CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86741 of 2013

(Arising out of Order-in-Original No. 06/2013/C dated 06.02.2013 passed by the Commissioner of Central Excise & Customs, Nagpur)

Larsen & Toubro Limited **.... Appellant**
Corporate Indirect Tax, North Block-II,
3rd Floor, Gate No.1, Powai Campus
Saki Vihar Road, Mumbai – 400 072.

Versus

Commissioner of Central Excise & Customs **.... Respondent**
Telangkhedi Road, Civil Lines
Nagpur- 440 001.

WITH

Excise Appeal No. 86747 of 2013

(Arising out of Order-in-Original No. 06/2013/C dated 06.02.2013 passed by the Commissioner of Central Excise & Customs, Nagpur)

J. Kumar **.... Appellant**
Head Finance & Accounts, Larsen & Toubro Ltd.
Corporate Indirect Tax, North Block-II,
3rd Floor, Gate No.1, Powai Campus
Saki Vihar Road, Mumbai – 400 072.

Versus

Commissioner of Central Excise & Customs **.... Respondent**
Telangkhedi Road, Civil Lines
Nagpur- 440 001.

AND

Excise Appeal No. 86748 of 2013

(Arising out of Order-in-Original No. 06/2013/C dated 06.02.2013 passed by the Commissioner of Central Excise & Customs, Nagpur)

Proficient Equipment Solutions **.... Appellant**
Plot No.W-46, Hingna, MIDC
Nagpur – 400 072.

Versus

Commissioner of Central Excise & Customs **.... Respondent**
Telangkhedi Road, Civil Lines
Nagpur- 440 001.

Appearance:

Shri Prakash Shah, 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/85326-85328/2025

Date of Hearing: 14.11.2024
Date of Decision: 13.03.2025

Per: M.M. Parthiban

This appeal has been filed by M/s Larsen & Toubro Limited, Mumbai; Shri J. Kumar, Head – Finance & Accounts of Larsen & Toubro Limited and M/s Proficient Equipment Solutions, Nagpur (herein after referred together as 'the appellants', for short) assailing the Order-in-Original No. 06/2013/C dated 06.02.2013 (referred to as 'impugned order') passed by the Commissioner of Central Excise & Customs, Nagpur.

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

2.2 The appellant M/s Larsen & Toubro Limited is *inter-alia* engaged in importation and procurement of parts and components of construction equipment viz., hydraulic excavators, dozer, wheel loaders, motor graders, tippers and dumpers, generally known as 'earthmoving equipment', on which applicable duties of customs and additional duties of customs were paid by them at the time of import. They also have their Central Warehouse situated in Nagpur, where they undertake the activity of packing, after attaching an identification tag giving details of part number, description, quantity, Delivery note, item number and location, along with name of the appellant as 'Larsen & Toubro Limited, Nagpur'. M/s Proficient Equipment Solutions, Nagpur was one of the dealers of the appellant Larsen & Toubro Limited. The appellants were 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 registered with the Central Excise department and no payment of central excise duty was made.

2.3 The present dispute is in relation to the activities undertaken at these warehouse/dealers' premises, where the activity of packing, re-packing and labelling was carried out by the appellants. The appellants 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 appellants' 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 appellants-assessee, but merely packed and sold, no excise duty was paid on the same by them during the period of dispute from July, 2007 to April, 2011. However, consequent to certain legal changes made by the government in May, 2011, the appellants took registration under the Central Excise Act, 1944 and started paying Central Excise on such activities post May, 2011 and onwards.

2.4 The department had interpreted that the 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 July, 2007 to April, 2011 and for confiscation of goods, imposition of penalty on the appellants, by issue of Show Cause Notices dated 02.12.2011 and 09.08.2012. The said SCNs were adjudicated by the learned Commissioner of Central Excise, Nagpur by confiscation of the goods and offering them on payment of redemption fine, besides confirmation of adjudged demands and imposition of penalty on the appellants.

2.5 Being aggrieved with the above Order-in-Original dated 06.12.2013, which is impugned herein, the appellants had preferred an appeal before this Tribunal. The issue was decided by the Tribunal by issue of Final Order No. A/3357-3359/15/EB dated 08.10.2015. The said order of the Tribunal set aside the order of original authority for confiscation of the goods and imposing redemption fine thereon; imposing penalties on the appellants Shri J. Kumar and Proficient Equipment Solutions, Nagpur and remanded the matter for limited purpose of determining the differential duty payable as per Section 4A of the Act of 1944 read with Explanation to Section 4(1) ibid in extending the cum-duty benefit available to the appellant M/s Larsen & Toubro Limited.

2.6 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 passed by the Co-ordinate Bench of the Regional Bench of the Tribunal, Mumbai in the case of JCB India Limited involving identical facts and legal point of dispute, the issues were referred to the Larger Bench of the Tribunal. In the meantime, against the order passed by the Larger Bench of the Tribunal in JCB India Limited case, the appellants-assessee in that case had filed Civil Appeal No. 5764 of 2014 before the Hon'ble Supreme Court. In the above circumstances, the Larger Bench vide order dated 27.02.2017, disposed of the case giving liberty to the assessee-appellants to approach the Tribunal again after final verdict by Hon'ble Supreme Court, as the appellants in that case have already approached the Hon'ble Supreme Court on the disputed issue in Civil Appeal No. 5764 of 2014.

2.7 On the above basis, the appellant M/s Larsen & Toubro Limited had filed an appeal before the Hon'ble High Court of Bombay in Central Excise Appeal No.91 of 2016; and the Hon'ble High Court had disposed of this case vide judgement delivered on 06.04.2023, by holding that since the impugned judgment and order is based almost entirely on the decision in the case of JCB India Limited, which is being considered by the larger bench of the Tribunal, the order of the Tribunal dated 08.10.2015 was quashed and set aside; and the appeal filed by the appellant-Larsen & Toubro Limited was restored to the file of the Tribunal. Accordingly, the said matter was also placed before the Larger Bench of the Tribunal for consideration on the legal issues. During the meantime, the Hon'ble Supreme Court had disposed of the Civil Appeal filed in the case of JCB India Limited vide judgement dated 07.02.2023, by setting aside the order of the Tribunal dated 08.11.2013 and by remanding it back the case for fresh consideration of the issues under dispute by constitution of Larger Bench. The relevant paragraphs of the said judgement of the Hon'ble Supreme Court are 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.*
>
> *xxx xxx xxx xxx*
>
> *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."*

Accordingly, Larger Bench had taken up the above disputed issues and had passed a common order *inter alia* covering the appeals filed in the present cases also vide Interim Order No. IO/21-25/2023-EX(DB) dated 06.06.2023 and directed the individual appeals in various cases to be placed for hearing before the concerned Division Bench. Accordingly, these appeals have come up for hearing before this Bench of the Tribunal for hearing and disposal of the case.

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

4.1 We find that the issue involved in these appeals, being identical in all such cases, were 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 appeals being No. E/86741/2013; E/86747/2013 and E/86748/2013 were also covered by such order of the Larger Bench.

4.2 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. 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."*

5. 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 based on 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."*

6. In view of the above, we are of the opinion that the issue under dispute is no longer *res integra*. On the basis of the decision given by the Larger Bench of this Tribunal vide Interim Order dated 06.06.2023, we are of the considered view that the adjudged demands for the period prior to 29.04.2010 is not legally sustainable. We also find that for that reason the impugned order dated 06.02.2013 does not stand the legal scrutiny and therefore, it is liable to be dismissed.

7. In the result, the impugned order is set aside and the appeals filed by the appellants are allowed in their favour.

(Order pronounced in open court on 13.03.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha