

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Excise Appeal No. 1001 of 2012

(Arising out of Order-in-Original No. 23/2012 dated 30.03.2012 passed by the Commissioner of Central Excise & Customs, Nagpur)

M/s. Mahindra & Mahindra Ltd.

Appellant

DGM (Excise), Farm Equipment Sector,
MIDC, Hingana Road, Nagpur

Vs.

Commissioner of Central Excise, Nagpur

Respondent

Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur 440 001.

WITH

Excise Appeal No. 85020 of 2013

(Arising out of Order-in-Original No. 61/2012/C dated 28.09.2012 passed by the Commissioner of Central Excise & Customs, Nagpur)

M/s. Mahindra & Mahindra Ltd.

Appellant

DGM (Excise), Farm Equipment Sector,
MIDC, Hingana Road, Nagpur

Vs.

Commissioner of Central Excise, Nagpur

Respondent

Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur 440 001.

AND

Excise Appeal No. 88628 of 2013

(Arising out of Order-in-Original No. 8/2013/C dated 27.05.2013 passed by the Commissioner of Central Excise & Customs, Nagpur)

M/s. Mahindra & Mahindra Ltd.

Appellant

DGM (Excise), Farm Equipment Sector,
MIDC, Hingana Road, Nagpur

Vs.

Commissioner of Central Excise, Nagpur

Respondent

Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur 440 001.

Appearance:

Shri Sriram Sridharan with Ms. Payal Nahar, Advocates, for the Appellant

Shri C. Dhanasekaran, Special Counsel for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 19.12.2022

Date of Decision: 30.01.2023

FINAL ORDER NO. A/85076-85078/2023

PER: SANJIV SRIVASTAVA

The appeals as indicated in table below are in respect of order in original of Commissioner of Central Excise, Nagpur.

Appeal No.	Order Original	in Dated	Period	Duty Demanded
E/1001/2012	23/2012/C	30.03.12	Apr 07 - Jan 11	Rs.17,26,89,200
E/85020/2013	61/2012/C	28.09.12	Feb 11- Sep 11	Rs. 3,87,91,376
E/88628/2013	8/2013/C	27.05.13	Oct 11 - Jun 12	Rs. 2,67,62,848
Total.				Rs. 23,82,43,424

1.2 By the impugned order following has been held:

Order No 23/2012/C dated 30.03.2012**"ORDER**

a] I hereby order classification of the model "Arjun Ultra - 1 CE" cleared by the Noticee during the period from April, 2007 to January 2011 under Chapter Sub-heading No. 8429.51.00 of the Schedule to the Central Excise Tariff Act, 1985.

b] I hereby confirm the demand of Central Excise duty of Rs. 17,26,89,200 /- (BED - Rs. 16,76,59,417/- + ED Cess 33,53,189/- + S&H ED.Cess 16,76,594/-) (Rupees Seventeen Crores Twenty Six Lakh Eighty Nine Thousand and two Hundred Only) on "Arjun Ultra - 1 CE" cleared by the Noticee during the period from April, 2007 to January 2011, under the provisions of Section 11A of the Central Excise Act, 1944.

c] I also order recovery of interest at appropriate rate, on the amount of duty confirmed, under Section 11AB of the Central Excise Act, 1944.

d] I also impose penalty of Rs. 17,26,89,200/- upon the Noticee under the provisions of Section 11AC of the Central Excise Act, 1944.

e] Since penalty under Section 11 AC of the Central Excise Act, 1944 has been imposed upon the Noticee, I refrain from imposing penalty under Rule 25 of the Central Excise Rules, 2002."

1.3 Other two orders are identically worded except for the amounts hence not reproduced.

2.1 Appellant is engaged in the manufacture of various types of tractors. Tractors are wholly exempt from payment of basic excise duty vide Sr. No. 40 of the Notification No. 6/2006-CE dated 1.3.2006, as amended.

2.2 Acting on intelligence that appellant are also engaged in manufacture and clearance of tractor model having brand name **"Arjun Ultra 1-CE"** along with other models manufactured and cleared by them, investigations were initiated. In said model certain arrangements were made during the course of manufacture itself to make it exclusively for use as loader. From the marketing material and literature it transpired that this model is marketed by them as "Construction Equipment" capable of lifting or loading a payload of more than 1 MT. In this model appellant were providing special grade axle so as to enable it to carry the payload of more than 1 MT. Investigations were also made with the end users.

2.3 On conclusion of investigations revenue authorities were of the view that the instant machine i.e. Arjun Ultra-1 CE manufactured by the appellant is specially designed by them to form an integral part of a machine performing function such as lifting, dozing or attaching any other required FEL and the resultant goods appropriately merit classification under the subheading 8429.51.00 as "Front End Shovel Loader.

2.4 The examination of end use of the said model Arjun Ultra-1 CE manufactured by the appellant this view is supported as the machine has an inherent feature for lifting more than 1 M.T. load and serves as a material handling equipment rather than tractor. It is also clear that the Noticee are Machine is capable of handling or loading goods or materials rather than the vehicles as laid down in chapter Note 2 to chapter 87 which defines "Tractors" as vehicles constructed essentially for hauling or pushing another vehicle, appliance or load. Appellant purchase

loading equipments (Front end loaders) from their vendors which are manufactured as per the designs and specifications provided to them. The Front End Loaders (FEL /FED) etc. are manufactured under their quality control and bear their brand name. Appellant impart training to dealer's personnel for the attachment of FEL and also give necessary directions to them regarding the maintenance of the equipments and also give physical demonstrations to the customers as well as the staff members of the dealer. The User Manuals for so-called tractors inter alia revealed that labour free services are offered to the customers for these FEL/FED etc., which can be availed by the attachment owner from any authorized dealer in India. They also warranted the FEL/FED etc. to the extent that the defective part will be repaired or replaced through their authorized dealer.

2.5 Thus Appellant themselves differentiate between plain "Arjun Ultra-1 605 tractor" and "Arjun Ultra-1 CE 605 model/construction equipment". Admittedly "Arjun Ultra-1 CE 605 model/construction equipment" is fitted a special axle with "Tonplus technology" wherein the cross section of the centre bar is more as compared to normal tractors. As per the appellants, the models are not interchangeable as the axle is put at the time of manufacture itself making it suitable to perform specific function.

2.6 It. therefore, they have misdeclared their product Arjun Ultra-1 CE as "tractor" falling under chapter sub-heading 8701.90.90 and wrongfully claimed exemption under Notification No. 06/2006-CE dt 16.11.2006 (Sr. No. 40) instead of properly classifying them under the appropriate heading 8429.51.00 as Front End Shovel Loaders.

2.7 A show cause notice dated 9.03.2011 was thus issued to the appellant asking them to show cause as to why: -

- a) The Arjun Ultra -1 CE model manufactured and cleared by them during the period from April ,2007 to January, 2011 should not be classified under Chapter sub heading 8429.51.00 of the Central Excise Tariff as Front End Shovel Loaders;
- b) Central Excise duty of Rs. 17,26,89,200 /- (BED - Rs. 16,76,59,417/- + ED Cess 33,53,189/- + S&H ED.Cess

16,76,594/-) leviable on Front End Loaders falling under subheading 8429.51.00 being manufactured and cleared by them, should not be demanded and recovered from them under the provisions of Section 11A(1) of the Central Excise Act, 1944;

- c) Interest at appropriate rate on the duty so payable should not be charged and recovered from them under the provisions of Section 11AB of Central Excise Act, 1944; and
- d) Penalty should not be imposed upon them under the provisions of Section 11AC of the Central Excise Act, 1944.
- e) Penalty should not be imposed upon them under Rule 25 of the Central Excise Rules, 2002 for contravention of the provisions of the Rules mentioned in para supra.

2.8 Two more show cause notices dated 15.02.2012 and 08.10.2012 were issued demanding the duty for the period February 2011 to September 2011 and October 2011 to June 2012 respectively.

2.9 The show cause notices have been adjudicated as per the impugned orders. Aggrieved by the impugned orders appellant have filed these appeals as indicated in para 1 above.

3.1 We have heard Shri Sriram Sridharan along with Ms Payal Nahar, Advocates for the appellant and Shri C Dhanasekaran, Special Counsel for the Revenue.

3.2 Arguing for the appellant learned counsel submitted that:-

- Arjun Tractor is cleared by them correctly classifiable under CSH 8701, as per Note 2 to Chapter 87 and para 1 of HSN 87.01 provide the meaning of term 'tractor', as Note 2 to Chapter **87**. It is equipped with certain components which are essential for working on various field operations.
- It has been certified by the ARAI and Central Farm Machinery Training & Testing Institute, Ministry of Agriculture as agricultural tractor. the Therefore, it is designed essentially for agricultural purposes, specially designed for the purpose of hauling/pushing.
- The conclusion that it is covered by the exclusion clause in Para 2 of the HSN Explanatory note to heading No.8701 is without any basis. This HSN explanatory note is applicable

for the classification of propelling bases fitted with or incorporating robust elements and in addition comprising of other machinery. Arjun tractor is cleared from the factory without any fitment of any machinery. Thus, aforesaid HSN explanatory note is wholly irrelevant for the purpose of determining the classification of the tractor in question.

- Even after the fitment of front end loaders/dozers at the dealers end, Arjun tractor cannot be excluded from Heading 8701, for the reason that these fitments are detachable and do not form an integral part of the tractor. The term 'integral mechanical unit' has already been interpreted by the following HSN and SC Judgment;
 - HSN notes for heading 8705 under the title 'Motor Vehicles, Chassis or lorries combined with working machines'
 - HSN notes for heading 8430 under the title 'Machines mounted on tractor type bases.'
 - LMP Precision Eng, Co. Ltd. [2004 (163) ELT 290 (SC)]
- Further, merely strengthening the axle of the tractor, cannot be treated as the special constructional design or reinforcement to make the vehicle as propelling base to form integral part of a machine. In fact, the strengthening was done due to breakages in the front axle of the earlier iterations of the Arjun Tractor while hauling agricultural implements.
- The fact that some of the end-customers had fitted front end loaders/dozers on the tractor cannot be a ground to classify the vehicle in question itself, as a machine under Heading No. 84.29.
- As per Bureau of India Standards (BIS) for tractors there is a specific requirement that two most essential components - VTU/PTO should be there in an agricultural tractor. This requirement is not prescribed for any construction equipments like front end loaders/dozers. It is also clear from the technical specifications given under ARAI, that Arjun tractor conforms to all the requirements of an agricultural tractor.

- CBEC Circular No. 838/15/06 dated 16.11.2006 clarifies that primary use of tractor should be the deciding factor for its classification. Accordingly, since Arjun tractor's principal function is hauling/pushing essentially being used for agricultural purposes, it is to be classified under chapter heading 8701.
- Goods have to be assessed in the form in which they are cleared
 - Dunlop India [1983 (13) ELT 1566 (SC)]
 - Reliance Textile Industries Ltd. [1993 (63) ELT 67 (Bom)]
 - Mahindra & Mahindra Ltd. - 2010 (262)ELT 366 (T) Affirmed by the Apex Court in 2016 (334) ELT 193 (SC)
 - Aura Solar Products Pvt. Ltd. Vs. CCE – 2021 (44) GSTL 82 (T)
- It is a settled legal position that goods presented for assessment and cleared at different points of time, cannot be clubbed as a single consignment for the purpose of Rule 2(a) of General Interpretative Rules while determining classification
 - Tata Motors Ltd [2008 (222) ELT 289 (T)] Affirmed by Apex Court in [2016 (337) ELT A99 (SC)]
 - L.G. Electronics India Pvt. Ltd. [2022 (8) TMI 873 – CESTAT]
 - Sony India Ltd. [2002 (143) ELT 411 (T)]
- Interpretative Rules cannot be applied when an article falls squarely under a particular tariff heading. Kindly refer:
 - Shivaji Works Ltd. [1994 (69) ELT 674 (T)]
 - Mukund Ltd. [2004 (167) ELT 177 (T)]
- It is a settled law that the end-use to which the product is put to, cannot determine the classification of the product, in cases where the product manufactured falls under a specific tariff heading. In the present case, there is a specific tariff heading for tractor, therefore, end use is irrelevant for the purpose of determining classification of Arjun Tractor. In any case, the end- user statements relied upon by the department pertains to the tractor after

fitment of additional implements and hence, not relevant for deciding classification of Arjun tractor.

- Carrier Aircon Ltd.[2006 (7) TMI 8 (SC)]
- Indian Aluminium Cables Ltd. [1985 (5) TMI 54 SC]
- It is a settled law that payment of duty under a particular tariff item must depend upon the facts of the case and not on the advertisement gimmick of the advertiser. In any case, the advertisements relied upon by the department tractor after fitment of additional implements and hence, not relevant for deciding classification
 - Blue Star Ltd. [1980 (6) ELT 280 (Bom)] Leukoplast (India) Pvt. Ltd. [1985 (20) ELT 70 (Bom)] Affirmed by Apex Court in 1994 (70) ELT 9 (SC)
- Undisputedly, there were 4041 tractors of model '605 DI Arjun Ultra-1' cleared during the period under consideration. As against this, only 330 loaders and 187 dozers were sold. This constitutes less than 13% of the total sales of the tractor model. Under these circumstances, the liability on the appellants ought to be restricted to the number of tractors which were fitted with front end loaders/dozers. Demand of duty on all 4041 tractors is thus incorrect.
- Explanation to Section 4(1)(a) of the Central Excise Act, provides that, total amount received by a manufacturer will be deemed to be price cum duty and the assessable value should be determined accordingly. **Circular D.O.F No. 384/1/2003 TRU dated 20.2.2003** also clarifies the above position. Therefore, in the present case also, the appellants should be given the benefit of price cum duty.
- Without prejudice to the submissions made, in case the Arjun tractor model is held to be dutiable, by classifying the same under Chapter Heading 8429 of the Central Excise Tariff, then the appellants will be entitled to the CENVAT credit of the duty paid on inputs used in or in relation to the manufacture of the said tractor model.
- In order to invoke extended period of limitation, the alleged suppression or mis-statement of fact must be willful. However, in view of the bonafide belief of the appellants,

there is no such willful suppression of facts in the present case.

- Cosmic Dye Chemical [1995 (75) ELT 721 (SC)]
 - Pushpam Pharmaceuticals Company [1995 (78) ELT 401 (SC)]
 - Chemphar Drugs and Liniments [1989 (40) ELT 276 (SC)]
 - Jai Shree Rasayan Udyog Ltd. [2015(10)TMI1777-CESTAT DEL]
 - Arani Agro Oil Industries Ltd [2020(9)TMI502-CESTAT HYD]
- Demand of penalty and interest is also not sustainable.

3.3 Arguing for the revenue learned special counsel while reiterating the findings recorded in the impugned orders submits

- The short issue to be decided in these appeals is whether the goods in question ought to be classified under Chapter sub-heading 8429.51.00 of the Central Excise Tariff as front-end shovel loaders or as a tractor under Chapter 87 as tractors.
- The Appellant has also taken a stand that since the Tractor has been tested and certified as a Tractor by the Central Farm Machinery Training and Testing Institute the same is a tractor. In this regard, it is observed that although the appellant has claimed that the same was tested by the said agency which certifies only farm equipment such as a tractor, it is seen that the appellant had got tested only the tractor portion of the equipment without the loader and dozer fitted to it. The test report submitted by the appellant clearly reveals that the same were not fitted when the said model was tested by the appellant. It is therefore clear that when primarily and principally the machine has been built for carrying out the activities meant for material handling rather than those undertaken by normal tractors the same cannot be called a tractor when sold in the complete form as portrayed and advertised.
- In this case, the end use of the machine cleared by the appellant is to do heavy-duty loading, unloading, and dozing. This machine is designed to perform the work of a

bulldozer, excavator, lifter, etc and is designed for mounting such types of equipment, hence it needs to be classified in chapter 84295100 and can not avail exemption of chapter 8701 which is given for tractor used for agriculture purpose only. Even road tractors which use a semi-trailer as mounting /equipment and have a capacity of more than 1800 CC are taxable. Also, tractors which are special purpose tractors falling under heading 8705 are taxable. Tractors which are used on the railway platform and kind of places are taxable in heading 8709. It means the exemption was for tractors used for agriculture purposes only.

- It is noteworthy that machines cleared by the appellant in this case, are having capacity of more than 1800 CC and have a unique axle for loading purposes and are designed for industrial use.
- The appellant has misclassified the goods intentionally, they were aware that these goods are not agricultural tractors and the design of the goods is made for industrial/commercial purposes, they availed the exemption with the intention to evade the duty and to capture the market by selling the goods at a lesser cost compared to their competitors. Hence the extended period of limitation was rightly invoked. The adjudicating authority rightly relied upon the Larger Bench decision of the Hon'ble Tribunal in the case of Mermaid Marine Products Pvt Ltd [1985(20)ELT 329(Tri-LB)].
- The interest is rightly invoked against the appellant. Since the demand for Tax has been upheld the demand for interest will follow. As have been held in Pratibha Processors [1996 (88) ELT 12(SC) and Kanhai Ram Thekedar [2005-TIOL-76 SC]
- The Adjudicating Authority rightly invoked the extended period for the following reasons. It is established that the acts of omission and commission on the part of the appellant have resulted in conscious and willful suppression of facts with the intent to evade the due payment of duties of excise on the part of the appellant which renders them liable for penalty under section 11 AC. the Adjudicating

authority relied upon the Hon'ble Supreme Court judgment in the case of Sony India Ltd [2004(167)ELT 385 (SC)]

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the following findings to hold against the appellant:

"2. It is observed that as per the chapter Note 2 to chapter 87 reads as under, "For the purposes of this chapter, "tractors" means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load whether or not they contain subsidiary provision for the transport, in connection of the main use of the tractor, of tools, seeds, fertilizers or other goods."

3. As per the explanatory notes of Harmonized System of Nomenclature (HSN) in Section XVII, Chapter 87, Gen/87.01 the heading 8701 does not cover propelling bases specially designed, constructed or reinforced to form an integral part of a machine performing a function such as lifting, excavating, leveling, etc., even if the propelling base uses traction or propulsion for the execution of this function. It is also specifically excludes the propelling bases of machines, in which the propelling base, the operating controls, the working tools and their actuating equipment are specially designed for fitting together to form an integral mechanical unit, as in the case of loaders, bulldozers, motorized ploughs, etc.

4. Thus it is established that those machines of chapter 84 can be distinguished from the tractors Chapter 87 by their special constructional features (shape, chassis, means of locomotion, etc.). IT is also observed that the said distinction has been clearly explained in the HSN as - "For propelling bases of the tractor type, various technical features relating essentially to the structure of the complete unit and to equipment specially designed for functions other than hauling or pushing should be taken into consideration. For instance, the propelling bases not covered by this heading incorporate robust elements (such as supporting blocks, plates or beams, platforms for swiveling cranes) forming a part of or fixed, generally by welding, to the chassis-body framework to carry the actuating equipment for the

working tools. In addition, such propelling bases may comprise several of the following typical parts: powerful equipment with built-in hydraulic system for operating the working tools; special gear boxes, in which, for example,"

5. *It is observed from the marketing material and literature of the noticee as well as from their website that the particular model i.e. "Arjun-Ultra 1 CE" is marketed by them as "Construction Equipment" capable of lifting or loading a payload of more than 1 M.T. and that the noticee have carried out certain arrangements for fitting of hauling or lifting equipments (also known as Front End Loaders, FEL). while manufacturing the same.*

6. *IT is also observed from the exemption Notification No. 06/2006 -CE dated 16.11.2006 at Sr. no. 40 that the same exempts the goods i.e. tractors as under-*

40. 8701 *All goods (except road tractors for semi-trailers of engine capacity more than 1800 cc)*

Thus it is clear that the exemption contained in the notification is available to the tractors other than road tractors and especially those which are primarily meant for agricultural activities.

7. *This view is also supported by the instructions contained in the C.B.E.C. Circular No. 838/15/2006-CX, dated 16.11.2006, which specify that the primary use of Tractors should be considered as the deciding factor for putting them into the dutiable category. The instant model thus has been primarily designed to take a load of more than 1 M.T. for a short distance movement such as for lifting and loading of sand / metal for putting in feeder of Ready-Mix Concrete Plant; Paper waste in pulper; Coal/Ash handling in Thermal Power Plants; Loading M.S. pipes in trucks; lifting machines and equipments such as motors, shafts in the factory etc. (The list of usage is merely illustrative and not exhaustive). As per the technical literature of M/s Mahindra & Mahindra Ltd., they have provided a special grade axle to "Arjun-Ultra 1 CE" to take a load of more than 1 ton in its Front End Loader (FEL).*

8. *Further the model is equipped with a 3200 cc engine and a 56 HP engine power enabling the same to perform tasks as a*

loader rather than an agricultural implement. The engine capacity and power are far more than the average requirement of farming and agriculture. Such machines with 56 HP engine or more are principally manufactured, marketed and used as material handling equipment. More emphasis is given on material handling than farming.

9. *It is further seen that FEL manufacturing companies, such as Bull Machines Ltd., M/s Chowgule and Company, and M/s Essaey Ltd., are advising their customers to purchase "Arjun Ultra-1 CE from M/s Mahindra and Mahindra which is made suitable for attaching the material handling equipments. The advertising material of these companies show "Arjun-Ultra 1 CE" in use as loader or a crane. Not a single instance of "Arjun-Ultra 1 CE" being projected as farm equipment or as a "tractor" as defined in the Chapter Note 2 of chapter 87 is seen on the record. These machines are neither used for hauling or pushing of any vehicle, load or appliance and thus fail to satisfy the test of whether the same are eligible to exemption or not. It is noteworthy to mention that the promotional leaflets of these companies recovered from the dealer of M/s Mahindra and Mahindra, and that in most of the cases M/s Mahindra and Mahindra itself had issued invoices for front end loaders.*

10. *It is seen from the investigations conducted that the actual usage of these machines was also verified from various users which are essentially industrial units, construction companies etc. It was seen that the machines were purchased by such users exclusively for material handling purposes and not even once for agricultural purpose.*

11. *It is seen from the statement dt 08-06-2010 of Shri Vinay Digambar Khole, Deputy Manager of AppliTrack Department of the noticee that the said Dept.was dealing with the sale/purchase of tractor Equipments and attachments like Front End Dozers, Front End Loaders, tractor mounted combined harvester and other agricultural implements. That he was the only coordinator for the whole of India regarding sale of equipments/implements from their dealers. That they purchased these equipments and implements from various manufacturers (vendors) located all over India which were manufactured as per*

the designs and specifications provided by M/s Mahindra & Mahindra through their Head office located at Akurli Road, Kandivali(East), Mumbai and that in some cases the equipments designed by vendors were subsequently approved by M/s Mahindra & Mahindra. It is seen that there is a categorical confession by Shri Khole stated that these Front End Dozers, Front End Loaders (FEL /FED) etc. were manufactured under noticee's quality control and bear their brand name i.e. Mahindra & Mahindra. This shows that not only the said equipments were manufactured to suit the usage of the goods in question as dozer but were planned to perform the said activities as planned. He has also stated that on receipt of purchase orders from various locations the Purchase Dept. at Mumbai places the purchase orders to respective vendors for supply of these equipments.

12. It is seen that the transaction is arranged by the noticee in the manner as admitted by Shri Khole, in his statement, which involved placement of order by noticee's Mumbai office which inter alia contained the details of the consignee to whom the equipment/implement are destined. Thereafter, the manufacturer (Vendor) cleared the Front Loader on payment of Central Excise duty and under cover of Central Excise Invoice." He has further stated that, "The manufacturer (Vendor) sends the Sale Bill/ Invoice to our Mumbai Office who accounts for the stock of the goods in their inventory. Thereafter, on receipt of advice from their Mumbai office, through e- mail, Sale Invoices are issued in the name of the concerned dealer of Mahindra & Mahindra." It is also observed that the noticee was issuing Central Excise Invoice such traded goods, admittedly, as per the directions of Head Office." It is observed that on receipt of the duplicate copy (transporters copy) of Central Excise invoice of the noticee, alongwith the certificate stating therein the details of their Area office (Stockyard), Invoice No. and Date, Dealers name and manufacturer (vendor) particulars, the manufacturer (vendor) clears the goods to the respective dealer of M/s Mahindra & Mahindra on either Central Excise Invoice or commercial invoice as the case may be and in turn, the dealer, the latter issues a retail sale bill to the customer. It is also admitted fact that the officials of M/s Mahindra & Mahindra also give necessary directions regarding the maintenance of the

equipments and also give physical demonstrations to the customers as well as the staff members of the dealer. Thus it is clear that the customer upon seeing the advertisement floated for dozer places order on the dealer of the noticee and the customer is given delivery of the front loader after procuring the equipments from vendors and "Arjun Ultra -1 CE" from the factory of the noticee.

13. Shri Khole has also admitted that their qualified staff visits the factory premises of the manufacturers (Vendors) on periodical basis to inspect the products being manufactured and inspection reports are accordingly drawn. He further stated that their vendors are allowed under an agreement to use brand name "Mahindra" of M/s Mahindra & Mahindra (the noticee herein) on the products manufactured by vendors for the noticee by placing a sticker, painting or fixing name plate bearing the name "Mahindra". Thus it is clear that the noticee has devised a strategy to procure the equipment from vendors branded as "Mahindra" and supply the front loader after attaching the fitments required to modify the same at the end of the dealer.

14. It is observed from the user manuals for 'Mahindra Front End Loader', 'Mahindra Front End Loader FEL 60-XTRA REACH' and 'Mahindra Front End Dozer Attachment' that:-

8. These manuals are published by the noticee's head office at Kandivali.
9. It is categorically mentioned that this manual is complementary to the Tractor's Operator Manual and all the maintenance & safety precautions given therein are to be followed along with those given in this manual.
10. Labour free services are offered to the customers for these FEL/FED etc which can be availed by the attachment owner from any authorized Mahindra Tractor Dealer in India.
11. The noticee warranted the product i.e. FEL/FED etc. to the extent that the defective part will be repaired or replaced through its authorized dealer.
12. A Field Installation Report is given in the manual which has information regarding whether the customer is explained and educated the operation of FEL/FED, function of each

part, how to attach/detach FEL/FED to the machine, maintenance schedule of FEL/FED etc.

- 13. The instructions are explicitly provided regarding Safety, Product overview, Specifications, Loader Detachment & Attachment, Technical details, Operating the loader, Service schedules etc.*
- 14. Copies of Pre-delivery Inspection (PDI) Reports are provided in the manual which has columns showing the name of person who does the attachment of FEL/FED. It also shows Loader invoice No. and maintenance schedule of FEL/FED.*

Thus it is clear that the noticee is dealing with the sales-purchase of FEL/FED etc. in as much as the noticee places the purchase orders of these implements to their approved vendors who manufacture FEL/FED as per the designs supplied by the noticee. The implements are manufactured under the strict quality control of the noticee. These FEL/FED also bear brand name of noticee. The entire documentation of FEL/FED for whole of India is looked after by noticee's AppliTrac division located within their factory premises at Hingna, Nagpur. This is also corroborated from the statement of Shri Khole, Deputy Manager of the noticee recorded on 08-06-2010 under section 14 of the Central Excise Act, 1944.

End Use Verification of the product -

16.

20.6 Thus it is clear from the statement of Shri Nihar Banerjee, an actual user of the subject goods that, they had intended to purchase a Buller machine having front End Loader which effectively act as "Mini JCB" from M/s Bull Machines, Coimbatore who had recommended them to purchase Arjun Ultra -1 605 CE manufactured by the noticee as the Gross vehicle Weight (GVW) is 3500 Kg, the power is 56 HP and the axle strength is suitable as per the requirements for mounting the Front End Loader. Thus M/s Suguna had purchased Arjun Ultra -1 605 CE from Provincial Tractors, Nagpur as it acts as a substitute for JCB and performs the same functions as that of JCB i.e. material handling purposes such as ash handling in the power plant and coal handling. He stated that the Buller machine (i.e. Arjun Ultra -1

605 CE with attached FEL) is used exclusively in their captive power plant for filling trolleys with ash and also putting coal in the coal bunker.

21. Thus it is seen that the noticee gives their customers a warranty for the model Arjun Ultra -1 605 CE even after attachment of Front End Loader; hence it is clear that the noticee intends to manufacture a machine capable of handling or loading goods or materials rather than the vehicles as laid down in chapter Note 2 to chapter 87 which defines "Tractors" as vehicles constructed essentially for hauling or pushing another vehicle, appliance or load whether or not they contain subsidiary provision for the transport, in connection of the main use of the tractor, of tools, seeds, fertilizers or other goods. Such warranty is also explicitly mentioned on the 'User Manual' of 'Mahindra Front End Loader', 'Mahindra Front End Loader FEL 60-XTRA REACH' and 'Mahindra Front End Dozer Attachment' submitted by Shri Khole, Deputy Manager of AppliTrack Department of the noticee, wherein the noticee warranted the product i.e. FEL/FED etc. to the extent that the defective part will be repaired or replaced through it's authorized dealer. Even the labour free services are offered to the customers for these FEL/FED etc which can be availed by the attachment owner from any authorized Mahindra Tractor Dealer in India. Therefore it becomes clear that the noticee manufactures a loader machine as against "Tractor" as claimed by them.

22. Shri Shrikant Dube, Deputy General Manager in his statement recorded under section 14 of the Central Excise Act, 1944 on 15-02-2011; he stated that the model Arjun Ultra 1 CE is equipped with a special grade front axle which is heavy duty and used for enhancing the load bearing capacity of the front axle of these models. He categorically stated that the wording CE stands for "Construction Equipment". As explained by him the axle is peculiar wherein the cross section of the centre bar is more as compared to other models. He also explained further that all Arjun Ultra-1 CE models are equipped with Tonplus technology axle and that the normal variety like 605 cannot be changed to 605 CE as the CE model comes with special axle which is not available as spare part in the market.

23. It is observed that the noticee in their reply dtd. 26/12/2012 to the show cause notice have stated that the vehicles of model 605 DI Arjun Ultra-I is a tractor and not construction equipment. It is however observed that as stated by Shri Shrikant Dube, Deputy General Manager in his statement recorded under section 14 of the Central Excise Act, 1944 on 15-02- 2011 the very name CE stands for "Construction Equipment and that Arjun Ultra 1 CE is equipped with a special grade front axle which is heavy duty and used for enhancing the load bearing capacity of the front axle of these models. Since this is an admitted position that the said machine is projected, used, designed and advertised as construction equipment the contention of the noticee is not sustainable.

24. The noticee has submitted that as per the photograph of the said goods when cleared from the factory it can be seen that there is no front end loader/dozer fitted and hence since the goods are being cleared in the same state from their factory they are required to be classified as tractors and not loader under CETH 8429.51. They have also taken a stand that since the same has been tested and certified as Tractor by the Central Farm Machinery Training and Testing Institute the same is a tractor. In this regard it is observed that although the noticee has claimed that the same was tested by the said agency which certifies only farm equipments such as tractor, it is seen that the noticee had got tested only the tractor portion of the equipment without the loader and dozer fitted to it. The test report submitted by the noticee clearly reveals that the same were not fitted when the said model was got tested by the noticee. It is therefore clear that when primarily and principally the machine has been built for carrying out the activities meant for material handling rather than those undertaken by normal tractors the same cannot be called as a tractor when sold in the complete form as portrayed and advertised. It is also seen from the Circular no. 838/15/06 dtd. 16.11.2006 that the guiding factor in the case is whether the vehicle in question is designed and meant for agriculture use or otherwise. In the instant case it is crystal clear that the said goods are specifically designed, built, engineered, advertised, projected, sold and used as dozers and not tractors at all.

25. It is contended by the noticee that the goods in question are to be assessed in the same condition in which they are cleared from their factory and not on the basis of the end use to which the users were putting them to. In this regard it is observed that the noticee have master minded a scheme to defraud the revenue by (i) firstly clearing the impugned goods as Tractor, and carrying out modification in the axle load capacity (making it capable of handling one MT of load); (ii) by employing the services of the vendors they enrolled for manufacture and supply directly to their dealer's end, of the equipment for material handling to be fitted to the said goods, branded with their name i.e. Mahindra; so that the end customer recognizes it as a product of the noticee (iii) ensuring that the goods are advertised and known in the market as material handling equipment of Mahindra make, (iv) printed material depicting the said goods as material handling equipment rather than mere tractors, (v) training the personnel as well as the customer in handling the goods after the said equipment is fitted and ready for material handling, (vi) extending the warranty even after carrying out of the said fittings. Thus on one hand the noticee would claim the benefit of the exemption notification for tractor (for agricultural purpose) and on the other using the same as material handling equipment. The contention that the goods were cleared without any fitments is a clever idea adopted by the noticee to hoodwink the revenue department, as at the same time the orders were received for the entire Arjun Ultra Di-1 CE fitted with equipment which were later going to be fitted for use solely as material handling equipment. Thus the noticee was in a way, clearing the goods in dissembled condition. In this regard it is felt necessary to visit the decision of the Honourable Madras High Court reported in 1983(12)ELT 681 (Mad.) in the case of *TS Cycles of India Ambattur v/s UOI* in which it was held that "Interpretative Rule 2(a) of the Customs Tariff Act, 1975 provides that incomplete or unfinished vehicles, aircraft or other articles of this section are to be classified with the corresponding complete or finished vehicles or aircraft or other articles, provided they have the essential character of the latter. Complete vehicles and other articles of this section, or those considered as complete, imported unassembled or disassembled,

are to be classified as if they were imported in the assembled state." I also rely on the dissenting judgment of Hedge J. in the decision reported in J.K. Steel Ltd. v. Union of India and others, AIR 1970 SC 1175 = 1978 E.L.T. (J 355), to hold that the Central Excises and Salt Act and the Tariff Act are cognate legislations which are in pari materia and on the analogy of Rule 2 (a), the 'goods cleared in unassembled state should be classified and considered equivalent to complete goods in the unassembled state.

26. Further it is observed that since the goods were so projected, marketed as dozers and were understood in the trade parlance as dozers and not tractors as revealed during the investigation carried out at the end of the buyers has and discussed in the foregoing paras the same are to be classified as dozers under Chapter 84 only. I place reliance on the decision of the Apex court in the case of Atul Glass Industries v/s CCE (1986) 25 ELT 473 (SC) in which it has been held that - "The test commonly applied to such cases is how is the product identified by the class or section of people dealing with or using the product [paras 7 to 12]". It is thus clear and settled that a consumer buys an article because it performs a specific function for them. This mental association with a product is highly important for classification. In such cases the extended period has been held to be invokable. I place reliance on the decision of Fusebase Eletoro Ltd V/s CCE Meerut reported in 2000 (120) E.L.T. 488 (Tribunal).

27. The noticee has placed reliance on the decision of Dunlop India V.S UOI reported in 1983(13) ELT 1566 to argue that the goods are to be assessed on the basis of the condition at the time of presentation to the department for assessment. However in the present case the noticee has adopted a modus operandi of clearing the model Arjun Ultra Di-1 CE. Disguised as Tractor for agricultural purpose but with a clear knowledge that the same was meant for use as a dozer in view of the fact that the same was equipped with a modified axle capable of handling 1 MT load which the other model did not, and there after as per the customer's order convert the same into Loader, dozer as advertised. Hence the ratio of the aforesaid case is not

applicable to the case of the noticee. In the present case the end use is very much relevant for the purpose of deciding the eligibility to exemption.

28. The noticee has cited a plethora of decision on similar lines as Dunlop referred above and I find that the ratio thereof is not applicable to the present case as same were rendered in a totally different situation unlike the present one.

29. It has been held in the case of Union Carbide v/s CC reported in 1986(24)ELT 325 (Tri.) that where the classification is related to the function of goods the predominant use of the goods is very relevant and important.

30. In CCE v/s Yash Laboratories also it was held that when terms of tariff require use of product to be taken into consideration such use is to be considered. [2001 (131) ELT 469(Tri.)]

31. In the case of Camlin Ltd., v/s CCE reported in [2000 (121) ELT 178 (Tri.)] it has been held that function of the article can be used as an aid to classify a product.

32. It is contended by the noticee that the reliance placed on the strengthening of axles of vehicle to classify the same under Chapter 84 is incorrect as the product remains the same even after the said changes were made. In this regard it is necessary to understand that no prudent business firm would needlessly enhance capability of a product without any reason. The reason in the present case is that the same would be used only as a dozer after strengthening the axle, hence such technical changes have been made. Hence the averment that the same would still remain a tractor is not tenable. Further the technical literature recovered regarding the product at the end of the dealer where the product is show cased as a dozer also clearly settles the issue against the noticee. It is also seen that in cases like these technical literature would definitely an aid to arrive at the correct classification.

33. I place reliance on the decision of the Apex Court in the case of CCE, Kolkata v/s G C Jain reported in 2011 (269) E.L.T. 307 (S.C.) wherein it was held that-

"It is also noted that in the technical literature given by the manufacturer, use of the product has been shown as adhesives. Even though the Revenue has disputed that the said literature produced by the Respondents is not correct and is manipulated inasmuch as the same is different than the manufacturer of identical product in India, however, no concrete evidence to that effect has been led by the Revenue. The Tribunal has given a finding that the literature produced by the Respondents is of the Korean manufacturer and is given in English language as well as Korean language and there is no reason to doubt the veracity of the said literature. Inasmuch, as the manufacturers themselves have shown the use of Butyl Acrylate as adhesive as well as textile binders, we see no reasons to take a different view".

34. The noticee has contended that the statement of the end user are not relevant for the purpose of classification of the product and that the advertisement cannot be a basis for determination of the classification. In this regard it is seen that they have also placed reliance on various decisions. However in a specific case like the present one the same is also a determining factor for classification as it relates to its main function. This view is supported by the decision of the Hon'ble CESTAT in the case of B K Products v/s CCE Patna reported in 1998 (104) E.L.T. 430 (Tribunal) in which it was held as under -

34.1 "The product is one for care of the hair, even as per the appellants' own description in advertisements as "for bright, thick, dark long hair, etc." It is a hair oil which has a pleasant, fragrant odour. Hence, it has been rightly treated as a perfumed hair oil and by virtue of Note 6 to Chapter 33 of the Schedule to the CETA, 1985, it has correctly been held to fall under CET sub-heading 3305.10. [paras 5.3, 6, 7]"

Incidentally this decision has been upheld by the Apex Court [B.K. Products v. Collector - 2000 (121) E.L.T. A81 (S.C)].

35. Thus from the foregoing it is seen that the advertisement material published by the marketing department of the noticee also highlights this model as basically a loader machine, it states categorically that the new Arjun Ultra-1 CE, with Front End Loader FEL 60 comes up with specialty of Tonplus technology which enables the machine for lifting of more than 1 Tonne load.

*The advertisement projects the product as useful in stone quarries for loading stone in dumpers & trailers, for clearing ash in furnaces, for loading molasses & compost in trucks in sugar industry, for lifting and loading salt in salt beds, for lifting and loading soda ash in cement factories to illustrate a few. This particular vehicle is therefore clearly, not constructed essentially for hauling or pushing another vehicle or hauling or pushing any appliance or load. It is essentially constructed for lifting or loading or dozing as against provided for in the chapter note *ibid*. It therefore becomes evident that the machine manufactured by the noticee is equipped with the special axle at the time of manufacture itself which renders the resultant product with enhanced load bearing capacity. This axle is fitted to the CE models only making them as specialty construction equipments. From the statement of Shri Shrikant Dube, it is clear that the Tonplus technology axle in Arjun Ultra-1 CE model is peculiar to this particular model fitted at the time of manufacture and not available as a spare part in the market.*

*36. In view of the same there is no doubt at all that the noticee have manufacturing, "Arjun- Ultra 1 CE" by making some arrangements while manufacturing itself to make these useful for exclusive use as a "Loader". It is forthcoming from the records and the statements of noticee's Deputy General Manager dt 15-02-2011, various end users and also from the advertisement material / Service manuals of the subject goods published by the noticee themselves that this particular model is marketed by them as "Construction Equipment" capable of lifting or loading a payload of more than 1 M.T. and not as tractor as defined in the chapter note, *ibid*. It is, therefore, clear that the instant machine i.e. Arjun Ultra-1 CE manufactured by the noticee is specially designed by them to form an integral part of a machine performing function such as lifting, dozing or attaching any other required FEL and the resultant goods merit classification under the subheading 8429.51.00 as "Front End Shovel Loader".*

37. Further it is clear that it has an inherent feature of having arrangements for lifting more than 1 M.T. load and serves as a material handling equipment rather than tractor as claimed by

the noticee. It is also clear that the noticee intends to manufacture a machine capable of handling or loading goods or materials rather than the vehicles as laid down in chapter Note 2 to chapter 87 which defines "Tractors" as vehicles constructed essentially for hauling or pushing another vehicle, appliance or load. It is also an admitted position that the noticee purchase loading equipments (Front end loaders) from their vendors which are manufactured as per the designs and specifications provided by noticee themselves. The Front End Loaders (FEL /FED) etc. are manufactured under noticee's quality control and bear their brand name i.e. Mahindra & Mahindra. The noticee impart training to dealer's personnel for the attachment of FEL and also give necessary directions to them regarding the maintenance of the equipments and also give physical demonstrations to the customers as well as the staff members of the dealer. The User Manuals for so-called tractors inter alia revealed that labour free services are offered to the customers for these FEL/FED etc which can be availed by the attachment owner from any authorized Mahindra Tractor Dealer in India. The noticee even warranted the product i.e. FEL/FED etc. to the extent that the defective part will be repaired or replaced through it's authorized dealer.

38. The noticee themselves differentiate between plain "Arjun Ultra-1 605 tractor" and "Arjun Ultra-1 CE 605 model/construction equipment". It is admitted position that the noticee uses a special axle with "Tonplus technology" in the latter wherein the cross section of the centre bar is more as compared to normal tractors. As per the noticee, the models are not interchangeable as the axle is put at the time of manufacture itself making it suitable to perform specific function."

4.3 The General Rules For The Interpretation of Tariff read as under

Classification of goods in this Schedule shall be governed by the following principles:

- 1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes*

and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential Abbreviations For 31 character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. *When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected 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 put up for retail sale, 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 for retail sale, 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, in so far 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 numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

4.4 From the perusal of the above General Rules of Interpretation of the Tariff, it is quite evident that the classification of the goods is to be done in according to the terms of heading/ sub heading and relevant Section Notes and Chapter Notes. All other tests, such as end use verification, trade understanding of the goods etc., are only aid to understand the nature and character of goods for determining the classification

under tariff. It is also settled principle of law that classification and assessment of the goods is to be done at the time of the clearance of the goods and in the form in which they are presented for assessment. The law in this respect has been settled by the Hon'ble Supreme Court long back in case of Dunlop India [1983 (13) ELT 1566 (SC)] where Hon'ble Apex Court observed as follows:

"30. The relevant taxing event is the importing into or exporting from India. Condition of the article at the time of importing is a material factor for the purpose of classification as to under what head, duty will be leviable. The reason given by the authority that V.P. Latex when coagulated as solid rubber cannot be commercially used as an economic proposition, as even admitted by the appellants, is an extraneous consideration in dealing with the matter. We are, therefore, not required to consider the history and chemistry of synthetic rubber and V.P. Latex as a component of SBR with regard to which extensive arguments were addressed by both sides by quoting from different texts and authorities.

31. 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.

36. We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the 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, we then see no difficulty for statutory classification under a particular entry."

In the case of Reliance Textile Industries Ltd. [1993 (63) ELT 67 (Bom)], Hon'ble Bombay High Court held as follows:

"7. Mr. Dada submitted, and in our judgment with considerable merit, that as soon as the petitioners manufacture base yarn in their factory at Patalganga, an excisable item comes into

existence and when such excisable item is cleared from the factory gate, the excise duty payable is at the rate of Rs. 61.25 and it is not permissible for the department to claim that a higher excise duty which is payable in respect of texturised yarn will be levied and recovered. It is not in dispute that 52% of the base yarn manufactured at Patalganga factory is cleared at the factory gate. Mr. Varma, learned Counsel appearing on behalf of the department, submitted that the clearance by the petitioners from Patalganga factory is only to forward to the texturising unit of the petitioners at Naroda in the State of Gujarat. Mr. Varma submitted that even though the base yarn is a new product liable to excise duty when the petitioners remove such new product for undertaking texturising process at their own factory at Naroda, the excise duty payable while removing base yarn at the factory gate from Patalganga factory is a duty leviable in respect of texturised yarn. It is impossible to find any merit in the submission of the learned Counsel. It is futile to suggest that base yarn is an intermediary product used by the petitioners for bringing into existence the final product of texturised yarn. The tariff entry clearly establishes that base yarn is a product which comes into existence on manufacture and is liable to excise duty. **The liability of the petitioners to pay duty arises as soon as base yarn comes into existence and the same is cleared from the factory gate. The excise duty payable is on the basis that the manufactured product is base yarn and at that juncture it is not permissible for the department to levy excise duty on the basis that the manufactured product is textured yarn. It is not in dispute that when base yarn undergoes texturising process to bring into existence texturised yarn, then separate excise duty is leviable for the process of manufacture. In these circumstances, it is impossible to accede to the submission urged on behalf of the department that at the time of clearance of base yarn, the petitioners are liable to pay excise duty which is required to be paid after the texturised yarn comes into existence.** The provisional assessment made by the department, therefore, is unsustainable.”

In the case of Mahindra and Mahindra Ltd. [2010 (262) ELT 366 (T)] tribunal has held as follows:

"5. Factory as defined under Section 2(e) of the Act means:-

"Factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on".

Rule 174 of erstwhile Central Excise Rules, 1944 and Rule 9 of Central Excise Rules, 2002 required every manufacturer to be registered and CBEC is empowered to specify conditions and limitations. The Board vide notification No. 35/2001-C.E. (N.T.), dated 26-6-2001 as amended has prescribed conditions. According to the notification, if a registered person has more than one premises, he shall obtain separate registration certificate for each premises. The fact that each premises should have a registration emerges from the provisions of Sec. 4 of the Act which requires determination of value at the place of removal. Naturally, place of removal has to be one place. What follows from the provisions relating to registration is that each factory or premises of a manufacturer is required to be registered except those who are covered by exemption.

6. In terms of the legal provisions discussed above, it is quite clear that goods have to be assessed at the place of removal and if the value cannot be determined under main provisions of Section 4(1)(a) of the Act, rules for valuation have to be resorted.

7. A hypothetical example makes the position clear. Let us take an assessee who has 4 divisions in different parts of the country, each making plastic granules, plastic films, plastic bags and printed bags. For the finished product of one division, the finished product of another division is the raw material. If a purchase order is placed on the division for printed plastic bag, question arises whether the division clearing the granule can be asked to pay duty on the value of printed bags or any of other two divisions can be asked to do so. If the product undergoes a process which does not amount to manufacture, department cannot demand duty including cost of each process just because

the unit making raw material belongs to the same company. Legal provisions remain the same irrespective of who takes up the process. If there is no sale or if value cannot be determined under Sec. 4(1)(a) value has to be determined under Sec. 4(1)(b)."

While affirming this order Hon'ble Supreme Court has in its order reported at 2016 (234) ELT 193 (SC)] held as follows:

"2. *The question of law which is sought to be raised by the Revenue/Appellant in this appeal is as to whether the value addition made to the base vehicle viz. 'the Jeep' in question, by way of bullet proofing, has to be added while arriving at transaction value for the purpose of excise duty. We may mention that in the normal course, the Jeeps are manufactured by the respondent/assessee without any such bullet proofing. However, there was a specific requirement of the Police Department in various States for supply of Jeeps with bullet proofing system, the Jeeps were supplied to them after getting the same bullet proofing. However, the admitted facts are that as far as clearance of these Jeeps from the factory of the respondent/assessee is concerned, they were cleared without any bullet proofing. It is only after clearance that the Jeeps were sent to get the processing of bullet proofing carried out by job workers outside the factory premises. The Tribunal has, thus, rightly held that in such circumstances, the cost of bullet proofing could not be added to arrive at the transaction value. The order of the Tribunal does not warrant any interference."*

In case of Aura Solar Products Pvt Ltd. [2021 (44) GSTL 82 (T)] following has been held:

"4.3 *From the facts as determined and recorded by the adjudicating authority it is clearly evident that the manner in which the goods were being cleared by the appellant was in a package comprising of two lanterns along with a solar photovoltaic panel. SPV Panel having capacity and provisions to charge both the lanterns simultaneously. The packaging and the manner of marketing the product also suggest that both the lamps in the package are marketed as solar lanterns. It is an admitted fact and a fact not in dispute that appellants do not sell*

the single lantern individually or separately. That being so Revenue has no jurisdiction to vivisect the package and classify one lantern separately. The classification of the goods need to be determined in the form and manner in which the same is cleared and not by unbundling/vivisecting the package into individual components to determine their classification.

4.4 We do not find support in the technical opinion rendered by the IIT, Mumbai to classify the goods in the manner they have been classified by the revenue authorities. As per para 14 of the order-in-original, technical opinion is reproduced below :

.....

4.5 From the opinion as reproduced above it's quite evident that it is not in respect of the package in the manner in which it is cleared. From the facts as narrated above it is quite evident that while the goods in the form in which it is cleared was with the SPV Panel whereas the sample was without the SPV Panel. Further the opinion clearly states that the batteries of the lamp can be charged with the solar power normally but in emergency or non-availability of solar power the same can be recharged by using the normal power source with a suitable adapter. For classifying the one of two lamps in the package Revenue has relied on the fact that it can be charged with the normal power supply using suitable adapters. While doing so they ignore the fact that the technical opinion given by the IIT Professor clearly states that the normal mode of charging the batteries in the lamps will be solar power only. Further it is not even the case of Revenue that the package was being cleared with a suitable adapter to charge the batteries using normal power supply. In our view the technical opinion furnished by the Revenue is clear and loud against the stand taken by the Revenue to determine the classification of one of the two lamps being supplied in the package in the form in which it is sold.

4.6 From the findings as recorded by the adjudicating authority in order-in-original and the technical opinion given by the IIT Professor, the only conclusion that can be arrived is that the goods in the form and manner in which they are cleared for sale to consumers are nothing but "Solar Power Generating System" or "Solar Photovoltaic Lantern" and the exemption claimed by

the appellants in respect of same under Sl. No. 237 of Notification No. 6/2002-C.E. as amended (Sl. No. 18 of List 9) as claimed by them is admissible to the whole package. The vivisection of the package to classify a part of such package and deny exemption in respect of one lamp out of the (sic) is neither justified nor having any basis in law. Hence we do not find any merits in the order of the authorities below.”

4.5 Before we undertake any discussion on the subject the we would like to reproduce the tariff entries of Chapter 84 & 87:

8429			Self Propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.
	-		Bulldozers and angledozers:
	-		Graders and Levelers:
	-		Scrapers:
	-		Tamping machines and road rollers
	-		Mechanical shovels, excavators, shovel loaders:
8429 51 00	--		Front end shovel loaders
8429 52 00	--		Machinery with a 360 degrees revolving superstructure
8429 59 00	--		Other.
Chapter 87			
<i>2. For the purposes of this Chapter, "tractors" means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilizers or other goods.</i>			
<i>Machines and working tools designed for fitting to tractors of heading 8701 as interchangeable equipment remain classified in their respective headings even if presented with the tractor, and whether or not mounted on it.</i>			
8701			TRACTORS (OTHER THAN TRACTORS OF HEADING 8709)
8701 10 00	-		Pedestrian Controlled Tractors
8701 20	-		Road Tractors for semi trailers;

8701 20 10	---	Of engine capacity not exceeding, 1800 cc
8701 20 90	---	Other
8701 30	-	Track laying Tractors:
	---	Garden tractors:
8701 30 11	----	Of engine capacity not exceeding, 1800 cc
8701 30 19	----	Other
	---	Other;
8701 30 91	----	Of engine capacity not exceeding, 1800 cc
8701 30 99	----	Other
	-	Other
8701 90 10	---	Of engine capacity not exceeding, 1800 cc
8701 90 90	---	Other

4.6 From the plain reading of the heading 8701, it is quite obvious and evident that all sort of tractors other than those classifiable under heading 8709 need to be classified under this heading. However impugned order while determining the classification of tractor, has sought to limit the scope of this heading to agricultural tractors and have sought to classify the tractors fitted with certain attachment after their clearance from the factory at the instance of the customer by the dealers, as machinery under heading no 84295100. In view of what we have observed in para 4.4, we are not in agreement with the approach of the Commissioner in determining the classification of the goods as cleared by the appellant on the basis of the attachments provided by the dealers at the instance of the customer.

4.7 It is settled position in law that HSN Explanatory Notes provide necessary assistance for determining the classification of the goods. In case of Uni Products India Pvt Ltd. [2020 (372) ELT 465 (SC)] Hon'ble Supreme Court held as follows:

"25. Revenue's argument is that the Explanatory Notes have persuasive value only. But the level or quality of such persuasive value is very strong, as observed in the judgments of this Court to which we have already referred. Moreover, the Commissioner himself has referred to the Explanatory Notes in the order-in-original while dealing with the respondent's stand. Thus, we see no reason as to why we should make a departure from the general trend of taking assistance of these Explanatory Notes to resolve entry related dispute."

In case of Gujarat Perstorp Electronics Ltd. [2005 (186) ELT 532 (SC)], Hon'ble Supreme Court held as follows:

"54. The matter could be looked at from another angle also. As noted earlier, HSN has dealt with the point and as per Explanatory Note, it would fall under Chapter Heading 49.01. If it is so, it would not be covered by sub-heading 4911.99.

55. In this connection, we may refer to a three-Judge Bench decision of this Court in Collector of Central Excise, Shillong v. Wood Craft Products Ltd. - 1995 (77) E.L.T. 23 (S.C.) = (1995) 3 SCC 454. The Court, in that case, considered the question whether 'plywood' was classifiable under sub-heading 4408.90 or sub-heading 4410.90? HSN Explanatory Notes was considered by this Court and it was observed;

"We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be

construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian tariff of a different intention."

4.8 HSN explanatory notes clearly explain the difference between the machinery classifiable under 84, for the purpose of reference we refer to Excerpts of HSN Explanatory Notes for Chapter Heading 8426, 8429 and 8430.

Excerpt from 8426 and 8430 explaining the Classification of Self Propelled and Other Mobile Machines

SELF-PROPELLED AND OTHER "MOBILE" MACHINES

In general, the heading covers not only fixed or stationary machines, but (with certain exceptions referred to below concerning machines mounted on transport equipment of the type falling in Section XVII) also mobile machines, whether or not self-propelled.

The exceptions are :

- (a) Machines mounted on vehicles proper to Chapter 86.
- (b) Machines mounted on tractors or motor vehicles proper to Chapter 87.
- (1) Machines mounted on tractor type bases.

Certain working parts of the machines of this heading may be mounted on tractors which are constructed essentially for hauling or pushing another vehicle, appliance or load but, like agricultural tractors, are fitted with simple devices for operating the working tools. Such working tools are subsidiary equipment for occasional work. In general, they are relatively light and can be mounted or changed at the working site by the user himself. In such cases, the working tools remain in this heading provided they constitute machines of this heading, or in heading 84.31 if they are parts of those machines, even if presented with the tractor (whether or not mounted thereon), while the tractor with its operating equipment is classified separately in heading 87.01.

On the other hand, this heading covers self-propelled machines in which the propelling base, the operating controls, the working tools and their actuating equipment

are specially designed for fitting together to form an integral mechanical unit. This applies, for example, to a propelling base resembling a tractor, but specially designed, constructed or reinforced to form an integral part of a machine performing one or more of the functions mentioned in this heading (lifting, handling, etc.). Presented separately, such propelling bases also fall in this heading, as incomplete machines having the essential features of complete machines of the same kind. Propelling bases potentially classifiable in several of the headings 84.25 to 84.30 because they can be equipped with several different working parts, are classified in accordance with Note 3 to Section XVI or by application of Interpretative Rule 3 (c).

For more detailed criteria for distinguishing between the tractors of heading 87.01 and the propelling bases of this Chapter, see Explanatory Note to heading 87.01.

(2) Machines mounted on automobile chassis or lorries. ...

(c) Machines on floating structures proper to Chapter 89....

Excerpt Explaining the goods classifiable under Chapter 84.29

84.29 - Self-propelled bulldozers, angledozers, graders, leveilers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.

- Bulldozers and angledozers:

8429.11 -- Track laying

8429.19 -- Other

8429.20 - Graders and levellers

8429.30 - Scrapers

8429.40 - Tamping machines and road rollers

Mechanical shovels, excavators and shovel loaders:

8429.51 -- Front-end shovel loaders

8429.52 - Machinery with a 360 revolving superstructure

8429.59 -- Other

The heading covers a number of earth digging, excavating or compacting machines which are explicitly cited in the heading and which have in common the fact that they are all self-propelled.

The provisions of Explanatory Note to heading 84.30 relating to self-propelled and multi-function machines apply, mutatis mutandis, to the self-propelled machinery of this heading, which includes the following:

(A) Bulldozers and angledozers.

(B) Graders and levellers. ...

(C) Scrapers. ...

(D)

(E) Self-propelled road rollers

(F) Mechanical shovels (boom, jib or cable type) which dig into the soil, above or below machine level, by means of an excavating bucket, grab, etc., operated either directly from the end of a boom or jib (shovel excavators, drag shovels, etc.) or, to increase the working range, on a cable or by means of a hydraulic jack suspended from the jib (draglines). In long range excavators (slackline draglines), the bucket is operated on a cable running between two movable structures some distance apart.

(G) Multi-bucket excavators in which the digging buckets are fitted on endless chains or on rotating wheels. These machines often incorporate conveyors for discharging the excavated soil, and they are mounted on wheeled or track-laying chassis. Special models are designed for digging or cleaning out trenches, drainage channels, ditches for use in open-cast (open-pit) mines, etc.

(H) Self-propelled shovel loaders. These are wheeled or crawler machines with front-mounted bucket which pick-up material through motion of the machine, transport and discharge it.

Some "shovel-loaders" are able to dig into the soil. This is achieved as the bucket, when in the horizontal position, is capable of being lowered below the level of the wheels or tracks.

(I) Loader-transporters used in mines.

This heading also covers self-propelled shovel loaders having an articulated arm with a bucket, mounted on the rear.

4.4 HSN Explanatory Note for 87.01 reads as follows:

87.01 Tractors (other than tractors of heading 87.09) (+).

8701.10 - Pedestrian controlled tractors

8701.20 -Road tractors for semi-trailers

8701.30 - Track-laying tractors

8701.90 - Other

For the purposes of this heading, tractors means wheeled or track-laying vehicles constructed essentially for hauling or pushing another vehicle, appliance or load. They may contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods, or provision for fitting with working tools as a subsidiary function.

The heading does not cover propelling bases specially designed, constructed or reinforced to form an integral part of a machine performing a function such as lifting, excavating, levelling, etc., even if the propelling base uses traction or propulsion for the execution of this function.

The heading covers tractors (other than tractors of the type used on railway station platforms, falling in heading 87.09) of various types (tractors for agricultural or forestry work, road tractors, heavy duty tractors for constructional engineering work, winch tractors, etc.), whatever their mode of propulsion (internal combustion piston engine, electric motor, etc.). It also includes tractors which can be used both on rails and on road, but not those which are designed exclusively for use on rails.

The tractors of this heading may be fitted with coachwork (a body) or may have seats for the crew or a driving cab. They may be equipped with a tool box, with provision for raising and lowering agricultural implements, with a coupling device for trailers or semi-trailers (e.g., on mechanical horses and similar

tractive units), or with a power take-off for driving machines such as threshers and circular saws.

The chassis of a tractor may be mounted on wheels, on tracks or on a combination of wheels and tracks. In the last case, only the front steering axle is fitted with wheels.

This heading also covers pedestrian controlled tractors. These are small agricultural tractors equipped with a single driving axle carried on one or two wheels; like normal tractors, they are designed for use with interchangeable implements which they may operate by means of a general purpose power take-off. They are not usually fitted with a seat and the steering is effected by means of two handles. Some types, however, also have a one- or two-wheeled rear carriage with a seat for the driver.

Similar pedestrian controlled tractors are also used for industrial purposes.

The heading includes tractors fitted with winches (e.g.. as used for hauling out bogged-down vehicles; for up-rooting and hauling trees; or for the remote haulage of agricultural implements).

The heading further includes straddle-type' tractors (stilt tractors) used, for example, in vineyards and forestry plantations.

The heading also excludes motor breakdown lorries equipped with cranes. lifting tackle, winches, (heading 87.05).

TRACTORS FITTED WITH OTHER MACHINERY

It should be noted that agricultural machines designed for fitting to tractors as interchangeable equipment (ploughs, harrows, hoes, etc.) remain classified in their respective headings even if mounted on the tractor at the time of presentation. The tractive unit in such cases is separately classified in this heading.

Tractors and industrial working tools are also classified separately when the tractor is designed essentially for hauling or pushing another vehicle or load, and includes, in the same way as an agricultural tractor, simple devices for operating (raising, lowering, etc.) the working tools. In such a case, the interchangeable working tools are classified in their appropriate headings, even if presented with the tractor, and whether or not

mounted on it, while the tractor with its operating equipment is classified in this heading.

In the case of articulated motor lorries with semi-trailers, tractors coupled to semi-trailers, and heavy duty tractors coupled, in the same way as to semi-trailers, to working machines of Chapter 84, the hauling element is classified in this heading whereas the semi-trailer or the working machine is classified in its appropriate heading.

On the other hand, this heading does not cover the propelling bases of machines referred to, for example, in headings 84.25, 84.26, 84.29, 84.30 and 84.32, in which the propelling base, the operating controls, the working tools and their actuating equipment are specially designed for fitting together to form an integral mechanical unit. Such is the case with loaders, bulldozers, motorised ploughs, etc.

As a general rule, propelling bases forming an integral part of a machine designed for handling, excavating, etc., can be distinguished from the tractors of this heading by their special constructional features (shape, chassis, means of locomotion, etc.). For propelling bases of the tractor type, various technical features relating essentially to the structure of the complete unit and to equipment specially designed for functions other than hauling or pushing should be taken into consideration. For instance, the propelling bases not covered by this heading incorporate robust elements (such as supporting blocks, plates or beams, platforms for swivelling cranes) forming a part of or fixed, generally by welding, to the chassis-body framework to carry the actuating equipment for the working tools. In addition, such propelling bases may comprise several of the following typical parts: powerful, equipment, with built-in hydraulic system for operating the working tools; special gear boxes, in which, for example, the top speed in reverse gear is not less than the top speed in forward gear; hydraulic clutch and torque converter; balancing counterweight; longer tracks to increase stability of the base; special frame for rear mounted engine, etc.

4.9 Revenue do not dispute the preposition as stated in the para 4.7 above but have sought to refer to the certain portions of explanatory notes, which would suit their purpose. However in

terms of HSN Explanatory Notes reproduced above we are of the view that even the **heavy duty tractors for constructional engineering work** will be classified under the heading 8701 only and not under the heading 8429 as determined by the revenue. In case of LMP Precision Engineering Co Ltd. [2004 (163) ELT 290 (SC)] Hon'ble Apex Court has held as follows:

"15. Besides the Tariff Headings in the HSN specifically include "mobile drilling derricks" under Tariff Heading 8705.20. A derrick has been defined in the Concise Oxford Dictionary (7th Edition) at page 258 as a : "contrivance for moving or hoisting heavy weights, kind of crane with adjustable arm pivoted at foot to central post, deck, or floor; framework over oil-well or similar boring". Therefore mobile oil rigs such as those manufactured by the respondent would fall within Chapter 87 and not 84 of the HSN. This is made further clear by the note appended to the Tariff Heading 8705 of the HSN which says that the Tariff Heading includes "lorries fitted with a derrick assembly, winches and other appliances for drilling, etc."

16. In view of this specific inclusion of mobile drilling derricks in the HSN Tariff Heading 8705.20, even if we assume that the explanatory note to the Section indicates to contrary, nevertheless the express words of the Tariff Heading would prevail. This also answers the submission made on behalf of the respondent that the Section notes relevant to Chapter 84 of the HSN indicated that the goods manufactured by the respondent were classifiable under Heading 84.30. In any event the particular Section Note referred to by the respondent does not support the submission that the goods were classifiable at any material point of time under Heading 84.30. The Section Notes relied on read :

"Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function."

"Where a machine (including a combination of machines) consists of individual components (whether separate or

interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.”

17. The Section Notes have been further expounded under different parts. Part VI : Multifunctional machines and composite machines and Part VIII : Mobile machinery have been separately detailed. Part VI pertains inter alia to "composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing separate functions, which are generally complementary and are described in different headings of Section XVI, and also classified according to the principal function of the composite machines". This would cover those machines which are classifiable in Chapter 84. But the machine with which we are concerned is referred to under Part VIII, namely "mobile machinery". In this Part it is said that reference should be made not only to the explanatory note to the Headings for the machines under Chapter 84.25, 84.28, 84.29 and 84.30 but also to the explanatory notes to the chapters and headings of Sec. XVII. That Section includes Chapter 87. We have already noted that the Tariff Heading 8705.20 clearly includes machines of the kind manufactured by the respondent and the Tribunal erred in holding to the contrary.”

4.10 In view of the above decision of the Hon'ble Apex Court and the HSN Explanatory notes we have no doubt that the impugned goods in the form and manner as cleared are tractors classifiable under heading 8701. Now we take look at the entries of the exemption notification No 06/2006-CE dated 16.11.2006, which is reproduced below:

40	8701	All goods (except road tractors for semi trailers of engine capacity more than 1800 cc)	Nil	-
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From the perusal of the above entry it is quite evident that all goods classifiable under heading 8701 are exempt from payment of duty, except for the road tractors for semi trailers of engine

capacity more than 1800 cc. Road Tractors for the semi-trailer of engine capacity more than 1800 cc are classifiable under heading 87012090. Thus all plain reading of the Tariff entries and the entries in the notification it is evident that all goods of CETH 8701, except those which are classifiable under 87012090 are exempt from payment of duty. It is not even the case of the revenue that the tractors manufactured and cleared by the appellant are classifiable under this category.

4.11 Circular No 838/15/2006-CX dated 16.11.2006 do not state that the exemption under this entry is admissible only to the agricultural tractors. The text of the said circular is reproduced below:

"Representations have been received in the Board that certain field formations are proposing to charge excise duty on agricultural tractors on the ground that besides agricultural work, these tractors are used for haulage of farm products, fertilizers, etc. thereby qualifying as "road tractors for semi-trailers" attracting Central Excise duty @ 16%. "Road tractors for semi-trailers" attract Central Excise duty at the rate of 16%, if the engine capacity is more than 1800 cc.

2. Tractors falling under Chapter heading 8701 were exempted from excise duty in Budget 2004-05 with the intention to give exemption to agricultural tractors, in order to encourage farm sector. A tractor primarily designed and meant for agriculture purposes can also be incidentally used to take goods to the nearest market. But that is an incidental use, and such tractors are not primarily designed to haul trailers. Therefore, incidental use of hauling trailers will not put such tractors in dutiable category. Therefore primary use of tractor should be the deciding factor."

In our view the only thing which has been stated in the circular is respect of the exception carved by the Notification in respect of road tractors for semi trailers of engine capacity more than 1800 cc. The clarification issued only states that some incidental use of hauling trailers will not put such tractors in dutiable category. Hence reliance placed by the revenue do not advance the case of revenue.

4.11 Since we determine the classification of the impugned goods in the form and manner which they are clear as tractor, the fact which is well supported and certified by Central Farm Machinery Training and Testing Institute, Ministry of Agriculture and the Automotive Research Association of India. Also in terms of the provisions of the Central Motor Vehicle Rules, 1989 the said goods are considered as tractors only. Thus we conclude by holding the classification of the impugned goods under heading 8701.

4.12 Since we have concluded that impugned goods are classifiable under heading 8701, the exemption claimed by the appellant under Sl No 40 of the exemption notification no 06/2006-CE will be admissible to them.

4.13 Since we have held in the favour of the appellants on merit itself we are not inclined to consider the other submissions on cum duty price, admissibility of CENVAT credit, limitation, interest and penalty etc., advanced by the appellant for deciding these appeals.

5.1 Appeals are allowed.

(Order pronounced in the open court on 30.01.2023)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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