

Rate of tax for supplies to marine sector

MAN Energy Solutions India Private Limited¹- Authority for Advance Ruling, Maharashtra

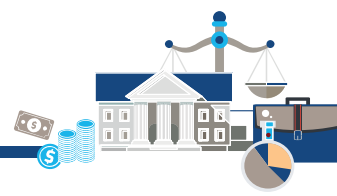
MAN Energy Solutions Private Limited ('the applicant') filed an application with the Authority for Advance Ruling, Maharashtra ('AAR') on the issue of the rate of GST applicable to marine diesel engines and parts thereof supplied by the applicant to ship-building companies and shipyards, for use and application in ships/vessels.

Facts of the case:

- The applicant is engaged in the manufacture and supply of marine diesel engines and parts thereof ('Subject Goods').
- The applicant supplies Subject Goods to ship-building companies and shipyards for application and use in ships/vessels.
- Entry # 252 of Notification 1/2017- C.T. (Rate) dated 28 June 2017 ('the Notification') stipulates that a concessional GST rate of 5% be applied to supply of goods classified under "any chapter" which are "parts of goods of heading 8901, 8902, 8904, 8905, 8906, 8907 (i.e., ship/ vessels/ boat etc.)".

- The applicant submitted that upon a plain and literal reading of Entry #252, it can be inferred that goods that merit classification under *any specific chapter heading* will merit the rate of 5%, so long as the goods are used as parts of ships/vessels (i.e. goods that fall under tariff headings 8901, 8902, 8904, 8905, 8906 or 8907).
- In order to establish that the Subject Goods are used as parts of ships/vessels, the applicant submitted various documents including purchase orders, technical specifications, list of parts, certificates endorsing the fact that the Subject Goods had been specially designed and engineered for the purpose of being used in ships/vessels.
- The applicant *inter alia* relied on:
 - The decisions of the CESTAT in the cases of Mahindra & Mahindra Limited Vs. Commissioner of Central Excise, Nagpur- [2007 (210) E.L.T. 579 (Tribunal)] and [2007 (210) E.L.T. 35 (Tribunal)];
 - The decision of the CESTAT in the case of High Energy Batteries (I) Limited Vs. Commissioner of Central Excise, Trichy [2002 (142) E.L.T. 266 (Tribunal)];

¹ Order No. GST-ARA-56/2019-20/B-41 dated 30.07.2021



- Circular No. 512/8/2000-CX, dated 10 February 2000 of the Central Board of Excise and Customs; and
- Circular No. 839/16/2006-CX, dated 16 November 2006 of the Central Board of Excise and Customs.

Ruling of the Maharashtra AAR:

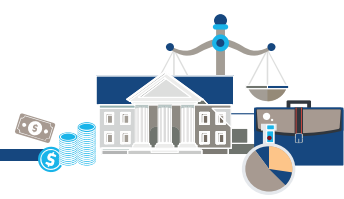
- The Maharashtra AAR analysed the definition of 'parts' (which is not provided in the GST law and instead referred from the judgment of the Supreme Court in the case of *Saraswati Sugar Mills Vs. Commissioner of Central Excise* [2011 (270) E.L.T. 465 (S.C.)]) and held that marine diesel engines and parts thereof falling under chapter headings 8408 and 8409, respectively, that are supplied to ship-building companies or shipyards for use in or fitment in ships are considered essential parts of a ship/vessel. It was held that the Subject Goods, which find end-use in the ships/boats/vessels merit classification as parts of goods under headings 8901, 8902, 8904, 8905, 8906 and 8907 of the GST tariff and therefore such supplies attract GST at a rate of 5% in accordance with the Notification.
- The advance ruling clarifies that the Subject Goods will merit the concessional rate only if they are used in ships/vessels etc. and are not diverted and used for other purposes.

Dhruva Comments:

The advance ruling critically examines the scope and meaning of the word "part" and concludes that "part" is a separate piece of something or a piece that combines with other pieces to form the whole of something.

This ruling reaffirms the position that at the point of supply, the taxpayer should be able to demonstrate that goods are supplied for use and application in ship/vessels in order to claim the concessional rate of GST.

Interestingly, Entry # 252 of the Notification *per se* by its language does not cast an onus on a taxpayer to demonstrate end-use beyond the point of supply.





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