

(2015) 09 SC CK 0020
In the Supreme Court Of India
Case No : Civil Appeal No. 1518 of 2007

Commissioner of Central Excise, Pune-I	APPELLANT
Vs	
Bajaj Auto Ltd.	RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Citation : (2015) 325 ELT 465

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri K. Radhakrishnan, Senior Advocate, Ritesh Kumar, Ms. Rashmi Malhotra, Atulesh Kumar and B. Krishna Prasad, Advocates, for the Appellant; M/s. K.J. John and Co, for the Respondent

Final Decision : Disposed Of

Judgement

1. The present appeal involves controversy pertaining to the classification of the goods in question, viz., three wheeled tractor or auto trailer. If it is to be characterised as auto trailer as claimed by the respondent-assessee, then the goods are classifiable under Chapter Heading 8701. On the other hand, the appellant-Department contends that the goods in question are to be treated as Light Motor Vehicle (LMV) for goods carriage and should be classified under Chapter Heading 8704.

2. The assessee is manufacturing three wheeled tractor which are known as "Auto Track and semi-trailer". They claimed classification of the product as a "Tractor" falling under Tariff Item 34(II) under the erstwhile Tariff. However, Department did not agree with the classification sought by the respondent-assessee. According to the Department, Auto-track was classified under Tariff Item 34(I) of the erstwhile tariff as a motor vehicle.

3. Show cause notice was issued and Order-in-Original was passed confirming the demand therein based on the classification adopted by the Department. Aggrieved by the order, the respondent filed appeal before the Commissioner

who dismissed the appeal upholding the order of the Adjudicating Authority. In the opinion of the Commissioner, the Auto track manufactured by the assessee was an articulated vehicle to carry the load tractor and was registered as a single unit characterised as a goods carrier, meaning thereby the product in question falls under Chapter Heading 8704. This order of the Commissioner was challenged by the respondent before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "Tribunal") and the Tribunal has allowed the appeal upsetting the order of the Commissioner vide its decision dated 12-7-2006.

4. The Tribunal found that the Commissioner while relying upon the earlier decision of the Tribunal ignored the fact that on the first occasion, when the matter was remanded, the Tribunal itself had observed that the new tariff did find the meaning of the tractor and also that positive evidence would be necessary to make them depart from its earlier view. It further found that the Revenue had not disputed that it is immaterial whether vehicle in question comprising of hauling unit and semi-trailer is cleared together or separately which is clear from Chapter Note 2. Discussion on this aspect runs as follows :-

"It is not disputed by the Revenue that vehicle in question comprise of hauling unit and semi-trailer, it is immaterial whether they are cleared together or separately as it is also emphasised in the Chapter Note 2 that they may or may not contain subsidiary provision for the transport of goods.....

Explanatory notes to this chapter heading further state that articulated motor lorry with semi-trailer, tractors coupled to semi-trailers, the hauling unit is classifiable under Heading 8701. In the present appeal the vehicle in question is nothing but articulated motor vehicle as per the definition of articulated motor vehicle given in the automotive dictionary. This view also find supports from two opinions of VRDE and VRIA which were sought by the department after forwarding then certificates issued by CMVR and were obtained at the department's own instance. All these clearly establish that vehicle in question is "tractor" and not LMV. The emphasis on non-use for agriculture purpose is totally misplaced as Heading 8401 includes all kinds of tractors including road tractors for semi-trailers. The sole use of the goods is to haul another trailer. It has no pay load capacity of its own and is therefore not capable of transporting any goods on its own. These facts are also not disputed by the department. As rightly said by learned advocate Shri Hidaytulla that once the definition of tractor is given in the statute, we cannot go by meaning in common parlance. We are fully in agreement with the view taken by the tribunal in the case of Volvo India Pvt. Ltd. where identical goods were held to be classifiable under Chapter Heading 87.01 and not under Heading 84.04."

5. We have heard the learned counsel for the parties. Learned counsel for the Revenue could not shake the aforesaid basis for classifying the goods under Chapter Heading 8701.

6. We do not find any merit in this appeal and the same is, accordingly, dismissed.