IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5208 OF 2025

Mercedes-Benz India Pvt. Ltd.,
& Another .. Petitioners.

Versus

Union of India & Others .. Respondents.

Adv. Prasad Paranjape with Adv. Kumar Harshvardhan and Adv. Dhruvi Shah *i/b. Lumiere Law Partners, for the Petitioners.*

Adv. Jitendra Mishra with Ms. Mamta Omle and Adv. Rupesh Dubey, *for the Respondents.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: APRIL 29, 2025

P. C.

1. Heard the learned Counsel for the parties.

2. ***Rule.*** Rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties and heard finally.

3. This Petition challenges Order-in-Original dated 21st January, 2025 along with Rectification Order dated 13th March, 2025. Petitioner No.1 is, *inter alia*, engaged in the manufacture and trading of passenger cars of various models and variants of the Mercedes-Benz brand falling under Chapter Heading 8703 of the Customs Tariff Act, 1975, as made applicable to assessment under relevant legislative provisions under the Central Goods and Service Tax Act, 2017 ("CGST Act"). Petitioner No.2 is an employee of Petitioner No. 1.

4. The Petitioners were issued Show Cause Notice dated 9th December, 2022 by which it was alleged that Petitioner No.1 has short-paid Compensation Cess leviable under the Goods and Services (Compensation to States), Act, 2017 read with Notification No.1/2017-CC (Rate) dated 28th June, 2017, as amended by 05/2017-CC (Rate) dated 11th September, 2017 ("the Cess Notification"). Specifically, the case of the Respondents was that Petitioner No.1 was covered by Sr. No.52B of the Cess Notification attracting Compensation Cess at 22% as opposed to the Petitioners' claim that they were covered by Sr.No.52A of the Cess Notification, attracting Compensation Cess at 20%.

5. To attract compensation cess of 22% under Sr. No.52B of the Cess Notification, the following conditions were required to be satisfied:

(a) Engine capacity exceeding 1500cc

(b) Popularly known as Sports Utility Vehicles (SUVs)

(c) Length exceeding 4000mm

(d) Ground Clerance of 170mm and above

6. The dispute in the present case is about compliance with respect to condition (d) above.

7. It is the Petitioners’ case that prior to 26th July, 2023, the law was silent on how to measure the ground clearance i.e. whether in a laden (fully loaded) condition or in an unladen (empty) condition. However, based on their interpretation supported by industry practice, regulatory requirements under the Motor Vehicles Act and the practice being followed by the Petitioners themselves and accepted by the Respondents since the Central Excise regime, they measured ground clearance in a laden condition. Even the Appellate Authority for Advance Ruling in the case of Tata Motors Ltd., vide its Order dated 20th September, 2019 held that the ground clearance be computed in a laden condition of the vehicle. Since, the impugned motor vehicles bore ground clearance of less than 170mm in laden condition, they were correctly paying Compensation Cess at 20% under Sr. No. 52A of the Cess Notification.

8. It is the Respondents' case that in the absence of a specific mandate of law, the ground clearance should be measured in an un-laden condition and since in the Petitioners’ case the impugned vehicles, in an un-laden state, bore ground clearance of 170 mm or above, they would attract Compensation Cess at 22% under Sr No. 52B of the Cess Notification.

9. At this stage, the learned Counsel for the Petitioners drew our attention to the Minutes of the 50th GST Council Meeting held on 11th July, 2023 (Page 135 of the Petition) which records the decision of the GST Council. The Minutes of the said meeting records that the GST Council agreed with the recommendation of the Fitment Committee and accordingly agreed to amend the entry 52B of the Cess Notification *inter alia* to clarify that for the purposes of the Cess Notification, *"Ground Clerance"* in entry 52B means Ground Clearance in an un-laden condition.

10. The learned Counsel further drew our attention to Notification 03/2023-CC (Rate) dated 26th July, 2023 (Page 139 of the Petition) issued on the recommendations of the GST Council, where at Para (xiv) an Explanation has been inserted as agreed in the 50th GST Council meeting.

11. The learned Counsel for the Petitioner also submitted that to put the controversy to rest, the 55th GST Council meeting held on 21st December, 2024, (Page 143 of the Petition) clarified that the Explanation inserted vide amendment dated 26th July, 2023 regarding ground clearance, is applicable with effect from 26th July, 2023. Thereafter, the Board, based on the recommendation of the GST Council and in exercise of the powers conferred under Section 168(1) of the CGST Act issued Circular No. 247/04/2025-GST dated 14th February, 2025 (Page 144 of the Petition) to clarify that the amendment carried out vide Notification No. 3/2023- CC (Rate) dated 26th July, 2023 will apply only on or after 26th July, 2023.

12. The learned Counsel for the Petitioner submitted that in view of the above, the Explanation inserted with effect from 26th July, 2023 will apply only to supplies made on or after 26th July, 2023. He submitted that the Petitioner has been paying Compensation Cess at 22% for the vehicles with ground clearance of 170mm or above in an un-laden state and supplied on or after 26th July, 2023.

13. On the other hand, the learned Counsel for the Respondents submitted that Respondent No. 3 did not have the advantage of the Circular dated 14th February, 2025 as the Impugned Order was passed and issued prior to the said date. Hence, Respondent No.3 has righty denied the benefit of lower Compensation Cess to the Petitioners.

14. Having heard the learned Counsel for the parties, we find from para 30.4.4 of the Impugned Order that the only basis for confirming the Compensation Cess at the rate of 22% against the Petitioner is by considering Notification No. 3/2023-CC (Rate) dated 26th July, 2023 to be retrospective in its application. Now the Board itself [albeit based on the GST Council recommendation and clarification] has clarified that the amendment carried out vide Notification No.3/2023-CC (Rate) dated 26th July, 2023 is prospective in nature. This clarification issued by the Board is binding on the Respondents. The disputed period in the present case is from September 2017 to July 2022. Hence, for the aforesaid period, the ground clearance of motor vehicles for the purpose of determining applicable Cess rate under the Cess Notification had to be considered in a laden condition, as was being done by the Petitioner.

15. In view of the above discussion, the Petition is allowed in terms of prayer clauses (a) to (d) which read thus:-

> *"(a):- This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, declaring 'ground clearance' as measured under entry 52B of the Notification No. 01/2017- Compensation Cess (Rate) dated 28.06.2017, amended by Notification No.05/2017 -Compensation Cess (Rate) dated 11.09.2017 means in "laden condition" prior to 23.07.2023.*
>
> *(b) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, declaring that the Petitioner No.1 is liable to pay Compensation Cess @ 20% for the disputed period i.e. September, 2017 to July 2022.*
>
> *(c) This Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and quash and set aside the Order-in-Original No. PUN-CGST-001/JC-VGM-199 2024-25 dated 21.01.2025, (Exhibit A) and/ or Rectification Order dated 13.03.2025 (Exhibit B) both issued by Respondent No.3.*

> *(d) This Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Order-in-Original No. PUN-CGST-001/JC-VGM-199/ 2024-25 dated 21.01.2025 and set aside penalty imposed on Petitioner No.2."*

16. Rule is made absolute in the above terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

17. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

S.R.JOSHI