

**Prabhat Fertilizer and Chemical Vs. Commr. of Cus.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Nov-02-2000

**Reported in :** (2000)(72)ECC768

**Appellant :** Prabhat Fertilizer and Chemical

**Respondent :** Commr. of Cus.

**Judgement :**

1. The issue involved in this appeal filed by M/s. Prabhat Fertilizer & Chemical Works, is whether Zinc Ash imported by them could have been imported under OGL.

2. Shri A.C. Jain, Id. Advocate, submitted that the Appellants manufacture Zinc Sulphate (Agri. grade) from Zinc which can be obtained from Zinc Ash containing 70-85% total Zinc; that they were importing Zinc Waste without any hindrance since 1989; that Zinc Waste though is not a hazardous waste, the Appellants had been obtaining necessary clearances from State Pollution Control Board; that three consignments imported by them were held by the Commissioner to be hazardous waste and same were confiscated in absence of any import licence with option to redeem the same on payment of fine of Rs. 1 lakh in each case and Commissioner also imposed penalty of Rs. 50 Thousand, in each of the three cases; that as per chemical test report the sample contained 82.1% by weight total Zinc, 58.6% by weight metallic Zinc; that it contains 0.52% by weight of water soluble substances which answer the test for the presence of zinc in traces which is insignificant quantity to cause hazard. He, further, mentioned that during same

time they had imported Zinc Ash under Bill of Entry No. 103571 dated 9-4-96 in respect of which Commissioner (Appeal) has set aside the confiscation order and redemption fine and they have received the refund of the redemption amount paid in that matter under Adjudication Order No.38/98 dated 18-7-98 passed by the Assistant Commissioner (Refund).

Finally, he submitted that a committee constituted under the Chairmanship of Prof. M.G.K. Menon, has mentioned in its Report that Zinc Ash can be considered as a source of zinc and based on water extract analysis, zinc ash need not be classified as hazardous Waste.

3. Countering the submissions, Dr. D.K. Verma, Id. SDR, submitted that if Zinc Ash was not a hazardous waste there was no necessity for the Appellants to take a licence from Pollution Control Board under the Hazardous Waste (Management and Handling) Rules, 1989; that the Commissioner in the impugned Order has clearly given his findings that hazardous waste fall under restricted lists of imports and as it was imported without licence, confiscation was justified; that the Commissioner has taken a liberal view in allowing redemption of the confiscated Zinc as the Appellants had taken necessary permission under Hazardous Waste Rules.

4. We have considered the submissions of both the sides. The issue involved in the present appeal is regarding the import of zinc ash under three bills of entry Nos. 103569 and 103570 dated 9-4-96, and 104756 dated 16-5-96. No reason appears to have been advanced by the Commissioner to treat the zinc ash as hazardous waste in the impugned Order. In another Bill of Entry No. 1035671 dated 9-4-96 also the Appellants had imported Zinc Ash which has been held to be non-hazardous by Commissioner (Appeals) under Order in Appeal No.141/ICD/97 dated 9-12-97 on the basis of test report. The Commissioner (Appeal) also gave the findings in that order that since August 95 zinc ash was allowed clearances at ISD Tughlakabad without any import licence but subject to actual user condition and submission of authorisation from State Pollution Board which conditions have been complied by the Appellants. In the present matters also, the Appellants have shown the test report and also complied with other conditions. In view of these

facts and circum stances coupled with the fact that no material has been brought on record by the Revenue to show that zinc ash is of hazardous nature, the appeal filed by the appellants is allowed

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