

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76558 of 2019

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AA/216/2019 dated 27.03.2019 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. Enterprise International Limited : **Respondent**
Malaylay Unit No. 2A(S), 2nd Floor,
3, Wood Burn Park, Kolkata – 700 020 (W.B.)
AND

Customs Appeal No. 76675 of 2019

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AA/270/2019 dated 10.04.2019 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. Enterprise International Limited : **Respondent**
Malaylay Unit No. 2A(S), 2nd Floor,
3, Wood Burn Park, Kolkata – 700 020 (W.B.)

APPEARANCE:

Shri Subrata Debnath, Authorized Representative
For the Appellant-Revenue

Shri Sudhir Mehta, Senior Advocate
Shri Devansh Santhalia, Advocate
for the Respondent

CORAM:

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

FINAL ORDER NOs. 75558-75559 / 2025

DATE OF HEARING / DECISION: 27.02.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The importer M/s. Enterprise International Ltd. (herein after referred as the Respondent) has filed EDI Bill of Entry No. 8677612 dated 31.10.2018, declaring the description of the goods as 'wind shield glass set' and classified the goods under the Customs Tariff Item 70071100. The assessing officer was of the view that the said goods cannot be covered under the CTH 70071100. Accordingly, he has rejected the classification of 7007100 declared by the respondent in the Bill of Entry No. 8677612 dated 31.10.2018 and reassessed the same under the CTH 87089900.

1.1. Aggrieved against the reclassification of the goods under the CTH 87089900, the respondent filed appeals before Commissioner (Appeals). The Ld. Commissioner (Appeals) vide impugned orders has set aside the classification re-determined by the assessing officer and upheld the classification declared by the respondent in the said Bill of Entry.

1.2. Aggrieved against the impugned orders, Revenue has filed these appeals.

2. In the appeal, Revenue has raised the following grounds:

(i) The Customs Tariff Item 70071100 covers 'Toughened (tempered) safety glass of size and shape suitable for incorporation in vehicles, aircraft, spacecraft, or vessels' However, the impugned goods was declared and described "Long Size Windshield Glass Set (including glass frame, support, frame, rubber)", are not just 'safety glass' covered under Customs Tariff Item 70071100. The impugned goods includes 'glass' covered under Chapter 70, 'Rubber' covered

under Chapter 40, 'support & frame' covered under Chapter 73 and therefore appears to be a finished/semi-finished product (part of front panel) exclusively designed for e-rickshaw/e-tricycle, thus cannot be covered under any one of the aforesaid three Chapter Heading. Rather it has character of part of an e-rickshaw /electric tricycle and therefore appears classifiable under CTH 87089900, which covers parts of vehicle. The Appellate Authority had failed to appreciate that the Customs Tariff Item 70071100 covers only 'Toughened (tempered) safety glass' and that the impugned item may have reasons to be covered under CTH 7007 had it consisted of only toughened (tempered) safety glass of size and shape suitable for incorporation in the vehicle without being fitted on the body frame of the e-rickshaw/electric tricycle.

(ii) As per Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled. The impugned item, declared as "Long Size Windshield Glass Set (including glass frame, support, frame, rubber)", is actually part of front panel of the electric-tricycle hence classifiable as parts of electric-tricycle/electric-rickshaw. Further, the

Appellate Authority has failed to appreciate that Rule 2 (a) of General Rule of Interpretation (GIR) to the Customs Tariff Act, 1975 would take precedence over Rule 3 and therefore appears to have erroneously emphasized upon Rule 3 ignoring Rule 2.

(iii) The Rule 2 (a) of General Rule of Interpretation (GIR) to the Customs Tariff Act, 1975 has been read and applied in its plain and simple language by the Lower Authority without resorting to any kind of interpretation of the same. The Learned Appellate Authority has apparently erred and failed to realize that as per established rules of construction, where the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature [Collector of Customs, Baroda Vs. Digvijay Singhji Shipping and Weaving Mills Ltd., Jamnagar - AIR 1961 SC 1549]. The contention of the Learned Appellate Authority therefore appears to be misplaced.

(iv) At Para 7 of the said Order-in-Appeal it has been pointed out by the Appellate Authority that as per explanatory notes heading 8708 includes Parts of bodies and associated accessories, for example, floor boards, sides, front panels Thus the Appellate Authority himself acknowledges that the front panels of e-tricycle/e-rickshaw are classifiable under Customs Tariff Item 8708. The impugned item being part of front panel and not exclusively 'Toughened (tempered) safety glass' and therefore are classifiable under

Customs Tariff Item 8708. The Learned Appellate Authority appear to rely more rhetoric than on facts & law and misses the actual issue in dispute, which is as to whether front panel of e-tricycle/e-rickshaw (the impugned goods) fitted with 'safety glass' is a part of vehicle classifiable under Customs Tariff Item 8708 or otherwise.

(v) The Learned Appellate Authority appears to have erred in citing case-laws which are irrelevant, inappropriate and out of context in respect of the instant case-matter.

(vi) The Learned Appellate Authority had failed to appreciate that Section 5(3) of the Customs Act, 1962 limits the power and jurisdiction of the Commissioner of Customs (Appeals), which states, Notwithstanding anything contained in this section, Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108'; The Appellate Authority at Paragraph 20 of the said Order-in-Appeal KOL/CUS/(PORT)/AA/216/2019 dated 27.03.2019 has ordered, "In view of the above, 1 set aside the change in classification of the said imported goods as done by the lower authority for the instant Bill of Entry and assess the impugned Bill of Entry at declared classification of the imported goods as declared /self-assessed by the appellant. Thus, in view of said Section 5(3) of the Customs Act, 1962 the said Order-in-Appeal KOL/CUS/(PORT)/AA/216/2019 dated 27.03.2019 has been passed by the Appellate

Authority without jurisdiction and is bad in law, illegal, perverse, since assessment, re-assessment and finalization of provisional assessment covered under provisions of Section 17 and Section 18 of the Customs Act, 1962, are beyond the jurisdiction of Commissioner of Customs (Appeals) and thus the said Order-in-Appeal is liable to be set aside on this ground alone. The said Order-in-Appeal is liable to be set aside on merit.

2.1. Accordingly, Revenue prayed for setting aside the impugned order and uphold the classification determined by the assessing officer.

3. The Respondent has made the following submissions:

(i) They have imported Laminated Safety Windshield Glasses classifiable under CTH 7007 of Customs Tariff Act 1975. Such safety windshield glasses are usable in various industries, as well as in manufacturing of cars. In vehicles, such windshield glasses are fixed for protection of the passengers. These glasses are used in heat chambers as well as in cubicles set up in snowy areas. It has multiple uses. The department sought to classify the goods under CTH 8708 as parts of vehicles by alleging that these are usable in vehicles as well.

(ii) The respondents submits that such windshield glasses are specifically covered by CTH 7007. it is not necessary that all cars would have wind shields . In open cars , scooters and motor bikes it is optional as per choice of the consumer.

(iii) The goods were imported in the year 2018 and the CTH Chapter 70 at the material time in the year 2018- 19 CTH7007 11 00 specifically covered such safety glasses of sizes and shapes suitable for incorporation in vehicles aircraft , spacecraft, or vessels.

(iv) There was no ambiguity on classification of Wind Glasses as these were specifically covered under the Chapter 70 and CTH 8708 covering motor vehicle parts did not include it. However , the adjudicating authority classified the glass shields under CTH 8708 as parts of motor vehicles . The order was contrary to the law laid down by the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that classification of the goods cannot be made on the basis of "end use". This view has been held in catena of cases such as Indian Aluminium Cables Limited versus Union of India, 201. ELT Page 3, Supreme Court, Collector of Central Excise 607 ELT page 30.

(v) In the impugned order, the Ld. Commissioner (Appeal) has held that such windshield glasses have many uses and reliance was placed upon the judgement of the Tribunal in Chandra Luxmi Laminated Safety Glass Limited versus Commissioner New Delhi reported in 1995 (77) ELT 877.

(vi) In the Finance Act 2021 two amendments were brought in Chapter 70 and Chapter 87. The effect of these amendments is that the following items were excluded from chapter 70;

"(d) front windscreens (windshields), rear windows and other windows, framed, for vehicles of Chapters 86 to 88;

(e) front windscreens (windshields), rear windows and other windows, whether or not framed, incorporating heating devices or other electrical or electronic devices, for vehicles of Chapters 86 to 88;"

Corresponding amendments were also brought in Chapter 87 and the same items were included in Chapter 87, —

Sub-heading 8708 22 covers :

(a) front windscreens (windshields), rear windows and other windows, framed; and

(b) front windscreens (windshields), rear windows and other windows, whether or not framed, incorporating heating devices or other electrical or electronic devices, when suitable for use solely or principally with the motor vehicles of headings 8701 to 8705."

(vii) Thus, the respondent submits that 'Wind Screens' were included in the CTH 87082200 after the amendment in finance Bill 2001 only. The respondent referred the decision of the Tribunal in the case of Indian National Ship owners Association versus Union of India reported in 14 STR 289 (Bombay), wherein it has been held that introduction of new entry under the provisions of statute denotes that such tariff was not previously applicable. Accordingly, the respondent submits that prior

to 2001, the impugned goods were not classifiable under the CTH 8708 as motor vehicle parts.

(viii) In view of the above submissions, the respondent prayed for rejecting the appeals filed by Revenue and to uphold the impugned orders passed by the Commissioner (Appeals).

4. Heard both sides and perused the appeal records.

5. We observe that the respondent imported the goods and filed the Bill of Entry by declaring the description of the goods as 'wind shield glass set' and classified the said goods under the Customs Tariff Item 70071100. The Assessing Officer re-classified the said goods under the CTH 8708, as motor vehicle parts. The Commissioner (Appeals) upheld the classification of 70071100 declared by the respondent and rejected the classification re-determined by the Assessing Officer. Hence, this appeal by the Revenue.

5.1. We observe that the heading 8708.99.00 covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, provided the parts and accessories fulfil both the following conditions:

- They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles:
- They must not be excluded by the provisions of the Notes to Section XVII

5.2. In the present case, we observe that the above said two conditions are not satisfied. As per the reading of descriptions as provided under Import Tariff, Section Notes to Chapter XVII and Explanatory Notes to HSN/CTH 8708, we find that the goods imported will have the essential characteristic of parts & accessories of motor vehicles only when the same are solely or principally used in the said vehicle. We find that the goods as imported by the respondent did not fulfil the description as provided in explanatory notes to CTH 8708. Moreover, the assessing officer in his findings has not adduced any evidence that the goods imported by the respondent are the parts and accessories of motor vehicles. Thus, we observe that as per the Chapter Notes cited above, the goods imported by the respondent are excluded from the CTH 8708.

5.3. We observe that as per the Explanatory Notes to Chapter Heading 7007, "Toughened (tempered) Glass" are specifically covered under the CTH 7007. In vehicles, such windshield glasses are fixed for protection of the passengers. These glasses are used in heat chambers as well as in cubicles set up in snowy areas. It has multiple uses. The Department sought to classify the goods under CTH 8708 as parts of vehicles by alleging that these are usable in vehicles as well. However, we find that it is not necessary that all cars would have windshields. In open cars, scooters and motor bikes, it is optional, being as per choice of the consumer. The goods were imported by the respondent in the year 2018 and the CTH Chapter 70 at the material time (in the year 2018- 19) CTH 7007 11 00 specifically covered such safety glasses of sizes and shapes suitable for incorporation in vehicles aircraft, spacecraft, or vessels. Accordingly, we hold

that during the material period, the goods imported by the respondent are more appropriately classifiable under the CTH 70071100.

5.4. We further observe that 'wind screens' were included in the CTH 87082200 after the amendment brought in finance Bill 2001. The respondent referred the decision of the Tribunal in the case of *Indian National Shipowners Association versus Union of India reported in 2009 (14) STR 289 (Bombay)*, wherein it has been held that introduction of new entry under the provisions of statute denotes that such tariff was not previously applicable. We agree with the submission of the respondent. Accordingly, we hold that prior to amendment brought in by the Finance bill 2001, the impugned goods 'wind shield glass set' were not classifiable under the CTH 8708 as motor vehicle parts. As the CTH 70071100 specifically covered the impugned goods imported by the respondent during the period under dispute, we do not find any infirmity in the impugned orders passed by the Ld. Commissioner (Appeals).

6. In view of the above findings, we uphold the impugned orders passed by the Ld. Commissioner (Appeals) and dismiss the appeals filed by the Revenue. The respondents are eligible for consequential relief, if any, as per law.

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

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)