

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAFCG4091HIZI
Legal Name of Applicant		M/s. GREEN RUBBER CRUMB PRIVATE LTD
Registered Address/Address provided while obtaining user id		NEW ERA MILLS COMPOUND, MOGUL LANE, MATUNGA (W) MUMBAI 400016
Details of application		GST-ARA, Application No. 70 Dated 29.11.2019
Concerned officer		Division-VII, Commissionerate Mumbai Central
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing,
B	Description (in brief)	Manufacturing of fine rubber products and other products of rubber using import and local purchase of crumb rubber/granules of size less than 35 mm manufactured from used/waste tyres.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (ii) applicability of a notification
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 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" respectively] by **M/s. GREEN RUBBER CRUMB PRIVATE LIMITED**, the applicant, seeking an advance ruling in respect of the following question.

What is the (HSN) classification of Crumb rubber/granule? Therefore what is Current duty applicable?

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision

under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions (verbatim) made by the applicant are as under:-

“Annexure A

(a) used/waste tyres is a waste and falls under chapter 4004.

(b)Crumb rubber/granule less than 35 mm having mixture of rubbers mentioned in 4001, falls under 4002. Even if the granule/crumb is manufactured from waste /used tyres it is a finished product and not a waste. Supporting document (Letter MOEF) and therefore does not fall under 4004. (Annexure 1)

(c) MOEF which is recognized agency to differentiate waste from finished product has clarified that powder/ granules which is generated as a by-product during manufacture of a product is a waste and hence should be classified as 4004. However, when some powder or granule is made as a main product by processing any waste rubber it is considered as finished product under 4002. (Annexure 2)

(d) The GST applicable on rubber waste is 5% however GST applicable on crumb rubber/granule is 18% as it is a finished product. (Annexure 3) :

(e) Chapter note of 4002 mentioning granule/ crumb of mixture of rubber fall under 4002. (Annexure 4)

Annexure-2

Decision of Ministry of Environment, Forest & Climate Change with respect to import and export of hazardous waste under the Hazardous and other Wastes (Management, Handling & Trans-boundary Movement) Rules, 2016 as approved by the Competent Authority on the basis of decision of the 72nd meeting of Expert Committee held on 19th -20th September 2016 for appraisal of such applications

AGENDA NO.2.3: IMPORT OF RUBBER SCRAP ETC.

2.3.4 M/s MSS Rubber and Reclaims Pvt. Ltd., Kerala (F. No. 5-1/2014-HSMD)

Decision: The applicant has applied for import of rubber tyre scrap including buffing powder for manufacturing of reclaim rubber. During presentation it was stated that they would be importing only buffing powder. Earlier in 2015 the applicant had been given permission for import of 1000 MT of used nylone tyre scrap, rubber scrap. The Ministry recommended import of 1500 MT of tyre buffing powder for use in making reclaim rubber. The Ministry also recommended site visit by CPCB.

While considering this case the committee recalled that in the 68th meeting of the Expert Committee held on 26-04-2016 in a similar case of import of rubber powder, the committee had taken the view that the rubber powder may be considered similar to rubber crumbs or granules made from scrap tyre and may be considered as products rather than waste and as such no permission from the Ministry was required. The committee deliberated on the issue again and made a distinction between buffing powder and crumb

rubber / granules. Rubber crumbs or granules are made by processing (shredding, grinding) of used tyres and is thus a product obtain from waste. On the other hand tyre buffing powder is waste generated during the tyre buffing process and hence cannot be considered as rubber waste for which Ministry permission is required.

2.3.5 M/s Western India Oil Company, Mumbai (F. No. 23 126/2014-HSMD)

Decision: The Committee recommended import of 8000 MT of old /used rubber tyres scrap as in the last permission, in the first instance. The applicant has claimed expansion of the plant to produce 6000 MT per Month of crumb rubber. The balance quantity would be considered after site visit by subcommittee comprising of Chairman and the Expert member Shri KP Nyati,

2.3.6 M/s Royal Carbon Black Pvt. Ltd., Mumbai (F. No. 5 15/2010-HSMD)

Decision: The Committee noted the proposed import is for crumb rubber /granules of less than 35 mm size. Since rubber crumb / granules are made by processing of used tyre scrap and are thus. Products made from waste rubber, they have not been considered as waste under Schedule III of HW Rules, 2016. Earlier also the committee had taken this view and stated that import of this material does not need permission from this Ministry, The applicant may be informed that the import of crumb rubber /granules does not need permission from this Ministry.

2.3.8 M/s Balaji Udyog, Distt. Churu F. No. 5-33/2014-HSMD)

Decision: In the report received from CPCB after site visit of the plant, it is noted that certain improvement has been suggested and the applicant is also required to take fire clearance. The application will be considered further after receipt of confirmation of compliance of the above issues.

B. Statement containing the Applicant's interpretation of law and /or facts

- (a) Chapter 4004 is for waste/used rubber tyres and goods imported/traded under this chapter heading should be charged 5 % GST as GST on **Rubber scrap is 5%**
- (b) For products such as **crumb rubber/granule manufactured from waste/ and used tyres or virgin rubber** should fall under chapter 4002 and should be charged 18% GST.

Vide further correspondence the applicant has also submitted some import/purchase/sales invoices, process of manufacture, etc. in support of their contention that the subject goods fall under Heading 40.02 of the GST Tariff.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional/concerned officer has not made any submissions.

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 22.01.2020. Shri B. N. Kamath, Accountant, and Shri. Pratik Shaha, Accountant appeared, and requested for admission of the application. Jurisdictional Officer was absent.
- 4.2 The application was admitted and called for final e-hearing on 10.08.2021. The Authorized representatives of the applicant, Shri. B.N. Kamath, Account Manager was present. The Jurisdictional officer was absent. The Authorized representatives made oral and written submission. The applicant was asked to produce manufacturing process and invoices issued.
- 4.3 Heard the applicant.

05. DISCUSSIONS AND FINDINGS:

- 5.1 We have perused the documents on record, facts of the matter and submissions made by the applicant. The jurisdictional officer has neither appeared for the hearings nor has made any submissions in the matter.
- 5.2.1 The applicant during the course of the hearings submitted that they are involved in making crumb rubber/granules from used tyres. According to the applicant, even if the crumb rubber/granules is manufactured from waste /used tyres it is a finished product and not a waste. Further, applicant has submitted that, The Ministry of Environment, Forest & Climate Change (MOEF), which is the recognized agency to differentiate waste from finished product has clarified that powder/granules which is generated as a by-product during manufacture of a product is a waste and hence should be classified as 4004. However, when some powder or granule is made as a main product by processing any waste rubber it is considered as finished product under 4002.
- 5.2.2 The applicant has submitted copy of a clarification dated 07.10 2016, issued by Joint Director, MOEF, Government of India, which states that, *"The application was considered in the 72nd meeting of the Expert Committee held on 19th and 20th September, 2016. The committee noted the proposed import is for crumb rubber/granules of less than 35 mm size. Since rubber crumb/granules are made by processing of used tyre scrap and are thus products made from waste rubber, they have not been considered as waste under Schedule III of HW Rules, 2016. Import of this material does not need permission from this Ministry"*.
- 5.2.3 First of all we observe that the MOEF issued the referred clarification in respect of a **proposed import of crumb rubber/granules**, on an application made by M/s Royal Carbon Black Private Limited, New Era Mills Compound, Mogul Lane, Mumbai 400016 and not the applicant. Further, it is clarified therein that, rubber crumb/granules are made by processing of used tyre scrap and are thus products made from waste rubber. It is nowhere insinuated, in the said referred

clarification that, powder or granule made as a main product by processing any waste rubber is to be considered as finished product under HSN 4002.

5.3 Further, applicant has submitted an import bill/invoice dated 13.02.2020, in their own name which refers to 'Old and Used Tyre Scrap in baled form' which is shown to be classified under Chapter Heading 4004. The said product appears to have been imported by the applicant and does not pertain to the impugned product, namely crumb rubber/granules.

5.4 We also find that copies of two sales Invoices, issued by the applicant, have been submitted on record, pertaining to the subject matter. We find that the product mentioned therein is "Used Tyre Crumb Grade C" and the HSN Code mentioned in the said invoices is 4004.

5.5 Copies of two Purchase Invoices in the name of the applicant, have also been submitted on record pertaining to the subject matter. We find that the product mentioned therein is "Used Tyre Crumb Grade B" and the HSN Code mentioned in the said invoices is 4004. Thus the applicant also appears to have purchased the impugned product which would mean that the goods pertaining to these invoices have not been produced by the applicant from used/waste tyres.

5.6 Applicant, in Annexure 'A' has submitted that MOEF has clarified that powder/ granules which is generated as a by-product during manufacture of a product is a waste and hence should be classified as 4004. However, when some powder or granule is made as a main product by processing any waste rubber it is considered as finished product under 4002. The applicant is referring to the observations made by the MOEF in the issue of M/s MSS Rubber and Reclaims Pvt. Ltd., Kerala (F. No. 5—1/2014-HSMD) at point 2.3.4 in Annexure 'A'. It is mentioned therein that, "*Rubber crumbs or granules are made by processing (shredding, grinding) of used tyres and is thus a product obtain from waste. On the other hand tyre buffing powder is waste generated during the tyre buffing process and hence cannot be considered as rubber waste*". It is nowhere mentioned that that powder/ granules which is generated as a by-product during manufacture of a product is a waste and hence should be classified as 4004. In fact we find that the crumb rubber/granules is not generated as a by-product at all in the subject case. Further the applicant has not produced any evidence in support of their contention that the impugned product is classifiable under HSN 4002.

5.7 Now, considering the applicant's submission that the impugned product is being produced by them from waste/used tyres, we refer to the relevant provisions of the GST Tariff, as under:-

5.7.1 Chapter 40 of the GST Tariff Act covers the products: 'Rubber and articles thereof'. The relevant portion of the Explanatory Notes, under 'Scope of the Chapter' i.e. Chapter 40 is as under:-

(a) Subject to Note 5, headings 40.01 and 40.02 essentially cover raw rubber in primary forms or in plates, sheets or strip.



(c) Headings 40.03 and 40.04 cover reclaimed rubber in primary forms or in plates, sheets or strip, and waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.

5.8.1 The applicant has submitted that the impugned product falls under HSN 4002. The said HSN 40.02 is as under:-

40.02 : *Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 40.01 with any product of this heading, in primary forms or in plates, sheets or strip.*

5.8.2 We find that the subject product cannot be called as synthetic rubber derived from oils, in primary forms or in plates, sheets or strip. The impugned product is in the form of granules which is different from plates, sheets or strip. Further the product 'factice', as per Note (2) to Heading 40.02, is the product of the reaction of certain vegetable or fish oils (whether or not oxidised or partly hydrogenated) with sulphur or sulphur chloride. Thus it is clear that the subject product cannot be considered as 'factice' also.

5.8.3 The second part of heading 40.02 covers products which are mixtures of any product of heading 40.01 with any product of heading 40.02, in primary forms or in plates, sheets or strip. Again there is nothing on record to suggest that the impugned product i.e. crumb rubber/granule is something which is covered under the second part of heading 40.02 and is a mixture of any product of heading 40.01 with any product of heading 40.02, in primary forms or in plates, sheets or strip.

5.8.4 Hence we are of the opinion that, the subject product is not covered under Heading 40.02 of the GST Tariff.

5.9.1 Taking into account, the submissions made by the applicant, we will now discuss whether the subject product is covered under Heading 40.04 of the GST Tariff. As per the explanatory notes, the relevant provisions of Heading 4004 are reproduced as under:-

40.04 :- *Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.*

The heading covers:-

- (1) Rubber waste, parings and scrap from the manufacture or working of unvulcanised or vulcanised rubber (other than hard rubber).*
- (2) Goods of rubber (other than hard rubber) definitely not usable as such because of cutting-up, wear or other reasons.*

This category includes worn-out rubber tyres not suitable for retreading and scrap obtained from such worn-out rubber tyres, usually by the following processes

- (a) Cutting the tyre, with a special machine, as close as possible to the triangle bead wires or the heel.*
- (b) Splitting to remove the tread.*



(c) Cutting into pieces.

The heading excludes used tyres suitable for retreading (heading 40.12).

(3) *Powders and granules obtained from goods of (1) and (2) above.*

These consist of ground waste of vulcanized rubber. They may be used as a filler in road surfacing materials or in other rubber based compounds or for moulding directly into articles not requiring great strength.

The heading also excludes waste, parings, scrap, powders and granules of hard rubber (heading 40.17)

- 5.9.2 We find from 5.7.1 above that Headings 40.03 and 40.04 covers reclaimed rubber in primary forms or in plates, sheets or strip, and waste, parings and scrap of rubber (other than hard rubber) and powders and **granules** obtained therefrom. Further, the Notes to Heading 40.04 states that “Goods of rubber (other than hard rubber) definitely not usable as such because of cutting-up, wear or other reasons” includes worn-out rubber tyres not suitable for retreading and scrap obtained from such worn-out rubber tyres. Also notes to Heading 40.04 also states that **Powders and granules, obtained from such goods of such rubber (other than hard rubber) definitely not usable as such because of cutting-up, wear or other reasons” which includes worn-out rubber tyres, are covered under Heading 40.04.**

- 5.10 We also reproduce Note 6 of Chapter 40 as under:

“For the purpose of heading 4004, the expression “waste, parings and scrap” means rubber waste, parings and scrap from the manufacture and working of rubber and rubber goods definitely not usable as such because of cutting up, wear or other reasons”.

- 5.11 The applicant is producing crumb rubber/granules from used/waste tyres and has submitted during the course of the hearing that, the waste/used tyres are not usable because they are worn out tyres due to wear and tear. In view of the above discussions, we find that the used/ waste tyres, made of rubber are nothing but ‘rubber and rubber goods not usable as such because of cutting up, wear or other reasons’ from which the subject goods are produced. Thus the impugned goods are squarely covered under the Heading 40.04 of the GST Tariff Act, 2017.

- 5.12 Further, from the invoices dated 15.07.2021 and 26.07.2021, (which has been issued after the date of this application), submitted by the applicant, it is seen that, the applicant also has been classifying the impugned product under Chapter Heading 4004.

- 5.13 We also find that the applicant has made an application which is very cryptic. They have submitted that their impugned product falls under HSN 4002 but other than making just a passing statement they have not brought anything on record to support their contention.

- 5.14 Finally, the relevant provision of the GST Tariff is reproduced as under:-

Tariff Item	Description of goods	Unit	CGST	SGST/UTGST	IGST
4004 00 00	Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom	Kgs	5% IGST/2.5% CGST /2.5% SGST or UTGST ; 4004 00 00: Waste, parings and scrap of rubber (other than hard rubber) 18% IGST/9% CGST /9% SGST or UTGST ; 4004 00 00: Powders and granules obtained from waste, parings and scrap of rubber (other than hard rubber)		
			2.5/9% 5/18%		2.5/9%

5.14 From the above table, it is clearly seen that Powders and granules obtained from waste, parings and scrap of rubber (other than hard rubber), in this case used tyres, are covered under Tariff Heading 4004 00 00 and attract 18% IGST or 9% each of CGST/SGST or UTGST.

5.15 In view of the above, we hold that the subject product namely; crumb rubber/granules falls under Heading 4004 of the GST Tariff thus attracting GST @ 18%.

06. In view of the above discussions, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 70/2019-20/B- 62

Mumbai, dt. 22.04.2021

For reasons as discussed in the body of the order, the questions are answered thus –

Question. What is the (HSN) classification of Crumb rubber/granule? Therefore what is Current duty applicable?

Answer: - Crumb rubber/granule is classifiable under Heading 4004 and is liable to GST @18% (9% each of CGST & SGST/18% IGST).



RAJIV MAGOO
(MEMBER)

T.R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.

