

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G.Venkatesh, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K.Latha., M.Sc., (Agri), Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3.

ORDER No. 25/AAR/2022 DATED: 30.06.2022

GSTIN Number, if any / User id		33AABCT1828R1Z0
Legal Name of Applicant		TRIDENT PNEUMATICS (P) LTD
Registered Address/Address provided while obtaining user id		5/232, K.N.G Pudur Road, Somayampalayam P.O, Tamil Nadu, Coimbatore-641108
Details of Application		GST ARA- 01 Application Sl.No. 23/2022/ARA dated: 12.04.2022
Concerned Officer		Centre: Coimbatore Commissionerate. State: Velandipalayam Assessment Circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory/Manufacturing
B	Description (in Brief)	The applicant is an approved vendor of the Indian railways and is presently supplying a range of products. The applicant has received orders for the manufacture and supply of Air Spring Failure Indication Cum Brake Application (FIBA) device to the Railways.
Issue/s on which advance ruling required		Classification of any goods

Question(s) on which advance ruling is required	Whether Air Spring Failure Indication cum Brake Application (FIBA) proposed to be manufactured and supplied solely and principally for use in Railways can be classified under “86072100- Air Brakes and parts thereof” of Section XVII?
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service

TRIDENT PNEUMATICS (P) LTD, 5/232, K.N.G Pudur Road, Somayampalayam P.O, Tamil Nadu, Coimbatore-641108 (hereinafter called the Applicant) are registered under GST with GSTIN 33AABCT1828R1Z0. The applicant has sought Advance Ruling on the following question:

Whether Air Spring Failure Indication cum Brake Application (FIBA) proposed to be manufactured and supplied solely and principally for use in Railways can be classified under “86072100- Air Brakes and parts thereof” of Section XVII?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The Applicant has stated that they are an approved vendor of the Indian Railways and is presently supplying a range of products. They have received orders for the manufacture and supply of Air Spring Failure Indication Cum Brake Application (FIBA) device to the Railways. They propose to Manufacture FIBA

based on design specifications provided by Indian Railways. The product so supplied is not a catalogue product and is customized for Indian railways on the parameters of Form, Fitment and function. In other words, this product is manufactured "solely and principally" for its application in the Indian Railways and is not supplied to any other customer. They have stated that the FIBA device is an application to indicate the location of air spring failure and apply brake on Indian Railways coaches (ICF & LHB type). The suspension air springs on the coaches are filled with compressed air at 6 barg. Any damage to air spring can cause the pressure to reduce, thereby affecting the suspension system on the coach. If the pressure in an air spring reduces to less than 1.1 barg, the air in the brake pipe gets vented, causing the brakes to apply on the vehicle. The location of failure (i.e. on which coach the air spring has been damaged) is indicated by a hissing sound (from a whistle), along with a red marking in an indicator. After the air spring is repaired, the indicator turns to green, showing that the air spring is back to working condition. Since supplies to Railways is time and again subjected to various interpretations and disputes by all stakeholders, they deemed fit to seek a ruling on the subject matter of classification to avoid ambiguity.

2.2 On interpretation of law, the applicant has submitted the following facts:

FIBA is neither excluded by the terms of Note 2 to Section XVII not specifically included elsewhere in the Nomenclature

- FIBA is a failure indicator and brake application system used in the AIR Brakes of Indian Railways that works based on Mechanical Energy. The venting brake pipe air is used to actuate visual indicators, and hissing sound generator, which aids the engine crew to easily identify the location of the failed air spring
- The above product does not find mention, based on its function/name/trade parlance, in any of the headings listed under Note 2 of Section XVII and therefore qualifies for classification under Section XVII
- Additionally, FIBA is also not specifically included elsewhere in the nomenclature

Is FIBA is suitable for use "Solely & Principally" with "Air brake" of Chapter 86

- The FIBA proposed to be supplied is not a catalogue product and is customized for Indian railways on the parameters of Form, Fitment and Function based on the detailed design specification provided by Indian railways.

- In other words, FIBA is proposed to be manufactured “ Solely & Principally” for its application in the Air brakes for Indian railways and have no alternate usage possible even hypothetically
- The said product is not supplied to any other customer other than Railways
- Section note (3) of Section XVII provided, 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.
- The applicant’s product is a fit example for the same, wherein FIBA is meant exclusively for Air Brakes of railways and have no generic use, hence the same is classifiable under Chapter 86 of section XVII under heading “86072100-Air brakes and parts thereof”
- The applicant has placed reliance of the decision of the Hon’ble Supreme Court in the case of Westinghouse Saxby Farmer Ltd [2021 (3) EMI 291 SC]

3.1 The applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 15.06.2022. The Authorised Representative (AR) Ms.T.M.Malavika appeared for the hearing and reiterated the submissions made. The CGST Member asked the AR to submit their stand on the issue of classification of FIBA being in dispute under SCN No.16/2022 and their stand on the admissibility of application while the issue is under dispute.

3.2 The applicant vide their email dated 21.06.2022 submitted that they have filed Advance Ruling Application online on 07.11.2020 and manually with the Superintendent of GST & Central Excise, Coimbatore I-B Range on 11.02.2021. They have stated that the demand cum show cause notice u/s 74 of CGST and TNGST Act 2017 read with IGST Act 2017 was issued on 28.03.2022. Therefore, the question raised in the application was not pending in any proceeding in the case of the Applicant at the time of filing the application on 7th November 2020. They have further stated that the classification of FIBA is not disputed as per SCN No. 16/2022, wherein the DGGI has only stated that FIBA can continue to be classified under CTH 8607 based on the function.

4. The Centre Jurisdictional Authority, Coimbatore Commissionerate, who has administrative control over the applicant has submitted that vide order in original

No. 01/2020-CE (AC) dated 28.08.2020, department has classified the applicant's product compressed Air Dryer under Chapter 84213990 and demanded differential duty of Rs.3,66,295/- the same has been upheld by the Commissioner (Appeals), Coimbatore. Accordingly, the applicant paid the confirmed demanded amount of Rs.3,66,295/- along with interest of Rs.2,18,662/-. Further, the DGGI, Coimbatore Zonal Unit, has issued a SCN No. 16/2022 GST dated 28.03.2022 requiring the applicant to classify all products supplied to Railways under chapter 84 instead of Chapter 86 and demanded about Rs.3 Crore being the differential duty. They have furnished the copy of SCN for reference.

5. The State Jurisdictional Authority has submitted that there are no pending proceedings in the applicant's case in their jurisdiction.

6.1 We have carefully examined the submissions of the applicant and the remarks of the Centre Jurisdictional officer. The applicant has received orders for the manufacture and supply of Air Spring Failure cum Brake Application (FIBA) device to the Railways. The applicant has sought ruling on the following question:

Whether Air Spring Failure Indication cum Brake Application (FIBA) proposed to be manufactured and supplied solely and principally for use in Railways can be classified under "86072100- Air Brakes and parts thereof" of Section XVII?

6.2 We first address the issue of admissibility of the application under Section 97/98 of the CGST Act. The question raised is on the classification of FIBA, supplied by the applicant to the Indian Railways and therefore covered under Section 97 (2) of the Act. Section 98 of the CGST Act 2017 /TNGST Act 2017 provides the procedure to be followed on receipt of the application and the first proviso to Section 98(2) states that the application is not to be admitted when the question raised in the application is already pending or decided in any proceedings in the applicant's case. The same is extracted under for ease of reference:

98 (2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application 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 this Act:

The Center Jurisdictional Officer, in their submissions, has stated that the classification of the supplies to Indian Railways by the applicant was under investigation by DGGI and a Show Cause notice No. 16/2022 –GST dated 28.03.2022 stands issued.

6.3 Applicant was asked to substantiate the admissibility of the application during the hearing. The applicant vide their email dated 21.06.2022 has stated that the Advance Ruling application was filed online on 07.11.2020 and manually with the Center Jurisdiction range on 11.02.2021. They have stated that the demand cum show cause notice u/s 74 of CGST and TNGST Act 2017 read with IGST Act 2017 was issued on 28.03.2022, much after their filing of application and has claimed that the question raised was not pending in any proceeding at the time of filing the application.

6.4 As per Rule 107A of the CGST Rules, 2017 readwith Circular No.25/25/2017 dated 21.12.2017, the application seeking Advance Ruling is to be filed manually with the State Authority for Advance Ruling until the module is made available on the common portal. The online accessibility to the common portal was not available to the registry until recently. On receipt of the accessibility, the Registry, issued a Notice to the applicant on 04.04.2022 and thereafter the applicant filed the application manually on 13.04.2022.

6.5 We find that the DGGSTI, Coimbatore based on the intelligence that the applicant are supplying parts to Indian Railways classifying all the products uniformly under Chapter 86, while most supplies should have been classified under respective chapter 84/85, have visited the applicant factory on 02.05.2019 and has recorded Statements & drawn Mahazar on the same day. Further DGGI vide letter dated 24.06.2019 has addressed the applicant to pay the short payment arising out of the wrong classification and the applicant has replied on 04.07.2019 as can be seen in the SCN No. 16/2022-GST dated 28.03.2022. Further, in the said notice from para 3.9 it is seen that a letter was addressed to the applicant seeking the details of clearance of goods @ 5% for the period from 01.07.2017 to 31.12.2019, which was furnished by them vide e-mail dated 11.06.2020 and on

continuing communications, the applicant has provided the technical write-up for FIBA on 02.02.2022. The Investigation Agency has analysed the classification of FIBA (as can be seen in para 5.9.2 and 5.14 of the SCN), which is the clarification sought before us, as a part of the Proceedings initiated by them with the visit to the applicant factory on 02.05.2019, based on the Intelligence collected by them. The applicant has filed the present application in the common portal only on 07.11.2020 and has filed manually with the center Jurisdiction office on 11.02.2021 while the proceedings on the 'Classification of the goods supplied to Indian Railways' were initiated through Inspection/Mahazar and recording of Voluntary Statements on 02.05.2019 and further communications asking the applicant to pay the short payment made by them.

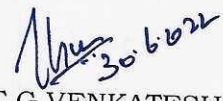
6.6 The first proviso to Section 98(2) of the Act, states that where the question raised is pending or decided in any proceedings under this Act, the same is not eligible for admission before this authority. It is clear that classification of FIBA, manufactured and supplied to Indian Railways by the applicant has been a part of the investigation proceedings under Authorisation for Inspection dated 01.05.2019 issued under Section 67 of the Act which establishes that the question raised before us is a part of the proceedings of DGGSTI and therefore squarely covered under proviso to Section 98(2) of the Act. For these reasons, the application is not admissible before this authority for ruling on merits and accordingly not admitted.

7. In view of the above, we rule as under:

RULING

The application is not admitted under first proviso to Section 98(2) of the CGST/TNGST Act 2017, for the reasons stated in Para 6 above.


Smt. K.LATHA
Member (SGST)


Shri. T.G. VENKATESH
Member (CGST)



To

TRIDENT PNEUMATICS (P) LTD,

5/232, K.N.G Pudur Road,

Somayampalayam P.O,

Tamil Nadu,

Coimbatore-641108 **// BY SPEED POST WITH ACK.DUE //**

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes/Member,
IInd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Principal Commissioner of GST & Central Excise,
Coimbatore Commissionerate, 6/7, A.T.D. Street,
Race Course, Coimbatore – 641 018.
4. Assistant Commissioner(ST),
Velandipalayam Assessment Circle,
Commercial Taxes Annexure Building,
First Floor, Dr Balasundaram Road,
Coimbatore 641 018.
5. Master File/ Spare – 2.

