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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CUSAA 9/2017 & C.M.No.7809/2017 (Stay)**

COMMISSIONER OF CUSTOMS
IMPORT & GENERAL ..... Appellant

Through: Mr.Sanjeev Narula, Sr.Standing Counsel with Mr.Abhishek Ghai, Advocate

Versus

LEXTRIX MOTORS LTD. ..... Respondent

Through: None.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% **02.05.2017**

<u>C.M.No. 7810/2017 (Exemption)</u>

1. Allowed, subject to all just exceptions.

<u>CUSAA 9/2017</u>

2. This appeal under Section 130 of the Customs Act, 1962 (the Act) is directed against a final order dated 22nd July, 2016 passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) in Appeal No. C/531/2010. The questions sought to be urged for consideration by this Court are as under:

> "(i) Whether on the basis of the classification under the Customs Tariff Act can a benefit under the Exemption Notification be granted, when the language of the notification is clear and unambiguous?
>
> (ii) Whether Tribunal can expand language of a

Notification i.e. whether claimed benefit of CVD under Notification No.06/2006 (S.No.35) dated 01.03.2006 is applicable to the party who imported goods (E-bike) in CKD condition, contrary to the wordings of Notification which exempts CVD at nil rate for vehicles and does not include vehicles in CKD conditions?

(iii) Whether the CESTAT is right in granting the benefit of the exemption Notification No.06/2006 (S.No.35) dated 01.03.2006 on the basis of the classification of the goods under the Customs Tariff Act?"

3. The Respondent Assessee through their Customs Handling Agent filed two Bills of Entry (B/E) dated 11th January, 2010 for clearance of goods declared as completely knocked down (CKD) Kits of E-Bike and other spares. It is stated that E-Bikes are classified under Customs Tariff Heading (CTH) 879091 and spares are classified under various other CTHs.

4. The Respondent claimed the benefit of Notification No.06/2006-CE (Sl.No.35) dated 1st March, 2006 read with Notification No.25/2008-CE dated 29th April, 2008. It contended that in terms thereof the countervailing duty (CVD) payable on the CKD E-Bike kit would be at 'Nil' rate. The Assistant Commissioner of Customs by order dated 17th February 2010 denied the benefit on the ground that the E-Bikes (Electric Scooter) as imported were not a complete built up unit but in a CKD condition. According to him, the Notification under Central Excise Act (CE Act) granted the benefit of exemption only to complete vehicles.

5. Against the aforementioned order dated 17th February, 2010 an appeal

was filed by the Respondent to the Commissioner of Customs (Appeals). The appeal was dismissed by the order dated 23rd August, 2010.

6. Aggrieved by the above order, the Respondent filed an appeal before the CESTAT which by the impugned order while allowing the appeal has held that since the goods, when assembled, are complete electrically operated bikes they would be covered under Serial No.35 of the table appended to the exemption Notification in question.

7. Mr. Sanjeev Narula, the learned counsel appearing for the Appellant Department, has placed before this Court, the Notification dated 1st March, 2006. Under Serial No.35 there is a mention of Chapter 87 of Central Excise Tariff Act and the entry reads as under:

> "Electrically operated vehicles, namely, trolley buses, platform trucks, works trucks, tow tractors, two or three wheeled electric motor vehicles; and battery powered road vehicles
>
> Explanation.- For the purposes of this exemption, "electrically operated trolley buses" means trolley buses which are run solely on electrical energy derived from an external source, and "electrically operated platform trucks", "electrically operated work trucks" and "electrically operated tow tractors" respectively means platform trucks, work trucks or two tractors which are run solely on electrical energy derived from one or more electrical batteries which are fitted to such vehicles and "battery powered road vehicles" means road vehicles which are run solely on electrical energy derived from one or more electrical batteries fitted to such road vehicles.

8. By virtue of the Exemption Notification, the earlier rate of 8% has been amended as 0%. In other words, the excise duty payable on the aforementioned goods is Nil.

9. In the context of CVD what has to be seen is whether goods of a like nature if manufactured in India would be exigible to excise duty. Where such goods are not exigible to excise duty, then naturally there would be no corresponding CVD on such goods when imported. In the domestic manufacturing context, the question of goods being in either in CKD condition or a Semi Knocked Down (SKD) does not arise. When goods are imported, as in the present case, in a CKD condition, what in fact is imported is the entire vehicle. All that is required to be done is to assemble the various components to obtain the complete vehicle. That is why it is called a CKD kit. Since virtually what is imported is in fact an entire electrically operated vehicle, in this case is E-bikes, there would be no justification in denying the exemption from excise duty under the Notification in question. Therefore, no CVD would be applicable on such imported CKD E-bike kits.

10. It is pointed out by Mr Narula that the CESTAT has in the impugned order erroneously relied upon a decision of the Supreme Court in ***Collector of Customs, Bangalore v. Maestro Motors Ltd. (2005) 9 SCC 412*****,** which according to him is distinguishable on facts. While Mr. Narula may be right in his contention, it makes no difference to the ultimate decision of the CESTAT regarding the non-applicability of CVD on the imported E-bikes in CKD condition.

11. No substantial question of law arises from the impugned order of the CESTAT.

12. The appeal is accordingly dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 02, 2017
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