IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 76120 of 2014

(Arising out of Order-in-Original No. CCE/BBSR-II/No.09/Commissioner/2014 dated 16.05.2014 passed by the Commissioner, Central Excise & Customs & Service Tax, Bhubaneswar-II Commissionerate, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Steel Authority of India Limited **: Appellant**
Rourkela Steel Plant, Rourkela, District: Sundargarh (Odisha)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-II Commissionerate,
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

AND

Service Tax Appeal No. 76402 of 2014

(Arising out of Order-in-Original No. CCE/BBSR-II/No.09/Commissioner/2014 dated 16.05.2014 passed by the Commissioner, Central Excise & Customs & Service Tax, Bhubaneswar-II Commissionerate, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

Commissioner of Central Excise, Customs and Service Tax **: Appellant**
Rourkela Commissionerate,
C.R. Building, Rajaswa Vihar, Sahid Nagar,
Bhubaneswar – 751 007

VERSUS

M/s. Steel Authority of India Limited **: Respondent**
Rourkela Steel Plant, Rourkela, District: Sundargarh (Odisha)

APPEARANCE:

Shri Deepro Sen, Advocate for the Assessee

Shri K. Chaudhuri, Authorized Representative for the Revenue

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76980-76981 / 2024

DATE OF HEARING / DECISION: 09.09.2024

ORDER: [PER SHRI R. MURALIDHAR]

The assessee were paying service charges in respect of various contracts awarded to service providers. As a matter of precaution, the assessee-appellant were retaining 10% of the total value of the services provided, which was to be released by them subsequently after being satisfied with the services rendered. The assessee were availing CENVAT Credit for the entire 100% of the service value, on which the Service Tax was indicated in the invoices.

2. The Revenue took the view that since they were not paying to the extent of 10% of the invoice value, the assessee-appellant is not eligible to avail CENVAT Credit. Accordingly, a Show Cause Notice dated 23.01.2012 was issued, *inter alia*, to deny CENVAT Credit to the tune of Rs.13,34,13,383/- for the transactions which had taken place during the period from 2008-09 to 2010-11.

3. The ld. adjudicating authority, after getting the facts verified by the Range / Division Officers, vide the impugned order, held that the quantification was not correct and re-quantified the ineligible CENVAT Credit as Rs.89,76,703/-.

3.1. Being aggrieved by the denial of CENVAT Credit to the extent of Rs.89,76,703/-, the assessee-appellant is before us.

3.2. Being aggrieved with the fact that on account of the re-quantification, denial of CENVAT Credit to the extent of Rs.12,44,37,180/- got dropped at the adjudication stage, the Revenue is in appeal before us.

4. Heard both the appeals together.

5. The Ld. Counsel for the assessee-appellant submits that only as a matter of precaution, the assessee were retaining 10% of the invoice value and ultimately, after being satisfied with the service rendered, this balance of 10% was being released to the vendor. He contends that it is not the case of the Revenue that this 10% was being retained by the assessee-appellant.

5.1. He further submits that the issue is no more *res integra*; he cites the case-law of *Hindustan Zinc Ltd. v. Commissioner of Central Excise, Udaipur vide Final Order No. 56669 of 2017 dated 01.09.2017 in Excise Appeal No. 54357 of 2015 (CESTAT, New Delhi) [2017 (9) TMI 1639 – CESTAT, Delhi]* and *Hindustan Zinc Ltd. v. Commissioner of Central Excise, Jaipur-II vide Final Order No. 52976 of 2017 dated 18.04.2017 in Excise Appeal No. 1228 of 2011 [2017 (4) TMI 1323 – CESTAT, New Delhi]*; it is submitted that in both these decisions, the issue was identical and the Tribunal has held that CENVAT Credit cannot be denied on the retained portion of the invoice value. Accordingly, relying upon these case-laws, the Ld. Counsel for the assessee-appellant prays that their appeal may be allowed.

6. The Ld. Authorized Representative of the Revenue submits that the Revenue has filed this appeal only because of the re-quantification undertaken by the ld. adjudicating authority, which does not call for resulting in dropping of a huge portion of the demand on this count alone.

7. Heard both sides and perused the appeal papers and other documents placed before us.

8. We find that the issue is no more *res integra*. The Delhi Bench of the Tribunal in the case of *Hindustan Zinc Ltd. v. Commissioner of Central Excise, Udaipur [2017 (9) TMI 1639 – CESTAT, Delhi]* has held as under: -

> *"5. The facts of the case are not in dispute. We note that the original authority after referring to the above mentioned circular of the Board distinguished the same and disallowed the credit of service tax attributable to consideration not paid by the appellant. We note, in the present case, the appellants retained a portion of the consideration towards service rendered by the service provider in terms of contract towards performance guarantee. We note, the Board's clarification is applicable to the facts of the present case. Identical set of facts came up for decision before the Tribunal in many cases. In appellant's own case the matter has been decided holding that no reversal of credit under Rule 14 can be ordered in such situation. The reference can be made to the following decision: -*
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> > *1. Hindustan Zinc Ltd. vs. CCE, Jaipur-II, Final Order No.A/53738/2016-EX(DB).*
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> > *2. CCE, Jaipur-ll vs. Hindustan Zinc Ltd.- 2014 (34) STR 440 (Tri.:-Del.)*
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> > *3. CCE & ST, Udaipur vs. Hindustan Zinc Ltd. Final Order No. 55702-55703/2016 dated 24.11.2016.*
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> > *4. Hindustan Zinc Ltd. vs. CCE, Jaipur, Final Order No. A/58300/2013 dated 07.11.2013.*
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> > *5. Hindustan Zinc Ltd. vs. CCE, Jaipur-II Final Order No.52976/2017 dated 18.04.2017.*
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> *6. Following the ratio of the settled cases as above, we find the impugned order is not sustainable. Accordingly, the same is set aside. The appeal is allowed."*

8.1. In another identical issue in the case of *Hindustan Zinc Ltd. v. Commissioner of Central Excise, Jaipur-II [2017 (4) TMI 1323 – CESTAT, New Delhi]*, the Tribunal held as under: -

> *"2. The brief facts of the case are that the appellant is engaged in the manufacture of lead and zinc. The appellant has awarded contracts to various prestigious companies for erection, installation, commissioning works etc. in relation to various projects. In all the cases, the agreements provided that a certain percentage of the stipulated payment would be withheld on account of performance guarantee. This payment would be made at the end of the stipulated period after the successful execution of the contract. Thus, from each of the progressive bills raised by the contractors during the execution of the contract, the appellant deducted 5% 10% as retention amount and made the balance payment of 90% to the contractors. However, it is pertinent to note that the service tax reflected on the invoice was fully paid by the contractor to the exchequer. Further, the appellant paid the full amount of service tax to the contractors at the time of retaining the amounts and took the cenvat credit of the entire service tax so paid. The retained amounts were paid at the end of the stipulated period after completion of the project. The department, however, invoked the provisions of Rule 4(7) of the Cenvat Credit Rules, 2004, which reads as under:*
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>> *7. The Cenvat credit in respect of input service shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.*
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> *..........*
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> *4. After hearing both sides and on perusal of record, it appears that the issue has come up before the Tribunal in favour of the assessee's in their own case in Appeal No. E/1364/2010-EX (DB) vide Final Order No. 53738/2006- EX(DB) dated 22.09.2016, wherein the Tribunal has observed that:*
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>> *"We noticed that the very same issue was the subject matter of clarification by the Board*

> *vide circular dated 30.04.2010. In para 5(b), the situation as per the present case was also covered. It was clarified that in case of any amount retained or discounted after the invoices were issued, the credit need not be changed and full credit of service tax paid to the service tax paid to the service provider will be eligible for credit. It is clarified that the invoice would in fact stand amended to that extent in the appellant's own case (supra) the Tribunal referred to the said circular and on a similar set of facts upheld the credit availed by the appellant."*

9. We find that the ratio laid down under these Tribunal decisions are squarely applicable to the facts of the present case. Accordingly, we set aside the impugned order and allow the appeal filed by the assessee-appellant.

9.1. Since we have already held that on merits there is no case for the Revenue, the present appeal filed by the Revenue being agitated by the re-quantification of demand, has become infructuous. Accordingly, we dismiss the appeal filed by the Revenue.

10. The appeals are disposed of thus.

(Dictated and pronounced in the open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd