

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

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40554 of 2024

(Arising out of Order-in-Original No. 103104/2023 dated 21.09.2023 passed by the Principal Commissioner of Customs (Audit), Custom House, No. 60, Rajaji Salai, Chennai - 600 001)

Commissioner of Customs

Chennai Import Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

...Appellant

Versus

M/s. ILJIN Automotive Private Limited

B1&B2, SIPCOT Industrial Park,
Irrungattukottai,
Sriperumbudur,
Kanchipuram – 602 117.

...Respondent

APPEARANCE:

For the Appellant : Mr. P. Narasimha Rao, Authorised Representative
For the Respondent : Ms. A. Aruna, Advocate

CORAM:

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

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

FINAL ORDER No. 40847 / 2025

DATE OF HEARING : 25.02.2025
DATE OF DECISION : 21.08.2025

Per Mr. VASA SESHAGIRI RAO

The Commissioner of Customs, Chennai-II
(Imports) (hereinafter referred to as the 'Appellant') has filed
this Appeal No. C/40554/2024 to assail the Order-in-Original
No. 103104/2023 dated 21.09.2023 passed by the Principal
Commissioner of Customs (Audit), Chennai.

2. The Directorate of Revenue Intelligence (DRI), Indore Zonal Unit initiated investigation into imports made by M/s. Iljin Automotive Private Limited, Kancheepuram (hereinafter referred to as the Respondent). It was noticed that the Respondent had mis-classified the imported items mentioned in Table I below and thereby wrongly availed FTA benefit of Indo-Korea Preferential Trade Agreement under Notification No. 152/2009-Cus dated 31.12.2009.

Table I

Sl.No.	Description of the item imported	Declared CTH	Correct CTH as per DRI
1	Hub Assembly	87089900	87085000
2	Parts of Hub Assembly	87089900	87085000
3	Parts/Components of Door	87089900	87082900
4	Stabilizer Link Assembly (Suspension Part)	87089900	87088000
5	Ball Joint Suspension Part	87089900	87088000
6	Tie Rod (Steering Part)	87089900	87089400

3. Upon completion of investigation, the Show Cause Notice dated 20.12.2022 was issued to the Respondent wherein it was proposed to re-classify the goods as per Table above and thereby, deny the benefit of Indo-Korea Preferential Trade Agreement under Notification No: 152/2009-Cus dated 31.12.2009 for the said goods and consequently differential duty of Rs. 71,00,62,952/- was demanded by invoking Section 28(4) of the Customs Act,

1962 and interest under Section 28AA ibid was also demanded. The Show Cause Notice also proposed confiscation of the goods having assessable value of Rs.522,88,02,291/- under Section 111(m) & (q) of the Customs Act, 1962 and imposition of penalties under Section 112(a)/114A of the Customs Act, 1962 and Section 114AA of the Customs Act, 1962 for knowingly and intentionally using CEPA certificates which they knew were not correct.

4.1 The Adjudicating Authority i.e., the Principal Commissioner of Customs (Audit), Chennai passed the impugned order dated 21.09.2023 wherein it was held that the demand made under Section 28(4) of Customs Act, 1962 by invoking extended period is not correct and the demand of differential duty was re-determined as mentioned in Table II below by reducing the demand period to two years under Section 28(1) of Customs Act, 1962: -

Table II

S. No.	Description of the item imported	Assessable value	Differential duty demanded under Section 28(4) of Customs Act, 1962	Differential duty determined by Adjudicating Authority under Section 28(1) of Customs Act, 1962
1	Hub Assembly	2521514796	336622317	0
2	Components of Door Checker	656240075	90906682	34278714
3	Components of Stabilizer Link Assembly	825760115	113258241	32879334

4	Components of Ball Joint	951958712	131212323	37930447
5	Components of Tie Rod	152249849	21308203	4295908
6	Components of Hub Assembly	66822131	9408556	0
7	Components of Axle Assembly	11953434	1683043	155168
8	Parts of Differential Case Axle Assembly	42303179	5663587	1653283
TOTAL		522,88,02,291	71,00,62,952	11,11,92,854

4.2 Further, the Adjudicating Authority held that since the importer co-operated during the investigating proceedings and furnished all the documents sought by the department, as per the provisions of Section 28(2), the proper officer shall not serve any notice if duty and interest are received and no penalty shall be levied. The Adjudicating Authority appropriated the amount of Rs.23,69,30,782/- paid voluntarily by the Respondent during the course of investigation towards duty and interest.

4.3 The Adjudicating Authority held that the declared classification of the goods mentioned at S.No. 1 & 6 (Hub assembly & parts/components of Hub assembly) of Table II above is correct. In respect of the remaining goods mentioned in Table II above, the adjudicating authority ordered re-classification of the goods as per the applicable

CTH and consequently, denied the benefit of Indo Korea PTA under Notification No. 152/2009 dated 31.12.2009.

4.4 The Adjudicating Authority confirmed the demand to the extent of Rs.11,11,92,854/- under Section 28(1) read with Section 28(10B) along with interest under Section 28AA of the Customs Act, 1962.

4.5 The Adjudicating Authority dropped the proposals to confiscate the imported goods under Section 111(m) & (q) of the Customs Act, 1962 and to impose penalties under Sections 112(a)/114A & 114AA of the Customs Act, 1962.

5. As such, the Respondent has preferred the present appeal assailing the impugned order.

6.1 The Ld. Authorized Representative Shri P. Narasimha Rao, Commissioner Appeared for the appellant and submitted that the Adjudicating Authority has passed the order beyond the scope of Show Cause Notice by adjudicating the same under Section 28(2) of the Act even as the Show Cause Notice was limited to applicability of duty demand for extended period under Section 28(4) of the Customs Act, 1962.

6.2 He further submitted that Rule 3(a) of General Interpretative Rule (GIR) is applicable for classification of goods at "heading level" only and not at tariff item level. Therefore, the Adjudicating Authority has erred in applying the said rule at tariff item level.

6.3 The Ld. AR submitted that the adjudicating authority *vide* Para 53 has concluded that "the Hub assembly is not a part required to transmit the power from drive shaft and even without the Hub assembly, the axle rotates in its axis. Rotating in its axis is the function, an axle has to do and to do the same Hub assembly is not required. The function of Hub assembly is to transmit the power/rotation of the axle to the wheel. Without the Hub assembly, the axle can rotate deriving the power from the drive shaft. Hence Hub assembly cannot be considered as a part of axle, as without Hub assembly, the drive axle does its function of rotating". However, Hub assembly is an integral part of transmission and without Hub assembly power cannot be transmitted smoothly to the wheel for running the vehicle. The Hub assembly is responsible for rolling the vehicle's wheels, that is, it makes the CV joint transmit the proper torque to the wheels and sets it in motion. And the imported goods, Hub Assembly has main components as Hub. Hub

assembly is attached to the Road wheels and Road wheels also have specific tariff item i.e. 8708 70 00. Therefore, "Hub" is also included in details of explanatory notes to Subheading 8708 50 of chapter heading 8708.

6.4 It was further submitted by the Ld. AR that Compendium of Classification opinions- HS Committee 63rd Session issued by the World Customs Organization had classified Hub Assembly under Sub heading 8708.50. The adjudicating authority has disregarded the WCO recommendation on the ground that the WCO recommendations are binding only when the respective member countries accept under their law whereas no such acceptance has been given by the Indian Government.

6.5 The Ld. AR submitted that the Adjudicating Authority has stated that WHA are classified under 870899 as per US Customs Ruling but he has not specifically mentioned any US Customs Ruling. However, while going through the website of US Cross rulings, it is found that US Customs vide Cross Ruling No. NYF86222 dated 17.05.2000 has ruled that applicable subheading of the Hub Assembly, Rear Wheel will be 8708.39.5010 and applicable subheading for the Hub Assembly, Front Wheel will be 8708.99.6700. It is seen that the said ruling has classified Hub Assembly, Rear

Wheel and Front Wheel in different sub-headings in the year 2000 and has been issued prior to various recent amendments in the Harmonized System. Therefore, Adjudicating Authority has erred in relying on an old US customs CROSS Ruling issued prior to recent amendments in the Harmonized System and disregarding recent WCO recommendations issued in the year 2019.

6.6 The Ld. AR argued that the statements of officials of the Respondent under Section 108 of the Customs Act, 1962 wherein they had admitted correct classification of imported goods on the basis of the terms of the headings and relative Section or chapter notes, WCO recommendations and Notification issued by their supplier country and web catalogues were corroborative evidences.

6.7 It was submitted by the Learned AR that the Adjudicating Authority has disregarded the explanatory notes to chapter heading 8708 and wrongly concluded that Wheel Hub Assembly and parts of Wheel Hub Assembly are not classifiable under CTI 8708.50.00 and they are rightly classifiable under CTH 8708.9900. He referred to the chapter heading 8708 and explanatory notes to chapter heading 8708 which read as under: -

Heading 8708 of the Customs Tariff Act, 1975;

8708		PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADING 8701 TO 8705
8708 50 00	-	Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof

Relevant Explanatory Notes of CTH 8708;
(E) Drive-axles, with differential; non-driving axles (front or rear); casings for differentials, sun and planet gear pinions; Hubs, stub-axles (axle journals), sub-axle brackets.

The Ld. AR argued that from the above chapter heading and explanatory notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 8708 reproduced above, it is evident that the said goods, Hub is mentioned against the details of specific tariff item 8708 50. Therefore, Hub Assembly which is an assembly having Hub as its main component has a specific heading 8708 50 and cannot be classified under the residual heading.

6.8 The Ld. AR submitted that the marketing material is corroborative evidence to establish the fact that the officials of Respondent were aware with the function and location of automotive parts and their correct classification.

6.9 The Ld. AR further submitted that as per Rule 1 of General Rules for the Interpretation of the Harmonized

System, for legal purposes, classification is 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 Rules 2 to 6 of the GIR. From the Chapter heading and explanatory notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 8708, it is evident the said goods, Hub is mentioned against the details of specific tariff item 8708 50. Therefore, Hub Assembly which is an assembly having Hub as its main component has a specific heading 8708 50 00 and cannot be classified in residual heading.

6.10 It was argued by Learned AR that the findings of the Adjudicating authority that most of the multinational companies are using SAP for international transaction and description in invoice is captured as available in the SAP system cannot be justified for incomplete / inaccurate declared description while filing Bills of Entry as the Respondent subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Customs Act, 1962 and accuracy and completeness of the information in terms of Section 46(4A) of the Customs Act, 1962 in all their import declarations.

6.11 The Learned AR submitted that Korean Customs vide Notification Service No. 2020-7 dated 01.06.2020 has re-classified Wheel Hub Assembly from 8708 99 to 8708 50 on the basis of the aforesaid approved HS Classification written Opinion in WCO 63rd HS Committee. The subject goods have been imported from Republic of Korea and the PTA Certificates i.e. Indo-Korea Preferential Trade Agreement (PTA) produced by the Respondent were got issued by them by wilful mis-statement that the said goods were not classifiable under CTI 8708 50 00. Thus, these certificates are rendered null and *void ab initio* in respect of the said imported goods.

6.12 The Ld. AR further submitted that it appears that the adjudicating authority has mis-interpreted Trade Notice No. 46/2019-20 dated 17.01.2020 issued by DGFT in respect of goods under 'Others' category which is residual code category wherein the importers were also requested to file their Bills of Entry with specific codes available for the imported items under ITC (HS), 2017, Schedule I at 8 digit level and to avoid as far as possible 'others' category. Adjudicating Authority finding's that trade notice was issued for trade / statistical purpose is absolutely incorrect. The Public Notice Dated 17.01.2020 has subject as "*Mis-classification of goods under 'Others' category at the time of*

export". The Public Notice No.46/2019-20 dated 17.01.2020 was issued for non-compliance and continued misclassification by the importers even when specific classification is available. Hub Assembly being main component used in the transmission of power to the wheels to run the vehicle is included in explanatory notes to Sub-heading 8708 50 and cannot be classified under residual heading.

6.13 Regarding applicability of Section 28(4) of Customs Act, 1962, the Learned AR submitted that from the documents recovered during search by DRI, Web catalogue of Respondent and statements of various officials of Respondent, it emerged that the Respondent had imported the said goods declaring part number only, without complete description and mis-classified them under customs tariff item 8708 99 00 in order to avail undue benefit of S. No. 896 of Notifications No. 152/2009 dated 31.12.2009. Further, the Respondent intentionally did not declare the complete description of Hub Assembly though complete description was declared during export of the goods and domestic sale.

6.14 The Ld. AR averred that it was clear from the statements of various officials of the Respondent that they classified the said goods under CTI 8708 99 00 only to avail

benefit of Notifications No. 152/2009-Cus dated 31.12.2009 (as amended) and thereby, evaded customs duty. Moreover, the Respondent declared part number only and did not disclose intended function /use of the imported goods in their respective Bills of Entry to ensure correct classification. They deliberately suppressed information related to function / use and complete description of the imported goods in order to hoodwink the officers of Customs and wrongly classified them under Customs Tariff Item 8708 99 00 to avail undue benefit of Customs Notification. Such facts prove suppression of facts, wilful mis-statement on the part of Respondent, as a result of which extended period of limitation under section 28(4) is invocable in the case.

6.15 The Ld. AR pointed out that some invoices issued for the item "Hub Assembly" by ILJIN Global, Korea to ILJIN Global Pune (another group company firm) has the correct CTI 8708 50 00. However, invoices issued for the same item "Hub Assembly" by the ILJIN Global Korea to the Respondent had no Customs Tariff Item though the invoices were issued /signed by the same person. Thus, the overseas related company of the Respondent colluded and helped the importer in availing undue benefit of concessional rate of duty under Notification No. 152/2009.

6.16 The Ld. AR relied upon the following case laws in support of his request for invocation of extended period of limitation under Section 28(4) of Customs Act, 1962 in the subject case and for confiscation and imposition of penalties under the Customs Act, 1962:

- (i) Order No. 40526/2024 dated 6-5-2024 passed by CESTAT, Chennai vide in case of Sai Balaji Fancy Store Vs Commissioner of Customs, Chennai*
- (ii) Judgement of CESTAT, Chennai in the case of M/s. Kisankraft Machine Tools Pvt Ltd Vs Commissioner of Customs, Chennai [2024(3) TMI-CESTAT Chennai]*
- (iii) Judgement of CESTAT, NEW DELHI in the case of M/s. Sarvatra International Vs Commissioner of Customs, ICD Tuglakabad, New Delhi (vice versa) [2025 (2) TMI 25-CESTAT New Delhi]*
- (iv) Final Order No. 20278/2024 dated 10-12-2024 passed by CESTAT, Bangalore in case of Bosch Ltd Vs Commissioner of Customs*
- (v) Judgment of CESTAT, Mumbai (Larger Bench) in case of M/s. Tata Motors Ltd. Vs. CC,(Import), Mumbai-I [2015 (7) TMI 787-CESTAT Mumbai (LB)]*
- (vi) Judgment of CESTAT, Chennai in case of M/s. Seaswan Shipping and Logistics Vs. Commissioner of Customs, Tuticorin [2024 (1) TMI 257-CESTAT, Chennai]*

6.17 Finally the Ld. AR prayed that considering the written and oral submissions made by the Appellant, the classification proposed by the Department be upheld and the extended period of limitation under Section 28(4) of the Customs Act, 1962 be upheld and duty demand as per Show Cause Notice be confirmed along with applicable interest and

confiscation under section 111(m) and 111(q) be upheld along with penalty under Section 114A & 114AA of the Customs Act, 1962.

7.1 *Per contra*, the Ld. Advocate Ms. A. Aruna appeared and argued for the Respondent and submitted that the Ld. Adjudicating Authority has passed a well-reasoned order by upholding the original classification of Hub Assembly and their parts under CTH 8708 9900 and restricting the demand in respect of other items within 2 years period. She submitted that the ground of the appellant that the importer accepted the classification proposed by the DRI and never contested the same is not sustainable under law. She submits that it is a well settled law that in revenue matters, that too in case of interpretation of law, there is no estoppel in law. The legal right of contesting/protesting a quasi-judicial decision cannot be taken away by the consent given earlier. She submitted further that accepting or agreeing with the Department or DRI during the course of investigation cannot be taken as evidence. She cited the case laws of (i) *M/s. Vallabh Textiles Vs. Senior Intelligence Officer and Ors. [WP © No. 9834/2022 dated 20.12.2022]* wherein the Hon'ble Delhi High Court has held that payment of tax made during the conduct of search cannot be considered as voluntary payment of tax; (ii) *2016 (343) ELT*

963 (*Tri.-Del.*) wherein the Principal Bench of the Tribunal held that the acceptance does not curtail the right of the assessee to file an appeal against the said assessment; (iii) *Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs. UoI and Others* [1983 (13) ELT 1566 (S.C.)] wherein in the matter of classification of V.P.Latex, the Hon'ble Supreme Court held that there is no estoppel in law against a party in a taxation matter; and the decisions to the same effect were pronounced in *Jeyaswal Neco. Ltd. Vs. Commissioner of C.Excise, Raipur* [2015 322 ELT 587 (S.C.)] and *Tata Chemicals Ltd. Vs. Commissioner of Cus. (Preventive), Jamnagar* [2015 320 ELT 45 (S.C.)].

7.2 The Ld. Advocate submitted that both the Show Cause Notice and appeal try to classify the impugned goods based on extraneous materials and not based on GIR. The terms of heading of CTH 8708 and the wordings of the entries under it are very clear, hence there is no need to look into other extraneous materials.

7.3 It was further submitted by the Ld. Advocate that the Show Cause Notice tried to fit each item into a specific entry, when it is not possible, it defines the item as part of some other item which has a specific entry, only because it is physically connected with that item, which is

against the principles of classification. Even though the terms of heading 8708 reads 'parts and accessories', the individual entries specifically cover either a specific item or item and their parts only or assemblies or item and their parts & accessories.

7.4 The Ld. Advocate averred that the appellant has not adduced any valid evidence to show that Hub bearing Assembly is part of Axle; that both the SCN and appeal rely on the statements of the officials of the Respondent, Chartered Engineer's report, WCO committee's recommendation and Korean Customs notification, which are neither relevant to the subject issue nor reveal any technical facts of the subject item.

7.5 The Ld. Advocate contended that the ground (of the appellant) that rule 3(a) of GIR is applicable only to classifying an item upto 'heading level' only and not at tariff item level, shows the shallowness of the present appeal as Rule 6 of GIR clearly provides that the Rule 1 to 5 applies Mutatis mutandis to sub-heading level.

7.6 The Ld. Advocate submitted that the Respondent imported complete Hub Bearing Assembly for rear wheel (non-drive wheel) in CKD form and parts/Components of Hub

Assembly of front wheel (Drive wheel) i.e., Bearing & Hub bolt and had classified them under CTI 87089900. The learned Adjudicating Authority has rightly upheld the classification of those items under CTI 87089900. Hub Bearing Assembly of rear wheel connects the rear wheel with the non-driving Axle. It acts as a connector and helps in free and smooth rotation of the wheel without any friction, it plays a critical role in vehicle's Anti-lock Braking System (ABS) and Traction Control System (TCS). The drive axle Hub Assembly includes additional components to accommodate the transmission of power from the drive shaft while non-drive axle Hub Assembly only needs to support the wheel's rotation. It is structurally and functionally an independent assembly carrying out its own specific function independent of Axle and hence, cannot be treated as a part of Axle.

7.7 The Ld. Advocate further submitted that the Drive axle's function is to transmit the power received from the engine to the wheel and to do that it has to rotate on its axis deriving power from the engine through the drive shaft. Even without the Hub assembly the drive axle does its function of rotating on its axis. Therefore, the Hub assembly is not a 'part' required for the Axle to transmit the power from the drive shaft. As far as non-drive axle is concerned

there is no power transmission at all. Unlike a drive-axle, a non-drive axle has no internal components like shafts or differentials to transfer power, its primary role is to provide a mounting point for the wheels and act as a part of suspension system, allowing the wheels to move while still supporting the vehicle's weight. The impugned item Hub bearing Assembly is for non-drive wheel only. The entry 8708 5000 mentions differentials and transmission components only with Drive axles, whereas with non-drive axles nothing is added. This shows that no other component of non-drive axle is included under the entry 8708 5000. In all cases, the Hub bearing assembly is a functionally independent assembly, carrying out its own function independent of Axle and hence cannot be classified under CTI 87085000.

7.8 The Ld. Advocate contended that the appeal is devoid of any technical details. She submitted that the appellant in para 5 of Grounds of appeal says that Hub Assembly is the integral part of transmission and without Hub Assembly power cannot be transmitted to the wheel for running the vehicle. If this contention of the appellant is applied to axle, then the axle and differential themselves will become part of transmission equipment and will fall under CTH 8483. In an automobile, the power generated in the

engine is transmitted through various parts till it reaches the wheel/tyre, because of that it cannot be said that all the parts in that line are parts of transmission. If such analogy is taken then all the parts become parts of engine, which is the ultimate and core component of a vehicle.

7.9 Further, the Ld. Advocate argued that the appellant Department has got confused with Explanatory Notes and WCO Recommendation. Both are different. Explanatory Notes are common for all member countries and it is having persuasive value throughout all WCO countries and even in India, the Hon'ble Supreme Court has held that it has persuasive value and when there is ambiguity, the Explanatory Notes may be applied. Whereas, the WCO Recommendation and WCO HS Committee Opinions are neither binding nor have persuasive value, unless or otherwise it has been accepted and notified by the member countries.

7.10 The Ld. Advocate cited the argument of Customs as extracted in para 9 of the Order of the Hon'ble High Court of Madras in the case of *L & T Metro Rail and Hyundai Rotem Company Vs. The Commissioner of Customs and ADG, DRI-Mumbai in WP No. 40081 & 40082 of 2015*, to submit that the Customs Department has always taken the stand that

the WCO opinion are not binding and the classification of the commodity has to be decided taking into consideration the statutory rules for interpretation, chapter notes, section notes.

7.11 The Ld. Advocate submitted that in respect of import of Hub Assembly under Courier mode through IGI Airport, Air Cargo Complex, New Delhi, the Respondent had classified the subject Hub Assembly under CTI 9804 9000. Whereas the Customs officer at New Delhi ACC, had objected to the same and classified the said item under CTI 8708 9900 and also passed an Order-in-Original SPOT AO No. 2015 dated 27.12.2018, which order has been accepted by the Commissioner of Customs. It is settled principle that department cannot take a different view for the same product. In this regard, she relied on the decision in the case of *Mercantile Express Co. Ltd. v. Assistant Collector of Customs*, [1978 (2) ELT 552 (Cal)], wherein Hon'ble High Court has categorically held that: -

“The Customs now say that they are not bound by their previous decisions. Whether the doctrine of precedents applies in its full rigour to Administrative Agencies and Officers, and whether a reasonable latitude should be given to them or administrative tribunals to correct or modify their previous decisions may still remain a debatable controversy in the world of law; nevertheless I am clearly of the opinion that neither the Appraiser nor the Collector of Customs can change his mind from time to

time in respect of the same articles by assessing them in the case of one importer under one section and then assessing them for another importer under different section. To allow the Customs to do so will lead to utter confusion in the very basis and principles of taxation and grave uncertainty in business and foreign trade of India.”

7.12 The Ld. Advocate referred to the US Cross Ruling NYF 86222 dated 17.05.2000 to submit that the Hub assembly of drive wheel are clearly classified under 870899 (others) and only the non-drive wheel Hub assembly are classified under 870839. Even before 2000, the HS code 8708 99 covered “other” items and 8708 39 covered other parts of Brakes. Hence it is obvious that even the non-drive Hub assembly is not classified as part of axles. She submitted further that in the US Cross Ruling after 2000, viz., in N276944 dated 15.07.2016, casting Hub assembly from South Korea has been classified under 8708 99.6890.

7.13 The Ld. Advocate averred that classification is a quasi-judicial function and that the Appellant failed to appreciate the fact that the statement of a person cannot decide the classification and such a method is not allowed under GIR.

7.14 The Ld. Advocate argued that the interpretation and the reliance placed by the appellant on the Explanatory

note (E) to CTH 8708 is not correct. "Hub" is a general item which means a center of activity. It is a center or a place where various parts are joined/meet/fixed together. Whereas Hub bearing Assembly is different; it has a bearing, Hub nut, Hub bolt. "Hub" is figuring in other CTHs also like, 8517, 8714 and 8474. Hence, just figuring of the term "Hub" in Explanatory Notes to 8708 does not in any way suggest classification of Hub assembly. If the imported item is a simple Hub, then it may denote that. Further, the said Explanatory Note does not specifically state that the "Hub" mentioned therein is part of Axle of 8708 5000, as the Explanatory Notes does not give sub heading specific explanation. Further, the housing in the Axle assembly is a Hub, where various parts/components of the Axle assembly are joined / housed.

7.15 The Ld. Advocate referred to reliance placed by the Appellant on classification in Korean Customs notification dated 01.06.2000 and submitted that even the classification given in a notification issued by Indian Customs cannot be a ground to classify an item under Customs Tariff and such method is not allowed under GIR. Therefore, it is very strange to rely upon the notification of Korean Customs.

7.16 The Ld. Advocate contended that various marketing/commercial websites don't show the wheel Hub assembly as part of Axle. Regarding DGFT Trade Notice No. 46/2019-20 dated 17.01.2020, she submitted that when there is no specific entry provided for an item, the same has to be classified under the residual entry and therefore, the said DGFT Trade Notice is not applicable to the present case.

7.17 The Ld. Advocate averred that a number of Bills of Entry were subjected to re-assessment and/or examination and after thorough verification of classification and applicability of the notification benefit the proper officers have allowed clearance of the subject goods. Further all Bills were subjected to verification at the time of giving OOC, which is not a simple and empty procedure. It is a quasi-judicial order passed under Section 47 of the Customs Act, 1962. When all the facts were before the officers and they have verified the description, classification and notification benefit and endorsed the COOs in respect of all the Bills of Entry, none of the essential ingredients of Section 28(4) could be established in this case.

7.18 The Ld. Advocate further submitted that the classification of CTH 8708 5000 given in the invoice raised by the same supplier to M/s. ILJIN Automotive Pvt. Ltd., Pune

was a mistake made by the supplier due to the fact that those invoices were for the prototypes produced by the Development Product Management Department, whose products were handled by Development Team. Further, the classification given in the invoices pertaining to supplies made to Pune factory cannot be a ground to decide the classification. The Appellant department relying on the classification given in the invoice of supply made to Pune factory is not a method prescribed under law, viz. the GIR.

7.19 The Ld. Advocate submitted that the Assessment Group or the Examination officers had never asked for any literature or write-up in respect of Bills of Entry where the description was given in Alpha-numeric form.

7.20 The Ld. Advocate argued that the subject SCN has relied on the recommendations made by the 63rd Session of HS Committee of WCO, wherein the WCO has given an opinion to list 2nd Generation Tapered Roller Bearing Hub Unit under sub-heading 8708 50. In this regard, she submitted that

- i. It is only a recommendation and an opinion of the WCO and hence the WCO in the said opinion itself has given an "advice" as below:

"Parties seeking to import or export merchandise covered by a decision are advised to verify the implementation of the decision by the importing or exporting country, as the case may be".

- ii. The WCO, on its recommendations related to the Harmonised System Convention, has categorically stated that such recommendations do not bind the contracting parties to the HS Convention, except where it concerns a recommendation to amend the Harmonised System (that is HS code) itself. Subject recommendation of the WCO is not for changing or amending the HS Code. It further says that when a Custom Administration (of a contracting party/country) adopts the recommendation this administration obligates itself to implement the recommendations by taking necessary steps at national level; e.g. by enacting new national legislation or by amending existing law.
- iii. The HS Committee recommendations/opinions are not binding on WCO contracting parties/countries. Even the 'binding recommendation' of amendments to Harmonised System (that is HS code/Tariff) are implemented or made applicable to India by amending the Customs Tariff Act by way of amendment. For example when the HS code was widely amended by the WCO during June 2019, the same was made applicable

to India by amending the First Schedule to CTA, 1975 through Finance Bill, 2021, with effect from 01.01.2022. This view is further strengthened by the fact that the USA, which is a contracting party to WCO in their Harmonised Tariff Schedule of 2023 itself classified double flanged wheel Hub units under sub-heading 8708.99 and not under 8708.50 as recommended by the WCO.

- iv. Only the changes in Explanatory Notes are not required to be made applicable through law, since the explanatory notes are not having statutory implication and they are only of persuasive value. In this regard reliance already placed on the case of L & T Metro Rail – Hon'ble High Court of Madras in WP No. 40081 & 40082 of 2015 is reiterated.
- v. Hence reliance on WCO recommendation by the appellant and the SCN is not tenable as has been held by the Adjudicating Authority.

7.21 The Ld. Advocate further submitted that as number of Bills of Entry were subjected to re-assessment and examination, invocation of extended period under Section 28(4) is against law and facts of the case, as held by the Hon'ble CESTAT and higher judicial fora. She cited the judgment of this Tribunal in the case of *M/s. BMW India Pvt.*

Ltd. Vs. Commissioner of Customs, Chennai-V in Final Order No. 42430/2018 dated 17.09.2018 wherein it was held that when number of Bills of Entry were subjected to re-assessment and examination, extended period for duty demand under Section 28(4) is not tenable.

7.22 It was argued by the Learned Advocate that the case laws relied on by the appellant in are on different ratio and not applicable to the subject issue as explained below: -

i. *Sai Balaji Fancy Store – Final Order No. 40526/2024 –*

In this case the goods were mis-declared to circumvent the policy condition. Hence, it is not applicable to the subject case.

ii. *Kisankraft [2024(3) TMI/ 188-CESTAT Chennai]–* In

this case the goods were mis-declared as 'Agricultural Reaper' as against actual description of 'Brush Cutter' and further the issue of classification of Brush Cutter under CTH 8467 was decided by the Department by issuing order, having knowledge on the said classification of the said item, the party therein mis-classified the goods. Hence, the same is on different ratio.

iii. *M/s. Sarvatra International Vs. Commissioner of Customs-ICD, Tuglakabad-* It is a case of mis-declaration of description as 100% Polyester knitted

fabric as against the actual description of "100% polyester knitted cut pile fabric" (which attracted specific rate of duty), to classify the goods under lesser rate of duty.

iv. *Bosch Ltd. Vs. Commissioner of Customs in F.O. No.*

20278/2024 – It is also a case of mis-declaration of description as "navigation system" as against the actual description of "infotainment system".

v. *Tata Motors Ltd. Vs. CC, (Import), Mumbai* – It is a

case of mis-declaration of description as "non-alloy steel coils" as against the actual description of "alloy steel coils". Hence, it is on different ratio than the subject case.

vi. *Seaswan Shipping and Logistics Vs. Commissioner of*

Customs, Tuticorin – In this case even though the issue involved is classification of exported 'safety matches', the entry under heading 3605 is categorical and limited to two entries. Out of which, 'safety matches' have a very specific entry at 3605 0010.

Whereas in the subject case, there is no specific entry and the heading 8708 is one of the most complicated heading in the entire first schedule. Further even proper officers at many times subjected the imports for re-assessment and examination and approved the classification of 8708 9900 for the Hub assembly and

their parts. Hence, the said case law is not of same ratio as that of the subject case.

8. The Learned Advocate prayed that the appeal filed by the Department may be dismissed and the impugned order may be upheld.

9. We have carefully considered rival submissions and examined the evidences available on Appeal records including the case laws relied upon.

10. We find that the Respondent/importer, who have been in the field of manufacture of automobile parts/components have been importing subject items from 1997 onwards and thus had imported Hub Assembly, parts of Hub assembly, parts/components of door, stabiliser link assembly, ball joint, and Tie rod by classifying them under CTI 8708 9900 with BCD 5% under Customs Notification No. 152/2009 (Sl. No. 896) on the strength of Country of Origin Certificates (COOs) issued by the exporting country viz., Korea under Indo-Korea Preferential Trade Agreement. Based on the investigation by DRI-Indore, subject SCN dated 20.12.2022 was issued proposing classification of the subject items under CTI 8708 5000, 8708 5000, 8708 2900, 8708 8000, 8708 8000 and 8708 9400 respectively and thereby

denying the benefit of the subject notification and proposing merit rate of BCD @ 15%. The Respondent contested the same before the Original Adjudicating Authority, who had passed the impugned order dated 29.09.2023 wherein the classification of the four items viz., parts/components of door, stabiliser link assembly, ball joint, and Tie rod have been upheld as proposed by DRI, Indore in the SCN. However, the duty demand in respect of those items had been restricted to 2 years under Section 28(1) of Customs Act, 1962. In respect of Hub assembly and its parts, the OAA held that the same are classifiable under CTI 8708 9900 and are eligible for 5% BCD as originally assessed and accordingly dropped the duty demand against the said two items.

11. Being aggrieved by the impugned order, as far as the classification of Hub assembly and its parts and restriction of duty demand to 2 years' period is concerned, the Revenue has filed the present appeal. Whereas, the Respondent/importer has not filed any appeal against the impugned order dated 21.09.2023 as such revised classification of four items viz., parts/components of door, stabiliser link assembly, ball joint, and tie rod has attained finality.

12. Thus, the issues for consideration in this Appeal are: -

- i. Whether "Hub Assembly" and "Parts/components of Hub Assembly" should be classified under CTH 87089900 as contended by the Importer / Respondent or under CTH 87085000 as reclassified by the Revenue?
- ii. Whether the imported goods are liable for confiscation under Section 111(m) and 111(q) of the Customs Act, 1962?
- iii. Whether demand of duty should be restricted to the normal period of 2 years under Section 28(1) of the Customs Act, 1962 or extended to 5 years under Section 28(4) of the Customs Act, 1962? and,
- iv. Whether penalties are imposable under Section 114A, Section 114AA and Section 112(a) of the Customs Act, 1962?

13.1 The first issue to be decided is whether "Hub Assembly" and "Parts/components of Hub Assembly" should be classified under the CTH 87089900 or under CTH 87085000 of Customs Tariff Act, 1975.

13.2 The Appellant's grounds for assailing the classification of "Hub Assembly" and "Parts/components of

Hub Assembly” under CTH 87089900 in the impugned order and for re-classifying the goods under CTH 87085000 are that: -

- i. Rule 3(a) of General Interpretative Rule (GIR) is applicable for classification of goods at “heading level” only and not at tariff item level. Therefore, the Adjudicating Authority has erred in applying the said rule at tariff item level.
- ii. Hub assembly is an integral part of transmission and without Hub assembly power cannot be transmitted to the wheel for running the vehicle. The Hub assembly is responsible for rolling the vehicle’s wheels, that is, it makes the Constant Velocity (CV) joint transmit the proper torque to the wheels and sets it in motion. Hub is the main component of Hub assembly. Hub assembly is attached to the Road wheels and Road wheels also have specific tariff item i.e. 8708 70 00. Therefore, “Hub” is included in details of explanatory notes to Subheading 8708 50 of chapter heading 8708.
- iii. Compendium of Classification opinions- HS Committee 63rd Session issued by the World Customs Organization had classified Hub Assembly under Sub heading 8708.50.
- iv. Adjudicating Authority has erred in relying on an old US customs Cross Ruling issued prior to recent

amendments in the Harmonized System and by disregarding recent WCO recommendations issued in the year 2019.

- v. Chapter heading 8708 and explanatory notes to chapter heading 8708 read as under: -

8708		PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADING 8701 TO 8705
8708 50 00	-	Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof

"Relevant Explanatory Notes of CTH 8708;

(E) Drive-axles, with differential; non-driving axles (front or rear); casings for differentials, sun and planet gear pinions; Hubs, stub-axles (axle journals), sub-axle brackets."

From the chapter heading and explanatory notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 8708 reproduced above, it is evident the said goods, 'Hub' is mentioned against the details of specific tariff item 8708 50 00. Therefore, Hub Assembly which is an assembly having Hub as its main component has a specific heading 8708 50 00 and cannot be classified under the residual heading.

- vi. As per Rule 1 of General Rules for the Interpretation of the Harmonized System, for legal purposes, classification is 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 Rules 2 to 6 of the GIR. From the Chapter heading and explanatory notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 8708, it is evident the said goods, Hub is mentioned against the details of specific tariff item 8708 50 00. Therefore, Hub Assembly which is an assembly having Hub as its main component has a specific heading 8708 50 00 and cannot be classified in residual heading.

vii. Korean Customs *vide* Notification Service No. 2020-7 dated 01.06.2020 has re-classified Wheel Hub Assembly from 8708 99 to 8708 50 on the basis of the aforesaid approved HS Classification written Opinion in WCO's 63rd HS Committee. The subject goods have been imported from Republic of Korea and the PTA Certificates i.e. Indo-Korea Preferential Trade Agreement (PTA) produced by the Respondent were got issued by them by wilful mis-statement that the said goods were not classifiable under CTI 8708 50 00. Thus, these certificates are rendered null and void ab initio in respect of the said imported goods.

On the contrary, the Respondent contended that the Hub assembly is not a part of axle and it is a separate item; that as per the terms of entry of CTI 8708 5000, it does not cover

Hub assembly and that the WCO HS Committee recommendations are not binding on Indian Customs as it has not yet been accepted by the Authorities in India. They have also relied upon various US Cross Rulings to support the classification of Hub assembly an parts under CTI 8708 9900.

13.3 We find that almost all the parts and accessories of an automobile, except, which are specifically covered under other headings/chapters are covered under CTH 8708. As submitted by the Respondent, a car contains around 30,000 parts, out of which 1800 parts are significant and it is not possible to give separate entry for each and every part of a car. The heading 8708 has been constructed in such a way to accommodate all those parts. At this juncture it is essential to examine how heading 8708 of the Customs Tariff reads: -

HS Code	Item Description
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705
8708 10	- Bumpers and parts thereof :
8708 10 10	--- For tractors
8708 10 90	- Other parts and accessories of bodies (including cabs) :
	- Other parts and accessories of bodies (including cabs) :
8708 21 00	-- Safety seat belts
8708 29 00	-- Other
8708 30 00	- Brakes and servo-brakes; parts thereof
8708 40 00	- Gear boxes and parts thereof

8708 50 00	- Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof
8708 70 00	- Road wheels and parts and accessories thereof
8708 80 00	- Suspension systems and parts thereof (including shock absorbers)
	- Other parts and accessories:
8708 91 00	-- Radiators and parts thereof
8708 92 00	-- Silencers (mufflers) and exhaust pipes; parts thereof
8708 93 00	-- Clutches and parts thereof
8708 94 00	-- Steering wheels, steering columns and steering boxes; parts thereof
8708 95 00	-- Safety airbags with inflator system; parts thereof
8708 99 00	-- Other

It can be seen from the above that there are 15 entries and out of which 8708 9900 is a residual entry for the heading 8708. All other entries specifically cover certain parts viz., Bumper, parts of Bodies, Breaks, Gear Boxes, Axle Wheels, Suspension System, Radiators, etc. The issue in hand involves two entries viz., (i) 8708 5000 - "Drive Axle with differential, whether or not provided with other transmission components; non-driving axles; parts thereof" and 8708 9900 - "others", which covers all the parts which are not covered by the preceding entries of CTH 8708. We find that only the goods which do not fall in 870810 to 8708 9500, will fall under CTI 8708 9900. Hence it is imperative to rule out all those entries before coming to CTI 8708 9900.

13.4 It is essential to understand how the Hub Assembly works. Hub assembly also referred to as wheel Hub assembly or wheel Hub unit or Hub and bearing Assembly is an automotive part used in most cars, passenger vehicles that keeps wheel attached with the vehicle and mounted on axles. It is a forged or cast piece of metal that an automobile wheel mounts to. Wheel bearing assemblies typically fit inside the center of the wheel Hub to allow free rotation around an axle shaft or spindle. Bearing assemblies that mount inside a wheel Hub are called wheel Hub bearing assemblies. We find that entry 8708 5000 covers not only Axles - Driving and non-driving- but also parts of those axles. Hence it has to be seen as to whether the Hub assembly is a part of Axles and if the answer is in the affirmative, then it will fall under CTI 8708 5000 and if the answer is in the negative, then obviously it will fall under CTI 8708 9900, as there is no other entry specifically which covers Hub assembly.

13.5 We find that the Respondent in their reply to the subject SCN contended that the 'Hub bearing' connects the rear wheel and non-drive axle together, and the road wheel is connected to the Hub assembly. It is obvious from the above that the purpose of Hub assembly is to rotate along with axle so that the power from engine is transmitted to the

road wheel and hence the Hub assembly does the same function as the one done by the axle. Hence, we find that Hub assembly is part and parcel of the Axle. Without Hub assembly, the purpose and function of the axle cannot get completed. Therefore, the Hub assembly is not a separate part carrying out a function independent of the axle. The function of both axle and Hub assembly is same. Having come to the conclusion that Hub assembly is a part of Axle, we hold that the same has to be classified as part of axle.

13.6 We find that the above conclusion is also strengthened by the Explanatory Notes to CTH8708. The Explanatory Notes to heading 8708 grouped "Hub" along with the axle and its parts. Even though the Explanatory Notes are only heading specific, the explanatory notes to 8708 grouped the 'Hub' along with axles. Hence it is obvious that the explanatory notes treat the "Hub" as part of axle. It is well settled law that when the terms of heading or entry is not specific and if there is any ambiguity in classifying an item, the Explanatory Notes have to be applied. In *Commissioner of Central Excise vs M/s Uni Products India Ltd. decided on 1 May, 2020 [AIR 2020 SUPREME COURT 2332, AIRONLINE 2020 SC 554]*, the Hon'ble Supreme Court held as follows: -

"6. Reference has been made before us to "Harmonized Commodity Description and Coding System", Explanatory Notes issued by the World Customs Organisation (2002). These Notes, termed HSN Explanatory Notes have been referred to by the learned Counsel for both the parties. Strong persuasive value of these Explanatory Notes has been recognised by this Court in the cases of CCE vs. Wood Craft Products Ltd. [(1995) 3 SCC 454], Collector of Central Excise vs. Bakelite Hylam [1997 (91) E.L.T. 13 (S.C.)], Collector of Customs vs. Business Forms Ltd. [(2005) 7 SCC 143] and Holostick India Ltd. vs. Commissioner of Central Excise [(2015) 7 SCC 401]."

Further, we find that the WCO HS Committee recommendation is categorical and it classifies the Hub assembly under HS code 8708 50. World Customs Organization's Harmonized System Committee in its 63rd session in March 2019 concerning amendments to the Harmonized System compendium of classification opinions applicable as of 1st June 2019 has opined that Flanged tapered roller bearing Hub unit for inner ring rotating type, Bearing Hub unit for outer ring rotating type, Finished outer ring for a Flanged Tapered Roller Bearing Hub unit to be classified under CTH 8708 50. However, it has been advised therein that parties seeking to import or export merchandise covered by a decision are to verify the implementation of the decision by the importing or exporting country, as the case may be. Thus, the explanatory notes have got immense

persuasive value in deciding the matters of classification of any imported product. We do not find any force in the argument of the Respondent that the said WCO recommendation is not binding on the Indian customs, that too when India is a member country of WCO and the CBIC has not issued any clarification to the contrary, with respect to the said recommendations. We also find that the Korean customs has issued a Notification No. 2020-17 dated 01.06.2020 classifying Hub assembly under HS Code 8708 50 from where the goods impugned are being imported.

13.7 Coming to classification of parts of Hub-assembly, we find that part of a part has to be classified as part of the main item. Accordingly, the parts of Hub-assembly also has to be classified along with Hub-assembly.

13.8 In the light of the forgoing discussion and findings, we hold that the Hub-assembly and its parts are rightly classifiable under CTI 8708 5000 and accordingly not eligible for 5% BCD under CN No. 152/2009 (Sl.No. 896) and thus the appeal of the Appellant-Department succeeds, as far as classification of Hub-assembly and their parts is concerned. So, ordered accordingly.

14.1 In order to decide about invoking extended period in this appeal, it is feasible first to evaluate the provisions of Section 28(4) of Act during the relevant period which reads as under: -

"(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

14.2 We find that the Appellant-Department raised the following grounds to invoke the extended period: -

- i. Korean Customs Notification No. 2020-17 dated 01.06.2020 classified Hub assembly under 8708 5000 as part of Axle in pursuance to WCO's Harmonized System Committees' recommendation in its 63rd session as applicable w.e.f. 01.06.2019.

- ii. The Respondent purportedly given Alpha-numeric description and not given complete description in the Invoices and Bills of Entry filed.
- iii. In 3 invoices raised by Korean supplier to Pune office of the importer given the HS code 8780 5000 for Hub-assembly.
- iv. In the export invoice and local sales invoice, the Respondent has given complete description.

On the contrary, we find that the Respondent argued that they have been importing subject items from 1997 and they have been importing subject goods during both Pre-SAP and post-SAP period. It is noted that the Respondent has implemented SAP in its units in 2016. When they were operating under SAP the description in invoice is captured from SAP system, when it was raised by the supplier. In respect of export to Turkey, the buyer was requesting to give the description and hence those invoices were not raised through SAP system and in respect of local sales also the invoice are not raised through SAP system and hence they do not contain alpha-numeric description. They also contended that they have been classifying subject items under same entry before and after the issuance of CN No. 152/2009 dated 31.12.2009 which accords concessional rate of duty for imports from Korea and also under same entry prior to self-assessment and post-introduction of self-

assessment. Further, we have taken note of Respondent's submission that around 48 Bills of Entries covered by the impugned order were subjected to re-assessment and examination by the officers of the appellant department and the Country of Origin Certificates in respect of subject imports have been verified and defaced. The Respondent also argued that in one of their import of Hub-assembly through courier mode in IGI Airport, New Delhi, the import was adjudicated by classifying the same under 8708 9900.

14.3 We find from the above unassailable facts, which are not controverted by the Appellant-Department, we have to conclude that there is no misdeclaration or *mala fide* intention on the part of the Respondent in classifying subject items under CTI 8708 9900. All the facts have been presented before the officers of the Department and the Respondent have been classifying the subject goods under the same CTI 8708 9900 both prior and post issuance of CN No. 152/2009 under PTA with Korea and also prior and post introduction of self-assessment. It is not disputed that the importer has been importing these goods *viz.*, Hub Assembly and its parts since 1997 onwards adopting the classification for these goods under CTI 8708 9900. This clearly proves the fact that there is no ground shown for the Original Adjudicating Authority to invoke the extended period under

sub-section (4) of the Section 28 of Customs Act 1962. It is also a fact that in the Country of Origin (COOs) issued by the Korean Authority, the items have been classified under HS code 8708 99. Though the Korean Notification has been issued on 01.06.2020, the Respondent has been importing the subject items under 8708 99 and the COOs issued indicated the classification as 8708 99.

14.4 We refer to the decision of the Tribunal Chennai which has decided against the Revenue on the issue of invoking extended period relating to classification of PV Sheet availing the benefit of the same FTA Notification No. 152/2009 in identical circumstances in the case of *M/s. Hyundai Transys India Pvt. Ltd - Final Order No. 40805/2025 dated 28.08.2025*.

14.5 The Appellant Department has relied upon three imports of Hub Assembly by the Respondent's office to allege misdeclaration as the classification mentioned in these three invoices was 8708 50. We find that the Respondent has submitted that only prototypes of Hub Assembly were imported for their R&D purpose but the adopted classification confirmed to be CTI 8708 9900. Further, the fact that WCO Opinion has been issued in respect of goods classifiable under CTH 8708 only on 01.06.2019, together with the fact

that there are several cases of interpretation of goods classifiable CTH 8708 by taking into consideration relevant chapter notes, section notes and GIR shows that classification of goods falling under CTH 8708 has always been highly interpretational in nature. Further, 48 bills of entry out of the total 482 Bills of Entry covered by the Show Cause Notice were reportedly subjected to re-assessment and/or examination by officers, covering all the impugned items, whereby the officers have verified the classification and the applicability of the notification claimed by the Respondent and not raised any objection. The CTI 8708 9900 declared by the Respondent is in accordance with the CTI determined in Order-in-Original SPOT AO No. 2015 dated 27.12.2018 by the original adjudicating authority at Air Cargo Complex, New Delhi New Delhi, which order has been accepted by the Commissioner of Customs.

14.6 Under the above circumstances, the Respondent's act of classifying the goods under 8708 9900 cannot be treated or as amounting to suppression of facts or willful mis-statement or collusion, as there is no *mala fide* intention established against the Respondent. In this regard, we rely on the decisions rendered in the case of *Uniworth Textiles Ltd Vs. Commissioner of Central Excise, Raipur*,

[2013 (288) ELT 161 (SC)] and other precedent case laws as elaborated below.

14.7 In *Commissioner of Customs, Central Excise and Service Tax, Bangalore vs. M/s. Northern Operating Systems Pvt. Ltd.* decided on 19 May, 2022, the Hon'ble Supreme Court held as follows: -

"Invocation of the extended period of limitation

62. *The revenue's argument that the assessee had indulged in wilful suppression, in this court's considered view, is insubstantial. The view of a previous three judge ruling, in Cosmic Dye Chemical v. Collector of Central Excise [(1995) 6 SCC 117 = 1995 (75) E.L.T. 721 (S.C.)] - in the context of Section 11A of the Central Excise Act, 1944, which is in identical terms with Section 73 of the Finance Act, 1994 was that:*

"Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful."

63. *This decision was followed in Uniworth Textiles v. Commissioner of Central Excise where it was observed that "(t)he conclusion that mere non- payment of duties is equivalent to collusion or willful misstatement or suppression of facts" is "untenable". This view was also followed in Escorts v. Commissioner of Central Excise [(2015) 9 SCC 109 = 2015 (319) E.L.T. 406 (S.C.)], Commissioner of Customs*

v. Magus Metals [(2017) 16 SCC 491 = 2017 (355) E.L.T. 323 (S.C.)] and other judgments.”

64. The fact that the CESTAT in the present case, relied upon two of its previous orders, which were pressed into service, and also that in the present case itself, the revenue discharged the later two show cause notices, evidences that the view held by the assessee about its liability was neither untenable, nor mala fide. This is sufficient to turn down the revenue’s contention about the existence of “wilful suppression” of facts, or deliberate misstatement. For these reasons, the revenue was not justified in invoking the extended period of limitation to fasten liability on the assessee.”

14.8 In *CCE vs. Chemphar Drugs & Linments, 1989 (40) ELT 276 (SC)*, the Hon’ble Supreme Court has laid down that in order to make the demand for duty sustainable beyond a period of six months and up to a period of five years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability.

14.9 Further, in *Tamilnadu Housing Board vs. CCE, Madras*, [1994 (74) ELT 9], the Hon'ble Supreme Court held as follows: -

"3. Section 11A of the Act empowers the Central Excise Officer to initiate proceedings where duty has not been levied or short-levied within six months from the relevant date. But this period to commence proceedings under proviso to the Section stands extended to five years if the duty could not be levied or it was short-levied due to fraud, collusion, wilful misstatement or suppression of facts etc. The proviso to Section 11A reads as under :

"Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder, with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "Central Excise Officer", the words "Collector of Central Excise" and for the words "six months", the words "five years" were substituted."

A bare reading of the proviso indicates that it is in nature of an exception to the principal clause. Therefore, its exercise is hedged on one hand with existence of such situations as have been visualised by the proviso by using such strong expression as fraud, collusion etc. and on the other hand it should have been with intention to evade payment of duty. Both must concur to enable the Excise Officer to proceed under this proviso and invoke the exceptional power. Since the proviso extends the period of limitation from six months to five years, it has to be construed strictly. The initial burden is on the Department to prove that the situations visualised by the proviso existed. But once the Department is able to bring on record material to show

that the appellant was guilty of any of those situations which are visualised by the Section, the burden shifts and then applicability of the proviso has to be construed liberally. When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. In Padmini Products v. Collector of Central Excise 1989 (43) E.L.T. 195, it was held that where there was scope for doubt whether case for duty was made out or not, the proviso to Section 11A of the Act would not be attracted."

14.10 Further, in *Pushpam Pharmaceuticals Company vs. CCE, Bombay*, [1995 (78) ELT 401 (SC)], the Hon'ble Supreme Court held as follows: -

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed

deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

14.11 The ratio of these laws is squarely applicable to the facts of the case as the Respondent had been importing these goods classifying under CTI 8708 9900 since 1997. The disputed period in the appeal is from December 2017 to April 2022. The concessional benefit of FTA under CN Notification No. 152/2009 dated 31.12.2009 was being availed with effect from the year 2010 onwards under Indo Korea Preferential Trade Agreement. For more than a decade, the Respondent was importing these goods adopting the classification under CTI 8208 9900 and the same classification was mentioned in the County of Origin Certificates issued. Reportedly, more than 48 consignments were examined by the officers but no doubt has ever been pointed out. Classification of imported goods is complex and in certain cases, it can be highly interpretational like in this case. We have taken note of WCO's HSN Committees' suggested classification Hub Assembly and some of the parts under 8708 50 only in March 2019 which coming into effect from 01.06.2019. As such the allegation of misdeclaration or any willful intent to evade duty against the Respondent Importer cannot be sustained in the facts of this case.

15. We have also examined the case laws relied on by the Ld. Authorized Representative Mr. P. Narasimha Rao relating to invoking extended period which are distinguishable as discussed below: -

- i. *Final Order No. 40526/2024 dated 06-05-2024 passed by CESTAT, Chennai* in the case of *Sai Balaji Fancy Store Vs. Commissioner of Customs, Chennai* is a case of import of complete plastic toys in semi knocked down (SKD) condition by mis-declaring the same as parts of plastic toys with the intention to circumvent compulsory Bureau of Indian Standards (BIS) certification compliance by suppression of facts. In the present case the Respondent has not imported complete items by suppressing any facts or by mis-declaring the same as "Parts". Further, the Respondent has not violated the import policy in respect of the impugned imported goods.
- ii. Judgement of CESTAT, Chennai in the case of *M/s. Kisankraft Machine Tools Pvt. Ltd. Vs. Commissioner of Customs, Chennai [2024 (3) TMI-CESTAT Chennai]* is a case of mis-declaration of description of 'Brush Cutter' as 'Agricultural Reaper' and continued classification of goods under CTH 8443 even after the matter was decided against the appellant by the original adjudicating authority and the lower appellate authority

by upholding the view of Revenue that the goods are appropriately classifiable under CTH 8467. In para 15 of the order cited, the CESTAT held as follows:

"if the goods actually imported are more in number or the actual description or CTH as determined by an order under the Act is different from what is declared in the Bill of Entry, the importer would have made a mis-declaration. If this is done knowingly it's a willful misstatement."

In para 19.2 of the above order, it is held as follows:

"A valid order determining the CTH of the imported goods and a statutory document filed for the same goods knowingly misstating the CTH cannot coexist legally and be recognised in law to be valid."

In the instant case, there is no mis-declaration of description of goods and the CTH declared by the Respondent is not contrary to the CTH determined by any original authority or appellate authority before filing of bills of entry in respect of the impugned goods. In fact the CTI 8708 9900 declared by the Respondent is in accordance with the CTI determined in Order-in-Original SPOT AO No. 2015 dated 27.12.2018 by the original adjudicating authority at Air Cargo Complex, New Delhi New Delhi, which order has been accepted by that Commissioner of Customs.

iii. Judgement of CESTAT, New Delhi in the case of *M/s. Sarvatra International Vs Commissioner of Customs, ICD*

Tuglakabad, New Delhi (vice versa) [2025 (2) TMI 25-CESTAT New Delhi] It is a case of mis-declaration of description of "100% Polyester Cut Pile Fabric" as "100% Polyester Knitted Fabric" to mis-classify the goods. The Respondent in the present case has not mis-declared the description of goods.

iv. Final Order No. 20278/2024 dated 10-12-2024 passed by CESTAT, Bangalore in case of Bosch Ltd Vs Commissioner of Customs - It is a case of mis-declaration of description of "infotainment system" as "navigation system". There is no such mis-declaration by the Respondent in the present case.

v. Judgment of CESTAT, Mumbai (Larger Bench) in case of *M/s. Tata Motors Ltd Vs. CC, (Import), Mumbai-I 2015 (7) TMI 787-CESTAT Mumbai (LB)* - It is case of mis-declaration of description of "alloy steel coils" as "non-alloy steel coils". There is no allegation or finding of mis-declaration of description in the present case.

vi. Judgment of CESTAT, Chennai in case of *M/s. Seaswan Shipping and Logistics Vs Commissioner of Customs, Tuticorin [2024 (1) TMI 257-CESTAT, Chennai]* - It is a case of dispute which arose out of imposition of penalties under Sections 114 and 114AA of the Customs Act, 1962 and the undisputed facts among the rival parties therein is that the classification of the goods

declared in the Bill of Lading and in Bill of Entry is 'Safety Matches' with CTH 3605 0090 whereas there is only one specific heading for "Safety Matches" in the Customs Tariff and in the MEIS schedule i.e. CTH 3605 0010. Revenue's case was that "the classification of the goods declared in the Bill of Lading and in Bill of Entry is 'Safety Matches' with CTH 36050090, when there is only one specific heading for "Safety Matches" in the Customs Tariff and in the MEIS schedule i.e. CTH 360500 10. Hence there is no ambiguity or question of interpretation and it was only a case of misdeclaration. The Exporter was earlier regularly exporting the said goods under CTH 360500 10." In the present case, there is no specific heading and the Respondent was regularly importing the impugned goods under CTI 87089900 for more than 10 years.

In the case law cited, it is held as under:

"The onus of classification of the product especially when the issue involves interpretation and complex questions of law is on the proper officer of customs only."

16. At the outset, Ld. AR has raised an objection that the SCN was issued under Section 28(4) and confirmation of charge in respect of certain imported items on reclassifying the classification for extended period is not in order. It is common knowledge that demand of duty upto the extended

period of 5 years encompasses the demand of duty for the normal period of 2 years also. Further, Section 28(10B) of Customs Act, 1962 specifically provides that a notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under the Customs Act, 1962, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly. Therefore, we do not find any merit in Appellant's argument that the Adjudicating Authority has passed the order beyond the scope of Show Cause Notice by adjudicating the same demanding duty for normal period even as the Show Cause Notice was issued invoking extended period under Section 28(4) of the Customs Act, 1962.

17. We find that the case laws relied by the Appellant for confiscation and imposition of penalties are distinguishable. Several case laws, including case laws relied on by the Respondent in reply to the Show Cause Notice,

have been discussed in detail by the Adjudicating Authority and the Appellant has not countered the same. Further, the Respondent has not misdeclared description, quantity or value any mis-declaration warranting confiscation of impugned goods under Section 111(m) of Customs Act, 1962. Further provision of Section 111(q) of Customs Act, 1962 cannot be invoked in the absence of any evidence that the origin criteria declared in the Country of Origin are not correct / proper. As we have already held above that there is no misdeclaration or suppression or any *mala fide* or willful conduct to evade payment of duty on the part of the Respondent and the issue of classification of goods is interpretational and the onus of correct classification is always on the Department, the Respondent could not be attributed with willful suppression for adopting a particular classification. As such, we hold that the impugned goods are not liable for confiscation and consequently, penalty is not impossible on the Respondent under Section 112(a) of Customs Act, 1962. In view of the finding that Section 28(4) is not invocable in this case, penalty is not imposable on the Respondent under Section 114A of the Customs Act, 1962. Further, penalty is also not imposable under Section 114AA of Customs Act, 1962 on the Respondent for alleged act of wrong classification of impugned goods without any mis-declaration as to description, quantity or value.

18. In view of our above findings, the appeal of the Appellant-Department is partly allowed by upholding the classification of CTI 8708 5000, as proposed in the impugned show cause notice in respect of two items, viz. "Hub Assembly" and "Parts/components of Hub Assembly" but upholding the impugned Order-in-Original No. 103104/2023 dated 21.09.2023 as far as confirmation of demand of differential duty for two years period under Section 28(1) of the Customs Act, 1962. The Respondent is required to pay interest on the differential duty that arise due to classification of these goods under CTI 8708 5000 and so being not eligible for concessional benefit of Customs Notification No. 152/2009 dated 31.12.2009.

19. Thus, the appeal is partly allowed on the above terms.

(Order pronounced in open court on 21.08.2025)

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

MK

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