

**AUTHORITY FOR ADVANCE RULINGS**  
**(Central Excise, Customs and Service Tax)**  
**Hotel Samrat, 4<sup>th</sup> Floor, Kautilya Marg, Chanakyapuri**  
**New Delhi**

**Present:**

**Justice V.S. Sirpurkar (Chairman)**  
**Shri S.S.Rana (Member)**

**The 20th day of November 2015**

**Ruling No. AAR/Cus /12/2015**

**In**

**Application Nos. AAR/44/Cus/01/2014**

Name & address of the applicant :	M/s BMW India Pvt. Ltd., DLF Cyber City, Phase-II, Bldg. No.8, Tower-B, 7 <sup>th</sup> Floor, Gurgaon- 122002,Haryana
Commissioner concerned :	Commissioner of Customs (Port- Import),Custom House, 60, Rajaji Salai, Chennai-600001
Present for the applicant :	Shri Arvind Datar, Sr. Advocate Shri Prashant Agarwal, CA.
Present for the Department :	Shri Govind Krishna Dixit (AR)

**Ruling**

M/s BMW India Pvt. Ltd (hereinafter also referred to as BMW India or applicant) is a wholly owned subsidiary of a foreign company. Applicant

submits that under the proposed new activity of import, while the imports of certain components / parts / sub-assemblies of the motor vehicles will continue to be effected by the applicant from BMW Group companies, there will be localization of following six essential components / parts / sub-assemblies required for manufacture of motor vehicles in India, namely; Engine (along with engine and transmission unit); Axle assembly; Exhaust system; Cooling module; Heating, Ventilation and Air Conditioning unit (HVAC) and Door Panels; that the local third party vendors will source the components / parts / sub-assemblies of the above said component / parts / sub-assemblies of the motor vehicles independently from BMW AG and its approved suppliers ( if any); that the local third party vendors will manufacture the above said components / parts / sub-assemblies at their factory and sell to the applicant for manufacturing the motor vehicles; that the applicant will import only the balance components / parts / sub-assemblies of the motor vehicle from BMW Group companies; that under the proposed localization concept it is estimated that about 13% to 16% net value addition will be performed by local third party vendors; that there would be an increase in proportion of locally sourced parts / components / sub-assemblies; that the proportion of direct imports by local third party vendors will be around 28% to 32% of a motor vehicle.

2. Applicant has narrated the evolution of their business relating to manufacture of motor vehicles at Chennai plant, which is as under:

Applicant started its business in India with the import of Completely Built Units (CBUs) of motor vehicles from BMW Group Companies outside India and assembly of motor vehicles from imported CKD kits (with the exception of seats which were locally procured) at its Chennai plant.

TILL FEBRUARY, 2011- IMPORT OF MOTOR VEHICLES IN CKD KITS: At the start of the business, since the business was at a nascent and low volume stage, applicant chose to import the motor vehicles in CKD form and undertaking assembling of the motor vehicles from such imports at its plant in Chennai. The only exception was the vehicles seats which were locally manufactured in India by a local third party vendor. Since the Government allowed import of motor vehicles in CKD form at concessional rate of Basic Customs Duty of 15% [applicable to motor vehicle if imported as CKD unit] being covered by Serial No. 344 for Customs Tariff Heading No. 8703 of Notification No. 21/2002-Cus., dated 1-3-2002, as amended by Notification No. 11/2005-Cus., dated 1-3-2005 and the Customs Notification during the relevant period did not provide for any definition of CKD, the applicant filed for a ruling before this Authority to attain certainty on applicable duty structure for its imports. This Authority held that the import of assemblies and sub-assemblies, except local procurement of vehicle seats which were locally manufactured in India by a local third vendor, would be considered as import of motor vehicle in CKD form, eligible to the concessional rate of Custom duty.

FROM MARCH, 2011 TO APRIL 11, 2013- IMPORT OF MOTOR VEHICLES IN CKD KITS: With effect from March 1, 2011 (vide Notification no. 21/2011-Customs), the CKD definition was introduced under Customs Law, at Sr. No. 344 of the Customs Notification providing for concessional rate of Basic Customs Duty on import of motor vehicles in CKD form. The said entry of the Notification was further amended on March 24, 2011 (vide Notification no. 31/2011-Customs) to provide differential Basic Customs Duty rates ( i.e. 10% and 30%) on import of motor vehicles in CKD form depending on the nature of CKD imports. During the aforesaid period, applicant continued to import vehicles in CKD form.

Adjudication of dispute: For the imports made by the applicant during the period March 2011 till 11 April 2013, a dispute arose as regards the rate of duty applicable to import of motor vehicles by the applicant in CKD form. The Department is contending that the applicable rate of Basic Customs Duty on CKD kits should be 30% as against 10% claimed by the applicant, on the ground that the applicant has imported engine and transmission in a pre-assembled form. The Department had issued a show cause notice which has been confirmed by the adjudicating authority and the matter is now pending before the Tribunal.

FROM APRIL 2013 TO DECEMBER 2014- IMPORT OF PARTS: The CKD model as adopted by the applicant from the inception of the business was felt inadequate over a period of time since the business was growing and the BMW Group had planned significant increase in volumes / production for the Indian markets considering the huge potential. Accordingly, to cater to the future growth, the applicant introduced a part based supply chain and logistic model from 11 April 2013 up-to December 2014, wherein instead of importing motor vehicles in CKD form, the applicant started importing all the parts of the motor vehicle from different locations, namely; Germany, United States, Japan and South Africa, with the exception of seats and wiring harness (for two models only) which were locally procured, for assembly at its Chennai plant.

FROM 1 JANUARY 2015-NEW ACTIVITY OF IMPORT (LOCALISATION MODEL): Effective from January 2015, the applicant has moved to an entirely new business model i.e. the localization model, whereby in addition to seats and wiring harness, 6 critical parts/components/sub-assemblies of the car are being localized resulting in more than 40% of the value of the motor vehicle being locally sourced from approved third party vendors in India. Further, the

applicant is importing the balance parts/components/sub-assemblies from BMW Group Companies located outside India.

3. Applicant further submits that BMW Group is committed to the Indian market and supports Government of India's "Make in India" initiative; that this is clearly evident from the localization model started by the applicant from January 2015. It is noticed that the Government of India's "Make in India" initiative inter-alia envisages increase in indigenous manufacturing sector growth, which will result in imports reduction and thus saving precious foreign currency reserves. Further, creating additional jobs is also expected.

4. Applicant has raised the following questions in respect of which advance ruling have been sought;

a) *Whether the import of components / parts/ sub-assemblies by the applicant will be classified as motor vehicle under Tariff Heading 87.03 or as Completely Knocked Down (CKD) kit under Sr. No. 437 of Notification No. 12/2012-Cus., dated 17.3.2012, as amended, when six essential and critical components / parts/sub-assemblies, namely; (i) engine (along with engine and transmission unit) (ii) axle assembly (iii) exhaust systems (iv) cooling module (v) heating, ventilation and air conditioning unit and (vi) door panels are to be locally assembled / manufactured by approved local third party vendors?*

b) *If the import of components / parts / sub-assemblies by the applicant will not be classified as motor vehicle or as CKD kits, whether the applicants imports will be classified under their respective headings / sub-headings of the Customs Tariff Act, 1975 or under Tariff Heading 87.08 of the Customs Tariff Act, 1975?*

5. The case of the applicant is that Rule 2 (a) of the Interpretative Rules under the Customs Tariff Act, 1975 would not come in-to play for classification purposes. It can be applicable only as and when the incomplete or unfinished goods presented for custom clearance exhibit the essential characteristics of finished article. The essential ingredients for invoking Rule 2(a) are as follows:

- a) Imported goods should have the essential characters of the complete or finished article;
- b) Imported goods, as presented, even if incomplete, will be classified as complete article;
- c) Above will be the case even for the goods when the goods as presented in unassembled or disassembled form exhibits the essential characteristics of the complete or finished article.

6. It is submitted by the applicant that under the proposed new activity of import, components / parts required for manufacturing of the above stated six components /parts / sub-assemblies mentioned in paragraph 1 of the ruling will be imported by local third party vendors; that Rule 2(a) of the Interpretative Rules will not be applicable in the proposed scenario in the absence of the essential conditions and hence the classification to be adopted for the imported goods will be the respective classification of the parts and not that of motor vehicle.

7. Applicant reiterates that they are proposing to localize few of the essential components / parts / sub-assemblies listed above and accordingly, in terms of Circular F. No. 528/128/97-Cus-TRU dated 05.12.1997, the imports proposed will not reflect the essential characteristics of the motor vehicle and hence the

imported goods will be liable to be classified as per the respective classification without invoking Rule 2(a) of the Interpretative Rules; that analogy can also be drawn from the Circular No. 666/57/2002-CX. dated 25.09.2002 wherein it was clarified that sub-assembly or assembly of air conditioning machines not having essential character of complete air-conditioning machines to be considered as parts.

8. It is further submitted by the applicant that as per HSN explanatory notes (v), (vi ) and (vii) to Rule 2 (a), Rule 2(2) of the Interpretative Rules is applicable in cases where –

a) only assembly operations are involved irrespective of the complexities of the assembly methods for assembly an article imported in unassembled form; and

b) components themselves should not been subjected to any further working operations for completion into finished state.

9. While concluding submissions to this issue, applicant submits that the local third party vendors of the applicant will import components for assembling six essential and critical components / parts / sub-assemblies at its manufacturing facility in India; that under the proposed import pattern, applicant will import only the balance components / parts / sub-assemblies at distinct times and at no point of time the imported goods will exhibit the essential characteristics of a motor vehicle; that in terms of HSN explanatory notes to Rule 2 (a) of the Interpretative Notes, the items imported by such local third party vendors can be classified at most as the respective components / parts / sub-assemblies and not as motor vehicle in the hands of applicant.

10. Commissioner of Customs (Import – Seaport), Chennai submits that the applicant had been filing bills of entry for clearances of consignments declared as 'BMW CARS IN CKD' through Chennai Seaport till 11.4.2013; that as per Notification No. 12/2012-Cus dated 17.03.2012 (S. No. 437), car imports in CKD-kit form, would attract a lower rate of 10% basic customs duty only if the engines and/or gearboxes are not in pre-assembled condition; that Cars imported in CKD kits with engines and /or gearboxes in pre-assembled condition would attract a higher rate of 30% BCD (when the engines and gearboxes are not mounted on the chassis); that it was noticed during investigation that the applicant was importing engines and gearboxes in pre-assembled condition but they were misdeclaring the same as sub-assemblies of transmission/engine; that during the course of the investigation, the applicant changed their model of import (for the bills of entry filed from 19.4.2013) from their earlier model of 'CKD-kit' based import of cars to importation of cars claiming that the imports are at 'component part level' (thereby taking advantage of the rate of duty applicable for individual parts, BCD for which is @ 7.5% or 10% only, in lieu of 30% BCD applicable to the CKD kits imported with pre-assembled engines and / or gearbox); that pending verification, imports made by the applicant (at component part level) from 19.4.2013 are being assessed provisionally at the rate of duty claimed by the importer; that on completion of the said investigation, a Show Cause Notice dated 26.8.2013 has been issued to the applicant, inter-alia, demanding differential duty amounting to more than Rs. 757 crores as the applicant appeared to have availed ineligible Customs duty benefit for such imports from the period 01.3.2011 to 11.4.2013; that as regards the imports made from 19.4.2013, it is noticed that all the parts

/ components, except gear-boxes, were procured from the applicant's own entities in Germany, South Africa and the U.S.; that gearboxes alone are imported from non-BMW sources, viz. M/s ZF, Germany and M/s Aisin, Japan for the different models of cars assembled at the Chennai Plant; that the applicant proposes to import substantial number of parts / components / sub-assemblies from their own group entities (BMW Group companies) for their car manufacturing activities in India. Remainder of the parts / components / sub-assemblies [viz. (i) engine (along-with engine and transmission unit) (ii) axel assembly (iii) exhaust systems (iv) cooling module (v) heating, ventilation and air conditioning unit and (vi) door panels are proposed to be sourced from local third party vendors; that since 19.4.2013, applicant's activity of import is more or less on similar lines, i.e. substantial number of parts / components / sub-assemblies are being imported either from the applicant's own entities abroad or M/s ZF, Germany or from M/s Aisin, Japan; that only seats and wiring harnesses (only for 2 models of cars) are stated to be locally sourced ; that, if there is any material difference between the ongoing and the proposed import activity it is the minimal reduction (six nos. of parts / components) in the applicant's overall ongoing import activity; that at best, this proposal is only the latest in the series of incremental and cosmetic changes in the supply and logistics chain and does not substantively alter the fact that parts, components and sub-assemblies for assembling the vehicle continue to have, materially, the same/similar import content as was the position during pre-19.4.2013 phase of the applicant's import activity; that this (reduction in the number of imported parts/components coupled with local sourcing) does not appear to alter the "activity" per se so as to be termed as a "new business of import proposed to be undertaken" by the applicant and thereby bringing the

reduction in the quantum of imports (in parts term) to be covered within the definition of “activity” covered under Section 28E (a); that though there is reduction in the number of parts imported by the applicant, many of such parts which the applicant proposes not to import would be imported by the so-called local third party vendors directly from either BMW AG or from its approved suppliers.

11. Commissioner of Customs (Import – Seaport), Chennai submits that considering the huge amount of revenue involved and that the payment of differential duty being made by BMW is subject to disclaimers and riders without prejudice to their claim for lower rates of duty applicable to parts (7.5% to 10% vis-à-vis 30 % otherwise applicable), detailed investigation was launched into BMW’s ‘new model’ of imports (starting from 19.4.2013) also; that further investigation is in progress.

12. It is observed that import of motor vehicle is covered under Tariff Heading 87.03. Tariff Heading 8703 reads as under;

<u>Tariff Item</u>	<u>Description of goods</u>
8703	<i>Motor cars &amp; other Motor Vehicles Principally Designed for the Transport of Persons (Other Than those of heading 8702), including Station Wagon &amp; Racing Cars.</i>

*CTH 8702 of Customs Tariff reads as under;*

<i>8702</i>	<i>Motor Vehicles for the Transport of Ten or More persons, including the Driver.</i>
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13. Notification No. 21/2002-Customs dated 01.03.2002 was amended vide Notification No. 12/2012-Customs dated 17.03.2012. This notification inter-alia exempts goods of description specified in column (3) of the Table below and

falling within the Chapter, heading, sub-heading or tariff item as specified in the corresponding entry in column (2) of said Table, when imported into India.

Relevant entry S. No. 437 reads as under;

<i>S.No</i>	<i>Chapter or Heading or sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Standard rate</i>	<i>Additional rate</i>	<i>Condition No.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
437.	8703	<p><i>Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars, new, which have not been registered anywhere prior to importation, if imported,-</i></p> <p>(1) As a Completely Knocked Down (CKD) kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,-</p>			
		(a) Engine, gearbox and transmission mechanism not in a pre-assembled condition;	10%	-	-
		(b) Engine or gearbox or transmission mechanism in Pre-assembled form but not mounted on a chassis or a body assembly	30%	-	-
		(2) in any other form,-	75%	-	-
		(a) with FOB value more than US\$ 40000 and with engine capacity more than 3000 cc for petrol-run vehicles and more than 2500 cc for diesel-run vehicles;	60%	-	-
		(c) Other than (a) above			

14. Rule 2 (a) of the General Rules for Interpretation of Import Tariff is reproduced below;

2(a): any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented; the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete

or finished( or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

15. The Central Board of Excise and Customs ('CBEC') Circular F .No. 528/128/97-Cus-TRU dated 5-12-1997 is reproduced below;

*It may be considered that the following parts or components or sub-assemblies could be construed as most essential to bring into effect a finished motor car, namely; engine, gear box, chassis, transmission assembly system, body/cab suspension system, axles front and rear. In general, it may be mentioned that if all these components or parts or sub-assemblies are imported, Rule 2(a) of the aforesaid rules for interpretation would come into play, in as much as it would be possible to take a view that when put together, these parts or components or sub-assemblies constitute essential characteristics of a motor car has been achieved. However, if a few of these components or parts or sub-assemblies are not imported but are wholly manufactured or purchased locally, it would be difficult to take the view that the "essential characteristics" of a motor car has been achieved without these parts.*

16. HSN explanatory notes to Rule 2(a) of the Interpretative Notes further provide as under:

*(V) The second part of rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for the reasons such as requirements or convenience of packing, handling or transport;*

*(VI) This rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished article by virtue of first part of this rule;*

*(VII) For the purpose of this rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts etc.) or by riveting or welding, for example, provided only assembly operations are involved.*

*No account is to be taken in that regards of the complexity of assembly method. However, the components shall not be subject to any further working operations for completion in to finished state. Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.*

17. Revenue has raised following issues before the Authority opposing the application. First issue raised is that it is not a proposed activity, as they have already commenced new localization model of import from 02.01.2015 and hence this Authority has no jurisdiction. The contention of Revenue is not

tenable as the application before this Authority was filed on 30.01.2014 and the activity is said to have commenced from 01.01.2015 i.e. about one year after filing of application. It has been held by this Authority in case of Guthy Rennker Marketing Pvt. Ltd. 2010 (261) ELT 737 (AAR) that the imports effected subsequent to filing of application, cannot take import out of the criteria of “proposed activity” and does not preclude the Advance Ruling Authority from giving its ruling. This point is not relevant at this juncture; as we had admitted the application vide Misc. Order No. AAR/44/Cus/01/2015 dated 16.01.2015.

18. Revenue submits that a Customs case was adjudicated against the applicant vide Order-in-Original No. 35113/2015 dated 13.02.2015 wherein facts regarding actual nature of imports were suppressed. This order reportedly is regarding imports during the period from 01.03.2011 to 11.04.2013. Revenue has not mentioned as to how the said Order-in-Original is relevant to this case. Documents placed before us show that the issue involved in respect of Order-in-Original No. 35113/2015 dated 13.02.2015 was whether out of imports of CKD kits, the Engine and Transmission were in assembled condition. In case, the Engine and Transmission were imported in pre-assembled condition, concessional rate of BCD in respect of CKD imports by the applicant would be 30% instead of 10%, if imported in unassembled form and as claimed by BMW before the Customs authorities, vide Notification No. 12/2012-Cus dated 17. 03. 2012. The issue before this Authority is whether, after 6 essential parts, as mentioned in paragraph 1, are manufactured in India, the remaining items imported can be classified as parts under individual heading and not as CKD. In short, the question before the Customs authorities was basically relating to interpretation of Notification and before this Authority

is classification issue. Therefore, it is concluded that the said Order-in-Original is neither the subject matter before this Authority nor directly related to the issue of proposed activity of the applicant.

19. Further, Revenue submits that applicant has not submitted any documents supporting any domestic manufacturing of the parts for car like engines, gear box etc., therefore the term localization model does not translate into domestic manufacturing; that stated local third party vendors appear to import basically items which are relevant to BMW cars only; that these imports made by local third party vendors and applicant converge in the manufacture of BMW cars by the applicant. It is further submitted by the Revenue that third party vendors appear to be mere extension of the applicant; that local third party vendors do not function independently as they import only items relevant to BMW cars; that the fact remains that the common thread of all activities is the manufacture of BMW cars under the leadership and control of the applicant; that BMW AG hold the intellectual property rights for BMW engines and therefore there is absolute control by the applicant on the activities of such control.

20. Applicant submits that engines were earlier imported in the form of engine sub-assembly by the applicant whereas under the localization model, Force Motors Ltd is importing individual engine parts (such as cylinder head, crank shaft, connecting rods etc.) and the entire manufacture of the engine is being undertaken by the vendor in India. Applicant further submits that except for parts of engines (which is imported by Force Motors Ltd from BMW AG), none of the local third party vendors are importing raw materials from BMW

AG or any BMW Group Company; that third party local vendors are renowned global suppliers and have own independent factories. Applicant also submits that merely because for engines, the IPR is with BMW AG, to contend that localization is not taking place in India, is a completely incorrect statement made by the Department.

21. It has been pointed out by the applicant that 6 critical parts / components / sub-assemblies are sourced by them from local third party vendors, for the manufacture of motor vehicles at their Chennai plant. Details of such parts etc. along-with names of local third party vendors are as under,

<b>Name of the Company</b>	<b>Product Manufactured in India</b>	<b>Parent entity country</b>
Force Motors	Engine along-with Transmission unit	India
Draeximaier	Door Panel	Germany
Valeo	HVAC and cooling Module	France
Mahle Behr	HVAC and Cooling Module	Germany
Tenneco	Exhaust System	United States
JV between ZF India and Hero MotoCorp	Axle	JV between German and Indian company

22. It is noticed that the above named Companies are known companies. Further, Revenue has not produced any evidence to indicate that these Companies are dummy companies or are working under the leadership and control of the applicant. It is also noticed that none of these Companies belong to the BMW Group. Applicant has also produced sample copies of Excise invoices issued by local third party vendors to show that they (local third party

vendors) are manufacturing said critical parts/components/sub-assemblies, which has not been refuted by the Revenue. We also agree with the submission of the applicant that merely because for engines, the IPR is with BMW AG, to contend that the localization is not taking place in India, is incorrect plea taken by the Revenue. It is reiterated that third party local vendors are independent suppliers, who primarily import raw materials / components from independent overseas suppliers ( with the exception of engine parts); that these third party vendors thereafter undertake manufacturing activity in India, pay Central Excise duty and sell finished goods to the applicant for manufacture of motor vehicles. Revenue alleges that third party vendors appear to be extension of the applicant as they import and manufacture items which are relevant to BMW cars only. It is to be observed that there is nothing irregular in local third party vendors importing and manufacturing such items, as it is their business decision-specially when, these third party vendors are reportedly renowned global suppliers and have their own independent factories. Therefore, the allegations leveled by Revenue that third party vendors appearing to be mere extension due to corporate agreements between the applicant and third local vendors, is without basis and therefore not tenable.

23. Rule 2(a) of General Rules for the Interpretation of Import Tariff inter-alia states that any reference in a heading to an article shall be taken to include a reference to incomplete or unfinished provided it has essential characteristics of finished article. This shall also include unassembled or disassembled goods. It is reiterated that the proposed import by the applicant would not contain 6 essential and critical components / parts / sub-assemblies, mentioned above.

Absence of above referred 6 items, from the proposed imports by the applicant would not enable the imports to be classified as “motor car” under CTH 8703, as it will not have the essential character of the complete or finished goods, as envisaged in Rule 2(a) of the General Rules for the Interpretation of Import Tariff. Further, CBEC vide Circular F. No. 528/128/97-Cus-TRU dated 05.12.1997, while further explaining the scope of said Rule 2(a), inter-alia, mentioned that engine and axle, front and rear, are among the parts or components or sub assemblies, considered most essential to bring into effect a finished motor car. Engine and axle shall not be part of proposed imports of the applicant. Therefore, proposed import would not be classified under CTH 8703 as ‘motor cars’ but as parts of ‘motor cars’. Further, goods imported will be eligible for benefit of Notification No. 12/2012-Cus dated 17.03.2012 (S. No. 437), provided goods are of the description specified in Column (3) and fall under Tariff Item 8703. It has already been discussed that subject goods do not fall under Tariff Item 8703 for the purpose of classification. Further, proposed imports also do not fit into the description of goods specified in column (3) of said Notification i.e. Motor cars and other motor vehicles principally designed for the transport of person (other than those of heading 8702), including station wagons and racing cars, new, which have not been registered anywhere prior to importation. In view of the above, subject goods will not fall under CTH 8703 or as CKD kit under S. No. 437 of Notification No. 12/2012-Cus dated 17.03.2012.

24. Revenue has relied upon Hon’ble Supreme Court judgment in case of Sharp Business Machines Pvt. Ltd., Bangalore vs. Collector of Customs, Bangalore 1990 (49) ELT 640 (SC) wherein it was inter-alia held that the goods

imported were fully finished copiers in SKD/CKD form and as such there was a mis-declaration that the imported goods were only parts of the copiers. Hon'ble Supreme Court in this case observed as under;

*The intention and purpose of the import policy was to give incentive and encouragement to the new entrepreneurs establishing small scale industries and in the first phase to import 62% of the components of the copiers and the balance of 38% was to be manufactured by them indigenously. According to the import policy this percentage of 62% was to be reduced in the subsequent years. The import policy was not meant for such entrepreneurs who instead of importing 62% of the components, imported 100% of the components of a fully finished and complete goods manufactured by a foreign country. It is an admitted position that fully finished plain paper copiers were a prohibited item for import and thus the device adopted by the company in the present case was a complete fraud on the import policy itself. Apart from the above circumstances in our view the Tribunal was not right in setting aside the finding of the adjudicating authority and in taking the view that one has to look into the respective license and not to the fact that if all the consignments covered by all the bills of entry assembled together, there will be a full and complete machinery.*

25. It is observed that judgment of Hon'ble Supreme Court relied upon by Revenue in case of Sharp Business Machines Pvt. Ltd is not applicable to the issue before us. In Sharp Business Machines Pvt. Ltd case, intention of the Govt. was to give incentive and encourage new entrepreneur by permitting import of 62% of the components of the copiers and the balance was to manufacture indigenously. In the case before us, there is no such restriction.

Further, the applicant is not proposing to import 100% components / parts etc. himself. Also, there cannot be charge of misdeclaration for proposed import to be affected by the applicant. However, importer in case of Sharp Business Machineries Pvt. Ltd. resorted to misdeclaration of goods at the time of import.

26. Revenue also relied upon the judgment in case of Commissioner of Customs, New Delhi vs. Phoenix International Ltd 2007 (216) ELT 503 (SC) wherein it was held that a subterfuge was created to show that two independent companies had imported separate parts of footwear in order to bypass para 156 (a) of EXIM Policy, 1992-97; that imports to be clubbed and consequently not entitled to benefit of Notification No. 45/94-Cus; that bifurcation of imports made in SKD condition, intention plays an important role in matters in which there is an allegation of duty evasion; that when there is allegation of subterfuge the court has to examine the circumstances surrounding the import to ascertain whether the importer had entered into fictitious arrangement to evade custom duty.

27. It is observed that ratio of Phoenix case, relied upon by the Revenue is not applicable to this case. In the case before us, applicant has not created any subterfuge to bypass the law. Applicant proposes localization of six essential components / parts / sub-assemblies, which will be manufactured by local third party vendors on payment of Central Excise duty and supplied to the applicant for manufacture of motor vehicle. These local third party vendors are reputed companies. Revenue has not produced any tangible evidence to indicate that the applicant has entered into any fictitious arrangement to evade Customs duty. It is noticed that the Hon'ble Supreme Court in case of Commissioner of

Customs, New Delhi vs. Sony India Ltd 2008 (231) ELT 385 (SC) distinguished the judgment in case of Phoenix International Ltd and observed that all parts were imported in Phoenix case by two units in same container, unlike in Sony India Ltd case. It was also held that Rule 2(a) of Rules of Interpretation of Tariff are applicable only if all components intended to make a final product presented at same time for customs clearance. The judgment of Hon'ble Supreme Court in Sony India Ltd., is more applicable to the case before us as components / parts / assemblies for manufacture of motor vehicle are not likely to be imported in same container. In fact they are not even likely to be imported at same time and require further manufacture by different local third party vendors.

28. Second question on which ruling sought is;

*If the import of components / parts / sub-assemblies by the applicant will not be classified as motor vehicle or as CKD kits, whether the applicants imports will be classified under their respective headings / sub-headings of the Customs Tariff Act, 1975 or under Tariff Heading 87.08 of the Customs Tariff Act, 1975?*

29. Applicant submits that total number of parts proposed to be imported by the applicant would be 1940 and 1436 (depending on the model of the motor vehicle). It does not include parts imported by local third party vendors. It has already been discussed by us that proposed imports of these parts / components etc. would not fall under CTH 8703.

30. CTH 8708 reads as under:

<u>Tariff Item</u>	<u>Description of goods</u>
8708	<i>Parts and Accessories of the Motor Vehicles of Headings 8701 to 8705</i>

31. Tariff Item 8703 is in respect of “Motor Cars and other Motor Vehicles etc.” Note 2 to Section XVII, which also covers ‘vehicles’ gives a list of 11 articles, where expressions ‘parts’ and ‘parts and accessories’ do not apply. Further, Note 3 to Section XVII states that references in Chapter 86 to 88 to ‘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. Note further mentions that 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. Therefore, in order for an article to fall under headings covered by Section XVII, those parts or accessories should comply with all conditions, namely;

- a) They must not be excluded by the terms of Note 2 of Section XVII.
- b) They must be suitable for use solely or principally with articles of chapter 86 to 88.
- c) They must not be more specifically included elsewhere in the nomenclature.

32. Therefore, import of components / parts/sub-assemblies by the applicant will be classified under their respective headings / sub-headings of Customs Tariff Act, 1975.

33. In view of the above, we rule as under;

a) The import of components / parts/ sub-assemblies by the applicant will not be classified as motor vehicle under Tariff Heading 87.03 or as Completely Knocked Down (CKD) kit under Sr. No. 437 of Notification No. 12/2012-Cus., dated 17.3.2012, as amended, when six essential and critical components / parts/sub-assemblies, namely; (i) engine (along with engine and transmission unit) (ii) axle assembly (iii) exhaust systems (iv) cooling module (v) heating, ventilation and air conditioning unit and (vi) door panels are to be locally assembled / manufactured by approved local third party vendors.

b) The import of components / parts / sub-assemblies by the applicant will be classified under their respective headings / sub-headings of the Customs Tariff Act, 1975.

**(S.S.Rana)**  
**Member**

**(V.S.Sirpurkar)**  
**Chairman**