It's Plastic, but for Taxman it's Auto Part & Higher Tax

Car cos get notice to pay 28% duty on items such as ashtrays due to classification issue

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Mumbai: Can separate tax rates be levied on same product imported by two different companies, based on the end use? The customs department seems to think so, going by its latest tax demand from carmakers.

The customs department has started issuing notices to several automakers, asking them to cough up 28% goods and services tax on imported plastic goods such as ashtrays and floormats instead of 18% GST, people familiar with the development said.

The logic? While plastic goods attract only 18% GST, here they are used as auto components that attract 28% GST.

Top automakers such as Maruti Suzuki, Mahindra & Mahindra and Tata Motors have already been questioned by the customs department's Mumbai, Delhi, Ahmedabad and Mundra offices in last couple of weeks, the sources said. Several other companies are under scrutiny and could get these notices in the coming weeks, they said.

Industry trackers said this is a classification issue under GST regulations. "The industry has been adopting the classification (of plastic goods and other imports used in cars) for over a decade, which has been accepted by the customs authorities in the past," said Rohit Jain, partner at Mumbai-based law firm ELP. "The classification is required to be done on a case by case basis as per the scheme of the Customs Tariff Act."

He said the tax demand will adversely impact the auto sector that's going through one of its worst crises.

The auto industry recorded its worst sales slump in nearly 19 years in July. Many companies including Maruti Suzuki, Tata Motors and M&M have cut production, and, according to data released by the Society of Indian Automobile Manufacturers (SIAM), around 230,000 jobs have been lost in the industry.

And the new tax demand is uncalled for, some experts said. As per the customs regulations, the department has to levy taxes based on the place and form of the imported goods and it doesn't have the mandate to check the end use, they said.

"There have been several goods which could have multiple use and in the current scenario many companies too are going for standardisation, and so these could have multiple end uses," a person in the know said on condition of anonymity.

Others said several products like plastic ashtrays could face different taxes depending on who is importing it. So, a hospitality company could be paying lesser tax than a carmaker for the same product. And the problem may not be limited to the auto sector or even imports. Taking a cue from the customs department, the indirect tax department could also challenge GST paid by some component manufacturers for domestic sales in the replacement market, experts said.

"Classification of parts has historically been a matter of debate due to different tax rates applicable to different chapter headings," said Abhishek Jain, tax partner at EY India. "Companies should well analyse the chapter and section notes of various products before finalising the classification of the product and related duty/tax rates on such products to avoid unwarranted litigation."

Other sectors such as aviation could also face the scrutiny from the customs department in the coming months, people with direct knowledge of the matter said.

Industry trackers fear that going ahead this could be extended to several other products and industries.

A New Tax Tiff

Top auto-makers including Maruti Suzuki, M&M and Tata Motors have been questioned by customs department over last few weeks

Experts say the imported product should be taxed and there's no need to check end use

They will have to cough up an extra 10% on certain imports such as plastic ashtrays or floor mats

This may also encourage the indirect tax department to challenge GST rates by component makers

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ABHISHEK JAIN, Tax Partner, EY India

Other sectors like aviation could be next to face scrutiny