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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/907 /2007 – SM [BR] Date 03/08/2009

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II Appellant
Vs
HINDUSTAN ZINC LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** **851 /** **2009 - SM[BR]** Dated 10.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
HINDUSTAN ZINC LTD.
PUTHOLI, CHITTORGARH, (RAJASTHAN)

2. Adv. / Consult SHRI V. LAKSHMIKUMARAN ADV.
B-4/158, 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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(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi-66
COURT-III

Date of hearing/decision: 10.06.2009

Excise Appeal No. 907 of 2007-SM

[Arising out of Order-in-Appeal No.129 (HKS) CE/JPR II/2007 dated 27.2.2007 passed by the Commissioner (Appeals), Customs & Central Excise, 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?	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

Commissioner of Central Excise, Jaipur — Appellant

Vs.

M/s. Hindustan Zinc Ltd. — Respondents

Appearance:

Shri R.K. Verma, DR for the Appellant
Shri R.K. Hasija, Advocate for the Respondent

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

Final Oral Order No. 851/2009-SM(BR)

Per P.K. Das :

Revenue has filed this appeal against the order of the Commissioner (Appeals).

2. After hearing both the sides and on perusal of the record, it is seen that the issue involved in this case is as to whether credit of service tax availed on mobile phone and residential phones is admissible to the respondents as inputs service in terms of Cenvat Credit Rules, 2004. There is no dispute that the mobile phone or residential phone were used by the employees of the respondent company. There is no material available that the mobile phones and residential phones were not used in relation to the business activities. I find that the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise vs. Excel Crop Care Ltd. [2008 (12) STR 436 (Guj)] held that mobile phones provided by the respondent to employees are eligible for inputs credit as there is no material showing that the activities carried out by the employees not relatable to the manufacture. Tribunal in the case of Indian Rayon and Industries Ltd. vs. CCE, Bhavnagar [2006 (4) STR 79 (Tri-Mumbai)] held that service tax paid on mobile phone is available as input credit. The Tribunal in the case of CCE, Bhavnagar vs. Saurashtra Chemicals Ltd. [2008 (12) STR 67 (Tri-Ahmd)] rejected the appeal filed by the Revenue on the identical issue.

3. It is contended by the learned DR that the decision of the Tribunal in the case of Indian Rayon & Industries has not attained finality and has been challenged before the Hon'ble High Court.

4. I do not find any force in the submission of the learned DR. After considering facts and law of the case, there is no reason to interfere with the order of the Commissioner (Appeals). Respectfully following the ratio of the Hon'ble High Court of the Tribunal , the appeal filed by the Revenue is rejected.

(P.K. Das)
Member (Judicial)

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