

The Supreme Court Bench comprising Hon'ble Mrs. Justice B.V. Nagarathna and Hon'ble Mr. Justice Nongmeikapam Kotiswar Singh on 24-9-2024 **admitted** Civil Appeal No. 12233 of 2018 with C.A. Nos. 9383 of 2019, 6521 of 2021, 2882 of 2022 and 4588 of 2022. Civil Appeal No. 12233 of 2018 filed by BMW India Pvt. Ltd. and Civil Appeal No. 9383 of 2019 filed by Commissioner of Customs (Port Import) Chennai-V against the CESTAT Final Order No. 42430/2018, dated 17-9-2018 as reported in **2019 (366) E.L.T. A28 (Tri. - Mad.)** (*BMW India Pvt. Ltd. v. Commissioner*). Civil Appeal No. 6521 of 2021 filed by Bird Retail Pvt. Ltd. and Civil Appeal Nos. 2882 & 4588 of 2022 filed by Rony Abraham against CESTAT Final Order No. A/50362/2020-CU(DB), dated 24-2-2020 as reported in **2020 (373) E.L.T. 267 (Tri. - Del.)** (*Bird Retail Pvt. Ltd. v. Commissioner*). While admitting the appeal, the Supreme Court passed the following order :

“Appeals admitted.

Hearing expedited.

List on 27-11-2024.”

The Appellate Tribunal in its impugned order had held as follows :

(1) In view of Circular No. B-1/3/2011-TRU, dated 25-3-2011, imported goods viz. engine assembly, transmission sub- assembly/gearbox of motor cars not mounted on chassis or a body assembly and incorporating critical parts and components like crankshaft, cylinder heads, crank cases, cylinder head covers, flywheels, pistons, exhaust and inlet valves, etc., that were listed with their corresponding part numbers in the packing list and supplied by the manufacturer as a single product in CKD form having Unique Identification Number engraved on it, were to be considered in preassembled form even though the manufacturer had not supplied ‘add-on parts’ like nuts, screws, hoses, cables, drive shafts, gear shaft, levers, cross members and mounting brackets, which were to be fitted with the imported goods in the importer’s unit. Such goods were not eligible to concessional rate of BCD @ 10% during period 1-3-2011 to 11-4-2013 in terms of Sl. No. 344(1)(a) of Notification No. 21/2002-Cus., dated 1-3-2002 as amended by Notification Nos. 21/2011-Cus., dated 1-3-2011 & 31/2011-Cus., dated 24-3-2011 and Serial No. 437(1)(a) of Notification No. 12/2012-Cus., dated 17-3-2012 superseding earlier Notification No. 21/2002-Cus. Import of such CKD kits during period 24-3-2011 to 11-4-2013 was to suffer 30% BCD under Entry 344(1)(b) of the said Notification. But their import during the period 1-3-2011 to 23-3-2011 had attracted BCD @ 60%.

(2) Engine assembly, transmission sub-assembly/gearbox of motor cars incorporating critical parts and components like crankshaft, cylinder heads, crank cases, cylinder head covers, flywheels, pistons, exhaust and inlet valves, etc. imported in CKD and mated to each other or mounted on chassis/body assembly were covered under residual Entry 344(2) and attract BCD @ 60%. The import of these goods would have attracted the lowest rate of 10% BCD only when they were in completely knocked down condition, i.e. not in pre-assembled condition.

(3) Levy of Customs duty on imported goods, always being in the condition in which they are imported, the examination of goods at port at the time of import alone was relevant to determine the exact nature for the purpose of valuation or eligibility to any exemption Notification. The contention that no reliance could be placed on the examination report given by the expert after physical examination of the goods at port and not by visiting their factory and physically observing the assembly operations undertaken there with respect to the imported goods, was not

acceptable. The report submitted by the experts appointed by the importer was held to be not reliable as the same was based upon their visits to importer's unit and examination of goods there and not at the port at the time of import.

(4) Ambiguity existed in exemption notification must be interpreted in favour of the Revenue and not in favour of the assessee as laid down by the Supreme Court in *Dilip Kumar & Company* as reported in 2018 (361) E.L.T. 577 (S.C.).

(5) The word 'and' appearing between words 'gearbox' and 'transmission' in Serial No. 437(1)(a) of Notification No. 12/2012-Cus., dated 17-3-2012 is to be read as 'or' in disjunctive sense and the term should be interpreted as 'engine or gearbox or transmission mechanism in a pre-assembled condition'. Any other interpretation of the term would lead to absurdity and defeat the intention of the legislature, which obviously is to extend the lowest concessional rate of BCD to the highest level of 'knocked down parts'.

[BMW India Pvt. Ltd. v. Commissioner - 2025 (391) E.L.T. A42 (S.C.)]

(1) Plastic stickers — Whether goods imported declaring same as plastic stickers were to be classified under Tariff Item 3919 90 10 of Customs Tariff Act, 1975 by relying upon CIPET report instead of report of Customs Laboratory contrary to such CIPET report? (2) Sample testing of plastic articles — Whether CIPET report should be given precedence over test report of Customs Laboratory? (3) Valuation (Customs) — Whether charge of undervaluation of plastic stickers could be sustained merely on ground that proprietor of importing firm in SEZ selling such goods was one of partners in buyer firm in DTA? (4) Valuation (Customs) — Whether importing/selling firm and buyer firm could be said to be related to each other merely on ground that proprietor of former was one of partners in later firm?