

PL/SEC/TGT/2023-2024/159

 Monday, 26th February 2024

Listing Department National Stock Exchange of India Limited “Exchange Plaza’, C-1, Block G Bandra-Kurla Complex, Bandra (E), Mumbai - 400051	Corporate Relationship Department BSE Limited 1 st Floor, New Trading Ring Rotunda Building, P J Towers, Dalal Street, Fort, Mumbai 400 001
Script Code: PRICOLLTD	Script Code: 540293

Dear Sirs,

Subject: Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Dear Sirs,

The present letter is pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI LODR”) read with Part A of Schedule III and SEBI Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123 dated 13th July 2023.

We, Pricol Limited are in receipt of Show Cause Notice dated 5th February 2024 from the Directorate General of GST Intelligence, Gurugram Zonal Unit, on 15th February 2024. Copy of the same is enclosed as **Annexure-A**.

Explanation for delayed intimation as required under 2nd proviso to Regulation 30(6) of SEBI LODR: The Company wanted to disclose details of above said GST Show Cause Notice to stakeholders along with the details of impact on financial, operation or other activities of the Company due to the said notice. Therefore, we had approached M/s. Lakshmikumaran and Sridharan Attorneys, a leading law firm in GST practice, seeking their opinion and after careful consideration of the matter, they provided their opinion on 26th February 2024. The copy of opinion is enclosed as **Annexure-B**.

Further, we would like to inform that in a similar case, the Company has received a favourable Order from Deputy Assistant Commissioner, Gudur Circle in the issue involving alleged misclassification of instrument clusters under Chapter 90 and alleged non-payment of GST under reverse charge on freight services procured by the Andhra Pradesh GST registration of the Company. It was observed that the classification adopted by the Company is correct and the proposed classification of the Department (Chapter 87) does not hold good.

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The requisite information as per Para A of Part A of Schedule III under Regulation 30 of the Listing Regulations is given as **Annexure-C**.

In this regard, the Company's communication to its shareholders is enclosed as **Annexure-D**.

Kindly take the same on record.

Yours faithfully,

For Pricol Limited

T.G.Thamizhanban
Company Secretary
ICSI M.No: F7897

वस्तु और सेवाकर
आसूचना
महानिदेशालय
गुरुग्राम आंचलिक ईकाई
प्लॉट-४४, सेक्टर-३२,
गुरुग्राम-१२२००१



DIRECTORATE GENERAL OF GST
INTELLIGENCE
GURUGRAM ZONAL UNIT
Plot-44, Sector-32,
Gurugram-122001

F.No. DGGI/GZU/Gr-F/Inv/33/2021-22/Pricol
DIN: 202402adgEE000663756

Dated: 05.02.2024

[Form GST DRC-01]

[Refer Rule 142 (1)(a)]

SHOW CAUSE CUM DEMAND NOTICE NO. - 137 / 2023-24

M/s Pricol Ltd (hereinafter, also referred to as 'taxpayer' or 'company' or 'Pricol'), are registered with GST department with PAN number AAGCP0139E in multiple states having GSTIN-06AAGCP0139E1ZT in Haryana State. M/s Pricol is one of the leading automotive component manufacturers in India and has 7 manufacturing units located across India in Coimbatore (Tamilnadu), Manesar (Haryana), Pantnagar (Uttarakhand), Pune (Maharashtra) & Sricity (Andhra Pradesh). The company is engaged in the manufacture and supply of driver information systems and sensors, pumps, telematics and wiping systems catering to automotive industry across India and in international markets. M/s Pricol Ltd has 7 GST registrations all over India at Tamil Nadu, Haryana, Maharashtra, Uttarakhand, Andhra Pradesh, Kolkata and Gujarat from where they are supplying instrument clusters. The details of the same are as follows:

S.No.	GSTIN	State	Principal place of Business
1	33AAGCP0139E1ZW	Tamil Nadu	132, Plant 1, Mettupalayam Road, Perianaickenpalayam, Coimbatore, Tamilnadu-641020
2	06AAGCP0139E1ZT	Haryana	Plot No. 34-35, Sector-4, IMT Manesar, Gurugram, Haryana-122050
3	27AAGCP0139E1ZP	Maharashtra	Gat No. 180 & 187, Opp Honeywell Company, Global Industrial Park, Taluka Haveli, Phulgaon, Pune, Maharashtra-412216
4	05AAGCP0139E1ZV	Uttarakhand	Plot No. 45, Sector-11, IIE Pantnagar, Rudrapur, Udham Singh Nagar,

			Uttarakhand-263153
5	37AAGCP0139E1ZO	Andhra Pradesh	650, Benjamin Road, Sri City, Chittoor, Andhra Pradesh
6	29AAGCP0139E1ZL	Karnataka	117A, Survey No 186/1, Kadakola Industrial Area, Kadakola Village, Jaipura Hobli, Mysuru, Karnataka-571311
7	24AAGCP0139E1ZV	Gujarat	No. 5, Parth Industrial and Logistics park, Kadi, Unjha, Mahesana , Gujarat-384170

2. Whereas under Section 9 of the Central Goods and Service Tax Act, 2017 (hereinafter also referred to as the CGST Act or the Central Act) and the Haryana Goods and Service Tax Act, 2017 & other respective State Goods and Service Tax Act, 2017 (hereinafter also referred to as the SGST Act or the State Act), Central Goods and Service Tax (hereinafter also referred to as CGST) and State Goods and Service Tax (hereinafter also referred to as SGST) respectively, have been levied simultaneously on intra-state supplies of goods and services and under Section 5 of the Integrated Goods and Service Tax Act, 2017 (hereinafter also referred to as IGST Act) Integrated Goods and Service Tax (hereinafter also referred to as IGST) is levied on all inter-state supplies of goods and services.

2.1 Whereas in the narration hereinafter, whenever supplies are made within the State of Haryana or other respective states (intra-state supply), the simultaneous levy of taxes CGST and SGST; and whenever supplies are made inter-state the levy of tax IGST; shall also be commonly referred to as GST.

3. Whereas, specific information received by the officers of Gurugram Zonal Unit of the Directorate General of Goods & Services Tax Intelligence (hereinafter referred to as "DGGI"), indicated that the taxpayer was misclassifying their main final product i.e. 'Instrument Clusters' by classifying the said final product under Chapter Sub Heading (HSN) 9026 or 9029 of GST Tariff and paying GST (CGST + SGST or IGST) @ 18% rate, instead of right classification under Chapter Sub Heading (HSN) 8708 or 8714 of GST Tariff attracting GST (CGST + SGST or IGST) @ 28%. Instrument Clusters are combination of instruments including speedometer, tachometer, odometer, fuel gauge, temp. gauges, buzzers & clock display etc. The instrument cluster is the primary data source for the driver delivering information about vehicle and engine status. These electronic clusters are

generally used in the vehicle & mounted on front end of car, truck, tractor, two wheelers, three wheelers etc. Electronic instrument cluster is a distinct product having distinct name and use from its individual components. It is manufactured by using various components and one cannot supply individual components such as speedometer by detaching it from the cluster. It is purely a different manufactured product resulted by way of assembly and connecting various components on single electronic platform and which are solely used in vehicles. The issue of classification of instrument clusters was earlier dealt in Central Excise regime and had already been settled by the Hon'ble Supreme Court vide its order dated 24.04.2015 (RUD-1) wherein the judgement of the Tribunal in case of Commissioner v/s M/s Premier Instrument & Control Ltd -2004 (174) ELT 49 (Tri-Chennai) (RUD-2) had been upheld that clusters/sets comprising of speedometer, temperature gauge, fuel gauge, oil gauge and warning lights were classifiable as parts of motor vehicles under heading 8708 of Central Excise Tariff Act 1985; that they did not find place in chapter 90 and that each set was principally and solely meant for use in motor vehicles. The classification scenario and its consequent duty implications remains unchanged in the GST regime and hence, instrument clusters as part & accessories of motor vehicles merit classification under chapter 87 of GST Tariff. Further, M/s Imperial Motor Stores (GSTIN 27AAAFI0796BIZN) has earlier sought Advance Ruling in this regard and Authority for Advance Ruling has ruled that classification of instrument cluster is covered under Chapter 87 under 8708 HSN code as parts of motor vehicles (RUD-3). Further, it is also mentioned that the judgement of the Hon'ble Supreme Court mentioned above in the matter of M/s Premier Instrument & Control Ltd was against M/s Pricol Ltd only as the earlier name of the taxpayer was M/s Premier Instrument & Control Ltd. Moreover, there is another judgement of CESTAT Chennai dated 23.09.2016 wherein it has again been confirmed to them on the basis of Hon'ble Supreme Court judgement that instrument clusters are classifiable under chapter 87 (HSN 8708) of the Customs tariff (RUD-2).

4. Accordingly, inquiry was initiated in respect of the taxpayer and search under section 67(2) of the CGST Act, 2017, was conducted at the premises of M/s Pricol Ltd, located at Plot No. 34-35, Sector-4, IMT Manesar, Gurugram, Haryana-122050 on 07.07.2021. Panchanama dated 07.07.2021 was drawn (RUD-4). Sh. Anil Kumar Singh, Deputy Manager (Finance) was found available at the premises and he told that M/s Pricol Ltd was engaged in manufacturing and selling of 'instrument clusters/assembly speedometer'. They also submitted a letter dated 07.07.2021 wherein they have mentioned that they had been

classifying those instrument clusters under the HSN heading 9026 and have been discharging GST at the rate of 18% from 01.07.2017 onwards (RUD-5).

5. The officers of DGGI then issued summons dated 14.07.2021 (RUD-6) to the head office of the taxpayer located at 109, CPM Towers, Race Course, Tamil Nadu-641018 (also additional premises in GSTIN-33AAGCP0139E1ZW) to submit details of invoices pertaining to instrument clusters (speedometer assembly/ meter assembly/ speedometer combination/ speedometer complete/dashboard instrument or any other similar names) for two wheelers/three wheelers/four wheelers for the period 01.07.2017 to 30.06.2021 for all the units/branches of the company pan India along with sample invoices and drawing, design and technical specifications. The taxpayer then submitted vide their letter dated 01.09.2021 (RUD-7) that they have been engaged in discussions with their customers wherein they have requested their customers to reimburse them higher rate of tax so that same may be deposited with the Government under protest. They further submitted that while some of them agreed to reimburse them the higher rate of tax of 28% on the instrument clusters sold by them, major customers have not agreed. They also submitted that they are discussing the issue with their customers on a continuous basis and will deposit tax at 28% (albeit under protest) as and when their customers agree to discharge the same. They further submitted similar letter dated 25.10.2021 wherein they submitted details of tax deposited at 28% under protest for the period Aug, 2021 (from 19th Aug) and Sep, 2021. The taxpayer was then asked vide this office letter dated 05.01.2022 (RUD-8) to submit details of invoices pertaining to instrument clusters (speedometer assembly/ meter assembly/ speedometer combination/ speedometer complete/dashboard instrument or any other similar names) for two wheelers/three wheelers/four wheelers for the period Jul, 2021 to Dec, 2021 for all the units/branches of the company pan India. However, the company kept submitting similar letters wherein they submitted details of tax deposited at 28% under protest.

On-going through the said letters, it appears that the taxpayer started charging GST at 28% on supply of instrument clusters from July, 2021 onwards from those customers who had agreed to reimburse them GST at 28% and from the remaining ones, they were still charging GST at 18%. Accordingly, to arrive at differential tax for the overall period Jul, 2017 to Mar, 2022, the taxpayer was then asked vide summons dated 21.09.2022 (RUD-9) to submit details of invoices pertaining to instrument clusters (speedometer assembly/ meter assembly/ speedometer combination/ speedometer complete/dashboard instrument or any other similar

names) for two wheelers/three wheelers/four wheelers for the period 01.07.2017 to 31.03.2022 for all the units/branches of the company pan India along with sample invoices and drawing, design and technical specifications. In response, the taxpayer vide their submission dated 07.02.2023 (RUD-10) submitted details of supply of instrument clusters for the period Jul, 2017 to Mar, 2022 and it was observed that from Jul, 2017 to Jun, 2021 the taxpayer had charged only 18% GST on supply of instrument clusters and from the period July, 2021 onwards, they had charged both 18% & 28% GST on supply of instrument clusters.

A questionnaire was also sent to the taxpayer vide summons dated 21.09.2022 in response to which, vide their letter dated 07.02.2023, they stated as follows:

Ques-1: What is the business profile of the company?

Ans: Pricol is one of the leading automotive component manufacturers in India and operates 7 manufacturing units located across India in Coimbatore, Manesar, Pantnagar, Pune & Sricity. The company is engaged in the manufacture and sale of driver information systems and sensors, pumps, telematics and wiping systems catering to automotive industry across India and in international markets.

Ques-2: What products are being manufactured by the company?

Ans: As stated supra, the company is engaged in the manufacture of driver information systems and sensors which include measuring instruments such as speedometers, tachometers, odometers, fuel gauge, temperature gauge, oil pressure gauge, light and turn indicators etc., (combined to form instrument clusters). Over and above instrument clusters, the company also manufactures pumps, telematics and wiping systems catering.

Ques-3: As per the company's website, the company is engaged in manufacturing instrument clusters. What does instrument cluster mean and where are they used?

Ans: An instrument cluster is a group of checking and measuring instruments mounted on a base which is generally fitted onto the dashboard of motor vehicles. It is used for checking/ measuring the operations of a vehicle/ or a

part and includes speedometer, tachometers, odometers, temperature gauge, oil pressure gauge, light and turn indicators etc.

Ques-4: What is the dictionary meaning of instrument cluster?

Ans: An instrument cluster is also referred to as an instrument panel and the dictionary meaning of the term is extracted as follows:

a. As per the Macmillan dictionary, an instrument panel is “the board which faces the driver or pilot inside a vehicle, ship or plane, where they can see and operate the controls.”

(See <https://www.macmillandictionary.com/dictionary/british/instrument-panel>)

b. As per the Oxford dictionary of English (3rd Ed., 2010), an instrument panel is “a surface in front of a driver's or pilot's seat, on which the vehicle's or aircraft's instruments are situated.”

c. As per the Collins dictionary, an instrument panel is

“1. a panel on which instruments are mounted, as on car. See also dashboard.

2. an array of instruments, gauges etc. mounted to display the condition or performance of a machine or process.”

(See <https://www.collinsdictionary.com/dictionary/english/instrument-panel>)

Ques-5: What is the dictionary meaning of Speedometer? Does the company manufacture standalone speedometer?

Ans: 5.1-The dictionary meaning of the term speedometer is extracted as follows:

a. As per the Oxford dictionary of English (3rd Ed. 2010), a speedometer is “an instrument on a vehicle indicating its speed.”

b. As per the Collins dictionary, a speedometer is “a device fitted to a vehicle to measure and display the speed of travel.”

(See <https://www.collinsdictionary.com/dictionary/english/speedometer>)

c. As per the Merriam Webster dictionary, a speedometer is “an instrument for indicating speed.”

(See <https://www.merriam-webster.com/dictionary/speedometer>)

d. As per Macmillan dictionary, a speedometer is “a piece of equipment of a vehicle that shows how fast it is going.”

(See <https://www.macmillandictionary.com/dictionary/british/speedometer>)

5.2- No, the company is not engaged in manufacturing speedometers independently. The company only manufactures instrument clusters which has various checking and measuring instruments including a speedometer.

Ques-6: Who are the customers of the company for instrument cluster? (Vehicle Segment Wise)

Ans:

S.No.	Vehicle Segment	Major Customers
1.	Passenger Vehicles - Cars	No customer in Haryana GSTIN Registration
2.	Passenger Vehicles - Busses	SML Isuzu Limited VE Commercial Vehicles Ltd
3.	Commercial Vehicles- Trucks and other goods carriage vehicles	SML Isuzu Limited VE Commercial Vehicles Ltd
4.	Motorcycles	Hero Moto Corp Ltd, Honda Motorcycle and Scooters India, Suzuki Motorcycle India Ltd, India Yamaha Motors Pvt Ltd
5.	Special Purpose Vehicles	No customer in Haryana GSTIN Registration

Ques-7: What are the different components used in instrument cluster? Explain with their functionality?

Ans: The different components used in an instrument cluster with their functionality are tabulated as under:

Sl.No.	Instrument	Functionality of Instrument
1.	Speedometer	Indicates the speed at which the motor vehicle is travelling.

		Used Materials: Steel/Plastic/Copper/Brass/PCB/LCD/Active & Passive component/Stepper Motor and Controller
2.	Tachometer	Indicates the revolutions per minute (rpm) of the engine Used Material: Plastic/Copper wire/Steel
3.	Odometer	Indicates the distance travelled by the motor vehicle Used Material: Plastic/Copper wire/Steel
4.	Fuel gauge	Indicates the level of fuel contained in the fuel tank. Used Material: Plastic/Copper wire/Steel
5.	Temperature gauge	Indicates the temperature of the engine's coolant Used Material: Plastic/Copper wire/Steel
6.	Oil pressure gauge	Indicates the oil pressure of the engine Used Material: Plastic/Copper wire/Steel
7.	Light and turn indicators	Indicates the direction in which the vehicle is about to turn/brake & if the headlight is on/off. Used Material: Plastic/Copper wire/Steel

Ques-8: It has been observed that instrument cluster contains multiple instruments and is used as primary data source for driver. Is it possible to separate these multiple instruments from the cluster and use them separately? Can the said cluster be used anywhere else other than motor vehicles?

Ans: No, it is not possible to separate the multiple instruments from the cluster and the individual instruments cannot be used separately. These instruments are supplied and used only in the cluster in different categories of motor vehicles.

The said cluster cannot be used other than motor vehicles.

Ques-9: Where has the company classified these instrument clusters in GST tariff heading during the period Jul 2017 to March 2022 and at what rate GST has been paid by the company on supply of these instrument clusters?

Ans: The classification adopted by the company is tabulated as under:

Sl.No.	Period	Classification adopted
1	July, 2017 to May, 2021	We have been classifying instrument clusters under Heading 9026 of the Customs Tariff which covers instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of Heading 9014, 9015, 9028 or 9032'
2	June 2021 to Present Date	Since the Department was disputing the classification adopted by us for instrument clusters, to avoid proliferation of litigation, with effect from 1 st June 2021, we have been classifying instrument cluster under Headings 8708 which covers "Parts and accessories of the motor vehicles of headings 8701 to 8705" and 8714 of the Customs Tariff. which covers "Parts and accessories of the motor vehicles of headings 8711 to 8713" wherever the customers have agreed to reimburse higher rate of tax. Kindly note that re-classification under Chapter 87 has been done under protest and only for those customers who have agreed to reimburse the higher was rate of 28%. In those cases, where the customer did not agree for payment of GST at a higher rate, we have continued to classy the instrument cluster under Heading 9026.

Ques-10: Has the company used different HSN codes for the so-called speedometers (instrument clusters) for different part numbers or for different customers?

Ans: 10.1-Considering the disputes being raised by Department on the classification of instrument clusters adopted by us, the company from 1st June

2021 classified instrument clusters under Sub-heading 8708 & 8714 "under protest" to avoid further litigation in those cases where the customers have agreed to reimburse higher rate of tax.

10.2- It is reiterated that where the customer did not agree for payment of GST at a higher rate, we have continued to classify the instrument cluster under Heading 9026.

Ques-11: Why has the company used different HSN codes for the same item and supplied them at different rates?

Ans: 11.1- As stated supra, due to the disputes being raised by Department on the classification of instrument clusters, as a precautionary measure, the company has classified instrument clusters under Sub-heading 8708 & 8714 'under protest', though it continues to believe that the instrument clusters were rightly classifiable under Chapter 90 of the Customs Tariff.

11.2- It is reiterated that the re-classification has been done only with respect to supplies made to those customers who have agreed to reimburse the higher rate of tax to us.

Ques-12: As per 2015 Supreme Court Judgement in the matter of Commissioner vs. Ms. Premier Instrument & Control Ltd regarding instrument clusters (products containing multiple functionality such as speed indicator, tachometer, odometer, indicator, light, warning lights etc), they need to be classified under Chapter 87 only as parts & accessories of motor vehicles. What is the view of the company on the same?

Ans: 12.1- In our humble opinion, the decision of the Hon'ble Chennai Tribunal in CCEv. Premier Instruments & Controls Lid (2004 174 ELT 49 (Tri-Chennai) affirmed by the Hon'ble Supreme Court in [2015 321 ELT A130 (SC) may not be entirely accurate as the said decision has not analysed the full conspectus of legal and factual matrix.

12.2- In the said decision, the issue involved was the classification of cluster of instruments' wherein the taxpayer was classifying the goods under Heading 9031 whereas Department was claiming classification under Heading 8708. The demand was confirmed by the Adjudicating Authority. On appeal, the Ld.

Commissioner (Appeals) classified the subject goods under Heading 9026 against which the Department filed an appeal before the Hon'ble Chennai Tribunal.

12.3- Before the Tribunal, the submission that Instrument Clusters falls under Heading 9029/9026 was neither put forth by the assessee nor the Department. Further both the decisions were rendered in the context of a Central Excise Tariff which was not fully in line with the HSN. Thus, the Tribunal never had the opportunity to analyse the possibility of classifying the instrument cluster under Heading 9029/9026.

12.4- It is settled position of law that a judgment is an authority on what it decides and not what can logically flow out of it [Union of India v. Dhanwanti Devi, (1996) 6 SCC 44].

12.5- In Ajay Kumar v. CCE [2019 (366) E.L.T. 305 (Tri. -Del.)], it has been held that a decision arrived at without considering the relevant Section, Chapter and Heading entries vis-a-vis HSN Explanation and other Tariff clarification internationally decided is to be treated as a decision per incuriam.

12.6- Thus, in our view, the decision of Tribunal in Premier Instruments & Control Ltd. cannot be considered as having decided the issue of whether the Instrument Clusters are classifiable under CTH 9029/9026. Further, the Order of the Hon'ble Supreme Court dismissing the assessee's appeal against the Chennai Tribunal's order is a non-speaking order and cannot be considered a declaration of law by the Hon'ble Supreme Court.

Further, summons dated 04.08.2023 (RUD-II) was then issued to the taxpayer to clarify their stand regarding change of classification and payment of GST at 28% GST rate. In response, statement of Sh. Muthukumar Vellingiri, Manager (Finance) (Taxation Head) was recorded on 16.08.2023 (RUD-12) wherein he answered the questions put to him as follows:

Q-1 What is the business profile of the company? What do you look after in the company?

Ans The company is one of the leading automotive component manufacturers in India and operates 7 manufacturing units located across India in Coimbatore (2 units), Manesar (2 units), Pantnagar, Pune & Sricity . The company is engaged in the manufacture

and sale of driver information systems and sensors, pumps, telematics and wiping systems catering to automotive industry across India and in international markets.

Q-2 What products are being manufactured by the company?

Ans The manufactured products by the company are instrument clusters (for automotive industry), oil pumps, telematics and wiping systems catering.

Q-3 What does instrument cluster mean and where are they used?

Ans An instrument cluster is a group of checking and measuring instruments mounted on a base which is generally fitted onto the dashboard of motor vehicles. It is used for checking / measuring the operations of a vehicle / or a part and includes speedometers, tachometers, odometers, temperature gauges, oil pressure gauges, light and turn indicators etc.

Q-4 What is the dictionary meaning of instrument cluster?

Ans An instrument cluster is also referred to as an instrument panel and the dictionary meaning of the term is extracted as follows:

- a. As per the Macmillan dictionary, an instrument panel is *"the board which faces the driver or pilot inside a vehicle, ship or plane, where they can see and operate the controls."*
- b. As per Oxford dictionary of English (3rd Ed., 2010), an instrument panel is *"a surface in front of a driver's or pilot's seat, on which the vehicle's or aircraft's instruments are situated."*
- c. As per the Collins dictionary, an instrument panel is
 1. *a panel on which instruments are mounted, as on a car. See also dashboard.*
 2. *an array of instruments, gauges etc. mounted to display the condition or performance of a machine or process."*

Q-5 What is the dictionary meaning of Speedometer? Does the company manufacture stand-alone speedometer?

Ans The dictionary meaning of the term speedometer is extracted as follows:

- a) As per Oxford dictionary of English (3rd Ed., 2010), a speedometer is *"an instrument on a vehicle indicating its speed."*

- b) As per the Collins dictionary, a speedometer is “a device fitted to a vehicle to measure and display the speed of travel”
- c) As per the Merriam Webster dictionary, a speedometer is “an instrument for indicating speed”
- d) As per Macmillan dictionary, a speedometer is “a piece of equipment of a vehicle that shows how fast it is going.”

No, the company is not engaged in manufacturing speedometers independently. The company only manufactures instrument clusters which has various checking and measuring instruments including a speedometer.

Q-6 Who are the customers of the company for instrument cluster? (Vehicle Segment Wise)

Ans

S. No.	Vehicle Segment	Major Customers
1.	Passenger Vehicles – Cars	Tata Motors, Renault Nissan India Pvt Ltd, Mahindra and Mahindra, etc,
2.	Passenger Vehicles – Busses	SML Isuzu Limited, Ashok Leyland ,VE Commercial Vehicles Ltd etc..
3.	Commercial Vehicles – Trucks and other goods carriage vehicles	SML Isuzu Limited, Ashok Leyland Ltd, VE Commercial Vehicles Ltd, etc...
4.	Motorcycles	Hero Moto Corp Ltd, Honda Motorcycle and Scooters India, Suzuki Motorcycle India Ltd, India Yamaha Motors Pvt Ltd. TVS motors Ltd, Royal enfield, etc...
5.	Special Purpose Vehicles	Bajaj, etc..

Q-7 What are the different components used in instrument cluster? Explain with their functionality?

Ans The different components used in an instrument cluster with their functionality are tabulated as under:

Sl.No.	Instrument	Functionality of Instrument
1.	Speedometer	Indicates the speed at which the motor vehicle is travelling. Used Materials: Steel/Plastic/Copper/Brass/PCB/LCD/Active & Passive component/Stepper Motor and Micro Controller
2.	Tachometer	Indicates the revolutions per minute (rpm) of the engine. Used Material: Plastic/Copper wire/Steel.
3.	Odometer	Indicates the distance travelled by the motor vehicle. Used Material: Plastic/Copper wire/Steel
4.	Fuel gauge	Indicates the level of fuel contained in the fuel tank. Used Material: Plastic/Copper wire/Steel
5.	Temperature gauge	Indicates the temperature of the engine's coolant. Used Material: Plastic/Copper wire/Steel
6.	Oil pressure gauge	Indicates the oil pressure of the engine. Used Material: Plastic/Copper wire/Steel
7.	Light and turn indicators	Indicates the direction in which the vehicle is about to turn/brake & if the headlight is on/off. Used Material: Plastic/Copper wire/Steel

Q-8 It has been observed that instrument cluster contains multiple instruments and is used as primary data source for driver. Is it possible to separate these multiple instruments from the cluster and use them separately? Can the said cluster be used anywhere else other than motor vehicles?

Ans No, it is not possible to separate the multiple instruments from the cluster and the individual instruments cannot be used separately. These instruments are supplied and used only in the cluster in different categories of motor vehicles.

The said cluster cannot be used other than motor vehicles.

Q-9 Where has the company classified these instrument clusters in GST tariff heading during the period Jul, 2017 to Mar, 2022 and at what rate GST has been paid by the company on supply of these instrument clusters?

Ans The Company has classified instrument clusters supplied during 1st July, 2017 to 30th June, 2023 as below:

Sl.No.	Period	Classification adopted
1	01.07.2017 - 31.05.2021	We have been classifying instrument clusters under Heading 9026 of the Customs Tariff which covers "instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of Heading 9014, 9015, 9028 or 9032"
2	01.06.2021 - Present Date	Since the Department was disputing the classification adopted by us for instrument clusters, to avoid proliferation of litigation, with effect from 1st June 2021, we have been classifying instrument cluster under Headings 8708 which covers "Parts and accessories of the motor vehicles of headings 8701 to 8705" and 8714 of the Customs Tariff, which covers "Parts and accessories of the motor vehicles of headings 8711 to 8713" wherever the customers have agreed to reimburse higher rate of tax. Kindly note that re-classification under Chapter 87 has been done under protest and only for those customers who have agreed to reimburse the higher rate of 28%. In those cases, where the customer did not agree for

		payment of GST at a higher rate, we have continued to classify the instrument cluster under Heading 9026.
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Q-10 Has the company used different HSN codes for the so called speedometers (instrument clusters) for different part numbers or for different customers?

Ans Considering the disputes being raised by Department on the classification of instrument clusters adopted by us, the company from 1st June 2021 classified instrument clusters under Sub-heading 8708 & 8714 "under protest" to avoid further litigation in those cases where the customers have agreed to reimburse higher rate of tax. It is reiterated that where the customer did not agree for payment of GST at a higher rate, we have continued to classify the instrument cluster under Heading 9026.

Q-11 Why has the company used different HSN codes for the same item and supplied them at different rates?

Ans As stated above, due to the disputes being raised by Department on the classification of instrument clusters, as a precautionary measure, the company has classified instrument clusters under Sub-heading 8708 & 8714 "under protest", though it continues to believe that the instrument clusters were rightly classifiable under Chapter 90 of the Customs Tariff.

Q-12 As per 2015 Supreme Court judgment in the matter of Commissioner V/s M/s Premier Instrument & Control Ltd regarding instrument clusters (products containing multiple functionality such as speed indicator, tachometer, odometer, indicator light, warning lights etc), they need to be classified under Chapter 87 only as parts & accessories of motor vehicles. What is the view of the company on the same?

Ans In our humble opinion, the decision of the Hon'ble Chennai Tribunal in CCE v. Premier Instruments & Controls Ltd (2004 174 ELT 49 (Tri-Chennai) affirmed by the Hon'ble Supreme Court in [2015 321 ELT A130 (SC)]) may not be entirely accurate as the said decision has not analysed the full conspectus of legal and factual matrix.

In the said decision, the issue involved was the classification of 'cluster of instruments', wherein the company was classifying the goods under Heading 9031

whereas Department was claiming classification under Heading 8708. The demand was confirmed by the Adjudicating Authority. On appeal, the Ld. Commissioner (Appeals) classified the subject goods under Heading 9026 against which the Department filed an appeal before the Hon'ble Chennai Tribunal.

Before the Tribunal, the submission that Instrument Clusters falls under Heading 9029/9026 was neither put forth by the company nor the Department. Further both the decisions were rendered in the context of a Central Excise Tariff which was not fully in line with the HSN. Thus, the Tribunal never had the opportunity to analyze the possibility of classifying the instrument cluster under Heading 9029/9026.

It is settled position of law that a judgment is an authority on what it decides and not what can logically flow out of it [Union of India v. Dhanwanti Devi, (1996) 6 SCC 44].

In *Ajay Kumar v. CCE* [2019 (366) E.L.T. 305 (Tri. - Del.)], it has been held that a decision arrived at without considering the relevant Section, Chapter and Heading entries vis-a-vis HSN Explanation and other Tariff clarification internationally decided is to be treated as a decision per incuriam.

Thus, in our view, the decision of Tribunal in *Premier Instruments & Control Ltd.* cannot be considered as having decided the issue of whether the Instrument Clusters are classifiable under CTH 9029/9026. Further, the Order of the Hon'ble Supreme Court dismissing the company's appeal against the Chennai Tribunal's order is a non-speaking order and cannot be considered a declaration of law by the Hon'ble Supreme Court.

Q-13 What is the total sale of instrument clusters for the period Jul, 2017 to Jun, 2023? How much GST has been paid by the company and at what rate?

Ans This data will be submitted in a week time (22nd August 2023) in the prescribed format.

Q-14 Has the company started supplying instrument clusters under chapter 87 at 28% GST rate? If yes, from which period onwards? And whether the company has deposited differential GST liability for the period Jul, 2017 onwards?

Ans From 1st June 2021 onwards, the company started classifying instrument cluster under Headings 8708 which covers "Parts and accessories of the motor vehicles of headings 8701 to 8705" and 8714 of the Customs Tariff, which covers "Parts and accessories of the motor vehicles of headings 8711 to 8713" wherever the customers have agreed to reimburse higher rate of tax to avoid proliferation of litigation on account of dispute of classification. Kindly note that re-classification under Chapter 87 has been done "under protest only" for those customers who have agreed to reimburse the higher rate of 28%. However, this GST amount at 28% has been paid by us under protest as we do not agree with the classification contended by the department. Further, for the period from Jul, 2017 to Jun, 2021 we have not deposited differential liability of 10%. And even after Jun, 2021, in cases where customers have not agreed, we have continued with the rate of 18% and the differential liability of 10% has also not been deposited by us in the said cases.

Further, we, as a company, hereby undertake that we may not be issued DRC-01A as per provisions of the CGST Rules, 2017 prior to issuance of Show Cause Notice as we are waiving our right for the same and Show Cause Notice may directly be issued to us.

Later, the taxpayer submitted the details of supply of instrument clusters vide their letter dated 25.08.2023 & email dated 31.08.2023 (RUD-13) and also provided the copies of Show Cause Notice issued to them for their Maharashtra and Andhra Pradesh GSTINs. Accordingly, this Show Cause Notice is being issued for their remaining 5 registrations in Tamilnadu, Haryana, Gujarat, Uttarakhand and Karnataka.

The taxpayer was then asked to submit payment particulars of excise duty deposited pursuant to judgement dated 24.04.2015 pronounced by Hon'ble Supreme Court. In reply, the taxpayer vide their letter dated 01.02.2024 (RUD-14) submitted that they had deposited the excise duty demanded during excise regime pursuant to judgement of Hon'ble Supreme Court thereby indicating the acceptance of the said judgement.

6. Based on the answers submitted by the taxpayer in response to questionnaire and the aforementioned statement of the authorized person of M/s Pricol, it has been observed that the taxpayer had supplied instrument clusters under chapter heading 9026 at 18% GST rate instead of chapter heading 8708 (in case of four wheelers) and 8714 (in case of two wheelers) at 28% GST rate considering the same to be classifiable under same heading 9029 as that of other individual measuring instruments such as speedometer. However, even on their website '<https://pricol.com/driver-information-and-connected-vehicle-solutions/>', the taxpayer has advertised themselves as manufacturers of 'Driver Information and Connected Vehicle Solutions' and has given description of the same as follows:

Driver Information and Connected Vehicle Solutions - Driver Information System (DIS) is used to indicate the instantaneous changing parameters in the vehicle such as Speed, Engine RPM, Engine Temperature, Fuel Level, Fuel Economy, Service Reminder, Phone Connect, Navigation Assist (Turn By Turn) & Various Warning Indicators at vehicle level

From the above, it is amply clear that the company themselves considers them as manufacturer of a complete solution for driver and not only as manufacturer of speedometer. Some of the images of instrument clusters for four wheelers and two wheelers given by the company on their website are enclosed as RUD-15.

7. Further, a letter dated 07.12.2023 having DIN number 202312DNNI0000555F8A (RUD-16) was written to The Automotive Research Association of India, Survey No. 102, Vetal Hill, Off Paud Road, Kothrud, Pune-411038 and the same was also emailed to them at email id 'info@araiindia.com' on 07.12.2023. In response, replies were received on emails from the Director of ARAI, Pune on 08.12.2023 and from Senior Deputy Director & Head, Homologation Management, Regulations, Vehicle & Safety Evaluation, on 11.12.2023. (RUD-17)

The director of ARAI vide his reply interalia stated that-

- a. The instrument cluster is a central hub for key vehicle readouts and warning signals, providing drivers with essential information at a glance. It typically includes a range of gauges such as a speedometer, odometer, tachometer, oil pressure gauge, and fuel gauge. Additionally, it features numerous indicators for system malfunctions and

alerts. This design ensures that drivers have immediate access to crucial vehicle data, consolidating it in a single, easily accessible spot;

- b. The Instrument cluster provides information specific to the vehicle in which it has been installed. It is integral to the vehicle as it serves as the primary interface for the driver to receive critical information about the vehicle's status and performance, ensuring safe and informed driving, compliance with regulations, and timely vehicle maintenance. The details of the information provided include Driver Information & Safety, System Alerts and Warnings, Aid Regulatory Compliance & Diagnostic Support;
- c. The Instrument Cluster in vehicles is composed of various components, each designed to perform a specific function. However, it's important to note that the list is generic and the actual components can vary depending on the make, model, and year of the vehicle, as well as the specific features offered by the manufacturer. Generally, instrument cluster consists of speedometer, printed circuit board, control modules, tachometer, fuel gauge, engine temperature gauge, oil pressure gauge, batter voltage gauge, odometer, trip meter, warning lights/indicators, display screen, illumination components, connectors & wiring harnesses, housing & protective covers, input interfaces etc;
- d. Instrument Cluster is an integrated unit combining several individual instruments, specific functions into single, coherent display providing all information in one place. Instrument cluster design is focused on ergonomics and ease of use. The placement within the cluster is strategically done to minimize driver distraction. The instrument cluster is typically integrated with vehicle's computer systems (Engine Control Unit, Transmission Control Unit, Body Control Module, ABS etc.), allowing it to display real-time data and alerts about the vehicle's performance and condition. This level of integration is beyond the capability of most standalone instruments;
- e. It is not possible to separate multiple instruments and use them separately;
- f. The instrument cluster used in automobiles is designed for specific vehicle applications. It is not possible to use it for any other application unless significant modifications, reprogramming, recalibration etc. are done;

- g. Instrument cluster is an essential component for the operation of vehicle and can be referred to as a “part” of an automobile. Certain enhancement within the display which provide additional enhancement can be considered as accessories. However, the Instrument Cluster is generally classified as a part rather than an accessory. This is due to its fundamental role in the vehicle's operation and the fact that it is a standard, essential component in virtually all automobiles;
- h. Instrument Clusters are specifically designed, developed, and manufactured for use in automobiles;
- i. An 'Instrument Cluster' combines multiple instruments, including some of the ones mentioned like a speedometer, tachometer, and others. It is not accurate to term an Instrument Cluster as any one of those individual instruments (like a flow meter, pressure meter, revolution counter, taximeter, mileometer, pedometer, speedometer, or tachometer) because it encompasses several different functionalities integrated into one unit.
- j. Instrument Cluster is a distinct manufactured product, a multifunctional unit that amalgamates various individual instruments, each contributing to the overall functionality and user experience of monitoring and interacting with a vehicle's operational status.
- k. The instruments such as speedometer, tachometer, flow meter, pressure meter etc. have application beyond automobiles and are used in various fields for multiple general purposes whereas the “instrument cluster” is specifically used in automobiles and other vehicles.

The Senior Deputy Director & Head, Homologation Management, Regulations, Vehicle & Safety Evaluation, of ARAI vide his reply interalia stated that-

- a. The instrument cluster in automobiles serves the purpose of providing the driver with important information about the vehicle's status and performance. It typically consists of various gauges, indicators, and displays that help the driver monitor key aspects such as vehicle speed, engine RPM, fuel level, engine temperature, and warning lights for issues like low oil pressure or low tire pressure. The instrument

cluster allows the driver to stay informed about the vehicle's condition and make necessary adjustments or take appropriate actions while driving;

- b. The instrument cluster is an integral part of automobiles as it provides important information to the driver about the vehicle's performance, speed, fuel level, engine temperature, and various other parameters. It typically consists of a combination of gauges, indicators, and digital displays. The instrument cluster allows the driver to monitor crucial information while driving, ensuring safe and efficient operation of the vehicle. It provides real-time feedback on the vehicle's condition, enabling the driver to make informed decisions and adjustments while on the road. Additionally, the instrument cluster often includes warning lights and indicators that alert the driver to potential issues or malfunctions, such as low fuel, low tire pressure, or engine problems. This helps to prevent accidents and damages by providing timely notifications to the driver. In modern vehicles, the instrument cluster has evolved to include advanced features such as navigation systems, multimedia displays, and driver assistance information. It serves as a central hub for accessing various vehicle settings and features, enhancing the overall driving experience. Overall, the instrument cluster plays a critical role in providing essential information and feedback to the driver, contributing to the safe and efficient operation of automobiles;
- c. The components used in an instrument cluster can vary depending on the vehicle's make and model, but some common components are gauges, indicators, digital displays, warning lights, control buttons, illumination, circuitry and wiring. These components work together to provide the driver with essential information about the vehicle's performance, status, and potential issues. They help the driver make informed decisions while driving and ensure the safe and efficient operation of the automobile;
- d. The instrument cluster differs from separate individual instruments in that it combines multiple gauges, indicators, and displays into a single unit. In traditional automobiles, individual instruments are separate components mounted on the dashboard or instrument panel. For example, the speedometer, tachometer, fuel gauge, and temperature gauge may each have their own separate housing and display. On the other hand, the instrument cluster integrates all these individual instruments into a cohesive unit. It is a single assembly that houses and displays

multiple gauges, indicators, and digital displays. This consolidation provides a centralized and organized display of essential information for the driver;

- e. While it is technically possible to separate the individual instruments from the instrument cluster and use them separately, it may not be practical or feasible in most cases. The instrument cluster is designed as a unified unit that integrates multiple instruments into a cohesive assembly. Few of the reasons why separating these instruments may not be ideal are because of compatibility, space and mounting, wiring & circuitry, calibration & synchronization, user interface etc;
- f. The concept and components of an instrument cluster can be used in various applications beyond automobiles. While the design and specific functionalities may differ, the fundamental purpose of providing information and data display remains the same. Few examples of other areas where instrument clusters can be utilized are aviation, marine, industrial machinery, power generation, process control & medical equipment;
- g. The instrument cluster can be defined as a part and accessory of automobiles. It is a crucial component that is included as standard equipment in most vehicles. The instrument cluster serves as the primary interface between the driver and the vehicle's vital information, providing essential data such as speed, fuel level, engine RPM, and warning indicators. As a part, the instrument cluster is integrated into the vehicle's dashboard or instrument panel. It is designed to fit and function seamlessly within the vehicle's interior. The instrument cluster is typically installed during the manufacturing process and is considered an integral part of the vehicle's overall design and functionality. As an accessory, the instrument cluster can also be upgraded or customized to enhance the vehicle's aesthetics or functionality. Some car enthusiasts or manufacturers offer aftermarket instrument clusters with different designs, colours, or additional features. These accessories can be installed to replace the original instrument cluster, providing a personalized touch or additional functionality to the vehicle's interior. So, while the instrument cluster is a standard part of automobiles, it can also be considered an accessory that can be modified or upgraded to suit individual preferences or specific requirements;
- h. Instrument clusters are not exclusively designed, developed, and manufactured for automobiles. While they are commonly associated with automobiles, the concept and components of an instrument cluster can be adapted and utilized in various

other industries and applications. In addition to automobiles, instrument clusters can be found in other vehicles such as motorcycles, boats, and aircraft, where they serve a similar purpose of providing essential information to the operator. Moreover, instrument clusters can also be designed and used in non-vehicle applications. For example, they can be used in industrial machinery, power generation systems, medical equipment, and process control systems to monitor and display relevant data and parameters. The specific design and manufacturing process of an instrument cluster may differ depending on the application and industry. Different industries may have specific requirements and regulations that need to be considered during the design and manufacturing process. So, while automobile applications are the most common and well-known use of instrument clusters, they are not exclusively designed, developed, and manufactured for automobiles. The concept and components of instrument clusters can be adapted and utilized in various other industries and applications where the display of information and data is essential;

- i. A speedometer is an instrument or gauge that is part of the instrument cluster in a vehicle. Its primary function is to display the current speed at which the vehicle is traveling. The speedometer is typically located within the instrument cluster on the driver's side of the dashboard, where it is easily visible and accessible. It is a crucial component of the instrument cluster, which provides the driver with vital information about the vehicle's performance and status while on the road.
- j. An instrument cluster is a combination of multiple instruments, including some of the ones you mentioned, such as a speedometer, tachometer, odometer, and possibly others like fuel gauge, temperature gauge, and warning lights. It is not typically referred to as a flow meter, pressure meter, taximeter, pedometer, or revolution counter, as those instruments serve different purposes and are usually separate devices. So, the instrument cluster is a distinct manufactured product that combines various instruments to provide essential information to the driver in one centralized location on the dashboard of a vehicle;
- k. Instruments such as flow meter, pressure meters, revolution counters, taximeters, milometers (odometers), pedometers, speedometers, and tachometers can be used in various machines and equipment other than automobiles. So while these instruments have general uses beyond automobiles, the instrument cluster, as a

combination of these instruments, is specifically designed and used in automobiles to provide drivers with essential information about their vehicle's performance and speed.

It is clear from the replies received from Automotive Research Association of India that instrument cluster is so much more than simple speedometer or other such measuring instruments in that it is a combination of various instruments, is specifically designed and used in automobiles to provide drivers with essential information about their vehicle's performance and speed and hence, it is considered as an integral part of the automobiles.

8. The dictionary meaning of instrument is as follows:
 - a. As per <https://www.merriam-webster.com>, instrument means a measuring device for determining the present value of a quantity under observation;
 - b. As per <https://www.oxfordlearnersdictionaries.com>, instrument means a device used for measuring speed, distance, temperature, etc. in a vehicle or on a machine;
 - c. As per <https://dictionary.cambridge.org>, instrument means a piece of equipment used for measuring speed, height, etc. in vehicles, especially aircraft;
 - d. As per <https://www.collinsdictionary.com>, An instrument is a device that is used for making measurements of something such as speed, height, or sound, for example on a ship or plane or in a cluster of people or things is a small group of them close together

Similarly, dictionary meaning of cluster is as follows:

- a. As per <https://www.merriam-webster.com>, cluster means a number of similar things that occur together;
- b. As per <https://www.oxfordlearnersdictionaries.com>, cluster means a group of things of the same type that grow or appear close together;
- c. As per <https://dictionary.cambridge.org>, cluster means a group of similar things that are close together, sometimes surrounding something;
- d. As per <https://www.collinsdictionary.com>, a cluster of people or things is a small group of them close together.

From the above definitions, images given by the company on their website and even the use of the word instrument cluster in common parlance, it is very clear that what instrument

cluster means is that it is a device which is a combination of various instruments including speedometer, tachometer, odometer, fuel gauge, temperature gauge, buzzers, warning lights, indicators & clock display etc. The instrument cluster is the primary data source for the driver delivering information about vehicle and helps in better performance, safety and control during the time the automotive is in motion. It is specifically designed for the motor vehicles as per different designs & specifications and cannot be used anywhere else. This fact has even been admitted by the company while providing answers to the questionnaire. The said product is cleared as a single product and is a distinct product having distinct name and distinct uses. Instrument cluster is a different manufactured product resulted by assembling and connecting various components on a single electronic platform and solely used in vehicles. Instrument Clusters cannot be used anywhere other than application in two wheeler or four wheeler vehicles. Thus, the product 'Instrument Cluster' is solely or principally used for motor vehicles.

9. For correct classification of goods tariff item, sub heading, heading along with chapter as specified in the First Schedule to the Customs Tariff Act, 1975 is applicable. The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 including Section and Chapter Notes and General Explanatory Notes of the First Schedule are also applicable. There are basically three parameters for finalization of classification:-

- a. HSN along with Explanatory Notes provides a safe guide for interpretation of an entry;
- b. Equal importance to be given to Rules of Interpretation of the Tariff; and
- c. Functional utility, design, shape and predominant usages have also get to be taken into account.

9.1 Section XVII of HSN Explanatory Notes specified for articles of Vehicles provides general notes for chapter 86 & 87 of GST tariff. The relevant portion of this Section Note are as under:-

Notes.

1. *This Section does not cover articles of heading 95.03 or 95.08, or bobsleighs, toboggans or the like of heading 95.06.*

2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:
 - (a) Joints, washers or the like of any material (classified according to their constituent material or in heading 84.84) or other articles of vulcanized rubber other than hard rubber (heading 40.16);
 - (b) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);
 - (c) Articles of Chapter 82 (tools);
 - (d) Articles of heading 83.06;
 - (e) Machines or apparatus of heading 84.01 to 84.79, or parts thereof; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;
 - (f) Electrical machinery or equipment (Chapter 85);
 - (g) *Articles of Chapter 90,*
 - (h) Articles of Chapter 91;
 - (i) Arms (Chapter 93);
 - (j) Lamps or lighting fittings of heading 94.05; or
 - (k) Brushes of a kind used as parts of vehicles (heading 96.03).

3. References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

4. ...

5. ...

GENERAL

I. GENERAL CONTENT OF THE SECTION

II. SELF-PROPELLED OR OTHER MOBILE MACHINES

III. PARTS AND ACCESSORIES

It should be noted that Chapter 89 makes no provision for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships, etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of the vehicles, aircraft or equipment concerned.

It should, however, be noted that these headings apply only to those parts or accessories which comply with all three of the following conditions:

- (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below). and
- (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below). and
- (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

(A) *Parts and accessories excluded by Note 2 to Section XVII*

This Note excludes the following parts and accessories, whether or not they are identifiable as for the articles of this Section:

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

(8) Instruments and apparatus of Chapter 90, including those used on certain vehicles, such as:

- (a) Photographic or cinematographic cameras (heading 90.06 or 90.07).

- (b) Navigational instruments and appliances (heading 90.14).
- (c) Instruments and appliances used in medical, surgical, dental or veterinary sciences (heading 90.18).
- (d) Apparatus based on the use of X-rays and other apparatus of heading 90.22.
- (e) Manometers (heading 90.26).
- (f) Revolution counters, taximeters, speed indicators and tachometers and other instruments and apparatus of heading 90.29.
- (g) Measuring or checking instruments, appliances and machines of heading 90.3
- (9) ...
- (10) ...
- (11) ...
- (12) ...

(B) Criterion of sole or principal use

- (1) *Parts and accessories classifiable both in Section XVII and in another Section*

Under Section Note 3, parts and accessories which are not suitable for use *solely or principally* with the articles of Chapters 86 to 88 are excluded from those Chapters.

The effect of Note 3 is therefore that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. Thus the steering gear, braking systems, road wheels, mudguards, etc, used on many of the mobile machines falling in Chapter 84, are virtually identical with those used on the lorries of Chapter 87, and since their principal use is with lorries, such parts and accessories are classified in this Section.

- (2) *Parts and accessories classifiable in two or more headings of the Section.*

*Certain parts and accessories are suitable for use on more than one type of vehicle (motor cars, aircraft, motorcycles, etc.); examples of such goods include brakes, steering systems, wheels, axles, etc. Such parts and accessories are to be classified in the heading relating to the parts and accessories of the vehicles with which they are **principally used**.*

(C) *Parts and accessories covered more specifically elsewhere in the Nomenclature.*

Parts and accessories, even if identifiable as for the articles of this Section, are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g.:

(1) to (12)....

9.2 From the above section Note of the HSN Explanatory Notes it is noticed that Parts and Accessories used into motor vehicles / two-wheeler are to be classified under heading which corresponds to the principal use of that part or accessory. And the condition for qualifying are (a) must not be excluded by the terms of Note 2; (b) must be suitable for use solely or principally with the article; & (c) must not be more specifically included elsewhere in the nomenclature.

For correct classification of product one should not have overlooked the 'Predominant use' or 'sole/principal use' test which was acknowledged by the General Rules for interpretation of the schedule. The 'sole or principal use' test is sought to be applied for classification of parts under Chapter 86 and Chapter 87 to the exclusion of all other conditions / qualifications. This is especially in the case of parts those are custom-designed for automobiles. There are analogous Notes in other Section of HSN such as Notes to Section XVI (Chapter 84 & 85) and Section XVIII (Chapter 90). Thus, the classification of products that are otherwise falling under above Section may be classified accordingly.

9.3 The instant / subject product 'Instrument Cluster' is not elsewhere specified as it is a combination of various parts, which is not included under the excluded part, refer Para - (III) PARTS AND ACCESSORIES -(A) Parts and accessories excluded by Note 2 to Section XVII - (8) Instruments and apparatus of Chapter 90, including those used on certain vehicles. The said product is used solely and principally to Motor Vehicles (two / three / four wheeler

vehicles), as per the technical literature of the product, its uses and also admitted by the company. The said product is also not more specifically included elsewhere in the nomenclature. Thus, in view of the forgoing discussion the instant good 'Instrument Cluster' is an essential part of motor vehicle (two wheeler vehicles) and appears that it should be classified as part of motor vehicles / two wheeler vehicles) under chapter 87(8708 / 8714). The very facts in this case is that the goods were cleared in cluster / set which do not find place in chapter 90 and that each set was principally and solely meant for use in motor vehicle.

9.4 The aforesaid argument gains strength from the statement tendered by the taxpayer on the basis of following points:

a. In their statement dated 16.08.2023, the taxpayer inter alia stated that it is not possible to separate the multiple instruments from the cluster and the individual instruments cannot be used separately. These instruments are supplied and used only in the cluster in different categories of motor vehicles. The said cluster cannot be used other than motor vehicles.

b. In their statement dated 16.08.2023, the taxpayer inter alia stated that the company is not engaged in manufacturing speedometers independently. The company only manufactures instrument clusters which has various checking and measuring instruments including a speedometer.

10. The company vide their various submissions as detailed above have informed that they have started discharging GST at 28% (albeit under protest) on supply of instrument clusters to customers who have agreed to reimburse them higher rate of tax from Jul, 2021 onwards. Further, the taxpayer submitted in their statement dated 10.08.2023 that from 1st June 2021 onwards, the company started classifying instrument cluster under Headings 8708 which covers "Parts and accessories of the motor vehicles of headings 8701 to 8705" and 8714 of the Customs Tariff, which covers "Parts and accessories of the motor vehicles of headings 8711 to 8713" wherever the customers agreed to reimburse higher rate of tax to avoid proliferation of litigation on account of dispute of classification. However, they emphasized that re-classification under Chapter 87 has been done "under protest only" for those customers who have agreed to reimburse the higher rate of 28%. And, this GST amount at 28% has been paid by them under protest as they do not agree with the classification contended by the department. Further, for the period from Jul, 2017 to Jun, 2021, they have

not deposited differential liability of 10%. And even after Jun, 2021, in cases where customers have not agreed, they have continued with the rate of 18% and the differential liability of 10% has also not been deposited by us in the said cases.

Tax Calculation

11. On the basis of information / documents submitted by the company during investigation and details of supply of instrument clusters submitted by the taxpayer for the period from 01-07-2017 to 30.06.2023 vide their letter dated 28.08.2023, differential GST liability for the period from 01-07-2017 to 30.06.2023 has been calculated. This liability has been calculated keeping in mind the below mentioned points:

- a. Unpaid differential GST liability of 10% wherein the taxpayer had charged and deposited 18% GST on supply of instrument cluster; and
- b. Differential GST liability of 10% wherein the taxpayer had charged and deposited 28% GST on supply of instrument clusters under protest.

The details of the said differential liability are as per Annexure-A to this Show Cause Notice.

The year wise GST liability wherein the taxpayer had charged and deposited 18% GST on their supply of instrument clusters is as under:

A. For registration 06AAGCP0139E1ZT-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	64,97,88,502	6,49,78,850	26,65,04,972	1,33,25,249	1,33,25,249	9,16,29,348
2018-19	92,19,81,204	9,21,98,120	48,32,61,041	2,41,63,052	2,41,63,052	14,05,24,224
2019-20	70,07,14,423	7,00,71,442	33,12,91,959	1,65,64,598	1,65,64,598	10,32,00,638
2020-21	66,43,97,657	6,64,39,766	77,41,16,760	3,87,05,838	3,87,05,838	14,38,51,442

2021-22	38,82,04,363	3,88,20,436	56,29,83,698	2,81,49,185	2,81,49,185	9,51,18,806
2022-23	1,84,300	18,430	-	-	-	18,430
2023-24 (upto Jun, 2023)	-	-	-	-	-	-
Total	3,32,52,70,449	33,25,27,044	2,41,81,58,430	12,09,07,922	12,09,07,922	57,43,42,888

B. For registration 24AAGCP0139EIZV-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	-	-	-	-	-	-
2018-19	-	-	-	-	-	-
2019-20	-	-	4,16,60,279	20,83,014	20,83,014	41,66,028
2020-21	-	-	13,98,19,556	69,90,978	69,90,978	1,39,81,956
2021-22	-	-	7,60,50,380	38,02,519	38,02,519	76,05,038
2022-23	-	-	-	-	-	-
2023-24 (upto Jun, 2023)	-	-	-	-	-	-
Total	-	-	25,75,30,215	1,28,76,511	1,28,76,511	2,57,53,022

C. For registration 33AAGCP0139EIZW-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST

2017-18 (Jul, 2017 onwards)	66,04,24,236	6,60,42,424	71,06,40,272	3,55,32,014	3,55,32,014	13,71,06,452
2018-19	1,13,81,04,568	11,38,10,457	1,02,98,01,195	5,14,90,060	5,14,90,060	21,67,90,577
2019-20	1,25,40,45,769	12,54,04,577	81,63,94,115	4,08,19,706	4,08,19,706	20,70,43,989
2020-21	53,23,75,757	5,32,37,576	82,22,06,663	4,11,10,333	4,11,10,333	13,54,58,242
2021-22	54,83,36,794	5,48,33,679	63,44,34,588	3,17,21,729	3,17,21,729	11,82,77,137
2022-23	7,85,446	78,545	1,57,765	7,888	7,888	94,321
2023-24 (upto Jun, 2023)	-	-	-	-	-	-
Total	4,13,40,72,570	41,34,07,258	4,01,36,34,598	20,06,81,730	20,06,81,730	81,47,70,718

D. For registration 29AAGCP0139EIZL-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	-	-	-	-	-	-
2018-19	-	-	-	-	-	-
2019-20	-	-	-	-	-	-
2020-21	-	-	81,53,92,361	4,07,69,618	4,07,69,618	8,15,39,236
2021-22	-	-	60,87,38,225	3,04,36,911	3,04,36,911	6,08,73,822
2022-23	-	-	-	-	-	-
2023-24 (upto Jun, 2023)	-	-	-	-	-	-
Total	-	-	1,42,41,30,586	7,12,06,529	7,12,06,529	14,24,13,058

E. For registration 05AAGCP0139E1ZV-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	14,45,49,083	1,44,54,908	68,55,24,668	3,42,76,233	3,42,76,233	8,30,07,374
2018-19	12,60,45,022	1,26,04,502	1,21,15,29,581	6,05,76,479	6,05,76,479	13,37,57,460
2019-20	16,51,87,366	1,65,18,737	1,06,32,78,671	5,31,63,934	5,31,63,934	12,28,46,605
2020-21	13,91,70,516	1,39,17,052	1,22,14,66,078	6,10,73,304	6,10,73,304	13,60,63,660
2021-22	7,79,25,942	77,92,594	98,93,15,676	4,94,65,784	4,94,65,784	10,67,24,162
2022-23	-	-	-	-	-	-
2023-24 (upto Jun, 2023)	-	-	-	-	-	-
Total	65,28,77,929	6,52,87,793	5,17,11,14,674	25,85,55,734	25,85,55,734	58,23,99,261

Further, the taxpayer has time and again submitted that they have started discharging GST at 28% from customers who have agreed to remit higher rate of tax but the same has been deposited by them under protest even though they have charged the same on invoices raised to their customers, have shown them in their monthly GST return of outward supply (GSTR-1). The same stand was taken by them in their statement dated 10.08.2023. As the GST at 28% rate has been charged on their regular tax invoices and has been paid as normal tax liability, their customers have also availed ITC at 28% on the said invoices. Hence, the payment of the said tax at 28% cannot be considered as under protest. However, as the taxpayer has made the payment under protest, the differential tax of 10% on these supplies needs to be appropriated against their total payment of GST and the details of the same are as follows:

A. For registration 06AAGCP0139EIZT-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	-	-	-	-	-	-
2018-19	-	-	-	-	-	-
2019-20	-	-	-	-	-	-
2020-21	-	-	-	-	-	-
2021-22	65,40,25,721	6,54,02,572	69,42,33,715	3,47,11,686	3,47,11,686	13,48,25,944
2022-23	1,12,66,99,491	11,26,69,949	1,38,80,84,707	6,94,04,235	6,94,04,235	25,14,78,419
2023-24 (upto Jun, 2023)	27,70,80,041	2,77,08,004	39,48,91,622	1,97,44,581	1,97,44,581	6,71,97,166
Total	2,05,78,05,253	20,57,80,525	2,47,72,10,044	12,38,60,502	12,38,60,502	45,35,01,529

B. For registration 24AAGCP0139EIZV-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	-	-	-	-	-	-
2018-19	-	-	-	-	-	-
2019-20	-	-	-	-	-	-
2020-21	-	-	-	-	-	-
2021-22	-	-	9,50,10,573	47,50,529	47,50,529	95,01,058
2022-23	-	-	13,27,09,470	66,35,474	66,35,474	1,32,70,948
2023-24	-	-	3,13,75,487	15,68,774	15,68,774	31,37,548

(upto Jun, 2023)						
Total	-	-	25,90,95,530	1,29,54,777	1,29,54,777	2,59,09,554

C. For registration 33AAGCP0139EIZW-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	-	-	-	-	-	-
2018-19	-	-	-	-	-	-
2019-20	-	-	-	-	-	-
2020-21	-	-	-	-	-	-
2021-22	45,53,45,382	4,55,34,538	1,01,81,49,942	5,09,07,497	5,09,07,497	14,73,49,532
2022-23	1,33,75,27,228	13,37,52,723	2,80,90,77,551	14,04,53,878	14,04,53,878	41,46,60,479
2023-24 (upto Jun, 2023)	40,35,83,584	4,03,58,358	95,03,62,826	4,75,18,141	4,75,18,141	13,53,94,640
Total	2,19,64,56,194	21,96,45,619	4,77,75,90,319	23,88,79,516	23,88,79,516	69,74,04,651

D. For registration 29AAGCP0139EIZL-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	-	-	-	-	-	-

2018-19	-	-	-	-	-	-
2019-20	-	-	-	-	-	-
2020-21	-	-	-	-	-	-
2021-22	1,600	160	64,26,69,493	3,21,33,475	3,21,33,475	6,42,67,110
2022-23	2,87,504	28,750	94,03,25,727	4,70,16,286	4,70,16,286	9,40,61,322
2023-24 (upto Jun, 2023)	-	-	26,96,26,954	1,34,81,348	1,34,81,348	2,69,62,696
Total	2,89,104	28,910	1,85,26,22,174	9,26,31,109	9,26,31,109	18,52,91,128

E. For registration 05AAGCP0139EIZV-

Period	Inter-state taxable value	Differential IGST @ 10%	Intra-state taxable value	Differential CGST @ 5%	Differential SGST @ 5%	Total Differential GST
2017-18 (Jul, 2017 onwards)	-	-	-	-	-	-
2018-19	-	-	-	-	-	-
2019-20	-	-	-	-	-	-
2020-21	-	-	-	-	-	-
2021-22	9,07,89,059	90,78,906	69,35,95,555	3,46,79,778	3,46,79,778	7,84,38,462
2022-23	17,11,74,149	1,71,17,415	1,48,85,87,251	7,44,29,363	7,44,29,363	16,59,76,141
2023-24 (upto Jun, 2023)	5,72,53,936	57,25,394	48,57,46,623	2,42,87,331	2,42,87,331	5,43,00,056
Total	31,92,17,144	3,19,21,715	2,66,79,29,429	13,33,96,472	13,33,96,472	29,87,14,659

12 From the forgoing paragraphs, it appears that M/s Pricol have wrongly classified the product, i.e. 'Instrument Cluster', under Tariff Item 9026. For correct classification of product 'Instrument Cluster', its technical literature has been analyzed with reference to Section Note XVI and Chapter 87 of the GST Tariff and it appears that the same merits classification under Chapter heading 8708 & 8714 of the First Schedule to the Customs Tariff Act, 1975 / GST Tariff of Goods.

12.1 Whereas it is seen that goods classified under Chapter Heading 8708 / 8714 of the First Schedule to the Customs Tariff Act, 1975 attract CGST @ 14%, SGST @14% and IGST @ 28%, as the case may be, under Notification No. 1/2017 - Central Tax (Rate) dated 28-06-2017, respective State Notification and Notification No. 01/2017-Integrated Tax (Rate) dated 28-06-2017 respectively.

12.2 Whereas it therefore appears that the "Instrument Clusters" supplied by M/s Pricol w.e.f. 01-07-2017 are rightly classifiable under Heading 8708/8714 and attract CGST @ 14% and SGST @ 14% or IGST @ 28% as per above mentioned notifications.

13. Whereas M/s Pricol have submitted sample copies of invoices of supply of Instrument Clusters for the period 01-07-2017 onwards and that they were aware that the goods falling under Heading 8708 / 8714 are charged at 28% GST and goods cleared under Chapter 9026 are charged at 18% GST.

13.1 Whereas it, therefore appears that in order to avail lower rate of tax M/s Pricol have wilfully and deliberately classified the goods under Chapter 90, when they were well aware that the as per nature / functioning of Instrument Clusters supplied by them, the said products were used solely or principally in motor vehicles (HCV / LCV /two-wheeler). Further, the judgements of Hon'ble Supreme Court as well as CESTAT Chennai as mentioned in Para above, were against the same taxpayer i.e. M/s Pricol Ltd and the taxpayer even deposited the excise duty demanded during excise regime pursuant to judgement of Hon'ble Supreme Court thereby indicating the acceptance of the said judgement. And still, they deliberately continued with the classification of instrument clusters under Chapter 90 instead of Chapter 87.

14. Whereas in view of the above, it appears that M/s Pricol have contravened the following provisions:

- i. Section 9 of the Central & State Goods and Services Tax Acts, 2017 and Section 5 of the Integrated Goods and Services Tax Act, 2017, as the case may be, read with Notification No. 1/2017 – Central Tax (Rate) dated 28-06-2017, respective State Notification and Notification No. 01/2017-Integrated Tax (Rate) dated 28-06-2017 respectively, in as much as they failed to correctly classify the “Instrument Cluster/ Speedometer Assembly’ cleared by them under Heading 8708 / 8714, as provided in the said Notifications;
- ii. Section 9 of the Central & State Goods and Services Tax Acts, 2017 read with Notification No. 1/2017 – Central Tax (Rate) dated 28-06-2017 and respective State Notification in as much as they failed to levy the correct rate of CGST @ 14% and SGST @ 14% on the intra-State supplies of “Instrument Cluster/ Speedometer Assembly” w.e.f. 01-07-2017;
- iii. Section 5 of the Integrated Goods and Services Tax Act, 2017 read with Notification No. 01/2017-Integrated Tax (Rate) dated 28-06-2017 in as much as they failed to levy the correct rate of IGST @ 28% on the inter-State clearance of “Instrument Cluster/ Speedometer Assembly” w.e.f. 01-07-2017;
- iv. Section 59 of the Central & State Goods and Services Tax Acts, 2017 in respect of intra-State supplies of “Instrument Cluster / Speedometer Assembly’ and Section 20 of the Integrated Goods and Services Tax Act, 2017, read with Section 59 of the Central Goods and Services Tax Act, 2017, in respect of inter-State supplies of “Instruments Cluster / Speedometer Assembly’, in as much as they failed to correctly assess the taxes payable by them;
- v. Section 49 of the Central & State Goods and Services Tax Acts, 2017 in respect of intra-State supplies of “Instrument Cluster’ and Section 20 of the IGST Act, read with Section 49 of the Central Goods and Services Tax Act, 2017, in respect of inter-State supplies of “Instrument Cluster/ Speedometer Assembly”, in as much as they failed to correctly pay the taxes payable by them;

15. Whereas in view of the above contravention, it appears, that M/s Pricol have short paid the CGST amounting to 66,42,28,426/-, SGST amounting to 66,42,28,426/- and IGST amounting to 81,12,22,095/- (Total amounting to 2,13,96,78,947/-) on the supplies of

“Instrument Cluster/ Speedometer Assembly” during the period from 01-07-2017 to 30-06-2023 as elaborated in above paragraphs to this Notice. Further, they have made payment of CGST amounting to 60,17,22,376/-, SGST amounting to 60,17,22,376/- and IGST amounting to 45,73,76,769/- (Total amounting to 1,66,08,21,521/-) under protest on the supplies of “Instrument Cluster/ Speedometer Assembly” during the period from 01-04-2021 to 30-06-2023 as elaborated in para above.

16.1 The quantification of short paid tax as mentioned at Para above has been ascertained/ worked out on the basis of data submitted by M/s Pricol in respect of the supplies of “Instrument Cluster” during the impugned period, attached herewith as Annexure-A to SCN.

16. Further, the taxpayer vide their statement dated 16.08.2023 submitted that they are waiving their right for “Form DRC 01 A” to be issued to them and requested directly for issuance of Show Cause Notice.

17. Whereas it, therefore, appears that the taxes short paid are liable to be demanded and recovered under Section 74 of the CGST Act and the SGST Act and Section 20 of the IGST Act read with Section 74 of the CGST Act, as the case may be.

17.1 Whereas it further appears that the assessee were fully aware of the fact the “Instrument Cluster/ Speedometer Assembly”, manufactured and supplied by them were classifiable under Heading 8708 / 8714 liable to GST @ 28%.

17.2 Whereas it also appears that the “Instrument Cluster/ Speedometer Assembly”, would attract 18% GST, if classified under Chapter Heading 9026 / 9029 / 9031 in the GST regime as opposed to 28% GST if classified under Heading 8708 / 8714.

17.3 Whereas it therefore appears that the provisions of Section 74 of the Central and State Act as well as Section 20 of the IGST Act read with Section 74 of the CGST Act, as the case may be, are rightly invocable in the case of M/s Pricol to demand and recover the short paid taxes as elaborated in Para above.

Suppression of facts & Willful Misstatement

18. It is pertinent to mention here that the system of self-assessment and less interaction with department is in vogue in respect of GST. In the scheme of self-assessment, the department comes to know about the activities of a taxpayer and payment made, only during the scrutiny of the statutory returns filed by the taxpayer. Therefore, it places greater onus on the taxpayer to conform to higher standards of disclosure of information in the statutory returns. It is seen from the statutory returns filed by M/s Pricol that they had failed to disclose the above details relating to description and classification of Instrument Cluster in GST returns during the aforesaid period. Thus, M/s Pricol have suppressed the material facts from the Department by not disclosing in their statutory returns. This was done intentionally to avoid correct classification under chapter 8708/8714 and not to pay the tax @28%. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the taxpayer, but has to be established through evaluation of tax behaviour. The responsibility of the taxpayer to voluntarily make information disclosures is much greater in a system of self-assessment. In this case, evaluation of tax behaviour of M/s Pricol shows intent to evade payment of GST by wilful wrong classification of the said product. M/s Pricol had paid less GST @18% during the material period in case of supply of 'Instrument Clusters / Speedometer Assembly' and on pointing out by the department they have started classifying the product under Chapter heading 87 and started paying GST @ 28%. If DGGI, Gurugram Zonal Unit would not have initiated investigation, these facts would not have come to light and less payment of CGST/SGST/ IGST by M/s Pricol would have remained unnoticed, undetected and unpaid. Further, the judgements of Hon'ble Supreme Court as well as CESTAT Chennai were against the same taxpayer i.e. M/s Pricol Ltd and the taxpayer even deposited the excise duty demanded during excise regime pursuant to judgement of Hon'ble Supreme Court thereby indicating the acceptance of the said judgement. Therefore, it appears that M/s Pricol have wilfully suppressed the above facts with an intent to evade payment of GST. Further, it can be seen from their invoices (RUD-18) that they have described instrument cluster by various names such as Inst Cluster, Instrument Cluster, Speedometer Assy, Assy Speedometer Cluster etc. and have supplied them under HSN 9026/9029 at 18% rate.

18.1 Although, the judgements of Hon'ble Supreme Court as well as CESTAT Chennai were against the said taxpayer, they have intentionally continued with their classification.

They have even submitted in their replies that in their view, instrument clusters are rightly classifiable under chapter 90 of the Customs Tariff and that the decision of Hon'ble Supreme Court may not be entirely accurate as the said decision has not analysed the full conspectus of legal and factual matrix even though they deposited the excise duty pursuant to judgement of Hon'ble Supreme Court. Accordingly, it is evidently clear that the taxpayer was cognizant of the fact that court judgements were against their classification of instrument cluster and yet they intentionally kept classifying their product 'instrument cluster' with various names under chapter 90.

18.2 Further, there is evidence on record that the decision of Hon'ble Supreme Court was accepted by the taxpayer as they paid the excise duty demanded during excise regime. Yet the classification of impugned goods i.e. 'instrument cluster' under Chapter 87 of the Tariff was not accepted by the taxpayer and they kept classifying the said goods under Chapter 90. They even submitted in their replies that the decision of Hon'ble Supreme Court may not be entirely accurate as the said decision has not analysed the full conspectus of legal and factual matrix.

19. In view of the above discussions, it appears that M/s Pricol were fully cognizant of and aware of the fact that they have misclassified the product 'Instrument Cluster / Speedometer Assembly' under chapter 9026 attracting GST @ 18% instead of correctly classifying under chapter 8708/8714 attracting GST @ 28% with sole intention to evade payment of GST. Therefore, it appears that M/s Pricol have intentionally suppressed from the department, the true nature and classification of 'Instrument Cluster / Speedometer Assembly' to the department. It appears that M/s Pricol have intentionally suppressed the facts and contravened rules as discussed above, with intention to evade payment of GST and therefore provisions of Section 74(1) of the Central Goods and Services Tax, 2017 appear invokable in this case for demand of GST in extended period. The Total GST amounting to 3,80,05,00,468 /- (including CGST and SGST and IGST), as mentioned in para above, appears payable by M/s Pricol, along with interest on the above tax under Section 50 of the Central Goods and Services Tax Act and SGST Act and Section 20 of the IGST Act read with Section 50 of the CGST Act respectively. M/s Pricol also appear liable for penalty under Section 74(1) of the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 74(1) of the CGST Act.

20. Now Therefore, M/s Pricol Limited, GSTIN-33AAGCP0139E1ZW, 132, Plant 1, Mettupalayam Road, Perianaickenpalayam, Coimbatore, Tamilnadu-641020, are hereby directed to show cause to the jurisdictional Additional/Joint Commissioner, CGST Commissionerate, Chennai-South, having his office at 692, M.H.U. Complex, Anna Salai, Nandanam, Chennai-600035 in terms of Circular No. 169/01/2022-GST dated 12.03.2022 as to why:

- i. The "Instrument Cluster / Speedometer Assembly" supplied by them should not be classified under Heading 8708 / 8714 as provided under Notification No.1/2017 - Central Tax (Rate) dated 28-6-2017 and Notification No. 1/2017-State Tax (Rate) dated 29-6-2017 in respect of the intra-State supplies of the "Instrument Cluster / Speedometer Assembly" and Notification No. 01/2017-Integrated Tax (Rate), dated 28-06-2017 in respect of the inter-State supplies of the "Instrument Cluster / Speedometer Assembly" under the provisions of Section 9 of the CGST and SGST Acts and provisions of Section 5 of the IGST Act;
- ii. The intra -State supplies of "Instrument Cluster/ Speedometer Assembly" should not be taxed @ 14% CGST and 14% SGST and the inter-State supplies of "Instrument Cluster/ Speedometer Assembly", should not be taxed at 28% IGST under the provisions of Section 9 of the CGST and SGST Act and Section 5 of the IGST Act respectively;
- iii. The CGST amounting to 43,95,61,246 /-, SGST amounting to 43,95,61,246 /- and IGST amounting to 63,30,52,877 /- on the supplies of "Instrument Cluster/ Speedometer Assembly" (Total amounting to 1,51,21,75,369 /-) (One Hundred Fifty One Crores Twenty One Lakhs Seventy Five Thousand Three Hundred Sixty Nine Only) during the period from 01-07-2017 to 30-06-2023, as elaborated in para above to this Notice should not be demanded and recovered under the provisions of Section 74(1) of the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 74(1) of the CGST Act, respectively.
- iv. The CGST amounting to 23,88,79,516 /-, SGST amounting to 23,88,79,516 /- and IGST amounting to 21,96,45,619 /- on the supplies of "Instrument Cluster/ Speedometer Assembly" (Total amounting to 69,74,04,651 /-) during the period from 01-06-2021 to 30-06-2023 wherein the taxpayer has charged 28% GST on invoices raised to their customers and has also shown them in their monthly GST return of outward supply (GSTR-1) and has still considered the same as under protest, as elaborated in para

above to this Notice should not be appropriated against demand raised in point iii above;

- v. Interest at appropriate rate on the total GST demanded at point iii above should not be charged and recovered from M/s Pricol Ltd, under the provisions of Section 50 of the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 50 of the CGST Act respectively.
- vi. Penalty equivalent to evaded tax should not be imposed upon them, under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017; and
- vii. General Penalty should not be imposed upon them, under Section 125 of the CGST Act, 2017 for not correctly assessing and paying GST payable by them.

20.1 Now Therefore, M/s Pricol Limited, GSTIN-06AAGCP0139EIZT, Plot No. 34-35, Sector-4, IMT Manesar, Gurugram, Haryana-122050, are hereby directed to show cause to the jurisdictional Additional/Joint Commissioner, CGST Commissionerate, Chennai-South, having his office at 692, M.H.U. Complex, Anna Salai, Nandanam, Chennai-600035 in terms of Circular No. 169/01/2022-GST dated 12.03.2022 as to why:

- i. The "Instrument Cluster / Speedometer Assembly" supplied by them should not be classified under Heading 8708 / 8714 as provided under Notification No.1/2017 - Central Tax (Rate) dated 28-6-2017 and Notification No. 1/2017-State Tax (Rate) dated 29-6-2017 in respect of the intra-State supplies of the "Instrument Cluster / Speedometer Assembly" and Notification No. 01/2017-Integrated Tax (Rate), dated 28-06-2017 in respect of the inter-State supplies of the "Instrument Cluster / Speedometer Assembly" under the provisions of Section 9 of the CGST and SGST Acts and provisions of Section 5 of the IGST Act;
- ii. The intra -State supplies of "Instrument Cluster/ Speedometer Assembly" should not be taxed @ 14% CGST and 14% SGST and the inter-State supplies of "Instrument Cluster/ Speedometer Assembly", should not be taxed at 28% IGST under the provisions of Section 9 of the CGST and SGST Act and Section 5 of the IGST Act respectively;
- iii. The CGST amounting to 24,47,68,424 /-, SGST amounting to 24,47,68,424 /- and IGST amounting to 53,83,07,569 /- on the supplies of "Instrument Cluster/ Speedometer Assembly" (Total amounting to 1,02,78,44,417 /-) (One Hundred Two Crores Seventy Eight Lakhs Forty Four Thousand Four Hundred Seventeen Only) during the period from 01-07-2017 to 30-06-2023, as elaborated in para above

to this Notice should not be demanded and recovered under the provisions of Section 74(1) of the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 74(1) of the CGST Act, respectively.

- iv. The CGST amounting to 12,38,60,502 /-, SGST amounting to 12,38,60,502 /- and IGST amounting to 20,57,80,525 /- on the supplies of "Instrument Cluster/ Speedometer Assembly" (Total amounting to 45,35,01,529 /-) during the period from 01-06-2021 to 30-06-2023 wherein the taxpayer has charged 28% GST on invoices raised to their customers and has also shown them in their monthly GST return of outward supply (GSTR-1) and has still considered the same as under protest, as elaborated in para above to this Notice should not be appropriated against demand raised in point iii above;
- v. Interest at appropriate rate on the total GST demanded at point iii above should not be charged and recovered from M/s Pricol Ltd, under the provisions of Section 50 of the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 50 of the CGST Act respectively.
- vi. Penalty equivalent to evaded tax should not be imposed upon them, under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017; and
- vii. General Penalty should not be imposed upon them, under Section 125 of the CGST Act, 2017 for not correctly assessing and paying GST payable by them.

20.2 Now Therefore, M/s Pricol Limited, GSTIN-05AAGCP0139E1ZV, Plot No. 45, Sector-II, IIE Pantanagar, Rudrapur, Udham Singh Nagar, Uttarakhand-263153 are hereby directed to show cause to the jurisdictional Additional/Joint Commissioner, CGST Commissionerate, Chennai-South, having his office at 692, M.H.U. Complex, Anna Salai, Nandanam, Chennai-600035 in terms of Circular No. 169/01/2022-GST dated 12.03.2022 as to why:

- i. The "Instrument Cluster / Speedometer Assembly" supplied by them should not be classified under Heading 8708 / 8714 as provided under Notification No.1/2017 - Central Tax (Rate) dated 28-6-2017 and Notification No. 1/2017-State Tax (Rate) dated 29-6-2017 in respect of the intra-State supplies of the "Instrument Cluster / Speedometer Assembly" and Notification No. 01/2017-Integrated Tax (Rate), dated 28-06-2017 in respect of the inter-State supplies of the "Instrument Cluster / Speedometer Assembly" under the provisions of Section 9 of the CGST and SGST Acts and provisions of Section 5 of the IGST Act;

- ii. The intra -State supplies of "Instrument Cluster/ Speedometer Assembly" should not be taxed @ 14% CGST and 14% SGST and the inter-State supplies of "Instrument Cluster/ Speedometer Assembly", should not be taxed at 28% IGST under the provisions of Section 9 of the CGST and SGST Act and Section 5 of the IGST Act respectively;
- iii. The CGST amounting to 39,19,52,206 /-, SGST amounting to 39,19,52,206 /- and IGST amounting to 9,72,09,508 /- on the supplies of "Instrument Cluster/ Speedometer Assembly" (Total amounting to 88,11,13,920 /-) (Eighty Eight Crores Eleven Lakhs Thirteen Thousand Nine Hundred Twenty Only) during the period from 01-07-2017 to 30-06-2023, as elaborated in para above to this Notice should not be demanded and recovered under the provisions of Section 74(1) of the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 74(1) of the CGST Act, respectively.
- iv. The CGST amounting to 13,33,96,472 /-, SGST amounting to 13,33,96,472 /- and IGST amounting to 3,19,21,715 /- on the supplies of "Instrument Cluster/ Speedometer Assembly" (Total amounting to 29,87,14,659 /-) during the period from 01-06-2021 to 30-06-2023 wherein the taxpayer has charged 28% GST on invoices raised to their customers and has also shown them in their monthly GST return of outward supply (GSTR-1) and has still considered the same as under protest, as elaborated in para above to this Notice should not be appropriated against demand raised in point iii above;
- v. Interest at appropriate rate on the total GST demanded at point iii above should not be charged and recovered from M/s Pricol Ltd, under the provisions of Section 50 of the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 50 of the CGST Act respectively.
- vi. Penalty equivalent to evaded tax should not be imposed upon them, under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017; and
- vii. General Penalty should not be imposed upon them, under Section 125 of the CGST Act, 2017 for not correctly assessing and paying GST payable by them.

20.3 Now Therefore, M/s Pricol Limited, GSTIN-29AAGCP0139EIZL, 117A, Survey No 186/1, Kadakola Industrial Area, Kadakola Village, Jaipura Hobli, Mysuru, Karnataka-571311, are hereby directed to show cause to the jurisdictional Additional/Joint Commissioner, CGST Commissionerate, Chennai-South, having his office at 692, M.H.U. Complex, Anna

Salai, Nandanam, Chennai-600035 in terms of Circular No. 169/01/2022-GST dated 12.03.2022 as to why:

- i. The "Instrument Cluster / Speedometer Assembly" supplied by them should not be classified under Heading 8708 / 8714 as provided under Notification No.1/2017 - Central Tax (Rate) dated 28-6-2017 and Notification No. 1/2017-State Tax (Rate) dated 29-6-2017 in respect of the intra-State supplies of the "Instrument Cluster / Speedometer Assembly" and Notification No. 01/2017-Integrated Tax (Rate), dated 28-06-2017 in respect of the inter-State supplies of the "Instrument Cluster / Speedometer Assembly" under the provisions of Section 9 of the CGST and SGST Acts and provisions of Section 5 of the IGST Act;
- ii. The intra -State supplies of "Instrument Cluster/ Speedometer Assembly" should not be taxed @ 14% CGST and 14% SGST and the inter-State supplies of "Instrument Cluster/ Speedometer Assembly ", should not be taxed at 28% IGST under the provisions of Section 9 of the CGST and SGST Act and Section 5 of the IGST Act respectively;
- iii. The CGST amounting to 16,38,37,638 /-, SGST amounting to 16,38,37,638 /- and IGST amounting to 28,910 /- on the supplies of "Instrument Cluster/ Speedometer Assembly" (Total amounting to 32,77,04,186 /-) (Thirty Two Crores Seventy Seven Lakhs Four Thousand One Hundred Eighty Six Only) during the period from 01-07-2017 to 30-06-2023, as elaborated in para above to this Notice should not be demanded and recovered under the provisions of Section 74(1) of the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 74(1) of the CGST Act, respectively.
- iv. The CGST amounting to 9,26,31,109 /-, SGST amounting to 9,26,31,109 /- and IGST amounting to 28,910/- on the supplies of "Instrument Cluster/ Speedometer Assembly" (Total amounting to 18,52,91,128 /-) during the period from 01-06-2021 to 30-06-2023 wherein the taxpayer has charged 28% GST on invoices raised to their customers and has also shown them in their monthly GST return of outward supply (GSTR-1) and has still considered the same as under protest, as elaborated in para above to this Notice should not be appropriated against demand raised in point iii above;
- v. Interest at appropriate rate on the total GST demanded at point iii above should not be charged and recovered from M/s Pricol Ltd, under the provisions of Section 50 of

the CGST Act and SGST Act and Section 20 of the IGST Act read with Section 50 of the CGST Act respectively.

- vi. Penalty equivalent to evaded tax should not be imposed upon them, under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017; and
- vii. General Penalty should not be imposed upon them, under Section 125 of the CGST Act, 2017 for not correctly assessing and paying GST payable by them.

20.4 Now Therefore, M/s Pricol Limited, GSTIN-24AAGCP0139E1ZV, No. 5, Parth Industrial and Logistics park, Kadi, Unjha, Mahesana , Gujarat-384170, are hereby directed to show cause to the jurisdictional Additional/Joint Commissioner, CGST Commissionerate, Chennai-South, having his office at 692, M.H.U. Complex, Anna Salai, Nandanam, Chennai-600035 in terms of Circular No. 169/01/2022-GST dated 12.03.2022 as to why:

- i. The “Instrument Cluster / Speedometer Assembly” supplied by them should not be classified under Heading 8708 / 8714 as provided under Notification No.1/2017 – Central Tax (Rate) dated 28-6-2017 and Notification No. 1/2017-State Tax (Rate) dated 29-6-2017 in respect of the intra-State supplies of the “Instrument Cluster / Speedometer Assembly” under the provisions of Section 9 of the CGST and SGST Acts;
- ii. The intra –State supplies of “Instrument Cluster/ Speedometer Assembly” should not be taxed @ 14% CGST and 14% SGST under the provisions of Section 9 of the CGST and SGST Act respectively;
- iii. The CGST amounting to 2,58,31,288 /- and SGST amounting to 2,58,31,288 /- on the supplies of “Instrument Cluster/ Speedometer Assembly” (Total amounting to 5,16,62,576 /-) (Five Crores Sixteen Lakhs Sixty Two Thousand Five Hundred Seventy Six Only) during the period from 01-07-2017 to 30-06-2023, as elaborated in para above to this Notice should not be demanded and recovered under the provisions of Section 74(1) of the CGST Act and SGST Act, respectively.
- iv. The CGST amounting to 1,29,54,777 /- & SGST amounting to 1,29,54,777 /- on the supplies of “Instrument Cluster/ Speedometer Assembly” (Total amounting to 2,59,09,554 /-) during the period from 01-06-2021 to 30-06-2023 wherein the taxpayer has charged 28% GST on invoices raised to their customers and has also shown them in their monthly GST return of outward supply (GSTR-1) and has still considered the same as under protest, as elaborated in para above to this Notice should not be appropriated against demand raised in point iii above;

v. Interest at appropriate rate on the total GST demanded at point iii above should not be charged and recovered from M/s Pricol Ltd, under the provisions of Section 50 of the CGST Act and SGST Act respectively.

vi. Penalty equivalent to evaded tax should not be imposed upon them, under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017; and

vii. General Penalty should not be imposed upon them, under Section 125 of the CGST Act, 2017 for not correctly assessing and paying GST payable by them.

21. M/s Pricol Limited, are hereby directed to produce all the evidences upon which they intend to rely in support of their defence. Further, M/s Pricol are also directed to mention in their written reply as to whether they wish to be heard in person or otherwise. M/s Pricol are also directed to file their reply within the stipulated period (30 days) and if M/s Pricol fail to file reply or fail to appear when the case is posted for hearing, the case will be decided ex-parte on the basis of evidence available on record.

22. The documents/records/statements relied upon to this Show Cause Notice are listed below:

S.No.	Particulars	Description
1	RUD-1	Judgement dated 24.04.2015 pronounced by Hon'ble Supreme Court
2	RUD-2	Order dated 30.08.2004 pronounced by CESTAT, South Zonal Bench, Chennai and order dated 23.09.2016 pronounced by CESTAT Chennai
3	RUD-3	Order dated 10.06.2019 pronounced by Maharashtra Authority For Advance Ruling
4	RUD-4	Panchanama dated 07.07.2021 drawn at the premises of M/s Pricol Limited, Plot No. 34 & 35, Sector-4, IMT Manesar, Gurugram, Haryana
5	RUD-5	Letter dated 07.07.2021 submitted by taxpayer
6	RUD-6	Summons dated 14.07.2021 issued to taxpayer
7	RUD-7	Letter dated 01.09.2021 submitted by taxpayer
8	RUD-8	Letter dated 05.01.2022 issued to taxpayer
9	RUD-9	Summons dated 21.09.2022 issued to taxpayer

10	RUD-10	Letter dated 07.02.2023 submitted by taxpayer
11	RUD-11	Summons dated 04.08.2023 issued to taxpayer
12	RUD-12	Statement dated 16.08.2023 tendered by taxpayer
13	RUD-13	Letter dated 25.08.2023 & email dated 31.08.2023 submitted by taxpayer
14	RUD-14	Letter dated 01.02.2024 submitted by taxpayer
15	RUD-15	Screenshots taken from the website of M/s Pricol Ltd
16	RUD-16	Letter dated 07.12.2023 written to Automotive research Association of India
17	RUD-17	Replies from Automotive research Association of India
18	RUD-18	Invoices of M/s Pricol Ltd showing multiple descriptions for instrument cluster

23. This show cause notice is issued without prejudice to any other action that may be taken under the provisions of the Central Goods and Services Tax Act, 2017 or rules made thereunder or under any other law for the time being in force in India.

T. K. Meena
05/12/2024

(Dr. Bijendra Kumar Meena)

Additional Director

DGGI, Gurugram Zonal Unit

By SPEED POST A.D./E-MAIL/BY HAND


To

1. M/s Pricol Limited, (GSTIN-33AAGCP0139E1ZW)
132, Plant 1, Mettupalayam Road, Perianaickenpalayam,
Coimbatore, Tamilnadu-641020
2. M/s Pricol Limited, (GSTIN-06AAGCP0139E1ZT)
Plot No. 34-35, Sector-4, IMT Manesar,
Gurugram, Haryana-122050
3. M/s Pricol Limited, (GSTIN-05AAGCP0139E1ZV)
Plot No. 45, Sector-11, IIE Pantanagar, Rudrapur,
Udham Singh Nagar, Uttarakhand-263153

4. M/s Pricol Limited, (GSTIN-29AAGCP0139E1ZL)
117A, Survey No 186/1, Kadakola Industrial Area,
Kadakola Village, Jaipura Hobli, Mysuru, Karnataka-571311
5. M/s Pricol Limited, (GSTIN-24AAGCP0139E1ZV)
No. 5, Parth Industrial and Logistics park, Kadi,
Unjha, Mahesana , Gujarat-384170

Copy submitted for information & necessary action to:-

1. The Additional / Joint Commissioner (Adjudication), CGST Commissionerate, Chennai-South, having his office at 692, M.H.U. Complex, Anna Salai, Nandanam, Chennai-600035 for adjudication along with relied upon documents.
2. The Director General (North), DGGI, 3rd floor, Plot No. 44, Sector 32, Gurugram for information.
3. The Deputy / Assistant Commissioner, Division- Coimbatore-I, CGST Commissionerate, Coimbatore, No. 6/7, A. T. D. Street, Race Course Road, Coimbatore-641018 for information
4. The Deputy / Assistant Commissioner, Division- West-2, CGST Commissionerate, Gurugram, Plot No. 36-37, Sector-32, Gurugram, Haryana -122001 for information
5. The Deputy / Assistant Commissioner, Division- Rudrapur, CGST Commissionerate, Dehradun, Avas Vikas Gangapur, Civil Lines, Rampur (U.P.) for information
6. The Deputy / Assistant Commissioner, Division- Mysuru Rural, CGST Commissionerate, Mysuru, S1 & S2 Vinaya Marg, Siddartha Nagar, Mysuru-570011 for information
7. The Deputy / Assistant Commissioner, Division- Mehsana, CGST Commissionerate, Gandhinagar, 2nd Floor, Sardar Patel Vyapar Sankul, Mal Godoun Road, Mehsana-384002 for information
8. Notice Board.
9. Guard File


(Dharmendra Kumar Singh)
Deputy Director

LEGAL OPINION

To	Mr. Priyan Bastia M/s. PRICOL Limited	Address: 132, Mettupalayam Road, Post Box No. 4209, Perianaickenpalayam, Coimbatore- 641020.
Date	26.02.2024	
Issue	Classification of instrument cluster	Phone: +91 9962086667
		Email: priyan.bastia@pricol.com

CONTENTS

A	Brief Facts	2
B	Query	4
C	Analysis and application of legal provisions	5
D	Conclusion	22

Privileged/Confidential information may be contained in this opinion and is intended for the use only by the addressee(s) named herein. Such use may include furnishing this opinion to third parties by the addressee. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this opinion is strictly prohibited. If you have received this opinion in error, please notify us immediately.

A. BRIEF FACTS

Vide brief for opinion, we are informed of the following facts:

- 1.1. M/s. PRICOL Limited (“PRICOL”), a listed company headquartered in Coimbatore is *inter alia* engaged in the supply of Engineering Products.
- 1.2. PRICOL predominantly caters to the Automotive Industry and supplies products for all vehicle segments from Two-wheelers to Heavy Vehicles. Pertinently, PRICOL manufactures and supplies instrument clusters.
- 1.3. Instrument clusters are a set of instrumentation, which display essential data about the running of a vehicle. They are equipped with various gauges that are arranged as a combination meter system in front of a driver (generally fitted on to the dashboard), which display vehicle parameters such as speed, RPM, fuel level, odometer etc.
- 1.4. In other words, instrument clusters provide drivers with all critical system information in a centralised manner and have the following basic displays:

Sl. No	Instrument	Functionality of Instrument
1.	Speedometer	Indicates the speed at which the motor vehicle is travelling in Km/hr.
2.	Tachometer	Indicates the revolutions per minute (rpm) of the engine
3.	Odometer	Indicates the distance travelled by the motor vehicle
4.	Fuel gauge	Indicates the level of fuel contained in the fuel tank
5.	Temperature gauge	Indicates the temperature of the engine’s oil.
6.	Oil pressure gauge	Indicates the oil pressure of the engine
7.	Light and turn indicators	Indicates the direction in which the vehicle is about to turn/brake & if the headlight is on/ off.

- 1.5. The images of the instrument clusters in question are shown below:



- 1.6. Additionally, the instrument cluster also provides temperature warning light, ABS warning light, door ajar warning light, etc. The instruments can be either analog (dials) or digital (LCD displays).
- 1.7. We are given to understand that in terms of size, space occupation and value, the speedometer and the tachometer occupy a predominant position in the instrument cluster.

Working of the instrument cluster

- 1.8. The information for the display is received by the instrument cluster from the relevant control unit through the Controller Area Network (CAN) communication.
- 1.9. Driving speed of the vehicle is detected by converting a frequency of a signal output from a speed sensor mounted on an output shaft of a transmission to a corresponding voltage, and by supplying the converted voltage to a gauge as a speed meter through a voltage distribution circuit and an amplifier to drive the gauge.

Classification of instrument cluster

- 1.10. Instrument clusters are being supplied by PRICOL to its dealers/distributors/end customers under Heading 9026 of the Customs Tariff and sold on payment of Goods and Services Tax (“GST”) at 18%.

- 1.11. In the above background, we are informed that the Directorate General of GST Intelligence, Gurugram has initiated inquiry into the classification of instrument clusters supplied by PRICOL and seek to re-classify the same under Chapter 87. Under Chapter 87, GST would be payable at the rate of 28%.
- 1.12. The case of the GST Authorities, as we are given to understand, is majorly based on the decision of the Hon'ble Supreme Court in *Premier Instruments & Controls Ltd. v. Commissioner [2015 (321) E.L.T. A130 (S.C.)]* upholding the Tribunal's decision in *CCE v. Premier Instruments & Controls Ltd [2004 (174) E.L.T. 49 (Tri. - Chennai)]*.
- 1.13. We note that similar proceedings initiated by the State Tax Department, Andhra Pradesh was dropped vide Order dated 26.11.2022.

B. QUERY

In the above factual background, our legal opinion is sought on the appropriate classification applicable to the instrument clusters manufactured and supplied by PRICOL.

C. ANALYSIS AND APPLICATION OF LEGAL PROVISIONS

3.1.1 In our view, instrument clusters manufactured by PRICOL are appropriately classifiable under CTH 9029. Our reasoning for the said view is explicated hereunder:

Classification under GST

3.1.2 In terms of Section 9 of the Central Goods and Services Tax Act, 2017 (“CGST Act”), CGST shall be levied on all intra-State supplies of goods or services or both, at such rates notified by the Government¹.

3.1.3 In exercise of the powers conferred under Section 9 of the CGST Act, Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 has been issued prescribing the rates of tax applicable to intra-State supply of various goods under GST, the description of which is specified in the corresponding entry in column (3) of the Schedules under the Notification, falling under the Tariff Item, Subheading, Heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules².

3.1.4 Explanation (iii) to Notification No. 1/2017-IGST provides that “Tariff item”, “Subheading”, “Heading” and “Chapter” shall mean respectively a “Tariff Item”, “Subheading”, “Heading” and “Chapter” as specified in the First Schedule to the Customs Tariff Act, 1975.

3.1.5 Further, Explanation (iv) provides that the rules for the interpretation of the First Schedule to the said Act 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.

3.1.6 Accordingly, classification of goods under GST rate schedule is done in concurrence with the General Rules for Interpretation of the Customs Tariff (“GIR”).

¹ Corresponding provisions exist under the respective State Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017 for levy of SGST and IGST, respectively.

² Corresponding Notifications have been issued under the respective State Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017 prescribing rate of SGST and IGST, respectively.

- 3.1.7 The GIR are a set of 6 rules that aid in the classification of the goods under Customs Tariff. It is no longer res-integra that the GIR have to be applied sequentially to arrive at the appropriate classification of goods.
- 3.1.8 GIR 1 to 5 lay down the principles for determining the classification of goods under a specific Heading, whereas GIR 6 is applicable if the objective is to determine the classification of goods in the Sub-headings of a Heading.
- 3.1.9 In this regard, GIR 1 stipulates that the goods under consideration should be classified in accordance with the terms of the Headings and any relevant Section or Chapter Notes, and if the goods are not classifiable as per the description provided, subsequent rules are to be looked into.
- 3.1.10 Further, the Section Notes or Chapter Notes and Sub-Heading Notes give detailed explanation as to the scope and ambit of the respective Sections and Chapters. These notes have been given statutory backing and have been incorporated at the beginning of each Chapter.
- 3.1.11 In the case of The Larger Bench of Tribunal in the matter of *Saurashtra Chemical, Porbandar v. Collector of Customs, 1986 (23) ELT 283 (Tr-LB)*, it has been held that the Tariffs have to be interpreted in the light of relevant Section and Chapter Notes which have statutory binding like the headings themselves. Thus, the Section and Chapter Notes have an overriding force on the respective headings. The decision of larger bench was approved by the Hon'ble Supreme Court of India in 1997 (95) ELT 455 (SC),
- 3.1.12 In the case of *Commissioner of Central Excise vs. Simplex Mills Co. Ltd, [2005 (181) E.L.T. 345 (S.C)]*, it was held that according to Rule 1, titles of Section and Chapters in the Schedules are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relevant section or Chapter Notes. The other rules for interpretation shall be required only when the relevant Heading or Section Notes are not sufficient to lead to a definitive classification.

Classification under HSN

- 3.1.13 The First Schedule to the Customs Tariff Act is based on the Harmonised Commodity Description and Coding System (“HS”) framed by the World Customs Organization

(“WCO”). India had adopted HS based Customs Tariff for levying customs duty, in 1986.

3.1.14 The Customs Tariff as well as HSN comprise various commodity groups, each identified by a six-digit code, arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. The HSN is currently applied uniformly by more than 200 countries of the world.

3.1.15 For uniform interpretation of the HSN, the WCO has published detailed Explanatory Notes to the HSN which have long been recognised as a safe guide to interpret the Schedules to the Customs Tariff. To further interpret the relevant Headings, Sub-Headings and Section Notes under the First Schedule of the Customs Tariff, reliance can also be placed on the Explanatory Notes to the HSN.

3.1.16 In *Commissioner of Customs v. Wood Craft Products Ltd*, (1995) 77 ELT 23 (S.C.) the Hon’ble Supreme Court of India held that in case of doubt, HSN is a safe guide for ascertaining true meaning of any expression used in the Act, unless there is an express different intention indicated in the Customs Tariff itself.

3.1.17 The decision in the case of *Wood Craft Products Ltd. (supra)* was subsequently followed by the Hon’ble Supreme Court in *CC v. Business Forms, 2002 (142) ELT 18(SC)*. This proposition was also affirmed, upheld and followed in catena of cases by various judicial authorities.

3.1.18 In *O. K. Play (India) Ltd v. CCE 2005 (180) ELT 300 SC*, the Hon’ble Supreme Court made the following observations:

- a) There cannot be a static parameter for correct classification.
- b) HSN along with the explanatory notes provide a safe guide for interpretation of an Entry.
- c) Functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification of an item.
- d) Afore-stated aids and assistance are more important than the names used in the trade or common parlance in the matter of correct classification.

3.1.19 Thus, the process of classification of goods under the Customs Tariff involves the interpretation of the Section Notes, Chapter Notes, Sub-Heading Notes, Supplementary Notes, Headings, Sub-headings and the GIR of the Customs Tariff.

Classification of instrument clusters

3.4.1 CTH 9029 covers “revolution counters, production counters, taximeters, mileometers, pedometers and the like; speed indicators and tachometers, other than those of heading 9014 or 9015; stroboscopes”.

3.4.2 The HSN explanatory notes of CTH 9029 explain its scope and coverage. The relevant parts are extracted below:

*(B) **SPEED INDICATORS AND TACHOMETERS** These instruments differ from the revolution counters and production counters of Part (A) above in that they indicate the number of revolutions, speed, output etc., per unit of time (e.g. revolution per minute, miles per hour, kilometres per hour, meters per minute). They are usually mounted on vehicles (cars, motor cycles, bicycles, locomotives etc.,) or machines (motors, turbines, paper-making machines, printing machinery textile machinery etc.). The speed indicators and tachometers classified here normally function on one of the following principles:*

Chronometric system

Centrifuge system

Vibration system

Magnetic (induction) system.

Electrical system

*Speed indicators and tachometers of this heading may be fixed or portable, simple or multi-function (e.g. maximum or minimum), differential (in which case they give the difference between two speeds as a percentage), **combined with an adding counter or a time meter or graphical recording device etc**, The heading also covers certain instruments which simultaneously record speed, mileage, time in motion and at a standstill etc.*

3.4.3 It is evident that CTH 9029 includes all types of speedometers and tachometers irrespective of their application, viz., motor vehicles or machines or machinery. In other words, the HSN Explanatory Notes do not exclude speedometers and tachometers used in motor vehicles from the scope of CTH 9029. It is pertinent to note that this heading

includes certain instruments that simultaneously record speed, mileage, time in motion etc.

3.4.4 The subject goods are instrument clusters and therefore the question to be addressed is whether a combination of speedometer, tachometer, temperature gauge, fuel gauge and an LCD panel display would be classifiable under CTH 9029.

3.4.5 Note 3 to Chapter 90 states that classification in such cases should be determined in accordance with Note 3 and 4 to Section XVI. Note 3 to Chapter 90 and Notes 3 to Section XVI are extracted below:

Note 3 to Chapter 90:

3. The provisions of Note 3 and 4 to Section XVI apply also to this Chapter.

Note 3 to Section XVI

3, Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting of only that component or as being that machine, which performs the principal function.

3.4.6 On perusal of above Section Note, it can be said that there are two kinds of machines covered under the ambit of Section Note 3 namely:

a) Two or more machines fitted together to form a whole (which is called Composite machine)

a. For such machines, classification has to be determined on basis of that machine which performs the principal function;

b) Other machines designed for the purpose of performing two or more complementary or alternative functions (which is called multi-function machine)

a. For these machines, classification has to be determined according to the principal function of the machine [Refer HSN Explanatory Notes to Section Note 3];

3.4.7 The instrument cluster in question is a composite instrument containing speedometer, tachometer, temperature gauge, fuel gauge, etc. While the speedometer and tachometers

must be regarded as performing complementary functions, the other instruments forming part of the instrument cluster perform certain alternative functions.

3.4.8 In terms of size, the speedometer and odometer occupy a substantial space and also is predominant in terms of value. Thus, the essential character of the assembly is provided by the speedometer/tachometer. Therefore, the instrument clusters would be classifiable under CTH 9029.

3.4.9 Applying this principle, the US Customs issued Rulings while approving the classification of an instrument cluster under CTH 9029. The same are discussed below.

Classification of similar or identical products by WCO and other customs administrations:

3.4.10 In *US Cross Ruling No. NY 873948 dated May 14, 1992*, the issue to be decided was classification of instruments and gauges that were already assembled into a common housing ready for direct insertion into the vehicle's instrument panel. The combined value of the speedometer and tachometer in each instrument cluster was 70% or higher depending on the number of gauges in the cluster. The applicable sub-heading for the goods was held to be 9029.20.4080 under Harmonized Tariff Schedule of the United States which provides for other speedometers and tachometers.

3.4.11 Similarly, in another *US Cross Ruling No. HQ 958997 October 31, 1996*, the instrument clusters included a speedometer/odometer (CTH 9029), tachometer (CTH 9029), fuel gauge (CTH 9026), temperature gauge (CTH 9025), oil pressure gauge (CTH 9026) and voltmeter (CTH 9030), installed in a common housing. It was held that the speedometer component of the composite articles provided those articles with their essential character. Thus, even in this cross ruling, classification of instrument cluster was held to be under subheading 9029.20.40, HTSUS, as a result of GIR 3(b).

3.4.12 In *US Cross Ruling No. NY N266507 dated Jul 20, 2015*, Cluster Assembly-Instrument was held to be classifiable under sub-heading 9029.20 as Other speedometers and tachometers.

3.4.13 It is also apposite to refer to the recent *63rd session of the WCO HS Committee Page XVIII/11* where PCB for Vehicle Instrument Panels was classified under 902990 as

‘parts of instrument panels’ by application of GIRs 1 (Note 2 to Section XVII, Note 2 (b) to Chapter 90) and 6.

3.4.14 While coming to the above conclusion, the HS Committee observed that the product combined with other components after import, such as a window plate, liquid crystal displays (LCD), speaker, indicating pointers and various plastic structural components, to form a complete instrument panel. It further observed that in use, the final instrument panel can display the speed, revolutions per minute (RPM), and mileage of a vehicle (through data that the separate Electronic Control Unit (ECU) receives from the hall sensor mounted on the vehicle wheel) and information on the status of the vehicle received from sensors, such as the coolant temperature, remaining fuel amount and door open warning.

3.4.15 It can be seen that the invocation of Note 2(b) to Chapter 90 in the above ruling is significant as it is a recognition that the PCB in question is a part used solely or principally with an instrument cluster and that the PCB handles all the instruments in the cluster, viz., speedometer, tachometer, fuel gauge, temperature indicator etc.

3.4.16 It is to be noted that unless an instrument cluster falls under CTH 9029, the PCB for such a cluster could not be said to remain under CTH 9029 by application of Note 2(b) to Chapter 90. It must also be noted that the existence of additional gauges such as fuel, temperature did not deter the HS Committee from treating the PCB as an identifiable part of an instrument cluster of CTH 9029. Thus, the instrument clusters in question are classifiable under CTH 9029.

3.4.17 In *CCE v. Telco Ltd.* [2002 (143) E.L.T. 548 (Tri. - Mumbai)], which has been affirmed by the Hon’ble Supreme Court in *Commissioner v. TELCO Ltd.* [2003 (152) E.L.T. 4259 (S.C.)], it has been held that opinion of Harmonized Systems Committee has lot of weight and should ordinarily be taken as binding. A similar view has been expressed in *CC v. Reliance Jio Infocom Ltd.* [2019 (369) E.L.T. 1713 (Tri. - Mumbai)].

3.4.18 Drawing an analogy from the above cited US Cross Rulings and the WCO ruling, it can be said that even internationally, instrument clusters having multiple displays are classified under CTH 9029. Existence of certain additional gauges like temperature, warnings etc. which are associated with primary function of the instrument cluster

further proves the point that the instrument clusters in question are being used in conjunction with speed indicators only.

3.4.19 To summarise, CTH 9029 includes all types of speedometers and tachometers irrespective of their application, viz., motor vehicles or machines or machinery. Instrument clusters in question are a composite instrument containing speedometer, tachometer, temperature gauge, fuel gauge, etc. In terms of size and value, the speedometer and odometers predominate the cluster. Thus, the essential character of the assembly is provided by the speedometer/tachometer.

3.4.20 Therefore, the instrument clusters would be classifiable under CTH 9029.

Instrument clusters are not classifiable under CTH 8708/8714

3.5.1 Having determined that the products in question are ostensibly covered under Heading 9029, the question which now arises is whether the said products can be classified as “parts and accessories” of motor vehicles falling under Chapter 87 when they are solely or principally designed for use therewith.

3.5.2 Parts of motor vehicles are classifiable under Chapter 87 and attract tax at 28%. To appreciate what kind of parts and accessories are covered under Chapter 87, it is relevant to refer to Notes 2 and 3 to Section XVII (under which Chapter 87 falls).

3.5.3 To appreciate what kind of parts and accessories are covered under CTH 8708/8714, it is relevant to refer to Notes 2 and 3 to Section XVII (under which Chapter 87 falls) which are extracted below:

2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

...

(g) Articles of chapter 90;

...

3. References in chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

(Emphasis supplied)

- 3.5.4 Note 3 to Section XVII (Chapter 86 to Chapter 88) explains that references to “parts” or “accessories” in Section XVII do not apply to parts or accessories which are not suitable for use solely or principally with the articles of the said Section.
- 3.5.5 Additionally, Note 2 to Section XVII specifies that the expressions “parts” and “parts and accessories” do not apply to a set of articles enumerated therein, whether or not they are identifiable as for the goods of Section XVII. One of the specific exclusions in Note 2 is of “Articles of Chapter 90”.
- 3.5.6 A harmonious reading of Notes 2 and 3 of Section XVII will lead us to the conclusion that for a part to be classified under Section XVII, it has to first cross the test of Note 2. Even after passing the test of Note 2, classification under Section XVII will be permitted only for such parts which are suitable for use solely or principally with the goods of Section XVII. Therefore, these Notes lay down a two-fold test for a part to be classified under Section XVII which have to be cumulatively satisfied. The HSN Explanatory Notes under Section XVII explain this position as shown below
- 3.5.7 The HSN Explanatory Notes under Section XVII explain the scope of the terms “parts and accessories” for the purpose of Section XVII as below:

(III) PARTS AND ACCESSORIES

It should be noted that Chapter 89 makes no provision for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of vehicles, aircraft or equipment concerned.

It should, however be noted that these headings apply only to those parts or accessories which comply with all three of the following conditions:

- a. They must not be excluded by the terms of Note 2 to this Section (see Paragraph (A) below),*
- b. They must be suitable for use solely or principally with the articles of Chapter 86 to 88 (see paragraph (B) below, and*
- c. They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below:*

(A) Parts and accessories excluded by Note 2 to Section XVII

This Note excludes the following parts and accessories, whether or not they are identifiable for as for the articles of this Section.

...

(8) Instruments and apparatus of Chapter 90, including those used on certain vehicles such as:

...

(f) Revolution counters, taximeters, speed indicators and tachometers and other instruments and apparatus of heading 9029.

3.5.8 From the above HSN Explanatory Note, it can be seen that all the instruments covered under CTH 9029 are not to be regarded as “parts or accessories” of motor vehicles classifiable under Chapter 87 whether or not they are identifiable as for use with such motor vehicles as Articles falling under Chapter 90 are specifically excluded by Note 2 to Section XVII.

3.5.9 The principle that the terms “parts and accessories” for the purposes of Section XVII should be reckoned only after considering the exclusions specified under Note 2 to Section XVII has also been accepted by Hon’ble Supreme Court in *Intel Design System (India) Pvt. Ltd vs. CC [2008 (223) ELT 135 (SC)]*. In this case, the Hon’ble Supreme Court held as under:

4. As per Rule 1 on Interpretive Rules, classification of excisable goods is to be determined according to the terms of the Heading and in terms of Section/Chapter notes. Note 2(f) to Section XVII (which governs Chapter 87) excludes the goods viz. electrical machinery and equipment (Chapter 85). The goods in question i.e. contractors, switches, control box etc. are the goods used for switching, protecting electrical circuits or for making connections to or in electric circuit. These parts/components are specifically covered under CSH 8536.90. The CBEC Circular relied upon by the assessee is not relevant.

5. As per the Explanatory Notes to HSN the parts falling under Chapter Heading 8710 would be covered under the said chapter, provided they fulfill both the conditions i.e. they must be identifiable as being suitable for use solely or principally for such vehicles and that they must not be excluded by the provisions of Notes to Section XVII. The identifiable parts under the said heading bodies of armoured vehicles and parts thereof, cover special road wheels for armoured cars, propulsion wheels for tanks, tracts etc. As per this requirement, the goods should not only be identifiable to be armoured vehicles, but it should so not have been excluded by Notes to Section XVII. The Chapter note 2(f) excludes electrical machinery and equipment falling

under Chapter 85. Explanatory Notes to HSN relating to the parts and accessories excluded by Note 2 specify items with reference to specific Chapter Heading as per (7) (a), (k) which excludes photographs and other current collectors for electric traction vehicles, fuses, switches and other electric apparatus of Heading No. 85.35 or 85.36. The items, therefore, manufactured by the appellants are identifiable or are in the nature of goods falling under Chapter Heading 85.36. Since these fall under the category of excluded goods under Chapter Notes, even though they are used specifically solely or principally with the armoured vehicles of Chapter Heading 8710, they are classifiable under Chapter Heading 8536.90 only as held by the adjudicating authority.

3.5.10 Reference may also be made to the following recent decisions on classification of parts and accessories under CTH 8708/8174. In *CCE v. Uni Products India Limited [2020 (372) E.L.T. 465 (S.C.)*, the issue before the Hon'ble Supreme Court was whether car matting is classifiable under CTH 5703 covering "Carpets and Other Textile Floor Coverings" or whether they would be classified under CTH 8708 which covers "Parts and accessories of the motor vehicles of headings 8701 to 8705". While ruling on classification of car matting under CTH 5703, the Hon'ble Supreme Court propounded, *inter alia*, the following ratio:

- a. Section Notes and Chapter Notes are of utmost importance to determine classification;
- b. According to HSN Explanatory Note to Section XVII, all following three conditions must be fulfilled to classify any product as parts or accessories namely (a) They must not be excluded by the terms of Note 2 to Section XVII, and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88; and (c) They must not be more specifically included elsewhere in the Nomenclature
- c. The most specific description shall be preferred to headings providing a more general description as per Rule 3(a) to GI Rules.
- d. Even though HSN Explanatory Notes have persuasive value only, but the level or quality of such persuasive value is very strong, as observed in numerous judgments.

3.5.11 Similarly, in the case of *Shiroki Auto Components India Pvt Limited vs. CCE [2020 (374) E.L.T. 433 (Tri. - Ahmd.)]*, the issue before the Hon'ble Tribunal was whether the imported child parts which were used in the recliner assembly of the car seat were classifiable as parts of seat under CTH 9401 or as parts and accessories of motor vehicles under CTH 8708. The Hon'ble Tribunal relied on the Hon'ble Supreme Court judgment in the case of *Uni Products (supra)* and held that the Child Parts imported by the appellants is correctly classifiable under CTI 9401 90 00. It was held that vehicle seats are excluded by the provisions of Note 2 to Section XVII, therefore, clause (II) of the HSN Explanatory Notes to CTH 8708/8174 is not fulfilled hence, they are not covered under CTH 8708/8174.

3.5.12 From the above decisions, it can be seen that the articles of the CTH 9029 cannot be regarded as "parts and accessories" of motor vehicles classifiable under CTH 8708, even if they are principally designed for use with motor vehicles.

End use of goods is not determinative of classification of goods

3.5.13 It is a settled position of law that the goods are to be classified in the state in which their importation has taken place/ or in the state in which they have been cleared. The subsequent use of the goods cannot be a determinative factor for classification.

3.5.14 In *CCE v. Carrier Aircon Ltd. [2006 (199) E.L.T. 577 (S.C.)]*, the Hon'ble Supreme Court has held that end use to which the product is put to cannot be determinative of the classification of the product.

3.5.15 In *Subros Limited vs. CC [2018 (363) ELT 0849 (Tribunal-Delhi)]*, the dispute related to classification of Thermistors which were intended to be used in automobiles. The assessee was classifying the goods under CTI 8533 40 30, whereas the Department sought to classify them under CTI 8415 90 00 as parts of auto air-conditioners. The Hon'ble Tribunal, rejecting the classification proposed by the Department held that classification cannot be based on ultimate use.

3.5.16 Thus, the fact that the Instrument Clusters in question are meant for use in motor vehicles of Chapter 87 is immaterial for the purpose of determining their classification. Therefore, it can be argued that the same would be classifiable under CTH 9029 and not CTH 8708.

Decision of the Hon'ble Supreme Court in Westinghouse Saxby

3.5.17 In *Westinghouse Saxby Farmer's Union v. CCE 2021 2021 (3) TMI 291*, the Hon'ble Supreme Court applied the "sole or principal use" test in Note 3 to Section XVII as the exclusive test to determine whether an article should be classified as a "part of accessory" under Section XVII. Consequently, the Hon'ble Supreme Court applied the "sole or principal use" test to the prejudice of the specific exclusions under Note 2 to Section XVII.

3.5.18 The Hon'ble Supreme Court observed as follows:

- In terms of Note 3 to Section XVII, parts which are suitable for use solely or principally with an article covered under Chapter 86 cannot be classified under a different chapter.
- Note 2(f) will be applicable only to those goods which are capable of being marketed independently for use and does not apply to parts solely or principally used with an article covered under Chapters 86 to 88.

3.5.19 In our view, the argument that exclusions in Note 2 and the test in Note 3 is to be cumulatively satisfied for an article to be classified as a "part or accessory" under Section XVII was not brought to the attention of the Hon'ble Supreme Court.

3.5.20 Meanwhile, vide Instruction No. 01/2022-Customs dated 05.01.2022, the Deputy Secretary Customs has written to various Principal Commissioners noting the following: -

- The Hon'ble Supreme Court in *Saxby* held that the 'relays' are classifiable as parts of 'railway signalling equipment', under Heading 8608 of the Central Excise Tariff. In holding so, the Court has given precedence to the 'sole or principal use' test of Section Note 3 over Note 2(f) to Section XVII which specifically excluded 'electric equipment' from being classified under Section XVII, whether or not it is identifiable as being for the goods of that Section.
- Classification of 'parts' of goods falling under Section XVII of the Customs or Central Excise Tariff is a complex issue which has led to divergent practice.

- Various other judgements of Supreme Court such as *Intel Designs [2008 VII 72 SC - CE]* and *Uni Products [2020 (372) ELT 465 (SC)]* have suitably applied the Section Notes.
- However, in *Saxby*, the Judgments referred above have not come up for consideration and the Supreme Court has applied the ‘sole or principal use’ test of Section Note 3 to the exclusion of the embargo in Note 2. Thus, *Saxby* appears to be at variance with the stand taken by SC in classifying other parts of goods falling under Section XVII.
- *Saxby* has decided the classification of ‘relays’ used in railway signalling equipment of Chapter 86 and not parts of goods falling under Chapter 87. The judgement itself does not refer to its wider applicability to other cases or issues of a similar nature.
- Thus, the classification of various parts of Section XVII is to be decided taking into account all facts, details of individual cases, all the decisions on the subject, and arrive at the appropriate classification.
- The Department has filed a review petition against the judgement in *Saxby*.

3.5.21 However, the review petition preferred by the Department against the decision of the Hon’ble Supreme Court in Westinghouse Saxby came to be dismissed by the Hon’ble Supreme Court vide its Order dated 10.08.2022.

3.5.22 In this regard, various representations were received by the Department concerning the validity of Customs Instruction No. 01/2022- Customs dated 05.01.2022. Recently, the Board issued Customs Instruction No.25/2022 dated 03/10/2022 re-affirming Customs Instruction No. 01/2022- Customs dated 05.01.2022.

3.5.23 Vide Instruction dated 03.10.2022, it has been re-clarified that the decision in Westinghouse Saxby i.e., precedence of Note 3 to the exclusion of the embargo prescribed in Note 2, is not blanketly applicable to all cases and classification of various parts of Section XVII has to be decided taking into account all facts, details of individual cases, rules of interpretation, decisions on the subject etc.

3.5.24 In our view, the CBIC vide the above instructions has categorically observed that the Hon’ble Supreme Court in *Saxby* did not consider various other judgements of the

Supreme Court on the very same issue of classification of parts of vehicles/locomotives falling under Section XVII. Accordingly, they have opined that a holistic view should be taken on the issue of classification after considering the Section Notes, Explanatory Notes and other relevant judgements of the Supreme Court.

3.5.25 By applying the Section Notes, it is our view that instrument clusters are classifiable under Heading 9029 only. To summarise, Articles of the CTH 9029 cannot be regarded as “parts and accessories” of motor vehicles classifiable under CTH 8708, even if they are principally designed for use with motor vehicles as they are excluded by Note 2 to Section XVII. The primacy of Note 2 over Note 3 of Section XVII has been upheld by the Hon’ble Supreme Court in Intel Design Systems (Supra).

3.5.26 The said view has also been adopted by the Ld. Deputy Assistant Commissioner, State Tax Department, Andhra Pradesh, wherein proceedings initiated for classification of instrument clusters under Chapter 87 was dropped vide Order dated 26.11.2022.

Judicial decisions on instrument cluster in PRICOLs own case

3.5.27 In *CCE v. Premier Instruments & Control Ltd. [2000 (123) ELT 657 (Tri-Delhi)]* and *CCE v. Premier Instruments and Controls Ltd. [2004 (174) ELT 0049 (Tri- Chennai)]*- Civil Appeal dismissed by the Hon’ble Supreme Court in *Premier Instruments & Controls Ltd. v. Commissioner [2015 (321) E.L.T. A130 (S.C.)]*, instrument clusters used in motor vehicles have been held to be classifiable under CTH 8708 /8714 as parts of motor vehicles.

3.5.28 In *Premier Instruments [2004 (174) ELT 0049 (Tri- Chennai)]*, the reasoning employed by the Hon’ble Tribunal is extracted below for reference.

On a perusal of the Tribunal’s order, we find that, in that case, the party had not disputed the fact that the goods were cleared in clusters/sets which did not find place in Chapter 90 and that each set was principally and solely meant for use in motor vehicles. In the instant case also, they have taken this very stand. Therefore, as held by the Tribunal in the case cited by the DR, the goods should be held to be classifiable as parts of motor vehicles falling under sub-heading 8708.00.

3.5.29 From the above extract, it can be seen that the Hon’ble Tribunal has placed heavy emphasis on a previous order of the Delhi Tribunal in *CCE v. Premier Instruments 2000*

(123) *E.L.T. 657 (Tri-Delhi)* in which it was stated that the instrument clusters are solely or principally designed for use with motor vehicles. The Delhi Tribunal's Order states as follows:

No doubt individually, most of the items except warning lights & signalling equipment are classifiable under Chapter 90. However, it is not disputed by the respondents that the products are cleared in a cluster set which does not find place in Chapter 90 and it is principally and solely for the use in motor vehicle and as such, it is rightly classifiable as parts of motor vehicles falling under Heading 87.081.

3.5.30 However, neither the Delhi Tribunal's nor the Chennai Tribunal had the opportunity to examine the relevant Section Notes, HSN Explanatory Notes, or General Rules of Interpretation and classification had been decided based on the application of the "sole or principal use" test, Note 3 to Section XVII (which provides for the said test), without considering the specific exclusion contemplated under Note 2.

3.5.31 Further, the Hon'ble Supreme Court dismissed the assessee's appeal against the Chennai Tribunal's decision without any specific finding on classification of instrument clusters. The said dismissal does not qualify as law declared by the Hon'ble Supreme Court under Article 141 of the Constitution [See *Experion Developers v. Himanshu Dewan*, 2023 SCC Online SC 1029; *Secundrabad Club v. CIT*, 2023 SCC OnLine SC 1004].

3.5.32 Further, as far as the said decisions are concerned, it is apposite to note that the Hon'ble Tribunal did not examine applicability of the CTH 9029 in both the cases. Secondly, the decision in *CCE v. Premier Instruments and Controls Ltd.* [2004 (174) ELT 0049 (Tri- Chennai)] was based on *CCE v. Premier Instruments & Control Ltd*, 2000 (123) *E.L.T. 657 (Tri-Delhi)* i.e., the assessee's own case. The contention that the classification of instrument clusters fell under CTH 9029 was not canvassed either by the assessee or the Department. Further both the decisions were rendered in the context of a Central Excise Tariff when it was not fully aligned with the HSN. Therefore, these decisions cannot be seen as deciding the issue of classification of instrument clusters under CTH 9029.

3.5.33 It is settled law that a judgment is a binding precedent only for the proposition which has been canvassed, considered and decided by it. A judgment has no precedential value on a proposition which has never been canvassed or decided by the Tribunal. Reference in this regard can be made to *CCE v. Fiat India Pvt. Ltd.* [2012 (283) E.L.T. 161] and *Sneh Enterprises v. CC* [2006 (202) E.L.T. 7 (S.C.)].

3.5.34 Thus, the said decisions cannot be treated as having decided the question of whether the instrument clusters are classifiable under CTH 9029.

D. CONCLUSION

In view of the above discussions, instrument clusters manufactured by PRICOL are appropriately classifiable under CTH 9029.

Scope Limitation

This Opinion is based on the facts made available to us in the request for opinion and on the statutory/legal position including the judicial and administrative interpretations thereof prevailing upto and inclusive of the date of the opinion.

**Digitally signed by RAGHAVAN
RAMABADRAN**
Reason: I am the author of this document
Date: 26 February 2024 17:25:27
DN: C=IN, O=eMudhra Limited, OU=Certifying
Authority, CN=e-Mudhra Sub CA for Class 3
Individual 2022

Raghavan Ramabadran
Executive Partner, Lakshmikumaran and Sridharan Attorneys

Annexure-C

A. Show Cause Notice issued by DGGI, Gurugram

Name of the authority	Directorate General of GST Intelligence, Gurugram Zonal Unit
Nature and details of the action(s) taken, initiated or order(s) passed	Issuance of Show Cause Notice dated 5 th February 2024.
Details of the violation(s)/ contravention(s) committed or alleged to be committed	Show Cause Notice has been issued by the Directorate of GST Intelligence, Gurugram Zonal Unit, alleging misclassification of instrument clusters, classified by the company under HSN 9026 instead of HSN 8708/8714 and alleged short payment of GST @18% instead of GST@28%.
Date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority	15 th February 2024
Impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible	<p>The company will file a reply to the Show Cause Notice before the Adjudicating Authority and contest the demand proposed in the Show Cause Notice.</p> <p>There is no impact on financial, operational or other activities of the company due to this Show Cause Notice.</p>

Contd.2

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B. Order by Deputy Assistant Commissioner, Gudur Circle

Name of the authority	Deputy Assistant Commissioner, Gudur Circle
Nature and details of the action(s) taken, initiated or order(s) passed	Order dropping the demands raised vide Form GST DRC 01 dated 19 th January 2022 on the Andhra Pradesh GST registration of the Company
Date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority	26 th November 2022
Details of the violation(s)/contravention(s) committed or alleged to be committed	The Company received a favourable order from Deputy Assistant Commissioner, Gudur Circle. Issues involved were alleged misclassification of instrument clusters under Chapter 90 and alleged non-payment of GST under reverse charge on freight services procured by the Andhra Pradesh GST registration of the Company. The Deputy Assistant Commissioner, Gudur Circle observed that the classification adopted by the company is correct and the proposed classification of the Department (Chapter 87) does not hold good. Further, it was also held that there is no liability on the company to discharge GST under reverse charge.
Impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible	The order is in favour of the Company. There is no impact on financial, operation or other activities of the Company.

Annexure-D**Communication to Shareholders**26th February 2024

Dear Shareholder,

Greetings from Pricol!

We write to bring to your kind notice that our Company, Pricol Limited are in receipt of Show Cause Notice dated 5th February 2024 from the Directorate General of GST Intelligence, Gurugram Zonal Unit, on 15th February 2024, as a part of an industry-wide Goods and Services Tax (GST) investigation, concerning classification of instrument clusters.

As a valued shareholder, we deem it important to keep you informed about the developments in the matter. We firmly believe that transparency binds our business relationship. A summary of the events and actions taken by the Company in connection with above, are as follows:

1. As you are aware, our Company is a leading manufacturer of instrument clusters, which are sold to original equipment manufacturers and in the after-sales market sector.
2. Following the scheme of classification postulated under GST, which is based on internationally accepted principles, the Company had classified instrument clusters under Chapter 90 of the Tariff Schedule as Speed Indicators and Tachometers and supplied the same on payment of GST @18%.
3. Since instrument clusters are used in motor vehicles, it is the understanding of the GST Department that the same are classifiable under Chapter 87 of the Tariff Schedule, as parts of motor vehicles and thus, leviable to GST @28%.
4. Accordingly, proceedings have been initiated by the Department against various auto component manufacturers engaged in the supply of instrument clusters.
5. In the above background, the Company is in receipt of Show Cause Notice dated 5th February 2024. In the said Notice, the Department has called upon the Company to explain the classification of instrument clusters under Chapter 90, as against classification under Chapter 87 proposed by the Department. The potential demand exposure is around INR 3800.5 million. The Show Cause Notice also proposes to impose interest and penalty.
6. It is highlighted that the Show Cause Notice is only a proposal to fasten a plausible demand based on the understanding of the Tax Department and the Company is now only called upon to explain or justify its own stand.

Contd.2

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7. After assessing the proposals made in the Show Cause Notice and based on legal advice, the Company continues to believe that they have rightly classified instrument clusters under Chapter 90 of Customs Tariff and deposited the GST liability at the appropriate rate of 18%. The understanding of the Department is based on a faulty reading of the Tariff Schedule.
8. Presently, the Company is in the process of contesting the Show Cause Notice issued by the GST Department before the appropriate forum. In this regard, the Company has engaged the services of M/s. Lakshmikumaran and Sridharan Attorneys, a leading law firm, to represent the Company in this matter. A copy of the legal opinion issued by the said law firm, on the appropriateness of the classification adopted by the Company is enclosed for your perusal.
9. It is not uncommon for the Department to issue such notices, proposing demand of tax along with interest and penalty. In fact, our unit in Andhra Pradesh was in receipt of a similar notice demanding payment of GST for alleged misclassification of instrument clusters. The issue came to be decided in our favour and the Adjudicating Authority agreed with our classification under Chapter 90.
10. Further, as per the report of the Federation of Indian Chambers of Commerce & Industry (FICCI) on the draft GST Model Law, more than 80% of litigations are decided against Tax Authorities at the Tribunal level. We also believe that the said issue will be decided in favour of the Company in due course.
11. We emphasize that this challenge is not isolated to our Company but is a pervasive issue affecting multiple industry participants. In connection with the same, various representations have been made to the Governmental Authorities by the Company and other auto component manufacturers, concerning classification of instrument clusters under Chapter 90.
12. Kindly note that the Show Cause Notice does not impact the financial, operational or other activities of the Company in any manner. We will continue to provide updates on any significant developments as they arise and remain available to address any questions or concerns you may have.

For any clarifications on this subject, please get in touch with Mr. Priyadarsi Bastia, Chief Financial Officer or Mr Siddharth Manoharan, Director - Strategy, Investor Relations and Corporate Communication.

Thank you for your continued support and understanding.

With regards

Vikram Mohan
Managing Director
DIN: 00089968