IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 54504 of 2015
Excise Appeal No. 50013 of 2016

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-0030-31-15-16 dated 28.9.2015 passed by the Commissioner of Central Excise, Udaipur]

M/s. Hindustan Zinc Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Udaipur

Appearance:

Shri Hemant Bajaj, Advocate for the Appellants
Shri M R Sharma, AR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 25.10.2017

FINAL ORDER NO. 57515-57516/2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against the order in Original No. UDZ-EXCUS-000-COM-0030-31-15-16 dated 28.9.2015. The period of dispute is from October, 2013 to March, 2014.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Zinc & lead concentrates falling under chapter 26 of the first schedule to the Central Excise Tariff Act, 1985 and is also availing cenvat credit on various inputs, capital goods and input services in terms of Cenvat Credit Rules, 2004.

3. During the period under consideration, the appellant has claimed the cenvat credit on the following items which were disallowed by the department after issuing the show cause notice.

1. Development of underground mines
2. Consultancy services
3. Dozor Hiring services

4. During the course of arguments, both parties agreed that this issue has came up before the Tribunal in assessee's own case and vide Final Order No. 56292/2017 dated 14.8.2017, the matter was remanded to the adjudicating authority for fresh decision after examining the nexus between the services and the final product of the appellant. We are informed that the said direction is still pending before the adjudicating authority. When it is so, we modify impugned order in this regard and direct the adjudicating authority to decide all the matters on same issue together but by providing a reasonable opportunity to the appellant. Fresh evidence, if need be, may be admitted, as per law.

5. Regarding the services of (i) drilling service, (ii) portal work at Kayad mines and (iii) quality inspection service, the claim was disallowed by the department after issuing the show cause notice. During the course of arguments, it was revealed that the issue pertaining to drilling services has already came up before the Tribunal in assessee's own case and vide Final Order No. 57168/2017 dated 13.10.2017 it was observed that -

> *5. We have heard both sides and perused the material available on record. It appears that the facts are that Service Tax has been paid on the „Diamond Core Drilling Services" in the captive mines area of the assessee-Appellants. The said drilling operations are necessary for survey and exploration of their mining area to find the prospective potential for mining zinc ore. Accordingly, we note that this is essential for the core operation of manufacture of Zinc Ore by the assessee-Appellants and the same is carried out in their own mines only. Accordingly, we find no justification to deny the credit availed by the assessee-Appellants in their "Diamond Core Drilling Services", which is part of their operation. Thus, we set aside the impugned order and allow the appeal.*

6. By following our earlier order (supra), we set aside the impugned order in this regard and allow the cenvat credit on drilling services. However, regarding portal work at kayad mines and quality inspection services, matter is remanded to the adjudicating authority, to examine the nexus between the services and the final product of the appellant.

7. Regarding the maintenance work for pipeline from dam, and security services, the appellant has claimed the cenvat credit of Rs.1,56,408/- which was denied by the appellant after issuing the show cause notice dated 15.10.2014, but the fact remains that when another show cause notice dated 22.11.14, the same cenvat credit on the same services was dropped. By keeping in mind Article 14 of the Constitution, we set aside the demand raised by the show cause notice dated 15.10.14 pertaining to Rs.1,56,408/- and allow the cenvat credit.

8. In the result, both the appeals filed by the appellant are partially allowed as stated above.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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