

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
OLD RED BUILDING, 38, M.G.MARG, CIVIL LINE, ALLAHABAD-211001
REGIONAL BENCH, ALLAHABAD

DIVISION BENCH

Appeal No.E/1093-1094/2010-Ex (DB)
Appeal No.E/1282/2010-Ex (DB)

(Arising out of OIA No.21-22/CE/LKO/2010 dt.27.1.2010 and
OIA No.20/LKO/09 dt.27.1.2010 passed by the
Commissioner, Customs, Central Excise, Lucknow)

Date of hearing/Decision:28.12.2018

Delhi Metro Rail Corporation	Appellant
Mr.Satish Kumar, Director (Electrical)	
Tata Motors Ltd.	
Vs.	
CCE, Lucknow	Respondent

Present for the Appellant: Shri P.K.Sahu, B.L.Narasimhan & Ayush
Agarwal, Advocates

Present for the Respondent: Dr.Gyanendra Kumar Tripathi, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Anil G.Shakkarwar, Member (Technical)

FINAL ORDER NO. 70437-70439/2019

PER: ASHOK JINDAL

The appellants are in appeal against impugned orders wherein the benefit of exemption Notification No.6/2006-CE dt.1.3.2006 has been denied. Consequently, demand of duty has been confirmed against M/s. Tata Motors Ltd. and penalties on all the appellants have been imposed.

2. The brief facts of the case are that M/s. Tata Motors Ltd. (in short M/s.Tata) supplied bus chassis to Delhi Metro Railway Corporation (DMRC) by claiming exemption under Notification No.6/2006-CE dt.1.3.2006 (Entry No.90). The appellants had paid 10% of the total value of bus chassis in terms of Rule 6 (3b) of

Cenvat Credit Rules, 2004. As per Notification, the DMRC has provided the required Central Excise Duty Exemption Certificate certifying that the goods are parts of the inventory maintained by DMRC and shall finally be owned by DMRC. The said certificate has been obtained by DMRC on 14.06.2007. Later on, the Revenue entertained a view that the buses have been procured by DMRC in connection with Metro Link Service in which the buses will be handed over to private operators on operate and transfer basis on the value of buses. According to the Revenue such transaction would signify that the buses have neither been procured by DMRC nor will be owned by DMRC. Therefore, M/s. Tata has failed to fulfil the condition No.18 under exemption Notification No.6/2006-CE dt.1.3.2006. Consequently, show cause notice was issued on 18.7.2008 to demand duty on 120 bus chassis cleared to DMRC and to impose penalties on all the appellants. The matter was adjudicated, the demand of duty was confirmed along with interest and penalties were imposed on all the appellants. Against the said orders, the appellants are before us.

3. Ld. Counsel appearing on behalf of M/s.Tata submits that the appellant has provided a certificate and fulfilled the required condition under Notification No.6/2006-CE dt.1.3.2006 as the appellant has obtained certificate from DMRC dt.14.6.2007 at the time of clearance of buses. Therefore, the department can now examine the genuineness of the certificate and not the correctness of truthfulness of the statement. The notification does not empower the department, on verification of use of the bus chassis to demand

duty liability from the appellants. To support his contention, Ld. Counsel has relied upon the following decisions:-

- (i) Commissioner vs. Maruti Udyog-2001 (127) ELT A169 (SC)
- (ii) Maruti Udyog Ltd. vs. CCE, New Delhi-2000 (124) ELT 1175 (SC)
- (iii) State of Madras vs. Radio & Electricals Ltd.-1966 018 STC 0222.

4. It is his submission that bus chassis cleared by the appellant qualify as machinery under Sl.No.90 of the notification. To support this, he placed reliance on the decision of this Tribunal in the case of Bharat Sales Corporation vs. CC, Calcuta-1987 (32) ELT 778 (Tri.) Therefore, he submits that the impugned orders to be set aside.

5. On behalf of the appellant M/s. DMRC and Mr.Satish Kumar, Director, Ld.Counsel for the appellants submits that the appellant has not issued any false declaration to M/s.Tata and all the condition specified in the Notification No.6/2006-CE dt.1.3.2006 are satisfied with respect to buses supplied to DMRC by M/s.Tata. When Metro Link Service is an integral part of the MRTS project, the authorities below are not correct in holding that the buses used for such service are not falling within the description of equipment including machinery and rolling stock for MRTS project. He also relied upon the dictionary meaning of equipment and further relied on Bharat Sales Corporation. He also relied on the decision of Hon'ble Supreme Court in the case of Toyo Engineering India Ltd.- 2006 (201) ELT 513 (SC). He further submits that the authorities

had ignored the evidence that the buses are owned by DMRC and form part of its inventory. He also relied on the decision of this Tribunal in the case of Satish Kumar vs. CCE, Jaipur-I-2016 (342) ELT 452 (Tri.-Del.) to say that there was no fraudulent intent while issuing the certificate by the appellant for the Notification No.6/2006-CE dt.1.3.2006. Therefore, no penalty is imposable on the appellants. He prayed that the impugned orders to be set aside.

6. On the other hand, Ld.AR supported the impugned orders and submits that the chassis which has been purchased by DMRC from M/s.Tata were not equipment or machinery or rolling stock. These buses are not being used for Delhi MRS Project and ownership of these will be transferred by it to the operators of the buses after five years as per agreement. Therefore, DMRC has issued wrong certificate for the purpose of availing of above notification.

7. Heard the parties and considered the submissions.

8. We have gone through the Notification No.6/2006-CE dt.1.3.2006. The condition No.18 is relevant in relation to the use in hand which is extracted below:-

"18. If, before the clearance of the goods, the manufacturer produces to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, a certificate from the Chairman or the Managing Director or the Director (Rolling Stock, Electrical and Signaling) or the Director (Finance) of the Delhi Metro Rail Corporation Ltd., to the effect that –

(i) the goods are procured by or on behalf of the Delhi Metro Rail Corporation Ltd. for use in the Delhi MRTS project; and

(ii) *the goods are part of the inventory maintained by the Delhi Metro Rail Corporation Ltd. and shall be finally owned by the Delhi Metro Rail Corporation Ltd."*

9. As per the said condition, the goods are required to be procured by or on behalf of the Delhi Metro Rail Corporation Ltd. for use in the Delhi MRTS project and the goods are part of the inventory maintained by the Delhi Metro Rail Corporation Ltd. and shall be finally owned by the Delhi Metro Rail Corporation Ltd. Admittedly, the goods in question have been procured by DMRC in Metro Feeder bus service, therefore, the use of bus is for MRTS project. The sole reason to deny the benefit of exemption notification is the agreement between DMRC and its operators. As per agreement after five years the operator shall become the owner of the bus. In fact, on the basis of record placed before us, operators have never completed contract and agreements were not rescinded. Consequently, the DMRC remains the owner of the buses in question, therefore, on that ground the benefit of exemption notification cannot be to the appellant.

10. Further another issue raised by the Revenue is that the chassis in question are not inventory or equipment or machinery or rolling stock. Therefore, the benefit of exemption notification is not available as per Sl.No.90 of the notification. We find that the issue whether the vehicle is a machinery or not came before this Tribunal in the case of Bharat Sales Corporation (supra) wherein this Tribunal has observed as under:-

" 8. Now, turning to the Chapter 88, which is in Section XVII itself, the statutory note defines "aeroplane" as flying

machines "which are heavier than air" though this Chapter is outside Section XVI. On the same logic, there seems to be no reason why motor vehicles also should not be held to be machines. Again, note 5 to Chapter 90 (Section XVIII) explains with reference to Heading No.90.28 that should be taken to apply to machines etc. described in the specified headings of the Chapter. Heading 90.16, one of the specified Headings, covers inter alia drafting machines, measuring or checking machines; Heading 90.22 covers machines for testing certain properties of industrial materials. All this goes to show that, in the scheme of the Schedule, "machines" are not limited to those machines as fall within Chapter 84 and 85 comprising Section XVI."

11. Further this Tribunal has observed as under:-

"11. As noted earlier, the term "machine" has not been defined in the schedule save for the purpose of Section XVI. We have, therefore, to look at the ordinary sense of the term. The "McGraw Hill Dictionary of Scientific and Technical Terms" (Second Edition) defines "machines" inter alia as follows:-

"[Mech.Engg.] A combination of rigid or resistant bodies having define motions and capable of performing useful work."

12. New Webster's Dictionary of the English Language, Deluxe Encyclopaedic Edition, defines "Machines" thus:

"Machine: An apparatus, consisting of interrelated parts with separate functions, and used in the performance of some kind of work; a mechanical apparatus or contrivance; something operated by a mechanical apparatus, as an automobile or a bicycle....."

14. Having regard to all these considerations, we do not see why a motor vehicle cannot be held to be a machine for the purpose of the Schedule. In fact, the very note (1) (k) to Section XVI is a clear pointer to this conclusion. It says that that Section does not cover vehicles, aircrafts, ships or boats of Section XVII. It is evidently because these goods (though machines) are specified elsewhere, not because they are not considered to be machines."

12. Therefore, we hold that motor vehicles do qualify as machines and we also take support of the decision of this Tribunal in the case of Satish Kumar (supra) wherein this Tribunal has examined the issue and observed as under:-

"5. The admitted facts of the case are that the main appellant supplied buses to DMRC. The wordings of Entry No.90 in the Notification is specific and the appellants claim that bus is an equipment cannot be accepted even by plain reading. The Original Authority also relied on the Boards letter dated 14.09.2004 addressed to the DMRC enclosing two lists of items, for which exemption was sought by the DMRC. The Original Authority referred to the proceedings of the Empowered Committed on Delhi MRTS Project. The Original Authority, after examining in detail, the background of DMRCs claim with the Department of Revenue recorded that bus cannot be even by implication considered as equipment It was also recorded that if the intention is to include the bus for exemption, the same could have found place in the original list of items submitted by the DMRC for consideration before the issue of the exemption notification. The buses procured by DMRC are for Metro Link Bus Service, for which buses will be handed over to the private operators on operate and transfer basis, on recovery of the value of the buses. This shows that neither the buses are used by DMRC nor ultimately owned by them. The Original Authority recorded that it is an admitted fact that the exemption under notification was extended to DMRC on their request after deliberation in the Empowered Committee on Delhi MRTS Project and after jointly examined by the Department of Revenue as well as by the Ministry of Urban Development and DMRC. This is in the light of the decision taken by the Group of Ministers (GOM).

6. After careful examination of the findings recorded by the Original Authority and on various meanings based on the dictionary as pleaded by the appellant, we find that buses for passengers cannot be considered as an equipment within the scope of Entry No.90 of the above said notification. The appellants claim for such exemption is not tenable.

7. However, we find that the penalties imposed on the main appellant as well as the Director of the DMRC cannot be sustained. We find no justification for imposing equal amount of penalty on the main appellant in terms of Section 11 AC. The main appellant produced a certificate given by DMRC and claimed the exemption. DMRC gave such certificate based on their understanding of the claim for exemption. No fraudulent intent could be brought out in these transactions. DMRC is a Government Promoted Utility Organization and considering the facts and circumstances of the case, we find no justification in the imposition of equal penalty on the appellant and personal penalty on the Director of DMRC. Accordingly, we set aside the penalties imposed on them."

13. Further, we observe that in the case of Toyo Engineering India Ltd (supra), Hon'ble Supreme Court. Has observed as under:-

12. It is not disputed that construction equipments imported by the respondent were used in the initial setting up of the plant. The Assistant Collector and the appellate authority denied the facility of the project import as the ownership of the imported goods would not pass to the project authority and that the machinery imported could be utilized elsewhere in the setting up of any other plant. What is required under heading 98.01 Tariff Act is that the machinery imported should be required "for the initial setting up of a unit, or the substantial expansion of an existing unit".

This heading specifically mentions and includes "auxiliary equipment". The "auxiliary equipment" has not been defined under the Tariff Act. As per Dictionary meaning, extracted above, it is an equipment which aids or helps. Any equipment which aids or helps in the setting up of an industrial plant would fall and be covered under heading 98.01 of the Tariff Act. The mere possibility of its being used subsequently for other project would not debar the respondent from availing the facility of project import. If the contention of the Revenue is accepted, then resultant effect as put by the Tribunal would be:

"...no equipment can be imported for projects like Konkan Railway Project, Road Development Projects of the National Highway Authority of India, etc. specified under Heading 98.01 of CTA."

We agree with this observation of the Tribunal.

14. We do not find any substance in this submission. In that case this Court did not consider the vehicles imported to be an item of auxiliary equipment required for setting up of an initial unit on the ground that it was used only in shifting of the transformers which would not constitute an integral part of the power project. The vehicles imported were required for transportation of the transformers from railway yards to the erection sites and had no relation to power generation or power project. After transporting the specified number of transformers to the site of sub-station the utility of the vehicles would be over at the end of such transport and thereafter the vehicles could certainly be used for other purposes of the assessee. That the vehicles, which are used in the shifting of the transformers, would not constitute integral activity of the project. In the present case goods imported by the respondent are hydle truck cranes, excavator, shovel loader, truck, forklift truck, power generators, diesel welder, welding rectifier, containers tools and tackles instruments, level Nako with tripod, theodlitenako with accessories & tripod besides window air conditioners, electric typewriter and camera with flash (the total cost of last three items is only Rs.70,000/-, which is negligible). In fact, it was not disputed before the Tribunal or before us as well that the construction equipments imported by the respondent were used in the initial setting up of the plant. The goods imported by the respondent such as hydle truck cranes, excavator, shovel loader, truck, forklift truck, power generators, diesel welder, welding rectifier, containers tools and tackles instruments, level Nako with tripod and theodlitenako with accessories & tripod would certainly be auxiliary equipments which would help in the initial setting up of the industrial plant. The facility of the project import was denied to the respondent because the ownership of the imported goods did not pass to the project authority. Since it

is not disputed that the construction equipments imported by the respondent were used in the initial setting up of the plant, then, as per the provisions of heading 98.01 of the Tariff Act the respondent could not be denied the benefit of the project import.”

14. On the basis above judicial pronouncements and facts of the case, we find that it is admitted that these bus chassis purchased by DMRC from M/s.Tata are used as feeder bus service to carry passengers from various routes of metro and vice versa are integral part of the Delhi MRTS project and DMRC is the owner of the buses, therefore, DMRC has rightly issued certificate in terms of Notification No.6/2006-CE dt.1.3.2006 and M/s.Tata is entitled to avail exemption notification and have rightly cleared chassis in question without payment of duty.

15. In view of the above analysis, we do not find any merit in the impugned orders and hold that no demand is sustainable against M/s.Tata and no penalty is imposable on all the appellants.

16. In the result, the appeals are allowed with consequential relief, if any.

(Operative of order was pronounced in the court)

(ANIL G.SHAKKARWAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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