

SUPREME COURT OF INDIA

Messrs Hindustan Zinc Limited

Vs.

Commissioner of Central Excise, Jaipur

C.A.No.3991 of 2001

(S. N. Variava and Dr. A.R.Lakshmanan JJ.)

24.02.2005

JUDGMENT

S.H. Kapadia, J.

1. The short question which arises for determination in this 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.

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.