CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No.1967 Of 2012

[Arising out of OIO No.11/SSE/CCE/2012 dated 29.03.2012 passed by the Commissioner of Central Excise, Delhi-III, Gurgaon]

The Commissioner of Central Excise,
Gurgaon-II **: Appellant (s)**
Plot No.36-37, Sector-32, Opposite
Medanta Hospital, NH-IV, Gurgaon,
Haryana-122021

Vs

M/s Metaltech Motor Bodies Pvt.
Limited **: Respondent (s)**
Plot No.68, Sector-3, IMT Manesar,
Gurgaon (Haryana)

APPEARANCE:
Shri Rajeev Gupta, Shri Nikhil Kumar Singh and Shri Narinder Singh
Authorised Representatives for the Appellant
Shri R.K. Hasija and Shri Shivang Puri,Advocate for the Respondent

CORAM:
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60590/2023

Date of Hearing: 18.10.2023

Date of Decision:08.11.2023

Per: P. ANJANI KUMAR

Revenue assails the Order dated 29.03.2012 passed by the Commissioner of Central Excise, Delhi-III, vide which he did not accept the proposal in the show-cause notice to classify, Vajra Vahan-207, manufactured by the respondents, under CETH 8703 3392 and upheld the classification adopted by the respondents under CETH 8705 9000.
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2. The brief facts of the case are that the respondents are building bodies of the vehicles, known as Riot Control Vehicles (Vajra Vahan) on the Chases received from M/s Tata Motors and classified the same under CETH 8707 1000 availing exemption contained under Sl No.39 of Notification No.6/2006. Officers of Central Excise visited the premises and found certain discrepancies in addition to the above alleged mis-classification; statements of Shri C.S. Mudgal, General Manager of the respondents and Shri J.B. Sherawat, Director, were recorded and some documents were withdrawn. On conclusion of the investigation, a show-cause notice dated 31.12.2010 was issued seeking to re-classify the Vajra Vahan under CETH 8703 3392; demanding differential duty of Rs.2,99,89,527/- along with interest and penalties. Commissioner vide OIO dated 29.03.2012 discharged the show-cause notice as far as the classification of the impugned vehicles are concerned; confirmed the demand of duty of Rs. 36,691/- along with equal penalty on the company on the scrap alleged to have been clandestinely removed; he also imposed a penalty of Rs.5000/- each on Shri J.B. Sehrawat, Director and Shri C.S. Mudgal, General Manager of the respondents under Rule 26 of Central Excise Rules, 2002. Committee of Chief Commissioners have reviewed the OIO vide Order dated 18.06.2012 and directed the Commissioner to file an appeal against the impugned order. Accordingly, Revenue is in appeal against the OIO.

3. Shri Rajeev Gupta, assisted by Shri Nikhil Kumar Singh and Shri Narinder Singh, learned Authorized Representative for the Department

reiterates the grounds of appeal; he submits that special purpose motor vehicles under CETH 8705 are other than those special purpose vehicles, which are principally designed for the transport of persons or goods; vehicles like brake down lorries, crane lorries, fire-fighting vehicles, concrete mixer lorries, road sweeper lorries, spraying lorries, mobile worships, mobile radiological units have certain mechanical functions or applied functions through some mechanical device or appliance; they are conceived at the stage of designing itself for special purposes and further manufactured. He submits that Vajra Vahan is not a special vehicle and is classifiable along with ambulances, which also have life carrying equipment, principally designed for carrying patients; therefore, the correct classification would be under CETH 8703 2392. Learned Authorized Representative submits photographs to show that Tata-207 is akin to van used for transporting prisoners, ambulances etc. and therefore, cannot be classified under CETH 8705, following the principle of *ejusdem generis*.

4. Shri R.K. Hasija, assisted by Shri Shivang Puri, learned Counsels for the respondents, submits that Vajra Vahan is principally designed to perform non-transport function like riot control and fighting terrorism; it has been registered as a special purpose motor vehicle (multi role riot control vehicle) by the Vehicle Research & Development Establishment, Ahmednagar (VRDE), Defence Research & Development Organization (DRDO) vide Letter No. TE/06/209/CMVR/1263 dated 05.12.2006. He submits that Vajra

Vahan is, in addition to the above, fitted with Multi-tube Shell Launcher (MTSL), PA equipment with 12v, 96 AH battery, Generating set of 1 KVA single phase AC output capacity, Firing Ports, Rifle butt holders, Explosive suppression material, Commando light, 500W Flood Light, Stowage compartment for ammunition and smoke shells, Observation hatch, SS drinking water tank, First aid box, Foldable type stretcher, Fire extinguisher, Instruction sheet in cases of emergency, etc.

5. Learned Counsel submits, further, that as per HSN explanatory notes, motor vehicles specially constructed or adopted, equipped with various devices that enable them to perform certain non-transport functions, fall under heading 8705. He relies on Kailash Auto Builders- 2010 (257) ELT 582 (Tri. Mumbai); Automotive Coaches and Company Ltd. – 2010 (252) ELT 206 (Chennai); Bhawani Loaders- 2006 (205) ELT 1017 (Tri.). He places reliance on Speed crafts Limited – 2003 (151) ELT 14 (Tri. Kol.) and submits that any dispute relating to tariff classification must, as far as possible be resolved by placing reliance upon HSN, unless an express different intention is made clear in the Tariff Act itself.

6. Heard both sides and perused the records of the case. The issue, whether the impugned Tata-207 Vajra Vahan built by the respondent merits classification as a specially designed vehicle falling under CETH 8705 are a vehicle principally designed for transport of passengers falling under CETH 8703, seeks our attention in the impugned case.

Learned Commissioner vide the impugned order finds that Vajra Vahan, a multi role riot control vehicle, which is specially constructed and fitted with equipment to enable to perform specified functions, is classifiable under CETH 8705; it is not principally designed for transport of passengers or personnel, is correctly classifiable under CETH 8705 and eligible for the exemption contained under Notification No.06/2006-CE dated 01.03.2006. Learned Commissioner relies on the following Indcom Projects & Equipment Ltd. – 2003 (152) ELT 328 (Tri. Del.); Maniar & Company – 2000 (119) ELT 418 (Tri.) and Speed crafts Limited (supra).

7. We further find that the impugned order considers also the fact that similar vehicles manufactured by BAT-BEIT Alfa Technologies Ltd, Israel are classified under CETH 8705 as per the information available in website and the registration of the vehicle, as a special purpose vehicle, by transport authorities should be a guide for classification as held in Hindustan Steel Industries – 2011 (272) ELT 428; Scooter India Ltd. – 2003 (156) ELT (Tri.) and Bajaj Auto Ltd. – 2000 (118) ELT 635 (Tri.). We further find that learned Commissioner having gone through the different fittings in the vehicle comes to the conclusion that the vehicle is specially designed by DRDO for riot control and the experts in the field calling it a special vehicle, their opinion cannot be discarded; he also places reliance on the fact that the Transport Commissioner, U.P. has registered the same as a special purpose motor vehicle.

8. We find that as per HSN Explanatory Notes, heading 8705 covers a range of motor vehicles specially constructed or adopted, equipped with various devices that enables them to perform certain non-transport functions i.e. the primary purpose of a vehicle of this heading is not the transport of persons or goods. We also find that the heading includes Motor breakdown lorries (trucks), motor pump vehicles, Lorries (trucks) fitted with ladders or elevator platforms, lorries used for cleaning streets, gutters, airfield runways etc., Snow-ploughs and snow-blowers, spraying lorries, crane lorries, mobile drilling derricks, lorries fitted with stacking mechanisms, concrete-mixer lorries, mobile electric generator sets, mobile radiological units, mobile clinics, searchlight lorries, telegraphy, radio-telegraphy or radio-telephony transmitting and receiving vans, etc. The Department argues on the point that the impugned vehicle does not fall under the above group going by the principles of *ejusdem generis* and for these reasons, the impugned vehicle should be categorized along with vehicles falling under CETH 8703 3392 along with vehicles like ambulances, prison vans etc. Interestingly, learned Commissioner in the impugned order relies on the same principle to classify the goods under CETH 8705.

9. Now, it is to see whether the vehicle is a special purpose vehicle or meant for transportation of persons though with some additional features. From the material available on record, we find that the vehicle is specially adopted, equipped and designed for riot control. It is not the case of the Revenue that the vehicle is utilized for

transportation of police personnel alone. A distinction has to be made between the basic manufacture of the vehicle and the body build upon it. An undisputed fact in the case is that the chassis supplied by M/s Tata Motors is similar to all the vehicles in the series 207 or others. It is the body-builders like the appellants give shape to the vehicle depending on the requirement. The design of the impugned vehicle has been conceptualized by VRDE and DRDO to suit special requirements. Understandably, in the impugned case, the vehicle is made to have so many features that help the police personnel in controlling riots. It could be that the vehicle may be helpful to carry the police personnel to a place where the riots are taking place. However, for that reason, the vehicle does not cease to be special purpose vehicle. If it is meant for only transportation of police personnel, the means of transportation could be anything by jeep, car, van, bus etc; there is no need to use the specialized vehicle for transportation. We find that the impugned vehicle is not meant for normal transportation and transportation of police personnel in the vehicle is incidental to the functioning of the vehicle. Most of the vehicles classifiable under CETH 8705 do also require personnel to man the vehicle and use the equipment provided. Such personnel also need to be transported and for that reason, such vehicles cannot be held to be primarily designed for transportation of personnel.

10. We find that this Bench in the case of JCBL Limited – 2019 (367) ELT 283 (Tri. Chan.) has classified bullet proof special purpose vehicle having holes on the roof and sides and primarily designed for rendition

of Defence/ Policing service and not for transportation of persons and goods are classifiable under CETH 8705 9000; and that certificate given by VRDE is applicable to the facts of the case. Revenue argues that in the above case, the certificate by DRDO mentioned impugned vehicle therein to be armoured whereas in the impugned case, the vehicle is non-armoured. We find that this argument will not help the case of the Department as the construction and utility of the vehicle is to be seen in a holistic manner and not by the presence or absence of one or the other equipment. The Revenue seeks to submit that the impugned vehicle is essentially for transportation of police personnel though it has some features which can be used by them in riot control. We have gone through the photographs of the exteriors and interiors of the vehicles presented before us and we find that the vehicle is not principally designed for the transportation of persons. At this juncture, we bear in mind that HSN notes indicate that the vehicles under CETH 8703 are marked by absence of a permanent panel or barrier between the area for the driver and front passengers and the rear area that may be used for the transport of both persons and goods. Therefore, we find thatthe vehicle is specially conceptualized, designed and built to deal with the situation arising during the riots and transportation of police personnel is only incidental to such use.

11. Moreover, we have perused the certificate, for compliance to the Central Motor Vehicles Rules, issued by VRDE, Ahmednagar has classified the vehicle as special purpose vehicle (multi role riot control vehicle). We also find that; accordingly, the Transport Commissioner

of Uttar Pradesh has also certified the same. We find that the Larger Bench of the Tribunal in the case of Mahindra & Mahindra held that Motor Vehicles Act, 1988 and chapter 87 of Central Excise Tariff Act are *pari materia* Statutes for the purpose of determining the classification of motor vehicles. We find that the certificates issued by VRDE and the Transport Commissioner cannot be ignored unless the same are proved to be wrong or inconsistent with the provisions of the Statute. We find that no argument to the effect that the impugned certificates are wrong has been put forth by the Revenue. We find that as held in the impugned order that as the vehicle is seen to be a special purpose vehicle in the trade parlance, there is no reason as to why the classification should be done differently for the purpose of charging Central Excise duty. The opinion of DRDO which is under Government of India cannot also be ignored for the above cited reasons. The Department also argued that the appellants have classified the impugned vehicles earlier under CETH 8707 and have changed the classification to avail the benefit of notification. We find that there is no estoppel in revenue matters; no party can be expected to continue the mistake, if any, which occurred in the past and that the appellants have a legal right to change the classification.

12. In view of the discussion above, we find that no case has been made by the Revenue so as to interfere with the impugned order as far as the classification of the impugned special purpose vehicle (multi role riot control vehicle) is concerned. Thus, we find that the appeal is

devoid of any merits and therefore is liable to be dismissed. Accordingly, we dismiss the appeal.

(Pronounced on 08/11/2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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