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/AM-RM/11/2022-23 **Date- 30.09.2022**

BEFORE THE BENCH OF

(1) Shri Ashok Kumar Mehta, MEMBER (Central Tax)

(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Parker Hannifin India Private Limited, Plot EL-26, MIDC TTC Industrial Area, Mahape, Navi Mumbai-400709.
GSTIN Number:	27AAACP6820G1ZJ
Clause(s) of Section 97, under which the question(s) raised:	(a) Classification of any goods or services or both.
Date of Personal Hearing:	16.09.2022
Present for the Appellant:	(i) Shri. Mayank Jain (ii) Shri. Shridhar Khedekar
Details of appeal:	Appeal No. MAH/GST-AAAR/13/2021-22 dated 09.02.2022 against Advance Ruling No. GST-ARA-109/2019-20/B-112 dated 15.12.2021.
Jurisdictional Officer:	Deputy Commissioner of State Tax (RAI-VAT-E-002), LTU-I, Raigad Division.

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. 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.

2. 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 "CGST Act" and "MGST Act"**] by M/s. **Parker Hannifin India Private Limited**, Plot EL-

26, MIDC TTC Industrial Area, Mahape, Navi Mumbai- 400709, (**"hereinafter referred to as "Appellant"**) against the Advance Ruling No. GST-ARA-120/2018-19/B-90 dated 10.11.2021., pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as **"MAAR"**).

BRIEF FACTS OF THE CASE

3. Parker Hannifin India Pvt. Ltd. is a company incorporated under the Companies Act, 1956, and is, *inter alia*, engaged in the manufacture and trading of various industrial goods such as filters, actuators, nozzles, valves, lubricators, heat shielding, purifiers, hoses and the like which find place in a lot of varied industries. The Appellant was duly registered under the erstwhile Central Excise Act, 1944 and is also registered under Goods and Services Tax (hereinafter referred to as "**GST**") laws with GST Identification Number 27AAACP6820G1ZJ issued under the Central Goods and Services Tax Act, 2017, Maharashtra Goods and Services Tax Act, 2017 and equally applicable to the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "**IGST Act**").

4. So far as relevant to the present appeal, the Appellant is engaged in the manufacture and sale of ***"Compressed Natural Gas Dispenser"*** (hereinafter referred to as **"CNG Dispenser"**) which is supplied for use at Compressed Natural Gas (hereinafter referred to as "**CNG**") dispensing stations for vehicles and automobiles, which are operated by city gas distribution Companies like Mahanagar Gas Ltd, Gujarat Gas Ltd etc.

5. The CNG Dispenser *supra* is installed at consumer CNG fuel dispensing station's premises. This CNG Dispenser has an inbuilt mechanism to constantly measure and regulate the mass of natural gas being transferred to the vehicle as also the pressure of the natural gas so as to ensure that the rated pressure capacity of the CNG tank in the vehicle is not exceeded, for reasons of safety. Upon the pre-set values being reached, the CNG Dispenser, automatically, by way of a control unit and actuator, cuts the supply of CNG to the CNG tank in the vehicle.

6. To commence refueling of CNG vehicles, the drivers / operators need to unhook the nozzle from the CNG Dispenser and hook-up to the receptacle of the CNG tank in the vehicle. Thereafter, the dispensing of CNG would commence upon activation. Throughout the process of dispensing, the CNG Dispenser measures and regulates the pressure. If the pressure reaches 200 kg/cm^2 (196 Bar), the CNG Dispenser will automatically and without any human intervention, stop the dispensing and cut-off supply. Further, all such refueling transaction data

would be stored and subsequently downloaded into a computer or forecourt management system.

7. For ease of reference, the main parts and components of a CNG Dispenser and their function are noted *infra*:

   a. **Mass Flow Meter:** Measures the mass of CNG being dispensed into the vehicle;
   b. **Pressure Sensor**: Measures the pressure of the CNG in the storage tank of the vehicle to ensure that it remains within the safe and recommended range;
   c. **Inlet banks:** Allows the connection of the cascade bank at the fuel station to the CNG Dispenser;
   d. **Actuators, ball valves:** These are the parts of CNG dispenser to ensure start and stop of the flow based on signals received from controller.
   e. **Tubes and hoses:** These are used to route CNG from storage tank to vehicle cylinder.
   f. **Controller Unit:** This is installed and acts as the electronic control unit to send instructions to operate the valves, actuators etc. automatically.

8. As can be seen from *supra*, the CNG Dispenser manufactured and supplied by the Appellant does not have any pump and neither does it perform any function of pumping. In such background, the Appellant approached the MAAR for determination of the classification of the same. Per the Appellant, as there is no pump, **Heading 84.13 (*pumps*)** is inapplicable. Further, since the CNG Dispenser can automatically control and regulate the pressure and/ or value of the CNG dispensed. it will qualify to be classified under **Heading 90.32** as automatically controlling or regulating apparatus. Annexed hereto Appeal Memorandum, is a copy of the application preferred by the Appellant along with annexures including catalogues and technical drawings.

9. From a bare perusal of the same, it can be said that the CNG Dispenser does not have a pump or a pumping function. Rather, it has *simpliciter* inlets and outlets which allows for movement of the CNG from the storage tank to the vehicle via the CNG Dispenser. The reason for movement of the CNG is that the pressure in the tank is low, while that of being dispensed is high. Hence, by principle of simple physics, viz., gas moves from a region of high pressure to low pressure. It is also an undisputed fact that that there is no application of external force for causing movement of CNG into the vehicle.

10. In such background, the department submitted a reply to the application of the Appellant *supra* submitting that the CNG Dispenser is correctly classifiable under Heading 84.13 only as it is used to transmit fuel which is covered in the entry.

11. The Appellant submitted a rejoinder to the submissions of the department stating that Heading 84.13 should be read completely and it includes within its fold pumps which are used to dispense fuel and therefore, in the undisputed absence of the pump, there arises no question of application of Heading 84.13.

12. Subsequent to *supra*, the MAAR passed the Impugned Order No. GST-ARA- 109/2019-20/B-112 dated 15.12.2021 (hereinafter referred to as the "**Impugned Advance Ruling**") vide which it has been held that the CNG Dispenser is correctly classifiable under Heading 84.13. The Impugned Advance Ruling has held that the CNG Dispensers, being correctly classifiable under Heading 84.13 are covered vide Sl. No. 117, Schedule IV of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and the corresponding notifications issued under the Maharashtra Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017.

13. Being aggrieved by the "**Impugned Advance Ruling**", the Appellant is preferring the present appeal before the Maharashtra Appellate Authority for Advance Ruling (hereinafter referred to as the "**MAAAR**") on various grounds, which are without prejudice to each other.

APPLICATION FOR CONDONATION OF DELAY

14. The "Impugned Advance Ruling" dated 15.12.2021 was received by the Appellant on 16.12.2021. The present Appeal was filed by the Appellant on 09.02.2022. The Appellant submits that the accompanying appeal is within the statutory period of limitation of thirty days prescribed under Section 100(2) of the CGST Act and MGST Act, in view of the order dated 10.01.2022 of the Hon'ble Supreme Court in Re: **Cognizance for Extension of Limitation [Suo Motu Writ Petition (Civil) No. 3 of 2020]**, in terms of which the period from **15 March 2020 to 28 February 2022** is required to be excluded for the purposes of calculating limitation. Read with the above order, it is evident that the Appellant has filed the accompanying appeal within the statutory period of limitation.

15. Without prejudice to the above and assuming that, in the opinion of the MAAAR, the above referred orders passed by the Hon'ble Supreme Court do not apply to the present case, the Appellant humbly requests the MAAAR to condone the delay in filing the accompanying

appeal in exercise of powers conferred under the proviso to Section 100(2) of the CGST Act and MGST Act, for the following reasons:

a) The drastic surge in the number of COVID-19 cases in the country due to the spread of the new Omicron variant during late December 2021 up to late-January 2022. Several employees of the Petitioner were diagnosed with COVID-19 during this period, which adversely affected the day-to-day operations of the Petitioner; and

b) The *bona fide* belief of the Petitioner that the above referred orders passed by the Hon'ble Supreme Court applied to the present case, in terms of Articles 141 and 142 of the Constitution of India.

GROUNDS OF APPEAL

A. The Impugned Advance Ruling has completely ignored the scope of Heading 84.13 and incorrectly interpreted the same

16. The relevant part of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 is reproduced *infra*:

Sl. No.	Chapter/ Heading/ Sub-heading/ Tariff Item	Description of Goods
117.	8413	Pumps for dispensing fuel or lubricants of the type used in filling stations or garages [8413 11], Fuel, lubricating or cooling medium pumps for internal combustion piston engines [8413 301]

17. Explanation (iv) to the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 reads adopt the principles of the General Rules for Interpretation to the Customs Tariff, to the extent as applicable. Therefore, for any item to be covered in Sl. No. 117 supra, it is trite that the following conditions be satisfied:

a) That the same be covered by Heading 84.13 of the Customs Tariff; and
b) That the same answer to the description, viz., the item in question should be a pump which is used in filling stations or garages.

18. In so far as (a) *supra* is concerned. Heading 84.13 as occurring in the Customs Tariff is reproduced *infra*:

Tariff Item	Description of Goods
8413	**Pumps for liquids, whether or not fitted with a measuring device; liquid elevators**
	- *Pumps fitted or designed to be fitted with a measuring device*
8413 11	*-- Pumps for dispensing fuel or lubricant of the type used in filling stations or garages*

19. In order to understand the scope of Heading 84.13, recourse has to be made to the Explanatory Notes, which *per* the judgment of the Hon'ble Supreme Court of India in ***CCE vs Wood Craft Products Ltd. [1995 (77) ELT 23 (SC)]*** is a determinative and extremely persuasive guide to interpreting tariff entries. The relevant portion is reproduced infra for ready reference:

> *"This heading covers most machines and appliances for raising or otherwise continuously displacing volumes of liquids (including molten metal and wet concrete), whether they are operated by hand or by any kind of power unit, integral or otherwise.*
>
> *The heading also includes delivery pumps equipped with measuring or price-calculating mechanisms such as are used for supplying petrol or oil in garages, and also pumps specially designed for use with other machines, vehicles, etc. (including petrol, oil or water pumps for internal combustion engines, and pumps for man-made textile fiber spinning machines).*
>
> *The machines of this heading can be subdivided, according to their system of operation, into the following five categories.*
>
> ***(A) RECIPROCATING POSITIVE DISPLACEMENT PUMPS***
>
> *These use the linear suction or forcing action of a piston or plunger driven within a cylinder, the inlet and outlet being regulated by valves. "Single-acting" pumps utilise the thrust or suction of one end of the piston only; "double-acting" types pump at both ends of the piston thus using both the forward and reverse strokes. In simple "lift" pumps the liquid is merely raised by suction and discharged against atmospheric pressure. In "force" pumps, the compression stroke is used, in addition to the suction stroke, to force the liquid to heights or against pressure. Multi-cylinder pumps are used for increased output. The cylinders may be either in line or in a star shape.*
>
> .....

(B) ROTARY POSITIVE DISPLACEMENT PUMPS

In these also, the intake and discharge of the liquid is effected by suction and compression, in this case produced by cams (lobes) or similar devices, rotated continuously on an axis. These devices make contact, at one or more points with the wall of the body of the pump, and form in this way the chambers in which the liquid is displaced.

....

(C) CENTRIFUGAL PUMPS

In these pumps, liquid taken in axially is set in rotation by the revolving blades of a rotor (impeller), the resulting centrifugal action forcing the liquid outwards to the periphery of an annular casing containing an outlet placed tangentially The casing is sometimes Jilted with divergent vanes (diffuser vanes) to transform the kinetic energy of the fluid into high pressure.

....

Centrifugal pumps may be driven by an electric or internal combustion motor or by a turbine. Because of their high working speed, they are suitable for direct coupling whereas piston or rotary pumps require to be driven through reduction gears.

This group also covers submersible pumps, central heating circulating pumps, channel impeller pumps, side channel pumps and radial flow impeller pumps.

(D) OTHER PUMPS

The following pumps fall in this group :

1) Electro-magnetic pumps. ...

2) Ejectors. ...

3) Emulsion pumps. ... "

20. As can be seen from a bare perusal of *supra*, the pump covered under Heading 84.13 is an instrument that is used for raising and/ or displacing volumes of liquids. In simpler terms, the instrument must be a mechanical or electrical device which uses principles of suction or pressure or any other force to move a liquid from one place or point to another. Only then can an item be covered by Heading 84.13. As a matter of fact, such meaning is also the dictionary meaning of the word **pump** as evidenced by *infra*:

***Oxford Learners Dictionary**: a machine that is used to force liquid, gas or air into or out of something.*

***Merriam-Webster:** a device that raises, transfers, delivers, or compresses fluids or that attenuates gases especially by suction or pressure or both.*

21. Therefore, the essential feature of a pump covered by Heading 84.13 and Sl. No. 117, Schedule IV of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 is that it must be a device which applies an external force to move, deliver, transport or raise liquids from one particular point to another. Such meaning has also been concluded in paragraphs 5.4 to 5.6 of the Impugned Advance Ruling.

22. However, entirely contrary to *supra*, the Impugned Advance Ruling at paragraph 5.8 and 5.10 makes a finding as *infra*:

> *"The impugned product causes the CNG to flow from the filling station to the CNG Tank of the vehicle. **Thus, there is flow of gas in one particular direction and is the CNG Dispenser which is causing the CNG to move from one place to another. Thus, the impugned product is also functioning as a pump in view of the definitions mentioned above.** It can therefore be said that CNG fuel dispensers are used for distribution of Compressed Natural Gas (CNG) which is a fuel and as per the submissions of the applicant, they are equipped with electronic counters of quantity and price of pumping.*
>
> ....
>
> *5.10 We find that Chapter Heading 8413 11 of the GST Tariff covers "Pumps for dispensing fuel or lubricants of the type used in filling stations or garages". **The impugned product is designed to dispense fuel, in this case CNG, which are used in filling stations, and acts as a pump which causes CNG, a gas, to move from one place to another.** Thus, the impugned product can be said to be a type of pump which are used for dispensing fuel and are therefore classifiable under HSN 8413 11 91 of the GST Tariff"*
>
> ***[Emphasis supplied]***

23. As can be seen from *supra*, the Impugned Advance Ruling holds that the CNG Dispensers supplied by the Appellant qualifies to be a pump because it is causing movement of the CNG from one place to another in a particular direction. It is submitted that such conclusion is not only patently against the Explanatory Notes and dictionary meanings *supra*, the same is

patently illogical and unreasonable. If such findings is assumed to be correct in law, a *simpliciter* steel tube or a pipe also qualifies to be a pump, which is absurd, irrational and cannot be accepted in law.

24. In sum therefore, it is submitted that the CNG Dispenser in question supplied by the Appellant does not have any pump or pumping function, i.e., an external force by virtue of which the CNG is transported from the filling station to the vehicle tank. This statement is undisputed as evident vide paragraph 5.9 of the Impugned Advance Ruling. Further, as required by the Explanatory Notes *supra*, the CNG Dispenser factually does not have any pump of a kind noted therein and therefore, cannot be classified in Heading 84.13 and covered vide Sl. No. 117, Schedule IV of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017.

25. Merely because the Sl. No. 117, Schedule IV of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017uses the phrase "**filling stations or garages**" does not mean that the former part, viz., "**pump for dispensing fuel**" be ignored. It is trite that tariff entries must be literally interpreted and on a bare perusal of the same, it is necessary that there be a pump first, and such pump be used for dispensing fuel for coverage therein. Merely because the CNG dispensed by the CNG Dispenser supplied by the Appellant is a fuel used in motor vehicles, cannot be reason to hold that there is a pump. The requirement of the existence of a pump should be first independently satisfied and then the requirement of fuel or not be examined. In the present case, the Impugned Advance Ruling has erroneously held that because the CNG flows from one direction to the other, it is performing the function of a pump. However, as stated in the averments supra, such a conclusion is sans any logic and against the Explanatory Notes also.

B. ***The CNG Dispenser is correctly classifiable in Heading 90.32 and Sl. No. 422, Schedule III of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017***

26. For ease of reference, the text of Sl. No. 422, Schedule III of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 and that of Heading 90.32 is reproduced *infra*:

Sr. No.	Chapter/Heading/Sub-heading/ Tariff Item	Description of Goods
422.	9032	Automatic regulating or controlling instruments and apparatus

Tariff Item	**Description of Goods**
9032	Automatic regulating or controlling instruments and apparatus

27. Chapter Note 7 to Chapter 90 lays down the criteria for coverage under Heading 90.32. The text of the same is reproduced for ready reference:

"7. Heading 9032 applies only to:

(a) instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value; and

(b) automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value."

28. The Explanatory Notes further explain the scope of Chapter Note 7(a) and Heading 90.32 as *infra*:

"(I) INSTRUMENTS AND APPARATUS FOR AUTOMATICALLY CONTROLLING THE FLOW, LEVEL, PRESSURE OR OTHER VARIABLES OF LIQUIDS OR GASES, OR FOR AUTOMATICALLY CONTROLLING TEMPERATURE

Automatic control apparatus for liquids or gases and apparatus for automatically controlling temperature form part of complete automatic control systems and consist essentially of the following devices:

A device for measuring the variable to be controlled (pressure or level in a tank, temperature in a room, etc.); in some cases, a simple device which is sensitive to changes in the variable (metal or bi-metal rod, chamber or bellows containing an expanding liquid, float, etc.) may be used instead of a measuring device.

A control device which compares the measured value with the desired value and actuates the device described in (C) below accordingly.

A starting, stopping or operating device.

Apparatus for automatically controlling liquids or gases or temperature, within the meaning of Note 7 (a) to this Chapter, consists of these three devices forming a single entity or in accordance with Note 3 to this Chapter, a functional unit.

29. Therefore, in accordance with the HSN Explanatory Notes, there goods in question must be an automatic control device with three seminal *criterion supra* in terms of which a particular item is classifiable under Heading 90.32. It is submitted that the CNG Dispenser in question satisfies all the requirements, as shown *infra*:

a. ***Device for measuring the variable to be controlled****: In the present case, the CNG Dispenser measures both mass and pressure of the CNG being dispensed into the vehicle by the mass flow meter and the pressure sensor;*

b. ***Control device which compares the measured value with the desired value and actuates the device described in (C) below****: Controller unit of the CNG Dispenser continuously compares the mass and pressure of the CNG in the CNG tank and actuates by way of stopping or cutting-off the supply of natural gas once the desired values are reached;*

c. ***A starting, stopping or operating device:*** *As explained in (B) above, the control unit keeps a check on the pressure and mass and as and when the desired/ safe values are reached, supply is stopped by way of actuators and valves.*

30. Hence, as evidenced from *supra*, the pre-requisites of an automatic control system stand satisfied and hence, the device is correctly classifiable under Heading 90.32 and consequently, correctly covered vide Sl. No. 422, Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.

31. In addition to *supra*, it is submitted that the exclusion provided for in the Explanatory Notes to Heading 90.32 is also not applicable in the present case. For ease of reference, the same is reproduced below for ready reference:

"Instruments and apparatus for automatically controlling the flow, level, pressure and other variables of liquids or gases or for automatically controlling temperature are connected to an appliance which carries out the orders (pump, compressor, valve, furnace burner, etc.) which restores the variable (e.g. liquid measured in a tank or temperature measured in a room) to the prescribed value, or which, in the case of a safety system for instance, stops the operation of the

machine or apparatus controlled. This appliance, generally remote controlled by a mechanical, hydraulic, pneumatic or electric control, is to be classified in its own appropriate heading (pump or compressor: heading 84.13 or 84.14; valve: heading 84.81, etc.). If the automatic control apparatus is combined with the appliance which carries out the orders, the classification of the whole is to be determined under either Interpretative Rule I or Interpretative Rule 3 (b) (see Part (III) of the General Explanatory Note to Section XVI and the Explanatory Note 10 heading 84.81)."

32. Basis a bare reading of the above, it is clear that if the controlling device is combined with the appliance which carries out the orders of pumping/ compressing etc., only then is the measuring device liable to be classified in the entry relating to the appliance which carries out the orders. In the present case, the CNG Dispenser does not do the job of compression and/ or pumping and the same is never presented along with a compressor or a pump. Rather, it is sold as a separate and distinct unit which merely measures and controls the amount of CNG being dispensed according to preset parameters. Hence, there is no application of the exclusion thereto.

33. Therefore, for the reasons submitted *supra*, the CNG dispenser deserves to be correctly covered by Sl. No. 422, Schedule III of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 and consequently, the Impugned Advance Ruling deserves to be quashed forthwith.

RESPONDENTS SUBMISIONS

34. The Jurisdictional Officer vide their letter dated 24.02.2022 have made the following submissions:

a. That the appellant stated that there is no liquid being discharged by the CNG dispenser. Rather what is being transmitted is gas and nothing else, which the CNG dispenser only regulates, But the main purpose of CNG dispenser is to transmit the fuel and as per the Notification No. 1/2017-Central Tax (Rate) dated 28th June 2017, CNG dispenser covered under heading 8413 " Pumps for dispensing fuel or lubricants of the type used in filing stations or garages [8413 11], fuel , lubricating or cooling medium pumps for internal combustion piston engines [8413 30].

b. Therefore, CNG dispenser is liable to tax 14% CGST & SGST both or 28% IGST.

PERSONAL HEARING

35. The personal hearing in the matter was conducted on 16.09.2022 in virtual mode via Video Conferencing, which was attended by Shri. Mayank Jain and Shri. Shridhar Khedekar on behalf of the Appellant, wherein the Appellant reiterated their earlier submissions made while filing the Appeal under consideration.

36. Shri. Mayank Jain, in the aforesaid hearing, contended that the Appellant is engaged in the manufacture and sale of CNG Dispenser which is supplied for use at **CNG** dispensing stations for vehicles and automobiles, which are operated by city gas distribution Companies like Mahanagar Gas Ltd, Gujarat Gas Ltd etc. The CNG Dispenser *supra* is installed at consumer CNG fuel dispensing station's premises. This CNG Dispenser has an inbuilt mechanism to constantly measure and regulate the mass and pressure of natural gas being transferred to the vehicle's fuel tank as per the pre-set values of the devices. The CNG Dispenser, automatically, by way of a control unit and actuator, cuts the supply of CNG to the CNG tank in the vehicle.

37. He further contended that the CNG Dispenser manufactured and supplied by the Appellant does not have any pump and neither does it perform any function of pumping. As per the Appellant, as there is no pump, **Heading 84.13** *(pumps)* is inapplicable. Further, since the CNG Dispenser can automatically control and regulate the pressure and/ or value of the CNG dispensed, it will qualify to be classified under **Heading 90.32** as an automatically controlling or regulating apparatus. The Appellant has also made reference of technical drawings in this regard and contended that the CNG Dispenser does not have a pump or a pumping function. Rather, it has *simpliciter* inlets and outlets which allows for movement of the CNG from the storage tank to the vehicle via the CNG Dispenser. The reason for movement of the CNG is that the pressure in the tank is low, while that of being dispensed is high. Hence, by principle of simple physics, viz., gas moves from a region of high pressure to low pressure. It is also an undisputed fact that there is no application of external force for causing movement of CNG into the vehicle. Shri. Mayank Jain also sought to file additional submissions with respect to a query raised by the Bench regarding the classification and other issues as discussed in the aforesaid hearing.

ADDDITIONAL SUBMISSION DT.22.09.2022

38. The appellant in their additional submissions dated 22.09.2022 have reiterated their earlier position stating that the impugned product merit classification under Chapter heading 90.32

rather than the heading 84.13 owing to the reasons stated in the averment recorded in the appeal memorandum.

DISCUSSIONS AND FINDINGS

39. We have carefully gone through the entire appeal memorandum containing the submissions made by the Appellant vis-a-vis the Advance Ruling passed by the MAAR, wherein the MAAR has held that the impugned product, i.e., CNG dispenser, is classifiable under Chapter Heading 84.13 placed at Sl. No. 117, Schedule IV of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. The MAAR has founded their aforesaid ruling on their interpretation of the entry at Sl. No. 117 of Schedule IV of the Notification No.1/2017-C.T. (Rate) dated 28.06.2017, which is being reproduced hereunder:

Sl. No.	Chapter/ Heading/ Sub-heading/ Tariff Item	Description of Goods
117.	8413	Pumps for dispensing fuel or lubricants of the type used in filling stations or garages [8413 11], Fuel, lubricating or cooling medium pumps for internal combustion piston engines [8413 301]

In this regard, the MAAR has observed as under:

> *21. The impugned product causes the CNG to flow from the filling station to the CNG Tank of the vehicle.* ***Thus, there is flow of gas in one particular direction and is the CNG Dispenser which is causing the CNG to move from one place to another. Thus, the impugned product is also functioning as a pump in view of the definitions mentioned above.*** *It can therefore be said that CNG fuel dispensers are used for distribution of Compressed Natural Gas (CNG) which is a fuel and as per the submissions of the applicant, they are equipped with electronic counters of quantity and price of pumping.*
>
> ....
>
> *5.10 We find that Chapter Heading 8413 11 of the GST Tariff covers "Pumps for dispensing fuel or lubricants of the type used in filling stations or garages".* ***The impugned product is designed to dispense fuel, in this case CNG, which are used in filling stations, and acts as a pump which causes CNG, a gas, to move from one place to another.*** *Thus, the impugned product can be said to be a type of pump*

which are used for dispensing fuel and are therefore classifiable under HSN 8413 11 91 of the GST Tariff"

40. As regards the aforesaid observations of the MAAR, the Appellant have contended that the aforesaid observations of the MAAR are contrary to the explanatory notes to the Chapter 84 and the dictionary meanings of the term "pump". It has further been contended by the Appellant that if such interpretation of CNG dispenser as have been derived by the MAAR wherein they have contemplated the impugned product as pump attributing to its ability to cause movement of CNG from the filling station to vehicle tank, i.e., from one place to another, thereby, acting as a pump, is assumed to be correct in law, then a *simpliciter* steel tube or a pipe, which also carries liquid or gases from one place to another, would also qualify to be a pump, which is absurd and irrational. It is further contended by the Appellant that the CNG Dispenser in question supplied by the Appellant does not have any pump or pumping function, i.e., an external force by virtue of which the CNG is transported from the filling station to the vehicle tank. In this regard, the Appellant have relied upon the observations made by the MAAR in the paragraph 5.9 of the Impugned Advance Ruling where the MAAR has noted that it is the external force generated by the pump which causes the movement of liquid or gases from one place to another. They further contended that since the CNG Dispenser factually does not have any pump as such which causes the transportation of gases from one point to another, and therefore, cannot be classified in Heading 84.13 and covered vide Sl. No. 117, Schedule IV of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017.

41. It has further been contended by the Appellant that merely because the Sl. No. 117, Schedule IV of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 uses the phrase "**filling stations or garages**" does not mean that the former part, viz., "**pump for dispensing fuel"** be ignored. In this regard, they have submitted that tariff entries must be literally interpreted and accordingly, it is contended that there should be a pump at the first place, which dispenses the fuel or lubricants of such kind which are used in filling station or garage. They have further contended that merely because the CNG dispensed by the CNG Dispenser is a fuel filled in motor vehicles at the filling station, cannot be reason to hold that there is a pump. The requirement of the existence of a pump should be first independently satisfied and then the question of the kind of fuel would arise. In the present case, the Impugned Advance Ruling has erroneously held that because the CNG flows from one direction to the other, it is performing the function of a pump.

42. On perusal of the aforesaid contention of the Appellant vis-à-vis the impugned advance ruling of the MAAR, **the moot issue before us is as to whether the impugned product can be construed as "pump" as provided under the relevant entry of the Notification No. 01/2017-C.T.(Rate) dated 28.06.2017.**

43. To decide the aforesaid issue, we would like to understand the meaning of the term "pump". It is observed that the term "pump" is neither defined under the GST law including Acts, rules, or notification issued thereunder, nor under the Customs Tariff Act, 1975, which has been referred to in the notification no. 01/2017-C.T. (Rate) dated 28.06.2017, for the purpose of determining HSN of the goods based on the descriptions contained in the Chapters of the first schedule to the Customs Tariff Act, 1975. Under these circumstances, we would like to refer to the dictionary meaning of the said term "pump", which is being reproduced hereunder:

Oxford Learners Dictionary: a machine that is used to force liquid, gas or air into or out of something;

Merriam-Webster: a device that raises, transfers, delivers, or compresses fluids or that attenuates gases especially by suction or pressure or both.

44. On bare perusal of the aforesaid meaning of the term "pump", it is evident that for any device or apparatus to qualify for the pump, it should transfer or deliver liquid or gases by using pressure or suction or both. On perusal of the descriptions of the impugned product, CNG Dispenser, as submitted by the Appellant, it is noticed that the impugned product does not use pressure or suction to transfer the gas from filling station to fuel tank of the vehicle. It is further observed that it is the difference between the pressures of the gas in the filling station and that in the fuel tank of the vehicle that actuate the flow of gas from the filling station to the fuel tank. That is, the pressure in the filling station is higher than that in the fuel tank. Since it is trite that the gas flows from high pressure to low pressure, accordingly, the gas in the filling station starts flowing into the fuel tank of the vehicle.

45. Now, we would like to refer to the relevant entry under Chapter 84 of the Customs Tariff Act, 1975, which is being reproduced hereunder:

Tariff Item	Description of Goods
8413	**Pumps for liquids, whether or not fitted with a measuring device; liquid elevators**

	- *Pumps fitted or designed to be fitted with a measuring device*
8413 11	-- *Pumps for dispensing fuel or lubricant of the type used in filling stations or garages*

46. Now, we set out to examine the explanatory note of Chapter 84 of the Customs Tariff Act, 1975, which is being reproduced hereunder:

"This heading covers most machines and appliances for raising or otherwise continuously displacing volumes of liquids (including molten metal and wet concrete). whether they are operated by hand or by any kind of power unit, integral or otherwise.

The heading also includes delivery pumps equipped with measuring or price-calculating mechanisms such as are used for supplying petrol or oil in garages, and also pumps specially designed for use with other machines, vehicles, etc. (including petrol, oil or water pumps for internal combustion engines, and pumps for man-made textile fiber spinning machines).

The machines of this heading can be subdivided, according to their system of operation, into the following five categories.

(A) <u>RECIPROCATING POSITIVE DISPLACEMENT PUMPS</u>

These use the linear suction or forcing action of a piston or plunger driven within a cylinder, the inlet and outlet being regulated by valves. "Single-acting" pumps utilize the thrust or suction of one end of the piston only; "double-acting" types pump at both ends of the piston thus using both the forward and reverse strokes. In simple "lift" pumps the liquid is merely raised by suction and discharged against atmospheric pressure. In "force" pumps, the compression stroke is used, in addition to the suction stroke, to force the liquid to heights or against pressure. Multi-cylinder pumps are used for increased output. The cylinders may be either in line or in a star shape.

(B) <u>ROTARY POSITIVE DISPLACEMENT PUMPS</u>

In these also, the intake and discharge of the liquid is effected by suction and compression, in this case produced by cams (lobes) or similar devices, rotated continuously on an axis. These devices make contact, at one or more points with the wall of the body of the pump, and form in this way the chambers in which the liquid is displaced.

(C) <u>CENTRIFUGAL PUMPS</u>

In these pumps, liquid taken in axially is set in rotation by the revolving blades of a rotor (impeller), the resulting centrifugal action forcing the liquid outwards to the periphery of an annular casing containing an outlet placed tangentially The casing is sometimes Jilted with divergent vanes (diffuser vanes) to transform the kinetic energy of the fluid into high pressure.

Centrifugal pumps may be driven by an electric or internal combustion motor or by a turbine. Because of their high working speed, they are suitable for direct coupling whereas piston or rotary pumps require to be driven through reduction gears.

This group also covers submersible pumps, central healing circulating pumps, channel impeller pumps, side channel pumps and radial flow impeller pumps.

(D) <u>OTHER PUMPS</u>

The following pumps fall in this group:

1) Electro-magnetic pumps. ...

2) Ejectors. ...

3) Emulsion pumps. ... "

47. Thus, as can be seen from a bare perusal of supra, the pump covered under Heading 84.13 is an instrument that is used for raising and/or displacing volumes of liquid from one place to another, using external forces, which may be in the nature of pressure or suction. Since the impugned product, CNG Dispenser, does not use any external force driven by any electrical or mechanical devices, the same cannot be considered as pump in terms of its meaning provided under the explanatory note as detailed hereinabove.

48. **Since it has been established now that the impugned product is not a pump, which is the primary clause of the entry of the chapter heading 84.13, the same will not be classified under Chapter Heading 84.13.**

49. **Now, we set out to determine the correct classification of the impugned product, CNG Dispenser.** The Appellant have advocated the classification of the impugned product under the Chapter Heading 90.32 mentioned at Sl. No. 422, Schedule III to the Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017. To ascertain their claim, we would like to refer to the entry at Sl. No. 422 of the Schedule III to the Notification No.01/2017-C.T.(Rate) dated 28.06.2017, which is reproduced hereafter:

Sr. No.	Chapter/Heading/Sub-heading/ Tariff Item	Description of Goods
422.	9032	Automatic regulating or controlling instruments and apparatus

50. Chapter Note 7 to Chapter 90 lays down the criteria for coverage under Heading 90.32. The text of the same is reproduced for ready reference:

"7. Heading 9032 applies only to:

(a) instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value stabilized against disturbances by constantly or periodically measuring its actual value; and

(b) automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value."

51. The Explanatory Notes further explain the scope of Chapter Note 7(a) and Heading 90.32 as *infra*:

"(I) INSTRUMENTS AND APPARATUS FOR AUTOMATICALLY CONTROLLING THE FLOW, LEVEL, PRESSURE OR OTHER VARIABLES OF LIQUIDS OR GASES, OR FOR AUTOMATICALLY CONTROLLING TEMPERATURE

Automatic control apparatus for liquids or gases and apparatus for automatically controlling temperature form part of complete automatic control systems and consist essentially of the following devices:

A device for measuring the variable to be controlled (pressure or level in a tank, temperature in a room, etc.); in some cases, a simple device which is sensitive to

changes in the variable (metal or bi-metal rod, chamber or bellows containing an expanding liquid, float, etc.) may be used instead of a measuring device.

A control device which compares the measured value with the desired value and actuates the device described in (C) below accordingly.

A starting, stopping or operating device.

Apparatus for automatically controlling liquids or gases or temperature, within the meaning of Note 7 (a) to this Chapter, consists of these three devices forming a single entity or in accordance with Note 3 to this Chapter, a functional unit.

Now, since as per the submissions made by the Appellant regarding components of the impugned device which includes the components like pressure sensor, controller unit, which automatically control and regulate the pressure of CNG being dispensed into the fuel tank, it is observed that the impugned device would merit classification under the Chapter Heading 90.32 placed at Sl. No. 422 of the Schedule III to the Notification No. 01/2017-C.T.(Rate) dated 28.06.2017.

52. In view of the above discussions and findings, we pass the following order:

Order

53. We, hereby, set aside the impugned Advance Ruling Order No. GST-ARA-109/2019-20/B-112 dated 15.12.2021 by holding that the impugned product, CNG Dispenser, will be covered by Sl. No. 422, Schedule III of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017. Thus, the appeal filed by the Appellant is hereby allowed.

(RAJEEV KUMAR MITTAL)
MEMBER

(ASHOK KUMAR MEHTA)
MEMBER

Copy to the:

1. **Appellant;**
2. **AAR, Maharashtra**
3. **Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.**
4. **Commissioner of State Tax, Maharashtra.**

5. Deputy Commissioner of State Tax (RAI-VAT-E-002), LTU-1, Raigad Division, Raigad
6. Web Manager, WWW.GSTCOUNCIL.GOV.IN
7. Office copy.