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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/769/2007 Date 11/07/2008

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

To :
M/S HINDUSTAN ZINC LTD.

(ZAWAR MINES) PO ZAWARMINES. DISTT.
UDAIPUR. RAJASTHAN.
313901

M/S HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 447/2008- **Excise** dated 10-7-08

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.B. STATEU CIRCLE, JAIPUR.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE. NEW DELHI-110029
3. D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications. M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad. DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline com Pvt.Ltd. B-XI 8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi-110066

Court No.III

Date of hearing: 7.7.2008

Central Excise Appeal No.769 of 2007

Arising out of the Order in original No.24/CE/JP-II/Commr/2006 dated 30.11.2006 passed by the Commissioner , Central Excise, Jaipur II.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Appellants Respondent

M/s Hindustan Zinc Limited vs. C.C.E., Jaipur II

Appearance:

Shri Ravi Raghvan, Advocate for the appellant(s) and
Shri S. Kumar, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL Order No. 447/08-EX.

Per Archana Wadhwa:

The impugned order stands passed by the Commissioner in de novo proceedings when the matter was earlier remanded by the Tribunal with specific directions.

2. The appellant is engaged in the manufacture of zinc concentrate , which is being cleared by them to their own unit for captive consumption. Inasmuch as the same is not being sold by the appellant, the duty is required to be determined in terms of the provisions of Rule 6(b)(ii) of the Central Excise Valuation Rules, read with Section 4(b) of the Central Excise Act, 1944. In the earlier proceeding, the Commissioner had confirmed the demand of duty on the basis of cost structure by taking into account the cost of the raw material on monthly basis, The Tribunal on appeal, remanded the matter to the adjudicating authority with direction to determine the assessable value based on the audited data for a particular financial year.

3. The appellant's grievance is that instead of following the above direction of the Tribunal, the Commissioner had arrived at the assessable value based upon monthly cost structure. Apart from the above, it also stands argued before us that inasmuch as the entire zinc concentrate was being transferred by appellant to their own units situated at different places who were availing modvat credit of the duty paid by the appellant, the entire exercise is revenue neutral and is futile. The duty liability on the final product is higher than the duty liability on the zinc concentrate and their unit who were consuming the zinc concentrate are paying higher duty and as such, they were in a position to utilize the modvat credit in question. Reliance was placed on the Tribunal decision in the case of Gopal Zarda Udyog vs.

C.C.E., New Delhi – 2001 (128) ELT 409, As also in the case of MRF Limited vs. C.C.E., Hyderabad – 2004 (170) ELT 69 (Tri- Bang.).

4. We, after hearing both sides, find that the appeal can be disposed of on the point of revenue neutrality. Admittedly, the duty paid by the appellant was being availed as modvat credit, which the other unit was in a position to utilize. The Tribunal in the case of PTC Industries Ltd. vs. C.C.E., Jaipur I – 2003 (159) ELT 1046 (Tri-Del.) has held that whatever duty is paid by one unit on sale of goods to the assessee's another unit is being available as credit to the other unit, there was no warrant for demanding duty. In the present case, we find that the zinc concentrate was only being transferred to the appellant's own unit and was not being sold at all. Whatever duty was being paid by the appellant was available as credit to them and nothing would go into the Revenue's pocket. The entire excise is revenue neutral as neither the assessee stands to loose ~~for~~ anything by paying higher duty nor the Revenue stands to gain anything by the appellant's adoption of lower assessable value. As such, we are of the view that demand is unwarranted and unsustainable on this count alone. We , accordingly, set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Pronounced in the open Court)

10/7/08

(Archana Wadhwa)
Member (Judicial)

10/7/08

(M. Veeraiyan)
Member (Technical)