Commissioner of C. Ex. Vs. Mahindra and Mahindra Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-19-2005

Judge : A Wadhwa, S T S.S.

Appellant : Commissioner of C. Ex.

Respondent : Mahindra and Mahindra Ltd.

Judgement :

1. The dispute in the present appeal of the revenue involves correct classification of motor vehicle for transport of 10 or more persons including driver. Whereas both the authorities below, riginal as well as appellate has accepted the assessee's claim of classification under Heading 87.02, the revenue's contention is that the vehicle's correctly classifiable under Heading 87.03. In support of their above stand, they have referred to the provisions of Maharashtra Motor Vehicle Rules, 1988. For better appreciation of revenue's stand the reproduce below the grounds of review, as noted by Commissioner (Appeals) in his order: The Rule 171 of Maharashtra Motor Vehicle Rules, 88 (hereinafter called as MMVR' 88) lays down the parameters for transport category of vehicles in respect of its seating capacity. This rule specifies that for each passenger a reasonable comfortable seating space of not less than 381 mm is to be provided. The dimension of two seals placed in the rear of vehicles, parallel to its length and claimed for seating capacity of two persons are 28.5" (744 mm) length and 13" width (352mm). This dimension as per Rule 171 of MMVR 88 does not have enough capacity for seating two persons which is claimed by the assessee. Thus, the claim of the assessee that

vehicles are public transport type ten seater could not be sustained.

Further, under the Rule 79(7) of MMVR' 88 the transport vehicles should carry weight @ 68 kgs. weight as standard weight of each passenger including weight of personals belongings. As per Rule 82 and Rule 84 of MMVR '88 a load of 14 kgs. or 30 kgs. per person as personal belongings are permitted to be carried along with the person. Thus a transport vehicle should carry minimum weight of 82 kgs. or 98 kgs. of load per person including his personal belongings. However, the said vehicle can carry 700 kgs. of maximum load. Thus, carrying capacity of weight of vehicle in question is much less than the required weight under MMVR' 88 for public private transport vehicle. Thus, the claim of the assessee that the vehicle is of capacity of 10 persons including driver as public transport vehicle could not sustained by dimension of seating capacity. The same claim also could not be sustained for public private transport vehicle on basis of capacity of load by weight that is required to be carried by such vehicles.

2. As against the above contention of the Revenue. Commissioner (Appeals), has held as under: At relevant time CH. 87.02 covered motor vehicles for the transport of 10 or more persons including driver. No other condition or stipulation was incorporated therein. The plain reading of the CH conveyed that the vehicles should be meant for 10 or more persons including driver, whereas the CH. 87.03 specifically excluded motor vehicles covered under CH 87.02. The description given for CH 87.03 reads as motor cars and other motor vehicles principally designed for transport of persons. No such condition appears under CH. 87.02.

I find much force in the respondent's argument that provision of Motor Vehicle Act as referred in E.A. 2, cannot be made applicable in the matter of classification. In addition to this, I see that there is adequate other evidence which is indisputably in favour of the respondents. In the aforesaid view of the facts and law, I reject the deptt's appeal.

3. After hearing both the sides, duly represented by Shri S.S. Bhagat Ld. SDR and Shri Rohan Shah, Ld. Advocate, we do not find any infirmity in the view taken by the authorities below. The two contending entries are reproduced below.

87.02.00 - Motor Vehicles for the transport of ten or more persons, including the driver --25% 87.03.00 - Motor cars and other motor vehicles principally designed for the transport of persons (other than those of Heading No. 87.02), including station wagons and racing cars -- 60%.

Comparative reading of the two enteries shows that Heading 87.02 covers vehicles for transport of persons. Heading 87.03 covers vehicles other than those covered by 87.02. The revenue has referred to the provisions of Maharashtra Motor Vehicles Act to impress upon that the vehicles are non-transport category. On the other hand, respondents have referred to the classification issued by the Transport Commissioner as also the earlier orders passed by different authorities accepting the assessee's stand.

4. Inasmuch as there is no dispute that the vehicle under consideration is meant for transport of 10 persons or more, the same would get specifically covered by Heading 87.02. Heading 87.03, by its very language applies to vehicles which are not covered by 87.02 and is residual entry in nature. The explanatory Notes to Harmonized System are to the effect that Heading 87.02 covers all motor vehicles designed for the transport of 10 persons or more (including the drivers) without making any distinction about the use of the same as public transport vehicle or other. As such, we fully agree with Commissioner (Appeals) that there is nothing in the Heading 87.02 to suggest the said provisions had to be interpreted in accordance with the provision of Motor Vehicles Act.

5. In view of the foregoing, we do not find any merits in the revenue's appeal and reject the same.