

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12463 of 2014-DB

[Arising out of Order-in-Original/Appeal No RAJ-EXCUS-000-COM-194-13-14 dated 28.02.2014 passed by Commissioner of Central Excise-RAJKOT]

Commissioner of Central Excise & ST, Rajkot Appellant

Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot, Gujarat-360001

VERSUS

Kishan Agro Industries

.... Respondent

3, Umakant Pandit Udyognagar,
Kishan Marg, Near Ashok Machine Tools, Rajkot

AND

EXCISE Appeal No. 12464 of 2014-DB

[Arising out of Order-in-Original/Appeal No RAJ-EXCUS-000-COM-194-13-14 dated 28.02.2014 passed by Commissioner of Central Excise-RAJKOT]

Commissioner of Central Excise & ST, Rajkot Appellant

Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot, Gujarat-360001

VERSUS

Kishan Equipments

.... Respondent

Near Rajkamal Petrol Pump,
Rajkot, GUJARAT.

APPEARANCE :

Shri Tara Prakash, Deputy Commissioner (AR) for the Appellant-Revenue
Shri D.D. Rishi, Advocate for the Respondent- Assessee

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 07.08.2023

DATE OF DECISION: 10.10.2023

FINAL ORDER NO. 12228-12229/2023

RAMESH NAIR :

The respondent is engaged in manufacturing of different sizes of front loaders, which can be attached to tractors. The loaders are fabricated using raw materials like MS Plates, angles, channels, belts, hydraulic jacks/cylinder tyres, nuts, bolts, welding rods etc. on the tractors brought by their owners to the respondent's factory. Loader consists of mainly buckets, weight box,

oil tank, boom accessories. The loader is mounted upon the front portion of the tractor using mounting plate. Loader is nothing but one of the detachable accessories of tractor like other accessories such as plough, weeders, and land leveller etc. The Tractor is a fully functional vehicle as such. The Loader mounted by the Respondent is in nature of an additional fitment which, when fitted onto the front portion of the Tractor, enables it to carry out an additional function. Tractor Loaders mounted on the Tractors could easily be dismantled and re-installed. This attachment is not of permanent nature. The customer brings his tractor to the respondent's factory so that its design and measurements may be taken into account for fabricating the loader. The assessee's claim is that the product manufactured by them is Loader which is accessory of the tractor and is classifiable under Chapter heading 8708 and eligible for SSI exemption under Notification No. 8/2003-CE dated 01.03.2003.

2. The case of the Department is that the Respondent had manufactured Tractor Loader i.e. Special Purpose Motor Vehicle falling under Central Excise Tariff Sub Heading 8705 90 00, which is not eligible for SSI exemption as envisaged under Notification No.8/2003-CE dated 01.03.2003 as amended. It was further alleged that the respondent are liable to pay Central Excise duty on Loaders manufactured by them including the price of the tractors in terms of Rule 6 of the Central Excise (Valuation of Price of Excisable Goods), Rules, 2000.

3. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the findings in the grounds of appeal. He submits that since the appellant have fabricated loader and mounted on the tractor given by their customer, the overall activity amounts to manufacture

of Special Purpose Motor Vehicle and correctly classifiable under Chapter heading 8705.

4. Shri D.D. Rishi, learned Counsel appearing on behalf of the assessee submits that they received already manufactured and complete tractor from their customers either as a new one or after use for a long period only for attaching loader manufactured by the assessee. Therefore the activity of the assessee is manufacturing of loader and when it is attached to a tractor it is nothing but accessory of the tractor and therefore it is correctly classifiable under Chapter heading 8708. Accordingly, the assessee has correctly availed SSI exemption Notification No. 8/2003-CE. He submits that 'Special Purpose Motor Vehicles' has to be interpreted as covering only Special Purpose Motor Vehicles which are similar to breakdown lorries, crane lorries, workshops, mobile radiological units etc. In the present case the interchangeable attachment namely loaders mounted on tractor cannot, by their nature, be regarded as Special Purpose Motor Vehicle. He submits that learned Adjudicating Authority has accepted the respondent's this submission and has rightly quashed the show cause notice. The Adjudicating Authority has actually seen the relevant materials, photographs and videos of the tractor loader before arriving at these conclusions. He submits that the case laws relied upon by the Revenue in their grounds of appeal is not relevant as these are in respect of different nature of goods. He prays that appellant-Revenue's appeals may be dismissed.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that the neat question to be decided in the present case is whether the appellant's product i.e. Loader fitted in the tractor supplied by the customer is classifiable as a whole under Chapter

heading 8705 or any other Chapter heading. For understanding about the product we scanned below some photographs



Below is the picture of a **Tractor fitted with the Loader:**



From the above photographs it can be seen that no activity is carried out on the tractor which is already manufactured by the Tractor Manufacturing Company. The tractor is supplied by the customer and on the readily manufactured tractor the loader is fitted and such loader is manufactured independently by the assessee. In this entire process and the nature of the tractor which is received on which loader is fitted, the conclusion is drawn that the appellant's activity of manufacturing loader independently occurs by taking various alteration and since it is to be fitted in the tractor therefore, the assessee's activity is under manufacture of the whole vehicle but limited to manufacture of loader. Merely by fitting such loader which is manufactured and mounted on the tractor, cannot be said to be amounting to manufacture of 'special purpose motor vehicle' classifiable under heading 8705. In case of manufacture of special purpose motor vehicle, the

fabrication and mounting of special purpose body of motor vehicle is fabricated and mounted on the chassis. In the present case, tractor is already manufactured and in majority of cases the clients use his tractor for some time and thereafter it is given to the assessee only for fitting loader in the fully manufactured tractor. In this regard we refer to the Chapter Note 2 of Chapter 87 which defines the tractor, the same is reproduced below:-

Chapter Note 2 of the Chapter 87 of the Tariff:

"2. For the purposes of Chapter 87, "tractors" meant vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contained subsidiary provision for transport of tools, seeds, fertilizers or other goods".

Machines and working tools designed for fitting to tractors of heading 8701 as interchangeable equipment remain classified in their respective headings, even if presented with the tractor, and whether or not mounted on it."

Chapter Note 2 in HSN Explanatory Note to Chapter 87 reads as "2. For the purposes of this Chapter, "tractor" means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods."

General - Explanatory note below the chapter note reads as "This Chapter covers the following vehicles, with the exception of certain mobile machines of Section XVI (See Explanatory Notes to headings 87.01, 87.05 and 87.16):"

Explanatory Note under the heading TRACTORS FITTED WITH OTHER MACHINERY reads as "

Tractors and industrial working tools are also classified separately when the tractor is designed essentially for hauling or pushing another vehicle or load, and includes, in the same way as an agricultural tractor, simple devices for operating (raising, lowering, etc.) the working tools. In such a case, the interchangeable working tools are classified in their appropriate headings, even if presented with the tractor, and whether or not mounted on it, while the tractor with its operating equipment is classified in this heading."

6. From the above definition for the purpose of Chapter 87, it is very clear that the vehicle constructed is essentially for hauling or pushing another vehicle, appliance or load is included in the definition of 'tractors'. Therefore, even though the loader is fabricated and fitted with the tractor, it is fitted as an accessory of the tractor by fiction of Chapter Note 2 of

Chapter 87. Further, the relevant explanatory note of HSN under the heading tractors fitted with other machinery reads as under:-

"Chapter Note 2 in HSN Explanatory Note to Chapter 87 reads as "2. For the purposes of this Chapter, "tractor" means vehicles constructed essentially for hauling or pushing another vehicle appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods."

General - Explanatory note below the chapter note reads as "This Chapter covers the following vehicles, with the exception of certain mobile machines of Section XVI (See Explanatory Notes to headings 87.01, 87.05 and 87.16)

Explanatory Note under the heading TRACTORS FITTED WITH OTHER MACHINERY reads as

"Tractors and industrial working tools are also classified separately when the tractor is designed essentially for hauling or pushing another vehicle or load, and includes, in the same way as an agricultural tractor, simple devices for operating (raising, lowering, etc.) the working tools. In such a case, the interchangeable working tools are classified in their appropriate headings, even if presented with the tractor, and whether or not mounted on it, while the tractor with its operating equipment is classified in this heading."

From the above explanatory note, it was made very clear that any interchangeable working tools in normal course are classified in their appropriate headings. However, in case of tractor operating equipment fitted with the tractor is classified in the heading of tractor only. In the present case since loader is inter-changeable loading equipment fitted with the tractor, it is properly classifiable as accessory of tractor under Chapter 8708.

7. We find that the Adjudicating Authority after analyzing relevant Chapter notes of the tariff as well as Chapter note of HSN has rightly interpreted that the tractor alone is of no use and it is used as a power machine for the purpose of use of tractor and different equipment is fitted in the tractor. Therefore, the equipment such as loader in the present case is part of tractor which is much different from the vehicles classifiable as a special purpose motor vehicle under Chapter heading 8705.

8. The learned Adjudicating Authority in one of the impugned order wherein the findings is almost common being a common issue involved is reproduced below:-

"FINDINGS:

3.1 I have carefully gone through the entire case, SCN, evidences able on record, submission made by the Noticee(s) as well as those argued at the time of personal hearing.

3.2 The issue in the present proceeding for a decision, is classification of the loader manufactured and mounted on tractor of buyer and role of Chapter Note 2 of the Chapter 87 of the Tariff in the present case as well as applicable exemption and/or consequent demand of central excise duty along with interest and penal action.

3.3.1 The Noticee is engaged in business of manufacturing loader for tractor brought by the buyer. The Noticee designs the loader, as per the type of tractor brought by the buyer, and fabricates the same out of material procured from open market. The fabricated loader is mounted on tractor and supplied to the buyer. The Noticee is issuing invoice wherein they were charging price of loader manufactured and mounted on the buyer's tractor. The Noticee availing the benefit of exemption in terms of Notification No. 8/2003 *ibid*.

3.3.2 In the SCN the allegation is that by the activity of the Noticee, fabrication of loader and mounting on tractor resulted in new and distinct goods viz. tractor loader which is a Special Purpose Vehicle falling under Chapter Heading No. 87.05 of Central Excise Tariff. The Special Purpose Vehicle of 87.05 is not eligible for exemption benefit in terms of Notification No. 8/2003 *ibid*. The exemption in terms of Notification No. 06/2006 and 12/2012 is also not available to these Special Purpose Vehicles as the same were manufactured from exempted tractor and material which is not supported by duty paying documents. Therefore, central excise duty is required to be paid on the value of special purpose vehicle as one unit, on the total value of tractor and loader.

3.4.1 The Noticee claimed that the attachment of tractor viz. loader being manufactured by them is an interchangeable equipment of tractor. The Noticee demonstrated by video of four different makes of tractor attachment loader that the attachment can be easily mounted and dismantled and after dismantling the tractor can be used as tractor. They drew attention towards a major manufacturer of tractor attachment namely M/s Bull Machines, Pvt. Limited. Coimbatore, who also manufactures loader and mounts the same on buyers tractor. They supply these loaders as tractor attachment. Claiming the loader as interchangeable equipment, the Noticee argued that their case is falling under chapter note 2 of Chapter 87 and the loader is classifiable under its own respective heading.

3.4.2 In this regard, it is useful to refer to relevant Tariff Notes and Explanatory Notes, as under:

Chapter Note 2 of the Chapter 87 of the Tariff:

"2. For the purposes of Chapter 87, "tractors" meant vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contained subsidiary provision for transport of tools, seeds fertilisers or other goods"

Machines and working tools designed for fitting to tractors of heading 8701 as interchangeable equipment remain classified in their respective headings, even if presented with the tractor, and whether or not mounted on it."

Chapter Note 2 in HSN Explanatory Note to Chapter 87 reads as "2. For the purposes of this Chapter, "tractor" means vehicles constructed essentially for hauling or pushing another vehicle appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods.

General - Explanatory note below the chapter note reads as "This Chapter covers the following vehicles, with the exception of certain mobile machines of Section XVI (See Explanatory Notes to headings 37.01, 87.05 and 87.16);"

Explanatory Note under the heading TRACTORS FITTED WITH OTHER MACHINERY reads as

"Tractors and industrial working tools are also classified separately when the tractor is designed essentially for hauling or pushing another vehicle or load, and includes, in the same way as an agricultural tractor, simple devices for operating (raising, lowering, etc.) the working tools. In such a case, the interchangeable working tools are classified in their appropriate headings, even if presented with the tractor, and whether or not mounted on it, while the tractor with its operating equipment is classified in this heading."

3.4.3 A close look at the above notes gives a sense that if any equipment or machinery is manufactured and mounted on a tractor to carry out a certain operation and the said equipment and machinery is interchangeable in nature, the same should be classified in its respective heading, even if presented with tractor and whether or not mounted on tractor.

3.4.4 The Noticee argued that utility of tractor as such is very limited unless any accessory or machine or tool or equipment or trailer is attached to it. The tractor is a power vehicle which assists the machine, tool, equipment or another vehicle for their application. There are a number of interchangeable attachments which work with a tractor, such as loader, excavator, agriculture implements, rotavators etc. A tractor is an engineering vehicle specifically designed to deliver a high tractive effort (or torque) at slow speeds, for the purposes of hauling a trailer or machinery used in agriculture or construction or industry. The term is used to describe a farm vehicle that provides the power and traction to mechanize tasks. Agricultural implements may be towed behind or mounted on the tractor, and the tractor may also provide a source of power if the implement is mechanised. The tractors are designed in such a way so as to mount various attachments and use the power of tractor for its application(s) either from front, rear or side. As such the loader manufactured by the Noticee is an interchangeable tractor attachment for implementing loading tasks in farm, construction or industry. The Noticee also provided photographs of various types of tractor attachments which are interchangeable and mounted on a tractor to implement its task. The Notice also demonstrated by video that the loader manufactured by them can be easily mounted and dismantled from the tractor.

3.4.5 From the material before me, including photographs, various videos etc. I find that the tractor loader is an interchangeable attachment to tractor. The same can be mounted and dismantled like other attachments of the tractor. Therefore, in light of the Chapter Note 2 of chapter 87 and its Explanatory Notes, supra, once it is clear that the attachment, namely loader is an interchangeable equipment, the same is required to

be classified separately in its respective heading, even if presented with tractor and whether or not mounted on tractor.

3.4.5 Thus, the attachment, namely loader' fabricated and mounted on the tractor of buyer, as an interchangeable equipment, does not result in a new and distinct commodity which may be called as tractor loader. Special purpose vehicle, is vehicle other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete mixers lorries, spraying lorries, mobile workshops, mobile radiological units). The interchangeable attachment viz. loaders mounted on tractor cannot be considered as a special purpose vehicle similar to breakdown lorries, crane lorries, firefighting vehicles, concrete-mixer lorries, spraying lorries, mobile workshops and mobile radiological units. Special purpose vehicles are developed as such on a chassis fitted with engine and once such vehicle is manufactured, the same cannot be used for any other purpose. The additions/alterations/fabrication made on the chassis of these vehicles are permanent and cannot be taken apart without damage. Whereas, in the present case, the loader fabricated and mounted on tractor can easily be dismantled and the tractor can be used as tractor in its original form. It is impossible to restore, or convert, any of the special purpose vehicles, i.e. breakdown lorries, crane lorries, firefighting vehicles, concrete-mixer lorries, spraying lorries, mobile workshops and mobile radiological units to bare lorries, whereas, by removing the loader attachment of the tractor, the original tractor stands restored. The loader fabricated and mounted by the Noticee is merely in the nature of an additional accessory which, when fitted onto the front portion of the tractor, enables it to carry out an additional loading function. Therefore, the tractor and loader cannot be classified as 'one unit' special purpose vehicle under Chapter Heading No. 87.05 of Central Excise Tariff.

3.4.6 It is also alleged in SCN to support classification under Chapter Heading 87.05 of Central Excise Tariff that after the loader fabricated and mounted on tractor fresh RTO registration is required. The Noticee, in this regard, submitted that no fresh registration is made by RTO after mounting of loader. Such tractors are already registered by RTO and after attachment of loader the customer has to submit Registration Book of tractor to the RTO just for endorsement about fitment of loader. In terms of provisions of Section 52 of the Motor Vehicles Act, 1988, it is required to intimate RTO if any change is made in the vehicle after registration of vehicle e.g. if petrol motor car converted into CNG or LPG fuel car. The tractor prior to fitment of loader is non-transport category vehicle and even after fitment it remains as non-transport category vehicle.

3.5 Now, I take up the question that if loader is to be classified separately in its respective heading, what is the appropriate heading. The Noticee drew attention toward classification of similar loader by M/s Bull Machines Pvt. Ltd. Coimbatore and produced copies of invoices issued by the said company showing classification of such loader as accessories of tractor under Cluster Heading 87.08 of the Central Excise Tariff. In this regard, I find that the loader is a specially designed equipment for use with tractor and it cannot be used elsewhere. The loader by nature enhances the specific utility of tractor. The tractor means a vehicle constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for transport of tools, seeds, fertilisers or other goods. Accordingly, the loader in a subsidiary provision to tractor for loading. Accessory is that which enhances the application of the main vehicle. Accordingly, I find that the loader manufactured by the Noticee is appropriately classifiable as accessory to tractor under Chapter heading No. 87.08 of the Central excise Tariff.

3.6 With regard to valuation of the loader manufactured by the Noticee, I find that the Noticee is manufacturing the loader and mounting it on the tractor of buyer. Since

loader is distinct from tractor and classified as accessory of tractor, even if presented with tractor duly mounted on it, for the purpose of valuation and charging duty of excise the transaction value of loader charged by the Noticee shall be considered as assessable value in terms of section 4 of the Central Excise Act.

3.7 The loader classifiable under Chapter 87.08 of the Central excise Act, is eligible for exemption in terms of notification No. 8/2003 upto an aggregate value of first clearances of Rs. 150 Lakhs in a financial year, subject to the limit of aggregate clearances of 400 lakhs in previous years. In this case the Noticee claimed the said exemption and their aggregate value of clearance remained within exemption limit during all the financial year. Therefore, demand of duty of excise on the loader manufactured by the Notices. considering the same as special purpose vehicle of chapter heading 87.05 is deserves to be dropped with consequential relief of interest and penalty.

4.0 In view of the above, I pass the following order

ORDER

I hereby drop the proceeding initiated under Show Cause Noticee No. V.87/AR-III-Div-1-RJT/22/Commr./2013 dated 31.01.2013”

8. On careful consideration of the above findings, we find that the Adjudicating Authority has considered all the parameters, considered the photographs, physical aspect of the product, use of the product namely tractor to arrive at the conclusion that loader being accessory of the tractor, is correctly classifiable under Chapter heading 8708. Therefore, we do not find any infirmity in the impugned order. Accordingly, the impugned orders are upheld and Revenue’s appeals are dismissed.

(Pronounced in the open court on 10.10.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)