# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

## WEST ZONAL BENCH

## CUSTOMS APPEAL NO: 87073 OF 2023

[Arising out of Order-in-Original No: S/6-Gen-03/2023/2021-22/CEAC dated 21st June 2023 passed by the Commissioner of Customs (NS-II), Nhava Sheva.]

**John Deere India Pvt Ltd**
Off Pune-Nagar Road, Sanaswadi, Pune- 412 208 … ***Appellant***

*versus*

**Commissioner of Customs (NS-II)**
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Raigad, Maharashtra-400707 ***…Respondent***

*APPEARANCE:*

Shri AB Nawal, Cost Accountant for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for Revenue

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**
**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: 86846/2024**

DATE OF HEARING: 08/11/2024
DATE OF DECISION: 08/11/2024

*PER: C J MATHEW*

The limited issue in this appeal of M/s John Deere India Pvt Ltd is the manner in which export consignments of their were dealt with by the customs authorities during the period between ‘in principle debonding’ and the ‘final exit’ in terms of the Foreign Trade Policy (FTP).

2. Learned Cost Accountant appearing for the appellant submitted that they had obtained ‘letter of permission (LoP)’ from the jurisdictional Development Commissioner in accordance with the Foreign Trade Policy (FTP) as prevailing then to set up an ‘export oriented unit (EOU)’ and, on 17th December 2020, sought exit from the scheme in the office of Development Commissioner; the proposed debonding, according to Learned Cost Accountant, had been brought to the notice of the jurisdictional customs authorities as also that, during the transition period, on the exports effected by them, the shipping bills would be endorsed to effect intended to claim drawback thereon. According to Learned Cost Accountant, 4322 exports had been effected between January 2021 and 16th September 2021 with the final debonding ordered after issue of ‘no due certificate’ on 23rd August 2024 by the customs authorities

3. Learned Cost Accountant submitted that the appellant had sought formal approval for conversion of shipping bills from that of ‘export oriented unit (EOU) scheme’ to that under ‘claim for drawback’ in accordance with section 75 of Customs Act, 1962. According to him, after several reminders and finally on 4th October

2022 the application for amendments, preferred under section 149 of Customs Act, 1962, came to be rejected. It was further submitted that, upon representation, a hearing was conducted on 22nd May 2023 with no further remedial thereon.

4. He submitted that the sole ground for rejection appear to have bee non-compliance with the stipulation in circular[1] of Central Board of Excise & Customs (CBEC). It was his contention that before the enactment of Finance Act, 2019, section 149 of Customs Act, 1962 did not have provision for such instruction or stipulation from Central Board of Indirect Taxes & Customs (CBIC). He further submitted that the Tribunal had held that, in the absence of such enabling empowerment stipulation, restrictions put in place by Central Board of Excise & Customs (CBEC) is contrary to law. He has relied upon the decision of the Tribunal in, among others, that of *Seco Tools India Pvt Ltd v. Commissioner of Customs (Export), Air Cargo Complex, Mumbai* in order[2] disposing off appeal[3] against order[4] of the Commissioner of Customs, Mumbai.

5. Learned Authorised Representative submitted that the application for amendment had been made three months after the 'let export order (LoP)' which was clearly in breach of circular[5] of Central

[1] [no. 36/2010-Cus dated 23rd September 2010]
[2] [final order no. A/85916/2022 dated 29th September 2022]
[3] [customs appeal no. 86895 of 2016]
[4] [order-in-original no. CAO No. 01/16-17/ADJ (X), ACC dated 24th May 2016]
[5] [no. 36/2010-Cus dated 23rd September 2010]

Board of Excise & Customs (CBEC).

6. In *re Seco Tools India Pvt Ltd*, it has been held

> *'15. In view of the settled position, elaborated in Haldiram Foods International Pvt Ltd, on the irrelevance of the deadline stipulated in the circular of Central Board of Excise & Customs (CBEC) relied upon in the impugned order, we set aside the rejection of the applications for amendment and direct the original authority to decide the matter afresh within the framework of section 149 of Customs Act, 1962 on the propriety of the changes sought for in the shipping bills. Appeal is, accordingly, disposed off.'*

7. Furthermore, it has been brought to our notice that, on the same set of facts and circumstances, the competent authority had rejected these 155 bills pertaining to exports through Nhava Sheva while those effected through ICD Bhamboli and ICD Talegaon had been allowed.

8. In view of the above, we set aside the impugned order and restore the application back to the original authority for disposal in accordance with law as prevailing at the relevant time. .

*(Operative part of the order pronounced in the open court on 8th November 2024)*

**(AJAY SHARMA)**
***Member (Judicial)***

**(C J MATHEW)**
***Member (Technical)***

**/as*