

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

GSTIN Number, if any/ User-id	27AAACH2006CIZD
Legal Name of Applicant	M/s. Hyva India Pvt. Ltd
Registered Address/Address provided while obtaining user id	Plot No. EL - 215, MIDC, Mahape, Navi Mumbai - 400 701
Details of application	GST-ARA, Application No. 96 Dated 30.11.2018
Concerned officer	Asstt. Commissioner CGST & CX, Division-IV, Belapur
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory/Manufacturing
B Description (in brief)	That applicant is engaged in the manufacture of Hydraulic Kits which is used with other tipping parts to lift the body of a truck.
Issue/s on which advance ruling required	(i) Classification of goods and services or both. (v) determination of the liability to pay tax on any goods or services or both (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required	As reproduced in para 02 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 M/s. Hyva India Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following questions :-

a. What is the appropriate classification and tax rate applicable on the supply of -

'Hydraulic Kits' supplied to dealers / distributors or body builders as such from the factory of applicant, under Central Goods and Service Tax Act, 2017 (CGST).

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

1. M/s Hyva India Pvt. Ltd. ('Applicant') having its corporate head office at EL-215, Mahape, Navi Mumbai - 400710 and having various manufacturing units across the country, is engaged in the manufacture and supply of hydraulic kits, tippers, compactors, cranes, tail lifts, hook loaders, control valves etc.
2. The present application is filed in respect of one of the products namely "*Hydraulic Kit*". Hydraulic Kit is a combination of various items including Hydraulic front end cylinder, Gasket, washers, MTG Kit valves, hose, pipes, Oil tanks, cables, etc. along with other parts which are used for the fixing / mounting on a motor vehicle chassis. The hydraulic kit is of a kind used to fixed on a motor vehicle chassis can be used to lift the body of truck, tipper, etc. Further, the "*Hydraulic Kit*" is used in bodies/platform, detaching sides, tipper bodies falling under Chapter Heading No.87.09 as well as for other trailers for transport of goods such as agricultural, public works etc., trailer (whether or not tipper) falling under Heading No.87.16. All the aforesaid items of Hydraulic. Kit (except Hydraulic cylinder and Valve which are manufactured by the applicant) are commonly known as "wet kit" by the applicant. The front-end hydraulics are the best choice for front-end tippers and tipping trailers.
3. All the items of wet kit except Valve, are purchased and received from various vendors and are classified under different headings of the Customs Tariff which is adopted for the specification of GST rates in the notification issued under the CGST Act. The applicant supplies the "Hydraulic Kit" which comprise of Hydraulic cylinder along with wet kit. The Hydraulic cylinder and Valve are manufactured by the applicant at its factory/workshop duly registered under GST law. It is submitted that bulk packs of wet kit parts are received from various vendors. The applicant is then undertaking the activity of repacking of wet kit items in sets from the bulk pack to small pack. It means all the parts of Hydraulic kit complete in itself are dispatched in loose sets. Thus, the Hydraulic system in unassembled form are supplied by the applicant from its premises comprising of Hydraulic cylinder, wet kits in loose forms.
4. It is to be noted that Hydraulic Kit (cylinder + wet kit) when fitted on the chassis of motor vehicle delivers higher transport efficiency and safer operating at lower cost in the Construction, Transportation and Mining market segments.
5. It is observed by the applicant that there is an ambiguity prevailing in respect of the classification of "Hydraulic Kit" under GST laws for the purpose of determination of rate of tax.
6. Hydraulic Kit is supplied in two modes:
 - (i) Supply to dealers / distributors / body builders;
 - (ii) Supply to OEMs (namely Tata Motors, Eicher Motors, etc) alongwith body fitted on the chassis received from OEMs.
7. The dealers / distributors who purchase the Hydraulic Kit from the applicant, further sell the Hydraulic Kit to end customers; whereas body builder to whom the applicant sells the Hydraulic



Kit uses the Hydraulic Kit in its factory/ premises, to be fitted on the chassis of the vehicle. In some case, the Hydraulic Kit is cleared with or without pump to the dealers / distributors or OEMS

8. In case of sale of Hydraulic Kits to OEMs, the applicant receives chassis from the OEMs for fitting of body along with Hydraulic kit. In such cases, applicant supplies the body with Hydraulic Kit as a complete product/solution to the customers (OEMs) and clears the resultant product i.e. Body + Hydraulic Kit under Chapter Heading No.87.07 of the First Schedule of the Customs Tariff Act attracting GST @28%. In some instances, the applicant also clears/supplies the body alone to the OEMs under Chapter Heading No.87.07 of the First Schedule of the Customs. Tariff Act attracting GST @28%.
9. In the present application, the applicant is seeking the clarification regarding the correct classification of Hydraulic Kit supplied to Dealers / Distributors or body builders as such from the factory of the applicant.
10. As per the understanding of the applicant, there is an ambiguity regarding the correct classification of Hydraulic kit supplied as such to dealers / distributors or body builders cleared as such, as it comprises of multiple parts classifiable under various Tariff Headings, whereas, the Chapter Heading No 84.12 of the Customs Tariff covers "Hydraulic Systems" within its purview.
11. Chapter Heading No. 84.12 of the Customs Tariff covers '*Other Engines and Machines*'. This Chapter covers '*Hydraulic Power Engines and Motors*'.
12. Sl. No. 317 of Schedule - III to Notification No.1/2017- Central Tax (Rate) dated 30.06.2017 reads as under:

Sch.	Sl. No.	Chapter Sub-Heading	Description of Goods	Rate of Tax (CGST)
III	317.	8412	<i>Other engines and motors (Reaction engines other than turbo jets, Hydraulic power engines and motors, Pneumatic power engines and motors, other, parts) (other than wind turbine or engine)</i>	9%

Therefore, Hydraulic Power engines and motors of Heading No. 84,12 are covered by Sl. No. 317 of Schedule III and attract CGST @ 9%.

13. The present ambiguity regarding the Hydraulic Kit cleared to dealers / distributors or body builders cleared as such, arises due to absence of such type/category of product in Customs Tariff. The Customs Tariff mentions '*Hydraulic power engines and motors*' under Chapter Heading No. 84.12. However, the applicant's query arises from the fact that whether "Hydraulic kits" can be held to be synonymous to the term '*Hydraulic power engines and motors*' as covered under Heading No.84.12 of the Customs Tariff.

STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

APPLICANT'S INTERPRETATION

HYDRAULIC KITS MANUFACTURED AND SUPPLIED BY THE APPLICANT ARE CLASSIFIABLE UNDER CHAPTER HEADING NO. 84.12 OF THE CUSTOMS TARIFF AND

COVERED BY SL. NO. 317 OF SCHEDULE-III TO NOTIFICATION NO. 1/2017-CENTRAL TAX (RATE) DATED 30.06.2017

- C.1 In terms of Section 9(1) of CGST Act and subject to Section 9(2), there shall be levied a tax called the Central Goods and Service Tax on all *intra*-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- C.2 The Central Government has issued Notification No.1/2017-Central Tax (Rate) dated 28.6.2017 in exercise of the powers under Section 9(1). This Notfn., in Sch. I to VI specifies goods, which will be levied to tax at the rate of 2.5%, 6%, 9%, 14%, 1.5% & 0.125%.
- C.3 Chapter Heading No. 84.12 of the Customs Tariff is the relevant heading for the present matter and reads as under:

Tariff Item		Description of goods	Unit	Rate	
				Standard	Preferential Areas
(1)		(2)	(3)	(4)	(5)
8412		OTHER ENGINES AND MOTORS			
8412 10 00	-	<i>Reaction engines other than turbo-jets</i>			
	-	<i>Hydraulic power engines and motors:</i>			
8412 21 00	-	<i>Linear acting (cylinders)</i>			
8412 29	--	<i>Other:</i>			
8412 29 10	--	<i>Hydrojet (hydraulic jet engines)</i>			
8412 2990	--	<i>Other</i>			

- C.4 The relevant entry in Schedule-III of Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, for the purpose of the applicant's product in question, reads as under:

Sch.	SL No.	Chapter Heading Sub-Heading	Description of Goods	Rate of Tax (GST)
III.	317	8412	<i>Other engines and motors (Reaction engines other than turbo jets, Hydraulic power engines and motors, Pneumatic power engines and motors; other, parts) (other than wind turbine or engine)</i>	9%

- C.5 The aforesaid Notification contains the following explanation:
- (i)
- (ii)
- (iii) "Tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, Breeding, sub-leading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (iv) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 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.
- C.6 A perusal of the aforesaid provisions read with explanation to the Notification No.1/2017-Central Tax (Rate) shows that in order to determine the rate of CGST leviable on the product in question,



it is paramount to determine the classification of the product in question under Customs Tariff Act, 1975.

C.7 The Custom Tariff is generally based on the tariff classification adopted by World Customs Organization in its Harmonized Commodity Description of Coding System (hereinafter referred to as "HSN"). Hence, wherever a Chapter of Custom Tariff is fully aligned with the corresponding Chapter of HSN, then the HSN explanatory notes explaining the scope of headings of that Chapter would have persuasive value in the determination of scope of *Headings of* correspondence Chapter of Central Excise Tariff. The aforesaid position has been laid down by the Hon'ble Supreme Court in the following decisions:

- (a) *Camlin Limited Vs. CCE - 2008 (230) ELT 193 (SC)*
- (b) *Coen Bharat Limited Vs. CCE - 2007 (217) ELT 165 (SC)*
- (c) *CCE Vs. Bakelite Hylam Limited - 1997 (91) ELT 13 (SC)*

C8 Accordingly, Explanatory notes to HSN are used in order to understand and ascertain the correct classification of the products in question. The reference to Explanatory notes would be made wherever required in relation to the respective products.

C.9 The relevant portion of the Explanatory Notes to Chapter Heading No.84.12 of HSN reads as under:

"(B) HYDRAULIC POWER ENGINES AND MOTORS

This group includes:

- (1)*
- (2)*
- (3)*

Hydraulic cylinders.....

(6) Hydraulic systems consisting of a hydraulic power unit (comprising essentially a hydraulic pump, an electric motor, control valves and an oil tank), hydraulic cylinders and the pipes or hoses needed to connect the cylinders to the hydraulic power unit, the whole forming a functional unit within the meaning of Note 4 to Section XVI (see the General Explanatory Note to that Section). These systems are used, e.g., to operate civil engineering structures.

C.10 For sake of reference, Note 4 to Section XVI of HSN reads as under:

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

C.11 As per the Explanatory Note, Heading No.84.12 of HSN covers "hydraulic systems" consisting of a hydraulic power unit (comprising essentially a hydraulic pump, an electric motor, control valves and an oil tank), hydraulic cylinders and the pipes or hoses needed to connect the cylinders to the hydraulic power unit.



C.12 The lack of mention of the term 'Hydraulic Kit' in the Tariff entries should not be considered against such mechanical kits which work primarily on Hydraulic cylinders as the rest of the parts are mere ancillary to the Hydraulic cylinder which attract CGST @ 9% by virtue of Sl. No. 317 of Sch.-III to Notification No.1/2017-C.T. (Rate) dt. 30.06.2017.

C.13 To support the above submission, the applicant wishes to rely on following decision/ order passed by United States International Trade Commission in Ruling No. N246885 dated 8th November, 2013. The product which was under consideration before the Commission was classification of Hydraulic Equipment Assisting Device (HEAD)™ Hybrid System specifically developed for use with refuse trucks imported from Canada, The relevant portion of the ruling is reproduced below for ease of reference:

"N246885

November 8, 2013 C ; LA-2-84:0T;RR:NC:N1:102

CATEGORY: Classification ; TARIFF NO.: 8412.29.8075

Mr: James King , Affiliated Customs Brokers USA, Inc.

193 West Service Road, Champlain, NY 12919

RE: The tariff classification of a hydraulic system from Canada.

Dear Mr. King:

In your letter dated October 4, 2013, you requested a tariff classification ruling on behalf of your client, Development Effenco Inc.

The product under consideration is described as a Hydraulic Equipment Assisting Device (HEAD)™ Hybrid System. You indicate that this hydraulic system was specifically developed for use with refuse trucks and primarily consists of the following components: hydraulic reservoir, main hydraulic circuit manifold, hydraulic pumps, transfer case, transfer case hydraulic manifold, hydraulic accumulator, Hydraulic Motor Power Take Off (HMPTO), primary Power Take-Off (PTO), hydraulic circuit filters and hoses.

During braking, hydraulic pumps are used to slow down the vehicle and recover kinetic energy which is stored in the hydraulic accumulator in the form of pressurized fluid. The HEADIM Hybrid System uses the stored energy to reduce or eliminate engine idling while the waste handling equipment is being operated.

In your letter, you propose an alternative classification of subheading 8479.89.9899, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof: Other machines and mechanical appliances: Other: Other: Other". The Explanatory Notes to heading 84.79 state, in pertinent part, that "This heading is restricted to machinery having individual functions, which... (c) Cannot be classified in any other particular heading of this Chapter ...". As the device under consideration is specifically provided for elsewhere in Chapter 84, classification in heading 8479, HTSUS, is precluded.

The applicable subheading for the HEADIM Hybrid System will be 8412.29.8075, HTSUS, of the United States (HTSUS), which provides for other engines and motors, and parts thereof, hydraulic power engines and motors, other, other, other. The rate of duty will be free..... "



HYDRAULIC KIT WILL BE EXCLUDED FROM CHAPTER HEADING NO.87.08

- D.1 Chapter 87 of the HSN covered "vehicles other than railway or tramway rolling stock, and parts and accessories thereof".
- D.2 Chapter Heading 87. 08 covers "Parts and accessories of the motor vehicles of headings 87.01 to 87.05". To understand the scope of goods covered under heading 8708, it is relevant to refer Explanatory Note to Heading No. 8708 of the HSN which reads as under:
"This heading covers all the motor vehicles of heading 8701 to 8705, provided the parts and accessories fulfill both the following conditions:
1) They must be identifiable as being suitable for use solely or principally with the abovementioned vehicles; and
ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note)....."
- D.3 It should however be noted that the Heading No.87.08 apply only to those parts and accessories which comply with the all the *three following conditions:*
a) They must not be excluded by Note 2 to Section XVII; &
b) They must be suitable for use solely or principally with motor vehicles covered under heading No. 8701 to 8705;&
c) They must not be more specifically included elsewhere in the nomenclature,
In the present case, the Hydraulic Kit is used on bodies/ platform, detaching sides, tipper bodies falling under Chapter Heading No.87.09 as well as for other trailers for transport of goods such as agricultural, public works etc., trailer (whether or not tipper) falling under Heading No.87.16. Thus, it is clear that the product in question i.e. Hydraulic Kit is not satisfying the condition No.(b) mentioned in Para D.3 above and hence is not suitable for use solely or principally with the motor vehicles of Heading Nos.8701 to 8705.
- D.5 Further, the applicant also submits that the Hydraulic Kit is specifically excluded by Note 2(e) to Section 17 which provides that *the expression "parts" and "parts and accessories" do not apply to machines or apparatus of heading 8401 to 8479 or parts thereof, other than radiators or articles of Section 8481 or 8482 or provide constituting integral parts for engines or mote articles of Heading 8483, whether or not they are identifiable as goods as per the goods of this section.* In the present case, the subject product is squarely/specifically covered under Hdg No.84.12 & hence condition (a) mentioned in para C.15 above stands not satisfied.
- D.6 As discussed in paras C.1 to C.12 above, it is clear that Hydraulic Kit is more specifically included in Heading No.84.12 and is more specifically covered under said heading. Thus, the Hydraulic Kit does not satisfy the condition (c) mentioned in para D.3 above.
- D.7 Therefore, it is clear that all the 3 conditions mentioned in Heading No.8708 are not satisfied in the present case and hence, the product in question i.e. Hydraulic Kit will not be covered under Heading No.8708,



COMPLETE HYDRAULIC KIT IS CLEARED FROM THE FACTORY OF THE APPLICANT IN UNASSEMBLED/DISASSEMBLED CONDITION.

- E.1 Applicants are clearing complete Hydraulic Kit from their factory in unassembled/disassembled condition. The Hydraulic Kit is a combination of various items including Hydraulic front-end cylinder, Gasket, washers, MTG Kit valves, hose, pipes, Oil tanks, cables, etc.
- E.2 To decide the classification of an item in disassembled form, rule 2(a) of the Interpretative Rules has to be invoked. The applicant submits that in terms of Rule 2(a) of the General Interpretative Rules, the classification of Hydraulic Kit cleared in unassembled condition has to be under Heading No.8412 only. The applicant relies upon Rule 2(a) of the General Interpretative Rules which reads as under:

Rule 2(a) of GIR

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

- E.3. The applicants also specifically relied upon the Circular No. 55/1995-Cus dated 30.5.1995 which dealt with assessment of goods imported in CKD/SKD (unassembled) condition. The Circular held that "incomplete, unassembled articles should be assessed as complete articles, provided that when assembled the incomplete article has the essential character of a complete article". The relevant portion of said Circular is as under:

Government of India

Ministry of Finance(Department of Revenue)

New Delhi

Subject Assessment of goods imported in CKD/SKD condition.

The Board has had the occasion to examine the question of assessment of goods imported in unassembled form, particularly in the context of certain recent imports of cars in SKD kits form with the omission of a few parts like the batteries and tyres.

The question is not a new one, having been examined earlier at various levels, including the Supreme Court in the case of Sharp Business Machines v. Collector of Customs. The said judgment was also taken note of by the Tariff Conference of 1991. A reading of rule 2(a) of the Interpretative Rules to the First Schedule to the Customs Tariff Act, 1975, along with the Explanatory Note to this rule and the illustrations cited in the HSN Explanatory Notes makes it amply clear that even incomplete, unassembled articles should be assessed as complete articles, provided that when assembled the incomplete article has the essential character of a complete article. In the context of automobiles, the HSN Notes at page 1423 cites the cases of cars without batteries and tyres, or even the engines, as examples of such articles having the essential character of complete articles.



In this background, the Board once again desires the field formations to take due note of the provisions of Rule 2(a) of the above said Interpretative Rules, while dealing with such cases.

Regarding import licence, the EXIM Policy restricts the imports of not only complete consumer articles but also these articles in SKD/CKD condition or ready to assemble sets. Accordingly, such imports require a specific import licence. However, in some cases it has been noticed that the various bodies of the Government like the Secretariat of Industrial Approvals, FIPB etc., have approved the projects for the manufacture of such articles, with permission to import SKD kits in the initial period. Though the import licence is a must in these cases also, still if by mistake the importers have not obtained the licence prior to the imports, they may be advised to obtain the same and the cases need not be adjudicated without giving this opportunity. In genuine cases, like in the cases of reputed manufacturers with a proper infrastructure for manufacturing activities in respect of the goods being imported and having industrial approvals for SKD imports; clearance of goods under ITC bonds may also be considered pending production of licences.

E.4 Thus, when any article such as Hydraulic Kit is cleared in CKD/SKD condition, its classification for purpose of assessment would be done as complete or finished article in terms of the said Rule 2(a). In view of Rule 2(a) read with CBEC Circular dated 30.5.1995, it is clear that unassembled/assembled articles will fall under Heading No:84.12.

E.5 To support the above submission, the applicant wishes to rely on following decision/order passed by United States International Trade Commission in Ruling No. R01119 dated 16th December 2004. The product which was under consideration before the Commission was classification of Hydraulic Cylinder and parts for use as a hydraulic linear actuator in a pleasure boat lift/ docking system imported from China. The relevant portion of the ruling is reproduced below for ease of reference:

NY R01119 ; December 16, 2004

CLA-2-84:RR:NC:1:102 R01119

CATEGORY: Classification ; TARIFF NO.: 8412. 21.0075, 8412. 90.9005

Mr. Douglas Mark Carter

Swanson Industries, 2608 Smithtown Road

Morgantown, WV 26508

RE: The tariff classification of hydraulic cylinders and parts from China.

Dear Mr. Carter:

In your letter dated November 8, 2004 you requested a tariff classification ruling on behalf of Swanson Industries and inquire about country of origin marking requirements for certain imported components. Descriptive information and technical drawings were submitted.

The articles in question are described as two similar hydraulic cylinders, which are identified as cylinder number 0127 and cylinder number 1503. You indicate that cylinder number 0127 will be imported as a finished product, assembled and painted, and that it is intended for use as a hydraulically operated linear actuator for light duty construction and agricultural equipment.



Cylinder number 1503 will be imported as components, which be assembled into to a complete cylinder intended for use as a hydraulic linear actuator in a pleasure boat lift/docking system.

The imported components for cylinder number 1503 include a cylinder, rod assembly, Cylinder bottom, gland, piston and pivot tube. The imported components will be assembled with domestic components in the United States and the completed cylinder will then be painted.

The applicable subheading for the completed cylinder, number 0127, will be 8412. 21.0075, Harmonized. Tariff Schedule of the United States (HTSUS), which provides for hydraulic power engines and motors, other linear acting cylinders. The rate of duty is free.

The applicable subheading for the imported components. for use in the assembly of cylinder number 1503, i.e., the cylinder, rod assembly, cylinder bottom, gland, piston and pivot tube, will be 8412. 90.9005, HTSUS, which provides for parts of linear acting hydraulic power engines and motors. The rate of duty is free.

In your request you also inquire about the required country of origin marking for the imported components that are assembled by Swanson in the United States.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 USC 1304. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. 19 CFR 134.1(d) (1) states that if an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if the manufacturer subjects the imported article to a process which results in a substantial transformation of the article. An article used in manufacture which results in an article having a name, character or use differing from that of the constituent article will be considered substantially transformed and that the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. Pursuant 19 CFR 134.35, in such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked.

Based on the information provided we find that the subject components are substantially transformed into articles with a new name, character or use, when incorporated with other components to produce finished hydraulic cylinders. Further, you state that Swanson has no intentions to market or sell the imported components separately. Accordingly, Swanson is the ultimate purchaser of the imported components.

In accordance with 19 CFR 134.35, the subject components, provided that they are used by Swanson in the assembly of completed cylinders and not sold separately in their condition as imported, are excepted from individual marking and only the outermost containers of the imported articles must be marked with country of origin.



With respect to your inquiry as to the markings for the completed cylinders that are assembled in the United States, please note that our regulations govern only the marking of imported merchandise. We suggest you contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, NW, Washington, D.C. 20508, which has jurisdiction over the marking of products that are made in the U.S.A.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth T. Brock at 646-733 3009.

F. Without prejudice to the above submission, the applicant submits that the product in question would be classified under Heading No.84.79 of the Customs Tariff Act.

F.1 Chapter Heading No.84.79 of the Customs Tariff Act covers "machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter"

F.2 The relevant entry of Notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017, for the purpose of this opinion as in Schedule - III is as under:

Sl.No.	Chapter/Heading/Sub-Heading/Tariff Item	Description of Goods
366	8479	<i>Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter [other than Passenger boarding bridges of a kind used in airports (8479 71 00) and other (8479 79 00)].</i>

F.3 Heading No.84.79 of Chapter 84 is a residuary entry which covers mechanical equipment which have individual purpose and are not covered anywhere in Chapter 84.

F.4 It is informed that the Hydraulic Kit is installed in the various places to lift and control the movement of the item to be lifted in vertical or horizontal direction. Thus, the purpose of "Hydraulic Kit" is specific and individual i.e. is specialized to the product itself. As such, "Hydraulic Kit" is classifiable under Chapter Heading No. 84.79 of the Customs. Tariff. Thus, the applicant, without prejudice to its contentions contained elsewhere in the application, alternatively submits that the Hydraulic Kit will fall under Heading No.84,79 of the Customs Tariff and attract GST @18% by virtue of Sl. No.366 of Schedule-III to Notification No.1/2017-Integrated Tax(Rate) dated 28.6.2017.

ISSUES RELATING TO ADVANCE RULING AND APPLICANTS UNDERSTANDING,

Question: -

G.1 What is the appropriate classification and rate of CGST on the supply of such "Hydraulic Kit" cleared to dealers / distributors or OEMs cleared as such, which comprises of the Hydraulic cylinder and wet kit (with or without pump).

Applicants understanding: -

- G.2 That the correct classification of 'Hydraulic Kit' cleared to dealers / distributors or OEMs cleared as such from its factory, should be under the Chapter Heading No.84.12 of the Customs Tariff Act, 1975 attracting CGST on supply of such goods @9% by virtue of Sl. No. 317 of Schedule - III to Notification No.1/2017 Central Tax (Rate) dated 30.06.2017

Additional submissions on 30.01.2019

SYNOPSIS

1. In this regard, the Applicant wishes to make the following additional submissions which are without prejudice to the submissions made in the advance ruling application.

WRITTEN SUBMISSIONS

A. "HYDRAULIC KIT" IS CLASSIFIABLE UNDER CHAPTER HEADING 84.12 OF THE CUSTOMS TARIFF ACT, 1975

- 1.1 As submitted in the Advance Ruling Appln., Chapter 84 of the Customs Tariff Act, 1975 ("CTA"), covers "Nuclear reactors, boilers, machinery & mechanical appliances; parts thereof". Within the said Chapter, Heading 84.12 of the CTA covers "Other Engines & Motors".
- 1.2 The HSN Explanatory Notes to Chapter Heading No.84.12 specifically covers "Hydraulic Systems" consisting of a hydraulic power unit (comprising essentially a hydraulic pump, an electric motor, control valves and an oil tank), hydraulic cylinders and the pipes or hoses needed to connect the cylinders to the hydraulic power unit.
- 1.3 In light of the above HSN explanatory notes, it was submitted in the Advance Ruling Application in paras C.1 to C.12 (Refer Page no. 14-19 of the Advance Ruling Application) that "Hydraulic Kit" is the same as "Hydraulic System" and thus classifiable under Chapter Heading 84.12 of the CTA.

- 1.4 To further substantiate the said position, reference is made to case laws which lay down the "Common Parlance test".

"COMMON PARLANCE TEST" FOR THE PURPOSE OF IDENTIFYING THE APPROPRIATE CLASSIFICATION

1.8.1 The Supreme Court in the case of *Commissioner of Central Excise, New Delhi vs. Connaught Plaza Restaurant (P) Ltd.*, New Delhi (286) E.L.T. 321 (S.C.) (Refer Page no.113 of "Index - 1" submitted during the admission PH) upheld the "Test of Common Parlance" laid out in the case of *Commissioner of Trade Tax, U.P. vs. Kartos International* 2011 (268) E.L.T. 289 (S.C) (Refer Page no. 129-137 of "Index - 1" submitted during the admission PH). The court held as under:

"31. Therefore, what flows from a reading of the aforementioned decisions is that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances."



1.8.2 The court was thus of the view that that to identify whether a particular article will fall within a particular tariff heading or note, the same has to be decided on the basis of the of the tangible material or evidence to determine how such an article is understood in common parlance.

1.8.3 In the case of *Commr. Of Central Excise v. Wockhardt Life Science Ltd. AIR 2012 SC 1681 (Refer Page no. 100 - 112 of Index submitted during the admission PH)* the court held as under:

"There is no fixed test for classification of a taxable commodity. This is probably the reason why the 'common parlance test or the commercial usage test' are the most common. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the bases of the tangible material or evidence to determine how such as article in understood in 'common parlance' or in commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intension, when the statute was enacted. One of the essential factors for determining whether a product falls Chapter 30 or not is whether the product in understood as a pharmaceutical product in common parlance. Further, the quantity of medicament used in a particular product will also not be a relevant factor for, normally, the extent of use of medicinal ingredients is very low because a larger use may be harmful for the human body.)

1.8.3 In light of the same, it is humbly submitted that by applying the common parlance test, the "Hydraulic Kit" which in trade circles is known to operate as a "Hydraulic systems" shall be classifiable under Chapter Heading 8412 of the CTA.

The said contention is further substantiated with the help of the following decision/order passed by United States International Trade Commission.

1.6

In Ruling No. N053556 (Refer Page no. 138 of Index submitted during the admission PH) dated April 1, 2009, the product in question was a 'spoiler drive mechanism' used to raise and lower the rear spoiler on a motor vehicle. The product comprised of two hydraulic telescoping linear cylinders, a hydraulic fluid power pump, hydraulic hose line and mounting parts, are imported together as a set. The Authority held that the same shall be classifiable as a "Hydraulic System" under Tariff Item no. 84.12.21.0045. The relevant portion from the ruling is extracted below for your reference:

"N053556 ; April 1, 2009

CLA-2-84:OT:RR:E:NC:1:102, CATEGORY: Classification ; TARIFF NO.: 8412.21.0045

Mr. Robert Resetar

Porsche Cars North America, Inc. 980

Hammond Drive (Suite 1000) Atlanta,

GA 30328

RE: The tariff classification of a spoiler drive mechanism from Germany

Dear Mr. Resetar:

In your letter dated March 3, 2009 you requested a tariff classification ruling. A photograph and technical drawing were submitted.



The article in question is described as a spoiler drive mechanism used to raise and lower the rear spoiler on a motor vehicle. You indicate that the components, which include two hydraulic telescoping linear cylinders, a hydraulic fluid power pump, hydraulic hose line and mounting parts, are imported together as a set. The spoiler is not included in the set.

In your request you suggest that components be classified as a set in accordance with General Rule of Interpretation GRI 3. However, the components, in their condition as imported, when assembled together form a hydraulic system consisting of a hydraulic power unit, i.e., the fluid pump, and two hydraulic cylinders. Heading 8412, Harmonized Tariff Schedule of the United States (HTSUS), provides for hydraulic systems. GRI 2(a) extends the scope of that provision to hydraulic systems that are entered unassembled.

The applicable subheading for the spoiler drive mechanism will be 8412.21.0045, HTSUS, which provides for other telescoping linear acting hydraulic power engines and motors. The rate of duty is free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth T. Brock at (646) 733-3009.

Sincerely,

Robert B. Swierupski

Director

National Commodity Specialist Division

- 1.7 Similarly, the United States International Trade Commission in Ruling No. NY L81368 (Refer Page no. 148 - 149 of the "Index" submitted during the admission PH) ruled on the appropriate classification of wheel loaders. The said wheel loader consisted of various pipes designed for use in the hydraulic system of a VCENA wheel loader. The applicant in the aforesaid case submitted that the pipes are provided for in heading 8431, Harmonized Tariff Schedule of the United States (HTSUS), which provides for parts of wheel loaders as parts suitable for use solely or principally with the machinery of headings 8425 to 8430. However, United States International Trade Commission held that the applicable subheading for the wheel loader pipes will be 8412.90.9015 as subject parts are more specifically provided for as parts of the hydraulic systems in which they are used. The relevant extract has been reproduced below for your kind perusal:

NY L81368 ; December 21, 2004

CLA-2-84:RR:NC:1:102 L81368; CATEGORY: Classification ; TARIFF NO.: 8412.90.9015

Ms. Shannon E. Fura

Sandler, Travis & Rosenberg, P.A., Attorneys at Law



225 W. Washington Street (Suite 1550), Chicago, IL 60606

RE: The tariff classification of parts for wheel loader hydraulic systems of unspecified origin

Dear Ms. Fura:

In your letter dated November 30, 2004 you requested a tariff classification ruling on behalf of your client Volvo Construction Equipment North America ("VCENA").

The articles in question are described as parts of wheel loaders. These parts consist of various pipes designed for use in specific applications on VCENA wheel loaders. You indicate that these parts are identified internally by VCENA as part numbers VOE11172221, VOE 11173847, VOE11015677, VOE11172470, and VOE11023340. Technical drawings of the parts were submitted.

Part Number VOE11172221 is a steel oil pipe, which is designed for the hydraulic system of a VCENA wheel loader. Specifically, the part is designed for the lift function of the hydraulic system. The pipe is cold-worked steel of seamless construction, which is bent several times and manufactured with flanges at either end to achieve the requisite configuration for its application in the hydraulic system.

Part Number VOE 11173847 is a pipe designed for the return line in the transmission system of the VCENA wheel loader. The pipe is cold-worked steel of seamless construction, which is bent and shaped for its application in the transmission system. We assume from the information made available that the "transmission system" is a hydraulic power system and that the pipe is used to connect the components of that system.

Part Number VOE11015677 is similar to Part Number VOE11172221 as it is specifically designed for the lift function of the hydraulic system of the VCENA wheel loader. The pipe is bent in five locations and manufactured with flange fittings at either end for its application in the hydraulic system, which controls the lift function of the VCENA L90 wheel loader.

Part Number VOE11172470 is a seamless steel brake pipe, which is manufactured for a VCENA wheel loader. Specifically, this part is a brake pipe, which is designed to function in the front of wheel axle systems of an L110 wheel loader. The pipe at issue is a cold worked steel of seamless construction, which contains four bends in varying angles to obtain the requisite configuration for its application in the braking system. We assume that the brake pipe is used to connect the hydraulic components of the brake system.

Part Number VOE11023340 is a seamless steel brake pipe, which is manufactured for use in the VCENA wheel loader hydraulic brake system. The pipe is cold-worked steel of seamless construction, which is bent in a u-shape configuration for its use and application in the hydraulic braking system.

In your request you submit that the pipes are provided for in heading 8431, Harmonized Tariff Schedule of the United States (HTSUS), which provides for parts of wheel loaders as parts suitable for use solely or principally with the machinery of headings 8425 to 8430. However, we



find that the subject parts are more specifically provided for as parts of the hydraulic systems in which they are used.

The applicable subheading for the wheel loader pipes, part numbers VOE11172221, VOE11173847, VOE11015677, VOE11172470, and VOE11023340, will be 8412.90.9015, HTSUS, which provides for other parts of hydraulic power engines and motors. The rate of duty will be free."

- 1.8 The United States International Trade Commission in Ruling No. NY 188204 (Refer Page no. 149 - 150 of "Index-II" submitted during the final PH) while ruling on the appropriate classification of a "Hydraulic ESD" held that since the said item consisted of a hydraulic pump, a "pressure pilot", a fluid reservoir, and other system controls, it is classifiable under 84.12.90.9080 of the HTSUS which provides for "Hydraulic Transmission System".
- 1.9 It is further submitted that Para 10, 11 and 12 of the Department's submission also state that the said "Hydraulic Kit" is appropriately classifiable under Chapter Heading 84.12 of the CTA.
- 1.10 In light of the above stated submissions, it is humbly submitted that "Hydraulic Kit" is classifiable under Chapter Heading 84.12 of the CTA.

B. HYDRAULIC KIT IS NOT CLASSIFIABLE UNDER CHAPTER HEADING 87.08 OF THE CUSTOMS TARIFF ACT, 1975

- 2.1 In the alternative, it may be argued that "Hydraulic Kit" may form a part of a motor vehicle and it may be classified under Chapter Heading No.87.08 of the CTA. In this respect, reference is made to para D.1 to D.7 of the Advance Ruling Application wherein it is submitted that "Hydraulic Kit" is specifically excluded from Chapter Heading No.87.08 of the CTA.

In furtherance to the said submission, it is submitted that as stated in para D.2 of the Advance Ruling Application, the HSN Explanatory Notes to Chapter Heading 87.08 states as under:

"This heading covers all the motor vehicles of heading 8701 to 8705, provided the parts and accessories fulfill both the following conditions:

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

- 2.3 It is thus noted that Chapter Heading No.87.08 covers only those parts and accessories which comply with the following three conditions:
- a) They must not be excluded by Note 2 to Section XVII; &
- b) They must be suitable for use solely or principally with motor vehicles covered under heading No. 8701 to 8705; &
- c) They must not be more specifically included elsewhere in the nomenclature.

- 2.4 In the present case, the Hydraulic Kit sold by the applicant is used on bodies of Chapter Heading 87.09 as well as other trailers for transport of goods of Chapter Heading 87.16 of the CTA as showcased by images submitted during the admission PH (Refer Pg. 7, 9, 14, 15, 16, 17, 18-22 of the "Images Compendium" submitted during the admission PH). Further the Hydraulic Kit is also



used on the static / mobile garbage compactors / bins classified under Chapter Heading No.84.79 of the CTA which are kept at street corners for collecting and compacting of the garbage. Thus, it is clear that the Hydraulic Kit is not restricted to goods classified under Chapter Heading No.87.01 to 87.05 only but also used in items falling in various chapters.

- 2.5 Thus the "Hydraulic Kit" is not "exclusively" used on motor vehicles covered under Chapter Heading no. 8701 to 8705 of the CTA and stands excluded from classification under Chapter Heading 87.06 of the CTA.

C. **WITHOUT PREJUDICE TO THE ABOVE SUBMISSION, IF THE PRODUCT IS NOT CLASSIFIABLE UNDER CHAPTER HEADING 84.12 OF THE CUSTOMS TARIFF ACT, 1975 THEN IT SHALL BE CLASSIFIABLE UNDER CHAPTER HEADING No.84.79 OF THE CUSTOMS TARIFF ACT, 1975**

- 3.1 In the alternative and without prejudice to the submissions made above, it is humbly submitted that even if the authority is of the view that "Hydraulic Kit" is not classifiable under Chapter Heading 84.12 of the CTA, then the only other heading that it shall be classifiable under shall be Chapter Heading 84.79 of CTA which covers "machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter" attracting GST at the rate of 18%.

- 3.2 The same has been substantiated under Para F.1 to F.5 of the Advance Ruling Application submitted to the Authority.

04. **CONTENTION AND OBJECTIONS TO ADMISSION OF THE APPLICATION- AS PER THE CONCERNED OFFICER**

As per para 2 of Annexure A of the Application, the product Hydraulic Kit is a combination of various items including Hydraulic front-end cylinder, Gasket, washers, MTG kit valves, hose; pipes, oil tanks, cables, etc. along with other parts which are used for the fixing/mounting on a motor vehicle chassis: The hydraulic kit is of a kind fixed on a motor vehicle chassis and can be used to lift the body of truck, tipper, etc. Further, the Hydraulic Kit is used in bodies/platform, detaching sides, tipper bodies falling under Chapter Heading No. 87.09 as well as for other trailers of transport of goods such as agricultural, public works etc., trailer (whether or not tipper) falling under Heading No. 87.16. All the aforesaid items of Hydraulic Kit (except Hydraulic cylinder and Valve which are manufactured by the applicant) are commonly known as "wet kit" by the applicant. The frond-end hydraulics are the best choice for front end tippers and tipping trailers.

4. As per para 3 of Annexure A of the Application, all the items of wet kit except valve, are purchased and received from various vendors and are classified under different headings of the Customs Tariff which is adopted for the specification of GST rates in the notification issued under the CGST Act. The applicant supplies the "Hydraulic Kit" which comprise of Hydraulic Cylinder along with wet kit. The hydraulic cylinder and valve are manufactured by the applicant at its factory/workshop duly registered under GST law. Bulk packs of wet kit parts are received from various vendors. The applicant is then undertaking the activity of repacking of wet kit items in sets from the bulk pack to small pack. It means all the parts of Hydraulic Kit complete in itself are dispatched in loose sets.



Thus, the Hydraulic system in unassembled form are supplied by the applicant from its premises comprising of Hydraulic Cylinder, wet kits in loose forms.

5. Under Chapter Heading 84 "Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof, Tariff Heading 8412 reads as under:

Other engines and motors (Reaction engines other than turbo jets, Hydraulic power engines and motors, Pneumatic power engines and motors, other, Steam or other vapour power, parts).

6. For further clarification on the above, Para 6 of the General Explanatory Note to Section XVI under (B) Hydraulic Power Engines and Motors under heading 84.12, interalia states as under:

Para 6 : Hydraulic systems, consisting of a hydraulic power unit (comprising essentially a hydraulic pump, an electric motor, control valves and an oil tank). Hydraulic cylinders and the pipes or hoses needed to connect the cylinders to the hydraulic power unit, the whole forming a functional unit within the meaning of Note 4 to Section XVI (see the General Explanatory Note to that Section). These systems are used eg. to operate civil engineering structures.

7. In view of the above, it appears that the Hydraulic Kit is a mechanical appliance and is appropriately classifiable under Tariff Heading 8412, attracting CGST @ 9% as per para 6 of the General Explanatory Note, which is stated above. This mechanical appliance, though fitted on the chassis of the motor vehicle cannot be treated as a parts and accessories of the motor vehicles of Headings 8701 to 8705, so as to classify the same under Heading 8708 which reads as under:

Parts and Accessories of the Motor Vehicles of Headings 8701 to 8705 (Other parts and accessories of bodies (including cabs); Other parts and accessories)

Chapter Heading 87.08: covers "Parts & accessories of the motor vehicles of headings 87.01 to 87.05". General Explanatory Note to Section XVII under Chap. Heading 87.08 Parts and accessories of the Motor Vehicles of Heading Nos. 87.01 to 870.5, interalia, states as under:

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

They must be identifiable as being suitable for use solely or principally with the above mentioned vehicles, and

- ii. *They must not be excluded by the provisions of the Notes to Section XVII.*

9. Section Notes 2 (e) and 3 of Section XVII excludes the following:

2(e) Machines or apparatus of heading 84.01 to 84.79, or parts thereof articles of heading 84.81 or 84.82 or provided they constitute integral parts of engines or motors, articles of heading 84.83;

10. Further, Section Note 3 to Section VII reads as under: 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. A part of 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.*

11. Hydraulic Kit is a mechanical appliance not used solely or principally as a part of motor vehicle. Besides, it is excluded by Note 2(c) to Section XVII which provides that the expression "parts" and "parts and accessories" do not apply to machines or apparatus of heading 8401 to 8479 or



parts thereof, other than radiators or articles of Section 8481 or 8482.or; provided constituting integral parts for engines or motor articles of Heading 8483, whether or not they are identifiable as goods as per the goods of this section.

12. In view of the above, it is opined that the appropriate classification of the impugned 'Hydraulic Kit is under Heading 8412, attracting GST @ 18%."

04. HEARING

The case was taken up for preliminary hearing on 09.01.2019 with respect to admission/ rejection of the application when Sh. Nirav Karia, Advocate, Sh. Astha Singh, Advocate and Sh. Jugal Nanda, AGM-Taxation & Casting appeared and made oral submissions for admission of their ARA application. Jurisdictional Officer Ms. Arpita S., Asstt. Commissioner of CGST & CX, Division IV, Belapur appeared and made written submissions.

The application was admitted and called for final hearing on 22.01.2019, Sh. Nirav Karia, Advocate, Sh. Astha Singh, Advocate and Sh. Jugal Nanda, AGM-Taxation & Casting appeared and argued as per submissions. Jurisdictional Officer Ms. Arpita S., Asstt. Commissioner of CGST & CX, Division IV, Belapur appeared.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and written submissions made by both, the applicant and the jurisdictional office. We find that the issue before us is of classification of the product 'Hydraulic Kits' supplied by the applicant to dealers / distributors or body builders.

The applicant has submitted that they supply 'Hydraulic Kits' which is a combination of various items including Hydraulic front end cylinder, Gasket, washers, MTG Kit valves, hose, pipes, Oil tanks, cables etc. along with other parts which are used for the fixing / mounting on a motor vehicle chassis. The hydraulic kit is of a kind fixed on a motor vehicle chassis and can be used to lift the body of truck, tipper, etc. Further, the "Hydraulic Kit" is used in bodies/platform, detaching sides, tipper bodies falling under Chapter Heading No. 8709 as well as for other trailers for transport of goods such as agricultural, public works etc., trailer (whether or not tipper) falling under Heading No. 8716. All the aforesaid items of Hydraulic. Kit (except Hydraulic cylinder and Valve which are manufactured by the applicant) are commonly known as "wet kit" by the applicant. All the items of wet kit except Valve, are purchased and received from various vendors. The Hydraulic system in unassembled form comprising of Hydraulic cylinder, wet kits in loose forms are supplied by the applicant to their clients who generally are (i) dealers / distributors / body builders and (ii) OEMs (namely Tata Motors, Eicher Motors, etc) along with body fitted on the chassis received from OEMs.

In the case of sale of Hydraulic Kits to OEMs, the applicant receives the chassis from the OEMs for fitting of body along with Hydraulic kit and then the applicant supplies the body with Hydraulic Kit as a complete product/solution to the OEMs clearing the resultant product i.e. Body + Hydraulic Kit under Chapter Heading No.87.07 of the First Schedule of the Customs Tariff Act attracting GST @28%. In some instances, the applicant also clears/supplies the body alone to the OEMs under Chapter Heading No.87.07 of the First Schedule of the Customs. Tariff Act attracting GST @28%.



The subject application is only in case where the applicant supplies the kits to dealers / distributors / body builders. In this case they have made submissions supporting their contention that the Hydraulic Kits will fall either under Chapter Heading 84.12 or 84.79.

The applicant has submitted some photographs and write up of the Hydraulic Kits being supplied by them. In page 4 of the same they have given a diagram of the different products which make up the entire Hydraulic Kit. It is seen that the kit consists of Tipping Cylinder, **Air Control Valve**, Tipping Valve, Fasteners, **Chassis Bracket**, Pump to Valve House, Pump, Oil Tank to Pump LP Hose, Ball Valve, Rubber for Tank Bottom, Oil Level Indicator, Rubber for Metal strap, return Line Filter, Air Breather, Oil Tank and Valve to return Line Filter Hose. They have described the products in page 5 of the said submission of photographs and write ups.

From the submissions made by the applicant we find that, in the case of sale of Hydraulic Kits to OEMs, we agree with their submissions that their product falls under Chapter Heading 8412 of the Customs Tariff under the description "Other Engines and Motors" in view of the Explanatory Note to heading 8412 and Note 4 to Section XVI which are mentioned below.

"(B) HYDRAULIC POWER ENGINES AND MOTORS

This group includes:

(1)

(2)

(3)

(4) Hydraulic cylinders.....

(5)

*(6) **Hydraulic systems** consisting of a hydraulic power unit (comprising essentially a hydraulic pump, an electric motor, control valves and an oil tank), hydraulic cylinders and the pipes or hoses needed to connect the cylinders to the hydraulic power unit, the whole forming a **functional unit** within the meaning of Note 4 to Section XVI (see the General Explanatory Note to that Section). These systems are used, e.g., to operate civil engineering structures.*

For sake of reference, Note 4 to Section XVI of HSN reads as under:

" 4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

A doubt may arise that since the 'hydraulic kit' being fitted to a motor vehicle could merit classification as part of motor vehicle. However this doubt gets cleared by exclusions provided in the Explanatory notes to Section XVII and heading 8708, 8714 and 8716 which relate to the classification of parts of different kinds of motor vehicles. The Explanatory Notes to headings 8708, 8714 and 8716 are stated below:

"To be classified as parts and accessories they fulfill both the following conditions:



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

From the above explanations, it should be noted that the Heading 8708, 8714 and 8716 apply only to those parts and accessories which comply with the all the *three following conditions*:

- a) They must not be excluded by Note 2 to Section XVII;
- b) They must be suitable for use solely or principally with motor vehicles; and
- c) They must not be more specifically included else where in the nomenclature.

In the present case, the Hydraulic Kit is used on bodies/ platform, detaching sides, tipper bodies falling under Chapter Heading No.8709 as well as for other trailers for transport of goods such as agricultural, public works etc., trailer (whether or not tipper) falling under Heading No.8716. Thus, it is clear that the product in question i.e. Hydraulic Kit is not satisfying the condition No.(b) mentioned in above. In other words, Hydraulic Kit is not suitable for use solely or principally with the motor vehicles.

Further, we are in agreement with the applicant's submission that the Hydraulic Kit is specifically excluded by Note 2(e) to Section 17 which provides that *the expression "parts" and "parts and accessories" do not apply to machines or apparatus of heading 8401 to 8479 or parts thereof, other than radiators or articles of Section 8481 or 8482 or provide constituting integral parts for engines or articles of Heading 8483, whether or not they are identifiable as goods as per the goods of this section.* In the present case, the product in question 'hydraulic cylinders/hydraulic kits' is squarely/specifically covered under Heading No.84.12 and hence the condition (a) mentioned above stands not satisfied in the present case.

As discussed above, it is clear that Hydraulic Kit is more specifically included in Heading No.84.12 and is more specifically covered under said heading. Thus, the Hydraulic Kit does not satisfy the condition mentioned above.

Therefore, we clearly find that all the 3 conditions mentioned in Heading No.8708, 8714 and 8716 are not satisfied in the present case and hence, the product in question i.e. Hydraulic Kit will not be covered under Headings No. 8708, 8714 and 8716.

In view of the foregoing the hydraulic kits are appropriately classifiable under heading 8412 by application of HSN Explanatory Notes to headings 8412, 8708, 8714 and 8716 and Section Note 4 to Section XVI and Exclusion Note 2 to Section XVII.

06. In view of the extensive deliberations as held hereinabove, we pass the 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- 96/2018-19/B-

20

Mumbai, dt. 18/02/2019

Question :- What is the appropriate classification and rate of GST on the supply of such "Hydraulic Kit" cleared to dealers / distributors or OEMs cleared as such, which comprises of the Hydraulic cylinder and wet kit (with or without pump).

Answer :- Hydraulic Kits are appropriately classifiable as 'other engines and motors' under heading 8412 and the rate of GST would as applicable to that heading in the Schedule at the relevant time.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(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 Chief 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.