

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5118 OF 2003.

M/S BIRLA CORPORATION LTD.
Appellant (s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE
Respondent (s)

[With appln.for stay & Office Report]

WITH

CA Nos.8268/2003 (With office report),SLP(C) 23205/2003 (With prayer for interim relief & Office

Report),SLP(C) 737/2004(With appln.for c/d in refiling SLP & prayer for I. R. & O.R.),SLP(C)

3196/2004(With appln.for c/d in filing SLP & office report,CA 3422/2004(With appln.for permis sion

to place adl.documents & with office report),CA 4149 to 4153/2004(with ap pln.for c/d in filing

appeals & office report),CA 4120-4122/2004(With appln.for stay & c/delay in filing appeal and with

office report,SLP(C) 19769-19772/2004(with prayer for interim relief),CA 7175-71 89/2004(with

appln.for stay and O.R.), CA Nos.1197/2005,1815/2005(With appln.for permission to place

adl.documents) and office report,CA 1613/2005(With office report),CA 2318-2320/2005(with office

report),CA 2894-2895/2005(with appln.for permission to place adl.documents and office repo rt),CA

2896-2897/2005 (With office report)

Date : 26/07/2005 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE S.H. KAPADIA

For Parties:	Mr.SK Bagadia,Sr.Adv.
for Appellant in CA5118,8268	Mr.Praveen Kumar,Adv.
of 2003	
for Appellant in	Mr.Joseph Vellapally,Sr.Adv.
CA 4120-22/04&	Mrs.Prabha Swami,Adv.
CA 7175-89/04	
for CCE	Mr.TM Mohammad Yousuf,Sr.Adv.
an,Raghunath	M/s Rupesh Kumar,Tufail A. Kh
eswaran,Advs.	Kapoor,Ms.Indu Sharma, P.Parm
For repondents	Mr.Rajiv Dutta,ASG.
In CA 5118/03	Mr.T.M. Mohd.,Sr.Adv.
umar,	M/s Raghunath Kapoor,Rupesh K
waran,Advs.	Indu Sharma,T.A.Khan,P.Parmes
For appellants in	M/s V.Lakshmikumaran,Alok Yad
av,	
CA 3422,4149,4150,4151	Rajesh Kumar,Sanjay Grover,Advs.
4152&4153 of 2004,	
1197/05,2894-95/05,2896-97/05	

Contd..2/-

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UPON hearing the counsel the Court made the following

J U D G M E N T

Special leave granted in SLP(C) Nos.737/2004 & 3196/2004.

Civil Appeals Nos.5118/2003, 8268/2003, C.A.No.4526/2005 [Arising out of SLP(C)

No.737/2004] and C.A.No.4527/2005[Arising out of SLP(C)No.3196/2004] are allowed with no costs in

terms of the signed judgment.

Rest of the matters remained part-heard.

[Sheetal Dhingra]

[Vijay Dhawan]

Court Master

Court Master

[Signed reportable judgment is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.5118 OF 2003

M/S.BIRLA CORPORATION LTD.
pellant(s)

..Ap

Versus

COMMNR. OF CENTRAL EXCISE
pondent(s)

..Res

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 lime

stone 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

aforsaid 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.Peps.co India Holdings Ltd. Reported in 2001(42) RLT 800, Final order No.1581/2000 dated 27.10.2000 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. 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 appellant is entitled to the

Modvat credit claimed before the tribunal.

[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

aforsaid 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.

.....J.

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(B.P. SINGH)

.....J.

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(S.H. KAPADIA)

New Delhi

July 26, 2005.

