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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)

ORIGINAL SIDE

CEXA/5/2025
IA No. GA/1/2025, GA/2/2025

COMMISSIONER OF CENTRAL EXCISE, KOLKATA-V

VS.

M/S. JCB INDIA LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 26th June, 2025.

Appearance:
Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
…for the appellant.

Mr. Abhratosh Majumdar, Sr.Adv.
Ms. Pooja Sah, Adv.
Ms. Priyanshi Chakraborty, Adv.
Ms. Priyanka Rathi, Adv.
… for the respondent.

The Court : Affidavit of Competency and Vakalatnama filed be taken on record.

We have heard Mr. Bhaskar Prosad Banerjee, learned Senior Counsel appearing for the appellant/revenue and Mr. Abhratosh Majumdar, learned Senior Advocate appearing for the respondent/assessee.

There is a delay of 194 days in filing this appeal. Cause shown for not preferring the appeal within the period of limitation is acceptable. That apart, the delay is not inordinate delay as it is 194 days. Therefore, we are persuaded to exercise discretion in the matter and condone the delay in filing this appeal.

Accordingly, IA No:GA/1/2025 is allowed.

This appeal has been preferred by the appellant/revenue under Section 35G of the Central Excise Act, 1944 (the Act) challenging the final order passed by the Learned Customs, Excise and Service Tax Appellate Tribunal, Kolkata (Tribunal) being No.77753/2023 dated 18th December, 2023.

The appellant/revenue has raised the following substantial questions of law:

> *"a) Whether the activities viz. re-packing and labelling of various 'parts, and accessories' which were sold by the respondent as spares of automobiles with their logo, item code and affixing MRP thereon, amount to 'manufacture' within Section 2(f) (iii) of the Central Excise Act, 1944?*
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> *b) Whether the reliance on the decision of the Larger Bench of the Mumbai Tribunal in the case of Action Construction Equipment Limited is applicable and attains finality when there are other contrary decisions of various forums viz. M/s Central Coal Fields Ltd. Vs. State of Orissa and Others [1992 AIR SC 1366], Bose Abraham Vs. State Of Kerala & Anr. [2001(3) SCC 157], M/s Ashok Leyland Ltd. Vs. Union of India (1991(52) ELT 32 (Mad.) and the Learned Tribunal, New Delhi in the case of M/s Krishna Fabricators Pvt. Ltd. [1994(69) ELT729(Tri.) and as such, the order of the Learned Tribunal is not legally tenable?*
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> *c) Whether the aforesaid goods are covered under the Third schedule and Section 4A of the Central Excise Act, 1944 as parts, and assemblies of automobiles?*

d) *Whether the Learned Tribunal committed gross error of law by setting aside the appeal of the appellant and thereby set aside the demand proposed in the show cause notice dated 03.09.2010?*

e) *Whether, the order dated 12.12.2023 passed by the Learned Tribunal is perverse, and against the settled provisions of law, and whether the order impugned can be sustained under the scrutiny of law?"*

The learned Senior Advocate appearing for the respondent/assessee raised a preliminary objection as regards maintainability of the appeal before this Court and contended that the issue which falls for consideration in this appeal pertains to classification issue and therefore, the appeal would lie before the Hon'ble Supreme Court. That apart, it is submitted that the respondent/assessee was successful on the same issue both before the Chandigarh Bench as well as Pune Bench of the learned Tribunal and as against those orders, the revenue has preferred appeal before the Hon'ble Supreme Court. In this regard, the learned Senior Advocate referred to the substantial questions of law which have been raised before the Hon'ble Supreme Court in the Special Leave Petition filed by the revenue against the order passed by the Chandigarh Bench of the learned Tribunal. That apart, it is pointed out that the Chandigarh Bench had referred to the order passed by the Commissioner of Central Excise, Kolkata dated 21st March, 2011, by which the Commissioner concluded that the activity done by the assessee was outside the scope of Section 2(f) and the excise duty was not chargeable from the assessee for the period in question. This order of the Commissioner of the Central Excise, Kolkata dated 21st March, 2011 has been affirmed by the learned Tribunal which is impugned in this appeal.

The substantial questions of law which have been raised before the Hon'ble Supreme Court in the assessee's own case arising out of the order passed by the Chandigarh Bench of the learned Tribunal though not verbatim it is substantively the same. Apart from that, the revenue cannot dispute the fact that the issue which falls for consideration is a classification issue and the appeal is not maintainable before this Court.

Therefore, we sustain the preliminary objection raised by the learned Senior Advocate appearing for the respondent/assessee and hold that the appeal is not maintainable before this Court.

Accordingly, the appeal (CEXA/5/2025) stands dismissed.

The Stay Application (GA/2/2025) also stands dismissed.

The original certified copy of the order passed by the learned Tribunal shall be returned to the learned Advocate on record for the appellant/department after retaining the Photostat copy.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

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