

**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/1503/2006-SM[BR]

Date 20/02/2008

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

To :
M/S HINDUSTAN ZINC LIMITED
YASHAD BHAWAN, UDAIPUR (RAJ)
313001

M/S HINDUSTAN ZINC LIMITED

Appellant

THE COMMISSIONER OF CENTRAL EXCISE JAIPUR-
II (RAJA)

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 325 /2008 –SM[BR] dated 9.1.2008
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE JAIPUR-
II (RAJA
NEW C.R.BUILDING, STATUE CIRCLE, C-SCHEME,
JAIPUR (RAJASTHAN)

2. Adv. / Consult

MR.V.LAKSHMI KUMARAN
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 -I, 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. 1503 of 2006 (SM)

[Arising out of Order-in-Appeal No. 118(HKS)CE/JPR-II/2006 dated 8.2.2006 passed by the Commissioner (Appeals), 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?	no
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. Hindustan Zinc Limited

Appellants

Vs.

CCE, Jaipur - II

Respondent

Appearance:

Shri Ravi Raghavan, Advocate for the appellants,
Shri S.L. Meena, SDR for the Revenue.

Coram:

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

Date of Hearing: 8.1.2008

FINAL ORDER NO. 325/08 SM (BR) dated 9-1-2008

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order whereby credit in respect of following items was denied on various grounds:-

1. Iron and steel items like channels, angles, plain plates,
2. Electrical items like sockets, switches, kplugs, junction box, control panel,
3. Welding electrodes,
4. Pneumatic cylinder,
5. Original foil,
6. Tyres and tubes for forklift,
7. Wire rope,
8. D.A. Gas,
9. Leak repair clamp,
10. Jointing sheet,
11. Caliberation gas and boric acid

3. I find that the issue in respect of credit regarding welding electrodes, D.A. gas, Caliberation gas and Boric acid which are used for repair and maintenance of the machinery is settled by the Larger

Bench of the Tribunal in favour of the Revenue. The Tribunal in the case of Jay Pee Rewa Plant vs. CCE, Raipur, reported in 2003 (159) ELT 553 (Tri.-LB), and in the case of Triveni Engg. Vs. CCE, reported in 2005 (186) ELT 158 (Tri.-LB) has held that the assesses are not entitled for credit in respect of welding electrodes and D.A. gas used for maintenance purposes. In these circumstances the denial of credit on these items is upheld.

4. Credit in respect of iron and steel items like channels, angles, and plain sheets was denied on the ground that the same not used in or in relation to the manufacture of excisable goods. These items are used for fabrication of components and parts of the plant which are used to replace the old and worn-out parts. This issue is now settled by the Hon'ble High Court of Rajasthan in the appellants' own case i.e. UOI vs. Hindustan Zinc Ltd., reported in 2007 (214) ELT 510 (Raj). Appeal filed by Revenue against this decision is dismissed by the Hon'ble Supreme Court. In view of this position the appellants are entitled for credit in respect of these items.

5. Credit in respect of electrical items like sockets, switches, plugs, junction boxes, etc. is denied on the ground that the same are not directly used in the manufacture of goods. The case of the appellants is that the same are used in plant where the excisable goods are produced. As these items are used for running the plant,

therefore, these are entitled for credit. In respect of denial of credit which was taken on original copy of invoice, I find no infirmity in the impugned order as per the Central Excise Rules provides that credit is to be taken on duplicate copy of invoice. In case duplicate copy of invoice is lost during transit, credit can be taken on original copy of invoice, subject to the satisfaction of the Asst. Commissioner. In the present case as the credit has been taken on original copy of invoice without intimating to the Revenue, therefore, credit was rightly denied. In respect of credit on tyres and tubes, the same has been taken during the period September to December, 1995 and during this period they were covered under the definition of capital goods. Therefore, the appellants are entitled for credit in respect of tyres and tubes. The credit in respect of wire rope is denied on the ground that the same is used for maintenance purpose. I find that this issue is covered by the decision of Tribunal in the case of K.C.P. Ltd. vs. CCE, Guntur, reported in 2005 (183) ELT 403 (Tri.-Bang.). The Tribunal in this case has held that the credit in respect of steel wire ropes which are used in the factory is entitled for credit. In view of this decision credit on wire rope is upheld. In respect of credit on Jointing sheet and Leak repair clamp, as the same are used in plant to prevent leakage, therefore, denial of credit is denied. In respect of credit on Pneumatic cylinders, it is denied on the ground that no

declaration is filed. This issue is settled by the Tribunal in the case of JBM Tools vs. CCE, reported in 2002 (144) ELT 561 (Tri.) the Tribunal has held that after amendment in Rule 57G & T which is applicable to pending cases, credit can be denied in cases where no declaration is filed.

The appeal is disposed of as indicated above.

(Pronounced and dictated in Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 9th January, 2008

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