**OPINION**

**1.** **QUERIST:**

M/s. J.K. Fenner (India) Limited,

Khivraj Complex II, 5th Floor,

480 Anna Salai, Nandanam,

Chennai – 600 035.

**2. FACTS:**

2.1 Querist regularly imports goods described as ‘Tensioner’. It is stated that these are belt tensioners used in passenger vehicles, farm tractors and other off highway vehicles. The querist has been classifying these goods under 8483 5090 and 8483 9000 and clearing them upon payment of duty based on the above classifications.

2.2 It is reported that customs have sent an Audit Consultative Letter to the querist relating to these tensioners. In the consultative letter the provisions of chapters 84 and 85 have been referred to in detail and it has been contended that these are not identifiable parts of engines or of machinery falling under 8483 and that these should be appropriately classifiable under heading 8708 9900. On that basis, the querist was asked to pay the differential duty to the extent of Rs.13,91,254/-.

2.3 Apart from that, the querist also has been asked to provide details of similar imports for the last 5 years and wherever the goods have been misclassified in the above manner, they have been asked to pay the differential duty with applicable interest voluntarily.

**3. QUERY:**

In the above context, the querist seeks opinion with regard to appropriate classification of these belt tensioners.

**4. OPINION:**

4.1 Belt tensioners, basically are meant to keep the drive/serpentine belts in correct tension for efficient working of the connected machinery.

4.2 The querist has provided the following details for the tensioners under reference.

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**Auto tensioner:**

**Product:** for Front end accessory drive system which Integrates engine-driven accessories like power steering, water pump, Alternator and AC in an Automotive engine.

Key Functions are:

* Provides constant belt tension, so that the belt does not slip on the pulleys
* By providing tension it ensures the system and enables proper engine power transferred from crank to all the pulleys.
* Provides Damping to the system in order to reduce system vibration and maintain stability
* Provides compensation to any variation, stretch and wear of the belt in its service life to avoid any adjustment to the system during its service.

The querist has further reported that these tensioners are used in automotive passenger vehicles, commercial vehicles, farm tractors and off highway vehicles.

4.3 Based on the construction and function of these tensioners, it can be clearly seen that the product under question is not an identifiable part of an IC engine. On the other hand, it keeps the belt in proper tension and runs through different pulleys connecting IC engine, AC compressor and similar equipment. By taking into account the design and function of the product, it will be clear that it cannot be classified as an item falling under 8483 also. Parts which are specifically designed and which are solely and principally used in automotive vehicles will be classifiable under chapter 87, subject to certain conditions.

4.4 The Explanatory Notes to HSN to heading 87.08 which covers parts and accessories of various motor vehicles state the following.

“This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfil **both** the following conditions :

(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;

and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).”

Again, in Section XVII of the Explanatory Notes to HSN under “Parts and Accessories” the following is stated.

“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).”

4.5 In the present case, these tensioners are not identifiable parts of any other equipment falling under chapter 84. They are also not independently described as an ‘article’ under any other chapter heading of the Tariff schedule. Therefore, in such a context, their classification as part of automotive vehicles under chapter 87 cannot be ruled out and accordingly, these should fall under heading **8708**.

4.6 In this context, querist’s attention is invited to the U.S. Trade Commission Ruling NY N265154 dated 19.06.2015 where the Tariff classification of a tensioner assembly was examined. That item was reportedly for the purpose of maintaining the optimal level of tension for the accessory belt drive system of a vehicle and the assembly consisted of an arm, a base, a spring, a dampening mechanism, a pivot bushing, a pivot shaft, a bearing, a pulley, and a dust shield. When the applicant wanted classification of these items under 8483 the Trade Commission clarified the following:

“Thus, if the belt tensioner in issue is provided for in heading 8409 as a part suitable for use solely or principally with the engines of heading 8407 or 8408, it cannot be classified in heading 8708. The Court of International Trade has ruled repeatedly that not every article used with another article is necessarily a “part” for tariff purposes. This office discussed this import with the NIS that handles 8483 and 8409, as well as reviewing prior rulings . It has been previously determined by CBP that, for tariff purposes, a part is an integral, constituent component of another article necessary to the completion of the article which it is used, and which enables that article to function in the manner for which it is designed. Internal combustion engines convert energy into mechanical motion. In this case, the internal combustion engine is a discrete article of commerce, fully complete and functional in and of itself. Power generated by the engine is transmitted through the rotary motion of the crankshaft to the drive belt, and thence to the accessories the belt powers. The function the tensioner element performs with respect to the drive belt does not qualify the tensioner element as part of an internal combustion engine. The belt tensioner is not provided for in heading 8409 and, therefore, would not excluded from classification in heading 8708.”

Accordingly, the classification was indicated as 8708.99.8180 of the U.S. Tariff in that ruling. A copy of the same is attached as Annexure-A to this opinion. A similar ruling was given by the U.S. Trade Commission under reference NY R01023 dated 02.11.2004 in respect of drive belt tensioner assembly imported from Canada. A copy of this ruling also is attached as Annexure-B to this opinion.

4.7 Hence, in our view, these tensioners will be appropriately classifiable under 8708 as claimed by the department and therefore, the querist can consider paying the differential duty with interest now itself so that penal provisions are avoided by issue of a notice under Section 28 of Customs Act.

4.8 The customs have also asked for details of past imports for the last 5 years with a request to pay the differential duty. It is to be noted that payment of differential duty beyond the normal period for issue of demands under Section 28 will be relevant when such non-payment is due to suppression of facts, collusion, mis-statement etc. Or in other words, the duty demand for 5-year period can be made only in the above circumstances.

4.9 In the present case, there are different assessment practices in classification of these tensioner as can be seen from the import data across the country and the wrong classification, if any, is not due to suppression of facts or wilful mis-statement. There are several decisions to the effect that in respect of classification disputes involving interpretation of legal provisions, there cannot be any suppression of facts and hence, extended period for demand of duty for 5 years cannot be invoked.

4.10 By taking into account the above, in our view, there may not be any legal requirement to pay differential duty for the 5-year period as there are no legal provisions for demand of duty for these goods in the present case by invoking the extended period.

**S. MURUGAPPAN**

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**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the queriest and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.