CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 173 of 2011

(Arising out of Order-in-Original No. 14/CEX/2010 dated 28.09.2010 passed by the Commissioner of Central Excise, Pune-I)

Commissioner of Central Excise, Pune-I **.... Appellant**
ICE House, 41-A, Sassoon Road, Opp. Wadia College,
Pune – 411 001

Versus

M/s JCB India Ltd. **.... Respondent**
Parts Centre,
Talegaon Dabhade, Pune- 411507

Appearance:

Shri Mahesh Patil, Authorized Representative for the Appellant

Ms. Priyanka Rathi a/w Ms. Ashwini & Ms. Renuka Sable, Advocates for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85303/2025

Date of Hearing: 11.11.2024
Date of Decision: 10.03.2025

Per: M.M. Parthiban

This appeal has been filed by the Commissioner of Central Excise, Pune-I Commissionerate, Pune (herein after referred to as 'the appellants', for short) in pursuance of Review Order No.09/CEX-R/2010-11 dated 03.01.2011 passed by the Committee of Chief Commissioners assailing the Order-in-Original No. 14/CEX/2010 dated 28.09.2010 (referred to as 'impugned order') passed in the case of M/s JCB India Limited, Pune by the Commissioner of Central Excise, Pune-I, Pune.

2.1. Briefly stated, the facts of the case are as follows:

2.2 The respondents-assessee is *inter-alia* engaged in the manufacture of construction machines viz., hydraulic excavator loader (Backhoe Loaders), hydraulic loader (wheel loading shovel/shover loaders), road rollers (compactors) which are generally known as earth moving equipment classifiable under Chapter 84 of Central Excise Tariff Act, 1985. The respondents also have Spare Parts Divisions (SPDs) located in Pune, Ballabhgarh, Kolkata and Chennai, where they undertake the activity of packing, repacking and relabelling of spare parts of earthmoving equipment and since no manufacturing activity is carried out at these SPDs, the said premises were not registered with the Central Excise department. The present dispute is in relation to the SPD located at Pune. At this SPD, Pune the respondents-assessee had purchased parts of earthmoving equipment from independent vendors, who supply those parts on the basis of specifications given by the respondents, which are suitable for use in their earthmoving equipment. The said spare parts are brought to SPD, Pune, then packed, labelled with requisite details including MRP and affix the logo of the respondents company. Thereafter, the spare parts so packed are sold in the market. Since, the spare parts are not manufactured by the respondents-assessee, but merely packed and sold, no excise duty was paid on the same by the respondents during the period from June, 2006 to May, 2010.

2.3 However, the department had interpreted that such activity of packing, labelling etc. amounts to 'manufacture' in terms of the definition provided under Section 2(f)(iii) of the Central Excise Act, 1944 read with Serial No.100 of the Third Schedule, introduced w.e.f. 29.05.2006. Accordingly, the department had initiated show cause proceedings for demand of central excise duty for the disputed period viz., from June, 2006 to May, 2010 by issue of Show Cause Notices dated 22.12.2009 and 23.08.2010. The said SCNs were adjudicated by the learned Commissioner of Central Excise, Pune-I by holding that the respondents-assessee has succeeded on all grounds and accordingly they are not liable to pay any duty on the parts and components which are packed and sold with MRP with their own logo prior to 29.04.2010. Further, he also held that it will be unjustifiable to hold that the respondents-assessee had kept the department in dark of their activities of packing, repacking, labelling and relabelling and hence the extended period invoked under proviso to Section 11A ibid is also not available to the department. Accordingly, he dropped the proceedings initiated under the said two SCNs dated 22.12.2009 and 23.08.2010.

2.4 Being aggrieved with the above Order-in-Original dated 28.09.2010, which is impugned herein, the appellants-department had preferred an appeal before this Tribunal. The issue was decided by the Tribunal by issue of Final Order No. A/965/13/EB/C-II dated 08.11.2013 (Excise Appeal No. 173 of 2011). Since, the Co-ordinate Bench of the Regional Bench of the Tribunal, Chandigarh had expressed their disagreement with the views expressed in the Order dated 08.11.2013 of the Co-ordinate Bench of the Regional Bench of the Tribunal, Mumbai, the issues were referred to the Larger Bench of the Tribunal, which was disposed of vide order dated 27.02.2017, giving liberty to the assessee-appellants to approach the Tribunal again after final verdict by Hon'ble Supreme Court.

2.5 In the meantime, against the order passed by the Tribunal, the respondents-assessee had filed a Civil Appeal No. 5764 of 2014 and the Hon'ble Supreme Court had disposed of the case vide judgement dated 07.02.2023. In the said case, the Hon'ble Supreme Court had set aside the order of the Tribunal dated 08.11.2013 and remanded the case for consideration of the issues under dispute by constitution of Larger Bench. The relevant paragraphs of the said judgement is extracted below:

> *"5. In view of the above, without further entering into the merits of the case and/or expressing anything on merits in favour of either parties, we set aside the impugned judgment and order passed by the Mumbai Bench Tribunal. We remand the matter/Appeal to the Tribunal to be heard along with Excise Appeal Nos. E/791-793/2012*
> *and Appeal Nos. E/1161/2011 and E/2968/2011 and to be heard by the larger Bench to be constituted by the President of the Tribunal, as per the order passed by the Chandigarh Bench Tribunal dated 01.08.2016 and the issues which are referred to the larger Bench.*
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> *6. We direct the President of the Tribunal to constitute the larger Bench within a period of 4 weeks from the date of receipt of the present order and thereafter to finally decide and dispose of the issues referred to the larger Bench, referred to hereinabove, at the earliest, preferably, within a period of 6 months from the date of constitution of the larger Bench."*

3. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper book for this case.

4. We find that the issue involved in this appeal was decided by the Larger Bench of the Tribunal vide Interim Order Nos. 2-4/2023; 16-17/2023; and 21-25/2023 all dated 06.06.2023. The relevant paragraph in which the decision was given by the Larger Bench of the Tribunal is extracted and given below:

"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 Tariff Act by Finance Act, 2011 w.e.f. 29.04.2010 by adding serial no. 100A to the Third Schedule is prospective in nature."

5. On careful reading of the decision given by the Larger Bench of the Tribunal on the disputed issues, we find that the amendment carried out w.e.f. 29.04.2010 makes it abundantly clear that a legislature did not intend to tax the parts, components and assemblies of earthmoving equipment etc. under the Head "Automobiles"; therefore, to this extent, the adjudged demands for the period prior to 29.04.2010 cannot be sustained. We further note that the respondents-assessee have paid Central Excise duty for the period post 29.04.2010, and such duties paid have also been appropriated by the Department vide Order-in-Original dated 13.07.2012. Thus, there is no dispute in this regard for the period post 29.04.2010, which is required to be examined by us in this case. Moreover, Larger Bench has deliberated on the issue whether the earthmoving equipment etc. can be considered as automobiles in the case of respondent-JCB India Ltd. itself. Larger Bench has also considered various decisions in this regard and the Circular issued by the Central Board of Indirect Taxes and Customs and concluded as follows:

"84. The Motor Vehicles Act 1988 uses the term "motor vehicle" and does not refer to "automobile". It deals with the requirement of vehicles to be registered under the Motor Vehicles Act. The definition of "motor vehicles in the Motor Vehicles Act cannot, therefore, be applied to ascertain the meaning of "automobiles" for the purpose of levy of excise duty on parts, components and assemblies of "automobiles". (emphasis supplied)

85. The objective of The Air (Prevention and Control of Pollution) Act, 1981 the Air Act is to prevent, control and abate air pollution with a view to achieve the objective of the Air Act. The definition of "automobiles" appearing in section 2 (e) of the Air Act is very wide to cover all vehicles powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel *as the objective of the Air Act is to prevent, control and abate air pollution. Thus, the definition of automobiles in the said Air Act cannot be borrowed for the purpose of finding the meaning of "automobiles" in the Third Schedule to the Tariff Act.*

86. Learned special counsel for the department also contended that parts of "automobiles" as used in Central Excise Tariff or Third Schedule do not merely cover the parts of car but would also cover parts of a whole gamut of machines built on a motor vehicle or automobiles chassis with some exceptions. This is not an issue which has been referred to the Larger Bench and so it will not be appropriate to examine this issue.

87. To summarize, the Mumbai Bench of the Tribunal, in its order dated 08.11.2013, placed emphasis on following factors to arrive at a conclusion that earth moving machines are automobiles: (i) The vehicles involved are self-propelled, work with internal combustion engine using fuel, have four wheels and are rubber tyre and thus, have all the characteristic of a motor vehicle; (ii) The earth moving equipment are motor vehicles since they require registration under the Motor Vehicles Act, 1988; and (iii) The earth moving equipment are automobiles and are required to meet the air pollution norms 57 under the Air (Prevention and Control of Pollution) Act, 1981.

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. 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 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. Automobiles, therefore, are conveyances for transportation of passengers and goods on road as also been 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."

6. In view of the above, we are of the considered opinion that the issue is no longer *res integra*. In view of the decision given by the Larger Bench in Interim Order dated 06.06.2023, we find that the adjudged demands for the period prior to 29.04.2010 is not sustainable. We also find that for that reason the Departmental appeal is not acceptable.

7. In the result, the appeal filed by the appellants-department is dismissed.

(Order pronounced in open court on 10.03.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha