Mahindra and Mahindra Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-17-1998

Reported in : (1998)(76)LC77Tri(Mum.)bai

Judge : S Peeran, K D Shiben

Appellant : Mahindra and Mahindra Ltd.

Respondent : Cce

Judgement :

1. Both these appeals raise a common issue, hence they are taken up together for disposal as per law.

2. Appeal No. E/2738/89 has been filed by the assessee against the order dt. 25.11.1989 passed by the Collector (Appeals) rejecting the claim of classification of the product "Chassis with Cowl" under sub-heading No. 8706.40 i.e. under the description chassis fitted with engine or the motor vehicles for the transport of goods. The department on subsequent verification after the classification list had been confirmed, noticed that the vehicle was not a motor vehicle for transport of goods but it was cleared for manufacture of passenger type of vehicles and hence on the basis of investigation and after carrying out detailed adjudication the lower authorities confirmed the classification under sub-heading No. 8706.30 of the Central Excise Tariff. In this case the show cause notice was issued on 28.8.1986, which was adjudicated by the Assistant Collector by his order dt.

6.2.1987 and has also confirmed a duty demand of Rs. 38,704.80 under Section 11A of CESA, 1944. The Assistant Collector in his order has held that the goods chassis and cowls had been manufactured as vehicles for transport of goods. However, the chassis and cowls so manufactured are capable for being used for manufacture for carrying passenger type of vehicles. He has observed that since the classification and rate of duty in the present case depends on the kind of vehicles in which it is used and therefore, the claim of the appellants cannot be accepted to the effect that the classification should be independent of what happens to the goods subsequently. This reasoning has been adopted on the ground that at the time of removal according to purchase orders assessee knew for what purpose those can be used whether for transport of goods or for passenger type of vehicles. They ought to have known the correct duty which is required to be paid. He also observed that the customer namely, Shri K.P. Pathrose of Koshikode had manufactured Jeep for carrying passengers and therefore, the chassis and cowl will definitely fall under sub-heading No. 8706.30 chargeable to duty at 35% ad valorem. He did not want to propose to impose any penalty.

3. Appeal No. E/998/95 arises for proceedings remanded by the Tribunal for de nova proceedings on the earlier appeal filed by the assessee. On re-adjudication, the Collector dropped the show cause notice dt.

9.11.1988 to be withdrawn by accepting the plea of the assessee that the item is required to be classified under sub-heading 8706.40 on payment of CE duty at 20% ad valorem which rate was applicable for the chassis meant for transport of goods.

4. In the show cause notice dt. 9.7.1988, it was alleged by the department that the assessees are engaged in the manufacture of Motor Vehicles, Cowls and Chassis falling under Chapter 87 of the Central Excise Tariff Act, 1985 and possesses a licence issued by the Ministry of Industries and Company Affairs, Department of Industrial Development, to manufacture 13000 Nos. of 'On Road Automobiles', having 4 or more wheels known as light, medium and heavy commercial vehicles, jeep type vehicles and passenger cars. Earlier, the assessee held a licence for

manufacture of 13000 Nos. of three/four tonne jeeps, trucks, jeep utility vans (station wagons) etc.

(i) They were manufacturing motor vehicles of various models such as FJ 460, CJ 640, FC 360, FC 160, NC 640, NC 665, in different versions and accordingly classifying them as required under Rule 173B of Central Excise Rules, 1944.

(ii) The Central Excise Tariff Act, 1985 which came into force on 28.2.1986 prescribes different rates of duty for motor vehicles, under Chapter 87 of the Central Excise Tariff Act, 1985 and accordingly, the party submitted classification list No. 37/86-87/C-l effective from 28.2.1986, declaring the classification of the motor vehicles, as per description vide Sr. No. 7 of the afore aid Classification List filed with the department under the heading for the vehicles Heading No. 8704. They declared NC-665/640-DP-2WD chassis and cowl under Chapter I leading No. 8706.40, attracting effective basic duty at 20% ad valorem, in terms of Notification No. 162/86-CE dt. 1.3.1986.

(iii) Chassis fitted with engines for Motor Vehicles falling under Chapter heading 8701 to 8705 of the Central Excise Tariff Act, 1985, are classifiable under heading No. 8706. The details of all the vehicles were given in Annexure to the show cause notice. The party classified NC-640/665 chassis and cowl for use of Heading No. 87.04 i.e. for the motor vehicles meant for transport of goods.

(iv) On the basis of intelligence collected by the department that the chassis cleared by the party by declaring that they were for the motor vehicles for the transport of goods, were in fact used for the motor vehicles for the transport of persons. Motor vehicles for transport is classifiable under Chapter Heading 8706.30 which attracts duty at 35% ad valorem.

Working on the above intelligence, Superintendent Range-H, of Nasik Division, in whose jurisdiction the party's factory is located, called for information from the actual customers of NC-640/NC-665 chassis to know as to whether the same were used for vehicles for transport of goods or for transport of persons. A larger number of customers spread all over the country to whom the party had sold NC 640/NC 665, responded to the department's query and informed that all these chassis purchased by them were used for motor vehicles for transport of persons only and not for goods.

(v) The following correspondence were scrutinised and it showed that the party had prior knowledge of the use to which the chassis were being put to use.

(i) Reference No. WZ: 00:SALES:CRI:655 dated 1.3.1986 from Mr. M.C. Bhasin, Regional Manager (Jeeps) Western Zone to Area Managers/Dealers, in which a request has been made to intimate the number of body-builders existing in the areas and approximately how many metal body wagonettes are since built up on NCs.

(ii) Reference No. S:NA/3/23/G-364/2493 dated 23.4.1986 from M/s.

Narayan Automobiles, Lucknow to the party placing an order for supply of four numbers of NC 665/DP/2WD mounted with Hirider body (Passenger).

(iii) Letter No. WZ:SALES:FO2904 dated 5.4.1986 from Regional Sales Office (WZ) to Central Sales, Worli regarding supply of three numbers NC 665/DP/2WD chassis with cowl with body parts for jeep typo conversion to S.P.M.T. Maharashtra State, Pune.

(iv) Letter No. ITG/ND/ENQ/212.2 dated 14.6.1986 from Shri K. Tripathi of the party addressed to Spie Capag, New Delhi, regarding furnishing retail prices of Mahindra NC 640 cowl and chassis with metal body from rubber seats etc. - (Passenger Vehicles).

(v) Reference No. S/NA/3/23/1731 dated January, 1986 for supply of four numbers of NC vehicles to the Transport Commissioner, Lucknow with five door body i.e. passenger.

(vi) Telex dated 12.7.1986 from Mr. Bhavanani of the party addressed to Mr. Kini relating to negotiations with Public Health Department, Bangalore for 100 NCs of passenger vehicles.

(vii) " Order bearing No. DSE(R)45/86/8 dated 6.3.1986 from the Directorate of Sericulture Assam for supply of one Mahindra NC 640 passenger vehicle.

(viii) Order dated 17.7.1986 from M/s. Automotive Manufacturers Ltd., Vijayawada for supply of Mahindra NC 640 with clear cut understanding that the same should be for jeep conversion (passenger vehicle) at their end.

(ix) Order dated 1.4.1986 from M/s. India Carage, Bangalore for supply of five numbers NC 640 cowl and chassis to the Director Central Sericulture Research and Training Institute, Mysore, for fabrication of metal body station-wagon (Passenger vehicle).

4.2.1986 for supply of three number of NC 665 for fabrication of jeep body with Dunlop Seats and canvas hood (Passenger vehicle).

(x) Directorate of Fisheries, Bihar : vide their letter No. 262/Fish/dated 4.2.1986 for supply of there number of NC 665 for fabrication of jeep body with Seats and canvashood (Passenger vehicle).

(xi) Letter No. J:CN:PR:637/1036 dated 4.7.1986 to Lal Bahadur Shastri Engineering RES & Consultancy Centre, Trivandrum, regarding supply of NC 640 Cowl and chassis with Roplas Hirider fibre glass body. It is mentioned that they are requesting their Bombay office for release of cowl and chassis early to Roplas, Pune for fitment of FRP body.

(xii) Letter No. MD/APG/9808 dated 26.12.1986 to M/s. Simla Automobiles, Simla regarding NC and CJ Advertisement. The advertisement in 'Nav Bharat Times' dated 13.12.1985 mentioned that NC-640 DP Cowl and Chassis-4WD and 2WD with several body options which shows that the party had prior knowledge of NC Cowl and Chassis to be utilised for passenger carrying applications as one of the option and as admitted by Shri S.K. Sengupta in his statement dated 3.3.1988 recorded before the Assistant Collector, Central Excise, Aurangabad.

(xiii) Letter No. SA/86/2385 dated 8.4.1986 from M/s. Skyline Automobiles, New Delhi to the party requesting for delivery of NC-640 to M/s. Roplas for fitment of Hirider body five door type.

(xiv) Letter No. SHTO/1/86 dated 11.3.1986 of Director of Medical Education, Assam-Gauhati placing order for supply of one number NC-640 jeep Hirider FRP body five doors. He has requested further to send the chassis to M/s. Roplas for fitting of Hirider body on the said chassis after fitment vehicle be delivered through M&M dealer, Gauhati. Copy of this letter was endorsed to M/s. Roplas, Pune.

(xv) Letter dated 15.3.1986 bearing No. SHTO-1/86 from Directorate of Health Services, Assam placing order for one NC-640 jeep ambulance with all standard tools and fitments complete at DGS&D Rate Contract with a further request to send the Chassis to Roplas, Pune for fitting Ashwini Ambulance body on it.

(xvi) Letter No. J:CM:SALES:399 dated 5.2.1986 addressed to Nayak Trading Co., Quilon for supply of one number NC Cowl with Roplas Hirider Body. Further directions have been given to release the chassis early and send it to M/s. Roplas India, Pune for fitment of Hirider body.

(xvii) Letter No. J:CNPR:592/578 dated 15.3.1986 informing the Assistant Director Cardamom Board, Cochin confirming the receipt of DD for NC cowl and chassis and Roplas Hirider Body.

(xviii) Letter No. RA/VC/63/86 dated 19.6.1986 from M/s. Ranchi Automobiles, Ranchi to the party for supply of one number NC-640 with directions to send the chassis for Hirider fitment at Pune.

(vi) The Preventive Officers also visited Central Sales Office of the party at Bombay. On enquiry, the Deputy General Manager (Marketing) clarified that NC and FT Range of vehicles had the harder rear spring. The C] Range is relatively with a softer rear spring. NC and FJ Ranges of chassis are basically designed for commercial use i.e. transport of goods. No evidence in the form of purchase order etc. was, however, produced for verification.

In his statement dated 25.2.1988 Shri K.S.C. Parthasarthy, Deputy General Manager (R&D) stated that NC-640-DP/NC-665-DP are fitted with axis and suspension suitable for one ton GVW for two wheel drive. The only difference between cowi and chassis of above model and that of the Mini truck of the same model is that in case of mini truck it has got a platform mounted on chassis.

The Preventive Officers with the assistance of Central Excise Officers of Pune Collectorate searched the premises of Regional Sales Office situated at 6-R, Ambedkar Road, Pune and the premises of M/s. Silver Jubilee Pvt. Ltd., Pune on 29.2.1988 and recovered incriminating documents and recorded the statements of concerned individuals.

Shri H.F. Eduljee, Branch Manager, Regional Sales Office of the party at Pune stated that their office was handling only jeep trucks up to August, 1987 and thereafter the additional responsibility of Jeep was placed with them by a general directive by the Head Office, Worli, Bombay. That the orders are placed by the dealers directly to their Head Office and supplies are made from the factory. That they have no relation with any other body builder.

Shri D.A. Birajdar, Chief Accountant of M/s. Silver Jubilee Pvt. Ltd., Pune slated that they deal in Mahindra vehicles and spare parts. They receive cowl and chassis and platform in case of NC-665/640 models.

That they deal in fibre glass bodies manufactured and sold by M/s.

Roplas India Ltd., Pune according to the requirement of the customers.

That NC-640 and NC-665 models are sold by them as cowl and chassis and Mini Truck only.

The Preventive Officers also visited the premises of M/s. Roplas india Ltd., Rimpri on 29.2.1988 and recovered incriminating documents found relevant with the enquiry and recorded the statements of concerned persons.

In his statements dt. 29.2.1988 and 13.5.1988 Shri [Hinder Lakhani, Manager (Works & Administration) of M/s. Roplas India Ltd., stated that they were basically manufacturing auto body of fibre glass, FRP bodies for jeeps and Tata truck en bins. That they have their own specification for their own product and in respect of FRP body on Mahindra Vehicles, designs and specifications are approved by them.

That they receive the jeep from customers for body building. In a majority of the cases the jeeps are received with half body on which they install FRP bodies. In few cases they receive cowl and chassis/Mini truck which is converted as passenger body or Driver Cabin with pick-up box as per the requirements of the customers. Such vehicles are not directly received from the party but these are bought and delivered to them by the customers. Spare parts purchased from Mahindra are used in the body building of customers. Their company is a public company and Mahindra holding approximately 11% share in it. Shri George Jacob, Executive Vice-President of the party is the Chairman of the Board of the Directors of M/s. Roplas India Pvt. Ltd. That the persons of Roplas India Ltd. are sharing the office premises of the party's Regional Sales Office at Calcutta, Madras, Delhi and Bombay.

Their provident fund, Income Tax Matters, Insurance, Credit Society are being looked after by the party for which they raise suitable debit notes from time to lime. They are manufacturing FRP bodies on NC-Vehicles since 1982 and have developed Hinder, Ashwini Ambulance, Ashwini Passenger, Ranger, 665 vehicles manufactured by M/s. Mahindra & Mahindra The same bodies can also be fitted to CJ 640 vehicles. They receive NC-vehicles from their customers/dealers of M/s. Mahindra & Mahindra.

In his statement dt. 29.2.1988 and 13.5,1988 Shri E.D. Sharma, Dy.

Manager (R&D) stated that he has beep, associated with development of Hirider, Ranger, Ashwini Passenger/Ambulance bodies on NC vehicles. The Hirider type of bodies on NC vehicles was developed in the year 1982 or 1983. Thereafter they developed Ashwini Ambulance and Ashwini Passenger in the year 1984 followed by Ranger type of body on NC 665. The latest on the NC vehicle is FRP Hinder Super Deluxe. These bodies were developed in answer to market demands. The sitting capacity of different type on bodies referred above has been stated to be as follows: The above referred bodies made on NC vehicles are only meant for passenger carriage. These vehicles are not meant for the purposes of carrying loads. That production is undertaken of all the FRP bodies for passenger utility. The views of original manufacturers i.e. M/s.

Mahindra & Mahindra is taken because the sale of body their company and sale objectives of vehicles of the party are complementary to each other.

The Preventive Officers along with the assistance of officers of Nasik Division and the Officers from Central Excise Collectorate, Bombay-I searched the Central Sales Office and the registered Head Office of the M/s. Mahindra & Mahindra at Bombay on 2/3.3.1988 and recovered incriminating documents found relevant with the inquiry and recorded the statements of the concerned officers.

In his statement dt. 3.3.1988, Shri Keshub Mahindra, Chairman of M/s.

Mahindra & Mahindra stated that he is not looking after the day to day opera-lions of the company and matters pertaining to Excise are dealt by company's Executives. Therefore, on the basis of depositions, the charge sheet states that M/s. Mahindra & Mahindra had prior knowledge of the end use; (i) Shri K.K. Pitambar, Deputy Managing Director (Operations) of the assessee in his statement dt. 10.5.1988 deposed that he was aware that NC 665/NC 641) was being used as a passenger carrying vehicle prior to 1.3.1986. He further deposed that it was in the knowledge of the party that the NC Cowl and chassis was being converted into a passenger carrying vehicle at the dealer's end which was known to their marketing division since they (Marketing Division) had found a market for a product which was principally designed as a load carrying vehicle but was not selling in much quantity and by permitting their customers to convert the NC for passenger application, they were able to increase the off-take of the NC Model.

(ii) In his statement dt. 11.5.1988, Shri A.O. Saha, Parts Sales Manager of the party deposed that the spare parts as per proforma invoice were despatched to Roplas, Pune for converting NC cowls and chassis into Jeep type bodies. That kit half body shells and foot rear step were manufactured at their Kandivali Plant from where supplies were made to Roplas. He also furnished the parts used in conversion of NC Cowls and Chassis to Jeep type body during the period from 1.3.1985 to 28.2.1986 and from 1.3.1986 to 28.2.1987 as under:

Part Number 1.3.1985 to 28.2.1986 1.3.1986 to 28.2.1987

Qty. Nos.

Value Rs. Qty. (Nos.) Value Rs. 038950 2096 44,68,672 1224 26,09,568 036073 550 11,00,000 268 5,36,000 033690 1808 1,33,430 1217 89,815 That the half body shells were utilised for converting NCs into Jeep Type bodies.

(iii) In his statement dt. 11.5.1998, Shri M.M. Bhavnani, General Manager (Marketing) of the party deposed that NC-640 vehicles is capable of multiple use by customers and in respect of sales made to Public Health Department, Bangalore he was aware that the same was for application of passengers. That the body would not define a specific use. The Jeep with Ashwini and Hiriders body does not prevent the vehicle from being used for both load and passenger vehicle. That their vehicle is capable of multiple use by the customers and they were aware that customer was using their vehicle for application of passenger. He further deposed that they had knowledge that the vehicles were being put for passenger application by the customers. That the passenger application is a multiple use by the customer. NC Cowls and Chassis were for multiple use.

(iv) In his statement dated 11.5.1988, Shri K.S.C. Parthasarthy, Deputy General-Manager (R&D) of the party deposed that progressive springs were for comfort in riding of the vehicle with improved riding characteristics, the safety of vehicle was also improved.

That the introduction of progressive springs aimed at primarily removing problems of bumpy ride and consequently allowing the comfortable ride. That the total load carrying capacity of springs remained unaltered hence pay load of the vehicle did not change but the comfort of the passengers improved in the unladen condition.

In a memo dated 29.12.1985 addressed to M.S. Gadikar, Shri M.S. Parthasarthy mentioned that originally NC Springs were not designed for 1 ton pay load truck and subsequently "Marketing" had requested to re-design the spring to suit the metal body for which a, progressive spring was introduced after "marketing" had tried out and approval accorded. That is a soft spring is fitted and heavy loads are imposed, the rear brake holes get damaged due to too much of deflection and hence it would be necessary to supply softer springs only for soft top vehicle. That pay load against metal body was as 10 passengers having an unladen and laden weight of 850 kgs.

(v) In his confidential memo bearing No. JPG:MD:YSP dated 15.10.1987 addressed to Shri J.N. Pikle, Kandivali, Shri S.K. Sen Gupta, Deputy General Manager (Marketing) of the party has stated that he is not quite clear about the details which he (Shri Pikle) wants to furnish. As he (Shri Pikle) was aware that they used to supply in past NC Cowl and Chassis to customers and majority of these vehicles were being used for body building purposes.

(vi) In his statement dated 13.5.1988, Shri Jarinder Lakhani, Manager (Works and Admn.) of M/s. Roplas India Ltd., Pune deposed that they are engaged in manufacturing of FRP bodies on NC vehicles since 1982 and have developed Hirider, Ashwini Ambulance, Ashwini Passenger, Ranger, Hirider Super Deluxe and Hirider Deluxe on NC 640/665 vehicles manufactured by M/s. Mahindra & Mahindra. The same bodies can be fitted on CJ. 640 vehicles. That they were receiving NC vehicles from their customers/dealers of M/s. Mahindra & Mahindra.

(vii) In his statement dated 13.5.1988, Shri E.D. Sharma, Deputy Manager (R&D) of M/s. Roplas (I) Ltd., Pune deposed that they are putting the same type of components and same type of bodies on CJ 640 Model as the design features of the body design from the point of view of CJ 640 is similar to NC 665/640 vehicles.

(viii) In his statement dated 3.3.1988, Shri George Jacob, Executive Vice-President (Marketing) of the party has deposed that the party has invested to the extent of 11% in M/s. Roplas (I) Ltd., and that he is the non-executive Chairman of Roplas (I) Ltd. (ix) In his statement dated 10.5.1988, Shri B.R. Sule, Managing Director of the party deposed that design feature of CJ 640 and NC 640 remained the same due to use of progressive springs at rear and front and the use of shock absorber.

In his letter dated 15.3.1988, Shri R.K. Pitamber, Deputy Managing Director (Operations) of the party addressed to the Collector, Central Excise, Aurangabad has stated that the vehicles in question which was introduced in 1981 and designated the NC 665 was designed as a mini truck and the company found that a number of such vehicles though not designed for the transport of person were in fact put to use of transport of persons. Later the company introduced the cowls and chassis model of that vehicle and made certain design changes in the chassis and these changes of design consisted of reducing the size of the tyres and changing the design of the springs and suspension. The changes though mainly introduced for reasons of safety for the transport of goods had the effect of making of chassis capable of adaptation for the transport of persons. The letter further mentioned that they were aware that a number of NC series Cowl and Chassis vehicles have been converted to passenger application.

In order to know the difference between the vehicles for the purpose of Transport of persons and transport of goods, the Vehicle Research and Development Establishment, Ministry of Defence, Government of India, was addressed, who gave the expert opinion that the only distinguishing feature between Load Carrying Vehicle and Passenger Carrying Vehicle is that the load carrying chassis is provided with stiffer suspension whereas the passenger carrying vehicle is provided with a softer suspension along with shock absorbers to provide a good riding comfort.

And as regards tyres, their size is dependent on the load to be carried. it appears that use of softer springs rendered the vehicle suitable for transport of persons.

The party used soft springs part No. 054642, 057197 and 031699 in the chassis design of NC 640/NC 665, as is evident from the invoice No.BS/207/86 dated 17.4.1986 from M/s. Bharat Springs Pvt. Ltd., Bombay against their Order No. 86/C-2020345/00 dated 1.11.1985. Similarly, M/s. Jamna Auto Industries, Yamunanagar (Haryana) have also supplied part No. 031699 vide their invoice No. A-1672 dated 5.5.1986 to their Nasik plant. They have also used rear shock absorber part No. 012831 and front shock absorber part No. 033917 which were supplied to them by M/s. Escorts Ltd., Faridabad vide their Invoice No. WP 1187 dated 25.10.1986 and WF 1002 dt. 20.10.1986 respectively. It is evident from their "partwise MIC monthly report for production quantity statement" that these parts have been used in the manufacture of NC 640/665 Cowl and Chassis rendering them as chassis for fitting in Motor Vehicles primarily designed for the transport of persons.

It is also noted that while giving vehicle specification for NC 640 Cowl & Chassis in their promotional literature, M & M have not disclosed the fact of shock absorbers being used in NC vehicles.

However, the specification in the similar literature for CJ 640 Jeep gives the details regarding front and rear shock absorbers. Shri 13.R.Sule, Managing Director and Shri K.S.C. Parthasarthy, Deputy General Manager (R&D) in their statement dated May, 10 and 11, 1988 respectively have stated that the basic designing features of NC 640 and CJ 640 are identical. The party has however promoted the vehicle 640 as Jeep for the transport of persons. In this connection while comparing the vehicle specification of CJ 640 and NC 640 vehicles, V.R.D.E. Ahmednagar has stated that the only difference as per given specification are that the later model of vehicle does not have shock absorbers. According to opinion furnished by V.R.D.E. Ahmednagar the vehicles for transport of persons have soft springs and shock absorbers which distinguishes it from the vehicle for the transport of goods. As NC 640 has shock absorbers and soft springs, therefore, it appears to have been designed for transport of persons.

(x) In view of the allegations made up in the show cause notice and the annexure filed in detail that the party had prior knowledge regarding the end use of the Cowls and Chassis cleared by them. Therefore, the demand of Rs. 3,53,78,652.30 was and also they were asked to explain as to why penalty should not be imposed. It was alleged that the party had suppressed the facts with an intent to evade payment of duty, therefore, the extended period of 5 years is rightly applicable in the present case.

5. The assessee filed their reply to the show cause notice through their advocates. At the outset, it was contended that Rule 9(2) cannot be invoked in the present case, as the goods had been cleared after due approval of classification list, price list etc. and were openly cleared in the usual and ordinary course after submitting gate passes as required by Central Excise Law. In this regard, ruling of the Supreme Court judgment in Sanjana's case was relied as reported in AIR 1970 SC 2039, 2048 and J.K. Steel Ltd. case as reported in AIR 1970 SC 1173. In

paragraphs 9 to 19, they have traced out the history of the change brought in the design of the NC 665 model and about the reduction of payload from 1,000 kgs. to 750 kgs. the tyres specifications being altered and progressive rear springs being introduced. It was contended that from their experience from 1981 had shown that the registered laden in weight was specified at 20% above in terms of the gross vehicle weight, and it was legally possible to carry a payload of 1,570 kgs. on NC series. They stated that this resulted in dangerous overloading and safety hazards and it was, therefore, decided to reduce the gross weight from 2270 kgs. to 2045 kgs. with the result that the payload became 750 kgs. from 1,000 kgs. As a consequence they reduced the tyre size also. In cases when vehicles were not empty it became bouncy causing damage to the chassis frame, etc. and therefore, the) introduced progressive rear springs and also made certain changes in the load-holding and steering stability. They stated that in January 1985, the original three speed gear box in the 665 model was replaced by a 4 speed gear box and the model was called the NC 640. No design changes of any significance except lowering of the platform box have subsequently been made to the NC series of the vehicles. These changes were introduced much earlier to the introduction of the new Tariff of 1986 and it is only the new Tariff which made a distinction for the purpose of Excise duty between chassis for vehicles to carry passengers and chassis for vehicles to carry goods.

6. They have relied on the definition of the explanation chassis and chassis cowl as defined by the Federal Department of transport, Australia, in its Australian Design Rules, 3rd Edition, as follows: CHASSISthe basic operatic motor vehicles including engine frame and other essential structural and mechanical parts but exclusive of body and all appurtenances for the accommodation of driver, property and passengers applications or equipment related to other than control.

CHASSIS-COWLa partially completed vehicle with a partially completed occupant compartment with at least the windscreen and seats fitted, that required only the completion of the occupant compartment and the addition of cargo-carrying, work performing or load bearing components to perform its intended functions.

7. They contend that even the Supreme Court in the Automotive Manufacturers as reported in AIR 1972 SC 229 has observed: Ordinarily chassis have bodies attached to them for commercially profitable use.

8. They have relied on the literature of cither companies also following similar procedure for manufacturing their vehicles. They stated that the fact that the use on vehicles can be altered not only at the stage of initial purchase but subsequently is recognised by the Excise Department itself as is clear from the Trade Notices issued in 1988 by the Baroda, Bombay and Hyderabad Collectorates. They stated that the object in selling chassis is to enable the individual purchaser to have a body built on such chassis to his individual requirements. They furnished a table to show that of the total number of 25086 NC models cleared between 1.3.1981 and 31.3.1988 as many as 13425 constituting 54 per cent of the total were cleared in the form of mini-trucks and the balance of 11661 constituting 46 per cent of the total were cleared in the form of cowl and chassis. Therefore, they stated that the bulk of the cowl and chassis so cleared were supplied to the Government Departments etc. many of whom used these cowl and chassis after having passenger bodies installed on them. They stated that on introduction of new Tariff on 1.3.1986 under Rule 57F(2), they had addressed applications dt. 21.9.1986, 28.12.1986, 19.1.1987 and 5.2.1987 seeking permission under the said rule to clear the said chassis and cowl to different body builders, which was granted by the department on 3.6.1986 and 4.3.1987. It shows that the fact that the cowl and chassis were used for body building was known to the department at all relevant times. They also referred to the tender dt.

5.12.1985 issued by Maharashtra Government inviting tenders from body builders to construct passenger bodies NC 640 DP model. They also referred to an article in the issue of "Lok-Satta" etc. that a number of ambulances acquired by the Maharashtra Government were NC 665/640 vehicles with ambulance bodies built thereon. Therefore, they say that these facts indicate that it was widely known throughout the industry and in the public that a number of NC models cleared by M/s. Mahindra & Mahindra in the cowl and chassis form were being installed with bodies for passenger application. They also pointed out that during August, 1986, the Central Excise Authorities having jurisdiction over M/s.

Mahindra & Mahindra Factory at Nasik received communications from their counterparts in Kerala in which it was pointed out that chassis of four vehicles cleared as cowl and chassis had passenger bodies built on them. As a result of the said intimation, the Superintendent of Central Excise, Nasik issued a show cause notice to M /s. Mahindra & Mahindra contending that the said chassis ought to have been classified as chassis for passenger vehicles and though M/s. Mahindra & Mahindra refuted the same in their reply, the Assistant Collector passed an order against M/s. Mahindra & Mahindra holding that the chassis ought to have been cleared under Heading 8706.30. Further, they stated that during 1987, the representatives of M/s. Mahindra & Mahindra met the Chairman and Officers of the Central Board of Customs and Excise at Delhi and in this context, relied on the correspondence to show that the said vehicles were suitable for multiple operations including passenger use. Therefore, they stated that it was a matter of common knowledge throughout the country and also known to the department about the said chassis being put, amongst others, to use as passenger vehicles. They also stated that the vehicles cleared in the form of cowl and chassis are in all the basic respects identical to the vehicles cleared as mini-trucks, the only difference being that in respect of the latter certain fixtures and fittings have been added to enable the said vehicles to function as mini-trucks. They state that as there is no significant difference between the two, therefore, it established, inter alia, by the observations made during the inspection by the CERA Audit dt. 9th May, 1983 in which it was contended that the cowl and chassis were nothing but intermediate products of mini-trucks.

They had disputed these contentions. They had relied on the correspondence on this aspect of the matter to show that it conclusively establishes that the said cowl and chassis are in all basic respects identical to the said mini-trucks. They stated that as far as the design changes introduced in the NC models are concerned, the principal change has been in the introduction of what are called progressive springs. They pointed out that the show cause notice appears to proceed on the erroneous basis that a progressive spring is the same as a soft spring and that introduction of a progressive spring, therefore, establishes that the vehicle was meant for passenger application. They stated that this statement is manifestly incorrect, as is clear from the standard literature on the subject of a progressive spring. In this context, they have produced literature to support their case including letter dt. 4.8.1988 received by M/s.

Mahindra & Mahindra from the Automotive Research Association of India in reply to their letters of 31.5.1988 and r M988. It is also contended that the allegations in the show cause notice that the various changes made in the design of the NC series have been introduced to give a smoother ride and obviously, therefore, according to the show cause notice, the object was to make it more suitable for passenger use is based on erroneous approach and unwarranted assumption that a goods vehicle should not be comfortable. They stated that this entirely ignores the fact that it is a modern trend that the driver of a goods vehicle who drives it for many hours at a stretch must have reasonably comfortable driving conditions and in this connection, they relied on the Trade literature of other manufacturers. They also refuted the allegations in the show cause notice that the NC series of vehicles are fitted with shock absorbers and it is suggested that shock absorbers are only fitted in passenger vehicles. In this connection, they have relied on the opinion expressed by the Central Government's Vehicle Research and Development Establishment by their letter dt. 28.6.1988.

They stated that the function of a shock absorber is to allow wheels to move up and down relative to the body and shock absorbers also called dampers, are part of the suspension system of every motor vehicle. No motor vehicle is without a shock absorber be it a load carrier or a passenger carrier. In this connection they have relied on the Trade literature of other manufacturers. They also stated that the conclusion on admission made in the statement does not conclusively prove the case of the department. They stated that passenger carrying motor vehicles are the subject matter of heading 87.02 and 87.03. Heading 87.02 read with Chapter note 3 means a motor vehicle designed for the transport of 10 or more persons including the driver. Heading 87.03 deals with either motor cars or other motor vehicles principally designed for the transport of less than 10 persons, and includes station wagons and racing cars. Heading 87.04 deals with motor vehicles for the transport of goods. Heading 87.05 deals with special purpose motor vehicles. They stated that passenger type motor vehicles would merit classification under either heading 87.02 or 87.03, depending upon their design. If they had designed for the transport of 10 or more persons, they would merit classification under heading 87.02; if they had designed for the transport of less than 10 persons, they would merit classification under Heading 87.03. If the motor vehicles are not principally designed for the transport of persons they would not merit classification either under heading 87.02 or 87.03. They relied on the meaning of the word "for" as appearing in Indian Chamber of Commerce in AIR 1976 SC 348, 'for' used with the active participle (if a verb means 'for the purpose of ...' It connotes the end with reference to which anything is done. It also means the sense of 'appropriate' or 'adopted to'; suitable to purpose....

Therefore, they slated that the chassis would, therefore, merit classification under sub-heading 8706.30, if the chassis meant for vehicle of heading 87.03. It would merit classification under sub-heading 8706.40 if it is meant for vehicles falling under heading 87.04. They stated that it is necessary to take into consideration the Rules for the Interpretation of the Schedule to the Tariff Act, which are required to be applied for interpretation under the provisions of Section 2. The result of the correct interpretation of the sub-headings read with the aforesaid Rules of Interpretation is that if the chassis is designed for or is suitable only for passenger type vehicles falling under heading 87.03 the chassis must be classified under sub-heading 8706.30. If, on the other hand, the chassis is only suitable for a vehicle for the transport of goods falling under heading 87.04, the chassis must be classified under sub-heading 8706.40. They stated that this is clear from the judgment of the Court of Appeal in England in customs and Excise Commissioner v. Mechanical Service, as reported in 1979 1 All E.R. 501 and by reason of the said interpretation rule the goods must be classified under the later of the two sub-headings, namely, 8706.40. They have also given explanation on the admission taken by the department from Parthasarthy and stated that the same will not have any bearing on the case for the purpose of classification.

They also stated that it is not relevant in deciding upon the question of classification of the chassis to take into consideration the actual end-use. They stated that it is immaterial as to what happens to the goods if they have left the premises and that the taxable event is the manufacture or production of goods. In this regard, following judgments are cited: 1. M/s. Chltotabhai Jethabhai Patel and Co. v. UOI 1962 AIR SC 1006, para 25 : ECR C 147 SC 2. Balkrishna Ranchodlal Shah v. ACCE 1979 ELT J377 : 1991 (34) ECR 311 (Guj)Dunlop India Ltd. & Madras Rubber Factory Co. v. UOI AIR 1977 SC 597 : 1975 Dec. Cen-Cus 150 (SC) : ECR C 476 SC They also stated that the advertising materials cannot be relied for the purpose of determining how a particular object should be classified under the Central Excise Tariff. In this context, they relied on the judgment of the Bombay High Court in the case of Blue Star 1980 ELT 280 : 1987 (25) ECR 69 (Bom), Leuco Plast 1987 (11) ECR 204 and Union Carbide (38) STC 198.

They also stated that the proviso to Section 11A(1) of the Act cannot be invoked in the present case. They stated that the new Tariff came into force on 1st March, 1986 and that they had submitted a classification list classifying the NC cowl and chassis under sub-heading 8706.40 and the said classification list had been approved by the Assistant Collector on 27th August, 1986. They stated that before the said classification is approved it is the duty of the officer to carry out such enquiries as is provided under the provisions of Rule 173B and once the classification is deemed to have been approved it follows that such classification is deemed to have been approved after due enquiries. They also relied on several materials to show that the department had full knowledge about the use to which the chassis were being put to passenger use. They also relied on the classification list submitted on March, 1987 seeking classification of the said cowl and chassis under heading 8706.30 as also sub-heading 8706.40. They stated that enquiries had been made and they had clarified by their letter dt. 5th October, 1987 and they had stated that this was being done as the cowl and chassis were capable of both passenger and goods application. They stated that the 1987 classification list was approved by the Collector after this clarification was received. They stated that this further conclusively establishes that the actual knowledge of the passenger use was within the knowledge of department. They also stated that they have not recovered any higher amount of duty from the buyers.

9. The Collector in the impugned order has held that he did not find any difference between the cowl and chassis and cab and platform Truck versions chassis. This

is also confirmed from the Flow Chart of assessee's Assembly plant. He also referred to the fact that the assessee had sought permission of Superintendent of Central Excise in 1984 to convert certain mini Trucks to Cowls and Chassis and cleared them as such and about the Audit objection etc. He has held that it is fact that about 54% of the total production of Cowl and Chassis have been undoubtedly used by the assessee in the manufacture of Trucks cleared by them and the remaining quantity which has been cleared as 'Cowl and Chassis' has been used for conversion into passenger vehicle, ambulances and passenger vehicle with 10 passenger capacity. This point he has noted that the assessee had not seriously disputed before him.

He has concluded that the same cowl and chassis have been used not only for manufacture of motor vehicles under 87.03 but for other headings also. He has held that in that view of the matter, he cannot come to a positive conclusion that the cowl and chassis have been conclusively used or predominantly used for passenger vehicles under chapter heading 87.03 as alleged in the show cause notice. He also held that he cannot come to (lie conclusion that passenger vehicle under chapter heading 87.03 is predominant use when he finds that chassis can be used for vehicles of various types and could be classified under Chapter sub-heading 8706.20, 8706.30 and 8706.40. I he re fore, he has applied Interpretative Rule 3(c) for the purpose of classifying I he goods under sub-heading 8706.40 of the Central Excise Tariff Act, 1985. He has held that if predominant use is taken the said cowl and chassis should be classified under Chapter sub-heading 8706.40 only and this view is supported by Rule 5 of Rules of Interpretation. He has also looked into the aspect pertaining to the expression "FOR THE VEHICLES" would mean and convey. He has held that one has to go into the aspect of designing of the chassis to determine the term "used for", in that event one has to go to the predominant use which is for the goods vehicle and therefore, no demand on merits could be made. In order to arrive at this conclusion he has looked into the technical literature produced by the appellants. He has noted from the Book Manual on Design and Application of leaf springs, SAE HSJ-738 by Society of Automotive Engineers, USA to state that variable or progressive spring is a popular type of spring particularly in the light truck models. They have the potential of improved ride quality over a wide load range.

They are particularly used where a relatively low rate is desirable when the vehicle is in operation with only the driver and perhaps a light pay load, but a higher rate is required, when the vehicle is at designed loads. As in the light load range the second stage left are in-operative and as the pay load increases they come into operation.

From this description he has concluded that progressive springs are introduced only where there are large fluctuations in the loads being carried or otherwise empty running of the vehicles and that has to be goods transport vehicles. Therefore, he has concluded that the use and presence on the springs of 'progressive type' would be an essential design feature for goods carriage vehicles/chassis. He has also given details of 16 vehicles wherein progressive springs have been used in the several models for transport of goods. While no such springs were being used which were particularly for the transport of persons.

Therefore, he has held that he cannot accept the proposition that the introduction of the progressive spring by the assessee were with the intention to convert the chassis to a design suitable for transport of persons. They are definitely used where the fluctuations between the Curb weight and the Cross Vehicle weight is large and not used where the fluctuations are less. He has concluded that progressive spring was used by the assessee only for their transport models and not for their passenger models for example Armada Jeeps etc. at S. No. 17 to 28 of the details noted by the Collector in the order which are purely transport vehicles. He has held that the allegations made out in the show cause notice do not survive on merits regarding use of progressive springs and the use by the assessee in the other models being marketed by the assessee for passenger use as no progressive springs are used thereof. He has also noted the extracts of the book Motor Vehicle Technology and Practical Work by J. A. Dolan, which is reproduced below: Many production cars are now made with a combined welded construction of strengthened floor and body which replace the conventional frame.

He has noted that in fact, most of the popular models of the vehicles in India principally designed for transport of persons falling under 87.03 does not have full chassis frame for example, Fiat, Premier, Ambassador, Maruti etc. Therefore, he has held that he cannot accept the proposition that the 'Cowl and Chassis' in the present case is meant for a vehicle principally designed for the transport of persons like a Sedan or Saloon car should be cleared under Chapter heading 8703.00. He has also referred to the opinion given by the Government Institutes V.R.D.E. (Vehicle Research Development Establishment of Ministry of Defence, Government of India) and A.R.A.I. (Automotive Research Association of India, Research Institute of Automotive Industry of Ministry of Industry). On reference by the enquiry officer that it was not possible to state that the chassis were designed for passenger vehicle. He has also referred to certificate issued by V.J.T.I. (Victor Jubilee Technical Institute, Bombay a Government of Maharashtra run Engineering Institute have Motors Degree Courses in Automobile Engineering) has categorically opined that the chassis was not suitable for passenger use and has features essential for a vehicle used for transport of goods. In view of these certificates from the experts, he has held that it does not support the view that the design is suitable for or appropriate for vehicle for transport of persons.

Therefore, he has held that he could not find any specific design of the chassis meant for or changed for use for transport of persons. He has noted that from the history of the development of the Models and changes incorporated including the 'progressive springs' it is observed that all the changes were contemplated and implemented by May, 1985 well before the new Tariff was enacted and implemented. The design was meant for and used for goods transport vehicles as at all times therefore, one cannot come to a conclusion that the assessee tailor made the product to conform to 87.03 and avail of the notified rate of Notification No. 162/86-CE, dt. 1.3.1986 under sub-heading 8706.40. He has also noted several judgments which are in support of the party.

10. In that view of the matter, he has given a finding that he is not inclined to find any reason to effect a change in the classification of the Cowl and Chassis from sub-heading No. 8706.40 and also to support the charges of short payment of duty on merits as made out in the show cause notice. He has also held that the show cause notice is bad in law and no demand can be made per se; that the demands are barred by limitation as no cause arises to invoke the proviso clause to Section 11A (i) and to impose the penalty.

11. The Revenue being aggrieved with this order had contended that the Collector ought to have considered the statement of Shri R.K. Pitamber, Deputy Managing Director (Operations), who had accepted that all the chassis and cowls cleared by them during the period 1.3.1986 to 28.2.1987 were put to passenger use and this being an admitted fact that end use of the said goods was within the knowledge of the assessee and that the chassis were being used for the motor vehicles for transportation of passengers and hence the charge should have been accepted. The further admission of Shri R.K. Pitamber that the company introduced certain design changes in the chassis such as re-designing the size of tyres and changing the design of the spring and suspension with a view to make the chassis suitable for adoption into vehicle for the transport of persons should have been considered. It is further contended that the Collector has failed to consider the statement of Shri E.D. Sharma, Deputy Manager (R&D) of M/s. Roplas (I) Ltd. which is an associate company of the assessee firm stating that they were engaged in the activity of body building on the chassis provided by M/s. Mahindra & Mahindra and about their building passenger and ambulance models on the NC vehicle during the said period and the same had been done after obtaining the views of the original manufacturers.

It is also contended that the opinion of technical experts should have been accepted especially the opinion of V.R.D.E under Ministry of Defence, who had opined that the only features distinguishing between load carrying vehicle and passenger carrying vehicle is that the load carrying chassis is provided with stiffer suspension whereas the passenger carrying chassis is provided with a softer suspension along with shock absorbers to provide a good riding comfort and that the tyres, their size is decided based on the load to be carried. The opinion of the Automotive Research Association of India is also relied which had given the opinion that it is difficult in the Indian automobile field to distinguish between the chassis designed for passenger carrying application and the chassis designed for goods carrying application, as there are hardly any such clear demarcation existing today. It was also clarified that ideally speaking the suspension system for passenger carrying version is expected to be designed for better ride comfort. However, the suspension parameters such as road conditions and many LCV manufacturer use same spring for both the application. It is not possible to state from the suspension design alone whether the chassis is intended for passenger or truck application. Therefore, it is contended that the Collector has wrongly placed reliance on the opinion of V.J.T.I., as the project report on "Evaluation of NC-640 DP Vehicle for Mahindra & Mahindra Ltd." was prepared by V.J.T.I. They had also opined that the many of the factors are subjective in nature and they did not say that by changing spring/suspension, the vehicle cannot be converted into a passenger vehicle. It is stated that all the three reports quoted above does not lay down the demarcation line or distinction between the chassis which are used for transport of persons particularly in India. The difference is only in the riding comfort which is a subjective matter and is achieved by proper springs and suspension mechanism and shock absorbers. It is stated that in Indian Automobile Industry, there is no such hard and fast specification distinguishing the chassis meant for transportation of goods and for transportation of passengers. V.J.T.I.had carried out only certain tests and thereby concluded that the chassis in question would generate the vibration and other things and is, therefore, not suitable for transportation of passengers. However, they have not indicated any authoritative book or literature or specification based on which they had decided that the chassis is not fit for transportation of passengers. They have also made out grounds for invocation of Rule 9(2) and that the condition of mens rea and clandestine removal is not a must under this rule. It is stated that the Tariff of Motor vehicle has been designed in such a way that end-use is built into it. The wordings of Tariff are "motor vehicle for the transport of 10 or more persons", motor cars and other vehicles particularly designed for transport of persons, "motor vehicle for transport of goods" etc. Thus, it is stated that it may be seen that Tariff had specifically provided end-use of the vehicles for the purpose of classification and that end-use has been built in. They stated that Collector should have relied on the certificate issued by V.J.T.I. as it had been procured by the assessee themselves and it was for a different vehicle Model No. NC 640-DP and it was a part of the project report for designing a personal vehicle. Records are there to indicate that more of the vehicles had been used for passenger traffic and the assessee in its Circular dt. 8.2.1984 to its dealers, had advised that "vehicle is a passenger vehicle and softer springs had been added". They stated that when there is no prescribed specifications or authoritative guidelines to decide whether a particular chassis is meant for transporting goods or transportation of passengers; the Collector ought to have considered the actual use of the chassis while deciding the classification of the chassis on the basis of maxim "resipsa loegiter" (the thing speaks for itself). It is stated that in this case V.J.T.I. had mentioned that the chassis are not fit for transporting passengers, therefore, the opinion of V.R.D.E.quoted that the vehicle for transport of passengers had soft spring and shock absorbers which distinguished it from the vehicle for transportation of goods ought to have been considered. They stated that the admission of the stated persons had been duly corroborated by various experts from all over the country, therefore, the proper classification for the goods in question ought to be under sub-heading No. 8706.30 as suitable for the vehicles of heading No. 87.03.

12. We have heard the learned Senior Advocate, Shri A.M. Setalvad for the assessee's company and the learned DR, Shri D.S. Negi for the Revenue.

13. The learned Senior Advocate submitted that the goods in question cannot he classified as chassis fitted with engines for "motors and other vehicles principally designed for transportation of persons". It is his contention that the goods have not been principally designed for such use and only when the department discharges their burden of classification on this aspect of the matter, then can the item be classified as such. It is his contention that the department has proceeded on the basis to show that the goods have been fitted with progressive springs and shock absorbers and therefore, it satisfies the criterion of the item having been principally designed for transport of goods. He submits that there is no evidence produced by the department while there is enormous evidence in favour of the assessee both technical as well as trade and commercial understanding and also that the Collector had noted that 54% of the total production have been used for the manufacture of trucks. Therefore, it is his submission that the department have not discharged their burden on this aspect. He relies on the term "design" as laid down in English judgment French v.Champ-kin as reported in 1920 (1) KB 76, 79 which has held that "design" means adapted for, i.e. it must be originally constructed for the purpose or later altered for such purpose. He has pointed out that the entire submissions made by the assessee including the correspondence which the assessee had with the department on their bringing technical changes in the

design prior to the introduction of the Tariff. This clearly indicated that it was not done with a view to evade payment as the said changes had been effected prior to the introduction of the new Tariff which laid down these criterion. He submitted that such changes were done for the technical purposes as had been explained by the appellants. He submitted that end use cannot be the criterion for classification and that there has been no such misuse in the present case. He submits that although there has been some understanding in some cases whether the goods had been cleared for the purpose of passenger vehicle, yet it was not done with an intention to evade duty, ns it is well settled that end use is not the criterion. He submits that it is well settled that unless the heading or the entry specifically so provides the end use of an article is irrelevant for the purpose of article because the articles must be classified when it is cleared (for the purpose of Excise Duty) or when it is imported (for the purpose of Customs Duty). In this regard, he relied on the judgment of the Supreme Court in the case of Dunlop India Ltd. v. Union of India as reported in AIR 1977 SC 597, 607 : 1975 Dec. Cen-Cus 150 (SC) : ECR C 476 SC and that of Bombay High Court judgment rendered in the case of Sainet Put. Ltd. v. Union of India as . He submits that the sub-heading 8706.30 does not specifically or at all refer to the actual end use of the chassis; on the contrary if correctly read, introduces the criteria of design, not the actual end use. He submits that when the Parliament wanted to specify actual end use it always does so specifically as can be seen from the headings 37.07 and 40.11 and such is not the case with regard to sub-heading 8706.30. He points out that more than half of the very same item has been used for transport of goods. He submits that even if it is assumed for the purpose of arguments that the end use of the said vehicle is to be taken as criteria then in that case what has to be considered is the predominant use as has been held in the case Annapoorna Carbon Industries v. State of Andhra Pradesh It is his submission that as more than half of the said goods have been put to use for transport of goods it cannot possibly be concluded that the use shows that they should be classified as for vehicles for the transport of persons. He submits that their goods have to be regarded as multi-use articles and for such circumstances the goods are required to be classified under sub-heading No. 8706.40 by applying Interpretative Rule 3(c). In this regard he also relied the judgment rendered in the case of Customs and Excise Commissioner v.

Mechanical Services Ltd. as reported in 1979 (1) All E.R. 501, 511. He submits that the case had been remanded by the Tribunal as per Final Order dt.

30.4.1993 wherein the Tribunal had clearly indicated that the opinion of V.J.T.I. cannot be brushed aside and therefore, the present grievance made by the department in the appeal memo pertaining to the said opinion is not sustainable. He submits that the department did not produce any counter evidence to show that the progressive springs and chassis fitted with the shock absorbers cannot be used for transport of goods. He submits that both type of criteria of vehicles required progressive spring and shock absorber. In this regard, they had also explained in writing which has been accepted by the Collector. Such evidence being points of the facts it cannot be disputed. He pointed out that the jurisdictional Assistant Collector approached two Government bodies viz. A.R.A.I, and V.R.D.E. to give an opinion on the nature of these very cowls and chassis as to whether they were designed for transport of persons or goods neither opined that they were suitable for the transport of persons. He submits that the V.J.T.I.being an independent expert body has categorically given the opinion that the said cowl and chassis had features essential for a vehicle for the transport of goods and were not suitable for vehicles for the transport of persons. Therefore, he submits that merely because the opinion had been obtained by the assessee it is no reason to disregard it, particularly as there was no opinion or evidence to the contrary and as the Tribunal had also directed the Collector to consider the said opinion. He relied on the judgments rendered in the case of Ram Prasad v. Gold Control Administrator and that of Shantilal v. Collector of Customs as . He also referred to uncontroverted affidavit of Mr.

Parthasarthy, General Manager (R&D) that the said chassis were not designed for transport of persons and that he has not been cross-examined though made available and his statement is required to be accepted. In this regard, he relied on the following judgments: 14. He also submits that there is no ground to invoke Rule 9(2) as there was no clandestine removal and that the department's contention that clandestine removal is a "must" for application of Rule 9(2) is wholly wrong. In this regard, he relied on the judgment of the Supreme Court rendered in the case of N.B. Sanjana v. Elphinstone Spg. and Wvg.

Mills as .

15. He also submits that there is no ground for invocation of proviso to Section 11A (1) as according to them there was no suppression in the matter. Further, the progressive springs had been introduced in 1983, when the Tariff made no distinction between chassis for passenger vehicles and chassis for goods vehicles; no change in the design of the said cowls and chassis was made after the new Tariff Act came into force in 1986; and hence suppression cannot be alleged, as they had no intention to evade duty. Further, he submits that according to the assessee, the actual end use of the goods was irrelevant for classification and this opinion was bonafide is established by the fact that the jurisdictional Assistant Collector in 1988 was of the same view. There can, in such circumstances, be no suppression with intent to evade duty. In this regard, he relied on the following judgments: 1. Cement Marketing v. Assistant Commissioner 1980 ELT 295 : 1981 ECR 58D (SC) : ECR C 571 SC 2. Tata Yodogawa Ltd. v. Assistant Collector 1983 ELT 17 : 1983 ECR 277D (Pat)Ilavia Enterprises v. CCE He also submits that the department was aware of the appellants clearing the same or such use as can be seen from the correspondence in this regard. In this regard, also several judgments have been cited besides arguing for no penalty can be imposed. In this regard, also judgment rendered in the case of Indian Hume Pipe v. Collector of Central Excise, as reported in 1988 (33) ELT 508 : 1987 (11) ECR 616 (T) has been relied.

16. The learned DR while reiterating the Revenue's ground made out in the appeal submits that both criteria the design and the specification is the same and that there is no difference in the design. Therefore, the classification has to be adopted on the basis of end use and such end use is in-built in the Tariff. He submits that the assessee had knowledge at the time of removal with regard to these goods and therefore, they cannot state that there was no criteria for classifying it as chassis principally designed for transport of persons. He submits that M/s. Roplas India Ltd. had their office in M/s. Mahindra & Mahindra and that M/s. Mahindra & Mahindra shares in their company and M/s. Mahindra & Mahindra had control over them in terms of payment of provident fund and other aspects. There has been admission in the matter and it has a bearing for decision of the case. He submits

that the correspondence of the appellants with the customers came to their department's knowledge only after search. He submits that even in their earlier correspondence there was no indication about their clearances of the same goods for two purposes. Therefore, their contention that there is no suppression in the matter. The evidence of V.J.T.I. cannot be relied, as it is self-interested testimony. Even the reports of A.R.A.I. indicates that there is no specific design for any of the said end use.

17. We have carefully considered the submissions made by both the sides and have perused the records.

18. In this case, it is clear from the admissions of the witnesses that the appellants had prior knowledge in large section of supplies pertaining to use of the chassis and cowl for use of transport of persons. However, for the purpose of classification, is this understanding sufficient? According to Revenue, the end use is in-built in the tariff. On this point, the Senior Counsel does not differ but he submits that end use is not determinable on the reading of the tariff subheading, as the description under sub-heading 57.03 is "motor cars and other vehicles" principally designed for the transport of persons ....." It is contended that this description does lay down the said criteria as the cowls and chassis were not "principally designed for the transport of persons". On an examination of this point, it is noticed that on this point the party's submission has been that their experience from 1981 had shown that, as under the MVC rules, as in force at that time, the registered laden weight was specified at 25% above the gross vehicle weight, it was legally possible to carry a pay load of 15% kgs. on the NC series. It is stated that this resulted in dangerous overloading and lead to safety hazards and hence they had decided to reduce the gross vehicle weight from 2270 kgs. to 2045 kgs.

with the result the pay load became 750 kgs. from 1000 kgs. They were also stated that for removing extremely bouncy conditions, which resulted in damage to chassis, frame, etc. they introduced progressive gear springs for better riding characteristic both when the vehicle was fully loaded and when empty. They effected certain changes in the front springs to improve, road-holding and steering stability. This ground of defence was supported by technical opinion and also it has been shown that in Trade, other manufacturers have also effected these changes for their vehicles for transport of passengers. This aspect has been accepted by Collector. The revenue has not produced any rebuttal evidence to challenge this point that there was no need for effecting such changes. Further, it is seen that these changes were as a result of research and development and, it has not been shown that it urns effected to suit their convenience with an intention to evade duty.

Tins also could not possibly be so, as these changes were brought in the new tariff laying down this criteria. Further changes were effected in January, 1985 with regard to speed gear box in the 665 Model and the Model on replacement with four gears was renamed as NC 640 DP.19. There is reference made to the definition of the term "Chassis" and "Chassis Cowl" from the Australian Design Rules, which has extracted supra. From the reading of the relevant pages of "Motor Vehicle Technology and Practical Work" by J.A. Dolan at exhibit 2 of assessee's paper book, it is clear from page 79 that a chassis, or carriage unit, comprises of 8. Shock absorbers, fuel tank, petrol and hydraulic pipes, brake shafts and cables, and, of course, some means of mounting these components.

The literature states that "On a conventional chassis the components are mounted on a frame, which at a later date in the vehicles manufacture will have the body fastened to it. Many production cars are now made with a combined welded construction of strengthened floor and body which replaces the conventional frame".

On a further discussion on the types of frame, the literature concludes at page 82 that In general this type of chassis is used on large or expensive cars and commercial vehicles, and where the same engine, transmission and suspension might be used with different bodies.

Therefore, it is clear that one. type of chassis described therein has a common use both for cars and for commercial vehicle. It follows that use of "progressive rear springs" and 'softer suspension' alone cannot be the criteria for determinative of its use for both the types of the vehicles. Moreover, the assessee were constrained to bring changes for giving better effect to transport vehicles as explained. Further, it is seen from the pamphlets and trade literature of other manufacturer, produced in paper book, that these features are also present for the transport vehicles.

In the literature under reference at page 82 on the said topic under the heading "Comments on Commercial Vehicles" it states that In Commercial Vehicles the weight of the chassis frame is a minor consideration compared with the much greater pay loads it has to carry than the ordinary private motor car, and for this reason nearly all commercial vehicles have a chassis frame, similar to that previously mentioned (emphasis added) but with straight side members having no forward taper or upsweep at the rear. This is because there is more space available for turning the wheels on the larger vehicle, and the ground clearance is greater.

Thus, the understanding technically is that large and expensive cars and commercial vehicles have same chassis. This view is supported by the literature which reads "Manual on Design and Application of Leaf Springs SAE HSJ 788" from the Society of Automotive Engineers, Common Wealth Drive, Warrendale PA. It states that A popular type of spring particularly in the light truck models, is the variable or progressive rate spring design (emphasis added).

This is where a relatively low rate is desirable when the vehicle is in operation with only the driver and perhaps a light payload, but a higher rate is required when the vehicle is at design load.

Variable rate springs have the potential of improved ride quality over a wide load range, provided an adequate total deflection can be accommodated on the vehicle, and the design specifications assure main featuring controls to obtain the desired spring rates.

In the light load range, the second stage leaf or leaves are imperative. As the pay load increases, the first stage, by rolling contact gradually engages the second stage. When complete contact is made between the first and second stages, the spring is then operating in the high rate range.

20. The letter dt. 8th August, 1988 from "The Automotive Research Association of India" also states that the progressive springs are an improvement over the 'rigid springs' and this can be used for goods carrying vehicle also. The said letter at page 163 of paper book is reproduced herein below: Ref: Your letter No. M&M//ELC/NSK-27/87-88 dt. 31.5.1988 and letter even No. fy. 5.6.1988.

Though the differences in fully built vehicles for passenger and goods carrying applications are obvious, distinguishing between the chassis designed for passenger-carrying application and the chassis designed for goods carrying application is difficult in the Indian automobile field as there are hardly any such clear demarcation existing today.

Today most of the Indian vehicle manufacturers use the same basic design of chassis for both bus and truck applications. In the heavier class of passenger carrying vehicles longer lengths are permitted by the RTOs in the certain areas. It is only abroad that the design consideration for passenger carrying vehicles are clearly different such as pneumatic suspension, integral body construction and rear engine (in the heavier class), etc. However these, still, are in the experimental stage in our country.

Ideally speaking the suspension system for passenger carrying version is expected to be designed for better ride comfort. However, the suspension parameters such as spring stiffness are designed to cater for the road load and the road conditions and many LCV manufacturers use same springs for both the applications.

Progressive springs are an improvement over the 'rigid springs' in that, the progressive spring has a variable stiffness and the stiffness increases as the load on the springs increases. This is basically to improve the ride comfort on unladen or partly loaded vehicle and can be used for goods carrying vehicle also. In the simplest form of progressive springs the two stage spring (commonly called helper springs) have been in vogue on commercial vehicles for carriage of goods for quite some years. Hence it is not possible to state from the suspension design alone whether the chassis is intended for passenger or truck application due to a) hydraulic shock absorbers being used for both goods carrier and passenger carrier versions by many manufacturers.

b) progressive springs being also used for both types in the modern design.

The selection of tyre size on the vehicle is governed by the Gazette of India, part II, Section 3, Sub-section (ii) of Ministry of Shipping and Transport dt. 31st March, 1983, which stipulates the maximum permissible load on the vehicle. The vehicle manufacturer is free to choose a bigger tyre than what is stipulated for increasing the tyre life or the ride characteristics. Hence the tyre size is governed only by the GVW and not by the type of load to be carried such as goods or passengers.

The list of modifications carried out on your vehicles NC 665 DP and NC 640 DP, you had submitted vide your letter No. M&M/ELC/NSK-27/87-88 dt. 5.6.1988 appears to be normal improvements being carried out from time to time and does not uniquely distinguish the vehicle for being classified as passenger version only.

The report of Victoria Jubilee Technical Institute at page 177 of paper book have opined that NC 640 DP vehicle has features are essential for a vehicle used for Transport of goods. The entire report is extracted herein below: Safety is an important criteria in the design of both passenger and goods vehicles, but comfort is much more an important criteria in the design of passenger vehicles. Comfort in vehicle is affected by fatigue due to vibrations in all directions and modes, surroundings in the vehicle, random or continuous noise, the external scenery, etc. Many of the factors are subjective in nature, but the results of some experiments regarding effects of vibrations on human comfort are available. These results lay down a guideline for vehicle designers to design vehicles from passengers' comfort point of view.

Some of the results are given below: 1. If the vestibular apparatus of the inner ear is subjected continuously to linear and/or angular accelerations between about 0.5 and 0.75 Hz., dizziness and seasickness will be produced.

3. The head and neck are sensitive to vertical vibration frequencies of 4'A), 8'A, and 12 Hz and longitudinal and transverse vibrations at 1.5 Hz.

4. If Kv is a criterion of unpleasantness or discomfort for longitudinal acceleration then Kv = A.e. 0.13 f; for A = acceleration, m/s-, f = frequency Hz. Kv = 2.59 for disturbing and 3.5 for uncomfortable conditions.

If Ki is a criterion of unpleasantness or discomfort for longitudinal acceleration then Ki = A e. 0.087 f. Ki = 1.22 for disturbing and 1.68 for uncomfortable conditions.

If Kt is a criterion of unpleasantness or discomfort for transverse accelerations, then Kt = A; A = 0.84 for disturbing and 0.99 for uncomfortable conditions.

The calculations for ride quality and stability of the vehicles, are worked out on the basis of specifications supplied by the manufacturer for vehicles CJ-500-D and NC-640-DP. In this system, Ms represents the sprung mass Mu represents the unsprung mass, upper spring with stiffness Ks represents suspensions spring and lower spring with stiffness Kt represents tyre spring.

For C.J - 500 D vehicle, Ms = 1479 kg. and Mu = 291 kg. (half the spring mass is assumed as spring mass and remaining half as unsprung mass) In first mode of vibration, the frequency comes out to be equal to 1.6 Hz and in the second mode of vibrations, it comes out to be equal to 9.53 Hz. For NC - 640 DP - 4 WD vehicles: In first mode of vibration, the frequency comes out to be equal to 1.746 Hz and in the second mode of vibrations, it comes out to be equal to 9.736 Hz.

The above frequencies are undamped frequencies. The frequencies are little modified by clampers.

CJ-500 D vehicle is fitted with shock absorbers with resistance values at 85 rpm and 76.2 mm (3") stroke.

The front shock absorbers are at an inclination of 6 with vertical and rear shock absorbers are at an inclination of 28 with vertical.

Therefore Total effective damping force of four shock absorbers = 4600 N.S./m.

Therefore Bounce frequency in first mode of vibration considering damping = 1.584 Hz.

NC-640-DP-4 WD vehicle is fitted with shock absorbers with resistance values at 85 rpm and 76.2 mm (3") stroke.

The first shock absorbers are at an inclination of 6 with vertical and rear shock absorbers are at an inclination of 28 with vertical.

Therefore Bounce frequency in first mode of vibration considering damping = 1.7636 Hz.

Hence corresponding acceleration for CJ - 500 D vehicle is A = 2.108 m/s2 and for NC - 640 DP - 4 WD vehicle A = 2.0667 m/s2.

The minimum height of step input producing disturbance to CJ - 500 vehicle = 2.13 cm. and the minimum height of step input producing disturbance to NC - 640 DP - WD vehicle is 1.737 cm.

In uncomfortable condition, Kv = 3.05 for vertical vibrations.

Therefore, the minimum height of step input producing uncomfort to CJ - 500 D vehicle is 2.5 cm. and to NC - 640 DP - WD vehicle is 2.05 cm.

The greatest depth of ripple that can be negotiated without loss of tyre contract is largely governed by initial static spring deflection and the ratio of unsprung mass to sprung mass. The front tyre contact with road is very important from safety point of view.

Initial static deflection of front suspension springs of CJ - 500 D vehicle is 11.52 cm. and the ratio of unsprung mass to sprung mass at front = 0.254. Therefore, maximum depth in height of ripple for limiting road contact is equal to 14.45 cm.

Since NC - 640 - 4 WD vehicle have the same values of front spring stiffness, sprung mass and unsprung mass, the maximum depth or height of ripple for limiting road contact is also 14.45 cm.

From the above calculations, it is seen that the ride quality of NC - 640 -DP is inferior to CJ - 500 - D vehicle. This is due to too high stiffness of rear springs of NC - 640 DP vehicle.

The load capacity of the NC 640 DP is more than CJ 500 D by 25 legs, and this additional load is taken up by the rear axle only. This increases the load on rear axle by about 25%. However, the stiffness of rear springs is increased by more than two times. This results in inferior ride quality for NC -640 DP. Since use of NC 640 DP as a commercial vehicle would result in increased height of e.g., which would reduce lateral stability of the vehicle, the higher spring stiffness helps in reducing the rolling of the sprung mass and hence improves lateral stability which is necessary if it is to be used as a load carrier.

Based on the above calculations and ride tests, we are of the opinion that This NC 640 DP vehicle has features, which are essential for a vehicle used for transport of goods.

These features make this vehicle unsuitable for transport of passengers.

21. The Assistant Collector sought opinion from "The Automotive Research Association of India whose report appears at page 223 of the paperbook. They have categorically stated most of the vehicles manufacturers use the same basic design on chassis both for bus and for truck applications. They also state that progressive springs are an improvement over the 'rigid springs'. The full text of the report is extracted: Though the differences in fully built vehicles for passenger and goods carrying applications are obvious, distinguishing between the chassis designed for passenger-carrying application and the chassis designed for goods-carrying application and the chassis designed for goods-carrying application is difficult in the Indian automobile field as there are hardly any such clear demarcation existing today.

Today most of the Indian-vehicle manufacturers use the same basic design of chassis for both bus and truck applications. In the heavier class of passenger carrying vehicles longer lengths are permitted by the RTOs in the certain areas. It is only abroad that the design consideration for passenger carrying vehicles are clearly different such as pneumatic suspension, integral body construction and rear engine (in the heavier class), etc. However, these, still, are in the experimental stage in our country.

Ideally speaking the suspension system for passenger carrying version is expected to be designed for better ride comfort. However, the suspension parameters such as spring stiffness are designed to cater for the road load and the road conditions and many LCV manufacturers use same springs for both the applications.

Progressive springs are an improvement over the 'rigid springs' in that, the progressive spring has a variable stiffness and the stiffness increases as the load on spring increases. This is basically to improve the ride comfort on unladen or partly loaded vehicle and can be used for goods carrying vehicles also. In the simplest form of progressive springs the two stage spring (commonly called helper springs) have in vogue on commercial vehicles for carriage of goods for Quite some years.

Hence it is not possible to state from the suspension design alone whether the chassis is intended for passenger or truck application due to - (a) hydraulic shock absorbers being used for both goods carrier and passenger carrier versions by many manufacturers.

(b) progressive springs being also used for both types of the modern design.

The selection of tyre size on the vehicle is governed by the Gazette of India, Part II, Section 3, Sub-section (ii) of Ministry of Shipping and Transport dated 31st March, 1983, which stipulates the maximum permissible load on the vehicle. The vehicle manufacturer is free to choose a bigger tyre than what is stipulated for increasing the tyre life or the ride characteristics. Hence the tyre size is governed only by the GVW and not by the type of load to be carried such as goods or passenger.

The two specifications listed in your letter as vehicles A & B appear to be almost identical and it would not possible to state whether these are intended only passenger carrying or only for goods carrying or for both.

We also regret that we are unable to give you any reference on authoritative publication in this field since we are not aware of any.

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The term, commercial vehicle is used in conveying the meaning of a vehicle for carrying goods or passengers for commercial purposes leaving aside the car derivatives such as taxis. The expression, light commercial vehicle, medium commercial vehicle and heavy commercial vehicle is the classification. It is understood that RTO authorities of various states have different classifications. The terms, jeeps, mini trucks, etc., are derived from common usage and we are not aware of any standard technical definitions.

22. As can be seen, this report has been obtained by the department.

This report fully supports the assessee. Further, the affidavit of Shri K.S.C. Parthasarthy, General Manager (R&D) has not been controverted by the Revenue. Hence in the face of these wealth of evidence, the point raised by the Revenue in their appeal has to be negatived and the Learned Collector in Revenue appeal E/998/95 has rightly come to the conclusion that the Revenue has not established their case on merit.

The aspect pertaining to the knowledge of the party of the goods being put to different uses by customer loses its significance, as the goods were not for "principal design for not for the transport of persons" but it was for commercial vehicles also and that the commercial and trade understanding was also as such. Further, the other manufacturers have also imported their vehicles and all the other manufacturers have the same design, as can be noticed from the technical and trade literature produced by the assessee.

23. In the present case, the end use for the purpose of classification does not flow from the reading of the Tariff entry as it clearly lays down in heading No. 87.03 'Motor cars and other vehicles principally designed for the transport of persons'. The cowls and chassis were cleared from 1981 for transport purposes and it is also seen that majority of clearance has been produced i.e. 54%. The tariff reading indicates that it should have been "principally designed" where its criteria has not been fulfilled then the view held by the party, in the light of the technical evidence

and the trade and commercial understanding is required to be accepted.

24. It is also seen from the reports and opinion of the A.R.A. of India that "the design consideration for the passenger carrying vehicles are clearly different such as pneumatic suspension, integral body construction and rear engine (in the heavier class), etc." It also states that "the suspension parameters such as spring stiffness are designed to cater for the road load and the road conditions and many LCV manufacturers use same springs for both the applications". It further states that "progressive springs have been in vogue on commercial vehicles for carriage of goods for quite some time". This portion of opinion adds lot of weight to accept the plea of the assessee.

25. The plea that Interpretative Rule 3(c) applies is also acceptable.

The Rule 3 is reproduced.

3. When by application of Sub-rule (b) of Rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effective 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, 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, 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 the numerical order among those which equally merit consideration.

26. As can be seen Rule 3(a) lays down that a specific entry shall be preferred to headings of general description. In the present case, the goods are not specific nor the technical evidence discloses that they were "-principally designed for transport of persons ". The evidence discloses that the goods have been predominantly used (54%) for transport of goods. Hence the heading of specific description is required to be excluded. The Rule 3(c) states when goods cannot be classified with reference to (a) or (b) they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. The heading 87.04 occurs last and as both the headings equally merit classification, the Collector adopted heading 87.04 is fully justified and that the Interpretative Rule 3(c) has been rightly applied.

27. Even the charge of clandestine clearance is not sustainable as the department had called for necessary explanations and only after due enquiry the classification list has been approved.

28. The charge of suppression is also not supported by evidence. The assessee had been clearing the goods against orders and invoices had been duly raised. There has been due scrutiny of records by departmental officials. Although, there has been some admission of the arrangement with M/s. Roplas India Ltd. and their manufacture of passenger vehicles with the consent of the assessee, however, the overall fact and circumstances of the case in the light of the correspondence and the assessees' seeking clarification from the Board, it cannot be said that there has been a deliberate attempt to suppress facts with an intent to evade duty. The same goods had been cleared prior to introduction of the new Tariff and the design charge had effected prior to the introduction of new Tariff, which laid new criteria. However, these criteria has also not been met as held by us in our findings on merits. Hence, the ground made out on admissions by some witnesses is not germane to the main issue of classification, on which the Collector in Revenue's appeal has rightly held the issues in favour of the assessee. We have examined the ratio of the citations reported and noted the same, while arriving at the conclusion.

29. In the result, there is no merit in the appeal of Revenue in E/998/95-B and the same is rejected and the assessee's appeal in E/2738/89-B1 is accepted.