

**BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)**

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)

Present:

Shri Vipin Chandra (Member)

श्री विपिन चन्द्र (सदस्य)

Shri Amit Gupta (Member)

श्री अमित गुप्ता (सदस्य)

The 14th day of March, 2018

Ruling No. 01/2017-18

अग्रिम विनिर्णय संख्या. 01

In

Application No: 02/2017-18

आवेदन संख्या. 02/2017-18

1	Applicant आवेदक	M/s Kanam Industries, NNIE-II, Mahuakhera Gunj, Kashipur सर्वश्री कनाम इण्डस्ट्रीज, NNIE-II, महुवाखेड़ा गंज, काशीपुर
2	Jurisdictional Officer अधिकारिता अधिकारी	Deputy Commissioner (Assessment)-2 State Tax, Kashipur डिप्टी कमिश्नर(क0नि0)-2 राज्य कर, काशीपुर
3	Present for the Applicant आवेदक की ओर से उपस्थित	Shri Aishwarya Sharma (Advocate) श्री ऐश्वर्य शर्मा (अधिवक्ता)
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None कोई नहीं
5	Date of receipt of application आवेदन प्राप्त की तिथि	19-12-2017
6	Date of Personal Hearing सुनवाई की तिथि	15-02-2018

Note : Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order,

नोट : इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवा कर अधिनियम 2017 की धारा- 99 के अन्तर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND**

RULING

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 and the rules made thereunder filed by M/s Kanam Industries, NNIE-II, Mahuakhera Gunj, Kashipur seeking an advance ruling on
 - (a) What is the interpretation of the term "three wheeled powered cycle rickshaw" as provided under Sl. No. 190 of the Schedule 1 to Tariff Notification.
 - (b) Is there any difference between an electric rickshaw operated by chargeable batteries (E-Rickshaw) and three wheeled powered cycle rickshaw provided under Tariff Notification
 - (c) Whether inner tubes of butyl rubber used in e-rickshaw would fall within the meaning of term "three wheeled powered cycle rickshaw" and classification thereof
2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
3. As per Section 97(2) (a) & (e) of CGST/SGST Act, 2017 the advance ruling can be given on "classification of any goods or services or both" and "determination of the liability to pay tax on any goods or services or both" respectively. In the present case applicant has requested for advance ruling in respect of classification and rate of applicable GST on product mentioned above. Therefore, in terms of said Section 97(2) of CGST/SGST Act, 2017, the present application is hereby admitted.
4. Report dated 08.02.2018 was also submitted by Joint Commissioner, SGST, Haldwani in which he reported that the "three wheeled powered cycle rickshaw" and "E-Rickshaw" are different and the product namely

inner tubes of butyl rubber used in e-rickshaw would fall under HSN Code 4013 and accordingly attracts 18% duty.

5. Personal hearing was held on 15.2.2018 and Shri Aishwarya Sharma, Advocate appeared for applicant. No body appeared from the side of Revenue for the hearing.
6. In the present application, applicant has requested for advance ruling on interpretation of the term "three wheeled powered cycle rickshaw" (b) difference between an electric rickshaw operated by chargeable batteries (E-Rickshaw) and three wheeled powered cycle rickshaw, if any and (c) classification of inner tubes of butyl rubber used in e-rickshaw
7. As per Notification No. **1/2017-Central Tax (Rate)** dated 28th June, 2017, three wheeled powered cycle rickshaws are mentioned along with bicycles, rickshaws. The rate schedule is as under:

S/No. and Schedule in the Notification	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate of GST (Total Central Tax plus State Tax)
46 of Schedule IV	4011	New pneumatic tyres, of rubber [other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyres]	28%
47 of Schedule IV	4012	Re-treaded or used tyres and flaps	28%
48 of Schedule IV	4013	Inner tubes of rubber [other than of a kind used on/in bicycles, cycle rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyre tubes]	28%
190 of Schedule I	4011, 4013	Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws	5%

8. We find that the **Electric Motor Vehicle Three Wheeled** (commonly known as E-Rickshaw) are completely different from **three wheeled powered cycle rickshaws**. Three Wheeled **Electric** Motor Vehicle (known as E-Rickshaw in market) is a **Motor Vehicle** in Motor Vehicle Act also. It has to be registered with State Transport Authorities as a Motor Vehicle. Tyres and Tubes used in these Vehicles are Automobile Tyres and Tubes of size 300-12, 300-14, 90-90/12 and 3.75-12, which are duly prescribed as Automobile Tyres in **Bureau of Indian Standards** for Two and Three Wheeled Motor Vehicles IS 15627:2005.

9. Authority also observes that SSI exemption notification no. 8/2003-Central Excise dated 1st March, 2003 defines **powered cycle rickshaw**, as under:

"powered cycle or powered cycle rickshaw means a mechanically propelled cycle or as the case may be mechanically propelled cycle rickshaw, which may also be pedalled if any necessity arises for so doing"

10. We also observe that the term 'powered cycle rickshaw' in the explanation to the notification number 102/76 dated 16-3-1976 issued under erstwhile Central Excise Act, reads as follows:

"Explanation.- The expression 'Powered Cycle' or 'Powered Cycle Rickshaw' means a mechanically propelled cycle or as the case may be mechanically propelled cycle rickshaw, which may also be paddled, if any necessity arises for so doing".

11. Further, we also find that the meaning of Powered Cycle Rickshaw was clearly explained in the case of *Delhi Kinetic Engineering Ltd. vs Collector Of Central Excise and upheld by Supreme Court bench on 21.03.1996 and reported in 1997 (94) ELT AI57(SC)*. In the said order, Hon'ble Apex Court had taken note of the findings of Tribunal that mechanically propelled cycle means an ordinary cycle fitted with a motor or petrol engine as the mechanically propelled cycle rickshaw means a cycle rickshaw fitted with a motor or petrol engine. It was further held by the Tribunal that since the mechanically propelled cycle means ordinary cycle to which a motor or petrol engine has been fitted and moped admittedly is not one such cycle, therefore it would not qualify for exemption under Notification No. 52/77-C.E., dated 6-4-1977.

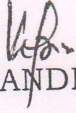
12. Similar analogy can be drawn in the present case and authority in view of the aforesaid provisions of law comes to the conclusion that **Powered Cycle Rickshaw** referred to in the Explanation would not cover an Auto Rickshaw and would only cover an **ordinary Cycle Rickshaw** to which a motor or petrol engine has been fitted.

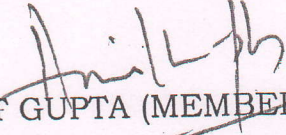
13. Authority also observes that Three Wheeled **Electric Vehicle (E-Rickshaw)** is not a Powered Cycle Rickshaw? Because -

- (a) It is not a Cycle Rickshaw.
- (b) It does not have pedal which is pre-requisite for Powered Cycle Rickshaw and it cannot be peddled, if any necessity arises for so doing.
- (c) It is powered solely by electric motor which is not auxiliary in nature.
- (d) It is a motor vehicle under "Motor Vehicle Act".
- (e) It has to be registered with Local Transport Authority; hence it is a motor vehicle.

14. Therefore, it is concluded that **E-rickshaw** and **powered cycle rickshaw** are not one and the same but two different items.

15. From the above discussions and analysis, we found that **Tyres used in E-Rickshaw** are not tyres of **powered cycle rickshaw** and hence they are required to be classified under Chapter Heading 4013 of GST Tariff, 2017 and attract 28% GST as on date.


VIPIN CHANDRA (MEMBER)


AMIT GUPTA (MEMBER)

To

M/s Kanam Industries,
NNIE-II, Mahuakhera Gunj,
Kashipur

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX, UTTRAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTRAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F.NO.: 02/2017-18/ Advance Ruling/D. Dur Dated: 14/03/18
D. No.: 6056 Dated 15/3/2018
Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut
2. The Commissioner, CGST, Commissionerate Dehradun
3. The Commissioner, SGST, Commissionerate Uttarakhand
4. Assistant Commissioner, CGST, Division Dehradun
5. Deputy Commissioner, SGST, Dehradun-II
6. Guard File