	<b>सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन,</b> <b>जामनगर - राजकोट हाइवे, विक्टोरिया ब्रिज के पास,</b> <b>जामनगर (गुजरात) - 361 001</b>
	<b>Office of the Commissioner of Customs (Preventive),</b> <b>'SEEMA SHULK BHAVAN', Jamnagar - Rajkot Highway,</b> <b>Near Victoria Bridge, Jamnagar (Gujarat) - 361 001</b>
	<b>Email: commr-custjmr@nic.in; adj-custjmr@nic.in</b>

दस्तावेज़ पहचान संख्या/

Document Identification Number (DIN)- 20240471MM000000E170

1.	फ़ाइल क्रमांक/ File Number	CUS/1362/2024-Adjn.
2.	मूल आदेश क्रमांक/ Order-In-Original Number	JAM-CUSTM-PRV-COM-001-24-25
3.	आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order	धिरेन्द्र लाल / Dhirendra Lal आयुक्त /Commissioner, सीमा शुल्क (निवारक) / Customs (Preventive), जामनगर /Jamnagar.
4.	आदेश की तिथि/ Date of Order	29.04.2024
5.	आदेश जारी करने की तिथि/ Date of issue of Order	29.04.2024
6.	कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date	संख्या/ No.: VIII/10-17/Commr/O&A/2020-21 दिनांक / dated: 29.09.2020 [REMAND PROCEEDINGS AS PER CESTAT ORDER NO. A/10458/2024 DATED 22.02.2024 IN APPEAL NO. 10259 OF 2021 ARISING OUT OF OIO NO. JAM-CUSTM-PRV-COM-003-20-21 DATED 15/18.01.2021]
7.	नोटिस पाने वाले का नाम/ Name of the Noticee	मेसर्स फोर्ड इंडिया प्राइवेट लिमिटेड, रेविन्यू सर्वे नंबर 06, ग्राम - उत्तर कोटपुरा, तालुका - सानंद, अहमदाबाद (गुजरात) - 382 170 M/s Ford India Private Limited, Revenue Survey No. 06, Village - North Kotpura, Taluka - Sanand, Ahmedabad (Gujarat)- 382 170.

1. इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है।  
The original copy of this order is provided free of cost to the person concerned.
2. इस मूल आदेश से व्यथित कोई भी व्यक्ति, सीमा शुल्क अधिनियम, 129 राकी था 1962A)(1)a), सीमा शुल्क नियम (अपील), 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए 3-में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए 3-में अपील का प्रपत्र, चार प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। (जिनमें से कम से कम एक प्रमाणित प्रति हो)

<b>सीमा शुल्क, उत्पाद शुल्क और सेवा कर</b> <b>अपीलीय न्यायाधिकरण, पश्चिम जोनल बेंच,</b>  दूसरी मंजिल, बहुमाली भवन असरवा, गिरधर नगर ब्रिज के पास, गिरधर नगर, अहमदाबाद, (गुजरात) - 380 004	<b>Customs, Excise and Service Tax</b> <b>Appellate Tribunal (West Zonal Bench)</b>  2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad (Gujarat) - 380 004
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Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-3, within three months from the date of receipt of this order, under the provisions of Section 129A(1)(a) of the Customs Act, 1962, read with Rule 6(1) of the Customs (Appeals) Rules, 1982. The form of appeal in Form No. CA.-3 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

3. अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये ) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।

The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

4. अपील के साथ 1962, सीमा शुल्क अधिनियम, की धारा ) 129A) की उप) धारा-6) के अंतर्गत किसी भी राष्ट्रीयकृत बैंक द्वारा न्यायाधिकरण की उक्त पीठ के सहायक रेजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट रु। -/5000 रु। -/1000 या रु। -/10,000 जैसा भी लागू होऐसे स्थान पर , जहां पर उक्त पीठ स्थित है। , स्थित शाखा के लिए जारी किया जाना चाहिए

The appeal should be accompanied with a cross demand draft in favour of the Assistant Registrar of the Bench of the Tribunal, on a branch of any Nationalized Bank located at a place where the bench is located for Rs. 1,000/- (in cases where the duty, interest, fine, or penalty demanded is Rs. 5 lakh or less), Rs. 5,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 5 lakhs but less than Rs. 50 lakhs) and Rs. 10,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 50 lakhs) as applicable under Sub-Section (6) of the Section 129(A) of the Customs Act, 1962.

5. अपीलीय ज्ञापन के साथ शुल्क भुगतान अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा /जुर्माना / शुल्क अधिनियम, 1962 की धारा 129(E) के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।

Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 (E) of the Customs Act, 1962.

6. अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम, और सिस्टेट 1982 नियम (प्रोसीजर) प्रक्रिया, के सभी नियमों का पूरा पालन हुआ है। 1982

While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.

7. इस आदेश के खिलाफ अपील, सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5 के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।

An appeal, against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal, on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.

**BRIEF FACTS OF THE CASE:**

M/s. Ford India Pvt. Limited, Revenue Survey No. 06, Village-North Kotpura, Taluka-Sanand, Ahmedabad holding IEC No. 0396011853 and Income Tax Permanent Account Number AAACM4454H (hereinafter referred to as 'the Noticee' / 'the Importer') are engaged in manufacture of Motor Vehicles falling under Chapter Heading 8703 of the Customs Tariff Act, 1975. The Noticee, amongst other imports, sought clearance of various imported Parts/ Components/ Equipment to be used in manufacture of Motor Vehicles under Bills of Entry filed for home consumption during the Period from 04.04.2018 to 28.03.2020.

2. It appeared that the Noticee prior to 14.11.2018, declared item description with mention of "*Components of the car parts*" in the Bills of Entry for import of these parts/components/ equipment classifying respective parts under Tariff item 73181900, 73181600, 73269090, 85123010, 85318000, 85011013, 85129000, 84833000, 85371000, 83023090, 85365090, 85437099, 90262000 and 96131000 of the First Schedule to the Customs Tariff Act,1975 (hereinafter referred to as "CTA"). However, subsequently, the Noticee changed the description and declared these imported parts/ components/ equipment without mentioning of "components of the Car Parts" and mentioned only respective item description for the imports covered under Bills of Entry filed on or after 14.11.2018.

3. It appeared that the Parts/Components/Equipment of the Motor Vehicle imported by the Noticee can broadly be segregated in two categories, i.e. (i) General Part of Motor Vehicles and (ii) Safety Air Bags and Parts thereof of Motor Vehicles. It appeared that, the Noticee claimed classification of the imported goods under Chapter 73 (Articles of Iron or steel), Chapter 83 (Misc. Articles of Base Metals), Chapter 84 (Nuclear reactors, boiler machinery, mechanical appliances and parts thereof); Chapter 85 (Electrical Machinery and equipment and parts thereof, sound recorders and reproduces, television image and sound recorders and parts and accessories of such articles) and under Chapter 96 (Misc. manufactured articles). Description of Items declared in the Bills of Entry with corresponding CTH by the Noticee are as under:

**Table- (I) General Part of Motor Vehicles**

Sr. No.	Description of Imported Items	CTH
1	Module Park Aid System	8531 80 00
2	Retainer Jack	7318 19 00
3	Motor Assembly Rear Window Wiper	8501 10 13
4	Arm and Blade Assembly Rear Window Wiper	8512 90 00
5	Bearing Shaft/Rod/Cap/ Etc.	8483 30 00
6	Nuts stamped MS hafnium	7318 16 00
7	Clip Push on Steel	7326 90 90
8	Horn and Sound (Support) Assembly	8512 30 10

9	Switch/penal Assembly Multiple Function	8537 10 00
10	Bracket Switch Multiple Function/plate assemble etc.	8302 30 90
11	Ring Cigarette Lighter Illuminate	9613 90 00
12	Base Assembly Cigarette Lighter	9613 90 00

**Table- (II) Safety Air Bags and Parts thereof of Motor Vehicles**

Sr. No.	Description of Imported Items	CTH
1	Pad Switch (Switch Assembly Passenger Air Bag Deactivate)	85365090
2	Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)	85437099
3	Electronic Control Unit (Control Assembly Occupant Restraint System)	85437099
4	Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)	85437099
5	Remote Sensor unit (Sensor Assembly side passenger Air Bag)	90262000

3.1. The Noticee paid customs duty at the following rates at the time of clearance of imported goods with respective Tariff items as under :

CTH	Duty Paid
7318 19 00	(i) Basic Custom Duty: 10% (ii) SWS: @10% (iii) IGST: @18%.
7318 16 00	
7326 90 90	
8512 30 10	
8531 80 00	
8501 10 13	(i) Basic Custom Duty: 7.5% (ii) SWS: @10% (iii) IGST: @18%.
8512 90 00	
8483 30 00	
8537 10 00	
8302 30 90	
8536 50 99	
8543 70 99	
9613 90 00	(i) Basic Custom Duty: 20% (ii) SWS: @10% (iii) IGST: @18%.
9626 20 00	(i) Basic Custom Duty: NIL (ii) SWS: NIL (iii) IGST: @18%.

4. It appeared that the Noticee is a manufacturer of Motor vehicle falling under Chapter Heading 8703 of the Customs Tariff and the imported goods are meant for specific purpose to use in the manufacturing of motor vehicles/car parts as well as for selling it as car parts of the motor vehicle manufactured by them. It therefore, appeared that these imported Parts/Components/Equipment of the Motor Vehicle are appropriately classifiable under Chapter 87 and specifically under Customs Tariff Heading No. 8708 meant for classification of "Parts and accessories of the motor vehicles of headings 87.01 to 87.05". The Customs duty structure in respect of CTH 8708 of the Customs Tariff prevailing at the material time is as under:

CTH	Duty Payable
8708	(i) Basic Custom Duty: 15% (ii) SWS: @10% (iii) IGST: @ 28%.

5. An inquiry with regard to classification of the imported goods by the importer in respect of the import of the General Parts of the Motor vehicles, was initiated through Summons proceedings under Section 108 of the Customs Act, 1962 to appear before the Superintendent, CH Pipavav on 14.09.2020. However, even after re-fixing the date of appearing on request of the Noticee and due to non availability of authorized representative of the Noticee for an inquiry through video conference facility, the inquiry was made in a manner that a set of the questionnaire was forwarded to the importer on their email address, with request to provide the answer/information of the questionnaire. The Noticee on 21.9.2020 submitted their reply regarding classification of components and parts imported by them vide Bill of Entry 8853647 dated 14.11.2018 and subsequently on being asked, on 24.09.2020 the importer submitted that the same goods (as imported vide Bill of Entry 8853647 dated 14.11.2018) are also imported under various Bills of Entry and used for manufacturing of vehicles. The importer in their letter dated 21.09.2020 read with letter dated 24.09.2020, *inter alia*, submitted as under:

(i) That the importer is engaged in manufacture and sale of Passenger cars, engines and parts thereof into domestic market and export. The importer are holder of Authorized Economic Operator (AEO)-T2 Certificate vide No. INAAACM4454H2F180 dated 20.06.2018 (valid till 19.06.2021). The importer are also holder of Five Star Export House Certificate vide no.04/17/0140/140620 dated 20.06.2014 (valid till 29.12.2020).

(ii) That the goods imported at Pipavav port covered under different 490 Bills of Entry during the period from 01.04.2018 to 28.03.2020 are same goods which are covered under the Bill of Entry 8853647 dated 14.11.2018 and used for manufacturing of vehicles; that motor vehicles manufactured by the Noticee are classified under CTH 8703 of the Customs Tariff; that goods imported are used in manufacture of motor vehicles and appropriately classified under their respective Chapter Heading by following classification principle laid down under Rule 1 of General Rules of Interpretation and relevant HSN explanatory notes.

(iii) That the parts imported at Pipavav port for manufacture of motor vehicles, can only be used for manufacture of specific model of vehicles at Sanand plant of the Company and described it as "Components of the car parts" classifying them under CTH 73181900,73181600,73269090, 85123010, 85318000, 85011013, 85129000, 84833000, 85371000, 83023090 and 96131000 to the first schedule to the Customs tariff Act; that they has stopped declaring the imported goods as "Components of the

car parts" from 14.11.2018, however, the goods imported before 14.11.2018 and the goods importer after 14.11.2018 are the same in nature and use.

(iv) That in spite of rejection of classification under CTH 73181900, 73181600, 73269090, 85123010, 85318000, 85011013, 85129000, 84833000 for various items imported vide Bill of Entry No. 88536447 dated 14.11.2018 and held to be classified under CTH 8708 vide Speaking Order No. 01/ DC/ GPPL/ Ford/ 2018-19 dated 06.12.2018 and Order-in-Original No 01/ DC/ PMT/ FORD/ 2020-21 dated-08.05.2020, they continued with the classification under various chapters, *supra*, because they preferred Appeal against the Order-in Appeal arising out of this OIO.

(v) That though the matter is pending litigation, they are paying duty under protest for imports after Aug., 2020 by classifying the goods in question under CTH 8708, because the jurisdictional Customs officials have started re-classification of such parts under CTH 8708 and these parts were critical for production; that they submitted copies of letter and replies communicated after issuance of those two orders dated 6.12.2018 and dated 8.5.2020.

(vi) The Noticee was asked to peruse Chapter Heading of 8708 which covers all Parts and Accessories of the Motor Vehicles of Headings 8701 to 8705, and were also asked to state why the imported goods being used in manufacture of Motor Vehicle falling under CTH 8701 to 8705, should not be classified under CTH 8708? The noticee stated that they have classified imported goods in accordance with the law laid down under Rule 1 of The General Rules of Interpretation of Import Tariff (hereinafter referred to as "GIR") read with the Section Notes and Chapter Notes and the appropriate HSN explanatory notes.

(vii) The Noticee was asked to refer Note 3 to Section XVII of the Customs Tariff, and since in their case, the intention of importing goods are to solely or principally use exclusively as components and parts of the Motor Vehicles falling under CTH 8701 to 8705, why these parts or accessories or components should not be appropriately classifiable under Chapter Heading 8708 of the Customs Tariff Act? The Noticee replied that they have classified imported goods in accordance with the law laid down under Rule 1 of GIR read with the Section and Chapter Notes and the appropriate HSN explanatory notes.

(viii) The Noticee was further put on reference that once it is settled in terms of Note 3 to the Section XVII of the Customs Tariff that in their case, the goods imported are correctly classified under Chapter Heading 8708 then what is the relevance of Note 2 to Section XVII of the Customs Tariff ? The Noticee in reply stated that the importer have classified imported goods in accordance with the law laid down under Rule 1 of GIR read with the Section and Chapter Notes and the appropriate HSN explanatory notes.

**5.1** Inquiry with regard to classification of the import of Safety Air Bag and Parts thereof under different Bills of entry was also initiated initially through Summon proceedings under Section 108 of the Customs Act, 1962 to appear before the Superintendent, SIIB, CH Pipavav on 04.09.2020. However, due to request for extension of time limit for appearing by the importer and to avoid further delay, the inquiry was made in a manner that a set of the questionnaire was forwarded to the importer on their email address, with request to provide the answer/information of the questionnaire by 26.9.2020. In response, the importer submitted the reply/information on 26.09.2020, inter-alia stating as under:

(i) That the subject goods imported under various Bills of Entry are used for manufacturing of vehicles; that the motor vehicles manufactured by M/s. Ford India P. Limited do fall under CTH 8703 of the First Schedule to the Customs Tariff Act; that goods are used in manufacture of motor vehicles and appropriately classified under their respective Chapter Headings by following classification principle laid down under Rule 1 of General Rules of Interpretation and relevant HSN explanatory note.

(ii) That the parts imported at Pipavav port for manufacture of motor vehicles; can only be used for manufacture of specific model of vehicles at Sanand plant of the Company and described it as "Components of the car parts" classifying them under Tariff item 85437099, 85365099 & 90262000 of the first schedule to the CTA.

(iii) The importer was asked to confirm and justify the classification of imported goods describing it as "different components of the Airbag" under Tariff item 85437099, 85365099 & 90262000. The Noticee replied that they have imported the subject Goods at Pipavav Port describing it as "Components of the car parts" classifying them under CTH 85437099, 85365099 & 90262000 to the first schedule to the Customs Tariff Act.

(iv) On being asked that the importer used to declare imported goods as "Components of the Air Bag" in the item description in the Bills of Entry filed before 14.11.2018 and subsequently stopped declaring the imported goods by the said description, whether the goods imported before 14.11.2018 and the goods importer after 14.11.2018 are different in nature or use thereof. The importer replied that the subject Goods (i.e. goods imported under above mentioned Bill of Entry No.9567725 dated 08.01.2019, 9500866 dated 02.01.2019, 9423805 dated 26.12.2018) are the same in nature and use as those imported later on.

(v) On being asked that in spite of rejection of classification under CTH 85437099, 85365099 & 90262000 for various items imported vide Bill of Entry No. 9567725 dated 08.01.2019, 9500866 dated 02.01.2019, 9423805 dated 26.12.2018 and held to be classified under CTH 8708 vide Speaking Order No. 05/DC/GPPL /Ford / 2018-19 on 18.01.2019 and Order-in-Original No 06 & 07/DC/GPPL/Ford /018-19 dated-18.01.2019

and in absence of any stay on operation of these orders why they continued with the classification under various chapters? The Noticee replied that they preferred Appeal against the Order-in Appeal OIA No. JMN/CUSTOM-000-APP-111 TO 113-19-20 dated 15.10.2019 arising out of this OIOs and they also referred clarification given in this regard by them to Pipavav Customs; that they submitted copies of letter and replies communicated after issuance of those orders dated 18.12.2018 and 18.01.2019.

(vi) The Noticee was asked to peruse Chapter Heading of 8708 which covered all Parts and Accessories of the Motor Vehicles of Headings 8701 to 8705, and were also asked to state why the imported goods which are being used in manufacture of Motor Vehicle falling under CTH 8701 to 8705 of the First Schedule to the Customs Tariff Act, should not be classified under CTH 8708 of the Customs Tariff ? The Noticee stated that they have classified imported goods in accordance with the law laid down under Rule 1 of GIR read with the Section and Chapter Notes and the appropriate HSN explanatory notes.

(vii) The Noticee was asked to refer Note 3 to Section XVII of the Customs Tariff, and since in their case, the intention of importing goods are to solely or principally use exclusively as components and parts of the Motor Vehicles falling under CTH 8701 to 8705 to the Customs Tariff Act, why these parts or accessories or components should not be appropriately classifiable under Chapter Heading 8708? The Noticee replied that the they have classified imported goods in accordance with the law laid down under Rule of GIR read with the Section and Chapter Notes and the appropriate HSN explanatory notes and they also filed Appeal before the Hon'ble CESTAT, Ahmedabad against OIA dated 15.10.2019

(viii) The Noticee was further put on reference that once it is settled in terms of Note 3 to the Section XVII of the Customs Tariff that in their case, the goods imported are correctly classified under Chapter Heading 8708 then what is the relevance of Note 2 to Section XVII of the Customs Tariff ? The Noticee in reply stated that the importer have classified imported goods in accordance with the law laid down under Rule 1 of GIR read with the Section and Chapter Notes and the appropriate HSN explanatory notes.

6. It appeared that parts and accessories of automobiles which are meant to be used solely and principally with/for the motor vehicles of CTH 8701 to 8705 cannot be considered as "parts of general use" and are therefore required to be classified under appropriate headings of parts & accessories of Chapter 87. It appeared that as per explanatory notes to Section XVII of the HSN, parts and accessories of the vehicles, aircraft or equipment concerned should be classified under headings of section XVII, only if they comply with following conditions :

(a) They must not be excluded by the terms of Note 2 to Section XVII



- (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 and
- (c) They must not be more specifically included elsewhere in the Nomenclature.

6.1 Section Note 2 and Section Note 3 to Section XVII reads as under:-

### **SECTION NOTE 2 & 3**

*(2) The Expression "Parts" and Parts and accessories do not apply to the following articles, whether or not they are identifiable as for the goods of this Section.*

- (a) Joints, washers or the like of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanized rubber other than hard rubber (heading 4016);*
- (b) Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (c) Articles of Chapter 82 (tools);*
- (d) Articles of heading 8306;*
- (e) Machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;*
- (f) Electrical machinery or equipment (Chapter 85);*
- (g) Articles of Chapter 90;*
- (h) Articles of Chapter 91;*
- (ij) Arms (Chapter 93);*
- (k) Lamps or lighting fittings of heading 9405; or*
- (l) Brushes of a kind used as parts of vehicles (heading 9603)."*

*(3) "References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory."*

6.2 It appeared that Parts and accessories, even if identifiable as for the articles of this Section, are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature. It appeared that following are relevant examples for such cases:

- (a) Profile shapes of vulcanised rubber other than hard rubber, whether or not cut to length (heading 40.08).
- (b) Transmission belts of vulcanised rubber (heading 40.10).
- (c) Rubber tyres, interchangeable tyre treads, tyre flaps and inner tubes (headings 40.11 to 40.13).
- (d) Tool bags of leather or of composition leather, of vulcanized fibre, etc. (heading 42.02).
- (e) Bicycle or balloon nets (heading 56.08).
- (f) Towing ropes (heading 56.09).
- (g) Textile carpets (Chapter 57).
- (h) Unframed safety glass consisting of toughened or laminated glass, whether or not shaped, glass used in motor car windscreens and windows (heading 70.07).
- (i) Rear-view mirrors (heading 70.09 or Chapter 90).
- (j) Unframed glass for vehicle headlamps (heading 70.14) and, in general, the goods of Chapter 70.
- (k) Flexible shafts for speed indicators, revolution counters, etc. (heading 84.83).
- (l) Vehicle seats of heading 94.01.

**6.3** It appeared that on the basis of legal position as laid down by Hon'ble Supreme Court in the cases of M/s. Asian Paints India Ltd [1988 (35) ELT 31 (SC), M/s. GS Auto International Ltd [ 2003 (152) ELT 3 (SC) and M/s. Cast Metal Industries Pvt. Ltd.,[2015(325) E.L.T.471 (S.C.)] that the parts & accessories of motor vehicles, which have not been otherwise excluded and are specially/specifically designed to be used for/with a motor vehicle of particular model and make should be classified under chapter 87. It further appeared that as per explanatory note to heading 8708, parts and accessories of motor vehicles of headings 87.01 to 87.05 which included in heading 8708, are subject to the fulfilment of two conditions that it must not be excluded by the terms of Note 2 to Section XVII and it must be suitable for use solely or principally with the articles of Chapters Heading 8701 to 8705. Therefore, it appeared that (i) the goods imported by the importer under the various Bills of Entry are solely and principally used for manufacture of motor vehicles, (ii) it can only be used for manufacture of specific model of vehicles at Sanad plant of the importer, (iii) these part/accessories/components have been specially designed and these are not capable to be used for any other purpose except to use in manufacture of Motor Vehicle of CTH 8703 of the Customs Tariff, and hence, these part/accessories/components do not qualify as parts of general use.

**7.** It appeared that nature of 'general use' is considered in two manners; the first is that where the part/accessories/component of the Motor Vehicle are available in open market as general items for general use but a manufacturer has adopted this item to use it in motor vehicle and still this part is capable of being used for any other purpose. The Second is that where the part is specifically designed for use in specific model of the motor vehicle which is also commercially known as part of the motor Vehicle but cannot be used elsewhere. In the second case, the part/ accessories/ components of the Motor Vehicle can be said to be used solely and principally in the Motor vehicle.

**8.** It appeared that the classification of General Parts / Accessories/ Components of Motor Vehicle as per Table-I of Para 3 above declared by the importer under Tariff items 73181900, 73181600, 73269090, 85123010, 85318000, 85011013, 85129000, 84833000, 85371000, 83023090 and 96131000 with specific declaration as "components of the car parts" covered under Bill of Entry No. 8853647 dated-14.11.2018, was rejected by the Dy.Commissioner, C.H., Pipavav and classified under CTH 8708 vide Order-in-Original No. 01/DC/GPPL/Ford /2018-19 dated 06.12.2018. Subsequently during de-novo adjudication consequent to out come of appeal proceedings the Deputy Commissioner, Customs House, Pipavav passed Order in Original: 01/DC/PMT/FORD/2020-21 dated 08.05.2020 holding that those imported goods are correctly classifiable under CTH 8708 of first schedule to the Customs Tariff Act, 1975.

8.1 Similarly, the classification of imported items i.e. Safety Air Bags and Parts thereof of Motor Vehicle as per Table-II of Para 3 above declared by the imported under Tariff item 85365090, 85437099 and 90262000 with specific declaration as "components of the car parts" covered by three different Bills of Entry No. 9567725 dated 08.01.2019, No. 9500866 dated 02.01.2019 and No. 9423805 dated 26.12.2018, were rejected and classified it under CTH 87089500 by the Deputy Commissioner, Customs House, Pipavav vide Order-in-Original No. 05/ DC/ GPPL/Ford/2018-19, No. 06/DC/ GPPL/ Ford/ 2018-19. and No. 07/ DC/ GPPL/Ford/2018-19 all dated 18.01.2019. The issue involved in all these three order was decided in the appeal proceedings vide the Order-in-Appeal No. JMN-CUSTOM-000-APP-111 to 113-19-20 dated 15.10.2019 therein the Commissioner (Appeals) Ahmedabad, upheld classification of disputed goods under CTH 87089500.

9. The classification of each of the items ((part/accessories/equipment of motor vehicle) in both the category of imported goods, i.e. General Part of Motor Vehicles and Safety Air Bags and its parts of Motor Vehicles are mentioned in the SCN item wise as under:

#### GENERAL PART OF MOTOR VEHICLES

Sr. No.	Description of Imported Items	CTH
1	Module Park Aid System	8531 80 00
2	Retainer Jack	7318 19 00
3	Motor Assembly Rear Window Wiper	8501 10 13
4	Arm and Blade Assembly Rear Window Wiper	8512 90 00
5	Bearing Shaft/Rod/Cap/ Etc.	8483 30 00
6	Nuts stamped MS hafnium	7318 16 00
7	Clip Push on Steel	7326 90 90
8	Horn and Sound (Support) Assembly	8512 30 10
9	Switch/panel Assembly Multiple Function	8537 10 00
10	Bracket Switch Multiple Function/plate assemble etc.	8302 30 90
11	Ring Cigarette Lighter Illuminate	9613 90 00
12	Base Assembly Cigarette Lighter	9613 90 00

#### (1) MODULE PARK AID SYSTEM

(i) The Module Park Aid System is an item specially designed and assigned with number as part of Ford cars. It is used in car and acts as sensor to alert any barrier around the park at the time of parking or turning or reversing the car. The item fitted in car receives signals from active park sensors fitted in car and once any object comes near the park sensors the item receives signals and creates audible signalling alert sound.

(ii) The importer claimed classification of the item under Tariff item 85318000. Since there is no specific entry for the item under heading 85.31, the importer resorted to classify the item under sub heading 85318000 as 'other'.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion list the item of Chapter 85 can only be excluded if they satisfy the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) Here the item cannot be qualified as part of general use of base metal or plastic. With regard to electrical machinery or equipment of Chapter 85, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. Since item under reference, is specially designed part of the motor vehicle and it is an admitted and undisputed fact that it is solely and principally designed to be used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "HUST 15K866 AE"

(v) In view of the above, the item namely Module Park Aid System is appropriately liable to be classified under CTH 8708 of the CTA.

## (2) RETAINER JACK

(i) The retainer Jack is a item specially designed part and assigned with a number as part of Ford cars. It is used in car which acts as metal threaded retainer and functions as fastener in vehicle jack kit.

(ii) The importer claimed classification of the item under CTH 73181900 of CTA. Since there is no specific entry for the item under heading 73.18, the importer resorted to classify the item under sub heading 7318.1900 as 'other'.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion list the item of Chapter 73 can only be excluded if they satisfy the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal*

*(Section XV). Or similar goods of plastics (Chapter 39);*

(iv) Since item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. Thus, the item cannot be qualified as part of general use of base metal or plastic. With regard to article of Chapter 73, it is required to refer Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. Here the principal and exclusive use of the item is to use as part of the motor vehicle manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "EA69-17A012-AB"

(v) In view of the above, the item namely Retainer Jack is appropriately liable to be classified under CTH 8708 of the CTA.

### **(3) MOTOR ASSEMBLY REAR WINDOW WIPER**

(i) The 'Motor Assembly Rear Window Wiper' is an item specially designed part and assigned with a number as part of Ford cars. It is used in car and acts as Motor assembly for functioning of the wiper system. The motor assembly connected with wiper arm and blade on rear end of the motor vehicle.

(ii) The importer claimed classification of the item under CTH 85011300 of CTA which specify the description as Electric Motor on an output not exceeding 37.5 W.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion list the item of Chapter 85 can only be excluded if the satisfy to the following :

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) It is obvious that the item Motor Assembly Rear Window Wiper cannot be qualified as part of general use of base metal or plastic. With regard to electrical machinery or equipment of Chapter 85, it is required to refer the Note 3 to Section XVII,

wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. Since item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to be used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "EAB5 17404 AA and EAB5 17404 BB"

(v) In view of the above, the item namely Motor Assembly Rear Window Wiper is appropriately liable to be classified under CTH 8708 of the CTA.

**(4) ARM AND BLADE ASSEMBLY REAR WINDOW WIPER**

(i) The 'Arm and Blade Assembly Rear Window Wiper' is specially designed part and assigned with a number as part of Ford cars. It is used in car which acts as wiper assembly system fitted on front/rear windshield without motor.

(ii) The importer claimed classification of the item under CTH 8512 90 00 of CTA.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion list the item of Chapter 85 can only be excluded if the satisfy to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) Here the item wiper assembly system without motor cannot be qualified as part of general use of base metal or plastic. With regard to electrical machinery or equipment of Chapter 85, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially

designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "E4B5 17C403 AC"

(v) In view of the above, the item namely 'Arm and Blade Assembly Rear Window Wiper' is appropriately liable to be classified under CTH 8708 of the CTA.

**(5) BEARING SHAFT/ROD/CAP/ ETC.**

(i) The 'Bearing Balance Shaft Centre and other Bearing Housing' are the part which is plain shaft bearing without any ball and roller, specially designed part and assigned with a number as part of Ford cars. It is used in car which acts as holding the crankshaft and prevent the force created by the piston and transmitted to the crankshaft by the connecting rod from dislodging the crankshaft.

(ii) The importer claimed classification of the item under CTH 8483 30 00 of CTA specifying as 'Bearing Housing, not incorporating ball & rollers bearing, Plain Shaft Bearing'.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion list the item of Chapter 84 can only be excluded if they satisfy to the following

- (a) *Joints, washers or the like of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanized rubber other than hard rubber (heading 4016);*
- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (e) *Machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;*

(iv) It is apparent that the item 'Bearing Balance Shaft Centre and other Bearing Housing' are not Joints, washers or the like of any material (classified according to their constituent material or in heading 8484).

(v) The plain shaft bearing are a part of general use and utilized for various purposes, but when any plain shaft bearings are specially designed for use in motor vehicle, which cannot be used elsewhere, the same become exclusively designed plain shaft bearing for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same do not remain as part of general use. At the same time if a plain shaft bearing of general series which is widely

used for different purpose and adopted by person as such without modification alteration and used in manufacture of motor vehicle, the same do qualify as parts of general use, which is not the case in the instant matter.

(vi) With regard to article of heading 84.83, it is required to refer to Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "GN1G-6L309-BB"

(vii) In view of the above, the item namely 'Bearing Balance Shaft Centre and other Bearing Housing' is appropriately liable to be classified under CTH 8708 of the CTA.

**(6) NUTS STAMPED MS HAFNIUM:**

(i) The 'Nuts stamped MS Hafnium' is a specially designed part and assigned with a number as part of Ford cars. It is used in car which act as metal threaded nuts and functions as fastener.

(ii) The importer claimed classification of the item under CTH 7318 16 00 of CTA specifying as Nuts.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion list the item of Chapter 73 can only be excluded if the satisfy to the following

(b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*

(iv) The item 'Nuts stamped MS Hafnium' is specially designed nuts solely and principally used in the Motor Vehicle of CTH 8703 manufacture by the importer. The Nuts are a part of general use and utilized for various purposes, but when any Nuts are specially designed for use in motor vehicle, which cannot be use elsewhere, the same



become exclusively designed Nuts for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same do not remain as part of general use. At the same time if a Nut of general series widely used for different purpose and adopted by person as such without modification alteration and used in manufacture of motor vehicle, the same do qualify as parts of general use, which is not the case in the instant matter. In term of the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to be used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "W709729-S442"

(v) In view of the above, the item namely 'Nuts stamped MS Hafnium' is appropriately liable to be classified under CTH 8708 of the CTA.

**(7) CLIP PUSH ON STEEL:**

(i) The 'Clip Push on Steel' is an item which is specially designed part and assigned with a number as part of Ford cars. It is used in car which act as push clip used on the vehicle body.

(ii) The importer claimed classification of the item under Tariff item 73269090 of CTA specifying as Nuts.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion list the item of Chapter 73 can only be excluded if the satisfy to the following

(b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*

(iv) The item 'Clip Push on Steel' is specially designed nuts solely and principally used in manufacture of Motor Vehicle of CTH 8703 by the importer. Also it is admitted by the importer that this item is identifiable part of Motor Vehicle and not falling within

the category of parts of general use. The 'Clip Push on Steel' are specially designed for use in motor vehicle, which cannot be used elsewhere, and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708. In term of the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "W703505-S307"

(v) In view of the above, the item namely 'Clip Push on Steel' is appropriately liable to be classified under CTH 8708 of the CTA.

**(8) HORN AND SOUND (SUPPORT) ASSEMBLY:**

(i) The 'Horn and Sound (Support) Assembly' is an item which is specially designed part and assigned with a number as part of Ford cars. It is used in car which acts as an horn assembly used in the Motor Vehicle for sound signalling.

(ii) The importer claimed classification of the item under Tariff item 85123010 of CTA which specifies the description as Sound Signalling Equipments.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion list the item of Chapter 85 can only be excluded if the satisfy to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) The item 'Horn and Sound (Support) Assembly' which cannot be qualified as part of general use of base metal or plastic. The 'Horn and Sound (Support) Assembly' can be a part of general use and utilized for various purposes, but when any 'Horn and Sound (Support) Assembly' are specially designed for use in motor vehicle, which cannot be use elsewhere, the same become exclusively designed 'Horn and Sound (Support) Assembly' for motor vehicle and the same do qualify as parts of motor

vehicles and liable for classification under CTH 8708, inasmuch as the same do not remain as part of general use. At the same time if a 'Horn and Sound (Support) Assembly' of general series which is widely used for different purposes and adopted by the importer as such without modification alteration and used in manufacture of motor vehicle, the same do qualify as parts of general use, which is not the case in the instant matter. With regard to electrical machinery or equipment of Chapter 85, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "J7BT-13A803-AA"

(v) In view of the above, the item 'Horn and Sound (Support) Assembly' is appropriately liable to be classified under CTH 8708 of the CTA.

**(9) SWITCH / PANEL ASSEMBLY MULTIPLE FUNCTION:**

(i) The 'Switch/panel Assembly Multiple Function' is an item which is special designed part and assigned with a number as part of Ford cars. It is used in car which acts as multiple switch assembly used as control equipment to perform various operations and operates at less than 1000v.

(ii) The importer claimed classification of the item under Tariff item 85371000 of CTA which specifies the description as Switch Board and Panel.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfies to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) The item 'Switch/panel Assembly Multiple Function' which cannot be qualified as part of general use of base metal or plastic. The 'Horn and Sound (Support) Assembly'

can be a part of general use and utilized for various purposes, but when any 'Switch/panel Assembly Multiple Function' are specially designed for use in motor vehicle, which cannot be used elsewhere, the same become exclusively designed 'Switch/panel Assembly Multiple Function' for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same do not remain as part of general use. At the same time if a Switch/panel Assembly Multiple Function of general series which is widely used for different purposes and adopted by the importer as such without modification alteration and used in manufacture of motor vehicle, the same do qualify as parts of general use, which is not the case in the instant matter. With regard to electrical machinery or equipment of Chapter 85, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. Since item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "J7BT-14K147-AA"

(v) In view of the above, the item 'Switch/panel Assembly Multiple Function' is appropriately liable to be classified under CTH 8708 of the CTA.

**(10) BRACKET SWITCH MULTIPLE FUNCTION/PLATE ASSEMBLY ETC.**

(i) The 'Bracket Switch Multiple Function' and similar items are specially designed and assigned with a number as part of Ford cars. It is used in car which acts as Metal Mounting For Decklid Switch.

(ii) The importer claimed classification of this part under Tariff item 83023090 which specifies the description as Mountings.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfy to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*

(iv) The item 'Bracket Switch Multiple Function' is specially designed mountings which cannot be qualified as part of general use of base metal or plastic. The 'Bracket Switch Multiple Function' can be a part of general use and utilized for various purposes, but when any 'Bracket Switch Multiple Function' are specially designed for use in motor vehicle, which cannot be use elsewhere, the same become exclusively designed 'Bracket Switch Multiple Function' for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same do not remain as part of general use. At the same time if a Bracket Switch Multiple Function of general series which is widely used for different purposes and adopted by the importer as such without modification alteration and used in manufacture of motor vehicle, the same do qualify as parts of general use, which is not the case in the instant matter. In terms of the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "J7BT-14D057-AA"

(v) In view of the above, the item 'Bracket Switch Multiple Function' and similar items such plate assembly etc. is appropriately liable to be classified under CTH 8708 of the CTA.

**(11) RING CIGARETTE LIGHTER ILLUMINATE**

(i) The 'Ring Cigarette Lighter Illuminate' is an item which is specially designed part and assigned with a number as part of Ford cars. It is used in car which part is a ring used in Cigarette Lighter to Illuminate.

(ii) The importer claimed classification under Tariff item 96139000 of CTA which specifies the description as Cigarette Lighter and Parts.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as

for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfy to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*

(iv) The item 'Ring Cigarette Lighter Illuminate' is specially designed part which cannot be qualified as part of general use of base metal or plastic. The importer also did not claim that this part is of general use, however, the 'Ring Cigarette Lighter Illuminate' can be considered as a part of general if used and utilized for various purposes, but when any "Ring Cigarette Lighter Illuminate" are specially designed for use in motor vehicle, which cannot be use elsewhere, the same become exclusively designed "Ring Cigarette Lighter Illuminate" for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same do not remain as part of general use. At the same time if a 'Ring Cigarette Lighter Illuminate' of general series which is widely used for different purposes and adopted by the importer as such without modification & alteration and used in manufacture of motor vehicle, the same do qualify as parts of general use, which is not the case in the instant matter. In terms of the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "E3B5-15K040-AB"

(v) In view of the above, the item 'Ring Cigarette Lighter Illuminate' and similar items such plate assembly etc. is appropriately liable to be classified under CTH 8708 of the CTA.

#### **(12) BASE ASSEMBLY CIGARETTE LIGHTER**

(i) The item 'Base Assembly Cigarette Lighter' which is specially designed part and assigned with a number as part of Ford cars. It is used in car which is a socket used in the Cigarette Lighter.

(ii) The importer claimed classification under Tariff item 96139000 of CTA which specifies the description as Cigarette Lighter and Parts.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfy to the following

(b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*

(iv) The item 'Base Assembly Cigarette Lighter' is specially designed part which cannot be qualified as part of general use of base metal or plastic. The importer also did not claim that this part is of general use, however, the 'Base Assembly Cigarette Lighter' can be considered as a part of general use if utilized for various purposes, but when any 'Base Assembly Cigarette Lighter' are specially designed for use in motor vehicle, which cannot be used elsewhere, the same become exclusively designed 'Base Assembly Cigarette Lighter' for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same have not remained as part of general use. At the same time if a 'Base Assembly Cigarette Lighter' of general series which is widely used for different purposes and adopted by the importer as such without modification & alteration and used in manufacture of motor vehicle, the same do qualify as parts of general use, which is not the case in the instant matter. In terms of the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to be used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The item is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "F1ET-15K047-AA"

(v) In view of the above, the item 'Base Assembly Cigarette Lighter' and similar items plate assembly etc. are appropriately liable to be classified under CTH 8708 of the CTA.

(II) **SAFETY AIR BAGS AND PARTS THEREOF OF MOTOR VEHICLES.**

Sr. No	Description of Imported Items	CTH
1	Pad Switch (Switch Assembly Passenger Air Bag Deactivate)	85365090
2	Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)	85437099
3	Electronic Control Unit (Control Assembly Occupant Restraint System)	85437099
4	Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)	85437099
5	Remote Sensor unit (Sensor Assembly side passenger Air Bag)	90262000

(1) **PAD SWITCH (SWITCH ASSEMBLY PASSENGER AIR BAG DEACTIVATE)**

(i) The 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' are specially designed parts of Safety Air Bag and assigned with a number as part of Ford cars. It is used in car which acts as it is pressure sensor with an accelerometer that detects when vehicle has been in a crash situation and sends the signal to the main airbag electronic control module. This pressure sensor can measure small pressure fluctuations at high static pressure levels. In the event of a serious side impact, pressure sensors help gain precious reaction time by measuring the steep and quick increase of pressure within the cavities of passenger car doors. Even before the accelerometers attached to the airbag control unit receives a signal indicating a heavy impact, the pressure sensors have determined that the door cavities have been compressed by an accident. This early detection gives the airbag control unit additional time to run sophisticated algorithms to determine the airbag-deployment strategy that will deliver optimal passenger protection.

(ii) The importer claimed classification under Tariff item 85365090.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfy to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) The item 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' cannot be qualified as part of general use of base metal or plastic. The 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' can be considered as a part of general use which may have use for various purposes, but when any 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' are specially designed for use in motor vehicle, which cannot be used elsewhere, the same become exclusively designed 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same have not remained as part of general use. With regard to electrical machinery or



equipment of Chapter 85, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The items of 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "ABIT-14B268-AB"

(v) Also Tariff item 87089500 specifically mentions the items of description 'Safety Air Bag with Inflater System; Parts thereof' and 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' do qualify an item under description of 'Safety Air Bag and Parts thereof'. Once the item 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' is categorically specified under Tariff item 87089500 of CTA, there is no reason to classify the same under other headings.

(vi) In view of the above, the item 'Pad Switch (Switch Assembly Passenger Air Bag Deactivate)' is appropriately liable to be classified under CTH 8708 of the CTA.

## **(2) REMOTE SENSOR UNIT (SENSOR AND BRACKET ASSEMBLY AIR BAG CENTRE)**

(i) The item 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' are specially designed parts of Safety Air Bag and assigned with numbers as part of Ford cars. This part is used for occupant restraint control device with mounting bracket. It consists of Collision sensor with integrated PCB. This part helps the air bag to inflate during Collision. This part is composed of sensor and printed circuit board enclosed in a plastic case with external connector and mounted on a bracket to get installed in vehicle. The airbag sensor senses the impact signals generated by the sensor to deflate or inflate the air bag.

(ii) The importer claimed classification under Tariff item 85437099 of CTA.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfy to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) The item 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' cannot be qualified as part of general use of base metal or plastic. The 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' can be considered as a part of general use which may have use for various purposes, but when any 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' are specially designed for use in motor vehicle, which cannot be use elsewhere, the same become exclusively designed 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same have not remained as part of general use. With regard to electrical machinery or equipment of Chapter 85, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to be used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The items of 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' are assigned specific 'PART NUMBER' by the importer as parts of motor vehicle as "FR3T-14B006-AA", "GN15-14B006-AA" and "E3BS-14B006-AC".

(v) Also Tariff item 87089500 specifically specifies the items of description 'Safety Air Bag with Inflator System; Parts thereof' and 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' do qualify an item under description of 'Safety Air Bag and Parts thereof'. Once the item 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' is categorically specified under Tariff item 87089500 of CTA, there is no reason to classify the same under other headings.

(vi) In view of the above, the item 'Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)' is appropriately liable to be classified under CTH 8708 of the CTA.

**(3) ELECTRONIC CONTROL UNIT (CONTROL ASSEMBLY OCCUPANT RESTRAINT SYSTEM)**

(i) The item 'Electronic Control Unit (Control Assembly Occupant Restraint System)' are specially designed parts of Safety Air Bag and assigned with numbers as part of Ford cars. These parts are control assembly, which receive commands from the restraint control module to the deployment of the airbags, and seatbelt pretensioners based on inputs from crash sensors that maybe located on the front and on the sides of the vehicle. It is also responsible for triggering the fuel cut off command. Depending on the intensity of the crash the RCM decides which command, if any, should be set based on the calibration during the vehicle testing.

(ii) The importer claimed classification under Tariff item 8543 70 99 of CTA.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfy to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) The item 'Electronic Control Unit (Control Assembly Occupant Restraint System)' cannot be qualified as part of general use of base metal or plastic. In case where the 'Electronic Control Unit (Control Assembly Occupant Restraint System)' can be considered as a part of general use it may have use for various purposes, but when any 'Electronic Control Unit (Control Assembly Occupant Restraint System)' are specially designed for use in motor vehicle, which cannot be use elsewhere, the same become exclusively designed 'Electronic Control Unit (Control Assembly Occupant Restraint System)' for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same have not remained as part of general use. With regard to electrical machinery or equipment of Chapter 85, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part

of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The items of 'Electronic Control Unit (Control Assembly Occupant Restraint System)' are assigned specific 'PART NUMBER' by the importer as parts of motor vehicle as "J7BT-14B321-AC", "J7BT-14B321-CB", "J7BT-14B321-BD", "J7BT-14B321-EB" and "J7BT-14B321-FB".

(v) Also Chapter Sub Heading 87089500 specifically mentions the items of description 'Safety Air Bag with Inflator System; Parts thereof' and 'Electronic Control Unit (Control Assembly Occupant Restraint System)' do qualify an item under description of 'Safety Air Bag and Parts thereof'. Once the item 'Electronic Control Unit (Control Assembly Occupant Restraint System)' is categorically specified under Tariff item 87089500 of CTA, there is no reason to classify the same under other headings.

(vi) In view of the above, the item 'Electronic Control Unit (Control Assembly Occupant Restraint System)' is appropriately liable to be classified under CTH 8708 of the CTA.

**(4) MOD ASY-SMART DAT LNK CON (MODULE ASSEMBLY SMART DATA LINK CONNECT)**

(i) The item 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' are specially designed parts of Safety Air Bag and assigned with numbers as part of Ford cars. This part acts as releasable connects to a vehicle data bus allowing connection of the transmission control module (TCM), an ABS control module, and an air to the electrical system without the use of complicated wiring diagrams.

(ii) The importer claimed classification under Tariff item 85437099 of CTA.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfy to the following

- (b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*
- (f) *Electrical machinery or equipment (Chapter 85);*

(iv) The item 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' cannot be qualified as part of general use of base metal or plastic. The 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' can be considered as a part of general use if it has use for various purposes, but when any 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' are specially designed for use in motor vehicle, which cannot be used elsewhere, the same

become exclusively designed 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same have not remained as part of general use. With regard to electrical machinery or equipment of Chapter 85, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The items of 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' are assigned specific 'PART NUMBER' by the importer as parts of motor vehicle as "J7BT-14F642-AB".

(v) Also Chapter Sub Heading 87089500 specifically specifies the items of description 'Safety Air Bag with Inflator System; Parts thereof' and 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' do qualify an item under description of 'Safety Air Bag and Parts thereof'. Once the item 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' is categorically specified under Tariff item 87089500 of CTA, there is no reason to classify the same under other headings.

(vi) In view of the above, the item 'Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)' is appropriately liable to be classified under CTH 8708 of the CTA.

**(5) REMOTE SENSOR UNIT (SENSOR ASSEMBLY SIDE PASSENGER AIR BAG)**

(i) The item 'Remote Sensor unit (Sensor Assembly side passenger Air Bag)' is specially designed parts of Safety Air Bag and assigned with a number as part of Ford cars. This part is pressure sensor with an accelerometer that detects when vehicle has been in a crash situation and sends the signal to the main airbag electronic control module. This pressure sensor can measure small pressure fluctuations at high static pressure levels. In the event of a serious side impact, pressure sensors help gain precious reaction time by measuring the steep and quick increase of pressure within the cavities of passenger car doors. Even before the accelerometers attached to the airbag control unit receive a signal indicating a heavy impact, the pressure sensors have

determined that the door cavities have been compressed by an accident. This early detection gives the airbag control unit additional time to run sophisticated algorithms to determine the airbag-deployment strategy that will deliver optimal passenger protection.

(ii) The importer claimed classification under Tariff item 90262000 of CTA.

(iii) In terms of Note 2 to Section XVII, the expressions "parts" and "parts and accessories" do not apply to the certain articles, whether or not they are identifiable as for the goods of this Section. In the exclusion, list the item of Chapter 85 can only be excluded, if it satisfy to the following

(b) *Parts of general use, as defined in Note 2 to Section xv, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*

(g) *Articles of Chapter 90;*

(iv) The item 'Remote Sensor unit (Sensor Assembly side passenger Air Bag)' which cannot be qualified as part of general use of base metal or plastic. The 'Remote Sensor unit (Sensor Assembly side passenger Air Bag)' can be considered as a part of general use which may have use for various purposes, but when any 'Remote Sensor unit (Sensor Assembly side passenger Air Bag)' are specially designed for use in motor vehicle, which cannot be used elsewhere, the same become exclusively designed 'Remote Sensor unit (Sensor Assembly side passenger Air Bag)' for motor vehicle and the same do qualify as parts of motor vehicles and liable for classification under CTH 8708, inasmuch as the same have not remained as part of general use. With regard to Article of Chapter 90, it is required to refer the Note 3 to Section XVII, wherein it has stipulated that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. The effect of Note 3 is that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. The item under reference, is specially designed part of the motor vehicle and as admitted and undisputed fact, it is solely and principally designed to used in car of CTH 8703 being manufactured by the importer only. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item exclusively used in the car manufactured by the importer. The items of 'Remote Sensor unit (Sensor Assembly side passenger Air Bag)' is assigned a specific 'PART NUMBER' by the importer as part of motor vehicle as "GN15-14C676-AC"

(v) Also Tariff item 87089500 specifically specifies the items of description 'Safety Air Bag with inflator System; Parts thereof' and 'Remote Sensor unit (Sensor Assembly side passenger Air Bag)' do qualify an item under description of 'Safety Air Bag and Parts thereof'. Once the item 'Remote Sensor unit (Sensor Assembly side passenger

Air Bag)' is categorically specified under Tariff item 87089500 of CTA, there is no reason to classify the same under other headings.

(vi) In view of the above, the item 'Remote Sensor unit (Sensor Assembly side passenger Air Bag)' is appropriately liable to be classified under CTH 8708 of the CTA.

9.1. It appeared that the General Part of Motor Vehicles imported by the importer, which are specially designed as well as solely and principally used in Motor Vehicle of CTH 8703 of CTA being manufactured by the importer, are appropriately classifiable under Tariff item 87089900 of the Customs Tariff Act and 'Safety Airbag and Parts thereof' are appropriately classifiable under Tariff item 87089500 of the Customs Tariff Act.

10. It appeared that the importer prior to 14.11.2018, described the imported goods which are broadly categorized here as General Parts of Motor Vehicle, with suffix "components of the car parts" acknowledging it as car parts and classifying it with different tariff items as discussed in forgoing para i.e. 73181900, 73181600, 73269090, 85123010, 85318000, 85011013, 85129000, 84833000, 85371000, 85365090, 85437099, 83023090, 96131000 and 96262000; whereas, after 14.11.2018, the importer mentioned only the name of the respective item without the suffix. The importer from August, 2020 onwards classified these items under CTH 8708 without specific declaration of "components of the car parts" as suffix and paying duty at appropriate rate under protest.

11. It appeared that during the period 01.04.2018 to 31.03.2020, the importer imported General Parts of Motor Vehicle and also Safety Airbags and Parts thereof as mentioned in Table below classifying the same under Tariff item mentioned against each description and sought clearance under different 490 Bills of Entry.

**(I) General Parts of Motor Vehicles**

Sr. No.	Description of Imported Items	CTH
1	Module Park Aid System	8531 80 00
2	Retainer Jack	7318 19 00
3	Motor Assembly Rear Window Wiper	8501 10 13
4	Arm and Blade Assembly Rear Window Wiper	8512 90 00
5	Bearing Shaft/Rod/Cap/ Etc.	8483 30 00
6	Nuts stamped MS hafnium	7318 16 00
7	Clip Push on Steel	7326 90 90
8	Horn and Sound (Support) Assembly	8512 30 10
9	Switch/penal Assembly Multiple Function	8537 10 00
10	Bracket Switch Multiple Function/plate assemble etc.	8302 30 90
11	Ring Cigarette Lighter Illuminate	9613 90 00
12	Base Assembly Cigarette Lighter	9613 90 00

(II) Safety Airbags and Parts thereof

Sr. No.	Description of Imported Items	CTH
1	Pad Switch (Switch Assembly Passenger Air Bag Deactivate)	85365090
2	Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)	85437099
3	Electronic Control Unit (Control Assembly Occupant Restraint System)	85437099
4	Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)	85437099
5	Remote Sensor unit (Sensor Assembly side passenger Air Bag)	90262000

11.1 It appeared that these items are specially designed material exclusively used for specific model of the Motor Vehicle of CTH 8703, being manufactured by the importer at their Sanand plant; that these items cannot be used for any other purpose; that they have commercial identity as part/accessories/components of the Motor Vehicle of CTH 8703 manufactured by the Importer i.e. part/accessories/components of FORD passenger Car; that these are not "parts of general use" and specially designed parts for use in particular brand and model of the vehicles and are sold in unit and as per part numbers of the original vehicle manufacturers; that therefore, General Parts of Motor Vehicle mentioned in above Table-I are appropriately classifiable under Tariff item 87089900; that Safety Airbag and Parts thereof of Motor Vehicle mentioned in above Table II, are appropriately classifiable under CTH 87089500 of the Customs Tariff Act.

11.2 It appeared that the Rate of duty prevailing at the time of Import for CTH 8708 was Basic Customs Duty @15%, Social Welfare Cess @105 and IGST @28% as against different rate of duty paid by the importer which are as under:-

**Difference in Rate of duty: General pars of the Motor Vehicle:**

CTH Declared by Importer	Rate at which the duty Paid	CTH Correctly applicable	Rate at which the duty Payable
7318 1900	(i) BCD: 10% (ii) SWS: @ 10% (iii) IGST: @ 18%.	87089900	(i) BCD 15% (ii) SWS: @10% (iii) IGST: @ 28%.
7318 16 00			
7326 90 90			
8512 30 10			
8531 80 00			
8501 10 13	(i) BCD: 7.5% (ii) SWS: @ 10% (iii) IGST: @ 18%.		
8512 90 00			
8483 30 00			
8537 10 00			
8302 30 90			
9613 90 00	(i) BCD: 20% (ii) SWS: @ 10% (iii) IGST: @ 18%.		

**Difference in Rate of Duty: Safety Air Bags and Parts thereof:**

CTH Declared by Importer	Rate at which the duty Paid	CTH Correctly applicable	Rate at which the duty Payable
8536 50 99	(i) BCD: 7.5% (ii) SWS: 10% (iii) IGST: @18%.	87089500	(i) BCD 15% (ii) SWS: @10%
8543 70 99			



9626 20 00	(i) BCD: NIL (ii) SWS: NIL (iii) IGST: @18%.	(iii) IGST: @ 28%.
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**11.3** It appeared that the importer has also claimed exemption under Notification No. 46/2011-Cus dated 01.06.2011 based on FTA agreement wherein the exemption was allowed on the Basis of Certificate of Origin. Since the imported goods appeared to be classifiable under CTH 87089900 which is other than that declared in Certificate of Origin, the benefit of exemption cannot be extended to other CTH. Similarly, exemption under Notification No. 24/2005-Cus dated 1.3.2005 claimed by the Importer can not be extended in respect of items which appeared to be classifiable under 87089500. In case of no short payment of BCD and SWS, differential duty in respect of only IGST is appeared short paid. Accordingly, differential duty payable by the importer worked out in respect of import of General Part/Accessories/Components of Motor Vehicle and import of the Safety Airbags and Parts thereof during the period 2018-19 and 2019-20 are as under:

(Amounts in Rupees)

<b>SUMMARY OF DUTY DIFFERENTIAL IN RESPECT OF GENERAL PARTS OF MOTOR VEHICLE IMPORTED BY FORD INDIA PVT. LTD. AT PIPAVAV PORT</b>				
Year	Assessable Value	Duty payable	Duty Paid	Difference
2018-19	810570468	398152214	229950293	168201920
2019-20	356285857	175007613	94100302	80907311
IGST Diff.	958146	312547	210409	102138
Total	1167814471	573472374	324261005	249211369

(Amounts in Rupees)

<b>SUMMARY OF DUTY DIFFERENTIAL IN RESPECT OF SAFETY AIRBAG AND PARTS THEREOF IMPORTED BY FORD INDIA PVT. LTD. AT PIPAVAV PORT</b>				
Year	Assessable Value	Duty payable	Duty Paid	Difference
2018-19	302772820	148722009	84189001	64533008
2019-20	149816247	73589741	41623610	31966131
IGST Diff.	27814196	13662333	4898529	8763804
Total	480403264	235974083	130711140	105262943

**11.4** It appeared that the importer, being manufacturer of Motor Vehicle of CTH 8703 ibid, and importing the General Part/Accessories /Components and also Safety airbags and parts thereof which are specially designed and exclusively suitable for use for Motor Vehicle of CTH 8703 being manufactured by them as well as being aware that these items imported under 490 Bills of Entry cannot be used for any other purpose, except to use in their specific model of Motor Vehicle of CTH 8703, the importer had intentionally/deliberately Mis-classified the imported goods with intention to evade payment of Customs duty; that initially, the importer was specifying these imported goods as components of car parts with each of the description of goods declared in the

bills of Entry up to 14.11.2018, however, once it is pointed out as well as a quasi-judicial order in the matter has been passed to classify the imported goods under CTH 87089900 / 87089500 of CTA, the importer had deliberately removed declaration 'components of car parts' with description of imported goods in the Bills of Entry after 14.11.2018, with intention to suppress the actual nature of the imported goods as well as continued Mis-classification for long period. However, it is also a fact that since August, 2020, the importer has adopted classification of these goods under CTH 87089900 / 87089500 of CTA. Thus, it appeared that duty of customs have been short paid by resorting to willful Mis-statement (Mis-classification) by the importer and hence, it also appeared that the goods were liable for confiscation under Section 111(m) of the Customs Act, 1962, and the importer is liable for penal action under various provisions of the Customs Act, 1962. Therefore, a Show Cause Notice No. VIII/10-17/COMMR/O&A/2020-21 dated 29.09.2020 was issued to the Noticee to show cause as to why:

**(A) WITH REGARD TO IMPORT OF GENERAL PART/ ACCESSORIES/ COMPONENTS OF MOTOR VEHICLE IMPORTED BY THE IMPORTER AT PIPAVAV PORT:**

- (i) Classification of the imported goods i.e. General Parts of Motor Vehicle, claimed by the importer in the 490 Bills of Entry(detailed in Annexure-A to SCN), under CTH 73181900, 731816 00, 73269090, 85123010, 85318000, 8501 1013, 85129000, 84833000, 85371000, 83023090 and 96131000 of the first Schedule to the Customs Tariff Act, 1975, should not be rejected;
- (ii) The goods Imported i.e. the General Parts of Motor Vehicle, covered under Bills of Entry (detailed in Annexure-A to SCN) should not be classified under CTH 87089900 of First Schedule to the Customs Tariff Act, 1975;
- (iii) Imported goods i.e. General Parts of Motor Vehicle, covered under Bills of Entry, as listed in Annexure-A, valued at Rs. 116,78,14,471/- should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (iv) Penalty should not be imposed upon the Noticee, in respect of import of the General Parts of Motor Vehicle by resorting to mis-classification, under the Section 112(a) of the Customs Act, 1962;
- (v) Custom Duty amounting to Rs. 24,92,11,369/- (Rupees Twenty Four Crore Ninety Two Lakhs Eleven Thousand Three Hundred Sixty Nine Only), as detailed in Annexure B1 to B5 to the SCN, should not be recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962;
- (vi) Interest on the Custom Duty should not be charged and recovered from the Noticee under the provisions of Section 28AA of the Customs Act, 1962;

- (vii) Penalty should not be imposed upon the Noticee, in respect of import of the General Parts of Motor Vehicle by resorting to mis-classification, under Section 114A of the Customs Act, 1962;
  - (viii) Penalty should not be imposed upon the Noticee, in respect of import of the General Parts of Motor Vehicle by resorting to mis-classification, under Section 114AA of the Customs Act, 1962.
- (B) WITH REGARD TO IMPORT OF SAFETY AIRBAGS AND PARTS THEREOF OF MOTOR VEHICLE IMPORTED BY THE IMPORTER AT PIPAVAV PORT;**
- (i) Classification of the imported goods i.e. the Safety Airbags and Parts thereof, claimed by the importer in the Bills of Entry (detailed in Annexure-A1 to SCN), under CTH 85365090, 85437099 and 96262000 of the First Schedule to the Customs Tariff Act, 1975, should not be rejected;
  - (ii) The goods i.e. Safety Airbags and Parts thereof, imported under Bills of Entry (detailed in Annexure-A1 to SCN) should not be classified under CTH 87089500 of first schedule to Customs Tariff Act, 1975;
  - (iii) Imported goods i.e. the Safety Airbags and Parts thereof of Motor Vehicle, covered under Bills of Entry, as listed in Annexure-A1, valued at Rs. 48,04,03,264/- should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
  - (iv) Penalty should not be imposed upon the Noticee, in respect of import of the Safety Airbags and Parts thereof of Motor Vehicle by resorting to mis-classification, under Section 112(a) of the Customs Act, 1962;
  - (v) Custom Duty amounting to Rs. **10,52,62,943/-** (Rupees Ten Crore Fifty Two Lakhs Sixty Two Thousand Nine Hundred Forty Three Only), as detailed in Annexure C1 to C4 to the SCN, should not be recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962;
  - (vi) Interest on the Custom Duty should not be charged and recovered from the Noticee under the provisions of Section 28AA of the Customs Act, 1962;
  - (vii) Penalty should not be imposed upon the Noticee, in respect of import of the Safety Airbags and Parts thereof of Motor Vehicle by resorting to mis-classification, under Section 114A of the Customs Act, 1962;
  - (viii) Penalty should not be imposed upon the Noticee, in respect of import of the Safety Airbags and Parts thereof of Motor Vehicle by resorting to mis-classification, under Section 114AA of the Customs Act, 1962.

#### **ADJUDICATION OF SHOW CAUSE NOTICE:**

12. Above show cause notice was adjudicated vide Order-in-Original No. JAM-CUSTM-PRV-COM-003-20-21 dated 15/18.01.2021 under which it was ordered that the parts imported by M/s. Ford India Pvt. Ltd. under different bills of entry as per Annexures Attached to the Show Cause Notice F. No. VIII/10-17/Commr/O&A/ 2020-21 dated 29.9.2020 be reclassified under tariff item 87089900 and under tariff item 87089500 and the respective classification claimed by the Noticee was rejected. Consequently, the demand of differential customs duty of Rs. 35,39,08,002/- in terms of Section 28 of the Customs Act, 1962 was confirmed along with interest in terms of Section 28AA of the Customs Act, 1962 and the differential duty demand of Rs.5,66,310/- wrongly computed due to duplication of entries in the worksheet attached to the Show Cause Notice VIII/10-17/Commr/O&A/ 2020-21 dated 29.9.2020 was dropped. Further, the proposal of confiscation of goods was rejected and no penalty under Section 112, Section 114A and Section 114AA of the Customs Act, 1962 was imposed on M/s Ford India Pvt Limited.

#### **OUTCOME OF APPEAL:**

13. Being aggrieved with the aforesaid Order, the Noticee filed Appeal No. 10259 OF 2021 before the Hon'ble CESTAT, WZB, Ahmedabad and as per CESTAT Order No. A/10458/2024 dated 22.02.2024, the order appealed against is set aside and matter is remanded to the original Adjudicating Authority for fresh adjudication in the light of the decision of Tribunal in appellant's own case as well as in the case of Suzuki Motors Gujarat Pvt. Ltd..

#### **PERSONAL HEARING IN REMAND PROCEEDINGS:**

14. In pursuance of CESTAT's Order No. A/10458/2024 dated 22.02.2024 remanding the matter to the original Adjudicating Authority for fresh adjudication, personal hearing was granted to the Noticee for 04.04.2024. Accordingly, on request of the Noticee, personal hearing was held virtually on 04.04.2024 which was attended by Ms. Shruti Khanna, Advocate and Authorised Representative, Shri Kadirvelu Srinivasan (S.), Manager Taxation, Shri Uday krishnaji Kulkarni (K.), Deputy Manager Taxation, Shri Dhandayudhapani D (D.), Dy. Manager C&L and Shri Jay Patel (P.), Customs & Logistics of the Noticee whereat Ms. Shruti Khanna, Advocate and Authorised Representative stated that the issue in the present remand proceedings is of classification of total 17 items and out of these, about 7 to 9 items are covered in the order recently passed by the Commissioner, Customs [Prev.], Jamnagar in the case of M/s. Ford India Pvt. Ltd. itself; that they have filed a written submission dated 04.04.2024 in respect of all these 17 items and the same is reiterated; that the issue is covered by the judgment of M/s. Uni Products and several judgments including CESTAT decision in their own case as well as in the case of M/s. Suzuki Motors which say that for classification of an item as parts and accessories of Motor Vehicle under

Heading 8708, three conditions should be satisfied; that one of the major conditions is that if an item is excluded or if an item is specifically covered in some other entry, then it should not be classified as parts and accessories of motor vehicle; that they have submitted specific submission on all the 17 items; that of the demand, the SCN was issued in September., 2020 whereas if normal period is considered, there is demand pertaining to the period of pre-September, 2018 as well; that they submit that since the issue pertains to interpretation and classification of tariff entries, the extended period of limitation should not be invoked and at least that much of demand should be set aside; that they have submitted judgment in the case of M/s. Suzuki Motors Gujarat Pvt. Ltd. passed by the Deputy Commissioner, ICD, Sanand and judgment in the case of M/s. Honda Cars India Ltd. passed by the Commissioner of Customs, Jamnagar on the issue.

**WRITTEN SUBMISSION IN REMAND PROCEEDINGS FILED ON 04.04.2024:**

15. In the written submission filed on 04.04.2024, the Noticee, inter alia, submitted as under :

**15.1 DETAILS OF THE IMPORTED ITEMS**

They have imported various parts and components of motor vehicle such as module park aid system, retainer jack, Remote sensor unit, etc. for use in the manufacturing of motor vehicles; that they have been always classifying goods under the Customs Tariff based on the Rules of Interpretation enunciated in the General Rules for Interpretation (herein after referred to as "GI Rules") to the Customs Tariff; that based on the said principles, they have been (a) Classifying parts which are specifically provided for in the specific headings; (b) Classifying parts which are not specifically provided for under the Heading 87.08 as part of motor vehicles etc.; that the description of the imported parts with its classification adopted by them are as under, which as per Department's contention are "Parts and Accessories of the motor vehicles of heading 8701 to 8705" :

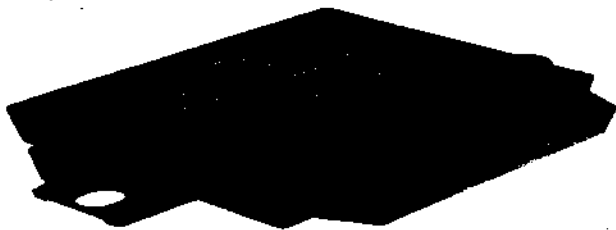
Sr.No.	Imported Item	CTI	Description
i.	Module Park Aid System	8531 80 00	Electric Sound or Visual Signaling Apparatus (For example Bells, Sirens, Indicator Panels, Burglar or Fire Alarms), other than those of heading 8512 or 8530
ii.	Retainer Jack	7318 19 00	Screws , bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel and similar articles, of iron or steel.

iii.	Motor Assembly Rear Window Wiper	8501 10 13	Electric motors and generators (excluding generating sets )
iv.	Arm and blade Assembly Rear Window Wiper	8512 90 00	Electrical lightning or signaling equipment (excluding articles of heading 8539), windscreen wipers , defrosters, and demisters, of a kind used for cycles or motor vehicles
v.	Bearing Shaft/ Rod/ Cap / etc.	8483 30 00	Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housing and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings( including universal joints)
vi.	Nuts stamped M5 hafnium	7318 16 00	Screws , bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel and similar articles, of iron or steel.
vii.	Clip Push on Steel	7326 90 99	Other articles of iron or steel
viii.	Horn and Sound (Support) Assembly	8512 30 10	Electrical Lighting Or Signaling Equipment (Excluding Articles Of Heading 8539), Windscreen Wipers, Defrosters And Demisters, Of A Kind Used For Cycles Or Motor Vehicles
ix.	Switch/Panel Assembly Multiple Function	8537 10 00	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517

x.	Bracket Switch Multiple Function	8302 30 90	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddler, trunks, chests, casket or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metals; automatic door closers of base metal.
xi.	Ring Cigarette Lighter Illuminate	9613 90 00	Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints and wicks.
xii.	Base Assembly Cigarette Lighter	9613 90 00	Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints and wicks.
<b><u>Safety Air Bags and Parts :</u></b>			
xiii.	Pad Switch (Switch Assembly Passenger Air Bag Deactivate)	8536 50 90	Electrical Machines and apparatus having individual functions, not specified, or included elsewhere in this chapter
xiv.	Remote Sensor Unit (Sensor and Bracket Assembly Air Bag Centre )	8543 70 99	Electrical Machines and apparatus having individual functions, not specified, or included elsewhere in this chapter
xv.	Electronic Control Unit (Control Assembly Occupant Restraint System)	8543 70 99	Electrical Machines and apparatus having individual functions, not specified, or included elsewhere in this chapter
xvi.	Module Assembly Smart Data Link Connect (Module Assembly Smart Data Link Connect)	8543 70 99	Electrical Machines and apparatus having individual functions, not specified, or included elsewhere in this chapter

xvii.	Remote Sensor Unit (Sensor Assembly Side Passenger Air Bag)	9026 20 00	Instruments and Apparatus for measuring or checking the flow, level, pressure or other variables
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1. **Module Park Aid System:-**This part is specifically covered under CTI 8531 80 00 as this is a sensor to intimate any barrier around the Motor Vehicle. The Module is shown below :-



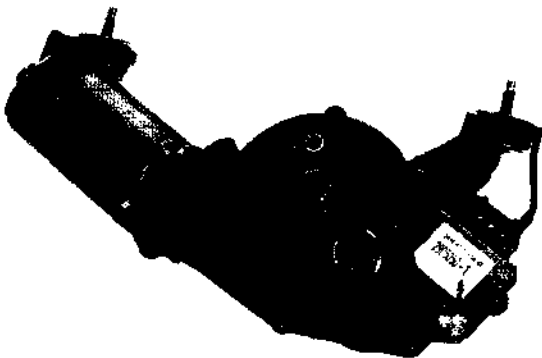
The Module is an assembly that receives inputs from active parking sensors and sends the corresponding output signals for sounding the audible alarm when the input signals received indicate proximity to hazards or obstacles. Note 2 (f) to Section XVII, would operate to exclude this Module, even if they are identifiable as parts of goods of Chapter 87.

2. **Retainer Jack:-**This part is classified as CTI 8501 10 13 as it is a motor which is used in the Wiper Assembly. The picture of the motor and its exploded view are shown below :-



Threaded fasteners are regarded as Parts of General use as per Note 2 to Section XV. The parts of general use, whether or not identifiable as parts of the goods in Section XVII are specifically excluded by note 2(b) to Section XVII.

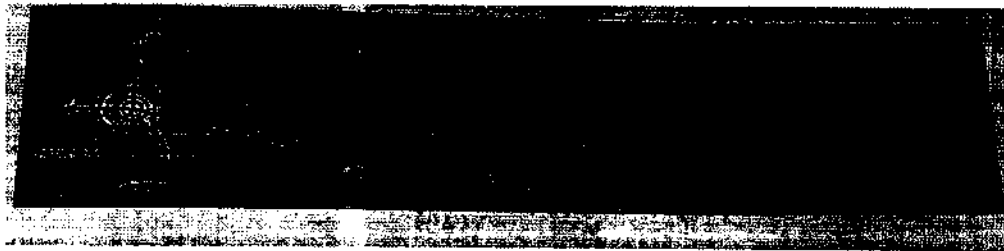
3. **Motor for Rear Window Wiper assembly:-**This part is classified CTI 8501 10 13 as it is a motor which is used in the Wiper Assembly. The picture of the motor and its exploded view are shown below:-





Goods covered by Chapter 85 are excluded by the terms of Note 2(f) to Section XVII, even if they are identifiable as parts of goods of Chapter 87. When such goods are excluded in terms of Note 2(f) to Section XVII, they cannot be classified under CTH 8708.

4. **Arm and Blade Assembly Rear Window Wiper:-** This Part is classified under CTI 8512 90 00 and is used in the Wiper Assembly. A picture of the part is shown below:



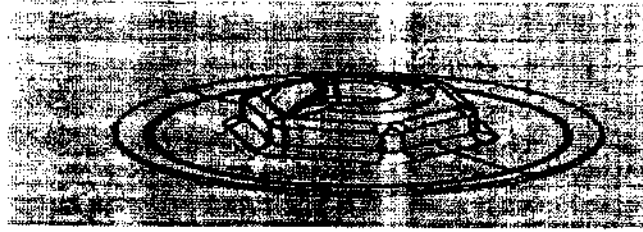
Wind screen wipers are specifically covered under CTH 8512. The arm and blade assembly being an identifiable part of the wind screen wipers are classified under CTH 8512 by application of Note 2(b) to Section XVI. This part cannot be classified under 8708 as per section note 2 (f) of Section XVII.

5. **Bearing Shaft/ Rod/Cap/Etc.:-** These are transmission shafts, shaft coupling, gears, gear boxes pinions, plain shaft bearings and bearing housing whether or not incorporating bearings. A picture of the part is shown below:

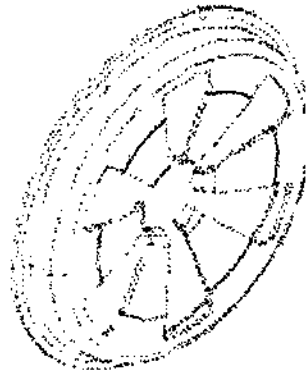


The Classification of this plain shaft bearing under CTI 8483 30 00 is appropriate. Classification under CTH 8708 cannot be sustained as Note 2(e) to Section XVII will operate to exclude all the plain shaft bearings from the purview of CTH 8708.

6. **Nuts Stamped M5 hafnium:-** This part is classified under CTI 7318 16 00 as this is a part of general use as defined in Note 2 to Section XV. Parts of general use whether or not identifiable as parts of goods of Section XVI or of the goods in Section XVII are specifically excluded by Note 2(b) to Section XVII. This part is pictorially described as under:-

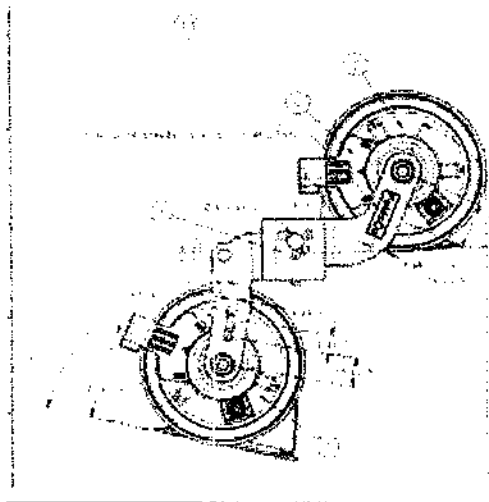


7. **Clip Push on Steel:-** This part is classifiable under CTH 7326 90 00. This is a simple push clip to be used in a car body. A picture of the part is shown below:



It is further submitted that no duty demand has been made under the impugned order for this particular part.

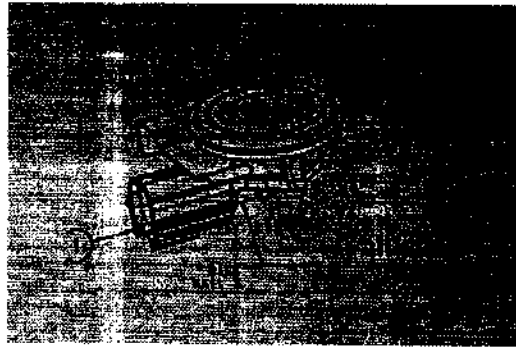
8. **Horn and Sound (Support) Assembly:-** This horn and sound support assembly acts as a signaling equipment and hence classifiable under CTH 8512 and more specifically under CTH 8512 30 10. The part is a horn assembly used in cars. A picture of the part is shown below:



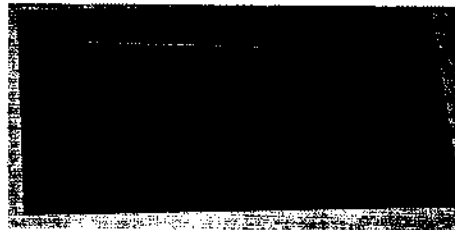
The Classification of this part is specifically covered by the HSN Explanatory Notes which covers horn, sirens and other signaling appliances.

9. **Switch Assembly Multiple Function:-** This part is classified under CTH 8537 10 00 of the Customs Tariff Act, 1975. The part performs a control function.

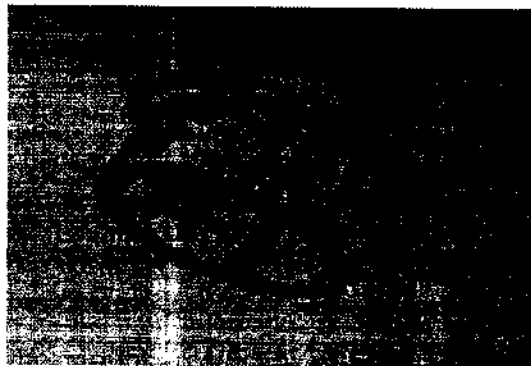
Therefore, goods cannot be classified under CTH 8708 since are appropriately classifiable under CTH 8537.



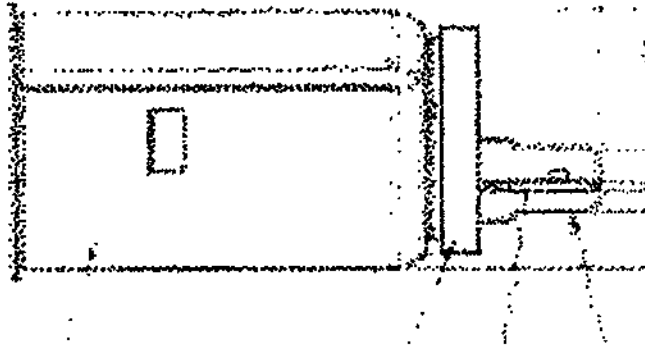
- 10. Bracket Switch Multiple Function:-** This is a general-purpose bracket to hold switches. This is a part of general use as defined in Note 2 to Section XV. Such brackets are covered under CTH 8302, more specifically under CTI 8302 30 90.



- 11. Ring Cigarette Lighter Illuminate:-** CTH 9613 covers cigarette lighter and parts of Cigarette lighter. This part is classifiable under CTI 9613 90 00. As per HSN explanatory notes, the lighter and its parts used in motor vehicles are classifiable under CTH 9613, the identifiable parts of such lighters are also classified under CTH 9613.



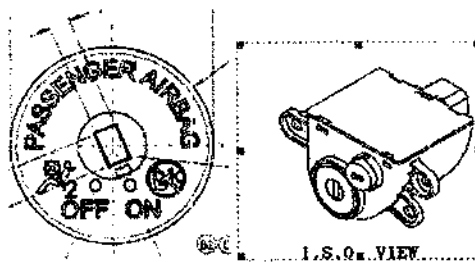
- 12. Base Assembly Cigarette Lighter:-** The product is classified under CTH 9613 90 00 since CTH 9613 covers cigarette lighter. A picture of the part is shown below:



The arguments extended for classification of Ring Cigarette Lighter Illuminate are equally applicable to this part as well. Hence, cannot be classified under CTH 8708.

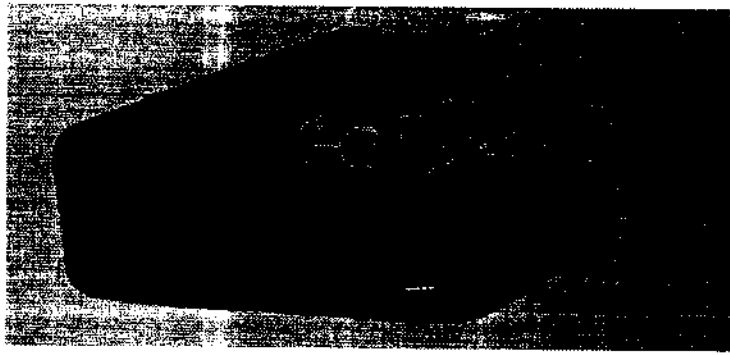
#### **Safety Air Bags and Parts:**

1. **Pad Switch (Switch Assembly Passenger Air Bag Deactivate):-** This part is switch assembly, which contains one Rotatory Switch, a Housing and Connector. It is used to switch ON or OFF the working of Airbag. This switch is used to deactivate the Airbag when there is no passenger in the passenger seat. A picture of the part is shown below:

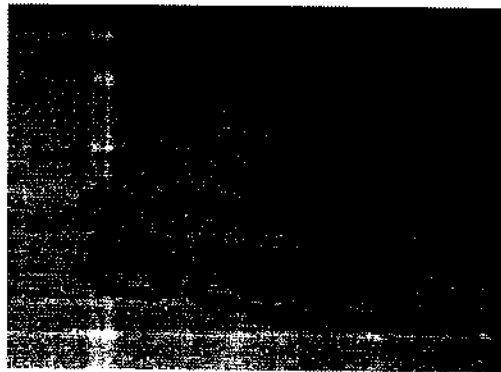


The Classification of the same is under CTH 8536 50 90 of the Customs Tariff Act, 1975 which covers electrical apparatus for switching or protecting electrical circuits.

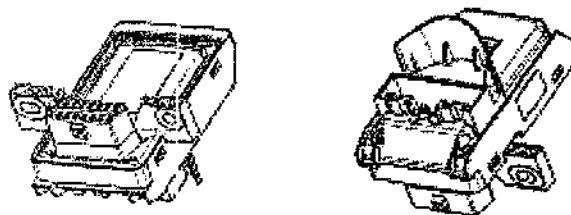
2. **Sensor and Bracket Assembly Air Bag Centre: -** This is classified under CTI 8543 70 99 as it acts as a sensor to inflate the Air Bag in the Motor Vehicle. This sensor instructs the air bag inflator system to inflate the bag during any sudden collision. The part is shown below:-



3. **Control Assembly Occupant Restraint System (Electric Control Unit):-** This product is classified under CTI 8543 70 99. This part is a control assembly that receives commands from the restraint control module to the deployment of air bags and seat belt pre-tensioners based on inputs from crash sensors located in the front and sides of the vehicles. It is also responsible for triggering the fuel cut-off command depending on the intensity of the crash. This part is therefore the controller for the airbag inflation unit.



4. **Module Assembly Smart Data Link Connect:-** This part is a Smart Data Link Connector Module assembly, which transfers the electronic pulse from the control module to the scan tool. The part in question gives the vehicle information such as operating condition, and diagnostic information. This part is therefore the electronic controller for the airbag inflation unit and classifiable under CTH 8543 70 99. Further since items falling under Chapter 85 are excluded from Section XVII by Note 2(f) of 8708, they cannot be classified under CTH 8708.

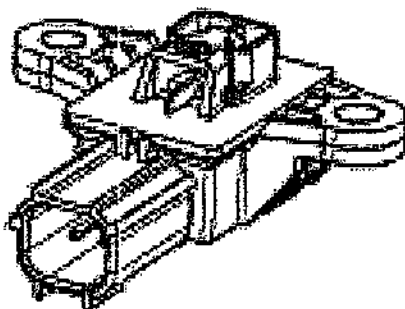


ISOMETRIC VIEW

*Module Assembly Smart Data Link Connect Assembly* functions to transfer the Electronic Pulse from the control module to the Scan Tool. It is used as Interface tool between Scan Tool and module of a given vehicle and access On Board

Diagnostics and Live Data. The device gives the Vehicle information such as operating conditions and Diagnostic information.

5. **Remote Sensor Unit (Sensor Assembly Side Passenger Air Bag):-** This product is classified under 9026 20 00, is a pressure sensor which helps in determining the pressure for airbag deployment. This part is a pressure sensor with an accelerometer that detects when the vehicle has been in a crash situation and sends the signals to the main airbag electronic control module. The pressure sensors are capable of measuring small pressure fluctuations at high static pressure levels. Pressure measuring instruments are specifically covered under CTH 9026. Further, articles of Chapter 90 are excluded from Section XVII by note 2(g) to Section XVII and hence not classifiable under CTH 8708.



## 15.2 **CUSTOMS INSTRUCTION NO.1/22- CUSTOMS DATED 05.01.2022**

15.2.1 Vide CBIC Instruction No. 01/2022-Customs dated 05.01.2022, it has been instructed that classification of parts has to be in terms of HSN Note and all the three conditions specified in the HSN must be satisfied; that the three conditions are extracted below for ease of reference –

- a. *They must not be excluded by the terms of Note 2 to section XVII; and*
- b. *They must be suitable for use solely or principally with the articles of chapter 86 to 88; and*
- c. *They must not be more specifically included elsewhere in the Nomenclature*

15.2.2 Vide Instruction No. 25/2022-Customs dated 03.10.2022, upheld the validity of the abovementioned instruction.

## 15.3 **ITEMS SPECIFICALLY DESIGNED FOR MOTOR VEHICLE WILL BE CLASSIFIED UNDER HEADING 8708 ONLY WHEN THE SAME ARE NOT EXCLUDED UNDER NOTE 2 OF SECTION XVII.**

15.3.1 Note 2 to Section XVII specifically excludes few items from the scope of parts and accessories; that the items excluded under Note 2 will not be classified as

parts under Heading 8708 (which falls within the ambit of Section XVII) even if these items are specifically designed for the motor vehicle.

**15.3.2** The contrary interpretation of Section Notes 2 and 3 of Section XVII provided in of G.S. Auto will make the existence of Section Note 2 redundant; that even if items are excluded in Note 2 but specifically designed for motor vehicle they will remain classified under Heading 8708; that thus, in such a scenario for determination of classification under Heading 8708 existence of Note 2 is immaterial; that such an interpretation is against the scheme of General rules for the Interpretation, Rule 1, which provides that classification has to be determined according to terms of relevant Section and Chapter Notes.

**15.3.3** Reliance is placed upon the judgment of *Tata Engg. Locomotive Co. Ltd. v. CCE* [1991 (55) ELT 536] where the court has ruled that the earlier precedented judgments are not binding as the same has not referred to relevant interpretation rules and section notes and chapter notes; that it was further ruled that **Oil Seals** that are specially designed to be fitted in motor vehicle will be classified under Heading 8708 only when the same do not fall under the sub-notes (a) to (k) of Note 2 of Section XVII.

**15.3.4** Reliance is also placed upon the following judgments where the courts have ruled that items specifically designed for motor vehicles will not be classified as "parts" or "parts and accessories" of motor vehicles as the same were excluded as per Note 2 to Section XVII, it was further observed by the courts that Note 3 to Section XVII cannot make Note 2 inoperative merely because the items are suitable for use solely and principally for motor vehicle –

- a. *Stone India Ltd. v. CC* [1999 (108) ELT 201]
- b. *CC. v. Gold Seal Engg. Products Pvt. Ltd.* [1999 (105) ELT 679]
- c. *Escorts Ltd. FED v. CC* [2001 (132) ELT 414]
- d. *Escorts Ltd. v. CC* [2002 (142) ELT 379]
- e. *Addon v. CC* [1997 (96) ELT 592]

**15.3.5** Reliance is placed on the judgment of *Saurashtra Chemicals v. CC* [1986 (23) ELT 283], where the court ruled that interpretation of headings is bound by the Section and Chapter notes; that thus, not all parts and accessories of motor vehicles are classifiable under Heading 8708; that only those items that are not excluded under Section Note 2 and are principally and specifically designed to be used with motor vehicle are classifiable under Heading 8708; that reliance is placed upon the advance ruling In *Re: WABCO India Limited* [2018 (18) GSTL 560] where the adjudicating authority ruled that electrical wiring harness will not be classifiable under Chapter 87 as parts and accessories of motor vehicle, even if they are specially designed for brake systems related to motor vehicle, in lieu of exclusion provided in Note 2 of Section XVII; that thus, even department is of view that if the items are specifically excluded in Note 2 to Section XVII, then the same cannot be classified under Heading 8708; that in view of above, as the nuts, bolts, etc. are specifically excluded under Note 2 of Section XVII

and thus, they are not classifiable under Heading 8708. This was also fortified by Instruction No. 01/2022 dated 05.01.2022.

**15.4 COURTS IN MUPLTIPLE CASES HAVE DISTINGUISHED FROM G.S. AUTO JUDGMENT WHILE CLASSIFYING PARTS PRINCIPALLY AND SOLELY DESIGNED FOR A PARTICULAR MACHINE AND HAVE CLASSIFIED THESE PARTS UNDER THEIR RESPECTIVE HEADING**

Reliance is placed of following judgments where courts have not followed the principal laid down by Hon'ble Supreme Court in the case of G.S. Auto and have classified the parts specifically and solely designed for a machine in their respective heading instead of classifying them as parts of the machine –

Sr. No.	Name and citation of Judgment	Reasons provided by the court to differentiate from G.S. Auto
1	J.K Tyre & Industries Ltd. v. CC [2018 (2) TMI 611]	The court classified tyres, tubes and flaps under Headings 4011, 4012 and 4013 by relying on the judgment of United Copies
2	Jtekt Sona Automotive India Limited v. CC [2019 (11) TMI 257]	The court classified gear reduction blank under Heading 8483 by relying on the judgment of Commissioner v. Best Cast (P) Ltd. [2001 (127) E.L.T. 730], affirmed by Supreme Court in 2001 (133) E.L.T. A258 (SC). Further, it was ruled that judgments, where Rule 3 (a) of rules for interpretation has not been referred, are per Incuriam.
3	CC v. Voltas Ltd. [2003 (158) ELT 52]	The court classified the tube and pipe of copper under Heading 7412 and not as part of air conditioner as they are parts of general use under Section Note 2 to Section XV and thus excluded under Note 3 (g) of Section XVI.
4	Swetha Engineering Ltd. v. CC [2008 (4) TMI 107]	The court classified plates, racks, angles etc under Heading 7308 and not under Heading 8402 as parts of boilers after relying of Rule 1 of General rules of interpretation and observing that Heading 7308 specifically covers the said items within its ambit.
5	Videocon Industries Limtied v. CC [2009-TIOL-653-CESTAT-MUM]	The court classified the LCD panels for television and computers under Heading 9013 after considering as Note 1 to Section XVI that excluded items of Chapter 90. Also, it was ruled that description of Heading 9013 was more specific and then the Heading 8529 which covers "part of good falling under Heading 8528". Further reliance was also placed on Note 2(a) of Section XVI which states that parts are to be classified in their respective heading even if they are suitable for use solely with a particular kind of machine.
6	Azra Poultry Equipments v. UOI [2015 (323) ELT 88]	The Delhi High Court ruled that wire mesh will be classified under Heading 7318 and not under Heading 8436 even if the same are only for poultry keeping as they merely are equipment to machinery would not be



		classified under Heading 8436. For classification under Heading 8436 the items need to be a machine in itself.
7	Shreya Life Sciences Pvt. Ltd. v. CC [2019 (369) ELT 1043]	The court ruled that nutrition supplements are rightly classifiable under Heading 2106 and not under Heading 3004 as medicaments based on the test reports which stated that the said items were nutrition supplements containing vitamins and minerals. Thus, even when in common parlance they were considered to be a medicament the items were classified under Heading 2106 based on test reports.

**15.5 THE ISSUE OF CLASSIFICATION OF ACESSORIES OR PART OF VEHICLE HAS BEEN DECIDED BY HONORABLE SUPREME COURT IN THE CASE OF CCE. V. UNIPRODUCTS INDIA LIMITED**

**15.5.1** The Honorable Supreme Court in the case of **CCE v. Uniproducts Limited in the matter of Civil Appeal Nos. 302-303 of 2009** had analyzed the issue of classification of car matting and whether the same will be classified under Chapter 57 or Chapter 87 of the First Schedule to Central Excise Tariff Act, 1985; that the Court relied upon to Rule 3(a) of Generals Rules of Interpretation which states that specific heading has to be preferred over headings providing general description;

**15.5.2** Relevant extract of Rule 3(a) is produced below-

*"Rule 3(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods."*

**15.5.3** The court also observed that according to HSN for an item to be classified under Heading 8708 all following three conditions must be fulfilled –

- (a) They must not be excluded by the terms of Note 2 to Section XVII,  
And
- (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88, And
- (c) They must not be more specifically included elsewhere in the Nomenclature

**15.5.4** After analysing the aforesaid Rule of interpretation and provisions of HSN, the court ruled that the car mats are rightly classified under CTH 5703, even if they are specifically and principally used for cars, and not as the parts of motor vehicle; that the court ruled that the car mats are more specifically described under Heading 5703 and thus it classifiable under that Heading even if they are solely and principally designed

for motor vehicle; that even in the present case, the goods imported by them are specifically provided in their respective heading; that even if these parts are being imported by them for being specifically used in the motor vehicle, the same are to be classified in their respective heading; that further, many of these items are specifically excluded by Note 2 to Section XVII; that thus, all the aforesaid conditions, that must be satisfied for classifying goods under Heading 8708 are not satisfied; that thus, even if these goods are specifically designed for motor vehicle the same will not be classified as parts of motor vehicle; that thus, the imported goods should be rightly classified under their respective heading.

#### **15.6 CLASSIFICATION OF THE GOODS CANNOT BE DETERMINED ON THE BASIS OF THEIR END USE**

**15.6.1** It is a settled law that the goods are to be classified in the state in which the importation has taken place; that the subsequent use of the goods cannot be a determinative factor for classification; that there is no requirement under law, i.e., either under any section note or chapter note, to classify the impugned goods as per their end use; that in the absence of any such requirement in the tariff itself, such a condition cannot be introduced by the Revenue; that wherever legislature intended to grant benefit based upon the actual end use, proper guidelines stand prescribed; that it has been shown in the instant case that at the time of importation, the goods in question have specific features and functions; that the fact that these will be used further in the manufacture of automobiles cannot be a determinative factor for the classification of goods in question; that the impugned goods qualify to be articles in themselves and are more specifically covered under description provided under Headings suggested by them.

**15.6.2** Reliance is placed on *Towa Ribbons Ltd. vs Collector of Customs 1993 (66) ELT 320*; that in light of the above, the classification of the impugned goods under CTH 87.08 as per impugned order is not sustainable and the impugned goods have been correctly classified by them.

#### **15.7 HEADING 87.08 IS A RESIDUARY ENTRY. THEREFORE, CLASSIFYING THE GOODS IN QUESTION UNDER A RESIDUARY ENTRY OVER SPECIFIC ENTRIES IS INCORRECT AND THEREFORE UN-SUSTAINABLE.**

**15.7.1** The impugned goods are not classifiable under CTH 8708 which covers 'Parts and accessories of the motor vehicles of headings 8701 to 8705' as has been proposed by the Department; that the classification of the impugned goods under CTH 8708 has been upheld without considering the principles of interpretation and hence they are to be re-assessed under their respective headings; that reliance is placed on Rule 3(a) of the General Rules of Interpretation of Customs Tariff which provides that

*"the heading which provides the most specific description shall be preferred to headings providing a more general description"; that the description of respective headings matches the description and the functions performed by the imported goods as already explained above; that this shows that the headings proposed by them are the appropriate heading for the imported goods.*

**15.7.2** CTH 8708 is a residuary entry and is to be considered only if there is no specific entry available for classifying an item; that reliance is placed on the judgment in the case of *Commissioner V/s. Wockhardt Life Sciences Ltd.*, reported at 2012 (277) E.L.T. 299 (S.C.) and *Dunlop India Ltd. & Madras Rubber Factory Ltd. V/s. Union of India (UOI) and Ors.*, 1983 (13) E.L.T. 1566 (S.C.); that CTH 8708 will not come into play for the classification of the imported goods as it is a residuary entry till the time classification of the impugned goods under their respective headings is ruled out completely; that therefore, the conclusion in the impugned assessment that the imported goods are classifiable under CTH 8708 is liable to be set aside.

#### **15.8 EXTENDED PERIOD OF LIMITATION NOT INVOCABLE IN THE INSTANT CASE**

**15.8.1** The show cause notice had proposed to recover duty under Section 28(4) of the Customs Act; that the extended period of limitation under Section 28(4) of the Customs Act can be invocable only if three ingredients are present viz. i. Collusion; or ii. Any willful misstatement; or iii. Suppression of facts; that the impugned order has held that the Appellant has mis-declared, misclassified and suppressed information with respect to actual nature of the subject goods with an intent to evade duty; that the Appellant has not misclassified the impugned goods; that in the instant case, the entire demand is in the extended period of limitation; that for invocation of extended period, the department ought to have established an intention to evade duty, on part of the Appellant; that in the present case, as it evident from the Impugned SCN, DRI has initiated investigations against similar importers from 2015; that in the instant case, the Appellant had always declared the subject goods as Waksol 9-11A and the same is also evident from a perusal of description of the products as given in the Warehoused Bills of Entry; that , the department having been all along aware of the declaration adopted by the Appellant, cannot vide Impugned SCN dated 15.11.2021 allege that the Appellant has indulged in mis-declaration for the purposes of invoking the extended period under Section 28(4); that the department has not made any specific allegation in the SCN as to how the Appellant deliberately suppressed/mis-declared any information with an intent to evade payment of duty.

**15.8.2** Reliance is placed upon the judgment of *Cosmic Dye Chemical V/s. Collector of Central Excise, Bombay* [(1995) 6 SCC 117], *Collector of Central Excise V/s. Chemphar Drugs & Liniments* [(1989) 2 SCC 127]; that they were under bonafide

belief that the imported goods were correctly classified; that in the impugned order, agents of other importers have been relied upon to arrive at the conclusion that the Appellant has suppressed facts; that even the department has not produced any other evidence to show that the Appellant has suppressed facts warranting the invocation of the extended period of limitation; that the impugned goods were declared by the Appellant in the BOE as "Waksol 9 – 11A" and they have not mis-declared the details of the goods being imported; that the description specified for the imported goods is correct and the same is not disputed by Customs; that the Appellant's actions are bonafide and no malafide intention can be attributed; that reliance in this regard is placed on the Tribunal's decision in *Sirthai Superware India Ltd. V/s. CC [2020 (371) E.L.T. 324 (Tri. - Mumbai)]* and *Vesuvias India Ltd. V/s. CC [2019 (370) E.L.T. 1134]*.

**15.8.3** The issue relates to interpretation of complex provisions of the Customs Tariff and entries in exemption notifications and is purely legal in nature; that therefore, the extended period of limitation cannot be invoked; that the extended period cannot be invoked when the case involves an interpretation issue; that reliance is placed on the following judicial decisions in support of the contention that extended period cannot be invoked in cases involving interpretation of statutory provisions.

- a) *Biomax Life Sciences Ltd. V/s. CCE & ST, Hyderabad [2021 (375) E.L.T. 263 (Tri. – Hyd.)]*
- b) *Singh Brothers V/s.. Commissioner of Customs & Central Excise, Indore, [2009 (14) STR 552 (Tri.-Del.)];*
- c) *Steelcast Ltd. V/s. Commissioner of Central Excise, Bhavnagar, [2009 (14) STR 129 (Tri.-Del.)];*
- d) *P.T. Education & Training Services Ltd. V/s.. Commissioner of Central Excise, Jaipur, [2009 (14) STR 34 (Tri.-Del.)]; and*
- e) *K.K. Appachan V/s. Commissioner of Central Excise, Palakkad, [2007 (7) STR 230 (Tri.-Bang.)]*

**15.8.4** The onus is on the department to prove that the Appellant has wilfully mis-declared or suppressed facts with intent to evade payment of duty, however, the department failed to prove that the Appellant has acted with any malafide intent; that there is nothing on record to show the existence of fraud, collusion or suppression of materials facts or information and therefore, the larger period of limitation is not invocable; that none of the ingredients required to invoke extended period of limitation exist in the present case and hence, invoking extended period of limitation is not sustainable and the Impugned Order ought to be set aside; that Reliance is placed on the following decisions in support of the above submission:

- a) *Shahnaz Ayurvedics V/s. CCE [2004 (173) ELT 337 (All)], affirmed in 2004 (174) ELT A34 (SC)*

- b) Devans Modern Breweries Ltd. V/s. CCE [2006 (202) ELT 744 (SC)]
- c) Continental Foundation V/s. CCE [2007 (216) ELT 177 (SC)]
- d) Pushpam Pharmaceuticals Pvt. Ltd. V/s. Collector of C.Ex. Bombay, [1995 (78) ELT 401 (SC)]
- e) Collector of Central Excise V/s. Chemphar Drugs and Liniments [1989 (40) ELT 276 (SC)]
- f) Padmini Products V/s. Collector of C. Ex [1989 (43) ELT 195 (SC)]
- g) Aban Lloyd Chiles Offshore Ltd. V/s. Commissioner of Cus., Maharashtra [2006 (200) ELT 370 (SC)]
- h) Devans Modern Breweries Ltd. V/s. Commissioner of C. Ex. Chandigarh [2006 (202) ELT 744 (SC)]

**15.9 FINAL ORDER NO A/10655/2022 dated 07.06.2022 decided by CESTAT, AHMEDABAD**

**15.9.1** In the case of M/s. Suzuki Motors Gujarat Pvt. Ltd., the Hon'ble CESTAT, Ahmedabad regarding the classification of various parts and accessories of motor vehicles vide Final Order No. A/ 10665 /2022 dated 07.06.2022 held as under:

*4.1 We noticed that the HSN explanatory notes in respect of Tariff items 8708 provided as under:*

*"This heading covers parts and accessories of the motor vehicles of heading 87.01 to 87.05, provided the parts and accessories fulfil both the following conditions:*

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and*
- (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note)."*

*As per above notes, both the conditions prescribed under Clauses (i) and (ii) need to be fulfilled for classifying parts and accessories of motor vehicle.*

*4.2 We also find that part (III) PARTS AND ACCESSORIES of the HSN Explanatory Notes to Section XVII, provides as under:*

*"It should, however, be noted that these heading apply only to those parts or accessories which comply with all three of the following conditions:*

- (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below) and*

*(b) They must be suitable for use solely or principally with the articles of chapter 86 to 88 (see paragraphs (B) below) and*

*(c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (c) below.*

*In view of above provisions, it is clear that for classification of goods under chapter heading 8708 i.e., parts and accessories of Motor Vehicles above conditions require to be satisfied."*

**15.9.2** Vide OIO No. 38/2022 dated 04.11.2022 passed by Assistant Commissioner (CPIO) Customs, Ahmedabad, it is stated that Final Order No. A/10665/2022 has been accepted by the Department; that vide Order-in-Original No. 1 to 287/DC/Assessment/ICD-SND/2022-23 dated 20.03.2023 for M/s. Suzuki Motors Gujarat Pvt. Ltd., the Ld. Deputy Commissioner, ICD Sanand has upheld the classification of 51 items imported as parts and accessories of motor vehicle under respective heading under Customs Tariff Act, 1975; that in the case of M/s. Honda Cars India Ltd. vide Order-in-Original No. CUS/1579/2022-Adjn-O/o Commr-Cus-Prev-Jamnagar dated 26.10.2022, upheld the classification of imported goods of parts and accessories of motor vehicles under respective heading; that vide Order-in-Original No. JAM-CUSTM-COM-006-23-24 dated 20.03.2024, classification of certain parts and accessories of motor vehicle under specific tariff headings has been upheld; that classification adopted by them for various parts is correct.

## **DISCUSSION AND FINDINGS :**

**16.** I have carefully gone through the case records including the written submission filed by the Noticee on 04.04.2024 and submission made by the Noticee at the time of personal hearing held on 04.04.2024. The present proceedings are in pursuance of CESTAT Order No. A/10458/2024 dated 22.02.2024 vide which the OIO appealed against bearing No. JAM-CUSTM-PRV-COM-003-20-21 dated 15/18.01.2021 passed by my predecessor in Show Cause Notice No. VIII/10-17/Commr/O&A/2020-21 dated 29.09.2020 issued to the Noticee, has been set aside and the matter is remanded to the original Adjudicating Authority for fresh adjudication in the light of the decision of Tribunal in appellant's [i.e. Noticee herein M/s. Ford India Pvt. Ltd.] own case as well as in the case of Suzuki Motors Gujarat Pvt. Ltd..

**17.** Text of the CESTAT Order dated 22.02.2024 as well as the Orders referred therein, are reproduced hereunder :

**17.1** CESTAT Order No. A/10458/2024 dated 22.02.2024 in Appeal No. 10259 of 2021 filed by M/s. Ford India Pvt. Ltd. against OIO No. JAM-CUSTM-PRV-COM-003-20-21 dated 15/18.01.2021 :

*" This appeal has been filed challenging the rejection of classification sought by the appellant.*

*1.1 The dispute relates to the classification of goods imported for use as parts of motor vehicles. The impugned order after examining Rule 1 of the general Rules of interpretation, notes 2 and 3 to section XVII of Customs tariff, the Commissioner has relied on note 3 to section XVII to arrive at the distinguishing factor between the classification of the impugned goods in chapter 87 vis-a-vis chapter 84, 85 and chapter 72 onwards. Similar matters have been examined earlier in appellants own case as well as the case of Suzuki Motors Gujarat Pvt Ltd. In all the aforesaid decisions the matters have been remanded to the original adjudicating authority to decide after following the criteria laid down in the said orders. The order in appellant's own case was also issued remanding with following directions.*

*"4. We have considered the rival submissions. We find that the matter involving identical dispute in respect of same appellant had been decided by the Tribunal in Final Order No. A/10665/2022 dated 07.06.2022. In the said decision following has been observed while remanding the matter to the Commissioner (Appeals)*

*"04. Heard both the sides and perused the records. The issue to be decided is whether the Controlled Assembly CVT imported by the appellant is classifiable under CTH 9032 and other items imported are classifiable under CTH 7318 as declared by the appellant or under CTH 8708 as parts and accessories of motor vehicles of heading 8701 to 8705 as assessed by the Customs.*

*4.1 We noticed that the HSN explanatory notes in respect of Tariff items 8708 provided as under:*

*"This heading covers parts and accessories of the motor vehicles of heading 87.01 to 87.05, provided the parts and accessories fulfil both the following conditions:*

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and*
- (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note)."*

*As per above notes, both the conditions prescribed under Clauses (i) and (ii) need to be fulfilled for classifying parts and accessories of motor vehicle.*

*4.2 We also find that part (III) PARTS AND ACCESSORIES of the HSN Explanatory Notes to Section XVII, provides as under:*

*"It should, however be noted that these heading apply only to those parts or accessories which comply with all three of the following conditions:*

- (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below) and*
- (b) They must be suitable for use solely or principally with the articles of chapter 86 to 88 (see paragraphs (B) below) and*
- (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (c) below).*

*In view of above provisions, it is clear that for classification of goods under chapter heading 8708 i.e. parts and accessories of Motor Vehicles above conditions require to be satisfied.*

*4.3 The Commissioner (Appeals) while deciding the classification of the disputed goods, in question, under heading 8708, has not given any finding as to whether all the above conditions which are very important for deciding the classification of goods, satisfy / comply in respect of the disputed goods. The Commissioner (Appeals) findings are silent on this vital aspect of the above provisions.*

*4.4 Further, we also find that Learned Commissioner (Appeals) in impugned order not given his finding related to classification of goods individually item wise. Whereas Appellant produced the list of 14 items imported vide above Bills of Entry.*

4.5 In view of our above observation, we find that the lower authorities have not examined the legal aspects properly to come to conclusion for correct classification of the goods in question. Hence in our considered view the matter needs to be remitted back to the Commissioner (Appeals).

05. We, therefore, set aside the impugned order and remand the matter for to the Commissioner (Appeals). The appeal is allowed by way of remand to the Commissioner (Appeals)."

4.1 It is notice that the said decision relies on the Harmonized System of Nomenclature explanatory notes. It is notice that while the impugned order takes note of the said criteria laid down in explanatory note but there is no discussion on the said criteria.

4.2. Learned AR is relied on the two decision of Hon'ble Apex Court. The crux of both the decisions of Hon'ble Apex Court is that the functional utility, design shape and predominant use have to be taken into account while classifications of goods.

4.3 It is notice that the decision of Tribunal in the appellant's own case dated 07.06.2022 list of the following test for classification:-

"It should, however be noted that these heading apply only to those parts or accessories which comply with all three of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below) and (b) They must be suitable for use solely or principally with the articles of chapter 86 to 88 (see paragraphs (B) below) and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (c) below."

2. The impugned order it is noticed only follows the criteria B specified in para 4.3 of the order in case of Suzuki Motors Gujarat Private Limited no. A/10665/2022 dated 07.06.2022. The real test of classification has to be after examination on all 3 criteria laid down the aforesaid order in case of Suzuki Motors Gujarat Private Limited.

3. It is noticed in the impugned order, that there were specific averment made by the appellants before Commissioner regarding satisfactions of all 3 conditions. The same has also been recorded in para 15.1 and 15.2 of the impugned order however, the impugned order presumes that note 3 to Section XVII can override note 2 to section XVII. Note 3 only make the distinction in case of disputes in classification within chapter 86 to 88. It does not apply to the disputes involving classification in chapters other than chapter 86 to 88. Thus, if a item can be used in a car as well as in a railway loco motive than the classification has to be done with the heading for which it is used solely or principally. This note does not apply to chapter other than chapter 86 to 88.

4. In view of the above the impugned order is set aside and matter remanded to original adjudication authority for fresh adjudication in the light of the decision of tribunal in appellant's own case as well as in the case of Suzuki Motors Gujarat Private Limited. (supra)."

**17.2** CESTAT Order No. A/10665/2022 dated 07.06.2022 in Appeal No. 10275 of 2020 filed by M/s. Suzuki Motors Gujarat Pvt. Ltd. against OIA No. AHM-CUSTM-000-APP-471-19-20 dated 10.12.2019 :

"04. ....

4.1 We noticed that the HSN explanatory notes in respect of Tariff items 8708 provided as under:

"This heading covers parts and accessories of the motor vehicles of heading 87.01 to 87.05, provided the parts and accessories fulfil both the following conditions:



(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and

(ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note)."

As per above notes, both the conditions prescribed under Clauses (i) and (ii) need to be fulfilled for classifying parts and accessories of motor vehicle.

4.2 We also find that part (III) PARTS AND ACCESSORIES of the HSN Explanatory Notes to Section XVII, provides as under:

"It should, however, be noted that these heading apply only to those parts or accessories which comply with all three of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below) and

(b) They must be suitable for use solely or principally with the articles of chapter 86 to 88 (see paragraphs (B) below) and

(c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (c) below.

In view of above provisions, it is clear that for classification of goods under chapter heading 8708 i.e. parts and accessories of Motor Vehicles, above conditions require to be satisfied."

17.3 CESTAT Order No. A/12641-12644/2023 dated 22.11.2023 in Appeal No. 10868 of 2022-DB filed by M/s. Ford India Pvt. Ltd. against OIO No. JMN-CUSTOM-PRV-COM-001-22-23 dated 29.06.2022 :

"4. We have considered the rival submissions. We find that Tribunal in the earlier order No. A/10665/2022 dated 07.06.2022, has observed as follows:

"04. Heard both the sides and perused the records. The issue to be decided is whether the Controlled Assembly CVT imported by the appellant is classifiable under CTH 9032 and other items imported are classifiable under CTH 7318 as declared by the appellant or under CTH 8708 as parts and accessories of motor vehicles of heading 8701 to 8705 as assessed by the Customs.

4.1 We noticed that the HSN explanatory notes in respect of Tariff items 8708 provided as under:

"This heading covers parts and accessories of the motor vehicles of heading 87.01 to 87.05, provided the parts and accessories fulfil both the following conditions:

*(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and*

*(ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note)."*

*As per above notes, both the conditions prescribed under Clauses (i) and (ii) need to be fulfilled for classifying parts and accessories of motor vehicle.*

*4.2 We also find that part (III) PARTS AND ACCESSORIES of the HSN Explanatory Notes to Section XVII, provides as under: "It should, however be noted that these heading apply only to those parts or accessories which comply with all three of the following conditions:*

*(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below) and*

*(b) They must be suitable for use solely or principally with the articles of chapter 86 to 88 (see paragraphs (B) below) and*

*(c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (c) below.*

*In view of above provisions, it is clear that for classification of goods under chapter heading 8708 i.e. parts and accessories of Motor Vehicles above conditions require to be satisfied.*

*4.3 The Commissioner (Appeals) while deciding the classification of the disputed goods, in question, under heading 8708, has not given any finding as to whether all the above conditions which are very important for deciding the classification of goods, satisfy / comply in respect of the disputed goods. The Commissioner (Appeals) findings are silent on this vital aspect of the above provisions.*

*4.4 Further, we also find that Learned Commissioner (Appeals) in impugned order not given his finding related to classification of goods individually item wise. Whereas Appellant produced the list of 14 items imported vide above Bills of Entry.*

*4.5 In view of our above observation, we find that the lower authorities have not examined the legal aspects properly to come to conclusion for correct classification of the goods in question. Hence in our considered view the matter needs to be remitted back to the Commissioner (Appeals).*

*05. We, therefore, set aside the impugned order and remand the matter for to the Commissioner (Appeals). The appeal is allowed by way of remand to the Commissioner (Appeals)."*

*4.1 It is noticed that the said order takes note of the HSN Explanatory notes part (III) which lays down the criteria for classification of parts and accessories. A perusal of the impugned order shows that the impugned order does not take notice of this explanatory note. The criteria laid down by the impugned order does not correspond to the criteria laid down in the HSN Explanatory note."*

**18.** I find that as per the above Show Cause Notice No. No. VIII/10-17/Commr/O&A/2020-21 dated 29.09.2020 which is the subject matter in the present remand proceedings, the Noticee, a manufacturer of Motor vehicles falling under

Chapter Heading 8703 of the Customs Tariff, had filed various Bills of Entry as listed in **Annexure – A and A1**(attached of the Show Cause Notice dated 29.09.2020, issued in the matter) during the period from **04.04.2018 to 28.03.2020**, wherein, apart from the other things, they sought clearance for home consumption of various imported Parts / Components / Equipment to be used in manufacture of Motor Vehicles. The Noticee classified the said goods under various Tariff Headings of the First Schedule to the Customs Tariff Act, 1975, as per the following Table – I and Table - II, and paid applicable customs duties on clearance thereof :

**Table- (I) General Part of Motor Vehicles**

Sr. No.	Description of Imported Items	CTH
1	Module Park Aid System	8531 80 00
2	Retainer Jack	7318 19 00
3	Motor Assembly Rear Window Wiper	8501 10 13
4	Arm and Blade Assembly Rear Window Wiper	8512 90 00
5	Bearing Shaft/Rod/Cap/ Etc.	8483 30 00
6	Nuts stamped MS hafnium	7318 16 00
7	Clip Push on Steel	7326 90 90
8	Horn and Sound (Support) Assembly	8512 30 10
9	Switch/penal Assembly Multiple Function	8537 10 00
10	Bracket Switch Multiple Function/plate assemble etc.	8302 30 90
11	Ring Cigarette Lighter Illuminate	9613 90 00
12	Base Assembly Cigarette Lighter	9613 90 00

**Table- (II) Safety Air Bags and Parts thereof of Motor Vehicles**

Sr. No.	Description of Imported Items	CTH
1	Pad Switch (Switch Assembly Passenger Air Bag Deactivate)	85365090
2	Remote Sensor unit (Sensor and Bracket Assembly Air Bag Centre)	85437099
3	Electronic Control Unit (Control Assembly Occupant Restraint System)	85437099
4	Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link Connect)	85437099
5	Remote Sensor unit (Sensor Assembly side passenger Air Bag)	90262000

19. As per the Show Cause Notice, the above imported goods are specially designed material exclusively used for specific model of the Motor Vehicle of CTH 8703, being manufactured by the Noticee at their Sanand plant; that these items cannot be used for any other purpose; that they have commercial identity as part/accessories/components of the Motor Vehicle of CTH 8703 manufactured by the Noticee i.e. part/accessories/components of FORD passenger Car; that these are not "parts of general use" and specially designed parts for use in particular brand and model of the vehicles and are sold in unit and as per part numbers of the original vehicle manufacturers; that therefore, General Parts of Motor Vehicle mentioned in above Table-I are appropriately classifiable under Tariff item 87089900; that Safety Airbag and Parts thereof of Motor Vehicle mentioned in above Table II, are appropriately classifiable under CTH 87089500 of the Customs Tariff Act.

20. After considering the representation in the original proceedings, the then adjudicating authority held that all the 12 parts mentioned in Table-I in Para 18 hereinabove are correctly classifiable under CTH 87089900 to the First Schedule to the Customs Tariff Act, 1975 and the remaining 5 parts mentioned in Table-II in Para 18 hereinabove are correctly classifiable under CTH 87089500 to the First Schedule of the Customs Tariff, 1975 and accordingly, vide OIO No. JAM-CUSTOM-PRV-COM-003-20-21 dated 15/18.01.2021, differential duty of customs arising on account of above change in the classification was confirmed along with interest upon the Noticee.

21. As per stand of the Noticee taken through the written submission filed on 04.04.2024 and submission made at the time of personal hearing held on 04.04.2024, the above said imported goods are correctly classifiable under the respective tariff entry and not under CTH 8708 as per relevant Section Note, Chapter Note and HSN Explanatory Notes as well as various judicial pronouncements including CBIC Instruction No. 01/2022-Customs dated 05.01.2022 and Instruction No. 25/2022-Customs dated 03.10.2022, and accordingly, there is no short-payment of customs duty which has been proposed in the Show Cause Notice.

22. I therefore find that the main issue to be decided in the present remand proceedings is whether, pursuant to CESTAT earlier Orders in the Noticee's own case as well as in the case of Suzuki Motors Gujarat Pvt. Ltd., mentioned in the CESTAT order dated 22.02.2024 giving rise to the present remand proceedings, narrated in Para 17 hereinabove, referring the criteria for classification made in the Tribunal Order No. A/10665/2022 dated 07.06.2022 in the case of M/s. Suzuki Motors Gujarat Pvt. Ltd., the subject imported goods mentioned under Table-I and Table-II of Para 18 hereinabove are correctly classifiable under their respective tariff heading declared by the Noticee at the time of clearance thereof or classifiable under CTH 87089900 and CTH 87089500 to the First Schedule of the Customs Tariff, 1975 respectively, as proposed in the Show Cause Notice.

23. Before coming to the discussion on merits of the case i.e. correct classification of the above 12 items mentioned in Table-I and the remaining 5 items mentioned in Table-II of Para 18 hereinabove, I take up the issue of limitation raised by the Noticee for discussion.

23.1 In the written submission filed on 04.04.2024, the Noticee, inter alia, contended that the show cause notice had proposed to recover duty under Section 28(4) of the Customs Act; that the extended period of limitation under Section 28(4) of the Customs Act can be invocable only if three ingredients are present viz. i. Collusion; or ii. Any willful misstatement; or iii. Suppression of facts; that the impugned order has

held that the Appellant has mis-declared, misclassified and suppressed information with respect to actual nature of the subject goods with an intent to evade duty; that the Appellant has not misclassified the impugned goods; that in the instant case, the entire demand is in the extended period of limitation; that for invocation of extended period, the department ought to have established an intention to evade duty, on part of the Appellant; that in the present case, as it evident from the Impugned SCN, DRI has initiated investigations against similar importers from 2015; that in the instant case, the Appellant had always declared the subject goods as Waksol 9-11A and the same is also evident from a perusal of description of the products as given in the Warehoused Bills of Entry; that the department having been all along aware of the declaration adopted by the Appellant, cannot vide Impugned SCN dated 15.11.2021 allege that the Appellant has indulged in mis-declaration for the purposes of invoking the extended period under Section 28(4); that the department has not made any specific allegation in the SCN as to how the Appellant deliberately suppressed/mis-declared any information with an intent to evade payment of duty; that they were under bonafide belief that the imported goods were correctly classified; that even the department has not produced any other evidence to show that the Appellant has suppressed facts warranting the invocation of the extended period of limitation; that the impugned goods were declared by the Appellant in the BOE as "Waksol 9 – 11A" and they have not mis-declared the details of the goods being imported; that the description specified for the imported goods is correct and the same is not disputed by Customs; that the Appellant's actions are bonafide and no malafide intention can be attributed; that the issue relates to interpretation of complex provisions of the Customs Tariff and entries in exemption notifications and is purely legal in nature; that therefore, the extended period of limitation cannot be invoked; that the extended period cannot be invoked when the case involves an interpretation issue; that the onus is on the department to prove that the Appellant has wilfully mis-declared or suppressed facts with intent to evade payment of duty; that there is nothing on record to show the existence of fraud, collusion or suppression of material facts or information and therefore, the larger period of limitation is not invokable; that none of the ingredients required to invoke extended period of limitation exist in the present case and hence, invoking extended period of limitation is not sustainable.

**23.2** At the time of personal hearing held on 04.04.2024 also, the Noticee contended that the SCN was issued in September., 2020 whereas if normal period is considered, there is demand pertaining to the period of pre-September, 2018 as well; that since the issue pertains to interpretation and classification of tariff entries, the extended period of limitation should not be invoked and at least that much of demand should be set aside.

**23.3** To examine the issue, I have gone through the impugned SCN dated 29.09.2020. It is seen that the period covered in the SCN is 04.04.2018 to 28.03.2020

and demand for the differential duty is proposed under Section 28(4) of the Customs Act, 1962.

**23.4** As per Section 28(4) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—(a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

**23.5** It is seen from the SCN that the same alleged wilful mis-statement [mis-classification] of the subject items by the Noticee and the reasons for such averments. For example, in para 17.1.1 and 17.1.2 of the SCN, it is alleged that the importer resorted to mis-classification of the subject goods which are liable to appropriate classification under CTH 87089900 / 87059500; in para 17.2 of the SCN, it is alleged that there is clear intention of the Noticee, by classifying the imported part/accessories/components under different CTH, as above, instead of correct CTH 87089900 / 87059500, to evade duties of customs and that the Noticee deliberately / intentionally mis-classified the subject items under different CTH, as above, which attract lower duty as against the Correct CTH 8708; in para 17.5.1 and 17.5.2 of the SCN, it is alleged that the Noticee had intentionally/deliberately mis-classified the imported goods with intention to evade payment of Customs duty. Accordingly, short-paid customs duty is proposed to be recovered from the Noticee under Section 28(4) of the Customs Act, 1962 on the ground of wilful mis-statement.

**23.6** I therefore find that when short-paid duty in the present case is alleged to be on account of wilful mis-statement, Show Cause Notice is correctly issued in terms of the provisions of Section 28(4) of the Customs Act, 1962 as one of the three reasons stipulated therein [(a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts] appeared to be applicable while raising demand through the SCN. However, it is observed that the subject SCN dated 29.09.2020 having been issued proposing recovery of short-paid duty under Section 28(4) of the Customs Act, 1962 nowhere mention that the same is issued within extended period of five years from the relevant date instead of normal period of limitation or that extended period of limitation is invoked for recovery of short-paid duty.

**23.7** It is also observed that the subject SCN, at para 21.0, clearly narrates as under:

"21.0 In exercise of the power conferred by clause (1) of the article 123 of the Constitution, the president has pleased to promulgate "The taxation and other laws (relaxation of certain provisions) ordinance, 2020" on 31.03.2020 to provide relaxation in the provisions of certain acts. Section 6 of Chapter V of the Ordinance dated 31.03.2020 regarding relaxation of time limit under certain indirect tax laws, *inter alia*, stipulates that notwithstanding anything contained in the Customs Act, 1962 (except Section 30, 30A, 41, 41A, 46 and 47), the time limit specified in, or prescribed or notified under the act which falls during the period from the 20<sup>th</sup> March 2020 to the 29.06.2020 or such other date after 29.06.2020 as the Central Government may by notification specify, *inter alia*, for completion of any proceeding or issuance of any order by any authority, shall notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30.06.2020 or such other date after 30.06.2020 as the Central Government may by notification specify, in this behalf. Further, in exercise of the powers conferred by section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, the Central Government vide Notification dated 27.06.2020, specified that the 29.09.2020 shall be the end date of the period during which the specified time limit prescribed under Customs Act, 1962 falls for the completion or compliance of such action and 30.09.2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended. Accordingly, normal time limit in the present case is up to 30.09.2020."

**23.8** In view of the above facts emerging on record, I find that contention of the Noticee on the issue is without any basis, completely misplaced and factually incorrect. It is also observed from the written submission of the Noticee filed on 04.04.2024 that the same narrates that in the instant case, the entire demand is in the extended period of limitation; that in the present case, as it evident from the Impugned SCN, DRI has initiated investigations against similar importers from 2015; that in the instant case, the Appellant had always declared the subject goods as Waksol 9-11A and the same is also evident from a perusal of description of the products as given in the Warehoused Bills of Entry; that the department having been all along aware of the declaration adopted by the Appellant, cannot vide Impugned SCN dated 15.11.2021 allege that the Appellant has indulged in mis-declaration for the purposes of invoking the extended period under Section 28(4). From the facts on record in the present case, I find the said contentions as completely extraneous, irrelevant, inapplicable, misplaced and have not been made in the context and facts in the Show Cause Notice dated 29.09.2020.

**23.9** Since the subject Show Cause Notice dated 29.09.2020, having been issued within the normal period of limitation i.e. up to 30.09.2020 available in terms of law position narrated in Para 21.0 of the Show Cause Notice, I do not go into the details of various contentions raised by the Noticee in the written submission filed on 04.04.2024 as well as submission in this regard made at the time of personal hearing held on 04.04.2024 contending that extended period is not invokable in the present case. For the said reason, ratio in various judgments relied upon by the Noticee in support of the said contentions is inapplicable in the facts of the case where the subject SCN is issued within normal period of limitation prescribed under Section 28(1) of the Customs Act, 1962. I therefore find that even when the reasons narrated in Section 28(4) of the Customs Act, 1962 viz. (a) collusion; or (b) any wilful mis-statement; or (c)

suppression of facts are presumed to be absent and inapplicable in the present case, the subject Show Cause Notice, having been issued within normal period of limitation of two years from the relevant date prescribed under Section 28(1) of the Customs Act, 1962 and not invoking extended period of limitation of five years from relevant date prescribed under Section 28(4) of the Customs Act, 1962, the issue of considering any portion of demand of differential duty as time barred due to non-invokability and non-availability of extended period and to set aside that portion for the said reason, as contended by the Noticee, does not arise in this case.

**24.** Now, I take up the issue involved in the Show Cause Notice which mainly relates to classification of parts / components / equipment of motor vehicle. Before coming to the discussion on the correct classification of 12 items of General Parts of Motor Vehicles mentioned in Table-I and 5 items of Safety Air Bags and Parts thereof of Motor Vehicles mentioned in Table-II in Para 18 hereinabove and covered in the Show Cause Notice dated 29.09.2020, I quote the relevant Section Notes, Chapter Notes, Explanatory Notes, etc. which read as under:

**24.1** *Note 1(g) to section XV reads as under:*

*1. This section does not cover:*

*(g) -----other articles of Section XVII (vehicles, ships and boats, aircraft)*

**24.2** *Note 2 to Section XV reads as under:*

*"2. Throughout this Schedule, the expression "parts of general use" means:*

*(a) articles of headings 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metal;*

*(b) springs and leaves for springs, of base metal, other than clock or watch springs (heading 9114); and*

*(c) articles of headings 8301, 8302, 8308, 8310 and frames and mirrors, of base metal, of heading 8306.*

*In Chapters 73 to 76 and 78 to 82 (but not in heading 7315) references to parts of goods do not include references to parts of general use as defined above.*

*Subject to the preceding paragraph and to Note 1 to Chapter 83, the articles of Chapter 82 or 83 are excluded from Chapters 72 to 76 and 78 to 81."*

**24.3** *Note 1(l) to Section XVI reads as under:*

*"1. This Section does not cover:*



(a)....;

....

(l) *articles of Section XVII.*"

**24.4** Section Note 2 to section XVII reads as under:

*"(2) The Expression "Parts" and Parts and accessories do not apply to the following articles, whether or not they are identifiable as for the goods of this Section.*

*(a) Joints, washers or the like of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanized rubber other than hard rubber (heading 4016);*

*(b) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV). Or similar goods of plastics (Chapter 39);*

*(c) Articles of Chapter 82 (tools);*

*(d) Articles of heading 8306;*

*(e) Machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;*

*(f) Electrical machinery or equipment (Chapter 85);*

*(g) Articles of Chapter 90;*

*h) Articles of Chapter 91;*

*(ij) Arms (Chapter 93);*

*(k) Lamps or lighting fittings of heading 9405; or*

*(l) Brushes of a kind used as parts of vehicles (heading 9603)."*

**24.5** Note 3 to Section XVII reads as under:

*"3. References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory."*

**24.6** HSN explanatory notes in respect of Tariff items 8708 provides as under:

*"This heading covers parts and accessories of the motor vehicles of heading 87.01 to 87.05, provided the parts and accessories fulfil both the following conditions:*

*(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and*

*(ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note)."*

**24.7** Part (III) PARTS AND ACCESSORIES of the HSN Explanatory Notes to Section XVII, provides as under:

*"It should, however, be noted that these heading apply only to those parts or accessories which comply with all three of the following conditions:*

*(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below) and*

*(b) They must be suitable for use solely or principally with the articles of chapter 86 to 88 (see paragraphs (B) below) and*

*(c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (c) below.*

**24.8** Rule 3(a) of General Rules of Interpretation reads as under:

*"The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods."*

**25.** From the above, I take up different issues involved in this case related to classification of the impugned goods as under:

**25.1** Whether Note 1(l) to Section XVI of the Customs Tariff excludes from Chapters 84 and 85, the goods of Chapters 84 and 85 mentioned in Note 2(e) and 2(f) of Section XVII. Similar is the issue as to whether Note 1(g) to Section XV of the Customs tariff excludes from Chapters 73 and 83, the goods of Chapters 73 and 83 mentioned in Note 2(b) of section XVII.

**25.1.1** From the above Section Notes, it is seen that Note 1(g) of Section XV and Note 1(l) of Section XVI generally exclude articles of section XVII from Sections XV and XVI respectively whereas Sections Note 2 to Section XVII excludes from Section XVII some specified items only mentioned at clauses (a) to (l) of Note 2. I find that when there is a conflict between a general and a special provision, the latter shall prevail. Accordingly, the special exclusions of Note 2 of Section XVII prevail over the general exclusions of Note 1(g) of Section XV and Note 1(l) of Section XVI. That is, the specified

exclusions from section XVII by its Note 2 can not be further excluded from Sections XV & XVI by Note1(g) of Section XV and Note 1(l) of Section XVI.

**25.1.2** In view of above, by applying Note1(g) of Section XV and Note 1(l) of Section XVI, it can be said that these Notes do not exclude from Sections XV and XVI those specified articles of Section XVII which are excluded from Section XVII by its Note 2. Thus the above conflict gets resolved and there is no need to apply Note-3 to Section XVII if by applying Note 2, the items are classifiable somewhere else than in Section XVII (under which Chapter 87 falls).

**25.1.3.1** Regarding Note 3 to Section XVII, I find that the first part / sentence in the Note is couched in negative terms which indicates that if a part or accessory is not suitable for use solely or principally with the articles of Chapters 86 to 88, it can not be covered by the reference "parts" or "accessories" in those chapters. It does not provide in positive terms that any goods suitable for use solely or principally with articles of Chapters 86 to 88 are covered by "parts" or "accessories" in those chapters. Second part/sentence of Note-3 is the 'principal use' test. It provides that if a part or accessory is covered by description in two or more headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

**25.1.3.2** The expression "those chapters" in this Note may have a restricted as well as expansive meaning. In the restricted sense it refers to Chapters 86 to 88 as this Note makes specific mention of those chapters. For example if a part is suitable for use for motor car (Chapter 87) as well as aircraft (Chapter 88), it will be classified in the heading of parts of that vehicle with which it is principally used. In expansive sense, the expression "those chapters" here may also be taken as headings in section XVII as well as in other Sections of Customs Tariff. For example, if certain part is used with goods of one heading in Section XVII as well as with goods of heading of Section XVI, its classification will be with the goods of that heading with which they have principal use. This Note is related to "parts" or "accessories" of different Headings in the same or different Chapters/sections.

**25.1.3.3** Another related aspect is as to whether the above principal use test in Note-3 overrides Note-2 of section XVII. In other words, whether the goods excluded by Note 2 can be classified in Chapter 87. The Note 2 quoted earlier starts with "(2) *The Expression "Parts" and Parts and accessories do not apply to the following articles, whether or not they are identifiable as for the goods of this Section.*" This mentions it clearly that even if the goods excluded by Note 2 are identifiable as for goods of section XVII (under which Chapter 87 also falls), they are not to be classified as part or accessory in that section. The second part of Note-3 discussed above talks of classification of part or accessory covered by description in two different headings whereas Note 2 provides that the *Expression "Parts" and Parts and accessories do not apply to the goods excluded by Note-2, whether or not they are identifiable as for the*

*goods of this Section.*" Therefore, since Note-3 applies for classification of parts and accessories and Note 2 excludes certain specified goods from the expression "part or accessory" in Section XVII, the Note 3 applies to parts and accessories other than those excluded by Note 2.

**25.1.3.4** The ratio of Intel Design Systems (India) Pvt. Ltd. [2008 (223) ELT 135 (SC)] and Uni Products Ltd. [2020 (372) E.L.T. 465 (S.C.)] narrated in CBIC Instruction No. 01/2022-Customs dated 05.01.2022 discussed in later portion of this order also supports this view. It is worth noting that the second part of above Note 3 applies only when a part or accessory answers to a description in two or more headings. If by exclusions of Note 2, the parts go out of say Chapter 87 and are covered by another heading say in Chapter 85, there may not be occasion to apply this second part of the Note as that would be not a case of answering description in two or more headings. In any case when exclusion of Note 2 applies to Chapter 87, there will be no question of considering that item in Chapter 87.

**25.2** Another issue is as to how to classify goods if they are classifiable in Chapter 87 as well as in any other Chapter. For this, I find that the General Rules of Interpretation of the Tariff (GIR) provide for the same and applying the relevant Rule of interpretation, classification can be done. I find that in such cases, Rule 3(a) of the General Rules for the Interpretation of Import Tariff, provides that for any reason, if goods are, *prima facie*, classifiable under two or more headings, classification shall be in the heading which provides the most specific description compared to heading providing a more general description. For example, if the goods are *prima facie* classifiable in headings of Chapters 84 as well as 87, the heading providing specific description will be preferred over the one providing general description.

**25.3.** Regarding the meaning of the expression 'parts of general use', I find that the same is defined under Note 2 to Section XV in exhaustive manner and it does not mention that these items should be capable of general purpose nor does it exclude from its purview the specialized items usable solely or principally in some other articles, for example vehicles. The definition of "parts of general use" only mentions certain tariff headings and descriptions and if an item is covered by those headings or descriptions, it satisfies the requirement of being "parts of general use" irrespective of the fact whether it is general purpose item or specialized item. The ratio of Spire India V/s. CCE [2006(200)ELT 539(T)] and Kirloskar Pneumatic Co. Ltd. V/s. CC [1997(90)ELT 428(T)] also supports this. I further find from Note 2(b) to Section XVII that the Expression "Parts" and Parts and accessories do not apply to the Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV) or similar goods of plastics (Chapter 39) whether or not they are identifiable as for the goods of Section XVII. It is

therefore clear that this Note 2(b) refers to definition of "parts of general use" as contained in Note 2 to Section XV as discussed above.

26. I further find that on the issue of classification of motor vehicle parts, the Board has also issued instructions and there are also conflicting judgments pronounced by different authorities. The same are discussed as under:

26.1 The Board has issued Instruction No. 01/2022-Customs dated 05.01.2022. The Board has taken into consideration the divergent practices of assessment of automobile parts and situation after the Hon'ble Supreme Court judgement in case of Westinghouse Saxby Farmer. In the said Instruction, the Board instructed as under:

"3. In the context of the divergent practices arisen, it is noted that the classification of 'parts' of goods falling under Section XVII of the Customs or Central Excise Tariff is a complex issue. Further, apparently, the Section notes have been suitably applied in relevant judgments of the Hon'ble Supreme Court on issues of classification of parts and accessories. Thus, the collective wisdom of these judgements indicates the manner in which such classification issues are to be approached. Few of such judgements are illustrated in succeeding paragraphs:

3.1 **Intel Design Systems (India) Pvt. Ltd vs Commissioner of Customs and C.Ex-2008**

A Apart from the reliance on the Section Notes and the Chapter Notes, the Court in this judgement, also considered the HSN Explanatory notes, wherein the three conditions that need to be fulfilled for the goods to be classified under the chapters of Section XVII are mentioned, namely-

- a. They must not be excluded by the terms of Note 2 to section XVII; and
- b. They must be suitable for use solely or principally with the articles of chapter 86 to 88; and
- c. They must not be more specifically included elsewhere in the Nomenclature.

B. While relying on these conditions, the Hon'ble Supreme Court held-

"The items therefore, manufactured by the appellants are identifiable or are in the nature of goods falling under Chapter heading 8536. Since these fall under the category of excluded goods under chapter notes, even though they are used specifically solely or principally with the armoured vehicles of Chapter Heading 8710, they are classifiable under chapter heading 853690 only as held by the adjudicating authority."

C By taking cognizance of the conditions mentioned in the HSN explanatory notes,

the exclusionary clause under Note 2 has been given precedence over the sole or principal use of the items. It was recognized that since one of the conditions i.e. of the exclusion mentioned in Note 2 (Condition (a)) was not met, the said goods could not be classified under chapter 87.

**3.2 CCE Delhi vs Uni Products Ltd-2020(372) ELT-465(SC)-2020**

A. In this judgement, the Hon'ble Supreme Court has once again taken cognizance of the reference to 'parts and accessories' under the main heading 'General' , in Section XVII of the HSN Explanatory Notes thus-

*•Under the Sub Heading "(iii) Parts and Accessories", a three layer test has been postulated. It is on satisfying all of these conditions that a particular item would come under that chapter head."*

B. Recognizing the significance of the Explanatory Notes in guiding the classification of goods, the Supreme Court has placed reliance on all the three conditions that need to be fulfilled for the goods to be classified under the chapters of Section XVII."

**26.2** Regarding Westinghouse Saxby judgement the Instruction mentioned as under:

"4. However, in the current case of Westinghouse Saxby, the Judgments referred above have not come up for consideration and the Hon'ble Supreme Court has applied the 'sole or principal use' test of Section Note 3 to the exclusion of the embargo in Note 2 and therefore, the judgment of the Hon'ble Supreme Court appears to be at variance with the stand taken by the Supreme Court in classifying other parts of goods falling under Section XVII.

5. In this regard, it may be considered that the judgement in case of M/s. Westinghouse Saxby has decided the classification of the commodity 'relays' used in railway signalling equipment of Chapter 86 and not parts of goods falling under Chapter 87. The judgement itself does not refer to it's wider applicability to any other case or issue of a similar nature. Also this judgement, pertains to a matter under the Central Excise Tariff Act in the year 1994 when the Central Excise Tariff and the Customs Tariff were not aligned.

6. Moreover, the Hon'ble Supreme Court in the Westinghouse Saxby judgement itself, has acknowledged the complexity of the issue and has pointed to the undesirability of generalising the decisions of one case to others....."

**26.3** In para 10 of the Instruction, the Board has advised that "in general, the practice of assessment of such 'parts' or any change in it may holistically keep in view and in a speaking manner, all relevant aspects including HS Explanatory Notes, the relevant section and chapter notes and the various decisions of Hon'ble Supreme Court, such as those illustrated above.

**26.4** From Para 10 of the Instruction above, it is revealed that a latitude is given to the assessing officer or the adjudicating authority to decide the classification after considering all relevant aspects of the matter, HSN Notes, Section/Chapter Notes and case law. The language of the Instruction seems to lay stress on the three layer test of HSN Notes and two Supreme Court Judgements in cases of Intel Design Systems and Uni Products. The instruction mentions about the collective wisdom of the Supreme Court judgments on the issue which lay stress on following the 3 conditions test laid down in the HSN Notes. The Instruction seems to indicate that Westinghouse is distinguishable as can be seen from the above quoted part of the Instruction. The judgements of G.S. Auto International and Cast Metal Industries are not mentioned in the Instruction where the ratio is different from the judgements of Intel Design and Uni Products. Hence, they also need to be considered.

**26.5** After the Department's Review petition against Westinghouse was dismissed by the Hon'ble Supreme Court, the Board has issued another Instruction No. 25/2022-Customs dated 03.10.2022 wherein the following is mentioned:

2. Concerns have been raised on *the* validity of the above instruction, as the Review Petition (Civil) D. No. 802/2022 filed in the instant case, vide its order dated 10.08.2022, was dismissed. The matter was examined and the opinion of the learned Additional Solicitor General was also sought on the matter.
3. In terms of the opinion received, it is clarified that the instruction 01/2022 dated 05-01-2022 has brought out distinguishing reasons as to how the decision of the Supreme Court would apply only to the goods in the facts and circumstances. The law continues to remain the same and therefore, the instruction remains valid and does not require any changes."

**26.6** From the above Instruction dated 03.10.2022, the view of the Board is clear which seems to be to follow the ratio of Intel Design and Uni Products and three layer test of HSN in preference to any other view in the matter of classification of parts of automobiles. Respectfully following the Instruction No. 25/2022-Cus, I am inclined to go by the ratio of Intel Design, Uni Products and Kirloskar Pneumatic.

26.7 Now I examine in brief, the relevant judgements on the issue.

26.7.1. In M/s. Intel Design Systems (India) Pvt. Ltd. [2008 (223) ELT 135 (SC)], the Hon'ble Supreme Court decided the classification of switches, control box etc by holding that *even though they are used specifically solely or principally with the armoured vehicles of Chapter Heading 8710, they are classifiable under Chapter Heading 8536.90 only*. The relevant paras 4 & 5 of the judgment read as under: -

*"4. As per Rule 1 on Interpretive Rules, classification of excisable goods is to be determined according to the terms of the Heading and in terms of Section/Chapter notes. Note 2(f) to Section XVII (which governs Chapter 87) excludes the goods viz. electrical machinery and equipment (Chapter 85). The goods in question i.e. contractors, switches, control box etc. are the goods used for switching, protecting electrical circuits or for making connections to or in electric circuit. These parts/components are specifically covered under CSH 8536.90. The CBEC Circular relied upon by the assessee is not relevant.*

*5. As per the Explanatory Notes to HSN the parts falling under Chapter Heading 8710 would be covered under the said chapter, provided they fulfill both the conditions i.e. they must be identifiable as being suitable for use solely or principally for such vehicles and that they must not be excluded by the provisions of Notes to Section XVII. The identifiable parts under the said heading bodies of armoured vehicles and parts thereof, cover special road wheels for armoured cars, propulsion wheels for tanks, tracts etc. As per this requirement, the goods should not only be identifiable to be armoured vehicles, but it should so not have been excluded by Notes to Section XVII. The Chapter note 2(f) excludes electrical machinery and equipment falling under Chapter 85. Explanatory Notes to HSN relating to the parts and accessories excluded by Note 2 specify items with reference to specific Chapter Heading as per (7) (a), (k) which excludes photographs and other current collectors for electric traction vehicles, fuses, switches and other electric apparatus of Heading No. 85.35 or 85.36. The items, therefore, manufactured by the appellants are identifiable or are in the nature of goods falling under Chapter Heading 85.36. Since these fall under the category of excluded goods under Chapter Notes, even though they are used specifically solely or principally with the armoured vehicles of Chapter Heading 8710, they are classifiable under Chapter Heading 8536.90 only as held by the adjudicating authority."*

26.7.1.1 The Hon'ble supreme Court in this judgement relied upon the HS Explanatory notes and the exclusionary clause under Note 2 of Section XVII has been given precedence over the sole or principal use test of Note 3 to Section XVII.



**26.7.2** In CCE v. Uni Products India Limited [2020 (372) E.L.T. 465 (S.C.)], the Hon'ble Supreme Court held that 'car matting' specially made for cars is classifiable under CTH 5703 and not under CTH 8708. The Apex Court, while determining the correct classification for 'Car Matting' has held that 'the common parlance test', "marketability test", "popular meaning test" are all tools for interpretation to arrive at a decision on proper classification of a tariff entry. In this case the Hon'ble Supreme Court took cognisance of the 3 conditions mentioned in the HSN explanatory Notes regarding the classification of parts and accessories of the motor vehicles. The Hon'ble Supreme Court went by the HSN Notes while deciding the classification issue in this matter.

**26.7.3** In Kirloskar Pneumatic Co Ltd V/s. CC [1997(90) ELT 428(T)], it was held that 'parts of general use' such as springs of all types, are classifiable under CTH 7320 of the customs tariff even though they may be specialized and identifiable parts of some machinery or motor vehicles. The tribunal relied upon the HSN Notes in Section XV regarding "parts of general use" to arrive at the decision. The Department's appeal to Supreme Court was dismissed [1997(94) ELT A135 (SC)].

**26.7.4** As against the Intel Design Systems, Uni Products & Kirloskar Pneumatic there are following three judgements in Westinghouse Saxby, GS Auto & Cast Metal which deserve attention. In Westinghouse Saxby Farmer Ltd V/s. CCE [2021(376) ELT 14(SC)], while ordering classification of relays used as railway signalling/traffic control equipment in CTH 8608, the Hon'ble Supreme Court relied on the "user test" of Note 3 of Section XVII to the exclusion of negations contained in Note 2(f) of Section XVII. It is worth noting that in Westinghouse case the earlier judgements of Hon'ble Supreme Court in Intel Design Systems and Uni Products Ltd. were not brought to the notice of the Hon'ble Supreme Court. The HSN Notes were also not brought to the notice of Hon'ble Supreme Court. Thus, judgement in Westinghouse has been passed without considering the contrary judgements of the Hon'ble Supreme Court and HSN Notes. In Intel Design systems, the issue in dispute was whether the goods will fall in Chapter 87 which is the case in these proceedings also whereas in Westinghouse it was the dispute for classification of goods under Chapter 86. In these circumstances the ratio of Intel Design Systems seems to be applicable as it is in line with HSN Notes also. Since Intel Design has not been considered in Westinghouse and it has not been expressly overruled, it does not lose the force of precedent and accordingly applied here. It is important to Note that the CBIC Instruction No. 25/2022-Cus has clarified that though the Department's Review Petition in Westinghouse has been dismissed, the law continues to remain the same and the Instruction No. 01/2022-Cus on the issue is still valid as it has brought out distinguishing reasons as to how the decision of Supreme Court would apply only to the goods in the facts and circumstances.

**26.7.5.1** In G.S. Auto International Ltd [2003(152) ELT 3(SC)] while ordering classification of screws, nuts, bolts etc under heading 8708 and not under heading 7318, the Hon'ble Supreme Court held as under:

*"26. ....For the purposes of classification under Chapter Heading 87.08, the test to be applied is: whether the goods are suitable for use solely or primarily with articles of Chapter Heading Nos. 87.01 to 87.05; if the answer is in the affirmative, the goods will be classifiable under Chapter Heading 87.08, but if the answer is in the negative, they would have to be classified under Chapter Heading No. 73.18. Having regard to the finding that the goods in question cannot but be regarded as parts of automobiles, it has to be held that they are suitable for use primarily with articles of Chapter Heading Nos. 87.01 to 87.05. It follows that the goods in question cannot be treated as falling under Chapter Heading No. 73.18 and that they can properly be classified under Chapter Heading No. 87.08 of the Central Excise Tariff Act, 1985."*

**26.7.5.2** In G.S. Auto, the Hon'ble Supreme Court went by the sole or principal use test contained in Note 3 to Section XVII. Note 2(b) of Section XVII was also mentioned. But the crucial and relevant Note 2 of Section XV containing the definition of "parts of general use" was not at all considered. There is nothing in the said definition applying the user test for denying classification in the given headings in the said Note 2 of Section XV if the said goods were used solely or principally as parts in motor vehicles. The three layer test of HSN Notes was not considered in G.S. Auto. While ordering classification of door handles and hinges for automobiles under heading 8708, in case of Cast Metal Industries (P) Ltd -2015(315)ELT 471(SC), the Hon'ble Supreme Court just followed the G.S. Auto International. The Judgement of Intel Design Systems was not brought to the notice of Hon'ble Supreme Court in Cast Metal. The CBIC Instructions 01/2022-Cus and 25/2022-Cus are for considering Intel Design, Uni Products and HSN Notes and three layer test contained therein.

**26.7.6** From the above, it is seen that there are conflicting ratios in Intel Design Systems, Uni Products and Kirloskar Pneumatics supra on one hand and G.S. Auto International & Cast Metal supra on the other hand. However, Intel Design, Uni Products and Kirloskar Pneumatic have considered the HSN Notes and are in line with the HSN Explanatory Notes. In the circumstances, respectfully following the Instructions as contained in Instruction No. 01/2022-Cus. and more particularly Instruction No. 25/2022-Cus., the ratio of Intel Design and Uni Products is being followed here as they have not been overruled. Indian customs tariff is aligned to HSN and therefore in case of conflicting views, an interpretation in the Supreme Court judgement which is in line with the HSN Explanatory Notes may be a safe guide to follow.

27. From the defence submission filed by the Noticee on 04.04.2024 in connection with the present remand proceedings, I find that apart from specific submission on total 12 + 5 = 17 items covered in this remand proceeding, the Noticee has mainly referred to the CBIC Instruction No. 1/2022-Cus. and No. 25/2022-Cus. and further contended that (i) items specifically designed for motor vehicle will be classified under Heading 8708 only when the same are not excluded under Note 2 of Section XVII; (ii) courts in multiple cases have distinguished from G.S. Auto judgment while classifying parts principally and solely designed for a particular machine and have classified these parts under their respective heading; (iii) the issue of classification of accessories or part of vehicle has been decided in the case of CCE V/s. Uni Products India Ltd.; (iv) classification of the goods can not be determined on the basis of their end use; (v) Heading 87.08 is a residuary entry and therefore, classifying the goods in question under a residuary entry over specific entries is incorrect. The Noticee has also relied upon various judgments in support of submission on the above individual points.

27.1 I have gone through the entire submission made by the Noticee in connection with the present remand proceedings. I find that the present remand proceedings are in pursuance of CESTAT Order No. A/10458/2024 dated 22.02.2024 whereby the matter is remanded for fresh adjudication in the light of the decision of Tribunal in appellant's [Noticee herein M/s. Ford India Pvt. Ltd.] own case as well as in the case of M/s. Suzuki Motors Gujarat Pvt. Ltd. Respectfully following the said direction of the CESTAT, I have analysed, in the foregoing paras, the criteria for classification made in the Tribunal Order No. A/10665/2022 dated 07.06.2022 in the case of M/s. Suzuki Motors Gujarat Pvt. Ltd. reiterated in Order No. A/12641-12644/2023 dated 22.11.2023 in appellant's [Noticee herein M/s. Ford India Pvt. Ltd.] own case and also analysed different judgments on the issue. I am also going to discuss, in the later part of this order, the issue of classification in each of the 12 + 5 items covered in this case. I therefore find that since submission of the Noticee in connection with the present remand proceedings is duly covered, I do not go in individually discussing each and every point of defence including the judgments relied upon in connection thereto.

28. Now, I briefly discuss the classification of the individual items in the light of above discussed principles and legal position.

Table- (I) General Part of Motor Vehicles

28.1 Sr. No. 1 of Table – I :

1	Module Park Aid System	85318000
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28.1.1 The relevant entries for the above claimed classification in the Customs Tariff are as under:

8531 Electric Sound or Visual Signalling Apparatus (For example Bells, Sirens, Indicator Panels, Burglar or Fire Alarms), other than those of heading 8512 or 8530  
85318000 – Other apparatus

28.1.2 In its reply, the Noticee mentioned that this part is specifically covered under CTH 8531 80 00 as this is a sensor to intimate any barrier around the Motor Vehicle. The Module is an assembly that receives inputs from active parking sensors and sends the corresponding output signals for sounding the audible alarm when the input signals received indicate proximity to hazards or obstacles. Note 2 (f) to Section XVII, would operate to exclude this Module, even if they are identifiable as parts of goods of Chapter 87.

28.1.3 From the above description of the goods, it is clear that the claimed tariff item in heading 8531 is for Module Park Aid System. These goods get excluded from parts of Section XVII (Chapter 87) by virtue of Note 2 (f) to Section XVII of the Customs tariff as the said exclusionary Note 2(f) covers electrical machinery or equipment of Chapter 85. Considering this Note 2(f), there is no question of going to Rule 3(a) of the GIR as the said goods get excluded from Chapter 87. Without prejudice to above, even if the said entry of that claimed by the Noticee 85318000 versus that claimed by the Department 87089900 are considered, the above tariff item under CTH 8531 being more specific compared to the residual general entry for parts and accessory – OTHER in tariff item 87089900, the goods can not be classified in tariff 87089900 by applying Rule 3(a) of the GIR also.

28.2 Sr. No. 2 of Table – I :

2	Retainer Jack	73181900
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28.2.1 The relevant entries for the above claimed classification in the Customs Tariff are as under:

7318 Screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel and similar articles, of iron or steel  
- Threaded articles  
73181900 -- Other

28.2.2 In its reply, the Noticee stated that threaded fasteners are regarded as Parts of General use as per Note 2 to Section XV. The parts of general use, whether or not identifiable as parts of the goods in Section XVII are specifically excluded by note 2(b) to Section XVII.

**28.2.3** From the above description of the goods, it is clear that the claimed tariff item in heading 7318 is for Retainer Jack. I find that this part is metal threaded retainer jack that functions as a fastener in vehicle jack kit and classified under CTH 7318 19 00. These goods get excluded from parts of Section XVII (Chapter 87) by virtue of Note 2 (b) to Section XVII of the Customs tariff as the said exclusionary Note 2(b) covers Parts of general use as defined in Note 2 to Section XV. The expression "parts of general use", in so far as the Customs Tariff is concerned, has been categorically defined vide Note 2 of Section XV of the Customs Tariff. There is no provision in the law to even suggest that one has to determine whether a particular "part of general use" can be used for multiple purposes or only in the Motor Vehicle or it has any other use also so as to get covered as "parts of general use". The classification of "parts of general use" in heading 7318 is independent of the specific use or general use of the item. Goods of Heading 7318 being parts of General Use as defined in Note 2 to Section XV are excluded from Section XVII by virtue of Note 2(b) to Section XVII. Considering this Note 2(b), there is no question of going to Rule 3(a) of the GIR as the said goods get excluded from Chapter 87.

**28.3** Sr. No. 3 of Table – I :

3	Motor Assembly Rear Window Wiper	85011013
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**28.3.1** The relevant entries for the above claimed classification in the Customs Tariff are as under:

8501 Electric motors and generators (excluding generating sets)

850110 - Motors of an output not exceeding 37.5W:

--- DC Motors:

85011013 ---- Wiper Motor

**28.3.2** In its reply, the Noticee mentioned that this part is classified CTH 8501 10 13 as it is a motor which is used in the Wiper Assembly. Goods covered by Chapter 85 are excluded by the terms of Note 2(f) to Section XVII, even if they are identifiable as parts of goods of Chapter 87. When such goods are excluded in terms of Note 2(f) to Section XVII, they cannot be classified under CTH 8708.

**28.3.3** From the above description of the goods, it is clear that the claimed tariff item in heading 8501 is for Electric motors. These goods get excluded from parts of Section XVII (Chapter 87) by virtue of Note 2 (f) to Section XVII of the Customs tariff as the said exclusionary Note 2(f) covers electrical machinery or equipment of Chapter 85. Considering this Note 2(f), there is no question of going to Rule 3(a) of the GIR as the said goods get excluded from Chapter 87. Without prejudice to above, even if the said

entry of that claimed by the Noticee 85011013 versus that claimed by the Department 87089900 are considered, the above tariff item under CTH 8501 being more specific compared to the residual general entry for parts and accessory – OTHER in tariff item 87089900, the goods can not be classified in tariff 87089900 by applying Rule 3(a) of the GIR also.

28.4           Sr. No. 4 of Table – I :

4	Arm and Blade Assembly Rear Window Wiper	85129000
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28.4.1           The relevant entries for the above claimed classification in the Customs Tariff are as under:

8512 Electrical lightning or signalling equipment (excluding articles of heading 8539), windscreen wipers, defrosters and demisters, of a kind used for cycles or motor vehicles  
85129000 - Parts

28.4.2           In its reply, the Noticee mentioned that this Part is classified under CTH 8512 90 00 and is used in the Wiper Assembly. Wind screen wipers are specifically covered under CTH 8512. The arm and blade assembly being an identifiable part of the wind screen wipers are classified under CTH 8512 by application of Note 2(b) to Section XVI. This part cannot be classified under 8708 as per section note 2 (f) of Section XVII.

28.4.3           The heading 8512 is specific for Wind screen wipers, defrosters and demisters as well as electrical lighting equipment or parts thereof for motor vehicles. From the above description of the goods, it is clear that the claimed tariff item in heading 8512 is specific for these Windscreen wipers and parts of electrical lighting equipment for motor vehicles. These goods get excluded from parts of Section XVII (Chapter 87) by virtue of Note 2 (f) to Section XVII of the Customs tariff as the said exclusionary Note 2(f) covers Electrical machinery or equipment (Chapter 85). Considering this Note 2(f), there is no question of going to Rule 3(a) of the GIR as the said goods get excluded from Chapter 87. Without prejudice to above, even if the entry of that claimed by the Noticee 85129000 versus that claimed by the Department 87089900 are considered, the above tariff item under CTH 8512 being more specific compared to the residual general entry for parts and accessory – OTHER in tariff item 87089900, the goods can not be classified in tariff 87089900 by applying Rule 3(a) of the GIR also.

28.5           Sr. No. 5 of Table – I :

5	Bearing Shaft/ Rod/ Cap/ Etc.	84833000
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**28.5.1** The relevant entries for the above claimed classification in the Customs Tariff are as under:

8483 Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housing and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)

84833000 – Bearing housings, not incorporating ball or roller bearings and plain shaft bearings.

**28.5.2** In its reply, the Noticee mentioned that these are transmission shafts, shaft coupling, gears, gear boxes pinions, plain shaft bearings and bearing housing whether or not incorporating bearings. The Classification of this plain shaft bearing under CTH 8483 30 00 is appropriate. Classification under CTH 8708 cannot be sustained as Note 2(e) to Section XVII will operate to exclude all the plain shaft bearings from the purview of CTH 8708.

**28.5.3** The heading 8483 is specific for plain shaft bearings. From the above description of the goods, it is clear that the claimed tariff heading 8483 is specific for shaft bearings. It is seen that there is no specific mention of 'for motor vehicles' in the CTH 8483 quoted above. However, it is seen that some other entries in CTH 8483 for example, 84831091 and 84831092 mention crank shaft for engines of heading 8407/8408 and heading 8407 specifically makes mention of 'for motor cars' etc which also supports that plain shaft bearing for connecting rod for motor vehicles should also fall under the heading 8483 and the tariff item claimed by the Noticee.

**28.5.4** The exclusionary Note 2(e) to Section XVII is as under:

“ 2(e ) ..... Or provided they constitute integral part of engines or motors, articles of heading 8483”

**28.5.5** Since the above item is covered by the CTH 8483, it can not be classified in Chapter 87 (section XVII) as proposed in the SCN in view of embargo placed by the Note 2(e). Considering this Note 2(e), there is no question of going to Rule 3(a) of the GIR as the said goods get excluded from Chapter 87. Without prejudice to above, even if the two tariff items of that claimed by the Noticee 8483 3000 versus that claimed by the Department 8708 9900 are considered, the above tariff item 84833000 for bearing shaft being more specific compared to the residual general entry for parts and accessory – OTHER in tariff item 87089900, the goods can not be classified in tariff item 87089900 proposed by the SCN by applying Rule 3(a) of the GIR also.

**28.6** Sr. No. 6 of Table – I :

6	Nuts stamped MS hafnium	73181600
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**28.6.1** The relevant entries for the above claimed classification in the Customs Tariff are as under:

7318 Screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel and similar articles, of iron or steel.

73181600 Nuts

**28.6.2** In its reply, the Noticee mentioned that this part is classified under CTH 7318 16 00 as this is a part of general use as defined in Note 2 to Section XV. Parts of general use whether or not identifiable as parts of goods of Section XVI or of the goods in Section XVII are specifically excluded by Note 2(b) to Section XVII.

**28.6.3** It is seen from Note 2 of Section XV that goods of heading 7318 are covered in the definition of 'parts of general use' and hence covered by the exclusions mentioned in Note 2(b) to Section XVII. The expression "parts of general use", in so far as the Customs Tariff is concerned, has been categorically defined vide Note 2 of Section XV of the Customs Tariff. There is no provision in the law to even suggest that one has to determine whether a particular "part of general use" can be used for multiple purposes or only in the Motor Vehicle or it has any other use also so as to get covered as "parts of general use". The classification of "parts of general use" in heading 7318 is independent of the specific use or general use of the item. Goods of Heading 7318 being parts of General Use as defined in Note 2 to Section XV are excluded from Section XVII by virtue of Note 2(b) to Section XVII.

**28.7** Sr. No. 7 of Table – I :

7	Clip Push on Steel	73269090
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**28.7.1** The relevant entries for the above claimed classification in the Customs Tariff are as under:

7326 : Other articles of iron or steel  
732690 : Other:  
73269099 : ---- Other

**28.7.2** In its reply, the Noticee mentioned that this part is classifiable under CTH 73269090 and that this is a simple push clip to be used in a car body. The Noticee further stated that no duty demand has been made for this particular part.

**28.7.3** On going through the tariff entries, it is observed that there is no entry



under CTH 73269090, instead entry under CTH 73269099 is for other articles of iron or steel as mentioned above. It is also observed that in connection with original adjudication proceedings vide OIO No. JAM-CUSTM-PRV-COM-003-20-21 dated 15/18.01.2021, the Noticee had made submission that no duty demand has been made on these clips in the impugned SCN and it appears that for the said reason, there was no discussion on the said item in the earlier order. In connection with the present remand proceedings, it is verified that there is no demand for differential duty in respect of the above item under CTH 73269090 / 73269099 and hence, no specific discussion on classification thereof i.e. whether the said item is classifiable under CTH 73269090 / 73269099 as claimed by the Noticee or under CTH 87089900 as claimed by the revenue, is warranted here in respect of the above item.

**28.8** Sr. No. 8 of Table – I :

8	Horn and Sound (Support) Assembly	85123010
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**28.8.1** The relevant entries for the above claimed classification in the Customs Tariff are as under:

8512 Electrical lightning or signalling equipment (excluding articles of heading 8539), windscreen wipers, defrosters and demisters, of a kind used for cycles or motor vehicles

851230 Sound Signalling Equipment

85123010 - Horns

**28.8.2** In its reply, the Noticee mentioned that this horn and sound support assembly acts as a signaling equipment and hence classifiable under CTH 8512 and more specifically under CTH 8512 30 10; that the part is a horn assembly used in cars; that the Classification of this part is specifically covered by the HSN Explanatory Notes which covers horn, sirens and other signaling appliances.

**28.8.3** The heading 8512 is specific for Electrical lightning or signalling equipment for motor vehicles. From the above description of the goods, it is clear that the claimed tariff item in heading 85123010 is specific for Horns. These goods get excluded from parts of Section XVII (Chapter 87) by virtue of Note 2 (f) to Section XVII of the Customs tariff as the said exclusionary Note 2(f) covers Electrical machinery or equipment (Chapter 85). Considering this Note 2(f), there is no question of going to Rule 3(a) of the GIR as the said goods get excluded from Chapter 87. Without prejudice to above, even if the entry of that claimed by the Noticee 85123010 versus that claimed by the Department 87089900 are considered, the above tariff item under CTH

85123010 being more specific compared to the residual general entry for parts and accessory – OTHER in tariff item 87089900, the goods can not be classified in tariff 87089900 by applying Rule 3(a) of the GIR also.

28.9 Sr. No. 9 of Table – I :

9	Switch / Panel Assembly Multiple Function	85371000
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28.9.1 The relevant entries for the above claimed classification in the Customs Tariff are as under:

8537 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517

85371000 – For a voltage not exceeding 1,000 V

28.9.2 In its reply, the Noticee mentioned that this part is classified under CTH 8537 10 00 of the Customs Tariff Act, 1975; that the part performs a control function. Therefore, goods cannot be classified under CTH 8708 since are appropriately classifiable under CTH 8537.

28.9.3 From the above description of the goods, it is clear that the claimed tariff item in heading 8537 is for Switch / Panel Assembly Multiple Function. These goods get excluded from parts of Section XVII (Chapter 87) by virtue of Note 2 (f) to Section XVII of the Customs tariff as the said exclusionary Note 2(f) covers electrical machinery or equipment of Chapter 85. Considering this Note 2(f), there is no question of going to Rule 3(a) of the GIR as the said goods get excluded from Chapter 87. Without prejudice to above, even if the said entry of that claimed by the noticee 85371000 versus that claimed by the Department 87089900 are considered, the above tariff item under CTH 8537 being more specific compared to the residual general entry for parts and accessory – OTHER in tariff item 87089900, the goods can not be classified in tariff 87089900 by applying Rule 3(a) of the GIR also.

28.10 Sr. No. 10 of Table – I :

10	Bracket Switch Multiple Function / Plate Assemble etc.	83023090
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28.10.1 The relevant entries for the above claimed classification in the Customs Tariff are as under:

8302 Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddler, trunks, chests, casket or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metals; automatic door closers of base metal.

830230 – Other mountings, fittings and similar articles suitable for motor vehicles:

83023090 --- Other

**28.10.2** In its reply, the Noticee mentioned that this is a general-purpose bracket to hold switches; that this is a part of general use as defined in Note 2 to Section XV; that such brackets are covered under CTH 8302, more specifically under CTH 8302 30 90.

**28.10.3** From the Note 2 of Section XV, it is seen that goods of heading 8302 are covered in the definition of ‘parts of general use’ and hence covered by the exclusions mentioned in Note 2(b) to Section XVII. It is worth mentioning that subheading 830230 is for ‘other mountings, fittings and similar articles suitable for motor vehicles.’ Therefore, this entry is quite specific for motor vehicles. The SCN does not dispute the description of these items but proposes that these are not general purpose items but are specialized items to be used solely or principally as part of motor vehicles and on this ground proposes to classify them under tariff item 87089900.

**28.10.4** The expression “parts of general use”, in so far as the Customs Tariff is concerned, has been categorically defined vide Note 2 of Section XV of the Customs Tariff. There is no provision in the law to even suggest that one has to determine whether a particular “part of general use” can be used for multiple purposes or only in the Motor Vehicle or it has any other use also so as to get covered as “parts of general use”. The classification of “parts of general use” in CTH 8302 is independent of the specific use or general use of the item. Goods of Heading 8302 being parts of General Use as defined in Note 2 to Section XV are excluded from Section XVII by virtue of Note 2(b) to Section XVII.

**28.11** In view of above, I find that the above items mentioned at Sr. No. 1 to 10 of Table-I are not classifiable under CTH 87089900 as the same do not satisfy one of the three conditions of HSN Explanatory Notes to Section XVII, mentioned in the Tribunal Order No. A/10665/2022 dated 07.06.2022 narrated in Para 17.2 above viz. *“(a) They must not be excluded by the terms of Note 2 to this Section”*.

**28.12** Sr. No. 11 and 12 of Table – I :

11	Ring Cigarette Lighter Illuminate	96139000
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12	Base Assembly Cigarette Lighter	96139000
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**28.12.1** The relevant entries for the above claimed classification in the Customs Tariff are as under:

9613 Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints and wicks  
96139000 - Parts

**28.12.2** In its reply for item at Sr. No. 11, the Noticee mentioned that CTH 9613 covers cigarette lighter and parts of Cigarette lighter; that this part is classifiable under CTH 9613 90 00; that as per HSN explanatory notes, the lighter and its parts used in motor vehicles are classifiable under CTH 9613, the identifiable parts of such lighters are also classified under CTH 9613. In its reply for item at Sr. No. 12, the Noticee mentioned that the product is classified under CTH 9613 90 00 since CTH 9613 covers cigarette lighter; that the arguments extended for classification of Ring Cigarette Lighter Illuminate are equally applicable to this part as well and hence, cannot be classified under CTH 8708.

**28.12.3** Above part at Sr. No. 11 is an illuminating indicator used showing readiness of lighter fitted in motor vehicle. This ring illuminate is integral part of a cigarette lighter in the motor vehicle. CTH 9613 classifies Cigarette lighters and parts thereof. Above part at Sr. No. 12 a part of Cigarette Lighter. Hence, both the said items are specifically classified under CTH 9613. It is seen that the principle of "specific over general" is explicitly codified in the Explanatory Notes to Section XVII. It is also noticed that Note 2 of Section XVII does not exclude goods of CTH 9613 from the parts and accessories of motor vehicle classifiable under Chapter 87 and in the present case the said goods are also suitable *for use solely or principally with the articles of Chapter 87 i.e. motor vehicles manufactured by the Noticee*. However, in view of specific inclusion of the above items elsewhere i.e. under CTH 9613, all the three conditions are not fulfilled in respect of the said items and hence, the same do not merit classification under CTH 87089900 as proposed in the Show Cause Notice.

**28.12.4** In view of above, I find that the above items mentioned at Sr. No. 11 and 12 in Table-I are not classifiable under CTI 87089900 as the same do not satisfy one of the three conditions of HSN Explanatory Notes to Section XVII, mentioned in the Tribunal Order No. A/10665/2022 dated 07.06.2022 narrated in Para 17.2 above viz. "(c) They must not be more specifically included elsewhere in the Nomenclature".

Table- (II) Safety Air Bags and Parts thereof of Motor Vehicles

28.13 Sr. No. 1 of Table – II :

1	Pad Switch (Switch Assembly Passenger Air Bag Deactivate)	85365090
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28.13.1 The relevant entries for the above claimed classification in the Customs Tariff are as under:

8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits for a voltage not exceeding 1000 volts; connectors for optical fibres, optical fibre bundles or cables  
853650 - Other switches:  
853690 --- Other

28.13.2 In its reply, the Noticee mentioned that this part is switch assembly, which contains one Rotatory Switch, a Housing and Connector; that it is used to switch ON or OFF the working of Airbag; that this switch is used to deactivate the Airbag when there is no passenger in the passenger seat; that the Classification of the same is under CTH 8536 50 90 of the Customs Tariff Act, 1975 which covers electrical apparatus for switching or protecting electrical circuits

28.14 Sr. No. 2 to 4 of Table – II classified by the Noticee under CTH 85437099 :

	Item description	Function of the part as mentioned in defence submission filed on 04.04.2024
2	Remote Sensor Unit (Sensor and Bracket Assembly Air Bag Centre)	It acts as a sensor to inflate the Air Bag in the Motor Vehicle. This sensor instructs the air bag inflator system to inflate the bag during any sudden collision.
3	Electronic Control Unit (Control Assembly Occupant Restraint System)	This part is a control assembly that receives commands from the restraint control module to the deployment of air bags and seat belt pretensioners based on inputs from crash sensors located in the front and sides of the vehicles. It is also responsible for triggering the fuel cut-off command depending on the intensity of the crash. This part is therefore the controller for the airbag inflation unit.
4	Mod Asy-Smart Dat Lnk Con (Module assembly Smart Data Link	This part is a Smart Data Link Connector Module assembly, which transfers the electronic pulse

	Connect)	from the control module to the scan tool. The part in question gives the vehicle information such as operating condition, and diagnostic information. This part is therefore the electronic controller for the airbag inflation unit. Further since items falling under Chapter 85 are excluded from Section XVII by Note 2(f) of 8708, they cannot be classified under CTH 8708
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**28.14.1** The relevant entries for the above claimed classification under CTH 85437099 in the Customs Tariff are as under:

8543 Electrical Machines and apparatus having individual functions, not specified or included elsewhere in this chapter

854370 – Other machines and apparatus:

85437099 ---- Other

**28.15** Sr. No. 5 of Table – II :

5	Remote Sensor unit (Sensor Assembly side passenger Air Bag)	90262000
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**28.15.1** The relevant entries for the above claimed classification in the Customs Tariff are as under:

9026 Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases, excluding instruments and apparatus of headings 90.14, 90.15, 90.28 or 90.32

90262000 – For measuring or checking pressure

**28.15.2** In its reply, the Noticee mentioned that this product is a pressure sensor which helps in determining the pressure for airbag deployment; that this part is a pressure sensor with an accelerometer that detects when the vehicle has been in a crash situation and sends the signals to the main airbag electronic control module; that the pressure sensors are capable of measuring small pressure fluctuations at high static pressure levels; that pressure measuring instruments are specifically covered under CTH 9026; that articles of Chapter 90 are excluded from Section XVII by note 2(g) to Section XVII and hence not classifiable under CTH 8708

**28.16** The relevant entry for the classification proposed in the Show Cause Notice is as under:

87089500 -- *Safety airbags with inflator system; parts thereof*

**28.16.1** It is not in dispute that all the above five items mentioned at Para 30.13 to 30.15 are parts of Safety airbag system. It is also not in dispute that Safety airbag system is a composite module fitted in cars and it is not a 'single item' used in isolation. It is also revealed that the Safety Airbag systems includes Airbag Control Unit, Sensors, airbags and inflator to perform the desired function of preventing damage to drivers and passengers in case of accident/crash by way of inflating and deflating airbags. When accident/collision happens, it activates the different types of sensors which detect changes in speed, pressure etc. These sensors are in close contact with Airbag Control Unit (ACU) which on analyzing the data received from sensors determines whether and how the airbags are to be deployed. If the ACU or electronic control module determines that airbag deployment is necessary, it initiates the inflation stage. Thus, safety airbag system is an integrated system of the above closely knit components to perform the principal function of safety restraint system of the vehicle. All these five parts imported by the Noticee are part and parcel of the safety airbag system of the vehicle. Safety air bag system is in the form of a system consisting of a variable number of separate units/parts depending upon the requirement. However, basic composition remains the same to make it working in a motor vehicle. The items in dispute are all used as constituents of Safety Air Bag system which is to be used as part of motor cars manufactured by the Noticee.

**28.16.2** The description of the tariff item under CTH 87089500 indicates that it covers the safety airbag system as whole and not just the plain airbag with inflator module. The word 'system' here qualifies the words 'safety airbag with inflator'. I therefore find that the description of the tariff item is for "safety airbag system" as a whole including the inflator module. The safety airbag system of the vehicle works as system where the different components of the system like sensors, electronic control module, airbags & inflator module work in unison.

**28.16.3** In the defence submission, the Noticee has submitted that all these five items as part of airbag system. I find that as per GRI 1, the classification of goods is to be determined as per the terms of the heading and section notes and chapter notes. The parts in question are solely and principally used as constituents of "Safety Airbag System" which is again used solely for fitting in the motor vehicle. These parts are also identified and given respective identity number by the Noticee as parts of Ford Motor Vehicle. Also, the combined prime function of these items is that they are integral part of safety airbag system and for operation of Safety Airbag only. Thus, going by the GIR 1 read with description mentioned in CTH 8708 and Section Note 3 to Section XVII the imported parts used for safety airbag system of motor vehicle are well covered under heading 87089500.

**28.16.4** The Noticee has classified four out of these five items under residual entries in Chapter 85 and one item under general entry under Chapter 90 whereas the

items are more specifically mentioned in tariff item 87089500. For example, the items at Sr. Nos. 2,3 and 4 of Table -II [Para 30.14 hereinabove] are classified by the Noticee under tariff item 85437099. This tariff item is highly residual entry. First, the Heading 8543 itself is a residual entry as under: 8543: *Electrical machines and apparatus having individual functions, not specified or included elsewhere in this chapter*. Under heading 8543, the subheading 854370 is again residual as under: 854370: *other machines and apparatus*. The tariff item 85437099 is a four dash residual entry---OTHER under the three dash residual entry ---OTHER. This illustration shows that the Noticee has classified these three items under residual to residual entry whereas there is specific entry for motor vehicle parts under heading 8708 and parts of safety airbag system are specifically mentioned in tariff item 87089500. Also the items at Sr. Nos. 1 and 5 of the Table-II [Para 30.13 and 30.15 hereinabove respectively] are also classified by the Noticee under general entries under tariff items 85365090 and 90262000 respectively as against the specific description under heading 8708. These items are admittedly suitable for use solely or principally as part in the motor vehicle. These five items are not general purpose items but exclusively designed for use as parts of Ford motor vehicle. For classification of such specialised parts of motor vehicle the entries of heading 8708 and tariff item 87089500 are applicable instead of general entries in Chapter 85 and 90 as done by the Noticee. Hence conjoint reading of Notes 2(f) & 3 of section XVII read with Note 1(l) of Section XVI makes it clear that such part can fall only in heading 8708.

**28.16.5** Note 1 (l) to Section XVI excludes articles of Section XVII from Section XVI under which Chapter 85 falls i.e. Articles of Chapter 87 (including parts & accessories of motor vehicle of Chapter 87) do not fall under Chapter 85 as Chapter 85 is part of Section XVI. Thus, if only Section Note 1(l) of Section XVI and Note 2(f) of Section XVII are considered, a situation emerges wherein each Section excludes the goods of other section by way of respective Section Note. Note 1(l) to Section XVI excludes goods of Chapter 87 (which fall under Section XVII) from Section XVI whereas Note 2(f) of Section XVII excludes goods of Chapter 85 (which falls under Section XVI) from Section XVII (under which Chapter 87 falls). The solution to this situation lies in Note 3 to Section XVII which reads as under: -

*"References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory."*

**28.16.6** Effect of Note 3 to Section XVII is that when any part or accessory can fall in Section XVII as well as in another Section, its classification has to be determined by its sole or principal use. For example, if a part can fall in Chapter 87 as well as in Chapter 85, if it is suitable for use solely or principally with vehicle of Chapter 87, its classification shall be under Chapter 87 (8708) and not under Chapter 85. Conjoint



reading of Section Note 1(l) of Section XVI and Note 2(f) and 3 of Section XVII makes it clear that once a part is suitable for use solely or principally with articles of Chapter 87, there is no question of considering entries under chapter 85.

**28.16.7** It is not in dispute that all the above five items (i) are specifically designed for use by the Noticee for the purpose of manufacture of motor vehicle of their own brand, (ii) can only be used in motor vehicle classifiable under CTH 8703 (iii) are given part number to each of these items by the Noticee and hence identifiable as parts of FORD motor vehicle (iv) cannot be used anywhere as general item/parts having general commercial identity i.e. identity other than "parts of Ford motor vehicle".

**28.16.8** Therefore, conjoint reading of Note 2 & Note 3 of Section XVII and Note 1 (l) of Section XVI make it very clear that since all the five items of Table-II are suitable for use solely or principally with the articles of Chapter 87 and all are parts of specific motor vehicles, their classification shall be under Chapter 87, Heading 8708 which is for "parts and accessories of the motor vehicles of headings 8701 to 8705" and the appropriate Tariff item is 87089500. It is also observed that the tariff items 85365090, 85437090 and 90262000 under which the Noticee has claimed classification of these five items are general entries for certain goods and not for the imported goods for specific use in motor vehicle, whereas the heading 8708 specifically covers parts of motor vehicle. In the light of the fact that the imported goods are suitable for use solely or principally as parts of motor vehicle, considering above section Notes there is no need to consider the entries of Chapters 85 and 90 for their classification.

**28.16.9** I further find from the submission of the Noticee filed on 04.04.2024 in connection with the present remand proceedings that the Noticee has not claimed exclusion of the above items at Sr. No. 1 to 3 of Table-II classified by them under CTH 85365090 / 85437099 from classification under Chapter 87 by virtue of Note 2(f) of Section XVII as is done in respect of other items classified under Chapter 85, mentioned at Sr. No. 1, 3 and 4 of Table-I and subject matter of the present case. This not only shows that the Noticee is also in agreement that the subject items do not fall under Chapter 85, as claimed by them but also supports the case of revenue that the subject items are correctly classifiable under CTH 87089500. Regarding item at Sr. No. 5 of Table-II classified by the Noticee under Tariff Item 90262000, as discussed above, the said item is a general entry for an instrument or apparatus for measuring or checking pressure whereas the item is a part of side passenger air bag assembly and therefore more specifically falls under CTH 87089500. It is seen that the principle of "specific over general" is explicitly codified in the Explanatory Notes to Section XVII. It is therefore noticed that exclusion by virtue of Note 2(g) claimed by the Noticee in submission filed on 04.04.2024 is not available to the Noticee. Further, in view of the fact that the said item has not been specifically included elsewhere, the same is correctly classifiable under CTH 87089500 as proposed in the Show Cause Notice.

**28.16.10** In view of above, I find that the above five items are classifiable under CTI 87089500 as the same satisfy all the three conditions of HSN Explanatory Notes to Section XVII, mentioned in the Tribunal Order No. A/10665/2022 dated 07.06.2022 narrated in Para 25 above, as :

- (a) They have not been excluded by the terms of Note 2 to Section XVII, and*
- (b) They have been suitable for use solely or principally with the articles of chapter 86 to 88 i.e. motor vehicle of CH 8703 in this case, and*
- (c) They have not been specifically included elsewhere in the Nomenclature.*

**28.17** The Noticee also stated in written submission dated 04.04.2024 about few orders of different adjudicating authorities wherein classification of the items imported as parts and accessories of motor vehicles under their respective headings under the Customs Tariff Act, 1975 is upheld. I have gone through the said orders and find as under:

**28.17.1** In the OIO No. 1 to 287/DC/Assessment/ICD-SND/2022-23 dated 20.03.2023 passed by the Deputy Commissioner of Customs, ICD, Sanand in the case of M/s. Suzuki Motors Gujarat Pvt. Ltd., classification of 51 items imported as parts and accessories of motor vehicle under respective headings under the Customs Tariff Act, 1975 is upheld. The said order did not deal with the Safety Air Bag Parts which are held to be classifiable under CTH 87089500 in this order against their classification under CTH 85365090 / 85437099 / 90262000 claimed by the Noticee in this case. The items at Sr. No. 39 and 40 in the said order dated 20.03.2023 classified under CTH 85365090 were Switch assembly neutral and Switch assembly brake vacuum which were general parts meant for use in motor vehicles and excluded vide Note 2(f) of Chapter XVII whereas in this case, the item classified by the Noticee under CTH 85365090 is Switch Assembly Passenger Air Bag Deactivate i.e. part of Safety Air bag and hence, held to be appropriately classifiable under CTH 87089500 as per discussion in foregoing paras. The item at Sr. No. 41 in the said order dated 20.03.2023 classified under CTH 85365090 was Switch assembly oil pressure which measures the engine oil pressure and hence, the said item is different from the item "Switch Assembly Passenger Air Bag Deactivate" classified by the Noticee under CTH 85365090 in the present case and the same being part of Safety Air bag is held to be appropriately classifiable under CTH 87089500 as per discussion in foregoing paras. Further, the said order did not deal with the items viz. Sensor and Bracket Assembly Air Bag Centre, Control Assembly Occupant Restraint System and Module Assembly Smart Data Link Connection which are parts of Safety Air bag system in the present case and classified by the Noticee

under CTH 85437099 but held to be correctly classifiable under CTH 87089500 as per discussion in the foregoing paras. Further, the item at Sr. No. 51 in the said order dated 20.03.2023 classified under CTH 90262000 was Sensor Assembly Air Pressure which measures air pressure coming from the turbo pipe in the engine which was general part meant for use in motor vehicles and excluded vide Note 2(g) of Chapter XVII whereas in this case, the item classified by the Noticee under CTH 90262000 is "Sensor Assembly Side Passenger Air Bag" i.e. part of Safety Air bag system and hence, held to be appropriately classifiable under CTH 87089500 as per discussion in foregoing paras. I therefore find that the said decision relied upon by the Noticee is not squarely applicable in this case as the items in this case held to be appropriately classifiable under CTH 87089500 against their classification in the respective tariff entries claimed by the Noticee are different.

**28.17.2** In the OIO No. JAM-CUSTM-PRV-COM-003-22-23 dated 26.10.2022 passed by the then Commissioner of Customs [Prev.], Jamnagar in the case of M/s. Honda Cars India Ltd., above five items of parts of Airbag system classified by the Noticee under CTI 85365090 / 85437099 / 90262000 and held to be correctly classifiable under CTH 87089500 in this order were not dealt with and hence, no decision, contrary to the stand taken in this order, in respect of the subject five items is placed on record by the Noticee.

**28.17.3** In the OIO No. JAM-CUSTM-PRV-COM-006-23-24 dated 20.03.2024 earlier passed by the undersigned in connection with a separate remand proceedings of a Show Cause Notice covering different period to the same Noticee i.e. M/s. Ford India Pvt. Ltd., I have held that General Parts of Motor vehicles are correctly classifiable under their respective tariff entries declared by the Noticee against claim of revenue for classification thereof under CTH 87089900 whereas Safety Air Bag Parts of the motor vehicles are held to be correctly classifiable under CTH 87089500 as proposed in the Show Cause Notice against classification thereof declared by the Noticee under respective tariff headings. Hence, my findings in the present case are in consonance with the findings in the said OIO No. JAM-CUSTM-PRV-COM-006-23-24 dated 20.03.2024.

**28.18** In view of the above discussion, I am of considered view that the above five items mentioned at Para 30.13 to 30.15 above and classified by the Noticee under CTI 85365090 / 85437099 / 90262000 are correctly classifiable under CTH 87089500 as proposed in the Show Cause Notice.

**29.** Complying with the direction of the Hon'ble CESTAT in Order No. A/10458/2024 dated 22.02.2024 for fresh adjudication of the issue involved in SCN No. VIII/10-17/Commr/O&A/2020-21 dated 29.09.2020 earlier adjudicated vide OIO No. JAM-CUSTM-PRV-COM-003-20-21 dated 15/18.01.2021, in the light of decision of the Tribunal in appellant's [i.e. the Noticee herein M/s. Ford India Pvt. Ltd.] own case as well as in the case of M/s. Suzuki Motors Gujarat Pvt. Ltd., in view of the discussion in

the foregoing paras, I hold that the 12 imported car parts / components, mentioned at Sr. No. 1 to 12 of Table-I in Para 18 above, are appropriately classifiable under their respective tariff entry declared by the Noticee and hence, there is no short-payment of customs duty in respect of these 12 items. Consequently, I drop the demand of differential duty in respect of these 12 items. Accordingly, the issue of recovery of interest under Section 28AA, proposal made in the Show Cause Notice to hold the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962 and proposal made in the Show Cause Notice to impose penalty on the Noticee under Section 112(a)/114A/114AA of the Customs Act, 1962 do not sustain in law in respect of these 12 items. However, as discussed above in detail in this order, I hold that the remaining five parts mentioned at Sr. No. 1 to 5 of Table-II in Para 18 above, are appropriately classifiable under Tariff Item 87089500 instead of Tariff item 85365090 / 85437099 / 90262000 claimed by the Noticee and this mis-classification is held to be in contravention of the correct law position in view of the above discussion and the same has led to short payment of duty.

**30.1** Regarding duty demand in the Show Cause Notice dated 29.09.2020, I find that differential duty of Rs. 24,92,11,369/- and Rs. 10,52,62,943/- was demanded on General Parts of Motor Vehicles and Safety Airbags and parts thereof respectively. During the course of defence submission to SCN in connection with original adjudication, the Noticee submitted that differential duty has been wrongly computed in as much as demand of duty under certain Bills of Entry has been made twice and demand of duty in some cases has been made on parts which are not covered under certain Bills of Entry. The Noticee submitted list of such duplicate entries.

**30.1.1** Verification in the matter was caused at the material time. The Deputy Commissioner, Customs House, GPPL, Pipavav vide his letter F No. VII/49-01/Ford-SCN/2020-21 dated 31.12.2020 had submitted verification report wherein it was reported that the details are verified and duty has been demanded twice, except following four entries, and therefore effectively, differential duty of Rs.5,66,310/- has been demanded in excess. The details of four entries with remark are as under:-

Sr No.	Annexure /Sr NO. SCN	Bill Of Entry No.	CTH	Remarks	Duty Difference (Rs.)
1	132	7947832/ 7.9.2018	8302309 0	B/E itself contains two entry at Sr No. 22 & Sr No.26 of Ass Value of Rs.180558/- and hence no duplication.	32,753
2	C1/14	6482537/2	8543709	Entry mentioned at Sr	25,566

		2.05.2018	9	No.1	
3	C2/87	3365486/ 24.5.2018	8543709 9	Mentioned at Sr No.6	1,20,973
4	C2/110	4999909/ 21.09.2019	8543709 9	Mentioned at Sr No. 1 Ass. Value mentioned as Rs.2,28,609/- as against Rs.8,03,545/- & Duty mentioned as Rs.48,888 as against Rs.1,71,838/- due to typographical error.	1,22,950
Total Duty Difference not found to be excess					3,02,242
Excess Duty demand due to duplication of entry (Rs.8,68,552/- claimed minus Rs.3,02,242/-)					5,66,310

**30.1.2** In light of above factual position reported by the Deputy Commissioner, Customs House, Pipavav, to correct the typographical error, the differential duty in Annexure/Sr.No. of SCN C2/110 was revised to Rs.1,71,838/-. With this correction of typographical error also, the overall demand in Show Cause Notice remained below the total differential duty demanded in the Show Cause Notice. Accordingly, the total differential duty demanded is reduced by Rs.5,66,310/- to Rs.35,39,08,002/- (i.e. Rs. 24,92,11,369 + Rs. 10,52,62,943 = Rs.35,44,74,312 minus Rs.5,66,310/-).

**30.2** As per the above submission of the Noticee and outcome of verification caused in the matter at the material time leading to revision of the differential duty in Annexure/Sr. No. of SCN C2/110 to Rs.1,71,838/- [instead of Rs. 48,888/-], the differential duty demand in respect of Safety Airbags and parts thereof comes to Rs. 10,53,85,893/- with the correction of above typographical error. Consequently, the assessable value of Safety Airbags and parts thereof covered in the Show Cause Notice shown in the Show Cause Notice as Rs. 48,04,03,264/- comes to Rs. 48,09,78,200/- correcting typographical error in value of above entry shown at Annexure/Sr. No. of SCN C2/110 as Rs. 2,28,609/- instead of Rs. 8,03,545/-. The above changes in quantification of duty and value of Safety Airbags and parts thereof is attributable to typographical error and rectification thereof is permissible in law so as to arrive at correct quantum of duty / value involved. It is further observed that the Noticee has not submitted anything in the written submission dated 04.04.2024 in respect of the above issue of correction of typographical error made in the Show Cause Notice at the time of earlier adjudication proceedings which is subjected to the present remand proceedings and hence, the issue stands undisputed on this count.

**30.3** Consequently, I confirm the demand of differential duty of Rs. 10,53,85,893/- (Rupees Ten Crore Fifty Three Lakhs Eighty Five Thousand Eight Hundred and Ninety Three only) in respect of the above five items mentioned at Sr. No. 1 to 5 in Table-II of Para 18 hereinabove and the same is required to be recovered from the Noticee under Section 28 of the Customs Act, 1962. Further, the demand of differential duty of Rs. 24,85,22,109/- (Rupees Twenty Four Crore Eighty Five Lakhs Twenty Two Thousand One Hundred and Nine only) in respect of the above discussed twelve items mentioned at Sr. No. 1 to 12 in Table-I of Para 18 hereinabove, duly quantified considering the typographical error, does not sustain in law and accordingly, the demand for the said amount of differential duty stands dropped

**31.** Regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI* – 1996 (88) ELT 12 (SC). Hence, I hold that the amounts demanded under Section 28 in the SCN and confirmed in this order in respect of the above five items are recoverable from the Noticee together with interest at appropriate rate in terms of section 28AA of the Customs Act, 1962.

**32.** The SCN proposes that the goods liable for confiscation under Section 111(m) of the Customs Act, 1962. It also proposes to impose penalty under Section 112(a) of the Customs Act, 1962. I find that despite appropriate classification of parts of airbag system under CTH 87089500 as per correct law position discussed in foregoing paras, the Noticee misclassified these items under residual entry so as to avoid appropriate payment of customs duty. I therefore find that the Noticee misclassified these goods in the Bills of Entry filed for clearance for home consumption which has resulted in short-payment of customs duty and the subject goods did not correspond in respect of correct classification with the entry made under the Customs Act, 1962 and for such misclassification by the Noticee contrary to the clear and unambiguous classification as discussed above, the said goods become liable to confiscation under Section 111(m) of the Customs Act, 1962, as proposed in the Show Cause Notice, and I hold so. However, since the goods are not seized and not available for confiscation but they are liable to confiscation under Section 111(m) of the Customs Act, 1962. For these acts and omission of misclassification which have rendered the goods liable to confiscation, the Noticee has rendered itself liable to penalty in terms of Section 112(a) of the Customs Act, 1962.

33. The Show Cause Notice also proposes penalty on Noticee under Section 114A of the Act which reads as under:-

*"SECTION 114A : Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to a penalty equal to the duty or interest so determined."*

33.1 I find from the Show Cause Notice that the same alleged wilful mis-statement by mis-classification of the subject goods by the Noticee with intention to evade payment of duty and therefore, duty was demanded under Section 28(4) of the Customs Act, 1962. During the original adjudication proceedings, my predecessor held that the issue involved is of interpretation of classification of goods and this is a case of difference of opinion about classification between importer and the department and no suppression can be attributed to the Noticee and that it is not the case of duty short paid by reason of collusion or any willful mis-statement or suppression of fact. Accordingly, it was found in the original adjudication proceedings that penal action under Section 114A of the Customs Act, 1962 is not attracted.

33.2 From the written submission filed by the Noticee on 04.04.2024 as well as submission made at the time of personal hearing held on 04.04.2024 in connection with the present remand proceedings, I find that the Noticee argued that since the issue pertains to interpretation and classification of tariff entries, extended period of limitation is not invokable and also relied upon various judgments in support of the said contention. However, the Noticee did not make any submission in connection with penal action under Section 114A of the Customs Act, 1962 proposed in the Show Cause Notice.

33.3 I have held in the foregoing paras that extended period of 5 years from the relevant date as per Section 28(4) of the Customs Act, 1962 is not invoked in the present case and that the Show Cause Notice is issued within normal period of limitation prescribed under Section 28(1) of the Customs Act, 1962 and in view of the matter, submission of the Noticee on this count is found mis-placed.

33.4 From the facts of the case and submission made by the Noticee, I am of considered view that the issue involved is of interpretation of classification of goods and this is a case of difference of opinion about classification between importer and the department and therefore, short-payment of duty in the present case is not by reason of collusion or any wilful mis-statement or suppression of facts on the part of the Noticee. Accordingly, penal action under Section 114A of the Customs Act, 1962 is not attracted in the present case.

34. The Show Cause Notice also proposes penalty on Noticee under Section 114AA of the Act which reads as under:-

*"SECTION 114AA: If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

34.1 Section 114AA provides penal provision for an intentional act of making, signing, using or causing to be made, signed or used a false or incorrect document/ declaration/ statement in the transaction of any business for the purpose of Customs Act, 1962. In the instant case, the Show Cause Notice has not brought out any acts caused by Noticee regarding making, using or signing any false documents or declaration before the customs officers during the course of import of goods in question which may render them liable to penalty under this Section. Since no evidences are brought on record to suggest that the Noticee made, used or signed any false document, declaration or statement during the course of import, this case cannot be covered by Section 114AA of the Customs Act, 1962. Therefore, I hold that no penalty can be imposed upon Noticee under Section 114AA of the Act.

35. In view of the above, I pass the following order:

#### ORDER

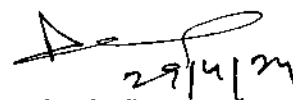
- (i) I order that the parts, mentioned at Sr. No. 1 to 5 of Table-II in Para 18 above, imported by M/s. Ford India Pvt. Ltd. under different Bills of Entry as per Annexure-A1 attached to the Show Cause Notice No. VIII/10-17/Commr/O&A/2020-21 dated 29.09.2020 be reclassified under tariff item 87089500 and I reject the classification of the said five items under tariff item 85365090 / 85437099 / 90262000 claimed by the Noticee.
- (ii) I hold that the parts, mentioned at Sr. No. 1 to 12 of Table-I in Para 18 above, imported by M/s. Ford India Pvt. Ltd. under different Bills of Entry as per Annexure-A attached to the Show Cause Notice No. VIII/10-17/Commr/O&A/2020-21 dated 29.09.2020 are appropriately classifiable under their respective tariff entry declared in the Bills of Entry.
- (iii) I confirm the demand of differential customs duty of Rs. 10,53,85,893/- (Rupees Ten Crore Fifty Three Lakhs Eighty Five Thousand Eight Hundred and Ninety Three only), in respect of the above five items held for reclassification under tariff item 87089500, in terms of Section 28(1) of the Customs Act, 1962 and drop the demand of remaining amount of differential customs duty of Rs. 24,85,22,109/- (Rupees Twenty Four



Crore Eighty Five Lakhs Twenty Two Thousand One Hundred and Nine only) raised in the Show Cause Notice No. VIII/10-17/Commr/O&A/2020-21 dated 29.09.2020.

- (iv) The amount of duty confirmed at (iii) above should be paid by / recovered from M/s Ford India Pvt. Limited forthwith along with interest in terms of Section 28AA of the Customs Act, 1962.
- (v) I hold that the imported goods, mentioned at Sr. No. 1 to 5 of Table-II in Para 18 above, valued at Rs. 48,09,78,200/- [Rupees Forty Eight Crore Nine Lakhs Seventy Eight Thousand Two Hundred only] are liable to confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not available for confiscation, I refrain from imposing any redemption fine.
- (vi) I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs only) on M/s Ford India Pvt. Ltd., under Section 112(a) of the Customs Act, 1962, which should be paid by / recovered from M/s Ford India Pvt. Limited forthwith.
- (vii) I do not impose any penalty on M/s Ford India Pvt. Ltd. under Section 114A and 114AA of the Customs Act, 1962.

36. Remand proceedings as per CESTAT Order No. A/10458/2024 dated 22.02.2024 in Appeal No. 10259 of 2021 filed by M/s Ford India Pvt. Limited against OIO No. JAM-CUSTOM-PRV-COM-003-20-21 dated 15/18.01.2021 stand concluded in the above terms.

  
(Dhirendra Lal)  
COMMISSIONER

F. No. CUS/1362/2024-Adjn.

Date: 29.04.2024

**BY SPEED POST/ E-Mail To:**

M/s. Ford India Pvt. Limited,  
Revenue Survey No.06, Village-North Kotpura,  
Taluka- Sanand, Ahmedabad-382 170.

**Copy submitted to:**

1. The Principal Chief Commissioner, Customs, Ahmedabad.
2. The Deputy / Assistant Commissioner, Customs House, GPPL, Pipavav.
3. The Deputy/Assistant Commissioner (System / Recovery), Customs (Prev.), HQ., Jamnagar
4. Guard File.