

[2023:RJ-JD:20183-DB]

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

D.B. Central/excise Appeal No. 89/2009

J.K. Cement Works, Nimbahera, District Chittorgarh.

Through Shri K.M. Jain S/o Shri Bajranglal Jain, aged 44 years,
General Manager (Accounts) Kailash Nagar, Nimbahera, District
Chittorgarh.

----Appellant

Versus

1. Commissioner, Central Excise, jaipur-II, Central Revenue
Building State Circle, C-Scheme, Jaipur.

2. Joint Commissioner, Central Excise Division, Chittorgarh.

----Respondent

For Appellant(s)	:	Mr. Vinay Kothari
For Respondent(s)	:	Mr. Kuldeep Vaishnav

**HON'BLE MR. JUSTICE VIJAY BISHNOI
HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI**

Judgment / Order

07/07/2023

1. The matter comes up for consideration of application (Inward No.1/23) preferred on behalf of the appellant with a prayer to decide this appeal in terms of the judgment dated 01.07.2008 passed by the Division Bench of this Court in ***Hindustan Zine Ltd. Vs. Union of India & Ors.,*** reported in ***2008 (132) ECC 3.***

2. This appeal has been admitted while framing the following question of law :

“Whether Oxygen Gas & Acetylene Gas used for repairs and maintenance of plant and machinery can be treated to be components/spares and/or accessories of welding machine falling under Heading 84.68 of Chapter 84 of the Tariff and

consequently eligible for CENVAT Credit as capital goods in terms of Rule 2(a)(A)(iii) of the CENVAT Rules, 2004 ?”

3. Learned counsel for the appellant has submitted that the question of law, framed in this appeal, has already been answered in favour of the assessee and against the revenue by the Division Bench of this Court vide aforesaid judgment passed in the case of **Hindustan Zine Ltd.** (Supra).

4. Learned counsel for the appellant has also submitted that leave to appeal against the above-referred judgment filed by the revenue has already been dismissed as withdrawn by the Hon’ble Supreme Court. It is further submitted that since the judgment passed in **Hindustan Zinc Ltd.’s** case (supra) has attained finality, this appeal is liable to be allowed in terms of the aforesaid judgment.

5. Learned counsel for the revenue has argued that though the SLP against the judgment passed by this Court in **Hindustan Zinc Ltd.’s** case (supra) has been dismissed as withdrawn, but the Hon’ble Supreme Court while dismissing the same has clearly observed that the question of law are left open. It is further submitted that certain SLPs filed on behalf of the revenue before the Hon’ble Supreme Court against the judgments of different High Courts are still pending, therefore, it would be appropriate to wait for the decision of the Hon’ble Supreme Court on the points involved in this appeal.

6. Heard learned counsel for the parties.

7. Learned counsel for the appellant has submitted that the Oxygen Gas and Acetylene Gas are accessories of welding

machine and are used for producing and processing of any goods and for bringing about the change in any substance for the manufacture of final product would be capital goods and would qualify for CENVAT Credit. It is further submitted that the judgment passed by this Court is in respect of welding electrodes is fully applicable in the present case.

8. Learned counsel for the revenue is not in a possession to dispute the above fact.

9. This Court, in **Hindustan Zinc Ltd.'s** case (supra), while considering the question of law, whether welding electrodes used for repairing and maintenance of plant & Machinery both as capital goods as well as inputs, has answered the same in favour of the assessee and against the revenue by making following observations :

"6. This appeal was admitted on 13th January, 2006, by framing the following substantial question of law:

Whether welding electrodes used for repairs and maintenance of plant and machinery are eligible for CENVAT credit both as capital goods as well as inputs.

7. We have heard learned Counsel for the parties and have gone through the Judgment in Jaypee Rewa Plant's case, as relied upon by the learned Counsel for the department, and have also gone through the Judgment of Hon'ble Supreme Court, in CCE v. Jawahar Mills reported in MANU/SC/0397/2001MANU/SC/0397/2001:2001(132)ELT3 (SC), relied upon by the learned Counsel for the Appellant.

8. In Judgment of Hon'ble Supreme Court in Jawahar's case, it is held, that capital goods can be machines, machinery, plant equipment, apparatus, tools or appliances. Any of these goods, if used for producing, or processing of any goods, or for bringing about any change in any substance, for the manufacture of final product, would be 'capital goods', and would qualify for MODVAT credit. Then as per clause-b the components, spare parts and accessories of the goods mentioned above, would also be capital goods, and would qualify for MODVAT credit. Then moulds and dies, generating sets, and weigh etc. has

four also been held to be eligible for MODVAT credit, even if they are not used for producing the final product, or used for process of any product, for the manufacture of final product, or used for bringing about any change in any substance, for the manufacture of final product. The only requirement is, that the same should be used in the factory of the manufacturer, thus, it was held, that the language is to be interpreted very liberally. Then the contention of the Revenue, about the goods involved, being not satisfying the requirement of capital goods, was negated on the ground, that it was not the case of the Revenue, set up all through.

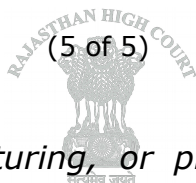
9. On the other hand in JP Rewa's case the eligibility of credit was denied, which was claimed as "inputs". Then so far as the claim made for MODVAT credit on the basis of it being capital goods, it was denied only on the ground, that in the declaration, it was not so claimed, and the Assessee has not even furnished details of any capital goods for captive consumption, to enable the adjudicating Authority to ascertain, whether such goods were covered by definition of capital goods. Thus, for want of evidence to show, that any part of any electrodes, and gases, was used in the manufacture of any capital goods for captive consumption, the claim was negated.

10. In our view, the Judgment of Hon'ble Supreme Court, in JK Cottons SPG. & WVG Mills Co. Ltd v. Sales Tax Officer, Kanpur reported in 1997 (91) ELT 34 has a 5 material bearing on the controversy involved in the present case. It may be noticed, that the Tribunal in J.P. Rewa case has referred to this Judgment of Hon'ble Supreme Court in JK Cotton's case, by reproducing a part of the headnote, but then, the very significant continuing next sentence has been omitted from consideration, in as much as the sentence following the portion quoted by the Tribunal, is as under:

They need not be ingredients or commodities used in the processes, nor must they be directly and actually needed for turning out or the creation of goods.

11. In that case the Hon'ble Supreme Court even went to the extent of holding, that use of electrical equipments, like lighting, electrical humidifiers, exhaust fan etc. were also taken to be necessary equipment, to effectively carry on the manufacturing process. Thus, with the above, if the quoted part of the Judgment in JK Cotton's case is read, it becomes clear, that the expression "in the manufacture of goods" should normally encompass entire process carried on by the dealer, of converting raw materials into finished goods, where any particular process, or activity, is so integrally connected with the ultimate production of the goods, but for

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that process, manufacturing, or processing of the goods would be commercially inexpedient, goods required in that process would, fall within expression "in the manufacturing of goods".

12. In our view the proposition propounded above sets the controversy at rest. The question, as framed, is accordingly required to be answered in favour of the Assessee.

13. We are not inclined to accept the logic and reason given in the JP Rewa Plant Mills's case, and following the letter and spirit of the JK Cotton's case coupled with Jawaharmal's case, set aside the Order of the Authorities below.

14. In view of the above discussion, the question so framed, is answered in favour of the Assessee and against the revenue. Resultantly the appeal is allowed. Impugned Order is set aside. The Appellant is held to be entitled to the credit as availed. The notice issued by the Dy. Commissioner accordingly stands quashed, and the proceedings dropped."

10. We are of the view that since the controversy raised in this appeal has been set at rest by the Division Bench of this Court by Judgment passed in Hindustan Zine Ltd.'s case (supra), while answering the question framed in that appeal, in favour of the assessee, we deem it appropriate to allow these appeal in terms of the judgment passed by the Division Bench of this Court in Hindustan Zine Ltd.'s case (supra).

11. Ordered accordingly.

12. The Application (Inward No.1/23) is disposed of.

(RAJENDRA PRAKASH SONI),J

(VIJAY BISHNOI),J