



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

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DIN-20251171MN0000002E09

क	फ़ाइल संख्या FILE NO.	S/49-105,106/CUS/AHM/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	AHD-CUSTM-000-APP-313 & 314-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.11.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. 27/ADC/VM/O&A/2024-25 dated 09.05.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(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



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या



	उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-				
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।				
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	Under section 129 (a) of the same Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.				



ORDER-IN-APPEAL

Appeals have been filed by M/s. White Carbon Motors Private Limited, Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar 382010 and 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, (hereinafter referred to as the 'Appellant 1 & Appellant 2') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 27/ADC/VM/O&A/2024-25 dated 09.05.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Customs, Customs, Ahmedabad (hereinafter referred to 'the adjudicating authority').

2. Facts of the case, in brief, are that in terms of the First schedule of the Customs Tariff Act, 1975, electric two-wheeler vehicles are classifiable under CTH 8711 and are leviable to tariff rate of Basic Customs Duty (BCD) @ 100% ad valorem and the parts and accessories of these vehicles are classifiable under CTH 8714 and are leviable to a tariff rate of BCD @ 15%/20%, Moreover, in terms of CBIC Notification No. 50/2017- Cus dated 30.06.2017 (Sr. No 531A), effective rate of duty on these goods under CTH 8711 is in the range of 15%/25%/50% depending upon the extent of assembly of these goods at the time of Importation, whereas effective rate of BCD on import of their parts & accessories under CTH 8714 is 15% vide Sr No. 532 of the said notification. Thus, rate of BCD leviable on import of electric vehicle in any condition mentioned at Sr. No. 1(b) and 2 of entry 531A of the Notification No. 50/2017-Cus dtd 30.06.2017 (i.e. 25%/50%) is higher than that leviable on import of their parts and accessories (i.e.15%).

2.1 It was gathered that some of the manufacturer of electric two wheelers (i.e. E-scooters/E-Bikes), had been resorting to duty evasion by importing complete electric two wheelers or their essential parts in knocked down condition such as motors, controllers, DC convertors, frame, charger, battery etc from China and classifying the same under chapter 8714 of Customs Tariff Act, 1975, by declaring the imported goods as parts of e-scooters/e-bikes. These importers were classifying other parts imported by them under various chapters as Chapter 39, 40, 48, 70, 73, 74, 83, 84, 85, 87, 90, 94, etc. depending on the nature of the goods being imported by paying BCD @ 10% or 15% ad valorem. It was further gathered that the parts of e-scooters/e-bikes were being



imported as sets of equal quantities required for assembling a particular quantity (nos.) of e-scooters/e-bikes. The same were declared as parts of e-scooters/e-bikes and were cleared at lower rate of duty. All parts which lend the essential character to the e-scooters/e-bikes such as motors, controller, Frame, charger and DC Converter were being imported and only a few parts such as tyres clamps, nuts, spanners etc might were being purchased locally or from other importers.

2.2 Based on the above, the search operations were carried out at the two premises (i) Plot No. B-120-121, GIDC Electronics Estate Sector 25, Gandhinagar, Gujarat & (ii) Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar - 382010 of M/s. White Carbon Motors Private Limited having IEC-AACCW5921D. During the search, Shri Pratik Singh Sankhla, Director of M/s. White Carbon Motors Private Limited explained before the Panchas that they were engaged in assembling of e-scooters/e-bikes and parts of e- scooters/e-bikes were imported from the China. They were assembling and selling 03 models (JAZZY, 03, GT5) of e-scooters through the dealers network in the brand name of "White Carbon". Shri Pratik Singh Sankhla, Director of the appellant 1 before Panch witnesses further informed that few parts like Rubber Tyre, Battery, Charger, Connectors, Metal Assembly, IOT (software) and some nuts and bolts were purchased locally / domestically. At the time of search proceedings some e-scooters (in ready to sell condition) were available in the premises and parts for assembling another fix numbers of E-scooters were also available in the premises.

2.3 On being asked regarding the type of parts being purchased for aforesaid assembly of E-scooters Shri Pratik Singh Sankhla informed that first they plan to assemble a particular number of different models of E-scooters and then according to that requirement they place the import order for the parts. He further elaborated that they imported the parts of E-scooters to assemble total E-scooters of various models which were imported in CKD condition. He further informed that they had imported E-scooters in CKD condition except other parts like Rubber Tyre, Charger, BMS (Battery Management System) some nuts and bolts etc. Shri Pratik Singh Sankhla provided the stock position of E-scooters Imported in CKD condition in their said factory. During the search proceedings the Customs officers informed Shri Pratik Singh Sankhla before the Panch



witnesses that the aforesaid imported goods imported by classifying, mainly, under Custom Tariff Head 8714 & by paying BCD @ 15% Ad valorem (& 10% ad.) appeared to fall under CTH 8711 as the same are carrying essential Character of Electric Scooters. The Import of the same then would have attracted BCD @ 50% (as the case may be), hence, it appeared that the said goods, imported by evading appropriate Customs Duty, were liable for confiscation under the Customs Act, 1962. Hence, the said goods under the reasonable belief were put under detention vide Detention Memo dated 23.11.2022.

2.4 During the search at Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar 382010, Shri Narendra Singh Sankhla, Chairman and Director of the importer explained that they were engaged in assembling of e-scooters/e-bikes and parts of e-scooters/e-bikes were imported from the China. They were assembling 03 models namely "03", "GT5" and "Jazzy" of e-scooters/e-bikes and selling them through the distributors / dealers network in the brand name of "White Carbon". He further informed that few parts like Rubber Tyre, Battery, Charger and some nuts and bolts were purchased locally / domestically. Shri Narendra Singh Sankhla, Chairman and Director of the importer informed before Panch witnesses that at the time of search proceedings, approximately 300 e-scooters, were available in their factory premises located at B/120-121, GIDC Electronic Estate, Sector 25, Gandhinagar. On being asked regarding the type of parts being purchased for aforesaid assembly of E-scooters Shri Narendra Singh informed that first they plan to assemble a particular number of different models of E-scooters and then according to that requirement they place the import order for the parts.

2.5 A statement of Shri Narendra Singh Sankhla, Chairman & Director of the importer was recorded on 23.11.2022 under Section 108 of Customs Act, 1962 wherein he interalia stated that he looked after accounts & Finance of the company. Having perused Panchnama dated 23.11.2022 drawn at M/s White Carbon Motors Private Limited located at Shalin, Plot No. 24, Office No. 807, Sector-11, Gandhinagar, he acknowledged its correctness. On being asked about the business activity being carried out the factory premises, 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. He stated that they were assembling the E-scooters in three models namely "03", "GT5" and "Jazzy" at their aforesaid 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 03 is Rs 50,000/-, E-scooter White Carbon GT5 is Rs. 1,12,150/- and E-scooter White Carbon Jazzy is Rs 77,160/-.

2.6 On being asked he stated that they were classifying the aforesaid imports mainly under CTH 8714 at the time of imports and paid BCD @ 15% ad valorem as per the Notification No. 50/2017-Cust dtd 30.06.2017 as amended. They were advised by their CHA M/s SMS International, Ahmedabad regarding the aforesaid classification.

2.7 A statement of Shri Pratik Singh Sankhla, Director & Production Incharge of the importer was recorded on 13.12.2022 Section 108 of Customs Act, 1962 wherein he interalia stated that he looked after production and operations of the company. Having perused Panchnama dated 23.11.2022 drawn at M/s. White Carbon Motors Private Limited located at Shalin, Plot No. 24, Office No. 807, Sector-11, Gandhinagar, he acknowledged its correctness. Further, having perused Panchnama & detention memo both dated 23.11.2022 drawn at M/s. White Carbon Motors Private Limited located at Plot No. B-120-121, GIDC Electronics Estate Sector Gandhinagar, he acknowledged its correctness. 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 "03", "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 03 is Rs 50,000/-, E-scooter White Carbon GT5 is Rs 1,12,150/- and E-scooter White Carbon Jazzy is Rs 77,160/-.

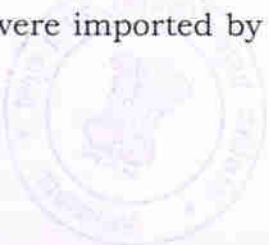
2.8 He further stated that they were classifying the aforesaid imports mainly under CTH 8714 at the time of imports pay BCD @ 15% ad valorem as per the Notification No. 50/2017-Cust dtd 30.06.2017 as amended. For the same they were advised by their CHA SMS International, Ahmedabad regarding the aforesaid classification. He was shown Chapter 87 of the Customs Tariff Act, 1985. Having perused the same, he acknowledged and agreed that Electric Scooters would be classifiable under CTH 871160 of the Customs Tariff Act, 1975. He was shown the Rule 2(a) of General Rules of Interpretation for import Tariff, HSN Explanatory Notes for Chapter 87, General Explanatory Note to the Section XVII. 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. Next, he was shown the Annexure-A to the Panchnama dtd 23.11.2022 drawn at the premises of M/s White Carbon Motors 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 inter- connected and not mounted on a chasis.

2.9 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. 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. 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.

2.10 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 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 which mentions about electrically operated vehicles. In the instant case, it appeared from the inventory of the imported goods that the importers have not imported parts in form other than the forms specified in condition 1(a) and 1(b), hence condition 1(a) and 1(b) as mentioned above are 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 importers viz., M/s. White Carbon Motors Private Limited in the instant case falls under the category "in a form other than (1) above" where standard rate of Customs Duty is 50%. The serial number 531A was further amended vide Notification No. 01/2020-Cus dated 02/02/2020 and Sr. No. 531A was modified after this amendment. However, this change was made effective from 01/04/2020. The rate of 50% is 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. Thus, in view of the above amendments to Notification No. 50/2017-Cus, it percolated that the goods imported by the appellant were E-scooters in complete Knocked Down kit and none of the parts such as motor, Motor Controller, Control Unit, energy monitor, brake system were interconnected and not mounted on a chassis. However, some parts viz electric motor, etc were pre-assembled part containing hub-motor (electric) inside rear tyre wheel frame. The same were imported by them by mis-declaring as parts of E-



scooters mainly under CTH 8714(or CTH 85-electrical Motor, etc.) in sets of equal quantities (as can be seen in "Annexure-A" to the Panchnama dtd 23.11.2022 required for assembling a particular quantity (Nos) of E-scooters bearing essential character of a complete Electric Scooter. Hence the said imported goods would be classifiable under CTH 87116020 of the Customs Tariff Act, 1985. In the instant case, the appellant, had imported some of the said parts of E-scooters in pre-assembled forms such as electric motor were pre-assembled part containing hub-motor (electric) inside rear tyre wheel frame. In view of the Notification No 50/2017-Cus dtd 30.06.2017 as amended by vide Notification No 03/2019-Cus dtd 29.01.2019 as amended vide Notification No 01/2020 dtd 02.02.2020 with effect from 01.04.2020, the effective rate of BCD leviable thereof would be as per Sr No 531A, sub-heading (1)(b).

2.11 From the inquiry conducted and the evidences gathered it appeared that M/s. White Carbon Motors Private Limited had imported e-bikes/e-scooters in CKD condition classifiable under Customs Tariff heading 8711 by resorting to misdeclaration of the same as "E-Scooter Spare Parts (parts and components of e-scooters/e-bikes)" by classifying the same mainly under CTH 8714 (or CTH 85-electrical Motor, etc) of Custom Tariff Act, 1975 with an intention to evade the payment of appropriate applicable Customs Duty. 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. Therefore, the said goods imported by the appellant appeared to be a complete e-scooter/e-bike in CKD condition, which appeared to be classifiable under Chapter Heading 87116020. 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."

2.12 It further appeared from the facts disclosed by Shri Narendra Singh Sankhla, Chairman & Director vide his statement that M/s. White Carbon Motors Private Limited is engaged in the manufacturing/assembling of Electric Vehicles (E-Bike/E-scooter) under three models namely "O3", "GT5" and "Jazzy" at their aforesaid factory premises. Shri Narendra Singh Sankhla, Chairman & Director of M/s. White Carbon Motors Private Limited further accepted that 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. Further, Shri Pratik Singh Sankhla, Director & Production In-charge of the importer in his statement recorded on 13.12.2022 also categorically accepted that they were engaged in assembling of Electric Scooters at their factory premises; that all the hardware for the said E-scooters were being imported from China except for Battery, Charger, Rubber Tyre and some other spare parts; that they were assembling the E-scooters in three models namely "O3", "GT5" and "Jazzy" at their factory premises; that 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. He also agreed that Electric Scooters would be classifiable under CTH 87116020 of the Customs Tariff Act, 1985; that Shri Pratik Singh Sankhla, Director & Production In-charge of the importer in his statement recorded on 13.12.2022 also 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. He agreed that the said imported goods would be classifiable under CTH 87116020 of the Customs Tariff Act, 1985.

2.13 In view of the above facts, it appeared that the E-scooters/E-bikes in CKD form imported by the importer M/s. White Carbon Motors Private Limited, have been mis-declared as "E-Scooter Spare Parts" and mis-classified as parts of e-bike/e-scooter under various CTHs mainly under CTH 8714 (or CTH 85-electrical Motor, etc) as mentioned above. However, as per the example



given in the HSN explanatory notes (relevant extract shown above), even if the bike is imported without fitted with the wheels or tyres and battery is classifiable as the corresponding complete or finished vehicle provided it has the essential character of the E-bike/E-scooter, within the ambit of Rule 2(a) of General Rules for Interpretation of Import Tariff. In the instant case, it appeared that the goods imported by M/s. White Carbon Motors Private Limited under the above referred Bills of Entry are used for assembling of complete E-vehicle/E-scooter (excluding battery and tyre). Thus, when the goods imported by the appellant were assembled, the resultant product is e-vehicle/e-scooter in incomplete or unfinished form. However, they were having essential characteristics of complete or finished article and therefore, in terms of provision of Rule 2 (a) of General Rules for Interpretation of Import Tariff they should be rightly classifiable in the Chapter Heading meant for e-vehicle i.e., 8711, even though the goods are imported in CKD form.

2.14 Vide Finance Act, 2011 w.e.f. 08.04.2011 "Self-Assessment" had 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. Thus, 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 were only known to the importer about the product and aforesaid fact came to light only subsequent to the in-depth investigation. Therefore, it appeared that M/s. White Carbon Motors Private Limited had 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'. It appeared that M/s. White Carbon Motors Private Limited 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 had failed to fulfil this legal obligation in respect of imports of above said goods for its correct and accurate classification.



2.15 From the above, it appeared that the appellant 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 the 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*.

2.16 In terms of Section 46 (4) of Customs Act, 1962, the appellant 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 appeared 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 appeared that the duty short levied and short paid is liable to be recovered in terms of Section 28 (4) of the Customs Act 1962. Thus it appeared that the classification of the goods under the Customs tariff head (CTH) 8714 claimed by M/s. White Carbon Motors Private Limited was required to be rejected and the said goods as detailed in Bills of Entry filed by the appellant were required to be correctly re-classified under Customs Tariff Heading 87116020 and charged to duties accordingly. Accordingly, the appellant 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 Show Cause Notice. The said evasion of duty was done by the appellant 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 was 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 appeared that the appellant 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 was also evident that the actual facts were only known to the appellant about the product and its actual classification. However, it appeared 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.

2.17 Shri Narendra Singh Sankhla, Chairman P. 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, had 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 had rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

2.18 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 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 the 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 the 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.

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, was called upon to show cause in writing to the Additional Commissioner of Customs, 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.

2.19 Consequently, the Adjudicating Authority passed the order as under:

- (i) He rejected 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) He disallowed 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) He ordered 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, he gave 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) He confirmed 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) He ordered recovery of interest on the above confirmed demand of Duty in terms of the provisions of Section 28AA of the Customs Act, 1962;
- (vi) He refrained from imposing penalty on M/s White Carbon under Section 112 (a) & (b) of the Customs Act, 1962;
- (vii) He imposed 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 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) He imposed 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) He imposed 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) He imposed 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) He imposed 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.

SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellants has filed the present appeals wherein they have submitted grounds which are as under:-

Grounds of Appeal of Appellant 1

3.1 The appellant has submitted that Adjudicating Authority has erred in failing to appreciate that the Show Cause Notice nowhere alleges that examination report of Custom officers pursuant to which goods were permitted clearance was in any manner incorrect or improper so as to consider the items covered by Bill of Entry No. 2661600 dated 07.02.2021 as e-scooters in complete knocked down condition. It is a matter of record that the goods were examined by Custom officers with reference to description, quantity, specifications and use in the manufacture of electrically operated vehicles, including two and three wheeled electric motor vehicles and the same were not found such that the same must be considered as E-scooters in CKD condition. Based on this, the assessing officer accepted the classification made by the appellant and accordingly, clearance was permitted. The department never challenged the assessment order. Hence, the impugned order demanding differential duty in the face of assessment order having already attained finality is not tenable in the eyes of law being contrary to the following amongst other decisions: -

- (i) ITC Ltd. v/s Commissioner of Central Excise, Kolkata-IV, 2019 (368) E.L.T. 216 (S.C.)
- (ii) Axiom Cordages Ltd. v/s Commissioner of Customs, Nhava Sheva- II, 2020 (9) TMI CESTAT Mumbai.
- (iii) Tripura Ispat, 2021 (1) TMI 753 Tripura HC.

3.2 The appellant has submitted that Adjudicating Authority has erred in failing to appreciate that there is no specific reference to Bill of Entry No. 2661600 dated 07.02.2021 in the statements that were recorded in the course of inquiry. Adjudicating Authority has also not given any categorical findings about how the various items covered by the aforesaid bill of entry would constitute essential characters of e-scooter so as to attract provisions of Rule 2



(a) of the General Rules for interpretation for the purpose of classification under CTH 8711 60 20 that is meant for scooters in SKD and CKD condition. Hence, duty is demanded on the basis of a non-speaking order, which is not permissible in the eyes of law.

3.3 The appellant has submitted that there is no dispute over the fact that the most essential items like battery, battery management system (software), charger, tyres and certain other parts have not been imported. The impugned order also, except for making a general observation, does not give any reason to conclude that the balance items that were covered by the bill of entry when put together would give essential character of a finished e-scooter. The appellant hereby says and submits that items imported by them, assembled or otherwise, are not sufficient to give essential character of an e-scooter. Hence, the impugned order rejecting the classification on merit and classifying all the items under CTH 8711 60 20 of the First Schedule to Customs Tariff Act, 1975 as e-scooter in SKD and CKD condition is not tenable in the eyes of law.

3.4 The appellant has submitted that Adjudicating Authority has erred in failing to appreciate that the appellant had declared each and every item under consideration in the bill of entry and presented the same before the officers for assessment and/or examination. As such, there is no collusion or wilful mis-statement or suppression of facts so as to justify invocation of extended period of limitation provided in Section 28 (4) for demanding duty. Moreover, the issue involved is interpretation of Rule 2 (a) of General Rules of Interpretation. Hence, demand of duty by invoking Section 28 (4) of Customs Act, 1962 is time-barred and therefore, not tenable in the eyes of law. On this basis, it is submitted that demand of interest under Section 28AA and levy of penalty under Section 114A of Customs Act, 1962 is also not tenable in the eyes of law.

3.5 The appellant has submitted that Adjudicating Authority has erred in imposing penalty under Section 114AA of Customs Act, 1962 without pointing out any declaration, statement or document knowingly or intentionally made, signed or used by appellant, which was found false or incorrect in any material particular. Moreover, Section 114AA is qua person and cannot be invoked against a Private Limited Company. Hence, imposition of penalty under Section 114AA of Customs Act, 1962 is not tenable in the eyes of law.



3.6 The appellant has submitted that Adjudicating Authority has erred in imposing penalty on appellant under Section 117 of Customs Act, 1962 inasmuch as Section 117, being a residuary provision cannot be invoked once specific penal provisions under Section 112, 114A and 114AA of Customs Act, 1962 were invoked in the Show Cause Notice. The appellant has submitted that Adjudicating Authority has erred in failing to appreciate that the dispute involved in this case is regarding classification and not about description and value. Hence, it is submitted that goods are not liable to confiscation under the provisions of Section 111 (m) of Customs Act, 1962. The appellant has submitted that the Adjudicating Authority has erred in imposing redemption fine in the facts and circumstances where goods are physically not available for confiscation, having already been cleared at the material time. Reliance is placed on the decision of larger Bench of Hon'ble Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd., 2009 (235) ELT 623 where it is held that goods cannot be confiscated when not available and redemption fine is not imposable. On this basis, it is submitted that the appellant is not liable to pay any redemption fine in respect of goods under consideration.

Grounds of Appeal of Appellant 2

3.7 The appellant has submitted that Adjudicating Authority has erred in failing to appreciate that the Show Cause Notice nowhere alleges that examination report of Custom officers pursuant to which goods were permitted clearance was in any manner incorrect or improper so as to consider the items covered by Bill of Entry No. 2661600 dated 07.02.2021 as e-scooters in complete knocked down condition. It is a matter of record that the goods were examined by Custom officers with reference to description, quantity, specifications and use in the manufacture of electrically operated vehicles, including two and three wheeled electric motor vehicles and the same were not found such that the same must be considered as E-scooters in CKD condition. Based on this, the assessing officer accepted the classification made by the appellant and accordingly, clearance was permitted. The department never challenged the assessment order. Hence, the impugned order demanding differential duty in the face of assessment order having already attained finality is not tenable in the eyes of law being contrary to the following amongst other decisions: -

- (i) ITC Ltd. v/s Commissioner of Central Excise, Kolkata-IV, 2019 (368) E.L.T. 216 (S.C.)



- (ii) Axiom Cordages Ltd. v/s Commissioner of Customs, Nhava Sheva-II, 2020 (9) TMI CESTAT Mumbai.
- (iii) Tripura Ispat, 2021 (1) TMI 753 Tripura HC.

3.8 The appellant has submitted that Adjudicating Authority has erred in failing to appreciate that there is no specific reference to Bill of Entry No. 2661600 dated 07.02.2021 in the statements that were recorded in the course of inquiry. The Adjudicating Authority has also not given any categorical findings about how the various items covered by the aforesaid bill of entry would constitute essential characters of e-scooter so as to attract provisions of Rule 2 (a) of the General Rules for interpretation for the purpose of classification under CTH 8711 60 20 that is meant for scooters in SKD and CKD condition. Hence, duty is demanded on the basis of a non-speaking order, which is not permissible in the eyes of law.

3.9 The appellant has submitted that there is no dispute over the fact that the most essential items like battery, battery management system (software), charger, tyres and certain other parts have not been imported. The impugned order also, except for making a general observation, does not give any reason to conclude that the balance items that were covered by the bill of entry when put together would give essential character of a finished e-scooter. The appellant hereby says and submits that items imported by them, assembled or otherwise, are not sufficient to give essential character of an e-scooter. Hence, the impugned order rejecting the classification on merit and classifying all the items under CTH 8711 60 20 of the First Schedule to Customs Tariff Act, 1975 as e-scooter in SKD and CKD condition is not tenable in the eyes of law.

3.10 The appellant has submitted that Adjudicating Authority has erred in failing to appreciate that M/s White Carbon had declared each and every item under consideration in the bill of entry and presented the same before the officers for assessment and/or examination. As such, there is no collusion or wilful mis-statement or suppression of facts so as to justify invocation of extended period of limitation provided in Section 28 (4) for demanding duty. Moreover, the issue involved is interpretation of Rule 2 (a) of General Rules of Interpretation. Hence, demand of duty by invoking Section 28 (4) of Customs Act, 1962 is time-barred and therefore, not tenable in the eyes of law. In as much as the demand of duty



against M/s White Carbon is not tenable on merit as well as limitation, the appellant who is the Chairman and Director of M/s. White Carbon is not liable to penalty under Section 112 and 114AA of Customs Act, 1962.

3.11 The appellant has submitted that Adjudicating Authority has erred in imposing penalty under Section 114AA of Customs Act, 1962 without pointing out any declaration, statement or document knowingly or intentionally made, signed or used by appellant, which was found false or incorrect in any material particular. Hence, imposition of penalty under Section 114AA of Customs Act, 1962 is not tenable in the eyes of law. The appellant has submitted that Adjudicating Authority has erred in failing to appreciate that the dispute involved in this case is regarding classification and not about description and value. Hence, it is submitted that goods are not liable to confiscation under the provisions of Section 111 (m) of Customs Act, 1962. Consequently, the appellant is not liable to penalty under Section 112 *ibid*. The appellant has submitted that Section 112 (a) and (b) operate in different fields and simultaneous and a common penalty is not imposable on appellant under both the sub-clauses.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 15.10.2025, following the principles of natural justice wherein Shri Vikas Mehta, Consultant appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Ahmedabad and the defense put forth by the Appellants in their appeal.

5.1 On going through the material on record, I find that the core issued for determination here is whether the imported goods are correctly classifiable under CTH 8714 or CTH 8711.

5.2 The Revenue's central argument is the application of GRI 2(a), which states that any reference to an article includes an incomplete or unfinished article, provided it has the essential character of the complete article, or a



complete article presented unassembled or disassembled. The impugned order heavily relies on the HSN Explanatory Note which includes "A motor vehicle, not yet fitted with the wheels or tyres and battery" as an example of an incomplete article retaining its essential character. The Appellants counter this by submitting that essential components like the battery, charger, tyres, and Battery Management System (BMS) were not imported and constituted a major part (47% by cost) of the final product, hence the imported components do not have the "essential character" of a complete electric scooter.

5.3 The argument that the Battery and BMS (Battery Management System) are the most essential parts of a Battery Operated Scooter (Electric Scooter) is highly persuasive. Unlike conventional (petrol/diesel) motor vehicles where the engine is the main source of motive power and is complex, in an electric vehicle, the electric motor is merely a component, and the power delivery system, comprising the Battery and the sophisticated BMS/Controller, is the distinguishing and truly "essential" characteristic. The example cited in HSN refers to a general motor vehicle, not specifically an Electric Vehicle where the battery and its management system are crucial for the primary function (propulsion) and longevity. The Revenue's analogy of battery to petrol/diesel is simplistic; the battery is a complex, high-value component that defines the vehicle's range and performance, far exceeding the nature of fuel storage. Judicial pronouncements consistently hold that Rule 2(a) requires the entire set of parts to be presented for classification as a complete article, often emphasizing that different consignments cannot be aggregated unless specifically provided for (e.g., Project Imports).

5.4 Given that crucial, high-value, and distinguishing components like the Battery, Charger, and Tyres were deliberately excluded and procured locally, the imported consignment, on its own, did not possess the "essential character" of a complete E-scooter. The assembly process undertaken post-importation by procuring significant domestic components further undermines the "CKD kit" classification. The opinion of the Chartered Engineer submitted by the Appellant also certified that the "ASSEMBLIES of these parts cannot lead to make a complete vehicles". The Revenue's re-classification under CTH 87116020 by invoking GRI 2(a) is not sustainable as the imported goods lacked the "essential character" of a complete electric scooter, given the omission of the battery,



charger, and tyres. The original classification by the Appellant primarily under CTH 8714 (for parts and accessories) is therefore upheld.

5.5 The differential duty demand of ₹ 9,71,950/- was raised by invoking the extended period of limitation under Section 28(4) of the Act, alleging "wilful mis-statement and suppression of facts" with intent to evade duty. The Appellants argue that this is a mere interpretational issue (Rule 2(a) vs. Rule 3(a)) and not one of deliberate mis-declaration. They point out that all relevant documents (invoice, packing list, product catalogue) were submitted, physical examination was carried out by the officers, and a Chartered Engineer's opinion was taken at the time of clearance which noted the essential missing parts.

5.6 It is a well-established principle, upheld by the Hon'ble Supreme Court in M/s. Uniworth Textiles Ltd vs Commissioner of Central Excise, Raipur, that mere non-payment of duty or a dispute over classification based on different interpretations of a Rule (like GRI 2(a) or 3(a)) does not automatically amount to collusion, wilful misstatement, or suppression of facts. The fact that the goods underwent physical examination, the documents were scrutinized, and the goods were cleared under self-assessment as claimed, after the Customs Authorities even called for and consulted a Chartered Engineer's certificate prior to clearance, substantially weakens the charge of suppression of facts or wilful mis-statement on the part of the importer. The classification was subject to the scrutiny of the proper officer at the time of importation. Given that the entire issue is rooted in a different interpretation of the application of GRI 2(a), and the elements of "suppression or wilful mis-statement" are not unequivocally established, the invocation of the extended period under Section 28(4) is not sustainable. Consequently, the differential duty demand is deemed time-barred as per the normal period of limitation under Section 28(1).

5.7 The Revenue ordered the confiscation of the cleared goods under Section 111(m) for mis-declaration and mis-classification. Since the goods were not available, a redemption fine was imposed under Section 125. As determined above, the mis-classification in this case is a genuine dispute over the interpretation of GRI 2(a), rather than deliberate mis-declaration with intent to evade duty. Misclassification alone does not warrant confiscation under Section 111(m). The remedy lies in re-assessment, not confiscation. Moreover, the Hon'ble Tribunal in Shiv Kripa Ispat Pvt. Ltd. [2009 (235) ELT 623] has held that



once goods are unconditionally cleared, and physical possession is relinquished, they cannot be confiscated under the Act. The Revenue's reliance on later High Court judgments allowing redemption fine for non-available goods is noted, however, since the foundational charge of "wilful mis-declaration to evade duty" under Section 28(4) is being set aside, and the re-classification is being overturned, the grounds for confiscation under Section 111(m) cease to exist. Since the re-classification is set aside and the invocation of Section 28(4) is not sustainable, the finding that the goods are liable to confiscation under Section 111(m) is set aside, and consequently, the imposition of the redemption fine under Section 125 is also set aside.

5.8 Penalties were imposed on the company under Sections 114A, 114AA, and 117, and on the Director, Shri Narendra Singh Sankhla, under Sections 112(a) & (b) and 114AA. Penalty under Section 114A is directly linked to the confirmation of duty demand under the extended period of limitation of Section 28(4). Since the invocation of Section 28(4) is set aside (as being time-barred), the penalty under Section 114A cannot be sustained. Penalties under Sections 112 and 114AA hinge on the finding that the goods were liable to confiscation (Section 112) or that a false or incorrect declaration was knowingly or intentionally made (Section 114AA). Since the confiscation of goods is set aside and the dispute is found to be based on an interpretation of the law without sufficient proof of malafide intent, the basis for these penalties is removed. The penalties on both the company and the Director are therefore set aside.

5.9 In light of the detailed discussion and findings above, this Appellate Authority concludes that the Revenue has failed to establish the prerequisites for the application of GRI 2(a) to classify the imported parts as E-scooters in CKD form, as the goods, lacking the battery and tyre, did not possess the "essential character" of an electric scooter. The invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962, as the dispute is primarily one of classification/interpretation without sufficient proof of wilful mis-statement or suppression of facts. Consequently, the differential duty demand is held to be time-barred, and the orders for confiscation and penalties cannot be sustained.

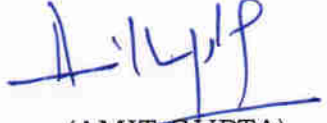
6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:



- (i) The Order-in-Original No. 27/ADC/VM/O&A/2024-25 dated 09.05.2024 is hereby set aside.

The appeals filed by M/s. White Carbon Motors Private Limited and Shri Narendra Singh Sankhla, Chairman & Director of M/s. White Carbon Motors Private Limited are hereby ALLOWED.




(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-105,106/CUS/AHD/2024-25

Date: 11.11.2025

By Speed post / E-Mail (As per Section 153(1)(a)&(c) of the Customs Act, 1962)

To,

- (1) M/s. White Carbon Motors Private Limited,
Plot No. 24, Office No. 807, Shalin, Sector-11, Gandhinagar 382010.
(email: info@whitecarbonmotors.com psankhla7@gmail.com)
- (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:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Ahmedabad
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, ICD-Khodiya.
(email: icdkhd-ahd@gov.in)
4. The Assistant Commissioner of Customs, Mundra Port, Mundra.
(email: commr-cusmundra@gov.in)
5. Shri. Vikas Mehta, Consultant, Ahmedabad (email: vikas@dlegal.in)
6. Guard File.

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