CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50416 of 2019-SM

(Arising out of order-in-appeal No. 1244(CRM)CE/JDR/2018 dated 13.11.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods, Service Tax, Jodhpur).

Hindustan Zinc Limited **Appellant**
Yashad Bhawan, Udaipur-313004.

VERSUS

Commissioner, Central Goods & Service Tax **Respondent**
142-B, Hiran Magri, Udaipur.

APPEARANCE:

Shri Dhrub Tiwari, Advocate for the appellant
Shri P. Juneja, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50665/2020

DATE OF HEARING/DECISION: 12.03.2020

ANIL CHOUDHARY:

The issue involved in this appeal is regarding allowability of cenvat credit of repair and maintenance services utilised for dismantling steel structural works, fabrications & erection of columns, trusses, monkey ladder, strengthening of existing structure, maintenance of tailing line, drilling and sand blasting, carried out in the factory premises of the appellant who are engaged in the manufacture of zinc lead which are taxable output.

2. Learned Counsel for the appellant points out that the Court below have disallowed the cenvat credit relating to period October,

2015 to September, 2016, being cenvat credit of Rs. 17,66,004/- by making the following observations in the impugned order:-

> *"I find that the appellant bifurcated the credit into two different types of input services, repair & maintenance of plant & machinery and repairs & maintenance of tailing dam work line. I find that as per exclusion clause (A) of rule 2(l) of CCR, 2004, the said services are specifically excluded from the purview of Input services. As such, these services are not related to the manufacture and clearance of final product up to the place of removal as such Cenvat credit of such service is not admissible to them, as rightly held by the Adjudicating Authority. Therefore, I find no force in the submission of the Appellant and I agree with the observation of the Adjudicating Authority and find no interference in the order passed by the Adjudicating Authority."*

3. Learned Counsel for the appellant draws my attention to Board Circular No. 943/4/2011-CX dated 29.04.2011, which was issued for clarification pursuant to Notification No.3/2011-CE(NT), whereby the exclusion clause was introduced in Rule 2(l) of Cenvat Credit Rules, 2004. In the said circular at Sl. No. 4 the issue noticed by the Board 'is - the credit of input services used for repair or renovation of factory or office is available', and clarified as under:-

> "*Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services."*

4. Accordingly, learned Counsel states that in view of the Board Circular the cenvat credit is allowable to them and moreover in the exclusive part of the definition of Rule 2(l), provides for allowing input services used by the manufacturer directly or indirectly in or in relation to the manufacture of final product and include services in relation to modernisation, renovation and repairs of the factory, etc.

5. Appellant has also relied on the final order No. A/50572-50573/2018-SM(BR) dated 07.02.2018, reported at 2018 (3) TMI 102-CESTAT New Delhi, wherein also the dispute of similar input services like dismantling and removal of old AC/CGI sheets/ GI gutters/ Louvers etc. Strengthening of steel structures, cleaning of existing structures, fabrication and erection etc. for repair and maintenance, Hiring of JCB/PCB Dozer, Grader etc. input services was held to be allowable for the period July 2012 to September, 2015.

6. Learned Authorised Representative for the Revenue have relied on the impugned order.

7. Having considered the rival contentions, I hold that the input services are not hit by the exclusion clause (A) in Rule 2(l) of Cenvat Credit Rules, 2004 in view of the inclusive part of the definition input service, read with the clarification given by the Board dated 29.04.2011. Accordingly, the appeal is allowed, setting aside the impugned order, so far as the abovementioned items (in para 1) are concerned.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant