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

Service Tax Appeal No. ST/835-837/2012-ST[DB]
[Arising out of Order-In-Appeal No.20-22(AKJ)ST-II/2012 dated 12.04.2012 passed by Commissioner -II, Central Excise & Customs, Jaipur.]

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

M/s. Hindustan Zinc Ltd. ...Appellant

Vs.

C.C.E. Jaipur …Respondent

Appearance:
Mr. Manish Gour, (Advocate) for the Appellant
Ms. Neha Garg, MR appeared for the Respondent

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

Date of Hearing/ Decision. 15.12.2016

Final Order No 56475-56477 /2016

Per S. K. Mohanty

These appeals are directed against the impugned order dated 29.03.2012 passed by the Commissioner (Appeals), Central Excise, Jaipur-II.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Lead Zink & Bulk concentrate falling under Chapter 2607, 2608 and 2617 of the Central Excise Tariff Act, 1985. The

appellant is also registered with the Service Tax Department under the category of "Goods Transport by Road" service. For the period March 2009 to March 2011, the Department initiated show cause proceeding against the appellant alleging that it had rented out housing quarters and other premises on rent to its contractors other persons, but did not pay the service tax under the taxable category of Renting of Immovable property service. The service tax demand was confirmed in the adjudication orders by observing that the activities of the appellant in letting out residential premises are to be taxed in terms of Explanation-2 to Section 65(105)(zzzz) of the Finance Act, 1994. It has also been held that the appellant is not eligible for threshold exemption provided under the Notification No. 6/2005 –ST, dated 01.03.2005. On appeal, the ld. Commissioner (Appeals) vide the impugned order has upheld the adjudged demand.

3. The ld. Advocate appearing for the appellant submitted that renting of housing quarters to its contractors for residence of their workers will be outside the scope and purview of the taxable service. With regard to other premises rented out by the

appellant, the ld. Advocate submitted that the appellant was eligible for threshold exemption under Notification dated 01.03.2005 and thus, was not liable to pay any service tax. He also submitted that Explanation-2 appended to Section 65(105)(zzzz) *ibid* will not have any application inasmuch as the housing quarters are situated in the housing colony of the appellant and the other premises are situated outside housing colony. He submits that the above submissions were not considered by the authorities below.

4. On the other hand, the ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. Renting of immovable property for use in the course of or for furtherance of, business or commerce is a taxable service, in terms of the definition contained in Section 65(105)(zzzz) *ibid*. Renting of premises for residential purposes is not included within the scope and preview of such taxable service, for the reason that such renting is not in connection

with business or commerce. However, a deeming fiction has been created in the explanation-2 appended to the said definition, providing that use of immovable property partly for business or commerce and partly for residential or any other purposes should be construed as immovable property for use in course or furtherance of business or commerce. We find that the submission of the appellant that the housing quarters are located at a different place, than the other premises were not considered by the authorities below. Rather, the service tax demand was confirmed in terms of explanation-2 contained in Section 65(105)(zzzz) *ibid*, holding that the appellant did not produce any evidence to show that the residential premises are located at a place, away from the commercial premises. Further, we also find that the submission of the appellant that for the purpose of computation of threshold exemption limit, the service tax paid on the GTA Services in the capacity of recipient of service should not be considered, has not been taken into consideration by the authorities below.

7. Therefore, we are of the view that the matter should go back to the original authority for passing the reasoned and speaking order on the basis of documents to be produced by appellant. Accordingly, after setting aside the impugned order, we remand the matter to the original authority for fresh adjudication of the matter. The appeal is disposed of accordingly.

(Operative Portion pronounced in open court)

(B. Ravichandran)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Sakshi