CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 85273 of 2024
(On behalf of the respondent)
&
Excise Miscellaneous Application No. 86415 of 2024
(On behalf of the appellant)

In

Excise Appeal No. 86965 of 2015

(Arising out of Order-in-Appeal No. CD/436 & 437/M-III/2015 dated 10.04.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s Schrader Duncan Limited **.... Appellant**
F-33, Ranjangaon MIDC, Ranjangaon,
Tal. Shirur, Pune, Maharashtra

Versus

Commissioner of Central Excise, Mumbai-III **.... Respondent**
3rd Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E, Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051

AND

Excise Appeal No. 86965 of 2015

(Arising out of Order-in-Appeal No. CD/436 & 437/M-III/2015 dated 10.04.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s Duncan Engineering Limited **.... Appellant**
F-33, Ranjangaon MIDC, Ranjangaon,
Tal. Shirur, Pune, Maharashtra

Versus

Commissioner of CGST & Central Excise, Navi Mumbai **.... Respondent**
16th Floor, Satra Plaza, Sector – 19D,
Palm Beach Road, Vashi, Navi Mumbai – 400 705

Appearance:

Shri Bharat Raichandani, Advocate for the Appellant

Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85511/2025

Date of Hearing: 27.03.2025

Date of Decision: 27.03.2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Revenue has filed a miscellaneous application No. 85273 of 2024, seeking change of name and address of the respondent in the appeal memorandum filed by the appellants. The prayer made by the Revenue is considered and accordingly, Registry is directed to incorporate the following changed name and address of the respondent in the appeal records for the purpose of disposal of the appeal:-

"*Commissioner of Central Goods Service Tax & Central Excise,*
Navi Mumbai Commissionerate,
16th Floor, Satra Plaza, Sector -19D, Palm Beach Road,
Vashi, Navi Mumbai – 400 705".

3. Further, the appellants have also filed miscellaneous application No. 86415 of 2024, seeking change of name of the appellant-company in cause title of the appeal memorandum. Name of the appellants has been changed from "M/s Schrader Duncan Limited" to "M/s Duncan Engineering Limited" vide Certificate of Incorporation pursuant to change of name dated 1st December, 2016 issued by Office of the Registrar of Companies, Ministry of Corporate Affairs, Govt. of India, Pune, Maharashtra. The prayer made by the appellants is considered and accordingly, Registry is directed to incorporate the changed name "M/s Duncan Engineering Limited" in the appeal records.

Both the miscellaneous applications are disposed of accordingly.

4. Briefly stated, the facts of the case are that the appellants are engaged, *inter alia*, in the manufacture of Tyres, Tubes, Valves etc., falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants are also engaged in trading of tyre 'O' rings, which are supplied to automobile sector in bulk. For selling of the said 'O' rings, the appellants get the same packed in the container and affix the product code and part number in each of the containers. Such an activity undertaken by the appellants in their factory premises was interpreted by the Department as 'manufacturing activity' and accordingly, the show-cause proceedings were initiated by the Department, seeking confirmation

of the duty demand in respect of the 'O' rings traded by the appellants. The show-cause notice dated 28.08.2012 issued by the Department was culminated into the adjudication order dated 27.11.2013, wherein the original authority had dropped the proposals made in the show-cause notice. Being dissatisfied with the said adjudication order dated 27.11.2013, Revenue has preferred an appeal before the learned Commissioner (Appeals), which was disposed of vide the impugned order dated 10.04.2015, in allowing the appeal filed by the Revenue. Feeling aggrieved with the impugned order dated 10.04.2015, the appellants have preferred this appeal before the Tribunal.

5. The Department had initiated show-cause proceedings on the premise that tyre 'O' rings are manufactured by them within their factory premises. The Department had held that as per Section 2(f)(iii) of the Central Excise Act, 1944, the activity undertaken by the appellants should be considered as 'manufacture' and as such, the appellants are liable to pay the central excise duty on the activities undertaken by them in their factory in respect of the products tyre 'O' rings. The original authority had dropped the show-cause proceedings initiated against the appellants, holding that tyre 'O' rings are classifiable under Tariff Item 4016 93 20 of the First Schedule to the Central Excise Tariff Act, 1985 and does not fall under the Third Schedule to such Tariff Act, as Section 2(f)(iii) *ibid* cover only those goods specified in the said Third Schedule. Thus, he has held that no central excise duty is payable by the appellant on 'O' rings cleared by them after packing and putting the product code in the packages. However, this finding of the original authority was negated by the learned Commissioner (Appeals), on the ground that the 'O' rings are the parts of dumpers and as per Sr. No. 100 of the Third Schedule to the Central Excise Tariff, the said 'O' rings should be qualified to be a product under Chapter 87 for the purpose of payment of central excise duty thereon.

6. On reading of the competing entries provided in Chapters 40 and 87, we find that the product 'O' rings has been specifically mentioned in Chapter Tariff Item 4016 93 20 as 'Rubber rings (O-ring)'. The 'O' rings are also classified under Chapter 87, in the circumstances, when those were used as "parts, components and assemblies of automobiles". The 'O' rings dealt with by the appellants in this case are not exclusively usable only in automobile industries, as the same can also be used for other purposes. The said 'O' rings are not confined as parts, components and assemblies of

automobiles industry only. Thus, we are in agreement with the order of the original authority, who had classified the product under Chapter 4016. Further, mere packing of the ‘O’ rings and putting of label thereon shall not amount to manufacture, inasmuch as no distinct and identifiable product emerges as a result of process of such packing or putting the logo thereon. Therefore, we are of the view that the appellants are not liable to pay central excise duty in respect of the tyre ‘O’ rings removed from the factory. We have also perused the sample copy of the invoices available in the case file, wherein the appellants had reflected the VAT element for selling the said goods to the customers.

7. In view of the foregoing discussions, we do not find any merit in the impugned order, insofar as it has allowed the appeal in favour of the Revenue. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha