
(1993) 04 SC CK 0105

In the Supreme Court Of India

Case No : Civil Appeal No. 2484 Of 1977

Dunlop India Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Citation : (1994) 2 SCC 335 Supp

Hon'ble Judges : N. Venkatachala, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Goodyear India Ltd. Vs. Union of India and others, AIR 1997 SC 2038 : (2002) 81 ECC 666 : (1997) 92 ELT 14 : (1997) 3 JT 63 : (1997) 2 SCALE 376 : (1997) 5 SCC 752 : (1997) 2 SCR 445 : (1997) AIRSCW 1839 : (1997) 2 Supreme 652

1. This appeal is preferred against the judgment and order of the Government of India in a revision petition filed under Section 36 of the Central 9 Excises and Salt Act, as it stood at the relevant time. The dispute pertains to classification of, what are known as "off-the-road tyres", "off-the-road tyres", according to the appellant, means those tyres which are used for equipment not used on the roads but for other special duties. The vehicles for which these tyres are used are referred to as dumpers, coal-haulers, bulldozers, earth-moving equipment, draglines, excavators etc. The duty on tyres was provided by Tariff Item 16 of the First Schedule to the Act, as it then stood. Tariff item 16 read as follows:

"Tyres "Tyres" means a pneumatic tyre in the manufacture of which rubber is used, and includes the inner tube and the outer cover of such a tyre. (1) Tyres for motor vehicles. (2 For cycles (other than motor cycles) (a) tyres (b) tubes (3 All other tyres."

2. Pneumatic tyre means a tyre in the manufacture of which rubber is used. It also means a tyre in which air is compressed. It includes the inner tube as well

as the cover of such a tyre. Tariff Item 16 had three sub-items. According to the appellant, the tyres for "off-the-road vehicles" fall under sub-item (3, whereas according to the Revenue it falls under sub-item (1. The question, therefore, arises whether "off-the-road vehicles" can be called "motor vehicles". If they can be called motor vehicles, tyres meant for them would fall under sub-item (1; if not, the tyres meant for them would fall under sub-item (3. There is no definition of "motor vehicles" in the Act or the Rules. However, Tariff Item 34 deals with levy of excise duty on motor vehicles. The government of India has in its order relied upon the definition of motor vehicles, contained in Tariff Item 34, for ascertaining the meaning of the expression "motor vehicles" in Tariff Item 16. Tariff Item 34 reads as follows:

"34 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 (1 Auto-cycles, motor cycles, scooters, autorickshaws and any other three-wheeled motor vehicles. (2 Motor vehicles of not more than 16 H.P. by Royal Automobile Club (R.A.C.) rating. (3 Motor cars of more than 16 H.P. by Royal Automobile Club (R.A.C.) rating, constructed or adapted to carry not more than nine persons. (3-a) Tractors, including agricultural tractors. (4 Motor Vehicles, not otherwise specified. 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."

3. Tariff Item 34 defines the expression "Motor Vehicles". The opening words, no doubt, say that motor vehicles means all mechanically propelled vehicles adapted for use upon roads but the several clauses following enlarge the scope of the definition to include even those vehicles which are not adapted for use on roads. Clause (3-a) refers to tractors including agricultural tractors. It is evident that tractors and in particular agricultural tractors are not meant for being used on roads. It is doubtful whether it can be said that they are "adapted for use upon roads", though it is true they can be operated on roads as well. If it is held that agricultural tractors also are "adapted for use upon roads" notwithstanding the fact that they are principally meant for being operated and Virendra Swarup v. Krishna Swarup 337 used on agricultural lands, it can equally be said that dumpers, coal-haulers, earth-movers etc. are also "adapted for use upon roads", though principally they are meant to be operated and used on construction sites. Clause (4 in Tariff Item 34 is in the nature of a residuary clause. It says all motor vehicles not otherwise specified fall within Item 34. Even the Explanation appended to Tariff Item 34 throws light upon the meaning and content of expression "motor vehicle". It says that where a motor vehicle is mounted, fitted or fixed with the weight-lifting, earth-moving and similar other specialised material-handling equipment, then, for the purpose of determining the value of such motor vehicle, the value of such mounted equipment shall not be taken into account. The Explanation indicates that even a motor vehicle upon which is

mounted the earth-moving equipment etc. continues to be a motor vehicle. In the absence of any definition of motor vehicle in Item 16, we see no error in the government of India relying upon the definition of "motor vehicle" contained in Item 34.

4. Even otherwise we are not satisfied that "off-the-road vehicles" are not "motor vehicles". After all, "motor vehicles" means a vehicle in which motor is fitted or a vehicle which runs on motor. There is no reason, why dumpers etc. are not motor vehicles. In this connection, it would be relevant to notice the fact recorded in the letter of the Superintendent, central Excise dated 8/01/1974 to the effect that in spite of repeated requests, the appellant not only failed to specify the types of tyres and tubes which they manufactured for the purpose of dumpers, coal-haulers, bulldozers etc. but filed a revision classification list without any specification as to their use. Basing upon this failure, the counsel for Revenue says that this was for the reason that many of these tyres are common to ordinary motor vehicles as well as off-the-road vehicles. We are, therefore, of the opinion that the tyres in question do not fall under clause (3 of Tariff Item 16. Clause (3 of Tariff Item 16 evidently takes in tyres meant for vehicles other than motor vehicles e.g. push-carts, animal-drawn vehicles etc.

5. For the above reason, we see no error of law in the classification done by the government of India. The appeal is accordingly dismissed. No costs.