IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 29.3.2017

Appeal No. E/50424-50425/2014 -DB

(Arising out of Order-in-Original No. JAI-EXCUS-02-COM-088 & 86-13-14 dated 28.11.2013 passed by the Commissioner, Central Excise, Jaipur)

M/s Hindustan Zinc Ltd. — Appellant

Vs.

CCE, Jaipur-I — Respondent

<u>Appearance</u>

Shri Rahul Tangri, Advocate - for the appellant

Shri Yogesh Agarwal, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 52682-52683/2017

Per Justice Dr. Satish Chandra:

The present appeals have been filed against the Orders-in-Original No. 88 & 86 dated 28.11.2013 and 27.11.2013. The period of dispute is March, 2009 to July, 2009; and December, 2009 to December, 2010 respectively.

2. During the period under consideration, the appellants were engaged in the manufacture of zinc and lead concentrates falling under Chapter 26 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants have an ore concentration facility at Dariba, where mined ores, containing mud/impurities, are brought for washing and concentrating the said ore, for sending the same to

their captive smelters for smelting. The ore concentrates are liable to duty on which appropriate excise duty has been discharged by the appellant. For the purpose of washing, appellant is drawing water from various dams to the appellant's factory by aid of pipelines. The pipelines were laying by the appellant.

3. The dispute in the present appeal is whether the service received in relation to laying of the pipelines from Matrikundia Dam to Dariba for water supply to plant at Dariba are covered under the scope of definition of 'input service'as provided under Rule 2(l) of Cenvat Credit Rules, 2004. The same was not allowed by the department. Being aggrieved, the appellants have filed the present appeals.

4. With this background, we have heard Shri Rahul Tangri and Shri Yogesh Agarwal, ld. Counsels for the parties.

5. After hearing both the sides and on perusal of record, it appears that an identical issue has come up for the earlier period in the appellant's case in Excise Appeal No. 50495 & 50487/2016 dated 28.6.2016, where it was observed that :

> "5. Heard both the sides and examined appeal records. The point for decision is the eligibility of appellant for service tax credit paid on services received for laying, inspecting and certifying the pipelines used for transportation of water to the manufacturing unit at Dariba. The admitted facts are that water is essential in the manufacturing process, the pipelines are exclusively used for transport of water for the said purpose. The service tax paid is on services received w.r.t. pipelines. The reasoning given by the lower authorities regarding these services

being not connected with manufacture is not sustainable in view of the facts narrated above. The scope of input services as given under Rule 2(l) of Cenvat Credit Rules, 2004 is not restricted to the location of the factory premises alone. The Hon'ble Bombay High Court in ***Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs. CCE, Belapur*** - 2013 (32) STR 532 (Bom.) have examined in detail the legal provisions applicable in such instances. The Hon'ble High Court found as below:-

5. Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit *inter alia* of Service Tax which is paid on (i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) any input service received by the manufacturer of the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input services on the other. Clause (i) above provides that the Service Tax should be paid on any input or capital goods received in the factory of manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal construction of Rule 3(1) the Tribunal was not justified in holding that the appellant would not be entitled to avail of Cenvat credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(l) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(l) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories *viz.* for the procurement of inputs and for the inward

> transportation of inputs. This interpretation which has been placed by the Tribunal is *ex facie* contrary to the provisions contained in Rule 2(l). The first part of Rule 2(l) *inter alia* covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(l). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(l).The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process."

6. By following our earlier order (supra), we set aside the impugned order and allow the appeals.

7. In the result, the appeals filed by the appellants are allowed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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