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

Excise Appeal No. 52823 of 2016 SM

[Arising out of Order-in-Appeal No. 210-AK-ST-JPR-2016 dated 11.7.2016 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur (Raj)]

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

Vs.

Commissioner of Central Excise **Respondent**
Udaipur

Appearance:

Shri Anurag Kapoor, Advocate for the Appellants
Shri G R Singh, DR for the Respondent

<u>CORAM</u>:

Hon'ble Mr. Ashok K Arya, Member (Technical)

Date of Hearing/ Decision: 28.04.2017

FINAL ORDER No. 53146 /2017 SM

<u>Per: Ashok K Arya:</u>

The appellant M/s. Hindustan Zinc is in appeal against the order in appeal No. 210/2016 dated 11.7.16 passed by Commissioner of Central Excise (Appeals), Jaipur. The disputed issue is regarding the cenvat credit of Service Tax paid on technical inspection and certification services with respect of pipe lines for supply of water from dams to the Dariba Mines of the appellant.

2. Both sides represented by learned Counsels Shri Anurag Kapoor, for the appellant and Shri G R Singh, for the Revenue, have been heard.

3. Considering the facts and the submissions of both the sides, it appears that subject matter is covered by Tribunal's decision in the appellants' own case vide Final Order No. 52240-52241/2016-SM (BR) dated 28.6.2016 in Excise Appeal No. 50495 & 50487/ 2016 SM whereunder it has been observed as under:-

> *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*** *(supra) 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*".

4. By following the above order of the Tribunal, it is clear that subject input service is having sufficient nexus with the manufacturing process of the appellant and is covered by the definition of 'input service' under Rule 2(l) of Cenvat Credit Rules, 2004. Therefore, service tax paid on such services is eligible to be claimed as Cenvat Credit by the appellant-assessee.

5. In the result, the impugned order is set aside and appeal allowed with consequential relief, if any.

(dictated and pronounced in the open Court)

(Ashok K Arya)
Member (Technical)

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