

SUPREME COURT OF INDIA

Mahindra & Mahindra Ltd.

Vs.

Collector of Customs, Bombay

(S Bharucha, U Banerjee and B P Singh JJ.)

15.01.2002

ORDER

1. The question to be considered in this appeal relates to the classification of tyres for fork lift trucks and tubes that are used therein. It is the case of the revenue that such tyres are classifiable under tariff entry 4011.91, which applies to "other tyres of a kind used on vehicles or equipments designed for use off the road", and it is this classification which the Customs, Excise and Gold (Control) Appellate Tribunal has been accepted in the present case. It is assessee's case on the other hand, that tyres for fork lift trucks are classifiable under tariff entry 4011.99, "other". Similarly, the tubes are classifiable, according to the revenue, under tariff entry 4013.91 and, according to the assessee, under tariff entry 4013.99, which tariff entries are substantially similar to the tariff entries that relate to the tyres.

2. It appears that the same issue was raised before the tribunal after the judgment in the present case and the Tribunal took a different view. That was in the case of *Ceat Ltd.*¹. The tribunal noted that documentation which had not been considered by the bench which decided the present case had been placed before it; and, having gone through such documentation, the tribunal came to the conclusion that the tyres of fork lift trucks were correctly classifiable under tariff entry 4011.99 and the tubes therefore under Tariff entry 4013.99.

3. The revenue filed a special leave petition against the decision of the Tribunal in the case of *Ceat Ltd.* special leave was refused on 4th may, 1998.

4. Thereafter, a larger bench of the tribunal considered the judgment in the present case and in *Ceat Ltd.* And came to the conclusion that the decision in *Ceat Ltd.* was correct. This was the case of *Kerala Agro Machinery Corporation Ltd.*².

5. Having regard to the material which has been considered by the Tribunal and its decisions in *Ceat Ltd.* And *Kerala Agro Machinery Corporation Ltd.* and the dismissal of the petition for special leave to appeal in *Ceat Ltd.*, we are of the view that the decision in *Ceat Ltd.* must prevail.

6. Accordingly, the civil appeal is allowed. The order under appeal is set aside. The fort lift truck tyres shall be classified under tariff entry 4011.99 and the tubes therefore under tariff entry 4013.99.

7. No order as to costs.

¹[1996 (83) E.L.T. 515]

²[2000 (117) E.L.T. 553]