

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 54/ 2019

Date : 19th September, 2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Parker Hannifin India Pvt. Ltd, Plot No.320 P2, Near APC Circle, Bommasandra Jigani Link Road, Industrial Area, Jigani Hobli, Anekal Taluk, Karnataka 560105
2.	GSTIN or User ID	29AAACP6820G1ZF
3.	Date of filing of Form GST ARA-01	12.06.2018
4.	Represented by	Sri Gopal Mundra, Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bengaluru South, CR Building, Queens Road, Bengaluru
6.	Jurisdictional Authority - State	LGSTO-025A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act 2017 & Rs.5,000/- under KGST Act 2017 vide CIN RBIS18042900166872 dated 18.04.2018.

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND
SERVICE TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE
KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s Parker Hannifin India Pvt. Ltd, (called as the 'Applicant' hereinafter), having its registered office at Plot No.320 P2, Near APC Circle, Bommasandra Jigani Link Road, Industrial Area, Jigani Hobli, Anekal Taluk, Bengaluru City District, PIN 560105, having GSTIN number 29AAACP6820G1ZF, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 & KGST Act 2017 read with Rule 104 of



the CGST Rules, and KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a private limited company engaged in the manufacture of various type of filters viz., air filter, oil filter, fuel filter etc. The applicant has sought advance ruling in respect of the following question:

- a) Whether filters manufactured solely and principally for use by/ in Indian Railways and supplied directly to Indian Railways are classifiable under HSN Heading 8421 or under HSN Heading 8607 of the Customs Tariff (which has been borrowed for classification purposes under GST regime)?
- b) Whether the aforementioned classifications of subject goods i.e. filter alter if identical goods are supplied to a distributor instead of Indian railways directly, and the distributor in turn effects supply to Indian railways?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The Applicant is inter-alia engaged in the manufacture of various types of filters viz. air filter, oil filter, Fuel filter etc. Different products manufactured by the Company find application in different industrial sectors and some of them are customized to the need and specification of the customers. The Applicant Company is duly registered under the provisions of the Central Goods and Service Tax Act, 2017 ('CGST Act') and Karnataka Goods and Service Tax Act, 2017 ('KGST Act') bearing GSTIN 29AAACP6820G1ZF.
- b. The range of products manufactured and supplied by the applicant includes Filters, which are custom manufactured for Indian Railways as per the design specifications provided by Indian Railways itself. The product so supplied is not a catalogue product of the applicant and is customized to the last mile for Indian Railways on the parameters of Form, Fitment and Function, which thus makes the product's use exclusively by the Railways.
- c. It becomes pertinent to submit that these filters find its application only in the Indian Railways and, as such, cannot be used elsewhere due to limitation of its Form, Fitment and Function as discussed above. In other words, these filters are manufactured 'solely and principally' for its application in the railway engines for Indian railways and have no alternate usage possible not even hypothetically.

- d. Oil and/ or fuel filters or other filters could be, generically, classified under the (HSN Based) Tariff Heading 8421; however owing to the fact that these filters are used 'solely and principally' in railway/ tramway/ locomotives, classification under (HSN Based) Tariff Heading 8607 also merits consideration.
- e. The aforesaid proposition is time and again subjected to interpretation by all stake holders given the specific Section Notes under Section XVI and XVII of the Customs Tariff (which is applied to GST matters for purposes of classification of goods), which do not yield a clear result. It may be noted that the alternate classification probable(s) here lead to varied GST rate scenarios and thus create ambiguity.
- f. Separately, it is proposed that going forward the applicant may receive order through an intermediary/ distributor (who would have an existing order of the goods so ordered, from Indian Railways). Hence, the eventual supply of goods shall be to Indian Railways but through the intermediary or distributor implying that the immediate customer for the Applicant would be the intermediary or distributor instead.
- g. The modus operandi of the transaction in such instance would, however, not alter. The goods would continue to be manufactured basis express design and specification received by the distributor from Indian railways and shared with the Applicant and that, the manufactured product would still be solely and principally used as a part in the railway/ locomotives.
- h. The applicant Company states that he is deemed fit to seek a ruling on the subject classification matter both in current fact patterns of direct supplies and future pattern of supplying to an intermediary or a distributor.
4. The applicant provides the relevant Section Notes under Customs Tariff.
- a. The applicant draws reference to Section Note 1 to Section XVI – Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and accessories of such Articles” which covers chapter 84 which reads as under

“1. This Section does not cover:

(a)



- (b)
- (c) .. (k).. . . .
- (l) *Articles of Section XVII*

b. The applicant also refers to section notes to Section XVII (which covers Chapter 86) – Vehicles, Aircrafts, Vessels and Associated Transport Equipments - as under

"2(e) 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) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) *Machines and apparatus of heading 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;*

"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."

5. The applicant has also provided that the two relevant Customs Tariff Entries applicable to the product under question are as under

Section	Chapter	Heading	Description
XVI	84	8421	Centrifuges, including Centrifugal dryers; Filtering or purifying machinery and apparatus, for liquids or gases
XVII	86	8607	Parts of railway or tramway locomotives or rolling-stock

6. The applicant has submitted that the Section Note 3 to Section XVII of Customs Tariff supersedes all other notes and references and merits classification of filters manufactured by the applicant under chapter 86 rather than under heading 8421 as under:



6.1 Sole or principal use of Applicant's filters for goods covered under chapter 86 being railway, tramway, locomotives

6.1.1 It is submitted that subject goods are manufactured by Applicant strictly as per the designs provided by the Indian Railways itself viz. Chittaranjan Locomotive works (CLW), Diesel locomotive works (DLW), Electric loco sheds & Diesel loco sheds. This fact is evident from the Purchase Order issued by the Indian Railways to applicant. Thus, filters supplied corresponding to said purchase order are meant for either fuel based locomotives or those, which are electrically operated. The manufacturing process for the subject goods is based upon design and specification received from the customer (Indian Railways in this instance). The manufactured product, therefore, is customized for

- Its design (Form) – compatible with the overall design of the railway/ locomotive in a given case
- Ability to fit within the railways/ locomotives as a part thereof (Fitment) – the engines or other parts of the railway or locomotives where the Applicant's filters would be placed cannot follow a plug and play model. The product is therefore customized to fit into the desired compartment (as the customer may have indicated) and work seamlessly on the equipment's platform.
- Filters are meant for cleaning fuel / clearing air, as the case may be – however the capacity and output may vary depending upon the platform and equipment for which it is used. The customer specifications clarify this aspect (Function) and hence, the product so manufactured and supplied by Parker is unique by its function, which is compatible only with Railway or locomotives.

6.1.2 It is submitted that the following filters are supplied to Indian Railways:-

Type of Filter	Function	Customer
Air filters for Electric locomotives	Providing clean air for cooling inside the electric locomotives	Chittaranjan Locomotive works (CLW), Electric loco sheds (Founder Indian Railways)
Air filters for Diesel locomotives	Providing clean air to Diesel IC engine for combustion purpose	Diesel locomotive works (DLW), Diesel loco sheds (Founder Indian Railways)
Car body filter	Providing clean air to the electrical equipment and compressor compartment	
Lube oil and Fuel filter	Removes particulate matter from the fuel oil and engine lube oil	

6.1.3 Basis the foregone submission, the applicant reiterates that, the subject filters *ipso facto* are not capable of generic use (for any other OEMs or in any other Industry apart from railway or locomotives) since the same have been manufactured to cater a specific design and configuration. As a matter of fact these filters (made to specification of Indian Railways) do not have any other buyer and hence, cannot be supplied otherwise than to Indian Railways by applicant.

6.1.4 In view of customized design/ specification, lack of usage other than in railway engines of Indian Railways and absence of supply other than to Indian Railways, the applicant states that it is evident that said filters are indeed manufactured solely and principally for its usage by the Indian Railways as a part of railway/ tramway/ locomotive and hence, qualify the test of Section Note 3 of Section XVII and analogy emerging therefrom. In such a case the subject filter merit its classification under heading 8607 as 'parts of railway or tramway locomotives or rolling stock' notwithstanding a probable classification under any other chapter of the Customs Tariff.

6.2 Classification of goods owing to its sole and principal usage is supported by a plethora of judicial precedents.

6.2.1 The applicant states that it is well settled law that predominant use to be established where classification relates to function of goods. In this regard the applicant draws attention to the decision of Hon'ble Tribunal in the case of Hi-tech Industries Limited vs. Commissioner of Customs, Bangalore [2005 (180) ELT 0356] wherein an identical issue in the context of classification of goods on the basis of principal or sole use of the goods was involved. As a matter of fact, the facts of the said case are applicable *mutatis mutandis* in the present factual matrix. The Hon'ble Tribunal while deciding the case in the favour of the assessee relied on the observations of the Commissioner (Appeals) while passing the Order in Appeal as under:

"It is observed that the impugned product imported by the appellants is a web camera. From the technical literature submitted at the time of personal hearing, it is observed that the camera is not an ordinary camera and functions only with the computer and this camera has got very specific functions and it works basically as a part of the computer and cannot function independently on its own. Thus, it is observed that the web camera imported by the appellant is not an ordinary camera and does not function independently. The image can be captured only when it is connected with the computer. Thus,

from the above, it can be seen that the product imported by the appellants is not an ordinary camera and therefore will not fall under chapter 90 as held by the lower authority. The proper classification will be under chapter 84.73 or 84.71. Besides, a perusal of the aforesaid judgment of the Hon'ble Tribunal also clearly indicates that all those items which come along with the computer are to be treated as spares and accessories. Thus, in view of the submissions made by the appellants and in view of the case law referred to by the applicants at the time of personal hearing, it is observed that the proper classification of the product under classification would be under chapter 8473.30 or 84.71 and not under chapter 90 as held by the lower authority. I set aside the order passed by the lower authority and allow the appeal filed by the appellants."

6.2.2 The above decision of the Hon'ble Tribunal has further been affirmed by the Hon'ble Supreme Court in Commissioner vs. Hi-Tech Computers - 2015 (321) E.L.T. A274 (S.C.).

6.2.3. Reliance is further placed by the applicant on the judgement of the Tribunal in the case of Rail Tech vs. Commissioner of Central Excise Chandigarh [2000 (120) E.L.T. 393 (Tribunal)] where in the following was held:

"9. The bare perusal of Tariff heading 76.10 shows that it covers aluminium structures and parts thereof. The entry "windows and their frames" in the bracketed words, in this Tariff Heading refers only to the parts of the structure. Even the aluminium, plates, rods, profiles, tubes and the like, had been referred to in this Tariff Heading as the ones prepared for use in structures. Similarly, the entry in the sub-heading 7610.10 of this Tariff Heading, regarding doors, windows and their frames and thresholds for doors refers to the ones which are meant for use in the structures as this entry is contained in the sub-heading of the main tariff heading 76.10 of the CETA. The entries in the Tariff heading and sub-heading have not to be read distinctively but collectively and in such a manner that the entry in the main Tariff Heading 76.10 does not become superfluous, redundant or in any manner isolated from its sub-heading entry. Therefore, only those doors, windows and their frames and threshold for doors, would be covered by sub-heading 7610.10 of the CETA which have relevance and use in the structures and not others.

10. In the instant case, admittedly, aluminium doors and windows manufactured by the assesseees have no use or relevance in the structures. These are being manufactured by them on the drawings and specifications provided to them, by the railways, for their sole use in the railway coaches. These aluminium windows and doors, as not disputed by the counsel before us, are neither marketable in the market nor can be used in any structure. He has rather fairly conceded that these can be solely used in the railway coaches. That being so, it can be safely concluded that these are parts of the railway classifiable under Tariff Heading 86.07 (sub-heading 8607.00) of the Tariff. The principal that specific tariff entry has to prevail over the general entry, is not attracted in this case. The view taken in the impugned order dated 15-06-1994 by the Collector (which is the subject matter of the appeal of the assesseees) is legally correct and no fault can be found with the same."

6.2.4 The classification of goods owing to sole and principal usage thereof in view of Section Note 3, according to the applicant, is a widely regarded and accepted position of law and the same is supported by a plethora of decisions and departmental clarification. The same have been illustratively cited below for ease of reference:

REFERENCE	PARTICULARS
Circular No. 17/90-CX.4, dated 9-7-1990	<p><u>Clarification:</u> Gear, gear boxes per se classified under 8483 would attract classification under heading 8607/8608/8614 when specifically designed for use with vehicles of Section XVII.</p> <p><u>Rationale:</u> Transmission elements even though covered under a specific heading would be covered under heading 8607 when they have been specifically designed for use with the vehicles of Section XVII.</p> <p>A copy of the said clarification is enclosed as Annexure - III(C). Though a clarification under the erstwhile excise regime, but since the excise also followed the common code of classification i.e. HS, an interpretation of the Tariff thereunder would squarely apply to present matter also.</p>
Hindustan Welding Engineers vs. CCE, Calcutta [2001 (133) ELT 770 (Tri.-Kolkata)]	<p><u>Ratio:</u> Various parts such as aluminium doors, windows, frames although generally covered elsewhere under the Excise Tariff were held to be classifiable under heading 8607 inasmuch as such parts were used 'solely and exclusively' for the railways.</p> <p>Decision of Tribunal in the case of Rail Tech was followed in this case.</p>

6.2.5 Thus, in view of the settled jurisprudence, the applicant argues that filters manufactured by him for Indian Railways merit classification under chapter 86 which covers parts of railway/ locomotives.

6.3 Owing to sole and principal usage, Section note 3 to section XVII merits classification of subject goods under Chapter 86.

6.3.1 The classification of goods under the Goods and Services Tax regime is expressly aligned to Chapter/ Heading / Sub-heading / Tariff item under the First Schedule to Customs Tariff Act, 1975 ('Customs Tariff') and warrants reliance on the rules of interpretation and Section/ Chapter/ General Explanatory note thereto, which provide prescription for interpretation of the Customs Tariff (refer to Explanation (iii) & (iv) in the CGST Rate Notification 1/2017 dated June 28, 2017).

6.3.2 It may be noted that Customs Tariff follows the common classification system, which is popularly called the Harmonized System of Nomenclature (HS or HSN), developed by the World Customs Organization and is used/ accepted all over the world.

6.3.3 Note 3 to Section XVII has been re-produced below for quick reference:

"3.References in Chapter 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..."

6.3.4 The applicant submits that, Section Note 3 (supra) provides that, an article cannot be classified as a part of an article covered under Section XVII unless the same is designed to be used 'solely' or 'principally' for articles of chapters falling under the said Section. A corollary to the said Section Note is that, if any heading under chapters of Section XVII covers parts of an article also falling under that Chapter than all such parts of the said article, which are meant for 'sole' or 'principal' use with it would be classified under the respective heading of chapters under Section XVII, which covers parts.

6.3.5 The present case, in applicant's view, is a fit example for same wherein the filters are meant exclusively for railway or locomotive (both fuel based as well as electric) & have no generic use; thus, the same are classifiable under Tariff Heading 8607.

6.3.6 Given the above, in Applicant's view, the position so emerging at para 3.14/ 3.15 above is apt and unambiguous.

PERSONAL HEARING

7. Personal hearing in the matter was held on 28.06.2018 and Shri Gopal Mundhra, Advocate, represented the applicant. The Advocate submitted a compilation of their arguments and also undertook to submit additional documents.

7.1 During the personal hearing, when it was pointed out as to whether the application for advance ruling was maintainable for the reason that the question raised in the application was a subject matter of SCN No. 107/HEB/JC/B1/2016 dated 23.03.2017 issued under the Central Excise Act, 1944 (in the pre-GST regime) by the Office of the Principal Commissioner of Central Excise, Bangalore-1 Commissionerate, the applicant submitted that

- (a) the proviso to Section 98(2) of the CGST Act, 2017 embodies the expression "proceeding in the case of an applicant under any of the provisions of this Act" and evidently, the words "this Act" shall mean the CGST Act and not the Central Excise Act and section 1 of the CGST Act states

"(1) This Act may be called the Central Goods and Services Tax Act, 2017."

- (b) The applicant has also submitted that in the flyer issued by CBIC on "Advance Ruling Mechanism" it is specifically stated as follows:

"Application for advance ruling shall not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of CGST Act."

From the above discussion, it can be concluded that the instant application for advance ruling is maintainable.

7.2 Regarding the significance of the Section Note 3 to Section XVII, -

7.2.1. the applicant has submitted that the goods in question (filters) must be classified under chapter heading 8607 on the grounds that the goods are meant for sole and principal use for railway locomotives. Section Note 3 to Section XVII is reproduced for quick reference:

"References in Chapter 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”.

The applicant submitted that on a mere perusal of the Section Note above, the following points emerge:

An article cannot be classified as a part of an article covered under Section XVII unless the same is designed to be used “solely” or “principally” for articles of chapters falling under the said section.

A corollary to the said Section Note is that, if any heading under chapters of Section XVII covers parts of an article also falling under that Chapter then all such parts of the said article, which are meant for “sole” or “principal” use with it would be classified under the respective heading of Chapters under Section XVII, which covers parts.

7.2.2 The applicant argued that this position was also supported by the explanatory notes to HSN which states as follows:

“- 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 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 under Chapter 84, are virtually identical with those used on 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 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.”

The applicant stated that in view of the above explanatory notes, it was established that the effect of Note 3 was 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 sole or principal use as clarified in the explanatory notes to the HSN.

7.2.3 In this connection, the applicant submits that the Hon'ble Supreme Court, time and again, has held that since the Customs / Central Excise Tariffs being broadly based on HSN, the explanatory notes to the HSN are a safe guide and aid for ascertaining the true meaning of any expression used in the Act in case of any doubt and that the explanatory notes to HSN are not only of persuasive value but are entitled to greater consideration in classifying goods under Customs and Central Excise Tariff:

- (i) Collector of Central Excise, Shillong v. Wood Craft Products Ltd. [1995 (77) ELT 23 (SC)]
- (ii) Collector of Central Excise, Hyderabad v. Bakelite Hylam Ltd. [1997 (91) ELT 13 (SC)]
- (iii) Collector of Customs, Bombay v. Business Forms Ltd. Thr. O.L. [2002 (142) ELT 18 (SC)]
- (iv) O.K.Play (India) Ltd. v. Collector of Central Excise, Delhi-III (Gurgaon) [2005 (180) ELT 300 (SC)]

7.2.4 The applicant states that the filters ipso facto are not capable of generic use since they have been manufactured to cater specific design and configuration provided by the Indian Railways. In view of customized design / Specification, lack of usage other than in Railway engines of Indian Railways and absence of supply other than to Indian Railways, it is evident that the said filters are indeed manufactured solely and principally for its usage by the Indian Railways as a part of railway / tramway / locomotive and hence, qualify the test of Section Note 3 of Section XVII and analogy emerging therefrom. In such a case the subject filter merits its classification under heading 8607 as "parts of railway or tramway locomotives or rolling stock".

7.2.5 The applicant also makes reference to Section Note 1 of Section XVI, which is inter-alia governs coverage under Chapter 84 (which falls in Section XVI) provides as follows:

"1. This Section does not cover:

*....
(i) articles of Section XVII;"*

7.2.6 The applicant states that the above implies that where by virtue of specific provisions, if goods are covered in Section XVII (i.e Chapter 86), its coverage under Section XVI (i.e Chapter 84 / Heading 8421) is naturally



ruled out. Thus, Section Note 1(l) of Section XVI reinforces that the subject goods must be classified under Chapter 86 only and not under Chapter 84.

7.3 Regarding classification under Tariff heading 86.07, the applicant states that this is supported by a plethora of judicial precedents:

7.3.1 The classification of goods on the basis of sole and principal usage for Indian Railways have been determined under the specific tariff heading under 86.07 in number of cases. The said cases have been summarized as under:

Case law	Goods in question	Competing classification entry	Classification under 8607 based on sole and principal use
Commissioner of Central Excise, Bangalore v. Sri Ram Metal Works [1998 (99) ELT 616 (Tri)]	Water Tank Sanitary Ware	8312.90	Container fabricated to specific design and drawings of railways for fitment into coach and becomes part of coach
	Sanitary ware	7308.80/ 7613.30	Sanitary ware designed for fitment into coach and considered as part of coach work
Commissioner of Central Excise, Chennai v. Parikh Metal & Chemical Industries [2001 (130) ELT 712 (Tri-Chennai)]	Aluminium Water Tanks	7611	Aluminium Water tanks manufactured as per drawings and designs of Railways and intended for fitment to railway coaches classifiable under Heading 86.07 by virtue of Section Note 2
Mechanico Enterprises v. Commissioner of Central Excise, Calcutta-II [1998 (104) ELT 345 (Tri)]	Aluminium Water Tanks	7611	Aluminium Water Tanks principally and solely designed for use in railway coaches
Poona Radiators v. Collector of Central Excise [1990 (48) ELT 93 (Tri)]	Radiator Assembly and Cases	8409	Parts of radiator located with locomotive meant for cooling water which picks up heat from diesel engine - classifiable as part of Railway or Tramway locomotives or rolling stock being principally used in railway locomotives

Collector of Central Excise, Bombay v. Polyset Plastics Ltd.	Brake Bushes	Gear	3926.90	Item specifically designed for railways for use solely or principally by railways in braking system of their locomotive or rolling stock and not excluded by Section Note 2 to Section XVII
--	--------------	------	---------	---

7.3.2 In view of customized design / specification, lack of usage other than in railway engines of Indian Railways and absence of supply other than to Indian Railways, it is evident that the said filters are indeed manufactured solely and principally for its usage by the Indian Railways. The applicant states that in view of the settled jurisprudence, filters manufactured by the applicant for Indian railways merit classification under the tariff heading 86.07 which covers parts of railway/locomotives.

7.4 The applicant states that his case is squarely covered by the decision of the Hon'ble Tribunal in the case of Diesel Component Works v. CCE, Chandigarh [2000 (120) ELT 648] which deals with an identical issue of classification under the two competitive chapter heading viz. 8409 and 8607. While the assessee in the said case relied on Section Note 3 for classifying the articles under heading 8607, the departmental authorities sought to invoke provisions of Section Note 2(e) to disallow the classification under heading 8607. In the said case, while laying down its ratio, the Hon'ble Tribunal took cognizance of the provisions of Section Note 2(e) as well as Section Note 3 and held that articles in question attract classification under heading 8607 in view of the collective reading of Section Notes. The applicant has extracted the relevant portion of the said decision, which reads as under:

"The Excise Department took the stand that the goods manufactured by the appellant company are not parts of locomotives, but they are parts of machines and apparatuses falling under Chapter Heading 84 or 85. This approach was made on the basis of Note 2(e). For a proper understanding of that Note, we read the same:

"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:-

(e) Machines and apparatus of heading No.s 84.01 to 84.79, and parts thereof; articles of heading No. 84.81 or 84.82 and provided they constitute integral parts of engines or motors, articles of heading No. 84.83."



The Commissioner in the impugned order took note of the meaning or locomotive given in the Explanatory Notes to HSN..... He further noted the meaning of locomotive from Encyclopedia Britannica as a vehicle containing the power unit used on rail roads.

Even after coming to this conclusion, he found the parts of the engine to fall under Chapter Headings 84 and 85 because of Section Note 2(e) to Section XVII. After referring to Note 2, learned Commissioner failed to read Note 3 to that Section. That Note reads:-

"References in Chapter 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".

In relation to Chapter Note 3, what HSN states is:

(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 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 under Chapter 84, are virtually identical with those used on lorries of Chapter 87, and since their principal use is with lorries, such parts and accessories are classified in this Section."

So, this Section Note of HSN makes it clear that final classification is determined by its principal use. The principal use of the components manufactured by the appellant company is admittedly as parts of locomotive.

A similar issue came up for consideration before this Tribunal in the decision reported in Bajaj Auto Ltd. v. Collector of Central Excise, Pune, 1994 (74) ELT 599 where the question, unspecific parts of IC engines used in motor vehicles are parts of motor vehicles came up for consideration. The Tribunal gave the answer in the affirmative. These parts of IC engines which were the main parts in the

locomotive should also be termed as part of the locomotive and not as IC engines coming under the general category. Central Board of Excise and Customs had to consider the issue as to whether a radiator assembly supplied to Indian Railways is to be classified under sub-heading 8607.00 or otherwise. The Board observed that product radiator assembly is designed according to the specifications of the Indian Railways and is for use solely and principally with locomotives of Heading 8601 and 8602. It is clarified that the radiator assembly is not to be classified as parts of IC engines under Heading 8409. This understanding of the Central Board of Excise and Customs is discernible from circular No. 16/90 dated 11-06-1990, which still holds good. If radiator assembly manufactured for Railways for being fitted in locomotives is to be classified under Heading 8607, we do not find any justification in the department taking a view that integral parts of IC engines which form locomotive are outside Chapter Heading 86.

In light of the above discussion, we come to the conclusion that the various components manufactured by the appellant company are classifiable solely under Chapter Heading 86. The contrary view taken by the Commissioner is clearly erroneous."

7.4.5 The applicant further submitted that the present issue was squarely covered by the ratio laid down by the Hon'ble Tribunal in as much both relate to classification of goods which are indeed classifiable under Section XVII (more particularly under the relevant heading 8607) due to the stipulation of the test "sole and principal use" in terms of Section Note 3 and in case the test of "sole and principal use" fails, the classification would be as per Section Note 2(e) of Section XVII i.e. outside the ambit of Chapter 86.

7.4.6 In view of the above, the applicant has submitted that once the goods, based on the test of "sole and principal use" is classifiable under Chapter 86, the Section Note 2(e) will not affect the classification and the classification would be entirely based on Section Note 3 of Section XVII.

7.5 The applicant has submitted that the goods manufactured by him are strictly as per the designs provided by the Indian Railways. This fact is evident from the following;

- In most of the cases, the specifications and designs provided by the Indian Railways has been referred / approved by Research Design and Standards Organisation (RDSO) which is the research and development organisation under the Ministry of Railways of India. At

the time of hearing, the applicant on sample basis demonstrated as to how the Part No.8470903 supplied by the applicant to the Indian Railway can be correlated to the design document, tender, purchase order, invoice, etc.

- On these specification and design documents, it is specifically mentioned / stamped that "This document is a property of DLW/ Indian Railways and any unauthorized USE of the document will be considered illegal and DLW / Indian Railways will have right to initiate legal proceedings against the defaulters".
- The Quality Assurance (Mechanical) Directorate of RDSO also issues "Vendor Directory". Since the vendors manufacturing products for Indian Railways deals with critical items, hence the vendors are first approved by Quality Assurance (Mech.), Wagon, Carriage, Motive Power and M&C Directorates of RDSO. The applicant is an authorised vendor for manufacturing the filters and other products. The vendor directory specifically states/ mentioned the name of the applicant corresponding to the product for which the applicant is an authorised manufacturer.
- Purchase order is issued by the Indian Railways to the applicant.

Thus, the applicant states that the manufacturing process for the subject goods is based upon the design and specification received from the Indian Railways.

7.6 The products manufactured by the applicant are customized for Indian Railways. The product so manufactured and supplied by the applicant, he claims that is unique by its functions, which is compatible only with Railways or locomotives and useless for any other purpose.

8. Hence, in view of the above, the applicant requests the authority to issue a ruling that the filters manufactured by the applicant must be classified under Heading 8607 as parts of goods falling under Chapter 86 (railway / tramway and locomotive) and not elsewhere.

FINDINGS & DISCUSSION:

9. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Gopal Mundhra, Advocate and authorized representatives, during personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act

and the KGST Act 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 same provisions under the KGST Act.

9.1 The applicant is engaged in manufacture of filters for supply to Indian Railways. The filters are generally covered under Heading 8421. However owing to the fact that these filters are used "solely and principally" in railway / tramway / locomotives, the applicant claims that they need to be classified under HSN 8607.

9.2 Filtering or purifying machinery and apparatus for liquids and gases are covered under HSN Heading 8421. Chapter 84 is covered under Section XVI and Section Note 1 states as under

"1. This Section does not cover:

....

(l) Articles of Section XVII"

Hence, it is clear from the above, if the goods are covered under Section XVII, then the same are excluded from the Chapter 84.

9.3 The issue is now whether the goods in question, i.e filters are covered under Section XVII? The same is examined now. Section Notes to Section XVII, to which HSN 8607 belongs, are examined.

9.4 Section Note 2 to Section XVII reads as under

"2. The expression "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:

(e) Machines and apparatus of heading 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;"

9.5 Rail/tramway locomotives and rolling stock are classifiable under Heading 8601 to 8603. The filters in the instant case are identifiable with the goods of the Chapter as contended by the applicant. Therefore plain reading of Section Note 2, as narrated above, indicates that filters appearing in heading 8421 cannot be considered as covered under Heading 8609. The exceptions to this rule are

- (a) Radiators for articles of Section XVII;
- (b) Articles of Heading 8481 or 8482; and
- (c) Articles of Heading 8483, provided they constitute integral parts of engines and motors.

Since filters are covered under Heading 8421 and these are not covered under the above exceptions, the same are not liable to be covered under Parts of Railway or Tramway locomotives or rolling stock.

9.6 Further, Section Note 3 of Section XVII reads as under:

"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."

The first sentence clearly states that the parts which are not suitable for use solely or principally with the articles of those Chapters cannot be considered as parts under Chapter 86 to 88. To be considered as parts of an article of Chapter 86, the goods in question must be **suitable for use solely or principally with the articles of Chapter 86**. That means, for a goods to be considered as a part of Railway locomotive, it must be **"suitable for use solely or principally with Railway locomotive"**.

9.7 The seemingly conflicting stipulations of Section Notes 2 and 3 to Section XVII are central to the instant issue. We delve into the details of the aforesaid Notes to reach to an answer to the question raised by the applicant. The applicant has amply demonstrated, with the help of a plethora of documents including design approvals and testimonials from railways to prove, that the filters are meant only for railways and are for principal use in locomotives manufactured by Railways. However this does not resolve the issue. Answer lies in the analysis of the two seemingly conflicting Chapter Notes. We proceed to examine the Chapter Notes through the Explanatory Notes to the Harmonised Commodity Description & Coding System issued by the World Customs Organisation. Explanatory Notes to the Harmonised Commodity Description & Coding System are provided to ensure uniform interpretation concerning Classification of goods in Customs Tariff.

9.8 Chapter 84 is covered under Section XVI of HSN. There are five Section Notes. The first Note provides for exclusion of certain items from the scope of Chapter 84. Note 1(l) stipulates that Articles of Section XVII shall not be covered in this Section. Note 2 deals with the classification of Parts. This Note is pertinent to the issue in hand and is reproduced below for

reference:



2. *Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:*
- (a) *Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their headings;*
 - (b) *Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17.*

The Rule stipulated at 2(a) above says that if there is a part which is shown in the Tariff as an item or as a goods in any of the headings of Chapter 84 then that part shall be classified in its heading only. In other words that item will not be liable to be classified as a part of the machine under the heading of the machine. This is rightly so as the item appears as an individual entry under a particular heading, which provides the item an identity of its own even if it is a part of some specific machinery. This finds resonance in the next rule at 2(b). It provides that 'Other parts' if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind. The words 'Other Parts' here means those parts which are not specifically classified as goods. A conjoint reading thus shows that if there are parts which are not specifically named and listed under a heading but are suitable for use solely or principally with a particular kind of machine, then such parts would find classification with the machines of that kind. In summation these Rules in Note 2 provide that if there is a part which is suitable for use solely or principally with a particular kind of machine but is specifically classified under a heading by its name then that part would continue to hold its classification under the same heading and would not be classified under the heading of the machine, of which it is a part. In this regard we find that the items supplied by the applicant to Railways are Air filters for Electric locomotives, Air filters for Diesel locomotives, Car body filter and Lube oil and Fuel filter. We find that Air filters for internal combustion engines are specifically classified under heading 84213100, Oil filters under 84212300 and Air filters for electric locomotives under 84213990. Applying the rules of interpretation under Note 2 all these items, because they find specific heading under which they are placed by name, will continue to be classified under the same heading even if they are designed for specific or sole use in

some machine. They would not liable to be classified under the heading of the machine.

9.9 The Explanatory Notes give further elaboration to the provisions contained in Note 2 as follows:

(II) PARTS

(Section Note 2)

*In general, parts which are suitable for use solely or principally with particular machines or apparatus (including those of heading 84.79 or heading 85.43), or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus subject, of course, to the **exclusions** mentioned in Part(I)above. Separate heading are however, provided for:*

- (A) *Parts of the engines of heading 84.07 or 84.08 (heading 84.09).*
- (B) *Parts of machinery of headings 84.25 to 84.30 (heading 84.31).*
- (C) *Parts of textile machines of headings 84.44 to 84.47 (heading 84.48).*
- (D) *Parts of the machines of headings 84.56 to 84.65 (heading 84.66).*
- (E) *Parts of the office machines of headings 84.69 to 84.72 (heading 84.73).*
- (F) *Parts of the machines of heading 85.01 or 85.02 (85.03).*
- (G) *Parts of apparatus of headings 85.19 or 85.21 (heading 85.22).*
- (H) *Parts of apparatus of headings 85.25 to 85.28 (heading 85.29).*
- (I) *Parts of apparatus of heading 85.35, 85.36 or 85.37 (heading 85.38.)*

*The above rules do **not** apply to parts which in themselves constitute an article covered by a heading of this Section (**other than** headings 84.87 and 85.48); these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine. This applies in particular to:*

- (1) *Pumps and compressors (heading 84.13 and 84.14).*
- (2) *Filtering machinery and apparatus of heading 84.21.*
- (3)
- (4)

This shows that in general, parts which are suitable for use solely or principally with particular machines or apparatus are classified in the same heading as those machines or apparatus. However the rule very specifically further states that the above rule does **not** apply to parts which in themselves constitute an article covered by a heading of this Section and it says 'This applies in particular to (1) Pumps and compressors (heading 84.13 and 84.14), (2) Filtering machinery and apparatus of heading 84.21.....'.

These stipulations and provisions clearly lead one to conclude that the and oil filters are specifically classified as goods under Heading 8421 and

by virtue of the Section Notes and the Explanatory Notes, as enumerated above, these items would continue to be classified under Heading 8421 even if they are solely and specifically for use in railway locomotives.

9.10 We now examine the Explanatory Notes and Section Notes concerning Heading 8607. The applicant contends that their goods find classification as parts of locomotives under heading 8607. Chapter 86 is covered under Section XVII. There are five Section Notes to Section XVII. Notes 2 and 3 concern the issue at hand. Note 2 reads as follows:

- 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) ... (b) (c) ... (d).....*
 - (e) Machine or apparatus of headings 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;*

This Note states that items, which are classified under Headings from 8401 to 84.79, will not be considered as parts for classification under Section XVII even if they are identifiable as for goods of this Section. However there is another Note to the Section that merits equal consideration and it is Note 3, reproduced as follows:

- 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.*

This Note states that parts of general use will not be covered under Chapter 86. Only those parts which are specifically designed for goods of Chapter 86 will get covered as parts under the same heading as the machine itself.

9.11 The Explanatory Notes further amplify the scope and ambit of the Section Notes. Part III deals with Parts and accessories. The same is reproduced below for reference.

(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 specifically included elsewhere in the Nomenclature (see paragraph (C)).

The above provisions show that for any item to be classified as a part in Chapter 86 all the three conditions as at (a), (b) and (c) above have to be fulfilled. We now examine whether all these conditions are fulfilled in respect of the items supplied by the applicant.

9.12 The first condition to be fulfilled is that the items must not be excluded by the terms of Note 2 to Section XVII. Note 2 is already reproduced in para 9.10. The Air filters for internal combustion engines are specifically classified under heading 84213100, Oil filters under 84212300 and other Air (for electric locomotives) under 84213990. Therefore by virtue of Note 2(e) to Section XVII, these items are excluded from this Section. Therefore the very first condition is not satisfied. It is seen that the other two conditions are met. However since all the three conditions are required to be met, since the items supplied by the applicant have failed to meet the first condition, they are not liable to be classified in Chapter 86 along with the locomotives.

9.13 In the light of these discussions we once gain look at the various cases germane to the issue and cited by the applicant as indicated in para 7.3.1. In all the cases cited therein we see that the goods made specifically for railways were covered under Headings 8312, 7308, 7613, 7611, 8409 and 3926. All these headings are not hit by the provisions of Note 2. We find that Note 2 applies the restrictions in respect of items covered by Headings 84.01 to 84.79 only. Further the three conditions, as enumerated in Para 9.11, show that any parts made specifically for railways and not covered under headings 84.01 to 84.79 would invariably be covered by heading 8607. The exclusion is specifically for items under heading 84.01 to 84.79 and the item supplied by the applicant happens to fall under heading 8421.



10. In view of the foregoing, we pass the following

RULING

The filters are classifiable under HSN Heading 8421. The classification of the goods shall not alter on account of supply by distributor to Railways.


19/09/2019

(Harish Dharnia)
Member



(Dr. Ravi Prasad M.P.)
Member



Place: Bengaluru,
Date: 19.09.2019

To,
The Applicant

Copy to:

The Principal Chief Commissioner of Central Tax, Bangalore Zone,
Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

Commissioner of Central Tax, Bengaluru South, CR Building Queens Road,
Bengaluru.

The Asst. Commissioner, LGSTO-025A, Bengaluru.

Office Folder.

