**Evolving EV ecosystem in India**

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**Background**

 The switch from internal combustion engine (‘**ICE**’) vehicles to electric vehicles (‘**EV**’) in global market is primarily driven by the global climate agenda as detailed in the Paris Agreement under United Nations Framework Convention on Climate Change (UNFCCC)[[1]](#footnote-1), to reduce carbon emissions for combating the alarming issue of global warming.

 Right from the year 2012, the Indian Government has been taking continuous steps to develop and promote EV ecosystem in the country, witnesseth from National Electric Mobility Mission Plan (‘**NEMP**’) to introduction of Faster Adoption and Manufacturing of EVs scheme (‘**FAME**’) on the consumer side and Production-linked Incentive Scheme (‘**PLI**’) for Advanced Chemistry Cell (‘**ACC**’) as well as for Auto and Automotive Components manufacturers on the supplier side.

 India being one of the world’s largest automobile market, has always been a market of interest for multinational automobiles companies to launch their EVs, thereby benefitting out of the market opportunities presented by this segment. The Government is looking up to these companies to set up manufacturing/assembly units here, in order to promote Make in India initiative. However, regardless of the ambitious targets set by the government, the penetration of EVs in the Indian market continues to be at a nascent stage.

 The Union Finance Minister while presenting the Finance Budget for the year 2022-2023 has made various announcements to edify the EV ecosystem in India and consequently some amendments have been introduced in notifications prescribing concessional rate of duty for import of EVs.

 With this article, we have tried to highlight the changes in entries relating to EVs and their probable impact on the EV ecosystem in India.

**Applicable rate of basic customs duty on EVs**

 Until the year of 2015, the Government of India levied uniform rate of basic customs duty on ICE vehicles and EVs imported into India. *Vide* Notification No. 10/2015-Cus dated 1 March 2015, an entry at S. No. 436B was introduced in the Notification No. 12/2012-Cus., dated 17 March 2012 to prescribe a concessional rate of basic customs duty (‘**BCD**’) for ‘EVs for transport of ten or more persons’. Thereafter, *vide* Notification No. 3/2019-Cus., dated 29 January 2019 a separate entry for electric cars was introduced in Notification No. 50/2017-Cus., dated 30 June 2017 (‘**Exemption Notification**’). This entry is substituted with a new entry *vide* Notification No. 2/2022-Cus., dated 2 February 2022. The changes carried out in the substituted entry in Exemption Notification dated 30 June 2017 *vis-à-vis* the earlier entry are discussed hereunder:

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| --- | --- | --- | --- |
| **S. No.** | **HSN** | **Particulars** | **Rate** |
| 526A      | 8703      | Electrically operated vehicles ~~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,~~ if imported, -(1) incomplete or unfinished, as a Knocked Down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, including battery pack, motor, motor controller, charger, power control unit, energy monitor, contactor, brake system, electric compressor, whether or not individually pre-assembled, with, - |  |
| (a) ~~disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor~~ none of the above components, parts or sub-assemblies inter-connected with each other and not mounted on chassis; | 15% |
| (b) ~~pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor~~ any of the above components, parts or sub-assemblies inter-connected with each other but not mounted on a chassis ~~or a body assembly.~~ | 30% |
| (2) In ~~any other~~ a form other than (1) above, - |  |
| (a) with CIF value more than US$ 40,000 | 100% |
| (b) other than (a) above***Explanation***. – For the removal of doubts, the exemption contained in items (1)(a) and (1)(b) of this entry shall be available, even if one or more of the components, parts or sub-assemblies required for assembling a complete vehicle are not imported in the kit, provided that the kit as presented, is classifiable under the heading 8703 of the Customs Tariff Act, 1975 as per the general rules of interpretation. | 60% |

***‘Incomplete or unfinished’:***

The substituted entry uses the phrase *‘incomplete and unfinished’* in clause (1) of the entry. Concerns have been raised as to whether this is an additional condition to be satisfied for import of goods at concessional rate of duty 15%/30%.

This phrase ‘incomplete or unfinished’ while read with the newly inserted explanation which prescribes that even if one or more of the components, parts or sub-assemblies required for assembling a complete vehicle are not imported in the kit, makes it clear that the benefit of concessional rate of duty would be available, provided the kit remains classifiable under CTH 87.03.

The phrase *‘incomplete and unfinished’* is also used in the HSN Explanatory Notes in context of classification of vehicles under Chapter 87 even if the same is not fitted with certain parts. However, it is not clear if the concessional rate of duty can be availed even if the components, parts or sub-assemblies as presented for import are complete and finished in all respect.

***‘Knocked down kit’:***

Entry 526A as introduced in the year 2019 uses the phrase ‘knocked down kit’, while the Entry 526 for import of ICE vehicles uses the phrase ‘completely knocked down (CKD) kit’. The Notification however does not define either of the terms.

In order to understand scope of ‘CKD Kit’ reference can be made to the explanation at S. No. 344 of Notification No. 21/2002-Cus., dated 1 March 2002 (superseded/rescinded by Notification No. 12/2012-Cus., dated 17 March 2012) which defined the term CKD unit[[2]](#footnote-2) of a vehicle to mean a unit having all necessary components, parts or sub-assemblies for assembling a complete vehicle but excluded units containing pre-assembled or pre-installed engine, gear box or transmission mechanism. Therefore, it can be understood that a CKD kit must have all the necessary components, parts or sub-assemblies required for assembling a complete vehicle.

Whereas the newly inserted explanation in S. No. 526A of Exemption Notification allows an importer of EV in ‘knocked down kit’ to avail concessional rate of duty even if one or more of the components, parts or sub-assemblies required for assembling a complete vehicle are not imported in the knocked down kit, but such kit must be classifiable under CTH 8703 as per the General Rules of Interpretation. However, no such explanation has been in inserted at S. No. 526 for ICE vehicles imported in ‘CKD kit’. Thus, a clarification on the scope and essentials of ‘semi-knocked down kit’ and ‘completely knocked down kit’ would bring certainty in the minds of importers.

***‘Individually pre-assembled’:***

The condition of different levels of ‘pre-assembly’ of specified components of kit as required under clause 1(a) and 1(b) of earlier entry, has now been relaxed and incorporated in Clause (1) of the substituted entry, providing that the components contained in an EV kit, may or may not be individually pre-assembled at the time of import of kit.

Whereas as per the earlier entry, if the said components were disassembled but not mounted on a chassis, the benefit of concessional rate of duty under clause 1(a) @ 15% was allowed and if the said same were pre-assembled then the Kit was subject to duty @ 30% under clause 1(b).

At this juncture, it is necessary to understand the meaning phrase ‘individually pre-assembled’ which presently has not been defined in the Exemption Notification. It can be said that unlike earlier entry, assembly of parts is not the criteria for deciding on the applicable rate of duty. However, the significance of term ‘individually’ being inserted before ‘pre-assembled’ could create confusion hence, a clarification in this regard would be of great help for the industry.

***‘Inter-connected with each other’***

 The clause (1)(a) of substituted entry at 526A, requires that none of the components, parts or sub-assemblies contained in a kit shall be inter-connected with each other and mounted on chassis for qualifying under 15% rate of BCD. The phrase ‘inter-connected with each other’ used in aforesaid clause plays an important role in deciding the applicable rate of duty on import of EVs; however, its meaning has not been provided in the Exemption Notification.

 The word interconnection has been commonly used in context of the components, parts as well as sub-assemblies. Thus, it is not clear if interconnection of various sub-assemblies for import of a part or interconnection of various parts for import of a component would be eligible for 15% rate of BCD. The industry is eagerly looking forward to getting more clarity regarding levels of integration allowed under clause 1(a) and 1(b).

**Explanation**

 An explanation has been added tothe substituted entry at S. No. 526A stating that the benefit of concessional rate shall be available even if one or more parts required for assembly of an EV are not imported in the Kit, however the kit as presented remains classifiable under CTH 87.03 as per GIR 2(a). In terms of TRU letter dated dated 01.02.2022, the said explanation has been added to provide that for an EV kit to be eligible for duty benefits: -

1. Each individual component in the kit need not be in a disassembled form.
2. Even if some components are missing in the EV kit, the benefit would still be available provided that the kit as presented has the essential character of an EV.

 The insertion of said explanation raises a fresh need to define which parts, components or sub-assemblies contained in an EV kit provides ‘essential characteristics’ to it as the Exemption Notification is silent on it.

**Epilogue**

The TRU letter in D.O. F. No. 334/01/2022-TRU dated 1 February 2022 has clarified that the changes in the Exemption Notification for goods under Chapter 87 have been made to remove the doubts that have arisen about the scope of the entries and that the changes are merely clarificatory in nature. Though, there is no change in the rate of duty, the changes carried out in the description in context of the form and manner in which the goods are to be imported is likely to cause muddle among the industry and the field formations. The industry is therefore expecting clarification on this front to arrest any possible litigation or dispute in the future.

 The changes in the entry in the Exemption Notification relating to import of EVs are carried out to encourage companies to set-up their manufacturing plants in India. This intent, coupled with Government’s commitment towards *Clean & Sustainable Mobility Programme* and introduction of *Battery Swapping Policy* in alternative for charging stations are clear indicators of our vision to evolve an efficient EV Ecosystem. Thus, it would be interesting to witness how the EV Ecosystem unfolds and how efficient the fuelling by Union Budget, 2022 proves to be.

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1. Paris Agreement is a legally binding international treaty on climate change which was adopted by 196 parties (including India) at the 21st Conference of Parties in Paris, on December 12, 2015, and was enforced on November 4, 2016. [↑](#footnote-ref-1)
2. “Explanation.- For the purposes of this exemption, “ Completely Knocked Down” unit means a unit having all the necessary components, parts or sub-assemblies for assembling a complete vehicle but does not include,-

(a) a unit containing a pre-assembled engine or gearbox or transmission mechanism; or

(b) a body assembly of a vehicle on which any of the component or sub-assembly viz. engine or gearbox or transmission mechanism is installed‟ [↑](#footnote-ref-2)