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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 302-303 OF 2009

COMMISSIONER OF CENTRAL EXCISE,
DELHI-III ...APPELLANT

VERSUS

M/S. UNI PRODUCTS INDIA LTD. ...RESPONDENT

J U D G M E N T

ANIRUDDHA BOSE, J.

These two appeals against the decision of the Customs Excise & Service Tax Appellate Tribunal (CESTAT) rendered on 16th July, 2008 require adjudication on the question as to whether

"car matting" would come within Chapter 57 of the First Schedule to the Central Excise Tariff Act, 1985 under the heading "Carpets and Other Textile Floor Coverings" or they would be classified under Chapter 87 thereof, which relates to "Vehicles other than Railway or Tramway Rolling-Stock and Parts and Accessories Thereof". The appeals are against a common decision and we shall also deal with both these appeals together in this judgment. The respondent-assessee want their goods to be placed under Chapter heading 5703.90. We shall refer to the specific entries against this item later in the judgment. The respondent, at the material point of time were engaged in the business of manufacture of textile floor coverings and car matting. The subject-goods have been referred to interchangeably by the revenue also as car mattings and car carpets. The respondent, at the material time, were clearing the goods declaring them to be goods against Heading No.570390.90. Effective rate of excise duty on goods under that entry was 8% and education cess at the applicable rate for the subject period. We find this rate of duty,

inter-alia, from the order of the Commissioner dealing with the first and the second show-cause notices. The rate of basic excise duty would have been 16% apart from education cess if these goods were classified against goods specified in heading no.8708.99.00. Altogether three show-cause-notices were issued against the respondent over clearance of goods under the said heading. These notices required them to answer as to why they should not be charged the differential rate of duty and interest. We would like to point out here that in the show-cause notices, the respective chapter sub-headings have been referred to as 8708.99.00 and 570390.90 and in the order of the Tribunal also, the sub-headings have been referred to as such. But the authorities themselves in certain places described the sub-headings in shorter numerical forms, as 5703.90 and 8708.00. We find these minor variations in the paper-book. But this variation of the sub-headings represented in numerical form is not of any significance so far as adjudication of these appeals are concerned. The respondent were also to answer as to why penalty should not be

imposed upon them in terms of Section 38A of the Central Excise Act, 1944 read with Rule 25 of the Rules made thereunder. The first show-cause notice is dated 9th August, 2005 in regard to clearance of goods made during the period between 9th July, 2004 and 31st March, 2005. They had cleared altogether 8,65,777 pieces of those items in different sizes in that period. The second show-cause notice was issued on 2nd May, 2006 and related to clearance of 12,02,482 pieces of the same goods for the period between 1st April, 2005 and 31st January, 2006. The third show-cause notice is of 7th March, 2007 and the clearance involved 20,15,412 pieces from 1st February, 2006 to 31st January, 2007. For the period involved in the third show-cause notice, clearance was made by the respondent under Chapter sub-heading no.570500.19, which carried effective rate of duty @8%.

2. By the time the third show-cause notice was issued, the adjudicating authority of first instance (Commissioner Central Excise, Delhi III) had passed the order against the respondent on 29th September, 2006, upon considering their responses to the said

two show-cause notices. In this judgment, we shall mainly refer to

this order, while examining the decision of the Tribunal. The authorities' stand has been that the subject-items ought to be classified under sub-heading 8708.99.00. Against chapter heading 8708, the goods described are "parts and accessories of motor vehicles of headings 8701 to 8705". The sub-headings against tariff item nos.8701 to 8705 refer to five categories of vehicles. These are (i) tractors (except those falling under 8709), (ii) motor vehicles for the transport of ten or more persons, including the driver, (iii) motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702) including station wagons and racing cars (iv) motor vehicles for transport of goods (v) special purpose motor vehicles, other than those principally designed for the transport of persons or goods. The description of goods in Chapter 87 of the

Central Excise Tariff of India (2004-05) in the eight digit format list the tariff-items of chapter 8708 have been depicted in the following manner:-

"Tariff Item (1)		Description of Goods (2)	Unit (3)	Rate of duty (4)
8708	-	**Parts and accessories of the motor vehicles of headings 8701 to 8705**		
8708 10	-	*Bumpers and parts* thereof:	Kg	16%
8708 10 10	-	For tractors	Kg	16%
8708 10 90	-	Other	Kg	16%
	-	Other parts and accessories of bodies (including cabs):	Kg	16%
8708 21 00	-	Safety seat belts	u	16%
8708 29 00	-	Other	Kg	16%
	-	Brakes and servo-brakes and parts thereof:		
8708 31 00	-	Mounted brake linings	Kg	16%
8708 39 00	-	Other	Kg	16%
8708 40 00	-	Gear boxes	Kg	16%
8708 50 00	-	Drive-axles with differential, whether or not provided with other transmission components	Kg	16%
8708 60 00	-	Non-driving axles and parts thereof	Kg	16%
8708 70 00	-	Road wheels and parts and accessories thereof	Kg	16%
8708 80 00	-	Suspension shock-absorbers	Kg	16%
		Other parts and accessories :		
8708 91 00	-	Radiators	Kg	16%
8708 92 00	-	Silencers and exhaust pipes	Kg	16%

8708 93 00	-	Clutches and parts thereof	Kg	16%
8708 94 00	-	Steering wheels, steering columns and steering boxes	Kg	16%
8708 99 00	-	Other	Kg	16% ”

3. As would be evident from the above-referred table, there are total seventeen items under the said sub-heading of tariff-item specified as parts and accessories (including those referred to as "other") and the item against which the excise authorities want the car mattings to be treated is in the nature of a residuary item, referred to in that table as "other". On the other hand, the relevant parts of Chapter 57 of Central Excise Tariff of India, 2004-2005 stipulates:-

> "**Notes**:
>
> 1. For the purposes of this Chapter, the term 'carpets and other textile floor coverings' means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes article having the characteristics of textile floor coverings but intended for use for other purposes.

Heading No.	Sub-heading No.	Description of goods
(1)	(2)	(3)
57.01	xx	xx
57.02		**Carpets and other textile floor coverings (other than those of heading No. 57.01), knotted, woven, tufted, or flocked, whether or not made up.**
		In or in relation to the manufacture of which any process is ordinarily carried on with the aid of machines:
	5702.11	Of coconut fibres (coir)
	5702.12	Of jute
	5702.19	Othe Other
	5702.90	Other
57.03		**Other carpets and other textile**

	floor coverings, whether or not made up
5703.10	Of coconut fibres (coir)
5703.20	Of jute
5703.90	Other”

4. Before the authority of first instance (Commissioner, Central Excise, Delhi-III, Gurgaon), the respondent explained their manufacturing process in course of hearing on the first two show-cause notices. This is recorded in the order of the Commissioner passed on 29th September, 2006. We reproduce below that part from the said order:-

> “…….Depending upon the variety of Moulded Car Carpets, the fibre i.e. polyester/polypropylene is fed in opening and blending equipment’s, from where it is transported to carding equipment’s. After carding, the same is put for Needle punching. After needle punching, the fabric is then chemically treated in order to provide strength to the carpet fabric as per customer requirement. After chemical binding, the fabric is laminated as per customer requirement. The laminated

> fabric/impregnated fabric is then moulded as per the requirement and trimmed to be fixed in the vehicle. After trimming the Namda felt is fixed on the back of the carpet as per requirement. Thereafter, the child parts as well as grippers are fixed wherever required. The resultant product is the moulded car carpets which was classified under sub-heading 5703.90."
>
> (quoted from the order of the Commissioner)

5. The respondent's argument that the Chapter heading 5703.90 covered carpets and other textile floor coverings and they were manufacturing those items only was rejected by the Commissioner. This plea, however, was subsequently accepted by the Tribunal.

6. Reference has been made before us to **"Harmonized Commodity Description and Coding System"**, **Explanatory Notes** issued by the World Customs Organisation (2002). These Notes, termed HSN Explanatory Notes have been referred to by the learned Counsel for both the parties. Strong persuasive value of these Explanatory Notes has been recognised by this Court in

the cases of **CCE vs. Wood Craft Products Ltd.** [(1995) 3 SCC 454], **Collector of Central Excise vs. Bakelite Hylam** [1997 (91) E.L.T. 13 (S.C.)], **Collector of Customs vs. Business Forms Ltd.** [(2005) 7 SCC 143] and **Holostick India Ltd. vs. Commissioner of Central Excise** [(2015) 7 SCC 401]. General Rules for the Interpretation of the Harmonized System lay down the Principles of Interpretation for classification of Goods in the Nomenclature. Rule 3(a) thereof provides:-

> "Rule 3(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods."

Clause 3 (a) of the **General Rules For the Interpretation** of First Schedule to the Central Tariff Act, 1985 in cases where possibilities arise of a single item being classified under more than

one head corresponds to the said Rule 3(a) of the **Explanatory Notes**.

The Explanatory Note IV (b) to this Rule i.e. 3 (a), of the Rules for Interpretation of the **HSN Explanatory Notes** specifies:-

> "(iv) It is not practicable to lay down hard and fast rules by which to determine whether one heading more specifically describes the goods than another, but in general it may be said that:-
>
> (a) xx xx xx
>
> (b) If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.
>
> Examples of the latter category of goods are:
>
> (1) Tufted textile carpets, identifiable for use in motor cars, which are to be classified not as accessories of motor cars in heading 87.08 but in heading 57.03, where they are more specifically described as carpets.

(2) ………”

7. Section Note 2 of Section XVII of Central Excise Tariff excludes eleven sets of items from being treated as parts and accessories. Section Note 3 further provides:-

> “3. Refences 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 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.”

8. There is reference to “PARTS AND ACCESSORIES” under the main heading “GENERAL”, in Section XVII of the HSN Explanatory Notes, 2002. Under the sub-heading “(iii) PARTS AND ACESSORIES”, a three-layer test has been postulated. It is on satisfying all of these conditions a particular item would come under that chapter head. The sub-head III reads:-

> “(III) PARTS AND ACCESSORIES

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

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

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

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

and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below)."

9. Paragraph (B) and relevant extract from Paragraph (C) to the same document stipulates: -

“**(B) Criterion of sole or principle use.**

(1) Parts and accessories classifiable both in Section XVII and in another Section.

Under Section Note 3, parts and accessories which are not suitable for use **solely or principally** with the articles of Chapters 86 to 88 are **excluded** from those Chapters.

The effect of Note 3 is therefore that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined but its **principal use.** Thus the steering gear, braking systems, road wheels, mudguards, etc., used on many of the mobile machines falling in Chapter 84, are virtually identical with those used on the lorries of Chapter 87, and since their principal use is with lorries, such parts and accessories are classified in this Section.

(2) Parts and accessories classifiable in two or more headings of the Section.

Certain parts and accessories are suitable for use on more than

one type of vehicle (motor cars, aircraft, motorcycles, etc.); examples of such goods include brakes, steering systems, wheels, axles, etc. Such parts and accessories are to be classified in the heading relating to the parts and accessories of the vehicles with which they are **principally used.**

(C) Parts and accessories covered more specifically elsewhere in the Nomenclature –

Parts and accessories, even if identifiable as for the articles of this Section, are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g: -

xx xx
xx xx
xx xx

(7) Textile carpets (Chapter 57)

xx xx
xx xx"

Moreover, the **Explanatory Notes** dealing with parts and accessories under chapter-head 87.08 includes floor mats (other than of textile materials or unhardened vulcanised rubber).

10. The Commissioner found that car mattings satisfied all the tests enumerated in the said explanatory notes of HSN to be treated as parts and accessories classifiable under Chapter 87.08.

11. One of the reasons for such finding was that the car mattings were suitable for use solely or principally with the vehicle and that were not excluded by provisions of Notes to Section XVII. Then he applied the "market test", and concluded that if anybody asked for car matting in the market, the consumer would get a product which could only be used in a car, with fixed length and width. In his order, the Commissioner found that what was excluded was textile carpets of Chapter 57 and not car mattings.

12. The Commissioner, thus, did not accept the assessee's stand and observed:-

"(A) what is excluded are the Textile carpets of Chapter 57 and not car mattings. One can only safely infer of exclusion of car matting in the list, provided, if it is established that "car mattings" are nothing but ordinary textile carpets of Chapter 57. But as has been already discussed supra car mattings are commercially known differently in the market than ordinary textile carpets of Chapter 57. From the point of view of its manufacturing process these are entirely different from ordinary carpets. My discussion and logic given in para 18.7.1 clearly indicates that, the "car mattings" are different products. Board's Circular No.117/28/05-CX dt. 17.4.95 clearly states car mattings different product all together.

The observations advanced in the judgments of Hon'ble Tribunal in the cases of Sterling India (2000(115) ELT-807-Trib., Jyoti Carpet Industries (2001 (132) ELT-458-Trib-Delhi), Swaraj Majda (1993 (68 ELT 258 Trib) clearly indicates that "car mattings" are entirely different than ordinary textile carpets of Chapter 57 (All these judgments are discussed in latter paras)

B-1 The HSN Clarificatory Notes on Chapter 57 (page 783 of HSN Clarificatory Notes Volume-II) states the following category of products are classifiable under Chapter 57:

> "The above products are classified in this chapter whether made-up (i.e. made directly to size, hemmed, lined, fringed, assembled etc.) in the form

> of carpet squares, beside rugs, hearth rugs, or in the form of carpets for installation in rooms, corridors, passages or stairs, in the lengths for cutting and making up. They may also be impregnated (i.e. with latex) or packed with woven or non-woven fabrics or with cellular rubber or plastics."

B-2 From the above notes it is clear that not only the carpets in running length, but also made ups (i.e. made directly to size, hemmed, lined, fringed assembled etc.) in the form of carpet squares, or in the form of carpet installation in rooms, corridors, passages or stairs are required to be classified under Chapter 57.

B-3 From the above explanation, it is seen that, carpets covered under Chapter 57 are simple carpets in running length may be made up directly to size, hemmed, lined, fringed, assembled etc. in the form of carpet squares, or in the form of carpet installation in rooms, corridors, passages or stairs and not certainly covers car mattings which undergo further processing like moulding, chemical treatment to provide strength to the carpet fabric as per customer requirement, lamination as per customers requirements, and trimming for fixing in the vehicle with NamdA fixing on the back. The car mattings although is of textile carpet origin are not ordinary carpets as

explained in the Explanatory Notes of HSN for Chapter 57 and certainly not covered under Chapter 57.

When car mattings are not by definition covered under Chapter 57 (as explained above taking reference of the clarificatory notes of HSN) those are not excluded from para-C of HSN General Explanatory Notes on Section XVII referring to parts and accessories Part-III para (c) (Sl.No.7) (page 1412 of HSN Explanatory Notes Vol.4).

Thus "car mattings" satisfies the test 2-C.

18.7. From the above discussion it is clear that "car matting" satisfies all the tests enumerated in the explanatory notes of HSN for Chapter XVII, to be treated as a part and accessory classifiable under chapter 87.08 of motor vehicles of Chapter 87.05-87.07."

13. The other order of Commissioner in connection with the third show-cause notice was passed on 5th January, 2007. The reasoning and conclusion of this order was in the same line with the order passed on 29th September, 2006. Thus, in both the orders the Commissioner sustained the directions for payment rejecting

the reply of the assessee and the orders charged on the respondent duty differential and interest and also imposed penalty.

14. The two appeals of the respondent before the Tribunal were decided in their favour by a composite decision. This decision is assailed before us by the revenue authorities in these two appeals. The Tribunal observed and held:-

> "**5.3** We find that chapter 57 covers not only carpets but also other floor coverings. What has to be considered is that between the terms 'carpets and other floor coverings' the terms 'parts and accessories' which can be considered more specific. Even if the claim of the Department that at no stage the carpets come into existence is accepted, it cannot be denied that the article can be considered as other floor coverings meant for other application. We also find that in the interpretative notes for rule 3(a) in HSN, where by way of an example, it has been clarified that "textile carpet identifiable for use in motor cars to be classified not as accessories of motor cars in heading 8708 but in heading 5703 where they are more specifically described as carpets". Though, in common parlance the impugned product may not be considered as carpets, in view of the wordings of the chapter, the section notes, chapter notes and the explanatory notes extracted above we are of the considered opinion that the impugned goods is correctly

> classifiable under chapter heading 570390.90 as claimed by the assessee."
>
> 6. The orders of commissioner are set aside and the appeals are allowed with consequential relief."

15. Chapter Notes to Chapter 57 of the HSN Explanatory Notes, relating to carpets and Other Textile Floor Coverings are relevant for effective adjudication of these two appeals. The said Chapter Notes read:-

> "**Chapter Notes.**
>
> 1.- For the purposes of this Chapter, the term "carpets and other textile floor coverings" means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes.
>
> 2. This Chapter does not cover floor covering underlays.
>
> **GENERAL**
>
> This Chapter covers carpets and other textile floor coverings in which textile materials serve as the exposed surface of the article when in use. It includes articles having the characteristics of textile floor

coverings (e.g., thickness, stiffness and strength) but intended for use for other purposes (for example, as wall hangings or table covers or for other furnishing purposes).

The above products are classified in this Chapter whether made up (i.e., made directly to size, hemmed, lined, fringed, assembled, etc.), in the form of carpet squares, bedside rugs, hearth rugs, or in the form of carpeting for installation in rooms, corridors, passages or stairs, in the length for cutting and making up.

They may also be impregnated (e.g., with latex) or backed with woven or nonwoven fabrics or with cellular rubber or plastics."

16. The said instrument, i.e. HSN Explanatory Notes deal with four entries against tariff item no.5703 in following terms:-

"**57.03 – CARPETS AND OTHER TEXTILE FLOOR COVERINGS, TUFTED, WHETHER OR NOT MADE UP.**

5703.10 - **Of wool or fine animal hair**

5703.20 - **Of nylon or other polyamides**

5703.30 - **Of other man-made textile materials**

5703.90 - **Of other textile materials**

> This heading covers tufted carpets and other tufted textile floor coverings produced on tufting machines which, by means of a system of needles and hooks, insert textile yarn into a pre-existing backing (usually a woven fabric or a nonwoven) thus producing loops, or, if the needles and hooks are combined with a cutting device, tufts. The yarns forming the pile are then normally fixed by a coating of rubber or plastics. Usually before the coating is allowed to dry it is either covered by a secondary backing of loosely woven textile material, e.g., jute, or by foamed rubber.
>
> Products of this heading are distinguished from the tufted textile fabrics of heading 58.02 by, for example, their stiffness, thickness and strength, which render them suitable for use as floor coverings."

17. Learned counsel for the revenue has argued, referring to three earlier orders of the Customs Excise and Gold (Control) Appellate Tribunal (CEGAT-the predecessor of CESTAT) and has also relied on a circular issued by the excise authorities dated 17th April, 1995. The said circular (bearing no.117/28/95-CX) specifies:-

“Car Mattings made from non-woven materials in roll form – Dutiability of

Circular No.117/28/95-CX, dated 17-4-1995

[From F.No.57/1/94-CX.1]

Government of India
Ministry of Finance (Department of Revenue)
New Delhi

Subject: Dutiability of Car Mattings made from non-woven materials in roll form – Regarding

I am directed to refer to Board’s <<15391$Circular No.5/Floor-Coverings/87>> (F. No.57/1/87-CX.1), dated 23-6-1987 wherein it was clarified that duty liability would not be attracted on car mattings made from duty paid non-woven material in roll form. It has been brought to the notice of the Board that this position may not hold good after extension of Modvat to these items.

2. The matter has been re-examined by the Board. The Board is of the view that there are two clear stages i.e. non-woven material emerging as excisable and dutiable goods in roll form and finally car mattings emerging as different final products. Duty has to be charged at both stages as the processes of conversion of non-woven material in roll form into car mattings involves the processes of cutting, stitching, sizing etc., and both products are known differently in the market.

3. It is, therefore, clarified that appropriate Central Excise Duty is payable on floor coverings in the form of non-woven

material in rolls when cleared from the factory, as well as, on the car mattings subsequently manufactured out of duty paid floor coverings in the form of non-woven material in rolls.

4. The Board's earlier <<15391$Circular No.5/Floor Coverings/87>> (F. No.57/1/87-CX.1) dated 23-6-1987 may be treated as withdrawn and assessments may be finalized in terms of the revised instructions."

This circular deals with a situation in which non-woven materials in roll form which were excisable goods, emerged as a different product when the former is transformed as car matting upon application of certain process. For this reason, it was stipulated, that duty would be leviable at two stages. But in these two appeals, we are to determine as to whether car mattings came within the aforesaid tariff under Chapter 57. These appeals do not raise the question as to whether car mattings themselves would be subjected to excise duty or not. The question here is under which tariff-head the duty should be paid. The aforesaid circular does not assist the revenue in the subject appeals.

18. In the three Tribunal decisions cited on behalf of revenue authorities, such car mattings were treated as parts and accessories of motor cars. The first case cited is that of **Collector of Central Excise, Bombay-II** vs. **Sterling India** [(2000) 115 ELT 807]. This was a decision of CEGAT, New Delhi. Before the Tribunal in this case, the assessee went unrepresented. The goods involved were canvas canopy, floor mattings and seat covers. The Tribunal upheld the Collector's order that the said articles were not classifiable as floor coverings under sub-heading No.5702.90 of the Tariff and those were to be classified under Heading No. 8708.00. The order of the Tribunal does not contain any analysis or reasoning and reads: -

> "**3.** We have gone through the facts on record. We find that both the Asstt. Collector of Central Excise, Bombay, who had adjudicated the matter and the Collector of Central Excise (Appeals), Bombay, had held that the goods in dispute were not the carpets and floor mattings but were accessories of motor vehicles. The goods in dispute are canvas canopy, floor matting and seat covers for motor vehicles.

> Floor matting was made from jute coated with PVC. Other items also were not used as floor coverings. The Collector of Central Excise (Appeals) has also referred to the HSN Explanatory Notes and the relevant Chapter Notes to arrive at his conclusion that the type of the goods involved in these proceedings were not to be classifiable as floor coverings."

19. The next case is that of **Collector of Central Excise** vs. **Swaraj Mazda** [(1993) 68 ELT 258]. This is also a decision of CEGAT. This case relates to availability of Modvat credit on floor mats for motor vehicles. In this case floor mats had been cleared on payment of duty under sub-heading No.8708, which covered parts and accessories of motor vehicles of heading 87.01 to 87.05. Applicability of that entry was not in lis in that appeal. The Tribunal found that floor mats could be an item entering into the stream of completion of the manufactured product rendering it fit for marketing. On that ground input credit under the Modvat provisions was allowed. The third case, which was cited on behalf of the revenue was that of **Jyoti Carpet Industries** vs.

Commissioner of Central Excise, Jaipur-I [(2001) 132 ELT 458] decided by the CEGAT. This was a case where the manufacturer classified textile floor covering of jute as product under sub-heading 5703.20 in the relevant years. The assessee in this case had been procuring raw-materials from different manufacturers and out of such materials, they had been producing car mattings and other mattings as well, such as bath mats, telephone mats, floor foot mats etc. with the aid of power operated machines. The process of manufacture involved cutting as per standards, overlocking and stitching etc. Following the case of **Sterling India** (supra), it was held that floor mats of cars could be classifiable under head No.8708. But again, like in the case of **Sterling India** (supra), the Tribunal has not given any reasoning for such classification in this decision. The Tribunal in these appeals, following the case of **Sterling India** (supra) found that the subject-goods were classifiable under Chapter 8708.

All these three cases have been decided by the Tribunal, which obviously has no precedent value for us. We however,

discussed these cases only for the purpose of ascertaining as to whether the revenue authorities had been treating car mats as a subject head under sub-heading 8708, on proper analysis of competing claim of the assessees to include them in sub-heading 5703. We do not find so from these decisions of the Tribunal.

20. There are authorities in which it has been held that the popular meaning among consumers would be a major factor for interpretation of dispute relating to classification. This principle has been laid down in the cases of **Plasmac Machine Manufacturing Co. Pvt. Ltd.** vs. **Collector of Central Excise, Bombay** [1991 Supp.(1) SCC 57] and **Dabur India Ltd.** vs. **Commissioner of Central Excise, Jamshedpur** [(2005) 4 SCC 9]. In the case of **Dabur India Ltd (supra)**, it has been held: -

> "**9.** From the abovementioned authorities, it is clear that in classifying a product the scientific and technical meaning is not to be resorted to. The product must be classifiable according to the popular meaning attached to it by those using the product. As stated above, in this case the appellants have shown that all the ingredients in the product are those which

> are mentioned in Ayurvedic textbooks. This by itself may not be sufficient but the appellants have shown that they have a Drug Controller's licence for the product and they have also produced evidence by way of prescriptions of Ayurvedic doctors, who have prescribed these for treatment of rickets. As against this, the Revenue has not made any effort and not produced any evidence that in common parlance the product is not understood as a medicament."

21. In the case of **A.P. State Electricity Board** vs. **Collector of Central Excise, Hyderabad** [(1994) 2 SCC 428], the marketability test has been applied, which is, in a way, a corollary to the "popular meaning" test. In this case it has been held: -

> "**10.** It would be evident from the facts and ratio of the above decisions that the goods in each case were found to be not marketable. Whether it is refined oil (non-deodorised) concerned in *Delhi Cloth and General Mills* or kiln gas in *South Bihar Sugar Mills* or aluminium cans with rough uneven surface in *Union Carbide* or PVC films in *Bhor Industries* or hydrolysate in *Ambalal Sarabhai* the finding in each case on the basis of the material before the Court was that the articles in question were

not *marketable* and were not known to the market as such. The ‘marketability’ is thus essentially a question of fact to be decided on the facts of each case. There can be no generalisation. The fact that the goods are not in fact marketed is of no relevance. So long as the goods are marketable, they are goods for the purposes of Section 3. It is also not necessary that the goods in question should be generally available in the market. Even if the goods are available from only one source or from a specified market, it makes no difference so long as they are available for purchasers. Now, in the appeals before us, the fact that in Kerala these poles are manufactured by independent contractors who sell them to Kerala State Electricity Board itself shows that such poles do have a market. Even if there is only one purchaser of these articles, it must still be said that there is a market for these articles. The marketability of articles does not depend upon the number of purchasers nor is the market confined to the territorial limits of this country. The appellant's own case before the excise authorities and the CEGAT was that these poles are manufactured by independent contractors from whom it purchased them. This plea itself — though not pressed before us — is adequate to demolish the case of the appellant. In our opinion, therefore, the conclusion arrived at by the Tribunal is unobjectionable.”

22. Emphasis on technical meaning has been highlighted in the case of **Commissioner of Central Excise** vs. **Wockhardt Life Sciences Limited** [(2012) 5 SCC 585] for resolving classification related disputes of goods. In this case, it has been held that a commodity cannot be classified in a residuary entry if there is a specific entry, even if the specific entry requires the product to be understood in a technical sense.

23. "The common parlance test", "marketability test", "popular meaning test" are all tools for interpretation to arrive at a decision on proper classification of a tariff entry. These tests, however, would be required to be applied if a particular tariff entry is capable of being classified in more than one heads. So far as subject-dispute is concerned, we have already referred to Chapter note 1 of Chapter 57. This note stipulates that carpets and other floor coverings would mean floor coverings in which textile materials serve as the exposed surface of the Article when in use.

This feature of the car mats has not really been rejected by the revenue authorities as untrue in the order of the Commissioner, before whom assertion to that effect was made by the respondent.

24. The core issue in these appeals is as to whether car mats come under chapter-heading 57.03 or not. In the second appeal, the numerical representation of the product, as claimed by the assessee, was different but that difference is not of much significance. Revenue's case is that the goods are manufactured in such a way that these can be used as accessories of cars. The Tribunal found that though in common parlance the products involved may not be considered as carpets, in view of the wordings of the chapter, section notes, chapter notes and explanatory notes, the goods were classifiable under chapter heading 570390.90.

25. We do not find any error in such reasoning. Chapter 87 of the Central Excise Tariff of India does not contain car mats as an independent tariff entry. We have reproduced earlier the various

parts and accessories listed against tariff entry 8708. All of them are mechanical components, and revenue want car mats to be included under the residuary sub-head "other" in the same list. The HSN Explanatory Notes dealing with interpretation of the rules specifically exclude "tufted textile carpets, identifiable for use in motor cars" from 87.08 and place them under heading 57.03. Revenue's argument is that the Explanatory Notes have persuasive value only. But the level or quality of such persuasive value is very strong, as observed in the judgments of this Court to which we have already referred. Moreover, the Commissioner himself has referred to the Explanatory Notes in the order-in-original while dealing with the respondent's stand. Thus, we see no reason as to why we should make a departure from the general trend of taking assistance of these Explanatory Notes to resolve entry related dispute. Now, on referring to these Explanatory Notes, we find that one category of carpets [Textile carpets (Chapter 57)] has been excluded specifically from parts and accessories. In our opinion, the subject-item does not satisfy the

third condition specified in Section XVII of the Explanatory Notes in relation to "III-Parts and Accessories". A plain reading of clause (C) thereof, which we have quoted above, excludes "textile carpets" (Chapter 57).

26. The main argument of the appellant is that because the car mats are made specifically for cars and are used also in cars, they should be identified as parts and accessories. But if we go by that logic, textile carpets could not have been excluded from Parts and Accessories. We have referred to such exclusion in the preceding paragraph. It has also been urged on behalf of the revenue that these items are not commonly identified as carpets but are different products. The Tribunal on detailed analysis on various entries, Rules and Notes have found they fit the description of goods under chapter heading 570390.90. We accept this finding of the Tribunal. Once the subject goods are found to come within the ambit of that sub-heading, for the sole reason that they are exclusively made for cars and not for "home use" (in broad terms), those goods cannot be transplanted to the residual entry

against the heading 8708. As we find the subject-goods come under the chapter-heading 570390.90, and the other entry under the same Chapter forming the subject of dispute in the second order of the Commissioner, in our opinion, there is no necessity to import the "common parlance" test or any other similar device of construction for identifying the position of these goods against the relevant tariff entries.

27. For these reasons, we dismiss the appeals. The impugned decision of the Tribunal is sustained.

28. Any connected applications shall also stand disposed of.

There shall be no order as to costs.

..…………………………..J.
(Deepak Gupta)

……………..………………..J.
(Aniruddha Bose)

New Delhi,
May 1, 2020.