

A M/S. HINDUSTAN ZINC LTD.  
v.  
COMMISSIONER OF CENTRAL EXCISE, JAIPUR

FEBRUARY 24, 2005

B [S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.]

*Central Excises and Salt Act, 1944 :*

C '*Silver Chloride*'—Declared as excisable goods—Assessee claiming exemption under Notification No. 217/86-CE dt. 2.4.1986—Held, Revenue having failed to prove marketability of the item produced by assessee during the relevant period, question of applicability of the notification has become academic, and is kept open.

D On the question whether in the event of silver chloride being declared as excisable goods the assessee was entitled to benefit of exemption under Notification No. 217/86-CE dt. 2.4.1986.

Disposing of the appeal, the Court

E HELD : In view of the judgment in the conjoint Civil Appeal No. 430 of 2000 holding that the department had failed to prove marketability of silver chloride produced in the factory of the assessee, during the relevant period, the question of applicability of the said notification during that period has become academic and is kept open. [399-C-D]

F *M/s. Hindustan Zinc Ltd. v. Commissioner of Central Excise, Jaipur*, [2005] 2 SCR 391, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3991 of 2001.

G From the Judgment and Order dated 23.1.2001 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi, in F.O. No. 6/2001-C in A. No. E/2164 of 2000-C.

V. Lakshmikumarán, Alok Yadav, M.P. Devnath and V. Balachandran for the Appellant.

R. Venkataramani, A.Subba Rao, Hemant Sharma, Ashok Panigrahi, A  
Ms.V. Vijaylakshmi, P. Parmeswaran and B.K. Prasad, with him for the  
Respondent.

The Judgment of the Court was delivered by

**KAPADIA, J.** The short question which arises for determination in this B  
civil appeal filed by the assessee under section 35L(b) of the Central Excise  
Act, 1944 is whether in the event of the silver chloride being declared  
“excisable goods”, the assessee was entitled to the benefit of exemption  
under notification No. 217/86-CE dated 2.4.1986.

In view of our judgment in the conjoint civil appeal No. 430 of 2000 C  
in the case of the same assessee holding that the department had failed to  
prove marketability of silver chloride produced in the factory of the assessee,  
during the relevant period(s), the question of applicability of the said  
notification during that period has become academic. In future, if the  
department succeeds in proving that silver chloride produced in the factory D  
of the assessee as “excisable goods” in terms of manufacture and marketability  
and if the assessee intends to take the benefit of the said notification, then,  
the question is kept open and the decision given by the tribunal herein will  
not preclude the assessee from relying on the above notification in accordance  
with law.

Subject to above, the appeal is disposed of with no order as to costs. E

R.P.

Appeal disposed of.