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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/689 /2008 – SM[BR] Date 27/01/2010

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

To :
M/S HINDUSTAN ZINC LTD.

YASHAD BHAWAN,NEAR SWAROOP
SAGAR,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**. 120 / 2010-SM[BR] dated 19.1.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.A. UPADHYAY

30/1, CHHIPA BAKAL, INDORE

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)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 689 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 570 (RKS) CE/JPR II/2007 dated 23.11.2007 passed by Commissioner (Appeals II) Central Excise, Jaipur (Raj)]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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?	:	Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	NO
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Yes
4. Whether Order is to be circulated to the Departmental authorities?	:	Seen

M/s. Hindustan Zinc Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur II — Respondent

Appearance:

Shri Ganesh Baboo, Advocate for the Appellants
Shri R.K. Saini, SDR for the Respondent

Date of Hearing/decision : 19.1.2010

ORAL ORDER NO. 120/2010 SM(BR)

Per M. Veeraiyan:

This is appeal against the order of the Commissioner (Appeals) No. 570 (RKS) CE/JPR II/2007 dated 23.11.2007.

2. Heard both sides.

3. The issue involved is whether the appellants are eligible for modvat credit on the inputs captively used in the generation of electricity used in places other than factory of production like residential colony, hospital, bank and school etc. The disputed amount is Rs.2,96,653/- and related to the period December, 2002 to February, 2004.

4. Learned Advocate fairly concedes that the issue is decided against the assessee by the Hon'ble Supreme Court in the case of CCE vs. Solaris Chemtech Ltd. [2007 (214) ELT 481 (SC)]. He also submits that in their own case by Final Order No. 647/09 dated 26.8.09 in Appeal No. 525/2006, the appeal has been disposed of by confirming the demand of duty along with interest and setting aside the penalty imposed on them.

5. Learned DR submits that the facts in the said case and the present case are identical.

6. In view of the above, the demand of duty and order for recovery of interest is confirmed as uncontested. However, penalty is set aside as the issue involved is one of interpretation of law and does not involve any mensrea on the ~~appeal of~~ part of the assessee.

(M. Veeraiyan)
Member(Technical)

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