsel, the findings recorded by the Tribunal are contrary to the provisions of the CENVAT Credit Rules, 2004 as well as the law laid down by the Hon'ble Supreme Court governing the admissibility of CENVAT credit. It was urged that the Tribunal failed to appreciate both the statutory scheme and the factual matrix in their proper perspective.

29. Learned counsel for the appellant submitted that the respondent had admittedly supplied a portion of the

electricity generated in its Captive Power Plant to the Bihar State Electricity Board. Electricity being exempted goods, the capital goods used for generation of such electricity could not, according to the appellant, qualify for CENVAT credit to the extent contemplated by the CENVAT Credit Rules, 2004. It was contended that the Tribunal erred in holding that Rule 6(4) of the Rules had no application merely because a substantial quantity of electricity was consumed captively within the factory. The decisive factor, according to the appellant, was that the capital goods were also used for generation of electricity cleared outside the factory and, therefore, the restriction contained in the Rules stood attracted.

30. Elaborating the submission, learned counsel argued that the Tribunal misdirected itself in treating electricity as an intermediate product. It was contended that electricity supplied to the Bihar State Electricity Board had no nexus with the manufacture of the respondent's dutiable final products. Once electricity left the factory for commercial supply to a third party, it ceased to have any connection with the manufacturing activity carried on by the respondent. Consequently, the capital goods employed for generation of

such electricity could not be regarded as having been used in or in relation to manufacture of dutiable final products.

31. Learned counsel further submitted that the Tribunal failed to correctly appreciate the ratio of the decision of the Hon'ble Supreme Court laid down in the case of ***Maruti Suzuki Ltd. v. Commissioner of Central Excise, Delhi-III***. According to the appellant, the Apex Court has clearly held that for availing CENVAT credit there must exist a direct and proximate nexus between the goods or services on which credit is claimed and the manufacture of the final product. The Tribunal, while relying upon other decisions, failed to apply the principles enunciated by the Hon'ble Supreme Court and thereby committed an error of law apparent on the face of the record.

32. It was next submitted that the Tribunal also erred in allowing CENVAT credit on the seventeen taxable services referred to in Rule 6(5) of the CENVAT Credit Rules, 2004. Learned counsel argued that the benefit under Rule 6(5) cannot be extended where the services are relatable to generation of exempted goods which are ultimately cleared outside the factory. According to the appellant, the Tribunal overlooked the scope and object of Rule 6 and thereby granted

a benefit not contemplated by the statutory scheme.

33. So far as the iron and steel items are concerned, learned counsel contended that the goods in question, namely M.S. Angles, Channels, Joists, Plates and similar structural items, had been used for fabrication of supporting structures and, after the amendment carried out with effect from 07.07.2009, no CENVAT credit was admissible on such goods. It was submitted that the Tribunal failed to distinguish between goods used as components of machinery and those employed for fabrication of supporting structures, resulting in an erroneous extension of the benefit of credit.

34. Learned counsel also questioned the finding of the Tribunal relating to waste and scrap. It was submitted that the waste and scrap had arisen from capital goods on which CENVAT credit had been availed and, therefore, the respondent was liable to discharge duty under Rule 3(5) of the CENVAT Credit Rules, 2004. The Tribunal, according to the appellant, committed an error in setting aside the demand without properly appreciating the statutory provisions governing such clearances.

35. Referring to the Order-in-Original, learned counsel submitted that the adjudicating authority had

examined each issue independently, analysed the relevant statutory provisions and recorded detailed reasons while confirming the demands. The Tribunal, however, reversed those findings without adequately dealing with the reasoning adopted by the adjudicating authority and without assigning cogent reasons for taking a contrary view. Such an approach, it was submitted, renders the impugned order legally unsustainable.

36. Lastly, it was contended that the appeal raises substantial questions relating to the interpretation of the CENVAT Credit Rules, 2004, particularly the scope of Rule 6(4), Rule 6(5) and Rule 3(5), and the applicability of the law declared by the Hon'ble Supreme Court in Maruti Suzuki Ltd. to the facts of the present case. Learned counsel, therefore, prayed that the impugned Final Order dated 11.12.2019 passed by the Tribunal be set aside and the Order-in-Original dated 29.01.2018 be restored.

37. Per contra, learned counsel appearing on behalf of the respondent-assessee supported the impugned Final Order, passed by the learned Tribunal and submitted that the appeal preferred by the Revenue is devoid of merit, both on facts and in law. It was contended that the Tribunal has

correctly appreciated the statutory provisions as well as the judicial precedents governing the field and has rightly interfered with the Order-in-Original. According to the respondent, no substantial question of law arises for consideration under Section 35G of the Central Excise Act, 1944, inasmuch as the findings recorded by the Tribunal are founded upon the admitted facts of the case and the settled position of law.

38. Learned counsel submitted that the respondent is engaged in the manufacture of excisable goods, namely sugar, molasses, rectified spirit and denatured ethyl alcohol, and that the Captive Power Plant forms an integral part of the manufacturing unit. It was argued that bagasse, which emerges during the manufacture of sugar, is utilized as fuel for generation of electricity in the Captive Power Plant and the electricity so generated is predominantly consumed within the factory for manufacture of the respondent's dutiable final products. The supply of surplus electricity to the Bihar State Electricity Board, according to the respondent, is merely incidental and does not alter the essential character of the Captive Power Plant as part of an integrated manufacturing process.

39. It was further submitted that Rule 6(4) of the CENVAT Credit Rules, 2004 has no application to the facts of the present case. Learned counsel argued that the embargo under the said Rule operates only where capital goods are used exclusively in the manufacture of exempted goods. In the present case, it is an admitted position that the electricity generated in the Captive Power Plant is substantially consumed within the factory in the manufacture of dutiable final products. Since the capital goods are not exclusively used for generation of electricity supplied outside the factory, the statutory prohibition contained in Rule 6(4) is not attracted.

40. Learned counsel submitted that the Department has proceeded on an erroneous assumption that the entire electricity generated in the Captive Power Plant is an exempted final product. According to the respondent, electricity generated and captively consumed in the manufacturing process constitutes an intermediate product and forms part of the continuous process of manufacture. It was argued that only the surplus electricity is supplied to the Bihar State Electricity Board and such incidental clearance cannot result in denial of CENVAT credit on capital goods which are

otherwise validly used in relation to the manufacture of dutiable final products.

41. In support of the above contention, learned counsel placed reliance upon the CBEC Circular No. 665/56/2002-CX dated 25.09.2002 and submitted that the circular itself clarifies that credit on capital goods is not liable to be denied merely because a part of the electricity generated is supplied outside the factory, provided the capital goods are not used exclusively for manufacture of exempted goods. It was further submitted that the Tribunal has rightly relied upon the decision of the Chhattisgarh High Court in Union of India v. HEG Ltd., wherein similar issues were considered and decided in favour of the assessee.

42. With regard to the reliance placed by the Revenue on the decision of the Hon'ble Supreme Court in Maruti Suzuki Ltd., learned counsel submitted that the said decision was rendered in the context of admissibility of credit on inputs and turned on an entirely different factual and statutory setting. According to the respondent, the controversy in the present appeal concerns capital goods governed by Rule 6(4) and specified input services covered by Rule 6(5), which stand on a different footing. It was therefore submitted that the

Revenue has misconstrued the ratio of the aforesaid decision and the same has no application to the facts of the present case.

43. Learned counsel next submitted that the denial of CENVAT credit on the seventeen taxable services covered under Rule 6(5) of the CENVAT Credit Rules, 2004 is equally unsustainable. It was argued that the said provision specifically permits availment of credit in respect of the specified taxable services unless they are used exclusively in relation to manufacture of exempted goods. Since the services in question were admittedly utilized in connection with the respondent's integrated manufacturing operations, the Tribunal rightly held that the benefit of credit could not be denied.

44. In relation to the iron and steel items, learned counsel submitted that the Department has proceeded on an incorrect factual premise. It was contended that the goods in question were not used for construction of civil structures or for fabrication of supporting structures but were consumed in repair and maintenance of existing plant and machinery. Such expenditure, according to the respondent, was essential for ensuring uninterrupted functioning of the manufacturing unit

and, therefore, the Tribunal rightly extended the benefit of CENVAT credit by following the decisions governing the issue.

45. So far as the demand relating to waste and scrap is concerned, learned counsel submitted that the Tribunal has rightly appreciated the factual position and correctly concluded that the demand confirmed by the adjudicating authority was unsustainable. According to the respondent, the Revenue has failed to demonstrate any legal infirmity in the finding recorded by the Tribunal warranting interference by this Court.

46. Summing up the submissions, learned counsel contended that the impugned order is based upon a correct interpretation of the CENVAT Credit Rules, 2004 and a proper appreciation of the evidence on record. It was argued that the appeal seeks nothing more than a re-appreciation of the factual findings recorded by the Tribunal, which is impermissible in an appeal under Section 35G of the Central Excise Act, 1944. Learned counsel, therefore, prayed for dismissal of the appeal with costs.

47. We have given our anxious consideration to the rival submissions advanced on behalf of the parties and have

carefully examined the pleadings, the impugned Final Order passed by the learned Tribunal, the Order-in-Original, the statutory provisions as well as the authorities relied upon by the respective parties. The substantial questions of law being interconnected, they are taken up together for consideration, though the issues arising therefrom shall be dealt with separately for the sake of convenience.

48. The first and foremost issue which falls for consideration is whether the learned Tribunal was justified in holding that the respondent was entitled to avail CENVAT credit on the capital goods installed in its Captive Power Plant notwithstanding the admitted fact that a part of the electricity generated therefrom was supplied to the Bihar State Electricity Board.

49. At the outset, it deserves to be noticed that there is no dispute with regard to the nature of the goods on which CENVAT credit has been availed. The Revenue has not disputed that the goods satisfy the definition of “capital goods” under Rule 2(a) of the CENVAT Credit Rules, 2004. Likewise, there is no controversy regarding the factual position that the electricity generated in the Captive Power Plant was substantially consumed within the respondent’s

factory in the manufacture of dutiable final products, namely sugar and molasses, and that only the surplus electricity was wheeled out to the Bihar State Electricity Board. The controversy, therefore, is confined to the applicability of Rule 6(4) of the CENVAT Credit Rules, 2004 to the admitted facts of the case.

50. Rule 6(4) of the CENVAT Credit Rules, 2004 prohibits availment of CENVAT credit only where the capital goods are used exclusively in the manufacture of exempted goods or in providing exempted services. The emphasis placed by the legislature upon the expression “exclusively” is of considerable significance. The statutory embargo is not attracted merely because exempted goods also emerge from the manufacturing process or because a portion of the output is cleared without payment of duty. The disqualification arises only where the capital goods are exclusively employed in the manufacture of exempted goods to the exclusion of dutiable final products.

51. In the present case, the factual foundation necessary to attract the aforesaid embargo is conspicuously absent. The Tribunal has recorded a categorical finding that the electricity generated in the Captive Power Plant was

predominantly consumed in the manufacture of dutiable final products within the respondent's factory and that only the surplus electricity was supplied outside the factory. This finding has not been shown to be perverse nor has any material been brought on record by the Revenue to demonstrate that the capital goods were used solely or exclusively for generation of electricity supplied outside the factory. Once the admitted position is that the Captive Power Plant formed an integral part of the respondent's manufacturing unit and the electricity generated therein was substantially utilized in the manufacture of dutiable final products, the requirement of exclusive use contemplated under Rule 6(4) cannot be said to have been satisfied.

52. The aforesaid interpretation also finds support from Circular No. 665/56/2002-CX dated 25.09.2002 issued by the Central Board of Excise and Customs, wherein it has been clarified that CENVAT credit on capital goods used in the manufacture of exempt intermediate goods cannot be denied where such intermediate goods are captively consumed in the manufacture of final products chargeable to duty. Though the Revenue has sought to distinguish the said Circular by contending that electricity supplied outside the

factory loses the character of an intermediate product, the Circular unmistakably proceeds on the principle that the decisive consideration is whether the capital goods are employed as part of an integrated manufacturing process culminating in dutiable final products.

53. Considerable reliance has been placed by the learned counsel for the appellant on the decision of the Hon'ble Supreme Court in Maruti Suzuki Ltd. v. Commissioner of Central Excise, Delhi-III, (2009) 9 SCC 193. We have carefully examined the said decision. The controversy before the Hon'ble Supreme Court arose in the context of admissibility of CENVAT credit on inputs used for generation of electricity, a part of which was supplied outside the factory. The Supreme Court emphasized the requirement of establishing a nexus between the inputs on which credit was claimed and the manufacture of the final dutiable product and held that credit could not be extended in respect of inputs utilized in generation of electricity cleared outside the factory, such electricity having no nexus with the manufacture of the final product.

54. In our considered opinion, the aforesaid decision cannot be read divorced from the statutory provisions which

fell for consideration therein. The controversy in the present case does not relate to the admissibility of credit on "inputs". The dispute concerns capital goods governed by Rule 6(4) of the CENVAT Credit Rules, 2004, which employs a distinct legislative standard by denying credit only where such capital goods are used exclusively in the manufacture of exempted goods. The statutory requirement governing capital goods is, therefore, materially different from that applicable to inputs, and the ratio of Maruti Suzuki Ltd. has to be understood in the context in which it was rendered.

55. Equally relevant is the decision of the Chhattisgarh High Court in Union of India v. HEG Ltd., wherein the Court considered the scope of Rule 6(4) of the CENVAT Credit Rules, 2004 in circumstances where electricity generated in a captive power plant was partly consumed in manufacture of dutiable goods and the balance was cleared outside the factory. The High Court held that the embargo under Rule 6(4) would not operate unless the capital goods were used exclusively in the manufacture of exempted goods and that captive consumption of electricity in the manufacture of dutiable final products constituted a relevant and determinative circumstance while examining the

applicability of the Rule. The Tribunal has placed reliance upon the said decision while allowing the respondent's appeal.

56. We find no inconsistency between the principle laid down in Maruti Suzuki Ltd. and the view expressed in HEG Ltd. so far as the controversy involved in the present appeal is concerned. The former explains the requirement of nexus in the context of inputs, whereas the latter interprets the expression "used exclusively" occurring in Rule 6(4) governing capital goods. The two decisions operate in distinct statutory settings and cannot be treated as laying down conflicting propositions of law. Consequently, the appellant cannot derive assistance merely by contending that the Tribunal ought to have applied Maruti Suzuki Ltd. in preference to HEG Ltd. without first demonstrating that the factual and statutory foundation of both cases was identical.

57. The appellant has further contended that the Tribunal committed an error in treating electricity generated in the Captive Power Plant as an intermediate product. In our opinion, the correctness of the Tribunal's conclusion cannot be examined in isolation. The Tribunal has not proceeded on the premise that electricity is invariably an intermediate product. The finding recorded by it is founded upon the admitted

factual position that the electricity generated in the Captive Power Plant was substantially consumed within the respondent's factory in the manufacture of dutiable final products and only the surplus was supplied to the Bihar State Electricity Board. The expression employed by the Tribunal has to be understood in the context of the integrated manufacturing activity carried on by the respondent and not as a declaration regarding the legal character of electricity for all purposes under the CENVAT Credit Rules.

58. Once it is accepted that the capital goods installed in the Captive Power Plant were not used solely for generation of electricity supplied outside the factory but formed part of an integrated manufacturing process resulting in dutiable final products, the essential condition for invoking Rule 6(4) of the CENVAT Credit Rules, 2004 remains unfulfilled. In such circumstances, we are unable to hold that the learned Tribunal committed any error in concluding that denial of CENVAT credit on the entire capital goods was unsustainable merely because a portion of the electricity generated was wheeled out to the Bihar State Electricity Board.

59. The next issue relates to the admissibility of

CENVAT credit amounting to Rs.7,12,624/- availed by the respondent on the seventeen specified input services covered under Rule 6(5) of the CENVAT Credit Rules, 2004.

60. The adjudicating authority proceeded on the premise that since the input services had been utilized in the Captive Power Plant for generation of electricity, a portion of which was admittedly supplied to the Bihar State Electricity Board, the respondent was disentitled from availing the benefit of CENVAT credit. The Tribunal, however, took a different view and held that the services in question were covered by Rule 6(5) of the CENVAT Credit Rules, 2004 and, therefore, denial of credit was not legally sustainable merely because a part of the electricity generated was wheeled out of the factory.

61. Rule 6(5), as it stood during the relevant period, carved out an exception in respect of certain specified taxable services by permitting availment of the whole of the CENVAT credit unless such services were used exclusively in relation to the manufacture of exempted goods or for providing exempted services. The legislative intent behind the provision was to recognize that certain common input services are incapable of precise segregation between dutiable and

exempted activities and, therefore, deserve a distinct treatment from other input services.

62. In the present case, it is not the case of the Revenue that the seventeen specified input services were utilized exclusively for generation of electricity supplied outside the factory. On the contrary, the admitted factual position is that the electricity generated in the Captive Power Plant was substantially consumed in the manufacture of the respondent’s dutiable final products and only the surplus electricity was supplied to the Bihar State Electricity Board. In such circumstances, it cannot be held that the specified input services were used exclusively in relation to exempted goods so as to attract the restriction contemplated under Rule 6(5).

63. The view taken by the Tribunal also finds support from CBEC Circular No. 137/203/2007-CX.4 dated 01.10.2007, wherein the Board clarified that the specified services enumerated under Rule 6(5) constitute common services which ordinarily cannot be co-related or apportioned to any particular output and that the benefit of full credit is intended to be available in respect of such services unless they are used exclusively for exempted goods or exempted

services. The said Circular, being binding upon the departmental authorities, could not have been ignored while determining the respondent's entitlement to credit.

64. We are, therefore, of the considered opinion that the learned Tribunal committed no error in holding that the respondent was entitled to avail CENVAT credit on the specified input services covered under Rule 6(5) of the CENVAT Credit Rules, 2004. The finding recorded by the Tribunal is consistent with the plain language of the Rule, the clarification issued by the Central Board of Excise and Customs, and the admitted factual position emerging from the record. We accordingly affirm the conclusion reached by the Tribunal on the second issue.

65. The third issue pertains to the denial of CENVAT credit amounting to Rs.33,32,155/- on iron and steel items, namely M.S. Angles, Channels, Joists, Plates and other similar goods, which, according to the Revenue, were used for fabrication of supporting structures and, therefore, ceased to be eligible for CENVAT credit after the amendment carried out in the CENVAT Credit Rules, 2004 with effect from 07.07.2009.

66. The Commissioner, while confirming the

demand, proceeded on the footing that the aforesaid goods were merely structural materials of general use and did not satisfy the definition of either "capital goods" or "inputs" under the CENVAT Credit Rules, 2004. The Tribunal, however, upon appreciation of the materials available on record, recorded a finding that the goods in question had been utilized for repair and maintenance of the existing plant and machinery installed in the respondent's factory and were not employed for construction of any civil structure or fabrication of immovable supporting structures. On that basis, the Tribunal held that the denial of credit was unsustainable.

67. It is well settled that the admissibility of CENVAT credit on iron and steel items depends not merely upon the description of the goods but upon the purpose for which such goods have been used. Where such goods are consumed in construction of buildings or fabrication of immovable supporting structures, the benefit of credit is ordinarily unavailable. However, where they are established to have been used in the repair, replacement or maintenance of existing plant and machinery directly connected with the manufacturing process, the claim is required to be examined in the light of their actual use and not merely on the basis of

their nomenclature.

68. In the present case, the Tribunal has recorded a categorical finding of fact that the iron and steel items were used for repair and maintenance of the existing capital goods and machinery forming part of the manufacturing unit. The Revenue has not been able to demonstrate from the materials on record that the said finding is either unsupported by evidence or suffers from perversity. In an appeal under Section 35G of the Central Excise Act, interference with such factual findings is permissible only where they are shown to be perverse or based on no evidence. Mere disagreement with the appreciation of evidence by the Tribunal does not give rise to a substantial question of law.

69. We also find that the adjudicating authority proceeded largely on the assumption that the goods were structural items and, therefore, ineligible for credit after the amendment introduced with effect from 07.07.2009. Such an approach overlooks the settled principle that the actual use of the goods constitutes the determinative test while examining the admissibility of CENVAT credit. The Tribunal, having examined the nature of utilization of the goods and having arrived at a factual conclusion that they were consumed in

repair and maintenance of the existing manufacturing machinery, cannot be said to have committed any error of law warranting interference by this Court.

70. We are, therefore, of the considered opinion that the finding recorded by the Tribunal on the third issue is based upon a proper appreciation of the materials available on record and does not suffer from any legal infirmity. Consequently, the order of the Tribunal setting aside the denial of CENVAT credit on the aforesaid iron and steel items calls for no interference in the exercise of appellate jurisdiction under Section 35G of the Central Excise Act, 1944.

71. The last issue relates to the demand of Central Excise duty amounting to Rs.4,05,110/- confirmed by the adjudicating authority under Rule 3(5) of the CENVAT Credit Rules, 2004 in respect of waste and scrap arising from capital goods. The Commissioner confirmed the demand on the premise that the respondent had cleared waste and scrap generated from capital goods on which CENVAT credit had been availed and was, therefore, liable to discharge duty in terms of the aforesaid Rule. The Tribunal, however, set aside the demand after examining the nature of the transaction and

the materials available on record.

72. The Revenue has not been able to point out any specific statutory provision or material on record demonstrating that the finding recorded by the Tribunal suffers from any legal infirmity. Except reiterating the reasoning adopted by the adjudicating authority, no substantial argument has been advanced before this Court to establish that the conclusion arrived at by the Tribunal is contrary to the scheme of the CENVAT Credit Rules, 2004 or the evidence available on record.

73. It is a settled principle that an appeal under Section 35G of the Central Excise Act, 1944 lies only on a substantial question of law. Where the Tribunal, upon appreciation of the evidence, records findings of fact which are neither shown to be perverse nor contrary to the statutory provisions, this Court would be slow to interfere merely because another view is possible. The jurisdiction under Section 35G is confined to examination of substantial questions of law and does not extend to a fresh re-appreciation of factual issues already adjudicated by the Tribunal.

74. Having examined the impugned order in its entirety, we are satisfied that the Tribunal has independently

considered each of the four issues arising in the appeal, analysed the relevant statutory provisions, taken note of the circulars issued by the Central Board of Excise and Customs as well as the judicial precedents governing the field, and thereafter recorded findings supported by reasons. The appellant-Revenue has not been able to demonstrate that the Tribunal ignored any binding statutory provision or applied an incorrect principle of law while arriving at its conclusions.

75. The grievance of the appellant, in substance, is directed against the appreciation of facts and the conclusions drawn by the Tribunal therefrom. Such a grievance, by itself, does not give rise to a substantial question of law within the meaning of Section 35G of the Central Excise Act, 1944. Once the findings recorded by the Tribunal are found to be based upon the evidence available on record and are consistent with the statutory framework, this Court would not be justified in substituting its own view merely because another interpretation may also be possible.

76. For the reasons recorded hereinabove, each of the substantial questions of law framed at the time of admission is answered against the appellant-Revenue and in favour of the respondent-assessee. We hold that the learned

Customs, Excise and Service Tax Appellate Tribunal committed no error in setting aside the Order-in-Original dated 29.01.2018 and allowing the appeal preferred by the respondent.

77. Consequently, the present Miscellaneous Appeal fails and is, accordingly, dismissed. The Final Order No.76870/2019 dated 11.12.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in Excise Appeal No.76323 of 2018 is hereby affirmed. There shall be no order as to costs.

78. In view of the foregoing discussion, the substantial questions of law framed at the time of admission are answered as follows:

(i) The first substantial question of law is answered against the appellant. The Tribunal cannot be said to have rendered a decision *per incuriam* merely because it has taken a view different from that adopted in an earlier decision. The impugned order discloses due consideration of the statutory provisions, the CBEC Circulars and the judicial precedents relied upon by the parties.

(ii) The second substantial question of law is also answered against the appellant. The Tribunal has correctly interpreted and applied the provisions of Rules 2, 3 and 6 of the CENVAT Credit Rules, 2004 in the facts and circumstances of the present case.

(iii) The third substantial question of law is answered against the appellant. We find no merit in the contention that the Tribunal ignored the binding precedents relied upon by the Revenue. The Tribunal has considered the decisions relevant to the controversy and its conclusions do not suffer from any error of law warranting interference under Section 35G of the Central Excise Act, 1944.

(iv) The fourth substantial question of law is likewise answered against the appellant. The Final Order No. 76870/2019, dated 11.12.2019, passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata, does not suffer from any legal infirmity, warranting interference by this Court.

79. Consequently, the Miscellaneous Appeal stands dismissed.

80. The Final Order No. 76870/2019, dated 11.12.2019, passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in Excise Appeal No. 76323 of 2018 is affirmed.

81. However, there shall be no order as to costs.

82. Pending interlocutory application(s), if any, shall also stands disposed of.

(Bibek Chaudhuri, J)

Rana Vikram Singh, J.: I agree.

(Rana Vikram Singh, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	07.07.2026
Uploading Date	24.07.2026
Transmission Date	N/A