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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/1450/2006-SM[BR]

Date 26/06/2008

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

To :
CCE,JAIPUR-II
NCRB STATUE CIRCLE ,C-SCHEME,JAIPUR

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

I am directed to transmit herewith a certified copy of **Final order No**. 998 /2008 –SM[BR] dated 3.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S HINDUSTAN ZINC LTD.
   RAMPURA AGUCHA,DISTT BHILWARA (RAJ)
2. Adv. / Consult SHRI RAVI RAGHVAN 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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.1450/2006-SM

(Arising out of order in appeal No.128/HKS/CE/JPR.II/06 dated 8.2.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur)

For approval and signature:

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

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?

No

CCE, Jaipur-II — Appellant
(Rep. by Shri B.S. Suhag, DR)

Vs

M/s Hindustan Zinc Ltd — Respondent
(Rep. by Shri Ravi Raghvan, Advocate)

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

Date of Hearing: 3.4.2008

Final Order No. 998 /2008-SM(BR)

Per P.K. Das:

Heard both sides and perused the record.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Lead and Zinc. The learned Advocate submits that the finished goods were partly consumed captively in the cement unit and partly sold to outside parties. The respondents had been paying duty on provisional assessment basis. The respondents paid differential duty on the clearance of goods before final assessment order. The Adjudicating Authority demanded interest on the payment of differential duty as per final assessment order under Rule 7(4) of Central Excise Rules, 2002. The Commissioner (Appeals) set aside the Adjudication Order.

3. Rule 7(4) of Central excise Rules, 2002 provides that the assessee shall be liable to pay interest on any amount payable to Central Government consequent to order for final assessment from the first day of the preceding the month for which such amount is determined till the date of payment thereof. In the present case, the respondents paid the differential duty before passing of the order for final assessment and determination of such amount. It is seen that the Tribunal in a series of cases on identical issue, held that the assessee is not liable to pay interest since differential duty was paid prior to final assessment order. Some of the decisions are as under:-

a) M/s J.K. Industries Ltd Vs CCE Mysore
2006-TIOL-1341

b) MSEB Pole Factory Vs CCE Aurangabad
2005 (187) ELT 209

c) Ispat Industries Ltd Vs CCE Nagpur
2007 (209) ELT 280

d) Tata Motors Ltd Vs CCE Pune-I
A/294-295/08/SMB/C.II

4. Respectfully following the decision of the Tribunal, I do not find any merit in the appeal of the Revenue. Accordingly, the appeal is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*