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

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 10259 of 2021

[Arising out of OIO-JAM-CUSTM-PRV-COM-003-20-21 dated 18/01/2021 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV)]

FORD INDIA PRIVATE LIMITED **.....Appellant**
Revenue Survey No 6, Village North Kotpura,
Taluka Sanand
Ahmedabad,
Gujarat

VERSUS

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

APPEARANCE:
Shri Manish Jain, Advocate for the Appellant
Shri Shyam Raj Prasad, Special Counsel for the Respondent

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

FINAL ORDER NO.A / 10458 /2024

DATE OF HEARING: 23.11.2023
DATE OF DECISION: 22.02.2024

RAJU

This appeal has been filed challenging the rejection of classification sought by the appellant.

1.1 The dispute relates to the classification of goods imported for use as parts of motor vehicles. The impugned order after examining Rule 1 of the general Rules of interpretation, notes 2 and 3 to section XVII of Customs tariff, the Commissioner has relied on note 3 to section XVII to arrive at the distinguishing factor between the classification of the impugned goods in chapter 87 vis-a-vis chapter 84, 85 and chapter 72 onwards. Similar matters have been examined earlier in appellants own case as well as the case of Suzuki Motors Gujarat Pvt Ltd. In all the aforesaid decisions the matters have been remanded to the original adjudicating authority to decide after following the criteria laid down in the said orders. The order in appellant's own case was also issued remanding with following directions.

"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."

2. The impugned order it is noticed only follows the criteria B specified in para 4.3 of the order in case of Suzuki Motors Gujarat Private Limited no. A/10665/2022 dated 07.06.2022. The real test of classification has to be after examination on all 3 criteria laid down the aforesaid order in case of Suzuki Motors Gujarat Private Limited.

3. It is noticed in the impugned order, that there were specific averment made by the appellants before Commissioner regarding satisfactions of all 3 conditions. The same has also been recorded in para 15.1 and 15.2 of the impugned order however, the impugned order presumes that note 3 to Section XVII can override note 2 to section XVII. Note 3 only make the distinction in case of disputes in classification within chapter 86 to 88. It does not apply to the disputes involving classification in chapters other than chapter 86 to 88. Thus, if a item can be used in a car as well as in a railway loco motive than the classification has to be done with the heading for which it is used solely or principally. This note does not apply to chapter other than chapter 86 to 88.

4. In view of the above the impugned order is set aside and matter remanded to original adjudication authority for fresh adjudication in the light of the decision of tribunal in appellant's own case as well as in the case of Suzuki Motors Gujarat Private Limited. (supra).

5. Appeal is allowed by way of remand.

(Pronounced in the open Court 22.02.2024)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Dharmi