CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 16.11. 2017
Date of decision: 20.12.2017

Excise Appeal No. 51213 of 2017
(Arising out of order-in-appeal No. 09(AK)/CE/JPR/2017 dated 31.01.2017 passed by the Commissioner (Appeals) Central Excise, Jaipur).

M/s Hindustan Zinc Limited Appellant

Vs.

CCE, Udaipur Respondent

Appearance:

Sh. Hemant Bajaj, Advocate for the appellant
Sh. M. R. Sharma, AR for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 58464/2017

Per: **V. Padmanabhan**:

The appeal is filed against the order-in-appeal No. 09(AK)/CE/JPR/2017 dated 31.01.2017 passed by the Commissioner (Appeals) Central Excise, Jaipur. The period of dispute is March to September, 2012.

2. The appellant is engaged in manufacture of zinc & lead concentrates falling under Chapter 26 of the First Schedule to the Central Excise Tariff Act, 1985. Non-ferrous metal ores are mined and crushed in appellant's captive mines, for manufacturing zinc / lead concentrates. The appellant uses mining machinery/ material handling equipment in relation to excavation and

transportation of ores, located within the same captive mining area. For manufacture of their final products i.e. zinc and lead concentrates. To maintain continuity in its manufacturing operations, the appellant purchased tyres for use in the material handling equipments. The duty paid on tyres used in material handling equipment was availed as cenvat credit. The present dispute relates to availment of cenvat credit on tyres used in RBO (material handling equipment) for mining operations during the period in dispute.

3. The department was of the view that the tyres for material handling equipment falling under Central Excise Tariff 4011 99 00 are outside the ambit of the definition of capital goods under Rule 2(a) of the Cenvat Credit Rules. The lower authorities accordingly disallowed the cenvat credit amounting to Rs.45,78,325/- alongwith order for payment of interest and penalties.

4. With the above background, we heard Sh. Hemant Bajaj, ld. Advocate for the appellant as well as Sh. M. R. Sharma, ld. AR for the Revenue.

5. Shri Hemand Bajaj, ld. Advocate for the appellant submitted that cenvat credit on dumpers have been allowed under Cenvat Credit Rules, 2004 consistently by the Tribunal. Since the vehicles i.e. 'Normet RBO', whose tyres are the subject matter of dispute, are also of the same nature, as dumpers he submitted that cenvat credit should be allowed. He, further relied on the following case laws:

1. Aditya Cement Ltd. vs. CCE, Jaipur-II -2017 (346) ELT 300 (Tri.Del.)

2. Northern Coalfields Ltd. vs. CCE,Bhopal-2017-TIOL02766-CESTAT-DEL

3. Northern Coalfields Ltd. vs. CCE,Bhopal-2017(5)GSTL-2017 (Tri.Del.)

6. Ld. AR for the Revenue justified the impugned order. He submitted that motor vehicles falling under Chapter 87 are not allowable as capital goods and as such parts of such capital goods will not fall under the definition of capital goods and will not be entitled to the cenvat credit.

7. After hearing both sides and on perusal of record, we find that the dispute is with reference to the cenvat credit availed on tyres of the vehicle described as 'Normet RBO'. The claim of the appellant is that such vehicles are used in the mines attached with the factory. It has also been argued by the appellant that the tyres are used in the mining machinery and are eligible for cenvat credit as inputs if not capital goods.

The definition of inputs in Rule 2(k) of the Cenvat Credit Rules covers all goods used in the factory by the manufacturer of the final product, but excludes the capital goods and motor vehicles, among other things. The tyres are parts of the transport vehicle and cannot be considered as inputs.

8. The main claim of the appellant is that the tyres are to be considered as spares of motor vehicles and further that dumpers and dippers falling under Chapter 87 has been allowed as inputs goods. They have also relied on some case laws in which cenvat credit has been allowed for dumpers /dippers and their tyres as capital goods.

9. We have perused these case laws. The cenvat credit for such dumpers / dippers were allowed since these are used in the mining activity for movement

of ore and other things in the captive mines. Upon perusal of the technical data sheet of the vehicle 'Normet RBO' we are lead to the conclusion that these vehicles are not meant to be used for movement of materials in the mines. Consequently, we are of the view that such goods cannot be covered under capital goods since they are in the nature of motor vehicle other than dumper and dipper. Consequently, tyres of such vehicle can also not be allowed for availing cenvat credit.

10. In view of the above discussion, we find no reason to interfere with the findings in the impugned order which is sustained and the appeal is dismissed.

(Pronounced on 20.12.2017).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Pant