L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

10 MARCH 2021

GST

Classification of parts used solely and principally in railways

UPDATE NO. 3 OF 2021

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BREIF FACTS

- The appellant / company was engaged in the manufacture of product, namely, 'relays' which is used as a part of the railway signaling system.
- The appellant had submitted classification list for approval to the Assistant Collector, Central Excise in August, 1993 and the classification of relay was approved by the concerned authority under Chapter Heading 8608 of the First Schedule to the Central Excise Tariff Act, 1985.
- However, the Department disputed the classification of relays under Chapter Heading 8608 and contended that the same should be classified under Chapter Heading 8536.
- The classification of the product under Chapter Heading 8536 was confirmed by the Tribunal at Kolkata*.
- The decision of the Tribunal was challenged before the Supreme Court by the appellant.
- As per the appellant, the relays are manufactured and supplied by them only to railways as part of the signaling equipment and therefore, the same would be classified under Chapter Heading 8608.

RELEVANT CHAPTER HEADINGS

Chapter Heading 8536	Chapter Heading 8608
Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, **relays,** fuses, surge suppressors, plugs sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000volts; connectors for optical fibres, optical fibre bundles or cables	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) **signalling safety or traffic control equipment for railway,** tramways, roads, inland waterways, parking facilities, port installation or air-fields; parts of the foregoing

* reported at 2008 VIL 145 CESTAT KOL CE)

DECISION OF THE SUPREME COURT

- The Supreme Court referred to Section Note 3 of Section XVII and held that those parts which are suitable for use solely or principally with an article of Chapter 86 cannot be taken to a different Chapter as the same would negate the very objective of group classification.

- The Court held that since the Revenue conceded to the fact that the relays manufactured by the appellant were used solely as part of the railway signaling / traffic control equipment and the classification of the product was approved by the Department under Chapter Heading 8608, the product should be classified under Chapter Heading 8608.

- Further, the Court held that since the Department had concluded the classification of the goods to be under Chapter 85 by virtue of the exclusion in Section Note 2(f) of Section XVII, there was fundamental fallacy in the reasoning of the Department to apply Rule 3(a) of the General Rules of Interpretation as the said Rule can be applied only in cases where there are two entries that merit consideration for classification.

Key Takeaways

- In order to determine classification of parts and accessories of goods under Section XVII, the exclusion in Section Note 2 to Section XVII should be read along with Section Note 3 (principal and sole use) and the goods (parts and accessories) should not be more specifically included elsewhere in the Nomenclature*. However, this aspect of fulfilling all the three conditions (Note 2, Note 3 and no other Nomenclature) has not been considered in the decision.

- ***Classification of other goods cleared to Railways:*** The decision of the Supreme Court will have an impact on the classification under Central Excise of all parts and accessories (such as static convertors, circuit breakers, connectors, battery chargers and panels) that are manufactured and supplied solely and principally to be used in railways.

- ***Classification under GST:*** Since there are corresponding entries under the GST Rate Notification, the decision would impact the classification of similar goods under GST. Accordingly, lower rate of GST (12%**) can be said to be applicable on parts of railways or railway track fixtures, mechanical signaling, safety or traffic control equipments, etc., even if the same are excluded specifically under Section Note 2.

- ***Classification of automobile parts:*** The decision would also impact the classification and rate of GST applicable on parts of automobiles that are manufactured and supplied to automobile industry.

[*Westinghouse Saxby Farmer Ltd.* v. *Commissioner of Central Excise, Calcutta* – Judgement dated 8 March 2021 in Civil Appeal No. 37 of 2009, Supreme Court]

*HSN Explanatory Notes to Section XVII
** With effect from 1 October 2019

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