

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

REGIONAL BENCH – COURT No. I

Excise Appeal No. 40472 of 2024

(Arising out of Order-in-Appeal No. 07/2023 dated 27.02.2023 passed by Commissioner of GST & Central Excise (Appeals), No. 6/7, ATD Street, Race Course Road, Coimbatore - 641 018)

Commissioner of GST and Central Excise

Coimbatore Commissionerate,
No. 6/7, ATD Street, Race Course Road,
Coimbatore – 641 018.

...Appellant

Versus

M/s. Craftsman Automation Ltd. (Unit-3)

No. 123/4, Sangothipalayam Road,
Arasur Post,
Coimbatore – 641 407.

...Respondent

APPEARANCE:

For the Appellant : Shri M. Selvakumar, Authorised Representative
For the Respondent : Shri M. Karthikeyan, Advocate

CORAM:

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

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40276 / 2025

DATE OF HEARING : 20.01.2025
DATE OF DECISION : 24.02.2025

Per Mr. VASA SESHAGIRI RAO

This Excise Appeal No. 40472 of 2024 has been filed
by the Department assailing the Order-in-Appeal No.
07/2023 dated 27.02.2023 passed by the Commissioner of
GST & Central Excise (Appeals), Coimbatore.

2.1 Brief facts are that M/s. Craftsman Automation Ltd. (Unit-3) (hereinafter referred to as 'Respondent') are engaged in the manufacture of various goods such as Fuel Filter assembly, Water Pump Assembly, Cylinder Head Sub-Assembly and Cylinder liner stud Assembly which are sub-assemblies and components of High Horse Power locomotives for Railways. The Respondent supplies these products to Diesel Locomotive Works, Varanasi (now renamed as Banaras Locomotive Works-BLW) through M/s. Faiveley Transport Rail Technologies India Limited (Faiveley) and their domestic marketing partner M/s. Transloco Engineering Industries (Transloco).

2.2 As the goods are manufactured according to the specifications of the BLW, the Respondent classified the products under CSH 8607.99.90 of the erstwhile Central Excise Tariff Act, 1985 (CETA for short) and were discharging appropriate duty liability. Consequent to the issue of Exemption Notification No. 12/2016-CE dated 01.03.2016 which amended Notification No. 12/2012-CE dated 17.03.2012 reducing rate of duty on "All goods" under CH 8607 of CETA to 6% by insertion of Sl. No. 272A, the Respondent started discharging duty liability on the products @ 6% from 01.03.2016.

2.3 The DGGI, Coimbatore Zonal Unit conducted investigation into the Respondent unit with specific reference to the classification adopted by the Respondent for the goods manufactured and cleared to Railways. It appeared to the investigating team that in spite of the products being made for and supplied to Railways as per the design and specification given by the BLW, Varanasi, the products stood excluded from CH 8607 of CETA by virtue of Note 2(e) of Section XVII of the CETA and merited classification under appropriate headings of Chapter 84 of CETA or other Chapters.

2.4 The said investigation resulted in Show Cause Notice No. 02/2021-C.Ex. dated 08.04.2021 issued by the Additional Director, DGCI, CZU demanding differential duty of Rs.1,26,91,614/- covering the period from 01.03.2016 to 30.06.2017 under Section 11A(4) of the erstwhile Central Excise Act, 1944 apart from interest under Section 11AA and penalty under Section 11AC, *ibid*. The SCN also alleged that the Respondent indulged in suppression of facts and wilful misstatement by wrongly classifying the products and incorrectly availing Notification No. 12/2016 dated 01.03.2016.

2.5 After due process of the law, the Original Adjudicating Authority upheld the same. Aggrieved by the order of the Adjudicating Authority the Respondent filed an appeal before the Ld. Appellate Authority who *vide* Order-in-Appeal No. 07/2023 dated 27.02.2023 has allowed the appeal by dismissing the Order-in-Original No. 7/2022-ST(ADC) dated 29.04.2022 passed by the Additional Commissioner of GST & Central Excise, Coimbatore. Aggrieved, the Department came on appeal before this forum.

3. The Principal Commissioner of Central Excise & GST as authorised by the Committee of Commissioners, requests for setting aside the order of the Lower Appellate Authority urging the following grounds: -

- i. Reliance placed by the Lower Appellate Authority on Board's Circular No. 17/90-CX 4 dated 09.07.1990 is not correct as the said circular speaks about classification of transmission elements like Gears, Gear Trains, Gear Boxes etc used in motor vehicles (8483 or 8607/8708/8714). Note 2 to Section XVII (Vehicles, Aircraft, Vessels) states that "the expression

'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: (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 8483". The meaning of this Note is that if "gears, gear trains, gear boxes" are integral part of engines or motors, then they are to be classified under 8483. The HSN Notes for 84.83 read as follows: -

"The heading also excludes:

(a)

(b) Transmission equipment of the kinds described above (gear boxes, transmission shafts, clutches, differentials, etc.), but which are designed for use solely or principally with vehicles or aircraft (Section XVII), it should, however, be noted that this exclusion does not apply to internal parts of vehicle or aircraft engines these parts remain classified in this heading. Thus a crank shaft or a cam shaft remains in this heading even if it is specialised for a motor car engine, but motor car transmission (propeller) shafts, gear boxes and differentials fall in heading 87.08.

(c) It should further be noted that transmission equipment of the type described in this heading remains classified here even if it is specially designed for ships"

- ii. The reliance placed by the Lower Appellate Authority on CBIC Order No.57/2/2000-CX dated 20.10.2000 that held Water tanks of Steel and aluminium to be fitted for railway coaches merit classification under Chapter Heading 86.07 of CETA as parts of coach work is also misplaced since the products supplied in this case were not water tanks.
- iii. The Hon'ble Supreme Court in the case of *Intel Design Systems (India) Pvt. Ltd. [2008 (223) ELT 135 SC]* held that switches, control boxes etc. tailor-made for armoured tanks are classifiable under 8536 and not under 8710, even though they are used specifically, solely or principally with the armoured vehicles of chapter heading 8710 and in the case of *Uni Products India Ltd. [2020 (372) ELT 465]*, the Apex Court held that 'car mattings' even when designed and trimmed to fit specific cars are to be classified as "carpets" under 5703.90 and not a part of car under 8708.
- iv. After taking note of the Section Note, HSN Explanatory Notes etc., the Board "recommended that transmission elements may not be classifiable under single heading 8483 when they have been specifically designed for use with vehicles of section XVII of Central Excise Tariff Act, 1984". In view of the above underlined portion and distinction made in (b) above,

this conclusion is solely based on the obvious fact that gears, gear trains and gear boxes are not integral parts of engines /motors of motor vehicles. The above decisive underlined portion is not applicable to goods falling under headings other than 8483 and hence the reliance placed on this Circular by the Lower Appellate Authority is not proper.

v. In the impugned order, cognizance has not been taken of Paras 18.1 to 18.2 in the OIO, wherein the Adjudicating Authority has relied upon the technical specifications to hold that Fuel Filter assembly, Water Pump assembly, Cylinder Head assembly, Cylinder liner stud assembly are standalone devices and have usage across the industrial sectors. As such the reliance placed on the Hon'ble Supreme Court judgment in *Westinghouse Saxby Farmer Ltd. case [2021 (376) ELT 14 SC]* is not correct.

vi. In the case of M/s. Westinghouse Saxby Farmer Ltd., the Hon'ble Supreme Court held that "relays" tailor-made for railways should not be classified under 8537 but under 8608 as part of railway signalling system. In coming to this conclusion, the court relied heavily on Note 3 to Section XVII which reads: -

"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"

vii. In the case of *Intel Design Systems (India) Pvt. Ltd.*

[2008 (223) ELT 135 SC] the apex court held that switches, control boxes etc, tailor-made for armoured tanks are classifiable under 8536 and not under 8710, even though they are used specifically, solely or principally with the armoured vehicles of chapter heading 8710. Likewise, the Hon'ble Supreme Court in the case of *Uni Products India Ltd. [2020 (372) ELT 465)]* agreed with the assesee that 'car mattings' even when designed and trimmed to fit specific cars are to

be classified as "carpets" under 5703.90 and not a part of car under 8708. The Hon'ble Supreme Court reasoned as follows: "Once the subject goods are found to come within the ambit of that sub-heading, for the sole reason that they are exclusively made for cars and not for 'home use' (in broad terms), those goods cannot be transplanted to the residual entry against the Heading 8708". The ratio of these decisions applies on all fours to the present case on hand.

viii. The above two earlier decisions of the Hon'ble Supreme Court were probably 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. Therefore, relying on the decision in Westinghouse Saxby case in isolation may not be the right approach.

ix. 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], 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(f) of Section XVII redundant or otiose. It may be profitably noted that, in a similar situation 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 otiose which cannot be countenanced. Therefore. Note 2, when seen along with Note 4, has to govern itself in limited territory".

Also, in the case of *British Airways PLC* [2002 (139) ELT 6 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".

- x. In view of the above, the interpretation made by the Hon'ble Supreme Court in the Westinghouse Saxby case does not appear to be in consonance with the principles set out in the aforesaid judgments rendered by the Hon'ble Supreme Court.
- xi. 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 I 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-I 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, it is felt 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 accessories" do not apply to "machines or apparatus of headings 8401 to 8479" WHETHER OR NOT they are identifiable as for the goods of this Section [Vehicles].

xii. The significance and weightage enjoyed by HSN Notes was expounded by the Hon'ble Supreme Court in the case of *Wood Craft Products Ltd [1995 (77) ELT 23]* as follows: -

"12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to 'reduce disputes on account of tariff

classification'. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred".

xiii. The HSN Explanatory Notes regarding classification of "Parts and Accessories" under XVII is extracted below: -

"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]

(b) They must be suitable for use solely or principally with the articles of Chapters 84 to 88 [see paragraph (B) below]

(c) They must not be more specifically included elsewhere in the Nomenclature [see paragraph (C) below]"

xiv. The findings of the Lower Appellate Authority that the goods viz., the Fuel Filter assembly, Water Pump assembly, Cylinder Head assembly, Cylinder liner stud assembly manufactured by the Appellant were for sole

and exclusive use of Railways and hence they were rightly classifiable under Chapter Heading 8607 does not mean that these goods cannot be used elsewhere and these goods can be put to generic use and therefore excluded from Section XVII by virtue of Note 2(e) since Section Note 2(e) *ibid* clearly excludes certain parts or accessories from Section XVII whether or not they are identifiable as for the goods of this Section. Hence, "sole or principal use" test cannot be a ground to circumvent (a) above.

xv. The following few examples will further illustrate why all 'parts' which are suitable for use solely or principally with an article in Chapter 86 as per Chapter Notes & HSN Explanatory Notes, are not classifiable under Chapter 86: -

I) It is common knowledge that car / two-wheeler engines are made to drawings, i.e., designed in a way that they are suitable for use solely or principally with those motor vehicles only. If one were to apply to the logic in the Order-in-Appeal, these engines are classifiable under 8708 as parts of motor vehicles. Yet it is seen that the Central Excise Tariff has the following headings: -

"8407 Spark-ignition reciprocating or rotary internal combustion piston engines

8407 32 -- Of a cylinder capacity exceeding 50cc but not exceeding 250cc:

8407 32 10 --- For motor cycles

8407 32 90 --- Other

8407 33 -- Of a cylinder capacity exceeding 250cc but not exceeding 1000 cc:

8407 33 10 --- For motor cars

8407 33 20 --- For motor cycles

8407 33 90 --- Other

8408 Compression-ignition internal combustion piston engines (diesel or semi-diesel engines)

8408 20 - Engines of a kind used for propulsion of vehicles of Chapter 87:

8408 20 10 --- Of a cylinder capacity not exceeding 250cc

8408 20 20 --- Engines of cylinder capacity exceeding 250cc"

- II) Similarly, it is common knowledge that car seats are designed to fit into specific models of cars and are not bought/sold in the open market by other users. Going by the logic of the Order-in-Appeal, these car seats are to be classifiable as parts of cars under heading 8708 of the Tariff. Yet, it is seen that heading 9401 of the Tariff,

reproduced below, has specific entries for these seats.

"9401 Seats (Other than those of heading 9402), whether or not convertible into beds, and parts thereof

9401 10 00 - Seats of a kind used for aircraft

9401 20 00 - Seats of a kind used for motor vehicles"

III) To conclude with another example, it is well known that 'head lights' of motor cars with dip/dim options, side lights, taillights, blinking lights, horns and windscreen wipers are tailor-made for use in motor cars. But such 'sole or principal use' does not seem to matter since the Tariff has a specific heading for those under Chapter 85.

"8512 Electrical lighting or signalling equipment (excluding articles of heading 8539), windscreen wipers, defrosters and demisters, of a kind used for cycles or motor vehicles

8512 10 00 - Lighting or visual signalling equipment of a kind used on bicycles

8512 20 00 - Other lighting or visual signalling equipment

8512 20 10 -- Head lamps, tail lamps, stop lamps, side lamps and blinkers

8512 20 20 --- Other automobile lighting equipment

8512 20 90 --- Other

8512 30 --- Sound signalling equipment

8512 30 10 --- Horns

8512 30 90 --- Other

8512 40 00 - Windscreen wipers, defroster and demisters

8512 90 00 - Parts"

xvi. If the reasoning adopted in the impugned order is accepted, then all the above headings, and many such headings elsewhere in the Tariff, would be rendered redundant which cannot be anyone's case. Hence, the only logical conclusion that emerges is that the products though designed specifically to fit into railway locomotives do not satisfy condition (a) of HSN Notes reproduced above and consequently do not meet the criteria to be classified under Section XVII/Chapter 86. They rightfully merit classification as decided by the Lower Adjudicating Authority.

xvii. The Hon'ble Supreme Court has on many occasions, reiterated the position that exemption notifications have to be interpreted strictly and the onus is on the assessee to prove that the conditions of the notifications were met, and any doubt will go to the Revenue. This was recently emphasized once again by a 5-judge Constitutional Bench of the

Supreme Court in the case of *Dilip Kumar & Company* [2018 (361) ELT 577 SC].

xviii. The Lower Appellate Authority had held that invoking the extended period of time limit under Section 11A(4) of the Central Excise Act, 1944 for the demand of differential duty was not sustainable under law, as the assessee had continued to classify the impugned products under 8607 as parts for railway locomotives, even before the benefit of Notification No. 12/2016-CE dated 01.03.2016. The assessee had declared their impugned goods under sub-heading 86079990 with general description as "parts of railway locomotives" in the ERI returns. Such a brief caption helped them in misclassifying the impugned goods. Only after detailed investigation conducted by the officers of DGCI, it came to the light that the goods under dispute would not fall under 86079990 and they were misclassified.

xix. Article 141 of the constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The judgment 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 judgment itself

does not refer to its wider applicability to any other case or issue of a similar nature. Also, this judgment 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.

xx. The Instruction No. 01/2022- Customs dated 05.01.2022 regarding the 'parts' to be classified under a specific heading of the First Schedule of the Customs Tariff Act, 1975, suggests to consider all the relevant aspects including HS Explanatory Notes, the relevant Section and Chapter notes and the various decisions of Hon'ble Supreme Court in order to arrive at an appropriate classification based on all facts and details of individual cases. Two judgments of the Hon'ble Apex Court (discussed above), were quoted in the Instruction No. 01/2022-Customs, dated 05.01.2022 to highlight the earlier interpretation of the Supreme Court when dealing with the classification of parts. These judgements have already taken a stand on giving prominence to the exclusions in Note 2 of the Section XVII over the Note 3 of the same Section.

4. During the hearing before the Tribunal, Shri M. Karthikeyan, the Ld. Advocate, representing the

respondent, has at the outset, informed the Bench that on the same issue, the Tribunal Chennai has held in favour of the respondent, *vide* Final Order No. 40003/2025 dated 02.01.2025 in the case of M/s. Shakthi Tech Manufacturing India Pvt. Ltd. The Learned Advocate also submitted that the points taken in the Application filed by the Department have been fully covered and answered by the respondent both in the reply to the SCN and in the Appeal filed with the Lower Appellate Authority, and the Lower Appellate Authority had set aside the order of the Lower Adjudicating Authority after recording detailed findings. He therefore requested for dismissing the Departmental Application by upholding the order of the Commissioner of GST and Central Excise (Appeals), Coimbatore *vide* Order-in-Appeal No. 07/2023 dated 27.02.2023.

5. Shri. M. Selvakumar, the Ld. Authorised Representative appearing for the Department, contesting the order of the First Appellate Authority, pointing to specific pleas in the Application filed, requested to restore the order of the Lower Adjudicating Authority by setting aside the impugned order.

6. We have gone through the Grounds of Appeal filed by the Department and other evidence forming part of the case records and considered the pleas made by the rival sides. Though we are convinced that the issue arising for decision in this Departmental Appeal is almost the same as dealt with in the case of M/s. Shakthi Tech Manufacturing India Pvt. Ltd. and are justified in following the ratio therein, yet, we fetter ourselves from doing so essentially for the reason that the Applicant, authorised by the Committee of Commissioners, has raised a plethora of issues which need to be considered especially when there is a plea to this effect from the department side and a submission from the Learned Advocate for the respondent that all points raised in the Application had been duly answered and taken care of both by the respondent in the reply to the SCN/Appeal Memorandum and the Lower Appellate Authority in the impugned order. We therefore feel that it would be in the fitness of things if a decision is rendered considering the points raised in the Application instead of merely following the earlier decision in the case of M/s. Shakthi Tech Manufacturing India Pvt. Ltd.

7. We now proceed to discuss the points raised in the Application and record our observations.

7.1 It is noticed that the Lower Appellate Authority has accepted the classification adopted by the respondent under CH 8607 chiefly relying on the relevant Section Notes and Rules for Interpretation of Tariff as is evident from the findings recorded in Paras 9.2 to 9.14 of the impugned Order. We therefore do not agree that the Lower Appellate Authority upheld classification under CH 8607 by merely relying on Board's Circulars dated 09.07.1990 and 20.10.2000 and the Supreme Court judgment in the case of *M/s. Westinghouse Saxby Farmer Ltd. [2021 (376) ELT 14 (SC)]*.

7.2 In Para 5 of Board's Circular dated 09.07.1990, it is conveyed that transmission elements, when specifically designed for use with vehicles of Section XVII of the CETA, 1985, would merit classification appropriately either under C11 8607 or 8708 or 8714. As the instruction therein covered not only CH 8708 but also CH 8607 which applied *inter alia* to parts of Railway Locomotives, the Lower Appellate Authority cannot be faulted for following the Circular.

7.3 We find that Section 37B Order issued earlier on 01.09.1993 instructing classification of Steel/Aluminium Water Tanks for supply to Railways either under Chapter 73 or Chapter 76 of the CETA, 1985 was withdrawn consequent to the Order of the Tribunal in *M/s. Sri Ram Metal Works [1998 (99) ELT 616 (Tribunal)]* that the provision of water in a coach was a necessity and the water tank became part of the coach after fitment. The decision is in keeping with the relevant Section Notes and Rules for Interpretation of Tariff as well as judgments of the Hon'ble Supreme Court and decision of the Tribunal in identical cases. Therefore, the Lower Appellate Authority did not commit any error in falling back upon Board's Circular dated 20.10.2000.

7.4 It is our understanding and we rightly feel so that the Hon'ble Supreme Court in the case of *M/s. Westinghouse Saxby Farmer Ltd. [2021 (376) ELT 14 (SC)]*, while dealing with classification of Relays used as parts of Railway Signalling System, laid down the criteria to be applied while classifying products of this nature (sole or principal use) in the following terms:

- i. The exclusion under Note 2(f) or Note 2(e) of Section XVII applies to goods which are capable of being marketed independently as parts or accessories for

electrical machinery /equipment falling under Chapter 85 or machinery/mechanical appliance falling under Chapter 84 and which are for use otherwise than in Railways or as Railway signalling equipment but not for parts or accessories designed for exclusive or specific use by Railways (as in this case).

- ii. Parts and accessories suitable for use solely or principally with articles of Chapter 86 as in this case cannot be taken to a different Chapter as it would defeat the object of group classification which is made clear by Note 3.
- iii. Once it is evident from record that the parts or accessories are solely for use by Railways, invoking exclusion clauses under Notes 2(f) and 2(e) overlooking Note 3 (sole or principal user test) is incorrect.
- iv. The Department should not have overlooked the "predominant use" or "sole/principal use" test acknowledged by the General Rules for interpretation of the Schedule.

7.5 In this case, it is an admitted fact that the products sought to be reclassified are engine parts as against signalling equipment in the other case but in both

the cases, it remains an undisputed fact that they are designed and solely for use in Railways / Railway Locomotives. It is never the case of the Department that the subject goods have any independent marketability. Therefore, we affirm that the ratio of the aforesaid judgment of the Hon'ble Supreme Court in M/s. Westinghouse Saxby Farmer Ltd. case would apply squarely to the facts of this case.

7.6 The Applicant has averred that the Lower Appellate Authority has ignored the findings recorded in paras 18.1 and 18.2 of the Original-in-Original that the products were standalone devices and found usage across industrial sectors. We have perused the Original-in-Original and we find that no such findings have been recorded by the Adjudicating Authority. We also notice that the sole reason which weighed with the Adjudicating Authority in not accepting the classification under CH 8607 was that since each of the products had specific headings in the CETA, classification under CH 8607 is inappropriate in view of Note 2. However, in terms of the ratio laid down by the Hon'ble Supreme Court in the above case as to the predominant use/sole or principal use test for purpose of classification under Chapter 86, the items are not hit by exclusion clause

Note 2 to Section XVII in view of specific inclusion under Note 3. The Lower Adjudicating Authority was therefore correct in following the Judgment of the Hon'ble Supreme Court in the case of *M/s. Westinghouse Saxby Farmer Ltd.* We also observe that the review petition filed by the Department against the afore-said judgment was dismissed by the Hon'ble Supreme Court as reported in [2022 (382) *E.L.T.* 292 (S.C.)]. Having lost the case before the highest Court of the land, it does not behove the Applicant to say that the said judgment was either improper or did not lay down the correct law for not taking note of the earlier judgments of the Hon'ble Supreme Court in the cases of *M/s. Intel Design Systems (India) Private Limited* [2008 (223) *ELT* 135 (SC)] and *M/s Uni Products India Limited* [2020 (372) *ELT* 465 (SC)].

7.7 We feel that characterising the judgment of the Hon'ble Supreme Court in Westinghouse Saxby case as having no precedent value for not taking note of the judgments of the Supreme Court in the cases of Intel Design and Uni Products is tantamount to entering into the arena of interpreting the judgement to judge its correctness or otherwise which in our considered opinion is forbidden.

7.8 We observe, with due respect, that the two Supreme Court judgments on which heavy reliance has been placed by the Applicant have not taken into account the earlier judgments of the Hon'ble Supreme court in the cases of *M/s. G.S. Auto International Ltd. [2003 (152) ELT 3 (SC)]* and *M/s. Cast Metal Industries Pvt Ltd. [2015 (325) 471 (SC)]* wherein sole/principal use criterion for classification came up for consideration and was decided as in the case of *M/s. Westinghouse Saxby Farmer Ltd.* The said judgements are discussed below.

7.8.1 In the case of *M/s. G.S. Auto International Ltd. [2003 (152) ELT 3 (S.C)]*, a question arose as to whether items such as Sprint Centre Bolts with Nuts, Spring U Bolt with Nuts, Spring U Clamps with nuts and plates, Spring Shackle Pin (Shackel Bolt) with Nuts and Spring Shackle Pin (Spring Pin) specifically designed for use in automobile vehicles merited classification as parts of general use under CH 73.08 or as parts and accessories of motor vehicles under CH 87.08. The Hon'ble Supreme Court, after taking note of Note 2(b) of Section XVII which excludes parts of general use of base metal from Section XVII and Note 3 which specifically includes parts or accessories suitable for

use solely or principally with Articles of Chapters 86 to 88, observed and held that: -

"26. A conjoint reading of the Notes, referred to above, would show that the expression "parts of general use" throughout the Schedule, means, inter alia, articles of Heading No. 73.18 and similar articles of other base metal, and the expression part and accessories in Chapter Heading 87.08 does not apply to parts or accessories which are not suitable for use solely or primarily with articles of Chapter Heading 87.08 which pertains to parts and accessories of motor vehicles of Chapter Heading Nos. 87.01 to 87.05. For the purposes of classification under Chapter Heading 87.08, the test to be applied is: whether the goods are suitable for use solely or primarily with articles of Chapter Heading Nos. 87.01 to 87.05; if the answer is in the affirmative, the goods will be classifiable under Chapter Heading 87.08, but if the answer is in the negative, they would have to be classified under Chapter Heading No. 73.18. Having regard to the finding that the goods in question cannot but be regarded as parts of automobiles, it has to be held that they are suitable for use primarily with articles of Chapter Heading Nos. 87.01 to 87.05. It follows that the goods in question cannot be treated as falling under Chapter Heading No. 73.18 and that they can properly be classified under Chapter Heading No. 87.08 of the Central Excise Tariff Act, 1985."

7.8.2 In the case of *M/s. Cast Metal Industries Pvt. Ltd. [2015 (325) ELT 471 (S.C.)]*, a question arose as to whether the items "hinges and handles" manufactured

according to specifications for motor vehicles would fall for classification under CH 8708 as claimed by the assessee or under CH 8302 as contended by the department. The Hon'ble Supreme Court, while setting aside the Order of the Tribunal, observed and held as under: -

"4. The aforesaid factual position is neither disputed nor it can be disputed by the Department. Notwithstanding the aforesaid position, we find that the Commissioner as well as the Tribunal have classified the goods under Chapter Heading 8302.00 by relying upon the Explanatory Note under Heading 83.02. This Note read as under:

"This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coach work etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g. door handles or hinges for automobiles). The heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs."

5. On the face of it, this note would not be applicable as it is HSN Note which has diversion with the relevant entry and as the very first line thereof mentions that it covers those goods which are meant for "general purpose". In the instant case, as already pointed out above, the goods in question are meant for specific purpose viz. in the motor vehicles that too for specific model of the motor vehicles as its parts.

6. We also find that the issue is squarely covered by the judgment of this Court in the case of G.S.Auto

International Limited vs. CC Excise, Chandigarh[2003(2) SCC 371]. In the said judgment, following the earlier decisions of this Court, the Court specifically held that to determine the applicability of the item under particular head, the test of commercial identity of the goods would be the relevant test and not the functional test. It was also held that the expression "parts of general use" would not apply to parts or accessories which are not suitable for use solely or primarily with articles of Chapter Heading 87.08 which pertains to parts and accessories of motor vehicles of Chapter Headings 87.01 to 87.05. The Court was also categorical that in such a case the test that is to be applied is: 'whether the goods are suitable for use solely or primarily with articles of Chapter Headings 87.01 to 87.05'. It is strange even when the judgment was specifically brought to the notice of the Tribunal and is taken note of, but the same was not dealt with by the Tribunal in the impugned judgment at all.

7. We are of the opinion that the aforesaid judgment clinches the issue in favour of the appellant/assessee herein. Accordingly, the impugned judgment of the Tribunal is set aside and this appeal is allowed with no order as to costs."

7.9 We have no doubt whatsoever that the ratio of these two judgements fully supports the Respondent's case.

7.10 We also note that in the case of *M/s. Vikas Automatic Fasteners Pvt. Ltd. [2005 (190) ELT 90 (Tri.-Mumbai)]*, a question arose as to whether items like spring lock washer, spring washer, plow bolt, rigid tine carrier and

bolt hex designed to specific shape and used as agricultural implements for attachment to tractors would merit classification as fasteners under CH 73.18.00 or under CH 84.32.00 as Agriculture Implement Kit/Parts. Taking note of the fact that the design, purpose and use of the items are as parts of agricultural implements and following the ratio of the Supreme Court judgment in the case of M/s. G.S. Auto International Ltd., the Tribunal upheld the classification under CH 8432.00 by allowing the appeal of the assessee. The Bench also said in Para 2.1(d) that *"HSN Notes are of persuasive value & S.C test is the law of the land. The latter shall prevail."*

7.11 We now turn to the judgements of the Hon'ble Supreme Court in the cases of *M/s. Intel Design Systems [2008 (223) E.L.T. 135 (S.C.)]* and *M/s. Uni Products [2020 (372) E.L.T. 465 (S.C.)]* on which heavy reliance is placed by the department. We find that both these decisions are with respect to completely different products. Whereas in Uni Products, the dispute was in relation to the classification between Chapter Note to Tariff Item 5703 and Chapter heading 8708 with respect to Carpets and Floor Coverings, the decision in the case of Intel Design is with respect to a dispute between Chapter Heading 8536.90 and 8710

regarding Switches used for switching/ protecting electrical circuits. However, the issue on hand is completely different as in those decisions, there was no need or occasion for the Apex Court to delve into the relevant Section/Chapter Notes and its correspondence to Section XVII as well as Chapter Heading 8607. Besides, it is also pertinent to note that both the decisions have been rendered by Benches consisting of two judges. However, the judgment rendered in the case of *M/s Westinghouse Saxby Farmer Ltd* is directly on the issue, much later in point of time to the other two decisions and by a Bench consisting of three Judges. As per settled position of law, the ratio of this judgment would take precedence over the other two judgments relied by the appellant. We take note of the fact that the Review Petition filed by the Department against this decision has been dismissed by the Hon'ble Apex Court as reported in [2022 (382) E.L.T. 292 (S.C.)]

7.12 In para 14 of the appeal memo, we find a reference to Supreme Court Judgements in the case of *M/s Star Industries* and *M/s. British Airways PLC* [2015 (324) ELT 656] and [2002 (139) ELT 6]. It is seen that in the case of *M/s Star Industries*, the issue arising for decision was whether benefit of an exemption notification available to

'Ores" could be extended to 'Ore Concentrate when Ore underwent the process of roasting to become Ore Concentrate. On the face of it, the ratio therein has no application to this case. Likewise in the case of M/s. British Airways PLC, the issue was whether the Aircraft Carrier could absolve himself of liability for shortages while offloading claiming that he was not the person in charge. The issue being totally unconnected has no application to this case.

7.13 There is absolutely no quarrel with the proposition that classification is to be decided in terms of the relevant Section and Chapter Notes. Even a cursory reading of the judgement in M/s Westinghouse case would show that the decision was rendered keeping in view Note 3 to Section XVII of the CETA, 1985 terming application of Note 2(f) overlooking sole/principle use criterion and the sole/principal use test acknowledged by the Rules for Tariff Interpretation as incorrect.

7.14 In Para 16 of the Appeal Memo reference is made to SC judgement in the case of M/s. Wood Craft Products Limited. In the said judgment, the Hon'ble

Supreme Court held that for purpose of classification, definition of a term in ISI Glossary, which has a different purpose, cannot in case of a conflict, override the meaning of an identical expression in the HSN. We fail to understand its relevance of the same to the issue under discussion in this Application.

7.15 We have no doubt that the CETA 1985 is enacted on the basis and pattern of the HSN. For resolving any dispute with reference to classification, reference to HSN is needed. However, when Section or Chapter Notes are clear and unambiguous, resorting to HSN Notes is not required. The principles governing classification are given in the General Rules of the Interpretation of Tariff. As per Rule 1 of the said General Rules, the classification is to be determined in terms of the headings and any relevant Section or Chapter Notes. If determination of classification is still elusive, recourse can be taken to Rules 2 to 6. If the dispute cannot be resolved in the manner said above, reference to HSN Notes is required. In this case, applying Note 3 of Section XVII coupled with the judgment of the Hon'ble Supreme Court in the case of M/s Westinghouse Saxby and Rule 3(a) of the General Rules for Tariff Interpretation, the issue has been resolved by classifying

the products under CH 8607. Therefore, any further reference to HSN Notes is not legally warranted. It needs to be understood that HSN has universal application and exemption notifications are country-specific. Despite being eligible, the incentive granted as promised by the FM through the exemption notification would be of no avail to the respondent if the classification is decided as interpreted by the Department.

7.16 We observe that the Applicant contests the findings of the Lower Appellate Authority that the products are rightly classifiable in CH 8607 in view of sole and exclusive use in Railways by saying that it does not mean these goods could not be used elsewhere or put to generic use thereby getting excluded from Section XVII by virtue of

Note 2(e) and further sole or principal use test could not be a ground to circumvent Note 2(e). It is clear from the records that the only issue arising for decision in this case was in view of the exclusive use of the products for Railway Locomotive whether Note 2(e) of Section XVII would hinder classification under CH 8607 when an independent Note 3 mandates classification based on sole or principal use. There

was never a doubt in the minds of the department at any point of time as to the use of the products solely and exclusively by Railways. In fact, we noticed that there is a clear admission in Para 6 of the Order-in-Original dated 29.04.2022 under the caption "Summary" that *'(ii) the goods supplied by the Noticee are for the usage in HHP Locomotive as per the vendor directory of DLW, Varanasi, However, the dispute is about the classification as per the CETA 1985'*. The Respondent during investigation submitted enough proof to prove that the products are manufactured and supplied to Indian Railways based on the drawings and specifications of Indian Railways and they are properties of Indian Railways who have exclusive proprietary interest over them. Therefore, the question of either use of the products elsewhere or their generic use cannot be raised at this point of time. Besides, being a classification issue, if the Applicant is of the view as said, the burden of proof is on the Department to adduce evidence to negate the respondent's factual submissions which is missing in this case.

7.17 With reference to the points raised in Para 19 of the Appeal Memo, we note that Chapter Headings 8407 and 8408 have specific subheadings for engines of cars/two

wheelers/vehicles falling under Chapter 87. Chapter Subheadings 94011000 and 94012000 are specific for seats used in aircrafts and motor vehicles. CH 8512 is specific for use of the items mentioned in cycles or motor vehicles. When there is a specific reference to motor vehicles in the mentioned Chapter Headings, it is inappropriate to relegate them to Chapter 87. CH 8607 is specific to parts of Railway Locomotive and by virtue of Note 3, we feel that the respondent has rightly classified the products under CH 8607. In the absence of the parts and accessories of Railway Locomotive not finding mention in any other Chapters, as against the mentioned motor vehicle parts like engines, seats and electrical lighting and signalling equipment finding specific entries in Chapters 84, 94 and 85, classification confirmed by the Lower Appellate Authority under CH 8607 cannot be faulted.

7.18 The ratio of the SC judgement in the case of M/s. Dilip Kumar & Company does not support the Department as the issue involved in this Application is classification and not eligibility to exemption.

8. In view of the discussions above, we are therefore clear in our mind that the products manufactured and supplied by the respondent are rightly classifiable under CH 8607 of CETA and the ratio of the decision of this Bench in the case of M/s. Shakthi Tech Manufacturing India Pvt. Ltd. applies to this case entitling the respondent to avail concessional rate of duty under the amending Notification No. 12/2016-CE dated 01.03.2016.

9.1 We now turn to the issue of limitation. It is said that the respondent had declared the products under Chapter Heading 8607 with general description as "Parts of Railway Locomotive" in the ERI Returns and such a brief caption helped in misclassifying the products. It is also said that only after detailed investigation by DGGI, misclassification came to light.

9.2 The Respondent has countered this charge saying that: only the general description of the products is given in the returns filed; the invoices issued give the exact description of the product with a product code; both were in the knowledge of the Department; and if the department wanted any further clarification, it was always open to

them. Inviting attention to Sub rule 3 of Rule 12 of erstwhile Central Excise Rule, 2002 which empowered the proper officer to conduct such further enquiry as he deemed necessary while scrutinizing the correctness of assessment done by the assessee, it was argued that scrutiny of returns was not for arithmetical accuracy alone as the proper officer was duty bound to ensure that the assessment done by the assessee was correct in all respects including classification, eligibility to exemption and whether had there been improper availing of Cenvat Credit for duty payment. We observe that as rightly argued by the respondent, when such a statutory obligation is cast on the officer, it is unfair to say that there was deliberate misclassification especially when the respondent did not withhold any information or details from the knowledge of the department and made true and complete disclosure of facts required under law. To put it precisely, having kept quiet accepting the description as given in the returns filed prior to availing the notification, it is not open to the department to say that misclassification resulted from non-giving exact description of goods.

9.3 It also needs to mention that the Department is fair enough to acknowledge the fact that the items manufactured by the appellant were parts of "Railway

locomotives" as they were designed solely for use therein. Even conceding for purpose of argument that all parts of "Railway locomotives" did not merit classification under HSN 8607, the department was equally at mistake in thinking that all the products for use in railway locomotives merited classification only under HSN 8607. Therefore, we agree with the contention of the respondent that the availing of benefit of the notification which resulted in lesser revenue to the department spurred the department to act in the manner done which otherwise would have gone unnoticed. In this connection, we refer to the following decisions of the Tribunal and follow the same with our observations as they have been rendered in identical circumstances: -

- (i) *CCE Vs. Gemag Rotoplast [2006 (196) E.L.T. 300 (Tri- Mumbai)]*. In this case, the larger period of limitation was held as not applicable for the reason that there was ignorance of the provision on both sides. If it is the case of the Department that the classification done by the respondent was not correct, action could have been initiated by the department for reclassification earlier to availing the notification. It is not disputed that the classification done by the respondent under HSN 8607 had been the same throughout.

(ii) *Doshion Limited Vs. CCE [2011 (274) E.L.T. 468 (Tri. Ahmd)]*. In this case, the Ld. Adjudicating Authority upheld the demand under extended period of limitation on the ground that there was deliberate misclassification so as to avail the benefit of exemption in spite of the fact that in the ER I returns filed by the assessee the Sl. No of the exemption notification was clearly mentioned. The Bench held that, in the absence of any positive act on the part of the assessee to deliberately adopt the classification, the mere fact of wrong classification or availing of benefit of notification could not lead to the conclusion that there was suppression or misstatement to justify invoking the extended period.

9.4 Apart from the above, we also rightly feel that when there are circulars of the Board clarifying classification of products depending on the suitability of their use, decisions of the Tribunal and the judgments of the Hon'ble Supreme Court rendered under identical circumstances favouring the classification done by the Respondent, there is no basis to even remotely charge the respondent with intention or evasion of duty.

10. It also needs to be noted that even in the Customs advisory contained in Instruction No. 01/2022-Customs dated 05.01.2022 to which a reference is made in Para 26 of the appeal memo, in Para 3 the Board says that *"In the context of the divergent practises 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."* Thus, the factum of admission in Board's circular that the classification of parts is a complex issue confirms the view that the issue is not free from doubt. Therefore, we have no hesitation to hold that the demand raised invoking extended period of limitation under Section 11(4) CEA, 1944 is wholly without any basis.

11. It is argued that the SC judgement in M/s. Westinghouse Saxby case does not refer to its wider applicability to any other case or issue of similar nature. In essence it amounts to saying that it has no precedent value or binding application to identical or similar issues. We are afraid that we are unable to subscribe ourselves to this view since there is nothing of this sort in this judgement. In this case, there is no gainsaying the fact that the applicable test is sole or principal use test about which in Paras 36 and 37

of the judgement in Westinghouse case the Supreme Court observed and held as under: -

*"**Para 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.*

***Para 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.*

*Even in **Para 38**, after extracting a portion of the said judgment, the Bench concluded that "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."*

Therefore, the ratio of the judgment in the case of M/s. Westinghouse Saxby would squarely apply to the facts of this case. In view of Note 3 to Section XVII specifying sole/principal use criterion for classification; CH 8607 being specific to parts of Railway Locomotive; Rule 3(a) of the General Rules for Tariff Interpretation mandating preference

of specific entry to general entry, and Railway Locomotive Parts not finding mention or entry in any other chapter, classification affirmed by the learned appellate authority under CH 8607 is appropriate and cannot be faulted.

12. There is an argument that the judgment in M/s. Westinghouse Saxby case pertained to a matter under Central Excise Tariff Act in the Year 1994 when the Central excise Tariff and Customs Tariff were not aligned. We observe that HSN was adopted for purpose of classification both for the Central Excise Tariff Act, 1985 (which came into force from 01.03.1996) and the Custom Tariff Act. There is no difference or variation in the relevant Section/Chapter Notes and Tariff Entries between the two statutes. The Applicant has also not pointed out as to what extent the Entries in the statutes vary. Therefore, this contention has no force.

13. We are unable to fathom the rationale behind bringing into aid the instruction contained in the Customs Circular dated 05.01.2022 as it is in the form of an advisory to the formations below and it has no statutory force. Para 9 of the Circular mentions that review petition has been filed

against the Supreme Court Judgment in the case of M/s. Westinghouse Saxby. The applicant may not be unaware of the fact that the review petition filed by the Department stood dismissed both on merits and on limitation. As a result, the issue regarding classification of the products meant for exclusive use for Railway Locomotive has attained finality. In Para 10 of the Circular, the formations are advised to take all relevant aspects including HSN Notes, relevant Section and Chapter Notes and various decisions of Hon'ble Supreme Court while classifying 'parts'. The Supreme Court in the case of Westinghouse Saxby after analysing the relevant Section Notes, Rules for Interpretation of Tariff and usage of products concluded that parts or accessories meant for sole or principal use by Railways would fall for classification under CH 8607. The Bench also held invoking Note 2(f) in Section XVII overlooking sole or principal use of test indicated in Note 3 is not justified. As the Hon'ble Supreme Court Order rendered by the Bench of three Judges which is later in point of time has decided an identical issue, it should take precedence over other decisions including the judgments in the cases of M/s. Intel Design Systems and M/s. Uni Products. In terms of Article 141 of the Constitution of India the law thus declared by the Supreme Court in the case of

Westinghouse Saxby is the law of the land and binds all Courts including Tribunals.

14. In view of our above observations, we do not have any doubt in our mind that the impugned Order-in-Appeal No. 07/2023 dated 27.02.2023 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore setting aside the demand both on merits and on limitation does not suffer from any infirmity.

15. Consequently, the appeal filed by the Department stands rejected.

(Order pronounced in open court on 24.02.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

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