

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. 16/AAAR/ 28/06/2021

Date: 28.06.2021

Before the Bench of:-

- 1. Shri Ajay Dixit,**
Member, Central Tax
- 2. Smt. Ministhy S.,**
Member, State Tax

Legal name of the Appellant	M/S PRAG POLYMERS
Trade Name of the Appellant	M/S PRAG POLYMERS
GSTIN Number	09AAVFP5915G1ZO
Registered address/Address provided while obtaining user ID	B-1 & A-40/41, TALKATORA INDUSTRIAL ESTATE, LUCKNOW 226011.
Order of Advance Ruling Against which the appeal is filed	ORDER NO. UP ADRG 75/2021 dated 19.03.2021 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. Prag Polymers, B-1 & A-40/41, Talkatora Industrial Estate, Lucknow 226011, Uttar Pradesh (hereinafter referred to as the “appellant”) against the Advance Ruling Order No. UP ADRG 75/2021 dated 19.03.2021 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.

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Brief Facts of the Case

1) The appellant is a partnership firm operating as M/S Prag Polymers, B-1 & A-40/41, Talkatora Industrial Estate, Lucknow and registered with GST department under GSTIN: 09AAVFP5915G1ZO.

2) As per the appellant, they are manufacturer and supplier of locomotive parts and coach (coach work/Rolling stock) parts, as per drawings and specifications approved/ provided by RDSO.

3). As per appellant, they are licensed & approved by Indian Railways for manufacturing of parts of Rolling Stock and Coach work as per design & drawings developed by RDSO. They have also been approved by RDSO for their Capacity-cum capability Assessment in order to manufacture & supply of Switch Board Cabinet for LHB Type AC EOG Coach consisting of all the power/control switchgear for coach lighting, Air Conditioning, Pantry, Pump Control, Sanitary system and public address system etc of Railways (Coach Work) to their RDSO Specification No. RDSO/PE/SPEC/AC/0184-2015. This product is to be manufactured strictly as mandated by Railways (RDSO) specification, according to the approved QAP and drawings of Indian Railways.

4). Accordingly, the appellant has submitted an application dated 22.12.2020, before the Authority for Advance Ruling Uttar Pradesh and sought Advance Ruling as follows : –

(i) *What will be the classification of coach work like switch board cabinet for railway coaches and locomotives.”*

5). The Authority for Advance Ruling, vide Order No. 75/2021 dated 19.03.2021, ruled that:

i. *“Switch Board Cabinet” merits classification under HSN 8537”.*

6) Being aggrieved with the Order No. 75/2021 dated 19.03.2021, 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) As per tariff interpretation product ought to be classified under tariff HSN 86 as it is exclusively made as per specification provided by RDSO and

other than the Indian Railways.

7.2) In order to justify the classification of the product under HSN 8537, the Advance Ruling Authority has wrongly applied and understood the circular No. 30/04/2018-GST dated 25/01/2018 issued by the Government of India, Ministry of Finance for the purposes of classification of goods specially when the circular does not make any specification/description with regard to the classification of goods but it only specifies the rate of tax on the goods supplied to the Indian Railways for its use in the coach termed as coach work.

7.3) Even as per the maintenance Manual for LHB Coach it has defined & clarified that the parts and spares used in Coaches shall be defined as Parts of Coach Work. Accordingly, the best suitable classification for Switch Board Cabinet for LHB Type AC EOG Coach consisting of all the power/control switchgear for coach lighting, Air Conditioning, Pantry, Pump Control, Sanitary system and public address system etc would be of Tariff heading 8607. Further, the appellant also paid reliance on several case laws to bolster their claim.

8) Following the principle of natural Justice, the appellant was granted personal hearing on 14th June 2021. Sh. T.K. Srivastava, Advocate/Authorised representative of the appellant appeared in personal hearing.

During the course of personal hearing, he reiterated the submissions already made vide appeal application dated 26.04.2021. He had nothing more to add.

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 us to decide is whether the product i.e. "Switch Board Cabinet" would fall under the Chapter Heading 8537 or under Chapter Heading 8607. In this regard, we observe that the Advance Ruling Authority has classified the impugned product under HSN 8537 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 8537, we observe that it covers *“Boards, Panels, Consoles, Desks, Cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for Electrical control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of Heading 8517”.*

14). We observe that as per the appellant, the product in question is specifically designed as per specifications of Indian Railways and they supply it to Indian Railways only and nowhere else. We also observe that though the Advance Ruling Authority has classified the products under Chapter Heading 8537 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.

Here, we observe that though the Advance Ruling Authority differs with the appellant in the classification of the product in question, however the Authority was in unison with the appellant that the said "Switch Board Cabinet" 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 and applying the same analogy, we are of the opinion that the said "Switch Board Cabinet" 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. More so, when 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."*

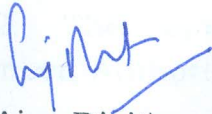
16.4) We also observe that, the Hon'ble Tribunal, in the case of Diesel Components Works Vs. Commissioner of C.Ex. Chandigarh {2000 (120) E.L.T. 648 (Tribunal)} has observed that *"Parts of internal combustion engine used exclusively for Railway locomotive classifiable by virtue of Section Note 3 of 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 "Switch Board Cabinet", 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 "Switch Board Cabinet", 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 Prag Polymers,
B-1 & A-40/41,
Talkatora Industrial Estate,
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 II Uttar Pradesh to jurisdictional tax assessing officers.