14 TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmail.com

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

Appeal No. E/2108/2005 - EX[DB]

Date **26/03/2012**

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.
302005

C.C.E. JAIPUR II Appellant

Vs

M/S HINDUSTAN ZINC LIMITED Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/347/ **2012 EX[DB]** dated 05-3-12 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 ZINC LIMITED
DEBARI SMELTOR PLANT,
DEBARI, UDAIPUR RAJASTHAN

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
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 (Haryana)
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. 2108 of 2005

[Arising out of Order-in-Appeal No. 194 (RM)CE/ JP-II/ 2005 dated 7.4.2005 passed by the Commissioner of Customs & Central Excise , Jaipur]

For approval and signature:

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

---

Commissioner of Central Excise Jaipur — Appellants

Vs.

M/s. Hindustan Zinc Ltd. — Respondent

Appearance:
Shri S. R. Meena, SDR for the Appellants
Shri Hemant Bajaj, Advocate for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing /decision: 5 3.2012

FINAL **ORAL ORDER NO. A/347/2012-EX(BR)**

Per Archna Wadhwa:

The short issue involved in the present appeal of the Revenue is as to whether the Sulphuric acid cleared by the respondents to its phosphoric acid plant without payment of duty is entitled to exemption in terms of Notification No. 81/75 CE or not. The assessee's contention was that as the sulphuric acid used for the manufacture of phosphoric acid which in turn was ultimately used in the manufacture of fertilisers was entitled to exemption in terms of said Notification.

2. The dispute reaching the level of Commissioner (Appeals), the appellate authority observed as under:

> "4. It is observed that the said appeal filed by the appellants has now been decided by the Hon'ble Tribunal vide Final Order No. 246/05-B dated 28.10.04. The Hon'ble Tribunal has relied on the Board's Circular F.No. 345/17/86-TRU dated 12.12.86 to hold that the benefit of Notification No. 81/75 dated 22.03.75 was available on sulphuric acid, which was used in the manufacture of phosphoric acid, which in turn was used in the manufacture of fertiliser. The original demands have accordingly been set aside. The ratio of the said decision of the Hon'ble Tribunal squarely applies as the instant demands pertain to differential duty of the same clearances during the same period. It is also not the Department's case that the said sulphuric acid and the phosphoric acid generated from the said sulphuric acid had not been ultimately used in the manufacture of fertilizer."

3. The grounds raised in the Revenue's appeal are that the Tribunal's order has not attained finality and reference application stands filed

before the Hon'ble High Court of Rajasthan. It stands brought to our notice that the reference filed by the Revenue before the Hon'ble High Court of Rajasthan stands rejected reported as Union of India vs. Hindustan Zinc Ltd. [2009 (236) ELT 633 (Raj)]. It stands held by the Hon'ble High Court that the question referred to them stands answered in favour of the assessee and against the Revenue.

4. Inasmuch as the only ground raised in the Revenue's appeal is as regards filing of reference application before the Rajasthan High Court which stand concluded, we do not find any merit in the Revenue's appeal and accordingly reject the same.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

ss