

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

PRINCIPAL BENCH-COURT NO. 4

CUSTOMS APPEAL NO. 51965 OF 2022

(Arising out of Order-in-Original No. 11/2022/SG/Pr. CommrICD-Import/TKD dated 02.05.2022 passed by the Principal Commissioner of Customs, ICD (Import), TKD. New Delhi)

M/s Y. C. Electric Vehicle

Plot No. 1, Gali No. 11, Mundka
New Delhi – 110041

Appellant

VERSUS

**PRINCIPAL COMMISSIONER,
CUSTOMS (IMPORT)
NEW DELHI (ICD TKD)**

Respondent

Appearance:

Present of the Appellant: Shri Rajat Bose, Shri Ankit Sachdeva, Advocates

Present for the Respondent: Shri S.K.Rahman, Authorized Representative

CORAM:

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

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

Date of Hearing: 23.10.2024

Date of Decision: 10.02.2025

FINAL ORDER NO. 50298/2025

HEMAMBIKA R. PRIYA

The appellant has filed the present appeal assailing the Order-in-Original No. 11/2022/SG/Pr. Commr./ICD-Import/TKD dated 02.05.2022 passed by the Principal Commissioner of Customs, ICD (Import), Tughlakabad New Delhi (herein after referred as 'OIO'). Wherein the adjudicating authority has ordered for reclassification of impugned goods and confirmed the demand of differential duty with penalty.

2. The brief facts of the case are that the appellant has imported "converter, charging socket, connection box....." etc declaring them as spare parts of e-rickshaw under CTH of 8708 9900 vide 18 Bills of Entry during the period May 2019 to November 2019 following a post clearance audit of the Appellant's Business premises in April 2021, a consultative letter no. DLCUSADT/104/Circle-3/2021 dt. 20.04.2021 was issued to the appellant stating that the importer had mis-classified the imported items under CTI 8708 9900 and paid BCD@ 15%, SWS@ 10% and IGST @28%. The department alleged that the said items were correctly classifiable under CTI 8703 90 00 and consequently duty payable was BCD@125%, SWS@ 10%, and IGST @28%. Consequently, a show cause notice was issued and the impugned order was passed.

3. Considering the written reply to SCN from the Noticee and the submissions made by the Noticee during the Personal Hearing, the Adjudicating authority vide the impugned has ordered as follows:-

- "(a) The imported goods is ordered to be classified under 87039000 instead 87089900 as classified by the importer*
- (b) The impugned goods are confiscated under Section 111(m) of the Customs Act, 1962. However, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962.*
- (c) I order recovery of differential duty amounting to Rs. 14,82,28,083/- (Rupees Fourteen crore Eighty two Lakhs Twenty eight thousand Eighty three only), (including Basic Customs Duty, Social Welfare Surcharges and IGST), on the impugned goods imported vide Bills of Entry mentioned in Annexure A' under Section 28(1) of the Customs Act, 1962 along with Interest at appropriate rate under Section 28AA of the Customs Act, 1962*
- (d) I impose a penalty of Rs. 1,00,00,000/- (Rupees One Crore only) upon M/s. Y. C. Electric Vehicle under Section 112(a)(ii) of the Customs Act, 1962.*
- (e) I refrain from imposing any penalty under Section 117 of the Customs Act, 1962.*

4. The present appeal is filed before this Tribunal against the impugned order.

5. Shri Rajat Bose and Shri Ankit Sachdeva, learned Counsels for the appellant made the following submissions during the hearing.

- a) The Bills of Entry which are orders of assessment have not been appealed against and have attained finality. Relied upon case of ITC Ltd. Versus Commissioner of Central Excise, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)]
- b) The Appellant is not importing all the essential components of E rickshaw and procuring major parts locally. The copies of invoices relating to local procurement were submitted. The Id. Counsel relied on case of Bharat Heavy Electricals Ltd Vs CC [1987(28)ELT 545]
- c) Imported goods must be classified as in the manner and form in which they are presented before customs officials. In this context, he relied on case law of Advani Pleasure Cruise Co. P. Ltd. Versus Commr. ofCus. (I), NhavaSheva, Raigad2020 (371) E.L.T. 408 (Tri. - Mumbai)
- d) Office Order dt 12-03-2014 of ICD TKD is not applicable. Relied upon case law of Dynamo Electricals VsUoI 1995(76)ELT 41 (Guj):
- e) On 04-09-2024, the Learned counsel for the appellant prayed for and was granted three weeks time to place on record the remaining four Bills of Entry and also to prepare a chart showing the items that have been imported by the appellant against each Bill of Entry. The statement of list of such Bills of Entry submitted on 08-10-2024 is placed on record and taken into consideration
- f) The Compilation of case laws submitted in two sets by appellant are taken on record and considered

6. Shri S.K.Rahman, learned Authorized Representative for the Revenue has made the following submissions during the hearing.

a) **Classification Under CTH 87039000:**

As per the HSN Explanatory Notes , incomplete or unfinished vehicles are classified under the heading of their corresponding complete vehicles if they have the essential character of the latter, as outlined in General Interpretative Rule 2(a). Examples include motor vehicles missing wheels, tyres, or batteries.

Ld. AR submitted that the importer has brought in complete sets of essential E-Rickshaw components, including converters, charging sockets, controllers, throttles, motors, and more. For example, under Bill of Entry No. 3557682 dated 07.06.2019, 1,000 sets of these components were imported, indicating

the intent to assemble complete E-Rickshaws. Similar patterns are noted in other Bills of Entry (Annexure D).

b) **General Rules of Interpretation:**

Rule 2(a) states that incomplete or unassembled items are classified as complete if they possess the essential character of the finished article, even when imported unassembled.

c) **CBIC Circular & ICD TKD Office Order:**

The CBIC Circular No. 55/1995-CUS specifies that incomplete, unassembled articles should be treated as complete if they acquire the essential character when assembled. For automobiles, examples include vehicles without batteries or tyres.

The ICD TKD Office Order dt 12-03-2014 classifies imports of key components—motor, axle, chassis, transmission, and controller—as complete vehicles under CTH 8703, provided they collectively form a functional vehicle. Here, all essential components are imported, enabling complete E-Rickshaw assembly.

Thus, the goods fall under CTH 87039000.

7. Having heard both sides, the issues before us is classification issue with consequent rate of duty as shown below:

	REVENUE	APPELLANT
CTH	8703 9000	8708 9900
CTH description	Electric Motor vehicles	Parts & accessories of automobiles
Description of goods	e – rickshaw in SKD/CKD condition	spare parts of e rickshaw
RoD BCD	125%+10%+28%= 172.5%	15%+10%+28%= 48.7%

8. In the instant case, it is seen that the appellant had imported components of the E-Rickshaw i.e.converter. charging socket, connection box, On-off switch, digital speedometer, alarm system, throttle with left grip, controller, left right switch, hand brake with wire, handle T, lamp ear, shocker, arm rest and motor. It is to be examined whether these components imported are essential components of the E-

Rickshaw.

9. The learned Counsels for the appellant have submitted that the impugned goods that were imported alone do not constitute automobile i.e. E-rickshaw. They have procured many of the components domestically in India . Both imported goods and domestically procured goods are put together to make a complete E -rikshaw. They have argued that articles must be presented together to be considered as complete product. They have stated that out of 18 Bs/E, there are 10 Bs/E against which only 1 or 2 items have been imported.

10. The learned Authorized Representative for the Revenue has made submissions that the appellant had imported converter. charging socket, connection box, On-off switch, digital speedometer, alarm system, throttle with left grip, controller, left right switch, hand brake with wire, handle T, lamp ear, shocker, arm rest and motor and these form the essential components of the E-Rickshaw. Ld. AR has drawn our attention to the fact that the appellant had imported each of these items in the same number that is in equal numbers for e.g. in the Bill of Entry No. 3557682 dated 07.06.2019, the appellant imported 1000 sets of the above mentioned essential items. Thus, it appears from the above that the appellant had imported most of the E-Rickshaw components.

11. After considering the arguments of both the counsels on this issue, we have examined to note as to what the common parts of E Rickshaw are that would constitute a complete E Rickshaw.

			
MOTOR	REAR AXLE	CONTROLLER	HYDRAULIC SHOCKER
			
BRAKE DRUM	CHARGER	HORN (FRONT/REVERSE)	SPEEDOMETER
			
WHEEL RIM	THROTTLE	LED HEADLIGHT	T SET
			
E RICKSHAW WIRING	E RICKSHAW CABLES & BRAKE CABLES	CONVERTERS	E RICKSHAW TYRES

12. The learned Authorized Representative in his submissions demonstrated as to how the parts of E Rickshaw were imported, which is reproduced below:-

[illegible]

B/ E N o. and date	317563 2	10.05. 2019	321846 2	14.05. 2019	355768 2	07.06. 2019	383616 3	27.06. 2019	422763 3	26.07. 2019	461977 7	23.08. 2019
1	Convert er	1000	Convert er	1000	Convert er	1000	Convert er	1000	Convert er	1000	Convert er	1000
2	Chargin g Socket	1000	Chargin g Socket	1000	Chargin g Socket	1000	Chargin g Socket	1000	Chargin g Socket	1000	Chargin g Socket	1000
3	Connec tion Box	1000	Connec tion Box	1000	Connec tion Box	1000	Connec tion Box	1000	Connec tion Box	1000	Connec tion Box	1000
4	Digital Speedo meter	1000	Digital Speedo meter	1300	On/Off Switch	1000	Digital Speedo meter	1000	Digital Speedo meter	1000	Digital Speedo meter	1000
5	Alarm System	1000	Left Right Switch	1000	Digital Speedo meter	1000	Alarm System	1000	Alarm System	1000	Alarm System	1000
6	On/Off Switch	1000	Throttle with left grip	1000	Alarm System	1000	On/Off Switch	1000	On/Off Switch	1000	On/Off Switch	1000
7	Left right swtich	1000	On-off switch	1000	Throttle with left grip	1000	Left Right Switch	1000	Left Right Switch	1000	Left right swtich	1000
8	Control ler	100	Control ler	1300	Control ler	1000	Control ler	1000	Control ler	1000	Control ler	1000
9	Throlltle with left grip	1000	Handbr ake with wire	450	Left Right Switch	1000	Throttle with left grip	1000	Throttle with left grip	1000	Throlltle with left grip	1000
10	Hand brake with wire	500	Front Shocker	1000	Hand Brake with wire	500	Hand Brake with wire	500	Shocker	1000	Hand brake with wire	500
11	Shocker	1000	Handle T	1000	Handle T	1000	Shocker	1000	Lamp Ear	1000	Shocker	1000
12	Handle T	1000	Lamp ear	1000	Lamp Ear	1000	Handle T	1000	Handle T	1000	Handle T	1000
13	Lamp ear	1000	Mud Guard	1000	Shocker	1000	Lamp Ear	1000	Rotor for Motor	200	Lamp ear	1000
14	Arm Rest	1000	Motor	1300	Arm Rest	1000	Arm Rest	1000	Cover for motor	200	Arm Rest	1000
15	Motor	1000			Motor 1000w	1000	Motor 1000w	1000	Motor 1000W	1000	Motor	1003
16									Magnet for motor	200		
17									Barring for motor	200		
18									Axle for motor	200		
19									Hall plate for motor	200		

TABLE 2

13. A comparison of the contents of Table-2 with the contents of the with Table 1, it is clear that most of the common & essential parts of E-Rickshaw have been imported . We are convinced from the above tables that that the appellant had indeed imported most of the E-Rickshaw components which by merely assembling these components, an E-

Rickshaw can be generated .

14. We find that the HSN Explanatory Notes for the Chapter 87 states as follow:

"An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter [see Interpretative Rule 2 (a)], as for example: (A) A motor vehicle, not yet fitted with the wheels or tyres and battery, (B) A motor vehicle not equipped with its engine or with its interior fittings, and (C) A bicycle without saddle and tyres".

15. In the instant case, we note that the appellant have imported certain components of the E-Rickshaw i.e.converter. charging socket, connection box, On-off switch, digital speedometer, alarm system, throttle with left grip, controller, left right switch, hand brake with wire, handle T, lamp ear, shocker, arm rest and motor. We also note that each of these items are in imported equal numbers, as is evident from the Table 2 above. Thus, it is seen from the above components, an E-Rickshaw can be assembled, even though it might be in an incomplete E-Rickshaw.

16. We take note of the HSN Explanatory Notes which categorically states that an incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle, provided it has the essential character of the latter. As per the HSN Explanatory Notes, even though parts of E-Rickshaw falling under CTH 8708 9900 were imported, on assembly, the said e-rickshaw is liable to be classified as complete or finished vehicle under CTH 8703 9000 provided it has the essential character of the latter. We now examine whether the incomplete or unfinished vehicle has the essential character of the complete or finished vehicle. The learned counsels for the appellant has submitted that they

have procured many of the components domestically in India. The Rule 2(a) of General Rules of Interpretation for classification under HSN is reproduced here under:-

"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 entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as completed or finished by virtue of this rule), entered unassembled or disassembled.

It says that an incomplete or unfinished article can be classified as a complete article provided the incomplete or unfinished article has the essential character of the complete or finished article. In the instant case some parts of E-Rickshaw are imported and some parts are domestically procured. The question arises which are the major components/assemblies that provide essential characteristics to make a complete E-rickshaw in CKD SKD condition.

17. Learned Authorized Representative has drawn our attention to the office order dated 12.03.2014 issued by port of import i.e. Principal Commissioner, Customs (Import) New Delhi (ICD TKD). It was submitted that a Committee was constituted in 2014 by the Commissioner of Customs ICD TKD to decide as to what percentage of components/assemblies combine together make E-rickshaw in CKD SKD as per Rule 2(a) of the Interpretative Rules to the First Schedule to the Customs Tariff Act, 1975. On the basis of recommendations of this Committee, an Office Order dt 12-03-2014 from C.No. VIII/ICD/TKD/6AG/104/2013/pt was issued, which is reproduced as below:

"C.No. VIII/ICD/TKD/6AG/104/2013/pt

Dated 12-3-2014

OFFICE ORDER

A Committee was constituted by Commissioner of Customs ICD TKD New Delhi comprising of following below mentioned officers

to decide up as to what percentage of components/assemblies combine together make E-rickshaw in CKD SKD as per Rule 2(a) of the Interpretative Rules to the First Schedule to the Customs Tariff Act, 1975.

(1) Shri Karamvir Singh, Joint Commissioner of Customs, SUR

(2) Shri Gauri Shankar Sinha, Deputy Commissioner of Customs, AG

(3) Shri Vikash, Deputy Commissioner of Customs Import Seed

(4) Shri Nalin Kumar, Deputy Commissioner of Customs Group V

(5) Shri Prashant Kumar Jha, Deputy Commissioner of Customs SUB, and

(6) Shri AbhinavYadav, Assistant Commissioner of Customs Import Shed.

2. A meeting of the Committee was held on 6.0-.2014 and after deliberation the matter the Committee has decided that as per Rule 2(a) of the Interpretative Rules to the First Schedule to the Customs Tariff Act, 1975 there are five major components/assemblies such as transmissions motors axles, chassis and controller that provides essential characteristics to make a complete E-rickshaw in CKD SKD condition classifiable at 8703 and are covered under the provisions of Motor Vehicles Act, 1988. However if along with motor any two of the essential components mentioned above are missing then it may be considered as parts of electric rikshaw falling under C.H 8708 and will not attract the provisions of Motor Vehicles Act, 1988. All officers are accordingly directed to decide all pending matters on the above lines.

3. This issues with the approval of the Commissioner of Customs, ICD TKD New Delhi.

*(Karamvir Singh)
Joint Commissioner of Customs (SUB)
ICD, TKD, New Delhi."*

18. As per this Office Order, there are five major components/assemblies viz. (i)transmissions (ii)motors (iii)axles (iv) chassis and (v)controller that provides essential characteristic to make a complete E-rickshaw in CKD SKD condition classifiable at 8703. The order also states that along with motor, any two of the essential components mentioned shall be imported to make a complete E-rickshaw in CKD SKD condition, classifiable at 8703. In this context, we note that as per Table-2 above, connection box, controller and motor were imported, along with other parts of E Rickshaw. We note that the appellant and has imported connection box for the e-rickshaw. The Connection box in an E rickshaw also known as junction box, is an electrical

enclosure that protects wiring connections. It is an important safety feature that protects people from electric shock and the connections from environmental conditions. We also note that as per open source available on internet, the transmission system or the gearbox is essentially connected to the electric motor through a shaft, which then connects to the motor's wiring that would likely be routed through a dedicated connection box for managing the electrical power coming from the battery controller to the motor; effectively making the gearbox indirectly linked to the electrical connection points. This makes the component an integral part of the transmission system. In addition, we also note that the appellant has imported identical numbers of other parts of an e-rickshaw. Therefore, we are of the view that with the three major components/assemblies in addition to the other components provide essential characteristics to make a complete E-rickshaw in CKD SKD condition, classifiable at 8703 have been imported. In addition, a perusal of the proximity of imports vide various Bills of Entry importing the parts of an E-Rickshaw establishes that complete e-Rickshaw in CKD/SKD condition was imported by the appellant.

19. The learned Counsel for the appellant has raised doubts as the extent to which the said Office Order issued by ICD TKD Commissionerate can be relied upon. In this context, we note that the learned Authorized Representative submitted the Hon'ble High Court of Delhi in the case of **Rama Krishna Sales Pvt. Ltd. Versus Union of India** reported as **2019 (366) E.L.T. 273 (Del.) [31-01-2019]** has relied on the aforesaid order. The relevant paras in this regard is reproduced hereinafter:-

"16. It is apparent that the scope of Rule 2(a) of the Interpretative Rules is only to interpret Customs duties as applicable to an article imported by any importer. Import of the said Rule is that even an incomplete or unfinished article, which has an essential character of a complete article, would bear the same duties as applicable to the complete article. Rule 2(a) of the Interpretative Rules creates a legal fiction for the purposes of imposition of duties, whereby even an unfinished article or an incomplete article is deemed to be treated as a complete article for the purposes of determining the duties applicable thereon.

17. At this stage, it is necessary to refer to the Office Order dated 12-3-2014, which is relied upon by the respondents. The same is set out below :-
"C.No. VIII/ICD/TKD/6AG/104/2013/pt Dated 12-3-2014

OFFICE ORDER

A Committee was constituted by Commissioner of Customs ICD TKD New Delhi comprising of following below mentioned officers to decide up as to what percentage of components/assemblies combine together make E-rickshaw in CKD SKD as per Rule 2(a) of the Interpretative Rules to the First Schedule to the Customs Tariff Act, 1975.

- (1) Shri Karamvir Singh, Joint Commissioner of Customs, SUR
- (2) Shri Gauri Shankar Sinha, Deputy Commissioner of Customs, AG
- (3) Shri Vikash, Deputy Commissioner of Customs Import Seed
- (4) Shri Nalin Kumar, Deputy Commissioner of Customs Group V
- (5) Shri Prashant Kumar Jha, Deputy Commissioner of Customs SUB, and
- (6) Shri Abhinav Yadav, Assistant Commissioner of Customs Import Shed.

2. A meeting of the Committee was held on 6.0.2014 and after deliberation the matter the Committee has decided that as per Rule 2(a) of the Interpretative Rules to the First Schedule to the Customs Tariff Act, 1975 there are five major components/assemblies such as transmissions motors axles chassis and controller that provides essential characteristics to make a complete E-rickshaw in CKD SKD condition classifiable at 8703 and are covered under the provisions of Motor Vehicles Act, 1988. However if along with motor any two of the essential components mentioned above are missing then it may be considered as parts of electric rikshaw falling under C.H 8708 and will not attract the provisions of Motor Vehicles Act, 1988. All officers are accordingly directed to decide all pending matters on the above lines.

3. This issues with the approval of the Commissioner of Customs, ICD TKD New Delhi.

(Karamvir Singh)
Joint Commissioner of Customs (SUB)
ICD, TKD, New Delhi."

18. It is apparent from the above that the High Powered Committee was constituted to decide as to what percentage of components/assemblies combined together should be considered as an E-rickshaw for the purposes of Rule 2(a) of the Interpretative Rules.

19. The aforesaid Office Order indicates the combination of essential components and assemblies of E-Rickshaws that are required to be considered as the finished article (a complete E-Rickshaw). The aforementioned Office Order has to be read in the context of Rule 2(a) of Interpretative Rules. It is, at once, clear that the import of the Office Order is that the duties as applicable to import of E-Rickshaws would also be applicable to the components which are determined as representing the essential character of the complete E-Rickshaw. The Committee had identified five major components/assemblies, namely, (i) transmission, (ii)

Motor, (iii) axel, (iv) Chassis and (v) Controller which would essentially constitute an E-rickshaw in CKD/SKD (Complete Knock Down/Semi- Knock Down) condition. The Committee had further opined that if any two of the essential components along with the motor are missing then the remaining components could be considered as parts of the motor vehicle (E-Rickshaw). In other words, if along with the motor other essential components/assemblies were imported, the same would be considered to have the essential character of an E-Rickshaw. The Chartered Engineer had also submitted an addendum report dated 10-1-2018, clearly stating as under :-

"We hereby once again submit that the goods received in consignment are essential parts which have essential character of finished article of E-rickshaw in terms of Rule 2(a) of general rules for the interpretation of First Schedule of Customs Tariff. Submitted without prejudice."

As seen above, the Hon'ble High Court of Delhi has relied upon the said Office Order dt.12-03-2014 of ICD TKD, giving the same its judicial sanctity. In view of the above, we are of the view that impugned components/assemblies combine together make E-rickshaw in CKD SKD as per Rule 2(a) of the Interpretative Rules to the First Schedule to the Customs Tariff Act, 1975. Thus, the impugned goods are rightly classifiable under CTH 8703 9000. We take note of the Tribunal's decision in the case of **L.M.L. Limited versus Commissioner of Customs, Bombay [1999 (105) E.L.T. 718 (Tri.-Del) [29-07-1998]** and the relevant para is reproduced below :

"5. On the question of classification we are inclined to agree with the Id. SDR. Although on the basis of common parlance, Id. Advocate Shri R. Santhanam, rightly points out that a "body unit without an engine" cannot be termed "scooter". But in view of the Explanatory Notes to HSN we are left with no doubt that the goods would be classifiable under Tariff Heading 8711.90. In arriving at the decision we have taken into account the submissions of the Id. SDR that Explanatory Note to HSN have great persuasive value in view of the judgment of the Apex Court in the case of Collector of Central Excise, Shillong v. Wood Craft Products Ltd. reported in 1995 (77) E.L.T. 23 (S.C.)"

We note that the aforesaid case relies on the HSN Explanatory Notes of Chapter 87 of the Customs Tariff Act, 1975. The said CESTAT Order has

also been upheld by the Hon'ble Supreme Court [1997 (107) ELT A119 (S.C.)]. We also note that the Apex Court in the case of **Pioneer Embroideries Ltd. Versus Commissioner of Customs, Mumbai [2015 (322) E.L.T. 602 (S.C.) [22-07-2015]** held as follows:-

"3. The Commissioner, after adjudicating the matter, held that the old machines were non-computerised and merely because the Jacquard Control Device Reading System was installed in these machines after its import into India thereby making the same as computerised machines, would not give it a character of "computerised embroidery machines" at the time of import. The Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') has affirmed the aforesaid view of the Commissioner resulting into dismissal of the appeal filed by the appellant-assessee against the order of the Commissioner [2004 (178) E.L.T. 933 (Tri. - Bom.)]. It is this judgment of the CESTAT which is in appeal before us. The matter rests on the meaning that is to be assigned to General Interpretative Rule (GIR) 2(a), which reads as under :-

"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."

4....

5.....

6.....

A perusal of GIR 2(a) and the related Explanatory Notes makes it clear that when a complete or finished article is presented unassembled, the same has to be classified in the heading as applicable to the assembled article. It also further indicates that the article must be complete or finished but presentation in unassembled condition is only for reasons such as requirements or convenience of packing, handling or transport. It is also clear that articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding and further that the components shall not be subjected to any further working operation for completion into the finished state."

7. We, thus, do not find any merit in this appeal which is, accordingly, dismissed."

This case is also squarely applicable in the instant case as it also interprets Rule 2(a) of the GIR. The said CESTAT Order has been upheld

by the Hon'ble Supreme Court. The following case laws have been relied upon the learned Authorized Representative:-

- a) In ***Salora International Ltd. v. CCE (2012) 284 ELT 3 (SC)***, assessee manufactured various components of TV sets. These were assembled for testing of each set. Then the sets were disassembled and then transported as parts to other units (satellite units) of assessee to be reassembled and marketed. Individual serial numbers were given. It was held that the goods have to be classified as finished/complete goods and not as parts. It was held that if only parts were manufactured and matching and numbering functions were done at satellite units, it would have been removal of parts of TV sets.
- b) In ***Hindustan Udyog v. CCE 2001(133) ELT 405 (CEGAT)***, it was held that 'belt conveyor system' supplied with all material except belt (as belt was to be procured from market and fitted by buyer) has to be classified as 'Belt Conveyor' as per rule 2(a), as it has essential character of final product.
- c) In ***Thomson Consumer Electronics v. CC 2004 (164) ELT 292 (CESTAT)***, parts of audio system were imported in SKD condition. It was held that it has to be classified as 'audio system'. [During relevant period, parts were freely importable but audio system was not freely importable].
- d) In ***Varshatronics v. CC 1999(106) ELT 89 (CEGAT)***, it was held that washing machine imported in SKD condition (excepting a few parts) would be classifiable as 'washing machine', applying rule 2(a). Further, goods can be confiscated if import of full machine without licence is prohibited. [In this case, import of full machine was prohibited but parts could be imported without import licence. The assessee imported almost all the components to show that he is importing parts and not the whole machine].
- e) In ***CC v. Hindustan Motors Ltd. 2003 (156) ELT 155 (CESTAT)***, almost all components of engine were imported in one consignment. Invoice showed them as 'set of engine'. The assembly of the components would give engine essential characteristic of engine, though some local components would be required to complete the engine. It was held that the import was of complete engine. - - It was also held that complexity of the assembly method is not required to be taken into account for purpose of application of rule 2(a).

We note that the underlying principle in all case is that even if the impugned article is incomplete, as long as it has the essential character, then it can be classified as a complete finished article. We also examine that in 06 Bs/E, the number of essential items impoted as per the Office Order dt 12-03-2014 on an average is more than 21. All these components find mention in Table 1 as common parts of any E Rickshaw, thus satisfying the essential character criteria of e-rikshaw in terms of Rule 2(a) of the

General Rules of Interpretation.

20. As regards the 12 Bills of Entry , we note that in 02 Bs/E,. the total no. of items of identical numbers are more than 10 . All these together figure as common parts of any E Rickshaw.

S. NO	PARTS	QUANTITY (Pcs.)	PARTS	QUANTITY (Pcs.)
B/E No. and date	4777299	05.09.2019	5144230	03.10.2019
1	Charging Socket	1500	Charging Socket	1550
2	Connection Box	1500	Connection Box	1550
3	Digital Speedometer	1500	Digital Speedometer	1550
4	Alarm System	1500	Left Right Switch	1550
5	On/Off Switch	1500	On-off switch	1550
6	Left right swtich	1500	Front Shocker	1550
7	Shocker	1500	Handle T	1550
8	Handle T	1500	Lamp ear	1550
9	Lamp ear	1500	Alarm System	1550
10	Arm Rest	1500	Arm Rest	1550
11	Transformer for charger	250		
No. of items	11		10	

TABLE 3

21.

SI No.	BE No	BE Date	Item	Quantity
1	3909116	03.07.19	Rear Axle	1200
2	4419559	09.08.19	Rear Axle	1200
3	4683106	29.08.29	Rear Axle	1000
4	3168551	09.05.19	Charger	1100
5	3237578	15.05.19	Lead Acid Battery	800
6	3448436	30.05.19	Rear Axle	1200
7	3804927	25.06.19	Charger	1300
8	5124669	01.10.19	Rear Axle	1200
9	5195547	07.10.19	Rear Axle	1200
10	5590235	07.11.19	Charger	1301

TABLE 4

In these 10 Bs/E, the number of items in each consignment (Bill of Entry) is one only but the quantity imported in all these consignments(Bills of Entry) is commercially comparable which is around 1200 Nos. In this context, we note that the Tribunal in **Commissioner Of Customs (Import), Mumbai Versus Videomax Electronics reported as 2011 (264) E.L.T. 466 (Tri.- Bom) [27-08-2010]**, the CESTAT clubbed the consignments of two different importers namely M/s. Electronic Instrumentation and M/s. Videomax Electronics to come to conclusion that the parts imported by these two importers can be clubbed together and Law is made applicable to the assembled resultant product. The relevant paras are reproduced.

"1.....M/s. Electronic Instrumentation (proprietor: Shri Vinod Kumar Agarwal) and M/s. Videomax Electronics (proprietress: Smt. SnehLata, w/o. Shri Vinod Kumar Agarwal) have imported components/parts required for electronic goods, namely, rechargeable lights and radio cassette recorders, during the period from April, 1997 to February 1998. These imports were made in several consignments during the said period. A set of Bills of Entry were filed by Electronics Instrumentation and another set by Videomax Electronics. These Bills of Entry were accompanied by the respective invoices and packing list

8.....On many occasions, the components imported by Shri Vinod Kumar Agarwal in the name of 'Electronic Instrumentation' on a particular date perfectly matched those imported by his wife in the name of 'Videomax Electronics' on the same date. (In one of these cases, the consignments covered by the Bills of Entry filed by the husband and the wife came in the same container.) There are also numerous instances of matching imports having been made by the couple on successive dates. In a few cases, matching components figured in Bills of Entry filed by the couple with a short gap of a few days.

16.....Separate Bills of Entry, No. 682 and No. 534 respectively, were filed on 5-1-1998 in the name of 'Videomax Electronics' and 'Electronic Instrumentation' describing the above goods in the same manner as in the respective invoices and claiming clearance.

17. Learned counsel has also relied on a few decisions including the apex court's judgment in Sony India case in support of his contention that each Bill of Entry has to be separately assessed and that it is not permissible in law to club imports of components covered by different Bills of Entry filed on the same date or on different dates, so as to assess the goods as the complete article in CKD/SKD condition. We have already held to the effect that the said contention of the learned counsel is not acceptable inasmuch as Vinod Kumar Agarwal admitted the subterfuge resorted to by him in the names of the respondents to evade Import Policy restrictions and to short-pay duty. It was clearly and categorically admitted that the imports of components by the respondents during the material period, as a matter of fact, constituted importation of complete RCRs and RCLs in CKD/SKD condition. Having admitted the Revenue's

case on facts, the respondents cannot claim the benefit of any of the decisions cited by their counsel, as the importers in the cited cases had apparently relied on Rule 2(a) without admitting subterfuge. We are of the view that, in respect of importers like the respondents who deliberately resort to subterfuge by importing complete articles against policy restriction on the pretext of importing components/parts thereof and also admit the offence as in this case, any interpretation of Rule 2(a) is only of academic interest. Moreover, the issue in the present case is squarely covered by the ratio of the Apex Court's decision in Phoenix case, the facts of which are similar to the facts of the present case."

This order was upheld by Supreme Court vide order dated 7-1-2011 in **Electronic Instrumentation v. Commissioner [2011 (270) E.L.T. A90 (S.C.)]**.

22. We note that from the parts of E Rickshaw imported as listed in Table 4 supra, it can be concluded that axles imported in these 10 consignments (Bills of Entry) are to supplement the other parts imported in the 8 each consignments (Bills of Entry) meant for assembly of e-Rickshaws. We note that the impugned order has relied on the case law of **Commissioner Of Customs (Import), Mumbai Versus Videomax Electronics [2011 (264) E.L.T. 466 (Tri.-Bom) [27-08-2010]** which was upheld by Supreme Court in **Electronic Instrumentation v. Commissioner [2011 (270) E.L.T. A90 (S.C.)]** while addressing the submissions made by the appellant.

23. Ld. Counsel for the Appellant submitted that the Rule 2(a) of general Interpretative Rules is not applicable because the unfinished and incomplete goods does not have the essential character of the finished or complete goods. However, as discussed in the preceding paras, the consignments imported in different B/Es put together does lead to the conclusion that Rule 2(a) of General Rules of Interpretation for classification under HSN is indeed applicable in the instant appeal. Ld. Counsel also submitted that the ICD TKD Office Order dt 12-03-2014

can not override the Exim Policy. However, we are of the opinion that the issue before us is whether the classification of impugned goods is CTH 8703 9000 as Electric Motor vehicles or CTH is 8708 9900 as Parts & accessories of automobiles. The aspects of allowing an unfinished vehicle as finished vehicle which may require certain statutory requirements under Motor Vehicles Act 1988 is not the issue under consideration.

24. The Appellant has stressed upon the words 'As presented' in Rule 2(a) of GIR to impress that the impugned goods as presented do not have essential characteristics and in this regard relied upon Hon'ble Apex Court judgement in the case of **Commissioner of Customs, New Delhi Versus Sony India Ltd. [2008 (231) E.L.T. 385 (S.C.)]**. We are of the view that this judgement is not applicable in the instant case, as the impugned goods imported in one consignment (Bill of Entry) is established are sufficient to assemble E-Rikshaw in CKD/SKD condition. Moreover, we also note that the "**Sony India**" judgement relied upon by the appellant has been distinguished by subsequent judgements such as (i) **Commissioner of Customs (Import), Mumbai vs. Videomax Electronics 2011 (264) E.L.T. 466 (Tri.-Bom)** (ii) **Salora International Ltd. vs. Commissioner of C. Ex., New Delhi 2012 (284) E.L.T. 3 (S.C.)** (iii) **Commissioner of Cus. (Import), Mumbai vs. Pundrick Ravindra Trivedi 2015 (322) E.L.T. 812 (S.C.)** (iv) **Ankit Asthana vs. Commissioner of Customs (Import), Nhava Sheva 2015 (327) E.L.T. 162 (Tri.-Bom)** (v) **Commissioner of Customs, Chennai vs. JSW Steel Ltd. 2016 (340) E.L.T. 262 (Tri.-Mad)** and (vi) **Vewvox Systems vs. Commissioner of Cus., C. Ex. & S.T., Noida-I 2017 (355) E.L.T. 148 (Tri.-All)**.

25. The Appellant has claimed the benefit of Sl. No. 526A of Notification No. 55/2017 dt. 30.06.2017. In this context, we note that the benefit of Sl. No. 526A of Notification No. 55/2017 dt. 30.06.2017 was not claimed by the Appellant at the time of filing of Bill of Entry. We also note that the impugned order has denied the benefit of the said Notification relying CESTAT Order in the case of **Abhedya Industries Ltd. Versus Commr. Of C. Ex. & S.T., Hyderabad-III** reported as **2016 (340) E.L.T. 398 (Tri.-Hyd) [21-06-2016]**. The relevant para is reproduced below:

"8. This being so, the contention of the appellant that even if they are not eligible under Notification No. 44/2001 they could be given benefit of Notification No. 43/2001-C.E. (N.T.) is therefore misconceived and unacceptable, since it is not the case of appellant that they had applied for benefit under Notification No. 43/2001."

26. In view of the above, we are of the opinion that the impugned components imported are essential components of the E-Rickshaw. Consequently, the correct classification of the impugned goods is CTH 87039000. Accordingly, the impugned order is upheld and the appeal is dismissed.

(Pronounced in the open Court on 10.02.2025)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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