Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11671 of 2018
(Arising out of OIO-VAD-EXCUS-001-COM-34-17-18 dated 22/03/2018 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Schaeffler India Limited **......Appellant**
(Formerly Known As Fag Bearings India Limited).,
176, C.P. Patel Finance, J.C. Patel Estate, Bharat Baug, N.H. No. 8, Nr. Ranoli Crossing,
Dashrath, Vadodara -Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-I **......Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
Race Course Circle, Vadodara, Gujarat -390007

WITH

Excise Appeal No.12461 of 2018
(Arising out of OIO-VAD-EXCUS-001-COM-34-17-18 dated 22/03/2018 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Sharad Sharma **......Appellant**
C/O. Schaeffler India Ltd., (Formerly Known As Fag Bearings India Limited),
176, C.P. Patel Finance, J.C. Patel Estate, Bharat Baug, N.H. No. 8, Nr. Ranoli Crossing,
Dashrath, Vadodara -Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-I **......Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING, Race Course Circle,
Vadodara, Gujarat -390007

APPEARANCE:
Shri. Prakash Shah, Advocate for the Appellant
Shri Jitesh Nagori, Commissioner (Authorized Representative) for the Respondent

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

Final Order No . A/ 11091 -11092 /2022

DATE OF HEARING: 09.03.2022
DATE OF DECISION: 05.09.2022

RAJU

This appeal has been filed by M/s. Schaeffler India Limited against demand of central excise duty, interest and imposition of penalty. Appeal has been also filed by Sharad Sharma General Manager Taxation against imposition of penalty.

1.2 Section 2(f) (iii) of the Central Excise Act, 1944 prescribes that in respect of goods listed in the Third Schedule of the Central Excise Act,1944 following would also amounts to manufacture

Section 2(f) of the Central Excise Act, 1944

"(f) "manufacture" includes any process,-

(i) Incidental or ancillary to the completion of a manufactured product,
(ii) Which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) Which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re- labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

1.3 The Serial No. 100 and 100A of the said Third Schedule of the Central Excise Act, 1944 reads as follows:-

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
100	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under Heading 8712,8713, 8715 and 8716	30

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
100A	Any Chapter	Parts, components and assemblies of goods falling under Tariff Item 84264100, Headings 8427, 8429 and sub-heading 843010	30

Serial No. 100 was introduced with effect from 27.02.2 010 and Serial No 100A was introduced with effect from 29.04.2010

2. Learned Counsel for the appellants argued that sine qua non to fall any goods under sr. no. 100 of the Third Schedule they must be parts, components and assemblies of Vehicles of Chapter 87 (excluding goods of heading 8712,8713,8715 and 8716) and under 100A goods must be " Parts, components and assemblies of machinery falling under Tariff Item, 8426 4100, Headings 8427, 8429 and sub – heading 8430 10. He argued that the meaning of term "automobiles" and vehicles of specific headings of chapters 87 and machinery of chapter 84 are not comparable. He argued that the clarification dated 16.12.2008 issued by the Board and relied upon by the learned Commissioner, related to in the context to relevant entries in Third Schedules and Notification under Section 4A prior to April 2010. The said clarification is inapplicable in the present proceedings post the period of April 2010 in view if totally different language of relevant entries in sr.nos. 100 and 100A.

2.1 He relied on Notes 2 and 3 of Section XVII of Central Excise Tariff Act, 1985 to assert that bearing have to be classified under CETH 8482 only. Learned Counsel for the appellant argued that even going by the scheme of the Central Excise Tariff, Bearings of Heading 84.82 are not to be considered as " Parts" or "Parts and accessories" of goods of Section XVII. He argued that Note 2 of Section XVII and in particular accessories thereof clearly excludes goods of heading 84.81 and 84.82 from the expressions "parts" and "parts and accessories" whether or not they are indentifiable as for the goods of Section XVII. Even going by note 3 to Section XVII, the references in Chapters 86 to 88 to "parts" or " accessories" do not apply to Bearings imported by the Appellants as they are admittedly not suitable for use solely or principally with the articles of Chapter 87 mentioned in sr.no. 100 of the Third Schedule.

2.2 He relied on the decision of Tribunal in the case of A.K.S Bearing Limited – 2019 (370) ELT 859 and in the case of J.K Tyre and Industries Limited – 2017 (358) ELT 1044. Learned counsel for the appellant argued that assuming that bearings imported by the Appellant have dual usage viz. Industrial and Automotive (as claimed by the department) even than they are not be considered as parts and components of automobiles in view of orders of this Hon'ble Tribunal in the case of J.K Tyre. He argued that the learned Commissioner has proceeded on the assumption that the imported bearing have their end use also in automotive sector and in the absence of any specific marking as to ascertain their usage clearly sustains the belief that bearings are mostly used in automotive or parts of automobiles. This assumption is contrary to the ratio of cited judgments of this Hon'ble Tribunal.

2.3 Learned Counsel for the appellant argued that the Learned Commissioner held that the Bearings are parts of automobiles relying upon clarification dated 16.12.2018. He argued that no findings are recorded that the imported goods bearings are parts of the goods described in sr.no.100A of the Third Schedule. The sole basis of covering Bearings under both sr. no. 100 and 100A is only the alleged dual usage of the Bearing. Even going by the case of the department that Bearings are covered by both sr. no. 100 and 100A itself is indicative of the fact that Bearings are not parts of vehicles of Chapter 87 and goods Chapter 84 referred to respectively in 100 and 100 A.

2.4 He argued that the imported goods are described in the bill of entry, commercial invoices issued by the overseas suppliers and by the appellant and its dealers as " Bearings". He argued that Bearings of Heading 84.82 are not specified in Third Schedule to the Act or notification issued under Section 4 A of the Act. He argued that the dealers of the appellant in their respective statements have categorically stated that said Bearings have only industrial application. Learned counsel for the appellant argued that the dealers and actual user are either examined orally or have provided details in form of letters to DCGEI. They have also provided details of the end use and end consumers and none of the end users have stated to use the bearings for vehicles except a solitary use of 4 pieces (for two codes) claimed to have used them for two wheelers.

2.5 Learned Counsel for the appellant argued that nothing on record indicate that the appellant or its dealers have marketed them as parts of vehicles of 87 or goods chapter 84 mentioned in sr. 100 and 100 A respectively of Third Schedule nor is any evidence produced that the bearings are suitable for solely and principally of the vehicles of 878 or goods chapter 84 mentioned in sr. 100 and 100 A respectively of Third Schedule.

2.6 He argued that the Bearings have only industrial use and have no other use either in the vehicles of chapter 87 or goods of chapter 84 as parts or components. Learned counsel for the appellant argued that burden to prove that Bearings are parts, components and assemblies of the vehicles of chapter 87 or goods of Chapter 84 is on the revenue. The revenue has not discharged its burden.

2.7 Learned Counsel for the appellant argued the bearings imported by the Appellants were admittedly assessed to customs duty under heading 84.82 of the First Schedule to the Customs Tariff Act. The Bearings were assessed to Additional Duty of Customs based on the transaction value under section 14(1) of the Act and not with reference to the retail price. He argued that once the imported Bearings are assessed to customs duty including CVD as Bearings under hearing 84.82 of the First Schedule to the Customs Tariff Act and duty having been charged with reference to the transaction value and not based on MRP, the very same Bearings cannot be assessed as parts, components and assemblies of automobiles (as held by the learned Commissioner) under the Central Excise Act and to invoke section2 (f) (iii) read with Third Schedule to the Act and demand duty of excise. Learned Counsel for the appellant argued that without prejudice and in any event, in the event the imported Bearings are held to be covered under notification issued under section 4A of the Act then in that event demand can only be for alleged short levy of CVD under section 28 of the Customs Act and not under Section 11 A of the Act.

2.8 Learned Counsel for the appellant argued that the DGCEI during the investigation recorded statements and collected data in form of letters of the various dealers of the Appellants. These statements and letters clearly show that Bearings are not for use in the automotive sector except a stray case of use of bearings of 2 codes in two wheelers. Learned Counsel for the appellant argued that the DGCEI, in the course of purported investigation, recorded statements of many persons. Search conducted at the premises of Premier (India) Bearings P, Ltd., Ahmedabad. The customers are mainly Rolling Mills, Machinery manufacturers, and Textiles manufacturer. Similar search was conducted at Navi Mumbai of Premier Bearing. Names are Jindal Saw, CEAT, Maharashtra Seamless, Reliance Industries, JSW Steel etc. He argued that these investigation clearly show that bearings are sold by the dealers of the Appellant to various industrial consumers like steel manufacturers, tyre manufacturers, power generation companies, petroleum companies etc.

2.9 Learned Counsel for the appellant argued that Mr Sharad Sharma, General Manager (Taxation) of the appellant in his statement dated 04th March, 2015 and 13th December, 2016 stated that the appellant do not import same type/ size bearings of automotive use and sold from trading warehouse during the last five years. He further stated that bearing having dual use are cleared from manufacturing plant. Even Mr. Dinesh Sharma, Senior Executive (Taxation) of the appellant in his statement dated 7th June, 2016 and 17th August, 2016 stated that the appellant have not sold imported bearing to automobile industries.

2.10 Learned Counsel for the appellant argued that various statements recorded by revenue also do not corroborate revenues case. He relied on following:-

i. Mr. Jinesh Jain, Authorized Signatory of M/s. Unitrade India in his statement dated 18th May, 2015 was specifically asked whether the bearing has dual application viz. Industrial and automobiles usage and he answered that bearing have only industrial usage.
ii. Mr. A Ravikumar- Taxation Head of M/s. Universal Sales Corporation in his statement dated 20th May, 2015 was specifically asked whether the bearing has dual application viz. industrial and automobile usage and he answered that bearings have only industrial usage. He further stated that his customers are industrial customers and details were enclosed to his letter dated 20.05.2015.
iii. Mr. A.Prasad- Partner of M/s. Sree Godavari Bearing Company in his statement dated 21st May, 2015 was asked to give usage of the bearing and he answered that they are used in industrial purpose only.
iv. Mr. Rupesh Navin Shah, partner of M/s. R K Engineering Corporation in his statement dated 21st May, 2015 was specifically asked whether the bearing has dual application viz. industrial and automobile usage and he answered that bearings have only industrial usage.
v. Mr. Bhikhamchand Choraria, Partner of M/s. Sunrise Bearing Corporation in his statement dated 22.5.2015 was specifically asked whether the bearing has dual application viz. industrial and automobile usage and he answered that bearings have only industrial usage.
vi. Mr. Amit Shastri - Branch Manager of M/s. Premier (India) Bearing Ltd. in his statement dated 12th October, 2015 was specifically asked whether bearing has dual application viz. industrial and automobile usage and he answered that bearings have only industrial usage. He further stated that he

had given details of Industrial Customers in pen-drive on the same day vide his letter dated 10.10.2015.

vii. Mr. Vimal Kumar Gupta - Authorized Person of M/s. Industrial Engineering Services in his statement dated 19.10.2015 was specifically asked whether the bearing has dual application viz. industrial and automobile usage and he answered that bearings are sold to industrial dealers and have only industrial usage.

viii. Mr. Kishore Amrutlal Shah- Director of M/s. Laxmi Bearing (Gujarat) Pvt. Ltd. in his statement dated 20th October, 2015 was specifically asked whether the bearing has dual application viz. industrial and automobile usage and he answered that bearings are sold to industrial distributors and have only industrial usage.

ix. Mr. Alkesh Manubhai Mashruwala – Proprietor of M/s. Arihant Tarding Co. dated 20th October 2015 was specifically asked whether the bearing has dual application viz. Industrial and automobiles usage and he answered that bearings are sold to industrial dealers and have only industrial usage.

x. Mr Hiteshkumar R Shah- Authorised Person of M/s. Ambica Traders in his statement dated 26th October , 2015 was specifically asked whether the bearing has dual application viz. Industrial and automobiles usage and he answered that bearings are sold to industrial distributors and have only industrial usage. He also provided details of industrial customers same day vide his letter dated 26.10.2015.

xi. Mr. S.S Pradeep, Authorized Signatory of M/s Onkar Bearing Co. in his statement dated 26th October, 2015 was specifically asked whether the bearing has dual application viz. Industrial and automobiles usage and he answered that bearings are sold to industrial distributors and have only industrial usage. He also had provided details of industrial customers same day vide his letter dated 23.10.2015.

xii. Mr. Sajan Ratheshyam Kheradi- Partner of M/s. Keshari Enterprises in his statement dated 05th November,2015 was specifically asked whether the bearing has dual application viz. Industrial and automobiles usage and he answered that imported bearings sold to industrial distributors/customers and have only industrial usage for which he had given details of his buyers vide letter dated 05.11.2015.

xiii. Mr. Rahul Desai- Manager of M/s. Ingo Engineering Corporation in his statement dated 06th November, 2015 was specifically asked whether the bearing has dual application viz. Industrial and automobiles usage and he answered that bearings are sold to industrial distributors/ customers and have only industrial usage. He also provided details of industrial customers vide letter dated 19.10.2015.

xiv. Mr. Roshan Palandurkar-Authorised Person- Bearing Centre in his statement dated 02nd May, 2015 stated that bearing imported by the Appellant had only industrial usage.

xv. Mr. Hemant N Shah- Proprietor of M/s. Isha Enterprises in his statement dated 12thDecemeber, 2015 was specifically asked whether the bearing has dual application viz. Industrial and automobiles usage and he answered that bearings are sold to industrial distributors and have only industrial usage.

xvi. Mr. Anshul Ramesh Zanzari- Director of M/s. Shri Sanmati Automobiles Pvt. Ltd. in his statement dated 18th November, 2016 he stated that he had not purchased any bearings used in two wheelers from the Appellant or Premier Bearing. However, he agreed that he had used bearing having code no, 6204 and 6202 was used in two wheelers.

2.11 Learned Counsel for the Appellant argued that except in one case, bearings of two codes sold by Premier India Bearing to M/s. Mohra Trading Company, which in turn sold two of the bearings to Sanmati Automobiles Private Limited, which are claimed to have been used in two wheelers.

2.12 Learned Counsel for the Appellant argued that evidence in form of the dealers and others clearly shows that bearings are only for industrial use only. The single incident of use of bearing in two wheelers cannot establish that the bearings are parts of vehicles of Chapter 87. He argued that imported bearings are not sold by the Appellant directly to any automobile dealers or service station. The Bearings are sold to Industrial dealers, who have sold them to Industrial customers only. The dealers of the Appellant had provided details of the Buyers and none of them are either automobile manufacturer or service station.

2.13 Learned Counsel for the Appellant argued that the Commissioner has rejected the contention of the Appellant that said bearings are only for industrial use only on the ground that the Appellant did not mention on the package that the bearings are for industrial use only or were fit for industrial usage and/or automotive usage or any other specific usage. He argued that with effect from April, 2015 the Appellant has declared on the package "For Non-Automotive Application- Industrial Usage only" in view of the objection of the department.

2.14 Learned Counsel for the Appellant argued that the Learned Commissioner has wrongly held that the imported bearings are covered by sr.nos. 100 and 100A in the absence of any specific usage having been mentioned on the package and imported bearings have dual usage viz. industrial and automotive usage and their end use also in automotive sector and automotive section is also an industry and use of the bearing in such industry is established by the investigation. He argued that assuming without admitting that the bearings have dual usage that by itself will not make them parts of vehicles of chapter 897 mentioned in sr.no. 100 or goods of chapter 84 mentioned in sr. no. 100A of the Third Schedule in view of the cited decision of this Hon'ble Tribunal in the case of J.K Tyre.

2.15 Learned Counsel for the Appellant argued that the Learned Commissioner wrongly held that the Appellant has no supporting evidence barring the dealers certificate showing authorized dealers for industrial distributors. The Learned Commissioner rejected the said Certificates as identically worded. The certificate issued to all dealers are bound to be identically worded except names of the dealers. He argued that apart from the oral evidence of the dealers relied upon by the department, some of the dealers in their communication to DGCEI provided complete list of the bearings sold by them after reiterating that the bearings have only industrial use and not meant for automobile use. He argued that the appellant imported bearing in the following packing:-

(a) Single Packing Bearing
(b) Bulk Packing Bearing
(c) Sleeves/bearing in bulk (without boxes)

The single packing bearing are only affixed with the retail sale price to comply with Legal metrology Act. Bulk packing bearing are also in individually package at the time of import. They are imported in bulk in pallets and taken out from different pallets and after affixing MRP using MRP fixing guns they are repacked in the corrugated boxes on which packing slip is affixed. The imported sleeves/bearing in bulk are packed in individual package and after affixing MRP are then repacked in the bigger corrugated boxes. He argued that the MRP is affixed in single packing and bulk packing bearings to comply with provisions of Legal Metrology Act and otherwise not covered by section 2(f)(iii) of the Act.

2.16 Learned Counsel for the Appellant argued that invocation of extended period of limitation is in the facts of the case untenable. The Appellant was registered as dealers. The Appellant's understanding that imported bearings are not covered by sr.no. 100 and 100A of the Third Schedule and therefore not covered by section 2(f) (iii) of the Act and not subjected to duty under section 4A of the Act. The overwhelming evidence gathered by the DGCEI also show that the imported bearings are not having dual usage. The ingredients of section 11A(4) are not applicable and demand for extended period is otherwise not tenable.

2.17 Learned Counsel for the Appellant as an alternative argued that the appellant is entitled to credit of CVD paid on the Bearings at the time of import. It is now well settled that when the activity is held to be manufacture and subject to duty the credit of duty paid on the inputs is permissible and allowed by Tribunal. In any event, imposition of penalty under section 11 AC in the facts of this case is not sustainable. Learned Counsel for the Appellant argued that imposition of penalty on Mr. Sharad Sharma is laible to be set aside. The learned Commissioner has imposed penalty on Mr. Sharad Sharma under section 26(1) of the Rules only on his finding that "Mr Sharma, General-Manager –Taxation knowingly indulged in the evasion of central excise duty". Mr. Sharma joined the Appellant with effect from February, 2012 whereas the Appellant is importing bearing from 2006-2007 and period of dispute is from 01.12.2011. It is thus clear that when Mr. Sharma joined the activity of importing duty paid bearing and trading in them without payment of duty was already in existence and it cannot be said that Mr. Sharma knowingly indulged in the evasion of duty.

3. Learned AR relies on the impugned order.

4. We have gone through the rival submission.

4.1 Section 2(f) of the central Excise Act, 1944 prescribes as under:

Section 2(f) of the Central Excise Act, 1944

"(f) "manufacture" includes any process,-

(i) Incidental or ancillary to the completion of a manufactured product,

(ii) Which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) Which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re- labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

In terms of the clause (iii) of aforesaid definition " Packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer" amounts to manufacture. The goods on which the clause (iii) of sub- section 2(f) of the Central Excise Act, 1944 applies are listed in the Third Schedule of the Central Excise Act, 1944.

4.2 The Serial No. 100 and 100A of the said Third Schedule of the Central Excise Act, 1944 reads as follows:-

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
100	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under Heading 8712,8713, 8715 and 8716	30

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
100A	Any Chapter	Parts, components and assemblies of goods falling under Tariff Item 84264100, Headings 8427, 8429 and sub-heading 843010	30

Serial No. 100 was introduced with effect from 27.02.2010 and Serial No 100A was introduced with effect from 29.04.2010

4.3 Section 4 A of the Central Excise Act prescribes the determination of value on the basis of retail sale price of goods. The goods liable to pay central excise duty under section 4A of the Act are the goods to which the provision of Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force apply.The goods also need to be notified under section 4 A of the Central Excise Act.

4.4 Notification No 02/2006 – CE (N.T) dated 01.03.2006 was issued in exercise of powers under Section 4 A of the Central Excise Act, 1944 prescribing the items on which the said section 4 A would be applicable and it also prescribed the quantum of abatement admissible to such goods.Vide Notification 11/2006- (N.T) dated 29.05.2006 the following entry was introduced in notification 02/2006 –CE (NT) (Supra)

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
97	Any heading	Parts, components and assemblies of automobiles	33.5%

4.5 On 24.12.2008 the Notification No 02/2006 –CE (NT) was replaced by Notification No. 49/2008-CE (NT) and the entries at Serial No. 97 in the erstwhile Notification 02/2006- CE (NT) was continued as sr. no. 108 of the new Notification. However, the quantum of abatement was reduced from 33.5% to 30%. The Notification 49/2008-CE (NT) was amended vide Notification No 09/2010-CE (NT) dated 27.02.2010 and the entry 108 was replaced by the following:

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
108	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under Heading 8712,8713, 8715 and 8716	30

The said Notification 49/2008 was amended by the Notification No. 19/2010-CE(N.T) dated 29.04.2010 and following entry was introduced.

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
109	Any Chapter	Parts, components and assemblies of goods falling under tariff item 84264100, headings 8427,8429 and sub-heading 8430 10	30

4.6 The appellants are manufacturers of bearings. The appellants also import bearing and sell the same after re-packing. The issue in dispute is if these "bearings" imported and repacked by appellant are covered by Sr. No. 100 and 100A of the Third Schedule of the Central Excise Act, 1944 and the Activity of "packing or re-packing of such goods in a unit container or labeling or re- labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer" amounts to manufacture. If it is held that the product manufactured by the appellant is covered by Sr.No. 100 or 100 A of the Third Schedule then the same would be liable to assessment under section 4 A in terms of Sr. no. 108 and 109 of Notification No 49/2008-CE(NT) as the said notification contains identical description.

4.7 We find that the issue needs to be decided is if the Roller Bearing and Ball Bearing imported by the Appellant are covered by the following description in the Third Schedule of the Central Excise Act, 1944.

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
100	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under Heading 8712,8713, 8715 and 8716	30

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off

			retail sale price
100A	Any Chapter	Parts, components and assemblies of goods falling under Tariff Item 84264100, Headings 8427, 8429 and sub-heading 843010	30

4.8 If the Ball bearing and roller imported by the appellant falls in the aforesaid description then the process of " Packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer" amounts to manufacture and the goods will needs to be assessed under Section 4 A in terms of Notification No 49/2008(NT) as amended under the following entries:-

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
108	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under Heading 8712,8713, 8715 and 8716	30

Sr.No	Chapter, heading, Sub-heading or tariff item	Description of goods	Abatement as a percentage off retail sale price
109	Any Chapter	Parts, components and assemblies of goods falling under tariff item 84264100, headings 8427,8429 and sub-heading 8430 10	30

It is noted that the entry 100 of the Third Schedule corresponds to 108 and Notification No 49/2008-CE (NT). Entry 100A of the Third Schedule corresponds to the entry 109 and Notification No 49/2008-CE (NT) .

4.9 The Revenue has alleged that all the Rollers and Ball bearings imported by the Appellant are either parts or components of vehicles falling under Chapter 87 (excluding vehicles falling under Heading 8712,8713, 8715 and 8716) or parts, components of goods falling under tariff item 84264100, Headings 8427, 8429 and sub-heading 843010. The appellant have relied on Note 2 and Note 3 of Section XVII which covers vehicles, aircraft , Vessels and associated transport equipment which defines the terms "Parts" and "Parts and Accessories" . The note 2 and Note 3 reads as follows:-

> *2. The expression "parts" and "parts and accessories" do not apply to the following articles , whether or not they are indentifiable as for the goods of this Section:*
>
> *(a) ---------------*
>
> *(b) ----------------*
>
> *(c) --------------------*
>
> *(d) --------------------*
>
> ***(e) machines and apparatus of headings 8401 to 8479, or parts thereof, other than the radidators for the articles of this Section, articles of heading 8481 or 8482 or, provided they constitute integral parts of engines and motors, articles of heading 8483;***
>
> *(f) -----------------------------*
>
> *(g) ------------------------------*
>
> *(h) -----------------------------*
>
> *(ij) ----------------------------*
>
> *(k) ----------------------------*
>
> *(l) ------------------------------*
>
> *3. References in Chapters 86 to 88 to "parts" or " accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory."*

It is noted that the heading 8482 of the Central Excise Tariff reads as follows:

> 8482- Ball Bearings or Roller Bearings

It is seen that Ball and Roller Bearing are covered under heading 8482. From the note 2 (e) it is apparent that the terms "Parts" and "Parts and Accessories" do not apply to

(i) machines or Apparatus of heading 8401 to 8479

(ii) Parts of Machines or Apparatus of Heading 8401 to 8479

(iii) Articles of heading 8481 or 8482

(iv) Articles of heading 8483 provided the constitute integral parts of engine or motors.

From the perusal of above Section note it is clear that bearings falling under Chapter heading 8482 cannot be called "Parts" and "Parts and Accessories" even if they constitute integral part of engine or motors of machines or apparatus of heading 8401 to 8479. Articles of heading 8481 or 8482 are excluded from the definition of "Parts" and "Parts and Accessories" under Section Note 2 (e) of Section XVII. As far as heading 8483 are concerned the same could be classified as "Parts" and "Parts and Accessories" provided they constitute the integral part of engine and motors. In view of above it cannot be held that the goods ordinarily falling under heading 8482 can fall under any classification under Section XVII of the Central Excise Tariff Act, 1985.

4.10 This view also supported by Section Note to Section XVI. Section XVI relates to machinery and mechanical appliances, electrical equipments, parts thereof, sound recorders and reproducers, television image and sound recorders and reproducers and parts and accessories of such articles. Section Note 2 of Section XVI reads as under:-

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use

principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548."

It is seen that Section Note 2 (a) clearly states that parts which are goods falling under any of the heading of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings. It is apparent that the said section applies to heading 8482. Thus, implying that goods ordinarily classifiable under 8482, cannot be classified under any other heading as parts and machines.

4.11 Clause (a) of Section note 2 of Chapter XVI clearly implies that goods ordinarily falling under 8482 are to be classified under heading 8482 only. Clause (b) and (c) of section note 2 of Section XVI has no application as far as goods that are ordinarily classified under heading 8482. The above view are also supported by the following decision relied by the appellant.

(i) A.K.S Bearing Limited – 2019 (370) ELT 859

"11. *A perusal of above entries under the relevant notifications for arriving at the assessable value on the basis of MRP price covers only parts, components and assemblies of automobiles. It is very clear that bearings are not specifically covered under the above notifications for MRP basis assessment. The department is of the view that bearings are part of automobiles and therefore, the above notification namely 11/2006 etc. as amended covers ball bearings for MRP based assessment as being a part of automobiles. We are of the view that the bearings as such, are not part or components of the automobile vehicles though the ball bearings to form a part of other parts of automobile vehicles. It is also relevant that the Central Excise Tariff under Section 17 which covers the classification of vehicles, aircrafts, vessels and other associated transport equipment specifically excludes under Section Note 2 the bearings falling under Chapter 84.81 or 84.82 from the expression of 'parts and accessories of vehicles'. Thus, from the careful study of the section note it becomes clear that it has been intention of the legislature ab initio not to consider that ball bearings as parts of automobile vehicles. We also find great force in the argument of Learned Advocate that the department has not brought on record any evidence to prove that as appellant assessee has sold any of his consignments of ball bearings to any manufacturer of automobile or any service station of automobiles.*

12. *In view of our observations, we find that the department has stretched the provisions of law unnecessarily to include small quantities of ball bearings cleared on retail sale under the provisions of Section 4A without substantiating such claim with some concrete evidences. In view of the above, we find that ball bearings are not included under relevant notifications issued under Section 4A of the Central Excise Act, 1944 and therefore, same cannot be considered for assessment on the basis of MRP value. While holding the above view, we also take shelter of following case laws which are cited by the Learned Advocate, State of Tamil Nadu v. Vinyl Cable Industries (supra) where Hon'ble High Court has observed as under :-*

> *6. It is well settled that a particular use to which a single article is put alone is not conclusive to know the real nature or character*

of the article that will determine how to identify it for the tax purpose. As noticed by the Tribunal, the Revenue authorities identified these cables as electrical goods for all purposes, except that in the matter of sale of such cables to automobile parts dealers, they wanted to impose a tax rate of 13 per cent treating only such sales as sale of parts and accessories of motor vehicles and trailers in entry 3 of the First Schedule. The revenue authorities evidently committed an error of law in so dividing the PVC cables for tax purposes into electrical goods and parts and accessories of motor vehicles. The Tribunal has taken a correct view in holding that the assessment originally made was in order and the reassessment at 13 per cent on a portion of turnover is not justified. There is no merit in these petitions. These petitions are accordingly dismissed. No costs."

13. *Following the decision of Hon'ble Madras High Court, we set aside the order-in-appeal and allow both the appeals with consequential benefit, if any, to the appellants.**"***

(ii) J.K Tyre and Industries Limited – 2017 (358) ELT 1044.

"3. *We note that the Original Authority vide his order dated 10-9-2009 has given a very cryptic finding to the effect that in terms of decision of Hon'ble Supreme Court in the case of G.S. Auto International Ltd. v. CCE, Chandigarh reported in 2003 (152) E.L.T. 3 (S.C.), the classification of goods is to be determined by commercial identity test and not by functional test. Accordingly, he held that tyres, tubes and flaps have "the identity with automobiles and prove themselves to be part of automobile". We have perused the said decision of the Apex Court. The said decision dealt with various types of automobile parts having fastening function. The Apex Court examined the general use parts and the scope of classification of these items. It is categorically held that for classification, the test of commercial identity and not the functional test should be applied. It needs to be ascertained as to how the goods, in question, are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise. Similarly, in CCE v. Wockhardt Life Sciences Ltd. reported in 2012 (277) E.L.T. 299 (S.C.), the Hon'ble Supreme Court reported that whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of tenable material or evidence to determine how such article is understood in "common parlance" or in "commercial world" or in "trade circle" or "in its popular sense meaning". Similar views have been expressed by the Apex Court in CCE, New Delhi v. Connaught Plaza Restaurant (P) Ltd. reported in 2012 (286) E.L.T. 321 (S.C.) and Commissioner of Trade Tax, U.P. v. Kartos International reported in 2011 (268) E.L.T. 289 (S.C.) dealing with a sales tax matter the Hon'ble Supreme Court in United Copies (India) Pvt. Ltd. v. Commissioner of Sales Tax reported in 1997 (94) E.L.T. 28 (S.C.) held that rubber flaps cannot be classified as accessories of motor vehicles. The Court also refer to Central Excise Tariff Act and mentioned that flaps are taxable under Tariff Heading 4012.*

4.*It is also brought to our notice that in the case of appellant's unit in Mysore, similar dispute arose. The Commissioner (Appeals) vide his order No. 228/2010, dated 22-10-2010, following the earlier appellate order dated 14-5-2010, which was accepted by the Department, held that tyres, tubes and flaps manufactured by the appellant's unit at Mysore is not to be assessed under Section 4A as parts of automobile. It is to be noted here that tyres and tubes are not only used for automobiles. They are used in animal drawn vehicles, aircrafts and various other machineries. As such even on this ground, it is not tenable to hold the tyres and tubes are to be considered as parts and components of automobiles."*

In the background it is apparent that the goods roller and ball bearings would be classified under heading 8482 as ball and roller bearings and the same cannot be classified as parts or components of other machines or vehicles.

4.12 Revenue has relied on statements of various employees of the appellant. The summary of the assertions made in the said statements are reproduced in para 2.10 Practically all the statements asserts that bearings have industrial and automobile usage. It is seen that all the statements merely states that bearings are used for industrial and automobile usage. The section Note 2 of Section XVI and Section note 2 of Section XVII clearly indicates that the description parts and components appearing in section XVI and XVII of Central Excise Tariff does not apply to bearings which are ordinarily classifiable under heading 8482 of Central Excise Tariff .The industrial or automotive use of bearings therefore has no impact on classification.

4.13 The revenue had inquired from some dealers and buyers about the usage of the said bearings purchased by them in an attempt to established that the said bearings are used for vehicles. It is seen that no conclusive evidence has been produced by the Revenue to establish that the said bearings are exclusively or primarily used for the automobile use. Even if revenue is to establish that certain bearings are used exclusively or primarily for the automobiles even then in terms of Section Note 2 and 3 to section XVII, the bearings would remain classifiable under chapter heading 8482 as Ball and Roller Bearing.

5. In view of above discussion, we do not find any merit in the order. The impugned order is dismissed. The appeals are allowed.

(Pronounced in the open court on 05.09.2022)

RAMESH NAIR
MEMBER(JUDICIAL)

RAJU
MEMBER (TECHNICAL)

geeta