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

Excise Appeal No. E/52699-52700/2015-E[SM]
[Arising out of Order-In-Appeal No. 22-23-SLM-CE-JPR-II-2014 dated 22.12.2014 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. Shashwat (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. 54321-54322/2015

Per S. K. Mohanty:

Denial of cenvat credit on outdoor catering and pandal and shamiyana service is the subject matter of present dispute. The period involved in both the cases are from

October 2009 to March 2010 and April 2010 to September 2010.

2. Sh. Shashwat, the Ld. Advocate appearing for the appellant submits that with regard to outdoor catering service, it is a mandatory requirement under the Factories Act, 1948 for providing the catering/canteen facility to its employees working in the factory. As regards the other services namely, Pandal and Shamiyana service, the submission is that for storing the raw materials within the factory temporarily, the service provider has provided tent to the appellant and the service tax paid thereon has been taken as cenvat credit. The Ld. Advocate has relied on the judgment of Hon'ble Gujarat High Court in the case of **CCE Ahmadabad-I vs Ferromatik Milacron India Ltd. reported in 2011 (21) STR 8 (Guj.). and the decisions of this Tribunal in the case of Dalmia Chini Mills vs CCE, LTU, New Delhi reported in 2015 (37) STR 485 (Tri. Del)** to justify his stand that Cenvat benefit is available on the disputed services to the appellant.

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

4. I have heard the Ld. Counsel for both the sides.

5. I find that the issue involved in this case is squarely covered by the decisions cited by the Ld. Advocate for the appellant. In the case of Ferromatik Milacron India Ltd.

(supra), the Hon'ble Gujarat High Court has held that outdoor catering service provided in factory canteen is eligible for Cenvat benefit. Further, this Tribunal in the case of Dalmia Chini Mills (supra), placing reliance on the judgment of Hon'ble Bombay High Court in the case of Ultratech Cement Ltd., 2010 (20) STR 577 (Bom.) has extended the Cenvat facility on Pandal and shamiana services.

6. In view of above settled position of law, I do not find any merits in the impugned orders. Accordingly, after setting aside the same, the appeals filed by the appellant are allowed.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha