CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/912/2009-DB

[Arising out of Order-in-Original No. 04/2009 dated 30/06/2009 passed by the Commissioner of Central Excise & Customs, Cochin]

Commissioner of Central Excise,
Customs and Service Tax,
Cochin
C.R Building,
I.S Press Road, Ernakulam,
Cochin - 682 018
Kerala

Appellant(s)

Versus

Binani Zinc Ltd.
Binanipuram Po, Edayar,
Ernakulam Dist., Kerala

Respondent(s)

Appearance:

Mrs. Kavita Podwal, Superintendent (AR) — For the Appellant

Ms Parvathi S, Advocate — For the Respondent

Date of Hearing: 16/11/2018
Date of Decision: 16/11/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER

Final Order No. 21784 / 2018

Per: S.S GARG

The present appeal has been filed by the Revenue against the impugned order dated 30.06.2009 passed by the Commissioner whereby the

Commissioner (Appeals) has dropped the proceedings in the show-cause notice. Briefly the facts of the present case are that the respondents are engaged in the manufacture of Unwrought Zinc, Sulphuric Acid and Cadmium falling under Chapter 7901, 2807 and 8107 of the CETA, 1985 and are availing the cenvat credit on inputs, capital goods and input services.

On verification of the records maintained by the assessee, it was found that they had availed service tax credit of Rs. 90,88,435/- (Rs. 88,39,931/- Service Tax + Rs. 1,77,175/- Edu. Cess + Rs. 71,329/- S & H Edu. Cess) during the period from November 2007 to March 2008 being the service tax paid by them in respect of outward transportation of goods and utilized the same for payment of duties of excise on the goods cleared by them. As per Rule 2(l) (ii) of Cenvat Credit Rules, 2004, "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes the services used in relation to inward transportation of inputs or capital goods and outward transportation up to the place of removal.

On these allegations that the assessee has availed wrong cenvat credit, a show-cause notice dated 23.05.2008 was issued to the assessee and after following the due process, the Commissioner (Appeals) dropped the show-cause notice. Aggrieved by the same, the Revenue is in appeal.

2. Heard both the parties and perused the records.

3. Learned AR for the Revenue submitted that the impugned Order-in-Original passed by the Commissioner is not legal and proper. He further submitted that the respondent in reply to the show-cause notice has stated that the *modus operandi* of the respondent in respect of Zinc metal manufactured in their factory is to clear the goods in stock transfer from the factory at Binanipuram to depot of various consignment agents located all over India and the product is sold to the buyers/customers only from the premises of the consignment agent and it is at this stage the goods enter the stream of trade. He further submitted that the respondent had only mentioned about one product i.e. Zinc and is silent about the other product i.e. Sulphuric Acid and Cadmium which leads to the conclusion that the respondent has more than one place of removal. He further submitted that the order of the Commissioner in accepting one of them as the place of removal and allowing the benefit of the service tax credit does not appear to be correct in law.

4. On the other hand the learned counsel appearing for the assessee defended the impugned order and submitted that the learned Commissioner has given a detailed finding along with the reasons and has rightly come to the conclusion that the assessee is entitled to cenvat credit on input services.

5. After considering the submissions of both the parties and perusal of the material on record, we find that the only issue to be decided in the

present appeal is whether the assessee is entitled for credit of the service tax paid on the outward transportation of their final products from the factory considering it as an 'input service' in relation to the manufacture in terms of the provisions of Cenvat Credit Rules 2004. Further we find that the Commissioner (Appeals) after discussing the provisions of Cenvat Credit Rules 2004 regarding input service and the place of removal has come to the conclusion that the transportation of goods from the factory to the consignment agent's premises fall in the definition of 'input service'. Further for the sake of reference it is pertinent to reproduce the material findings of the Commissioner which is contained in para 17 and is reproduced herein below:

> *"17. n the light of the legal position emerging from the above discussion, the documents of the assessee on record have been examined. It is seen that they have appointed selling/consignment agents in different parts of the country to act on their behalf in the territory specified. It is further confirmed that the assessee stock transfers the major portion of the goods manufactured in their factory to the consignment agent's premises through transporters viz. M/s. Surat Goods Transport Pvt. Ltd. and Lakshmi Transport Company, Kalamassery, paying duty at the factory gate, on the value prevailing at the depot on the date of removal. Further, the selling agents are required to sell these products at the price specified by the assessee and shall not sell the goods outside their territory apart from other conditions specified in the agreement entered into. Moreover, the copies of the documents covering insurance, transportation, payment of freight and sales tax on record also substantiate that sales in these cases are being actually*

affected from the selling agent's premises. The invoices indicate that the goods are 'stock transfer to selling agents' and are accompanied by Form 'F' under Central Sales Tax issued by the consignee i.e. consignment agent. Therefore, I am of the view that the premises of the consignment/ selling agents are places of removal as envisaged in the Act and consequently the service tax paid on the freight by the assessee for transportation of goods from the factory to the selling agent's place during the relevant period, is available as Cenvat Credit in terms of the Cenvat Credit Rules, 2004, as an input service. Accordingly, I hold that the allegation in the Show Cause Notice is not sustainable."

6. In view of the reasoned findings by the Commissioner, we are of the considered view that there is no infirmity in the impugned order which is upheld by dismissing the appeal of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **16/11/2018**)

(C. J. MATHEW)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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