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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/232 /2006 - EX[DB] Date 06/11/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S JCB INDIA LTD.
23/7, MATHURA ROAD, BALLABGARH, HARYANA
M/S JCB INDIA LTD. Appellant
Vs
C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 870/2009 EX[DB]** dated 04-11-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult SH. RAVINDER NARAIN, JEEVAN VIHAR 1ST FLOOR, (REAR ENTRANCE) 3, SANSAD MARG, N. DELHI-1
3 C.D.R
4 ~~JCDR~~.
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 232 of 2006 (Ex.Br.)

[Arising out of Order-in-Appeal No. No. 86/CE/Appl/DLH-IV/2005 dated 14.10.09 passed by Commissioner of Central Excise (Appeals), Delhi I]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. JCB India Ltd. — Appellants

Vs.

Commissioner of Central Excise
New Delhi. — Respondent

Appearance: Mr. Ravinder Narain, Advocate for the Appellants
Mr. Sansar Chand, SDR for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

Date of Hearing/decision : 28.10.2009

FINAL **ORDER NO. 878/09-EX**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) No. 86/CE/Appl/DLH-IV/2005 dated 14.10.09.

2. Heard both sides.

3. The appellant, a manufacturer of excavator loaders and earthmoving machinery have been availing the Cenvat credit of the duty paid on inputs and capital goods. They were selling Escorts JCB 3D hydraulic excavator loader at a particular price and paying the duty. It is the case of the appellants that in view of the market conditions, they wanted to reduce the price of the excavator, but as a market strategy, they supplied along with excavator, kits which are in the nature of spares parts. In other words, by maintaining the over all price, they supplied additional spares to the buyers. The Department has taken the stand that the kits supplied along with the excavator are collection of inputs on which Cenvat credit has been taken and therefore, the appellants should have paid the duty on the inputs prior to 1.3.2003 and reversed the amount equal to the Cenvat credit taken on inputs for the period from 1.3.2003. Accordingly, original authority confirmed the demand of Rs. 69,02,148/- and also imposed equal amount of penalty under section 11AC. Commissioner (Appeals) upheld the order of the original authority.

4. Learned Advocate submits that inasmuch as the duty has been paid on composite value of the excavator loaders along with spares, the question of demanding separately duty on the spares does not arise. If duty on spares is to be demanded separately, then the value of excavator loaders should

have been proportionately reduced and only lesser duty should have been demanded on such excavator loader and that they are not beneficiary in any way. There is no evasion of duty whatsoever and if at all they have paid extra duty.

5. Learned SDR submits that spare parts / extra spare parts which are supplied as kits free of cost and the spare parts consists of inputs on which the appellants have taken Cenvat credit. Since the inputs have not been used in the manufacture of final products and that they are cleared as such, they ought to have paid the applicable duty/ reversed the credit availed by them while clearing the kits as such.

6. We have carefully considered the submissions from both sides. Merely because the spare parts / extra spare parts in the name of kits have been supplied along with excavator loaders, they do not become part and parcel of the excavator loaders. The Department's contention that the said spares have not been used in the manufacture of final products deserves to be accepted. At the same time, the submission of the learned Advocate that after charging duty on the composite price at rate applicable to the excavator loader, demanding separately duty on the value of the spares is double taxation is valid. In whatever manner the invoices are prepared, the fact remains that from 1.3.2002, the appellants have supplied spares along with excavator and the overall price remained the same. To say that spares are supplied free of cost is a misnomer, as the spares are not available for free distribution for any person who does not buy the Hydraulic excavator. From the date when the spare parts are supplied, there is a reduction in the

price of the excavator loaders. Therefore, we are of the considered opinion that the excavator loader along with standard fitments and accessories would be assessed separately and the duty liability or the Cenvat credit on the kits should be determined separately. In other words, the total value requires to be apportioned between the value of excavator and value of spare parts /extra spare parts. This exercise has not been done by the original authority. To enable the same ,we set aside the orders of the lower authorities and remand the matter to the original authority to consider the matter afresh and to determine the value of excavator and to determine the duty liability accordingly and also to determine the duty liability /Cenvat credit to be reversed on the excavator inputs and spares/extra spares supplied as per Rule 3 & 4 of the Cenvat Credit Rules. The original authority will consider the matter afresh after granting reasonable opportunity of hearing to the appellant.

7. In the facts and circumstances of the case, we do not find that this is a case involving any intention to evade excise duty. Therefore, no penalty is warranted and accordingly, the same is set aside.

8. The appeal is allowed by way of remand on the above terms.

(M. Veeraiyan)
Technical Member

(D.N.Panda)
Judicial Member

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