

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1298/2011 - EX[DB] WITH E/S/1666/11-EX

Date **09/12/2011**

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

To :
M/S HINDUSTAN ZINC LIMITED,
"YASHAD BHAWAN" UDAIPUR (RAJASTHAN)
313001
M/S HINDUSTAN ZINC LIMITED,

Appellant

Vs
Respondent

C.C.E. JAIPUR II

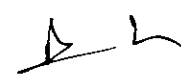
STAY ORDER NO. 1399/2011-EX

I am directed to transmit herewith a certified copy of Final order No. 1015/ 2011 EX[DB] dated 07-12-11
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R. BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.
2. Adv. / Consult *SH. AMIT JAIN, ADV.,
B-6/10, S.J. ENCLAVE,
N. DELHI - 29*
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai - 17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file


Assistant Registrar
(Excise Appeal Branch)

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

**Excise Appeal No. 1298 of 2011
Excise Stay Application No. 1666 of 2011**

[Arising out of Order-in-Appeal No. 23/CB/CE/JPR-II/2011 dated 27.1.2011 passed by the Commissioner of Customs & Central Excise Jaipur-I]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Mathew John, Member (Technical)

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- | | |
|--|------|
| 1. Whether Press Reporters may be allowed to see :
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982? | No |
| 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? | Yes |
-

M/s. Hindustan Zinc Ltd.

Appellants

Vs.

Commissioner of Central Excise
Jaipur II

Respondent

Appearance:

Shri Amit Jain, Advocate for the Appellants

Shri N. Pathak, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing /decision: 24.11.2011

STAY ORAL ORDER NO. 1399/2011 EX
 FINAL ORAL ORDER NO. 1015/2011-EX

Per Archana Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of duty of Rs.19,79,839/- and penalty of identical amount confirmed against and imposed upon the applicant-appellant for the period 1.8.2003 to 31.3.2008 by denying the inputs credit, in terms of Rule 3(5) of Cenvat Credit Rules, we proceed to decide the appeal itself with the consent of both the sides.

2. After hearing both the sides, we find that the said Rule 3(5) of Cenvat credit Rules, 2004 provide for a reversal of credit if inputs and capital goods, on which credit had been taken, are removed 'as such' from the factory. The appellants have their own mines and hire services from some outside agencies. Various inputs or the capital goods on which they have availed the credit are provided by the appellants to such outside agencies who are working in the appellants premises only. Admittedly, such inputs and capital goods are never removed from the factory premises. Inasmuch as the same are being used for the appellants in their own mines, ^{in respect of} learned advocate clarifies that ~~the~~ inputs being used by them in their own mines, they are being allowed modvat credit and there is no dispute on the same. The dispute is only in respect of inputs which are being used by the independent outside agencies in their own factory / mines/ premises.

3. The above denial by the adjudicating authority is on the ground that by handing over the inputs to the third independent parties working in the premises of the appellants, there is deemed removal of inputs from their premises, thus attracts the provisions of Rule 3(5). He however, submits that for the subsequent period, the Commissioner himself has dropped the proceedings against them on same grounds.

4. The above fact of dropping of demand is conceded by the learned DR who submits that the present matter may also be remanded to the Additional Commissioner for afresh decision in the light of Commissioner's subsequent order. Inasmuch as for the subsequent period, the Commissioner has dropped the demand, we deem it fit to set aside the impugned order and remand the matter to Additional Commissioner for denovo adjudicating in the light of subsequent order of the Commissioner.

5. Stay petition as also appeal gets disposed of in the above manner.

(Pronounced in the open Court)

(~~Archana~~ Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)