

Classification of a product adopted at the supplier's end shall be final and cannot be changed/questioned - SC

26 September 2022



## Summary

The Supreme Court (SC) has upheld the demand against the MODVAT credit availed by the appellant on the 'Guide Car' used for purpose of transportation of hot coke coming out of Coke Oven Battery (COB) as same cannot be said to be a 'component' or 'part' of COB. The SC stated that as per the settled position of law, the classification of a product done at the consignor's end should be final, and that cannot be changed/questioned at the consignee's end. The SC observed that the 'Guide Car' is being used for transporting hot coke after it is processed in the COB and can be said to be equipment distinct from COB. Hence, it cannot be said that without the 'Guide Car', the COB shall not be functional. Therefore, the SC stated that the Adjudicating Authority and the Tribunal have rightly denied the MODVAT credit availed by the appellant on 'Guide Cars'. However, the appellant had a bonafide belief that the goods would fall under the Chapter sub-heading 8428.90 or that the 'Guide Car' can be said to be a 'component' of the COB. Therefore the SC set aside the penalty upheld by the Tribunal.

## Facts of the case

- A show cause notice (SCN) was issued to the appellant<sup>1</sup>, seeking to deny the MODVAT credit availed by the appellant on capital goods, i.e., 'Guide Car' since it was classifiable under Chapter subheading 8603.00 of the Central Excise Tariff Act, 1985.
- The Adjudicating Authority (AA) believed the appellant should not be entitled to the MODVAT credit on Guide Car considering<sup>2</sup> and thus, disallowed the credit wrongly availed by the appellant during March 2000, which included the MODVAT credit availed by the appellant on the 'Guide Car' and imposed the penalty<sup>3</sup>.
- According to the appellant, the 'Guide Car' is classifiable under Chapter subheading 8428.90, as was being done by the supplier of the same to the appellant and there was no reason for classifying the same under chapter subheading 8603.00.

- The Customs, Excise & Service Tax Appellate Tribunal, Kolkata Bench (Tribunal) upheld the demand along with the penalty. Therefore, the appellant preferred the present appeal<sup>4</sup> before the SC.

## SC observations and ruling<sup>5</sup>:

- **The classification adopted by the consignor cannot be changed:** As per the settled position of law, the classification of a product done at the consignor's end shall be final, which cannot be changed/questioned at the consignee's end. In the case of the supplier, 'Guide Car' was classified under Chapter sub-heading 8603.00. Therefore, 'Guide Car' shall be classifiable under Chapter sub-heading 8603.00 of the tariff.
- **Guide Car cannot be said to be a component of COB:** Considering the expression 'component' as discussed in the case of Saraswati Sugar Mills, the

<sup>1</sup> Steel Authority of India Ltd.

<sup>2</sup> Rule 57Q of the Central Excise Rules, 1944

<sup>3</sup> under Rule 173Q of the Rules 1944

<sup>4</sup> CIVIL APPEAL NO. 7269 OF 2009

<sup>5</sup> vide order dated 16 September 2022

SC stated that the test would be whether the 'Guide Car' can be said to be an integral part necessary to the constitution of the whole article, namely, COB and whether without it, the COB shall not be complete? Considering the process and the way and/or for the purpose for which the 'Guide Car' is used, it cannot be said to be a 'component' of COB. It cannot be said that without the 'Guide Car', the COB shall not be functional.

- **Guide Car is distinct equipment:** The 'Guide Car' is used to transport the hot coke after it is processed in the COB. Therefore, 'Guide Car' can be said to be different equipment distinct from the COB and cannot be a part of the COB.
- **MODVAT credit not available:** The appellant shall not be entitled to the MODVAT credit on 'Guide Car' as a 'component' or part of COB as claimed by the appellant. The AA and the learned Tribunal have rightly denied the MODVAT credit availed by the appellant on 'Guide Cars'.
- **Penalty set aside:** The appellant genuinely believed that the goods would fall under Chapter sub-heading 8428.90 and that the 'Guide Car' can be said to be a 'component' of the COB. Therefore, the penalty imposed by the Tribunal is required to be quashed and set aside.
- **Duty levied on approved classification:** The present case was of

an approved classification list sought to be corrected subsequently. In this regard the SC observed that the levy of excise duty based on an approved classification list is the correct levy, at least until the correctness of the approval is questioned by the issuance of a SCN to the assessee.

### Our comments

The present ruling is in line with the well-settled position of law that the classification of a product done at the supplier's/consignor's end shall be final and that it cannot be changed/questioned at the recipient's/consignee's end. Recently, in the case of Sarvesh Refractories (P) Ltd., the SC had held that the classification of product cannot be changed by the recipient from one declared by the manufacturer-supplier to avail credit.

Even under the GST law, recently, the SC has held that it is the responsibility of the bidder to quote the correct HSN code and the corresponding GST rate<sup>6</sup>. Thus, the SC has once again reiterated the settled principle of law that the appropriate classification of goods and services and payment of GST liability is the sole responsibility of the supplier (except in the case of the reverse charge mechanism).

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<sup>6</sup> Bharat Forge Ltd

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