

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

(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  
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

|                                                                                      |                                                                                           |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| GSTIN Number, if any/ User-id                                                        | 27AABCJ6665J1Z6                                                                           |
| Legal Name of Applicant                                                              | JOTUN INDIA PRIVATE LIMITED                                                               |
| Registered Address/ Address provided while obtaining user id                         | D 280 RANJANGAON INDUSTRIAL ESTATE, PUNE NAGAR ROAD, RANJANGAON, PUNE, MAHARASHTRA 412220 |
| Details of application                                                               | GST-ARA, Application No. 26 Dated 20.02.2018                                              |
| Concerned officer                                                                    | COMMISSIONER, SGST, MUMBAI                                                                |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought |                                                                                           |
| A Category                                                                           | Manufacturing                                                                             |
| B Description (in brief)                                                             | As reproduced in para 02 of the Proceedings below.                                        |
| Issue/s on which advance ruling required                                             | (vii)classification of goods and/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 JOTUN INDIA PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following issues.

1. *Whether marine paints supplied by the applicant, would be considered to be part of ship and accordingly be then classified under Sl no 252 of Schedule I of Notification No 1/2017 of Central Tax (Rates) dated June 28, 2017?*

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 submission (Brief facts of the case), as reproduced verbatim, could be seen thus -

- ▶ *"Jotun Group is a leading supplier of paints and powder coatings. The Applicant, Jotun India Private Limited is a supplier, exporter and manufacturer of paints and powder coatings. The Applicant supplies paints and coatings that are specially designed for unique conditions.*
- ▶ *Broadly, the paints supplied by the applicant can be categorized in Solvent based paints and Water based paints. One of the major supplies by Applicant are marine paints. Composition of such marine paint being manufactured by Applicant makes it suitable for ships during building stage and even during maintenance. Details of such products along with its description are enclosed as Annexure 4*





- ▶ In the erstwhile Indirect Tax regime, Applicant has been discharging applicable Indirect taxes on supply of such paints and availing exemptions when granted under respective legislation. Since July 2017, new Indirect Tax regime – Goods and Service Tax (GST) has been introduced in India by way of introduction of following legislation:
  - Central Goods and Service Tax Act, 2017 (CGST)
  - State wise Goods and Service Tax Legislation (SGST)
  - Integrated Goods and Service Tax Act, 2017 (IGST)
- ▶ With the introduction of GST, Applicant has analysed classification and applicability of CGST, SGST and IGST in light of new legislation. For classification, it has been clarified in the rate notification of respective legislation that rule for interpretation of the First Schedule to the Customs Tariff Act, 1975 including Section notes and Chapter notes and general explanatory notes of the said First Schedule would be applicable for the purpose of classification under GST.
- ▶ Accordingly, Applicant has sought to classify paints being supplied under HSN 3208 and 3209 on the basis of nature of the product and after considering relevant chapter notes and section notes. Notification No 1/2017 – Integrated Tax (Rate) dated June 28, 2017 prescribes applicable rate of IGST (hereinafter referred to as IGST Rate Notification). Paint supplied by Applicant are classifiable under Chapter Heading 3208 and 3209 are covered under Schedule IV of the said Notification and accordingly liable to 28% IGST.
- ▶ However, under same IGST Rate Notification, Schedule I liable to 5% IGST covers parts (classifiable under any chapter) of goods falling under heading 8907 i.e. part of ships. Since, marine paints supplied by Applicant are suitable for use by ships, Applicant wishes to understand whether the said marine paints could get classifiable under Schedule I.

Accordingly, Applicant is making detailed submission herein below to demonstrate eligibility of marine paint to be classified under Schedule I and requests a ruling be pronounced in this regard.

**A. Marine paints to qualify as part of Ship in order to get covered under Schedule I of IGST Rate Notification liable to 5%**

- A1. In order to deliberate on the question being sought, it is pertinent to analyse the classification of marine paints supplied by Applicant in detail. Technical features of marine paints are relevant for such analysis.
- A2. Accordingly, Applicant submits that marine paint is a specific type of paints suitable for use principally for ships during building stage and even during maintenance. The sailing ship needs protection from corrosive environment in which they operate. Such marine corrosion has a significant impact on sea carriers and their longevity. Therefore, effective corrosion control strategies are chosen considering appropriate selection of coating for a marine environment. Marine coatings have special functionality to protect marine vessels and other carriers above and below the waterline. Accordingly, marine paints supplied by Applicant has following technical features:
- Protects the body of ship from highly corrosive environment
  - Blocks barnacles and other marine organisms from adhering to the hulls of ships
  - Lessens fuel consumption as it controls damage to the ship.
  - Prevents impact on water eco-systems by reducing emission of Green House Gases.
  - Transportation of marine organisms to other areas

▶ Vide notification no 1/2017 of Integrated Tax (Rate) dated June 28, 2017, the Government of India has notified IGST rates for goods. The said notification has classified goods into 4 digit HSN Codes. Further under the said notification, it has been specified that section notes, chapter notes and General explanatory notes mentioned under Customs Tariff Act, 1975 shall apply to the goods classified therein under GST.

▶ Since the notification refers to the classification of goods under The Customs Tariff Act, 1975, we have to refer to classification adopted therein.

**CLASSIFICATION UNDER CUSTOMS TARIFF ACT**

▶ As regards classification of the marine paints under Customs Tariff Act, it would be pertinent to refer to extract of description of goods falling under Customs Heading 3208:

Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers or chemically modified natural polymers dispersed or dissolved in a non-aqueous medium; solutions as defined in Note 4 to this Chapter

▶ Thus based on the technical specification of the product, marine paints appear to be classifiable under heading 3208. Since, marine paint is suitable for use for ships, it could also get classified as part of ship. For the purpose of this analysis, Applicant referred to chapter 89 for 'Ships, boats and floating structure'. However, Applicant wishes to draw your attention to the fact that there is no specific entry in Chapter 89 for 'parts' of ships covered therein. In the absence of any entry for part of ship, Applicant had adopted classification of marine paint under chapter heading 3208.

▶ Applicant has also been adopting similar classification under Central Excise Law. The excise duty liability has accordingly been discharged by Applicant in erstwhile Indirect Tax regime. Sample copy of invoice which was issued under erstwhile regime, has been enclosed as annexure 5 for your ready reference.

**CLASSIFICATION UNDER GST**

A3. Basis the IGST Rate notification, goods are divided into different schedules of tax rates and the same is summarized as follows:

| Sr No | Goods falling under Schedule | Rate of tax |
|-------|------------------------------|-------------|
| 1     | Schedule I                   | 5%          |
| 2     | Schedule II                  | 12%         |
| 3     | Schedule III                 | 18%         |
| 4     | Schedule IV                  | 28%         |
| 5     | Schedule V                   | 3%          |
| 6     | Schedule VI                  | 0.25%       |





- A4. As IGST Rate Notification directs to adopt classification in terms of Customs Tariff Act, 1975, Applicant has adopted classification of paints under heading 3208 to determine applicable rate. Entry number 20 of Schedule IV of IGST Rate Notification reads as under:

| Sr. No. | Chapter/ Sub-heading/ item | Heading/ Tariff | Description of Goods                                                                                                                                                                                                      |
|---------|----------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20.     | 3208                       |                 | Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium; solutions as defined in Note 4 to this Chapter |

However, marine paints are suitable for principally use of ships and hence, it is also pertinent to analyse Entry 252 to Schedule I of Notification No 1/2017 of Integrated Tax (Rates) dated June 28, 2017 liable to 5% IGST:

| Sl No | Chapter / Heading / Sub-heading / Tariff item | Description of Goods                                             |
|-------|-----------------------------------------------|------------------------------------------------------------------|
| 252.  | Any chapter                                   | Parts of goods of heading 8901, 8902, 8904, 8905, 8906 and 8907' |

Description of goods falling under above referred headings, are mentioned below

| Sr No | Chapter / Heading / Sub-heading / Tariff item | Description of Goods                                                                                                                                                                                             |
|-------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 246   | 8901                                          | Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods                                                                                        |
| 247   | 8902                                          | Fishing vessels; factory ships and other vessels for processing or preserving fishery products                                                                                                                   |
| 248   | 8904                                          | Tugs and pusher craft                                                                                                                                                                                            |
| 249   | 8905                                          | Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms |
| 250   | 8906                                          | Other vessels, including warships and lifeboats other than rowing boats                                                                                                                                          |
| 251   | 8907                                          | Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)                                                                                                            |

On conjoint reading of above entries, it could be construed that the aforementioned goods along with its parts (covered under entry 252) would be taxed at the rate of 5%.

- A5. Applicant wishes to draw your kind attention to the fact that Entry 252 reproduced above is applicable to goods falling under any chapter but which are parts of goods falling under headings 8901, 8902, 8904, 8905, 8906 and 8907. Accordingly, a product which is classifiable under any chapter, if could be construed as part of these prescribed goods then the same would fall within the purview of entry 252 and hence would be liable to 5% IGST.
- A6. Similar view was adopted by the Hon'ble Court in the case of **Mahindra & Mahindra Ltd. Vs Commissioner Of C. Ex., Nagpur [2007 (210) E.L.T. 579 (Tri. - Mumbai)]**, wherein it was held that we also note that the recent Circular No. 839/16/06-CX dated 16-11-2006 issued by the Board has clarified that inasmuch as Notification No. 6/2002 exempts parts, falling under any Chapter used within factory of production for manufacture of goods of Heading 8701, the benefit cannot be denied to the product which may not fall under said chapter. The goods falling under any Chapter, as long as they are parts of goods of Heading 87.01 will be covered by the said Notification.
- A7. Thus bearing in mind, entry 252 of Schedule I of GST classification notification (1/2017 – Integrated Tax dated June 28, 2017) and aforesaid case law, one may interpret that goods falling under any chapter, as far as they constitute to be part of vessel / ship, would be subjected to tax at 5%.
- A8. Accordingly, for marine paints to be classified under this entry, it should be construed as 'part of the ship' covered under entry 252.
- B. Marine paint is mandatorily to be applied on all ships under Merchant Shipping Act, 1958 and hence the same should be considered as part of Ship**
- B1. As highlighted above, there is no separate tariff item as 'parts of ship' under chapter 89 of First Schedule to Customs Tariff Act, 1975. Thus, meaning of the term 'parts of goods', could then be adopted from its meaning in common parlance. Consequently, we have referred to the definition of the term 'Part', legal jurisprudence on the term 'Parts / Components' under erstwhile Indirect Tax regime, the Merchant Shipping Act, 1958 and UK VAT Guidelines.
- B2. **Meaning of 'PART'**  
 The term 'Part' as defined under The Black's Law Dictionary  
 'an integral portion, something essentially belonging to a larger whole, that which together with another or others makes up a whole.'  
 Definition of 'Part' from Thesaurus  
 'an essential or integral attribute or quality'  
 The meaning of the term 'part' in common parlance is that component part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete'.
- B3. From the above, it could be understood that anything which is an integral element and is also essential to an object, could be considered as part of that article. Anything required to make the goods a finished item can be described as component





parts. Applicant hereby submits relevant provisions of Merchant Shipping Act, 1958 ('MS Act' for brevity) which would help in demonstrating that marine paint is integral and essential component of ship.

▶ Section 356P(1) of MS Act: Application of chapter XIB-Control Of Harnful Anti-Fouling Systems On Ships

Save as otherwise provided in this Part, this Part shall apply to—

- a. every Indian ship, wherever it is;
- b. ships not entitled to fly the flag of India, but which operate under the authority of India; and
- c. ships that enter a port, shipyard, or offshore terminal or place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) or any other law for the time being in force.

▶ Section 356Q(a) of MS Act– Definition of 'anti-fouling system'

"anti-fouling system" means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms

▶ Section 356R of MS Act – Control of anti-fouling system

1. Every Indian ship and other ships which are not entitled to fly Indian flag but operating under the authority of India, shall comply with the requirements set forth in this Part, including the applicable standards and requirements as prescribed from time to time as well as effective measures to ensure that such ships comply with the requirements, as may be prescribed from time to time.
2. All other vessels to which this Part applies shall comply with requirements of the anti-fouling systems as prescribed from time to time.

▶ Section 356X of MS Act - Information regarding contravention of the provisions of Convention

1. If, on receipt of a report from a surveyor or other person authorised to inspect a ship, the Director-General is satisfied that any provision of this Part has been contravened by such ship within the coastal waters, the Director-General or any officer authorised by him in this behalf, may—
  - a. detain the ship until the causes of such contravention are removed to the satisfaction of the Director-General or the officer authorised by him; and
  - b. levy penalty on such ship as specified in section 436
- B4. From conjoint reading of the above provisions, it is evident that every ship has to adhere to the anti-fouling provisions as prescribed under MS Act. Basis the same, a layer of coating or paint, has to be applied on the hull of the ship to control or prevent attachment of unwanted organisms. Further in the Concise Oxford English Dictionary, the term 'hull' is defined as follows –  
The main body of a ship or other vessel, including the bottom, sides, and deck but not the masts, superstructure, rigging, engines, and other fittings
- B5. Furthermore, if any Indian ship fails to comply with the provisions of this chapter, the Director – General or any officer authorised by him in his behalf can detain the ship until the causes of such contravention are removed or levy a penalty on such ship. Consequently, it could be construed that ships must have a layer of coating or paint on its hull, thereby making it very essential for a ship to operate and thus be marketable.
- B6. Considering the fact that all ships are mandatorily required to apply paint makes it evident that paint is essential element for any ship to operate. Accordingly, such marine paint has to be considered as part of ship and should get covered under 5% IGST Rate schedule.

- C. A product which is essential to complete the product and make it marketable then the same would be construed as part
- C1. In order to understand coverage of term 'parts', it is relevant to refer to legal jurisprudence available in this regard wherein meaning of 'parts' has been deliberated.
- C2. The Hon'ble Supreme Court, in case of Star Paper Mills Ltd. Vs. Collector of Central Excise, Meerut [1990] 76 STC 312 (SC), has ruled that if it is found that the use of paper core is necessary in "any process incidental or ancillary to the completion of " paper as marketable goods and it would consequently be commercially inexpedient to sell paper without the use of paper core", it would certainly be a constituent part of paper and would thus fall within the purview of the term "component parts" used in the notification.
- C3. The Hon'ble Gujarat High Court, in case of Surgichem Vs. State of Gujarat [1992] 87 STC 40 (Guj) observed that it is clear that anything that goes into the product till the product becomes marketable, such thing becomes part and parcel of that product or article. Applying this test in the instant case, the plastic spools over which the adhesive plaster tapes are wrapped have to be considered as one of the component parts of the goods marketed, i.e., adhesive plaster tapes. It is not disputed that adhesive plaster tapes can be marketed only after wrapping them on plastic spools. Therefore, plastic spools are to be held component part of the adhesive plaster tapes, that is, the goods marketed. Hence plastic spools cease to be packing material.
- C4. The Apex Court, in case of Collector of Central Excise, Calcutta-II Vs. Eastend Paper Industries Ltd. [1990] 77 STC 203 (SC) held that to be able to be marketed or to be marketable, it appears to us, in the light of facts in the appeals, that it was an essential requirement to be goods, to be wrapped in paper. Anything required to make the goods marketable, must form part of the manufacture and any raw material or any materials used for the same would be component part for the end product.
- C5. From the above, it could be summarized that paper core, plastic spools and wrapping paper would be considered to be parts of paper rolls, adhesive plaster tapes and paper reams/reels respectively since without the former goods, the later goods couldn't be marketed or are commercially inexpedient. Thus an analogy could be drawn that anything which is required for making goods marketed or to be marketable, would be form component part of that end products.





- C6. Basis the provisions of The Merchant Shipping Act, ships are bound to adhere to the 'anti-fouling system' norms. Accordingly, ship would not be marketable unless the same has complied with anti-fouling system i.e. application of paints / coating to avoid growth of unwanted organisms.
- C7. Thus applying the ratio derived from aforementioned legal jurisprudence in the current situation, a view can be taken that since the ship is not commercially expedient without following anti-fouling system, paints would have to be considered as 'part of that ship'

C8. Thus, it could be contended that marine paints so supplied for vessels, would be considered as 'Parts of vessel' and thus would fall under the ambit of entry 252 of Schedule I of the classification wherein tax would be levied at the rate of 5%.

**D. If paint is considered as part of aeroplane or helicopter then the same should be considered as part of ship**

D1. Under erstwhile Central Excise regime, similar benefit was introduced for the parts (irrespective of their classification) of aeroplanes or helicopters required for manufacture or servicing of aeroplanes or helicopter vide notification 6/2002 – Central Excise dated March 1, 2002. while deciding on whether wires and cables manufactured for aircrafts / helicopters would be considered as parts of aircraft, the Hon'ble Court in case of **Sanghvi Aerospace (P) Ltd Vs Commissioner of Central Excise Ahmedabad [2009 (247) E.L.T. 578 (Tri. - Ahmd.)]** stated that following:

*"he has also submitted a list of goods in respect of which exemption has been allowed to manufacturers supplying the goods to National Aerospace Laboratories, HAL etc. as detailed below:*

- 9.1 Aircraft cables (manufacturer - Radiant Cables Pvt. Ltd.)  
 9.2 Paints (manufacturer - South Field Paints & Chemicals Pvt. Ltd.)  
 9.3 Epoxi Yellow Primer (manufacturer - South Field Paints & Chemicals Pvt.Ltd.)  
 9.4 Thinner for yellow primer (manufacturer - South Field Paints & Chemicals Pvt. Ltd.)  
 9.5 Rivets (manufacturer - M/s. Ankit Forgings)  
 9.6 Epoxi black paint (manufacturer - South Field Paints & Chemicals Pvt. Ltd.)  
 9.7 Industrial Laminates Fabric (manufacturer - Lantuf Plastics Ltd.)"

D2. From the facts of above case, it could be understood that paints when supplied to manufacturers of aircrafts / helicopter, are treated as parts of aircraft and thus would be eligible for claiming benefit of nil rated duty under notification 6/2002 – Central Excise. Applying similar analogy, paint when supplied for manufacture of ship should be considered as part of ship.

**E. Under erstwhile Indirect Tax regime, Central Excise exemptions were granted to marine paints supplied to ship. Hence, intention of legislators appears to provide indirect tax concession to this product.**

E1. In order to evaluate whether marine paint would be eligible for lower rate of GST, it is also relevant to understand history of indirect tax rate and exemptions, if any, under erstwhile Indirect Tax regime.

E2. Under Central Excise Act, 1944, Notification No. 44/2015 –CE dated 24 November 2015 has issued prescribing effective rate of central excise for specified goods (amending Notification 12/2012 dated 17 March 2002). Said notification inserted following entry for prescribing effective rate of excise for goods mentioned therein.

| Sr. No. | Chapter or heading or sub-heading or tariff item of the First Schedule | Description of excisable goods | Rate | Condition No. |
|---------|------------------------------------------------------------------------|--------------------------------|------|---------------|
| 306C    | Any chapter                                                            | Raw materials and parts        | NIL  | 2 and 3*      |

\* Condition 2 - Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed.

Condition 3 - The exemption shall be allowed if it has been proved to the satisfaction of an officer not below the rank of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction that such goods are cleared for the intended use

E3. Vide above mentioned entry, rate of excise duty for raw material and parts, for use in the manufacture of different types of vessels has been prescribed as nil. Accordingly, goods falling under any chapter meant for use in the manufacture of vessel was made liable to nil rate of duty

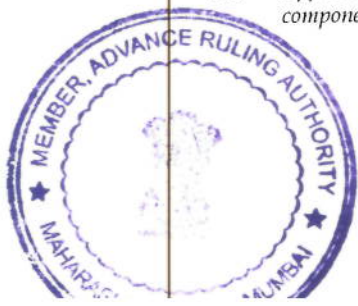
E4. Thus, it can be inferred that intention of the legislators is to grant benefits to all the products meant for use in manufacture of vessels. Keeping this in view, it can be contended that legislators would wish to continue extending such benefits to all products used in manufacture of vessel. Hence, paint which is meant for use in manufacture of vessel should fall within the purview of entry 252 of Schedule I of IGST rate schedule and would attract 5% IGST.

E5. The goods falling under chapter 8901 to 8907 are covered under schedule I of IGST Rate notification vide entry 246 to 251. Whereas separate entry 252 has been inserted for parts of these goods. Thus, the intention appears to be to avoid inverted duty rate structure for vessel manufacturers. They should be able to procure all the parts at 5% IGST and then would also be charging same rate on their outward supply of different types of vessels. Hence, entry 252 of IGST Rate notification should be read to cover all raw materials and parts which are meant for use in manufacture of different types of vessels.

**F. VAT legislation of United Kingdom also considers paint as part of ship**

F1. Value Added Tax (VAT) was introduced in the UK on April 1, 1973. Although Value Added Tax Act 1994 (VATA) provides the main framework of the tax, the detailed interpretation of the same are found in statutory instruments either in the form of Orders made by Treasury or Regulations made by Her Majesty's Revenue and Customs (HMRC). HMRC has published several Notices and Leaflets affecting law. Though these Notices are not part of the law but they explain how HMRC interprets the law.

F2. Applicant would also like to draw your attention to the VAT provisions laid in United Kingdom as regards parts or components of ship. Following is the extract of such germane provisions:





a. **Section 30(2) of Value Added Tax Act 1994**

A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description for the time being specified in Schedule 8 or the supply is of a description for the time being so specified.

b. **Group 8 of Schedule 8 of Value Added Tax Act 1994**

The supply of parts and equipment, of a kind ordinarily installed or incorporated in, and to be installed, or incorporated in, –

a. the propulsion, navigation or communication systems; or

b. the general structure,

of a qualifying ship or, as the case may be, aircraft

c. **VAT Notice 744C ships, aircraft and associated services published on July 20, 2011**

7.5. Which parts and equipment are excluded from zero rating?

Any raw or bulk materials, partly processed parts or equipment and also non-specialist goods or appliances are excluded from zero rating. The list below gives examples of other parts and equipment which are not zero-rated. It is not exhaustive.

- Binoculars
- catering equipment (domestic)
- crockery
- cutlery
- diving equipment
- furniture (unfixed)
- laundering equipment (domestic)
- missiles, shells etc
- ship's stores
- soft furnishings
- phones
- televisions
- tools
- underwater cameras
- videotapes/disks, electronic games and similar entertainment equipment
- crockery and cutlery
- raw materials such as: fibre board, plastics, and specialist metals
- bulk materials such as: adhesives, chemicals, fabrics, inhibitors, metals, oils, paints, solvents and thinners etc
  - aircraft ground equipment
  - flight simulators or their parts, and
  - tooling and equipment used for manufacturing parts or equipment

F3. Now as per section 30(2) of VATA, any supply of goods or services would be zero-rated if the supply of goods are covered under Schedule 8 of the Act or supply of goods to the person to whom he supplies services is covered under the description provided. Further Schedule 8 of the Act includes supply of parts and equipment, of a kind ordinarily installed or incorporated in, and to be installed, or incorporated in the propulsion, navigation, communication systems or the general structure of a qualifying ship.

F4. Thus as per section 30(2) read along with Schedule 8 of VATA, supply of parts and equipment of installed or incorporated in the propulsion, navigation or communication systems or the general structure of a qualifying ship would be considered as zero-rated supplies and accordingly no tax would be liable thereon. However in order to avail the benefit of above provisions, it would be pertinent to identify what would be considered to be parts and equipment of a ship. Therefore under VAT Notice 744C, the UK government has prescribed a non-exhaustive list of parts and equipments which are not zero-rated. The said non-exhaustive list of parts and equipments includes paints, solvent and thinners.

F5. Thus from above it is clear that paints, solvent and thinners have been considered to be parts and equipments of a ship since it is reported under a non-exhaustive list of parts and equipments.

**CONCLUSION**

1. In our view, marine paints so supplied by applicant, would be classified under Sr No 252 of Schedule I of IGST Act, 2017 - Parts of goods of heading 8901, 8902, 8904, 8905, 8906 and 8907' on following grounds -
2. Since entry at Sr no 252 has been newly introduced under GST Tax Schedules, inference could be drawn from Customs Tariff Act. Hence the meaning of the term 'parts of goods of heading 8901, 8902, 8904, 8905, 8906 and 8907' has to be adopted in general parlance.
3. Thus we have referred to definitions of 'Part' in various Dictionaries. Accordingly, part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete.
4. Further as per MS Act, anti-fouling system has to be mandatorily followed by every ship since non-adherence of the same would be liable to severe penal actions. Therefore paints form an essential part of the ship without which ship couldn't be marketed.
5. Furthermore applying the analogy drawn from the germane legal jurisprudence it is said that anything which is required for making goods marketed or to be marketable, would be form component part of that end products and hence paints would form part of the ship.
6. In addition to the above, we have also scrutinized the concerned issue under UK VAT, wherein paints is mentioned under the list of 'Parts and equipments of ship' which are excluded from zero rated goods.

However in absence of any such specific provisions in India, it could be said that paints are 'parts of the ship' and therefore would fall under Sr No 252 of Schedule I of IGST Act 2017 and hence be taxed at 5%".



On the basis of the above, the questions as reproduced above have been raised.  
03. **CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-  
"M/s. Jotun India Pvt. Ltd., GSTIN:- 27AABCJ6665J1Z6, who is assigned to this office under case allocation, has applied for advance ruling under section 97 of CGST/MGST Act, 2017. The dealer has mentioned its nature of activity as factory/ manufacturing & in brief it says "We supply paints and coatings that are specially designed for unique conditions"  
The dealer has requested in Annexure 1 that a ruling be pronounced under section 97(2) a of the CGST Act 2017 on the following questions:-

a) Whether marine paints supplied by the applicant, would be considered to be part of ship and accordingly be then classified under SI no.252 of Schedule I of Notification No. 1/2017 of Central Tax (Rates) dated June 28,2017?

The dealer is dealing in marine paint. In GST there is separate entry of paints but the dealer is requesting to classify these paints as part of ship. When there is a specific entry for any commodity the said commodity cannot be classified in another way. Therefore the dealer's request cannot be accepted."

04. **HEARING**

The case was taken up for preliminary hearing on dt. 20.03.2018, with respect to admission or rejection of the application when Sh. Nitin S Shah, Advocate, duly authorized, appeared and made oral submissions for admission of application as per details in their written submissions.

During hearing, the jurisdictional officer, Sh. Rajesh Gaikwad, Dy.Commr., State GST, stated that they have made written submissions objecting to admission of their application stating that when there is a specific entry for any commodity the said commodity cannot be classified differently.

The application was admitted and during the Final Hearing on 11.04.2018, Sh. Nitin S Shah, Advocate, duly authorized, appeared and made oral and written submissions along with case laws. Ms Shweta Patni, Chartered Accountant was also present.

The jurisdictional officer, Sh. Rajesh Gaikwad, Dy. Commr., State GST, also appeared and orally reiterated that the goods were having a specific entry and should be classified accordingly.

05. **OBSERVATIONS**

We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department.

The applicant has submitted that they are a manufacturer, supplier and exporter of paints and according to their submissions, they supply paints and coatings that are designed for unique conditions. In the subject case they have made submissions with respect to paints supplied to the shipping industry. They have stated that the paints supplied by them in the subject case are classifiable under Chapter Heading 3208 and 3209 which are covered under Schedule IV of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 and are accordingly liable to 28% IGST.

However further to their claim that their goods 'Marine paints' are classifiable under CTH 3208 and 3209 and individually as per tariff are liable to IGST @ 28%, but the applicant is claiming that in the present facts of the case wherein they are supplying their goods "marine paints" for use on ships and therefore their goods would get covered under Sr. No.252 of Schedule -I of Notification 1/2017 of Integrated Tax (Rates) dated 28.06.2017 and would be liable to IGST @ 5% as they are parts of goods of Headings 8901, 8902, 8904, 8905, 8906 and 8907.

Further we find that the jurisdictional officer, in his submissions has stated that under CTH 3208 and 3209 of the GST Tariff, there are specific entries for paints and varnishes and therefore the applicant's contention that marine paints be treated as parts of ship cannot be accepted.





From the above contentions of the applicant and the department, it is apparent that there is no dispute with regard to classification of the subject goods under CTH 3208 and 3209. The difference of opinion is only with respect to the claim of the applicant that the goods are parts of ship and therefore would be eligible for concessional rate of IGST @ 5% as given under Sr. No. 252 of Schedule -I of Notification No. 1/2017 of Integrated Tax (Rates), as discussed above.

To arrive at the correct position we need to examine all aspects of the case. We find that the Tariff Entry in respect of CTH 3208 and 3209 in GST Tariff are as under.

CTH 3208:-- *Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium; solutions as defined in Note 4 to this Chapter.*

CTH 3209:-- *Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium.*

We find that in normal parlance, 'paint' means any liquid or composition that, after application to a substrate in a thin layer, converts to a solid film. It is most commonly used to protect, color, or provide texture to objects. There are various types of paints like enamel paint, emulsion pain, lacquer paint, varnish paint (without pigment), etc. One of the type of paint is 'Anti-fouling' paints. Anti-fouling paints are generally paints that are applied to hulls of ships. They prevent barnacles and other marine organisms from adhering to the hulls of ships. Thus it is the contention of the applicant that such types of paints sold by them should be treated as parts of a ship.

First of all we refer to the exact body of the Sr.No. 252 of Notification No. 1/2017 of Integrated tax, the benefit of which the applicant is claiming.

| SI No | Chapter / Heading / Sub-heading / Tariff item | Description of Goods                                             |
|-------|-----------------------------------------------|------------------------------------------------------------------|
| 252.  | Any chapter                                   | Parts of goods of heading 8901, 8902, 8904, 8905, 8906 and 8907' |

We find that as per above details, the benefit of concessional rate of IGST @ 5% is available to parts of goods of headings 8901, 8902, 8904, 8905, 8906 and 8907.

Thus it is very apparent that parts of goods of Heading 8901, 8902, 8904, 8905, 8906 and 8907 are eligible for concessional rate of IGST @ 5%.

In view of the above, we first of all require to ascertain as to what are the goods that are covered under the above Tariff Headings. We find that these Headings cover the goods as under:-

| Sr No | Chapter / Heading / Sub-heading / Tariff item | Description of Goods |
|-------|-----------------------------------------------|----------------------|
|       |                                               |                      |





|     |      |                                                                                                                                                                                                                         |
|-----|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 246 | 8901 | <i>Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods</i>                                                                                        |
| 247 | 8902 | <i>Fishing vessels; factory ships and other vessels for processing or preserving fishery products</i>                                                                                                                   |
| 248 | 8904 | <i>Tugs and pusher craft</i>                                                                                                                                                                                            |
| 249 | 8905 | <i>Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms</i> |
| 250 | 8906 | <i>Other vessels, including warships and lifeboats other than rowing boats</i>                                                                                                                                          |
| 251 | 8907 | <i>Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)</i>                                                                                                            |

Now when we know as to what are the goods covered under above CTH, we are required to examine and see if marine paints are parts of goods of the above referred CTHs.

First of all we need to examine as to what are "Parts". We find that the word "Part/Parts" has not been defined in GST nor was it defined in Central Excise earlier. In view of this first we are required to understand the general meaning of the word 'Part/Parts' which is of relevance to us in the present case.

-----We find that as per Cambridge English Dictionary:

Part as a noun – *a separate piece of something or a piece that combines with other pieces to form the whole of something*

-----*One of the pieces that together form a machine or some type of equipment.*

It has other meanings also in other context which are not of relevance in present context like:

----*a single broadcast of a series of television or radio programme or Division of a story.*

----*one of two or more equal or almost equal measures of something etc.*

-----Further, we also find the definition of 'Spare Part' as per Wikipedia

*A spare part, spare, service part, repair part or replacement part is an interchangeable part that is kept in an inventory and used for the repair or replacement of failed units. Spare parts are an important feature of Logistics Engineering and Supply Chain Management.*

Thus in view of the above meanings/definitions of part/parts/Spare Part, we will be required to examine as to what are the parts of Goods of CTH 8901, 8902, 8904,8905,8906 and 8907 and whether marine paints can be taken to be covered within the meaning of Parts for Sr. No. 252 of Notification no. 1/2017 integrated Tax.

We find that Anchor, Bow, Bowsprit, Fore and Aft, Hull, Keel , Mast, Rigging, Rudder, Sails, Shrouds, Engines, gearbox, Propeller, Bridge, etc. are the very essential parts of a ship or vessel and are quite clearly parts of a vessel/ship and a ship cannot be imagined to be in existence without these parts.





However, in addition to the above there are some additional equipments that are required to be made available on a ship as a measure of statutory compliances under various marine acts such as Merchant Shipping Act or Additional Safety measures such as Walkie-talkie, Binoculars, Life Jackets, Lifeboats, etc. Though these are also to be compulsorily made available on a vessel and ship but cannot be taken to be parts of a ship as per general understanding but are rather additional equipments on a ship..

In addition to the above there are other essential items like furniture, fans, air-conditioners, television, etc which are very essential for comfort of officers and crew of the ship but do not come under essential parts or equipments of a vessel/ship.

In continuation of the same we find that the issue to be decided in the present case is whether marine paints can be considered as parts of a ship.

We find that the items that are discussed as essential parts of a ship/vessel are such essential components of a vessel/ship without which the ship would not be complete and would not exist. These are very integral for the functioning of the ship and can be separated from the ship for repair/replacement. There are various consumable items like paints varnish, oils, grease, etc. which are essentially applied and used in or on all or most of these essential ship parts as discussed above to make them tenable, durable and worthy of the ocean. Once applied, these consumable items are consumed and lost and cannot be reused and are also not worth recovery, reuse or recycle for use on ship.

The main function of marine paints as per applicant's submissions is ...

- *Protection the body of ship from highly corrosive environment*
- *Blocking barnacles and other marine organisms from adhering to the hulls of ships*
- *Lessening fuel consumption as it controls damage to the ship.*
- *Preventing impact on water eco-systems by reducing emission of Green House Gases.*
- *Preventing Transportation of marine organisms to other areas.*

When we refer to the definition of the word 'part' as discussed in detail above, we find that 'part' is a separate piece of something or a piece that combines with other pieces to form the whole of something. In this regard we find that marine paints are in no way piece of ship that would in any way form the whole ship. They are just consumables for the essential parts of ship.

Similarly the second definition of part also defines 'part' as one of the pieces that together form a machine or some type of equipment. We find that marine paints are not covered in this definition also.

In the same way we find that marine paints are not covered within the definition of spare part also as given in discussions above.

The applicant has contended that marine paints are mandatorily required to be applied on all ships as per Merchant Shipping Act, 1958 and therefore should be considered as parts of ship. Just because it is mandatory, under some law, to be applied on ships, does not essentially make it, its part.

The applicant has claimed that under the erstwhile indirect tax regime, Central Excise exemptions were granted to marine paints supplied to ship. They have construed the conditions of exemption very simply to their case.





Notification No. 44/2015 -CE dated 24 November 2015 was issued prescribing effective rate of central excise for specified goods (amending Notification 12/2012 dated 17 March 2002). The said notification inserted following entry for prescribing effective rate of excise for goods mentioned therein.

| Sr. No. | Chapter or heading or sub-heading or tariff item of the First Schedule | Description of excisable goods | Rate | Condition No. |
|---------|------------------------------------------------------------------------|--------------------------------|------|---------------|
| 306C    | Any chapter                                                            | Raw materials and parts        | NIL  | 2 and 3*      |

\* Condition 2 - Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed.

Condition 3 - The exemption shall be allowed if it has been proved to the satisfaction of an officer not below the rank of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction that such goods are cleared for the intended use.

*In fact the said notification gave exemption to all raw materials and parts for use in the manufacture of certain specified ships/vessels, subject to actual user conditions.*

While interpreting the issues like the one at hand, we may refer to certain judgements which throw light on the disputed issue.

**In case of Saraswati Sugar Mills Vs Commissioner of Central Excise Civil Appeal No.5295 of 2003 decided on 2<sup>nd</sup> Aug 2011 Hon. Supreme Court of India observed :**

12. *In order to determine whether a particular article is a component part of another article, the correct test would be to look both at the article which is said to be component part and the completed article and then come to a conclusion whether the first article is a component part of the whole or not. One must first look at the article itself and consider what its uses are and whether its only use or its primary or ordinary use is as the component part of another article. There cannot possibly be any serious dispute that in common parlance, components are items or parts which are used in the manufacture of the final product and without which, final product cannot be conceived of.*

13. *The meaning of the expression 'component' in common parlance is that 'component part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete'.*

14. *This Court, in Star Paper Mills (supra) has made a settled distinction while considering whether paper cores are 'components' in the manufacture of paper rolls and manufacture of paper sheets. It is stated that 'paper cores' are component parts in so far as manufacture of roll is concerned, but it is not 'component part' in the manufacture of sheets. It is useful to quote the observations made by this Court :*

*"Paper core would also be constituent part of paper and would thus fall within the term "component parts" used in the Notification in so far as manufacture of paper in rolls is concerned. Paper core, however, cannot be said to be used in the manufacture of paper in sheets as component part.*





15. In *Modi Rubber Ltd. v. Union of India*, (1997) 7 SCC 13, the appellant had set up tyre and tube manufacturing plant and imported various plants and machineries. While using the plants and machineries, PPLF (Polypropylene Liner Fabric) was used as a device in the form of liner components to various machinery units to protect the rubber-coated tyre fabric from atmospheric moisture and dust. This Court held that the PPLF was not a component of the machine itself. It was not a constituent part. It was used as a Liner Fabric not only in tyre production but also in similar other industrial processes.

**In case of *Jindal Strips Vs Collector of Customs*, Equivalent citations: 1997 ECR 98 Tri Delhi, 1997 (94) ELT 234 Tri Del. the Two Member Bench of the Tribunal referred the appeal before the larger bench on the following questions:**

(i) Whether the phrase "component parts" occurring in Notification 77/90 would cover "spare parts" for the purpose of granting of benefit thereunder?

The larger Bench of the Tribunal having regards to dictionary meaning of "part", and "Component" observed that in common parlance meaning of the expression "component" is also the same, that is, one of the parts or elements of which anything is made up or into which it may be resolved or a Constituent. The meaning in common parlance has to be looked into since the notification itself does not contain any definition of the expression.

**In the State Of Uttar Pradesh vs M/S. Kores (India) Ltd on 18 October, 1976, Equivalent citations: 1977 AIR 132, 1977 SCR (1) 837.**

In this case the appellant contended before the Hon SC that carbon paper does not lose its character as paper in spite of being subjected to chemical processes, and that ribbon is not an accessory but an essential part of the typewriter. While dismissing the appeal Court held that "A word which is not defined in an enactment has to be understood in its popular and commercial sense with reference to the context in which it occurs. It has to be understood according to the well-established canon of construction in the sense in which persons dealing in and using the article understand it."

The Hon.SC further observed that "Bearing in mind the ratio of the above mentioned decisions, it is quite clear that the mere fact that the word 'paper' forms part of the denomination of a specialized article is not decisive of the question whether the article is paper as generally understood. 'the word 'paper' in the common parlance or in the commercial sense means paper which is used for printing, writing or packing purposes. We are, therefore, clear of opinion that Carbon paper is not paper as envisaged by entry 2 of the aforesaid Notification. Regarding ribbon also to which the above mentioned rule construction equally applies, we have no manner of doubt that it an accessory and not a part of the typewriter (unlike spool) though it may not be possible to use the latter without the former. Just as aviation petrol is not a part of the aero- plane nor diesel is a part of a bus in the same way, ribbon is not a part of the typewriter though it may not be possible to type out any matter without it.

The very same question with which we are here confronted came up for decision before the High Court of Mysore in *State of Mysore v. Kores (India)Ltd*(26STC 87). (1) where it was held:

"Whether a typewriter ribbon is a part of a typewriter is to be considered in the light of what is meant by a typewriter in the commercial sense. Typewriters are being sold in the market without the typewriter ribbons and therefore typewriter ribbon is not an essential part of a typewriter so as to attract tax as per entry 18 of the Second Schedule to the Mysore Sales Tax Act, 1957."



Considering the meaning of an expression (Part) as defined in the dictionary and adopted by the courts mentioned above besides common parlance test it can be safely concluded that Marine Paint is not a component part of Ship. This conclusion which we have drawn as above gets support from the facts stated by the appellant and detailed discussions above as per which marine paints are clearly consumable items and not parts.

Thus we would be stretching the definition of 'part' greatly, if we intend to treat paints as parts of ship in view of the above discussions

Further, the applicant, citing Section 30(2) of the VAT Act of the United Kingdom and Group of Schedule 8 of the said VAT Act and VAT Notice 744 C of the U.K., has submitted that under the said Act paints, solvent and thinners have been considered to be parts and equipment of a ship. However we find that the statutory provisions, conditions for benefit as given and referred by the applicant in UK VAT Act are in different context and therefore not relevant in the facts of the case in present matter.

As per above detailed discussions we do not find any merit in the argument advanced by the applicant that Marine Paint should be considered as a part of Ship and accordingly find that marine paints are not covered under Serial No.252 of Schedule I of Notification No.1/2017 of Central Tax(Rates) Dated June 28,2017.

06. 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- 29/2017-18/B- 35 Mumbai, dt. 19/5/2018

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

Q.1 Whether marine paints supplied by the applicant, would be considered to be a part of ship and accordingly be then classified under SI No. 252 of Schedule I of Notification No. 1/2017 of Central Tax (Rates) dated June, 28, 2017?

A.1 Answered in the negative.



sd  
B. V. BORHADE  
(MEMBER)

sd  
PANKAJ KUMAR  
(MEMBER)

- 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

**Note :-** An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021

**CERTIFIED TRUE COPY**

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sd  
MEMBER  
ADVANCE RULING AUTHORITY  
MAHARASHTRA STATE, MUMBAI