

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO.MAH/AAAR/SS-RJ/17/2018-19

Date- 05.02.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AABCJ6665J1Z6
Legal Name of Appellant	Jotun India Pvt. Ltd.
Registered Address/Address provided while obtaining user id	D 280, Ranjangaon Industrial Estate, Pune Nagar Road, Ranjangaon, Pune - 412220
Details of appeal	Appeal No. MAH/GST-AAAR-18/2018-19 dated 08.11.2018 against Advance Ruling No.GST-ARA-29/2017-18/B-35 dated 19.05.2018
Concerned officer	Dy. Commissioner of SGST, Mumbai-LTU-2

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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 M/s. Jotun India Pvt. Ltd.(herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-29/2017-18/B-35 dated 19.05.2018.



BRIEF FACTS OF THE CASE

- A. Jotun Group is a leading supplier of paints and powder coatings. Jotun India Private Limited (herein after referred to as 'Appellant') is a supplier, exporter and manufacturer of paints and powder coatings. The Appellant supplies paints and coatings that are specially designed for unique conditions.
- B. Broadly, the paints supplied by the Appellant can be categorized in solvent based paints and water based paints. One of the major supplies by Appellant are marine paints. Composition of such marine paint being manufactured by Appellant makes it suitable for ship during building stages and even during maintenance.
- C. In the erstwhile indirect tax regime, Appellant has been discharging applicable indirect taxes on supply of such paints and availing exemptions when granted under respective legislation.
- D. With the introduction of GST, Appellant has analyzed classification and applicability of CGST, SGST and IGST in light of new legislation. For classification, it has been clarified in the rate notification of respective legislation that rule of interpretation of the First Schedule to the Customs Tariff Act, 1975 including Section Notes and Chapter Notes and general explanatory notes of the said first schedule would be applicable for the purpose of the classification under GST.
- E. Accordingly, Appellant has sought to classify paints being supplied under HSN 3208 and 3209 basis the nature of the product and after considering relevant chapter notes and Section notes. Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 prescribe applicable rate of CGST. Paint supplied by the Appellant classifiable under chapter heading 3208 and 3209 are covered under Schedule VI of the said Notification and accordingly were liable to 14% CGST and subsequently at 9% CGST.
- F. However, under same CGST Rate Notification, Schedule I liable to 2.5 % CGST covers parts (classifiable under any chapter) of goods, falling under heading 8907 i.e. part of ships. Since, marine paints supplied by the Appellant are suitable for use by ships,



Appellant seeks the clarification whether the said marine paints could get classified under Schedule I to the Notification No. 1/2017 –C.T. (Rate) dated 28.06.2017.

- G. Accordingly, the Appellant had made application before the Advance Ruling Authority seeking a ruling on the following question:

Whether marine paints, supplied by the Appellant, would be considered to be part of ship and accordingly, be then classified under Sl. No. 252 of the Schedule I of the Notification No. 1/2017 of Central Tax (Rates) dated 28.06.2017.

- H. The Authority for Advance Ruling, Maharashtra passed the advance ruling wherein the Appellant's contentions of classifying marine paints under Sl. No. 252 of Schedule I has been rejected. Hence, the Appellant has preferred an appeal before this Appellate Authority against the impugned Advance Ruling.

GROUND OF APPEAL

1. The Appellant submitted that marine paint is a specific type of paints suitable for use principally for ships during building stage and even during maintenance. The sailing ship needs protection from corrosive environment in which they operate. Such marine corrosion has a significant impact on sea carriers and their longevity. Therefore, effective corrosion control strategies are chosen considering appropriate selection of coating for a marine environment. Marine coatings have special functionality to protect marine vessels and other carriers above and below the waterline. Accordingly, marine paints supplied by them has following technical features:
 - Protects the body of ship from highly corrosive environment
 - Blocks barnacles and other marine organisms from adhering to the hulls of ships
 - Lessens fuel consumption as it controls damage to the ship.
 - Prevents impact on water eco-systems by reducing emission of Green House Gases.
 - Transportation of marine organisms to other areas



2. It is submitted that vide notification no 1/2017 of Central Tax (Rate) dated June 28, 2017, the Government of India has notified CGST rates for goods. The said notification has classified goods into 4 digit HSN Codes. Further under the said notification, it has been specified that section notes, chapter notes and General explanatory notes mentioned under Customs Tariff Act, 1975 shall apply to the goods classified therein under GST.
3. It is submitted that the notification refers to the classification of goods under the Customs Tariff Act, 1975.
4. As regards, classification of the marine paints under Customs Tariff Act, it would be pertinent to refer to extract of description of goods falling under Customs Heading 3208:
"Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers or chemically modified natural polymers dispersed or dissolved in a non-aqueous medium; solutions as defined in Note 4 to this Chapter"
5. It is submitted that based on the technical specification of the product, marine paints appear to be classifiable under heading 3208. Since, marine paint is suitable for use for ships, it could also get classified as part of ship. For the purpose of this analysis, Appellant referred to chapter 89 for 'Ships, boats and floating structure'. They further submitted that there is no specific entry in Chapter 89 for 'parts' of ships covered therein. In the absence of any entry for part of ship, Appellant had adopted classification of marine paint under chapter heading 3208.
6. The Appellant has also been adopting similar classification under Central Excise Law. The excise duty liability has accordingly been discharged by Appellant under erstwhile Indirect Tax regime.
7. It is submitted that marine paints are suitable principally for use in ships and hence, it is also pertinent to analyze Entry 252 to Schedule I of Notification No 1/2017 of Central Tax (Rates) dated June 28, 2017 liable to 2.5% CGST:



Sl No	Chapter / Heading / Sub- heading / Tariff item	Description of Goods
252.	Any chapter	Parts of goods of heading 8901, 8902, 8904, 8905, 8906 and 8907'

Description of goods, falling under above referred headings, are mentioned below

Sr No	Chapter / Heading / Sub- heading / Tariff item	Description of Goods
<u>246</u>	<u>8901</u>	<u>Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods</u>
247	8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products
248	8904	Tugs and pusher craft
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
250	8906	Other vessels, including warships and lifeboats other than rowing boats
251	8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)



8. It is submitted that on conjoint reading of above entries, it could be construed that the aforementioned goods along with its parts (covered under entry 252) would be taxed at the rate of 2.5%. It is to be noted here that Entry 252 reproduced above is applicable to goods falling under any chapter but which are parts of goods falling under headings 8901, 8902, 8904, 8905, 8906 and 8907. Accordingly, a product which is classifiable under any chapter, if could be construed as part of these prescribed goods then the same would fall within the purview of entry 252 and hence would be liable to 2.5% CGST.
9. It is submitted that similar view was adopted by the Hon'ble Court in the case of **Mahindra & Mahindra Ltd. Vs Commissioner Of C. Ex., Nagpur [2007 (210) E.L.T. 579 (Tri. - Mumbai)]**, wherein it was held that *we also note that the recent Circular No. 839/16/06-CX dated 16-11-2006 issued by the Board has clarified that inasmuch as Notification No. 6/2002 exempts parts, falling under any Chapter, used within factory of production for manufacture of goods of Heading 8701, the benefit cannot be denied to the product which may not fall under said chapter. The goods falling under any Chapter, as long as they are parts of goods of Heading 8701 will be covered by the said Notification.*
10. It is submitted that in light of the entry 252 of Schedule I of GST classification notification (1/2017 – Central Tax dated June 28, 2017) and case law referred above, it is clear that the goods falling under any chapter, as far as they constitute to be part of vessel / ship, would be subjected to tax at 2.5%.
11. Accordingly, for marine paints to be classified under this entry, it should be construed as 'part of the ship' covered under entry 252.
12. It is submitted that there is no separate tariff item as 'parts of ship' under chapter 89 of the 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.
13. It is submitted that the said term 'Part' means an essential ingredient of the main product. The said word i.e. part has been defined in various dictionaries as under:

The term 'Part' as defined under The 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.'



Definition of 'Part' from Thesaurus

'an essential or integral attribute or quality'

The meaning of the term 'part' in common parlance is that component part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete'.

14. It is submitted that it could be understood that anything which is an integral element and is also essential to an object, could be considered as part of that article. Alternatively, anything required to make the goods a finished item can be described as component parts.
15. It is submitted that the Ld. AAR has also referred the dictionary meaning of the term part on page 9 of the impugned advance ruling. The relevant extract of the said reference made by the Ld. AAR is as under:

"-----We find that as per Cambridge English Dictionary:

Part as a noun - 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.

It has other meanings also in other context which are not of relevance in present context like:

---a single broadcast of a series of television or radio programme or Division of a story.

----one of two or more equal or almost equal measures of something etc.

-----Further, we also find the definition of 'Spare Part' as per Wikipedia

A spare part, spare, service part, repair part or replacement part is an interchangeable part that is kept in an inventory and used for the repair or replacement of failed units. Spare parts are an important feature of Logistics Engineering and Supply Chain Management."

16. It is submitted that also as per the above definitions referred by the Ld. AAR, it is clear that part is one of the piece or ingredient of the main machine. In the present case, ship is main machine and marine paint is essential part of the same.
17. It is further submitted that the Ld. AAR has observed that anchor, bow etc. are very essential parts of the ship or vessel and are quite clearly part of the vessel. However, in addition to the above there are some additional equipment that are required to be made available on a ship as a measure of statutory compliance under the various



marine acts. Though these parts are very essential, cannot come under the essential parts or equipment of a vessel/ship.

In this regard, it is submitted that the courts in various cases has held that the goods which are essential to make a final main product marketable should be considered as part of the said main product. However, Ld. AAR has failed to appreciate the same and hence impugned advance ruling needs to be set aside.

18. The Ld. AAR has also erred in comparing paints with safety equipment's like walkie-talkie, binoculars, life jackets, life boats etc. Such safety equipment are generic in nature and not ship specific. However the marine paints supplied by Appellant are specifically meant for ships/vessels.
19. It is further submitted that the Ld. AAR has also observed that various consumables items like oil etc. are also used to make ship durable, tenable and worthy of ocean. Once applied these consumable items are consumed and lost and cannot be reused and also not worthy of recovery, reuse or recycle.
20. The Merchant Shipping Act, 1958, fosters development and ensures the efficient maintenance of an Indian mercantile marine in a manner best suited to serve the national interests. This Act provides registration, certification, safety and security provisions for Indian ships and generally deals with amendments law relating to merchant shipping.
21. It is submitted that as per the provisions of Merchant Shipping Act, 1958 ('MS Act'), marine paint is essential part of the ships. Relevant provisions of the said act which would help in demonstrating that marine paint is integral and essential component of ship as referred below for ease of reference.

► Section 356P(1) of MS Act: Application of chapter XIB-Control Of Harmful Anti-Fouling Systems On Ships

Save as otherwise provided in this Part, this Part shall apply to—

- a. *every Indian ship, wherever it is;*
- b. *ships not entitled to fly the flag of India, but which operate under the authority of India; and*
- c. *ships that enter a port, shipyard, or offshore terminal or place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to*



control of pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) or any other law for the time being in force.

Section 356Q(a) of MS Act– Definition of ‘anti-fouling system’

“anti-fouling system” means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms

Section 356R of MS Act – Control of anti-fouling system

1. Every Indian ship and other ships which are not entitled to fly Indian flag but operating under the authority of India, shall comply with the requirements set forth in this Part, including the applicable standards and requirements as prescribed from time to time as well as effective measures to ensure that such ships comply with the requirements, as may be prescribed from time to time.
2. All other vessels to which this Part applies shall comply with requirements of the anti-fouling systems as prescribed from time to time.

Section 356X of MS Act - Information regarding contravention of the provisions of Convention

1. If, on receipt of a report from a surveyor or other person authorised to inspect a ship, the Director-General is satisfied that any provision of this Part has been contravened by such ship within the coastal waters, the Director-General or any officer authorised by him in this behalf, may—
 - a. detain the ship until the causes of such contravention are removed to the satisfaction of the Director-General or the officer authorised by him; and
 - b. levy penalty on such ship as specified in section 436
22. It is submitted that from conjoint reading of the above provisions, it is evident that every ship has to adhere to the anti-fouling provisions as prescribed under MS Act. Basis the same, a layer of coating or paint, has to be applied on the hull of the ship to control or prevent attachment of unwanted organisms. Attention is invited to the meaning of term ‘hull’ in Concise Oxford English Dictionary, which reads as follows –



The main body of a ship or other vessel, including the bottom, sides, and deck but not the masts, superstructure, rigging, engines, and other fittings

23. It is further submitted that if any Indian ship fails to comply with the provisions of this chapter, the Director – General or any officer authorised by him in his behalf can detain the ship until the causes of such contravention are removed or levy a penalty on such ship. Consequently, it could be construed that ships must have a layer of coating or paint on its hull, thereby making it very essential for a ship to operate and thus be marketable.
24. It is submitted that considering the fact that all ships are mandatorily required to apply paint makes it evident that paint is essential element for any ship to operate. Accordingly, such marine paint has to be considered as part of ship and should get covered under 2.5% CGST Rate schedule.

A PRODUCT ESSENTIAL TO COMPLETE THE MAIN PRODUCT AND MAKE IT MARKETABLE IS CONSTRUED AS PART OF THE MAIN PRODUCT

25. Reliance is placed in this regard on the decision of the Hon'ble Supreme Court, in case of **Star Paper Mills Ltd.Vs. Collector of Central Excise, Meerut [1990] 76 STC 312 (SC)**, wherein it has been ruled that *if it is found that the use of paper core is necessary in "any process incidental or ancillary to the completion of "paper as marketable goods and it would consequently be commercially inexpedient to sell paper without the use of paper core, it would certainly be a constituent part of paper and would thus fall within the purview of the term "component parts" used in the notification.*
26. Reliance is also placed on the decision of Hon'ble Gujarat High Court, in case of **Surgichem Vs. State of Gujarat [1992] 87 STC 40 (Guj)** wherein it has been observed that *it is clear that anything that goes into the product till the product becomes marketable, such thing becomes part and parcel of that product or article. Applying this test in the instant case, the plastic spools over which the adhesive plaster tapes are wrapped have to be considered as one of the component parts of the goods marketed, i.e., adhesive plaster tapes. It is not disputed that adhesive plaster tapes can be marketed only after wrapping them on plastic spools. Therefore, plastic spools are to be held component part of the adhesive plaster tapes, that is, the goods marketed. Hence plastic spools cease to be packing material.*



27. The Apex Court, in case of **Collector of Central Excise, Calcutta-II Vs. Eastend Paper Industries Ltd. [1990] 77 STC 203 (SC)** held that *to be able to be marketed or to be marketable, it appears to us, in the light of facts in the appeals, that it was an essential requirement to be goods, to be wrapped in paper. Anything required to make the goods marketable, must form part of the manufacture and any raw material or any materials used for the same would be component part for the end product.*
28. It is submitted that from the above cases, it could be summarized that paper core, plastic spools and wrapping paper would be considered to be parts of paper rolls, adhesive plaster tapes and paper reams/reels respectively since without the former goods, the later goods couldn't be marketed or are commercially inexpedient. Thus an analogy could be drawn that anything which is required for making goods marketed or to be marketable, would be form component part of that end products.
29. It is submitted that, as explained above, basis the provisions of The Merchant Shipping Act, ships are bound to adhere to the 'anti-fouling system' norms. Accordingly, ship would not be marketable unless the same has complied with anti-fouling system i.e. application of paints / coating to avoid growth of unwanted organisms.
30. Thus applying the ratio derived from aforementioned legal jurisprudence in the current situation, a view can be taken that since the ship is not commercially expedient without following anti-fouling system, paints would have to be considered as 'part of that ship'.
31. It is submitted that in view of the above it is clear that marine paints so supplied for vessels, would be considered as 'Parts of vessel' and thus would fall under the ambit of entry 252 of Schedule I to the Central Tax Rate Notification 1/2017 wherein tax would be levied at the rate of 2.5%.

If paint is considered as part of aeroplane or helicopter then the same should be considered as part of ship

32. Under erstwhile Central Excise regime, similar benefit was introduced for the parts (irrespective of their classification) of aeroplanes or helicopters required for manufacture or servicing of aeroplanes or helicopter vide notification 6/2002 – Central Excise dated March 1, 2002. while deciding on whether wires and cables manufactured for aircrafts / helicopters would be considered as parts of aircraft, the



Hon'ble Court in case of **Sanghvi Aerospace (P) Ltd Vs Commissioner of Central Excise Ahmedabad**[2009 (247) E.L.T. 578 (Tri. - Ahmd.)] stated that following:

"he has also submitted a list of goods in respect of which exemption has been allowed to manufacturers supplying the goods to National Aerospace Laboratories, HAL etc. as detailed below:

9.1 Aircraft cables (manufacturer - Radiant Cables Pvt. Ltd.)

9.2 Paints (manufacturer - South Field Paints & Chemicals Pvt. Ltd.)

9.3 Epoxi Yellow Primer (manufacturer - South Field Paints & Chemicals Pvt.Ltd.)

9.4 Thinner for yellow primer (manufacturer - South Field Paints & Chemicals Pvt. Ltd.)

9.5 Rivets (manufacturer - M/s. Ankit Forgings)

9.6 Epoxi black paint (manufacturer - South Field Paints & Chemicals Pvt. Ltd.)

9.7 Industrial Laminates Fabric (manufacturer - Lamtuf Plastics Ltd.)"

33. It is submitted that from the facts of above case, it is clear that paints when supplied to manufacturers of aircrafts / helicopter, are treated as parts of aircraft and thus would be eligible for claiming benefit of nil rated duty under the Notification 6/2002 – CE. Applying similar analogy, paint when supplied for manufacture of ship should be considered as part of ship.

Under erstwhile Indirect Tax regime, Central Excise exemptions were granted to marine paints supplied to ship. Hence, intention of legislators appears to provide indirect tax concession to this product.

34. It is submitted that in order to evaluate whether marine paint would be eligible for lower rate of GST, it is also relevant to understand tax rate and exemptions, if any, under erstwhile Indirect Tax regime.
35. It is submitted that under Central Excise Act, 1944, Notification No. 44/2015 –CE dated 24 November 2015 has issued prescribing effective rate of central excise for specified goods (amending Notification 12/2012 dated 17 March 2012). Said notification inserted following entry for prescribing effective rate of excise for goods mentioned therein.



Sr. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
306C	Any chapter	Raw materials and parts	NIL	2 and 3*

* Condition 2 - 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.

*Condition 3 - The exemption shall be allowed if it has been proved to the satisfaction of an officer not below the rank of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction that such goods are cleared for the intended use

36. It is submitted that in terms of the above mentioned entry in the exemption notification, rate of excise duty for raw material and parts, for use in the manufacture of different types of vessels has been prescribed as nil. Accordingly, goods falling under any chapter meant for use in the manufacture of vessel was made liable to nil rate of duty.
37. It is submitted that from the above, it can be inferred that intention of the legislators is to grant benefits to all the products meant for use in manufacture of vessels. Keeping this in view, it can be contended that legislators would wish to continue extending such benefits to all products used in manufacture of vessel. Hence, paint which is meant for use in manufacture of vessel should fall within the purview of entry 252 of Schedule I of IGST rate schedule and would attract 5% IGST.
38. It is submitted that the goods falling under chapter 8901 to 8907 are covered under schedule I of IGST Rate notification vide entry 246 to 251. Whereas separate entry 252 has been inserted for parts of these goods. Thus, the intention appears to be to



avoid inverted duty rate structure for vessel manufacturers. They should be able to procure all the parts at 5% IGST and then would also be charging same rate on their outward supply of different types of vessels. Hence, entry 252 of IGST Rate notification should be read to cover all raw materials and parts which are meant for use in manufacture of different types of vessels.

VAT legislation of United Kingdom also considers paint as part of ship

39. It is submitted that Value Added Tax (VAT) was introduced in the UK on April 1, 1973. Although Value Added Tax Act 1994 (VATA) provides the main framework of the tax, the detailed interpretation of the same are found in statutory instruments either in the form of Orders made by Treasury or Regulations made by Her Majesty's Revenue and Customs (HMRC). HMRC has published several Notices and Leaflets affecting law. Though these Notices are not part of the law but they explain how HMRC interprets the law.
40. Appellant would also like to draw your attention to the VAT provisions laid in United Kingdom as regards parts or components of ship. Following is the extract of such germane provisions:

a. Section 30(2) of Value Added Tax Act 1994

A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description for the time being specified in Schedule 8 or the supply is of a description for the time being so specified.

b. Group 8 of Schedule 8 of Value Added Tax Act 1994

The supply of parts and equipment, of a kind ordinarily installed or incorporated in, and to be installed, or incorporated in,—

- a. the propulsion, navigation or communication systems; or*
- b. the general structure,*

of a qualifying ship or, as the case may be, aircraft

c. VAT Notice 744C ships, aircraft and associated services published on July 20, 2011

7.5. Which parts and equipment are excluded from zero rating?



Any raw or bulk materials, partly processed parts or equipment and also non-specialist goods or appliances are excluded from zero rating. The list below gives examples of other parts and equipment which are not zero-rated. It is not exhaustive.

- *Binoculars*
- *catering equipment (domestic)*
- *crockery*
- *cutlery*
- *diving equipment*
- *furniture (unfixed)*
- *laundrying equipment (domestic)*
- *missiles, shells etc*
- *ship's stores*
- *soft furnishings*
- *phones*
- *televisions*
- *tools*
- *underwater cameras*
- *videotapes/disks, electronic games and similar entertainment equipment*
- *crockery and cutlery*
- *raw materials such as: fibre board, plastics, and specialist metals*
- *bulk materials such as: adhesives, chemicals, fabrics, inhibitors, metals, oils, paints, solvents and thinners etc*
 - *aircraft ground equipment*
 - *flight simulators or their parts, and*
 - *tooling and equipment used for manufacturing parts or equipment*

41. It is submitted that as per section 30(2) of VATA, any supply of goods or services would be zero-rated if the supply of goods are covered under Schedule 8 of the Act or supply of goods to the person to whom he supplies services is covered under the description provided. Further Schedule 8 of the Act includes supply of parts and equipment, of a kind ordinarily installed or incorporated in, and to be installed, or incorporated in the propulsion, navigation, communication systems or the general structure of a qualifying ship.
42. It is submitted that as per section 30(2) read along with Schedule 8 of VATA, supply of parts and equipment of installed or incorporated in the propulsion, navigation or communication systems or the general structure of a qualifying ship would be considered as zero-rated supplies and accordingly no tax would be liable thereon. However in order to avail the benefit of above provisions, it would be pertinent to



identify what would be considered to be parts and equipment of a ship. Therefore under VAT Notice 744C, the UK government has prescribed a non-exhaustive list of parts and equipments which are not zero-rated. The said non-exhaustive list of parts and equipments includes paints, solvent and thinners.

43. It is submitted that from the above it is clear that paints, solvent and thinners have been considered to be parts and equipments of a ship since it is reported under a non-exhaustive list of parts and equipments.

VIOLATION OF PRINCIPLES OF NATURAL JUSTICE.

44. In support of its contentions, the Appellant replied upon the various cases. At the time of the passing of the impugned advance ruling, the Ld. AAR, relied upon various case laws different that the cases referred by the Appellant. However, the Appellant was not given chance of representing its case in light of those decisions referred by the Ld. AAR. Such act of the Ld. AAR is clearly violation of the principles of natural justice.
45. It is submitted that from the above, it is clear that the impugned advance ruling has been passed in violation of the principles of natural justice and hence the same is liable to be set aside.

HEARING

46. A personal hearing in the matter was conducted on 16.01.2019, where Shri Nitin Shashikant Shah, Advocate, appearing on behalf of the Appellant, reiterated their written submissions which were earlier made before the Advance Ruling Authority. Shri R.S. Gaikwad, Deputy Commissioner, State Tax appeared on behalf of the respondent in the matter. The said representative of the revenue made the following argument which are summarized as under:-

- 1) The dealer is private limited company
- 2) The dealer is manufacturer of marine paints & powder coating chemicals.
- 3) Out of the total turnover, marine paints constitute about 80% of the Turnover & remaining is of powder coating chemicals.
- 4) Out of the total turnover, 75 % is under CST and 25% under VAT. The Export turnover is 1 to 2 %.

Under VAT- Marine paints is classified under schedule entry E-1, Powder coating chemicals are classified under schedule entry C-54 i.e Industrial inputs @ 5%



- 5) Under Excise the goods are classified under Chapter-32, The rate of tax is 12 %
- 6) Under GST the goods are classified under schedule -IV @ 14+14=28 %(SGST+CGST)
- 7) Going by the principle of RNR i.e VAT+ Excise =13.5+12=25.5 hence the goods are classified @ 28 %.
- 8) Dealer's contention is to classify the goods under SCH-I, serial no.252 parts of goods of heading-89
- 9) In the ARA Maharashtra application, the dealer has contended the above claims of 5% on following grounds
 - i) Section 356 of Merchant shipping Act, 1958 – Anti-fouling paints just because it is mandatory under some law to be applied to ships does not essentially make it a part. On this issue, ARA Maharashtra has clearly clarified that paints can be consumables and not parts. As per this law although application of paints is mandatory but that doesn't mean that it can be classified as part of ship.
 - ii) Central Excise exemption notification in 2012, 2015 – specified ships. This exemption is for the things used in ships. In this case, it is noticed that the dealer sales goods to housing societies also. So this contention of the dealer is also not tenable. At the same time, there is no exemption under VAT. In VAT, the goods are classified under residual entry.
 - iii) Judgments relied by ARA :
 - A) Saraswati Sugar Mills Vs. Commissioner of Central Excise Civil Appeal No.5295 of 2003 decided on 2nd Aug 2011 Hon. Supreme Court of India
 - B) Jindal Strips vs. Collector of Customs, Equivalent citations: 1997 ECR 98 Tri Delhi, 1997 (94) ELT 234 Tri Del.
 - C) State Of Uttar Pradesh vs. M/S. Kores (India) Ltd on 18 October, 1976, Equivalent citations: 1977 AIR 132, 1977 SCR (1) 837
 - iv) The ARA has also stated as under:

Considering the meaning of an expression (Part) as defined in the dictionary and adopted by the courts mentioned above besides common parlance test, it can be safely concluded that Marine Paint is not a component part of Ship. This conclusion which we have drawn as above gets support from the facts stated by the appellant and detailed discussions above as per which marine paints are clearly consumable items and not parts.
 - v) Thus we would be stretching the definition of 'part' greatly, if we intend to treat paints as parts of ship in view of the above discussions.



vi) Basis 30(2) of UK VAT Act, the ARA has mentioned that the statutory provisions, conditions are in different context and therefore not relevant in the facts of the case in present matter.

DISCUSSION AND FINDINGS

47. We have perused the record of the file and gone through the facts of the case and the submission made by the appellant and the department. The appellant have submitted that they are manufacturers and exporters of paint. M/s. Jotun India Pvt. Ltd. is a supplier, exporter and manufacturer of paint and powder coatings. The appellant has stated that they supply paints that are specially designed for unique conditions. One of the major supplies are 'marine paints' which is the impugned product under consideration. Notification No.1/2017 dt.28.06.2017 prescribes the applicable rate of CGST. The paints supplied by the appellant are classifiable under Chapter heading 3208 and 3209 which are covered under Schedule IV of the said Notification and liable to GST @ 28%. However, under the same rate notification, Schedule-I which covers goods taxable @ 2.5% CGST has entry No.252 which covers parts (classifiable under any chapter) of goods, falling under heading 8901,8902,8904, 8905,8906 and 8907. It is the contention of the appellant that the marine paints supplied by them are suitable for use by ships and therefore would be covered at Sr.No.252 Schedule-I of Notification No.1 of 2017 dt.28.06.2017. Accordingly, the question raised by the appellant before the AAR is as follows:-

"Whether marine paints, supplied by the appellant, would be considered to be a part of ship and accordingly be then classified under Sr.No.252 of Schedule-I of the Notification No.1 of 2017 of Central Tax (Rates) dt.28.06.2017."

48. There is no dispute that the product is covered by Chapter heading 3208 and 3209 but the dispute pertains to the claim of the appellant that they are covered by Entry no.252 of Schedule I Notification No.1 of 2017 dt.28.06.2017, which covers parts (classifiable under any chapter) of goods, falling under heading 8901,8902,8904, 8905,8906 and 8907 i.e. 'parts of ships'. The appellant has submitted that the impugned product sold by them i.e. Marine Paint is a specific type of paint suitable for use principally for ship during the building stage and during maintenance. The ship needs protection from the corrosive environment in which they operate and the marine coatings are a special functionality to protect the marine



vessel and other carriers above and below the water line. The marine paint has the following special features:-

1. It protects the body of the ship from highly corrosive environment.
2. Blocks barnacles and other organisms from adhering to the hulls of the ship.
3. Lessens fuel consumption as it controls the damage to the ship.
4. Prevents the impact on water eco system by reducing emission of greenhouse gases.
5. Transportation of marine organisms to other areas.

49. It was held by the AAR that marine paints supplied by the appellant is not an integral part of the ship and would not be classified under Sr.No.252 of Schedule-I of the Notification No.1 of 2017. The appellant has therefore filed appeal against the Advance Ruling Order and has reiterated his contention that the marine paints are parts of ships and therefore covered at Sr.No.252 of Schedule-I of the Notification No.1 of 2017.

50. The question therefore before us is whether marine paint can be considered to be a part of headings 8901, 8902, 8904, 8905, 8906, 8907 which are all various types of water vessels. In common parlance, paints generally means any liquid which is commonly applied to a number of surfaces and is used to provide texture to an object as well as protect the surfaces. The paint supplied by the appellant is 'anti fouling paint' which is generally applied to hulls of ships. In order to address the contention of the appellant, it is to be seen as what is understood by the meaning of the term 'parts'. The terms 'parts' has not been defined under CGST Act. It has been defined under the Black's Law Dictionary as an 'integral portion, something essentially belonging to a larger whole which together with another or others makes of a whole. In the Cambridge English Dictionary 'part' is defined as a separate piece of something or a piece that combines with other piece to form something. Thus, what we understand from the term 'part' is that it should be identified as something integral and mandatory to the completion of the whole article and without which the article will not be complete. By the application of the above, it cannot be said that marine paint is part of the ship. An essential part of ship or something without which ship could not be completed and would not exist. It presumes that the article as such must, in its condition and functioning, be so essential that the whole cannot function without it. We agree with the observation of the AAR that 'marine paints' are in no way an integral piece of a ship which would in any way form the whole ship.



51. Paint is a commodity capable of many uses. It is not identified with a ship like maybe, a stern, a gunwale or a propeller or a mast. Marine paints may be used to make a ship durable and increase the life of a ship but that does not mean that it is an integral part of the ship. A ship can very well sail on waters without paint and at the most the corrosion will happen earlier than ideally required but it will be a little farfetched to say that the ship would be unable to sail without it. A marine paint adds to the life, convenience and efficiency but is certainly not a part of it. Paints have an identity of their own and are not perceived as a part of a setting on which they are applied and this would apply even to the special category of 'Marine paints'.

52. The main contention of the appellant is that as per the provisions of the Merchant Shipping Act, paints are mandatorily required on all ships and therefore they should be considered as part of ships. This may be mandatory requirement for the sail worthiness of the ship but that does not indicate that they are parts of the ship. The mandatory requirement under some other law cannot be an adequate ground for classifying a product as 'part'.

53. The Appellant has placed reliance on the Supreme Court decision in the case of Star Paper Mills v. Collector of Central Excise (1990) 76 STC 317 (SC), wherein it was ruled that if it is found that use of paper core as necessary in any process incidental or ancillary to the completion of paper as marketable goods and it would consequently be commercially inexpedient to sell paper without the use of paper core, it would certainly be construed as part of paper itself and fall within the purview of the term 'component part' used in the notification. The Supreme Court decision in the case of Collector of Central Excise v. East Paper and Industries (1990) 77 STC 201 (SC) held that anything required to make the goods marketable must form part of the manufacture and any raw material or any materials used for same would be component part of the end product. All these judgments are rendered under the Central Excise Law where the prime test is that the product is marketable or not. The judgments have been pronounced from the angle of marketability and accordingly any product which makes whole marketable product is held to be a 'part'. Therefore, they are not applicable to the instant case.



54. The appellant also referred to the Gujarat High Court Judgment in the case of Surgichem (1992) 87 STC 40 (Guj) where it was observed that, anything that goes into the product till the product become marketable such things becomes part and parcel of that article. Applying this test, the plastic pools over which plastic tapes are wrapped were considered as part of the goods marketed. A plastic tape could never have become marketable without a plastic pool and therefore the decision. The same cannot be said about paints.

55. The Bombay High Court in the case of Commissioner Of Sales Tax Vs. Jayanand Khira & Co. Private Ltd. (36 STC 242 Bom) had to decide whether an oil tanker is a part of a motor vehicle. The Court observed ,”

“....We find some difficulty in accepting the test laid down in that case. According to us, the correct test would be to look both at the article which is said to be the component part and the completed article and then come to the conclusion whether the first article is a component part of the whole or not. If one were to look at a complete and finished product, one might find so many parts which, by being fixed or otherwise made part of the said product, would lead one into a fallacious impression that they are component parts. What the court is here concerned with is to ascertain whether the sale of a particular article is exigible to tax and, if so, at what rate. Therefore, in order to determine whether a particular article is a component part of another article, one must first look at that article itself and consider what its uses are and whether its only use or its primary or ordinary use is as the component part of another article. We are here concerned with an article, which from the various uses to which it is ordinarily put and is capable of being put as found by the Tribunal, has both an independent existence and an independent use, apart from being a part of a complete motor oil-tanker. It is, therefore, not possible to hold on the facts as found by the Tribunal that the oil-tank sold by the respondents was a component part of a motor vehicles.

56. In the case of Commissioner, Sales Tax v. Free India Cycle Industries [1970] 26 STC 428 the Allahabad High Court was concerned with an entry "bicycles, tricycles, cycle rickshaws and perambulators and parts and accessories thereof other than tyres and



tubes". The assessee was a dealer in cycle and cycle goods and the question arose whether rexine saddle covers manufactured and sold by it would fall within that entry. It was observed by the Division Bench that the expression "parts and accessories" qualified the word "bicycles, tricycles, etc." The entry was regarded as referring to parts and accessories of the vehicles and did not include accessories of individual parts or accessories of the vehicle. Dealing with the question of rexine covers, it was held that "rexine covers in question are used as a covering of the saddle or seat of a cycle. The seat or saddle of a cycle is, of course, a part of the cycle because without it the cycle is not complete. A rexine cover in that sense is not a part of the vehicle". The above judgement is applicable to the instant case.

57. In a recent Bombay High Court judgment in the case of KhushBakht Electronics (Sales Tax Reference No 29 of 2009 in Reference Application No.107 OF 2002 dtd 14th September, 2018) the question before the Court was whether the Hybrid Amplifier or Line Extender is an accessory of Cable T.V. covered by the said schedule entry C-II-124 or is a general electronic item covered by the schedule entry C-II-126. The assessee contended that the impugned product was an electronic item not covered by any specific entry and therefore, would fall under Schedule Entry C-II-126 which was a residuary entry for electronic items. The Commissioner in determination order inter alia held that the impugned product was specifically required for Cable TV and therefore, it was covered by Schedule Entry No. C-II-124 as an accessory of the Cable TV. Thus, having regard to the functional utility of the product, the Commissioner held that the Hybrid Amplifiers were covered by Schedule Entry No. C-II-124 and liable to tax at 13%.

Schedule Entry C-II-124 read thus :-

Entry Description of the goods Television sets, television cameras, television receivers, to date television monitors, antennas and components, parts and accessories of any of them.

The Court observed,"

.. 'From all these facts, what becomes clear is that the Hybrid Amplifier basically boosts the signal, be it for the purpose of transmission of Cable TV or for several other purposes as set out by us earlier. This being the position, we agree with the finding of the MSTT that the impugned product viz. Hybrid Amplifier has got a totally different function and it has no function akin to an



antenna as was held by the Commissioner in his DDQ order. We do not find that this Hybrid Amplifier can be classified under Schedule Entry C- II-124 as it is neither a TV set, TV Camera, TV Receiver, TV Monitor, antennas and components, parts and accessories of any of them. **It is a stand alone active device for the purpose of boosting weaker signals and is comprised of all electronic components and parts. In these circumstances, to our mind at least, it would squarely fall within Schedule Entry C-II-126 which deals with electronic systems, instruments and appliances and components, parts and accessories of any of them. Merely because the impugned product can also be used for the purpose of boosting Cable TV signals would not alone justify its classification under Schedule Entry C-II-124. (*emphasis added).**

58. Thus, what we observe from the above is that the impugned product would not be a part of ship because

- It is a standalone commodity having independent existence
- It is also perceived as an independent product rather than as a part of something.
- It is not an integral part of the ship.
- The ship can sail without the application of the impugned product.
- It only adds to the comfort and durability of the ship but is not an indispensable part of it.

59. In view of the above discussion, we pass the following order:

ORDER

We do not find any reason to interfere with the ruling pronounced by the Advance Ruling Authority vide their Order no GST-ARA-29/2017-18/B-35 dated 19.05.2018.


(RAJIV JALOTA)
MEMBER


(SUNGITA SHARMA)
MEMBER

