CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

EXCISE CROSS OBJECTION APPLICATION NO.- 50714 OF 2014
(on behalf of Respondent)
IN
EXCISE APPEAL NO.- 60055 Of 2013

(Arising out of Order-in-Original No. 53-54/2013-CE-JPR-II-COMMR dated 24 July, 2013 passed by the Commissioner of Central Excise, Jaipur-II)

Commissioner of Central Excise ...... **Appellant**
Central Excise Commissionerate, Jaipur-II
N.C.R. Building, Statue Circle,
C-Scheme, Jaipur-302005

VERSUS

M/S Hindustan Zinc Limited .... **Respondent**
Zawar Mines, Yasgad Bhawan, Udaipur (Rajasthan)

APPEARANCE:

Shri Ravi Kapoor, Authorised Representative of the Appellant
Shri Hemant Bajaj and Ms. Sukriti Das, Advocates for the Cross-Objector

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50848 / 2020

DATE OF HEARING/DECISION: 14.09.2020

JUSTICE DILIP GUPTA

In this appeal filed by the Commissioner of Central Excise and Service Tax to assail that part of the order passed by the Commissioner of Central Excise that does not confirm the demand of CENVAT credit of Rs. 2,86,65,736/- and Rs. 3,50,31,000/-, in regard to the show cause notices dated April 25, 2012 and November 27, 2012 with interest and consequential penalty, two cross objections were filed by M/S Hindustan Zinc Limited[1], which is a respondent in this appeal.

2. The appeal and the cross objections were decided by the Tribunal by order dated April 6, 2017. The appeal filed by the Department was dismissed and so were the two cross objections.

3. The Respondent preferred and Excise Appeal bearing No. 2010 of 2019, before the Rajasthan High Court raising a grievance that the cross-objections had been wrongly dismissed. The High Court, by judgment and order dated July 4, 2019, directed that the cross objections should be heard afresh and be decided on merits. The two cross objections filed by the Respondent have, accordingly, being placed for hearing.

4. The Respondent-Hindustan Zinc Limited is manufacturing Lead, Zinc Ores at its Zawar Mines, Udaipur and has availed CENVAT credit on inputs, capital goods and input services in terms of the provisions of the CENVAT Credit Rules 2004[2]. The Department noticed that the Respondent had been availing CENVAT credit of inputs used in the Captive Power Plant for generating power, which power was partly consumed in the factory of the Respondents and also transferred to the sister concerns of the Respondent. It was also partly sold to M/S Ajmer Vidyut Vitran Nigam Limited[3]. The Respondent claims that it had been reversing the CENVAT credit pertaining to the electricity sold to Electricity Board on a monthly basis on its own but was not reversing the CENVAT

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1. **The Respondent**
2. **The Rules**
3. **The Electricity Board**

credit in relation to the electricity transferred to the sister concerns. The Department objected to the availment of CENVAT credit by the Respondent on inputs proportionate to the electricity transferred to the sister units and also on that portion sold to the Electricity Board. This resulted in the issuance of two show cause notices dated April 25, 2012 and November 27, 2012, proposing to demand and recover CENVAT credit amounting to Rs. 6,96,70,221/-, being proportionate to the electricity transferred to the other manufacturing units of the Respondent and also sold to the Electricity Board.

5. The Respondent filed replies to the aforesaid show cause notices and also filed additional submissions stating that the proportionate credit amounting to Rs. 39,11,958/- and Rs. 15,42,102/-, attributable to both the show cause notices to the inputs used in generation of electricity which was sold to the Electricity Board was calculated and reversed on a monthly basis. The Respondent also submitted that the demands computed under the two show cause notices were in excess of Rs. 69,307/- and Rs. 65,826/-, and hence needed to be dropped.

6. The two show cause notices were adjudicated upon by the Commissioner by a common order dated July 19, 2013. The demand of CENVAT credit amounting to Rs. 6,36,96,763/- on inputs (out of the proposed demand of Rs. 6,96,70,221/-) attributable to electricity wheeled out to the sister units of the Respondent was dropped after placing reliance on the decision of Supreme Court in **M/S Maruti Suzuki Limited** vs. **Commissioner of Central Excise, Delhi-III**[4]. The Commissioner, however, disallowed the CENVAT credit of Rs. 58,38,324/- attributable to

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4. 2009 (240) E.L.T. 641 (S.C.)

electricity sold outside. Further, a penalty of Rs. 30,00,000/- was also imposed upon the respondent under rule 15(1) of the Rules, for availing CENVAT credit on inputs attributable to electricity sold outside.

7. Feeling aggrieved by the aforesaid order of the Commissioner to the extent the demand of Rs. 6,36,96,763/- was dropped by the Commissioner, the Department preferred an appeal before this Tribunal. The Respondent also preferred cross objections against the imposition of penalty of Rs. 30,00,000/- (Rs. 20,00,000+Rs. 10,00,000). The Tribunal by order dated April 6, 2017 rejected the appeal filed by the Department holding that CENVAT credit on inputs attributable to electricity wheeled out to its sister units were admissible under the Rules. The cross-objections filed by the Respondent against the imposition of penalty were also rejected by the Tribunal. As noticed above, the appeal filed by the Respondent before the Rajasthan High Court against the dismissal of the cross-objections was allowed and the matter has been remitted to the Tribunal for a fresh decision on merits.

8. Shri Hemant Bajaj, learned Counsel appearing for the respondent has made following submissions:-

(i) The reversal of CENVAT credit on proportionate basis tantamounts to non-taking of CENVAT credit and in support of this submission learned counsel placed reliance upon decisions of the Supreme Court in **Chandrapur Magnet Wires (P) Ltd.** vs. **Collector of Central Excise**[5] and **Commissioner of**

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5. 1996 (81) E.L.T. 3 SC

Central Excise and Customs vs. **M/S Precot Meridian Limited**[6];

(ii) Penalty is not impossible upon the respondent under rule 15(1) of the Rules since the respondent was under a bonafide belief that CENVAT credit availed by it and reversed was in accordance with law; and

(iii) Even otherwise rule 15 (1) of the Rules is applicable only in a situation where an assessee has utilized the CENVAT credit in respect of input wrongly.

9. Shri Ravi Kapoor, learned Authorized Representative of the Department has however, supported the imposition of penalty and has submitted that the cross-objections should be rejected.

10. The submissions advanced by the learned counsel appearing for the Respondent and the learned Authorized Representative of the Department have been considered.

11. The two cross-objections relate to the imposition of penalty amounting to Rs. 30,00,000/- imposed in relation to the electricity sold by the Respondent to the Electricity Board. The contention of the Respondent is that though it had availed CENVAT credit on inputs used in the plant for generating power that was partly sold to the Electricity Board, but it had reversed the CENVAT credit pertaining to the said electricity sold to the Electricity Board regularly on a monthly basis on its own. This factual position has not been disputed and in fact is also clear from a perusal the

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6. 2015 (325) E.L.T. 234 (S.C.)

documents enclosed with the cross-objections, particularly the letter dated January 25, 2012 sent by the Respondent to the Superintendent of the Excise Department. The Supreme Court in **Chandrapur Magnet Wires (P) Ltd.,** and **M/s Precot Meridian Limited** held that reversal of credit means that the party has not availed the input service credit. A Division Bench of the Tribunal in **M/S Star Agriwarehousing & Collateral Management Limited** vs. **Commissioner, Central Excise & Service Tax**[7], also observed that once the proportionate reversal of CENVAT credit takes place, it tantamounts to non availing of the input service credit.

12. Such being the position, the imposition of penalty of Rs. 30,00,000/- upon the Respondent in respect of the electricity sold to the Electricity Board is bad in law.

13. It is, therefore, not necessary to examine the other contentions raised by the learned counsel appearing for the Respondent in support of cross-objections.

14. The cross-objections, are accordingly, allowed and the imposition penalty of Rs. 30,00,000/- upon the Respondent is set aside.

(JUSTICE DILIP GUPTA)
(PRESIDENT)

(C. L. MAHAR)
MEMBER (TECHNICAL)

Jb

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7. Service Tax Appeal No. 51818 of 2015 dated on 28.01.2020.