

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

Appeal No. E/3898-3899/2005-SM[BR]

Date 11/01/2008

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

To :
(1-2) M/S HINDUSTAN ZINC LIMITED
YASHAD BHAWAN, NEAR SWAROOP SAGAR,
UDAIPUR (RAJ.)
313001

M/S HINDUSTAN ZINC LIMITED

Appellant

Vs

C.C.E. JAIPUR II

Respondent

I am directed to transmit herewith a certified copy of Final order No. 51-52/2008-SM[BR] dated 2.11.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM 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.APURVA BHATTACHARYA ADV

BINDU BHAWAN, 49, SHASTRI MARG, UDAIPUR(RAJ)

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 Publications (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
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**


Excise Appeal Nos. 3898-99 of 2005-SM (BR)

[Arising out of Order-in-Appeal No.536(HKS)CE/JPR-II/2005 dated 29.9.2005 and Order-in-Appeal No.537(HKS) CE/JPR-II/2005 dated 29.9.2005 passed by the Commissioner, Central Excise, Rajasthan]

Date of Hearing/ Decision: 2.11.2007

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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|--|---|--|
| 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 should 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 Ltd.

Appellants
[Rep. by Mr. Ravi Raghavan, Advocate]

Vs.

CCE, Jaipur-II

Respondent
[Rep. by Mr. A.K. Rastogi, Authorized Representative (DR)]

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER No 51-52/08-5M(BR)

Per P.K. Das:

Common issue is involved in these appeals and, therefore, both are taken up together for disposal.

2. The appellants filed these appeals against denial of Cenvat Credit on Welding Electrodes. Ld. Advocate on behalf of the appellant submits that the Hon'ble Rajasthan High Court in the case of Shree Neel Cement Vs. Union of India held that the Welding Electrodes is eligible for Cenvat credit. He further submits that there is a contrary view regarding availment of Cenvat credit on Welding Electrodes and, therefore, penalty cannot be imposed.

3. Ld. DR submits that the Larger Bench of the Tribunal in the case of J.P. Rewa Plant Vs. CCE, Raipur reported in 2003 (159) ELT 553 held that welding electrodes is not eligible for Cenvat credit. He further submits that the Tribunal in the case of J.K. Cement reported in 2007 (211) ELT 235 after considering the decision of the Hon'ble High Court held that Cenvat credit is not eligible on Welding Electrodes.

4. After hearing both the sides and on perusal of the records, I agree with the submission of the ld. DR that the Larger Bench of the Tribunal in the

● case of J.P.Rewa Cement (supra) held that Welding Electrodes is not eligible for Cenvat Credit and, therefore, denial of credit on Welding Electrodes is upheld.

5. Regarding imposition of penalty, I find force in the submissions of the ld. Advocate that when there is conflicting views on eligibility of Cenvat credit on Welding Electrodes and ultimately decided by the Larger Bench of the Tribunal, imposition of penalty is not warranted. In view of the above, penalty imposed on the appellants is set aside. The impugned orders are modified and the appeals are disposed of in the above terms.

Order dictated & pronounced in open court on 2.11.2007.

(P.K. Das)
Member (Judicial)

Ckp.