

(1994) 04 PAT CK 0001

In the Patna High Court

Case No : Writ Petition No. 1512/1993 (R)

Tata Engineering and Locomotive Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0001

Judgement

Mukundkam Sharma, J.—The petitioners, in this writ application have challenged the legality and/or validity of the order dated 19-3-1993 passed by the Assistant Collector, Central Excise, Jamshedpur holding that Tool kits supplied by the petitioners with the motor vehicle chassis cannot be said to be "inputs" to be used in or in relation to the manufacture of motor vehicles within the ambit of Rule 57A of the Central Excise Rules (hereinafter referred to as "the Rules") and also the show cause notices issued by him to the petitioners prior to the said aforesaid decision.

2. According to the petitioners, it is engaged in manufacturing of motor vehicle chassis at their factories in Jamshedpur, in the State of Bihar and Pimpri, in the State of Maharashtra. The motor vehicle chassis manufactured by the petitioners are cleared on payment of excise duty at ad valorem basis. The Company supply to buyers of their motor vehicle chassis at their option a tool kit comprising of spanners, wrenches, screw drivers and a jack attachment. According to the petitioners, tool kits are supplied in accordance with the practice of the trade by all manufacturers as users of motor vehicles require such tool kits and, as far as public service vehicles are concerned, are required by law to carry such tool kits. It is further stated that tool kits are bought out from other manufacturers and are excise duty paid items. The petitioners include the value of tool kits in the assessable value of the motor vehicle chassis manufactured by them.

3. The petitioners, on the aforesaid facts and circumstances, contend that there are numerous items such as wipers, driver's seat, cabs and tool kits which are supplied or not supplied alongwith the basic motor vehicle chassis at the option

of the customer, and that such items are "inputs" used in manufacture of the motor vehicle chassis or in relation to such manufacture, though all such items may not be cleared with each vehicle and as such, in all such cases the value of the input is included in the assessable value and modvat credit should be allowed in respect of such inputs as they are required to market the motor vehicle chassis.

4. From March, 1986, the petitioners began availing of modvat credit in respect of motor vehicles manufactured at their Jamshedpur factory, after making a declaration under Rule 57G of the Central Excise Rules (hereinafter called as "the Rules"). The petitioners declared the tools comprising tool kits as "inputs" under Rule 57G and commenced availing modvat credit in respect of excise duty paid on such tools. On availing the aforesaid benefit by the petitioners, a show cause notice dated 16th February, 1987 was issued by the respondent No. 3 to show cause as to why modvat credit availed by them at their Jamshedpur factory during the period March, 1986 to January, 1987 on tools should not be disallowed under the provisions of Rule 57-I of the said rules. The stand of the department in the said show cause was that the tools could not be considered as "inputs" under Rule 57A. After petitioners filed their show cause, the respondent No. 2 by his order dated 30th May, 1987 rejected the petitioners' contentions and confirmed the demand in the said show cause notice dated 16th February, 1987 holding that the wrenches, spanners, etc. comprising tool kits were not "inputs" within the meaning of Rule 57A of the said rules.

5. An appeal having been preferred by the petitioners to the Appellate Collector, by his order dated 20th November, 1987 the Appellate Collector upheld the order of the respondent No. 2 on merit but allowing in part the petitioners' contention that a part of the demand confirmed by the respondent No. 2 was barred by limitation and further there was no justification for the imposition of any penalty.

6. In the meantime, on the basis of the letter dated 7th April, 1988, the Association of the India Automobile Manufacturers wrote to the Central Board of Excise and Customs requesting the Board to ensure that the benefit of modvat credit was made available in respect of tool kits supplied alongwith motor vehicles. The Central Board of Excise and Customs by a letter dated 23rd September, 1988 replied that it would not be possible to accede to the request of the Association since tools were specifically excluded from being an "input" under Explanation (b)(i) of Rule 57A. The matter once again having been taken up by the aforesaid Association on 11th October, 1988 with the Central Board and in pursuance of discussions between the representative of Industry and the Excise Department it was decided that modvat credit in respect of excise duty paid on tool kits would be admissible, provided that such tool kits were supplied alongwith motor vehicles and their value was included in the assessable value of the motor vehicles. In pursuance of the said decision, the Central Excise and Customs Collectorate, Calcutta issued a Trade Notice dated 18th July, 1989 directing the modvat credit on duties paid on tool kits and jacks would be

admissible provided such tool kits/jacks were supplied alongwith motor vehicles and their value was included in the assessable value of the motor vehicles.

7. The appeal filed by the petitioners before the Tribunal against the Appellate Collector's said order dated 20th November, 1987 came up for hearing before the East Regional Bench of the Customs, Excise and Gold (Control) and by an order dated 19th February, 1990 the said Tribunal allowed the petitioners' appeal holding that apart from trade notice issued by the different Collectorates, the legal propositions also establish that the petitioners are entitled to avail modvat credit in respect of the duty paid on tool kits which are supplied by the petitioners with motor vehicle chassis manufactured by them.

8. It appears from the records made available to us that an application was filed on behalf of the Revenue before the Appellate Tribunal, East Regional Bench, Calcutta as against the aforesaid order passed by the Tribunal praying for reference of certain questions of law said to be arising out of the said order passed by the Tribunal. The said application was belated and time barred, as there was a delay of about 3 years and 4 months and accordingly, the Appellate Tribunal, Calcutta by an order dated 17th August, 1993 held that the delay in filing the reference application could not be condoned and accordingly the Reference application was dismissed.

9. The Revenue, thereafter, filed an application before this Court u/s 35G(3) of the Central Excises and Salt Act (hereinafter referred to as the "Act") for a direction to the Tribunal to refer the question of law which arose out of the aforesaid appellate order. This Court by order dated 11-2-1994 held that in case, where reference application had been dismissed as time barred, the occasion to direct the Tribunal to refer the case on merits could not arise and accordingly, the said reference application was rejected.

10. In the meantime, however, a communication was issued by the Central Board to the different Collectorates on 21-10-1991 reversing the earlier decision and holding that tool kits are not eligible inputs for modvat credit. On the basis of the aforesaid decision, it appears that a trade notice was issued on 22-10-1991 by the Collectorate cancelling the earlier trade notice issued on 18-7-1989 and declaring that tool kits and jack Assy cannot be regarded on inputs for the purpose of permitting modvat credit thereon. Accordingly, notices to show cause were issued to the petitioners by the Assistant Collector of Central Excise, which are impugned in the present writ application and on showing causes by the petitioners and upon hearing the parties, the Assistant Collector passed the impugned order which was the subject matter of challenge in the present writ application.

11. The question, therefore, which falls for our consideration is whether tool kits which are bought out items and are supplied alongwith motor vehicle chassis by the petitioners at the request of its customers could be treated as "inputs" for the purpose of availing the benefit of modvat credit under Rule 57A of the

Central Excise Rules.

12. Mr. Trivedi, representing the Revenue, raised a preliminary objection in the present case that the petitioners are not entitled to prefer the present application under Article 226 of the Constitution of India as an efficacious alternative remedy is available to them under the provisions of the Act.

13. Dr. A.M. Setalvad, the learned counsel appearing for the petitioners, on the other hand, submits that in this petition the petitioners seek to raise an issue on which there are conflict of decisions of the Tribunal which need settlement at the higher level. Besides the present writ application having been already admitted and pending for final hearing, the question of existence of alternative remedy is irrelevant. In this respect, he relies on a decision of the apex court in the case of L. Hirday Narain Vs. Income Tax Officer, Bareilly, and a decision of this Court in the case of Tata Yodogawa Ltd. v. Union of India 1987 (32) E.L.T. 521 (Patna).

14. In our opinion, as the question raised before us does not call for any investigation into disputed questions of fact and particularly in view of the fact that the writ application has already been admitted and is pending for final hearing, there can be no reason why at this belated stage we should send the petitioners to seek alternative remedy available to them. In that view of the matter, we propose to take up the writ application and dispose of the same on merits proposing to answer the question and the issues raised before us in the present writ application.

15. Dr. Setalvad, the learned counsel for the petitioners submitted before us that tool kits are supplied by the petitioners with the motor vehicle chassis at the request of the purchaser with the practice of the trade by all manufacturers as users of motor vehicles require such tool kits and as far as public service vehicles are concerned, are required by law to carry tool kits. In this connection he also drew our attention to the provisions of Rule 172 of the Bihar Motor Vehicle Rules, 1992. The learned counsel further placed before us the provisions of Rule 57A of the Central Excise Rules particularly drawing our attention to the expression "used in or in relation to the manufacture of motor vehicles (input)" used in the said provisions and submitted that the said expression must receive a wide interpretation. In this connection the learned counsel relied upon the decision of the Apex Court in the case of Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, , Collector of Central Excise, Calcutta Vs. Jay Engineering Works Ltd., Calcutta, and also in the case of Collector of Central Excise, Calcutta-II Vs. Eastend Paper Industries Ltd., . In the back-drop of the aforesaid decisions, the learned counsel submits that the word "manufacture" must mean and cover everything and anything required to render the goods marketable and therefore tool kits which are generally supplied in the trade alongwith motor vehicle chassis are clearly used in relation to the manufacture of motor vehicles. Accordingly, the learned counsel submits that the said tool kits were inputs within the meaning of Rule 57A of the Rules and the petitioners were entitle to claim itself in respect of duty paid on such inputs.

16. Mr. Trivedi, learned counsel appearing for the respondents submitted that the word "used in or in relation to" manufacture is solely related to the word manufacture and "manufacture" is defined u/s 2(f) of the Act which cannot be kept in isolation while interpreting the admissibility on tool kits supplied with motor vehicles which never participated directly or indirectly in or in relation to manufacture of the motor vehicle chassis. According to him, the ratio of the decision of the Apex Court cited by the learned counsel for the petitioners have no application to the facts of the present case as supply of tool kits with the motor vehicle is not at all any process for converting raw materials into finished goods. Mr. Trivedi further submits that the petitioners have another factory at Lucknow for manufacturing motor vehicles and they are availing modvat credit on tool kits supplied with motor vehicle chassis and whatever amount of modvat had been availed on such tool kits had since been paid to the Department by them without any protest because modvat credit is not admissible on tool kits on merit. According to the Motor Vehicle Rules along with the many other accessories which cannot form the basis of availing modvat credit on such tools under Rule 57A.

17. In the background of the aforesaid submissions of the counsels for the parties, the fact of the petitioners not availing of the benefit of modvat credit at their factory at Lucknow on tool kits supplied although is a relevant factor, in our opinion, the same cannot stand as a waiver of the petitioners, if otherwise on the interpretation of the facts and law of the present case, they are found to be entitled to the benefit of modvat credit, they cannot be denied the same. Accordingly, we propose to examine the issue without being at all persuaded or influenced by the said facts.

18. The admissibility of the modvat credit is stipulated under Rule 57A of the Rules. According to the language of the said provisions modvat credit becomes admissible to one item provided it is an input as defined in the explanation appended below in Rule 57A and it is used in or in relation to the manufacture of the final product. Now since explanation to Rule 57A gives only one inclusive definition of inputs and excludes certain items from the purview of "inputs", the explanation does not provide a comprehensive definition of "inputs". Therefore, the word "inputs" will have to be understood in the context of its use "in or in relation to the manufacture" of final products. As pointed out by the Apex Court in the case of Collector of Central Excise, Calcutta-II Vs. Eastend Paper Industries Ltd., anything that enters into and forms part of that process must be deemed to be raw material or component part of the end-product and must be deemed to have been used in the manufacture of the end-product. Although the aforesaid observation of the Apex Court was in the context of Rule 56A on proforma credit it conclusively holds that the stress should be on the processes which are integrally connected with the production of the goods. The expression "in relation to" on the other hand, as has been held by the Apex Court in the case of Doypack Systems (supra) is a broad expression. These words are of comprehensiveness which might have a direct significance as well as an indirect

significance depending on the context. The expression "in relation to" has to be read in the context of manufacturing process of the finished goods covered under the modvat scheme. Therefore, on the basis of the interpretation given by the Apex Court in the aforesaid two cases, in our opinion, the expression "in manufacture of" denotes direct participation of the inputs in the manufacturing process resulting in the emergence of the final product whereas the words "in relation to manufacture" convey the meaning of indirect participation of the inputs in the manufacture of final product but even the indirect participation is essential to the manufacture of final product. In view of the aforesaid legal proposition, let us now examine whether tool kits supplied by the petitioners in their motor vehicle chassis at the request of its customers could come within the ambit of any of the aforesaid expressions so as to enable it to avail of the benefit of the modvat scheme.

19. It is the admitted position of the parties that tool kits are supplied by the petitioners alongwith their motor vehicle chassis on the request of buyers. Accordingly, the supply of tool kits is limited to some of the motor vehicle chassis but not applicable to all motor vehicle chassis manufactured and sold by the petitioners. The term "manufacture" relates to all motor vehicles as provided for in Section 2(f) of the Act. The motor vehicle chassis cleared without tool kits is also manufactured and duty is paid thereon. Definitely, therefore, the motor vehicle chassis are treated to be manufactured within Section Central Excises whether or not tool kits are supplied alongwith the motor vehicles. Again tool kits supplied with the motor vehicle chassis do not participate directly or indirectly in or in relation to manufacture of the motor vehicle chassis. The chassis is already manufactured goods and counted for as final product in petitioners' RG 1 register whether or not tool kit is supplied. There is no doubt that the supply of the tool kits is a subsequent action to the manufacture of chassis to be used in relation to maintenance and repair of the motor vehicle chassis and not used in relation to the manufacture of the final product.

20. Again examining it from another angle the definition of the "inputs" does not include tools used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of final products. The tool bits is definitely tools and it is specifically excluded from the definition of "inputs" by the law maker with clear intention to deny the modvat credit on the tool kits supplied with motor vehicle chassis.

21. It is also settled law that value of accessories and spares should be added to the value of the motor vehicle chassis and accordingly the petitioners include the value of tool kits in the assessable value of the motor vehicle chassis manufactured by them. In our opinion, the criteria for determination and inclusion of value is not the basis for allowing and disallowing modvat credit as per provision stipulated under modvat credit. As decided by the Apex Court in the case of Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, expenses incurred on account of several factors including service

which have contributed to the value of an excisable goods are liable to be included in the assessable value. Accordingly, the petitioners are adding cost of tool kits in the assessable value of the chassis on the above principle of law and not for the reason that such tool kits are used in or in relation to the manufacture of chassis, as submitted by the learned counsel for the petitioners.

22. Again tool kits cannot be said to be an item like driver's seat or the wiper machine, as urged by the learned counsel for the petitioners, helping in the marketability of the finished products i.e. motor vehicle chassis. The driver's seat is essential component of the motor vehicle chassis manufactured by the petitioners and without it the chassis cannot be cleared or cannot be transported outside the factory. Wiper machine is also fitted with all chassis manufactured by the petitioners. Accordingly, the wiper machine and driver's seat are the essential components of the motor vehicle chassis whereas the tool kits cannot be said to be essential component of a motor vehicle chassis for it is admittedly supplied only when there is a request from a customer for supply of the same. It is thus clear that the chassis is marketed without the help and assistance of the tool kits and accordingly the ratio of the decision of the Apex Court in the case of Jay Engineering on which the learned counsel strongly relied upon, has no application in the present case as the name plates to electric fans are not similar to tool kits supplied with motor vehicle chassis.

23. So from whatever angle the issue is examined, the irresistible conclusion that is arrived at is that tool kits supplied by the petitioners with the motor vehicle chassis 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 chassis. Now to deal with the last submission of the learned counsel for the petitioners with regard to the applicability of the doctrine of estoppel in view of the binding nature of the trade notice dated 18-7-1989 (Annexure 9 to the writ application) and holding out by issuing of such trade notice that credit could be availed of in respect of tool kits and duty could not be demanded contrary to the terms of the trade notice till such time as it is revoked, our finding is that the said trade notice dated 18-7-1989 was validly cancelled by issuing another trade notice on 22-10-1991 wherein it was specifically laid down by the competent authority that tool kits and jack Assy cannot be regarded as inputs for the purpose of permitting modvat credit thereon and thereby cancelling the earlier trade notice dated 18-7-1989 [See 1991 (56) E.L.T. Departmental Clarifications - Page T9]. Accordingly in view of the aforesaid cancellation of the earlier trade notice, the submission of the learned counsel for the petitioners has no force at all. The learned counsel for the petitioners has not submitted before us, and in our view rightly so, that the principle of estoppel can be invoked in the matter of withdrawing benefit of modvat scheme for there cannot be any enforceable promise in withdrawing a benefit once granted, as it is purely a policy matter of the Government or law enforcing agency.

24. In view of the aforesaid discussions and findings, we answer the issue arising

for the decision in this case holding that tool kits which are bought out items and are supplied alongwith motor vehicle chassis by the petitioners at the request of its customers cannot be treated as inputs for the purpose of availing the benefit of modvat credit, under Rule 57A of the Central Excise Rules.

25. In the result, the writ application stands dismissed but without any cost.

Sd/- (Dr. Mukundkam Sharma)

Choudhary S.N. Mishra, J.

26. I agree.

Sd/- (Choudhary S.N. Mishra)