CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 1129 Of 2011

[Arising out of Order-in-Original No.05/CE/CHD-II/2011 dated 07.02.2011 passed by the Commissioner of Central Excise, Chandigarh-II]

M/s Mohindra Cranks (P) Limited .... **Appellant**
Old Kalka Road, Dera Bassi, Mohali,
Punjab-140507

VERSUS

The Commissioner of Central Excise, Goods & Service Tax, Chandigarh-I .... **Respondent**
Central Revenue Building, Plot No.19
Sector-17C, Chandigarh-160017

<u>APPEARANCE:</u>
Shri Naveen Bindal and Shri Aman Bansal, Advocates for the Appellant
Shri Aniram Meena and Shri Narinder Singh, Authorised Representatives for the Respondent

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.61415/2025

Date of Hearing:04.08.2025

Date of Decision:24.09.2025

<u>P. ANJANI KUMAR:</u>

The appellants, M/s Mohindra Cranks, are engaged in the business of processing of forgings received from manufacturers of tractors, trucks and engineering products; the appellants were undertaking job-work for TAFE, Swaraj Mazda, ITL and IFL. M/s ITL and M/s IFL sent rough forgings to the appellant on which the appellants perform certain processes and returned the same to M/s ITL/ IFL who in turn further process the same in the manufacture of crank shaft for tractors. Revenue was of the opinion that the incomplete shaft processed by the appellants has the essential characteristic of a crank shaft and thus liable to excise duty; as the principals M/s ITL/ IFL did not file the necessary declaration under Notification No.214/86, benefit of job-work is also not applicable to the appellants/ principals. A show cause notice dated 24.02.2010 was issued to the appellants demanding central excise duty of Rs.1,13,81,827/-, for the period, 2004-2009, along with interest and penalty. The proceedings culminated with the issue of the impugned order dated 07.02.2011 wherein the amount of duty demanded was confirmed with equal penalty.

2. Shri Naveen Bindal, learned Counsel for the appellants submits that the Commissioner (Appeals) has passed an order in favour of the Revenue vide OIA dated 04.05.2012, for the period 01.10.2009 to 31.08.2010; learned Commissioner (Appeals) held that the incomplete crank shaft is exempt by Entry No.2 of Notification No.06/2006 dated 01.03.2006; the use of the incomplete crank shaft is within the factory of production as per the meaning assigned to it by the Hon'ble Supreme Court in the cases of M/s Lohia Sheet Products – 2008 (224) ELT 349 (SC) which was followed in 2011 (7) TMI 270 (Tri. Del.). He further submits that the incomplete shaft is not marketable unless it is subjected to flywheel drilling, tapping, dowel pin fitting, washing and other processes as held in Alumeco India Extrusion Ltd. – 2010 (249) ELT 577 (Tri. Bang.). He submits that the respondent/ department failed to prove the marketability of the incomplete product and therefore, the demand cannot be sustained. He would further submit that the appellants informed the Revenue vide letter dated 01.04.2008 that they are receiving goods from the principal manufacturer for processing on payment of service tax. The intention to

pay service tax proves that there was no intent to evade payment of duty as held in HYVA India P Ltd. – (2016) 68 TAXMAN.COM 383 (BANG-CESTAT).

3. Learned Authorised Representative, for the Revenue, submits that it was noticed during the course of an audit that the appellants were receiving rough forgings of crank shafts of Tractor Engine falling under CETH 7325 from M/s ITL and M/s IFI; after carrying out the process of facing, turning, drilling, induction hardening, grinding, key way milling, balancing etc. on the forgings the Appellants are sending the fully manufactured goods to M/s ITL and M/s IFI.; the only process of Fly-Wheel mounting holes is required to be done by ITL/IFI; the Appellants claim that that processing of crank shafts, done by them, does not amount to manufacture, is not correct; in terms of Rule 2(a) of CETA Interpretation Rules, the Forged Crank Shafts received by the appellant for processing fall under chapter CETH 7325, whereas, after completion of processes like facing centering, turning, drilling, induction hardening, grinding, key way milling, balancing etc, the machined Crank Shafts take the essential character of Crank Shaft and are classified under CETH 848310, even though some minor processes such as drilling, taping dowel pin fitted flange, washing and key fitting, were required to be done before fitting in the Tractor engines; the appellants described their final products as Crank Shaft; the appellants were removing the same after discharging appropriate central excise duty, prior to 19.09.2007.

4. Learned Authorised Representative submits that Shri Rajesh Kumar Rana, General Manager and Authorised Signatory of the Appellant in his

statement on 25.09.2009, stated that the appellant is engaged in the manufacturing of crank shaft since 1986; they are manufacturing crank shaft for M/s Tafe Motors & Tractors Ltd., Alwar (TAFE), M/s Swaraj Engine Ltd., Mohali (Swaraj), M/s International Tractor Hoshiarpur (ITL), M/s Ind-Farm Industries Ltd., Baddi (IFI) on job work basis; they are also manufacturing and selling crank shafts for tractor and trucks in replacement market on payment of central excise duty for which they are availing Cenvat credit on inputs, capital goods and input services; the statement has been corroborated by Shri M.S. Chera, Managing Director, of the Appellant. He relies on Bharat Enterprises (2002 (139) ELT 321 (CEGAT); Raunaq International Ltd 2004 (163) ELT 321 (Tri. Kolkata) and Metal Forgings Pvt Ltd 1987 (32) ELT 15 (Del.) upheld in 1998 (102) ELT A224 (S.C)

5. Learned Authorised Representative submits further that the Appellant's claim, of exemption under Notification No 6/2006-CE dated 01.03.2006, is not acceptable; from the words 'used in the factory of manufacture' used in the Notification No. 6/2006, it is evident that only those parts are exempt from duty which are manufactured and captively consumed in the manufacture of Tractors of heating 87.01. He submits that reliance on Lohia Sheet Products Vs. Commissioner of Customs, New Delhi [2008 (224) ELT 349 (SC) is incorrect as the Hon'ble supreme Court was dealing with Notification No. 8/96 dated 23.07.1996, which had no explanation as in the case of Notification No. 6/2006; moreover, the facts are also different; in the said case, the appellants are the importer of Copper/Brass Waste & Scrap and using the same in their own factory of manufacture, whereas, in the instant case, the appellants are clearing the

manufactured goods to another manufacturer who is using it as raw material for their manufacturing; it is a settled law that exemption notification has to be strictly construed as held in the following cases

- Rukmani Pakkwell Traders 2004 (165) ELT 481 (SC)
- Belapur Sugar & Allied Indus. Ltd 1999 (108) ELT 9 (SC)
- Hari Chand Shri Gopal 2010 (260) ELT 3 (SC)
- Kultar Exports 2020 (36) GSTL 208 (Del.)
- Arcelor Mittal Nippon Steel India Ltd 2022 (379) ELT 418 (SC
- Dilip Kumar & Company 2018 (361) ELT 577 (SC)

6. Learned Authorised Representative submits also that the appellant's contention, that tractors cannot be considered as exempted products, being subjected to Cess in addition to Education Cess and Secondary and Higher Education Cess, as 3% of the excise duty, is incorrect; appellants further contention that parts processed by the Appellant had been used in the manufacture of excisable non-exempted goods, and as such, as per Notification No. 214/86, the job worker is not liable to pay duty, is fallacious. He submits that as per Rule 2 (d) of the Cenvat Credit Rules, 2004, *"exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to 'Nil' rate of duty.* He submits that even though Cess is levied on Tractors, the same cannot be considered as dutiable; Tractors are exempt from payment of whole of Central Excise duty by virtue of Notification No. 23/2004-CE dated 09.07.2004. He submits that the appellant has manufactured the Crank Shafts falling under Chapter heading 8483. 10 on job work basis and cleared to ITL and IFI without payment of Central Excise duty; as the raw material suppliers i.e. ITL and

IFI had not filed any Declaration in terms of Notification no. 214/86-CE dated 01.01.1986, the appellant is liable to discharge duty on the goods manufactured in their factory at the time of removal of goods.

7. Learned Authorised Representative submits, on the admissibility of Cenvat credit on the goods received for processing, that the inputs (forged crank shafts) were received by the appellant, from M/s ITL & IFI, on job-work challan, for doing job-work only; the question of payment of duty on these inputs by M/s ITL & ITF does not arise and consequently, the question of taking of credit by the appellant also do not arise; the appellant has not produced any evidence showing that they have maintained proper records as per Rule 9(5) of Cenvat Credit Rules, 2004; the Appellant failed to discharge the onus regarding the admissibility of Cenvat Credit.

8. As regards, the invocation of extended period and imposition of penalties, Learned Authorised Representative submits that the appellant had neither disclosed the facts in their periodical ER-1 returns nor brought these facts to the notice of the Department; these facts came to the notice of the department only during the course of Audit; the appellants are manufacturing machined crank shafts for M/s TAFE and M/s Swaraj also besides for M/s ITL and M/s IFL; In respect of job-work undertaken for TAFE and Swaraj, they are availing exemption from whole of duty under notification 214/86-CE dated 01.03.86 and the suppliers have filed the requisite declarations; the question of availing emption arises only if the goods are dutiable; it appears that the Appellant is well aware that said machined crank shafts are dutiable and processes undertaken by the

appellant for the manufacture of said crank shafts amount to manufacture; by not paying duty on the said crank shaft when supplied to M/s ITL, and M/s IFI, appellant has suppressed the material facts from the knowledge of the department with clear intention evade duty; moreover, as the appellants were paying duty up to 19.9.2007 and thereafter, the appellant stopped paying such duty without any intimation to the department with an intent to evade payment of duty; also, they cannot claim that it is an issue of interpretation; the Appellant have rendered themselves liable to penal action under Section 11AC of the Act read with Rule 25 of the Rules.

9. Heard both sides and perused the records of the case. The precise questions that require consideration in the instant are as to whether the crank shafts processed/ manufactured by the appellants are exigible to excise duty; as to whether they are eligible for exemption contained under job-work notification and whether in the facts and circumstances of the case, extended period can be invoked. Coming to the first issue, the appellant claims that the incomplete shaft is not marketable unless it is subjected to flywheel drilling, tapping, dowel pin fitting, washing and other processes as held in Alumeco India Extrusion Ltd. (supra). On the other hand, Revenue contends that the appellants are manufacturing complete crank shafts and that the appellants were receiving rough forgings of crank shafts of Tractor Engine falling under CETH 7325 from M/s ITL and M/s IFI; after carrying out the process of facing, turning, drilling, induction hardening, grinding, key way milling, balancing etc. on the forgings the Appellants are sending the fully manufactured goods to M/s ITL and M/s IFI.; the only process of Fly-Wheel mounting holes is required to be done by ITL/IFI. Revenue submits in support of their claim that the appellants

were paying central excise duty on the job-work undertaken by them till 1997; Shri Rajesh Kumar Rana, General Manager of the appellants stated in his statement dated 25.09.2009 that in case of supplies to IFI, they cleared the crank shafts on job-work on payment of central excise duty up to 19.09.2007; he also stated that they are also manufacturing and selling crank shafts for tractors and trucks in replacement market.

10. On going through the records of the case and rival submissions, we find that the appellants as well as the revenue were taking different stand in respect of different manufacturers in different periods. The appellants were paying central excise duty on the crank shafts manufactured or job-worked by them till 1997; in case of IFI, out of the disputed supplies to TFL and IFI, they were paying duty on clearances up to 19.09.2007; Shri Rajesh Kumar Rana, General Manager of the appellants stated that they are also clearing some of the shafts in the replacement market. These facts are not denied by the appellant or the learned Counsel for the appellants. Therefore, there are reasons for the Revenue to believe that the process undertaken by the appellants on the crank shafts is rendering them marketable.

11. However, we find that in respect of the Show cause Notice issued for the period 01.10.2009 to 31.08.2010 i.e. the subsequent period to the impugned period of 2004-2009, Commissioner (Appeals) has decided the issue in favour of the appellants. Revenue has not filed any appeal against the order and thus, the issue attained finality. Though it may be argued that the principles of Res Judicata and Estoppel, are not applicable to the taxation Law, we find that it's not open for the Revenue to accept the

decision in favour of the very same appellants for the subsequent period and agitate the same for the previous period. A decision or a method of assessment cannot be changed for the previous period as it would be ridiculous to say that the Revenue was wiser for the past period and not so for the later period. We find that its not open for the revenue to change the assessment for the previous period more so when there were no changes in the provisions of Law or the facts and circumstances. It is not the case of the Revenue that there were certain changes in the provisions of Law or there were any judgements of the Tribunal or Courts which necessitated acceptance of the Commissioner (Appeals) order for the subsequent period. We find that revenue has not come forth with any such reasons in accepting the decision for the subsequent period, except stating that the order of the Commissioner (Appeals) was accepted on monetary policy. We find that Delhi High Court in the case of ***J.K. Synthetics Ltd 1981 (8) ELT 328*** (Del) laid down the principles as to when the Department would depart from its earlier views in relation to Central Excise with reference to tariff entries and process of manufacture. The principles enunciated are as follows.

> (i) If the facts are different or further and fresh facts are brought on record; or
> (ii) if the process of manufacture has changed (this was a central excise case); or
> (iii) if the relevant entries in the Tariff have undergone a modification; or
> (iv) if, subsequent to the earlier decision, there has been a pronouncement of a High Court or the Supreme which necessitates reconsideration of the issue. Further, fact that the earlier adjudication order was not reviewed by the

> department could not per se preclude them from taking contrary decision based on independent evidence and on its own merit as per legal development

Therefore, it has to be concluded that it is not open for the Revenue to change the practice of assessment for the previous period, after accepting the very same assesses argument for the subsequent period.

12. We find that the learned Counsel for the appellants submits that even if the crank shafts manufactured by them are dutiable, benefit of Notification No.214/86 may be granted to them as they have received the crank shafts for job-work, from the principal manufacturers, under the cover of job-work challan. Absence of a declaration/ undertaking by the principal manufacturer is a mere procedural infraction. We find that the appellants have been following the Notification No.214/86 in respect of other manufacturers like TAFE. They are well aware of the procedure to be adopted under Notification No.214/86 in respect of principal manufacturers. We find that giving the declaration and/ or the undertaking by the principal manufacturer is not an empty formality. It binds the principal manufacturer to pay the duties applicable, if any. We find that Larger Bench of the Tribunal in the case of Thermax Babcock & Wilcox Ltd. – 2018 (364) ELT 945 (Tri. LB) held that it is settled position of law that the job-worker as the manufacturer of goods, unless otherwise exempted, is liable to pay duty; in the present preference the undisputed fact being that the principal manufacturer did not pay duty and did not follow the procedure and conditions of Notification No.214/86 (supra), the job-worker as a manufacturer is liable to duty on the job-worked goods. In view of the same, we find that the conditions under job-work Notification

having not been fulfilled, it is not open for the manufacturer to take a shelter under the same at a later date.

13. Coming to the issue of limitation, we find that Revenue is very much aware of the fact that the appellants were paying central excise duty up to 1997. The appellants have informed the Department about the change in the stand taken by them and payment of applicable service tax on the job-work undertaken by them. Under the circumstances, the appellants cannot be accused of indulging in suppression, mis-statement, mis-declaration, collusion etc. with intent to evade payment of duty. Moreover, it is on record that the issue involves the interpretation of the provisions of taxation and was not free of doubt. One Commissioner (Appeals) decided the issue in favour of the appellants and the other Commissioner has decided the same against the appellants and therefore, extended period cannot be invoked. Accordingly, penalties are also not imposable.

13. In view of the above, the appeal is allowed for the aforesaid reasons.

(Order pronounced in the open Court on 24/09/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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