(2013) 05 P&H CK 0236

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal No. 52 of 2012 (O and M)

Commissioner of Central Excise	APPELLANT
Vs	
Honda Motorcycle and Scooter India P. Ltd.	RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2014) 303 ELT 193 : (2013) 22 GSTR 337

Hon'ble Judges : Ritu Bahri, J;Hemant Gupta, J

Bench : Division Bench

Advocate : Sunish Bindlish, for the Appellant;

Judgement

Hemant Gupta, J.—The present appeal u/s 35G of the Central Excise Act, 1944 arises out of an order passed by the Customs Excise and Service Tax Appellate Tribunal (for short "the Tribunal") on April 24, 2012 2012 (191) ECR 219 . The Revenue has claimed the following substantial questions of law:

(i) Whether the hon''ble CESTAT is correct in ignoring the decisions taken by the higher courts setting the precedent to follow which has been made the basis to confirm the demand by the Commissioner (ADJ), New Delhi?

(ii) Whether the hon''ble Tribunal has correctly interpreted inputs used in relation to manufacture of the final products as appearing in rule 2(k) of the Cenvat Credit Rules, 2004?

(iii) Whether the phrase ''inputs used in relation to'' the manufacture of final products does not postulates that the input must directly or indirectly participate in the process of manufacture of the goods?

(iv) Whether the hon''ble CESTAT is correct in ignoring earlier rulings of the Tribunal wherein tool kits have not been held to be ''inputs'' within the meaning of the Cenvat Credit Rules, 2004?

(v) Whether the hon''ble CESTAT is correct in placing reliance on the ruling in the case of Bajaj Auto Ltd. (ibid) when the same has been held not good by the

CESTAT, Delhi in the case of Daewoo Motors Ltd.?

The said questions of law are said to have arisen in. view of the fact that the adjudicating authority has disallowed Cenvat credit availed of by the manufacturer and ordered recovery of inadmissible Cenvat credit amounting to Rs. 50,65,946 under rule 14 of the Cenvat Credit Rules, 2004 read with the first proviso to section 11A(1) of the Central Excise Act, 1944. The adjudicating authority also ordered recovery of interest and imposed penalty.

2. The assessee-respondent is engaged in the manufacture of two wheelers falling under Chapter 87 of the Central Excise Tariff Act, 1985 and has availed of Cenvat credit facilities in respect of tool kits and first aid kits sold along with two wheelers. During audit, it was found that the respondent has availed of Cenvat credit amounting to Rs. 72,34,801 for the period 2007-08. The respondent was asked to provide details of the Cenvat credit availed of. It was found that during the period 2004-05 to 2008-09, the respondent has availed of Cenvat credit on tool kits and first aid kits sold along with two wheelers to the tune of Rs. 3,70,28,767. The Revenue was of the view that Cenvat credit was not permissible under rule 3(i) of the Cenvat Credit Rules, 2002 on such product. After show-cause notice, the adjudicating authority disallowed Cenvat credit as mentioned above.

3. The learned Tribunal has relied upon a larger Bench order of the Tribunal reported as 1997 (68) ECR 588 followed later by the Tribunal in a judgment reported as 2006 (113) ECC 583 to hold that the respondent has supplied tool kits and first aid kits to the buyers as per statutory requirements under the Central Motor Vehicle Rules, 1989 as accessories to be used in relation to the manufacture of vehicle. Thus, both tool kit and first aid kit are covered by the definition of input given under rule 2(k)(i) of the Cenvat Credit Rules.

4. Learned counsel for the appellant has vehemently argued that as per the definition of input, the goods which are used in or in relation to manufacture of final product alone are entitled to benefit of Cenvat input credit. Since neither the tool kits nor the first aid kits are used in or in relation to manufacture of final products, mere fact that they have to be sold along with vehicle will not entitle the respondent to avail of the benefit of Cenvat input credit. We do not find any merit in the argument raised by the learned counsel for the appellant. The relevant extract from rule 2(k) of the Cenvat Credit Rules reads as under:

(k) ''input'' means,--

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit commonly known as petrol and motor vehicles, used for providing any output service;

Explanation 1.--The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.--Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacture.

5. A reading of the said definition shows that it is inclusive and wide as it is started with the words "all goods". The goods excluded are light diesel oil, high speed oil and motor spirit which are in the nature of consumables. The final product cannot be given restricted meaning so as to mean as the engine of the vehicle or the chassis but all things which are necessary to make the final product marketable. What is excluded is the fuel which is to be consumed for running of the vehicle. All goods which are part of the original equipment are entitled to Cenvat credit as per the definition of rule 2(k)(i) reproduced above.

6. Learned counsel for the appellant has referred to a judgment of Patna High Court reported as Tata Engineering and Locomotive Co. Ltd. Vs. Union of India (UOI) wherein the tool kits supplied by the assessee with motor vehicle were not treated as input while considering the old Modvat credit scheme. It is contended that the SLP against the said order has been dismissed by the hon''ble Supreme Court. Therefore the judgment of the Patna High Court as affirmed by the hon''ble Supreme Court is binding on the Tribunal.

7. We do not find any merit in the said argument as well. The aforesaid judgment of the Patna High Court has been taken into consideration by the larger Bench in the judgment reported as 1997 (68) ECR 588 and also order of the Supreme Court. The Tribunal has found that the Tata Engineering and Locomotive Co. Ltd. Vs. Union of India (UOI)) Tata Engineering and Locomotive Co. Ltd. decided by the Patna High Court considered the matter of manufacture, sale and clearance of motor vehicle chassis and not motor vehicles. For motor vehicle, the tool kit and the first aid kit has to be part of the vehicle before the same can be put to use. In view of the above discussion and the larger Bench order of the Tribunal, we do not find any substantial question of law arises for consideration. In view of the above, we do not find any merit in the present case and the same is dismissed.