(1997) 01 SC CK 0041

In the Supreme Court Of India

Case No : Civil Appeal No. 3338 of 1990

Dunlop India Ltd. APPELLANT

Vs

Collector of Central Excise, Calcutta RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1997) 90 ELT 15 : (1997) 10 JT 743 : (1997) 10 SCC 769

Hon'ble Judges : S. P. Bharucha, J;Faizan Uddin, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

S.P. Bharucha, J.—The appellants manufacture tyres, among them aero tyres. Occasionally, some aero tyres are found to be unfit for use on aircraft. These are degraded by buffing the description upon them and painting in a prominent and durable fashion the words "ADV" thereon. In respect of these degraded tyres the appellants claimed the benefit of exemption provided by a notification dated 15th October, 1982 (229/82) issued under Rule 8 of the Central Excise Rules. The relevant clause of the notification reads thus :

____

SI. Sub-Item Description Rate Conditions No. No. ____ 9. IV. Tyres specifically Nil Provided that a designed for use durable of animal drawn prominent vehicles or hand marking of the carts. letters "ADV" has been made on every such tyre. _____

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The exemption having been denied to them, the appellants preferred an appeal before the Central Excise and Gold (Control) Appellate Tribunal and its order thereon is now under challenge. The Tribunal took the view that the degraded tyres had not been specifically designed for use on animal drawn vehicles and, therefore, the said exemption was unavailable to them. The Tribunal, therefore, upheld the demand for duty and the confiscation of the seized degraded tyres and it reduced the penalty amount from Rs. 2 lakhs to Rs. 1 lakh "considering that actual misuse of the tyres has not been proved". Having regard to the terms of the said exemption notification, the benefit thereof is available only to tyres which have been specifically designed for the use of animal drawn vehicles or hand carts. The tyres, in question, were, in fact, specifically designed for aircraft but were found defective and, therefore, not usable as such. Accordingly, the appellants degraded them by buffing what was printed thereon and substituting therefore the marking "ADV". In our view, such degraded tyres do not qualify for the exemption given to tyres specifically designed for the use of animal drawn vehicles. We, therefore, uphold the order of the Tribunal insofar as the duty demand and confiscation of the seized degraded tyres is concerned. The Tribunal itself has noticed that actual misuse of these tyres has not been proved. We are of the view, therefore, that only a token penalty should be imposed which would be in the sum of Rs. 1,000/-(Rupees one thousand).

2. The appeal is disposed of accordingly with no order as to costs.