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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1222/2006 - EX[DB] Date 29/09/2010

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 ZINK LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 663/ **2010 EX[DB]** dated 24-8-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S HINDUSTAN ZINK LTD.
   RAMPURA-AGUCHA, DISTT,BHILWARA (RAJASTHAN)
2. Adv. / Consult SH. B.L. NARASIMHAN, ADV., B-6/10, S. J. ENCLAVE, N. DELHI-29
3. C.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. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/ decision: 24.08.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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.	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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Y

Excise Appeal No. 1222 of 2006
[Arising out of Order-in-Appeal No. 27(HKS)CE/JPR-II/2006 dated 10.01.2006 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur].

CCE, Jaipur-II — Appellant

Vs.

M/s Hindustan Zinc Limited — Respondent

Appearance: Rep. by Sh. R.K. Verma, DR for the appellants.
Rep. by Sh. B.L. Narasimhan, Advocate for the Respondent

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL Oral Order No. 663/10-EX.

Per: Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellants and learned Advocate for the respondent.

2. The appellant challenge the order dated 10.01.2006 passed by the Commissioner (Appeals), Jaipur to the extent it dismisses the appeal filed by the department against the order passed by the adjudicating authority on 25.07.2000 whereby the assessment of lead and zinc concentrate classifiable under chapter heading 26.07 and 26.08 respectively cleared from the factory during the period from 01.04.99 to 31.03.2000 to their various smelters was sought to be finalized by adding notional profit @ 10% in the relevant year's cost of concentrate as there was no profit during the year 1999-2000 and accordingly the order of assessment of the lead and zinc concentrate was cleared for the said period by taking into account clearance on the grounds of Dry MT. The challenge to the impugned order is on the ground that what was required to be considered for determining the assessable value of the captively consumed goods based on the cost of production method was to include the projected profit in the cost of the captively consumed goods and the same was @ 15.24% which was shown in the corporate balance sheet of the respondent for the financial year 1998-99 and the same was ignored by both the authorities. Secondly, that the decision of the Tribunal in **Raymond Limited** case was distinguishable on the ground that Raymond were manufacturing variety of products whereas the respondent were manufacturing mainly lead and zinc and, therefore, said decision could not have been applied to the facts of the case.

3. Upon hearing the DR and learned Advocate for the appellants and on perusal of record the Commissioner (Appeals) while disposing the matter

has held thus:-

> "8. I have gone through the decision of Hon'ble Tribunal in the case of Raymonds Ltd. vs. CCE, Aurangabad-2001 (129) ELT 327 (T) relied upon by the respondent. In the above case, M/s Raymonds Limited, a multi product company, was engaged in the manufacture of fabrics, cement etc. in different factories. The show cause notice was issued on the basis that the appellant had included in the cost of production statement only the overall profit made by them from the manufacture of all items, while for the purpose of valuation of woven fabrics in question, only the profit if any, which the assessee would have normally earned on the sale of the woven fabric was required to be included. Since the goods were being captively consumed, they filed a Price List effective from 11.3.1998 in respect of the fabrics manufactured at Jalgaon unit. The value of the goods was determined based on the cost of production method and addition of 3.34% was also made towards profit. Show cause notice dated 1.1.1999 was issued proposing to increase the element towards profit from the original 3.34% to 30.6%, which was found to be the gross profit for the textile division for 1998-99. the adjudicating authority held that instead of the profit of 3.34% originally added, an addition of 10% towards normal profit should be made. The Hon'ble Tribunal observed that the appellants' declaration of price was based on the cost of production and profit of their textile division and that they did not take into account the cost and profit from cement and other divisions while filing the price list in question Holding that the inclusion of profit made in the previous year is in conformity with the instruction on the subject contained in the Circular No. 258/92/96-CX (f. No. 6/28/94-CX.I) dated 30th October, 1996 of the Central Board of Excise & Customs which is binding on the revenue authorities, the Hon'ble Tribunal set aside the adjudication order"

4. Evidently, the Commissioner (Appeals) has held that the department proceeded to include the overall profit as disclosed from the balance sheet in relation to manufacture of all the items by the respondent, whereas for the purpose of valuation of the woven fabrics in question the profit earned on the sale of woven fabric only was required to be considered. The appellants have not been able to point out any fault for the said finding except contending that it was the case of the appellants that the respondents are manufacturing mainly lead and zinc. The very fact that the appellants are contending that the two products are being mainly manufactured by the respondents that itself discloses that the respondents are manufacturing some other products. Being so, only on the said ground question of distinguishing

the Raymonds case cannot arise. Once the ratio of the Raymonds case is applicable to the facts of the case, we find no case to find fault with the impugned order being made out.

5. It is pertinent to note that the adjudicating authority had proceeded to add notional profit @ 10% even after taking note of the fact that the Superintendent had reported that the respondents had submitted the copy of the cost sheet and the profit & loss account of the audited balance sheet disclosing sale details and on examination thereof, it was revealed that the respondents had incurred losses for the year 1999-2000 to the tune of Rs. 1.09 crores. In such circumstances, the assessment having been finalized by adding notional profit @ 10% and the profit element having been considered with reference to the sale of woven fabric, we find no fault in the order of the assessment. Hence, considering the ratio of the decision in Raymonds case reported in -2001 (129) ELT 327 (T), we find no case for interference.

6. The appeal fails and is hereby dismissed.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/