

Doaba Coach Builders and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-2005

Reported in : (2005)(191)ELT853TriDel

Judge : A T V.K., P Bajaj

Appellant : Doaba Coach Builders and ors.

Respondent : Cce

Judgement :

1. In these 4 appeals, arising out of common Order-in-Appeal No.163-16/04 dated 26.3.2004, the issue involved is whether body built on motor vehicle chassis is classifiable under heading 87.02 or 87.07 of the Schedule to the Central Excise Tariff Act.

2. Shri Sudhir Malhotra, learned Advocate, submitted that the Appellants are engaged in the fabrication of bodies on chassis for public transport of passenger motor vehicles; that they were discharging Central Excise duty on such bodies under Heading 87.02 of the Tariff in terms of the Board's instructions F. No. B-19/4/86-TRU dated 1.7.1986 wherein it has been clarified that body built on motor vehicle chassis cleared by independent body builders are not liable to duty under Heading 87.07 and that the Excise duty is leviable on independent body builders under Heading 87.02, 87.03, and 87.04. The learned Advocate contended that as held by the Supreme Court in the case of CCE Vadodara v. Dhiren Chemical Industries , the Revenue cannot go against its own Circular and the Circular will be

binding upon the Revenue. He, therefore, contended that no further duty is payable by them classifying the product under Heading 87.07.

3. Countering the arguments Shri Randhir Singh, learned D.R., submitted that the issue regarding classification of the impugned product has been settled by the Supreme Court in the case of CCE v. Ram Body Builders wherein the Supreme Court has agreed with the view of the Punjab & Haryana High Court that the bodies which are built on chassis supplied by the customer would fall under Heading 87.07 of the Central Excise Tariff. The learned D.R. further submitted that the Single Bench of the Punjab & Haryana High Court in the case of Darshan Singh Pavitar Singh and Ors. v. UOI has held that a person who builds or fabricates a body on a chassis does not, from the notions of a common man, manufacture a motor vehicle and the body built/fabricated on the chassis supplied by the customers cannot be termed to be motor vehicles. The Punjab & Haryana High Court by its Order dated 5.6.1987 has held that the bodies so built will be classifiable under Heading 87.07 of the Tariff only; that this position has been affirmed by the Punjab & Haryana High Court as ; that once the Punjab & Haryana High Court has held in June, 1987 that the bodies built on the chassis supplied by the customers are classifiable under Heading 87.07 the Board's instructions to the contrary does not hold good and classification of the product cannot be made on the basis of such an instruction when the period involved is subsequent to the decision of the Punjab & Haryana High Court.

4. We have considered the submissions of both the sides. The issue regarding classification of the body built on chassis supplied by the customer has been settled by the Supreme Court in the case of Ram Body Builders. The body built or fabricated on chassis by independent body builders is classifiable under Heading 87.07 of the Central Excise Tariff. In view of this there is no force in the submissions of the learned Advocate that the bodies fabricated by the Appellants are chargeable to duty under Heading 87.02 of the Tariff. There is no force in the submissions of the learned Advocate that the instructions issued by the Board in 1986 will be applicable for the classification of the impugned product when there is a decision initially by the Punjab & Haryana High Court. We, therefore, find no merit in these appeals and reject the same.

