

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX**  
**(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)**  
**ORDER NO. MAH/AAAR/SS-RJ/06/2019-20** **Date- 20.09.2019**

**BEFORE THE BENCH OF**

**(1) Smt. Sungita Sharma, MEMBER**

**(2) Shri RajivJalota, MEMBER**

GSTIN Number	27AAACT2727Q1ZW
Legal Name of Appellant	Tata Motors Limited
Registered Address	Nigadi Bhosari Road, Pimpri, Haveli, Pune 411 018
Details of appeal	Appeal No. MAH/GST-AAAR-06/2019-20 dated 24.06.2019 against Advance Ruling No. GST-ARA-93/2018-19/B-32 dated 22/03/2019
Jurisdictional Officer/Respondent	Assistant Commissioner CGST & Central Excise, Division II, Pimpri, Pune –I Commissionerate

**PROCEEDINGS**

**(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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 Tata Motors Limited (herein after referred to as the “Appellant”) against the Advance Ruling No. GST-ARA-93/2018-19/B-32 dated 22/03/2019.



### Brief Facts of the Case

- A. Tata Motors Limited (hereinafter referred to as **"The Appellant"**) is in the business of manufacturing and selling of vehicles, chassis for vehicles and parts thereof. The Appellant manufactures commercial as well as passenger vehicles.
- B. The Appellant has launched its passenger vehicle, 'Tata Harrier', which has following technical specifications:

Particulars	Details
Seating capacity	5 persons including driver
Engine capacity	1956 cc
Fuel	Diesel
Market segment	Utility Vehicle (UV)
Length	4598 mm
Ground clearance (Unladen)	205 mm
Ground clearance (Laden)	160 mm (subsequently amended to 176 mm)

- C. The Central Government has vide Notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017, as amended from time to time, (hereinafter referred to as **"Cess Rate Notification"**) notified the rate of Compensation Cess that would be levied on the intra-State supplies and inter-State supplies of such goods.
- D. The rate of compensation cess, applicable on supply of goods, is determined based on the description of goods specified in the corresponding entry in Column (3) and falling under the tariff items, sub-heading, heading or chapter, as specified in corresponding entry in Column (2) of the Schedule appended to Cess Rate Notification. The Cess Rate Notification further provides that the Compensation Cess would be levied at the rates mentioned in Column (4) of the schedule appended to Cess Rate Notification.





- E. Sr. No. 52A of Cess Rate Notification provides that motor vehicle of engine capacity exceeding 1500 cc other than motor vehicles specified against entry at S No. 52B would attract the Compensation Cess at rate of 20%. Whereas, Sr. No. 52B of Cess Rate Notification provides that motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles would attract the Compensation Cess at the rate of 22%. The relevant extract of the Sr. No. 52A and 52B of the Cess Rate Notification is reproduced hereunder:

*SCHEDULE*

<b>S. No.</b>	<b>Chapter/ Heading/ Sub-heading/ Tariff item</b>	<b>Description of Goods</b>	<b>Rate of goods and services tax compensation cess</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
52A.	8703	Motor vehicle of engine capacity exceeding 1500 cc other than motor vehicles specified against entry at S No. 52B	20%
52B.	8703	Motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles.  <i>Explanation. – For the purpose of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm and above.</i>	22%

- F. As per Explanation 1 to Cess Rate Notification “tariff item”, “heading”, “sub-heading” and “Chapter” shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (herein after referred to as “**First Schedule**”).



- G. Further, Explanation 2 given under the Cess Rate Notification provides that the rules for the interpretation of the First Schedule, 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.
- H. As the classification of goods is determined by First Schedule, the Appellant referred to the chapters of First Schedule. Chapter 87 of First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as "**First Schedule**") broadly covers vehicles other than railway or tramway rolling-stock, and parts and accessories thereof.
- I. As the Tata Harrier is vehicle having seating capacity of upto 5 persons (including driver) most relevant Heading is 8703 which covers motor cars and other motor vehicles principally designed for the transport of less than 10 persons (including driver), including station wagons and racing cars.
- J. The relevant extract of the Chapter Sub-heading 8703 32 is reproduced hereunder

<b>Tariff Item</b>	<b>Description of goods</b>
<b>(1)</b>	<b>(2)</b>
<b>8703</b>	<b>Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars</b>
8703 32	-- Of a cylinder capacity exceeding 1,500 cc but not exceeding 2,500 cc :
8703 32 10	--- Vehicles principally designed for the transport of more than seven persons, including the driver
	--- Other :
8703 32 91	---- Motor cars
8703 32 92	---- Specialized transport vehicles such as ambulances, prison vans and the like





8703 32 99	---- Other
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K. Since, the Tata Harrier has engine capacity of 1956 cc and seating capacity of 5 persons (including driver), the Appellant was of the view that it would be classifiable under HSN 8703 32 91.

L. In order to get clarity on the classification of Tata Harrier and also on other aspects, the Appellant filed an application before Maharashtra Advance Ruling Authority (hereinafter referred to as 'ARA') and sought ruling on the following questions:

- a. Whether Tata Harrier vehicle, which has specifications as mentioned above, is classifiable under Tariff Item 8703 32 91 or 8703 32 99 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)?
- b. If the vehicle satisfies only the conditions mentioned in main clause but is not satisfying any one or all of the conditions mentioned in 'Explanation', whether it would be covered under Entry at Sr. No. 52B of Notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017 as amended?
- c. Whether the ground clearance of the vehicle is to be considered in laden condition or in unladen condition?
- d. Whether Tata Harrier vehicle whose ground clearance in unladen condition is 205 mm and in laden condition is 160 mm, would fall under Sr. No. 52B of the Notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017 as amended?



- e. Whether GST Compensation Cess @ 22% under Sr. No. 52B of Notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017 as amended, will be applicable to Tata Harrier vehicle?

**M.** During the course of hearing conducted before the Advance Ruling Authority, the jurisdictional officer i.e. Superintendent, Range V, Division II Pimpri, Pune I Commissionerate, Pune filed written submissions stating that:

- a. Tata Harrier would fall under Tariff Sub-heading 8703.32.91.
- b. Tata Harrier would fall under Sr. 52B of the Cess Rate Notification.
- c. The ground clearance given in the Cess Rate Notification has to be arrived in unladen state. The ground clearance in laden condition cannot be considered as the weight of passengers can vary hence, no standardization of laden weight can be arrived at. Further, the notification does not talk about laden condition.

**N.** The Appellant by letter No. GST/MH/AAR/27/TH/123 dated 12.02.2019 made following submissions, before Advance Ruling Authority:

- a. the Advance Ruling Authority has jurisdiction to decide matters involving applicability of Cess rate under Compensation Cess Act;
- b. subsequent to filing Application for Advance Ruling, ARAI issued Certificate for Compliance under Central Motor Vehicle Rules, by Tata Harrier vehicle, specifying Minimum Ground Clearance as 176 mm (laden) in accordance with IS-9435; in the absence of said ARAI Certificate at the time of filing Application for Advance Ruling, the Appellant had mentioned Ground





Clearance in laden condition as 160 mm in table to Question No. (1.1);  
under the circumstances, the Appellant requested to treat the said  
Application amended to this effect more specifically question nos. (1.1),  
(1.4) and (1.5) framed in the Application;

c. notwithstanding the above factual amendment in subject Application,  
considering the fact that in near future the Appellant may launch vehicles  
with ground clearance below 170 mm in laden condition, the Appellant  
requested the Advance Ruling Authorities for deciding the questions raised  
in Application.

O. In the said letter, in view of amendment in ground clearance, the Appellant also  
framed Additional Question as below:

Q. No. (1.4A) Vehicle whose ground clearance in unladen condition is more  
than 170mm but below 170mm in laden condition, whether will get covered  
under Sr. No. 52B of Notification No. 1/2017-Compensation Cess (Rate) dated  
28.06.2017 as amended.

P. The ARA passed Order No. GST-ARA-93/2018-19/B-32, dated 22.03.2019 as  
follows:

a. **Question 1.1:** Whether Tata Harrier vehicle, which has specifications  
(supra), is classifiable under Tariff Item 8703 32 91 or 8703 32 99 of the  
First Schedule to the Customs Tariff Act, 1975 (51 of 1975)?

**Answer to question No. 1.1:** Tata Harrier is classifiable under Tariff Item  
8703 32 91 of the First Schedule.



- b. **Question No. 1.2:** For a motor vehicle to get covered under Sr. No. 52B of Cess Rate Notification as SUV/UV, whether it has to satisfy only the conditions mentioned in main clause i.e. engine capacity above 1500 cc and popularly known as SUV/ UV or in addition, it has to also satisfy the conditions mentioned in 'Explanation' i.e. length exceeding 4000 mm and ground clearance of 170 mm and above? In short, if the vehicle satisfies only the conditions mentioned in main clause but is not satisfying any one or all of the conditions mentioned in 'Explanation', whether it would still be covered under Entry at Sr. No. 52B of Cess Rate Notification?

**Answer to Question No. 1.2:** To be covered under Sr. No. 52B of Cess Rate Notification, the vehicle must satisfy the conditions mentioned in main clause as well as the conditions mentioned in the Explanation.

- c. **Question No. 1.3:** For the purpose of Cess @ 22% under Sr. No. 52B of Cess Rate Notification, whether the ground clearance of the vehicle is to be considered in laden condition or in unladen condition?

**Answer to question No. 1.3:** The ground clearance given in the Cess Rate Notification must be arrived in unladen condition.

- d. **Question No. 1.4:** Whether Tata Harrier vehicle whose ground clearance in unladen condition is 205 mm and in laden condition is 160 mm (later amended to 176 mm), would fall under Sr. No. 52B of the Cess Rate Notification?





**Answer to question No. 1.4:** Tata Harrier whose ground clearance in unladen condition is 205 mm and in laden condition is 160 mm would fall under Sr. No. 52B of Cess Rate Notification.

- e. **Question No. 1.5:** Whether GST Compensation Cess @ 22% under Sr. No. 52B of Cess Rate Notification, will be applicable to Tata Harrier vehicle?

**Answer to question No. 1.5:** GST Compensation Cess @ 22% under Sr. No. 52B of Cess Rate Notification would be applicable to Tata Harrier.

- f. **Question No. 1.6:** Vehicle whose ground clearance in unladen condition is more than 170mm but below 170mm in laden condition, whether will get covered under Sr. No. 52B of Cess Rate Notification?

**Answer to question No. 1.6:** To get covered under Sr. No. 52B of Cess Rate Notification No., the ground clearance should be 170 mm or above in unladen condition.

- Q.** Being aggrieved by the answers in Impugned Order to question Nos. 1.3 and 1.6 of the Application for Advance Ruling, the Appellant is filing the present Appeal before your honour to the extent they are answered against the Appellant.
- R.** However, the Appellant has filed this appeal beyond the period of 30 days from the date of the communication of the Advance Ruling Order as envisaged under Section 100(2) of the CGST Act, 2017, which provides that every appeal shall be filed within a period of 30 days from the date on which the ruling sought to be



appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant.

- S. In view of the above delay, which amounts to 20 days beyond the date of the communication of the Advance Ruling, the Appellant has separately filed a separate application for the condonation of delay in filing of the present appeal incorporating, in detail, the reasons for the said delay, and has pleaded for the condonation of the delay, and for the admission of the instant appeal for hearing on merits.

#### **GROUND OF APPEAL**

1. At the outset, the Appellant submits that the Impugned Order is incorrect both on facts and on legality. The Appellant do not agree with the findings in the Impugned Order in respect of answers to question Nos. (1.3 and 1.6 i.e. ground clearance to be arrived in unladen condition). The Impugned Order proceeds on incorrect footing in answering to said questions (1.3 and 1.6) and hence, it is liable to be set aside to that extent.

**The ruling pronounced by the Advance Ruling Authority that ground clearance is to be computed in unladen condition is legally not tenable.**

2. The Appellant had raised question No. 1.3 before Maharashtra Advance Ruling Authority as to whether under Sr. No. 52B of Cess Rate Notification, the ground clearance of the vehicle is to be considered in laden condition or in unladen condition? While answering to this question, the Maharashtra Advance Ruling Authority held that rate of tax on the subject vehicle before it is sold to buyers and ground clearance given in the Notification must be arrived in unladen state,





when there are no passengers/ drivers occupying the vehicle. The relevant extract of the impugned order is reproduced below:

*"5.5 The rate of tax on the subject vehicle before it is sold to buyers. It is but natural that the ground clearance given in the Notification must be arrived in unladen state, when there are no passengers/ drivers occupying the vehicle. We are of the opinion and we agree with the submissions of the jurisdictional office in this regard that the ground clearance in laden condition cannot be considered because the same will vary depending on the weight of passengers and luggage occupying the vehicle and will therefore cannot be constant."*

3. In this regard, the Appellant submits that in the explanation part of said Sr. No. 52B, while the parameter as to ground clearance has been mentioned as 170 mm and above, it is not mentioned whether to compute the ground clearance in laden condition or unladen condition. In the absence of the same, the Appellant submits that it has to be computed in laden condition as the vehicle would be used in a laden condition and not in an unladen condition.
4. The Appellant further submit that as per the regulations of Motor Vehicle Act, 1988, a manufacturer of motor vehicle is required to obtain certificate from 'The Automotive Research Association of India ('ARAI')' to the effect that the vehicle manufactured by the manufacturer is complying with the Central Motor Vehicles Rules. The said certificate is issued based on the standards laid down in this regard. ARAI is a research institution of the automotive industry with the Ministry of Heavy Industries & Public Enterprises, Government of India. The ARAI has been certifying the specification/ dimensions of vehicles including ground clearance in accordance with IS-9435.



5. IS-9435 is Indian Standard for terms and definitions relating to dimensions of road vehicles issued by Bureau of Indian Standards. At Clause 5.8 of IS-9435 enclosed as **Annexure - 11**, following is mentioned:

*"The distance between the ground and the lowest point of the centre part of the vehicle. The centre part is that part contained between two planes parallel to and equidistant from the longitudinal median plane (of the vehicle)(see 4) and separated by a distance which is 80 percent of the least distance between points on the inner edges of the wheels on any one axle.*

*Note – This measurement has to be done on fully laden vehicle to the maximum authorized GVW."*

.....Emphasis supplied

6. Further, the vehicle should meet the Standards laid down under Motor Vehicle Rules. The objective for defining the minimum ground clearance is considering the fact that the vehicle is safe and reliable for the passengers. Since, the standards are laid down keeping in view the safety of vehicle, the ground clearance should be measured while the passengers are on board the vehicle i.e. in laden condition and not in unladen condition.
7. As regards the finding of the Maharashtra Advance Ruling Authority that the ground clearance in laden condition cannot be considered on the ground that the same will vary depending on the weight of passengers and luggage occupying the vehicle and will therefore cannot be constant, the Appellant submit that it is not correct in as much as for the sake of calculating pay load, gross vehicle weight, etc. is computed as per ARAI and various motor vehicle authorities. Further, the average weight of a person is taken as 68 kgs.
8. In this regard the Appellant places reliance on the decision of Hon'ble CESTAT, Mumbai in their own case **TELCO Ltd. [2002 (143) E.L.T. 548 (Tri.-Mumbai)]** which has been upheld by Hon'ble Supreme Court and reported in **[2003 (152)**





E.L.T. A259 (S.C.)), wherein to compute payload of the vehicle the standard weight per passenger was considered as 68 kg.

In view of the above, the Appellant submit that the ground clearance has to be considered in laden condition.

9. **The finding recorded in answer to question No. 1.6, that the vehicle whose ground clearance in unladen condition is more than 170 mm but below 170 mm in laden condition would get covered under Sr. 52B, is also not tenable.**

9.1 While answering to Question No. 1.6 i.e. vehicle whose ground clearance in unladen condition is more than 170 mm but below 170 mm in laden condition, whether it would get covered under Sr. No. 52B of Cess Rate Notification, the Advance Ruling Authority has answered that for the purpose of said Sr. No. the ground clearance should be 170 mm or above in unladen condition.

9.2 The Appellant referring to submissions made above, submits that this finding is factually not correct. The ARAI has been computing ground clearance in laden condition under IS-9435. Hence, this finding also needs to be set aside.

9.3 The Appellant also submits that there are specified norms for computation of ground clearance. As per these norms, the dimension is to be scaled with the vehicle loaded to its maximum capacity or the approved gross vehicle weight ('GVW'). In other words, the ground clearance is measured in laden condition and the weight considered in determining the same is the maximum capacity or the approved gross vehicle weight.

9.4 Given this, the finding that the weight of passengers will not be constant and will change, is not correct to determine the ground clearance of the vehicle.





Accordingly, the Appellant submits that the impugned Order should be set aside to the extent it is held that the ground clearance is to be considered in unladen condition.

10. Since, the GST law including the Rate Notification does not lay down the procedure/ method to determine the ground clearance, the reference should be drawn from The Central Motor Vehicle Rules, 1989

10.1 It is a settled position of law that if a term is not defined in the Act or the rules, then the meaning of the said term should be drawn from the Statue which governs the same subject. The view of the Appellant finds support in the case of **Mahindra & Mahindra Ltd. [2015 (324) E.L.T. 707 (Tri. - LB)]** wherein the Larger Bench of Mumbai Tribunal held that reference can be made to the legislation which is *pari materia* to the subject under consideration. The relevant extract of the decision is reproduced below:

*'5.3 Both Chapter 87 of the Central Excise Tariff Act, 1985 and the Motor Vehicles Act, 1988, deal with the same subject matter of classification of motor vehicles, one for the purpose of taxation and the other for the purpose of road transport management. In other words they can be considered as pari materia, that is, statutes dealing with the same subject matter or forming part of the same system. Statutes are in pari materia which relate to the same person or thing, or to the same class of persons or things. To quote from the Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition, 2010, page 298, - "It has already been seen that a statute must be read as a whole as words are to be understood in their context. **Extension of this rule of context permits reference to other statutes in pari materia, i.e., statutes dealing with the same subject matter or forming part of the same system.** VISCOUNT SIMONDS in a passage, already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including "other statutes in pari materia". As stated by Lord Mansfield, **where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they should be taken and construed together, as one system and as explanatory to each other.**'*

...Emphasis supplied





10.2 In the present set of facts, the subject matter is methodology for determining the ground clearance which is governed by Motor Vehicle Act, 1988 and rules and regulations made in this regard. Whereas the Cess Rate Notification provides for the rate of compensation cess applicable on the goods including motor vehicle. The rate of compensation cess is different for vehicles having different capacity and features. Further, the Rate Notification does not lay down the criteria for determination of capacity and the features basis which the vehicles should be classified.

10.3 Motor Vehicle Act, 1988 and the rules made thereunder are applicable to the motor vehicles. Given this, 'motor vehicle' is an object which is common for Rate Notification and the Motor Vehicle Act, 1988.

10.4 By applying the ratio laid down in case of **Mahindra & Mahindra Ltd. [2015 (324) E.L.T. 707 (Tri. - LB)]**, the Appellant submits that for determination of ground clearance, reference should be made to Motor Vehicles Act, 1988 and the rules made thereunder.

10.5 It is relevant to note that as per IS 9435:2004 - '*TERMS AND DEFINITIONS RELATING TO DIMENSIONS OF ROAD VEHICLES OTHER THAN 2 AND 3 WHEELERS*' ground clearance for measurements should be carried out in laden condition.

10.6 The fact that the ground clearance is in accordance with the criteria laid down by Indian Standards IS 9435:2004 is also mentioned in the certificate issued by ARAI.



10.7 Given the aforesaid, the Appellant prays that the impugned Order should be set aside, to the extent it states that for the purpose of Cess Rate Notification, the ground clearance should be considered in unladen condition.

**Personal Hearing**

11. A personal Hearing in the matter was conducted on 22.08.2019, wherein Shri Rajesh Shukla, Head, Indirect Tax and Shri Sanjay Ekhande, Dy. General Manager, Indirect Taxation, appearing on behalf of the Appellant, first pleaded for the condonation for the delay of 20 days in filing the present appeal by submitting as under:

- (a) That the Appellant is of one of the largest manufacturers of automobiles in India and also contributes substantially towards tax collection by the Government;
- (b) In every financial year, the Appellant files 25-30 appeal (approx.), most of which are filed in a timely manner and hardly there are any cases of delay in filing of appeals or reply to notices, thus emphasizing that they are law abiding entity;
- (c) That they could not appeal the present appeal in time on account of the following reasons:
  - (i) That they were busy in closing the books of account and preparation of financial statements during the months of May'19 and June'19.
  - (ii) That they were busy in collating of data for the GST Audit;
  - (iii) That they believed that the appeal against the impugned Advance Ruling Order was to be filed electronically on the GST Portal, however, due to some technical glitches of the GST Portal, the same could not be filed in time;
  - (iv) That they are filing the present appeal before the Appellate Authority for Advance Ruling for the first time.

The Respondent in the instant appeal, which were represented by the jurisdictional officer Shri Amit Nayak, A.C. did not oppose the aforementioned prayer for the condonation of the delay made by the Appellant.





12. In view of the above submissions and prayer made for the condonation of the delay in filing of the instant appeal, by the Appellant and no opposition or resistance offered by the jurisdictional officer in this regard, we were satisfied that the Appellant was prevented by a sufficient cause from presenting the appeal within period of thirty days from the receipt of the impugned Advance Ruling issued by AAR, and the said delay of 20 days was not deliberate on their part. Hence, we allowed the appellant to present their appeal within a further period of 30 days in accordance of the proviso to sub section 2 of section 100 of the CGST Act 2017. Subsequent to the admission of the appeal, the representative of the Appellant reiterated their written submissions, which they have filed before us. The representative of the Respondent argued on the same line, as they have done earlier before the Advance Ruling Authority, countering the submissions made by the Appellant.

#### **Discussion and Findings**

13. Heard both the parties, and have also gone through the facts of the case and all the written and oral submissions made by the Appellant as well as the Jurisdictional officer/Respondent. The Appellant, having been aggrieved with the ruling in respect of Question 1.3 and Question 1.6, have filed the present appeal against the impugned Advance Ruling passed in respect of the aforementioned questions 1.3 and 1.6 only. Hence, first we would like to go through the impugned ruling pronounced by the Advance Ruling Authority in respect of the abovementioned questions, wherein they held as under:

**Question No. 1.3:** For the purpose of Cess @ 22% under Sr. No. 52B of Cess Rate Notification, whether the ground clearance of the vehicle is to be considered in laden condition or in unladen condition?

**Answer to question No. 1.3:** The ground clearance given in the Cess Rate Notification must be arrived in unladen condition.



**Question No. 1.6:** Vehicle whose ground clearance in unladen condition is more than 170mm but below 170mm in laden condition, whether will get covered under Sr. No. 52B of Cess Rate Notification?

**Answer to question No. 1.6:** To get covered under Sr. No. 52B of Cess Rate Notification No., the ground clearance should be 170 mm or above in unladen condition.

14. On perusal of the aforementioned ruling and the submissions made by the Appellant against the same, the moot issue, before us, is as under:
  - (i) whether the term 'ground clearance' mentioned in the explanation to the Sr. 52B of the Schedule to the Cess Rate Notification No. 1/2017-Compensation Cess (Rate), dated 28.06.2017 as amended is to be measured in laden state or unladen state.
15. To decide the aforementioned issue, we would like to discuss the meaning of the term 'ground clearance' in relation to the motor vehicle. However, it is observed that the term 'ground clearance' is not defined anywhere in GST Law including GST (Compensation to States) Act, 2017, which deals with the levy of compensation cess on the motor vehicles at various prescribed rates on the goods specified under the Schedule appended to the Cess Rate Notification No. 1/2017-Compensation Cess (Rate), dated 28.06.2017.
16. Therefore, under the above circumstances, by following the doctrine of legal construction, we will refer to the provisions of the Central Motor Vehicles Act, 1988 and the rules made thereunder, which is in pari materia to the concerned act i.e. GST (Compensation to States) Act, 2017, which deals with the impugned term 'ground clearance'.
17. Now, we will refer to the concerned clause i.e. section 56 of the Central Motor Vehicles Act, 1988 which deals with the Certificate of fitness of transport vehicles.





For ease of reference, section 56 of Central Motor Vehicles Act, 1988 is being reproduced herein under:

- (1) Subject to the provisions of section 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder.

.....

18. Thus, the aforesaid provision mandates the manufacturer of motor vehicle to obtain certificate from the competent authority, which in the present case is 'The Automotive Research Association of India ('ARAI')' to the effect that the vehicle manufactured by the manufacturer is complying with the Central Motor Vehicles Rules. The said certificate issued by ARAI is based upon the standards laid down in this regard. ARAI is a research institution of the automotive industry with the Ministry of Heavy Industries & Public Enterprises, Government of India. The ARAI has been certifying the specification/ dimensions of vehicles including ground clearance in accordance with IS-9435.
19. Further, it is seen that IS-9435 is Indian Standard for terms and definitions relating to dimensions of road vehicles issued by Bureau of Indian Standards. Clause 5.8 of IS-9435, which deals with the minimum ground clearance of the motor vehicles, is being reproduced herein under:



*“The distance between the ground and the lowest point of the centre part of the vehicle. The centre part is that part contained between two planes parallel to and equidistant from the longitudinal median plane (of the vehicle) (see 4) and separated by a distance which is 80 percent of the least distance between points on the inner edges of the wheels on any one axle.*

*Note – This measurement has to be done on fully laden vehicle to the maximum authorized GVW.”*

20. Thus, on perusal of the **Note part** of the abovementioned clause, it is clearly revealed that the minimum ground clearance of any motor vehicles has to be measured only in fully laden state of that particular motor vehicle. There is no mention of unladen state anywhere in the said standard IS-9435 in so far as the measurement of ground clearance of a motor vehicle is concerned. Thus, it can decisively be inferred that as per the standards set out under IS 9435 : 2004 issued by Bureau of Indian Standard, which is followed by the ARAI, the authorized body for certifying the fitness of the motor vehicles, the ground clearance of the motor vehicles in their unladen state has no significance or implication.
21. Accordingly, it is observed that any vehicles whose ground clearance in laden state are below 170 mm. will not get covered under Sr. 52B of the Cess Rate Notification i.e. Notification No. 1/2017-Compensation Cess (Rate), dated 28.06.2017.
22. Now, we will analyze the merits of the Advance Ruling order, wherein the authority of the Advance Ruling has held that the ground clearance of the motor vehicle should be measured in unladen condition, which they attributed to the reasons that the weights of the passengers occupying any vehicle is not standardized, and will vary from passenger to passenger, and hence is not constant. Based on this notion, they drew the inference that it is the ground clearance in the unladen state of the vehicle, which would not vary and remain specific and constant in respect of each of the motor vehicles, should be considered while deciding its description and classification under Sr. 52 B of the Cess Rate Notification i.e. 1/2017-Compensation Cess (Rate), dated 28.06.2017.





23. As regards the observation made by the Advance Ruling Authority, it is opined that the rulings made by the Advance Ruling Authority is arbitrary and ungrounded, and the same is based on the flimsy notion in so much as they inferred that the weights of the passengers occupying the motor vehicles is not standardized, as the same will vary with persons occupying the motor vehicle, and thereby causing fluctuation in the ground clearance of the motor vehicles. In this regard, we would like to refer to the submissions made by the Appellant, wherein they relied upon the CESTAT Rulings in the case of **Commissioner of Central Excise Vs. TELCO Ltd. [2002 (143) E.L.T. 548 (Tri.-Mumbai)]** which has been upheld by Hon'ble Supreme Court and reported in **[2003 (152) E.L.T. A259 (S.C.)]**, wherein to compute payload of the vehicle the standard weight per passenger was considered as 68 kg in line with the yard stick proposed by motor vehicle law. In view of the above cited ruling of the CESTAT Mumbai, which was subsequently upheld by the Supreme Court, it is observed in the instant case that the Advance Ruling Authority has not followed the *principle of the ratio decidendi*, and thereby erred in holding that the weight of the persons occupying the motor vehicles cannot be standardized, and hence would not be constant for the purpose of determining the payload of the vehicle, which in turn will cause fluctuation in the ground clearance of the vehicle in the laden state. They relied on this theory and eventually decided that the ground clearance of the vehicle will be measured in the unladen state to determine the applicability of the compensation cess as prescribed under the Cess Rate Notification i.e. Notification No. 1/2017- Compensation Cess(Rate) dated 28.06.2017.

24. Hence, in view of our findings herein above, we pass the following order:



### **ORDER**

We, hereby, set aside the ruling pronounced by the Advance Ruling Authority in respect of the following questions raised by the Appellant and answer them as under:

**Q.1.3** For the purpose of Cess @ 22% under Sr. No. 52B of Cess Rate Notification, whether the ground clearance of the vehicle is to be considered in laden condition or in unladen condition?

**Ans:** For the purpose of Cess @ 22% under Sr. No. 52B of Cess Rate Notification, the ground clearance of the vehicle is to be considered in laden condition only.

**Q. 1.6** Vehicle whose ground clearance in unladen condition is more than 170mm but below 170mm in laden condition, whether will get covered under Sr. No. 52B of Cess Rate Notification?

**Ans:** Vehicle whose ground clearance in unladen condition is more than 170mm but below 170mm in laden condition, will not get covered under Sr. No. 52B of Cess Rate Notification.

  
(RAJIV JALOTA)  
MEMBER



  
(SUNGITA SHARMA)  
MEMBER

- Copy to-**
1. The Appellant
  2. The AAR, Maharashtra
  3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
  4. The Commissioner of State Tax, Maharashtra
  5. The Jurisdictional Officer
  7. The Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN)
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