

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Excise Appeal No. 40219 of 2022

(Arising out of Order-in-Original No. 01/2022 (CE) dated 31.01.2022 passed by Principal Commissioner of GST and Central Excise, Coimbatore)

M/s. Shakthi Tech Manufacturing India Pvt. Ltd.

...Appellant

SF No. 348/2A, 348/2B,
Agarwal School Road,
Somayampalayam Post,
Kalapanaickenpalayam,
Coimbatore – 641 108.

Versus

Commissioner of GST and Central Excise

...Respondent

Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course,
Coimbatore - 641 018.

APPEARANCE:

For the Appellant : Shri S. Durairaj, Advocate

For the Respondent : Shri N. Satyanarayanan, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40003 / 2025

DATE OF HEARING : 14.10.2024

DATE OF DECISION : 02.01.2025

Order :- Per Mr. VASA SESHAGIRI RAO

This Excise Appeal No. 40219 of 2022 has been filed by M/s. Shakthi Tech Manufacturing India Pvt. Ltd. (hereinafter called as 'Appellant') which is directed against the Order-in-Original No. 01/2022 (CE) dated 31.01.2022 passed by Principal Commissioner of GST and Central Excise, Coimbatore.

1.2 Facts briefly stated are that the Appellant engaged in the manufacture and supply of goods to Indian Railways and other major customers, had classified certain electrical machinery parts and accessories manufactured and cleared to railways attracting 5% duty under Chapter 86 of Central Excise Tariff Act, 1985 (CETA) whereas the Department alleged that such parts merit classification under respective Chapters 84 or 85, as per section note 2(f) of Section XVII of CETA. The excise duty on railway parts under HSN 8607 was reduced to 6% from 12.5% w.e.f. 01.03.2016 as per Notification No. 12/2016-CE dated 01.03.2016 whereas all other railway parts which were classifiable under Chapter 84 or 85 continued to attract 12.5%. Consequent to completion of investigation, a Show Cause Notice dated 25.02.2021 was issued to the Appellant seeking to reclassify the goods under Chapter 84 instead of under 8607 of CETA and to demand differential duty of Rs.2,18,29,679/- for the period 01.04.2016 to 30.06.2017 in terms of Section 11A(4) of Central Excise Act, 1944 (ACT) read with Section 174(2) of CGST Act, 2017, along with interest under Section 11AA and to impose penalty under Section 11A(2) of the ACT *ibid*. The impugned order dated 31.01.2022 has confirmed all the proposals put forth in the SCN. Being aggrieved, the Appellant came on appeal before this forum.

2. The main contentions of the appellant as culled out from the grounds of appeal have been summarized below: -

- i. It was submitted that findings in the impugned order were misplaced and are incorrect as it had wrongly concluded that the exclusions provided in Section Note 2(e) takes the classification out of Section XVII since it has to be read along with Section Note 3 of Section XVII and Note 1(l) of Section XVI for Chapters 84 and 85 of CETA which

excludes articles of Section XVII for Chapters 86 to 89. The impugned order dated 31.01.2022 was issued without wholly interpreting the provisions of Section notes and HSN explanatory notes.

- ii. It was averred that classification ought to be done on sole/ principal user test and not on description/ function basis which was affirmed by the Hon'ble Supreme Court in *Westinghouse Saxby Farmer Ltd. Vs. CCE [2021 (376) ELT 14 (SC)]*. Further reliance was placed on the decision of the Tribunal in the case of *Diesel Component Works Vs. Commissioner of Central Excise [2000 (1200) ELT 648 (Tri.)]* in which the parts were classified under CETH 8607 by relying on Note 3 of Section XVII read with Part III of HSN explanatory notes which reads as below: -

(III) PARTS AND ACCESSORIES

It should be noted that Chapter 89 makes **no provision** for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships, etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of the vehicles, aircraft or equipment concerned.

It should, however, be noted that these headings 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 Chapters 86 to 88 (see paragraph (B) below).
- and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

(A) Parts and accessories excluded by Note 2 to Section XVII.

This Note **excludes** the following parts and accessories, whether or not they are identifiable as for the articles of this Section :

- (1) **Joints, gaskets, washers and the like**, of any material (classified according to their constituent material or in **heading 84.84**) and other articles of vulcanised rubber **other than** hard rubber (e.g., mudguard-flaps and pedal covers) (**heading 40.16**).
- (2) **Parts of general use as defined in Note 2 to Section XV**, for example, cable and chain (whether or not cut to length or equipped with end fittings, other than brake cables, accelerator cables and similar cables suitable for use in vehicles of **Chapter 87**), nails, bolts, nuts, washers, cotter-pins, springs (including leaf springs for vehicles) (such goods of base metals fall in **Chapters 73 to 76 and 78 to 81**, and similar goods of plastics fall in **Chapter 39**), and locks, fittings or mountings for vehicle coachwork (e.g., made up ornamental beading strips, hinges, door handles, grip bars, foot rests, window opening mechanisms), number plates, nationality plates, etc. (such goods of base metals fall in **Chapter 83**, and similar goods of plastics fall in **Chapter 39**).
- (3) **Spanners, wrenches and other tools of Chapter 82.**
- (4) **Bells (e.g., for cycles) and other articles of heading 83.06.**
- (5) **Machines and mechanical appliances, and parts thereof, of headings 84.01 to 84.79, for example :**
 - (a) Boilers and boiler equipment (**heading 84.02 or 84.04**).
 - (b) Producer gas generators (e.g., for cars) (**heading 84.05**).
 - (c) Steam turbines of **heading 84.06**.
 - (d) **Engines of all kinds including engines fitted with gear boxes and parts thereof, falling in headings 84.07 to 84.12.**
 - (e) Pumps, compressors and fans (**heading 84.13 or 84.14**).
 - (f) Air-conditioning machines (**heading 84.15**).

...

...

...

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 by 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, e.g. :

- (1) Profile shapes of vulcanised rubber other than hard rubber, whether or not cut to length (**heading 40.08**).
- (2) Transmission belts of vulcanised rubber (**heading 40.10**).
- (3) Rubber tyres, interchangeable tyre treads, tyre flaps and inner tubes (**headings 40.11 to 40.13**).
- (4) Tool bags of leather or of composition leather, of vulcanised fibre, etc. (**heading 42.02**).
- (5) Bicycle or balloon nets (**heading 56.08**).
- (6) Towing ropes (**heading 56.09**).
- (7) Textile carpets (**Chapter 57**).
- (8) Unframed safety glass consisting of toughened or laminated glass, whether or not shaped (**heading 70.07**).
- (9) Rear-view mirrors (**heading 70.09 or Chapter 90** - see the corresponding Explanatory Notes).
- (10) Unframed glass for vehicle headlamps (**heading 70.14**) and, in general, the goods of **Chapter 70**.
- (11) Flexible shafts for speed indicators, revolution counters, etc. (**heading 84.83**).
- (12) Vehicle seats of **heading 94.01**.

- iii. It was put forth that the adjudicating authority without any cogent explanation had dismissed the Circular dated 09.07.1990 issued by CBEC which was based on sole usage test had taken a view that the transmission elements would fall under CETH 8607 or 8708 and not under 8483 since they were integral parts of the former.
- iv. It was pointed out that Note 2 of Chapter 86 is applicable to other items as well and Section Note 1(I) of Section XVI for Chapters 84 and 85 excludes articles of Section XVII.
- v. The allegation of mis-classification with an intention to evade payment of excise duty was denied as the appellant had classified the subject goods as per Section notes, explanatory notes, decision in the case of Diesel Component Works cited supra and Boards clarification dated 09.07.1990 and the purchase orders/ invoices reflected classification under CTH 86079100 and rate of duty @6% which was disclosed under the returns mentioning the Notification No. 12/2012-CE to claiming the reduced rate and therefore there was no intent to evade duty. The sole reliance placed in the impugned order on the statement of the Managing Director was not sustainable as nothing incriminating was established. It was pointed out that similar investigations were being done by the department and in one case the lower appellate authority dropped the demand vide OIA APPP/008/2021 dated 22.03.2021.
- vi. It was submitted that the impugned order was issued in violation of judicial discipline set out in the case of *Union of India Vs. Kamalakshi Finance Corporation Ltd. [1991 (55) ELT 433 (SC)]* and *Westinghouse Saxby Farmer Ltd. Vs. CCE supra*. It was pointed out that the law declared by the Supreme Court cannot be ignored on the ground that some points were not considered in view of the decision in the case of

Suganthi Suresh Kumar Vs. Jagadeeshan (AIR 2002SC 681). It was contended that the decisions in the *Intel Design Systems (India) Pvt. Ltd.* and *Uni Products India Ltd. [2020 (372) ELT 465]* relied upon by the adjudicating authority to contradict the case of *Westinghouse Saxby Farmer Ltd.* was misplaced as the contrary decision of a larger bench prevailed over the decision of the smaller bench and therefore liable to be set aside as the larger bench decision was a binding precedent in view of the decisions in *Keshav Mills Co Ltd. Vs. The Commissioner of I.T (AIR 1965 SC 1636)* and *Govinda Naik Vs. West patent Press [AIR 1980 KAR 92 (FB)]*.

vii. Further reliance was also placed on the following decisions:

- (i) *Uniworth Textiles Ltd. Vs. Commissioner [2013 (288) ELT 261 (SC)]*
- (ii) *Pushpam Pharmaceuticals Company Vs. Collector [1995 (78) ELT 401 (SC)]*
- (iii) *Collector Vs. HMM Ltd. [1995 (76) ELT 497 (SC)]*
- (iv) *Padmini Products Vs. Collector [1989 (43) ELT 195 (SC)]*

3.1 The Ld. Counsel Shri S. Durairaj representing the Appellant reiterated the grounds of appeal and submitted that the invocation of Note 2(e) overlooking Note 3 is not justified as it was held that Note 3 of Section XVII [Sole/principal use test] is applicable and NOT Note 2 of Section XVII [Parts of general use]. Further, Section Note 1(I) of Section XVI for Chapters 84 and 85, excludes articles of Section XVII. Further, it was averred that parts of railway diesel locomotive are specifically covered only in CETH 86079100 and nowhere else and therefore, classification under 8413/8414/8483 was wrong.

3.2 It was submitted that the Westing House decision was rendered by Full Bench – three judges which dealt with both Note 2 and Note 3 of

Section XVII and held Note 3 is applicable. On 5.1.2022, CBIC issued a circular stating that a review petition was being filed on the grounds that when the goods are excluded from Section XVII by Section Note 2, such goods will not fall under XVII, against the decision of Westing House by relying on the decisions of Hon'ble Supreme Court in the cases of *Intel Design Systems (India) Pvt Ltd Vs. CCE [2008 (223) ELT 135 (SC)]* and *Uni Products India Ltd. [2020 (372) ELT 465 (SC)]*. It was pointed out that the review petition based on Circular 05.01.2022 was dismissed by Hon'ble Supreme Court on 10.8.2022 and therefore, the findings of the Commissioner, which are based on the Circular 05.01.2022, were again set aside by the Hon'ble Supreme Court. In the above back drop, the decision in Westing House attained finality and was a binding precedent to be followed as per Article 141 of the Constitution.

3.3 It was emphatically put forth that the principle, which was laid down in Westing House decision, was also earlier laid down by the Hon'ble Supreme Court [Division bench] in the case of *GS Auto International Ltd. Vs. CCE [2003 (1) TMI 700]*. Classification of these products on the basis of "Sole/principal use test" was already upheld by the Tribunal in the case of *Diesel Component Works Vs. Commissioner of Central Excise [2000 (120) ELT 648 (Tri.)] [16.6.2000]* and was also followed in the case of *CCE Vs. Diesel Loco Modernisation Works [2017 (8) TMI 266] [8.6.2017]*. The ratio of Westing House was also followed in the case of *M/s. Faiveley Transport Rail Technologies India (P) Ltd Vs. CCE [2024 (8) TMI 1143]* and *Premier Polyfilm Limited Vs. CCE [2024 (7) TMI 6]*.

3.4 It was submitted that the Hon'ble Supreme Court in the case of *M/s. International Merchandising Company Ltd Vs. CST [2022 (12) TMI 556]* has held that extended period cannot be invoked where interpretation of classification is involved.

Therefore, it was prayed for setting aside the impugned order.

4. Shri N. Sathyanarayanan, Ld. Authorised representative for the Department, reiterated the findings in the impugned order and submitted that that there was intentional mis-classification of the subject imports with an intent to evade payment of excise duty warranting invocation of extended period and imposition of stringent penalties.

5. We have carefully heard the submissions of both sides and evidences on record especially provisions of Central Tariff Act, 1985 and related HSN Explanatory Notes.

6. The main issues which arise for decision in this appeal is with regard to the appropriate classification of electrical machinery parts and accessories, whether under Chapter 86 or under Chapter 84 and whether the invocation of extended period was justified considering the facts and circumstances of this appeal.

7. We find that the appellants have supplied the following products classifying them under CETH 86079100 and paid duty at 6% as per Notification No. 12/2016-CE dated 01.03.2016 whereas Department

classified the products under 8413/8414/8483 as mentioned against each and assessed duty at 12.5%. The differential duty of 6.5% was sought to be demanded by initiation of the proceedings as detailed above.

Sl.No.	PRODUCT NAME	Department's classification
1	Lube Oil Strainer assembly/Lube Oil Strainer Housing	84133090
2	Fuel strainer assembly	84133090
3	Lube Oil pump assembly	84133090
4	Scavenging Lube oil pump assembly [Part – Sleeve]	84133090/84139190
5	Water Pump Assembly [Parts – Bushing, spring, impeller and seal impeller].	84133030/84139190/ 84139120
6	Parts of Turbo charger [Turbo Dowelling Assembly, shaft carrier, idler gear support assembly, coupling, seal compressor bearing, nozzle ring, Diffuser assembly, heat shield, scroll dowelling assembly, kit of turbo dowelling components, support assembly, idler shaft assembly, set gear planet, engine coupling disc].	84148090/84149090
7	Air Duct assembly/Air inlet duct assembly.	84159000
8	Power transmission parts - Cam shaft drive housing machining assembly, damper assembly, idler stub shaft assembly, gear assembly carrier drive, clutch dowelling assembly, governor drive housing assembly, over speed trip housing assembly.	84839000/84834000/ 84836090
9	Cover accessory drive	84139190
10	Frame and latch assembly	84139190
11	Cover and seal assembly	84139190

Consequent to conducting in-depth investigation, the Show Cause Notice dated 25.02.2021 was issued to the Appellant seeking to reclassify the goods under Chapter 84 instead of under 8607 of CETA and to demand differential duty of Rs.2,18,29,679/- for the period from 01.04.2016 to 30.06.2017 which was confirmed in the impugned order dated 31.01.2022 of the Principal Commissioner of GST and Central Excise, Coimbatore.

8. We find that on the merits of the case, Ld. Counsel for the Appellant has vehemently argued that classification ought to be done only

on sole/ principal use test rather than on description/ function basis which was affirmed by the Hon'ble Supreme Court in *Westinghouse Saxby Farmer Ltd. Vs. CCE [2021 (376) ELT 14 (SC)]*. Further reliance was also placed on the decision of the Hon'ble Tribunal in the case of *Diesel Component Works Vs. Commissioner of Central Excise [2000 (1200) ELT 648 (Tri.)]* in which the railway parts were classified under CETH 8607 by relying on Note 3 of Section XVII read with clause B of Part III to Section XVII of HSN explanatory notes. (Para No. 2(ii) above refers)

9. The appellant was classifying their goods viz., Railway Parts under Chapter 8607 and discharging duty at concessional rate of 6% as per Notification No. 12/2016-CE dated 01.03.2016 during the period from 01.04.2016 to 30.06.2017. In order to ascertain the correct classification of the products, we reproduce relevant extracts from the Central Excise Tariff Act at the material point of time with Section Notes to Section XVI and XVII, and related HSN explanatory notes of the Chapter Headings 84 and 86: -

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 or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;

(f) electrical machinery or equipment (Chapter 85);

(g) articles of Chapter 90;

(h) articles of Chapter 91;

(ij) arms (Chapter 93);

(k) lamps or lighting fittings of heading 9405; or

(l) brushes of a kind used as parts of vehicles (heading 9603).

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.

4. -----

5.-----"

Chapter 86

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

Notes.

1.-

2.- Heading 86.07 applies, inter alia, to :

(a) Axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels;

(b) Frames, underframes, bogies and bissel-bogies;

(c) Axle boxes; brake gear;

(d) Buffers for rolling-stock; hooks and other coupling gear and corridor connections;

(e) Coachwork.

As per the Explanatory Note of this Section: -

(A) *Parts and accessories excluded by Note 2 to Section XVII.*

This Note excludes the following parts and accessories, whether or not they are identifiable as for the articles of this Section

- (1)
- (2)
- (3)
- (4)
- (5) *Machines and mechanical appliances, and parts thereof, of headings 84.01 to 84.79, for example:*
 - (a)
 - (b)
 - (c)
 - (d) *Engines of all kinds including engines fitted with gear boxes and parts thereof, falling in headings 84.07 to 84.12.*
 - (e) *Pumps, compressors and fans (heading 84.13 or 84.14).*
 - (f)
 - (g) ...
 - (h) ...
 - (i)
 - (j) ...
 - (k) ...
 - (l)
- (6) *Certain other goods of Chapter 84, e.g.:*
 - (a) ...
 - (b) ...
 - (c) *Internal parts of engines or motors (crank shafts, cam shafts, flywheels, etc.) falling in heading 84.83.*

SECTION XVI

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS; AND PARTS AND ACCESSORIES OF SUCH ARTICLES

Notes:

1. This Section does not cover:

- (a) *Transmission or conveyor belts or belting, of plastics of Chapter 39, or of vulcanised rubber (heading 4010), or other articles of a kind used in machinery or mechanical or electrical appliances or for other technical uses, of vulcanised rubber other than hard rubber (heading 4016);*
- (b) *Articles of leather or of composition leather (heading 4205) or of furskin (heading 4303), of a kind used in machinery or mechanical appliances or for other technical uses;*

(c) *Bobbins, spools, cops, cones, cores, reels or similar supports, of any material (for example, Chapter 39, 40, 44 or 48 or Section XV);*

(d) *Perforated cards for Jacquard or similar machines (for example, Chapter 39 or 48 or Section XV);*

(e) *Transmission or conveyor belts or belting of textile material (heading 59.10) or other articles of textile material for technical uses (heading 5911);*

(f) *Precious or semi-precious stones (natural, synthetic or reconstructed) of headings 7102 to 7104, or articles wholly of such stones of heading 7116, except unmounted worked sapphires and diamonds for styli (heading 8522);*

(g) *Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);*

(h) *Drill pipe (heading 7304);*

(ij) *Endless belts of metal wire or strip (Section XV);*

(k) *Articles of Chapter 82 or 83;*

(l) Articles of Section XVII;

(m) *Articles of Chapter 90;*

(n) *Clocks, watches or other articles of Chapter 91;*

(o) *Interchangeable tools of heading 8207 or brushes of a kind used as parts of machines (heading 96.03); similar interchangeable tools are to be classified according to the constituent material of their working part (for example, in Chapter 40, 42, 43, 45 or 59 or heading 68.04 or 69.09);*

(p) *Articles of Chapter 95; or*

(q) *Typewriter or similar ribbons, whether or not on spools or in cartridges (classified according to their constituent material, or in heading 9612 if inked or otherwise prepared for giving impressions).*

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.

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

5. For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.

Tariff-Chapter 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators			
	- Pumps fitted or designed to be fitted with a measuring device :			
8413 11	-- Pumps for dispensing fuel or lubricants, of the type used in filling stations or in garages :			
8413 11 10	--- Hand pumps	u	10%	-
	--- Other :			
8413 11 91	---- Pumps for dispensing fuel.	u	7.5%	-
8413 11 99	---- Other	u	7.5%	-
8413 19	-- Other :			
8413 19 10	--- Hand pumps	u	10%	-
8413 19 90	--- Other	u	7.5%	-
8413 20 00	- Hand pumps, other than those of sub-heading 8413 11 or 8413 19	u	10%	-
8413 30	- Fuel, lubricating or cooling medium pumps for internal combustion piston engines :			
8413 30 10	--- Injection pumps for diesel engines	u	7.5%	-
8413 30 20	--- Oil pump	u	7.5%	-
8413 30 30	--- Water pump	u	7.5%	-
8413 30 90	--- Other	u	7.5%	-
8413 40 00	- Concrete pumps	u	7.5%	-
8413 50	- Other reciprocating positive displacement pumps :			
8413 50 10	--- Metering and dosing pumps	u	7.5%	-
	--- Primarily designed for handling water :			
8413 50 21	---- Deep tube well turbine pump	u	7.5%	-
8413 50 29	---- Other	u	7.5%	-
8413 50 90	--- Other	u	7.5%	-
8413 60	- Other rotary positive displacement pumps :			
8413 60 10	--- Gear type pumps	u	7.5%	-
8413 60 20	--- Screw type pumps	u	7.5%	-

8413 60 90	--- Other	u	7.5%	-
8413 70	- Other centrifugal pumps :			
8413 70 10	--- Primarily designed to handle water	u	7.5%	-
	--- Other :			
8413 70 91	---- Single and multistage chemical process pumps	u	7.5%	-
8413 70 92	---- Horizontal split casing pumps	u	7.5%	-
8413 70 93	---- Horizontal self priming pumps	u	7.5%	-
8413 70 94	---- Vertical turbine driven pumps	u	7.5%	-
8413 70 95	---- Boiler feed pumps	u	7.5%	-
8413 70 96	---- Slurry pumps	u	7.5%	-
8413 70 97	---- Dredger pumps	u	7.5%	-
8413 70 99	---- Other	u	7.5%	-
	- Other pumps-liquid elevators :			
8413 81	-- Pumps :			
8413 81 10	--- Gas pumps	u	7.5%	-
8413 81 20	--- Hydraulic ram.	u	7.5%	-
8413 81 30	--- Axial flow and mixed flow vertical pump designed primarily for handling water	u	7.5%	-
8413 81 90	--- Other	u	7.5%	-
8413 82 00	-- Liquid elevators	u	7.5%	-
	- Parts :			
8413 91	-- Of pumps :			
8413 91 10	--- Of reciprocating pumps	kg.	7.5%	-
8413 91 20	--- Of centrifugal pumps	kg.	7.5%	-
8413 91 30	--- Of deep well turbine pumps and of other rotary pumps	kg.	7.5%	-
8413 91 40	--- Of hand pump for handling water	kg.	10%	-
8413 91 90	--- Other	kg.	7.5%	-
8413 92 00	-- Of liquid elevators	kg.	7.5%	-
8414	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters			
8414 10 00	- Vacuum pumps	u	7.5%	-
8414 20	- Hand or foot-operated air pumps :			
8414 20 10	--- Bicycle pumps	u	10%	-
8414 20 20	--- Other hand pumps	u	10%	-
8414 20 90	--- Other	u	7.5%	-
8414 30 00	- Compressors of a kind used in refrigerating equipment	u	7.5%	-
8414 40	- Air compressors mounted on a wheeled chassis for towing :			
8414 40 10	--- Reciprocating air compressors	u	7.5%	-
8414 40 20	--- Centrifugal air compressors	u	7.5%	-
8414 40 30	--- Screw air compressors	u	7.5%	-
8414 40 90	--- Other	u	7.5%	-
	- Fans :			
8414 51	-- Table, floor, wall, window, ceiling or roof fans, with a self-contained electric motor of an output not exceeding 125 W :			
8414 51 10	--- Table fans	u	10%	-
8414 51 20	--- Ceiling fans	u	10%	-
8414 51 30	--- Pedestal fans	u	10%	-
8414 51 40	--- Railway carriage fans	u	7.5%	-
8414 51 90	--- Other	u	7.5%	-
8414 59	-- Other :			
8414 59 10	--- Air circulator	u	7.5%	-
8414 59 20	--- Blowers, portable	u	10%	-
8414 59 30	--- Industrial fans and blowers	u	7.5%	-
8414 59 90	--- Other	u	7.5%	-
8414 60 00	- Hoods having a maximum horizontal side not exceeding 120 cm	u	7.5%	-
8414 80	- Other :			
	--- Gas compressors :			
8414 80 11	---- Of a kind used in air-conditioning equipment	u	7.5%	-
8414 80 19	---- Other	u	7.5%	-
8414 80 20	--- Free-piston generators for gas turbine	u	7.5%	-

8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated			
8415 10	- Window or wall types, self-contained or "split system" :			
8415 10 10	--- Split system	u	10%	-
8415 10 90	--- Other	u	10%	-
8415 20	- Of a kind used for persons in motor vehicles :			
8415 20 10	--- For buses	u	10%	-
8415 20 90	--- Other	u	10%	-
	- Other :			
8415 81	-- Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps) :			
8415 81 10	--- Split air-conditioner two tonnes and above.	u	10%	-
8415 81 90	--- Other	u	10%	-
8415 82	-- Other, incorporating a refrigerating unit :			
8415 82 10	--- Split air-conditioner two tonnes and above.	u	10%	-
8415 82 90	--- Other	u	10%	-
8415 83	-- Not incorporating a refrigerating unit :			
8415 83 10	--- Split air-conditioner two tonnes and above.	u	10%	-
8415 83 90	--- Other	u	10%	-
8415 90 00	- Parts	kg.	10%	-

8483	Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)			
8483 10	- Transmission shafts (including cam shafts and crank shafts) and cranks :			
8483 10 10	--- Crank shafts for sewing machines	u	7.5%	-
	--- Other :			
8483 10 91	---- Crank shaft for engines of heading 8407	u	7.5%	-
8483 10 92	---- Crank shaft for engines of heading 8408	u	7.5%	-
8483 10 99	---- Other	u	7.5%	-
8483 20 00	- Bearing housings, incorporating ball or roller bearings	u	7.5%	-
8483 30 00	- Bearing housings, not incorporating ball or roller bearings; plain shaft bearings	u	7.5%	-
8483 40 00	- Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters	u	7.5%	-
8483 50	- Flywheels and pulleys, including pulley blocks			
8483 50 10	--- Pulleys, power transmission	u	7.5%	-
8483 50 90	--- Other	u	7.5%	-
8483 60	- Clutches and shaft couplings (including universal joints) :			
8483 60 10	--- Flexible coupling	u	7.5%	-
8483 60 20	--- Fluid coupling	u	7.5%	-
8483 60 90	--- Other	u	7.5%	-
8483 90 00	- Toothed wheels, chain sprockets and other transmission elements presented separately; parts	[u]	7.5%	-

Chapter 86

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

8607	Parts of railway or tramway locomotives or rolling-stock			
	- <i>Bogies, bissel-bogies, axles and wheels, and parts thereof:</i>			
8607 11 00	-- Driving bogies and bissel-bogies	kg.	10%	-
8607 12 00	-- Other bogies and bissel-bogies.	kg.	10%	-
8607 19	-- <i>Other including parts:</i>			
8607 19 10	--- Axles, wheels for coaches, van and wagons (rolling-stock)	kg.	10%	-
8607 19 20	--- Axles and wheels for locomotives	kg.	10%	-
8607 19 30	--- Axle boxes (lubricating or grease box)	kg.	10%	-
8607 19 90	--- Other parts of axles and wheels	kg.	10%	-
	- <i>Brakes and parts thereof:</i>			
8607 21 00	-- Air brakes and parts thereof.	kg.	10%	-
8607 29 00	-- Other	kg.	10%	-
8607 30	- <i>Hooks and other coupling devices, buffers and parts thereof:</i>			
8607 30 10	--- Buffers and coupling devices	kg.	10%	-
8607 30 90	--- Other	kg.	10%	-
	- <i>Other:</i>			
8607 91 00	-- Of locomotives	kg.	10%	-
8607 99	-- <i>Other:</i>			
8607 99 10	--- Parts of coach work of railway running stock	kg.	10%	-
8607 99 20	--- Parts of tramway, locomotives and running stock.	kg.	10%	-
8607 99 30	--- Hydraulic shock absorbers for railway bogies	kg.	10%	-
8607 99 90	--- Other	kg.	10%	-

HSN

Chapter 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

Notes.

1.-----

2. Subject to the operation of Note 3 to Section XVI and subject to Note 9 to this Chapter, a machine or appliance which answers to a description in one or more of the headings 84.01 to 84.24, or heading 84.86 and at the same time to a description in one or other of the headings 84.25 to 84.80 is to be classified under the appropriate heading of the former group or under heading 84.86, as the case may be, and not the latter group.

3.---- to 6.----

7- A machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose.

Subject to Note 2 to this Chapter and Note 3 to Section XVI, a machine the principal purpose of which is not described in any heading or for which no one purpose is the principal purpose is, unless the context otherwise requires, to be classified in heading 84.79. Heading 84.79 also covers machines for making rope or cable (for example, stranding, twisting or cabling machines) from metal wire, textile yarn or any other material or from a combination of such materials.

GENERAL

(A) GENERAL CONTENT OF THE CHAPTER

Subject to the provisions of the General Explanatory Note to Section XVI, this Chapter covers all machinery and mechanical appliances, and parts thereof, not more specifically covered by Chapter 85,

In general, Chapter 84 covers machinery and mechanical apparatus and Chapter 85 electrical goods. However, certain machines are specified in headings of Chapter 85 (e.g., electro- mechanical domestic appliances) while Chapter 84 on the other hand covers certain non- mechanical apparatus (e.g., steam generating boilers and their auxiliary apparatus, and filtering apparatus).

It should also be noted that machinery and apparatus of a kind covered by Chapter 84 remain in this Chapter even if electric, for example:

(1) Machinery powered by electric motor.

(2) Electrically heated machinery, for example, electric central heating boilers of heading 84.03, machinery of heading 84.19 and other machinery (e.g., calenders, textile washing or bleaching machines or presses) incorporating electrical heating elements.

(3) Machines operated electro-magnetically (e.g., electro-magnetic valves) or incorporating electro-magnetic devices (e.g., textile looms with electrical automatic stop motions, cranes with electro-magnetic lifting heads and lathes with electro-magnetic chucks).

(4) Machines operated electronically (e.g., electronic calculating or automatic data processing machines) or incorporating photoelectric or electronic devices (e.g., rolling mills with photo-electric apparatus and machine-tools incorporating a variety of electronic control devices).

(B) GENERAL ARRANGEMENT OF THE CHAPTER

(1) -----

(2) Headings 84.02 to 84.24 cover the other machines and apparatus which are classified mainly by reference to their function, and regardless of the field of industry in which they are used.

(6) Headings 84.81 to 84.84 cover certain general-purpose goods suitable for use as machinery parts or as parts of goods of other Chapters.

(C) PARTS

As regards parts in general, see the General Explanatory Note to Section XVI.

*Separately presented electrical parts generally fall in one or other of the headings of Chapter 85, for example: electric motors (heading 85.01), electrical transformers (heading 85.04); electro-magnets, permanent magnets, electro-magnetic lifting heads for cranes and electro-magnetic chucks (heading 85.05); electrical starting equipment for internal combustion piston engines (heading 85.11); electrical switches, control panels, plugs, junction boxes, etc. (headings 85.35 to 85.37); electronic valves (heading 85.40), diodes, transistors and similar semiconductor devices (heading 85.41); electronic integrated circuits (heading 85.42); electrical carbons (heading 85.45); insulators (heading 85.46); and certain fittings of insulating material (heading 85.47). **Unless incorporated with other parts of the machine, such goods are classified under particular machine of this***

Chapter in those headings, even if designed for use solely or principally with a particular machine of this chapter.

The rule of precedence for headings 84.01 to 84.24 applies only to machines considered as a whole. Composite machines or multi-function machines are classified in accordance with Note 3 to Section XVI and functional units in accordance with Note 4 to that Section (see Parts (VI) and (VII) of the General Explanatory Note to Section XVI).

Machines which fall in two or more headings, none of which is within headings 84.01 to 84.24, are classified in that heading which provides the most specific description of the goods, or according to the principal use of the machine.

Chapter 86

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

Notes.

1.- This Chapter does not cover:

(a) Railway or tramway sleepers of wood or of concrete, or concrete guide-track sections for hovertrains (heading 44.06 or 68.10);

(b) Railway or tramway track construction material of iron or steel of heading 73.02; or

(c) Electrical signalling, safety or traffic control equipment of heading 85.30.

2.- Heading 86.07 applies, inter alia, to :

(a) Axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels;

(b) Frames, underframes, bogies and bissel-bogies;

(c) Axle boxes; brake gear;

(d) Buffers for rolling-stock; hooks and other coupling gear and corridor connections;

(e) Coachwork.

3.- Subject to the provisions of Note 1 above, heading 86.08 applies, inter alia, to :

(a) Assembled track, turntables, platform buffers, loading gauges;

(b) Semaphores, mechanical signal discs, level crossing control gear, signal and point controls, and other mechanical (including electro-mechanical) signalling, safety or traffic control equipment, whether or not fitted for electric lighting, for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields.

GENERAL

This Chapter covers locomotives and rolling-stock, and parts thereof, and certain track fixtures and fittings, for railways or tramways of any kind (including narrow gauge railways, single rail railways, etc.). It also covers containers specially designed and equipped for carriage by one or more modes of transport. Mechanical (including electro-mechanical) signalling, safety or traffic control equipment for traffic of all kinds (including that for parking facilities) is also covered.

Throughout this Chapter, the expressions " railway " and " tramway" refer not only to conventional railways and tramways using steel rails, but also to similar guided systems such as those using magnetic levitation or concrete tracks.

These various goods are classified as follows:

(A) Self-propelled railway vehicles of all types, such as locomotives, motorised railway or tramway coaches and rail-cars (headings 86.01 to 86.03). Heading 86.02 also includes locomotive tenders. Locomotives operated by two types of power are heading corresponding to the main type of power used.

(B) Railway or tramway maintenance or service vehicles, whether or not self-propelled (heading 86.04).

(C) Various types of hauled vehicles (railway or tramway passenger coaches and luggage vans, railway or tramway goods vans, wagons and trucks, etc.) (headings 86.05 and 86.06).

(D) Parts of railway or tramway locomotives and rolling-stock (heading 86.07), and also railway or tramway track fixtures and fittings, and mechanical (including electro-mechanical) equipment, for signalling to or controlling road, rail or other vehicles, ships or aircraft (heading 86.08).

(E) Containers specially designed and equipped for carriage by one or more modes of transport (heading 86.09).

The Chapter also includes air-cushion vehicles designed to travel on a guide-track (hovertrains), parts of these vehicles, and hovertrain track fixtures, fittings and mechanical (including electro-mechanical) signalling, safety or traffic control equipment for hovertrain transport systems (see Note 5 to Section XVII).

Incomplete or unfinished vehicles are classified with the corresponding complete or finished vehicles, provided they have the essential character thereof. Such vehicles may include:

(1) Locomotives or motorised railway or tramway coaches, not fitted with a power unit, measuring instruments, safety apparatus or service equipment.

(2) Passenger coaches not fitted with seats.

(3) Truck underframes complete with suspension and wheels.

On the other hand, bodies of motorised railway or tramway coaches, of vans, wagons or trucks or of tenders, not mounted on underframes, are classified as parts of railway or tramway locomotives or rolling-stock (heading 86.07).

The Chapter excludes :

- (a) Model railway rolling-stock for demonstrational purposes, of heading 90.23.*
- (b) Heavy artillery mounted on railway trucks (heading 93.01).*
- (c) Toy trains (heading 95.03).*
- (d) Equipment not constituting rolling-stock proper, specially designed for use on roundabouts or other fairground amusements (heading 95.08)*

86.07

86.07 Parts of railway or tramway locomotives or rolling-stock.

-Bogies, bissel-bogies, axles and wheels, and parts thereof:

8607.11 Driving bogies and bissel-bogies

8607.12 Other bogies and bissel-bogies

8607.19 Other, including parts

- Brakes and parts thereof:

8607.21 Air brakes and parts thereof

8607.29 Other

8607.30 Hooks and other coupling devices, buffers, and parts thereof

- Other:

8607.91 Of locomotives

8607.99 Other

This heading covers parts of railway or tramway locomotives or rolling-stock, provided the parts fulfil both the following conditions:

- (1) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;*
- (ii) They must not be excluded by the provisions of the Notes to Section XVII.*

Parts of railway or tramway locomotives or rolling-stock include:

- (1) Bogies, with two or more axles, and bissel-bogies consisting of a frame with only one axle.*
- (2) Straight or cranked axles, whether or not assembled.*
- (3) Wheels and parts thereof (wheel centres, metal tyres, etc.).*

(4) *Axle-boxes, also known as lubricating or grease-boxes, and parts thereof (e.g., axle-box bodies).*

(5) *All types of brake gear, including:*

(a) *Hand-brakes, controlled directly from each individual vehicle (lever and screw brakes).*

(b) *Continuous brakes with a single control for all the vehicles of the train. These include compressed air and vacuum brakes.*

(c) *Parts of brake gear including shoes, cylinders, levers, etc.*

(6) *Buffers:*

(7) *Coupling gear (e.g., hook, screw or chain type, draft gears); some coupling devices may be automatic.*

(8) *Frames and parts thereof (longerons, cross-girders, axle-box guides, etc.); frames cast in one piece.*

(9) *Corridor connections and connecting platforms.*

(10) *Bodies (not mounted on underframes) for motorised or non-self-propelled railway or tramway rolling-stock (e.g., for coaches, trucks, wagons, etc.); parts of such bodies (e.g., coach or truck doors, partitions, hinged water tanks for tenders). sides of wagons, side stanchions, running boards,*

(11) *Pipes with coupling heads for the braking or heating systems.*

(12) *Hydraulic shock absorbers for bogies.*

It should be noted, however, that angles, shapes, sections, sheets, plates and other parts of frames, and also tubes and pipes, etc., of base metal, remain classified in Section XV unless they have been worked to such an extent that they are clearly identifiable as parts of locomotives or rolling-stock."

10. We find that the Ld. Advocate has relied upon the decision of the Hon'ble Apex Court in the case of *Westinghouse Saxby Farmer Ltd. Vs. CCE [2021 (376) ELT 14 (SC)]* wherein it was held that the 'relay' are classifiable as parts of 'railway signaling equipment' under heading 8608 of the Central Excise Tariff. In holding so, the Hon'ble Supreme Court has given precedence to the 'sole or principal use test' of section Note 3 over Note 2 (f) of section XVII which specifically excluded 'electric equipment' from being classified under section XVII whether or not identifiable as being for the

goods of that Section. Relevant extracts from the judgement read as follows: -

“24. As could be seen from the Orders of the Original Authority and the first Appellate Authority, the answer to question No.1 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.

25. 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.”

26. 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”.

27. 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.

28. Rule 3 deals with cases where goods are classifiable under two or more subheadings. 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.”

29. Interestingly Rule 2(a) speaks about “Article”, Rule 2(b) speaks about “material or substance” as well as “goods of a given material or substance” and Rule 3 speaks about “goods”.

30. In the case on hand, the claim of the assessee was that the relays manufactured by them were part of the railway signaling 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.

31. 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 Vs. Simplex Mills Co. Ltd (2005) 3 SCC 51** 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 good 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.

32. 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)”

33. 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 signaling 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.

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

35. 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.”

36. 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 signaling 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.

37. It is conceded by the Revenue that the relays manufactured by the appellant are used solely as part of the railway signaling/ 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.

38. On the question as to what test would be appropriate in a given case, this court pointed out in **A. Nagaraju Bros Vs. State of A.P. 1994 Supp(3) SCC 1222**, 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.”

11. Whereas, the Original Adjudicating Authority has fully relied on the reasoning given in Circular No. 1/2022-Cus. (Instruction) dated 05.01.2022 for arriving at the conclusion that manufactured products by the Appellant are classifiable under Chapter 84 of the Central Excise Tariff Act, 1944 thus according precedence to Section Note 2(e) over Section Note 3 of Section XVII which is extracted below for ease of reference: -

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Indirect Taxes & Customs, New Delhi)

Subject: Implication of the judgement of the Hon'ble Apex Court in the case of M/s Westinghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Kolkata- reg.

References have been received from the trade and field formations pointing out difficulties owing to the divergent practices arisen in assessment of 'automobile parts' under the Customs Tariff, after the Hon'ble Supreme Court judgment has been delivered in the case of [M/s Westinghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Kolkata](#). [2021 (376) ELT 14 (SC)]

2. In the aforesaid case, the Hon'ble Supreme Court held that the 'relays' are classifiable as parts of 'railway signalling equipment', under Heading 8608 of the Central Excise Tariff. In holding so, the Hon'ble Supreme Court has given precedence to the 'sole or principal use' test of Section Note 3 over the Note 2(f) to Section XVII which specifically excluded 'electric equipment' from being classified under Section XVII, whether or not it is identifiable as being for the goods of that Section.

3. In the context of the divergent practices arisen, it is noted that the classification of 'parts' of goods falling under Section XVII of the Customs or Central Excise Tariff is a complex issue. Further, apparently, the Section notes have been suitably applied in relevant judgments of the Hon'ble Supreme Court on issues of classification of parts and accessories. Thus, the collective wisdom of these judgements indicates the manner in which such classification issues are to be approached. Few of such judgements are illustrated in succeeding paragraphs:

3.1 Intel Design Systems (India) Pvt. Ltd vs Commissioner of Customs and C. Ex. [2008 (223) ELT 135 (SC)]

A. Apart from the reliance on the Section Notes and the Chapter Notes, the Court in this judgement, also considered the HSN Explanatory notes, wherein the three conditions that need to be fulfilled for the goods to be classified under the chapters of Section XVII are mentioned, namely-

*a. They must not be excluded by the terms of Note 2 to section XVII; **and***

*b. They must be suitable for use solely or principally with the articles of chapter 86 to 88; **and***

c. They must not be more specifically included elsewhere in the Nomenclature.

B. While relying on these conditions, the Hon'ble Supreme Court held-

"The items, therefore, manufactured by the appellants are identifiable or are in the nature of goods falling under Chapter Heading 85.36. Since these fall under the category of excluded goods under Chapter Notes, even though they are used specifically solely or principally with the armoured vehicles of Chapter Heading 8710, they are classifiable under Chapter Heading 8536.90 only as held by the adjudicating authority"

C. By taking cognizance of the conditions mentioned in the HSN explanatory notes, the exclusionary clause under Note 2 has been given precedence over the sole or principal use of the items. It was recognized that since one of the conditions i.e of the exclusion mentioned in Note 2 (Condition (a)) was not met, the said goods could not be classified under chapter 87.

3.2 CCE Delhi Vs Uni Products Ltd-2020(372) ELT-465(SC)-2020

A. In this judgement, the Hon'ble Supreme Court has once again taken cognizance of the reference to 'parts and accessories' under the main heading 'General', in Section XVII of the HSN Explanatory Notes thus-

"Under the sub-heading "(iii) PARTS AND ACCESSORIES", a three-layer test has been postulated. It is on satisfying all of these conditions a particular item would come under that chapter head."

B. Recognizing the significance of the Explanatory Notes in guiding the classification of goods, the Supreme Court has placed reliance on all the three conditions that need to be fulfilled for the goods to be classified under the chapters of Section XVII.

4. However, in the current case of Westinghouse Saxby, the Judgments referred above have not come up for consideration and the Hon'ble Supreme Court has applied the sole or principal use' test of Section Note 3 to the exclusion of the embargo in Note 2 and therefore, the judgment of the Hon'ble Supreme Court appears to be at variance with the stand taken by the Supreme Court in classifying other parts of goods falling under Section XVII.

5. In this regard, it may be considered that the judgement in case of M/s. Westinghouse Saxby has decided the classification of the commodity 'relays' used in railway signalling equipment of Chapter 86 and not parts of goods falling under Chapter 87. The judgement itself does not refer to it's wider applicability to any other case or issue of a similar nature. Also this judgement, pertains to a matter under the Central Excise Tariff Act in the year 1994 when the Central Excise Tariff and the Customs Tariff were not aligned.

6. Moreover, the Hon'ble Supreme Court in the Westinghouse Saxby judgement itself, has acknowledged the complexity of the issue and has pointed to the undesirability of generalising the decisions of one case to others. The Honble Court, has referred to the observations made in its own judgement in the case of "[A. Nagaraju Bros Vs. State of A.P.](#)", thus

".....there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. 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 or 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"

7. Further, the Honble Supreme Court, in the case of [Commissioner of Central Excise , Mumbai Versus M/s Fiat India \(P\) Ltd.](#) [2012 (283) ELT 161 (SC)] has observed that, -

"a case is only an authority for what it actually decides and not for what may seem to follow logically from it. . . . Each case depends on its own facts and a close similarity between one case and another is not enough because either a single significant detail may alter the entire aspect... To decide, therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

8. Thus, the classification of various parts of Section XVII is to be decided taking into account all facts, details of individual cases, all the decisions on the subject, and arrive at the appropriate classification.

9. It is also informed that taking cognizance of inter alia the above aspects, including those related to various Hon'ble Supreme Court's judgements in case of parts and accessories and on the grounds of interpretation of Section Notes and the HS Explanatory notes, the Department has filed a review petition against the judgement in case of M/s Westinghouse Saxby.

10. In light of the above, opinion from Ld. Additional Solicitor General was solicited. In terms of the opinion received, it is advised that, in general, the practice of assessment of such 'parts' or any change in it may holistically keep in view and in a speaking manner, all relevant aspects including HS Explanatory Notes, the relevant section and chapter notes and the various decisions of Hon'ble Supreme Court, such as those illustrated above.

11. Difficulty faced, if any, in the implementation of the instructions, may be brought to the notice of the Board.

12. Hindi version follows."

12. The Original Adjudicating Authority has distinguished the above judgment of the Hon'ble Apex Court in *Westinghouse Saxby Farmer Ltd. Vs. CCE [2021 (376) ELT 14 (SC)]* and he has observed in Paragraph 19.1.7 of the impugned order that reads thus: -

"19.1.7. In support of their contention that the disputed goods merit to be classified under Chapter heading 8607, 'STM' has placed reliance on the verdict of Hon'ble Apex Court in the case of Westinghouse Saxby Farmer Ltd. Vs CCE, Calcutta. 2021 (376) ELT 14 (SC). On going through the said judgment, I find that the issue involved in that case is in respect of classification of 'relays' which are used as parts of Railway signalling system.

The Hon'ble Apex Court agreed with the contention of the appellant therein and held that the relays merit classification under heading 8608 and not under 8537. In coming to this conclusion, the Court relied heavily on Note 3 to Section XVII which 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". The court's finding is reproduced below:

"36. 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.

37. 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."

It is very relevant to note that the above two earlier decisions of the Hon'ble Supreme Court in the case of Intel Design Systems (supra) and Uni Products India Ltd. (supra) were not placed before the Bench which decided the Westinghouse Saxby case, as there is no reference to them in the order passed in the Westinghouse Saxby case. I also find that neither parties have brought to the notice of the Hon'ble Court the existence of the General Note III on 'Parts and Accessories in HSN notes to Section XVII of the Tariff Act. Therefore, relying on the decision in Westinghouse Saxby case in isolation may not be the right approach.

19.1.8. In view of the above decisions of the Hon'ble Apex Court in Intel Design Systems (India) Pvt Ltd (2008 (223) ELT 135 SC) and Uni Products India Ltd [2020 (372) ELT 465], I find that Note 3 of Section XVII does not appear to convey that all "parts" and "accessories" that are suitable for use solely or principally with an article in Chapter 86 are to be classified under Chapter 86 and not elsewhere. It merely states that for a 'part' or 'accessory' to fall under Chapter 86, it should be solely or principally designed for use in goods falling under Chapter 86. It does not mean the reverse - all goods solely or principally designed for use in goods falling chapter 86 will merit classification under chapter 86, since such an interpretation amounts to rendering the explicit exclusion specified in Note 2(e) of Section XVII otiose. It may be profitably noted that, in a case involving apparent overlapping of Chapter/ Section Notes, the Hon'ble Supreme Court in the case of Star Industries [2015 (324) ELT 656 SC] advised against an interpretation that would render a Chapter Note otiose. Hon'ble Apex court, observed:

"As per this note, metals of Section XV would be included in the term 'ores. However, after the insertion of Chapter Note 4, these two Notes, namely, Note 2 and Note 4 have to be read harmoniously. If we accept the submission of the learned counsel for the assessee predicated on Note 2. then Note 4 even after its conscious inclusion, would be

rendered otlose which cannot be countenanced. Therefore, Note 2, when seen along with Note 4, has to govern itself in limited territory"

19.1.9. Also, in the case of *British Airways PLC (2002 (139) ELT & SC)*, the Hon'ble Supreme Court ruled as follows:

"It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute"

19.1:10 Hence, the interpretation made in the *Westinghouse Saxby* case does not appear to be in consonance with the principles set out in the other judgments rendered by the Hon'ble Supreme Court cited supra.

19.1.11. It is well-settled law that the Chapter / Section Notes are legally binding and circumscribe the scope of the headings/sub-headings. In the case of *Subash Photographics [1993 (66) ELT 3 SC]*, the apex court emphasized that Chapter Note is a part of the statute itself. In the case of *Aldec Corporation [2005 (188) ELT 241]*, the Hon'ble Supreme Court held that "the coverage of the respective chapter headings has to be determined in the light of the section notes and chapter notes". In *Simplex Mills Co Ltd case [2005 (181) ELT 345 SC]*, it was held as follows: "11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification 'shall be determined according to the terms of the headings and any relevant section or Chapter Notes'. If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-1 gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules." Hence, I find that the 'sole or principal use' test cannot be applied to the present case by overriding Note 2(e) to Section XVII of the Tariff, which states that "parts" and "parts and accessories" do not apply to "machines or apparatus of headings 8401 to 8479 or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483" WHETHER OR NOT they are identifiable as for the goods of this Section [here, Chapter 86 titled as '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 falling under Section XVII)."

13. However, the Ld. Counsel Shri S. Durairaj has argued that the Adjudicating Authority's findings are not sustainable as: -

- i. The Westing House decision has been rendered by Full Bench – three judges and it is dated 08.03.2021. The Hon'ble Bench has

dealt with both Note 2 and Note 3 of XVII and held that Note 3 is applicable. Invocation of Note 2(f) overlooking Note 3 is held to be not justified. The review petition based on Circular 05.01.2022 was dismissed by Hon'ble Supreme Court on 10.8.2022. Therefore, the findings of the Adjudicating Authority passed relying on the Circular dated 05.01.2022 have to be held unsustainable. Thus, the decision in Westing House has become final and it is a binding decision. It must be followed as per Article 141 of the Constitution.

- ii. The two judgments, which are relied upon on by the Commissioner, were rendered on 11.02.2008 and 01.05.2020 by Hon'ble Division Bench (Two judges). These two are much earlier than the decision of the Hon'ble Full Bench. Note 3 of Section XVII was not considered in these two decisions.
- iii. The principle, which was laid down in Westing House decision, was also earlier laid down by the Hon'ble Supreme Court [Division bench] in the case of *GS Auto International Ltd. Vs. CCE [2003 (1) TMI 700]*.
- iv. Classification of these products on the basis of "Sole/principal use test" was already upheld by the Hon'ble Tribunal in the case of *Diesel Component Works Vs. Commissioner of Central Excise [2000 (120) ELT 648 (Trib)]*. The ratio was also followed in the case of *CCE Vs. Diesel Loco Modernisation Works [2017 (8) TMI 266]*.
- v. The ratio of Westing House was also followed in the case of *M/s. Faiveley Transport Rail Technologies India (P) Ltd Vs. CCE [2024 (8) TMI 1143]* and *Premier Polyfilm Limited Vs. CCE [2024 (7) TMI 6]*.

- vi. Section Note 1(l) of Section XVI for chapters 84 and 85, excludes articles of Section XVII. Therefore, the invocation of Section Note 2(e) is not justified. Further, parts of railway diesel locomotive are specifically covered only in CETH 86079100 and nowhere else. Therefore, classification under 8413/8414/8483 cannot be upheld.

14. We have considered these submissions and as these goods were manufactured as per the designs submitted by the Indian Railway, they have to be specifically treated as part of Diesel Locomotive and so more appropriately classifiable under Chapter 86 of Central Excise Tariff Act, 1985. Further, the Tribunal in the case of *M/s. Faivley Transport Rail Technologies India Pvt. Ltd. Vs. Commissioner of GST and Central Excise, Salem [2024 (8) TMI 1143-CESTAT Chennai]* has held on the classification of goods supplied to Indian Railways that the pantographs and its parts are exclusively used in railway or tramway locomotives. The relevant part reads as follows: -

"10. As per the appellant pantographs and its parts are not capable of generic use since the same have been manufactured to cater to a specific design and configuration. The pantograph is a device used specifically for the collection of electric current, which is mounted on the roof of the car body. It is used to collect and transfer electric energy from the catenary to traction system and is mounted on insulators for electrical insulation of the car body. In an electric locomotive there are two pantographs mounted on the roof. At any given point of time, one pantograph is raised and connects the locomotive with the overhead contact wire carrying electricity in order to ensure constant power supply to the locomotives. These pantographs are solely and principally used with railway locomotives and do not have any other buyers as they are made as per the specification of railways / locomotive manufacturers. They qualify the test of Note 3 to section XVII of the Central Excise Tariff, 1985. They hence merit classification under heading 8607 as parts of railways or tramway locomotives or rolling stock, notwithstanding their mention under any other chapter of the Customs Tariff. The appellant has drawn attention to the

decision of a Coordinate Bench of this Tribunal in the case of Hi-Tech Industries Ltd Vs Commissioner of Customs, Bangalore [2005 180 ELT 0356], wherein web camera was classified under chapter 84 instead of chapter 90 considering that it was not an ordinary camera and does not function independently. The decision of the Tribunal has been affirmed by the Hon'ble Supreme Court in Commissioner Vs Hi-Tech Computers [2015 321 ELT A274 SC]."

15. Further, in the case of *Premier Polyfilm Limited Vs. Commissioner of CGST, Ghaziabad [2024 (7) TMI 6-CESTAT ALLAHABAD]*, the Tribunal Allahabad has decided the issue in favour of the Assessee that the goods will be classified under the specific tariff entry of the goods cleared or under Chapter 86 in view of the Hon'ble Supreme Court's decision in the case of *Westghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Calcutta [2021 (3) TMI 291-SC]*.

16. In strict observance of judicial discipline and by appreciating above facts, we are inclined to hold that parts of railway diesel locomotive are more appropriately classifiable under CETH 86079100. Hence the issue regarding classification is decided in favour of the Appellant.

17. Since the demand itself does not sustain, the question of the invocation of extended period and imposition of penalties do not arise. We have also considered the Ld. Counsel's submissions that the extended period of limitation is not invocable as the matter pertains to classification and no deliberate intention for alleging suppression has been brought out. In the absence of any finding as to intent of suppression by the Appellant in the impugned order, we find that the allegation of wilful misclassification and intention to evade duty by the appellant is not at all tenable as

misclassification could not be equated with misdeclaration and it is a settled law that once the goods are correctly described, the bona fide adoption of classification by the importer cannot be equated with misdeclaration as the manufacturers are not expected to be fully conversant with the schedule to the Central Excise Tariff Act, 1985. So, the issue of limitation is also decided in favour of the appellant and consequently, penalties imposed are set aside. Thus, the appellant succeeds both on merits and also on limitation.

18. Consequently, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 02.01.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK