

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50434 of 2021 (SM)

(Arising out of Order-in-Appeal No. 352(CRM)CE/JDR/2020 dated 03.12.2020 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur.)

M/s Hindustan Zinc Ltd

Yashad Bhawan,
Udiapur
Rajasthan-313 004

.....Appellant

VERSUS

**Commissioner of Central Excise &
CGST-Udaipur**

142-B, Sector-11,
Hiran Magri, Udaipur
Rajasthan-313 002

.....Respondent

APPEARANCE:

Mr. Hemant Bajaj & Mr. Dhruv Tiwari, Advocates for the Appellant
Mr. Ravi Kapoor Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY MEMBER (JUDICIAL)

FINAL ORDER NO. 52055 / 2021

Date of Hearing/Decision: 25.11.2021

ANIL CHOUDHARY:

The issue involved in this appeal is whether the part of opening balance of Cenvat credit Rs. 2,83,137/- relatable to the receipt of capital goods in the previous year, whether (being made partial amount) disallowance for Rs. 2,83,137/- have been rightly made alongwith imposition of equal penalty.

Brief facts are as follows:-

1. The Appellant is engaged in manufacture of lead and zinc concentrates ("**final products**") falling under Chapter 26 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant availed Cenvat credit on inputs and capital goods. As required under provisions of Rule, 4(2)(a) wherein it has been provided that in respect of capital goods received in a factory in any financial year, credit shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year. Thus, the balance 50% of the credit is available in the next financial year or immediately succeeding financial year.

Accordingly, the appellant in the month of April, 2016 took credit of the deferred Cenvat credit of Rs. 70,16,535/- relating to 50% of the credit for the capital goods received in the previous financial year.

2. In the course of audit conducted in January, February and March 2019 for the period of April 2016 to June 2017, the Audit Officers asked for the details of credit taken for the month of April, which was submitted by the appellant as follows:-

(Amount in Rs.)

Month	50% Fresh credit availed/ available in April 2016	50% Deferred credit of previous year (2015-16) available as per details of deferred credit provided by Appellant	Total credit available for the month of April 2016	Cenvat credit taken in ER-1 for the month of April 2016	Credit taken in excess
(1)	(2)	(3)	(4) [(2)+ (3)]	(5)	(6) [(5)- (4)]
April 2016	2,79,757	64,53,641	67,33,398	70,16,535	2,83,137

It appeared to the Revenue that appellant have taken excess credit of Rs. 2,83,137/- which is not matched by invoices, as required under Rule, 9 of CCR.

3. The appellant in reply to the audit objection by their letter dated 12/07/2019 explained that this amount of Rs. 2,83,137/- is on account of additional duty and special additional duty. Whereas, the amount of Rs. 64,53,641/- is on account of basic excise duty. The concerned clerk in their office who submitted the details to the audit, have wrongly not submitted the amount attributable to additional duty+SAD resulting in difference or shortfall which is only due to clerical error, there being no actual discrepancy. The appellant maintained the books of accounts on the SAP system of accounting. The appellant also submitted a schedule of entries showing voucher wise purchase of capital goods and the deferred amount of credit for the capital goods received in the financial year 2015-16. However, Revenue issued show cause notice dated 19/08/2019 observing that the appellant have explained the discrepancy and have requested for verification of the records. But, it appears without such verification, it was alleged that appellant failed to provide any documentary evidence to prove that they have availed less Cenvat credit/proportionate credit in the previous Financial Year. The amount of Rs. 2,83,137/- was demanded under Rule 14 of CCR with proposal to impose penalty.

4. The show cause notice was adjudicated on contest and the proposed demand confirmed with equal amount of penalty. Being aggrieved, the appellant preferred appeal before the Commissioner(Appeals) who was pleased to dismiss the appeal relying on the order of the Court below.

5. Being aggrieved the appellant is before this Tribunal.

6. The Counsel for the appellant Mr. Hemant Bajaj have relied on the aforementioned fact and have further taken through the schedule of vouchers for capital goods which have been annexed in the appeal paper book as "**Annexure-9**". The Learned Counsel further demonstrated with respect to invoice no. 4695 issued by **Yoko Gava India Ltd, Vadodara** for receipt of capital goods in January, 2016 wherein the basic excise duty is Rs. 7635.80/-, out of which they have taken credit in the year of receipt of Rs. 3817.90/- and out of additional excise duty of Rs. 2759.38/- they have taken credit of Rs. 1379.69/- and being 50% of the balance is deferred credit for the next financial year. Similarly, they have demonstrated by showing invoice no. 3394 dated 08/12/2015 being capital goods received from Arihant Bearing Services Pvt. Ltd., Udaipur, wherein the basic excise duty is Rs. 1515.50/- out of which credit taken is Rs. 757.75/- and out of additional duty of Rs. 548.50/- they have taken credit of Rs. 274.25/- and the balance 50% have been deferred to the next accounting year. Upon totalling the 50% deferred additional duty during the accounting year 2015-16, the total amount comes to Rs. 2,83,136.87/- or rounded off to Rs. 2,83,137/-.

5. Accordingly, Learned Counsel stated that there is no discrepancy and the court below have erred in confirming the demand with penalty. Accordingly, he prays for allowing of the appeal with consequential benefits.

6. Learned Authorised Representative for Revenue relies on the impugned order.

7. Having considered rival contentions, I am satisfied that there is no discrepancy and the whole confusion has occurred on account of

clerical error in the account/store section of the appellant who initially submitted the figures to the audit, wherein this amount of Rs. 2,83,137/- was left out erroneously. Thus, I find that the show cause notice is misconceived and there is no merit in the allegation of Revenue.

8. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law.

(operative part of order pronounced in open Court)

(ANIL CHOUDHARY)
Member (Judicial)

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