

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

Service Tax Appeal No. ST/37/2012-ST[DB]

[Arising out of Order-In-Appeal No.462(CB) ST/JPR-II/11 dated 12.10.2011
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 II

...Respondent

Appearance:

Mr. Narendra Singhvi, (Advocate) for the Appellant

Ms. Neha Garg, DR appeared for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing. 02.02.2017
Date of Decision. 24.05.2017

Final Order No 53413 /2017

Per S. K. Mohanty

This appeal is directed against the impugned order dated 12.10.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur-II.

2. Brief facts of the case are that for the period June 2007 to February 2009, the Department initiated show cause proceeding against the appellant, alleging

that it had let out housing quarters and other premises on rent to its contractors and 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 order dated 16.03.2011 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 Id. Commissioner (Appeals) vide the impugned order has upheld the adjudged demand.

3. The Id. 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 Id. 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 Id. 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 was 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. We find that on similar issue for subsequent period from March, 2009 to , 2011, this Tribunal vide order dated 15.12.2016 in appeal No. ST/835-837/2012 has allowed the appellant's appeal by way of remand.

7. Therefore, we are of the view that the present matter should also 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.

(Pronounced in open court on____24/05/2017)

(B. Ravichandran)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Sakshi