

**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/1452/2006-SM[BK]

Date 19/02/2008

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

To :  
HINDUSTAN ZINC LTD.  
YASHAD BHAWAN, NEAR SWAROOP SAGAR,  
UDAIPUR, RAJASTHAN  
313001

HINDUSTAN ZINC LTD.

Appellant

Vs  
Respondent

C.C.E. JAIPUR II

I am directed to transmit herewith a certified copy of Final order No.307/2008-SM[BR] dated 31.12.2007  
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.V. LAXMIKUMARAN

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

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 & SERVICE  
TAX APPELLATE TRIBUNAL,  
WEST BLOCK NO. 2, R.K. PURAM,  
NEW DELHI**

**PRINCIPAL BENCH, NEW DELHI**

**Excise appeal No. 1452 of 2006 (SM)**

[Arising out of Order-in-appeal No. 97(HKS)CE/JPR-II/2006 dated 3.2.2006 passed by the Commissioner (Appeals-II), Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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 Ltd.

Respondents

Vs.

CCE, Jaipur

Respondent

Appearance:

Shri Ravi Raghvan for the appellants,  
Shri B.S. Suhag, JDR for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President

**Date of Hearing: 31<sup>st</sup> December, 2007**

**FINAL ORDER NO. 307/08-SM(BR) dated 31.12.07**

**Per S.S. Kang:**

Heard both sides.

2. The appellants filed this appeal against the impugned order whereby the demand of duty was confirmed in respect of quantity of goods found in excess then the recorded balance, and penalty was imposed.
3. The contention of the appellants is that they are engaged in the manufacture of Zinc and Lead concentrates. The show cause notice was issued on 28<sup>th</sup> March, 2003 demanding duty on alleged excess production and clearance of concentrates during the period 1997-98 to 2001-02. The contention is that concentrate was stored in open place and the same is being cleared to their manufacturing unit. All the concentrates is captively consumed. The contention is that during the same period when the appellants undertook the stock taking there was a shortage of concentrates and the appellants filed for remission of duty in respect of concentrates found short and the same was allowed by the Tribunal reported as 2005 (181) ELT 127 (Tri.-Del.). Further contention of the appellants is that they undertook periodical stock taking and there was some shortage of concentrates and sometimes there was some excesses which were very nominal. During the period in question excess was only

0.42%. The contention is that there is no intention to clear the goods without payment of duty. The appellants also submitted that some period of demand is beyond 5 years from the date of issuance of show cause notice. The appellant also submitted that the demand is time barred as the appellants were regularly filing RT-12 return and the Revenue was aware of the periodical stock taking by the appellants.

4. The contention of the Revenue is that the appellants filed remission application in respect of concentrates which were found short as per their stock taking and the same was allowed by the Tribunal. The contention is that as the remission was allowed in respect of concentrates which were found short the appellants were liable to pay duty in respect of the concentrates which were found in excess as per their record. The appellants themselves are undertaking periodical stock taking and their private record shows that there was excess of stock then reflected in RG-1 and this factual position is not denied by the appellants.

5. I find that on periodical stock taking during the period in dispute sometime there was shortage of concentrates then the reflected in RG-1 and sometime there was excess of goods then the reflected in RG-1 records. Regarding shortages which were as per record of the appellants remission was applied and the same was allowed by the Tribunal vide order reported as 2005 (181) ELT 127 (Tri.-Del.). Regarding the same period there was excess of concentrates which were found during periodical stock taking and the same was reflected in private records of

the appellants. As the appellants were seeking remission in respect of concentrates which were found short, they are liable to pay duty in respect of concentrates which were found excess then the recorded balance in the excise record. In respect of limitation the demand beyond the period of 5 years from issuance of show cause notice is not sustainable. In respect of remaining demand I find that the appellants had never informed the Revenue in their monthly return regarding stock position as per their private record. Therefore, extended period was rightly invoked. The appellants were reflecting excess stock in their private records and whole quantity was captively consumed and in absence of intention to evade duty penalty is not imposable. The appeal is disposed of as indicated above.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)  
VICE PRESIDENT

31 Dec 2007

~~Dated 1<sup>st</sup> January, 2008~~

RK