(2001) 10 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : C.C.E.S. No. 46 of 2001

Commissioner of C. Ex., Chandigarh-I — APPELLANT

Vs

Punjab Tractors Ltd. (SCD) — RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Central Excise Rules, 1944 — Rule 57A
Central Excises and Salt Act, 1944 — Section 35H

Citation : (2002) 79 ECC 455 : (2002) 139 ELT 560

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Kamal Sehgal, ACGSC, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—M/s. Punjab Tractors Ltd. is engaged in the manufacture of Fork Lift Trucks. It claimed Modvat credit on certain parts used for the manufacture of the said trucks. Vide order dated October 3,1998, a copy of which is at Annexure P-I with the petition, the Assistant Commissioner had disallowed the credit for an amount of Rs. 2,10,446/-. It was held that the benefit was not admissible as the parts fell under Item 8708. Aggrieved by the order, the respondent - company filed an appeal. It was allowed by the Commissioner vide order dated November 12, 1998. It was held that there was no "logic in the argument.......that the parts falling under 8708.00 cannot be taken as inputs for the final product for Fork Lift Trucks. No evidence has been brought on record by the department that these parts are not actually being used in the manufacture of Fork Lift Trucks."

2. Aggrieved by the order of the Appellate Authority, the Revenue filed an appeal. This was dismissed by the Tribunal vide its order dated July 6 2000 2001 (137) E.L.T. 247 . A copy of this order is at Annexure P-3 with the petition.

3. Aggrieved by the order of the Appellate Authority and the Tribunal, the

Revenue has filed the present petition u/s 35H(1) of the Central Excise Act, 1944. It maintains that the following question of law arises for the opinion of this Court :-

"Whether Modvat credit under Rule 57A of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) is admissible on the parts and accessories falling under Chapter sub-heading No. 8708.00 when used in or in relation to the manufacture of Fork Lift Trucks falling under Chapter Sub-heading No. 8427.00 as it has been clearly mentioned under Chapter Sub-heading No. 8708.00 that it covers "Parts and accessories" of the Motor Vehicles of Chapter headings "87.01 to 87-05 only."

4. We have heard Mr. Kamal Sehgal, learned Counsel for the petitioner. He contends that the parts for which Modvat credit had been claimed by the respondents fall within Tariff Item 8708 and not under Item 8431.

5. What are the ''parts''? Learned Counsel is unable to refer to any averment on the record. In this situation, it is impossible to say that the finding recorded by the Tribunal is wrong or that a question of law really arises in the case.

6. Mr. Sehgal submits that the Modvat credit could not be granted to the respondent-company in respect of items which are used in motor vehicles.

7. We are unable to accept this broad proposition. A battery is used in a car as well as in a truck. Is the credit inadmissible to the respondent only because the battery is used in a car also? The plain answer is no. Similarly, the mere fact that certain parts are used in trucks as well as in other motor vehicles cannot ipso facto mean that the Modvat credit shall not be admissible.

8. No other point has been raised.

9. In view of the above, we find that no question of law arises for the opinion of this court.

10. The petition is accordingly dismissed in limine.

