

**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 B.Senthilvelavan, IRS, Additional Commissioner/Member,  
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai 34  
and
2. Thiru KurinjiSelvaan V.S., M.Sc. (Agri.), M.B.A., Joint Commissioner (ST) / Member  
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

**ORDER No. 38 /ARA/2020 Dated: 18.12.2020**

GSTIN Number, if any / User id		33AAGCS8525B1ZL
Legal Name of Applicant		M/s Faiveley Transport Rail Technologies India Limited
Trade Name of the applicant		M/s Faiveley Transport Rail Technologies India Limited
Registered Address / Address provided while obtaining user id		Post Box No.39, Haritha, Hosur, Tamilnadu-635109
Details of Application		ARA Application Sl.No 02/2020 dated 22.01.2020
Concerned Officer		State : Assistant Commissioner, Hosur South Assessment Circle Centre : Salem Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Manufacturing
B	Description (in brief)	
Issue/s on which advance ruling required		Classification of goods
Question(s) on which advance ruling is required		Whether Wheel Side Protection Control Unit(WSP) and Pantograph supplied by the applicant, should be classified as “parts of railway or tramway locomotives or rolling stock, and parts thereof” (Viz under Heading 8607) for the purposes of levy of GST in terms of Section 9(1) of Central Goods and Services Act 2017 read with notification no.01/2017-Central Tax (Rate) dated 28.06.2017.

**Note: Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub Section (1) of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed 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 Tax Act.**

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M/s Faiveley Transport Rail Technologies India Limited (hereinafter referred as 'Applicant'), Post Box No.39, Haritha, Hosur, Tamilnadu-635109 is registered under the GST Act 2017 vide GSTIN No. 33AAGCS8525B1ZKL. The applicant has sought Advance Ruling on the following question:

Whether Wheel Side Protection Control Unit(WSP) and Pantograph supplied by the applicant, should be classified as "parts of railway or tramway locomotives or rolling stock, and parts thereof" (Viz under Heading 8607) for the purposes of levy of GST in terms of Section 9(1) of Central Goods and Services Act 2017 read with notification no.01/2017-Central Tax (Rate) dated 28.06.2017.

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 involved in the business of manufacturing, supplying and exporting equipment for the Rolling Stock industry. The said equipment includes, *inter alia*, railway door systems, grills for train coaches, braking systems and pantographs for railways. They are registered under the GST regime in the States of Tamil Nadu, Karnataka, Himachal Pradesh, West Bengal, Uttar Pradesh and Delhi. The WSP and Pantograph (hereinafter referred as 'the subject goods' wherein such expression refers to either one or both the goods depending on the context) in respect of which the classification has been sought *vide* the instant application are manufactured by them at their Factory located in Hosur in Tamil Nadu. They have stated that since September 2019 onwards, they have

stopped imports of WSP from outside India and at present, both these products are primarily manufactured in India. The subject goods are supplied by them to customers located in Tamil Nadu and other states.

2.2 The Constitution & functionality of the subject goods stated by the applicant are as follows:

**WSP:** In the course of running of trains, various issues may arise at the time of application of brakes. One of the most prominent issues is the skidding/ sliding of individual axles out of their designated place, which may lead to safety issues. In order to ensure that the individual axles are not displaced at the time of application of brakes, the adhesion existing between the rails and the train's wheels need to be utilized in order to ensure no/ minimum displacement of the said axles. The WSP is a Unit which carries out the aforesaid functionality. Simply put, the WSP is a system controlled by micro—processors that can regulate the manner of brake application in the train after analyzing the various factors/ parameters which are factored in as per an inbuilt software. The major constituents of the WSP are Speed sensors; Phonic Wheel; Micro—processor; Dump Valves (*also known as anti—skid values*); Pressure Switch; and other switches and connectors. Each of the aforementioned constituents has a specific role to play with respect to prevention of the sliding or skidding of the axles. The following is the process by which the WSP functions:

- Speed sensors and Phonic wheels (*which are a constituent of the WSP — located at the axle ends*) detect the speed at which the wheels are moving. The said speed is evaluated/compared with a reference speed which is a calculated value based on the real axle speeds. The comparison between these speed signals whether or not an axle is about to enter in to a slide mode;
- The speeds are evaluated by the micro—processor enabled unit (*viz. micro controller*) — which in turn generates signals in order to direct the dump valve (*viz. valves which controls the increase/decrease of the air pressure in the brake cylinders*) to effectively control the brake cylinder pressure in case of any locking of the axles and to ensure a safe & smooth braking without sliding;

- The instant the wheel to rail adhesion is brought within the optimum levels of pressure by the brake cylinder, the wheels are brought within the optimum/ safe range of skidding of axles in the instance of braking of the train; Various sub—components described supra are connected to each other through electrical wires via various mechanisms such as switches & connectors to essentially support the function of braking without skidding.
- WSP also assists in control engineering, measurement, data acquisition, and internal system supervision. These features are carried out by micro controller which updates the measurement data in every fraction of a second.

They have stated that an analogy may be drawn between the respective functions of WSP in railways/metro trains with those of an Anti—lock Braking System (ABS) in cars/ SUVs. They have also submitted technical literature of WSP issued by them and Handbook issued by the Indian Railways Centre for Advanced Maintenance Technology, Gwalior

**Pantograph:** Pantograph is a device utilized specifically for the collection of electric current, which is mounted on the roof of the car body. It is used to collect & transfer electrical energy from the catenary to traction system and is mounted on insulators for electrical insulation of the car body. It collects power from the overhead electrical wires and transfers it to the locomotive in order to enable forward motion of the locomotive/ metro train. From a practical viewpoint, Pantographs are an essential fitting of electric locomotives; as the supply of electric current to ensure motion of the coach/ train is dependent on the Pantographs. In an electric locomotive, there are two pantographs mounted on the roof. At any given point of time, one pantograph is raised and connects the locomotive with the overhead contact wire carrying electricity in order to ensure constant power supply to the locomotive. The subject goods have two basic positions — the upper position and the lower position. The lowering and raising speeds are controlled by a Pneumatic Control Unit which is placed inside the vehicle and is separate from the pantograph installed on the roof. The voltage supported by the said Pantographs is usually 25000 Volts.

2.3 They have stated that since the implementation of GST, they had been classifying the subject goods under Heading 8607 as contained vide S No 205G under

Schedule II of the rate notification which covers "parts of railway or tramway locomotives or rolling stock". The said classification had been adopted because:-

a. the WSP, by its very nature, cannot be utilized for other than railways, or rolling stock and needs to be utilized in conjunction with the braking system of a railway train coach or a metro bogey.

b. the Pantograph, by its very nature, cannot be utilized independently as a separate machine and needs to be mounted on the roof of the train coach so as to ensure uninterrupted power supply to the train at all times. It may be noted that a Pantograph, owing to its specific usage, is designed and structured (viz. from the from the stage of R&D to manufacture, till installation) to be fitted as per Railway specifications for train/ Metro coaches/ rolling stock.

2.4 On the interpretation of Law & facts, they have stated that

- Section XVII of the Customs Tariff Act (CTA) deals with 'Vehicles, Aircraft, Vessels and Associated Transport Equipment'. Chapter 86 falls within the ambit of the said Section and deals with 'railway or tramway locomotives, rolling stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro—mechanical) traffic signaling equipment of all kinds'.
- Chapter Heading 8607, under which they have been classifying the subject goods, deals with parts of railway or tramway locomotives of rolling stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof.
- The study of the relevant Chapter Notes prescribed under the CTA with respect to Chapter 86 clearly highlights that Heading 8607 would apply only to those 'parts'/ 'parts and accessories' of railway or tramway locomotives or rolling stock which are identifiable as being suitable for use solely or principally with the railway or tramway locomotives or rolling stock (viz. Note 3 to Section XVII) and also, these goods must not be specified in Note 2 to Section XVII.
- It is clear vide Note 2 to Section XVII that the scope of Heading 8607 is very wide and one of the inclusions made for classification within the said Heading is for brake gear. Further, Chapter Heading 8607 states that the term 'parts of railway or tramway locomotives or rolling—stock' includes, inter alia, all types of brake gear, including : Hand—brakes, controlled directly from each individual vehicle (lever and screw brakes); Continuous brakes with a single

control for all vehicles of the train — including compressed air and vacuum brakes; Parts of the brake gear, including shoes, cylinders and levers.

- The subject goods are solely/ principally used in the railway industry and clearly satisfy the conditions specified for classification under Heading 8607.
- On a practical level, due to the unique functionality and usage of the subject goods with respect to ensuring safety in the running of trains, the subject goods cannot be utilized in conjunction with any other mode of transport other than train coaches or metro trains. The WSP is a system controlled by micro—processors which is used to manage the behaviour of wheel sets in conditions wherein, there is reduced wheel/ rail friction conditions. Further, the subject goods ensure the stability and safety of the train in situations where the wheelset rotates at a lower velocity than the forward speed of the train which may lead to wearing out of the wheels of the train. WSP per se cannot be utilized independently or with any other mode of transportation apart from trains or metro coaches; as the various components of the WSP can only function once used in conjunction with the operating system of the train coach and metro bogey. Essentially, it is part of railway break/ air break/ break gear which is specifically covered under Note 2 of Chapter 86. Hence, it becomes evident that the subject goods are utilized exclusively with train bogies/ metro trains/ locomotives and hence, the primary condition for classification under Chapter Heading 8607 is satisfied. They have placed reliance on the case of M/s Knorr Bremse India Ltd. Vs. CCE, New Delhi reported in 2011 (7) TMI 621—CESTAT, Delhi, wherein, it was categorically held that the items under dispute (which included Wheel Slide Protection) are 'parts of railway breaks' imported in unassembled conditions and such parts were specifically held to be covered under Heading 8607 of the Customs Tariff.
- The basic utilization of the Pantographs is to store electric current within itself and provide uninterrupted power supply to the train coach by acting as a linkage between the overhead power cables (which carry electricity) and the train coaches/ Metro trains (which use the said electricity to propel forward). Pantographs, right from the structure on which they are installed are designed for exclusive use on train or metro coach bodies hence, being designed in a manner, wherein they can immediately be fitted in conjunction with the insulation mechanism provided on the train coach bodies. Hence, the Pantographs are specifically mounted on insulators so as to ensure that the body of the locomotive/ train coach/ metro bogey is insulated against electrical

current. It cannot per se be utilized independently on their own accord or with any other mode of transportation apart from trains or metro coaches as a Pantograph would not be required at all for the operation of other fossil fuel/ gas powered vehicles like cars, buses, trucks and airplanes. On account of trains being specifically required to be constantly connected to the overhead power cables for their operations in order to be in motion, the Pantograph is an instrument integral and intrinsic to the running of trains and metro coaches and no other mode of transportation.

➤ In view of the above facts, they have opined that the subject goods being utilized exclusively with train bogies/ metro trains/ locomotives, the primary condition for classification under Chapter Heading 8607 is satisfied. Furthermore, they have placed reliance on the following case laws as well as Circular to conclude that products shall fall under Heading 8607 where such products were solely/principally used for railway locomotives:

- Rail Tech Vs. Commissioner of Central Excise Chandigarh reported in 2000 (120) ELT 393 Tribunal
- Hindustan Welding Engineers Vs. CCE, Calcutta reported in 2001 (133) ELT 770 (Tri.—Kolkata):
- M/s Kay Pee Equipments Pvt Ltd [2019-TIOL-302-AAR- GST]:
- CBEC Circular No. 17/90—CX.4 dated 9 July 1990

The applicant has also referred to Note 2 of Section XVII and stated that the subject goods (viz. WSP and Pantograph) are not covered under any of the chapters of above note and the subject goods cannot be construed as parts of general use, tools or implements, electrical machinery etc. These entries cover goods of wide—ranging sphere of application and not specifically designed instruments. They have also stated that the subject goods can be classified as 'PARTS' of Rolling Stock as it complies with the specified conditions i.e.

(a) WSP (being part of Railway Air brake/ gear) and Pantograph (viz. installed on top of locomotive coaches specifically to draw and collect power from overhead wires) are suitable for usage solely or principally with the articles of Chapters 86 (i.e. Railway or Rolling stock); and

(b) WSP and Pantograph are not covered in goods mentioned in Note 2 to Section XVII.

In light of the aforementioned submissions, having elaborated upon the constitution and working of the WSP and the Pantograph as well as the legal framework in place with respect to the classification of the subject goods, they are of the view that the subject goods are appropriately classifiable under Heading 8607.

3.1 The applicant was extended an opportunity to appear for personal hearing on 11.02.2020. The applicant vide their letter dated 04.02.2020 sought adjournment and requested to reschedule the hearing. The hearing was scheduled to be held on 26.03.2020 but the same was cancelled due to Covid-19 Pandemic. In view of the prevailing pandemic, the applicant was offered to be heard through digital media and the applicant accepted the same. The applicant was heard on 06.08.2020. The authorized Legal representative along with the authorized representative of the applicant appeared for the hearing virtually. They shared the written submissions and submitted the same through email. They stated that summons were issued by DGGSTI & the products on which ruling is sought is not a part of the summons. Copies of the summons were asked to be furnished. They reiterated the written submissions. The applicant was asked to furnish the details of classification in the pre GST regime, invoice copy/work order/class of recipients and it was recorded that on receipt of the above cited documents if required another hearing may be extended.

3.2 The applicant in their written submissions submitted vide email furnished the following :

- i. Relevant extracts of Notification No. 1/2017—C.T. (Rate) dated 28 June 2017
- ii. Notification No. 14/2019—Central Tax (Rate) dated 30 September 2019 [amending Notification No. 1/2017—Central Tax (Rate)]
- iii. Heading 8607
- iv. Section Notes to Section XVII
- v. Chapter Notes to Chapter 86
- vi. Section Notes to Section XVI
- vii. Chapter Notes to Chapter 85
- viii. Section Notes to Section XV
- ix. General Rules for Interpretation
- x. Tender No. 08197020 dated 4 February 2020 Issued by the Indian Railways for supply of one coach set of 'Axle Mounted Disc Brake' (of which the WSP is a part)
- xi. Specifications for 'Axle Mounted Disc Brake System' for Mainline Coaches issued by the Indian Railways



- xii. Tender No. 34182948 dated 20 March 2019 issued by the Indian Railways for supply of 'High Reach Pantograph'
- xiii. Faiveley Invoice dated 4 August 2020 for the supply of WSP
- xiv. Faiveley Invoice dated 31 July 2020 for the supply of Pantograph
- xv. Details of Major Bidders for Tender No. 34182948 issued by India Railways regarding 'High Reach Pantograph'

3.3 The applicant vide their letter dated 10<sup>th</sup> September 2020 submitted the synopsis of the submissions made during the hearing on merits of the case. On the details of the summons issued to them by DGGSTI, Hosur they stated that

- They being a supplier of railway products and parts was summoned for the purposes of obtaining details about their products and recording the statements of the authorized personnel
- Subsequently, they identified certain goods meriting re-classification and discharged differential GST for the period July 2017 to March 2019 in respect of such goods and W.E.F 1<sup>st</sup> April 2019 they are classifying the said goods under the revised HSN
- They received a Show Cause Notice(SCN) dated 18<sup>th</sup> June 2020 from DGGSTI Coimbatore demanding the differential excise duty in respect of goods re-classified by them. In the said notice, the authorities did not contest on the classification of WSP and Pantograph
- The products in question(i.e., WSP and Pantograph were neither specifically enquired in any proceedings nor contested in the eventual SCN issued under Excise Law. Therefore, in their view, it is appropriate to say that there has been no proceedings pending under GST Law with respect to WSP and Pantograph.

The applicant has further stated that they received notices/summons from DGGSTI Chandigarh and Custom Authorities on classification of certain goods. They have identified the products (other than WSP and Pantograph) which merited re-classification under different CTH and paid differential duty thereon (viz. GST on outward supplies and Customs Duty on imports). The details of Inquiry/Investigations along with the copies of summons, Intimations and SCN were furnished as Annexure-A to this letter. They have further stated that there was no outward supply of WSP in the erstwhile regime and the same was imported to be used in the manufacture of the final products. They requested to grant an additional hearing in order to enunciate all the facts in relation to inquiry/ investigations.

4.1 The Directorate General of GST Intelligence (DGGSTI) Hosur Unit was addressed to clarify whether the investigations initiated by them on the products supplied by the applicant includes WSP and Pantograph, the classification of which is sought by the applicant before this authority and if so relevant reports/communications were asked to be furnished. In this regard, DGGSTI Hosur unit, vide their letter F.No.INT/DGGI/HRU/21/2018-G1 dated 16.09.2020 submitted that an investigation has been initiated against the applicant regarding classification adopted by them on products supplied to Railways and classified by them under Chapter Heading 8607.; that the investigation covers the period from 01.07.2017 and was initiated by way of issuing summons dated 10.10.2018 and is under progress.; that the products WSP and Pantograph are part of the investigation. Hence, they submitted that the classification of these products for the period from 01.07.2017i.e., under GST, for which the applicant has filed the application for advance ruling is under investigation by them. They also forwarded the copy of summon 33/2018 issued in file F.No.INT/DGGI/HRU/21/2018-G1/333 dated 10.10.2018.

4.2 The claim of DGGSTI Hosur was informed to the applicant and another opportunity to be heard personally (in Virtual mode) was extended on 15.10.2020 to the applicant for deciding the admissibility of the application.

5.1 The authorized representative appeared for the hearing virtually. They acknowledged the receipt of the report received from DGGSTI by the authority. They stated that the SCN raised for the period pertaining to pre-GST, has not raised any contentions with regard to the products in question for which classification is sought and there is no specific demand raised on the said products. The Authorised representative relied on certain decisions to substantiate their claim that the application is admissible in as far as the summons are general in nature and the questions raised by them before the authority is not specifically a part of the investigations by DGGSTI. They undertook to furnish submissions shared during the hearing and requested to consider their contention that their application is admissible.

5.2 The applicant vide their letter dated 29.10.2020 stated that the proceedings initiated by issue of the summons on them are general in nature and not specific to the question raised in relation to the classification of the subject goods and have submitted the following flow of key events along with the relevant documents.

- i. Summons issued by DGGSTI, Hosur dated 10.10.2018
- ii. Recording of statement of authorized person dated 25.10.2018

- iii. Details of payment of differential duty
- iv. Letter dated 07.01.2020 of the applicant addressed to the DGGSTI, Hosur regarding the details required for supplied made to Railways and others for the period March 2016 to June 2017
- v. Recording of statement of the authorized person dated 10.01.2020
- vi. Show Cause Notice issued by DGGSTI, Coimbatore dated 18.06.2020
- vii. DGGSTI, Hosur letter dated 09.09.2020 calling for details of supplies made to Railways and others

The applicant has submitted copies of the following case laws and stated that in these cases the application for advance ruling has not been admitted as the specific issue raised before the authority has been the subject of respective DGGSTI enquiries.

- Commissioner of Income Tax-1(International Tax, Delhi & ors. Vs Authority for Advance Ruling, Income Tax, New Delhi & Anr.2020 (8)TMI 770-Delhi High Court
- Sage Publications limited U.K. Vs Deputy Commissioner Of Income Tax (International Taxation), Circle II(2), N.Delhi 2016(9) TMI 299-Delhi HC
- M/s ID Fresh Food(India) Pvt Ltd 2020 (10) TMI 149-AAAR, Karnataka
- Arihant Enterprises 2020 (32) GSTL 82 (App.AAR-GST-Mah)
- Karnataka Co-operative Milk Producers Federation Limited[2020] 115 taxmann.com59(AAAR-Karnataka)

They have further stated that in their case, WSP or Pantograph have not been considered/questioned/referred to at any juncture by the DGGSTI in any summons/Notice/ Letter; there have been no proceedings/Show Cause Notice in respect of products in question and it can be inferred that the authorities are contended with their position of classifying WSP and Pantograph under CTH 8607; Consequently, the subject matter does not at any point of time form the matter of any 'pending proceedings' in any other forum whatsoever. The applicant has also requested to consider the overall facts and circumstances before passing the order.

6.1 In furtherance to the hearing, DGGSTI Hosur was addressed vide letter ARA.No.02/2020/A1 dated 05.11.2020 stating the contentions of the applicant that the summon dated 10.10.2018 issued to them is generic in nature and that the SCN issued for the period prior to 01.07.2017 (Pre-GST) has not raised any contentions with regard to the classification of the subject goods and therefore the application is to be admitted.; DGGSTI was called upon under the provisions of Section 98(1) of the CGST

Act 2017 to furnish the correspondences related to the investigations on the classification of the subject goods to establish that the same is under investigation from 10.10.2018 under GST.

6.2 DGGSTI, Hosur vide their letter F. No. INT/DGGI/ HRU/21/2018-G1 dated 23.11.2020 submitted that

- investigations have been initiated against the applicant by them by issuing summon dated 10.10.2018 asking them to furnish the description, classification, GST rate adopted by them on products supplied to Railways along with details for clearances to others.
- The applicant has furnished the details and given voluntary statement. Also based on the investigations initiated, the applicant re-classified some goods supplied to railways and others as railway parts and classified under Chapter Heading 8607 at the time of clearance. Based on the reclassification, they have paid differential duty of Rs.34,29,67,409/- along with interest of Rs.6,60,86,739/- during the period 30.12.2018 to 19.10.2019.
- the investigation is specific- for classification of goods for railways and covers all goods supplied by the applicant to railways under Chapter 8607 and has been initiated prior to their filing of Application for Advance Ruling.

Further, with respect to the products for which the applicant has sought ruling on the classification viz., Wheel Side Protection Control Unit and Pantograph, they have stated that:

- i. In respect of Wheel side protection control unit, the same was not in their list of products prior to GST and they cleared only spares for WSP which has been reclassified by them under 9302 for the said period.
- ii. In respect of Pantograph, a corrigendum to Show cause notice was issued on 27.10.2020 for reclassification of Pantograph and its parts.

In view of the above, they have reiterated that the investigation covers all products supplied by the applicant to Railways by classifying them under Chapter Heading 8607 since 01.07.2017 and it was initiated prior to their application for advance ruling. Hence, they opined that the application may not be considered.

7.1 The applicant vide their e-mail dated 12.11.2020, stated that they had received a corrigendum dated 27.10.2020 to the Show Cause Notice No. 02/2020 dated 18.06.2020; that as per the original show cause notice, DGGSTI authorities were in agreement and have not raised any question on their classification of "Pantograph and

parts” under Chapter 8607 but vide the corrigendum dated 27.10.2020, the authorities have sought to question the classification of “Pantograph and parts” and levy differential excise duty; they strongly believe that the question of classification of “Pantograph and parts” was never part of the proceedings before the DGGST. They requested a weeks’ time to provide a detailed submission

7.2 The applicant accordingly vide their letter 19.11.2020 has submitted the following :

The “Pantograph and parts” were classified by the company under CTH 8607 and the DGGSTI Authorities had not questioned the classification at any time during the course of proceedings before them, thereby explicating that they have agreed with the said position as per the original SCN. However, post the filing of the Application before the Advance Ruling Authority, the DGGSTI has issued the Corrigendum. The nature of changes proposed in the Corrigendum amending/inserting various paragraphs of the original Show cause notice (SCN) clearly indicates that there is a possible change in respect of the classification of “pantographs and parts”. They have also reiterated that the DGGSTI Authorities had never questioned the Company’s position in respect of classification of the Pantographs and parts in the past and the corrigendum has been issued only during the course of proceedings before the Advance Ruling Authorities. They have also submitted that the corrigendum is not issued to correct any mistake apparent on record (for e.g. any clerical or arithmetic mistake) but to change the position which was originally adopted by the DGGSTI post analyzing the facts of the case. Further, the Applicant has reiterated that two hearings have already taken place with respect to their Advance Ruling Application and the said Corrigendum has only been issued subsequent to the conclusion of the hearing on admissibility dated 15<sup>th</sup> October 2020. Thus, the applicant has submitted that the said Corrigendum cannot be termed as pending proceeding for the purposes of the their Application. Also, they have submitted that the corrigendum is issued in respect of proceeding under the Central Excise Law and not under GST law. Therefore, the corrigendum would have no consequence or bearing on the admissibility of their Application. Thus, the question of classification of “Pantograph and parts” or the WSP was never part of “pending proceedings” before the DGGSTI at the time of filing the Advance Ruling Application. The issuance of the Corrigendum at this stage fortifies the said fact.

8.1 We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of Virtual hearings and the comments/remarks of the Directorate General of Goods and Service Tax Intelligence, Hosur Unit. The applicant is involved in the business of manufacturing, supplying and exporting equipment for the Rolling Stock industry. The said equipment includes, *inter alia*, railway door systems, grills for train coaches, braking systems and pantographs for railways. The WSP and Pantograph in respect of which the classification has been sought *vide* the instant application are manufactured by the Applicant at their Factory located in Hosur in Tamil Nadu. They have stated that since September 2019 onwards, they have stopped imports of WSP from outside India and at present, both these products are primarily manufactured in India. The said goods are supplied by the Applicant to customers located in Tamil Nadu and other states. The applicant has sought ruling on the following question:

Whether Wheel Side Protection Control Unit and Pantograph supplied by the applicant, should be classified as “parts of railway or tramway locomotives or rolling stock, and parts thereof” (Viz under Heading 8607) for the purposes of levy of GST in terms of Section 9(1) of Central Goods and Services Act 2017 read with Notification No.01/2017-Central Tax (Rate) dated 28.06.2017.

8.2 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 the product supplied by the applicant 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 given 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:*

8.3 In the case at hand, we find that DGGSTI has submitted that the classification of the products supplied by the applicant to railways are under investigations and the investigations have been initiated through the summon dated 10.10.2018. It is the submission of DGGSTI, HRU Hosur that the question raised before this authority is part of the investigation and therefore the application do not merit admission as per the proviso supra

8.4 The applicant while acknowledging the investigations initiated by DGGSTI, HRU Hosur, has contended that the summon dated 10.10.2018 issued to them and the investigations are generic in nature and the classification of WSP and Pantograph were never contended by DGGSTI and therefore the classification of the subject goods were never part of 'Pending proceedings' before the DGGSTI at the time of filing the application before this authority.

9.1 The first proviso to Section 98(2) makes an application ineligible for admission if the Authority finds that the question raised in the application is already pending or decided in 'any proceedings' in the case of the applicant under any provisions of this Act. Issuance of summon under Section 70 of the CGST Act 2017 and calling for definite particulars happens in the course of investigation. We find that the only contention of the applicant is the summon is generic in nature and the subject goods whose classification is sought before us was never part of the proceedings.

9.2 The applicant has provided a flow of events with documents and also has furnished the same with their remarks as Annexure-A (Inquiry/Investigation pertaining to Hosur) to the submission dated 10.09.2020 of the applicant. On perusal of these documents the following are seen:

- DGGSTI Hosur in file F.No. INT/DGGI/HRU/21/2018-G1 dated 10.10.2018 has issued a Summon to Shri. Rohit Haldia, CFO of the applicant company to appear on 25<sup>th</sup> October 2018 with the following documents:
  - List of Invoices containing description of the item, chapter heading and GST rate charged along with copies of invoices (month wise) issued to Indian railways for supplies from July 2017 to September 2018
  - List of Invoices containing description of the item, chapter heading and GST rate charged along with copies of invoices (month wise) where the same items are issued to other clients as that of Indian railways from July 2017 to September 2018

- List of electrical items and parts thereof and mechanical items and parts thereof supplied by them along with the classification of the same
- Balance Sheet and Profit and Loss accounts along with the schedules for the year 2017-18
- The CFO has tendered a Statement before the Investigating authorities. The details stated are of the supplies made by them, rate of GST adopted for the supplies, basis for adopting the GST rate, list of items and their usage in railways/metros
- List of items includes among others, 'spare parts of WSP/Pantograph' and the applicant has claimed that independent supply of WSP/Pantograph are not included in the said list
- DGGSTI Hosur in file F.No. INT/DGGI/HRU/21/2018-G1 dated 25.04.2019 has issued a Summon to Shri. Rohit Haldia, CFO of the applicant company to appear on 6<sup>th</sup> May 2019 with the following documents:
  - The HSN codes for the correct classification in respect of the goods shown in the list(Exhibit 1) provided to them vide their letter dated 08.02.2019 which covers the period 01.07.2017 to 30.09.2018
  - The details of clearances of goods misclassified under 8607 for the period from 01.10.2018 to 31.03.2019 and the workings for differential duty along with HSN for correct classification
  - The list of vendors, who are all supplying the goods with 5% GST with details
  - Details of items cleared under the Chapter Heading 8607 and 8608, claiming exemption under Notification No. 12/2016-CE dated 01.03.2016 whose correct/actual classification falls under chapter heading other than the above
- The SCN No. 02/2020 dated 18.06.2020 and the corrigendum dated 27.10.2020 has been issued to demand the differential excise duty payable for the period upto 30.06.2017

9.3 It is evident from the documents called for in Summon No.33/2018 dated 10.10.2018 that the investigation initiated against the applicant is on the classification adopted by them on the products supplied to Railways and classified by them under Chapter Heading 8607 for the period from 01.07.2017 to 30.09.2018 and the applicable rate of GST adopted by them. The applicant has classified 'Pantograph' under CTH 8607 and continues to do so while in respect of certain other products, they have re-classified and paid the differential taxes. The month-



wise value in respect of 'Pantograph' has been furnished by the applicant to DGGSTI Hosur. Show Cause Notice No.02/2020 dated 18.06.2020, Corrigendum issued to the SCN dated 27.10.2020 seek the differential excise duty payable and the proceedings for the period from 01.07.2017 remains pending. DGGSTI, Hosur letter dated 23.11.2020 has categorically stated that the investigation is specific for the classification of goods for railways and covers all goods supplied by the applicant to railways under Chapter Heading 8607 and in respect of subject goods, it is stated that WSP was not in the list of products prior to GST and the spares for WSP was re-classified by the applicant from CETH 8607 to CETH 9032; while in respect of 'Pantograph', the investigation included the same and re-classification of the same for pre-GST period is issued through corrigendum dated 27.10.2020.

9.4 From the above facts, it is clear that DGGSTI has taken up investigations on the classifications adopted by the applicant on their supplies to Indian Railways and classified under CTH 8607. The subject goods are supplied to 'Indian Railways' and the applicant classify the same under CTH 8607. The application is filed on 20.01.2020 while the proceedings on the 'Classification of the goods supplied to Indian Railways' and the 'rate adopted for payment of GST' were initiated through summon dated 10.10.2018. Also from the list of parts given to the DGGSTI by the applicant, it is seen that details relating to 'Pantograph and Parts' is also furnished. The applicant claims that the DGGSTI did not contend the classification of 'Pantograph' and therefore the said goods were never a part of the investigation. 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 and rate adopted in respect of 'Pantograph' irrespective of the claim that their classification was acceded/contended by the investigating authority has been called for as a part of the investigation proceedings under Summon issued under Section 70 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.

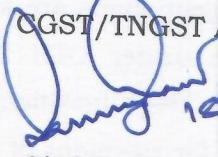
9.5 The applicant has relied upon the rulings pronounced by GST Advance Ruling Appellate Authority/ Advance Ruling Authority of different states wherein the said authorities have rejected the applications when the Investigations pertained to specific goods. The applicant has contended that in their case the


investigation was generic and the subject goods were not part of the proceedings and therefore the application is to be admitted. As brought out in para supra, the investigation initiated by DGGSTI in the case of applicant is on the classification and rate of GST adopted by the applicant on the supplies to Indian Railways, classifying under CTH 8607. It is without doubt that the applicant has been classifying the subject goods under CTH 8607 and the supplies are made to 'Indian Railways' and therefore we are unable to agree the contention that the investigation is 'generic', while we find the investigation is on the 'class of products' classified under CTH 8607 and supplied to 'Indian Railways'.

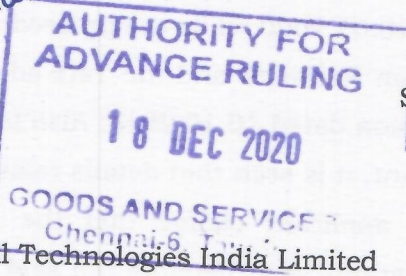
10. In View of the above, we rule as under

**RULING**

The application is not admitted under first proviso to Section 98(2) of the CGST/TNGST Act 2017 for the reasons mentioned in para 9 above.

  
12/12/2020  
Shri Kurinji Selvan  
(Member SGST)

  
18/12/20  
Shri. B. Senthilvelavan  
(Member CGST)



To  
M/s Faiveley Transport Rail Technologies India Limited  
Post Box No.39, Haritha, Hosur,  
Tamilnadu-635109 //By RPAD//

Copy Submitted to:

1. The Principal Chief Commissioner of CGST & Central Excise,  
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Ch - 600 034
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,  
II Floor, Ezhilagam, Chepauk, Chennai-5.

Copy to:

3. The Commissioner of GST & Central Excise, Salem Commissionerate  
1, Foulkes Compound Anaimedu, Salem 636 001.
4. DGGSTI, HRU, Hosur Regional Unit, SRM Towers, 1<sup>st</sup> and 2<sup>nd</sup> Floor,  
No: 222/1A1, Shanthi Nagar, 100 Feet Road, Near Rc Church,  
Hosur - 635 109.
5. Master /Spare file.