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

Appeal No. E/3193/2010-EX(SM)

[Arising out of Order-in-Appeal No. 301(CB)CE/JPR-II/2010 dated 04.08.2010, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

M/s. Hindustan Zinc Ltd. **....Applicants**

Vs.

C.C.E. Jaipur-II **....Respondent**

Appearance:

Ms. Sukriti Das, Advocate for the Appellants
Shri M.R. Sharma, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 04.01.2017

FINAL ORDER NO.50215/2017-EX(SM)

Per V. Padmanabhan:

The present appeal challenges the order in appeal dated 04.08.2010 passed by the Commissioner (A) Jaipur.

2. The brief facts of the case are that the appellant is engaged in manufacture of Zinc and Lead Concentrates falling under Chapter 26 of the First Schedule to the Central Excise Tariff Act 1985. Appellant is availing the services of M/s. Keybell Solutions Ltd. for keeping a track of the movement of trucks, known as "Truck Khoj services" carrying cargo from Mines to the smelters, from smelters

upto depot and for movement of the finished goods upto the door step of the customers to ensure timely delivery of the goods to the customers and to track delay caused in delivery of the goods, if any. The tax on services so provided by M/s. Keybell Solution Ltd. for vehicle tracking modules was paid under the category of Business Support Services and credit of the same was availed by the appellant, qualifying as an eligible input service, defined under Rule 2 (I) of the Credit Rules 2004.

3. With the above background, heard Ms. Sukriti Das, Advocate for the Appellants and Shri M.R. Sharma, DR for the Respondent.

4. The Ld. Counsel submits that the lower authorities have denied the Cenvat Credit only for the reason that the activity is post the clearance of the goods from the factory and hence cannot be said to be used directly or indirectly in relation to clearance of final products. She further submitted that the timely delivery of goods and the security of the same is an essential activity for running the business of the appellant and to ensure safe travel of goods upto the premises of the customer. She also submits that the same software package is also used to track the movement of inputs coming to the factory for manufacture. Accordingly she submits that the service qualifies as an eligible input service and falls within the "means portion" of the definition of input services in terms of Rule 2(l) of the Cenvat Credit Rules. She also placed reliance on the decision of the Hon'ble High court of Bombay in the case of ***CCE Vs. Ultratech Cement, 2010 (20) STR 577 (Bom.)***

5. Ld. DR reiterated the orders by the authorities below. He argued that since the use of the services was post the clearance of the goods, the same cannot be allowed as held by the authorities below.

6. The definition of input services in terms of Rule 2(l) of the Cenvat Credit Rules is reproduced below:

"input service" means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal"

7. It is to be noted that the definition of 'input services' when used by a manufacturer has two parts – it is used directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal. The definition also has an inclusive part within which comes the disputed service. The Hon'ble High Court of Bombay in the case of ***Ultratech Cement (Supra)*** has explained the definition of input services as follows:

"*The definition of "input service" covers services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product."*

The submission of the Ld. Counsel is that the services availed by the appellant is definitely covered under the second part of the definition of input services. It is the outlook of any manufacturer not only to manufacture the goods but also to ensure timely delivery of goods upto the ultimate destination. With technological advances it is now possible, through software packages, to track safe delivery of the goods loaded in the trucks until the premises of the customer. The appellant has made use of such services not only to track the delivery of the finished product but also to track the receipt of the inputs. Hence the said service qualifies as input service because the service has been used in or in relation to manufacture and clearance of the finished products upto the premises of the customer. It may even be covered within the definition of "procurement of inputs" and "activities relating to business."

8. In view of the above discussions the impugned order is set aside and appeal is allowed.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu