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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3470/2005 Date 06/11/2007

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
HINDUSTAN ZINK LTD,
YASHAD BHAWAN,
NEAR SWAROOP SAGAR, UDAIPUR (RAJ.)

HINDUSTAN ZINK LTD, **Appellant**

Vs

C.C.E. JAIPUR II (C.B. JAIPUR) **Respondent**

I am directed to transmit herewith a certified copy of Final order No. 547/07-EX dated 30-10-07 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
   JAIPUR 302005.
2. Adv. / Consult
   MR. M. P. DEVNATY, ADV.,
   B-6/10, S.J. ENCLAVE, N. DELHI-29
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT JAIPUR

Appeal No. E/3470/2005

Arising out of Order-in-Original No. 34 to 36/CE/JP-II/2005 dt.10/8/2005

Passed by: Commissioner of Central Excise, Jaipur

For approval and signature:

Hon'ble Mr. Justice R.K.Abichandani, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Departmental authorities?	:	Yes

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Appellant/s
M/s.Hindustan Zinc Ltd.

Represented by
Sh.M.P.Devnaty, Adv.

Vs.

Respondent/s
CCE, Jaipur

Represented by
Sh.V.K.Agrawal, SDR

CORAM:

MR. R.K.ABICHANDANI, PRESIDENT
MR. M. VEERAIYAN, MEMBER (TECHNICAL)

Date of Hearing: 30/10/07
Date of Decision: 30/10/07

Encl ORDER No. 547/2007 EX (C.B. Jaipur)

Per: Mr. M. Veeraiyan, Member (Technical)

Heard both sides.

2. The relevant facts, as deposed by the appellant, in brief, are as follows:-

a. The appellant has taken on lease mines and they are mining ores of Lead, Zinc; they concentrate the ores in the concentration plant situated within the mining area leased to them. The Department held that the mines can not be considered as factory and that the cenvat credit is available only in respect of excisable goods manufactured in a factory premises and hence they are not eligible for such credit.

b. Three show cause notices issued covering period October, 2000 to June, 2004 covering several items of inputs and several items of capital goods which were used in the mines area and the entire credit both on such capital goods and raw materials were denied and ordered recovery of the credit availed. Penalties were also imposed. Interest also stands demanded.

3. Ld. Advocate for the appellant submits that the issue whether cenvat credit will be available on inputs, capital goods used in mines area has been decided in favour of the assessee by the Hon'ble Supreme Court in the case of Vikram Cement Vs. CCE, Indore[2[illegible]5(197)ELT145(S.C.)]. He also submits that following the

judgement of the Hon'ble Supreme Court, the Tribunal has vide their final order No.227/2007-EX dt.22/5/2007 in respect of another unit of their own allowed the appeal No.E/1612/2005.

4. Ld. DR concedes that the benefits have to be allowed in the light of the decision of the Hon'ble Supreme Court. However, he submits that the Commissioner has no occasion to deal with the eligibility of individual input items/capital goods for cenvat purposes. He also points out that during certain period cenvat on capital goods was available only for capital goods falling under specific tariff headings.

5.1. We have carefully considered the submissions from both the sides and perused the records. We find that the Commissioner has denied the credit mainly on the ground that the inputs and capital goods were used in the mines area. Hon'ble Supreme Court in the case of Vikram Cement has decided this issue. The relevant portion of the order of the Hon'ble Supreme Court is reproduced below:

> *"4.In so far as the Modvat/Cenvat credit on inputs (explosives, lubricating oils etc.) is concerned, the matter is squarely covered by the decision of this Court in the case of Vikram Cement v. CCE reported in 2006 (194) E.L.T. 3. Therefore, the appeals where credit on inputs is concerned, are allowed.*
>
> *5.As regards the Modvat/Cenvat credit on capital goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/Cenvat credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assessees, Modvat/Cenvat credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules. The matters* are remanded to the respective original authorities for decision only on the above issue."

5.2. We feel that it is appropriate to set aside the order of the Commissioner and remand the matter to the Commissioner for reconsideration of the entire issue in the light of the judgement of the Hon'ble Supreme Court cited supra and to decide in accordance with the law and after hearing both the sides.

6. Appeal is allowed by way of remand in the above terms.

(Dictated & Pronounced in Court)

(R.K.Abichandani)
President

(M. Veeraiyan)
Member (Technical)

nr.