

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1638 OF 2006

M/s. LAFARGE INDIA LIMITED

(Now name changed to

"Nuvoco Vistas Corporation Ltd.")

APPELLANT(S)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, RAIPUR

RESPONDENT(S)

WITH

CIVIL APPEAL NOS.5955-5956 OF 2007

CIVIL APPEAL NOS. _____ OF 2023

(Arising out of SLP (Civil) Nos.4537-4538 OF 2008)

CIVIL APPEAL NO. _____ OF 2023

(Arising out of SLP (Civil) No.15616 OF 2008)

CIVIL APPEAL NO. _____ OF 2023

(Arising out of SLP (Civil) No.14206 OF 2008)

CIVIL APPEAL NOS.5896 OF 2008

CIVIL APPEAL NO.5894 OF 2008

CIVIL APPEAL NO.2443 OF 2007

CIVIL APPEAL NO.2444 OF 2007

CIVIL APPEAL NO.5237 OF 2009

CIVIL APPEAL NO.4946 OF 2016.

O R D E R

1. Leave granted in Special Leave Petitions.

2. Since all these appeals involve identical questions, we shall refer to the facts of Civil Appeal No.1638 of 2006.

3. Being aggrieved by the order of Customs, Excise & Service Tax Appellate Tribunal, New Delhi ("Tribunal" for short) passed on

Contd..

04.05.2005 in Final Order No.A/703/05 MBS, the Assessee has preferred this appeal.

4. We have heard Ms. Chitra Y. Parande, learned counsel for the assessee/appellant and Mr. N. Venkataraman, learned ASG for the Revenue/respondent and perused the material on record.

5. Learned counsel for the appellant submitted that the issue involved in this case relates to the denial of MODVAT/CENVAT credit on welding electrodes and gases for the period January to March, 2000 involving duty of Rs.3,78,534/-. That the Tribunal simply followed the earlier judgment of the larger Bench of the Tribunal in *Jaypee Rewa Plant vs. CCE*, reported in 2003 (88) ECR 503 ("Jaypee Rewa Plant") and ruled that MODVAT/CENVAT credit on these items as capital goods or as inputs was not available to the Assessee and consequently dismissed the appeal.

6. Learned counsel for the appellant drew our attention to Rule 57-A of the Central Excise Rules, 1944 and particularly to sub-Rule (4) thereof to contend that although the inputs in question in the instant cases, namely, welding electrodes and gases are not used in the manufacture of the final product of the appellant/Assessee, namely, cement, nevertheless, having regard to second category of inputs, which have reference to those which are in relation to manufacture of the final products, whether directly or indirectly and whether contained in the final product or not, would be squarely applicable in the instant case.

7. It was submitted that welding electrodes and gases in the

Contd..

instant case are being used for repair and maintenance of the cement plant and, therefore, are squarely covered within sub-Rule 4 of Rule 57-A of the Central Excise Rules, 1944. She further submitted that the judgment of the larger Bench of the Tribunal in *Jaypee Rewa Plant* having been impliedly over-ruled by the Rajasthan High Court in *Union of India vs. Hindustan Zinc Ltd.*, reported in 2007 (214) ELT 510 (RAJ) by order dated 22.05.2006, which has been sustained by this Court in *Union of India vs. Hindustan Zinc Ltd.*, reported in (2015) 15 SCC 312, the controversy is no longer at large. Learned counsel submitted that having regard to the reasoning of the Rajasthan High Court in paragraphs 2, 3 and 4 thereof, the appeal filed by the appellant herein has to be allowed.

8. *Per contra*, learned ASG appearing for the respondent submitted that if the judgment of the High Court passed in *Hindustan Zinc Ltd.*, which has been sustained by this Court, is to be made applicable to this matter, then appropriate orders may be made.

9. We have considered the submissions advanced at the Bar and having regard to Rule 57-A and particularly sub-Rule 4 of Rule 57-A of the Central Excise Rules, 1944, we find that the Assessee has been using welding electrodes and gases for the purpose of maintenance or up-keep of the plant and machinery, which is ultimately used for the purpose of manufacture of cement.

10. For immediate reference, Rule 57-A is extracted as under:

"57-A. APPLICABILITY

(1) The provisions of this section shall apply to such finished excisable goods (hereafter, in this section,
Contd..

referred to as the final products) as the Central Government may, by notification in the Official Gazette, specify in this behalf for the purpose of allowing credit of any duty of excise or the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereafter, in this section, referred to as the specified duty) paid on the goods used in the manufacture of the said final products (hereafter, in this section, referred to as the inputs).

(2) The credit of specified duty allowed under sub-rule (1) shall be utilised towards payment of duty of excise leviable on the final products, whether under the Act or under any other Act, as may be specified in the notification issued under sub-rule (1) and subject to the provisions of this section and the conditions and restrictions, if any, specified in the said notification.

(3) The Central Government may also specify in the said notification the goods or classes of goods in respect of which the credit of specified duty may be restricted.

(4) The credit of specified duty under this section shall be allowed on inputs used in the manufacture of final products as well as on inputs used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not.

(5) Notwithstanding anything contained in sub-rule (1) the Central Government may, by notification in the Official Gazette declare the inputs on which declared duties of excise or additional duty (hereinafter referred to as declared duty) paid shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification and allow the credit of such declared duty deemed to have been paid in such manner and subject to such conditions as may be specified in the said notification even if the declared inputs are not used directly by the manufacturer of final products declared in the said notification, but are contained in the said final products.

Explanation: For the purposes of the sub-rule, it is clarified that even if the declared inputs are used directly by a manufacturer of final products, the credit of the declared duty shall, notwithstanding the actual amount of duty paid on such declared inputs, be deemed to be equivalent to the amount specified in the said notification and the credit of the declared duty shall be allowed to such manufacturer.

Contd..

(6) Notwithstanding anything contained in sub-rule (1), the Central Government may, by notification in the Official Gazette, declare the inputs on which the duty of excise paid under section 3A of the Central Excise Act, 1944 (1 of 1944), shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification, and allow the credit of such duty in respect of the said inputs at such rate or such amount and subject to such conditions as may be specified in the said notification:

Provided that the manufacturer shall take all reasonable steps to ensure that the inputs acquired by him are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods, has been paid under section 3A of the Central Excise Act, 1944 (1 of 1944)."

11. On consideration of sub-rule 4 of Rule 57-A of the Central Excise Rules, 1944, it is noted that the credit of specified duty is allowed in respect of two categories of inputs namely: (i) inputs used in the manufacture of final products; and (ii) inputs used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. The latter category is quite wide enough to incorporate the use of welding electrodes and gases in the instant case for the purpose of maintenance and up-keep, which is in relation to the manufacture of final products and which is indirect and is not contained in the final product as such. Further, the expression "in relation to" is of a wider import. Hence, the appellant is entitled to the benefit of MODVAT/CENVAT Credit for the period in question.

12. In the circumstances, Civil Appeal No.1638 of 2006 and all connected appeals are allowed. No costs.

.....J.
[B.V. NAGARATHNA]

.....J.
[UJJAL BHUYAN]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3747 OF 2007

THE KISAN COOPERATIVE SUGAR FACTORY LTD.
SARSAVA DISTRICT SAHARANPUR, U.P.

Appellant(s)

VERSUS

COMMISSIONER CENTRAL EXCISE,
MEERUT-1

Respondent(s)

O R D E R

1. At the outset, learned counsel for the appellant Mr. Prakash Kumar Singh submitted that he does not press the case with regard to items, such as, plates, channels and angles used for replacement of damaged/worn out parts of different goods; that his case may be restricted to use of welding electrodes used as accessories for filling cavities of the machines and for repair and maintenance of the plant as well as paints used in the factory of boiler, chimney, etc.

2. In this case, the definition of "input" as stated in Rule 2(g) of the Cenvat Credit Rules, 2002 (herein after referred to as "2002 Rules") is under consideration.

"2(g) "input" means all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the

Contd..

final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production."

3. Learned counsel for the appellant further submitted that reliance could be placed on *Ramala Sahkari Chini Mills Ltd., Uttar Pradesh vs. Commissioner, Central Excise, Meerut, (2010) 14 SCC 744* where the expression "and includes" was considered and the matter was referred to a larger bench. Thereafter, the three judge Bench of this Court in *Ramala Sahkari Chini Mills Ltd., Uttar Pradesh vs. Commissioner, Central Excise, Meerut-I, (2016) 7 SCC 585*, held that the expression "includes" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of an extension and not with a view to restrict the definition. Accordingly, the observation of the two-judge Bench referring the matter to the three-judge Bench was affirmed.

4. Learned ASG appearing for the respondent submitted that an appropriate order may be made having regard to similar matters disposed of today.

5. In view of the order in *Ramala Sahkari Chini Mills Ltd., Uttar Pradesh vs. Commissioner, Central Excise, Meerut-I* by the three-judge Bench and bearing in mind the observations contained in the reference order of the two-judge bench in *Ramala Sahkari Chini Mills Ltd., Uttar Pradesh vs .*

Commissioner, Central Excise, Meerut-I, the appeal filed by the appellant herein is allowed by following the order in other similar appeals disposed of today in the case of M/s. Lafarge India Limited vs. Commissioner of Central Excise, Civil Appeal No.1638 of 2006 etc.

No costs.

.....J
[B.V. NAGARATHNA]

.....J
[UJJAL BHUYAN]

NEW DELHI,
DECEMBER 06, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1638/2006

M/S. LAFARGE INDIA LIMITED
(Now name changed to
"Nuvoco Vistas Corporation Ltd.")

Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, RAIPUR

Respondent(s)

(I.A. No.171502/2023 - Application for
change of name of Appellant)

WITH

C.A. No. 4704/2007 (XVII-A)

C.A. No. 3747/2007 (XVII-A)
(FOR ON IA 2/2007)C.A. No. 5955-5956/2007 (XVII-A)
(I.A. No.171652/2023 - Application for
change of name of Appellant)

SLP(C) Nos. 4537-4538/2008 (XVII-A)

SLP(C) No. 15616/2008 (XVII-A)

SLP(C) No. 14206/2008 (XVII-A)

C.A. No. 5896/2008 (XVII-A)

C.A. No. 5894/2008 (XVII-A)

C.A. No. 2443/2007 (XVII-A)
(IA No. 214541/2023 - AMENDMENT IN CAUSE TITLE
IA No. 3/2010 - EARLY HEARING APPLICATION)C.A. No. 2444/2007 (XVII-A)
(IA No. 214544/2023 - AMENDMENT IN CAUSE TITLE)C.A. No. 2445/2007 (XVII-A)
(FOR ON IA 15977/2007)

C.A. No. 6126-6129/2012 (XVI)

Contd..

C.A. No. 6125/2012 (XV)

C.A. No. 10824/2010 (XII)
(IA No. 2/2010 - STAY APPLICATION)

C.A. No. 6116-6124/2012 (III)

C.A. No. 6130-6132/2012 (XVI)

C.A. No. 6133/2012 (XVI)

C.A. No. 6135/2012 (XVI)

C.A. No. 6134/2012 (XVII-A)
(FOR ON IA 9368/2009, IA 39792/2009
IA No. 2/2009 - EARLY HEARING APPLICATION)

C.A. No. 3520/2008 (XVII-A)
(FOR ON IA 1/2008)

C.A. No. 6411/2008 (XV)

C.A. No. 2800/2009 (XVII-A)
(IA No. 212268/2023 - AMENDMENT IN CAUSE TITLE)

C.A. No. 6136/2012 (XV)

C.A. No. 5237/2009 (XVII-A)

C.A. No. 1877/2010 (XVII-A)

SLP(C) No. 25833/2015 (XI)

SLP(C) No. 33238/2015 (III)

C.A. No. 202-204/2016 (III-A)

SLP(C) No. 549/2016 (XI)

SLP(C) No. 547/2016 (XI)

SLP(C) No. 551/2016 (XI)

C.A. No. 3981-3982/2018 (XII)
(FOR ADMISSION and I.R. and IA No.50169/2018-CONDONATION OF DELAY
IN FILING)

C.A. No. 9694/2018 (IV-C)

C.A. No. 3976/2007 (XVII-A)

SLP(C) Nos. 4144-4146/2016 (XI)

C.A. No. 4946/2016 (III-A)

SLP(C) No. 37978/2016 (XI)

SLP(C) No. 621/2017 (XI)

SLP(C) No. 2358/2017 (XI)

S.L.P. (C) ...CC No. 1960/2017 (XI)
(IA No. 1/2017 - CONDONATION OF DELAY IN FILING)

C.A. No. 18007/2017 (III)

C.A. No. 6142/2010 (IX)
(FOR ON IA 74323/2011)

C.A. No. 10943-10944/2016 (III-A)
(IA No. 84785/2019 - MODIFICATION)

SLP(C) No. 26756/2017 (IV-C)
(FOR ADMISSION and I.R. and IA No. 101123/2017 - EXEMPTION FROM
FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 18006/2017 (III)

C.A. No. 18008/2017 (III)

C.A. No. 18005/2017 (III)

C.A. No. 1465/2018 (IV-C)

C.A. No. 4560/2018 (IV-C)

C.A. No. 5746/2018 (IV-C)

SLP(C) No. 18266/2018 (IV-C)
(IA No. 71538/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

SLP(C) No. 18249/2018 (IV-C)
(IA No. 77557/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

SLP(C) No. 22204/2018 (IV-C)

SLP(C) No. 22200/2018 (IV-C)

SLP(C) No. 18270/2018 (IV-C)
(FOR CONDONATION OF DELAY IN FILING ON IA 86148/2018, IA No.
86150/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 19075/2018 (IV-C)
(IA No. 99887/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 22202/2018 (IV-C)
(IA No. 167157/2023 - CLARIFICATION/DIRECTION)

SLP(C) No. 29165/2018 (IV-C)

C.A. No. 10715/2018 (IV-C)
(IA No. 167164/2023 - AMENDMENT IN CAUSE TITLE)

SLP(C) No. 27610/2017 (XI)

C.A. No. 8009/2019 (IV-C)
(FOR ADMISSION and I.R. and IA No.145428/2019-CONDONATION OF DELAY IN FILING and IA No.145430/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.145429/2019-CONDONATION OF DELAY IN REFILEING)

SLP(C) No. 8909/2020 (XI)
(IA No. 68698/2020 - APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT, IA No. 3275/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 131504/2020 - STAY APPLICATION)

SLP(C) No. 9053/2020 (XI)
(IA No. 70593/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 131524/2020 - EXTENSION OF EX-PARTY STAY)

SLP(C) No. 9062/2020 (XI)
(IA No. 70712/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 131501/2020 - STAY APPLICATION)

SLP(C) No. 8918/2020 (XI)
(IA No. 68893/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 131507/2020 - STAY APPLICATION)

SLP(C) No. 9077/2020 (XI)
(IA No. 71030/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 131503/2020 - STAY APPLICATION)

SLP(C) No. 9040/2020 (XI)
(IA No. 70410/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 131519/2020 - STAY APPLICATION)

SLP(C) No. 9001/2020 (XI)
(IA No. 69906/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 131517/2020 - STAY APPLICATION)

SLP(C) No. 9000/2020 (XI)
(IA No. 69905/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 131508/2020 - STAY APPLICATION)

Contd..

Mr. M. P. Devanath, AOR

Mr. Sanjay Grover, Adv.
Mr. Shivlal Singh, Adv.
Mr. Paramhans Sahani, Adv.
Mr. Rajesh Kumar, AOR
Mr. Keshav Sharma, Adv.
Mr. Praveen Agnihotri, Adv.
Mr. Devavrat Anand, Adv.
Mr. Siddharth Singh, Adv.
Mr. Rahul Krishna, Adv.
Mr. Raj Kumar Prasad, Adv.

Mr. N. Venkatraman, A.S.G.
Mr. Arijit Prasad, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Mr. V.C. Bharathi, Adv.
Ms. Nisha Bagchi, Adv.
Mr. Arijit Prasad, Adv.
Mr. Rupesh Kumar, Adv.
Mr. Raghav Sharma, Adv.
Ms. Ankita Anil Kumar Singh, Adv.
Mr. Rohit Verma, Adv.

Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. Ankur Saigal, Adv.
Mr. Alok Yadav, Adv.
Ms. Chitra Agarwal, Adv.
Ms. Manavi Agarwal, Adv.
Ms. Divya Singh, Adv.
Mr. E. C. Agrawala, AOR

M/S. Gagrat And Co, AOR
Mr. Ujjwal A. Rana, Adv.
Mr. Himanshu Mehta, Adv.

Mr. B. Krishna Prasad, AOR

Mr. K. V. Mohan, AOR
Mr. Sanjay Grover, Adv.
Mr. Shivlal Singh, Adv.
Mr. K.V. Balakrishnan, Adv.

Mrs. Prabha Swami, AOR
Mr. Nikhil Swami, Adv.
Ms. Divya Swami, Adv.

Mr. Rajesh Chhibber, Adv.
Mr. Dhananjay Garg, AOR

Ms. Charanya Lakshmikumaran, AOR
Ms. Falguni Gupta, Adv.

Ms. Apeksha Mehta, Adv.
Ms. Neha Choudhary, Adv.
Ms. Umang Motiyani, Adv.

Mr. Vikas Singh Jangra, AOR

Mrs. Anil Katiyar, AOR

Mr. Shibu Devasia Olickal, AOR

Mr. Arvind Kumar Sharma, AOR

Mr. Saurabh Suman Sinha, Adv.
Ms. Chitra Y. Parande, Adv.
Mr. Aditya Dev T., Adv.
Mr. Aniruddh Singh, Adv.
M/S. Ap & J Chambers, AOR

Mr. K.S. Naveen Kumar, Adv.
Mr. Dakshina Murthy, Adv.
Mr. Anand Sukumar, AOR
Mr. S. Sukumaran, Adv.
Mr. Bhupesh Kumar Pathak, Adv.
Mrs. Ruche Anand, Adv.

Mr. L Kartikeyan, Adv.
Mr. Arvind Gupta, AOR
Mr. Brahma Prakash, Adv.

M/S. Khaitan & Co., AOR
Mr. Ajay Bhargava, Adv.
Mrs. Vanita Bhargava, Adv.
Mrs. Nikitha Shinoy, Adv.

M/S. Axxess Legal Corp, AOR
Mr. Rajeev Mishra, Adv.
Mr. Sanand Ramakrishnan, Adv.

Ms. Praveena Gautam, AOR
Ms. Reena Asthana Khair, Adv.
Mr. Pawan Shukla, Adv.
Ms. Akanksha Tyagi, Adv.

Mr. Vikram Nankani, Sr. Adv.
Mr. Naresh Thacker, Adv.
Mr. Kumar V., Adv.
Mr. Udit Jain, Adv.
Mr. Harish Pandey, AOR

Mr. Krishnamohan K., AOR
Mr. Dania Nayyar, Adv.
Ms. Parul Sachdeva, Adv.

UPON hearing the counsel the Court made the following

O R D E R

C.A. No(s). 1638/2006, C.A. Nos. 5955-5956/2007, SLP(C) Nos. 4537-4538/2008, SLP(C) No. 15616/2008, SLP(C) No. 14206/ 2008, C.A. No. 5896/2008, C.A. No. 5894/2008, C.A. No. 2443/2007, C.A. No. 2444/2007 and C.A. No. 5237/2009 and C.A. No. 4946/2016

Leave granted in Special Leave Petitions.

The appeals are allowed in terms of signed order.

Applications for change of name of the Appellant/
amendment in cause title are allowed.

Pending application(s) shall stand disposed of.

C.A. No. 3747/2007

The appeal is allowed in terms of the Signed Order.

Pending application(s) shall stand disposed of.

Rest of the matters

List on 07.12.2023.

(NEETU SACHDEVA)
A.R.-CUM-PS.

(KRITIKA TIWARI)
SR.P.A.

(MALEKAR NAGARAJ)
COURT MASTER (NSH)

(Two Signed orders are placed on the file)