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

Appeal No. E/2068, 2067/2012-EX(DB)

[Arising out of Order-in-Original No. 14/2012/C.EX/JPR-II/Comm dated 25.04.2012, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

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

Vs.

C.C.E. & S.T. Jaipur-II **....Respondent**

Appearance:

Shri B.L. Narsimhan, Advocate for the Appellant
Shri Yogesh Agarwal, DR for the Respondent

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

Date of Hearing: 02.03.2017

FINAL ORDER NO. 52132-52133/2017-EX(DB)

Per M. V. Ravindran:

These two appeals are directed against the Order-in-Original No. 14/2012/C.EX/JPR-II/Comm dated 25.04.2012.

2. The relevant facts that arise for consideration are that the appellant herein is manufacturing lead, zinc, ores etc. and availing Cenvat Credit on inputs, capital goods and input services. During the period February 2008 to December 2010 the appellant availed Cenvat Credit on the common inputs and input services used in the captive power plant and generated power which was used captively as well as transferred to their sister concern and excess power was

sold to M/s. Ajmer Vidyut Vitran Nigam Ltd. (Electricity Board). During the course of audit, the officers objected for availment of Cenvat Credit on the common input services proportionate to the power sold to the electricity board and transferred to the sister concern. The appellant herein accepted the liability of the Cenvat Credit on the input services consumed for generation of electricity sold to electricity board and discharge the same to the industry. But in respect of Cenvat Credit on the input services used for the production of power transferred to their sister concern they contested the issue. Show cause notices were issued which were confirmed by the adjudicating authority after following due process of law.

3. Ld. Counsel submits that Cenvat Credit in respect of input services used in the power generation and transferred to sister concern is admissible to the appellant as input services were in fact used in the manufacture of dutiable final products by appellant as well as by their sister concern. Hence denial of cenvat credit on such input services is incorrect. It is his submission that during the relevant period there was no legal requirement that input services should be in or in relation to the manufacturer of final products within the factory premises. He would submit that the issue in the present case is squarely covered by the decision of this Tribunal in their own case vide final order no. ***A/51895-51899/2016 dated 27.05.2016 as also vide final order no. A/939/2012 dated 10.07.2012.***

4. Ld. DR reiterates the findings of the lower authorities.

5. On careful consideration of the submissions made by both the sides and perusal of records we find that the issue is regarding reversal of Cenvat Credit attributable to the power generated and transferred to their sister concern. It is the case of the Revenue that the input services are not used in respect of the power which is generated and captively consumed. We find no merits in the arguments put forth by the adjudicating authority in denying the cenvat credit to appellant as in an identical issue in respect of very sameassessee but situated at Chittorgarh, Rajasthan. This bench vide final order no. A/51895-51899/2016 held as under:

> *"Heard both the sides and examined the appeal records. The short point for decision is whether or not the appellant is eligible to avail the credit on input services used in the generation of electricity which is partly cleared to their sister units who are also engaged in the manufacture of dutiable final products. The admitted fact is that the Cenvat credit on input services used in the generation of power is eligible to the appellant as long as the electricity is used in the manufacture of dutiable final product. The only dispute is relating to the usage of electricity captively within the plant of generation or also outside the generation unit by the same manufacturer. Considering that the electricity has been used in the manufacture of dutiable final products and also the fact that all units belong to the appellant the denial of credit is not justifiable in the present case. Further, it is a fact that if the appellant were to follow the procedure for input service distribution the credit eligibility on part of the electricity cleared to sister unit could not have been questioned and the credit could have been passed on to the unit which is actually using the electricity or retained fully by the appellant himself without proportionate distribution. Such being the factual position, I find that the impugned orders are not sustainable. Further, the*

reliance placed in the impugned order on the ratio of Hon'ble Supreme Court in Maruti Suzuki Ltd. vs. CCE, Delhi – III (supra) is not appropriate. In fact the appellate Authority records that the facts are different in both the cases but still goes ahead and applies the ratio. As mentioned earlier in this order, the Hon'ble Supreme Court was dealing the sale of electricity to outside parties and not to clearance of electricity to another manufacturing unit of the appellant. The input service credits attributable to the electricity sold to utility companies are not available to the appellants as held by the Hon'ble Supreme Court. This, the appellants are not contesting and have already reversed the amount towards such input service credits."

6. In view of the foregoing, respectively following the decision of the Tribunal in the appellant's own case on identical issue, we hold that the impugned order is unsustainable and liable to be set aside and we do so. The impugned order is set aside and appeals are allowed.

[Operative part of the order pronounced in the open Court]

(V. Padmanabhan)	**(M. V. Ravindran)**
Member (Technical)	**Member (Judicial)**

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