

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

Excise Appeal No. 52175 of 2019 [SM]

[Arising out of Order-in-Appeal No. 506-508 (CRM)/CE/JDR/2019 dated 28.05.2019 passed by the Commissioner (Appeals), Jodhpur]

M/s.Hindustan Zinc Ltd
Chandaria Lead Zinc Smelter,
Putholi, District-Chittorgarh

...Appellant

VERSUS

**The Commissioner of Central Goods
and Service Tax Commissionerate,**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

...Respondent

WITH

Excise Appeal No. 52176 of 2019 [SM]

[Arising out of Order-in-Appeal No. 506-508 (CRM)/CE/JDR/2019 dated 28.05.2019 passed by the Commissioner (Appeals), Jodhpur]

M/s.Hindustan Zinc Ltd
Chandaria Lead Zinc Smelter,
Putholi, District-Chittorgarh

...Appellant

VERSUS

**The Commissioner of Central Goods
and Service Tax Commissionerate,**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

...Respondent

AND

Excise Appeal No. 52177 of 2019 [SM]

[Arising out of Order-in-Appeal No. 506-508 (CRM)/CE/JDR/2019 dated 28.05.2019 passed by the Commissioner (Appeals), Jodhpur]

M/s.Hindustan Zinc Ltd
Chandaria Lead Zinc Smelter,
Putholi, District-Chittorgarh

...Appellant

VERSUS

**The Commissioner of Central Goods
and Service Tax Commissionerate,**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

...Respondent

APPEARANCE:

Mr.Hemant Bajaj & Mrs.Sukriti Das, Advocates for the Appellant
Mr. Pradeep Gupta, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 29.09.2020

DATE OF DECISION : 29.09.2020

FINAL ORDER No. 50858-50860/2020

RACHNA GUPTA:

Present are the appeals filed against Order-in-Appeal No. 506-508 (CRM)/CE/JDR/2019 dated 28.05.2019 passed by the Commissioner (Appeals), Jodhpur vide which three separate appeals of the present appellants for such period and such demands as tabled below have been dismissed.

Sl. No.	Appeal No.	OIO No. & date	SCN No. & date	Period covered	Cenvat Credit disallowed & order to recover (in Rs.)
01	02	03	04	05	06
1.	APPL/JDR/CE/CH/689/xi/18 (along with condonation of delay)	18/CEx/UDR/2018-19/DC dated 10.08.2018	V(79)ADJ-II/JPR-II/380/2013/5010	January 2013 to June, 2013	11,45,853/- (marine insurance)
2.	APPL/JDR/CE/CH/644/X/ 18	19/CEx/UDR/2018-19/DC dated 10.08.2018	V(79) 04-82/2015/4523 dated 12.08.2015	January 2015 to June, 2015	4,13,258/- (marine insurance)
3.	APPL/JDR/CE/CH/683/XI/18 (along with condonation of delay)	20/CEx/UDR/2018-19/DC dated 10.08.2018	GL-3/LAR/Zinc/ 26/COR-II/2007 dated 04.07.2017	July 2015 to June 2016	7,30,203/- (6,99,548+41682) =7,41,230/- (marine insurance + cash in safe/transit insurance)

2. Relevant facts for the purpose are that appellants are engaged in manufacture of lead and zinc and are registered with the Central Excise Department. It was alleged in the aforesaid show cause notices that the appellant has availed the Cenvat Credit

of Service Tax as mentioned in the above table, on insurance services provided by the insurance companies despite that those services are not covered under the definition of input services. The demand was initially confirmed vide the aforementioned orders in original. The appeals thereof have been dismissed vide common-Order-in-Appeal under challenge. Being aggrieved thereof, the same has been assailed before this Court.

3. I have heard Mr.Hemant Bajaj and Ms.Sukriti Das, learned Advocates for the appellant and Pradeep Gupta, learned Authorised Representative for the respondent.

4. It is submitted on behalf of the appellants that the appellants took marine insurance to cover the risk of transportation of goods supplied to the buyers at their door steps under FOR delivery terms. It is submitted that issue in dispute is no more res-integra and it has already been settled in favour of the appellant pertaining to the previous period. It is submitted that this Tribunal has been allowing credit on marine insurance services and various other insurance services. Learned Counsel has placed reliance on following decisions:-

- **Hindustan Zinc Ltd. v. CCE, Jaipur, Final Order No. 50332-50336/2017 dated 12.01.2017**
- **Hindustan Zinc Ltd. v. CCE, Jaipur, reported in 2015 (37) STR 608 (Tri.-Del.); &**
- **Hindustan Zinc Ltd. v. CCE, Jaipur Final Order No. 52904/2017 dated 11.04.2017.**

5. Learned Counsel has further submitted that the marine insurance services are duly covered under the definition of input

services as given in Rule 2 (I) of Cenvat Credit Rules, 2004.

Reliance is placed on:

- **Coca Cola India Pvt. Ltd. v. CCE, Pune-III reported in 2009 (15) STR 657 (Bom.);**
- **CCE, Nagpur v. Ultratech Cement Ltd. reported in 2010 (20) STR 577 (Bom.); and**
- **Toyota Kirloskar Motor Pvt. Ltd. v.CCE, LTU, Bangalore reported in 2011 (24) STR 645 (Kar.).**

6. It is also submitted that the insurance services fall under the category of, "any service used by the manufacturer whether directly or indirectly, in or in relation to the manufacture of final products". It is impressed upon phrase "in relation to" has a vide connotation learned Counsel placed reliance on following decision:-

- **JK Cotton SPG. & WVG. Mills Co. Ltd. v. Sales Tax Officer, Kanpur reported in 1997 (91) ELT 34 (SC);**
- **Singh Alloys & Steel Ltd. v. Assistant Collector of Central Excise reported in 1993 (66) ELT 594 (Cal.);**
- **CC & CEX., Gzd. V. Samtel Color Ltd. reported in 2013 (293) ELT 501 (All.); and**
- **Jayaswal Neco Ltd. v. CCE, Raipur reported in 2015 (319) ELT 247 (SC)**

7. In the light of these arguments learned Counsel has prayed for Order under challenge to be set aside and appeals to be allowed.

8. While rebutting these arguments, learned Authorised Representative has submitted that the definition of input services expressly excludes the insurance services. Also after the

amendment in the definition of input services the availability of credit is restricted upto the place of removal. This amendment is in force since 1st April, 2008. Learned Authorised Representative has placed reliance upon sub-para 11 and 12 in para 8 of the order under challenge as a sufficient explanation to deny the Cenvat Credit to the appellant. Impressing upon that the order under challenge is reasonable and justified that the appeals in hand are prayed to be dismissed.

9. After hearing the parties and perusing the Court record, I am of the opinion as follows:-

10. The moot question to have been decided in the impugned appeals is:-

Whether Cenvat Credit on marine insurance services received by the appellant during the period of impugned demand is admissible in terms of Rule 2 (I) of Cenvat Credit Rules, 2004 or not.

Rule 2 (I) of Cenvat Credit Rules defines input service as follows:-

Rule 2(I) *"input service means any service, -*

- (i) *used by a provider of output service for providing an output service; or*
- (ii) ***used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products*** *and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry; security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes,-*
 - (A) *service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services), in so far as they are used for-*

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or*
- (b) laying of foundation or making of structures for support of capital goods,*
- except for the provision of one or more of the specified services; or*
- (B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or*
- (BA) service of general insurance business, servicing, repair and maintenance, in so far as*
 - they relate to a motor vehicle which is not a capital goods, except when used by –*
 - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*
 - (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or*
- (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetics and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;"*

[Emphasis Supplied]

11. From this definition it becomes clear that all services received by the manufacturer directly or indirectly in relation to the manufacture of final products upto the place of removal are admissible for availment of Cenvat Credit on the Service Tax paid for such services. Accordingly, the definition of place of removal acquires importance. Section 4 of the Central Excise Act, 1944 defines the same as follows:-

"Place of removal means

- (i) A factory of any other place or premises of production or manufacture of the excisable goods;*
- (ii) A warehouse or any other place of premises wherein the excisable goods have been permitted to be stored without payment of duty;*
- (iii) A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;*

From where such goods are removed."

12. The Hon'ble Apex Court in the case of **M/s. Escorts JCB Ltd. & others Vs. Commissioner of Central Excise Delhi, II (2003) 1 SCC 281** has held that the place of removal has to be determined with reference to the point of 'sale'. Section 19 of Sale of Goods Act says that the "property in goods stands transferred only when it is intended to be so transferred".

Section 19 reads as under:

"Property passed when intended to pass. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. (3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

13. Hon'ble Apex Court even in the case of **CCE & CU Vs. Roofit Industries Ltd. 2015 (319) ELT 221 (SC)** held as under:

"12. The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected namely whether it is on factory gate or at a later point of time, i.e. when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with Valuation Rules."

14. Coming to the facts of the present case I observe that the goods are being cleared by the appellants to their buyers on FOR basis and all liabilities in respect of transportation of goods or even damage to goods were on account of the appellants/manufacturer. It is the appellants who were liable for safe delivery of goods up to their customer's door steps. The impugned service of marine insurance was taken to cover the risk of transportation of goods. Thus, present becomes the case where the service of insurance of goods to be supplied to buyers at their door steps under FOR delivery system was taken. These admitted facts are sufficient to hold that the sale in the present case gets complete only at the door steps of buyers. It becomes clear that when the goods are cleared on FOR basis the freight paid on outward transportation would definitely qualify as input service, and thus shall be admissible for Cenvat.

15. Above all, there is a Circular No. 1065/4/2018 dated 8th June, 2018 which clarifies as under:-

*General Principle: As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of **CCE vs Ispat Industries Ltd 2015 (324) ELT 670 (SC)** may be applied. Apex Court, in this case has upheld the principle laid down in M/s Escorts JCB (Supra) to the extent that 'place of removal' is required to be determined With reference to point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. The observation of Hon'ble Court in para 16 in this regard is significant as reproduced below:*

16. It will thus be seen where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be normal value thereof, Sub-clause (b) (iii) is very

important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of the premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot or the premises of the consignment agent of the manufacturer are obviously places which are referable to the manufacturer. Even the expression "any other place or premises" refers only to a manufacturer's place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". These are key words of the subsection. The place or premises from where excisable goods are to be sold can only be manufacturer's premises or premises referable to the manufacturer. If we were to accept contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to buyer's premises."

16. In view of entire above discussion, it stands clear that marine insurance services were availed by the appellant-manufacturer when the property in goods was still retained with him, the delivery being on FOR basis. Hence, the opinion formed by the adjudicating authority below for the impugned marine services to not to be included under input services are absolutely wrong.

17. The plea that general insurance services fall under the exclusion clause is also not appropriate to the given facts and circumstances for the reason that the general insurance services only with respect to motor vehicles are covered under the exclusion part of the definition of input services. The impugned goods are not being motor vehicles.

18. As a result of entire above discussion, the Order-in-Appeal under challenge is hereby set aside. Three of the appeals consequently stand allowed. Consequential benefits to follow.

[Operative part pronounced in the open court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita