

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH COURT NO.II**

**Excise Appeal No. 51720/2021**

[Arising out of Order-in-Appeal No. 162/(CRM)CE/JDR/2021 dated 23.07.2021 passed by the Commissioner ( Appeals) Central Excise & Central Goods and Service Tax, Jodhpur.]

**HINDUSTAN ZINC LTD.**

Rampura Agucha Mines,  
Gulabpura, Distt Bhilwara (Raj).

**APPELLANT**

Vs.

**COMMISSIONER (APPEALS), CENTRAL  
EXCISE & CENTRAL GOODS AND SERVICE  
TAX, JODHPUR (RAJ)**

**RESPONDENT**

**APPEARANCE:**

Shri Hemant Bajaj, Advocate for the Appellant  
Shri Ishwar Charan, Authorised Representative for the Department

**CORAM:**

**HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)**

**DATE OF HEARING: March 30, 2022**

**DATE OF DECISION: 25-04-2022**

**FINAL ORDER No. 50367 /2022**

**PER RACHNA GUPTA**

The appellants are engaged in manufacture of zinc concentrate, lead concentrate etc and are also engaged in providing /receiving goods transport agency service, legal consultancy service, manpower supply service, rent-a-cab service etc. During the course of Audit of records of the appellant Department observed that the appellant has wrongly availed Cenvat Credit on :-

- (1) Proforma invoice / invoice issued in the name of head office situated at Yashad Bhawan, Udaipur.
- (2) Those invoices not being the proper documents in terms of Rule 9 of Cenvat Credit Rules, 2004;
- (3) On the invoice of Rampal Sahu for the service of providing food facility to the Police Guards ; the said service not being eligible input service under Rule (ii) of Cenvat Credit Rules, 2002;
- (4) Availed Cenvat Credit in excess of tax paid on invoice

2. Based on the said observations that the Cenvat Credit amounting to Rs. 2,64,442/- was proposed to be recovered from the appellant along with the interest and proportionate penalty vide Show Cause notice No. 592 dated 14.11.2019. The said proposal was confirmed initially vide Order-in-Original bearing No. 47/2021 dated 2.12.2020. The appeal thereof has been rejected vide Order-in-Appeal No. 162/2021 dated 23.7.2021 except that the amount of penalty was reduced to 25% of the demand in terms of second proviso to section 78 of the Finance Act, 1994.

3. Being aggrieved of the said order that the present appeal has been filed.

4. I have heard Shri Hemant Bajaj, learned Counsel appearing for the Appellant and Shri Ishwar Charan, learned Authorised Representative appearing for the Department

5. It is submitted on behalf of the appellant that the Cenvat Credit has been denied on mere technical /procedural aspects which is not permissible under law. There is no denial of duty /tax being paid by the appellant. The credit thereof cannot be denied alleging that the credit has been claimed based upon proforma invoice. Learned Counsel has submitted that the invoices had all the details as are required under Rule 9 of Cenvat

Credit Rules. Hence the Adjudicating Authority have wrongly denied the credit. Learned Counsel has relied upon following decisions:

- 1. CCE, Vadodara II vs Steelco Gujarat Ltd.  
[2010 (255) ELT 518 (Guj)];**
- 2. CCE, Chandigarh vs Aarti Steels Ltd.  
[2017 (347) ELT 415 (P&H)];**
- 3. CCE, Ludhiana v Ralson India Ltd.  
[2006 (202) ELT 759 (P&H)]**

6. The credit cannot be denied for procedural irregularities that the invoices have been issued in the name of head office. Proviso to Rule 9 (2) of Credit Rules has been impressed upon. Learned Counsel has laid emphasis on these decisions

- 1. Jayco Electricals v CCE & ST, Meerut I  
[2017 (352) EDLT 271 (Tr-All)];**
- 2. CC & CE, Vapi v DNH Spinners  
[2009 (244) ELT 65 (Tri-Ahmd)];**
- 3. Modern Petrofils vs CCE, Vadodara  
[2010 (20) STR 627 (Tri-Ahmd)]**

7. With respect to the credit on the invoices of Shri Rampal Sahu, it is submitted by the appellant that the service availed from Shri Rampal Sahu were that of hiring of crane instead of food facility for Police Guard. However that was inadvertently mentioned as food facility of Police Guard in books of accounts by mistake. Same was brought to the notice of Adjudicating Authority with all requisite documents even the copy of the TDS certificate was also submitted in order to prove the genuineness of the transaction that the payment was made to Shri Rampal Sahu against the impugned invoices which were actually for hiring of crane from Shri Rampal Sahu. The credit of those invoices is

alleged to have been wrongly denied. Reliance has been placed on

1. **CCE, Jaipur-I, Bharti Hexacom Ltd. [2018 (12) GSTL 123 (Raj)];**
2. **CGST & CE, Jaipur vs Genus Power Infrastructure Ltd. [2020 (2) TMI 36- CESTAT, NEW DELHI.];**
3. **Hindustan Zinc Ltd. Vs CGST [2019 (11) TMI 229 CESTAT-NEW DELHI)]**

8. The allegations of availing excess credit have also been vehemently denied with the submissions that actually there were two separate invoices on which credit was taken which are mentioned to have been annexed in the appeal paper book which clearly shows that the invoices and Service Tax was correctly mentioned in each of the entry which is co-relatable to the corresponding invoices. It was only an inadvertent mistake due to which correct details of invoices dated 28.6.2017 relating to entry at S.No. 867 was mentioned in the records of the appellants in place of entry at S.No. 865. It is submitted that those clarifications were submitted before the Authorities Below but still have not been considered. The denial of availment of Cenvat Credit is, therefore, absolutely wrong. Finally, it is submitted that the demand has been raised by invoking the extended period of limitation. Despite that there was no suppression or malafide which could be alleged upon the appellant nor Department could have produced any evidence for the same. The order is alleged to be wrong while invoking the extended period of limitation and also for imposing the penalty upon the appellant. The order under challenge is accordingly prayed to be set aside. And appeal is prayed to be allowed.

9. While rebutting the submissions learned Departmental Representative has laid emphasis upon the findings in paragraph 8 to 11 of the order under challenge where each allegations of

the Show Cause Notice have meticulously been dealt with by the Commissioner (Appeals) who has given the justified reason for rejecting the submissions of the appellants before confirming the demand against the appellant. Impressing upon no infirmity in the said order that the appeal in hand is prayed to be dismissed.

10. After hearing the rival contentions and perusing the record, it is observed and held as follows:

The issue to be adjudicated herein is as to whether the Cenvat Credit availed of Service Tax paid is liable to be denied being availed on the following grounds:-

- (i) Performa invoices
- (ii) Invoices issued in the name of Head Office instead of factory unit;
- (iii) Invoices issued by Rampal Sahu in contravention of Rule 9(1) of the Cenvat Credit Rules, 2004, and
- (iv) Excess availment of Cenvat Credit on the invoice dated 28.6.2017 issued by Sandvik Asia

**Point wise findings are as follows:**

(i) Cenvat Credit on Performa invoices:

The manufacturer or producer of final product or the provider of output service is eligible to take CENVAT Credit of the duty/ tax paid by him in terms of Rule 3 of Cenvat Credit Rules, 2004. Rule 9 thereof requires certain documents and accounts to be the basis for taking the Cenvat Credit. The said Rule of 9 of Cenvat Credit Rules, 2004 clarifies that Cenvat Credit on the documents as mentioned in Sub Rule (1) of Rule (9) shall be available if and only if all the particulars as prescribed under the respective statute are contained in the said documents. The conjoint reading of both the said Rules makes it clear that it is not merely a specific documents in sub rule but any similar

document which may provide all the statutory particulars that the same shall be admissible for permitting availment of Cenvat Credit to the manufacture or service provider. Also the documents required under the Rule 9 are not confined to merely invoices but these may be any documents, like bill or challan as issued in terms of Rule 4 (2) A of the Service Tax Rules etc. This particular Rule specifies the amount of information as is required in a particular documents for availment of Cenvat Credit. Thus any documents as required under Rule 4(2)A can be the documents under Rule 9 of Cenvat Credit Rules for entitlement of availing Cenvat Credit. I draw my support from the decisions of this Tribunal in the case of **CCE Indore vs Grasim Industries** reported as **[2011 (24) STR 691(Tri-Del)]** and **Emmes Metals Pvt Ltd. vs CCE, Appeal No. E/1015/2011** decided on 9.3.2016. There is no denial that entire information as required under Rule 9 was available in the performa invoices on which credit was availed by appellant. Hence, it is held that denial of availment of Cenvat Credit on performa invoices was absolutely wrong.

(ii) Invoices issued in the name of Head Office instead of factory unit

The availment of income tax credit is the creature of statute and the amounts to a substantial benefit which can not be denied based upon the some procedural irregularity. The Hon'ble High Court of Gujarat has allowed the Cenvat Credit even of zerox copy of the invoices holding that the Cenvat Credit cannot be denied on the basis of mere procedural irregularity. Hon'ble High Court of Punjab and Haryana in the case of **Commissioner of Chandigarh vs Stelko Strips Ltd** reported as **[2010 (255) ELT 397 (P&H)]** while relying upon the earlier decision in the case of **CCE Ludhiana vs Ralson India Ltd.** reported as **[2006 (202) ELT 65 (P&H)].** **The Commr. of C. Ex., Delhi-**

**III, Gurgaon vs Myron Electricals Pvt. Ltd.** reported as [2008 (11) STR 85 (P&H)] has held that the credit cannot be denied on the ground that the documents did not contain all the particulars. It was clarified that once difference was disputed and it was found that documents were genuine and not fraudulent then the manufacturer would be entitled to take Cenvat Credit on duty paid invoices. Issuance of invoices in the name of head office is merely procedural compliance. Credit based on such invoices is therefore held available. Findings to this aspect in Order-in-Appeal are liable to be set aside.

(iii) Invoices issued by Rampal Sahu in contravention of Rule 9(1) of the Cenvat Credit Rules, 2004,

The invoices as annexed on the record are perused. Perusal thereof clarifies that the services mentioned in such invoices is that of hiring of cranes none of the invoices is mentioning any service as that of food facility for police guards to have been availed is found on record. The order under challenge is silent about any such specific invoice. Whatever invoices has been mentioned in the order under challenge are mentioning the nature of service of hiring charges of cranes. Another ground for denying the credit based on these invoices is the difference of PAN Card No. of Rampal Sahu. The appellant has mentioned that there had occurred the typographical error on the invoice in question, that too only of one letter i.e. S instead of H (PAN No. of Rampal Sahu BYYPS 8713 H). Copy of PAN is placed on record by the adjudicating authority. Accordingly, non consideration of the said submission despite the documents being on record is held to be highly irrational and unjustified on the part of the adjudicating authority. It is held that the credit on this ground has also wrongly been denied.

(iv) Excess availment of Cenvat Credit on the invoice dated 28.6.2017 issued by Sandvik Asia

Coming to the issue of excess availment of Cenvat Credit on invoices dated 28.6.2017 issued by Sandvik Asia, it is observed that the appellant had demonstrated that there were two different separate invoices on which credit was taken as follows:

<b>Entry No.</b>	<b>Invoice No.</b>	<b>Invoice date</b>	<b>Credit available</b>	<b>Invoice amount</b>	<b>Credit taken</b>
865	9700184	15.6.2017	5,41,071	44,44,512	5,41,071
867	9700255	28.6.2017	4,99,945	41,06,690	4,99,945

On perusal of the above, it is abundantly clear that there are two separate entries vide which credit was availed. Entry No. 865 actually pertains to Invoice No. 9700184 dated 15.6.2017 where the admissible Cenvat Credit is Rs.5,41,071, however, the statement containing the entry details which was submitted to the Audit party had inadvertent clerical mistake regarding the mention of bill number and date for entry at Serial No. 865. Infact credit details of invoice No. 9700255 dated 28.6.2017 relating to Serial No. 867 which was Rs.4,99.945/- was mentioned in place of Serial No. 865 whereas the invoice amount and service tax as correctly mentioned in each of the entry which is co-relatable to the corresponding invoices. This fact was also brought to the notice of both the lower authorities under a self declaration submitting that there was no excess availment of credit by the appellant and the variation was due to clerical mistake in reporting the bill number and date.

11. It is clear that a substantial benefit of credit on the admittedly paid duty / tax has been denied by the Adjudicating Authority below on irrational and illogical ground despite having sufficient and relevant documents reflecting entitlement of the



appellant to the said benefits. It is held that even on this ground the credit has wrongly been denied.

12. Finally coming to the issue of invoking the extended period of limitation, it is observed that vide Show cause notice dated 14.11.2019 the demand for the period March 2016 to June 2017 has been claimed. Apparently and admittedly there is no evasion of duty / tax. From the entire above discussion, it becomes clear that the appellant was entitled for claiming the income tax credit and the credit proposes to have been recovered vide the impugned show cause notice is held to have been rightly availed by the appellant. The appellant had disclosed the total credit of amount availed by them in its ER I returns. There is no denial of the said fact also. No malafide intention or alleged suppression is at all apparent on part of the appellant. It is accordingly held that extended period of limitation in terms of proviso to 73 of Finance Act has wrongly been invoked. I draw my support from the decision of Hon'ble Apex Court in the case of **Uniworth Textiles Ltd. vs CCE, Raipur** reported as **[2013 (288) ELT 161 (SC)]**. Reliance has also been placed on the decision of **CCE, Indore vs Medicaps Ltd.** reported as **[2011 (24) STR 572 (Tri-Del)]** and **CCE, Kolkata VI v ITC Ltd.** reported as **[2013 (291) ELT 377 (Tri-Kolkata)]**. For the said reason, penalty is also held to be wrongly imposed.

13. In view of entire above discussion, the order under challenge is hereby set aside. Consequent thereto the appeal stands allowed.

( Pronounced in the open Court on 25-04-2022 )

**( RACHNA GUPTA )  
MEMBER (JUDICIAL)**

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