

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH –

COURT NO. I

Customs Appeal No. 51790 of 2022

(Arising out of Order-in-Original No. 10/2022/SG/Pr.Commr./ICD-Import/TKD dated 27.04.2022 passed by the Principal Commissioner of Customs, New Delhi)

M/s. Battre Electric Mobility Pvt. Ltd.

....Appellant

G-1/185, RIICO Industrial Area,
Bindayaka Sirsi Road, Jaipur,
Rajasthan - 302012

Versus

Principal Commissioner of Customs,

....Respondent

ICD, Tughlakabad (Import),
New Delhi - 110020

APPEARANCE:

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

Shri S. K. Rahman, Authorised Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 21.08.2024

DATE OF DECISION: 17.02.2025

FINAL ORDER NO. 50311/2025

P.V. SUBBA RAO:

The order dated 27.04.2022 passed by the Principal Commissioner of Customs ICD (Import) TKD, New Delhi¹ holding that the items imported by M/s. Battre Electric Mobility Pvt. Ltd.² would deserve classification under Customs Tariff Term³ 8711 60 20 of the Customs Tariff Act, 1975⁴ and not CTI 8078 99 00, as classified by the appellant, and confirming the demand of differential customs duty of

-
1. the Principal Commissioner
 2. the appellant
 3. CTI
 4. the Tariff Act

Rs.5,52,09,099/- with penalty of Rs. 50,00,000/- under section 112(a)(ii) of the Customs Act, 1962⁵ has been assailed in this appeal.

2. The appellant had filed various Bills of Entry for import of goods declared as 'spare parts of e-Scooty' at Inland Container Depot, New Delhi. During the course of post-clearance audit by the Audit Commissioner, it was observed that the appellant had declared imported goods as 'spare parts of e-Scooty' and classified the same under CTI 8708 99 00. The audit officers observed that Chapter Heading⁶ 8708 covers parts and accessories of goods of CTH 8702 to 8704 and does not include two wheeled electric vehicles, namely motorcycle, moped and scooty and as per the Tariff Act, two wheeled electric vehicles and parts thereof are appropriately classifiable under CTH 8711 and CTH 8714, respectively. The audit officers also observed that HS Code of the items in question was mentioned as CTH 8711 60 in the Bill of Lading pertaining to Bill of Entry dated 31.10.2020, which had been uploaded on e-Sanchit, whereas the appellant had classified the said item under CTI 8708 99 00. It, therefore, appeared to the audit officers that the appellant had mis-classified the impugned items under CTI 8708 99 00 and the items appeared to be correctly classifiable under CTI 8700 60 20. Consequently, basic customs duty appeared to be payable @100% in addition to social welfare surcharge⁷ @10% and Integrated Goods and Services Tax⁸ @28%. Thus, the mis-classification of the impugned goods had resulted in short payment of duty amounting to Rs. 5,52,09,099/-.

5. Customs Act
 6. CTH
 7. SWS
 8. IGST

3. A show cause notice dated 29.04.2021 was, thereafter, issued by the Deputy/Assistant Commissioner of Customs, New Delhi to the appellant requiring it to show cause as to why short levy of duty amounting to Rs. 5,52,09,099/- should not be demanded and recovered, classification should not be rejected, penalty under section 112(a)(ii)/117 of the Customs Act should not be imposed and goods should not be held liable to confiscation under section 111(m) of the Customs Act.

4. The appellant submitted a reply dated 08.04.2022 in response and refuted the allegations made in the show cause notice.

5. The Principal Commissioner, however, passed the order dated 27.04.2022 holding that the imported items deserved to be classification under CTI 8711 60 20. The relevant portion of the impugned order dated 27.04.2022 dealing with the aspect is reproduced below:

"34.3 It is the case of the department that the Noticee imported essential components of e-Scooty like motor, frame assembly, controller, brake, front fork etc. It is also seen that each of these items was being imported in equal numbers such as the importer vide Bill of Entry No. 2214390 dated 02.01.2021 imported 185 sets of 53 items including motor, frame assembly, controller. Vide impugned Bills of Entry, the Noticee imported 50-53 items including motor, frame assembly, controller, brake, plastic attachment assembly etc. in equal numbers. Most of the essential items of the e-Scooty were being imported. **Consequently, the imported items warrant classification under CTI 8711 60 20 attracting BCD@100%, SWS@10% and IGST@28%.**"

(emphasis supplied)

6. After referring to the decision of the High Court in **M/s. Rama Krishna Sales Pvt. Ltd. versus Union of India & Ors⁹**, the Principal Commissioner observed:

"36. As the aforesaid order has attained its finality, the department concluded that if the importer is importing "motor and other essential components/assemblies, the same would be considered to have the essential character of an E-Scooty" and merits classification under 8711 60 20 instead of 87089900, attracting BCD@100%, SWS@10% and IGST@28%.

37.1 The Noticee on the other hand has denied the allegation of the department in totality and has relied on a number of case laws."

7. After referring to the provisions of rule 2(a) of the General Rules of Interpretation¹⁰, the Principal Commissioner observed as follows:

"39.2 A perusal of above shows that any reference to complete goods also includes incomplete or un-finished goods, if such incomplete or un-finished goods have the essential characteristics of finished goods. [First part of rule 2(a)]. The heading will also include finished goods removed un-assembled or disassembled i.e., in SKD or CKD packs. [second part of Rule 2(a)]"

Submissions of the appellant

8. Learned counsel for the appellant has made the following submissions:

- (i) The appellant had imported various parts of e-Scooty and classified them under CTI 8708 9900 and paid BCD at the rate of 15%. There is no dispute regarding the SWS and IGST. The

9. 2019 (366) E.L.T. 273 (Del.)

10. GRI

audit officers observed that Chapter Heading 8708 covers parts and accessories of goods falling under Chapter Heading 8702 to 8704 but does not include two wheeled electric vehicles viz motorcycle, moped, scooty etc., which are classifiable under chapter heading 8711 and 8714. Accordingly, a show cause notice was issued proposing reclassification of the goods and recovery of differential duty. Even if the declared classification was deemed incorrect there is no short payment of duty.

- (ii) The first contention in the impugned order is that the spare parts of e-Scooty are correctly classifiable under CTH 8704 and second contention is that they are classifiable under CTI 8711 6020 as e-Scooty in disassembled contention. Duty has been demanded at the rate of 100% on all goods whereas during relevant period parts of two wheelers falling under CTH 8708 attracted duty BCD at the rate of 15% only.
- (iii) Two wheelers falling under CTH 8711 were chargeable to duty at the rate of 100% but there was an exemption notification and the effect rate of duty was only 15%. Even if the classification is held against the appellant no duty is recoverable.
- (iv) Rule 2(a) of the GRI is not applicable to the present case because the parts and spare parts imported under any single consignment did not have the essential character of a finished e-Scooty and a large number of essential parts were not in such consignments. Even though the appellant had imported a fixed number of parts/ sets of different items/ spares in a

few consignments, it cannot automatically mean that the appellant had imported e-scooters in CKD condition. The most significant parts of e-Scooty such as batteries/rubber parts/hardware parts were not imported. The appellant had, in fact, procured large number of parts and components from the local market in India and used them along with the imported goods to assemble e-Scooty. The list of the parts procured locally is enclosed as Annexure-6 at page 166 of the appeal.

- (v) Even if the GRI (2)(a) is applied and the imported goods are held to be classifiable under CTI 8711 6020, the applicable BCD would be only 15% and NOT 100% as has been held in the impugned order. The reason for this is that unconditional exemption Notification No. 50/2017-Customs dated 30.06.2017 as amended by Notification No. 3/2019-Customs dated 29.01.2019 and Notification No. 1/2020-Cus dated 02.02.2020 (Sr. No. 361A) would apply to e-Scooty in disassembled condition. The appellant had claimed this exemption in its submissions before the Principal Commissioner but he declined to consider this exemption notification while confirming the duty on the ground that the appellant had not claimed this exemption notification in the Bill of Entry. The substantive benefit of the notification should not have been denied even if it was not claimed in the Bill of Entry.
- (vi) The reason the appellant had not claimed the benefit of this notification in the Bill of Entry is that it was claiming a different classification and it was not claiming the classification

under CTI 8711 6090. If the Principal Commissioner decided to reclassify the goods under this CTI, it is NOT open to him to deny the unconditional notification to which it was entitled.

(vii) Even if the classification of the imported goods is changed, it cannot attract confiscation of the goods under section 111(m) of the Act. Consequently, there cannot be any penalty under section 112(a) (ii).

(viii) The impugned order confirmed and the SCN proposed the demand invoking extended period of limitation but they have not established any element of collusion, mis-statement or suppression of fact. In fact, the goods were cleared after examination of goods by the officers.

(ix) In view of the above, the appeal may be allowed and the impugned order may be set aside.

Submissions of the Revenue

9. Learned authorized representative appearing for the Revenue made the following submissions:

- (i) The imported goods deserve to be classified under CTH 8711 as e-Scooty even if we all the parts of the e-Scooty were not imported so long as they have the essential components such as motor, frame assembly, controller, brake, front fork etc.
- (ii) It was found in Bill of Entry no. 2214390 dated 02.01.2021 that the appellant had imported 185 sets of 53 items including the motor, frame, assembly, controller etc. and, therefore, they were liable for classification as e-scooter.
- (iii) In the Bill of Lading pertaining to Bill of Entry No. 99397605 dated 30.10.2020 which was been uploaded by the appellant

on e-sanchit of the Customs EDI systems, the Bill of Lading mentioned the HSN Code as 8711 60 whereas the appellant had classified it under CTI 8708 99 00. Therefore, it clearly appears that the appellant had willfully mis-classified the imported goods to pay BCD at 15% *ad valorem* instead of the correct rate of 100% *ad valorem*.

- (iv) As per GRI-2(a) unassembled and disassembled parts of an article which have the essential character of complete or finished article should be classified as the finished article. It is not necessary that the consignment should contain every single part of the article.
- (v) There are five major components/ assemblies such as transmission, motor, motoraxle, chassis and controller which provide the essential characteristics of a complete e-rickshaw in CKD and SKD condition. As per the office order of the Joint Commissioner of Customs dated 12.03.2024, if along with the motor, any two of the essential components are missing then it is the practice to consider the consignment as a parts of e-rickshaw and to otherwise consider them as e-rickshaws.
- (vi) The benefit of the exemption Notification No. 55/2017 as amended (Sr. No.361A) was not given to the appellant by the Principal Commissioner correctly as it had NOT claimed the benefit of the Notification in the Bill of Entry.
- (vii) In view the above, the impugned order may be upheld and the appeal may be dismissed.

10. We have considered the submissions advanced by both sides and

perused the records.

11. The issues to be decided in this appeal are :

- (a) Can more than one Bill of Entry be assessed together to determine the classification of the goods?
- (b) Can the goods imported under the 26 Bills of Entry be considered as e-scooter in disassembled and unassembled state in the facts of this case?
- (c) Did the Commissioner correctly deny the benefit of the unconditional exemption Notification No. 50/2017-Cus as amended available to goods falling under CTH 8711 on the ground that the appellant had not claimed it in the Bills of Entry?
- (d) Was the Commissioner correct in holding the goods were liable for confiscation under section 111(m) of the Customs Act for alleged wrong classification and the consequently imposing penalty under section 112(a)(ii) of the Customs Act?

Assessment of several Bills of Entry together

12. The first question to be answered is whether two or more Bills of Entry Bills can be assessed together to determine the classification of the goods, and demand differential duty or otherwise. To answer this question, we must examine the legal provisions relating to the Bills of Entry and assessment.

13. Section 46 of the Customs Act requires the importer to 'make an entry' of the imported goods by filing a Bill of Entry and section 47 of the Customs Act empowers the proper officer to make an order permitting clearance of goods for home consumption. 'Making an entry'

is a term used in Customs to submitting a form (known as Bill of Entry) to the Customs to clear the imported goods. The Bill of Entry is not only a declaration of the goods to be imported but is also the document through which import duty under section 17 of the Customs Act is self-assessed by the importer. Duty must be self-assessed by the importer and it can be re-assessed by the proper officer under section 17 of the Customs Act. 'Assessment' is defined in section 2(2) of the Customs Act. These legal provisions are reproduced below:

"Section 2

(2) **'assessment'** means **determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable**, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, **with reference to—**

(a) **the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;**

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

46. Entry of goods on importation.—(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof

(a) to examine the goods in the presence of an officer of customs, or

(b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing: Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India: Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, 1[and such other documents relating to the imported goods as may be prescribed]. 2 [(4A) The importer who presents a bill of entry shall ensure the following, namely:— (a) the accuracy and completeness of the information given therein; (b) the authenticity and validity of any document supporting it; and (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.] (5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

47. Clearance of goods for home consumption.—(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

14. As is evident, the Customs Act does not empower any officer to compel anyone to file a Bill of Entry or to file it in any manner or forbid anyone from filing a Bill of Entry. If the importer wants to clear the imported goods through customs, he has to file a Bill of Entry. Once a

Bill of Entry is filed, the proper officer can clear them for home consumption as per section 47 if he is satisfied that the imported goods are not prohibited goods and that if duty has been paid.

15. The importer who wants to clear imported goods must file a Bill of Entry (under section 46) and also self-assess the duty payable (under section 17) and the proper officer can re-assess the duty and if the proper officer who is authorised to give clearance under section 47 (or out of charge) is satisfied that the goods were not prohibited goods and the duty has been paid, he can give an order clearing them for home consumption.

16. In assessing any tax, there is, among other things, a unit of assessment. For instance, income tax is assessed on the income earned during the financial year. If 'A' has substantial income which is taxable under the highest bracket of income tax during a financial year, he will be taxed accordingly. If next year, he has very little income, he will be taxed accordingly – at low rates or nil. The income in the second year cannot be treated as if it is the income in the first year and taxed at a higher rate. Conversely, the assessee cannot claim to treat income of the first year to be treated as income in the second year and lower his taxes. Any adjustments between financial years can be made only as provided in the law (for instance, carrying forward depreciation or losses).

17. Similarly, in Customs, each Bill of Entry has to be assessed. If an importer, for instance, paid excess duty in one Bill of Entry and short paid duty in another, Revenue can raise a demand under section 28 in

the Bill of Entry where the duty was short paid and the importer can claim refund of the duty paid in excess under section 27 and it will have to be processed accordingly.

18. Two or more Bills of Entry cannot be taken together and assessed. The only exception made in the law are the project imports under the Project Import Regulations, 1986. If the importer claims and is allowed imports under these regulations, all goods imported under various Bills of Entry under the project are assessed together under a single tariff heading 98.01. All assessments are kept provisional and at the end all assessments are finalised together.

19. Except in project import regulations, there is no provision under the Customs Act under which several Bills of Entry filed by an importer can be assessed together to determine the classification because, as per section 2(2) of the Customs Act, assessment includes classification and since each Bill of Entry has to be assessed individually, the goods imported therein should be classified without considering what other goods were imported under other Bills of Entry.

20. If several goods are sought to be cleared in a Bill of Entry which together would constitute an incomplete or unfinished or disassembled or unassembled article, the goods so imported in the Bill of Entry should be classified, as per the GRI 2(a), as complete or finished article.

21. However, if several Bills of Entry are filed for various goods, each Bill of Entry must be assessed individually. The goods imported under different Bills of Entry cannot be considered together to decide the

classification. In the SCN in this case, all 26 Bills of Entry have been considered together to classify all the goods imported under them to be classified as e-Scooty under CTH 8711.

Classification of the imported goods

22. Only in respect of one Bill of Entry listed at S. No. 26 of the Annexure A to the SCN, the allegation is that several sets of 53 goods were imported. However, the SCN does not list the goods which were imported under this Bill of Entry nor does it show how the imported goods are sufficient to attract GRI 2(a) to classify them as e-Scooty.

23. In respect of the other 25 Bills of Entry, even such justification that several sets of goods were imported under each Bill of Entry and each set of which would constitute an e-Scooty as per GRI 2(a) is not in the SCN.

24. In the impugned order the classification of the imported goods was changed from parts of e-Scooty to e-Scooty itself by applying GRI 2(a). However, it is not indicated as to how in each of the Bills of Entry the goods imported itself would be sufficient to consider them as e-Scooty applying GRI 2(a).

25. We, therefore, find that the Commissioner erred in classifying the parts of e-Scooty imported by the appellant as e-scooter as there is no evidence to established that in each of the Bills of Entry equal sets of parts were imported and that those sets of parts constitute the complete e-Scooty.

26. **For the aforesaid reasons, the classification of the goods**

imported under the 26 Bills of Entry as e-Scooty in the impugned order cannot be sustained and needs to be set aside.

Exemption notification

27. Another submission of the appellant is that even if the imported goods were classified as e-Scooty under CTH 8711, it was liable to pay BCD only at 15% ad valorem as per exemption Notification No. 50/2017-Cus. dated 30 June 2017 as amended by Notification No. 3/2019-Cus. dated 29 January 2019, and further by Notification No. 1/2020-Cus. dated 2 February 2020 (S. No. 531A). Since the appellant had anyway paid duty at 15% advalorem, there can be no demand of differential duty.

28. Revenue does not dispute that if the imported goods are classified as e-Scooty, as has been done in the impugned order, the appellant would be entitled to the benefit of the above notification. However, in the impugned order, the Principal Commissioner did not allow the benefit of the because the appellant had not claimed the benefit of the notification at the time of filing the Bill of Entry.

29. The submission of the learner counsel for the appellant is that the benefit of exemption notification cannot be denied on the ground that it was not claimed at the time of filing the Bill of Entry. On the other hand, according to the learned authorised representative for the Revenue, the benefit cannot be extended at this stage because the appellant had not claimed the benefit of the notification and the Bill of Entry.

30. The question which needs to be answered is whether the benefit

of an unconditional exemption notification can be denied on the ground that it was not claimed in the bill of entry and if duty can be levied and collected ignoring the benefit of the notification. To answer this question, we need to examine the relevant sections of the Custom Act itself. Section 12 reads as follows:

Section 12. Dutiable goods. –

(1) **Except as otherwise provided in this Act**, or any other law for the time being in force, **duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975** (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

31. Section 12 of the Customs Act, the charging section, begins with the exception clause "except as otherwise provided in this Act or any other law..". The effect of an exception clause has been explained by **Justice G.P. Singh** in his seminal book¹¹ on statutory interpretation as follows:

"A distinction is said to exist between provisions worded as "proviso", "Exception" or "Savings clause". **"Exception" is intended to restrain the enacting clause to particular cases**; "Proviso" is used to remove special cases from the general enactment and provide for them specially; and "Savings clause" is used to preserve from destruction of certain rights, remedies or privileges already existing."

32. Thus, section 12 of the Customs Act levies duties at such rates as may be specific into the Customs Tariff Act, 1975, except as otherwise provided in this Act or in any other law for the time being in force. Thus, this section deals with two types of situations as follows:

- (a) Where it is not otherwise provided in the Customs Act or any other law – duties should be charged as specified in the

11 G P Singh Principles of Statutory Interpretation, 15th Edition, page 164

Customs Tariff Act, 1975

- (b) **Where it is otherwise provided in the Customs Act or any other law- the other provision prevails and subject to that provision, duties shall be charged as per the Customs Tariff Act, 1975.**

33. The other provision relevant to the question before us is section 25 of the Customs Act, which empowers the Central Government to, in public interest, exempt duties wholly or partly and conditionally or unconditionally. It reads as follows:

Section 25. Power to grant exemption from duty. –

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.
Xxxxxx”

34. Some exemption notifications issued by the Central Government in public interest under section 25 of the Customs Act are conditional, in which case it is up to the importer to either fulfil the conditions and avail the benefit of the notification or not. If the importer claims the benefit of notification, it is for him to show that he fulfilled the conditions. Other exemption notifications are unconditional. All notifications-either conditional or unconditional- are issued if the Central Government is satisfied that it is in public interest to issue them.

35. A combined reading of sections 12 and 25 of the Customs Act

shows that the charge of duty will be at the rates prescribed in the Customs Tariff except where a notification is issued under section 25. An unconditional exemption notification issued under section 25 reduces the charge under section 12 while a conditional exemption notification reduces the charge if and only if the conditions are fulfilled. In other words, although a higher rate of duty is specified in the custom tariff, if the Central Government, in public interest, issues a notification, the charge of duty under section 12 gets reduced or fully exempted because such a case falls within the exception clause of section 12. In the absence of the charge, no duty of customs can be collected.

36. Section 25 of the Customs Act does not say that the importer has to claim the benefit of an exemption notification to be entitled to its benefit although the obvious thing to claim while self-assessing duty in the Bill of Entry is to enter the notification number in the Bill of Entry. However, even if the importer has not claimed it at the time of filing the Bill of Entry, it will still be entitled to the benefit of an unconditional exemption notification. The benefit cannot be denied and duty cannot be charged at the tariff rate for several reasons. Firstly, if the duty is exempted by the Central Government in public interest an adjudicating authority cannot pass an order against the public interest determined by the Central Government. Secondly, neither section 25 of the Customs Act nor the notification requires an importer to claim the notification to be eligible to its benefit. Thirdly and most importantly, the charge of duty under section 12 of the Customs Act will be only to the extent of tariff rate read with the exemption notification because

once a notification is issued under section 25, such goods fall under the exception clause of section 12 and it is not for the adjudicating authority to charge duty beyond what is provided in section 12.

37. We now proceed to examine the notification itself. It reads as follows.

Notification No. 50 /2017 —Customs dated 30th June, 2017 as amended by Notification No. 3/2019-Cus dated 29 January 2019 and Notification No. 1/2020-Cus dated 2 February 2020 [S.No. 531A]

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17" March, 2017 published in the Gazette of India, Extraordinary, Part H, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17" March, 2017, except as respects things done or omitted to be done before such supersession, **the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-**

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and

(b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

Table

S.No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated goods and services tax	Condition no.
(1)	(2)	(3)	(4)	(5)	(6)
531A	8711	Electrically operated motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, - (1) As a knocked down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,- (a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis; (b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly (2) in a form other than (1) above	15% 25%		

38. It is evident that the above notification (S. No. 531A) does not come with any conditions nor does it require the importer to claim it in the Bill of Entry for it to be entitled to its benefit. Tax laws and

notifications must be strictly construed and there is no scope for intendment or reading any words into them. Since neither section 25 of the Customs Act nor the notification requires an importer to claim the benefit as a pre-condition, the benefit of the notification has been wrongly denied by the Principal Commissioner in the impugned order on the ground that it was not claimed.

39. The reason the appellant had not claimed the notification in its Bill of Entry is self-evident. It classified the goods under a different tariff heading and in the impugned order, the classification has been changed and this notification applies to the changed classification.

Confiscation and penalty

40. In the impugned order, the imported goods were held liable for confiscation under section 111(m) because the appellant had wrongly classified the imported goods. Although the classification has been determined in favour of the appellant, we proceed to examine this question of confiscation as well.

41. Section 111(m) of the Customs Act reads as follows:

111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation:-

(a)....

(b).....

.....

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

42. This section provides for confiscation of goods brought it to India

from a place outside India which do not correspond in respect of value or in any other particular by the entry made under the Customs Act, which, in case of imports, is the Bill of Entry. There is no dispute that the nature of the goods imported was correctly declared by the appellant. The case of the department is that the appellant had claimed wrong classification of the imported goods in the Bill of Entry and since the imported goods do not correspond to the CTI claimed, they are covered by section 111(m) of the Customs Act.

43. Although the CTI of the imported goods is part of the Bill of Entry, it must be remembered that the Bill of Entry filed under section 46 of the Customs Act by the importer has certain facts such as the nature of the goods, specifications quantity, etc. and certain matters of opinion such as the classification, exemption notifications which would apply, etc. Although these are also made in the Bill of Entry, they are in the nature of self-assessment under section 17(1) of the Customs Act.

44. The definition of the assessment under **section 2(2) of the Act is as follows;**

2. Definitions.—In this Act, unless the context otherwise requires,—

.....

(2) "**assessment**" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to - *by Finance Act*, (a) **the tariff classification of such goods** as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or

under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and **includes provisional assessment, self-assessment, re-assessment** and any assessment in which the duty assessed is nil;"

45. Evidently, classification is a part of the assessment. If the importer wrongly assesses the duty (by incorrect classification, notification, etc.), the remedy against it is a re-assessment by the proper officer under section 17(4). The re-assessment can further be appealed against before the Commissioner (Appeals) or this Tribunal or the Supreme Court and at any stage the opinion can vary regarding the classification. Merely because the importer classified the goods in a way during self-assessment, it does not mean that the importer had mis-declared. There is no obligation under the law for the importer self-assessing the goods to anticipate if the proper officer or audit, would find the classification appropriate or not and if so what classification they will find to be appropriate and file the Bill of Entry. The goods will not become liable for confiscation under section 111(m) of the Customs Act merely because the importer classified the goods as it thought proper and the officers, subsequently take a different view.

46. Therefore, goods cannot be held liable for confiscation for claiming a wrong classification. Consequently, the penalty under section 112 of

the Customs Act, which is dependent on the goods being held liable for confiscation under section 111 of the Customs Act also cannot be sustained.

47. To sum up:

- a) Each Bill of Entry must be assessed by itself and there is no provision in the Customs Act to combine the goods imported under more than one Bill of Entry to decide the classification and assess duty;
- b) Sufficient evidence has not been provided in the SCN or the impugned order in respect of each of the 26 Bills of Entry to establish that the goods imported under them are sufficient to be classify them as e-Scooty in CKD form applying GRI 2(a);
- c) Even if the goods were classified as e-Scooty under CTH 8711, no differential duty can be demanded because admittedly, as per Notification No. 50/2017-Cus. as amended, the rate of BCD is only 15% which is the same as was paid by the appellant.
- d) The Principal Commissioner erred in denying the benefit of the exemption notification on the ground that the appellant had not claimed it in the Bill of Entry. Neither section 25 of the Customs Act nor the notification requires the importer to claim the exemption in the Bill of Entry as a pre-condition to enjoy its benefit.
- e) An unconditional exemption notification falls under the 'Except as otherwise provided' clause of section 12- the charging section of the Customs Act- and therefore, the charge of duty

gets reduced as per the notification.

- f) All notifications are issued by the Central Government on being satisfied that it is in public interest to do so and the Principal Commissioner erred in denying the notification and thereby deciding against what according to the Central Government was in public interest.
- g) Imported goods do not become liable to confiscation under section 111(m) of the Customs Act simply because the appellant had classified the imported goods under a CTI which is a matter of his opinion and there is no obligation on the appellant to either anticipate the views of the officers or to file Bills of Entry conforming to such views.
- h) Consequently, the penalty under section 112 on the appellant cannot also be sustained.

48. In view of above we set aside the impugned order and allow the appeal.

[Order pronounced on **17.02.2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)