

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 1455 OF 2012

[Arising out of the Order-in-Original No. 38-41/COMMR/CEX/IND/2012 dated 27/02/2012 passed by The Commissioner of Central Excise, Customs & Service Tax, Indore (Madhya Pradesh).]

**M/s Case New Holland Construction
Equipment (India) Private Limited,
(Formerly M/s L&T Case Equipment
Private Limited)**

Appellant

Central Warehouse, C/o Pharma Traders,
18/2, Lasudia Mori, Dewas Naka,
Indore (M.P.).

VERSUS

**Commissioner of Central Excise,
Customs & Service Tax,**

Respondent

Manik Bagh Palace,
Indore (Madhya Pradesh).

**WITH
EXCISE APPEAL NO. 1456 OF 2012**

[Arising out of the Order-in-Original No. 38-41/COMMR/CEX/IND/2012 dated 27/02/2012 passed by The Commissioner of Central Excise, Customs & Service Tax, Indore (Madhya Pradesh).]

**M/s Case New Holland Construction
Equipment (India) Private Limited,
(Formerly M/s L&T Case Equipment
Private Limited)**

Appellant

Plot No. 157, Sector – III,
Pithampur (M.P.).

VERSUS

**Commissioner of Central Excise,
Customs & Service Tax,**

Respondent

Manik Bagh Palace,
Indore (Madhya Pradesh).

**AND
EXCISE APPEAL NO. 1532 OF 2012**

[Arising out of the Order-in-Original No. 38-41/COMMR/CEX/IND/2012 dated 27/02/2012 passed by The Commissioner of Central Excise, Customs & Service Tax, Indore (Madhya Pradesh).]

M/s Shri Balaji Tractor House,
61-62, Khalsa Stadium, Raj Mohalla,
Near Gangwal Bus Stand,
Indore.

Appellant

VERSUS

**Commissioner of Central Excise,
Customs & Service Tax,**
Manik Bagh Palace,
Indore (Madhya Pradesh).

Respondent

APPEARANCE

Shri B.L. Narasimhan and Ms. Sukriti Das, Advocates – for the appellant.

Shri Sanjeev Kumar Ray, Authorized Representative (DR) – for the Department

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO's. 50889-50891/2025

DATE OF HEARING/DECISION : 04.06.2025

JUSTICE DILIP GUPTA

Excise Appeal No. 1455 of 2012 has been filed by M/s Case New Holland Construction Equipment (India) Private Limited¹ at Indore for setting aside that part of the order dated 27.02.2012 passed by the Commissioner, that while adjudicating four show cause notices confirms the central excise duty demand against the appellant and also orders for recovery of interest and also imposes penalty. The order also confiscates the seized goods under the provision of rule 25 of the Central Excise Rules, 2002², but, as the goods were provisionally released, redemption fine has been imposed upon the appellant. The order also confiscates

1. appellant No. 1
2. the 2002 Rules

the goods manufactured and cleared by the appellant without payment of duty but as the goods were cleared redemption fine has been imposed.

2. **Excise Appeal No. 1456 of 2012** has also been filed by the appellant situated at Pithampur³ to assail that part of the order dated 27.02.2012 that confirms the demand on the appellant with interest and penalty.

3. **Excise Appeal No. 1532 of 2012** has been filed by M/s Shri Balaji Tractor House⁴, which is a warehouse from where the goods of appellant No. 1 and appellant No. 2 are sold. It has sought the quashing of the order dated 27.02.2012 passed by the Commissioner so far as it confiscates the goods, but as they were provisionally released, redemption fine has been imposed. The order also imposes penalty upon the appellant under rule 26 of the 2002 Rules.

4. Appellant No. 1 is *inter-alia*, engaged in the manufacture of earth moving construction equipments namely **Wheeled Tractor Loader Backhoe**⁵ and **Vibratory Compactor**⁶. These two shall be collectively referred to as construction equipments. They were

3. appellant No. 2

4. appellant No. 3

5. WTLB

6. VC

classifiable under Excise Tariff Item⁷ 8430 50 90 of the First Schedule to the Central Excise Tariff, 1985⁸.

5. WTLB is an earthmoving equipment fitted with a loader on the front and a backhoe on rear side. While backhoe excavates the earth, loader stacks that excavated material. The primary function of this equipment is to exhume the earth and then hoard the resultant stuff. VC is commonly known as road roller. It is used for compaction of the earth and soil.

6. **Appellant No. 2** is only a warehouse where packing/repacking of spare parts of construction equipments, namely, seal, hose assembly, primary element assembly, gear pump were undertaken. Thereafter, the spare parts are cleared in market for sale as spares of construction equipments. All spare parts for assembly are centrally purchased by Appellant No. 2 from independent suppliers and the spare parts meant for packing/repacking are delivered at the premises of appellant No.1.

7. **Appellant No. 3** is a proprietary concern and authorized dealer of machines and parts manufactured by appellant and is merely engaged in re-selling the spare parts purchased from the Appellant.

7. ETI

8. the Excise Tariff

8. Four separate periodical show cause notices were issued to the three Appellants proposing to demand and recover total central excise duty amounting to Rs. 13,40,71,400/- under the proviso to section 11A(1)/ 11A, as applicable, of the Central Excise Act, 1944⁹ on the re-packed spare parts of WTLB and VC.

9. The first show cause notice dated 16.6.2010 was issued for the period from 01.6.2008 to 16.12.2009, proposing to demand excise duty of Rs. 9,15,62,881/- after invoking extended period of limitation under the proviso to section 11A(1) of the Central Excise Act.

10. All the four show cause notices were issued on a common premise that the goods are parts of Motor Vehicles, which are Automobile, and so all such parts would fall within the ambit of Serial No. 100 of the Third Schedule to the Excise Act which covers "parts, components and assemblies of Automobiles" and accordingly, the activity of packing / repacking of such parts, carried out by the Appellant would amount to manufacture under section 2(f)(iii) of the Central Excise Act. Further, such parts being covered under Serial No. 97 of the MRP Notification dated 01.03.2006, as amended by Serial No. 108 of Notification dated 24.12.2008, are subject to MRP based assessment. Penalty was also proposed upon Appellant No. 3 in each of the aforesaid show cause notices, under section 11AC of Central Excise Act read with rule 25 of the 2002 Rules. Penalty was also imposed on Appellant

9. the Central Excise Act

No.1 and Appellant no. 2 under section 11AC of the Central Excise Act.

11. The Appellants filed their replies contesting the demand proposed in the show cause notices.

12. By a common order dated 27.2.2012, the Commissioner confirmed the entire demand of excise duty along with interest and penalty upon all the Appellants. Redemption fine was also levied on the goods found lying in the factory premises of the Appellants at the time of search.

13. It is against this order of the Commissioner that three appeals have been filed.

14. Shri B.L. Narasimhan, learned counsel for the Appellants assisted by Ms. Sukriti Das, submitted that the issue as to whether the construction equipments, namely WTLB and VC, are "**Automobiles**" has been answered by a Larger Bench of the Tribunal in Excise Appeal No. 791 of 2012¹⁰ holding that the activity of packing/repacking of the parts meant for use in these construction equipments would not amount to manufacture in terms of section 2 (f) (iii) of the Central Excise Act read with Serial No. 100 of the Third Schedule to the Excise Act. Learned counsel, therefore, submitted that the impugned order has

10. M/s Action Construction Equipment Ltd. versus Commissioner, Central Excise & Customs, Delhi – IV decided on 06.06.2023

wrongly considered the goods in dispute as parts/ components and assemblies of Automobiles. Learned counsel also pointed out that the decision of the Larger Bench of the Tribunal has been followed subsequently by various benches of the Tribunal, to which reference shall be made at the appropriate stage. Learned counsel also pointed out that subsequently section 73 of the Finance Act, 2011, which came into effect from 01.04.2011, amended the Third Schedule to the Central Excise Act retrospectively w.e.f. 29.04.2010. Entry No. 100A was inserted in the Third Schedule which covered "parts, components and assemblies of goods falling under ETI 8426 41 00, ETH 8427, 8429 and Excise sub-Heading 8430 10". This Entry No. 100A covered Tariff Items which provide for earth moving equipments like Bulldozers and excavator. However, it did not include Vibrator Compactor. In terms of the amended Entry 100A, the appellants deposited the excise duty component attributable to the activity of packing/repacking of parts meant for WTLB for the period w.e.f. 01.04.2011 and also deposited duty after 29.04.2010 till 31.03.2011 with interest and informed the department of this fact by a letter dated 25.08.2011. Learned counsel, therefore, submitted that the Commissioner failed to appreciate this position and also confirmed the excise duty in respect of the period from 29.04.2010 till 30.06.2011 with interest in respect of WTLB.

15. Shri Sanjeev Kumar Ray, learned authorized representative appearing for the department, however, supported the impugned order.

16. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

17. The sole issue that arises for consideration in respect of the period prior to 29.04.2010 is whether the two constructions equipments namely WTLB and VC are 'Automobiles', because only then the activity of packing/repacking of parts of the WTLB and VC would amount to manufacture under section 2 (f) (iii) of the Central Excise Act.

18. It is this precise issue that was examined and decided by a Larger Bench of the Tribunal in **Action Construction Equipment** The relevant portion of the interim order dated 06.06.2023 passed by the Larger Bench of the Tribunal is reproduced below :-

"A Division Bench of the Regional Bench of the Tribunal at Chandigarh, while hearing **Excise Appeal No's. 791 of 2012, 792 of 2012 and 793 of 2012** filed by **M/s. Action Construction Equipment Ltd., P. K. Bansal, and Vijay Agarwal** respectively, for the reasons stated in the order dated 01.08.2016, expressed disagreement with the views expressed earlier by another Division Bench of the Regional Bench of the Tribunal at Mumbai on 08.11.2013 in **Commissioner of Central Excise, Pune-I vs. JCB India Ltd.**¹¹ (Excise Appeal No. 173 of the 2011), and, therefore, **framed the following issues to be decided by a Larger Bench of the Tribunal:**

"(i) How to define expression "automobiles" when it is not defined in Central Excise Act/Rules or any Notification

issued thereunder. Can the expression given in the Acts, namely, Air (Prevention and Control of Pollution) Act, 1981 or Motor Vehicle Act, 1988 be adopted or the meaning of the expression "automobiles" can be assigned from the uniformly defined in the various dictionaries and known in common parlance?

(ii) The Notification No. 11/2011 dated 24.03.2011 giving the effect of demand of duty w.e.f. 29.04.2010 on the parts, components and assemblies of goods falling under Tariff Item No. 8426 41 00, headings 8417, 8429 and sub heading 8430.10 is clarificatory and applicable prior to 29.04.2010 or mandatory and applicable from 29.04.2010 onwards."

2. The issue involved is whether the activity of packing/repacking and affixing logo and MRP on the package of parts/components of Backhoe Loaders, Cranes, Forklifts and Compactors would amount to "manufacture" under section 2(f)(iii) of the Central Excise Act, 1944. This would depend on whether the aforesaid activity of packing/repacking is in relation to parts, components and assemblies of "automobiles".

.....

31. Having noted the relevant provisions, it would be useful to analyze them. Section 2 (f) of the Central Excise Act defines 'manufacture' to include any process which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods. Serial No. 100 of the Third Schedule, as it stood prior to 27.02.2010, describes the goods as parts, components and assemblies of automobiles.

32. **It is seen that it is w.e.f. 29.04.2010 that parts, components and assemblies of earth moving equipments/ machines were included retrospectively by Finance Act, 2011 (which came into force on 01.04.2011) in the description of goods at serial no. 100A. If earth moving equipments were already included in the description of goods described as 'automobiles in serial no. 100 prior to 29.04.2010, there would have been no necessity to add serial no. 100A in the Third Schedule. To recollect, prior to 29.04.2010, goods which were**

included in serial no. 100 were parts, components and assemblies of 'automobiles' upto 27.02.2010, and parts, components and assemblies of vehicles falling under Chapter 87 excluding certain types of vehicles upto 29.04.2010. It can, therefore, safely be concluded that it is only w.e.f. 29.04.2010 that the packing or repacking of parts, components and assemblies of goods described as earth moving equipments/ machines would amount to manufacture under section 2 (f) (iii) of the Central Excise Act.

33. **Learned special counsel appearing for the department, however, contended that the amendment made to the Third Schedule by addition of serial no. 100A was merely clarificatory in nature and would be applicable even prior to 29.04.2010.** According to the learned special counsel, the intention of the legislature was to rephrase the coverage by linking the final products with tariff entries, instead of the generic description i.e. "automobiles".

34. **Learned senior counsel appearing for the appellant, however, submitted that serial no. 100A of the Third Schedule was inserted w.e.f. 29.04.2010 and it cannot be given effect to for any period even prior to 29.04.2010.** Elaborating this submission, learned senior counsel pointed out that when serial no. 100A was specifically made applicable retrospectively w.e.f. 29.04.2010, it cannot by any interpretation be made effective from any day even prior to 29.04.2010.

.....

42. The amendment made in the Third Schedule by section 73 of the Finance Act, 2011, that came into effect on 01.04.2011, seeks to add serial no. 100A to the Third Schedule retrospectively w.e.f. 29.04.2010. It has to be examined whether this would be applicable even prior to this date in the light of the observations made by the Supreme Court in the aforesaid decisions.

43. Excise duty is leviable on the manufacture of any goods which, in relation to the goods specified in the Third Schedule would involve packing or repacking of such goods. To determine the goods specified in the Third Schedule of which packing or repacking would amount to manufacture, it is necessary to revert to the Third Schedule to the Central Excise Act. **Initially serial no. 100, which was inserted on 01.03.2003, described the goods as parts, component and assemblies of automobiles. Serial no. 100 was amended w.e.f. 27.02.2010 to include parts, components and assemblies of vehicles falling under Chapter 87, excluding certain types of vehicles. This Entry at serial no. 100 was kept intact and the Entry of serial no. 100A was added by the Finance Act, 2011 w.e.f. 29.04.2010 to describe the goods as parts, components and assemblies of goods which would be earth moving equipments.**

44. **It is difficult to comprehend, more particularly when serial no. 100A has been given a retrospective effect from 29.04.2010, that it would be applicable even prior to 29.04.2010. This date 29.04.2010 is not an artificial date since serial no. 100A has been retrospectively added w.e.f. 29.04.2010 to bring it in conformity with serial no. 109 of the notification no. 19 of 2010 dated 29.04.2010 issued under section 4A of the Central Excise Act relating to valuation of excisable goods with reference to retail sale price.**

45. It is, therefore, clear that levy of excise duty was introduced for the first time by serial no. 100A, by providing that packing or repacking of parts, components and assemblies of earth moving equipments would amount to manufacture. It, therefore, imposes a new burden of levy w.e.f. 29.04.2010 and it cannot by any stretch of imagination be said that it was intended to remedy a situation or make the position more explicit which was otherwise implicit.

47. **The result of the aforesaid discussion is that serial no. 100A to the Third Schedule, which was inserted retrospectively w.e.f. 29.04.2010 by Finance**

Act, 2011 (which came into effect from 01.04.2011), would have effect only from 29.04.2010 and not from any date prior to this date.

....

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.

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 Act by Finance Act, 2011 w.e.f.**

29.04.2010 by adding serial no. 100A to the Third Schedule is prospective in nature”.

19. The aforesaid decision of the Larger Bench of the Tribunal was followed in the following cases :-

- (i) **Excise Appeal No. 1161 of 2011¹²**
- (ii) **Excise Appeal No. 85911 of 2013¹³**
- (iii) **Excise Appeal No. 86741 of 2013¹⁴**
- (iv) **Excise Appeal No. 53073 of 2015¹⁵**
- (v) **Central Excise Appeal No. 21883 of 2014¹⁶**

20. In view of the reference answered by the Larger Bench of the Tribunal in **Action Construction Equipment** by interim order dated 06.06.2023, it has to be held that the two construction equipments, prior to 29.04.2010, are not 'Automobiles'. However, w.e.f. 29.04.2010, WTLB in terms Serial No. 100A would be 'Automobiles' and the appellant has paid excise duty with interest on the re-packing of all parts of WTLB w.e.f. 29.04.2010 with interest.

12. M/s JCB India Ltd. versus Commissioner of Central Goods & Service Tax, Faridabad decided on 09.01.2025

13. M/s Tata Hitachi Construction Machinery Co. Ltd. versus Commissioner of Central Excise, Nagpur decided on 13.03.2025

14. Larson & Toubro Limited versus Commissioner of Central Excise & Customs, Nagpur decided on 13.03.2025

15. M/s Donaldson India Filter Systems Private Limited versus The Commissioner of Central Excise, Gurgaon – II, Gurugram decided on 09.07.2024

16. M/s BEML Ltd. versus The Commissioner of Central Excise, Mysore decided on 13.10.2023

21. The amended Serial No. 100A that was inserted in the Third Schedule would not cover Vibrator Compactor as they are classifiable under ETI 8430 50 90, which is not included in Serial No. 100A. Therefore, no excise duty would be leviable on the packing/re-packing of parts of such Vibrator Compactor.

22. The period involved in all the three appeals is from 01.06.2006 to 30.06.2011. As noted above, no excise duty would be leviable on the packing/re-packing of the parts of the two construction equipments prior to 29.04.2010. However, w.e.f. 29.04.2010, the appellants have paid the central excise duty with interest on the packing/repacking of parts of WTLB.

23. In view of the aforesaid discussion, the impugned order dated 27.02.2012 passed by the Commissioner cannot be sustained and is set aside.

24. All the three appeals are, accordingly, allowed.

(Order dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)