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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/2478/2007 – SM[BR] Date 26/08/2009

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

To :
HINDUSTAN ZINC LTD.

YASHAD BHAWAN, NEAR SWAROOP SAGAR,
UDAIPUR 313 001 (RAJ.
HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1063 / 2009 –SM[BR] dated 11.8.2009

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 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 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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/2478/07-SM

(Arising out of Order-in-Appeal No.373(HKS)CE/JPR-II/2007 dt.21.6.07 passed by Commissioner(Appeals), Jaipur-II)

M/s. Hindustan Zinc Ltd. Appellant

Versus

CCE, Jaipur-II Respondent

Appearance
Shri Ravi Raghvan, Adv. For Appellant

Shri S.N.Srivastava, DR for Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final Date of decision: 11.8.09
Order No. 1063/2009 SM (Br)

Per Rakesh Kumar:

This is an appeal against order-in-appeal No.373(HKS)CE/JPR-II/2007 dt.21.6.07 by which the Commissioner(Appeals) upheld the Asstt. Commissioner's order denying capital goods Cenvat credit in respect of two items namely Battery Lead Acid and Ingot White Metal being used by the Appellant in their factory/mine for production of zinc metal.

2. Heard both sides.

2.1 Shri Ravi Raghvan, Advocate, Ld. Counsel for the Appellant pleaded that Ingot White Metal falling under Chapter Heading 7803 of the Tariff is used for capping the ends of steel wire ropes used in winders. Winders falling under Chapter 84 are capital goods and therefore, the Ingot White Metal being used for capping the ends of steel wire ropes are also capital goods and that Tribunal in the Appellant's own case vide Final Order No.525/09-SM dt.17.3.09 has held that Ingot White Metal used for capping the ends of steel wire ropes being used in the winders are covered by the definition of capital goods and eligible for Cenvat credit. As regards the Battery Lead Acid, he pleaded that the same is used in the vehicles which are used in the captive mine for movement of the ore and hence the same would be eligible for Cenvat credit as input.

2.2 Shri S.N.Srivastava, the Ld. DR reiterating the Commissioner(Appeals)'s findings pleaded that none of these items are covered by the definition of "capital goods" or "input", that so far as battery lead acid is concerned, the same is used in the vehicles for starting the same and the vehicles are used in the mines of the appellant company for movement of the ore and as such the battery lead acid is not saome thing which is used in or in relation to the manufacture of the finished product. As regards 'Ingot White Metal' he pleaded that the same cannot be treated as 'part' or 'spare' of winders and hence the same is not covered by the definition of 'capital goods'. He, therefore, pleaded that none of these items are eligible for Cenvat credit either as capital goods or as inputs.

3. I have carefully considered the submissions from both the sides and perused the records.

3.1 So far as Ingot White Metal is concerned, I find that the eligibility of this very item in the appellant's own case had been considered by the Tribunal 's Final Order No.525/09 dt.17.3.09 and the Tribunal has held that this item is covered by the definition of capital goods and hence eligible for the Cenvat credit. Following the decision of the Tribunal, I hold that Ingot White Metal is eligible for the capital goods Cenvat credit.

3.2 As regards the Cenvat credit in respect of Battery Lead Acid, I find that the same is used in the battery of the vehicles which are used in the mines for movement of the ore. The acid used in the vehicle batteries cannot be said to be used in or in relation to the manufacture of the finished goods. The Hon'ble Supreme Court judgment in the case of Vikram Cement vs UOI reported in 2006(197)ELT.145 is not applicable to the facts of the case as in that case the issue under consideration was as to whether explosives used in the captive mines are eligible for Cenvat credit and while explosives are directly used for mining of the ore, the same cannot be said about the Battery Lead Acid which is used in the batteries of the vehicles used for movement of the material in the mines. I, therefore, hold that the Battery

Lead Acid is neither capital goods nor the input used in or in relation to the manufacture of the finished goods.

4. In view of the above discussion while I uphold the impugned order in respect of Battery Lead Acid, I set aside the impugned order in respect of Ingot White Metal. In view of reduction in Cenvat credit demand, the penalty is also reduced to Rs.3,000/-. The impugned order stands modified as above.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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