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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/1094/2011-SM[BR] E / STAY /1363/2011-SM[BR]** Date **25/08/2011**

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

To :
M/S HINDUSTAN ZINC LIMITED,
YASHAD BHAWAN, UDAIPUR (RAJASTHAN)
313001

M/S HINDUSTAN ZINC LIMITED, Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.513/2011-SM[BR]&S/449/2011** dated 16.8.2011 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 V.LAKSHMIKUMARAN ADV.
B-6/10,SAFDARJUNG ENCLAVE NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

COURT NO. II

E/STAY/1363/11 in and Central Excise appeal No. 1094 of 2011

[Arising out of Order-in-Appeal No. 19(CB)CE/JPR-II/2011 dated 7.2.2011 passed by the Commissioner of Customs & Central Excise (Appeals-II), Jaipur].

Date of Hearing/decision: 16th August, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member;

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?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Hindustan Zinc Limited, Appellant

Vs.

CCE, Jaipur-II Respondent

Present for the Appellant : Shri Hemant Bajaj, Adv.
Present for the Respondent : Shri S.K. Bhaskar, D.R.

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

FINAL ORDER NO. S13/2011 **DATED** SM(BR) &

S-449/2011 SM BR

Per D.N. Panda:

Moving stay application learned Counsel submits that the allegation made in the show cause notice is only description of law. Therefore, adjudication traveling beyond the scope of show cause notice is unsustainable.

2. Thus it is required to find out what was the allegation. It appears that the allegation was that Cenvat credit of service tax was availed against certain premiums which were not the part of manufacture.

3. Perusal of the adjudication order at page 36 of appeal folder and appellate order at page 51 reveals that the authorities below have made casual approach to examine relevancy of ground for which appellant was denied Cenvat credit of service tax paid on the service availed. It also appears that justice is not done to the appellant. The appellate authority says that no documentary evidence was produced for examination of the case. On the other hand, it is not clear from the adjudication order whether the adjudicating authority examined the documents or not.

4. Violation of principle of nature justice being incurable at appellate stage, Dispensing with requirement of pre-deposit, appeal is remanded to the original authority to grant fair opportunity of hearing to the appellant and pass reasonable and speaking order concerning each and every claim of the appellant. In the result, both stay application as well as appeal are disposed by way of remand of appeal.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK