

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76045 of 2019

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/50/2019 dated 16.01.2019 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Port)

: Appellant

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

VERSUS

M/s. Jade Korea Spine Life

: Respondent

(Prop.: Mr. Anand Prakash)
Khagdhari Lane, Mirjanhat, Bhagalpur,
Bihar – 812 005

AND

Customs Appeal No. 76132 of 2019

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/49/2019 dated 16.01.2019 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Port)

: Appellant

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

VERSUS

M/s. Jade Korea Spine Life

: Respondent

(Prop.: Mr. Anand Prakash)
Khagdhari Lane, Mirjanhat, Bhagalpur,
Bihar – 812 005

APPEARANCE:

Shri Ashwini Kr. Choudhary, Authorized Representative for the Appellant-Revenue

Shri S.C. Ratho, Consultant for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NOS. 75061-75062 / 2025

DATE OF HEARING / DECISION: 16.01.2025

ORDER: [PER SHRI ASHOK JINDAL]

Both these appeals are having a common issue and therefore, they are disposed of by this common order.

2. The facts of the case are that the respondent filed Bills of Entry bearing Nos. 4524825 dated 22.12.2017, 4531002 dated 23.12.2017 and 4646796 dated 02.01.2018 for clearance of goods declared as components and parts of Electric Tricycle / E-Rickshaw through the Custom Broker M/s. Seaimpex Logistics Private Limited. The importer self-assessed the Bills of Entry under CTH 87089900, claiming benefit under Notification No. 50/2017-Cus. dated 30.06.2017 [Serial No. 528]. The said Bills of Entry were sent for 100% examination on first check basis for clearance of components and parts as would appear from the Bills of Entry and respective invoices.

2.1. The goods under the said consignments were withheld on the purported ground that the parts imported were E-Rickshaw in CKD condition. The Revenue took the view that the impugned goods would not be covered under Tariff Item No. 87089900, which is for parts and spares of motor vehicles.

3. Thereafter, the Ld. Additional Commissioner of Customs, (Gr.V A &B), Custom House, Kolkata passed the Order-in-Original No. KOL/CUS/ADC/11/ADJN(PORT)/2017(Gr-V A&B) dated 08.01.2018 and Order-in-Original No. KOL/CUS/ADC/23/ADJN(PORT)/2017(Gr-V A&B) dated 17.01.2018 re-assessing the Bills of Entry by rejecting the declared value of the goods, enhancing the value of the imported goods, re-classifying a portion of the subject goods, i.e. motor, controller,

chassis, differential and axle under CTH 87038040 as per Rule 2 of General Rules of Interpretation (GIR) and denied the benefit of Notification No. 50/2017-Cus. to the importer. The Ld. Additional Commissioner also confiscated the impugned goods under Section 111(m) of the Customs Act, 1962. Redemption fine under Section 125 of the Customs Act, 1962 and penalty under Section 112(a)(ii) of the Act were also imposed vide the above Orders-in-Original.

4. On appeal, the Ld. Commissioner of Customs (Appeals), Kolkata vide the impugned orders, has set aside the change in classification and value of the imported goods as done by the lower authority in the above Orders-in-Original and re-assessed the impugned Bills of Entry at the declared classification by extending the duty exemption benefit in terms of Notification No. 50/2017-Cus. [Sl. No. 528] dated 30.06.2017 and at the value declared by the importer. The imposition of redemption fine and penalty was also set aside.

5. Aggrieved from the said orders, the Revenue is before us.

6. At the outset, the Ld. Counsel appearing on behalf of the respondent submits that the issue is covered by the decision of this Tribunal in the case of *Commissioner of Customs (Port), Kolkata v. M/s. Twinkle Tradecom Pvt. Ltd.* [Final Order No. 75722 of 2024 dated 21.03.2024 in Customs Appeal No. 78675 of 2018 – CESTAT, Kolkata].

7. Heard the parties and considered their submissions.

8. We find that the issue is covered by the decision of this Tribunal in the case of *Commissioner of Customs (Port), Kolkata v. M/s. Twinkle Tradecom Pvt. Ltd.* [Final Order No. 75722 of 2024 dated 21.03.2024 in Customs Appeal No. 78675 of 2018 – CESTAT, Kolkata] wherein the Tribunal has observed as under: -

"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."*

9. Considering the fact that the same issue has already been decided by this Tribunal in the decision cited *supra*, we hold that there is no infirmity in the impugned orders. Accordingly, the same are upheld.

10. The appeals filed by the Revenue are dismissed.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)