

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2019/04
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/20)

Date : 28.02.2019

Name and address of the applicant	:	M/s. Inox India Pvt. Ltd. Boru Road, Near Narmada Colony, Village – Katol, Taluka Katol, Dist. Panchmahal – 389 330 (Gujarat)
GSTIN of the applicant	:	24AAACI4416P1ZH
Date of application	:	24.10.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both;
Date of Personal Hearing	:	4.1.2018
Present for the applicant	:	Shri Hardik P Modh CA Ashish Agarwal Shri Jignesh Ghelani

The applicant M/s. Inox India Pvt. Ltd. has submitted that the range of products manufactured and supplied by the company *inter alia* includes ‘transport tank’, which are used to transport gas, liquefied gas as well as liquids per se. In order to achieve the purpose of transport, said ‘transport tank’ is mounted on a chassis and supplied to customer. The applicant submitted a copy of Purchase Order raised by one of its customer and a copy of product catalogue. It has been submitted that the supply of ‘transport tank’ typically involves following steps :-

- Receipt of Chassis free of cost from customer (ownership of chassis retained by the customer) or Transporter who owned chassis and having contract to run it with customer;
- Manufacture of ‘transport tank’ by the applicant;
- Assembly / mounting of transport tank over the chassis; and
- Supply of the transport tank assembled / bolted on chassis

2. It has been submitted that the aforesaid activities attracted the taxable event of ‘manufacture’ under the Central Excise Act, 1944 (herein after referred to as the ‘CEA, 1944’) read with the Central Excise Tariff Act, 1985 (herein after referred to as the ‘CETA, 1985’) since the activity of mounting body on the chassis was defined to be ‘deemed manufacture’ vide Section 2(f)(ii) of the CEA, 1944 read with Note 5 of Chapter 87 of the CETA, 1985. This position of law attained finality based on the decision of Hon’ble Supreme Court in the case of CCE, Mumbai Vs. Sadguru Auto Builders [2006 (199) ELT 386 (SC)]. Due to said deeming fiction, the applicant deemed to have manufactured the entire motor vehicle and therefore was obligated to follow the duty structure as applicable to manufacture of motor vehicle, including its classification under

the CETA, 1985. Accordingly, the applicant classified the chassis mounted with transport tank as a vehicle under Chapter 87 and discharged the applicable Excise duty liability thereon.

3. It has been submitted that the Excise law has now been subsumed by GST laws and the taxable event of 'manufacture' (including 'deemed manufacture') has been replaced by 'supply'. Further, the said Chapter Note of CETA, 1985 has been de-notified and classification of goods under GST regime now required it to be referred to the Customs Tariff Act, 1975 (herein after referred to as the 'CTA, 1975'). It is further submitted that the concept of manufacture being peculiar to the Excise legislation, the CTA, 1975 does not contain any Note which stipulates that mounting of any structure on the chassis would amount to manufacture of motor vehicle. As such, the CTA, 1975 recognizes each article independently irrespective of whether it has undergone any activity of manufacture or not. It is also submitted that the activity undertaken by the applicant is limited only to manufacture and supply of transport tank by mounting the same on the chassis provided by customer. The chassis, as used to mount the transport tank does not form part of the 'supply' being affected by the applicant. As such, what is being supplied by the applicant is only transport tank, therefore the classification of said transport tank needs to be ascertained irrespective of the modus of supplying the same to recipient (i.e. supply by way of mounting on chassis). In other words, the classification of said transport tank merits its analysis only based on it being a 'tank'. The variety of tanks manufactured by the appellant attracts its classification under Chapter 73 once it merits classification with reference to it being merely a tank, as opposed to a motor vehicle.

4. The applicant raised the following question for advance ruling –

“Whether supply of transport tank by mounting the same on chassis amount to supply of ‘tank’ classifiable under Heading 7311 or supply of ‘motor vehicle’ classifiable under Heading 8704 in the GST regime ?

5. In the further written submission vide letter dated 16.01.2018 (submitted on 18.01.2018), the applicant inter-alia referred to Tariff Heading 7311 of the CTA, 1975 and submitted that a 'tank' as such when made of iron or steel and used for containing compressed or liquified gas is classifiable under Heading 7311. It is submitted that the subject article is indeed made up of iron or steel and are used for containing compressed or liquefied gas and therefore duly merit its classification under heading 7311. It is also submitted that the tank once manufactured by the applicant is supplied to its customer by way of mounting the same on chassis or is also delivered as such, in which case the mounting is undertaken by recipient on its own. In any case, the tank is mounted on the chassis for the purpose of providing mobility to the tank. The mounting process undertaken has been submitted as follows:-

- Affixing fixtures on tank by way of bolting to function as legs;
- Such bolting involves use of U-bolts;
- Affixing metal place to chassis by way of bolting to function as resting platform for legs;
- Mounting the tank on chassis by bolting the tank legs with metal plates affixed on chassis

It is submitted that the mounting process mainly involves bolting aimed at fixation of the tank and can be unmounted by merely unbolting the legs of tank from

metal plates affixed on chassis. Further, once the tank is unmounted, it can still be used as a storage tank. It is submitted that the subject article is indeed capable of a variety of usages owing to its capability of storage. The applicant referred to the judgement of Hon'ble Supreme Court in the case of O.K. Ply (India) Ltd. vs. CCE, Delhi – III [2005 (180) ELT 300 (SC)] wherein it was held that functional utility, design, shape and predominant usage are to be taken into consideration when determining classification of products. The appellant requested that the subject article which is pre-dominantly used as a tank to contain compressed or liquefied gas ought to be classified under heading 7311

5. It is further submitted that classification of an article is governed by 'General Rules for the Interpretation of Schedule' (herein after referred to as the 'Rules for Interpretation') and classification of transport tank as either a container under heading 7311 or as a part of motor vehicle under heading 8708 merits application of Rule 3 of Rules of Interpretation. It is submitted that as per Rule 3(a) of 'Rules for Interpretation' where an article is capable of being classified under two or more headings, then that article merits classification under a heading which provides for the most specific description. The applicant submitted that owing to its essential character being a tank to contain compressed or liquefied gas, the subject article merits the description of heading 7311 more specifically. It is submitted that merely because the tank is mounted on the chassis for the purpose of stability does not take away the essential character of it being a container. In such a case, description of subject article as a part of motor vehicle under heading 8708 is only generic in nature and falls short to cover the subject article in its scope as opposed to heading 7311. The reliance was placed on the decision in the case of Transenergy Limited Vs. Commissioner of Central Excise, Chennai [2009 (233) ELT 218 (Tri. Chennai)]

6. The Central GST & Customs Commissionerate, Vadodara-II, vide letter dated 21.11.2017 informed that since the taxable event under GST regime viz. Supply does not cover within its fold the activity of 'manufacture', classification of a product would be based on what is being supplied and occurrence of activity of manufacture would have no bearing on such classification. Therefore, the said goods i.e. tank mounted permanently on truck chassis (by manufacturing tank and mounting it on the chassis supplied by the recipient) is classifiable as Motor Vehicle under Chapter Heading 8704. It has been further informed that in Central Excise regime, the applicant used to manufacture 'Transport Tank', which when cleared from factory vide trucks/ trailers were classified by them under Chapter 7311 and when the goods supplied by mounting on the chassis provided by the customer, they classified under Chapter Heading 8704.

7. We have considered the submissions made by the applicant in their application, further written submission as well as at the time of personal hearing. We have also considered the views of the Central Goods & Services Tax and Customs Commissionerate, Vadodara-II.

8. The issue involved in this case is regarding classification of the product 'Transport Tank mounted on chassis of customer' being supplied by the applicant.

9. It is observed that the Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 provides as follows :-

"Explanation. - For the purposes of this notification, -

(i)

(ii)

(iii) *“Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*

(iv) *The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.”*

10. In the erstwhile regime, Central Excise Duty was being levied and collected on all excisable goods produced or manufactured in India. As per Section 2(f)(ii) of the CEA, 1944, manufacture included any process which was specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the CETA, 1985 as amounting to manufacture. Chapter Note 5 of Chapter 87 of the First Schedule to the CETA, 1985 provided as follows :-

“5. For the purposes of this Chapter, building a body or fabrication or mounting or fitting of structures or equipment on the chassis falling under heading 8706 shall amount to ‘manufacture’ of a motor vehicle.”

Therefore, in view of the aforesaid Chapter Note 5 of the First Schedule to the CETA, 1985 read with Section 2(f)(ii) of the CEA, 1944, mounting or fitting of structures or equipment on the chassis falling under heading 8706 amounted to ‘manufacture’ of a motor vehicle. Accordingly, in case of mounting of ‘transport tank’ by the applicant on the Chassis falling under heading 8706 of the customer, amounted to manufacture and was classifiable under Chapter 87.

11. However, as noted herein before, for the purpose of ascertaining the appropriate classification of the goods supplied and applicable rate of Goods and Services Tax thereon, the rules for the interpretation of the First Schedule to the CTA, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule would apply.

12. On going through the Chapter Notes of Chapter 87 of the First Schedule to the CTA, 1975, it is observed that there is no Chapter Note in the said Chapter analogous to Chapter Note 5 of Chapter 87 of the CETA, 1985. In absence of any Chapter Note in Chapter 87 of the CTA, 1975 analogous to Chapter Note 5 of Chapter 87 of the CETA, 1985, the ‘Transport Tank’, even if mounted or fitted on the Chassis of customer, would not fall under Chapter 87 of the CTA, 1985. Therefore, the product ‘Transport Tank’ would have to be independently classified without having any bearing on the fact whether the same has been mounted or fitted on the Chassis of customer or otherwise.

13. The product ‘Container for compressed or liquefied gas, of iron or steel’ is specifically covered under Chapter Heading 7311. The applicant has submitted that the subject articles are indeed made up of iron or steel and are used for containing compressed or liquefied gas and therefore merit classification under heading 7311. Even the Central Goods & Services Tax and Customs Commissionerate, Vadodara-II has

informed that in erstwhile regime, 'Transport Tank', when cleared from factory vide trucks/ trailers were classified by them under Chapter 7311. Further, as submitted by the applicant, the mounting process undertaken by it mainly involves bolting and the mounted 'Transport Tank' can be easily de-mounted. Taking all these aspects into consideration, we hold that the product 'Transport Tank mounted on chassis of customer' is appropriately classifiable under Chapter Heading 7311 of the CTA, 1975.

14. In view of the foregoing, we rule as under -

RULING

The product 'Transport Tank mounted on chassis of customer' being supplied by M/s. Inox India Pvt. Ltd. (GSTIN 24AAACI4416P1ZH) is classifiable under Heading 7311.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date :28.02.2019.