Commissioner of Central Excise, Vs. Ceat Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-06-2002

Reported in : (2002)(144)ELT200Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Central Excise,

Respondent : Ceat Ltd.

Judgement :

1. The question for consideration in this appeal is the classification of tyres for forklifts that the respondent to this appeal manufactured.

The respondent claimed classification of these tyres under Heading 4011.99 of the tariff. The department, by issue of notice, proposed classification under Heading 4011.91. Adjudicating upon this notice, the Assistant Collector confirmed the classification claimed by the department. The assessee appealed this order. The Commissioner (Appeals) applied the ratio of the decision of this Tribunal in CEAT Ltd. v. CCE - 1996 (83) E.L.T. 515, which held these tyres to be correctly under Heading 4011.99. She allowed the manufacturer's appeal.

2. At the relevant time sub-heading 91 of Heading 40.11 was for tyres "of a kind on vehicles or equipments designed for use off-the-road, subheading 99, "Other". In the decision that the Commissioner (Appeals) has relied upon, the Tribunal concluded that forklifts were not vehicles or equipment designed for use off-the-

roads. It was of the view that the term 'off-the-road' or 'off-the-highway' refers to conditions such as rough terrain, quarries etc., which require specialised and rugged equipment to operate on rough surfaces and/or steep terrain. It concluded therefore that the tyres for such forklift are classifiable under sub-heading 99 of Heading 40.11. It distinguished the earlier decision of the Tribunal in Mahindra & Mahindra Ltd. v. CCE - 1993 (63) E.L.T. 542, which sought tyres to be classifiable under subheading 91.

3. We have heard the Departmental Representative, the respondent being absent and unrepresented despite notice. He reiterates the grounds in the appeal. The appeal relies upon the decision in Mahindra & Mahindra Ltd. v. CCE - 1993 (63) E.L.T. 542. This decision, as we have already noted, has been distinguished by the later decision which the Commissioner (Appeals) follows. The grounds do not even indicate whether the Tribunal's decision that the Commissioner (Appeals) follows has been appealed. She has rightly said that she has gone by that decision. We therefore find no ground for interference.