


GST शास्त्र : 'C' for Classification, 'C' for Confusion

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Introduction :

Classification of goods under GST is very important and has very wide implications considering multi tax rate structure. To ascertain whether a subject matter is exigible to tax, exemption, rate of tax, classification is a crucial task. Certain entries in notifications to defined tax rates led to disarray among the industry. Advance rulings pronounced by various authorities further led to confusion. This article dedicatedly talks about one of such issue faced by the stakeholders of GST.

Background :

Let's understand issue with the help of an illustration.

Relevant entry under **notification no. 1/2017 – Integrated Tax – (Rate) dt. 28th June, 2017** –

Schedule no.	Sr. no.	Chapter / Heading / Sub-heading/ Tariff item	Description of goods	Rate
I	252	Any chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907	5%

Consider, goods classifiable under chapter **84** which will be utilized in fishing vessels classifiable under chapter **8902**.



Issue under consideration :

Whether concessional rate of 5% is applicable to any part of goods falling under 8901/02/04/05/06/07 irrespective of its actual classification or respective rate is applicable to parts prescribed against the respective HSN.

For instance, in above illustration whether actual rate is applicable to part classifiable under chapter 84 (say 28%) or concessional rate of 5% is applicable being part of goods falling under heading 8902?

Legal provisions :

1. Note 2 (e) of section XVII of **Custom Tariff Act, 1975** which is applicable to chapter 86 to 89 –

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)

(b)

(c)

(d)

(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;

(f)

2. Rule 3(a) of The General Rules for The Interpretation of Import Tariff –

The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Revenue's stand :

The difference in rate, as stated above, is of 23%. It was observed in many cases that revenue has tend to taxable goods @28% instead of allowing concessional rate of 5%. The government officials denied concessional rate on the basis of following –

a) As per note 2(e) of section XVII of Custom Tariff Act, 1975, 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 being **machines and apparatus of headings 8401 to 8479, or parts**

b) Further, as per rule 3(a) of The General Rules for The Interpretation of Import Tariff, parts classifiable under chapter 84, shall be classified under chapter 84 only being the most specific

Revenue's above argument led to havoc in industry as profitability of stakeholders may be affected due to future demands.

The same view was upheld Gujrat Authority for Advance Ruling in the matter of M/s Dyna Automation Private Limited.

Author's view :

1. In GST regime, the above matter was disputed before various Advance Ruling Authorities and several representations have been made seeking clarification on the subject matter.

2. As far as classification is concerned, the parts shall be classified as per The General Rules for The Interpretation of Import Tariff, Section Notes, Chapter Notes and tariff headings. However, classification under any chapter shall not result in denial of concessional rate.

3. Note 2(e) to section XVII, though categorically excludes the **machines and apparatus of headings 8401 to 8479, or parts thereof** from the expression **“parts and “parts and accessories”**, it is for the purpose of classification under section XVII only and **it does not**

deny the very fact that parts of fishing vessels (in our illustration), which are otherwise classifiable under chapter 84, shall not be treated as Parts of vessels or ships covered under chapter 89.

4. Entry no. 252, as mentioned above in paragraph 2, reads as goods falling under **any chapter which are the parts goods of heading 8906** shall attract concessional rate of 5% which otherwise attracts rate as applicable under respective chapters.

5. It implies that though goods parts which are classified under chapter 84, the same shall attract concessional rate of 5% **subject to the condition mentioned therein that it shall form part of vessel.**

6. The same view was upheld by Apex Court wherein it was held that *when the exemption Notification is clear and simple in its language which leaves no room to doubt about inclusion of any product thereunder, it is difficult to accept the contention on behalf of the respondent that such section notes would restrict the ambit of scope of exemption Notification irrespective of the fact that the exemption Notification has been issued knowingly well the scope of the Chapter and Section notes under the Tariff Act by the framers of law and the draftsman of the Notification.*

7. Paragraph 10.1 and 10.2 of **circular no. 52/26/2018 – GST dt. 9th August, 2018** cited as follows :

10.1 :

Applicability of GST on marine engine: Reference has been received seeking clarification regarding GST rates on Marine Engine. The fishing vessels are classifiable under heading 8902, and attract GST @ 5%, as per S. No. 247 of Schedule I of the **notification No. 01/2017- Central Tax (rate) dated 28.06.2017**. Further, parts of goods of heading 8902, falling under any chapter also attracts GST rate of 5%, vide S. No. 252 of Schedule I of the said notification. The Marine engine for fishing vessel falling under Tariff item 8408 1093 of the Customs Tariff Act, 1975 would attract a GST rate of 5% by virtue of S. No. 252 of Schedule I of the **notification No. 01/2017-Central Tax (rate) dated 28.06.2017**.

10.2 :

Therefore, it is clarified that the supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts 5% GST.

8. The legislative intention seems to be in line with above opinion as per paragraph 10.1 and 10.2 of **circular no. 52/26/2018 – GST**, though marine engines falling under tariff item 8408 10 93, it shall attract 5% rate of GST.

Conclusion :

Considering above discussion, author is of the opinion that any chapter or section note can not restrict the ambit of exemptions or concessional rate granted. Chapter notes and sections notes are merely for the purpose of classification and are not to determine availability of exemption or concessional rate. Hence, irrespective of classification, all goods satisfying the condition stated in entry 252 shall attract concessional rate of 5%.

(Above article was written on 24th October, 2019 & jointly authored by CA. Yogesh Ingale, CA. Tushar Ajmera and CMA. Anuj Chordiya. Views expressed are strictly personal. For any queries & feedback, reach us at yogesh.ingale@talentax.in)

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