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/52892/2015 [SM]

[Arising out of Order-in-Appeal No.139 (SLM)CE/JPR/2015 dated 05.03.2015 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

M/s.Hindustan Zinc Ltd. …Appellant

Vs.

C.C.E & S.T., Udaipur … Respondent

Present for the Appellant : Ms.Sukriti Das, Advocate
Present for the Respondent: Mr.Vaibhav Bhatnagar, D.R.

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

Date of Hearing: 16/03/2016
Pronounced on :15/07/2016

FINAL ORDER NO. 56523/2016

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 15.03.2015 passed by the Commissioner (Appeals) Central Excise and Customs, Jaipur.

2. Brief facts of the case are that the appellants are engaged in the manufacture of Zinc, Lead ingots falling under Chapter 26 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant imported certain inputs and capital goods for use in the factory for manufacture of the said excisable goods. In the Bills of Entries filed before the

Customs Authorities, the appellant had shown all duties foregone under Notification Nos. 53/2003-Cus., 89/05-Cus. & 19/06-Cus. In respect of the CVD amount, the appellant had shown the same as foregone under Notification No.89/05-Cus. under the DEPB License. The amount leviable as Cess was shown as '0'. The appellant had claimed Cenvat Credit of the entire amount of CVD. Taking of such credit was disputed by the Department on the ground that the appellant have taken excess Cenvat credit under the head CVD Account. According to the Department, the appellant should have bifurcated the same and should have availed the credit in respect of actual CVD amount only. The show cause notice issued in this regard was adjudicated vide order dated 13.02.2013 wherein Cenvat Credit of Rs.72,754/- was disallowed alongwith interest and equal amount of penalty was imposed on the appellant. On appeal, the ld. Commissioner (Appeals) has upheld the adjudged demand.

3. The ld. Advocate appearing for the appellant submitted that the assessed Bills of Entry have not bifurcated the amount of Cess and duty. Thus, the total amount shown as CVD has been correctly availed as Cenvat Credit. She further submitted that under Rule 9 of the Cenvat Credit Rules, 2004, Bill of Entry is a prescribed document for availment of credit. Further, she also submitted that taking of credit is in conformity with Rule 3 ibid. With regard to applicability of Rule 3 (7) (b) ibid, the ld. Advocate submitted that since the

amount in question was paid under the head 'CVD', taking of such amount as per the Bills of Entry is in conformity with such statutory provisions.

4. On the other hand, the ld. D.R. appearing for the respondent reiterated the finding recorded in the impugned order.

5. Heard both sides and perused the records.

6. The fact is not under dispute that while assessing the Bills of Entry, the amount towards CVD and Cess have not been bifurcated by the Customs Authorities. Since, the entire disputed amount was reflected under the 'CVD' head in the Bills of Entry, taking of Cenvat Credit of such amount is in conformity with Rule 3 read with Rule 9 of the Cenvat Credit Rules. Further, I also find that the Notification No. 89/2005-Cus. dated 04.10.2005 has specifically permitted an importer to avail Cenvat Credit of additional duty leviable under Section 3 of the Customs Tariff Act against the amount debited in the Duty Entitlement Passbook Script. Since, no provisions of the Cenvat Statute have been contravened in this case, I am of the view that taking of disputed Cenvat Credit by the appellant is proper and justified.

7. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita