IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 599 of 2011

(Arising out of Order-in-Original No. 07/COMMISSIONER/CE/KOL-V/ADJN/2011 dated 21.03.2011 passed by Commissioner of Central Excise, Kolkata-V.)

Commr. of Central Excise, Kolkata-V
(New Central Excise Building, 180, Rajdanga Main Road, Shantipally, Kolkata-700107)

Appellant

VERSUS

M/s. JCB India Ltd.,
(Parts Center, Mollar Gate, Budge Budge Trunk Road,
Inside old pepsi Godown, P. O. Maheshtala, Dist. 24 Parganas (South), Kolkata-700141)

Respondent

APPEARANCE :
Mr. K. Chowdhury, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77753/2023

Date of Hearing : 18 December 2023
Date of Decision: 18 December 2023

PER R. MURALIDHAR:

No one has appeared on behalf of the Respondent. Since the matter pertains to the year 2011, we have perused the Appeal Papers with the help of the Learned AR.

2. On going through the Appeal Papers and the submissions made by the Learned AR, we find that in view of different views taken by Benches of the Tribunal, a Larger Bench was constituted and the issue involved in the present Appeal has come to be decided by the Larger Bench. We also observe that even the present Appellant was one of the Appellant. Their Mumbai Unit was one of the parties before the Larger Bench.

Excise Appeal No. 599 of 2011

3. The period under dispute is from 1.6.2006 to 31.12.2009. The Show Cause Notice was issued on 3.9.2010 by invoking the extended period provisions. In the present proceedings initiated, the narrow issue in the present Appeal is as to whether, the earth moving equipment like Hydraulic Excavators, Loader, Track Excavator etc. are classifiable as "Automobiles" under Chapter 87 as contended by the Revenue to enforce the demand

4. The Larger Bench in the case of Action Construction Equipment Ltd. & Others Vs. CCE, Nagpur-2023 (6) TMI 1320, CESTAT, MUMBAI (LB), after going through all the statutory provisions and documentary evidence has held as under:-

> *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. <u>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"</u> 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. <u>Automobiles, therefore, are conveyances for transportation of passengers and goods on road as also been</u>*

Excise Appeal No. 599 of 2011

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.

90. The reference made to the Larger Bench is, accordingly, answered in the following manner:

(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

(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. [Emphasis supplied]

5. Therefore, the demand which has been raised on the ground that the equipment in question are automobiles cannot survive on merits. The Adjudicating Authority has correctly dropped the proceedings in the impugned Order in Original.

6. Respectfully following the decision of the Larger Bench, we dismiss the Appeal filed by the Revenue.

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

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja