

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 51748 OF 2021

[Arising out of Order-in-Original No.01/COMMR/MS/HANON/ICD-PPG/2021-22 dated 30.04.2021 passed by the Commissioner of Customs, ICD Patparganj & other ICDs, Delhi]

Hanon Climate Systems India Pvt. Ltd.

....Appellant

SP-812A, RIICO Industrial Area,
Phase-II, Bhiwadi, Alwar,
Rajasthan-301019

Versus

**Commissioner of Customs
ICD Patparganj and Other ICDs**

....Respondent

Ghazipur, Delhi-110096

APPEARANCE:

Shri B.L. Narasimhan, Ms. Kruti Parashar and Shri Prince Kumar, Advocates for the Appellant

Shri Mihir Ranjan, Special Counsel for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

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

Date of Hearing: 27.08.2025

Date of Decision: 21.01.2026

FINAL ORDER NO. 50136/2026

JUSTICE DILIP GUPTA:

Hanon Climate Systems India Pvt. Ltd.¹ has challenged the order dated 30.04.2021 passed by the Commissioner by which the classification of the three goods imported by the appellant, namely, aluminium tubes, aluminium pipes and aluminium profiles² under Customs Tariff Heading³ 7604, CTH 7608 and CTH 7616 have been

-
1. the appellant
 2. the goods
 3. CTH

rejected and have been ordered to be re-classified under CTH 8708. The Commissioner has also directed for recovery of customs duty under section 28(4) of the Customs Act 1962⁴ with interest. The Commissioner has also imposed penalty upon the appellant under section 114A and section 114AA of the Customs Act.

2. The appellant is engaged in the import of goods which are used for manufacturing engine cooling module⁵, radiators and condensers which shall collectively be referred to as finished goods.

3. The present case concerns the classification of the goods imported by the appellant during April 2015 to March 2016 through various Bills of Entry.

4. The appellant has described the goods in the following manner:

- (i) **Aluminium Tubes:** Two types of aluminium tubes are imported by the appellant. The first type of aluminium tubes is in long rectangular shape which are hollow from inside and the same are used for making 'Core' (which is a part of radiator), by process of fin insertion, crimping, degreasing and brazing in furnace. The second type of aluminium tube is a dimpled tube which is again long rectangular tubes/strips which are hollow, and the same further undergoes the process of working (i.e. core making/brazing in furnace/final assembly with plastic, rubber, etc.) to make the finished goods (i.e. engine cooling module);

4. the Customs Act
5. ECM

(ii) **Aluminium Pipes and articles i.e. RD Pipes and**

RD Tank: The Receiver Dryer⁶ pipe is an aluminium hollow pipe which is used for making RD Tank Assembly for storing refrigerant. During manufacturing process, holes are punched at required places on the RD Pipe so that it can properly connect with the RD Tank, which is a curved aluminium structure. When RD Pipe and RD Tank are put together, it forms the RD Tank Assembly;

(iii) **Aluminium Profiles:** Aluminium profiles imported by the appellant are used in manufacturing condensers.

5. The appellant undertakes manufacture of the finished goods using the pipes, tubes and profiles. The finished goods of the appellant have been described by the appellant in the following manner:

(i) **Engine Cooling Module:** The ECM is a combination of radiator, cooling fan and shroud. It rejects the heat generated within the engine into ambient air using the cooling fan mounted on the radiator. The appellant inter alia uses aluminium tubes to manufacture ECM. The tubes are further worked upon so that a radiator can be made over which cooling fan is mounted;

(ii) **Charge Air Cooler:** Intercooler optimized combination of air can be supplied to the vehicle engine through the heat exchanging processes of heated air that has been pressurized by Turbo

6. RD

Chargers and atmosphere. The appellant manufactures the charge air cooler using the rectangular tubes;

(iii) Condenser: The Condenser cools and converts the heated and high-pressure refrigerant received from the compressor into a liquid form. The appellant manufactures the condenser assembly using the aluminium profiles and RD Tank Assembly.

6. The appellant classified the goods under Customs Tariff Item⁷ 7604 21 00, CTI 7608 20 00 and CTI 7616 99 90 of the First Schedule to the Customs Tariff Act, 1975⁸ and claimed exemption from payment of Basic Customs Duty⁹ in terms of Serial No. 610 of Notification No. 152/2009-Cus dated 31.12.2009¹⁰ and Serial No. 992 of the Notification No. 046/2011-Cus dated 01.06.2011¹¹.

7. The department, through an audit letter dated 26.11.2019, raised some objections, including that with respect to classification of the goods, and sought to re-classify the same under CTI 8708 91 00 and CTI 8708 99 00. The appellant, by a letter dated 13.12.2019, accepted its bona fide mistake in relation to the objections, except for the classification of goods and intimated the department regarding deposit of the differential duty by a letter dated 21.01.2020 with respect to the objections. The appellant defended classification of the goods under Chapter 76 and submitted that the same cannot be classified as parts of motor vehicles under CTH 8708.

7. CTI
8. the Tariff Act
9. BCD
10. the Notification dated 31.12.2009
11. the Notification dated 01.06.2011

8. However, a show cause notice dated 21.07.2020 was issued to the appellant whereby the Commissioner (Audit) proposed to classify the goods under CTH 8708 primarily for the reason that the goods were suitably designed and cut to size solely for making motor vehicle radiators, condensers and charge air cooler. The show cause notice was issued for the period 01.04.2015 to 31.03.2019 and proposed to demand duty under section 28(4) of the Customs Act.
9. The appellant filed a reply to the show cause notice and denied the allegations made therein.
10. The Commissioner, however, confirmed the classification proposed in the show cause notice and also confirmed the proposed demand under section 28(4) of the Customs Act with interest and penalties. The Commissioner, however, dropped the proposal for confiscation under sections 111(m) and 111(o) of the Customs Act holding that the appellant had not suppressed any facts about the end use of the goods while making the declaration.
11. The following chart gives details of the goods in dispute, classification as per the appellant and classification as confirmed in the impugned order.

Products in Dispute	Classification as per the Appellant	Classification as confirmed in the impugned order
Aluminium Tubes and Aluminium Pipes [i.e. RD Bottle Pipes]	CTI 7608 20 00 - 'Of aluminium alloys' under heading 'Aluminium Tubes and Pipes'	Sub-heading 8708 91 - 'Radiators and parts thereof: Other parts and accessories' under heading for 'Parts and Accessories of the Motor Vehicles of Heading 8701 to 8705'
Aluminium Profiles	CTI 7604 21 00 - 'Hollow Profiles' under sub-heading 'Of aluminium alloys' which is covered by heading	Sub-heading 8708 91 - Radiators and parts thereof: 'Other parts and accessories' under heading for 'Parts and Accessories of the Motor

	for 'Aluminium Bars, Rods and Profiles'	Vehicles of Heading 8701 to 8705'
RD Tank i.e. Aluminium article	CTI 7616 99 90 - 'Other' under sub-heading for 'Other' which is covered by heading for 'Other Articles of Aluminium'	Sub-heading 8708 91 - Radiators and parts thereof: 'Other parts and accessories' under heading for 'Parts and Accessories of the Motor Vehicles of Heading 8701 to 8705'

12. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Ms. Kruti Parashar and Shri Prince Kumar, made the following submissions:

- (i) The goods, as presented before the customs department at the time of import, were simple plain aluminium articles, tubes, profiles and pipes, required to undergo various processes before they could be used/fitted in motor vehicle radiator, condenser or charge air cooler. In the as-imported condition, the aluminium tubes/profiles/pipes do not even form any identifiable part of any finished product at the time of import, let alone be parts of motor vehicles;
- (ii) The goods in their 'as imported state' satisfy the definition of 'profiles' and 'tubes and pipes' given in Chapter Note 1(b) and Note 1(e) of Chapter 76 which covers articles of aluminium. Therefore, aluminium profiles in question merit classification under CTH 7604 whereas 'aluminium tubes' and 'RD Pipes' merit classification under CTH 7608;
- (iii) The Tank in its 'as imported' state is merely an aluminium cut-out/ structure, not in the shape of tube, pipes or profiles There are a number of steps that are to be undertaken on the RD Tank before it can be used

in RD Tank Assembly or before it can be considered as an identifiable part of a motor vehicle covered under CTH 8708. RD Tank is not in the shape of a tube, pipe or profile and, therefore, would be classifiable under the heading CTH 7616 which houses other articles of aluminium;

(iv) The Commissioner has rejected the classification solely on the ground that the goods are imported for and used for manufacturing parts of motor vehicles namely, parts of radiator. Determining classification based on end use of any product is completely against the settled position in law. A commodity falls within a tariff entry by virtue of its description. The end use to which the product is put to cannot determine the classification of such product. In this connection reliance has been placed upon the following decisions:

(a) Dunlop India Ltd. & Madras Rubber Factory Ltd. vs. Union of India and Others¹²;

(b) Vareli Weaves Pvt. Ltd. vs. Union of India¹³;

(c) Secure Meters Ltd. vs. Principal Commr. of Cus. (import), New Delhi¹⁴;

(d) Commissioner of Customs (import), Nhava Sheva, Raigad vs. Jagat Malkani¹⁵;

(v) In order to classify the impugned goods under CTH 8708, the impugned goods need to fulfil all the

12. 1983 (13) E.L.T. 1566 (S.C.)

13. 1996 (83) E.L.T. 255 (S.C.)

14. 2025 (393) E.L.T. 93 (Tri. – Del.)

15. 2020 (371) E.L.T. 536 (Tri. – Mumbai)

conditions stipulated in the Explanatory Notes to Section XVII under which an article would be classifiable under CTH 8708 only if it cumulatively satisfies all the three conditions:

- a. Not being excluded by Note 2 to Section XVII;
- b. Being suitable for use solely or principally with the articles of Chapters 86 to 88; and
- c. Not being more specifically included elsewhere in the Nomenclature.

(vi) The goods in their 'as imported state' are raw inputs of aluminium which are further subjected to various processes by the appellant before they can be used in manufacturing the ECM/ charge air cooler and condensers (i.e. the finished goods). While, as a matter of fact, the goods can be and are used for manufacturing radiators and charge air coolers, but these cannot be considered as suitable for use solely or principally with motor vehicles. The goods are raw inputs which have wide application for manufacturing various types of products and are not limited to manufacture radiators and charge air coolers. Hence, the condition of sole and principal use is not satisfied in the present case;

(vii) With respect to the third condition, the goods are more specifically covered under CTH 7604, 7608 and 7616 of the Tariff Act. In this regard, reliance has been placed upon the decision of the Tribunal in **Shiroki Auto Components India Pvt. Ltd. vs. Commr. of C. Ex. & S.T., Ahmedabad**¹⁶, wherein the Tribunal held that

16. 2020 (374) E.L.T. 433 (Tri. - Ahmd.)

goods can be classified under Section XVII only if they are not more specifically covered elsewhere in the Nomenclature. The Tribunal held that parts of seats of motor vehicles are classifiable under CTI 9401 90 00 and not CTH 8708 on account of the goods being more specifically covered under the former;

(viii) Just because radiators, condensers or charge air coolers find their application in motor vehicles, classification of the raw materials used in the fabrication of these goods cannot be classified as parts of motor vehicles. To substantiate this reliance has been placed on the judgment of the Supreme Court in **Commissioner of Central Excise, Delhi-III vs. UNI Products India Ltd.**¹⁷;

(ix) On a plain reading of terms of CTH 7604, CTH 7608, 7616 and CTH 8708, it can be seen that 'profiles', 'tubes and pipes' and 'aluminium articles' cover the goods more specifically by name than 'parts' of motor vehicles which covers various types of parts meant for use in motor vehicle. It is a settled principle of law that specific entry has always to prevail over a generic entry;

(x) The goods have been imported from Republic of Korea and Thailand and benefits from the Notification 31.12.2009 and Notification dated 01.06.2011 have been collectively claimed;

(xi) The extended period of limitation under section 28(4) of the Customs Act is not invocable in the present case as

17. 2020 (372) E.L.T. 465 (S.C.)

none of the ingredients i.e. collusion, wilful mis-statement and suppression of facts can be attributed to the appellant. This submission is also supported by the fact that the Commissioner has set aside the proposal for confiscation under section 111(m) and section 111(o) of the Customs Act for the reason the appellant had not suppressed any fact about the end use of the goods while making the declarations in the Bill of Entry. The declaration given in the Bill of Entries is complete in all respect;

(xii) This apart, the issue regarding classification of the goods is covered by the decision of the Tribunal in **Visteon Climate Systems India Ltd. vs. Commissioner of Customs**¹⁸ passed by this Tribunal, which was also informed to the department from the start i.e. Audit stage. Thus, it is safe to establish and conclude that the appellant did not suppress any facts in the present case;

(xiii) The present dispute pertains to classification of goods and not of mis-declaration which cannot warrant invocation of section 28(4) of the Customs Act as there is no mala fide intent on part of the appellant. It is an established principle of law that misclassification does not amount to misrepresentation. In an interpretation issue, the extended period cannot be invoked simply because the interpretation given by the appellant is different from that of the department. In this connection, reliance has been placed on:

18. 2015 (315) E.L.T. 253 (Tri. - Del.)

- (a) M/s. Aglowmed Ltd. vs. Commissioner, Central Goods and Service Tax¹⁹;**
- (b) Midas Fertchem Impex Pvt. Ltd. vs. Principal Commr. of Cus., ACC (Import), New Delhi²⁰;**
- (c) Commissioner of Customs, New Delhi-Prev vs. M/s. Vision Diagnostic India Private Limited²¹;**
- (d) M/s. Goldstar Glasswares Pvt. Ltd. vs. Principal Commissioner of Customs²²;**

(xiv) As the extended period of limitation is not invokable in the present case, the penalties confirmed on the appellant under section 114AA and section 114A should also be set aside; and

(xv) When the principal demand is not justified, there is no liability to pay ancillary demand of interest under section 28AA of the Customs Act.

13. Shri Mihir Ranjan, learned special counsel appearing for the department, however, supported the impugned order and made the following submissions:

- (i)** The impugned order dated 30.04.2021 is a well-reasoned order and is sustainable. The Commissioner has correctly re-classified the goods, i.e. aluminium profile, tubes and pipes, under CTH 8708, which the appellant had self-assessed under CTI 7604 21 00, CTI 7608 20 00 and CTI 7616 99 00. After that, the denial of the exemption benefit under Notifications dated

19. Excise Appeal No. 51902 of 2021 decided on 17.02.2025

20. 2023 (384) E.L.T. 397 (Tri. - Del.)

21. Customs Appeal No. 55371 of 2023 decided on 16.01.2025

22. Customs Appeal No. 52752 of 2019 decided on 23.06.2025

31.12.2009 and Notification dated 01.06.2011 is only a logical conclusion as these Notification do not apply to goods classified under CTH 8708;

- (ii)** In the present case, it is not in dispute that imported aluminium profiles/tubes/pipes were having a specific part number correlated to Auto components (radiators, condensers, ECM, Charge air coolers). The appellant imported the goods solely for captive motor vehicle assemblies;
- (iii)** In the present case, classification can clearly be made according to the Customs Tariff Heading and the relevant Section and Chapter Notes as per rule 1 of GIR. Consequently, rules 2 to 6 will not apply to the goods;
- (iv)** The goods were not generic aluminium products. They bore part numbers tied to vehicle drawings and were imported only for captive use in car radiators, condensers and ECMs. The imported aluminium tubes bearing part number are custom-shaped rectangular profiles designed exclusively for use in fabrication of radiator core for motor vehicles. These tubes undergo fin insertion and crimping but retain their identity as radiator specific components throughout the process. Similar position in the case of aluminium pipes and articles i.e. RD Pipes and RD Tank. The RD pipes are aluminium hollow pipes used for making RD tank assembly for storing refrigerant. Therefore, the goods fall under CTI 8708 as "parts and accessories of motor vehicles of headings 8701 to 8705";

- (v)** In terms of Section Note 1(g) to Section XV, Chapter 76 is excluded once the goods fall under Section XVII (Chapter 87) and, therefore, cannot be classified under Chapter 76. Explanatory Notes to HSN concerning CTH 7608 excludes tubes and pipes made up into specific identifiable vehicle parts (Section XVII);
- (vi)** The contention of the appellant that classification should not be based on end use but it should be based on the condition in which goods are imported is not correct. The goods, at the time of importation, were recognizable as identifiable auto parts due to shape, design, part number, and correlation with drawings;
- (vii)** It is true that according to Section and Chapter Note (i.e., Note 2 to Section XV), items of general utility that may be used alongside specific machinery or equipment are classified independently. Such items do not qualify as parts or accessories of particular goods and should be classified under their material or generic headings. However, in this case, since Section XV explicitly excludes articles from Section XVII, the goods in question cannot be classified under Chapter 76 as they do not qualify as items of general utility;
- (viii)** The extended period of limitation was correctly invoked in the facts and circumstances of the case; and
- (ix)** Penalties were also correctly invoked.

14. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

15. The issue that arises for consideration in this appeal relates to classification of aluminium tubes, aluminium pipes and aluminium profiles. According to the appellant they are classified under CTI 7604 21 00, CTI 7608 20 00 and CTI 7616 99 90, while according to the department they are classifiable under CTI 8708 91 00 and CTI 8708 99 00.

16. It would, therefore, be appropriate to refer to the relevant portions of Chapter 76 and Chapter 87.

CHAPTER 76

ALUMINIUM AND ARTICLES THEREOF NOTES:

1. In this Chapter, the following expressions have the meaning hereby assigned to them:

(a) Bars and rods

Rolled, extruded, drawn or forged products, not in coils, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including "flattened circles" and "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products with a rectangular (including square), triangular or polygonal cross-section may have corners rounded along their whole length. The thickness of such products, which have a rectangular (including "modified rectangular") cross-section exceeds one-tenth of the width. The expression also covers cast or sintered products, of the same forms and dimensions, which have been subsequently worked after production (otherwise than by simple trimming or de-scaling), provided that they have not thereby assumed the character of articles or products of other headings.

(b) Profiles

Rolled, extruded, drawn, forged or formed products, coiled or not, of a uniform cross-section along their whole length, which do not conform to any of the definitions of bars, rods, wire, plates, sheets, strip, foil, tubes or pipes.

The expression also covers cast or sintered products, of the same forms, which have been subsequently worked after production (otherwise than by simple trimming or de-scaling), provided that they have not thereby assumed the character of articles or products of other headings.

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(e) Tubes and pipes

Hollow products, coiled or not, which have a uniform cross-section with only one enclosed void along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygonals, and which have a uniform wall thickness. Products with a rectangular (including square), equilateral triangular or regular convex polygonal cross-section, which may have corners rounded along their whole length, are also to be considered as tubes and pipes provided the inner and outer cross-sections are concentric and have the same form and orientation. Tubes and pipes of the foregoing cross-sections may be polished, coated, bent, threaded, drilled, waisted, expanded, cone-shaped or fitted with flanges, collar or rings.

Sub-heading Notes

1. In this chapter, the following expressions have the meanings hereby assigned to them:

(a) Aluminium, not alloyed

Metal containing by weight at least 99% of aluminium, provided that the content by weight of any other element does not exceed the limit specified in the following Table:

(b) Aluminium alloys

Metallic substances in which aluminium predominates by weight over each of the other elements, provided that:

- (i) the content by weight of at least one of the other elements or of iron plus silicon taken together is greater than the limit specified in the foregoing table; or

(ii) The total content by weight of such other elements exceeds 1%.

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Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
7604	Aluminium bars, rods and profiles			
7604 10	- Of aluminium, not alloyed:			
7604 10 10	--- Wire rods	Kg.	7.5%	-
7604 10 20	--- Bars and rods, other than wire rods . .	Kg.	7.5%	-
	--- Profiles:			
7604 10 31	---- Hollow	Kg.	7.5%	-
7604 10 39	---- Other	Kg.	7.5%	-
	- Of aluminium alloys:			
7604 21 00	-- Hollow profiles	Kg.	7.5%	-
xxxxxxxxxx				
7608	Aluminium tubes and pipes			
7608 10 00	- Of aluminium, not alloyed	Kg.	10%	-
7608 20 00	- Of aluminium alloyed	Kg.	10%	-
xxxxxxxxxxxxxx				
7616	Other articles of aluminium			
7616 10 00	- Nails, tacks, staples (other than those of heading 8305), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles	Kg.	10%	-
	- Other:			
7616 91 00	-- Cloth, grill, netting and fencing, of aluminium wire	Kg.	10%	-
7616 99	-- Other:			
7616 99 10	--- Expanded metal of aluminum and aluminium alloys	Kg.	10%	-
7616 99 20	--- Chains	Kg.	10%	-
7616 99 30	--- Bobbins	Kg.	10%	-
7616 99 90	--- Other	Kg.	10%	-

(emphasis supplied)

CHAPTER 87

VEHICLES OTHER THAN RAILWAY OR TRAMWAY
ROLLING – STOCK AND PARTS AND ACCESSORIES
THEREOF

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Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
xxxx	xxxxxx	xxxx	xxxx	xxxx
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705			
8708 10	- Bumpers and parts thereof:			
8708 10 10	--- For tractors	Kg.	10%	-
8708 10 90	--- Other	Kg.	10%	-
	- Other parts and accessories of bodies (including cabs):			
8708 21 00	-- Safety seat belts	U	10%	-
8708 29 00	-- Other	Kg.	10%	-
8708 30 00	- Brakes and servo-brakes; parts thereof.	Kg.	10%	-
8708 40 00	- Gear boxes and parts thereof	Kg.	10%	-
8708 50 00	- Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof	Kg.	10%	-
8708 70 00	- Road wheels and parts and accessories thereof	Kg.	10%	-
8708 80 00	- Suspension systems and parts thereof (including shock absorbers)	Kg.	10%	-
	- Other parts and accessories:			
8708 91 00	-- Radiators and parts thereof	Kg.	10%	-
8708 92 00	-- Silencers (mufflers) and exhaust pipes; parts thereof	Kg.	10%	-
8708 93 00	-- Clutches and parts thereof	Kg.	10%	-
8708 94 00	-- Steering wheels, steering columns and steering boxes; parts thereof . . .	Kg.	10%	-
8708 95 00	-- Safety airbags with inflator system; parts thereof	Kg.	10%	-
8708 99 00	- Other	Kg.	10%	-

(emphasis supplied)

17. The Commissioner has recorded the following finding in the impugned order to arrive at a conclusion that aluminium tubes, aluminium pipes and aluminium profiles deserve classification under CTI 8708 as parts and accessories of motor vehicles of headings 8701 to 8705.

"4.8 xxxxxxxxxxxx.

The imported article as presented to Customs carries characteristics of a part of radiator of motor vehicle or carries characteristics of a aluminum tube. It is its subsequent use that makes it a part of radiator. It is also true that aluminium tube only goes as a component/part of a radiator and not for any other use. (Hanon Climate Systems India Pvt. Ltd. is a manufacturer of parts & accessories of motor vehicles. Hanon Climate is a subsidiary of global automotive supplier Hanon Systems). Based on common parlance test, anything imported by Hanon Climate is a part of a motor vehicle. The imported aluminium tubes are of specific shapes and with specific identification numbers for use as part of radiator."

18. Regarding the extended period of limitation, the Commissioner observed as follows:

"4.17 xxxxxxxxxxxx. I find that the responsibility to declare the facts correctly to the Revenue is casted on the importer, but the noticee failed to discharge its responsibility to declare the facts to the Revenue properly and continued to follow the same practice even after being informed by the Revenue about the mis-declaration being made the noticee while importing and getting the impugned goods cleared. Thus, I find that the noticee had contravened the provisions of Section 17(1) of the Customs Act, 1962 as they failed to assess the goods correctly as discussed herein above with deliberate change in description which rendered themselves liable to penal action under section 28(4) of the Customs Act, 1962."

19. Regarding confiscation under sections 111(m) and 111(o) of the Customs Act, the Commissioner observed:

"4.19 The goods imported and particulars stated in bills of entry of this notice are the same. So the goods are not liable to confiscation under Section 111(m) of Customs Act.

Similarly the imported goods are claiming preferential rate of duty from specified country of import and these are not exempted from duty or prohibited from import. The discrepancy in Certificate of Origin description and bill of entry description is a curable defect and party has not suppressed fact of end use in declarations. So the goods are not liable to confiscation under section 111(o) of Customs Act."

20. The contention of learned counsel for the appellant is that the goods when presented before the customs department at the time of import were simple plain aluminium articles, tubes, profiles and pipes and they were required to undergo various processes before they could be used/fitted in motor vehicle radiator, condenser or charge air cooler. The submission, therefore, is that the aluminium tubes/profiles/pipes in the imported condition do not form any identifiable part of any finished product at the time of import, much less being parts of motor vehicle.

21. It would be seen from Chapter Note 1(b) and Chapter Note 1(e) of Chapter 76 that it covers articles of aluminium. The aluminium profiles, as noticed above, are of uniform cross-section along the whole length and they cannot be said to assume the character of parts of motor vehicles covered under CTH 8708 at the time of import. Likewise, aluminium tubes and RD Pipes also have uniform cross-section along the whole length and, therefore, they do not assume the character of articles or products under CTH 8708. They are, therefore, not excluded from the ambit of CTH 7608 by virtue of Section Note 1(g) to Section XV and HSN Explanatory Note to CTH 7608.

22. In respect of RD Tanks, it needs to be noted that the tank in its imported condition is merely an aluminium cut-out/structure, not in the shape of tubes, pipes or profiles. Number of steps have to be

undertaken on the RD tank before it can be used in the RD Tank assembly or before it can be considered as an identifiable part of a motor vehicle covered under CTH 8708. RD Tank is not in the shape of a tube, pipe or profile and, therefore, would be classifiable under CTH 7616 which contains other articles of aluminium.

23. The Commissioner has rejected the classification mentioned by the appellant for the reason that the goods are imported and used for manufacturing of parts of motor vehicles. The classification cannot be determined on the basis of end use of any product. When a product falls within a tariff entry by virtue of description, the end use to which the product may be put should not be considered for determining the classification of the product.

24. This is what was observed by the Supreme Court in **Dunlop India** and the relevant paragraph is reproduced below:

"42. We are clearly of opinion that in the state of the evidence before the revisional authority no reasonable person could come to the conclusion that V.P. Latex would not come under rubber raw. The basis of the reason with regard to the end-use of the article is absolutely irrelevant in the context of the entry where there is no reference to the use or adaptation of the article. The orders of the authority are, therefore, set aside. In the result the appeals are allowed with costs."

25. This is what was also observed by the Tribunal in **Secure Meters** and the relevant paragraph is reproduced below:

"30. In these two appeals, the dispute is about classification of the goods, which process, being a part of assessment, should be done in the form in which the goods are imported. After they are cleared for home consumption, the goods may take any other form as a part of any other goods or otherwise but that is immaterial because the goods were not imported in

that form; classification has to be in the form in which the goods are imported.”

26. It also needs to be noted that the goods cannot directly fit into any radiator, charge air coolers, or condensers for they have first to be subjected to different manufacturing processes such as drilling holes in pipes, threading, fin insertion/crimping/degreasing/brazing in furnace for tubes, attachments of brackets.

27. In the own case of the appellant in **Visteon Climate Systems India** regarding the classification of aluminium square tubes under CTH 7604, the Tribunal accepted the classification. It needs to be noted that the appellant was earlier known as Visteon Climate Systems India. The relevant portion of the decision of the Tribunal is reproduced below:

“2. So far as the Revenue’s claim is concerned, the Tariff Heading 8708 91 00 emanates from the gene “parts and accessories of motor vehicles” of the heading 8701 to 8705 under the main heading 8708. The Customs Tariff Heading 8708 91 00 deals with residuary item and parts thereof. This clearly shows that to bring the goods to the fold of CTH 8708 91 00 that should be established as parts and accessories of the motor vehicles of headings 8701 to 8705. The burden lies on Revenue to prove that the imported goods were sold. But nothing comes out from that angle on record and Revenue failed to discharge its burden of proof. So far as the aluminium tube is concerned, claim of the appellant is that the same shall fall under CTH 7608 10 00. That entry relates to the “product of aluminium tubes and pipes”. Therefore, appellant is correct on its claim of classification in so far as the aluminium square tube is concerned.”

28. The decision of the Tribunal in **Denso Kirloskar Indus. Pvt. Ltd. vs. Commr. of Cus. (Appeals), Chennai**²³ also needs to be considered. The appellant had imported certain aluminium pipes, tubes and profiles and classified them under different Chapter Heading of Chapter 76. The department contented that the goods were specifically meant for use in manufacture of air-conditioners for automobiles and would, therefore, be classifiable under CTH 8415. The Tribunal did not accept the contention of the department and held that aluminium pipes and tubes even if cut to size would be classifiable under sub-heading 7608 20 and not under Chapter 84 of the Tariff Act. The relevant portion of the decision of the Tribunal is reproduced below:

"3. XXXXXXXX

(a) to (b) xxxxxxxxxxxx

(c) The classification of the entities in question, used to make up a radiator and whether they would continue to be classified as tube/ pipes under Heading 7608.20 of the Customs Tariff has to be considered and it is found that merely because pipes and tubes are cut to size, they would not make any difference to the classification of the entity under Chapter Heading 7608.20, since Note (e) of Chapter 76 specifically covers tubes and pipes of aluminium that may be polished, coated, bent, threaded, expanded and cut to size. Infact, in the case of Tamil Nadu Electricity Board v. CC reported in 1992 (58) E.L.T. 101 and 1998 (102) E.L.T. 724, it was the case of the Revenue that such cut to size tubes or pipes would continue to fall under respective Chapter i.e. 76 and would not go to Chapter 84 and this contention was upheld by the Tribunal. The decision in the case reported at 1992 (58) E.L.T. 101 has been held by the Supreme Court as reported in 1998 (97) E.L.T. A65. Therefore, classification of the entities in the form of tubes and or pipes has to be

23. 2003 (158) E.L.T. 187 (Tri. – Bang.)

made under Heading 7608.20. The classification of the other products has to be considered as profiles under 7604, however it is found that if the profiles are further worked, they would result in an article or products of other headings then they cease to remain under Chapter 76. Their classification under 7604 cannot be therefore upheld, since they are further worked, as admittedly, they are caulked, fluted walled, etc.”

29. It is, therefore, not possible to accept the contentions advanced by the learned special counsel for the department that the Commissioner was justified in re-classifying the goods under CTH 8708. Merely because the imported goods have a specific part number would not mean that they can be called as parts of motor vehicles for it is not in dispute that various processes are required to be undertaken on them before they can be used in the motor vehicle radiators, condensers or charge air coolers. The goods were certainly not recognizable as identifiable auto parts at the time of import.

30. It now needs to be examined whether the goods would fall under CTH 8708.

31. In order to classify the goods under CTH 8708, the goods have to fulfil the conditions stipulated in the Explanatory Notes to Section XVII under which a product would be classifiable under CTH 8708 only if it cumulatively satisfies all the three conditions:

- (a) Not being excluded by Note 2 to Section XVII;
- (b) Being suitable for use solely or principally with the articles of Chapters 86 to 88; and
- (c) Not being more specifically included elsewhere in the Nomenclature.

32. In the present case, the goods as imported are raw inputs of aluminium which are subjected to various processes by the appellant before they can be used in manufacturing the ECM, charge air cooler or condensers. The goods are raw materials which have wide application for manufacturing various types of products and are not limited to manufacture of radiators, charge air coolers or ECM. Hence, they cannot be considered as suitable for use solely and principally with motor vehicles. The goods are also specifically covered under CTH 7604, CTH 7608 and CTH 7616. They can be classified under Section XVII only if they are not more specifically covered elsewhere. Merely because the appellant used the said pipes, tubes and profiles in manufacturing parts of automobiles, it cannot be concluded that the tubes, pipes and profiles are for sole or principal use with motor vehicles.

33. The appellant would, therefore, clearly be entitled to claim the benefit of Notifications dated 31.12.2009 and 01.06.2011. From a reading of the Exemption Notifications, it is clear that in order to avail the exemption benefits, an importer needs to prove that the goods are covered by the serial numbers of Exemption Notifications and that imported goods originated from the countries mentioned. The goods have been imported from the Republic of Korea, Thailand. The country of origin certificate filed by the appellant specifically mentions the goods by their name, part number and concerned invoice number. The appellant is, therefore, clearly entitled to the benefit of the Exemption Notifications.

34. The contention advanced by the learned special counsel for the department that the goods are classifiable under CTH 8708, therefore,

cannot be accepted. As noticed above, the goods do not fulfill the conditions stipulated in the Explanatory Notes to Section XVII under which a product can be classified under CTH 8709.

35. The contention advanced by learned counsel for the appellant that the extended period of limitation could not have been invoked in the facts and circumstances of the case also deserves to be accepted.

36. The present dispute pertains to classification of the goods and not of mis-declaration. Mis-classification does not amount to mis-representation as it is an issue relating to interpretation.

37. This apart, the issue regarding classification is covered by the decision of this Tribunal in **Visteon Climate Systems India** in the own case of the appellant. The appellant had also informed the department right from the audit stage. It cannot, therefore, be said that the appellant suppressed any facts. Further, the Commissioner in the impugned order has set aside the proposal for confiscation of the goods under sections 111(m) and (o) of the Customs Act holding that the appellant had not suppressed any facts about the end use of the goods while making the declarations in the Bill of Entry.

38. It cannot, therefore, be said that the appellant had suppressed any material facts from the department with an intent to evade payment of duty. The extended period of limitation, therefore, could not have been invoked in the facts and circumstances of the case.

39. Penalties, therefore, under section 114AA and section 114A could also not have been imposed upon the appellant nor interest could have been demanded.

40. The impugned order dated 30.04.2021 passed by the Commissioner is, accordingly, set aside and the appeal is allowed.

(Order Pronounced on **21.01.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Jyoti