



CUSTOMS AUTHORITY FOR ADVANCE RULINGS
O/o THE CHIEF COMMISSIONER OF CUSTOMS
NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI-110037

[Email: cus-advrulings.del@gov.in]

Present

Samar Nanda (Customs Authority for Advance Rulings, New Delhi)

F. No. VIII/CAAR/Delhi/DENSO/ 20 /2024

The day of 6th June, 2024

Ruling No. CAAR/Del/DENSO/25/2024 / 950 to 954

In Application No. 15/2024 dated 26.03.2024 06/06/2024

Name and address of the applicant: M/s DENSO Haryana Pvt Ltd.,
B-1/ D-4, Ground Floor, Mohan Co-operative Industrial
Estate, Mathura Road, New Delhi 110 048.

Commissioner concerned: Commissioner of Customs (ICD), Patparganj,
New Delhi-110096

Present for the Applicant: None

Present for the Department: None

Ruling

M/s. Denso Haryana Private Limited ('Applicant'), holding IEC 0599001356, are having the registered office at B-1/ D-4, Ground Floor, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi 110 048. It is submitted that the application for advance ruling in Form No. CAAR -1 along with the relevant annexures and documents as per the provisions of Section 28H of the Customs Act, 1962 has been filed before the Customs Authority for Advance Rulings, New Delhi (CAAR, in short). The said application was received in the secretariat of the CAAR, New Delhi on 26.03.2024 along with their enclosures in terms of Section 28H (1) of the Customs Act, 1962 (hereinafter referred to as the 'Act'). The enclosed application is submitted to seek confirmation whether-

- the classification adopted by the Applicant under the Customs Tariff Heading 8517 62 90 of the First Schedule of the Customs Tariff Act, 1975 in relation to import of the product "Telematics Control Unit (TCU)" is correct, and
- the Applicant is eligible to avail concessional rate of Basic Customs Duty under Sl. No. 666 of the Notification No. 69/2011-Customs dated 29.07.2011.

o/c



STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED

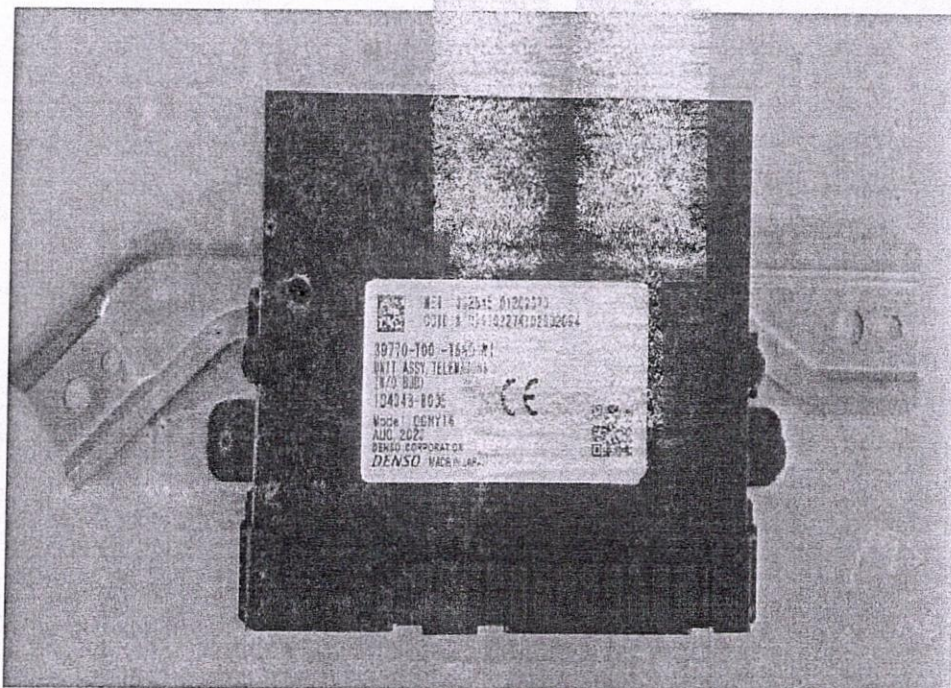
1. The application is being preferred by M/s. Denso Haryana Private Limited ('**Applicant**') a company incorporated in India under the provisions of the Companies Act, 1956 and having its registered head office located at New Delhi.
2. Copy of Certificate of Incorporation, Articles of Association and Memorandum of Association (as submitted with the Registrar of Companies in India) is enclosed herewith as **Appendix 1 (Colly)**.
3. The Applicant is presently engaged in the business of manufacturing and trading of parts of automobiles. For its trading business, the Applicant *inter alia* imports automotive parts in finished form for further supply of these automotive parts to the manufacturers of motor vehicles in India.
4. For the purposes of the present application, the applicant proposes to import Telematics Control Unit ('**TCU**'/ '**subject good**') from Denso Corporation Japan ('**Denso Japan**'). The subject good is to be imported in finished form and upon its arrival into India the same will be sold to its customers (i.e., automotive companies) in as is condition. The description, technical features, characteristics, and functions of the products are briefly discussed below.

About the subject good –

5. Subject good is a device that enables communication and data exchange between a vehicle and external networks or services. It uses cellular network through which signals are transmitted to the server and eventually to the agent or the specified person. It comes with in-built antenna. The automobile manufacturers use the subject good in motor vehicles to perform the following operations:
 - a. Connect to cellular, satellite, to transmit and receive data, voice, or multimedia messages.
 - b. Access and process information from various sensors, or other devices on the vehicle, such as GPS, speed, fuel level, tire pressure, engine status, diagnostics, etc.
 - c. Provide services or features to the driver, passengers, or fleet managers, such as navigation, emergency assistance, remote control, security, vehicle health, etc.
 - d. Integrate with other vehicle systems, such as the infotainment system, the engine control unit, the body control module, the anti-lock braking system, etc., to share data or control functions.
 - e. Store and manage data locally or in the cloud, using encryption, authentication, or other security measures.
6. The above functionality of the subject good in the motor vehicles add to the following features (which may vary depending on the vehicle model and country) and aids the end user in emergency situations like below
 - Vehicle probe/ crash detection/Auto collision notification
 - Roadside assistance/ emergency assistance/ information call
 - Security/ speed alert etc.
 - Stolen vehicle notification
 - Geo-fencing
 - Remote vehicle commands (Car finder, remote door lock/ unlock, remote engine start)
 - Virtual dashboard
 - Wipe personal data
 - Over the air updates
7. To perform the above operations, the subject good has the capability to interact with the inside of the system of motor vehicle i.e., to receive signal/ information from the various sensors and pass on the information to the server and eventually to the end user through the cellular network. Further,



the subject good can also receive commands from in-phone application or web-portal and view vehicle maintenance and status from such in-phone application or web portal. Picture of the subject good in as imported condition is annexed hereunder for ease of reference.



8. Copy of the data sheet of the subject good indicating working of the of the subject good in different situations is annexed with this application as **Appendix 2**.
9. Subject good may consist of various components, such as a microprocessor, a memory, a SIM card, network access device, an antenna, a connector interface, etc., depending on the design and specifications. A TCU may be installed as a standalone device, integrated into another vehicle system, or connected to a smartphone or tablet or other interfaces.
10. The subject good comes embedded with the Network Access Device (NAD) and E-sim which provides it with the capability to interact and pass on the received information to the server and subsequently to the end consumer and vice versa, in as imported condition.
11. When the subject good receives signal from different parts of the motor vehicle, it converts such signal to Radio frequency ("RF") signal and transmit such signal to the server by way of the connection established through NAD and E-Sim. From the above, it appears that the principal function of the subject good is to act as transmission, conversion, and reception apparatus and to provide further the information or data it receives from the input's end to the output's end.
12. **The Applicant qualifies as an 'applicant' under Section 28E(c) of the Customs Act, 1962 ('Customs Act')**
13. Section 28E(c) of the Customs Act reads as under:
 "*(c). "applicant" means any person -*
 (i) *holding a valid Importer-exporter Code Number granted under section 7 of the Foreign Trade (Development and Regulation) Act, 1992; or*
 (ii) *exporting any goods to India;*
 or
 (iii) *with a justifiable cause to the satisfaction of the Authority, who makes an application for advance ruling under section 28H;"*



14. The Applicant is a company registered in India and is holding a valid Importer-Exporter Code ('IEC') Number 0599001356 and PAN Card Holding Number AAACD6817F. In this regard, a copy of the IEC certificate and copy Pan Card are enclosed herewith as **Appendix 3**. Thus, the Applicant is rightly covered under the definition of 'applicant' as provided under Section 28E(c)(i) of the Customs Act for making this application.

Question raised in the application for advance ruling by the Applicant squarely falls within the ambit of Section 28H(2)(a) of the Customs Act

15. Section 28H of the Customs Act provides for the questions in respect of which an advance ruling may be sought by an applicant. Section 28H of the Customs Act reads as under –

"28H. Application for advance ruling -

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought shall be in respect of, -

(a) classification of goods under the Customs Tariff Act, 1975 (51 of 1975);

(b) applicability of a notification issued under sub-section (1) of section 25, having a bearing on the rate of duty;

(c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act.

(d) applicability of notifications issued in respect of tax or duties under this Act or the Customs Tariff Act, 1975 (51 of 1975) or any tax or duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act or the Customs Tariff Act;

(e) determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975 (51 of 1975) and matters relating thereto.

(f) any other matter as the Central Government may, by notification, specify."

(Emphasis supplied)

16. The Applicant wishes to obtain the advance ruling on questions relating to classification of subject good and applicability of exemption notification on import of subject good under Section 25(1) of Customs Act as detailed out in Annexure II. Therefore, the questions raised by the Applicant falls within the purview of the provisions of Section 28H(2)(a) and 28H(2)(b) of the Customs Act. Hence, the application for advance ruling is being filed in conformity with the provisions of Section 28H of the Customs Act.

Question raised under the present advance ruling application is not before any officer of Customs, the Appellate Tribunal or any Court.

17. As per Section 28I (2)(a) of the Customs Act with regard to procedure on advance ruling application, no application for advance ruling will be accepted if the question raised in the application is already pending before any forum. Relevant extracts of the provision are reproduced below:

"28I. Procedure on receipt of application. -

(1)

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

Provided that the Authority shall not allow the application where the question raised in the application is -

(a) already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any Court,

(b) the same as in a matter already decided by the Appellate Tribunal or any Court."

(Emphasis supplied)

QUESTION 1: CLASSIFICATION OF THE SUBJECT GOOD

18. For the subject good, the proposed classification and applicant's interpretation to reach to the proposed classification is discussed as under.



19. The import and export of goods into and out of India is regulated by the Customs Act, 1962. Section 12 of the Customs Act is the charging section which stipulates that duties of customs shall be levied on all goods imported into India or exported out of India at such rates as may be specified under the Customs Tariff Act, 1975 ('Tariff Act').
20. Section 2 of the Tariff Act provides that the rates at which BCD shall be levied under the Customs Act are specified in two schedules, namely, the **First Schedule** and the **Second Schedule**. First Schedule of the Tariff Act deals with the applicable duty structure on import of goods and the Second Schedule deals with the applicable duty structure on export of goods. To determine the said rates of BCD applicable on the imported good it is important to identify the tariff item under which the good would fall under the First Schedule of the Tariff Act.
21. Classification of goods covered under the Customs Tariff is done as per the General Rules of Interpretation ('GRI'). GRI 1 to 5 lay down the principles determining classification of goods under a specific Heading whereas GRI 6 is applicable if the objective is to determine the classification of goods in the Sub-headings of a Heading.
22. GRI 1 stipulates that the goods under consideration should be classified in accordance with the terms of the Headings and any relevant Section or Chapter Notes. These Section or Chapter Notes and Sub-Notes give detailed explanation as to the scope and ambit of the respective Sections and Chapters. These Notes have been given statutory backing and have been incorporated at the beginning of each Section / Chapter. For ready reference, Rule 1 is extracted herein below:
- "Classification of goods in this Schedule shall be governed by the following principles:*
- 1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions ..."*
23. The Larger Bench of the Hon'ble Tribunal in the matter of *Saurashtra Chemical, Porbandar vs. Collector of Customs, 1986 (23) E.L.T. 283 (Tri. -LB)* had held that the tariffs must be interpreted in the light of relevant Section and Chapter Notes which are statutorily binding like the Headings themselves. Thus, the Section and Chapter Notes have an overriding force on the respective Headings. This judgment was approved by the Hon'ble Supreme Court of India in the case of *Saurashtra Chemicals vs. Collector of Customs, 1997 (95) E.L.T. 455 (S.C.)*.

Harmonized System of Nomenclature

24. The Customs Tariff in India is based on Harmonized Commodity Description and Coding System, generally referred to as Harmonized System of Nomenclature ('HSN') developed by the World Customs Organization ('WCO') which is applied uniformly by more than 137 countries of the world. Under the HSN, various goods are classified under different headings, sub-headings and tariff items. For the purposes of the uniform interpretation of the HSN, the WCO has published detailed explanatory notes to HSN which have long been recognized as a safe guide to interpret the Tariff Schedule.
25. In the case of *O. K. Play (India) Ltd. vs. C.C.E. Delhi III, 2005 (180) E.L.T. 300 (S.C.)*, a 3-member bench of the Hon'ble Supreme Court of India made the following observations:
- (a) There cannot be a static parameter for correct classification; (b) HSN along with the explanatory notes provide a safe guide for interpretation of an Entry; (c) Functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification of an item; (d) Aforementioned aids and assistance are more important than the names used in the trade or common parlance in the matter of correct classification.
26. It was held by the Hon'ble Supreme Court in *L.M.L Limited vs. Commissioner of Customs, 2010 (258) E.L.T. 321 (S.C.)* that in order to resolve a dispute on tariff classification, internationally accepted nomenclature emerging from HSN Explanatory Notes is a safe guide. Further, HSN Explanatory Notes are also dependable guide for interpretation of Customs Tariff. Some other



judicial pronouncements wherein this proposition was also affirmed, upheld and followed have been enumerated below:

- i. *CC vs. Gujarat Perstorp Electronics Ltd., (2005)7 SCC 118, (2005) 186 E.L.T. 532 (3-member S.C. bench);*
- ii. *CCE vs. Phil. Corporation Ltd., (2002) 223 E.L.T. 9 (S.C.)*

27. Therefore, the HSN Explanatory Notes are an important aid for ascertaining the classification of a good, in addition to the GRI and corresponding Chapter Notes and Section Notes. In the light of above facts, to analyze the classification of above product following needs to be kept in mind:

a. General Rules of Interpretation (GRI); b. Heading/sub-heading of the First Schedule in conjunction with Section/Chapter/Explanatory notes; c. Principal function of the subject good.

28. To ascertain the classification and by application of GRI 1, the following Customs Tariff Heading ('CTH') require attention i.e., CTH 8517 and CTH 8708.

CTH	Description of Goods
8517	Telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks: other apparatus for the transmission or reception of voice, images or other data , including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528
8708	Parts and accessories of the Motor Vehicles of Heading 8701 to 8705

Analysis of Chapter 85

29. Given the above, CTH 8517 merits consideration, which provides for "other apparatus for the transmission or reception of voice, images, or other data". As stated in Annexure 1 above, the subject good imported by the Applicant is a networking device which is going to be used in the motor vehicles.

CTH		Description of Goods
8517		Telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks: other apparatus for the transmission or reception of voice, images or other data , including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528
	-	Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):
8517 62	--	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:
8517 62 90	---	Other



30. As per Rule 1 of the GRI, subject good should be classified in accordance with the terms of the headings and any relevant and Section or Chapter Notes.
31. CTH 8517 covers apparatus used for transmission or reception of voice, images or other data, including apparatus used for communication in a wired or wireless network. The machines whose principal function is to transmit and / or receive data or communicate in wireless network are classified under this heading.
32. Upon reading of the HSN Explanatory Notes to the CTH 8517, it is understood as below –
- “This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.”*
33. In view of the above extracted portion of the HSN explanatory notes, it appears that CTH 8517 covers such apparatus which is used in transmission and reception of data and wherein the data is transmitted by way of electromagnetic waves in a wireless network. As discussed in Annexure 1 of this application, where the subject good provides for transmission and reception of data in the RF form in the wireless network, by application of the GRI Rule 1 and considering the HSN explanatory notes, the subject good appears to merit classification under CTH 8517 at four-digit level.
34. It is pertinent here to note that the capability of subject good to perform transmission and reception function in wireless mode is there at the time of import. This is evident from the fact that at the time of import, the subject good comes embedded with the NAD and E-sim which provide the subject good with the capability to transmit and receive the data in the wireless network. This is established from the fact that the subject good in as imported condition has the IMEI number (for the NAD) and ICCID Number (for the E-sim) mentioned on the subject good (refer picture of TCU in as imported form below). This goes on to show that the TCU in as imported condition is capable to perform transmission and reception function, and hence merits classification at CTH 8517 at the four-digit level.
35. Given the above, the Applicant now needs to ascertain the classification at the six-digit and eight-digit level.
36. At six-digit level, CTH 8517 62 covers *“machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus”*. From the plain reading of the tariff sub heading, it appears that only those machines which independently perform all three functions of reception, conversion and transmission are covered under CTH 8517 62. Hence, in case a product only performs one or two of such aforesaid functions, it will not be covered under the purview of CTH 8517 62. In this regard, reliance is placed on the decision of the Hon'ble Bombay Tribunal in the case of *CCE vs. Reliance Jio Infocom Ltd., 2019 (369) E.L.T. 1713 (Tri - Bom)* wherein while determining the classification of ‘Antenna’ the court held that all the three functions of reception, conversion and transmission are required to be performed by a machine to fall under CTH 8517 62.
37. As discussed in Annexure 1 above, signals received by the subject good from other parts of the motor vehicle are first converted into RF signals for transmission in wireless mode, and then the RF signals are transmitted to the server and subsequently to the end user by way of connection established through the usage of NAD and E-sim.
38. In a similar manner, in case the user intends to provide any of the specified command to its vehicle through the smart phone/web portal, the command initiated by the user is first sent to the server. The server passes the command through telecom network to the subject good. Upon its receipt, such command is converted into form of RF signals and the same is passed on to the concerned part/component of the motor vehicle for execution.



39. In view of the functionality of the subject good discussed above, it is evident that the subject good performs transmission, conversion, and reception of signals in a wireless network and hence, merit classification under CTH 8517 62 at the six-digit level. Since the subject good is not specifically covered under any specific tariff entry at the eight-digit level, it merits classification in the residual category of 'Others' at eight-digit level i.e., **CTH 8517 62 90**.
40. In addition to above, it is also imperative to refer Note 2 (a) of Section XVI which provides for classification of parts of machines. It states that parts which are goods of any heading of Chapter 84 or 85 are in all cases to be classified in the respective headings. Relevant extract of Section Note has been reproduced below for ease of reference –

“(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;”

(Emphasis supplied)

41. Therefore, upon bare reading of the above stated Section Note, it can be construed that TCU which is an identifiable machine/ good as a whole and is going to be used in the motor vehicle merits classification under the Chapter 85 only.

Analysis of Chapter 87

42. At this juncture, the Applicant also considers it relevant to discuss heading of Chapter 87 under Section XVII of the Customs Tariff which covers vehicles (other than railway or tramway rolling stock) and parts and accessories thereof. The parts and accessories of motor vehicles are covered under CTH 8708. To understand the coverage of parts and accessories of motor vehicles, it is important to refer to Section notes of Section XVII.

43. In terms of Section Note 2(f) to Section XVII, electrical machinery and equipment are not regarded “parts or accessories” of the goods of Section XVII even if they are identifiable for use with these goods. Note Section 2(f) to Section XVII is extracted hereunder for reference purposes.

“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:

(f) electrical machinery or equipment (Chapter 85);”

(Emphasis supplied)

44. The Section Note 2 (f) of Section XVII thus explicitly excludes the electrical machinery or equipment of Chapter 85 from the purview of Section XVII. Further, reference is made to Note 3 to Section XVII which provides that references in Chapter 86 to 88 to the “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. In the instant case, the product is principally used for the purposes of transmission, conversion, and reception of data from any part of the motor vehicle to the end user or vice versa.
45. While Note 3 prescribes that a part or an accessory to merit classification under CTH 8708 should be suitable for use solely or principally with motor vehicles, Note 2(f) states that even such a part, which is suitable for use with motor vehicles, will not be regarded as part or an accessory classifiable under Chapter 87, if such a part is an electrical machinery or equipment of Chapter 85.
46. Further, the HSN explanatory notes under Section XVII explain the scope of the terms “parts and accessories” for the purpose of Section XVII. Relevant portion is extracted hereunder –

III) PARTS AND ACCESSORIES

It should be noted that Chapter 89 makes no provision for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of vehicles, aircraft or equipment concerned.



*It should, however be noted that these headings apply only to those parts or accessories which comply with all three of the following conditions:
They must not be excluded by the terms of Note 2 to this Section (see Paragraph (A) below),*

They must be suitable for use solely or principally with the articles of Chapter 86 to 88 (see paragraph (B) below, and

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

*(A) Parts and accessories excluded by Note 2 to Section XVII
This Note excludes the following parts and accessories, whether or not they are identifiable for as for the articles of this Section.*

*(7) Electrical machinery or equipment of Chapter 85, for example:
(Emphasis supplied)*

47. From the above, it is apparent that all the electrical machinery or equipment covered under Chapter 85 are not regarded as "parts or accessories" of motor vehicles classifiable under Chapter 87, as they stand excluded from the purview of Section XVII in view of the above.

Specific entry to prevail over general entry by virtue of GRI 3(a)

48. Without prejudice to the discussion above, reference is made to Rule 3(a) of the GRI which provides that the heading that provides the most specific description of the goods shall be preferred to headings providing a more general description. In this regard, Rule 3 of the GRI is extracted as below: -

"3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

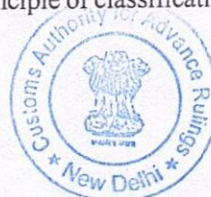
(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up 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.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

(Emphasis supplied)

49. Reliance in this regard is placed on the case of *Mauri Yeast India Pvt. Ltd. vs. State of UP, 2008 (225) E.L.T. 321 (S.C.)* wherein it was held by the Hon'ble Supreme Court that if there is a conflict between two entries one leading to an opinion that it comes within purview of tariff entry and another the residuary entry, the former should be preferred.
50. Further, in the case of *Dunlop India Ltd. & Madras Rubber Factory Ltd. vs. Union of India and Ors., 1983 (13) E.L.T. 1566 (S.C.)*, it was held by the Hon'ble Supreme Court that an article classifiable under specific item cannot be classified under residuary item.
51. Further, reliance is placed on the decision of Hon'ble Tribunal, Mumbai bench in the case of *Sirthai Superware India Ltd. v. Commr. of Customs, Nhava Sheva-III, 2020 (371) E.L.T. 324 (Tri. - Mumbai)*, where the Tribunal observed that it is general principle of classification that specific entry should be preferred over the general entry.



52. Therefore, it is submitted that where the goods satisfy the requirements of a specific entry, that entry should cover the goods rather than the residual heading. In view of GRI 3(a) and the judicial precedents cited above, where there is a specific heading for the subject good under Chapter 85 (i.e., CTH 8517), it will not merit classification in the residuary heading as parts of motor vehicles under CTH 8708.

Legal developments after the decision of Hon'ble Supreme Court in the matter of M/s. Westinghouse Saxby Farmer Ltd. and its application in the present case

53. in the decision of *Westinghouse Saxby Farmer Ltd. vs. Commissioner of Central Excise, Calcutta - 2021 (3) TMI 291 - Supreme Court*, while deciding upon classification of relays used for railway signaling system, the Hon'ble Supreme Court has held that those parts which are suitable for use solely or principally with an article of Chapter 86 cannot be taken to a different Chapter as the same would negate the very objective of group classification. In the above decision, the Hon'ble Supreme Court does not discuss the WCO General Explanatory Notes to Section XVII and XV, which indicate that if the goods are specifically excluded under Note 2 or if the goods have a specific classification under another heading, the goods cannot be classified as parts and accessories, irrespective of whether the goods are used along with such goods.

54. With regard to the above, kind attention is invited to the **Clarification on the classification of parts and accessories of motor vehicles** issued by the **Office of the Commissioner of Customs (Import) - Air Cargo Complex, Sahar, Andheri (E), Mumbai vide F.No. S/3-Misc-03/2019-20/GrVB/ACC dated 21st May 2019** (annexed as **Appendix 4**). To streamline the assessment of parts and accessories of automobiles, the Office of Commissioner issued the said Note wherein legal position was explained in the following manner.

"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."

55. In the instant case, the product under consideration has specifically been excluded by the working of Note 2 (f) of Section XVII (covering Chapter 86 to 89) which provides that the expressions "parts" and "parts and accessories" do not apply to the electrical machinery or equipment (Chapter 85). Furthermore, there is a more specific CTH as against general CTH under Chapter 87. Therefore, the product under consideration cannot be classified under the Chapter 87 in view of the conditions at point (a) and (c) of the aforementioned circular issued by the Commissioner's office.

56. The principal of classification discussed in the Hon'ble Supreme Court's decisions can be summarized as under.

- a. In the *Westinghouse judgment (supra)*, the end use test to determine the classification has been preferred over the exclusion provided under Note 2(f) to Section XVII.
- b. The judgment of the Supreme Court in the matter of *Commissioner of Central Excise, Aurangabad v. M/s. Videocon Industries Limited (2023-TIOL-25-SC-CUS)* has emphasized on the exclusion note over the sole/ principal use test.

57. Further, post the judgement of the Hon'ble Supreme Court in the case of *Westinghouse Saxby (supra)*, the CBIC on 5th January 2022 issued **instruction No. 01/2022-Customs** with subject **"Implication of the judgement of the Hon'ble Supreme Court in the case of M/s Westinghouse Saxby Farmer Ltd. Vs Commissioner of Central Excise, Calcutta – reg"**. (annexed as **Appendix 5**). This was to align with the divergent practice being followed on assessment of 'parts' after the *Westinghouse Saxby judgment (supra)* was issued. In the said instructions while making a reference to the judgement of the Hon'ble Supreme Court in the case of *M/s Intel Design Systems (India) P.*



Ltd. Vs Commissioner of Customs & Central Excise, among others the CBIC has instructed as follows –

“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 judgements of the Hon’ble Supreme Court on issues of classification of parts and accessories. Thus, the collective wisdom of these judgments indicates the manner in which such classification issues are to be approached. Few of such judgments are illustrated in succeeding paragraphs:

3.1 of M/s Intel Design Systems (India) P. Ltd. Vs Commissioner of Customs & C. Ex-2008

A. Apart from the reliance on the section notes and the chapter notes the court in this judgment also considered the HSN explanatory notes wherein three conditions that need to be fulfilled for goods to be classified under 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 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 exclusions mentioned in Note 2 (condition (a)) was not met, the said goods could not be classified under Chapter 87.”

58. Taking cognizance of the rationale laid down in the judgement in the matter of **M/s Intel Design Systems (India) P. Ltd. Vs Commissioner of Customs & Central Excise** and the instructions issued by the CBIC as discussed above, for goods to be classified under the chapters of Section XVII, fulfilment of the three-layer test postulated “Under the Sub-heading (iii) Parts and Accessories” of the explanatory notes to Section XVII as issued by the WCO is imperative. It is only when all these three conditions are met that a particular item would be classified under the Chapters of Section XVII.
59. In other words, the shape/ design/ specification of a product is not a determinant of principal or sole use. Further, Note 3 of Section XVII cannot be applied blanketly and needs to be construed narrowly otherwise the exclusion under Note 2 would become superfluous. To this extent, the Videocon judgment is particularly important, and it is also aligned with the WCO classification principles as propounded in the CBIC Circular (supra).
60. It may be added here that the CBIC had issued a further clarification on the issued vide **Instruction 25/2022-Cus. dated 03.10.2022** (annexed as **Appendix 6**), clarifying that the law continues to remain the same and hence the aforesaid instruction would remain valid without any changes.
61. In this context, additional reliance is also placed on the judgment of **Hon’ble Delhi Tribunal, in case of Kafila Forge Ltd. v. Principal Commissioner of Customs, (import) ICD TKC, Customs [2023 (7) TMI 1251 – CESTAT New Delhi]**, where the Tribunal has held that parts of transmission shafts fall under 8483 and not under 8708. In this case, the revenue relied upon Westinghouse judgment to classify the goods under heading 8708 based on sole or principal use. While the bench did not discuss the applicability of Westinghouse judgment but independently evaluated the classification based on section notes and chapter notes and a few other rulings. The bench observed that on comparison of both the heading 8483 and 8708, the impugned goods i.e., Universal Joint Parts to be used in transmission shaft are more specifically covered under sub heading 8483 60 90 whereas nothing specific is found in respect of these goods under the heading 8708.



62. This ruling is of importance since it is passed post Westinghouse judgment and contention of the Revenue to classify the item based on sole or principal use as laid down in the Westinghouse case has not been considered. This ruling effectively reiterates that classification based on section and chapter notes would still prevail despite Westinghouse judgment (although this ruling is not explicitly discussed by the bench).
63. To sum up, it is submitted in the present case that the subject good being electrical equipment falling under Chapter 85, does not satisfy the very first condition of three-layer test, as these are covered under the exclusion in Note 2 (f) of the Notes to Section XVII. On the other hand, coverage under chapter 85 is clearly supported through the principles of classification viz. GRI and the explanatory notes, as discussed supra.
64. Accordingly, it is the humble submission of the Applicant that the subject good should merit classification under the specific tariff line available for TCU i.e., CTH 8517 62 90.

QUESTION 2: APPLICABILITY OF NOTIFICATION NO 69/2011-CUSTOMS DATED 29.07.2011.

65. The Central Government vide Notification No. 69/2011-Cus dated 29.07.2011 has exempted all the goods falling under CTH 8517 from the whole of BCD leviable under the First Schedule of Customs Tariff Act, 1975 when the goods are imported from the Japan. The Notification further provides that the exemption of import of goods notified shall only be available when the origin of such goods is from Japan and the provisions laid down in Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011 are complied with. The relevant extract of the entry is reproduced hereinbelow and copy of notification is enclosed as Appendix 7:

S.No.	Chapter, Heading, Sub-heading and Tariff item	Description	Rate in % (unless otherwise specified)
666	8517	All Goods	0

66. It is the understanding of the Applicant that the benefit provided under the notification is subject to the condition that the goods being imported from Japan should be originating in Japan and the provisions laid down in Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011 are complied with. So long as the imported goods are rightly classifiable under CTH 8517 62 90 and are originating in Japan, the Applicant is eligible to avail concessional duty benefit @ 0% BCD. To this extent, it is humbly requested before the Hon'ble Authority that the above understanding of the Applicant may be accepted.

PRAYER

In the light of the above, a ruling is sought from the Hon'ble Authority as follows:

- A. The subject good is correctly classifiable under Customs Tariff Heading 8517 62 90 of the First Schedule of the Tariff Act
 - B. The Applicant is concessional rate of BCD @0% as per S. No. 666 to NN 69/2011 dated 29.07.2011 on import of subject good subject to satisfaction of origin criteria that the goods are originating from Japan.
2. Unfortunately, the response from the Customs Port Commissionerate of ICD, Patparganj, New Delhi has not been received in spite of multiple reminders being issued to the Commissionerate. The applicant had filed two applications pertaining to two ports on the same matter under consideration. The first application has the port Commissionerate of Customs, Chennai-II, the application on which the comments were received and the personal hearing was conducted on 21.05.2024. The ICD, Patparganj Commissionerate was also asked to provide the comments and to participate in the hearing, as the matter under consideration was same in the two filed applications. However, the Commissionerate did not participate in the hearing,



neither shared the comments. The authority is constrained to proceed to issue *ex-parte* Ruling in view of the provisions of the CAAR Regulation 2021 in order to stick to the 90 days mandatory timeline given under the Act & Rules.

3. I have taken into consideration of all the materials placed on record in respect of the subject goods including the submissions made by the applicant during the course of personal hearing for the other application filed for Commissionerate of Customs, Chennai-II (Imports). As no comments have been received from the Customs Port Commissionerate of ICD, Patparganj, New Delhi, I proceed to decide the present application regarding classification of Telematics Control Unit (TCU) on the basis of the information on record as well as the existing legal framework having bearing on the classification of the TCU under the first schedule of the Customs Tariff Act, 1975.

3.1 “As per the sub-rule 19 of the CAAR Regulation 2021 as provided under Notification No.01/2021-Customs (N.T.) dated 04.01.2021 as amended vide Notification No.63/2022-Customs (N.T.) dated 20.07.2022, Hearing of application ex parte. –

Where on the day fixed for hearing or any other day to which the case is adjourned, the applicant or the Principal Commissioner or Commissioner does not appear in person or through an authorised representative when the application is called for hearing, the Authority may dispose of the application ex-parte on merits :

Provided that where an application has been disposed of [under this regulation] and the applicant or the Principal Commissioner or Commissioner, as the case may be, applies within seven days of receipt of a copy of the order or advance ruling and the Authority is satisfied that there was sufficient cause for his non-appearance when the application was called for hearing, the Authority may, after allowing the opposite party a reasonable opportunity of being heard, make an order setting aside the ex parte order or advance ruling and restore the application for fresh hearing.”

4. As no comments of the Port Commissionerate has been received, let’s look at the original submissions made by the applicant.

4.1 Classification of goods covered under the Customs Tariff is done as per the General Rules of Interpretation (‘GRI’). GRI 1 to 5 lay down the principles determining classification of goods under a specific Heading whereas GRI 6 is applicable if the objective is to determine the classification of goods in the Sub-headings of a Heading. The Larger Bench of the Hon’ble Tribunal in the matter of *Saurashtra Chemical, Porbandar vs. Collector of Customs, 1986 (23) E.L.T. 283 (Tri. -LB)* had held that the tariffs must be interpreted in the light of relevant Section and Chapter Notes which are statutorily binding like the Headings themselves. In the light of above facts, to analyze the classification of above product following needs to be kept in mind:

- i. General Rules of Interpretation (GRI); ii. Heading/sub-heading of the First Schedule in conjunction with Section/Chapter/Explanatory notes; iii. Principal function of the subject good.

4.1.1 To ascertain the classification and by application of GRI 1, the following Customs Tariff Heading (‘CTH’) require attention i.e., CTH 8517 and CTH 8708.

CTH	Description of Goods
8517	Telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks: other apparatus for the transmission or reception of voice, images or other data , including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528
8708	Parts and accessories of the Motor Vehicles of Heading 8701 to 8705

4.1.2 Given the above, CTH 8517 merits consideration, which provides for “*other apparatus for the transmission or reception of voice, images, or other data*”. As stated in Annexure 1 above, the subject good imported by the Applicant is a networking device which is going to be used in the motor vehicles.



CTH		Description of Goods
8517		Telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks: other apparatus for the transmission or reception of voice, images or other data , including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528
	-	Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):
8517 62	--	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:
8517 62 90	---	Other

As per Rule 1 of the GRI, subject good should be classified in accordance with the terms of the headings and any relevant and Section or Chapter Notes.

4.1.3 CTH 8517 covers apparatus used for transmission or reception of voice, images or other data, including apparatus used for communication in a wired or wireless network. The machines whose principal function is to transmit and / or receive data or communicate in wireless network are classified under this heading. Upon reading of the HSN Explanatory Notes to the CTH 8517, it is understood as below –

“This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.”

4.1.4 In view of the above extracted portion of the HSN explanatory notes, it appears that CTH 8517 covers such apparatus which is used in transmission and reception of data and wherein the data is transmitted by way of electromagnetic waves in a wireless network. As discussed in Annexure 1 of this application, where the subject good provides for transmission and reception of data in the RF form in the wireless network, by application of the GRI Rule 1 and considering the HSN explanatory notes, the subject good appears to merit classification under CTH 8517 at four-digit level.

4.1.5 It is pertinent here to note that the capability of subject good to perform transmission and reception function in wireless mode is there at the time of import. This is evident from the fact that at the time of import, the subject good comes embedded with the NAD and E-sim which provide the subject good with the capability to transmit and receive the data in the wireless network. This is established from the fact that the subject good in as imported condition has the IMEI number (for the NAD) and ICCID Number (for the E-sim) mentioned on the subject good (refer picture of TCU in as imported form below). This goes on to show that the TCU in as imported condition is capable to perform transmission and reception function, and hence merits classification at CTH 8517 at the four-digit level.

4.1.6 Given the above, the Applicant now needs to ascertain the classification at the six-digit and eight-digit level. At six-digit level, CTH 8517 62 covers *“machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus”*. From the plain reading of the tariff sub heading, it appears that only those machines which independently perform all three functions of reception, conversion and transmission are covered under CTH 8517 62. Hence, in case a product only performs one or two of such aforesaid functions, it will not be covered under the purview of CTH 8517 62. In this regard, reliance is placed on the decision of the Hon’ble Bombay Tribunal in the case of *CCE vs. Reliance Jio Infocom Ltd., 2019 (369) E.L.T. 1713 (Tri - Bom)* wherein while determining the classification of ‘Antenna’ the court held that all the three functions



of reception, conversion and transmission are required to be performed by a machine to fall under CTH 8517 62.

4.1.7 As discussed in Annexure 1, signals received by the subject good from other parts of the motor vehicle are first converted into RF signals for transmission in wireless mode, and then the RF signals are transmitted to the server and subsequently to the end user by way of connection established through the usage of NAD and E-sim.

4.1.8 In a similar manner, in case the user intends to provide any of the specified command to its vehicle through the smart phone/web portal, the command initiated by the user is first sent to the server. The server passes the command through telecom network to the subject good. Upon its receipt, such command is converted into form of RF signals and the same is passed on to the concerned part/component of the motor vehicle for execution. In view of the functionality of the subject good discussed above, it is evident that the subject good performs transmission, conversion, and reception of signals in a wireless network and hence, merit classification under CTH 8517 62 at the six-digit level. Since the subject good is not specifically covered under any specific tariff entry at the eight-digit level, it merits classification in the residual category of 'Others' at eight-digit level i.e., CTH 8517 62 90.

4.1.9 In addition to above, it is also imperative to refer Note 2 (a) of Section XVI which provides for classification of parts of machines. It states that parts which are goods of any heading of Chapter 84 or 85 are in all cases to be classified in the respective headings. Relevant extract of Section Note has been reproduced below for ease of reference –

*“(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;”
(Emphasis supplied)*

Therefore, upon bare reading of the above stated Section Note, it can be construed that TCU which is an identifiable machine/ good as a whole and is going to be used in the motor vehicle merits classification under the Chapter 85 only.

4.1.10 At this juncture, the Applicant also considers it relevant to discuss heading of Chapter 87 under Section XVII of the Customs Tariff which covers vehicles (other than railway or tramway rolling stock) and parts and accessories thereof. The parts and accessories of motor vehicles are covered under CTH 8708. To understand the coverage of parts and accessories of motor vehicles, it is important to refer to Section notes of Section XVII.

4.1.11 In terms of Section Note 2(f) to Section XVII, electrical machinery and equipment are not regarded “parts or accessories” of the goods of Section XVII even if they are identifiable for use with these goods. Note Section 2(f) to Section XVII is extracted hereunder for reference purposes.

*“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:
(f) electrical machinery or equipment (Chapter 85);”
(Emphasis supplied)*

4.1.12 The Section Note 2 (f) of Section XVII thus explicitly excludes the electrical machinery or equipment of Chapter 85 from the purview of Section XVII. Further, reference is made to Note 3 to Section XVII which provides that references in Chapter 86 to 88 to the “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**. In the instant case, the product is principally used for the purposes of transmission, conversion, and reception of data from any part of the motor vehicle to the end user or vice versa.

4.1.13 Further, the HSN explanatory notes under Section XVII explain the scope of the terms “parts and accessories” for the purpose of Section XVII. Relevant portion is extracted hereunder –

III) PARTS AND ACCESSORIES



It should be noted that Chapter 89 makes no provision for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of vehicles, aircraft or equipment concerned.

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

They must not be excluded by the terms of Note 2 to this Section (see Paragraph (A) below),

They must be suitable for use solely or principally with the articles of Chapter 86 to 88 (see paragraph (B) below, and

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

(A) Parts and accessories excluded by Note 2 to Section XVII

This Note excludes the following parts and accessories, whether or not they are identifiable for as for the articles of this Section.

(7) Electrical machinery or equipment of Chapter 85, for example:

(Emphasis supplied)

From the above, it is apparent that all the electrical machinery or equipment covered under Chapter 85 are not regarded as “parts or accessories” of motor vehicles classifiable under Chapter 87, as they stand excluded from the purview of Section XVII in view of the above.

4.1.14 Without prejudice to the discussion above, reference is made to Rule 3(a) of the GRI which provides that the heading that provides the most specific description of the goods shall be preferred to headings providing a more general description. In this regard, Rule 3 of the GRI is extracted as below: -

“3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :

(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.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

(Emphasis supplied)

4.1.15 The following cases are cited to support the claim:

i. Reliance in this regard is placed on the case of *Mauri Yeast India Pvt. Ltd. vs. State of UP, 2008 (225) E.L.T. 321 (S.C.)* wherein it was held by the Hon’ble Supreme Court that if there is a conflict between two entries one leading to an opinion that it comes within purview of tariff entry and another the residuary entry, the former should be preferred.

iii. Further, reliance is placed on the decision of Hon’ble Tribunal, Mumbai bench in the case of *Sirthai Superware India Ltd. v. Commr. of Customs, Nhava Sheva-III, 2020 (371) E.L.T. 324 (Tri. - Mumbai)*, where the Tribunal observed that it is general principle of classification that specific entry should be preferred over the general entry.

Therefore, it is submitted that where the goods satisfy the requirements of a specific entry, that entry should cover the goods rather than the residual heading. In view of GRI 3(a) and the judicial precedents cited above, where there is a specific heading for the subject good under Chapter 85 (i.e., CTH 8517), it will not merit classification in the residuary heading as parts of motor vehicles under CTH 8708.



4.1.16 Legal developments after the decision of Hon'ble Supreme Court in the matter of M/s. Westinghouse Saxby Farmer Ltd. and its application in the present case

In the decision of *Westinghouse Saxby Farmer Ltd. vs. Commissioner of Central Excise, Calcutta - 2021 (3) TMI 291 - Supreme Court*, while deciding upon classification of relays used for railway signalling system, the Hon'ble Supreme Court has held that those parts which are suitable for use solely or principally with an article of Chapter 86 cannot be taken to a different Chapter as the same would negate the very objective of group classification. In the above decision, the Hon'ble Supreme Court does not discuss the WCO General Explanatory Notes to Section XVII and XV, which indicate that if the goods are specifically excluded under Note 2 or if the goods have a specific classification under another heading, the goods cannot be classified as parts and accessories, irrespective of whether the goods are used along with such goods.

4.1.17 The principal of classification discussed in the Hon'ble Supreme Court's decisions can be summarized as under.

- a. In the *Westinghouse judgment (supra)*, the end use test to determine the classification has been preferred over the exclusion provided under Note 2(f) to Section XVII.
- b. The judgment of the Supreme Court in the matter of *Commissioner of Central Excise, Aurangabad v. M/s. Videocon Industries Limited (2023-TIOL-25-SC-CUS)* has emphasized on the exclusion note over the sole/ principal use test.

4.1.18 Further, post the judgement of the Hon'ble Supreme Court in the case of *Westinghouse Saxby (supra)*, the CBIC on 5th January 2022 issued **instruction No. 01/2022-Customs** with subject "**Implication of the judgement of the Hon'ble Supreme Court in the case of M/s Westinghouse Saxby Farmer Ltd. Vs Commissioner of Central Excise, Calcutta – reg**". This was to align with the divergent practice being followed on assessment of 'parts' after the *Westinghouse Saxby judgment (supra)* was issued. In the said instructions while making a reference to the judgement of the Hon'ble Supreme Court in the case of *M/s Intel Design Systems (India) P. Ltd. Vs Commissioner of Customs & Central Excise*, among others the CBIC has instructed as follows –

"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 judgements of the Hon'ble Supreme Court on issues of classification of parts and accessories. Thus, the collective wisdom of these judgments indicates the manner in which such classification issues are to be approached. Few of such judgments are illustrated in succeeding paragraphs:

3.1 of M/s Intel Design Systems (India) P. Ltd. Vs Commissioner of Customs & C. Ex-2008

A. Apart from the reliance on the section notes and the chapter notes the court in this judgment also considered the HSN explanatory notes wherein three conditions that need to be fulfilled for goods to be classified under 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*

4.1.19 Taking cognizance of the rationale laid down in the judgement in the matter of *M/s Intel Design Systems (India) P. Ltd. Vs Commissioner of Customs & Central Excise* and the instructions issued by the CBIC as discussed above, for goods to be classified under the chapters of Section XVII, fulfilment of the three-layer test postulated "Under the Sub-heading (iii) Parts and Accessories" of the explanatory notes to Section XVII as issued by the WCO is imperative. It is only when all these three conditions are met that a particular item would be classified under the Chapters of Section XVII.

4.1.20 In other words, the shape/ design/ specification of a product is not a determinant of principal or sole use. Further, Note 3 of Section XVII cannot be applied blanketly and needs to be construed narrowly otherwise the exclusion under Note 2 would become superfluous. To this extent, the Videocon judgment is particularly important, and it is also aligned with the WCO classification principles as propounded in the CBIC Circular (supra). It may be added here that the CBIC had issued a further clarification on the issued



vide **Instruction 25/2022-Cus. dated 03.10.2022**, clarifying that the law continues to remain the same and hence the aforesaid instruction would remain valid without any changes.

4.1.21 In this context, additional reliance is also placed on the judgment of *Hon'ble Delhi Tribunal, in case of Kafila Forge Ltd. v. Principal Commissioner of Customs, (import) ICD TKC, Customs [2023 (7) TMI 1251 – CESTAT New Delhi]*, where the Tribunal has held that parts of transmission shafts fall under 8483 and not under 8708. In this case, the revenue relied upon Westinghouse judgment to classify the goods under heading 8708 based on sole or principal use. This ruling is of importance since it is passed post Westinghouse judgment and contention of the Revenue to classify the item based on sole or principal use as laid down in the Westinghouse case has not been considered. This ruling effectively reiterates that classification based on section and chapter notes would still prevail despite Westinghouse judgment (although this ruling is not explicitly discussed by the bench). To sum up, it can be concluded that the subject good being electrical equipment falling under Chapter 85, does not satisfy the very first condition of three-layer test, as these are covered under the exclusion in Note 2 (f) of the Notes to Section XVII. On the other hand, coverage under chapter 85 is clearly supported through the principles of classification viz. GRI and the explanatory notes, as discussed supra.

4.2 As far as the applicability of the benefit of the notification is concerned, the Central Government vide **Notification No. 69/2011-Cus dated 29.07.2011** has exempted all the goods falling under CTH 8517 from the whole of BCD leviable under the First Schedule of Customs Tariff Act, 1975 when the goods are imported from the Japan. The Notification further provides that the exemption of import of goods notified shall only be available when the origin of such goods is from Japan and the provisions laid down in Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011 are complied with. The relevant extract of the entry is reproduced hereinbelow:

S.No.	Chapter, Heading, Sub-heading and Tariff item	Description	Rate in % (unless otherwise specified)
666	8517	All Goods	0

4.2.1 The benefit provided under the notification is subject to the condition that the goods being imported from Japan should be originating in Japan and the provisions laid down in Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011 are complied with. So long as the imported goods are rightly classifiable under CTH 8517 62 90 and are originating in Japan, the Applicant is eligible to avail concessional duty benefit @ 0% BCD.

5. The answers to the questions raised by the applicant are as follows:

(a) Question 1: Whether the import of 'Telematics Control Unit (TCU)' is correctly classifiable under Customs Tariff Heading 85176290 of the First Schedule of the Customs Tariff Act, 1975?

Answer: The subject goods i.e. 'Telematics Control Unit (TCU)' is rightly classifiable under Customs Tariff Heading (CTH) **8517** and more specifically under **8517 62 90**.

(b) Question 2: Whether the Applicant is eligible to avail concessional rate of Basic Customs Duty (BCD) @0% as per S. No. 666 to NN 69/2011 dated 29.07.2011 on import of subject good subject to satisfaction of origin criteria that the goods are originating from Japan?

Answer: **Yes**, the applicant is eligible to avail concessional rate of Basic Customs Duty on import of the subject goods as per SI. No. 666 of Notification No 69/2011 - Customs dated 29.07.2011.

6. I rule accordingly.

(SAMAR NANDA)

Customs Authority for Advance Rulings
New Delhi

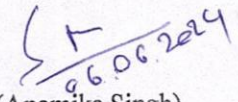


F. No. VIII/CAAR/Delhi/ DENSO/ 20 /2024

Dated: 06.06.2024

This copy is certified to be a true copy of the ruling and is sent to :-

1. M/s DENSO Haryana Pvt Ltd., B-1/ D-4, Ground Floor, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi 110 048.
2. The Commissioner of Customs, ICD, Patparganj, Gajipur, New Delhi - 110096.
3. The Customs Authority for Advance Rulings, Mumbai, New Custom House, Ballard Estate, Mumbai-400001
4. The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi-110066
5. The Chief Commissioner of Customs, Delhi Customs Zone, New Custom House, IGI Airport Complex, New Delhi-110037
6. Guard file
7. Webmaster.


(Anamika Singh)
Secretary,

Customs Authority for Advance Rulings, New Delhi

