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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/301 /2007 – SM[BR] Date 03/12/2008

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

To :
HINDUSTAN ZINC LTD.
YASHAD BHAWAN, NEAR SWAROOP NAGAR,
UDAIPUR 313001 (RAJASTHAN)
HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1572 / 2008- SM[BR] dated 25.11.2008 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 II

N.C.R.B. STATUE CIRCLE, 'C'SCHEME, JAIPUR 302005
2. Adv. / Consult SHRI V.LAKSMIKUMARANADV.
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal No. 301 of 2007-SM

(Arising out of Order-in-Appeal No. 583(HKS)CE/JPR-II/2006 dated 10.11.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur).

DATE OF HEARING : 25.11.2008
DATE OF DECISION : 25.11.2008

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 ?.	No
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 ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	yes

M/s Hindustan Zinc Ltd. .... **Appellants**
(Rep by Sh. Ravi Raghvan, Adv.)

versus

CCE, Jaipur -II .... **Respondent**
(Rep. by Sh. R.K. Verma, DR)

CORAM : **HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT**

Final **ORDER NO.** 1572/2008 SM (BR)

PER JYOTI BALASUNDARAM :

Credit of Rs. 3,95,168/- has been disallowed to the appellants herein and penalty of Rs. 2,00,000/- has been imposed upon them. The period in dispute is 01.01.2005 to 31.03.2005.

2. I have heard both sides. Credit of Rs. 2,02,855/- is undisputedly inadmissible to the appellants as it has been taken on LSHS Oil & Lubricants used for generating electricity for residential colony, hospital, school etc. in the light of the Apex Court decision in **CCE vs Solaris Chemtech,** 2007 (214) ELT 481 (SC). Credit of Rs. 10,200/- on cement used for grouting of rock bolt and other fixtures for mining is not admissible in the light of the judgment of the Hon'ble Rajasthan High Court in the case of the same assessee reported in 2008 (225) ELT 183 (Raj.). Credit of Rs. 5,286/- on HDPE Pipes used for carrying blasted material in the captive mines of the appellants is admissible in the light of the Apex Court decision in **Vikram Cement vs CCE,** 2006 (197) ELT 145 (SC). Credit of Rs. 4,526/- taken on denatured acetylene gas used for cutting liners in machines and crushing mills is also admissible to the appellants in the light of the Hon'ble Rajasthan High Court's decision in their own case reported in 2008 (228) ELT 517 (Raj.). Credit of Rs. 588/- taken on ingot white metal is admissible for the reason that this item is used in winder falling under Chapter 84 for capping ends of steel wire ropes which are used in the winder installed in the mines for movement of man made materials in the light of the Apex Court decision in **Vikram Cement vs CCE** cited (supra). Learned DR submitted that the finding of the

authorities below is that this item is used for filling the liners of the crushing machines and, therefore, used for repair and maintenance for which modvat credit is not admissible in the light of the Tribunal decision in **Steel Authority of India Ltd. vs CCE, Ranchi,** 2008 (222) ELT 233, against which SLP of the assessee was dismissed by the Apex Court as seen from 2008 (229) ELT A-127 (SC), I find that there is no basis in the form of any verification etc. that they have been used for repair and maintenance of the machinery.

3. As regards credit of Rs. 1,67,280/- on Ventra Diesel Hydro Locomotive, which is a mining equipment used for hauling ore in the mines, credit has been denied on the ground that the item falls under Chapter Heading 86.02 which is not covered in the definition of capital goods and credit of Rs. 4,433/- has been disallowed on Battery installed in locomotive used in mine for hauling ore. The alternative plea of the assessee is that, these items are used in captive mines and eligible to credit in the light of the Hon'ble Rajasthan High Court's decision in **Aditya Cement vs Union of India,** 2008 (221) ELT 362 (Raj.) and the Hon'ble Apex Court's decision in **Vikram Cement vs CCE** cited (supra). I find that although this plea was raised before the authorities below, no finding has been recorded on this alternative plea. The interest of justice, therefore, requires that this plea be considered and I, therefore, remit the issue of admissibility of credit on Ventra Diesel Hydro Locomotive and Battery installed in locomotive used in mines for hauling ore to the adjudicating authority for fresh decision after extending reasonable opportunity to the assessees of being heard in their defence. The penalty imposed upon the appellants is set aside as the issue is one of interpretation of provisions

relating to credit on capital goods and there ~~was~~ were conflicting decisions ~~which were fin~~al and the legal position was finally settled only by the subsequent Supreme Court's decision in **Collector of Central Excise vs Solaris Chemtech Ltd.** (supra) and by the Rajasthan High Court's decision in 2008 (225) ELT 183 (Raj.) cited (supra).

4. The appeal is thus partly allowed as above.

(Dictated and pronounced in the open Court on the 25th day of November, 2008)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay