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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2619/2005,3017/2005 - EX[DB] Date **12/07/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E.INDORE M.P.
P.B.NO-10,MANIK BAGH PALACE INDORE M.P.

C.C.E.INDORE M.P. Appellant

Vs

M/S EICHER MOTORS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.602-603/ 2011 EX[DB]** dated 08-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S EICHER MOTORS LTD.
PLOT NO-102,SECTOR-1
INDUSTRIAL AREA PITHAMPUR
M.P.

2. Adv. / Consult SH. V. L. KUMARAN, ADV.,
B-6/10, S.J. ENCLAVE,
N. DELHI-29

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.
15. M/S BHAGIRATH COACH & METAL FABRICATOR P.LTD.
PLOT NO-202 SECTOR-I,INDUSTRIAL AREAM PITHAMPUR

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 2619 & 3017/2005- Ex(BR)

[Arising out of Order-in-Original No. 30/COMMR/CEX/IND/2004 dated 24.6.2004 passed by the Commissioner of Central Excise & Customs, Indore]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Excise Appeal No. 2619 /2005- Ex(BR)

Commissioner of Central Excise. Indore — Appellants

Vs.

M/s. Eicher Motors Ltd. — Respondent

Excise Appeal No. 3017/2005- Ex(BR)

Commissioner of Central Excise. Indore — Appellants

Vs.

M/s. Bhagirath Coach & Metal Fabricators Ltd. — Respondent

Appearance:
Shri B.K. Singh, Jt.CDR and Shri Sunil Kumar, DR for the Appellants
Shri V. Lakshmi Kumaran, Advocate for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 30.6.2011
Date of decision : 8.7.2011

FINAL **ORAL ORDER NO.** 602-603/2011-EX

Per M. Veeraiyan (for the Bench):

Both these appeals are by the Department against the order of the Commissioner No. 30/COMMR/CEX/IND/2004 dated 24.6.2004 by which the Commissioner dropped proceedings initiated against both the respondents vide show cause notice dated 25.3.2004.

2. Heard both sides extensively.

3. The relevant fact, in brief, are as follows:

a) Eicher Motors Ltd., (hereinafter referred to as respondent 1) is a manufacturer of motor vehicle chassis and motor vehicles falling under Chapter 8706, 87.02 and 87.04. They were, during the relevant period availing Cenvat credit of duty paid on inputs / capital goods in terms of Rule 3 of Cenvat Credit Rules, 2002. Respondent 1 was sending motor vehicle chassis and motor vehicle chassis fitted with cabin falling under sub heading No. 8706.42 for the purpose of fabrication and mounting of body to M/s. Bhagirath Coach and Metal Fabricators Pvt. Ltd. (herein after referred to as respondent 2).

b) The motor vehicle chassis falling under sub heading No. 8706.29 / 8706.42 attract BED of 16% of ad valoram + Rs.10,000/- per chassis. The specific component of basic excise duty of Rs.10,000/- per chassis was imposed with effect from 1.3.2003. However, the body built vehicle was subject to BED of 16% only without the specific BED component of Rs.10,000/-.

c) Prior to 1.3.2003, respondent 1 used to clear the motor vehicle chassis on payment of Central Excise duty to respondent No.2 for fabricating motor vehicle body on such duty paid chassis. Without availing cenvat credit of duty paid on the chassis, the respondent 2 was paying Central Excise duty on the value of body by raising invoice only for the value of body so built by them as per the Notification No. 6/2002 CE dated 1.3.2003 read with condition No. 53.

d) Consequent to introduction of specific component of basic excise duty of Rs.10,000/- per chassis with effect from 1.3.2003, the respondent 1 cleared motor vehicle chassis and other materials to respondent 2 under Rule 4(5) (a) of Cenvat Credit Rules, 2002 for carrying out the fabrication and mounting the body on the chassis. Respondent 2, after fabrication and mounting the body, returned the body built vehicle to respondent 1 under the delivery challans after raising the bill for labour charges only.

e) The respondent 1 cleared the body built vehicle after receiving from the respondent 1 on payment of Basic excise duty of 16% on the enhanced value including the body building charges.

f) Show cause notice dated 25.3.2004 was issued alleging that the clearance of motor vehicle chassis which is a final product falling under sub heading 8706.42 in terms of Rule 4(5)(a) of Cenvat Credit Rules is irregular and the same has been resorted to deliberately to avoid payment specific BED component of Rs.10000/- per chassis imposed with effect from 1.3.2003. As the respondent 1 has cleared 8315 number of chassis during the period from March, 2003 to December 2003, the show cause notice proposed demand of duty of Rs. 8,31,50,000/- from respondent No. 1 and proposed imposition of penalties under Rule 13 of Cenvat Credit Rules, 2002 and Rule 25 of Central Excise Rules, 2002. Show cause notice also proposed imposition of penalties on respondent 2 under Rule 13 of Cenvat Credit Rules, 2002 and under Rule 26 of Central Excise Rules, 2002.

g) Commissioner, after considering the reply given by the respondents, dropped the proceedings initiated under show cause notice and hence the department is in appeal.

4.1 Learned DR for the department submits that motor vehicle chassis has been assembled by the respondent 1 using hundreds of parts and components and sub assemblies and the same is a final product in the hands of respondent 1. Clearance of such chassis with or without a cabin to the respondent 2 can by no stretch of imagination be treated as removal of inputs or partially processed inputs by respondents 1 in terms of Rule 4(5)(a) of the Cenvat Credit Rules.

4.2 The chassis cleared by the respondent 1 for body building has undergone manufacturing process and identifiable final product has emerged and the same were marketable. Infact, prior to 1.3.2003, the respondent had been clearing such chassis only on payment of duty. Such assembled chassis is clearly a final product and stock in trade as far as the respondent 1 is concerned. The chassis cleared by the respondent cannot be considered either as an input or partially processed input as far as the respondent 1 is concerned. The said chassis can be considered as an input only in the hands of body builders.

4.3 Rule 4(5)(a) of the Cenvat Credit Rules only permits clearance of any inputs and not combination of inputs especially after the same have been assembled into a recognised final product.

4.4 As a final product in the hands of respondent 1, the same should have been cleared on payment of duty as provided under Rule 4 of Central Excise Rules 2002 and after preparing excise invoices. Therefore, such clearances are in violation of the provisions of Central Excise Rules. Further, the respondents were aware that the chassis was a final product and still followed dubious methods to evade payment of specific component of BED.

4.5 Learned DR was asked a specific query as to why only specific component of BED stand demanded without the ad valoram component when the department was of the view that clearance of chassis under Rule 4(5)(a) was not permissible and the same ought to have been cleared only on payment of duty in terms of Rule 4 of Central Excise Rules, he submits that perhaps the same has been done in view of the respondent 1 paying 16% on the body built vehicle after receipt of the same from the respondent 2.

4.6 Even if the chassis is treated as semi finished goods, the same being excisable goods resulting from the process of manufacture, requires to be cleared only on payment of duty by respondent 1 and the same could be treated as inputs only in the hands of respondent 2.

5.1 Learned Advocate strongly supports the order of the Commissioner.

5.2 The final product, as far as the respondent 1 is concerned, is the body built vehicle. In the light of this fact, the chassis sent by them for body building has to be treated only as semi finished goods or partially processed inputs. Erstwhile Rule 56 B of the Central Excise Rules 1944 provided for clearance of such semi finished goods without payment of duty for the purpose of further processing and completing the manufacture and to pay duty on the higher value after the processing was over. This took into account "the later the better principle" which enabled charging duty on the value addition involved in completing the processing before marketing. Rule 56B was withdrawn by the Board (as mentioned in Circular No. 28/87 dated 1.7.87), on the ground that

> "commodities availing of modvat will then have to be cleared even in a semi finished stage on payment of duty or alternatively provision of 57F may be availed of".

The Rule 4(5)(a) of Cenvat Credit Rules is actually a successor to erstwhile Rule 57F. Therefore, the chassis should be treated as partially processed inputs or semi-finished goods eligible for clearance in terms of Rule 4(5)(a) of Cenvat Credit Rules. In this regard, he relies on the decision of Tribunal in the case of Eveready Industries Ltd. vs. CCE, Hyderabad reported in 2005(186) ELT 570 by which carbon electrodes manufactured using inputs on which modvat credit was availed was held permissible to be removed under Rule 57F(4). He also relies on the decision of the Tribunal in the case of Commissioner of Central Excise, Indore vs. Gajra Gears Ltd. reported in 2003 (152) ELT 367 by which tools manufactured using alloy steel bars were permitted to be cleared under Rule 57F(4).

5.3 Learned Advocate submits that the respondent 1 cleared chassis and other parts and components on which credit has been taken in terms of Rule 4 (5)(a) of the Cenvat Credit Rules. Respondent 1 also gave undertaking to the Asstt. Commissioner in-charge of the second respondent, undertaking to pay the duty involved on the final product and as a result the respondent 2 was permitted to avail the benefit of notification No. 214/86 CE dated 15.4.1986 and return the body built vehicle without payment of duty to respondent 1.

5.4 The procedure adopted in any case is not against the interest of revenue, learned Advocate submits. At chassis stage the basic excise duty leviable is 16% ad valoram + Rs. 10,000/- specific per chassis. On body built vehicle the Basic duty payable is only 16% which is on a higher value resulting in payment of higher amount of duty. He illustrated the same with the following examples,

(a) Chassis No. 17FC 30996221 with a value of Rs. 3,60,525/- was cleared on 13.9.2003 and the duty payable according to the Department is Rs. 57,684/- and the body built vehicle was received back and sold on 15.9.2003 for a value of Rs. 4,87,116/- on payment of basic duty of Rs.77,939/-.

(b) Chassis No. 17 FC 30996070 was cleared on 11.9.03 with assessable of value Rs. 3,60,525/-, the duty payable according to the department is Rs. 67,684/- whereas body built vehicle was cleared on 30.9.03 paying basic excise duty amounting to Rs.76,569/- on an assessable value of 4,78,554/-.

(c) Chassis No. 40LC 30900022 was cleared on 22.9.03 with an assessable value of Rs. 6,32,656/-, duty payable according to the department is Rs. 1,11,225/- whereas the duty paid on 22.3.03 on the body built vehicle was Rs.1,25,636/- on an assessable value of Rs. 7,85,227/-.

5.5 He also submits that the consequence of holding that clearance of chassis cannot be made under Rule 4 (5) (a) is that Credit involved on the inputs required to be reversed and not payment of excise duty.

6.1 We have carefully considered the submissions from both sides and perused the records. We find that the respondent 1 has, in addition to chassis, cleared other parts and components on which they have taken credit under Rule 4 (5) (a) , without reversing the credit to respondent 2 to enable the body building activities. There is no dispute raised regarding removal of other inputs and components under Rule 4 (5) (a). The dispute relates only to removal of chassis under Rule 4 (5) (a) of the Cenvat Credit Rules. The department's contention is that chassis being a fully manufactured and marketable product and specifically classifiable under Tariff, the clearance of the same should have been only on payment of duty in terms of Rule 4 of the Central Excise Rules and the same could be treated as inputs only at the hands of the respondent 2. If this was the view of the Department, the Department should not have allowed the respondent No.2 to operate under Notification No. 214/86 and send back the body built vehicle without payment of duty to respondent 1. It is to be noted that, though respondent 2 was also issued notice, no demand of duty was proposed on the respondent 2 in the show cause notice. Having issued the show cause notice holding that the chassis cleared by the respondent 1 should have paid duty at the time and place of removal of chassis, there is a clear contradiction in not demanding the full duty in terms of Rule 4 of the Central Excise Rules . There is no valid reason apparent in not demanding 16% BED at the time of clearance of the chassis No.1. Undoubtedly, the duty at 16% would have been paid only at the lower value applicable to chassis. The department has taken 16% duty paid at the enhanced value of the body built vehicle towards the duty at 16% payable at the time of clearance of chassis by respondent 1 for the purpose of body building. If the duty paid later on the vehicle after body was built could be taken as duty payable at time of clearance in respect of BED ad valoram, there is no reason why the same treatment cannot be extended for the duty payable as specific component. From the examples given by the learned Advocate, it is seen that the duty paid after body building at 16% is clearly higher than the Basic duty including specific component of Rs.10,000/- per chassis payable at the time of clearance of chassis. Learned Advocate submits that this is the position in respect of all the cases.

6.2 We find that no objection has been raised in respect of certain parts and components sent by respondent 1 to respondent 2 under Rule 4(5)(a) of the Cenvat Credit Rules for the purpose of body building. The body building is necessarily on the chassis which has been sent.

6.3 To a specific query as to whether respondent 2 would be eligible for cenvat credit of basic excise duty ad valoram + BED specific in case the clearance of chassis was on payment of duty by respondent No. 1, both sides agree that respondent No.2 could have taken the credit. Since the duty paid on the body built vehicle is clearly on the higher side than the duty payable on the chassis as per the proposal by the department, there is no evasion of duty involved. On the other hand, from the examples shown to us, we find that the respondent 1 has undisputedly paid higher amount of excise duty on the body built vehicle.

6.5 The tariff itself provided for differential rates for chassis and body built vehicle. For chassis, a rate of 16% ad valoram plus special BED at the rate of Rs. 10,000/- per chassis has been provided for, whereas for the body built vehicle BED of only 16% without the specific component of BED has been provided apparently taking into account the higher value on which the excise duty is paid on ad valoram basis.

7. From the above, we conclude that the chassis cannot be treated as an input partially processed in terms of Rule 4(5)(a) of the Cenvat Credit Rules. But, we hold that chassis is semi finished goods in the context of body built vehicle which is a final product. Further, we find that the tariff itself prescribing higher rates of duty for chassis by prescribing additionally a specific component of BED for chassis unlike in the case of body built vehicle. We also find that the body built vehicle has been allowed to be removed without payment of duty by respondent 2 (no demand also is raised on the respondent 2) and the same received by respondent 1 and cleared on payment of higher amount of duty. In view of the peculiar facts and circumstances of the case, we do not find any justification to

interfere with the order of the Commissioner in dropping the demand against respondent 1 and in not imposing penalties on the respondents.

8. Appeals by the department are rejected.

(Pronounced in the open Court on 8 .7.2011)

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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