

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 51294 OF 2022

[Arising out of the Order-in-Appeal No. CC-A/CUS/D-II/ICD/PPG/1588-1715/2021-22 dated 28/01/2022 passed by Commissioner of Customs (Appeals), New Customs House, New Delhi.]

**M/s Mitsubishi Electric Automotive
India Pvt. Ltd.**

.....Appellant

Plot No. 167-170, Sector - 5, IMT - Manesar,
Gurgaon, Haryana - 122 050.

Versus

Commissioner of Customs

....Respondent

ICD, Patparganj,
New Delhi.

With

| | | | | | |
|----------|----------|----------|----------|----------|----------|
| 51295/22 | 51296/22 | 51297/22 | 51298/22 | 51299/22 | 51300/22 |
| 51301/22 | 51302/22 | 51303/22 | 51304/22 | 51305/22 | 51306/22 |
| 51307/22 | 51308/22 | 51309/22 | 51310/22 | 51311/22 | 51312/22 |
| 51313/22 | 51314/22 | 51315/22 | 51316/22 | 51317/22 | 51318/22 |
| 51319/22 | 51320/22 | 51321/22 | 51322/22 | 51323/22 | 51324/22 |
| 51325/22 | 51326/22 | 51327/22 | 51328/22 | 51329/22 | 51330/22 |
| 51331/22 | 51332/22 | 51333/22 | 51334/22 | 51335/22 | 51336/22 |
| 51337/22 | 51338/22 | 51339/22 | 51340/22 | 51341/22 | 51342/22 |
| 51343/22 | 51344/22 | 51345/22 | 51346/22 | 51347/22 | 51348/22 |
| 51349/22 | 51350/22 | 51351/22 | 51352/22 | 51353/22 | 51354/22 |
| 51355/22 | 51356/22 | 51357/22 | 51358/22 | 51359/22 | 51361/22 |
| 51362/22 | 51363/22 | 51364/22 | 51365/22 | 51368/22 | 51369/22 |
| 51370/22 | 51371/22 | 51372/22 | 51373/22 | 51374/22 | 51375/22 |
| 51376/22 | 51377/22 | 51378/22 | 51379/22 | 51380/22 | 51381/22 |
| 51382/22 | 51383/22 | 51384/22 | 51385/22 | 51386/22 | 51387/22 |
| 51388/22 | 51389/22 | 51390/22 | 51391/22 | 51392/22 | 51393/22 |
| 51394/22 | 51395/22 | 51396/22 | 51397/22 | 51398/22 | 51399/22 |
| 51400/22 | 51401/22 | 51402/22 | 51403/22 | 51404/22 | 51405/22 |
| 51406/22 | 51407/22 | 51408/22 | 51409/22 | 51410/22 | 51411/22 |
| 51412/22 | 51413/22 | 51414/22 | 51415/22 | 51416/22 | 51417/22 |
| 51418/22 | 51419/22 | 51420/22 | 51421/22 | 51423/22 | 51424/22 |

APPEARANCE:

Shri B.L. Narasimhan, Ms. Jyoti Pal, Ms. Anshita Khandelwal,
Advocates and Shri Ashwin Sundaram, Chartered Accountant for the
appellant

Shri S.K. Rahman, Authorized Representative for the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NOs. 56067-56193/2024

DATE OF HEARING : 24.04.2024

DATE OF DECISION: 30.07.2024

P.V. SUBBA RAO

These 127 appeals have been filed by M/s Mitsubishi Electric Automotive India Pvt. Ltd.¹ to assail the order-in-appeal² dated 03.02.2022 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi whereby he rejected the appeals filed by the appellant assailing the classification of the goods imported under 127 bills of entry from February 2018 to May 2021.

2. We have heard Shri B.L. Narasimhan, learned counsel for the appellant and Shri S.K. Rahman, learned authorized representative for the revenue and perused the records.

3. The appellant manufactures and supplies parts of automobiles and for this purpose it imported "electronic control units for electronic power steering" (EPS – ECU) and its parts through 127 bills of entry. The appellant classified the goods under Customs Tariff Item³ 8708 9400 as parts and accessories of motor vehicles in its self-assessment and thereafter assailed it before Commissioner (Appeals). The disputed goods are as follows :-

- (i) Complete EPS – ECU ;
- (ii) Sub-assembly i.e. complete EPS – ECU without cover and
- (iii) Parts of EPS – ECU i.e. cover, housing frame assembly, heat sink, housing assembly, spacer, circuit assembly.

4. There is no dispute that the imported goods are electronic by nature. There is also no dispute that they are parts of

1 the appellant
2 the impugned order
3 CTI

automobiles and have no other function. According to the revenue, they are parts of motor vehicles and should be classified, as such. According to the appellant, since they are electrical/electronic parts they should be classified, as such and not as parts of motor vehicles.

5. EPS – ECU is used in automobiles with power steering and determines how much assistance is required to augment the steering effort of the driver in steering the wheel. In vehicles with manual steering, the vehicle is steered by driver's effort. In vehicles with power steering, the driver's effort is supplemented by power from a motor. The extent to which the driver should be assisted while steering has to be dynamically determined based on factors such as speed and torque. EPS – ECU does this determination.

6. A 12-volt car battery runs the motor which assists in steering. However, if the motor is run at full capacity it will provide too much power. Therefore, the 12-volt battery is connected to the EPS – ECU and through it to the motor. The EPS – ECU receives signals from the speed sensor (which senses the speed of the vehicle) and the torque sensor (which gives the angular position) while turning on the road. The EPS – ECU has a micro-processor which processes this data and determines how much power should be given to assist the steering effort of the driver and regulates the voltage given to the motor accordingly. Thus, the correct amount of assistance is provided to the driver in his steering effort.

7. Thus, the EPS – ECU is connected to the battery, the motor and the speed and torque sensors. If any anomalies arise within the input/out framework, it alerts the user so that necessary corrective steps can be taken.

Submissions of the appellant

8. Learned counsel for the appellant submitted as follows:

(i) the burden of proof of establishing a classification rests on the department which has not been discharged by it. The department has not given specific reasoning as to why the goods are not covered under Customs Tariff Heading⁴ 9032/8537 claimed by the appellant. Reliance is placed on the following decisions :

- (a) **HPL Chemicals vs. Commissioner of Central Excise, Chandigarh⁵ ;**
- (b) **Parle Agro (P) Ltd. vs. Commissioner of Commercial Taxes, Trivandrum⁶**
- (c) **Indian Tool Manufacturer Ltd. vs. Collector of Central Excise, Pune⁷**
- (d) **Supreme Enterprises vs. Commissioner (Export), Nhava Sheva⁸**

(ii) The EPS – ECU and sub-assembly are classifiable under CTH 9032 and other parts are classifiable under **CTI 9032 90 09** because CTH 9032 covers “automatic regulating and controlling apparatus” which is the function of EPS – ECU. Chapter No. 7 to Chapter Note 90 reads as follows :-

7. Heading 9032 applies only to:

- (a) instruments and apparatus for automatically controlling the flow , level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their

4 CTH

5 2006 (197) E.L.T. 324 (S.C.)

6 2017 (352) E.L.T. 153

7 1983 (13) E.L.T. 1170 (CEGAT)

8 2015 (316) E.L.T. 274 (Tri. – Mumbai)

operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value; and

- (b) automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value.
- (iii) EPS – ECU does not control the flow, level, treasure or other variable of liquids or gases, but controls the flow of current into the DC motor and thereby the assistance provided to the driver in steering. Therefore EPS – ECU would not be covered by Chapter Note 7 (a), but is covered by Chapter No. 7 (b).
- (iv) EPS – ECU fulfills all the criteria given in the HSN Explanatory Note to Chapter Note 7 (b) to Chapter 90 which reads as follows:
- “ The automatic regulators of this heading are intended for use in complete automatic control systems which are designed to bring a quantity, electrical or non-electrical, to, and maintain it at, a desired value, stabilized against any disturbances, by constantly or periodically measuring its value.”
- (v) EPS-ECU regulates both electrical quantity i.e., current and non-electrical quantity i.e., torque and provides the appropriate amount of torque assist to the driver;
 - (vi) EPS-ECU also serves to dampen the oscillations within the system, such as when the vehicle encounters an obstacle, such as a stone;
 - (vii) EPS-ECU has a measuring device which determines the actual value of the variable to be controlled (torque)

and converts it into an electrical signal and thereafter compares it which the desired value and the micro-controller determines the amount of assist to be provided and by provides the required amount of current to the motor so that the correct amount of assistance is provided.

- (viii) The sub-assembly of EPS-ECU is an incomplete EPS-ECU and hence it should also be classified as EPS-ECU.
- (ix) The remaining parts of the EPS-ECU deserve to be classified under **CTI 9032 90 00** as there is no specific heading for them.
- (x) Without prejudice to this assertion of classification, EPS-ECU and sub-assembly could be classified under **CTI 8537 10 00**.
- (xi) Of the parts of EPS-ECU, the cover, housing, housing assembly or frame assembly, spacer and circuit assembly deserve to be classified under **CTI 8538 90 00** and Heat sink under **CTI 8538 10 90**.
- (xii) As a third alternative, EPS-ECU and sub-assembly may be classified under **CTI 8543 70 99** and the parts of EPS-ECU may be classified under **CTI 8543 90 00**.
- (xiii) It is incorrect to classify EPS-ECU under CTH 8708, which is a residuary entry when they can be classified under more specific entries.
- (xiv) Specific entry prevails over the general entry.

Submissions on behalf of the Revenue

9. Shri S K Rahman, learned authorised representative for the Revenue submitted as follows:

- i) The goods were described in the bills of entry and the import documents as "EPS-ECU, automotive e-parts, captive consumption". Since they are "automobile parts", the appropriate customs tariff heading is CTH 8708 and within this heading CTI 87089400 as "steering wheels and parts thereof".
- ii) Chapter 87 falls under Section XVII of the Tariff. HSN Explanatory Note to this Section lays down three criteria for parts to be classified under the headings of that section all of which are met in the goods. They are:
 - a) They must not be excluded by the terms of Note 2 of 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.
- iii) EPS-ECU and its parts are not excluded as per note 2 to section XVII and therefore, the first condition is met. EPS-ECU and its parts are designed principally for use in automobiles as is evident from the description and there is no evidence of any other use and therefore, the second condition is also met. EPS-ECU is not more specifically covered elsewhere in the tariff and hence the third condition is also met.

- iv) As per General Interpretative Rule 2(a)⁹ a specific heading should be preferred over a general heading. **CTI 8708 94 00** under which the Revenue classified the **EPS-ECU** is a more specific heading and it covers 'Steering wheels, steering columns, steering boxes and parts thereof'.
- v) Similarly, parts of EPS ECU such as Cover , housing, housing assembly, frame assembly , spacer, circuit assembly were classified by the Revenue under **CTI 8708 94 00** which is a more specific heading.
- vi) The Office of Commissioner of Customs Import, ACC Sahar, Mumbai has circulated a note dated 21-05-2019 on classification of parts & accessories of motor vehicles as per which the correct classification of impugned goods is under **CTH 8708**.
- vii) On a similar issue, in the case of **M/s Continental Automotive Brake Systems India Private Limited vs. Commissioner of Customs, ICD, Patparganj**,¹⁰ the Tribunal held that electronic control units (ECU) of power brakes were classifiable under **CTI 8708 99 00**. EPS-ECU under consideration in these appeals is similar to the ECU considered in that case, except that instead of brakes, this regulates steering.

10. We have considered the arguments advanced by both the sides and have perused the records.

9 GIR
10 Final Order. No 55365-55440/2024 dated 19-03-2024

11. The issue to be decided in these appeals is the classification of EPS-ECU, sub-assembly of EPS-ECU and parts of EPS-ECU.

12. There is no dispute regarding the nature and function of the EPS-ECU. It is used in cars with power steering to dynamically determine- based on the speed and torque of the car- how much assistance should be provided to the driver in steering and accordingly regulate the voltage supplied to the motor from the 12-volt battery. The speed sensors and the torque sensors measure the speed and torque and send this information to the EPS-ECU. Processing this information, the EPS-ECU determines how much assistance should be provided to the driver in turning and accordingly regulates how much voltage from the battery is supplied to the motor which runs accordingly providing the appropriate amount of assistance to the driver in steering. If there is no EPS-ECU between the motor and the battery, the full 12-volts will be supplied to the motor and it will run at its full speed providing too much power to the driver in steering.

13. At the heart of the EPS-ECU is the circuit assembly which is a printed circuit board populated with capacitors, resistors, integrated circuit, microprocessor, etc. In addition to this circuit assembly, it has housing assembly, cover, spacer, heat sink, etc. which complete the EPS-ECU. If the EPS-ECU is without the cover, it is called its sub-assembly. The various parts of EPS-ECU and their functions according to the appellant are as follows:

Parts of EPS-ECU

- **Cover** is an outer covering and is mainly used for protection of EPS-ECU Assembly from dust/ foreign particles and from Electromagnetic interferences.
- **Housing or Housing Assembly** is the main structure of the EPS-ECU that holds the PCBs together. Housing of the EPS-ECU consists of connectors through which external signal inputs goes into the EPS-ECU. It is a plastic insert moulding part which contains sheet metal terminals for connection between power circuit P-PCB & control circuit C-PCB. It also acts like a mechanical structure that holds all electrical and electronic parts.
- **Frame Assembly** are assembly parts of housing, and it includes electrical components like coil and diodes. In other words, when a housing is combined with electrical components say coil and diodes, it becomes frame assembly.
- **Spacer** is a plastic part used to fill gap between Connectors.
- **Circuit Assembly** is control circuit consisting of Control PCB and all electronic parts (like capacitors, resistors, IC, microprocessor etc.) mounted over it.
- **Heat Sink** is aluminium die casted part attached to the base of EPS-ECU for dissipation of heat generated by electrical circuits (Power PCB P-PCB).
- **Sub Assembly** is complete EPS-ECU with all the child parts assembled (heat sink, screws, Housing Assembly, Control PCB), except Cover. Thus, it is complete EPS-ECU without cover.

14. It is undisputed that EPS-ECU is only meant for use in automobiles and it has no other use. It is also undisputed that it is electronic in nature and processes information.

15. According to the Revenue, EPS-ECU and its parts are parts of automobiles and hence deserve to be classified under **CTI 8708 94 00**.

16. The appellant has three alternative submissions regarding the classification of EPS-ECU, its sub-assembly and its parts. Its first claim is EPS-ECU and its sub-assembly merit classification under **CTI 9032 8910** and its parts merit classification under **CTI 9032 89 90**. Its alternative second claim is for classification of EPS-ECU and its sub-assembly under **CTI 8537 10 00** and its parts under **CTI 8538 90 00** (cover, housing, housing assembly, spacer and circuit assembly) and **CTI 8538**

10 90. Its alternative third claim is for classification of EPS-ECU and its sub-assembly under **CTI 8543 70 99** and its parts under **CTI 8543 90 00.**

17. In support of its second claim of classification under **CTH 8537**, the appellant relied on US Customs ruling N013361 dated 16 July 2007 and US Customs ruling H088421 dated 10 May 2012. We have gone through these rulings which are similar to the advance rulings given by Authority for Advance Rulings under the Customs Act in India. These rulings are decisions by the US Customs authorities on how the goods should be classified under the US Customs laws. These decisions of the US authorities about the classification under US customs Act do not stand on a better footing than the decisions by the Indian customs authorities under the Customs Act, 1962, let alone the decision by the Commissioner (Appeals) in the impugned order.

18. We now proceed to decide the classification of the goods.

Classification of EPS-ECU and its sub-assembly

19. It is undisputed that the sub-assembly is the same as EPS-ECU, except its cover. Therefore, according to the appellant, it should be treated as an incomplete EPS-ECU and should be classified as complete EPS-ECU as per GIR 2(a) which reads as follows:

Rule 2: (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

20. The department also classified both EPS-ECU and its sub-assembly under the same **CTI**. Thus, we agree with this submission of the learned counsel for the appellant that the EPS-ECU and its sub-assembly should be classified under the same **CTI**. The competing entries are **CTI 8708 94 00** (by the Revenue) and **CTI 9032 89 10** (first claim by the appellant), **CTI 8537 10 00** (second claim by the appellant) and **CTI 8543 70 99** (third claim by the appellant). Relevant entries of the Customs Tariff are reproduced below.

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| 8708 | Parts and accessories of the motorvehicles of headings 8701 to 8705 |
| 8708 10 | - Bumpers and parts thereof : |
| 8708 10 10 | --- For tractors |
| 8708 10 90 | --- Other |
| | - - Other parts and accessories of bodies (including cabs) |
| 8708 21 00 | -- Safety seat belts |
| 8708 29 00 | -- Other |
| 8708 30 00 | - Brakes and servo-brakes; parts thereof |
| 8708 40 00 | - Gear boxes and parts thereof |
| 8708 50 00 | - Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof Road wheels and parts and accessories thereof |
| 8708 70 00 | - Road wheels and parts and accessories thereof |
| 8708 80 00 | - Suspension systems and parts thereof (including shock absorbers) |
| | - Other parts and accessories: |
| 8708 91 00 | -- Radiators and parts thereof |
| 8708 92 00 | -- Silencers (mufflers) and exhaust pipes; parts thereof |
| 8708 93 00 | -- Clutches and parts thereof |
| 8708 94 00 | -- Steering wheels, steering columns and steering boxes; parts thereof |
| 8708 95 00 | -- Safety airbags with inflater system; parts thereof |
| 8708 99 00 | -- Other |

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| 9032 | Automatic regulating or controlling instruments and apparatus |
| 9032 10 | - Thermostats : |
| 9032 10 10 | --- For refrigerating and air-conditioning appliances and machinery |
| 9032 10 90 | --- Other |
| 9032 20 | - Manostats: |
| 9032 20 10 | --- For refrigerating and air-conditioning appliances and machinery |
| 9032 20 90 | --- Other |
| | - Other instruments and apparatus: |
| 9032 81 00 | -- Hydraulic or pneumatic |
| 9032 89 | -- Other : |
| 9032 89 10 | --- Electronic automatic regulators |
| 9032 89 90 | --- Other |
| 9032 90 00 | - Parts and accessories |

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| 8537 | 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 |
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| | chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517 |
| 8537 10 00 | - For a voltage not exceeding 1,000 V |
| 8537 20 00 | - For a voltage exceeding 1,000 V |

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| 8543 | Electrical machines and apparatus having individual functions, not specified or including elsewhere in this chapter |
| 8543 10 | - Particle accelerators: |
| 8543 10 10 | --- Ion implanters for doping semi-conductor material |
| 8543 10 20 | --- Vane graff, cock-croft, Walton accelerators |
| 8543 10 30 | --- Synchrocyclotrons, synchrotrons |
| 8543 10 90 | --- Other including cyclotrons |
| 8543 20 | - Signal generators : |
| 8543 20 10 | --- Sweep generators |
| 8543 20 20 | --- Impulse generators |
| 8543 20 30 | --- Tacho generators |
| 8543 20 90 | --- Other |
| 8543 30 00 | --- Machines and apparatus for electroplating, electrolysis or electrophoresis |
| 8543 70 | - Other machines and apparatus: |
| 8543 70 11 | ---- Proximity card and tags |
| 8543 70 12 | ---- Metal detector |
| 8543 70 13 | ---- Mine detector |
| 8543 70 19 | --- Other |
| | --- Audio special effect equipment: |
| 8543 70 21 | ---- Digital reverberators |
| 8543 70 22 | ---- Mixing system or consoles |
| 8543 70 29 | ---- Other |
| | --- Video special effect equipments: |
| 8543 70 31 | ---- Video mixing system or consoles |
| 8543 70 32 | ---- Video effect system |
| 8543 70 33 | ---- Digital layering machine |
| 8543 70 34 | ---- Paint box |
| 8543 70 35 | ---- Video typewriter |
| 8543 70 36 | ---- Video matting machine |
| 8543 70 39 | ---- Other |
| | --- Edit control Unit: |
| 8543 70 41 | ---- Computerised editing system controlling more than three video editing machines |
| 8543 70 42 | ---- Other video control unit |
| 8543 70 49 | ---- Other |
| 8543 70 50 | --- Colour corrector |
| | --- Amplifier: |
| 8543 70 61 | ---- Broadcast amplifier |
| 8543 70 62 | ---- Limiting amplifier, video distribution amplifier and stabilizing amplifiers |
| 8543 70 69 | ---- Other |
| | --- Graphic equalizer and synthesized receivers: |
| 8543 70 71 | ---- Graphic equalizer |
| 8543 70 72 | ---- Synthesised receivers |
| | --- Other: |
| 8543 70 91 | ---- RF(radio frequency) power amplifier and noise generators for communication jamming equipment, static and mobile or man-portable |
| 8543 70 92 | ---- Equipment gadgets based on solar energy |
| 8543 70 93 | ---- Professional beauty care equipment |
| 8543 70 94 | ---- Audio visual stereo encoders |
| 8543 70 95 | ---- Time code generator |
| 8543 70 99 | ---- Other |
| 8543 90 00 | - Parts |

21. The submission of the revenue is that the EPS-ECU is a part of an automobile and parts of goods falling under Section

XVII which includes automobiles falling under Chapter 87 must be classified in the respective Chapters. **CTH 8708** specifically covers parts and accessories of automobiles. The description of the goods in the bills of entry itself shows that EPS-ECU is a part of automobiles- more specifically a part of its power steering system. There is no other use of this good and its principal and also only use is as a part of the automobile. Therefore, according to the Revenue, EPS-ECU deserves to be classified under **CTH 8708** and within that under **CTI 8708 94 00 -- Steering wheels, steering columns and steering boxes; parts thereof.**

22. Further, according to the Revenue, the term 'parts and accessories' can fall under Section XVII (of which Chapter 87 is a part) subject to three conditions laid down in the HSN Explanatory note to Section XVII. These are:

- a) They are not excluded by section note 2 to this section;
- b) They must be suitable for use solely or principally with the articles of the chapters 86 to 88; and
- c) They must not be more specifically included elsewhere in the nomenclature.

23. There is no dispute that the EPS-ECU is meant solely for use in automobiles with power steering and therefore, the second of the above conditions is met. Certain goods are specifically excluded from the expression 'parts and accessories' by virtue of Section Note 2 to this Section. It reads as follows:

"2. The expressions "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 vulcanised 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 and apparatus of headings 8401 to 8479, or parts thereof, other than the radiators for the articles of this Section, articles of heading 8481 or 8482 or, provided they constitute integral parts of engines and 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) luminaries and lighting fittings and parts thereof heading 9405; or

(l) brushes of a kind used as parts of vehicles (heading 9603)"

24. This list does not include EPS-ECU by name although it excludes articles of Chapters 85 and 90. Thus, if any of the appellant's three alternative claims of classification is upheld, EPS-ECU cannot fall under chapter 87. Otherwise, the first of the above conditions for the EPS-ECU to be classified as part of automobile under Chapter 87 will be fully met. The third condition is that the goods should not be more specifically covered elsewhere. Here again if any of the appellant's claims that the EPS-ECU is more specifically covered in the other Customs Tariff headings is accepted, then it cannot be part of automobiles under Chapter 87; otherwise, EPS-ECU is clearly covered as part of automobiles.

25. The appellant's first submission is that the burden of classification is on the department which it failed to discharge. Learned counsel relies on **HPL Chemicals** in which Supreme Court held that if the department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the department has to adduce

evidence and discharge burden of proof. However, in these appeals, the appellant had self-assessed goods classifying them under **CTI 8708 94 00** and the department had not disputed this classification. Thereafter, the appellant challenged its own self-assessment by filing appeals before the Commissioner (Appeals) which were dismissed. Therefore, it is the appellant which is seeking to change the classification and the burden is on it to provide evidence. Learned counsel for the appellant does not dispute the fact that it had self-assessed the Bills of Entry classifying the goods under **CTI 8708 94 00** but asserts that it had so classified the goods on the insistence of the department so as to get the goods cleared. We do not find any force in this argument. Any importer can self-assess goods by filing the Bill of Entry. Until the Bill of Entry is filed, the departmental officer cannot assess or take any action on it with respect to assessment. If the proper officer does not agree with the self-assessment by the importer, he can re-assess the duty and provide a speaking order. We do not see how the departmental officers could have insisted that the goods should be classified in a particular heading in the Bill of Entry even before it was filed. Even if there was any informal discussion with the proper officer and he had suggested that the goods should be classified under any particular **CTI**, the appellant could not have been compelled to file the Bills of Entry in any particular manner. Differences on the question of classification of goods between the importer and the proper officer are a matter of everyday occurrence and where the proper officer disagrees with the classification by the importer and re-assesses the Bill of Entry,

he is duty bound to pass a speaking order (unless the importer agrees to the change in classification in writing). The appellant is a large company supplying EPS-ECU to automobile manufacturers and we cannot countenance a situation where it was either not aware of the legal position regarding assessment or it could have been compelled by any officer to file Bills of Entry in any manner.

26. The appellant's second submission is that EPS-ECU and its sub-assembly are correctly classifiable under **CTI 9032 90 00** as '*Automatic regulating or controlling instruments and apparatus*' because based on the speed and torque of the vehicle EPS-ECU regulates the voltage supplied to the motor and thereby the amount of assistance provided in steering. According to the learned counsel, it not only regulates the electrical quantity viz., voltage but also regulates the non-electrical quantity of torque. Learned counsel laid great emphasis on Chapter Note 7 to Chapter 90 which reads as follows:

7. Heading 9032 applies only to:

(a) instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value; and

(b) automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value.

(emphasis supplied)

27. According to the learned counsel, the torque assist provided by the power steering is the non-electrical quantity which is regulated by the EPS-ECU and it is dependent on the electrical value, i.e., the current so as to bring it at a desired value and it also serves to dampen the oscillations within the system such as when the vehicle encounters a stone or other obstacle. According to the learned counsel, EPS-ECU also constantly or periodically measures the actual value of torque.

28. According to the learned authorised representative, EPS-ECU is not an instrument or apparatus by itself. It does not measure the speed or torque but it receives the information about speed and torque from the speed sensors and torque sensors. It processes this information and determines how much assistance should be provided in steering and the assistance is actually provided by the motor using the energy from the battery and based on the instructions received from EPS-ECU.

29. We find from the details of the EPS-ECU provided by the learned counsel, that it acts as the brain and receives inputs from the speed sensor and torque sensor dynamically and processes this information to determine how much assistance should be provided to the driver in steering in a particular situation. Thereafter, based on this information it regulates the amount of voltage provided to the motor from the battery. The motor and battery are not part of the EPS-ECU. EPS-ECU is connected to the motor on one hand and the battery on the other.

30. EPS-ECU regulates the amount of assistance provided to the driver in steering. This regulation is based on two other phenomena-speed and torque. In other words, two non-electrical quantities viz. speed and torque are measured by sensors which provide information to the EPS-ECU and based on this it regulates another quantity viz., amount of assistance provided in steering. EPS-ECU is in essence not a regulator of electrical quantity but is a regulator of the assistance provided to the driver in steering.

31. We are conscious that there are electronic instruments and apparatus which, though used in automobiles, are classifiable under Chapter 90. However, EPS-ECU is not an instrument or an apparatus but is a part of the power steering system. Merely because it is in the form of a PCB and other electronic components does not change it from a part of an automobile into an instrument or an apparatus. It is, in essence, a microprocessor with certain other parts which receives information from the speed and torque sensors and processes it and issues instructions to regulate the assistance provided by the power steering to the driver. Therefore, in our considered view, EPS-ECU does not merit classification under **CTI 9032 90 00**.

32. The first alternative claim of the appellant is **CTI 8537 10 00** as "Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of CTH 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 CTH 8517 of voltage not exceeding 1000 volts”.

33. As discussed above, EPS-ECU is not designed for electricity distribution or electric control. It is a part of an automobile –specifically a part of the power steering system to decide how much assistance should be provided to the driver in steering. The mere fact that it makes this determination and intervenes between the 12-volt car battery and a small motor does not, in our considered view does not make, EPS-ECU into an electrical board, panel, etc. We, therefore, find that EPS-ECU does not merit classification under **CTI 8537 10 00**.

34. The second alternative claim of the appellant is for the EPS-ECU to be classified under **CTI 8543 70 99** as “*Electrical machines and apparatus having individual functions, not specified or including elsewhere in this chapter- others*”.

35. We find that **CTH 8543** covers various “electrical machines and apparatus having individual functions but not specified elsewhere in that Chapter”. This includes, various specific electrical machines and apparatus such as particle accelerators, signal generators, machinery for electroplating, electrolysis, audio visual equipment. This CTH lists various types of machines and has a residual category ‘Other’ preceded by “- - -” (three dashes). Within this three dash ‘Other’ category are various equipment and machines each preceded by “- - - -” (four dashes) such as radio frequency power amplifiers, beauty care equipment, audio visual stereo encoders, etc. and the last four

dash category is **CTI 8543 70 99 "----other"**. We do not find that EPS-ECU, which is essentially a part of an automobile specifically designed to be a part of power steering and which has no other function, can be classified in the general residual entry of electrical machines and equipment.

36. For all the above reasons, we find that **EPS-ECU and its sub-assembly** deserve to be classified and were correctly classified under **CTI 8708 94 00**. The impugned order insofar as this classification is concerned needs to be upheld.

Classification of parts of EPS-ECU

37. According to the Revenue, parts of EPS-ECU are also parts (or child parts) of the power steering and hence they were correctly classified under **CTI 8708 94 00**.

38. The appellant has three alternative submissions on the classification of parts of EPS-ECU. Its first submission is that they are classifiable under **CTI 9032 89 90**. According to the appellant, since the EPS-ECU itself is classifiable under **CTI 9032 89 10**, its parts consequently fall under **CTI 9032 89 90**. Since we have held that EPS-ECU do not merit classification under **CTI 9032 89 10**, its parts, consequently, do not fall under **CTI 9032 89 90**.

39. The appellant's alternative (second) submission is that parts of EPS-ECU are classifiable under **CTI 8538 90 00** (cover, housing, housing assembly, spacer and circuit assembly) and **CTI 8538 10 90** (heat sink). This submission is linked to its alternative submission that EPS-ECU is classifiable under **CTI**

8537 10 00. Since we have held that EPS-ECU do not merit classification under **CTI 8537 10 00**, its parts, consequently, do not fall under **CTI 8538 90 00** (cover, housing, housing assembly, spacer and circuit assembly) and **CTI 8538 10 90**(heat sink).

40. The appellant's another alternative (third) submission is that parts of EPS-ECU are classifiable under **CTI 8543 90 00**. This submission is linked to its alternative submission that EPS-ECU is classifiable under **CTI 8543 70 99**. Since we have held that EPS-ECU do not merit classification under **CTI 8543 70 99**, its parts, consequently, do not fall under **CTI 8543 90 00**.

41. In view of the above, the impugned order deserves to be upheld. All the 127 appeals, therefore, deserve to be dismissed and are dismissed.

(Order pronounced in open court on **30/07/2024**.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Tejo