

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

Appeal No. E/499 /2010 - EX[DB]
E/S/520/2010-EX

Date 14/05/2012

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

To :
M/S HINDUSTAN ZINC LIMITED,
YASHAD BHAWAN, NEAR SWAROOP SAGAR,
UDAIPUR-313001 (RAJ.)
M/S HINDUSTAN ZINC LIMITED,

Appellant
Vs
Respondent

C.C.E. JAIPUR II

STAY ORDER NO. 781/2012-EX

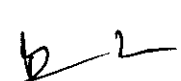
I am directed to transmit herewith a certified copy of Final order No.A/546
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

2012 EX[DB] dated 07-5-12


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 *Sl. B.L. NAIRSIPTHAN, ADV,
B-6/14, S.D. 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. Office Copy
13. Guard file


Assistant Registrar
(Excise Appeal Branch)

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

COURT-I

Date of hearing/ decision: 07.05.2012

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. 499 of 2010 with Excise Stay No. 520 of 2010

(Arising out of order-in-original No. 47/2009-CE/JP-II/COMM. dated 16.11.2009 passed by the Commissioner, Customs & Central Excise, Jaipur).

M/s Hindustan Zinc Ltd.

Appellants

Vs.

CCE, Jaipur

Respondent

Present Sh. B.L. Narsimhan, Advocate for the appellant.
Present I. Baig, AR for the respondent

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

STAY Order No. 78/2012-Ex (BIL)
FINAL Order No. 4/546/2012-Ex (BA)

Per. Justice Ajit Bharihoke:

The appellant is engaged in manufacture of lead and zinc concentrate classifiable under Chapter 26 of the Schedule to Central Excise Tariff Act, 1985. The appellants awarded contract to job contractors i.e. M/s Aravali Construction Co. Ltd. and M/s Technomin Construction Ltd. for underground of mine development purpose. As per the contract, the appellant supplied inputs including capital goods such as explosives, detonators, lubricants, pipes, rods and steel plates etc. to the job contractor regarding which, the appellant availed cenvat credit amounting to Rs. 52,37,757/-. The department was of the view that those inputs were supplied by the appellant on chargeable basis as such it amounted to transfer of the inputs to the job contractors without the issue of invoice, for which, the appellant should have reversed the cenvat credit availed by them. Accordingly, show cause notice was issued to the appellant. Appellant contested the show cause notice on the plea that the inputs were supplied to the job contractors free of cost for development of the mines and it did not amount to transfer of goods to the third person which could have entail the obligation to reverse the cenvat credit. The adjudication authority vide order-in-original dated 16.11.2009 ordered recovery of the cenvat credit amounting to Rs. 52,37,757/- under Rule 14 of Cenvat Credit Rules alongwith interest and also imposed the penalty of equal amount on the appellant.

2. Feeling aggrieved from the said order, the appellant has preferred this appeal wherein the application under Section 35F has been moved with a request to waive the condition of pre-deposit of the demand, interest and penalty.

3. Originally the case was listed for arguments on stay application. However, after having been gone through the record we are of the view that the appeal itself can be disposed of at this stage. Accordingly, after waiving the condition of pre-deposit with the consent of the parties, we proceeded to hear the arguments on appeal.

4. Sh. B.L. Narasimhan, Id. Counsel has contended that the inputs which are subject matter of the order-in-original were procured on payment of excise duty by the appellant and were provided to the job contractor for development of the mines belonging to the appellant from which the lead and mine ore is extracted. Thus, according to him the inputs were used for the function relating to the manufacture of final product. Ld. Counsel contended that the Commissioner has failed to appreciate that as per the job contracts the appellant was requested to provide the inputs to be used for the development of the underground mines and there was no transfer of those inputs to the job contractor as the ownership of those inputs always remain with the appellant. Thus, it is urged that the impugned order is not sustainable in law. Ld. Counsel in the alternative has referred to the final order No. 1015 of 2011-Ex (DB) of this Tribunal in Excise Appeal No. 1298 of 2011 between the parties wherein while dealing with the similar issue of fact and law relating to earlier period was involved the Tribunal taking note

of the fact that in one other similar matter the Commissioner (Adjudication) has dropped the demand, remanded the matter back to the adjudicating authority for denovo adjudication in the light of subsequent order of the Commissioner.

5. Sh. I. Baig, Id. AR of the department on the contrary had argued in support of the impugned order and submitted that Commissioner (Adjudication) has rightly concluded that the inputs in question were actually transferred to the job contractor as such the appellants were required to reverse the cenvat credit which they have not done. Thus, the adjudication order confirming the demand, interest and penalty cannot be faulted.

6. We have considered the rival contentions and perused the record. It is not disputed by the department that originally the cenvat credit was rightly claimed by the appellant. The question is whether the providing of the relevant inputs by the appellant to the job contractor for user for completion of contract work, would amount to the transfer of inputs to the third party which may require the appellant to reverse the cenvat credit relating to those inputs. This issue is basically a question of fact. For resolving this issue, it would be necessary to scrutinize the contract between the appellant and job contractors as also the actual transaction which have taken place. Admittedly, the adjudicating authority has not cared to refer the terms and conditions of the job contractor which could have thrown light upon the interest of the parties and the nature of transaction. Therefore, we are of the view that the adjudicating authority has confirmed the demand against the

appellant without looking into the basic evidence i.e. the contract between the parties. Thus, we are unable to sustain the impugned order. Appeal is accordingly accepted and the matter is remanded back to the Commissioner (Adjudication) for denovo adjudication after allowing the appellant to produce all relevant documents including the contracts in support of his defence and giving due hearing to the appellant.

7. Appeal as well as stay application disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant