CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 51711 of 2021

(Arising out of Order-in-Original No. 02/COMMR/CEX/UJN/2021-22 dated 28.06.2021 passed by The Commissioner, CGST & Central Excise, Ujjain)

Force Motors Limited **...Appellant**
Plot No. 3, Sector-1, Industrial Area,
Pithampur-454775, District Dhar,
Madhya Pradesh.

VERSUS

The Commissioner, Central Goods and Service Tax & Central Excise, **...Respondent**
Ujjain Commissionerate,
29, Bharatpuri, Administrative Area,
Ujjain, Madhaya Pradesh-456010.

APPEARANCE:

Shri S.A. Gundecha, Learned Counsel for the Appellant
Shri Rakesh Agarwal, Authorized Representative of the Department

WITH

Excise Appeal No. 51661 of 2021

(Arising out of Order-in-Original No. 02 to 06/COMMR/CEX/UJN/2021-22 dated 28.06.2021 passed by the Commissioner of CGST & Central Excise, Ujjain)

GVK Emergency Management & Research Institute. **...Appellant**
Coronation Hospital, 2nd Floor
Curzon Road Dalwanwala,
Dehra Dun (Uttarkhand).

VERSUS

Commissioner of CGST & Central Excise, **...Respondent**
Ujjain Commissionerate,
29, Bhartpuri Administrative Area,
Ujjain, Madhaya Pradesh-456010.

WITH

Excise Appeal No. 51662 of 2021

(Arising out of Order-in-Original No. 02 to 06/COMMR/CEX/UJN/2021-22 dated 28.06.2021 passed by the Commissioner of CGST & Central Excise, Ujjain)

GVK Emergency Management & Research Institute. **...Appellant**
MP State TB Association Building,
Near TB Hospital, Idgah Hills, Bhopal-M.P.

VERSUS

Commissioner of CGST & Central Excise, **...Respondent**
Ujjain Commissionerate,
29, Bhartpuri Administrative Area,
Ujjain, Madhaya Pradesh-456010.

WITH

Excise Appeal No. 51663 of 2021

(Arising out of Order-in-Original No. 02 to 06/COMMR/CEX/UJN/2021-22 dated 28.06.2021 passed by the Commissioner of CGST & Central Excise, Ujjain)

GVK Emergency Management & Research Institute. **...Appellant**
STDC Housing Board Colony
Basaveshwara Nagar Entrance
Opposite to Govt. Unani Medical College
GMS Compound, Magadi Road
Bangalore-560079

VERSUS

Commissioner of CGST & Central Excise, **...Respondent**
Ujjain Commissionerate,
29, Bhartpuri Administrative Area,
Ujjain, M.P.-456010.

AND

Excise Appeal No. 51664 of 2021

(Arising out of Order-in-Original No. 02 to 06/COMMR/CEX/UJN/2021-22 dated 28.06.2021 passed by the Commissioner of CGST & Central Excise, Ujjain)

GVK Emergency Management & Research Institute. **...Appellant**
Sarusajai Sports Complex
Express Highway-37, Lokhra,
Guwahati-781034, Assam

VERSUS

Commissioner of CGST & Central Excise, **...Respondent**
Ujjain Commissionerate,
29, Bhartpuri Administrative Area,
Ujjain, M.P. -456010.

<u>APPEARANCE:</u>

Shri Pankaj, Finance Head for the Appellant
Shri Rakesh Agarwal, Authorized Representative of the Department

<u>CORAM:</u>

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 05.07.2023
Date of Decision: 06.12.2023

FINAL ORDER NO's. 51598-51602/2023

JUSTICE DILIP GUPTA:

All the aforesaid five Excise Appeals seek to assail the order dated 28.06.2021 passed by the Commissioner CGST and Central Excise, Ujjain[1] that adjudicates the show cause notice dated 31.10.2014 issued to Force Motors Limited (Noticee-1)[2], Emergency Management and Research Institute, Bangalore (Noticee-2), Emergency Management and Research Institute, Guwahati (Noticee-3), GVK Emergency Management and Research Institute, Bhopal (Noticee-4) [3], and GVK Emergency Management and Research Institute Dehradun-UK (Noticee-5).

2. Force Motors is engaged in the manufacture of light commercial vehicles, while GVK Research Institute is engaged in providing emergency medical services to the Government of Karnataka. GVK Research Institute invited tender for supply of Original Equipment Manufacturer[4] integrated vans for conversion into 367 Ambulances. Force Motors submitted the tender and ultimately GVK Research Institute placed the purchase order on Force Motors for supply of the aforesaid OEM integrated vans.

3. The issue that arises for consideration in these appeals is as to whether the vans supplied by Force Motors would merit classification as

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1. **the Commissioner**
2. **the Force Motors**
3. **GVK Research Institute**
4. **OEM**

delivery vans falling under Excise Tariff Item[5] 8704 21 90 or as ambulance under ETI 8703 33 92 of the Central Excise Tariff Act 1985[6].

4. The Commissioner, by the impugned order, has classified the vehicles under ETI 8703 33 92 of the First Schedule to the Tariff Act as ambulances and has, therefore, directed Force Motors to pay the differential duty with penalty and interest. The Commissioner has also imposed penalty upon GVK Emergency Management & Research Institute, Dehradun (appellant of Excise Appeal No. 51661 of 2021), GVK Emergency Management and Research Institute, Bhopal (appellant of Excise Appeal No. 51662 of 2021), GVK Emergency Management and Research Institute, Bangalore (appellant of Excise Appeal No. 51663 of 2021) and GVK Emergency Management and Research Institute, Guwahati (appellant of Excise Appeal No. 51711 of 2021). These five appeals have, accordingly, been filed.

5. To appreciate the contentions that have been advanced by Shri S.A. Gundecha, learned counsel of Force Motors and Shri Pankaj, Finance Head of GVK Research Institute as also Shri Rakesh Agarwal, learned authorized representative appearing for the department, it would be appropriate to briefly examine the show cause notice issued by the department, the reply submitted by the appellant and the order passed by the Commissioner.

6. The show cause notice, in brief, alleges that from the technical specifications contained in the tender it would be clear that GVK Research Institute invited tender for supply of incomplete ambulances having the essential character of an ambulance and Force Motors offered to supply vehicles having additional features suitable for

5. ETI
6. the Tariff Act

conversion into ambulance and thus, as the vehicles sought by GVK Research Institute were for use as an ambulance, Force Motors mis-classified the vehicles as traveler delivery vans instead of ambulances and did not pay the proper central excise duty. The show cause notice, after referring to rule 2(a) of the General Rules for the Interpretation of the First Schedule to the Tariff Act[7], alleges that the vehicles cleared by the Force Motors would, therefore, be appropriately classifiable under ETI 8703 33 92 and not under ETI 8704 21 90. The show cause notice also invoked the extended period of limitation contemplated under section 11A(4) of the Central Excise Act, 1944[8]. The relevant portions of the show cause notice dated 31.10.2014 are reproduced below:

<u>Show Cause Notice</u>

> "3. **On going through the Technical Specification of the tender it is explicit that the Noticee No. 2 has invited tender for supply of incomplete ambulance having essential character of ambulance.** The Noticee No. 1 has offered for supply of vehicle having additional features suitable for conversion into ambulance.
>
> xxxxxxxxxxxx
>
> 6. xxxxxxxx. **Thus as per rule 2 (a)** of the Central Rules of the Intermations of the First Schedule to the Tariff Act above, **the vehicle cleared by the Noticee No. 1 above deserves to be appropriately classifiable under Chapter subheading 87033392 of the Central Excise Tariff Act, being the incomplete or unfinished vehicle having the essential characters of the complete or finished ambulance** and it was also known to Noticee No. 1 at the time of clearance of the said vehicles that the same are going to be used as ambulances.
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> xxxxxxxxxxxx

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7. the General Rules for Interpretation
8. the Excise Act

> 11. The Noticee No. 2, 3, 4 and 5 placed orders for supply of OEM vans for conversion into ambulance. **The Noticee No. 1 willfully misstated the vehicles as delivery van and abetted with the Noticee No. 2, 3, 4 and 5 to issue purchase order for supply of delivery van with intention to evade payment of Central Excise Duty. Thus extended period of five years is correctly invokable in this case for affecting recovery of duty short paid in terms of proviso to Section 11A(1)** [now Section 11A(4)] of the Central Excise Act, 1944 on account of suppression of facts, willful misstatement or fraud. The Notcee No. 1 also appears to have rendered themselves liable for penal action under Section 11AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002. **Further, the Noticee No. 2, 3, 4 and 5 abetted in short payment of duty by Noticee No. 1 in fraudulent manner by giving Purchase Orders in the name of Delivery Vans and therefore, the Noticee No. 2, 3, 4 and 5 also appear liable for penalty under Rule 26 of the Central Excise Rules, 2002.**"
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> **(emphasis supplied)**

7. The appellant filed a reply to the show cause notice pointing out that the status of the vehicles at the time of clearance determines the classification of goods and what was actually supplied by Force Motors were delivery van vehicles. The appellant, therefore, submitted that merely because such delivery vans were converted into ambulances by GVK Research Institute would not mean that they were required to be classified as ambulances. Learned counsel also pointed out that whenever customers placed order for procurement of traveler ambulances they were classified as ambulances. The appellant also contended that the extended period of limitation could not have been invoked. The relevant portions of the reply submitted by the appellant are reproduced below:

Reply

"15. Thus, in our respectful submission, the classification of a particular model of a particular type of vehicle, depends on the design, the specifications, the fitments and the status of the goods when cleared from the Factory. **The status of a vehicle at the time of clearance determines and has to be considered for the purpose of arriving at classification of such goods, under different Tariff Headings, sub-Headings, or Items of Chapter 87 of the CETA.**

16. **Our customer**, Emergency Management and Research Institute (later known as GVK Emergency Management and Research Institute), **floated 4 (four) different tenders, for supply of vehicles, which resulted in clearance, sale and supply of the 212 vehicles covered by the Show Cause Notice under reply.**

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It would be kindly observed from the tenders that, these tenders were floated for supply of vehicles, which should have certain technical specifications and which were defined by the said Customer, as integral vans.

The Customer, in order to enable the bidders, also indicated the purpose for which the said vehicles, if procured, are to be put after carrying out the futher operations, by other agencies, like body builders.

18. **We manufactured the above referred 212 Nos. of vehicles, as per the agreed specifications and cleared the same vide various invoices**, issued as per the provisions of Rule 11 of the Central Excise Rules, 2002. Annexed hereto and market as Annexures 21 to 24 are one of the invoices raised for supply of Traveller Delivery Van vehicles, as per the above referred four orders. These invoices are being submitted as a specimen.

As the model of the vehicle, Traveller (type) supplied by us to the Customer were manufactured as a Delivery Van, satisfying the technical specifications, required by the Customer, was of the type – Traveller, model – Delivery Van, **the above referred invoices contained the description of the goods as "Traveller Delivery Van** (BSII) (EMRI) 3350 MM Wheel Base fitted with TD 2650 FTI (Bharat Stage II Compliant) diesel engine, 270 Degree rear door hinges, front disc brake, additional fitments, (4) 215/75 R15 Tyres and Ett."

19. All these 212 Nos. of vehicles were sold by us, at our factory gate, to the Customer, and accordingly the duty liability computed as per the provisions of Section 4, of the Act, was discharged by us, considering the provisions of the Central Excise Rules, 2002.

The monthly returns filed for the respective months, disclose the invoice numbers.

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23. The Customer and other customers of our, placed specific order for procurement of Traveller Ambulances, from us, e.g. Tamil Nadu Medical Services Corporation Limited, Chennai, floated tenders for procurement of ambulances having the technical specifications, of Ambulances, with all internal fittings such as Hooks for intravenous bottles, Brackets for oxygen cylinders with adjustable straps, factory made stretcher, seats, Medicine box. Annexed hereto and marked as Annexure 37 is a copy of one of such tender. We submitted the bid and accordingly received the Purchase Orders for supply of Traveller Ambulances from these two entities. xxxxxxxxx.

27. **Thus, it would be kindly observed from the above documentation that two different models of Traveller type of vehicles, were sold by us, to the Customer, either as Delivery Van or as Ambulance, depending on the technical specification, Purchase Orders received, status of the vehicle at the time of clearance.**

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It is pertinent to and we wish to record that, no evidence whatsoever regarding the alleged suppression,

> willful misstatement or fraud or the abetment or our intent to evade payment of duty, has been made available to us, either as a part of Show Cause Notice or relied on documents or otherwise."
>
> **(emphasis supplied)**

8. The Commissioner did not accept the contentions raised by the appellant. In the opinion of the Commissioner, Force Motors was aware right from the beginning that they had to supply vehicles which were to be used as ambulances and so they designed the vehicles so as to make them suitable to be used as ambulances. The Commissioner, therefore, concluded that the vehicles manufactured and supplied by Force Motors were incomplete or unfinished vehicles having the essential character of complete or finished ambulances. Thereafter, placing reliance upon rule 2(a) of the General Rules for Interpretation, the Commissioner observed that the goods supplied by Force Motors had the essential character of complete or unfinished ambulances and hence appropriately classifiable under ETI 8703 33 92. The Commissioner also observed that the appellant had suppressed facts and, therefore, by making a wrong declaration in the invoices with intention to evade payment of duty, the extended period of limitation contemplated under section 11A(4) of the Excise Act would be invokable. The relevant portions of the order passed by the Commissioner are reproduced below:

<u>Order</u>

> "94. Noticee No.1 submitted that the vehicles supplied to EMRI (212 numbers), which are the subject of the above referred Show Cause Notice were not incomplete or incoherent Ambulances, but were fully completed Delivery Vans and the changes made therein specifically for the vehicles supplied to EMRI did not convert the said type of vehicle from a Delivery Van to an Ambulance.

In this regard, I observed that there was no dispute on the fact that the Noticee No. 1 was aware ab initio that they had to supply the vehicles to be used as ambulances. Accordingly they designed those vehicles suitably to be used as ambulances. They only disputed that at the time of removal from the factory, the said vehicles cannot be used as such as ambulances. The said motor vehicles were modified by the Noticee No. 2 to 5 as ambulances and thereafter used as ambulances by the customers.

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Thus, I find that those vehicles manufactured and supplied by Noticee No. 1 were incomplete or unfinished vehicle having the essential characters of complete or finished ambulance and it was also known to Noticee No. 1 at the time of clearance of the said vehicles that the same were going to be used as ambulances.

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9.3. In this regard, I find that Rule 2(a) of the Interpretative Rule of the First Schedule to the Central Excise Tariff Act, 1985 makes it clear that any reference to an article under any heading shall be taken to include a reference to that article unfinished or incomplete provided the same has attained the "essential character" of the complete or finished article.

11. I also find that the Noticee No 1 had knowingly delivery van in their invoices with sole intention to pay lesser rate of duty, the duty owingly which was appropriately payable on that and the Noticee No: 2 to 5 had willfully facilitated them in the same. **It is observed that the goods manufactured and supplied by Noticee No. 1 to Noticee No.2 to 5 were having the essential characters of the complete or finished ambulance and hence appropriately classifiable under Tariff Item/heading No. 87033392 of the first schedule to the Central Excise Tariff Act, 1985.** In the facts and circumstances as above, I find that the Noticee No.2 to 5 had wilfully facilitated Noticee No. 1 in the

same even when they clearly knew that what they were purchasing from the Noticee No. 1 is not Traveller Delivery Van.

Noticee No 1 have submitted that there was no suppression of facts. In this regard, I find that the Noticee No. 1 had never informed to the department about supply and removal of ambulances. Had the enquiry/investigation not been initiated by the Department, the facts would have remained unearthed. They had also misdeclared the said ambulances as delivery van in their invoices and periodical returns submitted to the department.

By misdeclaring the same in their invoices and removing the same on short payment of duty, with intention to evade payment of duty, the Noticee No 1 had contravened the provisions of Rule 4, 6 and 8 of the Central Excise Rules, 2002. Therefore, I find that the extended period of 5 years under Section 11 A of the Central Excise Act, 1944 is invokable in this case for recovery of demand. The Noticee No 1, for the said acts/omissions with intention to evade payment of duty, has rendered themselves liable for penalty under Section 11 AC of the Central Excise Act, 1944."

(emphasis supplied)

9. Learned counsel for the appellants placed reliance upon the tender document and submitted that as it specifically mentions that the OEM integral vans were meant 'for construction of ambulances', it cannot be said that the tender document mentions that they were ambulances. Learned counsel also pointed that the tender committee which evaluated the bids recommending release of purchase order in favour of Force Motors also mentions that the price was inclusive of all taxes with a clear understanding that they were for transit to an assigned body fabricator. The purchase order also mentions

transportation of the vehicles for delivery to the nominated fabricators. It is for this reason that the learned counsel submitted that it was only the fabricators who converted the delivery vans into incomplete ambulances by fitting them with a stretcher, attendant seats, wailing horn, medical cabinets, fans, hooks for intravenous bottle and oxygen cylinder in patient compartment. Learned counsel also pointed out that even after the fabrication work, the vans did not become full-fledged ambulance because after receipt of the vans from the fabricators they are equipped with ventilator, defibrillators, pluse oxymeters, stretchers, wheel chairs, etc., to make them full-fledged ambulances. Learned counsel also pointed out that it is thereafter that the vehicles were registered with the Regional Transport Authority as ambulances.

10. Thus, according to the learned counsel, GVK Research Institute had placed order on Force Motors for delivery vans and not for ambulances. The vans which are supplied by Force Motors to GVK Research Institute did not have the fittings necessary to treat them even as incomplete ambulances, much less a complete ambulances. According to learned counsel for the appellant, the goods have to be assessed in the form in which they are presented at the time of clearance and not as what they may ultimately become after going through various processes. Under rule 2(a) of the General Rules for Interpretation, the goods should have the essential character of complete/finished articles, but in the present case what was purchased by GVK Research Institute were bare delivery vans without any fittings and as such the vans did not have the essential character of an ambulance. Learned counsel also submitted that the extended period of

limitation could not have been invoked in the facts and circumstances of the case.

11. Learned authorised representative appearing for the department, however, supported, the impugned order and submitted that in view of the clear provisions contained in rule 2(a) of the General Rules for Interpretation and in view of the decision of the Tribunal in **Bajaj Auto Limited** vs. **Collector of Customs, Bombay**[9], the goods manufactured by Force Motors had the essential character of an ambulance and, therefore, would be classifiable under ETI 8703 33 92. Learned authorised representative also submitted that the tenders floated by GVK Research Institute and accepted by Force Motors and the purchase orders clearly evidence that the delivery vans were converted to be used as ambulances. Thus, despite knowing that the vehicles supplied were ambulances, Force Motors with the view to evade payment of duty cleared the vehicles as delivery vans and this fact came to the notice of department only when the investigation was started. Thus, the extended period of the limitation was correctly invoked in the facts and circumstances of the case.

12. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

13. Force Motors deals in various types of motors vehicles like light commercial vehicles, utility vehicles, off-road vehicles, tractors, parts and accessories. For manufacture of motor vehicles it established a manufacturing base at Pithampur in the State of Madhya Pradesh. According to the appellant, before any vehicle is marketed, in view of

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9. 1988 (33) E.L.T. 367 (Tri.-Del.)

the provisions to the Motor Vehicles Act, 1988[10], a manufacturer is required to get the type of vehicle certified from notified institutions and only upon certification the Regional Transport Authorities allow registration of that vehicle. The appellant also claims that vehicles like Traveller have different models such as Traveller Delivery Van, Traveller Ambulance, Traveller Mini Bus and Traveller Bus and these types and models are certified by the department.

14. In the year 2009, four institutions namely, Emergency Management & Research Institute, Guwahati, Assam, Emergency Management & Research Institute, Bangalore, Karnataka, GVK Emergency Management & Research Institute, Dehradun, Uttarakhand and GVK Emergency Management & Research Institute, Bhopal, Madhya Pradesh, floated tenders to procure vehicles of a certain type. The bid of the Force Motors was accepted and the aforesaid four customers placed orders for supply of Traveller Delivery Vans.

15. Based on these order, Force Motors supplied 212 vehicles to the aforesaid institutions between October 2009 to July 2010 and it is as follows:

Sr. No.	**Name of the Institution**	**Number of vehicles supplied**
(a)	Emergency Management & Research Institute, Guwahati	5
(b)	Emergency Management & Research Institute, Bangalore	144
(c)	GVK Emergency Management & Research Institute, Dehradun	18
(d)	Emergency Management & Research Institute, Bhopal	45
	Total	**212**

10. the Motor Vehicles Act

16. According to Force Motors, these vehicles were delivered to body builders, on instructions, and the details are as follows:

Sr. No.	**Name of the Institution**	**Number of vehicles delivered**
(a)	M/s. Perfect Mechanical Industry, Faridabad, Haryana	5
(b)	Bafna Healthcare, Faridabad, Haryana	144
(c)	M/s. Perfect Mechanical Industry, Faridabad, Haryana	18
(d)	Sarvottam Appliances Private Limited, Faridabad	45
	Total	**212**

17. Force Motors claims that none of the body builders or the customers are related persons or connected with Force Motors within the meaning of section 4 of the Excise Act.

18. However, the officers of the department visited the factory of Force Motors and based on the allegation that the Traveller Delivery Vans supplied by Force Motors were not delivery vans but were incomplete ambulances it was stated in the show cause notice that the said vehicles were wrongly classified by Force Motors under ETI 8704 21 90 in place of ETI 8703 33 92 with intent of evade payment of duty. Not being satisfied with the reply filed by the appellant, the Commissioner passed the order dated 04.03.2016. This order was assailed before the Tribunal and the matter was remanded for passing a fresh order. Thereafter, the order dated 28.06.2021 was passed by the Commissioner holding that 212 delivery vans needed to be classified as incomplete ambulances and, accordingly, the demand that was raised was confirmed with interest and penalty.

19. The issue that arises for consideration in these appeals is as to whether the integrated OEM delivery vans, for which an order was

placed by GVK Research Institute on Force Motors, would be classifiable under ETI 8703 33 92 as held in the impugned order or would be classifiable under ETI 8704 21 90 as classified by Force Motors.

20. Emphasis has been placed by both the learned counsel for the appellant and the learned authorised representative appearing for the department on the tender documents floated by GVK Research Institute and the purchase order for the procurement of the OEM integral vans.

21. It would, therefore, be useful to reproduce the relevant portions of the tender document which are as follows:

"TENDER NOTIFICATION

Sealed tenders are invited by Emergency Management and Research Institute (EMRI) from reputed Manufacturers / Suppliers with authorization from original manufactures has to be enclosed for supply of the items mentioned below.

OEM INTEGRAL VANS. (For construction of Ambulances) 367 Nos.

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Sale of Tender Form	28/1/2009 to 15/02/2009
Last Date & Time for obtaining Tender Form	15/02/2009 up to 5:30 P.M.
Pre-Bid meeting at EMRI Bangalore	03/2/2009 at 11 A.M.
Last date & Time for submission of Tenders:	16/02/2009 up to 10 A.M.
Opening of Tenders	16/02/2009 at 10:30 A.M.

TENDER DOCUMENT FOR ORIGINAL EQUIPMENT MANUFACTURER (OEM) INTEGRAL VANS QUANTITY – 367NOS.

General Terms and Conditions for supply of OEM Integral Vans (For Construction of Ambulances)

(For this tender OEM INTEGRAL VAN means a vehicle with integrated pilot and patient compartments separated by a partition. The integral van would not allow for dust or water (rain/road splash) with all doors and windows closed.

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1. Eligibility criteria:
   Only India based OEM Vehicle manufactures are eligible to participate in the tender. The Bidder should quote for complete quantity i.e. 367 nos."

22. With the show cause notice, a commercial evaluation cover dated 13.02.2009 was enclosed as Annexure 1 as a relied upon document. This contains the offer and the commercial bid. In this Annexure the required technical specifications and the technical specifications offered by Force Motors for Traveller Delivery Van, 3350 mm WB, BS-II were given and the relevant portions are reproduced below:

Technical Specifications of the offered Model : Traveller Delivery Van, 3350 mm WB, BS-II		
		Vehicle Specifications
Required Tender Technical Specifications		**Offered Model Technical Specification**
Engine	Diesel – 4 Cylinder, 4 Stroke, DI	Diesel – 4 Cylinder, 4 Stroke, DI
Emission Norms	Complaint with Bharat Stage – II	Complaint with Bharat Stage – II
Capacity	2500-3500 c.c	2596 c.c
Maximum Output	45-60 KW	56 Kw @ 3200 RPM
Max. Torque	175-225 N-m @ 1750 – 2200 rpm	195 N-m @ 1800-2000 RPM
Body Dimensions		
Overall Length	4350-5300 mm	5235 mm
Overall Width	1650-2100 mm	1975 mm
Overall Height	2470-2800 mm	2550 mm
Aspect Ratio (Height / Width)	1.2 to 1.3	1.29
Ground Clearance	190-210 mm	190 mm
Floor Loading Height	Maximum of 700 mm	695 mm – For Bare Vehicle without Plyboard on flooring
Turing Circle Radius	Not More than Chassis/Body OEM Standard	6.5 m
Steering	Ordinary	Mechanical Steering
Patient Compartment	The patient compartment must have all six sides, one partition, two side walls and one rear wall (doors) and roof and floor and should not be accessible to dust and water (rain or road splashes) with all doors and windows closed.	The patient compartment will have all six sides, one partition, two side wall and one rear wall (doors) and roof and floor and it will not be accessible to dust and water (Rain or road splashes) with all doors and windows closed.
*****	*****	*****
Doors	Dual hinged doors for easy	Dual hinged doors with 270

	entry and exit of paramedic/Ambulance stretcher, with 270 degree open out at the rear (positively securable in fully open condition of 270 degrees) with glass view panels. The doors would be completed in all respects including trimmings.	degree open out at the rear with glass view panels. Positively securable in fully open condition of 270 degrees. The doors will be completed in all respects including trimmings.
Windows	Two quarter plate tinted windows minimum 1500 mm from the ground level.	Two quarter plate tinted windows minimum 1450 mm from the ground level.
Footboard	One foot board (1600 mm long x 150 mm wide) 250-400 mm high at the rear door for east exit and entry into the vehicle	Fixed Foot step – 1600 mm long x 190 mm wide. 375 mm high at the rear door for easy exit & entry in to the vehicle.
*****	*****	*****
General Criteria	The manufacturer has to take a modular approach suitable for Air Conditioned ambulances with stretcher cum trolley. Completed floor with marine grade fire retardant ply board will be provided by the OEM. Finished version of the ambulance will have adequate space in the patient cabin, where apart from positioning of the patient in comfortable, a number of medical and communications equipment shall need to be fixed beside the patient. Patient cabin should have enough space to accommodate two paramedics for care of patient. The ambulance shall be suitable for continuous running/operation under prevailing environment and road conditions in Karnataka urban and rural areas.	It is possible to fit Air conditioner with stretcher cum trolley inside the quoted Traveller Delivery van model. We will provide completed floor with marine grade fire retardant ply board behind partition. As per out Traveller vehicles running on road, we confirm that finished version of the Traveller Ambulance will have adequate space in the patient cabin. Positioning of the patient will be comfortable. Also it is possible to fit number of medical and communications equipment. The patient and the patient cabin have enough space to accommodate two paramedics for care of patient. The ambulance will be suitable for continuous running/operation under prevalent environment and road conditions in Karnataka urban and rural areas.

23. The two purchase order dated 24.02.2009 relating to 180 Traveller Delivery Vans and purchase order dated 08.07.2009 relating to 187 Traveller Delivery Vans were issued. The show cause notice

encloses purchase orders issued for delivery of 212 Traveller Delivery Vans.

24. It needs to be noted that the effective rate of central excise duty on Traveller Van is lesser then Traveller Ambulance Van and it is for this reason that the department alleges that Force Motors with an intent to evade payment of duty connived with GVK Research Institute and mis-classified the vehicles as Traveller Delivery vans instead of ambulance vans.

25. The tender document and the price schedule clearly mention that the OEM integral vans are meant 'for construction of ambulances'. They do not mention that they are meant 'for ambulances'. It would also be seen from the specification contained in the tender and the specification offered by Force Motors that the manufacturer would have to take a modular approach suitable for air conditioned ambulances with stretcher cum trolley. The finished version will have adequate space in the patient cabin, where apart from positioning of the patient in a comfortable position, a number of medical and communication equipments would also have to be fixed besides the patient. It also required that patient cabin to have enough space to accommodate two paramedics for care of the patient.

26. According to the appellant, the vehicles that are supplied by Force Motors are delivery vans and not ambulances and in this connection the appellant has pointed out that after the vehicles are received from Force Motors they are sent to the fabricators for fabrication as ambulances. In this connection, the appellant has placed the tender notice issued by Emergency Research Institute, Bangalore inviting tenders from vehicle fabricators/body builders for fabrication as ambulances.

27. It would be seen from the tender document that the fabrication specifications have to as per Annexure 1. A typical ambulance fabricated as per Emergency Management & Research Institute specifications would be demonstrated to the tender participants during the pre-bid meet. Detailed drawing Bills of Materials would be passed on to the successful bidders on whom the tender committee decides to place the purchase order. The description of work would show that the fabricator has to make the following fitments in the delivery vans to make them into ambulances. The bids were called with the following specifications:

(i) Steel/plywood cabinet for storing medical equipment/supplies/ wash basin/dustbins.

(ii) Squad bench/Attendant Seat – (to seat with neat belts) with storage for EM rescue tools.

(iii) EMT Seat/foldable

(iv) Oxygen Cylinder compartment and delivery system

(v) Flooring

(vi) Wall paneling works and partition between ambulance pilot compartment.

(vii) Head racks and grab rails in the ceiling

(viii) Scoop stretcher and wheelchair hold

(ix) Fire extinguisher hold

(x) Curtain rods and curtains

(xi) Water dispenser

(xii) Electrical Work –

- **(a)** Air Conditioner
- **(b)** Inverter
- **(c)** Light bar
- **(d)** Automobile grade
- **(e)** Electrical Wiring and separate fuse boxes – clock
- **(f)** DC Connections and Outlet Points
- **(g)** Roof/wall mounted fans – half safety metal guard
- **(h)** Bush-less exhaust fans

28. On the basis of the tenders received and after the tender Committee scrutinized the bids, Bafna Healthcare Pvt. Ltd., Faridabad was found to be the lowest bidder and accordingly purchase orders dated 30.03.2009, 04.05.2009, 12.08.2009 and 17.09.2009 were placed on them. Copies of the purchase orders placed on Bafna Healthcare for conversion of Force Traveller Van No. 3350 mm WB into Emergency Response Van have been enclosed.

29. It is seen that after the vehicles are received from Force Motors, at the instance of Emergency Management & Research Institute, the fabricators convert the delivery vans into ambulances by fitting them with a stretcher, attendant seats, wailing horn, medical cabinets, fans, hooks for intravenous bottle and oxygen cylinder in the patient compartment. Even after the fabricators fit the above requirements, the delivery vans do not become full-fledged ambulances because after the said vans are received from the fabricators, the vans are equipped with ventilator, defibrillators, pulse oxymeters, stretchers, wheel chairs etc., to make them into full-fledged ambulances. These vehicles are then registered with the Regional Transportation Authority as Ambulances.

30. The goods have to be assessed in the form in which they are presented at the time of clearance and not what they may ultimately become after going through various processes. In order to invoke rule 2(a) of the General Rules of Interpretation, the goods should have the essential character of complete/finished articles. What was purchased by the appellant from Force Motors were bare delivery vans without any fittings, and as such they do not have the essential character of an ambulance. As the evidence placed on record clearly shows, it was subsequent to the clearance of the delivery vans, that the work of

fabrication of the delivery vans into ambulances was entrusted to the fabricators.

31. The Commissioner, after noticing that though the vehicles at the time of delivery could not be used as ambulances and they had been modified subsequently, proceeded to hold that the vehicles supplied by Force Motors "were incomplete or unfinished vehicles having the essential characters of complete or finished ambulance" and thus would be classifiable under ETI 8703 33 92 in view of the provisions of rule 2(a) of the General Rules of Interpretation.

32. The Commissioner was not justified in drawing such a conclusion. As observed earlier, the goods have to be assessed in the form in which they are presented at the time of clearance and not in the form they may ultimately take. The vehicles at the time of clearance did not have the essential character of an ambulance. What was purchased were bare delivery vans without any fittings. It cannot, therefore, be said that the vans had the essential character of an ambulance. Rule 2(a) of the General Rules for Interpretation would not come to the aid of the department. The order passed by the Commissioner classifying the vehicles under ETI 8703 33 92 of the First Schedule to the Tariff Act cannot, therefore, be sustained.

33. In this view of the matter, the penalty imposed upon the other appellants also cannot be sustained.

34. It would, therefore, not be necessary to examine the contention raised by the learned counsel for the appellant that the extended period of limitation could not have been invoked in the facts and circumstances of the case.

35. Thus, for the reasons stated above, the order dated 28.06.2021 passed by the Commissioner is set aside and the five appeals are allowed.

(Order pronounced on **06.12.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Jyoti, Shreya