Confidential



Additional Agenda for

26th GST Council Meeting

10 March 2018



File No: 106/26th GSTC Meeting/GSTC/2018
GST Council Secretariat

Room No.275, North Block, New Delhi
Dated: 28 February, 2018

Notice for the 26th Meeting of the GST Council scheduled on 10 March 2018

The undersigned is directed to refer to the subject cited above and to the earlier meeting notice dated 21 February 2018 and to say that in view of the extensive agenda items for discussion, the 26th Meeting of the GST Council will now be held on 10 March 2018 at Hall No 2-3, Vigyan Bhavan, New Delhi. The schedule of the meeting is as follows:

- Saturday, 10 March 2018 : 11:00 hours onwards

2. In addition, an Officer's Meeting will be held on 9 March 2018 at Hall No 2-3, Vigyan Bhavan, New Delhi as follows:

- Friday, 9 March 2018 : 14:30 hours onwards

3. The agenda items for the 26th Meeting of the GST Council will be communicated in due course of time.

4. Please convey the invitation to the Hon'ble Members of the GST Council to attend the Meeting.

-Sd-
(Dr. Hasmukh Adhia)
Secretary to the Govt. of India and ex-officio Secretary to the GST Council
Tel: 011 23092653

Copy to:

1. PS to the Hon'ble Minister of Finance, Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.

2. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.

3. The Chief Secretaries of all the State Governments, Delhi and Puducherry with the request to intimate the Minister in charge of Finance/Taxation or any other Minister nominated by the State Government as a Member of the GST Council about the above said meeting.

4. Chairperson, CBEC, North Block, New Delhi, as a permanent invitee to the proceedings of the Council.

5. Chairman, GST Network

Additional Agenda Items for the 26th Meeting of the GST Council on 10 March 2018

14. Any other agenda item with the permission of the Chairperson

i. Consideration of representation dated 22.09.2017 by M/s Honda Siel Products as per the Directions of the Hon'ble High Court of Delhi

ii. Procedure to be followed for grant of adhoc exemption on imports under Section 25 (2) of the Customs Act, 1962

iii. Appointment of Deputy Commissioner as member of Authority for Advance Ruling- Amendment in Rule 103 of the CGST Rules, 2017.

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Discussion on Agenda Items

Agenda Item 14: Any other agenda item with the permission of the Chairperson

Agenda Item 14(i): Consideration of representation dated 22.09.2017 by M/s Honda Siel Products as per the Directions of the Hon'ble High Court of Delhi

Briefly stated, M/s Honda Siel Products Ltd have filed a writ petition before the Hon'ble High Court of Delhi, inter alia, stating that their representation dated 22.09.2017 **(Annexure 1)** had not been considered by the GST Council. The matter was heard by the Hon'ble High Court on 01.12.2017, which vide its order dated 01.12.2017 **(Annexure 2)** directed the GST Council (3rd respondent) to appropriately consider the petitioners pending representations about the differential GST rates between its products and the fixed speed diesel engines.

2. Subsequently, the GST Council secretariat, vide its letter no. F.No.88/CWP-10720/2017/HSPL/GSTC/2018 dated 13.02.2018, had requested that the matter be placed before the Fitment Committee, so that it can be considered finally by GST Council.

3. The aforesaid representation of M/s Honda Siel states that fixed speed diesel engines below 15HP attract GST at 12%, whereas petrol/kerosene engines attract GST at 28%. It alleges that the above differentiation is arbitrary and founded on erroneous logic. The averments raised in the support of their claim are:

a) That historically there was no difference in the excise duty rate between diesel and petrol/kerosene engines.
b) That the state VAT rates were same on Diesel and Petrol/kerosene engines.
c) That diesel causes greater damage to the environment in comparison to the Petrol/Kerosene engines.

3.1. In view of the above, the representation seeks that the rate of GST applicable on supply of petrol/kerosene engines below 15HP be reduced to 12%, to maintain parity with fixed speed diesel engines below 15HP.

4. M/s Honda Siel Power Products Ltd. had in their earlier representation, dated 14th June, 2017 had stated that initially the effective rate of GST for both types of engines (IS 11170-1985 Cl Diesel engines upto 26HP and IS 7347-1974 Spark ignition engines, mostly of 1.5HP to 5 HP) was the same irrespective of the fuel used. However, in the meeting on 11th of June 2017, the rate on Diesel engines ranging upto 26HP viz. IS 11170-1985 (mainly used by large farmers and for industrial purposes) was reduced to 12%, which was discriminatory and the rate of both types may either be retained at 28% or both may be reduced to 12%.

5. In this context, it may be recalled that GST rate on fixed speed diesel engines upto 15HP [falling under sub-heading 8408] was discussed by the Fitment Committee in its meeting held on 07.06.2017 & 08.06.2017 and based on the suggestion made by the states of Gujarat and UP that the GST rate may be aligned with that of submersible pumps [which attracted 12% GST], the GST rate of 12% was recommended on fixed speed diesel engines, while the rest of the engines falling under 8408 remaining at 28%. The same was considered by the GST Council in its 16th meeting held on 11.06.2017 and it recommended 12% GST rate on fixed speed diesel engines up to 15HP.

6. In this regard it is to state that fixed speed diesel engines [upto 15HP] are used for agricultural purposes with more and more farmers opting for lifts irrigation and the demand for such diesel engines

has been increasing steadily, due to, *inter alia*, relatively lower price of diesel as compared to other fuels.

7. As per information available on web, M/s Honda Siel Power Products Ltd. [HSPPL] is the Indian subsidiary of Honda Motor Company, Japan, **who are the World's largest manufacturer of Portable Generators;** HSPPL are suppliers of Power Products, in different Segments like **Portable Generators, Water Pumps, General Purpose Engines, Brush Cutter, Lawnmowers, Backpack Sprayer & Power Tillers** to meet varying demand of a wide customer base; HSPPL, with strength of over 600 dealers and 17 Area Offices across India, have been continuously bringing joy and satisfaction through its range of Power Products that suits the requirements of a variety of customers engaged in the field of Agriculture, Horticulture, Disaster & Rescue, Defence & Paramilitary forces, Railways, Post Offices etc. besides Homes & small businesses. Further, M/s Honda Siel Products Ltd seem to supply three types of water pumping sets, namely, petrol water pumping sets, kerosene water pumping sets and diesel water pumping sets, and if the engines used in diesel water pumping sets are of fixed speed diesel engines upto 15HP, then such engines will also be eligible for 12% GST rate. As such, it appears that petrol and kerosene engines are generally not used by the farmers, and therefore extending same tax treatment to such engines as that to fixed speed diesel engines upto 15HP, would be treating unequals equally and, thus, may not be warranted.

8. The views/comments/recommendations of the members of the Fitment Committee were sought. In response, out of 11 members of the Fitment Committee only 4 members have provided comments. Detailed comments of these four states are given in **Annexure 3** to this note. Out of these States, two States have stated that extending 12% GST rate to petrol and kerosene engines may not be advisable. One of these States has stated that Fixed Speed Diesel Engines (upto 15HP) are mainly used by small and marginalized farmers for agricultural purposes, primarily irrigation and these are manufactured/ assembled in Unorganized Units whereas the Petrol/Kerosene engines are used as Electricity Generators, predominantly by the upper middle-class segment, and are manufactured in well run units of Organized Sector and are not used generally by farmers. The other State has stated that diesel engines are used in farming and therefore have been kept so aligned with the rate of tax of submersible pumps. One State has recommended reducing the GST rate of petrol and diesel engine to 12% to remove ambiguity if revenue implications are not found substantial. However, there is no ambiguity in classification of such engines, as kerosene and petrol engines and diesel engines are clearly distinguishable. One State has stated that fixed speed diesel engines, below 15 HP are mostly used for agricultural purposes and the rate of tax on them has been fixed in alignment of rate of tax on power driven pumps primarily designed for handling water, deep tube well turbine pumps, submersible pumps which are also taxable at 12%. Other engines are used for purposes other than agriculture and as such there is no justification to reduce its rate to 12%. However, the rate of such goods can be brought down to 18%. In this context, it may be recalled that 12% rate on fixed speed diesel engines resulted in tax inversion and had necessitated reduction in GST rate on parts suitable for use solely or principally with fixed speed diesel engines upto 15HP. Since parts and components of engines, in general attract 28% GST rate, reduction in GST rate on such engines to 18% will result in similar inversion, necessitating reduction in GST rate on parts and components of such engines. No comments, have been received from 7 other states [who are members of the Fitment Committee], and it appears that such States are in agreement with the agenda note circulated. Therefore, no State has recommended reduction in rate on the ground of discrimination as has been argued by the petitioner.

9. In view of the above, on merit there does not appear a case for reduction in the GST rate on petrol and kerosene engines upto 15 HP from 28%.

10. The GST Council may take a view regarding the representation dated 22.09.2017 of M/s Honda Siel Products seeking reduction in GST rate on petrol and kerosene engines upto 15 HP to 12%, as per the Directions of the Hon'ble High Court of Delhi.

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Annexure 1

PDS Legal
Advocates & Solicitors

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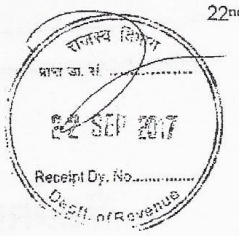
ANNEXURE- P6

22nd September, 2017



To

Dr Hasmukh Adhia
Secretary (Revenue)
Ministry of Finance
North Block
New Delhi - 110001

Subject: Representation for seeking parity in GST rates on supply of petrol/kerosene engines and fixed speed diesel engines below 15 HP

Dear Sir

Please find enclosed a representation on behalf of M/s Honda Siel Power Products Ltd ("**HSPPL**"). HSPPL is engaged in manufacture of petrol and kerosene engines which are used in power driven water pumps and other products. The power capacity of such engines is in the range of 0.5 HP to 3 HP.

Presently, supply of fixed speed diesel engines below 15 HP, which cause pollution, attracts GST @ 12% whereas supply of petrol/kerosene engines which are more environmentally friendly attract GST @ 28%.

Accordingly, the representation enclosed herewith is being filed arguing that the rate of GST applicable on supply of petrol/kerosene engines below 15 HP be reduced to 12% to maintain parity with fixed speed diesel engines below 15 HP.

Thanking You

Yours Sincerely

PDS Legal Advocates & Solicitors

Encl: as above

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REPRESENTATION TO THE HON'BLE SECRETARY (REVENUE), MINISTRY OF FINANCE GOVERNMENT OF INDIA

REPRESENTATION ON BEHALF OF M/S HONDA SIEL POWER PRODUCTS LTD.

AUGUST, 2017

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I. EXECUTIVE SUMMARY

1.1. This Representation is being filed on behalf of M/s Honda Siel Power Products Ltd. (**"HSPPL"**) to address the issue pertaining to non-parity of rates of tax levied on petrol/ Kerosene engines and fixed speed diesel engines under the Goods and Service Tax Regime.

1.2. The GST regime has been introduced with effect from 01.07.2017 with the objective of mitigating the cascading effect of taxation or double taxation. Various levies such as excise duty, service tax and VAT have been subsumed into GST. Henceforth, GST is payable on supply of goods or services or both.

1.3. HSPPL is *inter-alia* engaged in the manufacture of amongst all power products, petrol / kerosene engines. Such engines are of variable speed type and the capacity of such engines is from 0.5 HP to 3 HP and are sold to OEMs who use these engines in manufacture of Power Driven Water Pumps, lawnmowers, tiller, and backpack sprayers. Such products are mostly used in the agriculture sector.

1.4. Prior to introduction of GST, these petrol / kerosene engines manufactured by HSPPL attracted excise duty @ 12.5% and VAT in the range of 12-5%-14.5% in different States. Further, similar rate of excise duty and VAT was attracted on manufacture and sale of diesel engines used in Power Driven Water Pumps.

1.5. After transition into the GST regime, while fixed speed diesel engines below 15 HP attract GST @ 12%, all other engines including petrol/kerosene engines manufactured by HSPPL attract 28% despite

being below 15 HP. This has led to a disparity in the rates of petrol/kerosene engines and fixed speed diesel engines below 15 HP. While diesel engines cause pollution and are required to be discouraged are at a lower rate of GST @ 12%, petrol engines which are more environmentally friendly are being charged to GST @ 28%. Further, if diesel engines are charged to GST @ 12%, there is no basis for charging kerosene engines @ 28%.

1.6. It is the well adverted policy of the Government of India that usage of cleaner fuels is to be promoted. Various studies undertaken have highlighted the harmful effects of using diesel over petrol and have supported reduction in usage of diesel. On various occasions, the Hon'ble Supreme Court has banned diesel vehicles and recommended use of cleaner fuels. Moreover, there is no rationale for affixing different rates of tax for fixed speed diesel engines below 15HP and other types of engines and will result in a tax arbitrage especially considering the fact that such products are used in the agriculture sector which is extremely price sensitive.

1.7. **In terms of the rationale set out in this Representation, it is prayed that the rate of tax on supply of petrol / Kerosene engines below 15HP be reduced to 12% to maintain parity with fixed speed diesel engines below 15 HP;**

II. BACKGROUND

2.1. M/s Honda Siel Power Products Ltd (hereinafter referred to as "**HSPPL**") is a public limited company situated at Plot no. 5, Sector 41 (Kasna), Greater Noida Industrial Development Area, Distt. Gautam Budh Nagar, Uttar Pradesh-201306 and is a subsidiary of M/s Honda Motor Company Ltd., Japan. HSPPL is engaged in manufacturing other power products of *inter alia*, petrol/ kerosene engines.

2.2. The petrol / kerosene engines manufactured by HSPPL are *inter alia* for the purpose of usage in Power Driven Water Pumps, lawnmowers, tiller, and backpack sprayers by OEMs. The smallest type of petrol /kerosene engine manufactured by HSPPL is GX-80 Engine (Q-type)- 2 HP and the biggest variant is G 300. The power capacity of engines manufactured by HSPPL varies from 0.5 Horse Power (HP) to 3 HP. Most of the products wherein the petrol/Kerosene engines are used are meant for agricultural purposes.

2.3. With the introduction of GST with effect from 01.07.2017, differential rates of tax have been introduced with regard to supply of fixed speed diesel engines below 15 HP and other types of engines including the variable speed petrol /kerosene engines manufactured and sold by HSPPL. While fixed speed diesel engines below 15 HP attract GST @ 12%, all other engines attract GST @ 28%. This has resulted in various issues which have been explained subsequently in the representation below.

III. RATIONALE FOR ALIGNMENT OF RATES

HISTORICAL PERSPECTIVE

3.1 It may be noted that prior to the introduction of GST from 01.07.2017, the manufacture of petrol / kerosene engines attracted the levy of excise duty@ 12.5% and were classifiable under Central Excise Tariff Heading (CETH) 8407. Moreover, diesel engines (not manufactured by HSPPL) were classified under CETH 8408 and attracted excise duty @ 12.5 %. Hence, there was no difference in the rate of excise duty payable on the manufacture of a petrol / kerosene or diesel engines wherein such engines were used in water pumps.

3.2 It is further pertinent to note that on the sale of such petrol / kerosene and diesel engines, the rate of Value Added Taxes (VAT) applicable in all States and Union Territories were also the same. The rate of VAT applicable and payable on the engines in different States of India by the assessee in the pre-GST regime is as below-:

STATE WISE VAT RATE		
SL.NO.	STATE	ENGINE
1	MAHARASTRA	12.50%
2	HARYANA	12.50%
3	MEGHALAYA	12.50%
4	MIZORAM	12.50%
5	ARUNACHAL PRADESH	12.50%
6	UTTARANCL	12.50%
7	UTTAR PRADESH	12.50%
8	CHANDIGARH	12.50%
9	HIMACHAL PRADESH	12.50%
10	GOA	12.50%
11	BIHAR	14.50%
12	ORISSA	14.50%
13	RAJASTHAN	5.50%
14	WEST BANGAL	14.50%
15	KERALA	14.50%
16	PONDICHERRY	14.50%
17	MEGHALAYA	12.50%
18	TAMILNADU	14.50%
19	ANDHRA PRADESH	5.00%
20	AASAM	14.50%
21	PUNE	13.00%
22	GUJARAT	4.00%
23	CHATTISGARH	14.00%
24	MADHYA PRADESH	14.00%
25	JHARKHAND.	14.00%
26	JAMMU& KASHMIR	13.50%
27	MANIPUR	13.50%
28	TRIPURA	13.50%
29	NAGALAND	12.50%
30	KARNATAKA	14.50%

Hence, it can be seen that the incidence of tax on manufacture and sale of petrol/ kerosene and diesel engines was the same prior to the introduction of GST. Accordingly, a level playing field was in place wherein the rate of tax applicable did not determine consumer choices.

RATE OF TAX APPLICABLE WITH EFFECT FROM 01.07.2017

3.3 With effect from 01.07.2017, the individual levies of excise duty and VAT have been subsumed into GST with the assessee being liable to

make payment of Central GST and State GST on intra-State supply of goods or services or both or Integrated GST in case of inter-State supply of goods or services or both.

3.4 On the basis of the discussions of the 14th GST Council Meeting held on 18th May, 2017, the GST Council recommended the GST Rate Schedule for Goods. As per S. No. 84 of the said Schedule, the supply of products classifiable under CETH 8407 i.e., Spark-ignition reciprocating or rotary internal combustion piston engine attracted GST @ 28%. Hence, the supply of petrol /kerosene engines manufactured and sold by HSPPL was to attract GST @ 28%. S. No. 84 also provided that supply of products classifiable under CETH 8408 i.e., compression-ignition internal combustion piston engine (diesel or semi diesel engines) attracted GST @ 28%. Accordingly, by way of the GST Rate Schedule released on 18th May, 2017, the supply of petrol / kerosene and diesel engines attracted the same levy of GST @ 28% maintaining the competitiveness which existed in the pre-GST regime.

3.5 As per the discussions held in the 16th GST Council Meeting held on 11th June, 2017, a revised rate of GST for certain goods was released. It is pertinent to note that S. No. 40 of the said Schedule provided that the supply of Fixed Speed Diesel Engines classifiable under Chapter 84 attracted GST @ 12% instead of 28% as had been fixed in the 14th GST Council Meeting. Further, as per the Booklet of Rate of GST on Goods, the supply of Fixed Speed Diesel Engines of power not exceeding 15 HP were to attract GST @ 12%. Hence, supply of diesel engines below 15 HP will now attract GST @ 12%.

3.6 However, no corresponding reduction in rate of GST on supply of petrol / kerosene engines was announced by the GST Council. As a result, while the supply of fixed speed diesel engines below 15HP attracts

GST @ 12%, the supply of petrol / Kerosene engines (even those below 15HP) attracts GST @ 28%.

GOVERNMENT INITIATIVES TOWARDS CLEANER FUELS

3.7 Imposition of a lower rate of tax on supply of diesel engines is contrary to the policy of the Government of India to promote usage of cleaner fuels. It is relevant to note that the Draft National Energy Policy submitted by the Niti Aayog on 27.06.2017, amongst its suggestions to ensure cleaner air quality, has suggested that diesel being one of the biggest polluters must be discouraged as a source of energy not only for vehicles but for water pumps.

3.8 While petrol prices had been made market determined in 2010 itself, diesel price was also made market determined with effect from October, 2014. This step was undertaken to reduce the burden of subsidies given on diesel and diesel products and also reduce reliance on diesel as a source of fuel across all sectors in India.

3.9 Further, the policy of the Government to dis-incentivise diesel as a fuel can be seen in the GST rates applicable on sale of cars. GST Compensation cess @ 1% is payable on sale of cars using petrol and having an engine below 1200 cc whereas cars using diesel and having an engine below 1500 cc attract GST Compensation cess of 3%. Moreover, sale of all diesel engines which are above 15 HP will also attract GST @ 28%. Thus, while the Government itself recognize detrimental effects of use of diesel as fuel and seek to discourage it, the step to reduce GST rates on diesel engines is not in alignment with the policy of the Government and adversely affects the initiative to reduce use of diesel as a fuel.

REDUCTION OF DIESEL AS FUEL FOR CONTROLLING AIR POLLUTION

3.10 The impact of diesel generator sets in the rising air pollution across India has also been highlighted in various studies undertaken. Various studies undertaken which highlight the harmful impact of diesel as a fuel.

3.11 In a study undertaken by the International Agency for Research on Cancer for the World Health Organization, it was concluded that diesel engine exhaust can be classified as carcinogenic to humans. Further, even though diesel engine standards have improved over the years and the amount of particulates and chemicals has decreased, it is not clear whether the qualitative changes will translate into altered health effects.

3.12 In a report prepared by the Central Pollution Control Board in August, 2008, the following effects of diesel pollution were highlighted:

i. Exposure to diesel exhaust reduces the capacity of lungs to clear bacteria and increases susceptibility of the lung to infection;
ii. Diesel exhaust particulates cause DNA damage;
iii. Exposure to even low levels of diesel exhaust reduces the expression of various genes
iv. Exposure to diesel exhaust particles marked inflammatory response in the airways of humans.

3.13 The Hon'ble Supreme Court in **M.C. Mehta v. Union of India (2016) 4 SCC 269** had requested the Environment Pollution (Prevention & Control) Authority for the National Capital Region (EPCA) to prepare a report on air pollution. The said report was prepared and submitted to

the Hon'ble Court on 1st February, 2017 and highlighted various reasons for the prevailing air pollution problem in Delhi.

3.14 The Report stated that Delhi experiences higher than normal levels of PM2.5 which is a major cause of health ailments. This increase in PM2.5 is due to a variety of reasons which also includes the usage of diesel as a source of fuel for various purposes such as vehicles, generator sets etc. further, the report also suggested various methods through which diesel should be dis-incentivized as a fuel due to its toxicity.

3.15 In the Comprehensive Study on Air Pollution and Green House Gases in Delhi- IIT, Kanpur, January, 2016, it was highlighted that usage of diesel as a fuel is a major source of CO2, PM2.5 and SO2 pollution in Delhi. The Report has also recommended steps to be taken to reduce the pollution caused by diesel and minimise its use due to the air pollution caused by it by improving quality of engines, reduction in Sulphur content.

3.16 Thus, incentivizing the use of diesel engines by reduction in rate of tax while keeping the petrol /kerosene engines at higher rate of tax is a retrograde step in efforts to reduce the air pollution.

OBSERVATIONS BY THE JUDICIARY AGAINST USAGE OF DIESEL

3.17 It may be noted that to curb the use of diesel as a source of fuel, the Hon'ble Supreme Court vide its order dated 18.02.2016 in the case of **M.C. Mehta v. Union of India (2016) 4 SCC 269** banned the sale of diesel vehicles above 2000 CC temporarily in the State of Delhi. Further, the Hon'ble Supreme Court has in the decision of **M.C. Mehta v Union of India (1999) 6 SCC 9** observed that more than 90% of the

nitrogen oxide (NOx) and respirable particulate matter (RSPM) over Delhi is due to diesel emissions.

3.18 In fact, the Hon'ble Supreme Court in the decision of **M.C. Mehta v Union of India (2003) 11 SCC 771** had directed the Ministry of Non-Conventional Energy to tender necessary affidavit for stating the steps to be taken for having non-conventional energy instead of diesel generators.

3.19 It may also be noted that the National Green Tribunal vide its decision dated 14.09.2017 refused to interfere with its previous order dated 07.04.2015 for banning diesel vehicles which are more than 10 years old. Thus, it can be seen that the judiciary has consistently endorsed reduction in use of diesel as a fuel.

DISCRIMINATION AGAINST PETROL/KEROSENE ENGINES

3.20 It may be noted that diesel engines are both used in water pumps, lawnmowers and other products which use the petrol / kerosene engines manufactured by HSPPL. In light of the same, the rates of taxes payable on such products was also identical. In fact, such parity in taxation was proposed to be continued in the GST regime as well as can be seen from the discussions of the 14th GST Council Meeting. However, without assigning any reasons, a change in rate of diesel engines below 15 HP was introduced.

3.21 Neither there is any cogent reason nor a tangible basis to have a differential lower rate for diesel engines when compared with petrol / kerosene engines. The reduction in rate for diesel engines is completely arbitrary without taking into relevant considerations and

accordingly, rate of petrol / kerosene engines must also be reduced to 12%, especially as such engines are used for agricultural purposes.

DIFFERENTIAL TAX LEADING TO TAX ARBITRAGE

3.22 Petrol / Kerosene engines manufactured by HSPPL are most commonly used in the agricultural sector. It may be noted that in market for such products, even a slight change in the product price is sufficient to determine which product the consumer will purchase. The lower rate of tax on diesel engines will lead to arbitrage wherein the only factor compelling purchase of diesel engines instead of petrol / kerosene engines will be the lower rate of GST which it attracts.

3.23 The removal of tax arbitrage or tax becoming a factor to make or not make any transaction has been highlighted by the Organisation for Economic Co-operation and Development in the International VAT Guidelines. Guideline 2.3 provides that VAT Rules should be framed in such a way that they are not the primary influence on business decisions. Hence, the levy of GST should not operate in a manner to determine the choice of consumer in purchasing a product. The lower levy of GST on diesel engines then on petrol / Kerosene engines does provide tax arbitrage to suppliers of diesel engines adversely affecting the suppliers of petrol/ kerosene engines.

3.24 On the basis of the above discussion, it can be clearly seen that there is no rationale for keeping the higher rate of GST for petrol / kerosene engines when various studies and the Hon'ble Supreme Court has sought to dis-incentivize and regulate the usage of diesel as a source of fuel.

BENEFITS OF THE PROPOSED AMENDMENTS

3.25 The extension of beneficial rate of GST @ 12% on variable speed petrol/ Kerosene engines below 15 HP will result in encouragement of sales of petrol / Kerosene engines as opposed to diesel engines. Further, lowering of rate will also result in the following advantages, which can been summarized as under:-

i. It is in consonance with the Government policy to dis-incentivize use of diesel and promote use of cleaner fuels;

ii. It will remove the fiscal discrimination against petrol / Kerosene engines will can create a major trade deterrent especially as such engines are mainly used in agricultural products which are very price sensitive;

iii. It will result in reduction of price of Power Driven Water Pumps which are used in agricultural products;

IV. RELIEF'S SOUGHT

4.1 In terms of the rationale set out in this Representation, it is prayed that:-

(i) The rate of GST applicable on supply of variable speed petrol / kerosene engines below 15 HP is fixed at 12% and brought at par with fixed speed diesel engines;

TRUE COPY

Annexure 2

Annexure - II

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P. (C) 10720/2017, CM APPL.43939/2017

HONDA SIEL POWER PRODUCTS LTD. ..... Petitioner

Through: Mr. Tarun Gulati with Mr. Sparsh Bhargava, Mr. Anupam Mishra and Mr. Nikhil Gupta, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Kirtiman Singh, CGSC for R-1&2 with Mr. Gaurav Rohilla, Govt. Pleader.
Mr. Bhuvnesh Satija, Advocate for R-3.
Mr. Anuj Aggarwal, ASC, GNCTD with Ms. Deboshree Mukherjee, Advocate, for R-4.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **01.12.2017**

Issue notice. Mr. Kirtiman Singh, Advocate accepts notice on behalf of first and second respondents. Mr. Bhuvnesh Satija, Advocate accepts notice on behalf of third respondent and Mr. Anuj Aggarwal, Advocate accepts notice on behalf of fourth respondent.

List on 12th February, 2018.

In the meanwhile, the third respondent shall appropriately consider the petitioner's pending representations about the differential GST rates between its products and the fixed speed diesel engines.

Order ***Dasti***.

S. RAVINDRA BHAT, J

DECEMBER 01, 2017*/vikas/* **SANJEEV SACHDEVA, J**

Annexure 3

S. No.	Member state of the Fitment Committee	Comments / Recommendation
1	Uttar Pradesh	1. Fixed Speed Diesel Engines (upto 15HP) are mainly used by small and marginalized farmers for agricultural purposes, primarily irrigation. These are manufactured/ assembled in Unorganized Units whereas the Petrol/Kerosene engines are used as Electricity Generators, predominantly by the upper middle-class segment, and are manufactured in well run units of Organized Sector. 2. Hence it is evident that Petrol/Kerosene engines are not used generally by farmers, and extending the same tax treatment to Petrol/Kerosene engines as that of Fixed Speed Diesel Engines upto 15HP will not be advisable
2	Haryana	1. It is proposed that the fixed speed diesel engines upto 15 HP be kept @ 12% GST. While rest of the engines falling under 8408 may remain at 28%. The above-mentioned diesel engines are used in farming and therefore has been kept so aligned with the rate of tax of submersible pumps. 2. In view of the above, no change is recommended.
3	Maharashtra	1. The distinction made in rate of tax between the two products are on the following criteria: (i) The rate of fixed speed diesel Engine upto 15HP are to be aligned with the rate fixed for submersible pumps as decided in the Fitment Committee Meeting held on 7th & 8thJune 2017. (ii) The fixed speed diesel engines upto 15HP are invariably used by farmers whereas petrol / kerosene engines are not used by them. 2. The past experiences reveal that distinction made in the rate of tax on the basis of end use are always difficult to monitor and hence evasion prone. If there is no substantial revenue involved in the supply chain of petrol / kerosene engines, it would be better if we try to remove the alleged discrimination by bringing down the rate of petrol / kerosene engines to 12% i.e. at par with fixed speed diesel engines upto 15HP and submersible pumps. Also, we have in the process of rationalization of rate, recently reduced the rates in 150 odd commodities from 28% to 18%. 3. Hence, if revenue implications are not found substantial, then we can think of reducing the rate of petrol / diesel engine to 12%.
4	West Bengal	1. Fixed speed diesel engine below 15HP are mostly used for agricultural purposes by farmers and the rate of tax has been fixed in alignment with the rate of tax of power driven pumps primarily designed for handling water, deep tube-well turbine pumps, submersible pumps which are also taxable @ 12%. The objective was to help the farmers by reducing the rate of tax on such sets which are largely used by them for agricultural purpose. 2. **Other engines** are generally used for purposes other than agriculture and as such there is no justification to reduce its rate to 12%. However, the rate of such goods (HSN 8408) can be brought down to 18%.

5*	Tamil Nadu	1. Under TNVAT Act, 2006 the diesel engines were liable to tax at 14.5% under entry 44 part C of first schedule to the TNVAT Act,2006 which is extracted below: *"Internal combustion engine, marine engine, diesel engine, oil engine, generator, their spare parts, other than those specifically mentioned in this Schedule."* 2. As the rate of tax on Fixed Speed Diesel Engines of power not exceeding 15HP is 12% which would be applicable when used in the Diesel Engine pump sets meant for agricultural purpose, the reduction in rate of tax for other types of Engines which will not be used for agricultural purpose, may not be considered. Further, this kind of representation by individual taxpayer through Hon'ble High Court may lead to other taxpayers to seek reduction on rate of tax on other commodities and set as a wrong precedent.

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Agenda Item 14(ii): Procedure to be followed for grant of *ad hoc* exemption on imports under Section 25 (2) of the Customs Act, 1962

Background

Section 25 of the Customs Act, 1962 gives the power to the Central Government to exempt generally either absolutely or subject to such conditions as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon. Sub- section (2) of Section 25 allows for exemption from payment of duties under circumstances of an exceptional nature on import of any goods on which duty is leviable.

2. The request for exemptions under Section 25(2), viz., *ad hoc* exemptions are considered and in fit cases, exemption from all duties of Customs (including BCD, CVD, SAD etc.), leviable under section 3 of the Customs Tariff Act, 1975, and cesses is granted on approval of the Union Finance Minister, or the Minister of State for Finance (if the duty involved is less than Rs 2 crore). The requests are considered in terms of guidelines framed with the approval of Union Finance Minister and issued vide circular 09/2014 - Customs dated 19th August, 2014. The guidelines cover the cases of import of goods for:

i. free distribution of goods for charitable purposes by charitable institutions/organizations,
ii. promoting India's foreign relations,
iii. re-import of artefacts and memorabilia representing India's historical, cultural and art heritage,
iv. treatment of life threatening diseases by individuals,
v. relief and rehabilitation of people affected by natural disasters and epidemics,
vi. medical or surgical instruments and apparatus by charitable hospitals

Current Situation

3. Post implementation of GST, imported goods are being levied an Integrated Tax under Section 3(7) of Customs Tariff Act, 1975, Therefore, an *ad hoc* exemption order under section 25 (2) of Customs Act, 1962 granting special exemption will also involve exemption of Integrated Tax to such goods. Sub-section (2) of section 6 of the IGST Act empowers the Government to exempt Integrated Tax, upon recommendations of the GST Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax on any goods or services or both on which tax is leviable."

4. Thus, all requests for *ad hoc* exemptions are required to be placed before the Council for exemption of IGST, based on whose recommendation, the Hon'ble Finance Minister may exempt the IGST leviable.

Proposal

5. Considering the nature of *ad hoc* exemptions covered under Section 25(2) of the Customs Act, 1962, which are given for specific consignments and are often extremely urgent in nature, such as in cases of import of goods for relief and rehabilitation in case of natural disasters, treatment of life threatening diseases etc., it is proposed that the GST Council may allow grant of *ad hoc* exemptions upon the approval of the Union Finance Minister as per the guidelines laid down in Circular 09/2014 – Customs dated 19th August 2014, as was the case prior to the introduction of GST, subject to the condition that each such *ad hoc* exemption order be placed before the Council after issue of such order.

Agenda Item 14(iii): Appointment of Deputy Commissioner as member of Authority for Advance Ruling-Amendment in Rule 103 of the CGST Rules, 2017.

The Authority for Advance Ruling (AAR) is being constituted under the provisions of a SGST/ UTGST Act in terms of the provisions of Section 96 of the GGST Act, 2017. Accordingly, Section 96(2) of the SGST Act, 2017, stipulates that the AAR shall consist of two members- one member each of Central Government and State/Union Territory (UT) Government. Rule 103 of the CGST Rules, 2017, states that the members of the AAR shall **not** be of the rank **below Joint Commissioner**.

2. Manipur State and UT of Puducherry have stated that no post of Joint Commissioner exists in hierarchy in their State/UT. Accordingly, they have requested for appointing officers of the rank of Deputy Commissioner from their State/UT as the member of AAR.

3. Change in eligibility of officer from Joint Commissioner to Deputy Commissioner requires amendment in Rule 103 of CGST Rules, 2017. If State/UT is allowed to appoint officer of the rank of Deputy Commissioner, then Centre should also be allowed to appoint officer of the same rank in order to ensure equal ranked members of AAR so as to avoid administrative issues.

4. In order to consider officers of the rank of Deputy Commissioner also for appointment by Central Government and State Government as members of Authority for Advance Ruling, two options can be considered. One option is to appoint officer not below the rank of Deputy Commissioner as member of the AAR instead of Joint Commissioner. It would have uniformity in all States in terms of appointing Deputy Commissioner as members of AAR. However, if both Central and States desire they can appoint an officer in higher rank than Deputy Commissioner. Since this kind of situation exists only in few States, the second option that can be exercised is by appointing Deputy Commissioner only in such cases where post of Joint Commissioner does not exist.

5. To summarize, the two options for amending the Rule 103 of CGST Rules, 2017 are as below:

Option-I:

5.1. The Government shall appoint officers not below the rank of Deputy Commissioner as member of the Authority for Advance Ruling;

Option-II:

5.2. The Government shall appoint officers not below the rank of Joint Commissioner; or an officer not below the rank of Deputy Commissioner, where the post of Joint Commissioner does not exist, as member of the Authority for Advance Ruling.

Where Deputy Commissioner is appointed by the State Government/ UT, the Centre shall also appoint officer of same rank.

6. In view of above, the proposal is placed before the GST Council for consideration and approval.

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