IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Court No. IV

Date of Hearing/Decision: 22.06.2017

Appeal No. ST/1433-1434/2011-DB

[Arising out of the Orders in Original No. 06/AKJ/CST/2014 DATED 28/02/2014, passed by Commissioner of Service Tax, Delhi]

M/s Hindustan Zinc Appellant

Vs.

CCE Jaipur -II Respondent

Appearance
Shri Narendra Singhania for the appellant
None - for the respondent

CORAM: **Hon'ble Mr. DR. D.M.Misra, Member (Judicial)**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. __54371-54372/2017___

Per D.M.Misra

1. These two appeals filed by respective Orders in Appeal No. 284-285(CB0ST/JPR-II/11 dated 01/07/2011 & 284-285 (CB)ST/JPR-II/2011 dated 01/07/2011 passed by Commissioner-II, Central Excise (Appeals) .
2. The brief facts of the case are that the appellant are engaged in the manufacture of Lead and Zinc Ores. In the said process,

they had engaged contractors who undertake mining work under an agreement entered into between the appellant and the said contractors. The Contractor is required to provide various equipments for carrying out the mining work, and certain equipments were also taken on lease/hire from the appellant and utilized in the activity of mining. Since the appellant has though supplied the equipment to the contractor but not discharged service fare under the category of 'supply of tangible goods and services', demand notice was issued for recovery of Service Tax of Rs. 6,55,847/- for the period from May, 2008 to November, 2009. On adjudication, the demand was confirmed with penalty interest and with penalty. Aggrieved by the said order they filed appeal before the Ld. Commissioner (Appeals) who in turn, rejected their Appeal. Hence, the present appeal.

3. Ld. Advocate for the appellant submits that since the entire copy of the agreement between the appellant and contractor was not placed, before the Ld. Commissioner (Appeals), the order of the adjudicating authority was upheld by the Ld. Commissioner (Appeals). To this effect a finding has been recorded at para 6 of the impugned order. He submits that they are now in procession of the entire copy of the contract/ agreement and can establish before the Ld. Commissioner

(Appeals) that their supply do not fall under the category of 'supply of tangible goods'.

4. Ld. AR for the Revenue reiterated the findings of Ld Commissioner (Appeals).

5. We find that Ld. Commissioner (Appeal) at para 6 of the impugned order observed as under:

> *In support of their contention they produced two pages of the contract. One page marked as "annexure D" containing condition no. 29.2 to 31 of the Contract and another page marked as Schedule-F of the contract. I find that the appellant have not produced the entire copy of the contract and in the absence of which the two pages of the contract has no evidentiary value because the conditions of the contract are to be examined in the context of entire contract. The schedule-F of the contract does not support the case of the appellant because it ahs condition that "Hire Charge will not be applicable when equipment cannot be used for reasons beyond control of the contractor& agreed by Engineer-in-charge". The condition "agreed by engineer-in-charge" proves that the engineer of the appellant is monitoring the movement of the impugned tangible goods. The appellant have also not produced logbook of LPD Trucks dully certified by the contractor as well as the appellant. Thus I hold that appellant have no merit in their case and therefore the findings of the adjudicating authority are upheld.*

6. A simple reality of the of the above finding reveals that because of non production of the complete copy of the agreement/contract the Ld. Commissioner (Appeals) could not in a position to analyse the terms of contract and arrive at the finality in the impugned order on the issue. In our view, the appellant should be given a fair chance to produce the copy of the relevant contracts/agreements before the Ld Commissioner (Appeals) and establish his case. In the result,

the impugned order is set aside to the extent above and the appeal is allowed by way of remand, to the said extent. Appeal disposed.

(Dictated & pronounced in open Court)

(Ashok K. Arya) (D .M. Misra)
Member (Technical) Member (Judicial)

RS