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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

Date 20/10/2009

Appeal No. ST/116 /2009 – SM[BR]

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

To :
M/S KOREA PLANT SERVICE & ENGINEERING CO LTD
PJT OFFICE, CHANDERIYA LEAD ZINC SMELTER,
PUTHOLI, DISTT- CHITTORGARH. — Appellant

Vs

M/S KOREA PLANT SERVICE & ENGINEERING CO LTD — Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of **Final order No.** 1283 / 2009 –SM[BR] dated 24.9.2009

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   NONE;----------------

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)
16 Office Copy
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Assistant Registrar
(SM Appeal Branch)

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

Service Tax Appeal No.116 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.207-208 (DK)ST/APPL/JPR-II/2008 dated 24.10.2008 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:24.09.2009

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? :
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. Korea Plant Service & Engg. Co. Ltd. ...Appellants
(Rep. by none.)
Vs.
CCE, Jaipur-I ....Respondents
(Rep. by Shri S.R. Meena, SDR)

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No.1283/2009 SM (BR)/Dated:24.09.2009

Per P.K. Das:

None appears on behalf of the appellants. By letter dated 19.05.2009, the appellants requested to decide the matter in their absence. It is stated that on the identical issue for the earlier period, the Tribunal vide Final Order No.1096-1097 of 2009-SM (BR) dated 13.08.2009 allowed their appeal.

2. Heard ld. SDR on behalf of the Revenue.

3. After hearing the ld. SDR and on perusal of the records, I find that the appellant entered into a contract with M/s. Hindustan Zinc Ltd. for the operation and maintenance of Chanderiya Captive Power Plant at Chittorgarh, Rajasthan. The appellant is also registered with Service Tax department under the category of repair and maintenance. The findings of the Commissioner (Appeals) is that the appellant wrongly availed input-service credit on unloading charges, which is not for the maintenance and it is used for the operation purposes. The Commissioner (Appeals) also allowed input-service credit on car hiring charges, insurance charges, storage charges to the extent of shape of maintenance fee i.e. 49.60% as per the contract. The Commissioner (Appeals) observed that the contract is for operational and maintenance and, therefore, the appellant is eligible for input-credit only in respect of maintenance and not for the operational purposes. The contention of the appellant is that they paid service tax on all the contractual amount under repair and maintenance. Thus, it is evident that the appellant paid service tax on the entire contractual amount. The fact is that the Department while calculating the tax on the repair and maintenance treated the repair and maintenance as composite

contract but at the time of admissibility of credit, it was bifurcated, which is not permissible.

4. I find that the Tribunal in the appellant's own case vide Final Order dated 13.08.2009 set aside the impugned orders. The relevant portion of the said order is reproduced below:-

> "3.1 The service being provided by the appellant to M/s. Hindustan Zinc Ltd. is operation and maintenance of the captive power plant owned by M/s. Hindustan Zinc Ltd. Even though the appellant's agreement with M/s. Hindustan Zinc Ltd. mentions separate charges for plant operation and plant maintenance, the Department treating the entire service of operation and maintenance as one composite service classifiable as "repair and maintenance service" has charged service tax on the entire amount including the amount towards plant operation. In view of this, having treated the appellant's activity as one composite service, the Department cannot split it into plant operation and plant maintenance for the purpose of permitting Cenvat credit and deny Cenvat credit in respect of input goods and services used for plant operation. In view of this, having treated the appellant's activity s one composite service, the Department cannot split it into plant operation and plant maintenance for the purpose of permitting Cenvat credit and deny Cenvat credit in respect of input goods and services used for plant operation. In view of this, I hold the impugned order is not sustainable. The same is set aside. The appeals are allowed."

5. In view of the above discussions, the impugned order is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 24.09.2009.

(P.K. Das)
Member (Judicial)

Ckp.