CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1

SERVICE TAX APPEAL NO. 53536 OF 2015

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-0015-15-16 dated 28.07.2015 passed by the Commissioner of Central Excise, Udaipur]

M/S HINDUSTAN ZINC LTD **Appellant**
Head Office, Yashad Bhawan
Swaroop Sagar, Udaipur (Rajasthan)

Vs.

COMMISSIONER OF CENTRAL EXCISE, UDAIPUR **Respondent**
142 B, Sector 11, Hiran Magri,
Udaipur (Rajasthan)

Appearance:
Present for the Appellant : Ms. Neha Choudhary, Advocate
Present for the Respondent: Shri Ravi Kapoor, Authorised Representative

CORAM:
HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR .P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51000 /2022

Date of Hearing/Decision : 19/10/2022

JUSTICE DILIP GUPTA

1. The order dated 28.07.2015 passed by the Commissioner of Central Excise is sought to be assailed in this appeal filed by M/s Hindustan Zinc Limited[1]. The issue involved in this appeal relates to demand of service tax under reverse charge mechanism on foreign currency expenditure for the financial year 2012-13.

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[1] **the appellant**

2. The appellant is engaged in the manufacture of lead, zinc and other concentrates. The Department believed that the appellant had not paid/ short paid service tax on some of the cases of foreign remittances liable to service tax and consequently a show cause notice dated 21.04.2014 was issued to the appellant proposing demand of service tax on foreign currency expenditure. The Commissioner, by order dated 28.07.2015, adjudicated the show cause notice. Out of the total demand of Rs. 68,05,821/- proposed in the show cause notice, a demand of Rs. 59,94,929/- was confirmed with interest and penalty.

3. Ms. Neha Choudhary, learned counsel appearing for the appellant pointed that the period involved is from April 01, 2012 to March 31, 2013. The contention that has been advanced is that for the period 01.04.2012 to 30.06.2012 the show cause notice is vague as it does not indicate the sub-clause of section 65 (105) of the Finance Act, 1994[2] under which service tax is sought to be levied. In support of this contention learned counsel placed reliance upon the decision of this Tribunal in the matter of the appellant relating to the previous period reported in **M/s Hindustan Zinc Limited vs. Commissioner, Central Excise, Udaipur[3].** For the period from 01.07.2012 to 31.03.2013, learned counsel submitted that the demand has been proposed under section 66A of the Finance Act which did not even exist at the relevant time. In

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[2] **the Finance Act**
[3] **2021 (9) TMI 859-CESTAT NEW DELHI**

support of this contention, learned counsel placed reliance upon the decision of the Tribunal in **M/s Frisco Foods Private Limited vs. Commissioner, Customs, Central Excise and Service Tax, Dehradun**[4]**.**

4. Shri Ravi Kapoor, learned authorised representative appearing for the Department has, however, supported the impugned order and has submitted that it is specifically deals with the various aspects under which the service tax has been confirmed.

5. We have considered the submissions advanced by learned counsel for the appellant and the learned authorised representative appearing for the Department.

6. Learned counsel for the appellant is justified in asserting that the period from April 01, 2012 to June 30, 2012 the impugned order deserves to be set aside for the simple reason that the show cause notice is vague. This issue for the said period stands covered by the decision of this Tribunal in the matter of the appellant in **M/s Hindustan Zinc Limited.** While dealing with the issue the Division Bench made the following observations:

> " 9. The first contention advanced by learned Counsel for the Appellant is that the proceedings that were initiated against the Appellant were vague and in gross violation of the principles of natural justice. Elaborating this submission, learned Counsel submitted that during the relevant period, the charge of service tax under section 66 of the Finance Act was on services falling under the various sub-clauses of section 65 (105). The provisions of section 66A of the Finance Act would also be applicable only when a

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[4] **2021 (11) TMI 428-CESTAT NEW DELHI**

> service falls within any of the sub-clauses of section 65(105). It was, therefore, necessary for the Department to first establish that the alleged foreign currency expenditure pertained to services falling under one of the sub-clauses of section 65(105) of the Finance Act and then establish how it would be taxable in terms of the Import Rules. Learned Counsel submitted that a charging provision has to be construed strictly and a heavy burden is cast upon the Department to prove that the demand is sustainable under the charging provisions. In this connection, learned Counsel placed reliance upon the decision of the Supreme Court in **Commissioner v/s Dilip Kumar Company.**
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> 10. To appreciate the aforesaid contention, it would be necessary to examine the relevant provisions of section 66 and 66A of the Finance Act. Section 66 is the charging section and it provides that there shall be levied service tax at the rate of 12 per cent of the value of taxable services referred to in various clauses of section 65(105). Section 66A of the Finance Act relates to charge of service tax on services received from outside India.
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> 11. Neither is there any allegation in the two show cause notices nor any finding has been recorded in the impugned order to demonstrate how the provisions of 66 read with 66A of the Finance Act and the Import Rules are attracted. In fact, neither the show cause notices nor the impugned order specify the category of service under which the demand has been confirmed against the Appellant. The demand has been proposed and confirmed merely because of difference between the figures in the balance sheet of the Appellant and the ST-3 Returns.
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> 12. It is well settled that the show cause notice as also the order of the adjudicating authority should specify the taxable service. In this connection reference can be made to the following decisions:
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> 16. The confirmation of demand on the basis of such a vague show cause notice cannot, therefore, be sustained."

7. In the present case also the show cause notice does not specify the category of service under which the demand has been confirmed.

8. In regard to the period from July 01, 2012 to March 31, 2013 the demand has been proposed under section 66A of the Finance Act which did not exist. This precise issue was

considered by a Division Bench of the Tribunal in **M/s Frisco Foods Private Limited** and the relevant observations are as follows:

> " 13. It is undisputed that the charging section under which the Department sought to demand service tax under reverse charge mechanism post 1st July, 2012 in this case is Section 66A read with Section 65(105)(zzb). These sections did not exist after 1 July 2012 and, therefore, we find that any reference to any other legal provisions which may have existed during the relevant period and which could have been invoked is irrelevant. It is a well-settled legal principle that the charging section in any taxing statute must be strictly construed and in case of any ambiguity it should be interpreted in favour of the assessee.
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> 14. In the present case, the charging section which has been invoked for the period post 2012 does not exist at all and, therefore, there is no question of any ambiguity. Even if there is an ambiguity, it should go in favour of the assessee."

9. Thus, as the demand for both the aforesaid period could not have been confirmed, the impugned order dated 28.07.2015 deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

[Dictated and pronounced in open court]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P V SUBBA RAO)
MEMBER (TECHNICAL)

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