

As to whether if goods are supplied as free replacement under guarantee period without any consideration, what would be the tax liability under GST. HELD GST is not leviable, if goods are supplied as free replacement under guarantee period without any consideration.

AUTHORITY FOR ADVANCE RULING NO. UP ADRG 15/2022, DATED 5th December, 2022

AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

UTTAR PRADESH

4, Vibhuti Khand, Gomti Nagar, Lucknow

PRESENT:

1. Shri Rajendra Kumar
Additional Commissioner, Central Goods and Service Tax
Audit Commissionerate, Lucknow Member (Central Tax)
2. Shri Vivek Arya
Joint Commissioner, State Goods and Service Tax Member (State Tax)

1.	Name of the Applicant	M/s Prag Industries (India) Pvt. Ltd. (GSTIN-09AABCP7647L1 ZU) Address-E-7,Talkatora Industrial Estate, Lucknow Uttar Pradesh-226011
2.	GSTIN or User ID	09AABCP7647L1ZU
3.	Date of filing of Form GST ARA-01	06.09.2022
4.	Represented by	Mr. T.K. Srivastava (Advocate & Authorized representative)
5.	Jurisdictional Authority-Centre	Commissionerate-Lucknow, Division-Lucknow-II, Range-V
6.	Jurisdictional Authority-State	NA
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes HDFC22090900031337

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 &

UNDER SECTION 98(4) OF THE UPGST ACT, 2017

1. M/s Prag Industries (India) Pvt. Ltd., a proprietor, is registered with GST vide GSTIN-09AABCP7647L1ZU under trade name M/s Prag Industries (India) Private Ltd bearing principal address at E-7, Talkatora Industrial Estate, Lucknow Uttar Pradesh-226011 (hereinafter referred as "the applicant") and are manufacturers and suppliers of Railways locomotive parts.

2. The applicant has submitted application for Advance Ruling dated 06.09.2022 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following question-^

"As to whether if goods are supplied as free replacement under guarantee period without any consideration, what would be the tax liability under GST."~

3. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

The applicant has submitted that-

3.1 The applicant is a Private Limited Company operating as M/S PRAG INDUSTRIES (INDIA) PVT. LTD., AT E-7, TALKATORA INDUSTRIAL ESTATE, LUCKNOW 226011, having CENTRAL EXCISE REGISTRATION number AABCP7647LXM001.

3.2 Now the applicant has taken registration in the State of Uttar Pradesh as a regular manufacturer and dealer under Goods and Service Tax having GSTIN number 09AABCP7647L1ZU.

3.3 We are the manufacturers and suppliers of Railways locomotive parts and coach (coach work/Rolling stock) parts of Railway Coach classifiable under HSN 8607 of the Tariff, as per railway drawings & specifications and working under Ministry of Railways, Govt, of India.

3.4 The Applicant is licensed & approved by Indian Railways for manufacturing of parts of Railways/locomotives as per design & drawings developed by them-the Indian Railways. This product is to be manufactured Strictly as per Railways and as per terms of contract of Indian Railways. Accordingly, this manufactured item is covered under chapter heading 8607 as parts of Railways.

3.5 That as per terms & conditions of Railways Contract, and also as per conditions mentioned in Indian Railways Specification applicant has to comply with the Guarantee Clause, wherein it is mentioned that "The Firm shall stand Guarantee for a ' period of 30 Months from the date of supply regarding performance of Elastomeric Pads. In case of any pre-mature failure of pads, firm will be liable to make free replacement to the depot where failure has been reported within reasonable time", (copy of the purchase order and specification(s) of a sample item. Modified Elastomeric Pad to RDSO drg. No. WD-95005/S-1, Alt.7 and RDSO Specification No. WD-20-Misc-95[Rev.-3] of March 2003, Amendment 6 of Sept, 2016 is attached).

3.6 That under guarantee and free replacement no consideration shall be chargeable from the buyer against the supply of replaceable goods, and as such no GST could be charged and payable to the Govt. The replaced items shall be of NIL value. In as much as the consideration for replaced goods has already been included as and when the original supply was made for the first time to the Indian Railways.

4. The applicant has submitted their interpretation of law as under-^

(1) We appreciate that under guarantee and free replacement no consideration shall be chargeable from the buyer against the supply of replaceable goods, and as such no GST could be charge and payable to the Govt. The replaced items shall be of NIL value. In as much as the consideration for replaced goods has already been included as and when the original supply was made for the first time to the Indian Railways.

(2) The applicant can supply the parts only after accepting the condition as mentioned in the Specification therefore the applicant company include the cost of warranty in the price charged to the Indian Railways. Now as a result in case of failure the applicant company has to give free replacement of the products to the Indian Railways without any consideration receivable from the Indian Railways.

(3) In this reference the Apex Court in the case reported on 2006 (196) ELT 246 (Trib.) has affirmed the Tribunal Order wherein the Tribunal held that replacement items should be treated as part of the original Contract. And therefore replacement of parts against rejection/failure covered under Warranty contract will not be termed as Supply.

(4) Now the question from the advance ruling authority is " as to whether the GST shall be payable on the goods which are being supplied against the Guarantee/warranty clause, as free ?~

5. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Deputy Commissioner, CGST & Central Excise Division, Lucknow-II vide her letter dated 12.10.2022 submitted the desired comments/view/verification report on the question raised in the Advance Ruling Application is as under:-

(a) Party is registered with the GSTIN-09AABCP7647L1ZU w.e.f. 01-07-2017 as Manufacturer.

(b) Party's registered address is E-7, Talkatora Industrial Estate, Lucknow-226011.

(c) Party is regular taxpayer and has filed all returns up to August 2022.

(d) Party is manufacturing goods falling under Chapter Heading 86079920 (PARTS OF RAILWAY OR TRAMWAY LOCOMOTIVES OR ROLLING-STOCK-BOGIES, BISEL-BOGIES, AXLES AND WHEELS, AND PARTS THEREOF)

(e) w.e.f. 01.10.2019 rate of CGST & SGST is 6% on the goods mentioned in /Chapter Heading 86079920.

Same issue was raised earlier by M/s South Indian Federation of Fisherman Societies, SIFFS OBM Sales & Service Centre, Mulihithlu, Bolar, Mangalore, Dakshina Kannada (GSTIN No. 29AACT0090G1ZH) for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of the KGST Rules, 2017.

The above issue has been decided in the AAR, Bengaluru, Karnataka vide Advance Ruling No. KAR ADRG 74/2021 dated 06/12/2021 (Para 1 & 2 of Point No. 5.5 and Point No. 11)

6. The applicant was granted a personal hearing on 15.11.2022 which was attended by Mr. T.K. Srivastava Authorized Representatives during which he reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

7. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act 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 same provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

8. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issue on which advance ruling required-^

"As to whether if goods are supplied as free replacement under guarantee period without any consideration, what would be the tax liability under GST."~

9. In the letter/purchase order dated 21-04-2021 issued by the Principal Chief Material Manager, South Central Railway to M/s Prag Industries (India) Pvt. Ltd. Lucknow, issued vide P.O. No.38201145101516 dated 30.04.2021 wherein warranty clause is mentioned at terms and condition No. 09 which is under:

"Warranty Clause Guarantee for a period of 30 months from the date of supply.

10. Supply to Indian Railways are classifiable under HSN 8607. The applicable rate of GST on the impugned goods is 5% in terms of entry number 241 of Schedule I to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, till 29.09.2019.

In the said notification, -

Schedule I-2.5%

S. No.	Chapter / Heading / Sub heading / Tariff item	Description of Goods
(1)	(3)	(3)
.....
241.	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof

W.e.f. from 30.09.2019, the rate of GST is 12%, in terms of entry number 205 G of Schedule II to the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No.14/2019 - Central Tax (Rate) dated 30.09.2019, with no refund of unutilized input tax credit, in terms of SI.No.14 of Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017

In the said notification, it is mentioned:

B. in Schedule II - 6%, -

.....
(iii) after S. No. 205 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -

205G	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof
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11. Exception to the Requirement of Consideration

There are exceptions to the requirement of 'Consideration' as a pre-condition for a supply to be called a supply as per GST. As per schedule I to CGST Act, 2017, activities as mentioned below shall be treated as supply even if made without consideration.-^

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business However, gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.~

12. The applicant is engaged in supply of Elastomeric pads without any consideration (free of cost) during the warranty period as mentioned in para 9 of vide P.O. No.38201145101516 dated 30.04.2021 of Principal Chief Material Manager, South Central Railway to the M/s Prag Industries (India) Pvt. Ltd. It is an admitted fact that the warranty is a promise or guarantee for the goods / services supplied by the applicant.

13. That under guarantee and free replacement no consideration shall be chargeable from the buyer against the supply of replaceable goods, and as such no GST could be charge and payable to the Govt. The replaced items shall be of NIL value. In as much as the consideration for replaced goods has already been included as and when the original supply was made for the first time to the Indian Railways. During the warranty period the goods and service have been supplied to customers as free of charge. No separate consideration is charged and received at the time of replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore the replacement of the goods and service rendered during the warranty period without consideration does not attract GST separately.

14. We find that the above issue has been decided in the AAR, Chennai, Tamil Nadu vide Advance Ruling No. TN/07/ARA/2022 Dated 28.02.2022 in case of SOUTH INDIAN FEDERATION OF FISHERMEN SOCIETIES.

Relevant part of para 8.1 is as under:

As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore the replacement of the goods and service rendered during the warranty period without consideration does not attract GST separately.

We also find that Extract from CBIC -GST SECTORAL SERIES IT/ITES (page no 5)

Question 20: What would be the tax liability on replacement of parts (no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the input tax credit?

Answer: As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to

reverse the input tax credit on the parts/components replaced.

15. In view of the above discussions, we pass an order as follows:

ORDER

"1. "As to whether if goods are supplied as free replacement under guarantee period without any consideration, what would be the tax liability under GST."?

Answer- GST is not leviable, if goods are supplied as free replacement under guarantee period without any consideration.

16. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104 (1) of the Act.

(Vivek Arya)

Member of Authority for Advance Ruling

(Rajendra Kumar)

Member of Authority for Advance Ruling

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khand, Gomti Nagar, Lucknow - 226010, within 30 days from the date of service of this order.