$~11

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

Date of decision: 31st July, 2025

\+ **W.P.(C) 5178/2023**

SONI E VEHICLE PRIVATE LIMITED .....Petitioner

Through: Mr. Tanmay Mehta, Mr. Arhum Sayeed & Mr. Rahil Ahmed, Advs and Mohd. Shahzeb Khan, Advs.

versus

COMMISSIONER OF CUSTOMS ICD TUGHLAKABAD NEW DELHI .....Respondent

Through: Mr. Aditya Singla, SSC, CBIC with Ms. Shreya Lamba & Mr. Ritwik Saha, Advs for R-1.
Mr. R. Ramachandran, SSC with Mr. Prateek Dhir, Adv. for R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner-M/s Soni E Vehicle Pvt. Ltd., under Article 226 of the Constitution of India *inter alia* seeking quashing the impugned office order bearing "***C. NO. VIII/ICD/TKD/ 6AG/104/2013/PT.1/11695*** dated 12th March, 2014 passed by the Office of the Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi. The impugned order in effect was issued with the purpose of determining/ clarifying the number of components, if imported, would constitute a complete vehicle under the Motor Vehicles Act, 1988.

3. The Petitioner is a company engaged in manufacture and import of E-Rikshaws. The brief background of this case is that the Petitioner had filed

certain shipping bills sometime between 2015 to 2019 for import of components for manufacture of E-Rikshaw and for domestic sale. Two consignments of the Petitioner were intercepted and a Show Cause Notice (*hereinafter* "*SCN*") was issued on 13th August, 2019. Thereafter, the consignments were seized and a Seizure Memo was issued on 25th February, 2019 on the ground that the same were liable to be confiscated under Section 111 of the Customs Act, 1962 *(hereinafter 'the Act')*.

4. The case of the Respondent-Customs Department (*hereinafter 'Department'*) in the SCN is that since almost all the main parts of the E-Rikshaw were part of the imports, the same were not merely components but, in fact, constituted a complete E-Rikshaw. Consequent to the SCN issued, the impugned Order-in-Original was passed on 20th August, 2020. The finding in the Order-in-Original is that the consignments were having "Different Axles" of the E-Rickshaw, which appeared to be an integrated device having Axle, Transmission (Gears), Brake Drum Assembly *etc.* Even the chassis is also stated to have been present as part of the components. The Petitioner had imported a total 142 incomplete e-Rikshaw in unassembled condition and therefore, the Department was of the opinion that the same ought to be classified under ***CTSH 87038040***, but the same were classified by the importer under CTSH i.e. 87089900, 94042990, 83013000, 73209090, 40169990 and 42022290 etc.

5. The said Order-in-Original dated 20th August, 2020 *inter alia confirmed* the re-classification of the goods and also directed absolute confiscation of the same in the following terms:-

<u>ORDER</u>

"*(i)* ***<u>I Confirm the re-classification of Goods covered under</u>***

said 19 Bills of Entry, as discussed hereinabove Paras under CTSH 8703 90 10 till 31.12.2016 and thereafter under the CTSH 8703 8040 in terms of subsection(4) of Section 17 of the Customs Act 1962.

(ii) I confiscate the seized Goods covered under said 06 live Bills of Entry, having total Assessable Value of Rs.1,18,36,944/-, as discussed hereinabove, under Section 111(m) of the Customs Act, 1962 and I impose a fine of Rs. 12,00,000/-(Rupees Twelve Lakh only) in lieu of confiscation under Section 125 (1) of the Customs Act, 1962.

(iii) I confiscate the Goods covered under said 13 previous Bills of Entry, having total Assessable Value of Rs.2,65,49,148/, as discussed hereinabove under Section 111(m) of the Customs Act, 1962 and I impose a fine of Rs.27,00,000/-(Rupees Twenty Seven Lakh only) in lieu of confiscation under Section 125 (1) of the Customs Act, 1962.

(iv) I confirm the re-assessment of the duty amount of Rs. 56,71,410/- (Rs. 16,61,378/- as BCD, Rs. 1,66,139/- as SWS, Rs. 35,78,387/- as IGST and Rs. 2,65,506/- as ADD) as declared payable in the said 06live Bills of Entry to the duty payable amount of Rs.1,96,49,327/- (Rs.1,47,96,180/-as BCD, Rs.14,79,618/- de SWS and Rs.33,73,529/-as IGST) in terms of sub-section (4) of Section 17 of the Customs Act, 1962.

(v) I confirm the demand of duty amount of Rs.3,58,00,851/- (Rupees Three Crore Fifty Eight Lakh Eight Hundred and fifty one only) as discussed in the aforementioned Paras, short-paid in respect of said 13 previous Bills of Entry under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962 as against Noticée No.01M/s. Soni E Vehicle Pvt. Ltd. (IEC No. 0513056335), 0-7, UPSIDC, Phase-V, Kasha Industrial Area, Greater Noida, Uttar Pradesh-201310 and order for its recovery from said Noticee No.01M/s. Soni E Vehícle Pvt. Ltd. (IEC No. 0513056335).

(vi) I impose a penalty of Rs. 13,90,000/-(Rupees Thirteen Lakh Ninety Thousand only) upon Noticee No.01M/s. Soni E Vehicle Pvt. Ltd. (IEC No. 0513056335), 0-7, UPSIDC, Phase-V, Kasna Industrial Area, Greater Noida, Uttar Pradesh-201310 under Section 112(a)(ii) of the Custom Act, 1962 for their act of omission and commission in respect of seized Goods covered under above said 06 live Bills of Entry.

(vii) I impose à penalty of Rs.3,58,00,851/- (Rupees Three Crore Fifty Eight Lakh Eight Hundred and fifty one only) upon Noticee No.01 M/s. Soni E Vehicle Pvt. Ltd. (IEC No. 0513056335), 0-7, UPSIDC, Phase-V, Kasna Industrial Area, Greater Noida, Uttar Pradesh-201310 under Section 114A of the Custom Act, 1962 for their act of omission and commission in respect of Goods imported under said 13 previous Bills of Entry.

(viii) I impose a penalty of Rs. 45,00,000/-(Rupees Forty Five Lakh only) upon Noticee No.02 Sh. Anuj Sharma, Managing Director of M/s. Soni Vehicle Pvt. Ltd. (the Importer), M-12, West Patel Nagar, New Delhi-110008 under Section 112(a) (ii) of the Customs Act, 1962.

(ix) I impose a penalty of Rs. 10,00,000/-(Rupees Ten Lakh only) upon Noticee No.03 Sh. Sunil Gautam, (G-Card No. 25/2006), working in the Custom Broker firm M/s. Professional Exim, residing at C-29D, Gangotri Enclave, Alaknanda, New Delhi-110019 under Section 112(a)(ii) of the Customs Act, 1962.

(x) I impose a penalty of Rs40,00,000/-(Rupees Forty Lakh only) upon Notice No.04 Customs Broker M/s. Professional Exim, WZ-340, Nangal Rai, Delhi Cantt, New Delhi-110046 under Section 112 (a) (ii) of the Customs Act, 1962."

6. The Petitioner is stated to have suffered financially due to the seizure of these consignments and therefore had filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal (*hereinafter* "*CESTAT*") on 17th February, 2021 without the statutory pre deposit. A defect notice was issued

on 09th March, 2021 for removing defects. Time was sought repeatedly by the Petitioner for making the pre-deposit. However, finally the pre-deposit as determined by the CESTAT of the sum of Rs 10,74,025/- was not deposited and therefore, the CESTAT had dismissed the appeal for non-compliance of the statutory requirement of pre-deposit. Thus the present Petition has been filed seeking the following prayers:

> *"I. Issue a Writ of Mandamus, and/or any other appropriate Writ, orders or directions setting aside/Quashing the Impugned Office Order bearing "C. NO. VIII/ ICD/ TKD/ 6AG/ 104/ 2013/ PT.1/11695 dated 12.03.2014 passed by the Office of the Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi, and/or,*
> *II. Direct the Hon'ble CESTAT to hear the Petitioner on merit without the pre-deposit/reduce the amount of pre-deposit, and/or".*

7. Mr. Mehta, ld. Counsel appearing for the Petitioner submits that it is due to the Office Order dated 12th March 2014 that this confusion as to the nature of the goods imported has been created. He further submits that the Petitioner's Director has also filed an appeal before CESTAT, which is still pending.

8. On behalf of the Respondent, Mr. Singla, ld. SSC submits that the imported components were actually CKD/SKD and, hence, 125% duty would be liable to be paid.

9. The Court has considered the Office Order dated 12th March, 2014, which reads as under:-

> *"2. A meeting of the Committee was held on 06.03.2014 and after deliberation the matter, the Committee has decided ·that as per Rule 2 (a) of the*

Interpretation Rules to the First Schedule to the Customs Tariff Act, 1975 there are five major components/assemblies such as transmission, motor, axle, chassis and controller that provides essential characteristics to make a complete E-Rikshaw in CKD/SKD condition classifiable at 8703 and are covered under the Provisions of Motor Vehicles Act, 1988. However, if along with the motor any two essential components mentioned above are missing then it may be considered as parts of electric rikshaw falling under CTH 8708 and will not attract the provisions of Motor Vehicle Act, 1988. All officers are, accordingly, directed to decide all pending matters on the above lines."

10. The Court has also perused the photographs of the parts which have been imported and are placed on record from pages 220 to 223 of this writ petition. The question that would arise before the CESTAT is whether the subject matter consignment would constitute components of E-Rikshaw or E-Rikshaw themselves. This issue ought to be determined by the CESTAT. Upon querying the Court is informed that the goods continue to lie confiscated with the Customs.

11. Considering the facts that there is an enormous push being given to environmentally safer and friendly vehicles in the country, the confiscation of the E-Rikshaw in this matter would benefit no one in the *prima facie* opinion of this Court. The matter deserves adjudication on merits by the CESTAT.

12. Under such circumstances and bearing in mind the financial constraints of the Petitioner-company, which is engaged in importing E-Rikshaw/components, this Court is of the view that pre-deposit can be reduced to a sum of Rs 5.5 lakhs. Accordingly, let the pre-deposit of Rs.5.5 lakhs be made within a month from today, i.e., 31st July, 2025 before the CESTAT.

13. Let this appeal along with the appeal filed by the Director be adjudicated against the Order-in-Original dated 20th August, 2020, on merits. The question of applicability or the validity of the impugned Office Order and the question as to whether the imported components constituted E-Rikshaw themselves shall also be adjudicated by the CESTAT.

14. Since the goods are lying with the Customs, the CESTAT shall pass the orders in this matter by 15th November, 2025, once the pre-deposit is made.

15. List before the CESTAT on 04th September, 2025.

16. Needless to add that any observation made herein would not have bearing on the final adjudication.

17. The present petition, along with any pending application, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

JULY 31, 2025/*sk/Ar.*