

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

P R E S E N T

Hon'ble Mr. Justice Syed Shah Mohammed Quadri (Chairman)
Mr. Somnath Pal (Member)
Dr. B.A. Agrawal (Member)

Friday, the twenty-eight October of Two Thousand Five

Ruling No. AAR/12(Cus)/2005
in
Application No.AAR/56(Cus)/2005

Applicant	M/s Bayerische Motoren Werke Aktiengesellschaft (in short "BMW AG") Petuelring 130 80788 Munich Germany
Commissioner concerned	Commissioner of Customs, Airport & Air Cargo, Chennai. Commissioner of Customs, Port-Import, Chennai
Present for the applicant	Mr. J. Vellapally, Sr.Advocate Mr. Ravi Nath, Advocate Ms. Kumkum Sen, Advocate Mr. Rajesh Roshan, Advocate Mr. Gerhard Lindner Mr. Peter Baumgartner
Present for the Commissioner	Mr. A.K. Roy, Joint CDR CESTAT, New Delhi. Mr. S. Chandrasekaran Assistant Commissioner Appraising Group, Custom House Chennai.

RULING OF THE AUTHORITY

In view of the opinion of the majority of the Members of the Authority on the question set forth in the application, it is ruled that import of car parts as listed in Annexure-III to the application would be considered as import of motor car as a completely knocked down unit (CKD), eligible to the concessional rate of customs duty of 15% [applicable to motor cars if imported as completely knocked down (CKD) unit] being covered by Entry 344 of CTH No. 8703 of Notification

No. 21/2002-Cus. Dated 1.3.2002 as amended by Notification No. 11/2005-Cus.,
Dated 1.3.2005.

Pronounced in the open Court of the Authority on this 28th day of
October, 2005.

Sd/-
(Somnath Pal)
Member

Sd/-
(Justice S.S.M. Quadri)
Chairman

Sd/-
(B.A. Agrawal)
Member

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

PRESENT

**Hon'ble Mr.Justice Syed Shah Mohammad Quadri (Chairman)
Mr.Somnath Pal (Member)
Dr.B.A.Agrawal (Member)**

Friday, the twenty-eight October of Two Thousand Five

**Ruling No. AAR/12(Cus)/2005
in
Application No.AAR/56(Cus)/2005**

Applicant	M/s Bayerische Motoren Werke Aktiengesellschaft (in short "BMW AG") Petuelring 130 80788 Munich Germany
Commissioner concerned	Commissioner of Customs, Airport & Air Cargo, Chennai. Commissioner of Customs, Port-Import, Chennai
Present for the applicant	Mr. J. Vellapally, Sr.Advocate Mr. Ravi Nath, Advocate Ms. Kumkum Sen, Advocate Mr. Rajesh Roshan, Advocate Mr. Gerhard Lindner Mr. Peter Baumgartner
Present for the Commissioner	Mr. A.K. Roy, Joint CDR CESTAT, New Delhi. Mr. S. Chandrasekaran Assistant Commissioner Appraising Group, Custom House Chennai.

R U L I N G

(By Mr. Justice S.S.M. Quadri for himself and Dr. B.A. Agrawal)

We have perused the ruling drafted by the learned Member of the Authority - Mr. Somnath Pal. After succinctly stating the facts and the contentions urged before us, he framed the following two issues (see para 14): -

- (a) *Whether the goods proposed to be imported by the applicant are covered by Sl. No. 344 of the exemption Notification. This would include the question of applicability of Interpretative Rule*

2(a) to the description of goods specified in column (3) of the aforesaid Sl.No. of exemption Notification and implications thereof;

- (b) *In case the goods are held to be covered by Sl. No. 344 of the Notification, then whether sub-clause (1) or sub-clause (2) of that Sl. No. would be attracted in applicant's case.*

On issue (a), the learned Member concluded that the goods proposed to be imported by the applicant are not covered by the main text of the description of goods specified in column (3) against Sl. No. 344 of the Notification No. 21/2002-Cus. dated 1.3.2002 as amended by Notification No. 11/2005 dated 1.3.2005 (for short "the exemption notification") and hence the benefit of exemption thereunder is not available to the applicant. In view of this finding, he held that issue (b) need not be discussed.

On a careful consideration of that ruling, with great respect, we regret our inability to agree with both the approach and the conclusion of the learned Member on issue (a) for reasons more than one stated hereunder.

The applicant is a non-resident company. It and BMW Holding, B.V. Netherlands, by a Memorandum of Understanding agreed to take over BMW India (P) Ltd. as a joint venture company in India. They propose to import motor cars except seats as completely knocked down (CKD) units (referred to in this ruling as "the goods"), assemble and market the motor cars here. It claims that by virtue of Entry 344 of CTH 8703(1) of the Exemption Notification, it would be eligible to avail concessional rate of 15% customs duty. It sought advance ruling of the Authority on the following question:-

"Whether the import of car parts, listed at Annexure-III, would be considered as import of completely knocked down ("CKD") unit, eligible to the concessional rate of customs duty of 15% being covered by Entry 344 of CTH No. 8703(1) of Notfn No. 21/2002 Cus. dated March 1st, 2002 as amended by Notification No. 11/2005-Cus. Dated 1.3.2005."

The Commissioner, Customs (Airport & Air Cargo) and Commissioner, Customs (Port Export), Chennai submitted separate comments which may be summarized as follows:-

"In the instant case, although the applicant has furnished a list of parts which they propose to import (Annexure-III) they have not explicitly stated whether these parts if assembled would form a completely built unit of car (except seats). This is a technical aspect which needs to be certified by independent technical agencies/institutions. Such a technical certificate should also indicate whether any other parts are required and whether the components need to be subjected to further working operation for completion into a finished car.

Apart from the above, if the importer is able to establish that the items listed in Annexure-III enclosed with the application would form a complete motor car of the specified model and if all those individual items are imported as one consignment in the same unassembled state as indicated in the said Annexure, then such imports would be considered as Motor Cars in completely knocked down (CKD) condition. Such imports would be covered by Sl. No. 344 of the Notification No. 21/2002 dated 01.03.2002"

It is a common ground that the contention of the applicant that the exemption notification applies to the goods is not disputed by the Commissioners in their comments. Indeed, the learned Joint Chief Departmental Representative who argued the case for the Commissioners, categorically conceded that the goods are covered by the notification. A Commissioner of Customs assists the Authority in pronouncing its ruling and we are not unmindful of the fact that proceedings before the Authority is not an adversarial litigation. However, as an advance ruling of the Authority is binding on the applicant as well as the Commissioner and his subordinates by virtue of Section 28J of the Customs Act, before pronouncing the advance ruling, comments of the concerned

Commissioner are called for and an opportunity of being heard is provided to both the applicant and the Commissioner. It is true that the Authority has to independently arrive at its own conclusion on a question set forth in the application but that does not mean that we should ignore the plea of the Commissioner and the submissions made by the departmental representative at the time of oral hearing unless there is material on record to doubt the *bona fides* of the plea or the plea is *prima facie* so absurd that no reasonable person in the position of a Commissioner, Customs, could have taken. We cannot lose sight of the rebuttable presumption contained in section 114 (e) of the Evidence Act that all official acts have been regularly performed. Admittedly, there is nothing on record to doubt the *bona fides* of the plea taken by the Commissioner in regard to applicability of the notification to the goods nor is the plea *prima facie* farcical. It may be pointed out that one of the reasons for seeking an advance ruling of the Authority is that an applicant is unaware of the view that may be taken by a Commissioner on a question of fact or law on the facts and in the circumstances of his case. The stand of the Commissioner in his comments in response to the application has to be taken into consideration by the Authority before proceeding to pronounce the ruling. The applicant is entitled to rely upon the stand of the Commissioner if the same is beneficial to him and in the absence of any material to rebut the presumption of regularity it will not be permissible for us to deny to the applicant the benefit of the plea of the Commissioner. Further, it will also be both indecorous and presumptuous to brush aside the plea of the Commissioner in proceedings before the Authority for no valid reason. Where the Commissioner accepts the position stated by the applicant, it would be a futile exercise to probe an aspect which is not put in issue by the Commissioner as it would result in sheer waste of time of the Authority. It is only when the Commissioner joins issue with the applicant either on facts or law and it is necessary to determine the same to pronounce a ruling on the question set forth in the application, the Authority has to determine the same. Be that as it may, inasmuch as the learned Member has recorded his finding that the description of the goods in Col.(3) of the Sr.No. 344 of the exemption notification cannot be interpreted so as to include incomplete or unfinished motor car or other motor vehicles within its ambit, it has become necessary for us to express our opinion on that issue.

The point is whether rule 2(a) of the General Rules of Interpretation of the First Schedule to the Tariff Act (referred to in this ruling as the "interpretative rules") applies in interpreting the exemption notification. The relevant part of the interpretative rules reads thus:

**“GENERAL RULES FOR THE INTERPRETATION
OF THIS SCHEDULE”**

Classification of goods in this schedule shall be governed by the following principles:

1. x x x x x x

- 2. (a)** *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

x x x x x x x x

The heading itself suggests that these are general rules of interpretation for purpose of classification of the goods in the Schedule. A plain reading of rule 2 (a), extracted above, shows that it deals with interpreting the word 'article' in a heading when it says that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished provided that as presented the incomplete or unfinished article has the essential character of the complete or finished article. It further provides that a reference to that article includes and shall also be taken to include a

reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

It would be useful to quote here heading 8703 of the First Schedule to the Tariff Act and the description of goods given in Sr. No. 344 of the exemption notification which are relevant for the present discussion and they run as follows:

Heading **8703**

“8703 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”

Description of goods in the exemption notification.

TABLE

S.No.	Chapter or heading No. or sub-heading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
..... 344 8703 Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading No. 87.02), including station wagons and racing cars, (new , which have not been registered anywhere prior to importation			
		(1) If imported as completely knocked down (CKD) unit	[\$15%]	-	-
		(2) If imported in any other form)	60%	-	-
.....

\$ substituted by Notification No. 11/2005-Cus., dated 1-3-2005.

Now it may be noticed that against Sr. No.344 of the Exemption Notification, in Col. (2) heading 8703 is noted and the description of goods given in Col. (3) is verbatim the same as in heading 8703, quoted above, except for the words in bracket. The difference, it may be pointed out, is in respect of the following: the motor cars: (i) shall be new; (ii) shall not have been registered anywhere prior to importation and (iii) the concessional rate of duty is 15% if imported as completely knocked down (CKD) unit; and 60% if imported in any other form.

It has been stated above that interpretative rule 2(a) requires that any reference in a heading to an article shall be understood as: (i) a reference to that article incomplete and unfinished subject to the condition that the incomplete and unfinished article has the essential character of the complete and finished article and (ii) a reference to that article complete or finished when presented unassembled or disassembled. It follows that in the light of the rule 2(a), the term 'motor cars' in Heading 8703, both in the Schedule as well as in the exemption notification, would be understood as motor cars including incomplete or unfinished motor cars provided they have the essential character of the complete or finished motor cars whether presented unassembled or disassembled. This is because the exemption notification contains both the heading number and description of the goods and obviously, interpretative rule 2(a) will equally apply in interpreting the heading and the description of the goods as they occur in the Exemption Notification. However, in so doing, the clear language in the Exemption Notification cannot be obliterated. The description of the goods in the Table of the exemption notification has, therefore, to be read as motor cars including incomplete or unfinished provided that as presented they have the essential character of the complete or finished motor car whether presented unassembled or disassembled provided further that such cars are (i) new; and (ii) have not been registered anywhere prior to importation. In as much as the goods – cars imported as CKD units without seats- have the essential character of the complete or finished motor cars, they would be covered by the exemption notification.

The question of application of interpretative rule 2(a) in regard to an Exemption Notification fell for consideration of the Hon'ble Supreme Court of India in Collector of Customs, Bangalore vs. Maestro Motors Ltd.¹ The facts of that case and the extracts from the judgement of the Hon'ble Supreme Court have been quoted *in extenso* by the learned Member in his ruling. There, components and parts falling within chapter heading 87 were exempted subject to certain conditions. The Hon'ble Supreme Court having observed that the Notification has to be interpreted in terms of its clear language, held, giving effect to the wording of the notification, that the components including components in completely knocked down packs, were exempted. It was clarified that whereas in notification 29/83 components including components in CKD packs were exempted, therefore, exemption would apply to those components even though for purposes of payment of duty, the components were classifiable as cars. But in the second case, Notification 72/93 exempted components and parts falling under Chapter 87 and not components in CKD packs which were in fact imported. Reiterating its view in Maruti's case the Hon'ble Supreme Court observed that a notification had to be interpreted in accordance with the language of the notification and it was held that components and parts must be considered to be components and parts for purposes not just for exemption but also for payment of customs duty. We may with advantage refer to the relevant observations of the Hon'ble Supreme Court, in that case: "*if, by virtue of Interpretative Rules, for purposes of the First Schedule to the Customs Tariff Act, 1975 the*

¹ 2004(174) E.L.T. 289 (S.C.)

imported goods are not considered to be components and parts, then for purposes of this Notification also they cannot be said to be components and parts.

When a Notification exempts goods falling within the First Schedule to the Customs Tariff Act, 1975, then the goods must be classified in the same manner both for purposes of payment of custom duty as well as for purposes of exemption/benefit under that Notification. However if the wording of the Notification show that an item is specifically exempted then the exemption will apply to that item even though for purposes of classification it may be considered to be something else. In other words when, in a Notification, the exemption is with reference to an item in the First Schedule to the Customs Tariff Act, 1975, then the Interpretative Rules would equally apply to such Notification. In such cases, if they are not components and parts for the purposes of payment of customs duty they would not be components and parts even for the purposes of the Notification." (emphasis supplied)

These observations of the Hon'ble Supreme Court would clearly support our view.

Now, we shall advert to the real issue - issue (b) - as to whether sub-clause (1) or sub-clause (2) of Sl. No. 344 would be attracted. For resolving this issue, it was necessary to seek expert's opinion on the point whether the car parts listed in Annexure-III to the application would truly represent completely knocked down (CKD) unit of a BMW 3-Series (E-90) motor car. Both the parties agreed that the point be referred to Automotive Research Association of India, Pune (for short "ARAI"). The ARAI was requested to give its opinion on two aspects: (a) whether the car parts listed in Annexure-III when assembled, would make the complete motor car; and (b) whether the said parts can be taken as a "CKD Unit". On 5.9.2005 the following opinion was furnished by ARAI:-

"We have studied Annexures B & C and we, hereby, like to declare that, by & large, it is a CKD kit. It is also learnt that BMW intends to procure seats for car from within the country right from the beginning. With the assembly of that fixture, it will constitute a complete car."

It was noticed that the words "by and large" in the opinion were vague and would need clarification by the expert who was, therefore, asked to clarify the same. In response thereto, the Director, ARAI sent the following clarification.

Expert's Report dated 22.9.2005

"It is to clarify that, to our knowledge, there are no specific guidelines prescribed for defining CKD and SKD kits. However, if there are any followed by Customs, please do let us know. There are some parts in the total list, you have provided, which could be taken as component form, while there are other parts, which could be termed as SKD form. From the analysis carried out by us and the discussions held with BMW, it was learnt that they were going to manufacture the seats locally and then install the same in the vehicle. You will agree, one cannot take the vehicle as complete without seat. That is why the words "by and large" have been used".

After a copy of the said clarification of the expert was communicated to the Commissioners concerned, the Commissioner of Customs (Airport and Air Cargo), Chennai presented the following two points:-

- (1) The items in question would merit classification under CTH 87.03 as motor cars by virtue of rule 2(a) and
- (2) The goods would be apparently chargeable to Basic Customs duty @ 60% as 'motor cars imported in any other form' under Sl.No. 344(2) of the Notification contrary to the claim of the applicant.

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%.

For the above mentioned reasons, we rule on the question set forth in the application that import of car parts as listed in Annexure-III to the application would be considered as import of motor car as a completely knocked down unit (CKD), eligible to the concessional rate of customs duty of 15% [applicable to motor cars if imported as completely knocked

down (CKD) unit] being covered by Entry 344 of CTH No. 8703 of Notification No. 21/2002-Cus. Dated 1.3.2002 as amended by Notification No. 11/2005-Cus., Dated 1.3.2005.

Pronounced in the open Court of the Authority on this 28th day of October, 2005.

Sd/-
(Justice S.S.M.Quadri)
Chairman

Sd/-
(B.A. Agrawal)
Member

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

PRESENT

**Hon'ble Mr.Justice Syed Shah Mohammed Quadri (Chairman)
Mr.Somnath Pal (Member)
Dr.B.A.Agrawal (Member)**

**Ruling No.AAR/12(Cus)/2005
In
Application No.AAR/56(Cus)/2005**

Applicant	M/s Bayerische Motoren Werke Aktiengesellschaft (in short "BMW AG") Petuelring 130 80788 Munich Germany
Commissioner concerned	Commissioner of Customs, Airport & Air Cargo, Chennai. Commissioner of Customs, Port-Import, Chennai
Present : for the applicant	Mr. J. Vellapally, Sr. Advocate Mr. Ravi Nath Ms. Kumkum Sen Mr. Rajesh Roshan Mr. Gerhard Lindner Mr. Peter Baumgartner
for the Commissioner concerned	Mr. A.K. Roy, Joint CDR CESTAT, New Delhi Mr. S. Chandrasekaran Assistant Commissioner Appraising Group, Custom House Chennai

R U L I N G

(By Mr. Somnath Pal, Member)

M/s Bayerische Motoren Werke Aktiengesellschaft (in short "BMW AG"), a German Company, having its registered office at Petuelring 130, 80788 Munich, Germany (hereinafter referred to as the applicant), has filed an application seeking

advance ruling under Section 28 H of the Customs Act, 1962. The Applicant alongwith its joint venture partner BMW Holding BV, a Company incorporated under the laws of The Netherlands, having its registered office at 5 Laan van Vredenoord, 2289 DA Rijswijk ZH, The Netherlands, proposes to set up a joint venture to establish a facility in India for assembly of certain models of high-end BMW motor cars. For this purpose they have identified BMW India Private Limited as the proposed joint venture company in India in which they will acquire shares. The list of items to be imported into India and the Assembly Manual have been furnished by the applicant as Annexure-III to their application.

2. The question which has been raised by the applicant for an advance ruling from this Authority reads as under :

“Whether the import of car parts, listed at Annexure III, would be considered as import of completely knocked down (‘CKD’) unit, eligible to the concessional rate of customs duty of 15% being covered by Entry 344 of CTH No. 8703(1) of Notification No. 21/2002-Cus. dated March 1, 2002 as amended by Notification No. 11/2005-Cus., dated 1-3-2005?”

3. The technical aspect involved in the above question, is whether car parts listed in Annexure III of the application would truly represent completely knocked down (CKD) unit of a BMW 3-Series (E-90) motor car. This being so, the Authority asked the authorized representatives of the applicant as well as of the Commissioner(s) concerned to suggest an agreed agency whose report would be acceptable to both of them. They suggested ‘Automotive Research Association of India’, Pune (for short ARAI). The Authority therefore decided that a report be called from ARAI.

4. The direction of the Authority was conveyed to the Director, ARAI drawing his attention to the Notification No. 21/2002-Cus., dated 1.3.2002 as amended by Notification No. 11/2005-Cus., dated 1.3.2005, Sl. No. 344 thereof, and forwarding a certified copy of Annexure-III containing list of the parts pertaining to assembly of BMW 3-Series (E-90) as Annexure-B, alongwith Assembly Manual (Annexure-C). ARAI was requested to give technical report covering two aspects, namely, (a) whether the car parts listed in Annexure-III when assembled, would make the complete motor car and (b) whether the said parts can be taken as a “CKD unit”.

5. The Director, ARAI in the communication dated 5.9.2005 has given the following report :

“We have studied Annexures B & C and we, hereby, like to declare that, by & large, it is a CKD kit. It is also learnt that BMW intends to procure seats for car from within the country right from the beginning. With the assembly of that fixture, it will constitute a complete car”.

6. A copy of the above report from ARAI was forwarded to the applicant as well as to the Commissioner(s) concerned.

7. During the hearing that followed, (later confirmed by a written note) the Ld. Counsel for the applicant heavily relied upon rule 2(a) of the General Rules for the Interpretation of the First Schedule to Customs Tariff Act, 1975 and submitted that the report of the ARAI shows that the parts listed in Annexure-III to the application can be taken to be a CKD unit. The use of the phrase ‘by and large’ is only by way of abundant

caution. Further, it has been certified in the technical report of the ARAI that with the fixture of seats, which would be procured from within the country, the parts covered by Annexure-III, when assembled, would become a complete motor car. According to the applicant, before going over to the language of a Notification, the classification issue is to be decided and by application of Interpretative Rule 2(a) it is clear that the parts proposed to be imported as per Annexure-III, when assembled, would definitely acquire the essential character of a motor car and hence would be classifiable under 8703 of the Customs Tariff Act, 1975. Reliance was placed on the certificate issued by SGS, Germany GMBH, dated 2.8.2005 in support of their contention. The Ld. Counsel took us through various paragraphs of the Hon'ble Supreme Court's decision in Collector of Customs, Bangalore V/s Maestro Motors Limited¹ and also of the Tribunal decision in the case of Commissioner of Customs, Indore V/s

1. [2004(174)E.L.T.289(S.C.)]

Hindustan Motors Limited². The appeal filed by M/s Hindustan Motors Ltd. against the aforesaid decision of the Tribunal has also been dismissed by the Hon'ble Supreme Court³, he added. Citing in particular the observations of the Apex Court in Maestro's case, the Ld. Counsel submitted that if in a notification exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, then same Rules of Interpretation must apply. In that case the goods will be classified even for the purposes of the notification, as they are classified for purposes of payment of customs duty. In other words, the applicant's plea is that the parts in question proposed to be imported as CKD unit, being classifiable as a motor car under Tariff Heading 8703 by virtue of interpretative rule 2(a) would also be squarely covered by the language of the Sl. No. 344, part (1) of the Notification. The second limb of the interpretative rule 2(a) has also been cited by him in support of this submission. It says that any reference in a heading to an article shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled. The Ld. Counsel also drew our attention to the Circular No. 55/95-Cus., dated 30.5.1995 issued by the Central Board of Excise and Customs, New Delhi, wherein it has been clarified that even incomplete, unassembled articles should be assessed as complete article, provided that when assembled the incomplete article has the essential character of a complete article. It has been submitted that in view of the plain language of the above Circular, even without the parts like seats, seat covers (leather) which are to be sourced by the applicant from local suppliers, the car parts in Annexure-III would be classified as completely knocked down cars. According to the applicant therefore, the report given by Director, ARAI clearly clinches the issue in favour of granting exemption to the goods under consideration in terms of part (1) of Sl. No. 344 of the Notification referred to above.

8. The Ld. Jt. CDR appearing on behalf of the Commissioner(s) concerned agrees that interpretative rule 2(a) is applicable for interpreting the exemption notification as well. He has referred to the Hon'ble Supreme Court's judgement

2. [2003(156)E.L.T.155(Tri.-Del.)]

3. [2005(181)E.L.T.A130(S.C.)]

in Maestro Motor's case (supra) to support his contention. Reliance has also been placed on the Board's Circular No. 55/95-Cus., dated 30.5.1995. In view of the aforesaid, the Ld. Jt. CDR submits that the Sl. No. (1) under column (3) against

Item/Heading No. 344 in the exemption Notification No. 21/2002-Cus. appears to be applicable in this case if the report/view dated 5.9.2005 of ARAI (alongwith any forthcoming clarification) is accepted or taken as the proposed items/materials to be imported as completely knocked down (CKD) unit. In this context he has also referred to the Hon'ble Supreme Court's judgements in the case of H.M.M. Ltd. v/s Collector?S.G. Glass Works Pvt. Ltd. v/s Collector of Central Excise and Customs, Nagpur? and C.C., Kolkata v/s Rupa & Co. Ltd.⁶ on the interpretation of exemption notification. The verbal submissions were confirmed by Ld. Jt. CDR in his written note submitted to the Authority.

9. As the use of the expression "by and large" in the report of ARAI created some doubt in the mind of the Authority as to whether it implies that certain parts are in semi-knocked-down form, a clarification to this effect was sought from ARAI. In response, Director, ARAI has stated that there are some parts in the total list which could be taken as component form while there are other parts which could be termed as SKD form. He has further indicated that from the analysis carried out by the ARAI and the discussions held with BMW, it was learnt that they were going to manufacture the seats locally and then install the same in the vehicle. As such, one cannot take the vehicle as complete without seat. That is why the words "by and large" have been used. He has also clarified that to their knowledge, there are no specific guidelines prescribed for defining CKD and SKD kits.

10. A copy of the clarification received from ARAI, Pune in their letter dated 22.9.2005 was forwarded to the applicant and to the Commissioners concerned for their objections, if any. The Commissioner of Customs, Airport & Aircargo, Chennai stated in response that the items in question would merit classification under CTH 87.03 as motor cars by virtue of Interpretative Rule 2(a) and that the

4. [1996(87)E.L.T.593(S.C.)]

5. [1994(74)E.L.T.775(S.C.)]

6. [2004(170)E.L.T.129(S.C.)]

goods would be apparently chargeable to Basic Customs duty @ 60% as "motor cars imported in any other form" under Sl. No. 344(2) of the Notification contrary to the claim of the applicant. The Commissioner of Customs (Sea Port), Chennai has not given any specific comment or opinion and has merely summarized ARAI, Pune's letter, Rule 2(a) and the Sl. No. 344 of the Notification. In the hearing that followed, the Ld. Counsel for the applicant submitted that interestingly enough, there is no clear-cut demarcation between CKD and SKD. However as far as BMW is concerned, in all other countries where they are manufacturing 3-series cars, such items as proposed to be imported by the applicant, are considered to be CKD packs. Certain documents were also submitted to show how, as per the perception of the applicant, CKD concept compares with SKD concept. He also emphasized the point that motor car has to be in CKD pack and not each component thereof needs to be in CKD condition. As per the clarification later given by ARAI, Pune in their letter dated 22.9.2005, the phrase 'by and large' was used only because the seats would be procured locally. So, according to the applicant, the items proposed to be imported would deserve the benefit of exemption Notification in question under Sl. No. 344(1) @ 15% of Basic Customs duty. On a specific query put to the Ld.

Counsel, he submitted that Rule 2(a) is implicit in this Notification. Without Rule 2(a), the Notification would become meaningless. The Jt. CDR reiterated the submissions of Commissioner (Port) and Commissioner Airport & Aircargo, Chennai.

11. The matter has been examined carefully. The moot point raised for consideration is whether the car parts listed in Annexure-III would be eligible for the concessional rate of customs duty of 15% under sub-clause (1) of Entry 344 relating to Tariff Heading No. 8703 of the First Schedule to the Customs Tariff Act, 1975 (for short Tariff Act), of the Notification No. 21/2002-Cus., dated 1.3.2002 as amended by Notification No. 11/2005-Cus., dated 1.3.2005. This notification, as we find, is a general exemption notification covering various items falling under different Tariff/Chapter Headings of the Customs Act. In the limited context before us, we are concerned only with Sl. No. 344 of the said general exemption notification. In order to appreciate the point raised before us, it is necessary to reproduce the relevant portion of the notification which reads as follows :

“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2001-Customs, dated the 1st March, 2001 [G.S.R 116(E), dated the 1st March, 2001], the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, -

- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;
- (b) from so much of the additional duty leviable thereon under §[section 3] of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table :

§[Provided that nothing contained in this notification shall apply to -

- (a) the goods specified against serial No. 75A of the said Table on or after the 1st day of April, 2005;
- (b) the goods specified against serial No. 252A of the said Table on or after the 1st day of May, 2006;
- (c) the goods specified against serial No. 75 of the said Table on or after the 2nd day of July, 2005;

(d) the goods specified against serial No. 170A of the said Table on or after the 4th day of September, 2005]

Explanation. – For the purposes of this notification, the rate specified in column (4) or column (5) is *ad valorem* rate, unless otherwise specified.

Table

S.No.	Chapter or Heading No. or sub-heading No.	Description of goods	Standard rate	Additio- nal duty rate	Condi- tion No.
(1)	(2)	(3)	(4)	(5)	(6)
.....
.....
344	87.03	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading No. 87.02), including station wagons and racing cars, new, which have not been registered anywhere prior to importation			
		(1) if imported as completely knocked down (CKD) unit		§[15%]	
		(2) if imported in any other form	60%		
.....
.....”

§ Substituted by Notification No. 11/2005-Cus., dated 1.3.2005

12. As is apparent from the language of the exemption Notification itself the Central Government through this Notification “exempts the goods of the description specified in column (3) of the Table”.....”and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India.....”. From the description of the goods specified in column (3) against Sl. No. 344 of the notification, it is clear that the exemption is available to motor cars and other motor vehicles principally designed for the transport of persons (other than those of Heading No. 87.02), including station wagons and racing cars, new, which have not been registered anywhere prior to importation . Sub-clause (1) and sub-clause (2) specify the form in which such motor cars or other motor vehicles are to be imported in order to get the concessional rate of duty corresponding to either sub-clause (1) or sub-clause (2). As the position stands at present, the motor cars or other motor vehicles as specified in the description of the goods mentioned above would enjoy a lower rate of customs duty namely 15% “if imported as completely knocked down (CKD) unit” whereas it will attract higher rate of customs duty of 60% “if imported in any other form” that means, in any form other than as a CKD unit. It may be worthwhile to mention in this context that standard rate of customs duty at present for 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 which corresponds to Tariff Heading 8703 of the Tariff Act is 100%. Therefore there is a two tier concessional rate of customs duty for the goods specified in column (3) against Sl. No. 344 of the

Notification depending on the form in which such specified goods are imported. There is no ambiguity or dispute about the classification of motor cars and other motor vehicles principally designed for the transport of persons (other than those of Heading 87.02), including station wagons and racing cars which are evidently classifiable under Tariff Heading 8703 which has also been specifically mentioned under column (2) against Sl. No. 344 of the Notification. It is equally important to note that only such motor cars and other motor vehicles which are specified under column (3) of the Notification would get the benefit of exemption as are new and have not been registered anywhere prior to importation.

13. Evidently the seats and seat covers (leather) are not proposed to be imported by the applicant and it has been made clear in the application itself that these items will be procured from local suppliers. Only with the fixture of the seats a motor car as we commonly understand would come into existence. This has been made clear in the opinion of ARAI, Pune and accepted both by the applicant as well as by the Commissioner(s) concerned. The point which however arises for consideration is whether in the given facts and circumstances of the case before us, Interpretative Rule 2(a) can be applied to decide about the coverage of the goods in question by the description specified in column (3) of Sl. No. 344 of the Notification. It would be useful in this context to reproduce the relevant portion of the General Rules for Interpretation of the First Schedule to the Tariff Act

“Classification of goods in this Schedule shall be governed by the following principles :

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, 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 :

2.(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”

It is sufficient to note at this stage that the General Rules for Interpretation lay down the principles which would govern the classification of goods in the First Schedule to the Tariff Act. Rule 2(a) embodies the principle that an incomplete or unfinished article will fall to be classified under the same heading in the First Schedule which refers to the complete and finished article, provided, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.

14. The two issues which therefore need critical examination are :-

- (a) Whether the goods proposed to be imported by the applicant are covered by Sl. No. 344 of the exemption Notification. This would include the question of applicability of Interpretative Rule 2(a) to the description of goods specified in column (3) of the aforesaid Sl. No. of exemption Notification and implications thereof;
- (b) In case the goods are held to be covered by Sl. No. 344 of the Notification, then whether sub-clause (1) or sub-clause (2) of that Sl. No. would be attracted in applicant's case

15. Regarding the first issue, it has been submitted before us by both the sides that Hon'ble Supreme Court in Maestro Motor's case has made it clear that when a Notification exempts goods falling within the First Schedule to the Customs Tariff Act, 1975, then the goods must be classified in the same manner both for purposes of payment of customs duty as well as for purposes of exemption/benefit under that Notification. In other words, when, in a Notification, the

exemption is with reference to an item in the First Schedule to the Tariff Act, then Interpretative Rules would equally apply to such Notification. The thrust of the plea is that an incomplete or unfinished motor car or other motor vehicle would be treated as a complete or finished motor car or motor vehicle both for the purpose of Tariff classification and also for exemption under the Notification. The submission is therefore to be examined carefully in the light of the context and the background of the Hon'ble Supreme Court's decision cited above and the exact text of the observations made by it in order to appreciate its effect and implications.

16. In Collector of Customs, Bangalore v/s Maestro Motors Ltd. the Hon'ble Supreme Court in fact dealt with two cases together. The first was the case of M/s Maruti Udyog Ltd. They had imported two shipments, namely, 24 CKD packs (completely knocked down condition) and 48 CKD packs respectively of passenger car components. The goods were claimed to be components of motor vehicles under Tariff Heading 8704 of the Customs Tariff Act. They also claimed benefit of Notification Nos. 29/83 and 29A/83. These Notifications exempted "components (including components of fuel-efficient motor cars in semi-knocked down packs and completely knocked down packs) required for the manufacture of fuel-efficient motor car of engine capacity not exceeding 1000 cubic centimeters", subject to fulfillment of certain conditions as specified in the Notification. The original Adjudicating Authority held that the imported components being complete cars in CKD packs had the essential character of the finished product and as such the consignments were to be treated as motor cars and not components and thus denied the benefit of the exemption Notifications which were only for components. Both the Commissioner (Appeals) and the CEGAT however held that the goods were component parts and not motor cars and accordingly extended the benefit of Notification to the said goods. While deciding the appeal filed by the Collector of Customs, the Hon'ble Supreme Court observed that the questions for consideration are whether the CKD packs imported into the country could be considered to be motor cars and not components and secondly, whether M/s Maruti Udyog Ltd. are entitled to the benefit of Notification No. 29/83. On careful consideration of the facts of the case the Hon'ble Supreme Court made the following observations :-

"It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language. If in the Notification exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, then the same Rules of Interpretation must apply. In that case the goods will be classified, even for the purposes of the Notification, as they are classified for purposes of payment of customs duty. But where the language is plain and clear effect must be given to it. In this Notification what is exempted is components, including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. Undoubtedly, for purposes of levy of customs duty, by virtue of Interpretative Rule 2(a), the components in a completely knocked down pack would be considered to be cars. But in view of the clear language of the Notification the components including components in completely knocked down packs are exempted. Effect must be given to the wording of the Notification. Thus components in completely knocked down packs would get the exemption under this Notification, even though for purposes of classification they may be considered to be cars."

17. It is thus seen that in the Maruti's case the Hon'ble Supreme Court took note of the fact that what was exempted by the Notification is components, including components of fuel-efficient motor cars in SKD packs and CKD packs. It therefore held that undoubtedly for purposes of levy of customs duty, by virtue of Interpretative Rule 2(a), the components in CKD packs would be considered to be cars but in view of the clear language of the Notification the components including components in CKD packs are exempted. Effect was therefore given to the wording of the Notification. Benefit of exemption was accordingly granted to the components in CKD packs as per clear wording of the notification, even though for purposes of classification such components in CKD packs may be considered to be cars. In other words, while Rule 2(a) was applied for the purpose of classification, it was not applied to interpret the description of goods specified in the exemption Notification.

18. In the second case, M/s Maestro Motors Ltd. were importing in effect the entire motor car in completely knocked down condition. They claimed the goods to be components and also the benefit of Notification No. 72/93 which exempted components and parts of motor vehicles falling within Chapter 87 of the First Schedule to the Customs Tariff Act, 1975 and goods specified in column (3) of the Table annexed to the Notification. Referring to their decision in the earlier part of the judgement in Maruti's case, the Hon'ble S.C. observed that as already set out in that decision, such components are nothing but cars in knocked down condition and applying Interpretative Rule 2(a) such components are to be classified as cars. On the question as to whether M/s Maestro Motors Ltd. is entitled to the benefit of the Notification No. 72/93, the Hon'ble S.C. referring to its view in Maruti's case, reiterated that a Notification has to be interpreted in accordance with the language used in the Notification. Where the language is clear and unambiguous an interpretation which does not tally with the language cannot be given. The wording of the Notification No. 72/93 being very clear, it is only components and parts which fall within Chapter 87 are to be exempted and not components in CKD packs which were actually being imported. In this context, the Hon'ble S.C. made the following observation 'If, by virtue of Interpretative Rules, for purposes of the First Schedule to the Customs Tariff Act, 1975 the imported goods are not considered to be components and parts, then for purposes of this Notification also they cannot be said to be components and parts. In our view, CEGAT has erred in holding that the Interpretative Rule 2(a) does not apply to a Notification. When a Notification exempts goods falling within the First Schedule to the Customs Tariff Act, 1975, then the goods must be classified in the same manner both for purposes of payment of custom duty as well as for purposes of exemption/benefit under the Notification. However if the wording of the Notification shows that an item is specifically exempted then the exemption will apply to that item even though for purposes of classification it may be considered to be something else. To take this very case as in illustration, where like in Notification No. 29/83 components including components in CKD packs, were given benefit of exemption those components would get exemption even though for purposes of payment of duty they are classified as cars. But where, as in this case, components and parts falling within Chapter 87 are exempted, then the components and parts must be considered to be components and parts for purposes, not just for exemption but also for payment of custom duty. If for purposes of payment of custom duty they are not deemed to be components and parts, then they are also not components and parts for purposes of the Notification. In other words when, in a Notification, the exemption is with reference to an item in the First Schedule to the Customs Tariff Act, 1975, then the Interpretative Rules would equally apply to such Notification. In such cases, if they are not components and parts for the purposes of payment of customs duty they would not be components and parts even for the purposes of the Notification. Thus, M/s Maestro Motors Ltd. are not entitled to the benefit of the Notification No. 72/93.'

The emphasis in this case again, it is noticed, is on the language of the Notification. One has to see what goods are being exempted. When the Hon'ble S.C. observed that if by virtue of Interpretative Rules, for purposes of the First Schedule to the Customs Tariff Act, the imported goods are not considered to be components and parts, then for purposes of the Notification also they cannot be said to be components and parts, the reference was to the classification of the imported goods for both the aforesaid purposes. This is made clear in the observations of the Hon'ble S.C. little later in the same para when it pointed out that If the exemption is granted with reference to the Tariff Heading, then those goods must be classified in the same manner both for purposes of payment of customs duty as well as for purposes of exemption/benefit under that Notification. However, when the wording of a Notification specifically exempts an item, then the exemption will apply to that item even though for purposes of classification it may be considered to be something else. On this principle, it was held by the Hon'ble S.C. that M/s Maestro Motors Ltd. were not entitled to the benefit of the Notification.

19. The important legal propositions which flow from the above observations of the Hon'ble Supreme Court in the two decisions are:-

- (i) A Notification has to be interpreted in terms of the language used in the Notification. Where the language is clear and unambiguous an interpretation which does not tally with the language cannot be given.
- (ii) If in the Notification exemption is granted with reference to Tariff Heading in the First Schedule to the Customs Tariff Act, 1975 then the same rules of interpretation must apply. The goods will be classified in that case, even for the purposes of the Notification, as they are classified for purposes of payment of custom duty.
- (iii) But where the language of the Notification is plain and clear effect must be given to it, even though for purposes of classification it may be considered to be something else.

In my view, the Hon'ble S.C. while stating these principles, has made a very subtle but apt distinction between a Notification which grants exemption solely with reference to Tariff Heading and one which, side by side specifying the Tariff Heading, also describes the exact item(s) which is/are exempted. For example, the first category of Notification may exempt, say, goods falling under particular Tariff Heading(s) but leaves it at that (like Notification 24/2005-Cus. dated 1.3.2005 as corrected by Corrigenda M.F.(D.R)F.No. 334/1/2005 dated 2.3.2005). In that event, any goods classifiable under that particular Tariff Heading (whether as it is or by application of the Interpretative Rules) would be entitled to the exemption. The second category of Notification exempts specific items described therein and simultaneously indicates the particular Tariff Heading (as in the case before us). In such a situation, in my opinion, only those very specific items falling under that Tariff Heading would get the benefit of exemption.

20. In the case before us, a perusal of column (3) of Sl. No. 344 of the Notification in question, would show that the exemption is clearly in respect of Motor Cars and other Motor Vehicles as described therein. Two different concessional rates have been prescribed depending on in what form such motor cars or other motor vehicles are imported. The Tariff Heading is 8703 which signifies the classification of the goods described in column (3) of the Sl. No. 344 of the Notification both for the purpose of payment of customs duty as well as for exemption. In so far as a complete or finished motor car or other motor vehicle of the type specified therein is imported either "as a CKD unit" or in a form other than as a CKD unit, there is absolutely no doubt that the goods would be covered by this Sl. No. and would enjoy the benefit of exemption under sub-clause (1) or sub-clause (2) as the case may be. The question that however arises is whether an incomplete or unfinished motor car as in the case before us, which has acquired essential character of a complete or finished motor car, would also be covered by the description of the goods given in this Sl. No. and get the benefit of exemption, if imported either as a CKD unit or in any other form. Undoubtedly, for purposes of payment of customs duty, such incomplete or unfinished motor car would be classified as complete or finished car by applying Interpretative Rule 2(a). In this context, the following observation of the Hon'ble S.C. in Maestro's case becomes relevant – "When a Notification exempts goods falling within the First Schedule to the Customs Tariff Act, 1975, then the goods must be classified in the same manner both for purposes of payment of custom duty as well as for purposes of exemption/benefit under the Notification. However if the wording of the Notification shows that an item is specifically exempted then the exemption will apply to that item even though for purposes of classification it may be considered to be something else". By this principle, such goods should also be classified as a complete or finished article for the purpose of exemption Notification as well. Simply stated, the classification of such goods should be under the Tariff Heading 8703 both for purposes of payment of customs duty and for purposes of exemption Notification. But this cannot be taken to mean that merely because the goods are classifiable under the same Tariff Heading for these two purposes, the benefit of exemption would automatically be extended to such unfinished or incomplete motor car when the description of the goods eligible for exemption is indicated in the exemption notification in plain and clear terms. One has to examine the language used in the Notification which not only indicates the Tariff Heading but also the description of the goods which are exempted. One has also to keep in mind the fact that classification of two different physical entities under identical Tariff Heading does not make the two entities identical. A complete or finished motor car will, ipso facto, remain distinct and different from an incomplete or unfinished

motor car. In the case before us, the Notification grants exemption to motor cars or other motor vehicles of the description specified in column 3 corresponding to Tariff Heading 87.03. Classification of imported goods means determination of particular Tariff Heading/Sub-Heading/Tariff Item of the First Schedule to the Customs Tariff Act, 1975 under which the said goods would fall for the purpose of payment of customs duty. This is altogether different from interpreting the description of goods specified in an exemption notification. Role of Interpretative Rules, in my view, is limited to the first aspect alone and cannot be stretched to the second aspect. So, the description of goods given in column (3) of Sl. No. 344 of the Notification cannot be interpreted by calling in aid the Interpretative Rule 2(a) to cover not only complete or finished motor car or other motor vehicle but also incomplete or unfinished motor car or other motor vehicle.

21. The point which remains to be examined is whether the expressions 'motor car' or 'motor vehicle' can even otherwise cover incomplete or unfinished forms as well or not. The Customs Tariff Act, 1975 nowhere defines 'motor car' or 'motor vehicle'. There is also no definition of these articles given in the exemption Notification under consideration. No 'explanation' has been appended to Sl. No. 344 of the Notification to define the scope of these expressions used therein. So, we would refer to the ordinary meaning ascribed to the expression 'Motor Car' and 'Motor Vehicle' in the dictionaries/encyclopedia. These are :-

The New Oxford American Dictionary

Motor car  n. 1. dated or Brit. an automobile
2. a self-propelled railroad vehicle used to carry railroad workers

Motor vehicle  n. a road vehicle powered by an internal combustion engine; an automobile.

Automobile  n. a road vehicle, typically with four wheels, powered by an internal combustion engine and able to carry a small number of people

The New International -Webster's Dictionary & Thesaurus of the English Language

Motor car n. An automobile

Motor vehicle 1. Any vehicle operated by a motor or engine. 2. A vehicle adapted to be pulled by another, as a trailer

Automobile n. A self-propelled vehicle; specifically, one driven by an internal-combustion engine or storage battery and independent of rails or tracks; a motorcar. – v.i. **biled, bil-ing** To ride in or drive an automobile – adj. 1. Self-propelling. 2. Of or for automobiles.

The New Shorter Oxford - English Dictionary

Motor car (a) = CAR 6; (b) US a rail car for freight or passengers propelled by its own motors

Motor vehicle a road vehicle powered by an internal-combustion engine

Automobile a., n., & v. Chiefly N. Amer. LI9 [Fr., f. as AUTO⁻¹ + MOBILE a.] A adj. 1. Esp. of a vehicle: self-propelling (as opp. to horse-drawn). arch. LI9. 2[The n. used attrib.] Of or pertaining to motor vehicles. LI9 B n. A motor vehicle; a car. LI9 C v.i. Drive or travel in a motor vehicles. LI9.

McGraw-Hill – Concise Encyclopedia of Science & Technology – Third Edition

Motor vehicle A trackless, self-propelled vehicle for land transportation of people or commodities or for moving materials. Passenger and commercial vehicles have comparable components but separate identities, primarily because of their different functions. Passenger vehicles are built for the comfort and protection of occupants, whereas commercial vehicles are designed more ruggedly to withstand daily abuse and are available in an infinite variety of forms.

Passenger vehicles include automobiles, recreation vehicles and all-terrain vehicles such as campers and motor homes with sleeping accommodations, motor bikes, motorcycles, scooters, trail bikes, dune buggies, and snowmobiles. Included in the broad range of body types and configurations of commercial vehicles are ambulances, airport limousines, taxicabs, buses, vans, tankers, light- and heavy-duty highway and industrial trucks, tractors, and self-propelled farm equipment, off-highway construction and excavation units, and various military vehicles.

Automobile A generic term for a self-propelled, trackless personal or public carrier which encompasses passenger cars, recreational vehicles, taxis, and buses used to transport people in cities, on highways, or across country. Passenger cars are available in several body styles, with optional components, and they are made in various sizes. The sedan, in two- or four-door models, seats five or six passengers. The hardtop, a metal-roof model that replaced the convertible, offers some of the all-weather advantages of the sedan. The station wagon, a utility vehicle with two or four doors for occupants and a rear door for loading commodities, provides comfortable seating for up to nine passengers. The van is a type of commercial vehicle that has been adapted for personal use. Variations of these body types have been developed for special purposes.

McGraw-Hill – Dictionary of Scientific and Technical Terms – Fifth Edition

Motor vehicle Any automotive vehicle that does not run on rails, and generally having rubber tires.

Car See automobile.

Automobile A four-wheeled, trackless, self-propelled vehicle for land transportation of as many as eight people . Also known as car.

It would therefore appear that the expressions “motor car” and “motor vehicle”, as commonly perceived and understood, mean complete and finished motor car or motor vehicle and not their incomplete or unfinished forms.

22. Even in Customs Act, 1962 there is no definition given of motor car or motor vehicle. However the term “ vehicle” has been defined in section 2(42) to mean “conveyance of any kind used on land and includes a railway vehicle”. The term “conveyance” has also been defined in section 2(9) as including “a vessel, an aircraft and a vehicle”. These definitions also do not give any impression contrary to or different from the common perception. We have however noticed that “motorcar” and “motor vehicle” have been defined in The Motor Vehicles Act, 1988. As per section 2(26), “motor car” means “any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motorcycle or invalid carriage”. “Motor vehicle” or “vehicle” has been defined in section 2(28) to mean “any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters”. This definition, refers, by inclusion to a chassis to which a body has not been attached.

It is a well settled principle of interpretation of statutes that reference to other statutes can be made as an external aid to interpretation provided they are in *pari materia* i.e. statutes dealing

with the same subject matter or forming part of the same system. As stated by LORD MANSFIELD, “where there are different statutes in *pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other”⁷. The meaning of the phrase *pari materia* has been explained in an American case in the following words : “Statutes are in *pari materia* which relate to the same person or thing, or to the same class of persons or things. The word *par* must not be confounded with the word *similis*. It is used in opposition to it—intimating not likeness merely but identity. It is a phrase applicable to public statutes or general laws made at different times and in reference to the same subject”⁸. When the two pieces of legislation are of differing scopes, it cannot be said that they are in *pari materia*⁹.

Having regard to the purpose and the scope of The Motor Vehicles Act on the one hand and of the Customs Act, 1962/Customs Tariff Act, 1975 on the other, it seems reasonable to hold the view that The Motor Vehicles Act is not a statute in *pari materia* with the Customs Act/Customs Tariff Act. Therefore, help of the definition of “motor vehicle” given in The Motor Vehicles Act cannot be taken to interpret this expression used in the exemption notification issued under the Customs Act or in the Customs Tariff Act.

7. *R.v. Loxdale*, (1758) 97 ER 394, p. 395. See further *J.K. Steel Ltd. V. Union of India*, AIR 1970 SC 1173, p. 1183 (para 29); *Board of Trustees of the Port of Bombay v. Sriyansh Knitters*, AIR 1999 SC 2947 p. 2952 (para 12) : (1999) 7 SCC 359; *Oliver Ashworth (Holdings) Ltd. v. Ballard (Kent) Ltd.*, (1999) 2 All ER 791 p. 808 (CA).

8. *United Society v. Eagle Bank* (1829) 7 Connecticut 457, p. 470, as cited in *CRAIES, Statute Law*, p. 134 (7th Edition). See further *Shah & Co., Bombay v. State of Maharashtra*, AIR 1967 SC 1877, pp. 1883, 1884 : 1967 (3) SCR 466; *Sirsilk Ltd. V. Textiles Committee*, AIR 1989 SC 317, p. 330 : 1989 Supp (1) SCC 168.

9. *State of Punjab v. Okara Grain Buyers Syndicate Ltd., Okara*, AIR 1964 SC 669, pp. 684, 685 : 1964 (5) SCR 387.

23. It therefore appears that the description of the goods specified in column (3) of the Sl. No. 344 of the Notification cannot be interpreted in a manner so as to include incomplete or unfinished ‘motor car’ or ‘other motor vehicle’ also within its ambit

24. A plea has been taken by the applicant before us that Interpretative Rule 2(a) is implicit in the language of description of goods specified in column 3 of Sl. No. 344 of the Notification. Framers of the Notification, it is submitted, had Rule 2(a) in mind while drafting the description column. This line of agreement, it is felt, is not convincing. First of all, general exemption notifications are issued under Section 25(1) of the Customs Act, 1962 which, empowers the Central Government, if it is satisfied that it is necessary in the public interest to do so, to exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon. What is supreme is the satisfaction of the Central Government that ‘goods of any specified description’ deserve to be exempted in public interest. The exemption may be full or partial. Description of the goods to be exempted are specified in the Notification. Interpretative Rule 2(a) which is an aid to classify incomplete or unfinished goods has no role to play when the exemption notifications are framed nor can this Rule be taken as implicit in the description of goods specified in such notifications. Secondly, such line of argument would imply, in the case before us, that the description of goods given in column (3) against Sl. No. 344 of the Notification, would in effect, be expanded to read as ‘motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading No. 87.02), including station wagons and racing cars, new, which have not been registered anywhere prior to importation, including such motor cars or motor vehicles, incomplete or unfinished provided they have the essential character of a complete or finished car or motor vehicle. This, it appears, would do violence to the plain and clear language of the Notification as

it reads in its present form and this would not be permissible. Had this been the intention, the description of goods given in the Notification would have been worded in that fashion or it would have been spelt out by way of an 'explanation' in the column (3) of Sl. No. 344 itself. Thirdly, if the plea of implicit applicability of Rule 2(a) to the description of goods specified in an exemption notification is accepted, then in Maruti Udyog's case before the Hon'ble S.C., the imported goods namely components in completely knocked down packs would have been treated as motor cars by virtue of this Rule and denied the benefit of exemption though it was available to components in CKD packs. Obviously this would have been an irrational decision. So, when Rule 2(a) cannot be applied to deny the benefit of exemption, it would be reasonable and logical to hold that the same cannot also be applied to allow the benefit of exemption – the sole focus in both the situations being the description of the goods specified in the exemption notification. Otherwise, it would mean that goods, say, components of a motor car in CKD packs would get the benefit of an exemption Notification specifically exempting such components, by not applying Rule 2(a) and even when such exemption notification is not available, the same goods would enjoy the benefit of exemption under a Notification if in force, which exempts motor cars, by applying Rule 2(a). Such an approach does not appear to be consistent and hence not supportable.

25. Other judgements and the Board's Circular No. 55/95-Cus. dated 30.5.1995 cited by both the sides are not found directly relevant to the issues under consideration and hence not discussed here.

26. Summing up therefore, it is ruled that the goods proposed to be imported by the applicant are not covered by the main text of the description of goods specified in column (3) against Sl. No. 344 of the Notification No. 21/2002-Cus. dated 1.3.2002 as amended by Notification No. 11/2005 dated 1.3.2005 and hence the benefit of exemption under the said Notification is not available to the goods in question. In view of the above finding, the question of deciding whether sub-clause (1) or (2) in the column (3) would be attracted in the applicant's case, does not arise.

Pronounced in the open Court of the Authority on this 28th day of October, 2005.

Sd/-
(SOMNATH PAL)
MEMBER