

**Bhavani Loaders and ors. Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/39882](http://sooperkanoon.com/39882)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-03-2005

**Judge :** N T C.N.B., M Ravindran

**Appellant :** Bhavani Loaders and ors.

**Respondent :** Cce

**Judgement :**

1. The appellant-assessee manufacture "Loader cum Dozzer". The process is that the appellant receives tractor, and after suitably modifying it, material handing (loader) arm is mounted on it. The power for propelling the tractor and operating the loader is drawn from the tractor engine. The appellant claimed classification under heading 8705 as special purpose motor vehicle. The revenue authorities took a view that he correct classification would be under 8429 which is for self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, etc., The first appeal challenges that classification and consequential duty demand. The second appeal of Sh.

Mukeshchandra S. Patel, Partner is directed against imposition of penalty on him.

2. The contention of the learned Counsel is that the issue had come up before this Tribunal in the case of M/s Maniar & Company, Ahmedabad in Appeal No. E/2362/2003-NB (B) and this tribunal vide final order No.4332/04-B dated 2.4.2004, held that the classification would be under heading 8705. Learned Counsel submits that the present appeals are to be allowed in the light of that

judgment.

3. The product covered by the decision of the aforesaid order in the case of M/s Maniar & Company is the same as the appellant's product.

The Tribunal took a view in favour of classifying that item under heading 8405 in the light of note 3 to Chapter 87. That note makes it clear that, for the purpose of heading 8701 to 8705 (tractors to special purpose motor vehicles), building of body or fabrication or fitting of tractors on equipment, shall amount to manufacture of motor vehicle. In the present case, what is being done is the mounting of a material handling equipment on tractors. The note brings the product resulting from such mounting within the classification of 8705.

4. In view of what is stated above, the dispute remains covered in favour of the assessee, by the earlier order of this Tribunal. The duty demand and penalty imposed under the present order, which is contrary to the classification order of the order of the Tribunal, are not sustainable. Accordingly, the impugned order is set aside and the appeals are allowed with consequential relief, if any, to the appellants.

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