



Intricacies in Classification

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GST Rate Notifications refers to the Customs Tariff *qua* classification of goods for GST purpose

Harmonised System (HS) was developed by World Customs Organization (WCO) in the year 1988

Members : More than 190 countries have adopted HS system developed by WCO

Objective : Universal standard system of classification of goods/services to facilitate international trade

Structure : HS provides product code and description upto 4 digit/ 6 digit level

Explanatory Notes have been published by WCO for uniform interpretation of HS

India has adopted HSN based classification since March 1986

India follows classification at 8 digit level (USA follows 10)

Basis of determining applicable tax rates under Customs/GST

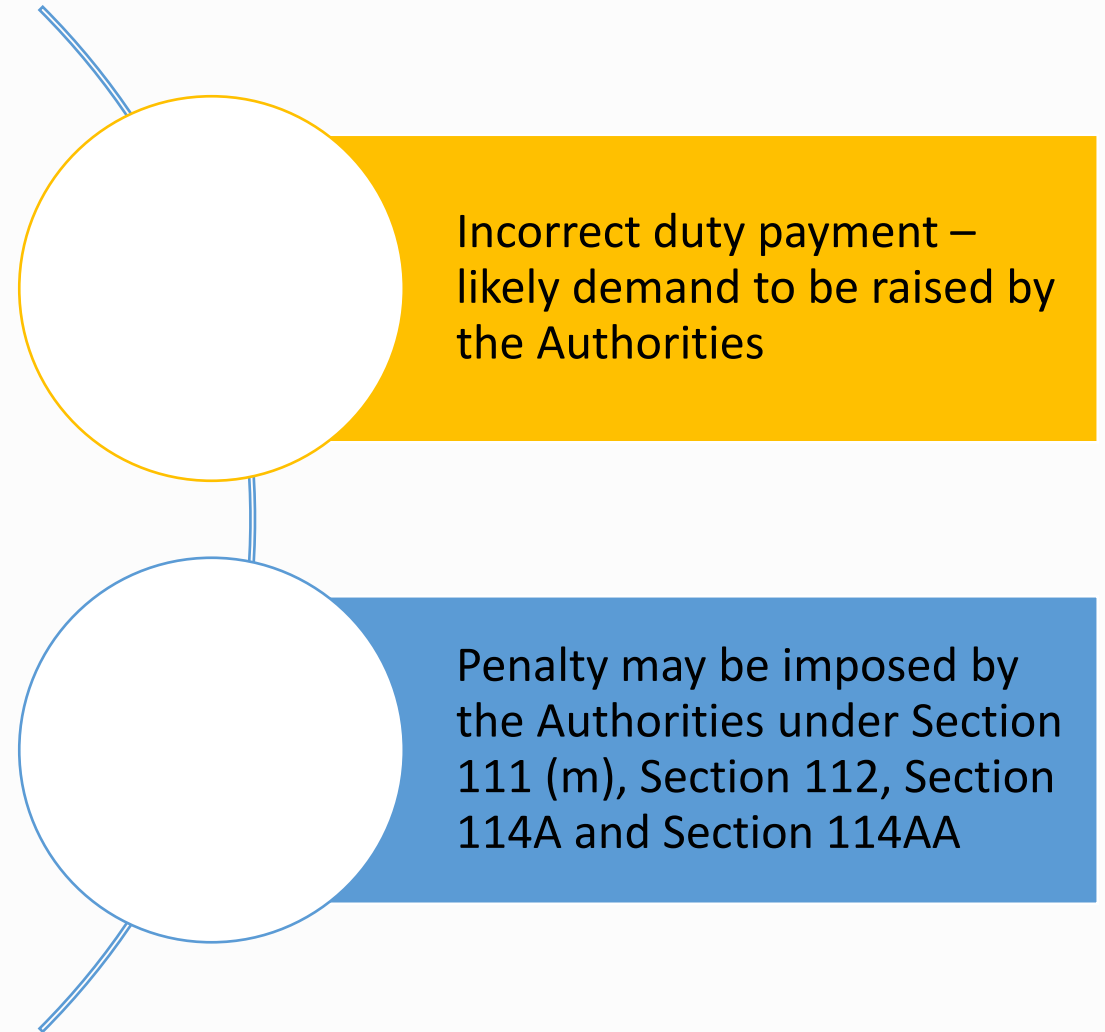
Availability of exemption/concessional notifications including the benefit of FTA/PTA [**100 Notifications**]

Quantum of benefits available *qua* exports such as drawback/RoDTEP

Determining applicability of obtaining export/ import license

Basis for trade negotiations and concessions – FTA/PTA



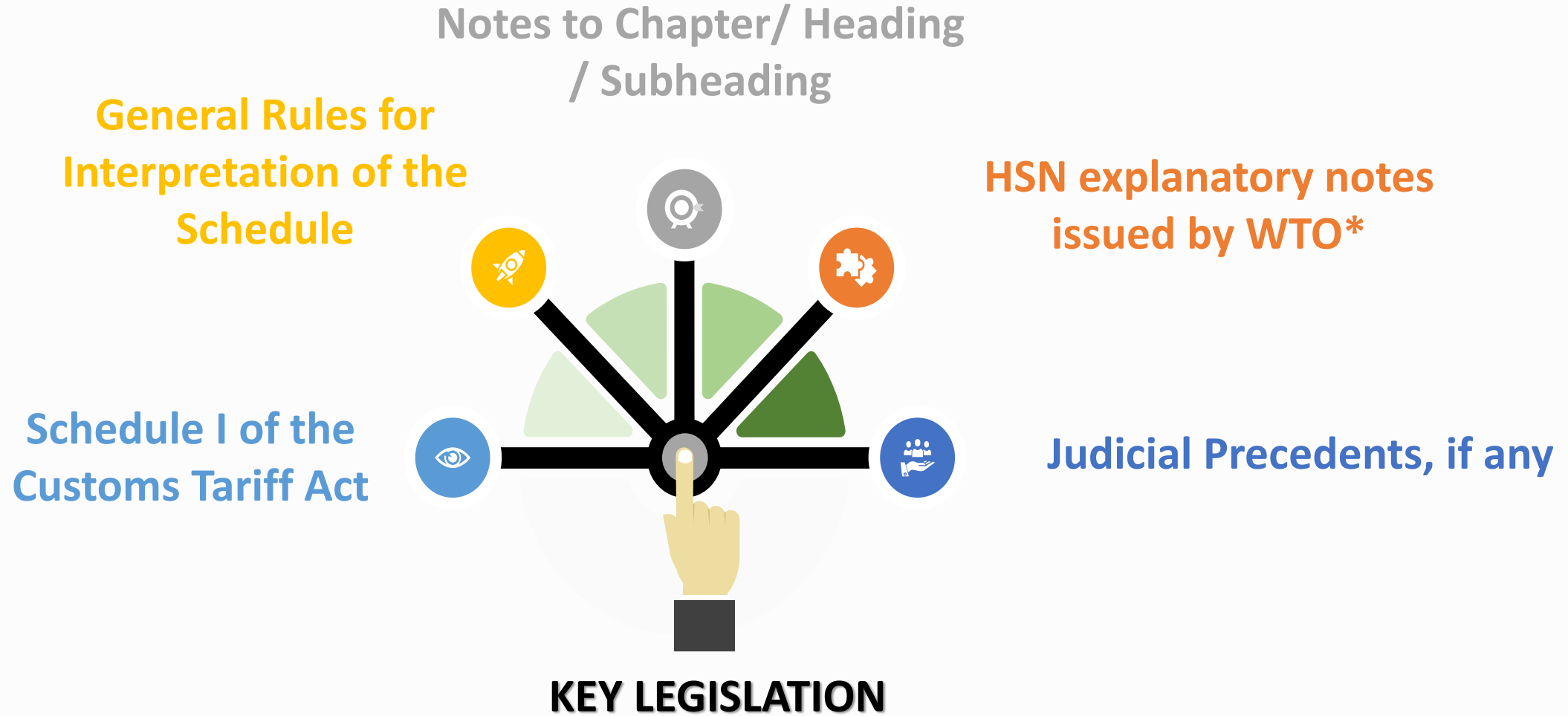


The investigation into car companies such as [REDACTED] for allegedly evading India's customs duties while importing components needed to assemble cars, started nearly three years ago in 2022, on account of the automakers allegedly "misclassifying" components for completely knocked down, or CKD, units, a top Finance Ministry official said Thursday.

Two different customs notices were sent to [REDACTED] with a tax demand of \$1.4 billion and \$150 million, respectively, for allegedly importing components for a car in CKD condition in different lots, and misclassifying them as individual components, which attracts a lower customs duty. The notice was sent to [REDACTED] last April by the Customs Office in [Chennai](#), and the one to [REDACTED] was issued in September by the Office of the Commissioner of Customs in Maharashtra.

A duty of 30-35 per cent is applicable on parts imported in CKD form in a single shipment, whereas importing them separately as individual parts attracts a lower tax rate of 10-15 per cent.

Key Legislations to be referred for Classification



*Not binding on the Authority but has strong persuasive value

Brief of 21 Sections of Customs Tariff		
Animal Products	Raw hides and Skins, Leather and articles	Base metals and articles of base metal
Vegetable Products	Wood, cork, straw and their articles	Machinery and mechanical appliances, electrical equipments, television etc.
Animal or vegetable fats and oils	Pulp of wood, Paper, Paper-board and articles	Vehicles, Aircrafts, vessels and associated transport equipment
Prepared foodstuffs, beverages	Textile and Textile Products	Optical, photographic, medical, surgical instruments, clocks, musical instruments
Mineral Products	Footwear, Headgear, Umbrellas, Articles of human hair	Arms and Ammunition
Chemical products	Articles of stone, plaster, ceramic, mica, glass	Misc. manufactured articles like Furniture, toys etc
Plastics and Rubber and their articles	Pearls, precious metals	Works of Art, collectors' pieces and antiques

Arrangement of Tariff...

21 Sections
(I to XXI)

98 Chapters

More than
1200

More than
5200

Sections

Chapters

Heading

Sub-heading

Tariff Item

SECTION XIX
ARMS AND AMMUNITION; PARTS AND ACCESSORIES THEREOF

Chapter Notes:

Chapter No. 93
Arms and ammunition; parts and accessories thereof

NOTES :

1. This Chapter does not cover :

(a) goods of Chapter 36 (for example, percussion caps, detonators, signaling flares);

(b) parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);

(c) armoured fighting vehicles (heading 8710);

(d) telescopic sights or other optical devices suitable for use with arms, unless mounted on a firearm or presented with the firearm on which they are designed to be mounted (Chapter 90);

(e) bows, arrows, fencing foils or toys (Chapter 95); or

(f) collectors' pieces or antiques (heading 9705 or 9706).

2. In heading 9306, the reference to "parts thereof" does not include radio or radar apparatus of heading 8526.

Table:

Tariff Item	Description	Unit	Rate of Duty	Preferential Area Rate
(1)	(2)	(3)	(4)	5
9301	MILITARY WEAPONS, OTHER THAN REVOLVERS, PISTOLS AND THE ARMS OF HEADING 9307			
930110	Artillery weapons (for example, guns, howitzers and mortars:			
93011010	Self-propelled	u	10%	-

Pattern of arrangement of goods in the Tariff is in increasing degree of manufacture of commodities – natural products, raw materials, semi-finished goods, fully manufactured goods

A single dash (-) denotes that goods belongs to a group covered under a heading

A double dash (--) denotes that the article is a sub-classification of the preceding article that has a single dash

a triple dash (---) or quadruple dash (----) indicates the article is a sub-classification of the preceding article that has a double dash or triple dash

7304 TUBES, PIPES AND HOLLOW PROFILES, SEAMLESS, OF IRON (OTHER THAN CAST IRON) OR STEEL

- Line pipe of a kind used for oil or gas pipelines :

730411 -- of stainless steel:

73041110 --- Tubes and pipes

73041120 --- Blanks for tubes and pipes

73041190 --- Other

730419 -- Other:

73041910 --- Tubes and pipes

73041920 --- Blanks for tubes and pipes

73041990 --- Other

General Rules of Interpretation

- The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only. **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 – **Rule 1**
- Classification of incomplete and unassembled goods, and mixtures and combinations of goods
 - ✓ The **incomplete/unfinished goods having essential characteristics of the finished/complete product** to be classified as **that of the finished product** – **Rule 2(a)**
 - ✓ Classification of goods consisting of more than one material shall be done Rule 3 – **Rule 2(b)**
- Classification of products that are, *prima facie*, classifiable under two or more different HS headings
 - ✓ **Specific heading to be preferred over general headings**– **Rule 3(a)**
 - ✓ Mixtures/composite goods consisting of **different materials/components should be classified according to the material/component which gives the essential character** – **Rule 3(b)**
- Classification of packing material
 - ✓ **Containers designed for the article and suitable for long-term use shall be classified along with that article**, if such articles are normally sold along with such cases. For example, a camera case – **Rule 5(a)**
 - ✓ Packing materials/containers are to be classified with the related goods except when it is for repetitive use – **Rule 5(b)**

Relevant Chapters for classification of chemical products

First Schedule to the Customs Tariff Act, 1975	
Chapter	Description
Chapter 28	Inorganic chemicals, organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes
Chapter 29	Organic chemicals
Chapter 30	Pharmaceutical products
Chapter 31	Fertilizers
Chapter 38	Miscellaneous chemical products

Although by application of Rule 3(a), chemical products are to be classified in their specific Chapter Headings however, by virtue of following Chapter Notes, chemical products can also merit classification under Chapter 98

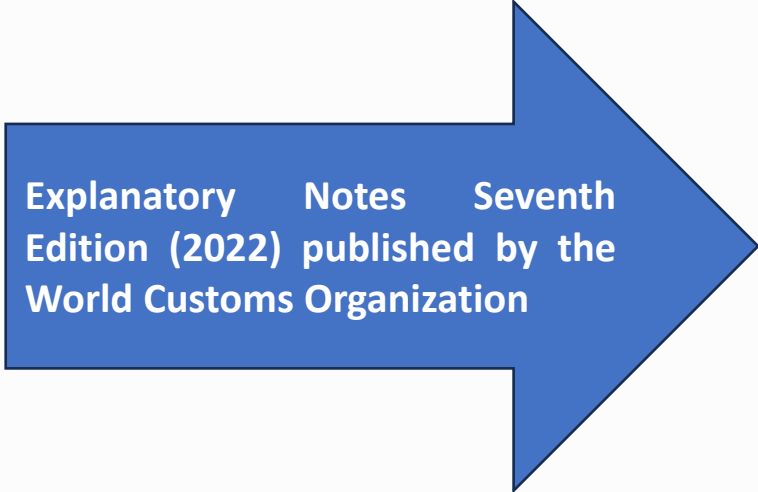
1. This Chapter is to be taken **to apply to all goods** which **satisfy the conditions prescribed therein, even though they may be covered by a more specific heading elsewhere** in this Schedule.
2.
3. For the purpose of Heading 9802, "laboratory chemicals" means all **chemicals**, organic or inorganic, **whether or not chemically defined**, imported and **intended only for own use** (i.e. **other than purposes like trading, further sale etc.**) in **packings not exceeding 500 gms or 500 millilitres** and which can be identified with reference to the purity, markings or other features to show them to be meant for use solely as laboratory chemicals.

Classification of “Bacto Yeast Extract”

Competing Customs Tariff Headings					
Reference	Description	Customs duty	Reference	Description	Customs duty
Chapter 21	Miscellaneous edible preparations	-	Chapter 38	Miscellaneous chemical products	-
2106	Food preparations not elsewhere specified or included	-	3824	Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included	-
21069099	Other	150%	38249999	Other	17.5%

Relevant Chapter Note –
Note 1(b) to Chapter 38

*1(b) mixtures of **chemicals with foodstuffs or other substances with nutritive value**, of a kind used in the preparation of human foodstuffs (**generally, heading 2106**)*



Explanatory Notes Seventh Edition (2022) published by the World Customs Organization

*“For the purposes of Note 1(b) to the Chapter, the expression “foodstuffs or other substances with nutritive value” principally **includes edible products** of Sections I to VI.*

...

*The mere presence of “foodstuffs or other substances with nutritive value” in a mixture would not suffice to exclude the mixture from Chapter 38, by application of Note 1(b). **Substances having a nutritive value that is merely subsidiary to their function as chemical products, e.g., as food additives or processing aids, are not regarded as “foodstuffs or substances with nutritive value” for the purpose of this Note.** The mixtures which are excluded from Chapter 38 by virtue of Note 1(b) are those which are of a kind used in the preparation of human foodstuffs and which are valued for their nutritional qualities.*

Accordingly, mere presence of “foodstuffs or other substances with nutritive value” in a chemical product will not render it to be outside the purview of Chapter 38, when having a nutritive value is only a subsidiary function of that chemical product. Hence, “Bacto Yeast Extract” may be classified under CTH 3824 9999

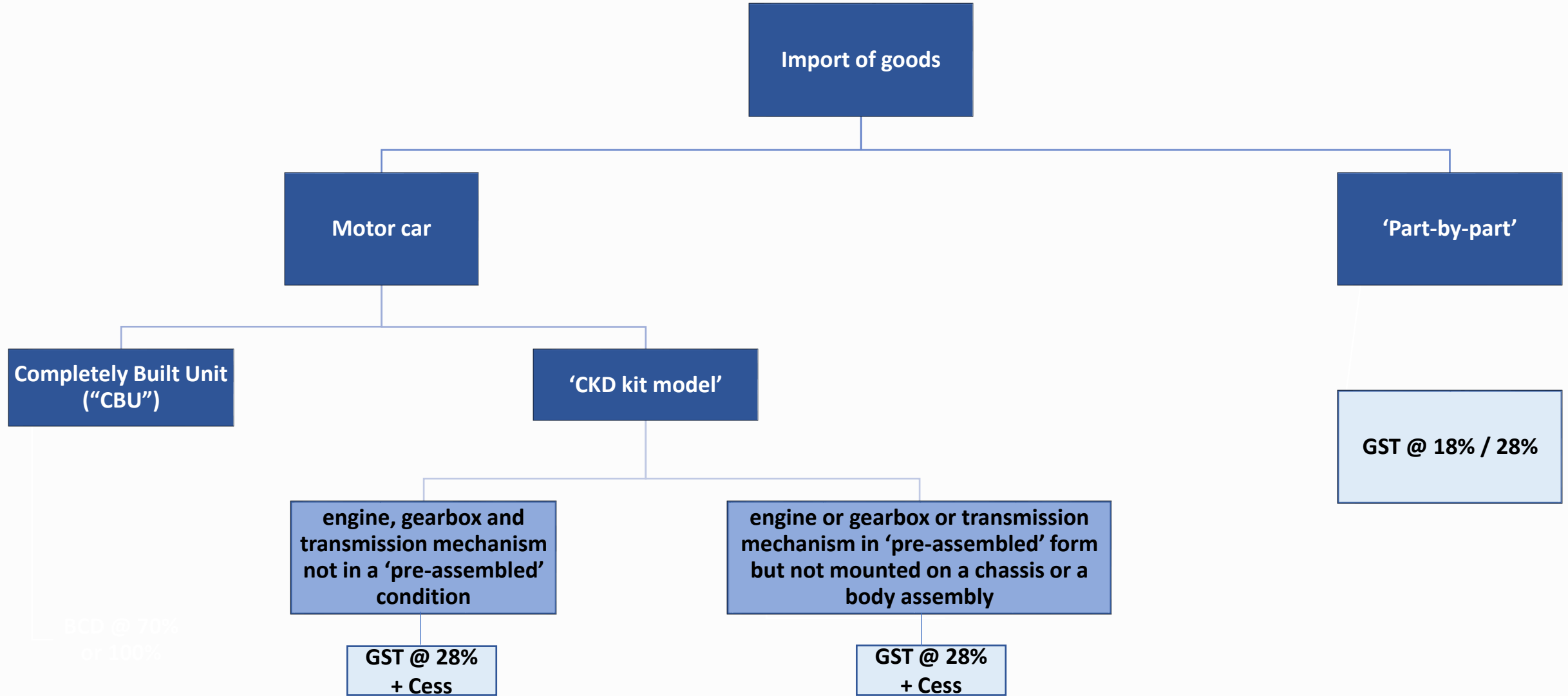
CASE STUDY I : CLASSIFICATION OF INCOMPLETE/UNASSEMBLED GOODS

Classification of Incomplete / Unassembled goods...

Whether imported goods, *albeit*, imported as 'part-by-part', can be classified as import of a motor car?

S. No	CTH of Tariff Item	Description of goods	Standard rate
526	8703	<p>Motor cars and other motor vehicles (excluding electrically operated 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,-</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> <p>a) engine, gearbox and transmission mechanism not in a pre-assembled condition</p> <p>b) engine or gearbox or transmission mechanism in pre-assembled form but not mounted on a chassis or a body assembly.</p> <p>(2) in any other form:</p> <p>(a) with CIF value more than US \$ 40,000 or with engine capacity more than 3000 cc for petrol-run vehicles and more than 2500 cc for diesel-run vehicles, or with both;</p> <p>(a) Other than (a) above</p>	<p>15%</p> <p>35%</p> <p>100%</p> <p>70%</p>

Classification of Incomplete / Unassembled goods...



...Classification of Incomplete / Unassembled goods

Rule 2(a) of the General Rules for Interpretation to the Customs Tariff Act

An unfinished and incomplete goods can be classified under the same Heading as the same goods in a finished state if they have the essential character of the complete or finished article

Dunlop India Ltd. & MRF Ltd. vs. UOI, 1983 (13) E.L.T. 1566 (Supreme Court)

Each consignment has to be separately assessed 'as presented' at the stage of importation

CC v. Sony India Ltd, 2008 (231) ELT 385 (Supreme Court)

Even if majority of the parts are imported yet it cannot be classified as a complete product if all the parts intended to make the complete product are not presented for Customs clearance at the same time

HSN Explanatory Notes to Chapter 87 (2022 Edition)

The **classification** of a motor vehicle is **not affected** by operations which are **carried out after assembling all parts into a complete vehicle**, such as: vehicle identification number fixation, brake system charging and bleeding air from brakes, charging of steering booster system (power steering) and cooling and conditioning systems, headlights regulation, wheel geometry regulation (alignment) and regulation of brakes. **This includes classification by the application of General Interpretative Rule 2(a).**

An incomplete or unfinished vehicle, whether or not assembled, is classified as the complete or finished vehicle provided it has the essential character of the latter [see General Interpretative Rule 2(a)], as for example:

- A. A motor vehicle, not yet fitted with the wheels or tyres and battery
- B. A motor vehicle not equipped with its engine or with its interior fittings
- C. A bicycle without saddle and tyres

CASE STUDY II : CLASSIFICATION OF PARTS



- Nut/ screws/ bolts used in machinery to be classified in Chapter 73 (based on base metal) or Chapter 84 (based on usage)?



Nut/ screws/ bolts used in machinery will be classified in Chapter 73 as these are parts of general use
(Condition I)



- Tubes, pipes of plastic fitted in machinery to be classified in Chapter 3926 (based on description) or Chapter 84 (based on usage)?



Tubes, pipes of plastic fitted in machinery are classified in Chapter 3926 as specifically covered in the said heading
(Condition II)



- Instrumental cluster mounted on dashboard of the vehicle containing speedometer, indicators, fuel indicator would be classified under Chapter 90 (depending upon the main function) or Chapter 87 (based on use)?



Instrumental cluster mounted on dashboard of the vehicle containing speedometer, indicators, fuel indicator would be classified as part of vehicle in Chapter 87 as it is solely used for motor cycle

Whether parts/accessories of machinery/vehicle shall be classifiable under the Chapter Heading of the respective machinery/vehicle or based on the content of that part?

Note	Relevant Portion
Note 2 to Section XVII	<p>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:</p> <p>(a) <u>joints, washers or the like</u> of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanised rubber other than hard rubber (heading 4016);</p> <p>(b) <u>parts of general use</u>, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39)</p> <p>(d) articles of heading <u>8306</u></p> <p>(e)</p> <p>(f) electrical machinery or equipment (<u>Chapter 85</u>);</p> <p>(g) articles of <u>Chapter 90</u>;</p>
Note 3 to Section XVII	<p>3. References in Chapters 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. A part or accessory which answer 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 of accessory.</p>
Note 2 to Section XV	<p>“PARTS OF GENERAL USE”</p> <p>2. Throughout this Schedule, the expression “parts of general use” means : (a) articles of headings 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metal; (b) springs and leaves for springs, of base metal, other than clock or watch springs (heading 9114); and (c) articles of headings 8301, 8302, 8308, 8310 and frames and mirrors, of base metal, of heading 8306.</p>

Principles of classification of Parts

Condition I

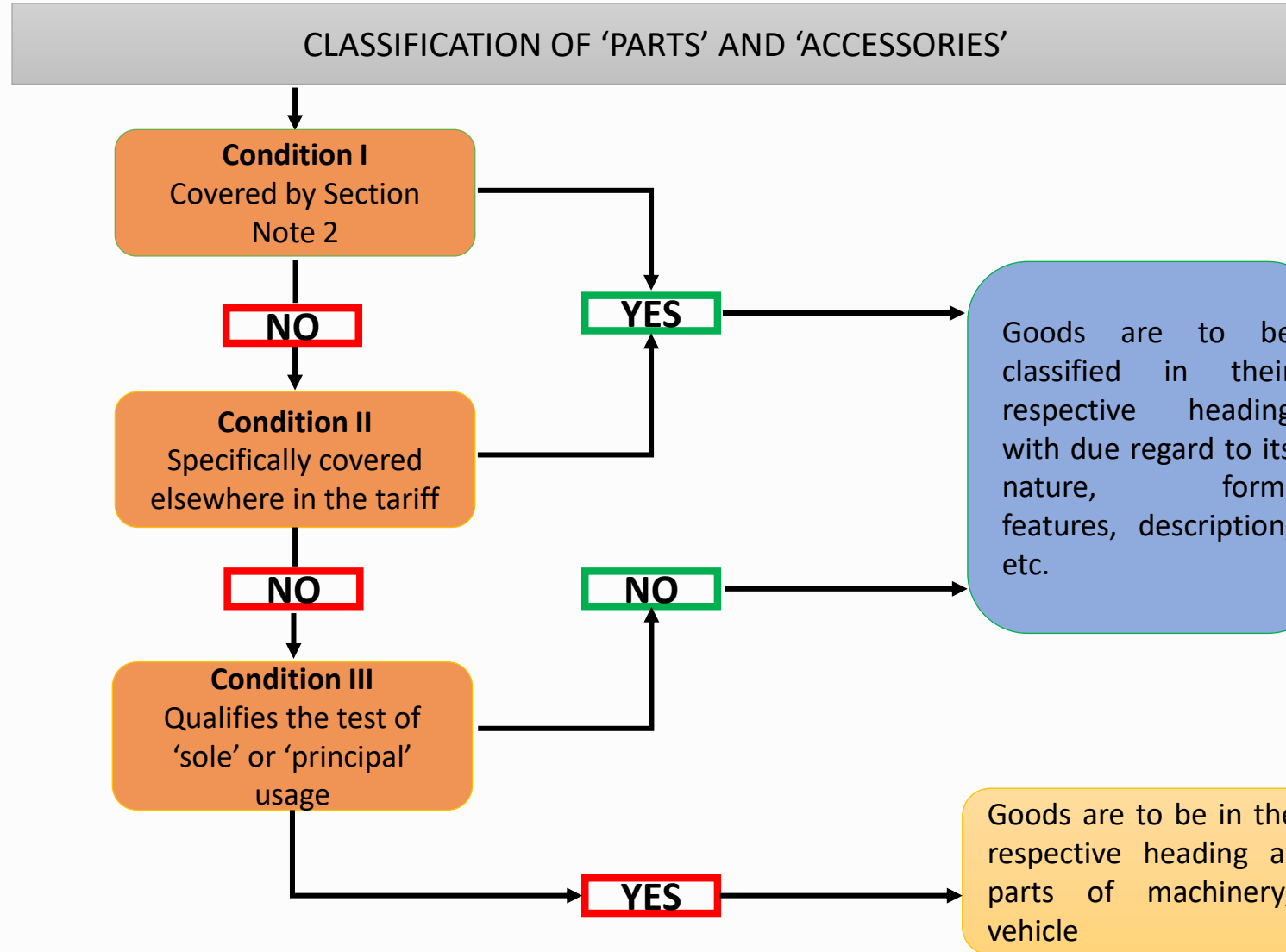
- **'Parts of General Use'** are to be classified in their respective specified headings and not under the heading of the machine where they are used
- Parts of general use are provided in Section Note 2 to Section XVII
- E.g. washers, articles of rubber, nuts, screws,

Condition II

- Parts which are **specifically covered under another specific Chapter heading** even if suitable for use solely or principally with the machines/vehicles
- These are to be classified in their respective heading with due regard to its nature, form, features, description, etc

Condition III

- Parts which are **neither excluded by Section Note 2 nor specifically covered by another specific Chapter Heading**, attract the **test of 'sole' or 'principal' usage** *qua* part or accessory within motor vehicle



.. Supreme Court judgment in Westinghouse Saxby...



SUPREME COURT OF INDIA (3 member bench including CJI)

**Upheld classification of “relays” as parts principally/ solely used with Railways, under Chapter 86 irrespective of the exclusions mentioned in Note 2 of Section XVII
(irrespective of general coverage for relays under 8536)**

01

Overlooking the sole or principal user test is not justified

02

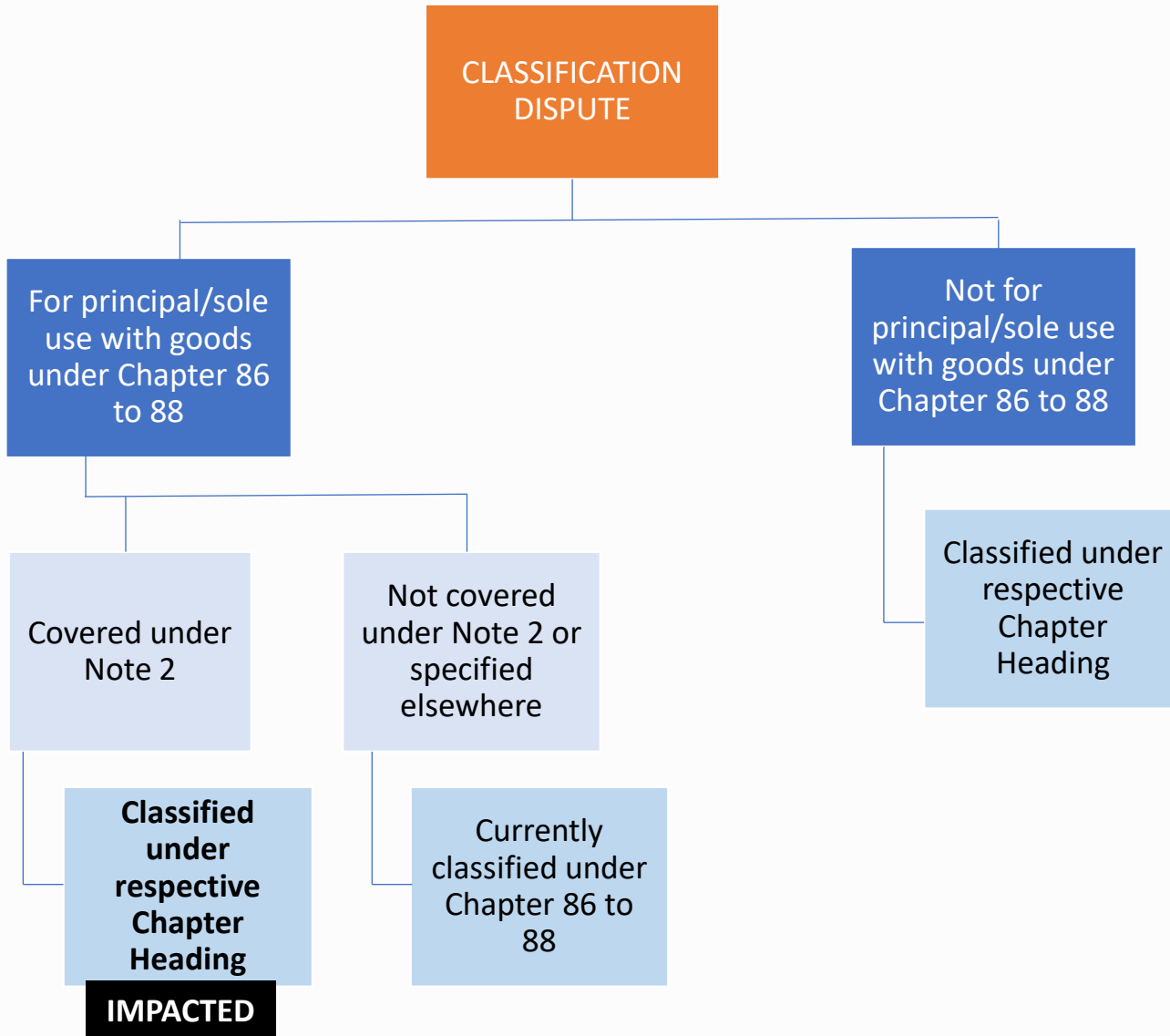
General Rules of Interpretation will come into play upon inability of classification in terms of the Headings and the relevant section or chapter notes

03

Classification should be determined basis ‘predominant use’ or ‘sole/ principal use’ test

The aforesaid judgment created havoc in the industry as classification adopted by the Companies over the period of years came under investigation/ litigation

.. Supreme Court judgment in Westinghouse Saxby...



Instruction no. 1/2022 dated January 5, 2022

- Judgment in case of Westinghouse Saxby does **not refer to its wider applicability to any other issue of a similar nature** as it deals with classification of product falling under Chapter 86. In any event, the Department has filed a review petition against the judgment in case of Westinghouse Saxby.
- **Classification of parts shall be done after taking into consideration HS explanatory notes, section notes, other rulings of the Hon'ble Supreme Court etc.**

CASE STUDY III : CLASSIFICATION OF OPTIC FIBER CABLE

Case Study III : Classification of Optic Fiber Cable ('OFC')

Issue : OFC is covered under different Chapter Heading wherein exemption available *qua* raw materials required for manufacture of such OFC differs

8544 *Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors*

8544 70 *Optical fiber cables*

All raw materials required for manufacture of OFC classifiable under 8544 are exempt from BCD

9001 *Optical fibres and optical fibre bundles; Optical fibre cables other than those of Heading 8544; sheets and plates of polarising Material; lenses (including contact lenses), Prisms, mirrors and other optical elements, of any material, unmounted, other than such Elements of glass not optically worked*

9001 10 00 *Optical fibres, optical fibres bundles and cables*

50% of the raw materials required for manufacture of OFC classifiable under 9001 are exempt from BCD

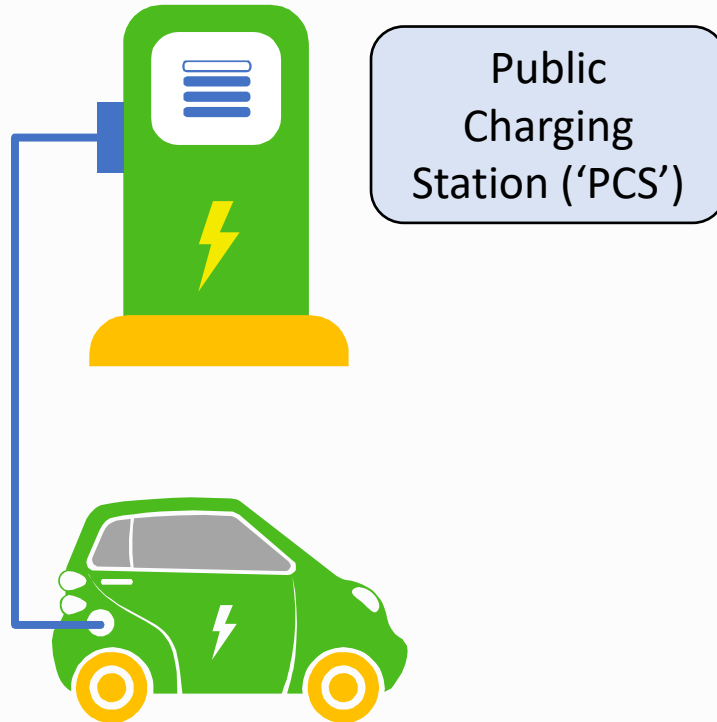
Differentiating factor between 8544 and 9001 : Whether the cables are made up of individually sheathed fibers?

There are advance rulings, tribunal judgments which explains what is individual sheathed fibers

Accordingly, most of OFC manufactured in India is classifiable under 9001

CASE STUDY IV : Taxability of Charging EVs

Karnataka AAR - M/s Chamundeshwari Electricity Supply Corporation Limited



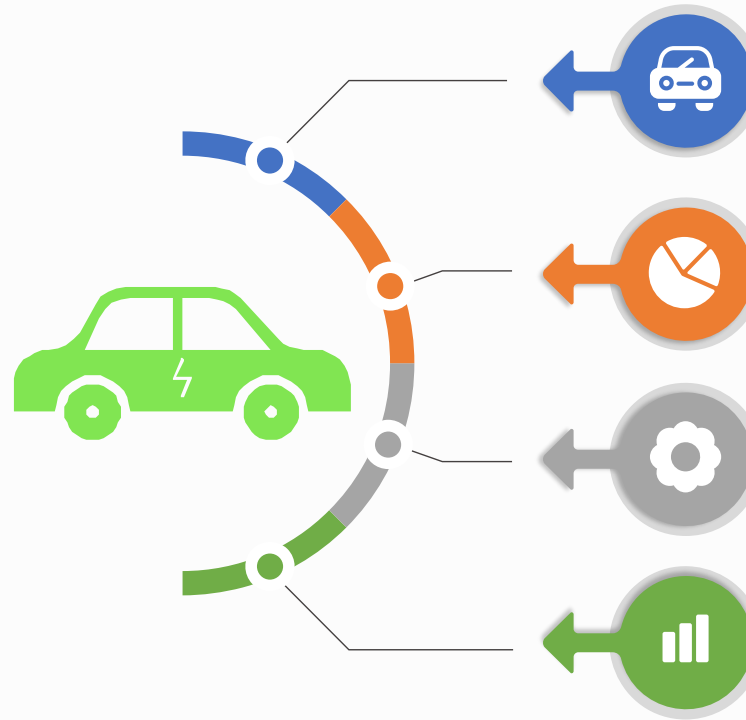
EV CHARGING FEES

- I. Energy Charges – number of units of energy consumed
- II. Service Charges – i.e. cost of setting up service station and operating cost

Whether energy charges will be considered as sale of “electrical energy” and exempt from GST?

Held by AAR

- Electricity is not supplied 'as such'
- It is converted into chemical energy - Consumer receives only chemical energy which is stored in the battery of EV
- **Activity of charging an EV is a supply of service @ 18%**
(SAC - 998714 – Maintenance and repair service of fabricated metal products, machinery and equipment)



Key Considerations

It is mandatory to have a **license** to supply electricity under Electricity Act, 2003 – PCS does have such license

Guidelines by Ministry of Power – Activity of charging EV through a charging station involves 'a service' and does not involve sale of electricity

Divergent views on whether electricity energy or chemical energy is transmitted to EV from charging station?

Concept of **composite/ mixed supply** not deliberated in the AAR ruling

Way Forward in case of Ambiguity

Provisional Assessment

The Importer may clear goods under the provisional assessment and challenge the Bill of Entry before Appellate Authority

Advance Ruling

The importer/ exporter may approach the Customs Advance Ruling Authority providing clarity on the classification of the goods



Beware, Be Vigilant and Be prepared

Caveat - Beware

Estot vigilans –
Be Vigilant

Estote semper parati – Be prepared

“The miracle of modern times is not to fly in the air or to skim the waters, the true miracle is to be able to walk securely on land”



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