

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Central/excise Appeal No. 56/2018

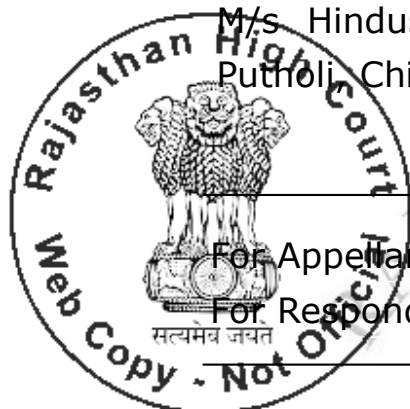
Union Of India through the Commissioner, Central Excise and
Central GST Commissionerate, 142-B, Hiran Magri, Udaipur
(Rajasthan).

----Appellant

Versus

M/s Hindustan Zinc Limited, Chanderiya Lead Zinc Smelter,
Putholi, Chittorgarh (Raj.).

----Respondent



For Appellant(s) : Mr. Vipul Singhvi
For Respondent(s) : Mr. Sharad Kothari

**HON'BLE THE CHIEF JUSTICE S. RAVINDRA BHAT
HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**

Judgment

01/07/2019

1. The Revenue is in appeal against the order of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and urges that the grant of input credit for cement, used as stabilization agent in respect of hazardous waste generated by the respondent manufacturer, could not be granted.

2. The relevant facts here are that for the period of April 2013 to September 2013, Cenvat credit was availed by the respondent assessee for cement used as an input to stabilize hazardous waste generated in the manufacture of its final products zinc and lead. This was necessary as the waste product was hazardous and had to be stabilized in terms of Environment Regulations into Jarofix and placed at the Secured Land Fill. The Cenvat credit claimed was sought to be reversed/disallowed by

Commissioner who directed payment of Rs.56,94,393/- along with interest under Rule 14 of the Cenvat Credit Rules, 2004 and also imposed penalty of Rs.20 lakhs.

3. The assessee appealed to CESTAT contending that Cenvat Credit Rules, 2004 has undergone an amendment to Rule 2(k) which expanded in effect to the articles and processes used by the manufacturer to claim input credit. The CESTAT relying upon on its own previous ruling in the decision relating to **Indian Farmer Fertilizer Cooperative Limited vs. Collector of Central Excise Ahmedabad reported in 1996 (86) ELT 177** held that input credit was rightly claimed and set aside the order in original.

4. Counsel for the Revenue relies upon the definition of Input in Rule 2(k) and contends that one to one link between the use of input goods with the final output is essential.

5. The CESTAT we notice took into account the later changes to the Cenvat Credit Rules, 2004 – amendment of 2011. The relevant part of pre-amended definition of Input reads as follows :-

"Input" means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final products, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

*(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;
"*

6. By Cenvat Credit (Amendment) Rules, 2011, definition of Input in Rule 2(k) was amended and the new definition reads as follows :-



2(k) "inputs" means-

- (i) all goods used in the factory by the manufacturer of the final product; or*
- (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
"*

7. The assessee had relied upon the judgment reported as Indian Farmers Fertiliser Coop. Ltd. (supra). Although the Court took into account the previous rule, the conclusion, if rendered, was similar to the impugned decision of CESTAT in this case. The Supreme Court pertinently held as follows :-

"11. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption, It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end product is part and parcel of the manufacturing process

of that end product, The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore to be held to be use in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption."

8. In the opinion of this Court, the interpretation of the CESTAT of the expression "input" as covering all goods used in a factory by a manufacturer of any final product – as evident from the words "final product", re-enforces the intention of rule making authority to expand the definition and provide the benefit of input credit even to the processes which are not intrinsically covered or do not have a direct link with the manufacture of the final product. This aspect assumes significance in the present case since the input is used to stabilize a by-product, a hazardous waste, which is not permitted to be handled and transported without stabilizing, under the other laws.

9. In these circumstances, use of cement as a stabilizing agent in the factory at the stage of treatment of hazardous waste can be said to be goods used in the factory by the assessee/manufacturer of a final product.

10. In view of the foregoing discussion, this Court is of the opinion that there is no merit in the appeal and no substantial question of law arises. The appeal is accordingly dismissed.

(DR.PUSHPENDRA SINGH BHATI),J

(S. RAVINDRA BHAT),CJ

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