

CASE NO.:
Appeal (civil) 5118 of 2003

PETITIONER:
M/S.BIRLA CORPORATION LTD.

RESPONDENT:
COMMNR. OF CENTRAL EXCISE

DATE OF JUDGMENT: 26/07/2005

BENCH:
B.P. SINGH & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

B.P.SINGH, J.

The short question involved in this appeal is whether the duty paid on spares of ropeway used for the purpose of transporting the crushed limestone from the mines located 4.2 kms. away to the factory, is entitled to Modvat credit.

The Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short 'CEGAT') by its impugned order of 25th March, 2003 disallowed the Modvat credit on the ground that the ropeway transports raw material from the mines to the factory premises and is not a material handling equipment within the factory premises. It is not disputed before us that the crushed limestone is brought from the mines to the factory premises where it is deposited utilising the ropeway as a means of transportation.

An identical issue came up for consideration before the CEGAT, in J.K.Udaipur Udyog Ltd. Vs. CCE, Jaipur-II [2001(130)ELT 996]. In that case the tribunal held, following the principles laid down in the case of CCE, Chennai Vs. Pepsico India Holdings Ltd. [2001(130) ELT 193], that the assessee was entitled to the Modvat credit. The Commissioner of Central Excise came up in appeal before this Court in Civil Appeal No.1129/2003 impugning the aforesaid decision of the CEGAT.

However, by order dated July 10, 2003 the appeal was dismissed in view of the fact that the learned Attorney General appearing for the Commissioner of Central Excise stated that he did not wish to press the appeal in view of the letter of the Department dated 5th June, 2003. The aforesaid letter reads as follows:

"Please refer to your office letter, dated 2nd May 03 on the above cited subject. In this connection it is to inform you that case of CCE, Chennai Vs. M/s.Pepsico India Holdings Ltd. Reported in 2001(42) RLT 800, Final order No.1581/2000 dated 27.10.2000 in appeal No.E/2603/1998/MAS has been accepted as reported by Chief Commissioner Central Excise Chennai vide his letter C.No.IV/16/16/2003-CZO dated 3-6-03."

In these circumstances, this Court dismissed the appeal.

Learned counsel appearing on behalf of the appellant submitted before us that there are several decisions of the tribunal which have followed the principles laid down in J.K. Udaipur Udyog Ltd. and Pepsico India Holdings Ltd. (supra) and the law is now well settled.

In the instant case the same question arises for consideration and the facts are almost

identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd.(supra) cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assesseees in a quandary.

We, therefore, allow this appeal and hold that Modvat credit is available to the appellant in the facts and circumstances of the case. This appeal is accordingly allowed. The order of the CEGAT is set aside.

No costs.

C.A.No.8268/2003

In view of the judgment and order passed in Civil Appeal No.5118 of 2003, this appeal is allowed in the same terms.

No costs.

CIVIL APPEAL NO.4526/2005

[Arising out of SLP(C)No.737/2004]

Special leave granted.

Heard counsel for the parties.

Respondents waive notice.

This appeal is squarely covered by our judgment and order pronounced today in M/s. Birla Corporation Ltd. Vs. Commr. of Central Excise[C.A.No.5118/2003]. Following the judgment

impugned in the aforesaid appeal, the appeal of the appellants herein was dismissed by the tribunal.

In view of the fact that we have today allowed the appeal of M/s. Birla Corporation Ltd. in Civil

Appeal No.5118/2003, this appeal is also allowed and it is held that the appellant is entitled to the

Modvat credit claimed before the tribunal.

CIVIL APPEAL NO.4527/2005

[Arising out of SLP(C)No.3196/2004]

Special leave granted.

Heard counsel for the parties.

Respondents waive notice.

This case is squarely covered by our judgment and order in Birla Corporation Ltd. in Civil Appeal No. 5118 of 2003 pronounced today. Following the judgment impugned in the

aforesaid appeal, the CEGAT had dismissed the appeal of the Appellant herein. This Court having allowed the appeal preferred by M/s. Birla Corporation Ltd., this appeal must also be allowed.

Accordingly, this appeal is allowed. The judgment and order of the CEGAT is set aside and it is held that the appellant herein is entitled to Modvat credit claimed before the CEGAT in respect of the ropeways and spare parts thereof.

No costs.