



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.:VIII/10-39/Pr.Comm./O&A/2023-24
DIN-20250271MN000000966E

आदेशकीतारीख/Date of Order : 25.02.2025

जारीकरनेकीतारीख/Date of Issue : 25.02.2025

द्वारापारित :-
Passed by :-

शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COM-66-24-25 Dated 25.02.2025 in
the case of **M/s.Diwa Environment Project Pvt. Ltd.**

- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of

copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Subject: Show Cause Notice No.VIII/10-39/Pr.Commr./O&A/2023-24 dated 08.03.2024 issued by Principal Commissioner, Customs, Ahmedabad in case of M/s Diwa Enviroment Project Pvt. Ltd., Plot No.16-120, Mahalaxmi Industrial Estate, Near Virat Alloys, Kadi Road, at Dhanot, Kalol, Gandhinagar.

BRIEF FACTS OF THE CASE

Based on the information received that M/s. Diwa Enviroment Project Private Limited, Plot No. 16, 17, 18 19 & 20, Mahalaxmi Industrial Estate, Near Virat Alloys, Kadi Road, at Dhanot, Ta. Kalol, Gandhinagar- 382729(IEC-AAGCD6586M) (hereinafter referred to as M/s. Diwa or Importer for the sake of brevity), are engaged in import of e-scooters/e-bikes in CKD condition by declaring the imported goods as parts/spare parts and components of e-scooters/e-bikes and classifying the same under Chapter Tariff Heading (CTH) 8714 and other headings of Custom Tariff Act, 1975. The said goods appear to be classified under CTH 8711 attracting duty @50% ad-valorem, as per Rule 2(a) of General Rules of interpretation for Import Tariff.

1.1 Rule 2(a) of General Rules of Interpretation for Import Tariff of the First Schedule to the Customs Tariff Act, 1975 reads as under:

In terms of Rule 2(a) of General Rules of Interpretation for Import Tariff which reads as, "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."

2. Accordingly, search was conducted at the factory premises of M/s. Diwa Enviroment Project Private Limited at Plot No. 16, 17, 18 19 & 20, Mahalaxmi Industrial Estate, Near Virat Alloys, Kadi Road, at Dhanot, Ta. Kalol, Gandhinagar- 382729 under Panchnama dated 25.03.2022 and relevant documents were withdrawn under the said Panchnama dated 25.03.2022.

2.1 During the Panchnama proceedings, Shri Hardik Panchal, Production Manager of M/s. Diwa Enviroment Project Private Limited narrated the assembling process of e-scooter/e-bikes in their plant in presence of Shri Anil Patel, Director of M/s Diwa Enviroment Projects Pvt Ltd. Shri Hardik Panchal, Production Manager informed that first of all, chassis is fitted with corn set, swing arm, main stand, motor, controller, harness, main lock and convertor, after fitting these items to chassis, it becomes ready to take up on assembly line for further assembly. Thereafter, as a Stage -1 of the assembly of e-scooter, steering, meter, side stand, brake-wire, front wheel, inner cover, foot-mat are fitted in the same sequence. Then, as a Stage-2 of the assembly of e-scooter, front cover, back body cover and back carrier is fitted. Then as a Stage-3 of the assembly of e-scooter, side light cover is fitted, then battery is fitted and e-scooter is ready. Then quality/inspection check is conducted of this ready e-scooter and if any fault is found, servicing is done and then e-scooter is ready to dispatch. Shri Hardik Panchal explains flow chart of assembling process of e-scooter which was as under:

						(Stage-1 assembly)
Chassis	→	corn set, swing arm, main stand, motor, controller, harness, main lock and convertor	→	Ready Chassis to take up on assembly line	→	steering, meter, side stand, brake wire, front wheel, inner cover,

						footmat
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	(Stage-2 assembly)		(Stage-3 assembly)		(Stage-4 assembly)	
→	front cover, back body cover and back carrier	→	front cover, back body cover and back carrier	→	Battery	→

(Stage-5 assembly)				
Quality/In spection check	→	Servicing if any fault is there	→	E-scooter is ready to dispatch

2.3 Shri Hardik Panchal informed that all the parts of e-scooter were imported except Tyre, battery and battery charger.

3. Statement of Shri Patel Jagdishbhai Mulchandbhai, Director of M/s. Diwa Enviroment Project Private Limited was recorded under Section 108 of Customs Act, 1962 on 25.03.2022, wherein he, inter-alia, stated that :

- He had joined the company on 04.02.2020 as Director and the production started in the company in September 2020. He looks after all technical R&D and purchase in the company;
- Apart from him there are three more directors in the company i.e. Jignesh Joshi who looks after Finance, Shri Haresh Thakkar and Anil Patel both of whom look after Sales & Production;
- M/s. Diwa Enviroment Project Pvt. Ltd. is engaged in production of e-Scooters under the Brand Name 'Diwa' and has three models viz. 'Vgore', 'Rapido' and 'Mini Vigore';
- They have appointed dealers at Taluka level in Gujarat for sales of their e-Scooters, who further sell the same to retail customers after adding their dealer's margin;
- Major parts of their e-scooters are Motor, Battery, Charger, Controller and Chassis;
- He submitted a comprehensive list of all the parts of our 'Rapido' and 'Vgore' models which was duly signed by him (**RUD- 03**). He further stated that almost the same parts that of these two models are used in their third model 'Mini Vgore' also;
- With regard to procurement of these parts, Patel Jagdishbhai Mulchandbhai stated that they import some parts from China, and some parts viz. Battery (both Lithium-Ion & Lead Acid), Charger, Tyres, Hardware (Nut/Bolts) are procured from the domestic market. Patel Jagdishbhai Mulchandbhai further clarified that they had

- imported Lead Acid Battery also from China, and later they started procuring the same from domestic market;
- The main supplier in China in respect of parts of 'Rapido' and 'Vgore' models is M/s. Zhejiang Taizhou Jiefeng Import Export Co Ltd. The supplier for 'Mini Vgore' is M/s. Peerless Automotive Co Ltd;
 - The supplier for Lead Acid Battery is M/s. Changxing Tianying Import and Export Co Ltd;
 - The main supplier for Lithium-Ion Battery/Chargers is M/s. Trontek Electronics Pvt. Ltd. and M/s. SYS Net Technologies, for Lead Acid Battery is M/s. Akash Indchi Import & Export Co;
 - The main supplier for Tyres are M/s. Ceat Ltd, M/s. TVS Srichakra Limited and M/s. DK Enterprises;
 - Shri Patel Jagdishbhai Mulchandbhai further stated that he had previous knowledge that M/s. Zhejiang Taizhou Jiefeng Import Export Co Ltd is in the business of manufacturing of e-Scooters, and they decided to import parts of two models of their e-Scooters, assemble these parts in their factory and sell it under our Brand Name 'Diwa' under models 'Rapido' and 'Vgore'. Similarly, they decided to import parts of one model of e-scooter of M/s. Peerless Automotive Co. Ltd., China, assemble the same in their factory, and sell it under another model namely 'Mini-Vgore'. Their brand names are printed on parts of the e-scooters imported by suppliers themselves;
 - They place orders for parts of e-Scooters in respect of each of their models as per their market demand;
 - All the orders to their Chinese suppliers were normally made by him through WeChat app. On being asked to show WeChat messages sent to their suppliers, he stated that earlier he was using One Plus 6T phone which got damaged around two months back and he bought a new mobile; and when he tried to install WeChat app on his new mobile, the same could not be installed may be due to banning of WeChat, a Chinese app by the Government;
 - On being asked about how they place orders to Chinese Suppliers now, he stated that they had placed last order for import in November, 2021 and after that they had not placed any order for import as they do not have enough orders in pipeline. Further, on being asked he stated that only a few correspondence with foreign suppliers was done by him through his Gmail account janakpatel51@gmail.com also and he submitted copies of the same;
 - On being asked about the numbering marked on the Chassis of e-Scooters, he stated that they gave direction to foreign supplier about the series of numbers to be marked on Chassis and accordingly they send the Chassis with numbers marked on it;
 - On being specifically asked he stated that their company imports complete parts and components except locally procured i.e. Battery, Charger, Tyres, Hardware, in knocked down condition, and from the said imported parts and components e-scooters are assembled at their factory premises under the supervision of Shri Hardik Panchal, Production Supervisor who reports to Shri Anil Patel, Director of the company. A flow chart of the production process was also submitted by him;
 - On being asked regarding agreement/contracts entered with the suppliers regarding purchase of goods, he stated that they have not entered into any formal agreement/contract with the supplier. However, they place the order after receipt of proforma invoice from supplier, and normally they make advance payment to them before shipment is done;
 - On being asked regarding dealers appointed by their company for sale of e-scooters manufactured by their company, he stated that so far

they have appointed 20 dealers all over Gujarat. Further, he stated that they sell scooters to them after receipt of 90% payment in advance. Their company also provide warranty for certain period in respect of components viz. Battery, Charger, Controller.

4. M/s. Diwa Enviroment Project Private Limited had filed total nine Bills of Entry as detailed below.

Table-1

S.No.	Bill of Entry No.	Bill of Entry Date
1	9736174	27-11-2020
2	9875444	08-12-2020
3	2748763	13-02-2021
4	3119388	12-03-2021
5	4279059	11-06-2021
6	4323721	15-06-2021
7	4520096	01-07-2021
8	5638727	30-09-2021
9	7086899	15-01-2022

- 4.1 It was observed that in the Bills of Entry filed by importer, some of which were mentioned below, the parts had been imported in sets:

Table-2

Sl No	BOE No	BOE Date	No. of sets of Parts of particular Model	Model of E-bike/ E-scooter
1	9736174	27-11-20	150	Rapido
			150	V gore
2	2748763	13-02-21	300	Rapido
			300	V gore
3	4279059	11-06-21	300	Rapido
			640	V gore

- 4.2 The description of the goods imported under the Bill of Entry No. 4279059 dated 11.06.2021 mentioned at serial number 5 of Table-1 (Sl.No. 3 of Table 2) was shown in the below Table-3:

Table-3

Sl No	Description
Parts of Rapido Model as per Bill of Entry	
1	TIE 10 PKT -RAPIDO ELECTRIC SCOOTER SPARE PARTS
2	T-STEM -300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
3	FRONT SHOCK ABSORBER L&R 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
4	REAR SHOCK ABSORBER L&R 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
5	LOCK SET ASSY 700 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
6	SEAT LOCK 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
7	SEAT LOCK CABLE 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
8	CIRCUIT BREAKER 540 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
9	WIRING HAMESS 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
10	BATTERY CABLES 400 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
11	CHARGING SOCKET 320 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
12	LH HORN SWITCH 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
13	INDICATOR SWITCH 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE

	PARTS
14	LIGHT SWITCH 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
15	DIM & BRIGHT SWITCH 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
16	THROTTLE AND LH GRIP 460 PCS -RAPIDO ELECTRIC SCOOTER SPAREPARTS
17	RH HRON SWITCH 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
18	REAR CARRIER 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
19	CONVERTER 380 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
20	STEEL RING 460 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
21	REAR VIEW MIRROR SET 300 PCS -RAPIDO ELECTRIC SCOOTER SPAREPARTS
22	RIM 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
23	FRONT DISC BRAKE ASSY 300 PCS -RAPIDO ELECTRIC SCOOTER SPAREPARTS
24	MAT 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
25	DISC PAD 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
26	BRAKE SENSOR SET 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
27	DC MOTOR CONTROLLER 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
28	REAR NUMBER PLATE LIGHT 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
29	HEADLIGHT 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
30	REAR LIGHT 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
31	L & R INDICATOR LIGHT 306 PCS -RAPIDO ELECTRIC SCOOTER SPAREPARTS
32	ALL TRIM PARTS 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
33	HOOK-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
34	FOOT REST-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
35	VIN COVER-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
36	REFLECTOR-PC 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
37	TOOL BOX INNER BOX-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPAREPARTS
38	TOOL BOX-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
39	SEAT BUCKET-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
40	L&R PEDAL-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
41	REAR MUDGUARD-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
42	L&R REAR FORK COVER-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
43	TOOL BOX DOOR-PP 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
44	CHASSIS 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
45	MAIN STAND 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
46	SIDE STAND 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
47	LOCK CLIP 10 PKT -RAPIDO ELECTRIC SCOOTER SPARE PARTS
48	MOTOR DRUM CLAMP 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
49	BATTERY STRIP 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
50	REAR FORK 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
51	HANDLE BAR 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
52	REAR FENDER HOLDER 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
53	CIRCUIT BREAKER HOLDER 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
54	REAR FORK AXLE,SPRING,SCREWS 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS

55	FRONT AXLE,SLEEVE,BOLTS 300 PCS-RAPIDO ELECTRIC SCOOTER SPARE PARTS
56	SPRING,RUBBER,HANDLE BAR BOLTS,RING 300 PCS -RAPIDO ELECTRICSCOOTER SPARE PARTS
57	FRONT WINDSHIELD 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
58	METER 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
59	FACE COVER-ABS 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
60	FRONT WHEEL MUDGUARD-ABS 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
61	L & RIGHT SIDE COVER-ABS 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
62	L & RIGHT PROTECT PANEL-ABS 306 PCS -RAPIDO ELECTRIC SCOOTERSPARE PARTS
63	REAR PROTECT PANEL-ABS 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
64	FRONT COVER-ABS 306 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
65	L & R MOTOR COVER-ABS 306 PCS -RAPIDO ELECTRIC SCOOTER SPAREPARTS
66	NUMBER PLATE 1000 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
67	TOOL KITS 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
68	250W DC MOTOR 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
69	REMOTE ALARM 380 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
70	60V20AH BATTERY LEAD ACID CHARGER 310 PCS-RAPIDO ELECTRIC SCOOTER SPARE PARTS
71	12V FLASER 380 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
72	HARD LOGO 500 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
73	HORN 460 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
74	BRAKE LEVER 460 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
75	REAR BRAKE CABLE 300 PCS -RAPIDO ELECTRIC SCOOTER SPARE PARTS
Parts of Vgore Model as per Bill of Entry	
76	REAR SHOCK ABSORBER L&R 640 PCS -VGORE ELECTRIC SCOOTER SPAREPARTS
77	LOCK SET ASSY 1040 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
78	SEAT LOCK 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
79	SEAT LOCK CABLE 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
80	CIRCUIT BREAKER 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
81	TIE 25 PKT -VGORE ELECTRIC SCOOTER SPARE PARTS
82	LIGHT SWITCH 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
83	T-STEM 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
84	FRONT SHOCK ABSORBER L&R 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
85	WIRING HARNESS 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
86	LH HORN SWITCH 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
87	INDICATOR SWITCH 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
88	DIM & BRIGHT SWITCH 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
89	RH HORN SWITCH 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
90	REAR CARRIER 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
91	BACK REST 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
92	CONVERTER 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
93	THROTTLE AND LH GRIP 640 PCS -VGORE ELECTRIC SCOOTER SPARE

	PARTS
94	STEEL RING 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
95	REAR VIEW MIRROR SET 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
96	BRAKE SENSOR SET 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
97	RIM 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
98	FRONT DISC BRAKE ASSY 640 PCS -VGORE ELECTRIC SCOOTER SPAREPARTS
99	DISC PAD 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
100	DC MOTOR CONTROLLER 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
101	MAT 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
102	USB SOCKET 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
103	HEADLIGHT 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
104	REAR LIGHT 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
105	L & R INDICATOR LIGHT 652 PCS -VGORE ELECTRIC SCOOTER SPAREPARTS
106	REAR WHEEL INNER MUDGUARD -PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
107	CHASSIS MUDGUARD-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
108	FRONT INNER COVER-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
109	HOOK-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
110	VIN COVER-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
111	SEAT BUCKET-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
112	REFLECTOR-PC 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
113	TOOL BOX INNER BOX-PP 652 PCS -VGORE ELECTRIC SCOOTER SPAREPARTS
114	TOOL BOX-PP 652 PCS-VGORE ELECTRIC SCOOTER SPARE PARTS
115	METER COVER-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
116	FOOT REST SMALL COVER-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
117	REAR MUDGUARD-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
118	REAR WHEEL MUGUARD-PP 652 PCS -VGORE ELECTRIC SCOOTER SPAREPARTS
119	CHARGER SOCKET HOLDER-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
120	FRONT FORK MUDGUARD-PP 652 PCS -VGORE ELECTRIC SCOOTER SPAREPARTS
121	FOOT REST-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
122	L & R REAR FORK COVER-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
123	SIDE COVER CONNECTOR-PP 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
124	CHASSIS 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
125	MAIN STAND 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
126	SIDE STAND 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
127	BATTERY STRIPS 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
128	REAR FORK 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
129	HANDLE BAR 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
130	FRONT WINDSHIELD HOLDER 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
131	REAR FORK AXLE,SPRING,SCREWS 640 PCS -VGORE ELECTRIC SCOOTERSPARE PARTS
132	LOCK CLIP 25 PKT -VGORE ELECTRIC SCOOTER SPARE PARTS

133	FRONT AXLE, SLEEVE,BOLTS 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
134	SPRING,RUBBER,HANDLE BAR BOLTS,RING 640 PCS -VGORE ELECTRICSCOOTER SPARE PARTS
135	FRONT WINDSHIELD-ABS 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
136	FACE COVER-ABS 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
137	FRONT WHEEL MUDGUARD-ABS 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
138	L & RIGHT SIDE COVER-ABS 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
139	L & RIGHT PROTECT PANEL-ABS 652 PCS -VGORE ELECTRIC SCOOTERSPARE PARTS
140	REAR PROTECT PANEL-ABS 652 PCS -VGORE ELECTRIC SCOOTER SPAREPARTS
141	TOOL KITS 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
142	FRONT COVER-ABS 652 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
143	L & R MOTOR COVER-ABS 652 PCS -VGORE ELECTRIC SCOOTER SPAREPARTS
144	METER 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
145	250W DC MOTOR 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
146	REMOTE ALARM 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
147	60V20AH BATTERY LEAD ACID CHARGER 380 PCS-VGORE ELECTRIC SCOOTER SPARE PARTS
148	12V FLASHER 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
149	HORN 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
150	BRAKE LEVER 640 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
151	REAR BRAKE CABLE 960 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
152	LED BLUBS 160 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
153	DISC BRAKE SHOES 320 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
154	DRUM BRAKE SHOES 400 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
155	BRAKE CUT-OFF SWITCH 200 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
156	JUNCTION BOX 400 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
157	AIR VALVE 940 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS
158	HARD LOGO 630 PCS -VGORE ELECTRIC SCOOTER SPARE PARTS

Similarly various goods as mentioned in the Column No. 2 of the Table - 3 had also been imported under the Bills of Entry mentioned in Table No. 1 above.

4.3 From the details of all the parts/components/assemblies/sub-assemblies imported by M/s. Diwa Enviroment Project Private Limited vide above said nine Bills of Entry as mentioned column no. 2 of Table 3 above and from the list of all the parts of 'Rapido' and 'Vgore' models submitted by Shri Patel Jagdishbhai Mulchandbhai, it appeared that M/s. Diwa Enviroment Project Private Limited had imported all the necessary components, parts or sub-assemblies, for assembling a complete vehicle i.e. e-bike/e-scooter. These imported parts together fulfil the essential character of the complete or finished e-bike/e-scooter.

4.4 In the Panchnama dated 25.03.2022 drawn at factory premises of M/s. Diwa Enviroment Project Private Limited, Shri Hardik Panchal, Production Manager had explained the flow chart of assembling process of e-scooter. All the parts necessary to assemble a complete e-scooter/e-bike mentioned in the said

flow chart were Chassis, corn set, swing arm, main stand, motor, controller, harness, main lock and convertor, steering, meter, side stand, brake wire, front wheel, inner cover, foot-mat, front cover, back body cover and back carrier, front cover, back body cover, back carrier, Battery. Similar flow chart was also submitted by Shri Patel Jagdishbhai Mulchandbhai, Director of M/s. Diwa Enviroment Project Private Limited during his statement recorded on 25.03.2022. It was evident from the goods imported under above said nine Bills of Entry that all these necessary parts/components to assemble complete/finished e-scooter/e-bike had been imported by M/s. Diwa Enviroment Project Private Limited.

4.5 Shri Patel Jagdishbhai Mulchandbhai, Director of M/s. Diwa Enviroment Project Private Limited had stated in his statement recorded on 25.03.2022 that major parts of their e-scooters were Motor, Battery, Charger, Controller and Chassis; that they imported some parts from China, and some parts viz. Battery (both Lithium-Ion & Lead Acid), Charger, Tyres, Hardware (Nut/Bolts) were procured from the domestic market; that initially they had imported Lead Acid Battery also from China, and later they started procuring the same from domestic market.

4.6 It appeared from the imported goods list (Table 3) that all parts like Motor, Battery, Charger, Controller and Chassis were imported by M/s. Diwa Enviroment Project Private Limited.

4.7 Shri Patel Jagdishbhai Mulchandbhai, Director of M/s. Diwa Enviroment Project Private Limited had categorically stated that he had previous knowledge that M/s. Zhejiang Taizhou Jiefeng Import Export Co Ltd is in the business of manufacturing of e-Scooters, and they decided to import parts of two models of their e-Scooters, assemble these parts in their factory and sell it under their Brand Name 'Diwa' under models 'Rapido' and 'Vgore'. Similarly, they decided to import parts of one model of e-scooter of M/s. Peerless Automotive Co. Ltd., China, assembled the same in their factory, and sold it under another model namely 'Mini-Vgore'.

4.8 It was evident from the Statement of Shri Patel Jagdishbhai Mulchandbhai that they were not importing parts of e-scooter from part-suppliers. Rather their suppliers were themselves manufacturers of e-scooters and M/s. Diwa had imported two models of their suppliers' scooters only *albeit* in Complete Knock Down (CKD) condition assembled the scooter from the parts so imported. M/s. Diwa only changed the Brand Name of their suppliers' e-scooters and got their (Diwa's) brand names like 'Rapido', 'Vgore' and 'Mini-Vgore' printed on parts of imported e-scooters by the suppliers themselves. Moreover, the Chassis Number was also already marked/embossed by the supplier on such imported e-scooters in CKD condition.

4.9 Shri Patel Jagdishbhai Mulchandbhai had also stated that M/s. Diwa imported complete parts and components in knocked down condition except locally procured i.e. Battery, Charger, Tyres, Hardware (Nut/Bolts). It appeared that Hardware (Nut/Bolts), Charger, Tyres were not at all for giving e-scooter its essential character in terms of Rule2(a) of General Rules of Interpretation for Import Tariff, 1975. The same was also corroborated by the fact that in the flow chart explained by Shri Hardik Panchal and also submitted by Shri Patel Jagdishbhai Mulchandbhai, there was no mention of Charger, Tyres or Hardware (Nut/Bolts). Attention was invited to HSN explanatory notes for Chapter 87. The relevant part of the explanatory notes of chapter 87 is as under: -

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

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

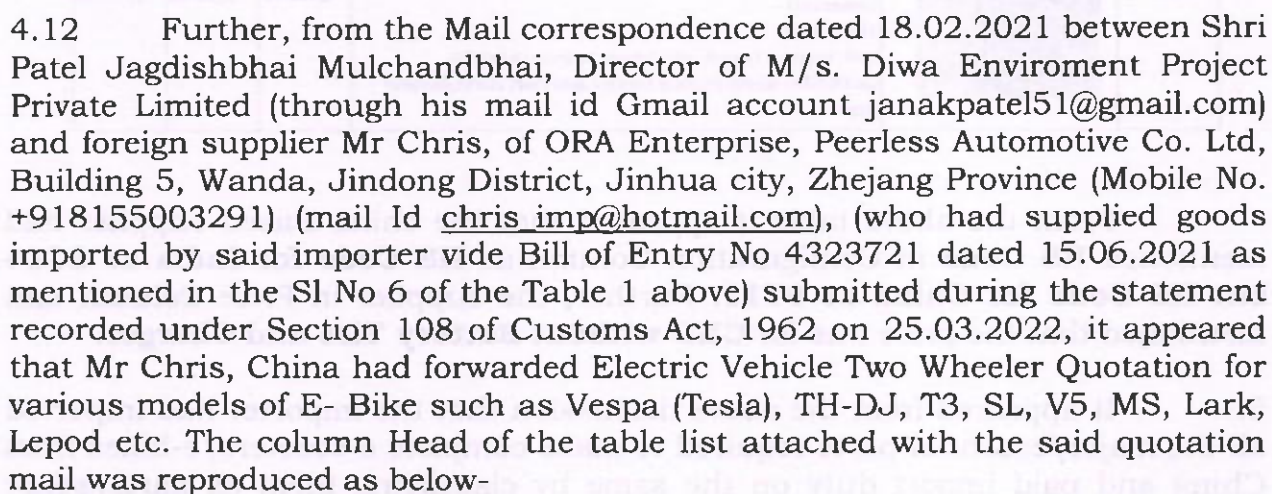
From Para (A) above to HSN explanatory notes for Chapter 87, it was amply clear that the import in CKD from would be considered import of complete/finished vehicle by application of General Interpretative Rule 2 (a) even if wheels, tyres, battery were not imported.






4.10 Further from the Mail correspondence dated 23.02.2022 between Shri Patel Jagdishbhai Mulchandbhai, Director of M/s. Diwa Enviroment Project Private Limited (through his mail id Gmail account janakpatel51@gmail.com) and foreign supplier Mr Jeff Yang (mail Id jeffyang61@aliyun.com) submitted during the statement recorded under Section 108 of Customs Act, 1962 on 25.03.2022, it appeared that, Mr Jeff of M/s Taizhou Huangyan Wuxing Bicycle Industrial Co Ltd, China had forwarded Vgore and Rapido Price List (Quotation) as attachment to the said mail. On going through the attached quotations **(Quotation List for Quantity of 1 SET e-bike in ckd)** with the said mail, it appeared Mr Jeff had forwarded Price list / quotation of 40 parts of Rapido Model and 39 Parts of Vgore Model in tabular format. The quotation itself mentioned that the said list was of 1 set of E-bike in Complete Knock Down (CKD) condition.

QUOTATION LIST FOR QUANTITY 1 SET e-bike in ckd						
NO	Photo	Specification	Unit	Quantity	Unit price (RMB)	Total (RMB)
1		All plastic & lights (LED) (---3000 hours with driver for LED light battery---12V)	set	1	50	50
2		PU part, 3 layer	set	1	12.5	12.5
3		Chain 80V25H	pc	1	22	22
4		Main stand	pc	1	2.0	2
5		Side stand	pc	1	1.5	1.5
6		Battery strips	set	1	0.6	0.6
7		Rear fender	pc	1	4.8	4.8
8		Front fender handle bar, shock, 100-150mm	pc	1	2.5	2.5
9		Front shock absorber	pc	1	5.00	5
10		Rear shock absorber	pc	1	6.00	6.0
11		Lock assembly (MGO) for frame	set	1	2.5	2.5

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4.11 Further, from the Mail correspondence dated 20.05.2021 between Shri Patel Jagdishbhai Mulchandbhai, Director of M/s. Diwa Enviroment Project Private Limited (through his mail id Gmail account janakpatel51@gmail.com) and foreign supplier Mr Carrie (mail Id echorui84@hotmail.com) submitted during the statement recorded under Section 108 of Customs Act, 1962 on 25.03.2022, it appeared that Mr Carrie, China had forwarded invoice, Packing



Peerless Automotive Co., Ltd					
Building 5, Wanda, Jindong District, Anhua City, Zhejiang Province					
Email: echoru84@hotmail.com · chris_lmp@hotmail.com Phone: 008155001291					
Model	Pics	Configuration India HS:87141090 China HS:8711600090	Sample price	20GP (70pcs)	40HQ (165pcs)
			CKD without battery Tire and Charger		
VESPA (TESLA)		Motor:1000w,10inchs. Battery:48v/6Jv. Topspeed:45km/h Breaks:disc/drum. Light:LED. Meter:LED. Tire:3.0-10. USB charger,123 gear adjustment,2mirrors.REVERSE GEAR,Iron wheel.Remote control,anti theft alarm,Reverse gear	\$335.00	\$243.00	\$235.00
TH-DJ		Motor:1000w,10inchs. Battery:48v/60v. Topspeed:45km/h Breaks:disc/drum. Light:LED. Meter:LED. Tire:3.0-10. USB charger,123 gear adjustment,2mirrors.REVERSE GEAR,Alloy wheel.Remote control,anti theft alarm,Reverse gear One button start	\$325.00	\$233.00	\$225.00
T3		Motor:1000w,10inchs. Battery:48v/60v. Topspeed:45km/h Breaks:disc/drum. Light:LED. Meter:LED. Tire:3.0-10. USB charger,123 gear adjustment,2mirrors.REVERSE GEAR,Alloy wheel.Remote control,anti theft alarm,Reverse gear	\$303.00	\$211.00	\$203.00
SL		Motor:1000w,10inchs. Battery:48v/60v. Topspeed:45km/h Breaks:disc/drum. Light:LED. Meter:LED. Tire:3.0-10. USB charger,123 gear adjustment,2mirrors.REVERSE GEAR,Iron wheel.Remote control,anti theft alarm,Reverse gear	\$290.00	\$198.00	\$190.00
MS		Motor:1000w,10inchs. Battery:48v/60v. Topspeed:45km/h Breaks:disc/drum. Light:LED. Meter:LED. Tire:3.0-10. USB charger,123 gear adjustment,2mirrors.REVERSE GEAR,Alloy wheel.Remote control,anti theft alarm,Reverse gear	\$315.00	\$223.00	\$215.00

From the above table it appeared that the china Based supplier had mentioned **HS Code** in Configuration Column as **HS Code for India as 8714 but HS Code for China as 8711**. Further, the supplier in Price Column had mentioned that the price was for **CKD without Battery Tire and Charger**.

5. It appeared from the above discussion that the importer had imported all the major/essential parts required to make complete e-scooters/e-bikes from China and paid import duty on the same by classifying them as parts/spare parts under chapter heading 8714 and other headings. However, Rule 2(a) of General Rules of Interpretation for Import Tariff reads as, "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". Therefore, the said goods imported by the M/s. Diwa appeared to be a complete e-scooter/e-bike in CKD condition, which appears to be classifiable under Chapter Heading 8711.

6. **LEGAL PROVISIONS IN RESPECT OF GOODS IMPORTED UNDER CKD FORM & CLASSIFICATION OF IMPORTED GOODS:**

(A) Rule 2(a) of General Rules of Interpretation for Import Tariff of the First Schedule to the Customs Tariff Act, 1975:

In terms of Rule 2(a) of General Rules of Interpretation for Import Tariff which reads as, *"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."*

It appeared that as per Rule 2(a) of General rules of interpretation for Import Tariff, any heading for a particular article should include reference to such goods whether unfinished/incomplete if such unfinished/incomplete goods give essential characteristics of the complete article of that heading. For instance, if a mobile phone was imported without a battery, it appeared that such a mobile phone would be classified under the Chapter heading as a complete mobile phone as that unfinished mobile phone would give essential characteristics of a mobile phone even without a battery. Similarly, it appeared that automobiles without their battery or without wheels under Chapter Heading 8711 appeared to be classified as automobiles only. Therefore, the said goods imported by M/s. Diwa Enviroment Project Private Limited **appeared to be a complete e-scooter/e-bike in CKD condition, which appears to be classifiable under Chapter Heading 8711.**

(B) Further it appeared that HSN explanatory notes for Chapter 87 also specifically focus on the unassembled/incomplete article, which gives essential characteristics of a finished article falling under the chapter heading of a finished article only. The relevant part of the explanatory notes of chapter 87 is as under: -

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

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

(C) From the list of imports under the above referred Bills of Entry of M/s. Diwa Enviroment Project Private Limited, it appeared that all the essential parts like Chassis, Motor, Controller, etc. have been imported and very few parts like battery, charger, tyres etc. were locally procured. In fact, initially the battery and charger were also imported as evident from Statement of Shri Patel Jagdishbhai Mulchandbhai and as seen from list of imported goods. Further, the parts which had been imported from China were essential parts of the e-scooter/e-bike. **Hence, the imported parts constitute the majority of the e-scooter/e-bike and when assembled together, they appeared to give the essential character of an e-scooter/e-bike. Therefore, the said goods imported by the importer appeared to be a complete e-scooter/e-bike in CKD condition, which appeared to be classifiable under Chapter Heading 8711.**

6.1. It appeared that the **electrically operated motor cycles (including mopeds)** and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, fall under CTH 8711 and attract effective rate of duty in terms of Sr. 531A of the Notification No. 50/2017 dated 30/06/2017, as amended by Notification No. 03/2019-Cus dated 29/01/2019. After this said amendment, Sr. No. 531A was inserted in Notification No. 50/2017-Cus for electrically operated vehicles. The following duty structure was made applicable:

S. No.	Chapter Heading or sub-heading or tariff item	Description of Goods	Standard rate
"531 A.	8711	Electrically operated motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, -	
		(1) As a knocked down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,-	
		(a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;	10%
		(b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly	15%
		(2) in a form other than (1) above	50%

6.2 From the above, it could be seen that Sr. No. 531A of Notification No. 50/2017-Cus mentions about electrically operated vehicles. In the instant case, it appeared from the list of the imported goods that the importer had not imported parts in form as specified in condition 1(a) and 1(b), hence condition 1(a) and 1(b) as mentioned above were not applicable in the instant case. In view of the above, it appeared that imports of e-bike/e-scooter in CKD condition by the importer in the instant case falls under the category "*in a form other than (1) above*" where standard rate of Customs Duty was 50%.

6.3 The serial number 531A was further amended vide Notification No. 01/2020-Cus dated 02/02/2020 and Sr. No. 531A was modified as given below after this amendment. However, this change was made effective from 01/04/2020. **The rate of 50% was still applicable on sub-entry (2) and only the rates against the sub-entry (1) were changed vide the said Notification No. 01/2020-Cus.**

S. No.	Chapter Heading or sub-heading or tariff item	Description of Goods	Standard rate
"531 A.	8711	Electrically operated motor cycles (including mopeds) and cycles fitted with	

	an auxiliary motor, with or without side cars, and side cars, if imported, -	
	(1) As a knocked down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,-	
	(a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;	15%
	(b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly	25%
	(2) in a form other than (1) above	50%

7. Hence, it appeared that in the instant case, the duty structure on e-bike/e-scooter in CKD condition imported was to be considered as goods falling under the category "(2) in a form other than (1) above" where standard rate of Customs Duty is 50%.

7.1 Further, in the instant case, as the Importer was engaged in import of e-scooters/e-bikes in CKD condition by declaring the imported goods as parts/spare parts and components of e-scooters/e-bikes appeared to be classified under CTH 8711 attracting duty @ 50% ad-valorem, as per Rule 2(a) of General Rules of interpretation for Import Tariff, The IGST duty applicable on the same is 5% in terms of Sl. No. '242 A' of 'Schedule I' of Integrated Goods and Services Tax Act, 2017, inserted vide Notification No. 12/2019-Integrated Tax (Rate) dated 31.07.2019, effective from 1st August, 2019 (since all the bills of entry have been filed after 01.08.2019 as mentioned in table 1 above).

The Sl. no 242A of the said notification read as under-

Sl No	Chapter Heading	Description of Goods
242A	87	Electrically operated vehicles, including two and three wheeled electric vehicles. Explanation .- For the purposes of this entry, "Electrically operated vehicles" means vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E- bicycles.";

8. DIFFERENTIAL DUTY CALCULATION:

TABLE – 4 as detailed in Annexure A

Bill of Entry No. & Date	Total Ass. Value of the imported Goods	Differential Duty
Nhava Sheva Customs	2,63,41,599/-	1,17,46,961/-
Ahmedabad Customs	3,42,24,723/-	1,31,20,789/-

Total	6,05,66,322/-	2,48,67,750/-
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9. **LEGAL PROVISIONS UNDER CUSTOMS ACT, 1962**

The following legal provisions were applicable in the instant case:

SECTION 28(4) OF THE CUSTOMS ACT, 1962:

"Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

- a) *collusion; or*
- b) *any willful mis-statement; or*
- c) *suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

SECTION 28AA OF THE CUSTOMS ACT, 1962:

Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-Section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of Section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-Section (1), no interest shall be payable where ---,

- a) *the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under Section 151A; and*
- b) *such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.*

SECTION 46 (4) OF THE CUSTOMS ACT, 1962:

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

4(A) The importer who presents a bill of entry shall ensure the following namely:-

- a) *the accuracy and completeness of the information given therein;*
- b) *the authenticity and validity of any document supporting it; and*
- c) *compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

RULE 2(a) OF GENERAL RULES OF INTERPRETATION FOR IMPORT TARIFF:

"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."

SECTION 111 OF CUSTOMS ACT, 1962

Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-Section (1) of Section 54;

SECTION 112 OF CUSTOMS ACT, 1962:

Penalty for improper importation of goods, etc.-

Any person -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable, -

SECTION 114A OF THE CUSTOMS ACT, 1962.

Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under ²²[sub-Section (8) of Section 28] shall also be liable to pay a penalty equal to the duty or interest so determined

Provided that where such duty or interest, as the case may be, as determined under [sub-Section (8) of Section 28], and the interest payable thereon under Section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under Section 25[28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114.

SECTION 114AA OF CUSTOMS ACT, 1962:

Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

SECTION 117 OF CUSTOMS ACT, 1962:

Penalties for contravention, etc., not expressly mentioned: - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].

CHAPTER NOTES TO CHAPTER 87 ITC (HS)

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

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

10.

LEGAL PROVISIONS UNDER FOREIGN TRADE LAWS APPLICABLE IN THIS CASE:

The Foreign Trade (Development and Regulation) Act, 1992

SECTION 3. Powers to make provisions relating to imports and exports.—(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the 1[import or export of goods or services or technology]

(3) All goods to which any Order under sub-Section (2) applies shall be deemed to be goods the import or export of which has been prohibited under Section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

SECTION 11. Contravention of provisions of this Act, rules, orders and foreign trade policy. —

- (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.

Foreign Trade (Regulation) Rules, 1993

RULE 11 - Declaration as to value and quality of imported goods: *On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall, in the bill of entry*

or the shipping bill or any other documents prescribed under the Customs Act, 1962, state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe to a declaration of the truth of such statement at the foot of such bill of entry or shipping bill or any other documents.

11. **WILFUL MISSTATEMENT AND SUPPRESSION OF FACTS**

11.1. Section 17 of the Customs Act, 1962 provided for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form, as per Section 46 or 50 of the Customs Act, 1962, respectively. Thus, under self-assessment, it was the importer or exporter who would ensure that he declared the correct classification, applicable rate of duty, value, benefits of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill.

11.2. In terms of Section 46 (4) of Customs Act, 1962, the importer was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. M/s. Diwa Enviroment Project Private Limited had wilfully mis-declared the goods as E-Scooter Spare parts/Parts whereas the goods were "E-Bikes /E-Scooters in CKD form" and also mis-stated the Tariff Classification of the said goods imported by them as 8714 and other CTH instead of appropriate CTH 8711. Thus, the duty appeared to had been short levied and short paid by wilfully mis-declaring the description of goods as "E-Scooter Spare parts/parts" and mis-stating the Customs Tariff heading as 8714 as against the applicable Customs Tariff Item No. 87116020 for the discharge of duty payable. Hence it appeared that the duty short levied and short paid was liable to be recovered in terms of Section 28 (4) of the Customs Act 1962.

11.3. It thus appeared that the classification of the goods under the Customs tariff head (CTH) 8714 and other headings declaring the goods as individual parts claimed by M/s. Diwa Enviroment Project Private Limited is required to be rejected and the said goods as detailed in Bills of Entry filed by M/s. Diwa Enviroment Project Private Limited were required to be correctly re-classified under Customs Tariff Heading 87116020 and charged to duties accordingly. Accordingly, the differential Customs Duty amounting to **Rs. 2,48,67,750/- (Rupees Two Crore Forty Eight Lakh Sixty Seven Thousand Seven Hundred Fifty Only)** appeared liable to be recovered from M/s. Diwa Enviroment Project Private Limited by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, in as much as the duty was short paid on account of wilful mis-statement as narrated above. Further the interest at the prescribed rate was also liable to be recovered from them in terms of Section 28 AA of Customs Act, 1962. Also, the importers M/s. Diwa Enviroment Project Private Limited had rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

11.4. It further appeared that the goods i.e., 'E-Bikes /E-Scooters in CKD form' as detailed in the Bills of Entry filed by M/s. Diwa Enviroment Project Private Limited (as detailed in Annexure-A) were imported by resorting to mis-declaration and mis-classification by way of wilfull mis-statement in the Bills of Entry filed under Section 46 of the Customs Act, 1962, before the designated authority of Customs. The goods having assessable Value of **Rs. 6,05,66,322/- (Rupees Six Crores Five Lakh Sixty Six Thousand Three Hundred Twenty Two Only)** as detailed in Bills of Entry filed by M/s. Diwa Enviroment Project

Private Limited (as detailed in Annexure-A), appeared liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

11.5. Further, on account of their above said acts of omission and commission, which had rendered the goods liable to confiscation under Section 111 (m) of the Customs Act, 1962, M/s. Diwa Enviroment Project Private Limited, were also liable for penalty under Section 112 (a) and (b) of the Act *ibid*.

11.6. M/s. Diwa Enviroment Project Private Limited appeared to have mis-declared the description of the goods imported by them as parts instead of e-bike/e-scooter in CKD condition. Further, it appeared that M/s. Diwa Enviroment Project Private Limited deliberately devised fraudulent modus to mis-declare the parts of e-bikes/e-scooters and tried to get these goods cleared from the port to hide the actual import of an e-bike/e-scooter. Thus, it appeared that M/s. Diwa Enviroment Project Private Limited knowingly or intentionally made, signed or used false declaration, statement or document which appeared to be false or incorrect in material particular, in the transaction of above import business for the purposes of the Customs Act in the Bills of Entry filed by them before the Indian Customs. By their acts of omission and commission it appeared that they had rendered the goods imported by them under Bills of Entry mentioned in **Table-1** above liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they appeared to had rendered themselves liable for penalty under the provisions of Section 112(a) and (b) or Section 114A and Section 114AA of the Customs Act, 1962.

12. ROLE OF THE PERSONS

12.1 **Shri Patel Jagdishbhai Mulchandbhai** being the Director of M/s. Diwa Enviroment Project Private Limited and looking after all technical R&D and purchase in the company was responsible for the managing the imports. It was evident from discussion hereinabove that M/s. Diwa Enviroment Project Private Limited deliberately devised fraudulent modus to mis-declare the CKD condition parts of e-bikes/e-scooters and tried to get these goods cleared from the port to hide the actual import of an e-bike/e-scooter. And thus Shri Patel Jagdishbhai Mulchandbhai who is Director of the company and also handling all purchase of the company was directly involved in mis-declaration in import of CKD e-bikes/e-scooters as parts/spare parts of e-bikes/e-scooters.

12.2 It appeared that he was aware of the provisions of the Customs Act, 1962 as well and fully aware of the goods being imported and could have easily declared the correct classification of the goods imported by M/s. Diwa Enviroment Project Private Limited under CTH 8711. In fact Shri Patel Jagdishbhai Mulchandbhai had himself stated that M/s. Diwa had imported two models of their suppliers' scooters. M/s. Diwa only changed the Brand Name of their suppliers' e-scooters and got their (Diwa's) brand names like 'Rapido', 'Vgore' and 'Mini-Vgore' printed on parts of imported e-scooters by the suppliers themselves. Moreover, the Chassis Number was also already marked/embossed by the supplier on such imported e-scooters in CKD form. Therefore, it appeared that prior to import of goods he was well aware that they were importing complete/finished e-scooters/e-bikes in CKD form.

12.3 From the mail communication submitted by Shri Patel Jagdishbhai Mulchandbhai it was clearly evident that he had placed order for Sets of vehicle in CKD condition to their Chinese suppliers of, however, he chose to mis-declare the said imports as Parts of E- vehicle and mis-classify the goods under CTH 8714 and other CTH, so that they could enjoy the benefits by paying lower Customs duty, thereby resulting in evasion of Customs Duty. It therefore appeared that by his acts of omission and commission, he had rendered the

goods imported under Bills of Entry mentioned in **Table-1** above liable for confiscation under Section 111 (m) of the Customs Act, 1962 and consequently, he appeared to have rendered himself liable for penalty under Section 112(a) and 112 (b) of the Customs Act, 1962 and Section 114AA and 117 of the Customs Act, 1962.

13. In the present case, the amount of Duty evaded by M/s. Diwa Environment Project Private Limited, Plot No. 16, 17, 18 19 & 20, Mahalaxmi Industrial Estate, Near Virat Alloys, Kadi Road, at Dhanot, Ta. Kalol, Gandhinagar- 382729 in respect of imported goods cleared through multiple ports/ICDs viz. Air Cargo Complex (INAMD4), ICD Thar Dry Port (Sanand) (INSAU6), ICD Khodiyar (INSBI6) all three falling under the jurisdiction of Commissioner of Pr. Customs, Ahmedabad and Nhava Sheva Port (INNSA1) falling under the jurisdiction of Principal Commissioner of Customs, Nhava Sheva. Since the total Duty in respect of imported goods cleared through Air Cargo Complex (INAMD4), ICD Thar Dry Port (Sanand) (INSAU6), ICD Khodiyar (INSBI6) were falling under the jurisdiction of Commissioner of Pr. Customs, Ahmedabad and the Principal Commissioner of Customs, Ahmedabad was proper authority for issuing the Show Cause Notice in terms of Section 110AA read with Notification no. 28/2022 customs (NT) dated 31.03.2022 issued by Central Board of Indirect Taxes and Customs (CBIC), New Delhi.

14. M/s. Diwa Environment Project Private Limited, Plot No. 16, 17, 18 19 & 20, Mahalaxmi Industrial Estate, Near Virat Alloys, Kadi Road, at Dhanot, Ta. Kalol, Gandhinagar- 382729 was called upon to show cause to the Principal Commissioner of Customs, Ahmedabad as to why:-

- i. The goods imported vide Bills of Entry mentioned in Table-1 and as detailed in Annexure-A to the show cause notice should not be re-classified under Customs Tariff Heading 87116020 of the First Schedule to the Customs Tariff Act, 1975 and Customs Duty amount payable be re-assessed and re-determined at Rs. 2,48,67,750/- (Rupees Two Crore, Forty Eight Lakh, Sixty Seven Thousand, Seven Hundred and Fifty only) accordingly;
- ii. The goods imported valued at Rs. 6,05,66,322/-(Rupees Six Crore, Five Lakh, Sixty Six Thousand, Three Hundred, Twenty Two only) as detailed in Annexure-A should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962;
- iii. Differential Customs Duty amounting to Rs. 2,48,67,750/- (Rupees Two Crore, Forty Eight Lakh, Sixty Seven Thousand, Seven Hundred and Fifty only), on the imported goods as detailed in Annexure-A, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962.
- iv. Interest should not be recovered on the said Customs duty, at Sl. No. (iii) above, under Section 28 AA of the Customs Act, 1962.
- v. Penalty should not be imposed on under the provisions of Section 114A /112 of the Customs Act, 1962 for acts of commission and omission discussed hereinabove.
- vi. Penalty should not be imposed under Section 114AA of the Customs Act, 1962.

15. Shri Patel Jagdishbhai Mulchandbhai, Director of M/s. Diwa Environment Project Private Limited, was called upon to show cause to the Pr. Commissioner of Customs, Ahmedabad as to why penalty should not be

imposed on them under the provisions of Section 112 and Section 114AA of the Customs Act, 1962 for his acts of commission and omission as discussed hereinabove.

DEFENCE REPLY

16. A defence reply was filed by the importer vide letter dated 07.02.2025. In the defence reply, it was contended that:-

(i) As the Parts of Electric Scooter imported by them did not find mention under Chapter Heading 871160, they had claimed classification of the same under Chapter Heading 8714 at the time of filing bills of entry. In the Bills of Entry filed they had clearly and specifically declared that the goods imported were parts of Electric Scooters. It was also an undisputed matter of record that the classification claimed in the Bills of Entry filed by them was accepted by the Customs authorities at the port of import after due examination of the goods and the Bills of Entry filed by them were assessed accordingly. However, the investigating agency i.e. DRI had alleged that the goods imported by them were classifiable as e-scooter/e-bikes in CKD condition without even physically examining the goods imported by them. On the contrary, the Customs Officers at the port of import had accepted their claim for classification under heading 8714 after proper examination of the goods.

(ii) The allegations that they had imported all the major /essential parts required to make complete e-scooters/e-bikes by classifying them under chapter heading 8714 and that the goods imported by them were complete e-scooter/e-bike in CKD condition classifiable under Chapter 8711 appeared to be based upon Rule 2(a) of the General Rules for Interpretation of the Import Tariff and the HSN Explanatory Notes of Chapter 87. It is clear from the terms and phrases used in Rule 2(a) and the HSN Explanatory Notes that for determination of classification, the "incomplete or unfinished articles had to have the **essential character** of the **complete or finished article**". Therefore, for determining the classification in terms of the said Rule 2(a) and the HSN Explanatory Notes it was necessary to establish that the incomplete or unfinished article had the essential character of the complete or finished article. In the instant case no evidence had been brought on record in the impugned notice which even remotely established or suggested that the parts imported by them represented the import of an incomplete or unfinished article having the essential character of the complete or finished article. The department had not shown how the Parts imported by them when put together constitute an incomplete or unfinished article having the essential character of the complete or finished article.

(iii) The phrase 'essential character' had not been defined in the law and as such the same had to be interpreted in terms of the trade parlance and common linguistic understanding of the phrase. The goods under consideration were e-scooters/ e-bikes and as such it was of prime importance to examine the statutory definition of Battery-Operated Vehicle. Rule 2(u) of the Central Motor Vehicles Rules, 1989 defines the same as under:

*"Battery operated vehicles means a vehicle adapted for use upon roads and powered exclusively by an electric motor whose traction energy is supplied exclusively by **traction battery installed in the vehicle**"*

The above definition expressly demonstrated that the e-scooter/ e-bike mandatorily needed to have a battery installed in the vehicle. In other words, the goods were not covered under the definition of Battery-Operated Vehicle unless the battery had been installed in the vehicle. The natural corollary to the said definition implied that the goods can be said to have the essential

characteristics of an e-scooter/ e-bike if and only if the battery had been installed. In the instant case, there was no dispute to the fact that the goods were imported in the form of parts and there was no import of battery. In such cases, where there was no import of battery, the captioned goods cannot be said to have the essential characteristics of e-scooter/ e-bike. Thus, the proposal to classify the captioned goods as e-scooter/ e-bike on the basis of Rule 2(a) of the General Rules of Interpretation falls flat on this count only.

(iv) the Department itself had accepted and admitted that not all the parts which go into making a complete or finished article having the essential character of an e-scooter/e-bike had been imported by us. At Para 6 (C) of the impugned Notice it is stated that ***“very few parts like battery, charger, tyres etc. are locally procured”***. It has been further stated in the said paragraph that ***“Hence, the imported parts constitute the majority of the e-scooter/e-bike”***. Therefore, even the Department acknowledged and accepted the fact that not all the parts required for constituting a complete e-scooter/e-bike were imported by them. Once it was accepted that not all the Parts of the e-scooter were imported by them, it failed the crucial test of such Parts having the ‘**essential character**’ of the complete or finished article. The natural corollary was that some Parts or the Sum of such Parts if it did not have the essential character of the complete or finished article cannot be classified by applying Rule 2(a) and the HSN Explanatory Notes of Chapter 87. Consequently, the proposal of the department to classify the parts of e-scooter/e-bikes imported by us under heading 8714 fails on this very ground.

(v) The term ‘essential characteristic’ has been illustrated in Explanatory Notes to Chapter 87 as under:

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

- (A) A motor vehicle, not yet fitted with the wheels or tyres or battery.***
- (B) A motor vehicle not equipped with its engine or with its interior fittings.***
- (C) A bicycle without saddle and tyres.”*** {Emphasis supplied}

The illustrations depict the meaning that the vehicle needs to be in an assembled condition as a unit and only the remaining fittings were wheels, tyres, battery, engine or interior fittings. In the instant case, it was on record that the imported goods were not units in which the only remaining fittings were wheels, tyres, battery, engine or interior fittings. It was expressly clear that the term ‘essential characteristic’ would not apply merely to the parts which were to be taken on the assembly line for manufacture of the unit. On the contrary, the impugned notice itself mentioned that the different parts imported have been subjected to the assembly line in 3 stages so as to obtain the e-scooter/ e-bike.

(vi) It was further submitted that the impugned Notice had not properly appreciated the facts and details contained in the Bills of Entry under dispute and wrongly alleged that the Parts imported by them were e-scooter/e-bikes in CKD condition; that the goods can be said to be in CKD condition only if the sum of the parts results in the whole i.e. if the parts and components in a consignment were put together/assembled it should result in the finished product. The allegations in the impugned Notice that they had imported goods in CKD condition failed even on this ground. Further, it is submitted that despite the varying quantities of the different parts the same has been deliberately ignored and it had been wrongly alleged that we had imported 300 sets of Rapido and 640 sets of Vgore brand e-scooter/e-bikes under the said Bill

of Entry No. 4279059 dated 11.06.2021. Some of the major parts along with the quantity imported in respect of this Bill of Entry were:

Parts of Rapido brand Electric Scooter imported under Bill of Entry No. 4279059 dated 11-06-2021	
Description of Goods	Quantity
Chassis	300
Lock Set Assy	700
Circuit Breaker	540
Tie	10
Battery Cables	400
Charging Socket	320
Connector	380
Throttle & LH Grip	460
Steel Ring	460
Head Light	306
Rear Light	306
Lock Clip	10
Number Plate	1000
Remote Alarm	380
Battery Lead Acid Charger	310
12V Flasher	380
Horn	460
Brake Lever	460
Hard Logo	500

Parts of Vgorebrand Electric Scooter imported under Bill of Entry No. 4279059 dated 11-06-2021	
Description of Goods	Quantity
Chassis	640
Lock Set Assy	1040
Tie	25
Head Light	652
Rear Light	652
L&R Indicator Light	652
Rear Wheel Inner Mudguard	652
Chassis Mudguard-PP	652
Front Inner Cover-PP	652
Charger Socket Holder -PP	652
Lock Clip	25
Battery Lead Acid Charger	380
Rear Brake Cable	960
LED Bulbs	160
Disc Brake Shoes	320
Drum Brake Shoes	400
Brake Cut-Off Switch	200
Junction Box	400
Air Valve	940
Hard Logo	630

(vii) It was alleged in the impugned Notice that they had imported 300 sets of Rapido and 640 sets of Vgore Model e-scooter/e-bikes under the said Bill of Entry. However, it was very clearly evident from the details tabulated above that there were varying quantities of different parts of the e-scooter some of which were more than that required for a complete/finished e-scooter and some were less than that required for a complete/finished e-scooter, which clearly indicated

and established beyond doubt that they had actually imported parts of e-scooter and not e-scooters in CKD condition.

(viii) Some of the major parts along with the quantity imported in respect of the other two Bills of Entry referred to in Table-2 of Para 4.1 of the impugned Notice were :

Parts of Rapido brand Electric Scooter imported under Bill of Entry No. 9736174 dated 27-11-2020	
Description of Goods	Quantity
Chassis	150
DC Motor Controller	153
60V20AH Battery Charger	150
Tie	05
Headlight	153
Rear Light	153
L&R Indicator Light	153
Read Number Plate	153
Hook -PP	153
Fork Axle Spring, Screws	01 set
Lock Clip	05
Front Axle, Sleeve, Bolts	01 set
Spring, Rubber, Handlebar, Bolts, Rings	01 set

Parts of Vgore brand Electric Scooter imported under Bill of Entry No. 9736174 dated 27-11-2020	
Description of Goods	Quantity
Chassis	150
DC Motor Controller	153
60V20AH Battery Charger	150
Tie	05
Headlight	153
Rear Light	153
L&R Indicator Light	153
Fork Axle Spring, Screws	01 set
Lock Clip	05
Front Axle, Sleeve, Bolts	01 set
Spring, Rubber, Handlebar, Bolts, Rings	01 set

It was also very pertinent and important to note that they had also imported 1530 pieces of Sealed Lead Acid Battery under Bill of Entry No. 9736174 dated 27-11-2020.

Parts of Rapido brand Electric Scooter imported under Bill of Entry No. 2748763 dated 13-02-2021	
Description of Goods	Quantity
Chassis	300
Lock Set Assly	500
Circuit Breaker	420
Tie	05
Battery Cables	200
Charging Socket	160
Converter	340
Throttle & LH Grip	380
Steel Ring	380

DC Motor Controller	306
Head Light	306
Rear Light	306
LR Indicator Light	306
Rear Number Plate Light	306
Rear Fork Axle, Spring, Sleeves	01
Lock Clip	25
Front Axle, Sleeve, Bolts	01
Spring, Rubber, Handle, Bar, Bolts, Rings	01
250W DC Motor	306
Remote Alarm	340
Battery Charger	280
Ambose Logo	500
LED Bulb	80
12V Flasher	340
Horn	380
Disc Brake Shoes	160
Drum Brake Shoes	200
Brake Cut-off Switch 0 Left & Right	100
Brake Lever	380
Rear Brake Cable	460
Junction Box	200

Parts of Vgorebrand Electric Scooter imported under Bill of Entry No. 2748763 dated 13-02-2021	
Description of Goods	Quantity
Chassis	300
Lock Set Assy	500
Tie	05
DC Motor Controller	306
Head Light	306
Rear Fork Axle, Spring, Sleeves	01
Lock Clip	25
Front Axle, Sleeve, Bolts	01
Spring, Rubber, Handle, Bar, Bolts, Rings	01
250W DC Motor	306
60V20AH Battery Charger	200
Ambose Logo	500

It was also very pertinent and important to note that they had also imported 2040 pieces of Sealed Lead Acid Battery under Bill of Entry No. 2748763 dated 13-02-2021.

(ix) It was alleged in the impugned Notice that they had imported 150 sets and 300 sets each of Rapido and Vgore Model e-scooter/e-bikes under the said Bills of Entry. However, it was very clearly evident from the details tabulated above that there were varying quantities of different parts of the e-scooter some of which were more than that required for a complete/finished e-scooter and some were less than that required for a complete/finished e-scooter. Further, two Bills of Entry i.e. 9736174 dated 27-11-2020 and 2748763 dated 13-02-2021 they had totally imported 3570 pieces of Sealed Lead Acid Battery. These facts clearly indicated and established beyond doubt that they had actually imported parts of e-scooter and not e-scooters in CKD condition as alleged by the department.

(x) It was further submitted that they had under the other bills of entry in dispute, similarly imported different parts in varying quantities which can

under no circumstances be construed to be import of e-scooter/e-bikes in CKD condition as the varying quantity of the Parts imported by them cannot be totally used to constitute Completely Built Units. The details of some of the Parts imported by them under these Bills of Entry were:

Parts of Rapido brand Electric Scooter imported under Bill of Entry No. 5638727 dated 30-09-2021	
Description of Goods	Quantity
Chassis	310
Tie	10
LH Horn Switch	410
Indicator Switch	410
Light Switch	410
RH Horn Switch	410
Converter	310
Brake Sensor	510
DC Motor Controller	320
Headlight	316
Rear Light	316
L&R Indicator Switch	316
Rear Number Plate Light	316
Number Plate	500
250W DC Motor	312
Motor Sensor PCBS	100

Parts of Vgore brand Electric Scooter imported under Bill of Entry No. 5638727 dated 30-09-2021	
Description of Goods	Quantity
Chassis	180
Seat Lock	180
LH Horn Switch	280
Indicator Switch	280
Light Switch	280
Rear Carrier	180
DC Motor Controller	180
Headlight	183
Tool Box Inner Box-PP	183
Hook-PP	183
Rear Light	183
Lock Clip	05
250W DC Motor	180
Air Valve	500

Parts of Rapido brand Electric Scooter imported under Bill of Entry No. 7086899 dated 15-01-2022

Description of Goods	Quantity
Front Shock Absorber	50
Lock Set Assly	25
Seat Lock	150
Wiring Harness	30
LH Horn Switch	100
Rear Carrier	25
Converter	10
Throttle & LH Grip	50
Steel Ring	10
Rear View Mirror Set	10
Rim	10

Front Disc Brake Assy	10
Brake Cut-off Switch	100
DC Controller	100
Head Light	20
Rear Light	20
Meter	50
Tool Kits	10
DC Motor	10
L Brake Lever Sensor	20
Hard Logo	1000

Parts of Vgore brand Electric Scooter imported under Bill of Entry No. 7086899 dated 15-01-2022	
Description of Goods	Quantity
Chassis	130
Front Shock Absorber LR	150
Lock Set Asst	130
Seat Lock	230
Seat Lock Cable	180
Circuit Breaker	130
Wiring Harness	190
LH Horn Switch	330
Indicator Switch	230
Rear Carrier	150
Converter	130
Throttle and LH Grip	180
Rear View Mirror Set	140
Rim	155
DC Controller	190
USB Socket	180
Headlight	157
Battery Cover-PP	157
Handle Bar	160
Meter	180
250W DC Motor	150
Remote Alarm	140
12V Flasher	155
L Brake Lever Sensor	155
Disc Brake Shoes	50
Brake Cut-off Switch	50
Rear Number Plate	200
Hard Logo	1000

(xi) From the details of the major parts imported by them under the different Bills of Entry, detailed in the tables above, it was very clear that there were different quantities of different parts. The department had not shown how these Parts in different quantities could be construed to be e-scooter/e-bikes in CKD condition. The department had also not brought on record any material or evidence to show that the Parts in different quantities imported by them were having the essential character of e-scooter/e-bike. The department had also not placed on record any evidence to show that the Parts in different quantities imported by them were e-scooter/e-bike in CKD condition. It was also pertinent to mention that while importing various Parts of Rapido Model e-scooter in different quantities under Bill of Entry No. 7086899 dated 15-01-2022, no Chassis of the said Rapido Model was imported by them and when no Chassis

was imported by them, the allegation of the department that they had imported e-scooter in CKD condition was beyond belief.

(xii) Considering the factual position as regards the Parts imported them and the lack of any evidence in the impugned Notice to establish that the Parts imported by them were having the essential character of e-scooter in CKD condition, the proposal in the impugned Notice to reclassify the Parts imported by us under CTH 87116020 was not sustainable either factually or legally. Therefore, the impugned Notice deserved to be dropped and the classification claimed under 8714 was required to be upheld.

(xiii) CTH 871160 of the Customs Tariff covers Motor Cycles, Scooters, Mopeds etc. with electric motor for propulsion. It, however, did not cover parts of the vehicles falling under 871160 and a specific Chapter Heading 8714 covers *'Parts and Accessories of Vehicles of Headings 8711 to 8713'* and despite this the department had in the impugned Notice proposed classification of the parts of e-scooters imported by us under CTH 87116020 by relying upon Serial Number 531A of Notification No. 50/2017-Cus dated 30-06-2017 as amended by Notification No. 03/2019-Cus dated 29-01-2019 and Notification No. 01/2020-Cus dated 02-02-2020.

(xiv) It had been alleged that they had not imported parts in the form specified in condition 1(a) and 1(b) and hence, they were not applicable and that the e-bike/e-scooter imported by them in CKD condition fell under the category of (2) of the above Serial Number 531A of the said Notification, which was totally erroneous, a violent interpretation and reading of the words and phrases used in the said Notification. It has to be appreciated that Notification No. 50/2017-Cus dated 30-06-2017 as amended by Notification No. 03/2019-Cus dated 29-01-2019 and Notification No. 01/2020-Cus dated 02-02-2020 prescribes the effective rate of Basic Customs duty in respect of the goods specified in the said Notification. While the Tariff rate in respect of Goods of Chapter Heading 8711 is 100%, the Government of India has by issue of the said Notification prescribed the effective rate applicable on import of the specified goods. Therefore, the Notification has to be understood and applied considering this crucial aspect. It was evidently clear that Serial Number (1) (a) and (b) of Serial Number 531A of the said Notification is in respect of Electrically operated motor vehicles imported in a Completely/Semi Knocked Down (CKD/SKD) condition. While Serial Number (2) of Serial Number 531A of the said Notification was in respect of Completely Built Units (CBU) which implied that though the Tariff rate of Basic Customs Duty (BCD) was 100%, the Government had prescribed effective rate of BCD when goods of CTH 8711 were imported in different forms. Accordingly, when the goods were imported in CKD condition, the effective rate of BCD is 10% while in the case of import in SKD condition the effective rate of BCD was 15%. However, if the goods were imported as Completely Built Units, the applicable effective rate of BCD was 50%; that the goods imported by them were neither in CKD or SKD condition and neither were they Completely Built Units as they had imported only Parts of e-scooter/e-bike and consequently, none of the categories specified in Serial Number 531A of the said Notification was applicable to the Parts imported by them.

(xv) By claiming classification of the Parts imported by them under CTH 8714 paid BCD at the rate of 15% and IGST at the rate of 28%. The BCD in respect of e-scooters imported in CKD condition was 10% which was later increased to 15% and the applicable IGST was 5%. It is also pertinent to mention that as a prudent businessman they could have imported all the Parts of e-scooter along with Battery Pack if they had wanted to avail of the benefit of the said Notification. Further, as they had also imported Battery under Bills of Entry No. 9736174 dated 27-11-2020 and 2748763 dated 13-02-2021 they

could have declared the goods imported by them as e-scooter in CKD condition so as to be eligible for the benefit of Sr.No.531A of the said Notification. However, since they had not imported e-scooters in CKD or SKD condition nor had we imported e-scooters as a Completely Built Unit, they had claimed classification of the Parts imported by them under CTH 8714.

(xvi) They relied upon the judgment of the *Honourable Tribunal in the case of Commissioner of Customs (Port), Kolkatta Vs. Ms. Twinkle Tradecom Private Limited, Kolkata in Customs Appeal No. 78675 of 2018*. The Hon'ble Tribunal had vide *Final Order No.75722/2024 dated 21-03-2024* rejected the appeal filed by the Department. The relevant part of the said judgment is reproduced below :

"6.4 We agree with the findings of the Ld. Commissioner (Appeals) that the interpretation of statutes should be in line with the Act i.e., the Customs Tariff Act, 1975, and should be purposive in nature and not strictly as a literal interpretation which will not serve the purpose of the Act and the other literal description as provided. In this regard, the Ld. Commissioner(Appeals) has referred the judgment of Hon'ble HighCourt in the case of Macneill Engineering Ltd.Vs.Commissioner of Customs (Port), reported in 2014(310)ELT33(Cal.), wherein it has been held as under:

"More often than not, in the interpretation of statutes, the Court should make a purposive interpretation of their provisions. A strictly literal interpretation may not serve the purpose of justice. The same principle should be applied to the interpretation of the Customs Act, 1962 and the related statutes and rules, for example the Customs Tariff Act, 1975 and the schedules appended thereto.

6.5 In order to have the essential characteristics of any machine or vehicle, the parts involved in the manufacturing should fulfil the basic principle of that vehicle or machine. The lower authority has classified the goods under CTH 8703.80 which covers the vehicle propelled through motor powered by a battery. The goods imported as such, by the respondent, if assembled together, will not provide the basic function of propulsion as required for the classification under CTH8703. Accordingly, we uphold the findings of the Id. appellate authority in the impugned order and hold that the goods imported would not constitute a fully finished e-rickshaw as it did not have all essential components for a fully finished e-rickshaw."

The ratio of the above judgment of the Honourable Tribunal was squarely applicable to the facts and circumstances of their case and accordingly, the Parts of e-scooters imported by them had been correctly classified by them under CTH 8714. Accordingly, the allegations levelled in the impugned Notice as well as the proposal to reclassify the Parts imported by them under CTH 87116020 as e-scooters in CKD condition was against the judgment of the Honourable Tribunal in the case cited above. In view of their above submissions and the factual position of the Parts imported by them and following the ratio of the judgment of the Honourable Tribunal in the case of Twinkle Trade com Private Limited, supra, in line with the principles of judicial discipline, it was humbly requested that the proposal to reclassify the Parts imported by them under CTH 87116020 as 'Completely Built Units' and charge BCD @ 50% in terms of Serial Number 531A (2) be rejected and the demand for differential Customs duty dropped in the interest of justice.

(xvii) It was further submitted that since the classification claimed by them in the Bills of Entry was sought to be rejected and revised by the department, the onus of proving that the goods merit a different classification was solely upon the department as had been held in a plethora of judgments and which was

now a settled principle of law. The Honourable Supreme Court had in the case of HPL Chemicals Ltd. Vs. Commissioner of Central Excise, Chandigarh reported in 2006 (197) ELT 324 (SC) held that :

"28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is quite clear that the goods are classifiable as "denatured salt" falling under Chapter Heading 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as denatured salt. The Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject-matter is to be treated as sodium chloride."

29. It has been held by this Court in a number of judgments that the burden of proof is on the Revenue in the matter of classification. In Union of India v. Garware Nylons Ltd. [(1996) 10 SCC 413] in para 15 this Court held as under: (SCC pp. 419-20)

"15. In our view, the conclusion reached by the High Court is fully in accord with the decisions of this Court and the same is justified in law. The burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority. Especially in a case as this, where the claim of the assessee is borne out by the trade enquiries received by them and also the affidavits filed by persons dealing with the subject-matter, a heavy burden lay upon the Revenue to disprove the said materials by adducing proper evidence. Unfortunately, no such attempt was made. As stated, the evidence led in this case conclusively goes to show that nylon twine manufactured by the assessee has been treated as a kind of nylon yarn by the people conversant with the trade. It is commonly considered as nylon yarn. Hence, it is to be classified under Item 18 of the Act. The Revenue has failed to establish the contrary. We would do well to remember the guidelines laid down by this Court in Dunlop India Ltd. v. Union of India [(1976) 2 SCC 241 : AIR 1977SC 597] in such a situation, wherein it was stated: (SCC p. 254, AIR p. 607, para 35)

'When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause.'"

The above judgment was followed and reiterated by the Honourable Supreme Court in their judgment dated 20-10-2023 in the case of Commissioner of Central Excise, Ahmedabad Vs. Urmin Products P. Ltd and Others in Civil Appeal No. 10159-10161 of 2010 reported at [2023] 13 S.C.R. 573 : 2023 INSC 951 and in case of M/s. Parle Agro (P) Ltd. Vs. Commissioner of Commercial Taxes, Trivandrum in Civil Appeal No. 6468-69 of 2017. The judgments of the Honourable Supreme Court cited above were squarely applicable to the facts and circumstances of the present case. While proposing classification of the Parts imported by them under CTH 87116020 as e-scooters the Department had not given any cogent grounds nor had it brought on record any evidence justifying classification of the Parts imported by them as e-scooters under CTH 87116020, however, nowhere had the Department shown that the Parts imported by them when put together result in a complete and functional e-scooter/e-bike and neither had the Department been able to establish that the Parts were having the essential character of the complete/finished article. In view thereof, the provisions of Rule 2(a) of the General Rules for Interpretation of Tariff as well as the HSN Explanatory Notes

of Chapter 87 did not apply to the Parts imported by them as the test of '**essential character**' had not been passed. Therefore, as per the law laid down by the Honourable Supreme Court, the Department had failed to discharge the burden of establishing that the Parts imported by them were classifiable under CTH 87116020. Consequently, the proposal to classify the Parts of CTH 8714 imported by them under a different Chapter Heading deserved to be quashed and the proceedings initiated under the impugned Notice dropped.

(xviii) The impugned Notice had proposed reclassification and demanded consequential differential Customs duty in respect of nine bills of entry filed by us for import of Parts of e-scooters were:

S.No.	Bill of Entry No. & Date	Goods Imported
1	9736174 dated 27-11-2020	Parts of e-scooter including Battery and Charger
2	9875444 dated 08-11-2020	Parts of e-scooter – Only Tail Light
3	2748763 dated 13-02-2021	Parts of e-scooter including Battery and Charger
4	3119388 dated 12-03-2021	Parts of e-scooter – Only Disc Pad
5	4279059 dated 11-06-2021	Parts of e-scooter
6	4323721 dated 15-06-2021	Parts of e-scooter
7	4520096 dated 01-07-2021	Only Battery
8	5638727 dated 30-09-2021	Parts of e-scooter
9	7086899 dated 15-01-2022	Parts of e-scooter

Assuming but not accepting the contention of Department, it was clearly seen from the details above that the goods at Serial Number 1 and 3 of the Table above were covered by Serial Number 1(a) of Serial Number 531A of Notification No. 50/2017-Cus dated 30.06.2017 and accordingly attract Basic Customs duty at the effective rate of 10%.

(xix) Further, it can be seen from the details enumerated in the Table above that though they had imported only Tail Lights, Disc Pads and Battery under the Bills of Entry at Serial Number 2, 4 and 7 of the above Table, the department had sought to classify even these goods as e-scooter/e-bikes under CTH 87116020 and demanded Customs duty in terms of Serial Number 531A (2) of Notification No. 50/2017-Cus dated 30.06.2017. It, therefore, appeared that the Department had considered the entire goods imported under the said nine Bills of Entry as a whole to arrive at the conclusion that they had imported e-scooter in CKD condition.

(xx) They had paid IGST @ 18% and 28% in respect of their import of Parts of e-scooter of CTH 8714. If the proposal of the department to classify their goods under CTH 87116020 was accepted, they were eligible for the benefit of Serial Number 1(a) of Serial Number 531A of Notification No. 50/2017-Cus dated 30.06.2017 for payment of Basic Customs duty @ 10%. Further, as per Para 7.1 of the impugned Notice they were liable to pay IGST @5% in terms of Serial Number 242A of Notification No.12/2019-Integrated Tax (Rate) dated 31.07.2019. Therefore, if the goods imported by them were re-assessed by classifying the same under CTH 87116020 they were liable to pay

BCD @ 10% in terms of Serial Number 1(a) of Serial Number 531A of Notification No. 50/2017-Cus dated 30.06.2017 and IGST @ 5% and they would also be eligible for refund of the excess IGST paid by them.

(xxi) In the impugned Notice at Para 4.10 to 4.12, some quotations as well as draft invoices had been referred to which they submitted that in the course of our business they seek and receive offers and quotations from many overseas suppliers, but they do not always translate into firm purchase orders, which was clearly seen from the fact that while the said quotation did not result to any purchase or imports of any goods from this company and that their imports in respect of the nine bills of entry referred to in the impugned Notice were from M/Zhejiang Taizhou Jiefeng Import & Export Co. Ltd., M/s.ChangzingTianying Import and Export Co. Ltd, and M/s.Peerless Automotive Co. Ltd. Similarly, in case of M/s. Ora Enterprise, Peerless Automotice Co. Ltd, China and it had been inferred that they had imported the goods mentioned in quotation to which they submitted that they had imported one consignment of Parts of e-scooter from M/s. Peerless Automotive Co. Ltd, the goods of the Model and specification referred to in the said quotation were never purchased or imported by them. Accordingly, the mail correspondences and the quotations referred to have no relevance as the goods mentioned therein were never purchased or imported by them and neither was there any allegation by the department that they had purchased and imported the goods mentioned in these quotations.

(xxii) They had at the time of filing Bills of Entry furnished the true and correct description of the goods as well as the correct classification of these goods and had also submitted the requisite documents. All the particulars of the goods imported by them had been fully and correctly declared by them and were subjected to examination by the Customs Officers at the Port of Import and even the Customs Officers physically examining the goods had not found any discrepancy in any of the goods or its description in the documents filed by us and that no document or evidence other than what was submitted by them at the time of import had been brought on record to establish any mis-declaration of any particulars on their part. It was also a settled principle in law that in matter of classification and interpretation suppression or mis-declaration cannot be alleged. The issue involved in the present Notice was purely of interpretation and classification. The classification claimed by them based on the description of the goods in the Bills of Entry was accepted by the Customs Officers at multiple Ports of Import. Merely because DRI, was having a different view, the classification cannot be changed by alleging mis-declaration, particularly when the factual position of the goods declared before the Customs Authorities had not changed and neither had any new fact or evidence been brought on record by DRI; that they relied upon the judgment of the Honourable Supreme Court in the case of CCE Vs. Chemphar Drugs and Liniments reported at 1989 (40) ELT 276 (SC). Similarly in the case of Pushpam Pharmaceutical Company Vs. CCE reported at 1995 (78) ELT 401 (SC) and the judgment of the Honourable Tribunal, Ahmedabad in the case of Power Grid Corporation of India Limited Vs. Commissioner of Customs, Ahmedabad in Customs Appeal No. 10829 of 2022-DB. Therefore, since there had been no mis-declaration or mis-statement on our part, the provisions of Section 28(4) were not applicable and extended period of limitation cannot be invoked for demanding differential Customs duty. The nine Bills of Entry were filed between 27.11.2020 to 15.01.2022 and present Notice was issued on 08.03.2024 i.e. much after the expiry of the normal period of limitation in terms of Section 28(1) of the Customs Act, 1962. Therefore, the demand for differential Customs duty was clearly time barred.

(xxiii) The impugned Notice proposed to hold the goods imported by them valued at Rs.6,05,66,322/- as being liable for confiscation under Section 111(m) of the Customs Act, 1962. It had been alleged at Para 11.4 of the Notice that the said goods were liable to confiscation as the same were imported by resorting to mis-declaration and mis-classification by way of mis-statement in the bills of entry; and that they had neither mis-declared or mis-classified the goods nor indulged in any mis-statement and that they had filed Bills of Entry and furnished the proper documents and also furnished the full and correct description of the goods imported by them. Additionally, no material evidence had been brought on record to establish any mis-declaration or mis-statement on their part and the entire contents of the impugned Notice was based upon the details and documents furnished by them before the Customs Officers at the time of import; that they rely to the following case laws:

M/s Lewek Altair Shipping reported at 2019 (366) ELT 318 (T) wherein the Hon'ble Tribunal has held as under:

"Even otherwise, we find it hard to hold that an assessee who filed bill of entry with a Customs Tariff Heading which is not correct, will render his goods liable to confiscation under Section 111(m). The Customs Tariff Heading indicated in the Bill of Entry is only a self assessment by the appellant as per his understanding which is subject to re-assessment by the officers if necessary. Therefore, an assessee, not being an expert in the Customs law can claim a wrong tariff or an ineligible exemption notification and such claim does not make his goods liable to confiscation. It is a different matter if the goods have been described wrongly or the value of the goods has been incorrectly declared. In this case, although there was an allegation in the show cause notice that the invoices were initially submitted for a lower value and thereafter were revised for higher amount, the confiscation in the impugned orders were only on the ground that CTH in the bill of entry was incorrect. In our view, this cannot form the basis for confiscation of goods under Section 111(m). Therefore, the confiscations and the redemption fines need to be set aside and we do so."

The above judgment was affirmed by the Hon'ble Supreme Court as reported at 2019 (367) ELT A 328 (SC)

M/s Mittal International reported at 2018 (359) ELT 527 (T) wherein it has been held as under:

It is seen from the records of the case that the dispute is with reference to correct classification of the goods. In view of the two competing classifications under customs tariff, the difference in opinion cannot be considered as mis-declaration. Consequently, there is no justification for confiscation of the imported goods which is set aside.

Therefore, the proposal to hold the goods imported by them as being liable for confiscation under Section 111 (m) of the Customs Act, 1962 was contrary to the provisions contained in the said Section. The department had also not put forth any evidence on record to establish that the goods imported by them did not correspond to the particulars declared in the Bills of Entry filed by them. Accordingly, there was no merit in the proposal to hold the goods imported by them as being liable for confiscation under Section 111(m) of the Customs Act, 1962.

(xxiv) The impugned Notice also proposes imposition of penalty under Section 112 or Section 114A and Section 114AA of the Customs Act, 1962; that the Department had specified in what way they had made, signed or used false declaration, statement or documents; that they had furnished the documents of the overseas supplier while filing Bills of Entry and these documents contained the true and correct description of the goods imported by them and the same were declared in the Bills of Entry. There was no allegation or evidence in the Notice that the documents viz. Invoice, Packing List of the overseas supplier were false document or that they contained any wrong particulars. It had also

not been shown in what way they had subscribed to false declaration in the Bills of Entry filed by them; that the goods imported by them and declared in the Bills of Entry were physically examined by the Customs Officers at the port of import and only after they were satisfied that the goods corresponded to the description filed in the Bills of Entry that the goods were assessed and allowed clearance. The entire dispute hinges on a wrong interpretation by the Department of the Customs Tariff and the Notification prescribing the effective rate of duty. At best the dispute can be termed to be one of interpretation of the Statute. However, only with a view to overcome the bar of limitation, the department had levelled unsubstantiated allegations without any shred of evidence.

(xxv) The department had not specified under which sub-section i.e. Section 112 (a) or (b) penalty was proposed to be imposed upon them and in the absence of specific provision under which penalty was proposed to be imposed, it was not possible for them to make any submission in this regard. It had been held in a number of cases by various higher judicial authorities that the specific provision under which action is proposed to be taken was to be specified in the Notice; that since when the proposal to hold the goods liable for confiscation itself was not justified and liable to be dropped, the question of imposition of penalty under Section 112 of the Customs Act, 1962 did not arise and was redundant. As regards the proposal for imposition of penalty under Section 114A of the Customs Act, 1962, it was submitted that there had been no suppression or wilful mis-statement on their part in respect of the goods imported by them and that they had fully and correctly declared the description of the goods in the Bills of Entry filed and the same were verified by the Customs Officers while physically examining the goods and no discrepancy was found by them. Further, when the demand for differential Customs duty itself was not justified and liable to be dropped, the question of imposition of penalty under Section 114A of the Customs Act, 1962 did not arise and was redundant.

(xxvi) Regarding the proposal to impose penalty under Section 114AA of the Customs Act, 1962, it was submitted that the said section provides for imposition of penalty where a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular. It was submitted that they had not specified which document or declaration furnished by them was false or contained false or incorrect material particulars. The documents furnished by them at the time of filing Bills of Entry were those which they had received from the overseas supplier and the particulars declared in the Bills of Entry were the same as contained in these documents of the overseas supplier. These documents were examined by the Customs Officers who had assessed the Bills of Entry filed by us. Further the particulars contained in these documents as well as in the Bills of Entry filed by them were verified by the Customs Officers who had physically examined the goods imported by us and found no discrepancy or difference in the goods and its description in the documents as well as in the Bills of Entry. Therefore, the unsubstantiated allegation made without any evidence and challenging or questioning the officers who had examined/assessed the goods imported by them was not legally sustainable and hence, liable to be dropped; that they rely was placed on the following case laws in this regard (i) M/s Eastern Steel Industries reported at 2017 (349) ELT 324 (T); M/s Thyssenkrupp Industries India P. Ltd. reported at 2016 (343) ELT 533 (T); M/s INdofil Chemicals Co. reported at 2016 (333) ELT 115 (T); M/s Bharti Airtel reported at 2009 (235) ELT (T); M/s Abraham J Thakaran reported at 2007 (210) ELT 112 (T). Even otherwise, the demand was not sustainable and as such the question of imposition of penalty did not arise as held in the case of M/s Balkrishna

Industries reported at 2006 (201) ELT 325 (SC) wherein the Hon'ble Supreme Court has held as under:

Since the revenue has not challenged the findings recorded by the Tribunal on merits, they are confirmed. Once it is held that no differential duty was leviable, question of levy of penalty does not arise.

(xxvii) It was a settled law that for the purpose of imposition of penalty something positive other than mere inaction or failure on the part of the appellants or conscious or deliberate withholding of information when the importer knew otherwise, was required to be established. In the instant case, there were no findings or evidence to show that the appellants were indulged in some conscious or deliberate events which led to the issuance of Show Cause Notice. The present case was concerned with mere classification dispute which was in the nature of interpretation and as such no penalty was imposable. The appellants crave leave to rely on the following case laws in this regard: M/s Anand Nishikawa Co Ltd reported at 2005 (188) ELT 149 (SC); Padmini Products Limited v CCE reported at 1989 (43) ELT 195 (SC); Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC).

17. A defence reply was filed by Shri Jagdishbhai M. Patel, Director of M/s Diwa Enviroment importer vide letter dated 07.02.2025. In the defence reply, it was contended that:-

(i) They had at the time of filing Bills of Entry furnished the true and correct description of the goods as well as the correct classification of these goods and had also submitted the requisite documents. All the particulars of the goods imported by them had been fully and correctly declared by them and were subjected to examination by the Customs Officers at the Port of Import and even the Customs Officers physically examining the goods had not found any discrepancy in any of the goods or its description in the documents filed by us and that no document or evidence other than what was submitted by them at the time of import had been brought on record to establish any mis-declaration of any particulars on their part and that the show cause notice did not specify in what way or manner the goods imported by the Company did not correspond to the particulars declared in the bills of entry filed.

(ii) that the show cause notice does not specify in what way he had made, signed or used false declaration, statement or document and that they had furnished the documents of the overseas supplier while filing bills of entry, which were true and correct description of the goods imported and that there was no allegation or evidence in the show cause notice that they were false or contained any wrong particulars.

PERSONAL HEARING

18. Since, no defence reply was received from any of the concerned persons a personal hearing was fixed on 17.01.2025. The importer vide letter dated 13.01.2025 requested for adjournment. Another personal hearing was fixed on 30.01.2025, however, the importer again requested for another adjournment vide letter date 28.01.2025. A final opportunity was fixed on 10.02.2025, which was attended virtually by Shri Ashish Jain and Shri John Christian, both Consultants on behalf of the importer and the Director of the Company. During the said hearing, they reiterated the written submissions/defence reply dated 07.02.2025.

DISCUSSION AND FINDINGS

19. I have carefully gone through the show cause notice, defence submissions and records of personal hearing in this case.

20. The following are the short points for determination in this case:-

(i) whether the noticee, M/s Diwa Enviroment Project Pvt. Ltd. have misclassified their declared goods, viz., parts/spare parts and components of e-scooters/e-bikes under Customs Tariff Heading No.8714 and other headings of the said Act, instead of Customs Tariff Heading No.8711 of the Customs Tariff Act, 1975.

(ii) Consequently, whether the goods attracted effective rate of duty @50% in terms of Sr.No.531A of the Notification No.50/2017 dated 30.06.2017 as, amended for electrically operated vehicles and were liable to pay the differential Customs duty of Rs.2,48,67,750 under Section 28(4) of the Customs Act, 1962;

(ii) whether the imported goods valued at Rs.6,05,66,322/- are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;

(iii) whether the noticee is liable to penalty under Section-112A and Section 114AA of the Customs Act, 1962.

21. The case of the department is that:-

(i) the noticee has imported all the essential parts of e-scooter/e-bikes like, Chassis, Motor, Controller, Wiring harness etc. and locally procured few parts like battery, charger, tyres etc., and therefore, appeared to be a complete e-scooter/e-bike, considering that all the necessary/significant or major parts have been imported.

(ii) As HSN explanatory notes for Chapter 87 specifically focus on the unassembled/incomplete article, which gives essential characteristics of a finished article falling under the chapter heading of a finished article only. The relevant part of the explanatory notes of chapter 87 is: -

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

- (A) **A motor vehicle, not yet fitted with the wheels or tyres and battery.**
- (B) **A motor vehicle not equipped with its engine or with its interior fittings.**
- (C) **A bicycle without saddle and tyres.”**

(iii) The imported parts were classifiable under the Chapter Sub-heading (CTH) No.87116020 of the Customs Tariff Act, 1975 and the duty structure for the goods imported under CTH No.8711 is:-

S. No.	Chapter Heading or or sub-heading or tariff item	Description of Goods	Standard rate
"531 A.	8711	Electrically operated motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, - (1) As a knocked down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,- (a) dis-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy	10%

		Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;	
		(b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly	15%
		(2) in a form other than (1) above	50%

(iv) In terms of the above, since the imported parts did not contain battery pack in dis-assembled or pre-assembled form, the Department has alleged that the duty structure on e-bike/e-scooter in CKD condition imported is to be considered as goods falling under the category "(2) in a form other than (1) above" where standard rate of Customs Duty is 50%.

(v) The imported goods attract IGST duty applicable @ 5% in terms of Sl. No. '242 A' of 'Schedule I' of Integrated Goods and Services Tax Act, 2017, inserted vide Notification No. 12/2019-Integrated Tax (Rate) dated 31.07.2019, effective from 1st August, 2019, which covers chapter heading 87.

22. The main points of defence by the noticee are as under:-

(i) the imported parts of e-scooter/e-bike do not classify under CTH 8711 as they cover Motor cycles, scooters, Mopeds etc. with electric motor for propulsion and that the parts of vehicles falling under Chapter heading 8711 to 8713 are classified under Chapter Heading 8714.

(ii) that they had self-declared in the bills of entry that the imported parts were parts of electric scooters and were accepted by the Customs authorities after due examination of the goods and the bills of entry filed by them. No document or evidence has been brought on record to establish any mis-declaration of any particulars on their part; that they rely on the judgments of the Hon'ble Supreme Court in case of CCE V/s Chemphar Drugs and Liniments reported at 1989 (40) ELT-276(SC), in case of M/s Pushpam Pharmaceutical Company V/s CCE reported at 1995(78) ELT 401 (SC); that extended period cannot be invoked in their case as no mis-declaration, mis-statement or suppression was applicable;

(iii) that no evidence has been brought on record to show that the imported parts represent an incomplete or unfinished article having the essential character of the complete or finished article as alleged by the department in terms of Rule 2(a) of the HSN Explanatory Notes.

(iv) that the phrase 'essential character' has not been defined in the law and according to Rule 2(u) of the Central Motor Vehicles Rules, 1989, only if the battery is installed the goods can be said to have fulfilled the essential characteristics of an e-scooter/e-bike and that they have not imported any battery to that effect;

(v) that despite the varying quantities of the different parts imported the same had been deliberately ignored by the Department and that they cannot be totally used to constitute Completely Built Units.

(vi) that since they had not imported any chassis, the allegation that they had imported e-scooter in CKD condition cannot be accepted;

(vii) that the condition No.1(a) of Sr.No.531A applies to goods imported in CKD form, Condition No.1(b) of Sr.No.531A applies to goods imported in SKD form, and the residual entry under condition No.2 of Sr.No.531A applies to imported as Completely Built Units; that they do not fall under any of the said conditions as they have imported parts totally independently; notwithstanding the department allegation that the goods imported under condition No.2, if at all they would fall under condition No.1(a), where the effective rate of customs duty @ 10% and, consequently, they would be eligible for refund of IGST duty as they had paid 18%/28% on imported parts, instead of 5%.

(viii) that they primarily rely on the ratio of the Hon'ble judgment dated 21.03.2024 passed vide Final Order No.75722/2024 in case of Commissioner of Customs, Kolkata V/s M/s Twinkle Trade com Pvt. Ltd. passed in Customs Appeal No.78675 of 2018, wherein it was contended that the goods imported, as such, if assembled together would not provide the basic function of propulsion as required for classification under CTH 8703, then it would not constitute a fully finished e-rickshaw as it did not have all essential components for a fully finished e-rickshaw; that their case involves the same identical issue.

(ix) that they rely on the ratio of the Hon'ble Supreme Court's judgment in case of M/s HPL Chemicals Ltd. V/s Commissioner of Central Excise, Chandigarh reported in 2006(197) ELT 324(SC) wherein it was contended that the onus of proving that the goods merit a different classification is solely upon the department.

(x) that the impugned imported goods were not liable for confiscation under Section 111(m) of the Customs Act, 1962 as there was no dispute regarding value, description of goods mentioned in the bills of entry filed by them and that the goods were physically examined by the Customs officers at the time of import; that just because the claim of different classification does not make goods liable for confiscation as has been held in Hon'ble Supreme Court judgment reported in 2019(367) ELT A 328(SC);

(xi) that no evidence has been produced by the Department to show that they had made, signed or used false declaration, statement or document and that they had declared the correct description of the goods imported by them as per the documents of the overseas supplier like packing list, invoice etc., therefore, no penalty under Section 112, 114A or 114AA of the Customs Act, 1962 was imposable; that they rely on Hon'ble Supreme Court's judgment in case of M/s Anand Nishikawa Co. Ltd. reported at 2005 (188) ELT 149 (SC) wherein it was contended that there must be some positive act from the side of the assessee to find wilful suppression; and that there was no justification in imposing penalty in cases of classification dispute as provided in case of M/s Abraham J Thakaran reported at 2007(210) ELT 112(T).

23. I find that M/s Diwa had imported all ingredients, except, tyres/battery/chargers, necessary for e-scooter/e-bike. The ingredients, include, T-Stem, shock absorbers, set assembly, cables, circuit breakers, wiring harness, horn switch, indicator switch, light switch, throttle, converters, rear carrier, mirror sets, disc brake assembly, brake sensors, DC motor assembly, foot rest, reflectors, tool box, mud guards, chassis, stands, motor drums, fork axles, windshields, remote alarms, horn, springs, rubbers, panels, etc. These parts are classifiable under Chapter 87 to the Customs Tariff Act, 1975. The question before me, now, is whether the parts are covered under Tariff Item No.87116020.

Chapter 8711 reads as:-

8711 MOTORCYCLES (INCLUDING MOPEDS) AND CYCLES FITTED WITH AN AUXILIARY MOTOR, WITH OR WITHOUT SIDE-CARS

8711 60 - With electric motor for propulsion:

ITC(HS) Code	Description	Unit
8711 60 10	Motor cycles	Nos.
8711 60 20	Scooters	Nos.
8711 60 30	Mopeds	Nos.
8711 60 90	Others	Nos.

I find that M/s Diwa has imported various spares and parts of electric-scooter/bikes. Now, the Explanatory Notes to Chapter 87 explains the term 'essential character' in a very explicable manner:

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

(A) A motor vehicle, not yet fitted with the wheels or tyres and battery.

(B) A motor vehicle not equipped with its engine or with its interior fittings.

(C) A bicycle without saddle and tyres."

The HSN explanatory Notes to Chapter 87, cites an example, wherein a motor vehicle, not yet fitted with the wheels or tyres and battery would also be classified as a corresponding complete or finished article. Therefore, even though, M/s Diwa has not imported e-scooter, as such, the parts imported by M/s Diwa, befits the explanatory note, so as to conclude that the parts imported by M/s Diwa provide an 'essential character' of the finished vehicle, i.e., e-scooter.

24. Now, for the effective rate of duty, I find that Sr.No.531A was inserted by Notification No.3/2019-Cus dated 29.01.2019 and also by Notification No.1/2020-Cus dated 02.02.2020 to the original Notification No.50/2017-Cus dated 30.06.2017, wherein the effective rate has been detailed for different categories. After careful reading of the duty structure mentioned in the amended Notification No.1/2020-Cus dated 02.02.2020, it is clearly seen that there is a clear and specific provision for kits or parts of Electrically operated motor cycles, if imported, -

1) As a knocked down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,-

(a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;

(b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly

(2) in a form other than (1) above

In the instant case, since M/s Diwa has not imported any Battery pack, in any form, as it was being procured locally, therefore, (1) is not applicable. In that event, (2) gets attracted, which specifies the rate of duty

structure @50%. Therefore, I find no ambiguity to ascertain the correct classification and duty structure in the case.

25. M/s Diwa has contended that their goods are primarily covered under the Chapter Heading 8714 1090 to the Customs Tariff Act, 1975. It reads:-

8714 PARTS AND ACCESSORIES OF VEHICLES OF HEADINGS 8711 TO 8713

8714 10- Of motorcycles (including mopeds):

ITC(HS) Code	Description	Unit
8714 10 10	Saddles	kg
8714 10 90	Others	kg

From the above, it is clearly seen that the parts and accessories of vehicles fall under Headings 8711 to 8713, however, these are for non-electric vehicles. The parts and accessories of electric motorcycles, which is so, in the instant case, is covered under a specific chapter sub-heading No.8711 60 20 and the duty structure, is evident from the amended Notification No.1/2020-Cus dated 02.02.2020 to the original Notification No.50/2017-Cus dated 30.06.2017.

26. I find that M/s Diwa has argued that no evidence has been brought on record to show that the imported parts represent an incomplete or unfinished article having the essential character of the complete or finished article as alleged by the department in terms of Rule 2(a) of the HSN Explanatory Notes and that the phrase ‘essential character’ has not been defined in the law and according to Rule 2(u) of the Central Motor Vehicles Rules, 1989, only if the battery is installed the goods can be said to have fulfilled the essential characteristics of an e-scooter/e-bike and that they have not imported any battery to that effect. However, I do not concur to the said argument. From the description of the imported parts, it is abundantly clear that they provide an ‘essential character’ to an e-scooter/e-bike, as provided under Rule 2(a) of the General Rules for Interpretation of Import Tariff. If at all any other part left to be installed inside a ready-to-use vehicle, would be wheels or tyres and battery (which they are procuring locally). In short, by assembling the said imported ingredients, an incomplete or unfinished vehicle could be put in place. The HSN explanatory Notes to Chapter 87, cites an example, wherein a motor vehicle, not yet fitted with the wheels or tyres and battery would also be classified as a corresponding complete or finished article as discussed in the para above.

27. It would be appropriate to discuss what are the essential parts for an e-scooter. According to the open source in the internet, parts of e-scooter according to *Wikipedia* are:-

Parts of an electric scooter include the deck, stem, handlebars, tires, suspension, lights, batteries, brakes, controller and motor.

From the above, it is seen that M/s Diwa cannot deny that the parts imported by them, include those mentioned above and can be treated as ‘essential character’ of the e-vehicle. Therefore, in the present case, when the impugned imported products are put together, they would work as complete e-bike/e-scooter.

28. I find that their argument, that the absence of battery (being procured locally) in their imported parts would not give the ‘essential character’ of the e-scooter goes against them since the explanatory notes clearly show that even if the motor vehicle is not fitted with the wheels or tyres and battery then also the vehicle would be classified as a complete or finished unit. Their reference to the Central Motor Vehicles Rules, 1989 would not come to their rescue, when

there is a specific explanation to the term 'essential character' in the explanatory notes itself. Rule 2(a) of General Rules for Interpretation of Import Tariff contains the word "incomplete" as well. Hence, the rule should not be interpreted as if this would fit only if all the parts are imported and not just the major parts. The said rule makes it clear that any product, which is imported and has all the essential ingredients to work as a complete article after assembly of the same, the said parts need to be classified as a complete article. Therefore, M/s Diwa was required to ensure that if the items imported by them imparted the "essential characteristics" of the e-bike/e-scooter, they were required to classify the imported parts under the same classification of Chapter sub-heading as an 'e-bike/e-scooter' under Customs Tariff Act, 1975.

29. The above findings get strengthened by the judgment in case of M/s L.M.L. v. Commissioner of Customs, Bombay - 1999 (105) E.L.T. 718 (Tribunal) in an identical issue where the classification of parts of scooters have been discussed:- [relevant portion of judgment reproduced]

"The appellants herein imported certain goods described in the Bill of Entry as "Spare parts" complete body unit with all fittings for Scooters - and have claimed classification under Tariff sub-heading 8714.19. However, the authorities below on the basis of Explanatory Notes to HSN in Chapter 87 of the Customs Tariff Act, 1975 have held that it is a complete Scooter in an incomplete and unfinished form. They have relied on the following General Explanatory Note on page 1543 of the Explanatory Notes to HSN which are given below :-

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

(A) A motor vehicle, not yet fitted with the wheels or tyres and battery.

(B) A motor vehicle not equipped with its engine or with its interior fittings.

(C) A bicycle without saddle and tyres.

This Chapter also covers parts and accessories which are identifiable as being suitable for use solely or principally with the vehicles included therein, subject to the provisions of the Notes to Section XVII (see the General Explanatory Note to the Section)." (Emphasis supplied by Ld. S.D.R.)

2. *The goods were accordingly classified under Tariff Heading 8711 90. These were also taken for the purpose of ITC policy as complete Scooters. It is in the negative list of the policy and hence licence was required. Since the licence was not available the goods have been confiscated under Section 111(d) and a penalty has also been imposed under Section 112. The appellants have been given an option to redeem the goods on payment of Rs. 15,000/-.*

2.1 *Hence this appeal before the Tribunal.*

3. *Ld. Advocate Shri R. Santhanam, has submitted that there is no Engine imported with the body Unit and therefore, it cannot be considered as complete Scooters. The goods cannot be treated as Scooters since engine is an essential part of a complete scooter and consequently it is submitted by the ld. Advocate that the authorities misdirected themselves by classifying the goods as "complete scooter" under sub-heading (sic) 8711.90.*

4. *On the other hand ld. SDR Shri A.K. Agarwal has submitted that the Customs Tariff of the Chapter 87 is fully aligned on the HSN. He, therefore, submits that the Explanatory Notes to HSN have a great persuasive value. He, therefore, urges that as per the Explanatory Note mentioned above the authorities below has correctly classified the goods taking them as character of complete scooter.*






5. *On the question of classification we are inclined to agree with the ld. SDR. Although on the basis of common parlance, ld. Advocate Shri R. Santhanam, rightly points out that a "body unit without an engine" cannot be termed "scooter". But in view of the Explanatory Notes to HSN we are left with no doubt that the goods would be classifiable under Tariff Heading 8711.90. In arriving at the decision we have taken into account the submissions of the ld. SDR that Explanatory Note to HSN have great persuasive value in view of the judgment of the Apex Court in the case of Collector of*

Central Excise, Shillong v. Wood Craft Products Ltd. reported in 1995 (77) E.L.T. 23 (S.C.)."

I find that this order of Hon'ble Tribunal has been upheld by Hon'ble Supreme Court by dismissing the Appeal filed by L.M.L. Ltd. against the aforesaid Order of Tribunal. [*L.M.L. Ltd. v. Commissioner – 1999 (107) E.L.T. A119 (S.C.)*].

30. I find that M/s Diwa has relied on the judgement dated 21.03.2024 of the Hon'ble Tribunal, Eastern Zonal Bench, Kolkata wherein it was held that the Section Notes to Chapter XVII and Explanatory notes to HSN/CTH 8703 and 8708, the goods imported will have the essential characteristics of e-rickshaw only when the same are assembled to create a T-shaped vehicle mounted on a chassis, whose two rear wheels are independently driven by separate battery-powered electric motors and also the goods imported did not fulfill the description as provided in explanatory notes to CTH 8708 as mentioned at Sl.Nos. (a) to (n). However, in the instant case, it is seen that M/s Diwa has also imported chassis and also main stand and side stand for it to be mounted and also motors for electric scooter. Further, the explanatory notes also provide for the conditions fulfilling the essential characteristics of e-rickshaw. I do not find any similar explanatory notes for the goods under Chapter 8711. I, therefore find that the judgment is clearly distinguishable to that extent.

31. Notwithstanding the above, I find that the mail correspondence dated 18.02.2021 between Shri Jagdishbhai Patel, Director of M/s Diwa and the foreign supplier, Mr. Chris of ORA Enterprise, Peerless Automotive Co., Ltd. a Electric Vehicle Two Wheeler Quotation for various models of E-bike/scooters were relied by the Department, wherein it is clearly seen that the overseas supplier has classified the goods under HS:87116090, but the Indian HS is shown as 87141090. The quotation is reproduced as under:-

Peerless Automotive Co., Ltd					
Building 8, Wanda, Jindang District, Anhui City, Zhejiang Province					
Email: anhui083@foxmail.com · Chris_jiang@hotmail.com Phone: 0086158008261					
Model	Pics	Configuration India HS:87141090 China HS:871360090	Sample price	30GP (70pcs)	40HQ (140pcs)
CKD without battery Tire and Charger					
VESPA (TESLA)		Motor:1000w,50inchs. Battery:48v/63v Top speed:45km/h Breaks:disc/drum. Light:LED Meter:LED Tires:8-10 USB charger,123 gear adjustment,2 mirrors,REVERSE GEAR,front wheel,Remote control,anti theft alarm,Reverse gear	\$235.00	\$243.00	\$285.00
TH-01		Motor:1000w,50inchs. Battery:48v/60v Top speed:45km/h Breaks:disc/drum. Light:LED Meter:LED Tires:8-10 USB charger,123 gear adjustment,2 mirrors,REVERSE GEAR,front wheel,Remote control,anti theft alarm,Reverse gear	\$225.00	\$233.00	\$225.00
T3		Motor:1000w,50inchs. Battery:48v/60v Top speed:45km/h Breaks:disc/drum. Light:LED Meter:LED Tires:8-10 USB charger,123 gear adjustment,2 mirrors,REVERSE GEAR,front wheel,Remote control,anti theft alarm,Reverse gear	\$305.00	\$211.00	\$203.00
SL		Motor:1000w,50inchs. Battery:48v/60v Top speed:45km/h Breaks: disc/drum. Light:LED. Meter:LED. Tires:8-10. USB charger,123 gear adjustment,2 mirrors,REVERSE GEAR,front wheel,Remote control,anti theft alarm,Reverse gear	\$290.00	\$198.00	\$190.00
MS		Motor:1000w,50inchs. Battery:48v/60v Top speed:45km/h Breaks: disc/drum. Light:LED. Meter:LED. Tires:8-10. USB charger,123 gear adjustment,2 mirrors,REVERSE GEAR,front wheel,Remote control,anti theft alarm,Reverse gear	\$315.00	\$223.00	\$215.00

From the above discussions, I find that the goods imported under Bills of entry filed by M/s Diwa covered in the show cause notice are classifiable under Tariff Item No.8711 60 20 of the Customs Tariff Act, 1975 and thereby, I reject the classification by M/s Diwa of the said imported goods under Chapter heading 8714 & others.

32. Now, coming to the duty structure part of the imported goods under Tariff Item No.8711 60 20 of the Customs Tariff Act, 1975, I find that the duty structure for the goods imported under CTH No.8711 as per the amended Notification No.1/2020-Cus dated 02.02.2020 to the original Notification No.50/2017-Cus dated 30.06.2017 is as follows:-

S. No.	Chapter Heading sub-heading or tariff item	Description of Goods	Standard rate
"531 A.	8711	<p><i>Electrically operated motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, -</i></p> <p><i>(1) As a knocked down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,-</i></p> <p><i>(a) dis-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;</i></p> <p><i>(b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly</i></p> <p><i>(2) in a form other than (1) above</i></p>	<p>10%</p> <p>15%</p> <p>50%</p>

In terms of the above, since the imported parts do not contain battery pack in dis-assembled or pre-assembled form, I find that the show cause notice is correct in alleging that the duty structure on e-bike/e-scooter in CKD condition imported is to be considered as goods falling under the category "(2) in a form other than (1) above" where standard rate of Customs Duty is 50%. Further, the imported goods attract IGST duty applicable @ 5% in terms of Sl. No. '242 A' of 'Schedule I' of Integrated Goods and Services Tax Act, 2017, inserted vide Notification No. 12/2019-Integrated Tax (Rate) dated 31.07.2019, effective from 1st August, 2019, which covers chapter heading 87.

33. I find that in terms of Section 46 (4) of Customs Act, 1962, the importer was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. Section 46(4) of the Customs Act, 1962 reads:-

" (4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

4(A)The importer who presents a bill of entry shall ensure the following namely:-

- a) the accuracy and completeness of the information given therein;
- b) the authenticity and validity of any document supporting it; and
- c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force."

34. M/s. Diwa Enviroment Project Private Limited was required to classify their imported goods, viz. **'E-Scooter parts in other form'** under Tariff Item 8711 60 20 and pay appropriate duty @ 50% of standard rate and appropriate IGST duty in terms of Sl. No. '242 A' of 'Schedule I' of Integrated Goods and Services Tax Act, 2017, inserted vide Notification No. 12/2019-Integrated Tax (Rate) dated 31.07.2019. However, M/s Diwa classified the said imported goods as "E-scooter spare parts/parts by declaring it under Chapter Tariff Heading No.8714. They were fully aware that by declaring the imported goods as spare parts or parts of e-scooter under Chapter Tariff Heading No.8714, they can escape with a lower quantum of duty, under the guise that they had not mis-declared/suppressed anything from the Department. They were also fully aware that parts and spare parts of electric vehicles, when imported in CKD/SKD/other form were classified under a different Chapter Sub-heading. The quotation of the overseas supplier, in that regard, clearly shows that the despite being aware that the imported goods were classifiable under CTH 8711, M/s Diwa classified it under CTH 8714, which attract lower rate of duty. By merely mentioning the description of the imported goods as 'electric scooter spare parts/parts' they could very well get off with lower duty by classifying it under Chapter Tariff Heading No.8714 as, prima-facie, there seemed not much of a difference in the description of the imported goods. In this era of self-assessment, it is the duty of importers to ensure that they classify the imported goods in a correct manner and discharge duty obligations accordingly. Therefore, if the goods have been described wrongly or the value of the goods has been incorrectly declared in the statutory documents like bill of entry, such goods are liable for confiscation under provisions of Section 111(m) of Customs Act, 1962. In the instant case, the description and classification of the product are mis-declared in the concerned import documents with an intention to avoid higher rate of Customs Duty applicable to the e-bike/e-scooter in other than CKD/SKD condition. Consequently, M/s Diwa has, thereby contravened the provisions of Section 47 of the Customs Act, 1962, since the Bills of Entry had not been filed in compliance to Section 46 of the Customs Act, 1962. Thus, I find that the said goods imported by them are liable for confiscation under Section 111(m) of the Customs Act, 1962. Since, the goods are not physically available for confiscation, and in such cases redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

The Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertilchem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, held that even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of

confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed.

35. I find that M/s Diwa had wilfully mis-declared the goods as E-Scooter Spare parts/Parts whereas the goods were "E-Bikes /E-Scooters in others form" and also mis-stated the Tariff Classification of the said goods imported by them as 8714 and other Tariff Item instead of appropriate Tariff Item 8711 60 20. Thus, the duty had been short levied and short paid by wilfully mis-declaring the description of goods as mentioned above, and therefore, the duty short levied and short paid amounting to Rs. 2,48,67,750/- is to be recovered in terms of Section 28 (4) of the Customs Act 1962 by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962. Further the interest at the prescribed rate was also liable to be recovered from them in terms of Section 28 AA of Customs Act, 1962. Also, the importers M/s. Diwa Enviroment Project Private Limited had rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

36. As regards imposition of penalty on M/s Diwa is concerned, I find that they had intentionally mis-declared the description of the imported goods with a view to pay lower Customs duty in respect of Bills of entry mentioned in the show cause notice. Therefore, M/s Diwa is also liable to penalty under the provisions of Section 114A of the Customs Act, 1962 on that account. However, I refrain from imposing any penalty under Section 112 of the Customs Act, 1962 in view of sub clause (5) to Section 114A of the Customs Act, 1962.

37. I also find that M/s Diwa was aware of the correct classification of imported goods under CTH 8711 60 20 as is evident from the quotation of the overseas supplier, however, they knowingly or intentionally mis-declared the description of the goods under CTH 8714 with a clear intention of paying lower Customs duty. As per Section 114AA of the Customs Act, 1962, penalty can be levied when a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document, which is false or incorrect. From the facts and discussions made above, I hold that M/s Diwa is also liable to penalty under Section 114AA of the Customs Act, 1962.

38. As regards penalty on Shri Jagdish Patel, Director of M/s. Diwa under Section 112 and Section 114AA of the Customs Act, 1962, I find that Shri Jagdish Patel, being the Director of M/s Diwa was required to ensure that the imported goods were being correctly classified for payment of Customs duty purposes. I find that the communication dated 18.02.2021 was received by him through e-mail from his overseas supplier, which showed that the quotation of various models of e-bikes/scooters and the classification (China) under HS: 8711600090, and the classification (India) HS as 87141090. Therefore, I find that Shri Jagdish Patel, being the authorized person of M/s Diwa was fully aware of the fact that the imported goods were classifiable under CTH 8711 and not under CTH 8714, and accordingly, should have correctly classified the imported goods, and paid appropriate Customs duty. On account of his action, I hold that Shri Jagdish Patel, Director of M/s Diwa is liable to penalty under Section 112(b) and also under Section 114AA of the Customs Act, 1962 as he had consciously overlooked the correct classification of the imported goods and classified it under an incorrect classification with a clear intent of payment of lower Customs duty.

39. In view of the above, I pass the following order-

ORDER

(i) I reject the classification of the goods, viz. Parts and spare parts of e-bike/e-scooter, as detailed in the Show Cause Notice, under respective Customs Tariff Headings, as declared by M/s Diwa, and order that the goods are correctly classifiable under Tariff Item No.8711 60 20 as parts and spare parts of e-scooter in other form, and value be re-determined accordingly;

(ii) I order for confiscation of the goods imported by M/s.Diwa under the Bills of Entry mentioned in the Show Cause Notice, having total assessable value of **Rs.6,05,66,322/- (Rupees Six crores, Five Lakh, Sixty Six Thousand, Three Hundred and Twenty Two only)**, under Section 111(m) of the Customs Act, 1962. However, I give an option to M/s Diwa to redeem the goods on payment of Fine of **Rs.50,00,000/-(Rupees Fifty Lakh only)** under Section 125 of the Customs Act, 1962;

(iii) I confirm the demand of differential Customs Duty of **Rs. 2,48,67,750/- (Rupees Two Crore, Forty Eight Lakh, Sixty Seven Thousand, Seven Hundred and Fifty only)** as detailed in the Show Cause Notice in terms of the provisions of Section 28(4) of the Customs Act, 1962 and order for recovery of the same;

(iv) I order recovery of interest on the above confirmed demand of Duty in terms of the provisions of Section 28AA of the Customs Act, 1962;

(v) I impose penalty of **Rs. 2,48,67,750/- (Rupees Two Crore, Forty Eight Lakh, Sixty Seven Thousand, Seven Hundred and Fifty only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s Diwa. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to M/s Diwa, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

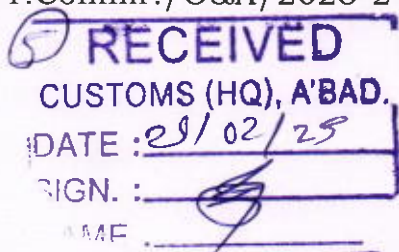
(vi) I refrain from imposing penalty on M/s Diwa under Section 112 of the Customs Act, 1962;

(vii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on M/s Diwa in terms of the provisions of Section 114AA of the Customs Act, 1962;

(viii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakhs only)** on Shri Jagdish Patel, Director of M/s Diwa, under Section 112(b) of the Customs Act, 1962.

(ix) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on Shri Jagdish Patel, Director of M/s Diwa, under Section 114AA of the Customs Act, 1962.

40. Accordingly, I dispose of the Show Cause Notice No. VIII/10-39/Pr.Commr./O&A/2023-24 dated 08.03.2024.



(Signature)
25.02.2025
(Shiv Kumar Sharma)
Principal Commissioner

DIN-20250271MN000000966E

BY SPEED POST A.D

1. M/s. Diwa Enviroment Project Private Limited, Plot No. 16, 17, 18 19 & 20, Mahalaxmi Industrial Estate, Near Virat Alloys, Kadi Road, at Dhanot, Ta. Kalol, Gandhinagar- 382729.
2. Shri Patel Jagdishbhai Mulchandbhai, Director of M/s. Diwa Enviroment Project Private Limited, Plot No. 16, 17, 18 19 & 20, Mahalaxmi Industrial Estate, Near Virat Alloys, Kadi Road, at Dhanot, Ta. Kalol, Gandhinagar- 382729.

Copy To:

1. The Additional Director General, DRI, AZU, Unit.No.15, Magnet Corporate Park, 100 ft, Thaltej-Hebatpur Road, Off.Sola Over Bridge, Ahmedabad 380054.
2. The Deputy Commissioner/Assistant Commissioner, Customs, JNPT, Nhava Sheva.
3. The Deputy Commissioner/Assistant Commissioner, Customs, Air Cargo Complex/ICD Sanand/ICD Khodiyar, Ahmedabad.
4. The Superintendent (Systems), Customs, Ahmedabad.
5. Guard file.