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W.P.No.14959 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM :

THE HON'BLE MR.R. MAHADEVAN, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. No.14959 of 2016 and
W.M.P. Nos.13062 of 2016 and 33496 of 2018

The Commissioner of Customs (Port-Import),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

... Petitioner

Vs.

1.The Authority of Advance Rulings,
(Central Excise, Customs and Service Tax),
Hotel Samarat, 4th Floor, Kautilya Marg,
Chanakyapuri, New Delhi.

2.M/s.BMW India Pvt. Limited,
DLF Cyber City, Phase-II,
Building No.8, Tower-B,
7th Floor, Gurgaon-122002.
Harayana.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records of the first respondent in Advance Ruling No.AAR/Cus/12/2015,



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dated 20.11.2015 issued with respect to the Application No.AAR/44/Cus/01/2014 and quash the same.

For petitioner : Mr.V.Sundareswaran

For R2 : Mr.Aravind P. Datar,
Senior counsel for
Mr.Karthik Sundaram

ORDER

The present writ petition has been filed by the Revenue challenging the order dated 20.11.2015 passed by the first respondent - the Authority for Advance Rulings (AAR) in Advance Ruling No. AAR/Cus/12/2015 with respect to Application No.AAR/44/Cus/01/2014 filed by the second respondent - M/s BMW India Pvt Ltd (BMW India).

Facts:

2. The 2nd Respondent is wholly owned subsidiary of M/s.Bayerische Motoren Werke Holding B.V., Netherland (99,9981%) and M/s.Bayerische Motoren Werke, Aktiengesellschaft, Germany (BMW AG - 0.0019%) hereinafter referred to as the “Parent company”.

The parent company is engaged in the manufacture and sales of “BMW



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cars” outside the territory of India.

2.1. The 2nd respondent commenced its business in India in 2005, its business operation has undergone significant changes since then. The 2nd Respondent started its business in India with the import of Completely Built Units (hereinafter referred to as “CBUs”) of motor vehicles from BMW Group Companies outside India and assembly of motor vehicles from imported CKD kits (with the exception of seats locally procured) at its Chennai plant. An advance ruling was also issued by the 1st Respondent, wherein, *vide* order dated 28.10.2005, it was ruled that import of car parts as listed in Annexure-III to the said application would be considered as import of motor car as a completely knocked down unit (CKD), eligible to the concessional rate of customs duty of 15% [applicable to motor cars if imported as completely knocked down (CKD) unit] being covered by Entry 344 of CTH No.8703 of Notification No. 21/2002-Cus., dated 01.03.2002 as amended by Notification No. 11/2005- Cus., dated 01.03.2005. The 2nd Respondent imported the motor vehicle by paying the concessional rate of duty prevailing at the relevant time of import.



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2.2. Thereafter from 01.03.2011 with the introduction of the definition of CKD the 2nd Respondent who was importing engine, gearbox and transmission not in a pre-assembled condition informed the Customs authorities of its business model and offered to provide clarification if need be / sought for. The authorities permitted the appellant to continue to clear the imports at a concessional basic customs duty rate of 10% applicable for CKD kits.

2.3. There was an investigation initiated by the Special Intelligence Investigation Branch (SIIB) *inter alia* to examine the applicability of concessional rate of 10% on import of CKD kits by the 2nd respondent. On the basis of the information gathered during the course of the investigation, a show cause notice dated 26.08.2013 was issued to the 2nd Respondent proposing to levy basic customs duty at 30%. The 2nd Respondent submitted its reply to the notices stated to be pending adjudication. It is relevant to note that the issue prior to April 2013 related to import of vehicles in CKD form. We intend to clarify that the impugned Advance Ruling dated 20.11.2015 is in relation to the



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activity/business model which the 2nd respondent proposed to follow on the date of its application before the Advance Ruling Authority i.e., subsequent to April 2013. It is stated that there is marked difference in the *Modus Operandi* / Business Model with regard to which the present application for Advance Ruling was sought.

2.4. The 2nd Respondent from April 2013 onwards proposed to change its business model / *modus operandi*, and the customs authorities were duly informed. Under the new business model the 2nd Respondent was to discontinue the import as CKD kits and proposed to import as “parts of the motor vehicle”. Under this new business model all the underlying component / parts / sub assemblies required for manufacturing motor vehicles were to be imported (except the seats and wire harness for 2 models) which were intended to be locally sourced from 3rd party vendors in India. The parts were intended to be imported from various BMW Group Companies and 3rd Party overseas vendors. Importantly, the imports were also intended to be made at distant points of time. The 2nd Respondent also intended to procure within India 6 essential components / parts / sub assemblies required for manufacture of



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motor vehicle viz.,

1. Engine(along with engine and transmission unit)
2. Axle assembly;
3. Exhaust systems;
4. Cooling module;
5. Heating, Ventilation and Air Conditioning unit (HVAC); and
6. Door Panels.

3. Against this background, the 2nd Respondent approached the 1st Respondent raising the following questions with regard to which the ruling was sought:

“a) Whether the import of components / parts/ sub-assemblies by the applicant will be classified as motor vehicle under Tariff Heading 87.03 or as Completely Knocked Down (CKD) kit under Sr. No. 437 of Notification No. 12/2012-Cus., dated 17.3.2012, as amended, when six essential and critical components/parts/sub-assemblies, namely; (i) engine (along with engine and transmission unit) (ii) axle assembly (iii) exhaust systems (iv) cooling module (v) heating, ventilation and air conditioning unit and (vi) door panels are to be locally assembled/manufactured by approved local third party vendors?

b) If the import of components/parts/sub-assemblies by the applicant will not be classified as motor vehicle or as CKD kits, whether the applicants imports will be classified under their respective headings/sub-headings of the Customs Tariff Act, 1975 or under Tariff Heading 87.08 of the Customs Tariff Act, 1975?”

Order of the Advance Ruling authority:



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4. The Advance Ruling Authority held on consideration of the facts presented before it that the import of components/parts/sub-assemblies by the applicant will be classified under their respective headings / sub-headings of Customs Tariff Act, 1975.

History of Notification:

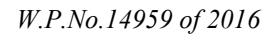
5. Before proceeding further it may be relevant to trace the history of the notification commencing with Notification No.21/2002 dated 01.03.2002 and culminating in Notification No.12/2012 dated 17.03.2012 provided *vide* S.No.344. The following Table is relevant:

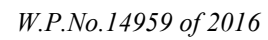
S.No.	Notification Date	Description of goods	Standard rate
1.	Notification No.21/2002 dated 01.03.2002	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02) including station wagons and racing cars, new, which have not been registered anywhere prior to importation: a) if imported as Completed Built up Units (CBU) Explanation I - "Completely Built-up Unit" means completely assembled vehicle, whether or not fitted with tyres or batteries. Explanation II – For removal of doubts, it is hereby clarified that if the engine and the gear box assemblies are installed in the body assembly of a vehicle, then such a vehicle shall be deemed as a Completely Built-up Unit.	60%



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S.No.	Notification Date	Description of goods	Standard rate
		b) if imported in any other form	30%
2.	Amendment to Notification No.21/2002, vide Notification No.26/2003 dated 01.03.2003	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02) including station wagons and racing cars, new which have not been registered anywhere prior to importation: a) if imported as Completed Knocked Down (CKD) Unit. b) if imported in any other form	25% 60%
3.	Amendment to Notification No.21/2002, vide Notification No.11 of 2005 dated 01.03.2005	(xxxvi) against S.No.344 for the entry in column (4) occurring against item (1), the entry “15%” shall be substituted instead of 25%.	15%
4.	Amendment to Notification No.21/2002, vide Notification No.11/2006 dated 01.03.2006	(xxxiv) against S.No.344 for the entry in column (4), for the entry relating to item (1) of column (3), the entry “12.5%” shall be substituted instead of 15%.	12.5%
5.	Amendment to Notification No.21/2002, vide Notification No.20/2007 dated 01.03.2007	(xxxiii) against S.No.344 for the entry in column (4), for the entry relating to item (1) of column (3), the entry “10%” shall be substituted instead of 12.5%.	10%
6.	Amendment	(xxiv) against S.No.344, in column (3), after the	

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5.1. From a reading of the above Table, it would be clear that Notification No.21/2002 dated 01.03.2002 provided *vide* S.No.344 that vehicles in “completely built up” condition would be liable to duty at 10%, while import “in any other form” would be liable to tax at 30%. The Notification also contained an Explanation with regard to the expression “completely built up”. The above Notification was amended by Notification No.26/2003-Cus dated 01.03.2003 whereby motor vehicles imported in “*completely knocked down*” condition was liable to duty at 10%.



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duty at 25% and import of motor vehicle “in any other form” at 60%. The rate of duty on import of completely knocked down motor vehicles was reduced periodically from 25% to 15%, 15% to 12.5% and 10% *vide* Notification No.11 of 2005, Notification No.11 of 2006, Notification No.20 of 2007 dated 01.03.2005, 01.03.2006, 01.03.2007 respectively.

6. While so, Notification No.21 of 2002 was further amended *vide* Notification No.21 of 2011 whereby an Explanation was inserted which defined “Completely Knocked Down” condition to mean a unit having all the necessary components, parts or sub-assemblies for assembling a complete vehicle but does 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 components or sub-assemblies viz., engine or gearbox or transmission mechanism is installed.

7. Import of motor cars as CKD kit containing all the necessary components or sub-assemblies, for assembling a complete vehicle with engine, gear box and transmission not in pre-assembled condition was



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liable to tax at 10%. If the Motor Vehicle is imported as a CKD kit containing engine or gearbox or transmission mechanism in pre-assembled form, but not mounted on a chassis or a body assembly, it was liable to duty at 30%. Import of motor vehicles in any other form was liable to tax at 60%.

8. Notification No.12 of 2012 dated 17.03.2012 superseded Notification No.21 of 2002 and S.No.344 was replaced with S.No.437. The above Notification provided that motor cars and motor vehicles if imported as:

(1) a completely knocked down (CKD) kit containing all necessary components, parts or sub assemblies for assembling a complete vehicle, with:

(a) engine, gearbox and transmission mechanism not in a pre-assembled condition is liable to be taxed at 10%;

(b) engine or gearbox or transmission mechanism in Pre-assembled form but not mounted on a chassis or a body assembly is liable to be taxed at 30%.

(2) In any other form: (a) depending on the FOB value and Engine



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Capacity was liable to be taxed at 75% or 60% respectively.

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Circular on Import of Motor Vehicles:

9. Having traced the history of the notification relating to import of Motor Vehicle in varying forms, it may be relevant to refer to Circular in F.No.528/128/97-Cus-Tu dated 05.12.1997, wherein it was clarified that the following parts could be construed as most essential to bring into effect a finished motor vehicle viz., Engine, Gear Box, Chassis, Transmission Assembly System, Body/Cab, Suspension System, Axle Front and Rear. It was clarified that if all these components or parts or sub assemblies are imported, Rule 2(a) of the General Interpretative Rules would come into play since it is possible to take a view that when all these parts, components or sub assemblies when put together would have the essential character of a complete or finished motor vehicle. Importantly, it was also clarified that if a few of these components or parts of sub assemblies are not imported but are manufactured or purchased locally, it would then be difficult to take a view that the import of the other components or parts or sub assemblies has the essential character of a complete or finished motor vehicle.



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Issue of Maintainability raised by 2nd Respondent :

10. We shall now deal with the issue of maintainability of the application before the 1st Respondent raised by the appellant. The appellant raised a preliminary objection as to the maintainability of the application before the 1st Respondent, on the premise that the jurisdiction of the Advance Ruling Authority under Section 28E(b) of the Customs Act, 1962 is to determine a question of law or fact specified in the application regarding the liability to pay duty in relation to an “activity” which is proposed to be undertaken by the applicant.

10.1. It was submitted by the learned Senior Standing Counsel for the appellant placing reliance upon sub clause (b) read with sub-clause (a) to Section 28E of the Customs Act, 1962 that the activity with regard to which an advance ruling can be issued under Section 28E is only in relation to an “activity” which is proposed to be undertaken. In other words the “advance ruling” sought for must be in relation to a “new business of import or export” proposed to be undertaken. However, the



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activity i.e., business with regard to which the advance ruling is sought for viz., import of motor vehicles is an existing business and thus the 1st Respondent ought to have rejected the application as not maintainable.

11. To the contrary, it was submitted by the learned counsel for the 2nd Respondent that the above submission by the learned counsel for the appellant is misconceived both in law and on facts. The learned counsel for the 2nd Respondent would submit that the issue of maintainability of the application before the 1st Respondent cannot be raised inasmuch as the application was admitted by the 1st Respondent *vide* Misc. Order No.AAR/44/Cus/01/2015 dated 16.01.2015 and the same was never under challenge. In any view, it was submitted that the application was filed on 31.01.2014 and the 2nd Respondent commenced its import in terms of the new business model only from January 2015. The eligibility to seek advance ruling must be tested on the basis of the fact existing on the date of filing of the application and the imports effected subsequent to filing of the application cannot be looked at to determine the maintainability of the application on the premise that it is no longer a proposed activity.



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12. We have considered the submissions of both sides as to the maintainability of the application before the advance ruling authority. We are of the view that the above preliminary objection raised by the Revenue ought to be rejected for the following reasons:

a) Sections 28E (a) and (b) as it stood during the relevant period are extracted hereunder:

“28E. (a) “activity” means import or export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be;

(b) “advance ruling” means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant;”.

12.1. A conjoint reading of the above provisions would show that an Advance Ruling can be sought for determination of a question of law or fact specified in the application regarding the liability to pay duty in relation to an “activity proposed to be undertaken”. “Activity” is defined to mean “import or export” while also including any new business of



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import or export proposed to be undertaken by the existing importer or exporter. The learned counsel for the Revenue would submit that the 2nd Respondent being already in the business of import of motor vehicle, mere change in the business model would not enable them to obtain an advance ruling, for, it would then not be a new business which is a condition precedent for the 1st Respondent to issue any ruling. We are unable to agree with the above submission of the learned counsel for the 2nd respondent, if we bear in mind the object of constituting an Advance Ruling Authority, which is to give a ruling in advance to remove uncertainty in the mind of an applicant and eliminate possibility of dispute before any dispute arises. The object of Advance ruling is avoidance of litigation and promoting better relationship. In the era of globalisation of business, the purpose for creating the Authority is for expeditious disposal and determination of question of law or fact specified in the application regarding the liability to pay tax in relation to a transaction proposed by the applicant for which the Authority is required to give advance ruling. The Authority has been created to promote better compliance *inter alia* with the provisions of the Customs Act, 1962, on the lines of a similar Authority constituted under the



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Income-tax Act, 1961. The advance ruling would enable an importer to obtain in advance, a binding view from the Authority under the Act on issues which could arise in determining his tax liability.¹

13. Keeping in view the above object of the Advance Ruling Authority, we find that the submission by the Revenue on maintainability is premised on a narrow construction on the expression “business”. A new model / pattern / modus of import would constitute business for the purpose of Section 28E of the Act. One can draw support to the above view from Section 28 J(2) of the Act which reads as under:

“28 J. Applicability of advance ruling

(1).....

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.”

13.1. A reading of the above provision would show that an advance ruling would be binding only unless there is a change in law or fact. In other words, if there is a change in fact which has a material bearing on the question raised for ruling by the authority, the Advance

1. GSPL India Transco Ltd. v. Union of India, (2012) 56 VST 19



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Ruling Authority would no longer be binding. This, in our view, is indicative of the legislative intent that the expression “business” employed in Section 28E(a) of the Customs Act must be given a wide meaning so as to include business *qua* models / *modus operandi* and not business *qua* product.

14. It is also necessary to bear in mind that Section 28 E(2) of the Customs Act ought not to be read in isolation but to be read with Section 28 I(2), which provides that the Advance Ruling shall be binding unless there is a change in fact or law on the basis of which the Advance Ruling was pronounced. It is trite law that the Act must be read as a whole. In this regard, it may be useful to refer to the following judgment :

1. CIT v. Hindustan Bulk Carriers, reported in (2003) 3 SCC 57:

"18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335: 1992 SCC (L&S) 286: (1992) 19 ATC 507: AIR 1992 SC 81]) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the



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same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373: AIR 1997 SC 1006])"

2. Jayam and Co. vs. Assistant Commissioner reported in (2016)15 SCC. 125:

"a. "18. Another principle of statutory interpretation which needs to be noticed is that a provision in the statute is not to be read in isolation rather it has to read along with other related provisions itself, more particularly when the subject matter dealt within different sections or parts of the same statute is the same.

b. In the case of Kailash Chandra and another versus Mukundilal and others, 2002 (2) SCC 678. In paragraph 11, following has been laid down: "11. A provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subjectmatter dealt with in different sections or parts of the same statute is the same or similar in nature."

On applying the above principle that the Act must be read as a whole it appears the submission of the respondents that the right to input tax credit is perfected/complete/absolute the moment inputs are used in the manufacture or processing of goods cannot be sustained inasmuch as it is in conflict that other provisions of the Value Added Tax in particular Section 19(4) and 19(5) of the TNVAT Act, 2006.

The above submission is thus contrary to the settled rule of construction that the "act must be read as a whole" and no provision can be read in isolation."

14.1. If we read Sections 28 E and 28 I of the Customs Act conjointly, we are of the view that if there is a change in fact or law which substantially alters the position, the same would constitute



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“activity” for the purpose of Section 28 E of the Act. In the present case, AAR has found that there is change in facts and in our view, the change in modus adopted is extensive and would thus constitute “business activity” for the purpose of Section 28E of the Act. Thus, the challenge to the maintainability premised on construction by the Revenue in giving a narrow / restricted meaning to "business" is liable to be rejected.

15. We also find that the Revenue having not challenged the order dated 16.01.2015 whereby the application was admitted by the 1st Respondent it may not be open to now challenge the maintainability before this Court after final orders are passed. It may be relevant to note that Section 28 I of the Customs Act provides for the procedure to be followed on receipt of an application for Advance Ruling. Importantly, sub-section (2) to Section 28 I of the Act provides that the authority may after examining the application, call for records and either allow or reject the application on the ground that the question raised in the application is already pending before an officer of Customs, Appellate Tribunal or Court or the question raised is decided by Appellate Tribunal or Court.

15.1. A reading of Section 28 I(2) of the Act would show that mere



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obtaining of an Advance Ruling in respect of a product does not bar an applicant from approaching the Advance Ruling Authority if there is a change in fact or law. Admittedly, there is change in business model. The 1st Respondent has on examination admitted the application which remains unchallenged. It is trite law that when an order resulting in adverse consequences is not challenged immediately / at the earliest / within the prescribed period (if limitation is prescribed) the same must be treated as having attained finality and then ought not to be disturbed lightly.² It is also relevant to note that the appellant having participated and thereby acquiesced in the proceedings, ought to be understood as having waived their right to challenge the maintainability of the application before the 1st Respondent. We say this conscious of the fact that acquiescence or consent would not confer jurisdiction if the authority otherwise does not possess the requisite authority / jurisdiction. However, there is a distinction between jurisdiction to decide the matter and the ambit of the matter to be heard by the authority. While the waiver or consent would not confer jurisdiction in the case of the former, however waiver may be a factor to be considered in the case of the latter.

2. Rama Narang v. Ramesh Narang, (2021) 15 SCC 338



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We would think that apart from the fact that the challenge to jurisdiction is without merit, in any view, it falls within the latter category and thus the conduct of the appellant in participating in the proceeding may constitute waiver of its right to question / challenge maintainability before this Court.³

16. For the above reasons we are unable to agree with the challenge to the maintainability raised as a preliminary issue by the appellant.

Classification of Imports on Merits:

17. We shall now proceed to examine the classification of imports on merits. It may be relevant rather necessary to note that the 1st Respondent had as a matter of fact, found that 6 critical parts / components / sub-assemblies are sourced by them from local third party vendors, for the manufacture of motor vehicles at their Chennai plant. Details of such parts, etc. along with names of local third party vendors are as under:

3. *United Commercial Bank Ltd. v. Workmen*, 1951 SCC 364; *Kedar Shashikant Deshpande v. Bhore Municipal Council*, (2011) 2 SCC 654



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<i>Name of the Company</i>	<i>Product Manufactured in India</i>	<i>Parent entity country</i>
Force Motors	Engine along-with Transmission unit	India
Draeximaier	Door Panel	Germany
Valeo	HVAC and Cooling Module	France
Mahle Behr	HVAC and Cooling Module	Germany
Tenneco	Exhaust System	United States
IV between ZF India and Hero MotoCorp	Axle	IV between German and Indian Company

18. Apart therefrom, the following findings of facts are recorded in the impugned order by the 1st Respondent viz,

(a) That the third party local vendors are independent suppliers, who primarily import raw materials / components from independent overseas suppliers (with the exception of engine parts);

(b) That these third party vendors thereafter undertake manufacturing activity in India, pay Central Excise duty and sell finished goods to the applicant for manufacture of motor vehicles.



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(c) The allegation by the Revenue that third party vendors appear to be extension of the applicant as they import and manufacture items which are relevant to BMW cars only is rejected by finding that there is nothing irregular in local third party vendors importing and manufacturing such items, as it is their business decision-specially when these third party vendors are reportedly renowned global suppliers and have their own independent factories. Therefore, the allegation levelled by Revenue that third party vendors appearing to be mere extension due to corporate agreements between the applicant and third local vendors, is without basis and therefore not tenable.

(d) That the Applicant / 2nd Respondent proposes localization of six essential components / parts / sub-assemblies, which will be manufactured by local third party vendors on payment of Central Excise duty and supplied to the applicant for manufacture of motor vehicle.

(e) That the Revenue has not produced any tangible evidence to indicate that the applicant has entered into any fictitious arrangement to evade Customs duty.

(f) That Rule 2(a) of the Rules of Interpretation of Tariff are applicable only if all components intended to make a final product



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presented at same time for customs clearance. The judgment of Hon'ble Supreme Court in *Commissioner of Customs v. Sony India (2008) 13 SCC 145*, is closer to the present case as components / parts / assemblies for manufacture of motor vehicle were not likely to be imported in the same container. They are not even likely to be imported at the same time and require further manufacture by different local third party vendors.

(g) The attempt by the Revenue to rely upon Rule 2(a) of the General Interpretative Rules is mis-conceived inasmuch as it does not satisfy the test of the imports being made of the various elements / components at the same time.

19. Having narrated the factual setting on the basis of which the Advance Ruling was issued, let us now examine Rule 2(a) of the General Interpretative Rules which forms the basis of the appellant case, to submit that the impugned order of the 1st Respondent ruling that Rule 2(a) of the Rules of Interpretation of Tariff is applicable and the imports bear essential character of Motor Vehicle and thus cannot be classified as import of parts.



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19.1. It may thus be relevant to refer to Rule 2(a) of the General Interpretative Rules:

“2.(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 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.”

19.2. The above rule has come up for consideration on more than one occasion before the Apex Court. It has been held by the Apex Court that for the above Rule to get attracted, it is essential that all the components which form part of the assembly or complete or finished goods are presented together at the same point of time.

19.3. It has been repeatedly held that until all the components of the complete article are presented together for assessment at the same point of time, Rule 2(a) cannot be invoked to classify the parts as complete article. It has also been held that consignments removed / presented at different points of time from different factories cannot be clubbed together to classify the parts as complete article. The *sine qua*



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non for the application of this Rule is that any imported article, which is “as presented”, must have the essential character of the “complete or finished article”. It is also a settled position in law that the goods would have to be assessed in the form in which they are imported and presented on import and not on the basis of the finished goods manufactured after subjecting them to some process after the import is made. In this regard, it may be relevant to refer to the following judgments:

(i) Commissioner of Customs v. Sony India Ltd., reported in (2008) 13 SCC 145 :

“23. We would, therefore, consider the implication of Rule 2(a). Rule 2(a) is as under:

“2. (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 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 learned ASG, therefore, suggests that the articles though were not the CTVs in CKD form and were incomplete or unfinished ones, they had the essential character of complete or finished CTVs and applying this Rule, every such component, would have to be taken as an import of CTV. The learned ASG heavily relied on the second part of the Rule, starting from words “It shall also to be taken to include a reference....” He says that every component whether it is complete or finished and which is presented in unassembled or disassembled condition, would have to be taken as the finished article, like CTVs in this case. In our opinion, this argument is completely illogical and again that is not the import of the language of the Rule. If the argument of the learned ASG has to be accepted, then we would have to concentrate only on the later part of the Rule, ignoring the first part of the Rule and such dissection, in our opinion, is not possible.



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The sine qua non for the application of this Rule is that any imported article, which is “as presented”, must have the essential character of the “complete or finished article”. This condition cannot be ignored and we cannot allow the reading only of the second part beginning with words “It shall also to be taken to include a reference....” for application of the Rule. The Rule must apply as a whole.

24. Learned ASG was not able to point out as to how the first condition can be satisfied in the present case. A mere PCB or a CRT, in our opinion, under any circumstances, cannot be held to have essential character of the CTV. It is only when this first condition is satisfied that the remaining clause would have to be read and thereby, the words “that article” used in the later part would have to pass the test of the opening words of the clause “as presented, the incomplete or unfinished article has the essential character of the complete or finished article”. Once this condition is satisfied then the further clause is activated, suggesting that even when such article is in disassembled or unassembled condition, it would still be taken to be a complete article. Therefore, essentially the second part would come into play provided the component parts intended to make up the finished product are all presented for customs clearance at the same time which is not the case here.

.....

26. Again, the meaning of terms “as presented” in Rule 2(a) would clearly imply that the same refers to presentation of the incomplete or unfinished or unassembled or disassembled articles to the Customs for assessment and classification purpose. It is also a settled position in law that the goods would have to be assessed in the form in which they are imported and presented to the customs and not on the basis of the finished goods manufactured after subjecting them to some process after the import is made.”

(ii) M/s.L.G. Electronic India Pvt. Ltd. and others v. Commissioner, Central Excise, Noida-II, reported in (2023) 6 Centax 183 (Tri. -All):

“15. The first issue that arises for consideration is regarding Interpretative Rules 2(a) of the Central Excise Tariff. The order of the Commissioner is based on this rule 2(a) and, therefore, it will be necessary to reproduce it and rule 1 also and they are as follows:

"The Schedule-Excise Tariff Rules for the Interpretation of the



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this Schedule

1. The titles of Sections and 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 Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained.

2. (a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled.

(b)**

16. It would be clear that this rule can be applied only if all the components which form part of the assembly or complete or finished goods are removed together at the same point of time. Thus, unless and until all the component or parts which form part of the complete goods, which in the present case are CTVS, are removed together, rule 2(a) would have no applicability.

17. It would also be useful to contrast this Interpretative Rules 2(a) with Interpretative Rules 2(a) of the Customs Tariff, which is identical with the only difference being that instead of "removed", the expression "presented" appears in the Customs Tariff. In regard to the applicability of rule 2(a) of the Customs Tariff to import of goods, it has been repeatedly held that until all the components of the complete article are presented together for assessment at the same point of time, rule 2(a) cannot be invoked to classify the parts as complete article. It has also been held that consignments removed/presented at different points of time from different factories cannot be clubbed together to classify the parts as complete article."

(emphasis supplied)

19.4. The above order of the Tribunal was carried by way of appeal by the Revenue to the Supreme Court and the same was dismissed as under:



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(i) Commissioner of Central Excise, Noida-II v. L.G.Electronics India Pvt. Ltd. Civil Appeal Diary No. 8150 of 2023 dated 10.04.2023:

“Delay condoned.

1. This Court is of the opinion that no substantial question of law arises in regard to interpretation of Note (a) of the General Rules of Interpretation as is urged b the revenue.

2. The appeals are accordingly, dismissed.”

19.5. From a reading of the above judgments it is clear that Rule 2 (a) if applied to the facts considered by the 1st Respondent, the import cannot be understood as that of motor vehicles. Six essential components viz., Engine along - with Transmission Unit, Door Panel, HVAC and Cooling Module, Exhaust System and Axle are being procured from vendors in India. Now, applying the 1997 circular, it would be clear that in view of the fact that these six parts are being procured locally the import cannot be stated to have the essential character of a motor vehicle inasmuch as it was clarified that the following parts could be construed as most essential to bring into effect, a finished motor vehicle viz., Engine, Gear Box, Chassis, Transmission Assembly System, Body/Cab, Suspension System, Axel Front and Rear. It was clarified that if all these



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components or parts or sub assemblies are imported, Rule 2(a) of the General Interpretative Rules would come into play since it is possible to take a view that when all these parts, components or sub assemblies when put together would have the essential character of a complete or finished motor vehicle. Importantly, it was also clarified that if a few of these components or parts of sub assemblies are not imported but are manufactured or purchased locally it would then be difficult to take a view that the import of the other components or parts or sub assemblies has the essential character of a complete or finished motor vehicle. The facts considered by the Advance ruling would show that at least 3 out of the six components viz., Engine, Transmission, Axle found as essential for a motor vehicle in terms of the circular is procured locally. It may be relevant to note that it is found by the Advance Ruling Authority that the total number of parts proposed to be imported by the applicant would be 1940 and 1436 (depending on the model of the motor vehicle). The above parts are imported from different entities in different consignments at different points of time, thus applying the decision in *Sony India* and *L.G. Electronics* to the facts recorded by the 1st Respondent, we agree with the finding of the 1st Respondent that Rule 2 A of G.I.R. would not



Relevance of the decision in Westinghouse Saxby :

20. The Revenue placed reliance on the above decision of the Apex Court reported in (2021) 5 SCC 586 to submit that the order of the Advance Ruling is erroneous. That was a case of relays manufactured under the Excise Act and the question was whether it would fall under Tariff Item 8608 or 8536.90, premised on the question as to which of the two Entries is more specific and Rule 3 (a) of the General Interpretative Rules were considered. However, what falls for consideration in the present case is Rule 2 (a) of the General Interpretative Rules and thus reliance on the above judgment which deals with Rule 3(a) of GIR is misplaced.

21. We intend to clarify that we had only tested the correctness of the order of the 1st respondent passed on the basis of the facts presented before the 1st Respondent. If there is any change in fact it is always open



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to the respondent to take appropriate proceedings in accordance with law which position is also legislatively affirmed by virtue of Section 28 J(2) of the Customs Act.

22. We also agree with the order of the 1st Respondent that the import of components/parts/sub-assemblies by the applicant will be classified under their respective headings / sub-headings of the Customs Tariff Act, 1975.

23. For all the above reasons, we see no reason to interfere with the impugned order. Hence, this Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

[R.M.D., A.C.J.] [M.S.Q., J.]
05.07.2024

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
Spp

To
1. The Commissioner of Customs (Port-Import),
Customs House,



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No.60, Rajaji Salai,
Chennai - 600 001.

2.The Authority of Advance Rulings,
(Central Excise, Customs and Service Tax),
Hotel Samarat, 4th Floor, Kautilya Marg,
Chanakyapuri, New Delhi.

THE HON'BLE ACTING CHIEF JUSTICE
and
MOHAMMED SHAFFIQ. J.

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05.07.2024