

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II**

Customs Appeal No.52238 of 2019 (SM)

[Arising out of Order-in-Appeal No.CC(A)/CUS/D-II/ICD/TKD/Import/251/2019-2020 dated 29.05.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near I.G.I. Airport, New Delhi]

M/s. K.S. Worth International

RZ-398-B-21, Tughlakabad Extension,
New Delhi.

Appellant

VERSUS

Commissioner of Customs,

ICD,TKD, New Delhi.

Respondent

APPEARANCE:

Shri Maheshwar Dash, Advocate for the appellant.

Shri Mahesh Bhardwaj, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51840/2021

DATE OF HEARING: 10.09.2021

DATE OF DECISION: 24.09.2021

ANIL CHOUDHARY:

The issue involved in this appeal is in the facts and circumstances, the appellant have imported e-rickshaw in CKD condition without battery, vide live Bill of Entry dated 1.1.2014; whether they are required to produce the 'Type Approval Certificate' under the provisions of Rule 126 of Central Motor Vehicle Rules for clearance and whether the impugned order confiscating the goods for want of such certificate, is legal and proper.

2. The appellant, M/s. K.S. Worth International, RZ-398-B/21, Tughlakabad Extension, New Delhi-110 019, having IECNO. 0506045552(hereinafter referred to as the "importer") imported 60 sets of E-Rickshaw in CKD Condition without Battery (with spares), at ICD, Tughlakabad, New Delhi vide Bill of Entry No.4239556 dated 01.01.2014. The importer classified the said goods under CTH No.87039090 of the Customs Tariff Act, 1975. The assessable value of the goods under the B.E. is Rs.17,99,141.28.

3. The examination of the goods contained (in Container No.ESPU 8012959) was conducted on 03.01.2014 in the presence of independent witnesses and G card holder of CHA firm. During the course of examination of the said container, it was found that the goods contained in them were 60 numbers of E-Rickshaw in CKD condition without battery. The said Rickshaws in CKD condition consisted of different parts i.e. Transmission, Chassis, Rear Axle, Motor, Controller, Speedo Meter, Seats, Head Light, Tyres, Wires, etc. Further one representative sample of Motor and Speedo Meter were drawn for further investigation. The representative sample of Motor was drawn alongwith Rear Axle, because Motor and Real Axle were screwed together. The importer was asked to specify the Wattage of the Motor by the DC(Import-shed) on 4.1.2014, and was also asked to submit the catalogue of the goods, but the importer did not reply to the said query, neither any wattage of Motor was declared in the Bill of Entry by the importer. M/s. K.S. Worth International-Appellant vide letter dated 28.02.2014 to the Deputy Commissioner of Customs, ICD, TKD requested for warehousing of the goods under Section 49 of the

Customs Act, 1962 mentioning *inter alia*, therein that "With due regards it is to inform you that our container mentioned above containing E-Rickshaw has arrived at ICD Tughlakabad on 30.12.2013, due to the consignment put on hold by Customs, we are unable to take the delivery of said consignment", alongwith the space available certification of M/s. International Refrigeration Corporation dated 27.02.2014, which was allowed by the competent authority.

4. Whereas as per Rule 2(a) of General Rules for the interpretation (GRIs) of the First Schedule to the Customs Tariff Act (CTA), 1975, provides -- such goods, when imported in CKD condition, are to be treated as the finished article (in the present case 'Vehicle'), for levy of duty.

5. Whereas as per Rule 2 (u) of Central Motor Vehicle Rules, 1989 (hereinafter referred to as the "CMVRs"), 1989 "Battery operated vehicle" means a vehicle adapted for use upon roads and powered exclusively by an electric motor, traction energy of which is supplied exclusively by traction battery, installed in the vehicle:

Provided that if the following conditions are verified and authorised by any testing agency, specified in Rule 126 of CMVRs, the battery operated vehicle shall not be deemed to be a motor vehicle.

--the thirty minutes power of the motor is less than 0.25 KW;

--the maximum speed of the vehicle is less than 25 km/h;

--bi-cycles with pedal assistance which are – (a) equipped with an auxiliary electric motor having a thirty minute power less than 0.25KW, whose output is progressively reduced and finally cut off as the vehicle reaches a speed of 25 KM/h, or sooner, if

the cyclist stops pedalling; and (b) fitted with suitable brakes and retro-reflective devices, i.e. one white reflector in the front and one red reflector at the rear.

Explanation :- The thirty minute power of the motor is defined in AIS:049:2003 and method of verification is prescribed in AIR: 041:2003, till the corresponding BIS specification are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).

6. Whereas the vehicles so imported are powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle. On scrutiny of the said Bill of Entry, it has been observed that the power of electric motor has not been declared by the importer in the said Bill of Entry, and even on specific query, the importer chose to be silent on this issue and thus, it appeared to Revenue that it can be reasonably concluded that the Wattage of the Motor is more than 250 Watts. From the above facts, it is evident that the goods imported are battery operated vehicle falling under CTH 8703.

7.1 The import policy relating to the new "motor vehicle" falling under CTH 87 *inter alia* reads as under:-

"Rule 2(ii) of Import Policy and conditions of Chapter 87 prescribes that :-

"The import of new vehicles shall be subject to the following conditions:-

a. The new vehicle shall-

- (i) Have a speedometer indicating the speed in Kilometers per hour;
- (ii) Have right hand steering and controls (applicable on vehicles other than two and three wheelers);

- (iii) Have photometry of the headlamps to suit "keep-left" traffic; and
 - (iv) Be imported from the country of manufacture. The country of manufacture will also mean a single market like the European Union.
- b.** In addition to the conditions specified in (a) above, the new vehicle shall conform to the provisions of the Motor Vehicles Act, 1988 and the rules made there-under, as applicable, on the date of import.
- c.** Whoever being an importer or dealer in motor vehicles, who imports or offers to import a new vehicle into India shall,
- (i) At the time of importation, have valid certificate of compliance as per the provisions of Rule 126 of Central Motor Vehicle Rules, (CMVR), 1989 for the vehicle model being imported, issued by any of the testing agencies, specified in the said Rule;
 - (ii) Be responsible for all the provisions assigned to the manufacturer as per Rule, 122 and 138 of CMVR, 1989 and for issuing Form 22, as per provisions of CMVR, 1989; and
 - (iii) Gives an undertaking in writing that the proof of compliance to conformity of production as per Rule 126 A of CMVR shall be submitted within six months of the imports. In case of failure to do so, no further import of new vehicle of that model shall be allowed thereafter.

Whereas in the present case, it appears that the power of the E-Rickshaw (in CKD condition) is much more than the prescribed limit of 250 watt (Rule 2(u) of CMVR, 1989), therefore, it appears that the goods in question are not outside the purview of being treated as battery operated vehicle in terms of Rule 2(u) of the CMVR, 1989.

Whereas it appears from the above provisions that the import of vehicle including battery operated vehicle falling under heading 8703, requires a valid certificate of compliance (Type Approval Certificate), as per the provisions of Rule 126 of Central Motor Vehicle Rules (CMVR), 1989 for the vehicle model being imported, issued by any of the testing agencies, specified in the said Rule. Whereas the importer has not submitted the said type approval certificate.”

7.3 It further appeared to Revenue that as the appellant have not provided the wattage/power of the motor, it was presumed that the power is more than the prescribed limit of 250 Watts. Thus, exemption of not being deemed to be motor vehicle under Rule 2 (u) of the CMV Rules, is not available. Thus, the e-rickshaw in CKD condition, falls under the CTH 8703 (for import of vehicle) and a valid 'type approval certificate' from the Competent Authority /Agency is required as per the provisions of Rule 126 of the CMV Rules, which the appellant have not submitted.

7.4 Accordingly, it appeared that the appellant have violated the provisions of Section 111(d) of the Act, as they have attempted to import the goods contrary to the provisions imposed under the Motor Vehicle Act. Accordingly, the goods under import are liable to confiscation as 'Type Approval Certificate' is required for import of motor vehicle under Rule 2(II)(C)(i) of the Import Policy.

7.5 Accordingly, show cause notice was issued on 4.3.2016 proposing to confiscate the goods under import valued at

Rs.17,99,141/- imported vide Bill of Entry No.4239556 dated 1.1.2014 under Section 111(d) of the Act, further penalty was proposed under Section 112(a) of the Act.

8. The appellant contested the show cause notice by filing the written submissions. The appellant had, *inter alia*, contended that –

- (i) They have submitted the catalogue (TEE32) for completely assembled e-rickshaw.
- (ii) Rules of interpretation under Customs Tariff Act cannot be used or referred for interpretation of the provisions of the Import Policy/Foreign Trade Policy. Rule 2 (a) of the General Rules of Interpretation under Customs Tariff, is not applicable and cannot be made applicable for interpreting the provisions of Import Policy. Though the goods under Import - e-rickshaw in CKD condition as per the said Rules is treated as a complete e-rickshaw for the purpose of levy of customs duty. The said Rule is not applicable for any other purpose, as have been held by the Tribunals and the Higher courts, in the following rulings:-

(i) Universal Commercial Corpn. Vs. Collector of Customs, Delhi- 1994 (69) ELT 150 (Tribunal).

(ii) S.S. Appliances (P) Ltd. Vs. Collector of Customs, Delhi- 1008 (100) ELT 429 (Tribunal).

(iii) Chan Tronix Vs. Commissioner of Customs, Mumbai – 2000 (124) ELT 510 (Tribunal)

(iv) Union of India Vs. Tarachand Gupta Se. Bros. – 1983 (13)ELT 1456 (SC). It was held that when the good were imported as parts, they would merit import as parts, even if the parts and accessories are so comprehensive that if put together would constitute full articles. (Motor Cycle

in this case in CKD condition. As parts and accessories of motor cycles and scooters imported in CKD condition will be treated as import of parts and accessories only for all other purposes or other Acts/Rules.

Therefore, the respondent was not liable to payment of fine and penalty for breach of Section 3 of the Imports and Exports (Control) Act, or Section 167(8) of the Sea Customs Act [paras 14 and 24].

(v) **Collector of Customs Vs. Reliance Industries Ltd. – 2000 (115) ELT 15 (SC, Three Member Bench).** The case of Tarachand as reported in 13 ELT 1356 was approved in this case, and it was held that the goods may be classified as machinery for Customs valuation, but may be treated as a part for import entitlement purpose. This is logical, as classifications under Rule 2(a), 3(a) are deeming provisions” These are for classification purpose of Customs Tariff Head, and are not to be used for other purposes.

(vi) **Elsimate Electronic Industries P. Ltd. Vs. Commissioner of Customs, Chennai – 2002 (141) ELT 126 (T-Chennai).**

(vii) **Wipro Ltd. Vs. CC, Chennai – 1999 (107) ELT 398 (T).**

(viii) **LML Ltd. Vs. CC, Bombay – 1999 (105) ELT 718 (T).** It was held in para 8 of the order as follows:-

“8. We have carefully considered the facts and circumstances advanced from both sides. On this plea, we agree with Shri R. Santhanam, Rules of Interpretation of Tariff and Explanatory Notes to HSN, cannot be applied for the purpose of

interpreting the ITC Policy. When the policy states in the negative list, that consumer goods are required to be imported on licence, it means only the complete motor vehicles, which are understood to be in the list and not on the basis of understanding in terms of Customs Tariff Act. Accordingly, we are of the view that confiscation of the goods and imposition of penalty are not warranted.

(ix) **K.R. Trading Co. Vs. CC, Calcutta -1999 (110)ELT 746 (T)**

(x) **CC vs. Ankineedu Mangant -2012 (275) ELT 551 (Ker.)**

9. It was urged that Rule 2 (u) of the Central Motor Vehicle Rules read with Rule 126 of the CMVR and read with ITC (HS) Classification of Chapter 87, cannot be read into the Import Policy Condition No.2(II)(C)(i), is not applicable in the facts of this case for import in CKD condition. The appellant have not violated the conditions of the Import Policy and is not obligated to produce the 'Type Approval Certificate' in view of the aforementioned judicial rulings, particularly the law pronounced by the Hon'ble Supreme Court.

9.1 Reliance was also placed on the Ruling of this Tribunal in the case of **Vanish Enterprises Vs. CCE & CC, Noida – 2015 (321) ELT 335**, wherein this Tribunal held that – as per Chapter Note 2(a) of Chapter 87 of Customs Tariff, read with Import Export Policy, 2014, new imported vehicles did not include a vehicle, which is manufactured in India or assembled in India. Thus, the import of e-rickshaw parts in CKD condition are required to be assembled in India

and hence, cannot be treated as new vehicle. Thus, the requirement (of 'Type Approval Certificate') for import of a new vehicle under Rule 126 of MVR read with the Import Export Policy under Rule 14 is not applicable in the facts of the present case. It was further contended that for the purpose of customs duty, the appellant have themselves classified the goods under CTH 87039090 (for a new vehicle), and have paid the duty accordingly.

9.2 The appellant also pointed out, that similar imports in recent past by one J.S. Energy Systems have been cleared by the Customs, in which case the goods were held liable to confiscation due to mis-declaration. A copy of the adjudication order by the Additional Commissioner of Customs dated 11.10.2013, in the case of **J.S. Energy Systems**, was also annexed for reference. It was also pointed out that in spite of drawing of samples of motor vehicle parts like speedo meter, etc. the test report has not been brought on record by the Revenue, which is gross violation of the principles of natural justice, as the samples have been drawn for testing. It is the onus on the Revenue to bring the test report on record, in support of its contention.

9.3 Reliance was also placed on the ruling of the Kerala High Court in the case of **CC Vs. Ankineedu Manganti – 2012 (275) ELT 551 (Ker.)**, wherein for similar import of parts in CKD condition, the Hon'ble High Court held that the 'Type Approval Certificate' is mainly required to ensure that the vehicle is safe and roadworthy for use. It is to be considered by the Registering Authority while registering the vehicles, and not by the Customs Authority at the time of import.

9.4 Similar view has been taken by Delhi High Court in **CC Vs. Jaspreet Singh Jetly – 2013 (288) ELT 379.**

9.5 The appellant also prayed that as they are incurring demurrage and detention charges, the goods in question may be released or cleared.

9.6 Vide order-in-original dated 12.09.2016, the Joint Commissioner confirmed the proposals in the show cause notice ordering for absolute confiscation under Section 111(d) of the Act plus penalty of Rs.2 lakhs under Section 112(a).

10. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) on the aforementioned grounds:-

"(i)The Commissioner (Appeals) after going through the facts on record and also perused the certificate by M/s. Ajay - Contractor, who are specialised in e-rickshaws assembling, who has certified that the following parts are further required for completing the e-rickshaw viz. Brake pad, horn operation switch, light operation switch, battery, battery charger, charging adaptor, wire for connecting head lights and connecting rods, etc. It has also been observed that although the appellant did not know technical details about the e-rickshaw, but they have not disputed the fact that is wattage of the motor is more than 250 watts, and that there was no declaration of the power of the motor in the bill of entry. Accordingly, he rejected the appeal and upheld the order-in-original."

11. Being aggrieved, the appellant is before this Tribunal.

12. Heard the parties.

13. Ld. Counsel for the appellant, Shri Maheshwar Das has urged the aforementioned grounds and Rulings. Further, reliance is placed on the ruling of the Hon'ble Delhi High Court delivered on 31.01.2019, in WPC 1232/2018 in **Ram Krishna Sales Pvt. Ltd. Vs. Union of India and Ors.**, wherein under similar facts and circumstances relating to

import of e-rickshaw parts in CKD condition, and demand of 'Type Approval Certificate' by the Revenue, vide bill of entry dated 20.12.2017, held that Rule 126 of CMV Rules indicates that it is applicable in respect of a manufacturer or a importer of a motor vehicle, who is required to submit prototype vehicle for testing, as specified by the Testing Agency. Clearly as prototype type approval is not available for parts of a motor vehicle. Admittedly, M/s. R.K. Sales have imported certain parts of an e-rickshaw, which are intended to be sold to the manufacturers etc., and also held that there is merit in the contention of the petitioner that it cannot obtain a type approval certificate under Rule 126 of CMV Rules, since it is not importing a complete motor vehicle, but only certain parts thereof. It is only a manufacturer of motor vehicle, who are required to obtain 'Type Approval Certificate'.

14. Further, held that the Customs Authorities are not the authority for administering the provisions of CMV Act, 1988 and are only concerned with the question whether it is permissible to import the goods in question, and to ensure that the applicable duties are paid for import of the said goods.

15. Further held that so far the Office Order dated 12.03.2014, issued by the Commissioner of Customs, being C.No.VIII/ICD/TKD/6AG/104/2013/pt-HC, observed that the circular relates to the limited purpose of deciding the classification of spare parts of e-rickshaw, whether the parts constitute a complete e-rickshaw as per interpretation of Rule 2(a). Hon'ble High Court further observed that

legal fiction, as narrated under Rule 2(a) of General Interpretation Rules – i.e. treating incomplete and unfinished articles as the complete article/machine, is only for the purpose of calculation of customs duty under the appropriate heading. This legal fiction cannot be extended beyond the purpose, for which it was enacted. Also held that it shall not apply by fiction to spare parts of motor vehicle in CKD condition. Reference was made to the ruling in **Bengal Immunity Co. Vs. State of Bihar – 1955 (2) SCR 603**, wherein the Hon'ble Supreme Court has held that it is well settled that -- A legal fiction created by a Statute cannot extend beyond the purpose for which it is so created. Accordingly, prays for allowing the appeal.

16. Ld. Departmental Representative for Revenue relies on the impugned order.

He also relies on the Division Bench of this Tribunal in **M/s. Olympic Exports Vs. CC, New Delhi** being **Final Order No.52630 of 2018 dated 24.07.2018** by a Division Bench of this Tribunal, wherein with respect to the similar import of e-rickshaw in CKD condition along with spare parts, this Tribunal held that restriction as per Import Policy clarifies that it applies to a new vehicle, which is not manufactured or assembled in India. Further, held that a narrow view of the issue will not lead to proper appreciation of the licensing conditions. It was further held that e-rickshaw in CKD kit are for ease of transport, and require compliance of CMV Rules.

17. As regards the query by the Bench at the time of hearing, whether in adjudication order, there is any reference to the test report, if any. The basis on which, Revenue has concluded that the appellant

has not imported the parts of the e-rickshaw, but it amounts to a complete e-rickshaw in CKD condition.

18. In the written submissions, Id. Departmental Representative stated that the appellant have mentioned in their bill of entry that they have imported e-rickshaw in CKD condition without battery, which is also evident from the invoice of the supplier. Hence, the goods under import have rightly been considered to be a complete article/vehicle for interpretation of Import Policy, as applicable. Further, there is no reference of any Test report.

19. Having considered the rival contentions, I find that the issue is no longer *res integra*. The applicability of the Rule 2(a) of General Rules of Interpretation read with Chapter 87 of the Customs Tariff, have been held to be not applicable for interpretation of the Import Export Policy or the Foreign Trade Policy, as early as in 1983 by the Hon'ble Supreme Court in the case of **Union of India Vs. Tara Chand Gupta (supra)** and again a constitution bench of the Apex Court in **CC Vs. Reliance Industries Ltd. (supra)**. The show cause notice and the impugned order are in the teeth of the rulings of Apex Court.

20. I hold that e-rickshaw kits in CKD condition imported in the facts and circumstances of the present case, can be treated as a complete vehicle only for the purpose of customs tariff, and not for interpretation of the Import Export Policy /Foreign Trade Policy, or for the purpose of the CMV Act and the Rules thereunder.

21. In the similar facts and circumstances, in **LML Limited Vs. CC, Bombay (supra)**, wherein M/s.LML had imported scooters in CKD

condition, the Division Bench of this Tribunal had held that Rules of interpretation of tariff and Explanatory Notes to HSN, cannot be applied for the purpose of interpreting the import Trade Policy.

22. Thus, I hold, there is no legal requirement for production of any 'Type Approval Certificate' for clearance of e-rickshaw in CKD condition, which is applicable only for import of new vehicle(s).

23. I further find that the show cause notice is wholly mis-conceived and also botched-up as in spite of drawing samples for testing, no test report has been brought on record, which is both stinking and also in violation of all Administrative norms and the Rules of the natural justice. Examination of goods and drawl of sample (for testing etc.) was completed on 04.01.2014. Request for warehousing was made and allowed on 28.02.2014. Thereafter show cause notice has been issued after 24 months on 04.03.2016. Thus, the appellant have been subjected to high handedness and mental coercion by delaying the proceedings.

24. I also find that the Commissioner (Appeals) has committed a mistake of fact in the impugned order, as in para 5.7 of the order, it is observed that - it is not disputed that wattage of the motor (wrongly mentioned as battery) was more than 250 watts.

25. Further, admittedly, the goods in question are freely importable, there being no restriction under the Foreign Trade Policy. I further find that the facts and circumstances of the present case, are also squarely covered in favour of the appellant by the ruling of the Hon'ble Delhi High Court in the case of **Ram Krishna Sales (supra)**. The Hon'ble High Court has also held that the Interpretative Rules 2 (a) under

G.R.I. is only for the purposes of interpretation of the Customs Tariff Act, i.e. for determining the applicable duty under the Tariff Act, and the said Rule cannot be used for treating the CKD kits/spare parts as a complete e-rickshaw under any other statute including the CMV Act and the Rules thereunder. The requirement of 'Type Approval Certificate' is not warranted for import of spare parts or kits in CKD condition.

26 In view of my aforementioned findings, I set aside the impugned order and allow the appeal with cost and directions as under:-

- (i) The appellant shall not be responsible to pay any warehousing charges, and all such charges, if any, shall be borne by the Customs Department /Government.
- (ii) The appellant is awarded litigation cost of Rs.50,000/- (to be paid by the Customs Department).
- (iii) The goods under import, presently lying in warehouse with reference to the Bill of Entry No.4239556 dated 01.01.2014 shall be released forthwith to the appellant (within a period of 15 days) from the date of receipt/service of a copy of the order.
- (iv) All demurrages, if any, suffered by the appellant shall also be re-imbursed by the Customs Department.

27. The appeal is allowed.

(Pronounced on 24.09.2021).

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.

