CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85911 of 2013

(Arising out of Order-in-Original No. 67/2012/C dated 30.11.2012 passed by the Commissioner of Central Excise, Nagpur)

Tata Hitachi Construction Machinery Co. Ltd. **.... Appellant**
(Formerly known as Telco Construction Equipment Co. Ltd.)
C/o Swetal Logistics,
Tata Steel Yard, N.H.6
Bhandara Road, Mahalgaon
Nagpur, Maharashtra.

Versus

Commissioner of Central Excise **.... Respondent**
P.B. No. 81, Telangkhedi Road, Civil Lines
Nagpur- 440 001.

Appearance:

Shri Saurabh Bhise, Advocate for the Appellant

Shri C. Dhanasekaran, Special Counsel for the Respondent

CORAM:

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

FINAL ORDER NO. A/85325/2025

Date of Hearing: 14.11.2024

Date of Decision: 13.03.2025

Per: M.M. Parthiban

This appeal has been filed by M/s Tata Hitachi Construction Machinery Company Limited, Nagpur (herein after referred to as 'the appellant', for short) assailing the Order-in-Original No. 67/2012/C dated 30.11.2012 (referred to as 'impugned order') passed by the Commissioner of Central Excise, Nagpur.

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

2.2 The appellant is *inter-alia* engaged in manufacture of excavators and other earthmoving machinery classified under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant also manufactures spare parts of excavators and other earthmoving machinery.

They have factories at Jamshedpur, Dharwad and Kharagpur and also have Central Warehouse at Nagpur.

2.3 At their Central warehouse, the appellant procured other spare parts of earth moving equipment through domestic and foreign suppliers. Further, spare parts manufactured from its own factories were also received in bulk and packed condition at such Central warehouse. The disputed spare parts in question were used for the following models of earthmoving equipment viz. Hydraulic Excavator Loader (Backhoe Loader-Tata 315V Model); Motor Grader (TG 14 Model); Wheel Loader (TWL 3034 Model); Vibratory Soil Compactor (Road Roller-Model VM3). The appellant undertakes the activity of packing, repacking, and attaching an identification tag giving details of part number, description, quantity, MRP etc. before these were sent to subsequent sales to their dealers and industrial consumers. The appellant was of the understanding that since no manufacturing activity is carried out in such packing, repacking and labelling of spare parts of earthmoving equipment, the said premises were not required to be registered with the Central Excise department and therefore no payment of central excise duty was made.

2.4 The present dispute is in relation to the activities undertaken at the Central warehouse, where the activity of packing, re-packing and labelling was carried out by the appellant. The appellant had procured spare parts of earthmoving equipment from abroad/local independent vendors, and then packed, labelled with requisite details including MRP and affix the logo of the appellant' company. Thereafter, the spare parts so packed are sold in the market or directly to industrial customers. Since the spare parts are not manufactured by the appellant-assessee, but merely packed and sold, no excise duty was paid on the same by them during the period of dispute from October, 2006 to 28.04.2010. However, the department did not agree with such view and initiated show cause proceedings to demand excise duty on re-packed spare parts on the ground that these goods were parts of motor vehicles (automobiles) and these parts were covered under Sl. No.100 of the Third Schedule to the Central Excise Tariff Act, 1985, which covers "parts, components and assemblies of automobiles". Further, the department had interpreted that the activity of packing/re-packing, labelling, affixing logo and MRP on package of such parts, carried out by the appellant in its warehouse, amounts to manufacture under Section 2(iii) of the Central Excise Act, 1944. Further, such parts, being covered under Sl. No.97 of Notification No. 2/2006-C.E.(NT) dated 1.3.2006 / Sl. No. 108 of Notification No.49/2008-C.E.(N.T.) dated 24.12.2008, which prescribe the MRP-based assessment of Central Excise duty. Therefore, the department issued Show Cause Notice dated 01.11.2011 for demand of duty, imposition of penalty on the appellant.

2.5 In adjudication of the SCN dated 01.11.2011, learned Commissioner of Central Excise had confirmed the demands proposed in the SCN under Section 11A of the Central Excise Act, 1944 and also imposed equal amount of penalty on the appellant under Rule 25 of the Central Excise Rules, 2002 by issuing the Order-in-Original dated 30.11.2012 which is impugned herein.

3.1 Being aggrieved with the above impugned order dated 30.11.2012, the appellant had preferred an appeal before this Tribunal. During the pendency of this appeal, the appellant came to know that 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 passed by the Co-ordinate Bench of the Regional Bench of the Tribunal, Mumbai in the case of J.C.B. Limited involving identical factual matrix, and therefore 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-appellant to approach the Tribunal again after final verdict by Hon'ble Supreme Court, as the appellant have already approached the Hon'ble Supreme Court on the disputed issue in Civil Appeal No. 5764 of 2014.

3.2 In the meantime, against the order passed by the Tribunal in the case of J.C.B. Limited, the 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 confirming the duty demands raised by the department and remanded the case for consideration of the issues under dispute by constitution of Larger Bench. The relevant paragraph 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."*

3.3 On the above basis, the appellant had filed a Miscellaneous Application No.85288 of 2023 with a prayer that in their case, they may be permitted to intervene in the hearing before the Larger Bench, as the issues to be decided therein would have an impact on their case. Considering these submissions, the Larger Bench had allowed the applicant to intervene in the matter pending before Larger Bench. After hearing both sides, Larger Bench of the Tribunal had disposed of all the pending issues vide issue of common Interim Order including the case of the appellant vide Interim Order dated 06.06.2023.

3.4 Learned Special Counsel representing the Revenue, had reiterated the findings given by the learned Commissioner in the impugned order. Further, he submitted that the jurisdictional Commissioner of Central GST and Central Excise, Nagpur-II had vide their letter dated 19.02.2024 had informed him for praying before the Tribunal that they had preferred an appeal before the Hon'ble High Court of Bombay; however, the matter has not yet been listed for hearing by the Hon'ble High Court. He had no objection for proceeding the appeal on the merits of the case and based on the decision of Larger Bench.

4. 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.

5.1 We find that the issue involved in this appeal was decided by the Larger Bench of the Tribunal in a common order vide Interim Order Nos. 2-4/2023; 16-17/2023; and 21-25/2023 all dated 06.06.2023. The present appeal being No. E/85911/2013 is also covered by such order of the Larger Bench.

5.2 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. Further, it is a fact on record that Third Schedule to the Central Excise Tariff Act, 1985 was retrospectively amended vide Finance Act, 2011 read with Finance Act, 2012, with effect from 29.4.2010. Accordingly, from 29.4.2010, the appellant started discharging the excise duty on activity of packing / re-packing and affixing MRP undertaken on spare parts at warehouse, on the basis of MRP-based assessment. This was also confirmed by the jurisdictional Commissioner of Central Excise, Nagpur vide their letter dated 07.01.2014 submitting therewith the verification report dated 30.12.2013 received from the Assistant Commissioner of Central Excise Division-II, Nagpur that the appellant is discharging the Central Excise duty on MRP basis.

6. We find that the Larger Bench has deliberated on the core issue of dispute, whether the earthmoving equipment etc. can be considered as automobiles in the case of respondent-JCB India Limited 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)*
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> *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.*
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> *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."

7. In finally answering the issues on which reference was made to Larger Bench, on account of difference of opinion between two Co-ordinate Benches of the Tribunal and on the basis of the direction given by the Hon'ble Supreme Court, the following order was passed. 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."

8. In view of the above, we are of the considered opinion that the issue under dispute is no longer *res integra*. On the basis of the decision given by the Larger Bench in Interim Order dated 06.06.2023, we come to the conclusion that the adjudged demands for the period October, 2006 to 28.04.2010 is not sustainable. We also find that for that reason the impugned order dated 30.11.2012 is not legally sustainable and therefore it is liable to be dismissed.

9. In the result, the impugned order is set aside and the appeal filed by the appellant-assessee is allowed in their favour.

(Order pronounced in open court on 13.03.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha