CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No. 1774 of 2010

[Arising out of the Order-in-Appeal No.83/2010 dated 23.04.2010 passed by the Commissioner of Customs (Appeals), Bangalore.]

The Commissioner of Customs **....Appellant**
CR Building,
Queen's Road,
Bangalore – 560 001.

Vs.

M/s. Bosch Limited **....Respondent**
Hosur Road,
Adugodi
Bangalore – 560 030.

Appearance:

Mr. K. A. Jathin, AR **....For Appellant**

Ms. Neetu James, Advocate **.... For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 04.08.2023

Date of Decision: 06.12.2023

FINAL ORDER No. 21336 of 2023

Per R. BHAGYA DEVI:

The respondent, M/s. Bosch Limited imported Smartra Immobilisers classifying the same under Chapter Heading 8536 5090 as automatic regulating and controlling instrument and apparatus. From the catalogue submitted by the respondent, the imported item vehicle immobiliser system consisted of key head with transponder, antenna, Smartra, and engine management system. From the various features of the imported items, it was found that it was an optional item to be fitted to vehicle engine for better security. The engine of the vehicle would not start if any improper starting of the vehicle was attempted and thus, prevented theft. It was an antitheft device and accordingly, the item was classified under chapter heading 8708 9900 as accessories of vehicles by the original authority. However, on appeal, the Commissioner (Appeals) observed that smartra components are made up of digital circuit with the character interface and the device directs electronic signals between the engine management system and the transponder and once the car engine is stopped the EMS immobilises the vehicle by disabling control of the spark ignition circuit and fuel supply. Going by the Australian Customs Authority's classification, the Commissioner (Appeals) classified the said item under 8536 5090. The department is in appeal against this impugned order.

2. On behalf of the Revenue, the Authorised Representative submitted that as per the catalogue provided by the supplier, "electronic control unit (Smartra)" is a part of a vehicle engine immobiliser system. Vehicle immobiliser greatly reduces the chance of a vehicle being stolen by preventing engine start if a previously electronically registered key is not presented. Smartra is one key component in vehicle immobiliser system. Immobiliser functionality: after engine stops, vehicle is immobilised after a

short period of time, authentication must be repeated to mobilise the vehicle and that the immobilisation of the vehicle occurs by the EMS disabling the control of the spark ignition and fuel supply. The Smartra unit acts as an electronic translator between the engine management system and the key with the transponder. The Smartra unit is made up of digital circuits with one connector interface and mounting bracket". Therefore, the Smartra immobiliser does not work as a switch to start and stop the engine so it cannot be classified under chapter heading 8536 as 'other switches'. The Authorised Representative further submitted that it is nothing but an antitheft device which prevents engine to start if the previously registered key is not presented and therefore, it is an accessory of the vehicle rightly classifiable under Chapter Heading 8708 9900 which covers other parts and accessories of motor vehicles of heading 8701 to 8705.

3. On the other hand, the learned advocate for the respondent submits that the HSN Explanatory Notes to Chapter Heading 8536 reads as apparatus for switching electrical circuits. The imported goods are nothing but an electronic chip consisting of transistor and logic chip for a voltage not exceeding 1000 volts. It is submitted that the device switches on the EMS, when the appropriate signal is received from the transponder, i.e., the impugned goods make it circuit. If the appropriate signal is not received from the transponder, then the engine itself cannot be turned on by the user of the vehicle and therefore, it is rightly classifiable under Chapter Heading 8536. Relying on HSN

Explanatory Notes under the heading ‘parts and accessories’ it is submitted that if any of the three conditions are not satisfied, the goods cannot be classified under Section XVII as part of an accessory of the goods. It is further stated that Note 2(f) excludes goods of Chapter 85 to be classified as parts or accessory of goods of Section XVII. The learned Counsel further relied on decision in the case of **Intel Design Systems (India) Pvt. Ltd. vs. Commr. of Cus. & C. Cx: 2008 (223) ELT 135 (SC)** and **Perfet Electric Concern Pvt. Ltd. vs. Collector of C. Ex., Patna: 1997 (93) ELT 622 (Tribunal)** wherein it was held that switch is designed for goods of Chapter 8710 merits classification under Chapter Heading 8536. The respondent also relied on the decision of **Pioma Chemicals vs. Commissioner of Customs, Nhava Sheva-I: 2019 (370) ELT 301 (Tri.-Mumbai)** to state that Rulings of the U.S. Customs had great persuasive value on the classification and hence, the Australian Tariff Advice issued for the imported item was relevant in deciding the classification which has been rightly done by the Commissioner (Appeals) in the impugned order.

4. Heard both sides and perused the records. There is no dispute on the technical aspects of the item imported and the function of the said item that it is being used in the vehicles as an antitheft device and for security purpose. The question now arises whether it is classifiable under Chapter Heading 8701 as ‘part/accessory of a motor vehicle’ or as a ‘switch’ under Chapter Heading 8536.

5. The rival entries reads as under:

8536	**Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts : connectors for optical fibres, optical fiber bundles or cables.**
8536 10	- Fuses :
8536 20	- Automatic circuit breakers :
8536 41 00	- Other apparatus for protecting electrical circuits - Relays:
8536 50	- Other switches :
8536 50 10	--- Control and switch gears u 10% -
8536 50 20	--- Other switches of plastic u 10% -
8536 50 90	**--- Other**
8708 10	**-Parts and Accessories of the Motor Vehicles of Headings 8701 TO 8705**

Other parts and accessories:

8708 91 00	-- Radiators and parts thereof
8708 92 00	-- Silencers (mufflers) and exhaust pipes; parts
8708 93 00	--Clutches and parts thereof
8708 94 00	-- Steering wheels, steering columns and steering boxes; parts thereof
8708 95 00	--Safety airbags with inflater system; parts thereof
8708 99 00	**-- Other**

Section XVI Note 2 reads as

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;

Section XVII: Vehicles, Aircraft, Vessels and Associated Transport Equipment

Notes:

1. This Section does not cover articles of heading 9503 or 9508 or bobsleighs, toboggans and the like of heading 9506.

> **2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:**
>
> (a) joints, washers or the like of any material (classified according to their constituent material or
> in heading 8484) or other articles of vulcanised rubber other than hard rubber (heading 4016);
>
> (b) parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar
> goods of plastics (Chapter 39);
>
> (c) articles of Chapter 82 (tools);
>
> (d) articles of heading 8306;
>
> (e) machines and apparatus of headings 8401 to 8479, or parts thereof, other than the radiators
> 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) electrical machinery or equipment (Chapter 85);**
>
> (l) brushes of a kind used as parts of vehicles (heading 9603).

The above Clause (f) refers to 'electrical machinery or equipment' falling under Chapter 85, the goods imported are neither a machinery nor an equipment but an accessory to be used in a vehicle for security purpose.

6. 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 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)."

7. As per above Explanatory Notes, both the conditions prescribed under Clauses (i) and (ii) needs 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. The Smartra Immobilser undoubtedly is used only in the vehicles for antitheft purpose and it is not excluded by the provisions of the Notes to Section XVII, thus, satisfying both the conditions as discussed supra.

8. As per the HSN Notes to Chapter Heading 8536 covers electrical apparatus for a voltage not exceeding 1000 volts generally used for dwellings or industrial equipment. This heading also covers connectors for optical fibres, optical fibre bundles or cables. As seen from the Technical Literature of the item imported, it is nothing but an electronic security device fitted to a motor vehicle that prevents engine from being started unless the correct key is present and thus, prevents the vehicle from being stolen. Under no circumstances, this can be considered as switch to be classified under Chapter Heading 8536.

9. Moreover, the HSN Notes under 'parts and accessories' of Clause A, B and C reads as:

> (A) Parts and Accessories excluded by Note 2 to Section XVII
>
> (B)
>
> This note excludes the following parts and accessories, whether or not there are identifiable as for the articles of this section:
>
> ---
>
> 7. Electrical machinery or equipment of Chapter 85 for example:
>
> --

(k) Pantographs and other current collectors for electric traction vehicles, and refuses, switchers and other electrical apparatus of heading 8535 or 8536.

(B) Criterion of sole or [principal] use. (1) Parts and accessories classifiable both in Section XVII and in another Section.

Under Section Note 3, parts and accessories which are not suitable for use **solely or principally** with the articles of Chapters 86 to 88 are **excluded** from those Chapters.

The effect of Note 3 is therefore that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined but its *principal use.* Thus the steering gear, braking systems, road wheels, mudguards, etc., used on many of the mobile machines falling in Chapter 84, are virtually identical with those used on the lorries of Chapter 87, and since their principal use is with lorries, such parts and accessories are classified in this Section.

(2) Parts and accessories classifiable in two or more headings of the Section.

Certain parts and accessories are suitable for use on more than one type of vehicle (motor cars, aircraft, motorcycles, etc.); examples of such goods include brakes, steering systems, wheels, axles, etc. Such parts and accessories are to be classified in the heading relating to the parts and accessories of the vehicles with which they are *principally used.*

(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 more specifically by another heading elsewhere in the Nomenclature,**

10. As seen above the exclusions under Part A (k) as claimed by the respondent is not applicable and Part C excludes parts and accessories even if identifiable as for the articles of this Section are excluded if they are covered more specifically by another heading elsewhere in the nomenclature and this heading specifically excludes vehicle seats of heading 9401 but not a security device or an antitheft device. Therefore, it is seen that Part A and Part C are not applicable to the relevant items and Part

B clearly establishes that it is rightly classifiable under CTH 8708 based on its principal use. Hence the reliance placed on the decision of ***Intel Design Systems (India) Pvt. Ltd.*** (supra) by the respondent is of no help since it does not satisfy the criteria laid down for classifying the item under 8536.

11. The Hon'ble Supreme Court of India in the case of **C. EX, Delhi Versus Insulation Electrical (P) Ltd.: 2008 (224) E.L.T. 512 (S.C.)** dated 27-3-2008 while dealing with the classification of Rail Assembly Front Seat (Omni), Adjuster Assembly slider seat, YF-2, Rear Back Lock Assembly and 1000 CC Rear Back Lock Assembly observed that:

> "Tribunal, by the impugned order, has set aside the orders of the authorities below holding that the products manufactured by the assessee are classifiable under chapter heading 8708.00 as claimed by the assessee and not under chapter heading 9401.00 as put forth by the revenue. Tribunal came to the conclusion that the items manufactured by the assessee are only adjuncts, additions to the seats for the better utilization of the seats for comfort and convenience of the passengers and they are not essential components or parts of seats. That the seats are complete in themselves without these mechanisms and therefore do not merit classification as parts of seats under Chapter 9401.00. Tribunal relying upon a judgment of this Court in the case of *Mehra Brothers* v. *Joint Commercial Officer* reported in 1991 (51) E.L.T. 173 (S.C.) held that products manufactured by the assessee merited classification under chapter heading 8708.00 as "parts and accessories of motor vehicles".
>
> **21.** Chapter heading 8708 covers both the 'parts' as well as 'accessories'. The items manufactured by the assessee are only adjuncts. These are to be affixed on the floor of motor vehicles. When seats are affixed on these rails, seats can slide back and forth with the operation of a lever forming part of other rail assembly front seat adjuster. This enables the driver or the passenger, to adjust the position of the seat to suit his comfort and convenience. These are merely to improve the efficiency and convenience of the seat and does not form part of the seat. The seats are complete in themselves without these mechanisms and therefore it cannot be held that the parts manufactured by the assessee merit classification under

> chapter 9401. Rather the same would be accessories to the motor vehicle as claimed by the assessee and would merit classification under chapter heading 8708, because they are fitted in the motor car for adjustment of the seats for the convenience and comfort of the passengers. The Rail Assembly front seat (Omni), Adjuster/assembly slider seat, YE-2 rear back lock assembly and 1000 cc rear back lock assembly being manufactured by the assessee can at best be termed as accessories to the motor vehicle for better convenience of the passengers/drivers travelling in the car."

12. The Hon'ble Supreme Court of India in the case of **Westinghouse Saxby Farmer Ltd. Versus Commissioner of C. EX., Calcutta: 2021 (376) E.L.T. 14 (S.C.)** dated 08-03-2021 was dealing with the question Whether the "Relays" manufactured by the appellant used only as Railway signaling equipment would fall under Chapter 86, Tariff Item 8608 as claimed by the appellant or under Chapter 85 Tariff Item No. 8536.90 as claimed by the Department. In the regard the Hon'ble apex court observed that :

> "--- it is necessary first to see the description of the goods that fall under Chapter 85 and Chapter 86 with particular reference to the relevant Tariff Items thereunder. Chapter 85 covers goods, described as *"Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles."* Chapter Heading 8536 covers *"Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts; connectors for optical fibres, optical fibre bundles or cables."* Sub-heading 8536.90 covers *"other apparatus"*. This includes (i) Motor starters for AC motors under sub-heading 8536.90.10; (ii) Motor starters for DC motors under sub-heading 8536.90.20; (iii) Junction boxes under sub-heading 8536.90.30; and (iv) others under sub-heading 8536.90.90.
>
> Chapter 86 covers *"Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds."*

Chapter Heading 8608 covers *"Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling safety or traffic control equipment for railway, tramways, roads, inland waterways, parking facilities, port installation or air-fields; parts of the foregoing".*

--the answer to question revolves around the description of goods found in Chapters 85 and 86, as well as the Notes in Section XVII and the General Rules for Interpretation of the First Schedule. We have already extracted the description of goods in Chapters 85 and 86. Therefore, let us now take note of the relevant Notes in Section XVII and the relevant Rule of the General Rules for Interpretation of the First Schedule.

Section 2 of the Central Excise Tariff Act, 1985 provides that the rates at which duties of excise shall be levied under the Central Excise Act, 1944 are specified in the First Schedule and the Second Schedule. The First Schedule contains a set of Rules known as *"General Rules for the Interpretation of this Schedule".* These Rules begin with a mandate that the *"classification of goods in this Schedule shall be governed by the principles laid thereunder."* Rule 1 of these Rules makes it clear that *"the titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only and that for legal purposes, classification shall be determined according to the terms of the Headings and any relative Section or Chapter Notes and provided such headings or Notes do not otherwise require, according to the provisions of the rules that follow".* Rule 2 deals with (i) incomplete or unfinished articles; and (ii) mixtures or combinations of material or substance. While Rule 2(a) deals with incomplete or unfinished Articles, Rule 2(b) deals with mixtures or combinations of a material or substance. Rule 3 deals with cases where goods are classifiable under two or more sub-headings. But Rule 3 begins with a reference to Rule 2(b). Therefore, it is necessary to extract Rule 2(b) and Rule 3 together. They read as follows :

"2.(a) xxxx

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, *prima facie,* classifiable under two or more headings, classification shall be effected as follows :

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

In the case on hand, the claim of the assessee was that the relays manufactured by them were part of the railway signalling equipment. But all the Authorities were of the unanimous view that this product is referable to goods of a specific description in Chapter sub-heading 8536.90 and that, therefore, General Rule 3(a) will apply. But in invoking General Rule 3(a), the Authorities have omitted to take note of 2 things. They are : (i) that as laid down by this Court in *Commissioner of Central Excise* v. *Simplex Mills Co. Ltd.* [(2005) 3 SCC 51 = 2005 (181) E.L.T. 345 (S.C.)] the General Rules of Interpretation will come into play, as mandated in Rule 1 itself, only when no clear picture emerges from the terms of the Headings and the relevant section or chapter notes; and (ii) that in any case, Rule 3 of the General Rules can be invoked only when a particular goods is classifiable under two or more Headings, either by application of Rule 2(b) or for any other reason. Once the authorities have concluded that by virtue of Note 2(f) of Section XVII, 'relays' manufactured by the appellant are not even classifiable under Chapter Heading 8608, we do not know how the Authorities could fall back upon Rule 3(a) of the General Rules. There is a fundamental fallacy in the reasoning of the Authorities, that Rule 3(a) of the General Rules will apply, especially after they had found that 'relays' are not classifiable under Chapter Heading 8608, on account of Note 2(f) of Section XVII. Coming to Section XVII, which precedes Chapter 86, the same contains a few notes, one of which is Note 2, which lists out certain articles to which the expressions *"parts"* and *"parts and accessories"* mentioned in Chapter 86 do not apply. Note 2(f) reads as follows :-

"(1) xxxx

(2) xxx

(a) xxxx

(b) xxxx

(c) xxxx

(d) xxxx
(e) xxxx
(f) electrical machinery or equipment (Chapter 85)".

Note 2(f) is relied upon by the Revenue, in view of the fact that Chapter Heading 8608 uses the words *"parts of the foregoing"* after the words *"Railway or tramway track fixtures and fittings"* etc. Chapter Heading 8608 does not specifically mention *"electrical relays"*. The assessee's contention is that *"it is part of the railway signalling safety or traffic control equipment"* and that, therefore, Relays manufactured by them would fall under Chapter Heading 8608 due to the usage of the word *"parts"*. It is this contention that is sought to be repelled by the Authorities by relying upon Note 2(f) of Section XVII.

Though at first blush, Note 2(f) seems to apply to the case on hand, it may not, upon a deeper scrutiny.

Note 3 of Section XVII reads as follows :

> *"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 or accessory."*

What is recognized in Note 3 can be called the *"suitability for use test"* or *'the user test'*. While the exclusion under Note 2(f) may be of goods which are capable of being marketed independently as electrical machinery or equipment, for use otherwise than in or as Railway signalling equipment, *those parts which are suitable for use solely or principally with an article in Chapter 86* cannot be taken to a different Chapter as the same would negate the very object of group classification. This is made clear by Note 3. It is conceded by the Revenue that the relays manufactured by the appellant are used solely as part of the railway signalling/traffic control equipment. Therefore, the invocation of Note 2(f) in Section XVII, overlooking the *"sole or principal user test"* indicated in Note 3, is not justified.

On the question as to what test would be appropriate in a given case, this court pointed out in *A. Nagaraju Bros.* v. *State of A.P.* [1994 Supp (3) SCC 122 = 1994 (72) E.L.T. 801 (S.C.)], as follows :

> *".....there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test,*

> *though not the only one. There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application."*

> Therefore, the respondents ought not to have overlooked the *'predominant use'* or *'sole/principal use'* test acknowledged by the General Rules for the Interpretation of the Schedule.

Accordingly, the Hon'ble Supreme Court allowed the appeal classifying the product under Chapter Heading 8608 and not under 8536 as claimed by the Revenue.

13. In the present case, the facts are similar to the above case and therefore, since admittedly the sole and principal use of smartra immobiliser is only as an accessory to the vehicle as an antitheft device, adding value to the vehicle in terms of security, the question of classifying the same under Chapter Heading 8536 does not arise. Moreover, it is to be classified as part of motor vehicle unless excluded by the Section or Chapter Notes or if there is a specific entry in the Tariff as per the General Explanatory Notes. As already discussed, it is rightly classifiable under Chapter Heading 8708 as there is no specific entry elsewhere. Therefore, since the smartra immobiliser is only a security device to prevent a vehicle from being stolen it is rightly classifiable under Chapter Heading 8708 as parts of motor vehicle. When the primary evidences and criteria for classification as discussed supra do not allow classifying the items under Chapter Heading 8536, the question of following the Tariff Advice which is only a persuasive value does not arise.

14. In view of the above observations, the impugned order is set aside and the appeal is allowed.

(Order pronounced in open court on 06/12/2023.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

RV