CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.

Excise Appeal No.51115 of 2020

[Arising out of Order-in-Appeal No.258(CRM)CE/JDR/2020 dated 06.08.2020 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

M/s. Hindustan Zinc Ltd. **Appellant**
Zinc Smelter, Debari,
Udaipur.

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax, **Respondent**
Udaipur (Rajasthan).

Excise Appeal No. 51202 of 2020

[Arising out of Order-in-Appeal No.287(CRM)CE/JDR/2020 dated 14.09.2020 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

M/s.Hindustan Zinc Ltd. **Appellant**
Zinc Smelter, Debari,
Udaipur (Rajasthan).

Versus

Commissioner of Central Excise & Central Goods & Service Tax, **Respondent**
Udaipur (Rajasthan).

APPEARANCE:

Shri Hemant Bajaj, Advocate for the appellant.
Ms. Tamanna Alam, Authorised Representative for the respondent/Department.

CORAM:

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

FINAL ORDER NOs.50093-50094/2022

DATE OF HEARING/DECISION:04.02.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in these appeals 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 and the impugned order 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. 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. Ld. Counsel also relies upon the precedent decision of this Tribunal in the appellant's own case, wherein under the similar facts, the same issue was involved and this Tribunal has been pleased to allow the appeal in favour of the appellant being **Final Order No.51812-51814 of 2021 reported at 2021 (9) TMI 692 (CESTAT-Delhi)**.

7. 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.

8. 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 sellor/appellant, 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.