

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, 'H' Wing, Mazgaon, Mumbai - 400010.

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)
(2) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

GSTIN Number, if any/ User-id	27AAACC7258B1ZW
Legal Name of Applicant	Cummins India Limited
Registered Address/Address provided while obtaining user id	Cummins India Office Campus, Tower A, 5th floor, Survey No. 21, Balewadi, Pune - 411045
Details of application	GST-ARA, Application No. 66 Dated 10.08.2018
Concerned officer	Range I, Div-V (Khadakwasla), Pune II Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory / Manufacturing, Service provision, Input Service Distributor
B Description (in brief)	Applicant is a group company of Cummins Inc. situated in Columbus, Indiana and as such is engaged in manufacture, sale of a variety of diesel engines, parts thereof and related services; and undertakes all day-to-day activities required therefore.
Issue/s on which advance ruling required	i) classification of goods and/or services or both (v) determination of the liability to pay tax on any goods or services or both
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"] by Cummins India Limited, the applicant, seeking an advance ruling in respect of the following issue.

Whether engine manufactured and supplied solely and principally for use in railways/locomotives are classifiable under HSN Heading 8408 or under HSN Heading 8607 of the Customs Tariff (which has been borrowed for classification purposes under GST regime) as a part used solely or principally for Railways or Tramway Locomotives or Rolling Stock?"

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED



1. This Application is being preferred on behalf of Cummins India Limited ("Company/the Applicant"), a company incorporated in India under the provisions of the Companies Act, 1956 having its registered office at Cummins India Office Campus, Tower A, 5th Floor, Survey No. 21, Balewadi, Pune-411045.
2. Applicant is a group company of Cummins Inc. situated in Columbus, Indiana and as such is engaged in manufacture, sale of a variety of diesel engines, parts thereof and related services; and undertakes all day-to-day activities required therefore. The Applicant is duly registered under the Central Goods and Service Tax Act, 2017 ("CGST Act") and Maharashtra Goods and Service Tax Act, 2017 ("MGST Act") bearing GSTIN 27AAACC7258B1ZW.
3. Post-implementation of GST, the Applicant has analyzed all its business activities and day-to-day operations to ascertain levy of GST and necessary compliance under GST legislature. However, there appears ambiguity in few of the activities of Applicant vis-a-vis interpretation of GST legislation. Thus, the Applicant has preferred the present application to seek a ruling relating to the activities of Applicant which are tabulated below along with corresponding issue therefor:

DESCRIPTION OF TRANSACTION (In Brief)	Issue (In brief)
Whether engines manufactured for sole or principal use Classification of Engine in railways/ locomotives are classifiable under Section XVII i.e. Chapter 86 of the Tariff which covers parts of railways/ locomotives or need to be classified under heading 8408 which covers in its fold 'Compressionignition internal combustion piston engines (diesel or semi-diesel engines)'.	
Cummins India Limited has obtained multiple registration for each of its unit that qualifies as distinct person. These units as well as head office of Cummins India Limited, receive certain common input supplies on behalf of multiple/all of its units registered distinctly under GST. These common input supplies are procured on payment of GST and credit thereof is availed by receiving unit/head office. Availment of common input supplies on behalf of other unit is being treated as a service of facilitating common input supplies to distinctly registered units and are sought to be assessed for GST at a nominal value.	Levy of GST on facilitation of common input services, necessity of registering as an ISD and determination of assessable value.

4. For the sake of brevity these issues are being collectively presented for a suitable ruling. Facts in detail of each transaction referred above followed by issue for determination in detail and submissions on interpretation of law is enclosed vide separate Annexures. The documents in support of the submissions are enclosed as Exhibits thereafter.

STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED

Classification of Engines exclusively manufactured for use in Railways/Locomotives

1. STATEMENT OF THE RELEVANT FACTS

- 1.1 The range of products manufactured and supplied by the company inter alia include engine ('subject engine'), which are manufactured for Railways/Locomotive manufacturers Railways as per the design specifications provided by Railways such Railways/Locomotive manufacturers itself. These subject engines have sole use of main propulsion in railways/locomotives and have no alternate usage. Railways. In other words, these engines are manufactured and supplied 'solely and principally' for its application in the railways/locomotive engines.
- 1.2 The engines manufactured by applicant may potentially be classified under heading 8408 as Compression- Ignition Internal Combustion Piston Engines (Diesel or Semi- Diesel Engines) as well as heading 8607 as 'Parts Of Railways Or Tramway Locomotives Or Rolling-Stock' inasmuch as these engines are used 'solely and principally' in railways/ tramway/ locomotives.



1.3 The aforesaid proposition is time and again subjected to interpretation by all stake holders given the specific Section Notes under Section XVI and XVII of the Tariff, which do not yield a clear result. It may be noted that the alternate classification probable(s) here lead to varied GST rate scenarios and thus create ambiguity.

1.4 The Applicant Company thus deemed fit to seek a ruling on the subject classification matter.

2. ISSUE FOR DETERMINATION

"Whether engine manufactured and supplied solely and principally for use in railways/locomotives are classifiable under HSN Heading 8408 or under HSN Heading 8607 of the Customs Tariff (which has been borrowed for classification purposes under GST regime) as a part used solely or principally for Railways or Tramway Locomotives or Rolling Stock?"

3. LEGAL PROVISIONS

Relevant Section Notes under Customs Tariff

SECTION	SECTION NOTE	DESCRIPTION
XVI (inter-alia covers chapter 84)	1(1)	1. This Section does not cover: (Inter-alia covers (1) articles of Section XVII; chapter 84)
XVII (inter-alia covers chapter 86)	2(e)	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: (e) machines and apparatus of headings 8401 to 8479, or parts thereof, other than the radiators for the articles of this Section, articles of heading 8481 or 8482 or, provided they constitute integral parts of engines and motors, articles of heading 8483;
	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.

Relevant Customs Tariff entries

SECTION	CHAPTER	HEADING	DESCRIPTION
XVI	84	8408	COMPRESSION- IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL OR SEMI-DIESEL ENGINES)
XVII	86	8607	PARTS OF RAILWAYS OR TRAMWAY LOCOMOTIVES OR ROLLING-STOCK

4. OUR SUBMISSIONS

SECTION NOTE 3 TO SECTION XVII OF CUSTOMS TARIFF SUPERSEDES ALL OTHER NOTES AND REFERENCES AND MERITS CLASSIFICATION OF ENGINE MANUFACTURED BY THE APPLICANT UNDER CHAPTER 86 BASED ON ITS USAGE
Owing to sole and principal usage, Section note 3 to Section XVII confirms classification of subject goods under Chapter 86

4.1 The classification of goods under the Goods and Services Tax regime is expressly aligned to Chapter/ Heading / Sub-heading / Tariff item under the First Schedule to Customs Tariff Act, 1975 (Customs Tariff) and warrants reliance on the rules of interpretation and Section/ Chapter/ General Explanatory note thereto, which provide prescription for interpretation of the Customs Tariff (refer to Explanation (iii) & (iv) in the CGST Rate Notification 1/2017 dated June 28, 2017).

4.2 It may be noted that Customs Tariff follows the common classification system, which is popularly called the Harmonized System of Nomenclature (HS or HSN), developed by the World Customs Organization and is used/ accepted world over.

4.3 Note 3 to Section XVII has been re-produced below for quick reference:

"3. References in Chapter 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..."

4.4 It is submitted that, Section Note 3 (supra) provides that, an article cannot be classified as a part of an article covered under Section XVII unless the same is designed to be used 'solely' or 'principally' for articles of chapters falling under the said Section. A corollary to the said Section Note is that, if any heading under chapters of Section XVII covers parts of an article also falling under that Chapter then all such parts of the said article, which are meant for 'sole' or 'principal use with it would be classified under the respective heading of chapters under Section XVII, which covers parts. The present case and heading 8607 are fit examples for same.

4.5 Given the above, in Applicant's view, the position so emerging at para 4.4 above is apt and unambiguous.

Sole or principal use of Applicant's engines for Railways engines

4.6 It is submitted that subject goods are manufactured by Applicant strictly as per the designs provided by the Railways Railways/locomotives manufacturers itself. This fact is evident from the Purchase Order issued by railways/locomotive manufacturers itself. This fact is evident from the sample purchase order issued by railways/locomotive manufacturers Railways to the Applicant. A sample copy of such Purchase Order along with detailed design specification is enclosed as Exhibit -A and Exhibit - B.

4.7 It is submitted that, the subject engines ipso facto are not capable of generic use since the same have been manufactured to cater to a specific design and configuration. As a matter of fact these engines (made to specification of Railways/Locomotive manufacturer) do not have any other buyer and hence, cannot be supplied by the Applicant otherwise than to railways/locomotive manufacturer for specific railways application.

4.8 In view of customized design/ specification, lack of usage other than in railways/locomotive engines, it is evident that said engines are indeed manufactured solely and principally for its usage by the Railways/Locomotive manufacturers as a part of railways/ tramway/ locomotive and hence, qualify the test of Section Note 3 of Section XVII. In such a case the subject engine merit its classification under heading 8607 as 'parts of railways or tramway locomotives or rolling stock notwithstanding a probable classification under any other chapter of the Customs Tariff.

4.9 Classification of goods owing to its sole and principal usage is supported by a plethora of judicial precedents It is well settled law that predominant use to be established where classification relates to function of goods. In this regard attention is invited to the decision of Hon'ble Tribunal in the case of Hi-tech Industries Limited vs. Commissioner of Customs, Bangalore (2005 (180) ELT 0356] wherein an identical issue in the context of classification of goods on the basis of principal or sole use of the goods was involved. As a matter of fact, the facts of the said case are applicable mutatis mutandis in the present factual matrix. The Hon'ble Tribunal while deciding the case in the favour of the assessee relied on the observations of the Commissioner (Appeals) while passing the Order in Appeal as under:

"It is observed that the impugned product imported by the appellants is a web camera. From the technical literature submitted at the time of personal hearing, it is observed that the camera is not an ordinary camera and functions only with the computer and this camera has got very specific functions and it works basically as a part of the computer and cannot function independently on its own. Thus, it is observed that the web camera imported by the appellant is not an ordinary camera and does not function independently. The image can be captured only when it is connected with the computer. Thus, from the above, it can be seen that the product imported by the appellants is not an ordinary camera and therefore will not fall under chapter 90 as held by the lower authority. The proper classification will be under chapter 84.73 or 84.71. Besides, a perusal of the aforesaid judgment of the Hon'ble Tribunal also clearly indicates that all those items which come along with the computer are to be treated as spares and accessories. Thus, in view of the submissions made by the appellants and in view of the case law referred to by the appellants at the time of personal hearing, it is observed that the proper classification of the product under classification would be under chapter 8473.30 or 84.71 and not under chapter 90 as held by the lower authority. I set aside the order passed by the lower authority and allow the appeal filed by the appellants."

4.10 The above decision of the Hon'ble Tribunal has further been affirmed by the Hon'ble Supreme Court in Commissioner vs. Hi-Tech Computers - 2015 (321) E.L.T. A274 (S.C.)).

4.11 Reliance is further placed on Rail Tech vs. Commissioner of Central Excise Chandigarh (2000 (120) E.L.T. 393 (Tribunal)] where in the following was held:

"9. The bare perusal of Tariff heading 76.10 shows that it covers aluminium structures and parts thereof. The entry "windows and their frames" in the bracketed words, in this Tariff Heading refers only to the parts of the structure. Even the aluminium, plates, rods, profiles, tubes and the like, had been referred to in this Tariff Heading as the ones prepared for use in structures. Similarly, the entry in the sub-heading 7610.10 of this Tariff Heading, regarding doors, windows and their frames and thresholds for doors refers to the ones which are meant for use in the structures as this entry is contained in the sub-heading of the main tariff



heading 76.10 of the CETA. The entries in the Tariff heading and sub-heading have not to be read distinctively but collectively and in such a manner that the entry in the main Tariff Heading 76.10 does not become superfluous, redundant or in any manner isolated from its sub-heading entry. Therefore, only those doors, windows and their frames and threshold for doors, would be covered by sub-heading 7610.10 of the CETA which have relevance and use in the structures and not others. 10. In the instant case, admittedly, aluminium doors and windows manufactured by the assesseees have no use or relevance in the structures. These are being manufactured by them on the drawings and specifications provided to them, by the railways, for their sole use in the railways coaches. These aluminium windows and doors, as not disputed by the counsel before us, are neither marketable in the market nor can be used in any structure. He has rather fairly conceded that these can be solely used in the railways coaches. That being so, it can be safely concluded that these are parts of the railways classifiable under Tariff Heading 86.07(sub-heading 8607.00) of the Tariff. The principal that specific tariff entry has to prevail over the general entry, is not attracted in this case. The view taken in the impugned order dated 15-06-1994 by the Collector (which is the subject matter of the appeal of the assesseees) is legally correct and no fault can be found with the same."

- 4.12 The classification of goods owing to sole and principal usage thereof in view of Section Note 3 is a widely regarded and accepted position of law and the same is also supported by Circular No. 17/90-CX.4, dated 9-7-1990 which clarified that Gear, gear boxes per se classified under 8483 would attract classification under heading 860778608/8614 when specifically designed for use with vehicles of Section XVII. It is submitted that though the referred clarification was issued under the erstwhile excise regime, but since the excise tariff too was based on HSN as customs tariff is, an interpretation thereunder would squarely apply to present matter also. A copy of the said clarification is enclosed as Exhibit - C.
- 4.13 We also place reliance on the decision of Hon'ble Tribunal in the case of Hindustan Welding Engineers vs. CCE, Calcutta (2001 (133) ELT 770 (Tri-Kolkata)] wherein Various parts such as aluminium doors, windows, frames although generally covered elsewhere under the Excise Tariff were held to be classifiable under heading 8607 inasmuch as such parts were used solely and exclusively for the railways. This ratio was laid down based on decision of Tribunal in the case of Rail Tech
- 4.14 Thus, in view of the settled jurisprudence, engines manufactured by the Applicant for Railways/Locomotive manufacturers merit classification under Heading 8607 as parts of railways or tramway locomotives or rolling-stock under appropriate headings covering parts/ accessories.
- 4.15 Classification of subject goods under Chapter 86 based on its usage is also in line with the GST rate structure. It is submitted that the GST rate structure in India covers in its fold multiple rates to address the diversity in the Indian social stratification. Accordingly, a lower rate of 5% is assigned to many of the articles which are of social significance and are in the interest of public at large. The necessity of a lower rate of GST has been widely discussed by many stakeholders in the incumbent government as well as bureaucrats.
- 4.16 The rationale behind introducing GST with varied rate structure, is also evident from the fact that entire Chapter 86 which covers in its fold articles such as Railways, locomotive, rolling stock and parts thereof which are of substantial significance for public at large is subject to a levy of GST at the rate of 5%. This submission also finds force by Circular No. 30/4/2018-GST dated January 25, 2018 which clarifies that goods supplied to railways, which are classified under Chapter 86 attract GST at the rate of 5%. A copy of the said Circular is enclosed as Exhibit-D.
- 4.17 In such a case, the subject products which are admittedly to be used solely for manufacture of railways/locomotives; merits its classification under Chapter 86 and thereby accord the rate of GST at 5% in the larger scheme of GST rate structure.
- 4.18 NOTE 2(e) OF SECTION XVII FALLS SHORT TO EXCLUDE SUBJECT GOODS FROM CHAPTER 86 It is seen that the major deterrent to classification of subject goods under Chapter 86 as part for sole/ principal use with articles of those chapters is Note 2(e) of Section XVII of the Customs Tariff (supra).
- 4.19 It is submitted that, provisions of Note 2(e) of Section XVII excludes articles of heading 8401 to 8479 from being covered as 'part' under Section XVII itself. However, in Applicant's view the Note 3 supersedes Note 2 due to following reasons:
- Note 3 being specific cannot be superseded by generic Note 2;
 - Note 2, by theme, seem to be exclusion for generic parts and accessories, which may have multiple application notwithstanding its usability inter-alia with articles falling in Section XVII;
 - Reference is also invited to note1(i) of Section XVI, which is inter-alia governs coverage under Chapter 84 (which falls in Section XVI) provides as follows:

*1. This section does not cover:



(f) articles of Section XVIIA' The above implies that where by virtue of specific provisions, if goods are covered in Section XVII (ie. Chapter 8607 in present facts) its coverage under Section XVI (ie. Heading 8408 in present facts) is automatically ruled out. Again re-enforcing that Subject goods should fall within ambit of Chapter 8607 only and not otherwise.

d. Note 2(e) and 3 to Section. XVII are seen competing and irreconcilable, and are hence, repugnant to each other, in such state, the rules of statutory interpretation suggest that the last provision (ie. Section Note 3) must prevail over the prior (i.e. Section Note 2(e)). The principle find absolute support of available jurisprudence (refer K.M. Nangvati vs State of Bombay - AIR 1961 SC 112). Courts have repeatedly approved the said principle holding that the last provision stands later in the enactment and thus, speaks the last intention of the makers of the statute and therefore, must be given effect to.

4.20 Given the above, the Applicant pleads that it has already factually established that the principal use of the goods in question, is with articles of Chapter 86 i.e. as part thereof and also that, the goods are so custom made that the same cannot be put to an alternate use at all. Accordingly, the correct classification of the subject goods should be under those heading that covers part under Chapter 86.

4.21 Consequentially, it follows that provisions of Note 2(e) are rendered inapplicable where the goods are squarely covered by operation of Note 3 of Section XVII i.e. owing to their sole and principal use. The said view is further strengthened by available jurisprudence, which without exception favours and approve the Applicant's view.

4.22 Reliance is placed on the decision of the Hon'ble Tribunal in the case of Diesel Components Works vs. CCE, Chandigarh (2000 (120) ELT 648), which deals with an identical issue wherein articles of heading 8409 were proposed to be classified under heading 8607 in view of Section Note 3 owing principal usage in the railways. However departmental authorities sought to invoke provisions of Note 2(e) to disallow the said classification under heading 8607.

4.23 in the said case, while laying down its ratio the Hon'ble Tribunal took cognizance of the provisions of Section Note 2(e) as well as Section Note 3 and held that articles in question attract classification under heading, 8607 in view of the collective reading of the Section Notes. The Relevant portion of the said decision is extracted below:

The Excise Department took the stand that the goods manufactured by the applicant company are not parts of locomotives but they are parts of machines and apparatuses falling under Chapter Heading 84 or 85. This approach was made on the basis of Note 2e. For a proper understanding of that Note, see read the same:

"3. 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:

"(1) Machines and apparatus of heading Nos. 84.01 to 84.79, and parts thereof; articles of heading No: 84.81 or 84.82 and provided they constitute integral parts of engines or motors, articles of heading No. 84.83."

The Commissioner in the impugned order took note of the meaning of locomotive given in the Explanatory Notes to HSN... He further noted the meaning of locomotive from Encyclopaedia Britannica as a vehicle containing the power unit used on railroads

Even after coming to this conclusion, he found the parts of the engine to fall under Chapter Headings, 84 and 85 because of Section Note 2(e) to Section XVII. After referring to Note 2, learned Commissioner failed to read Note 3 to that Section. That Note reads:

"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."

In relation to Chapter Note 3, what HSN states is: (B) Criterion of sole or principal use. (1) Parts and accessories classifiable both in Section XVII in 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."

So, this Section Note of HSN makes it clear that final classification is determined by its principal use. The principal use of the components manufactured by the appellant company is admittedly as parts of locomotive.

A similar issue came up for consideration before this Tribunal in the decision reported in Bajaj Auto Ltd. v. Collector of Central Excise, Pune, 1994 (74) E.L.T. 599 where the question, unspecific parts of IC engines



used in motor vehicles are parts of motor vehicles came up for consideration. The Tribunal gave the answer in the affirmative. These parts of IC engines which were the main parts in the locomotive should also be termed as part of the locomotive and not as IC engines coming under the general category. Central Board of Excise and Customs had to consider the issue as to whether a radiator assembly supplied to Indian Railways is to be classified under sub-heading 8607.00 or otherwise. The Board observed that product radiator assembly is designed according to the specifications of the Indian Railways and is for use solely and principally with locomotives of Heading 8601 and 8602. It is clarified that the radiator assembly is not to be classified as parts of IC engines under Heading 8409. This understanding of the Central Board of Excise and Customs is discernible from circular No. 16/90 dated 11-6-1990, which still holds good. If radiator assembly manufactured for Railways for being fitted in locomotives is to be classified under Heading 8607, we do not find any justification in the department taking a view that integral parts of IC engines which form locomotive are outside Chapter Heading 86.

In the light of the above discussion, we come to the conclusion that the various components manufactured by the appellant company are classifiable solely under Chapter Heading 86. The contrary view taken by the Commissioner is clearly erroneous."

(Emphasis supplied)

- 4.24 The Applicant submits that the present issue and relevant facts are squarely covered by the ratio laid down by the Hon'ble Tribunal inasmuch both relate to classification of goods which are indeed classifiable under Section XVII (including one relevant heading being 8607) due to the stipulation of sole and principal use as per provisions of Section Note 3 and only failing that test would attract Section Note 2(e) of Section XVII and be classifiable elsewhere.
- 4.25 In view of the above, it is submitted that, Section Note 2(e) fails to exclude the subject engine from the coverage of Section XVII and owing to sole and principal usage, these engines continue to be classified under Chapter 86.
- 4.26 Given the settled ratio emerging from the ruling above, which has an identical/ similar fact pattern as in the present case, it is prayed that the said view is concluded in context of the present application as well.
- 4.27 The Applicant is further wishful of the aforesaid conclusion in view of the Board Circular 17/90-CX quoted above, which also confirms the Applicant's point of view though under the excise regime.
- 4.28 However, since the basis of classification under excise and GST (which in turn relies on customs) is HS N, a reliance of the aforesaid circular is helpful.
- INTERPRETATION OF STATUE - CUSTOMS TARIFF - OTHER CONSIDERATIONS**
Specific entry would prevail over general entry for classification of goods
- Without prejudice to averments above, the Applicant humbly submits before the Hon'ble Authority that it is a settled position in law that, in tariff, a specific entry would prevail over a general entry. This applied to present context would also yield a conclusion that Heading 8408 being generic should be discarded for products for which a specific entry in form of Heading 8607 is available. This position is further strengthened by the fact that, subject goods are used solely and principally with articles of Chapter 86, which would make the heading 8607 be deemed as specific and Heading 8408 as general. The net result would, therefore, be that classification of subject goods under the entry 8607 follows.
- 4.29 It is also pertinent to mention before the Hon'ble Bench that, keeping parts meant for sole and principal use in articles of Section XVII outside that Section (and corresponding Chapters/Headings) would be grossly unjust inasmuch it would imply that specific Headings under the Tariff have been overlooked.
- 4.30 Latter the better rule be applied in state of indecision Assuming for sake of argument, and without admitting, even if the competing Headings equally merit consideration and there is a state of indecision, for classification of goods, the general rules of interpretation of the Harmonized System prescribe that goods should be classifiable under the heading occurring last in the numerical order (commonly known as latter the better rule).
- 4.31 in the instant case, if the said rule is applied that also yields conclusion in favour of Heading under Section XVII only i.e. 8607.

5. PRAYER

"Owing to sole and principal usage for Railway/locomotives (Chapter 86 goods) the engines manufactured by Applicant are rightly classifiable as parts of goods falling under Chapter 86 and hence, classifiable under heading 8607 and not elsewhere. GST rules should therefore, be determined accordingly."

1. STATEMENT OF THE RELEVANT FACTS

1.1 The Applicant has its presence across various states in India through its manufacturing/service/sales units. These units are located in different states of India. Therefore, in view of section 25(4) of CGST Act, units located in each such state are to be treated as a 'distinct person' from units located in other states ('distinct persons'). Below tabulated is the list of such distinct person:

GSTIN	State	Address	Type
01AAACC7258B229	Jammu & Kashmir	PREM Villa, IND. Building, Canal Road, Jammu and Kashmir, 180001	Area Office
3AAAACC7258B225	Punjab	Second floor,,SCF 58, Sector 65, Phase 11, Mohali; SAS Nagar, Punjab. 160062	Area Office
04AAACC7258B124	Chandigarh	Industrial & business park. 1st floor, palladium. tower, plot no.181/46; Chandigarh	Area Office
06AAACC7258B272	Haryana	3rd Hour, Plot No 278, Udyog Vihar, Phase II, Gurgaon, Gurgaon, Haryana, 122016	Area Office
07AAACC7258B1ZY	Delhi	Floor 1,61, Shop NO 105, M 5 Chamber, Laxmi Nagar, New Delhi, 110092	Area Office
08AAACC7258B1ZW	Rajasthan	6th Floor Office no. 604-605, Signature Tower, Lal Kothi, Tonk Road,, Jaipur, Rajasthan, 302016	Depot
09AAACC7258B1ZU	Uttar Pradesh	102,First floor,Cyber Heights, TE G2/2;&-3/5, Vibhuti Khanc Gomali Nagar, Lucknow: 226010	Area Office
18AAACC7258B2ZU	Assam	4th Floor, NA, Archon Arcade, Dr. B. Barua Road, Ulubari, Guwahati, Kamrup Metropolitan, Assam 781007	Area Office
19AAACC7258B2Z5	West Bengal	204/2, Ceramic Road, GT: Road, Asansol, Bardhaman, West Bengal,713303	Depot
20AAACC7258B1ZA	Jharkhand	Plot No 43; Near Imam Kothi, Hazaribagh Road, Kokar, Ranchi, Ranchi, Jharkhand, 834009	Depot
21AAACC7258B1Z8	Odisha	PLOT NO 1473/3230, KHATANO 808/255, Rourkela, Sundargarh Odisha, 769041	Depot
22AAACC72583126	Chhattisgarh	Ground Floor, Ilot No 69, M A Rappai and KX Poulase, Transport Nagar, Korba, Korba, Chhattisgarh, 495677	Depot
23AAAC07258B124	Madhya Pradesh	House No 357, New Market Near BEML Colony, Singrauli, Singrauli, Madhya Pradesh, 486889	Depot
24ANACC72588122	Gujarat	13-703 & 704,7th floor, Block-B, Westgate, Near YMCA club, SG Highway, Ahemedabad - 380054	Area Office
27AAACC7258B12W	Maharashtra	Cummiris India Office Campus, Tower A, Survey No 21, Balewadi Pune, Maharashtra-411045	Manufacturing
27AAACC7258B2ZV	Maharashtra-SEZ	Plot No. 6-2 SEZ Industrial Area, Nandal And Survadu; Salara, Maharashtra, 415552	Manufacturing
27AAAC0725833ZU	Maharashtra ISD	Cummins India Office Campus, Tower A, 5th Floor, Survey No 21, Balewadi, Pune, Maharashtra-411045	ISD
29AAACC72588125	Karnataka	3rd Floor, B Wing Gayatri lakefront, Ring Road, Hebbal, Bangalore) Urban, Karnataka, 560024	Area Office
30AAACC7258B1Z9	Goa	Floor 2 Hat NoS-1, Building No 5, Kimat Estate, Iisivadi, Parji, Goa, 403001	Area Office
32AAACC72588125	Kerala	Floor 1, TV/431H, VINCENT PLAZA, THIRUVANKULAM PANCHAYATH,HILL PALACE ROAD, Cochin, Ernakulam	Area Office



33AAACC725881Z3	Tamil Nadu	62, SREE TEJA, GREENWAYS, RAJA ANNAMALAIPURAM Chennai, Tamil Nadu, 600028	Manufacturing
34AAACC725881Z1	Puducherry	No 14, Pillayar koil street, G. N. Palayam, Arumparthapuram, Puducherry; 605110	Area Office
36AAAG0725861ZX	Telangana	4th Floor, 404/1 404/2, Block 1, White House, Kundan Bagh, Begumpet, Hyderabad, Telangana, 500016	Depot

- 1.2 The Applicant, being a registered person and engaged in the activity of making taxable supply, is eligible to avail Input Tax Credit ("ITC") of GST paid on all the input, capital goods and input services procured in the course of furtherance of business.
- 1.3 Amongst all such procurements, certain common input services are availed by head office of the Applicant located in Pune. Further, the units of the Applicant may also avail common services. Accordingly, the head office or the respective unit, as the case may be, avails ITC of GST paid on such common input supplies subject to provisions of Section 17 of the CGST Act.
- 1.4 The costs incurred by head office/units for procurement of such common in head office/units for procurement of such common input services, is booked by such unit/head office in its own books of accounts. Such cost is then allocated and recovered proportionately from each of the recipient unit to determine the office/plant wise profitability, which is an internal procedure.
- 1.5 Based on these facts the applicant herein seeks a Ruling with respect to questions framed and submissions enumerated thereafter.

2. ISSUE FOR DETERMINATION

- 2.1 Whether availment of input tax credit of tax on common input supplies on behalf of other unit/units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST?

If GST is leviable, whether assessable value can be determined by arriving at nominal value?

- 2.3 *Once GST is levied and ITC thereof is availed by recipient unit, whether the Applicant is required to register itself as an Input Service Distributor for distribution of ITC on common input supplies?*

OUR SUBMISSIONS

AVAILMENT OF INPUT TAX CREDIT OF TAX ON COMMON INPUT SERVICE ON BEHALF OF ALL THE UNITS QUALIFIES AS 'SUPPLY' AND ATTRACTS GST THEREON

Availment of common input tax credit of tax on input services on behalf of the other distinct person/s, is in the nature of an activity of facilitating such availment to distinct persons and attracts scrutiny of Section 2(102) and Section 7 of CGST Act to determine whether such facilitation partakes the character as 'service' and results in 'supply of service'. Section 2(102) defines the term 'service' and the same is extracted below for reference:

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

- 3.2 The Applicant submits that on a bare perusal, the definition of 'service' is very wide and covers in its scope every-thing other than goods, money and securities. It thus appears that, the definition implies a very wide scope of activities as 'service' and inter alia covers in its scope the activity of facilitating common input supplies.

- 3.3 At this juncture, attention is invited to provisions of Section 7 of the CGST Act, 2017 which provides the scope of 'supply' and specifies activities which qualify as supply if undertaken for consideration. It further refers to the activities enlisted in Schedule - 1 of the CGST Act, 2017 which are to be treated as supply even if made without consideration. Said Schedule - 1 at its entry no. 2 refers to supply of goods or services between distinct persons. Relevant portion is reproduced below:

"SCHEDULE 1: ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business."

- 3.4 As such the units of the Applicant located in different states qualify as distinct person, and any service inter se qualifies as 'supply irrespective of whether there is any consideration for the same.



- 3.5 The Hon'ble Authority is therefore requested to kindly pass a ruling to clarify that the facilitation of availing common input services by Units of the Applicant to its other units registered as distinct persons qualifies as 'supply of service'.

SUPPLY OF FACILITATING COMMON INPUT SERVICES BETWEEN DIFFERENT UNITS WHICH ARE REGISTERED AS DISTINCT PERSON CAN BE ASSESSED AT A NOMINAL VALUE

- 3.6 Since each of Applicant's unit is registered independently and is treated as a 'distinct person' in view of provisions of Section 25(4) of the CGST Act, value of supply made between such distinct person is required to be assessed in view of Rule 28 of the Central Goods and Service Tax Rules, 2017 ("CGST Rules"). Relevant portion of Rule 28 is extracted below for ready reference:

"28. Value of supply of goods or services or both between distinct or related persons, other than through an agent-

The value of the supply of goods or services or both between distinct persons as specified in subsection (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall -

- a. be the open market value of such supply;
- b. if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- c. if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order.

- 3.7 On a bare perusal of Rule 28 it is submitted that value of supply between distinct person needs to be determined based on either of the following mechanism which are mentioned in its order of priority:

a. Open Market Value

b. Value of supply of like kind and quality

C. Value as determined by application of Rule 30 or Rule 31

- Rule 30 prescribes for value of supply of goods or services or both based on cost of production or manufacture

- Rule 31 prescribes residual method of referring to reasonable means consistent with Section 15 and provisions of CGST Rules, 2017

It is submitted that, facilitation as undertaken by one unit/ head office to avail the common input supplies on behalf of its other units is an activity specific to Applicant's business and is not being supplied in open market. Consequently, there does not exist any comparable 'open market value' to measure consumption of referred common input supplies. In such a case, the subject supply cannot be assessed with reference to open market value. For the same reason of exclusivity of subject transaction to the Applicants own business, it cannot be assessed with reference to value of 'supply of like kind and quality' as well.

Further, the subject supply being 'service of facilitation of common input, ascertaining 'cost of provision of service would involve ascertaining cost of service and all the ancillary activities necessary to facilitate the same to recipient units. As such, the activity of facilitation would include multiple of tangible and intangible activities and cost for all such activities cannot be ascertained rationally. Owing to inability to determine the cost of providing the service of facilitation, provisions of Rule 30 also cannot be referred to determine the assessable value.

- 3.10 In such a case, the applicant is left with the only resort to assess the subject supply with reference to the provisions of Rule 31 which directs a taxable person to assess the value of 'supply with reasonable means consistent with Section 15 and provisions of CGST Rules.

- 3.11 in view of Rule 31 which refers to 'reasonable means' the applicant is of the view that facilitation on input supplies by one unit to each of its distinctly registered unit can be assessed by assigning a nominal charge for facilitating common input supplies to each of the distinct unit.

- 3.12 It is therefore submitted that, It is only judicious for Hon'ble authority to pass a ruling to accept nominal value as to be assigned for facilitating common input supplies by Unit of the Applicant to its other units registered as distinct person, to be a statutorily correct assessable value.

THE FACILITY OF REGISTERING AS AN ISD IS AN OPTION PROVIDED BY THE STATUTE AND THERE IS NO COMPULSION FOR A TAXABLE PERSON TO REGISTER ITSELF AS AN ISD

- 3.13 The common input services and related expenses are booked in the books of the account of the head office/unit which received it on behalf of other unit. However, since the common input supplies have been consumed by more than one unit of the Applicant, it has allocated and recovered the costs so incurred from each of such unit. Based on the stated facts and submissions made hereafter, the Applicant seeks for a ruling to determine necessity of registering as an ISD.



- 3.14 The concept of ISD under the GST regime is a legacy carried over from the Service Tax Regime. The concept of ISD was first introduced in the year 2004 in the CENVAT Credit Rules, 2004 and its primary purpose was to enable a taxable person to distribute credit on common input services based on the outward turnover of different units so as to ensure fungibility of credit.
- 3.15 Similarly, ISD as defined under Section 2(61) of the CGST Act is an office meant to receive tax invoices towards receipt of input services and further distribute the credit to supplier units (having the same PAN) proportionately i.e. distinct persons. The relevant definition is reproduced below for easy reference:
"Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office."
- 3.16 As such, when the input supplies are being received by a unit on behalf of distinct persons the ISD mechanism ensures that credit fungibility is maintained by passing on the relevant proportion of ITC to the respective distinct person. However, it does not indicate that such issuance of invoice for distribution of ITC as a mandatory activity and it appears that operating as an ISD is an option.
- 3.17 We further refer to provision of Section 24 of the CGST Act which enlists the entities that are required to be registered as a taxable person, and the said Section at its sub-clause (viii) requires an ISD to obtain an independent registration. The Applicant submits that, Section 24 merely refers to the necessity of an independent registration if a person intends to avail the facility of ISD. It however, does not create any stipulation as to necessity of availing the ISD facility itself. The Applicant further submits that there exists no other statutory provision which compels a person to act as an ISD, and the mechanism of ISD in all its possibilities appear to be an 'option' to be exercised at the discretion of registered person itself.
- 3.18 This position is also explained by the clarification as offered by CBIC (the then CBEC) vide its tweter handle. A snapshot of the same is reproduced herein below for ready reference:



GST@Gol @ask GST_Gol Jun 2
 ISD is an option provided to distribute your input tax credit for services.

Ayush Goenka @Ayush Goenka9
 @askGST_Gol Is ISD an option or a mandate under the law?

5 12 20 11
 GST@Gol #RGST_Gol Jul 18

It is not mandatory but if ur registered as ISD than it is mandatory
 CMA Sagar Daivadnya @saganya

@askGST_Gol

I have 3 registration and have some common input services at head office. I: is mandatory to opt for ISD and allocate credit?

- 3.19 Based on the submissions expounded and supporting twitter clarifications referred above, the applicant herein humbly prays to the Hon'ble authorities to pass a ruling to clarify that the mechanism of ISD as provided under CGST Act is an optional facility and the applicant has the right to exercise its discretion to either opt or refrain from availing the ISD mechanism.

4. PRAYER

In view of the submissions made above, it is most humbly prayed that Hon'ble authorities may kindly pass a ruling to clarify as follows:

- Facilitation of common input supplies by one unit to all the other units registered as distinct persons qualifies as 'Supply';
- Such facilitation of common input supplies can be assessed for GST with reference to a nominal value, which is deemed to be treated as 'open market value'; and
- The facility of ISD is an option provided under CGST Act and Applicant is at liberty to exercise its right to either avail or refrain from the ISD mechanism.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

BRIEF FACTS OF THE CASE

Applications made by M/s Cummins India Ltd, (hereinafter referred as "the applicant") vide their letters dated 26.07.2018 are examined and it is noticed that the applicant have made two applications seeking advance ruling on three issues. Comments on their application is as under:

(II) Classification of Engines exclusively manufactured for use in Railways/Locomotives

The applicant stated that they also manufacture and supply their range of products to Railways/Locomotives manufacturers as per the design specifications provided by Railways as such Railways/Locomotive manufacturers itself. They stated that these engines have sole use of main propulsion in railways/locomotives and have no alternate usage. They further stated that the engines manufactured by them may be classified under heading 8408 as Compression-Ignition Internal Combustion Piston engines (Diesel or Semi-diesel engines) as well as heading 8607 as 'Parts of Railway or Tramway Locomotives or Rolling Stock' in as much as these engines are used 'solely and principally' in railways/tramway/locomotives.

For discussing the issue raised by the applicant, the Section Note 2 of Section XVII which deals in goods like vehicles, aircrafts, vessels and associated transport equipments is reproduced as below:-

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 vulcanized rubber other than hard rubber (heading 4016)
- (b) parts of general use, as defined in Note 2 of Sec.XV, of base metal (Sec XV), or similar goods of plastics (Chap 39);
- © articles of Chapter 82 (tools);
- (d) articles of heading of heading 8306;
- (e) machines or apparatus of headings 8401 to 8479, or parts thereof, articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;
- (f) electrical machinery or equipment (Chapter 85);
- (g) articles of Chapter 90;
- (h) articles of Chapter 91;
- (i) arms (Chapter 93);
- (k) lamps or lighting fittings of headings 9405; or
- (l) brushes of a kind used as parts of vehicles (heading 9603).

Further Chapter Notes 1 of Chapter 86 is reproduced as below:-

Chapter does not cover:

- (a) railway or tramway sleepers of wood or of concrete, or concrete guide-track sections for hovertrains (heading 4406 or 8500);
- (b) railway or tramway track construction material of iron or steel of heading 7302; or
- © electrical signaling, safety, or traffic control equipment of heading 8530.

Further, Chapter Notes 2 of Chapter 86 which states regarding application of heading 8607 is reproduced as under:

Heading 8607 applies, inter alia, to:

- (a) axles, wheels, wheels sets (running gear), metal tyres, hoops and hubs and other parts of wheels;
- (b) frames, under frames, bogies and bissel-bogies;
- © axle boxes, brake gear;
- (d) buffers for rolling-stocks; hooks and other coupling gear and corridor connections;
- (e) coachwork.

The issue raised by the applicant is examined in light of above Section note and Chapter note of relevant Chapter and Sections of the Customs Tariff and merits classification under heading 8408 for the following reasons:

- a. Note 2(e) of the Section XVII of the Customs Tariff clearly states that the expression "parts" and "parts and accessories" do not apply to the machines or apparatus of heading 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483
- b. Note 2 of the Chapter 86 of the Customs Tariff states that Heading 8607 applies, inter alia to axels, wheels, wheel sets (running gear), metal tyres, hoops, hubs and other parts of wheels; frames, under frames, bogies and bissel-bogies; axle boses, brake gear; buffers for rolling-stock; hooks and other coupling gear and corridor connections; coachwork. The Heading 8607 does not cover engines of any type.
- c. The goods classified under Heading 8607 are subjected for assessment on the basis of quantity cleared on weight basis whereas the goods classified under Heading 8408 are subjected for assessment on the basis of quantity cleared on number basis. This shows that the nature of goods classified under these two heads is inherently different from each other.

In view of the foregoing para it appears that Note 2 of the Chapter 86 clearly indicates goods like engines cannot be classified under this chapter. Further, Note 2(e) of the Section XVII clearly states that the



expression parts and parts and accessories do not apply to machines or apparatus of headings 8401 to 8479, or parts thereof. Hence, the engine manufactured and supplied for use in railway, locomotives are classifiable under HSN Heading 8408 and not under Heading 8607 of the Customs Tariff.

I. Common Input Services: Levy, Assessable value and ISD Registration:

The applicant stated that it has presence across various states in India through its manufacturing/service/sales units and they are located in different states in India. As per provisions of Section 25(4) of CGST Act, 2017, units located in each such state are to be treated as a 'distinct person' from units located in other states. The applicant further stated that certain common input services are availed by the head office located in Pune and the units of the applicant. The costs incurred by head office/ units for procurement of such common input services, is booked by head office/such unit in its own books of account and is then allocated and recovered proportionately from each of the recipient unit to determine the office/plant wise profitability, which is an internal procedure.

The applicant seeks to get ruling as to whether availment of input tax credit of tax on common input supplies on behalf of other unit/units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST. Whether assessable value can be determined by arriving at nominal value and whether the applicant is required to register itself as an Input Service distributor for distribution of ITC on common input supplies when GST is levied and ITC thereof is availed by recipient unit?

The issue raised by the applicant is examined. The facility for distribution of Input Tax Credit is available to the applicant under the provisions of Section 20 of the CGST Act, 2017 by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed. The applicant may opt for this facility and get themselves registered under ISD category. However, the applicant seeks a parallel ruling as to whether availment of input tax credit of tax on common input supplies on behalf of other unit/units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST. As per provisions of Section 7 of the CGST Act, 2017 and activity enlisted at Sr. no. 2 in Schedule -I of the CGST Act, 2017, supply of goods or services or both between related persons or between distinct persons as specified in Section 25 when made in the course or furtherance of business is to be considered as supply. Hence, the applicant is required to pay GST on such supply.

The applicant at their submissions to the application at Para 3.7 to 3.10 stated that they are unable to arrive at assessable value as per provisions of Rule 28 as their does not exist any comparable "Open Market Value" and also cannot be assessed with reference to value of "Supply of like kind and quality". They stated that they are left with only resort to assess the subject supply with reference to the provisions of Rule 31 which reads as

31. *Residual method for determination of value of supply of goods or services or both.- Where the value of goods or services or both cannot be determined under Rules 27 to 30 the same shall be determined using reasonable method consistent with the principles and the general provisions of Section 15 and the provisions of this chapter.*

Therefore, before proceeding for valuation under Rule 31 the possibility of assessment of value of such supply of services must be explored under the provisions of Rule 30 of CGST Rules which is reproduced as below:

30. *Value of supply of goods or services or both based on cost.- Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provisions of such services.*

In view of the above, the valuation for such supply can be done under the provisions of Rule 30 of the CGST Rules, 2017 and applicant's request to accept nominal value may not be accepted.

04. HEARING

The case was scheduled for 11.09.2018 for Preliminary hearing when Sh. Rohit Jain, Advocate along with Sh. Narender Vaidya, DGM Taxation appeared and made oral contentions for admission of application as per contentions in their ARA application. Jurisdictional Officer Sh. B. K. Mishra, Supt., Pune II, CGST Commissionerate, appeared and stated that they would be making submissions in due course.

The application was admitted and called for final hearing on 27.11.2018, Sh. Rohit Jain, Advocate along with Deepak L Bahirwani, Tax Director-Cummins India Group, Group CFO's Officer and Sh. Vivek Baj, C.A. ELP appeared and made oral contentions as per details submitted by them. No one from the side of the department was present.



05. OBSERVATIONS

We have gone through the facts of the case. There are 3 questions raised by the applicant before this authority.

(A).In respect of the first question i.e. "Whether engine manufactured and supplied solely and principally for use in railways/locomotives are classifiable under HSN Heading 8408 or under HSN Heading 8607 of the Customs Tariff (which has been borrowed for classification purposes under GST regime) as a part used solely or principally for Railways or Tramway Locomotives or Rolling Stock?", the applicant has submitted that they are manufacturers of various products one of which are "engines" ('subject engine') manufactured for Railways/ Locomotive manufacturers as per the design specifications provided by them and are 'solely and principally' used in railways/locomotive engines. These subject engines have sole use of main propulsion in railways/locomotives and have no alternate usage. The issue before us is whether the subject engines manufactured by applicant are classifiable under heading 8408 as Compression- Ignition Internal Combustion Piston Engines (Diesel or Semi- Diesel Engines) or under heading 8607 as 'Parts of Railways or Tramway Locomotives or Rolling-Stock'.

The applicant has submitted that the rationale behind introducing GST with varied rate structure, is evident from the fact that entire Chapter 86 which covers in its fold articles such as Railways, locomotive, rolling stock and parts thereof which are of substantial significance for public charge is subject to a levy of GST at the rate of 5%. According to them this submission also finds force by Circular No. 30/4/2018-GST dated January 25, 2018 which clarifies that goods supplied to railways, which are classified under Chapter 86 attract GST at the rate of 5%.

We find that Circular No. 30/4/2018-GST dated January 25, 2018 has clarified that only the goods classified under Chapter 86, supplied to the railways attract 5% GST rate with no refund of unutilised input tax credit and other goods [falling in any other chapter], would attract the general applicable GST rates to such goods, under the aforesaid notifications, even if supplied to the railways. Therefore it is very important to classify subject engines, whether the same falls under Chapters 8408 or 8607.

Section Note 2(e) of the Section XVII of the Customs Tariff clearly states that the expression "parts" and "parts and accessories", whether or not they are identifiable as for the goods of this section, do not apply to the machines or apparatus of heading 8401 to 8479..... It is very clear from a reading of the said Note 2 (e) that the subject engines which are "Compression-Ignition Internal Combustion Piston Engines ",running on diesel or semi-diesel, cannot be called as parts of goods of Chapter Headings 86 to 88 of the GST Tariff. What this note effectively states is that the subject engines (being compression-ignition internal combustion piston engines), have individual entity and cannot be called as parts of goods falling under Chapters 86 to 88. Thus this note 2(e) is self-explanatory and does not contradict any other Note



3 of Chapter XVII as claimed by the applicant. Further Note 2 of Chapter 86 states that Heading 8607 applies to (a) axles, wheels, wheels sets (running gear), metal tyres, hoops and hubs and other parts of wheels, (b) frames, under frames, bogies and bissel-bogies, (c) axle boxes, brake gear, (d) buffers for rolling-stocks; hooks and other coupling gear and corridor connections, and (e) coachwork. Therefore it is crystal clear that Heading 8607 does not cover engines of any type.

Finally we agree with the submissions made by the jurisdictional officer the goods classified under Heading 8607 are subjected for assessment on the basis of quantity cleared on weight basis whereas the goods classified under Heading 8408 are subjected for assessment on the basis of quantity cleared on number basis. This shows that the nature of goods classified under these two heads is inherently different from each other.

Hence in view of the above discussions we find that the subject engines manufactured and supplied for use in railway, locomotives are classifiable under HSN Heading 8408 and not under Heading 8607 of the Customs Tariff.

(B).Now we proceed to the next question raised by the applicant which is as under-

Whether availment of input tax credit of tax on common input supplies on behalf of other unit/units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST?

The applicant has submitted that certain common input services are availed by their head office located in Pune on which they avail ITC of GST paid on such common input supplies subject to provisions of Section 17 of the CGST Act. Further, the units of the Applicant may also avail common services and the head office or the respective unit, as the case may be, avails ITC of GST paid on such common input supplies subject to provisions of Section 17 of the CGST Act.

The applicant stated that it has presence across various states in India through its manufacturing/service/sales units and they are located in different states in India. As per provisions of Section 25(4) of CGST Act, 2017, units located in each such state are to be treated as a 'distinct person' from units located in other states. The applicant further stated that certain common input services are availed by the head office located in Pune and the units of the applicant. The costs incurred by head office/ units for procurement of such common input services, is booked by head office/ such unit in its own books of account and is then allocated and recovered proportionately from each of the recipient unit to determine the office/plant wise profitability, which is an internal procedure.

The applicant seeks to get ruling as to whether availment of input tax credit of tax on common input supplies on behalf of other unit/units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST. Whether assessable value can be determined by arriving at nominal value and whether



the applicant is required to register itself as an Input Service distributor for distribution of ITC on common input supplies when GST is levied and ITC thereof is availed by recipient unit?

We find that the applicant is seeking for a ruling as to whether availment of input tax credit of tax on common input supplies on behalf of other unit/ units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST.

As per Section 25 of the CGST Act, 2017, "a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act." Hence the applicant and their various offices will be distinct persons.

As per the provisions of Section 7 of the CGST Act, 2017 read with Sr. no. 2 in Schedule - I of the CGST Act, 2017, supply of goods or services or both between related persons or between distinct persons, when made in the course or furtherance of business is to be considered as supply. Hence, the applicant is required to pay GST on such supply made to their offices/branches having different registration numbers. This brings us to the next question raised by the applicant which is as under:-

Is GST is leviable, whether assessable value can be determined by arriving at nominal value?"

The applicant in their submissions have stated that, on they are unable to arrive at assessable value as per provisions of Rule 28 as their does not exist any comparable "Open Market Value" and also cannot be assessed with reference to value of "Supply of like kind and quality". The Applicant has also submitted that on a bare perusal, the definition of service' is very wide and covers in its scope every-thing other than goods, money and securities and have concluded that since the definition implies a very wide scope of activities as 'service' and inter alia covers in its scope the activity of facilitating common input supplies, . They have submitted that they are left with only resort to assess the subject supply with reference to the provisions of Rule 31 which the Residual method for determination of value of supply of goods or services or both.

Before discussing the provisions of Rule 31, we discuss the provisions of Rule 30 since we agree with the applicant's submissions that Rule 27 to Rule 29 is not applicable in the subject case. The provisions of Rule 30 of CGST Rules which is reproduced as below:

"30. Value of supply of goods or services or both based on cost.- Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provisions of such services."

Rule 30 prescribes for value of supply of goods or services or both based on cost of production or manufacture. The applicant has submitted that they are engaged in manufacture,



sale of a variety of diesel engines, parts thereof and related services; and undertakes all day-to-day activities required therefore. Thus they have available the cost of production of such goods and therefore it would be prudent for them to arrive at a value which is 110% of the cost of production. Hence we find that Rule 30 is very much applicable in the applicant's case.

In view of the above, we rule that the provisions of Rule 30 of the CGST Rules, 2017 should be followed by the applicant to arrive at the assessable value.

The final question raised by the applicant is as under:-

"Once GST is levied and ITC thereof is availed by recipient unit, whether the Applicant is required to register itself as an Input Service Distributor for distribution of ITC on common input supplies?"

ISD is a facility available to persons/businesses having a large share of common expenditure and where billing/payment is done from a centralized location. The concept of ISD has been introduced to simplify the credit taking process for various assesses/businesses, etc, and the facility helps the concerned to have a smooth flow of input tax credit under GST.

We refer to provision of Section 24 (viii) of the CGST Act which is as under:-

Compulsory registration in certain cases. -- Notwithstanding anything contained in sub-section (viii) of section 22, the following categories of persons shall be required to be registered under this

(viii) Input Service Distributor, whether or not separately registered under this Act.

We have no doubt that the applicant wants to distribute common cenvat credit received by the HO for which payments/billings are done by them. If they want to distribute such credit than they will be an Input Service Distributor. Once an ISD, then it follows that they must compulsorily obtain separate registration as an ISD. Hence we do not agree with the applicant's contention that the provisions of Section 24 (viii) of the CGST Act merely refers to the necessity of an independent registration if a person intends to avail the facility of ISD and does not create any stipulation as to necessity of availing the ISD facility itself.

05. In view of the extensive deliberations as held hereinabove, 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- 66/2018-19/B- 162 Mumbai, dt. 19.12.2018

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

Question :- "Whether engine manufactured and supplied solely and principally for use in railways/locomotives are classifiable under HSN Heading 8408 or under HSN Heading 8607 of the Customs Tariff (which has been borrowed for classification purposes under GST regime) as a part used solely or principally for Railways or Tramway Locomotives or Rolling Stock?"

Answer :- In view of the discussions made above the engine manufactured and supplied solely and principally for use in railways/locomotives are classifiable under HSN Heading 8408

Question :- Whether availment of input tax credit of tax on common input supplies on behalf of other unit/units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST?

Answer :- Yes.

Question :- If GST is leviable, whether assessable value can be determined by arriving at nominal value?

Answer :- In the subject case assessable value can be determined by following the provisions of Rule 30 of the CGST Rules, 2017

Question :- Once GST is levied and ITC thereof is availed by recipient unit, whether the Applicant is required to register itself as an Input Service Distributor for distribution of ITC on common input supplies?

Answer :- Yes as per the provisions of Section 24 of the CGST Act, 2017, the applicant is required to get registered as an ISD.




B. V. BORHADE
(MEMBER)


B. TIMOTHY
(MEMBER)
CERTIFIED TRUE COPY

Copy to:-

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


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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.