

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	AMWA MOTO LLP
Address	7/1, Mahiskapur Road B Zone, Durgapur, Paschim Bardhaman, Pincode-713205
GSTIN	19ABEFM9792N2Z6
Case Number	07 of 2022
ARN	AD190322015995X
Date of application	March 31, 2022
Order number and date	05/WBAAR/2022-23 dated 30.06.2022
Applicant's representative heard	Mr. Sandip Choraria, Authorised Advocate Mr. Rajkumar Banerjee, Authorised Advocate

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is an entity engaged inter-alia in the business as wholesaler of electrically operated two wheeled vehicles. The company wants to enter into the business of manufacturing and reselling of electrically operated three wheeled vehicles in the state of West Bengal.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- 1) Whether a three-wheeled electrically operated vehicle, commonly known as e-rickshaw, when sold without battery is classifiable as an “electrically operated motor vehicle” under HSN 8703?
- 2) In case where the answer to question No 1 is in negative, what shall be the classification and the rate of tax?

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (a) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

The submission of the applicant in respect of ‘statement of fact’ is reproduced as follows:

2.1 Meaning of E-Rickshaw:

The word ‘E-Rickshaw’ is not defined under the GST law. However, it is defined in sub-section (2) of Section 2A of the Motor Vehicles Act, 1988 as follows:

“(2) For the purposes of this section, "e-cart or e-rickshaw" means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.”

So, as per above definition, an E-Rickshaw is:

- special purpose battery powered vehicle;
- of power not exceeding 4000 watts;
- having three wheels;
- for carrying goods or passengers, as the case may be,
- for hire or reward;
- manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.”

2.2 Meaning of Battery Operated Vehicle:

As per Rule 2(u) of THE CENTRAL MOTOR VEHICLES RULES, 1989, "Battery Operated Vehicle" means a vehicle adapted for use upon roads and powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle:

So, as per above definition, a battery operated vehicle has to satisfy the following conditions:

- It should be a vehicle adapted for use upon roads; and
- powered exclusively by an electric motor;
- whose traction energy is supplied exclusively by traction battery;
- installed in the vehicle

Analysis:

1. When we see the definition of an 'E-Rickshaw' under Motor Vehicles Act (*supra*), it is clear that by definition, it is a battery powered vehicle, thus automatically satisfying all the conditions of a battery operated vehicle as mentioned above in Rule 2(u). The definition of an 'e-rickshaw' or the 'battery operated vehicle' nowhere put a condition that the battery has to be supplied by the manufacturer. What it says that it should be installed in the vehicle so that it can supply traction energy to the electric motor.
2. An electric motor converts electrical energy supplied by the traction batteries as such into the mechanical energy for the propulsion of vehicle.
3. It is worthwhile to note that the definition of battery operated vehicle (*supra*) use the word '*exclusively*' both for the electric motor and the traction battery. By using this word, the rule makes it absolutely clear that in order to be a battery operated vehicle, it must be powered exclusively by an electric motor and traction energy to such electric motor must be supplied exclusively by the traction battery.

2.3 Is Electric Motor an engine?

Answer is 'No'. An electric motor is not an engine. There are two methods used for propulsion of vehicle:

- Electric Motor and
- Internal combustion engines (ICEs)

While Electric motor is powered by traction batteries and are used exclusively in battery operated vehicles as stated above, internal combustion engines (ICEs) are powered by energy-dense fuels such as gasoline or diesel fuel, liquids derived from fossil fuels and are the dominant power supply for vehicles such as cars, aircraft, and boats, known as internal-

combustion-engine vehicles (ICEV). A Battery operated vehicle does not have internal combustion engine, fuel cell, or fuel tank.

2.4 Embossment of motor number in case of battery operated vehicles:

Rule 122 of CMVR, 1989 provides for Embossment of the chassis number and engine number or in the case of battery operated vehicles, motor number and month of manufacture and states as follows:

(1) On and from the date of commencement of the Central Motor Vehicles (Amendment) Rules, 1993, every motor vehicle including agricultural tractor and construction equipment vehicle other than trailer and semi-trailer shall bear the identification number including month and year of manufacture, embossed or etched or punched on it.

Provided that in such vehicles where space is insufficient for etching, embossing or punching the engine number/motor number, chassis number and month of manufacture, the etching, embossing or punching of year and month of manufacture shall be on an identification plate welded or rivetted to the body of the vehicle.

- Analysis of Rule 122:

Rule 122 of CMVR, 1989 also clearly provide that in case of battery operated vehicles, motor number and NOT the engine number is required to be embossed or etched or punched on the vehicle and if space is insufficient in such vehicle for etching, embossing or punching, then it shall be on an identification plate welded or rivetted to the body of the vehicle.

2.5 Classification Principle under GST law:

Explanation to Rate Notification No. 01/2017-Central tax (Rate) dated 28.06.2017 states as follows:

For the purposes of this notification:

Clause (iii): "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Clause (iv): The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

General rules for the interpretation of First Schedule-Import Tariff to the Customs Tariff Act, 1975:

As per Rule 3(a), the heading which provides the most specific description shall be preferred to headings providing a more general description.

First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

Chapter 87 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) is related to 'Vehicles other than railway or tramway rolling-stock and parts and accessories thereof'. This chapter has 16 chapter headings starting from 8701 to 8716.

The description of Chapter heading 8703 is "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars".

The description of sub-heading 870380 under chapter heading 8703 is "Other vehicles with only electric motor for propulsion".

Under this sub-heading, "Three-wheeled vehicles" falls under tariff item 87038040.

So, if we analyse chapter heading 8703, a three-wheeled vehicle with only electric motor for propulsion falls under tariff item '87038040'.

Rate Notification under GST law:

Notification No. 01/2017-CT dated 28.06.2017 is the rate notification for goods under GST law containing different rates of CGST under six schedules. While Schedule-I is meant for goods @ 2.5% CGST, Schedule-II is meant for goods @ 6% CGST, Schedule-III is meant for goods @ 9% CGST, Schedule-IV is meant for goods @ 14% CGST, Schedule-V is meant for goods @ 1.5% CGST, Schedule-VI is meant for goods @ 0.125% CGST. Equivalent rates are there under State GST law, thus making total rates on intra-state supplies of goods @ 5%, 12%, 18%, 28%, 3% and 0.25% respectively.

The goods falling under a particular chapter in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) may attract different rates under different schedules in GST depending upon the chapter heading, sub-heading and tariff item in which it falls and it is not necessary that such goods shall attract a single rate under a particular rate schedule in GST.

In the rate notification mentioned above, for example-vehicles falling under chapter 87 find a place in four schedules i.e.

- Schedule-I- 2.5% (Sl. No. 242A to 243A);
- Schedule-II-6% (Sl. No. 206 to 211);
- Schedule-III-9% (Sl. No. 399A to 403A, 452E to 4520); and
- Schedule-IV-14% (Sl. No. 163A to 175).

2.6 Whether e rickshaw without battery disqualifies to be GST tax rate applicable to Electric vehicles:

As stated above, Vehicles under chapter 87 attract different tax rates under four rate schedules. In Schedule-II (CGST Rate 6%), entry No. 206 reads as follows:

206	87	<i>Electrically operated vehicles, including two and three wheeled electric vehicles.</i>
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Above entry was subsequently omitted and a new Entry No. 242A was inserted under Chapter 87 in Schedule-I (CGST Rate 2.5%) reducing the rate on such vehicles to 5% w.e.f 01.08.2019 vide Notification No. 12/2019-Integrated Tax (Rate), 31st July, 2019. The entry reads as follows:

242A	87	<p><i>Electrically operated vehicles, including two and three wheeled electric vehicles.</i></p> <p><i>Explanation .- For the purposes of this entry, “Electrically operated vehicles” means 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.”</i></p>
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- Analysis:

“Other vehicles with only electric motor for propulsion”

This entry does not talk about vehicles fitted with internal combustion engine (ICE) or hybrid vehicles where both electric motor and ICE is used. It talks about those vehicles which uses only electric motor for propulsion. Such vehicles as specified under sub-heading 870380 are as follows:

Tariff Item	Description
87038010	Vehicles principally designed for transport of more than seven persons, including driver
87038020	Specialized transport vehicles such as ambulances, prison vans and the like
87038030	Motor Cars
87038040	Three-Wheeled vehicles
87038090	Other

As can be seen above, Tariff item for “Other vehicles with only electric motor for propulsion” which is a “Three-wheeled vehicles” is 87038040.

2.7 Interpretation of law on the issue as made by the applicant is reproduced below:

- An electrically operated vehicle/electric vehicle uses only electric motor for propulsion. Such vehicles are not fitted with internal combustion engine (ICE) unlike in a diesel /petrol vehicles.
- The Explanation to Entry No., 242A in Schedule-I 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.

- 'E-Rickshaw' as defined in sub-section (2) of Section 2A of the Motor Vehicles Act, 1988 inter alia means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels.
- Further, as per Rule 2(u) of The Central Motor Vehicles Rules, 1989, "Battery Operated Vehicle" means a vehicle adapted for use upon roads and powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle.
- In the instant case, E-Rickshaw intended for manufacture by the applicant would use only electric motor for propulsion (i.e powered exclusively by a 48V electric motor) whose traction energy is supplied exclusively by 4 batteries (12V*4) installed in the vehicle.
- The definition of an 'e-rickshaw' or the 'battery operated vehicle' under The Central Motor Vehicles Rules, 1989 nowhere put a condition that the batteries have to be supplied by the manufacturer. What it merely says that it should be installed in the vehicle so that it can supply traction energy to the electric motor.
- The purpose to sale an e-Rickshaw without battery pack is purely a commercial one and is meant only to lower the upfront cost of such vehicles as compared to equivalent ICE vehicles. However, it does not mean that such vehicles can run without batteries. The buyer has to purchase the batteries either from the original equipment manufacturer (OEM) or from the market. He can also obtain the batteries on hire. Supply of such vehicles without battery pack does not alter the characteristics of such vehicles and it still remains a three-wheeled electric vehicle with an electric motor which is supplied by the manufacturer.
- The electric motor used in an electric vehicle is not an engine. Use of internal combustion engines (ICEs) is another way used for propulsion of diesel/petrol driven vehicles. Such ICEs are not used in an E-Rickshaw as can be seen from the technical specification drawing attached herewith duly certified by an approved testing agency.
- Rule 122 of CMVR, 1989 clearly provides that in case of battery operated vehicles, motor number and not the engine number is required to be embossed or etched or punched on the vehicle and if space is insufficient in such vehicle for etching, embossing or punching, then it shall be on an identification plate welded or rivetted to the body of the vehicle.
- As per Rule 3(a) of the General rules for the interpretation of First Schedule-Import Tariff to the Customs Tariff Act, 1975, the heading which provides the most specific description shall be preferred to headings providing a more general description. An electrically operated vehicle/three-wheeled electrical vehicle specified in Entry No. 206 of Schedule-II (12%) up to 31.07.2019 and Entry No. 242A of Schedule-I (5%)

after that provides the most specific description which shall be preferred to headings providing a more general description in Schedule-IV (28%).

- Thus, it can safely be concluded that the three-wheeled e-rickshaw intended for manufacture by the applicant is an electrically operated vehicle/three-wheeled electric vehicle falling under tariff heading 87038040 and leviable to GST @ 12% upto 31.07.2019 and 5% thereafter.
- The Advance Ruling No. 06/WBAAR/2020-21 dated 10.08.2020 in the case of M/s. Hooghly Motors Pvt. Ltd is not applicable in the case of the applicant in terms of sub-section (1) of section 103 of the GST Act.

2.8 The authorised advocate of the applicant, in course of personal hearing, has also placed his reliance on the advance ruling given by the Orissa Authority for Advance Ruling in the case of Anjali Enterprises [ORDER NO. 01/ODISHA/AAR/2021-22 dated 15.04.2021] wherein it is held that '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'.

3. Submission of the Revenue

3.1 The officer concerned from the revenue has submitted that based on the available records, it appears that the subject product falls under Chapter No 87 under description electrically operated vehicles, including two and three wheeled electric vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries. The officer from the revenue further submits that the above comments regarding the classification of the subject product are purely based on the submission made by the taxpayer in their application before the AAR.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised advocates of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the revenue.

4.2 The issue involved in the instant case is to determine whether a three-wheeled electrically operated vehicle (commonly known as e-rickshaw) when supplied without battery can be regarded as an electrically operated vehicle under HSN 8703.

4.3 Chapter 87 of the First Schedule to the Customs Tariff Act, 1975 classifies "Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof". Further, Tariff item under 8703 broadly covers following description of goods:

- MOTOR CARS AND OTHER MOTOR VEHICLES PRINCIPALLY DESIGNED FOR THE TRANSPORT OF PERSONS (OTHER THAN THOSE OF HEADING 8702), INCLUDING STATION WAGONS AND RACING CARS.

Furthermore, 'Other vehicles, with only electric motor for propulsion' under Tariff item 8703 80 covers 'Three-wheeled vehicles' having HSN Code 8703 80 40.

4.4 It, therefore, appears that e-rickshaw being a three-wheeled electrically operated vehicle would be classifiable under tariff item 8703 80 40. But the issue in our hand is not to decide the HSN code of e-rickshaw rather the issue, as we find, is confined to decide whether fitting of battery is a pre-condition or not so as to qualify an e-rickshaw as an electrically operated vehicle.

4.5 Electrically operated vehicles, including two and three wheeled electric vehicles attract tax @ 5% [CGST @ 2.5% + SGST @ 2.5%] with effect from 01.08.2019 vide serial number 242A inserted through Notification No. 12/2019-Central Tax (Rate) dated 31.07.2019. Further, *Explanation* given in the respective entry reads as follows:

For the purposes of this entry, "Electrically operated vehicles" means 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.

4.6 The argument of the applicant in this regard is that the e-rickshaw which the applicant intends to manufacture would use only electric motor for propulsion whose traction energy is supplied exclusively by batteries installed in the vehicle. The applicant contends further that use of internal combustion engines (ICEs) is another way used for propulsion of diesel/petrol driven vehicles and the electric motor used in an electric vehicle is not an engine.

4.7 To proceed, we first take a brief idea of the main components of a battery operated vehicle (BEV, for short). BEVs are also known as All-Electric Vehicles (AEV). Electric Vehicles using BEV technology run entirely on a battery-powered electric drive train. The electricity used to drive the vehicle is stored in a large battery pack which can be charged by plugging into the electricity grid. The charged battery pack then provides power to one or more electric motors to run the electric car. Main components of a BEV are Electric motor, Inverter, Battery, Control Module, Drive train.

[Source: Niti Aayog, Government of India: e-amrit.niti.gov.in]

4.8 It transpires from above that the power of a battery operated vehicle is solely generated from the rechargeable battery since it doesn't have any other source of propulsion. "Electrically operated vehicles" as it has been explained in serial number 242A of the Notification No. 12/2019-Central Tax (Rate) dated 31.07.2019 requires a single factum that the vehicles will run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles. There is not an iota of doubt that unless the battery is fitted to an e-rickshaw, it will not be capable to run. But the question arises that when an e-rickshaw, having a motor fitted on it, is supplied without battery, does it lose its original character and can be termed as 'chassis'.

4.9 In this context, observation of the Orissa Authority for Advance Ruling, in the case of Anjali Enterprises may be reproduced:

“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 Co. (P.) Ltd. (supra) 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 pre-condition for the same to be classified as electrically operated vehicle”.

4.10 We are also in agreement with the view taken by the Orissa AAR to conclude that when a vehicle which is solely operational on battery power is supplied without battery, the same will qualify as a supply of electrically operated vehicle and therefore shall be classifiable under tariff item 8703.

In view of the above discussions, we rule as under:

RULING

A three-wheeled electrically operated vehicle, commonly known as e-rickshaw, when supplied without battery is also classifiable as an “electrically operated motor vehicle” under HSN 8703.

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

