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

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10920 of 2021

[Arising Out Of OIA-JMN-CUSTM-000-APP-034-21-22 Dated-19/07/2021 Passed By Commissioner of CUSTOMS-AHMEDABAD]

FORD INDIA PVT LTD **.....Appellant**
Revenue Survey No 6 Village North Kotpura Taluka Sanad
Ahmedabad, Gujarat

VERSUS

C.C.-JAMNAGAR(PREV) **.....Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar Gujarat

APPEARANCE:
Shri. Manish Jain & Ms. Shruti Khanna, Advocates for the Appellant
Shri. Anand Kumar, Superintendent (Authorized Representative) for the Appellant

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

FINAL ORDER NO.A / 11733 /2023

DATE OF HEARING:17.08.2023
DATE OF DECISION:17.08.2023

RAJU

This appeal has been filed by FORD INDIA PVT LTD against change of classification of items imported by them.

2. Learned Counsel pointed out that the identical case has been decided in the case of Suzuki Motor Gujarat Pvt Ltd vide Final Order No. A/11149/ 2023 dated 10.05.2023 and in the case of Suzuki Motor Gujarat Pvt Ltd vide Final Order No. A/10665/2022 dated 07.06.2022. In all these cases the issue involved is identical if the goods imported by the appellants are classifiable

as part of vehicles or otherwise. He pointed out that all aforementioned cases, the matter has been remanded by the Tribunal to decide the classification in term of the test prescribed in the said orders.

3. Learned AR relies on the impugned order.

4. We have considered the rival submissions. In the case of Suzuki Motor Gujarat Pvt Ltd the Tribunal vide orders dated 10.05.2023 has observed as follows:-

> *"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."*

5. We find that the test of predominant use is incorporated in the set of test to be exercise before classification. In view of above, follow the decision of Tribunal in the case of Suzuki Motor Gujarat Pvt Ltd (supra) remand the matter to the Commissioner (Appeals) to decide in identical manner as the earlier remand order.

6. Appeal is allowed by way of remand in above terms.

(Dictated and pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi