

M/S BIRLA CORPORATION LTD.  
v  
COMMISSIONER OF CENTRAL EXCISE

JULY 26, 2005

[B.P. SINGH AND S.H. KAPADIA, JJ.]

*Central Excise—Modvat credit—Entitlement to—Duty paid on spares of ropeway used for transporting crushed limestone from mines located 4.2 kms away to the factory premises—Held: Entitled to Modvat credit.*

*Practice and Procedure—Appeal before Supreme Court—Revenue consciously did not press its appeal after taking a particular stand—Appeal was therefore dismissed—Held: In a subsequent appeal involving identical issue, the Revenue cannot be permitted to take a opposite stand.*

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

Allowing the appeals, the Court

**HELD:** 1.1. An identical issue came up for consideration before the Tribunal in *J.K. Udaipur Udyog Ltd.*\* where the Tribunal held, following the principles laid down in *Pepsico India Holdings Ltd.*\*\* that the assessee was entitled to Modvat credit. Revenue came up in appeal before this Court which was dismissed since the Revenue did not press the appeal. [882-G-H; 823-A]

1.2. In the instant case, the same question arises for consideration and the facts are almost identical. The Revenue having taken a conscious decision to accept the principles laid down in *Pepsico India Holdings Ltd.*\*\* cannot be permitted to take the opposite stand in this case. If the same is permitted, the law will be in a state of confusion and will place the authorities as well as the assesseees in a quandary. [823-D, F]

\**J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II 2001 (130) ELT 996* and  
\*\* *CCE, Chennai v. Pepsico India Holdings Ltd., (2001) 130 ELT 193,*

A approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5118 of 2003.

From the Judgment and Order dated 25.3.2003 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in F.O.No. A/160/2003-NBC in A.No. E/A. No. 1307 of 2002 with E/CO/306 of 2002.

WITH

C.A. Nos. 8268/2003, 4256/2005.

C (Arising out of SLP(C) No. 737/2004) C.A. No. 4527/2005 (Arising out of SLP(C) No. 3196/2004)

Rajiv Dutta, Addl. Solicitor General S.K. Bagadia, T.M. Mohammad Yousuf, Praveen Kumar, Rupesh Kumar, Tufail A. Khan, Raghunath Kapoor, Ms. Indu Sharma and P. Parmeswaran with them for the appearing parties.

D The Judgment of the Court was delivered by

E **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.

F 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 lime stone is brought from the mines to the factory premises where it is deposited utilising the ropeway as a means of transportation.

G An identical issue came up for consideration before the CEGAT, in *J.K.Udaipur Udyog Ltd. v. CCE, Jaipur-II* (2001) 130 ELT 996. In that case the tribunal held, following the principles laid down in the case of *CCE, Chennai v. 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

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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: A

“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 v. M/s.Peps. Co India Holdings Ltd.*, Reported in 2001(42) BRLT 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.” B

In these circumstances, this Court dismissed the appeal. C

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. D E

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. F

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. G

No costs.

CIVIL APPEAL NO. 4526/2005

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

A Special leave granted.

Heard counsel for the parties.

Respondents waive notice.

B This appeal is squarely covered by our judgment and order pronounced today in *M/s. Birla Corporation Ltd. v. Commnr. 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  
C appellant is entitled to the Modvat credit claimed before the tribunal.

*CIVIL APPEAL NO. 4527/2005*

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

D Special leave granted.

Heard counsel for the parties.

Respondents waive notice.

E 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  
F 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.

B.B.B.

Appeals allowed.