CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 06.04.2017

Excise Appeal No. 60055 of 2013 WITH
Ex. C.O. No. 50714/2014

(Arising out of order-in-original No. 53-54/2013/CE/JPR-II-Commr. dated 24.07.2013 passed by the Commissioner of Central Excise, Jaipur-II).

CCE, Jaipur-II Appellant-Revenue

Vs.

M/s Hindustan Zinc Limited Respondent-Assessee

Appearance:

Sh. M. R. Sharma, AR for the Revenue
Sh. Hemant Bajaj, Advocate for the Assessee

Coram:

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

Final Order No. 52857 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed by the Revenue against the order-in- original No. 53-54/2013/CE/JPR-II-Commr. dated 24.07.2013 passed by the Commissioner of Central Excise, Jaipur-II.

2. The brief facts of the case are that during the period under consideration (April, 2011 to July, 2012), the respondent-assessee was manufacturing Lead, Zinc ores etc. and was availing 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 Limited (Electricity Board) on which the appellant have already paid the duty by way of reversal of the credit. In the present case, the dispute is pertaining to the cenvat credit on the power generated transferred and supply to their sister concern. By the impugned order, the relief was given to the appellant. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Shri M. R. Sharma, ld. AR for the Revenue and Sh. Hemant Bajaj, ld. Advocate for the Respondent

4. After hearing both the sides and on perusal of record, it appears that the identical issue has come up in the assessee's own case for the earlier period (Ex. Appeal No. 2068-2067 of 2012 dated 02.03.2017) where it was observed that input service parts and power transferred to their sister unit is admissible to avail the cenvat credit on input service used in the manufacture of dutiable final product by the appellant as well as by their sister unit. The Tribunal relied upon the ratio laid down in the appellant's own case vide final order No. A/51895 – 51899/2016 where it was observed that:

> "*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 SuzukiLtd., 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. Thus, the appellants are not contesting and have already reversed the amount towards such input service credits*".

5. By following our earlier order (supra), we find no reason to interfere with the impugned order, the same is hereby sustained.

6. In the result, appeal filed by the department is dismissed. We find no merit in the Cross-objection. Appeal filed by the department and Cross-objection filed by the appellant are dismissed.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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