

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act. Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Kay Pee Equipments Pvt Ltd
Address	46/6/2 Chatterjee Para Lane, Kadamtala, Howrah - 711101
GSTIN	19AABCK1182B1ZX
Case Number	28 of 2019
ARN	AD190619002989C
Date of application	01/07/2019
Order number and date	25/WBAAR/2019-20 dated 23/09/2019
Applicant's representative heard	Sri Dipak Chatterjee, Advocate

1. Admissibility of the Application

1.1 The Applicant, stated to be a manufacturer of railway locomotive spare parts, seeks a ruling on the classification of the items it manufactured and the applicable rate of tax. An advance ruling is admissible on this question under Section 97(2)(a) & (b) of the GST Act.

1.2 The Applicant submits that the question raised in the Application has neither been decided by nor is pending before any authority under any provisions of the GST Act. The officer concerned from the Revenue does not object to the admission of the Application.

1.3 The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Applicant submits that it manufactures locomotive spares in accordance with the drawings and specifications of the railway authority and classify the goods under the Heading 8607 of the First Schedule to the Customs Tariff Act, 1975, (hereinafter referred to as "the Tariff Act"), to which the GST Act is aligned for classification [as per Explanations (iii) and (iv) to Notification No. 01/2017- CT (Rate) dated 28/06/2017]. The Applicant refers to Memo No. 2017/RS(G)/779/2 dated 20/06/2017 of the Railway Board and Circular No. 30/4/2018-GST dated 25/01/2018 of CBIC in support of its argument. The Applicant has also provided a list of the goods supplied.

3. Observations and findings of the Authority

3.1 In the course of the personal hearing, the Applicant informs that the list of goods submitted is merely illustrative and not exhaustive. This Authority, therefore, does not attempt to answer the Applicant's question in specific terms of the basket of goods it supplies. Based on the list of goods as a point of reference, the Authority describes the method to be followed for classifying each of the articles the Applicant supplies. The list of goods supplied contain the goods that are composite in nature, consisting more than one item. However, it is learnt at the time of hearing that the list is far from exhaustive.

3.2 In Circular dated 25/01/2018 referred to above the CBIC clarifies that only the goods classifiable under Chapter 86 when supplied to the railways shall attract 5% GST with no refund of the unutilized input tax credit. Other goods, even if supplied to the railways, will attract the applicable rate for such goods. The Applicant has supplied the goods to the railways. It appears from the scrutiny of the list of the goods manufactured and the relevant purchase orders that they are components of railway locomotives. However, Notes 2 and 3 of Section XVII, which includes Chapters 86 to 89, prohibits classification of a few articles as 'parts' or 'accessories' under these Chapters. Therefore, components of railway locomotives should be classified under heading 8607 subject to the provisions of Notes 2 and 3 of Section XVII.

3.3 Note 2 of Section XVII states that "parts" and "parts and accessories" do not apply to a group of articles listed thereunder. They include inter alia parts of general use, as defined in Note 2 of Section XV, of base metal whether or not they are identifiable as for the goods of Section XVII. Note 2 to Section XV defines the expression "parts of general use" to mean (a) articles of headings 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metals, (b) springs and leaves for springs of base metal, other than clocks or watch springs, and (c) articles of headings 8301, 8302, 8308, 8310 and frames and mirrors, of base metal, of heading 8306.

3.4 Note 3 of Section XVII states that reference in Chapters 86 to 88 to 'parts' or 'accessories' applies to parts or accessories that are suitable for use solely or principally with the articles of those Chapters.

3.5 Heading 8607 inter alia refers to parts of railway locomotives (such as bogies, bissel-bogies, axels and wheels and parts thereof). A combined reading of the above notes, therefore, reveals that any parts of locomotives, unless specifically excluded by Note 2 of Section XVII should be classified under heading 8607, provided they are used solely or principally as parts of railway locomotives in terms with Note 3 of Section XVII.

3.6a For example, the Motor Suspension Unit (hereinafter MSU) for Electric Locomotives contains thirty-five items. The classification of MSU needs to be done in terms of rule 3(b) of the General Rules of Interpretation of the Tariff Act which states that "*composite goods.....made up of different components,.... which cannot be classified by reference to (a), shall be classified as if they consisted of the...component which gives them their essential character, in so far as this criterion is applicable*". In a general case, we have to search out the component, which gives MSU its essential character, out of the thirty-five components and classify accordingly. If classification cannot be done that way, we have to resort to rule 3(c) and then to rule 4. In the present case however, we do not seek the detailed characteristics/classification of the thirty-five components since the composite goods MSU is a part, meant specifically for electric locomotives and it is, therefore, held classifiable under heading 8607, as discussed in para 3.2 to 3.5.

3.6b On the other hand, classification of springs of iron and steel for the railways can serve as a good example of how to classify the goods in the Applicant's basket other than the composite ones. Heading 7320 includes springs of iron and steel for the railways. "Leaf-springs for

Railways” are classified under Tariff Item No. 73201012 and “Coil-springs for Railways” are classified under Tariff Item No. 73209010.

3.6c In terms of Rule 3(a) of the Rules for Interpretation of the Tariff Act “the heading which provides the most specific description shall be preferred to headings providing a more general description”. Since springs of iron and steel are specifically classifiable under heading 7320, the general description under heading 8607 is not applicable. Moreover, such springs of base metal are ‘parts of general use’ in terms of Note 2 of Section XV. They are, therefore, not to be classified under Chapter 86.

3.7 To sum up, the composite goods manufactured by the Applicant that are used primarily as parts of railway locomotives are to be classified under heading 8607 and taxable @ 5% GST with no refund of the unutilized input tax credit. The same classification will apply to the Applicant’s other supplies to the railways if they are used primarily as parts of railway locomotives, provided they are not excluded by Note 2 of Section XVII. Supplies other than the above two categories, if any, shall not be classified under heading 8607.

We, therefore, rule as under.

RULING

The composite goods manufactured by the Applicant that are used primarily as parts of railway locomotives are to be classified under heading 8607 and taxable @ 5% GST with no refund of the unutilized input tax credit. The same classification will apply to the Applicant’s other supplies to the railways if they are used primarily as parts of railway locomotives, provided they are not excluded by Note 2 of Section XVII. Supplies other than the above two categories, if any, shall not be classified under heading 8607.

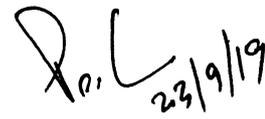
This Ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.



(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling



(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling