

**(1992) 11 BOM CK 0055**

**In the Bombay High Court**

**Case No : Writ Petition No. 2278 of 1986**

Tata Engineering and Locomotive Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision : 18-11-1992**

**Acts Referred:**

Central Excise Rules, 1944 — Rule 173F, 9(1)

**Citation :** (1993) 64 ELT 171 : (1995) 3 LLJ 603(2)

**Hon'ble Judges :** V.S. Sirpurkar, J;M.L. Pendse, J

**Bench :** Division Bench

**Advocate :** Shri T.R. Andharujina, Mr. M.D. Siodia and Mr. H.N. Vakil, instructed by Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; Shri R.V. Desai, for Shri K.V. Sidhwa, for the Respondent

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## **Judgement**

Pendse, J.—The controversy in this petition stands concluded by decision of Division Bench to which one of us (Pendse, J.) was a Party and reported in Tata Engg. and Locomotive Company Ltd. Vs. Union of India, . Only few facts are required to be stated to appreciate the grievance of the petitioners. The petitioners are manufacturers of motor vehicles and inter alia manufacture motor vehicle chassis liable to payment of excise duty under Tariff Item 34-I(3) of the Central Excise Tariff. The specifications were filed by the petitioners and price lists were approved on that basis.

2. The Superintendent of Central Excise served show cause notice dated February 7, 1986 upon the petitioners to explain why short payment of duty to the tune of Rs. 41,53,426.17 during the period commencing from April 1985 and ending with September 1985 should not be recovered. The show cause notice recites that the petitioners have contravened the provisions of Rule 9(1) read with Rule 173(F) of the Central Excise Rules, 1944 inasmuch as the petitioners have failed to include the value of wheel, rim, carrier, tyre and tube in the assessable value of motor vehicle before clearance from factory gate. The annexure to the show cause notice recites that as per the Bombay Vehicles Act,

the items spare wheel and tools are necessary vide Rule 201 of the Bombay Motor Vehicles Rules, 1959. The show cause notice is under challenge.

The decision of the Division Bench with which we respectfully agree clearly held that it was not permissible for the department to claim that though the goods are not cleared from the factory-gate, still the assessable value should be determined by taking into consideration what was set out in the specification. The claim of the department that if the petitioners had opted for self-removal procedure and filed classification list and price-list, the assessable value should be determined on the basis of the specification was turned down. In our judgment, it is wholly irrelevant as to whether the Bombay Motor Vehicles Rules demand that every vehicle should carry a spare wheel and tools for determination of assessable value of items cleared from the factory-gate. In our judgment, the Superintendent of Central Excise lacks jurisdiction to issue the impugned show cause notice and, consequently, it is necessary to strike down the same.

3. Accordingly, petition succeeds and rule is made absolute in terms of prayer (a). The respondents shall pay the costs of the petitioners.