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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/1495/2005 - EX[DB] Date **19/06/2012**

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

To :
C.C.E.JALANDHAR
C.R.BUILING PLOT NO-19,SECTOR-17-C,CHANDIGARH

C.C.E.JALANDHAR Appellant

Vs

M/S SUTLEJ COACH BUILDERS PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/685 2012 EX|DB|** dated 31-5-2012 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 SUTLEJ COACH BUILDERS PVT.LTD.
5TH K.M.STONE KANPURTHALA
ROAD JALANDHAR

2. Adv. / Consult
MR.SUDHIR MALHOTRA, ADVOCATE(NEW)
CHAMBER NO.103, C.K. DAPHTARY LAWYER'S CHAMBERS, SUPREME COURT OF INDIA, BHAGWAN DASS ROAD, NEW DELHI.

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-3
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 (Haryana)
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 31.5.2012

Central Excise Appeal No.1495 of 2005

Arising out of the order in appeal No. 665/CE/Appl/Ldh/04 dated 30.12.2004 passed by Commissioner of Central Excise (Appeals), Ludhiana.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

C.C.E., Jalandhar ... Appellant

Vs.

M/s Sutlej Coach Builders (P) Ltd. .. Respondent
(now known as Sutlej Motors Ltd.)

Present for the appellant : Shri Bharat Bhushan, A.R.,
Present for the respondent : Shri Sudhir Malhotra, Advocate

FINAL Order No. A/685/2012-EX(BR)

Per Justice Ajit Bharihoke (Oral):

Commissioner (Appeals), Central Excise, Jalandhar has preferred this appeal against the order in appeal No. 665/CE/Appl/Ldh/04 dated 30.12.2004 passed by the Commissioner (Appeals) Ludhiana whereby he set aside the duty demand of

Rs.16,10.411/- confirmed against the respondent under Section 11A of the Central Excise Act, 1944.

2. Briefly putting the facts relevant for disposal of this appeal are that M/s Sutlej Coach Builders (P) Ltd. (now known as Sutlej Motors Ltd.) , Kapurthala Road, Jalandhar is engaged in the manufacture of bodies on the chassis for public transport passenger motor vehicle, ambulance , motor vehicle for transport of goods and special purpose motor vehicle.

2. During the period 1.2.1991 to 24.7.1991, the respondent claimed classification of above said goods under sub-heading No.8702.00, 8704.00 & 8705.00 and paid duty accordingly.

3. The Department was of the view that the aforesaid manufacture of bodies of vehicles on chassis supplied by the customers were chargeable to excise duty under sub-heading No.8707.00. Accordingly, show cause notice dated 30.8.1991 was issued to the respondent raising duty demand of Rs.16,10,411/- on the ground that the bodies on chassis built by the respondent were classifiable under sub-heading 8707.00 whereas the respondent cleared the said goods under sub-heading 8702.00 to 8705.00.

4. The jurisdictional Assistant Commissioner vide order in original dated 11.11.2003 held that as per Notification No.27/02-CE(NT) dated 23.7.02 issued under Section 11AC duty payable in excess was not required to be paid in respect of bodies which were cleared under sub-headings 8702.00, 8704.00 & 8705.00 during the period with effect from 1.5.91 ending July, 1991. As such, the jurisdictional Commissioner confirmed the differential excise duty to the extent of Rs.16,10,411/- against the respondent in respect of the period with effect from Feb. 1991 to July, 1991.

5. Commissioner (Appeals) vide impugned order has set aside the order in original on the ground that the respondent had cleared the goods as per classification approved by the competent authority and correctly discharged

the duty liability under sub-heading 8702.00 to 8705.00 during the period in question.

6. Learned Bharat Bhushan, authorized representative of the Department has pleaded that the finding of the Commissioner (Appeals) classifying the manufacture of bodies of transport vehicle by the respondent on the chassis supplied by the customers under chapter heading 8702 to 8705 is not sustainable in law as it is in direct conflict with the judgment of Punjab & Haryana High court in the case of Darshan Singh Pavitar Singh vs. UOI - 1998 (34) ELT 631 (P & H) wherein it was held that building of bodies of bus and trucks on the chassis supplied by the customers does not amount to manufacture of motor vehicles and is covered under heading 87.07 of the Central Excise Act, 1985. He submits that the issue regarding classification of fabrication of bodies of the transport vehicles have been set at rest by the Supreme Court in the case of C.C.E. vs. Ram Body Builders - 1997 (94) ELT 442 (SC) wherein the Supreme Court upheld the view of Punjab & Haryana High Court that fabrication of bodies on chassis supplied by the customer would fall within chapter heading 87.07. Learned A.R. submits that in view of the settled position in law, the impugned order is liable to be set aside.

7. Shri Sudhir Malhotra, learned Advocate for the respondent has argued in respect of the impugned order. He pleaded that the respondents are engaged in fabrication of bodies on chassis of public transport motor vehicles and they were discharging their excise duty liability. As such, bodies under sub-heading 87.02 of Central Excise Tariff Act, 1985 in terms of approved classification as also the Board instruction N F.No.B-19/4/86-TRU (PT) dated 1.7.86 wherein it has been clarified that the body built on motor vehicle chassis provided by the customers are not liable to duty under heading No.87.07 and the excise duty is leviable on the independent body builders under Chapter Heading No. 8702.00, 8704.00 and 8705.00. Learned Counsel has further contended that as held by the Supreme Court

in the matter of C.C.E., vs. Dhiren Chemical Industries - 2002 (139) ELT 3 (SC) , the Revenue cannot go against its own circular. Learned Counsel has further submitted that admittedly, the respondent was paying excise duty under Classification 87.02, approved by the Assistant Collector and the said approval was not rescinded at any stage. Thus, the payment of excise duty by the respondent as per approved tariff amounts to valid discharge of liability to pay excise duty. For this reason also, the impugned order cannot be faulted. In support of this contention, learned Counsel has also relied upon the judgment of the Supreme Court in the matter of C.C.E., Bombay vs. Giridhara Supply Co. - 1997 (94) ELT 14 (SC).

8. We have considered the rival contention and perused the record. The issue involved in this appeal is regarding classification of the body built or fabricated on the chassis by an independent body builders for the purpose of excise duty. This issue has been settled by the Supreme Court in its various pronouncements. The Supreme Court in the case of C.C.E., vs. Ram Body Builders supra has held that bus/truck body built on chassis supplied by the customers are classifiable under heading 87.07 of the Central Excise Tariff Act, 1985.This judgment was followed by Supreme Court in the matter of Collector vs. Vijay Industries Ltd. - 1999 (113) ELT A 111 (SC). Thus, we find it difficult to sustain the impugned order.

9. Shri Sudhir Malhotra, Advocate contended on behalf of the respondent that in the instant case admittedly, the respondent had cleared the impugned bus bodies fabricated by him on payment of duty as per approved classification list. The said approved classification list was neither reviewed nor revoked by the concerned authority at any given time. As such, in view of the judgment of the Supreme Court in the case of C.C.E., Bombay I vs. Giridhara Supply Co. (supra), the demand for differential excise duty raised by the Department on the basis of classification under sub-heading 8707.00 is not sustainable.

10. In our considered view, the judgment of the Supreme Court relied upon by the respondent is of no avail to him for the reason that the aforesaid judgment in the matter of Giridhara Supply Co. relates to the period comprising of part of 1979 and 1980. Subsequent to the aforesaid judgment, Section 11A of the Central Excise Act, 1944 was amended with effect from 17.11.1981 with retrospective effect which read thus:

> **SECTION 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.** — (1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder, a Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.
>
> Provided that where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect , as if for the words one year, the words ' five years' were substitute

On reading of the above , it is obvious that even if the excise duty has been short paid on the basis of any approval, acceptance or assessment by the department, the aforesaid short levied shall be recoverable from the relevant date.

11. In view of the discussion above and the finding of the Supreme Court in the matter of C.C.E. vs. Ram Body Builders (supra), we are of the view that impugned order of Commissioner (Appeals) is not sustainable. The

impugned order is accordingly set aside and the demand confirmed by the order in original is upheld. The appeal is disposed of in above terms.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/