

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**REGIONAL BENCH – COURT NO.1**

**Appeal No.E/428/2011**

[Arising out of Order-in-Original No.80/2010/C, dt.22.12.2010, passed by the  
Commissioner of Customs & C.Ex., Nagpur]

**M/s AMCL Machinery Ltd**

Plot No.A/1/1, MIDC Industrial Area,  
Butibori 441 122 (Dist: Nagpur)

**.....Appellant**

VERSUS

**Commissioner of Customs & C.Ex.,**

Telangkhedra Marg,Civil Lines, Post Box No.81,  
Nagpur

**.....Respondent**

**Appearance:**

Shri D.H. Nadkarni, Advocate for the Appellant  
Shri Anil Choudhary, DC (AR) for the Respondent

**CORAM:**

**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**

**HON'BLE MR. SANJEEV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.A/88416/2018**

Date of Hearing: 30.11.2018

Date of Decision: 30.11.2018

**PER: D.M. MISRA**

This appeal is filed against OIO No.80/2010/C, dt.22.12.2010,  
passed by CCE & C, Nagpur.

2. Briefly stated the facts of the case are that the Appellants are engaged in the manufacture of various Machineries and Bulklers falling under CSH 841080 of Central Excise Tariff Act, 1985. Alleging that even though the Appellants are manufacturing bulklers

which are used for carrying cement and fly ash wrongly classifying the same under CSH 87042319 of Central Excise Tariff Act, 1985, availed exemption under Notification No.6/2006-CE,dt.1.3.2006 S.No.39, (Condition No.9) during the period April 2005 to March 2010, Show Cause Notice was issued to them on 06.05.2010, for recovery of duty of Rs.55,57,456/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty.

3. At the outset, the learned Advocate Shri D.H. Nadkarni for the Appellant has submitted that the Appellants are mainly engaged in the fabrication of bulkers which are mounted on duty paid chassis and such vehicles are used for transportation of cement and fly ash. Explaining the activity as alleged in the SCN, the learned Advocate for the Appellant submitted that the Appellants are manufacturing/fabricating two types of bulkers viz. 45 Cubic Mtrs and 30 Cubic Mtrs. In the manufacture of 45 Cubic Mtrs bulkers, they purchased HR coils and cut the same into sheets on job work basis. The job worker, thereafter, fabricates the basic structure of the bulker (known as shell with base) from the HR sheets. Further, after receiving shell with base from the job worker, they installed pneumatic pipeline on the exterior of the shell. Thereafter, installed the tri-assembly on the rear side of the shell. Some other accessories like tail-lamp, safety valve, pressure guage etc installed on the shell. A king pin is welded on the bottom side of the shell which helps the shell to be hooked to the horse (i.e. chassis of the truck). Regarding the manufacturing/fabrication of 30 Cubic Mtrs, the procedure is one and the same except that the tri-axel assembly of tyre is absent and the Pin is not welded at the bottom side of the

shell. On the contrary, the shell is mounted on the chassis and fitted with nut and chassis mounting bolts. It is his contention that 30 Cubic Mtrs bulkers are moulded as chassis mounted bulkers whereas 45 Cubic Mtrs bulkers are classified as semi-trailor type bulkers by the Appellant. It is his contention that the bulkers which are mounted on the chassis used for transportation of the cement and fly ash, correctly classifiable under CSH 87042319 in view of Chapter Note 5 of Chapter 87 of Central Excise Tariff Act, 1985. It is his argument that the allegation of the Revenue that the fabricated shell is classifiable under Chapter 8707 of Central Excise Tariff Act, 1985 is incorrect when the same is read with Chapter Note 5 of Chapter 87. It is his contention that the Appellants merely do not fabricate the shell and supply separately but the shell is mounted on duty paid chassis in their factory premises and what is cleared from the factory premises is complete motor vehicle capable of transporting the cement and fly ash duly registered to ply on Road by R.T.O. Therefore, the findings of the learned Commissioner that the bulkers are classifiable under CSH 8707 of Central Excise Tariff Act, 1985 is incorrect.

4. Further, he has submitted that the Appellants are entitled to the benefit of Notification No.6/2006-CE, dt.1.3.2006 inasmuch as they satisfied the condition of notification by not availing the CENVAT Credit on the inputs used in the fabrication of bulkers and the bulkers are fabricated/manufactured out of the chassis falling under Heading 8706 of Central Excise Tariff Act, 1985. It is his contention that the scope of the expression "manufactured out of

chassis" falling under heading 8706 is satisfied in their case as the Appellants had fabricated/mounted the capsule/tank on the duty paid chassis and the Revenue's argument that, it is not made out of the duty paid chassis, is incorrect and unsustainable. In support, he has referred to the judgment of this Tribunal in the case of CCE Gaziabad Vs T.P.S. Mrg. & Construction Co. (P) Ltd - 2003 (162) ELT 1112 (Tri-Del). Further, he has submitted that the entire demand is barred by limitation as on similar issue of classification for the earlier period i.e. 11.02.97 to 18.08.98, SCN was issued on 02.08.1999 in connection with their other unit at Ghuggus, second SCN was also issued on 16.01.2004 for the earlier period from Feb.2003 to June 2003 pertaining to the present unit. Since the Department was fully aware of the activity undertaken by the Appellant, therefore, extended period of limitation cannot be invoked. In support, the learned Advocate referred to the judgment of Hon'ble Supreme Court in the case of Nizam Sugar Factory Vs Collr. Of C.E., A.P. - 2006 (197) ELT 465 (SC).

5. Per contra, the learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals). He has submitted that the Appellants are fabricating capsules of various dimensions having opening from both sides. These capsules are fitted into bulkers by way of fabrication as per design and technology for carrying the cement or fly ash which is designated as bulkers. Bulker is nothing but a 'tank' manufactured for special purpose i.e. transportation of cement or fly ash. These bulkers are fitted with nuts and bolts by mounting the same on duty paid chassis supplied by the customer. These bulkers are not permanently attached to

the chassis and can be easily mounted or dis-mounted as per the requirement of customer by removing or fixing nuts and bolts. Thus, the activity is manufacturing of 'storage tank' and not a bulkers for special purpose with special design in order to carry cement from the cement plant or fly ash to the cement plant. Thus, the bulker is correctly classifiable under CSH No.8707 and not 8704 as claimed by the Appellant. Further, he has submitted that the bulkers which are fitted with tri-axles and with king pins to be attached to the horsed, cannot in any manner, be considered as motor vehicle falling under Chapter 8704 of Central Excise Tariff Act, 1985. On the other hand, it is correctly classifiable as semi-trailor falling under Chapter 8716 of Central Excise Tariff Act, 1985.

6. Heard both sides and perused the records.

7. The issue involved for determination is whether the bulkers fabricated and mounted by the Appellant in their factory on duty paid chassis is classifiable under CSH 87042319 and eligible to benefit of exemption under Sr.No.39 of Notification No.06/2006-CE, dt.01.03.2006. Undisputedly, the Appellants had also manufactured /fabricated bulkers fitted with tri-axle and other accessories fitted with a king pin whether be called as a semi-trailor under sub-heading 8716 of Central Excise Tariff Act, 1985. The Appellants heavily relied upon the Chapter Note 5 of Chapter 87 of Central Excise Tariff Act, 1985 which reads as under:-

"5. For the purposes of this Chapter, building a body or fabrication or mounting or fitting of structures or equipment on the chassis falling under heading 8706 shall amount to "manufacture" of a motor vehicle."

8. A plain reading of the said chapter note, there cannot be any iota of doubt that building a body or fabrication or mounting or fitting of structure or equipment on the chassis falling under CH 8706 shall amount to manufacture of a motor vehicle. Thus, by the said fiction, the activity of fabrication or mounting body on the chassis falling under Chapter 8706 will be deemed to be manufacture of a motor vehicle. In the present case, explaining the manufacturing process of 30 Cubic Mtrs bulkers, the learned Advocate submitted that the shells are initially fabricated and then mounted on the chassis which ultimately used for transporting cement and fly ash. Therefore, by mounting the shell on the chassis by virtue of Note 5 of Chapter 87, activity becomes manufacture and the resultant would be considered as a motor vehicle. The reasoning of the learned Commissioner that the shell which is mounted /fabricated on the chassis through the nuts and bolts since removable which the Appellant vehemently objected would be considered as a fabricated tank used for transportation of the cement and fly ash, in our view, devoid of merit and cannot be sustained. This Tribunal, interpreting the said activity, in T.P.S. Mrg. & Construction Co. (P) Ltd case (supra), in the context of earlier Chapter Note 3 of Chapter 87, which is similar to the present Chapter Note 5, observed as follows:-

**“4.** We have considered the submissions of both the sides. The Punjab and Haryana High Court in the case of *Darshan Singh Pavitar Singh v. U.O.I.*, 1988 (34) E.L.T. 631 (P&H) which was confirmed by the Division Bench of the said High Court as reported in 1990 (47) E.L.T. 532 (P&H) has held that “the person who only made or fabricated bodies for buses and trucks on the chassis supplied by their customers do not manufacture motor vehicle but they manufacture only bodies of motor vehicles and their chassis are fully covered by Heading 87.07”. Thereafter Note 3 was inserted in Chapter 87 of the Central Excise Tariff which provided that “for the purpose of Headings 87.01 to 87.05, the activity of body building or fabrication or mounting or fitting of structures or equipment on the chassis shall amount to manufacture of motor vehicle.” This Chapter Note came up for consideration before the Tribunal in the case of *Kamal Auto Industries v. CCE, Jaipur* - 1996 (82) E.L.T. 558 (T) wherein the Tribunal held that the said Chapter Note does not cover the body building on chassis fitted with engine which is classifiable under Heading 87.06 and the body building on chassis fitted with engine are classifiable under Heading

87.07. This decision of the Tribunal was affirmed by the Supreme Court as the appeal filed by the Revenue was dismissed. It appears that to overcome the short levy of duty in respect of classification of bodies under Headings 87.02 to 87.04 instead of 87.07 was waived by issuance of Notification No. 27/2002 under Section 11AC of the Central Excise Act. Note 3 to Chapter 87 was also amended to read as under :-

“For the purposes of this Chapter, building a body or fabrication or mounting or fitting of structures or equipment on the chassis falling under heading 87.06 shall amount to “manufacture” of a motor vehicle.”

In view of the Chapter Note substituted w.e.f. 1-3-2001 building a body on the chassis shall amount to manufacture of motor vehicle which will be classifiable according to the type of motor vehicle. In the present matter duty has been demanded for the period from May, 2000 to August, 2001. The Commissioner (Appeals) under the impugned Order has set aside the demand for the period prior to 28-2-2001 in view of the Notification No. 27/2002-C.E. (N.T.), dated 23-7-2002 against which the Revenue has not come in appeal. In respect of classification of body building by the Respondents we agree with the findings of the Commissioner (Appeals) that the same are classifiable under sub-heading 8704.90 in view of Chapter Note 3 which came into effect from 1-3-2001. We accordingly reject the appeal filed by the Revenue.”

9. Therefore, following the aforesaid precedent, we are of the view that the Appellant has rightly classified the fabricated/mounted shell on the duty paid chassis falling under CSH 87042319 of Central Excise Tariff Act, 1985. On the issue of exemption under Notification No.06/2006-CE, dt.1.3.2006, we find that the Appellant claimed the benefit under Sr.No.39 & Condition No.9 of Notification No.06/2006-CE, dt.1.3.2006, which reads as under:-

Sr.No.39 :-

Sr. No.	Chapter	Description of Goods	Rate of Duty	Condition No.
39	87	(i) Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons; and  (ii) Motor vehicles for transportation of goods (other than those specially designed for the transportation of compressed or liquefied gases), falling under Heading 8704; and  (iii) three wheeled motor vehicles	NIL	9

## Condition No.9 :-

9.	If manufactured out of chassis falling under heading 8706 on which duty of excise has been paid and no credit of duty paid on such chassis and other inputs used in the manufacture of such vehicle and has been taken under Rule 3 or Rule 13 of the CENVAT Credit Rules, 2004:
(a)	Who is manufacturing such vehicle on the chassis supplied by a chassis manufacturer, the ownership of which remains vested in the chassis manufacturer or the sale of the vehicle so manufactured is made by such chassis manufacturer on his account; and
(b)	who is manufacturing chassis and using such chassis for further manufacture of such vehicle.

10. In denying the benefit of said exemption Notification, the learned Commissioner observed that since it is not manufactured out of the chassis under Heading 8706, therefore, benefit is not admissible to the Appellant. We do not find merit in the said finding of the learned Commissioner also as the Appellant in the present case, fabricated / mounted the shells on the duty paid chassis, the fact which is not disputed by the Revenue. In the result, the Appellants are eligible to the benefit of the said notification as they have also fulfilled the other condition of not availing CENVAT Credit on the inputs used in the manufacture of the bulkers. However, there is no merit in the contention of the Appellant when they advanced similar argument to 45 Cubic Mtrs bulkers, which are fabricated and attached with tri-axle tyres and other accessories and are attached to the horse by a king pin. These are semi-trailor type of motor vehicles and not covered under the scope of the said exemption notification, accordingly dutiable. Since the Appellant has not disclosed the manufacture of semi-trailor type bulkers, but considered as bulkers mounted on the chassis and claimed exemption. Therefore, extended period of limitation has been rightly applicable for recovery of duty against these semi-trailors. The

learned Advocate during the course of hearing submitted that out of the total 109 bulkers on which the demand has been raised, 105 were mounted on the duty paid chassis and 4 are semi-trailor type. Therefore, the demand in relation to 105 mounted bulkers is set aside and the demand in relation to 4 semi-trailors classifiable under Chapter 8716 of Central Excise Tariff Act, 1985 is hereby confirmed with interest and penalty.

11. Appeal is disposed of as above.

(Operative part of the order pronounced in the open court)

**(D.M. Misra)**  
**Member (Judicial)**

**(Sanjeev Srivastava)**  
**Member (Technical)**