

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

R.C.No.1 of 2007

JUDGMENT: (Per Hon'ble Sri Justice V. Ramasubramanian)

At the instance of the assessee the High Court directed the Tribunal to refer the following questions –

1. Whether in the facts and circumstances of the case the Tribunal is correct in law in holding that lubricants used in the mines of the Appellant which are contiguous to the factory and included in the approved ground plan cannot be considered as capital goods for the purpose of grant of Modvat Credit in terms of Rule 57 Q of the Central Excise Rules 1944?
2. Whether in the facts and circumstances of the case, the Tribunal is correct in law in holding tht the mines which are integrally connected with the production of te cement cannot be taken as part of the factory for the purpose of allowing Modvat Credit of duty paid on the capital goods as per Rule 57 of the Central Excise Rules 1944?
3. Whether in the facts and circumstances of the case, the Tribunal was correct in law in confirming the disallowance of Modvt Credit of duty paid on lubricants on the ground that they are used in the Mines, even though the excavation of Lime Stone is integrally connected with the Manufacture of Cement?
4. Whether in the facts and circumstances of the case, the Tribunal is correct in law in holding that the mines which are integrally connected with the production of the Cement cannot be taken as part of the factory as defined in Section 2© of the Central Excise Act for the purpose of allowing Modvt Credit of duty paid on inputs used in or in relation to the manufacture of finished goods in terms of Rule 57-A of Central Excise Rules 1944?
5. In the facts and circumstances of the case whether the process of manufacture of cement can be said to be commence from the

stage of excavation of Lime Stone in the mine for the purpose of Sect 2(1) of the Central Excise Act 1944?

2. It is stated by the learned counsel for the petitioner and which is also not controverted by the learned Standing Counsel for the department that the questions raised in this reference were answered by this Court in C.E.R.C.Nos.20 and 21 of 2001 on the basis of the decision of the Supreme Court in **Vikram Cement v. Commissioner of Central Excise, Indore**¹, followed by a further clarification issued in the decision reported in 2006 (197) E.L.T. 145 (S.C).

3. Therefore, following the same, the above questions of law are answered in favour of the assessee and the matter is remitted back to the Commissioner of Central Excise for passing appropriate orders. Accordingly the reference is answered.

4. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

2nd February, 2017
Js.

¹ 2006 (194) E.L.T. 3 (S.C)

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