

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II**

Customs Appeal No. 50547 of 2019-[DB]

Arising out of Order-in-Appeal No. CC(A)/CUS/D-11/ICD/TKD/IMPORT/2440/2018,
Dated: 18.10.2018

Passed by the Commissioner of Customs(Appeals) New Delhi

Date of Hearing: 25.04.2019

Date of Decision: 18.10.2019

**JTEKT SONA AUTOMOTIVE INDIA LTD
PLOT NO. 26, SECTOR 05, PHASE-II GROWTH CENTRE, BAWAL
DIST. REWARI, HARIYANA- 123501**

Vs

**COMMISSIONER OF CUSTOMS
NEW CUSTOMS HOUSE, NEW DELHI-110037**

Appellant Rep by: Shri B L Narsihman, Adv.

Respondent Rep by: Shri Sunil Kumar, AR

CORAM: Anil Choudhary, Member (J)

Bijay Kumar, Member (T)

Cus - The assessee imported a consignment of Gear Reduction Blank from a supplier based in China - The assessee classified the goods under Tariff Item 8483 40 00 as Gears and Gearing other than toothed wheel, chain sprockets and other transmission elements presented separately - The classification adopted by the assessee did not find favor with the appraising group, which proposed to re-classify the goods under Tariff Item 8708 94 00 - The assessee agreed to pay the differential duty under protest - On adjudication, the classification adopted by the assessee was rejected and the goods were re-classified under Tariff Item 8708 94 00 of the Customs Tariff Act - On appeal, the Commr.(A) upheld the O-i-O - Hence the present appeal.

HELD - The Tribunal in *Commissioner of Central Excise, Chennai vs. Best Cast Pvt. Ltd.* decided upon the classification of gear box part and clutch, wherein it was held that the proper classification of these items would be under Heading 8483 and not under Heading 8708 as part of motor vehicles - Such order of the Tribunal was later sustained by the Apex Court and so attained finality - Moreover, in the case of *Eimco Elecon (India) Pvt Ltd. vs Commissioner of C. EX., Vadodara* it was held that the pinion manufactured as component of air motor is rightly classified under Heading 8443 of CEA as against Heading 7226, 8607, 8708 of 8714 of CETA - Moreover, in *Commissioner of Central Excise Rohtak vs. Khalifa Forge Limited* it was held that the transmission shaft and parts thereof are classifiable under Heading 8443 of CEA and not under Chapter 87 as part of motor vehicle - In light of such precedent cases, there is no reason to classify the goods under Heading 8708 as part of motor vehicles - The parts which were imported were part of column type electric power steering system

(CEPS) and not part of motor vehicle so as to be classifiable under Chapter 8708 of Customs Tariff - Hence the O-i-A merits being set aside: CESTAT

Assessee's appeal allowed

Case laws cited:

Vediocon Industries Ltd., vs. CCE, Aurangabad - 2009-TIOL-653-CESTAT-MUM... Para 2

Commissioner of Central Excise, Rohtak vs. Khalifa Forge Limited - 2004-TIOL-164-CESTAT-DEL... Para 2.4...followed

Bharat Fritz Werner (P)Ltd vs. Collector of C. Excise, Bangalore, [1998 (102) ELT 732(Tribunal)]... Para 2.4

Commissioner of C. Ex. Vs. Best Cast (P) Ltd. [2001 (127) ELT 730 (Tri.-Chennai)]... Para 2.5

Telco Limited vs. Commissioner of Central Excise, Pune 2006(105) ELT 151 Tri-Mum]... Para 2.6

Mahindra and Mahindra Ltd. [1986 (26) ELT 269(Tri.)]... Para 4

Telco ltd - 2006-TIOL-199-CESTAT-MUM... Para 4

GS Auto International Ltd - 2003-TIOL-92-SC-CX ... Para 4

FINAL ORDER NO. 51389/2019

Per: Bijay Kumar:

1. The Present appeal is filed against the Order dated 18/10/2018 passed by the learned Commissioner (Appeal), vide which he has sustained the assessment order dated 13/01/2017 passed by the Deputy Commissioner of Customs, (Gr), ICD Tuglakabad, New Delhi confirming the demand of Rs. 1,95,134/-. Being aggrieved with the impugned order the Appellant is before us in this Appeal. The appellant has imported a consignment of "gear reduction blank" (hereinafter referred to as "impugned goods") from overseas supplier from China vide Bill of Entry No. 76447685 dated 30/11/2016 at ICD, Tuglakabad. The Appellant classified the impugned goods under tariff item 8483 40 00 as Gears and gearing, other than toothed wheel, chain sprockets and other transmission elements presented separately. This classification of the impugned goods was not accepted by the appraising group and the query was raised as to why the impugned goods should not be re-classified under tariff item 8708 94 00 of the Customs Tariff Act, 1975 (hereinafter referred to as 'CTH') The appellant replied to the above query on EDI system stating that they have already submitted required documents for claim of the classification of the impugned goods under tariff item 8340 00 of CTH, however, agreed to pay the differential duty under protest. Thereafter, the Deputy Commissioner, ICD, TKD, New Delhi passed an assessment order wherein the classification claimed by the appellant was rejected and the impugned goods were re-classified under tariff item 87 0 89 400 of Customs Tariff Act. The appellant preferred appeal against this order on 08/03/2017 before the learned Commissioner (Appeal).

However, the learned Commissioner (Appeal) upheld the order passed by the Adjudicating Authority in the assessment order which is the subject matter of present appeal.

2. Learned Advocate on behalf of the Appellant submitted that the classification adopted by the appellant is appropriated in terms of Section XVI of CTH. Section note I to Section XVI of CTH provided for exclusion of articles of Section XVII from purview of Section XVI. The Section Note 1(I) did not apply in the present case since it excludes articles of Section XVII, whereas the impugned product is part of article of Section XVII and no article specifically mentioned by its name in Section XVII. Reliance was placed in the case of *M/s Vediocon Industries Ltd., vs. CCE, Aurangabad reported at - 2009-TIOL-653-CESTAT-MUM* .

2.1 It was also submitted that the classification of the impugned goods in Section XVII under tariff entry 870894 00, of Customs Tariff Act is to be ruled out due to the existence of more specific entry under heading 8483 40 00 as per the General Rules of Interpretation Rules for the interpretation of first schedule to Import Tariff and as per the Harmonise system of Nomenclature Explanatory Note. The learned Advocate refers to Customs Tariff heading 8708, which is for parts and accessories of motor vehicles of 8701 to 8705. The Tariff Item 8708 94 00 pertains to steering wheels; steering columns; steering boxes; and parts thereof. The issue in the present case is regarding the classification of the impugned goods as "parts of steering wheels and steering columns. It is submitted that the appellant is not disputing the fact that the impugned goods are parts of steering columns but their classification under tariff heading 87089400.

2.2 The learned Advocate further submitted that Section Note 2 to Section XVII is not applicable in the case at hand. As the Department solely relied upon the exclusion made under Section Note 2 (e) to Section XVII, which states that only those articles of chapter heading 8443 shall be excluded from this Section, which constitutes the integral part of the engine or motor. Therefore, they are correctly classified under Customs Tariff Heading 8708. In this regard, it was submitted that the Department has mis-understood the scope of Section Note 2 to Section XVII of Customs Tariff Act to the extent that even though the impugned goods are excluded by virtue of Section Note 2 (e) which does not mean that it is included in chapter 87.

2.3 It is also submitted that Section Note 3 to Section XVII shall not apply in the case at hand as only those parts which are not suitable for use solely or principally with article of Section XVII shall not be covered under the Chapter XVII the impugned goods are solely or principally be used with article of chapter 87 the exclusion given under Section Note 3 shall not apply.

2.4 The learned Advocate place reliance on Rule 3(a) of General Rules of Interpretation wherein it is provided that the heading which provides more specific description shall be preferred over a more general description and thus the classification of impugned goods cannot be placed to the residuary heading covering the parts and accessories. Reliance was placed on HSN Explanatory note to Section XVII that provided for that the heading or part and accessory, only apply to those parts or accessories which apply with the following three conditions:

- (i) They must not be excluded by the terms of Note 2 to this; and
- (ii) They must be suitable for use solely or principally with the articles of Chapter 86 to 88; and
- (iii) They must not be more specifically included elsewhere in the Nomenclature

The third exclusion reiterates what is provided under Rule 3(a) of GI Rules and also in the HSN to Section XVII which stated that;

"(C) Parts and accessories covered more specifically elsewhere in the Nomenclature.

Parts and accessories, even if identified as for the articles of this Section, are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature."

(11) flexible shafts for speed indicators, revolution counters, etc.

Thus in the case at hand the tariff heading 87080 more general in nature and 84830 more specific, applying General Rules of Interpretation and hence the interpretation adopted by the Department is incorrect and impugned order is not sustainable. Reliance was placed on the following decisions;

(a) *Commissioner of Central Excise, Rohtak vs. Kafila Forge Limited, 2004 (167) ELT 343 (Tri.-Del.)* = **2004-TIOL-164-CESTAT-DEL**, wherein it was held that transmission shaft are to be classified under Heading 84.83 of the Central Excise Tariff being specifically covered therein and not as parts of accessories of the machines.

(b) *Bharat Fritz Werner (P)Ltd vs. Collector of C. Excise, Bangalore, [1998 (102) ELT 732(Tribunal)]*-wherein it was held that gears which are specifically described in any particular heading will be classified under that specific heading (i.e. 8483) and not as parts and accessories under Heading 84.66 even if they are suitable for use solely or principally with the machines of Heading Nos. 84.65 to 84.65

2.5 It is also submitted that all types of steering gears are to be classified in tariff item 8483 40 00 as per HSN Explanatory Note placing reliance in the case of *Commissioner of C. Ex. Vs. Best Cast (P) Ltd. [2001 (127) ELT 730 (Tri.-Chennai)]*

2.6 Learned Advocate further submitted that the reliance placed by learned Commissioner (Appeal) in the impugned order in the case of *M/s Telco Limited vs. Commissioner of Central Excise, Pune reported at [2006(105) ELT 151 Tri-Mum]* is not correct to the extent that Rule 3(a) of GI Rules read with HSN Explanatory Note was not considered, and therefore, the decision cannot be relied upon to conclude the classification of impugned goods.

3. The learned Authorised Representative for the Revenue, however, supported the impugned order and also submitted a written submission dated 08/05/2019. In the written submission it was submitted the classification of the impugned goods should be heading 8708 of the Customs Tariff Act placing reliance on the Section Note of Section XVI and XVII along with the HSN Explanatory Notes. It was also submitted that the impugned goods are not classifiable under chapter heading 84/83 as gear contrary to the provisions of Note 1(l) of Section XVI in terms of which article of Section XVII are included from the purview of Section XVI. A reliance was placed in the case of *Best*

Cast Pvt. Ltd. [2001(127 ELT 730 (Tri-Chennai)]. Accordingly it was submitted that the classification of impugned goods can be determined under Rule 1 of GR Rules there is no justification to jump to Rule 3(a) as contented by the Appellant. On application of Note 1(l) of Section XVI and exclusion the more appropriate classification should be under heading 8708, which has rightly been upheld in the impugned order.

4. Learned AR also place reliance on the decision of *Mahindra and Mahindra Ltd. [1986 (26) ELT 269(Tri.)]* and *Telco Ltd. [2006 (195)ELT 151 (Tri-Mum)] = 2006-TIOL-199-CESTAT-MUM* wherein goods identical to impugned goods were held classifiable under heading 8708. It is also submitted that the impugned goods are parts of the steering wheels and hence suitable for use solely and principally with the automobiles/ vehicles of heading 87.01 to 87.05 and relied on the decision of *GS Auto International Ltd. [2003(152) ELT 2(SC)] = 2003-TIOL-92-SC-CX* wherein Hon'ble Apex Court held that goods suitable for use solely and principally with the automobiles/vehicles of heading 8701 to 8705 shall be classified under 8708. In view of above submissions, learned Departmental Representative submitted that there is no infirmity in the impugned order and appeal is liable to be dismissed.

5. We have gone through the impugned order and submissions made by learned Advocate on behalf of the Appellant and learned AR on behalf of the Revenue.

6. We find that the classification of impugned product is to be decided as to whether under Chapter 8443 or 8408 of Customs Tariff Act. We find that Tribunal in case of Commissioner of Central Excise, Chennai vs. Best Cast Pvt. Ltd. has occasion to decide the classification of gear box part and clutch, wherein it is held that the proper classification of the parts gear box and part of clutch will be under 8483.00 of Central Excise Tariff and not under Chapter Heading 8708 as a part of motor vehicles. Para 4 of the order is reproduced as under;

4. We have considered the material on records, submissions made and find that the subject goods are parts of gear box and clutch which are classified under Heading 8483.00, therefore, these items cannot be said to be articles of Section XVII, which are not excluded by Section Note 1K to Section XVI. Therefore, we find no merit in the grounds urged in the appeal filed by the Revenue when the gear box is classified under heading 8483.00, parts thereof as per Notes have to be classified thereunder and not as parts of Motor vehicle under Chapter 87 as proposed in the Revenue appeal. The parts are not understood as parts of motor vehicle but are understood as parts of gear box, and therefore, not only by reading of interpretation of Chapter Notes as conducted by Commissioner (Appeals) but also by commercial parlance, the goods will get classified as parts of gear box under Heading 8483.00. Therefore, we find no reason to uphold the present appeal.

This order was challenging by the Revenue before Hon'ble Supreme Court in which dismissed the appeal upholding the order of the Tribunal. Thus the order of the Tribunal merged with the order of Hon'ble Supreme Court and attained finality.

8. We also find that in case of *Eimco Elecon (India) Pvt Ltd. vs Commissioner of C. EX., Vadoara* it was held that the pinion manufactured as component of air motor is rightly classified under heading 8443 of Central Excise Act. As against heading 7226, 8607,

8708 of 8714 of Central Excise Tariff. The relevant portion of the order which is para 5 which is reproduced as under;

"5. We are unable, on examination, to agree that the classification determined by the Board is correct. Gears and gearing are specifically mentioned in Heading 84.83. The Explanatory Notes to the Harmonized System of Nomenclature on which the heading is based, specifically mentioned rack and pinion gear, we have already noted the definition of pinion in the McGraw Hill Dictionary of Science and Technology. The basis for the Board's view is Note 2(e) to Section XVI of the tariff which excludes inter alia articles of Section XVII from the scope of Chapter 84. Note 2(e) to Section XVII inter alia provides that the expression "parts" does not apply inter alia to machines and apparatus of Headings 84.01 and 84.79 and parts, thereof articles of Heading 84.81 or 84.82, and provided they constitute integral part of engines or motors of Heading 84.83. In our opinion, the conclusion of the Board's view is questionable. However, we do not propose to pursue this further; The Board has concluded that such transmission elements, if specially designed for use with vehicle of Section XVII of the tariff, would be covered as parts of vehicles under the appropriate Heading 86.07, 87.08 or 87.14. The appellant has explained that pinion manufactured by it was a component of an air motor, which was an internal component of an underground mining machinery. It is not possible for us to conclude, from the material on record, that such machinery would be classifiable in any of three headings mentioned in the Board's circular. That circular therefore will not apply. Therefore, we must confirm the classification under Heading 84.83."

9. In the case of Commissioner of Central Excise Rohtak vs. Khalifa Forge Limited it is held that the transmissions shaft and its part are classifiable under heading 8443 of Central Excise Act which specifically covered therein and not under Chapter 87 as a part of motor vehicle is contended by Revenue. Relevant portion of the order is reproduced as under;

"3. The contention of the Revenue is that the transmission shafts manufactured by respondents specially designed for use in the motor vehicle of Chapter 87 of the Tariff. Therefore, are to be classified under heading as parts of vehicles. We find that this issue is settled by the decision of the Tribunal in the case of Bharat Fritz Werner (P) Ltd. vs. CCE, Bangalore, 1998 (102) ELT 732 and in the case of CCE, Coimbatore vs. Venkatachalapathy Industries, 1999 (106) ELT 176. In these cases crank shafts tappet shafts, gear, wheels, pulleys and picking shafts are to be classified under heading 84.83 of the Central Excise, Tariff being specifically covered therein and not as parts of accessories of the machines. In view of the above decisions of the Tribunal, we find no infirmity in the impugned order. The appeal filed by the Revenue is rejected."

10. We also considered the decision of Teleco Ltd (supra) wherein it was held as under;

2. In the instant case, there is evidence that the impugned goods are not integral parts of engines or motors but are parts of motor vehicles. We also note that the appellants are paying duty on the impugned goods as parts of motor vehicles for the period subsequent to the period in dispute. We also note that in the case of Mahindra & Mahindra Ltd. v. Collector of Customs - 1986 (26) E.L.T. 269 (Tri.), Tribunal had earlier held that goods similar to the impugned goods to be classifiable under Chapter 87 applying the said Section Note 2(e) of Section XVII and Section Note 1(k) of Section

XVI of the Customs Tariff Schedule which is similar to the Excise Tariff Schedule. The contrary decision in the case of Commissioner, Chennai v. Best Cast (P) Ltd. - 2001 (127) E.L.T. 730 (Tri. - Chennai) holding that gear box parts and clutch are not parts of motor vehicle by commercial parlance and classifiable under Heading 8483.00 is distinguishable and moreover, the said decision in its operative part makes no reference to Section Note 2(e) referred to above.

3. Accordingly, following the decision in the case of Mahindra & Mahindra (supra), we hold that the impugned goods are classifiable under Heading 87.08. As such, we uphold the duty demand against the appellants but allow them to utilize the credit of duty paid by them on these goods under Heading 87.08 when used in further manufacture in their own unit.

*4. Consequently, Appeal Nos. E/2030 & 2031/00 and cross-objection No. E/CO-272/2000 filed by M/s. Telco Ltd. = **2006-TIOL-199-CESTAT-MUM** are dismissed and Appeal No. E/2056/2000 filed by the department is allowed in the above terms.*

11. In This case we find that the Interpretative Rules 3(a) has not been considered by the Tribunal, and therefore, the same is per incuriam. On the other hand the imported item are parts of steering column which are classifiable under heading 848300 and cannot to said to be the article of Section XVII which are not excluded by Section Note 1(k) to Section XVI.

12. Accordingly, we do not find any reason to classify the goods under heading 8708 as the part of motor vehicles as held in the impugned order. The parts which has been imported is part of column type electric powers steering system (CEPS) and not part of motor vehicle so as to classify under chapter 8708 of Customs Tariff. In view of above, we set aside the impugned order and allow the appeal.

(Order pronounced in open court on 18.10.2019)