(2014) 08 SC CK 0093

In the Supreme Court Of India

Case No : Civil Appeal No. 2543 of 2006 and Civil Appeal No. 957 of 2010

Commissioner of Central Excise — APPELLANT

Vs

Mahindra and Mahindra Ltd. — RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Citation : (2015) 315 ELT 161 : (2015) 51 GST 712

Hon'ble Judges : Madan B. Lokur, J;C. Nagappan, J

Bench : Division Bench

Advocate : N.K. Kaul, ASG, K. Radhakrishanan, Sunita Rani Singh, K. Swami and B. Krishna Prasad, Advocates for the Appellant; H.N. Salve and Shyam Diwan, Sr. Advs., Anil Wahi, Mahesh Agarwal, Rishi Agrawala, E.C. Agrawala, Radhika Gautam and Abhinav Agarwal, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. There is a conflict of opinion between two Benches of the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''the Tribunal''). In Appeal No. E/394/2001, the Tribunal passed an order on 19th July, 2005 [2006 (197) E.L.T. 341 (Tri.-Mumbai)] holding that the vehicles manufactured by the Assessee falls under Entry 87.02.00 of the Central Excise Tariff Act, 1985 (hereinafter referred to as ''the Act'').

2. However, in Appeal No. E/2053/2005, decided on 7th December, 2009 [2010 (249) E.L.T. 182 (Tri - Mumbai)], the Tribunal has taken the view that the vehicles manufactured by the Assessee falls under Entry 87.03.00 of the Act.

3. Since two Benches of the same strength of Members have taken two conflicting views, we are of the opinion, that judicial discipline requires that instead of disagreeing with the view taken by the First Bench, the appropriate course for the second Bench would have been to refer the matter to a Larger Bench. This is the basic requirement of judicial discipline. Since this has not been done, we set aside both orders and remand both the appeals back to the Tribunal

and request its President to constitute a larger Bench of three Members to decide the issue whether the vehicles manufactured by the Assessee falls under Entry 87.02.00 or 87.03.00 of the Act.

4. We make it clear that we have not expressed any view on the merits of the case and all contentions are open to both the parties in support of their respective stand.

5. The interim order passed by this Court on 8th February, 2010 in C.A. No. 957 of 2010 [2010 (250) E.L.T. A111 (S.C.)] will continue till the disposal of the appeals by the Tribunal.

6. Since the matters pertain, inter alia, to Classification List of 1992, we request the Tribunal to make an effort to expedite the hearing of the appeals. Appeals are disposed of. No costs.

