

Before : J. V. Gupta & M. S. Liberhan, JJ.

UNION OF INDIA AND OTHERS,—Appellants.

*versus*

DARSHAN SINGH PAVITAR SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 5 of 1988

19th December, 1989.

*Central Excise and Salt Act, 1944—S. 3—Central Excise Tarriff Act, 1985—Chapter 87, S. XVII, Heading 87.07—Central Excise Rules, 1944—Rl. 8(1)—Central Excise Notifications Nos. 175/86-C.E. dated March 1, 1986 & 162/86-C.E. dated March 1, 1986—Manufacture or fabrication of bodies for buses or trucks—Chassis supplied by customers—Does not amount to manufacture of motor vehicle—Excise duty—Leviable either on end product or product at stages.*

*Held, that any single act in the process of manufacturing an end-product cannot possess the attributes of production of the end-product. The only conclusion that can be drawn is that the body building is not the same as the manufacture of complete motor vehicle. It may be a link in the whole process and the Legislature has taxed it as an independent item. It is not disputed that in the trade body building is taken as an independent item and building of it is not understood as manufacturing of a motor vehicle. No body builder has ever been described to be a manufacturer of motor vehicle. It does not appeal to the reason that merely body being built on the chassis will deprive it of its character as a body of the motor vehicle. It would still continue to partake the colour and name of the article known in the trade, i.e. body building. It is in eyes of those who are dealing with the commodity and in commercial parlance that the body is treated as distinctive character and identity from the end product. The interpretation put forward by the appellants would lead to an illogical result. There is no reasonable basis for the appellants to treat differently the bodies built on the chassis itself and those built away from the chassis and then mounted on the chassis. The only intelligent deduction from the basic design appears to be, from reading of the entries as well as charging section 3 and Notification No. 175/86-C.E. dated March 1, 1986, as well as the Schedule and subsequent Notification No. 162/86-Central Excise. dated March 1, 1986, that building or process of manufacturing or fabrication of bodies would not partake the character of manufacture of motor vehicle which may be used for the purpose of carriage of goods or passengers. Since the respondents are not manufacturing any motor vehicle, they are not liable to take any licence.*

(Para 13)

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*Letters Patent Appeal under Clause X of the Letters Patent of the High Court, against the judgment of Hon'ble Mr. Justice, Sukhdev Singh Kang, dated 5th June, 1987 in C.W.P. No. 5256 of 1986.*

Jaishree Anand Advocate, for the Appellants.

H. L. Sibal, Sr. Advocate with S. C. Sibal, Advocate and R. C. Setia, Advocates, for the Respondents.

### JUDGMENT

*M. S. Liberhan, J.*

(1) This judgment will dispose of Letters Patent Appeals Nos. 5 of 1988, 6 of 1988 and 7 of 1988, which arise out of a judgment of learned Single Judge, dated June 5, 1987,—*vide* which the Writ Petition of the respondents was allowed holding, *inter alia*, that the respondents and other small scale manufacturers who build or fabricate only bodies for buses or trucks on the chassis supplied by their customers do not manufacture motor vehicles and the bodies so manufactured are covered under Heading No. 87.07 of the entries in Chapter 87, section XVII of the Schedule of the Central Excise Tariff Act, 1985 (hereinafter called the Act).

(2) In order to determine the controversy raised in this Letters Patent Appeal, it would be expedient to collate the brief undisputed facts leading to this appeal. The respondents are engaged in building bodies of trucks and buses. The chassis on which the bodies are built are supplied by the customers. The respondents are owners of small scale units for fabricating or building bodies for trucks and buses. They are not holding any licence for manufacture of motor vehicles. The annual turnover of theirs is not more than Rupees ten lacs in any way. They do not sell any motor vehicle. They charge the price of the body built by them either of the bus or of the truck.

(3) It is not disputed that there are large number of such units in the State. The Central Excise and Salt Act, 1944 (Act 1 of 1944) prescribes various rates as specified in the Scheduled chargeable as

the excise duty. It is provided under the said Schedule as follows:—

Heading No.	Sub-heading No.	Description of goods	Rate of duty
87.01	8701.00	Tractors (other than tractors of heading No. 87.09).	15%
87.02	8702.00	Public transport type passenger motor vehicles.	25%
87.03	8703.00	Motor cars and other motor vehicles principally designed for transport of persons (other than those of heading No. 87.02), including station wagons and racing carts.	5% plus Rs. 16,500 per car or vehicle as the case may be.
87.04	8704.00	Motor vehicles for the transport of goods.	20%
87.05	8705.00	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (For example, breakdown lorries, crane lorries, fire fighting vehicles, concrete mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units).	15%
87.06		Chassis fitted with engines, for the motor vehicles of heading Nos. 87.01 to 87.05.	
	8706.00	For the vehicles of heading No. 87.01.	15%
	8706.20	For the vehicles of heading No. 87.02.	25%
	8706.40	For the vehicles of heading No. 87.04.	20%
	8706.50	For the vehicles of heading No. 87.05.	15%
87.07	8707.00	Bodies (including cabs) for the motor vehicles of heading Nos. 87.01 to 87.05.	25%

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On March 1, 1986, the Central Government issued a Notification exempting certain goods from excise duty. It was provided in the said Notification (No. 175/86-C.E., dated March 1, 1986) in Entry (4) "All other goods specified in the said Schedule other than the following, namely:—

(i)

(ii) all goods falling under heading Nos. 2106, 25.04, 36.03, 40.11, 40.12, 40.13, 87.01, 87.02, 87.03, 87.04, 37.05, 87.06, 87.11, 91.01, 91.02 and 96.13.

(iii)

(iv)

However, in view of the latter Notification, dated March 1, 1986, by necessary concomitant bodies including cabs for the motor vehicles as prescribed under Heading Nos. 87.07 have been exempted from the payment of the excise duty.

(4) The appellants insisted that since the respondents are engaged in the business of building bodies over the chassis for trucks and buses and are consequently manufacturing the motor vehicles, they are liable for payment of the excise duty as envisaged by Entries 87.01 to 87.05 of the Schedule, at the rate of Rs. 4,000 and Rs. 8,000 respectively per body built. A letter, dated September 8, 1986, was addressed by the Superintendent, Central Excise Range, Moga that by virtue of Notification, dated April 24, 1986 the respondents, i.e., the body builders of trucks and buses were liable to pay the excise duty and a similar letter was written on September 16, 1987 that since they were manufacturing bodies for trucks and buses resulting in the manufacture of motor vehicles as envisaged by the Schedule and they were not having a proper licence, action would be taken against them for the lapse. The above duty was levied by the Central Government in exercise of powers conferred by sub-rule (1) Rule 8 of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) by issuing Notification No. 162/86-Central Excise, dated March 1, 1986. It was notified that the manufacturers public transport type passenger motor vehicles covered by Heading No. 87.02 or 87.04 of the Schedule were liable to pay the excise duty at the rate of Rs. 8,000 per motor vehicle and the manufacturers of motor vehicles for transport of goods were liable to pay excise duty at the rate of Rs. 4,000 per motor vehicle.

(5) The respondents challenged the levy of the excise duty and contended that Notification No. 162/86-Central Excise, dated March 1, 1986 issued by the Central Government in exercise of powers does not deprive the respondents from the exemption granted to them the builders of the bodies of the motor vehicles being squarely covered under Heading No. 87.07. It was contended that they were not manufacturing the motor vehicles and further in view of the admitted facts were not covered by any of the Entries from 87.02 to 87.04.

(6) The appellants contended that since the respondents were not manufacturing separate identifiable unit articles in the form of bodies which can be sold or bought in the market and designed to be mounted on public transport type motor vehicles either for the transport of goods or the passengers, they were manufacturing the motor vehicles and are squarely covered under Heading No. 87.02 or 87.04 of the Schedule. Making of the bodies on the chassis of the motor vehicles amounts to manufacture of motor vehicles since the entire process of body building on the chassis is a single integrated process resulting in converting the chassis into a different and separately identifiable article, viz., motor vehicle. Thus, the resultant product is a separate independent item capable of being sold and purchased as an entirely different unit, i.e., chassis are converted into motor vehicles. The chassis become motor vehicles capable of being used as such for the conveyance of passengers or for goods. The building of the body partakes the character of manufacture of a motor vehicle. Thus, the respondents are liable to pay excise duty under the Headings 87.02 and 87.04. The respondents are further liable to take the licence for the manufacture of the vehicle.

(7) The learned Single Judge after noticing the various submissions by the counsel for the parties came to the conclusion that since the respondents turnover was not more than Rupees ten lacs, they were not in a position to manufacture motor vehicles. As defined by the Motor Vehicles Act, a person who builds or fabricates a body on a chassis does not, from the notions of a common man, manufacture a motor vehicle. The chassis manufactured by a large scale industrial unit under licence from the Government of India are the motor vehicles as commonly understood. In order to determine as to whether the particular products or goods are liable to tax or excise duty, the test commonly applied is: how is the product identified by the class or section of people dealing with or using the products. The words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the

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consumer. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted. Applying these tests, the bodies built/fabricated by the respondents on the chassis supplied by the customers cannot be termed to be motor vehicle.

(8) The respondents just build a part of the motor vehicle and the part cannot be equated with the whole. It was further observed that if the process of manufacturing the body on the chassis had culminated in the manufacture of a complete and whole motor vehicle, then entry 1609.07 in the Schedule would become redundant. The distinction admitted to have been drawn by the appellants to the effect that bodies independently built without the chassis and then mounted on the chassis, will not make any difference with the one built on the chassis itself. Resultantly, the Writ Petition was allowed and it was held that the building of bodies or fabrication of the same on the chassis supplied by the customers is squarely covered by Entry No. 87.07 which has been exempted from the excise duty.

(9) The learned counsel for the appellants contended that building of the body on the chassis of the motor vehicle amounts to manufacture of motor vehicle itself. It was contended that when body is built on the chassis, it is an integral part of the process of building motor vehicle. The chassis in itself cannot be used as it is an independent item and it is only after the body had been built on the chassis that it becomes a complete usable motor vehicle. It is the end-product which has to be seen. Building of body is one of the acts in the series which constitute building of the vehicles as the final end-product. Since the end-product is the motor vehicle, it is liable for the excise duty under the Schedule.

(10) The learned counsel for the respondents contended that it is axiomatic that Tax Statute has to be strictly construed. The words must be construed in the sense in which they are used in the context of the name known in the trade in which a person is dealing. When there is no definition of a particular word in the Act itself, it is the nomenclature of the word used in the particular trade and its popular meaning which the authority should take into consideration. It was further contended that if an article has been classified under a specified item then by reason of construction of the word or phrase

or the intention of the Legislature the authorities cannot classify the specific item as being covered by other item under which it can be taken by process of reasoning alone.

(11) The interpretation put by the appellant would lead to an unjust result. A plain reading of the Schedule leads to an only inference that place of manufacturing the body is of no consequence. Building of a body is one part in the series of the long-drawn process of manufacturing the motor vehicle. The interpretation put by the appellants would lead to results which are illogical and against the realities.

(12) In order to support his submissions, the learned counsel for the respondents relied on *Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India and others* (1), and *Synthetics & Chemicals Ltd. etc. etc. v. State of U.P. and others* (2). It was observed in *Dunlop India Ltd. & Madras Rubber Factory Ltd. case* (supra) that "When there is no reference to the use of adaptation of the article, the basis of end use for classification under a Tariff entry is absolutely irrelevant." "It is well established that in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the Trade and its popular meaning should commend itself to the authority"; and "The meaning given to articles in a fiscal statute must be as people in the trade and commerce conversant with the subject generally treat and understand them in the usual course. But, once an article is classified and put up in a distinct entry, the basis of classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, there is no difficulty for statutory classification under a particular entry."

(13) It was observed in *Synthetics & Chemicals Ltd. etc. etc. case* (supra) that having regard to the principles of interpretation and the Constitutional provisions, in the light of the language used and having considered the impost and the composition of industrial alcohol, and the legislative practice of this country, the provisions seek to levy imposition in their pith and substance not as incidental or as merely disincentives but as attempts to raise revenue for States' purposes. The entries are to be judged by the pith and substance of the legislation.

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(1) 1983 E.L.T. 1566 (S.C.).

(2) J.T. 1985 (4) S.C. 267.

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(14) In our considered view, there is no substance in the contentions raised by the appellants. The State is not bound to tax everything. It is at liberty to tax the end-product or the product at stages. A bare reading of the entries leads to an inference that the bodies built for the motor vehicle are squarely covered by Heading No. 87.07. Nothing has been specified that bodies built in a particular way only are to be treated the bodies as envisaged by Heading No. 87.07. The process of manufacturing bodies is not an essential ingredient for the payment of the excise duty, nor the end-product produced by the body building is one of the components of a motor vehicle which end-product can be termed as motor vehicle. Various types of motor vehicles are known in the trade and recognised by the consumer which have been charged with the excise duty specifically, as would be obvious from the Entries in the Schedule, as mentioned above. There is no gainsaying that while exempting the excisable goods which is in the negative form, i.e. except goods specified in the Notification, dated March 1, 1986, all other goods have been exempted. It has been specifically provided that the goods referred to under Heading No. 87.07 are not excisable. Reading the entries as put forth by the counsel for the appellants, would result in draconian rule of law and would produce an unjust result inasmuch as the vehicle shall become liable for tax twice over as chassis alone has been made liable for excise as a separate item under Heading No. 87.06 at a particular rate, while the motor vehicles have been excised separately under Heading No. 87.02 to 87.04. The basic terra-firma of the Notification remains that bodies have been independently excised. The reason deployed by the appellant to the effect that building of a body on the chassis itself amounts to manufacture of a motor vehicle is bereft of any substance. Any single act in the process of manufacturing an end-product cannot possess the attributes of production of the end-product. The only conclusion that can be drawn is that the body building is not the same as the manufacture of complete motor vehicle. It may be a link in the whole process and the Legislature has taxed it as an independent item. It is not unknown that in order to encourage subsidiary industries and the small scale units, the Legislature thinks it proper to exempt such industries or units from the excise duty. However, they still kept the impost if the body is built as part of the integral process of manufacturing the vehicle. It is not disputed that in the trade body building is taken as an independent item and building of it is not understood as manufacturing of a motor vehicle. No body builder has ever been described to be a manufacturer of motor



vehicle. It does not appeal to the reason that merely body being built on the chassis will deprive it of its character as a body of the motor vehicle. It would still continue to partake the colour and name of the article known in the trade, i.e. body building. It is in the eyes of those who are dealing with the commodity and in commercial parlance that the body is treated as distinctive character and identity from the end-product. The interpretation put forward by the appellants would lead to an illogical result. There is no reasonable basis for the appellants to treat differently the bodies built on the chassis itself and those built away from the chassis and then mounted on the chassis. The only intelligent deduction from the basis design appears to be, from reading of the entries as well as charging section 3 and Notification No. 175/86-C.E. dated March 1, 1986, as well as the Schedule and subsequent Notification No. 162/86 Central Excise, dated March 1, 1986, that building or process of manufacturing or fabrication of bodies would not partake the character of manufacture of motor vehicle which may be used for the purpose of carriage of goods or passengers. Since the respondents are not manufacturing any motor vehicle, they are not liable to take any licence. Otherwise also, as observed in *Porritts and Spencer (Asia) Ltd. v. State of Haryana* (3), it is the functional character that a product is so identified which is identified in the mind of the consumer.

(15) Thus, the question posed by the counsel for the appellants, whether the process of building of bodies of buses or trucks would amount to manufacture of motor vehicle as envisaged by Heading No. 87.02 and 87.05 of the Schedule to the Central Excise Tariff Act, 1985, is to be answered in the negative. Merely building of the bodies does not amount to manufacture of motor vehicles.

(16) No other contention has been raised.

(17) In view of the observations made above, we find no force in the appeal. The same is dismissed, with no order as to costs.

P.C.G.

(3) (1978) 42 S.T.C. 433.