

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9423/2006

(From the judgment and order dated 2.1.2006 in A No. E/128/04-Ex. of the Customs,
Excise & Service Tax Appellate Tribunal, New Delhi)

M/S BIRLA CORPORATION LTD. SATNA

Petitioner(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE RAIPUR

Respondent(s)

(With office report)

Date: 23/03/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Petitioner(s) Mr.Sanjay Grover, Adv.

Mr. Nikilesh Ramachandran,Adv.

For Respondent(s) Mr. Shishir Pinaki, Adv.

Mr. Rahul Kaushik, Adv.

Mr. B. Krishna Prasad,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Appeal is allowed in terms of the signed order. No order as to costs.

(J.S. Rawat)

(Kanwal Singh)

AR-cum-PS

Court Master

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CIVIL CIVIL JURISDICTION

CIVIL APPEAL NO. 1556 OF 2007.
(Arising out of SLP(C) No. 9423 of 2006)

M/s. Birla Corporation Ltd., Satna

Appellant(s)

Versus

Commissioner of Central Excise, Raipur

Respondent(s)

O R D E R

Leave granted.

This appeal is directed against the Judgment and Final Order No. 15/06-Ex dated 2nd January, 2006 in Appeal No. E/128 of 2004-Ex by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi [for short "the Tribunal"].

Heard the counsel appearing on both sides.

The point for consideration before the Tribunal was as to whether the appellant was entitled to Modvat/Cenvat on capital goods, namely, spares of ropeway that are used for conveying crushed limestone from the Crusher (located in/near the captive mines), to the factory where cement is manufactured.

This point stands concluded by a judgment of this Court in Birla

Corporation Ltd. v. Commissioner of Central Excise [(2005) 6 SCC 95].

In Commissioner of Central Excise, Nagpur v. Manikgarh Cement

Ltd. [2005(190) ELT 7(SC)], this Court followed the view taken in the earlier case, i.e., Birla Corporation's case (supra). Thus, the appeal preferred by the Department in the said case should have been dismissed.

But, by an inadvertent mistake, instead of saying that the appeal is dismissed, the Court said the appeal is allowed.

The Tribunal, by the impugned order, without going into the operative portion of the order in the above said case, took an erroneous view, that since this Court in Manikgarh Cement's case (supra) had allowed the appeal of the Department, dismissed the appeal filed by the assessee. Being aggrieved, the assessee has filed the present appeal.

Learned counsel appearing for the revenue fairly concedes that since this Court in Manikgarh Cement's case (supra) had followed the view taken in Birla Corporation's case (supra), the appeal filed by the assessee deserves to be allowed; and states that it seems by mistake the Court in Manikgarh Cement's case (supra) instead of saying the appeal of revenue is dismissed observed that the appeal is allowed; that it seems to be an inadvertent mistake.

Following the view taken by this Court in Birla Corporation's case (supra) and Manikgarh Cement's case (supra), we accept this appeal and set aside the order passed by the Tribunal. The assessee-appellant would be entitled to the Modvat/Cenvat credit on capital goods, i.e., spares of

ropeway.

The appeal is allowed accordingly. However, there shall be no

order as to costs.

.....J.

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(ASHOK BHAN)

New Delhi;

.....J.

March 23, 2007.

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(V.S. SIRPURKAR)