

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

Appeal No. E/525 /2006 - EX[DB]

Date 09/09/2009

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

To :
HINDUSTAN ZINC LIMITED
YASHAD BHAWAN, NEAR SWROOP
SAGAR, UDAIPUR
313001
HINDUSTAN ZINC LIMITED

C.C.E. JAIPUR I

Appellant
Vs
Respondent

EX[DB] dated 07-9-09

I am directed to transmit herewith a certified copy of Final order No. 647/2009-
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 I

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

2. Adv. / Consult

MR.V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 C.D.R

~~4 I.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd. B-XI/8183, Vasant Kunj, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

14 Easy Service Tax Online Dot Com Pvt.Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

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Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.
Principal Bench, New Delhi**

COURT NO. II

DATE OF HEARING : 26/8/09.

Excise Appeal No. 525 of 2006

[Arising out of the Order-in-Appeal No. 653 (HKS)/CE/JPR-II/ 2005 dated 21/11/2005 passed by The Commissioner (Appeals-II), Central Excise, Jaipur.]

M/s Hindustan Zinc Limited

Appellant

Versus

CCE, Jaipur

Respondent

Appearance

Shri B.L. Narsimhan, Advocate - for the appellant.

Shri Sansar Chand, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member**

FINAL Order No. 647/09-EX Dated : _____

ORDER

Per. D.N. Panda :-

In this appeal, only issue involved is whether Cenvat credit to the extent of Rs. 13,88,502/- (Rupees Thirteen Lakh Eighty Eight Thousand Five Hundred and Two) is admissible in respect of LDO used for generation of electricity. Learned counsel points out that the Appellate Authority below following the decision of **Commissioner vs. J.K. Udaipur Udyog Ltd. - 2004 (171) E.L.T. 289 (S.C.)** has disallowed the claim of the appellant. This being only the reason the

appellate order is unsustainable since decision in **Jaypee Rewa Cement vs. Commissioner – 2001 (133) E.L.T. 3 (S.C.)** is no more a good law as held by a three judges Bench of the Hon'ble Supreme Court in the case of **Vikram Cement vs. CCE, Indore** reported in **2006 (194) E.L.T. 3 (S.C.)**.

2. Finding no other factual issues in controversy and the issue being pin-pointed by learned First Appellate Authority by his order, the appellant should get relief following the decision in **Vikram Cement (supra)**. Accordingly, appeal is allowed to the limited extent, for an amount of Rs. 13,88,502/-. So far as, the other dispute of the appellant in respect of availment of Cenvat credit of Rs. 3,14,646/- (Rupees Three Lakh Fourteen Thousand Six Hundred Forty Six) and Rs. 1,37,750/- (Rupees One Lakh Thirty Seven Thousand Seven Hundred Fifty) is concerned, that is not pressed by learned counsel, in view of the law settled by Apex Court in the case of **CCE vs. Solaris Chemtech Limited** reported in **2007 (214) E.L.T. 481 (S.C.)**. Accordingly, the First Appellate order is confirmed in respect of these two demands. For the conclusion and also interpretation of the law in the issues involved, the appellant is not required to be penalised in absence of *mens rea*.

In the result, appeal is allowed partly to above extent.
(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK