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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/521 /2008 – SM[BR] Date 17/05/2010

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

To :
M/S HINDUSTAN ZINC LTD.

YASHAD BHAWAN,NEAR SWAROOP
SAGAR,UDAIPUR (RAJ.)

M/S HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 527 / 2010 –SM[BR] dated 20.4.2010 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 Shri V. Lakshmikumaran 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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. Office Copy
14. Guard file
15. TAXINDIAONLINE. COM PVT. LTD. UNIT NO. 1, 2ND FLOOR VASANT ARCADE , NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI -1100070

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/521/08-SM

[Arising out of Order-in-Appeal No.599(RKS)CE/JPR-II/2007 dt.28.12.07 passed by Commissioner(Appeals), Jaipur)

For approval and signature

Hon'ble Mr. Rakesh Kumar, Member Technical

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 would 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 Department Authorities: :

M/s. Hindustan Zinc Ltd. Appellant

Versus

CCE, Jai pur Respondent

Appearance
Ms. Napur Maheswari, Adv. For Appellant
Sh. I.Baig, DR For Respondent

Date of decision: 20.4.2010
Final Order No. 527/2010-SM (BR)

Per Rakesh Kumar:

The Appellants are engaged in the manufacture of Lead and Zinc Concentrates falling under Chapter Heading No.2607 & 2608 of Central Excise Tariff Act. During the period from Nov'05 to May'06, the Appellant took Cenvat credit of duty on inputs namely LSHS Oil and Lubricants used in generation of electricity which was used in places like Residential Colony, Hospital, Bank, School etc. Accordingly, a show cause notice dt.14.11.06 was issued to the Appellant for denying the Cenvat credit amounting to Rs.7,73,061/- on the above mentioned items used in the generation of electricity, which instead of being used in the plant for production of excisable goods, had been used in the Residential Colony, Hospital etc. The Dy. Commissioner vide order-in-original dt.31.5.07 confirmed the Cenvat credit demand alongwith interest and imposed penalty of equal amount under Rule 15(1) of Cenvat Credit Rules,2004.

1.1 On appeal to Commissioner(Appeals) against the above order of the Dy. Commissioner, the Commissioner(Appeals) vide order-in-appeal No.599(RKS)CE/JPR-II/2007 dt.28.12.07 dismissed the appeal and upheld the Dy. Commissioner's order. With regard to penalty equal to the wrongly taken Cenvat credit, the Commissioner(Appeals) observed that the Appellant had never disclosed the fact to the Department that electricity generated by the DG Sets was meant not for the factory but for supply to residential colony, hospital etc. and hence they are guilty of suppressing this fact of the Department and accordingly penalty under Section 11AC would be justified.

It is against this order of the Commissioner(Appeals) that the present appeal has been filed.

2. Heard both the sides.

2.1 Ms. Nupur Maheswari, Advocate, learned Counsel for the Appellant fairly concede that issue involved in this case stands decided against them by Hon'ble Supreme Court in the case of CCE vs Solaris Chemtech reported in 2007(214)ELT.481(SC) but she pleaded that since during the period when the credit was taken, issue was under the dispute, the penalty may be waived.

2.2 Learned DR defending the impugned order emphasises on the Commissioner's observation in para 7 of the impugned order and pleaded that in view of this, imposition of penalty under Rule 15 of Cenvat Credit Rles,2004 read with Section 11AC of Central Excise Act,1944 is justified.

3. I have carefully considered the submissions from both the sides. The only point of dispute in this case is as to whether Cenvat Credit of duty is LSHS Oil and Lubricants used in the DG set, which was used for generating electricity only for use in the residential colony, hospital, school etc. is available to the Appellant. Since this issue has been decided against the Appellant by the Hon'ble Supreme Court in the case of CCE vs Solaris Chemtech(supra) on merits of the Cenvat credit demand, I do not find any

infirmity in the impugned order. Coming to the imposition of penalty, the Commissioner(Appeals) has specifically observed that the Appellant never disclosed the fact to the Department about the use of electricity generated through their DG Sets for use in their residential colony, schools etc. and had taken Cenvat credit in respect of the inputs used in the generation of such electricity, which instead of being used in the factory for production of excisable goods, was supplied for use in their residential colony, hospital, school etc. It is not the contention of the Appellant that they had specifically informed the Department about the generation of electricity for use in residential colony, Hospitals etc. through DG sets and availment of Cenvat credit in respect of LSHS Oil and Lubricants used in the generation of such electricity. In view of this, I do not find any infirmity in the Commissioner(Appeals)'s order. The appeal is dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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