# Customs, Excise & Service Tax Appellate Tribunal
# West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

**EXCISE Appeal No. 10735 of 2015- DB**

(Arising out of OIA-KCH-EXCUS-000-APP-18-14-15 dated 13/03/2015 passed by Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

**Electrotherm India Ltd** **........Appellant**
Nh No. 08, Village : Samakhiyali,
Taluka : Bhachau,
Kutch, Gujarat

*VERSUS*

**C.C.E.-Kutch (gandhidham)** **......Respondent**
Central Excise & Service Tax Commissionerate,
Centeral Excise Bhavan Plot No. 82,
Sector 8, Gandhidham(Kutch)
Gandhidham(Kutch), Gujarat

**APPEARANCE:**
Shri S J Vyas, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

**Final Order No. 10443/2024**

DATE OF HEARING: 20.10.2023
DATE OF DECISION: 20.02.2024

**RAMESH NAIR**

Brief facts of the case are that the Appellant M/s Electrotherm India Ltd. is engaged in the business of production and clearances of Finished Excisable Goods. The Appellant is manufacturing Electrically Operated Vehicles named Yo–Bikes by assembling various Parts, components and Assemblies. Prior to 30/04/2008 Yo–Bikes were chargeable to CENVAT at their appropriate rate however, vide Notification No. 25/2008 CE dated 29/04/2008, Electrically Operated Vehicles falling under Chapter 87 of the First Schedule of Central Excise Tariff Act, 1985 were exempted from duty of excise leviable thereon hence the appellant did not pay Automobile cess. The learned Commissioner (Appeals) rejecting the submissions made by Appellant has confirmed the demand on them with regards to the levy of

Automobile Cess vide Order in Appeal No. KCH/EXCUS/000/APP/018-14-15 dated 27.05.2014. Hence the present appeal.

2. Shri S.J. Vyas Learned Counsel, appearing on behalf of the Appellant has submitted that both the lower authorities have erred in confirming the demand and imposing penalties and charging interest on the Appellants in so far alleging that the Appellants have suppressed relevant facts from the Department in order to evade any payment of Automobile Cess when the entire case rises from the audit and it is a fact on record that the Appellants have already paid cess for the period February 2010 to February 2011 under protest. He further submits that their product Yo–Bikes were exempted from payment of Central Excise Duty vide Notification No. 25/2008 CE dated 29/04/2008. He submits that the expression "Automobiles" or "Vehicles" are not defined in the Central Excise Law and that the Department has wrongly classified their product as Automobile solely for the purpose of levy of Cess when it fulfills the characteristics of that of a vehicle. He further submits that the demand is barred by limitation as the show cause notice was received on 03.04.2013 for time period pertaining to 2008–09 to 2011–12 and that the department has wrongly invoked extended period of limitation by alleging suppression of facts on the part of Appellant without substantiating their claim to do so. Therefore he submits that the said demand should not be imposed on the Appellant.

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of Revenue reiterates the findings on the impugned order.

4. We have considered the submissions made by both the sides and perused the material on record. We find that the appellant is assembling various parts and components in order to produce Yo-Bikes falling under the chapter heading 87 which qualifies for exemption vide Notification No. 25/2008-CE. Further we observe that the Appellant has paid automobile cess upon being pointed out by auditors for the period February, 2010 to February, 2011 under protest only because the Appellant was under *bona fide* belief that their product does not qualify under the category of automobiles and thus they were not liable to pay cess for which they received no clarity from the department with respect to their liability. It is pertinent to note here that the department has taken no effort to establish any tests/ingredients as to why the product of the appellant will be classifiable as "automobile" for the levy of automobile cess and has simply taken the support of Notification 67/88 dated 09/01/1989 to levy automobile cess on the Appellant. We have observed that the entire demand for automobile cess has been raised from the Audit Objection and records maintained by the Appellant which goes on to show that the department never raised any objection regarding non–deposit of automobile cess even when the cess was paid by the Appellant under protest. Therefore it cannot be denied that the Department had enough time to investigate for the purpose of levy of cess. We further note that the lower authorities in order to invoke limitation have incorrectly upheld that there was suppression of facts when there are records that reflect to the contrary. Therefore, we find that the entire demand in this case is time barred as for the period 2008 – 09 to 2011 - 12 show cause was issued on 03.04.2013 which is not only beyond the period of normal limitation but also that the Department has incorrectly invoked extended period of limitation without sufficiently establishing ingredients to give effect to the same.

5. In view of the above, we hold that the demand is barred by limitation. The issue on merit is left open. Thus the impugned order is set aside. The appeal is allowed.

*(Pronounced in the open court on 20.02.2024)*

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

**(RAJU)**
**MEMBER (TECHNICAL)**

Raksha