

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51065 of 2022 [DB]

[Arising out of Order-in-Original No.02/2020 dated 13.01.2020 passed by the Commissioner of Customs (Import), New Delhi]

M/s. Best Koki Automotive Pvt. Ltd.

...Appellant

Pathradi Industrial Area,
Bilaspur Tauru Road, Mewat,
Haryana - 122105

VERSUS

**Principal Commissioner of Customs
(Import), New Delhi**

...Respondent

New Custom House, Near IGI Airport,
New Delhi - 110037

APPEARANCE:

Dr. B.L. Garg, Advocate for the Appellant

Shri Rakesh Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 20.05.2024

DATE OF DECISION: **19.09.2024**

FINAL ORDER No. 58596/2024

DR. RACHNA GUPTA

The present appeal has been filed to assail the Order-in-Original No.02/2020 dated 13.01.2020 vide which the demand of differential duty of Rs.56,91,216/- has been confirmed against the appellant along with the interest. However, penalty as was proposed under section 112(a) of Customs Act, 1962 (the Act) has not been imposed on the appellant. The facts in brief culminating into the said adjudication are as follows:

1.1 M/s. Best Koki Automotive Pvt. Ltd./the appellants imported Fork/Yoke 5th and reverse gear shift (parts of motor vehicles) vide various Bills of Entry during the period from July 2017 to May 2018 for the composite assessable value of Rs.839.84 Lakh. The imported goods have been classified by the appellant under CTH 84831099 considering the goods as 'Transmission Shafts'. However, while scrutiny of imported goods by the department, those were observed to be parts of motor vehicle like gear boxes and parts thereof. Hence were proposed to be classified under CTH 8708400. Since this tariff entry attracts Basic Customs Duty (BCD) at the rate of 10%/15% w.e.f. 02.02.2018 instead of duty at the rate of 7.5% under CTH 84831099 that mis-declaration has been alleged against the appellant with an intent to evade the differential 2.5% of customs duty. Accordingly, a pre consultation notice bearing No. 294/2018 dated 28.12.2018 was served upon the appellant calling them to admit and pay the differential duty demand along with the applicable interest else to be served with a demand notice under Section 28(1) of the Act.

1.2 The appellant did not pay the differential duty, as was demanded, hence the Show Cause Notice bearing No. 02/2019-20 dated 13.06.2019 was served upon the appellant proposing the recovery of the short paid duty amounting to Rs.56,91,216/- along with the interest in terms of section 28 AA of the Act. Penalty under section 112(a) of the Act was also proposed to be imposed. The said proposal was confirmed vide the impugned order under challenge. Though the penalty has not been imposed upon the appellant but the appellant still being aggrieved of the confirmation

of differential duty demand with interest has filed the present appeal.

2. We have heard Dr. B.L. Garg, learned Advocate for the appellant and Shri Rakesh Kumar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that appellant had imported 63 consignments of automotive parts, namely- 'Fork/Yoke 5th' and 'Reverse Gear Shift' and classified them under Tariff Item 84831099 of the Customs Tariff Act, 1975 where the applicable rate of BCD was at the rate of 7.5%; in addition, Education cess at the rate of 3% or Social Welfare Surcharge at the rate of 10% and IGST at the rate of 28% were also paid by the appellant. Heading 8483 where the appellant has classified the items in question clearly covers various kinds of transmission elements which are presented separately. The goods in question i.e., Fork/Yoke 5th and reverse gear shift are parts of transmission system/shaft of the motor vehicles and thus, qualify as 'separately presented transmission elements'. Product literature of the items in question confirms that the goods in question are transmission elements. Such 'separately presented transmission elements' are specifically mentioned under tariff item 84834000. Although the appellant had classified the referred items under tariff item 84831099 and not 84834000, however, the rate of BCD applicable under both these tariff items i.e., 84831099 and 84834000 is the same at 7.5%. Hence, it clearly comes out that the items in question are classifiable under Heading 8483 (tariff item 84834000) where the rate of applicable duty was at the rate of 7.5% BCD +

3% Education Cess/10% SWS + 28% IGST. The items in question in the instant matter i.e., Fork/Yoke 5th and reverse gear shift, are internal parts of automotive engine/Automotive Transmission Shaft and that there is no evasion of any amount of duty (BCD). On that account too, these items are appropriately classifiable under Heading 8483 instead of Heading 8708. Thus, Heading 8483 clearly covers various kinds of gears and transmission shafts (including cam shafts and crank shafts) and cranks. However, the said heading excludes gear boxes and transmission shafts. In the HSN notes of Heading 8708, items namely 'internal parts of the engines' are excluded from the coverage under Heading 8708. This read with the inclusion in the HSN notes of Heading 8483, establishes that all internal parts of engine fall under Heading 8483 and not under 8708. The goods in question are completely different from gear boxes and their parts, hence, the impugned order classifying the goods under CTH 8708 and confirming the differential demand of BCD is incorrect. To support his submissions, learned counsel has relied upon the following decisions:

(i) JTKET Sona Automotive India Ltd. Vs. Commr. of Customs, New Delhi reported as 2020 (371) ELT 293 (Tri-Del.)

(ii) Commissioner of Central Excise, Chennai Vs. Best Cast (P) Ltd. reported as 2001 (127) ELT 730 (Tri.-Chennai)

(iii) Hero Motocorp Ltd. Vs. Commissioner of Customs (NS-I), Raigad reported as 2022 (379) ELT 214 (Tri.-Mumbai)

(iv) Commissioner of Central Excise Vs. Urmin Products Pvt. Ltd. reported as 2023 11 CENTAX 270 (SC)

(v) M/s. HPL Chemicals Limited Vs. Commissioner of Central Excise, Chandigarh in Supreme Court Appeal (Civil) 1836 of 2001, judgment dated 20.04.2006

Accordingly, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. Per contra learned Departmental Representative has mentioned that there is no denial for the imported goods to be the parts of motor vehicles. The parts and accessories of motor vehicles are classified under 8708 i.e. gear boxes and parts thereof. There is also no denial that the impugned goods parts of transmission shafts but different from cam shafts and crank shafts or flywheel. However, the appellant declared these goods to be covered under CTH 8483. Learned Departmental Representative further submitted that the goods are gear boxes and parts thereof motor vehicles and thus are correctly classifiable under CTH 87084000. It is also impressed upon that what is excluded specifically by Note-2(e) of Section XVII (further explained in heading III-A-c of Section-XVII) is "integral parts of engines or motors (crank shafts, cam shafts, flywheels etc.) falling in heading 84.83" and not the gear boxes and parts thereof as has been claimed by the importer in this case. Thus the appellant has committed an act of mis-declaration. Since under CTH 8708 the customs duty is to be paid at a higher rate of 10% as compared to at the rate of 7.5% for CTH 8483, it has rightly been held that the wrong classification has been done with the sole intention to evade

the customs duty. It is further impressed upon that Chapter Head 8483 essentially talks about transmission shafts etc. but the goods gear shaft which are parts suitable for use as part of motor vehicles are classified under CTH 8708.

4.1 Learned Departmental Representative has further mentioned that Tariff Heading of goods is ascertained on the basis of terms of heading or relevant Sections and chapter notes as per GIR Rule 1. It further states that in case the goods are not classified under Rule 1 subsequent rules to follow. Note I(I) of Section Note XVI of CTA, 1975 states that this Section does not cover articles of Section XVII/Ch 87. Further Note 2(e) of Section XVII of CTA 1975, the expression parts and parts and accessories of chapter 87 do not apply to the following articles, whether or not they are identifiable as for the goods of this section. The submissions of appellant that it is a general part which can be used as part of internal engine only is irrelevant as the subject goods shall only be used in the motor vehicles as has been stated by the appellant in their submissions before adjudicating authority themselves to be the predominant factor. To find answers to right classification, it is the description of goods as well as the test of predominance use that matters as was held in a catena of judgements of Hon'ble Apex Court, recent one being judgement in **Westinghouse Saxby Farmers Ltd. Vs. Commr. of Central Excise, Calcutta MANU/SC/0162/2021**. To support his submissions learned Departmental Representative has also relied upon the following decisions:

(i) Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd. reported as 1995 (77) ELT 23 (SC)

**(ii) LML Ltd. Vs. Commissioner of Customs reported as 2010
(258) ELT 312 (SC)**

With these submissions learned Departmental Representative has prayed for the appeal to be dismissed.

5. Having heard the contentions from both the sides and perusing the records, the submissions and the order under challenge, we observe and hold as follows:

5.1 Apparently and admittedly the appellants have imported Fork/Yoke 5th and reverse gear shif. So the question to be adjudicated is:

“Whether or not the goods in question should be classified as ‘Transmission Shafts’ classified under chapter heading 8483 (84831099) or as ‘Gear Boxes’ and part thereof, being the part and accessories of the motor vehicles classified under chapter heading 8708 (87084000)?”

5.2 To adjudicate this issue foremost we need to look into these entries. CTH 8483 reads as follows:

*84.83- Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; **gears and gearing**; ball or roller screws; **gear boxes and other speed changers**, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints).*

8483.10- Transmission shafts (including cam shafts and crank shafts) and cranks

The goods covered by this heading are mainly:

(1) Certain mechanical parts which are used in the transmission of power from an external power unit to one or more machines.

(ii) Certain internal parts of a machine, used to transmit power to the various parts of the same machine.

5.3 Transmission shafts under the chapter are defined to mean the shafts which usually transmit a rotary motive power. They include:

- (1) Main shafts or driving shafts driven directly by the motor.*
- (2) Counter shafts, for coupling to the main shaft by belts and pulleys or by cogs, etc.; they are used to take the drive from the main shaft to a number of machines, or to different parts of a machine.*
- (3) Articulated shafts, consisting of two or more shafts connected by ball and socket joints, etc.*
- (4) Flexible shafts which transmit the motion of a driving unit to, e.g.. hand tools, measuring instruments (revolution counters, speedometers, etc.).*
- (5) Cranks and crank shafts. These may be either made in one piece or assembled from several parts. They receive a reciprocating motion (e.g., from a piston engine) and convert it into rotary movement, or vice versa.*
- (6) Cam shafts and eccentric shafts.*

The heading does not cover simple axles which do not transmit power but merely support a wheel or other revolving part.

It also excludes:

- (a) Bars of iron or steel of uniform cross-section (heading 72.14 or 72.15).*
- (b) Simple lengths of twisted wire for the manufacture of flexible drives, not fitted with coupling attachments (heading 73.12).*
- (c) Oscillating connecting-rods for transmitting motion to cutter bars of lawn mowers or grass cutters (heading 84.33).*

5.4 No doubt this entry also includes 'Gears and Gearing' including friction gears and chain sprockets but the chapter note further clarifies that the group covers all types of gears including simple cog wheels, bevel gears, conical gears, helical gears, worms, rack and pinion gears, differential gears, etc., and assemblies of such gears. It also covers toothed and similar wheels for use with transmission chains. The chapter heading also includes gearboxes and other speed changers including torque converters which provide a range of speeds to be varied either manually or automatically and include gear boxes consisting of assemblies of gears which can be selected in alternative arrangements; the speed of transmission can thus be varied according to the arrangement of gears set. But the question as framed above, is yet to be decided.

5.5 To adjudicate the question, as above, the description of the goods under CTH 8708 is also perused. It is observed that on the contrary, this CTH talks about parts and accessories of motor vehicles of heading 8701 to 8705. CTH 87084000 specifically covers gearboxes and parts thereof. Para F of the Explanatory Notes to CTH 8708 states as under :- Parts and accessories of this heading includes:-

Other transmissions parts and components (for example propeller shafts, half shafts, gears, gearing, plain shafts bearings reduction gear assemblies, UNIVERSAL JOINTS.. But the heading excludes....crank shafts, cam shafts and flywheels of heading 8483.

(ix) As per Note 2(e) of Section XVII the expressions, 'parts and accessories' do not apply to articles of heading 84.83. Further, 'Universal Joints' are not excluded from the expressions, 'parts and accessories' under Chapter 87 since the said goods are not integral parts of engine or motor.

5.6 the above discussed explanatory notes have the persuasive values for determining the right classification as has been held by the Hon'ble Supreme Court in **Wood Craft Products Ltd.** (supra) wherein it has been held that the structure of central excise tariff is based on internationally accepted nomenclature found in the HSN and therefore any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the tariff. Similar view was subsequently taken by Hon'ble Apex Court in the case of **LML Ltd.** (supra) wherein it has been held that for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the harmonious system of nomenclature (HSN). As already observed above, the goods under 8483 are transmission shafts with gears and gearing also under the said CTH. However CTH 87084000 talks about gear boxes and the parts thereof specifically. This bare perusal is sufficient for us to hold that for any good to be Gear or Gear box, classified under 8483. It is not to be used as part of motor vehicle. 8483 does not talk about parts of 'gears and gearing' in motor vehicles. The gearbox meant to be used for motor vehicle and any part thereof has to be classified under CTH 8708.

5.7 Reverting to the facts of present case, admittedly the good imported by the appellant is Fork and Yoke 5th which in itself is neither the transmission shaft nor the gear box. However it has been judicially noticed that Fork and Yoke are the assembly components located inside the gear box assembly. Since the

parts/components of gearboxes are covered under 8708 precisely 87084000, that the impugned goods are not used as an integral part of engines or motors but are solely and principally used as part of transmission assembly only as claimed by the appellant which are parts of motor vehicles of HSN 8701 to 8705 because only those parts which are which constitute integral parts of engines or motors of heading 8483 are excluded from Section XVII as per Note 2(e). The above provisions of the explanations as provided by the chapter Note 8708 is an important material evidence to support the findings of the Adjudicating authority as the appellant himself has accepted that the impugned goods are transmission shafts which are further used in automobiles.

5.8 We further observe that the General Rules for the Interpretation (GRI) of harmonized system guides about classification of goods in the nomenclature to be governed by the principles enshrined therein. The first GRI is that the titles of sections, chapters and sub-chapters are only for ease of reference, for legal purposes classification shall be determined according to the terms of headings and in any related section or chapter notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

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 (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

5.9 GRI 3 says that when the goods are *prima facie* classifiable under two or more headings, the heading with most specific description must be preferred to the heading providing a more general description.

5.10 In the present case, 'Transmission Shaft' is a general classification for the goods in question. The goods since are meant to be embodied under the gear box, these are the parts of gear box for motor vehicles more specifically defined under 8708400. Also as per sub rule (c) of GRI 3 when goods cannot be classified by any of the other rules then those should be classified under heading which occurs last in numerical order among those which equally merit consideration. Though from the above discussion we do not find any equal merit consideration in the two contesting tariff entries however still 8708 is later in the numerical order. Seen from this perspectives also the impugned goods (Fork and Yoke 5th) are rightly classifiable under 87084000 which attract BCD at the rate of 10%.

6. With these observations, we hold that the appellant has wrongly classified the imported goods under CTH 84831099 and that due to said mis-declaration the appellant has evaded BCD to the extent of 2.5% thereof. Hence, we do not find any infirmity in

the order under challenge. Same is hereby upheld. Consequent thereto, the appeal is hereby dismissed.

[Order pronounced in the open court on **19.09.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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