CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 344 of 2012

(Arising out of Order-in-Appeal No. 531(AKJ)ST/JPR-II/2011 dated 09.01.2012 passed by the Commissioner of Central Excise-II, Jaipur)

DATE OF HEARING : 15.02.2017
DATE OF DECISION : 15.02.2017

M/s Hindustan Zinc Limited …. Appellants
(Rep. by Sh. Narendra Singhvi, Adv.)

VERSUS

CCE, Jaipur-II …. Respondent
(Rep by Dr. Neha Garg, DR)

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

FINAL ORDER NO. 51973/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the impugned order-in-appeal no. 531(AKJ)ST/JPR-II/2011 dated 09.01.2012 passed by the Commissioner of Central Excise-II, Jaipur.

2. The brief facts of the case are that, the assessee-Appellants, during the period under consideration (April 2007 to September 2008), were engaged in mining and manufacture of non-ferrous metals like zinc, lead etc. In the present appeal, the issue relates to one of mining units of

the assessee-Appellants known as ‘Rampura-Agucha Mines’ located in District of Bhilwara.

3. The assessee-Appellants were receiving the services in the nature of Consulting Engineering from a foreign party in terms of agreement dated 13.07.2006. They were discharging the Service Tax on the consideration paid. The dispute in the present case is pertaining to recovery of inclusion of the value of reimbursements paid by the assessee-Appellants to the said party for various expenses incurred, such as, travel expenses, visa extension/renewal of foreign consulting engineers, shifting of household goods and re-allocation thereof etc. The same was not allowed by the lower authorities. Being aggrieved, the assessee-Appellants have filed the present appeal.

4. With this background, we have heard Shri Narendra Singhvi, learned counsel for the assessee-Appellants and Dr. Neha Garg, learned DR for the Department, and perused the written submissions.

5. During the course of arguments, the learned counsel for the assessee-Appellants has also relied upon the ratio laid down in the case of **Intercontinental Consultants & Technocrats Pvt. Ltd. vs Union of India,** 2013 (29) STR 9 (Del.) and **Reliance Industries Ltd. vs Commissioner of Central Excise, Rajkot,** 2008 (12) STR 345 (Tri.-Ahmd.). On the other hand, the learned Departmental Representative, relied upon the ratio laid down by the Larger Bench of this Tribunal in the case of **Sri Bhagavathy Traders vs Commissioner of Central Excise, Cochin,** 2011 (24) STR 290 Tri.-LB).

6. After hearing both sides and on perusal of record, it appears that the lower authorities have not examined the nature of the household goods and their necessity. In the instant case, the reimbursement of various expenses incurred by the service provider can be considered for Service Tax or not. This aspect was not examined by the lower authorities. Moreover, the above mentioned cases were not available before the lower authorities. When it is so, then we deem it fit to set aside the impugned order and remand the matter to the adjudicating authority for *de novo* adjudication in the light of the above observations, but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional documents, if any, as per law.

7. In the result, the appeal filed by the assessee-Appellants is allowed by way of remand.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay