

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.**

**COURT NO. IV**

**Excise Appeal No.52263 of 2022 (SM)**

[Arising out of Order-in-Appeal No.30-32(SM)CE/JDR/2022 dated 28.04.2022 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur].

**M/s. Hindustan Zinc Ltd.**

Chandaria Lead Zinc Smelter,  
Village- Putholi,  
District-Chittorgarh (Rajasthan).,

**Appellant**

VERSUS

**Commissioner of Central Goods &  
Service Tax,**

142-B, Sector-II, Hiran magri,  
Udaipur (Rajasthan).

**Respondent**

**With**

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**Respondent**

**APPEARANCE:**

Shri Hemant Bajaj, Advocate for the appellant.  
Ms. Tamanna Alam, Authorised Representative for the respondent.

**CORAM:**

**HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDERS NOS.50430-50432/2023**

**DATE OF HEARING:06.04.2023**  
**DATE OF DECISION:06.04.2023**

**AJAY SHARMA:**

These appeals have been filed from the impugned order-in-appeal dated 28.04.2022. Since the common impugned order has been passed by the first appellate authority, therefore, I am also disposing of these three appeals by this common order.

2. The issue involved herein is whether the appellants are entitled to utilise cenvat credit on account of Education Cess and SHE Cess paid through DEPB scrips towards payment of central excise duty in terms of Rule 3(7)(b) of Cenvat Credit Rules, 2004?

3. I have heard Id. Counsel for the appellant and Id. Authorised Representative appearing on behalf of the respondent/Department and perused the case records including the synopsis and compilation of cases filed by the Id. Counsel. During the course of hearing, along with other submissions, learned Counsel also submits that on the identical issue for the subsequent period i.e. from July, 2011 to December, 2011 in Appellant's own case, the issue has been decided by this Tribunal in favour of the appellant vide Final Order No.56523 of 2016 dated 15.07.2016 in Excise

Appeal No.E/52892 of 2015 (SM) by holding that credit of CVD paid through debit in DEPB Scheme is admissible as per Notification No.89/2005-Cus dated 4.10.2005 and the Bills of Entry assessed by the Customs Authorities have not been bifurcated between CVD and Cess, and therefore, the credit has been rightly availed in conformity with Rule 3 and Rule 9 of the Cenvat Credit Rules, 2004. Per contra, Id. Authorised Representative appearing on behalf of the Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of appeals.

4. I have gone through the decision placed on record by the Counsel in the appellant's own case Hindustan Zinc Ltd. (supra) for the subsequent period and am in complete agreement with the aforesaid decision. The relevant paragraphs of the said decision is reproduced hereinbelow:-

*"3. The Id. 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 Id. Advocate submitted that since the amount in question was paid under the head 'CVD', taking of such amount as per the Bills of Entry is in conformity with such statutory provisions.*

*4. on the other hand, the Id.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 Bill 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 'CVD' head in the Bill 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.”*

5. Since the issue involved herein is no more *res integra* in view of the aforesaid decision, therefore, the appeals filed by the appellant are allowed with consequential relief, if any, in accordance with law.

[Order pronounced on 6.4.2023]

**(AJAY SHARMA)**  
MEMBER (JUDICIAL)

Ckp.