CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

Court IV

Date of hearing: 05.12.2017

Appeal No. E/51382/2017 –EX [SM]
[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-092-17-18 dated 17/05/2017 passed by the Commissioner Central Excise (Appeals), Raipur (Chhattisgarh)]

Birla Corporation Ltd. … Appellant

Vs.

CCE & ST, Jabalpur … Respondent

Appearance:
Present Ms. Rinki Arora, Advocate for the appellant
Present Shri G.R. Singh, DR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER No. 58252/2017

Per S.K. Mohanty

1. Denial of Cenvat Credit of Central Excise duty paid on locomotive is the subject matter of present dispute. The authorities below have denied the Cenvat benefit, holding that locomotive is not falling under the definition of capital goods, defined under the Cenvat Credit Rules, 2004.

2. The Ld. Advocate appearing for the appellant submits that this Tribunal in the case of *Mangalam Cement Ltd*., vide Final Order No. 53550/2017 dated 26/05/2017 has extended the Cenvat facility on locomotive, holding that the same should be considered as input.

3. On the other hand, the Ld. DR appearing for the Revenue submits that locomotive is not the capital goods as per the definition provided in the cenvat statute. Thus, he submits that

since locomotive falling under Chapter 86 is not specified as 'Capital Goods', the benefit of Cenvat Credit should not be available to the appellant.

4. Heard both sides and perused the records. I find that this Tribunal in the case of Mangalam Cement Ltd. (supra) has extended the Cenvat benefit on locomotive, holding that the same is to be considered as input for the purpose of availing the Cenvat benefit. A manufacturer of excisable goods is permitted to take Cenvat Credit of Central Excise duty paid on inputs or capital goods for utilization of such credit in payment of Central Excise duty on the goods removed from the factory. Since locomotive in this case is considered as an input for the purpose of availment of Cenvat benefit, the Department cannot deny such benefit on the ground that locomotive is not defined as capital goods under the cenvat statue. I am not able to accept the submission of the Revenue, for the reason that under the Cenvat regime, the credit taken on both input and capital goods are permitted to be utilized for payment of Central Excise duty on the finished products manufactured and cleared from the factory. I also find that the Larger Bench of this Tribunal in the case of ***CCE, Meerut –I V/s Modi Rubber Ltd***. ***2000 (199) ELT 197 (Tri.-LB).*** has extended the Modvat benefit holding that even if the lubricant are declared as capital goods, still the same should be considered as input for the purpose of availment of Cenvat benefit. Since the Department has not disputed the duty paid character of the subject goods i.e. locomotive and its recipt and utilization within the factory premises of the appellant, Cenvat credit cannot be denied on the procedural ground that taking of such credit under capital goods is not proper and justified.

5. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

Rekha