

**PUNJAB AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICE TAX, BHUPINDRA ROADPATIALA  
147001, PUNJAB**

**ORDER NO. AAR/GST/PB/016...**

**dated 16.08.2022**

**Present:**

1. Ms. Varinder Kaur, Additional Commissioner of Central Tax (Central Tax)
2. Mr. Viraj Shyamkarn Tidke, Additional Commissioner of State Tax-1 (State Tax)

**Application Details:**

Name and GSTIN of the applicant(s)	M/s ESS ESS KAY ENGINEERING COMPANY PRIVATE LIMITED 03AAACE5057G1Z1
Address	FACTORY AREA, KAPURTHALA-144601
Details of application	AAR/GST/PB/038 dated 13/10/2021
Concerned Officer	ACST, Kapurthala. CGST Division, Kapurthala
Nature of activity (present/proposed) in respect of which advance ruling sought.	
A Category	Manufacturing (AC Parts/ Railway Components)
B Description in brief	The applicant is engaged in manufacturing of roof mounted AC package unit for fitment in LHB/ LGB.
Issue(s) on which advance ruling is required.	(i) Classification of any goods or services or both.
Question (s) on which advance ruling is required.	(i) Whether roof mounted Air-conditioning unit especially for use in railway coaches (manufactured as per railway design) classifiable under HSN-8415 1090- IGST @ 28% or under HSN 8607 99 - IGST @ 18% as parts of Railway Coaches/ Locomotives?
Date of Personal Hearing	18.02.2022 & 05.08.2022
Present for applicant	S. S. Chauhan (Manager) Sudhir Malhotra (Advocate)

1. M/s ESS KAY ENGINEERING COMPANY PRIVATE LIMITED, as detailed in the table above and hereinafter referred to as 'applicant', had submitted an application for advance ruling in form GST ARA-01 dated 13.10.2021 seeking advance ruling on the questions detailed in the table above.

**2. Proceedings Under Section 98 of CGST/PGST Act:**

In this regard personal hearings were held on 18.02.2022 before the Advance Ruling Authority, Punjab. On 18.02.2022 applicant submitted purchase orders submitted to applicant by its customers. Jurisdictional Authority also submitted written comments on the issue which are placed on file. Another hearing was scheduled on 05.08.2022. On the scheduled date none present on the behalf of applicant. Reply through email dated 06.08.2022 received vide which applicant submitted that they had already submitted all their submissions on the issue and has nothing more to add .

**3. Question on which Advance Ruling is sought:**

The applicant has sought advance ruling on the classification of roof mounted Air-conditioning unit especially for use in railway coaches (manufactured as per railway design)i.e whether they are classifiable under HSN- 8415 1090- IGST @ 28% or under HSN 8607 99 - IGST @ 18% as parts of Railway Coaches/ Locomotives?

**4. Eligibility of The Application For Advance Ruling:**

The Section 97(2) of the Central Goods and Services Tax Act, 2017, read with Section 97(2) of the Punjab Goods and Services Tax Act, 2017, provides for the issues on which advance ruling can be sought.

97 (2) The question on which the advance ruling is sought under this Act, shall be in respect of,

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

It is observed that the query of the applicant in para III is related to the question of roof mounted Air-conditioning unit especially for use in railway coaches (manufactured as per railway design) classifiable under HSN- 8415 1090- IGST @ 28% or under HSN 8607 99 – IGST @ 18% falls under the ambit of Section 97(2) (a) - classification of any goods or services or both. Hence, the application of the applicant is eligible for a ruling by the Punjab State Advance Ruling Authority

## **5. SUBMISSIONS BY THE APPLICANT: -**

### **5.1 The applicant has made the following submissions at the time of filing of advance ruling application: -**

The applicant is inter-alia engaged in manufacture of "Roof Mounted Air-conditioning unit for Passenger Coaches of Railway as per RDSO specification and drawing" (in short impugned goods). The impugned goods are exclusively for use in railway coaches, it has no marketability except use in railway coaches. It is an integral / essential part of Air-conditioned railway coaches and accordingly classifiable under HSN 8607 99 of Customs Tariff Act as made applicable to GST vide Notification No. 1/2017 CT (R) dated 28.06.2017

### **The Note 3 to section XVII of Customs Tariff Act reads as under: -**

#### **Note 3 to section XVII**

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."

The Explanatory HSN Notes to Note 3 to Section XVII reads as under: -

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

The impugned goods are solely and principally for use in the manufacture of passenger coaches of railways.

**5.2 The applicant has cited the following judgements along with submission.**

- ✓ DIESEL COMPONENTS WORKS Vs. COMMISSIONER OF C.EX., CHANDIGARH (IN THE CEGAT, COURT NO. I, NEW DELHI), 2000(120) E.L.T. 648 (Tribunal)
- ✓ S. AUTO INTERNATIONAL LTD. Versus COLLECTOR OF C. EX., CHANDIGARH 2003 (152) E.L.T. 3 (S.C.)
- ✓ RAIL TECH Versus COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH 2000 (120) E.L.T. 393 (Tribunal)
- ✓ MECHANICO ENTERPRISES Versus COMMISSIONER OF C.EX., CALCUTTA-II, 1998 (104) E.L.T. 345 (Tribunal)
- ✓ COMMISSIONER OF C. EX., BANGALORE, Versus SRI RAM METAL WORKS, 1998 (99) E.L.T. 616 (Tribunal)
- ✓ COMMISSIONER OF C. EX., BANGALORE Versus RAMSONS UDYOG (P) LTD. 2000 (115) E.L.T. 171 (Tribunal)

**6. SUBMISSIONS BY THE JURISDICTIONAL AUTHORITY: -**

The jurisdictional Assistant Commissioner State Tax, Kapurthala vide letter dated 17.02.2022 has furnished his comments on the application as below:

That Roof mounted AC package unit for fitment LHB/ LGB coaches manufactured by the above mentioned firm comes under Tariff Head-8607 99 as parts of railway coaches/locomotive. On the other hand, Tariff Head- 8415 relates to Air Conditioning machines, comprising a Motor-Driven Fan and Elements for changing the temperature and Humidity, including those machines in which the humidity cannot be separately regulated.

Similar question decided on dated 14.02.2020 by Authority for Advance Ruling-Uttar Pradesh went in favour of Appellant and against the Revenue in which the said "**Roof Mounted AC Package Unit**" was held to be fall under

Chapter 86.07 of the GST Tariff. Moreover, Supreme Court Judgement delivered on 08.03.2021 in Civil Appeal No 37 of 2009 in the case **WESTINGHOUSE SAXBY FARMER LTD. VS COMMR.OF CENTRAL EXCISE CALCUTTA** deciding similar question also went in favour of Appellant and against the Revenue.

The jurisdictional CGST Authorities were also asked to submit the comments but no reply was received from them.

#### **7. DISCUSSIONS AND FINDINGS: -**

7.1 We have gone through the application and submissions made by the applicant.

7.2 The question raised by the applicant involves classification of air conditioning machines manufactured and supplied by them to Indian Railways for use in the railway coaches. The applicant has contended that the goods viz. Roof Mounted Air-Conditioning unit manufactured and supplied by them, for use in railway coaches merits classification under HSN Code 8607 of Customs Tariff Act attracting levy of GST @18% (CGST @9% and PGST @9%) instead of HSN Code 8415 of Customs Tariff Act, attracting levy of GST @28% (CGST @14% and PGST @14%). In their support, the applicant has relied upon various Chapter notes/Section notes and some judicial decisions. For classifying the goods under HSN 8607, the applicant has specifically relied upon Note 3 to Section XVII of the Customs Tariff Act read with Explanatory HSN Notes to Note 3 to Section XVII (Criterion of sole or principal use) and has primarily contended that since the goods manufactured by them are solely and principally for use in the manufacture of passenger coaches of railways, they are specifically classifiable under HSN 8607. Section Note 3 to Section XVII, inter-alia, prescribes 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. 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.”

We have gone through the prevailing GST law in this regard and find that the GST law prescribes that in case of any dispute regarding classification, it is the Customs Tariff, HSN and the Explanatory Notes to HSN that would determine the classification. Before proceeding further, we must go through HSN 8607 and 8415.

HSN Code 8607 reads as under:

**8607 PARTS OF RAILWAY OR TRAMWAY LOCOMOTIVES OR ROLLING-STOCK**

- Bogies, bissel-bogies, axles and wheels, and parts thereof :
- 8607 11 00 -- Driving bogies and bissel-bogies
- 8607 12 00 -- Other bogies and bissel-bogies
- 8607 19 -- Other including parts:
- 8607 19 10 --- Axles, wheels for coaches, van and wagons (rolling-stock)
- 8607 19 20 --- Axles and wheels for locomotives
- 8607 19 30 --- Axle boxes (lubricating or grease box)
- 8607 19 90 --- Other parts of axles and wheels
- Brakes and parts thereof:
- 8607 21 00 -- Air brakes and parts thereof
- 8607 29 00 -- Other
- 8607 30 -- Hooks and other coupling devices, buffers and parts thereof:
- 8607 30 10 --- Buffers and coupling devices
- 8607 30 90 --- Other
- Other:
- 8607 91 00 -- Of locomotives
- 8607 99 -- Other:
- 8607 99 10 --- Parts of coach work of railway running stock
- 8607 99 20 --- Parts of tramway, locomotives and running stock
- 8607 99 30 --- Hydraulic shock absorbers for railway bogies
- 8607 99 90 --- Other

The Heading 8415 reads as below:

**8415 AIR CONDITIONING MACHINES, COMPRISING A MOTOR DRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE MACHINES IN WHICH THE HUMIDITY CANNOT BE SEPARATELY REGULATED**

- 8415 10 -- Of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained or "split-system":
- 8415 10 10 --- Split system
- 8415 10 90 --- Other
- 8415 20 -- Of a kind used for persons in motor vehicles:
- 8415 20 10 --- For buses
- 8415 20 90 --- Other
- Other:
- 8415 81 -- Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):
- 8415 81 10 --- Split air-conditioner two tonnes and above
- 8415 81 90 --- Other
- 8415 82 -- Other, incorporating a refrigerating unit:
- 8415 82 10 --- Split air-conditioner two tonnes and above
- 8415 82 90 --- Other
- 8415 83 -- Not incorporating a refrigerating unit:
- 8415 83 10 --- Split air-conditioner two tonnes and above
- 8415 83 90 --- Other
- 8415 90 00 - Parts

7.3 In order to determine correct classification of goods manufactured by the applicant, it is necessary to go through Chapter Notes to chapter 84 & 86 of the Customs Tariff Act.

7.4 Chapter note to Heading 84.15 as given in Explanatory notes, inter alia reads as under:

“This heading covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. The machine may also comprise elements for the purification of air.

They are used for air conditioning offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring specific atmospheric conditions (e.g. in the textile, paper, tobacco or food industries).”

Further, Explanatory Notes to Chapter 84 under Heading ‘General’ and sub heading ‘(B) General Arrangement of the Chapter’ reads as under:

- (1) .....
- (2) Headings 84.02 to 84.24 cover the other machines and apparatus which are classified mainly by reference to their function, and regardless of the field of industry in which they are used.

7.5 From the above, it can be inferred that Roof Mounted Air Conditioning unit manufactured and supplied by the applicant is squarely covered under HSN 84.15 irrespective of field of industry in which they are used.

7.6 Further, Chapter Note 2 to Chapter 86 of the Customs Tariff states as under:

- “2. Heading 8607 applies, inter alia, to:
- (a) axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels;
  - (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.”

7.7 On perusal of chapter note 2 of chapter 86, it can be observed that ‘Roof Mounted Air-conditioning units’ are not covered specifically under HSN 8607. As the word ‘inter alia’ is mentioned in chapter note 2, it is necessary to go through the Explanatory Notes to HSN 8607. Note to heading 8607 as given in the explanatory notes to HSN is reproduced below –

This heading covers parts of railway or tramway locomotives or rolling-stock, provided the parts fulfill both the following conditions:

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;
- (ii) They must not be excluded by the provisions of the Notes to Section XVII.

7.8 From the above, it is evident that for a part to be covered under HSN 8607, the above-said two conditions need to be fulfilled in toto. The second condition prescribed is that the parts will get classified under HSN 8607 only if they are not excluded by the provisions of the Notes to Section XVII.

7.9 Section Note 2 to *ibid* Section XVII provides that:

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.

7.10 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.

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

(A) Parts and accessories excluded by Note 2 to Section XVII.

This Note excludes the following parts and accessories, whether or not they are identifiable as for the articles of this Section:

(1)------(2)------(3)------(4)

(5) Machines and mechanical appliances, and parts thereof, of headings 84.01 to 84.79, for example:

(a) ----- (b)----- (c)----- (d)----- (e)

(f) Air-conditioning machines (heading 84.15).

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.

1. 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 above. Further, Note 2 read with Explanatory Notes specifically excludes 'Air Conditioning Machines (heading 84.15)' from falling under HSN of Section XVII and more so, from HSN 8607. Therefore, by virtue of Note 2(e) to Section XVII read with Explanatory Notes, 'Air Conditioning Machines (heading 84.15)' are excluded from this Section. Therefore, the very first condition is not satisfied in the case of applicant. Further, the three conditions, as enumerated above, show that any parts made specifically for railways and not covered under headings 84.01 to 84.79

- (c) Moreover, three conditions prescribed for any item to be classified as a part in Chapter 86 are also not fulfilled in the instant case, as discussed supra.

### RULING

The Roof Mounted Air-Conditioning unit manufactured by the applicant are classifiable under HSN Heading 8415 and the classification of the goods shall not alter on account of supply by them to Railways.

8. An Appeal against this order lies with the Punjab Appellate Authority for advance rulings, Chandigarh, in terms of Section 99 and Section 100 of the CGST Act, 2017 and Section 99 and Section 100 of the PGST Act, 2017 within a period of thirty days from the date of communication of this order.

**Note:** The provisions of CGST Act, 2017 and PGST Act, 2017 are almost same except a few provisions. Unless specific reference is made to such dissimilar provisions in the two acts, reference to provisions of CGST Act, 2017 would mean a reference to the same provisions of PGST Act, 2017 and vice versa.

*Viraj*  
16/8/22  
Viraj Shayamkarn Tidke  
Member, SGST

*Varinder Kaur*  
16/8/22  
Varinder Kaur  
Member, CGST

Attested to be true Copy  
*February 23/8*  
ACST-cum-NODAL OFFICER  
For Advance Ruling, Punjab

To

M/s Ess Ess Kay Engineering Company Pvt. Ltd.  
Factory Area,  
Kapurthala-144601

No.PB/AAR/2022/195-129 Dated: 23/8/2022

Copy to:

- ✓ The Special Secretary, Goods and Service Tax Council, 5<sup>th</sup> floor, Tower-II, Jeevan Bharti Bldg., Connaught Place, New Delhi w.r.t. F. No. 193/Advance Ruling/ GSTC/2017 dated 01.05.2018.
- The Commissioner of State Taxes, Punjab.
- The Commissioner, CGST, Ludhiana, GST Bhawan, Rishi Nagar, Ludhiana.
- The Commissioner, CGST, Jalandhar, camp office GST Bhawan, Rishi Nagar, Ludhiana.
- The Assistant Commissioner of State Taxes, Kapurthala.