**Ceat Ltd. Vs. Collector of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/9260

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

**Decided On :** Mar-14-1996

**Reported in** : (1996)(83)ELT515TriDel

**Appellant** : Ceat Ltd.

**Respondent** : Collector of Central Excise

**Judgement** :
1. The issue in both the appeals being identical, they are disposed of by this Order.

2. The appellant manufactures tyres and tubes in its factory at Satpur, Nasik. It manufactured and cleared tyres for fitment on fork-lift trucks. It also manufactured and cleared tubes to be used with such tyres. It sought classification of the tyres and tubes under sub-headings 4011.99 and 4013.99 respectively of the Central Excise Tariff. The Department, however, held the goods to be classifiable under sub-headings 4011.91 and 4013.91 respectively. After issue of notices, the Asstt. Collector, whose orders have been confirmed by Collector (Appeals), confirmed this classification. Hence these appeals.

3. The relevant Headings and sub-headings of the Tariff are reproduced below - 40.11 Pneumatic Tyres, of Rubber.

xxxxxxxx4011.91 - of a kind on vehicles or equipments designed for use off-the-road4013.91 - of a kind used in tyres for vehicles or equipments designed for use off-the-road.

4. It is the contention of the appellant that fork-lift truck is not a vehicle or equipment designed for use off-the-road and that, therefore, the tyres and tubes to be fitted upon it will not be classifiable under Headings 4011.91 and 4013.91 and will fall under the residuary entries.

This claim is sought to be supported by circulars of the Board dated 1-3-1981 and the decision of this Tribunal in Kerala Agro Machinery Corpn. Ltd. v. Collector of Customs, 1992 (62) E.L.T. 733, which it is claimed has been accepted by the Department, no appeal having been filed. The Advocate for the appellant seeks to distinguish the decision of this .Tribunal in Mahindra & Mahindra Ltd. v. Collector of Central Excise, 1993 (63) E.L.T. 452 on the ground that relevant and significant material produced before the Bench has not been taken note of or considered. Among these are stated to be the categorisation by the Indian Tyre Technical Advisory Committee (ITTAC), off-the-road vehicles, the product literature of M/s. Voltas and M/s. Godrej & Boyce, manufacturers of fork-lift trucks and the Board's circular referred to above. The Advocate contends that reference to a larger Bench is also not warranted for the reason that the Bench which decided the Mahindra & Mahindra case has not considered relevant factors. He relies upon the Supreme Court's judgment in C.I.T. v. Brij Lal Lohia and Anr. -1972 (84) ATR 273 and this Tribunal's decision in Punjab National Fertilizer & Chemical v. Collector of Central Excise -1991 (54) E.L.T. 115.

5. The Advocate also relied upon the nomenclature of the Tire & Rim Association, USA relating to definition of terms for off-the-road tyre and the speech of the Finance Minister with regard to the scope of the term 'off-the-road tyres'. Affidavits of the employees of appellant company and of manufacturers of fork-lift tyres also submitted.

6. The Departmental Representative seeks to discount the affidavits as those affirmed by interested persons and, therefore, not impartial witnesses. He contends that the word 'road' occurring in the phrase 'off-the-road' ought to be given a plain and simple meaning of a path-way connecting places suitably finished to enable vehicles to ply upon it. Going by this meaning, the fork-lift truck

is an off-the-road vehicle. The ITTAC and Tire & Rim Association literature is not relevant for Central Excise classification. The Bench in Mahindra & Mahindra decision had considered all relevant factors and the decision is binding. The earlier decision in Kerala Agro Machinery Corpn. Ltd. has to be distinguished as it related to classification under the earlier Tariff. The Finance Minister did not mention fork-lift trucks in his speech. The Board's Circular No. 21/90-CX III, dated 17-4-1990 suggested classification of tyres and tubes meant for dumpers, scrapers, loaders etc., which are designed for use of off-the-road under Heading 4011.91 and 4013.91 respectively.In Kerala Agro Machinery Corporation. Ltd. v. Collector of Customs, the issue before the Bench was classification of tyres of power tiller.

The Bench noted that the power tiller was not a motor vehicle designed for use upon roads; nor was it an off-the-road vehicle for equipment like dumpers, excavators etc. In coming to this conclusion, the Bench took note of the Ministry of Finance Circular No. 24/81, dated 1-3-1981 which accompanied the Budget proposals. The Bench did not directly address itself to the question of what exactly is the scope of the term 'off-the-road tyres'; nor was it concerned with classification of tyres for fork-lift trucks.Mahindra & Mahindra Ltd. v. Collector of Central Excise was classification of tyres for fork-lift trucks. The appellant had sought to file as additional evidence various documents including ITTAC definitions, nomenclature of Tire & Rim Association etc. No separate order was passed on this application. Extracts from some of the documents sought to be filed including the ITTAC manual were reproduced in the Order. It is, however, not possible to conclude on reading the Order that the Bench had weighed these documents as evidence and decided to accept or reject them as such. Since these documents have been produced before this Bench, it would not be bound by the decision in the Mahindra & Mahindra Ltd. which did not have the benefit of going through them.

9. The term 'vehicles or equipment designed for use off-the-road' in the Tariff entries has not been defined in the Tariff itself. The Board's circular dated 17-4-1990 does not help to settle this issue. It only appears to indicate that predominant use of the vehicles on which such tyres and tubes are to be fitted must be taken into account. The circular 24/81, dated 1-3-1981 which accompanied the 1981 Budget proposals, explained classification of off-the-road tyres. It said - "4.3 The

classification of tyres commonly known as OTR tyres (off-the-road tyres) has also been clearly set out in the new description of Tariff Item 16. Off-the-road tyres are generally designed for fitment in motor vehicles like off-the-highway dumpers, and earth moving equipments like graders, bulldozers, scrapers, front-end loaders, draglines, excavators etc. They are normally of the sizes 12.00-24 and above. Some of these tyres are also of the tubeless type. These OTR tyres are essentially equipped with extra heavy tread with rugged bar and block tyre patterns for high traction designed to operate on broken surface strewn with sharp, fresh blasted rocks and boulders as at mining, earth moving and construction sites. Special cut resistant and high abrasion resistant rubber compounds are used in their manufacture to resist damages by cuts and bruises. The revised Tariff Item 16 is worded in such a manner as to group these OTR tyres alongwith the tyres for motor vehicles, attracting a common effective rate of 55% ad valorem (vide S. No. 5 of the Table annexed to the Notification No. 27/81-C.E., dated 1-3-1981). However, aero tyres, tyres for fork-lift trucks, power tillers etc., would be covered under the residuary category "all other tyres" under sub-item III of Item 16 attracting tariff and effective rates of 25% ad valorem." This appears to us to be recognition of the understanding in the industry that certain kinds of vehicles and equipment are specially designed for use off-the-road on rough or steep terrain such as quarries, construction sites, etc., and that tyres and tubes for such vehicles must be so constructed as to be adopted for such use. The McGraw Hill Dictionary of Science and Technology defines off-the-road equipment as tyres and earth-moving equipment designed for off-highway duty in surface mines and quarries. Off-road hauling is defined as hauling off the public highways, and generally on the mining site or excavation site. This definition is reflected in the publication of the Tire & Rim Association. Earth-mover dozer, grader and loader are all classified as off-the-road equipment. The ITTAC manual reproduces these definitions. The manual does not have a specific provision for fork-lift truck tyres and tubes. These documents support the conclusion 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.

10. The Board's Circular of 1981 specifically recognises this distinction by excluding tyres for air-craft, fork-lift truck and power tiller from the category of OTR tyres. The relevant para of the Finance Minister's speech introducing the Budget read - " 109.1 also propose to rationalise the Central Excise Tariff entry and the rate structure relating to tyres with a view to making the legislative intent clearer and minimising the scope for disputes in classification and assessment, particularly in regard to off-the-road tyres used in bulldozers, scrapers and other earth-moving equipment." The specific reference to bulldozers, scrapers and other earth-moving equipment gives recognition to the trade conception of off-the-road equipment as discussed above.

11. The Board's circular has to be considered to be in the nature of contemporaneous exposition reflecting the intention of the Department to cover as to the scope of the term "off-the-road vehicles or equipment". This speech of the Finance Minister is also useful to ascertain the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is the ratio of the Supreme Court decision in K.P. Verghese v. I.T.O. - AIR 1981 SC 1922.

12. We agree with the Departmental Representative that the Board Circular F. No. 99/22/89-CX. 3, dated 6-3-1990 does tend to support the contrary view, since it is held that tyres and tubes meant for power tiller would be classifiable under Headings 4011.91 and 4013.91 respectively. However, decision of this Tribunal in Kerala Agro Machinery Corpn. Ltd. case, to the contrary, has not been challenged by the Department. This decision was also not brought to the notice of the Bench which decided the appeal in the Mahindra & Mahindra case.

13. A consideration of the material placed before us justifies the conclusion that the expression "vehicles and equipment designed for use off-the-' road" which was incorporated in 1981 in the relevant Tariff items and carried over to the new Tariff, does not refer to all vehicles which are designed for use off-the-road or highway, as, commonly understood. Such a simplistic definition between "off-the-road" use and "on-the-road" use is not tenable. We are, therefore, of the view that fork-lift trucks do not fall within category of vehicles or equipment designed for use off-the-

road as specified in sub-headings 4011.91 and 4013.91. The tyres and tubes intended to be fitted on these trucks would, therefore, fall for classification under Headings 4011.99 and 4013.99 respectively.