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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/1217/2006 – SM[BR] Date 12/01/2010

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR II Appellant
Vs
M/S HINDUSTAN ZINC LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 69 / 2010 –SM[BR] dated 1.1.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S HINDUSTAN ZINC LTD.
   DEBARI,UDAIPUR(RAJASTHAN)
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 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)
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Assistant Registrar
(SM Appeal Branch)

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

Appeal No.E/1217 of 2006-SM Branch

[Arising out of Order-in-Appeal No.100 (RM)CE/JPR-II/2006 dated 3.2.06 of the Commissioner of Central Excise (Appeals), Jaipur-II]

Date of Hearing/ Decision:01.01.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

CCE, Jaipur-II ...Appellants
(Rep. by Shri I. Baig, SDR)

Vs.

M/s. Hindustan Zinc Ltd. ...Respondent
(Rep. by Shri Ravi Raghavan, Advocate)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No. 69/2010 SM (BR) /Dated:01.01.2010

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No.100(HKS)CE/JPR-II/06 dated 3.2.2006.

2. Heard both sides. The appeal has been listed on several occasions earlier on the ground that the matter was covered by the issue referred to Larger Bench in the case of Panasonic Battery reported in 2008 (85) RLT 380. Both sides now agree that the issue in the present case are not the same as the matter referred to the Larger Bench in the case of Panasonic Battery Ltd. (supra).

3.1 The respondent inter alia, manufacture Lead Anode Sheets and Lead Headers and use these items captively for manufacture of Zinc. The nature of activities in relation to manufacture of the above items are recorded in para 12 and 13 in the order of the Original Authority, which are reproduced below:-

> "12. They were, inter alia, engaged in the manufacture of zinc ingots and lead ingots. For the manufacture of zinc, they adopt various processes and one of the process is the electrolysis process by which zinc is extracted from the electrolyte. The electrolysis process is carried out in the electrolytic cell where they use lead anode sheets and lead headers. For this purpose, they get lead ingots from their Visakhapatnam and Tundoo units on payment of duty. The said ingots are then rolled into sheets in their factory.
>
> 13. These lead sheets are supplied to independent job workers along with copper strip and lead ingots. These job

workers fabricated the lead headers and weld the same to the lead sheets of specific dimension in order to enable these lead sheets to be hung in the electrolytic cell. The job workers who fabricate these lead anode sheets and lead headers are independent job workers and they only inspect the final fabrication done by them."

3.2 Alleging under-valuation of "Leader Anode Sheets and Lead Headers " cleared for captive consumption, three show cause notices were issued, as detailed below:-

S.No.	SCN No.	Date of SCN	SCN issued by	Amount involved	Period of SCN1
1	V(78)4-24/95/437-38	28.1.95	A.C. CE, Div. Udaipur	2816402	07/94 to 09/94
2	V(78) 4-145/95/1729-30	25.4.95	A.C. CE Div. Udaipur	2241628	10/94 to 02/95
3	V(78)4-268/95/5039-5040	30.09.95	A.C. CE, Div. Udaipur	287388	03/95 to 07/95
	Total			5345418	

3.3 The Original Authority, after taking into account, the decision of the Hon'ble Supreme Court in the matter relating to excitability of Lead Anode Sheets and Lead Headers, confined the demand to Rs.7,81,633/- in relation to only Lead Headers. He also imposed a penalty of Rs.10 Lakhs on the respondent. Commissioner (Appeals), taking into account that the respondent have totally paid a sum of Rs.16,34,632/- in respect of both Lead Anode Sheets and Lead Headers during the disputed period and that the duty payable on Headers was only Rs.8,65,082/-, adjusted the differential duty demand attributable to Lead Headers amounting to Rs.7,81,633/- and held that no further demand survive and no penalty was imposable. Hence, the Department is in appeal.

4. Ld. SDR produced attested copy of three show cause notices for records. He submitted that though the show cause notices were issued for demanding differential duty on the ground of under-valuation in respect of Lead Anode Sheets and Lead Headers combinedly, the Annexure to the show cause notices clearly indicated the duty relating to Lead Anode Sheets and Lead Header separately. When the show cause notices were decided the decision of the Hon'ble Supreme Court holding that Lead Anode Sheets were not dutiable has been taken into account. The duty demand has been confined to only Lead Headers. The order of the Original Authority thus demanding differential duty on under-valued Lead Headers and imposition of penalty is in order. The Commissioner (Appeals) should not have adjusted the differential duty due on Lead Headers towards duty paid on the Lead Anode Sheets which have been held not dutiable by the Hon'ble Supreme Court. He also relies on the decision of the Tribunal in the case of Indus Engg. Company reported in 2001 (130) ELT 667.

5. Ld. Advocate for the respondent submits that the Department was treating the product as Lead Annode which consists of Lead Anode Sheets and Lead Headers joined together. That is the reason show cause notices have been issued combinedly. The segregation of value and demand separately in the Annexure is not relevant. When the Department demanded differential duty on Lead Anode and subsequently, only a portion of the Lead Anode viz. Lead Headers are held dutiable, differential duty, if any, has to be demanded taking into account the duty already paid on the Lead Anode Sheet. Therefore, he seeks upholding of the order of the Commissioner (Appeals). He also submits that the decision of the Tribunal in the case of Indus Engg. Company is on different set of facts, which, inter alia, involved the issue as to whether the value of erection and commissioning charges as well as third party inspection charges of the items in assessment should be treated as part of assessable value and whether the said issue can be agitated and whether such demand can be adjusted towards demand involving re-classification of the same product. Ld. Advocate also submitted that at any rate, the Lead Header were manufactured on job work basis and differential duty, if any, should have been demanded from the job worker.

6. I have carefully considered the submissions from both sides and perused the records including the three show cause notices issued in 1995. From the process of manufacture of the impugned items recorded by the Original Authority, which has been reproduced earlier, it is clear that the Lead Headers were claimed to have been manufactured by the independent job workers. It is settled that the duty liability on the goods manufactured on job work basis is on the job worker. However, the fact remains that the respondents have been paying the duty and the dispute is in relation to the differential duty arising out of alleged undervaluation of the said products. It is to be noted that the Commissioner (Appeals) has not gone into this issue perhaps because he has allowed the appeal of the party on other grounds. Both sides agree that there is no dispute on the excisability of Lead Headers nor on the valuation of Lead Headers as adopted by the Original Authority. The dispute is in a narrow compass as to whether the Commissioner (Appeals) was correct in adjusting the differential duty due on Lead Headers from the duty amount paid by the assessee on Lead Anode Sheets. In the present case, it is apparent that the Department has been proceeding on treating the two i.e. Lead Anode sheets and lead Headers as composite items under the name Lead Anode and issued show cause notices for demanding duty accordingly. Because of subsequent development by way of judgment of the Hon'ble Supreme Court, the demand stands restricted only to Lead Headers. The duty

amount paid, which need not have been paid, on Lead Anode Sheets is substantially higher than the differential duty involved on the Lead Header. In the peculiar facts and circumstances of the case, the order of the Commissioner (Appeals) in allowing adjustment of duty paid on Lead Anode Sheets towards the differential duty payable on Lead Header appears reasonable and legal. The decision of the Tribunal in the case of Indus Engg. Co. is on different sets of facts as rightly claimed by the ld. Advocate for the respondent and hence has no applications to the facts of this case.

7. In view of the above, the appeal by the Department does not survive. The same is rejected.

Order dictated & pronounced in open court on 1.1.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.