



ODISHA AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICE TAX (GST)

RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members Present :

1. Sri Gopal Krishna Pati, IRS, Addl. Commissioner, Office of the Chief Commissionerate, GST, Central Excise & Customs, Bhubaneswar
2. Sri Dillip Satpathy, Special Commissioner of CT&GST Office of the Commissioner, CT&GST, Odisha Banijyakar Bhawan, Cantonment Road,Cuttack-753001-Odisha.

1	Name and Address of the Applicant	M/s ANJALI ENTERPRISES, PLOT NO-853/1431, SAILA NIVAS, MADHUSUDAN NAGAR, BHUBANESWAR-751001, ODISHA.
2	GSTIN or User ID	21CIGPP8275G1Z2
3	Date of Filing of Form GST ARA-01	30.12.2020
4	Present for the Applicant in the personal hearing.	Chandrasekhar Chand, Advocate
5	Date of Personal Hearing	28.01.2021 & 09.03.2021

ORDER NO.01/ODISHA-AAR/2021-22/DATED 15/04/2021

Subject: M/s Anjali Enterprises, Plot No-853/1431, Saila Nivas, Madhusudan Nagar, Bhubaneswar-751001, Odisha (herein after referred to as the 'Applicant') having a GSTIN : 21CIGPP8275G1Z2 , is a Proprietorship Concern filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

- 1.0 The Applicant having assigned with GSTIN number 21CIGPP8275G1Z2 sought for an advance ruling in respect of the following question.

15.4.21

Signature
15.04.2021



“Whether fitting of battery is mandatory in two & three-wheeled battery powered electric vehicles (here-in-after referred to as ‘the subject goods’) while selling the same to the dealers for getting the benefit of 5% GST rate applicable for electrically operated vehicles?”

1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the OGST Act.

2.0 Submission of the Applicant

2.1 Shri Abhisek Pani is a Proprietor of M/s Anjali Enterprises deals in battery powered Electric Two Wheelers, as a Dealer. The applicant purchases vehicles from M/s Omjay Eeve Ltd., Badchana under a brand name ‘EEVE’. During transportation, the batteries are not fitted with the vehicle though they are transported together.

2.2 It was submitted that the applicant is having a plan to manufacture similar battery powered electric vehicle, therefore, they want clarification whether fitting of battery is mandatory in battery powered electric vehicles while selling the same to the dealers for getting the benefit of 5% GST rate applicable for electrically operated vehicles.

2.3 Electrically Operated Vehicles, including two and three wheeled electric vehicles falling under Chapter 87 is taxable @ 5%. As per Sl. No. 242A of Notification No. 1/2017 – Central Tax (Rate) dated 30 June 2017, as amended from time to time, which defines electrically operated vehicles as “vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E- bicycles”.

2.4 The subject goods in question is operated from the power generated by battery, supplied to the motor to rotate the wheels and also the vehicle in question does not have an internal combustion engine or gear box, etc. which is typical in the case of a fossil fuel powered vehicle. Hence, it falls within the definition of electrically operated vehicle, as defined above, chargeable to GST @ 5%.

2.5 The only difference between the goods that are supplied with batteries and the ones without batteries is that, battery is not there in the latter case. Otherwise, the goods without batteries are complete in itself to act as an agent of transportation which is



propelled by a motor. Once battery is fitted, the vehicles will start functioning. Thus, such goods fits within the definition of 'Electrically operated vehicles' mentioned in entry 242A of Notification No. 1/2017 *ibid*.

- 2.6 When compared with a normal vehicle (running on fuel), the battery essentially plays the role of fuel i.e. diesel or petrol. When a sale of the vehicle running on fuel is done with empty tank, it does not change the nature of the goods supplied. It is still a vehicle. Drawing an analogy to the instant case, the battery plays role of fuel and thus if the goods are supplied without battery (i.e. without fuel), the nature of the goods is still 'vehicle'. Hence, for vehicles to be classified as electrically operated vehicles, it must be such that run solely on electrically energy derived from one or more electrical batteries, as and when put to use. Fitting of battery in the vehicle, at or before the time of supply, is not a precondition for the same to be classified as electrically operated vehicle. In support of its claim, the applicant cited a judgement passed by the department of Revenue-Revisionary Authority in the case of Reva Electric Car Company Pvt. Ltd. [2012 (275) E.L.T. 488 (G.O.I.)], which holds that even if cars are not fitted with batteries, the same is classifiable as battery powered road vehicles.
- 2.7 That for a vehicle to be construed as a battery operated vehicle, the same must be powered exclusively by electric motor wherein the traction energy is supplied exclusively by traction battery installed in the vehicle. However, fitting of batteries cannot be considered as a concomitant factor to define a vehicle as a battery powered/ battery operated vehicle.
- 2.8 Further, in the certificate issued by International Centre for Automotive Technology for establishing compliance to the provisions of CMVR, it states that it is the vehicle manufacturer's responsibility to ensure fitment of same components/ parts/ assemblies etc. before submission of the vehicle for registration. However, the requirement to ensure fitment of the same before applying for registration does not mean that the same must be fitted in the vehicle by the manufacturer while selling the same to the dealers.
- 2.9 That, pre-fitment of battery in the vehicle before selling it to the dealers has never been the intention of law. The only requirement that needs to be fulfilled is that the vehicle must be one that depends upon batteries for traction energy. Accordingly, the same may



be classified as an electrically operated vehicle irrespective of the fact that battery is installed in the vehicle by the dealers while selling it to ultimate customers.

- 3.0 The personal hearing was fixed on 09.03.2021 under due intimation to the applicant, the jurisdictional officer of State GST & jurisdictional officer of Central GST (intimated through their respective commissionerate along with a copy of application and the written submission of the applicant). The applicant appeared hearing through its Advocate Shri Chandrasekhar Chand. During P.H., Shri Chandrasekhar Chand, Advocate re-iterated the submissions already furnished in the annexure to the application. He explained/submitted the details of activities being undertaken or proposed to be undertaken by the applicant.

Discussion & findings

- 4.0 We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments advanced by Sri Chandrasekhar Chand, Advocate during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. We find that the question before us essentially pertains to the rate of GST applicable on supply of electrically operated vehicles without fitting of battery and the applicability of Notification issued under the provisions of GST Act. We, therefore observe that the issue before us is squarely covered under Section 97(2) of the CGST Act, 2017 and therefore we admit the application for consideration.
- 5.0 We need to answer the only question asked by the applicant that “Whether fitting of battery is mandatory in two & three-wheeled battery powered electric vehicles while selling the same to the dealers for getting the benefit of 5% GST rate applicable for electrically operated vehicles?”. In this regard the applicant stated that the difference between the goods that are supplied with batteries and the ones without batteries is that, battery is not there in the latter case. Otherwise, the goods without batteries are complete in itself to act as an agent of transportation which is propelled by a motor. Once battery is fitted, the vehicles will start functioning. Thus, such goods fits within the definition of ‘Electrically operated vehicles’ mentioned in entry 242A of Notification No. 1/2017 *ibid*.
- 5.1 The applicant referred to the judgment passed by the Department of Revenue- Revisionary Authority in the case of Reva Electric Car Company Pvt. Ltd. [2012 (275) E.L.T. 488 (G.O.I.)], which holds that even if cars are not fitted with batteries, the same is



classifiable as battery powered road vehicles. The applicant contended that a vehicle to be construed as a battery operated vehicle, the same must be powered exclusively by electric motor wherein the traction energy is supplied exclusively by traction battery installed in the vehicle. However, fitting of batteries cannot be considered as a concomitant factor to define a vehicle as a battery powered/ battery operated vehicle. Pre-fitting of battery in the vehicle before selling it to the dealers has never been the intention of law. The only requirement that needs to be fulfilled is that the vehicle must be one that depends upon batteries for traction energy. Accordingly, the same may be classified as an electrically operated vehicle irrespective of the fact that battery is installed in the vehicle by the dealers while selling it to ultimate customers.

- 5.2 The Central Jurisdictional Officer in his comments cited the decision of Advance Ruling of West Bengal in the case of Hoogly Motors (P) Ltd, wherein it has been held that a three-wheeled motor vehicle particularly an e-rickshaw without the battery pack does not have the essential character of an 'electrically operated vehicle.' It is classified as a chassis and therefore, it is not classifiable as a vehicle under Sub-heading 8703 of the Tariff Act. But the said Jurisdictional Officer has taken a opposite stand that even without the battery, if the e-rickshaw has a motor fitted on a chassis along with the body and is capable of transporting people, it remains its original character. The chassis of an e-rickshaw is the basic skeletal or structural framework fitted with an axle, motor and other parts. Just because there is no battery, it may not be termed as 'chassis', as there is a body mounted on the chassis, which gives it the characteristic of a vehicle along with the chassis. Therefore, mere absence of the battery may not make an e-rickshaw a chassis.
- 5.3 Before taking a final opinion, we need to go through the definition of 'electrically operated vehicle'. Explanation to Entry No.242 A of schedule-1 to notification no.01/2017-central tax (rate), dated 28.06.2017, as amended from time to time defines the term 'electrically operated vehicle' to mean " vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include e-bicycles". That means it is a type of electric vehicle (EV) that exclusively uses chemical energy stored in rechargeable battery packs, with no secondary source of propulsion (e.g. hydrogen fuel cell, internal combustion engine, etc.). An Electric Vehicle with battery pack uses electric motors and motor

controllers instead of internal combustion engines (ICEs) for propulsion. It derives all power from battery packs and thus has no internal combustion engine etc. Electrically operated vehicles are designed to run only on electrical energy. As such, they will run on battery as and when put to use. Hence, for vehicles to be classified as electrically operated vehicles, it must be such that it would run solely on electrically energy derived from one or more electrical batteries, as and when put to use. In this regard, it would be relevant to refer the judgment passed by the Department of Revenue- Revisionary Authority in the case of Reva Electric Car Company Pvt. Ltd. Reported in [2012 (275) E.L.T. 488 (G.O.I.)], which holds that if electrically battery operated cars exported, though not fitted with batteries at the time of export, the same is still classifiable 'battery powered road vehicles' and would run on battery when put to use. Hence, we hold that fitting of battery in the vehicle, at or before the time of supply, is not a precondition for the same to be classified as electrically operated vehicle.

6.0 In view of the above, we rule as follows :

A two or three-wheeled "battery powered electric vehicle" when supplied with or without battery pack is classifiable under HSN 8703 as an 'electrically operated vehicle' and is taxable @ 5% GST.

7.0 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.

8.0 The applicant or jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.

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15.4.2021
(G K Pati)

Member, CGST

15.4.21

(Dillip Satpathy)

Member SGST



C. No. V (1) ARA/ODISHA/BBSR/2020/18 / 6714-16-A

Dated: 15/4/21

To

M/s Anjali Enterprises, Plot No-853/1431, Saila Nivas, Madhusudan Nagar,
Bhubaneswar-751001, Odisha.

Copy forwarded to:

1. The Principal Commissioner, CGST & Central Excise, Bhubaneswar
Commissionerate, C R Building, Rajaswa Vihar, Bhubaneswar-751007 (Odisha).
2. The Commissioner, SGST Odisha, Baniyakar Bhawan, Old Secretariat Compound,
Cuttack-753001, Odisha.
- ✓ 3. Office copy.

