

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. B. V. Borhade, Joint Commissioner of State Tax

(2) Shri. Pankaj Kumar, Joint Commissioner of Central Tax.

| | |
|---|--|
| GSTIN Number, if any/ User-id | 27AAACC1645G1ZZ |
| Legal Name of Applicant | CEAT LIMITED |
| Registered Address/Address provided while obtaining user id | RPG House, 463, Dr. Annie Besant Road, Worli, Mumbai - 400030. |
| Application | No. 07 / Dated. 13.12.2017 |
| Jurisdictional officer | MUM-VAT-E-614, L.T.U.-2, Mumbai. |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought. | Manufacturing of tyres of kind used in three-wheeled Electric-rickshaws |
| A Category | Factory / Manufacturing |
| B Description (in brief) - | Applicant is engaged in the manufacturing of tyres of kind used in three-wheeled Electric-rickshaws which are used to transport goods and passengers over short distances. |
| Issue/s on which advance ruling required /The question posed. | What is the classification and rate of Central Goods Service Tax leviable on product- <u>"E-rickshaw tyres"</u> . |

PROCEEDINGS

(Under section 98 of the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-07/2017/B- 06

Mumbai, dt. 09/03/2018

The applicant, M/s Ceat Ltd. has filed the application under section 97 of the Maharashtra Goods and Services Tax Act, 2017 and requested to decide the question What is the classification and rate of Central Goods and Service Tax leviable on the product **"E-rickshaw tyres"**.



02. Fact of the case:-

1. M/s Ceat Ltd. (hereinafter referred to as ‘**Applicant**’) having its corporate head office at, Ceat Limited, RPG House, 463, Dr. Annie Besant Road, Worli, Mumbai Mumbai 400 030 and having various regional offices located at across the Country Viz. Delhi, Bangalore Hyderabad, Guwahati etc., is *inter-alia* engaged in the manufacture of Rubber Tyres, Tubes and Flaps which are taxable under GST law.
2. The present application is filed in respect of one of its products - “*Tyres of kind used in Three-wheeled Electric rickshaws*” (known in trade by the name of ‘*e-rickshaw tyres*’) which is specially manufactured to be used in modern day electric rickshaws (e-rickshaws) to bear vehicular load and help ease of movement of the e-rickshaws.
3. The applicant has been clearing the product under Chapter Heading No. 4011 of the Schedule to Customs Tariff Act, 1985 which covers ‘*New pneumatic tyres, of rubber*’. Under GST regime, the same Chapter Heading No. 4011 of the Schedule to the Customs Tariff Act, 1975 attracts CGST at both, 2.5% and 14%. Thus, effective rate of GST on the said product can be either of 5% or 28%.
4. It is observed by the applicant that there is an anomaly in the Customs Tariff as well as in the GST Tariff Schedules in so far as ‘*e-rickshaw tyres*’ are concerned. The term ‘*e-rickshaw tyres*’ fails to find a mention in both, the Customs Tariff and the GST Rate Schedules. Furthermore, it is observed that Chapter Heading No. 4011 of the Customs Tariff is covered by two separate entries in two distinct Schedules i.e. Sl. No. 190 of Schedule-I attracting CGST @2.5% and Sl. No. 46 of Schedule-IV attracting CGST @14% as per Notification No.1/2017- Central Tax (Rate) dated 30.06.2017.
5. Sl. No. 190 of Schedule-I and Sl. No. 46 of Schedule-IV of the Notification No.1/2017- Central Tax (Rate) dated 30.06.2017 reads as under:

| Sch. | Sl. No. | Chapter Heading/ Sub-Heading | Description of Goods | Rate of Tax (CGST) |
|------|---------|------------------------------|---|--------------------|
| I. | 190. | 4011,4013 | <i>Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle -rickshaws and three wheeled powered cycle rickshaws</i> | 2.5% |
| IV. | 46. | 4011 | <i>New pneumatic tyres, of rubber [other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyres; and of a kind used on aircraft]</i> | 14% |



6. The present ambiguity regarding the product in question is due to the lack of reference to the term '*e-rickshaw tyre*' in both, Customs Tariff and GST Rate Schedules. Sl. No. 190 of Schedule-I to Notification No.1-Central Tax (Rate) covers Chapter Heading No. 4011 (and 4013) for '*Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle - rickshaws and three wheeled powered cycle rickshaws*' attracting CGST @ 2.5%. On the contrary, Sl. No. 46 of Schedule-IV covers Chapter Heading No. 4011 with the description '*New pneumatic tyres, of rubber [other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyres; and of a kind used on aircraft]*' attracting CGST @ 14%. Chapter Heading No. 4011 covers '*New pneumatic tyres, of rubber*' and the term '*e-rickshaw tyre*' is not specifically covered in the entire Tariff. Furthermore, even HSN Explanatory Notes to Chapter Heading No. 4011 are silent in so far as '*e-rickshaw tyres*' are covered.
7. The prevailing ambiguity is caused by the omission of the term '*e-rickshaw*' and further, by specific mention of the term '*three-wheeled powered cycle rickshaws*' in Sl. No. 190 of Schedule-I of Notification No. 1/2017-Central Tax (Rate). It shall be noted that '*Three-wheeled powered cycle rickshaw*' was a vehicle that comprised of three wheels and was used to carry passengers or light goods over a short distance. It was a modification of the three wheeled-powered cycle rickshaws by adding a small battery to the same in order to ease the burden of the driver by using the mechanical energy generated as electrical energy to propel the rickshaws over short distances. It is understood that the legal principle of *ejusdem generis* was applied in the year 1976 so as to include '*three-wheeled powered cycle rickshaws*' in the same heading with '*three-wheeled cycle rickshaws*' primarily because of similar design and usage.
8. However, it is submitted that '*three-wheeled powered cycle rickshaws*' are outdated in technology and have been effectively replaced by three-wheeled electronic rickshaws (i.e. e-rickshaws) which run on electrical energy stored in batteries and serve the same purpose as three-wheeled powered cycle rickshaws. In true sense, '*e-rickshaws*' are an upgradation of the three-wheeled powered cycle rickshaw technology carried out to increase the efficiency of the rickshaws while minimizing the physical efforts put in by the driver.
9. The principle of *ejusdem generis* specifies that like items should be treated likely i.e. goods of the same kind should be clubbed and treated similarly. Extending the same principle to e-rickshaws, it is submitted, that e-rickshaws should be treated as similar to three-wheeled



powered cycle rickshaws in law and clubbed with the same for the purpose of taxation under GST.

10. The lack of mention of 'tyres used in e-rickshaws' along with three-wheeled powered cycle rickshaws in Sl. No. 190 of Schedule-I to Notification No. 1-Central Tax (Rate) gives rise to the ambiguity that whether the product in question shall be perceived to be covered under Schedule I or Schedule IV of Notification No.1-Central Tax (Rate). This further gives rise to the ambiguity regarding applicability of GST @ 5% or 28% on the product in question which is an effective tax differential of 23%.

03. The legal submission of applicant:-

- A.1 That the sub-section (c) of Section 95 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), defines the term 'applicant' as under:-

"applicant" means any person registered or desirous of obtaining registration under this Act"

... Emphasis Supplied

- A.2 A perusal of the above clarifies that scope of the term 'applicant', as defined under sub-section (c) of Section 95 of the CGST Act shall include both, the person registered under the CGST Act and also the person who is not registered as on date of applying for the advance ruling, but is desirous of seeking registration under the CGST Act, in the state where advance ruling is sought.

- A.3 Further, Section 22 of the CGST Act, specifies the person liable for registration and reads as under:-

"22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

....." ... (Emphasis Supplied)

- A.4 The above referred section can be vivisected into following essentials: -

- a. A supplier shall be liable to be registered under CGST Act in the State or Union Territory, from where he makes taxable supply of goods or services or both;
- b. If the aggregate turnover in the financial year exceeds rupees twenty lakh.

- A.5 The Applicant submits that as on date, it is registered in Maharashtra and also making taxable supplies of goods from the same to its customers located in State of Maharashtra. Further, the turnover of the Applicant exceeds rupees twenty lakhs in the financial year. Given this, it is submitted that Applicant clearly satisfies to be 'applicant' in terms of sub-section (c) of the Section 95 of the CGST Act.



A.6 That sub-section (1) of the Section 95 of the CGST Act defines the term 'advance ruling' as under:-

“(a) “advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;”

... Emphasis Supplied

A.7 Perusal of the above clarifies that the advance ruling can only be sought on the issues, as are specified under Section 97(2) of the CGST Act, which reads as under:-

*“97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the **question on which the advance ruling is sought.***

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

*(a) **classification of any goods or services or both;***

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

*(g) **whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.”***

... Emphasis Supplied

A.8 In view of the above, it is submitted that advance ruling may be sought by the Applicant on the questions concerning classification of goods or services or both, on the question involving determination if any thing done by the applicant with respect to a goods or services or both amounts to or results in a supply of goods or services or both. The Applicant submits that the questions for determination in the instant advance ruling application concern both (1) if the Applicant is making supply of goods or services and (2) what is the correct classification of goods or services supplied by the Applicant

A.9 Further, Section 96 of the CGST Act provides for appointment of advance ruling authority and reads as under:-

*“96. Subject to the provisions of this Chapter, for the purposes of this Act, **the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.**”*

... Emphasis Supplied

A.10 Hence, an Advance Ruling Authority appointed by the concerned State or Union Authority Government under concerned State or Union Territory Goods and Service Tax Act, shall be



the deemed to be the Advance Ruling Authority for the purpose of CGST Act. The Section 96 of the Maharashtra Goods and Service Tax Act, 2017, reads as under:-

“SECTION 96

*(1) The **Government shall, by notification**, constitute an Authority to be known as the Maharashtra Authority for Advance Ruling:*

Provided that the Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for the State.

(2) The Authority shall consist of-

(i) one member from amongst the officers of central tax; and

(ii) one member from amongst the officers of State tax,

to be appointed by the Central Government and the State Government respectively.

(3) The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.

... Emphasis Supplied

A.11 The Applicant submits that in terms of the above referred section 96 of the Maharashtra Goods and Service Tax Act, 2017, the Government of Maharashtra has issued a Notification No. MGST-1017/CR 193/Taxation dated 24.10.2017, which constitutes this authority as Maharashtra Authority for Advance Ruling. The Applicant submits that by virtue of Section 96 of the Maharashtra Goods and Service Tax Act, 2017, the questions for determination in advance ruling lie before the Maharashtra Authority for Advance Ruling.

A.12 In view of the foregoing, the Applicant submits that it is eligible to file the present advance ruling application before the Maharashtra Authority for Advance Ruling, Mumbai, appointed vide Notification No. MGST-1017/CR 193/Taxation, dated 24.10.2017 read with Section 99 of Maharashtra Goods and Service Tax Act, 2017.

4. We find that **jurisdictional officer has made written submission** which are as under :-

The dealer has applied for advance ruling for the issue of classification of commodity. The dealer is dealing in the commodity tyres of kind used in three wheeled electric rickshaws which is specially manufactured to be used in modern day electric rickshaws. The dealer has been clearing goods under chapter heading-4011. While going through chapter heading 4011 in the customs act (which is quoted above) it mentions new pneumatic tyres of rubber.

The word rickshaw's origins lie in the Japanese language, and it literally translates to “a human powered vehicle”. The rickshaw is one of the oldest modes of transport, and was first introduced in the late 19th century. It is used all across the world, but more common in the Asian countries, especially in India and Bangladesh. The various types of rickshaws have also evolved over time with the earliest ones being the pulled-rickshaws. Other variations of the mode of transport include the powered cycle-rickshaw, the auto-rickshaw and the relatively newer iteration of the e-rickshaws. Historically, India's urban as well as rural areas have depended on the various rickshaw types for their travel requirements. The most recent modification called the battery operated e-rickshaws (Referred as battery rickshaws subsequently in the study) was introduced in the city of New Delhi during the Commonwealth Games 2010.



As well as the notification No.1/2017- Central Tax (Rate) dated 28th June 2017 reads as under:-
The GST Rate schedules. Sr. no .190 of schedule -1 to Notification no-1 central tax rate covers chapter heading no 4011 and 4013

Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle -rickshaws and three wheeled powered cycle rickshaws

| | | | |
|------|------------|--|------|
| 190. | 4011, 4013 | Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle -rickshaws and three wheeled powered cycle rickshaws | 2.5% |
|------|------------|--|------|

| Chapter / Heading / Sub-heading / Tariff item | Description of Goods | CGST Rate (%) | SGST/UTGST Rate (%) | IGST Rate (%) | Condition |
|---|--|---------------|---------------------|---------------|-----------|
| 4011 30 00 | New pneumatic tyres, of rubber of a kind used on aircraft" | 2.5 | 2.5 | 5 | |
| 4011. 4013 | Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle -rickshaws and three wheeled powered cycle rickshaws | 2.5 | 2.5 | 5 | |
| 4011 | Rear Tractor tyres and rear tractor tyre tubes | 9 | 9 | 18 | |
| 4011 70 00 | Tyre for tractors | 9 | 9 | 18 | |
| 4011 | New pneumatic tyres, of rubber [other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; rear tractor tyres; and of a kind used on aircraft] | 14 | 14 | 28 | |

The dealer's contention to consider three wheeled powered cycle rickshaws as three wheeled electric rickshaws based on the principle of *Ejusdem generis* cannot be accepted because three wheeled powered cycle rickshaws are different than electric rickshaws. Cycled rickshaws were first driven manually. To carry more loads and reduce burden on the person who rides it manually power was added to it. This means three wheeled power cycled rickshaws is up gradation of cycled rickshaws.

The dealer who is requesting for levy of tax @ 2.5% was earlier charging the same goods at an aggregate pre-GST tax of around 12.5% As per Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, three wheeled powered cycle rickshaws are mentioned along with bicycles, rickshaws.

The **Electric Motor Vehicle Three Wheeled** (commonly known as E-Rickshaw) are completely different from **three wheeled powered cycle rickshaws**. While the tyres/tubes of the former are liable to be taxed at 14% and that of the latter are chargeable @ just 2.5% .It appears that **Electric Motor Vehicle Three Wheeled** Tyres and Tubes are tried to be classified as Tyres and Tubes of 'Three Wheeled Powered Cycle Rickshaw' in chapter heading 401150, 40119900 and 40132000, 40139050 which was earlier exempted from Central Excise Duty by earlier Central Excise Tariff before GST, but now attracting 2.5% percent. This exemption exists in Central Excise Tariff since long time, the time when Three Wheeled Electric Motor Vehicles



(E-Rickshaw) were not even **conceptualized**. This exemption has been taken verbatim in GST in 2.5% percent slab.

Three Wheeled **Electric** Motor Vehicle (known as E-Rickshaw in market) is a **Motor Vehicle** in Motor Vehicle Act also. It has to be registered with State Transport Authorities as a Motor Vehicle. Tyres and Tubes used in these Vehicles are Automobile Tyres and Tubes of size 300-12, 300-14, 90-90/12 and 3.75-12, which are duly prescribed as Automobile Tyres in **Bureau of Indian Standards** for Two and Three Wheeled Motor Vehicles IS 15627:2005. By no means the Tyres and Tubes cleared by them are Tyres and Tubes of Three Wheeled Powered Cycle Rickshaw. The SSI exemption notification no. 8/2003-Central Excise dated 1st March, 2003 defines the powered **cycle rickshaw** is defined as under:

"Powered cycle or powered cycle rickshaw means a mechanically propelled cycle or as the case may be mechanically propelled cycle rickshaw, which may also be pedalled if any necessity arises for so doing"

It clearly shows that the Tyres cleared by these manufacturers attracts a peak rate of 14% percent instead of 2.5% percent, as these Tyres and Tubes are meant for **Electric Motor Vehicles** (known as E-Rickshaw). The sizes of these tyres and tubes mentioned are also used widely in scooters and motorcycles. It is necessary to verify what duty these companies were paying in pre-GST era.

In Chapter head 4011 and 4013, Pneumatic Tyres or Inner Tubes, of Rubber, of a kind used on/in Bicycles, Cycle Rickshaws and Three Wheeled Powered Cycle Rickshaws attract a GST Rate of 2.5%

In Chapter head 4011, New Pneumatic Tyres of Rubber {Other than of a kind used on/in Bicycles, Cycle-Rickshaws and **Three Wheeled Powered Cycle Rickshaws**; and Rear Tractor Tyre} attracts a GST Rate of 14%

To ascertain the GST Rates on tyres used on/ in Erickshaw, we have to find out what is **the meaning of Powered Cycle Rickshaw and whether it is synonymous with E Rickshaw?** The following are the history findings of term 'powered cycle rickshaw'.

The term 'powered cycle rickshaw' in the explanation to the notification number 102/76 dated 16-3-1976 as follows:

"Explanation.- The expression term 'Powered Cycle' or 'Powered Cycle Rickshaw' means a mechanically propelled cycle or as the case may be mechanically propelled cycle rickshaw, which may also be paddled, if any necessity arises for so doing".



Further, the meaning of Powered Cycle Rickshaw was clearly explained in the case of *Delhi Kinetic Engineering Ltd. vs Collector Of Central Excise and upheld by Supreme Court bench on 21.03.1996 and reported in 1997 (94) ELT AI57(SC)*. Therefore, It is settled that **Powered** Cycle Rickshaw referred to in the Explanation would not cover an Auto Rickshaw and would only cover an **ordinary Cycle Rickshaw** to which a motor or petrol engine has been fitted.

The next question is, why Three Wheeled Electric Vehicle (E-Rickshaw) is not a Powered Cycle Rickshaw? Because -

- a) It is not a Cycle Rickshaw.
- b) It does not have pedal which is pre-requisite for Powered Cycle Rickshaw and it cannot be peddled, if any necessity arises for so doing.
- c) It is powered solely by electric motor which is not auxiliary in nature.
- d) It is a motor vehicle under "*Motor Vehicle Act*".
- e) It has to be registered with Local Transport Authority; hence it is a motor vehicle.

Therefore, it is very clear that E-rickshaw and powered cycle rickshaw are not one and the same but two different items.

As on day and with the present GST law: From the above empowered discussions, it is apparent that **Tyres used in E-Rickshaw** are not tyres of **powered cycle rickshaw** and hence attract a peak rate of 14% GST instead of 2.5% as charged/paid by some manufacturers/traders/importers

05. The legal position, Analysis and Discussion

We find that the charging section 9(1) of MGST and CGST ACT, 2017 provides for levy and collection of state tax and central tax on goods and services on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. Accordingly the State and central government have issued the notification for levy of tax. The provisions for implementing the CGST ACT and MGST ACT, 2017 are similar.

5.1 The relevant entries in the respective Schedules of Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, for the purpose of the impugned product in question, read as under:

Schedule I – 2.5%



| Sl. No. | Chapter Heading/ Sub-Heading | Description of Goods | Rate of Tax (GST) | Perscribed Sch.for rate of tax |
|---------|------------------------------|--|-------------------|--------------------------------|
| (1) | (2) | (3) | (4) | |
| 190. | 4011,4013 | Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle -rickshaws and three wheeled powered cycle rickshaws. | 2.5% | I. |
| 46. | 4011 | New pneumatic tyres, of rubber [other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyres; and of a kind used on aircraft] | 14% | IV. |

5.2

a) Three Wheeled Electric Motor Vehicle (known as E-Rickshaw in market) is a Motor Vehicle in Motor Vehicle Act also. It has to be registered with State Transport Authorities as a Motor Vehicle. Tyres and Tubes used in these Vehicles are Automobile Tyres and Tubes of size 300-12, 300-14, 90-90/12 and 3.75-12, which are duly prescribed as Automobile Tyres in Bureau of Indian Standards for Two and Three Wheeled Motor Vehicles IS 15627:2005. By no means the Tyres and Tubes cleared by them are Tyres and Tubes of Three Wheeled Powered Cycle Rickshaw.

b) The SSI exemption notification no. 8/2003-Central Excise dated 1st March, 2003 defines the powered cycle rickshaw as under:

"Powered cycle or powered cycle rickshaw means a mechanically propelled cycle or as the case may be mechanically propelled cycle rickshaw, which may also be pedalled if any necessity arises for so doing"

c) It clearly shows that the Tyres cleared by these manufacturers attract a peak rate of 14% percent instead of 2.5% percent, as these Tyres and Tubes are meant for **Electric Motor Vehicles** (known as E-Rickshaw). The sizes of these tyres and tubes mentioned are also used widely in scooters and motorcycles. It is necessary to verify what duty these companies were paying in pre-GST.

d) In Chapter head 4011 and 4013, Pneumatic Tyres or Inner Tubes, of Rubber, of a kind used on/in Bicycles, Cycle Rickshaws and Three Wheeled Powered Cycle Rickshaws attract a GST Rate of 2.5%, In Chapter head 4011, New Pneumatic Tyres of Rubber {Other than of a kind used on/in Bicycles, Cycle-Rickshaws and Three Wheeled Powered Cycle Rickshaws; and Rear Tractor Tyre} attract a GST Rate of 14%



e) To ascertain the GST Rates on tyres used on/ in E-rickshaw, we have to find out what is the meaning of Powered Cycle Rickshaw and whether it is synonymous with E Rickshaw? The term 'powered cycle rickshaw' in the explanation to the notification number 102/76 dated 16-3-1976 is as follows:

"Explanation.- The expression term 'Powered Cycle' or 'Powered Cycle Rickshaw' means a mechanically propelled cycle or as the case may be mechanically propelled cycle rickshaw, which may also be paddled , if any necessity arises for so doing". Here it is very clear that e-Rickshaws cannot be paddled is such necessity arises

g) Further, the meaning of Powered Cycle Rickshaw was clearly explained in the case of Delhi Kinetic Engineering Ltd. Vs Collector Of Central Excise and was upheld by Supreme Court bench on 21.03.1996 and reported in 1997 (94) ELT AI57(SC). Therefore, It is settled that Powered Cycle Rickshaw referred to in the Explanation would not cover an Auto Rickshaw and would only cover an ordinary Cycle Rickshaw to which a motor or petrol engine has been fitted.

5.3 We have carefully considered the notification issued for rate of tax, in order to determine the rate of MGST/CGST. The scheme of tax revealed that the GST is levied on supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules.

The description is provided as 'Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle -rickshaws and three wheeled powered cycle rickshaws.'

a) On analysis of the schedule entry- 190, it is seen that the tyres of cycle or cycle rickshaw whether powered or not are covered only. It is clear that the rickshaw must be pedal driven. The term "Cycle rickshaw" connotes a pedal driven, human powered, single track vehicle, having three wheels attached to a frame. The vehicle is usually a tricycle, pedal-driven by a driver, though some are equipped with an electric motor to assist the driver. In common parlance, the people understand a "cycle rickshaw" is a pedal driven, human powered, single track vehicle, having three wheels attached to a frame. This view is fortified with the ruling of Hon. Apex Court.

The meaning of Powered Cycle Rickshaw was clearly explained in the case of Delhi Kinetic Engineering Ltd. Vs Collector Of Central Excise and upheld by Supreme Court bench on 21.03.1996 and reported in 1997 (94) ELT AI57(SC).

b) It is well settled principle that in interpreting the entries of tax statute, preference should be given to the common parlance meaning and the one defined in local dictionary. In common as well as in commercial parlance, principle of classification provides that goods should be classified according to their popular meaning or as they are understood in their commercial sense and not as per the scientific or technical meaning. How the product is identified by the class or section of



people dealing with or using the product is also a test when the statute itself does not contain any definition and commercial parlance would assume importance when the goods are marketable.

c) In the present case, the product introduced by the appellant is with electric battery whereas the simple meaning of "cycle" is a pedal driven, human powered, single track vehicle, having two wheels attached to a frame, one behind the other. He also urged that the word "cycle" has to be understood in the light of the word "cycle rickshaw". The word "bicycle and cycle rickshaw", provided in entry-190 of schedule-I takes the colour from each other. For the purpose of charging sales tax we have to consider the plain meaning of "cycle" in common parlance.

d) With this understanding, let us turn to the maxim "noscitur a sociis", which means the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it. A man may be known by the company he keeps and a word is known by the accompanying words. Words derive colour from the surrounding words. The coupling of words together shows that they are to be understood in the same sense. Where the meaning of a particular word is doubtful, it may be ascertained by looking at adjoining words. In the construction of statutes, the rule noscitur a sociis is frequently applied, the meaning of a word, and, consequently, the mens legis is ascertained with reference to the context, and by considering whether the word in question and the surrounding words are, in fact, ejusdem generis, and referable to the same subject-matter. The meaning of law can be collected by comparing one part with another and by viewing all the parts together as one in whole and not one part only by itself. If one goes by this settled principle of interpretation of statutes then one would find that the word is to be found in the company of the words "cycle rickshaws", "bicycle". The cycle rickshaws are commonly understood as rickshaws propelled by cycling. The cycle rickshaw cannot be termed as auto-rickshaw or e-rickshaw.

e) The Cycle rickshaw is cycle rickshaw as understood in common parlance. The word cycle-rickshaw will take colour from the word bicycle and the things are belonging to same genus. Considered from this angle, one has to reach to the conclusion that the e-rickshaw is not within the sweep of the word "bicycles" or "cycle Rickshaw" and also does not appear to be in consonance with the legislative intent.

f) The applicant has relied upon the various case laws. We have carefully gone through the case laws. The case laws cited by applicant are more or less related to advancement of technology. The courts have observed that there is no change in the class of goods. The textile remains as textile. The change in method of manufacturing does not change the product. In present case we have seen that the Three wheeled power cycle rickshaw and E-rickshaw are two different and very



distinct commercial commodity understood in market. We respectfully opine that the ratio of the judgment cited by the applicant is not squarely applicable to this case.

g) It is settled principle that the "entry" in a tax statute is to be considered or interpreted in respect of a product or an item and its name in the commercial parlance is to be considered and if there is no clear identity or there is no clarity on the said aspect, the court may consider the composition of the product used or other dictionary meaning, etc. When the product is well known and understood amongst the buyers in commercial parlance, the other test namely, its composition or its actual use by different persons who may be using it for various purposes or its dictionary meaning would have little role to play. At this stage, we may refer to the decision of this court in the case of Raman Boards Ltd. [2015] 80 VST502(Karn), more particularly the observations made at para 37 of the said decision, which reads as under (pages 526 & 527 in 80 VST) :

"37. The 'entry' to be interpreted here is in a taxing statute ; full effect should be given to all the words used therein. If a particular article would fall within a description, by the force of words used, it is impermissible to ignore that description and denote the article under another entry, by a process of reasoning. The meanings given to articles in a fiscal statute must be as people in trade and commerce, con-versant with the subject, generally treat and is understand by them in the usual course. If an expression is capable of a wider meaning as well as narrower meaning, the question whether the wider or the narrower meaning should be given depends on the context and the background of the case. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described, then, there is no difficulty for statutory classification under a particular entry.

In view of detailed discussions as above it is clear that when legislature has classified the product and put them under a different entries Entry 160 of schedule-I and Entry-46 of schedule-IV and being capable to be understood in common parlance as a different commercial commodity, the basis of the classification is not open to question. Moreover, the schedule entry 46 is very specific in nature and is considered for all pneumatic tyres, of rubber. The schedule entry is provided with the exclusion clause. The exclusion clause enlists very specific items only. As we have already seen that the impugned product is pneumatic tyre and also does not fit into exclusion clause namely **[other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyres; and of a kind used on aircraft]** of particular entry. Once the articles are in circulation and come to be described, then, there is no



difficulty for statutory classification under a particular entry. Hence we are of opinion that there is no force in contention of applicant.

In view of the extensive deliberations as held hereinabove, we pass an order as under:-

ORDER

(Under section 98 of the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-07/2017/B- 10

Mumbai, dt. 09/03/18

Q.1 What is the classification and rate of Central Goods and Service Tax leviable on product "E-rickshaw tyres"?

A.1 The product is classified and covered by Tariff Heading 4011 and the rate of tax shall be at the rate of 14 percent under MGST ACT, 2017 and 14 percent under CGST ACT, 2017.



— sd —

B. V. BORHADE
(MEMBER)

— sd —

PANKAJ KUMAR
(MEMBER)

Copy to:-

1. Applicant.
2. The Commissioner (SGST)
3. The jurisdictional officer, MUM-VAT-E-614, L.T.U.-2, Mumbai.

CERTIFIED TRUE COPY
[Signature]
CHAIRMAN
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI