# Tata Motors Limited (Appellant)

Appellate Authority for Advance Ruling — Maharashtra

**ORDER NO. MAH/AAAR/SS-RJ/06/2019-20** Dated **20.09.2019**

## Q Questions Before the Authority

- Q 1.3: For the purpose of Cess at 22% under Sr. No. 52B of the Cess Rate Notification, whether the ground clearance of the vehicle is to be considered in laden condition or in unladen condition?
- Q 1.6: Whether a vehicle whose ground clearance in unladen condition is more than 170 mm but below 170 mm in laden condition will get covered under Sr. No. 52B of the Cess Rate Notification?

## F Facts

Tata Motors manufactures the Tata Harrier, a five-seat diesel utility vehicle with a 1956 cc engine and a length of 4598 mm. Its ground clearance is stated as 205 mm unladen and 160 mm laden, later amended to 176 mm laden on an ARAI certificate. The Advance Ruling Authority held that ground clearance must be measured unladen and that a vehicle with more than 170 mm unladen but less than 170 mm laden would not qualify for the 22% rate, and the appellant challenged only those two answers.

## H Ruling

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| **Q 1.3: Ground clearance for Cess at 22% under Sr. No. 52B, laden or unladen?** | ****Laden condition only**** | The Advance Ruling Authority had answered unladen. This answer is set aside. |
| **Q 1.6: Vehicle with more than 170 mm unladen but below 170 mm laden, covered under Sr. No. 52B?** | ****Will not get covered** under Sr. No. 52B** | The Advance Ruling Authority had answered that 170 mm or above unladen was required. This answer is set aside. The result follows from the laden-only test. |

The Appellate Authority set aside the Advance Ruling Authority's answers to Q 1.3 and Q 1.6. It held that for the 22% rate under Sr. No. 52B, ground clearance is to be taken in **laden condition only** . Consequently, a vehicle with more than 170 mm unladen but below 170 mm laden **will not get covered** under Sr. No. 52B.

## R Reasoning

The order notes that the Cess Rate Notification does not define ground clearance, so it borrows the meaning from the Central Motor Vehicles Act, 1988, which is pari materia, relying on the Mahindra and Mahindra Larger Bench decision. Section 56 of that Act requires a certificate of fitness, obtained from ARAI, that a vehicle complies with the Act and rules, and ARAI certifies ground clearance under IS 9435. Clause 5.8 of IS 9435 says the measurement is to be done on a fully laden vehicle to the maximum authorised GVW, and it makes no mention of an unladen state. The order also rejects the Advance Ruling Authority's reason that passenger weight varies, relying on the TELCO decision, which took 68 kg as the standard passenger weight for payload computation and was upheld by the Supreme Court.


Prepared as a reading aid. Where this summary and the original order differ, the order governs.

## P Provisions Relied On

- Section 100 of the CGST Act, 2017 and the MGST Act, 2017 (appeal and proviso to sub-section 2 on condonation of delay)
- Section 101 of the CGST Act, 2017 and the MGST Act, 2017 (appellate order)
- Notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017, as amended, Sr. No. 52A and 52B and the Explanation…
- Explanation 2 to the Cess Rate Notification (interpretation rules of the First Schedule)
- Customs Tariff Act, 1975, First Schedule, heading 8703 and tariff item 8703 32 91
- Section 56 of the Central Motor Vehicles Act, 1988
- IS 9435, clause 5.8 and its Note on laden measurement to maximum authorised GVW
- Mahindra and Mahindra Ltd. [2015 (324) E.L.T. 707 (Tri.-LB)] on statutes in pari materia
- Commissioner of Central Excise v. TELCO Ltd. [2002 (143) E.L.T. 548 (Tri.-Mumbai)], upheld [2003 (152) E.L.T. A259 (S.C.)]

## ! For the Practitioner

A practitioner dealing with SUV-type vehicles near the 170 mm threshold can cite this order for the position that ground clearance under Sr. No. 52B is measured laden, which may decide whether the 22% rate applies. The order rests on the IS 9435 measurement standard and the Motor Vehicles Act framework, not on any rule in the GST law itself. The order does not decide the vehicle's HSN classification or whether the Tata Harrier as such attracts the 22% rate, since those answers of the Advance Ruling Authority (Q 1.1, 1.2, 1.4 and 1.5) were not appealed and remain as given.

### Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mh aaar ss-rj 06 2019-20 tml 20.09.2019.pdf

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