IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. E/1364/2010-Ex[DB]
[Arising out of Order-In-Original No. 13/2010/CE/JP-II-COMM. dated 15.03.2010 passed by CCE Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Hindustan Zinc Ltd. ...Appellant

Vs.

C.C.E. Jaipur-II …Respondent

Appearance:
Mr. B.L. Narsimhan, (Advocate) for the Appellant
Mr. G. R. Singh (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/ Decision.22.09.2016

Final Order No. 53738 /2016

Per B. Ravichandran:

The appeal is against order dated 15.09.2010 of Commissioner of Central Excise, Jaipur-II. The Appellants are engaged in the manufacture of lead and zinc Concentrate liable to Central Excise duty. They were availing credit on various services and inputs. The dispute in the present case is relating to application of Provisions of Rule 4(7) of Cenvat Credit Rules, 2004. The appellant availed various services from service providers in terms of contract. The consideration for the said services along with applicable service tax have been paid to the service providers. However, a part of the invoiced amount is retained by the appellant in terms of the contract as performance guarantee. Revenue, by entertaining a view that the full invoice consideration for the service has not been paid by the appellant to the service provider and hence, the service tax attributable to the money retaining cannot be allowed as credit in terms of Rule 4(7) of the Cenvat Credit Rules, 2007 initiated proceedings which resulted in the impugned order. The Original Authority disallowed a credit of Rs. 60,51,237/- and imposed a penalty of Rs. 2000/-.

2. We have heard both the sides and perused the records.

3. The Ld. Counsel for the appellant relied on Board's Clarification dated 30.04.2010 and the decisions of the Tribunal in the appellant's own case reported in 2014 (34) STR 440 (Tri. Del) to state that the above said rule has no application to the facts of the present case. In any case, he also submitted that the retained money has been later paid to the service providers in terms of the contract.

4. We noticed that the very same issue was the subject matter of clarification by the Board vide Circular dated 30.04.2010. In para 5(b), the situation as per the present case was also covered. It was clarified that in case of any amount retained or discounted after the invoices were issued, the credit need not be changed

and full credit of service tax paid to the service provider will be eligible for credit. It is clarified that the invoice would infact stand amended to that extent. In the appellant's own case (supra) the Tribunal referred to the said Circular and on a similar set of facts upheld the credit availed by the appellant.

5. In view of the above settled position, we find that the impugned order is without merit, and accordingly, the same is set aside. The appeal is allowed.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

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