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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/3149/2007 Date 07/03/2008

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

To :
HINDUSTAN ZINC LTD.
YASHAD BHAWAN, NEAR SWAROOP SAGAR,
UDAIPUR, RAJASTHAN
313001

HINDUSTAN ZINC LTD. Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of Final order No. 76/08 Excise dated 5-2-08 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.ANAND BHATACHARYA~~
   ~~BINDU BHAWAN, 49, SHASTRI MARG, UDAIPUR(RAJ)~~
   SH. V.N. SHUKLA, 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT -II

EXCISE APPEAL No. 3149 of 2007

[Arising out of Order-in-Appeal No. 526(RKS)CE/JPR-II/007 passed by the Commissioner (Appeals-II), Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. P. Karthikeyan, 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 would 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 Zinc Limited — Appellants

Vs.

CCE, Jaipur-II — Respondent

Appearance:

Shri Vishvanath Shukla, Advocate for the appellants,
Shri D. Garg, SDR, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. P. Karthikeyan, Member (Technical)

Date of Hearing: 05.02.2008

FINAL ORDER NO. 76/08 dated 5/2/08

Per S.S. Kang:

Heard both sides.

2. Applicants filed this application for waiver of duty and penalty. Demand was confirmed after denying credit in respect of cement used in mines for repair purpose. We find that this issue is now settled by the Hon'ble Rajasthan High Court in applicants' own case i.e. UOI vs. Hindustan Zinc Ltd. vide order dated 9th August, 2007 in favour of the Revenue. In view of the order passed by the Hon'ble Rajasthan High Court appeal itself is being taken up for hearing after waiving pre-deposit of duty and penalty.

3.The appellants availed credit in respect of cement used in mines for repair purpose. The Tribunal in applicants' own case vide Final Order No. 137-38/06 dated 30.01.06 held in favour of the appellants. Revenue filed appeal and the Hon'ble High Court of Rajasthan vide its order dated 9th August, 2007 set aside the order passed by the Tribunal and held that the appellants are not entitled for credit in respect of cement used in mine for repair. In view of the above, we find no infirmity in the impugned order. In respect of penalty, we find that as in the earlier case the

Tribunal held in favour of the appellants, it is not a fit case for imposition of penalty. Accordingly, penalty is set aside.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(P. KARTHIKEYAN)
MEMBER (TECHNICAL)

Dated 7th February, 2008

RK