# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# MUMBAI

REGIONAL BENCH

**Excise Miscellaneous Application No. 85304 of 2022**
(On behalf of Appellant)
**In**

**Excise Appeal No. 86259 of 2015**

(Arising out of Order-in-Original No. 274-291/COMMR. (WLH)/LTU-M/CX/2014 dated 19.03.2015 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.)

**M/s. Tata Motors Ltd.** ........Appellant
**Mr. Dhanu Kumar,**
**AGM-Finance M/s. Tata Motors Ltd.,**
**Jamshedpur– 831 010**

*VERSUS*

**Commissioner of Central Excise & Service Tax LTU), Mumbai** ........Respondent
**8th Floor, Centre-I,**
**World Trade Centre,**
**Cuffe Parade, Mumbai – 400 005**

**WITH**

**Excise Appeal No. 85782 of 2017**

(Arising out of Order-in-Original No. 105-106/COMMR (RS)/LTU-M/CX/2016-17 dated 30.12.2016 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.)

**M/s. Tata Motors Ltd.** ........Appellant
**Mr. Dhanu Kumar,**
**AGM-Finance M/s. Tata Motors Ltd.,**
**Jamshedpur– 831 010**

*VERSUS*

**Commissioner of Central Excise & Service Tax LTU), Mumbai** ........Respondent
**8th Floor, Centre-I,**
**World Trade Centre,**
**Cuffe Parade, Mumbai – 400 005**

**APPERANCE:**

Shri V. Sridharan, Senior Advocate alongwith
Shri Rajesh Ostwal & Shri. Saurabh Bhise, Advocates for the Appellant

Shri C. Dhanasekaran, Special Counsel, Authorised Representative for the Respondent

CORAM:

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/86146-86147/2022**

Date of Hearing: 10.10.2022
Date of Decision: 10.10.2022

**PER: DR. SUVENDU KUMAR PATI**

Confirmation of 1% National Calamity Contingent Duty (NCCD) for an amount of Rs.87,09,48,002/- with education cess of Rs.2,34,82,651/- alongwith interest and equal penalty of Rs.89,44,30,653/- on the Appellant for the period between 01.03.2003 and 31.12.2013 demanded through 18 show-cause notices as well as adjudicated by the Commissioner of Central Excise & Service Tax LTU, Mumbai in the second round of litigation confirming mis-declaration concerning classification of chassis manufactured by the Appellant is assailed in Excise Appeal No. 86259 of 2015. The other Excise Appeal No. 85782 of 2017 relates to the order passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai for the subsequent period from January, 2014 to October, 2015 involving an amount of Rs.19,67,15,630/-.

2. Facts of the case, in brief, is that Appellant is a manufacturer of different categories of chassis for automobiles including tipper chassis at its unit located at various places. This dispute relates to the manufacturing unit at Jamshedpur. Basing on the investigation

made by DGCEI, Appellant was put to show-cause notice for non-payment of National Calamity Contingent Duty on the allegation of wrong classification of the chassis meant for dumpers as tippers. The allegations were founded on the basis that M/s. Hyva India Pvt. Ltd. (Hyva), a job worker of Appellant, clears the completed vehicle after mounting of body on the chassis and it classified the same under the Chapter Heading meant for dumper. Reliance is also placed on the statements of some five end-users. The dispute relates to the chassis type LPK 2516 which Appellant consistently asserts to be of tipper chassis. After confirmation of duty, interest and penalty etc. matter was taken up to the CESTAT, Kolkata by the Appellant challenging legality of such confirmation of demand etc. and the same was remanded back for *de novo* adjudication *vide* final order of CESTAT passed on dated 04.01.2012. In the meantime, Appellant had joined LTU having its head office at Mumbai for which the re-adjudication was done by the Commissioner of Central Excise & Service Tax LTU, Mumbai confirming the duty demand, interest and penalty which is assailed in this appeal. So the issue to be determined by this Tribunal relates to the correctness of the classification of LPK 2516 chassis manufactured by Appellant and classified by it under S.H. 8704.30 (upto 28.02.2005) Tariff Item 87041090 (from 01.03.2005 after introduction of 8 digit HSN) as tipper vehicle or the same as a dumper classifiable under 8706.49/87060043 as asserted by the Respondent-Department making National Calamity Contingent Duty payable on its clearance of LPK 2516 chassis and confirming demand including interest and penalty accordingly.

3. During the course of hearing of these appeals learned Counsel for the Appellant Mr. V. Sridharan, Senior Advocate alongwith Shri Rajesh Ostwal & Shri. Saurabh Bhise submitted that without any evidence recovery of National Calamity Contingent Duty was proposed from the Appellant on manufacturing of chassis of tipper model LPK 2516 and confirmation of its classification as dumper is ex-facia incorrect as all lories/trucks with tipper facility cannot automatically be treated as dumpers since the HSN covers it as dumpers that are designed for 'off highway use' and classification made by the subsequent developers on the chassis into a vehicle as well as by some of the end-users of those vehicles who used the same at the place of their requirement, cannot by itself convert the nature of vehicle to attract additional duty. Further, Mr. Sridharan pointed out that in the *de novo* proceeding the Commissioner, LTU had passed the Order-in-Original without regard to the principle of Natural justice as the Appellant was not granted second personal hearing and its written submissions were not considered by the Commissioner despite a clear direction made by the Tribunal at Kolkata in the remand order. In submitting the literature/catalogue of the chassis model LPK 2515 & LPK 2516, that is noted by the Commissioner, LTU at para 1.08(i) to have been produced before him, and comparing it with LPT 2516, he further submitted that there

is no identifiable distinction between the features of both LPT 2516 and LPK 2516 except that in LPK multi-axle tipper and concrete mixture are mounted at the company itself but Department had never disputed the classification made for LPT 2516. Highlighting the features of dumper as noted in the HSN explanatory note for Heading 8704, he pointed out that vehicles which may have a rigid or articulated chassis and are generally fitted with off the road wheels that can work over soft ground having two seats facing in opposite direction of the steering wheel to enable the vehicle to be steered with driver facing the body for uploading can only be categorised as dumper and not that the end-user had not used the same in the highway and got the same for use in its mining area would change the classification of the vehicle. Learned Counsel for the Appellant further argued that certificate obtained from the technical expert to justify that LPK 2516 is not a dumper had not been accepted by the Adjudicating Authority nor even the certificate issued by the Automobile Research Association of India to that effect was considered by him. Placing reliance on the decided case laws on every point, our attention is drawn to the judgment of this Tribunal delivered in the case of *V.E. Commercial Vehicles Ltd. Vs. Commissioner of Central Excise & Service Tax, Indore* reported in *2018 (15) GSTL 291 (Tri.-Del.),* wherein it has been held that vehicles classifiable under Tariff Item 8704 23 90 as tipper trucks also meant for classification of its chassis that fell under Tariff Item 8706 00 42, for which there could be no justification for demand of differential duty of NCCD made under Section 11A of the Central Excise Act that corresponds to Section 73 of the Finance Act, 1994. Refuting the reasoning of the order passed by the Commissioner that dictionary meaning of both tipper and dumper being similar and both the words being used interchangeably, he submitted that in view of the decision reported in *1998 (104) ELT 398 (Tribunal)* in the case of *Periwal Plastics Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore and 2000 (126) ELT 904 (Tribunal)* in the case of *Hari Chand Shri Gopal Vs. Collector of Central Excise, Ghaziabad*, that has been affirmed by the Hon'ble Supreme Court in 2002, when clear explanation is provided in the HSN explanatory note placing reliance on dictionary meaning in confirming the duty etc. is itself not sustainable in law and facts.

4. In response to such submissions learned Authorised Representative for the Respondent-Department Mr. C. Dhanasekaran, Special Counsel argued in favour of reasoning and rationality of the order passed by the Commissioner, LTU Mumbai and drawn our attention to the elaborate discussion made by the Commissioner in explaining the legislative intent by appropriately classifying LPK 2516 chassis under 8706.49 and 8704.30 after introduction of 8 digit classification and the said classification being made for dumpers, interference by the Tribunal in the order passed by the Commissioner, LTU is uncalled for. He also pointed out as to why the extended period of limitation was justifiably involved for the

demand raised up to July, 2005. In toto he pleads for confirmation of the order passed by the Commissioner, LTU, Mumbai.

5. We have perused the case record and observed that Departmental Officers themself also got confused about the classification used by the Appellant and proposed by the Department even in the show-cause notices itself, as could be noticed from para 1.02 and 1.05 (a) of the Order-in-Original. Further, show-cause notice and Order-in-Original were based on 3 points namely Hyva who mounted the body on Appellant's manufactured chassis, classified it differently, five end-users had stated that disputed model of the vehicle had been used by them in mining area, hilly area and stormy soft narrow roads where ordinary truck cannot be used and dictionary meaning of tipper and dumper are synonyms. However, all these points are not in conformity to the HSN explanatory note available for Heading 8704 where the characteristic features of dumper are clearly reflected. Further, sub-Heading 8704.10 of HSN, as could be noticed from the explanatory note, has equated it with the type of vehicle that has been designed for "off highway use", having no axle suspension, with special earth moving tyres whose weight/payload ratio does not exceed 1:1.6 etc. etc. Going by the catalogue of LPK 2516, it can be noticed that it has multi-axle suspension, mounted with robber tyre meant for terrain path namely national highways, state highways and off-road applications. With these features alone, in the common parlance, this LPT 2516 model

cannot be called as a vehicle designed for "off highway use", to put it in the category of dumper, apart from the fact that technical expert's report, that might have considered weight by payload ratio factor, clearly indicates the model to be a tipper one so as to justify the classification made by the Appellant. This being the facts on record and having regard to the decision of V.E. Commercial Vehicles Ltd., *cited supra*, that carries a precedent value, the following order is passed.

THE ORDER

6. The appeals are allowed and the orders passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai vide Order-in-Original No. 274-291/COMMR. (WLH)/LTU-M/CX/2014 dated 19.03.2015 and Order-in-Original No. 105-106/COMMR (RS)/LTU-M/CX/2016-17 dated 30.12.2016 confirming National Calamity Contingent Duty alongwith interest and equal penalty are hereby set aside.

7. Miscellaneous application is dismissed as withdrawn.

(Operative portion of the order pronounced in open court)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

**(Sanjiv Srivastava)**
**Member (Technical)**

*Prasad*