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

Excise Appeal No. 50584 of 2017

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001- AP-498-16-17 dated 15/16.12.2016, passed by Commissioner (Appeals) Customs, Central Excise and Service Tax, Bhopal]

M/s. Rivoltech Auto Engineering P. Ltd. Plot No. 51-A, Industrial Area, Sector III, Pitampur. — **Appellants**

Vs.

Commissioner of Central Excise Indore — **Respondent**

Appearance:

Shri Manish Saharan, Advocate for the Appellants
Shri R K Mishra, AR for the Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. C L Mahar, Member (Technical)

Date of Hearing/ Decision: 12.10. 2018

FINAL ORDER No. 53579 /2018

Per: C L Mahar:

The appellants are engaged in the manufacture of motor vehicle parts and tractors parts falling under Chapter 87 of the Schedule to the Central Excise Tariff Act, 1985 and attracting *ad valoram* rate of duty.

As per the provisions of section 9(1) of Industries (Development and Regulation) Act 1951 prescribe Cess on certain industries which includes the tractor.

2. It has been the contention of the Department that parts and components manufactured by the appellant for tractor are subject to levy of Industries (Development and Regulation) Act Cess as provided under section 9(1) of the said Act. And since, the appellant have failed to pay Cess on the clearance of tractor parts and components manufactured and cleared by them, a show cause notice dated 16.12.2014 came to be issued which have been adjudicated vide Order-in-Original No. 334/AC/Dem/CEx/Pith/2015 dated 12/13.3.2015 wherein the Cess amounting to Rs.2,03,888/- for the period 2009-2010 to 2013-2014 has been confirmed by invoking the extended time proviso under section 11 A of the Central Excise Act, 1944 along with the interest. A penalty of equal amount has also been imposed on the appellant under Rule 25 of the Central Excise Rules, 2002. The appellant have approached the learned Commissioner (Appeals) against the above mentioned impugned order in appeal. However, vide his order dated 15.12.2016, the learned Commissioner (Appeals) has rejected the appeal of the appellant. The appellants are before us against the above impugned order in appeal dated 15.12.2016.

3. We have heard both the sides and also have perused the record of the appeal. The issue is no longer res integra as similar issue has already been decided by the co-ordinate Bench of this Tribunal in the case of M/s. Gatiman Auto Pvt. Ltd. vs. CCE & CGST, Indore [Final Order No. 53087-53089/2018] dated 09.10.2018. The relevant extract of the above decision are reproduced hereinbelow:

> ***"2. Brief facts of the case are that the appellant was issued show cause notice dated 01.07.2014 wherein it was alleged that the appellant has cleared parts of the tractors during the period 2009 to March 2010 and did not pay tractor cess and hence contravened the provisions of Section 9 (1) of the Industrial (Development and Regulation) Act, 1951 read with Ministry of Industry SO No. 55(E) dated 19.01.1993. According to Rule 2 of the Tractor Cess Rules, 1992, the provisions of the Central Excise and Salt Act, 1944 and the Rules made thereunder has been made applicable for the purpose of levy and collection of tractor cess and hence the provisions of Section 11A of the Central Excise Act, 1944 equally applicable in this case. It was alleged that the appellant by not paying the Tractor cess has contravened the provision of Rule 6 of the Central Excise Rules, 2002 read with Rule 3 of the Tractor Cess Rules, 1992 with intention to evade tax and therefore extended period of limitation was also applied as per Central Excise Act (supra).***
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> ***3. Ld. Advocate appearing on behalf of the appellant submitted that on perusal of the notification regarding***

imposition of tractors cess, it is evident that cess is leviable on tractor and not on the parts, components and accessories thereof to tractor cess as the Government of India has not notified the same by the independent notification. It is also impressed upon by the ld. Advocate that the tractor cess is applicable to the tractors only and is not leviable to parts and accessories thereof. In support of the argument, he has relied upon the case laws in the case of CCE, Jamshedpur vs. Tata Motors Ltd. -2016 (336) ELT 208 regarding the imposition of automobile cess alongwith the other decision namely S. M. Kannappa Automobiles P. Ltd. vs. CCE, Bangalore – 2008 (224) ELT 467 (Tri. Bang.). He also referred to Circular No. 41/88, dated 31.08.1988 issued by the Ministry of Finance, New Delhi regarding levy of cess on automobiles consequent upon the introduction of new Central Excise Tariff, 1985. It has been clarified in the impugned circular that –

> ***"The matter has been referred to Administrative Ministry who have intimated that the intention behind the notification levying the cess is to realise such levy from the vehicle manufacturers and not from the body builders. Further, the provision of IDR Act, 1951, under which the notification levying the cess has been issued, provides that the rate of cess shall not in any case exceed two annas per cent of the value of the goods. If the cess is levied in line with the Excise Tariff Act, 1985, this would exceed the maximum rate of 1/8th per cent prescribed in the IDR Act. Therefore, the cess may continue to be levied and collected on the vehicles in the condition they are cleared from the premises of the manufacturers and no cess should be levied again in case the body on the chassis is built by an independent body builder on the cess paid chassis".***

3.1 It was therefore argued by the ld. Advocate that the ratio laid down in the aforesaid judgments are mutatis-mutandis applicable for imposition of tractor cess on the parts, components and accessories of tractor is to be treated at par with that of automobile cess and the levy on the component and part of the automobile. He further stated that Commissioner (Appeals) has not considered the relevant provision of the IRDA Act regarding the imposition of cess on the tractor notifications in proper perspective and not decided the issue regarding the application thereof on the parts/ components of tractor.

4. On the other hand, ld. AR appearing for the Revenue reiterated the ground contended in the aforesaid order.

5. Heard the parties and perused appeal record.

6. The issue before us is to decided as to whether the tractor cess is leviable on the part and component of the tractor cleared by the appellant. After going through the case laws cited and circular issued by the Ministry of Finance, it is clear that part and accessories etc. of the tractor cannot be compared with that of the tractor itself. Therefore, the tractor cess is not leviable thereon in terms of Notification (supra). For the aforesaid conclusion, we also draw our support to CBEC Circular (supra) in the case of parts and accessories of the automobile which clearly goes in favour of the appellant. We are conscious of the fact that aforesaid circular is with reference to

automobile cess but the principle enunciated there is squarely applicable in the instant case."

4. Since the facts of the case at hand are similar to one decided in the matter cited in the preceding paragraph, we follow the same and hold that the order in appeal is without any merit and same is set aside. The appeal is thus allowed.

(operative part of the order pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

(C L Mahar)
Member (Technical)

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