

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

4, Vibhuti Khand, Gomti Nagar, Lucknow

**PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S. 98 OF
THE GOODS AND SERVICES TAX ACT, 2017**

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 26.11.2018 from M/s Resistoflex Dynamics Pvt. Ltd, Noida, Uttar Pradesh – Order– Reg.

1) M/s Resistoflex Dynamics Pvt. Ltd, B-103, Sector- 5, Noida, Uttar Pradesh, 201301 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AACCR3766P1ZN.

2) The applicant is a company *inter alia* engaged in manufacture of air-spring assemblies for Indian Railways. For this purpose the Applicant imports air-springs from outside India in terms of the approval accorded by the Indian Railways.

3) The Applicant has submitted application for Advance Ruling dated 26.10.2018 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexures and attachment.

4) The Applicant in his application sought clarification and Advance Ruling as follows: –

- a) Whether the air-springs imported by the Applicant are classifiable under HSN heading 8607(i.e. parts of coach work of railway running stock) and thus covered under Entry No. 241 of Schedule - I of the GST rate notifications?
- b) If the answer to (a) is in the affirmative, what is the applicable rate of tax under GST notifications?
- c) If the answer to (a) is in the negative

- i) Whether the air-springs imported by the Applicant's competitors is classifiable under HSN heading 8607?
- ii) What is (a) the correct classification of the air-springs imported by the Applicant and (b) the applicable rate of tax under GST notifications?
- iii) Whether the Applicant can also be eligible for classifying imported goods under HSN heading 8607 like its competitors?

5) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report which are received in this office vide letter C.No. 20-CGST/Advance Ruling/R-07/D-II/N/01/2019/1193 dated 05.02.2019.

6) The applicant was granted a personal hearing on 15.02.2019. Mr. Monish Panda, Advocate, Authorized representatives on behalf of applicant appeared for hearing. During the personal hearing they submitted/stated:-

that they have already submitted written submission in their letter dated 26/11/18 and they would like to reiterate the same. They would like to submit some technical write- up on the goods in question vide letter dated 06/02/19, which is taken on record. During the P.H., he has also shown the RSS of 'goods' for better understanding of issue. He also submitted the compilation of relevant judgments quoted in their submission.

DISCUSSION AND FINDING

7) We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the question sought by the applicant is:-

- a) Whether the air-springs imported by the Applicant are classifiable under HSN heading 8607(i.e. parts of coach work of railway running stock) and thus covered under Entry No. 241 of Schedule - I of the GST rate notifications?

b) If the answer to (a) is in the affirmative, what is the applicable rate of tax under GST notifications?

c) If the answer to (a) is in the negative

i) Whether the air-springs imported by the Applicant's competitors is classifiable under HSN heading 8607?

ii) What is (1) the correct classification of the air-springs imported by the Applicant and (2) the applicable rate of tax under GST notifications?

iii) Whether the Applicant can also be eligible for classifying imported goods under HSN heading 8607 like its competitors?

8) The Applicant in its application submitted the details of the services are as follows:-

a) It has submitted that the air-spring assemblies supplied by the Applicant under these Purchase Order and technical specifications of RDSO are basically meant to be fitted in the railways coaches. These perform the suspension function for which purpose the air-spring assembly is installed between the railway bogie and coach.

b) For completeness of understanding, it is expedient to point out that air-spring systems in rail vehicles ensure pneumatic suspension of the vehicle body. As per RDSO, vide clause 4.1 of Schedule of Technical Requirements (STRs), each air-spring module must contain the following:-

S.No.	Item	Quantity
1.	Air-spring (rubber bellow)	1
2.	Top Interfacing plate with bolster with	1
3.	Sealing O-Rings	2
4.	Base plate	1
5.	Emergency Spring	1
6.	High tensile hex. socket hard screws with spring washers	4 sets

c) The top and bottom metal enclosures are essentially required to contain the air within the air-spring to function as a spring under air-pressure. The dynamics of the working are as under;

- i) When the load in the bogey increases, a levelling valve causes air to be fed into the air-spring from the vehicle's own air supply.
- ii) Similarly, when the load in the bogey decreases, air is removed from the air-spring. These actions of feeding and removing of air are achieved by air-pressure controlled through levelling valve.

d) There is an official explanation of the air-suspension systems which are fitted in the bogies by the Indian Railways. It can be derived from it that the air-spring assembly (of which air-spring is an integral part) are custom-made and are an essential part of the railway bogies and coaches.

e) Further, it is submitted that the air-spring assembly manufactured by the Applicant has an imported component i.e. 'air-spring'. The import of these air-springs can be made from various countries and manufacturers. However, as per the RDSO specifications, the imported air-spring is specifically mentioned along with the details of the foreign manufacturer of these air-springs. Thus the Applicant is required to import these air-springs only from the specified foreign manufacturer, as may be specified in the approval document. For this purpose, the Applicant places a Purchase Order on the foreign supplier who in turn manufactures and exports these air-springs to the Applicant.

9) As per the applicant's interpretation of law, applicant submitted that, these air-springs imported by the Applicant are classifiable under HSN Entry No. 8607 and more particularly under entry 86079910. It is also submitted that the imported air-springs are parts of air-spring assembly, which in turn is a part of railway bogies and therefore are covered within the scope of the entry No. 241 above and accordingly are subject to tax at the rate of 5% on imports.

10) Brief reasons for claiming classification under HSN heading 8607:-

- a) The imported goods are manufactured strictly in accordance with the requirement of Indian Railways and do not have any other usage except being used in manufacture of railway wagons.
- b) In terms of Interpretative Rules also the imported air-springs are classifiable under heading 8607 only.
- c) Common parlance test is in favour of the Applicant.
- d) Customs order is incorrect. Note 2(a) to Section XVII has been misconstrued.
- e) Note 3 to Section XVII endorse the position of the Applicant.
- f) Department cannot discriminate between similarly placed tax-payers. Department having accepted classification under heading 8607 for similarly placed tax-payers is bound to extend the same classification to the Applicant.
- g) Latter HSN heading is to be preferred over earlier HSN heading. Therefore classification under HSN heading 8607 must be adopted in preference to classification under HSN heading 4016.
- h) Without prejudice, when two competing headings exist, that classification which is beneficial to the tax – payer is to be adopted.

11) We have considered the submissions made by the applicant in their application for advance ruling, in additional submission at the time of personal hearing and as well as views of the Jurisdictional office. The first issue to be decided whether air springs imported by the Applicant are classifiable under HSN heading 8607:-

a) As per specification provided “In air suspension system, properties of air are used for cushioning effect. Enclosed pressurized air in a rubber below is called air springs.” Therefore, as per the submission, technical specifications and characteristics mentioned by the party in respect of air spring it appears that the goods in question are air below made of rubber to be used in spring.

The jurisdictional AC, CGST Div-II, Noida also submitted that the party's assumption is not acceptable as the disputed goods are made of rubber and the articles of vulcanized rubber are excluded from chapter 86 as per Section Note 2(a) to Section XVII. After considering the submissions made by the applicant and jurisdiction office it is observed that it is not appropriate to classify the goods in question under the heading 8607.

b) Now, coming to the second question raised by the applicant, it was asked if the answer to the first question is affirmative what will be applicable GST rate, as the answer to the first question is in negative, second question cannot be considered.

c) Now, third concern raised by the applicant was whether the air springs imported by its competitors is classifiable under HSN heading 8607, the question is out of the purview of the mandate of the Advance Ruling U/s 95 (a) which provides that:- *"advance ruling" 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.*

d) Now, coming to the second part of the third question raised by the applicant, in which applicant asked the correct classification of goods and the applicable rate of tax under GST Notfn., if answer to first question is in negative. From the submissions it can be classified as follows:-

i) After going through explanation (iii) in Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, it appears to be clear that the classification of any goods under the Customs Tariff Act, 1975 has to be taken as it is for the purpose of classifying any goods in GST. The explanation (iii) in Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 reads as follows:

"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)."

ii) Further, it is also clear from explanation (iv) in Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 that the rules for interpretation of the First Schedule of Customs Tariff Act, 1975 has to be taken as it is for interpretation of this Notification. Explanation (iv) in Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 reads as follows:

"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."

From the above, it is clear that the classification of the goods in question shall

be the same as classified under the Customs Tariff Act, 1975 and shall be interpreted in terms of the Customs Tariff Act, 1975 for classifying any goods under the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017. Since, the goods in question is classified under chapter heading 40169590 under the Customs Tariff, it has to be appropriately classified under the same chapter i.e. 4016 for levying of Tax under GST not under the chapter heading 8607.

e) Further, as per specification provided by the applicant "In air suspension system, properties of air are used for cushioning effect. Enclosed pressurized air in a rubber below is called air spring." Therefore, as per the submission, technical specifications and characteristics mentioned by the party in respect of air spring it appears that the disputed articles are air below made of Rubber to be used in air spring. Furthermore, as per the specification "requirement for emergency rubber springs used in air springs": The emergency rubber bumper used in the air spring should be manufactured from natural rubber suitably compounded to conform to the requirements stipulated in STR (Schedule of Technical Requirements).

f) Further, for specific purpose of the goods in question, the terms 'Compounded Rubber' and 'Vulcanization' is required to be understood more clearly. In this regard, the definition available on Wikipedia can be referred for specific meaning of the above terms.

As per definition of Compounded rubber available on Wikipedia:-

Rubber is first compounded with additives like sulfur, carbon black and accelerators. It is converted into a dough-like mixture which is called "compound" then milled into sheets of desired thickness. Rubber may then be extruded or molded before being cured.

As per definition of Vulcanization available on Wikipedia:-

Vulcanization (British: vulcanisation) is a chemical process used to harden rubber. Vulcanization traditionally referred to the treatment of natural rubber with sulfur and this remains the most common example, however the term has also grown to include the hardening of other (synthetic) rubbers via various means. Examples include

silicone rubber via room temperature vulcanizing and chloroprene rubber (neoprene) using metal oxides.

g) It is clear from the above that the process of making compounded rubber is none other than Vulcanized rubber. Vulcanization makes rubber much stronger, more flexible, and more resistant to heat and other environmental conditions."

h) As per definition of rubber in Chapter 40 to the Customs Tariff Act:- The term "vulcanised" refers in general to rubber (including synthetic rubber) which has been cross-linked with sulphur or any other vulcanizing agent (such as, sulphur chloride, certain oxides of polyvalent metals, selenium, tellurium, thiuram di- and tetrasulphides, certain organic peroxides and certain synthetic polymers), whether or not using heat or pressure, or by high energy, radiation so that it passes from a mainly plastic state to a mainly elastic one. It should be noted that the criterion concerning vulcanization with sulphur is relevant only for the purposes of Note 4, i.e. for determining whether a substance is synthetic rubber or not.

i) Further, for appropriate classification of the goods in question, Chapter 86 is also to be examined. Section Note 2 (a) to the Section XVII of Customs Tariff Act, 1975 provides that the expression "parts and accessories" do not apply to the articles of vulcanized rubber other than hard rubber (heading 4016) Section Note 2(a) to the Section XVII of Customs Tariff Act, 1975 is as follows:

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

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

j) From the above, it appears that the goods in question are made of rubber and the articles of vulcanized rubber which are excluded from chapter 86 as per Section Note 2(a) to Section XVII, the party's assumption is not acceptable and the correct classification of the air springs would be 40169590 & rate as per the notification no. 01/2017 Central Tax Rate will be 18 % (9% CGST + 9% SGST).

k) As for the third part of the question is concerned it is again out of the purview of the mandate of the Advance Ruling U/s 95 (a) which provides that:- *"advance ruling" 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.

In view of the above, both the members unanimously rule as under;

RULING

- a) It will not be appropriate to classify air springs under 8607.
- b) Answer to the first question is negative.
- c) (1) Question raised is out of purview of the mandate of Advance Ruling U/s 95(a).
(2)(i) The goods in question are most suitably classifiable under Tariff item 40169590.
(2)(ii) The applicable rate of GST for the heading 40169590 under GST Notf. will be 18% (9% CGST + 9% SGST).
(3) Question raised is out of purview of the mandate of Advance Ruling U/s 95(a).


Vivek Kumar Jain
Member of Authority for Advance
Ruling


Hari Ram
Member of Authority for Advance
Ruling

To,

M/s Resistoflex Dynamics Pvt. Ltd,
B-103, Sector- 5, Noida
Uttar Pradesh, 201301.

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 26

Date: 20.02.2019

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, Noida, Uttar Pradesh.
4. The Deputy Commissioner, CGST & Central Excise, Division-II, Noida, Uttar Pradesh;
- ✓ 5. Through the Additional Commissioner, Commercial Tax, Noida, Uttar Pradesh to jurisdictional tax assessing officers.

For RESISTOFLEX DYNAMICS PVT. LTD.

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A. H. Maingole.

A. H. Maingole
08/4/2019