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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/182 /2009 – SM[BR]E/STAY/187 / 2009-SM[BR] Date 28/05/2009

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

To :
M/S HINDUSTAN ZINC LTD.
"YASHAD BHAWAN" NEAR SWAROOP SAGAR,
UDAIPUR-313001 (RAJ.)
M/S HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 525 / 2009 –SM[BR]&S/277/2009 dated 17.3.2009 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.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.RAVI RAGHAVAN 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 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Stay Application No.187 of 2009-SM
In Appeal No.182 of 2009-SM

[Arising out of Order-in-Appeal No.216(DK)CE/JPR-II/2008 dated 11.11.2008 passed by the Commissioner of Central Excise (Appeals-II), New Delhi]

Date of Hearing/ Decision:17.03.09

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?	:	No
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

M/s. Hindustan Zinc Limited ...Appellants
[Rep. by Shri Ravi Raghavan, Advocate]

Vs.

CCE, Jaipur-II ...Respondent
[Rep. by Shri R.K. Saini, DR]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**
Stay order No. 277/09-SM(BR)
Final Order No. S-251/09-SM(BR)/Dated:17.3.2009

<u>Per P.K. Das:</u>

The issue involved in this case is in narrow compass and, therefore, the appeal is taken up for hearing after granting stay.

2. In this case, the credit was denied on Battery Lead Acid and Ingot White Metal. The finding of the Commissioner (Appeals) is that the

Battery Lead Acid was used for starting the diesel engine installed in the locomotive. The other item was used in winder for capping the ends of steel wire ropes installed in the mines for movement of materials. Both the items were used in the mines.

3. Ld. Advocate relied upon the decision of the Tribunal in appellant's own case vide Final Order No.1572/2008-SM (BR) dated 25.11.2008 whereby credit on Ingot White Metal was allowed as this item was used in the winder falling under Chapter 84 for capping ends of steel wire ropes, which were used in the winder installed in the mines for movement of materials. The Tribunal following the Apex Court decision in the case of Vikram Cement reported in 2006 (197) ELT 145 (SC) allowed credit on Ingot White Metal. Regarding the credit on Battery Lead Acid, the Tribunal in the appellant's own case in Final Order No.1572 of 2008-SM (BR) dated 25.11.2008 held as under:-

> "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 (Rajasthan) 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."

4. In view of the above discussions, denial of credit on Battery Lead Acid is set aside and the matter is remanded back to the Original Authority to decide afresh. Credit on Ingot White Metal is allowed. It is seen that the Tribunal in the appellant's own case in the above mentioned order set aside the penalty as the issue involved is interpretation of the law on the availability of the credit on capital goods. So, the imposition of penalty is not warranted. Accordingly, the penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in the open court on 17.03.2009.

(P.K. Das)
Member (Judicial)

Ckp.