



**Dr. Ranjeet Mehta**  
CEO & Secretary General

17th February 2025

**Shri Tuhin Kanta Pandey, IAS**  
Finance and Revenue Secretary,  
Ministry of Finance,  
Government of India,  
New Delhi 110001.

**Dear Shri Tuhin Kanta Pandey Ji,**

**Subject :- Request for Relief from Payment of differential GST, Interest and Penalty on Two-Wheeler Seats under Section 11/11A of the Central GST Act, 2017 from July' 2017 to October' 2023 on 'as-is' basis.**

We would like to commend the Government of India and the GST Council for their relentless efforts in streamlining the GST framework, which has significantly contributed to simplifying compliance and improving tax collection. Over the years, the GST system has evolved into a robust mechanism that has played a pivotal role in driving transparency and efficiency in India's taxation landscape.

The Government of India, after one of the greatest consultative processes, brought in the historic tax reform GST in 2017 to reduce the incidence of tax and to give a boost to the GDP of India. GST's introduction has been particularly remarkable in a diverse and federal country like India where multiple tax laws were consolidated into a single system and has marked a significant milestone in the history of taxation in India.

### **Background**

#### **1. Classification and Industry Practice:**

- The automobile industry had adopted the trade practice of classifying two-wheeler seats under Harmonized System of Nomenclature (HSN) Code **9401 20 00** (Seats of a kind used for motor vehicles), attracting GST at the rate of **18%**.
- This classification was based on the interpretation of the tariff provisions and industry-wide consensus.

#### **2. Subsequent Determination of Classification under HSN 9401 20 00:**

- In Central Excise Circular No. 43/90 dated 23.10.1990 the revenue department clarified that appropriate chapter heading classification for two-wheeler seats is 8714.
- The Hon'ble Supreme Court of India in the case of Matador Foam "**Commissioner of Central Excise, Kanpur vs Matador Foam 2005 (179) E.L.T. 257 (SC)**" held that the goods of respondent would fall under tariff heading 9401.
- After the pronouncement of The Hon'ble Supreme Court judgement the revenue department did not come up with any circular or clarification to clarify the ambiguity that arose.

- It was a settled issue during the previous tax regime and because the principle of classification of goods remained intact in the GST regime, the taxpayers opted to classify the two-wheeler seats under HSN 9401 2000.
- W.e.f. 15.11.2017 vide GST Notification No. 41/2017-Central Tax (Rate) dated 14<sup>th</sup> November 2017, GST rate on HSN 9401 20 00 changed to 18% from 28%. In the recent past, the revenue authorities started challenging settled HSN classification due to differential GST @ 10% (28%-18%) and they are alleging that two-wheeler seats are liable to be classified under HSN 8714 10 90 attracting GST @ 28%.
- Some of the two-wheeler seats manufacturers started paying GST @ 28% from October' 2023 onwards.

### 3. **Impact of Reclassification:**

- The reclassification led to demands for differential GST @ 10% (28%-18%), interest, and penalties from GST authorities.
- The additional tax burden, coupled with interest and penalties, places an unjustifiable financial strain on manufacturers and suppliers who followed an established trade practice in good faith.

### 4. **Classification of two-wheeler seats as per established trade practice:**

- The two-wheel seat manufacturing industry has been declaring two-wheelers seats under HSN 9401 20 00 from central excise days and then in the GST regime in the classification declarations and GST returns.
- The industry of two-wheelers seats manufacturing is engaged in business-to-business as they supply their manufactured two-wheelers seats to two-wheelers manufacturers (OEMs). Whatever GST is paid the input tax credit is available to the two-wheelers manufacturers, irrespective of the rate of which GST is paid on the two-wheeler seats.
- The industry has been truthfully declaring the classification of two-wheelers seats under HSN 9401 20 00 from central excise days till the GST regime. The regular audit of the manufacturers was done from July' 2017 onwards by the GST department and CAG. The GST department has also been carrying out inspection and regulatory visits to the industry without raising any issue of classification of two-wheelers seats under 8714 10 90.
- Since the industry has been paying the taxes as per established trade practice which is duly accepted by the GST department and without any audit or inspection objection, any attempt to levy penalty on the industry shall be very harsh and legally unsustainable.
- The exercise of moving the classification from HSN 9410 20 00 to 8714 10 90 is revenue neutral exercise as we are into business-to-business category. The Government shall not have any revenue loss in this exercise.
- Therefore, the industry makes the a very humble request that a relief from the differential GST @ 10% (28% - 18%) while moving from HSN 9410 20 00 to 8714 10 90 along with interest and penalty may kindly be granted by issuance of a notification under section 11 of CGST Act, 2017 on 'as is' basis.

### **Justification for Relief**

#### 1. **Good Faith Compliance:**

- The classification under HSN 9401 20 00 was based on genuine interpretation and industry consensus.

- There was no intention to evade taxes; GST at 18% was duly paid under HSN 9401 20 00, demonstrating compliance with tax obligations.
- The industry has been truthfully declaring that HSN classification of two-wheelers seats under HSN 9410 20 00 in their declaration, invoices, periodical returns to the GST department from July' 2017 to October' 2023, without the GST department pointing out any discrepancy despite the regular audit/ inspections by the GST department and CAG.

## 2. **Ambiguity in Classification:**

- The classification of two-wheeler seats under HSN 9401 20 00 vs. HSN 8714 10 90 was not explicitly clarified in the initial stages of GST implementation, leading to inadvertent misclassification by the industry.

## 3. **Revenue neutral exercise of reclassification:**

- Since, the industry supplies two-wheeler seats to two-wheeler manufacturing companies (OEMs), as business-to-business transaction and whatever taxes paid by the two-wheeler seat manufacturing companies, the input tax credit is availed by the two-wheeler manufacturing companies.
- The honest declaration by the industry about the classification of two-wheeler seats as established trade practice, without having been objected by the GST department made the industry to continue the practice till October' 2023.
- Since, it has been the industry practice from July' 2017 to classify the two-wheelers seats under HSN 9401 20 00, therefore the prayer of the industry to exempt the differential GST, interest and penalties as industry practice is genuine and worth consideration to issue notification of waiver on 'as is' basis.

## 4. **Precedent of Relief:**

- The Government has, in the past, granted retrospective relief in cases where genuine trade practices led to unintended tax liabilities (e.g., reclassification of certain products).

## 5. **Financial Impact on the Industry:**

- The demand for differential GST at 10% (28%-18%) retrospectively, along with interest and penalties, imposes a disproportionate burden on the industry.
- Such demands may disrupt business operations and competitiveness of automotive ancillary industries which form the backbone of the automobile sector.

## **Request for Relief**

In view of the above, we humbly request the Ministry of Finance to:

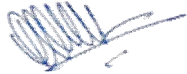
- Issue a Notification Under Section 11/11A of the CGST Act, 2017: to Provide relief for the past period (July' 2017 to October' 2023) by treating the classification of two-wheeler seats under HSN 9401 20 00 as valid for GST purposes on an 'as-is' basis.
- Exempt two-wheelers seats manufacturers and suppliers from differential GST of 10% (28% - 18%), interest and penalties associated with the reclassification under HSN 8714 10 90 for the past period.
- Ensure that the trade practice followed in good faith does not lead to undue financial strain or penal consequences for the industry.

We submit this petition with the utmost faith in the Ministry's commitment to fostering a fair and equitable taxation regime.

We look forward to your kind cooperation and continued support for the growth of the Indian Industry.

With best regards,

Yours sincerely,



**(Dr. Ranjeet Mehta)**



**"Voice of Industry & Trade"**



PHD House, 4/2 Siri Institutional Area, August Kranti Marg, New Delhi - 110 016 (India) • Tel. : +91-11-2686 3801-04, 49545454, 49545400  
Fax : +91-11-2685 5450, 49545451 • E-mail : [sg@phdcci.in](mailto:sg@phdcci.in) • Website : [www.phdcci.in](http://www.phdcci.in), CIN: U74899DL1951GAP001947

Connect with us:

