

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

PRINCIPAL BENCH

CUSTOMS APPEAL NO. 52881 OF 2019

(Arising out of Order-in-Original No. 13/2019/MKS/Pr.Commr./ICD-Import/TKD dated 27.08.2019 passed by the Principal Commissioner of Customs (IMPORT), New Delhi)

Polaris India Private Limited

Plot No. 14/6, Mathura Road,
Near Mewala Maharajpur Metro Station,
Faridabad, Haryana-121003

...Appellant

Versus

Principal Commissioner of Customs,

Office of the Principal Commissioner
of Customs (IMPORT), Inland Container Depot,
Tughlakabad, New Delhi-110020

...Respondent

APPEARANCE:

Shri Harish Bindumadhavan, Advocate for the appellant.
Ms. Jaya Kumari, Authorized Representative for the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**Date of Hearing: 30.01.2023
Date of Decision: 03.07.2023**

FINAL ORDER NO. 50803/2023

JUSTICE DILIP GUPTA:

Polaris India Private Limited¹ has filed this appeal to assail the order dated 27.08.2019 passed by the Principal Commissioner of Customs (Import), New Delhi². The Principal Commissioner has confirmed the demand of customs duty of Rs. 41,61,609/- under section 28(4) of the Customs Act, 1962³ with interest under section 28AA of the Act and penalty of Rs. 41,61,609/- under section 114A of

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- 1. Polaris India**
 - 2. the Principal Commissioner**
 - 3. the Act**

the Act. A redemption fine of Rs. 5,00,000/- has also been imposed in lieu of confiscation under section 125 of the Act.

2. Polaris India is a wholly owned subsidiary of Polaris Industries Inc., USA ⁴. Polaris USA designs, engineers, manufactures and markets innovative high quality Off Road Vehicles, including All Terrain Vehicles ⁵, snowmobiles, motorcycles and electric powered vehicles for various applications.

3. Polaris India commenced import of vehicles from its parent company and through various Bills of Entry filed during the period from 23.07.2013 to 18.11.2016, imported the following models of vehicles, which shall be referred to as 'Vehicles':

1. Rangers (Non-Electric) [**cleared under CTH 8704**]
 - (i) In Ranger Crew 900 Model
 - (ii) In Ranger Crew 570 Model
 - (iii) In Ranger 570 Model
2. Ranger (Electric) [**cleared under CTH 8709**]
3. Brutus [**cleared under CTH 8709**]

4. These Vehicles, which were classified by Polaris India under Customs Tariff Heading⁶ 8704 and 8709, as vehicles for the purpose of carrying goods, material shifting and pushing and hauling activities based on their features and characteristics, have been classified under CTH 8703 in the impugned order by treating them as vehicles principally designed for transportation of persons.

5. It needs to be noted that earlier the Directorate of Revenue Intelligence⁷ had initiated investigations in relation to the import of

4. Polaris USA
5. ATVs
6. CTH
7. DRI

ATVs in December 2016 and issued summons to Polaris India. DRI sent a scanned copy of the seizure memo by email dated 17.07.2017, wherein the DRI placed 16 ATVs under seizure under section 110(1) of the Act, including those already sold to dealers. Seizure memo was amended by a corrigendum dated 24.08.2017 and a revised memo was forwarded to Polaris India by email dated 24.08.2017 in relation to 12 ATVs. Subsequently, the 12 seized ATVs were provisionally released by order dated 26.09.2017.

6. A show cause notice dated 21.12.2017 was, therefore issued to Polaris India proposing:

- (i)** Rejection of the declared classifications of ATVs in the Bills of Entry filed and reclassifying the same under CTH 8703;
- (ii)** Confiscation of 12 seized ATVs under section 111(m) of the Act;
- (iii)** Confiscation of 22 seized ATVs imported by misclassifying, but not available for seizure under section 111(m) of the Act;
- (iv)** Demand and recovery of differential customs duty of Rs. 61,18,771/- and Rs. 5,66,306/- under section 28(4) of the Act; and
- (v)** Recovery of interest on proposed demand of differential customs duty under section 28AA of the Act and imposition of penalty under section 112(a)/section 114A of the Act.

7. Polaris India filed a detailed reply on 05.08.2019 giving reasons as to why the classification adopted by it should not be rejected.

8. The Principal Commissioner passed the impugned order upholding the classification under CTH 8703 and the demand

proposed in the show cause notice. The findings recorded by the Principal Commissioner in regard to the two set of Vehicles are as follows:

(i) Ranger (non electric), Brutus and Ranger (electric):

There is no evidence from the product literature and Polaris USA's website that the vehicles are meant for transportation of goods. Hence the vehicles would be classified under CTH 8703 for transportation of passengers; and

(ii) The penalty on Aftab Alam under section 112 of the Act is not imposable since he cannot be held responsible for the acts prior to his joining and there is no allegation of any personal gain to him.

9. Shri Harish Bindumadhavan, learned counsel for the appellant made the following submissions:

- (i)** The Principal Commissioner has not discharged the burden to prove that the correct classification is Customs Tariff Item⁸ 8703 10 10/ 8703 10 90. A perusal of CTI 8703 10 10 and CTI 8703 10 90 shows that for a motor vehicle to be classified under CTH 8703, it must be principally designed for transport of persons first. The fact that the vehicle is principally designed for transport of persons is required to be proved by the Department upon scrutiny and examination of the vehicles in dispute, if the Department intends to classify the Vehicles under CTH 8703 by rejecting the classification adopted by the appellant;

8. CTI

- (ii)** The Vehicles in dispute have not been designed principally for transportation of persons;
- (iii)** Incidental use by passengers does not make the Vehicles as one which are principally designed for transportation of passengers; and
- (iv)** There is no suppression or mis-statement or declaration with intent to evade payment of service tax and so the extended period of limitation could not have been invoked, nor could penalty have been imposed.

10. Ms. Jaya Kumari, learned authorized representative appearing for the Department supported the impugned order and made the following submissions:

- (i)** ATVs which are having off road use are for recreational purpose and principally designed for transportation of persons and not for the transportation of goods. As such the classification of the imported goods under CTI 8704 31 90, CTI 8704 90 12 and CTI 8704 90 90 is not appropriate. These goods are specially designed vehicles for transport of persons and accordingly as appropriately classifiable under CTI 8703 10 90 and CTI 8703 10 10;
- (ii)** ATVs Rangers have different models as two-seater, three-seater and crew, which shows that they are for recreational purpose only and principally designed for transportation of persons and not for the transportation of goods;
- (iii)** As per the website of the parent company and the owner Manual of Ranger Models, there is no mention

that Ranger is meant for transportation of goods. However, it contains guidelines regarding safety and other information regarding transportation of passengers;

- (iv) Serial No. 6 of Explanatory Notes to Harmonized System of Nomenclature⁹ 87.03 further reveals that ATVs for off road use which have steering system based on Ackerman principle are specifically covered under HSN 87.03;
- (v) In view of the Explanatory Note to HSN 87.09, the imported goods i.e. ATVs of BRUTUS Model do not have essential characteristic required for classification under HSN 87.09; and
- (vi) By resorting to willful mis-statement and suppression, the appellant rendered itself liable to penalty under section 114A of the Act and confiscation under 111(m) of the Act.

11. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

12. It would be necessary to first reproduce the Notes of Chapter 87 of the Customs Tariff Act and CTH 8703, CTH 8704 and CTH 8709 as contained in Chapter 87 and they are as follows:

CHAPTER 87

Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof

NOTES:

1. This Chapter does not cover railway or tramway rolling-stock designed solely for running on rails.

9. HSN

2. For the purpose this Chapter, "tractors" means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilizers or other goods.

Machines and working tools designed for fitting to tractors of heading 8701 as interchangeable equipment remain classified in their respective headings even if presented with the tractor, and whether or not mounted on it.

3. Motor chassis fitted with cabs fall in heading 8702 to 8704, and not in heading 8706.

4. Heading 8712 includes all children's bicycles. Other children's cycles fall in heading 9503.

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8701	Tractors (Other Than Tractors of Heading 8709)			
8702	Motor Vehicles for the Transport of ten or more persons, including the Driver			
8703	Motor Cars and Other Motor Vehicles Principally Designed for the Transport of Persons (Other than those of Heading 8702), Including Station Wagons and Racing Cars			
8703 10	- Vehicles specially designed for travelling on snow; golf cars and similar vehicles:			
8703 10 10	--- Electrically operated	u	125%	-
8703 10 90	--- Other	u	125%	-
8704	Motor Vehicles for the Transport of Goods			
8704 10	- Dumpers designed for off-			

		highway use			
	-	Other, with spark-ignition internal combustion piston engine:			
8704 31	--	g.v.w. not exceeding 5 tonnes:			
8704 31 10	---	Refrigerated	u	40%	-
8704 31 20	---	Three-wheeled motor vehicles	u	40%	-
8704 31 90	---	Other			
8704 32	--	g.v.w. exceeding 5 tonnes:			
	---	Lorries and trucks:			
8704 32 11	----	Refrigerated	u	40%	-
8704 32 19	----	Other	u	40%	-
8704 32 90	---	Other	u	40%	-
8704 90	-	Other:			
	---	Lorries and trucks:			
8704 90 11	----	Refrigerated	u	40%	-
8704 90 12	----	Electrically operated	u	40%	-
8704 90 19	----	Other	u	40%	-
8704 90 90	---	Other	u	40%	-
8709		Works Trucks, Self- propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles			
	-	Vehicles:			
8709 11 00	--	Electrical	u	10%	-
8709 19 00	--	Other	u	10%	-
8709 90 00	-	Parts	Kg.	10%	-

13. It is pointed out by the learned counsel for the appellant that the models of ATVs i.e. Ranger Vehicles (electric or non-electric) and Brutus Vehicles are manufactured and designed for the purpose of

carrying goods, material shifting and pushing and hauling activities. According to the learned counsel, the design and build of the imported Vehicles are specifically for the purpose of transportation of cargo/goods to different places. The contention of the learned counsel, therefore, is that the appellant has correctly classified Ranger Vehicles (non electric) under CTH 8704, and Brutus and Ranger Vehicles (electric) under CTH 8709.

14. To substantiate this submission, learned counsel has placed the factual portion contained in the Memo of Appeal in respect of Ranger Vehicles (non-electric) and the same is produced below:

RANGER VEHICLES (NON-ELECTRIC)

a) Product Description and Usage

- (i) Ranger Vehicle is a market leader providing best off-road capability and hardest working vehicle allowing cargo carrying capabilities to locations where other vehicles cannot go. All Ranger Vehicles come with four wheel drive to offer ability to work in wet and muddy regions.
- (ii) The build and design of the Ranger Vehicle focus on cargo and hitch toe capabilities along with offering features which are relevant for transporting goods to off road places. Ranger Vehicles have a separate cargo area, platform and a drop-down tailgate offering easier cargo transportation. Ranger Vehicles also have a tilt dump box for easier unloading of the cargo.
- (iii) The Ranger Vehicle is manufactured with an intent to transport cargo and therefore offers various options to install utility accessories such as winches, cargo and bed storages, and plow systems. The Vehicle provides spaces and fittings, which allows easy installation of these utility accessories, and therefore provides the flexibility to the customers to customize the Vehicle as per their requirements and needs depending upon the job or work to be performed.
- (iv) Ranger Vehicles are ATVs primarily used for off road applications inter alia by the State Forest Departments, Border Security Force, State Police for patrolling in forests or along border or by other users for material/ waste movement, transportation of goods in large farm houses, etc. Ranger Vehicles are not meant for transport on roads.

(b) Technical Features and Specifications

- (i) Ranger Vehicles have two sections which are separated by way of a barrier or a panel:
- Front Area/Section – This is meant for the seating of driver and passengers
 - Rear Area/Section – This is meant for loading and carrying of cargo or material.
- (ii) *****
- (iii) Ranger Vehicles have a box capacity ranging from 226 kg to 453 kg which is used to load, store and transport cargo.
- (iv) Ranger Vehicles have a payload capacity ranging from 453 kg to 794 kg which offers the Vehicle to carry heavy loads to places where other vehicles cannot go.
- (v) Additionally, Ranger Vehicles have a hitch toe capacity ranging from 680 Kg to 1134 kg which provides ease in transportation of heavy weighted goods.
- (vi) Ranger Vehicles have high engine capacities ranging from 44 HP to 82 HP which allow the vehicle to carry loads to off road regions.

(c) Special Features of standard Ranger Vehicles

- (i) **No seating comfort-** Ranger Vehicles have bench type seating allowing for easy ingress and egress for work/cargo carrying capabilities. Hence, passenger comfort is compromised for cargo/goods carrying capabilities.
- (ii) *****
- (iii) **Hauling/ Trailer Capabilities** - Ranger Vehicles have Trailer Hitch attachment as part of frame, which allows the Vehicle to have additional cargo carrying ability. Ranger has an available winch, which increases the hauling capabilities. The Appellant humbly submits that presence of such features clearly demonstrates that the Ranger Vehicles are designed and imported with an intent to transport goods, more so, by also providing additional cargo handling features.
- (iv) **No passenger comfort** - Ranger Vehicles do not come standard with roofs to protect passengers from extreme weather conditions such as rain or sunlight. Further, dash, floor, seats, all are made from waterproof plastics and vinyl allowing vehicle to be an open cab

vehicle for work applications, garden which can be washed with a hose.

15. The contention of the learned counsel for the appellant, based on the features, specifications, technical capabilities and usage as described above, is that:

- (i)** The Ranger Vehicles (non-electric) are primarily designed and intended for transportation of cargo on off road surfaces;
- (ii)** Various Ranger Vehicle models are four- wheel, light-weight vehicles with a top speed of 60 mph or less having different payload abilities ranging from 454 kg to 907 kg and incorporate a segregated large rear box or cargo area that tilts to facilitate unloading of goods;
- (iii)** Although various models can carry anywhere from 2-6 passengers, primarily seats and vehicle configurations are designed for work and cargo hauling, depending upon users' requirements;
- (iv)** Further, seating area in Ranger Vehicle is smaller and generally not protected with doors or similar safety features, as in passenger vehicles, in order to facilitate easy ingress and egress;
- (v)** Ranger Vehicles have more weight carrying capacity for goods as compared to the weight carrying capacity for passengers; and
- (vi)** Additionally, Ranger Vehicle is primarily marketed by the appellant to support cargo transport and similar work functions, highlighting payload capacity, including some models with more fuel-efficient diesel engines and enhanced

heavy duty suspensions, brake systems, and calibration clutch.

16. Learned counsel, therefore, submitted that it is evident that the construction, build and usage of the Vehicle are meant for material shifting and transportation of cargo. Thus, according to the learned counsel, the Ranger Vehicles deserve classification under CTH 8704, which covers vehicles primarily meant for transportation of goods.

17. With regard to Brutus and Ranger Vehicles (electric), learned counsel for the appellant placed the following position as enumerated in the Memo of Appeal.

BRUTUS AND RANGER VEHICLES (ELECTRIC)

(a) Product Description and Usage

- (i) Brutus Vehicles and Ranger Electrical Vehicles are work utility vehicles predominantly used in factories, warehouses and other places by the customers. Ranger Electric vehicles are the electric vehicles which are run on AC induction motors whereas Brutus Vehicles are light-weight diesel powered vehicles with hydrostatic transmission. These Vehicles also have all season climate control functions and come with optional front attachments to create new levels of productivity outdoors.
- (ii) The build and design of the Brutus/Ranger Electric vehicles focus on cargo and hitch toe capabilities along with offering features which are relevant for transportation of goods and performing various work applications like plow, lift, scoop, blow etc. as shown in the images below. These Vehicles have a separate cargo area, platform and a drop-down tailgate offering easier cargo transportation. Further, they also have a tilt dump box for easier unloading of the cargo.
- (iii) These Vehicles are manufactured with an intent to transport cargo and therefore, offer various options to install utility accessories such as winches, cargo and bed storages, and plowing systems. These Vehicles provide spaces and fittings, which allow easy installation of these utility accessories, and therefore gives the flexibility to the customers to customize the Vehicle as per their requirements.

- (iv) Brutus is predominantly used in floods and other disaster hit areas wherein the Vehicle assists in clearing the roads, plowing off snow after a major disaster, etc.

(b) Special features of standard Brutus Vehicles and Ranger (Electric) Vehicles

- (i) No seating comfort - These Vehicles have bench style seating allowing easy ingress and egress with transport of goods as focus. Passenger comfort is compromised (as shown in the image below) in these Vehicles for cargo/ goods carrying capabilities. The set-up of these Vehicles is ergonomically different than a people carrier.
- (ii) Rear Suspension - These Vehicles have suspension designed to increase load carrying capability while keeping ground clearance allowing vehicle to carry goods to locations which other vehicles cannot carry. Similar to Ranger Vehicles, the suspension in Brutus is specifically designed to be able to carry massive loads while maintaining ground clearance.
- (iii) Hauling/Trailer Capabilities - These Vehicles have Trailer Hitch attachment which allows the Vehicles to have additional cargo carrying ability. Hitch receivers are standard on all Brutus vehicles to tow cargo long distances.
- (iv) Passenger comfort removed - Brutus Vehicles do not come standard with roofs to protect passengers from extreme weather conditions such as rain or sunlight. Further, dash, floor, seats, all are made from waterproof plastics and vinyl allowing vehicle to be an open cab vehicle for work applications. Also, vehicle can be washed with a garden hose.
- (v) Focus on cargo carrying - These Vehicles have separate cargo area, platform and a drop-down tailgate offering easier cargo transportation. These Vehicles also have an electric bed lift allowing for easier unloading of heavy cargo.

(c) Technical Features and Specifications of standard Brutus Vehicles and Ranger Electric Vehicles

- (i) These Vehicles have two sections which are separated by way of a barrier or a panel:

Front Area/Section - This is meant for the seating of driver and passengers

Rear Area/Section - This is meant for loading of cargo or goods

- (d) These Vehicles have a small area for seating of passengers and can carry up to two to three passengers only.

- (e)** Brutus Vehicles and Ranger EVs have a cargo box capacity of 447 Kg and 226.80 Kg, respectively, which is used to load, store and transport the cargo.
- (f)** Brutus Vehicles and Ranger EVs have a payload capacity of 793.80 Kg and 453.60 Kgs, respectively, which allows the Vehicles to carry heavy loads.
- (g)** Brutus Vehicles and Ranger EVs have a hitch toe capacity of 907.2 Kg and 680.40 Kg respectively which provides ease in transportation of heavy weighted goods.
- (h)** Brutus Vehicles have a top speed of 30 mph or less and Ranger EVs have a top speed of 25 mph or less.
- (i)** These Vehicles have a bench type seating to allow easy ingress and egress and do not have any passenger comfort amenities, that are provides in vehicles designed for transportation of persons.
- (e)** These Vehicles focus on cargo and hitch toe capabilities and are marketed on work/ cargo/ hitch toeing capabilities for work related jobs, similar to the Ranger Models elaborated above. In addition, these Vehicles have separate cargo area, platform and a drop-down tailgate offering easier cargo transportation and also have an electric bed lift allowing for easier unloading of heavy cargo. Brutus has more weight carrying capacity for goods as compared to the weight carrying capacity for passengers.

18. Learned counsel for the appellant contented that it is evident from technical literature, product features, images and videos that Brutus and Ranger Electric Vehicles are meant for transportation of goods and not passengers. Thus, according to the learned counsel, special features of Brutus and Ranger Electric Vehicles completely fit within the scope of Work Trucks and Vehicles covered under CTH 8709 and, accordingly, appropriately classifiable under CTH 8709.

19. Learned authorised representative appearing for the department submitted that the Vehicles imported by Polaris India deserve to be classified under CTI 87031010 CTI 87031090 and in this connection placed reliance on the website of Polaris USA. Learned authorised representative submitted that the Vehicles are principally

designed for transportation of persons and not for transportation of goods. In this connection learned authorised representative also placed reliance upon serial no. 6 of Explanatory Notes to HSN 87.03 and HSN 87.09.

20. It would be useful to compare the salient features for classification under CTH 8703 as per HSN and the feature of the Vehicles and they are as follows:

Salient features for classification under CTH 8703 as per HSN	Features of the Vehicles
Presence of permanent seats with safety equipment (safety seat belts or anchor points and fittings for installing safety seat belts) for each person	The vehicles have bench type seats for providing easy ingress and egress for work/ cargo carrying capabilities. Passenger comfort is compromised.
Presence of rear windows along two side panels	There are no rear doors or windows along the two side panels. Rear section of the vehicles contain cargo box meant for loading, storing and carrying goods and material. They also have a drop-down tailgate and tilt dump box for convenient cargo transportation.
Presence of sliding, swing-out or lift-up door or doors with window, on side panels or in rear	Vehicles do not have doors, windows or similar safety features on the front or rear section. However, the customer is given an option to install doors, side panels, etc.
Increased windows and sight capacity especially in rear of the vehicle	There are no windows in the front or rear section. Rear section contains cargo boxes and do not have windows/doors attached to it.
Absence of a permanent panel or barrier between area for driver and front passengers and rear area that may be used for transport of both passengers and cargo	The Vehicles have two sections – front for driver and passengers and rear for loading of cargo. The sections are separated by a defined physical separation in the form of a panel or a barrier.
Lack of substantial cargo room	Vehicles have separate cargo area, platform and a drop-down tailgate for loading and unloading of cargo.
Ability to drive at high speeds	They do not have the ability to run at high speeds. For ranger, top speed is 60 mph and for Ranger EV/Brutus it is 30 mph and 25 mph or less.
Diminished cargo capacity and hauling	Vehicles focus on hauling, pushing and hitch tow capabilities and come with

capabilities	enhanced cargo box capacity, payload capacity and hitch toe capacity.
Presence of comfort features and interior finish and fittings throughout vehicle interior associated with passenger areas of vehicles (floor carpeting, ventilation, interior lighting, ashtrays etc.)	They lack comfort features and interior fitting which are prevalent in vehicles meant for passengers. There is no door, windows or roofs. However, an option to install them is given to the customers.
Uni-body construction without defined separation between passenger and cargo locations	They do not have uni-body construction. There is a defined separation between driver and passenger section and cargo section.

21. Similarly, it would be appropriate to compare the salient features for classification under CTH 8704 with the features of the Vehicles and the same are as follows:

Salient features for classification under CTH 8704	Features of the Vehicles
Presence of bench-type seats without safety equipment for each person or passenger amenities in the area behind the area for the driver and front passengers.	These vehicles have bench type seats for providing easy ingress and egress for work/ cargo carrying capabilities. They come with only basic safety features which are to be present in all vehicles like seat belts for drivers and passengers.
Presence of separate cabin for driver and passenger and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles)	Ranger Vehicles have two sections – Front section/area is meant for seating of driver and passengers, whereas the rear is for loading and carrying cargo. The two sections are separated by a panel/barrier. Rear section contains a cargo box meant for loading, storing and carrying goods and material. Additionally, the vehicles have a drop down tailgate and tilt dump box for convenient cargo transportation.
Presence of sliding, swing-out or lift-up door or doors with window, on side panels or in rear for loading and unloading of cargo	No door or windows are present in the Ranger Vehicles in order to allow easy ingress and egress for smooth transportation of goods.
Absence of rear windows and inclusion of side panels to contain cargo	The rear section of vehicles contains cargo boxes for loading, storing and carrying of cargo and does not have windows or doors to it.
Presence of a permanent panel or barrier between the area for the driver and front passenger and the rear area	Ranger Vehicles have two sections – Front section/area is meant for seating of driver and passengers, whereas the rear is for loading and carrying cargo. The two sections are separated by a

	panel/barrier.
Absence of comfort features and interior finish and fittings in cargo bed area which are associated with passenger areas of vehicles (E.g. floor carpeting, ventilation, interior lighting, ashtrays)	In the cargo area, there are no comfort features such as floor carpeting, interior lighting etc. The Rangers do not have roofs or frames or ashtrays.

22. Brutus and Ranger Vehicles (electric) classified by the appellant under CTH 8709 are classifiable under CTH 8709 as works trucks and the same is evident from a perusal of their characteristics and features. The Vehicles do not have the features that a vehicle for transportation of persons is required to have as per the HSN Explanatory Notes.

23. From the aforesaid comparison, it clearly transpires that the appellant has correctly classified Ranger Vehicles (non electric) under CTH 8704, and Brutus and Ranger Vehicles (electric) under CTH 8709.

24. Even otherwise, it is a settled principal of law that if the department wishes to change the classification proposed by an assessee then it is for the department to discharge the burden and prove that the Vehicles fall under CTH 8703, which includes within its scope motor cars and other motor vehicles **principally designed for transport of persons**. The department has merely relied upon the website of Polaris USA to conclude that the classification adopted by Polaris India is not correct. It was imperative for the department to have established that the Vehicles are primarily designed for transport of persons. Only when the department discharges the burden of proof, that the burden of proof would shift to the assessee. In this connection reliance can be placed on the decision of the

Supreme Court in **H.P.L Chemicals vs. CCE., Chandigarh** ¹⁰ ,
wherein the following observations have been made:

“29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. 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 proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue.”

25. The reason assigned in the impugned order passed by the Principal Commissioner for holding that the classification would be under CTH 8703 is as follows:

“31. Thus, the evidence shows that these ATVs may perform a wide variety of functions for a diverse buying public. Some of the utility ATVs may, no doubt, be purchased primarily as personal or corporate workhorses to perform pushing or hauling functions....

In other words, the evidence shows that the ATVs in issue have many different uses, some of which have nothing to do with carrying goods, some of which do.”

26. Even this paragraph would indicate that Principal Commissioner has noted that the Vehicles may perform a wide variety of functions, some of which would be pushing or hauling functions.

27. For a vehicle to be classified under CTH 8703, it is required to be ‘principally designed’ for transportation of persons. The Vehicles in dispute, namely, the Ranger (non-electric) and the Ranger (electric) and Brutus Vehicles are not designed principally for transportation of persons. It would, therefore be necessary to determine what would constitute ‘principally designed for transportation of persons’.

10. 2006 (197) E.L.T. 324 (SC)

28. In **Commissioner of Central Excise vs. Telco Ltd¹¹**, the Tribunal observed:

“(f) In absence of any other criteria available to determine ‘principally designed and on a plain reading of logic of the classification ruling of HSN Committee now adopted by us indicates to us, **if vehicle weight is used up in the design, in favour of the passengers inasmuch as a major portion of the same is used for the passengers transportation, then the vehicle would be classified as one which is ‘principally designed for transport of persons’.** If, on the other hand, this gross vehicle weight is so distributed by designing features on a major portion of difference is used for transportation of goods then the vehicle would not classify in the classification Heading 8303, but would classify in the classification as classified for transportation of goods i.e. under Heading 8704.

(h) *****. In case of 8703 the term “Other motor vehicles principally designed for the transport of not more than six persons”, may imply reading of an ‘end use’ stipulation to mean that Design of the vehicle for purpose of transport of passengers and not cargo. *****

5. *****. **We therefore conclude, that an incidental use by crew/family members/farm labour, should not over-ride the essential characteristic of the vehicles herein which is for transport of goods/spare parts & tools/goods-farm produce for which it is designed put to use. The transport of person is incidental.** That farm labour/crew/family members could travel in relative comfort of a Tractor/Trolley one encounters in the Rural Indian Scene, will not contribute to be a factor to determine those transports as ‘principally designed for persons’. *****

Therefore any intended/isolated advertised use by the manufacturer, does not induce us to conclude that the entity under dispute, are ‘principally designed for transport of person’. A single isolated

11. 2002 (143) ELT 548 (Tri.-Mumbai)

advertisement cannot be a cause to classify the entity under 8703. The substantial normal use, as it appears, from the documents in the Miscellaneous Application of Revenue is for transport of goods.”

(emphasis supplied)

29. In **Mahindra and Mahindra Ltd. vs. CCE & ST, Hyderabad-I¹²**, the Tribunal observed:

“6.5 In the event, we have no hesitation in holding that the test laid down in the earlier Tribunal decision viz; that a motor vehicle would be classifiable under 8703 or 8704, depending on how the gross vehicle weight in design of the vehicle was distributed and whether the major portion of it was used for transportation of passengers or for transportation of goods, is still the settled yardstick to be applied in such a controversy.”

30. Thus, it is the gross weight usage that determines whether the vehicle is principally designed for transportation of persons.

31. The documents filed by the appellant establish that the design and build of the imported Vehicles are not principally meant for transportation of passengers, as from the distribution of the payload capacity between the area designed for passengers and cargo, it can be seen that out of the total capacity, more is designed to be used for carrying of cargo only and not passengers. This shows that the principal design is not for transportation of passengers but for transportation of goods.

32. This apart, the Ranger and Brutus Vehicles imported by the appellant over the years have been sold to the TN Coastal Security, NIM/UK-SDRF- Disaster Relief Forces, Border Security Surveillance and Utility Support, primarily for the purpose of transportation of goods and utility purposes. Therefore, applying the usage/functionality test, which can be applied in the instant case as

12. 2019 (367) E.L.T. 465 (Tri.- Hyd.)

CTH 8703 uses the words 'principally designed for transportation of passengers' which implies reading of an 'end use' stipulation in the Tariff as held in **Telco**, it is clear that the said Vehicles are not vehicles designed for transportation of passengers.

33. The incidental use by passengers would not make Vehicles as one which are principally designed for transportation of passengers. In this connection it would be useful to refer to the decision of the Tribunal in **Nicholas D'Souza Garage vs. Commissioner of C. Ex., Thane**¹³, wherein the Tribunal held:

"2.9 ***** the cash delivery vans should not be classified under CTH 8703, since the vehicles are not exclusively used for transportation of persons. The Tribunal while placing emphasis on the facts that for the purpose of determining the appropriate classification, exclusive use of the vehicle is not required, held that the disputed vehicles are used for carrying cash/ valuables which are goods, and hence, the finding of the Commissioner that the security guards also travel in the same vehicles cannot be a reason to classify the cash delivery vans to be vehicles meant for transportation of passengers. On appeal by the department in **Commissioner v. Nicholas D'Souza Garage**¹⁴, dismissed the appeal and upheld the decision of the Tribunal.

34. In **Mahindra and Mahindra**, the answer to the question posed by the Tribunal is as follows:

"Can a vehicle which is capable of transporting not just goods but also passengers, qualify for inclusion in CETH 8704?":

"We note that while the main qualification for Heading 8703 is that the vehicle should be principally designed for the transportation of passengers", there is no such underlying requirement for CETH 8704."

13. 2015 (320) E.L.T. 579 (Tri.-Mumbai)

14. 2015 (320) E.L.T. A251 (S.C.)

35. Thus, even if passengers are transported in the Vehicles, it would not mean that the Vehicles cannot be classified under CTH 8704 and CTH 8709.

36. In such circumstances, it would not be appropriate to refer to the website of Polaris USA. The information conveyed therein may not mention the Vehicles are for transportation of goods, but that would not conclusively prove that the Vehicles are not for transportation of goods.

37. In view of the aforesaid discussion, it has to be held that the Ranger (non-electric) Vehicles deserve to be classified under CTH 8704 and Ranger (electric) and Brutus Vehicles deserve to be classified under CTH 8709.

38. It, is, therefore, not possible to sustain the order dated 27.08.2019 passed by the Principal Commissioner. It is, accordingly, set aside and the appeal is allowed.

(Order pronounced on **03.07.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)