

**Commissioner of Central Excise, Vs. Telco Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-26-2002

**Reported in :** (2002)(84)ECC54

**Judge :** J Balasundaram, S T S.S.

**Appellant :** Commissioner of Central Excise,

**Respondent :** Telco Ltd.

**Judgement :**

1. The Appeal No. E/3573-R-99-Mum. has been filed by the Revenue, where M/s. TELCO are the respondents; Appeal No. E/423-R/2000-Mum. has been filed by the appellants, M/s. Mahindra & Mahindra where Revenue is Respondent. Since the issue involved in these two appeals are common, they were heard together and are being disposed of by this common order.

2. (a) In Appeal No. E/3573, the Commissioner by the impugned order, dropped all further proceedings in pursuance of show cause notice dated 3-3-98 and further ordered that 'Tata Mobile 207 Model Crew Cab' vehicles shall continue to be classified under Heading 8704.20 at 15% as hitherto before for domestic market and allowed the same to be cleared accordingly.

(b) The appellants had classified 'Tata Mobile 207 Model Crew Cab' with load body, as 'goods transport vehicle' under Heading 8704. They were issued a notice for classifying the same under Heading 8703 as the vehicle was considered to be

"principally designed and meant for transport of passengers, not more than six persons". Duty demands thereafter were made on account of differential of duty payable under Heading 8703 and duty paid under Heading 8704.

(c) The Revenue has filed this appeal seeking confirmation of duty for the period March, 96 to January, 98, After holding the subject model vehicle to be a vehicle, "principally designed and meant for transport of not more than six persons" to be classified under Heading 8703. The department has supported the case of classification under Heading 8703 in the hearing before us on the following grounds - (i) The conclusion that the vehicle is hybrid vehicle and there was no provisions of classification for such vehicles is erroneous. The Commissioner erred and failed to apply the provisions of CETA, 1985.

The said vehicle is not hybrid and after coming to a finding that the vehicle was designed for not more than six persons, it should have classified under Heading 8703.

(ii) The assessee's contention that Ministry of Industry has classified the vehicle as LCV is not correct. Such vehicles are never recognised or called as a LCV. The contention of the assessee that they were availing the benefit of duty for fuel efficient LCV does not cause a proof that the vehicle was recognised by Central Excise Department as LCV. The purpose of categorisation of Ministry of Industry under the Industries Development & Regulation Act, 1948 was for very specific licence purposes. It is not of consequence for deciding whether the subject model vehicle is for transportation of persons or only for goods.

(iii) The finding of the Commissioner as regards other models of other manufactures, is not supported by the facts. He was required to conclusively establish that the model under dispute was identical in terms of design, seating capacity, size, etc. to other models.

Such vague order is bad in law and no competent authority has decided whether so called identical models are comparable or not.

Misclassification in other Commissionerates is not a ground. The Commissioner has failed to consider the facilities provided for passengers like both side doors, comfortable seating arrangement and space, side windows, etc. which are never provided for vehicles meant for transport of goods.

(iv) The adjudicator has not ascertained the fact that the subject vehicle has been registered by the owner with RTO authorities before alteration and after alteration. As per Motor Vehicle Act, the vehicle is to be registered before use. The statement by M/s. TELCO is misleading on this aspect.

(v) The finding that 'crew cab model' and so called identical model in India and Abroad, known as 'pick-up trucks' is based on some photographs produced by the assessee, which, in reality are entirely different from the impugned model. In general parlance, the subject model is not known as such. The adjudicator is silent about the registration by RTO authorities as 'saloon' body which is vital to determine the classification. The judgment in the case of Modi Rubber - 1989 (42) E.L.T. 48 (T) wherein 'saloon' body has been decided, should be followed and applied to this model to give a finding and it is primarily meant for carrying passengers.

(vi) The Commissioner has erred in finding the vehicle has Cargo carrying capacity of 532 Kgs. whereas capacity to carry person is only 408 Kgs. Therefore holding that it is not a vehicle primarily designed, not for carrying person and would be appropriate to be classified as a multi-utility or hybrid vehicle and classifying it as 'Vehicle for transport of goods' under Heading 8704 is not correct.

(vii) The Tariff has taken due care to differentiate vehicles 'principally designed for transport of persons' falling under Heading 8703 from those used for transport of goods falling under Heading 8704. Heading 8704 is general description while in Heading 8703. It stressed that the vehicle be designed for carrying persons.

It should take precedence over its use for transport of Cargo/Baggage. Such use, as in this case, is incidental into the design of the vehicle for carrying persons.

(viii) The Commissioner should have considered the various headings under Chapter 87 for the categorization of vehicle. Page 1427 of the HSN clarifies the expression 'station wagons' means vehicles with a maximum seating capacity of nine persons. The interior of which may be used without structural alteration for transport of both goods and persons. This should have been considered as it relates to the use of 'principally designed' which are used under Headings 8702 & 8703 and not in 8704. There are three main constituents of the vehicle i.e. engine, chassis and body. Admittedly in respect of all the vehicles viz. (a) Tata 207 pickup truck (b) Tata 207 Passenger (c) Tata 207 crew cab (i) with soft top canopy (ii) with load body, the engine and chassis are the same, the difference is only in the body. Body of pickup truck is not principally designed for the transport of person and is meant for transport of goods, hence it is classifiable under Heading 8704. While body of Tata 207 Passenger admittedly has been principally designed for transport of more than six persons, hence classifiable under Heading 8702. Similarly body of Tata 207 Crew Cab with soft top canopy is also principally designed for the transport for more than six persons but not more than 12 persons hence classifiable under Heading 8702.10 and same logic and analogy, when the body of the Tata 207 Crew Cab with load body is principally designed for transport of not more than six persons, it should be classifiable under Heading 8703.90 where legislature has used the words "principally designed" which has not been used for the vehicles used for transport of goods. Therefore the subject vehicle is principally designed for the transport of persons irrespective of load carrying capacity and would be classifiable under Headings 8702 and 8703 as the case may be depending upon the number of persons it can carry, i.e. six or more.

(ix) Basically, there is no difference between the type of vehicles.

The body of subject vehicle is 'principally designed for six or more persons' and the classification view is corroborated by the technical specifications given in the owners manual and service book published by the assessee. From the owners manual and advertisement made in the news papers by the assessee as appeared in the news paper "Sakal" in Marathi leads as under - "Introducing Tata Mobile double cab. This vehicle carries more people with comfort. Two models have capacity to carry 1+9 persons with soil top and 1+5 persons and for carrying

personal baggage load body has been provided. The modern design is so built to provide utility and comfort. Now don't care for rough roads because strong suspension and anti-roll bars have been provided with 5 speed gear box with over drive engine and with assurance of Tata's name, visit nearest TELCO dealer - Bring double cab, no wonder your family members would like it." The Commissioner has failed to apply the ratio of the following decisions - (x) The Commissioner erred in holding that since the department themselves approved classification list of the vehicle or obtained declaration in respect of the said vehicle on three different occasions in the past, and hence there was no wilful suppression of facts on the part of the manufacturers and therefore the show cause notice issued is not sustainable either on merits or on legal grounds. The assessee has first time declared to the Excise department about their manufacturing activity of the subject vehicle vide their classification declaration e.g. 26-3-96 at S. No. 783 under Rule 173B of the Central Excise Rules. Their classification declaration w.e.f. 23-7-96 was filed due to change in rate of duty from 10% to 15% adv. on subject vehicle being the budgetary charge, for Tariff S. H. 8704.20. Later, again vide classification declaration e.g. 9-8-96 they introduced the second version of the same model vehicle with changed engine at S. No. 791. They further introduced two more versions of the same model vehicle at S. Nos.

810 and 816 in their classification declaration w.e.f. 1-3-97. The Commissioner has not appreciated that the manufacture of subject vehicle was started in the post era of May, 95 i.e. the end of 'classification list' approval era and commencement of classification declarations era.

(xi) Since 1995-96 approval of classification claimed has been done away and therefore the onus of correct declaration would be on the assessee and in view of the facts of this case the misdeclaration and mis-classification of the product by the assessee, they are bound to pay less duty and extended period was correctly invoked.

The Commissioner has not taken note of the fact in the first declaration, that special comfortable seating arrangement for 5 persons excluding driver in the vehicle. In their subsequent declaration it was simply mentioned "Bench seat" nor

there was a mention of 4 doors which lead to intention of charge of material facts. All the vehicle principally designed and meant for transport of not more than six persons. Therefore invoking of proviso to Section 11A(1) for differential duty is correctly made.

3. (a) In Appeal No E/423-R/2000 Mum. filed by M/s. Mahindra & Mahindra, against the order of the Commissioner (Appeals), who has confirmed the classification of the vehicle manufactured by the appellants viz. 'Mahindra Utility Double Cab' under Heading 8703.90.

However, following the decision of the Tribunal in the case of Srichakra Tyres - 1999 (108) E.L.T. 361 (Tribunal-LB), he granted appellants relief by way of treating the price, as cum-duty price and ordered the demand to be re-worked out. The case of M/s. Mahindra & Mahindra to classify the subject vehicle for assessment under Heading 8704 was rejected.

(i) No opportunity was given to the appellants to deal with the issue and aspect of 'end use' as relied by the Commissioner (Appeals). The findings were different from the reasons arrived at by the Assistant Commissioner whose order the Commissioner (Appeals) has confirmed. If end use was at all relevant for determining the classification of the said vehicle, they should have been granted opportunity to place materials and evidence to controvert and show the actual use to be pre-dominantly for transport of goods. The end use of the vehicles as the crucial test applied by the Commissioner (Appeals) was beyond the show cause notice and the Commissioner (Appeals) had to remand the matter to enable the facts relating to end use to be ascertained.

(ii) The classification of the vehicle had to be determined on the basis of the design, not on what use the vehicles are put. The end use arrived at by the Commissioner (Appeals) himself was not accepted to be proof of evidence as it appears from his orders as below - "Though the learned Commissioner classified the product manufactured by M/s. TELCO as vehicle for carriage of goods, no enquiries or discussion appear to have been made with reference to the usage of the vehicle i.e. how the customer uses the vehicle whether for carrying the passengers without actually putting the vehicle for commercial use for carrying the

goods. Nor it was established that the vehicles are exclusively used only for transporting the goods irrespective of the increased seating capacity. (Para 8).

A transporter or user purchases the vehicle for carrying the goods only if it is advantageous to him for the purpose it was meant.

Whether this being achieved in respect of Mahindra Utility has not been looked into or enquired into as also in the case of TELCO Crew Cab. (Para 9) But whether it is designed principally for carrying goods or principally for carrying cargo cannot be determined unless the use of the goods by purchaser or the class of purchasers who purchase these goods and put to actual use having regard to various factors including the cost of transportation of the goods, is available.

Unfortunately, such data is not available. (Para 9) As stated supra what is needed is how the vehicle is ultimately being used by the customer is relevant. But unfortunately this has not been looked into by the adjudicating authority nor it has been established by the Appellants that the vehicles cleared by them are nor put to any transportation of persons but exclusively used for transporting the goods and that the class of purchasers of the said vehicles have all use the vehicle for transport of goods only and not transporting the passengers. (Para 12)" In view of this finding the Department's burden to classify the vehicles come under Heading 8703 should have been held as not discharged.

(iii) Without cogent reasons the classification cannot be changed.

Therefore, the show cause notice dated 31-8-98 which did not offer any reason to change the classification effective since 1995 was bad in law.

(iv) The design feature of the vehicle conclusively showed that they did not answer the descriptive of Heading 8703. The various design features of this vehicle were clearly intended for carrying of goods and by no stretch of imagination could be termed as a vehicle principally designed for transportation of persons. The features of vehicle principally designed for transportation of persons are - (a) It would not have an open platform for carriage of their personal belonging but would have a closed compartment, i.e. a dicky.

(b) It will never have such a high payload for transportation of goods in relation to the payload for transport of passengers and this features have not been considered by the Commissioner.

(v) The Commissioner has erred in law by reading the word "exclusively" into Heading 8704 or commercially viable are not correct in law and he has failed to appreciate that the terms Heading 8704 would impugned vehicles suitable for or appropriate for transportation of goods and it did not rule out that the use for carriage of some persons and the fact is that if not all goods vehicles which have ability to carry passengers.

(vi) The certificate issued by the Motor Vehicle Regulatory Authority to classify the vehicles cannot be relevant for the purpose of CETA, 1985 classification. The ARAI certificate, similarly, has no role to play for the classification of the vehicles and a reference in this certificate to LCV support the classification of the appellant's vehicle.

(vii) The reliance on the Explanatory Notes to HSN by the Commissioner (Appeals) relates to the design of 'station wagons' while design of the subject vehicle is totally different from the design of 'station wagons' and it appears the case of the appellants and it is not support the department's case. The analogy of comparing the vehicle with 'station wagons' is erroneous.

(viii) Headings 8703 and 8704 of CETA, 1985 are not identical with corresponding headings of HSN and both contain significant differences. Therefore, the reliance of Explanatory Notes to HSN are not called for.

(ix) Rule 3(a) of Rules of Interpretation applied by the Commissioner is not called for. The Rule 3(c) of the Rules of Interpretation would apply to the aforesaid classification under Heading 8704. Similarly the Rule 4 of the Rules of Interpretation would apply the classification under Heading 8704.

(x) The Commissioner (Appeals) should have followed the order of Commissioner of Central Excise, Pune in case of TELCO which was pending on the Assistant Commissioner in the hierarchy principle as their vehicle and that of TELEO are

substantially similar. Other manufacturers of similar vehicles like TELCO, Bajaj Tempo, Swaraj Mazda are clearing such vehicles under Heading 8704, the department's appeal filed to seeking review of the orders of the Commissioner, Pune in TELCO matter is no ground to follow that order as CEGAT has granted any stay such differential classification causes gross discrimination.

(xi) The Commissioner (Appeals) for this to decide the classification of penalty which is amounting to Rs. 50,000/- on the appellants, the appellants had cleared the vehicle as per the approved classification since February, 1995 and no dispute was raised until July, 1998 and therefore no penalty was called for the appellants prior to 2nd June, 1998 were not permissible.

4. We have heard learned Senior Counsels for the Revenue, M/s. Mahindra & Mahindra and M/s. TELCO and considered the submissions made in the appeal before us and the written submissions permitted to be filed up to 31-12-2001. The directions were issued to complete material in form of correspondence in the miscellaneous applications filed by the Revenue, since the same were not on record before us or the lower authorities. We find Revenue has made a plea in written reply dt.

30/31-12-2001, that the submissions are not complete and sought time till 15-1-2002. No further submissions have been received. We, therefore, proceed to decide. After con-sideration of the record, we find - (a) The Tribunal has normally allowed a fresh plea, if relevant facts are on record [Hindustan Tyres Pvt. Ltd. v. Collector - 1988 (34) E.L.T. 324 (Tribunal)]. However, it is well settled law that an appellant in appeal cannot be put anything adverse from a situation in what he was in earlier. In these considerations and once we find that classification of an entity is to be determined, as in this case, the material now been placed by miscellaneous applications should be considered to determine the classification, which is the core dispute before us. Thus material relevant to determine the same can be taken on record. We find that these application rely upon certain letters, we had instructed the Department to complete this correspondence, so that such letters could be appreciated in their entity. As regards the statements, the same shall be considered for what they purported to convey.

(b) Before proceeding to determine the classification of any product, it is essential that identification of the entity which are proposed to be classified is first arrived at. This identification process is to be distinguished from the next step which follows, viz, the enquiry whether one or more Tariff provision applied to the entity which has been so identified. It is not the provision of the Tariff, which determine the relevant entity of the goods. They only determine whether the identified entity will attract duty thereunder. The appropriate heading or sub-heading is to be found after the goods are identified. The Rule 1 of the Statutory Rule of Interpretation in CETA, 1985 also stipulates descriptions implied in the Tariff nomenclature should be appreciated having regard to the terms of headings, read with the relevant Section and Chapter Notes, as also provisions of the Statutory Rules of interpretation. Unless such headings do not otherwise require. This qualifications would mean all the other interpretation rule are to be applied only when the goods could not be classified by reference to the headings and relevant notes. We are aware that HSN Explanatory Notes do not have legal binding. They are useful material/ have persuasive effect and can be read.

(c) The entities for considerations herein are Motor vehicles which are submitted to be - "In both cases, there is a separate Cab, comfortable seating and separate two doors for the passenger compartment, In the case of TELCO, the total payload of vehicle is 940 Kg and payload used up in the entity design for 6 persons (c) 68 Kg per person (as per Motor Vehicle Law yard sticks) would be 408 Kg and balance payload for cargo left is 532 Kg. It is therefore clear from the designed use of total payload that the vehicles in question are not principally designed for transport of persons. In the case of Mahindia & Mahindra vehicle, the position submitted is that the total payload is 1060 Kg/1050 Kg (2 wheeled & 4 wheeled respectively) and out of which 408 Kg is used up in design for 6 persons and remaining 652 Kg or 597 Kg (for 2 wheeled & 4 wheeled drive respectively) left for cargo. From these statements made, as regards the distribution of the gross vehicle weight and payload, between the designed area for person and cargo. Major portion is taken up in the design for cargo.

There is nothing on record to controvert the above submissions on the distribution of the payload as between the designed for passengers and cargo." "87.03 Motor

Cars and other motor vehicles principally designed for the transport of persons (other than those of Heading No 8702); including station wagons and racing cars It is also not in dispute, that no chapter notes, in the CETA, 1985 for 'principal design of vehicle for person or/and transport' exist.

Nor any such requirements under any other law, especially Motor Vehicle Act & the Rules thereunder was shown as a requirement to meet prescribed/applicable designs for persons or transport, except size of seating space for person and brake requirements; the only evidence brought on record is that the mandatory certification Tests/or the vehicle conducted by the Authority, i.e. Automotive Research Association, etc. are conducted for 'Brake efficiency requirements for a passenger vehicle' in the case of vehicle of M/s.

Mahindra & Mahindra and same have been met.

(e) Rulings of the World Customs Organisation Harmonised System Committee in the 1999 Amendment issued by the World Body on HSN classification have been relied upon by the Id. Advocate for TELCO and placed before us. These rulings have considered the scope of the term 'principally designed for six persons' and classified the vehicles therein in the following manner - "8703.32 1. Van type motor vehicle (monocoque body type having a chassis body frame work and a single enclosed space for the transport of both persons and goods) powered by a compression ignition engine of a cylinder capacity of 2,229 cc and having window side panels (for the passenger area (dual-purpose area) and closed side panels (for the cargo area), a sliding door on one side, a lift up rear door with window and a non-collapsible bench behind the front seats. Behind the bench is a loading space, which is separated from the passenger area by a removable partition (metal plate in the lower part and grill in the upper part). A panel of plywood is placed on the floor to provide a flat floor in the cargo area and the rear part of the passenger area (dual purpose area). The panel has openings for mounting the bench on anchor points in the passenger area (dual purpose area). There is no anchor point in the cargo area. The total load capacity (cargo and persons, excluding the driver) is 945 Kg. The vehicle has a well finished interior (e.g., upholstered seats or benches with headrests and decorative wall panels).

8704.31 1. Two-wheel-driven motor vehicle, with a spark ignition internal combustion piston engine of a cylinder capacity of 2,254 cc. The vehicle has four doors, two seats in the front and a non-collapsible bench for three persons in the passenger area (so-called double cab). The superstructure of the vehicle consists of two separate bodies, one for the driver and passenger area, and one for the cargo area. The cargo area is open and has a drop-down tailgate to facilitate the loading or unloading of cargo. The total load capacity (persons, including the driver, and cargo) is 1,140 Kg. The g.v.w. (gross vehicle weight) of the vehicle is 2,450 Kg.

8704.31 2. Four-wheel-driven motor vehicle, with a spark-ignition internal combustion piston engine of a cylinder capacity of 2,254 cc. The vehicle has four doors, two seats in the front and a non-collapsible bench for three persons in the passenger area (so-called double cab). The superstructure of the vehicle consists of two separate bodies, one for the driver and passenger area, and one for the cargo area. The cargo area is open and has a drop-down tailgate to facilitate the loading or unloading of cargo. The total load capacity (persons, including the driver, and cargo) is 950 Kg.

The g.v.w. (gross vehicle weight) of the vehicle is 2,450 kg." [Source : Harmonised System Compendium of classification issued by World Customs Organisation Rec De amending supplement No. 26 June, 2000 26-38, B 1040, - Amending Supplement No. 26.] The logic of applying the classification, based on where the major designed Gross Laden Weight of the vehicle is used up, has the approval of this august Body of HSN. They, thereafter, placed the vehicle under 8703 or 8704 as the case may be. The CETA, 1985 uses the same term 'principally designed' in 8703. We therefore have not hesitation in considering the said logic to interpret the term 'principally designed'.

(f) In absence of any other criteria available to determine 'principally designed' and on a plain reading of logic of the classification ruling of HSN Committee now adopted by us indicates to us, if vehicle weight is used up in the design, in favour of the passengers inasmuch as a major portion of the same is used for the passengers transportation, then the vehicle would be classified as one which is

'principally designed for transport of persons'. If, on the other hand, this gross vehicle weight is so distributed by designing features on a major portion of difference is used for transportation of goods then the vehicle would not classify in the classification Heading 8303, but would classify in the classification as classified for transportation of goods i.e. under Heading 8704.

(g) We have considered the statements made by the Revenue in their written submissions under on 31-12-2001 that as regards the publications by World Customs Organisation dated June, 2000 relied upon by the Respondents in the TELCO case - almost similar logic has been used by them in M/s. Mahindra & Mahindra case which is - ".....(a) The World Customs Organisation has not yet been recognised by the Government of India and referential respect given by the Authorities in India to HSN was not confirmed upon this organisation. Therefore, the contents of June, 2000 World Customs Organisation carries no weight so far as the interpretation of the Excise Tariff in India is concerned.

(b) As against that the department had referred to and relied upon the re-introduction of the entry "station wagon" in the Finance Bill of 2000. In the context of the department's submissions that the impugned vehicle could appropriately be classified as passenger vehicle falling within the ambit of station wagon, inter alia briefly, the following points were made.

(i) The entry "station wagon" existed under Chapter 8703 as passenger vehicle applicable to the impugned vehicle until the year 1995-96. The same was deleted only with effect from 23-7-1996. This means that the entry did not exist only during the period of dispute in this case. Prior, thereto and immediately thereafter station wagon as a passenger vehicle was a part of the Tariff Heading 8703.

(ii) It was emphatically submitted to the Hon'ble Tribunal that while re-introducing this entry the legislature had specifically introduced a chapter note, being Chapter Note 6. Apart from the fact that the consideration of this chapter note is very relevant for the present dispute, it was also submitted that, significantly, a departure was made in this chapter note from the wordings and description of the chapter note under HSN in respect of station wagon. For the convenience of the Hon'ble Tribunal, the chapter note in the Central Excise Tariff and the

correspondent chapter notes in the HSN are reproduced herein below.

Chapter Note 6 in Central Excise Tariff 2001 :- For the purpose of this chapter "station wagon" means vehicles which may be used, without structural alteration, for the transportation of both persons and goods.

Note 5 to the Tariff Heading 8703 given in HSN :- For the purpose of this heading the expression "station wagon" means vehicle with a maximum seating capacity of nine persons (including the driver), the interior of which may be used, without structural alteration, for the transport of both persons and goods.

A careful perusal of the above clearly establishes that the legislature partially departed from the concept of Station Wagon as explained in the HSN and this departure is fully relevant for understanding our Tariff and for bringing the impugned vehicle within the description of Chapter Heading 8703. It is also brought to the notice of the Hon'ble Tribunal that the concept of pick up trucks embodied in the World Customs Organisation, yet does not find any reference in our Tariff, even from this angle, reference to World Customs Organisation is irrelevant to repeat But the department may state that World Customs Organisation at the relevant time has no official recognition in India," We do not share these views; In the light of the fact that the Board vide Circular No. 25/96-Cus., dt. 25-4-96, had relied upon the classification of the article mentioned therein as examined by the World Customs Organisation (WCO) and as per the classification information by the WCO. Circulars and instructions were thereafter issued to classify the product under the Central Excise Tariff, 1985, as per that WCO ruling (Circular No. 156/21/90 Cus. 4, dated 10-10-90 refers). In the case of Mangalore Chemicals & Fertilisers Co. Ltd. [1997 (93) E.L.T. 548 (Tribunal)], the Tribunal has held that "opinion given by World Customs Organisation in regard to classification of goods having great persuasive value, considering the purpose of its setting up and expertise it represents". In the case of Netlon India Ltd. [2000 (121) E.L.T. 675 (Tribunal)], it was held that "Central Excise Tariff being structured on HSN, opinion and recommendation of the Harmonised System Committee cannot be brushed aside" (Para 8 of the reported decision refers). In the case of Manisha Pharma Plasto Pvt. Ltd. [1999 (112) E.L.T. 22 (Del.)] had held that

"opinion and recommendations of the System Committee on HSN cannot just be brushed aside". Revenue has not brought out in the written and oral submissions, any decision contrary to the above. Being bound by the Delhi High Court decision and in view of the fact that CBEC has on occasions, relied upon the WCO rulings on classification to issue instructions on classification under CETA, 1985, we find no substance in the arguments, now being placed before us, that WCO ruling made by and published in the authoritative classification opinion by the WCO should be ignored. Especially when we find that there is no difference in the Headings 8703 and 8704, as regards the term 'principally designed for transport of not more than six persons' used in the CETA, 1985 and HSN, nor is there any material difference between these headings in CETA, 1985 and HSN. We therefore, would apply these rulings even if published subsequently since they explain the scope of the term 'principally designed for transport of not more than six persons'.

(h) Ultimate usage of a product, mentioned in the entry is not relevant, when the entry refers to no such end use. In case of 8703 the term "Other motor vehicles principally designed for the transport of not more than six persons", may imply reading of an 'end use' stipulation to mean that Design of the vehicle for purpose of transport of passengers and not cargo. The evidence adduced by Revenue in the miscellaneous petition of the end users statements has been analysed and submitted by the learned Counsel for M/s.

Mahindra & Mahindra as follows - ".....2. Regarding documents Exhibits 1-A to 1-D of the department's affidavit. These documents are the statements of 4 persons who merely state that the said vehicle is not suitable for the carriage of goods by a transport agency. Even assuming, whilst not admitting, that these statements are correct, they do not establish that the said vehicle was principally designed for the transport of persons; the un-suitability of the vehicle for being used as a goods vehicle by a transport agency does not rule out in any way its suitability for use as a goods vehicle by others; and this is, in fact, the evidence revealed by numerous statements produced by the department itself. 4. Regarding documents Exhibits 2-A to 2-Q of the department's affidavit. These are statements of 17 actual users of the said vehicle in the Nasik area. The Appellants sold thousands of the said

vehicles all over India, and these statements cannot be regarded as representative of the general use of the said vehicle.

Further, and in any event, these statements conclusively show that the predominant use of the said vehicle was for the carriage of goods.

# 6 users, used the said vehicle for the transport of goods such as agricultural products (Exhibits 2-B to 2-D, and 2-1), fruit, vegetable and 'milk (Exhibit 2-K) and 'my products' (Exhibit 2-Q); # 6 users used the said vehicle to carry both persons and goods, viz., agricultural products and labour (Exhibits 2-F and 2-G), engineering team, goods and tools (Exhibit 2-J), vegetables and farmers (Exhibit 2-K), persons and boxes (Exhibit 2-M), hotel staff, vegetables and grocery (Exhibit 2-N), mechanics and spare parts (Exhibit 2-O).

# only 4 users used the said vehicle to transport persons (Exhibits 2-A, 2-E, 2-L and 2-P).

Assuming, whilst denying, that the user was a relevant criteria for determining classification, the main use of the said vehicle was to carry goods, or goods and persons, and, consequently, it must be held that the vehicle was correctly classified as a vehicle for the carriage of goods. See Annapoorna Carbon Industries Co. v. State of Andhra Pradesh, 4. Regarding the letters of ARAI, Exhibits 3-A, and 3-B of department's affidavit. These letters merely describe the different categories of vehicles under the Terminology of the Indian Standards Institute. It should be noted that ARAI had itself classified the said vehicle as falling in the 'N-I' category, as per IS : 14272, which is the standard relied upon by the department, as is clear from Exhibit B of the reply affidavit filed by the Appellants.

5. Regarding the letter of the Transport Commissioner Exhibit 4 of the department's affidavit. This letter does not even state that the said vehicle is a vehicle for the carriage of persons, let alone that it was either so designed, or so used." After perusal of the same, we find, we could not do any better.

Relying on this analysis, we cannot find material to rely on, that the vehicle is generally used for and understood by the consumers to be a passenger vehicle. The learned Counsel has taken us through various decision of the Courts in England and this Tribunal wherein it was held - (i) Latchford v. Kelsey - 1907 (96) Law Times 620 at 622 (a farm cart, used occasionally to carry farm labourers, does not cease to be a conveyance for the carriage of goods); (ii) Cook v. Hobbs (1911) 1KB 14, 17 (a farm cart used to convey the farmer's family to sell farm produce does not cease to be a conveyance for carriage of goods); (iii) Modi Rubber Ltd. [1989 (42) E.L.T. 48 (Tribunal-LB)] (Maruti van is not a vehicle for carriage of goods as it is intended for passengers only, carriage of goods is secondary function.).

we therefore conclude, that an incidental use by crew/family members/farm labour, should not over-ride the essential characteristic of the vehicles herein which is for transport of goods/spare parts & tools/goods-farm produce for which it is designed put to use. The transport of person is incidental. That farm labour/crew/family members could travel in relative comfort of a Tractor/Trolley one encounters in the Rural Indian Scene, will not contribute to be a factor to determine those transports as 'principally designed for persons'. The other evidence from Transport Companies, which Revenue wants to rely upon, only indicate that the vehicle does not find, any use in Transportation Business.

Such commercial non-use by itself, would not cause it to be classified under 87.03. In any case, these letters are material which appear to be solicited and similarity in wording, to meet the requirement of Revenue. They do not induce us to change our findings on essential end use. Depending on Cargo characteristics, different kinds of vehicles are designed for Transportation of goods, as the impugned entities are found to be actually used; they would therefore be classified under 8704. If end use is held to be relevant, it is the common use, that would be relevant, such common use as found, based on material relied by Revenue, is to be of "Transport of Cargo". Therefore any intended/isolated Advertised use by the manufacturer, does not induce us to conclude that the entity under dispute, are 'principally designed for transport of person'. A single isolated Advertisement cannot be a cause to classify the entity under 8703. The substantial normal use,

as it appears, from the documents in the Miscellaneous Application of Revenue is for transport of goods. Exact proportions of one use over other was not required to be determined. We find that the material does not help the plea of Revenue to cause a classification under 8703.

(i) We have considered the following submissions made by Revenue in written reply dated 31-12-2001 - "In view of the fact that neither the Automotive Research Association of India and nor the Bureau of Indian Standards are statutorily capable of opining or effectively laying down any descriptive character of the impugned vehicle for the application of appropriate Excise Tariff Entry, the only statutory provision which defines the character of the impugned vehicle must be accepted as the effective guide for determination of the applicable tariff under the Central Excise Act." This submission would itself rule out the reliance by Revenue on the documents, opinion mid certificate by Bureau of Indian Standards & Automotive Research Association and other documents of Motor Vehicles Act/Rules and verification thereunder. We therefore would not labour on the detailed submissions made on this behalf of Revenue and the defence on these points as made out by the manufacturers. We do not rely on these documents.

5. In view of our findings herein above we order the classification of the vehicles under 8704, consequently - (ii) Appeal No. E/423-R/2000-Mum. filed by M/s. Mahindra & Mahindra is allowed with consequential relief as per law. Ordered accordingly.

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