

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Thiru Senthilvelavan B., I.R.S.,
Member/ Additional Commissioner,
Office of the Commissioner of GST & Central Excise, Chennai -600 034.
2. Thiru KurinjiSelvaan V.S., M.Sc., (Agri.), M.B.A.,
Member/ Joint Commissioner (ST)
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No.01/ARA/2021 Dated 24.02.2021

GSTIN Number, if any / User id		33AABCF1689G1ZQ
Legal Name of Applicant		M/s. SI AIR SPRINGS PRIVATE LIMITED
Trade Name of the Applicant		M/s. SI AIR SPRINGS PRIVATE LIMITED
Registered Address / Address provided while obtaining user id		TVS Building, 7-B West Veli Street, Madurai-625001
Details of Application		Form GST ARA - 001 Application Sl.No.14 dated 18.06.2020
Concerned Officer		State: Assistant Commissioner(ST), West veli Street Circle, Madurai - 600 020. Centre: Madurai, Division- Madurai I
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Factory/Manufacturing
B	Description (in brief)	The applicant is engaged in the manufacture and sale of "Air Springs" which are used in air suspension system for buses, trucks and trailers.
Issue/s on which advance ruling required		Classification of goods

Question(s) on which advance ruling is required	Whether "Air Springs" manufactured and supplied by the applicant will be correctly classifiable under Tariff heading 40169990 as opposed to Tariff heading 8708 9900 and attract GST at the rate of 18%
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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.

SI AIR SPRINGS PRIVATE LIMITED, S.Nos 19/3 & 14/2-A, Poosaripatti Post, Kallikulam Village, Melur Taluk, Madurai - 625122 (hereinafter called the 'Applicant') is registered under the GST Vide GSTIN 33AABCF1689G1ZQ. They are engaged in the manufacture and sale of "Air Springs" which are used in air suspension system for buses, trucks and trailers. They have sought Advance Ruling on the following question:

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

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The Applicant has stated that the composition, function and usage of the 'Air Springs' manufactured and sold by them are as below:

- **Composition & Description of 'Air Springs':** The 'Air Springs' manufactured and sold by the Applicant are 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.
- **Function of 'Air Spring':** The product is made up of sealed fabric-reinforced rubber bellows and is sealed with a steel plate. 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. The vulcanised rubber component of the 'Air Springs' is the heart of the product and gives the product its key functionality. The steel component provides support for the same.
- The detailed description of the product is provided as follows –
 - i. Highly engineered elastometric bellow with metal end closures, which contains a column of fluid with a fabric reinforced rubber envelope called a bellow.
 - ii. The ends are sealed by bead plates – so called because they are crimped around the beads of the bellow.
 - iii. Bead plates contain hardware like tapped hole or blind nut for attaching the below to the desired application.
 - iv. An air fitting is located in one of the bead plates which allows the fluid (usually air) to flow in and out of the bellows.
 - v. The fabric in the 'bellow ball' restricts radial expansion, so that the air pressure developed by the air flowing into the air spring causes it to extend axially.

2.2 The applicant has stated that the products manufactured and sold by them which are in the nature of 'Main Air Springs' and 'Lift Air Springs' are critical components of the air suspension and lift axle systems in trucks, trailers and buses. They have also stated that under the erstwhile Central Excise regime, they were classifying and clearing the Air Springs under Central Excise Tariff Heading 4016 on payment of appropriate excise duty and have submitted documents evidencing the same. The Applicant has for the purposes of GST been classifying such 'Air Springs' under tariff heading 8708 9900 w.e.f. 01.07.2017, which attracts GST at the rate of 28%. They have stated that certain other manufacturers in the

industry are classifying similar products – ‘Air Springs’ manufactured and supplied by them, under the heading 4016 9990 (@18% GST). They have subsequently obtained a legal opinion on issue and has been advised that the appropriate classification of ‘Air Springs’ is under tariff heading 4016 9990 as ‘Other Articles of Vulcanised Rubber other than Hard Rubber’ of the Customs Tariff and not under tariff heading 8708 9900.

2.3 They have placed reliance on the decision of Supreme Court in LML limited Vs Commissioner of Customs, 2010 (10) SCC (503). They have stated that the product ‘Air Spring’ is a critical component of the air suspension and lift axle systems in trucks, trailers and buses. They have placed references to the Chapter notes and Section notes of Chapter 40 and 87. They have also submitted that the component which gives the ‘Air Spring’ manufactured and supplied by them its key characteristic and functionality is ‘vulcanized rubber’. They have referred to the decision of Supreme Court in *O.K. Play (India) Ltd. V. Commissioner of Central Excise, 2005 (180) E.L.T. 300 (S.C.)*, wherein it is held that functionality, utility, design, shape and predominant usage have to be taken into account while determining the classification of an item and is in fact more important than the name used in trade or common parlance. They are of the view that from a reading of the relevant Section Notes, Chapter Notes under the Customs Tariff Act, as well as the Explanatory notes under the HSN, the product of vulcanized rubber, even if it is ‘parts and accessories’ of motor vehicles falling under Chapter 87 will only be classifiable under Chapter 40.

2.4 The applicant has stated that the ‘Air Springs’ unlike conventional springs, function on pneumatic system-based principles and not on bending principles, they are not in the nature of Springs and leaves for springs, of iron and steel, under Chapter 7320 and are not based on the bending principle but based on the pneumatic principle. In order to substantiate the above facts the applicant has submitted a Chartered Engineer Certificate issued by a Registered Valuer for Machinery & Plant. The details of certification are as below:

“1. The key functionality of the Lift air spring assembly is derived from rubber component

2. *Air Springs are made up of fabric-reinforced rubber bellows sealed with steel plate. The same undergoes the process of calendaring and is compressed to produce a reaction force to take the load.*

3. *The steel component, being the base metal merely provides support. The essential character is derived from 'vulcanized rubber'.*

4. *Unlike conventional springs, function on pneumatic system-based principles and not on bending principles.*

5. *The rubber used in 'Air Springs' is not in the nature of 'hard rubber'.*

They have stated that they have been classifying 'Air Springs' under Chapter 87 (albeit erroneously) because it was of the erroneous opinion that 'Air Springs' would form 'parts and accessories' of motor vehicles of headings 8701 to 8705. However, now they are of the view that HSN Explanatory notes to Section XVII specifically excludes springs from the scope of Chapter 87. Further Section note 2 to Section XVII, specifically excludes articles of 'vulcanized rubber' from the scope of Chapter 87. They have placed reliance on the following case laws/instructions/tariff classifications to validate their interpretation of law.

- Instruction dated 21.05.2019 issued by the Office of the Commissioner of Customs (Import), Mumbai
- The Tribunal in **Prag Industries v. CCE**, 1998 (103) ELT 62 (T)
- US tariff classification bearing no. N303352 and dated March 28, 2019

2.5 In view of the above facts, the applicant has sought the authority to seek clarification on the correct classification of 'Air Springs' manufactured and supplied by them.

3.1 The applicant was given an opportunity to be virtually heard on 20.08.2020. The authorized representative appeared for virtual hearing. They furnished the written submissions. They reiterated the submissions made along with the application. The representative emphasized that the functionality of the product is extended by the vulcanized rubber which stands classified under CTH 4016, though the product is a part of Motor Vehicle classifiable under CTH 8708. The applicant was asked to furnish the Certificate of Name Change from Firestone TVS Private Limited the ER-1 of which is furnished, technical write up on the products. Further, to the query as to whether any change in the manufacture/usage to change the classification in the pre and post GST regime, the representative answered in

negative. They stated that they wish to furnish further submissions which was allowed to be furnished.

3.2 Further to the hearing the applicant submitted the following documents vide their letter dated 29.08.2020:

- Write up on difference between main air spring and lift air spring in response to the query raised during PH. They have stated that the essential function and characteristics of 'Main Air Spring' and 'Lift Air Spring' are the same. The vulcanised rubber is the key/essential component of both the air springs and gives the product its key functionality. Both of them work on the pneumatic principle as opposed to the bending principle. They have stated that the factual and legal position set out in their AAR application applies equally to both 'Main Air Spring' and 'Lift Air Spring'

MAIN AIR SPRING	LIFT AIR SPRING
They are fitted in the lift axle	Fitted in the lift axle suspension system
They carry the defined load of the lift axle	They operate to move the lift axle up and down
They act As suspension for lift axle	When the vehicle is loaded to its full capacity, the driver moves down the lift axle on the road. When the vehicle is empty or lesser load, the driver moves up the lift axle from the road.

- Name change certificate from Registrar of companies dated 11.01.2018
- Pictorial representation of main air spring and lift air spring
- Sample invoices of manufacturers of similar products viz., Invoice dated 03/12/2019 of DEY MOTORS SERVICES, invoice dated 31.01.2020 of Gibraltar Air springs Pvt Ltd
- Legal opinion obtained by the applicant

3.3 In furtherance to the hearing, the applicant was asked to furnish a report on components, specifically the type of rubber and its constituent certified by an authorized Chemical Examiner. The applicant vide their letter dated 30.11.2020 furnished a test report issued by Kamaraj College of Engineering and Technology. The following is the report issued by the Head of Polymer Technology, Kamaraj College of Engineering and Technology.

“ It is inevitably concluded based on the observations and results that the nature of rubber used in SI Air Springs manufactured by M/s SI AIR SPRINGS PVT LTD, Madurai is soft rubber which is flexible and high elastic in nature.”

3.4 The applicant was given another opportunity to be heard and the virtual hearing was held on 16.12.2020. The authorized representative appeared for the hearing. He reiterated their earlier submissions made along with the application and that furnished on 26.08.2020. He drew the attention to the Chartered Engineer Certificate furnished by them, wherein, it is stated that the rubber used in the bellows are 'Vulcanized Rubber' and not in the nature of 'Hard Rubber'. He also referred to the report submitted by Principal, Kamaraj College of Engineering & Technology, wherein it is stated that the rubber is soft, flexible with Hardness (Shore 'A') at 63 while for 'Hard Rubber' it must be '100'. The classification under CTH 4016 is sought stating that the essential function and utility of the Air Springs comes from the Rubber which is Vulcanized Rubber and not Hard Rubber. It was opined by the members that the 'Chemical Examiner' report was not from an authorized Chemical Examiner and if the applicant company agreed the department will be asked to draw samples and test in the authorized labs for the functionality and composition which was acceded by the applicant.

3.5 The applicant falls under the administrative control Central Tax. The Commissioner of GST & Central Excise, Madurai Commissionerate was addressed to draw samples from the applicant's product and test the same from the authorized Central Revenue Control Laboratory for the functionality and composition of the product.

3.6 The applicant vide their letter dated 26.12.2020 submitted the test report issued by Indian Rubber Manufacturers Association (IRMRA), affiliated to DPIIT, Ministry of Commerce & Industry (Government of India). The applicant has stated that it is seen from the Test Report of IRMRA that the test method used to determine 'Hardness by Shore A Durometer' is ASTM D2240 and that the observed value of Hardness (Shore A) is 61. They have also stated that the American Society for Testing and Materials (ASTM) has established international standards developed in accordance with internationally recognized principles on standardization in accordance with the World Trade Organization Technical Barriers to Trade (TBT) Committee and the Standard Test Method for Rubber Property- Durometer Hardness is ASTM D2240. Further, from Table X1.1 Durometer Selection: Typical

uses at page 12 of the standard, it is clear that where material tested is Soft Vulcanized rubber, natural rubber, nitriles etc., the hardness of the durometer would be between 20-90 A. They have stated that the value assigned to the nature of rubber used in their product is 61 as per IRMRA report dated 03.12.2020.

3.7 The Central Jurisdiction Commissionerate submitted the test report received from Custom House Laboratory Chennai vide letter Lab No.01/Madurai/08.01.2021 dated 15.01.2021. The details of report is given below verbatim;

“ The Sample is an article. It is mainly composed of compounded rubber. It answers test for Sulphur, an ingredient of Vulcanised rubber. However, mechanical tests could not be carried out for want of facilities. Sealed remnant returned.”

4.1 The Central Tax jurisdictional authority was addressed to report if there are any pending proceedings in the applicant's case on the issues raised by them in the ARA application and for comments on the issues raised. The authority furnished the following comments :

- It is admitted by the applicant, that the product in question 'Air Springs' are specifically manufactured for Motor vehicles viz., Heavy Duty Trucks with Lift Axle suspension and Buses with Air suspension system and do not have any other use. The case law LML LTD., Vs Commissioner of Customs 2010 (SC) SCC 503 = 2010 (258) ELT 321 (SC) advocates that HSN Explanatory notes are dependable guide for interpretation of Customs Tariff. Thus, only when classification could not be decided based on the principle enunciated in GST Notification 01/2017, other external aids like HSN can be resorted to. Resort to HSN, for classification at the initial phase is not recommended.
- It is admitted by the applicant that the product is a critical component of the air suspension system for trucks, trailers and buses i.e, Motor vehicles of Chapter 87. Chapter notes / Section notes and Explanatory notes to HSN are put forth by the applicant. As submitted above, resort to HSN does not warrant to the present case, when classification is possible in the normal course.
- Moreover, from the explanatory notes, it is observed that explanatory notes to heading 4016 includes under Sl.10 "Chassis mounting rubbers, mudflaps, and pedal covers for motor vehicles, brake blocks, mudguard flaps and pedal blocks for cycles, and other parts and accessories for

vehicles, aircraft or vessels of section XVII., whereas, the Explanatory Notes to Headings 8708 , provides that Parts and accessories of this heading include:

(IJ) Suspension shock absorbers (friction, hydraulic etc.) and other suspension parts (other than springs) , torsion bars.

The product in question being pneumatic suspension parts, it is covered under clause (IJ). Also, the product is not the conventional spring to be excluded from the heading. Thus, the product is more specifically included under heading 8708 than heading 4016.

- Moreover, from the Explanatory Notes to Heading 87.08 'parts and accessories of the motor vehicles of Headings 87.01 to 87.05', the heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, provided the parts and accessories fulfill both the conditions stipulated in the explanatory notes. It is observed that the applicant's product is specifically manufactured for heavy duty trucks and buses i.e., motor vehicles of heading 8701 to 8705. In as much as the product is not considered under chapter 40, the exclusion provided under section note 2 of Chapter 87 do not apply to the present case. In other words, what is excluded in Section notes 2(b) and 2(a) are more or less parts of general use or common use and the product in question is not in the nature of goods of common use. These products are manufactured specifically as per the requirements of the motor vehicle manufacturers. Further as seen from the pictures, and as seen from the chartered engineer's certificate, Air springs are made up of rubber bellow and sealed with steel plates in which Emergency bumpers are placed inside. As such, the product could not be termed as 'other articles of vulcanised rubber of heading 4016'. Thus, on all counts, the product merits classification under 8708 only.
- The case law **O.K. Play (India) Ltd. V. Commissioner of Central Excise, 2005 (180) E.L.T. 300 (S.C.)**, throws light on the importance of the Rules of Interpretation esp., rule 3(a), "*The heading which provides a specific description shall be preferred to a heading having a more general description*". In the present case, 8708 80 00 is more specific than the 4016 99 90.[Others] and also 8708 99 00[others]. 40169990 is a residuary entry and not a specific one. Moreover, as pointed out in the case law, when considering utility, predominant usage of the product,

[applicant admitted that the said products are specifically manufactured for use in motor vehicles], it is rightly classifiable under 8708 8000 only.

- The applicant admits that the subject product is a part and accessories of motor vehicles falling under chapter 87 but pleads classification under chapter 40 mainly on the ground that the essential character of the 'Air Spring' is derived from the 'vulcanized rubber'. Essential character is not the sole test for classification. The classification needs to be done as per the Rules of interpretation. The contention that the essential character is derived from rubber is not relevant. Just because rubber is used partly, the said goods could not be classified under Chapter 40. A product is to be classified taking a holistic view and by following the principles of classification.
- It may be noted that Joints , washers or the like of any material are items of general use or ready to use whereas the present goods in question i.e., Air springs are specifically manufactured for Motor vehicles and not similar or akin to the common goods viz., joints , washers or the like. Moreover, Air springs are not falling under heading 4016 by any stretch of imagination and therefore section note 2 to Section XVII is not applicable to the present case.
- In other words, only articles of vulcanised rubbers of heading 4016 are excluded from Section XVII. It is submitted that the product in question is not an article of vulcanised rubber falling under heading 4016 . Mere usage of vulcanised rubber does not make any goods, to fall under heading 4016. However, reading of Section Note 3 amplify that the subject goods fall under chapter 87 only. As per note 3 to Section XVII classification needs to be done based on the 'principal use' of the parts. In the present case, the product "Air springs", being used in heavy duty trucks and buses, by following note 3 above, the product is to be classified under 8708 80 00 only. The case law Prag Industries Vs CCE , Allahabad 1998(103) ELT 62 (TRI) is on the classification dispute in respect of parts of railway ie., 8607 and hence distinguishable, whereas the present case is governed by the decision of GS Auto International Ltd., VS CCE, Chandigarh 2003(152) ELT 3 (SC). Accordingly, in the present case, the applicant have admitted that the goods are specifically manufactured for Heavy duty trucks and buses i.e., for motor vehicles of heading 8701 to 8705. Since the answer is in the affirmative, the goods

are rightly classifiable under heading 8708 only. The said case law has been followed in 2015(325) ELT 471 (SC) Cast Metal Industries P Ltd., VS CCE., Kolkatta, wherein it was held that door handles and hinges being specifically meant for and use in motor vehicles as its parts and accessories classifiable under heading 8708. The US TARIFF advise is an unauthorized external aid which cannot be admitted for interpretation.

- It is admitted by applicant that the product was manufactured with 60% metal and 40% rubber. The reaction force mentioned by applicant is nothing but shock absorbent or shock suspension system. They have also admitted that the products manufactured and sold by the applicant are critical components of the air suspension system.
- Explanation (iv) to Notification 01/2017CT(Rate) provides that 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. The crux of the General Rules for the Interpretation of Import Tariff is that classification to be done on perusal of heading with relevant Section Notes and Chapter notes. Thus, on plain reading of the Section /chapter notes of Section 40, the subject goods "Air springs" could not be classified under heading 4016. Moreover, Rule 3(a) provides, that the heading which provides the most specific description shall be preferred to headings providing a more general description. Accordingly, in terms of Rule 3(a), when comparing the headings 8708 80 00 and 4016 99 90, it is noticed that the tariff entries of 4016 is a residual entry for chapter 40 covering "other articles of vulcanised rubber other than hard rubber", wherein 4016 99 00 is a further residual entry. In other words, 4016 99 00 is a residual entry of a residual entry. Whereas tariff heading 8708 reads "Parts and accessories of the motor vehicles of heading 8701 to 8705", wherein 8708 8000 reads "Suspensions systems and parts thereof (including shock absorbers)", which shows that the tariff heading is a specific entry heading. Thus the classification 8708 80 00 is more specific than the heading 4016 99 90 and hence merits classification thereunder, even if considering the functionality, utility, design, shape, predominant usage, Air springs manufactured and sold by the applicant are rightly classifiable under 8708 8000 only. In this connection, The **Hon'ble SC, in the case of**

Mauri Yeast India P Ltd., Vs State of UP 2008 (225) ELT 321 (SC) have held that if there is a conflict between two entries one leading to an opinion that it comes within the purview of a tariff entry and another the residuary entry, the former should be preferred. Accordingly, heading 8708 8000 being a specific entry, takes prominence than the other residuary 4016 99 90.

- Therefore, in the above circumstances, it is observed that the applicant's application for classification of "Air Springs" rightly falls under tariff heading 8708 8000 only than the 8708 99 00 [others].

5. The State Jurisdictional Officer has not furnished any comments on the issues raised by the applicant and it is construed that there is no proceedings initiated by the said office on the question raised by the applicant.

6. We have carefully examined the statement of facts; supporting documents filed by the Applicant, test reports furnished by the applicant and the department, the comments of the Centre Jurisdictional authority and heard the arguments made by the Applicant at the time of Virtual hearings. They have sought ruling on the following question:

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

7.1 The facts of the case as available before us are that the applicant is 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. The sample invoice dated 26.01.2020 submitted by the applicant shows that the product is invoiced under the heading 8708 9900. The applicant

had stated that they had subsequently obtained legal opinion on issue and has been advised that the appropriate classification for their product is under Heading 4016 9990. Hence, the applicant has contended that the appropriate classification of 'Air Springs' is under tariff heading 4016 9990 as 'Other Articles of Vulcanised Rubber other than Hard Rubber' of the Customs Tariff and not under tariff heading 8708 9900.

7.2 The main contentions of the applicant is that

- the functionality of the 'Air Springs' is extended by the bellow made of vulcanized soft rubber and relying on the decision of Hon'ble S.C. in the case of O.K. Play (India) Ltd Vs. Commissioner of Central Excise [2005(180) E.L.T. 300(S.C.)], they contend that the subject product is rightly classifiable under CTH 4016 as 'Other articles of Vulcanised Rubber'.
- Once the product falls for classification under Chapter 4016, it is specifically excluded from the purview of Chapter 87 (even though it may be a part/accessory of a vehicle falling under Chapter 87) in terms of Section Note 2 to Section XVII.

They have relied on the US tariff classification bearing No. N303352 dated 28th March 2019 wherein on the issue of 'tariff classification of convoluted/bellows air spring from Mexico', it is opined that the applicable sub heading for the rolling lobe air spring will be 4016.99.5500, HTSUS, which provides for Other articles of vulcanized rubber other than hard rubber: Other: Other: Other: Vibration control goods of a kind used in vehicles of headings 8701 through 8705.

8.1 It is evident that the product in hand is designed and manufactured for use as parts in Motor vehicles falling under CTH 8701 to 8705 and this is not disputed by the applicant. They claim that while classifying a product, the same is to be classified based on the part which provides the functional utility of the product. In this connection they have relied on the decision of Hon'ble Apex Court in the case of O.K. Play (India) Ltd. We find that in this case, the Hon'ble S.C. has stated that

- No one single universal test can be applied for correct classification
- HSN along with the explanatory notes provides a safe guide for interpretation of an entry
- Equal importance is required to be given to the Rules of Interpretation

- 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

Thus, the above decision hands out that the classification primarily is to be attempted using the chapter headings, 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. The competing heads for classification of the product in hand are 40169990 and 87089900.

8.2 In terms of explanation (iii) and (iv) to Notification No. 1/2017 - Central Tax (Rate) dt. 28-06-2017, tariff heading, 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 and the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall be applied for the interpretation and classification of goods.

8.3 The CTH, relevant Section/Chapter Notes and HSN explanatory notes for the above cited chapter headings are examined as under:

4016	OTHER ARTICLES OF VULCANISED RUBBER OTHER THAN HARD RUBBER	
4016 10 00	- Of cellular rubber	kg.
	- <i>Other :</i>	
4016 91 00	-- Floor coverings and mats	kg.
4016 92 00	-- Erasers	kg.
4016 93	-- <i>Gaskets, washers and other seals :</i>	
.....		
4016 94 00	-- Boat or dock fenders, whether or not inflatable	
4016 95	-- <i>Other inflatable articles:</i>	
4016 95 10	--- Air mattresses	
4016 95 90	--- Other	
4016 99	-- <i>Other :</i>	
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	

From the above, it is clear that the entry at 40169990 of CTH made applicable to GST is residual of the residual entry of CTH 4016 99. The Explanatory Notes as per HSN is as below:

40.16 - Other articles of vulcanised rubber other than hard rubber.

4016.10 - Of cellular rubber

- Other :

4016.91 -- Floor coverings and mats

4016.92 -- Erasers

4016.93 -- Gaskets, washers and other seals

4016.94 -- Boat or dock fenders, whether or not inflatable

4016.95 -- Other inflatable articles

4016.99 -- Other

This heading covers all articles of vulcanised rubber (other than hard rubber) not covered by the preceding headings of this Chapter or by other Chapters.

The heading includes :

- (1) Articles of cellular rubber.
- (2) Floor coverings and mats (including bath mats), **other than rectangular** (including square) mats cut from plates or sheets of rubber and not further worked than surface-worked (see the Explanatory Note to **heading 40.08**).
- (3) Erasers.
- (4) Gaskets, washers and other seals.
- (5) Boat or dock fenders, whether or not inflatable.
- (6) Pneumatic mattresses, pillows and cushions and other inflatable articles (**other than those of heading 40.14 or 63.06**); water-mattresses.
- (7) Rubber bands; tobacco-pouches; characters for date stamps and the like.
- (8) Stoppers and rings for bottles.
- (9) Pump rotors and moulds; rubber liners for milking machines; taps, cocks, valves and similar appliances; other articles for technical uses (including parts and accessories of machines and appliances of Section XVI and of instruments and apparatus of Chapter 90).
- (10) Chassis mounting rubbers, mudflaps and pedal covers for motor vehicles, brake-blocks, mudguard-flaps and pedal blocks for cycles, and other parts and accessories for vehicles, aircraft or vessels of Section XVII.
- (11) Plates, sheets and strip merely cut to non-rectangular shapes, and articles excluded from heading 40.08 because they have been milled, turned, assembled by glueing or sewing or otherwise worked.

From the above explanatory notes, it is seen that all articles of vulcanised rubber (other than hard rubber) not covered by the preceding headings are included in this heading. Thus the entry 4016 is a residual entry which covers 'Other articles of Vulcanised Rubber other than hard rubber' in which CTH 4016 99 is a further residual entry 'Other' and CTH 4016 99 90 is a residual- residual-residual entry and therefore not a 'specific entry'. To be classified under this heading, the product should be an article of vulcanised rubber other than hard rubber and should not be covered under any specific preceding entries.

8.4 The next competing heading being, CTH 8708, the same is examined as under:

8708	PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705		
8708 10	- Bumpers and parts thereof :		
8708 10 10	--- For tractors		kg.
8708 10 90	--- Other		kg.
	- Other parts and accessories of bodies (including cabs) :		
8708 21 00	-- Safety seat belts		u
8708 29 00	-- Other		kg.
8708 30 00	- Brakes and servo-brakes; parts thereof		kg.
8708 40 00	- Gear boxes and parts thereof		kg.
8708 50 00	- Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof		kg.
8708 70 00	- Road wheels and parts and accessories thereof		kg.
8708 80 00	- Suspension systems and parts thereof (including shock absorbers)		kg.
	- Other parts and accessories:		
8708 91 00	-- Radiators and parts thereof		kg.
8708 92 00	-- Silencers (mufflers) and exhaust pipes; parts thereof		kg.
8708 93 00	-- Clutches and parts thereof		kg.
8708 94 00	-- Steering wheels, steering columns and steering boxes; parts thereof		kg.
8708 95 00	-- Safety airbags with inflator system; parts thereof		kg.
8708 99 00	-- Other		kg.

The above heading includes all the parts and accessories of CTH 8701 to 8705.

The relevant Section Notes/Chapter Notes/heading notes of HSN are as follows:

Notes to Section XVII:

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 84.84) or other articles of vulcanised rubber other than hard rubber (heading 40.16);

3.- References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

(III) PARTS AND ACCESSORIES

It should be noted that Chapter 89 makes **no provision** for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships, etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of the vehicles, aircraft or equipment concerned.

It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions :

- (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).
- and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).
- and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

(A) Parts and accessories excluded by Note 2 to Section XVII.

This Note **excludes** the following parts and accessories, whether or not they are identifiable as for the articles of this Section :

- (1) **Joints, gaskets, washers and the like**, of any material (classified according to their constituent material or in **heading 84.84**) and other articles of vulcanised rubber **other than** hard rubber (e.g., mudguard-flaps and pedal covers) (**heading 40.16**).

(B) Criterion of sole or principal use.

(1) Parts and accessories classifiable both in Section XVII and in another Section.

Under Section Note 3, parts and accessories which are not suitable for use **solely or principally** with the articles of Chapters 86 to 88 are **excluded** from those Chapters.

The effect of Note 3 is therefore that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its **principal use**. Thus the steering gear, braking systems, road wheels, mudguards, etc., used on many of the mobile machines falling in Chapter 84, are virtually identical with those used on the lorries of Chapter 87, and since their principal use is with lorries, such parts and accessories are classified in this Section.

(2) Parts and accessories classifiable in two or more headings of the Section.

Certain parts and accessories are suitable for use on more than one type of vehicle (motor cars, aircraft, motorcycles, etc.); examples of such goods include brakes, steering systems, wheels, axles, etc. Such parts and accessories are to be classified in the heading relating to the parts and accessories of the vehicles with which they are **principally used**.

(C) Parts and accessories covered more specifically elsewhere in the Nomenclature.

Parts and accessories, even if identifiable as for the articles of this Section, are **excluded** if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g. :

- (1) Profile shapes of vulcanised rubber other than hard rubber, whether or not cut to length (**heading 40.08**).
- (2) Transmission belts of vulcanised rubber (**heading 40.10**).
- (3) Rubber tyres, interchangeable tyre treads, tyre flaps and inner tubes (**headings 40.11 to 40.13**).
- (4) Tool bags of leather or of composition leather, of vulcanised fibre, etc. (**heading 42.02**).

Chapter Note of Chapter 87:

This Chapter also covers parts and accessories which are identifiable as being suitable for use **solely or principally** with the vehicles included therein, **subject** to the provisions of the Notes to Section XVII (see the General Explanatory Note to the Section).

87.08 - Parts and accessories of the motor vehicles of headings 87.01 to 87.05.

- 8708.10 - Bumpers and parts thereof
 - Other parts and accessories of bodies (including cabs) :
- 8708.21 -- Safety seat belts
- 8708.29 -- Other
- 8708.30 - Brakes and servo-brakes; parts thereof
- 8708.40 - Gear boxes and parts thereof
- 8708.50 - Drive-axles with differential, whether or not provided with other transmission components, and non-driving axles; parts thereof
- 8708.70 - Road wheels and parts and accessories thereof
- 8708.80 - Suspension systems and parts thereof (including shock-absorbers)
 - Other parts and accessories :
- 8708.91 -- Radiators and parts thereof
- 8708.92 -- Silencers (mufflers) and exhaust pipes; parts thereof
- 8708.93 -- Clutches and parts thereof
- 8708.94 -- Steering wheels, steering columns and steering boxes; parts thereof
- 8708.95 -- Safety airbags with inflator system; parts thereof
- 8708.99 -- Other

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfil **both** the following conditions :

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;
- and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

Parts and accessories of this heading include :

- (IJ) Suspension shock-absorbers (friction, hydraulic, etc.) and other suspension parts (**other than** springs), torsion bars.

From the above, it is seen that CTH 8708 covers 'Parts and accessories of vehicles falling under CTH 8701 to 8705. Section Note 2(a) of Section XVII, states that the expression 'Parts' of this Section do not apply to articles covered under 'CTH 4016-other articles of vulcanised rubber other than hard rubber'. We find that the applicant relies on this Section Note and claim classification under CTH 40169990.

8.5 It is seen from the reports of the Chartered Engineer that the functionality of the product is extended by the rubber part of the product and the reports of Chemical examiner provided by the department and that of the Kamaraj university faculty provided by the applicant states that the rubber used in the bellow is vulcanized soft rubber and not hard rubber. It is also seen that the product in hand consists of vulcanised soft rubber, which forms 40% of the product- 'Air Spring' and the steel plate, textile fabric, etc makes the 60% of the product. It is the contention of the applicant that the functionality of the airspring is extended by the bellow made of vulcanised soft rubber and therefore the 'Air Spring' is an article of Vulcanised rubber. The bellow is made of the fabric -reinforced vulcanised soft rubber as seen from the chartered Engineer Certificate furnished by the applicant. The Apex Court in the case of O.K.Play relied by the applicant, has stated that the 'functional utility', 'predominant usage' of the product is to be considered for the purpose of classification. The functional utility of the product, i.e., 'Air Spring' is to provide 'Suspension' or 'Shock absorber' as a part of the suspension system, when fitted in the Axle of the vehicles classified under CTH 8701 to 8705 and as handed down by the Apex Court, providing 'suspension' or 'shock absorbance' is the 'functional utility' of the product. Even if we consider that the functional unit of the air spring, the container which holds the air i.e, bellows made of fabric-reinforced vulcanised soft rubber and therefore should merit classification under CTH 40169990, the suspension, i.e., the functional utility, is not provided only by the vulcanised soft rubber in the 'Air Spring'. It is the entire formation of the product, bellow by the fabric reinforced vulcanised soft rubber, crimped with the bolts and the steel plate which provides the 'functional utility', when air is pumped in through the 'compressor' and let out through the connected valves in the system. It is without doubt that the rubber used in the product is vulcanised soft rubber and mere usage of the same in the product do not merit the product to be termed as an article of vulcanised rubber other than hard rubber and classifiable under CTH 40169990. When it is held that the 'Air Springs' are not products of 'vulcanised rubber other than hard rubber', then there is no application of Note 2(a) of Section XVII of the Customs Tariff.

8.6 The Air springs are a part of the 'Suspension System' fitted in the axles of the vehicles falling under CTH 8701 to 8705, designed for use in such vehicles. Now, the possibility of the product being classified as 'Parts and accessories' under CTH 8708 is examined as under:

(1) The product is not excluded by the specific exclusions of the relevant Section/Chapter Notes as it is concluded that Just because vulcanised soft rubber makes for 40% of the product, the product cannot be termed as article of vulcanised rubber and therefore not covered under exclusion of Section Note 2(a) of Section XVII;

(2) The Air springs are designed for use in the Motor Vehicles and are sold to Auto-Manufacturers;

(3) The functional utility of the product is to provide 'Suspension' and maintain levels irrespective of the load or to act as 'Shock absorber' and its predominant usage is in the Motor vehicles falling under CTH 8701 to 8705.

Thus as per the explanatory notes in respect of 'Parts and accessories' of Section XVII above, the appropriate heading for the product is CTH 8708 80 which specifically covers 'Suspension Systems and parts thereof(including Shcok absorbers)'. In this connection, we find that Hon'ble Apex Court in the case of GS Auto International Ltd., VS CCE, Chandigarh 2003 (152) ELT 3 (SC) has handed out the moot point to be considered when there is a conflict in deciding the classification of 'Parts and accessories of Motor Vehicle' and a 'part of general use', which is as below:

".....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. 87.01 to 87.05; if the answer is in the affirmative, the goods will be classifiable under Chapter Heading 87.08, but if the answer is in the negative, they would have to be classified under Chapter Heading No. 73.18. 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. 87.01 to 87.05. It follows that the goods in question cannot be treated as falling under Chapter Heading No. 73.18 and that they can properly be classified under Chapter Heading No. 87.08 of the Central Excise Tariff Act, 1985."

In the case at hand, it is true that the products are for use primarily with articles of chapter 8701 to 8705. The product Main Air Spring are fitted in the lift axle and act as suspension for lift axle. The product Lift Air Springs are fitted in the

lift axle suspension system and operate to move the lift axle up and down. Thus both these air springs are 'Suspension systems and part thereof' and by predominant usage are classifiable under CTH 8708. Following the Apex Court's decision above, the product in hand being suitable for use solely with articles of Chapter Heading No. 8701 to 8705 are classifiable under CTH 8708, more appropriately under 'CTH 8708 80 00- Suspension Systems and parts thereof'. We find that the applicant are classifying their product under the residual entry 'CTH 8708 9900—Other' as seen in the Invoice furnished to us. But specific entry is to be preferred as per the General Interpretation Rules to Customs Tariff and therefore considering the functional utility and the entry being specific, CTH 8708 80 00 is the right classification for 'Air Springs', the product in hand and we hold so.

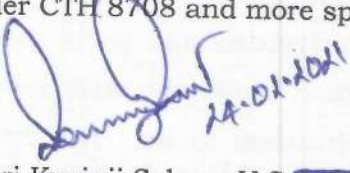
9. Further, we find that the US tariff classification bearing No. N303352 dated 28th March 2019 relied upon by the applicant has classified the rolling lobe air spring under 4016.99.5500, HTSUS, which provides for Other articles of vulcanized rubber other than hard rubber:Other:Other:Other: Vibration control goods of a kind used in vehicles of headings 8701 through 8705. Thus it is seen that the said classification is based on the heading of the HTSUS, i.e., 'Vibration control goods of a kind used in vehicles of heading 8701 through 8705', which is specific to cover those goods wherein the functionality is defined by the type of rubber and for use in vehicles of heading 8701 to 8705 for the purposes of vibration control. Whereas the Customs Tariff which is adopted for GST do not have any such entry and therefore the above ruling is differentiable.

10. To sum up, we find that the product as a whole is not an article of vulcanized rubber other than hard rubber and not classifiable under Customs Tariff entry at 40169990. Customs heading entry at 87088000 specifically covers Suspension systems and parts thereof of Motor Vehicles classifiable under CTH 8701 to 8705 and the functional utility of the 'Air Springs' being extending suspension or acting as shock absorber designed specifically for Motor Vehicles, the said entry is to be preferred to the residual entry of CTH 8708 9900. However, the GST rates for the purposes of Notification No. 01/2017-C.T.(Rate) dated 28.06.2017 are based on the descriptions in the notification with the CTH at the four digit level and therefore we hold that the 'Air Springs' manufactured by the applicant are rightly classifiable under CTH 8708 and more specifically under CTH 8708 8000.


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

RULING

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


Shri Kurinji Selvaan V.S.,
Member, SGST




Shri B. Senthilvelavan
Member, CGST

To

M/s. SI AIR SPRINGS PRIVATE LIMITED,
TVS Building, 7-B West Veli Street, Madurai-625001

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes/Member,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Madurai Commissionerate,
Central Revenue building, No.4, Lal Bahadur Shastri road,
Bibikulam, Madurai 625 002.
4. The Assistant Commissioner(ST),
West veli Street Circle,
Commercial Taxes Building,
Dr. SVKS Thangaraj Salai,
Madurai 600 020.
5. Authority for Advance Ruling, Tamil Nadu.
Room No.503b, 5th Floor,
Integrated commercial Taxes complex Chennai(north) division,
No.32, Elephant Gate Bridge Road,
Chennai-600003.
6. Master File/ Spare-2