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

Appeal No. ST 557/2006 - CU[DB]   Date 22/12/2008

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

To
M/S HINDUSTAN ZINC LTD.
YASHAD BHAWAN, NEAR SWAROOP SAGAR,
UDAIPUR (RAJASTHAN)
313001

M/S HINDUSTAN ZINC LTD.   Appellant
Vs
C.C.E. JAIPUR   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/437/08 **CU[DB]** dated 18.12.08 passed by the Tribunal under Section 129. (B) of the Customs Act.1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.E. JAIPUR
NEW C.R. BUILDING, STATUE CIRCLE, 'C' SCHEME, JAIPUR(RAJASTHAN)
2. Adv Consult
MR.V.LAKSHMIKUMARAN, ADV
B-6/10, SAFDARJUNG ENCLAVE, NEW 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. 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-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

COURT – III

SERVICE TAX APPEAL NO. 557 OF 2006-ST

[Arising out of Order-in-Original No. 524(HKS)ST/JPR-II/2006 dated 20.9.2006 passed by the Commissioner-II, Customs & Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, 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 — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:

Ms. Tajwasvi Harikrishan, Advocate for the appellant,
Shri V. Chaudhary, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),
Shri Rakesh Kumar, Member (Technical)

Date of Hearing: 18th December, 2008

FINAL ORDER NO. S7/437/08 **dated** 18/12/08

Per P.K. Das:

Heard both sides and perused the record.

2. The appellants filed this appeal against the rejection of refund claim of Rs. 13,97,010/-. It is contended by the appellants that dispute is for the period January, 2004 to December, 2004 in respect of service received by them from Non-resident Engineering Consultant and payment were made thereon. We find that the issue has already been decided by the Larger Bench of the Tribunal in favour of the assessee in the case of Hindustan Zinc Ltd. vs. CCE, Jaipur, reported in 2008 (11) S.T.R. 338 (Tri.-LB). The relevant portion of the said decision is reproduced below:-

"16. In fairness to be learned S.D.R. we must mention that a rather detailed argument was made on the rules of interpretation; he also cited decisions to support his contention (so did the learned Advocate for the appellant); in view of the clear legal position, as it appears to us and stated hereinabove, we have not considered it necessary to deal with them.

17. The upshot of the above discussion is that the taxable service provided by a non-resident or from outside India, who does not have any office in India, having been specified as 'taxable service' with effect from 1.1.2005, under Notification No. 36/2004, recipient of such

service e could not be held liable for paying service tax prior to 1-1-2005 notwithstanding the amendment in Rule 2(1) of the Service Tax Rules under Notification No. 12/2004.

18. We thus concur in the view expressed in the cases of Aditya Cement and Ispat Industries, supra. The issue is thus answered in favour of the assessee and it is held that as a recipient of the 'consulting engineer' service from outside India, the appellant was not liable to pay service tax prior to 1-1-2005.

19. The reference having been answered, the appeal may be listed before the Division Bench for final disposal according to law."

3. In view of the decision of the Larger Bench (supra) we allow the appeal on merit. However, refund may be granted, after considering the question of principle of unjust enrichment in accordance with law.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

(RAKESH KUMAR)
MEMBER (JUDICIAL)

Dated 18th December, 2008

RK