**(1990) 01 MAD CK 0099**

**In the Madras High Court**

**Case No :** Writ Petition No. 10603 of 1981

Ashok Leyland Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 05-01-1990

**Acts Referred:**

**Citation :** (1991) 52 ELT 32

**Hon'ble Judges :** S. Ramalingam, J

**Bench :** Single Bench

**Advocate :** Shri C. Natarajan, for the Appellant; Shri T. Somasundaram, Addl. Central Govt. Standing Counsel, for the Respondent

## Judgement

S. Ramalingam, J.—This writ petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the order of the High Court, dated 26-11-1981 and made herein, and the counter filed herein and the records of the respondent relating to the order in 161/1981 dated 25-3-1981 on the file of the 1st respondent comprised in the return of the respondents to the writ made by the High Court and upon hearing the arguments of Mr. C. Natarajan, Advocate for the petitioner, and of Mr. T. Somasundaram, Additional Central Government Standing Counsel on behalf of the respondents, the Court made the following order :-

The petitioner manufactures vehicles known as Dumpers. Besides the chassis, it consists of (1) Special cabin; (2) Tipping gear; and (3) Steel body. The tipping gear lowers and raises the steel body to perform the operation of dumping.

2. The petitioner claimed that it is bound to pay excise duty only on the value of the chassis and that portion of the vehicle forming the cabin and the remaining portions, viz., the tipping gear and the steel body are exempt from payment of duty.

3. The relevant portion of Tariff Item No. 34 at that time was as follows :

 

"MOTOR VEHICLES".

"Motor vehicles" means all mechanically propelled vehicles adapted for use upon roads and includes a chassis and a trailer; but does not include a vehicle running upon fixed rails. .."

The explanation to Tariff Item No. 34 is relevant for the purpose of this case and it reads as follows :

"Explanation. - For the purpose of this item where a motor vehicle is mounted fitted or fixed with any weight-lifting, earth moving and similar specialised material handling equipment, then such equipment other than the chassis shall not be taken into account".

In the proceedings taken before the Collector of Central Excise, the petitioner claimed that on a proper interpretation and application of Tariff Item No. 34 read with the Explanation, ad valorem duty is payable only on the cabin portion and chassis and not on the remaining portions. It was the case of the petitioner that the dumper, which would come under the generic category of a motor vehicle under Tariff Item No. 34 is liable to excise duty excluding the value of the equipment forming part of the steel body. This case was not accepted by the Collector in his order dated 29-9-1975, which was a cryptic order, by stating as follows :-

"I have no doubt in my mind that the explanation would not cover dumpers and that it is restricted to specially designed material handling equipment and the dumper as such would not come under this category".

He further held that the cabin, tipping gear and the steel body form a composite whole assessable under sub-item (4) of Tariff Item No. 34.

4. Aggrieved by this order, the petitioner preferred an appeal before the Central Board of Excise and Customs, New Delhi and that appeal was dismissed by orders dated 21-5-1979, in which it was held that the specialised material handling equipment must be similar to the weight-lifting or earth moving equipments and a dumper is not one such. It was further held that dumpers are primarily transport equipment and that they are designed to go to distant places when loaded and, therefore, dumpers are not similar to weight-lifting or earth moving equipments.

5. The petitioner thereafter preferred a revision to the Government of India and by orders dated 25-3-1981, the revision was dismissed observing that the dumper is designed to carry heavy loads and that merely because the body is tipped or titled at the time of dumping the transported material, it would not mean that the main function of the body is that of material handling and concluded that it remains only as a transport vehicle, excluding that portion of the tipping mechanism, the government said that this mechanism is essentially for the purpose of material handling and as per the Explanation, its value should be excluded. Challenging these orders, the present writ petition has been filed.

 

6. At the time of the hearing of the writ petition, a brochure showing the various parts of the vehicle called beaver Rear Dumper produced before Court and it shows that on the chassis fitted with pneumatic tyres is a body built consisting of two portions, one the cabin and the other the steel body. The steel body is mounted on the chassis and is equipped with a machine, apparently operated by hydraulic pressure, to lift and tilt the steel body. While conceding that it is bound to pay excise duty on the chassis portion as well as the cabin portion, the contention urged by the petitioner is that the dumping equipment should not be included for valuation.

7. While the Collector of Central Excise gave practically no reason to reject this claim of the petitioner, the Central Board rejected the claim by stating that the dumpers are intended to be used on roads to transport materials over long distance, and, therefore, the entire value of the steel body, including the chassis and cabin, should be taken into consideration. It is rightly contended by the petitioner that merely because this vehicle, which is a motor vehicle, can be used on the roads and the said vehicle (dumper) can carry loads over long distances, it would not lose its character as a specialised material handling equipment and therefore, the reasoning of the Appellate authority is not correct. Tariff item No. 34 deals with "Motor Vehicles" and the term "Motor Vehicle" is described as meaning a mechanically propelled vehicle adapted for use upon roads. Therefore, merely because the equipment in this case, viz., Beaver Rear Dumper is capable of being put on the road and is also capable of carrying loads over long distances, it does not cease to be an equipment coming with the definition of a "Motor Vehicle". Then, the next question would be, whether by applying the explanation any portion of the that motor vehicle can be excluded for the purpose of valuation. That Explanation states that where a motor vehicle is mounted, fitted or fixed with any weight-lifting or earth moving and similar specialised material handling equipment, then such equipment other than the chassis, shall not be taken into account. Even though Beaver Rear Dumper would not come within the definition of a vehicle used for weight-lifting or earth moving, it is not in dispute that it is a specialised material handling equipment. This specialised material handling equipment, viz., the tipping gear and the steel body, which forms the container for moving and holding the material, is mounted on the chassis. This mechanism is intended to move materials from one place to another and to dump them in a chosen site. Such a specialised material handling equipment is similar to earth moving machineries and, therefore, this vehicle as a whole would come within the definition of a "Motor Vehicle" and would attract the benefit of the Explanation to Tariff Item No. 34. Since the reasoning given in the order of the Government is the same as the reasoning contained in the order of the Central Board of Excise and Customs and there is no justification for including the value of the steel body, which forms the container, for valuation, the orders of the respondents cannot be sustained. The tipping gear and the steel body are attached to each other and form an integral whole and would come within the meaning of the term "specialised material handling equipment".

 

It follows that the whole petition of it, viz., the tipping gear and the steel body, should be excluded from valuation for the purpose of Tariff Item No. 34. There is no justification for dissecting this equipment into two parts, viz., the tipping gear (tipping mechanism) as being eligible for exclusion including the integral body, viz., the steel body, forming the container. The tipping mechanism is of no use unless the steel body container is attached to it and similarly, the steel body cannot be used without the tipping mechanism. It therefore, follows that the tipping mechanism is of no use unless the steel body container is attached to it and similarly, the steel body cannot be used without the tipping mechanism. It, therefore, follows that the tipping mechanism and the steel body which are attached to each other form an integral whole and are entitled to be excluded for the purpose of valuation under Tariff item No. 34. Hence, the orders impugned in this writ petition are quashed and the petitioner is entitled to relief in respect of the excise duty paid on the value of the steel body. The writ petition, insofar as the valuation of the cabin is concerned is dismissed. However, there will be no order as to costs.