IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

(VIA VIRTUAL MODE OF HEARING)

Excise Appeal No. 77046 of 2018

(Arising out of Order-in-Appeal No. 19/KOL-III/2018 dated 16.02.2018 passed by the Commissioner of C.G.S.T. and C.X. (Appeal-I), Kolkata, G.S.T. Bhawan, 8th Floor, 180, Shantipally, Kolkata – 700 107)

M/s. TIL Limited **: Appellant**
517, B.T. Road,
Kolkata – 700 058

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Kolkata North Commissionerate
(Erstwhile Kolkata-III Commissionerate),
G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri B.L. Narasimhan, Advocate,
Shri Deepro Sen, Advocate,
Shri Shovit Betal, Advocate,
For the Appellant

Shri S.K. Dikshit, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76020 / 2026

DATE OF HEARING: 30.07.2026

DATE OF DECISION: 05.08.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order.

2. The facts of the case are that M/s. TIL Limited has its manufacturing unit located at 517, B.T. Road, Kolkata – 700058 holding Central Excise Registration no. AABCT0704GXM003. The appellant manufactures various kinds of mobile lifting machinery such as Hydraulic Truck Crane, Rough-terrain Hydraulic Truck Crane, etc., and clears them on payment of

appropriate excise duty by classifying the same under Central Excise Tariff Item (CETI) 8426 12 00.

3. The DGCEI visited premises of the appellant in 2013 and formed an opinion that cranes were being mis-classified under CETI 8426 12 00 even though such cranes were being classified under this Tariff Item since introduction of the 8-digit tariff entry (from February 2005 onwards). The appropriate classification of the cranes was proposed to be under CETI 8426 41 00 as 'other machine, self-propelled on tyre' on the ground that Tariff Item 8426 12 00 is generic whereas tariff item 8426 41 00 is specific. It was alleged that cranes were being misclassified with intent to evade payment of central excise duty on manufacturing activity (packing and labelling of spare parts of cranes) undertaken at the Taratala unit.

4. On the basis of such allegation, a Show Cause Notice dated 04.07.2013 was issued to the appellant, proposing to change the classification of the products cleared to CETI 8426 41 00 with retrospective effect and impose penalty under Rule 25 of the Central Excise Rules, 2002 for alleged violation of Rule 6 of the Central Excise Rules, 2002.

4.1. The matter was adjudicated vide Order-in-Original dated 06.12.2013, wherein the classification proposed in the said Show Cause Notice was confirmed; a penalty of Rs. 10,000/- was imposed.

4.2. The appellant challenged the said order before the Ld. Commissioner (Appeals), who, vide the impugned Order-in-Appeal dated 16.02.2018, upheld the same.

4.3. Against the said order, the appellant is before us.

5. The Ld. Counsel appearing on behalf of the appellant submits that the proceedings initiated against the appellant for reclassification of mobile lifting machinery in question is without any authority of law. It is submitted that the classification cannot be changed retrospectively.

6. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

7. Heard the parties and considered their submissions.

8. We find that during the impugned period, the appellant was a manufacturer of various kinds of mobile lifting machinery and paying appropriate duties thereon after classifying the same under Central Excise Tariff Item No. 8426 12 00 whereas, without any investigation, the DGCEI formed the opinion that the said goods would be appropriately classification under Central Excise Tariff Item No. 8426 41 00 as "other machinery, self-propelled: on tyres".

8.1. We find that, on this basis, the Show Cause Notice has been issued to the appellant on 04.07.2013 and the classification was changed with retrospective effect. However, there is no such provision in the Central Excise Act, 1944 under which such a Show Cause Notice can be issued. In fact, in the impugned Show Cause Notice, no such provision has been invoked for issuance of the same. It is only under Section 11A of the Central Excise Act, 1944 that the Proper Officer can issue a Show Cause Notice proposing change in classification of goods declared by an assessee in cases of short / non-payment of duty. It is a fact that no such provision exists for changing the classification, as done in the Show Cause Notice.

9. Therefore, we hold that the Show Cause Notice issued to the appellant, for mere change in the classification of the goods, is not sustainable in the eyes of law. In these circumstances, as the impugned Show Cause Notice against the appellant cannot be sustained, consequently, the impugned order is also not sustainable. Accordingly, the same is set aside.

10. In the result, the appeal is allowed, with consequential relief, if any.

(Order pronounced in the open court on **05.08.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd