

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

Appeal No. E/3528/2003

Date 17/01/2008

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

To :  
M/S HINDUSTAN COPPER LTD.

KHETRI COPPER COMPLEX, KHETRINAGAR, DISTT.  
JHANJHUNU

M/S HINDUSTAN COPPER LTD.

C.C.E. JAIPUR I

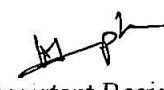
Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 18/2008 Excise  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

dated 18-12-07

  
Assistant Registrar  
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,  
JAIPUR 302005.

2. Adv. / Consult SH.K.K.ANAND,A-5,BASEMENT,LAJPATNAGAR-IILN.DELHI-24

3. S.D.R.

~~4. I.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

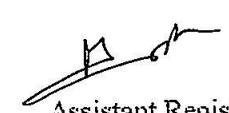
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

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)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**  
**COURT NO. II**

Excise Appeal No. 3528 of 2003

[Arising out of Order-in-Appeal No. 371(SN)/CE/ JPR-I/2003 dated 1.9.2003 passed by Commissioner of Customs & Central Excise, Jaipur.]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President  
Hon'ble Mr. K.K. Agarwal, Member (Technical)

- 
1. Whether Press Reporters may be allowed to see :  
the Order for publication as per Rule 27 of the  
CESTAT (Procedure) Rules, 1982?
  2. Whether it should be released under Rule 27 :  
of the CESTAT (Procedure) Rules, 1982 for  
publication in any authoritative report or not?
  3. Whether Their Lordships wish to see the fair :  
copy of the Order?
  4. Whether Order is to be circulated to the :  
Departmental authorities?
- 

M/s. Hindustan Copper Ltd.

Appellant

Vs.

Commissioner of Central Excise,  
Jaipur I

Respondent

Appearance:

Shri K.K. Anand, Advocate for the Appellant  
Shri H.K. Thakur, Jt.CDR for the Respondent

**CORAM:**

Hon'ble Mr. S.S. Kang, Vice President  
Hon'ble Mr. K.K. Agarwal, Member (Technical)

Date of decision : 18.12.2007

**Per S.S. Kang (for the Bench):**

Heard both sides. The appellant filed this appeal against the impugned order, whereby the input credit was denied in respect of the explosives used in the mines.

2. The Commissioner (Appeals), after taking into consideration the definition of capital goods under Rule 57AA of Central Excise Rules 2002, and under Rule 2F of Cenvat Credit Rules, 2002, held that as the explosives are not used within the factory of production, hence the appellants are not entitled for credit.

3. We find that this issue is now settled by Hon'ble Supreme Court in the case of Vikram Cement vs. CCE, Indore, reported in 2006 (194) ELT 3. The Hon'ble Supreme Court after taking into consideration the amended provisions of Credit Rules in respect of inputs as well as the provisions of Rule 57 AB of Cenvat Credit Rules, held that credit is available in respect of the explosives used in the mines. The Hon'ble Supreme Court held as under:

*"19. In this background, the question arose in the case of Commissioner of Central Excise, Jaipur vs. J.K. Udaipur Udyog Limited (supra) whether the explosives used for blasting purposes in the mines and which had not been used in the factory premises for production or in relation to the manufacture of cement could qualify for Cenvat credit.*

20. *The Court answered the question in the negative and in Paragraph 9 of the judgment as reported said:-*

*“The scheme for Modvat and Cenvat Credits being different and in view of the definition of “input” given in sub-rule (d) of Rule 57AA of the Rules and the omission of a Rule similar to Rule 57J, the ratio of Jaypee Rewa Cement (supra) can have no application here”.*

21. *Three reasons were given by the Court for holding that credit could be taken only on inputs received in the factory of the manufacturer of the final product. First, the Court held that the definition of input given in sub-rule (d) of Rule 57AA was “entirely different from the manner in which the said word had been expounded in the explanation to Rule 57A of the Modvat Rules”. We cannot agree with this reading of the Section. As we have said there was only a rearrangement of the several provisions of Rule 57B in Rule 57AA. Rule 57AA is in fact more broad based than Rule 57B.*

22. *Second, the Court proceeded on the basis that under the Cenvat scheme there was no provision similar to Rule 57J of the Modvat scheme. As we have seen, Rule 57J was replaced in substance by Rule 57AB. This provision was overlooked.*

23. *The third reason given by the Court in J.K. Udaipur Udyog for holding that the Cenvat scheme was different from the Modvat scheme was Rule 57AC(1). However, that Rule is limited to inputs received in the factory of the manufacturer and does not impinge on Rule 57AB at all.”*

4. The Hon'ble Supreme Court held that credit on explosives can not be denied on the ground that same was not used within the factory.

5. In view of the above decision of the Hon'ble Supreme Court, the appeal is allowed. The appellants are entitled for consequential relief, if any, in accordance with the law.

(Dictated in the open Court)

( S.S. Kang )  
Vice President

( K.K. Agarwal )  
Member(Technical)

Dt:18.12.07

SS