Mahindra and Mahindra Ltd. Vs. Acce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-15-1990

Reported in : (1991)(33)LC116Tri(Mum.)bai

Judge : S Excise

Appellant : Mahindra and Mahindra Ltd.

Respondent : Acce

Judgement :
1. M/s. Mahindra ft Mahindra Ltd situated at Plant No. 1, Satpur Nasik-7 have filed the present appeal petition against the order-in-original passed by the Assistant Collector of Central Excise ft Customs, Nasik under his order No. VGN(30)l21/57A/T-2/86 Pt. 1 dated January 1988 wherein he his held that Screw Jack with haadle is not an input used in or in relation to the manufacture of Motor Vehicle and thereby disallowed the Modvat Credit taken wrongly on screw jack with handle with effect from 5.2 1987 under the provisions of Rule 57 of the Central Excise Rules, 1944.

(a) The appellants maintain that the basic requirements of Rule 57A which permits the taking of credit of the Paid paid on the inputs is that the inputs Should be used in or in relation to manufature of the final products. Supreme Court in case of Indian Corporation v. Commissioner of Commercial Taxes, Bihar has held that the vehicles used in mining operations, so also the basket used in transporting the mined ore also, to be treated as goods in the manufacture. The Assistant Collector has completely missed the wording 'in relation to manufacture' appearing in Rule 57A. (b) The Assistant Collector has also completely missed the concept of what is goods as are covered under Section 3 of Central Excises & Salt Act, 1944. The Supreme Court in case of DC & G Mills v. Union of India 1977 ELT J-199 : Cen-Cus April 1973 Page 56; ECR C 216 SC; 1990 (27) ECR 151 has held that the meaning of the word goods provides strong support to the view that manufacture which is liable to excite duty under Central Excises & Salt Act' 1944 must be bringing into existence a new substance known to the market.

(c) The appellants further maintain that they cannot market their vehicles unless they are provided with Jack, tools and spare wheel which is in line with the universal practice in the automobile industry. Further it is also statutory binding in the appellants to provide the same in terms of Rule 200(1) and (3) of the Bombay Motor Vehicles Rules.

(d) The department has conceded that the duty paid on the spare wheel is entitled to be taken credit Of duty under the Modvat Scheme. On this analogy, the appellants maintain that they are rightly eligible for credit of duty paid on Jack and tools.

3. The personal hearing of the case took place on 7.7.1989 and Shri J.N. Pikle, Senior Manager Excise appeared for the hearing and he put forth the below mentioned additional pleas.

(i) Board has agreed in the monthly meeting on Modvat dated 22.4.1989 at Bombay that Modvat Credit is permissible on Jack Assembly (Point No. 6 of the Minutes).

(ii) The Assistant Collector had also issued a similar Show Cause Notice for the 5th Wheel (Stepney) and the said Show Cause Notice has been subsequently withdrawn by him vide order No V-8703(l5)4/87 dated 7.6.1988.

4. The appellants have filed their written submissions and in it they have added below mentioned additional further pleas.

(A) If they do not provide their vehicles with these accessories which are to be so provided as per statute, then they cannot be put on roads and hence obviously not marketable. Further non-marketable materials are not goods and hence they become non-excisable They have cited Delhi High Court decision in case of Delhi Cloth d General Mills v. Jt. Secretary Govt. of India 1978 ELT J-Pl : Gen-Cus April 1978 Page 56D in support, of their defence (B) They have further stated that it is legally settled law that bringing together of parts, but keeping then in a loose condition that is CKD, still amounts to manufacture, when all these loose parts together constitute a new product which is usable and recognisable in the market as different from each of the individual ports. They have relied CEGAT's Collector of Central Excise.

Chandigarh .

5. I have gone through the Order in original, the appeal petition and the record of personal hearing carefully and notice that: Under Bombay Motor Vehicle Rules, 1959, there is statutory provision that every public service vehicle shall at all times be furnished with efficient jack and other tools necessary to change a wheel or rim and tyre with the equipment necessary to repair a puncture.

Further it is seen that Central Board of Customs & Central Excise, New Delhi in the point No. 6 of Modvat meeting held on 22.4.1989 at Bombay have clarified that MODVAT Credit of duties on tool kits would be admissible provided such tool kits are supplied along with motor vehicles and their value is included in the assessable value of motor vehicles.

6. In view of the circumstances, appellants are eligible for Modvat Credit in regard to Screw Jack with handle if the value of the same is included in the assessable value of the motor vehicle and if it is supplied along with the motor vehicle.

7. The Assistant Collector may allow the credit on factual verification if the conditions are fulfilled.