Eicher Tractors Ltd. Vs. Cc

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SooperKanoon Citation : sooperkanoon.com/13746

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-29-1998

Reported in : (1999)(80)LC137Tri(Delhi)

Judge : J T P.C., S Kang

Appellant : Eicher Tractors Ltd.

Respondent : Cc

Judgement :

1. Matter called. None for the appellants herein. They have, however, prayed for deciding the appeal on the basis of merits and the records available before the Tribunal. Accordingly, we have heard the Ld. JDR Shri S.N. Ojha.

2. The appellants herein imported 12000 inserts. Out of this said quantity, for 5000 inserts, being parts of diesel engines, they claimed benefit of notification 155/86-CUS. The benefit of the said notification was duly allowed by the authorities. But now the appellants have come up in the appeal against the said decision stating that the authorities below have not considered the effect of notification No. 59/87 along with the notification 155/86-Cus. We have gone through the impugned order and to this extent we agree with the appellants herein that the authorities below have not made any comments whatsoever about the applicability of notification 59/87-Cus. and therefore on this aspect the matter requires to be remanded so far as 5000 inserts are concerned for which the appellants claimed the benefit of notification No. 155/S6-Cus. as well.

3. As regards remaining 7000 inserts claimed by the appellants as 'warranty spares', the appellants have claimed that the authorities below have misdirected themselves by raising a wrong issue that the tractors are motor vehicles. Their main emphasis is that the parts imported by them are parts of agricultural tractors as is apparent from their Parts Catalogue of the Tractors which is clearly not interchangeable with any other motor vehicle as per the intrinsic design of the tractors. We have duly considered the submission of the appellants along with the submission of the Ld. JDR who has taken us through the notification 172/89-Cus. which is the notification applicable, as claimed by both sides. On going through the wordings of notification 172/89-Cus., we observe that the said notification is applicable insofar as serial No. 7 of the table is concerned (which is the relevant serial number and it is undisputed before us) that it gives exemption to "goods falling under heading No. 84.09 excluding the parts of engines which are interchangeable for use with motor vehicles ". It is in the light of this entry we have to examine the submission of both sides. Ld. JDR's submission based on the lower authorities findings is that this entry is applicable only to goods falling under heading 84.09 which are not parts of engines of motor vehicles. He submits that it cannot be denied that tractors falling under tariff heading 87.01 are motor vehicles when we read chapter note 2 read with entry No. 8708 which speaks of parts of motor vehicles falling under tariff heading 87.01 to 87.05. He therefore, submits that the submission of the appellants that the question whether tractors are motor vehicles is not germane to the issue, is not correct. He submits that in view of the entry at sr. No. 7 of the table to notification 172/89, the question whether tractors are motor vehicles is very much germane to the issue. We are inclined to agree with the Ld. JDR. There would have been some force in the contention of the appellants had the entry given exemption specifically to parts of tractors or parts of engines of tractors but that is not the entry available at sr. No. 7 of the table. It gives exemption to goods falling under heading 84.09.

Heading No. 84.09 speaks of parts suitable for use solely or principally with engines of heading No. 84.07 or 84.08. Further, heading 84.07 speaks of spark-ignition reciprocating or rotary internal combustion piston engines. Heading No. 84.08 speaks of combustion-ignition internal combustion piston engines (diesel or semi-diesel engines). Engines referred to in tariff headings 84.07 and 84.08 can be stationary engines as well as engines of motor vehicles.

Therefore, when notification No. 172/89-Cus. gives exemption to goods falling under heading 84.09 it speaks of parts for engines both stationary and engines for motor vehicles but it has simultaneously excluded parts of engines for use with motor vehicles. Therefore, in effect entry at sr. No. 7 of table to notification 172/89 would be applicable to parts of diesel engines of stationary type and not of engines usable in motor vehicles.

4. In view of foregoing discussion, we do not find any substance in the contention of the appellants, so far as the remaining 7000 inserts described as "warranty spares" are concerned. To this extent the appeal of the appellants is rejected.

5. In short matter is remanded to the original authority for considering the claim of the appellants in respect of 5000 inserts for considering the applicability of notification No. 59/87-Cus. along with notification No. 155/86-Cus. As regards the remaining 7000 inserts (warranty spares), the appeal is rejected. Appeal disposed of in the above manner.