

PETITIONER:
GOODYEAR INDIA LTD.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 24/02/1997

BENCH:
SUJATA V. MANOHAR, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:
[With SLP(C) No. 6236/79 and TC(C) No. 30/89]
J U D G M E N T

THOMAS.J.

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 Excise 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 No.16 of the Central Tariff (1st Schedule to the Act).

Appellant company has been manufacturing tyres and tubes of varying sizes which are excisable under Item No.16 of the Central Excise Tariff. The said item, during the relevant period, contains the following descriptions:
Item No.16 - TYRES

Item No.	Tariff Description	Rate of Duty
16.	Tyres	
	"Tyre" means a pneumatic tyre in 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.
20% ad valorem

3. All other tyres

Appellant adopted the stand that tyres of the 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. 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 Appellate Collector of Central Excise, New Delhi, reversed the orders of the Assistant Collector upholding the contention of the appellant. But 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.

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" appellant cannot escape from the liability to pay the higher duty at 60% ad valorem. 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, 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.

The subject "motor vehicle" is not defined in the Act or in the Rules prescribed thereunder, nor even in Item No.16. However, it is defined in Item No.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:

Item No.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 scooters, auto-rickshaws and any other three wheeled motor vehicles	10% ad valorem
(2)	Motor vehicles of not more than 16 HP by Royal Automobile; Club (RAC) rating	25% ad valorem
(3)	Motor cars of more than 16 HP by Royal Automobile Club (RAC)	40% ad valorem

rating constructed or
adapted to carry not
more than 9 persons

(3A) Tractors, including 15% ad valorem
agricultural tractors

(4) Motor vehicles, not 15% ad valorem
otherwise specified

Explanation- For the purposes of this item, where a motor vehicle is mounted, fitted or fixed with any weight lifting, earth moving and similar specialised material handling equipment, then such equipment, other than the chassis, shall not be taken into account.

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 weight lifting or earth moving etc. work would no render the basic motor vehicle different from a motor vehicle.

A Bench of two judges of this Court has considered the identical question in *Dunlop India Ltd. vs. Union of India* [1994 Suppl. (2) SCC 335]. Learned Judges approved the interpretation made by Government of India on the words "motor vehicles" in Item No. 16 mainly on two premises discerned from the description given in Item No. 34 of the Tariff. First is that "agricultural tractors" are also included in Item No. 34 and second is that the Explanation in item No. 34 throws much light upon the precise meaning to be attached to "motor vehicles". Regarding the first premise learned Judges have observed thus:

"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, coalhaulers, earth movers etc. are also adapted for use upon roads', though principally they are meant to be operated and used on construction sites."

We do not think that inclusion of "agricultural tractors" in the list in item No. 34 can have such a decisive impact on understanding the scope of the words "motor vehicles". We bear in mind that sub-item (3A) was not in the original list in item No. 34. (That sub-item and the Explanation in the item were later added by the Finance Act 1964).

Similarly, with the addition of the Explanation the position was only clarified that when a motor vehicle is fitted with any weight-lifting 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 envisaged in item No. 16.

A close reading of the definition "motor vehicle" in Item 34 reveals that the striking ingredient thereof is that it should have been "adapted for the 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.

Sri Joseph Vellapally, learned Senior Counsel cited before us *Maddox vs. Storer* [1962 (1) All England Reports 831] 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 vs. Norwich Crematorium Ltd.* [1967 (2) All E.R. 576] 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 by reference to the dictionary or decided cases."

We are, therefore, of the view that tyres of the size 1800 and above would fall within the residuary sub-item III in item No.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. vs. Union of India* [1996(9) SCALE 457] and the FORMAT prepared pursuant to the directions given therein.