

Cce Vs. T.P.S. Mfg. and Construction Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-09-2003

Reported in : (2003)(90)ECC821

Judge : A T V.K., P Chacko

Appellant : Cce

Respondent : T.P.S. Mfg. and Construction Co.

Judgement :

1. In this appeal, filed by Revenue, the issue relates to the classification of Body built on motor vehicle chassis.

2. Shri Kumar Santosh, learned SDR, submitted that M/s. IPS Mfg. & Construction Co. Pvt. Ltd. manufacture bodies designed for transport of goods and bodies of special purpose carrier and spare parts thereof, that the Additional Commissioner under Order-in-Original No. 3/2002 dated 8.2.2002 classified the bodies under Heading 87.07 of the schedule to the Central Excise Tariff Act and disallowed the benefit of Notification No. 6/2000-CE dated 1.3.2000; that on appeal filed by the Respondents the Commissioner (Appeals), under the impugned Order, has set aside the Order-in-original classifying the bodies under Sub-heading 8704.90 of the Tariff in terms of Note 3 to Chapter 87 of the Tariff. He, further, submitted that the bodies manufactured by the Respondents are clearly classifiable under Heading 87.07 in view of the judgment of the Appellate Tribunal in the case of Kamal Auto Industries v. CCE, Jaipur, 1996 (82) ELT 558 (T); that the activity of

body building is more specifically covered by Heading 87.07 and in terms of Rule 3(a) of the Rules for Interpretation, the more specific description has to be preferred over general description. The learned SDR also mentioned that in the case of *Shalimar Auto Ancillary P. Ltd. v. CCE*, 2002 (146) ELT 479 (T) the Tribunal has held that the bodies of motor vehicles are classifiable under heading 87.07 and the appeal filed by Revenue has been dismissed by the Supreme Court as reported in 2003 (154) ELT A243 following the decision in the case of *CCE v. Ram Body Builders*, 1997 (94) ELT 442 (SC).

3. Opposing the prayer Shri P.C. Jain, learned Advocate, submitted that Note 3 to Chapter 87 was amended w.e.f. 1.3.2001 providing that "for the purpose of this Chapter building of body or fabrication or mounting or fitting of structures or equipment on the chassis falling under Heading No. 87.06 shall amount to manufacture of a motor vehicle;" that vehicle manufactured by them is used for transportation of goods and the same is classifiable under Sub-heading 8704.90. He also mentioned that for the period prior to 1.3.2001 Central Government has issued a Notification No. 27/2002 under Section 11C of the Central Excise Act for not collecting duty in respect of body built by independent body builders on the motor vehicle chassis which was short levied during the period 1.5.91 and 28.2.2001; that 11C Notification was required to be issued as during the said period the duty was paid on the body building on chassis under heading 87.02 to 87.04 instead of 87.07 in view of the decision of the Supreme Court in the case of *Kamal Auto Industries*; that this is apparent from the letter F. No. 156/6/2000-CX-4 circulated by the Board for collecting information for considering the issue of notification under Section 11AC wherein it has been mentioned that "w.e.f. 1.3.2001, the matter has been resolved by suitably amending Chapter Note 3 of Chapter 87 as also the entry relating to heading 87.07." 4. We have considered the submissions of both the sides. The Punjab & Haryana High Court in the case of *Darshan Singh Pavitar Singh v. UOI*, 1988 (16) ECC 6 (P&H) : 1988 (34) ELT 631 (P&H) which was confirmed by the Division Bench of the said High Court as reported in 1990 (47) ELT 532 (P&H) has held that "the person who only made or fabricated bodies for buses and trucks on the chassis supplied by their customers do not manufacture motor vehicle but they manufacture only bodies of motor vehicles and their cases are fully covered by Heading 87.07".

Thereafter Note 3 was inserted in Chapter 87 of the Central Excise Tariff which provided that "for the purpose of heading 87.01 to 87.05, the activity of body building or fabrication or mounting or fitting of structures or equipment on the chassis shall amount to manufacture of motor vehicle." This Chapter Note came up for consideration before the Tribunal in the case of Kamal Auto Industries v. CCE, Jaipur, 1996 (82) ELT 558 (T) wherein the Tribunal held that the said Chapter Note does not cover the body building on chassis fitted with engine which is classifiable under heading 87.06 and the body building on chassis fitted with engine are classifiable under heading 87.07. This decision of the Tribunal was affirmed by the Supreme Court as the appeal filed by the Revenue was dismissed. It appears that to overcome the short levy of duty in respect of classification of bodies under Heading 87.02 to 87.04 instead of 87.07 was waived by issuance of Notification No.27/2002 under Section 11AC of the Central Excise Act. Note 3 to Chapter 87 was also amended to read as under: "For the purposes of this Chapter, building a body or fabrication or mounting or fitting of structures or equipment on the chassis falling under heading 87.06 shall amount to "manufacture of a motor vehicle." In view of the Chapter Note substituted w.e.f. 1.3.2001 building a body on the chassis shall amount to manufacture of motor vehicle which will be classifiable according to the type of motor vehicle. In the present matter duty has been demanded for the period from May 2000 to August 2001. The Commissioner (Appeals) under the impugned Order has set aside the demand for the period prior to 28.2.2001 in view of the Notification No. 27/2002-CE (NT) dated 23.7.2002 against which the Revenue has not come in appeal. In respect of classification of body building by the Respondents we agree with the findings of the Commissioner (Appeals) that the same are classifiable under Sub-heading 8704.90 in view of Chapter Note 3 which came into effect from 1.3.2001.

We accordingly reject the appeal filed by the Revenue.

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