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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/867 /2011 – SM[BR] E / STAY/ 1063/2011-SM[BR] **Date 20/10/2011**

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

To :
M/S HINDUSTAN ZINC LIMITED,(UNIT: C.L.Z.S.)
"YASHAD BHAWAN",
UDAIPUR (RAJASTHAN) 313001

M/S HINDUSTAN ZINC LIMITED,(UNIT: C.L.Z.S.) Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.724/2011-SM[BR]&S/648/2011** dated 10.10.2011 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 DELHI29.

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 (Harvana)
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)

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

Excise Stay Application No.E/S/1063/11-SM in
Excise Appeal No.E/867/11-SM

M/s.Hindustan Zinc Ltd. ...Appellant

Vs.

CCE, Jaipur-II ... Respondent

Present for the Appellant : Shri. Hemant Bajaj, Advocate
Present for the Respondent:Shri.Fateh Singh, DR

Coram: HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER

Date of Hearing/Decision:10.10.2011

Final **ORDER NO.** 724/2011 SM (BR) & **DATED:**________
S-648/2011 SM (BR)

PER: ASHOK JINDAL

The short issue involved in this case is whether the appellant is entitled to take cenvat credit on input service tax credit on out door catering service received in its factory canteen defined under Rule 2(l) of the Cenvat Credit Rules, 2004.

2. Ld. Advocate for the appellant submits that the issue is no more resintegra as held by the Hon'ble High Court of Bombay in the case of CCE, Nagpur vs. Ultratech Cement Ltd. reported in 2010 (20) STR 577 (Bom.), CCE, Ahmadabad-I vs. Ferromatik Milacron India Ltd. Reported in 2011 (21) STR 8 (Guj.) and CCE, Bangalore-III vs. St6anzen Toyotetsu India (P) Ltd. reported in [2011] 32 STT 244/12 taxman.com 101 (Kar.) Therefore, he prays that the impugned order may be set aside, appeal may be allowed and stay may be granted.

3. As the issue involved in narrow compass, waiving requirement of pre-deposit, I have taken up the appeal for final disposal as agreed by both the sides.

4. I have gone through the impugned show cause notice wherein the input service credit has been denied on the ground that the appellant is not entitled to take input service credit on out door catering service received as the same are not covered under Rule 2(l) of the Cenvat Credit Rules, 2004. As the same has been decided by the Hon'ble High Courts of Bombay, Ahmadabad and Karnataka, the assessee is entitled to take input service credit on outdoor catering service, therefore, issue in no more resintegra. Accordingly, impugned order is

set aside, appeal is allowed & Stay application is disposed off in the above manner.

[Dictated & Pronounced in the open Court].

(ASHOK JINDAL)
JUDICIAL MEMBER

Anita