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

Date of hearing/decision: 29.05.2017

Excise Appeal Nos. 50958 & 50636 of 2014

(Arising out of order in original No. JAI-EXCUS-002-COM-075-13-14 & JAI-EXCUS-002-COM-077-13-14 dated 31.10.2013 & dt. 18.11.2013 passed by the Commissioner, Central Excise, Jaipur).

M/s Hindustan Zinc Limited — Appellant
Ms. Sukriti Das, Advocate for the appellant

Vs.

CCE, Jaipur-II — Respondent
Ms. Suchitra Sharma, AR for the Respondent

Coram:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53619 – 53620/2017

Per: **Anil Choudhary**:

Appellant is engaged in manufacture of Zinc & Lead Concentrates falling under Chapter 26 of the First Schedule to the Central Excise Tariff Act, 1985 and is also availing Cenvat credit on various inputs, capital goods and input services in terms of the provisions of the Cenvat Credit Rules, 2004. Appellant is mining ore and concentrating the said ore for smelting metal out of the same. During the beneficiation process, which is an integral part of manufacturing process, industrial waste and polluted water emerges, which is hazardous. As per the Environmental Laws, such hazardous wastes are not allowed to be discharged on open land and have to be disposed so as to localize the hazards of the pollution. Therefore, such wastes are dumped into the tailing dam constructed few kilometers away from the mine for collecting industrial waste/residue for Environmental related issues. Thus, for this purpose, the appellant has availed services for raising the height of tailing dam and the service tax paid thereon was availed as Cenvat credit by the appellant under Rule 2(l) of the Cenvat Credit Rules, 2004.

1. Further, the appellant has also created a facility for drawing recycled water (by process of sedimentation/condensation) from the tailing dam to the captive mine, through pipelines, where underground mined ores, containing mud/impurities are washed for concentrating the ore. Thus, for washing mined ores, pipelines so laid requires periodical maintenance work, therefore appellant availed maintenance service for the pipeline works and the service tax paid thereon was availed as credit by the appellant under Rule 2 (l) of the Credit Rules.

<u>In Appeal No. E/50636/2014</u>

2. Appellant is engaged in the manufacture of Zinc, Lead and Sulphuric Acid, etc. Appellant 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. During the beneficiation process, which is part of manufacturing process of the appellant, industrial waste and polluted water emerges, which is hazardous. As per the Environmental Laws, such hazardous wastes are not allowed to be discharged on open land and have to be disposed in Secured Land Fills and Jerofix Storage Ponds, so as to localize the hazards of the pollution. Thus, for constructing such Secured Land Fills and Jerofix Ponds, Appellant has procured various input services and the service tax paid thereon was availed as credit by the appellant.

3. During Audit of appellant's records, for the period in question, disputes were raised by the department that input service credit availed by the appellant on services in relation to tailing dam & maintenance work for pipeline of tailing dam [in **E/50958/2014]** and construction services in relation to Secured Land Fills and Jerofix Storage Ponds [in **E/50636/2014**], for disposal of Industrial Waste and Polluted Water, have no nexus with the manufacturing process of the appellant and hence, not entitled to take credit under Rule 2(l) of the Credit Rules. Thus, SCNs were issued by invoking extended period of limitation.

4. Appellant filed detailed reply with respect to each of the notices stating that disposal of hazardous waste is an integral activity connected with manufacturing operations, especially when the plant would be refused permission by the State Pollution Control Board to function at all if Pollution Control measures are not adopted as directed. Further, the maintenance services used for pipelines connecting tailing dam to the captive mine to transport water is essentially in relation to manufacturing activity, thus qualifying as an input service eligible for credit under Rule 2(l) of the Credit Rules.

5. However, the ld. Adjudicating Authority vide separate Orders-in-Original dated 31.10.2013 & 18.11.2013 passed similarly worded OIOs, observing that the use of services in question was to fulfill an obligation for disposal of hazardous waste arising out of the manufacturing process of zinc, in compliance with the Environmental Laws. However, the credit was denied on the ground that the said services were in no way required or connected with the manufacturing activities of the final product i.e. lead, zinc or sulphuric acid either directly or indirectly.

6. Being aggrieved with the aforesaid OIOs, the Appellant has filed the present appeals on the following grounds:

6.1 Cenvat credit has been correctly availed by the Appellant on services, in relation to tailing dams/Secured Land Fills and Jerofix Ponds, used for disposal of hazardous industrial wastes, as they are essentially/integrally connected with the manufacturing process, thus qualifying as an eligible input service defined under Rule 2(l) of the Credit Rules.

6.2 In terms of Rule 2 (l) of the Credit Rules,-

input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) ***used by the manufacturer whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal*** **(emphasis supplied)**

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, ***activities relating to business****, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"'*

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6.3 Further, the definition of input service under Rule 2(l) of the Credit Rules, has been amended w.e.f. 01.04.2011, which reads as under:

input service" means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) ***used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products*** *and clearance of final products upto the place of removal,*
and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services-

(A) *<u>Service portion in the execution of a works contract and construction services including service listed under clause (b) of Section 66E of the Finance Act,</u> (hereinafter referred as specified services) in so far as they are used for-*
(a) *<u>Construction or execution of works contract of a building or a civil structure or a part thereof; or</u>*
(b) Laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services or

(Emphasis supplied)

6.4 The expression "in or in relation to the manufacture of final product" used in the means part of the definition of 'input service', both under the pre and post amended provision, widens the scope of the said definition as held by the Hon'ble Supreme Court in **Collector of Central Excise v. Rajasthan State Chemical Works 1991 (55) E.L.T. 444 (S.C.).** Further, the Hon'ble Bombay High in the case of **Commissioner of Central Excise v. Ultratech Cement, 2010 (20) STR 577 (Bom) [pg. 62-71 of case compilation],** held that "*……the definition of "input service" covers services used directly or <u>indirectly in or in relation to the manufacture of final products</u>, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to* *the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product."*

6.5 It is an undisputed fact that the services in question availed by the appellant in relation to the raising height of tailing dam/construction of Secured Land Fills and Jerofix Storage Ponds, are used essentially for the purposes of disposal of hazardous waste, in compliance of the pollution control laws. Without complying with the said laws, the appellant would not be allowed to carry out the manufacturing process. Thus, the services are integrally connected to the manufacturing of the finished goods of the Appellant. Therefore, the denial of Cenvat Credit is improper and unjustified.

6.6. It is further submitted that in the context of admissibility of Cenvat credit on cement used to stabilize the waste 'jarosite', this Tribunal in the Appellant's own case i.e. **Hindustan Zinc Ltd. v. CCE, Final Order No. A/52585-52589/2015-Ex[DB]** held that use of cement for stabilization of hazardous waste 'jarosite' as toxic effluent at secured land fill is part and parcel of their manufacturing activity. This Tribunal in the said case was dealing with availment of Cenvat Credit on cement as inputs for disposal of the hazardous waste. The aforesaid order was also followed by this Tribunal in the appellant's own cases:

- **Hindustan Zinc Ltd. v. CCE, Jaipur-II, F.O. No. 55074-55079/2016 dated 11.11.2016**

- **Hindustan Zinc Ltd. v. CCE, Jaipur-II, F. O. No. 54037/2015 dated 21.12.2015**

6.7 In the aforesaid cases, reliance was placed by the Tribunal on the decision of the Hon'ble Supreme Court in **Indian Farmers Fertilizer Corp. Ltd. v. CCE, 1996 (86) ELT 177 (SC)**, wherein the issue involved was availment of exemption notification in respect of raw naptha used in the manufacture of ammonia provided such ammonia is used elsewhere in the manufacture of fertilizers. Hon'ble Supreme Court held that use of ammonia in water treatment, steam generation and inert gas generation is a necessary part of manufacturing urea. The relevant portion of the order is as follows:

> *"9. …The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption."*

6.8 It is submitted that the Cenvat credit is admissible to the appellant in relation to the subject services, as they are integrally connected with the manufacturing activity of the appellant and hence the impugned order is not sustainable and is liable to be set aside.

6.9 Similarly service tax credit taken on maintenance of pipelines of tailing dam for transporting water to the captive mines qualifies as an eligible input service under Rule 2(l) of the Credit Rules

6.10. Extended period not invokable; Penalty not imposable and interest not recoverable

Without prejudice to the above grounds, it is also submitted that the appellant had no intention to act dishonestly and had acted in accordance with the legislative provisions in as much as every relevant fact is on record and no credit has been availed without the knowledge of the department. Therefore, the demand raised, (**in E/50958/2014)** by the SCN dated 01.06.2012 for period August 07 to October 2011, is time-barred upto April, 2011. And with respect to demand raised, (**in E/ 50636/2014**) by SCN dated 26.12.2012 for the period August 2009 to February 2011, the entire demand is barred by limitation and hence the impugned demand is not sustainable and is liable to be set aside.

7. Ld. AR for the Revenue have relied on the finding of the ld. Commissioner in the impugned order.

8. Having considered the rival contentions, we find that the appellant – assessee cannot operate their business or manufacturing facility of dutiable / excisable goods without compliance with the directions given by State Pollution Control Board to minimise the pollution under the relevant Pollution Control laws. Compliance with the directions of the State Pollution Control Board if not done by the appellant industry, may result in prosecution of the appellant company and its key personnel under the various Pollution Control laws for violation. Accordingly, we hold that the cenvat credit received on the services for raising the height of tailing dam and maintenance service for pipeline work of tailing dam, used for disposal of industrial waste and polluted water in compliance with Environmental laws is an input service within the meaning of Rule 2(l) of Cenvat Credit Rules, 2004 used by the manufacturer indirectly in or in relation to the manufacture of final products and clearance of final products from the place of

removal. Similarly, the cenvat credit on services procured for construction of secured land fill and jerofix storage pond, which are used for disposal of industrial waste and polluted water in compliance with Environmental laws is an input service received by the manufacturer indirectly in relation to the manufacture of final products. Accordingly, we hold that the cenvat credit in dispute is allowable to the appellant. Accordingly, we allow these appeals and set aside the impugned orders. The appellant shall be entitled to consequential relief, if any.

(Operative portion of the order was pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Pant