

AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
NEW DELHI

PRESENT

Mr. Justice P.V.Reddi (Chairperson)
Mr. J.K.Batra (Member) Mr. J. Khosla (Member)

The 27th July, 2010

Ruling No. AAR/Cus/ 02 /2010
In
Application No. AAR/ Cus-1/ 03/2010

Applicant : M/s H-D Motor Company India Private Limited, 1105 Ashoka Estate, 24,Barakhamba Road, New Delhi 110001

Commissioner concerned : 1. Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi-110020

2. Commissioner of Customs (General & Muland CFS), New Custom House, Ballard Estate, Mumbai-400 001

3. Commissioner of Customs (Import), Jawahar Lal Nehru Custom House, Nhava Sheva, District Raigad, Maharashtra-400 707

Present for the applicant : Mr. Joseph Vellapally, Senior Advocate and M/s Manish Mishra-Advocate, Rahul Jena-Advocate, Kabir Bogra-Advocate and Ragvesh Singh-Advocate with him
Mr. Pete Petersen III Company's Representative

Present for the Commissioner : Sh. S.K.Panda,Jt. CDR
Sh. B.K.Singh, Jt. CDR
Sh. Sumit Kumar, SDR

Ruling
(By J.K.Batra)

M/s H-D Motor Company India Private Limited, the applicant, is a wholly owned subsidiary of Harley-Davidson Singapore Pte. Ltd. The applicant proposes to import parts / components of motorcycles from Harley-Davidson Group of Companies and their vendors located in different countries for assembly of Harley-Davidson brand of motorcycles in India. The said parts are proposed to be packed into motorcycle kits. In general all the parts,

components and sub assemblies required to build a standard order quantity of motorcycles would be shipped together. The vehicles would be assembled in India by fastening the various components together in a predefined sequence of operations. The operators will use a combination of hand tools (wrenches, sockets, screw drivers, etc.) and power tools (electric or pneumatic wrenches, nut drivers, drills, guns etc.) in assembling the vehicles. No other process such as machining, fabrication, stamping etc is proposed to be undertaken with respect to imported parts and components. Routine quality checks would be performed during the assembly operations and motorcycles would be released for distribution after final vehicle inspection.

2. Motorcycles imported by the applicant are claimed to be covered under Custom Tariff sub heading 8711 50 00 of the First Schedule to the Custom Tariff Act, 1975. Further, motorcycles imported as “completely knocked down (CKD) unit” are eligible for a concessional rate of duty of 10% ad valorem under notification no. 21/2002-Customs, dated 1st March, 2002.

3. Based on the aforesaid facts the applicant has sought a ruling on the following question, namely:-

Whether in the facts and circumstances of the present case, the import of motorcycle in the form of components, parts and sub-assemblies, proposed to be imported by the applicant, would constitute import of motorcycles in Completely Knocked Down form and as such would be eligible for concessional rate of basic customs duty at the rate of 10% provided under Entry 345 of Notification No. 21/2002-Cus, dated 1st March 2002(as amended)?

4. The relevant extracts of Entry No. 345 of Notification No. 21/2002-Cus dated 1st March, 2002 (as amended) are as follows:-

S. No.	Heading No.	Description	Rate of Duty
345	8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, new, which have not been registered anywhere prior to importation,- (1) if imported as completely knocked	10%

down(CKD)unit
(2) if imported in any other form

60%

5. The applicant has observed that the term “completely knocked down” is not defined under the Customs Law or any other Indian Laws. In the circumstances it is relevant for the applicant to ascertain whether the manner in which it proposes to import motorcycles would constitute an import as a completely knocked down unit so as to qualify for the concessional rate of duty in the aforesaid entry. Under the present industry practice only key components/parts are manufactured by the motor vehicle manufacturers in their own facility; most of the other components/parts are outsourced for manufacture by the ancillary units. All components/parts required to be assembled to manufacture a motorcycle are proposed to be imported from H-D Group Companies into India in a knocked down condition in the form of motorcycle kits. The applicant has submitted that it would import motorcycles in the same condition that Harley-Davidson would have presented the parts, components and assemblies to Harley-Davidson’s motorcycles assembly lines in United States. The applicant has further submitted that because of the developing industry practice of outsourcing of manufacturing operations, the literal meaning of the expression “ completely knocked down” cannot be adopted since it would not only be unviable but also unworkable.

6. The applicant has filed the copy of an opinion tendered by the Automotive Research Association of India (ARAI) vide their letter No. AP:X/09-10/II-1260/073 dated 29th December, 2009. This letter is in response to a letter dated 26th November, 2009 from the applicant company. The ARAI in their letter dated 29th December, 2009 have observed as follows:-

“On perusal of documentation, our views are as under:

1. *The Assembly Description and the supporting documentation covers mainly five vehicle models, namely Sportster, VRSC, Dyna, Softail and Touring.*
2. *The assembly kits for these vehicle models consist of following sections.*
 - *Mid Assembly*
 - *Rear Assembly*

- *Intermediate Sub-Assembly*
- *Front Assembly*
- *Final Vehicle Dress up*

Each assembly/section is further knocked down into sub-assemblies or parts/ components as the case may be. It appears that Engines are packed as complete unit. Similarly Wheel Rims and Tyres are also included as integrated assemblies.

3. *The assembly description covers simple processes like bolting, fastening, tightening and such mechanical assembly operation. Processes like machining, welding, fabrication, painting, etc. are not being used.*
4. *The assembly part list indicates that main critical assemblies which are normally required for building motorcycles are covered in assembly drawings/sketches.*

In conclusion, it appears that the assemblies would represent the completely knocked down kits for the above vehicle models”

7. The applicant has further submitted that the Authority has already examined a similar issue in the matter of Bayerische Motoren Werke(BMW) reported in 2006 (193) ELT 138(AAR) wherein based on the opinion of the ARAI, the Authority held that even though some individual parts of the car may be imported in semi knocked down condition, the car itself would be viewed as having been imported in completely knocked down condition. The applicant has claimed that since the description of Entry No. 345 of the Notification is identical to the description of Entry No. 344, the motorcycle kits imported by the applicant would be eligible to claim the concessional rate of duty applicable to CKD kits

8. The Commissioners of Customs have submitted that as the expression itself implies, “Completely Knocked Down” refers to items which cannot be dismantled any further into parts/components. The applicant has proposed to import a large number of assemblies or sub assemblies which can admittedly be dismantled further into various components;

therefore, these cannot be categorized as goods in a Completely Knocked Down condition. The views expressed by ARAI have also been contested by the Commissioners. It has been contended that the opinion of ARAI confirms that the imported goods are sub assemblies or assemblies and therefore CKD condition could not have been inferred. During the course of arguments, the Department has even questioned the competence of ARAI to give an opinion on the expression CKD since the organization is mandated only to certify on issues related to homologation of vehicles and other such matters as per the Motor Vehicles Rules. It has also been claimed on behalf of the Department that the facts and circumstances of the BMW case are different from the facts provided by the applicant. An opinion from a Chartered Engineer has been submitted pointing out that the goods proposed to be imported are in Semi Knocked Down condition and not in Completely Knocked Down condition.

9. On behalf of the Department it has also been stated that the duty structure applicable to motor vehicles is in accordance with the "AUTO POLICY", a vision document published by the Ministry of Heavy Industries and Public Enterprises in March, 2002 with a view to establish a globally competitive automotive industry in India. As per Para 8.1 of the policy "The incidence of import tariff will be fixed in a manner so as to facilitate development of manufacturing capabilities as opposed to mere assembly without giving undue protection;...." It was submitted that it is in accordance with this policy that while lifting the import restrictions in accordance with the World Trade Organisation (WTO) obligations, the Government has prescribed three different rates of duty depending upon the degree of manufacturing activity required to be carried out on the imported items. While fully assembled motorcycles which did not require any manufacturing operation after their import were subjected to import duty of 100% ad valorem (basic), motorcycles imported in a Completely Knocked Down form (i.e. import items should not be capable of being further dismantled) which involved maximum labour and assembling activity in India were subjected to import duty only at 10%. Import of motorcycles in any other intermediate form i.e. either as sub assemblies or some components in CKD forms and some other in the form of sub assemblies are leviable to a median rate of 60% ad valorem. It was contended that in the form in which motorcycle kits are proposed to be imported by the applicant, these would not be entitled to be assessed as Completely Knocked Down units. It was contended that having regard to the various judicial

pronouncements, that an exemption notification should be construed strictly, there is no scope for any extended meaning to be adopted. Acceptance of the applicant's point of view would render serial no. (2) of the description against entry no. 345 of the Notification No. 21/2002 as redundant.

10. The issue before us is whether the motorcycle kit in the form it is proposed to be imported by the applicant can be said to be imported as a Completely Knocked Down unit to be eligible for the concessional rate of duty of 10% under Notification No. 21/2002-Cus. In the application filed by the applicant there was no clarity regarding the manner in which the motorcycle kit would be imported except the reference to annexures pertaining to Bills of Material, assembly process overview and pictures of motorcycles submitted to ARAI for the purpose of seeking their advice. On a clarification being sought by the Commissioner of Customs, CFS, Mulund, regarding the list of components, sub assemblies and the form and packing in which these were intended to be imported, the applicant vide its letter dated 19.04.2010 provided additional details. Since the matter was again raised by the Department during the course of oral argument, this Authority asked the applicant to furnish the details relating to the items that are going to be imported in an illustrative case. Following these directions the applicant submitted further details vide its letter dated 16th June, 2010. The applicant has 40 individual models of motorcycles distributed over six families. The number of parts, components and sub assemblies to be imported in respect of each motorcycle would vary depending upon the design and features of the specific motorcycle models. The applicant submitted a representative list of parts, components and sub assemblies to be imported for the manufacture of two models of Harley-Davidson motorcycles in India, namely "Sportster-XL883N" and "Softail-FLSTC". The applicant vide its letter dated 25th June, 2010 submitted another list of components, parts and sub assemblies for the model Softail-FLSTC since the list of components submitted with the applicant's letter dated 16th June, 2010 for this model contained an inadvertent error. Copies of the lists of components, parts and sub assemblies of the aforesaid two models of motorcycles have been taken on record and made available to the Departmental Representatives. The Ruling is accordingly based on the list of components, parts and sub assemblies now submitted by the applicant and not on the basis of bill of materials annexed to the application.

11. The rate of duty to be levied on the motorcycle kits proposed to be imported by the applicant would depend on the scope of the expression “Completely Knocked down (CKD) unit”. The exemption Notification does not provide a definition of Completely Knocked down unit. Even the Explanatory Notes to the Harmonized System of Nomenclature reportedly do not provide any meaning of this term. On inquiries it is ascertained that though this term has been used in the World Trade Organization (WTO) proceedings, no definitive scope of the expression has been outlined. Some information as gleaned from the internet on this expression is as follows:

1. Completely Knocked Down Products

Products which are sold in pieces, which the purchaser has to assemble, and are therefore sold at reasonably low prices

Source: <http://www.glossaryofmarketing.com>

2. Knocked down (KD)

Articles (such as bicycles, fans, furniture) supplied unassembled, but with all components and assembly instructions, to avail of preferred shipping rates and reduced import duties. To qualify as KD, an article must be taken apart, folded, or telescoped in a manner that its overall bulk or size is reduced by at least one third(33 1/3 percent) of the assembled bulk or size.

Source: <http://www.businessdictionary.com/definicion/knocked-down-KD....>

3. Completely knocked down(CKD)

Fully disassembled item (such as an automobile, bicycle, or a piece of furniture) that is required to be assembled by the end user or the reseller. Goods are shipped in CKD form to reduce freight charged on the basis of the space occupied by (volume of) the item.

Source: www.businessdictionary.com/definition/completely-knoc.....

4. Complete knocked down (CKD),

Complete knocked down (CKD) is a complete kit needed to assemble a vehicle. It is a common practice among automakers, as well as bus and rail vehicle manufacturers, to sell knocked down kits to their foreign affiliates in order to avoid high import taxes and/or receive tax preferences for providing local manufacturing jobs. An incomplete kit is known as SKD or Semi Knocked Down. Both types of KDs are collectively referred to within the auto industry as KDX or Knocked-down export, while cars assembled in the country of origin and exported whole to the destination market are known as BUX, or Built-UP Export.

Source: http://en.wikipedia.org/wiki/Complete_knock_down

From the aforesaid information though it is obvious that the expression “Completely Knocked Down” finds its usage in the context of motor vehicles and refers to articles which may have been supplied unassembled or disassembled, these definitions are silent on the degree of assembly of the article. It is difficult to accept the proposition put forth by the Department that CKD implies articles disassembled to such a degree that they cannot be further dismantled into components/parts. A note has also to be taken of the industry practice in the manufacture of motor vehicles. There are no instances of manufacturers undertaking manufacture of each and every component part required for assembly of a motor vehicle in their own factories. With continuous R & D efforts, a greater degree of specialization than ever before is being achieved in the manufacture of components/ parts. For example Bosch is a well known brand for manufacture of spark plugs nozzles etc. for motor vehicles. It cannot be expected that Bosch would supply spark plugs in a completely unassembled form to a motor vehicle manufacturer so as to comply with the definition of CKD as proposed by the Department. Even in India it is an accepted fact that indigenous manufacturers of motor vehicles undertake the manufacture of key components/parts (such as car bodies, engines, transmission assembly etc.) within their own facility. There are several ancillary units who manufacture hundreds of other components and sub assemblies required in the manufacture of a complete motor vehicle. Apparently this trend is not confined only to India but this practice is observed the world over. In the absence of the definition of “Completely Knocked Down” in the Notification itself we are unable to be persuaded by the interpretation of the expression of CKD as sought to be given by the Department that is kits of motorcycles dismantled to the last individual components alone would be covered by this exemption. In our view the expression CKD in the context of motorcycles also includes parts in the form of identifiable basic sub assemblies, such as the engine assembly, the

transmission assembly, the clutch assembly, the axle assembly, the body assembly, the exhaust pipe assembly, the fork assembly, the mirror assembly, the front wheel assembly, the head light assembly, the rear wheel assembly, the oil tank assembly, shock absorber assembly etc..

12. In coming to the aforesaid conclusion we have also been guided by the ruling of this Authority in the case of Bayerische Motoren Werke (BMW) reported in 2006 (193) ELT 138(AAR). Though the said ruling was with reference to import of components, parts or sub assemblies of motor vehicles, the ruling did discuss import of motor vehicle kits in CKD form viz-a-viz SKD form. There may be difference in the facts of the present case with regard to nature of sub assembly/ assembly but in principle we do not find any major deviation. It would be worthwhile to re-produce para 44 of the said ruling:-

“It may be noted from the clarification report that (1) there are no specific guidelines prescribed for defining CKD and SKD kits; (2) there are some parts in the Annexure which could be taken as component form while there are other parts which could be termed as SKD form. (3) on the basis of the analysis carried out by ARAI and the discussions held with BMW, it was learnt that seats would be manufactured locally and then installed in the vehicle; (4) inasmuch as without seats the vehicle could not be treated as complete, the words “by and large” have been used.

From the perusal of these reports, the position that emerges is that parts listed in Annexure-III to the application represent the CKD Unit and with the assembly of seats, which will be procured locally, the parts would constitute a complete car. There are some parts, which could be taken as component form while there are other parts which could be termed as SKD form. It is true that there are no definitions of the terms “CKD” and “SKD” in the Customs Act or Rules framed thereunder. But from the material furnished by the applicant for comparison of CKD and SKD, it appears that the components for the CKD vehicle are procured from the suppliers who supply to main BMW production facility at the CKD location and approximately 1400 single parts and body parts are transported to the CKD country. In the case of SKD, the vehicles are completely built up in a main BMW production facility in Germany and subsequently certain components are disassembled; the partially disassembled vehicles are mounted on transport skids and shifted to the respective countries where the disassembled components are fitted. The reports of the expert, as may be seen, refer to Annexure – III as CKD unit. The notification does not use the term “SKD”. The Notification for purposes of concessional duty refers to two categories: (i) imported as completely knocked

down (CKD) Unit dutiable 15%; and (ii) imported in any other form 60%.The reports of the expert do not mention that the car is not imported in completely knocked down (CKD) unit. What they say is that some parts of the car are in SKD form, thereby meaning, they can be further knocked down into components. This, in our view, may not be a relevant factor because it is clear from the report that Annexure – III represents completely knocked down unit of motor cars. If that be so, the contention of the Commissioner that Sl.No. 344 (2) prescribing 60% duty would apply, cannot be accepted; the applicable rate of duty would be 15%. We hasten to make it clear that the motor cars if imported in any form other than completely knocked down (CKD) unit, the rate of duty applicable would be 60%”.

As may be inferred from the above said observations of the Authority in the case of BMW, the applicant had proposed to import parts which could be taken as components while there were other parts in the nature of sub assemblies which could be termed as in SKD form. A perusal of Annexure III of the application filed by BMW before the Authority for Advance Rulings indicates that they have proposed to import several sub assemblies for being assembled into a motor car. These sub assemblies were definitely capable of being further dismantled into components. Yet the Authority ruled that in view of the report of ARAI, the items in Annexure –III represent Completely Knocked Down unit of motor cars. The department has not pointed any material differentiating features in the case of the present applicant. No case is made out to differ with the view already taken by the Authority in the preceding case. The learned Advocate for the applicant has submitted that despite the ruling given by the Authority in BMW case as far back in 2005, the Government has thought it prudent not to change the text of the notification thereby confirming the interpretation of the expression CKD given by the Authority in BMW case.

13. During the course of arguments the Department objected to the engine and transmission assembly of the motorcycle being treated as a component part of the CKD kit. It was observed that in the lists provided by the applicant vide letters dated 16th June, 2010 and 25th June, 2010, "engine and transmission" have been shown together as a single component description in the list for components for both the motorcycles. It was submitted on behalf of the Department that apart from other objections raised by them regarding the scope of expression Completely Knocked down in the exemption Notification No. 21/2002, they have serious objection to the engine transmission

assembly being treated as a component for complying with the condition of CKD import. It was stated that the engine and the transmission assemblies should be imported separately for being considered as CKD units to be eligible for the exemption. It was pointed out that the engine and transmission assembly constitutes about 50% to 60% of the value of the motorcycle and an import of these two items assembled as a single part would render the motorcycle out of the scope of CKD. In support of the aforesaid contention, the Department referred to the Entry No. 345 as it existed on 1st March, 2002 when the Notification No. 21/2002-Cus was first issued. It was pointed out that there was an explanation in the said Entry which clarified that “if the engine & gear box assemblies are installed in the body assembly of vehicle, then such vehicle shall be deemed as a completely built up unit” This Entry was amended by Notification No. 26/2003-Cus dated the 1st March, 2003 when the concept of Completely Knocked Down units was introduced and consequently the explanation deleted. It was sought to be conveyed that the engine and transmission assembly as a single part virtually represented the motorcycle itself and not a CKD unit.

14. It is no doubt true that the engine and transmission assembly constitutes the most important and critical part of a motorcycle. Even the applicant during the course of hearing observed that this part contributes to around 40% of the cost of motorcycle. The applicant however, reiterated going by the ruling of the Authority in the case of BMW that the engine and transmission assembly should be taken as a CKD component. It was also mentioned that in some of the models the engine and transmission assembly are housed in single cast housing.

15. As we have observed in para 11, in our view, the expression Completely Knocked down in the context of motorcycles not only refers to components which cannot be dismantled further but also includes parts in the form of identifiable basic sub assemblies. Engine and transmission assemblies are generally regarded as separate identifiable parts of a motor vehicle and therefore they can be classified as a component of Completely Knocked Down unit only if these are imported separately. However, if these two assemblies are designed to be housed in a single housing and are so

assembled, the engine and transmission assembly is generally referred to as an “engine assembly” only and merits to be treated as a component for the purposes of CKD units. For the matter of record it may be mentioned that in the list of components, parts and sub assemblies in Annexure III of the application filed by BMW, (which has been made the basis of its plea by the applicant in this case) the engine assembly and the transmission assembly have been indicated as two separate assemblies.

16. As stated earlier, it has been contended by the Department that in case Serial No. (1) is interpreted to include sub assemblies as has been sought by the applicant, Serial No. (2) of the Entry 345 will be rendered redundant. As noted in the preceding paragraphs we are unable to be persuaded to accept Department’s view that “Completely Knocked down” would refer to components of an article which cannot be dismantled further. In our view basic identifiable sub assemblies as per commercial practice in the trade would get covered in the description of Serial No. (1) of Entry No. 345. However, any integration which violates the basic identifiable sub assembly criterion would take the article out of scope of Serial No. (1) and put it in Serial No. (2). For example any import of a motorcycle which has been assembled abroad and is spilt up into 8-10 sub assemblies (without being spilt up completely into individual identifiable basic sub assemblies) would be out of Serial No. (1) and be covered in Serial No. (2).

17. The “Auto Policy” referred to by the Department cannot control the operation of a statutory notification. Further, it is difficult to say that in the instant case, there will be no manufacturing activity in India.

18. In view of the above observations the ruling with reference to the question raised in the application is given as follows:-

Question: Whether in the facts and circumstances of the present case, the import of motorcycle in the form of components, parts and sub-assemblies, proposed to be imported by the applicant, would constitute import of motorcycles in Completely Knocked Down form and as such would be eligible for concessional rate of basic customs duty at the rate of 10% provided under

Entry 345 of Notification No. 21/2002-Cus, dated 1st March 2002(as amended)?

The import of motorcycles “Sportster-XL883N” and “Softail-FLSTC” in the form of components, parts and sub assemblies as per the lists filed by the applicant would constitute import of motorcycles in Completely Knocked Down form provided the engine and the transmission assemblies are designed to be housed and are so assembled in a single housing. Consequently it would be eligible for concessional rate of duty provided under Serial No. (1) of the description against Entry No. 345 of Notification No. 21/2002-Cus dated 1st March, 2002. All other models of motorcycles will equally be eligible for the concessional rates of import duty as aforesaid if these are imported in the form of identifiable basic sub assemblies or components as per the illustrative list of components, parts and sub-assemblies for the two models mentioned above. The benefit of exemption would however be applicable only in case the engine and transmission assembly imported as a single part is designed to be housed and is so assembled in a common single housing.

Accordingly Ruling is given on this 27th day of July, 2010.

Sd/-
(J.Khosla)
Member

Sd/-
(J.K.Batra)
Member

Per P.V.Reddi, J.

The term 'completely knocked down condition' is a term of brevity which has no definite connotation. Its parameters cannot be defined with certainty either by taking recourse to dictionaries or scientific terminology. We have two apparently contradictory opinions of experts which itself exposes the difficulty in assigning a clear and precise meaning to it. To put it in straight language, it is a loose and nebulous expression used to describe a state of things concerning the article which it qualifies. 'Completely knocked down' (CKD) and 'Semi knocked down' (SKD) are the two expressions that are distinctly used. The difference between 'complete' and 'semi' is a difference in degree. The distinction is often thin. The example of a motor cycle unit in a semi-knocked down condition has been given by the learned Member. In the absence of a definition or a definite connotation, we must understand the said expression (CKD) in a practical sense, without adopting an extreme view that the import should take place only in the form of parts and the elaborate process of manufacture, not merely assembly, should be done only after import. Viewed from this angle, 'completely knocked down' condition does not necessarily mean that at the time of import, nothing is capable of being identified as a critical component of motor cycle and that the importer should start manufacturing 'from scratch'. There is no warrant to hold that, if in addition to other parts, sub-assemblies are imported, the CKD terminology would cease to apply. The BMW ruling clearly rules out the adoption of such a view. There is considerable force in the contention of the applicant's counsel that if the Revenue wanted to deviate from the opinion expressed therein, the Central Government should have been moved to suitably amend the notification. In any case, we do not find any

compelling reason to depart from the view taken in the said ruling. Perhaps, this is an ‘a *fortiori*’ case.

With this short supplement, I concur with the views and findings recorded by the learned Member.

Sd/-
(P.V. Reddi, J)
Chairperson