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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/517 /2008-518 /2008 – SM[BR] Date 17/05/2010

Assistant Registrar

C.E.S.T.A.T, New Delhi
To :

1. M/S HINDUSTAN ZINC LTD.
YASHAD BHAWAN UDAIPUR-313001[RAJ.]

2. M/S HINDUSTAN ZINC LTD.
YASHAD BHAWAN UDAIPUR-313001 (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**. 528- 529 / 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
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15 TAXINDIAONLINE. COM PVT. LTD. UNIT NO. 1, 2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ , NEW DELHI -110070.

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/517-18/08-SM

[Arising out of Order-in-Appeal No.601 & 603(RKS)CE/JPR-11/2007 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. & Others — Appellant

Versus

CCE, Jaipur — Respondent

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

Date of decision: 20.4.2010
Final Order No. 528 – 529/2010-SM (BR)

Per Rakesh Kumar:

The Appellant having plant at Chanderia, Distt. Chittorgarh are engaged in the manufacture of Lead and Zinc. There is captive power plant for use in the factory. Coal and LDO was brought to the captive power plant for which GTA service was availed. However, a part of the electricity generated in the captive power plant was used in the manufacturing unit, a part of the electricity was wheeled out to other plant of M/s. Hindustan Zinc Ltd. and a small portion of electricity was sold to other parties. The credit in respect of GTA service received during the period from April'05 to Sept.06 was Rs.37,083/- and during period from April'06 to Sept'06 was Rs.1,54,442/-. The Department issued show cause notices for denial of Cenvat credit on the ground that major portion of the electricity generated has not been used in the factory but has been wheeled out/sold to other unit. The show cause notices were adjudicated by the Asstt. Commissioner by which the Cenvat credit demands were confirmed alongwith interest and penalties were imposed. In first case, penalty of Rs.25,000/- and Rs.2,000/- was imposed and in second case, penalty of Rs.1,50,000/- and Rs.2,000/- was imposed. The Appellant filed an appeals to Commissioner(Appeals) against both the orders and the Commissioner(Appeals) vide order-in-appeal No.601 & 603(RKS)CE/JPR-11/2007 dt.28.12.07 upheld Asstt. Commissioner's orders. It is against this order of the Commissioner(Appeals) that the present appeals have been filed.

2. Ms. Nupur Maheswari, Advocate, learned Counsel for the Appellant, pleaded that it is not correct to say that major

portion of the electricity generated was sold out or used in the other plant of the Appellant; that the major portion of the electricity generated was used in Chanderia plant of the Appellant and only a small portion was wheeled out to other plant of Hindustan Zinc Ltd. and a very small portion of the electricity was sold out to others, that details about the total electricity generated, the quantity wheeled out to other plant of Hindustan Zinc Ltd. and the quantity sold to the other had been given to the Department; that in view of this, it is totally incorrect for the Department to deny the entire credit; that the Appellants are eligible for proportionate Cenvat credit to the extent the electricity was used in their plant at Chanderia for manufacture of finished goods, that in addition to this, the Appellants are also eligible for Cenvat credit even when the electricity generated was wheeled out for use in their other plant, that in this regard, she relies upon the judgment of the Tribunal in the case of Essar Steel Ltd. vs CCE, Surat reported in 2001(129)ELT.213 and that in view of this, the impugned order is not correct.

2.1 Shri I.Baig, learned DR defending the impugned order, pleaded that the Appellant would be eligible for Cenvat credit of service tax on GTA service used for bringing the coal and LDO to the captive power plant only if the electricity generated was used in the factory for production of finished goods; that to the extent, the

Appellant wheeled out the electricity generated to the other plant, or sold to others, they would not be eligible for Cenvat credit; that the Hon'ble Supreme Court in the case of CCE, Nagpur vs Ballarpur Industries Ltd. reported in 2007(215)ELT.489(SC) has held that when cenvated inputs are transferred to sister units, Rule 57CC of erstwhile Central Excise Rules would be applicable, that same principles will be applicable in this case and to the extent, the Appellant wheeled out the electricity generated to their other plant or sold to others, they would not be eligible for Cenvat credit and that since the Appellant had not given the details regarding the quantity of the electricity generated which used in the plant and the quantity wheeled out to other plant of Hindustan Zinc Ltd. or sold to others, the entire amount of Cenvat credit has been rightly denied.

3. I have carefully considered the submissions from both the sides and perused the records. In this case, there is no dispute about the eligibility of the Appellant to Cenvat credit of service tax paid on GTA service used in transportation of coal and LDO to the captive power plant. The Department seeks to deny the credit on the ground that major portion of the electricity produced was not used in the factory for production of dutiable goods, while according to the Appellant, major portion of the electricity was used in the factory itself and only a small portion was wheeled out, the

major portion of which was used in other plant of Hindustan Zinc Ltd. In this case since the Cenvat credit had been taken by the Chanderia unit of the Appellant company, electricity generated should have been used in that factory only and to the extent, the electricity generated was not used in that factory but was wheeled out, they would not be eligible for Cenvat credit even if the electricity was wheeled out to other unit of the Appellant company. However, I do not find any justification for denial of the entire Cenvat credit which has been done by the Department. While according to the Department, the Appellant had not given the details of the electricity consumed in the unit and electricity wheeled out, according to the Appellant such details had been given and same are available. In view of this, the impugned order is set aside and the matter is remanded to the Commissioner(Appeals) for denovo decision after examining the Appellant's plea about the quantity of the electricity generated which has been used in their plant at Chanderia and the quantity which had been wheeled out to other units. Both the Appeals stand disposed of as above.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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