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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/105 /2008 – SM[BR] Date 06/01/2010

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

To :
M/S HINDUSTAN ZINC LIMITED[ZAWAR MINES]
P.O. - ZAWAR, DIST-UDAIPUR, RAJASTHAN

M/S HINDUSTAN ZINC LIMITED[ZAWAR MINES] Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 16 / 2010 –SM[BR] dated 4.1.2010 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
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B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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 (Harvana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.105 of 2008

(Arsing out of Order-in-Appeal No.538(RKS) CE/JPR-II/2007 dated 10.10.2007 passed by the Commissioner of Central Excise (Appeals-II), Jaipur)

Date of Hearing: 16.12.2009
Date of Decision: 16.12.2009

Hindustan Zinc Limited — Appellant

Vs.

CCE, Jaipur-II — Respondent

Present for the Appellant: Shri Ravi Raghvan, Advocate
Present for the Respondent: Shri S.K.Bhaskar, DR

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Final **ORDER NO.** 16/2010 SM (BR)

PER: D.N.PANDA

Three issues that came up for decision in this appeal are:

(1) Whether DA gas used for purpose of cutting out liners in the crushing mills and refurbish them shall be eligible to cenvat credit,

(2) Whether Ordinary Portland cement used for grouting of various rocks blots and other fixtures which are used for carrying out mining activities shall be eligible to cenvat credit and

(3) Whether HDPE pipes used for carrying out blasting in the mines shall be eligible to cenvat credit.

2. So far as the first issue is concerned, ld.Counsel adopts his argument as he made in Appeal No.E/101/08 decided by a separate order today. DA gas being integrally connected with the welding electrodes, this matter shall also go back to the learend adjudicating authority to determine the issue as that has been directed in Appeal No.E/101/08.

3. So far as the second issue of ordinary Portland cement is concerned, ld.Counsel fairly states that the appellant has no chance to succeed in view of the decision of Hon'ble Rajasthan High Court in the own case of assessee reported in 2008 (225) ELT 183 (Raj.). He also fairly states that when assessee appealed against the decision of Hon'ble Rajasthan High Court, its SLP was dismissed by the Apex Court.

4. So far as the third issue of HDPE pipes is concerned, he submits that exclusively it is used for carrying out mining activities carried out through HDPE pipes. According to the judgement of Apex Court in the case of Vikram Cement vs.CCE-2006 (194) ELT 3 (SC) and most particularly in terms of para 11 of the judgment, the appellant shall get relief in respect of HDPE Pipes.

5. Heard both sides and perused the records.

6. Since a matter similar to above issue having been remanded to the adjudicating authority as stated above, DA gas which is used in connection with welding needs to be examined in the light of the direction given today in appeal No.E/101/08 by a separate order.

7. So far as ordinary Portland cement is concerned, in view of the resolution of the dispute by the judgement of Hon'ble Rajasthan

High Court as reported in 2008 (225) ELT 183 (Raj.) and SLP of assessee dismissed, its appeal on this count is dismissed.

8. So far as the third issue of HDPE Pipes is concerned, following the apex court judgement as cited by the ld.Counsel, the appellant gets relief on such dispute.

9. Ld.Counsel further submits that penalty having been imposed by different interpretations of law, such levy was unwarranted. Considering that issue has undergone various phases of resolution of dispute, levy of penalty is unwarranted. Accordingly, the appellant gets relief by way of waiver of penalty and in respect duty demand, relief is in respect of HDPE Pipes while DA gas issue is remanded. Accordingly appeal is disposed of in the manner as indicated above.

(D.N.PANDA)
JUDICIAL MEMBER

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