# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 86178 of 2014**

(Arising out of Order-in-Original No. 12/ANS-12/Meher Trailers/K-IV/Th-I/2013 dated 31.12.2013 passed by the Commissioner of Central Excise, Thane-I.)

**Meher Trailers Private Limited** **.... Appellant**
B-73, Additional MIDC Area, Anand Nagar,
Ambernath (East), Mumbai – 421 506.

Versus

**Commissioner of Central Excise, Thane-I** **.... Respondent**
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West)
Mumbai – 400 028.

WITH

**Excise Appeal No. 86179 of 2014**

(Arising out of Order-in-Original No. 12/ANS-12/Meher Trailers/K-IV/Th-I/2013 dated 31.12.2013 passed by the Commissioner of Central Excise, Thane-I.)

**Meher Trailers Private Limited (Unit No.II)** **.... Appellant**
B-135, Additional MIDC Area, Anand Nagar,
Ambernath (East), Mumbai – 421 506.

Versus

**Commissioner of Central Excise, Thane-I** **.... Respondent**
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West)
Mumbai – 400 028.

WITH

**Excise Appeal No. 86180 of 2014**

(Arising out of Order-in-Original No. 12/ANS-12/Meher Trailers/K-IV/Th-I/2013 dated 31.12.2013 passed by the Commissioner of Central Excise, Thane-I.)

**Anil Nathuram Tandon** **.... Appellant**
Managing Director, Meher Trailers Private Limited
B-73, Additional MIDC Area, Anand Nagar,
Ambernath (East), Mumbai – 421 506.

Versus

**Commissioner of Central Excise, Thane-I** **.... Respondent**
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West)
Mumbai – 400 028.

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the Appellants

Shri Rajiv Ranjan, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/87639-87641/2024**

Date of Hearing: 21.06.2024
Date of Decision: 21.06.2024

**Per: M.M. PARTHIBAN**

These appeals have been filed by both the units of appellant company M/s Meher Trailers Private Limited i.e., Unit No.1 at B-73 and Unit No.2 at B-135 at Additional MIDC Industrial area, Anand Nagar, Ambernath (East); and by Shri Anil Nathuram Tandon, Managing Director of the appellant company (herein after, referred together as 'the appellants'), assailing Order-in-Original No. 12/ANS-12/Meher Trailers/K-IV/Th-I/2013 dated 31.12.2013 (herein after, referred to as 'the impugned order') passed by the Commissioner of Central Excise, Thane-I, Mumbai.

2.1 Briefly stated, the facts of the case are that the appellants, *inter alia,* are engaged in manufacture of excisable goods i.e., trailers, semi-trailers and bulkers classifiable under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants have their manufacturing unit set up in 2003, located at Unit No.1 at B-73 at Additional MIDC Industrial area, Anand Nagar, Ambernath (East); further, in September, 2009, one more additional unit was set up as Unit No.2 at B-135 of the same Additional MIDC Industrial area, Anand Nagar, Ambernath (East). For the purpose of payment of Central Excise duty on final products and for compliance with the Central Excise statute the appellants had registered with the jurisdictional authorities holding Central Excise Registration No. AAECM6529RXM001. Subsequently, the appellants vide their letter dated 14.09.2009 informed the department about their requirement of additional manufacturing facility and requested to add the new additional premises acquired by them at B-135 of the same Additional MIDC Industrial area, Anand Nagar in their Central Excise Registration certificate.

2.2 Intelligence collected by Headquarters Preventive, Thane-I and Belapur Commissionerates indicated that the appellants are evading payment of central excise duty by mis-classifying the 'Bulkers' manufactured by them and are availing ineligible exemption benefit under Notification No.6/2006-C.E. dated 01.03.2006 read with condition No.39. On the above basis, the department initiated detailed investigation, including search of factory/office premises and recovery of certain documents under Panchnama proceedings dated 21.04.2010. Further, statements were also recorded from various persons concerned. On completion of the investigation, the department had come to the conclusion that the appellants had intentionally classified 'Bulker' under Central Excise Tariff Item (CETI) 8704 2390 as they had mentioned in the ER-1 return the description of bulker as 'mounting of tanks on duty paid chassis' with a view avail the ineligible exemption under Notification No.6/2006-C.E. dated 01.03.2006 and evade payment of central excise duty. The department had interpreted that the correct classification of bulkers would be under CETI 8707 9000. Accordingly, Show-Cause Notice (SCN) dated 02.05.2012, was issued proposing for confiscation of excisable goods cleared, demand of Central Excise duty of Rs.1,32,94,638/- on such goods along with interest and for imposition of equal amount of penalty on the appellant company under Section 11AC of the Central Excise Act, 1944; proposing imposition of penalty under 25 and 26 of the Central Excise Rules, 2002 on the Unit No. II of the appellant company and on Shri Anil Nathuram Tandon, Managing Director (MD) of the appellant company. In adjudication of the said SCN dated 02.05.2012, the original adjudicating authority had ordered for reclassification of the bulkers attached/mounted on a longer chassis under CETI 8707 9000 and in case of bulkers/trailers/tanks fitted on trailers attached to a prime mover under CETI 8716 3100 and confirmed the demand of duty as proposed in the SCN and imposed mandatory penalty under Section 11AC ibid, besides imposing penalty of Rs.25,00,000/- on Unit No. II of the appellant company and Rs.10,00,000/- on Shri Anil Nathuram Tandon, MD of the appellant company vide Order-in-Original dated 31.12.2013. Feeling aggrieved with the impugned order dated 31.12.2013, the appellants have preferred these appeals before the Tribunal.

3.1 Learned Advocate appearing on behalf of the appellants had submitted that appellants have their manufacturing unit set up in 2003 as Unit No.1 at B-73 and in September, 2009 had created an additional manufacturing facility at Unit No.2 at B-135 at Additional MIDC Industrial area, Anand Nagar, Ambernath (East) due to space constraints faced by them at Unit No.1. The products manufactured by the appellants include 'semi–trailer' or 'trailer' which are non-mechanically propelled vehicle that is designed to be towed by other vehicles (prime mover). These trailers can be fitted with a body to carry goods. Trailers are classified by the appellants under heading 87.16 and are cleared on payment of appropriate Central Excise duty by them. There is no dispute on clearance of such products in the present case. The product 'bulker' is the chassis fitted with the tank and a cab mounted over it; and the entire arrangement becomes a vehicle which is known as 'bulker'. The bulkers are used for the transport of cement, fly ash etc. and are classified by them under heading 8704.

3.2 Learned Advocate further stated that appellants manufactured certain bulkers out of the chassis received from Chassis manufacturers for fabricating the body and mounted it on the chassis. In such cases, the appellants have duly paid the central excise duty on the value of bulkers. These bulkers manufactured by the appellants are not in dispute in the present case. Further the appellants also manufactured bulkers out of the duty paid chassis supplied by the customers, who are not manufacturers of the chassis. The appellants received all raw materials including steel sheets and steel plates to fabricate the tanker in their premises. The appellants fabricated the body of bulker with all fitments in the unit No. 1 and mounted or fitted, the said body, on the chassis supplied by the customers. The appellants had cleared the motor vehicle, which is called bulkers from the factory without payment of Central Excise duty by availing the duty exemption benefit under serial No.39 of the Notification No.06/2006-C.E. dated 01.03.2006. These bulkers manufactured by the appellants are the only products under dispute in the present case.

3.3 Further, in explaining the manufacturing process undertaken by the appellants, learned Advocate stated that in unit No. 1 they received duty paid steel sheets and plates of various thicknesses from various vendors. The unit No. 1 has not taken any input duty credit of duty paid these sheets and plates; some of these steel sheets, plates were cleared to third-party vendors under challan movement for pressing into dished ends; the third-party vendors after completion cleared the same back to their unit No. 1. The dished ends, steel sheets and plates are then cleared to unit No. 2 under regular challans for fabrication of the tubular structures. After further processing in unit No. 2, the tubular structures are cleared to unit No. 1. At this stage, the tubular structure is not the complete body required to be mounted on the chassis. The tubular structure is further fitted with an aeration hose, ladder, gateway, manhole cover, piping etc. at unit No. 1. Then the structure is then painted and an air leakage test is conducted thereafter the structure is repainted, if required, and the finished structure is then mounted on the chassis with the help of mounting plates, nuts, bolts and screws. The chassis fitted with the above body is called the 'bulker'. The appellants cleared the bulkers from Unit No. 1 without payment of Excise duty, since the bulker is manufactured out of duty paid chassis supplied by their customer, and no CENVAT credit of duty paid on such chassis is taken by the appellants, in compliance with condition No.9 of the Notification No.06/2006-C.E. dated 01.03.2006. Furthermore, he stated that bulkers are nothing but a vehicle classifiable under Chapter 87. Therefore, he submitted that the exemption claimed by the appellants is correct and there was no requirement for payment of Central Excise duty on clearance of such bulkers.

3.4 Learned advocate also stated that the interpretation of the department that the body of bulker is manufactured at unit No. 2 and thereafter brought for mounting on the top of the chassis in Unit No.1 and thus, such bulkers are not manufactured out of the duty paid chassis supplied by the customers, is incorrect. This is for the reason that their unit No. 2 is engaged in manufacture of tubular structure, which is required to be further worked as explained in the above paragraphs at unit No. 1 in order to make it a complete body of the bulker, to be fitted on the chassis supplied by their customers. As such tubular structures are neither marketable nor does the activity amount to manufacture, he stated there is no payment of central excise duty involved in such process undertaken in Unit No.2 and they have not violated any procedures for attracting penal provision of Rule 25 of the Central Excise Rules, 2002.

3.5 He further stated that the appellants had applied for Central Excise registration for addition of unit No. 2 as the additional premises on 14.09.2009 to their jurisdictional Central Excise authorities, and therefore there is no suppression of the fact on the part of the appellants about the activities undertaken in unit No. 2 as well as Unit No.1. Since all the facts were disclosed in the statutory records maintained by the appellants, he submitted that there is no ground for the allegation of suppression of facts with an intent to evade payment of duty. Therefore, he claimed that the demand for the period April, 2007 to April, 2011, which is beyond the normal period of limitation of one year, cannot be sustained.

3.6 In support of their stand, they relied upon the following decisions:

*(i) Disha Engineers Vs. Collector of Central Excise, Ahmedabad-I -* (2023) 4 Centax 305 (Tri.-Ahmd.)

*(ii) AMCL Machinery Limited Vs. Commissioner of Customs & Central Excise* - 2019 (8) TMI 250 -CESTAT Mumbai

*(iii) Automobile Corporation of Goa Ltd. Vs. Commissioner of Central Excise, Goa* – 2006 (197) E.L.T. 564 (Tri. – Mumbai) & 2001 (132) E.L.T. 64 (Tri. – Mumbai)

*(iv) Bata India Limited Vs. Commissioner of Central Excise, New Delhi* – 2010 (252) E.L.T. 492 (S.C.)

4. On the other hand, learned Authorized Representative on behalf of Revenue submitted that the procedure prescribed as per Notification No. 214/84-C.E. dated 25.03.1986 has not been complied with by the appellants, in undertaking the job work. He stated that the issue of classification and the eligibility to notification benefit under Notification No. 6/2006-C.E. dated 01.03.2006 has been discussed elaborately in the impugned order and therefore he reiterated the conclusions arrived at therein by the learned adjudicating authority. Therefore, he prayed that the impugned order is correct and the appeals filed by the appellants are liable to be rejected.

5. Heard both sides and perused the records of the case. We had also perused the additional written submissions presented in the form of paper books for this case.

6. The issues involved in these appeals are as follows:

(i) whether the revised classification of excisable goods determined in the impugned order for 'bulker' under Central Excise Tariff Item 8707 9000, 8716 3100 of the Central Excise Tariff Act, 1985 are legally sustainable or not? and whether the classification adopted by the appellants under CETI 8704 2390 is appropriate or not?

(ii) whether the appellants are eligible to exemption from payment of central excise duty in respect of disputed clearances of goods, under Notification No.6/2006-C.E. dated 01.03.2006, under Serial No.39 along with conditions laid down therein, or otherwise; and

(iii) whether the differential duty demands confirmed in the impugned order under Section 11A ibid by invoking extended period of limitation and penalty imposed under Section 11AC ibid on the appellants company and penalty under Rule 25, 26 of the Central Excise Rules, 2002 on the appellants is sustainable or otherwise?

7. In order to address the above issues relating to classification of excisable goods, eligibility to exemption notification benefit, invoking penal provisions, we would like to refer the relevant legal provisions contained in Central Excise Act, 1944 and the rules made thereunder, and the Central Excise Tariff Act, 1985. The disputed period in the case is from April, 2007 to March, 2012.

**Central Excise Act, 1944**
***Chapter II***
***Levy and Collection of Duty***

***"Definitions.***
*2. In this Act, unless there is anything repugnant in the subject or context,—*
***xxx xxx xxx xxx***
*(f) "manufacture" includes any process, —*
*(i) incidental or ancillary to the completion of a manufactured product;*

*(ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or*

*(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,*
*and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;*

***Duty specified in the First and Second Schedule to the Central Excise Tariff Act, 1985 to be levied.***

***Section 3.*** *(1) There shall be levied and collected in such manner as may be prescribed*
*(a) a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Act, 1985 (5 of 1986):……"*

**Central Excise Rules, 2002**

***Confiscation and penalty.***
***"Rule 25.*** *(1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse, or a registered dealer, —*
*(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or*
*(b) does not account for any excisable goods produced or manufactured or stored by him; or*

*(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or*

*(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,—*

*then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse, or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or two thousand rupees, whichever is greater.*

*(2) An order under sub-rule (1) shall be issued by the Central Excise Officer, following the principles of natural justice.*

***Rule 26 .** (1) Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or ten thousand rupees, whichever is greater:……"*

***Central Excise Tariff Act, 1985***

***"Duties specified in the First Schedule and the Second Schedule to be levied***

***Section 2.** The rates at which duties of excise shall be levied under the Central Excise Act, 1944 (1 of 1944) are specified in the First Schedule and the Second Schedule."*

***FIRST SCHEDULE***

*[See Section 2]*

***GENERAL RULES FOR THE INTERPRETATION OF THIS SCHEDULE***

*Classification of goods in this Schedule shall be governed by the following principles:*

***1.** The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.*

***2.** (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

*(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.*

***3.** When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :*

*(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those*

*headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

*(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*

*(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

***4.*** *Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.*

***5.*** *In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein :*

*(a) camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;*

*(b) subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.*

***6.*** *For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

***GENERAL EXPLANATORY NOTES***

***1.*** *Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "--", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".*

***2.*** *The abbreviation "%" in column (4) of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods fixed, defined or deemed to be, as the case may be, under or in sub-section (2) read with sub-section (3) of section 3 or section 4 or section 4A of the Central Excise Act, 1944 (1 of 1944), the duty being equal to such percentage of the value as is indicated in that column.*

***ADDITIONAL NOTES***

*In this Schedule, —*
*(1) (a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;*

*(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;*

*(c) "tariff item" means a description of goods in the list of tariff provisions accompanying either eight-digit number and the rate of the duty of excise or eight-digit number with blank in the column of the rate of duty;*

*(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;*

*(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics.*

*"SECTION XVII*

*VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT*

*Notes:*

*1. This Section does not cover articles of heading 9503 or 9508 or bobsleighs, toboggans and the like of heading 9506.…*

*6. In respect of goods covered by this Section, conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article (including 'blank', that is an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into a finished article or a part), into complete or finished article shall amount to 'manufacture'.*

*xxx xxx xxx xxx*

*CHAPTER 87*

*VEHICLES OTHER THAN RAILWAY OR TRAMWAY ROLLING-STOCK, AND PARTS AND ACCESSORIES THEREOF*

Notes:

*1. This Chapter does not cover railway or tramway rolling-stock designed solely for running on rails.*

*xxx xxx xxx xxx*

*3. Heading 8706 shall include chassis, whether or not fitted with a cab.*

*4. Heading 8712 includes all children's bicycles. Other children's cycles fall in heading 9503.*

*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.*

*xxx xxx xxx xxx*

| **"Tariff Item** | **Description of goods** |
|---|---|
| (1) | (2) |
| **8701** | **Tractors (other than tractors of heading 8709)** |
| xxx | xxx xxx xxx |
| **8702** | **Motor vehicles for the transport of ten or more persons, including the driver** |
| xxx | xxx xxx xxx |
| **8703** | **Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars** |
| xxx | xxx xxx xxx |
| **8704** | **Motor vehicles for the transport of goods** |
| 8704 10 | - *Dumpers designed for off-highway use:* |
| 8704 1010 | -- With net weight (excluding pay-load) exceeding 8 tonnes and maximum pay-load capacity not less than 10 tonnes |

| "Tariff Item | Description of goods |
|---|---|
| 8704 1090 | --- Other : |
| | *- Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel):* |
| 8704 21 | *- g.v.w. not exceeding 5 tonnes:* |
| 8704 2110 | --- Refrigerated |
| 8704 2120 | --- Three-wheeled motor vehicles |
| 8704 2190 | --- Other |
| 8704 22 | -- *g.v.w. exceeding 5 tonnes but not exceeding 20 tonnes :* |
| | --- *Lorries and trucks:* |
| 8704 2211 | ---- Refrigerated |
| 8704 2219 | ---- Other |
| 8704 2290 | --- Other |
| 8704 23 | -- *g.v.w. exceeding 20 tonnes :* |
| | --- *Lorries and trucks:* |
| 8704 2311 | ---- Refrigerated |
| 8704 2319 | ---- Other |
| 8704 2390 | --- Other |
| xxx | xxx xxx xxx |
| | |

&

| "Tariff Item | Description of goods |
|---|---|
| (1) | (2) |
| **8707** | **Bodies (including cabs), for the motor vehicles of headings 8701 to 8705** |
| 8707 1000 | - For the vehicles of heading 8703 |
| 8707 9000 | - Other |
| xxx | xxx xxx xxx |
| | |
| **8716** | **Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof** |
| 8716 1000 | - Trailers and semi-trailers of the caravan type, for housing or camping |
| 8716 2000 | - Self-loading or self-unloading trailers and semi-trailers for agricultural purposes |
| | *- Other trailers and semi-trailers for the transport of goods:* |
| 8716 3100 | -- Tanker trailers and tanker semi-trailers |
| 8716 3900 | -- Other |
| 8716 4000 | - Other trailers and semi-trailers |
| 8716 80 | *- Other vehicles:* |
| xxx | xxx xxx xxx |

8.1 On careful reading of the aforesaid legal provisions, it transpires that the central excise duty is a levy on manufacture or production of excisable goods which are specified in the First schedule to the Central Excise Tariff Act, 1985. Further, it also transpires from the definition given for the phrase 'manufacture' in terms of Section 2(f) the Central Excise Act, 1944, that any process incidental or ancillary to the completion of the manufacture product, or, any process which is specified in relation to any goods in the Section or Chapter notes of the First schedule to the Central Excise Tariff Act as amounting to manufacture, applied on the goods can also be subject to levy of central excise duty. Furthermore, it also transpires that the rate of duty at which a commodity is subjected for levy of Central Excise duty is determined as per the unique classification of such commodity under specific heading/sub-heading/tariff item provided under the First Schedule.

8.2 Classification of the excisable goods are based on the Schedule to the Central Excise Tariff as given under the Central Excise Tariff Act, 1985. Central Excise classification had initially followed Six-digit classification code until 2003 and was broadly based upon HSN (Harmonized System of Nomenclature) classification. However, there were a number of differences with HSN classification and as such the 6-digit classification was not totally aligned with HSN, on the basis of which Customs Tariff has been designed. Eight-digit HSN based Commodities Classification Code was adopted for the purpose of levy of Customs duty with effect from 01.02.2003. Same eight-digit Code was also adopted by DGFT for FTP/EXIM Policy and by DGCIS for compilation of trade statistics. In such background, the Central Government thought it is desirable to adopt a common commodity classification code for all trade related transactions so as to avoid disputes and facilitate smooth flow of trade. Accordingly, for the purpose of eight-digit classification code for levy of Central Excise duty also, Central Excise Tariff (Amendment) Act, 2004 was brought into force with effect from 28th February 2005. Therefore, it can be seen that classification of goods for the purposes of Central Excise duty, Customs duty and for compliance with exemption notification follow a common code. Therefore, if the issue of classification of goods under dispute are examined firstly, then it would logically lead to determination of other issues under dispute viz., eligibility to concessional duty under the relevant notifications issued by the Ministry of Finance.

8.3 In this regard, we find that as per the legal provisions of the Central Excise Tariff Act of 1985, for legal purposes, the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes. We also find upon careful reading of the various tariff entries of relevant headings of Chapter 87 as given above, we find that the following categories of goods are covered under its scope:

(i) goods covered under sub-heading 8704 10/tariff items from 8704 1010 and 8704 1090 relates to 'dumpers' designed for off-highway use, which is not relevant for the products under dispute;

(ii) goods covered under sub-heading 8704 21/tariff items from 8704 2110 to 8704 2390 relates to various types of 'motor vehicles' with compression-ignition internal piston combustion engines. Further, Lorries and Trucks, refrigerated and other than refrigerated type of g.v.w. exceeding 20 tonnes capacity are specifically covered under tariff items 8704 2311 and 8704

2319, respectively. Further, tariff item 8704 2390 covers other type of motor vehicles of g.v.w. exceeding 20 tonnes.

(iii) All types of 'bodies' for the motor vehicles of heading 8701 to 8705 are covered under heading 8707; while 'bodies' for motor cars are covered under tariff item 8707 1000, the 'bodies' of other motor vehicles are covered tariff item 8707 9000;

(iv) 'Trailers and semi-trailers' and other vehicles that are not mechanically propelled are covered in heading 8716; while 'tanker trailers' and 'tanker semi-trailers' are specifically covered under tariff item 8716 3100.

8.4 From the facts on record it clearly transpires that the classification of items under dispute are 'bulkers'. In the SCN, the contending classification as per the claim of the appellants is CETI 8704 2390, whereas the department has claimed classification under sub-heading 8707. In the impugned order, besides rejecting the classification claimed by the appellants, the adjudicating authority had specified two classifications one under CETI 8707 9000 for bulkers mounted on duty paid chassis supplied by customers and CETI 8716 3100 for bulkers attached to or fitted on trailers. Since the SCN had not proposed for classification of disputed goods under CETI 8716 3100, we find that it would be out of the purview of the adjudication proceedings to discuss about such classification. Therefore, we are not examining such classification hereunder. Therefore, the contending classification are between tariff item 8707 9000 and 8704 2390.

8.5 On plain reading of the tariff items as elaborated above, it clearly transpires that CTI 8707 9000 covers only 'bodies' and not the entire motor vehicles; whereas the scope of sub-headings 8704 21, 8704 22 and 8704 23 specifically cover various types of 'motor vehicles (other than dumpers), which are designed for the transport of goods. It is an undisputed fact that bulkers are designed for transportation of large volumes of unpackaged goods in bulk quantities such as cement, fly ash, grain, as well as liquid bulk such as fuel and chemicals. Unlike standard freight trucks that carry goods in pallets or containers, bulk trucks are equipped with specialized tanks, hoppers, or compartments tailored to handle specific materials. From the above analysis of the classification of goods, we are of the prima facie view that in terms of headings and the scope of coverage of goods under those heading, the 'bulkers' under dispute are appropriately classifiable under CETI 8704 2390.

8.6 Further, in terms of Chapter Note 5 to Chapter 87, building a body or fabrication or mounting or fitting of structures or equipment on the chassis of all type of motor vehicles covered under heading 8701 to 8705 shall amount to "manufacture" of a motor vehicle. As in the present case, the appellants are engaged in fabricating the steel sheets into tubeless structures, and these are further fitted with aeration hose, ladder, gateway, manhole cover, piping etc. to form the bunker which is finally mounted on the chassis, such process amount to manufacture of 'motor vehicle for the transport of goods' and thus such final product would be classifiable under chapter heading 8704 only and not elsewhere, in terms of legal fiction created as per Chapter Note 5 of Chapter 87 read with Section 2(f) of the Act of 1944.

9.1 In terms of notification No.06/2006-C.E. dated 31.03.2003, all goods of the description given in the exemption entry at Serial No. 39 and falling under Chapter 87 are exempted subject to conditions specified therein. The relevant entry of the said notification is extracted and given below.

**Notification 06/2006-C.E. dated 01.03.2006**

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table given below read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid:
Provided that nothing contained in this notification shall apply to goods specified against S.No. 10 of the said Table on or after the 1st day of May, 2007.
*Explanation.* - For the purposes of this notification, the rates specified in columns (4) of the said Table are *ad valorem* rates, unless otherwise specified.

| S. No. | Chapter or heading or sub-heading or tariff item of the First Schedule | Description of excisable goods | Rate | Condition No. |
|---|---|---|---|---|
| xx | xxx | xxx | xx | xx |
| 39 | 87 | (i) Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons; and<br>(ii) Motor vehicles for the transport of goods (other than those specially designed for the transport of compressed or liquefied gases), falling under heading 8704; and<br>(iii) three wheeled motor vehicles | Nil | 9 |
| xx | xxx | xxx | xx | xx |

Annexure

| Condition No. | Condition |
|---|---|
| 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 has been taken under rule 3 or rule 11 of the CENVAT Credit Rules, 2002:<br>Provided that this exemption is not applicable to a manufacturer of said vehicles-<br>(a) who is manufacturing such vehicle on a 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<br>(b) who is manufacturing chassis and using such chassis for further manufacture of such vehicle. |

9.2 On plain reading of the exemption entry under Serial No. 39 of the Notification No.6/2006-C.E. dated 01.03.2006, it clearly transpires that all three types of motor vehicles as specified therein are covered under the scope of exemption. The requisite condition is that the manufacture of vehicle by building body, mounting of bulker etc. shall be on the chassis on which central excise duty is already paid and is not supplied by the chassis manufacturer and that the assessee-manufacturer availing the said exemption has not taken input credit on the inputs used by them for manufacture and on the chassis. Since, the appellants-assessee had separately accounted for the manufacture of bulkers mounted on the chassis for which central excise duty had been paid and such chassis have been supplied by their customers under proper purchase order indicating such supply of duty paid chassis, we are of the view that the requirement of aforesaid exemption notification and the associated conditions have been fulfilled by the appellants.

9.3 We also find that the Notification No.214/89-C.E. dated 25.03.1986 provide for exemption for manufacture of specified finished products under job-work arrangement by using the specified raw material/semi-finished goods, mentioned in the Table to the notification. The condition to be fulfilled for availing such exemption is that the supplier of raw materials to a job worker undertakes the responsibility for discharging the central excise duty liability on the finished products. In the present case, since both the unit-1 and unit-2 are under the same manufacturer, and there is no job-work arrangement in this case, there is no question of the application of such notification to the present situation arises to deny the exemption available in other notification No.06/2006-C.E. dated 01.03.2006.

9.4 We also find that there is no independent evidence established or documents produced by the department to invoke the ground of suppression with an intent to evade duty, and therefore we find that there is no case made out in terms of the settled legal position for confirmation of the duty demands by invoking the extended period of limitation. Further, since the adjudicating authority had not confiscated the goods in the impugned order, we find that there exists no ground for invoking consequential penal provision under Rules 25, 26 of the Central Excise Rules. 2002.

10. In this regard, we find that in an identical issue to the one covered under the present dispute had been examined by the Tribunal in an identical set of facts in the case of *Disha Engineers* (supra) and the demand of excise duty was set aside by holding that the exemption under Notification No.06/2006-C.E. dated 01.03.2006 is eligible. The relevant paragraphs of the said order is extracted and given below:

> ***"1.1*** *The brief fact of the case is that the appellant are engaged in manufacture of Cement and Alumina Bulkers and Fly Ash Bulkers falling under chapter heading 87 of the Central Excise Tariff Act, 1944. Intelligence gathered was that the Appellant had manufactured and cleared Bulkers without payment of Central Excise Duty by misclassification of the Bulkers, so as to avail the exemption from payment of duty as provided under the Notification No. 6/2006 -CE dated 1-3-2006, vide Sr. No. 39 read with condition no. 9. The officers conducted the search at the factory premises of Appellant and withdrew some incriminating documents/ records and recorded the statement of persons. After the detail investigation Appellant was issued show cause notice dated 31-12-2010 by the Joint Commissioner (Prev.), Ahmedabad-I as to why:*
>
> *(i) The semi-trailer type of Bulker (attached to 'horse') manufactured should not be classified under Chapter sub-heading 8716 of the Central Excise Tariff Act, 1985 and the Bulker manufactured which are mounted on the chassis, should not be classified under Chapter Sub heading 8707 of the Central Excise Tariff Act, 1985.*
>
> *(ii) Central Excise Duty of Rs. 47,63,915/- leviable on the above both types of bulkers being manufactured and cleared, should not be demanded and recovered under the provisions of Section 11A(1) of the Central Excise Act, 1944. Already paid amount of Rs. 8,00,000/-under protest should not be appropriated and adjusted against the duty liability.*
>
> *(iii) Interest should not be charged and recovered under the provisions of Section 11AC of the Central Excise Act, 1944.*
>
> *(iv) Penalty should not be imposed under the provisions of Section 11AC of the Central Excise Act, 1944.*
>
> *(v) Penalty should not be imposed under Rule 25 of the Central Excise Rules, 2002.*
>
> *The adjudicating authority after considering the submissions made by the appellant re-quantified the demand and confirmed duty demand of Rs. 30,60,884/- along with interest and penalty vide OIO dated 22-12-2011. Aggrieved by the said order, Appellant filed appeal before the Commissioner (Appeals), and Commissioner (A) vide impugned order under challenge upheld demand of duty and classified all goods under Chapter 8716. Hence, the present appeal.*

***4.2*** *In order to appreciate the issue and proper classification of the goods viz. Bulker mounted on duty paid chassis we reproduce the relevant chapter heading No. 8704, 8716 and Chapter Note 5 to Chapter heading 87 as under :*

| *Heading No.* | *Description of Goods* |
|---|---|
| *1* | *2* |
| *8704* | *Motor vehicles for the transport of goods* |
| *8716* | *Tailers and Semi- trailers; other vehicles, not mechanically propelled, parts thereof* |

*Chapter Note 5 to Chapter heading 87*
*5. For the purpose of the 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.*

***4.3*** *From the above Central Excise Tariff heading and chapter Note we find that Chapter heading 8704 covers the product Motor Vehicle for the transport of goods and Chapter heading 8716 covers a group of non-mechanically propelled vehicles. Chapter Note 5 to the Chapter 87 creates a fiction whereby building a body or fabrication or mounting or fitting of a structure or equipment on a chassis, falling under Heading 8706, shall amount to "manufacture" of a motor vehicle. In terms of the legal fiction, since the appellant is mounting or fitting bulkers on the chassis falling under Chapter 8706, Appellant is deemed a manufacturer of motor vehicle and since the said vehicle is used for transportation of goods viz. fly Ash/cement etc, Appellant is a manufacturer motor vehicle falling under 8704. From the description of the articles and the use to which they put, we find that heading 8704 is the most appropriate. However, so far as heading 8716 is concerned, the said chapter heading deal with the Trailers and semi-trailers; other vehicles, not mechanically propelled vehicles.*

***4.4*** *The view taken by the Adjudicating authority that Bulkers mounted on chassis is classifiable under Chapter heading no. 8716 is incorrect. There is no dispute that after fabrication of bulkers appellant undertaking the process of mounting it on chassis and in the same form they were clearing it as complete and integrated motor vehicle for transport goods. Further Chapter heading 8716 would be applicable for fabrication of bodies for trailers/semi-tailers covered under Heading 8716 and these fabrication of bodies would be regarded as bodies for trailer/semi-trailer of Heading 8716 and such bodies would also be classified under Heading 8716.Thus it is quite clear that the disputed goods cannot be classifiable under Chapter Heading 8716.*

***4.5*** *We find that vide serial No. 39 of the table annexed to Notification No. 6/2006 motor vehicles for the transport of goods falling under 8704 is exempt from excise duty subject to condition No. 9 which stipulates that the manufacturer does not avail of the Cenvat Credit of duty paid on chassis falling under 8706 or other inputs used in the manufacture of such vehicle. In the present case, it is not in dispute that the appellant has not availed any Cenvat Credit on any of the inputs which have been used in the manufacture of either the bulkers or the duty paid on the chassis and therefore, the appellant would be entitled for the benefit of exemption under the said Notification vide Serial No. 39. Therefore, there would not be any duty liability on the appellant on the bulkers manufactured and captively consumed in the manufacture of motor vehicle falling under Chapter 8704.*

> ***5.*** *In view of the discussion and analysis as above, we find merit in the appeals filed by the appellant and hold the impugned order as unsustainable. Accordingly, the same is set aside. The appeal is allowed."*

11. We further find that in the case of *AMCL Machinery Ltd.* (supra), the Co-ordinate Bench of the Tribunal had examined the identical issues under dispute, in greater detail and have held that bulkers are rightly classifiable under tariff item 8704 2319 and are eligible for exemption under Notification No.06/2006-C.E. dated 01.03.2006. The relevant paragraphs of the said decision of the Tribunal is extracted and given below:

> *"7. Heard both sides and perused the records. 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 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 87.06 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*

*xxx xxx xxx xxx*

*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. .."*

12. In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Co-ordinate Benches of the Tribunal as referred above, we are of the considered view that 'bulkers' are appropriately classifiable under tariff item 8704 2390. Further, we also find that the exemption benefit under Notification No.06/2006-C.E. dated 01.03.2006 is extendable to excisable goods viz. 'bulkers' manufactured by the appellants and the same cannot be denied on the grounds that certain procedures have not been followed, since all the requisite certain conditions prescribed in the notification have been fulfilled.

13. Therefore, the impugned order is liable to be set aside to the extent it had confirmed the adjudged demands and imposed penalty on the appellants. Accordingly, by setting aside the impugned order dated 31.12.2013, the appeals filed by the appellants are allowed in their favour.

(Operative portion of the Order pronounced in the open court)

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**
**MEMBER (TECHNICAL)**

*Sinha*