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

Excise Appeal No. E/52697-52698/2015-E[SM]
[Arising out of Order-In-Appeal No. 20-21-SLM-CE-JPR-II-2014 dated 19.12.2014 passed by CCE-Jaipur]

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

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(s)

Vs.

CCE & ST, Jaipur-I …Respondent(s)

Appearance:
Mr. Rahul Tangri (Advocate) for the Appellant
Mr. Vaibhav Bhatnagar DR for the Respondent

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

Date of Hearing/ Decision. 21.12.2015

Final Order No. 54319-54320 /2015

Per S. K. Mohanty:

These appeal are directed against the impugned order dated 19.12.2014 passed by the Commissioner of Central Excise

(Appeals), Jaipur-II, upholding the cenvat demand on the appellant.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Zinc, Lead and Sulphuric Acid. During the disputed period, the appellant had availed and utilized cenvat credit on the input service before making payment of value of taxable service and the service tax thereon to the service provider. The cenvat demand has been confirmed on the ground that the appellant has contravened the provisions of Rule 4(7) of the Cenvat Credit Rules, 2004.

3. Shri Rahul Tangri, the Ld. Advocate appearing for the appellant submits that out of the value of taxable service claimed by the service provider in its invoices, the appellant had retained 10% of the amount and the same was paid to the service provider upon completion of the job. It is his submission that since the entire service tax has been paid by the appellant to the service provider, the embargo created in Rule 4(7) of the Cenvat Credit Rule 2004 is not applicable for reversal of cenvat credit. To substantiate his above stand, the Ld. Advocate has referred to the Circular No 122/3/2010-S.T. dated 30.04.2010 issued by the CBEC. He also relies on the final order No. 56583/2013 dated 15.05.2013 passed by this Tribunal in the case of the appellant itself.

4. On the other hand, Sh. Vaibhav Bhatnagar, the Ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

5. I find that in context with the present issue, the CBEC vide Circular dated 30.04.2010 (supra) has clarified that if the service tax as per the bill has been paid by the recipient to the service provider, for non-payment of the service charges in totality, cenvat credit cannot be denied. I also find that placing reliance on the above circular of the CBEC, this Tribunal in the case of the appellant itself vide final order dated 15.05.2013 has dismissed the appeal filed by the Revenue.

6. In view of above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeals in favour of the appellants.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

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