IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/50758/2017 [SM]

[Arising out of Order-in-Appeal No.07(AK)CE/JPR/2017 dated 08/02/2017 passed by the Commissioner (Appeals), Central Excise Commissionerate-II, Jaipur]

M/s.Hindustan Zinc Ltd. …Appellant

Vs.

C.C.E & S.T., Jaipur-I … Respondent

Present for the Appellant : Mr.Shaswat Arya, Advocate
Present for the Respondent: Ms.Kanu Verma Kumar, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 28/06/2017

FINAL ORDER NO. 54976/2017

PER: S.K. MOHANTY

Denial of cenvat credit on various taxable services is the subject matter of present dispute. The Department has denied service tax benefit on the taxable services namely, commercial & industrial construction service, rent-a-cab service, security agency service, site formation and clearance service, Earth moving service, demolition service and club & association service on the ground that the said services are not confirming to the definition of input service contained in Rule 2 (l) of the

Cenvat Credit Rules, 2004 and those services have no nexus with the manufacture of the final products by the appellant.

2. The ld. Advocate appearing for the appellant submits that in respect of commercial & industrial construction service, out of the disputed service tax credit of Rs.31,33,433/-, the appellant availed Rs.26,99,255/- on the services received up to 31.03.2011 and the balance amount of Rs.4,34,178/- after 01.04.2011. As regards, rent-a-cab service, the submissions are that the entire amount of credit of Rs.2,69,936 was availed by the appellant prior to 31.03.2011 and thus, under the un-amended definition of input service, both the above said services will be considered as input service for the purpose of availment of cenvat credit. As regards the credit taken after 01.04.2011, he submits that the services are not falling under the excluded category of definition. With regard to security agency service, the ld. Advocate submits that credit was availed on said service by the appellant for patrolling in the area of water pipe line and the dam, which are located adjacent to the factory and the benefit of cenvat credit should be available on such services. As regards site formation & clearance service and club & association service, the ld. Advocate submits that adjudicating authority has not specifically recorded any findings regarding eligibility of cenvat credit on those services.

3. On the other hand, the ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order and further submits that there is no discussion and findings by the authorities below that the credit taken on the disputed services were prior to 31.03.2011. Thus, she submits that these factual aspects have to be verified at the original level.

4. Heard both sides and perused the records.

5. Under the unamended definition of input service effective upto 31st March, 2011, there were no restrictions provided for non-consideration of construction service as input service. Such embargo was created only with effect from 01.04.2011 by Notification No.3/11-CE-NT dated 01.03.2011, wehrein construction service was specifically excluded from the definition of input service. Thus, the credit taken on commercial and industrial construction service prior to 31.03.2011 should be available for cenvat benefit. With regard to the credit availed after 01.04.2011, the appellant submits that the said services are in relation to repair, renovation of existing machinery, which are specifically finding place in the inclusive part of the definition w.e.f. 01.04.2011. However, on perusal of the case records, I find that authorities below have not specifically discussed the period, during which the cenvat credit was availed by the appellant. Thus, the said factual aspects have to be verified by the original authority for proper appreciation of the facts. With regard to rent-a-cab service,

the appellant submits that the entire credit was availed prior to 31.03.2011 and thus, such services confirms to the definition of input service. The appellant also relies on the decision of the Tribunal in the case of CCE, Delhi vs. Pricol Ltd. – 2016(41) STR 649 (Tri.-Del.) to state that rent-a-cab service should be considered as input service for the purpose of cenvat credit. However, for ascertaining the period of availment of cenvat credit, the matter has to be verified by the original authority, since no observations were made with regard to such aspect in the original order.

6. As regards the security agency service, the appellant submits that the issue is squarely covered by the decision of the Tribunal in the case of Aluminium Powder Co. Ltd. vs. C.C.E., Madurai - 2016 (42) STR 776 (Tri. Chennai). Thus, respectfully following co-ordinate Bench decision, I am of the view that the cenvat benefit on such service can be extended to the appellant.

7. As regards the other services namely, site formation & clearance, excavation and Club or Association Service, I find that the authorities bellow have not addressed the issue as to whether the said services should be considered as input service for the purpose of cenvat benefit. Therefore, I am of the considered view that in respect of the disputed services,

except security agency service, the original authority should verify the period during which the cenvat credit was taken by the appellant and the eligibility of the cenvat credit with reference to the decision cited by the appellant.

8. In view of the above, the impugned order is set aside and the matter is remanded to the adjudicating authority to decide the matter afresh after affording due opportunity of personal hearing to the appellant. With regard to security agency service, the appeal is allowed in favour of the appellant.

9. The appeal is disposed of in above terms.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita