

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 21349 of 2014

[Arising out of Order-in-Original No. 02/2014 dated 20.01.2014 passed by the Commissioner of Central Excise, Bangalore-I]

Volvo Buses India Pvt Ltd

Yalachahally, Tavarakere Post,
Hoskote, Bangalore 562 122

.....Appellant

VERSUS

**Commissioner of Central Excise,Respondent
Bangalore-I**

PB No. 5400, Central Revenue Building,
Queens Road, Bangalore 560 001

with

Excise Appeal No. 21350 of 2014

[Arising out of Order-in-Original No. 02/2014 dated 20.01.2014 passed by the Commissioner of Central Excise, Bangalore-I]

K. Ramamurthy

Director & Company Secretary M/s Volvo Buses India
Pvt Ltd, Yalachahally, Tavarakere Post,
Hoskote, Bangalore 562 122

.....Appellant

VERSUS

**Commissioner of Central Excise,Respondent
Bangalore-I**

PB No. 5400, Central Revenue Building,
Queens Road, Bangalore 560 001

APPEARANCE:

Present for the Appellant: Sh. Ravi Raghavan, Advocate with

Ms. Sudheeshna, Advocate & Ms. Sneha, Advocate

Present for the Respondent: Mrs. D. S. Sangeetha, Add. Com. (A.R.)

CORAM:

HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20941-20942/2023

DATE OF HEARING: 17.05.2023
DATE OF DECISION: 15.09.2023

PER: D. M. MISRA

These two appeals are filed against the Order-in-original No.02/2014 dt. 20/01/2014 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellants are manufactures of parts and accessories of buses falling under Chapter sub-heading 87082900 of Central Excise Tariff Act, 1985 (CETA). During the course of verification of refund claim dt. 08/12/2011, it was noticed by the Department that the appellant also undertakes the activity of body building on the duty paid chassis. However, no duty was paid on the said manufactured body built motor vehicles for the period 08/2008 to 07/2012. Consequently, investigation on non-payment of excise duty on the body building activities initiated and on completion of the same, show-cause notice was issued to the appellant on 08/06/2013 alleging that during the said period though they have manufactured 2545 numbers of motor vehicles for transport of more than 12 persons falling under Chapter heading 8702 of CETA, 1985 but failed to pay duty of Rs.67,46,70,752/-; consequently on adjudication, the demand was reduced to Rs.58,03,73,082/- with interest and penalty of equivalent amount

imposed on the appellant company and Rs.50,000/- on Shri Ramamurthy, Director of the appellant. Hence the preset appeals.

3.1 The Ld. Advocate for the Appellant has submitted that the benefit of exemption under Sl. No.39 of the Notification No. 6/2006-CE dated 01.03.2006 and Sl. No. 276 of the Notification No. 12/2012-CE dated 17.03.2012 is available subject to fulfilment of conditions as prescribed in Sl.No.9/27 therein viz.

- i) The motor vehicles should be designed for transport of more than six persons, excluding the driver, including station wagons;
- ii) The chassis manufacturer should not have ownership on the chassis thus, effectively he should have sold the chassis to the person manufacturing the vehicles;
- iii) The manufacturer of the said vehicles should not have availed the Cenvat credit under the Cenvat Credit Rules, 2004;
- iv) The manufacturer of the said vehicles should not have manufactured the vehicles on account of the chassis manufacturer; and
- v) The manufacturer of such vehicles should not have manufactured the chassis by himself.

3.2 He has submitted that undisputedly VIPL is the manufacturer of chassis and have sold the said chassis to the Appellants on payment of applicable Central Excise duties and Sales Tax / VAT. The Appellant has also not availed input credit of the duty

paid on the chassis and the duty paid on other inputs used in the manufacture of the chassis under the Cenvat Credit Rules, 2004.

3.3 It is further submitted that the definition of 'Sale' as defined under Section 2(29) of the Karnataka Value Added Tax Act, 2003 clearly shows that when there is transfer of property in goods by one person to another in the course of business for a consideration, it is considered as 'sale' and 'sales tax' is payable on the said transaction. Further, the definition of sale and purchase under Section 2(h) of the Central Excise Act, 1944 also envisages that mere transfer of possession of goods from one person to another amounts to sale and purchase. In the present case, admittedly VIPL has discharged Value Added Tax on the sale of chassis to the Appellants and there is admittedly a transfer of property in title to the goods / chassis from VIPL to the Appellants. The chassis purchase agreement also clearly indicates that the ownership of the chassis will vest with the Appellants immediately on sale thereof by VIPL. Further it is clear from the VAT payment that the sales tax authorities have accepted the said transaction to be a sale under the KVAT, 2003 and there has been no dispute in this regard.

3.4 The Ld. Advocate further submitted that once there has been a sale of chassis from VIPL to the Appellants, the title / ownership to the chassis stands transferred to the Appellants. Therefore, the principal condition as envisaged in Condition Nos. 39/276 of the Notification Nos. 6/2006 dated 1.3.2006 and 12/2012-

CE dated 17.03.2012 that the manufacturer of vehicles should not have manufactured the vehicles on account of the chassis manufacturer stands fulfilled in the present case.

3.5 It is also submitted that once the chassis are purchased by the Appellants, the ownership of such chassis is transferred to the Appellants and the activities undertaken on such chassis would make the Appellants the owner of the goods / vehicles. It is therefore submitted that Condition Nos. 39 or 276 of the Notifications 06/2006-CE or 12/2012-CE have not been violated by the Appellants and hence, the benefit of both the Notifications cannot be denied to the Appellants.

3.6 Rebutting the department's argument that the ownership of the chassis does not change hands and remains with the Volvo group since the transaction is between two companies of the same group and they are closely related is incorrectly premised and is without any legal basis, it is submitted that merely because two companies are from the same group of companies cannot be a reason in itself to hold that both the companies have common interests in the business of each other unless the goods manufactured on account of the Appellant and VIPL are one and the same as the conditions in Notifications 6/2006-CE and 12/2012-CE. It is submitted that parties involved should have direct or indirect interest in the business of each other to be considered as 'related persons'. Further, it is submitted that in the present case the Board of Directors in both the Companies

are different and no Directors have shareholding in each other's Company. In support they referred to the judgments viz. (i) *Union of India & Others v. Atic Industries Ltd., 1984 (17) E.L.T. 323 (S.C.)*. (ii) *Commissioner of C. Ex., Chandigarh v. Kwaliti Ice Cream Co., 2010 (260) E.L.T. 327 (S.C.)* (iii) *M/s Bilag Industries Pvt Ltd & Anr v. Commissioner of Central Excise, Daman & Anr, 2023-TIOL-22-SC-CX*.

3.7 Further, it is submitted that VIPL and the Appellants are independent body corporates as defined under the Companies Act, 1956. It is contended that merely because the parent companies located abroad are belonging to Volvo group of companies cannot be a reason to allege common interest between the group companies. It is submitted that the condition Nos.39 or 276 of the aforesaid Notifications 6/2006CE or 12/2012 also does not envisage existence of any relationship between two group companies and hence the reliance placed by the Commissioner in relying on the definition of 'related person' as per Section 4 is not sustainable. It is submitted that every taxing statute including charging, computation and exemption clause should be interpreted strictly as settled in the case of *Commissioner of Cus. (Import), Mumbai v. Dilip Kumar & Company, 2018 (361) E.L.T. 577 (S.C.)*.

3.8 Further it is argued that alternatively in the event the benefit of the exemption Notifications are held to be inadmissible the Appellants are then they are entitled to claim Cenvat credit of Rs.43,04,89,473/- on the inputs used in the manufacture of body

building. In support they referred to the Judgement in the case of *Collector of Central Excise, Hyderabad v. Divya Enterprises Ltd., 2003 (153) E.L.T. 497 (S.C.); ITW Signode India Ltd. v. Collector of Central Excise, 2003 (153) E.L.T. 501 (S.C.)*.

3.9 Assailing the Order confirming the demand invoking extended period, the Ld. Advocate for the Appellant submits that they have not suppressed the fact of fabrication of body building and clearances of Motor Vehicles without payment of duty / by claiming exemption from payment of duty. All facts have been disclosed to the department. The Appellants have applied for registration vide letter dated 30.01.2008 explaining the fact of building body on the duty paid chassis procured from VIPL and clearing the same by claiming exemption under Notification No.6/2006-CE dated 01.03.2006. The Assistant Commissioner vide letter dated 04.02.2008 informed that the registration is not required in case the goods are exempted. Thus the fact of clearance of procurement of duty paid Chassis from VIPL was within the knowledge of the department and the department could have conducted the investigation at that point of time itself inasmuch as a layman can easily identify/recognize from the first/beginning name used both by the Appellant and VIPL as "Volvo" that both the Companies seems to be the from the same group of Companies. It is therefore, submitted that the allegation of suppression of facts cannot be alleged to invoke longer period.

3.10 Further it is submitted that the Officers of DGCEI had conducted investigation of records of the Appellant during the month of February, 2010 and did not raise any objections with regard to the eligibility of exemption on the activity of body building. The complete operations of the Appellant were brought to the notice of the DGCEI officers including the documents relied upon in the present proceedings. Thus, the findings by the Ld. Commissioner that the non-production of the above said agreements amounts to suppression of fact cannot be sustained in order to invoke willful suppression on the part of the Appellants. Further, it is submitted that it is settled law that where there is a scope for interpretation of any of the provisions in the statute, notifications etc., it is impermissible for the revenue to invoke longer period. In support they referred to the judgement of the Apex Court in the case of *Padmini Products v. Collector of C. Ex, 1989 (43) E.L.T. 195 (S.C.)*,.

3.11 Challenging imposition of Penalty, the Ld. Advocate submits that the penal provisions under Section 11AC of the Act are not invokable as the Appellants have not suppressed any facts much less with an intention to evade payment of duty. Further, the imposition of penalty on Shri. Ramamurthy, Director and Company Secretary under Rule 26 is not sustainable as there is no positive evidence adduced by the department to established that he had the knowledge that the impugned goods are liable for confiscation. It is

submitted that the imposition of penalty and demand of interest is not sustainable as the duty demand itself is liable to be set aside.

4. Per contra, Learned A.R. for the Revenue reiterating the findings of the learned Commissioner, has submitted that the appellant entered into an agreement with M/s. Volvo India Pvt. Ltd. (VIPL, for short) termed as "Chassis Supply Agreement" dt. 11/01/2008. The VIPL has entered into agreement with their principal M/s. Volvo Bus Corporation, Sweden (VBC), a Technology Transfer Agreement dt. 01/01/2008. He has submitted that analyzing the said agreement along with the master agreement entered between VIPL with AB Volvo Sweden, it is clear that even though the appellant has received the chassis from VIPL. However, there was no ownership transfer of the chassis in favour of the appellant, a part of the group company; hence benefit of exemption Notification No.6/2006 dt. 01/03/2006 claimed by the appellant is not admissible. Further, he has submitted that on analysis of share holding pattern of the foreign holding company and the subsidiaries in India viz. VIPL and the appellant, it evident that these companies are inter-connected undertakings and their relationship established mutuality of interest between the appellant and VIPL, hence ownership of the chassis continues to be vested on VIPL.

5. Heard both sides and perused records.

6. The issues involved in the present appeal for determination are whether: (i) the appellant are eligible to the benefit of Notification No.6/2006 CE dt. 01/03/2006 and 12/2012CE 17.3.2012, as the case may be, in carrying out the activity of body building on the chassis supplied/sold to them by VIPL. (ii) The demand is barred by limitation.

7. The relevant Notification No.6/2006-CE dt. 01/03/2006 (Sl.No.39) and Notification No.12/2012-CE dt. 17/03/2012 (Sl.No.276) reads as follows:-

Sl.No.	Chapter or heading or -sub heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
39	87	(i) Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons; and (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	NIL	9

Sl.No.	Chapter or heading or -sub heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
276	87	(i) Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons; and (ii) Motor vehicles for the transport of goods (other than	NIL	27

		those specially designed for the transport of compressed or liquefied gases), falling under heading 8704; and (iii) three wheeled motor vehicles		
--	--	---	--	--

Conditions 9 & 27 of the said Notifications reads as below :-

"9. *If manufactured out of chassis falling under Heading 8706 on which duty of excise has been paid and no credit of duty paid on such chassis and other inputs used in the manufacture of such vehicle has been taken under rule 3 or rule 13 of the CENVAT Credit Rules, 2004.
Provided that this exemption is not applicable to a manufacturer of said vehicles-*
(a) who is manufacturing such vehicle on a chassis supplied by a chassis manufacturer, the ownership of which remains vested in the chassis manufacturer or the sale of the vehicle so manufactured is made by such chassis manufactured on his account.

27. *If manufactured out of chassis falling under Heading 8706 on which duty of excise has been paid and no credit of duty paid on such chassis and other inputs used in the manufacture of such vehicle has been taken under rule 3 or rule 13 of the CENVAT Credit Rules, 2004.
Provided that this exemption is not applicable to a manufacturer of said vehicles-*
*(a) who is manufacturing such vehicle on a chassis supplied by a chassis manufacturer, the ownership of which remains vested in the chassis manufacturer or the sale of the vehicle so manufactured is made by such chassis manufacturer on his account, and
(b) who is manufacturing chassis and using such chassis for further manufacture of such vehicle."*

8. The allegation of the Revenue is that clause (a) of the condition No.9 or 27 for availing benefit of said exemptions during the relevant period is not complied with inasmuch as the ownership of the chassis

remains vested in the chassis manufacturer viz. VIPL even though it is claimed by the Appellant that the chassis has been sold by VIPL to appellant and applicable VAT paid on such clearance; delivery of possession of the chassis consequent to the sale has been transferred to the appellant thereby complied with the definition of sale and purchase prescribed under Section 2(h) of Central Excise Act, 1944.

9. In arriving at the said conclusion, the learned Commissioner at para 29.1 of the impugned order presented the relationship of the AB Volvo, Sweden the holding company and the other companies under the said Volvo group including the Appellant and VIPL. Analysing the Technology Licence Agreement dt.01.01.2008 between Volvo Bus Corporation, Sweden and the appellant particularly para 2.3 of the said agreement, the learned Commissioner observed that there is a restriction under the said agreement by which the appellant cannot undertake body building activity on the chassis manufactured by any other manufacturer except on the chassis manufactured by VIPL. Further referring to clause 1.7 of the Chassis Supply Agreement dt. 11/01/2008 between appellant and VIPL, the learned Commissioner is of the view that the subsidiary companies within the Volvo group have a control over each other along with mutuality of interest in the business of each other, hence not independent. Further referring to the definition of 'related' person prescribed under Section 4 of the Central Excise Act, 1944, the learned Commissioner concluded that relationship between VIPL and the appellant satisfies the scope of

'inter-connected undertakings' as both companies are under the same management ; these are owned and controlled by a common entity i.e. AB Volvo, Sweeden. Accordingly, the relationship establishes mutuality of interest between these two entities and explains the inter-dependance of activities of both in India. Thus, the Ownership of chasis supplied by VIPL continued to vest on it even after the same were sold and possession delivered to the Appellant.

10. We do not find merit in the said observation in analyzing/examining the issue whether ownership of the chassis after sale and delivery of possession continues to remain with VIPL thereby the clause (a) of the condition 9 of Sl. No. 39 of Notification No. 6/2006-CE and condition 27 of sr. no 276 of Notification No. 12/2012-CE 17.3.2012, as the case may be, is satisfied or otherwise. The term "ownership" has not been defined under Central Excise Act,1944 or the Rules made thereunder. 'Ownership' is a legal concept. In common parlance it means to have or hold a thing. In Salmond's Jurisprudence (12th Edition) 'ownership' is described as:

"Ownership denotes the relation between a person and object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem being good against all the world and not merely against specified persons. Though in certain situation some of these rights may be absent, the normal cases of ownership can be expected to exhibit the following incidents."

The incidents are (i) right to possess the thing though he may be wrongfully deprived of it or may have voluntarily divested himself of it; (ii) right to use and enjoy the thing owned, right to manage and use, to the income from it such right to possess being in fact liberties; (iii) right to consume . or destroy as also to alienate or transfer the thing by will after death or by

conveyance during lifetime; (iv) right of ownership being indeterminate in duration such interest being perpetual, determined neither by any set point (as the interest of a lessee or bailee) nor by owner's death, as the property owned can descend to his heirs or while the new owner's interest is to continue, if the property is sold to him prior to death, unaffected by such death; and (v) ownership is residuary in character and when the lesser rights are given away, their extinction revives all rights in the owner

It is defined under the Black's Law Dictionary, 6th Edition as under:-

"Collection of rights to use and enjoy property, including right to transmit to others....."

"The right of one or more persons to possess and use a thing to the exclusion of others. The right by which a thing belongs to someone in particular, to the exclusion of all other persons. The exclusive right of possession, enjoyment, and disposal; involving as an essential attribute the right to control, handle, and dispose."

11. Applying the said concept of ownership to the present case, we find that the appellant and M/s VIPL are independent legal entities as both are incorporated under the Indian Companies Act, 1956. The chassis manufactured by M/s VIPL sold to the appellant on payment of applicable VAT and excise duty. There is no condition appended to such sale which would indicate the transfer of title, possession etc. is incomplete. The appellant after receipt of the chassis undertake the activity of bodybuilding and dispose of the buses to their customers. In these circumstances, merely because the appellant and M/s VIPL belong to a common group of companies, the transaction between them cannot be considered other than sale or purchase of the chassis and the

Ownership of chassis not transferred after sale of the same by VIPL to Appellant.

12. Needless to mention, the immediate ownership of the chassis manufactured by M/s VIPL got transferred to the appellant, a distinct legal entity, after payment of full price and the transfer of ownership of the chassis is completed on delivery opposition of the sale in view of the definition of sale or purchase under Section 2(h) of the Central Excise Act, 1944.

13. The reference to concept of 'related person' under Section 4 of the Central Excise Act, 1944, in analysing, the condition of the Notification whether ownership of the chassis is continued to be vested on chassis manufacturer by the learned Commissioner in the impugned order, in our opinion, is out of context, in as much as, the question is not for determination of the value of the chassis sold; hence, reliance placed on the meaning of interconnected undertaking under Section 4 of the Central Excise Act, 1944 is also irrelevant.

14. Further, the clause 1.7 of the Chassis Supply Agreement and Master Agreement dated 01.04.2001 providing license to manufacture entire range of products of 'AB Volvo' like trucks, buses, construction equipment etc. to M/s VIPL in our opinion does not establish the case that the ownership of chassis after being sold by M/s VIPL to the appellant continued to vest on the chassis manufacturer i.e. M/s VIPL. Similarly, various clauses in Technology

License Contract dated 01.01.2008 between Volvo Bus Corporation, Sweden and the appellant also do not lead to any inference that the legal ownership of the chassis continued to remain on the chassis manufacturer VIPL being belonging to the same group company. Therefore, on merit the Appellants are eligible to the benefit exemption Notifications 06/2006-CE dt. 01.3.2006 and 12/2012-CE dt. 17.03.2012.

15. On the issue of extended period of limitation, we find that the appellant have approached the Department through the letter dated 30.01.2008 informing the activity of bodybuilding to be undertaken by them on the duty paid chassis purchased from M/s VIPL and clearing the same by availing exemption under Notification No. 06/2006-CE dated 01.03.2006. Also, they have filed an application seeking Registration for the said activity. The same was responded by the Assistant Commissioner through letter dated 04.02.2008 intimating that Central Excise Registration is not required in case of goods are exempted. Also, the records have been investigated by DGCEI during the month of February, 2010. Therefore, allegations of suppression of the fact of bodybuilding on the supplied chassis by M/s VIPL and availing benefit of exemption Notifications have not been established. Consequently, invoking of extended period is also not justified. Since, the issue on merit i.e. admissibility of exemption notification has been decided in favour of the assessee, the entitlement of CENVAT Credit on duty paid inputs becomes academic

and hence not deliberated. Thus, the appellants succeed both on merit as well as on limitation.

16. In the result, the impugned Order is set aside and the Appeals are allowed with consequential relief, if any, as per law.

(Pronounced in the court on 15.09.2023)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

raja +saifi