CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I

Appeal No. E/635,955/2012&
E/50451,/50269,52440,53199/2014

(Arising out of OIO No.29/CE/CHD-II/12 dt.13.1.2012, OIO No.66-67/CE/CHD-II/13 dt.7.10.2013, OIO No.21/CE/CHD-II/12 dt.5.3.2014 passed by the CCE, Chandigarh-II)

Date of hearing: 20.02.2019

Date of Decision: 01.04.2019

M/s. JCBL Limited **Appellant**
M/s. Tata Motors Limited
M/s. JCBL Limited
M/s. Tata Motors Limited
M/s.JCL Limited
M/s.Tata Motors Limited

Vs.
CCE & ST, Chandigarh-II **Respondent**

Present for the Appellant: Shri B.L.Narsimhan, Advocate
Present for the Respondent: Shri Vijay Gupta, AR

Coram: Hon'bleMr. Ashok Jindal, Member (Judicial)
Hon'bleMr.Bijay Kumar, Member (Technical)

FINAL ORDER NO. 60223-60227 & 60332 /2019

PER: ASHOK JINDAL

The appellants are in appeals against the impugned orders demanding excise duty and imposing penalty on the appellants.

2 The facts of the case are that M/s. JCBL is engaged in the manufacture/fabrication of bus bodies on the chassis supplied by their customers. The appellant also manufactures bulletproof special purpose vehicles (for short Bulletproof SPVs) falling under chapter 87 of the First Schedule to the Central Excise Tariff Act,

1985 for army/paramilitary forces by carrying out the activity of body building and bullet proofing on the chassis supplied by M/s.Tata Motors Ltd. (for short M/s. Tata). M/s. JCBL was classifying its vehicle under tariff item 8705 9000 of CETA. These vehicles were cleared without payment of excise duty by availing exemption under Serial No.50 of Notification No.6/06-CE dt.1.3.2006. The Revenue entertained a view that the said goods were classifiable under tariff item 8710 0000 of CETA. It was also contended that the said vehicles ought to be assessed in terms of Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In view of this, various show cause notices were issued to the appellants for different period and the demands were confirmed against the appellants alongwith the interest and penalties were imposed all the appellants. Against the said orders, the appellants are before us.

3. Ld. Counsel for the appellant submits that the bulletproof SPVs are appropriately classifiable under tariff item 8705 90 00 of CETA. These vehicles are meant for use by Army and Paramilitary forces. The fact that these vehicles were for special purpose vehicles has also been substantiated by the VRDE certificate and tendered documents. The opinion of the agencies such as ARAI or VRDE is reliable as held by this Tribunal in the case of Mann Tourist Transport Service (P) Ltd. vs. CC (I), Nhava Sheva-2015 (319) ELT 153 (Tri.-Mum.). He also relied upon the decision of Hon’ble Apex Court in the case of Bajaj Auto Ltd.-2015 (325) ELT 465 (SC).

4. He further submits that receipt of the orders for supply of armoured bulletproof vehicles from Armed Forces, BSF and CRPF,

etc. M/s. Tata supplied chassis to the JCBL for undertaking the activity of body building and bullet proofing. The feature of the bullet proof SPV indicate that these provide protection to the troops sitting inside the vehicles, against bullet/hand grenades. It also has provision for holes on the roof and the sides, through which the troops inside the vehicle can retaliate. Thus, primary purpose of the said vehicle was patrolling, surveillance and security of the forces inside the vehicle while being stationed at the battlefield. Therefore, the SPVs are designed and manufactured for special purpose and use. These are not principally designed for the transport of passengers or goods and hence, are not excluded from the purview of heading 8705. The main purpose is to ensure the safety of the occupants inside the vehicle for which, the vehicle is made bulletproof. Therefore, the bulletproof SPVs deserve to be classified under chapter heading 8705. He also submits that HSN Explanatory Notes to chapter heading 8705 provides that the primary purpose of a vehicle of this heading is not the transport of persons or goods. These bulletproof special purpose vehicles are primarily designed for rendition of defence/policing services and not for the transportation of persons or goods and hence, merit classification under tariff item 8705 90 00. He relied upon the decision of larger bench of this Tribunal in the case of Mahindra & Mahindra Ltd.-2015 (324) ELT 707 (Tri.-LB) wherein it has been 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.

5. He further submits that the goods are not classifiable under tariff item 8710 00 00 of CETA. It is his contention that the vehicles

in question are not armoured personnel carrier. He submits that as per Rule 3 (a) of the General Interpretation Rules for interpretation of the First Schedule to the Central Excise Tariff, the most specific description shall be preferred to the heading which provides a general description. In this case, the specific description of the goods, as is evident from the VRDE certificate as also from the purchase order issued by the customer of M/s.Tata, is special purpose armoured vehicle/light armoured troop carrier. He submits that tariff item 8710 00 00 of CETA covers motorised tanks and other armoured fighting vehicles, and parts of such vehicles. Further, such armoured fighting vehicles will continue to be classified under chapter 8710 irrespective of the fact that such vehicles may or may not fitted with weapons. The bulletproof SPVs manufactured by the appellant are not armoured fighting vehicles as is the requirement of heading 8710 and are only armoured vehicles. This bullet proof SPVs have a defensive capability but they do not possess the capability to fight back and are not fitted with guns, mortars or rocket launchers etc. which are used for fighting or combating. The bullet proofing of the vehicles only provides a defensive cover to the personnel in the vehicle. It does not impart any fighting capability to the vehicle. Reliance placed by the adjudicating authority on HSN Explanatory Notes to the chapter heading 8710 is not correct to hold that this heading excludes cars and lorries of the conventional type equipped with subsidiary removable armour and the items manufactured by the appellant are appropriate classifiable under heading 8705.

6. With regard to the valuation aspect under Rule 10A of the Valuation Rules, it is his contention that that appellant has not

undertaken the job work on behalf of the M/s.Tata as the body of vehicle has been manufactured by the appellant from the chassis supplied by M/s. Tata as per specifications of M/s. Tata, which has been cleared to the depots of M/s. Tata at the price fixed by M/s . Tata. The appellant independently procured various other raw materials requited for fabricating the body, including the armour plates. The cost of raw material contributed by the appellant for the purpose of manufacturing the final products comes to about 60% to 70% of the total cost. The activity undertaken by the appellant is not job work and accordingly the goods are correctly valued in terms of Section 4 read of the Act with Rule 6 of valuation Rules. He submits that Rule 10A applies in a situation where the excisable goods are manufactured by a job work on behalf of principal manufacturer. The Explanation to Rule 10A defines a job worker as a person engaged in the manufacture of goods from inputs or goods supplied by the principal manufacturer or by any other person authorised by the principal. Therefore, the scope of Rule 10A is restricted to the determination of the value of excisable goods manufactured by a job worker from the raw materials supplied by the principal manufacturer, on behalf of the principal manufacturer. Therefore, the goods manufactured and sold by the assessee, Rule 10A is not applicable.

7. He further submits that quantification of demand is not correct. The appellant is entitled to avail credit on inputs if it is classifiable under tariff item 8710 00 00. He therefore, submits that cum-tax benefit is to be given to the appellant. He also submits that the extended period of limitation cannot be invoked. The penalty is not imposable on all the appellants.

8. On the other hand, Ld. AR submits that the adjudicating authority has rightly classified the goods under tariff item 8710 00 00.

9. Heard the parties and considered the submissions.

10. On careful consideration of the submissions made by both sides, we find that the Director General of Border Security Force has issued tender for supply of 20 numbers of light armoured troops carrier. Therefore, it is to be seen whether these light armoured troops carrier is classifiable under chapter 8705 90 00 or under tariff item 8710 00 00 or not?

11. For better appreciation, chapter headings are reproduced below:-

8705	Special purpose motor vehicles other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixers, lorries, spraying lorries, mobile workshops, mobile radiological units.
8705 10 00	Crane lorries
8705 20 00	Mobile drilling derricks
8705 30 00	Fire fighting vehicles
8705 40 00	Concrete mixer lorries
8705 90 00	Other
8710 00 00	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons, and parts of such vehicles
8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary Motor, with or without side cars;
8711 10	With reciprocating internal combustion piston engine of a cylinder Capacity not exceeding 50 cc
8711 10 10	Mopeds
8711 10 20	Motorised cycles
8711 10 90	Other
8711 20	With reciprocating internal combustion piston engine of a cylinder

Capacity exceeding 50 cc but not exceeding 250 cc

Scooters:

8711 20 11 of cylinder capacity not exceeding 75 cc

8711 20 19 Others

12. HSN Explanatory Notes to chapter heading 87.10 are also extracted below for better appreciation of the facts of the case:-

87.10 Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons, and parts of such vehicles.

This heading covers tanks and other armoured fighting "Vehicles, motorised, Whether or not fitted with weapons, and" parts of such vehicles.

Tanks are armoured fighting vehicles mounted on tracks, and armed with various weapons (guns, machine-guns, flame-throwers, etc.) usually housed in a traversing turret. They are sometimes fitted with a special gyroscopic stabilisation gear to keep the sights on the target, irrespective of the movement of the vehicle. They may also to be equipped with anti-mining devices, such as a "flail" (a rotating drum which is carried on arms in front of the tank and to which are attached chains with ball ends) or a number of heavy rollers attached to the front of the tanks.

The heading also includes amphibious tanks.

Armoured cars are faster and lighter than tanks and cannot carry such heavy armour or mount such large guns. Sometimes they are only partly armoured. They are used for police duties, reconnaissance or for transport in fighting areas. Some armouredcars are track-laying but the majority are of the road-wheel type. They may be amphibious (e.g. track-laying armoured landing vehicles).

This heading also covers:

(A) Tanks equipped with crane for the recovery of fighting vehicles
(B) Armoured supply vehicles, generally of the track-laying type whether or not they are designed to be armed; these are used for the transport of petrol, ammunition, etc. in fighting areas.
(C) Small remote-controlled "tanks" which carry ammunition to advanced fighting vehicles or artillery units.
(D) Armoured vehicles permanently fitted with special demolition equipment.
(E) Armoured personnel carriers.

The heading **excludes** cars and lorries of the conventional type, armoured or equipped with subsidiary removable armour (**headings 87.02 to 87.05** as applicable).

Self-propelled artillery weapons fall in **heading 93.01**; they are characterised by the fact that they are designed to fire when stationary, the weapon itself having a limited traverse.

12. On-going through the certificate issued by VRDE and tender documents placed on record, we find that it show that these

documents show that the requirement of Boarder Security Force is for light armoured troop carrier and as per the certificated issued Vehicle Research Development Establishment that the vehicles manufactured by the appellants are **special purpose armoured vehicle**. The certificate is having acceptability in light of the decision of this Tribunal in the case of Mann Tourist Transport Service (P) Ltd. (supra) wherein this Tribunal has observed as under-

> 5.1 In the remand order dated 7-10-2010, this Tribunal had clearly directed the Revenue to get the vehicle examined and obtain expert opinion from agencies such ARAI/VRDE with regard to the seating capacity and determined the classification issue. When the said order was passed, the vehicle was very in the possession of the department and they could have got necessary examination/verification done, which they failed to do. Even after the Apex Court decision, before allowing release of the vehicle, the said action could have been undertaken. This shows gross negligence and complete disregard on the part of the department to the directions given by this Tribunal. Thus, the entire blame for the inaction lies squarely on the department.
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> 5.2 In the letter dated 19-11-2012, ARAI has not given any opinion on the seating capacity of the impugned vehicle They have merely observed that the vehicle was originally designed for seating 5 persons. However, they advised the department to verify from the concerned vehicle manufacturer about the type approval certificate issued from country of origin for the above vehicle with modified seating capacity. This direction has also not been complied with. As regards ARAI observation that – "under provisions of Motor Vehicles Act, any modification/alteration to the original vehicle are not permitted under Section 52 of the Motor Vehicles Act", this observation is quite irrelevant as the modification has been undertaken abroad before importation and the Indian Motor Vehicle Act does not have any extra-territorial jurisdiction. It is well settled position in law that imported goods have to be assessed to duty in the form in which they are presented. In the facts of the present case, the vehicle as imported has been presented with a seating capacity of 12. Further, the regional transport authorities at Delhi has registered the vehicle as having a seating capacity of 10. The certificate of fitness and the tourist permit for the vehicle issued by the RTO authorities at Delhi also confirm this fact. In this factual scenario, the decisions of the Hon'ble High Court of Kerala in K.Jayachandran v. Regional Transport Officer, Trichur& others in W.P.28702 of 2007 and the decision of this Tribunal in the Mahindra & Mahindra case (cited supra) become relevant and applicable."

13. Further, in the case of of Bajaj Auto Ltd.(supra) wherein Hon'ble Supreme Court has observed as under:-

> "**4.** The Tribunal found that the Commissioner while relying upon the earlier decision of the Tribunal ignored the fact that on the first occasion, when the matter was remanded, the Tribunal itself had observed that the new tariff did find the meaning of the tractor and also that positive evidence would be necessary to make them depart from its earlier view. It further found that the Revenue had not disputed that it is immaterial whether vehicle in question comprising of hauling unit and semi-trailer is cleared together or separately which is clear from Chapter Note 2. Discussion on this aspect runs as follows :-
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> "It is not disputed by the Revenue that vehicle in question comprise of hauling unit and semi-trailer, it is immaterial whether they are cleared together or separately as it is also emphasized in the Chapter Note 2 that they may or may not contain subsidiary provision for the transport of goods…………
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> Explanatory notes to this chapter heading further state that articulated motor lorry with semi-trailer, tractors coupled to semi-trailers, the hauling unit is classifiable under Heading 8701. In the present appeal the vehicle in question is nothing but articulated motor vehicle as per the definition of articulated motor vehicle given in the automotive dictionary. This view also find supports from two opinions of VRDE and VRIA which were sought by the department after forwarding then certificates issued by CMVR and were obtained at the department's own instance. All these clearly establish that vehicle in question is 'tractor' and not LMV. The emphasis on non-use for agriculture purpose is totally misplaced as Heading 8401 includes all kings of tractors including road tractors for semi-trailers. The sole use of the goods is to haul another trailer. It has no pay load capacity of its own and is therefore not capable of transporting any goods on its own. These facts are also not disputed by the department. As rightly said by learned advocate Shri Hidaytulla that once the definition of tractor is given in the statute, we cannot go by meaning in common parlance. We are fully in agreement with the view taken by the tribunal in the case of *Volvo India Pvt. Ltd.* where identical goods were held to be classifiable under Chapter Heading 87.01 and not under Heading 84.04."

14. In that circumstance, we hold that the vehicle is special purpose armoured vehicle are certified by the VRDE and the certificate given by the VRDE is applicable to the facts of this case.

15. In the light of that, we have to examine tariff heading 8705 which is applicable to special purpose vehicle.

Admittedly, the vehicle in question is a special purpose vehicle, therefore, the same have merited classification under tariff heading 8705 90 00. We have also examined HSN Explanatory Notes to chapter 87.10 it excludes cars and lorries of the conventional type, armoured or equipped with subsidiary removable armour which will cover under headings 87.02 to 87.05 as applicable. Therefore, it is clear that 87.10 covers tanks and other armoured fighting vehicles in the HSN. Therefore, light armoured bulletproof vehicles are specifically excluded from classification under tariff heading 87.10. The bulletproof vehicles manufactured by the appellants are light armoured bulletproof vehicles is not disputed. The feature of the bullet proof SPV indicates that these provide protection to the troops sitting inside the vehicles, against bullet/hand grenades. It also had provision for holes on the roof and the sides, through which the troops inside the vehicle can retaliate. Thus, primary purpose of the said vehicle was patrolling, surveillance and security of the forces inside the vehicle while being stationed at the battlefield. Therefore, the **SPVs are designed and manufactured for special purpose and use**. These are not principally designed for the transport of passengers or goods and hence, are not excluded from the purview of heading 8705. The main purpose is to ensure the safety of the occupants inside the vehicle for which, the vehicle is made bulletproof. Therefore, the bulletproof SPVs deserve to be classified under chapter heading 8705. We also find that HSN Explanatory Notes to chapter heading 8705 provides that primary purpose of a vehicle of this heading is not the transport of persons or goods. These bulletproof special purpose vehicles are primarily designed for rendition of defence/policing services and not for the transportation of persons or goods and hence, merit classification under tariff item 8705 90 00. In view of this, we hold that merit classification of the goods is under chapter heading 8705 90 00.

16. As the goods are classifiable under chapter heading 8705 90 00. Therefore, the appellants are entitled for the benefit under Serial No.50 of exemption notification No6/03-CE dt.1.3.2003.

17. Further, as no duty is payable on these vehicles, we are not discussing the issue of valuation as the same is on relevance in the facts and circumstances of the case.

18. Therefore, no proceedings are sustainable against the appellants and the demands raised against the appellants are set aside.

19. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(pronounced in the court on 01.04.2019)

(BIJAY KUMAR)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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