

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

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 10249 of 2022-DB

[Arising Out Of OIA-AHD-CUSTM-000-APP-1487-1488-21-22 Dated-01/02/2022 Passed By Commissioner of CUSTOMS-AHMEDABAD)

SUZUKI MOTOR GUJARAT PVT LTD
Plot No 334-335 Survy No 293 Hansalpur Near
Becharaji Tal Mandal Dist
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.-AHMEDABAD
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri. Manish Jain, Advocate for the Appellant
Shri. Prabhat K Rameshwaram, Additional Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
 HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

FINAL ORDER NO. A / 11149 / 2023

DATE OF HEARING: 10.05.2023

DATE OF DECISION: 10.05.2023

Raju

This appeal has been filed by M/s SUZUKI MOTOR GUJARAT PVT. LTD. against change of classification of the items imported by them.

2. Learned Counsel pointed out that they are manufacturing motor vehicles. They are importing goods which are used as components in manufacture of motor vehicle. The appellants have sought classification of such components imported for manufacture of motor vehicle under the specific heading of those components whereas the revenue is seeking the classify the same under the heading of 8708 as parts of the motor vehicle. Learned Counsel pointed out that the matter earlier been decided their own case vide Order No. A/10665/2022 dated 07.06.2020. He pointed out that in the said decision while remanding the case a three layer test has been prescribed for classification of such goods. He sought similar relief in the instance case. He further pointed out that the said decision of the Tribunal

has been accepted by the revenue as his apparent form the reply to the RTI query. He further pointed out the subsequent assessment are being done following the order of the Tribunal.

3. Learned AR relies on the impugned order. He relied on the decision of the Hon'ble Apex Court in the case of OK PLAY (INDIA) LTD. -2005 (180) ELT (300) (S.C) and on the decision of Hon'ble Apex Court in the case of in the case of CAST METAL INDUSTRIES (P) LTD-2015 (325) ELT 471 (S.C). He pointed out that predominant use and the commercial identity of the goods are equally important.

4. We have considered the rival submissions. We find that the matter involving identical dispute in respect of same appellant had been decided by the Tribunal in Final Order No. A/10665/2022 dated 07.06.2022. In the said decision following has been observed while remanding the matter to the Commissioner (Appeals)

"04. Heard both the sides and perused the records. The issue to be decided is whether the Controlled Assembly CVT imported by the appellant is classifiable under CTH 9032 and other items imported are classifiable under CTH 7318 as declared by the appellant or under CTH 8708 as parts and accessories of motor vehicles of heading 8701 to 8705 as assessed by the Customs.

4.1 We noticed that the HSN explanatory notes in respect of Tariff items 8708 provided as under:

"This heading covers parts and accessories of the motor vehicles of heading 87.01 to 87.05, provided the parts and accessories fulfil 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 Clauses (i) and (ii) need to be fulfilled for classifying parts and accessories of motor vehicle.

4.2 We also find that part (III) PARTS AND ACCESSORIES of the HSN Explanatory Notes to Section XVII, provides as under :

"It should, however be noted that these heading 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 chapter 86 to 88 (see paragraphs (B) below) and*
- (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (c) below.*

In view of above provisions, it is clear that for classification of goods under chapter heading 8708 i.e. parts and accessories of Motor Vehicles above conditions require to be satisfied.

4.3 The Commissioner (Appeals) while deciding the classification of the disputed goods, in question, under heading 8708, has not given any finding as to whether all the above conditions which are very important for deciding the classification of goods, satisfy / comply in respect of the disputed goods. The Commissioner (Appeals) findings are silent on this vital aspect of the above provisions.

4.4 Further, we also find that Learned Commissioner (Appeals) in impugned order not given his finding related to classification of goods individually item wise. Whereas Appellant produced the list of 14 items imported vide above Bills of Entry.

4.5 In view of our above observation, we find that the lower authorities have not examined the legal aspects properly to come to conclusion for correct classification of the goods in question. Hence in our considered view the matter needs to be remitted back to the Commissioner (Appeals).

05. We, therefore, set aside the impugned order and remand the matter for to the Commissioner (Appeals). The appeal is allowed by way of remand to the Commissioner (Appeals)."

4.1 It is notice that the said decision relies on the Harmonized System of Nomenclature explanatory notes. It is notice that while the impugned order takes note of the said criteria laid down in explanatory note but there is no discussion on the said criteria.

4.2. Learned AR is relied on the two decision of Hon'ble Apex Court. The crux of both the decisions of Hon'ble Apex Court is that the functional utility, design shape and predominant use have to be taken into account while classifications of goods.

4.3 It is notice that the decision of Tribunal in the appellant's own case dated 07.06.2022 list of the following test for classification:-

"It should, however be noted that these heading 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 chapter 86 to 88 (see paragraphs (B) below) and*
- (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (c) below."*

4.4 We find that the test of predominant use is incorporated in the set of test to be exercise before classification. In view of above, we do not find any

conflict in the decision of Hon'ble Apex Court cited by the Learned AR and the decision of the Tribunal in the appellant's own case dated 07.06.2022.

6. In view of above, follow the decision of Tribunal in the appellant's own case and remand the matter to the Commissioner (Appeals) to decide in identical manner as the earlier remand order.

(Dictated and pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI