

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 1161 of 2011**

[Arising out of Order-in-Original No. 09/DM/Adjn./2010-11 dated 31.03.2011  
passed by the Commissioner of Central Excise, Faridabad, Haryana]

**M/s JCB India Ltd.**

23/7, Mathura Road, Ballabgarh,  
Faridabad, Haryana-121003

**.....Appellant**

*VERSUS*

**Commissioner of Central Goods & Service  
Tax, Faridabad**

New CGO Complex, NH-IV, Faridabad, Haryana-  
121001

**.....Respondent**

**WITH**

**Excise Appeal No. 2968 of 2011**

[Arising out of Order-in-Original No.18/DM/Adjn./2011-12 dated 26.09.2011  
passed by the Commissioner of Central Excise, Faridabad, Haryana]

**M/s JCB India Ltd.**

23/7, Mathura Road, Ballabgarh,  
Faridabad, Haryana-121003

**.....Appellant**

*VERSUS*

**Commissioner of Central Goods & Service  
Tax, Faridabad**

New CGO Complex, NH-IV, Faridabad, Haryana-  
121001

**.....Respondent**

**APPEARANCE:**

Ms. Priyanka Rathi and Shri Ashwini Chandrasekaran, Advocates  
for the Appellant

Shri Yashpal Singh, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO.60063-60064/2025**

DATE OF HEARING: 09.01.2025

DATE OF DECISION: 09.01.2025

**P. ANJANI KUMAR:**

The appellants, M/s JCB India Ltd., are manufacturers of JCBs (construction machines) like Hydraulic Excavator Loader (Backhoe loaders), Hydraulic Loader (wheel loading shovel/ shovel loaders) and Road Rollers (compactors); the appellants are also engaged in packing/ re-packing, labeling/ re-labeling etc. of parts thereof in their Spare Parts Division (called SPD) located at Pune, Ballabgarh, Kolkata and Chennai. On the basis of investigation and searches conducted, Revenue entertained an opinion that the activity of packing/ re-packing, labeling/ re-labeling of machine parts undertaken by the appellants amounts to manufacture under Section 2(f)(iii) of Central Excise Act read with Sl. No.100 of Third Schedule w.e.f. 29.05.2006. Two Show Cause Notices dated 23.12.2009 and 16.08.2010 were issued to the appellants, covering the period June 2006 to July 2009 and August 2009 to May 2010, demanding Central Excise Duty of Rs.10,74,99,807/- and Rs.7,43,67,037/-, along with interest and penalties. The proposals in the said Show Cause Notices have been confirmed vide Orders-in-Original dated 31.03.2011 and 26.09.2011. Hence, these appeals.

2. Ms. Priyanak Rathi, learned Counsel for the appellants, submits that the issue is no longer *res integra* as the Larger Bench of the Tribunal vide Final Orders No.2-4/2023; 16-17/2023; 21-25/2023 dated June 6, 2023 have decided the issue in favour of the appellants that the JCBs cannot be called automobiles which are basically intended for transport of persons; the classification of "Automobiles" and "Earthmoving Machines" is under different Chapters of Central Excise Tariff; the packing/ re-packing, labeling/ re-labeling of parts of earthmoving machines amounted to manufacture with effect from 29.04.2010 and that Sl. No.100A inserted with effect from 29.04.2010 in the Third Schedule will not have any retrospective operation prior to 29.04.2010. Learned Counsel submits also that adjudicating authorities at Kolkata and Pune have decided the issue in favour of the appellants in their own case. This Bench has decided the issue in favour of the appellants in the case of Donaldson India Filter Systems Pvt. Ltd.- 2024-VIL-763-CESTAT-CHD-CE. She submits, therefore, that the issue is squarely decided in favour of the appellants.

3. Shri Yashpal Singh, learned Authorized Representative for the Department reiterates the findings of the OIOs.

4. Heard both sides and perused the records of the case. We find that Larger Bench of the Tribunal in the case cited above answered the reference made to them as follows:

(i) As the word 'automobile' has not been defined in the Central Excise Act, the Central Excise Tariff Act or the Notifications issued by the Central Government, it would be permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance and it will not be appropriate to refer to the definition of the word 'automobile' occurring in the Air (Prevention and Control of Pollution) Act, 1981 or the Motor Vehicles Act, 1988; and (i)

(ii) The amendment made in the Third Schedule to the Central Excise Act by Finance Act, 2011 w.e.f. 29.04.2010 by adding serial no. 100A to the Third Schedule is prospective in nature.

5. This Bench in the case of Donaldsons India Filter Systems Pvt. Ltd. (supra) finds as follows:

9. Heard both sides and perused the records of the case. We find that the amendment carried out w.e.f. 29.04.2010 makes it abundantly clear that a legislature did not intend to tax the parts, components and assemblies of earthmoving equipment etc. under the Head "Automobiles"; therefore, to this extent, the demand for the period prior to 29.04.2010 cannot be sustained. Moreover, Larger Bench has deliberated on the issue whether the earthmoving equipment etc. can be considered as automobiles in the case of Action Construction Equipment Ltd. (supra); Larger Bench has considered various decisions in this regard and the Circular issued by the Board and concluded that:

84. The Motor Vehicles Act 1988 uses the term "motor vehicle" and does not refer to "automobile". It deals with the requirement of vehicles to be registered under the Motor Vehicles Act. The definition of "motor vehicles" in the Motor Vehicles Act cannot, therefore, be applied to ascertain the meaning of "automobiles" for the purpose of levy of excise duty on parts, components and assemblies of "automobiles".

(emphasis supplied)

85. The objective of The Air (Prevention and Control of Pollution) Act, 1981 the Air Act is to prevent, control

and abate air pollution with a view to achieve the objective of the Air Act. The definition of "automobiles" appearing in section 2 (e) of the Air Act is very wide to cover all vehicles powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel as the objective of the Air Act is to prevent, control and abate air pollution. Thus, the definition of automobiles in the said Air Act cannot be borrowed for the purpose of finding the meaning of "automobiles" in the Third Schedule to the Tariff Act.

86. Learned special counsel for the department also contended that parts of "automobiles" as used in Central Excise Tariff or Third Schedule do not merely cover the parts of car but would also cover parts of a whole gamut of machines built on a motor vehicle or automobiles chassis with some exceptions. This is not an issue which has been referred to the Larger Bench and so it will not be appropriate to examine this issue.

87. To summarize, the Mumbai Bench of the Tribunal, in its order dated 08.11.2013, placed emphasis on following factors to arrive at a conclusion that earth moving machines are automobiles:

(i) The vehicles involved are self-propelled, work with internal combustion engine using fuel, have four wheels and are rubber tyred and thus, have all the characteristic of a motor vehicle;

(ii) The earth moving equipment are motor vehicles since they require registration under the Motor Vehicles Act, 1988; and

(iii) The earth moving equipment are automobiles and are required to meet the air pollution norms 57 under the Air (Prevention and Control of Pollution) Act, 1981.

88. The Chandigarh Bench of the Tribunal, while referring the matter to Larger Bench by order dated 01.08.2016, expressed disagreement with the views expressed by the Mumbai Bench of the Tribunal for the following reasons:

(i) As the expression "automobile" has not been defined in the Central Excise Act, it would not be permissible to adopt the definition of the word "automobile" in other enactments and, therefore, it would not be possible to

agree with the views expressed by the Mumbai Bench of the Tribunal

(ii) Various dictionaries have defined the expression "automobile" to mean a car or goods carrier, and

(iii) The amendment made in the Third Schedule w.e.f. 29.04.2010 and the clarification given by the Ministry of Finance on 28.02.2011 make it clear that duty would be payable on parts and components of earth moving machines only w.e.f. 29.04.2010.

89. What follows from the aforesaid discussion is that the earth moving machines involved in the present appeals are not "automobiles". It would not be appropriate to borrow the meaning of the word "automobile" or motor vehicle under the Motor Vehicles Act, 1988 or the Air (Prevention and Control of Pollution) Act, 1981 merely because the word "automobile" has not been defined in the Central Excise Act, Central Excise Tariff Act or the Notifications issued by the Central Government. In such a situation, it would be appropriate to refer to the dictionaries to find out a general sense in which the word "automobile" is understood in common parlance. Automobiles, therefore, are conveyances for transportation of passengers and goods on road as also been understood by the department in the various Circulars issued from time to time. Serial no. 100A inserted in the Third Schedule w.e.f. 29.04.2010 is prospective and likewise serial no. 109 inserted in notification no. 49/2008 by notification no. 19/2010 dated 29.04.2010 issued under section 4A of the Central Excise Act, is prospective in nature-----

6. We find also that Commissioner, Kolkata vide his Order dated March 21, 2011 in respect of the appellant's unit at Kolkata has held as follows:

"I find that Earth Moving Equipment like Excavator, Loader. Road Roller have been specifically classifiable under Chapter 84 whereas automobiles attract classification under Chapter 87. When specific entry for Earth Moving Equipment is available in Tariff there appears to be no scope for stretching the coverage of

classification of automobile so as to include Barth Moving equipment within its ambit, I therefore decline to accept various grounds taken in the Show Cause Notice seeking classification of Earth Moving Equipment as automobiles. Further CBEC Circular F. No. 167/38/2008-CI dated 16.12.2008 also clarifies that the word automobiles mentioned under SL. No. 100 of THIRD SCHEDULE of Central Excise Act, covering parts, components and assemblies for which activity of packaging is deemed to be manufacture, are meant for conveyance for transport of passenger and goods on roads such as motor car, bus, jeep, truck, van, scooters etc. This clearly indicates that hydraulic excavator, loaders etc. are not treated as automobiles for the purpose of S. No. 100 of THIRD SCHEDULE amended vide Notification /2/2006-CE (NT) dated 29.05.2006.

"I further find that in Budget, 2011 proposal has been made to provide specific coverage of Earth Moving Equipment and Machinery falling under Chapter Heading 84.26 and 84.29 as a separate entry inserted in Sl.No. 100 A in THIRD SCHEDULE of Central Excise Act with a retrospective effect from 29.04.2010. It clearly shows that packing, repacking, MRP fixing etc. done with respect to parts and components of Earth Moving Equipment shall attract duty only with effect from 29.4.2010 in terms of Section 2(D(iii)) of Central Excise Act, 1944. Prior to that date such activities of parts/ components relating to Earth Moving Equipment were not dutiable.

"I therefore conclude that the activity of the noticee during impugned period of packing /repacking of parts/components of Earth Moving Machineries with fixing of MRP was outside the scope of Section 2(f) as manufacturing activities and excise duty was not chargeable from them during the impugned period.

7. We further find that Commissioner, Pune vide his Order dated 13.07.2012 observed as follows:

12. I find that the facts of the subject case are squarely covered by the ratio of judgment / decision rendered by the Hon'ble Supreme Court / Tribunal in the case of Star India Pvt. Ltd. (supra) and Premier Industries Ltd. (supra), as referred to above. I find that in this case.

the activities of packing and repacking of parts, components and assemblies of earth moving machinery falling under Chapter Heading 8429. manufactured by the assessee, have been made liable to Central Excise duty retrospectively, with effect from 29-04-2010, in view of the retrospective amendment made in the Third Schedule to the Central Excise Act, 1944, by inserting Entry 100A in the said Schedule vide Section 73 read with Twelfth Schedule to the Finance Act,

2011. The Finance Act. 2011, got assent of the Hon'ble President of India, on 08-04-2011 and hence the said retrospective amendment came into force only on 08-4-2011."

8. In view of the above, the impugned orders cannot be sustained and are liable to be set aside. We do so. Accordingly, both the appeals are allowed.

(Operative part of the order pronounced in the open court)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**