Cc and Ce Vs. Bajaj Temo Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-11-2004

Reported in : (2004)(117)LC414Tri(Delhi)

Judge : S Kang, Vice, A T V.K.

Appellant : Cc and Ce

Respondent : Bajaj Temo Ltd.

Judgement :
1. These are three appeals filed by Revenue against the common Order-in-Appeal No. 673-675/2003 dated 22.12.2003 by which the Commissioner (Appeals) has allowed the Modvat Credit (except Rs. 464.06 and Rs 4614.07) to M/s. Bajaj Tempo Ltd. 2. In respect of Appeal Nos. E/3548 and 3549/04, the Revenue has also filed applications for condonation of delay in filing the appeals. Shri O.P. Arora, learned S.D.R., mentioned that the Revenue has initialy filed one common Appeal No. E/1546/04-B within the time specified in Section 35B of the Central Excise Act; that the two supplementary appeals have been filed as the Commissioner (Appeals) has disposed of three appeals by the impugned Order. After hearing Sh. S.A. Gundecha, Director of Respondent Company, we condone the delay in filing these two appeals as the main appeal had been filed within the time limit specified in Section 35B of the Central Excise Act.

3. The learned S.D.R. mentioned that the Respondents manufacture motor vehicles and avail of MODVAT Credit of the duty paid on inputs under Rule 57A of

the Central Excise Rules, 1944; that they manufacture Matador (L.C.V.) and Tempo Travellers in their factory; that they had utilised the credit of the inputs meant for L.C.V. towards payment of duty on Tempo Travellers; that the Assistant Commissioner has disallowed the MODVAT Credit of duty paid on inputs used in the manufacture of Matador as the same has been utilised towards payment of duty in respect of Tempo Travellers on the ground that credit taken in respect of inputs can be utilised for payment of duty on the final products manufactured from such inputs only; that the Commissioner (Appeals) has, however, allowed the credit holding that such utilisation of credit is permissible under the MODVAT Scheme following the decision in the case of the Respondents themselves as .

4.1 The learned S.D.R. submitted that during the relevant period Rule 57F(4) of the Central Excise Rules, 1944 stipulated that the credit allowed in respect of any inputs may be utilised on any of the final products, in or, in relation to the manufacture of which such inputs are intended to be used in accordance with the declaration filed under Rule 57G(1) of the Central Excise Rules; that MODVAT is a system based on the concept of value addition at the manufacturing stage and whatever goes into the making of the final products on which duty is levied would be relevant for consideration because credit of duty paid on inputs is to be utilised towards the duty payable on the said final product; that thus the MODVAT Credit availed on the inputs for one final product cannot be used for payment of duty on other final product; that thus the MODVAT Credit taken on inputs used in the manufacture of Matador vehicle cannot be utilised towards the payment of duty on Tempo Travellers.

4.2 He, further, submitted that Commissioner (Appeals) has also allowed the Modvat Credit in respect of tool kits following the decision of the Tribunal in the case of Bajaj Auto Ltd. v. CCE, Pune ; that tool kits cannot be said to be used in or relation to the manufacture of final products, i.e. Motor Vehicles; that the Supreme Court has dismissed the S.L.P. filed by M/s. Tata Engineering & Locomotive Co. Ltd. as against the judgment of Patna High Court in the case of Tata Engineering & Locomotive Co. Ltd. v UOI ; that the Patna High Court has held that tool kit which is bought out item and is supplied along with motor vehicle chasis cannot be treated as inputs for the purpose of availing the benefit of MODVAT Credit under

Rule 57A; that following this judgment the Tribunal has also disallowed Modvat Credit on tool kits in the case of Daewoo Motors v. CCE 2001 (135) ELT 396 (T) and in the Respondents' own matter as .

5. On the other hand, the learned Director of the Respondent Company submitted that at the material time Rule 57A provided for the credit of duty paid on inputs used in or in relation to the manufacture of final products; that there was nothing in Notification No. 177/86-CE dated 1.3.1986 to suggest that the credit is admissible only on those inputs which go directly in the manufacture of final product; that thus any item which is used in or in relation to the manufacture of final product would be an input; that tool kit has to be supplied statutorily under the provisions of Motor Vehicle Rules along with the Motor vehicle and as such tool kit is used in or in relation to manufacture of the Motor Vehicles as the same is not marketable without tool kit.

He relied upon the decision of the Larger Bench of the Tribunal in the case of Bajaj Auto Ltd. v. CCE, Aurangabad wherein the Modvat Credit of the duty paid on tool kits was allowed holding that supply of these items, which is required statutorily under the Motor Vehicle Rules, enriches the value of the vehicles and gives them the marketability in the light of the trade pattern. He also relied upon the decision in the case of CCE, Indore v. Bajaj Tempo Ltd., Final Order No. A/54/011 NB 6. We have considered the submissions of both the sides. During the relevant periods (1989-1990), Rule 57A of the Central Excise Rules provided for taking Modvat Credit of the duty on the specified inputs which are used in or in relation to the manufacture of the specified final products under Notification No. 177/86-CE dated 1.3.1986 Rule 57G of the Central Excise Rules mandates filing of declaration by the manufacturer intending to take Modvat Credit of the duty paid on the inputs. In such a declaration, the manufacturer has to declare the inputs and the final products manufactured out of such inputs. Rule 57F of the Rules contains provisions for utilisation of credit by the manufacturer. Sub-rule (3) of Rule 57F reads as under at the relevant time: (3) Credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise- (i) on any of the final products, in or in relation to the manufacture of which such inputs are intended to be used in accordance with the declaration filed under Sub-rule (1) of Rule 57G, or 7. It is thus apparent from this provision that the credit may be utilised on any of the final products in or in relation to the manufacture of which inputs are intended to be used. The respondents are manufacturing motor vehicles and are bringing inputs to be used in or in relation to the manufacture of Motor Vehicles. They have utilised the credit towards payment of duty on Motor Vehicles alone. The mere fact that they are manufacturing different motor vehicles will not mean that the inputs have not been used in or in relation to manufacture of Motor Vehicles. The fact that one particular input has not been used in the manufacture of Tempo Travellers will not debar the Respondents from utilising the credit taken in respect of the said units, towards payment of duty on Tempo Travellers since the said inputs is intended for use (and in fact is used) in the manufacture of motor vehicles. The provisions of Rule 57F(3) and the Notification No. 177/86-CE do not provide that the inputs credit had to be used towards payment of duty on variety wise of each products. Rule 57P(3)(i) also uses the phrase "on any of the final products" and not "on the final product". The Tribunal has also in Bajaj Tempo case, supra, held that the Commissioner had distinguished between 'door handles for matador' and 'door handles for Tempo Travellers' which "certainly is not the intention behind the Modvat Scheme". The Tribunal has also referred to the decision in the case of Sawottam Ispat Pvt. Ltd. v. CCE wherein the Tribunal has held that if a distinction is made on the ground of different varieties of inputs, "the entire Scheme of Modvat would be a dismal failure.... This distinction is not envisaged in the definition of inputs and such distinction cannot be permitted to defeat the principle that there is no one to one co-relation in the Modvat Scheme." As in the present matter all the inputs have been used in the manufacture of motor-vehicles and the credit has been utilised towards payment of duty on motor vehicles (whether Tempotraveller or Matador), the Respondents have not contravened any of the provisions relating to utilisation of Input Credit. We therefore, reject the appeals filed by the Revenue on this count.

8.1 In respect of eligibility of tool kits as inputs for the purpose of availing of Modvat Credit, we observe that no doubt the Larger Bench of the Tribunal in Bajaj Auto case has held that credit is admissible in respect of duty paid on tool kits. But the Patna High Court in the case of Tata Engineering Locomotive Co. Ltd. v. UOI has held that tool-kits which are bought out items and are supplied along with motor vehicle chasis by the Petitioner cannot be treated as inputs for the purpose of availing the Modvat Credit. The High Court has held that "So from whatever angle the item is examined, the irresistible conclusion that is arrived at is that tool kits supplied by the Petitioners with the motor vehicle chasis manufactured by them at the request of the customers cannot be said to be "inputs" and used in or in relation to the manufacture of motor vehicle chasis." The Special Leave Petition filed by the Petitioners has been dismissed by the Supreme Court as . The Appellate TribunalDaewoo Motors India Ltd. v. CCE 2001 (135) ELT 596 (T) has followed the decision of the Patna High Court as affirmed by the Supreme Court and has held that the following legal positions emerge: Manufactures of automobiles are not entitled to include the value of jack assemblies and tool kits in the assessable value of the automobile with eligibility to avail Modvat Credit in respect of excise duty paid on such goods. Nor can the Department require the manufactures to include the value of Jack assemblies and tool kits in the assessable value of the vehicles as they are essential accessories of the automobiles.

8.3 In view of the legal position, the decision of the Single Member Bench of the Tribunal in Final Order No. A/540/2001 dated (sic) 4.2001 is not applicable. Further, the judgements of the High Court and the Supreme Court were not brought to the notice of the said Bench.

Following those judgements, we hold that Modvat Credit of the duty paid on tool kits is not available to the Respondents. The appeals of the Revenue are allowed to this extent.