FAX : 011-26108426

REGISTERED / AD

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

Dated: **13/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1365/2012-EX[DB]** dated **26/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar(EXCISE Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	E/5949/2004	**HINDUSTAN COPPER LTD.** Mlanjkhand Copper Project Distt.Balaghat Malanjkhand
		Name and Address of Respondent
2		**C.C.E.BHOPAL** 178,Bhagya Bhawan Zone-II M.P.Nagar Bhopal M.P

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Copy To
3Advocate(s) / Consultant(s):

V. Laxmikumaran
5, Jangpura Extension,
Link Road,
New Delhi
Delhi
110014

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4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. **14** Office Copy **15** Guard File

Asstt. 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: 26.11.2012

Central Excise Appeal No.5949 of 2004

Arising out of the order in appeal No.293-CE/BPL/2004 dated 26.8.2004 passed by Commissioner (Appeals), Customs & Central Excise, Bhopal.

For Approval and Signature:

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Hindustan Copper Ltd. .. Appellant

Vs.

C.C.E., Bhopal .. Respondent

Present for the appellant : Shri Amit Jain, Advocate
Present for the respondent : Shri I. Baig, A.R.

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

FINAL Order No. A/1365/2012-EX(BR)

Per Rakesh Kumar (oral):

The point of dispute in this case about the method of determination of cost of production of goods cleared by the appellant for captive consumption during May 2002, June, 2002, October 2002, November, 2002 and March 2003. The appellant in respect of the goods cleared for captive consumption paid duty on the value equal to 115% of the cost of production of the previous month. However, according to the Department , the duty was required to be paid at 115% of the actual cost of production during the month. On this basis after issue of show cause notice , the Commissioner confirmed the duty demand of Rs.68,49,725/- against the appellant. Besides this , penalty of Rs.1 lakh was imposed on the appellant under Rule 25 of Central Excise Rules, 2002. Against this order of the Commissioner this appeal along with stay application has been filed.

2. Heard both the sides in respect of stay application.

3. Shri R.K. Hasija, Advocate, the ld. Counsel for the appellant, pleaded that the Board had issued a circular No.692/8/2003 dated 13.2.2003, according to which the cost of production of the goods cleared for captive consumption is required to be determined on the basis of CAS-4 standard developed by ICWAI, that in terms of the judgment of the Apex Court in the case **of C.C.E., Pune, vs. Cadbury India Ltd. reported in 2006 (200) ELT 356 (SC),** the above circular of the Board is applicable for the past period also, that the same view has been taken by the Tribunal in the case of **C.C.E., Mumbai III vs. Raymond Ltd. reported in 2012 (279) ELT 431** and in the case **of Hindustan Zinc Ltd. vs. C.C.E, Rajasthan reported in 2011 (273) ELT 405 (T)**,, and that the cost of production is determined in terms of CAS-4 standard, the assessable value determined would be less than the value on which the appellant discharged the duty liability and as such no duty would be payable. He therefore, pleaded that impugned order is not correct.

4. Shri Sanjay Jain, ld. A.R. for Revenue, has defended the impugned order and reiterated the findings of Commissioner in it and emphasised that in terms of provisions of Rule 8 of Central Excise Valuation Rules, 2004, the appellant was required to pay duty in respect of the goods cleared for captive consumption at 115% / 110% of the cost of production and the cost of production was to be determined for current month i.e. the month during which goods, in question, had been cleared. He therefore, pleaded that there is no infirmity in the impugned order.

5. We have considered the submissions made from both the sides and perused the record.

6. Both sides agree that in terms of Board's Circular dated 12.3.2003 the cost of production for the purpose of determining the assessable value under Rule 4 has to be determined on the basis of CAS-4 standard and in terms of the judgment of Apex Court in the case **of C.C.E., Pune vs. Cadbury India Ltd. (supra)**, the Board circular is applicable for the past period also. This judgment has been followed in a series of judgements of the Tribunal. In view of this, the impugned order is not sustainable. The same is set aside and the matter is remanded to the Commissioner for de novo adjudication in terms of the law laid down by the Apex Court in the case of **C.C.E., Pune vs. Cadbury India Ltd. (supra)** and the Board's circular dated 13.2.2003.

7. The Appeal stands disposed of as above.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/