

Customs, Excise and Gold Tribunal - Tamil Nadu

Collector Of Central Excise vs Larsen And Toubro Ltd. on 28 October, 1993

Equivalent citations: 1994 (69) ELT 762 Tri Chennai

ORDER V.P. Gulati, Member (T)

1. This appeal is filed by the Revenue against the findings of the lower appellate authority that benefit of MODVAT Credit should be available in respect of tool kit supplied along with Hydraulic Excavator and vibrating components.

2. The learned DR for the Department submitted that this Tribunal in the case of Sundaram Clayton Ltd. v. CCE, reported in 1989 (44) E.L.T. 578 held that tool kit could not be taken to be an input for the purpose of MODVAT Credit under Rule 57 of the Central Excise Rules, 1944 and for that reason the benefit of MODVAT Credit on the duty paid on the same was not eligible. This position has been followed subsequently by the Tribunal in its order No. 929/1990 dated 3-12-1990 reported in 1991 (56) E.L.T. 445 (Tribunal) in the case of CCE, Bangalore v. Larsen & Toubro Ltd.

3. Shri Balasubramanian, the learned Counsel for the Respondents pleaded that the East Regional Bench in the case of Tata Engineering & Locomotive Co. Ltd. v. CCE, Patna, reported in 1991 (32) ECR 165 have allowed the benefit of MODVAT Credit in respect of tool kit.

4. We observe that this Bench in order No. 929/1990 dated 3-12-1990 [1991 (56) E.L.T. 445 (Tribunal)] referred to supra has taken note of the findings of the Tribunal in the case of Sundaram Clayton - reported in 1989 (44) E.L.T. 578, the relevant portion of which is reproduced below :-

"The question for consideration will, therefore, be how far the tool kit can be said to be used in or in relation to the manufacture of the final products viz. Mopeds in the present case. Admittedly, the tools are not an integral part of the Moped. They are supplied as an accessory to the Two Wheeler. It is also not the case that the Moped is unfinished without the Tool kit. Merely because the appellants provide for a storage space for the tool kit in the body of the Mopeds, it cannot be accepted for that reason that the tool kit would form a component part of the Moped. It does not at all participate in the process of manufacture of the Moped. It is bought out item which is received as such by the appellant's undergoes no process in their factory and it is supplied as such by them along with the finished Moped. In this view of the matter, we are unable to accept the contention of the appellants that the tool kits would be eligible for MODVAT Credit under Rule 57A because we are satisfied that it cannot be said to be used in or in relation to the manufacture of the final product viz., Mopeds".

5. The East Regional Bench, however, we find, has ruled in favour of the assessee for the following reasons:

"We have considered the submissions advanced by both the sides. Apart from the trade notice issued by the different Collectorates which have been referred to by the learned Representative of the Company, the legal position also does not invalidate the proposition that the inputs in question are used in the manufacture of motor vehicles. The arguments advanced in this regard about the inclusion of the cost of such inputs in the cost of the assessable value of the motor vehicles coupled

with the extended definition of manufacture under Section 2(f) which covers any process incidental or ancillary to the completion of the manufactured product would support the stand taken by the appellants. If the inputs in question are held to be not used in the manufacture or in relation to the manufacture of the motor vehicles then the inclusion of their cost in the assessable value would also not be justified. Anyway, since this is a matter which has already been accepted by the different Collectorates and more particularly the Collectorate itself which is concerned with this matter, we see no justification not to allow these appeals. The appeals are accordingly allowed with consequential benefits to the appellants".

6. We observe that the Departmental authorities have also issued instructions by disallowing the benefit in respect of tools kit. One of the reasons which weighed with the East Regional Bench in giving a finding in favour of the assesseees was, at that time the Departmental authorities were allowing the benefit of MODVAT Credit in respect of tools kit in similar case. In view of the discussion as to the eligibility to MODVAT Credit in the context of Rule 57A and in view of the ruling given by this Bench, we hold that benefit of MODVAT Credit is not available in respect of tools kit. We, therefore, allow the appeal of the Revenue. So far as the exclusion of the tools kit, for arriving at the assessable value of the vehicle, the Respondents are free to agitate the matter in the context of the parameters of Section 4 of the Act, before the appropriate authority.