

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 51367 OF 2025

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/03/2020-21 dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037)

M/s. Soni E Vehicle Pvt. Ltd.,
through its Manager Mr. Ankit Sharma
Plot No. 5, Nihal Vihar, Phase-II
Nilothi Extention,
New Delhi-110041

.....Appellant

VERSUS

Principal Commissioner of
Customs (Preventive)
New Customs House,
Near IGI Airport,
New Delhi-110037

.....Respondent

WITH

CUSTOMS APPEAL NO. 51078 OF 2022

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/03/2020-21 dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037)

Mr. Anuj Sharma
S/o Sh. Kidar Nath Sharma
R/o M-12, West Patel Nagar,
New Delhi-110008

.....Appellant

VERSUS

Principal Commissioner of
Customs (Preventive)
New Customs House,
Near IGI Airport,
New Delhi-110037

.....Respondent

WITH

CUSTOMS APPEAL NO. 50217 OF 2021

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/03/2020-21 dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037)

M/s. Professional Exim
WZ-340, Nangal Raya, Delhi Cantt,
New Delhi-110046

.....Appellant

VERSUS

Principal Commissioner of
Customs (Preventive)
New Customs House,
Near IGI Airport,
New Delhi-110037

.....Respondent

AND

CUSTOMS APPEAL NO. 50218 OF 2021

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/03/2020-21 dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037)

Sh. Sunil Gautam

C-29 D, Gangorti Enclave,
Alaknanda, New Delhi - 110019

.....Appellant

VERSUS

**Principal Commissioner of
Customs (Preventive)**

New Customs House,
Near IGI Airport,
New Delhi-110037

.....Respondent**APPEARANCE:**

Shri Arhum Sayeed, Shri Rahil Ahmed, Ms. Deepriya Snehi and Ms. Yashika Kaushik Advocates for Soni E Vehicle and Anuj Sharma

Shri Sanjeev Kumar, Consultant and Ms. Priyanka Goel, Advocate for Professional Exim and Sunil Gautam

Shri Nikhil Mohan Goyal and Shri Rajesh Singh, Authorized Representatives for the Department

CORAM:**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT****HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)****DATE OF HEARING: 07.10.2025****DATE OF DECISION: 17.11.2025****FINAL ORDER NO's. 51739-51742/2025****JUSTICE DILIP GUPTA:**

Customs Appeal No. 51367 of 2025 has been filed by M/s. Soni E Vehicle Pvt. Ltd.¹ to assail that part of the order dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Delhi² that re-classifies the goods imported under 19 Bills of Entry; confiscates the seized goods covered under 6 live Bills of Entry with option to pay redemption fine; confiscates the goods covered under 13 previous Bills of Entry with option to pay redemption fine; confirms the re-assessment of the duty in the 6 live Bills of Entry; confirms the demand of

1. the appellant

2. the Principal Commissioner

duty short paid in respect of the 13 previous Bills of Entry under section 28(4) of the Customs Act, 1962³; and imposes penalties upon the appellant under section 112(a)(ii) of the Customs Act in respect of the 6 live Bills of Entry and penalty under section 114A of the Customs Act on the 13 previous Bills of Entry.

2. **Customs Appeal No. 51078 of 2022** has been filed by Anuj Sharma, Managing Director of the appellant, to assail that part of the order dated 20.08.2020 passed by the Principal Commissioner that imposes penalty upon him under section 112(a)(ii) of the Customs Act.

3. **Customs Appeal No. 50217 of 2021** has been filed by Professional Exim, Customs House Agent, to assail that part of the order dated 20.08.2020 passed by the Principal Commissioner that imposes penalty upon it under section 112(a)(ii) of the Customs Act.

4. **Customs Appeal No. 50218 of 2021** has been filed by Sunil Gautam, a G-Card holder working with Professional Exim, to assail that part of the order dated 20.08.2020 passed by the Principal Commissioner that imposes penalty upon him under section 112(a)(ii) of the Customs Act.

5. The appellant claims to be a manufacturer of e-rikshaw in India since 2013. The appellant further claims that for this purpose it imported various parts/spare parts of e-rikshaw for manufacture of e-rikshaw. Since 2017, Anuj Sharma is the Managing Director of the appellant.

6. Two import consignments covered under 2 Bills of Entry, both dated 12.02.2019, filed by the appellant were put on hold for examination by the officers of the customs on 14.02.2019. The goods were examined and it was found that the quantity and description of the goods tallied with the

3. **the Customs Act**

respective import documents including the Bills of Entry. However, scrutiny of the 2 Bills of Entry revealed that the consignment in the container had 91 pieces/sets of different parts for 70 e-rikshaws in respect of 1 Bill of Entry and 99 pieces/sets of different parts for 72 e-rikshaws in respect of the other Bill of Entry. It, therefore, appeared to the department that the appellant had imported 142 incomplete e-rikshaws but had classified the imported items as parts of e-rikshaw. It needs to be noted that duty payable on e-rikshaw in complete knocked-down⁴/semi-knocked down⁵ condition is higher than on the parts.

7. It was also noticed that the appellant had filed 4 more Bills of Entry, two of them dated 22.12.2018 and the remaining two dated 05.03.2019. In the two Bills of Entry dated 22.12.2018, it was noticed that the appellant had imported 99 parts of 130 e-rikshaws and in the other two Bills of Entry dated 05.03.2019, it was noticed that the appellant had imported 92 parts of 72 e-rikshaws.

8. A show cause notice dated 13.08.2019 was issued to the appellant as importer, Anuj Sharma as Managing Director of the appellant, Professional Exim as Customs House Agent and Sunil Gautam as G-Card holder of Customs House Agent. The main allegation in the show cause notice is that the appellant had imported incomplete e-rikshaw in unassembled or disassembled condition but had classified the imported goods as parts of e-rikshaw which attracted lesser duty. The relevant portion of the show cause notice relating to 2 Bills of Entry, both dated 12.02.2019, is reproduced below:

"2. The Scrutiny of the aforesaid Bills of Entry No. 2030048 and 2030112, both dated 12.02.2019, revealed that the consignment in Container No.

-
4. CKD
5. SKD

TCNU5171790 covered under Bill of Entry No. 2030048 dated 12.02.2019 was having 91 pieces/sets of different parts for 70 e-rikshaw and the consignment in Container No. DFSU7688331 covered under Bill of Entry No. 2030112 dated 12.02.2019 was having 99 pieces/sets of different parts for 72 e-rikshaws as is evident from the fact that most of the parts are either 70 or 72 in numbers or in multiples of 70 or 72 in the respective Bills of Entry. Both the import consignments were having "Differential Axles" of the e-rikshaw which appeared to be an integrated device having Axle, Transmission (Gears), Brake Drum Assembly, etc. Further, both the consignments were also having Chassis of the e-rikshaw. The remaining items imported vide aforesaid two consignments were for the use in the body/cabin of the e-rikshaw as well as several other parts of e-rikshaw, such as wiper motor, Brake Rod, Accelerator, Hand Brake and its wire, Remote Lock, Converter, Grip, Front Horn, Switches, etc. Both the aforesaid import consignments were having four major parts of the e-rikshaw, i.e. Transmission, Axle, Carriage and Chassis besides and several other parts of the e-rikshaw. **It appeared that the Importer had imported a total of 142 incomplete e-rikshaws in unassembled/disassembled condition, which merited classification under CTSN 8703 80 40 but the Importer had claimed that these were parts and thus classified them under various CTSN i.e. 87089900, 94042990, 83013000, 73209090, 40169990 and 42022290 etc. which appeared to be wrong.** The goods of both the import consignments covered under Bills of Entry No. 2030048 and 2030112, both dated 12.02.2019, accordingly were seized under Section 110 of the Customs Act, 1962, vide Seizure Memo dated 25.02.2019 [referred to as RUD-03 to the Show Cause Notice], on a reasonable belief that the same were liable to confiscation under Section 111 of the Act, *ibid.* *****"

(emphasis supplied)

9. The show cause notice dated 13.08.2019 not only refers to the 6 live Bills of Entry but also to the previous 13 Bills of Entry which were cleared from 10.11.2015 to 19.11.2018. In respect of these 13 previous Bills of Entry, the provisions of section 28(4) of the Customs Act were invoked alleging that the appellant had resorted to wilful mis-statement or suppression of facts.

10. The appellant filed a detailed reply to the show cause notice and denied the allegations made therein. The appellant contended that:

- (i)** The allegations made against the appellant were based on conjecture and surmises without any proof;
- (ii)** The appellant had imported various parts of e-rikshaw through the 6 live Bills of Entry and the appellant had not imported the essential parts required for manufacture of e-rikshaw, including the motor;
- (iii)** The 13 previous Bills of Entry had been cleared by the proper customs officers and out of charge orders had issued;
- (iv)** The department failed to take into consideration the Notification No. 50 of 2017 dated 30.06.2017; and
- (v)** It was not case of seizure or confiscation and that penalties under sections 112 and 114A of the Customs Act could not have been imposed upon the appellant.

11. The Principal Commissioner, however, did not accept the contentions advanced on behalf of the appellant.

12. The main allegation against the appellant was noted by the Principal Commissioner in paragraph 67 of the impugned order, which is reproduced below:

"67. I find that the principal allegation against the Noticees to the Show Cause Notice in the instant case is that Noticees having willfully classified their said imported Goods as spare parts under different CTH instead of as E-Rickshaw under CTH 87039010/87038040 with an intent to evading payment of Duty resulting thereof into short payment of said Duty in violation of said Office Order dated 12.03.2014 issued by the Joint Commissioner of Customs, ICD, TKD, New Delhi read with Rule 2(a) of the General Rules for the interpretation of First Schedule of the Customs Tariff Act, 1975."

(emphasis supplied)

13. The Principal Commissioner after considering the statement of Anuj Sharma made under section 108 of the Customs Act observed:

"68.3 I find that said Sh. Anuj Sharma has admitted in his said statement dated 27.03.2019 about the import of (i) transmission, (ii) axle and (iii) chassis of E-rickshaw Vehicle in their said import consignments under said Bills of entry."

(emphasis supplied)

14. In respect of the live Bill of Entry No. 2290163 dated 05.03.2019, the Principal Commissioner observed:

"70. From the analysis of goods imported vide aforesaid Bill of Entry 2290163 dated 05.03.2019, I find that 91 different types of parts of e-rickshaw had been imported and the quantity imported of 63 parts was 72. Further, it emerges from Table 03 to the Show Cause Notice that quantity of the 23 parts was either 144 or 216 or 288 or 1440, which are also multiples of 72 depending upon the requirement of those parts in a E-Rickshaw. It is clearly evident from the quantity imported of each item is either 72 or multiples of 72 for examples 2 numbers of 'Arm Rest' (one on left side and one on right side), 3 numbers of 'Water Guard' (for 3 wheels) and 4 numbers of 'Hanging Handles (for four passengers) are used

in a single e-rickshaw and it is evident that the commensurate quantity of these goods was imported meant for assembly of 72 e-rickshaws. The said import consignments did not only have three essential parts of e-rickshaw, i.e. Transmission, Axle and Chassis, but also had almost all parts required in assembling of body/cabin of e e-rickshaw. Further, several other parts required for assembling the e-rickshaw were also present in the aforesaid consignments. Moreover, required number of Nuts and Bolts were also imported in the aforesaid consignment and I find that the same were also to be used for assembly of 72 e-rickshaws. In view of the aforesaid, I find that 72 incomplete e-rickshaws in the unassembled or disassembled condition were imported vide Bill of Entry No. 2290163 dated 05.03.2019."

(emphasis supplied)

15. The Principal Commissioner thereafter held that incomplete e-rickshaw had been imported by the appellant in unassembled condition and the relevant findings are:

"74. **I find that the meaning of "essential character" can also be understood from the definition of "blanks" given in the Point (II) of the HSN Explanatory Notes to the Rule 2(a).** I find that in the instant case the incomplete e-rickshaw which would come into existence on assembling of various parts imported in a single consignment has the approximate shape and outline of the complete e-rickshaw. **Moreover, such incomplete e-rickshaw can only be used, other than in exceptional cases, for making the complete e-rickshaw. Therefore, I find that the incomplete e-rickshaw coming into existence after assembly of various parts imported through a single consignment has the essential character of the complete e-rickshaw despite the fact that few parts, such as Motor, Controller, Tyres, Rims, etc., were not imported through such import consignments.** Further, I find that the Chapter Note 3 of Chapter 87 specifically says

that "Motor Chassis fitted with cabs fall in heading 8702 to 8704, not in heading 8706". I find that in the instant case the incomplete e-rickshaw had been imported in unassembled or disassembled condition, along with cabs and therefore, I find that the import consignments are not classifiable under the CTH 8706."

(emphasis supplied)

16. The Principal Commissioner then referred to the office order dated 12.03.2014 and held:

"75. I find that in the instant case, all the imports consignments had three parts, i.e. Transmission, Axle and Chassis, out of the five major components/assemblies mentioned in the aforesaid Office Order dated 12.03.2014. Further, only two parts, i.e. Motor and Controller, out of the five major components/assemblies mentioned in the aforesaid Office Order dated 12.03.2014 were missing in the import consignments. As per aforesaid Office Order dated 12.03.2014, if three major components, including Motor, were missing, only then the import consignments had to be classified as parts under CTH 8708. However, I find that in the instant case, only two components, including Motor were missing and therefore, I hold that the import consignments are not to be classified as parts but are liable to be classified under the CTH meant for e-rickshaw in terms of the aforesaid Office Order dated 12.03.2014 also."

(emphasis supplied)

17. In respect of the 6 live Bills of Entry, demand of Rs. 1,96,49,327/- has been confirmed.

18. In respect of the 13 previous Bills of Entry, the Principal Commissioner made the following observations:

"84. I find that the Noticee No. 01/Importer vide Bill of Entry No. 3217271 dated 10.11.2015, Bill of Entry No. 3276673 dated 17.11.2015, Bill of Entry No. 4530251 dated 10.03.2016, Bills of Entry No. 7511185,

7512582 and 7513135, all dated 18.11.2016, Bills of Entry No. 5198079 and 5198100, both dated 13.02.2018, Bill of Entry No. 6147042 dated 26.04.2018, Bill of Entry No. 6181610 dated 28.04.2018, Bill of Entry No. 8778447 dated 08.11.2018 and Bill of Entry No. 8907585 and 8918608, both dated 19.11.2018 **had imported incomplete e-rickshaw in unassembled or disassembled condition, which had the essential character of complete e-rickshaw as discussed hereinabove.** However, I find that the Noticee No. 01/Importer have suppressed this fact and presented the imported goods as parts of e-rickshaw in the Bills of entry with the intent to evade payment of duty by misclassifying the goods imported vide aforesaid import consignments under various headings meant for individual part/component/assembly instead of correctly classifying them under the CTSN 8703 90 10 till 01.01.2016 and thereafter under the CTSN 8703 80 40. Further, find that the Noticee No. 01/Importer described each individual part/component/assembly as "spare parts of electric rickshaw". I find that the "spare part" takes colour from the word "spare" that is a part which would require replacement in ordinary course on account of wear and tear. **I find that all the parts imported by Noticee No. 01/Importer in the aforesaid consignments were meant for assembling into a new e-rickshaw not for replacing of old parts. I find that the Shri Anuj Sharma, Managing Director of M/s. Soni E Vehicles Pvt. Ltd. in his said statements had clearly submitted that the imported goods were meant for manufacturing E-Rickshaws and therefore I find that the same were not spare parts. From the aforesaid, I find that the various parts of e-rickshaw in the aforesaid consignments were not "spare parts". Therefore, I find that the aforesaid misclassification by the Importer amounts to wilful mis-statement."**

(emphasis supplied)

19. It is for this reason that in respect of these 13 previous Bills of Entry, demand of Rs. 3,58,00,851/- has been confirmed under section 28(4) of the Customs Act.

20. Penalty under section 112(a)(ii) of the Customs Act has been imposed upon the appellant for the 6 live Bills of Entry for the reason that the Bills of Entry described the goods as spare part of e-rikshaw to hoodwink the department. Penalty has been imposed on Anuj Sharma, Managing Director of the appellant, under section 112(a)(ii) of the Customs Act for the reason that he was responsible for wrong classification of the imported goods as parts of e-rikshaw.

21. Penalty has also been imposed upon the appellant under section 114A of the Customs Act on the 13 previous Bills of Entry.

22. Penalty has been imposed upon Professional Exim and Sunil Gautam under section 112(a)(ii) of the Customs Act as they failed to substantiate their claim of innocence with respect to their complicity into commission of offense of wilful mis-classification of the imported goods.

23. Shri Arhum Sayeed, learned counsel for the appellant and Shri Anuj Sharma assisted by Shri Rahil Ahmed, Ms. Deepriya Snehi and Ms. Yashika Kaushik, and Shri Sanjeev Kumar, learned consultant and Ms. Priyanka Goel, learned counsel for Professional Exim and Shri Sunil Gautam made submissions to assail the impugned order. Shri Nikhil Mohan Goyal and Shri Rajesh Singh, learned authorized representatives appearing for the department, however, supported the impugned order.

24. The submissions advanced by the learned counsel for the appellant and the learned authorized representatives appearing for the department have been considered.

25. As noticed above, the Principal Commissioner noticed that the main allegation against the appellant in the show cause notice was that it had wilfully classified the imported goods as spare parts of e-rikshaw resulting in evasion payment of duty in violation of the office order dated 12.03.2014 issued by the Joint Commissioner of Customs read with rule 2(a) of the General Rules for the Interpretation of First Schedule of the Customs Tariff Act, 1975⁶.

26. Rule 2(a) of the Interpretative Rules is reproduced below:

"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 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 falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled."

27. It would also be appropriate to refer to the office order dated 12.03.2014 issued by the Joint Commissioner of Customs, which is as follows:

"C.No. VIII/ICD/TKD/6AG/104/2013/pt Dated 12.03.2014

OFFICE ORDER

A Committee was constituted by Commissioner of Customs ICD 1 KD New Delhi comprising of following below mentioned officers to decide up as to what percentage of components/ assemblies combine together make Erikshaw in CKD SKD as per Rule 2 (a) of the Interpretative Rules to the first Schedule to the Customs Tariff Act 1975.

1. Shri Karamvir singh Joint commissioner of Customs, SUR

6. the Interpretative Rules

2. Shri Gauri Shankar Sinha Deputy
Commissioner of Custom, AG
3. Shri Vikash Deputy Commissioner of Customs
Import Seed
4. Shri Nalin Kumar Deputy Commissioner of
Customs Group V
5. Shri Prashant Kumar Jha Deputy
Commissioner of Customs SUB and
6. Shri Abhinav Yadav Assistant Commissioner
of Customs Import Shed

2. A meeting of the Committee was held on 06.0-.2014 and **after deliberation the matter the Committee has decided that as per Rule 2(a) of the interpretative Rules to the First Schedule to the Customs Tariff Act 1975 there are five major components/assemblies such as (i) transmission, (ii) motor, (iii) axle, (iv) chassis and (v) controller that provides essential characteristics to make a complete E-Rickshaw in CKD SKD condition classifiable at 8703 and are covered under the provisions of Motor Vehicle Act 1988. However if along with motor any two of the essential components mentioned above are missing then it may be considered as parts of electric Rickshaw falling under C.H 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.

3. This issues with the approval of the Commissioner of Customs ICD TKD New Delhi.

(Karamvir Singh)
Joint Commissioner of Customs (SUB)
ICD, TKD, New Delhi"

(emphasis supplied)

28. It is clear from the aforesaid office order that a committee of officers had been constituted to decide what percentage of components/assemblies combined together would make a e-rikshaw in CKD/SKD condition under rule 2(a) of the Interpretative Rules. The

committee decided that there are five major components/assemblies of an e-rikshaw like transmission, motor, axle, chassis and controller that provide the essential characteristics to a complete e-rikshaw in CKD/SKD condition classifiable under Customs Tariff Heading⁷ 8703 and would be covered by the provisions of the Motor Vehicles Act, 1988. The committee further decided that if along with motor, any two essential components mentioned above were missing, then the goods may be considered as parts of e-rikshaw falling under CTH 8708 and will not attract the provisions of the Motor Vehicle Act.

29. It will, therefore, be appropriate to reproduce CTH 8703 and CTH 8708 which are as follows:

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
*****	*****	*****	*****	*****
8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars			
*****	*****	*****	*****	*****
8708	Parts and accessories of the motor vehicles of heading 8701 to 8705			

30. In the instant case, it is not in dispute that motor was not imported by the appellant. Thus, the goods imported would have to be considered as parts of e-rikshaw and not a complete e-rikshaw in CKD/SKD condition as it is only if along with motor any two of the essential components mentioned in the order are missing. What, therefore, transpires is that if along with motor any two of the essential components are missing, then

7. CTH

the imported goods will be considered as part of e-rikshaw. Motor, therefore, is the most vital essential component.

31. The case set up by the appellant is that three of the essential components namely motor, transmission and controller were not imported. In paragraph 75 of the order reproduced above, it has been noted that the import consignment had three essential components, namely transmission, axle and chassis and as only two components including motor were missing, the import consignment cannot be classified as parts of e-rikshaw and have to be classified under CTH 8703 meant for e-rikshaw.

32. This finding is clearly contrary to the terms of the office order. It clearly provides that if motor along with two essential components are not imported, then the goods would be classified as parts under CTH 8708. The Principal Commissioner has misread the office order.

33. The Principal Commissioner failed to appreciate this important aspect of the office order dated 12.03.2014 that it was absolutely necessary for motor to be imported and if motor is not imported then in terms of the office order dated 12.03.2014, the goods imported will have to be considered as parts of e-rikshaw.

34. The show cause notice alleges that the appellant had imported e-rikshaw in CKD/SKD condition in terms of the office order dated 12.03.2014 and this office order has also been heavily relied upon by Principal Commissioner in the impugned order to hold that the appellant had imported e-rikshaw in CKD/SKD condition.

35. The office order dated 12.03.2014 was noticed and considered by a Division Bench of the Tribunal in **M/s. Y.C. Electric Vehicle vs. Principal**

Commissioner, Customs (Import), New Delhi (ICD TKD)⁸. The Division Bench repelled the contention advanced on behalf of the appellant of the said appeal that the office order dated 12.03.2014 cannot be relied upon. This conclusion was arrived at by placing reliance on the judgment of the Delhi High Court in **Rama Krishna Sales Pvt. Ltd. vs. Union of India**⁹.

36. The Principal Commissioner has also relied upon HSN General Explanatory Notes to the Chapter 87 which are as follows:

"An incomplete or unfinished vehicle is classified as the corresponding complete or finished provided it has the essential character of the latter (see Interpretative Rule 2(a), as for example:

- (G) A motor vehicle, not yet fitted with the wheels or tyres and battery.
- (H) A motor vehicle not equipped with its engine or with its interior fittings.
- (I) A bicycle without saddle and tyres."

37. The said Explanatory Notes provide that an incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle, provided it has the essential character of the latter and for this reference has be made to rule 2(a) of the Interpretative Rules. This rule 2(a) of the Interpretative Rules was considered by the high powered committee in the office order dated 12.03.2014, which order has been referred to in the show cause notice and the impugned order. It is not in dispute that the appellant had not imported motor, controller, tyres, rims and wire harness. The HSN Explanatory Notes provides that an incomplete or unfinished vehicle should have the essential character of a complete or finished vehicle as provided in rule 2(a) of the Interpretative Rules. The

8. Customs Appeal No. 51965 of 2022 decided on 10.02.2025 (Tri.-Del.)
 9. 2019 (366) E.L.T. 273 (Del.)

high powered committee had taken a conscious decision in the office order dated 12.03.2014 regarding the essential components that would constitute an e-rikshaw in CKD/SKD condition and when they would be considered as parts of the e-rikshaw. Thus, it is the office order that is required to be considered for this purpose.

38. It will also be pertinent to refer to the Central Motor Vehicle (16th Amendment) Rules, 2014 which came into force on 08.10.2014. After clause (ca) of rule 2 the following sub-rule was inserted:

“(cb) “E-rickshaw” means a special purpose battery operated vehicle having three wheels and intended to provide last mile connectivity for transport of passengers for hire or reward, provided,—

- (i) such vehicle is constructed or adapted to carry not more than four passengers, excluding the driver, and not more than forty kilograms luggage in total;
- (ii) the net power of its motor is not more than 2000 W;**
- (iii) the maximum speed of the vehicle is not more than twenty-five kilometer per hour;”

(emphasis supplied)

39. This also shows that motor is the most essential element because in an e-rikshaw the net power of the motor has not to be more than 2000 W.

40. However, HSN General Explanatory Notes to Chapter 87 provide that an incomplete or unfinished vehicle can be classified as a complete or finished vehicle if it has the essential character of a finished vehicle. As an example, it has been stated that a motor vehicle not yet fitted with wheels or tyres and battery, or not equipped with its engine or with its interior fittings, will still be considered as a complete or finished vehicle. This would mean that either a motor vehicle should not be fitted with wheels or

tyres and battery but should have all the other components, or a motor vehicle should not be equipped with its engine or with interior fittings but with all the other components. In the absence of any finding recorded on this issue, HSN General Explanatory Notes to Chapter 87 will not come to the aid of the department.

41. The appellant also claims that it had imported only two of the said five essential elements namely "differential axle" and chassis and, therefore, it cannot be said that the appellant had imported unfinished electric e-rikshaws. The Principal Commissioner has, however, found that "differential axle", contains two essential elements namely "transmission" and "axle" and, therefore, concluded that the appellant had imported three essential components.

42. The issue, therefore, that arises for consideration is whether "differential axle" imported by the appellant should be considered as "axle" only or both "transmission" and "axle". The Principal Commissioner has concluded that "differential axle" comprises two essential elements namely "transmission" and "axle" on the basis of a statement made by Anuj Sharma, Managing Director of the appellant, on 27.03.2019 under section 108 of the Customs Act. This is clear from the paragraph 68.3 of the order, which paragraph is reproduced below:

"68.3 I find that said Sh. Anuj Sharma has admitted in his said statement dated 27.03.2019 about the import of (i) transmission, (ii) axle and (iii) chassis of E-rickshaw Vehicle in their said import consignments under said Bills of Entry."

43. It is, therefore, clear that the impugned order has placed reliance upon the statement of Anuj Sharma made under section 108 of the Customs Act. This statement cannot be considered as relevant unless the

procedure contemplated under section 138B of the Customs Act has been followed. As has been held by this Tribunal in **M/s. Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur**¹⁰.

44. The impugned order has also referred to the opinion given by a Chartered Engineer through a letter dated 08.05.2019. This mentions that "differential axle" actually consists of assembly of differential gear i.e. transmission with two rear axles (one on each side) along with fittings of Brake, Brake Drum Assemblies, at the end of each axle shafts.

45. The contents of the report were controverted by the appellant in the reply filed to the show cause notice and the appellant also specifically asked for cross examination of the Chartered Engineer.

46. In such circumstances, it was obligatory on the part of the adjudicating authority to have examined the Chartered Engineer and then granted an opportunity to the appellant to cross examine him. In the absence of this procedure having been followed, no reliance can be placed on the report submitted by the Chartered Engineer.

47. Thus also, it cannot be urged that the appellant had imported incomplete e-rikshaws as three of the essential components mentioned in the office order were not imported by the appellant. It needs to be reiterated that if motor is not imported then it would necessarily mean, in terms of the office order, that only parts of e-rikshaw under CTH 8708 were imported by the appellant.

48. The Principal Commissioner has also drawn a presumption from the number of parts imported by the appellant to conclude that they would constitute a fixed number of e-rikshaws. A finding has, therefore, been recorded that the appellant had imported many e-rikshaws in CKD/SKD

10. Excise Appeal No. 51148 OF 2020 decided on 01.04.2025 (Tri.-Del.)

condition. Liability cannot be fastened on the basis of presumption, more particularly when the conditions set out in the office order dated 12.03.2014 for an e-rikshaw to be in CKD/SKD were not satisfied.

49. The impugned order has not only examined the 6 live Bills of Entry but has also dealt with 13 previous Bills of Entry by invoking the provisions of section 28(4) of the Customs Act relating to invocation of the extended period of limitation. The Principal Commissioner has found that the appellant had cleared the goods by wilfully mis-stating that the components were spare parts of e-rikshaw in the Bills of Entry. This is clear from paragraph 85.5 of the order, which is reproduced below:

"85.5 I find that the Noticee No. 01/Importer had never disclosed the fact that they had imported incomplete E-rikshaw having the essential character of the complete e-rikshaw. Instead these were mis-declared as spare parts of E-Rickshaw and thus the facts were suppressed. **Therefore, I find that the Noticee No. 01/Importer has suppressed the facts w.r.t. actual nature of their import."**

(emphasis supplied)

50. It is clear from the impugned order that out of charge order was issued by the proper officer in respect of these 13 previous Bills of Entry. The impugned order merely holds that since the appellant had not disclosed to the department that it had imported incomplete e-rikshaw having essential character of a complete e-rikshaw, the appellant had suppressed facts with respect to the actual nature of the import. There is no finding that such suppression was with an intent to evade payment of duty.

51. The Courts have time and again held that mere suppression of fact is not enough and there has to be a deliberate attempt to evade payment of excise duty. The show cause notice must specifically deal with this

aspect and the adjudicating authority is also obliged to examine this aspect in the light of the facts stated by the assessee in reply to the show cause notice. In the absence of any finding having been recorded that suppression was with an intent to evade payment of duty, the extended period of limitation could not have been invoked.

52. The provisions of section 11A (4) of the Central Excise Act, 1944, which also deals with the extended period of limitation, came up for interpretation before the Supreme Court in **Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay**¹¹. The Supreme Court observed that section 11A(4) empowers the department to reopen the proceedings if levy has been short levied or not levied within six months from the relevant date but the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. It is in this context that the Supreme Court observed that the act must be deliberate to escape payment of duty. The relevant observations are:

"2. *****. The Department invoked extended period of limitation of five years as according to it the duty was short levied due to suppression of the fact that if the turnover was clubbed then it exceeded Rupees Five lakhs.

4. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. **It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not**

11. 1995 (78) E.L.T. 401 (S.C.)

disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

(emphasis supplied)

53. This decision of the Supreme Court in **Pushpam Pharmaceuticals** was followed by the Supreme Court in **Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut**¹² and the relevant paragraph is as follows:

"27. Relying on the aforesaid observations of this Court in the case of **Pushpam Pharmaceuticals Co. v. CCE** we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. **There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act.** We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was 7 (2005) 7 SCC 749 11 E/52953/2018 not open to CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts"."

(emphasis supplied)

12. (2005) 7 SCC 749

54. In **Easland Combines, Coimbatore vs. Collector of Central Excise, Coimbatore**¹³ the Supreme Court observed that for invoking the extended period of limitation, duty should not have been paid because of fraud, collusion, wilful statement, suppression of fact or contravention of any provision. These ingredients postulate a positive act and, therefore, mere failure to pay duty which is not due to fraud, collusion or wilful misstatement or suppression of facts is not sufficient to attract the extended period of limitation.

55. The aforesaid decisions of the Supreme Court were relied upon by the Supreme Court in **Uniworth Textiles Ltd. versus Commissioner of Central Excise, Raipur**¹⁴ and the relevant portion of the judgment is reproduced below:

"12. We have heard both sides, Mr. R.P. Batt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta, learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. **The conclusion that mere non-payment of duties is equivalent to collusion or wilful misstatement or suppression of facts is, in our opinion, untenable.** If that were to be true, we fail to understand which form of nonpayment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. **In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso."**

(emphasis supplied)

13. (2003) 3 SCC 410

14. 2013 (288) E.L.T. 161 (S.C.)

56. The Supreme Court in **Continental Foundation Joint Venture vs. Commissioner of Central Excise, Chandigarh**¹⁵ also observed in connection with section 11A(4) of the Excise Act, that suppression means failure to disclose full information with intention to evade payment of duty and the observations are as follows:

"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with knowledge that the statement was not correct."

(emphasis supplied)

57. It is, therefore, clear that suppression of facts should be deliberate and in taxation laws it can have only one meaning, namely that the correct information was not disclosed deliberately to escape payment of duty.

58. Even otherwise, the appellant had correctly described the goods in the Bills of Entry and it is only a question of classification. Merely because the department believes that the goods should have been classified under CTH 8703 and not under CTH 8708 will not mean that the extended period of limitation can be invoked.

15. 2007 (216) E.L.T. 177 (S.C.)

59. The extended period of limitation contemplated under section 28(4) of the Customs Act, therefore, could not have been resorted to for the 13 previous Bills of Entry. The confirmation of demand for the 13 previous Bills of Entry has, therefore, to be set aside.

60. The impugned order also holds that the seized goods covered under the 6 live Bills of Entry were liable to confiscation under section 111(m) of the Customs Act. It is for this reason, that penalty has been imposed on the appellant under section 112(a)(ii) of the Customs Act. It has been found that there was no mis-declaration by the appellant and so goods were not liable to confiscation. Therefore, penalty under section 112(a)(ii) of the Customs Act could not have been imposed upon the appellant.

61. Likewise, penalty under section 112(a)(ii) of the Customs Act could not have been imposed on the appellant for the 13 previous Bills of Entry.

62. Penalty under section 114A of the Customs Act could also not have been imposed upon the appellant for the 13 previous Bills of Entry as there was no mis-statement or suppression of facts.

63. The imposition of penalty on Anuj Sharma, Managing Director of the appellant, under section 112(a)(ii) of the Customs Act cannot also be sustained for the aforesaid reason.

64. Penalty has also been imposed upon Professional Exim, a Customs House Agent, under section 112(a)(ii) of the Customs Act and its G-Card holder Sunil Gautam for the reason that they had a greater responsibility to ensure appropriate classification of imported goods. It has been found that there was no mis-classification of the imported goods and even otherwise the Bills of Entry had been submitted by them on the basis of the documents received by them from the importer. Penalties, therefore,

could not have been imposed upon them under section 112(a)(ii) of the Customs Act.

65. Thus, for all the reasons stated above, the impugned order dated 20.08.2020 passed by the Principal Commissioner deserves to be set aside and is set aside. All the four appeals bearing Customs Appeal No. 51376 of 2025, Customs Appeal No. 51078 of 2022, Customs Appeal No. 50217 of 2021 and Customs Appeal No. 50218 of 2021 are, accordingly, allowed.

(Order Pronounced on **17.11.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya, Jyoti

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 51367 OF 2025

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/03/2020-21 dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037)

M/s. Soni E Vehicle Pvt. Ltd.,
through its Manager Mr. Ankit Sharma

Plot No. 5, Nihal Vihar, Phase-II

Nilothi Extention,

New Delhi-110041

.....Appellant

VERSUS

Principal Commissioner of
Customs (Preventive)

New Customs House,

Near IGI Airport,

New Delhi-110037

.....Respondent

WITH

CUSTOMS APPEAL NO. 51078 OF 2022

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/03/2020-21 dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037)

Mr. Anuj Sharma

S/o Sh. Kidar Nath Sharma

R/o M-12, West Patel Nagar,

New Delhi-110008

.....Appellant

VERSUS

Principal Commissioner of
Customs (Preventive)

New Customs House,

Near IGI Airport,

New Delhi-110037

.....Respondent

WITH

CUSTOMS APPEAL NO. 50217 OF 2021

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/03/2020-21 dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037)

M/s. Professional Exim

WZ-340, Nangal Raya, Delhi Cantt,

New Delhi-110046

.....Appellant

VERSUS

Principal Commissioner of
Customs (Preventive)

New Customs House,

Near IGI Airport, New Delhi-110037

.....Respondent

AND**CUSTOMS APPEAL NO. 50218 OF 2021**

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/03/2020-21 dated 20.08.2020 passed by the Principal Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037)

Sh. Sunil Gautam

C-29 D, Gangorti Enclave,
Alaknanda, New Delhi - 110019

.....Appellant**VERSUS****Principal Commissioner of
Customs (Preventive)**

New Customs House,
Near IGI Airport,
New Delhi-110037

.....Respondent**APPEARANCE:**

Shri Arhum Sayeed, Shri Rahil Ahmed, Ms. Deepriya Snehi and Ms. Yashika Kaushik Advocates for Soni E Vehicle and Anuj Sharma

Shri Sanjeev Kumar, Consultant and Ms. Priyanka Goel, Advocate for Professional Exim and Sunil Gautam

Shri Nikhil Mohan Goyal and Shri Rajesh Singh, Authorized Representatives for the Department

CORAM:**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT****HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)****DATE OF HEARING: 07.10.2025****DATE OF DECISION: 17.11.2025****ORDER**

Order pronounced.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P.V. SUBBA RAO)
MEMBER (TECHNICAL)**