

**(2010) 12 CAL CK 0023**

**Calcutta High Court**

**Case No:** CEXA No"s. 59, 68-72 and 74-78 of 4009

C.C.E.

APPELLANT

Vs

Hindustan Engineering and  
Industries Ltd.

RESPONDENT

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**Date of Decision:** Dec. 15, 2010

**Citation:** (2011) 264 ELT 161

**Hon'ble Judges:** Sengupta, J; Kanchan Chakraborty, J

**Bench:** Division Bench

**Advocate:** Hazra and Sampa Sircar, for the Appellant; Khaitan, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. All these appeals [item Nos. 40 to 50] have been preferred by the revenue against a common judgment and order of the learned Tribunal dated 27th March, 2008. The learned Tribunal in its, turn by this judgment and/or order disposed of a number of matters [29 appeals]

2. The entire judgment of the learned Tribunal was not substantially assailed before us. By our order dated 28th January, 2010, we admitted the appeal only on the following point:

Whether the learned Tribunal is justified in law in treating the electrodes as being inputs and allowing the credit on such electrodes in the facts and circumstances of this case ?

3. Mr. Hazra, learned Counsel appears with Ms. Sampa Sircar, on behalf of the Appellant, and submits that the learned Tribunal has not made any endeavour to look into the real issue in this matter. The inputs electrode is not an input at all, it is a finished product and an enquiry should have been made inviting the expert opinion whether the electrode is an input or a finished product. According to him,

this judgment and order of the learned Tribunal is so to say perverse and without any basis whatsoever.

4. We have the benefit of hearing Mr. Khaitan, learned Senior Advocate for the Respondent. He draws our attention to the fact finding of the learned Tribunal and submits that the question formulated at the time of admission relates to the fact and not the law. The learned Tribunal has followed its earlier decision wherein it has been held that electrode is an input and credit on such input is permissible and there is no illegality. The learned Tribunal while dealing with the appeal No. EDM-44-53/05 has observed that the Tribunal had earlier allowed the credit on such electrodes and the department had accepted the said order and this fact finding was not challenged before us as being perverse and in fact no ground has been made out.

5. In view of the aforesaid fact finding and in absence of any challenge on the ground of perversity, we are unable to accept the contention of the Revenue.

6. Accordingly, all these appeals are dismissed.

7. There will be no order as to costs.

8. All parties concerned are to act on a signed photocopy of this order on the usual undertakings.