

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40510 of 2015

(Arising out of Order-in-Appeal C. Cus. II No. 212/2014 dated 21.11.2014 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Ajax Fiori Engineering (I) Pvt. Ltd.

Appellant

No. 148/25, Industrial Area
Yeshwanthpur, Bangalore – 560 022.

Vs.

Commissioner of Customs

Respondent

Chennai II Commissionerate
Custom House, No. 60, Rajaji Salai
Chennai – 600001.

With

Customs Appeal No.42422 of 2016

(Arising out of Order-in-Original No. 50342/2016 dated 27.9.2016 passed by the Commissioner of Customs, Chennai – II)

M/s. Ajax Fiori Engineering (I) Pvt. Ltd.

Appellant

No. 148/25, Industrial Area
Yeshwanthpur, Bangalore – 560 022.

Vs.

Commissioner of Customs

Respondent

Chennai II Commissionerate
Custom House, No. 60, Rajaji Salai
Chennai – 600001.

With

**Customs Appeal No.41217 & 41218 of 2017
And
Customs Miscellaneous Application (Cross)
No. 40612 & 40613/2017**

(Arising out of Order-in-Appeal C. Cus. II No. 311 & 312/2017 dated 29.3.2017 passed by the Commissioner of Customs (Appeals – II), Chennai)

Commissioner of Customs

Appellant

Chennai II Commissionerate
Custom House, No. 60, Rajaji Salai
Chennai – 600001.

Vs.

M/s. Ajax Fiori Engineering (I) Pvt. Ltd.

Respondent

No. 148/25, Industrial Area
Yeshwanthpur, Bangalore – 560 022.

APPEARANCE:

Shri Raghavan Ramabhadran, Advocate for Appellant-Importer
Shri Sanjay Kakkar, Authorized Representative for Respondent-Department

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS. 40145 to 40148/2025

Date of Hearing : 03.01.2025

Date of Decision: 03.02.2025

Per M. Ajit Kumar,

Appeal Nos. C/40510/2015 and C/42422/2016 have been filed by M/s. Ajax Flori Engineering India Pvt. Ltd. (referred to as the importer herein) and Appeal Nos. C/41217 and 41218/2017 have been filed by the respondent-department. The importer has filed cross-objections to the appeals filed by the department. These appeals were heard together and are disposed by this common order.

2. Brief facts of the case are that the importer filed various bills of entry for clearance of imported goods including "Steering Axle", "Steering Axle with gear box", "Dana Axle Type 212/Dana Axle with gear box", "Valve for negative brake", "hand brake", etc. declared as 'the parts for concrete mixers' / 'Components of Mobile Concrete Mixers'. The importer was of the opinion that 'Concrete Mixers' or what they have referred to as Self-Loading Concrete Mixtures (**SLCM**), are classifiable CTH 8474 3110 and the imported parts for the said machines were mainly classified under CTH 8474 which carried BCD at 7.5%. The goods were allowed clearance accepting the Customs Tariff Heading (**CTH**) claimed by the importer. Subsequent to the clearance,

it appeared to the department that 'Concrete Mixers' were classifiable under CTH 8705 and not under CTH 8474 and hence the parts of the said machine would be classifiable under CTH 8708 and would carry a higher BCD. Show Cause Notices (**SCN**) were issued and decided during various periods which is summarised in the table here under as submitted by the importer;

APPEAL NO.	FILED BY	PERIOD OF DISPUTE	DUTY DEMAND
C/40510/2015	Appeal filed by Ajax Fiori against Order-in-Appeal No. 212/2014 dated 21.11.2014	2009-2011	Rs. 59,70,683/-
C/42422/2016	Appeal filed by Ajax Fiori against Order-in-Original No. 50342/2016 dated 27.09.2016	September 2014 to January 2015	Rs. 51,47,933/-
C/CROSS/40612/2017 & C/41217/2017 and C/CROSS/40613/2017 & C/41218/2017	Appeal filed by Department against Order-In-Appeal No. 311 & 312 dt. 29.03.2017	December 2011 to March 2012	Rs. 1,50,169/-
COMMON ISSUE			
Classification of parts of Self-Loading Concrete Mixer			
Appellant's classification		Department's classification	
CTI 8474 9000 <i>(Parts of Self-Loading Concrete Mixer classifiable under CTI 8474 31 10)</i>		Heading 8708 <i>(Parts and accessories of Special Purpose Motor Vehicle classifiable under CTI 8705 40 00)</i>	

The appeal wise details are as under;

I. Appeal No. C/40510/2015

Order-in-Appeal No. 212/2014 dated 21.11.2014, classified Parts of SLCM falling under CTH 8705 4000 as against appellants claim for classification under CTH 8474 3000 & 8483 6090. Aggrieved by the said decision the importer is before us in appeal.

II. Appeal No. C/42422/2016

Order-in-Original No. 50342/2016 dated 27.09.2016 passed by Commissioner of Customs, Chennai II, classified Parts of SLCM falling under CTH 8708 4000 as against appellants claim for classification under CTH 8481 8090 & 8483 6090. Aggrieved by the said decision the importer is before us in appeal.

III. Appeal No. C/41217/2017 & C/41218/2017

In Order-In-Appeal No. 311 & 312 dt. 29.03.2017, the Ld. Commissioner rejected the views of the department that 'Mobile Concrete Mixers' are 'special transport motor vehicles' falling under CTH 8507 and its parts are classifiable under CTH 8708. He went on to uphold the classification of the goods as done by the importer in the BE's. Aggrieved by the said decision revenue is before us in appeal.

Cross Objections No. C/CROSS/40612/2017 & C/CROSS/40613/2017 have been filed by the importer against the above-mentioned appeal by revenue.

3. Shri Raghavan Ramabhadran, Ld. Advocate appeared for the appellant-importer and Shri Sanjay Kakkar, Ld. Authorized Representative appeared for the respondent-department.

3.1 The Ld. Advocate submitted on behalf of the importer that they are engaged in the manufacture of various models of **SLCM** for mixing and producing quality concrete at the customer's site. They been classifying the same under Heading 8474 since the commencement of manufacturing activities in the year 1992. These hydraulically operated standalone machines are able to scoop, load, mix, produce and place the concrete independently and are called a Mini Batching plant. The Ld. Advocate stated that the SLCM manufactured by the Appellant is

classifiable under Chapter 84 and hence, the parts imported are correctly classifiable under CTI 8474 9000. He submitted that CTH 8474 3110 specifically covers 'concrete mixers'. On a reading of the HSN Explanatory Notes for Heading 8474 and Heading 8705, it emerges that a concrete mixer is excluded from Heading 8474 in the following two scenarios.

- a. If such concrete mixer is permanently mounted on a railway wagon or lorry chassis; (OR)
- b. If the concrete mixing equipment is not completely integrated with the chassis and the chassis does not reach a condition of being incapable of use for other purposes.

The Ld. Advocate stated that the chassis and the concrete mixer are completely integrated with one another to form one integral mechanical unit. Thus, the SLCMs manufactured by the Appellant which are specifically designed for each other and so integrated that the chassis cannot be separately used for any other purpose are classifiable under CTI 8474 3110. However, revenue has placed reliance on Sl. No.10 of the HSN Explanatory Notes to conclude that the SLCMs manufactured by the Appellant are classifiable under CTH 8705 as a "Special Purpose Vehicle" and not under CTH 8474. The Ld. Advocate submits that the SLCMs manufactured by the Appellants has always been classified under Heading 8474. The same is evident from a perusal of the following documents:

- c. Bills of Entry for home consumption for import of SLCM
- d. Central Excise Registration Certificate

The Ld. Advocate submits that SLCM is classifiable under CTH 8474 is also evident from a perusal of the following decisions:

- e. BTI Ruling in IT-IT-2014-0242M-025100 for Fiori Group classifying SLCM under CTH 8474
- f. Decision of Telangana VAT Appellate Tribunal in Appellant's own case T.A. No. 137/2016 dated 09.09.2016 classifying SLCM under CETH 8474
- g. Advance Ruling in Order No. AAR/CE/10/20156 dated 26.02.2016 for M/s. Schwing Stetter (India) Pvt. Ltd.

The Ld. Advocate stated that the SLCMs manufactured and sold by the importer were being cleared under Heading 8474 in the Central Excise regime and also under the GST regime. Thus, the parts which are used in the manufacture of such SLCM are classifiable under CTI 8474 9000 as parts of such machinery, by application of Note 2(b) to Section XVI. Further, since transmission parts are specifically covered under CTH 8483, the Appellant submits that these parts remain classified under CTH 8483 by application of Note 2(a) to Section XVI. In light of the submissions, the Ld. Advocate prayed that:

- A. Appeal No. C/40510/2015 filed by the Appellant be allowed;
- B. Appeal No. C/42422/2016 filed by the Appellant be allowed;
- C. Appeal No. C/41217/2017 & C/41218/2017 filed by the Department be dismissed;
- D. The Appellant be entitled to consequential relief;

3.2 The Ld. AR in his oral submissions and later in writing dated 16.12.2024 as permitted by the Bench, conceded that the issue of classification of 'Mobile Concrete Mixers' had been dealt by other empowered authorities, as reported by the importer-appellant. A conflicting scenario emerged when the same features of the product, were analysed by Different Authorities, leading to two diametrically opposite conclusions by the various formations and authorities. In the instant case, the Explanatory Notes for Chapter 84 indicate that the

Concrete or Mortar Mixers, when mounted are excluded, and need to be classified under CTH 86.04 or 87.05, as the case may be. The importer may argue that the 'Mobile Concrete Mixers' manufactured by them are not mounted on any wagon or lorry, but the fact that these 'Mobile Concrete Mixers' are not standalone, static machines also cannot be denied. Also, the mobility of the 'Mobile Concrete Mixers' is not due to attachment of wheels to the machine but admittedly is due to an integrated structure which has assumed the shape and function of a vehicle, to which homologation tests by ARAI and the provisions of Central Motor Vehicles Act apply. The Ld. AR referred to the Explanatory Notes and stated that if Explanatory Notes for HSN 87.05 are analysed, it is seen that emphasis is on the nature of base. The wording "mobile machines, formed by mounting equipment on a vehicle chassis of Chapter 86 or 87....." further emphasizes the formation, implying an integrated structure to make the product classifiable under CTH 87.05, amongst others, as the case may be. The 'Mobile Concrete Mixers' manufactured by the importer-appellant would clearly fall in this category of a "formed" product, admittedly integrated. The importer-appellant has referred to another set of HSN Explanatory Notes (2007) to Section XVII (for the purposes of CTH 8705) as extracted below.

"87.05

This heading includes:

.....

*(10). Concrete-Mixers Lorries (Trucks) consisting of a cab and a motor vehicle chassis, on which is **permanently** mounted a concrete-mixer, capable of use for both, making or transporting concrete.*

.....

.....

He submitted that Sl.No.10 of the same refers to a 'permanently' mounted concrete-mixer, which aspect can't be denied for the 'Mobile Concrete Mixer'. He stated that a conflicting scenario had emerged for the same Product from HSN Explanatory Notes. It is in this context that the CMV Act come into play and Commissioner (Appeals) rightly added this perspective in his analysis. Fundamental to it is the fact that if a 'Mobile Concrete Mixer' is to be considered as a machine classifiable under CTH 84.74, there would be absolutely no requirement of homologation by ARAI and a registration under the CMV Act, for which the importer-appellant has not put forth any arguments. This factor, he felt, would be sufficient to merit the classification of the product under CTH 8705.4000. The Ld. AR prayed that classification of 'Mobile Concrete Mixers' be sustained as under CTH 87054000, and classification of parts/components thereof under CTH 87.08 except where specifically forbidden by Note 2 to Section XVII of the First Schedule to Import Tariff and recovery of consequential differential tax and interest be ordered.

3.3 In their rejoinder dated 03.01.2025, to the written submissions made by revenue, the importer stated that during the course of hearings before the Hon'ble Tribunal on 16.12.2024 and 03.01.2025, it was accepted by both parties that the classification of the parts of SLCM is interlinked to the classification of the final product, i.e., SLCM. It was accepted by both parties that if the SLCM is classifiable under CTI 8474 3110 (as contended by Appellant), the parts of SLCM are classifiable under CTI 8474 9000. On the contrary, if the SLCM is classifiable under CTI 8705 4000 (as contended by the Department),

the parts of SLCM would be classifiable under CTH 8708. It was submitted that the classification of SLCMs manufactured by the Appellant has been held to be under CTI 8474 3110 by various authorities and had attained finality. The importer submitted that the Homologation Certification under ARAI under "Category C" of AIS 0153, cannot be basis to classify the SLCMs under CTH 8705. From a perusal of the standard, it is evident that even other construction equipments such as fork-lift truck (CTH 8427), mobile crane (CTH 8426) etc. which are classifiable under Chapter 84 are covered under this Category. If the submission of the Department is taken its logical end, then all mobile machineries that require ARAI Certification will always be classifiable under Chapter 87, which will be contrary to the scheme of classification under Customs Tariff and the HSN Explanatory Notes which are globally followed. They reiterated the prayer made.

4. We have gone thorough the appeal memorandum, cross objection and the related documents and have also heard the rival parties. A detailed response was made by the importer and a spirited rejoinder by revenue. However, we find that we are called upon to first decide upon the classification of a product which has not been imported in the impugned case and then decide the classification of its imported parts.

4.1) We find that in the present case the importer is also the manufacturer of SLCM for which the imports of parts have been made. They possess a Central Excise Registration Certificate for 'Self Loading Concrete Mixers' falling under Tariff Heading 8474. Once the decision on the main machine has been taken by the Proper Officer in charge of the factory we do not deem it proper to sit in judgment over the said

classification when that matter is not before us. The Telangana VAT Appellate Tribunal in Appellant's own case T.A. No. 137/2016 dated 09.09.2016 has classified SLCM under CETH 8474. Even under the GST regime, the appellant has stated that the SLCM's manufactured by them are sold and cleared under Heading 8474.

4.2) The importer in their written submissions has stated that decisions by various authorities regarding the classification of SLCM under CTH 8474 in their case have attained finality and have not been challenged by the Department. In such a situation we cannot allow the same revenue department to speak in two voices. Since the classification of the parts of the SLCM is dependent on the classification of the SLCM which falls under CETH 8474, as decided by the Central Excise Authorities and not under 8708 as stated by the customs department, the classification of the parts of the SLCM proposed by revenue in the present appeals / cross objections, fails.

4.3) A Coordinate Bench of this Tribunal in **Sun Rise Traders v. Commissioner of Customs, Mundra** — 2022 (381) E.L.T. 393 (Tri. - Ahmd.), held that it is a settled legal position that if the goods are not classifiable under the chapter heading proposed by the revenue thereafter even if the goods is classified under the chapter heading claimed by the assessee are correct or not, the case of the department will fail. We concur with the same.

4.4) In **Warner Hindustan Ltd. Vs Commissioner** [1999 (113) E.L.T. 24 (SC)], the Hon'ble Apex Court had an occasion to examine an appeal by the manufacturer, where revenue changed the classification proposed in the SCN for the first time before the Tribunal, which upheld the same. The Hon'ble Court held;

2. The correct course for the Tribunal to have followed was to have dismissed the appeal of the Excise authorities making it clear that it was open to the Excise authorities to issue a fresh show cause notice to the appellant on the basis that the tablets were classifiable under Heading 17.04 as items of confectionery. This would have given the appellant the opportunity to place on record such material as was available to it to establish the contrary. It is impermissible for the Tribunal to consider a case that is laid for the first time in appeal because the stage for setting out the factual matrix is before the authorities below.

Revenue would have to follow the same route if at some stage the classification of SLCM's manufactured by the appellant is changed by the Central Excise Authorities. It would only be fair that in such an eventuality that the importer also disclose this change of classification to the Customs Authorities.

4.5) In the facts and circumstances of the matter, the classification of the goods as declared in the BoE's does not merit a change. The appeals are hence disposed of as under

- A) Appeal No. C/40510/2015 filed by the Appellant is allowed;
- B) Appeal No. C/42422/2016 filed by the Appellant is allowed;
- C) Appeal No. C/41217/2017 & C/41218/2017 filed by the Department are dismissed;

The cross objections are disposed of accordingly. The importer is eligible for consequential relief is any, as per law.

(Order pronounced in open court on 03.02.2025)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

Sd/-
(P. DINESHA)
Member (Judicial)