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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10510 of 2019 - DB

(Arising out of OIA-VAD-EXCUS-001-COM-19-18-19 dated 30/11/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Shree Sai Coach Builders ....**Appellant**
Nh8, Malarpura
Kheda, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-I ......**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

WITH

Excise Appeal No. 10511 of 2019 – DB

(Arising out of OIA-VAD-EXCUS-001-COM-18-18-19 dated 05/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Kirti Coach Builders ....**Appellant**
Nh 8 Malarpura Kheda
Kheda, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-I ......**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:

Shri Jagrat Shah, Advocate & Shri Bisan R Shah & Shri Pooja Shah, Chartered Accountant for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. 13116-13117/2024

DATE OF HEARING: 08.08.2024
DATE OF DECISION: 06.12.2024

RAMESH NAIR

The issue involved in the both the appeals is common, therefore, both the appeals are taken together for disposal.

1 The brief facts of the case in the present appeals is that the appellant are engaged in the manufacture of body structure of Buses (i.e. fabricating and mounting on the chassis). The appellants are neither registered with the Central Excise nor with Service Tax. An intelligence and investigation were

carried out by the Central Excise Preventive Officers and the statements of proprietors were obtained under Section 14 of the Central Excise Act. The investigating agency noticed that the appellant was engaged in the manufacturing activity of building body structures of buses on the chassis. It was contention of the department that the body building activity amounts to manufacture as per the chapter note of Chapter 87 of the Central Excise Tariff Act, 1985. The bus bodies manufactured are classic under CETH 8707 of the Central Excise Tariff Act, 1985 and attracts Central Excise duty whereas the activity is exempted as per the entry No. 334 of the Notification 12/2012-CE dated 17.03.2012 subject to compliance of the conditions attached to the notification.

1.2 In the show cause notice, it was contended that as per the condition of the notification, it is clear that the exemption against the said entry is for the goods manufactured in the factory which are used within the factory itself for building body or fabrication or mounting or fitting of structure or equipment on duty paid chassis. Whereas in the instant case the manufacturer is not manufacturing anything in their factory but all the goods are purchased by them for manufacture of bodies. Therefore, the exemption against entry No. 334 of Notification No.12/2012-CE dated 17.03.2012 not to be available to the assessee.

1.3 It was further contended in the show cause notice that the chassis received by assesse from their clients, falls under the chapter heading 8706 of the Central Excise Tariff Act, 1985 on the bodies so manufactured apparently falls under Central Excise Tarif Heading 87079000 i.e. "bodies (including Cabs) for the motor vehicles of heading 8702, 8705 and excise duty is leviable on the said goods. On this basis the show cause notice proposed the classification of motor vehicles manufactured by the appellant under heading 87079000 and the same is not eligible for exemption Notification No. 12/2012-CE under entry No. 334. Consequently, the notice proposed the demand of excise duty along with interest and imposition of penalties. The adjudicating authority while adjudicating the show cause notice, confirmed the demand of excise duty along with demand of interest and imposed equal amount of penalty on the proprietary firm as well as on the proprietor of the proprietorship concern.

1.2 Being aggrieved by the Orders-In-Original, the appellants filed the present appeals.

2. Shri Jagrat Shah, Learned Counsel with Shri Bisan R Shah & Ms. Pooja Shah Chartered Accountant appearing on behalf of the appellants submits that the show cause notice proposed the classification of bus body building activity under 8707. Whereas as per the Chapter Note 5 of Chapter 87, the activity of fabrication of bus body and mounting on duty paid chassis is amount to manufacture of motor vehicle. He submits that since the motor vehicle manufactured by the appellant is a passenger motor vehicle having sitting capacity of 41 passengers, the same is correctly classifiable under 8702 whereas in the adjudication order, the adjudicating authority assumed that the vehicle is falling under either chapter 8703 or 8704.

2.1 It is his submission that the Motor vehicle i.e. bus manufactured by the appellant falling under 8702 is eligible for exemption Notification No. 12/2012-CE dated 17.03.2012 under Sr. No. 276. He submits that as prescribed under the said entry the appellant has complied with the conditions provided under the exemption entry. Therefore, the vehicle manufactured by the appellant is exempted. Hence, entire order is incorrect and illegal and the same is liable to be set aside.

2.3 Without prejudice to the above, he further submits that in the present case the penalty was also imposed on the proprietor of the proprietorship concern. It is a settled law that in case of proprietorship concern, a separate penalty on proprietor cannot be imposed. He placed reliance on the following judgments:-

- Commissioner of C. Ex., Nagpur vs. Ballarpur Industries Ltd - 2007 (215) ELT 489 (SC)
- Caprihans India Ltd vs. CCE - 2015 (325) ELT 632 (SC)
- Faze Three Limited. v C.C.E & S.T. -Silvasa 2024 (1) TMI 635
- Commissioner of Customs, Mumbai vs. Toyo Engineering India Ltd - 2006 (201) ELT 513 (SC)
- Swapne Nagari Holiday Resort vs. Commissioner of C.Ex., Raigad - 2019 (21) GSTL 559 (Tri.- Mumbai)
- Senor Metals Pvt Limited vs. Commissioner of Central Excise & ST, Rajkot -2023 (7) TMI 1115-CESTAT Ahmedabad
- Messrs Disha Engineers Versus CCE - Ahmedabad-I 2022 (5) TMI 476
- M/S AMCL Machinery Ltd v. Commissioner Of Customs & C. Ex. 2019 (8) TMI 250-CESTAT MUMBAI
- Uniworth Textiles Ltd. V. Commissioner of Central Excise, Raipur, 2013 (288) E.LT. 161 (S.C.),

- Anand Nishikawa Co. Ltd v. Commissioner of Central Excise, Meerut, 2005 (188) E.LT. 149 (S.C.),
- Vinod Kumar Gupta v. CCE-2013 (287) E. L. T. 54 (P & H)

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. Before addressing the issue on merit, we find that there is a serious error in the entire issuance of show cause notice as well as passing of adjudication order in as much as the show cause notice ignoring the chapter Note of chapter 87, the vehicle was proposed to be classified under chapter 8707, on top of that the adjudicating authority has travelled beyond the scope of show cause notice and classified the motor vehicle not only one particular chapter heading but under chapter heading 8703 or 8704. Therefore, firstly the adjudication order travels beyond the scope of show cause notice. Secondly, the adjudicating authority is also not confirmed that whether the motor vehicle will fall under chapter 8703 or 8704. Therefore, on this basis itself, the entire adjudication proceeding is vitiated.

4.1 We find that the chapter 8703 is in respect of the passenger vehicle having sitting capacity of not exceeding 10 persons and chapter heading 8704 is for the motor vehicle for transport of goods. In the present case the motor vehicle manufactured by the appellant is having sitting capacity of 41 passenger. Therefore, it is neither classifiable under 8703 nor 8704. On this basis itself demand is not sustainable.

4.2 Without prejudice to the above, we proceed to analyse the correct position of classification as well as applicability of the notification. We find that admittedly the appellants have fabricated and mounted the bus body on the chassis supplied by their client who is not a chassis manufacturer. The said activity is amount to manufacture in terms of chapter Note 4 (said Chapter Note 4, later renumbered as 3 and finally renumbered as 5) of chapter 87 which reads as under:-

> *"For the purpose of this Chapter, building of body or fabrication or mounting or fi tting of structure or equipment on the chassis falling under heading 8706 shall amount to "**manufacture of a motor vehicle**"*

4.3 From the above chapter note, it is clear that the fabrication of bus body and mounting thereof on the duty paid chassis is amount to manufacture of motor vehicle. Therefore, on this basis the motor vehicle cannot be classified under 8707. Since, the motor vehicle manufactured by the appellant is having sitting capacity of 41 passengers, the same is neither classifiable under 8703 nor 8704 as contended by the adjudicating authority in the adjudication order. Now we hold that the correct classification of the motor vehicle manufactured by the appellant is under chapter heading 8702. The appellant have claimed the exemption Notification No. 12/2012-CE dated 17.03.2012 under Sr. No. 276 which is reproduced below:-

Table

Sl.No.	**Chapter or heading or sub-heading or tariff item of the First Schedule**	**Description of excisable goods**	**Rate**	**Condition No.**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
276.	87	(i) Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons; and	Nil	27
		(ii) Motor vehicles for the transport of goods (other than those specially designed for the transport of compressed or liquefied gases), falling under heading 8704; and		
		(iii) three wheeled motor vehicles		

4.4 The above notification exempts motor vehicles of chapter 87 particularly designed for transportation of more than 6 persons. In the present case the bus manufactured by the appellant is a motor vehicle for transport of more than 6 persons. Therefore, the same is covered by the exemption entry Sr. No. 276. The said Notification contains the condition No. 27 which reads as under:-

" *it manufactured out of chassis falling under heading 8706 on which duty of Excise has been paid and no credit of duty have paid on such chassis and other inputs used in the manufacture of such vehicle has been taken under Rule 3 or Rule 30 of the Cenvat Credit Rules , 2004*"

4.5 As per the above condition, the chassis on which the motor vehicle is manufactured must be duty paid. In this regard a sample invoice of the chassis is scanned below:-

J 110

AUTOMOTIVE MANUFACTURERS PRIVATE LIMITED

ASHOK LEYLAND

TAX INVOICE

INVOICE :AVI-81661617-112792
CUSTOMER:VIJAY R. MAKWANA DATE :30/06/2016
PARTNER:CHIRAG TRAVELS CO
FLAT NO.601,SQUARE
PLASANT PARK,CROSS ROAD
MIRA GAON ,MIRA ROAD (E)
401104
CUSTOMER CODE :

INVOICE DETAIL		VEHICLE DETAIL	
SALE ORDER	MVSO-81661617-0849	CUSTOMER PAN NO.	AFTPM6607D
ALLOCATION	MVSA-81661617-0849	HYPO. WITH	HINDUJA LEYLAND FINANCE LTD.
STORE	AMPL-Panvel	CHASSIS NO.	MB1PREFD7GACF5123
SALES	AMIT DESAI [3609]	ENGINE NO.	GFHZ402907
RECEIPT NO.		PO/DO NO.	-Dt. 30/06/2016

SR.No	MODEL	DESCRIPTION	QTY	AMOUNT
1	4/253 FWRA	ASHOK LEYLAND ALPSV 4/253 BUS CHASSIS 6200MM(244")WB FITTED WITH H SERIES 6 CYLINDER BSIII DIESEL IL ENGINE (180 HP)DDAC, 6 SPEED OVERDRIVE GEARBOX RUBBER ENDED SUSPENSION IN FRONT & AIR SUSPENSION IN REAR AND RETARDER(BIL) 7 NOS.295/80 R22.5 TUBELESS RADIALS INCLUSIVE OF EXCISE DUTY	1	1844388.00
2		TRANSPORTATION CHARGES INCLUDING TEMP REGISTRATION		6000.00
		SUB TOTAL		1850388.00
		VAT @ 12.5%		231298.50
		SUB TOTAL		2081687.00
		TCS @ 1.00%		20817.00
		NET VALUE		2102504.00

AMOUNT IN WORDS:RUPEES Twenty-One Lakhs Two Thousand Five Hundred Four Only.
CST : 27760000015C Dt:01/04/2006
LST :

PAN NO/GIR : AAACA3428K
TIN NO. : 27760000015V Dt:01/04/2006

For Automotive Manufacturers Private Limited

Authorised Signatory

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Talegaon - Gat No. 46, Village Ambi, Talegaon MIDC Road, Near D. Y. Patil College, Tal. Maval, Dist. Pune, Pin - 410507. • www.automotiveml.com
Regd. & Head Office : Automotive House, 108, Bazar Ward, Kurla (W), Mumbai - 400 070.
CIN : U34100MH1948PTC006781 • Tel.: 022-61563700

LEYLAND DIRECT
1800 266 3340

From the above invoice in respect of purchase of chassis by the appellant's client, it is clear that the excise duty has been paid on the chassis.

4.6 As regard the condition that Cenvat credit of such chassis is not availed by the manufacturer of motor vehicle, it is an admitted fact that appellant is neither registered with Central Excise nor paying any Excise Duty, Therefore there is no question of availment of Cenvat Credit either on the inputs or any other material used in the manufacture of such motor vehicle. With this fact, the conditions of the notification also stands scrupulously complied with. Therefore, the motor vehicle manufactured by the appellant is exempted under the aforesaid notification. Therefore, on this merit also the demand is not sustainable.

4.7 As per our above discussion and findings, the appellant are not liable to pay Excise duty on the motor vehicle manufactured by them on the chassis supplied by their client, who is other than the manufacturer of a chassis manufacture. Accordingly, the impugned orders are not sustainable. Hence the same are set aside. Appeals are allowed with consequential relief. Since, demand against the manufacturer assessee is not sustainable, the penalty on the persons being consequential to the demand shall also not sustainable.

5. Accordingly, the impugned orders are set aside. All the appeals are allowed with consequential relief.

(Pronounced in the open court on 06.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha