

TAX FLASH NEWS

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CBIC instruction regarding assessment of 'automobile parts' under Customs Tariff

Central Board of Indirect Taxes and Customs (CBIC) has issued an Instruction¹ owing to the divergent practices in assessment of 'automobile parts' under the Customs Tariff, on account of Hon'ble Supreme Court judgment in the case of Westinghouse Saxby Farmer Ltd² ('Westinghouse judgement'). The Instruction states that classification of parts of goods falling under Section XVII (which *inter alia* include automobiles) is to be decided taking into account all facts, details of individual cases, all judicial decisions on the subject including reference to relevant section/Chapter notes and explanatory notes to the Harmonised system of nomenclature ('HS notes'). During the last 8 months, many customs and GST authorities have been seeking to classify automobile parts under Chapter 87 citing the Westinghouse judgement causing delays in clearances and increasing costs in the supply chain.

Gist of judgement in the case of Westinghouse Saxby Farmer Ltd ('Westinghouse')

- Westinghouse was engaged in the manufacture of 'relays' which were used as part of railway signaling system.
- 'Westinghouse' claimed that product manufactured by them would fall under heading 8608 as parts of Railway signaling equipment. The classification was accepted by the Authorities. However, Authorities later contended that 'relays' manufactured by Westinghouse would fall under Chapter 85 under sub-heading 8536.90 as electrical relays and sought to change the classification.
- It is pertinent to note that Chapter 85 which covers *inter alia* Electrical machinery and equipment and parts thereof falls under Section XVI of the Central Excise Tariff, whereas Chapter 86, which covers "Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signaling equipment of all kinds" is part of the Section XVII of the Tariff.
- Section Note 2(f) to section XVII specifically excludes from the purview of the section goods falling under Chapter 85 if they are parts of goods falling under section XVII (like automobiles, railways, ships, aircrafts etc). Section Note 3 to section XVII, states that references to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of that section.
- Hon'ble Supreme Court, deciding in favour of Westinghouse, held that the 'relays' were classifiable as parts of 'railway signaling equipment', under Heading 8608 giving precedence to the 'sole or principal use' test of Section Note 3 over Note 2(f) to Section XVII and that it was not proper for the authorities to invoke Section Note 2(f) once the classification under 8608 was approved by them.
- This judgement was interpreted by field formations to classify most of the automobile parts under chapter 87, irrespective of the fact that they were earlier classified in other chapters.

¹ Instruction No. 01/2022-Customs dated 5 January 2022, CBIC, Ministry of Finance

² Westinghouse Saxby Farmer Ltd vs Commr. of Central Excise Calcutta [2021-VIL-33-SC-CE]

Gist of CBIC Instruction

CBIC instruction primarily states that :

- 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.
- Practice of assessment of 'parts' or any change in their existing classification should keep in mind and also express in a speaking manner, all relevant aspects such as HS Explanatory Notes, relevant section and chapter notes and the various decisions of Hon'ble Supreme Court on classification of parts and accessories.

The instruction, advising the field formations as above, primarily relies on the following:

- Westinghouse judgement itself does not refer to its wider applicability to any other case or issue of a similar nature.
- Westinghouse 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.
- It is not possible, nor desirable, to lay down any hard and fast rules of universal application.
- Authorities have filed a review petition against the Westinghouse judgement.

Our comments

Since April 2021 the Westinghouse judgment was relied on by many Customs formations to seek classification of all automobile parts under Chapter 87. Some custom houses, while insisting on reclassification under chapter 87 of most of the auto components, however allowed classification of some specified goods like tyres (Chapter 40), engines (Chapter 84), windscreen wipers, lamps (Chapter 85), seats (Chapter 94) etc. in their respective chapters thereby selectively deviating from the Westinghouse judgement.

Recently, even the GST formations started questioning the classification of automobile parts. While some auto component players supplying to OEMs elected to change classification on prospective basis, the issue for the past remained a bone of contention. It also meant that the cost to the final consumer increased especially where sale of parts was to the after-market. All this had resulted in increasing delays, unfruitful litigation and increase in the cost in the supply chain. Industry had represented individually as well as through trade associations for clarification on the issue. The present Instruction would be a big respite for the industry.



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