

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No.05 /2021/AAAR

Date: 29/06/2021

BEFORE THE BENCH OF

1. Thiru.G.V.KRISHNA RAO, MEMBER

2. Thiru. M.A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/13/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b). On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	SI AIR Springs Private Limited TVS Building, 7-B West Velli Street, Madurai 625 001
GSTIN or User ID	33AABCF1689G1ZQ
Advance Ruling Order against which appeal is filed	Order No. 01/ARA/2021 dated 24.02.2021
Date of filing appeal	01.04.2021
Represented by	Shri. Karthik Sundaram, Advocate
Jurisdictional Authority-Centre	Madurai Commissionerate
Jurisdictional Authority -State	Asst. Commissioner, WestVeli Street Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Rs. 20,000/- SBIN21033300516675 dated 31.03.2021

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal is filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s SI Air Springs Private Limited (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AABCF1689G1ZQ. The appeal is filed against the Order No.01/ARA/2021 dated 24.02.2021 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The Appellant has stated that they are engaged in the manufacture and sale of 'Air Springs' which are used in Air suspension systems for Buses, Trucks and Trailers. The product is composed of a rubber bellow which includes rubber and fabric composite, beadwire, griddle hoop, crimped top plate, piston and a bumper. The material composition of such 'Air Spring' is approximately 60% metal and 40% rubber. The 'Air Springs' work on the pneumatic system principle, whereby a

volume of gas confined within a container is compressed, and, it produces a reaction force. The reaction force takes the vehicle load, makes the ride smoother and reduces wear and tear in the vehicle. Hence, the sole purpose of Air Spring is to provide a smooth, constant ride quality. In the erstwhile Central Excise regime they were classifying their product under the Heading 4016. Effective 01.07.2017, under GST, they have classified their product under CTH 8708.

2.2 The Appellant had filed an application before Hon'ble Authority for Advance Ruling, seeking clarification on the following questions:

Whether "Air Springs" manufactured and supplied by the appellant will be correctly classifiable under Tariff heading 40169990 as opposed to Tariff heading 8708 9900 and attract GST at the rate of 18%.

3. The Original Authority has ruled as follows:

"Air Springs" Manufactured and supplied by the applicant are rightly classified under CTH 8708 and more specifically under CTH 8708 8000"

4. Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

GROUND 1: THE IMPUGNED ORDER HAS ERRED NOT HOLDING THAT THE 'AIR SPRINGS' MANUFACTURED AND SUPPLIED BY THE APPELLANT ARE ARTICLES OF VULCANIZED RUBBER.

- The impugned order accepts the fact that the product in question comprises of vulcanized soft rubber and not hard rubber. This is evident from the findings at para 8.3 of the order.
- The functionality of the product 'Air Springs' is extended by the rubber part of the product ('Vulcanized Rubber') and the same is evident from para 8.5 of the impugned order, whereby reference is made to the report of the Chartered Engineer. Further, though it is stated that functional utility is not provided solely by the soft rubber, the impugned order does not contradict the independent Chartered Engineer report dated 29.02.2020 relied upon by the Applicant/Appellant that the functional utility is primarily provided by the vulcanized soft rubber. Furthermore, no independent technical report or evidence has been relied upon by the authority in the impugned order to contradict the expert opinion of the Chartered Engineer dated 29.02.2020.

- The impugned order proceeds on the erroneous basis that despite the product comprising of vulcanized rubber and its functionality being primarily attributable to vulcanized rubber, it cannot be classified under CTH 4016 9990. Therefore, the primary basis on which the impugned order holds that the Air Springs are not classifiable as products of vulcanized rubber is that the whole of product is not an article of vulcanized rubber. Further, the order also holds /does not deny that while the functionality of the Air Spring is primarily from vulcanized rubber, it is not only from the vulcanized rubber, but from the formation of the product as a whole.
- It is well settled law that classification of product is to be done as per section notes and chapter notes of custom tariff read with section notes and chapter notes and explanatory notes to HSN. The same is also held at para 8.1 of the impugned order itself.
- The authority failed to take record of the explanatory note to Chapter 40 which clearly states that even if the essential characteristic derives from rubber, the article will be vulcanized rubber. In the present case, the fact that the Air Springs manufactured by the appellant derive essential character from vulcanized rubber is proved by the certification dated 29.02.2020 of the Chartered Engineer Mr.T.S Bhaskar.
- The Authority has therefore, without appreciating the finding of the technical experts, has passed the Impugned Order completely ignoring the settled position in law that view expressed in a technical/expert report cannot be displaced other than by way of specific and cogent evidence in the form of another expert report. The appellant has referred to the case law of *Inter Continental (India) v. UOI, 2003 (154) ELT 37 (Guj)* which they have furnished. It is clear from the above that Chapter 40 covers articles whose essential character derives from rubber. However, the Impugned Order at para 10 erroneously held that as the product as a whole is not an article of vulcanized rubber other than hard rubber, it is not classifiable under Tariff Entry 4016 9990. Such a finding is completely erroneous as Chapter 40 includes all articles whose 'essential character is derived from rubber' and it is not necessary for the product to be 'wholly made of rubber' in order to be classifiable under Chapter 40.
- Without prejudice it is further submitted that Rule 3(b) of the General Rules for the Interpretation of Import Tariff lays down that 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 Rule 3(a), shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable. That in addition to the HSN Explanatory Notes to Chapter 40, the 'essential character' test also is the mandate of Rule 3(b) of the General Rules for the Interpretation of the Import Tariff. This Rule has also not been considered in the Impugned Order and the Impugned Order has been passed without even referring to the relevant HSN Explanatory notes to Chapter 40 or the General Rules for the Interpretation of the Import Tariff.

- The Appellant had placed reliance on the US tariff classification bearing no. N303352 and dated March 28, 2019 to show that the essential character of the air spring is imparted from the rubber component ('vulcanized rubber'). The US authority in such classification opinion on the issue of 'tariff classification of convoluted/bellows air spring from Mexico', has opined that it is the rubber portion of the spring that allows the spring to act as designed. Therefore, the essential character of the spring is imparted by the rubber component, making it an article of rubber. As a result, classification of the spring in Section XVII is precluded. While the crux of the ruling is that the essential character of the 'air springs' is imparted from the 'rubber component' ('vulcanized rubber'), the Authority has failed to examine this important aspect but instead proceeded on a tangential basis while arriving at erroneous findings at para 9 of the Impugned Order on this issue.
- The Impugned Order does not deny/dispute the fact that the essential characteristic of the product is from 'vulcanised rubber', but only states that the product as a whole is not vulcanised rubber and not classifiable under CTH 4016 9990. It is submitted that the product manufactured by the Appellant derives its 'essential character' from the rubber component ('vulcanized rubber') for the detailed reasons set out hereinabove and therefore, is classifiable under CTH 4016 9990. In so far as the Impugned Order did not consider the abovementioned submission of the Appellant and has been passed without considering the HSN Explanatory Notes to Chapter 40, Rule 3(b) of the General Rules for the Interpretation of the Import Tariff and the US Tariff opinion in its correct perspective, it proceeds on an entirely erroneous basis and is liable to be set aside on this ground alone.

Ground 2:THE IMPUGNED ORDER HAS ERRED IN NOT HOLDING THAT THE 'AIR SPRINGS' MANUFACTURED AND SUPPLIED BY THE APPLICANT BEING 'ARTICLES OF VULCANIZED RUBBER' ARE SPECIFICALLY EXCLUDED FROM THE SCOPE OF CHAPTER 8708 AND ARE CORRECTLY CLASSIFIABLE UNDER CHAPTER 4016

- Even though the product manufactured by the Appellant, namely 'Air Springs', are critical components of the air suspension and lift axle systems in trucks, trailers and buses, it is relevant to note that Section note 2(a) to Section XVII specifically excludes articles of vulcanized rubber from the scope of Chapters 86 to 89.
- From Grounds of appeal above it is clear that the product manufactured by the Appellant are articles of vulcanized rubber and classifiable under CTH 4016 9990. Thus, when that is the case, it is specifically excluded from the purview of Chapter 87 in view of Section Note 2(a) to Section XVII. The Impugned Order does not dispute this position but proceeds on the basis that the product in question does not fall under Chapter Heading 4016 (for the erroneous reasons highlighted above), and hence the product will fall for classification under Chapter 8708.
- The Impugned Order itself accepts the position that if an article is of 'vulcanized rubber', the same is excluded from the scope of Chapter 87 in view of Section Note 2(a) [See para 8.4 of the Impugned Order]. The Impugned Order however proceeds on the erroneous basis that the product in question does not fall under Chapter Heading 4016 (which findings are incorrect for the reasons highlighted hereinabove), and hence the product will fall for classification under Chapter 8708.
- The General Rules of Interpretation of Import Tariff lays down as follows —

" Classification of goods in this Schedule shall be governed by the following principles: I. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:"
- The Section notes and chapter notes provided under the Customs tariff facilitate in arriving at the proper classification and contain valuable guides to classification. Therefore, it is imperative that in order to arrive at the correct tariff classification, the headings along with relevant Section and

Chapter note be taken into consideration. Reliance in this regard is also placed on the Instruction dated 21.05.2019 issued by the Office of Commissioner of Customs (Import), Mumbai, which clarifies that 'articles of vulcanized rubber other than hard rubber' are specifically excluded from chapters 86,87 & 88.

- Reliance in this regard is also placed on the decision of the Supreme Court in Intel Design Systems (India) (P) Ltd. v. Commissioner of Customs and Central Excise (2008) 3 SCC 258 whereby the condition precedent to classification under Heading 87.10 was discussed. The above decision makes it amply clear that in order to be classified under Chapter 87, the said product must not be specifically excluded by Note 2 to Section XVII. However, the product manufactured by the Appellant, is specifically excluded by Section note 2 to Section XVII. Further, it is clear that HSN Explanatory notes to Section XVII also specifically exclude springs from the scope of Chapter 87. The abovementioned decision of the Supreme Court in Intel Design Systems (supra) has also been relied upon by the same Hon'ble Authority for Advance Ruling in M/s. Heavy vehicles Factory (Order No. 15/AAR/2020 dated 20.04.2020) whereby while deciding the classification of various products under Chapter 87, applied the same logic that the product should not be specifically excluded by the provisions of the Notes to Section XVII and must not be more specifically included elsewhere in the nomenclature.
- However, the same Hon'ble Authority while deciding the issue of the Appellant, has failed to apply the same principle and has erroneously classified the product 'Air Springs' under Chapter 87. Such act of the Hon'ble Authority reflects gross non-application of mind while deciding the issue.

Ground 3: WITHOUT PREJUDICE, THE IMPUGNED ORDER FAILS TO CONSIDER THE EXPLANATORY NOTES TO CHAPTER XVII WHICH SPECIFICALLY EXCLUDES 'SPRINGS' FROM THE SCOPE OF 'PARTS AND ACCESSORIES' UNDER CHAPTER 8708. CONSEQUENTLY, THE CLASSIFICATION OF 'AIR SPRINGS' UNDER TARIFF HEADING 8708 8000 IS ERRONEOUS

- The HSN Explanatory Notes to Chapter XVII specifically excludes 'springs' from the scope of parts and accessories under Chapter 8707. Also springs of base metals are excluded from the scope of Chapter 87.
- Without prejudice to the submission that the 'air springs' derive their essential character from the 'vulcanized rubber' and are hence products of

vulcanized rubber classifiable under Chapter heading 4016, it is submitted that even assuming though not accepting that these are springs of base metal, even in such a case the classification cannot be under Chapter 87 but will only be under Chapter 7320, the GST rate for which is 18%. Therefore, without prejudice to the submission set out hereinabove, it is submitted that the springs per se cannot be classified under Chapter 87 as has been done vide the Impugned Order.

GROUND 4 — WITHOUT PREJUDICE, THE IMPUGNED ORDER FAILED TO APPRECIATE THAT COMPETING MANUFACTURERS WHO MANUFACTURE 'AIR SPRINGS' HAVE CLASSIFIED THE SAME UNDER TARIFF HEADING 4016 9990. THERE CANNOT BE TWO COMPETING CLASSIFICATIONS AS REGARDS THE SAME PRODUCT

- The Appellant submits that other competing manufacturers in the industry who manufacture the similar product in question - namely 'Air Springs', have classified the same under Tariff heading 40169990 that attracts GST at the rate of 18%. This submission was also made before the Hon'ble Authority for Advance Ruling in the Additional Submissions dated 26.08.2020 along with sample invoice. However, without considering the same, the Impugned Order has ordered that the 'Air Springs' manufactured by the Appellant are classifiable under 8708 8000. There cannot be competing classifications as regards the same product, as it would otherwise lead to discrimination. When the classification under Tariff heading 4016 9990 by competing manufacturers is being accepted by the GST Authorities, GST being a common code across India, there is no basis to discriminate against the products of the present Appellant alone and classify them under tariff heading 8708 8000. The classification of the same product cannot be different for different manufacturers for the purposes of GST. Thus, the Impugned Order is liable to be set aside as it results in different classifications by manufacturers across India qua the same/similar product.

PERSONAL HEARING:

5.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media vide e-mail dated 20th April 2021. The appellant provided their

consent to be heard through digital means. Accordingly, the hearing was held virtually on 15th June 2021.

5.2 Shri. Karthik Sundaram, Advocate and the authorized representative appeared for the hearing virtually. He reiterated the written submissions. He emphasized that

- Their product being one of vulcanized rubber other than hard rubber, is classifiable under CTH 4016 only
- As per the Technical report furnished by the Chartered Engineer, it is clear that the key functionality of the product is derived from rubber component and the same has not been applied in the impugned order
- Articles of Vulcanized rubber other than hard rubber are specifically exempted vide Note 2 to Section XVII

Therefore he stated that the product is not classifiable under CTH 8708 but only under CTH 4016.

DISCUSSIONS:

6. We have carefully considered the submissions of the Appellant, the impugned Order and the applicable statutory provisions. We find the issue before us for decision is whether the product “Air Springs” manufactured by the appellant which is a critical component in Air suspension systems for Buses, Trucks and Trailers are classifiable under CTH 4016 as claimed by the appellant or under CTH 8708 as decided by the Lower Authority.

7.1 From the submissions, it is seen that the product is composed of a rubber bellow which includes rubber and fabric composite, beadwire, griddle hoop, crimped top plate, piston and a bumper. The material composition is approximately 60% metal and 40% rubber. It is stated that the product works on the pneumatic system principle and the vulcanized rubber component gives the key functionality of the product, a critical component of the air suspension and lift axle systems in trucks, trailers and buses. Pre-GST, the appellant had classified this product under CETH 4016 and after the introduction of GST from 1st July 2017, they have started classifying under CTH 8708 for the purposes of GST. Since their competitor manufacturers are classifying the said goods under CTH 4016, they have sought Advance Ruling and they continue to classify their product under CTH 8708.

7.2 The contention of the appellant before us is that

- The Certified Chartered Engineer has stated that key functionality of the product is extended by the rubber part, which is a vulcanized rubber and it gives the essential characteristics to the product and this opinion is not contradicted by any independent technical report or evidence.
- As per the HSN Explanatory Note to Chapter 40, the said chapter covers articles wholly of rubber or whose essential character derives from rubber, other than products excluded by Note 2 to Chapter 40.
- Rule 3(b) of the General Rules for the Interpretation of Import Tariff lays down that composite goods consisting of different materials or made up of different components, which cannot be classified by reference to Rule 3(a) shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable
- The reliance on the US tariff Classification bearing No. N303352 dated 28th March 2019 is to show that the essential character of the product is imparted by the rubber component making it an article of rubber.
- Though the product is a critical component of the Suspension Systems of the Motor Vehicles, by virtue of Note 2 to Section XVII the product is excluded under Chapter 87

7.3 It is seen that the Chartered Engineer has determined that the key functionality of the product is derived from the rubber component and the essential character is derived from the vulcanized rubber. The lower authority has attempted to undertake the verification of the product by the Department but the Custom House Laboratory has stated that the sample is an article, mainly composed of compounded rubber; it answers test for sulphur, an ingredient of vulcanized rubber; however mechanical tests could not be carried out for want of facilities and returned the remnants and the authority has not pursued further. The appellant had relied on the decision of Hon'ble Supreme Court in the case of O.K.Play (India) Ltd before the Lower authority, which states that the classification primarily is to be attempted using the chapter heading; HSN Explanatory Notes are safe guides for interpretation and equal importance is to be given to the Rules of Interpretation and lastly, the functional utility, design, shape and predominant usage should also be taken into account while determining the classification of an item, which had been undisputedly followed by the Lower authority. In the case at hand the product is designed for use as a part of the suspension in the Motor Vehicles and the

functional utility of the product is as a 'Part of the suspension system of the Motor Vehicle' as deduced by the Lower authority and we find that the appellant is not disputing this fact. The appellant states that the product is an 'article of vulcanized rubber' and once when an article is 'an article of vulcanized rubber', the same gets excluded from the purview of section XVII as per Note 2 to Section XVII and cannot be classified under CTH 8708, therefore necessarily to be classified under CTH 4016-other articles of vulcanized rubber other than hard rubber.

7.4 Therefore, we find that the point to be decided is whether the product is an article of vulcanized rubber other than hard rubber and if so, whether as per Note 2 to Section XVII, the same is excluded from chapter 87, though the product are critical components of the air suspension and lift axle system designed for use only in trucks, trailers and buses

8.1 In the case at hand, it is stated that the "Air Springs" functions on the Pneumatic principles, i.e., the fluid used to balance is 'air'. Air when pumped in and out of the bellow when connected in the system acts as a shock absorber and provides the suspension by its reaction force. The product, "Air Spring assembly" manufactured by the appellant consists of a bellow made of vulcanised soft rubber coated with fabric sheet sealed with bottom Bead Plate & Top Bead Plate and also has Bead Wire, Girdle hoop, Piston and a Rubber Bumper. The fabric in the 'bellow wall' restricts radial expansion so that the air pressure developed by the air flowing into the air spring causes it to expand axially and the rubber essentially provides the enclosure for the fluid, i.e., air. It has been opined by the Certified Chartered Engineer that the essential characteristics is derived from the vulcanised rubber. As pointed out by the appellant, this opinion has not been negated and therefore stands.

8.2 We find that Hon'ble Supreme Court in the case of O.K.Play (India) Ltd Vs. Commissioner of Central Excise [2005(180) E.L.T. 300(S.C.)], has handed out the guidelines as to how a product is to be classified. The relevant Paragraph is as under:

Before dealing with the issue of classification, certain points are required to be clarified. In the case of A. Nagaraju Brothers v. State of Andhra Pradesh reported in [1994 (72) ELT 801], it has been held by this Court that no one single universal test can be applied for correct classification. There cannot be a static parameter for correct classification.

Further, the scheme of the Central Excise Tariff is based on Harmonized System of Nomenclature (for short "HSN") and the explanatory notes thereto. Therefore, HSN along with the explanatory notes provide a safe guide for interpretation of an Entry.

Further, equal importance is required to be given to the Rules of Interpretation of the Excise Tariff. Under rule 3(a), it is provided that the heading which provides a specific description shall be preferred to a heading having a more general description. For example, in the case of "toys" referred to in the HSN Heading and the Tariff Heading, the description refers to reduced size model of an Article used by adults. This test helps us to understand the difference between "toys" and "furniture".

Lastly, it is important to bear in mind that functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification of an item.

The aforesaid aids and assistance are more important than the names used in the trade or common parlance in the matter of correct classification.

From the above, it is clear that explanatory notes provides a safe guide for interpretation of an entry. In the case at hand, the scope of Chapter 40 as per the General notes in the HSN is as follows:

Scope of the Chapter

This Chapter covers rubber, as defined above, in the raw or semi-manufactured states, whether or not vulcanised or hard, and articles wholly of rubber or whose essential character derives from rubber, other than products excluded by Note 2 to this Chapter.

It says articles whose essential character derives from rubber are covered in this chapter. As per the Chartered Engineers' certificate, the essential character of the product is derived from rubber which is vulcanized soft rubber and therefore the product may be covered under CTH 4016. Chapter headings of CTH 4016 are examined as under:

4016		OTHER ARTICLES OF VULCANISED RUBBER OTHER THAN HARD RUBBER	
4016 10 00	-	Of cellular rubber	kg.
	-	Other :	
4016 91 00	--	Floor coverings and mats	kg.
4016 92 00	--	Erasers	kg.
4016 93	--	Gaskets, washers and other seals :	
.....			
4016 94 00	--	Boat or dock fenders, whether or not inflatable	
4016 95	--	Other inflatable articles:	
4016 95 10	---	Air mattresses	
4016 95 90	---	Other	
4016 99	--	Other :	
4016 99 10	---	Rubber cots for textile industry	
4016 99 20	---	Rubber bands	
4016 99 30	---	Rubber threads	
4016 99 40	---	Rubber blankets	
4016 99 50	---	Rubber cushions	
4016 99 60	---	Rubber bushes	
4016 99 70	---	Ear plug	
4016 99 80	---	Stoppers	
4016 99 90	---	Others	

Considering the headings, it is evident that the product fits only in the residuary heading CTH '40169990---Others'. The Apex Courts' decision above, states that the functional utility, design, shape and predominant usage have also got to be taken into account while classifying an item. The functional utility of the "Air Springs" is as "Part of the Suspension System in the Motor Vehicle"; the design is specific to the Motor Vehicle; and as to the predominant usage, it is only used in the Motor Vehicle. Thus though considering the General notes of the HSN, the product merits to be classified as 'other article of vulcanised rubber under CTH 4016', in the tests of functional utility, design, shape and predominant usage- the product merits to be classified as 'Parts and accessory of Motor Vehicles under CTH 8708'

8.3 It is stated that once a product falls under CTH 4016 as other article of vulcanised rubber, by virtue of Note 2 of Section XVII, the product cannot be classified in chapter 87. The relevant Section Note is examined as under:

Section XVII Note 2 is as follows:

2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

(a) joints, washers or the like of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanised rubber other than hard rubber (heading 4016);

(b) parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);

The contention of the appellant is that as per Note 2(a) above, the product which is an article of vulcanized rubber other than hard rubber is excluded from being considered as 'Parts'. Here again, we find that Hon'ble Supreme Court in the case of M/s Pragati Silicones PVT Ltd Vs. Commissioner of Central Excise Delhi[2007-TIOL-71-SC-CX], while considering whether Note 2(b) of Section XVII excludes 'Plastic Name Plates' to be excluded from considering as 'Parts', has stated that:

27. Based on the submissions made by Counsel for the Revenue, the central question before us is: whether the abovementioned Section Note 2(b) excludes plastic name plates from the scope of Section XVII. Thus, we are required to looking into the meaning and interpretation of Section Note 2(b). The Counsel for the Revenue contends that since Note 2 to Section XV defines "parts of general use" as including name plates, sign plates, number plates, etc., their plastic equivalents [by virtue of Note 2(b)] will also get excluded from the scope of Chapter 87. Thus, he submits that they ought to be classified under Chapter 39.

28. We however find it difficult to accept this submission in the light of the language used in Note 2(b). Note 2(b) excludes from the scope of Section XVII "Parts of general use, as defined in Note 2 to Section XV, of base metal (section XV), or similar goods of plastics (Chapter 39)".

What we have to examine is the scope of the last part of the Note. Admittedly, there are two ways of interpreting this phrase.

The interpretation suggested by the Revenue is to read the exclusion of "similar goods of plastics", in synchrony with the exclusion that applies to the goods of base metal. In this respect, he drew our attention to the further explanation that is provided on Note 2(b), where number plates are given as an example and it is further provided that "such goods of base metals fall in Chapter 83, and similar goods of plastics fall in Chapter 39".

According to the Revenue, this makes it amply clear that the "parts of general use" includes name plates of both, base metal and plastic and therefore fall out of the scope of Section XVII.

29. We are not impressed with this submission. It is true that on first blush, it appears that if the base metal name plates are excluded, so must similar plastic goods be excluded. However, we do not think that this is the correct position, primarily because of the reference made in Note 2(b) to Chapter 39. Undoubtedly, name plates of base metal stand excluded from the scope of Section XVII by virtue of being "parts of general use" as defined and specifically mentioned in Chapter XV. Now, with respect to plastic name plates, if the reference to Chapter 39 had not been made, then there would be no controversy at all. In such a case, all plastic products similar to those defined in Chapter XV would be excluded, regardless of an omission to specifically mention them within Chapter 39. In other words, without any reference to Chapter 39 in Note 2(b), the only control on the meaning of "similar goods of plastics" would be the description of goods included within Chapter XV.

30. However, the minute a reference is made to Chapter 39, it is the provisions in Chapter 39 that control the scope of "similar goods of plastics". Thus, when Note 2(b) refers to similar goods of plastics as in Chapter 39, it must be interpreted to mean similarly defined goods in Chapter 39. And since no definition or reference exists in Chapter 39 regarding name plates, etc., we cannot find any exclusion with respect to these goods from Chapter 87. For example, when the exclusion regarding base metal name plates is made, it is so because there exist specific and detailed headings in that Chapter. But in the absence of such specific headings in Chapter 39, we are unable to accept the exclusion of the plastic name plates from Chapter 87 and include it within a residuary provision in Chapter 39.

31. Thus, we are of the opinion that the language in Note

2(b) cannot be interpreted to exclude plastic name plates from the scope of Section XVII.

8.4 Applying the above ratio to the case at hand, in Note 2(a) similar to Note 2(b), there are two parts, viz.,

- *joints, washers or the like*
- *of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanised rubber other than hard rubber (heading 4016)*

Thus, only joints, washers, or the like which are parts of general use, when made of any material or other articles of vulcanized rubber, the same stands excluded as per Note 2(a) above. This view stands fortified by the decision of Hon'ble Supreme Court in the case of CAST METAL INDUSTRIES (P) LTD. Vs COMMISSIONER OF C. EX.-IV, KOLKATA, wherein the Apex Court has stated as follows:

4. *The aforesaid factual position is neither disputed nor it can be disputed by the Department.*

Notwithstanding the aforesaid position, we find that the Commissioner as well as the Tribunal have classified the goods under Chapter Heading 8302.00 by relying upon the Explanatory Note under Heading 83.02. This Note read as under :

"This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coach work etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g. door handles or hinges for automobiles). The heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs."

5. On the face of it, this note would not be applicable as it is HSN Note which has diversion with the relevant entry and as the very first line thereof mentions that it covers those goods which are meant for "general purpose". In the instant case, as already pointed out above, the goods in question are meant for specific purpose viz. in the motor vehicles that too for specific model of the motor vehicles as its parts.

6. We also find that the issue is squarely covered by the judgment of this Court in the case of *G.S. Auto International Limited v. CC Excise, Chandigarh* [2003 (2) SCC 371 = 2003 (152) E.L.T. 3 (S.C.)]. In the said judgment, following the earlier decisions of this Court, **the Court specifically held that to determine the applicability of the item under particular head, the test of commercial identity of the goods would be the relevant test and not the functional test.** It was also held that the expression "parts of general use" would not apply to parts or accessories which are not suitable for use solely or primarily with articles of Chapter Heading 87.08 which pertains to parts and accessories of motor vehicles of Chapter Headings 87.01 to 87.05. **The Court was also categorical that in such a case the test that is to be applied is : 'whether the goods are suitable for use solely or primarily with articles of Chapter Headings 87.01 to 87.05'.**(emphasis supplied)

8.5 In the case at hand, the product is not a joint, washer or the like, it is an 'Air bellow', a specifically designed part for use in the Motor Vehicle as a Shock absorbent and therefore, even if the part which gives the essential character of the product is made of vulcanized rubber other than hard rubber and the functionality of the product is extended by the said rubber portion as claimed by the appellant, still as per the dictum pronounced by the Apex Court referred above, the test of commercial identity and not the functionality test is relevant. The commercial identity of the product is that the product is a critical component of the air suspension and lift axle system in trucks, trailers and buses as has been stated by the appellant. It is also pertinent to note that the product is suitable for use solely or primarily with the articles of Chapter 8701 to 8705. The appellant has relied on the decision of the Apex Court in the case of *Intel Design Systems (India) (P) Ltd Vs. Commr. Of Customs and*

Central Excise, and claimed that when the Section Note excludes, the product cannot be classified in Chapter 87. In this case the excluding note excludes 'electrical machinery and equipment(chapter 85)' and the items for which the classification was under dispute are goods specifically covered under CETH 8536.90, which is not the case at hand and therefore is differentiable.

9. The appellant has also claimed that the HSN Explanatory Notes to Section XVII specifically excludes 'Springs' from the scope of 'Parts and Accessories' under CTH 8708. The relevant note seeks to exclude 'Parts of General use- springs (including leaf springs for vehicles) such goods of base metal fall in Chapter 73 to 76 and 78 to 81, and similar goods of Plastics fall in Chapter 39'. The product in hand is an air below the utility of which is to act as a 'Shock absorbent'. It is not a spring classifiable under any of the Chapters mentioned, for the reason that the product is not an article of base metal or alloy of base metal. The product is made of fabric coated soft vulcanized rubber trimmed with the base plate and designed to give its full utility when used in axles of the Motor Vehicles to absorb shock and provide the required suspension and this claim is not valid

10. The invoice of the competing manufactures were provided but the inputs used, process undertaken, or any test reports to establish the similarities or that the receivers are the same buyers are not produced. However, the ruling extended is applicable only to the person who sought the same and on going through the submissions, the classification of the product has been extended and done so.

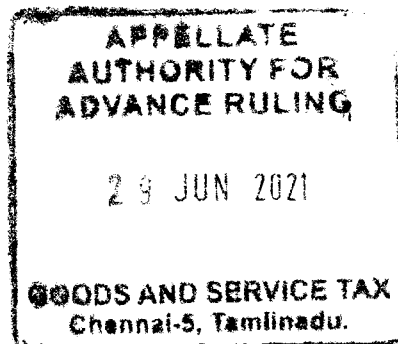
11. In view of the above, we rule as under:

RULING

For the reasons discussed above, we hold that Air Springs manufactured by the appellant is classifiable under CTH 8708 as rightly held by the Lower Authority. The subject appeal is disposed of accordingly.

(M.A.SIDDIQUE)
Pr.Secretary/Commissioner of State Tax
Tamilnadu /Member AAAR

(G.V.KRISHNA RAO)
Pr.Chief Commissioner of GST&C.Ex
Chennai Zone/Member AAAR



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