


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2021/22
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/36)

Date: 28.06.2021

Name and address of the Appellant	:	M/s. Apar Industries Ltd., Plot No.157 to 163, 2827, 151 to 153, 164, Survey No.189/P1, GIDC Road, Tal. Umbergaon, Walsad (Dist.), Gujarat-396171 (Gujarat State).
GSTIN of the Appellant	:	24AAACG1840M1ZR
Advance Ruling No. and Date	:	GUJ/GAAR/R/91/2020 dated 17.09.2020
Date of filing appeal	:	03.11.2020
Date of Personal Hearing	:	15.04.2021
Present for the applicant	:	Advocate Amal Paresh Dave

At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the SGST Act.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017 and SGST Act, 2017) by M/s. Apar Industries Ltd. (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/91/2020 dated 17.09.2020.

3. The applicant first filed the application for Advance Ruling with Gujarat Authority of Advance Ruling where in stated that they are engaged in the manufacture and supply of various goods such as: (a) Transformer

oils, white oil, industrial lubricating oils and specialties oils falling under the Customs/GST Tariff No.2710. (b) Aluminium conductors falling under Chapter Heading No.7614 of the Customs/GST Tariff Act. (c) Various grades of cables, including power/electric cables, house wire cables, marine/pressure tight cables and non-pressure tight cables and other cables, etc. falling under Chapter Heading No.8544 of the Customs Tariff Act.

4. The applicant has submitted that they have received orders and are expecting future orders from the Defence Machinery Design Establishment (DMDE), Department of Defence Research and Development under the Ministry of Defence, Government of India for the supply of Marine-pressure tight and Non-Pressure tight cables, specially made and designed for use in the warship as 'parts' of warship; that these cables are though universally classified under Tariff Heading No.8544, but made and designed for use in Warship as it's integral parts, without which warship cannot function and cannot be treated as complete in all respects and at the same time the same is capable of being separated from warship for repairs and replacement. The Rear Admiral of the Indian Navy, an officer equivalent in rank to the Joint Secretary of the GOI, has issued a Certificate of End User, vide F.No.HLC/85/PT-10 Cables (32 Types)/S4" dated 10.06.2019, to that effect, clearly showing therein the use of cables in warship application and applicability of GST@5%.

5. The applicant has claimed that supply of Marine-pressure tight and Non-Pressure tight cables, specially made and designed for use in the warship as 'parts' of warship are essential parts of warship and liable for GST @ 5% in terms of Sr. No. 252 of Notification No. 01/2017-CT (rate) dated 28.06.2017. Sr. No. 252 of Notification No. 01/2017-CT (rate) dated 28.06.2017 is read as under:

S. No.	<i>The goods of any Tariff Heading/Chapter,if they are the "Parts of goods of headings</i>	<i>Rate of Tax</i>
252	8901, 8902, 8904, 8905, 8906, 8907s	GST @5%

6. The applicant has placed on the records 4 purchase Orders received for supply of 'Marine-Pressure/ Non-Pressure Tight Cables from Defence Machinery Design Establishment (DMDE), Department of Defence Research

& Development, Ministry of Defence, Govt. of India for their Warship Submarine Applications as the “Parts of Goods of heading No. 8906 or the Parts of Warship”.

7. The applicant has submitted that marine/pressure tight cables/non-pressure tight cables, to be supplied by them are very essential and integral part of the warship, without which warship cannot function and cannot be completed and at the same time the said goods supplied and used in the warship are capable of being separated as such for the purpose of repairs and replacement. Hence an End User Certificate duly signed by the Rear Admiral of Indian Navy/Defence Ministry, an officer equivalent to the rank of Joint Secretary to the Government of India has issued a certificate certifying therein the intended use of the said goods as “parts of warship” vide their File No.HLC/85/PT-10 Cables (32 Types)/S4* dated 10.06.2019.

8. The applicant has further submitted that under erstwhile Central Excise Act, 1944 vide Notification No. 64/95-CE dated 16.03.1995 duly amended by Not. No. 25/2002-CE full exemption was given on all the goods when supplied to Indian Navy or Ministry of Defence, GOI based on a certificate of intended use issued by the Rear Admiral of Indian Navy or an officer not in below Joint Secretary to the GOI. Whereas in the GST regime there is no requirement of issuing such a certificate, the Ministry of Defence has issued such certificate confirming that intended use of the goods is for Warship Submarine Application and therefore GST rate @5% is applicable in terms of Sr. No. 252 of Not. No. 11/2017-CT (Rate) dated 28.06.2017.

9. The Gujarat Authority for Advance Ruling (herein after referred to as ‘the GAAR’), vide Advance Ruling No. GUJ/GAAR/R/91/2020 dated 17.09.2020 inter-alia observed that the term ‘Part/Parts’ has not been defined in GST therefore it is required to understand the general meaning or dictionary meaning of the said terms. Cambridge dictionary meaning of the part means, *‘a separate piece of something or a piece that combines with other pieces to form the whole of something’* and second definition of part defines *‘as one of the pieces that together forms a machine or some type of equipment’*. Also refer the judgment of *Saraswati Sugar Mills Vs. Commissioner of Central Excise Civil Appeal No. 295 of 2003 of Hon’ble Supreme Court of India and State of U.P Vs. M/s. Kores (India) Ltd. on 18.10.1976, Equivalent citations : 1977 AIR 132, 1977 SCR (1) 837*. The GAAR has observed that the goods which are the essential and integral part of the warship are covered under

Sr. No. 252 of Notification No. 11/2017-CT (rate) and liable to GST rate @5%. However, the applicant have not submitted any details with regard to the goods viz. Marine pressure tight cables and non-pressure tight cables are essential and integral part of the warship without which warship cannot function and cannot be completed. Also the applicant has not submitted the details such as: (i) the definition of marine pressure tight cables and non-pressure tight cables (ii) in which part of the warship they are used. (iii) do they constitute parts which can be used solely in warships? (iv) what are the uses of these cables i.e. what is the purpose they serve. (v) the reason why these cables can be considered to be so essential or so integral a part of a warship, without which the warship would not come into existence or would not be complete. In the absence of these details, it would not be possible for them to decide whether the subject goods are parts of warship or otherwise.

9.1 The GAAR, has also observed that in the End Use certificate issued by the Admiral and Director of DMD Establishment vide F. No. HLC/85/PT-10 Cables (32 type/S4* dated 11.06.2019) it is not specifically mentioned that the subject goods are integral part of warship and without which the warship would not come into existence or would not be completed. The view of the GAAR was that the essential and integral parts of a ship are Anchor, Bow, Bowsprit, Bow Thrusters, Fore and Aft, Ship's Hull, Keel, Mast, Rigging, Rudder, Sails, Shrouds, Engines, gearbox, Propellor, Funnel, Navigation Bridge, Deck, Deck Crane, Forecastle etc. These are the parts so essential or integral to a ship or vessel without which a ship cannot be imagined to be a ship or to be in existence or be complete and marine pressure tight cables and non-pressure tight cables are excluded from this list. The applicant has failed to prove their claim that the marine pressure tight cables and non-pressure tight cables manufactured and supplied by them are integral parts of warship without which the warship would not come into existence or would not be complete.

10. Accordingly, Gujarat Authority of Advance Ruling vide Advance Ruling No. GUJ/GAAR/R/91/2020 dated 17.09.2020 has ruled that:

Q. Whether the applicability or determination of liability to pay Tax on our said goods at 5% GST rate is legally correct and in order in terms of Schedule-I of Notification No.1/2017-Integrated Tax(Rate) or not?"

Ans. The applicant M/s. Apar Industries limited, Valsad is not eligible to avail the benefit of GST @5% applicable as per Entries 250 and 252 of Schedule-I of Notification No.01/2017-Integrated Tax (Rate) dated 28th June, 2017 for the reasons discussed hereinabove.

11. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal on 03.11.2020.

12. During the course of personal hearing held on 15.04.2021, the appellant reiterated the submissions made in the appeal.

13. The appellant in the ground of appeal has submitted as under:

(i) The GAAR had relied upon the extracted data available on the 'online' internet and it is simple logic that how fully automatic ship can function or work without having used therein Power or electrical cables. The use of cables for electrical or mechanical and instrumental functioning of the ship is very essential and the same is regarded as integral parts of the ship.

(ii) Ministry of Defence had ordered to manufacture cables i.e. Marine Pressure/non-pressure tight cables with the special features, properties, design and characteristic for sole use in their submarine warship application.

(iii) The items mentioned in the Ruling i.e. Fore and Aft, Ship's Hull, Keel, Mast, Rigging, Rudder, Sails, Shrouds, Engines, gearbox, Propeller, Funnel, Navigation Bridge, Deck, Deck Crane, Forecastle etc. and considered as only essential and integral parts of the warship are the illustrative list of the parts of the ship and they are not exclusive but inclusive. The cables manufactured /designed and supplied to the Indian Navy/ Ministry of Defence are very essential and integral parts of the Warship and which can never be the items of comforts in nature fitted in the warship.

(iv) The judgments of Hon'ble Supreme Court relied upon by the Authority are not applicable in this case because Cables are manufactured with special properties, design, characteristics and supplied to the Indian Navy/ Ministry of Defence solely for submarine warship application is forming essential and integral parts of the warship as without being their use or fitted, the warship cannot function, work and treated as completed in all respect.

(v) The GAAR observation that exemption provided under erstwhile Central Excise regime vide Not. No. 64/95-CE dated 16.03.1995 was not available to the goods which were used as parts of warship was not correct because under the said Notification full exemption was given irrespective of whether goods are used as 'inputs' in the construction of Warship or used as 'Parts or components' of said warship.

(vi) The clarification to the question which was raised in the Advance Ruling regarding definition, used and reasons to be considered the marine pressure tight cables and non-pressure tight cables are essential or integral parts of a warship without which the warship would not come into existence or would not be completed, are submitted herewith:

(a) The Marine- Pressure Tight and Non Pressure Tight Cables are used in Submarine warship under the sea which requires highly sophisticated design with very special characteristics, specification, properties, technical requirements and various testing Parameters to be compiled with for the reason that the water is excellent conductor of electricity where general purpose or multipurpose Cables cannot be used in water and these cables are specially designed for used in Submarine warship.

(b) It can be say that Kerosene and Aviation Turbine Fuel are essentially same, except that for use in Aircraft it has to pass 70+ stringent tests, otherwise the life of 100 plus will be in danger. Similarly, Warship which has to move for combat operations is in 'do or die' situation, highly, sophisticated designed and special characteristic and effectiveness of cables used in the Warship must meet international standards.

(c) The submission and diagram of submarine warship showing therein how the goods i.e. Marine- Pressure Tight and Non Pressure Tight Cables are used is strictly confidential for the Govt. of India.

(vii) The Ministry of Defence/ Indian Navy in view of the GAAR order has submitted clarification/ reply vide their letter dated 29.10.2020 wherein they have explained how these cables are used in the warship Application and how they are essential and integral parts of warship.

(viii) They relied upon the following Advance Ruling order in their support :

(a) Alekton Engineering Industries Pvt. Ltd., Tamilnadu- 2019 (26) GSTL 143 (AAR-GST)

(b) Bharat Electronics Ltd., Karnataka-2019 (29) GSTL 178 (AAR-GST)

Discussion and Findings

14. We have carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

15. We find that the appellant has received the order for supply of Marine-Pressure & Non-Pressure Tight Cables from Defence Machinery Design Establishment (DMDE), Department of Defence Research &

Development under the Ministry of Defence, Govt. of India, specially made and designed for use in the Warship Submarine Application as 'Parts' of Warship. These cables are classified under tariff Heading No. 8544 of Custom tariff Act, 1975, but are/were made and designed for use in the Warship Application only as an essential and integral parts, without which warship cannot function and cannot be treated as completed in all respect. Therefore, the moot question here is to decide whether the Marine-Pressure & Non-Pressure Tight Cables are essential and integral parts of the submarine warship or otherwise because GAAR in their Ruling has ruled that the said goods are not essential and integral parts of submarine warship. Therefore, Appellant is not eligible for GST rate @ 5% in terms of Sr. No. 252 of Not. No. 11/2017-CT (Rate) dated 28.06.2017.

16. Now, the issue before us is to examine whether the goods/parts used by the appellant are essential and integral parts of a submarine warship. First of all we need to examine as to what are "Parts". There is no separate tariff item as 'parts of ship' under Chapter 89 of First Schedule to Customs Tariff Act, 1975 thus meaning of the term, parts of goods could then be adopted from its meaning in common parlance.

The term, 'part' as defined in Black's Law dictionary: *'an integral portion, something essentially belonging to a larger whole, that which together with another or others makes up a whole'*

We find that as per Cambridge English Dictionary : *'a separate piece of something or a piece that combines with other pieces to form the whole of something. One of the pieces that together form a machine or some type of equipment'*

From the above it could be understood that anything which is an integral element and is also essential to an object, could be considered as part of the article. Now, it is necessary to know about the technical characteristic and use of the goods in question viz. Marine-Pressure & Non-Pressure Tight Cables in submarine warship so that it can be decided that goods in question is an essential and integral part of the warship. Therefore, we refer the technical write up, End-User Certificate and clarification issued by Rear Admiral of Indian Navy.

16.1. The appellant in his technical write up has stated that Marine-Pressure & Non-Pressure Tight Cables are manufactured as per the size, design and specification provided by Indian Navy and are intended for use in the Warship Application only and has no other intended use. Since these cables are used under the sea they requires very special characteristics,

technical requirements and various testing parameters to be compiled with for the reason that water is the excellent conductor of electricity where general purpose or multipurpose cables cannot be used in Submarine Warship. Further the appellant has submitted the details of testing parameters which differentiate these special types of cables from other general/ multipurpose cables. Also submitted the application, use and function of these cables in Submarine Warship which is reproduced as under :

These cables are suitable for use in areas where fuel, lubricating oils, hydraulic fluids, detergents and water are present. These cables are designed and develop to possess requisite level of electrical, mechanical, chemical, environmental and thermal properties to carry out desired function in presence of electrical, mechanical and thermal stresses arising out of installation and subsequent operation on submarine warship during the entire service life. These thin walled insulated, sheathing materials are halogen free and fire retarded with low smoke generation and low toxicity properties.

Further, it is submitted in the technical write-up that, “all above technical requirements/ properties are integrated in single cable and we can conclude that these cables are unconditionally only for use in underwater warship submarine applications where ambient pressure in machinery compartment is expected to vary from 900 to 1330 mbar during operation”.

16.2. The applicant has submitted the End-User certificate dated 04.12.2019, issued by Rear Admiral, Indian Navy wherein it is stated that cables supplied by M/s. Apar Industries Ltd. against P.O. No. HLC/85/NPT Cables (56 types)/S4*/243 dated 17.07.2019 are intended for bonafide use towards Warship application of Indian Navy of Indian Armed forces.

16.3. The Rear Admiral of Indian Navy vide their letter dated 29.10.2020 has issued clarification with regard to the queries raised in the Ruling of Advance Authority, which are reproduced as under :

2. Indian Navy warship are envisaged to operate in high seas away from near coastal line and are exposed to severe weather and sea conditions. All equipment and electrical cables fitted onboard warship are to be watertight and ruggedized to work in high salt water content sea waters and in submerged conditions while going through cyclonic storms.

3. The marine cables (Pressure Tight, Non-Pressure Tight and Special) ordered on M/s. Apar Industries Ltd., Mumbai by this unit vide Pos mentioned ibid are designed and developed exclusively for Indian Navy and do not have any commercial application/utility.
4. These cables are utilized for powering the essential equipment listed at Para 15 (Page6) of the Advance Ruling issued by the Gujarat Authority for Advance Ruling and also weapon launchers thereby attracting GST of only 5%.
5. Without these marine cables the essential equipment would be rendered non-operational thereby rendering warships ineffective during war operations.

17. On going through the technical write up we have observed that Marine-Pressure & Non-Pressure Tight Cables are customized and manufactured as per the design and specification provided by Indian Navy. These cables are used in Submarine warship under the sea which requires highly sophisticated design with very special characteristics, specification, properties, technical requirements and various testing Parameters to be compiled with for the reason that the water is excellent conductor of electricity where general purpose or multipurpose Cables cannot be used in water. These cables are designed and develop to possess requisite level of electrical, mechanical, chemical, environmental and thermal properties to carry out desired function in presence of electrical, mechanical and thermal stresses arising out of installation and subsequent operation on submarine warship. These cables are unconditionally only for use in underwater warship submarine applications where ambient pressure in machinery compartment is expected to vary from 900 to 1330 mbar during operation. Thus it can be say that Marine-Pressure & Non-Pressure Tight Cables can only be used in under water submarine warship due to their properties, technical specification and are used in machinery compartment where ambient pressure is expected to vary from 900 to 1330 mbar during operation.

18. The Rear Admiral in their End User certificate has certified that these cables are intended for bonafide use in submarine warship. Also clarified in their letter dated 29.10.2020 that these cables i.e. Marine-Pressure & Non-Pressure Tight Cables are utilized for powering the essential equipment listed at Para 15 (Page6) of the Advance Ruling i.e. Anchor, Bow, Bowsprit, Bow Thrusters, Fore and Aft, Ship's Hull, Keel, Mast, Rigging, Rudder, Sails, Shrouds, Engines, gearbox, Propeller, Funnel, Navigation Bridge, Deck, Deck Crane, Forecastle and also used in

weapon launchers; all equipment and electrical cables fitted ONBOARD warship are to be watertight and ruggedized to work in high salt water content sea waters and in submerged conditions while going through cyclonic storms; without these marine cables the essential equipment would be rendered non-operational thereby rendering warships ineffective during war operations. Hence the Rear Admiral has stated that these cables are used for supply the power to the various parts of the submarine warship and also used in weapon launcher. Further clarified that these cables are used ONBOARD warship for electrical and mechanical functioning of equipment in submarine warship and without these cables all the essential equipment would be rendered non-operational and submarine warship would be ineffective during war operation. These cables exclusively can be used in submarine warship and do not have any commercial application.

19. In view of the above we find that Marine-Pressure & Non-Pressure Tight Cables are essential and integral part of the warship as such these cables are customized and specially designed for use in submarine warship only under the sea and do not have any commercial application. These cables are used to supply the power to the various parts and equipments of the submarine warship for their functioning in Submarine Warship and also used in weapon launcher of the submarine warship. The use and application of the Marine-Pressure & Non-Pressure Tight Cables clearly suggest that these cables are very much essential and integral parts of the submarine warship as such these cables are used ONBOARD warship and without these cables all the essential equipment would be rendered non-operational and submarine warship would be ineffective during war operation. The use of cables for electrical or mechanical and instrumental functioning of the submarine warship is very essential and without these cables the supply of power would not be possible and all the equipment and machinery of submarine warship become non-functioning or we can say submarine warship itself may become non-operational and ineffective. Hence, Marine Pressure Tight cable and non-pressure tight cable are integral and essential for the functioning of the submarine warship.

20. We, therefore, in view of the above discussion, conclude that the marine pressure tight cables and non-pressure tight cables manufactured and supplied by the applicant to the Indian Navy are essential and integral parts of the submarine warship and hence the benefit of reduced rate of

GST of 5% is available to the appellant as per Sr. No. 252 of Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017.

21. In view thereof, we modify the Advance Ruling No. GUJ/GAAR/R/91/2020 dated 17.09.2020 of the Gujarat Authority for Advance Ruling and rule as under :

The appellant M/s. Apar Industries limited, Valsad is eligible to avail the benefit of GST @5% applicable as per Entries 252 of Schedule-I of Notification No.01/2017-Integrated Tax (Rate) dated 28th June, 2017 for the reasons discussed hereinabove.

(J.P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date : 28.06.2021