CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 3783 to 3787 of 2012

(Arising out of Order-in-Original No. 54-58/2012.C.EX/JPR-II/COMMISSIONER dated 31.08.2012 passed by the Commissioner of Central Excise, Jaipur-II)

DATE OF HEARING : 12.01.2017
DATE OF DECISION : 12.01.2017

M/s Hindustan Zinc Ltd. …. **Appellants**
(Rep by Sh. Hemant Bajaj, Adv.)

VERSUS

CCE, Jaipur …. **Respondent**
(Rep. by Sh. H.C. Saini, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50332-50336/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeals are filed by the assessee-Appellants against the Order-in-Original No. 54-58/2012.C.EX/JPR-II/COMMISSIONER dated 31.08.2012 passed by the Commissioner of Central Excise, Jaipur-II.

2. The brief facts of the case are that the assessee-Appellants at their smelting unit are engaged in the manufacture of Lead and Zinc

falling under Chapter 79 & 79 respectively of the Central Excise Tariff Act, 1985.

During the period in dispute, the assessee-Appellants availed Cenvat credit on the invoices issued by Input Service Distributor for the following insurances, which were used for the purposes indicated below :

(a) Plant & Machinery Insurance – This was taken to avoid the risk of loss of the plant, machines and various structures located in the plant, which are vital for the production processes undertaken by the Appellant. This insurance also covered stock of raw materials, fuel etc.;

(b) Marine Insurance – This was taken to cover the risk of transportation of goods by rail, road, air/high seas. This also includes insurance of goods supplied to buyers at their doorstep under FOR delivery terms;

(c) Employees Group Insurance – This was taken as a part of statutory mandate under the Employees State Insurance Act, 1948 for the health of employees working in the Appellants factory; and

(d) Other Insurances (Cash-in-transit/safe, laptop, other assets, company vehicles, etc.) – This was taken on vehicles owned by the company and other assets (laptops, cash etc.) owned by the Appellants to cover the risk. Insurance of Motor vehicle was also a statutory obligation under the Motor Vehicles Act, 1988 which were used for transportation of employees engaged in the manufacturing activities.

Proceedings were initiated against the assessee-Appellants which resulted in issuance of show cause notices to the assessee-Appellants on the ground that they have availed wrongful credit since the impugned services have not been used by the assessee-Appellants directly or indirectly, in or in relation to manufacture of their final product. The learned Commissioner has confirmed the demand against the assessee-Appellants.

3. Being aggrieved, the assessee-Appellants have filed the present appeals.

4. With this background, we have heard Shri Hemant Bajaj, learned counsel for the assessee-Appellants and Shri H.C. Saini, learned DR for the Respondents.

5. After hearing both sides and on perusal of the record, it appears that the issue is squarely covered by the ratio of judgment in assessee-Appellants' own case reported in 2015 (37) STR 608 (Tri.-Del), wherein it was observed that :

"8.1 Coming first, to the finding of the Commissioner that service for being Cenvatable, must have been used in or in relation to the manufacture of final product and that insurance

services having no nexus whatsoever with the manufacture of final product are not eligible for Cenvat credit, we find that this finding of the Commissioner is contrary to the law laid down by the Hon'ble Bombay High Court in the case of CCE v. Ultra Tech Cement (supra), wherein the Hon'ble Bombay High Court while considering the eligibility of outdoor catering service for Cenvat credit, has in para 28, 29 and 30 held that -

> *(a) the definition of "input service" is very vide and covers not only the services which are used directly or indirectly 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 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 the manufacture of final products but extends to all services used in relation to the business of manufacture of final product;*
>
> *(b) the expression 'activities relating to business' in the definition of 'input service' postulates activities which are integrally connected with the business of assessee and if an activity is not integrally connected with the business of the manufacture of final product, that service would not qualify to be an input service under Rule 2(l) of the Cenvat Credit Rules; and*
>
> *(c) the expression "activities relating to business" in the inclusive portion of the 'input service' widens the scope of 'input service' so as to cover all services used in the business of manufacturing of final product and that the said definition is not restricted to the services enumerated in the main definition part of the 'input service' and the Revenue's contention that a service to qualify as input service must be used in or relation to the manufacture of final product is not correct, as any service used in or in relation to the*

> *business of manufacture of final products would be an eligible 'input service.*

In this judgment, the Hon'ble Bombay High Court also considered the Apex Court's judgment in the case of Maruti Suzuki Ltd. reported in 2009 (240) E.L.T. 641 (S.C.) and observed that Revenue's contention based on this judgment of the Apex Court that 'input service' in order to qualify for Cenvat credit must be only those services which have nexus with the manufacture of final products is not correct as unlike the definition of 'input' which is restricted to the input used directly or indirectly in or in relation to the manufacture of final products, the definition of 'input service' not only means service used directly or indirectly in or in relation to the manufacture of the final products but also includes services used in relation to business of manufacturing. In view of this judgment of the Hon'ble Bombay High Court the Commissioner's finding that a service for being Cenvatable must be used in or in relation to the manufacture of final product whether directly or indirectly is not correct and any service having nexus with the business of manufacture which has been used by a manufacturer would qualify as an input service. Insurance of plant and machinery, goods in transit, cash in transit and insurance of vehicles and laptop, is an integral part of manufacturing business, as no manufacturer would carry on manufacturing operations without insurance of plant & machinery, cash in transit, goods in transit, vehicles & computers, etc. against any loss due to accident, natural calamities, etc. In view of this, the services of plant and machinery, transit insurance of goods, insurance of cash in transit, laptop, etc. have to be treated as an activity related to the business and would be eligible for Cenvat credit.

9. As regards, the Group Insurance of all Employees against sickness or accident, the same has been held as Cenvatable by the judgments of Hon'ble Karnataka High Court in the cases of Stanzen Toyotetsu India (P) Ltd. (supra), Micro Labs Ltd. and M/s. Millipore India Ltd. (supra). Moreover, Group insurance of *the employees against accident or sickness is the requirement of Section 38 of the Employees State Insurance Act, 1948, which a manufacturer has to comply with and accordingly, this service would have to be treated as a service used in or in relation to the manufacture of final products whether directly or indirectly, as a manufacturer would not be allowed to carry on manufacturing operations unless he complies with the requirements of Section 38 of the Employees State Insurance Act, 1948.*

10. Coming to the second ground on which the Commissioner has disallowed the Cenvat credit in respect of the insurance services, the Commissioner's view is that the amendment to Rule 2(l) of Cenvat Credit Rules, 2004 w.e.f. 1-4-2004 is a clarificatory amendment and hence, the amended provisions would have retrospective applications. The reasoning in this regard given by the Commissioner is the judgment of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. (supra) wherein the Tribunal has held amendment to Rule 2(k) of Cenvat Credit Rules, 2004 by adding Explanation-II to be of clarificatory nature. But the Tribunal in case of Vandana Global Ltd. (supra) had given detailed reasons explaining why the amendment to Rule 2(k) has to be treated as of clarificatory nature while in this case, the Commissioner, other than citing the judgments of the Tribunal in the case of Vandana Global Ltd. (supra) and J.K. Synthetics reported in 1996 (88) E.L.T. 785 has not given any reason whatsoever as to how the deletion of the expression "activities relating to business" in Rule 2(l) and its amendment w.e.f. 1-4-2011 has to be treated as of clarificatory nature and hence, having retrospective validity.

11. In view of the above discussion, we hold that the impugned order is not only sustainable but is an absurd order passed without any application of mind. What we find more disturbing is that though the judgments of Tribunal and High Court with regard to eligibility of various insurance services for Cenvat credit :-

> *(a) Judgment of Larger Bench of Tribunal in case of CCE, Mumbai-IV v. GTC Industries Ltd. reported in 2008*

(12) S.T.R. 468 (Tri.-LB) and Tribunal's judgments in cases of Finolex Cable Ltd. v. CCE reported in 2009 (14) S.T.R. 303 (Tri. - Mum.) and Millipore India Ltd. reported in 2009 (13) S.T.R. 616 (Tri. - Bang.) = 2009 (236) E.L.T. 145 (Tri. - Bang.) with regard to legibility for Cenvat credit of the Insurance of plant and machinery; and

(b) Judgments of Hon'ble Karnataka High Court in case of CCE, Bangalore-III v. Stanzen Toyotetsu India (P) Ltd., reported in 2011 (23) S.T.R. 444 (Kar.) and CCE, Bangalore v. Micro Labs Limited reported in 2011 (24) S.T.R. 272 (Kar.), in respect of eligibility for Cenvat credit of employee's group insurance;

had been cited before the Commissioner (as mentioned in para 11 of the order-in-original), he has either ignored these judgments and not given any findings as to how these judgments are not applicable or has made observations contrary for the judgments of the Tribunal/High Court and has decided the question of eligibility of various insurance services for Cenvat credit on the basis of his own interpretation of Rule 2(l) of Cenvat Credit Rules, 2004 observing that amendment to this rule w.e.f. 1-4-2011 is a retrospective amendment and the insurance services, in question, have no nexus with manufacture of final products. The conduct of the Learned Commissioner amounts to clear judicial indiscipline and irresponsible exercise of adjudication function. Such exercise of adjudication powers in blatant violation of Apex Court's judgment in case of Union of India v. Kamlakshi Finance Corporation Ltd., reported in 1991 (55) E.L.T. 433 (S.C.) requires to be censured as, if allowed to go unchecked, would lead to collapse of entire dispute resolution mechanism. Such adjudication orders burden not only the Assessee who has to incur avoidable expenses on challenging such order before the Courts/Tribunal, but also impose clearly avoidable costs for the Government, as the Tribunal's/Court's valuable time is also consumed in hearing appeals against such clearly erroneous and indisciplined orders, which should never have been passed."

6. Following the ratio of the aforesaid decision, we set aside the impugned order and allow the appeals.

7. In the result, the appeals filed by the assessee-Appellants are allowed.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay