

**BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)**

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)

Present:

Shri Vipin Chandra (Member)

श्री विपिन चन्द्र (सदस्य)

Shri Amit Gupta (Member)

श्री अमित गुप्ता (सदस्य)

The 14th day of March, 2018

Ruling No. 02/2017-18

अग्रिम विनिर्णय संख्या. 02/2017-18

In

Application No: 03/2017-18

आवेदन संख्या. 03/2017-18

1	Applicant आवेदक	M/s Indo German Brakes Private Limited, Po- Majra, Niranjanpur, Dehradun सर्वश्री इण्डो जर्मन ब्रेक्स प्राईवेट लिमिटेड, पोस्ट माजरा, निरंजनपुर, देहरादून
2	Jurisdictional Officer अधिकारिता अधिकारी	Deputy Commissioner (Assessment)-2 State Tax, Dehradun डिप्टी कमिश्नर(क0नि0)-2 राज्य कर, देहरादून
3	Present for the Applicant आवेदक की ओर से उपस्थित	Shri Vipul Dawar (Director) श्री विपुल डावर (निर्देशक)
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None कोई नहीं
5	Date of receipt of application आवेदन प्राप्ति की तिथि	29-12-2017
6	Date of Personal Hearing सुनवाई की तिथि	15-02-2018

Note : Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

नोट : इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवा कर अधिनियम 2017 की धारा- 99 के अन्तर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND**

RULING

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 and the rules made thereunder filed by M/s Indo German Brakes (P) Ltd Khasra No. 323Mi, Central Hope Town, Selaqui, Dehradun seeking an advance ruling on classification and rate of applicable GST on "Disc Brake Pads & Brakes Shoes" being used in automobiles.
2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
3. As per Section 97(2) (a) & (e) of CGST/SGST Act, 2017 the advance ruling can be given on "classification of any goods or services or both" and "determination of the liability to pay tax on any goods or services or both" respectively. In the present case applicant has requested for advance ruling in respect of classification and rate of applicable GST on "Disc Brake Pads & Brakes Shoes" being used in automobiles. Therefore, in terms of said Section 97(2)(a) and (e) of CGST/SGST Act, 2017, the present application is hereby admitted.
4. Report dated 16.01.2018 was also submitted by Deputy Commission-II, SGST, Dehradun in which he reported that the products in question in his opinion, are required to be classified under Chapter head 6813. However, Assistant Commissioner, CGST, Dehradun in his report dated 27.2.2018 has reported that the said product is required to be classified under Chapter Head 8708.
5. Accordingly opportunity of personal hearing was granted to the applicant and department on 15.02.2018. Shri Vipul Dawar appeared for personal hearing on the appointed date and submitted that before GST regime, they were classifying the said product under chapter 6813 of the Central Excise Tariff but after GST regime advance ruling is requested to clarify whether the product in question is required to be classified under under chapter 68 or 87. No body appeared from the side of Revenue for the hearing.

6. In the present application, applicant has requested for advance ruling on (I) classification of the product and (II) rate of applicable GST on "Disc Brake Pads & Brakes Shoes" being used in automobiles. Findings of the authority are as under :

7. **"Classification of "Disc Brake Pads & Brakes Shoes" being used in automobiles"** : Applicant in their application dated 5.12.2017 has submitted that in the chapter 6813 there is entry which specify that if friction material is not mounted, in such scenario it falls under 6813 otherwise not. However certain manufacturer, by deeming that this mounting means mounting on the brake system, therefore the disc brake pads & brake shoes manufactured by them fall under the category of not mounted and accordingly merit classification under HSN 6813. But in fact such pad/shoe (containing friction material) are bonded on a metal plate for being fixed in the brake system therefore, it is like mounted on a plate, therefore, not eligible to be classified under HSN 6813.

7.1 Question before authority is to determine whether the disc brake pads & brake shoes manufactured by the applicant deserve classification under Chapter 6813 (Friction material and articles thereof) or under Chapter 8708 of the GST Tariff (which deals with parts and accessories of the motor vehicle). The said chapter heads are reproduced as under:

6813:Friction material and articles thereof (for example , sheets, rolls, strips, segments, discs, washers, pads) not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textile or other materials

8708: Parts and accessories of the motor vehicles of headings 8701 to 8705

7.2 Having gone through the aforesaid chapter heads we now proceed to determine the issue in hand.

7.3 Subheading 6813 provides for:

"Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a **basis** of asbestos, of other mineral substances or of cellulose, whether or not combined with textile or other materials...Other...."

Word "Basis" as mentioned above is not defined in the GST Tariff. In the absence of any guidance in the Explanatory Notes, it is proper to use the

principal that tariff terms are construed in accordance with their common and commercial meaning. "Basis" has been defined as follows:

- (a) The main constituent, fundamental ingredient. The Compact Edition of the Oxford English Dictionary (1987), pg. 173.
- (b) The principal component parts of a thing. Black's Law Dictionary (1990), pg. 151.
- (c) The chief component or fundamental ingredient. Webster's II New Riverside University Dictionary (1988), pg. 156.
- (d) The principal component of something. Webster's Ninth New Collegiate Dictionary (1983), pg. 134.

7.4 Based on the definitions of "basis" and a reading of 6813, we find that the phrase "with a basis of" as found in the article description to heading 6813, GST Tariff, requires that asbestos, cellulose or other mineral substance identified in that article description be the principal or fundamental substance in the article. In the present case Kevlar, Mineral Fibre, Cellulose, Phenolic Resin, Steel Wool, Metal Fibre, graphite and Barium Sulphate are the material used by the applicant for manufacture of Disc Brake Pads and Shoes. As per the applicant out of these items Kevlar, Mineral Fibre, Cellulose falls under the category of principle substances constituting most of the inputs. Whereas mineral substances namely Barium Sulphate and Graphite constitutes only a small percentage of the inputs used for making the aforesaid items. Therefore we observe that since mineral substances are not the principal or fundamental substance of Disc Brake Pads and Shoes and, therefore, do not warrant classification under subheading 6813.

7.5 Further Chapter Heading 8708 covers parts and accessories of motor vehicles of headings 8701 to 8705, provided the parts and accessories fulfil the following conditions:

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;
- (ii) They must not be excluded by the provisions of Notes to Chapter 87
- (iii) They must not be more specifically included elsewhere in the nomenclature...

The Disc Brake Pads and Shoes are not excluded by aforesaid Chapter Notes, and are dedicated and used as parts of motor vehicles of headings 8701 to 8705. Moreover, the said items are not more specifically provided for elsewhere in the GST Tariff.

- 7.7 For the purposes of classification under Chapter Heading 87.08, the test to be applied is: whether the goods are suitable for use solely or primarily with articles of Chapter Heading Nos. 8701 to 8705; if the answer is in the affirmative, the goods will be classifiable under Chapter Heading 8708. Having regard to the finding that the goods in question cannot but be regarded as parts of automobiles, it has to be held that they are suitable for use primarily with articles of Chapter Heading Nos. 8701 to 8705. It follows that the goods in question cannot be treated as falling under Chapter Heading No. 6318 and that they can properly be classified under Chapter Heading No. 8708 of the GST Tariff 2017.
- 7.8 Further the true test for classification of a product is the test of commercial identity. It needs to be ascertained as to how the goods in question are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise. In the present case Disc Brake Pads and Shoes are nowhere referred to as the friction material and articles thereof and are known as parts of motor vehicle. Further, Disc Brake Pads and shoes also qualify the test to the effect that they are suitable for use solely or primarily with articles of Chapter Heading Nos. 8701 to 8705; accordingly they are classifiable under chapter heading 8708.
- 7.9 Irrespective of aforesaid we also find that products being manufactured by the applicant are meant to be used in the braking system of vehicles of heading 8701 to 8705 of the Tariff. The parts and accessories of such vehicles are covered in heading 8708 of the Tariff;
- (a) The said Chapter 87 falls under Section XVII of the Tariff. Section Note 2 to Section XVII (covering Chapter 86 to 89) specifically excludes certain articles from the purview of the expression "parts" and "parts and accessories". I find that goods of Chapter 68 do not find mention in the listed articles in the said Note 2;
- (b) Section Note 3 of Section XVII further excludes articles which, though may be usable as parts and accessories of goods covered under Chapter

86 to 88, are not "suitable for use solely or principally with the articles of those Chapters";

- (c) Further, in the light of General principles of interpretation of the Tariff, parts and accessories even if identifiable as meant for the articles of this Section, would stand excluded if they are covered more specifically by another heading(for example automobile tyres which merit classification under heading 4011 being more specifically covered therein);
- (d) Thus, for a product to be classified as a "part or accessory" falling under Section XVII (more specifically Chapter 87; in the present case) it should satisfy all three conditions i.e. (a) it should not be excluded by Section Note 2; (b) it should be suitable for use solely or principally with products of Chapter 86 to 88; and (c) it must not more specifically be covered elsewhere in the Tariff;
- (e) As regards to the product in question- "Disk Brake Pads" and "Brake Shoes" for automobiles, it is observed that there seems no dispute as regards to the fact that they are not excluded vide said Section Note 2 of Section XVII and that they are meant solely or principally for use in the braking system of automobiles. The only point of discussion, then, remains as to whether they could be taken out from the purview of Section XVII for the reason that they are more specifically classified elsewhere in the Tariff;
- (f) The contesting heading, as stated by the applicant, is 6813 of the Tariff. Chapter 68 falls within Section XIII of the Tariff and this Section does not have any Section Notes. Heading 6813 reads "*Friction material and articles thereof (For example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with the basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textile or other materials*";
- (g) It has been stated by the applicant that the "Disk Brake Pads" and "Brake Shoes", containing friction material, are bonded (and thus mounted) on a metal plate for being fixed in the Brake System of the automobile. It is noticed that the goods covered under heading 6813 must be friction

material and articles thereof in form of sheets, rolls, strips, segments, discs, washers, pads etc. It should be "not mounted" and must be "for" brakes etc. Thus, it means that the goods must be friction material in itself or friction material converted to other form such as sheet, disc, pad etc. which were to be used for making of brakes etc. It further specifically excludes such products from the purview of heading 6813 if they are mounted. This exclusion is reasoned because once the friction material is mounted upon, it takes a different shape and its use no more remain wide-ranging (as a friction material) but becomes further contoured (such as a brake pad in the instant case). Accordingly, it is observed that "Disk Brake Pads" and "Brake Shoes" which are in form of friction material already mounted on metal plate is not be covered under heading 6813 of the Tariff;

- (h) Explanatory Notes to the Harmonized System of Nomenclature, pertaining to heading 6813 of the Tariff too have been perused and give a similar interpretation. The relevant portion reads as follows:-

*"... Owing to its high friction coefficient and its resistance to heat and wear, this material is **used for lining** brake shoes, clutch disc, etc., for vehicles of all kinds, cranes, dredges or other machinery..."*

*According to the particular use for which it is intended, **friction material** of this heading may be in the form of sheets, rolls, strips, segments, discs, rings, washers, pads or cut to any other shape...*

...

The heading excludes:

(a)...

(b) Mounted brake lining (including friction material fixed to a metal plate provided with circular cavities, perforated tongues or similar fittings, for disc brakes); these are classified as parts of the machines or vehicles for which they are designed (e.g. heading 8708)

Thus, from the aforesaid Explanatory Notes it is evident that only friction material in different shape is classifiable under heading 6813 and that mounted brake lining is specifically excluded from this heading;

- (i) It is also reported by the Assistant Commissioner, CGST; Division Dehradun that the applicant is manufacturing "Disk Brake Pads" and "Brake Shoes" for different models of four/two wheeled automobiles such as Santro, Alto, Wagon R, Swift, Bolero, Scorpio, Tata Sumo, etc. [Four Wheeler], Splendor, Champion, Pulsar, TVS Fiero etc. [Two Wheelers]. Various ingredients such as Kevlar, Mineral wool, Barytes powder, steel wool, phynolic resin, cellulose etc. are mixed in a predetermined ratio to derive the desired friction material in powdered form. Their other main input is a metal sheet designed according to compatibility of the braking system of the vehicle upon which it is to be fitted to. The metal plate is 'shot blasted' to attain the desired surface/strength. The friction material in powder form is poured into a mould/die and along with the metal sheet it is fed into the moulding machine where the powder takes shape of a mould and gets fixed upon the metal plate. This product there after undergoes certain curing and finishing process to attain the desired marketable condition. The product ["disk brakes pads" and "brake shoes" for two/four wheelers] is then packed in retail packs and in secondary packing in which it is cleared from the factory;
- (j) In view of the foregoing report, authority observes that the "disk brakes pads" and "brake shoes" are meant for sale in the secondary market i.e. replacement market of various models of vehicles. The products so manufactured are supplied to renowned brands for example "Bosch India Ltd." etc. who subsequently sell it in the secondary market through their supply chain. Further from the samples (retail packs) drawn by the Assistant Commissioner, CGST, Division Dehradun it is observed that From perusal of these retail packs it is seen that they are meant for usage in the braking system of specific vehicles and bear instructions to this effect, such as:- **"Brake Pad (Front) ... MARUTI SWIFT"**, **'suitable for Tvs Fiero'** clearly mentioning the name of vehicle for which they are meant thereby also restricting their usage as a part or accessory of the mentioned vehicle only.
- (k) Thus, it is observed that process of manufacture carried out by the applicant, the ingredients used, the size & design of the metal plate (including its perforation, the positioning of the cavities/holes etc.), the


manner in which it is marketed, on the whole, make the end product compatible for usage solely with the intended automobile;

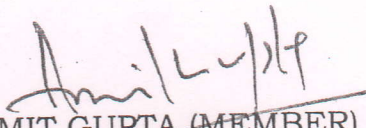
- (1) After going through the aforesaid process read with the relevant Section/Chapter Notes and the HSN Explanatory Notes, authority is of the view that the said "disk brakes pads" and "brake shoes" are appropriately classifiable as part and accessory of automobiles and not as friction material.

7.9 Therefore based on the above, we hold that Disc Brake Pads and Shoes are required to be classified under subheading 8708 of GST Tariff, as other parts and accessories of the motor vehicles of headings 8701 to 8705.

8. APPLICABLE RATE OF GST :

Since the good in question are classifiable under Chapter Heading 8708, accordingly applicant is liable to pay GST applicable under the said Chapter Head which is 28% as on date.


VIPIN CHANDRA (MEMBER)


AMIT GUPTA (MEMBER)

To

M/s Indo German Brakes (P) Ltd,
Khas. No. 323Mi, Central Hope Town,
Selaqui, Dehradun

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX, UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F.NO. : 03/2017-18 / Advance Ruling / D.Dun Dated : 14/03/18
D. NO : 6050 Dated 15/03/18.
Copy to :

1. The Chief Commissioner, CGST, Meerut Zone, Meerut
2. The Commissioner, CGST, Commissionerate Dehradun
3. The Commissioner, SGST, Commissionerate Uttarakhand
4. Assistant Commissioner, CGST, Division Dehradun
5. Deputy Commissioner, SGST, Dehradun-II
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