
(2005) 02 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal No. 3991 of 2001 & Civil Appeal No. 430 of 2000

Hindustan Zinc Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Jaipur

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35L

Citation : (2005) 99 ECC 117 : (2005) 181 ELT 162 : (2005) 2 JT 520 : (2005) 2 SCC 668

Hon'ble Judges : S. N. Variava, J;S. H. Kapadia, J;AR. Lakshmanan, J

Bench : Full Bench

Advocate : V. Lakshmikumaran, Alok Yadav, M.P. Devnath and V. Balachandran, for the Appellant; R. Venkataramani A. Subba Rao, Hemant Sharma, Ashok Panigrahi, V. Vijaylakshmi, P. Parmeswaran and B.K. Prasad, for the Respondent

Final Decision : Disposed Of

Judgement

S.H. Kapadia, J.—The short question which arises for determination in this civil appeal filed by the assessee u/s 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.

2. In view of our judgment in the conjoint civil appeal no.430 of 2000 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 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.

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