CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No.51656 of 2019 (SM)

[Arising out of Order-in-Appeal No.352-354(CRM)/CE/JDR/2019 dated 15.04.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur (Rajasthan)]

M/s. Hindustan Zinc Ltd. **Appellant**
Chanderia Lead Zinc Smelter,
Putholi,
Chittorgarh (Rajasthan).

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax, **Respondent**
142-B, Sector-11, Hiran Magri,
Udaipur (Rajasthan).

WITH

Excise Appeal No.51657 of 2019 (SM)

[Arising out of Order-in-Appeal No.352-354(CRM)/CE/JDR/2019 dated 15.04.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur (Rajasthan)]

M/s. Hindustan Zinc Ltd. **Appellant**
Chanderia Lead Zinc Smelter,
Putholi,
Chittorgarh (Rajasthan).

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax, **Respondent**
142-B, Sector-11, Hiran Magri,
Udaipur (Rajasthan).

AND

Excise Appeal No.51658 of 2019 (SM)

[Arising out of Order-in-Appeal No.352-354(CRM)/CE/JDR/2019 dated 15.04.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur (Rajasthan)]

M/s. Hindustan Zinc Ltd. **Appellant**
Chanderia Lead Zinc Smelter,
Putholi,
Chittorgarh (Rajasthan).

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax, **Respondent**
142-B, Sector-11, Hiran Magri,
Udaipur (Rajasthan).

APPEARANCE:

Shri Hemant Bajaj and Ms. Sukriti Das, Advocates for the appellant
Shri Ravi Kapoor, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDERS NOS.51812-51814/2021

DATE OF HEARING/DECISION:08.09.2021

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in the appeal is whether the appellant, M/s. Hindustan Zinc Ltd. is entitled to cenvat credit of service tax paid for availing the Goods Transport Agency Service, for despatching their finished goods (outward transportation) on FOR destination basis to their buyers.

3. Admittedly, the transportation charges have been incurred from the factory gate to the premises of the customers.

4. Ld. Counsel for the appellant has pointed out from the show cause notice that it is an admitted fact that it is the appellant - manufacturer, who has paid the GTA charges for the services and have taken cenvat credit of the tax amount charged in the invoice for transportation, issued by the transporter, on the reverse charge basis.

5. Ld. Counsel further points out that as per the show cause notice and according to the Revenue also, the appellant has cleared their goods on FOR destination basis. However, according to Revenue, 'place of removal' is the factory gate and not the premises and or address of the buyer.

6. Ld. Counsel further points out from the sample purchase order annexed to the compilation, during the hearing that purchase/sales order no.95736 from sale to the buyer- Agrawal Metal Works Pvt. Ltd., the pricing is, the basic price plus excise duty plus cess plus service tax and it is mentioned that this price is FOR destination. The corresponding sale invoice no.17458 dated 30.10.2008 has been raised, and there is no charges reflected for transportation of the goods from the factory to the premises of the appellant. The invoice shows charges with reference to the aforementioned sale order no.95736 dated 25.10.2008. Some more sample orders have been annexed to the compilation and demonstrated during the hearing.

7. The ld. Counsel further contends that as the appellant has paid the excise duty on the basic sale price, which includes the element of transportation upto the premises of the buyer, accordingly, they are entitled to cenvat credit of the GTA service under dispute, credit of which has been disputed.

8. Ld. Authorised Representative for Revenue relies on the impugned order and further refers to para 9 of the impugned order in appeal, wherein the ld.Commissioner (Appeals), after taking notice of the definition of 'place of removal' under Section 4(3)(c) and 4(3)(cc), wherein the 'place of removal' has been defined and also the Circular No.1065/4/2018-CX dated 8.6.2018, whereby the Board has directed that in view of the several rulings of the Hon'ble Apex Court particularly in the case of **Roofit Industries, Ispat Industries and Ultra Tech Cement Ltd**. etc., whereof situation of confusion has arisen and accordingly, the Board has emphasised that the general principal is that cenvat credit is allowable with respect to the 'place

of removal' on outward transportation and accordingly, it has been mentioned in para 6 of the Circular, that this Circular only brings to the notice of the field the various judgements of the Hon'ble Supreme Court, which may be referred for further guidance in individual cases, based on the facts of each case. Past cases should accordingly be decided.

9. Having considered the rival contentions, I find that in the facts and circumstances of this case, the 'place of removal' is the premises of the buyer, not the factory gate of the buyer, as the finished goods are cleared by the appellant on 'FOR destination basis'. Accordingly, I hold that the appellant is entitled to cenvat credit on the GTA service for outward transportation of the goods on FOR destination basis. Accordingly, these appeals are allowed. The impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.