CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 50446-50447 & 50559 of 2017

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-486-16-17 dated 07.12.2016 passed by the Commissioner (Appeals-I) Customs, Central Excise & Service Tax, Bhopal)

DATE OF HEARING : 28.03.2018
DATE OF DECISION : 28.03.2018

M/s Man Trucks India Pvt. Ltd. ….. **Appellants**
(Rep. by Sh. Dhruv Tiwari, Adv.)

VERSUS

CCE, Indore .… **Respondent**
(Rep by Sh. S.K. Bansal, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51126-51128/2018

PER JUSTICE (Dr.) SATISH CHANDRA :

All these appeals are filed by the assessee-Appellants against the Order-in-Appeal No. BHO-EXCUS-001-APP-486-16-17 dated 07.12.2016 passed by the Commissioner (Appeals-I) Customs, Central Excise & Service Tax, Bhopal. The period in dispute is November 2013 to December, 2015.

2. The brief facts of the case are that, during the period under consideration, the asseessee-Appellants were engaged in the manufacture of heavy commercial vehicles for the transport of goods and chassis of motor vehicles which attracts the Central Excise duty under the Central Excise Tariff Act, 1085. The heavy commercial vehicles of the assessee-Appellants are meant to trudge long distances for transportation of goods, such as, sand, coal, ore and metals to the construction sites and also from mines to far off locations. These vehicles also have a tripping function, which is used to unload the material carried in the vehicles at the site by vertically tilting the carriage portion of the truck.

3. The dispute in the present appeals is that, the Department was of the view that the motor vehicles as well as the chassis manufactured by the assessee-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, issue of show cause

notice, vide the impugned order 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-Appellants. Being aggrieved, the assessee-Appellants have filed the present appeals.

4. With this background, we have heard Shri Dhruv Tiwari, learned counsel for the assessee-Appellants and Shri S.K. Bansal, learned DR for the Revenue.

5. After hearing both sides and on perusal of the material available on record, we find that an identical issue has come up for consideration before the Tribunal in the assessee-Appellants own case [**Man Trucks India Pvt. Ltd. & Ors. vs CCE&ST, Indore,** Final Order Nos. 50795-50799/2018 dated 26.02.2018**],** wherein it was observed that :

> **"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 offroad 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 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 maid 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."

6. By following our earlier order (supra)**,** we set aside the impugned order and allow the appeals.

7. In the result, all the appeals filed by the assessee-Appellants are allowed.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(V. PADMANABHAN)
MEMBER (TECHNICAL)

Golay