

Goodyear India Ltd.

Vs

Union of India and Others

Civil Appeal No. 640 of 1979 With SLP (C) No. 6236 of 1979

(CJI A. M. Ahmadi, S. P. Bharucha JJ)

24.02.1997

JUDGMENT

THOMAS, J.

1. The question involved in this appeal is whether tyres of the size 1800 and above manufactured for fitment to heavy-moving vehicles such as dumpers and earth-movers are exigible to excise duty as "tyres for motor vehicles". This appeal by special leave is in challenge of the order passed by the Central Government in exercise of their revisional powers under Section 36(2) of the Central Excises and Salt Act, 1944 (for short "the Act") decided against the appellant holding that such tyres are also "tyres for motor vehicles" as envisaged in Item 16 of the Central Tariff (First Schedule to the Act).

2. The appellant-Company has been manufacturing tyres and tubes of varying sizes which are excisable under Item 16 of the Central Excise Tariff. The said item, during the relevant period, contained the following descriptions :

#Item 16. - Tyres-----	Item No.	Tariff Description
Rate of Duty-----	16.	Tyres - "Tyre" means a pneumatic tyre is the manufacture of which rubber is used and includes the inner tube, the tyre-flap and the outer cover of such a tyre (1). Tyres for motor vehicles 60% ad valorem (2). For cycle (other than motor cycles) : (a) Tyres 60 p. per tyre or 15% ad valorem whichever is higher. (b) Tubes 30 p. per tube or 15% ad valorem whichever is higher. (3). All other tyres 20% ad valorem----
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3. The appellant adopted the stand that tyres of size 1800 and above do not fall within the category of "tyres for motor vehicles" and hence the proper classification of such tyres should be under the residuary sub-item (3) - "all other tyres". Excise duty was collected from the appellant for such tyres treating them as tyres for motor vehicles. The appellant made claims for refund of the excess amount with the Assistant Collector of Central Excise, Faridabad. All such claims were rejected by the Assistant Collector. However, on appeals preferred by the appellant, the Appellant Collector of Central Excise, New Delhi, reversed the orders of the Assistant Collector upholding the contention of the appellant. But the Central Government in exercise of the revisional powers under Section 36(2) of the Act set aside the orders of the Appellate Collector of Central Excise and restored those of the Assistant Collector. Hence, this appeal.

4. There is no dispute that tyres of size 1800 and above are intended to be fitted to heavy-moving vehicles like dumpers etc. If such heavy-moving vehicles are "motor vehicles" the appellant cannot

escape from the liability to pay the higher duty at 60% ad valorem. The learned counsel for the appellant contended that "motor vehicles" are those vehicles which are made to run on the roads and not those which are made for other uses. On the other hand, the learned counsel for the Revenue argued that since dumpers etc. are also used to move on the roads, they too must be regarded as "motor vehicles" for the purpose of exigibility to excise duty.

5. The subject "motor vehicle" is not defined in the Act or in the Rules prescribed thereunder, nor even in Item 16. However, it is defined in Item 34 of the Central Tariff wherein motor vehicles are also subjected to excise duty at different layers. We may point out that both sides agreed that the definition contained in Item 34 can usefully be imported for deciding what is a motor vehicle even as for Item 16. We, therefore, reproduce the said item below :

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#Item 34. - Motor Vehicles-----  
Item No. Tariff Description Rate of Duty-----  
-----34. Motor Vehicles - "Motor Vehicles" means all mechanically propelled  
vehicles adapted for use upon roads and includes a chassis and a trailer, but does not  
include a vehicle running upon fixed rails - (1) Auto-cycles, motor cycles, 10% ad  
valorem scooters, auto-rickshaws and any other three-wheeled motor vehicles (2)  
Motor vehicles of not more 25% ad valorem than 16 HP by Royal Automobile Club  
(RAC) rating (3) Motor cars of more than 16 HP 40% ad valorem by Royal  
Automobile Club (RAC) rating constructed or adapted to carry not more than 9  
persons (3-A) Tractors, including 15% ad valorem agricultural tractors (4) Motor  
vehicles, not otherwise 15% ad valorem specified-----  
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Explanation. - For the purpose of this item, where a motor vehicle is mounted, fitted or fixed with any weightlifting, earth-moving and similar specialised material handling equipment, then such equipment, other than the chassis, shall not be taken into account.

6. The learned counsel for the Revenue contended on the strength of the above "Explanation" that additions fitted to a motor vehicle for equipping it to be used for weightlifting or earth-moving etc. work would not render the basic motor vehicle different from a motor vehicle.

7. A Bench of two Judges of this Court has considered an identical question in *Dunlop India Ltd. v. Union of India* [1994 Supp (2) SCC 335]. The learned Judges approved the interpretation made by the Government of India of the words "motor vehicles" in Item 16 mainly on two premises discerned from the description given in Item 34 of the Tariff. First is that "agricultural tractors" are also included in Item 34 and second is that the Explanation in Item 34 throws much light upon the precise meaning to be attached to "motor vehicles". Regarding the first premise the learned Judges have observed thus : (SCC pp. 336-37, para 3)

".... If it is held that agricultural tractors also are 'adapted for use upon roads' notwithstanding the fact that they are principally meant for being operated and used on agricultural lands, it can equally be said that dumpers, coal-haulers, earth-movers etc. are also 'adapted for use upon roads', though principally they are meant to be operated and used on construction sites."

8. We do not think that inclusion of "agricultural tractors" in the list in Item 34 can have such a decisive impact on understanding the scope of the words "motor vehicle". We bear in mind that sub-

item (3-A) was not in the original list in Item 34. (That sub-item and the Explanation in the item were later added by the Finance Act, 1964.)

9. Similarly, with the addition of the Explanation the position was only clarified that when a motor vehicle is fitted with any weightlifting equipment, such motor vehicle shall be counted de hors those fitments made thereto. That apart, the use of the Explanation arises only in cases where a motor vehicle is fitted with such equipment. Hence the Explanation by itself is not of use to determine what is a motor vehicle as envisaged in Item 16.

10. A close reading of the definition of "motor vehicle" in Item 34 reveals that the striking ingredient thereof is that it should have been "adapted for use upon roads". Merely because the areas on which such heavy-movers traverse might sometimes include roads also is not enough to hold that they were "adapted for use upon roads". Such use of the heavy-mover on the road may only be ancillary or incidental to the main use of it. Emphasis in the definition must be on the words "use upon road" as those words would denote the principal or dominant use and not where it may move incidentally.

11. Shri Joseph Vellapally, learned Senior Counsel cited before us *Maddox v. Storer* [(1962) 1 All ER 831 : (1962) 2 WLR 958], to support the contention that the word "adapted" can be used disjunctively as an alternative to "constructed" in which case it can only have one meaning, viz., if the thing was not originally constructed for the particular use then it has been altered and made fit for that purpose. Lord Parker, C.J. who delivered the judgment in the said case made a clear observation that "when, however, one finds the word 'adapted' used on its own then one must look to the context". In *Bourne v. Norwich Crematorium Ltd.* [(1967) 2 All ER 576 : (1967) 1 WLR 691], Stamp, J. has reminded that "English words derive colour from those which surround them and sentences are not mere collections of words to be taken out of the sentence, defined separately be reference to the dictionary or decided cases".

12. We are, therefore, of the view that tyres of the size 1800 and above would fall within the residuary sub-item (3) in Item 16 of the Central Excise Tariff during the relevant period. Accordingly we set aside the impugned orders of the Central Government passed in revision. However, the question of entitlement to refund shall be decided by the Assistant Collector concerned in accordance with the law laid down by the Constitution Bench of this Court in *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536 : (1996) 9 Scale 457] and the FORMAT prepared pursuant to the directions given therein.