

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail :aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore

2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AAACB7066L1ZM
Name and address of the applicant	M/s Force Motors Limited Plot No.3, Sector 1, Pithampur industrial Estate, Pithampur, Dhar, Madhya Pradesh,454775
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of any goods or services or both;
Present on behalf of applicant	Shree S.S. havaldar, Advocate and Shree Abhay Singhi Companies representative
Case Number	07/2019
Order dated	25/09/2019
Order Number	17/2019

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

The present application has been filed u/s 97 of the Central Goods and Services Act,2017 and MP Goods and services Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s Force Motors Limited(hereinafter referred to as the Applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

3.1 Force Motors is fully vertically integrated, making its own engines, chassis, gear boxes, axles, bodies etc. for the entire product range.

3.2 Force provides appropriate solutions for transport –both goods, as well as passenger - rugged, reliable and efficient transport solutions for every need - rural or urban, long distance or local, over good roads or bad tracks.

3.3 The company continues in the founder's vision of providing efficient,utilitarian vehicles that empower the individual entrepreneur to meet his and the country's ever changing needs.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority in the application:-

4.1 Whether to classify Utility Van under chapter Heading 8703 or Chapter Heading 8704.

5. CONCERNED OFFICER'S VIEW POINT:

The concerned officer opined that the product in question viz. Utility Vehicles, predominantly designed for transportation of goods/

6. RECORD OF PERSONAL HEARING:

6.1. Shree S.S. Havaldar, Advocate and Shree Abhay Singhi Companies representative appeared for personal hearing. At the outset they informed that the applicant paid only 5000/- for SGST as fee along with the application and the requisite fee of rupees 5000/- under CSGT was paid on 17.07.19. Accordingly they urged to admit the application. Since the requisite fee has been paid on 17.07.19 the application date shall be 17.07.19 only. This was accepted by them. Shree S.S. Havaldar, Advocate and Shree Abhay Singhi Companies representative reiterated the submissions already made in the application. They reiterated the facts submitted along with the application.

The Applicant states that –

6.2. Certain goods carrying vehicle models were developed by the company as per needs of the user, with passenger seating capacity not more than 6 passengers where transportation of persons is incidental. In such vehicles, short space is provided for carrying persons, keeping in mind the necessity of carrying some persons for loading and unloading operations, providing assistance which may require in transit, transportation of perishable goods like fruits, vegetables, etc.

6.3. These Utility Vehicles are useful for –



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- i) Transportation of fruits vegetable and various types of agricultural produce, with 4/5 persons for loading unloading etc.
- ii) Transportation of machineries, appliances, tools etc, with technicians for its disassembly and assembly etc.
- iii) Transportation of vegetables, groceries etc. required by hotel industry with staff with such goods.
- iv) Transportation of Household goods like furniture, appliances etc. and useful for packers and movers.

6.4. The Automotive Vehicle type terminology is defined in Automotive Industry Standard (AIS) in AIS-053 issued by the Ministry of Road Transport and Highway of Govt. of India as per the Central Vehicle Rules 1989. As per AIS-053 the passenger carrying vehicles are classified as 'M' and the goods carrying vehicles are classified as 'N' subject to the conditions in 3.2. are met.

6.5. In terms of AIS standard AIS-053, Para 3.2.1 – A vehicle which is designed to carry person in addition to goods shall be considered as N category vehicle if –

- a) The number of seating positions excluding the driver is not more than six
- b) A seating portions for a passenger shall be fixed and could not be changed with normal tools.

- c) The weight of goods carried by the vehicle is more than weight of personal carried as calculated by the formula

Considering the above criteria of the goods carrying vehicles, Utility Vans manufactured by the company fulfills the required conditions as applicable for goods carrying vehicle and should fall under GSTHSN 8704.

6.6. In a nutshell, as explained, the Utility Vans are primarily manufactured for transportation of goods and small space is provided for carrying passenger is in relation transportation of goods. It is having more weight carrying for goods as compared to the weight carrying capacity for passenger. Therefore these Utility Vehicles should fall under goods carrying vehicle and falling under category 'N' and appropriately classifiable under GST Tariff 8704.

6.7. The vehicle is classifiable under 8703 of the GST Tariff, only when the vehicle is principally designed for the transport of persons. As the Utility vans manufactured by the Applicant are principally designed for carrying the Goods, the same is classifiable under 8704 of the GST Tariff.

6.8. As per provisions of Motor Vehicle Act 1988, the Central Motor Vehicles Rules 1989 and relevant Motor Vehicle Rules of the states, each type of vehicle is required to be certified by the Vehicle Research and Development Establishment of Ministry of Defense of Government of India (VRDE). As per the compliance certificate issued by VRDE, under Central Motor Vehicle Motor Rules 1989, the Utility Van is categorized as Goods carrier, under Category NI. As per technical specifications and Drawing of the utility van, certified by VRDE it is having more weight carrying capacity for goods than for passenger, therefore these vehicles shall appropriately classifiable under GST Tariff 8704.



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6.9. Further, as per decision of Mumbai Tribunal in case of CCE Pune-1 Vs. Telco Ltd., Pune - 2002- (143) ELT 548 (Tri-Mumbai) where under the Hon'ble tribunal while deciding the classification of goods carrying vehicle with space for passenger, held that, an incidental use by crew / family members/ farm labour, should not override the essential characteristic of the vehicle herein which is for transportation of goods/spare parts and tools/goods-farm produce for which it is designed put to use. - Gross vehicle weight in design so distributed that major portion used for transportation of goods. Also decided that, vehicle is classifiable under CETSH 8704. In this case on Appeal by the department, the Hon'ble Supreme court dismissed the Appeal and held that the category of vehicle as decided by the tribunal is correct, it is classifiable under CETSH 8704.

6.10. We also rely upon case law of Nicholas D'Souza Garage - 2015(320) ELT- 579 (Tri-Mumbai). In this case it has been decided that cash delivery Van is goods carrier vehicle and not classifiable under CETSH No. 8703 since it is not exclusively used for transportation of persons. On Appeal by the department, the Hon'ble Supreme court dismissed the Appeal.

7. DISCUSSIONS AND FINDINGS:

7.1 We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

7.2 We find that the question before us essentially pertains to classification of the goods under the Act. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) and therefore we admit the application for consideration.

7.3. The applicant is a manufacturer of automobiles registered under the GST Act 2017. The goods viz. Automobiles and parts thereof manufactured by the applicant are classifiable under Chapter 87 of the first schedule to Customs Tariff Act 1975 which has been adopted in the GST regime as GST Tariff. The applicant design and develop different models of a type of vehicle as per requirements and needs of ultimate customers. The question raised before the authority relates to proper classification of Utility Vans which are designed for carrying goods as well as passengers. These utility vans are specially designed to carry passengers as well as transportation of goods of the likes of Tempo Trax & Tempo Traveller etc. As per details furnished by the Applicant in Para 11 of Statement of Facts, these utility vehicles are designed to carry upto 6 passengers (excluding driver) and carry a load between 687 Kg to 1942 Kg of cargo. Plain reading of specifications given by the Applicant make it amply clear that these vehicles are predominantly designed for carrying cargo i.e. transportation of goods, while the seating capacity for passengers is an added facility provided to meet the requirement of customers.

7.4. The Customs Tariff, as also the GST Tariff, broadly classifies the vehicles under two categories viz. Vehicles for transport of passengers and vehicles for transport of goods. As per statutory requirements laid down under the provisions of Motor Vehicle Act 1988 and Motor Vehicle Rules 1989, each type of vehicle is required to be certified either by the



Vehicle Research and Development Establishment of Ministry of Defense or by the Automobile Research Association of India, or certain other authorities.

7.5. We also observe that the Automotive Vehicle Types Terminology defined under Automotive Industry Standards in AIS-053 issued by the Ministry of Road Transport & Highways of the Government of India, the passenger carrying vehicles are classified under Category M while goods carrying vehicles are categorised under Category N. The Category N has been defined as '*N Category means a Motor Vehicle with at least four wheels used for carrying goods. These vehicles can carry persons in addition to goods subject to the conditions in 3.2 are met.*' Thus it becomes imperative to have a look at the conditions laid down under para 3.2 which prescribes three conditions – '*(a) Number of seating positions excluding the driver is not more than six; (b) The seating position shall be regarded as existing if the vehicle is provided with 'accessible' seat anchorages; and (c) The weight of goods carried by the vehicle is more than the weight of persons carried.*' We have carefully gone through the relevant literature of vehicles in question furnished by the applicant and we are satisfied that the impugned vehicles fulfil the conditions laid down as above to merit categorisation as Vehicles for transportation of goods under Category N of AIS 053.

7.6. We also find it necessary to point out that during the course of personal hearing the representatives of the Applicant were categorically asked to inform the status of classification of impugned goods prior to 01.07.2017 i.e. pre-GST regime. It was informed that such vehicles, prior to 01.07.2017, were being classified as goods transport vehicles under Chapter Heading 8704 of the Schedule to the Central Excise Tariff Act 1985. We observe that post implementation of GST, there is neither any change in circumstances nor any change in impugned products which would necessitate fresh consideration over a settled classification.

7.7. However, since we have taken up the matter for consideration, we find it necessary to derive support from the observations of the Hon'ble CESTAT while deciding an identical issue in the matter of CCE, Pune Vs. TELCO Ltd. [2002(143)ELT548(Tri)], wherein Hon'ble Tribunal observed, '*We therefore conclude that an incidental use by crew/family members/farm labour, should not over ride the essential characteristic of the vehicles herein, which is for transportation of goods/spare parts & tools/goods/farm produce for which it is designed put to use.*' This decision of the Hon'ble Tribunal was subsequently acknowledged and confirmed by the Hon'ble Supreme Court, when the Apex court observed that the gross vehicle weight in design is so distributed that the major portion is used for transportation of goods. It was accordingly held that such utility vehicles merit classification under Chapter Head 8704.

7.8. Having regard to our observations and findings detailed in the foregoing paras, we conclude that the goods in questions i.e. Utility vehicles, are predominantly designed for transportation of goods and these vehicles also conform to the categorisations and conditions laid down under Automotive Industry Standards AIS 053 as Category N vehicles for carrying goods. We thus hold that the utility vehicles in question shall merit classification under



Chapter Head 8704 of GST Tariff and shall be liable to GST at the rate applicable at the time of supply.

8. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

8.1 The product in question viz. Utility Vehicles, predominantly designed for transportation of goods conforming to the norms of Category N vehicles as per Automotive Industry Standards AIS 053, shall merit classification under Chapter 8704 of the GST Tariff and shall be chargeable to GST at the rate prevailing at the time of supply.

8.2 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

RAJIV
RAJIV AGRAWAL
(MEMBER)

MANOJ
MANOJ KUMAR CHOUBEY
(MEMBER)

Copy to:- No. 07/2019/A.A.R/R-28/32

INDORE dt. 25/09/2019

1. Applicant
2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner (SGST) Indore
4. The Commissioner, CGST & Central Excise, Ujjain
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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Manoj

