

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	27AAPCS5350R1ZF
Legal Name of Applicant	Shandong Heavy Industry India Pvt. Ltd
Registered Address/ Address provided while obtaining user id	Survey No. 280, 281, Hinjewadi Phase II, Village Mann, Taluka Mulshi, Pune, Maharashtra - 411057
Details of application	GST-ARA, Application No. 44 Dated 20.03.2018
Concerned officer	COMMISSIONER, SGST, MUMBAI
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	Dy. Commissioner CGST, Division-II, (Pimpri) Pune -I Commissionerate.
A Category	Manufacturing
B Description (in brief)	As reproduced in para 02 of the Proceedings below.
Issue/s on which advance ruling required	(i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

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

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Shandong Heavy Industry India Pvt. Ltd, the applicant, seeking an advance ruling in respect of the following questions.

- A. Whether the classification of Marine Diesel Engine falling under TSH 8408 of Customs Tariff Act, 1975 as adopted to GST attracting 28% of IGST (14% CGST + 14% SGST) as per Schedule IV (Sr. No. 115) of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 is correct or not?
- B. Whether the classification of Gear Box falling under TSH 8483 of Customs Tariff Act, 1975 as adopted to GST attracting 28% of IGST (14% CGST + 14% SGST) as per Schedule IV (Sr. No. 135) of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 is correct or not?
- C. Whether the goods falling under TSH 8408, 8409 and 8483 of Customs Tariff Act, 1975 as adopted to GST can be treated as '**parts of heading of 8902, 8904, 8905, 8906 and 8907**' attracting 5% of IGST (2.5% CGST+ 2.5% SGST) as per Schedule I (Sr. No. 252) of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 or not?



At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION – AS PER THE APPLICANT

The submission (Brief facts of the case), as reproduced verbatim, could be seen thus –

Description of Activity in which the Advance Ruling is sought

- a. The applicant is engaged in assembly and testing of Marine Diesel Engines and making supply to various dealers and shipyard manufacturers falling under TSH 8408.
- b. The applicant is also engaged in Importing Marine Diesel Engines (TSH 8408) for making supply as such to various dealers and shipyard manufacturers and engaged in importing parts required for assembly and testing of Marine Diesel Engine (TSH 8409) for making further supplies as well as for consumption assembly of Marine Diesel Engine as mentioned in (a) (*supra*).
- c. The applicant is also engaged in Import of Gear Box and making supply as such to various dealers and shipyard manufacturers falling under TSH 8483.

STATEMENT OF RELEVANT FACTS

1. M/s Shandong Heavy Industry India Private Limited (Hereinafter referred as 'The Applicant') is engaged in supply of WEICHAI diesel engine range includes 15-2250 KVA for G-Drive applications, 30-1650 hp range for marine propulsion, auxiliary and commercial marine applications for various vessel types. (The leaf-let of the applicant and detailed specifications of six different marine engines are enclosed herewith and marked as **Annexure - A** collectively).
2. The Applicant is also engaged in importing and supply of various models of Gear Boxes including Trans capacity KW FD135, FD120 and FD 300 etc.(The detailed specifications of the said gear boxes are given in the Service Manuals. The relevant copies from the said Service Manuals are enclosed herewith and marked as **Annexure - B**).
3. The supply of Diesel Engine made is of two types i.e. assembly of Diesel Engine by using various imported parts and import the diesel engine as such (The copy of process flow diagram of Marine Diesel Engines and the copies of Commercial Invoice issued by M/s Shandong Weichai import and Export Corporation, Shandong, China to the applicant along with BOE are enclosed herewith and marked as **Annexure - C** and **Annexure - D** respectively).
4. The supply of Gear boxes is made by importing the same and never assembled by the applicant in India (The copies of Commercial Invoice issued by M/s Shandong Weichai import and Export Corporation, Shandong, China to the applicant along with BOE are enclosed herewith and marked as **Annexure - E**).
5. The applicant made supplies of marine engines and the gear boxes (Hereinafter referred as 'said goods') to two types of customers i.e. dealers who supply the said goods to the sailors who further use the said goods in fishing vessels, ships, boat or trawlers and the shipyard manufacturers engaged in manufacturing of various vessels falling under Chapter 89 of Customs Tariff Act, 1975.
6. The applicant would like to furnish details of Engine models (assembled and/or imported) fitted in the fishing boats with the help of certain photographs of fishing boats and engine details as per the models to establish that the diesel engines (assembled and/or imported) are specially designed for Marine application and used exclusively for fishing vessels. (The five copies of different engine models and photos of fishing boats with certain specifications are enclosed and marked as **Annexure - F**).
7. The applicant would also like to highlight some of the photographs of marine engines to show that the said marine engines installed on the vessels (The three copies of actual photographs taken of engines fitted on the trawlers are enclosed and marked as **Annexure - G**).
8. The applicant either after assembly of marine engine, however prior to supply, is supposed to affix the proper specifications name/number plate on the face of the marine engine to describe the engine number, net weight, rated speed max power and the date of manufacture of the said engine etc. likewise, the exporter while exporting the 'gear box' to India, is supposed to affix the name/number plate of gear box with its specifications (The photographs of the said name/number plates of marine engine assembled by the applicant and gear box imported by them are enclosed and marked as **Annexure - H**).
9. The marine engines as described in **Annexure - A** and the marine gear box as described in **Annexure - B** are falling under following 4 digits of Customs Tariff Act, 1975 as adopted by GST.

Chapter / Heading / Sub-heading / Tariff item	Description of goods
8408 (<u>Annexure - A</u>)	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines)
8409	Parts suitable for use solely or principally with the engines of heading 8407 or 8408
8483 (<u>Annexure - B</u>)	Transmission Shafts (Including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and



	pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)
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10.

Notification No. 1/2017 - Central Tax (Rate) dated 28th June, 2017, amended from time to time, specifies CGST rate schedules and classification of abovementioned goods under different Schedules. Similarly, Notification No. 1/2017 - Integrated Tax (Rate) dated 28th June, 2017 is also issued to specify IGST rate Schedules. The Schedules applicable to the applicant as per the 'classification of goods' as mentioned in Para 9 (*supra*) attracting tax rate is as follows:

Schedule No.	Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of goods	CGST / SGST Rate	IGST Rate
IV	115	8408	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines)	14%	28%
IV	116	8409	Parts suitable for use solely or principally with the engines of heading 8407 or 8408	14%	28%
IV	135	8483	Transmission Shafts (Including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)	14%	28%

11.

As per the **Annexures F to H** enclosed with this application and as narrated in Para Nos. 5 to 8 (*Supra*), the applicant supply the marine engines and gear boxes, the end - use of which is in fishing vessels, boats, trawlers etc. The classifications of these vessels etc. are falling under following 4 digits of Customs Tariff Act, 1975 as adopted by GST.

Chapter / Heading / Sub-heading / Tariff item	Description of goods
8901	Cruise-ships, excursion boats, ferry-boats, cargo-ships, barges and similar vessels for the transport of persons or goods
8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products
8904	Tugs and pusher crafts
8905	Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
8906	Other vessels, including warships and lifeboats other than rowing boats
8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)

12 Notification No. 1/2017 - Central Tax (Rate) dated 28th June, 2017, amended from time to time, specifies CGST rate schedules and classification of abovementioned goods under different Schedules. Similarly, Notification No. 1/2017 - Integrated Tax (Rate) dated 28th June, 2017 is also issued to specify IGST rate Schedules. The Schedules applicable to the abovementioned goods as per the 'classification of goods' as mentioned in Para 11 (*supra*) attracting tax rate is as follows:

Schedule No.	Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of goods	CGST / SGST Rate	IGST Rate
I	246	8901	Cruise-ships, excursion boats, ferry-boats, cargo-ships, barges and similar vessels for the transport of persons or goods	2.5%	5%
I	247	8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products	2.5%	5%
I	248	8904	Tugs and pusher crafts	2.5%	5%
I	249	8905	Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms	2.5%	5%
I	250	8906	Other vessels, including warships and lifeboats other than rowing boats	2.5%	5%
I	251	8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)	2.5%	5%



13. The applicant rightly stated in Para No. 11 (*Supra*) that the marine engine and the gear boxes supplied by them end - use which is in the vessels, trawlers etc which are classified under TSH 8901 to 8907 attracting 5% IGST (2.5% CGST and SGST each). Therefore, marine engines and marine gear boxes supplied by the applicant to dealers and shipyard manufacturers are used as **Parts of vessels falling under 8901 to 8907.**

14. The applicant refer to the specific Sr. No. 252 of Schedule I of Notification No. 1/2017 - Central Tax (Rate) dated 28th June 2017 which inter alia states as follows:

Schedule No.	Sr. No.	Chapter/Heading/Sub-heading/Tariff item	Description of goods	CGST/SGST Rate	IGST Rate
I	252	Any Chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907	2.5%	5%

15. From the above it is cleared that the applicant can supply the marine engine and the marine gear boxes as **Parts of headings of 8901, 8902, 8904, 8905, 8906, 8907** as per Sr. No. 252 of Schedule I of Notification No. 1/2017 - Central Tax (Rate) Dated 28th June, 2017. However, the applicant as on date of this application has never supplied the goods under Sr. No. 252 by charging 5% IGST or 2.5% CGST and SGST each.

16. The applicant by this application of advance ruling would like to know the correct interpretation and applicability of Sr. No. 252 (Schedule I) vis-a-vis Sr. Nos. 115, 116 and 135 (Schedule IV), reference Para 10 above in the light of different rates of CGST+SGS applicable to TSH 8408, 8409 and 8483 of Customs Tariff Act, 1975 as adopted for GST.

Statement of applicants interpretation of law in respect of question raised in Sr. No. 14 i.e. questions on which Advance Ruling is sought.

Brief note regarding prior to GST regime

a. The applicant is engaged in assembling of Marine Diesel Engine prior to 01.07.2017 also, however, never claimed General Exemptions of Central Excise Tariff Act, 1985 which read as under

Sr. No	Chapter or heading	Description	Rate	Condition
305A	89 or any other chapter	Capital goods and spares thereof, raw materials, parts, material handling equipment and consumables, for repairs of ocean-going vessels by a ship repair unit.	NIL	Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed.

b. Likewise, while importing the Marine Diesel Engines and Gear Boxes prior to 1.7.2017, the applicant never claimed General Exemptions of Customs Tariff Act, 1975 which read as under:-

Sr. No	Chapter or heading	Description	Rate	Condition
550	89 or any other chapter	Spare parts and consumables for repairs of ocean going vessels registered in India	NIL	If, the importer maintains a proper account of import, use and consumption of the specified goods imports for the purpose of repairs of ocean going vessels and submits such accounts periodically to the commissioner of Customs in such form and in such manner as may be specified by the said Commissioner. Explanation. - " <u>Ocean going vessels</u> " includes- (a) liners; cargo-vessel of various kinds including refrigerator vessels for the transport of meat, fruit or the like, vessels specified for the transport of particular goods (grain, coal, ores or the like) ; tankers (petrol, wine or the like); yachts and other sailing vessels; cable ships; ice-breakers; floating factories of all kinds (for processing whales, preserving fish or the like) whale catchers; trawlers and other fishing vessels; life boats, scientific research vessels; weather ships; vessels for the transportation or mooring of buoys; pilot-boats; hopper barges for the disposal of dredged material or the like; (b) war ships of all kinds including submarines; (c) tugs, dredgers, fire-floats and salvage ships; and (d) oil rigs, drilling ships and jack-up rigs



553	8902,890400 00 or 890590	All goods (Excluding vessels and other floating structures as imported for breaking up for)	NIL	Same as above
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C.. The applicant was right to not to claim the above General Exemptions before 01.07.2017, because the Chapter 89 and the Chapter Notes of it specifically stated that the said exemption were applicable only if, the conditions enumerated therein were fulfilled. The applicant was unable to fulfill the said conditions and hence did not claim the General Exemptions. Therefore, the applicant was paying normal rate of Central Excise Duty while making clearances of Marine Diesel Engine irrespective of the supplies made to dealer or Shipyard manufacturer and also paying CVD while importing the Marine Diesel Engine and Gear Box at normal rate. It is also to be noted that the applicant has never claimed any General Exemptions for import duty also under General Exemptions issued under Customs Tariff Act, 1975.

2. **Applicant's views and submissions (GST Regime)**

a. In the GST regime, there are two separate Schedules (I and IV) given under Notification No. 1/2017 - C. T. (Rate) dated 28/06/2017. The relevant entries related to the applicant are reproduced below:-

Schedule I

Sr. No	Chapter/Headings	Description of goods	Rate of GST (CGST+SGST)
246	8901	Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods	5%
247	8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products	5%
248	8904	Tugs and pusher craft	5%
249	8905	Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms	5%
250	8906	Other vessels, including warships and lifeboats other than rowing boats	5%
251	8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)	5%
252	Any chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907	5%

Schedule IV

Sr. No	Chapter/Headings	Description of goods	Rate of GST (CGST+SGST)
114	8407	Spark-ignition reciprocating or rotary internal combustion piston engine	28%
115	8408	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines)	28%

The applicant submits that Sr. No. 252 of Schedule I is solely for 'Any Chapter' as the parts of the goods of Sr. Nos. 246 to 251 (Schedule I) attracts 5% IGST or 2.5% CGST + 2.5% SGST. It means, 'Goods' covered by 'Any Chapter' supplied as parts of goods falling under Sr. Nos. 246 to 251 (Schedule I) attracts 5% IGST or 2.5% CGST + 2.5% SGST.

b. The Applicant also submits that the very purpose of Sr. No. 252 (Schedule I) is to set aside the General Exemption (Sr. No. 305A) (*supra*) of the Central Excise Tariff Act, 1985 attracting NIL rate of duty. In a nutshell, the goods attracting NIL rate of duty under Sr. No. 305A till 30.06.2017, is now attracting 5% IGST (2.5% CGST + 2.5% SGST) under Sr. No. 252 (Schedule IV) of Notification No. 01/2017 - C. T. (Rate) dated 28.06.2017.

3. The Applicant in Point No. 15, particularly Para Nos. 1 and 6 to 8, specifically stated that the Diesel Engine and Gear Boxes assembled/imported by the applicant are used exclusively for Marine purposes i.e. for Fishing



vessels, Ships, boats, trawlers etc. The applicant also enclosed various Annexures particularly, **Annexure A and Annexure F to H** to establish the end use of the goods falling under TSH 8408, 8409 and 8483 of Central Excise Tariff Act, 1985 as adopted to GST in the goods falling under TSH 8902, 8904, 8905, 8906, and 8907 (Sr. Nos. 246 to 251 of Schedule I).

4. The applicant, till date, has not supplied Marine Diesel Engines, Gear Boxes falling under TSH 8408, 8409 and 8483 under Sr. No. 252 of Schedule I. The applicant, till date, has made all the supplies after 01.07.2017 by charging 28% IGST (14% CGST + 14% SGST) as per Sr. No. 115, 116 and 135 of Schedule IV of Notification No. 01/2017 - C. T. (Rate) dated 28.06.2017.(Refer Para 10 above).

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

1. M/s. Shandong Heavy Industry India Pvt. Ltd., falls under the Jurisdiction of Range: IV, Division: II (Pimpri), Central GST, Pune-I Commissionerate. In the pre-GST regime, the taxpayer had obtained registration under Central Excise, Service Tax as well as Importer & Trader/Dealer. Their registration Nos. being AAPCS5350REM001, AAPCS5350RSD001, AAPCS5350REI004, AAPCS5350RED003 respectively. The taxpayer has migrated in the GST regime with GSTIN 27AAPCS5350R1ZF.

The taxpayer is engaged in importing diesel engines from their parent company and also manufacturing of diesel engines and making supply to various dealers and shipyards. The taxpayer is also engaged in the Import of Gear Boxes making supply as such to various dealers and shipyard.

2. The details of the classification and rate of duty before GST on the above mentioned goods are as under:

Name of the goods/description	Tariff Code No.	Rate of duty (Excise)	Customs	Exemption if any
Assembly Marine Diesel Engines	8408	12.5%	10%/7.5%	Nil
Import Marine Diesel Engines/Parts	8408/8409	12.5%	10%	Nil
Import Gear Box	8483	12.5%	10%	Nil

3. The details of the classification and rate of duty under GST on the above mentioned goods are as under:

Name of the goods/description	Tariff Code No.	Rate of duty (CGST + SGST)	IGST	Exemption if any
Assembly Marine Diesel Engines	8408	14% + 14%	28%	Nil
Import Marine Diesel Engines/Parts	8408/8409	14% + 14%	28%	Nil
Import Gear Box	8483	14% + 14%	28%	Nil

4. The taxpayer in his application dated 20-03-2018 to the Advance Ruling Authority stated that, they are supplying the marine Engines and gear boxes, the end use which is in fishing vessels , boats, trawlers, etc. & stated that the classifications of these vessels etc are falling under Customs Tariff Act, 1975 Chapter 89, as adopted by GST.

Chapter/ Heading/ Sub-heading/ Tariff item	Description of goods
8901	Cruise-ships, excursion boats, ferry-boats, cargo-ships, barges and similar vessels for the transport of persons or goods
8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products
8904	Tugs and pusher crafts
8905	Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
8906	Other vessels, including warships and lifeboats other than rowing boats
8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)

Further, they stated that the Notification No. 1/2017 - Central GST (Rate), dated 28th June, 2017, amended from time to time, specifies CGST rate schedules and classification of abovementioned goods under different Schedules. Similarly, Notification No. 1/2017 - Integrated Tax (Rate) dated 28th June, 2017 is also issued to specify IGST rate Schedules. The Schedules applicable to the abovementioned goods and attracting tax rate is as follows:

Schedule No.	Sr. No.	Chapter/ Sub-heading/ item	Heading/ Tariff	Description of goods	CGST/ SGST Rate	IGST Rate
I	246		8901	Cruise-ships, excursion boats, ferry-boats, cargo-ships, barges and similar vessels for the transport of persons or goods	2.5%	5%
I	247		8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products	2.5%	5%
I	248		8904	Tugs and pusher crafts	2.5%	5%
I	249		8905	Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to		



			their main function; floating docks; floating or submersible drilling or production platforms	2.5%	5%
I	250	8906	Other vessels, including warships and lifeboats other than rowing boats	2.5%	5%
I	251	8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)	2.5%	5%

Further, the taxpayer stated that the marine engine and the gear boxes supplied by them end - use which is in the vessels, trawlers etc which are classified under TSH 8901 to 8907 attracting 5% IGST (2.5% CGST and SGST each). Therefore, marine engines and marine gear boxes supplied by the applicant to dealers and shipyard manufacturers are used as Parts of vessels falling under 8901 to 8907.

5. As per, Sr. No. 252 of Schedule I of Notification No. 1/2017 - Central GST (Rate) dated 28th June 2017 which *inter alia* states as follows:

Schedule No.	Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of goods	CGST/SGST Rate	IGST Rate
I	252	Any Chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907	2.5%	5%

6. The taxpayer is requested for the Advance Ruling to know the correct interpretation and applicability of Sr. No. 252 as mentioned above. However, the taxpayer as on date have never supplied the goods under Sr. No. 252 by charging of 5% IGST or 2.5% CGST and SGST each and also did not take any benefit of exemption before GST.

7. **The taxpayer has raised questions on the following points:**

- D. Whether the classification of Marine Diesel Engine falling under TSH 8408 of Customs Tariff Act, 1975 as adopted to GST attracting 28% of IGST (14% CGST + 14% SGST) as per Schedule IV (Sr. No. 115) of Notification No. 01/2017 - Central GST (Rate) dated 28.06.2017 is correct or not?
- E. Whether the classification of Gear Box falling under TSH 8483 of Customs Tariff Act, 1975 as adopted to GST attracting 28% of IGST (14% CGST + 14% SGST) as per Schedule IV (Sr. No. 135) of Notification No. 01/2017 - Central GST (Rate) dated 28.06.2017 is correct or not?
- F. Whether the goods falling under TSH 8408, 8409 and 8483 of Customs Tariff Act, 1975 as adopted to GST can be treated as 'parts of heading of 8902, 8904, 8905, 8906 and 8907' attracting 5% of IGST (2.5% CGST+ 2.5% SGST) as per Schedule I (Sr. No. 252) of Notification No. 01/2017 - Central GST (Rate) dated 28.06.2017 or not?

8. It is seen that 8408, 8409, and 8483 occurring in Central Excise Tariff & Customs Tariff are related to Machinery and Mechanical Appliances and attracting chargeable duty on the classification of this Tariff heading, i.e. 14% CGST/SGST, 28% IGST.

The chapter 89 is related to classification of Ships/ Boats/Floating Structures and attracts chargeable duty on the classification of this Tariff heading, i.e. 2.5% CGST/SGST, 5% IGST.

However, it is seen that the taxpayer engaged in the manufacture of this product/supply of the product have suddenly requested the clarification regarding the classification of engines and gear boxes under chapter 84 and applied for classification under CHAPTER HEADING NO. 8901 to 8907 of the schedule to the tariff under the GST regime. Chapter 89 actually attracts classification of "SHIPS, BOATS AND FLOATING STRUCTURES thereunder.

9. In this case, it is seen that a very specific description for classification of the parts/spares of MARINE GEAR BOX is found in CHAPTER HEADING NO. 8483 of the schedule of the tariff which is "gear boxes and other speed changers" Gear boxes of all kinds are classifiable under this heading only. Chapter 89 attracts classification of "SHIPS, BOATS AND FLOATING STRUCTURES which is a specific description and does not attract gear boxes to be classified under this chapter.

Schedule I and Schedule IV of the NOTIFICATION NO.1 /2017-Central GST (Rate), dated 28-06-2017: While schedule I attracts Central GST @ 2.5 per cent and schedule IV attracts Central GST @14 per cent. As a result, rate difference of 11.5 per cent (14% - 2.5%).

10. It is seen that Chapter 89 is about the classification of Ships/Boats/Floating Structures and Chapter 84 is about Machinery & Mechanical Appliances.

The chapter note no. 7 to chapter 84 of GST Tariff Act, 2017 is reproduced below:

7. A machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose.

11. Rule 3 (reproduced below) of General Rules for interpretation of Customs Tarriff made applicable to GST.

Rule 3:

If goods are prima facie classifiable under two or more headings:

When by application of Rule 2(b) or for any other reason, goods a'e, prima facie, classifiable under two or more headings, classification shall be effected as follows:



- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Explanation: Rule 3(a) states that where 2 or more Headings seem to apply, the one which provides the most specific description of the product in question should be used. This means that a Heading which names the actual product should be used in preference to one which only names a category to which the product could belong. Similarly, a Heading that describes the whole product should be used in preference to one which describes part of it. However, where two Headings both only describe part of the product, this rule cannot be used to tell which one to use even if one seems more specific or detailed than the other.

Example: Mint tea is not stated specifically, as a product, in the Tariff. Although the product descriptions available are mint and tea, the importer must classify mint tea under the appropriate tea Heading of tea because it provides the most specific product description and mint is only the flavour of the tea.

Explanation: Rule 3(b) applies to mixtures, composite goods and sets that cannot be classified by use of the previous Rules. These should be classified as if they consisted of the material or component which gives them their essential character. Example: An importer bringing in "liquor gift sets" (that include the bottle of liquor and glasses) must classify the goods under the appropriate liquor Heading. The essential character of the item is the liquor itself and not the glasses contained within the set.

Explanation: Rule 3(c) is for use in cases in which a good seems to fit in more than one Heading and the essential character cannot be determined. In this case, the product should be classified under the Heading which occurs last in numerical order.

Example: A gift set which includes socks (Heading number 6115) and ties (Heading number 6117) cannot be classified by the previous rule since neither item gives the gift set its essential character. The gift set must be classified under the Heading number for ties which is the Heading that occurs last in numerical order.

12. It may be noted that a Gear Box is a device basically designed for changing speed, irrespective of to which device it is coupled/attached. The gear box will either increase the speed or decrease the speed depending upon desired output needed. Normally gear box is independent of machine to which it is attached. Gear box can be attached to IC engines, machines, etc. That doesn't mean they become parts of vehicles or machines. Therefore, it is wrong to say that gear box falls under chapter 89. This should be rightly classifiable under chapter 8483. The applicant is importing the marine gear boxes and such goods are assessed to chapter 8483 under Customs Act. The applicant himself has admitted this and has given copies of BoEs showing gear boxes assessed under Chapter 8483.

13. As regards to classification of IC engines, the chapter note '7' to chapter 84 of GST Act is referred once again.

The IC engine is a multipurpose machine which can be used in motor vehicles, gensets, compressors, etc. That doesn't mean it becomes part of such motor vehicles, genset, or compressor. In applicant's case it is used for vessels under chapter 89, that doesn't take away basic character of IC engine, hence to be classified under Chapter 8408. The applicant in his own admission has submitted copies of B/Es wherein IC engines are classified under 8408 under Customs Tariff. Therefore it is strongly felt that the correct classification of IC engine to be under Chapter 8408. Accordingly the gear box which is bearing general description and specifically classified under chapter 84834000 of GST Tariff cannot be classified as parts of Goods falling chapter 89. Similarly Diesel Engine bearing General description Marine Diesel Engine is specifically classified under Chapter 840810.

Therefore such Engines cannot be classified as parts of Goods falling under Chapter 89.

04. HEARING

The case was taken up for preliminary hearing on dt. 11.04.2018, with respect to admission or rejection of the application when Sh. Vidhyadhar S. Apte, Advocate along with Sh. Denvendra S. Athawale and Mr. Suresh Kumar, Sr. Manager, Service appeared and requested for admission of application as per their contentions made in ARA. The jurisdictional officer, Sh. Mahesh Hombali Dy. Commissioner CGST Division II, Pimpri, Pune along with Sh. Bhakte, Supdt. appeared and made written submissions.

The application was admitted and during the Final Hearing on 16.05.2018, Sh. Vidhyadhar S. Apte, Advocate along with Mr. Suresh Kumar, Sr. Manager, Service, appeared and made contentions as per their written submissions at the time of preliminary hearings and hearing today. The jurisdictional officer, Sh. S. H. Phatak, Supdt. Division -II Pimpri, Pune - I Commissionerate appeared and made written submissions and orally made contentions as per details in their written submissions.



05. OBSERVATIONS

We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department. We take up the first question raised by the applicant which is as under:-

(1) ---Whether the classification of Marine Diesel Engine falling under TSH 8408 of Customs Tariff Act, 1975 as adopted to GST attracting 28% of IGST (14% CGST + 14% SGST) as per Schedule IV (Sr. No. 115) of Notification No. 01/2017 - Central GST (Rate) dated 28.06.2017 is correct or not?

The applicant has submitted that they are engaged in the assembly and testing of Marine Diesel Engines (MDE) falling under TSH 8408 which they supply to various dealers and shipyard manufacturers. MDEs are also imported by them and supplied as such to various dealers and shipyard manufacturers. They are also importing parts (falling under TSH 8409), required for assembly and testing of MDEs, and for further supplies as such.

Diesel engines are known as compression ignition internal combustion piston engines. Diesel Engine are classified under CTH 8408 and are mainly differentiated as Marine Propulsion Engines, Engines of a kind used for the propulsion of vehicles of Chapter 87 and the third as Other Engines. They can further be classified on the basis of operations viz. 2-stroke, 4-stroke, single acting, double acting and finally, on the basis of Cylinder arrangement namely, horizontal, vertical, radial, etc. DMEs are those engines which are used in marine vehicles namely boats, ships, submarines, etc. Both 2-stroke as well as 4-stroke engines are used in the marine industry. The engines used for the main propulsion or turning the propellers of the normal ships are usually slow speed 2-stroke engines while those used for providing auxiliary power are usually 4-stroke high speed diesel engines. The engine itself is made up of several components such as the crankshaft, bedplate, pistons, liner, etc.

Chapter / Heading / Sub-heading / Tariff item	Description of goods
8408	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines)
8408 10	Marine propulsion engines

Compression-ignition internal combustion piston engines (diesel or semi-diesel engines) are classified under Heading 8408 of the GST Tariff (Machinery and Mechanical Applications) and Marine Propulsion Engines are classified under sub heading 8408 10 of the said Tariff. The applicant has submitted that they assemble and also import such MDEs. We find that a very specific description and mention of such engines is made under Heading 8408 of the GST Tariff and in view of the same it is very clear that MDEs are classifiable under CH 8408 of the GST Tariff. Under Sr. No. 115 of Schedule IV of Notification No. 1/2017 – Central Tax (Rate) dated 28th June 2017, the tax rate for MDEs is 14% each of CGST and SGST.

Now we take up the second question raised by the applicant which is as follows:-

(2)---Whether the classification of Gear Box falling under TSH 8483 of Customs Tariff Act, 1975 as adopted to GST attracting 28% of IGST (14% CGST + 14% SGST) as per Schedule IV (Sr. No. 135) of Notification No. 01/2017 - Central GST (Rate) dated 28.06.2017 is correct or not?



The applicant has submitted that they are also engaged in Import of Gear Box falling under TSH 8483 and making supply of the same as such to various dealers and shipyard manufacturers. We find that Tariff Heading 8483 covers goods as under:-

Chapter/Heading/Sub-heading/Tariff item	Description of goods
8483	Transmission Shafts (Including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)

Gear Boxes are specifically mentioned under Heading 8483 (SH 8483 40 00) of the GST Tariff (Machinery and Mechanical Applications). The applicant has submitted that they import such Gear Boxes. In view of the fact that a very specific description and mention of such gear boxes is made under Heading 8483 of the GST Tariff, we find that Gear Boxes are classifiable under Heading 8483 of the GST Tariff. Under Sr. No. 135 of Schedule IV of Notification No. 1/2017 – Central Tax (Rate) dated 28th June 2017, the tax rate for Gear Boxes is 14% each of CGST and SGST.

Now we refer to the third question posed by the applicant which is as follows:-

(3)---Whether the goods falling under TSH 8408, 8409 and 8483 of Customs Tariff Act, 1975 as adopted to GST can be treated as 'parts of heading of 8902, 8904, 8905, 8906 and 8907' attracting 5% of IGST (2.5% CGST+ 2.5% SGST) as per Schedule I (Sr. No. 252) of Notification No. 01/2017 - Central GST (Rate) dated 28.06.2017 or not?

We find that Sr.No. 252 of Notification No. 01/2017 - Central GST (Rate) dated 28.06.2017 which is as follows:-

Schedule No.	Sr. No.	Chapter/Heading/Sub-heading/Tariff item	Description of goods	CGST/SGST Rate	IGST Rate
I	252	Any Chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907	2.5%	5%

From a reading of the same it is very clear that parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907 are chargeable to CGST and SGST @ of 2.5% each. We now reproduce the description of headings 8901, 8902, 8904, 8905, 8906 and 8907 as under:-

Chapter/Heading/Sub-heading/Tariff item	Description of goods
8901	Cruise-ships, excursion boats, ferry-boats, cargo-ships, barges and similar vessels for the transport of persons or goods
8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products
8904	Tugs and pusher crafts
8905	Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
8906	Other vessels, including warships and lifeboats other than rowing boats
8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)



The applicant has submitted that they make supplies of DMEs and gear boxes to two types of customers i.e. dealers who supply the said goods to the sailors who further use the said goods in fishing vessels, ships, boat or trawlers and to the shipyard manufacturers who are engaged in manufacturing of various vessels falling under Chapter 89 of Customs Tariff Act, 1975. They have submitted that the end use of such DMEs and gear boxes supplied by them is for final use in fishing vessels, boats, trawlers etc, which are falling under following 4 digits of Customs Tariff Act, 1975 as adopted by GST, namely, 8901, 8902, 8904, 8905, 8906 and 8907.

We find, from a general reading of Sr.No. 252 of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017, that goods falling under any chapter of the GST Tariff, if used as parts of goods falling under headings 8901, 8902, 8904, 8905, 8906 and 8907, then such goods would attract CGST and SGST @ 2.5% each.

We find that the applicant has stated in their submissions that the marine engine and the gear boxes supplied by them are for end-use in the vessels, trawlers etc, classified under TSH 8901, 8902, 8904, 8905, 8906 and 8907 of the GST Tariff and therefore would attract 5% IGST (2.5% CGST and SGST each). We find that marine engines and marine gear boxes which are claimed to be supplied by the applicant to dealers and shipyard manufacturers for use in goods falling under heading 8901, 8902, 8904, 8905, 8906 and 8907 will be deemed to be Parts of vessels falling under heading 8901, 8902, 8904, 8905, 8906 and 8907, if they are used in goods covered under Tariff Headings 8901, 8902, 8904, 8905, 8906 and 8907 and are not diverted and used for other purposes somewhere else.

We are in agreement with the contention of the applicant that the MDEs and Gear Boxes supplied by them for use in goods falling under heading 8901, 8902, 8904, 8905, 8906 and 8907 will be taxable @ 5% IGST (2.5% CGST and SGST each). However it is to reiterate that the benefit of reduced CGST and SGST for such MDEs and Gear Boxes would only be available and applicable if the engines and gear boxes are used as parts of goods falling under heading 8901, 8902, 8904, 8905, 8906 and 8907 of the GST Tariff. The benefit of reduced GST rates would not be available in respect of the Engines and Gear Boxes supplied by the applicant if the same are for use in goods other than goods of heading 8901, 8902, 8904, 8905, 8906 and 8907 of the GST Tariff.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

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

NO.GST-ARA- 44/2017-18/B- 51 Mumbai, dt. 15/6/2018

For reasons as discussed in the body of the order, the questions are answered thus -

Q.A Whether the classification of Marine Diesel Engine falling under TSH 8408 of Customs Tariff Act, 1975 as adopted to GST attracting 28% of IGST (14% CGST + 14% SGST) as per Schedule IV (Sr. No. 115) of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 is correct or not?

Answer:- Answered in the affirmative



Q.B. Whether the classification of Gear Box falling under TSH 8483 of Customs Tariff Act, 1975 as adopted to GST attracting 28% of IGST (14% CGST + 14% SGST) as per Schedule IV (Sr. No. 135) of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 is correct or not?

Answer:- Answered in the affirmative.

Q.C. Whether the goods falling under TSH 8408, 8409 and 8483 of Customs Tariff Act, 1975 as adopted to GST can be treated as 'parts of heading of 8902, 8904, 8905, 8906 and 8907' attracting 5% of IGST (2.5% CGST+ 2.5% SGST) as per Schedule I (Sr. No. 252) of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 or not?

Answer:- Answered in the affirmative, subject to these goods, marine Engines and Gear Boxes are used in goods falling under Headings 8901, 8902, 8904, 8905, 8906 and 8907 of the GST Tariff Act, 2017. However if the said goods are used for some other purpose, then the tax rate as applicable to the TSH under GST Tariff would apply.



—sd—
B. V. BORHADE
(MEMBER)

—sd—
PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021

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MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI