CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Date of hearing/decision : 26.07.2017

Excise Appeal No. 50886 of 2014
(Arising out of order-in-original No. JAI-EXCUS-002-COM-085-13-14 dated 26.11.2013 passed by the Commissioner, Central Excise, Jaipur)

M/s Hindustan Zinc Ltd. Appellant
(Rep. by Ms. Sukriti Das, Advocate)

Vs.

CCE, Jaipur Respondent
(Rep. by Sh. R. K. Mishra, AR)

CORAM **:**

HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 55605 /2017

PER Justice (Dr.) Satish Chandra:

The present appeal has been filed against the order-in-original No. JAI-EXCUS-002-COM-085-13-14 dated 26.11.2013 passed by the Commissioner, Central Excise, Jaipur. The period of dispute is November, 2008 to April, 2010.

2. Brief facts of the case are that during the period under consideration, the appellant were engaged in the manufacture of zinc and lead concentrates falling under Chapter 26 of the first Schedule to the Central Excise Tariff Act, 1985. The appellant have ore concentration facility at Dariba where they are mining ores and concentrating the same, before sending them to their captive smelters for use in mines. The ore concentrate is cleared on payment of applicable duty. For this

purpose, the appellant was drawing water from various dams in the vicinity of factory and pipelines have been laid from the tanks to the mines. Cenvat credit of duty paid on such pipes was availed by the appellant. But, the same was denied by the department. Being aggrieved, the present appeal has been filed by the appellant.

3. With this background, we heard Ms. Sukriti Das, ld. Advocate for the appellant and Shri R. K. Mishra, ld. AR for the Revenue.

5. After hearing both parties and on perusal of record, it appears that the identical issue has come up before the Tribunal in appellant's own case vide final order No. 54524 – 54525/ 2017 dated 04.07.2017 where it was observed that:

> *"4. A perusal of Rule 2(a) of Cenvat Credit Rules, 2004 reveals the definition of capital goods as follows:*
>
> *(a) "capital goods" means :-*
>
> *(A) The following goods, namely:*
>
> *(i) All goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;*
> *(ii) Pollution control equipment;*
> *(iii) Components, spares and accessories of the goods specified at (i) and (ii);*
> *(iv) Moulds and dies, jigs and fixtures;*
> *(v) Refractories and refractory materials;*
> *(vi)* ***tubes and pipes and fittings thereof****, and*
> *(vii) Storage tank, and*
> *Used*
> *(1) In the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or*
> *(2) For providing output service;*
>
> *(B)............."*
>
> *[Emphasis supplied]*
>
> *5. The above definition clearly includes the pipes and fittings thereof used in the factory of the manufacturer. The mines were for mining of ore and are captive mines attached to the appellants factory. The pipelines*

from the dams, are for taking water to be used in mines. It is fairly well settled that captive mines attached to the factory can be considered as a part of the factory premises. Since the pipe line is necessary for manufacturing process, such pipes will have to be considered as having been used in the factory premises. In the case law cited by the appellant, we find that similar benefits stand allowed for pipes used outside the factory for treating water from a well situated at a distance from the factory. Hence, we are of the view that Cenvat credit will be allowable.

6. Another objection raised by the Department is that invoices under which the pipes have been procured is not issued in favour of the appellants but in favour of the contractor who has executed the work of pipeline laying. We have perused some of the invoices. We note that such invoices clearly indicate the consignee as the appellant. As such, there is no reason to deny such credit, which are consequently allowed.

7. In view of the above discussion, the appeals are allowed."

6. By following our earlier decision (supra), we find no reason to sustain the impugned order and the same is set aside.

7. In the result, appeal filed by the appellant is allowed.

(Dictated & pronounced in the open court)

(AHSOK K. ARYA) **(JUSTICE Dr. SATISH CHANDRA)**
MEMBER (TECHNICAL) **PRESIDENT**

Pant