
(2010) 09 JH CK 0020
In the Jharkhand High Court
Case No : Tax Appeal No. 5 of 2008

Commissioner of C. Ex.

APPELLANT

Vs

Tata Motors Ltd.

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Citation : (2013) 294 ELT 394

Hon'ble Judges : Sushil Harkauli, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Ratnesh Kumar, for the Appellant; Sumit Kr. Gadodia, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard both sides. The brief facts of this case are that an amount of about Rs. 10,00,000/- (rupees ten lacs) was claimed as Modvat credit by the respondent-assessee. Out of the aforesaid amount of Rs. 10,00,000/- (rupees ten lacs), a sum of less than Rs. 5,00,000/- (rupees five lacs) was claimed on the strength of certain invoices, issued to the respondent-assessee by one Clutch Auto Ltd., Mathura in respect of the inputs supplied to the assessee by Clutch Auto Ltd., Mathura.
2. It is not disputed that the full amount of invoices was paid by the assessee to M/s. Clutch Auto Ltd. It is also not disputed that the inputs supplied by M/s. Clutch Auto Ltd. to the assessee were excisable items. The case of the department is that M/s. Clutch Auto Ltd. did not actually deposit the excise duty, which was payable on the said inputs, which were supplied to the assessee.
3. The Tribunal has held in favour of the assessee and against the department, saying that the assessee was not at fault.
4. Learned counsel for the department in this appeal has relied upon firstly upon Rule 57G. It has been urged that the said Rule provides for Modvat credits in these words:

Every manufacturer intending to take credit on the duty paid on inputs...

5. Placing reliance upon the underlined words, it has been urged that unless the duty has been paid on inputs, no Modvat credit can be availed by the assessee.

6. This argument does not appeal to us. Once a buyer of inputs receives invoices of excisable items, unless factually it is established to the contrary, it will be presumed that when payments have been made in respect of those inputs on the basis of invoices, the buyer is entitled to assume that the excise duty has been/will be paid by the supplier on the excisable inputs. The buyer will be therefore entitled to claim Modvat credit on the said assumption. It would be most unreasonable and unrealistic to expect the buyer of such inputs to go and verify the accounts of the supplier or to find out from the department of Central Excise whether actually duty has been paid on the inputs by the supplier. No business can be carried out like this, and the law does not expect the impossible.

7. Reliance has been placed by the appellant upon Rule 57-1 and a decision of the Tribunal in the case of 1997 (70) ECR 436 .

8. The aforesaid decision does support the department directly, but, we are of the opinion for the reasons given above, that the decision of the Tribunal is not correct. We, therefore, decline to interfere on the aforesaid point with the impugned order of the Tribunal. So far as remaining amount of Modvat credit is concerned, the defence of the assessee which was initially taken, is said to have been not pressed before the Tribunal. The assessee says that the assessee voluntarily deposited the amount of which Modvat credit has been taken wrongly. However, if that be so, we would expect a few lines of the Tribunal devoted to that issue. Because of the complete silence in the Tribunal's order on the said remaining issues, we remand the case back to the Tribunal after setting aside that portion of the impugned order. The Tribunal will decide such of the remaining issues, which are necessary, after giving an opportunity of hearing to both sides.