CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86818 OF 2022
WITH
CUSTOMS APPLICATION (MISC) NO: 85379 OF 2025
(on behalf of appellant)

[Arising out of Order-in-Original No: 12/2022-23/CAC/CC(IMPORT-I)/MKK dated 25th May 2022 passed by Commissioner of Customs (Import-I), Mumbai.]

Coal India Ltd
Coal Bhawan Premises No.4 MAR, Plot No.-AF-III,
Action Area-1A, Newtown Rajarhat, Kolkata-700 156. … ***Appellant***

versus

Commissioner of Customs (Import-I)
New Custom House, Ballard Estate, Mumbai-I ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85544 OF 2023
WITH
CUSTOMS APPLICATION (MISC) NO: 85380 OF 2025
(on behalf of appellant)

[Arising out of Order-in-Original No: 66/2022-23/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I) dated 17th January 2023 passed by Commissioner of Customs (Import-I), Mumbai.]

Coal India Ltd
Coal Bhawan Premises No.4 MAR, Plot No.-AF-III,
Action Area-1A, Newtown Rajarhat, Kolkata-700 156. … ***Appellant***

versus

Commissioner of Customs (Import-I)
New Custom House, Ballard Estate, Mumbai-I ***…Respondent***

APPEARANCE:

Shri Vipin Jain with Shri L S Shetty, Shri Ambarish Pandey and Ms Juhi Masani, Advocates for the appellant

Shri Shambhoo Nath, Special Counsel for the respondent

AND

CUSTOMS APPEAL NO: 87159 OF 2022
WITH
CUSTOMS APPLICATION (MISC) NO: 86923 OF 2024
(on behalf of appellant)

[Arising out of Order-in-Original No: 12/2022-23/CAC/CC(IMPORT-I)/MKK dated 25th May 2022 passed by Commissioner of Customs (Import-I), Mumbai.]

GMMCO Ltd
9/1 R N Mukherjee Road, Kolkata-700001 … ***Appellant***

versus

Commissioner of Customs (Import-I)
New Custom House, Ballard Estate, Mumbai-I ***…Respondent***

APPEARANCE:

Shri Sujay Kantawala with Shri Dinesh Agarwal, Shri Mayank Jain and Shri Mihir Gupta Advocates for the appellant

Shri Shambhoo Nath, Special Counsel for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: __86682-86684/2025

DATE OF HEARING: 05/05/2025
DATE OF DECISION: 03/09/2025

PER: C J MATHEW

In the symbiotic environment straddling imperatives of commerce and inevitability of taxation into which was spawned the dispute culminating in impugned orders of Commissioner of Customs (Import-I), Mumbai, the peel interleaving the strata are no less critical to the resolution thereof than the layers themselves. At the base is the harsh reality of facts to be fitted on the template of universally accepted rules of engagement circumscribed by tax policy of a State framed for the time within doctrines and precedents that guide judicial approval of enforcement behaviour on the part of the tax collector visible as the lordly monarch of all he surveys. The thread of constancy spanning this spectrum is

> *'**265. Taxes not to be imposed save by authority of law:** -No tax shall be levied or collected except by authority of law.'*

of the Constitution of India as touchstone and yardstick. The complexity of the dispute, stemming from multiple rates of duty on import of vehicles, and not necessarily restricted to the genre of 'off-road' vehicles, together with continued regulatory oversight under authority of another law, provisioning for public safety of the common weal, by another agency concerned with the product emerging as conveyance or carrier, has at its core the intent of segregation set out for discriminatory tax treatment.

2. While goods answering to generic description corresponding to heading 8702 and heading 8704 of First Schedule to Customs Tariff Act, 1975, even though presented for clearance as parts, components and sub-assembly earmarked, by distinctive numbering, for each

vehicle, were chargeable to standard rate of duty, exemption notification, issued under section 25 of Customs Act, 1962 assigned different effective rates corresponding to description evocative of stages of assembly of vehicle at manufacturing plant. It is disagreement over the ‘either-or’ dichotomy, and consequent rate, that is the primary strand of present dispute. Keeping pace with developments in the automotive sector, Finance Act, 2011 incorporated, and facilitated by tariff, ‘completely knocked down (CKD)’ with attended definition to distinguish legislative intent of taxing ‘completely built up (CBU)’ differently. Thereby, hangs the course of this tale and in the context lies the happy ending for one of the protagonists.

3. M/s Coal India Ltd, basis tender[1] floated for supply of ‘rear dumpers with ancillary services and supplies’ for projects of M/s Northern Coalfields Ltd and Rajmahal project of M/s Eastern Coalfields Ltd, entered into contract[2] with M/s Caterpillar Inc., Illinois, USA for purchase of 102 nos. ‘190T Rear Dumper Caterpillar Make Model 789D’, and with M/s GMMCO Limited and M/s Gainwell Commosales Private Limited, as their authorized agent in India, to be supplied, installed and commissioned inclusive of twelve month warranty covering consumable spares and consumables as well further coverage of eighty four months for spares and consumables. With 84

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[1] [CIL/C2D/190T Dumper/R-66/17-18/312 dated 26th December 2018]
[2] [CIL/C2D/190T Dumper/R-66/17-18/153 dated 2nd December 2019]

consignments imported as ‘completely knocked down (CKD) kits’ that, admittedly, were assembled, under assembly, or to be assembled by expert technicians for, reportedly, about half of the contracted goods and most already in operation, the imports of further eight were interrupted upon seizure of six of those effected by jurisdictional customs authorities on or about 6th November 2022 for misdeclaration to avail ineligible concessional rate of duty. Investigations encompassed meticulous inspection by customs officials and certification by Shri Rajendra Tambi, chartered engineer, obtained as counter to certificate furnished by in support of declaration in bills of entry and contents of packing list; thereafter, show cause notice proposing recovery of differential duty, from denial of claim for lower rate of duty available under exemption notification and from value of ₹ 30,00,000 apiece allegedly not included in contract price of ₹ 8,00,82,42,472 as consideration totaling ₹ 8,26,02,42,472 for sale by the overseas supplier, was issued. Together, one[3] of the impugned orders has made out a case for recovery of differential duty of ₹ 128,68,24,528, and the other[4] ₹ 27,18,01,616, by adopting rate applicable to imported vehicles that are not ‘completely knocked down (CKD)’ even while conceding that, taken together, several vehicles of the brand, type and model *supra* would emerge on putting together of the imported goods in the expert hands of M/s GMMCO with the

[3] [order-in-original no. 12/2022-23/CAC/CC(IMPORT-I)/MKK dated 25th May 2022]
[4] [order-in-original no. 66/2022-23/CAC/CC(IMPORT-I)/VP dated 17th January 2023]

exclusion laid on the bedrock of not answering to the two ‘qualifiers’ corresponding to the lower rates of duty.

4. Learned Counsel for M/s Coal India Ltd, supported in argument by Learned Counsel and Learned Consultant for other appellants, pressed that their claim of coverage within the impugned notification should not have been denied in view of conformity with the first of the descriptions therein.

5. The facts are no cause of stress - M/s Coal India Ltd, being in need of ‘off road motorised carriers’ at their mining sites, narrowed down ‘Caterpillar 190T Rear Dumper Model 789D’ as best suited and contracted with the manufacturer outside India whose representatives in India was assigned the responsibility of assembling, and rendering operational, these leviathans that challenged transportation across the seas in its usable form – but the terms of supply did. At least, the manner of presentation of these behemoths in constituent components did.

6. The primary obligation on import is assessment to duty as a function of rate of duty applicable to the goods and value of the goods. The latter is not problematic except in peripheral context; nor should the other be for the goods, doubtlessly, do answer to description corresponding to tariff item 8704 1010 of First Schedule to Customs Tariff Act, 1975 even if it be by the elasticity accorded in rule 2(a of General Rules for Interpretation of the Import Tariff appended to

Customs Tariff Act, 1975 applied to

> *'....sr no (CKD) with all necessary component for assembly of complete vehicle'*

as description in the bills of entry that, as prescribed in section 17(1) of Customs Act, 1962, were self-assessed.

7. Considering the narrative in the impugned order as authority for enhancement of assessable value by ₹ 30,00,000 apiece, even as it has been admitted as representing payment by the importer to the authorized agent of supplier in India as consideration for specified contractual activity, it would be appropriate to dispose off that element of the dispute first, and at this stage, before taking up the more tortuous controversy. More, and acknowledgeably from our relatively less familiarity with the complexities involved, for our own edification and from the lack of any discussion thereto in the impugned order, it behoves us to place the conspectus of the dispute in the context of scheme of valuation in the statute. Since 1988, the basis of *ad valorem* assessment has been 'transaction value' which, till 2007, was expressed as a 'gold standard' deeming acceptance of 'price' that conformed to the qualifying parameters in every respect with 'surrogate value' provided for, and variants provisioned in, Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 as rules 5 to 10. In further evolution of the scheme, the 'gold standard' was elevated from concept to default rendering the 'declared value', corresponding

to ‘price’, as the default for assessment. Section 14 of Customs Act, 1962, consequently, is authority for ‘transaction value’ as declared or, by reason of availability of a more real price, as ‘substitute value’ of imported goods on evidence of actual remittance and the Rules framed thereunder for other potential contingencies of ‘supplementing’ and ‘surrogate’ values.

8. Without detracting from the integrity of ‘price’ as actual consideration, the imperative of non-discriminatory non-distortionary assessment persuades adoption of ‘surrogate value’, in place of ‘declared value’ in accordance with pre-determined principles for specified circumstances, whether of ‘relationship’ or of ‘commercial dominance’, having influenced price, under the authority of rule 3 of Customs Valuation (Determining of Value of Imported Goods) Rules, 2007 by recourse to rule 3(3) or rule 12 therein.

9. There, also, is provisioning for ‘supplementing value’, which, too, is no reflection on the integrity of ‘price’ as actual consideration for goods, owing to inextricability of ‘services’ from the imported goods and is contrived by law to be included if only for completeness of section 14 of Customs Act, 1962. Strictly speaking, and as consideration attributable to ‘services’ beyond the spectrum envisaged in List 1 of the Seventh Schedule in the Constitution, the enlargement is justified by the concept articulated as

> *'(1) ....the value of imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation,…where the buyer and seller of the goods are not related and price is the sole consideration for the sale*
>
> *Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and manner specified in the rules made in this behalf:…'*

in section 14 of Customs Act, 1962 and, more so, by the 'services' being 'non-taxable'; indeed, even as late as the vintage of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, taxation of services provided from outside India was yet taking toddler steps as section 66A of Finance Act, 1994. Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 specifies the additions of 'cost and services' to assessable value; the *minutiae* are not relevant here and, suffice to say, both with such taxation now in the portfolio of the exchequer as well as from the ever-present constitutional restraints, it is necessary to strictly adhere to the mandate of 'supplementing value' for both assessment as well as for saddling of penal detriment. It may also be reiterated that causes and effects of 'substituted value', 'surrogate value' and 'supplementing value' being different, each of these is mutually exclusive. On a cautious note, it may also be asserted here, that 'surrogate value', by its very objective and provisioning, places substantial onus on the importer in recourse thereof even as there is a constraining framework; it was also carved out as exception to preclude 'tying down' of the assessing authorities. Arrogation of like flexibility for other 'values' is neither envisaged in the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 nor appropriate to be accommodated in like manner when prejudicial to the scheme of taxation or bounds of constitutional propriety.

10. Reverting to the valuation dispute, it is see that, by referring to the tripartite contract[5] *supra*, the adjudicating authority held in the impugned order that

> *'52.5 This, I find that the entire contract price was bifurcated into the following parts:*
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> *i. CIF value of the equipment.*
>
> *ii. Erection and communication charges per equipment.*
>
> *iii. Price of all items sourced in India required for fitting in equipment during commission in of the equipment.*
>
> *iv. Price of consumables to be supplied after commissioning*
>
> *On perusal of the same it can be inferred that Noticee no. 1 had* ***not ordered for the goods in the condition as imported****. They* ***had ordered for supply, installation and commissioning*** *of 102 nos. of 190 Tonnes rear dumpers along with consumables thereafter. Thus, installation and commissioning*

[5] [no. CIL/C2D/190T Dumper/R-66/17-18/153 dated 2nd December 2019]

> *was integral to the goods imported unless installation and commissioning of goods imported was done, the condition of the contract is not fulfilled…..' (emphasis supplied)*

which, doubtlessly, is brilliant analysis of the impugned contract and is appropriate preliminary to audit thereof in the same vein. There can be no doubt that a chain of events, remaining unfulfilled, could precipitate non-acceptance of any one or more of the equipment but it is moot that such contingency, to occur at a time and place well after 'time and place of importation', can reverse the process of importation of goods to relieve the importer of burden of duty liability under secretary 17 of Customs Act, 1962. Reciprocally, contractual contingency for acceptance of the goods at a time and place well after 'time and place of importation' has no bearing on duty liability either. There is no provision in Customs Act, 1962 or Customs Tariff Act, 1962, and here, too, other than 'project imports', which considers contracts for assessment at any stage. Obviously, the template of contractual compliance – relevant for commercial law and practice – has been imported into customs law in the impugned order without legal authority.

11. The goods have been assessed to duty on import; admittedly, the impugned 'per equipment cost' was not subjected to duties of customs along with the landed price of the goods. Section 28 of Customs Act, 1962 does not confer powers of recovery of duties except to the extent

'*not been levied or not paid or has been short-levied or short-paid'* at the time of assessment under section 17 or finalized under section 18 of Customs Act, 1962. Consequently, no factor other than those that lie within the empowerment of 'proper officer' therein may be drawn upon by 'proper officer' under section 28 of Customs Act, 1962. The article under importation is to be evaluated for physical description by reference to section 12 of Customs Act, 1962 and the value of article under importation evaluated conceptually by reference to section 14 of Customs Act, 1962. Here, *ex facie,* the original authority has literally stepped off the cliff edge by relying upon the contractual complexities to re-determine the object of the transaction and from the physical to the metaphysical. That exercise has no place in the scheme of customs assessment.

12. According to Learned Counsel for appellant-importer, the amount in dispute related to a transaction, involving the other appellant herein, even if it be tri-partite, located in the territory of India and themselves, covering consideration for activity to be undertaken in domestic area and subjected to domestic taxation. He pointed out that it was specific *quid pro qu*o between them with no concern to the seller in the course of international trade. He contended that the 'declared value' has not been questioned nor rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ever invoked for such purpose and 'supplementing value' is contingent only upon

payment due, either directly or indirectly, to seller of, and only for, goods, with even that, strictly within the stipulations in rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 if constitutional propriety were not to be molested. Conceding the contractual necessity of getting such activity undertaken by the other appellant in the proceedings, it was contended that such was not ‘condition of sale’ except by mutual concurrence; the goods, according to him, were not mere ‘standalone’ equipment but regulated ‘conveyance’ with compliance thereof assured through such execution. He placed reliance on the decisions of the Hon’ble Supreme Court in *Commissioner of Customs v. Hindalco Industries Ltd [2015 (320) ELT 42 (TO SC)]* and in *Commissioner of Customs, Ahmedabad v. Essar Steel Ltd [2015 (319) ELT 202 (SC)]*.

13. Learned Special Counsel was elaborate in his exposition that the facts were sufficient to expand the scope of assessable value beyond the price charged by the seller for the equipment. According to him, the terms of contract could not be excluded from consideration for the imported goods and scrutiny undertaken by the adjudication authority was not only appropriate but also legally tenable.

14. We find that the impugned amount was payable to the other appellant herein and not to the seller. We find that the amount is payable for an activity performed in India by an entity located in India and,

hence, is service taxable in India. We find no evidence that any part of this payment was either due to the seller at some stage from the importer and constituting payment on account of such dues or due from seller to the other appellant herein for any cause owing to which it would constitute settlement thereon on behalf of seller from consideration otherwise due to seller.

15. We also find no evidence to suggest that such amount was due to seller, or anyone else, at the time and place of importation or that, but for want of wherewithal to quantify at time of import, was excluded as to validly draw such within the *proviso* in section 14 of Customs Act, 1962 *supra*. There is no evidence that either the whole or any part accrued to the seller as consideration for the goods. For such performance to be 'condition of sale', envisaged in rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, it was necessary to demonstrate that the dominant position of the seller *vis-à-vis* the importer was of such significance that the importer had, but for the inclusion of such activity at the insistence of seller, had no particular preference. *Per contra*, we find that rejection of assembled equipment was option to be exercised by importer; the reciprocal fastening of contingent outcomes excludes the agreement to have the work executed by M/s GIMMCO Ltd from condition of sale. It is another condition in the contract independent of the contract of sale. As pointed out by Learned Counsel, the observation of the Hon'ble

Supreme Court in *re Essar Steel Ltd*

> *'A cursory reading of the Section makes it clear that Customs duty is chargeable on goods by reference to their value at a price at which such goods or like goods are ordinarily sold or offered for sale at the time and place of importation in the course of international trade. This would mean that any amount that is referable to the imported goods post-importation has necessarily to be excluded. It is with this basic principle in mind that the rules under sub-clause 1(A) have been framed and have to be interpreted.*

is salutary guidance. For all these factual reasons, the payment does not constitute 'cost and service' liable to be added to the assessable value for determination of duty liability; we set aside the demand arising from addition of services to the cost of goods.

16. The negation of claim for the least of the rates of duties enumerated in the impugned notification rests on examination of six consignments imported *vide* bills of entry no. 9284011/23.10.2020, no. 9284020/23.10.2020, no. 9284056/23.10.2020, no. 9284063/ 23.10.2020, no. 9284073/23.10.2020 and 9284075/23.10.2020 that were allegedly not in conformity either with the description therein or certification by Shri M Vairamohan of M/s Mohan & Techno Associates and further relying on certification by Shri Rajendra S. Tambi, Chartered Engineer. Representative examination was reported and certified is as under:

‘3. On the basis of the above intelligence, SIIB (I) undertook the examination of the above said consignment covered under 06 Bills of Entry i.e. 9284011, 9284020, 9284056, 9284063, 9284073 and 9284075 all dated 23.10.2020, under Panchnama dated 05.11.2020 in the presence of Shri Sadanand C Kapei, Custom Broker, M/s Seashell Logistics Pvt Ltd. and Shri M.Vairamohan, Chartered Engineer, M/s Mohan & Techno Associates. The examination of the above said 6 consignments under Panchnama dated 05.11.2020 revealed as under:

(a) Item named "BANJO"' in the packing lists, was a standalone unit and was the transmission mechanism of the rear dumpers. Transmission mechanism "BANJO" was already in assembled form.

(b) Item mentioned as "Engine in the packing list with net weight of 9897 Kgs, was a stand alone unit" and was already in assembled form. All the necessary parts of the engine were already assembled in the said item. The engine had been mentioned as a one complete item in packing list of all BOE's and had been allotted an engine number also.

(c) The engine had already been allotted a specific engine number by the manufacturer. The Manufacturer would assign the number to an equipment once it was a set in completely pre-assembled form. Engines of the said BOE's appeared to be in pre-assembled form.

(d) Item mentioned as "Engine Parts" in the packing list of said BOE are just mere attachments to the engine and even without these attachments the engine can work.

(e) Goods covered under examined BOE's were found to be completely identical in all aspects and had absolute similarity in shape, size and form.

(f) Imported goods appeared to be not as per declaration made by importer and the submissions made in "Certificate of Chartered Engineer" issued by, CE. M. Vairamohan of M/s Mohan and Techno Associates.

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5. Further, to ascertain the technical aspects of the goods covered under said 06 BOE's, the Custom's empanelled Chartered Engineer Shri Rajendra S. Tambi, conducted the re-examination of goods. The Chartered Engineer Shri Rajendra S. Tambi, submitted the Chartered Engineer Certificates vide Ref No's: CE1227 and CE1226 both dated 09.11.2020 &CE1306, CE1307, CE1308 and CE1309 all dated 19.11.2020, for the six Bills of Entry as mentioned in para 2 above wherein he made the following submissions in his reports:

(a) The chassis inspect bearing numbers CAT0789DHSPD00949 and CAT0789DHSPD00951, imported vide BOE's 9284056 and 9284073 respectively, were in pre-assembled condition having all cylinders, valves, hoses, pipes, hydraulic and electrical mechanism assembled together and were basically, sub-assemblies of the dumpers.

(b) The engines inspected bearing numbers: 7TR03826 and 7TR03831, imported vide BOE's 9284056 and 92.84073 respectively, were in pre-assembled condition although not mounted on the chassis.

(c) Transmission Mechanisms bearing serial numbers:

90001873 and 90001825, imported vide BOE's 9284056 and 9284073 respectively, mentioned in packing list as "BANJO", were also in pre-assembled form although not mounted on the chassis. All the parts and components of the Transmission Mechanism i.e. BANJO had already been pre-assembled in assembly line of manufacturing facility.

(d) *Drive shaft mentioned in packing List as "DRIVE SHAFT" was basically a sub-assembly for the dumper and was in pre-assembled form.*

(e) *Engine parts mentioned in packing list, viz. pipes, hoses, hardware, seals etc. were basically attachments to the engine which has been imported in pre-assembled form. The pre-assembled engine will start even without these attachments in place.*

(f) *Parts mentioned as "Parts" in the packing list viz. hardware, plates, tubes, flange, clamps, seals etc. were basically attachments of other sub-assemblies, which were in pre-assembled form. Some of these parts like mirror, instruments had no relation whatsoever with the engine/transmission mechanism.*

(e) *The goods imported were not in completely knocked down condition as there were various sub-assemblies viz. Chassis, Engine, Transmission mechanism, Driver Cabin etc. which were combined together to erect a dumper.*

(h) *Conclusion that the Engine. Transmission Mechanism, Driver Cabin, Chassis main body etc., were in pre-assembled form but not mounted on chassis or a body assembly.'*

Another two bills of entry no. 9284079/23.10.2020 and no. 9284087/23.10.2020 were similarly subjected to examination and certification by the same Shri Rajendra S. Tambi. Both these lots, entered after the earlier lots, comprising fifty bills of entry, already cleared, were seized under section 110 of Customs Act, 1962 but permitted to be provisionally released under section 110A of Customs Act, 1962.

17. Another set of consignments imported against 18 nos. bills of entry of 31st December 2020, 5th February 2021 and 1st March 2021 and eight others imported against bills of entry of 1st April 2021, 11th May 2021 and 28th May 2021 were also seized similarly under section 110 of Customs Act, 1962 to be provisionally released under section 110A of Customs Act, 1962. All of these were brought under the umbrella of the investigation thus

> *'22. Therefore, from the investigations conducted by SIIB (I). NCH, Mumbai, it appeared that:*
>
> *i. The goods imported vide total34 Bills of Entry, seized and subsequently provisionally released, (as detailed in para 1, Table- II and Table-Ill above), filed by M/s NCL, were not as per their declaration and mis-declared as "CATERPILAR MAKE 190T REAR DUMPERS MODEL 789D IN CKD CONDITION, CONTAINING ALL NECESSARY COMPONENTS FOR ASSEMBLING A COMPLETE VEHICLE AS PER CONTRACT HAVING ENGINE, GEARBOX AND TRANSMISSION MECHANISM NOT IN. A PRE-ASSEMBLED CONDITION". However, the goods were*

found to be with pre-assembled engine, gear box and transmission mechanism which were not eligible for the BCD @ 15% claimed by the importer, vide Serial No: 524 (1) (a) of exemption Notification No: 50/2017 dated 30.06.2017 as amended by Notification No: 25/2019 dated. 06.07.2019. Further, as all the previously cleared and provisionally released consignments were completely identical in nature, the benefit claimed by importer as mentioned above, was not applicable for all previously cleared 50 Bills of Entry also. Therefore, the goods covered vide 84 Bills of Entry mentioned in both subject SCNs dated 27.05.2021 and 08.07.2021, were liable for confiscation under Section 111(m) of Customs Act 1962, and the importer M/s NCL, was liable for penal action under section 114A and 114 AA of the Customs Act 1962, as they have knowingly and intentionally made use of false and incorrect material in the transaction of the imported goods.'

18. The sum and substance of the allegations is that

'17. From the perusal of the Notification No: 50/2017 dated. 30.06.2017 amended by Notification No: 25/2019 dated. 06.07.2019, if engine or gearbox or transmission mechanism are in pre-assembled form and not mounted on chassis or body assembly then the same shall be covered under Serial No: 524 (1)(b) of Notification No: 50/2017 dated. 30.06.2017 (Notification No: 25/2019 dated. 06.07.2019).

18.1 As the importer have themselves certified in their packing list that engine and transmission mechanism i.e. Banjo have attained their essential characteristics as both are provided with unique serial numbers. Since essential characteristics have already been attained and declared by importer, it appears that engine and transmission mechanism were in pre-assembled form.

> *18.2 Further, the manufacturer of goods M/s Caterpillar Inc., USA, in all its invoices had declared that engine, driveshaft and transmission mechanism were not in pre-assembled condition. However, the packing list issued by the supplier clearly identified the Engine, Banjo and gearbox as a pre-assembled unit. Thus, it was evident that manufacturer M/s Caterpillar Inc., had manipulated the invoice with the intention to avoid Custom duty.*
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> *18.3 Further, the manufacturer of goods had categorically stated in the Contract No: CIL/C2D/190T Dumper/R-66/17-18/153 dated 02.12.2019that dumpers will be supplied in a completely knock down condition with engine, gearbox and transmission mechanism not in a pre-assembled condition but still instead of complying with agreement the manufacturer have contravened the conditions of contract and mis-declared the description of goods in their invoices.'*

19. Apparently, there is no classification dispute; and notwithstanding, the occasional references in the impugned order to the General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. The goods were declared to conform, for tariff purpose, to

> *'with net weight (excluding pay-load) exceeding 8 tonnes and maximum pay-load capacity not less than 10 tonnes'*

corresponding to tariff item 8704 1010 below

> *'Dumpers designed for off-highway use'*

corresponding to sub-heading 8704 10 and within

'Motor vehicles for the transport of goods'

corresponding to heading 8704 of First Schedule to Customs Tariff Act, 1975.

20. It is common ground that the impugned goods do not have the appearance of 'motor vehicle', as would be the expectation from

> *'The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Sections or Chapter Notes…'*

in rule 1, but, by operation of

> *'(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 failing to be classified as complete or finished by virtue of this rule), presented unassembled or dis-assembled.'*

in rule 2 of General Rules for the Interpretation of the Import Tariff appended to Customs Tariff Act, 1975, it is. And, thereby, the claim for the notification which, for the specific entry, applies to goods covered by heading 8702 or heading 8704 of First Schedule to Customs Tariff Act, 1975; indeed, the several tariff items under both segregate the 'motor vehicles' by several criteria while whole and complete. That, however, did not constrain the adjudicating authority in relying upon the ground rules designed solely for distinguishing articles of import at the heading level and at correspondingly lower levels in the classification hierarchy. We, however, do note that, even as the classification has been so declared, and uncontestably so, the adjudicating authority has applied these principles to 'engines' and 'transmission systems' even though these have subsumed within 'motor vehicles' as declared and taken up for assessment.

21. The seminal rulings on the rules of engagement for classification by the Hon'ble Supreme Court are found in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)]* thus

> *'19. As per the fourth category mentioned in the explanatory notes in the HSN, Chapter Heading 25.01 covers, inter alia, "residuary Sodium Chloride, in particular that left after chemical processing". The subject product fully answers the fourth category of goods covered by Chapter Heading 25.01 as per HSN. Even, according to the process of manufacture described in the show cause notice, the subject product arises as a residuary product left after the chemical processing for the manufacture of Hydrazine. The Chemical Examiner of the Department has also opined that the said product "is to be taken as Sodium Chloride". The explanatory notes, below Chapter Heading 25.01 of the HSN make it clear that the sodium chloride which is obtained by the chemical processing would be covered by the Chapter Heading 25.01.*

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28. Rule 2(b) provides that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. The classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Sub-rule 3(a) provides that heading which provides for most specific description shall be preferred to headings providing a more general description. Sub-rule 3(b) provides that mixtures, composite goods consisting of different materials or made of a different components, and goods put up in sets, which cannot be classified with reference to sub-rule (a) of Rule 3, shall be classified as if they consisted of the material or component which gives them their essential character. In the present case, the goods in question admittedly contain 53.6% Sodium Chloride and their essential character is derived by the Sodium Chloride, which is salt. Since in the present case the salt is unfit for human consumption, the same would be classifiable as "Denatured Salt" under the specific Heading No. 25.01 and not under Heading 38.23 which is a residuary Heading.

29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is' quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter

Heading No. 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.

30. It has been held by this Court in number of judgments that burden of proof is on the Revenue in the matter of classification. In Union of India and Others v. Garware Nylons Limited and Others - 1996 (10) SCC 413, in Para 15 this Court held as under :-

> *"15. In our view, the conclusion reached by the High Court is fully in accord with the decisions of this Court and the same is justified in law. The burden of proof is on the taxing authorities to show that the particular case or item lit question is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority. Especially in a case as this, where the claim of the assessee is borne out by the trade enquiries received by them and also the affidavits filed by persons dealing with the subject-matter, a heavy burden lay upon the Revenue to disprove the said materials by adducing proper evidence. Unfortunately, no such attempt was made. As stated, the evidence led in this case conclusively goes to show that Nylon Twine manufactured by the assessee has been treated as a kind of Nylon Yarn by the people conversant with the trade. It is commonly considered as Nylon Yarn. Hence, it is to be classified under Item 18 of the Act. The Revenue has failed to establish the contrary. We would do well to remember the guidelines laid down by this Court in Dunlop India Ltd. v. Union of India. AIR 1977 SC 597 at Page 607. In such a situation, wherein it was stated (AIR P. 607 SCC P. 254, Para 35) :-*
>
> *"When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause."*

and in *Hindustan Ferrodo Ltd v. Commissioner of Central Excise,* *Bombay [(1997) 2 SCC 677]* thus

> *'4. It is not the function of the Tribunal to enter into the arena and make suppositions that are tantamount to the evidence that a party before it has failed to lead. Other than supposition, there is no material on record that suggests that a small scale or medium scale manufacturer of brake linings and clutch facings "would be interested in buying" the said rings or that they are marketable at all. As to the brittleness of the said rings, it was for the Revenue to demonstrate that the appellants' averment in this behalf was incorrect and not for the Tribunal to assess their brittleness for itself. Articles in question in an appeal are shown to the Tribunal to enable the Tribunal to comprehend what it is that it is dealing with. It is not an invitation to the Tribunal to give its opinion thereon, brushing aside the evidence before it. The technical knowledge of members of the Tribunal makes for better appreciation of the record, but not its substitution.*
>
> *xxxxx*
>
> *8. The appeal is allowed and the order under appeal is quashed. No order as to costs.'*

22. By initiating another round of exercise in classification of 'engine' and 'transmission mechanism', the adjudicating authority has placed the findings thereof in jeopardy as the specifics of such determination are without the preliminary of discharging the onus that devolves on customs authorities for adjudging classification. If the attempt of the adjudicating authority was to segregate the imports as 'engines' and 'transmission systems', chargeable to duty corresponding to headings in chapter 84 of First Schedule to Customs Tariff Act, 1962,

that should have been taken to its logical conclusion. The want thereof in the impugned order is glaring. Accordingly, the resort to General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 for determining articles as ‘engines’ and ‘transmission systems’ by the adjudicating authority must have to be ignored as irrelevant and superfluous.

23. In stepped a policy of the State to segregate classes among the articles, undisputedly accepted for determination of standard rate of duty, and not by means of ‘tariff items’, designed under the aegis of the World Customs Organisation (WCO), in the First Schedule to Customs Tariff Act, 1975 as enablement for tax policy differentiation but by recourse to section 25 of Customs Act, 1962 facilitating exemption, fully or partially, to all or some classes of goods from the standard rate of duty and prescribing effective rate of duty in notification no. 50/2017-Cus dated 30th June 2017 (serial no. 524 (1) (a)) stipulating 15% and 25% under conditions. Considering the contours of the assessment, the adjudicating authority should have determined the outcome of the controversy only by reference to the content of the said notification and, in the event of any ambiguity therein, by reference to intent as an instrument of tax policy instead of regressing to distinguishment of ‘articles’ within the accepted determination of the imported article as ‘motor vehicle’; just as a ‘motor vehicle’ – complete of itself – is no longer a set of assemblies, sub-assemblies, components

and parts, a 'deemed' 'motor vehicle' is also is no longer a set of assemblies, sub-assemblies, components and parts for any purpose whatsoever and, most especially, for determination of duty. That conceptual commotion has pervaded the impugned order to not only confound logical structuring of adjudication but continued to influence the arguments and submissions of both sides.

24. Learned Consultant for M/s GMMCO Ltd engaged our attention in elaborate submissions on the packing lists accompanying the goods to demonstrate that these were 'completely knocked down (CKD)' kits and that the assemblage thereto was to be strictly according to the accompanying manual of instructions. Likewise, Learned Special Consultant for respondent-Commissioner drew attention to several portions of the impugned order, and, in particular, to the colored pictures so vividly embedded therein, to demonstrate that essential components of a 'motor vehicle' were evidently the first stage of assembly and, upon which the lower rates in the exemption notification would cease to be available. At all events and for the purposes of revisiting the assessment, the technical details of the import are not relevant. The argument, in support of the impugned order, that the 'transmission system' is identifiable as is the 'engine' and that the appendant pieces are only for interconnecting as larger 'engine system' carries with it the proposition that the concession in the notification is an exercise in superfluity – neither is a 'completely built up (CBU)'

vehicle eligible nor does an assembly in which the ‘engine’, ‘transmission’ and ‘gearbox’ is formed first. Hence, it would appear that only a ‘miracle’ warrants extending the benefit of the notification.

25. It was held in *Commissioner of Customs v. Dilip Kumar & Co [(2018) 9 SCC 1)]* that

> *‘41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statue including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/ State.*
>
> *xxxxx*
>
> *43. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a tax provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assesse may warrant visualizing different*

situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.

xxxx

47. We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in Hari Chand Case (supra).'

and that alone should have been the guiderail of the impugned proceedings.

26. According to Learned Counsel for M/s Coal India Ltd, the sweep of the tax policy is evident in the content of the notification and the intent in its structuring. He argued that the incorporation of 'completely knocked down (CKD' with definition, through Finance Act, 2011, was the foundation for discriminating tax regime in 'motor vehicle' importation and the impugned notification should have been appreciated as segregation prevalent in the sector deployed for according tax preference for essential assemblies without chassis integration over full assembly. He was critical of the adjudication authority for not only adopting an 'all or nothing' alternative but also in attempting to contrive stages in between merely to deny the lowest rate of duty to the impugned imports.

27. It was pointed out that, evidently, the three – engine, transmission and gearbox – together provided motive power to automobiles and, when conjoined, is essence of 'motor vehicle' just as any two of them attached to chassis is essence of 'motor vehicle' thus edging out such products from the benefit of concessional rate of duty and at par with 'completely built up (CBU)' units insofar as the highest rate of duty is concerned. This concatenation of the combinations, according to Learned Counsel, is the only logical structuring that may give purpose to the notification. According to him, corollary thereof is that 'pre-assembled' is 'interconnectedness' and not dis-assembled condition as posited in the impugned order. Drawing attention to the

specifics of the expression deployed in the notification, he attributed significance to '*not in* ***a*** *pre-assembled condition*' (emphasis supplied) while noting absence in '*in pre-assembled form'* to highlight the intent; were it otherwise, he contended, a 'separator' would have found place in enumerating all three.

28. He suggested discard of report of Shri Rajendra Tambi for the admitted superficiality of the examination as well as the findings in the impugned order which relied apparently on misconstrued portions of statements of S/Shri Shyamal Samanta, Vairamohan, Vikas Kumar and Sadanand Kapei.

29. The reliance placed on the decision of Tribunal, in *BMW India Pvt Ltd v. Commissioner of Customs, Chennai [2018 (9) TMI 1151 – CESTAT CHENNAI]*, came in for its fair share of criticism on two counts by Learned Counsel. According to him, the operation of the order was stayed by the order[6] of the Hon'ble Supreme Court and as the order was insufficient precedent, constrained as it was within a decision of the competent advance ruling authority which binds both sides, by its factual matrix.

30. Learned Special Counsel found no reason for cavil that the adjudicating authority had had to fall back on the rules of classification

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[6] [dated 4th July 2019]

and, in particular to rule 2(a) of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 for concluding that 'engine' and 'transmission system' were 'pre-assembled' and that 'engine system' to be assembled or other parts imported therewith constituted a larger set as he relied upon the decision of the Hon'ble Supreme Court in *Collector of Customs, Bangalore v. Maestro Motors Ltd [2004 (174) ELT 289 (SC)*] holding that

> *' 19....In our view, CEGAT has erred in holding that the Interpretative Rule 2(a) does not apply to a Notification. When a Notification exempts goods falling within the First Schedule to the Customs Tariff Act, 1975, then the goods must be classified in the same manner both for the purposes of payment of customs duty as well as for the purposes of exemption/benefit under the Notification. However, if the wording of the Notification show that an item is specifically exempted then the exemption will apply to that item even though for the purposes of classification it may be considered to be something else. To take this very case as in illustration, where like in Notification No. 29/83 components including components in CKD packs, were given benefit of exemption those components would get exemption even though for purposes of payment of duty they are classified as cars. But where, as in this case, components and parts falling within Chapter 87 are exempted, then the components and parts must be considered to be components and parts, not just for exemption but also for payment of custom duty. If for purposes of payment of custom duty they are not deemed to be components and parts, then they are also not components and parts for the purposes of the Notification. In other words when, in a Notification, the exemption is with reference to an item in*

> *the First Schedule to the Customs Tariff Act, 1975, then the Interpretative Rules would apply to such Notification. In such cases, if they are not components and parts for the purpose of payment of custom duty they would not be components even for the purpose of the Notification…'*

but it does appear that the context in which the Hon'ble Supreme Court did posit the proposition has been lost sight of, for earlier in the proceedings, it was noted that

> *'9…It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language. If in the Notification exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, then the same Rules of Interpretation must apply. In that case the goods will be classified, even for the purposes of the Notification, as they are classified for purposes of payment of customs duty. But where the language is plain and clear effect must be given to it…Undoubtedly, for purposes of levy of customs duty by virtue of Interpretative Rules 2(a), the components in a completely knocked down pack would be considered to be cars. But in view of the clear language of the Notification the components including components in completely knocked down kits are exempted…'*

as imperative for applying the General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 independently for exemption. In the present dispute, the exemption is extended to 'completely knocked down (CKD)' kits of particular heading subject to prescribed qualification and not to any component or part thereof which has been referred to only for purposes of eligibility of 'completely knocked down (CKD)' kits as whole. This ruling is no authority to undertake separate classification of 'engine', 'transmission system' or 'gear box' for ascertaining compliance with qualification. There is no convergence of statutory objective and, absent such convergence, appropriation of uncontemplated liberty to foray into rules of classification does not survive the test of statutory authority.

31. The decision of the Tribunal, in *BMW India Pvt Ltd v. Commissioner of Customs, Chennai-V [2018 (9) TMI 1151 – CESTAT CHENNAI]*, has been extensively relied upon by the adjudicating authority. Needless to say, the concessional rate under dispute therein is attributed to notification no. 21/2011-Customs dated 24th March 2011 and denial thereof, of benefit extended to 'completely knocked down (CKD)' imports, led to default fitment at rate of duty applicable to others besides pertaining to passenger cars that would require every component and part necessary to operate as such upon assembly. Furthermore, the 'pre-assembled' condition of the components was presumed in that dispute from the absence of evidence of actual examination of the imported goods.

32. Owing to lack of clarity on the article of import sought to be granted concessional rate of duty, 'completely knocked down (CKD)' kits and, consequent uncertainty about implementation thereof,

> *'Explanation – For the purposes of this exemption, "Completely Knocked Down" unit means a unit having all the*

necessary components, parts or sub-assemblies for assembling a complete vehicle but not include, -

(a) A kit containing a pre-assembled engine or gearbox or transmission mechanism; or

(b) A chassis or body assembly of a vehicle on which any of the component or sub-assembly, viz., engine or gearbox or transmission mechanism is installed'

was incorporated vide notification[7] which, along with further emendations, was considered in *re BMW India Pvt Ltd* thus

'16. Discernibly, the changes brought about by Notification No. 31/2011-Cus. not only created an additional slab of concessional duty, but also further clarified what exactly was considered as CKD. Notification 31/2011-Cus. in fact expanded the types of import which could be considered as CKD unit. In the Notification 31/2011 if the engine, gearbox and transmission mechanism were not in a pre-assembled condition, this would be considered as a CKD kit, meriting the lowest rate of 10% BCD.

xxxx

18. Quite evidently, the sub-assemblies covered in sub entry 344 (1) (b) are only "engine" or "gearbox" or "transmission mechanism". From a plain reading of the sub entry, it is clear that it will not cover engine mated to a gear box or transmission. Hence if the goods as imported for an engine mated to a gearbox or transmission, they will go out of the scope of entry 344(1)(b) and will necessarily fall within the residual entry namely 344(2) "in any other form" and suffer BCD @ 60%. Hence, in our view, therefore not only will entry

[7] [notification no. 21/2011-Cus dated 1st March 2011]

> *344(1)(b) not include automobile kit imported with engine or gearbox or transmission in preassembled form and mounted on a chassis/ body assembly but also will not include such sub-assembly engine and/or gearbox and/or transmission mechanism if they are mated to each other.*
>
> *19. It is also pertinent to note that if the imported automobile CKD kit has the engine or gearbox or transmission in preassembled condition, the entire kit will not get the benefit of 10% BCD under entry 344(1)(a) but will have to suffer 30% BCD under 344(1)(b).'*

to divine circumstances in which the full rate of duty and intermediate rate would be applicable, i.e., by 'mating' and 'separate but pre-assembled' respectively. Thus expressions were insinuated into the literal description to assign intent.

33. On the contrary, according to Learned Consultant for M/s GMMCO, the Hon'ble Supreme Court in *United Offset Process (P) Ltd v. Asst Collector of Customs, Bombay and others [(1989) 74 STC 81]* emphasized common parlance to undefined expressions thus

> *'4…the legislature did not suppose our merchants to be naturalists, or geologists or botanists..*
>
> *5….There is no technical definition of the expressions used. In that view of the matter, in our opinion, the true approach of the Tribunal should have been to find out the correct meaning of the items, i.e., the meaning attributed to the expressions used by those dealing with in the trade'*

as also by the Tribunal in *Indian Oil Corporation Ltd v. Commissioner* *of Central Excise & Service Tax, Vadodara [2015 (329) ELT 334 (Tri-Ahmd)]* to hold that

> *'5.2 ...Learned AR also relied upon the judgement in the case of Orient Traders v. Commercial Tax Officer, Tirupati [2009 (237) ELT 447(SC)]. Para 18 of this case law is relevant where the Apex Court has made the following observations:-*
>
> *"18. We are, however, of the opinion that, on principle, the decision of this court in Mangalore Chemicals – and in Union of India Papers referred to therein – represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that the said principle is good and sound – does not apply to the construction of an exception or exempting provision; they have to be construed strictly. A person invoking an exception or exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [1978 (2) ELT (J350) (SC) = 1969 (2) SCR 253] that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any interment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."*

> *5.3 From the above case laws, it is observed that Courts are not permitted to add any words in the language of exemption notification.'*

owing to which, and along with jeopardy thereof, we are not inclined to consider the decision of the Tribunal *re BMW India Pvt Ltd* as having persuasive influence let alone as binding precedent.

34. The adjudicating authority has resorted to the highest rate, at 40%, among the classes delineated in the impugned notification to fasten duty liability that is cause of grievance to the appellants. That would have been in order upon reasoning being in conformity with the test, presumably applied by the competent review authority in accordance with section 129D of Customs Act, 1962, to allow the adjudication to stand and also passing muster for discard of the appeals. *Per contra*, failure in the test of the twin parameters – being legal and being proper – on the impugned order merits setting aside of the impugned order.

35. For the sake of form, we also note that the impugned order re-evaluated the goods as approximating to be

> *'(2) other than (1) above'*

of, *inter alia*,

> *'Motor vehicles'*

corresponding to heading 8704 of First Schedule to Customs Tariff Act, 1975 in the impugned notification from lack of conformity with

> *'(1) as a Completely Knocked Down (CKD) kit containing all the necessary components, parts or sub-assemblies for assembling a complete vehicle, with, -'*
>
> *'(a) engine, gearbox and transmission mechanism not in a pre-assembled condition;'*

claimed by importer, in the bills of entry filed for clearance of goods procured under agreement, or of

> *'(b) engine or gearbox or transmission mechanism in pre-assembled form but not mounted on chassis or body assembly;'*

Either, leading to fastening of differential duty of under section 28 of Customs Act, 1962, along with applicable interest under section 28 of Customs Act, 1962. The notification prescribes a three-level duty structure of which the concessional rates are applicable to 'completely knocked down (CKD)' kit as long as the principal elements – engine, gear box, transmission mechanism – are not in preassembled condition or, if so, not mounted on chassis or body assembly. The adjudicating authority has premised the hierarchy of preference as inversely proportional to the work involved in assembling the vehicle; there is, of course, no authoritative foundation for this intendment to be valid. According to the impugned order, the three – engine, gear box, transmission mechanism – would have to be non-preassembled to qualify as eligible ‘completely knocked down (CKD)’ kit for the lowest rate.

36. We are unable to affirm this reasoning as sound because there would be no need, in the light of ‘completely knocked down (CKD)’ being so by definition, for reiterating the three parts to be identified for particular emphasis. Furthermore, the deployment of ‘not in a preassembled form’ does jar, contextually, when ‘unassembled’ is the plain and straightforward deployment for that presumed intendment. Preassembled is a clumsy expression which, in common usage, suggests a state before ‘being’ – or ‘assembled’ – as well as a state after ‘unassembled’ and its deployment, such as it is, not only for the most favoured category of ‘motor vehicle’ but, with slight variant from ‘condition’ to ‘form’, for the intermediate category must surely mean more than mere ‘unassembled’ as posited by the adjudicating authority. And like graceful ageing, assumes elegance in a nuanced preassembling.

37. The three are the crucial components of ‘motor vehicle’ and, together, provide the motive force; all other appendages are incidental to, and for, controlling the motive power. In the hierarchy of ‘motor vehicles’, the three on chassis or body assembly with steering, brake, fuel storage, inlet and exhaust for air and/or fuel is, for all practical purposes, ‘motor vehicle’ and availability in any combination but all

three together makes for partial fulfillment towards ‘motor vehicle’; ‘preassembled’ is orphaned unless assigned a meaning that is consistent with this hierarchy and, that too, without adding other expressions. A ‘completely knocked down (CKD)’ kit, including engine, gear box and transmission mechanism presented separately, is not ‘motor vehicle’ till assembled and so, too, is such kit where the engine, gear box and transmission mechanism are not assembled yet. This, then, is the condition of presentation to qualify for the lowest rate. Only then, does the incorporation of chassis or body assembly become consistent with the stages of transformation as ‘motor vehicle’ through the process of integration.

38. It would, therefore, be sound to hold that ‘preassembled condition’ implies independent existence even if identifiable as engine, gear box and transmission mechanism which turns into assembly as soon as fitted over chassis or body assembly. The distinction is not in the degree of identifiability but in the progress of assimilation as ‘motor vehicle’ from ‘preassembled’ to ‘assembled’; something that does not appear to have troubled the adjudicating authority. It would offer absurd consequence if any one or two of the three were identifiable and, even without the engine, held as progression warranting withhold of most favorable duty rate. Thus, ‘preassembled’ must be taken to mean putting together of engine, gearbox and transmission mechanism and disparate existence as sufficient condition for availing the least of the

duty burden.

39. For the above reasons, it must be held that the imports are not to be deprived of the lowest rate of duty and the demand arising therefrom held to be inconsistent with the law. Likewise, the detriments visited on the appellants is without basis and liable to be set aside.

40. Appeals are allowed.

(Order pronounced in the open court on 03/09/2025)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*