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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-25-2004

Reported in : (2005)(101)ECC187

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Airtech Pvt. Ltd.

Judgement :

1. The issue involved in this Appeal, filed by the Revenue, is whether dumper placers manufactured by M/s. Airtech Pvt. Ltd. are eligible for exemption under Notification No. 162/86-C.E., dated 1-3-1986 and 8/96-C.E., dated 23-7-1996.

2. Ms. Charul Barnwal, learned Senior Departmental Representative, submitted that Notification No. 8/96 (S. No. 87/10) prescribes duty at the rate of 15% ad valorem in respect of dumpers confirming to the specification mentioned in the Notification; that dumper placers, manufactured by the respondents are nothing but dumpers; that both dumper and dumper placer continued to be vehicle of transport falling under Chapter 87 of the Central Excise Tariff Act; that the dumper placer are used to lift and carry the sludge/wastage filled containers to the dumping grounds; that as per Explanatory Notes of HSN, Heading 87.04 covers in particular refuse collectors whether or not fitted with loading, compressing, damping, etc. devices. Learned Senior Departmental Representative, therefore, contended that as Explanatory Notes specifically places 'refuse collectors' under

Heading 8704, the dumper placer manufactured by the respondents is classifiable under Heading 8704 as dumper only and will attract duty at the rate of 15%; that these will not be eligible for nil rate of duty as provided at S.No. 87.14 of Notification No. 8/96.

3. Countering the arguments, Shri Dharmesh Mishra, learned Advocate, submitted that the dumper placers manufactured by the respondents are not dumpers as they do not confirm to the specifications mentioned in subheading 8704.30 of the Schedule to the Central Excise Tariff Act; that dumper placer manufactured by them is classifiable as motor vehicle for the transport of the goods under sub-heading 8704.90 as 'others'. The dumper placer differs from dumper in definition, qualities, functionally as loading, capacity, design and working style.

He, further, mentioned that according to the Explanatory Notes, dumpers are "sturdily built vehicles with a tipping or bottom opening body, designed for the transport of excavated or other materials"; that these vehicles are generally fitted with off-the-road wheels and can work over soft ground; that the dumper placer manufactured by them are motor vehicles used for transport of the goods as specified in HSN; that the dumper placer carries containers place to place by self-loading the containers filled with goods kept at various places for transportation; that dumper placer has the capacity to self load the containers and unload by elevating devices and winching equipment for transport of goods. He finally submitted that dumper placer manufactured by them is used for transportation of goods on city roads and cannot be used for highway and these are not fitted with wheels for use on highway area, on soft-ground like a dumper.

4. We have considered the submissions of both the sides. Notification No. 8/96 (S. No. 87.10) provides concessional rate of duty for dumper conforming to the following specifications :- Further, S. No. 8714 of the Notification No. 8/96 exempts motor vehicles for the transport of goods (other than those specially designed for the transport of compressed or liquefied gases), falling under Heading No. 87.04. It has not been disputed by the Revenue that the dumper placer in question is used for carrying the containers filled with refuse or wastage and is used in the cities. For being classified as dumper the product has to satisfy the conditions of

net weight exceeding 8 tonnes and it should be for use off the highway and finally the maximum pay load capacity should not be less than 10 tonnes. The Revenue has not brought on record any material to show that any of these specifications mentioned in the Central Excise Tariff itself (Heading 8704.30) and also mentioned in the Notification No.8/97 (S. No. 87.10) are satisfied by the impugned product. In absence of any material to show that the respondents' product satisfies the specifications mentioned in the Tariff/Notification, it cannot be claimed by the Revenue that dumper placer manufactured by them is nothing but dumper. On the other hand, the respondents have brought their technical brochure according to which the net weight of dumper placer is not more than 8 tonnes and its capacity is not more than 4,000 Kgs. In view of these facts, the dumper placer in question is not classifiable as dumper under sub-heading 8704.30. It is a motor vehicle for transport of goods which is eligible for nil rate of duty under S.No. 87.14 of Notification No. 8/96. We, therefore, reject the Appeal filed by the Revenue.

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