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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/125/2009-EX[DB]

Dated: **19/10/2012**

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.

C.C.E. JAIPUR II (Appellant)

VS

HINDUSTAN ZINC LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1231/2012-EX[DB]** dated **01/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
HINDUSTAN ZINC LTD.
RAJPURA DARIBA, DISTT.
RAJSAMAND (RAJASTHAN)

2. Advocate(s) / Consultant(s): SH. B.L.NARASIMHAN, 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-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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 01.10.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No. 125 of 2009
(Arising out of order in appeal No. 225-226(DK)-CE/JPR-II/08 dt. 8.12.2008 passed by the Commissioner of Customs & Central Excise (Appeals-II) Jaipur).

CCE, Jaipur Appellants

Vs.

M/s Hindustan Zinc Ltd. Respondent

Present Sh. M.S. Negi, AR for the appellant.
Present Sh. B.L. Narasimhan, Advocate for the respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/1231/2012-Br(B)

Per. Rakesh Kumar:

The respondent during the period of dispute were clearing their final product for export under ARE-1. The respondent's contract with their overseas customers was on C&F basis. The point of dispute is as to whether the respondent were eligible for credit of service tax paid on the GTA service availed for transportation of the goods from the factory to the port. The department was of the view that in such case it is the factory gate which is the place of removal not the port from where the goods are exported and on the basis the cenvat credit in respect of the GTA service availed for transportation was disallowed. On appeal having filed before the CCE (Appeals), the AC's order disallowing cenvat credit and confirming the demand alongwith interest was set aside. Against this order of CCE(Appeals), this appeal has been filed by the Revenue. This matter was earlier heard by a Single Member Bench who ~~while~~ vide Misc. Order No.61/2011-SMC(Br.) dated 19.5.2011 directed the registry to place this matter before a Division Bench for deciding the question as to whether the factory gate ~~at~~ or the port of export would be the place of removal when the goods are cleared for export under ~~with~~ bond.

3. Heard both the sides.

4. Shri M.S. Negi, the ld. DR assailed the impugned order reiterating the grounds of appeal and pleaded that the impugned order being contrary to the provisions of law is not sustainable.

5. Shri B.L. Narasimhan, ld. Advocate for the appellant, pleaded that the respondent's contract with the overseas buyers was on C&F basis; that in view of this, the place of removal would be the port from where the goods were exported, that in this regard he relies upon the Hon'ble Gujarat High Court's judgment in the case of **CCE & Cus. vs. Parthpoly Wooven Pvt. Ltd.** reported in 2010 (25) STR 4; that same view has been taken by the Tribunal in the cases of **Modern Petrofils vs. CCE, Vadodara** -2010 (18) STR 625 (Tri. Ahmd.) , **Leela Scottish Lace Pvt. Ltd. vs. CC, Bangalore reported in 2010 (19) STR 69 (Tri. Bang.); C.C.E., Ahmedabad vs. Fine Care Biosystems reported in 2009 (16) ELT 701; C.C.E.,. Surat vs. Colour Synth Indus. P. Ltd. reported in 2009 (14) STR 309 (Tri-Ahmd.), Cauvery Stones Impex Pvt. Ltd. vs. C.C..E., Salem reported in 2010 (257) ELT 151 (Tri-Chennai) and C.C..E, Rajkot vs. Adani Pharmachem P. Ltd. reported in 2008 (12) STR 593 (Tri-Ahmd.)** and that in view of this there is no infirmity in the impugned order.

6. We have considered the submissions from both the sides and perused the record. The only point of dispute in this case is as to whether the respondent would be eligible for cenvat credit of service tax paid on GTA services availed for transportation of the goods from the factory to the port from where the goods were placed on board the vessel for export to their overseas buyer. We find that this issue stands decided in favour of the respondent by a series of judgments of the Tribunal mentioned above some

of which are the judgment of Division Benches. In view of this, we do not any find merit in the revenue's appeal. The same is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant