

Simpson and Co. Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-16-1983

Reported in : (1983)LC455DTri(Delhi)

Appellant : Simpson and Co. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The question involved in this case is whether internal combustion engines manufactured by the appellants and designed for being fitted to forklift trucks are chargeable to duty under item 29(0) of the Central Excise Tariff, as held by the Department, or under item 29(ii), as urged by the appellants.

2. Shri Ramasubramaniam, on behalf of the appellants, referred to the wording of item 29(i) CET and stated that only those I.C. engines fell under this item which were designed for use as a prime-mover for transport vehicles, that transport vehicles were those which plied on public roads and for fairly long distances, that a vehicle for mechanised transport must be a motor vehicle first, that for this reason it was relevant to refer to the definitions of 'Public Service Vehicle' and 'Goods Vehicle' in the Motor Vehicles Act, that in this sense forklift trucks were not transport vehicles but work trucks used for a short distance transport within the factory area and that the other features which distinguished them from transport vehicles were that forklift trucks not only moved the goods but also lifted and stacked them and that speed was no consideration for them nor heating of the engine a problem in their case. Secondly, he stated that after going through the

quasi-judicial process, the Assistant Collector had passed an order on 19-9-1964 in which he had held that I.C. engines fitted to forklift trucks should be treated as of stationary type falling under item 29(ii) CET, that this practice of assessment continued for 11 years, that on 4-8-1975 the Superintendent of Central Excise, a functionary lower to Assistant Collector, issued a show cause notice for assessing such engines under item 29(i) CET, that it was well settled that earlier decisions could not be re-opened without good and cogent reasons (1981 ELT 328 Delhi-J.K. Synthetics v. Union of India) and that merely change of opinion or interpretation on the part of the successor officers was no reason for re-opening settled questions.

3. On behalf of the Department, Shri Raghavan Iyer stated that the Motor Vehicles Act had quite a different purpose to serve and the definitions given therein were, therefore, not relevant, that the Magraw Hill Encyclopaedia of Science and Technology described forklift trucks as industrial trucks only, that the term 'transport vehicle' had to be understood as per the plain dictionary meaning, that a transport vehicle need not necessarily be the one which plied on road or surface and that in the wider sense even an aircraft was a transport vehicle.

Regarding the second argument of the appellants, he stated that the doctrine of Res Adjudicata had to be applied to taxation matters with extreme care, the Central Excise law, as it then stood, gave finality only to Orders-in-Appeal and that too subject to the power of revision by the Central Government, that no finality could be claimed for assessment orders as otherwise the provisions of Rule 10 relating to short-levy would become redundant, that the power under Rule 10 was also, in a sense, a review power inasmuch as it enabled the proper officer to issue a show cause notice in case he felt that duty had been short-levied due to error, that mistake of interpretation of law was also an error, that the Superintendent who issued the show cause notice on 4-8-1975 was a proper officer in terms of Rule 10 and that since he had asked the appellants to show cause only to the Assistant Collector, the appellants could have no valid objection to the issue of show cause notice by an officer lower in rank to that of an Assistant Collector.

4. We have given a very careful consideration to the matter. We reproduce below the text of Central Excise Tariff items 29 and 34B which were cited before us during the arguments : - (i) Those designed for use as a prime-mover for transport vehicles and have been given for that purpose some special shape, size or quality which would not be essential for their use for any other purpose.

"34B. Work trucks, mechanically propelled, used for short distance transport or handling of goods, the following, namely :- 5. There is no dispute that the subject I.C. engines were specially designed as a prime-mover for forklift trucks. The dispute is only on the point whether forklift trucks could be considered transport vehicles within the meaning of item 29(i) CET. 'Transport vehicle' is a term of common usage and ought to be interpreted in the sense in which it is commonly understood. As so understood, transport vehicle means a vehicle used for carriage of men and materials from one place to another. In the absence of any stipulation in the Tariff as to the distance to be covered, it is not correct to say that a short distance transport vehicle is not a transport vehicle. In the same way, it is also not correct to say that a transport vehicle must run on public roads only. Vehicles which run on kucha tracks or in rough terrains are also transport vehicles. When we turn to the language of item 34B of the Tariff, we find that forklift trucks come in the category of work trucks used for short distance transport. Thus they are basically a transport vehicle. No doubt, that in addition they perform the functions of lifting and stacking also. But these are their secondary functions, their primary function being one of carriage of materials from one place to the other within the factory area. We, therefore, hold that forklift trucks are transport vehicles within the meaning of item 29(i) CET. As regards the appellants' second argument, they themselves admitted during the hearing that earlier decisions could be re-opened if there were good and cogent reasons for doing so. It was also mentioned during the arguments that item 34B was introduced in the Central Excise Tariff in May, 1971. We hold that this event, which provided for a Tariff definition of forklift trucks as work trucks used for short distance transport was an adequate justification for the Department to have a second look at the question whether forklift trucks could be considered transport vehicles for the purpose of item 29(i) of the Tariff or not. We, therefore, agree with the lower authorities that I.C. engines designed for forklift trucks are correctly assessable under item 29(i) of the Central Excise Tariff.

