(2016) 07 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52892 Of 2015

M/s.Hindustan Zinc Ltd. APPELLANT

Vs

C.C.E And S.T., Udaipur RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 26, Section 3
Cenvat Credit Rules, 2004 — Rule 3, 3(7)(b), 9

Citation : (2016) 07 CESTAT CK 0002

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

Bench : Single Bench

Advocate : Sukriti Das, Vaibhav Bhatnagar

Final Decision : Allowed

Judgement

1. This appeal is directed against the impugned order dated 15.03.2015 passed by the Commissioner (Appeals) Central Excise and Customs, Jaipur.

2. Brief facts of the case are that the appellants are engaged in the manufacture of Zinc, Lead ingots falling under Chapter 26 of the Central Excise

Tariff Act, 1985. During the disputed period, the appellant imported certain inputs and capital goods for use in the factory for manufacture of the said

excisable goods. In the Bills of Entries filed before the Customs Authorities, the appellant had shown all duties foregone under Notification

Nos.53/2003-Cus., 89/05-Cus. & 19/06-Cus. In respect of the CVD amount, the appellant had shown the same as foregone under Notification

No.89/05-Cus. under the DEPB License. The amount leviable as Cess was shown as â??0â??. The appellant had claimed Cenvat Credit of the

entire amount of CVD. Taking of such credit was disputed by the Department on the ground that the appellant have taken excess Cenvat credit under the head CVD Account. According to the Department, the appellant should have bifurcated the same and should have availed the credit in respect of

actual CVD amount only. The show cause notice issued in this regard was adjudicated vide order dated 13.02.2013 wherein Cenvat Credit of

Rs.72,754/- was disallowed alongwith interest and equal amount of penalty was imposed on the appellant. On appeal, the ld. Commissioner (Appeals)

has upheld the adjudged demand.

3. The ld. Advocate appearing for the appellant submitted that the assessed Bills of Entry have not bifurcated the amount of Cess and duty. Thus, the

total amount shown as CVD has been correctly availed as Cenvat Credit. She further submitted that under Rule 9 of the Cenvat Credit Rules, 2004,

Bill of Entry is a prescribed document for availment of credit. Further, she also submitted that taking of credit is in conformity with Rule 3 ibid. With

regard to applicability of Rule 3(7)(b) ibid, the ld. Advocate submitted that since the amount in question was paid under the head â??CVDâ??, taking

of such amount as per the Bills of Entry is in conformity with such statutory provisions.

4. On the other hand, the ld. D.R. appearing for the respondent reiterated the finding recorded in the impugned order.

5. Heard both sides and perused the records.

6. The fact is not under dispute that while assessing the Bills of Entry, the amount towards CVD and Cess have not been bifurcated by the Customs

Authorities. Since, the entire disputed amount was reflected under the â??CVDâ?? head in the Bills of Entry, taking of Cenvat Credit of such amount

is in conformity with Rule 3 read with Rule 9 of the Cenvat Credit Rules. Further, I also find that the Notification No. 89/2005- Cus. dated 04.10.2005

has specifically permitted an importer to avail Cenvat Credit of additional duty leviable under Section 3 of the Customs Tariff Act against the amount

debited in the Duty Entitlement Passbook Script. Since, no provisions of the Cenvat Statute have been contravened in this case, I am of the view that

taking of disputed Cenvat Credit by the appellant is proper and justified.

7. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Pronounced in the Open Court]

