

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 78676 of 2018

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/AA/1171-1172/2018 dated 02.07.2018 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House 15/1, Strand Road, Kolkata-700001)

Commissioner of Customs (Port),

Custom House, 15/1, Strand Road,
Kolkata-700 001

: Appellant

VERSUS

M/s. Vani Electric Vefchicle Private Limited,

Dag No. 847, Khaitan No. 4003
JL 23, Mouza Bhadua, P.O. Mollaber,
Dankuni, Hooghly-712250

: Respondent

APPEARANCE:

Shri A. K. Choudhury, Authorized Representative for the Appellant

Shri A. K. Jha, A.R. for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77187/2024

DATE OF HEARING / DECISION: 08.10.2024

Order: [PER SHRI ASHOK JINDAL]

The present appeal has been filed by the revenue against the Order- in –Appeal No. Kol/Cus(Port)/AA/1171-1172/2018 dated 02.07.2018 passed by the Commissioner of Customs (Appeals)

2. Brief facts of the case as under:-

(a) On the basis of examination report and import documents it appeared that consignment imported against both the Bills of Entry, consists of all the essential components to make e- rickshaw. Accordingly a query was raised to importer that why the goods should not be classified under heading 8703, as complete e-rickshaw in CKD (Completely Knocked Down) condition.

(b) Importer vide letter dated 29.11.2017 submitted that all necessary components are not present in the subject consignment therefore goods should be classified under CTH 8708 instead of 8703. However, they are ready to pay the duty as decided by the department under protest. In view of the above observations, both the cases were adjudicated by the Additional Commissioner of Customs vide impugned Order-in-Original and the following order was passed:

(i) Re-assessed both the Bills of Entry by classifying the goods under Tariff Item No. 87038040.

(ii) Goods were confiscated under Section 111(m) of the Customs Act, 1962 for mis- declaration of description and classification of the goods.

(iii) Redemption fine of Rs. 4,00,000/-under Section 125 of the Customs Act, 1962 was imposed in each case.

(iv) Penalty of Rs. 5000/- in each case was also imposed under Section 112(a)(ii) of the Customs Act, 1962 was also imposed.

(c) Being aggrieved and dissatisfied with the said order, the appellant filed appeals in each case before the Commissioner of Customs (Appeals), Custom House, Kolkata.

2.1 The Ld. Commissioner appeals has Accordingly, the Ld. Commissioner (Appeals) has set aside the change in classification of the imported goods as done by the lower authority in both the cases and assessed the impugned two Bills of entry at declared classification of the goods by the appellant. Commissioner (Appeals) has also set aside the redemption fine and penalty imposed upon the appellant in both the cases, Aggrieved from the said order, the Revenue is before us.

2.2 In their grounds of appeal, the Revenue has made the following submissions: -

(i) Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, also known as the General Interpretative Rules (GIR) states that when incomplete goods are presented before customs for clearance and they have the essential character of complete goods,

they have to be classified as complete goods. If all the parts are presented in CKD condition and they have the essential character of a complete article, they have to be assessed as complete article. This has been held in the case of *Procal Electronics India Ltd. v. Commissioner 2005 (185) E.L.T. A58 (S.C.)*. The Hon'ble Supreme Court had upheld the Revenue holding that once the goods are imported in CKD condition and presented before Customs as such the goods are classifiable as complete article. The goods under import are in CKD condition hence classifiable under CTH 8503.

(ii) The Tribunal in the case of *P.R. Trivedi vs. CC 2005 (192) E.L.T. 801 (Tri. Mumbai)* held that if the goods are imported and presented by different importers they cannot be allowed to be treated as complete car cassette player. Even if they are imported by the same importer but in different consignments, they still do not become complete article since they are not presented together as a complete article in CKD condition, held the Supreme Court in the case of *C.C., Delhi vs. Sony India-2008(231) ELT385(SC)*. However in the instant case, the issue does not involve different consignment, hence the ratio of the case matter is not applicable.

(iii) If some items are not present in the CKD pack, the latter can still become complete article as ruled in the case of *Galaxy Agencies vs.C.C.E-2009 (239) ELT478(Tri.)* And in the case of *Bayerische Motoren - 2006 (193) E.I.T. 138 (A.A.R.)*, the AAR held that Motor cars imported in CKD units without seats have to be treated as complete cars. In the instant case, all the essential parts of e-rickshaw were present, hence the impugned goods are to be considered as e-rickshaw in CKD condition and thus classifiable under CTH 8703.

(iv) The CBEC Circular No. 55/95-Customs dated 30/5/95 issued vide F.No. 528/42/95- CUS (TU) with regard to 'Assessment of goods imported in CKD/ SKD condition' prescribes reliance upon the said General Rules for the Interpretation of the Harmonized System in such cases.

(v) The Learned Appellate Authority failed to appreciate that the process of assembling of e-rickshaw involves simple screwdriver technology and is not a complicated process requiring high precision, as claimed by the importer and wrongfully ruled in favour of the appellant on the said premise.

(vi) Since the goods were found to be mis-declared in terms of description, classification and value hence the same were liable to confiscation and the importer liable to penal action under provisions of Customs Act, 1962. Hence holding the impugned consignments not liable to confiscation and dropping of penal provisions are bad in law and the said Order-in-Appeal is liable to be set aside.

3. The Ld. Counsel appearing for the respondent submits that the present issue has already been dealt with by the Tribunal in the case of *Twinkle Tradecom Pvt. Ltd.* vide Final Order No. 75722 of 2024 dated 21.03.2024 and thus the issue is no longer res integra. In these circumstances, he prays that the appeal filed by the Revenue be dismissed.

4. Heard the parties.

5. We observe that in the case of *Twinkle Tradecom Pvt. Ltd. (Supra)*, the Tribunal has already examined the said issue and held as under: -

"5. Heard both sides and perused the appeal documents.

6. We observe that the Respondent had declared the goods as "Spare Parts of E-rickshaw". However, upon examination of the goods imported, the Department found that the imported goods consists of all the essential parts/components of the e-rickshaw. The essential items that were found to be imported by the Respondent are (i) Motor (ii) Axle (iii) Chassis (iv) Tyre& (v) Transmission (Gearbox). Accordingly, the adjudicating authority concluded that if all the parts are assembled together, it would make the complete e-rickshaw (without battery). The adjudicating authority cited Rule 2 of General Rule of Interpretation (GIR) and classified the said goods under CTH 8703.80.40 in accordance with the application of Rule 2 (a) of General Rule of Interpretation (hereinafter referred to as GIR).

6.1. We observe that the interpretation of the GIR by the adjudicating authority is not proper. The Ld. Commissioner (Appeals) has given a clear finding in the impugned order as to why the imported goods cannot be considered as a fully finished e-rickshaw. As per the reading of descriptions as provided under Import Tariff, Section Notes to Chapter XVII and Explanatory Notes to HSN/CTH 8703 and 8708, the goods imported will have the essential characteristic of e-rickshaw only when the same are assembled to create a T-shaped vehicle mounted on a chassis, whose two rear wheels are independently driven by separate battery-powered electric motors. Also, it is observed that the goods as imported by the Respondent fulfil the description as provide in explanatory notes to CTH 8708 as mentioned at Sl. Nos. (a) to (n).

6.2. Moreover, the lower authority in its findings has not adduced any evidence that the goods imported by the Respondent are in CKD condition and provides the essential characteristic of e- rickshaw. As per the

terminology of CTH 8703 in order to have the essential characteristics of three wheeled vehicle the same has to be powered or there should be propulsion through a battery which provides the power to the motor in order to thrust a vehicle. It is on record that there is no battery available in the goods imported to provide power supply to the e-rickshaw.

6.3. We observe that the lower authority has placed its reliance on Rule 2 (a) of General Interpretative Rules which stipulates as follows:

"(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles 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."

6.4. We agree with the findings of the Ld. Commissioner (Appeals) that the interpretation of statutes should be in line with the Act i.e., the Customs Tariff Act, 1975, and should be purposive in nature and not strictly as a literal interpretation which will not serve the purpose of the Act and the other literal description as provided. In this regard, the Ld. Commissioner (Appeals) has referred the judgment of Hon'ble High Court in the case of Macneill Engineering Ltd. Vs. Commissioner of Customs (Port), reported in 2014 (310) ELT 33 (Cal.), wherein it has been held as under:

"More often than not, in the interpretation of statutes, the Court should make a purposive interpretation of their provisions. A strictly literal Interpretation may not serve the purpose of justice. The same principle should be applied to the interpretation of the Customs Act, 1962 and the related statutes and rules, for example the Customs Tariff Act, 1975 and the schedules appended thereto."

6.5. In order to have the essential characteristics of any machine or vehicle, the parts involved in the manufacturing should fulfil the basic principle of that vehicle or machine. The lower authority has classified the goods under CTH 8703.80 which covers the vehicle propelled through motor powered by a battery. The goods imported as such, by the respondent, if assembled together, will not provide the basic function of propulsion as required for the classification under CTH 8703. Accordingly, we uphold the findings of the Id. appellate authority in the impugned order and hold that the goods imported would not constitute a fully finished e-rickshaw as it did not have all essential components for a fully finished e-rickshaw.

6.6. Regarding enhancement of value, we observe that the Ld. Commissioner (Appeals) has relied on the Judgment of Commissioner of Customs (General & CFS)

vs. Radhey Shyam Ratanlal reported in 2017 (358) E.L.T. 965 (Tri. Mumbai) and observed that the enhancement of values was done without providing any logical reasons. We agree with the findings of the Ld. Commissioner (Appeals) that the transaction value as declared by the respondent was rejected by the lower authority without application of valuation rules i.e., the CVR, 2007. Also, no reason for rejection were recorded in line with the procedure laid down in the said rules. Further, no evidence was provided to the respondent as to why the value as declared by the respondent was rejected by the lower authority. Accordingly, we hold that the enhancement of value without following the due process as laid down in the Act and CVR, 2007 and in violation of the principles of natural justice is not sustainable.6.7. Since the mis-declaration of the description, classification and value as alleged by the Department has not been established, we hold that the goods Imported are not liable confiscation. Accordingly, we hold that the Ld. Commissioner (Appeals) has rightly set aside the redemption fine and penalty imposed under the provisions of the Customs Act, 1962. 7. In view of the above, we uphold the impugned order and reject the appeal filed by the Department."

6. As the issue has already been decided by the Tribunal in the above case, therefore, following the said ratio, we do not find any infirmity in the impugned order and accordingly the same is upheld.

7. In the result, the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)