

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. IV

Customs Miscellaneous Application No. 50487 of 2019
(on behalf of appellant)
in
Customs Appeal No. 51007 of 2019

[Arising out of the Order-in-Original No. 01/2019/Pr. COMMR/IMP/ICD/TKD dated 28/01/2019 passed by The Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi.]

M/s Bird Retail Pvt. Ltd.

Appellant

E-9, Connaught House, Connaught Place,
New Delhi – 110 001.

VERSUS

Commissioner of Customs (Import)

Respondent

Inland Container Depot,
Tughlakabad,
New Delhi.

WITH
Customs Appeal No. 51008 of 2019

[Arising out of the Order-in-Original No. 01/2019/Pr. COMMR/IMP/ICD/TKD dated 28/01/2019 passed by The Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi.]

Shri Rony Abraham, Manager Sales

Appellant

M/s Bird Retail Pvt. Ltd.

E-9, Connaught House, Connaught Place,
New Delhi – 110 001.

VERSUS

Commissioner of Customs (Import)

Respondent

Inland Container Depot,
Tughlakabad,
New Delhi.

AND
Customs Appeal No. 51009 of 2019

[Arising out of the Order-in-Original No. 01/2019/Pr. COMMR/IMP/ICD/TKD dated 28/01/2019 passed by The Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi.]

Shri Ankur Bhatia, Director

Appellant

M/s Bird Retail Pvt. Ltd.

E-9, Connaught House, Connaught Place,
New Delhi – 110 001.

VERSUS

Commissioner of Customs (Import)

Inland Container Depot,
Tughlakabad,
New Delhi.

Respondent

APPEARANCE

Shri J.M. Sharma, Consultant – for the appellants.

Shri Rakesh Kumar, Authorized Representative (DR) – for the Respondent

CORAM: HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50362/2020

DATE OF HEARING : 28/08/2019.

DATE OF DECISION : 24/02/2020.

C.L. MAHAR :-

The brief facts of the matter are that the appellant No. I was appointed a distributor of "Segways" manufactured and patented by M/s Segways Inc., U.S.A. for Indian territory on 01/02/2010. The agreement authorized the appellant No. I as the distributor for Segway and thereafter have been revalidated on 01/11/2012 and 19/03/2015. As per the agreements, the appellant are required to sale the Segway products/Segway personal transport products purchased from M/s Segway Inc., U.S.A. The appellant have been importing 'Segway' product in CKD condition in the form of very assemblies such as power assembly, transmission assembly, wheel assembly etc. as well as Air Cargo Complex, New Delhi wherein they have filed bills of entry for assessment and clearance of the imported consignment declaring the product as "CKD Parts of electrically operated two wheeler/personal transport/lithium ION battery for captive use". The product has been classified under Customs Tariff Heading 87149990/87144011 etc. They have also claimed benefit of Notification No. 21/2002- Cus. dated 01/02/2002 (Sl. No. 345)

and Notification No. 12/2012-Cus. dated 17/03/2012 (Sl. No. 443 and 444). The department working on an intelligence has initiated investigations against the appellant for mis-declaration of the product at the time of import and have entertained a view that the importer/appellant have imported a complete units of the Segway personal transport self-balancing vehicle in CKD condition. However, at the time of the import, they have mis-declared the same as "CKD parts of personal transport/electrically operated two wheelers for captive use and have mis-classified the same under Customs Tariff Heading 87149990 and thereby has evaded huge amounts of customs duty. It's a matter of record that during the course of investigation, the Departmental officer have visited the business premises of the appellant and the appellant was asked to produce the sample of the imported consignments. Shri Rony Abraham (appellant No. II) was present at the time of the visit of the DRI officers at their business premises. On the request of the DRI officers, Shri Rony Abraham presented sample of the imported vehicle/item before one Shri Vinod Soorma, Chartered Engineer which was appointed by the Department for examining the sample of the imported consignment. Shri Vinod Soorma, Chartered Engineer after examination of the goods and submitted his report on 01/08/2016 saying that :

"(i) this is to certify that I have inspected/examined the following units, which were imported by M/s Bird Retail Pvt. Ltd., New Delhi. The same were found in the form of assemblies off. ; (a) transmission assembly, (b) power base assembly (without batteries) ; (c) wheel assembly with tyre (d) info key [incomplete form].

(ii) All the above units were in the form of assemblies and not in knocked down condition. These units were in the form of assemblies are absolutely complete and are ready for use and only to be attached and fixed each other for use of the final product namely Segway. The said inspection was carried out at DRI, New Delhi office on 26/07/2016.

2. During the course of investigation, the DRI officers have also made a request to the National Automobile Testing and R&D Infrastructure Product, NBCC Place, Lodhi Road, New Delhi to depute a suitable expert for examining gear box and transmitting assembly imported by the appellant. One Shri Devesh Parikh, Deputy Manager was deputed by National Automobile Testing and Infrastructure Institute on 22 December 2016. Shri Devesh Parikh after examining the samples of gear boxes and power base of the Segway submitted that the gear box and power base were in assembled condition.

3. After investigation, show cause notice was issued to the appellants by the Principal Commissioner/Commissioner of ICD, Tughlakabad, whereunder the appellants were asked to reply as to why –

- (A) (1) The Segway (electrically operated) imported by them in parts with Gear Box/Power Base in Pre-assembled form mis-declaring them CKD parts of electrically operated two wheeler/of Personal Transport/Lithium ION Battery for captive use as detailed in Serial No. 1, 2 & 7 of **Annexure – A** to the Show cause Notice, should not be classified under CTH 87119091 and the benefit of Notification No. 12/2012-Cus. (Serial No. 444) dated 17/03/2012, as amended, fraudulently claimed by them towards the import of these goods should not be denied and BCD @ 30% should not be charged in view of Notification No. 12/2012-Cus. (Serial No. 443) (1) (b) dated 17/03/2012, as amended, towards the import of these goods ;
- (2) The seized goods valued at Rs. 20,43,777/- should not be confiscated under Section 111 (m) of the Customs Act, 1962 ;
- (3) The imported goods valued at Rs. 2,84,79,194/- other than the seized goods, as mentioned in Sr. No. (i) above should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962 ;
- (4) The differential Customs duty amounting to Rs. 73,24,680/- (Rupees Seventy Three Lacs Twenty Four Thousand Six Hundred and Eighty only) evaded/ short paid by them as detailed in Serial No. 1, 2 & 7 to Annexure – A to the show cause notice should not be demanded and recovered from them by invoking the extended period as per provisions of Section 28 (4) of the Customs Act, 1962 ;

(5) Interest should not be demanded and recovered from them on the aforesaid evaded/short paid Customs duty in terms of Section 28AA of the Customs Act, 1962 ;

(6) Penalty should not be imposed upon them under Section 114A and 114AA of the Customs Act, 1962, as discussed in paras above ;

(A1) Now, therefore, that Shri Ankur Bhatia, Director of M/s Bird Retail Pvt. Ltd., E-9, Connaught House, Connaught Place, New Delhi – 110 001 and Shri Rony Abraham, Manager (Sales) M/s Bird Retail Pvt. Ltd., E-9, Connaught House, Connaught Place, New Delhi – 110 001 are hereby called upon to show cause to the Principal Commissioner/ Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi – 110 020 within 30 days of the receipt of this notice, as to why penalty should not be imposed upon them under Section 112 and/or 114AA of the Customs Act, 1962, as discussed in paras above”.

(B) Now, therefore, M/s Bird Retail Pvt. Ltd., E-9, Connaught House, Connaught Place, New Delhi – 110 001 are hereby called upon to show cause to the Additional/ Joint Commissioner of Customs, Air Cargo (Import), New Custom House, Near I.G.I. Airport, New Delhi – 110 037 within 30 days of the receipt of this notice, as to why –

(1) The Segway (electrically operated) imported by them in parts with Gear Box/Power Base in Pre-assembled form mis-declaring them CKD parts of electrically operated two wheeler/of Personal Transport/Lithium ION Battery for captive use as detailed in Serial No. 3, 4, 5, 6, 8 & 9 of **Annexure – A** to this Show cause Notice, should not be classified under CTH 87119091 and the benefit of Notification No. 12/2012-Cus. (Serial No. 443 (1) (a) and 444) dated 17/03/2012, as amended, fraudulently claimed by them towards the import of these goods should not be denied and BCD @ 30% should not be charged in view of Notification No. 12/2012-Cus. (Serial No. 443) (1) (b) dated 17/03/2012, as amended, towards the import of these goods ;

(2) The seized goods valued at Rs. 6,86,154/- should not be confiscated under Section 111 (m) of the Customs Act, 1962 ;

(3) The imported goods valued at Rs. 1,23,33,275/- other than the seized goods, as mentioned in Sr. No. (i) above should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962 ;

(4) The differential Customs duty amounting to Rs. 32,16,660/- (Rupees Thirty Two Lacs Sixteen Thousand Six Hundred and Sixty only) evaded/ short paid by them as detailed in Serial No. 3, 4, 5, 6, 8 & 9 to Annexure – A to the show cause notice should not be demanded and recovered from them by invoking the extended period as per provisions of Section 28 (4) of the Customs Act, 1962 ;

(5) Interest should not be demanded and recovered from them on the aforesaid evaded/short paid Customs duty in terms of Section 28AA of the Customs Act, 1962 ;

(6) Penalty should not be imposed upon them under Section 114A and 114AA of the Customs Act, 1962, as discussed in paras above ;

(B1) Now, therefore, that Shri Ankur Bhatia, Director of M/s Bird Retail Pvt. Ltd., E-9, Connaught House, Connaught Place, New Delhi – 110 001 and Shri Rony Abraham, Manager (Sales) M/s Bird Retail Pvt. Ltd., E-9, Connaught House, Connaught Place, New Delhi – 110 001 are hereby called upon to show cause to the Additional/Joint Commissioner of Customs, Air Cargo (Import), New Custom House, Near I.G.I. Airport, New Delhi – 110 037 within 30 days of the receipt of this notice, as to why penalty should not be imposed upon them under Section 112 and/or 114AA of the Customs Act, 1962, as discussed in paras above”.

(C) Now, therefore, M/s Bird Retail Pvt. Ltd., E-9, Connaught House, Connaught Place, New Delhi – 110 001 are hereby called upon to show cause to the Deputy/ Assistant Commissioner of Customs, Inland Container Depot Patparganj, Delhi within 30 days of the receipt of this notice, as to why –

(1) The Lithium Ion Batteries (which were the essential part of the Segway (electrically operated) imported by them in parts with Gear Box/Power Base in Pre-assembled form vide Bill of Entry No. 5146942 dated 04/05/2016 at New Custom House, Air Cargo (Import), Near I.G.I. Airport, New Delhi) imported by them by mis-declaration as Lithium Ion Batteries for Segway for captive consumption vide B/E No. 5413240 dated 27/05/2016 as detailed in Serial No. 10 of **Annexure – A** to this Show cause Notice, should not be classified under CTH 87119091 as part of the complete Segway and BCD @ 30% should not be charged in view of Notification No. 12/2012-Cus. (Serial No. 443 (1) (b)) dated 17/03/2012, as amended, towards the import of these goods ;

(2) The seized goods valued at Rs. 7,64,643/- should not be confiscated under Section 111 (m) of the Customs Act, 1962 ;

(3) The imported goods valued at Rs. 1,91,161/- other than the seized goods, as mentioned in Sr. No. (i) above should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962 ;

(4) The differential Customs duty amounting to Rs. 2,32,032/- (Rupees Two Lacs Thirty Two Thousand and Thirty Two only) evaded/ short paid by them as detailed in Serial No. 10 to Annexure – A to the show cause notice should not be demanded and recovered from them by invoking the extended period as per provisions of Section 28 (4) of the Customs Act, 1962;

(5) Interest should not be demanded and recovered from them on the aforesaid evaded/short paid Customs duty in terms of Section 28AA of the Customs Act, 1962 ;

(6) Penalty should not be imposed upon them under Section 114A and 114AA of the Customs Act, 1962, as discussed in paras above ;

(C1) Now, therefore, that Shri Ankur Bhatia, Director of M/s Bird Retail Pvt. Ltd., E-9, Connaught House, Connaught Place, New Delhi – 110 001 and Shri Rony Abraham, Manager (Sales) M/s Bird Retail Pvt. Ltd., E-9, Connaught House, Connaught Place, New Delhi – 110 001 are hereby called upon to show cause to the Deputy/Assistant Commissioner of Customs, Inland Container Depot Patparganj, Delhi within 30 days of the receipt of this notice, as to why penalty should not be imposed upon them under Section 112 and/or 114AA of the Customs Act, 1962, as discussed in paras above”.

4. The matter has been got adjudicated vide order-in-original No. 1/19/Pr. Commr./Import/ICD/TKD dated 28 January 2019. Vide the impugned order dated 28 January 2019 all the charges as leveled in the show cause notice have been confirmed by the Adjudicating Authority. The appellant are before us against the impugned order-in-original.

5. The learned Advocate appearing for the appellant has submitted that the appellant have imported the goods vide finally assessed bills of entry through ICD, TKD Tughlakabad at ICD Airport, New Delhi and ICD, Patparganj, New Delhi at lower rate of the basic customs duty at 10% in terms of Notification No. 21/2002-Cus. dated 01/02/2002 under Sl. No. 345 and thereafter under Notification No. 12/2012-Cus. dated 17/03/2012 by declaring the same as CKD parts assembly (part of electrically operated two wheeler for captive use) classifying the same under Customs Tariff Heading 87149990 primarily. The lithium Ion battery imported separately were classified under Chapter Heading 85076000 and appropriate rate of customs duty under the said heading has been paid at the time of import. The learned Advocate has contended that the Adjudicating Authority has erred in classifying the product under CTH 87119091 as this heading is applicable only for electrically operated motorcycles

(including mopeds) and cycle fitted with auxiliary motors with or without cars. The learned Advocate has tried to impress that Segway in common parlance is not understood as motorcycle or moped or cycle fitted within an auxiliary motor. It has further been added by the learned Advocate that the Adjudicating Authority has wrongly taken a view that wheel power fitted for movement of a person are akin to the goods covered under CTH 8711. It has been the contention of the learned Advocate that Segway being battery operated vehicle cannot be classified to be a motor vehicle as per Motor Vehicle Act, 1988 as its maximum speed is 12.5 miles per hour equal to 20 km. and, therefore, Segway cannot be equated with the electrically operated motorcycle or moped or cycle fitted with the auxiliary the motor. It has further been argued that though the appellant had classified their product under a particular customs tariff heading and if the Department wants to change the classification of the product to some other tariff heading the burden of proof for classifying the product in a different tariff heading has to be discharged by the Department. The learned Advocate has taken reliance of following cases in support of his argument on this count : **(a) Commissioner of Central Excise, Nagpur versus Vicco Laboratories – 2005 (179) E.L.T. 17 (S.C.) ; (b) Raptakos Brett & Co. Ltd. versus Commissioner of Central Excise, Raigad – 2014 (307) E.L.T. 565 (Tri. – Mumbai).**

6. It has further been submitted that the Commissioner has wrongly denied them the benefit under Notification No. 12/2012-Cus. dated 17/03/2012 at Sl. No. 443 (1) (a) saying that the gear box imported by the appellant were in pre-assembled condition at the time of the import and, therefore, the benefit of above said notification is not available to the appellant. The learned Advocate submitted that the basic evidence for denying the benefit of this notification to the appellant is Chartered Engineer certificate and Chartered Engineer Shri Vinod Soorma has not been made available for cross-examination to the

appellant at the time of adjudication. The report given by him cannot therefore be made basis for arriving at the conclusion that the gear box imported by them were at the pre-assembled form.

7. Regarding opinion of Shri Devesh Pareekh, it is submitted that during cross examination, in reply to question 7, he stated that the parts shown to him were not motorcycle parts and were parts of Segway. The opinion of Shri Pareekh doesn't support the Department's case that others electrically operated motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars classifiable under CTH 87119091 were imported.

8. The appellant further submit that learned Commissioner erred in denying the alternative submission of the appellant claiming benefit of Notification No. 12/2012-Cus. dated 17/03/2012 as per entry 444. Entry 444 of the said notification is extracted below for ready reference.

1	2	3	4	5	6
444	8714 91 00, 8714 92, 8714 93, 8714 94 00, 8714 95, 8714 96 00. 8714 99	All goods other than Bicycle parts and components	10%	-	-

A perusal of packing list will show that the parts (in sets) required to assemble Segways classifiable under Chapter Heading 8714 9990 are fully covered under Serial No. 444 of Notification No. 12/2012-Cus. dated 17/03/2012 attracting basic customs duty @ 10%.

It has further been submitted that all the ten bills of entry, after examination and after several queries from the Customs Appraising Officers, were cleared against 10 finally assessed bills of entry. All the invoices, packing list etc. were submitted to the Department and nothing was concealed or suppressed by the importer. The value of goods and the description of goods declared by the appellant has not been disputed by the

Department. The only dispute relates to interpretation of clauses of Notification No. 12/2012-Cus. dated 17/03/2012; therefore invoking extended period of limitation in respect of 7 B/E dated prior to 11/01/2015 (beyond two years), ignoring the various submissions of the appellant discussed in Ground – G of the appeal, is not sustainable.

9. That the learned Commissioner in the impugned order confiscating the seized goods and holding other than seized goods liable to confiscation u/s 111 (m) of Customs Act 1962 and imposing penalties u/s 112, is not sustainable. The appellant also submit that as per Annexure – A of the show cause notice the differential duty has been demanded in respect of all goods including seized goods, which were cleared for home consumption against 10 finally assessed B/E. The said goods are not covered by the definition of imported goods which definition excludes goods which have been cleared for home consumption. The duty less paid on such goods can be recovered under Section 28 of the Customs Act, 1962. In the present case the notice for recovery of differential duty has been issued under Section 28 (4) of the Customs Act, 1962.

10. The penal provisions in respect of duty short paid etc. are contained in Section 114A of the Customs Act, 1962 which Section 114A contains inter-alia a proviso that where any penalty has been levied under Section 114A, no penalty shall be levied u/s 112 or Section 114. The said Sections 112 and 114 provide for penalties consequent to confiscation of goods or holding goods liable to confiscation u/s 111 or 113 of the Act *ibid*. It is appellant submissions that once demand of differential duty on disputed goods u/s 28 of the Customs Act has been issued, the penalty under Section 114A can only be imposed. The provisions contained in Sections 111 and 112 cannot be invoked in respect of same goods which are outside the definition of imported goods under Section 2 (25) of the Customs Act, 1962.

11. That the learned Commissioner's impugned order imposing penalty on appellant No. 1 under Section 114A and 114AA are not acceptable.

12. We have also heard the learned Departmental Representative who has vehemently supported the findings as given in the impugned order-in-original.

13. We have heard both the sides and have also perused the record of the appeal.

14. The issue for consideration before us in these proceedings is whether the consignments imported by the appellant vide 10 subject bills of entries were 'Segway electrically operated personal balancing vehicle' in condition of completely knocked down condition classifiable under Chapter Heading 87119091 or whether these were CKD parts and assemblies of parts of electrically operated two wheelers for captive use as declared by the appellant in their import bills of entries whereunder they have classified the same under Chapter Heading 87149990 and whether the appellant are entitled for the benefit of the Notification No. 21/2002-Cus. dated 01/02/2002 (Sl. No. 345) and Notification No. 12/2012-Cus. dated 17/03/2012 (Sl. No. 443 and 444); (ii) whether the appellants have mis-declared the description of the imported goods with an intent to evade customs duty ; (iii) whether appellant are liable to pay the differential amount of the customs duty under Section 28 (4) of the Customs Act, 1962 and are also liable for penalty under provisions of Section 112, 114A and 114AA of the Customs Act, 1962. Before proceeding further in the matter, it is relevant to first have a glance at what is being imported by the appellant. It emerges from the investigation that the appellant No. II namely Shri Rony Abraham business head of the appellant No. I has submitted the samples of the import consignment which were in the 'same form and condition' as were being imported by them before the officers as well as before Shri Vinod Soorma –

Chartered Engineer. The samples of the imported goods were in the form of power base, transmission assembly, gear box, info key and wheels with tyres. These products were produced before the Chartered Engineer. The Chartered Engineer vide his report dated 1 August 2015 submitted as follows :

"This is to certify that I have inspected/examined the following units which were imported by M/s Bird Retail Pvt. Ltd., New Delhi. The same were found in the form of assemblies of –

1. Transmission Assembly ;
2. Power Base assembly (without Batteries) ;
3. Wheel Assembly with tyre ; and
4. Info Key (in complete form).

All the above units were in the form of assemblies and not in knocked down condition. These units which are in the form of assemblies, are absolutely complete and are ready for use and only need to be attached/fixed to each other for use off the final product i.e. Segway. The said inspection was carried out at DRI – Delhi office on 26/07/2016".

15. During the course of investigations statement of several other relevant persons including Shri Rony Abraham – appellant No. II were recorded. Shri Rony Abraham in his statement dated 08/07/2016 has stated that Segway were being imported by them in parts and they consisted with the following components :

"(i) **Power Base** : which was the main part of the Segway and was in the form of a platform on which the rider stands and which contains sensons, computer parts etc. ;

(ii) **Info Key** : the remote control which controls the operation of the Segway (all the components required for operations of the Segway were contained in it) ;

(iii) **Fender frame** : which was made of plastic ;

(iv) **Wheel** : used in the Segway for its movement, each wheel consisted of one rim, one tyre and one tube (only in 12 model) ;

(v) **Gear Box** : mentioned as transmission assembly in the Bill of Entry and which controls the speed of the Segway requiring no further assembly ;

(vi) **Battery** : imported in complete ready to use condition, each Segway having two batteries.

That all the components required for assembly of a Segway were being imported in a single Bill of Entry or mere including Nuts, screw etc., user manual as received from the manufacturer; that they neither procured nor required any local part/component for assembling a Segway and the same was being assembled with the imported parts only; that Segway could be assembled easily with the help of instructions contained in the manual being imported with the help of the available imported components; that the parts/components being imported were not further worked except to assemble them in to a Segway”.

16. Further Shri Devesh Pareekh, Deputy Manager, International Centre for Automobile Technology at Manesar on 22 December 2016 has examined the samples of the gear boxes imported as transmission assembly by the appellant as well as the power base in presence of Shri Rony Abraham (appellant No. II) and specifically opened that samples of gear box/ transmission assembly and power base were in “pre-assembled form”.

17. We find from the above facts that it categorically emerges from the entire discussions, which have also been not rebutted by the appellant, that under the various bills of entries the appellant have imported all parts including screw, nuts and user manual etc. for assembling Segway in India. The parts and assemblies imported were not subjected to any modification or addition of the local parts or hardware. The imported assemblies, such as, transmission assembly, power base assembly, wheel assembly with tyre, info key assembly and batteries were just put together by following the instructions with the screw driver technology and complete Segway unit came into existence. It also emerges from the entire investigation that gear box mentioned as the transmission assembly were imported in the form of the pre-assembled unit and same were used, as such, while assembling the ‘Segway’ the final product.

18. It also emerges that no plant, machinery was required for assembling 'Segway' imported by the appellant and the 'Segway' were imported in the CKD condition, which were got assembled with the help simple hand tools like spanner, screw driver etc. and it also emerges from the investigations that sometimes the product were got assembled at the buyer's premises itself.

19. Thus, it emerges that the Segway product was being imported in a CKD condition under various bills of entries and same was got assembled in India for further sale with the simple screw driver technology. It is also matter of fact that the parts such as Power Base, Gear Box were imported in assembled forms and not in CKD condition and thus these crucial parts were assembled/ready to use components for further assembly of 'Segway' product.

20. For deciding the appropriate classification for imported consignments of the Segway in CKD condition it will be appropriate to have look at the relevant Customs Tariff Heading 8711 and 8714.

21. It can be seen that Chapter 8711 covers primarily motorcycles and like products which includes mopeds, side cars, scooters as well as electrically operated bicycles. It is relevant to mention here that Harmonization Committee of the World Customs Organization in its 58th Session of the Committee has further elaborated the scope of classification under Chapter Heading 8711 to cover the products such as self-balancing, electrically power two wheel transportation devices which are known by various names, such as, hover board, smart scooter, drift vehicle. The relevant extract is reproduced here below :-

"No.	Product Description	Classification	HS Codes considered	Classification rationale
17	Self-balancing, electrically – powered, two-wheeled transportation device (commercially known as	8711.60 (HS 2017)	87.11 and 95.03	GIRs 1 and 6

	"hoverboard", "smart scooter", or "drift vehicle"), designed for use within low speed areas such as pavements (sidewalks), paths, and bicycle lanes. The maximal speed of the device is 10 km/h and maximum distance per charge is 15 – 20 km.			
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The Segway product which is the subject matter of this dispute also falls under this very category.

22. It can also be seen that as per the interpretative rules to the Customs Tariff Act, the general rule for interpretation of the Schedule II provides as follows :-

“Rule 2 (a) : Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished for falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled”.

23. The above-mentioned Rule 2 (a) makes it clear that any product, which is imported in the form of completely knocked down condition (CKD) and if such components imported in CKD condition have all the essential ingredients to work as a complete vehicle after assembly of the same, in that case such components need to be classified as a complete motor vehicle, motorcycle etc. In the present case it has very categorically been established that the products which were imported were completed assemblies of the components when put together would work as complete Segway product. It has also categorically been opined by the Chartered Engineer who in his report dated 1 August 2016 has categorically certified that the various assemblies which have been imported by the appellant, such as, transmission assembly, power base assembly (without batteries), wheel assembly with tyre and info key etc. were imported in the form of the assemblies not in the knocked down condition and the final product namely Segway can be made just by attaching these

assemblies with the simple screw driver technology. Thus, it proved without any doubt that what has been imported by the appellant were various assemblies, such as, transmission assembly, power base assembly etc. to make a product called Segway. Thus, it can be seen that the correct classification for the product imported in the CKD condition as is the case in this particular appeal, same need to be classified under Chapter sub-Heading 87119091. We have also analyzed the declaration which have been made by the appellant while making import of various complete assemblies of various components of Segway and find that the classification adopted by the appellant was under CTH 87149990, which primarily pertains to parts and accessories of the vehicles of heading classifiable under 8711 to 8713. Since it has already been established with the help of an expert that the components imported by the appellant while put together will form a complete operative Segway product. We, therefore, feel that classification claim by the appellant while getting clearance of the consignment appears to be not correct. Since the technical person has given his categorical finding that what has been imported by the appellant were the Segway product in the CKD condition and the appellant did not have any evidence to contradict the finding of the technical expert, we are inclined to accept the opinion expressed by the technical expert. We also take support of a decision given by Hon'ble Gujarat High Court in the case of **Inter Continental (India) versus Union of India – 2003 (154) E.L.T. 37 (Guj.)**. to rely on the expert opinion. The relevant extract of the above decision is reproduced here below :-

"19. Mr. Patel during the course of discussion referred to the provisions of Prevention of Food Adulteration Act, 1954 as well as Rules thereunder with special reference to Sec. 6 of the said Act and Rule 5 which defines standards of quality on various articles as specified in Appendix "B" to the Rules. Our attention was invited to various standards set out in Appendix "B" to urge that only slight difference was there between the different kinds of oils for the purpose of ascertaining whether oil was of edible grade or not. It is not necessary for our purpose to deal with the various technical aspects laid down in Appendix "B" for the simple reason that it is an admitted position between the parties that when the imported

24. Now coming to the question whether the benefit of the Notification No. 12/2012-Cus. dated 17/03/2012 is available to the appellant or not it will be proper to have a glance at the relevant entry of the above notification for sake of convenience:-

443.	8711	Motor Cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, new, which have not been registered anywhere prior to importation, - (1) As a completely knocked down (CKD) kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with, - (a) Engine, gearbox and transmission mechanism not in a pre-assembled condition ; (b) engine or gearbox or transmission mechanism in pre-assembled form, not mounted on a body assembly, (2) in any other form.	10% 30% 60%	-- -- --	-- -- --
444.	87149100, 871492, 871493, 87149400, 871495, 87149600, 871499	All goods other than Bicycle parts and components	10%	--	--

25. It can be seen from the entry 443 of the above-mentioned Notification No. 12/2012-Cus. dated 17/03/2012 that the concessional rate of Customs duty @ 10% available under category 1 (a) for engine, gear box and transmission mechanism not in a pre-assembled condition. We find that the benefit under this category has wrongly been claimed and availed by the appellant as from the expert opinion as well as from the facts of the matter it has come out specifically that what has been imported by them were not CKD condition components or parts, such as, engine, gear box, transmission mechanism etc. rather they were in the form of completely assembled components in the form of transmission assembly, power base assembly, wheel assembly with tyre etc. and, therefore, the benefit of the concessional rate of the duty were certainly not available to them.

26. In view of entire above discussion, we find that appellant have mis-declared their import consignment and what they have imported were Segway product classifiable under Customs Tariff Heading 87119091 in completely knocked down condition. We, therefore, uphold the findings of the impugned order-in-original classifying the import consignments under 87119091. We also find no reason to interfere with the order-in-original with regard to demand of Customs duty under Section 28 (4) of the Customs Act, 1962 by invoking the extended time proviso as we find that the appellant have been fully aware as to what is being imported by them and they have consciously mis-declared their product as CKD parts of electrically operated two wheelers of captive use classifying the same under chapter sub-Heading 87149990. As discussed in preceding paragraphs it is come out very categorically that what has been imported by the appellant was Segway product in the CKD condition which required to classified under Chapter sub-Heading 87119091. This attempt of mis-declaration was consciously was done to evade customs duty by availing concessional rate of the duty. Notification No. 12/2012-

Cus. dated 17/03/2012. In view of this, we uphold the correlating finding of the order-in-original with regard to confiscation of the mis-declared goods under Section 111 (m) of the Customs Act, 1962 as well as imposition of the penalties on the appellant No. 1 as per the provision of Section 114A and 114AA of the Customs Act, 1962 as well as the demand of the interest under the provisions of the Customs Act under Section 28AA.

27. With regard to imposition of penalty on appellant No. 2 namely Shri Rony Abraham, Manager Sales and appellant No. 3 namely Shri Ankur Bhatia, Director of the appellant No. 1. From the record of the appeal, we find that both the appellant 2 and 3 were fully aware that M/s Bird Retail Pvt. Ltd. is importing complete Segway electrically operated product in CKD condition by mis-declaring the same as CKD parts of components such as Power unit, transmission kit etc. Both the appellants were aware that the components which have been imported just indeed screw drive technology to make the same as functional Segway product. Shri Rony Abraham, Sales Manager was looking after the work pertaining to import, preparation of import documents and liaising with the customs clearing agent and subsequent sale of Segway products in a complete functional form. Shri Ankur Bhatia was controlling the activity of the imports as he was financing the same and gave financial approval for various activities of the import of the Segway product. Both of them were instrumental and devising a modus-operandi to evade customs duty by wrongly availing the benefit of the Notification No. 12/2012-Cus. dated 17/03/2012. Considering the involvement of both the appellants in entire activity, we feel that the Adjudicating Authority is right in imposing penalty upon them under provision of Section 114A and Section 114AA of the Customs Act, 1962 and we refrain from interfering the finding and imposition of the penalty upon these two appellants also.

28. The miscellaneous application filed by the appellant for additional ground have also been considered and while deciding the above appeal and same are also being kept in mind and accordingly the miscellaneous application also stand disposed of as being decided in the case of the main appeal.

29. In view of above, all the appeals are dismissed.

(Order pronounced in open court on 24/02/2020.)

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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