(18)

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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. ST/416 /2008-418 /2008- SM[BR] Date 05/09/2008

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
M/S HINDALCO INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1270 -1272 /2008 –SM[BR] dated 19.8.2008 assed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S HINDALCO INDUSTRIES LTD.
   RENUKOOT, SONEBHADRA(UP)
2. Adv. / Consult Shri S. Vashudavan Adv.
   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. 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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

2. M/S HINDALCO INDUSTRIES LTD.
RENUKOOT, SONEBHADRA(UP)
3. M/S HINDALCO INDUSTRIES LTD.
RENUKOOT, SONEBHADRA(UP)

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Appeals Nos.416-418 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.14 to 16-ST/ALLD/2008 dated 25.03.2008 passed by the Commissioner of Central Excise, Allahabad (U.P)]

Date of Hearing/ Decision:19.08.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? : yes
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : yes.

CCE, Allahabad

....Appellants

[Rep. by Shri S.Gautam, DR]

Vs.

M/s. Hindalco Industries Ltd.

...Respondent

[Rep. by Shri S. Vashudavan, Advocate]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 1270-72/08-SM(BR) /Dated:19.08.2008

Per P.K. Das:

All the appeals are arising out of a common order and, therefore, all are being taken up together for disposal.

2. After hearing both the sides and on perusal of the records, it is revealed from the show cause notice that the Respondents availed Cenvat Credit of Service Tax paid on Mobile Phones in respect of their work place at Renukoot and Corporate Offices, Mumbai and Kolkata and utilised it for payment of central excise duty to clear their finished goods during the period from September, 2006 to April, 2007. It has been alleged that in view of CBEC Circular No.59/8/2003-ST dated 20.6.2003. The Respondents are not eligible to avail Credit on Mobile Phones.

3. Ld. DR submits that the Respondents are eligible to avail Credit on Mobile Phones used in relation to business activities as defined in Rule 2 (1)(i) of Cenvat Credit Rules, 2004. He further submits that the Respondent did not submit any evidence that the Mobile Phones have exclusively been used in or in relation to manufacture of final products or used in sales promotion, market research, procurement of inputs, activities relating to business, etc.

4. I find from the show cause notice that the Mobile Phones were used in the Respondent's work place and Corporate office, Mumbai and Kolkata. So, the contention of the ld. DR that the Respondent failed to produce any evidence regarding the use of the Mobile Phones is without any substance. The Tribunal in the case of Indian Rayon & Industries Ltd. Vs. CCE, Bhavnagar reported in 2006 (4) S.T.R. 79 (Tribunal-Mumbai) allowed the Cenvat Credit of Service Tax paid on Mobile Phones, which

have been provided by the Appellants to their employees to carry out business transactions. It has further been held that the Board's Circular No.59/8/2003-ST dated 20.6.2003 could not be pressed under the Cenvat Credit Rules, 2004. In the present case, it is evident that the Mobile Phones were used at their Corporate Office and the work place at Renukoot. Therefore, there is no reason to deny the Credit of Service Tax paid on Mobile Phones. Hence, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 19.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.