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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/6052/2004-6053/2004 - EX[DB] Date 03/11/2008

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

To :
HINDUSTAN ZINC LTD.
RAMPURA-AGUCHA MINES P.O.AGUCHA
DISTT.BHILWARA RAJASTHAN
311029

2. M/s. HINDUSTAN ZINC LTD.
YASHAD BHAWAN,
NEAR SWAROOP SAGAR,
UDAIPUR-313001 (RAJ.)

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

I am directed to transmit herewith a certified copy of **Final order No**. 830-831/08 **EX[DB]** dated 22-10-08 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.STATUE CIRCLE C-SCHEME JAIPUR
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. C.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 - 3
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
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 6052-53 of 2004

(Arising out of order-in-appeal No. 590-598(RM)/CE/JPR-II/04 dated 22.09.2004 passed by the Commissioner (Appeals), Jaipur)

DATE OF HEARING : 22.10.2008
DATE OF DECISION : 22.10.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, 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 ?.	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

M/s Hindustan Zinc Ltd. .... **Appellant**
(Rep by Sh. Manish Panda, Adv.)

VERSUS

CCE, Jaipur .... **Respondent**
(Rep. by Sh. B.S. Suhag, DR)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

FINAL **ORDER NO.** 930 - 831/08-Ex.

PER M. VEERAIYAN :

These two appeals are filed by the same appellant and involved more or less identical issue and, therefore, are being dealt with by a common order.

2. We have heard both sides.

3. The appellant has mines for extracting lead/zinc ores and for extraction of same they used explosives, power gel, detonators and prilled ammonia nitrate (these items are involved in A.No. E/6053/04) and are also using lubricating oil and grease (these items are involved in A.No. E/6052/04) in the mines area. They have taken cenvat credit of duty paid on these materials and used them for paying duty on the zinc/lead concentrate which are excisable.

4. Show cause notices were issued on the ground that the above materials were not used as inputs within the factory in the manufacture of excisable final products, namely, lead/zinc concentrate. On this ground, the cenvat credit was denied and penalties were also imposed.

5. On appeal, Commissioner (Appeals) while confirming the demand, set aside the penalties.

6. Learned advocate submits that the issue of eligibility of credit for use of any inputs in captive mine linked to a factory of excisable goods has been settled in favour of the assessee by the Hon'ble Supreme Court in the cases of (i) **Jaypee Rewa Cement vs Commissioner of Central Excise, M.P.,** 2001 (133) ELT 3 (SC); (ii) **Vikram Cement vs Commissioner of Central Excise, Indore,** 2006 (194) ELT 3 (SC); and **Vikram Cement vs Commissioner of Central Excise, Indore,** 2006 (197) ELT 145 (SC).

7. Learned DR submits that the inputs used in the mining area of a captive mine attached to the factory is settled by the judgments, referred to above by the learned advocate. However, he points out that there is no specific finding by the original authority or by Commissioner (Appeals) regarding the status of the mine as to whether the same is a captive mine or not. Learned Advocate submits that they have mentioned in the reply that they have a captive mine and that there is no adverse finding recorded by the authorities on this submission.

8. We have considered the submissions made by both sides. The issue regarding admissibility of cenvat credit on the inputs used in the captive mines is covered by the judgments of the Hon'ble Supreme Court (supra). Therefore, the appeals deserve to be allowed subject to verification/confirmation of the factual position that the above mentioned impugned inputs are used in the captive mines. We remand this matter for the limited purpose of verifying whether the above impugned inputs are used in the captive mines and if they are used, the benefit of cenvat credit shall be extended.

9. Both the appeals are thus allowed by way of remand.

(Dictated and pronounced in the open Court on the 22nd day of October, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay