

**Aditya Cement Vs. C.C.E.**

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**SooperKanoon Citation :** [sooperkanoon.com/44636](http://sooperkanoon.com/44636)

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

**Decided On :** Jan-19-2007

**Reported in :** (2007)(116)ECC552

**Judge :** P Das

**Appellant :** Aditya Cement

**Respondent :** C.C.E.

**Judgement :**

1. The appellant filed this appeal against the order-in-appeal dt.20.10.05.
2. The issue involved in this case is whether the inputs and capital goods used in mines are entitled to avail Cenvat credit. The appellants are engaged in the manufacture of cement and clinker falling under sub-heading 2502.29 and 2502.10 of Central Excise Tariff Act, 1985.

They availed Cenvat credit on explosives which are used in mines.

3. Ld. Advocate on behalf of the appellant submits that this issue is already decided by the Hon'ble Supreme Court in the case of Vikram Cement v. CCE, Indore reported at and 2006 (197) ELT 145 (SC).

4. Heard Ld. DR. He reiterated the findings of the Commissioner (Appeals).

5. After hearing both the sides and on perusal of the record, I find that the case is covered by the decision of the Hon'ble Supreme Court in the Case of Vikram Cement v. CCE . I find that the Commissioner (Appeals) passed the order following the decision of the Hon'ble Supreme Court in the case of CCE, Jaipur v. J.K. Udaipur Udyog Ltd. . However, the Hon'ble Supreme Court in the case of Vikram Cement held as under: The third reason given by the Court in J.K. Udaipur Udyog for holding that the Cenvat Scheme was different from the Modvat scheme was Rule 57AC(1). However, that Rule is limited to inputs received in the factory of the manufacturer and does not impinge on Rule 57AB at all.

The schemes of Modvat and Cenvat credit are not therefore, different and we are unable to agree with the conclusion of the Court in J.K. Udaipur Udyog that the decision in Jaypee Rewa Cement (supra) would have no application to Cenvat Rules. In our opinion the doubt expressed by the referring Bench about the correctness of the decision in CCE v. J.K. Udaipur Udyog Ltd. (supra) was well founded.

Having regard to the fact that the Cenvat Rules in effect substitute the Modvat Rules, the decision in Jaypee Rewa Cement would continue to apply. The decision in Commissioner of Central Excise, Jaipur v. J.K. Udaipur Udyog Ltd. (supra) holding to the contrary is, in our opinion, not good law. The reference is answered accordingly. All the appeals and special leave petitions will now be listed for being disposed of in the light of this judgment.

6. In view of the above, the issue is no more res-integra. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief.

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