

COMMISSIONER OF CENTRAL EXCISE, T.N. A

v.

M/S VINAYAGA BODY BUILDING INDUSTRY LTD.

(Civil Appeal No. 2833 of 2006)

MARCH 4, 2008

(S.B. SINHA AND V.S. SIRPURKAR, JJ.) B

Central Excise Tariff Act, 1985:

Chapter 87 – Sub Heading 8702.10 – Manufacture of motor cabs on duty paid chassis – Classification of – Levy of National Calamity Contingency Duty – Assesse-manufacturer of motor cabs, relying on classification of chassis under Sub-Heading 8702.90 and claiming the same classification for motor cabs as well – Also relying on job cards – HELD: Investigation carried out and the documents revealed that Sub-Heading 8702.10 was applicable – Further, payability of duty would depend on registration certificates in respect of vehicle in question – Relevant factor is seating capacity for which registration certificate had been granted and not the opinion of manufacturer of chassis – Similarly, stand of assessee based on job-work rightly rejected – Revenue rightly classified motor cabs in question under Sub-Heading 8702.10 – Central Excise Act, 1944 – s.11-A – Central Excise Rules, 1944 – r.4(1). C D E

The respondent was engaged in manufacture of motor cabs on duty paid chassis, with a seating capacity of 12 passengers and 1 driver. The manufacturers of chassis in their invoices placed the said goods under Sub-Heading 8706.29 of Chapter 87 of Central Excise Tariff Act, 1985. The Revenue classified the motor cabs under Sub-Heading 8702.10 and issued a show cause notice calling upon the respondent to pay one percent National Calamity Contingency Duty for the period 1.3.2003 to 30.9.2003, in terms of s.11-A of the Central Excise Act, 1944 read with Rule 4(1) of the Central Excise Rules, 1944 along F G

A with the penalty at the prescribed rate. The respondent filed an appeal contending that the motor cabs manufactured by it were classifiable under Sub-Heading 8702.90 as indicated in the invoices of manufacturers and further the job cards issued also showed that the orders
B were for fabrication of more than 16 seats in the cab. The appellate authority declined to interfere, but the Customs Excise and Service Tax Appellate Tribunal set aside the demand.

C In the instant appeal filed by the Revenue, it was contended for the appellant that the Tribunal erred in classifying the goods under Sub-Heading 8702.90 on the basis of the invoices issued by the manufacturers of chassis.

D Allowing the appeal, the Court

HELD: 1.1 The respondent-assessee during the period in question was stated to have manufactured 87 maxi cabs. An investigation in regard to the number of seats of the said vehicles carried out, showed that the assessee had built maxi cabs with seating capacity of 12 + 1 and not 16 + 1. Documentary evidences were also
E collected by the revenue from various customers. Sub-Heading 8702.10 would, therefore, be applicable. [para 15,18] [918-B, C, E]

F 1.2 Sub-Heading 8702.10 specifies for a vehicle designed for the transport of more than six persons but not more than twelve persons excluding the driver. It is also a 'cab' within the meaning of the provisions of the Motor Vehicles Act. [para 19] [918-F, G]

G 1.3 The finding that the respondent manufactured bodies for user thereof for maxi cabs with seating capacity of 12 persons excluding the driver is a finding of fact. Only because the manufacturers of chassis had
H classified the said goods under Sub-Heading 8702.90, the

same having regard to the independent manufacturing activities carried on by the respondent, was not decisive. For good and sufficient reasons, the claim raised on behalf of the assessee with reference to the job-work had been rejected. [para 19] [918-G, H; 919-A] A

1.4 The question in regard to the payability of duty would furthermore depend upon the registration certificates in respect of the vehicle in question. It is a statutory document granted under the provisions of the Motor Vehicles Act, 1988. Such a certificate is issued upon an inspection of the vehicle by the authorities of the transport department. On a chassis classifiable under Sub-Heading 8706.29, the manufacturer can make a body thereupon having regard to the nature of orders placed by their customers. In a given case, it may be of sixteen seating capacity but it may be more or less than the same in some other cases. What is, therefore, relevant is the seating capacity for which the registration certificates had been granted and not the opinion of the manufacturer of the chassis. [para 19] [919-B, C, D] B C D

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2833 of 2006 E

From the Judgment and final Order No. 1313/2005 dated 22/9/2005 of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Appeal No. E/616/2005. F

Mohan Parasaran, A.S.G., Arijit Prasad, Krishna Kumar and B. Krishna Prasad for the Appellant.

S. Nanda Kumar, Satish Kumar, S. Ananda Krishna Raj and V.N. Raghupathy for the Respondent. G

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Classification of the motor cabs manufactured by the respondent is the question involved in this appeal, which arises out of a judgment and order dated H

A 22.09.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Appeal No. E/616 of 2005.

B 2. Respondent is engaged in body building on duty paid chassis. Indisputably, it amounts to manufacture within the meaning of Note 3 of Chapter 87 of Central Excise Act, 1944 (for short "the Act"), which is in the following terms:

C "3. 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 No. 87.06 shall amount to 'manufacturer' of a motor vehicle."

D 3. For carrying out its manufacturing activities, the respondent purchased duty paid chassis from Tata Motors Ltd. The seating capacity of the cabs for which the body building activity was being carried out by the respondent is 12 + 1 (i.e. 12 passengers and one driver).

E 4. Indisputably, National Calamity Contingency Fund was created by Finance Act, 2003 wherefor inter alia it was proposed to impose one per cent duty on motor cars and multi utility vehicles.

5. The manufacturers of chassis in their invoices placed the said goods under Sub-Heading 8706.29.

F Appellant, however, classified the said motor cabs under Sub-Heading 8702.90 which has been specified for payment of National Calamity Contingency Duty (NCCD) at one per cent for the period 1.03.2003 to 30.09.2003. Admittedly the said duty was not paid.

G 6. A show cause notice was issued calling upon the respondent to show cause as to why an amount of Rs. 4,42,823/- should not be recovered from them in terms of Section 11A of the Central Excise Act read with Rule 4(1) of the Central Excise Rules towards NCCD at one per cent on the motor vehicles with seating capacity of more than 6 but less than 12, excluding
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driver's seat as also a penalty and interest thereupon. Cause A
was shown to the said notice by the respondent.

7. By an order dated 29.11.2004, the assessing authority B
confirmed the demand of Rs. 4,42,823/-. A penalty for an amount
of Rs. 5000/- was also imposed at the prescribed rate. It was
furthermore directed that on the said amount of duty interest
shall be payable.

8. An appeal was preferred thereagainst by the respondent C
contending that the job cards issued by them indicate that the
orders were for fabrication of more than 16 seats in the cab
and as such thereby the 'goods' manufactured by them should
be classified under Sub-Heading 8702.90 wherefor no NCCD
was payable.

The said contention was rejected by the appellate authority D
in terms of its judgment dated 18.04.2005 holding:

"The evidences of job cards produced at the time of E
personal hearing cannot be relied upon by them as the
same are new evidences in the form of new plea which
were not produced before the Lower Authority that cannot
be entertained at this stage as held by the Hon'ble
Supreme Court in the case of Naharwar Engg. Works Vs.
UOI reported in 2002 (143) ELT 34(SC). Further the
Hon'ble Apex Court in the case of Krishna Steel Industries F
Vs. CCE Patna reported in 2004 (172) ELT 305 Authority
or Tribunal, the same cannot be allowed to be relied upon".
Applying the ratio of the above decision, I, therefore, reject
this fresh plea/ evidences put forth for the first time by the
appellants.

10.3 Even presuming without admitting that these job G
cards are fresh evidences, these cannot be relied upon in
the matter of classification of said vehicles in the CETA
1985 inasmuch as the heading No. 87.02 and 87.03 have
been aligned on the basis of Motor Vehicles Act, 1988 H

A based on passenger carrying designed for the transport
of 12 + 1 persons” by the State Transport Authorities as
discussed in para 8 supra.”

B 9. As noticed hereinbefore, an appeal preferred
thereagainst by the respondent before the Tribunal has been
allowed stating:

C “3. It is not disputed that the seating capacity of the vehicles
manufactured by the appellants was more than 12,
excluding the driver. Hence the vehicles were classifiable
under SH 8702.90 only. The chassis (from M/s Tata Motors
D Limited) used by the appellants was classified by its
manufacturer under SH 8706.29 vide invoices of M/s. Tata
Motors Limited. The Tariff entry (8706.29) also clearly
indicates that chassis falling thereunder is meant for motor
vehicles of SH 8702.90. Hence there is no question of the
appellants’ product being classified under SH 8702.10
and demanded NCCD is set aside. The appeal is
allowed.”

E 10. Mr. Mohan Parasaran, learned Additional Solicitor
General appearing on behalf of the appellant, would submit that
the Tribunal committed a serious error in passing the impugned
judgment insofar as it proceeded to determine the issue relying
only on or on the basis of the invoice issued by the manufacturer
of chassis, which is impermissible in law.

F 11. Mr. S. Nanda Kumar, learned counsel appearing on
behalf of the respondent, on the other hand, submitted that not
only the manufacturer of chassis; even the job cards produced
by the respondent would clearly show that NCCD was not
payable.

G 12. Chapter 87 of the Act as applicable in the year 2003
contains the heading “Vehicles other than Railway or
Tramway Rolling Stock and Parts and Accessories thereof”.
Sub-Headings 8702.10, 8702.90 and 8706.29 thereof read as
H under:

"Heading No.	Sub-heading No.	Description of goods	Rate of duty
87.02		Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons.	
	8702.10	Motor vehicles principally designed for the transport of more than six persons, but not more than twelve persons, excluding the driver, including station wagons	16%
	8702.90	Other	16%
87.06	8706.29	Chassis fitted with engines, for the motor vehicles of heading Nos. 87.01 to 87.05 For the vehicles of sub heading 8702.90	16% plus Rs. 10,000 per chassis"

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13. A "maxi cab" has been defined in Section 2(22) of the Motor Vehicles Act, 1988 to mean:

"(22) "maxi cab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;"

14. Indisputably, body building of chassis amounts to manufacturing. It falls under Heading 87.06. The question, therefore, which arises for consideration is as to whether a maxi cab should be classified under the respective tariff heads, i.e.,

A 87.02 to 87.05 of Central Excise Tariff Act, 1985 or under the Chapter Heading 87.07?

15. Indisputably, again NCCD was imposed at the rate of one per cent advalorem on the goods falling under Sub-Headings 8702.10, 8703.90 and 8704.90.

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Respondent during the period in question allegedly manufactured 87 numbers of maxi cabs. An investigation in regard to the number of seats of the said vehicle was carried out. Statements of two of the officers of the respondent, viz., S. Balamurugan and P.V. Subbaraj were recorded wherefrom it appeared that the respondent had built maxi cabs with seating capacity of 12 + 1 and not 16 + 1. Documentary evidences were also collected by the revenue from various customers.

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16. Respondent inter alia contended that NCCD is paid on the chassis supplied by the owners of the motor vehicles and the intention of the Revenue was to collect the same from the manufacturers of the chassis and not independent body builders.

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17. The said contention of the respondent was rejected inter alia on the premise that the seating capacity of maxi cabs manufactured by the respondent is 12 + 1 only.

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18. Sub-Heading 8702.10 would, therefore, be applicable.

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19. Sub-Heading 8702.90 no doubt provides for the residuary whereas Sub-Heading 8706.29 refers to the vehicles falling under Sub-Heading 8702.90. Sub-Heading 8702.10 specifies for a vehicle designed for the transport of more than six persons but not more than twelve persons excluding the driver. It is also a 'cab' within the meaning of the provisions of the Motor

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Vehicles Act.

For good and sufficient reasons, in our opinion, the contention raised on behalf of the respondent with reference to the job-work prepared by them had been rejected.

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The finding that they manufacture bodies for user thereof

for maxi cabs with seating capacity of 12 persons excluding the driver is a finding of fact. Only because the manufacturers of chassis had classified them under Sub-Heading 8702.90, the same having regard to the independent manufacturing activities carried on by the respondent, was not decisive.

The question in regard to the payability of duty would furthermore depend upon the registration certificates in respect of the vehicle in question. It is a statutory document granted under the provisions of the Motor Vehicles Act, 1988. Such a certificate is issued upon an inspection of the vehicle by the authorities of the transport department. What is relevant was the terms of the contract entered into by and between the respondent and their customers. On a chassis classifiable under Sub-Heading 8706.29, the manufacturer can make a body thereupon having regard to the nature of orders placed by their customers. In a given case, it may be of sixteen seating capacity but it may be more or less than the same in some other cases. What is, therefore, relevant is the seating capacity for which the registration certificates had been granted and not the opinion of the manufacturer of the chassis.

20. For the reasons aforementioned, the impugned judgment cannot be upheld, which is set aside accordingly.

21. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs.

R.P.

Appeal allowed.