

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/740/2005

(Arising out of Order-in-Original No. 03/2005 dated 19.05.2005 passed by the Commissioner of Central Excise, Commissionerate-IV, Chennai).

M/s. Larsen & Toubro Ltd.

Appellant

Vs.

CCE, Chennai-IV

Respondent

Appearance

Shri S. Muthu Venkataraman, Advocate
for the appellant

Shri A. Cletus, ADC (AR)
for the Respondent.

CORAM :

Hon'ble Smt. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing: 31.05.2017

Date of Pronouncement: 14-07-2017

FINAL ORDER No. 41217/2017

Per: Bench

The issues in dispute relate to classification and valuation etc., of the following goods manufactured and cleared by the appellants.



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(1) Integrated Mobile Missile Launcher (hereinafter referred to as 'IMML') and cleared to M/s. Bharat Dynamics Ltd., Hyderabad (hereinafter referred to as 'M/s. BDL').

(2) P-II Missile Launcher (P-II ML) for Bharat Earth Movers Ltd., Bangalore (hereinafter referred to as M/s. BEML'). The above two items were classified by the assessee under Chapter Heading 8428.00 of the Schedule to the Central Excise Tariff Act, 1985; and

(3) Launching Mechanism (LM) and cleared to Research and Development Establishment (Engineers), Ministry of Defence, Dighi, Pune (hereinafter referred to as M/s. RDE) and the item was classified under Chapter Heading 8425.00 of the Schedule to the Central Excise Tariff Act, 1985.

2. Proceedings had been initiated by the Department against the appellant alleging the following:-

(1) that for manufacturing the IMML, P-II ML and LM, M/s. LTM (BU) has received free issue materials such as Chassis/Vehicle, Design and Drawings from the customer.

(2) that appellants have not included the value of the free issue materials (Chasis/Vehicle Design and Engineering charges) in the assessable value of IMML and LM.

(3) that even though the value of Chassis were included in the assessable value, the value of Design and Drawings were



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not included in the assessable value of the P-II Missile Launcher.

(4) that the appellants had mis-classified the Integrated Mobile Missile Launcher and P-II Missile Launcher under CSH 8428.00 instead of 8705.00 of the Schedule to the Central Excise Tariff Act, 1985.

Show cause notice was issued to the appellants, inter-alia proposing classification of IMML and P-II Missile Launcher under CSH 8705.00, demand of differential central excise duty of Rs.2,87,10,149/- with interest liability thereof and imposition of penalties under various provisions of law. On adjudication, the Commissioner vide impugned order dated 19.05.2005, ordered classification of IMML and P-II Missile Launcher under CSH 8705.00, launching mechanism under CSH 8425.00, and held that value of free receipt of Chassis/Vehicle and Design and drawing to be treated as additional consideration and to be added to the assessable value. The additional authority has also confirmed the proposed duty liability with interest, imposed penalty equal to the duty demanded under Section 11AC of the Act, also a penalty of Rs. 2 lakhs under Rule 25 of the Central Excise Act, 1944. Hence this appeal.

3. On 31.05.2017 when the matter came up for hearing, Ld. Advocate Shri. S. Muthu Venkataraman, reiterated the grounds of appeal and also placed further submissions which are summarized as follows:-

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- (a) With regard to Integrated Mobile Missile Launcher (IMML) & P-II Missile Launcher [(a) & (b)] appellants had accepted the classification under 8705.00 and stated that they are eligible for benefit of Sl.No. 217 of Notification No. 6/2002-CE dated 01.03.2002. Sl.No. 217 exempts from the whole of duty leviable subject to condition No.55.

Condition 55 prescribes that

- The product should have been manufactured out of chassis and equipment
- The Excise Duty or the additional duty leviable under Section 3 of the Customs Tariff Act 1975, has already been paid on the chassis and equipment.

The department denies the exemption on the ground that the appellants herein have not proved with documentary evidence that they have paid duty on the chassis and the equipment. Relying on the decision in Indian Hydraulic Industries Vs. Collector of Central Excise, New Delhi reported in 2003 (152) ELT 12 (SC), department contends that the word "equipment" used in the notification does not refer to the final body manufactured by the appellants, but the material inputs which have gone into the manufacturing the special purpose motor vehicle. The Commissioner has interpreted the decision wrongly in as much as the decision states that the term equipment means the material and inputs which have gone into the manufacturing of the Special purpose vehicle and the missile launcher. The chassis is



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already duty paid and the appellants have also paid duty on the equipment and thus eligible for the exemption

(b) With regard to Launching Mechanism, appellants submitted that it is an independent equipment which is mounted on the vehicle and there is no functional integration. The said launching mechanism is not self-propelled. The mounted launching mechanism is non-functional without additional hydraulic and other equipment mounted on it. The department states that HSN to Chapter Note 84.26 applies to 84.25. HSN to Chapter 84.26 applies to only to self-propelled vehicles and not in the instant case. Note 3 to Chapter 87 deems mounting of machine onto motor vehicle as manufacture. There is no such provision in Chapter 84.

4.1 On behalf of the department Ld. AR Shri A. Cletus, ADC submits the following:-

- (i) The claim of the appellant for benefit of Sl.No. 217 of Notification No. 6/2002 dated 01.03.2002 cannot be accepted since the product has been manufactured out of chassis manufactured for the vehicles of heading No. 8705; however, the appellants have not proved that they have paid duty on chassis as well as on the equipments.
- (ii) Although the assesseees have argued that vehicles along with Missile Launcher also a special purpose vehicle meriting



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classification under CSH 8705 and hence eligible for exemption in terms of Sl.No. 217 of Notification No. 6/2002, however, all the said items are fitted together to form integrated mechanical unit which is clearly covered under Para-2 of clause-b of notes under CSH 8425.

- (iii) Vehicles which were received under exemption without any payment of duty cannot be considered as having discharged duty of excise leviable.
- (iv) With regard to motor vehicles received from BEML, the same were exempt from central excise duty in terms of Notification No. 63/95 dated 01.03.95. Plea of the appellants that since the said vehicles had suffered "nil" duty, payment of 'nil' duty is valid discharge of duty, cannot be accepted.
- (v) Receipt of design and drawings is an additional consideration as the goods are manufactured by the appellant out of such design and drawings.
- (vi) Since receipt of chassis/vehicle and design and drawing charges will amount to additional consideration, the same are required to be added to the assessable value since the finished product is cleared as a single unit.

5.1 Heard both sides and have gone through the records.



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5.2 In respect of first two items IIML & P-II Missile Launcher, there is no dispute with regard to classification by either side namely that the item will fall under CSH 8705 as a special purpose vehicles. What is in contention is the eligibility or otherwise of Notification 6/2002 dated 01.03.2002, entry No. 217, which reads as under:-

Sl.No.	Chapter	Description	Rate under	Rate under	Condition
217	Heading	of goods	I schedule	II schedule	No.
	8705	special	Nil	Nil	55
		Purpose			
		M. vehicle			

Condition No. 55:

If manufactured out of chassis and equipments on which duty of excise leviable under the first schedule or the additional duty leviable under section 3 of the Customs Tariff Act, 1975, as the case may be, has already been paid.

5.3 The allegation of the department is that excise duty has not been paid on the chassis and on the equipment. In respect of chassis, appellants themselves concede that the vehicles supplied by BEML were exempt from central excise duty in terms of Notification No. 63/95 dated 01.03.1995. However, they contend that clearance of goods at "Nil " rate of duty is tantamount to payment of duty of excise leviable. We are afraid that such contention is mis-placed especially when the controversy in this regard clearly has been laid to rest by the Hon'ble Supreme Court in the case of Dhiren Chemical Industries - 2002 (139) ELT 3 (S.C). The Hon'ble Apex Court in that judgment held that where



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the raw material is not liable to excise duty or where such duty is 'nil', no excise duty is as a matter of fact is paid upon it and that benefit of exemption notification will not apply to such goods. It is pertinent to note that the interpretation given in Dhiren Chemicals case was reiterated by the Hon'ble Apex Court in the case of Kalyani Packaging Industries Vs. UOI – 2004 (168) ELT 145 (S.C).

5.4 Viewed in this light, we are afraid that the appellants cannot then lay claim to duty exemption under the said notification No. 6/2002 for the impugned products namely IIML and P-II Missile Launcher. The differential duty liability on the clearances of these items made without discharge of proper duty liability thereon will then sustain. Plea of the appellants on this score is therefore dismissed.

5.5 Coming to the classification of launching mechanism etc., assessees themselves have classified the item under 8425 at the outset. They have subsequently sought re-classification of the items under 8705 even in the written submissions submitted during the course of hearing. The appellant seems to be once again claiming CSH 8425. It is thus seen that the appellant themselves are changing their stance on the classification. On the other hand, we find that the adjudicating authority has very cogently analyzed this very aspect in para 16.3 of his order which (page- 34-36 of the appeal paper book) as follows:

“The LM is a mobile machine. As per the explanatory notes to CSH No. 8426, the heading cover self – propelled machine in



which the propelling base, the operating controls, the working tolls and their actuating equipment are specifically designed for fitting together to form an integral mechanical unit and it would apply to a propelling base resembling a tractor, but specially designed, constructed or reinforced to form an integral part of a machine. As I find that the very name, "Re-engineered Bridge Vehicle" suggests that it is specially designed for the Bridge Laying Launching Mechanism and the same acted as a propelling base which has been classified as "Tractor". Further the said vehicles manufactured by BEML and other components manufactured by LTM (BU) have been manufactured to the design supplied by the buyer of the product and all the said items are fitted together to form an integrated mechanical unit which is clearly covered under para-2 of clause (b) of notes under 8425.

We find ourselves in agreement with these conclusions and hence no infirmity can be faulted in the impugned order on this score.

5.6 Coming to inclusion of money value of free receipt materials of chassis/vehicles, design and drawing of engineering charges, it is seen that the appellant has made contrary contentions. In page-8 of the grounds of appeal, they have merely argued that the adjudicating authority was wrong in adding 2% of contract value towards technical charges, that no engineering product can be manufactured without goods drawings and technical specifications; and that 2% is un-arbitrary and unwarranted. However, appellants have not given any reasoning or counter evidence to substantiate this ground. We find that even during the hearing, this aspect has not been raised by the Id. Advocate. It is seen that the appellants have been following different practices for different products. In



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respect of some earlier clearance and supply of Missile Launcher, they had included the value of chassis, however, in respect of clearances to BDL they have not done so. The law is very clear that when design and drawings are intrinsically tied to the emergence of the final product and without which the intended goods cannot be conceived or manufactured, the intrinsic value of such design and drawing charges will necessarily be required to be added for the purpose of determining assessable value of the goods that have emerged neutralizing the same.

5.7 Viewed in this light, we do not find any infirmity in the finding of the adjudicating authority in para-17 of the impugned order that value of chassis/vehicles and design and drawing charges, since amounting to additional consideration, their value will have to be included in the assessable value of the products cleared as a one single unit.

5.8 Coming to the contention of the appellants on limitation, we are unable to find any merit in the contention of the appellants that non-inclusion of value of chassis cannot be considered to hold that the appellants have knowingly or willfully suppressed the value. Appellants are definitely not a neophyte in the field of central excise law and procedure. The fact that they are manufacturing such high value items for launch of missile/defense sector etc., will necessarily cast an additional responsibility on the appellants to ensure their compliance to all procedural requirements including correct discharge of central excise duty liability. The adjudicating



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authority has therefore correctly held in para-18 of the impugned order that proviso to Section 11A of the Act rightly applicable to demand differential duty and consequent penalty under Section 11AC and penalty under Rule 25 ibid is imposable. The plea of the assessee that the goods were supplied for defence purposes does not absolve the unit from the charges of suppression. This intention of appellant is therefore devoid of merit.

6. In the event, we do not find any merit in the appeal filed by the appellant for which reason, the same is dismissed.

(Order pronounced in the Open Court on 14-07-2017)



(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)



(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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