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

**COURT-II**

**Date of hearing/decision: 20.07.2017**

**Appeal No. E/50285/2017-SM**
[Arising out of the Order-in-Appeal No.188-AK-CE-JPR-2016 dated 21/11/2016, passed by the Commissioner (Appeals) Customs & Central Excise (Appeals), Jaipur]

M/s Hindustan Zinc … Appellant

Vs.

CCE, Udaipur … Respondent

Appearance:
Present Ms. Sukriti Das, Advocate for the appellant
Present Ms G.R. Singh, DR for the respondent

**Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)**

**FINAL ORDER No. 55393/2017**

**Per Ashok K. Arya :**

**1.** The appellant namely, *M/s Hindustan Zinc* is in appeal against Order in Appeal No. 188/2016 dated 21/11/2016 whereunder input service credit on 'Consultancy and Certification Services' used in relation to modernization of their power plant and also to reduce the emissions of Green House Gases at safe levels as per Kyoto Protocol, for which targets has been fixed for every developed country.

**2.** Both sides represented by Ld. Advocate, Ms. Sukriti Das for the appellant and Ld. DR, Shri G.R. Singh for the Revenue have been heard.

**3.** The main plea of the appellant is that they have availed subject input services namely 'Consultancy and Certification Services' provided by M/s Ernst & Young Pvt. Ltd., M/s Bureau Veritas Certification and M/s Contor CO2e India Pvt Ltd., which have been used for modernization of their power plant as a measure of increasing efficiency and profitability of their plant.The appellant further mentions the following :

> The United Nations Framework Conventions on Climate Change (UNFCC) has committed to limit/reduce the emissions of Green House Gases at safe level as per Kyoto Protocol, for which targets have been fixed for every developed country. The UNFCC being Clean Development Mechanism (CDM) which are given by the CDM Executive Board to projects in the developing countries including India for reduction of emission of GHG. The said CDM is used for reduction of emission of toxic gases in the atmosphere from the manufacture unit. The appellant, in order to comply with the statutory requirements of environmental protection norms and India being a signatory to the Kyoto Protocol, appellant participated in the CDM project acitivity as per the Kyoto Protocol.

The Appellant emphasizes that subject services have been thus utilized to reduce emission of toxic gases which vitiates atmosphere.

**4.** Ld. DR for the Revenue reiterates the submissions given in the impugned order.

**5.** After having carefully considered the facts of the case and submissions of both the sides it appears that the matter is covered by the Tribunal's decision in the case of *Heidelberg Cement India Ltd. V/s Commissioner of C. EX., Bangalore-I* 2017 (47) STR 98 (Tri.-Bang). The Tribunal in the said case has observed as follows :

> **6.**The only issue involved in the present case is whether the appellants are entitled to service tax credit on 'Consultancy Services' used for 'Clean Development Mechanism (CDM) Service' in relation to 'Carbon Credit Management Service'. It is necessary to analysis the definition of Rule 2(l) of the Cenvat Credit Rules, 2004, which is reproduced herein below :
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> ….. …. …. RULE 2.
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> "input service" means any service, - (l)
>
> used by a provider of taxable service for providing an output (i) service, or
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> used by the manufacturer, whether directly or indirectly, in (ii) or in relation to the manufacture of final products and clearance of final products from the place of removal,
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> 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 up to 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 up to the place of removal;

The definition of the terms 'input service' as defined above has two parts -

(i) the *'MEANS'* part which is the main part of the definition and

(ii) the *'INCLUSIVE'* part which is illustrative and certainly not exhaustive.

The 'means' part of the definition covers any service used directly or indirectly, in or in relation to manufacture of the final products and clearance of the final products from the place of removal. It covers within its ambit all services received by the manufacturer of final products, as long as they are related to the manufacturing business of the assessee. A service would qualify as 'input service' even if not covered by the 'means' portion, if it satisfies the 'includes' portion of the definition. In other words, in order to qualify as an input service, a service has to fall either within the 'means' part or 'includes' part of the said definition. The Hon'ble High Court of Bombay in the case of *Commissioner of C.E., Nagpur* v. *Ultratech Cement Ltd.* [2010 (260) E.L.T. 369 (Bom.)] has observed in Para 27 as under :

The definition of "input service" as per Rule 2(l) of 2004 "27. Rules (insofar as it relates to the manufacture of final product is concerned), consists of three categories of services. The first category, covers services which are directly or indirectly used in or in relation to the manufacture of final products. The second category, covers the services which are used for clearance of the final products up to the place of removal. The third category, includes services namely;

(a) Services used in relation to setting up, modernization, renovation or repairs of a factory,

(b) Services used in an office relating to such factory,

(c) Services like advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs,

(d) Activities relating to business such as, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal.

Thus, the definition of 'input service' not only covers services, which fall in the substantial part, but also covers services, which are covered under the inclusive part of the definition."

Similarly, the Hon'ble High Court of Karnataka in the case of *Commissioner of Central Excise, Bangalore-III* v. *Stanzen Toyotetsu India Pvt. Ltd.* [2011 (23) S.T.R. 444 (Kar.)] has observed in Para 10 as under :

As is clear from the definition any service used by the "10. manufacturer whether directly or indirectly in or in relation to the manufacture of final products constitutes input service. Various services are set out in the definition expressly, as constituting input service. It also includes transportation of inputs or capital goods and outward transportation up to the place of removal. Therefore the test is whether the service utilized by the assessee is for the manufacture of final product. Such service may be utilized directly or indirectly. Such service may be in the nature of transportation of inputs or capital goods, up to the factory premises or if the final product is removed from the factory premises for outward transportation up to the place of removal. It is an inclusive definition. The services mentioned in the Section are only illustrative and it is not exhaustive. Therefore when a particular service not mentioned in the definition clause is utilised by the assessee/manufacturer and service tax paid on such service is claimed as Cenvat credit, the question is what are the ingredients that are to be satisfied for availing such credit. If the credit is availed by the manufacturer, then the said service should have been utilized by the manufacturer directly or indirectly in or in relation to the manufacture of final products or used in relation to activities relating to business. If any one of these two tests is satisfied, then such a service falls within the definition of "input service" and the manufacturer is eligible to avail Cenvat credit of the service tax paid on such service."

Further the Tribunal's Delhi Bench in the case of *Shree Bhawani Paper Mills Ltd.* v. *Commissioner of C. Ex., Lucknow* [2012 (28) S.T.R. 409 (Tri.-Del.)] has observed as under :

After hearing both sides duly represented by Shri Hemant "5. Bajaj, learned Advocate and Ms. Renu Jagdev, SDR it is seen that the services of M/s. Ernst & Young Pvt. Ltd., were availed in relation to the power plant used for manufacture of paper. Admittedly, such paper is liable to duty of Excise. As a result of modernisation of power plant, the appellant earned Certified Emission Reduction Sale (hereinafter referred to CERS). Such earning of CERS is on account of appellant having entered into an agreement with M/s. EDF Trading Ltd., company organised under the laws of England. This seems to be scheme for encouraging manufacturer to use fossil fuel to develop their plant in such a manner so as to reduce the carbon emission which vitiates atmosphere. The revenue's contention that such earning of carbon credit from the United Nations company was not liable to Service Tax and inasmuch as the services of E & Y were availed for earning of such credits, the appellant is not entitled to avail the credit.

I find no merits in the above contention of the Revenue. The 6. services availed from M/s. Ernst & Young Pvt. Ltd., were admittedly for modernisation of the power plant of the appellant. Such power plant is used for manufacture of paper which is liable to Central Excise. In addition, if the appellant, by way of entering into an agreement with the England based company gets profit by way of earning carbon credit, it cannot be held that said services of M/s. Ernst & Young Pvt. Ltd., were for the purpose of earning the credit. I fully agree with the learned Advocate that the above contention of the Revenue that the amount earned as a result of consultancy must be either subject to Excise duty or should be taxable under the Service Tax is nothing but a fallacy. The amount earned as a result of such service availed by the party is the income of the appellant and is not required to be leviable to Service Tax. As long as the services of consultancy engineering by the appellant are in relation to the development of the power plant, which in turn is used for manufacture of paper, such services get covered under the cover of definition of input services. In fact I note that show cause notice itself admits the factum that the consultancy service provided by M/s. Ernst & Young Pvt. Ltd., to the appellants was to facilitate them in installing projects of high technical equipments to the power plant in which fossil fuel like rich husk are used which reduces carbon emission. They again submitted that installing projects of high technical equipment is nothing but modernisation of a factory and as per Cenvat Credit Rules, 2004, services used in relation to modernisation are eligible for Cenvat credit.

Admittedly, the main activity of the appellant is to 7. manufacture paper for which electricity is used from captive power plant. The services were used for modernisation of plant. As a result, the appellant might have made CERS income, which is in no way connected with the availment of Cenvat credit. As the paper being manufactured by them is leviable to Excise duty, I find no reason to deny the benefit of Cenvat credit availed on the said services. Accordingly, I set aside the impugned order and allow the appeal with consequential relief to the appellants."

**7.** After considering the submissions of both the parties and also on going through the judgments cited supra, I am of the view that the service tax paid for providing 'Consultancy Services' in relation to 'greenhouse gas emission reduction' and 'carbon credit management service' as per guidelines under the Koyoto Protocol falls under the definition of 'input service' and the appellants are entitled to Cenvat credit and the impugned order denying the Cenvat credit on the said services on account of lack of nexus is wrong and not sustainable in law. Therefore, I set aside the impugned order and allow the appeal with consequential relief, if any, to the appellant.

**5.1.** By following Tribunal's decision (supra), the impugned order is set aside and appeal allowed with consequential relief, if any, to the appellant.

[Order dictated and pronounced in the open court]

**(Ashok K. Arya)**

**Member (Technical)**

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