

PUNJAB APPELLATE AUTHORITY FOR ADVANCE RULING

Order No. 01/AAAR/Ess Ess Kay Engg./2023

Dated: 21.02.2023

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Present:

1. Sh. Rajesh Puri, Chief Commissioner, IRS (C&IT), CGST Commissionerate, Chandigarh Zone, Chandigarh
2. Sh. Kamal Kishor Yadav, IAS, Commissioner of State Tax, Punjab

Name and Address of appellant	M/s ESS ESS KAY ENGINEERING COMPANY PVT LTD, FACTORY AREA, KAPURTHALA, PUNJAB-144601
GSTIN	03AAACE5057G1Z1
Date of Application	05-09-2022
Jurisdictional Authority-Centre	Commissioner,CGST,Jalandhar Division-Kapurthala Range-II,Kapurthala,
Jurisdictional authority-State	Punjab, Jalandhar, Kapurthala, Ward-1, Kapurthala
Represented By	Mr. Sudhir Malhotra
Date of Personal Hearing	27 th of January, 2023
Order of Authority of Advance Ruling	AAR/GST/PB/016 dated 16 th of August, 2022 issued by the Authority for Advance Ruling, Punjab.


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PROCEEDINGS

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Punjab Goods and Services Tax Act, 2017, (hereinafter referred to as, "CGST Act, 2017 and PGST Act, 2017") are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the PGST Act.

FACTS OF THE CASE:

M/s ESS ESS KAY ENGINEERING COMPANY PRIVATE LTD, Kapurthala, Punjab (hereinafter referred to as, "the appellant") holding GSTIN 03AAACE5057G1Z1 is engaged in the manufacturing of "Roof Mounted Air Conditioner unit for Passenger Coaches of railways as per Research design and Standard Organisation (RDSO) specification and drawing".

2. The appellant filed an application for Advance Ruling with the Authority for Advance Ruling, Punjab (hereinafter referred to as, "AAR, Punjab"). The question for consideration was that whether roof mounted Air conditioning unit especially for use in railway coaches (manufactured as per railway design) should be classifiable under HSN- 8415 1090- IGST 28% or under HSN 8607 99 - IGST 18% as parts of Railway Coaches/ Locomotives.

3. AAR Punjab, vide its Order No. AAR/GST/PB/016 dated 16th of August, 2022 ruled that the Roof Mounted Air-Conditioning unit manufactured by the applicant are classifiable under HSN Heading 8415 and the classification of the goods shall not alter on account of supply by them to Railways

II. Order of the Authority for Advance Ruling:

Relevant extract of the order No.AAR/GST/PB/016 dated 16th of August, 2022 issued by the AAR, Punjab is reproduced hereunder:

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“The Roof Mounted Air-Conditioning unit manufactured by the applicant are classifiable under HSN Heading 8415 and the classification of the goods shall not alter on account of supply by them to Railways.”

III. Submission of the appellant:

- A. The appellant submitted that classification of impugned goods may be done in terms of Note 3 to the Section XVII of Customs Tariffs Act read with corresponding Explanatory notes of the HSN. The principle use of the goods manufactured are as per the design given by the Railways for exclusive use with the railway coaches only.
- B. The Id. Authority for advance ruling erred in placing reliance on note 2(e) to the section XVII without considering the following:
- i. Note 3 to section XVII of the Customs Tariff act;
 - ii. Decision of Hon’ble Supreme Court in case of **Westinghouse Saxby Farmer Ltd vs. Commissioner of Central Excise Kolkata-2021(376) ELT 14(SC)** also relied upon by the State tax authority in favour of appellant. The Central Tax Authority did not file reply to Id. Authority for Advance ruling.
 - iii. Decision of Hon’ble Supreme court in Case of **G.S. Auto International Ltd. Vs Collector of Central Excise, Chandigarh-2003(152) ELT 3(SC)**.
 - iv. Decision of Hon’ble Tribunal in case of **Diesel Component Works Vs. Commissioner of Central Excise-2000(120) ELT 648(T)**.
 - v. Decision of Hon’ble Tribunal in case of **Rail Tech Vs. Commissioner of Central Excise-1998(104) ELT 345(T)**.
 - vi. Decision of Hon’ble Tribunal in case of **Mechanico Enterprises Vs. Commissioner of Central Excise-1998 (104) ELT 345 (T)**.
 - vii. Decision of Hon’ble Tribunal in case of **Commissioner of Central excise vs Sri Ram Metal works-1998(99) ELT 616(T)** & decision

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in case of **CCE vs. Ramsons Udyog Pvt. Ltd-2000(115) ELT 171(T)**.

- viii. The Ld. Authority for Advance Ruling- Uttar Pradesh, Gomti Nagar, Lucknow 2021 (53) GSTL 364 (AAR-GST-UP) gave ruling that the roof mounted AC Package Unit for Railway Coaches manufactured strictly as per specification and design provided by Railways and they are for exclusive use in Railway coaches-in view of catena of decisions on classification of specific parts, these goods are appropriately classifiable under heading 8607 of Central excise Tariff Act, 1985 being part of coach work of Railway running stock.
- ix. A tabulation statement of the financial bids dated 09-06-2022 in respect of CSD/PR/southern Railways. As per the tabulation all other parties have quoted GST @ 18% except him which is causing commercial losses as his rates for the same product becomes uncompetitive.
- C. The impugned goods are solely and principally used in railways; it has no other use except in railways coaches. It is an integral/ essential part of Air conditioned railways coaches. As per note 3 to section XVII by applying "user test", the impugned goods are classifiable under HSN 8607.

Discussion and Findings:

4. The primary issue that emerges from the appeal filed by the appellant is regarding the classification of the roof mounted Air conditioning unit. The AAR Punjab, vide its Order No. AAR/GST/PB/016 dated 16th of August, 2022 ruled that the Roof Mounted Air-Conditioning unit manufactured by the applicant are classifiable under HSN Heading 8415 and the classification of the goods shall not alter on account of supply by them to Railways.
5. In order to comprehend the issue under consideration it would be pertinent to reproduce the contentious entries of the tariff so that a clarity can be

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developed regarding the classification of the goods. The Heading 8415 reads as under:

8415 AIR CONDITIONING MACHINES, COMPRISING A MOTOR-DRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE MACHINES IN WHICH THE HUMIDITY CANNOT BE SEPARATELY REGULATED

6. The other heading i.e. 8607 reads as under:

8607 PARTS OF RAILWAY OR TRAMWAY LOCOMOTIVES OR ROLLING-STOCK

7. Before going into the issue under consideration there is an important observation that requires to be made regarding the nature of both the contentious entries of the Tariff. It is easily discernible that the entry 8415 is a very specific entry that is devoted to the classification of the Air Conditioning machines. On the other hand, the entry 8607 is general in nature and seeks to bring within its ambit parts of railway locomotives or rolling stock. One of the fundamental rule of classification of goods is that where there are two competing entries laying claim to the classification of a particular good, a specific entry shall be preferred over the general entry. The Rule 3 of the Classification is reproduced hereunder for reference:

Rule 3: When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

8. The GST Tariff is entirely based upon the Customs tariff and therefore the provisions and entries of Customs Tariff are required to be considered for

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fixing correct classification of goods in GST Tariff. The Customs Tariff is structured into Sections, Chapters, Headings and sub-headings. Each Section and Chapter under the Tariff is accompanied by the notes known as "Section Notes" and "Chapter Notes" which define the scope of the concerned Section and Chapter. The section notes are more comprehensive in nature as they apply to each chapter in that particular section. As these notes are part of the Tariff. They enjoy the full statutory backing of the law.

9. Now coming to the issue of classification of the said goods it is important to look at the concerned Chapter Note of the said entry to identify as to what kind of goods are falling within the ambit of the said chapter as well as the entry therein. Chapter Note 2 to Chapter 86 of the Customs Tariff states as under:

"2. Heading 8607 applies, inter alia, to:

(a) axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels;

(h) frames, under frames, bogies and bissel-bogies;

(c) axle boxes, brake gear;

(d) buffers for rolling-stock; hooks and other coupling gear and corridor connections;

(e) coachwork,"

10. The chapter note details the various good which may fall within the scope of the said entry i.e. 8607. It is perceptible that the air conditioning machines are not mentioned in the said Chapter note. The only aspect that requires consideration here is that the said chapter note mentions the word "*inter-alia*" which literally means "**among other things**". Thus, it can be

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deduced that the Chapter Note (2) is not the exhaustive chapter note detailing all the goods that may fall within the ambit of the said entry.

11. Now coming to the Section note that defines the domain of the Section *XVII VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT* of which Chapter 86 is a part. Section Note 2 of the said section provides that 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 8484) or other articles of vulcanised rubber other than hard rubber (heading 4016);

(b) parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similargoods of plastics (Chapter 39);

(c) articles of Chapter 82 (tools);

(d) articles of heading 8306;

(e) machines and apparatus of headings 8401 to 8479, or parts thereof, other than the radiators for the articles of this Section, articles of heading 8481 or 8482 or, provided they constitute integral parts of engines and motors, articles of heading 8483;

(f) electrical machinery or equipment (Chapter 85);

(g) articles of Chapter 90;

(h) articles of Chapter 91;

(ij) arms (Chapter 93);

(k) *luminaires and lighting fittings and parts thereof of heading 9405; or

(l) brushes of a kind used as parts of vehicles (heading 9603).

(emphasis supplied)

12. A bare perusal of the said section notes with specific reference to the clause (e) highlights the fact that the expressions “parts” and “parts and accessories” do not apply to machines and apparatus of headings 8401 to

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8479 or parts thereof. This clearly implies that the said section has been designed in such a manner whereby those goods which acquire the character of machines and apparatus and fall within the domain of headings 8401 to 8479 shall not be treated or classified as “parts” or “parts and accessories” for the Section XVII. So, the important question to be answered here is whether the good under contention falls within the ambit of the headings 8401 to 8479. If the said good falls within the scope of the said entries, then by virtue of the Section Note 2 (e) the same shall be excluded from the said section and therefore cannot claim the right to be treated as an accessory or part of the goods mentioned in the said section.

13. In the beginning of the proceedings, at para 5, the entry 8415 was detailed which is being reproduced hereunder at the cost of repetition. The Heading 8415 reads as under:

8415 AIR CONDITIONING MACHINES, COMPRISING A MOTOR-DRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE MACHINES IN WHICH THE HUMIDITY CANNOT BE SEPARATELY REGULATED.

14. The said entry applies to the air conditioning machines which have the elements for changing the temperature and humidity. It further includes those machines even where the humidity cannot be separately regulated. The said entry clearly applies to the good under question as the same is an air conditioner unit that is roof mounted in the railway coaches. The important aspect that requires attention here is that the said heading does not define the good by the manner in which the fitting is done or the particular vehicle in which the same is to be deployed. Thus, the said heading is wide enough to cover within its realm all kind of air conditioning machines irrespective of the fact that whether the same are manufactured in such a manner to be installed on a particular vehicle or a

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machine or even a location. It can be inferred that once the said good is classified under the heading 8415, then by virtue of the clause (e) of the Section Note 2 of the Section XVII, the same is excluded from classification under heading 8607.

15. The above line of argument is further amplified once the Explanatory notes to the Chapter 84 are referred. The Explanatory Notes to Chapter 84 under Heading 'General' and sub heading '(B) General Arrangement of the Chapter' provide that:

1...

2. *headings 84.02 to 84.24 cover the other machines and apparatus which are classified mainly by reference to their function and regardless of the field of industry in which they are used.*

(emphasis supplied)

16. The said explanatory note clearly brings out the fact that the industry in which the said goods are deployed is immaterial for determining the classification and the same should be guided by the function which it is expected to perform. To take this logic further, the good under contention i.e. 'Roof Mounted Air Conditioning Units' being manufactured by the appellant have a specific function to perform i.e. of air conditioning and same should clearly be covered under the heading 8415 and not under 8607.

17. Since, we have examined the Explanatory notes to Chapter 84, it would be prudent to discuss the explanatory notes to Chapter 86 as well to bring a sense of wholeness to the proceedings. Note to heading 8607 as given in the explanatory notes to HSN is reproduced below -

This heading covers parts of railway or tramway locomotives or rolling-stock, provided the parts fulfill both the following conditions:

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(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;

(ii) They must not be excluded by the provisions of the Notes to Section XVII.

18. The said explanatory note brings out the fact that for the goods to be classifiable under HSN 8607, there are two conditions that are required to be satisfied. The first condition is that the goods under consideration must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles i.e. railway or tramway locomotives or rolling-stock. On this parameter the goods being manufactured by the appellant satisfies the criteria as the appellant has emphasised the fact that the said good is to be only used in railways. The second condition for bringing the goods into the domain of the said heading is that by virtue of Notes to the Section XVII they must not be excluded from the classification thereto. At para number 11 and 12 of this order we have discussed the Section Note 2(e) and have brought out the fact that goods which acquire the character of machines and apparatus and fall within the domain of headings 8401 to 8479 shall not be treated or classified as "parts" or "parts and accessories" for this section. Thus, the goods being manufactured by the appellant fail to satisfy the second condition of the said explanatory note and therefore lose their claim to classification under the heading 8607.

19. The appellant has further attacked the correctness of the order of AAR, Punjab by adopting the line of argument that the said authority has ignored the Section Note 3 of Section XVII while dealing with the application. The said argument has been further substantiated by giving reference to the Hon'ble Supreme Court Judgment of **Westinghouse Saxby Farmer Ltd vs. Commissioner of Central Excise Kolkata-2021(376) ELT 14(SC)**.

20. The said section note is being reproduced hereunder for reference:



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 of accessory.

21. An analysis of the said section note demonstrates that the parts or accessory which are not suitable for use solely or principally with the articles of Chapter 86 to 88 are not to be included in the said chapter. On the obverse, *parts* or accessory which are suitable for use solely or principally with the articles of Chapter 86 to 88 are to be included in the said chapter. But the said section note has to be read in conjunction with the Section Note 2 of the said section. The harmonious construction of the said section notes brings out the fact that section note 2 excludes certain goods from the domain of the expression, “parts” or “parts and accessories”. As for the remaining good that is not excluded by virtue of the said section note the same can be classified as “part” or “accessory” only if it is suitable for use solely or principally with the goods of the said Section.

22. Further, as far as the said judgement of the Hon’ble Supreme Court is concerned, the Hon’ble Court has itself acknowledged the complexity of the issue and has pointed to the undesirability of generalising the decision of one case to others. The Hon’ble Court, has referred to the observations made in its own judgement in the case of "A. Nagaraju Bros Vs. State of A.P, thus-".....**there is no one single universal test in these matters.** The several decided cases drive home this truth quite eloquently..... There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. **It**

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is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application".

(emphasis supplied).

23. Further, the Hon'ble Supreme Court, in the case of Commissioner of Central Excise, Mumbai Versus M/s Fiat India (P) Ltd, has observed that,-

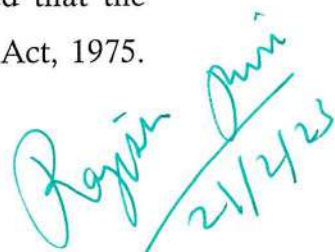
"a case is only an authority for what it actually decides and not for what may seem to follow logically from it. ...Each case depends on its own facts and a close similarity between one case and another is not enough because either a single significant detail may alter the entire aspect... To decide, therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

(emphasis supplied)

24. Incidentally, on a similar issue, CBIC vide Instructions No. 01/2022-Customs dated 05.01.2022 in para 10 *has advised that in general, the practice of assessment of such 'parts' or any change in it may holistically keep in view and in a speaking manner, all relevant aspects including HS explanatory Notes, the relevant section and chapter notes.*

25. Further the appellant has cited certain judgments in his submissions. The discussions in these judgments as well as the factual matrix detailed therein, it is clear that the specific exclusion provided to HSN 84.01 to 84.79 do not apply in above judgments. Accordingly, the judgment cited by the appellant varies from the instant appeal both on law and facts. The judgments mentioned above relates to the Chapter 73 and 76 of the erstwhile Central Excise Tariff Act, 1985 and not applicable in the instant case.

26. The appellant has further adopted the contention that Air conditioned units are to be included in the coach work. It is to be noted that the expression "Coachwork" is not defined in the Customs Tariff Act, 1975.



However, the dictionary meaning of the coachwork is reproduced as under:

- a) the bodywork of a road or railway vehicle (**Cambridge Dictionary**).
- b) the metal outer part of a road or railway vehicle (**Oxford Dictionary**)
- c) an automobile body (**Merriam-Webster Dictionary**)

27. An overview of the above definitions highlights the fragility of the argument of the appellant and same does not deserve the consideration of this authority.

28. The appellant has also submitted certain Orders passed by Authority for Advance Ruling and Appellate Authority for Advance Ruling in his favour i.e M/s Daulat Ram Engineering Services Pvt Limited passed by AAR, MP, M/s Prag Polymers passed by AAR, U.P and M/s Concord Control Systems Private Limited passed by AAAR, U.P. In this regard it is to be noted that as per Section 103 of the CGST Act, 2017, *the advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—*

- (a) *on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 for advance ruling;*
- (b) *on the concerned officer or the jurisdictional officer in respect of the applicant.*

29. The appellant has conveniently overlooked the basic nature of the ruling given by the Authority for Advance Ruling. The said rulings are in the nature of “in personam” and not “in rem” and therefore their applicability as well as their protection cannot be sought by the others who were not party to the said proceedings.


30. In view of the foregoing discussions, we hold that the subject goods i.e. Roof Mounted Air-Conditioning unit manufactured by the appellant are


classifiable under HSN Heading 8415.

31. Accordingly, we pass the following order:

ORDER

We uphold the order AAR/GST/PB/016 dated 16th of August, 2022 issued by the Authority for Advance Ruling, Punjab and the appeal filed by the appellant M/s ESS ESS KAY ENGINEERING COMPANY PVT LTD, stands dismissed on all counts.


Rajesh Puri IRS (C&IT)
Chief Commissioner,
CGST Commissionerate,
Chandigarh Zone, Chandigarh


Kamal Kishor Yadav, IAS,
Commissioner of State Tax,
Punjab.

Place: Chandigarh

To,

M/s ESS ESS KAY ENGINEERING COMPANY PVT LTD,
FACTORY AREA, KAPURTHALA, PUNJAB-144601

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1. The Member, Central Tax, Appellate Authority for Advance Ruling, Punjab.
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