

Collector of Central Excise Vs. D.C.M. Toyota Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-20-2000

Reported in : (2001)(127)ELT227TriDel

Appellant : Collector of Central Excise

Respondent : D.C.M. Toyota Limited

Judgement :

1. By this application, the Revenue has submitted that the point of law reading as "Whether Hon'ble Tribunal was right in holding that 'tool kit' and 'jack assembly' supplied with motor vehicle can be treated as an input under Rule 57A of the Central Excise Rules, 1944" arises out of the Final Order Nos. A/211-12/97-NB, dated 27-1-1997.

2. The facts of the case giving rise to the above contention are that the respondents are engaged in the manufacture of motor vehicles and supplied tool kits and jack assembly with motor vehicles. They supplied tool kits and jack assembly alongwith the motor vehicles. The Asstt.

Commissioner held that Modvat credit was not available on tool kits and jack assembly supplied with motor vehicles. He accordingly confirmed the demand. Against this order, the respondents filed an appeal before the Commissioner (Appeals) who held that tool kits and jack assembly are essential constituents to make the motor vehicles marketable and set aside the order of the Asstt. Commissioner. The Revenue has filed an appeal before the Tribunal. The Tribunal

in para 5 of its impugned order held as under :- "Heard the submissions of both sides. I find that the facts of this case are more or less similar to the facts on the basis of which the Tribunal had given the decision in the case of Bajaj Auto Limited cited supra. I find that both the issues namely, tool kits and jack assembly were considered by the Tribunal. Following the ratio of that decision of the Tribunal, I uphold the impugned order and set aside the appeal. Consequential relief, if any, shall be admissible to the respondents in accordance with law." Being aggrieved by this order, the Revenue has submitted that the above point of law arises.

3. Arguing the case for the Revenue, Shri R.C. Sankhyala, Id. JDR submits that the order passed by the Tribunal is contrary to the provisions and spirit of Modvat rules; that the tool kits and jack assembly are not inputs but are such items as are not used in or in relation to the manufacture of motor vehicles; that the Hon'ble Patna High Court in the case of TELCO v. Union of India 1994 (72) E.L.T. 525 held that the tool kits are not inputs as are not used in or in relation to the manufacture of motor vehicles. He, therefore, submits that the point of law as formulated above may be referred to the Hon'ble Allahabad High Court for their considered opinion.

4. Shri Janesh Baweja, Id. Advocate submits that no point of law arises inasmuch as the Larger Bench of this Tribunal in the case of Bajaj Auto Limited 1996 (88) E.L.T. 355 held that jack assemblies and tool kits supplied along with the motor vehicles are inputs as contemplated in Rule 57A of the Central Excise Rules, 1944 and not excluded by Clause 1A of the Explanation to that Rule. He submits that for coming to this decision, the Larger Bench had before it the decision of the Hon'ble Patna High Court and various other decisions. He, therefore, submits that since the issue has been decided by the Larger Bench of this Tribunal after taking into consideration the decision of the Hon'ble Patna High Court, no point of law arises. He, therefore, prays that reference application may be rejected.

5. Heard the rival submissions. I note that the Larger Bench of this Tribunal in the case of Bajaj Auto Limited cited above had no doubt examined the issue of admissibility of Modvat credit on tool kits and jack assembly and also perused the

decision of the Hon'ble Patna High Court on the issue. However, I find that since the Tribunal had not agreed fully with the decision of the Hon'ble Patna High Court, I consider that point of law arises in the present case and, therefore it needs to be referred to the Hon'ble High Court concerned for its considered opinion. The matter is required to be referred to the Hon'ble Allahabad High Court. The reference application is allowed in the above terms.

6. The respondents in this case are manufacturers of motor vehicles.

They are availing the benefit of Modvat credit on the inputs and utilising the same for payment of duty on the final products. The respondents were supplying the tool kits and jack assembly alongwith the motor vehicles. The Revenue was of the view that tool kits and jack assembly are not such items as are used in or in relation to the manufacture of motor vehicles. In support of this contention, they cited and relied upon the judgment of the Hon'ble Patna High Court in the case of TELCO v. Union of India 1994 (72) E.L.T. 525. Against this, the respondents submitted that the decision of the Hon'ble Patna High Court was examined by the Larger Bench of this Tribunal in the case of Bajaj Auto Limited in para 17 of its order which is as under :- "On behalf of the department, reliance is placed on the decision of High Court of Patna in TELCO v. Union of India -1994 (72) E.L.T. 325 (Pat.). Appellants, manufacturers of motor vehicle chassis, were purchasing tool kits comprising of spanners, wrenches, screwdrivers and jack attachments and sup-Paying the same to buyers of chassis at their option. They were adding the value of tool kit in the assessable value of chassis and paying duty thereon. The question directly arose as to whether appellants were entitled to Modvat credit in respect of such tool kits. The Tribunal in the decision reported in 1991 (32) ECR 165 (Tri.) held that TELCO were entitled to Modvat credit, mainly on the basis of trade notices. Thereafter CBEC on 21-10-1991 withdrew the earlier instructions. Thereupon Assistant Collector issued notice and subsequently passed an order holding against TELCO's entitlement to Modvat credit. This order was unsuccessfully challenged by TELCO before the High Court. The High Court was of the view that the definition of "input" in the Explanation to Rule 57A of the Rules not being exhaustive, the word has to be understood in the context of its use "in or in relation to the manufacture" of final product. The expression "in relation to" has

to be read in the context of manufacturing process of finished goods. Relying on the decision of Supreme Court in Eastend Paper Industries case - 1989 (43) E.L.T. 201 (S.C.) and Doypack Systems (Pvt.) Limited v. Union of India -1988 (36) E.L.T. 201 (S.C.), the Court indicated that the expression "in manufacture of" denotes direct participation of the input in the manufacturing process usually in the emergence of the final product, whereas the words "in relation to manufacture" convey the meaning of indirect participation of the inputs in the manufacture of the final product but such indirect participation is essential. The Court noticed that tool kits were supplied on the request of buyers and supply was limited to some of the chassis and not all chassis manufactured and sold by TELCO. Tool kits, it was observed, do not participate directly or indirectly in or in relation to the manufacture of chassis and chassis were already manufactured goods and counted as finished products whether or not tool kits were supplied. Thus supply of tool kit was a subsequent action to the manufacture of chassis to be used in relation to maintenance and repair of chassis and not used in relation to manufacture of chassis. It was opined that value of accessories and spares should be added to the value of chassis as they contribute to the value of chassis and not because tool kits are used in or in relation to the manufacture of chassis.

The Court also observed that unlike wiper machine or seat which are essential parts of chassis, tool kit cannot be said to be essential component of chassis since it is supplied only on request of customers and hence it is clear that chassis is marketed without the help and assistance of the tool kit. Thus, it was held that the ratio of Jay Engineering case was not applicable." 7. It was submitted by the respondents that after examining carefully the decision of the Patna High Court, the Larger Bench of this Tribunal held that Modvat credit was admissible on tool kits and jack assembly under Rule 57A. We note that the issue is not free from doubt, a doubt is about a point of law whether tool kits and jack assembly which are supplied with the motor vehicles are inputs for the purpose Rule 57A as they are not used in the manufacture of motor vehicles. Accordingly the matter is sent to the Hon'ble Allahabad High Court to decide the issue.

The point of law to be decided is "Whether the Tribunal was right in holding that the 'tool kits' and 'jack assembly' supplied with motor vehicle can be treated as an

input under Rule 57A of the Central Excise Rules, 1944."

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