

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi – 110 066.**

PRINCIPAL BENCH – COURT NO. II

Excise Appeal No. 52539 of 2018-DB

(Arising out of Order-in-Appeal No. 82(AG)/CE/JDR/2018 dated 7.2.2018 passed by Commissioner, Central Excise & Central Goods & Service Tax, Udaipur (Raj.)

Commissioner, Central Excise & Appellant
Central Goods & Service Tax, Udaipur

Vs.

M/s Hindustan Zinc Ltd. Respondent

Appearance :

Shri R.K. Mishra, DR - for the appellant

Shri H. Bajaj, Advocate - for the respondent

**CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)**

Final Order No. 50547/2019

**Date of Hearing: 1/1/2019
Date of Decision: 1/1/2019**

Per Bijay Kumar :

Being aggrieved by the impugned Order-in-Appeal No. 82(AG)/CE/JDR/2018, dated, 7.2.2018, passed by Commissioner Audit, CEGST, Jodhpur, the Revenue is in appeal before this Tribunal.

2. The issue involved in this case is regarding admissibility of Cenvat credit of service tax paid on excavation services by the respondent in respect of tailing dam constructed by the respondent and used for disposal of industrial waste and polluted water in

compliance with the Environment Laws. Period of demand is from Feb. 2012 to March, 2015 for an amount of Rs. 86,01,412/- with a penalty of Rs. 43,00,706/- under the provisions of Cenvat Credit Rules, 2004 (for short Credit Rules).

3. Brief facts of the case are that the respondent is engaged in the manufacture of zinc and lead concentrates and is also availing Cenvat credit on the various inputs, capital goods and input services in terms of Credit Rules. The respondent is mining ore and concentrating the said ore for smelting metal out of the same. During the beneficiation process, industrial waste and polluted water emerges, which is hazardous. As per the Environmental Laws, such wastes are not allowed to be discharged on open land and have to be disposed of as per the manner prescribed under the Environmental Laws. Accordingly, such wastage is dumped into tailing dam constructed few kilometers away from the mining sites. For this activity, the respondent has availed Cenvat credit under the provisions of 2(1) of the Credit Rules for the input/input services and capital goods. During the audit this Cenvat credit was disputed on the ground that the same has been availed by the respondent without having nexus with the manufacturing process and clearance of final products by them and further these services were used for construction of building/civil structure and hence not entitled for the Cenvat Credit under Credit Rules. Accordingly, the instant Show Cause Notice was issued and the case got adjudicated confirming the demand as per the order of the lower adjudicating authority. Being aggrieved, the respondent filed appeal before the Commissioner (Appeals) (Commissioner, Audit, in this case) who

vide the impugned order set aside the order passed by lower authority on the following grounds :

"7. I find that the 'site formation' service utilized by the appellant for excavation services utilised by the appellant for excavation services utilised for deepening/excavation of tailing dam, which is a storage place for industrial waste. This is a requirement of Pollution Control department. I further find that the activity of effluent treatment or pollution control is a part of the manufacturing activity itself and not simply an ancillary activity. The Hon'ble Supreme Court has very clearly explained that *"the apparatus used for such treatment of effluents in a plant manufacturing a particular end product is part and parcel of the manufacturing process of that end product."* I am in total agreement with the appellant's submission that without complying with the environmental laws, it is not possible to carry on the manufacturing activity. It is essential to arrange a proper waste disposal arrangement to run the manufacturing activity comfortably and qualitatively. Therefore, it is neither legal nor feasible/practical to continue manufacturing activity without complying with the environmental laws. All such hazardous effluents need to be properly disposed off to safeguard the health and welfare of the workers of such an industry and the public at large within the vicinity of the factory.

8. I observe that it is not only essential but also a social responsibility for every manufacturer and industry to ensure that industrial waste is disposed in a proper and safe manner without causing harm to the environment. I find that to ensure that the dam at which such waste and residue is dumped, proper maintenance and timely upkeep of the dam is essential. I also observe that on almost similar ground, services utilised for repair/maintenance and patrolling/security/watch of tailing dam has been allowed by different adjudicating authorities. Thus, the department is also of the view that 'input services' used for disposal of industrial waste is in relation to the manufacture of their end product. Therefore, I hold that credit availed by the assessee is admissible to them".

4. Learned AR, on behalf of the Revenue, contests the impugned order on the ground that the Cenvat credit in this case is not available as the same is not being used outside the factory of production among the other grounds.

5. We have considered the rival submissions and perused the case record. This issue is decided in their own case, vide Final Order No. 52328/2018 dated 19.6.2018, wherein, such credit has been held to be admissible. The relevant portion of the order is reproduced herein as under :

"9. On an identical issue in respondent's own case, this Tribunal in *Excise Appeal Nos. 50958 & 50636 of 2014, titled as M/s. Hindustan Zinc Limited vs. CCE, Jaipur-II, vide Final Order No. A/53619-53620/2017-EX[DB], dated 29/05/2017* held that the Cenvat credit in dispute is allowable to the respondent and recorded as under:-

".....

*8. Having considered the rival contentions, we find that the appellant assessee cannot operate their business or manufacturing facility of dutiable/ excisable goods without compliance with the directions given by the State Pollution Control Board to minimise the pollution under the relevant Pollution Control Laws. Compliance with the directions of the State Pollution Control Board if not done by the appellant industry, may result in prosecution of the appellant company and its key personnel under the various Pollution Control Laws for violation. Accordingly, we hold that the **Cenvat credit received on the services for raising the height of tailing dam** and maintenance service for pipeline work of tailing dam, used for disposal of industrial waste and polluted water in compliance with Environment Laws is in input service within the meaning of Rule 2(I) of Cenvat Credit Rules, 2004 used by the manufacturer indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal. Similarly, the Cenvat credit on services procured for construction of secured land fill and jerofix storage pond, which are used for disposal of industrial waste and polluted water in compliance with Environmental laws is an input service received by the manufacturer indirectly in relation to the manufacture of final products.*

Accordingly, we hold that the Cenvat credit in dispute is allowable to the appellant. Accordingly we allow these appeals and set aside the impugned orders. The appellant shall be entitled to consequential relief, if any."

6. In view of above, we find no infirmity in the impugned order and uphold the same. Accordingly, we dismiss the appeal filed by the department.

(Pronounced in open Court)

(Bijay Kumar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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