HIGH COURT OF CHHATTISGARH, BILASPUR

Central Excise Reference No. 56 of 2000

Commissioner, Customs and Central Excise, Raipur, 492001 (Madhya Pradesh) (Now Chhattisgarh).

---- Applicant

Versus

M/s. Maihar Cement, Sarla Nagar, District Satna, Madhya Pradesh.

---- Respondent

For Applicant : Shri Vinay Pandey, Advocate.
For Respondent : Shri Ashish Shrivastava, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Order on Board

Per Deepak Gupta, Chief Justice

28/11/2016

1. The instant reference application has been made to consider the following substantial questions of law:

> "Whether Chemical viz. Caustic Soda and Bleaching Powder, used for treatment of water which in turn is used for generation of steam in the powerhouse for generation of electricity could be considered to be used in or in relation to the manufacture of Cement, and therefore, eligible for Input Modvat Credit in terms of Rule 57-A of the Central Excise Rules, 1944?".

2. The facts, in nutshell, are that the Respondent-Company i.e. M/s. Maihar Cement is engaged in manufacture of cement. The Respondent claimed Modvat credit of duty paid on number of inputs. The Applicant-Revenue denied the credit on the ground that the items were of the nature of machines/machinery which do not fall within the definition of inputs. An appeal was preferred by the Respondent-Company which was allowed and it was held that the Respondent-Company was entitled to claim Modvat Credit on chemicals i.e. Caustic Soda and Bleaching Powder used for treatment of water.

3. Learned counsel for the parties jointly submit that the aforesaid legal question is squarely covered by the judgment dated 06.08.2012 passed by a Division Bench this Court in Central Excise Reference No. 48 of 1999 and submit that this case may also be decided in the same terms.

4. In para 8 of the judgment dated 06.08.2012, it was held as under:

> "8. It is well settled principle of law, as laid down by the Supreme Court in Commissioner of Central Excise, Coimbatore & Others {(2001) 6 SCC 274} which has been referred with approval subsequently, that any of those goods 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, therefore, qualify for availing MODVAT credit. In the case on hand, on examining the above stated articles, it is found that all the above stated articles are used for manufacture of cement and in absence of any of the above stated goods, manufacture of cement is not possible. Applying the 'user test' as laid down by the Supreme Court in the above referred case, the decision of the Tribunal is just, proper and legal."

5. Following the aforesaid judgment, it is held that the Respondent-Company is entitled to Modvat Credit for the chemical inputs such as Caustic Soda and Bleaching Powder.

6. The reference is answered accordingly.

Sd/- Sd/-

(Deepak Gupta) (Sanjay Agrawal)
CHIEF JUSTICE **JUDGE**

Amit