CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10248 of 2020

[Arising out of Order-in-Original/Appeal No OIA-AHD-CUSTM-000-APP-472-19-20 dated 10.12.2019 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

Shiroki Auto Components India Pvt Limited .... Appellant
Block B Building-1, Techno Trends Auto Parts Pvt Ltd,
Ahmedabad, Gujarat

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... Respondent
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE :

Shri A.R. Madhav Rao & Shri Arjyadeep Rai, advocates for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11132 / 2020

DATE OF HEARING : 23.07.2020
DATE OF DECISION: 29.07.2020

RAMESH NAIR :

The brief facts of the case are that the appellant have imported child parts from Japan which are then assembled to manufacture Round Recliner Assembly in India and then said Round Recliner Assembly is dispatched to factory at Haryana where the recliner welding assembly is completed and thereafter it is sent to Maruti factory where it is welded and fixed on the seat of motor vehicles. The case of the department is that the child / spare parts imported by the appellant are classifiable under heading 8708 of CTH as parts and accessories motor vehicle, as against the appellant's claim that the imported parts are parts of motor vehicle seats and classifiable under 9401 9000. The Adjudicating Authority in the speaking order held that child/ spare parts imported by the appellant is correctly classifiable under CTH 8708. For this conclusion, he placed reliance on the judgments of

Pragati Silicones Pvt. Limited vs. CCE, Delhi – Manu/SC/2072/2007, GS Auto International Limited vs. Collector of Central Excise, Chandigarh – Manu/SC/0031/2003 and Cast Metal Industries Pvt. Limited vs. CCE, Kolkata – Manu/SC/1369/2015.

2. Shri A.R. Madhav Rao along with Shri Arjyadeep Rai learned advocates appearing on behalf of the appellant made a detailed submission. He submits that in the present case explanatory notes of Section XVII specifically excludes the vehicle seats of heading 9401; Motor vehicle seats are specifically mentioned under heading 9401 and this heading also covers parts of seats under heading 9401 9000 therefore, parts of motor vehicle seats can only fall under 9401 9000. He further submits that US Customs Ruling NY R04585 dated 15.08.2006 in regard to very same product i.e. Recliner Assembly has held the same to be parts of seats used in motor vehicles. As regards the judgments relied on by the Adjudicating Authority, he submits that all the three judgments are clearly distinguishable as the facts in those cases are different from the case in hand. In support of his submission he placed reliance on the following judgments:-

(a) JTKET Sona Automative India Limited vs. CC, New Customs House – CA 50547 of 2019 (Order No. 51389/2019 dated 18.10.2019)

(b) CCE vs. Uni Products India Limited – CA 302-303 of 2009 Hon'ble Supreme Court judgment dated 01.05.2020.

(c) CCE, Shillong vs. Wood Craft Products Limited – 1995 (3) SCC 454

(d) O.K. Play (India) Limited vs. CCE, Delhi – 2005 (180) ELT 300 (SC)

3. On the other hand Shri Vinod Lukose, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order. He filed a detailed written submission and relied upon the following decisions:-

(a) 2005 (180) ELT 300 (SC) - O.K. Play (India) Limited vs. CCE, Delhi- III, Gurgaon

(b) 2007 (211) ELT 534 (SC) - Pragati Silicons Pvt. Limited vs. CCE, Delhi

(c) 1991(51) ELT 173(SC) - Mehra Brothers vs. Joint Commercial Officer

(d) 2019 (23) GSTL 441 (SC) CTO, Anti Evasion, Circle-III, Jaipur vs. Prasoon Enterprises

(e) 2003 (152) ELT 3(SC) - GS Auto International Limited vs. CCE, Chandigarh

(f) 1987(31) ELT 369(Bom) - PMP Auto Industries Limited vs. Union of India & Others

(g) 2015 (325) ELT 471 (SC) - Cast Metal Industries (P) Limited vs. CCE-IV, Kolkata

(h) 2004 (174) ELT 49(Tri-Chennai) - CCE, Coimbatore vs. Premier Instruments & Controls Limited

(i) 2015 (321) ELT A130 (SC) - Premier Instruments & Controls Limited vs. Commissioner

(j) 2002(145) ELT 639 (Tri-Del) - Insulation Electricals Pvt. Limited vs. CCE, Delhi-I

(k) 2008(224) ELT 512 (SC) — CCE, Delhi vs. Insulation Electricals Pvt. Limited

He submits that parts in question are used in the automobile seats therefore, it is clearly classifiable as parts and accessories of motor vehicle. He further submits that in the case of *O.K. Play (India) Limited (supra)*, parameters were given on how to classify the goods. The same parameters i.e. HSN, Rules on interpretation of Customs Tariff can be adopted even for classification under Customs since Customs harmonized to nomenclature. As regards the authority of USA relied upon, whereby recliners have been held to be part of the seat, he submits that in the Harmonized Tariff Schedule of the United States, under the heading parts 9401.90, they have a further sub-heading which pertains to parts of seats of a kind used for motor vehicles. However, in the Customs Tariff under CTH 9401 which deals with seats, there is only one sub-heading which deals with parts namely 94019000. Sub-heading specifically deals with parts or seats of motor vehicles is missing in tariff. Even otherwise only where the goods are identical then law laid down by the earlier judgments is required to be followed. In this case, neither are the goods similar/ identical nor are the judgments/ orders so relied upon given by any Court within the territory of India. Therefore, the said US authority cannot be relied upon.

4. The appellant was directed to submit affidavit as regards to their manufacture from imported child parts and supply thereof. The appellant have submitted the affidavit dated 27 July 2020 along with copies of sample invoices, which is taken on record. The learned Authorised Representative Shri Vinod Lukose also submitted one more additional submission post hearing on 28.07.2020 which has been taken on record and carefully considered.

5. We have heard both sides and perused the record. The limited issue to be decided is whether the child parts imported by the appellant from Japan is classifiable under CTH 94019000 as parts of vehicle seats as declared by the appellant or under CTH 87089900 as parts and accessories of motor vehicles of heading 8701 to 8705 as assessed by the Customs. Before analyzing the entire legal authority on the classification, it is necessary to first understand the facts in the present case. The appellant have imported certain child parts which they have assembled in their plant at Gujarat. The assembled item is named as Round Recliner. Round Recliner is thereafter sold to the manufacturing facility of the appellant’s sister concern M/s. Shiroki Technical India Pvt. Limited (hereinafter referred to as STIPL) in Haryana where said Round Recliner is used to make Recliner

Assembly. M/s. STIPL Haryana sold the Recliner Assembly to the seat manufacturer namely M/s. Krishna Maruti Limited, Gurgaon. M/s. Krishna Maruti Limited after purchase of Recliner Assemblies fixed/ welded the same into the seat frame in the course of manufacture of complete seat of motor vehicles. The complete seat duly fitted with Recliner Assembly is supplied to Maruti Suzuki India Limited, Gurgaon. As per the affidavit given by the appellant and also on perusal of the invoices, it is seen that Round Recliner supplied by the appellant to their sister unit/ STIPL Haryana and also the manufacture of Recliner Assembly by STIPL Haryana and supplied to M/s. Krishna Maruti Limited, were classified under 9401. On this fact, it is clear that the appellant have manufactured Round Recliner which is part of Recliner Assembly and Recliner Assembly is part of complete seat and classification of goods at both the stages is for parts of seats. This classification under CETH 9401 has not been disputed by the department therefore, the classification of goods manufactured by the appellant as well as subsequent manufacturers of Recliner Assembly and even manufacturer of seat i.e. Krishna Maruti Limited under heading 9401, has been accepted by the department. It is also clear that Round Recliner manufactured by the appellant is not used as parts or accessories of motor vehicle. It is undisputedly used as part of sub assembly of the seats. Therefore, as per the appellant stand that they are supplying the final product Round Recliner is parts of seat under CETH 9401, it cannot be imagined that the child parts which is used for manufacture of Round Recliner is classifiable under CETH 8708 as parts and accessories of motor vehicles.

6. Now coming to various legal authorities such as relevant tariff entries, HSN and explanatory notes, General Rules for interpretation, Section notes on Customs Tariff for classification of goods. We analyze as under. The

competing entries of Customs Tariff Act 1975 in respect of tariff item 9401 and 8708 are given below:-

Tariff Item	**Description of goods**	**Unit**	**Rate of duty**	
			Stan-dard	**Prefer-ential Areas**
1	**2**	**3**	**4**	**5**
9401	**Seats (Other Than Those Of Heading 9402), whether or not convertible into beds, and parts thereof**			
9401 10 00	- Seats of a kind used for aircraft	u	10%	-
9401 20 00	- **Seats of a kind used for motor vehicles**	u	10%	-
9401 30 00	- Swivel seats and variable height adjustment	u	10%	-
9401 40 00	- Seats other than garden seats or camping equipment, convertible into beds	u	10%	-
	- *Seats of cane, osier, bamboo or similar materials:*			
9401 51 00	-- Of bamboo or rattan ……………………	u	10%	-
9401 59 00	-- Other	u	10%	-
9401 61 00	-- Upholstered	u	10%	-
9401 69 00	-- Other	u	10%	-
	-- *Other seats, with metal frames*	u	10%	-
9401 71 00	-- Upholstered	u	10%	-
9401 79 00	-- Other	u	10%	-
9401 80 00	-- Other seats	u	10%	-
9401 90 00	- Parts	Kg.	10%	-
8708	**Parts and accessories of the motor vehicles of headings 8701 to 8705**			
8708 10	- Bumpers and parts thereof :			
8708 10 90	--- For tractors	kg.	10%	-
8708 10 90	--- Other	kg.	10%	-
	- *Other parts and accessories of bodies (including cabs) :*			
8708 21 00	-- Safety seat belts	u	10%	-
8708 29 00	-- Other	kg.	10%	-
8708 30 00	- Brakes and servo-brakes; parts thereof	kg.	10%	-
8708 40 00	- Gear boxes and parts thereof	kg.	10%	-
8708 50 00	- Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof	kg.	10%	-
8708 70 00	- Road wheels and parts and accessories thereof	kg.	10%	-
8708 80 00	- Suspension systems and parts thereof (including shock absorbers)	kg.	10%	-
	- *Other parts and accessories:*		10%	
8708 91 00	-- Radiators and parts thereof	kg.	10%	-
8708 92 00	-- Silencers (mufflers) and exhaust pipes; parts thereof	kg.	10%	-
8708 93 00	-- Clutches and parts thereof	kg.	10%	-
8708 94 00	-- Steering wheels, steering columns and steering boxes; parts thereof	kg.	10%	-
8708 95 00	-- Safety airbags with inflater system; parts thereof	kg.	10%	-
8708 99 00	- Other	kg.	10%	-

From the above rival tariff entries, it is seen that in CTH 8708 there is general entry of parts and accessories of motor vehicles but there is no specific entry for seat or its parts. Whereas in tariff item 9401, there is entry specifically for seat, wherein under tariff sub-heading 9401 20 00 entry describes "*Seats of a kind used for motor vehicles*" and in tariff item

9401 9000 is for Parts of various seats and the said seats includes 'seats of kind used in motor vehicles'. Therefore, from the tariff entries it is clear that the seat for motor vehicles is specifically included under heading 9401.

7. Relevant notes of Section XVII which covers CETH 8708 is reproduced below:-

Section XVII

VEHICLES, AIRCRAFTS, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT

Notes.

1. to 5. ……..

GENERAL

(I) GENERAL CONTENT OF THE SECTION …… …..

(II) SELF-PROPELLED OR OTHER MOBILE MACHINES …… …..

(III) PARTS AND ACCESSORIES

It should be noted that Chapter 89 makes no provision for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of the vehicles, aircraft or equipment concerned.

It should, however, be noted that these headings apply only to those parts or accessories which comply with all three of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

and (b) they must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

And (c) they must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below.

(A) ……….

(B) ……….

(C) **Parts and accessories covered more specifically elsewhere in the nomenclature**.

Parts and accessories, even if identifiable as for the articles of this Section, are excluded if they are covered by another heading elsewhere in the Nomenclature, e.g.:

(1) Profile shapes of vulcanised rubber other than hard rubber, whether or not cut to length (heading 40.08)

(2) Transmission belts of vulcanised rubber (heading 40.10).

(3) Rubber tyres, interchangeable tyre treads, tyre flaps and inner tubes (headings 40.11 to 40.13).

(4) Tool bags of leather or of composition leather, of vulcanised fibre, etc. (heading 42.02).

(5) Bicycle or balloon nets (heading 56.0$).

(6) Towing ropes (heading 56.09).

(7) Textile carpets (Chapter 57).

(8) Unframed safety glass consisting of toughened or laminated glass, whether or not shaped
(heading 70.07).

(9) Rear-view mirrors (heading 70.09 or Chapter 90- see the corresponding Explanatory Notes).

(10) Unframed glass for vehicle headlamps (heading 70.14) and, in general, the goods of Chapter 70.

(11) Flexible shafts for speed indicators, revolution counters, etc. (heading 84.83).

(12) **Vehicle seats of heading 94.01**.

As per the notes relevant to Parts and Accessories, all the three conditions prescribed under clause (a), (b) and (c) should be complied with.

We find that as per the clause (c), a part must not be more specifically included elsewhere in the nomenclature Part (III) Para 'C' above. In paragraph 'C', at serial number (12) vehicle seats of heading 9401 is explicitly excluded from the Section XVII as vehicle seats is covered more specifically by other heading under 9401. This clearly establish that vehicle seats of 9401 being excluded from Section XVII will not fall under 8708.

8. The HSN explanatory notes in respect of tariff item 8708 are reproduced below:-

> "This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, provided the parts and accessories fulfill both the following conditions :
>
> (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and
>
> (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note)."

As per above notes, both the conditions prescribed under Clause (I) and (II) need to be fulfilled for classifying parts and accessories of motor vehicle. As per clause (II), parts and accessories must not be excluded by the provisions of notes of Section XVII. As discussed above, it is clear that vehicle seats is excluded by the provisions of notes (II) to Section XVII, therefore, clause (II) is not fulfilled. Consequently, the vehicle seats will not cover under heading 8708. In view of the above unambiguous provisions for classification, there is no iota of doubt that vehicle seats will not fall under 8708 whereas, the same is correctly classifiable under 9401. Hence, part of seats which is undisputed in the present case is correctly classifiable under CETH 9401. It is undisputed that child parts used for making parts which are subsequently used in the complete assembly of vehicle seat and the vehicle seat has been classified under 9401, then how part of seat can be classified under 8708. If Revenue's contention is accepted then the tariff entry i.e. seats of a kind used for motor vehicles under 9401 2000 will become redundant.

9. As regards judgments relied by the learned Counsel for the appellant, we find that in the case of *JTEKT Sona Automotive India Limited (supra)* the principal bench of this Tribunal, after analyzing legal provisions of customs tariff, HSN, drawing a similar interpretation, decided that the assessee imported 'gear reduction blank' is correctly classifiable under 8483 40 00 as Gear and gearing, other than toothed wheel, chain sprockets and other transmission elements presented separately as against Revenue's contention to classify under 8708 94 00. It is pertinent to mention that in the above case, the goods imported were directly used in the manufacture of motor vehicle parts whereas, in the present case, child parts were admittedly used in the vehicle seat parts. Therefore, the appellant's case is on the better footing. In identical issue, in the case of *Uni Products India Limited (supra)* the Hon'ble Supreme Court, after considering various provisions of HSN and explanatory notes, General Rules for interpretation held that car mating which is used in the motor vehicle is classifiable under Chapter 57 and not under Chapter 87. In this case, the assessee was manufacturing car mating which was directly used in the motor vehicle and despite this the Hon'ble Supreme Court held the classification under chapter 57 whereas in the present case, child parts were not used in the motor vehicle but were used in the manufacture of another parts i.e. Round Recliner which is an integral part of motor vehicle seats. Therefore, apex Court judgment is applicable in the facts of the present case.

10. As regards the reliance placed by the Revenue on various judgments, we find that in the case of *Pragati Silicons Pvt. Limited (supra)*, it deals with name plates of motor vehicle of plastic. The Hon'ble Supreme Court's findings based on the facts that there is no specific entry for name plate in Chapter 39 therefore, it was held that name plate would fall under heading 8708 whereas in the present case there is a specific entry for seats of motor vehicle under CETH 9401. Therefore, the judgment of Pragati Silicons Pvt. Limited is not applicable. In the case of *GS Auto International Limited (supra)*, the goods involved was Nut and Bolts for motor vehicle. It was held by the Hon'ble Supreme Court that Nut and Bolts for motor vehicle are not parts of general use as defined in Section XV and hence, would be classified under heading 8708. In the case of *Cast Metal Industries Pvt. Limited (supra)*, the apex Court held that parts of general use was excluded from Chapter 87 and since the door handles and door hinges for motor vehicles etc. were specifically used in motor vehicles, they would fall under heading 8708 and not under heading 8308. All the three judgments are distinguishable, particularly for the reason that parts in the present case is different inasmuch as motor vehicle seats itself described under CETH 9401. As regards the judgment in the case of *Insulation Electricals Pvt. Limited (supra)* relied upon by the Revenue, we find that in the said judgment motor vehicle parts and accessories involved was rail assembly front seat adjuster/ assembly slider seat and rear back seat lock assembly, all these items are not part of seat but accessories which is fitted in the motor vehicle. Whereas, as per facts in the present case child parts are used to make Round Recliner which is used for manufacturing of Recliner Assembly and the Recliner Assembly is fitted inside the seat at the time of assembling of complete seat. Therefore, the child parts are integral parts of seat and

not like accessories which is fitted in the motor vehicle. Hence, the facts of the case in *Insulation Electricals Pvt. Limited (supra)* and in the present case are entirely different.

11. As per our above discussion and finding, we are of the clear view that captioned goods i.e. Child Parts imported by the appellant is correctly classifiable under CETH 9401 90 00 of Customs Tariff Act. Accordingly, the impugned order is set-aside. The appeal is allowed.

(Pronounced on 29.07.2020*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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