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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/610 /2007 – SM[BR]

Date 12/11/2008

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

To :
HINDUSTAN ZINC LTD.
YASHAD BHAWAN, NEAR SWAROOP SAGAR,
UDAIPUR (RAJ.)
313001

HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1450 / 2008- **SM[BR]** dated 6.11.2008 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
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult SHRI B.NARASIMHAN 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-1
15 Office Copy
16 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.I

Excise Appeal No. 610 of 2007 -SM

[Arising out of Order-in-Appeal No. 689(HKS)CE/JPR-II2006 dated 20.12.2006 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

Date of Hearing/Decision : 06.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, 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.	: yes
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?	: Yes

M/s Hindustan Zinc Limited — Appellant

Vs.

CC&CE, Jaipur — Respondent

Appearance:

Mr. B. Narasimhan with Mr. V.N. Shukla, Advocates.
Mr. S. Gautam, Authorized Representative for the respondent.

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1450/08-SM (PR)

Per Jyoti Balasundaram:

I have heard both sides on the appeal against the order of the Commissioner (Appeals) disallowing the cenvat credit on the following items:-

(i) HDPE Pipes

(ii) Ventral Diesel Hydro Loco

(iii) Battery Lead Acid

(iv) Ingot white metal

2. HDPE Pipes are used for inserting into holes made by drilling in the mines for holding explosive compounds to blast the rocks. Appellants had explained that HDPE pipes are used as the shell of the explosives for carrying out blast in the mines. Prilled ammonium nitrate and diesel is filled in the pipes and then detonators are attached to the same. If the prilled ammonium nitrate and explosives are not filled in the pipes; same would get burnt up. By putting it in HDPE pipes, it is possible to ignite the prilled ammonium nitrate and diesel in a closed place which results in explosion of the rocks. In this view of the matter, I see force in the submission of the appellant that HDPE pipes are part of the explosives and since duty paid on explosives used in captive mines has already been decided by the Apex Court in the case of Vikram Cement vs. CCE, Indore reported in 2006 (194) ELT 3 (SC), to be admissible credit of Rs. 5,280/- is admissible in respect of HDPE pipes.

3. As regards Ventral Diesel Hydro Loco, it is submitted that this item is a rail locomotive falling under chapter 8602 and used for hauling ore in the underground mine which heading is not covered under the definition of capital goods. Therefore, they are not eligible to cenvat credit as capital goods and the alternative plea that they are held to be eligible to input credit also is not tenable, as there is no substantiation of this plea.

4. Battery Lead Acid falling under chapter 8708 is not covered under the definition of capital goods as contained under rule 2 of the Cenvat Credit Rules 2004. Therefore, I uphold the finding that no credit is admissible on this item.

5. As regards Ingot White Metal, this item falls under chapter heading 7803.10. It is being used for filling of the lining of bearing of the crusher machines and is in fact being used for repair & maintenance of the said machinery. In the light of the recent judgement of the Rajasthan High Court in the case of Union of India vs. Hindustan Zinc Limited reported in 2007 (214) ELT 510 (Raj.) holding that MS/SS plates used in workshop meant for repair and maintenance of machinery, which are used for manufacture of final product, is eligible capital goods since such goods are necessary for running of plant and up-keep of the machinery which is directly involved in the manufacture of final products, I hold that modvat credit is admissible on this item.

6. Penalty of Rs. 50,000/- imposed on the appellant is set aside as the issue involved is the interpretation of availability of the credit and the appellants can taken credit only by taking ~~stating~~ the claim which may be held as admissible or otherwise later.

7. In the result, the appeal is partly allowed by extending credit on HDPE pipes and Ingot white metal and setting aside penalty while rejecting the claim on Ventra diesel hydro loco and battery lead acid.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]