IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 16/06/2017.
DATE OF DECISION : 23/06/2017.

Excise Appeal No. 3069 of 2010

[Arising out of the Order-in-Appeal No. IND-I/140/2010 dated 13/05/2010 passed by The Commissioner (Appeals – I), Central Excise & Customs, Indore.]

M/s J.K. Tyre & Industries Ltd. Appellant

Versus

CCE, Indore Respondent

Appearance

Shri S.C. Kamra, Advocate – for the appellant.

Shri H.C. Saini, Authorized Representative (DR) – for the Respondent.

CORAM :**Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54322/2017 Dated : 23/06/2017

Per. B. Ravichandran :-

The appeal is against order dated 13/05/2010 of Commissioner (Appeals – I), Indore. The appellants are engaged in the manufacture of tyres, tubes and flaps falling under Central Excise Tariff Headings 40.11, 40.12 and 40.13. The dispute in the present case relates to the liability of the appellant to pay Central Excise duty on these items in terms of Section 4A of the Central

Excise Act, 1944 readwith Notification No. 11/2006-CE (NT) dated 29/05/2006. In terms of these provisions, the Revenue held a view that the tyres, tubes and flaps will be covered under the description on Sl. No. 97 of the said notification as "parts, components and assemblies of automobiles". Accordingly, the appellants were held to be liable to discharge Central Excise duty on these items based on MRP, with abatement of 33.5%. The lower authorities confirmed a differential duty demand of Rs. 6,16,742/- for the period 01/06/2006 to 31/07/2006.

2. We have heard both the sides and perused the appeal records.

3. We note that the Original Authority vide his order dated 10/09/2009 has given a very cryptic finding to the effect that in terms of decision of Hon'ble Supreme Court in the case of **G.S. Auto International Ltd. vs. CCE, Chandigarh** reported in **2003 (152) E.L.T. 3 (S.C.)**, the classification of goods is to be determined by commercial identity test and not by functional test. Accordingly, he held that tyres, tubes and flaps have "the identity with automobiles and prove themselves to be part of automobile". We have perused the said decision of the Apex court. The said decision dealt with various types of automobile parts having fastening function. The Apex court examined the general use parts and the scope of classification of these items. It is categorically held that for classification, the test of commercial identity and not the functional test should be applied. It needs to

be ascertained as to how the goods, in question, are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise. Similarly, in **CCE vs. Wockhardt Life Sciences Ltd.** reported in **2012 (277) E.L.T. 299 (S.C.)**, the Hon'ble Supreme Court reported that whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of tenable, material or evidence to determine how such article is understood in "common parlance" or in "commercial world" or in "trade circle" or "in its popular sense meaning". Similar views have been expressed by the Apex court in **CCE, New Delhi vs. Connaught Plaza Restaurant (P) Ltd.** reported in **2012 (286) E.L.T. 321 (S.C.)** and **Commissioner of Trade Tax, U.P. vs. Kartos International** reported in **2011 (286) E.L.T. 289 (S.C.)** dealing with a sales tax matter the Hon'ble Supreme Court in **United Copiex (India) Pvt. Ltd. vs. Commissioner of Sales Tax** reported in **1997 (94) E.L.T. 28 (S.C.)** held that rubber flaps cannot be classified as accessories of motor vehicles. The court also refer to Central Excise Tariff Act and mentioned that flaps are taxable under Tariff Heading 4012.

4. It is also brought to our notice that in the case of appellant's unit in Mysore, similar dispute arose. The Commissioner (Appeals) vide his order No. 228/2010 dated 22/10/2010, following the earlier appellate order dated 14/05/2010, which was accepted by the Department, held that tyres, tubes and flaps manufactured by the appellant's unit at

Mysore is not to be assessed under Section 4A as parts of automobile. It is to be noted here that tyres and tubes are not only used for automobiles. They are used in animal drawn vehicles, aircrafts and various other machineries. As such even on this ground, it is not tenable to hold the tyres and tubes are to be considered as parts and components of automobiles.

5. Considering the above discussion, we find no merit in the impugned order. Accordingly, we set aside the same. The appeal is allowed.

(Order pronounced in the open court on 23/06/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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