

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

Appeal No. E/805 /2006-812 /2006

Date 06/11/2007

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

To :
CCE, JAIPUR-II


CCE, JAIPUR-II, NEW CENTRAL REVENUE BUILDING,
STATUE CIRCLE, C-SCHEME, JAIPUR.

CCE, JAIPUR-II

HINDUSTAN ZINC LTD.

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 538-545/07 dated 31-10-07
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944. (C.B. JAIPUR)


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

HINDUSTAN ZINC LTD.

HINDUSTAN ZINC LTD. PUTHOLI
CHITTORGARH (RAJASTHAN)

2. Adv. / Consult SH. M.P. DEVNATH, 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 Publications (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)

- 1 HINDUSTAN ZINC LTD.
HINDUSTAN ZINC LTD. PUTHOLI, CHITTORGARH (RAJASTHAN)
- 2 HINDUSTAN ZINC LTD.
HINDUSTAN ZINC LTD. PUTHOLI, CHITTORGARH (RAJASTHAN)
- 3 HINDUSTAN ZINC LTD.
HINDUSTAN ZINC LTD. DEBARI, UDAIPUR (RAJ.)
- 4 HINDUSTAN ZINC LTD.
HINDUSTAN ZINC LTD. PUTHOLI, CHITTORGARH (RAJASTHAN)
- 5 M/S HINDUSTAN ZINC LTD.
DEBARI, UDAIPUR (RAJASTHAN)
- 6 HINDUSTAN ZINC LTD.
HINDUSTAN ZINC LTD. DEBARI, UDAIPUR (RAJASTHAN)
- 7 HINDUSTAN ZINC LTD.
HINDUSTAN ZINC LTD. CHITTORGARH (RAJASTHAN)

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

Appeal Nos.805 to 812/06

Arising out of Order-in-Appeal No.880-887(HKS)CE/JPR-II/2005
dt.15/12/2005

Passed by: Commissioner of Central Excise & Customs (Appeals-II),
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
CCE, Jaipur-II

Represented by
Sh.S.L.Meena, SDR

Vs.

Respondent/s
M/s.Hindustan Zinc Ltd.

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

CORAM:

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

Date of Hearing: 31/10/07
Date of Decision: 31/10/07

Final ORDER No. 538 To 545/2007 EX (CIRCUIT BENCH JAIPUR)

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

These appeals of Department arise out of common orders-in-appeal No.880-887(HKS)CE/JPR-II/2005 dt.15/12/2005 dealing with identical issue in respect of two of the units relating to the respondent. The dispute relates to the period 1997-98 to March 2004.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a. The respondent is manufacturing items like Zinc, Sulphuric Acid and Silver. They are clearing the Zinc on payment of applicable duty. Sulphuric Acid (Item covered in seven of the appeals) partly cleared on payment of duty and partly cleared without payment of duty for use in the manufacture of fertilizers availing benefit of exemption Notifications No.4/97-CE dt.1/3/1997, No.67/95-CE dt.16/3/1995, No.34/2001-CE(NT) dt.21/6/2001 and No.47/94-CE(NT) dt.22/9/2004. The clearances of Sulphuric Acid was following chapter-X procedures and supplies have ^{been} made to the manufacturers of fertilizers on the basis of CT-2 certificates issued to them. m

b. The original authority held that inasmuch as the Sulphuric Acid has been cleared without payment of duty availing exemption and since the respondent did not maintain separate accounts for the inputs going into the exempted final product viz. Sulphuric Acid,

he demanded 8% of the sale price of the exempted Sulphuric Acid.

Similarly in respect of Silver, which is cleared without payment of duty on the ground that the same is subject to 'nil' rate of duty as per the tariff, the original authority demanded an amount equal to 8% in terms of Rule 57CC.

c. Commissioner(Appeals) decided the issue in favour of the respondent.

4. The ld. Advocate appearing for the respondent submits that the very same issue regarding payment of an amount of 8% of value of Sulphuric acid cleared without payment of duty has been decided in relation to subsequent show cause notices issued to their units and the show cause notices have been quashed by the Hon'ble High Court of Rajasthan in their order dt.23/1/2007. Therefore, he seeks dismissal of the appeals of the Department.

5. Ld. SDR submits that the issue involved in the present appeals are identical to the issue involved in the judgement governed by the Hon'ble High Court of Rajasthan.

6. We have carefully considered the submissions from both sides. We would like to reproduce certain relevant portions of the order of the Hon'ble High Court of Rajasthan.

"In these petitions, the parties have joined the issue about the ambit and scope of Rule 57CC of the Central Excise Rules, 1944 about the availing of Modvat credit on duties paid on inputs used at smelter by the petitioner-company vis-à-vis the part of sulphuric acid produced by it in its sulphuric acid plant and sold to IFCO, a manufacturer of fertilizer, who is entitled

to avail concession of acquiring sulphuric acid used by it as an input in manufacture of fertilizers on payment of duties in terms of the exemptions notifications issued from time to time.”

“We have already noticed above that General Exemption No.66 which prescribed nil rate of sulphuric acid used in manufacture of fertilizers. It did not provide nil rate of duty on production or manufacture of sulphuric acid as such. Therefore, the end product sulphuric acid was not subjected to exemption. If Rule 57CC is read closely, the exemption or nil rate must be related to the end product of the manufacturer.”

“In view thereof, we have no hesitation to come to the conclusion that the Rule 57CC has no application to the petitioners-manufacturers of sulphuric acid as their product as such was neither exempted from payment of duty nor chargeable at nil rate of duty.

In this connection, it will be relevant to consider that what is envisaged under Rule 57CC is chargeability of the production to duty and not to the duty chargeable on clearance, which is the ground on which respondent Revenue intends to recall the modvat credit availed by the petitioners manufacturers on inputs used by them at their smelter.”

“Upshot of this discussion is that prohibition against claiming modvat credit on exempted goods or subject to nil rate of duty applies in case where such exemption from payment of duty or nil rate of duty on end product is predictably known at the time the recipient of inputs is entitled to take credit of duties paid on such inputs. The fact that due to subsequent notification or on contingency that may arise in future, the end product is cleared without payment of duty due to exemption or nil rate of duty does not affect the availing of modvat credit on the date of entitlement. If on the date of entitlement, there is no illegality or invalidity in taking credit of such modvat/cenvat credit, the right to utilize such credit against

future liability towards duty become indefeasible and is not liable to be reversed in the contingency discussed above.

Accordingly, the petitions are allowed. The impugned notices are quashed.”

7. In the light of the ratio of the decision of Hon'ble High Court of Rajasthan in the matter relating to the very same respondent on the identical issue, we do not find any merit in the appeals of the department.

8. All these appeals are, therefore, dismissed.

(Dictated and pronounced in the open Court on the 31st day of October, 2007)

**(JUSTICE R.K. ABICHANDANI)
PRESIDENT**

**(M. VEERAIYAN)
MEMBER (TECHNICAL)**

Nr.