

THE APPELLATE AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICE TAX, UTTAR PRADESH

4, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW - 226 010.

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Appeal Order No. 15/AAAR/20/06/2021

Date: 20.06.2021

Before the Bench of:-

1. Shri Ajay Dixit,
Member, Central Tax

2. Smt. Ministhy S.,
Member, State Tax

Legal name of the Appellant	CONCORD CONTROL SYSTEMS PRIVATE LIMITED
Trade Name of the Appellant	M/s CONCORD CONTROL SYSTEMS PRIVATE LIMITED
GSTIN Number	09AAECC2602B1ZC
Registered address/Address provided while obtaining user ID	202, Garden View Apartment, 2nd Floor, 8 Rana Pratap Marg, Hazratganj, Lucknow, UP - 226001.
Order of Advance Ruling Against which the appeal is filed	ORDER NO. UP ADRG 73/2021 dated 22.02.2021 issued by the Authority for Advance Ruling, Uttar Pradesh

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UPGST Act") by M/s. Concord Control Systems Private Limited, 202, Garden View Apartment, 2nd Floor, 8 Rana Pratap Marg, Hazratganj, Lucknow, Uttar Pradesh (hereinafter referred to as the "Appellant") against the Advance Ruling Order No. UP ADRG 73/2021 dated 22.02.2021 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017, and vice versa.

1) M/s Concord Control Systems Private Limited, 202, Garden View Apartment, 2nd Floor, 8 Rana Pratap Marg, Hazratganj, Lucknow, Uttar Pradesh (the Appellant) is a registered assessee under GST having GSTIN: 09AAECC2602B1ZC.

2) The Appellant is a limited company, engaged in supply of "Bellow Duct" made of Meta Aramid/ Para Aramid Fabric with Silicon Rubber Coating on both sides, for RMPU for LHB EOG/ HOG type AC coaches of Indian Railways to RDSO department, Ministry of Railways.

3). As per appellant, the end use of the aforesaid goods is solely and principally for Indian Railways only. These Bellow Ducts are designed and manufactured as per the specifications issued by the RDSO & Department, Ministry of Railways and exclusively supplied/used in the AC coaches of Indian Railways.

4). Accordingly, the Appellant has submitted an application dated 31.08.2020, before the Authority for Advance Ruling Uttar Pradesh and sought Advance Ruling as follows : –

- (i) *What will be the HSN Code and GST Rate on supply of "Bellow Duct" to RDSO, Ministry of Railways for use in Indian Railways Coaches?*
- (ii) *Whether the supply of "Bellow Duct" to RDSO, Ministry of Railways for use in Indian Railway Coaches will fall under the HSN Code 8607 having GST rate of 12% or will it fall under HSN 8424 having GST Rate of 18%?*

5). The Authority for Advance Ruling, vide Order No. 73/2021 dated 22.02.2021 ruled that:

- i. *"Bellow Ducts" merits classification under HSN 8424 attracting GST @18% (CGST 9% & SGST 9%).*
- ii. *The supply of "Bellow Duct" to RDSO Ministry of Railways for use in Indian Railways Coaches will fall under the HSN 8424 having GST Rate of 18%.*

6) Being aggrieved with the Order No. 73/2021 dated 22.02.2021, the Appellant filed this appeal application before us.

Grounds of appeal submitted by the Appellant:-

7) The Appellant made the following grounds for filing of appeal:

7.1) Bellow Ducts in the instant case are flexible ducts/ conduits through which air flows in the AC Unit of the coaches in the Rails. Bellow Ducts

manufactured and supplied by the appellant cannot be used in any other industry and cannot be fitted into any other machinery to form its part other than the Air conditioning unit of the Railways. Whereas Chapter Heading 8424 covers mechanical appliances for dispersing, spraying or projecting only 'liquids or powders' and it does not cover disbursement of Air. Therefore, the goods in the instant case cannot be said to be Industrial Bellows.

7.2) Appellants product is not classifiable in Section XVI or Chapter 84 of Customs Tariff Act 1975. Therefore note 2(e) to section XVII is not applicable to the appellant's case.

7.3) Appellant's goods are custom built operation. These goods are manufactured as per RDSO specification and are used exclusively for Railways. They cannot be used for any other purpose. The appellant also paid reliance on several case laws to bolster their case.

8) Following the principle of natural Justice, the appellant was granted personal hearing on 14th June 2021. Sh. Nitin Jain, Director, Sh. Kapil Vaish, Chartered Accountant and Sh. Mohit Vaish, Chartered Accountant appeared in personal hearing.

During the course of personal hearing, they reiterated the submissions already made vide appeal application dated 19.03.2021. They also filed additional submissions along with some supporting documents (such as Invoices/purchase orders), gist of which is as under:-

- i. Bellow duct are used as a flexible pipe for connecting the roof mounted air condition package unit in the air conditioned coaches of Indian Railways. It should therefore, be considered as part of coach work and classifiable under chapter heading 8607. Bellow duct is manufactured on customer built basis as per RDSO specification and it cannot be used for any other purpose.
- ii. Bellow duct cannot be classified under chapter heading 8424 of Custom Tariff. As per HSN, this heading covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g. sand, powders, granules, grit or metallic abrasives) in the form of a jet, a dispersion (whether or not in drips) or a spray.

DISCUSSION AND FINDING

9) We have gone through the submissions made by the appellant and examined the detailed explanation submitted by them. We observe that the question before

Chapter Heading 8424 or under Chapter Heading 8607. In this regard, we observe that the Advance Ruling Authority has classified the impugned product under HSN 8424 whereas as per the appellant the said product merits classification under Chapter Heading 8607 of the Customs Tariff Act, 1975, as parts of railways.

10) As regard to the classification under Chapter 86, we observe that the Chapter 86 covers “*Railway or Tramway Locomotive, Rolling- Stock and Parts thereof; Railway or Tramway Track Fixtures and Fittings and Parts thereof; Mechanical (Including Electro-Mechanical) Traffic Signalling Equipment of all kinds*”. Further, as per Chapter Note 2 of Chapter 86;

“2. Heading 8607 applies, *inter alia*, to:

- (a) *axles, wheels, wheel set (running gear), metal tyres, hoops and hubs and other parts of wheel;*
- (b) *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.*”

11). Further, the exclusion clause under the Chapter 86 of the GST Tariff, is as follows:

“1. This chapter does not Cover:

- (a) *railway or tramway sleepers of wood or of concrete, or concrete guide-track sections for hovertrains (heading 4406 or 6810);*
- (b) *railway or tramway track construction material of iron or steel of heading 7302; or*
- (c) *electrical signaling, safety or traffic control equipment of heading 8503.*”

12). Accordingly, Chapter Heading 8607 reads as under:-

Chapter Heading		Description
8607		Parts of Railway or tramway locomotives or rolling -stock
	-	Bogie, bissle-bogies, axles and wheels, and parts thereof:
86071100	--	Driving bogies and bissel-bogies
86071200	--	Other bogies and bissle-bogies
860719	--	Other including parts :

86071910	---	Axles, wheels for coaches, van and wagons (rolling-stock)
86071920	---	Axles and wheels for locomotives
86071930	---	Axles boxes (lubricating or grease box)
86071990	---	Other parts of axles and wheels
	-	Brakes and parts thereof :
86072100	--	Air brakes and parts thereof
86072900	--	Other
860730	-	Hooks and other coupling devices, buffers and parts thereof :
86073010	---	Buffers and coupling devices
86073090	---	Other
	-	Other :
86079100	--	Of locomotives
860799	--	Other :
86079910	---	Parts of coach work of railway running stock
86079920	---	Parts of tramway, locomotives and running stock
86079930	---	Hydraulic shock absorbers for railway bogies
86079990	---	Other

Further, as per Chapter Note 3 of chapter 86 *“Reference 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”.*

13). Now coming to the Chapter heading 8424, we observe that it covers *“Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders, fire extinguishers, whether or not charged, spray guns and similar appliances, steam or sand blasting machines and similar jet projecting machines”.*

14). We observe that as per the appellant, the product in question is specifically designed as per specification of the product in question.

to Indian Railways only and nowhere else. We also observe that though the Advance Ruling Authority has classified the products under Chapter Heading 8424 but the fact that aforesaid product is specifically designed as per specification of Indian Railways and supplied only to the Indian Railways is not discussed by the Authority.

15). We further observe that larger bench of Hon'ble Supreme Court of India, in its judgment dated March 08, 2021, in the Civil Appeal No. 37 of 2009, Westinghouse Saxby Farmer Ltd Vs. Commissioner of Central Excise, Calcutta has observed that:

"36. What is recognized in Note 3 can be called the "suitability for use test" or "the user test". While the exclusion under Note 2(f) may be of goods which are capable of being marketed independently as electrical machinery or equipment, for use otherwise than in or as Railway signaling equipment, those parts are suitable for use solely or principally with an article in Chapter 86 cannot be taken to a different Chapter as the same would negate the very object of group classification. This is made clear by Note 3.

37. It is conceded by the Revenue that the relays manufactured by the appellant are used solely as part of the railway signaling /traffic control equipment. Therefore, the invocation of Note 2(f) in Section XVII, overlooking the "sole or principal user test" indicated in Note 3, is not justified.

Applying the same analogy, we observe that the Advance Ruling Authority was in unison with the appellant that the said "Bellow Duct" which are specifically designed for Indian Railways, would be used for coach work only and nowhere else. Accordingly, in the light of above referred Hon'ble Supreme Court Judgment we are of the opinion that the said "Bellow Ducts" merits classification under Chapter Heading 8607.

16). We further observe that in the case of Commissioner of Central Excise, Bangalore Vs. Sri Ram Metal Works {1998 (99) E.L.T. 616 (Tribunal)} the Hon'ble Tribunal has observed that:

"It is seen that the containers as fabricated, to specific design and drawing of the railways for fitment into coach and it becomes a part of the coach. In that view of the matter, assessment under 8312.90 is not sustainable. The Chapter Note 2 to the Chapter 86 clearly sets out that the coach work falls under this chapter. The term coach work, as such, has not been defined. Coach work, as such, has to be, therefore, treated in the broad sense of the work which goes to make the coach functionally complete. In the case of railways, it goes without saying that the provision of water in the coach is a necessity and the coach can be taken to be complete with the fitment of the water tank."

becomes part of the coach itself, Tariff Heading 86.07 would be more appropriate for assessment of the water tank”.

16.1) Further, applying the same analogy, in the case of Commissioner of C. Ex., Bangalore Vs. Ramsons Udyog (P) Ltd {2000 (115) E.L.T. 171 (Tribunal)} the Hon’ble Tribunal has observed that “*Sanitary wares are also designed for fitment into the coach and they would be classifiable under Heading 86.07*”.

16.2) Similarly, in the case of Sunflex Auto Parts Vs. Commissioner of C.Ex. (Appeals) Mumbai-II (2004(171) E.L.T. 188 (Tri- Mumbai), it was observed by the Hon’ble Tribunal that “*Parts made out of rubber and metal bonded together as per specification of Indian Railway and meant for use solely and exclusively for them, classification under Sub-heading 8607.00 of Central Excise Tariff.*”

16.3) Further, in the case of Mechanico Enterprises Vs. Commissioner of C.Ex, Calcutta-II, {1998 (104) E.L.T 345 (Tribunal)}, the Hon’ble Tribunal has observed that “*Aluminum water tanks, principally and solely designed for use in railway coaches- classifiable under 86.07 and not under 76.11.*”

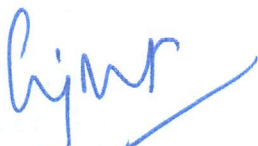
16.4) We also observe that, the Hon’ble Tribunal, in the case of Diesel Components Works Vs. Commissioner of C.Ex. Chandigarh {2000 (120) E.L.T. 648 (Tribunal)} has observed that “*Parts of internal combustion engine used exclusively for Railway locomotive classifiable by virtue of Section Note 3 of Section XVII of Schedule to the Central Excise Tariff Act, classifiable under Chapter 86 as parts of Railway locomotive and not under chapter 84 of the Central Excise Tariff Act, 1985..*”.

16.5) Similar views has been observed by the Hon’ble Tribunal, in the case of Rail Tech Vs Commissioner of Central Excise, Chandigarh {2000(120) E.L.T. 393 (Tribunal)} that “*Aluminum windows, doors and their frames manufactured by the assessee have no use or relevance in structure but manufactured on the drawings and specifications provided by the Railways for the sole use in railway coaches- Such Aluminum windows and doors are neither marketable nor can be used for any structure-classifiable under Heading 86.07 of the Central Excise Tariff Act, 1985 as parts of Railways and not under 7610.10.*”

By applying same analogy in the instant case also, we observe that the “Bellow Ducts”, specially meant for the Railways, as per the design and layout provided by them, are integral part of the coach and rightly classifiable under chapter heading 8607 of the Customs Tariff Act, 1975.

RULING

The classification of the "Bellow Ducts", manufactured as per the specific design and layout provided by the Railways and supplied to the Indian Railways only and no-where else, falls under Chapter Heading 8607 of the Customs Tariff Act, 1975.



(Ajay Dixit)
Member AAAR
CGST



(Ministhy S)
Member AAAR
SGST

To,

M/s Concord Control Systems Private Limited,
202, Garden View Apartment,
2nd Floor, 8 Rana Pratap Marg,
Hazratganj, Lucknow

APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTAR PRADESH

Copy to –

1. The Additional Commissioner, CGST & Central Excise, Audit Commissionerate, Lucknow, Member, Authority for Advance Ruling.
- ✓ 2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.
3. The Commissioner, CGST & CX, Lucknow Commissionerate, Uttar Pradesh.
4. Through the Additional Commissioner, Commercial Tax, Lucknow-5, Uttar Pradesh to jurisdictional tax assessing officers.