(2015) 08 CESTAT CK 0005

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 3201, 3202 Of 2010

Hindustan Zinc Ltd. APPELLANT

Vs

CCE-Jaipur RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2(I)

Citation : (2015) 08 CESTAT CK 0005

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Sukriti Das, Ranjana Jha

Final Decision : Allowed

Judgement

1. These appeals are directed against the impugned order dated 4/8/2010 passed by the Commissioner (Appeals) Jaipur, upholding denial of CENVAT

Credit on the taxable services namely, catering service, tent service and design, supply, erection of rerouting.

2. Ms. Sukriti Das, Ld. Advocate appearing for the appellant submits that the factory of the assessee is located at Chanderia which is quite far from

the Chittorgarh City and the assessee has to provide canteen facility to its employees. She further submits that the provision of canteen facility is a

statutory requirement under the Factories Act, 1948, without which there would be violation of provision of the said statue. Thus, according to the ld.

Advocate, the provision of said facility to the employees is definitely is in connection with the activities relating to business of the assessee and the said

service should classify as the input service in terms of the definition contained in Rule 2(I) of the CENVAT Credit Rules. With regard to the other

services, i.e., tent service, design service, supply, erection etc, the submission of the ld. Advocate are that the said services were used in the plant for

the purpose of protecting and safe storage of their raw material such as Calcine/ Pb-Ag Cakes/HDPE dust etc. during the monsoon season. She

further submits that the design, supply, erection for re routing of Ghosunda pipe line at Zinc Colony have been used for the purpose of expansion

project. According to the ld. Advocate, the said services will also be eligible for CENVAT Credit. To support her above stand, ld. Advocate has relied

on the following decisions/judgments:

1. Hi-tech Power & Steel Ltd. Vs. CCE reported in 2014 (34) STR 276 (Tri-Del)

2. CCE Vs. Mark Exhaust Systems Ltd. reported in 2015 (39) STR 351 (Tri-Del)

3. Deepak Fertilizers & Petrochemicals Corpn. Ltd. reported in 2013 (32) STR 532 (Bom.)

3. Mrs. Ranjana Jha, ld. JCDR appearing for the respondent submits that the disputed input services have no nexus with the manufacture of final

product and thus, such services cannot be considered as input service for the purpose of CENVAT Credit. She further submits that catering service is

more in the nature of welfare service, than the service in relation to business of the appellant. With regard to the limitation aspect, the submissions of

ld. JCDR is that since the Department during the course of audit had detected wrong availment of cenvat credit, issuance of SCN within one year

from the date of such knowledge is not barred by limitation to time.

4. I have heard both sides and perused the records.

5. Catering facility provided by the employer to its employees is a statutory requirement under the Factories Act, 1948. In order to accomplish the

purpose of said statue, the appellant has provided catering facility to its employees and the expenses incurred in this regard was also considered in the

costing of final product, on which Central Excise duty liability has been discharged by the appellant. However, I find from the available records that

the appellant had recovered the catering charges at subsidized rates from its employees, which according to my opinion, will not be eligible for cenvat

credit. With regard to the other services like tent service, design, supply, erection for re routing pipe line etc., the nature and purpose of said services

as explained by the ld. Advocate will be considered as input service, since those services have nexus with the manufacture of final product by the appellant. In this context, I find support from the decision cited by the ld. Advocate, wherein cenvat credit has been allowed.

6. In view of the above, the impugned order is set aside and the appeal is allowed to the extent of CENVAT Credit on tent services, business, supply

and erection for re-routing of Ghosunda pipe line at Zinc Colony. With regard to the Catering service, after setting aside the impugned order, the

matter is remanded to the Original Authority for ascertaining the fact as to the actual cost recovered by the appellant from its employees and the

service tax attributable to such service will not be eligible for CENVAT Credit.

7. The appeal is disposed of in above terms.