KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJIYA THERIGE KARYALAYA
KALIDASA ROAD, GANDHINAGAR, BANGALORE 560009

(Constituted under Section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bengaluru, dated 25-04-2018)

BEFORE THE BENCH OF
Shri. D.P. NAGENDRA KUMAR, Member
Shri. M.S. SRIKAR, Member

ORDER NO:-KAR/AAAR/07/ 2019-20 **Dated:-10-01-2020.**

Name and address of the appellant	M/s Parker Hannifin India Pvt Ltd, Plot No 320 P2, Near APC Circle, Bommasandra Jigani Link Road, Industrial Area, Jigani Hobli, Anekal Taluk, Karnataka 560105
GSTIN or User ID	29AAACP6820G1ZF
Advance Ruling Order against which appeal is filed	Advance Ruling No KAR ADRG 54/2019 Dated:19.09.2019
Date of filing appeal	25.10.2019
Represented by	Shri. Abhishek Naik, Consultant
Jurisdictional Authority – Centre	Commissioner, Central GST South Commissionerate
Jurisdictional Authority – State	LGSTO—075, Bengaluru
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details.	Yes. Payment of Rs. 20,000/- made vide Challan CIN RBIS19102900347887 dated 23.10.2019

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017 and KGST Act, 2017) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar

provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

The present appeal has been filed under Section 100 of the CGST Act, 2017 and the KGST Act, 2017 by M/s Parker Hannifin India Pvt Ltd, Plot No 320 P2, Near APC Circle, Bommasandra Jigani Link Road, Industrial Area, Jigani Hobli, Anekal Taluk, Karnataka 560105 (hereinafter referred to as 'Appellant') against the Advance Ruling No KAR ADRG 54/2019 dated 19.09.2019 pronounced by the Karnataka Authority for Advance Ruling.

Brief facts of the case:

1. Parker Hannifin India Pvt. Ltd. is engaged in the manufacture of oil/ fuel/ air filters for various industrial sectors such as Railways, automobiles etc. One of the products manufactured by the Appellant is oil/ fuel/ air filters whichare tailor-made for the Indian Railways based on the specifications provided by the Indian Railways. In certain cases, the purchase order for the filters is placed on the Appellant by an intermediary who may then further supply the same to the Indian Railways.

2. The Appellant sought an advance ruling before the Karnataka Authority for Advance Ruling in respect of the following questions:

a) Whether filters manufactured solely and principally for use by / in Indian Railways and supplied directly to Indian Railways are classifiable under HSN Heading 8421 or under HSN Heading 8607 of the Customs Tariff?

b) Whether the aforementioned classification of filter will change if the identical goods are supplied to a distributor instead of Indian Railways directly, and the distributor in turn effects supply to Indian Railways?

3. The Karnataka Authority for Advance Ruling vide its order No KAR ADRG 54/2019 dated 19th September 2019 examined the issue in the light of the Section Notes to Section XVI and XVII and upon applying the rules of interpretation in the Section Notes, held that the Filters are classifiable under HSN Heading 8421 and that the classification of the goods shall not alter on account of supply by distributor to Railways.

4. Being aggrieved by the above order of the Karnataka Authority for Advance Ruling, the Appellant has preferred this appeal before us on the following grounds:

4.1. They submitted that the AAR has ignored the directions contained in Circular no. 17/90-CX.4 dated 9 July 1990.The said circular refers to the discussions that took place in the South Zone Tariff-cum-General Conference of Collectors held in the year 1990, wherein in the context of certain transmission elements, it was clarified that **where goods have been specifically designed for use with vehicles of Section XVII, they would be covered as parts of vehicles under the appropriate Headings 8607 or 8708 or 8714**. Applying the analogy to the Subject Filters, the Appellant submits that since these goods have been specifically designed for use in railway locomotives of Section XVII, they would be appropriately covered under Heading 86.07; that Circulars issued by the Board are binding on the revenue authorities. This has been emphasized time and time again by the Supreme Court in various decisions, including in ***State of Kerala vs. Kurian Abraham Private Limited*** [2008 (224) ELT 354 (SC)]. The Appellant further submits that the AAR, in the Impugned Advance Ruling, has not discussed the Circular and the directions flowing from it.

4.2. They also submitted that explanation (iii) to Notification no. 1/2017-Central Tax (Rate) dated 28 June 2017, provides for classification of goods in terms of the First Schedule of the Customs Tariff Act, 1975 ("hereinafter referred to as "**CTA**"). Further, by way of explanation (iv) to the said notification, it has been clarified that the rules for the interpretation of the First Schedule to the CTA, including the Section and Chapter Notes and the General Explanatory Notes, shall apply for the purpose of classification under GST. It is also submitted that erstwhile Central Excise Tariff ("hereinafter referred to as "**CET**") was aligned with the Customs Tariff and that there was no difference in the respective description of Tariffs entries i.e. Heading 84.21 and Heading 86.07 under the CTA and CET, or any Section or Chapter Notes applicable thereto. Thus, classification interpretation provided under the Circular under the erstwhile CET remains equally applicable under the GST.

4.3. The Appellant reiterated that the Subject Filters are manufactured strictly as per the designs provided by the Indian Railways; that the filters are meant either for fuel-based locomotives or those which are electrically operated. The manufacturing process for the subject filters is based upon design and specification received from the Indian Railways; that they are customized for form, fitment and function, and consequently cannot be used by any

other entity. They relied on Section Note 3 to Section XVII of the First Schedule to the CTA which deals with *Vehicles, Aircraft, Vessels and Associated Transport Equipment*, wherein it is clear that an article cannot be classified as a part of an article covered under Section XVII (Chapters 86 to 88), unless the same is designed to be used 'solely' or 'principally' for articles of chapters falling under the said Section; that all other articles, being 'parts' or 'accessories' would merit classification under other chapters of the tariff, but not in Section XVII (Chapters 86 to 88).

4.4. The Appellant referred to the Harmonized System of Nomenclature (hereinafter referred to as "HSN") Explanatory Notes to Section XVII to argue that in case a part appears to *prima facie* fall under one or more Sections and also under Section XVII, the final classification is to be determined based on its principal use. Therefore, the subject filters, being designed to be used solely and principally for locomotives falling under Chapter 86, satisfy the test of Section Note 3 to Section XVII, and are thus required to be classified under the said Chapter itself, specifically under Heading 86.07 covering *Parts of Railway Locomotives*. This is notwithstanding the fact that the subject filters may have a *prima facie* probable classification elsewhere in the tariff. The Appellant submitted that the AAR has erred by not according primacy to Section Note 3 of Section XVII and consequently not classifying the Subject Filters according to their sole or principal use.

4.5. The Appellant submitted that the proposition that goods meant solely or principally for use in railway locomotives are to be classified under Chapter 86, specifically under Heading 86.07 as *Parts of Railway Locomotives*, has been affirmed time and time again by numerous Tribunals. The Appellant submits that Tribunals have consistently held that **in case an article, being a part of railway locomotive, appears to be *prima facie* covered under any other heading of the tariff, the test of 'sole or principal use' is to be applied and classification of the said article is to be made under Chapter 86, specifically under Heading 86.07**. The Appellant relied upon the decision of the **CESTAT**in the case of***Rail Tech vs. Commissioner of Central Excise Chandigarh***[2000 (120) E.L.T. 393 (Tribunal)], the facts of which are identical to the present case. In the said case, the CESTAT held that the aluminum doors and windows manufactured by the assessee according to the design and specifications provided by the Railways would merit classification under Heading 86.07 and not under any other heading, based on their sole use in railway locomotives. The aforesaid decision was followed in the case of ***Hindustan Welding Engineers vs. CCE, Calcutta***[2001

(133) ELT 770 (Tri.-Kolkata)] wherein it was held that doors, windows and frames of iron, steel and aluminum are correctly classifiable under Heading 86.07 and not under any other heading in Chapters 73 or 76, owing to their sole and principal use in railway locomotives.

4.6. The Appellant also relied on the following decisions wherein classification under Heading 86.07 was held to be applicable when the goods in question were meant solely and principally for use in railway locomotives:

a) ***Chief Workshop Manager, Central Railway vs. Commissioner of Central Excise, Nashik*** [2018-TIOL-3398-CESTAT-MUM], wherein C. I. Rollers and Separators used by the Railways were sought to be classified under Chapter 84 by the revenue authorities. However, owing to the fact that the goods were specifically used by the railways and the same were fitted to specially designed wagons, the CESTAT held that the goods were correctly classifiable under Chapter 86.

b) ***Sunflex Auto Parts vs. CCE, Mumbai – II***[2004 (171) ELT 188 (Tri. – Mumbai)], wherein rubber metal silent block was sought to be classified under Heading 40.16 by the revenue authorities. However, owing to the fact that the same was manufactured solely and exclusively for its usage in the railways, the same was held by the CESTAT to be classifiable under Heading 86.07.

c) ***Uni Deritend ltd. vs. CCE, Mumbai-III***[2014 (313) ELT 423 (Tri. – Mumbai)], wherein castings of nickel and nickel-based alloys were sought to be classified under Heading 75.08 by the assessee.However, owing to its usage in the railway and failure on the part of the assessee to prove any alternative usage, the same were held by the CESTAT to be classifiable under Heading 86.07.

d) ***Nagpur Engg. Co. Ltd. vs. CCE***[1993 (63) ELT 699 (Tribunal)], wherein the CESTAT observed that a'brake block' is fixed to a brake glove and together it is used as a brake in the locomotive. Accordingly, the CESTAT held that brake block was more appropriately classifiable under the Heading 86.07.

4.7. The Appellant submitted that, the AAR has erred in not following settled judicial positions, while issuing the impugned Advance Ruling.

4.8. The Appellant further submitted that the AAR, in the impugned Advance Ruling, has heavily relied upon Section Note 2(e) to Section XVII in order to justify classification of the subject filters under Heading 84.21. They submitted that the provisions of Section Note 2(e)

to Section XVII are ostensibly generic in nature and is required to be read in conjunction with the specific test laid down in Section Note 3. As such, the two provisions [Section Note 2(e) and Section Note 3] seem to contradict each other, and a reconciliation could be attempted on the basis of the following observations:

a) Note 3 lays down a specific test of 'sole or principal use', and therefore cannot be superseded by generic Note 2;

b) Note 2 appears to exclude parts and accessories which may have multiple applications and uses, other than their application or use with articles of Section XVII;

c) Articles of Section XVII (*inter alia* covering Heading 86.07) are excluded from Section XVI (*inter alia* covering Heading 84.21) by Section Note 1(l) to Section XVI, which states as follows:

"1. This Section does not cover:

...

(l) articles of Section XVII;"

4.9. In view of the above, they contended that where, by virtue of specific provisions, if goods are covered in Section XVII (i.e. Chapter 86; Heading 86.07) their coverage under Section XVI (i.e. Chapter 84; Heading 84.21) is automatically ruled out; that they had already factually established that the principal use of the subject filters is with articles of Chapter 86 i.e. as parts thereof and also that the goods are so custom made that they cannot be put to an alternate use at all. Accordingly, the correct classification of the subject filters should be under the heading that covers parts of locomotives i.e. under Heading 86.07. They further submitted that the provisions of Note 2(e) are rendered inapplicable where the goods are squarely covered by operation of Note 3 of Section XVII i.e. owing to their sole and principal use; that the AAR, in the impugned Advance Ruling, has erred in overlooking the specific test laid down in Section Note 3 in favour of generic provisions of Section Note 2(e) to Section XVII. They relied on the decision of the CESTAT in the case of ***Diesel Components Works vs. CCE, Chandigarh***[2000 (120) ELT 648] wherein, articles of Heading 84.09 were proposed to be classified under Heading 86.07 by relying upon Section Note 3 to Section XVII owing to their sole and principal usage in the railways. However, the revenue authorities sought to invoke provisions of Note 2(e) to Section XVII to disallow the said classification and instead sought to classify the goods under Headings 84.09 or

84.83.However, the CESTAT took cognizance of the provisions of both, Section Note 2(e) as well as Section Note 3 to Section XVII and held that articles in question attract classification under Heading 86.07 in view of the collective reading of the Section Notes and more importantly, the test of 'sole or principal use'. In view of the above, they submitted that Section Note 2(e) fails to exclude the subject filters from the coverage of Section XVII and owing to their sole and principal usage with railway locomotives and the said filters can appropriately be classified under Heading 86.07 and not under Heading 84.21 as ruled by the AAR.

4.10. The Appellant referred to the Advance Ruling issued by the Authority for Advance Rulings, Uttar Pradesh in the case of ***M/s G. S. Products*** [Order no. 31 dated 3 June 2019]. The assessee therein is also engaged in manufacture and supply of filters to Indian Railways. The Authority for Advance Ruling, Uttar Pradesh, relying upon Note 3 to Section XVII, affirmed classification of the filters manufactured by the assessee therein under Heading 86.07. The Appellant submits that the facts of the aforesaid case are exactly the same as the Appellant's present case and therefore, the aforesaid decision further strengthens the argument that the subject filters are most appropriately classifiable under Heading 86.07.

4.11. The Appellant submitted that even if for the sake of argument, the Section Note 2(e) and Section Note 3 to Section XVII merit equal consideration leading to a state of indecision, for classification of goods, the general rules of interpretation of the Harmonized System of Nomenclature prescribe that goods should be classifiable under the heading occurring last in the numerical order. The above is in terms of rule 3(c) of the General Rules for the Interpretation of Import Tariff. Further, even if for the sake of argument, Section Note 2(e) and Section Note 3 to Section XVII are seen competing and irreconcilable, and hence, repugnant to each other, settled rules of statutory interpretation also suggest that the last provision (i.e. Section Note 3) must prevail over the other (i.e. Section Note 2(e)). The principle finds absolute support in the case of ***K.M. Nanavati vs. State of Bombay*** [AIR 1961 SC 112]. The Supreme Court has repeatedly approved the said principle and held that the last provision stands later in the enactment and thus, speaks the last intention of the makers of the statute and therefore, must be given effect to. Therefore, applying the aforesaid principles in the present case, the Appellant contended that the subject filters should be classified according to Note 3 of Section XVII i.e. under Heading 86.07 by applying the test of 'sole or principal use'. The Appellant submits that the AAR has erred in not according due credence

to the aforesaid settled principles of interpretation, as well as to rule 3(c) of the General Rules for the Interpretation of Import Tariff.

PERSONAL HEARING:

5. The Appellant were called for a personal hearing on 3rd December 2019 and were represented by their consultant Shri. Abhishek Naik. He submitted that the Appellant is a subsidiary of US Company; that they are engaged in the manufacture of a wide range of products for the industrial and aerospace markets. One of their products is 'Filters' which is manufactured as a generic product for the domestic market and manufactured specifically for the Indian Railways as a customized product. Their contention is that the classification of the 'filters; manufactured specifically and solely for Indian Railways is under Heading 86.07 as against the view taken by the AAR that the said product merits classification under Heading 84.21. The Consultant drew reference to the provisions of the relevant Section Notes which were mentioned in the impugned order and also took support of the various decisions of the Supreme Court and the Tribunal to buttress their case that the said 'filters' are rightly classifiable under Heading 86.07. He also made a reference to the ruling dated 3rd June 2019, passed by the UP Authority for Advance Ruling in the case of M/s G.S Products (a direct competitor of the Appellant), wherein the Filter Elements and Air Filter Assembly manufactured for the India Railways has been classified under 86.07 as parts of Diesel Electric Locomotive. In view of the aforesaid he pleaded that the ruling passed by the Karnataka Authority for Advance Ruling in their case may be set aside and the classification of the filters be held as under Heading 86.07.

DISCUSSION & FINDINGS:

6. We have gone through the records of the case and taken into consideration the submissions made by the Appellant in their grounds of appeal and at the time of the personal hearing.The Appellant manufactures different types of filters including Air Filters for Electric locomotive, Air Filters for Diesel locomotive, Carbody filter, Lube oil and fuel filters which are manufactured exclusively for use by the Indian Railways (hereinafter referred to as 'subject Filters'). We have gone through the technical literature furnished by the Appellant regarding the use of the subject Filters in railway locomotives. The products, manufactured are filtering apparatus which are customized specifically to filter the air/fuel in electric/diesel

locomotives thereby preventing malfunction of the railway locomotives. The subject Filters are manufactured strictly as per the technical specifications, drawings and designs provided by the Indian Railways and are peculiar products meant for the exclusive use in locomotive engines of Railways and has no other application / function and cannot be used elsewhere.

7. The dispute in the present case is whether the subject filters manufactured by the Appellant exclusively for use by the Indian Railways would merit classification under Heading 84.21 – as filtering or purifying machinery/apparatus or under Heading 86.07 – as parts of railway locomotives. For ease of reference, it would be beneficial to refer to both these Chapter headings of the Customs Tariff.

Heading	**Heading description as per Customs Tariff**	**Description as per GST Rate Notification**	**Schedule / entry no**	**GST Rate**
84.21	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases	Schedule III-entry No 322	18%
86.07	Parts of railway or tramway locomotives or rolling-stock	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof.	Schedule I/entry No 241 (from 1st July 2017 to 30th Sept 2019) Schedule II/entry No 205G (from 1st Oct 2019)	5% 12%

8. The above two Chapter Headings being considered for the classification of the 'subject Filters' manufactured exclusively for Indian Railways, fall under two different Sections of the Customs Tariff, viz. Section XVI (Heading 84.21) and Section XVII (Heading 86.07). The Customs Tariff is structured into Sections, Chapters, Headings and sub-headings. Each Section and Chapter under the Tariff is accompanied by the notes known as "Section Notes" and "Chapter Notes" which play an important part in classification. They are normally referred to as "Legal Notes". The function of these notes is to define the scope of

each headings, chapters and sections precisely. These are given at the beginning of the Section or Chapter respectively which governs the concerned Section or Chapter as the case may be. In the case of Section Notes, they are applicable to each Chapter which is part of a specific section of the Tariff. The Section notes explain the scope of chapters / headings, etc. Since these notes are part of the Tariff, they have full statutory backing. The HSN and the Section/Chapter Notes and Explanatory Notes thereto, on which the Customs Tariff is modeled, has been repeatedly acknowledged by the Courts to be a safe guide for resolution of disputes with regard to classification under the Customs Tariff Act.

9. Section XVI pertains to *"Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof; Sound Recorders and Reproducers, Television image and Sound Recorders and Reproducers; and Parts and accessories of such articles."* Chapters 84 and 85 form part of this Section. Section XVII pertains to *"Vehicles, Aircraft, Vessels and Associated Transport Equipment"*. Chapters 86 to 89 form part of this Section.

10. It is the case of the Appellant that, since the subject Filters are manufactured for the sole and principal use of the Railways, they merit classification under Chapter Heading 86.07 of the Tariff as Parts of Railway locomotives. While it might be logical to presume that an article manufactured specifically for locomotives and not having any use elsewhere, would be considered as parts of locomotives, it would not be the correct way to classify an article. Rule 1 of the General Rules of Interpretation of the HSN exhorts us to classify "... according to the terms of the headings and anyrelative section or chapter notes...." (Emphasis supplied). The notes to Section XVII provide guidance on classification of 'parts' and 'accessories' of goods falling under the Chapters of the said Section. Note 2(e) to Section XVII states that the expression 'parts and 'parts and accessories' do not apply to the machines or apparatus of heading 84.01 to 84.79, whether or not they are identifiable as for the goods of this Section. As mentioned earlier, filtering apparatus is covered under heading 84.21 of the Tariff. By virtue of Note 2(e) to Section XVII, the filtering apparatus falling under Chapter Heading 84.21 will not be considered as 'parts' or 'parts and accessories' even if they are identifiable as being for railway locomotives.

11. The Appellant has argued that Note 2(e) to Section XVII is generic in nature and primacy should be given to Section Note 3 to Section XVII which determines the classification based on the sole and principal use. We have gone through Note 3 to Section

XVII which states that, the 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. It is the claim of the Appellant that the reference to 'Parts" in Chapter Heading 86.07 applies only to those parts which are suitable for use solely or principally with railway locomotives and since the subject Filters manufactured by them are solely and principally for the railways, the provisions of Note 3 to Section XVII would squarely apply. This argument is not acceptable.

12. On a conjoint reading of Section Notes 2 and 3 to Section XVII, what emerges is that:

a) Section Note 2 to Section XVII excludes certain items mentioned at (a) to (l) from being covered under Section XVII as 'parts' or 'parts and accessories' even though they are identifiable as being for the goods under the Chapters of this Section. Note 2(e) excludes machines and apparatus of heading 8401 to 8479 from being considered as 'parts' or 'parts and accessories'.

b) Section Note 3 to Section XVII states that the references in Chapters 86 to 88 to 'parts' or 'accessories' applies only to those parts and accessories which are used solely and principally with the articles of those Chapters. In the case of Chapter Heading 86.07 – "Parts of Railway locomotives", the reference to 'parts' will apply only to those parts which are used solely and principally with the railway locomotives.

It is evident from the above Section Notes that certain articles are excluded from being considered as parts of goods under the Chapters of this Section, by virtue of Note 2. Articles which are not excluded by virtue of Note 2, can qualify to be a 'part' or 'accessory' only if it is suitable for use solely or principally with the goods of this Section. In other words, in order to apply the principle of Note 3 to Section XVII while classifying a 'part', it is essential that said items should not be excluded from Section XVII by virtue of Note 2. Only after it is ensured that the 'part' is not excluded by Note 2, can the 'sole or principal use' concept in Note 3 be applied. The final test for classifying a part under Section XVII will no doubt be on the basis of the sole and principal use with the goods of the Chapters in the said Section. However, the contention of the Appellant that Note 2 contradicts the specific test of 'sole or principal use' laid down in Note 3 and hence Note 3 is to be given primacy over Note 2 is not a correct interpretation. There is no contradiction between Section Notes 2 and 3 to Section XVII. The test laid down in Note 3 is to be applied only after it is ensured that the article is not excluded by virtue of Note 2. Section Notes 2 and 3 are to be read harmoniously in

sequential order. Section Note 3 cannot be read in isolation or accorded primacy as contended by the Appellant.

13. Our view is supported by the General Notes to Section XVII on Parts and Accessories wherein it is stated that Chapters 86 to 88 of Section XVII each provide for the classification of parts and accessories of the vehicles, aircraft or equipment concerned. However, it should be noted that these heading 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; and

b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88; and

c) They must not be more specifically included elsewhere in the Nomenclature.

In the instant case, we find that the subject Filters falling under Chapter Heading 84.21 is excluded from being considered as a part for the goods under Section XVII by virtue of Note 2(e) to Section XVII, thereby failing to fulfill the very first condition above. Further, the subject Filters are also specifically included in Chapter Heading 84.21 as filtering apparatus and hence the third condition of the above General Notes is also not fulfilled. The only condition that is satisfied is that the subject Filters are suitable for use solely and principally with the articles of Chapter 86. Since all three conditions are required to be fulfilled, which is not so in the instant case, the subject Filters cannot be considered as 'Parts of railway locomotives' and therefore, cannot be classified under Chapter Heading 86.07. The correct classification of the subject Filters would be under Chapter Heading 84.21 of the Tariff.

14. The Appellant has relied on several decisions of the Tribunal to buttress their case that the subject Filters are to be classified as parts of railway locomotives based on the sole and principal use concept. We have gone through the following case laws relied upon by the Appellant and observe as follows:

a) In the case of Rail Tech vs CCE, Chandigarh reported in 2000(120)ELT 393 (Tri), the issue before the Tribunal was whether Aluminum windows, doors and their frames manufactured by the assessee was classifiable under 86.07 as parts of railways or under 7610.10 as contended by the assessee. The Tribunal held that the aluminum windows and doors and parts thereof manufactured by the assessee were not capable of being used as aluminum structures in order to merit classification under Heading 76.10; that the goods have no application or utility elsewhere than in railway coaches;

that the goods were manufactured for railway coaches on the designs and specifications provided by the Railway. Therefore, it was held that the goods were classifiable under 86.07 as parts of railway. We opine that the ratio of this decision has no relevance to the present case since at the outset, the goods under Section 7610.10 were not excluded in terms of Note 2 to Section XVII. Secondly, the Tribunal has held that Heading 7610.10 applies only to those doors, windows and their frames which have relevance and use in structures and since the assessee was manufacturing the said aluminum doors and windows not for use in structures but for railway coaches, they will be classifiable under 86.07 as parts of railways. The facts being different, this decision does not help in advancing the case of the Appellant before us.

b) The case of Hindustan Welding Engineers vs CCE, Calcutta-II reported is 2001 (133) ELT 770 (Tri-Kolkata) is also not helpful for the Appellant as the said decision has been passed by relying on the Rail Tech case supra. Hence, for the reasons stated earlier, this decision also is not being considered.

c) In the case of PoonaRadiators vs CCE, reported in 1990 (48) ELT 93 (Tri), the issue of classification of Radiator Assembly and Radiator cores supplied to Indian Railways was being considered – whether under 86.07 as per the assessee or under 84.09 as per the Department. The Tribunal after taking note of Section Note 2(e) and 3 to Section XVII as well as the Explanatory Notes, held that the radiator is designed to be fitted on the diesel locomotive body itself and not on the diesel engine. Therefore they do not appear to be parts of the diesel engines. Even though the radiators are meant for cooling the water which picks up heat from the diesel engine, being located in the locomotive, they are appropriately classified as parts of locomotive under 86.07. This case is distinguishable from the present case in as much as, in the case before the Tribunal, the item Radiator Assembly was proposed to be classified under 84.09 which heading pertained to parts suitable for use with I C Engines. Since it was proved that the Radiator Assembly was not fitted on the diesel engines but on the body of the locomotive itself, the Tribunal had held that it will be part of the locomotive and not part of the diesel engine. In the instant case, the Heading 84.21 covers filtering apparatus for liquids and gases. This is a specific tariff heading and is not based on where the filtering apparatus is used unlike goods of Heading 84.09. Therefore, when considering whether the subject Filters are parts of locomotives under 86.07, one has to adopt the guiding principles of the Section Notes

and Explanatory Notes to Section XVII which we have discussed in the foregoing paras.

d) The case of CCE, Bombay vs Polyset Plastics Ltd (2001 (129) ELT 259 (Tri-Del)) also does not help the cause of the Appellant since in that case, the issue before the Tribunal was, whether bushes manufactured for the Railways will get excluded by virtue of Note 2(a) to Section XVII. The assessee in that case had contended that the bushes in dispute have similar application as washers and since Note 2(a) to Section XVII mentions "Joints, washers or the like of any material", the said Note 2(a) is attracted and hence they are excluded from the coverage of Chapter 86. The Tribunal observed that bushes are neither technically identical or similar to washers nor in the commerce and trade, they are looked upon as the same or similar items; that bushes are distinct and treated distinctly from washers and the two are not used interchangeably. Since bushes are not hit by Note 2 to Section XVII and are specifically designed as per the orders of the railways, for use solely or principally by the railways, they fulfill both the conditions under the explanatory notes and hence rightly classifiable under 86.07. This case on the other hand supports our view that Section Notes 2 and 3 to Section XVII must be read together and Note 3 cannot be read in isolation as contended by this Appellant.

15. The Appellant has tried to make a strong argument that the final classification is to be determined by the principal use, by relying on the decision of the Tribunal in the case of Diesel Component Works vs CCE, Chandigarh reported in 2000 (120) ELT 648 (Tribunal). In the said case, the Tribunal has held that the effect of Note 3 to Section XVII is 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. We find that this decision has been rendered without taking note of the General Notes on Parts and Accessories given in Section XVII wherein it is stipulated that classification of parts and accessories of goods under Chapters 86 to 88 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; and

b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88; and

c) They must not be more specifically included elsewhere in the Nomenclature.

It appears that the provisions of the above General Notes have eluded the attention of the Tribunal and hence the decision is *per incuriam*.

16. The Appellant has also advanced his case by strongly relying on the CBEC Circular No 17/90 CX-4 dated 09.07.1990 issued in the context of transmission elements. We have gone through the said Circular which relates to the classification of transmission elements like Gears, Gearings, Gear Trains, Gear boxes, etc. which have been specifically designed for use with vehicles of Section XVII. The Circular was issued based on the discussions held at the Tariff Conference wherein, after taking note of Section Note 2(e) to Section XVII, the Conference recommended that transmission elements may not be classifiable under Heading 84.83 when they have been specifically designed for use with vehicle of Section XVII. We find that this Circular has no relevance to this case since the discussion in the Circular is only with specific reference to transmission elements falling under Chapter Heading 84.83 and is not a circular for classification of parts of goods of Section XVII in general. We also find that, notwithstanding the issuance of the Circular No 17/90-CX-4 dated 09.07.1990, the Tribunal in the case of CCE, Chennai vs Best Cast Pvt Ltd (2001 (127) ELT 730) has, after considering the Sections Notes to Section XVII, held that parts of gear boxes and clutches were classifiable under heading 84.83 as these items could not be said to be articles of Section XVII (parts of motor vehicles). The civil appeal filed against the Tribunal's decision in Best Cast case was dismissed by the Apex courtas reported in 2001 (133) E.L.T. A.258 (S.C).

17. The Appellant has also relied on the ruling given by the Uttar Pradesh Authority for Advance Ruling in the case of M/s G.S Products wherein it was held that the correct classification of the Filter elements and Air Filter Assembly manufactured as the specification and design of the Indian Railways, will be Heading 86.07. The Authority for Advance Ruling is constituted under the respective State/Union Territory Act and not under the Central Act and hence every ruling pronounced by the Authority will be applicable only within the jurisdiction of the concerned state or union territory. Further the ruling given by the Authority is binding only on the applicant who has sought the advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State. Therefore, the ruling given by the UP Authority for Advance Ruling is not applicable to any other taxable person within the State of Uttar Pradesh leave alone a taxable person outside the

State of Uttar Pradesh. Notwithstanding the above, we find that the ruling given by the Authority at Uttar Pradesh has not examined the provisions of Note 2(e) to Section XVII and the General Notes on Parts and Accessories in Section XVII while determining the classification of Air Filters. For the above reasons we are not inclined to give any weightage to the ruling given in the case of M/s G.S Products.

18. Before we conclude we draw attention to the Circular No 80/54/2018-GST dated 31.12.2018 issued by the CBIC regarding the classification of certain goods. Para 12 of the said Circular deals with the classification of Turbo Charger supplied to Railways. It has been clarified that Turbo Charger is specifically classified under Chapter Heading 8414.80.30 and continues to remain in this code irrespective of its use by Railways. This substantiates our stand that goods which are excluded by virtue of Note 2(e) to Section XVII and specifically classified elsewhere in the nomenclature cannot be classified as parts of railway locomotives under Chapter 86, irrespective of their use by Railways.

19. In view of the foregoing discussions, we hold that the subject Filters manufactured by the Appellant solely and principally for use by the Indian Railways and supplied directly to the Indian Railways are classifiable under Chapter Heading 84.21 of the Customs Tariff. The classification of the subject goods will not change if the same are supplied to a distributor instead of Indian Railways and the distributor in turn affects the supply to the Indian Railways.

20. Accordingly we pass the following order:

ORDER

We uphold the order No.KAR ADRG 54/2019 dated 19.09.2019 passed by the Advance Ruling Authority and appeal filed by the appellant M/s Parker Hannifin India Pvt. Ltd, stands dismissed on all counts.

10-1-20.

(D.P. NAGENDRA KUMAR)
Member
Karnataka Appellate Authority

(M.S. SRIKAR) 10.1.2020
Member
Karnataka Appellate Authority