

**Commissioner of Central Excise Vs. New Vikram Cements**

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**SooperKanoon Citation :** [sooperkanoon.com/509595](http://sooperkanoon.com/509595)

**Court :** Madhya Pradesh

**Decided On :** Dec-16-2003

**Reported in :** 2004(1)MPHT340

**Judge :** Kumar Rajaratnam, C.J. and ;Shantanu Kemkar, J.

**Acts :** Central Excise Rules, 1944

**Appeal No. :** C.E.R. No. 63/99

**Appellant :** Commissioner of Central Excise

**Respondent :** New Vikram Cements

**Judgement :**

ORDER

1. The assessee, M/s. New Vikram Cements, is engaged in manufacturing of ordinary Pozzolana Portland Cement. For availing the MODVAT credit they filed a declaration in respect of its explosive and grinding media balls. The Revenue was of the view that MODVAT credit would not be available to the assessee as the nature of grinding media balls is akin to appliance, equipment and tools. In respect of the explosive it was felt by the Revenue that the same are used in the mines which are outside the factory premises. The Assistant Collector declined to accept the contention of the assessee that the MODVAT credit was admissible on grinding media balls and explosive. On an appeal being preferred, the Commissioner (Appeals) overturned the finding of the Assistant Commissioner

and held that MODVAT credit on explosive can be allowed if they are used by the manufacturer in the mines. With regard to grinding of media balls, the Collector (Appeals) accepted the contention of the assessee. Being aggrieved the Revenue preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (in short 'the Tribunal'). The Tribunal placed reliance on certain earlier decisions rendered by it and expressed the view that the MODVAT credit can be admissible on both the items.

2. After the decision was rendered by the Tribunal the Revenue filed an application seeking a reference to this Court on the question of law which was formulated as under :--

'Whether credit as inputs in terms of the Central Excise Rules, 1944 is admissible on the following items :--

(i) Explosive and

(ii) Grinding Media Balls.'

3. The Tribunal thought it to be a fit case and accordingly drew up the statement of case and referred the matter to this Court.

4. It is submitted by the learned Counsel for the assessee that the core question involved in the lis is no longer res integra. It is submitted that as far as explosives are concerned the matter is squarely covered by the pronouncement of Apex Court in the case of Jaypee Rewa Cement v. Commissioner of Central Excise, M.P., (2001) 8 SCC 586, and as far as grinding media balls are concerned, the matter is covered by Full Bench decision of CRGAT in the case of HMP Cements Ltd. v. Collector of Central Excise, Belgaum, 2000 (117) ELT 549.

5. Following the aforesaid judgments and for the reasons stated therein, the reference is answered in the affirmative in favour of the assessee and against the Revenue.