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Three-wheeled motor vehicle fitted with battery pack, classifiable under HSN 8703, otherwise under HSN 8706

The Hon'ble AAR, West Bengal in **Re: M/s Hooghly Motors Pvt. Ltd. [Order Number 06/WBAAR/2020-21 dated August 10, 2020]** held that a three-wheeled electrically operated vehicle/rickshaw is classifiable under HSN 8703 (Motor Vehicles for carrying less than 10 passengers) as an electrically operated vehicle, provided it is fitted with the battery pack. Otherwise, it will be classifiable under HSN 8706.

Facts:

M/s Hooghly Motors Pvt. Ltd. ("**the Applicant**") is a manufacturer of "three-wheeled motor vehicles", commonly known as "Toto".

Issue:

Whether three-wheeled vehicle is classifiable as an 'electrically operated motor vehicle' under HSN 8703 when supplied with a battery pack.

Held:

The Hon'ble AAR, West Bengal in **Order Number 06/WBAAR/2020-21 dated August 10, 2020** held as under:

- Motor vehicles for carrying less than ten passengers are classified under HSN 8703 of the First Schedule of the Customs Tariff Act, 1975 ("**Customs Tariff Act**"), which is adopted in the GST Act for classification. Sub-heading 8703 10 covers the vehicles specially designed for travelling on snow, golf cars and similar vehicles. The term 'similar' narrows the scope to specific use other than carrying passengers on hire on regular roads. All other sub-headings except the residual sub-heading 8703 90, refer to vehicles fitted with an internal combustion engine. E-rickshaws or electrically operated three-wheeled vehicles are, therefore, classifiable under Tariff heading 8703 90 10 of the Custom Tariff Act.
- A three-wheeled motor vehicle without the battery pack does not have the essential character of an 'electrically operated vehicle.' However, it is neither a vehicle fitted with an internal combustion engine. Unless it is equipped with any device like solar panels that may supply energy for its locomotion, it is not classifiable as a vehicle under Sub-heading 8703 of the Custom Tariff Act. However, it includes the chassis fitted with the motor to convert electrical energy into the mechanical energy to put

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the vehicle into locomotion once the battery pack is attached. Such a device is called the engine of the vehicle. It is, therefore, classifiable under Tariff-head 8706 00 31, being the chassis fitted with an engine of a vehicle under sub-heading 8706.

- A three-wheeled motor vehicle is classifiable under HSN 8703 as an electrically operated vehicle, provided it is fitted with the battery pack. Otherwise, it will be classifiable under HSN 8706.

Our Comments:

In our view, electrically operated vehicles shall be classifiable under Entry 242A of the Schedule I of the Notification No. 1/2017- Integrated tax (Rate) dated June 28, 2017 (“**Goods Rate Notification**”) (as amended vide Notification No. 12/2019- Integrated Tax (Rate) dated June 31, 2019 w.e.f. August 1, 2019). The Entry 242A reads as under:

S. No.	Chapter	Description
242A	87	Electrically operated vehicles, including two and three wheeled electric vehicles. <i>Explanation .-</i> 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.

As evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical driven energy derived from an external source ‘or’ from electrical batteries. Therefore, battery pack is not an essential character of electrically operated vehicle, essential character is that it runs solely on electrical energy.

Thus, vehicles that run solely on electrical energy should be classified under Entry 242A of the Schedule I of the Goods Rate Notification, taxable @ 5% GST.

Further, refund on account of inverted duty structure is permissible on Electronic Vehicle taxable @ 5%, if they are excluded from the above-mentioned entry, no refund on account of inverted duty structure would be granted and may be disputed by the Department as the motor vehicles without battery are not termed as Electronic Vehicles as per the above ruling.

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