Ashok Leyland Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-29-2000

Reported in : (2001)(96)LC407Tri(Chennai)

Judge : S Peeran

Appellant : Ashok Leyland Ltd.

Respondent : Cce

Judgement :

1. This appeal arises from Order-in-Appeal No. 249/97(M) dated 15.10.1997 denying the Modvat credit on tyres and tubes meant for the flow cars, which are used within the factory for movement of materials.

The Assistant Commissioner's impugned order held that Modvat credit is not available on the flow cars and as a result its spares tyres & tubes also will fall under the same category and on that plea the Modvat credit has been denied.

2. Learned counsel submits that the issue is no longer res integra inasmuch as the Tribunal in the case of CCE v. India Glycols Ltd. as has held that fork lifts utilised for transport of raw materials from one place to another place within the factory are eligible for Modvat credit. He points out that a similar view has been taken by the Tribunal in the case of Caroborandum Universal Ltd. vide final order No. 1838/98 dated 17.9.1998, wherein Modvat credit on Morris 1 tonne capacity geared trolley used within the factory was held to be eligible for Modvat credit as capital goods.

The counsel submits that this ratio of the judgement was again followed in the same assessee's case by final order No. 402/2000 dated 28.3.2000.

It is his contention that the flow cars are having same functions that of fork lift as well as Morris 1 Ton capacity geared trolley and all these three items perform the same function of material handling equipment and used within the factory, hence, in terms of these judgements, in the present case, the main item itself is eligible for Modvat credit and its spares namely tyres and tubes would also be eligible for the said benefit. He, therefore, prays for allowing the appeal.

3. Learned D.R. points out to Order-in-Original, wherein the admission of the party is recorded that said flow cars are not eligible for Modvat credit and on that finding, the Assistant Commissioner has held that its spares namely tyres and tubes would automatically fall outside the scope of meaning and on that reasoning the benefit has been denied.

He, therefore, submits that orders of both the authorities should be upheld.4. On a careful consideration of these submissions, I notice that the issue pertaining to equipments of fork lift, tractor, Morris I Ton capacity geared trolley used for the purpose of material handling equipment within the factory have been held to be eligible for Modvat credit in terms of the ratio of the judgments cited above. The impugned item in the present case namely flow car is admittedly utilised for transport of components from one place to another within the factory which is recorded in the Order-in-original. There is no dispute with regard to flow car activity of transporting raw materials within the factory, therefore, its spares namely tyres & tubes would fall within the category of capital goods in terms of Rule 57G. The Assistant Commissioner had proceeded on the basis of flow car tractors and found that they are not eligible for the benefit and on that premise he held that its spares namely tyres & tubes also would not be eligible for the benefit. I notice that the Tribunal held in the above cited judgements that material handling equipments used within the factory premises are eligible for benefit of Modvat credit and the spares of the said equipments also held to be eligible for the benefit of the Modvat credit. Applying the ratio thereof, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.