IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.41176 of 2014

(Arising out of Order-in-Original No.3/2014 (CE) dated 28.2.2014 passed by the Commissioner of Central Excise, Chennai – III)

M/s. Same Deutz-Fahr India Pvt. Ltd. **Appellant**
72/72-M, SIPCOT Industrial Estate
Ranipet, Tamil Nadu – 632 403.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, Anna Nagar
Chennai – 600 040.

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 40632/2025

Date of Hearing : 10.01.2025
Date of Decision: 20.06.2025

Per M. Ajit Kumar,

This appeal is filed against Order in Original No. 3/2014-CE dated 28.2.2014 passed by the Commissioner of Central Excise, Chennai – III Commissionerate (impugned order).

2. The appellants are a 100% Export Oriented Unit (**EOU**) engaged in the manufacture of Tractors, Engines and Parts thereof falling under Chapters 84 and 87 of the Schedule to the Central Excise Tariff Act, 1985 (**CETA 1985**). Brief facts of the case are that the appellant is permitted to sell a portion of similar goods in DTA at concessional rate of duty in terms of Foreign Trade Policy 2009 – 2014 read with

Notification No. 23/2003-CE dated 31.3.2003. During scrutiny of ER-2 returns of the appellant for the period August 2008 to March 2012, it was noticed that the appellant has cleared stationary engines to DTA for use in the construction equipment, water pumps etc. classifiable under CETH 84089010 on payment of duty at concessional rate of 3.75% with 2% education cess and 1% SHE cess vide Sl.No. 2 of Notification No. 23/2003-CE dated 31.3.2003 which are not similar to the engines exported or expected to be exported. It was alleged by the department that during the said period i.e. 2008 – 09 to 2011 – 12, the appellant has exported only 3 numbers of stationary engines valued at Rs.2,75,600/- whereas the appellant has cleared 1437 numbers of stationary engines valued at Rs.12,26,92,239/- to DTA for sole use in the construction equipments, water pump etc. which are used in the stationary position whereas the goods exported are engines for tractors and hence both the engines do not fall under the definition of 'similar goods' and perform similar function as clarified in para 3 of the Board Circular No. 7/2006-Cus dated 13.1.2006 by adopting the definition of 'similar goods' provided in the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. Hence Show Cause Notice dated 4.7.2013 was issued to the appellant to demand differential duty of Rs.52,98,243/- short-paid on the clearances of stationary engines in DTA during the period from August 2008 to March 2012 along with interest and for imposition of penalty under sec. 11AC of the Central Excise Act, 1944 and Rule 25 of Central Excise Rules, 2002. After due process of law, the Ld. Adjudicating Authority confirmed the proposals in the Show Cause Notice along with interest

and imposed equal penalty under sec. 11AC of the Act but refrained from imposing penalty under Rule 25 of Central Excise Rules, 2002. Hence the appellant is before this forum.

3. Shri S. Murugappan, Ld. Advocate appeared for the appellant and Shri Anoop Singh, Ld. Authorized Representative appeared for the respondent.

3.1 Shri S. Murugappan the Ld. Advocate for the appellant submitted that being a EOU the Green Card issued to them under Chapter 6 of the FTP (RE-2012)/ 2009-14, is for manufacture and clearance of engines in general and further, definition given in Customs Valuation Rules with regard to similar goods cannot be adopted for interpretation of the expression "similar goods" as it appears in the Foreign Trade Policy. The Green Card issued to the appellants is for engines in general i.e. “Tractors, Engines and Parts thereof” and not for any specific type of engines. All engines are manufactured using like components, having like configuration and technical characteristics and perform the same function, even though they are used for various applications. The fact that engines have different end-use applications, will not make them different goods. Engines have the same purpose, use and construction though they may be customized for specific use. The issue is covered in terms of the decision given by this Hon'ble Tribunal in the case of **ABI Turnamatics Vs. Commissioner of GST & C.Ex., Chennai** reported in 2019 (366) E.L.T. 1048 (Tri-Chennai). He prayed that their appeal may be allowed.

3.2 The Ld. AR for the respondent submitted that the appellant is engaged in the manufacture and clearance of tractors / engines and

parts thereof falling under chapter 87 and 84 of the schedule to the Central Excise Tariff Act, 1985. They are permitted to sell a portion of 'similar goods' in domestic tariff area and concessional rate of duty in terms of foreign trade policy 2009-2014 read with notification number 23/2003-CE dated 31.03.2003. Hover the appellant has cleared stationary engine to DTA for use in construction equipment, water pumps etc classifiable under Central Excise Tariff Sub-Heading (**CETSH**) number 8408 9010 on payment of concessional duty. Tractor engines and stationary engines are not commercially interchangeable since they perform different functions and are not 'similar' goods. As per Boards circular no. 7/2006 Cus dated 13.01.2006 it has been stated that 'similar goods' would be based on the definition as provided in the Customs Valuation (Determination of Price of Imported Goods) Rules 1988 (**CVR 1988**). Further the appellant has not registered themselves for manufacture and clearance of stationary engines in DTA during 2008-09. On perusal of ER 2 returns it is seen that the appellant had classified stationary engines manufactured by them under CETH 8408 9010 and engines for tractor under CETH 8408 2020, hence it is clear that the engines manufactured are classified as per their usage. Hence the goods are not similar and the appeal may hence be rejected.

4. We have heard both the parties to the dispute and have also carefully gone through the appeal memorandum. We find that the Ld. Commissioner had posed to herself the question for decision as under;

> "Now the issue placed before me is to decide whether the goods cleared by the noticee in DTA fall under the definition of "similar goods" as specified under Board's Circular number 7/2006-Cus dated 13.01.2006 and are eligible for concessional rate of duty under notification 23/2003-CE dated 31.03.2003."

While being a departmental officer bound by Boards Circular, she had perhaps posed the question correctly, but since the EOU scheme under consideration was formulated under the Foreign Trade Policy, 2009-14 (**FTP**), we feel the correct question should have been:

> "Whether the goods cleared by the noticee in DTA fall under the definition of "similar goods" as per paragraph 6.8 of the Foreign Trade Policy, 2009-14 and are eligible for concessional rate of duty under notification 23/2003-CE dated 31.03.2003 ?"

5. In terms of the FTDR Act, it is the DGFT who has the final word on interpretation of the FTP. It has also been held by the Hon'ble Supreme Court in ***Atul Commodities Pvt. Limited* v. *CC, Cochin*** [2009 (235) E.L.T. 385 (S.C.)] that if any doubt or question arises in respect of interpretation of Foreign Trade Policy or in the matter of classification of any item of the ITC (HS) or in the Handbook, the said question or doubt shall be referred to DGFT, whose decision thereon shall be final and binding. The same is, however, not seen to have been done.

6. Since neither the FTP nor Notification No. 23/2003-CE has defined "similar goods", it may not be correct to seek its meaning in CVR 1988. As stated by the Hon'ble Supreme Court in **Jagatram Ahuja vs. C.I.T.** [AIR 2000 SUPREME COURT 3195 / (2000) 246-ITR-609]

> "The words and expressions defined in one statute as judicially interpreted do not afford a guide to the construction of the same words or expressions in another statute unless both the statutes are pari materia legislations or it is specifically provided in one statute to give the same meaning to the words as defined in another statute."

We find that the aim and object of the two legislations, namely, the FTDR Act and the Customs Act are not similar. They operate in their

own spheres. The former provides a framework for the development and regulation of foreign trade in India by facilitating imports and increasing exports. The latter is a tax statute. The Apex Court in **Maheshwari Fish Seed Farm Vs T.N. Electricity Board,** [(2004) 4 SCC 705], held that it is settled rule of interpretation that the words not defined in a statute are to be understood in their natural, ordinary or popular sense. In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which everyone conversant with the word and the subject-matter of statute and to whom the legislation is addressed, will give if the problem were put to him. The Hon'ble High Court of Kerala after citing a large number of Constitutional Court judgments in **ABBAS ALI, S/O. ALAVI Vs THE SECRETARY, REGIONAL TRANSPORT AUTHORITY, MALAPPURAM** [WP(C).No. 10484 of 2011 (I), Dated: 21.03.2012] held;

> "12.**Thus, it is well settled that if a word used in a statute is not defined in that statute itself, the definition clause in a different statute, which may have defined the same word for the purpose of that statute, cannot be imported to interpret or construe the said word in the statute where it is not defined**. Different statutes may use the same term for different purposes. The common parlance meaning available in the dictionaries provide a field of choice. In the case of a term left undefined in the statute under interpretation, the duty of the interpreter would be to choose that which fits, plainly, situationally, objectively, contextually and in terms of the constitutional vision and doctrines emanating out of the Constitution of India which is the "Mother Statute". The nature of the legislation; the purpose of the legislation; the context of the use of the particular word; etc. are among the guiding factors as may appeal to judicial prudence. **The object and purpose of the legislation which is subjected to the process of interpretation or construction, has necessarily to be taken into consideration."**
>
> (Emphasis added)

7. We find that the Ld. Adjudicating Authority at para 17. Of the impugned order has made the following observation.

> "17. I notice from the write up of the engines, that the noticee manufacture engines capacity of 3000 cc and above which have common major components and if the engines are fitted with tractors, it will function like tractor engine and if fitted with other than tractors, it will function as stationary engines. However, it is important to note that internal components with variation is customized by way of adjustment done in the Mono Cylinder Fuel Injection pump and Governor Assembly to suit the application for which the engine is required. Hence it is clear though the components are same the settings are done in such a way to enable the engines to perform the job as per the buyer's requirement. Hence the contention of the notice that all the engines are of same group is not acceptable."
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> (emphasis added)

7.1 The order makes it clear that the two products are similar. It is the end use which has troubled the Ld. Commissioner in returning a finding of the goods not being similar, perhaps burdened by the Boards Circular for adopting the definition of 'similar goods' provided in the CVR 1988. However as stated in **ABBAS ALI** (supra), the object and purpose of the legislation which is subjected to the process of interpretation or construction, has necessarily to be taken into consideration.

8. We find that the meaning of the words of "similar goods" came up for a discussion before the Hon'ble Supreme Court in the case of **Nat Steel Equipment Pvt Ltd.** [1988 (34) ELT 8 (SC)]. It was held;

> "5. It is manifest that the equipment were electrical appliances. There was no dispute on that. It is also clear that these are normally used in household and similar appliances used in hotels etc. The expression "similar" is a significant expression**. It does not mean "identical" but it means corresponding to/resembling to in many respects; somewhat like; or having a general likeness. The statute does not contemplate that the goods classified under the words of "similar description" shall be in all respects the same. If it did, these words would be unnecessary.** These were intended to embrace goods but not identical with those goods. If the item for similar appliances which are normally used in the household, these will be taxable under tariff item 33C." (emphasis added)

9. Hence as stated by the Hon'ble Supreme Court in **Nat Steel** (supra) "The expression "similar" does not mean "identical" but it means corresponding to resembling to in many respects; somewhat like; or having a general likeness.

10. We find that, the EOU scheme under the FTDR Act is a part of beneficial legislation for facilitating imports and increasing exports. It needs to be read in a liberal way in the context of the FTDR Act. Hence one does not need to go deep into the matter and by a process of hairsplitting and semantic niceties deny the benefit of the exemption notification. We find that the observations of the Ld. Commissioner leans towards finding the goods to be similar except for their end use, which is not of relevance just like the definition of similar goods in CVR 1988. Moreover, the term used is "similar goods" and not "identical goods". We hence are of the opinion that the impugned goods fall under the definition of "similar goods" as per paragraph 6.8 of the Foreign Trade Policy, 2009-14 and are eligible for concessional rate of duty under notification 23/2003-CE dated 31.03.2003.

11. In the light of the discussions above, we set aside the impugned order and uphold the appeal. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 20.06.2025)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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