(2015) 12 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52697, 52698 Of 2015 & Excise Appeal No. 52699, 52700 Of 2015

M/s Hindustan Zinc Ltd. APPELLANT

Vs

CCE And ST, Jaipur-I RESPONDENT

Date of Decision : 21-12-2015

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 4(7)

Citation : (2015) 12 CESTAT CK 0011

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

Bench : Single Bench

Advocate : Rahul Tangri, Vaibhav Bhatnagar

Final Decision : Allowed

Judgement

1. These appeal are directed against the impugned order dated 19.12.2014 passed by the Commissioner of Central Excise (Appeals), Jaipur-II,

upholding the cenvat demand on the appellant.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Zinc, Lead and Sulphuric Acid. During the disputed period, the

appellant had availed and utilized cenvat credit on the input service before making payment of value of taxable service and the service tax thereon to

the service provider. The cenvat demand has been confirmed on the ground that the appellant has contravened the provisions of Rule 4(7) of the

Cenvat Credit Rules, 2004.

3. Shri Rahul Tangri, the Ld. Advocate appearing for the appellant submits that out of the value of taxable service claimed by the service provider in

its invoices, the appellant had retained 10% of the amount and the same was paid to the service provider upon completion of the job. It is his submission that since the entire service tax has been paid by the appellant to the service provider, the embargo created in Rule 4(7) of the Cenvat

Credit Rule 2004 is not applicable for reversal of cenvat credit. To substantiate his above stand, the Ld. Advocate has referred to the Circular No

122/3/2010-S.T. dated 30.04.2010 issued by the CBEC. He also relies on the final order No. 56583/2013 dated 15.05.2013 passed by this Tribunal in

the case of the appellant itself.

4. On the other hand, Sh. Vaibhav Bhatnagar, the Ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

5. I find that in context with the present issue, the CBEC vide Circular dated 30.04.2010 (supra) has clarified that if the service tax as per the bill has

been paid by the recipient to the service provider, for non-payment of the service charges in totality, cenvat credit cannot be denied. I also find that

placing reliance on the above circular of the CBEC, this Tribunal in the case of the appellant itself vide final order dated 15.05.2013 has dismissed the

appeal filed by the Revenue.

6. In view of above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeals in favour of the

appellants.

(Dictated and pronounced in open court)