



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

A	फाइलसंख्या/ File No.	:	VIII/10-121/Prev/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	F.No. VIII/10-05/PI/HQ/2022-23 dated 12.10.2023
C	मूलआदेशसंख्या/ Order-In-Original No.	:	27/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	09.05.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	09.05.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	M/s. White Carbon Motors Private Limited, Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar – 382010
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील, छवि मंजिल, हुड्को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ % अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Limited located at Plot No. B-120-121, GIDC Electronics Estate Sector - 25, Gandhinagar, he acknowledged its correctness.

7.1. On being asked he stated that they were engaged in assembling of Electric Scooters at their factory premises located at B/120-121, GIDC Electronic Estate, Sector 25, Gandhinagar. All the hardware for the said E-scooters were being imported from China except for Battery, Charger, Rubber Tyre and some other spare parts. On being specifically asked he stated that they were assembling the E-scooters in three models namely "O3", "GT5" and "Jazzy" at their factory premises. They were importing the aforesaid E-scooters in complete Knocked Down Condition from M/s. Wuxi Kainning Electric Technology Co. Ltd, China and M/s. Taizhou Youji EV Tech Co. Ltd, China and procuring some parts like Battery, Charger, Rubber Tyre, etc from local market. After assembling, they sell these E-scooters in local market throughout India. Approximate price excluding Taxes for "E-scooter White Carbon O3 is Rs 50,000/-, E-scooter White Carbon GT5 is Rs 1,12,150/- and E-scooter White Carbon Jazzy is Rs 77,160/-.

7.2. He further stated that they were classifying the aforesaid imports mainly under CTH 8714 at the time of imports pay BCD @ 15% *ad valorem* as per the Notification No. 50/2017-Cust dtd 30.06.2017 as amended. For the same they were advised by their CHA SMS International, Ahmedabad regarding the aforesaid classification.

7.3. He was shown Chapter 87 of the Customs Tariff Act, 1985 as reproduced below: -

Chapter 87 of the Customs Tariff Act, 1975 read as: --

Tariff Item	Description of Goods
8711	MOTORCYCLES (INCLUDING MOPEDS) AND CYCLES FITTED WITH AN AUXILIARY MOTOR, WITH OR WITHOUT SIDE-CARS;
8711 60	- With electric motor for propulsion:
8711 60 20	--- Scooters
8711 60 90	--- Others

Having perused the above he acknowledged and agreed that Electric Scooters would be classifiable under CTH 871160 of the Customs Tariff Act, 1975.

7.4. He was shown the following: -

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 article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

HSN Explanatory Notes for Chapter 87:

Any incomplete or unfinished vehicle, whether or not assembled, 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.

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 (refer *General Explanatory Note to the Section*)

General Explanatory Note to the Section XVII

5. Air-cushion vehicles are to be classified within this Section with the vehicles to which they are most akin as follows:

(a) in Chapter 86 if designed to travel on a guide-track (hovertrains);

(b) in Chapter 87 if designed to travel over land or over both land and water;

(c) in Chapter 89 if designed to travel over water, whether or not able to land on beaches or landing - stages or also able to travel over ice.

Parts and accessories of air-cushion vehicles are to be classified in the same way as those of vehicles of the heading in which the air-cushion vehicles are classified under the above provisions.

Having perused the above rules and notes he acknowledged and agreed that Electric Scooters imported by them by declaring parts of E-scooters mainly under CTH 8714 (or CTH 85-electrical Motor, etc.) in sets of equal quantities required for assembling a particular quantity (Nos) of E-scooters bears essential character of a complete Electric Scooter. Hence the said imported goods would be classifiable under CTH 87116020 of the Customs Tariff Act, 1985.

7.5. Next, He was shown the Annexure-A to the Panchnama dtd 23.11.2022 drawn at the premises of M/s White CarbonMotors Private Limited located at Shalin, Plot No. 24, Office No. 807, Sector-11, Gandhinagar, after perusal he stated that as could be seen from the said Annexure, which was as per the Packing list for the goods imported vide BE No. 2793570 dtd 08.10.2022, they had imported parts of E-scooters or E-scooters in complete Knocked Down kit and none of the parts such as motor, Motor Controller, Control Unit, energy monitor, brake system were not interconnected and not mounted on a chassis.

7.6. On being specifically asked he stated that they had imported in the aforesaid imports, electric motor under CTH 85015390 and the said electric motor was part of the rear tyre wheel frame suitable for use solely or principally with the said E-scooter.

7.7. He further informed that they had imported the aforesaid goods viz E-scooters in complete Knocked Down kit vide two Bill of Entry No.2661600 dtd 07.02.2021 for importing 140 units of E-scooters & BE No. 6986763 dtd 07.01.2022 for importing 1 unit of E-scooter through ICD Khodiyar by wrongly classifying it under CTH 8714 instead of its correct classification under CTH 87116020.

7.8. Further, he stated that their aforesaid goods viz E-scooters in complete Knocked Down kit merits classification under CTH 87116020 and they were entitled for availing exemption notification No. 50/2017-Customs dtd 30.06.2017 as amended vide Notification No. 02/2022-customs dtd 01.02.2022. As per Sr No. 531A 1(a) of notification No. 50/2017-Customs dtd 30.06.2017, their aforesaid goods would have attracted BCD @ 15% *Ad valorem* and IGST @ 5% (Not No 01/2017 as amended)

whereas they had already paid BCD @ 15% *Ad valorem* and IGST @ 18%/28% due to wrong interpretation of the Classification.

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

Relevant extract of General Rules of Interpretation is also reproduced below:

Rule 2(a)
(Incomplete or unfinished articles)

(I) *The first part of Rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.*

Rule 2(a)
(Articles presented unassembled or disassembled)

(V) *The scope part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.*

(VI) *This Rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished articles by virtue of the first part of this Rule.*

(VII) **For the purpose of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved. No account is to be taken in that regard of the complexity of assembly method.** However, the components shall not be subjected to any further working operation for completion into finished state. Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.

It appears that as per note 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 is imported without a battery, it appears 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 appears that automobiles without their battery or without wheels belong in Chapter Heading 8703 appeared to be classified as automobiles only. **Therefore, the said goods imported by the importer appeared to be a complete e-**

scooter/e-bike in CKD condition, which appears to be classifiable under tariff heading 87116020.

(B) Further, it appears 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."**

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 (refer *General Explanatory Note to the Section*)

General Explanatory Note to the Section XVII

5. Air-cushion vehicles are to be classified within this Section with the vehicles to which they are most akin as follows:

- (a) in Chapter 86 if designed to travel on a guide-track (hovertrains);
- (b) in Chapter 87 if designed to travel over land or over both land and water;**
- (c) in Chapter 89 if designed to travel over water, whether or not able to land on beaches or landing - stages or also able to travel over ice.

Parts and accessories of air-cushion vehicles are to be classified in the same way as those of vehicles of the heading in which the air-cushion vehicles are classified under the above provisions.

In view of the above the said imported goods bearing essential characteristics of a complete E-scooters, imported in sets of equal quantities required for assembling a particular quantity(nos) of E-scooters, but imported by mis-declaring as parts of E-scooters and by mis-classifying under CTH 87141090 (**or under CTH 85015390 in case of Electric Motors—here the said electric motor is part of the rear tyre wheel frame suitable for use solely or principally with the vehicles**) merit classification under CTH 87116020.

(C) From the inventory of imports under the above referred Bills of Entry of the importer M/s. White Carbon Motors Private Limited, it appears that all the essential parts like Frame, Motor, Controller, etc. have been imported and very few parts like Battery and tyres etc. are locally procured. 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-bike and when assembled together, they appear to give the essential characteristics 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 appears to be classifiable under Chapter Heading 8711.**

9. It appears 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 as per 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 amendment, Sr. No. 531A was inserted in Notification No. 50/2017-Cus for electrically operated vehicles. The following duty structure was made applicable: -

13. From the above, it appears that the importer had knowingly and deliberately indulged in suppression of facts in respect of their imported product and had willfully misrepresented/mis-stated the material facts regarding the goods imported in the declarations made in the import documents including Check lists presented for Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty. Therefore, Section 28(4) of the Customs Act, 1962, is applicable. The differential Customs duty amounting to **Rs. 8,83,591/-** (Rupees Eight Lakhs Eighty Three Thousand Five Hundred and Ninety One only) and **Social Welfare Surcharge (SWS) amounting to Rs. 88,359/-** (Rupees Eighty Eight Thousand Three Hundred and Fifty Nine only) as detailed in 'Annexure-X' to this Show Cause Notice, is liable to be recovered from M/s. White Carbon Motors Private Limited, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

14. In terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. M/s. White Carbon Motors Private Limited had wilfully mis-declared the goods as "E-Scooter Spare parts" whereas the goods were "E-Bikes /E-Scooters in CKD form" and also misstated the Tariff Classification of the said goods imported by them as 8714 instead of 8711. Thus, the duty appears to have been short levied and short paid by wilfully mis-declaring the description of goods as "E-Scooter Spare parts" and misstating the Customs Tariff heading as 8714 as against the applicable Customs Tariff Heading of 87116020 for the discharge of duty payable. Hence it appears that the duty short levied and short paid is liable to be recovered in terms of Section 28 (4) of the Customs Act 1962.

15. Thus it appears that the classification of the goods under the Customs tariff head (CTH) 8714 claimed by M/s. White Carbon Motors Private Limited is required to be rejected and the said goods as detailed in Bills of Entry filed by the importer are required to be correctly re-classified under Customs Tariff Heading 87116020 and charged to duties accordingly. Accordingly, the importer has evaded Basic Customs Duty amounting **Rs. 8,83,591/-** (Rupees Eight Lakhs Eighty Three Thousand Five Hundred and Ninety One only) and **Social Welfare Surcharge (SWS) amounting to Rs. 88,359/-** (Rupees Eighty Eight Thousand Three Hundred and Fifty Nine only) as detailed in 'Annexure-X' to this Show Cause Notice. The said evasion of duty was done by the importer by resorting to mis-declaration, willful mis-statement and suppression of facts that they were importing E-scooters in complete Knocked Down kit by mis-declaring as parts of E-scooters mainly under CTH 8714(or CTH 85-electrical Motor, etc). The willful mis-statement and suppression of facts is evident from the fact that the parts of e-scooters/e-bikes have been imported as sets of equal quantities required for assembling a particular quantity (nos) of e-scooters/e-bikes i.e. e-scooters/e-bikes in CKD condition. Thus, it appears that the importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had intentionally mis-declared the imported goods viz E-scooters in complete Knocked Down kit classifiable under CTH 87116020. The aforesaid acts of suppression of facts and wilful mis-statement by M/s. White Carbon Motors Private Limited had led to short levy of Customs duty thus rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the Basic Customs Duty amounting to **Rs. 8,83,591/-** (Rupees Eight Lakhs Eighty Three Thousand Five Hundred and Ninety One only) and **Social Welfare Surcharge (SWS) amounting to Rs. 88,359/-** (Rupees Eighty Eight Thousand Three Hundred and Fifty Nine only) was short levied by reason of wilful mis-statement and suppression of facts with a malafide intention of evasion of Customs duty. All the aforesaid acts of omission and commission on the part of M/s. White Carbon Motors Private Limited have rendered the subject imported goods having assessable value of **Rs. 56,51,000/-** (as detailed in Annexure-X to the SCN) liable for confiscation under Section 111(m) of the Customs Act, 1962. M/s. White Carbon Motors Private Limited are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. In the present case, it is also evident that the actual facts were only known to the importer about the product and its actual classification. However, it appears that M/s. White Carbon Motors Private Limited had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and have therefore rendered themselves liable for penalty under

section 114AA of the Customs Act, 1962 too. Since the M/s. White Carbon Motors Private Limited have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962.

ROLE OF THE PERSONS

16. Shri Narendra Singh Sankhla, Chairman & Director, M/s. White Carbon Motors Private Limited, Gandhinagar, was at the helm of affairs of the importer company and was directly responsible for the said imports and aforesaid mis-declaration, willful mis-statement and suppression of facts regarding true description of the said goods in order to evade the Higher Basic Customs Duty leviable thereon. Thus, Shri Narendra Singh Sankhla, Chairman & Director, M/s. White Carbon Motors Private Limited, Gandhinagar, had acquired possession of or concerned himself in carrying, removing, depositing, harbouring, keeping, concealing, selling of the said imported goods which he had known or had reasons to believe were liable to confiscation under Section 111(m) of the Customs Act, 1962. For the above mentioned acts of omission and commission on the part of Shri Narendra Singh Sankhla, Chairman & Director, M/s. White Carbon Motors Private Limited, Gandhinagar, has rendered himself liable for penal action under the provisions of Section 112 (b) of the Customs Act, 1962. Further being overall incharge of the imports and their documentation it appears that Shri Narendra Singh Sankhla, Chairman & Director, M/s. White Carbon Motors Private Limited, Gandhinagar, submitted documents mis-declaring the imported goods. Thus, he has rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

SHOW CAUSE NOTICE:

17. **Accordingly**, a Show Cause Notice dated 12.10.2023 was issued to M/s. White Carbon Motors Private Limited, Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar- 382010, wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why: -

- (i) Goods imported under Bills of Entry mentioned in 'Annexure-X' to this notice should not be considered as E-scooters in complete Knocked Down kit and re-classified under CTH 87116020 of the Customs Tariff Act, 1975;
- (ii) Goods imported under Bills of Entry mentioned in 'Annexure-X' to this notice, having assessable value amounting to Rs. **56,51,000/-** (Fifty Six Lakhs Fifty One Thousand only), should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (iii) Differential Basic Customs Duty amounting to **Rs. 8,83,591/-** (Rupees Eight Lakhs Eighty Three Thousand Five Hundred and Ninety One only) and **Social Welfare Surcharge (SWS) amounting to Rs. 88,359/-** (Rupees Eighty Eight Thousand Three Hundred and Fifty Nine only), as detailed in 'Annexure-X' to this notice, should not be recovered from them under Section 28 (4) of the Customs Act, 1962;
- (iv) Interest should not be charged and recovered from them under Section 28AA of the Customs Act, 1962 *on the duty demanded at (iii) above.*
- (v) Penalty should not be imposed upon them under the provisions of Section 112(a) &112(b)/114A, 114AA and 117 of the Customs Act, 1962 for goods mentioned at (ii) above.

18. Now, therefore, **Shri Narendra Singh Sankhla, Chairman & Director** of M/s. White Carbon Motors Private Limited, Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar – 382010, are hereby called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 2nd Floor,

'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:-

- (i) Penalty should not be imposed upon him under the provisions of Section 112(b) of the Customs Act, 1962.
- (ii) Penalty should not be imposed upon him under the provisions of Section 114AA of the Customs Act, 1962.

SUBMISSIONS:

19. In response to the Show Cause Notice, Shri Narendra Singh Sankala, Chairman and Director of M/s White Carbon Motors Pvt. Ltd., presented a submission on 10.11.2023.

In the submission he presented as follows –

- a) That in their understanding Rule 2(a) of the General Rules of Interpretation is not suitable for application on their imported consignments as they are assembling battery operated scooter and in this type of vehicle only battery, battery charger and tyres are the most essential parts.
- b) That they have also gone through the Rules 2(b) and 3 of the General Rules of Interpretation and have found that for their imported goods, Rule 3(a) is the most suitable rule of interpretation.
- c) That they took all the care during self-assessment and have produced invoices with accuracy and completeness of the information given therein u/s 46(4) and 4(4A) of the Customs Act, 1962.
- d) That they filed Bill of entry as per their understanding of law.
- e) That there is no wilful misrepresentation / mis-statement on their part at the time of import and section 28(4) is not applicable on them. Instead, their matter falls under section 28(a) of the Customs Act, 1962.
- f) That they referred to following case of M/s Uniworth Textiles Ltd vs Commissioner of Central Excise, Raipur [2013-TIOL-13-SC-CUS] to state that mere non-payment of duty does not amount to collusion and wilful mis-statement or suppression of facts laws to counter.
- g) That since physical verification was done by the Customs Authorities. Also, Customs authorities took certificate and opinion from chartered engineer before clearing the goods. Thus, they have not violated any provision under section 111(m) of the Customs Act, 1962 and requested not to penalize them under section 112(b)/ 114A, 114AA and 117 of the Customs Act, 1962.
- h) That differential duty and Social Welfare Surcharge, along with interest under section 28AA of the Customs Act, should not be recovered from them.

PERSONAL HEARING:

20. During the Course of Adjudication proceedings, personal hearing was given to the Noticee of the Show Cause Notice dated 12.10.2023. In response to the letter for personal hearing on 09.04.2024, Shri Narendra Singh Sankala, Chairman & Director of M/s. White Carbon Motors Private Limited, Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar – 382010 appeared on 09.10.2024 to present his viewpoint in the matter. Shri Sankala reiterated the submission presented by him earlier in the matter and also stated that he had no malafide intent to evade payment of proper customs duty.

DISCUSSION AND FINDINGS:

21. I have carefully gone through both the Show Cause Notices and relevant documents. I have also given due consideration to the written as well as oral submissions made by the Noticee.

22. Issues for consideration before me in these proceedings are as under-

(i) Whether the goods imported by M/s White Carbon under the Bills of Entry, as detailed in Annexure to the Show Cause Notice, Goods imported under Bills of Entry mentioned in 'Annexure-X' to this notice should not be considered as E-scooters in complete Knocked Down kit and re-classified under CTH 87116020 of the Customs Tariff Act, 1975, instead of classifying the said imported goods in the respective Customs Tariff Headings of each part of an e-bike/e-scooter or otherwise ?

(ii) Whether M/s White Carbon are entitled for the benefit of concessional rate of Duty availed by virtue of various Notifications by declaring the goods as parts of e-bike ?

(iii) Whether the goods imported by M/s White Carbon under Bill of Entry no. 2661600 dated 07.02.2021 mentioned in Annexure-X to the Show Cause Notices are to be confiscated or otherwise?

(iv) Whether M/s White Carbon are liable to pay the differential amount of Customs Duty, as detailed in Annexure-X to the Show Cause Notices under Section 28(4) of the Customs Act, 1962 and are also liable to penalty under the provisions of Section 112(a) and Section 112(b) or 114A, Section 114AA and Section 117 of the Customs Act, 1962 ? and

(v) Whether Shri Narendra Singh Sankhala, Director of M/s White Carbon is liable to penalty under the provisions of Section 112(b) and Section 114AA of the Customs Act, 1962?

23. Whether the goods imported by M/s White Carbon under the Bills of Entry, as detailed in Annexure to the Show Cause Notice, Goods imported under Bills of Entry mentioned in 'Annexure-X' to this notice should not be considered as E-scooters in complete Knocked Down kit and re-classified under CTH 87116020 of the Customs Tariff Act, 1975, instead of classifying the said imported goods in the respective Customs Tariff Headings of each part of an e-bike/e-scooter or otherwise?

23.1. From the subject Show Cause Notices, defense submissions and records available before me, I find that M/s White Carbon have imported goods describing as Parts of e-bike/e-scooter and classifying it under various Customs Tariff Heading (85013119, 85359020, 85365020, 90292010, 8714 etc). The impugned goods have been cleared through different Customs stations i.e. Mundra Port/ ICD-Khodiyar.

23.2 Through departmental investigation, a case has been made out that M/s White Carbon had imported parts of e-bike/e-scooter in such manner that it can be termed as import of e-bikes/e-scooters in CKD condition and has evaded Customs Duty. M/S WHITE CARBON failed to pay correct Duty on the imported goods as they had wrongly availed the benefit of Entry No. 1(a) of Sr.No. 531A of Notification No. 50/2017-Cus, as amended, instead of the benefit under Entry No. 1(b) of Sr.No.531A of the said Notification.

23.3 The import data of M/s White Carbon has shown that they imported all the major parts of e-bikes/e-scooters from China and were paying import Duty on the same by classifying them as parts under respective Chapter Heading. Further, it is observed from the Bills of Entry filed by M/s White Carbon at aforesaid Customs stations/ports that the said parts had been imported in equal sets and in multiples of a certain number which depicted that M/s White Carbon had imported certain number of e-bikes/e-scooters in CKD condition.

23.4 For deciding the appropriate classification for the impugned imported goods, it would be appropriate to have a look at the competing Customs Tariff Headings invoked in the Show Cause Notices.

Heading No.	Description
8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; Side-cars.
871160	- With electric motor for propulsion.
87116020	---Scooters

Heading No.	Description
8714	Parts and accessories of vehicles of headings Nos. 87.11 to 87.13
871410	-Of motorcycles (including mopeds)
87141090	--- Other

Heading No.	Description
8501	Electric motors and generators (other than Generating Set)
850131	-Of an output not exceeding 750 W
85013119	---other

Heading No.	Description
8535	8535 electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, fuses, lightning arresters, voltage limiters, surge suppressors, plugs and other connectors, junction boxes), for voltage exceeding 1,000 volts
853590	- Other
85359020	--- Control gear and starters for DC motors

Heading No.	Description
8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts : connectors for optical fibres, optical fiber bundles or cables.
853650	- Other switches
85365020	--- Other switches of plastic

Heading No.	Description
9029	Revolution counters, production counters, taximeters, mileometers, pedometers and the like; speed indicators and

	tachometers, other than those of heading 9014 or 9015; STROBOSCOPEs
902920	- Speed indicators and tachometers; stroboscopes :
90292010	--- Tachometers, non-electrical

Above Tariff Headings indicate that motor cycles with electric motor (e-scooter/e-bike) would be classified under Customs Tariff Heading Nos. 87116020 whereas parts and accessories of motorcycles would be classified under various other chapter heads mentioned above.

23.5 M/s White Carbon declared the description of the products in question as Parts of e-bike/e-scooter by classifying it under various Customs Tariff Heading i.e. 85013119, 85359020, 85365020, 90292010 and 8714, whereas subject Show Cause Notices propose classification under Customs Tariff Heading 87116020 as e-bikes/e-scooters in CKD kits with pre-assembled motor, controller etc, not mounted on a body of the e-bike/e-scooter.

23.6 The main grounds for re-classifying the impugned goods under Customs Tariff Heading No.87116020 shown in the Show Cause Notices are as under-

- (i) The imported goods were covered under an Agreement for supplying e-scooter kits in CKD condition from Chinese suppliers to the importer in India;
- (ii) The Electric scooters imported by them by declaring parts of e-scooters mainly under CTH 8714 (or Chapter heads 85 or 90) in sets of equal quantities required for assembling a particular quantity (nos) of E-scooters bears essential characteristics of complete E-scooters.
- (iii) **Rule 2(a) of General Rules for Interpretation of Import Tariff** stipulates that if parts are imported in CKD condition and they have the essential character of the complete article, they have to be assessed as complete article and it appears to be squarely applicable in this case. M/s White Carbon had committed a fraud intentionally after proper planning and devising a modus-operandi deliberately to cleverly take shield of the clause 'as presented' in Rule 2(a) of the General Rules for Interpretation of Import Tariff by importing the e-scooter/e-bike as portions of a CKD kit in different consignments at different ports and by mis-classifying the same under different Customs Tariff Heading as parts to evade Customs Duties.
- (iv) The 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.**

(v) Vide Finance Act, 2011 w.e.f. 08.04.2011 "Self-Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides 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, respectively. Under self-assessment, it is the importer or exporter who shall ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts was only known to the importer about the product and aforesaid fact came to light only subsequent to the in-depth investigation. Therefore, M/s. White Carbon have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty leviable and payable on the import of the goods as 'E-Bikes /E-Scooters in CKD form'. M/s. White Carbon had contravened the provisions of Section 46(4A) of the Customs

Act, 1962 in as much as M/s. White Carbon Motors Private Limited while filing Bill of Entry had to ensure the accuracy and completeness of the information given therein for assessment of Customs duty, whereas in the instant case, M/s. White Carbon Motors Private Limited failed to fulfil this legal obligation in respect of imports of above said goods for its correct and accurate classification.

23.7 M/s White Carbon have defended classification of the impugned goods under Tariff Heading as parts of e-bike/e-scooter and objected to the proposal of Show Cause Notices to classify under Customs Tariff Heading 87116020 by arguing that –

- i) in their understanding Rule 2(a) of the General Rules of Interpretation is not suitable for application on their imported consignments as they are assembling battery operated scooter and in this type of vehicle only battery, battery charger and tyres are the most essential parts.
- ii) they have also gone through the Rules 2(b) and 3 of the General Rules of Interpretation and have found that for their imported goods, Rule 3(a) is the most suitable rule of interpretation.
- iii) since the goods imported by them contained only the 'parts' of the Electric Vehicle, it is covered by them under respective Customs Tariff Headings.
- iv) they took all the care during self-assessment and have produced invoices with accuracy and completeness of the information given therein u/s 46(4) and 4(4A) of the Customs Act, 1962.
- v) they filed Bill of entry as per their understanding of law.
- vi) there is no wilful misrepresentation / mis-statement on their part at the time of import and section 28(4) is not applicable on them. Instead, their matter falls under section 28(1) of the Customs Act, 1962.
- vii) they referred to following case of M/s Uniworth Textiles Ltd vs Commissioner of Central Excise, Raipur [2013-TIOL-13-SC-CUS] to state that mere non-payment of duty does not amount to collusion and wilful mis-statement or suppression of facts laws to counter.
- viii) they have not violated any provision under section 111(m) of the Customs Act, 1962 and requested not to penalize them under section 112(b)/ 114A, 114AA and 117 of the Customs Act, 1962.

23.8 I find that if the grounds on which any facts or charges made in the Show Cause Notice are not specifically denied or replied by the Noticee in defence in their written submissions or during the personal hearing proceedings, such charges shall be treated as admitted by the Noticee. Thus, at this stage, I would like to examine the charges made in the Show Cause Notices.

23.8.1 Subject Show Cause Notices demand the differential Customs Duty by stating that in terms of Rule 2(a) of General Rules of Interpretation of Import Tariff, impugned imported consignments have to be classified under classification of e-bike/e-scooter in CKD condition and not as a part. To decide the classification of an item in disassembled/unassembled form, Rule 2(a) of the General Rules of Interpretation of Import Tariff of the First Schedule to the Customs Tariff Act, 1975 has to be invoked. Rule 2 (a) of the General Rules of Interpretation of Import Tariff inter alia provides for assessment of articles presented in unassembled or disassembled condition as complete article. It also provides for assessment of

incomplete articles presented unassembled or disassembled, as complete article, provided the incomplete article has the essential characteristic of the complete article.

23.8.2 Rule 2(a) of the General Rules for Interpretation of Import Tariff provides that, *'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 failing to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.'*

It would be seen from above that the essential ingredients for invoking Rule 2(a) are as under-

- (i) Imported goods should have the essential characters of the complete or finished article.
- (ii) Imported goods, as presented, even if incomplete, will be classified as complete article.

23.8.3 It is to be ascertained as to whether the goods imported, in this case, are classifiable as parts of e-bike/e-scooter only or as e-bikes/e-scooters in CKD condition in terms of the provisions contained in interpretative Rule 2 (a) of the General Rules for the Interpretation of the First Schedule of the Customs Tariff Act, 1975.

23.8.4 Shri Narendra Singh Sankhla vide statement dated 23.11.2022 wherein he interalia stated that they were importing parts of e-bike in CKD condition from Wuxi Kainning Electric Technology Co. Ltd, China and M/s Taizhou Youji EV Tecj.Co. Ltd, China and are only procuring some parts like battery, charger, rubber tyres from local market. M/s White Carbon assembled these CKD kits along with some locally procured items. M/s White Carbon had ordered almost all the parts in multiples of 500 which depicts that they had ordered 500 e-bikes in CKD condition.

23.8.5 It has been submitted by Shri Pratik Singh Sankhla, Director and production incharge (imports), in his statement dated 13.12.2022 that after importing the scooter kits, in sets of equal quantities, in CKD condition they did not manufacture anything new in their factory, they merely assembled the imported CKD state kits with some local components like battery, charger, rubber tyre etc., to make complete e-scooters.

23.8.6 It emerges from investigation that no machinery was required for assembling the impugned goods imported by M/s White Carbon in the CKD condition, which were got assembled with the help of simple hand tools like spanner, screw driver etc. It is also a matter of fact that the import data of M/s White Carbon shows that all the essential parts like Frame, Motor, Controller, etc. have been imported and very few parts like battery, charger, Tyres etc. were locally procured. Further, the parts which had been imported from China were essential parts like Motor, Motor Controller, Frame etc. The features of an e-bike/e-scooter which make it the preferred vehicle is the low maintenance, environment friendliness, cost-friendly, better mileage etc. The components which give it these essential characters are Motor (which does not require much maintenance and is the key part being the prime mover mechanism), Controller (which is the mechanism that utilizes the movement of motor for the purpose of motion). The power for the Rotor of Motor is derived from Battery and hence, there is no smoke emission which makes it environment friendly. In conjunction with this major essential component, the body (frame) of the e-bike/e-scooter would also qualify as the item which imparts essential character to the e-bike/e-scooter. Hence, it is evident that imported CKD kits consisting of frame made of steel parts and plastics parts along with electrical parts like Motor, Controller etc. have the essential characteristics of an e-bike/e-scooter.

23.8.7 The cumulative value of the said imported parts also constitutes a substantial value of an e-bike/e-scooter. The unassembled parts so imported constitute major and essential parts which includes Frame, energy monitor, control unit, brake system, Motor, Controller etc. It also shows that all the major parts have been imported and only some parts like battery and its charger or tyres, were procured locally.

23.8.8 In terms of said Rule 2(a), if complete machine is presented unassembled or disassembled, it has to be classified under classification of particular machine and not as parts. In the present case even though the e-bikes/e-scooters have been imported and cleared from two or more different ports but both consignments put together comprises of one electronic bike/scooter which is covered in the Rule 2(a) of General Rules for Interpretations of Import Tariff and therefore, the present consignments have to be classified under classification of e-bike/e-scooter in CKD Kits and not as parts of e-bike/e-scooter. **Hon'ble Tribunal, Mumbai in the case of Hightemp Furnaces Ltd Vs. Commissioner of Customs (Imports), Mumbai-I, reported in 2017 (357) ELT. 948**, in the matter of the requirement of import licence for one consignment of second-hand machine ordered by importer and imported through two ports, held that even though a part of the second-hand machine were imported at JNPT, Nhava Sheva and part imported at New Custom House, Mumbai Port will not make both consignments as separate consignments and in terms of Rule 2(a) of Interpretative Rules, consignment has to be classified under classification of a whole machine and not as a part. Further, **Hon'ble Tribunal, Mumbai in the case of Porritts and Spencer Asia Ltd vs. Commissioner of Customs (Import), NCH, Mumbai-I, reported in 2017 (345) ELT 149 (Tri-Mumbai)**, has also taken similar stand.

23.8.9 M/S White Carbon had intentionally not declared the goods so imported as e-bike in CKD condition and declared them as e-bike parts for the reason that for mis-declaration of description and classification there was the benefit available on some of the parts of e-bike like Motor, Controller, frame control panel etc. by virtue of the Notification No. 24/2005-Customs dated 01.03.2005, Notification No.12/2012-Customs dated 17.03.2012 and Notification No.50/2017-Customs dated 30.06.2017. This fact was also confirmed from the import data of M/S White Carbon wherein it was noticed that the said benefit of these Notifications had been availed by M/S White Carbon. Thus, it is an admitted fact that what had been imported by M/S White Carbon by filing Bills of Entry as specified in the Annexure to the Show Cause Notices, were e-bike/e-scooter in CKD condition but M/S White Carbon had mis-declared the same as parts of e-bike/e-scooter by wrongly classifying under various Customs Tariff Headings with an intention to evade Customs Duty at higher rate. Further, Shri Pratik Singh Sankhla, Director and production incharge (imports) vide his statement dated 13.12.2022, is found to have admitted that the said imported goods would be classifiable under CTH 87116020 of the customs Tariff Act, 1985. Thus, M/S White Carbon had intentionally mis-declared and wrongly classified the impugned imported goods in order to avoid higher rate of import Duty.

23.8.10 From the statements and submissions by the Directors of M/S White Carbon it is also gathered that the goods imported by them when assembled together did not give characteristics of an e-bike, because many local components like battery, charger, Tyre etc. were procured locally and they formed major part of an e-bike and hence, without those parts the final product so formed after assembling the imported parts did not give the essential characteristics of an e-bike. The contention by M/s White Carbon that battery and its charger are the main components and hence are they had not imported the kits to evade customs duty is untenable. I find that even though battery is important part of the vehicle it is not the principal part of an electric vehicle. Battery gives power to the vehicle, just like petrol or diesel gives power to the tradition combustion engines. Thus, calling battery as main component of the vehicle is akin to calling petrol as major component of a two or four stroke engine. Also, battery is a fix life component and can be replaced from time to time. The basis that since it gives power hence it is

the main component, is misplaced. It is also worth noting that the majority of the components were imported in fix number of kits. This explains the intention of the importer to evade customs duty. As per Rule 2(a) of General Rules of Interpretation of the Import Tariff, a bike without tyre and certain metal parts (nuts, bolts etc.) also would be classified as bike. Thus, the aforesaid e-scooter/e-bike in CKD condition is classifiable under Customs Tariff Heading 87116020.

23.8.11 In view of the facts narrated in para supra, it is found that in terms of the importance of parts, the impugned imported parts when assembled together give the essential characteristics of an e-scooter/e-bike. Further, even in terms of cost, the major part of cost was constituted by the imported CKD kits.

23.8.12 Rule 2(a) of the General Rules for Interpretation of Import Tariff makes it clear that any product, which is imported in the form of completely knocked down condition (CKD) and if such components have all the essential ingredients to work as a complete article after assembly of the same, in such cases, such components need to be classified as a complete article. In the present case, it has very categorically been established that when the impugned imported products are put together, they would work as complete e-bike/e-scooter. I, therefore, find that classification declared by M/S White Carbon while getting clearance of the impugned consignment from Customs Ports under various CTHs (85013119, 85359020, 85365020, 90292010, 8714) is not correct. The correct classification for the impugned products imported in unassembled condition would be under Customs Tariff Heading No.87116020 as e-bike/e-scooter.

23.8.13 Rule 2(a) of General Rules for Interpretation of Import Tariff contains the word "incomplete" as well. Hence, this rule should not be interpreted as if this would fit only if all the parts are imported and not just the major parts. It therefore appears that the importer was required to ensure that if the items imported by them impart the "essential characteristics" of the e-bike/e-scooter, it was required to be considered as an e-bike/e-scooter as per the statutory scheme of classification under the Customs Tariff Act, 1975, read with the Customs Act, 1962.

23.8.14 In L.M.L. v. Commissioner of Customs, Bombay - 1999 (105) E.L.T. 718 (Tribunal), the appellant had imported the complete body unit with all fittings for scooters. The said goods were described as "spare parts" in the Bills of Entry. The Customs Authorities concluded that the said goods were to be interpreted as a complete scooter since they had the essential character of a complete scooter by applying Rule 2(a) of the Interpretative Rules. The authorities relied upon the Explanatory Note to HSN in Chapter 87 of the Customs Tariff Act, 1975 which is set out 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.

Hon'ble Appellate Tribunal in its order had held that the complete body unit without an engine imported by the Appellants would be classifiable as "scooter" under Sub-heading 8711.90 of the Customs Tariff Act, 1975 in view of Explanatory Notes on page 1543 of HSN, as Explanatory Notes to HSN have great persuasive value while interpreting Customs Tariff Act, 1975.

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)]

23.8.15 Principal Bench of the Appellate Tribunal, New Delhi in the case of Bird Retail Pvt Ltd vs. Commissioner of Customs, New Delhi, reported in 2020 (373) ELT 267 (Tri-Del) held that 'segway' imported in CKD condition and assembled with the help of simple hand tools like spanner, screw driver, etc. but

without using any plant and machinery, for further sale in India, is classifiable under Tariff Item 8711 90 91 of Customs Tariff Act, 1975 and the same is not eligible for exemption under Sl. Nos. 443 and 444 of Notification No. 12/2012-Cus., dated 17.03.2012. Relevant portion of this Order is as under-

"26. In view of entire above discussion, we find that appellant have misdeclared their import consignment and what they have imported were Segway product classifiable under Customs Tariff Heading 8711 90 91 in completely knocked down condition. We, therefore, uphold the findings of the impugned order-in-original classifying the import consignments under 8711 90 91. We also find no reason to interfere with the order-in-original with regard to demand of Customs duty under Section 28(4) of the Customs Act, 1962 by invoking the extended time proviso as we find that the appellant have been fully aware as to what is being imported by them and they have consciously misdeclared their product as CKD parts of electrically operated two wheelers of captive use classifying the same under chapter sub-heading 8714 99 90. As discussed in preceding paragraphs it is come out very categorically that what has been imported by the appellant was Segway product in the CKD condition which required to be classified under Chapter sub-heading 8711 90 91. This attempt of misdeclaration was consciously done to evade customs duty by availing concessional rate of the duty. Notification No. 12/2012-Cus., dated 17-3-2012. In view of this, we uphold the correlating finding of the order-in-original with regard to confiscation of the misdeclared goods under Section 111(m) of the Customs Act, 1962 as well as imposition of the penalties on the appellant No. 1 as per the provision of Sections 114A and 114AA of the Customs Act, 1962 as well as the demand of the interest under the provisions of the Customs Act under Section 28AA."

23.8.16 Therefore it is seen that what had been imported in the instant case are e-bike/e-scooter in CKD Kits in the guise of parts of e-bike/e-scooter.

23.9. It is argued that since the goods imported by them contained only the 'parts' of the Electric Vehicle, it is covered by the (Customs Tariff Heading 85013119, 85359020, 85365020, 90292010, 8714): mostly others, which are the residual entry for the parts not specifically mentioned under Customs Tariff Heading. The imported goods included Frame, Brake, Motor, Controller, etc. and thus the said goods are covered by the Customs Tariff Heading No.87141090 as declared by them in the subject Bills of Entry.

23.9.1. Since, the parts/components imported have all the essential ingredients to work as a complete e-bike/e-scooter after assembly of the same. In such a situation, provisions of Rule 2(a) of the Interpretative Rules of the First Schedule to the Customs Tariff Act, 1975 would come into play in deciding the proper classification of the goods in question and accordingly, such parts merit classification as a complete e-bike/e-scooter.

23.9.2. Further contention is that it is an absurd situation that the goods for the purpose of IGST are classified under Customs Tariff Heading 8714 but for the purpose of Customs, are to be classified under Customs Tariff Heading 8711. This contention is not based on facts. It is clearly evident from the Annexure X to the Show Cause Notices that the differential Duty is worked out on the basis of BCD rate, SAD rate and IGST rate applicable to the goods falling under Customs Tariff Heading No.87116020.

23.10. The noticee in their submission presented that they have not done anything malafide either knowingly or deliberately. They have not wilfully misrepresented/ mis-stated the material facts regarding goods presented in bills of entry presented before customs at the time of import for assessment and clearance therefore, Section 28(4) is not applicable in the instant matter, instead Section 28(1) would be applicable in this instant case. The submission itself is an acceptance that there is a fault, whether intentional or otherwise. The fact that the M/s White carbon wants to change section to evade harsher penalty under section 28(4) of the Customs Act, 1962. However, the very modus of carefully going into details of CTH while filing Bill of Entry itself shows that the

importer knew what they were doing and doing it deliberately. Moreover, on a simple perusal of Chapter 87 of the Customs Tariff Act, 1985 and General Rules of Interpretation Shi Pratik Singh Sankhla acknowledged that the scooters imported by them by declaring parts of e-scooters mainly under Chapters 84 or 85 etc. in sets of equal quantities required assembling a particular numbers of E-scooters, bear essential characters of a complete E-scooter. Hence, the correct classification should be 87116020 of Customs Tariff Act, 1985 and any other classification is intended to evade payment of proper customs duty by availing ineligible benefits under notifications 50/2017-Customs dated 30.06.2017 as amended under notification no. 02/2022-customs dated 01.02.2022.

24. Whether M/s White Carbon are entitled for the benefit of concessional rate of duty availed by virtue of various Notifications by declaring the goods as parts of e-bike ?

24.1 Since the impugned imported goods, as mentioned under Annexure X of the Show Cause Notices, are correctly classifiable under Customs Tariff Heading No.87116020 as e-bike/e-scooter in CKD condition, M/s White Carbon is liable to pay import Duty at the rate applicable to the goods falling under Customs Tariff Heading No.87116020, as per the demand raised in the subject Show Cause Notices. Obviously, the benefit of concessional rate of Duty availed by M/s White Carbon by virtue of various Notifications by declaring the goods as parts of e-bike is required to be denied.

25. Whether the goods imported by M/s White Carbon under Bills of Entry mentioned in Annexure-X to the Show Cause Notices are to be confiscated or otherwise?

25.1 If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the provisions of Section 111(m) of Customs Act, 1962. It is to reiterate that in the present case it is an admitted fact that 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 CKD condition. M/s White Carbon has mis-declared the description of the said goods imported by them as parts instead of e-bike/e-scooter thereby contravening the provisions of Section 47 of the Customs Act, 1962 since the Bill(s) of Entry have not been filed in compliance to Section 46 of the Customs Act, 1962. Thus, the said goods imported by them are also liable for confiscation under Section 111(m) of the Customs Act, 1962.

25.2. Though, 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).

Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem 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.

26. Whether M/s White Carbon are liable to pay the differential amount of Customs Duty, as detailed in Annexure-X to the Show Cause Notices under Section 28(4) of the Customs Act, 1962, along with interest?

26.1. Keeping the aforesaid discussions in mind, I proceed to examine the matter further. M/s White Carbon filed Bills of Entry dated 07.02.2021 as detailed in Annexure X to the Show Cause Notices for clearance of goods by declaring the description as 'parts of e-bike/e-scooter' and classifying it under respective Customs Tariff Heading 8714. Although after issuance of Notification No. 03/2019-Cus dated 29.01.2019, for some consignments, M/s White Carbon started declaring "e-bike in CKD (not mounted on chassis)" in Bills of Entry, but failed to pay correct Duty on the imported goods as they had wrongly availed the benefit of entry No. 1(a) of Sr.No. 531A of Notification No. 50/2017-Cus, as amended, instead of the benefit under Entry No. 1(b) of Sr.No. 531A of said Notification. As discussed at paras supra, the goods imported are found as deliberately mis-classified as parts of e-bike/e-scooter instead of e-bike/e-scooter in order to evade Customs Duty at higher rate. Correct classification of the product in this case is determined under Customs Tariff Heading No.87116020. Hence, benefits of concessional rate of Duty as per various Notifications would not be available to the goods imported under the aforesaid Bills of Entry. M/s White Carbon are therefore liable to pay the differential Basic Customs Duty amounting to **Rs. 8,83,591/-** and differential Surcharge Amount of **Rs. 88,359/-**. Thus, the demand raised to recover the said amount of differential Customs Duties by both the Show Cause Notices under the provisions of Section 28(4) of the Customs Act, 1962 would sustain.

26.2 It has also been proposed by Show Cause Notices to demand and recover interest on the aforesaid differential Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that differential Basic Customs Duty amounting to **Rs. 8,83,591/-** and differential Surcharge Amount of **Rs. 88,359/-** is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.

27. Whether M/s White Carbon are liable to to penalty under the provisions of Section 112(a) & 112(b), 114A, 114AA and 117 of the Customs Act, 1962?

27.1 Further I consider the proposal of penalty upon M/s White Carbon under the provisions of Section 112 (a) & (b), Section 114A and Section 114AA of the Customs Act, 1962. The penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging willful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in foregoing paras, M/s White Carbon had willingly mis-stated the description of goods and wrongly classified the same with an intention to avoid the higher Duty liability that would have accrued to them if they had correctly classified the same. I therefore held that the differential Basic Customs Duty amounting to **Rs. 8,83,591/-** and differential Surcharge Amount of **Rs. 88,359/-** is to be recovered from them under Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that the penalty under Section 114A of the Customs Act, 1962 is to be imposed upon the Noticee.

27.2 Show Cause Notices also propose imposition of penalty under Section 112(a) & (b) of the Customs Act, 1962 on M/s White Carbon. In this regard it is to mention that the 5th proviso to Section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

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

In the instant case, I have already found that M/s White Carbon are liable to penalty under Section 114A of the Customs Act, 1962 and therefore penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

27.3. As per Section 114AA of the Customs Act, 1962, penalty can be levied when a person knowingly or intentionally makes, signs or used or causes to be made, signed or used, any declaration, statement or document, which is false or incorrect. It is evident from the facts and discussions made at paras supra that M/s White Carbon had intentionally made, signed and used false declarations in respect of material particulars in the Bills of Entry, as mentioned in the Annexure to the Show Cause Notices and accordingly, penalty under Section 114AA of the Customs Act, 1962 is to be imposed on them.

27.4. The directors of M/s White Carbon by inspite of knowing the fact that the goods imported are e-scooters classified them under wrong heading. Under their supervision and improper documentation, the improper import was made leading to improper payment of customs duty. By way of their such acts, the Directors of the firm have rendered themselves for penal action under Section 117 of the Customs Act, 1962.

28. Whether Shri Narendra Singh Sankhla, Director of M/s White Carbon is liable to penalty under the provisions of Section 112(a) and 112(b) and Section 114AA of the Customs Act, 1962 ?

28.1 Finally, the proposal to penalize **Shri Narendra Singh Sankhla**, Director of M/s White Carbon under Section 112 (a) & (b) and Section 114AA of the Customs Act, 1962 is to be examined. In terms of the provisions of Section 112(a) of the Customs Act, 1962, any person, 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 as act, is liable to penalty. Penalty under Section 112(b) can be imposed when a person 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 reasons to believe are liable to confiscation under Section 111 of the Customs Act, 1962.

28.2 Shri Narendra Singh Sankhla, being the active Director of M/s White Carbon as well as being the major shareholder, had the responsibility of managing the imports and assembling process in M/s White Carbon. Further, the *modus operandi*, as discussed in earlier paras, was developed by him and he had been monitoring the imports throughout including counter signing the Proforma Invoices which had the description of goods as "E-bikes in CKD condition". He is found to have intentionally adopted such *modus operandi* to evade the Customs Duty. The change in description of goods and the Customs Tariff Heading after the issuance of Notification No.03/2019 dated 29.01.2019 clearly shows his intentions. Prior to that, he was deliberately declaring the e-bikes in CKD condition as parts, to avoid paying higher rate of Duty. Hence, it is seen that he was aware of the provisions of the Customs Act, 1962 and was also fully aware of the goods being imported and he could have easily declared the correct classification of the goods imported by M/s White Carbon. However, he chose to adopt the said *modus operandi* to evade Customs Duty. In his statement dated 04.03.2021, he clearly admitted to have intentionally mis-declared the e-bikes as parts of e-bike to evade Custom Duty and avail benefits under FAME scheme. It therefore appears that by his acts of omission and commission, he has rendered the goods imported under Bills of Entry as mentioned in Annexure- X of the Show Cause Notices, liable for confiscation under Section 111(m) of the Customs Act, 1962 and consequently, he has rendered himself liable for penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962. Further, by knowingly and intentionally making, signing and using false declaration and document which was false or incorrect in material particular, in the transaction of above import business for the purposes of the Customs Act, 1962 in the Bills of Entry filed by them before Customs, he has rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

29. In view of my findings in the paras *supra*, I pass the following order-

ORDER

(A) In respect of Show Cause Notice No. VII/10-05/PI/HQ/2022-23 dated 12.10.2023 :-

(i) I reject the classification of the goods, viz. Parts of e-bike/e-scooter, as detailed in Annexure X to the Show Cause Notice, under respective Customs Tariff Headings, as declared by M/s White Carbon, and order that the goods are correctly classifiable under Customs Tariff Heading No.87116020 as Consignments of e-bikes in CKD condition;

(ii) I disallow the benefit of concessional rate of Duty availed by M/s White Carbon, by virtue of various Notifications by declaring the goods as Parts of e-bike/e-scooter;

(iii) I order for confiscation of the goods imported by M/s White Carbon under the Bills of Entry mentioned in Annexure X to the Show Cause Notice, having total assessable value of **Rs. 56,51,000/- (Rupees Fifty Six Lakhs Fifty One Thousand only)**, under Section 111(m) of the Customs Act, 1962. However, I give an option to M/s White Carbon to redeem the goods on payment of Fine of **Rs. 5,65,000/- (Rupees Five Lakh Sixty Five Thousand Only)** under Section 125 of the Customs Act, 1962;

(iv) I confirm the demand of differential Basic Customs Duty amounting to **Rs. 8,83,591/- (Rupees Eight Lakhs Eighty Three Thousand Five Hundred and Ninety One only)** and differential Surcharge Amount of **Rs. 88,359/- (Rupees Eighty Eight Thousand Three Hundred and Fifty Nine only)** as detailed in Annexure- X to the Show Cause Notice and order recovery of the same in terms of the provisions of Section 28(4) of the Customs Act, 1962;

(v) 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;

(vi) I refrain from imposing penalty on M/s White Carbon under Section 112 (a) & (b) of the Customs Act, 1962;

(vii) I impose penalty of **Rs. 9,71,950/- (Rupees Nine Lakh Seventy One Thousand Nine Hundred and Fifty only) plus penalty equal to the applicable interest under section 28AA of the Customs Act, 1962 payable on duty** on M/s White Carbon, in terms of the provisions of Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

(viii) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh only)** on M/s White Carbon, in terms of the provisions of Section 114AA of the Customs Act, 1962;

(ix) I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand only)** on M/s White Carbon, in terms of the provisions of Section 117 of the Customs Act, 1962;

(x) I impose penalty equal to **Rs. 97,000/- (Rupees Ninety Seven Thousand only)** on **Shri Narendra Singh Sankhla**, Director of M/s White Carbon, in terms of the provisions of Section 112 (a) & (b) (ii) of the Customs Act, 1962; However, in view of the proviso to Section 112(ii) of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the penalty determined above;

(xi) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** on **Shri Narendra Singh Sankhla**, Director of M/s White Carbon, in terms of the provisions of Section 114AA of the Customs Act, 1962.

Accordingly, SCN issued vide F.N. VIII/10-05/PI/HQ/23-24 dated 12.10.2023


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad.

F. No. VIII/10-121/Prev/O&A/HQ/23-24
DIN- 20240571MN0000510685

Dated.09.05.2024

BY SPEED POST:

To,

1. M/s. White Carbon Motors Private Limited, Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar – 382010.
2. Shri Narendra Singh Sankhla, Chairman & Director of M/s. White Carbon Motors Private Limited, Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar – 382010

Copy to:-

- (i) The Principal Commissioner, Customs Ahmedabad for information please.
- (ii) The Assistant Commissioner, ICD-Khodiyar.
- (iii) The Assistant Commissioner, Mundra port, Mundra.
- (iv) The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
- (v) Guard File