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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/965 /2006-SM[BR] Date 24/03/2008

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

To :
M.S HINDUSTAN ZINC LTD.
YASHAD BHAWAN UDIAPUR

M.S HINDUSTAN ZINC LTD. Appellant
Vs
CCE,JAIPUR-II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 466 /2008 –SM[BR]** dated **18.3.2008**

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   CCE,JAIPUR-II
   NEW CR BUILDING,STATUE CIRCLE C
   SCHEME,JAIPUR
2. Adv. / Consult SHRI. A. BHATTACHARYA ADV
   BINDU BHAWAN"
   49, SHASTRI MARG, UDAIPUR-313001[RAJASTHAN]

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 Publictions (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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI, COURT NO.1
EXCISE APPEAL NO. 965 OF 2006

[Arising out of order-in-appeal No.895(HKS)CE/JPR-II/2005 dated 21.12.2005 passed by the Commissioner of Customs & Central Excise(Appeals-II), Jaipur-II]

Date of Hearing: 3.3.2008
Date of Decision: [illegible].3.2008

Hon'ble Mr. Justice S.N. Jha, President

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	No

M/s. Hindustan Zinc Ltd. Applicant
[Rep. by: Mr. Ravi Raghvan, Advocate]

Versus

CCE, Jaipur-II Respondent
[Rep. by: Mr. B.S. Suhag, Authorized Representative (DR)]

Coram: Hon'ble Mr. Justice S.N. Jha, President

Final **ORDER** 466/2008-SM(BR)

Per Justice S.N.Jha:

This appeal by the assessee is directed against the order-in-appeal of Commissioner (Appeals) dated 21.12.2005 upholding the order-in-original of the Assistant Commissioner dated 31.8.1999.

2. The dispute relates to availment of modvat credit. The appellant, a Government of India Undertaking, is engaged in the manufacture of non-ferrous metals and their by-products. The

appellant owns various mining and smelting units where manufacture of different finished products takes place.

3. On or about 29.4.1999, a show cause notice was issued to the appellant requiring it to explain why modvat credit availed of by it be not reversed and recovery made thereof under the following heads :-

(a)	Excess credit taken on Lubricant Oil	Rs. 4,613/-
(b)	Credit taken on replacement & repair charges	Rs. 1,01,688/-
(c)	Credit taken on Filter cloth	Rs. 33,841/-
(d)	Credit taken on plain plates	Rs. 56,991/-
		Rs. 1,97,133/-

By the order-in-original, on consideration of the reply of the appellant, the adjudicating authority upheld its claim to the extent of Rs.28,512/- availed of on replacement of bellow/diaphragms and M.S. Flanges etc. vide invoice No.B-87/31.7.1998 and B-105/31.8.1998. After allowing modvat credit of Rs.28,512/- the adjudicating authority confirmed the demand to the extent of Rs.1,68,621/- directing its reversal through RG.23C Part-II/PLA. Penalty of Rs.1000/- under rule 173-Q (1)(bb) of the Central Excise Rules was also imposed. The appeal before the Commissioner (Appeals) having been dismissed, the appellant has come to this Tribunal in the present appeal.

4. I am of the view that the appellant's claim with respect to availment of credit on plain plates is fit to be allowed in view of the decision of the Rajasthan High Court in the own case of the appellant [Union of India Vs. Hindustan Zinc Ltd.-2007 (214) ELT 510(Raj.)] The High Court has held with respect to M.S./S.S. Plates used in workshop for repair and maintenance of machinery that without

proper up-keep and maintenance, the principal plant and machinery cannot function properly. Use of such capital goods is essential for smooth running of plant with greater efficiency and better results and thus, they are integral parts of the process with which the primary machines are engaged, and therefore, qualify as capital goods eligible for modvat credit. It is to be mentioned here that SLP preferred by the Revenue against the said decision of the Rajasthan High Court was dismissed by the Supreme Court vide SLP (Civil) No.CC 8147 of 2006. In view of the said decision, the appellant was entitled to avail modvat credit on plain plates amounting to Rs.56,991/-. Other items, however, in my opinion do not qualify as capital goods so as to entitle the appellant to avail modvat credit thereon, and the impugned orders to that extent do not require any modification.

5. As regards the lubricating oil, the adjudicating authority held that the amount of duty involved as shown by the dealer on the respective invoice was more than the duty actually paid by the manufacturer as shown in col.no.2 of the invoices. Besides, the appellant did not file any documentary evidence showing that duty charged from the assessee for which it had taken credit had been paid by the manufacturer at the time of removal of the goods.

6. As regards the credit taken on replacement and repair charges, there was no evidence showing receipt of capital goods vide invoice No.17 dated 2.10.1998 with respect to items other than damaged bellow/diaphragms, M.S. Flanges etc. covered by invoices dated 31.7.1998 and 31.8.1998 referred to above. The adjudicating authority recorded a categorical finding that no capital goods had been received under the cover of invoice dated 2.10.1998, only repair of

damaged hopper had been done by fabrication and welding and accordingly credit of Rs.73,176/- under the head replacement and repair charges was disallowed. I find no reason to take a different view.

7. As regards the Filter Cloth, the case of the appellant is that the item is a spare/accessory of filter press in the copper recovery plant which was required for extraction of copper. The adjudicating authority found that filter press is covered under heading 8421 and as such covered under sr.no.2 of the table annexed to rule 57Q. The contention of the appellant that the goods are required for extraction of copper was rejected on the ground that commercial production of metal cannot be extracted on Filter Cloth which itself has much weight. It was held that the item is not spare or part of filter press, and the claim of availment of modvat credit on the item was accordingly rejected. I am of the view that the finding on this point also does not warrant any interference.

8. In the result, subject to the modification in the impugned orders upholding the appellant's claim of availment of credit on plain plates to the extent of Rs.56, 991/-, the appeal is dismissed with respect to other items.

[Pronounced in the open Court on 18 .03.2008]

[Justice S.N. Jha]
President

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