

**Instruction No. 01/2022-Customs**

F. No.524/02/2021-STO(TU)  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes & Customs)

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Room no. 227-B, North Block, New Delhi,  
Dated the 05<sup>th</sup> of January, 2022.

To,

All Principal Chief Commissioners/ Chief Commissioners of Customs/ Customs (Preventive),  
All Principal Chief Commissioners/ Chief Commissioners of Customs & Central tax,  
All Principal Commissioners/ Commissioners of Customs/ Customs (Preventive),  
All Principal Commissioners/ Commissioners of Customs & Central tax,  
All Principal Director Generals/ Director Generals under CBIC.

Madam/Sir,

**Subject: Implication of the judgement of the Hon'ble Apex Court in the case of M/s Westinghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Kolkata- reg.**

References have been received from the trade and field formations pointing out difficulties owing to the divergent practices arisen in assessment of 'automobile parts' under the Customs Tariff, after the Hon'ble Supreme Court judgment has been delivered in the case of *M/s Westinghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Kolkata*.

2. In the aforesaid case, the Hon'ble Supreme Court held that the 'relays' are classifiable as parts of 'railway signalling equipment', under Heading 8608 of the Central Excise Tariff. In holding so, the Hon'ble Supreme Court has given precedence to the 'sole or principal use' test of Section Note 3 over the Note 2(f) to Section XVII which specifically excluded 'electric equipment' from being classified under Section XVII, whether or not it is identifiable as being for the goods of that Section.

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 ie 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.



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 its 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. The Hon'ble Court, has referred to the observations made in its own judgement in the case of "**A. Nagaraju Bros Vs. State of A.P.**", thus-

*".....there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently..... There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application".*

7. Further, the Hon'ble Supreme Court, in the case of Commissioner of Central Excise, Mumbai Versus M/s Fiat India(P) Ltd., has observed that,-

*"a case is only an authority for what it actually decides and not for what may seem to follow logically from it. ...Each case depends on its own facts and a close similarity between one case and another is not enough because either a single significant detail may alter the entire aspect... To decide, therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

8. Thus, the classification of various parts of Section XVII is to be decided taking into account all facts, details of individual cases, all the decisions on the subject, and arrive at the appropriate classification.

9. It is also informed that taking cognizance of inter alia the above aspects, including those related to various Hon'ble Supreme Court's judgements in case of parts and accessories and on the grounds of interpretation of Section Notes and the HS



Explanatory notes, the Department has filed a review petition against the judgement in case of M/s Westinghouse Saxby.

10. In light of the above, opinion from Ld. Additional Solicitor General was solicited. In terms of the opinion received, it is 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.

11. Difficulty faced, if any, in the implementation of the instructions, may be brought to the notice of the Board.

12. Hindi version follows.

Yours faithfully

  
(Ananth Rathakrishnan)  
Deputy Secretary (Customs)