

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 24.01.2018
Date of pronouncement: 26.02.2018

Ex. Appeal Nos. 50085, 50257-50258 of 2015, 50281 & 50285 of 2016

(Arising out of Order-in-Original No. 77-78, 80-81, 46-47/Commr./C. Ex/IND/2014 dated 23.09.2014, 13.10.2014, 26.11.2015 passed by the Commissioner of Central Excise, Customs & Service Tax, Indore).

M/s VE Commercial Vehicles Ltd. Appellant
Nitin Nagda
M/s Man Trucks India Pvt. Limited
M/s V.E. Commercial Vehicles Ltd.
Nitin Nagda

Vs.

CCE &ST, Indore Respondent

Appearance:

Sh. Amit Jain, Advocate for the appellant
Sh. S. K. Bhatnagar, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 50795 – 50799/2018

Per: **V. Padmanabhan**:

The entire set of appeals have been filed against the following orders
in original.

- i) No. 80-81/COMMR/CEX/IND/2014 dated 13.10.2014,
- ii) 46-47/COMMR/IND/CEX/2015 dt. 26.11.2015 and
- iii) 77-78/Commr/C. Ex./IND/2014 dt. 23.09.2014

2. In respect of M/s VE Commercial Vehicle Limited the period of dispute is April 2008 to October, 2013 and November, 2013 to June, 2015. In respect of the other assessee M/s Man Trucks India Pvt. Limited, the dispute covers the period April 2008 to October, 2013. Appeals have been filed not only by the two manufacturers –assessee but also by Sh. Nitin Nagda, General Manager of M/s V.E. Commercial Vehicles Limited. Since this is a common dispute, all the appeals are being disposed of by this common order.

3. All the appellants are represented by Sh. Amit Jain, Id. Advocate for the appellant and Sh. M. R. Sharma, Id. AR appeared for the Revenue.

4. Both M/s V.E. Commercial Vehicles Limited (VECVL) and M/s Man Trucks India Pvt. Limited (MFTPL) are engaged in the manufacture of heavy commercial vehicles for transport of goods and chassis of such motor vehicle fall under Central Excise Tariff Heading 8704 and 8706 respectively of the Central Excise Tariff. The vehicles manufactured by the appellants are meant for transport of goods and have a tipping function which can be used to unload material at the site. Both VECVL as well as MFTPL classified the various models of vehicles manufactured by them under Central Excise Tariff Heading 87042390 as “tipper trucks” and their chassis under CETH 870660042. The department was of the view that the motor vehicles as well as the chassis manufactured by the appellants are not trucks designed for **highway use, but were “dumpers” designed for off highway use.** Such vehicles were classified, as per Revenue, under 870410 as well as chassis

under 87060043. The rate of excise duty on dumpers and tipper trucks were not different. In respect of chassis also the rates of duty were the same. However, there was difference in the rate of duty leviable under National Calamity Contingent Duty (NCCD) leviable under Section 136 of the Finance Act, 2001. In respect of complete vehicles – dumpers as well as tipper – NCCD was exempted under Notification No. 21/2005-CE dt. 13.05.2005. But NCCD was payable on the dumper chassis but not payable on tipper chassis. The department, after conclusion of investigation, and issue of show cause notice, vide the impugned orders, ordered for classification of the commercial vehicle and their chassis as dumpers and dumper chassis respectively. This resulted in the demand of NCCD on the quantity of chassis cleared by the two manufacturers during the disputed period. Penalties were also imposed on the assessee. In respect of VECVL, penalty was also imposed on Sh. Nitin Nagda, General Manager. Aggrieved by the impugned orders, the present appeals have been filed.

5. The relevant tariff heading 8704 is as under for ready reference:

8704	Motor vehicles for the transport of goods		
8704 10	-Dumpers designed for off-highway use:		
8704 10 10	---With net weight (excluding pay-load) exceeding 8 tonnes and maximum pay-load capacity not less than 10 tonnes	u	10%
8704 10 90	---Others.....	u	22%
	-Others, with compression-ignition internal combustion piston engine (diesel or semi-diesel):		
8704 21	--g.v.w. not exceeding 5 tonnes:		

8704 21 10	---Refrigerated.....	u	10%
8704 21 20	---Three-wheeled motor vehicles	u	10%
8704 21 90	---Other.....	u	10%
8704 22	---g.v.w. exceeding 5 tonnes but not exceeding 20 tonnes:		
	---Lorries and trucks:		
8704 22 11	----Refrigerated.....	u	10%
8704 22 19	----Other	u	10%
8704 22 90	---Other.....	u	10%

6. The case of the Department is based on the following:
- i) Reference has been made to the various catalogue / product literature / technical specifications on the website regarding various features of the motor vehicles. On the basis of such literature it has been concluded that the vehicles manufactured have been described wrongly as dipper but they are dumpers.

ii) Reference has been made to HSN explanatory notes pertaining to the heading 8704.
7. Ld. Advocate argued the case mainly as follows:
- i) The motor vehicle manufactured by the appellant are tipper trucks designed for road / on-highway used and cannot be called dumper meant for off-highway use.

ii) The CETH 8704 10 claimed by the Department is not applicable to the vehicles manufactured since 8704 10 will apply only to vehicles designed for off-highway use.

iii) He submitted a copy of the product leaflets for the vehicles manufactured by VECVL and has drawn our attention to the various

specifications. He particularly pointed out the facts that such vehicles are designed with very high pick up and capable of maximum speeds of 72 to 85 km. per hour which are possible only on road/ highways. He also drew our attention to the type of tyres used in such vehicles and pointed out that such tyres are those which are capable of running on roads.

iv) He also submitted a catalogue for (Carmics dumper) which is not manufactured by the appellant but is representative of what a dumper is. He pointed out that such vehicle are capable of achieving only maximum speed 20 miles per hour and are fitted with off-road tyres.

v) He read out the relevant heading 870410 and explained that the vehicles manufactured are not in the nature of on road vehicles and cannot be classified as proposed by the Department.

8. Ld. AR appearing for the Department justified the impugned order. He submitted that the description “tipper” is not found in the tariff. Tipper and dumper are used interchangeably. The Automobile & Automotive Research Association of India (ARAI) has given their opinion which has been relied upon in the impugned order in which it has been opined that the vehicles manufactured by the appellants are construction vehicles and have on road as well as off highway capabilities. Consequently, the classification of vehicles under 8704 10 as off-road vehicle is correct and may be upheld.

9. In the appeal filed by MFTPL an additional issue is for decision. During the period June 2008 till February, 2011 MFTPL manufactured and exported chassis fitted with engine, cabin and parts of vehicles. It was noticed by the Department that the duty payable at the relevant time on such

vehicles was 10% plus Rs. 10,000/- per vehicle but the MFTPL was found only to have paid the duty @ 10% resulting in short payment of duty. It is further on record that the duty paid on the exported goods were refunded to the appellant under a claim of rebate. But the adjudicating authority has demanded the differential duty alongwith interest and penalties.

The submission of the appellant is that such demand is not justified since it is a revenue neutral situation as any differential duty paid would be available to them by way of rebate.

10 We have heard both sides and perused the appeal record. The dispute in the present case is with reference to the classification of the motor vehicles as well as chassis fitted with engine which is also cleared at times by the appellant. The motor vehicles have been described as “tipper” which have been claimed to be meant for off-road use and hence classifiable under 8704 2390. However, Revenue of the view that such vehicles are meant for off-road use and hence are to be described as “dumpers” for off-road use which are classifiable under 870410. The corresponding classifications for chassis fitted with engine which fall under 8706 will also change. The impact, as far as duty payment is concerned is there only in respect of chassis cleared with engine. For the full vehicles there is no differential duty between the two competing classifications. The NCCD payable also stands fully exempted for all fully manufactured vehicles. However, in respect of chassis fitted with engines, NCCD is payable in respect of chassis for dumpers whereas the same is not payable in respect of other chassis.

11. The Central Excise Tariff is based on the HSN Harmonised System Nomenclature. The HSN explanatory notes can serve as a useful guide in deciding the classification of the goods under the First Schedule to the Central Excise Tariff Act, 1985. The Hon'ble Supreme Court in the case of **CCE vs. Woodcraft Pvt. Ltd. -1995 AIR SCW 1063 (SC)**, has observed that HSN is a safe guide for ascertaining true meaning of any expression used in the Act unless there is an expressed different intention indicated in the tariff itself.

12. The HSN explanatory notes in respect of 8704 10 which covers dumper designed for off-highway use are reproduced below for ready reference:

"Subheading Explanatory Notes.

Subheading 8704.10

These dumpers can generally be distinguished from other vehicles for the transport of goods (in particular, tipping lorries (trucks) by the following characteristics:

- the dumper body is made of very strong steel sheets; its front part is extended over the driver's cab to protect the cab; the whole or part of the floor slopes upwards towards the rear;*
- in some cases the driver's cab is half-width only;*
- lack of axle suspension;*
- high braking capacity;*
- limited speed and area of operation;*
- special earth-moving tyres;*
- because of their sturdy construction the tare weight/ payload ratio does not exceed 1: 1.6;*

- *the body may be heated by exhaust gases to prevent materials from sticking or freezing.*

It should be noted, however, that certain dumpers are specially designed for working in mines or tunnels, for example, those with a bottom-opening body. These have some of the characteristics mentioned above, but do not have a cab or an extended protective from part of the body”.

13. The features highlighted by the appellant include limited speed as well as special earthmoving tyres. When we look at the specifications of the trucks manufactured by both the appellants, we note that such trucks are capable of maximum speed in the range of 70 to 85 km per hr. The type of wheels/ tyres which are used in the appellant's vehicles are also of the type used on highways and not off-road tyres.

14. After perusing the catalogue of the vehicle, it is fairly obvious that such vehicles manufactured by the appellant are meant to carry loads and capable of off-loading but the same are not machines exclusively meant for off-road use.

We have also perused the clarification obtained by the Revenue from the ARAI, Pune. Such clarification has been given in the light of the Motor Vehicle Act and Central Motor Vehicle Rules. The clarification mentioned that the classification under Central Excise Tariff needs to be made after perusing the basic technical specifications of the vehicles.

15. The adjudicating authority has also referred to the definition of capital goods as per Rule 2(a)(c) of Cenvat Credit Rules, 2004. But, we note that the classification under the schedule to the Central Excise Tariff Act is not to be

made on the basis of any reference in the Cenvat Credit Rules hence, such reference is misplaced.

16. In the light of the HSN explanatory notes and the various tariff headings and sub-headings, we are of the view that the motor vehicles manufactured by the appellants do not fall in the category of dumpers designed for off-highway use under 8704 10. They are classifiable, as claimed by the appellant under 8704 2390 as tipper trucks likewise the classification of chassis also will fall under 87060042 and not under 87060043 as claimed by the Department.

17. In the light of the above discussions, we find no justification in the demand for differential duty of NCCD made by the adjudicating authority in the impugned orders. The same is set aside.

18. The second issue in respect of MFTPL is that during the period June, 2008 to February, 2011, the MFTPL has exported chassis fitted with engines but they paid Excise duty only @ 10% under claim of rebate whereas the applicable Excise duty during the relevant time was 10% plus specific Excise duty @ Rs.10,000/- per chassis. The adjudicating authority has confirmed the demand of differential duty alongwith interest and penalties. However, the appellant has claimed that any differential duty, if paid, will also be refundable to them as much as goods have been exported.

There is no dispute that the goods have been exported during the period June, 2008 to February, 2011. Admittedly, there is a short payment of duty by the appellant. However, the fact remains that if the differential duty

is paid by the appellant the same will also be available to them as rebate since the goods have been exported. Consequently, we agree with the contention of the appellant that this leads to revenue neutral situation. Consequently, there is no justification for demand of duty which is set aside alongwith the interest and penalties.

19. In view of the above discussions, all the impugned orders are set aside and all appeals are allowed.

(Pronounced on 26.02.2018).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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