CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 06.06.2017
Date of Pronouncement: 13.06.2017

Appeal No. E/52163/2014-EX[DB]

[Arising out of the Order-in-Original No. Jai/Excus/002/Com/105/13-14 dated 10.01.2014, passed by the Commissioner of Central Excise, Jaipur]

M/s. Hindustan Zinc Ltd. … Appellant

Vs.

C.C. Jaipur ... Respondent

Appearance:

Present Shri Hemant Bajaj, Advocate for the appellant
Present Ms. Suchitra Sharma, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 53869/2017

Per Justice (Dr.) Satish Chandra:

The present appeal is filed by the appellant against the order in original no. 002 dated 10.01.2014. The period of dispute is April 2008 to December 2011.

2. The brief facts of the case are that during the period under consideration the appellant was engaged in the manufacture of lead and zinc concentrates, zinc cathodes and sulphuric acid falling under chapter 26, 79 and 28 of the First Schedule of the Central Excise Tariff Act 1985 and they were availing the Cenvat Credit facility. The appellant has engaged M/s. L&T for fabrication of plant and machinery for smelter plant within the

premises of the factory. The appellant has availed the Cenvat Credit on the items used for the purpose but the Department has not allowed the same. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Hemant Bajaj, Advocate for the appellant and Ms. Suchitra Sharma, DR for the respondent. We have also perused the written submission submitted by the parties.

4. The first item is the MS tower, which was used for the transmission of the electricity. The appellant has claimed Cenvat Credit by following the ratio laid down in the case of ***Sanghi Industries Ltd. Vs. CCE Rajkot, 2006 (206) ELT 575 (Tri-Del.).*** The Ld. Counsel also relied on the ratio laid down in the case of ***Prism Cement Ltd. Vs. CCE Bhopal in appeal no. E/4056/2012-EX(DB) dated 24.03.2017*** where the Cenvat Credit on the transmission line was allowed.

5. On the other hand, Ld. DR for the Department heavily relied on the ratio laid down in the case of ***Bharti Airtel Ltd. Vs. CCE vide Central Excise Appeal No. 73/2012 dated 26.08.014*** where the Hon'ble High Court of Bombay has not allowed the Cenvat Credit on the tower used for cellular services. It is the submission of the Ld. Counsel for the Department that by installation of the tower, it has become immovable property and hence not goods. Hence, the Cenvat Credit cannot be granted either as capital goods or as inputs. After hearing both the parties we are of the view that the ratio laid down in the

case of ***Bharti Airtel (Supra)*** is not applicable in the instant case for the reason that the assessee has used the tower for the transmission of the electricity. Without electricity factory cannot run. In the case of ***Bharti Airtel***, tower was used for only cellular services being the service provider which is not the case in the instant case. Thus the ratio laid down in the case of ***Bharti Airtel*** is distinguishable and is not applicable to the instant case where the appellant is not a service provider. In the present case, the appellant is a manufacturer and needs the electricity by way of transmission line. By following the ratio laid down in the case of ***Prism Cement Ltd. (Supra)*** we allow the Cenvat Credit on the transmission line.

6. The Department has not allowed the Cenvat Credit on angles, channels, cable trays, etc. which were used on the transmission tower as well as for fabrication of the plant and machinery. The Cenvat credit was allowed on cable tray and angle, in the case of ***Hindustan Zinc (i.e. in the case of the assessee) Vs. CCE vide final order no. A/53893/2015 dated 31.12.2015.***

7. Similarly, the Cenvat Credit was allowed on various items like MS plates, channels, angles, beams, joist, iron sheets, angle plates, etc. for fabrication / manufacturing of various capital goods by the Tribunal in the case of ***Hindustan Zinc (assessee) vide appeal no. E/51256/2014 dated 13.04.2017***. Further, the Cenvat Credit was also allowed on the electrolysis plates as per the ratio laid down in the case of

Cominco Binani Zinc Ltd. Vs. CCE 1990 (48) ELT 283 (Mad.). On anodes, the MODVAT was also allowed in the case of ***CCE Vs. Travancore Cochin Chemicals Ltd. 1995 (77) ELT 396 (Tri).***

8. By following the ratio laid down by the Tribunal in the above mentioned cases, we allow the claim of the appellant pertaining to MS angles, channels, Cable tray, MS tower, copper anode, hanger bar and aluminum plate of electrolysis, etc.

9. Hence we set aside the impugned order and allow the appeal of the appellant.

[Order Pronounced in the open court on 13.06.2017]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu