# AUTHORITY FOR ADVANCE RULING, TAMIL NADU No.207, 2<sup>nd</sup> FLOOR, PAPJM BUILDING, No.1, GREAMS ROAD, CHENNAI 600 006.

### ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER SECTION 98(4) OF THE TNGST ACT, 2017

#### Members present:

Sri. Balakrishna S, I.R.S., Additional Commissioner/Member (CGST), Office of the Commissioner of GST and Central Excise, Audit II Commissionerate, Chennai - 600 034. Smt. A.Valli, M.Sc.,
Joint Commissioner/Member (SGST),
Authority for Advance Ruling,
Tamil Nadu,
Chennai - 600 006.

#### Advance Ruling No. 25/AAR/2024, dated 05.11.2024

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/TNGST Act 2017, within 30 days from the date on which the ruling sought to be appealed, is communicated.
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-
  - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.
  - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
- 3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
- 1. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.
- 5. The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (hereinafter referred to as the '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 Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.

GSTIN Number, if any / User id	33AAFCA6421P1ZK
Legal Name of Applicant	M/s. ZF Commercial Vehicle Control Systems India Limited.
	(formerly known as WABCO India Limited)
Trade Name of Applicant (Optional)	M/s. ZF Commercial Vehicle Control Systems India Limited
Registered Address/ Address provided while obtaining user id	Plot No. 3, South phase, Third Main Road, Ambattur Industrial Estate, Chennai – 600 058.
Details of Application	Application Form GST ARA – 01 received from the applicant on 28.06.2023.
Concerned Officer	Center: Chennai North Commissionerate, Ambattur Division, Range III.
	State: Ambattur Assessment Circle, Kancheepuram Division.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	1. Factory/Manufacturing
	2. Warehouse/Depot
	3. Service Provision
	4. Service Recipient
B Description (in brief)	The applicant having above mentioned GSTIN has manufacturing unit in the State of Tamil Nadu. The applicant is leading global supplier engaged in manufacturing of braking control systems and other advanced technologies that improve the safety, efficiency and connectivity of the commercial vehicles. The Applicant is importing as well as domestically procuring Electronic Control Units ("ECU") for anti-lock braking systems ("ABS"). The Applicant thereafter supplies the said ECUs domestically in Indian market.  The application seeks a ruling on the HSN Classification of the above-mentioned ECU and its relevant rate of tax under GST Law.
Issue/s on which advance ruling Required	Classification of goods and/ or services or both

ruling is required

- Question(s) on which the advance 1. Whether ECU supplied by the applicant is classifiable under the HSN 9032 89 90 as "Other instruments and apparatus Others?
  - 2. If not classifiable under tariff item 9032 89 90, what is the relevant HSN Classification for ECU?
  - 3. What is the applicable rate of GST for the above-mentioned ECU as per Notification No. 01/2017-CentralTax (Rate) dated 28th June 2017?

M/s.ZF Commercial Vehicle Control Systems India Limited, Plot No. 3, South phase, Third Main Road, Ambattur Industrial Estate, Chennai - 600 058 (hereinafter called as 'the Applicant') is engaged in manufacturing of braking control systems and other advanced technologies that improve the safety, efficiency and connectivity of the commercial vehicles and also importing as well as domestically procuring Electronic Control Units ("ECU") for anti-lock braking systems ("ABS"). Thereafter, the applicant supplies the said ECUs domestically in Indian market. They are registered under the GST Acts with GSTIN 33AAFCA6421P1ZK.

- 2. The Applicant have made a payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules, 2017 and SGST Rules, 2017.
- 3. The applicant have preferred this application seeking Advance Ruling on the following:
  - 1. Whether ECU supplied by the applicant is classifiable under the HSN 9032 89 90 as "Other instruments and apparatus - Others?
  - 2. If not classifiable under tariff item 9032 89 90, what is the relevant HSN Classification for ECU?
  - 3. What is the applicable rate of GST for the above-mentioned ECU as per Notification No. 01/2017-CentralTax (Rate) dated 28th June 2017?

#### 4. Statement of facts in brief:

1. ZF Commercial Vehicle Control Systems India Limited is a company incorporated under the Companies Act 2013 having its registered office at Plot No.3, South Phase, 3rd Main Road, Ambattur Industrial Estate, Chennai 600 058. The applicant is primarily engaged in the manufacture of air brake actuation systems for commercial vehicles. The Company is also engaged in rendering of software development and other services. The applicant has factory located in Chennai in the State of Tamil Nadu.

- 2. The Applicant is inter-alia engaged in trading of Electronic Control Units ("ECU") for anti-lock braking systems ("ABS"). The Applicant is procuring ECU domestically as well as importing from outside India.
- 3. The Applicant thereafter supplies the said ECU domestically to their customers in the Indian market.

#### **About ECU for ABS**

- 4. ABS ECU is an electronic control unit that receives, amplifies and filters the sensor signals for calculating the wheel rotational speed and acceleration. The ECU receives a signal from the sensors in the circuit and controls the brake pressure, according to the data that is analysed by the unit. ABS prevents the wheels from locking up, this avoiding uncontrolled skidding of the vehicle and decreases the distance travelled without slipping.
- 5. ABS enhances the vehicle stability, steer ability under emergency braking, stable stopping on slippery road and in curves, increases overall safety, extend tire life.
- 6. An ECU is an embedded system in automotive electronics that controls one or more of the electrical systems or subsystems in a car or other motor vehicle. An anti-lock braking systems ("ABS") is a safety anti-skid braking system used in motor vehicles. ABS operates by preventing the wheels from locking up during braking, thereby maintaining active contact with road surface and allowing the driver to maintain more control over the vehicle. The applicant has also provided the pictorial diagram of ECU.
- 7. ABS system consists of ECU, wheel speed sensor, brake pressure modulator valves, harness, switches, relays and lamps.
- 8. The applicant is also developing ECUs for ABS applications and this is an add on to a conventional brake systems.
- 9. Further, ECU sends signals which controls the movement of pneumatic/air through the modulator valves. The wheel speed sensors will give the information to the ECU and said ECU works as an automatic device.
- 10. The ECU has a Printed Circuit Board Assembly attached to it. The ECU acts as an intelligent regulator by controlling and regulating the flow of pneumatic through the modulator valves. The ECU dose not merely send signals but also undertakes ABS regulating/controlling function.
- 11. The applicant have attached the Technical writ up on ECU as Annexure-1
- 12. The applicant have also attached the Product specification of ECU as Annexure-2

#### Appropriate HSN Classification of ECU

- 13. The applicant is currently supplying the ECU under HSN 9032 (Automatic Regulating or Controlling Instruments and Apparatus). However, it is important for the applicant to arrive at the appropriate Harmonized System (HS) Nomenclature as per the GST Legislation.
- 14. The applicant is of the understanding that the HSN classification under GST Law is based on the Customs Tariff Act 1975 ("Customs Tariff Act) for ECU. In this regard, reference is drawn to Explanation provided in the Notification No.01/2017-Central Tax (Rate) dated 28th June, 2017. Relevant extract is reproduced below:

"Explanation-For the purposes of this notification,	

- (iii) "Tariff item", "Sub-heading" "Heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification."
- 15. Given the above, it is important to arrive at the appropriate HSN Classification as per customs Tariff Act for the purpose of HSN Classification under the GST Law. Therefore, for HSN classification of ECU, the applicant is required to refer First Schedule to Customs Tariff Act ("Customs Tariff")
- India being a party to HS convention adopted new (seventh) edition of the Harmonized System (HS) Nomenclature, HS-2022 w.e.f. 01st January 2022. Therefore, for the purpose of classification of ECU, the Applicant has analysed the relevant chapter of HS code 2022, read with General Rules of Interpretation, Section & Chapter Notes and Explanatory Notes issued by World Customs Organisation ("WCO")
- 17. While the applicant had supplied ECU in the past, based on the technical characteristics of the ECU and further analysis of the classification under HS explanatory notes and internal discussions, the Applicant believes that the most appropriate classification of ECU would be Chapter heading 9032 as "Automatic Regulating or Controlling Instruments and Apparatus".

#### 4.2. STATEMENT OF INTERPRETATION OF LAW

### 1. Classification of ECU - Chapter Heading 9032

1.1 Chapter 9032 consists of the following sub-heading and tariff entries.

Tariff	AUTOMATIC REGULATING OR CONTROLLING INSTUMENTS AND APPARATUS		
9032			
903210	-Thermostats		
90321010	For refrigerating and air-conditioning appliances and machinery		
90321090	Other		
903220	-Manostats		
90322010	For refrigerating and air-conditioning appliances and machinery		
90322090	090other		
	- Other instruments and apparatus		
90328100	Hydraulic or pneumatic		
903289	Other		
90328910	Electronic automatic regulators		
90328990	Other		
90329000	-Parts and accessories		

1.2 Further, Note 7 of Chapter 90 has provided the scope of Heading 9032. The Applicant has enclosed the copy of Note 7 of Chapter 90 as Annexure-3. Extract of the note is reproduced hereunder:

#### "7. Heading 9032 applies only to:

- (a) Instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value; and
- (b) Automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be

controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value."

- 1.3 From the above, it can be inferred that Tariff Heading 9032 includes two categories of Automatic Regulating or Controlling Instruments and Apparatus:
  - (a) Instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature;
  - (b) Automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities.
- 1.4 As explained above, it can be understood that ECU sends signals which controls the movement of pneumatic/ air through the modulator valves. Further, the ECU has a Printed Circuit Board Assembly attached to it. The ECU acts as an intelligent regulator by controlling and regulating the flow of pneumatic through the modulator valves.
- 1.5 Therefore, ECU does not merely send signals but also undertakes regulating/controlling function. Given this, the applicant submits that the above functionality of ECU gets covered under Note 7 (b) of Chapter 90 and therefore, the appropriate classification is Heading 9032 and more specifically under the Tariff 90328990.
- 1.6 Further **WCO HSN Explanatory notes on Heading 9032** (The same has been attached by the applicant as Annexure-4) provides the following scope:

"The Automatic Regulators of this heading are intended for use in complete automatic control systems which are designed to bring quantity, electrical or non-electrical, to, and maintain it at, a desired value, stabilized against any disturbances, by constantly or periodically measuring its actual value. They consist essentially of the following devices:

- A) A measuring device (sensing device, converter, resistance probe, thermocouple, etc.) which determines the actual value of the variable to be controlled and converts it into proportional electrical signal.
- B) An electric control device which compares the measured value with the desired value and gives a signal (generally in the form of modulated current).
- C) A starting, stopping or operating device (generally contracts, switches or circuit brakers, reversing switches or sometimes relay switches) which supplies current to an actuator in accordance with the signal received from the control device.

An automatic regulator within the meaning of Note 7(b) to the Chapter consists of the devices described in (A), (B) and (C) above, whether assembled together as a single entity or in accordance with Note 3 to this Chapter, a functional unit.

Automatic regulators are connected to an electrical, pneumatic or hydraulic actuator which brings the controlled variable back to the desired value. This actuator may be the clamps which adjust the gap between the electrodes of an arc furnace, the motorized value which controls the intake of water or steam in a boiler, furnace, a pulping machine, etc."

- 1.7 From the above, it can be understood that following conditions are required to classify a product under the Chapter Heading 9032.
  - Apparatus for automatically controlling liquids or gases or temperature, within the meaning of Note 7(a) to this Chapter, consists of three devices (viz., A device for measuring the variable to be controlled, control device and starting /stopping /operating device) forming a single entity or a functional unit.
  - Instruments and apparatus for automatically controlling the flow, level, pressure and other variable of liquids or gases or for automatically controlling temperature are connected to an appliance which carries out the orders (pump, compressor, valve, furnace burner, etc.) which restores the variable to the prescribed value, or which, in the case of a safety system, for instance, stops the operation of the machine or apparatus controlled.
- 1.8 As explained above in Para 1.1 to 1.7, the applicant is of understanding that ECU sends signals which controls the movement of pneumatic/air through the modulator valves. Further, the ECU has a printed Circuit Board attached to it. The ECU acts as an intelligent regulator by controlling and regulating the flow of pneumatic through the modulator valves.

Therefore, <u>ECU does not merely send signals but also undertake regulating/controlling function</u>. Given this, the applicant submits that the above functionally of ECU gets covered under Note 7(b) of Chapter 90 and therefore, the appropriate classification is Heading 9032 and more specifically under the Tariff 90328990.

#### 2. ECUs are not classifiable under Chapter 87.

- 2.1 Having submitted that the applicant is of the view that the ECUs are classifiable under Chapter 9032, the next question which arises is that whether the said product can be classified as "parts and accessories" of motor vehicles falling under Chapter 87.
- 2.2 In this regard, it is important to refer to Note 2 and Note 3 to Section XVII (i.e. Section under which Chapter 87 falls) Note 2 provides that the expressions "parts" and "parts and accessories" do not apply to a set of articles enumerated therein, whether or not they are identifiable as for the goods of Section XVII. One of the specific exclusions specified is "Articles of Chapter 90". The Applicant has enclosed the Note-2 Section XVII as Annexure-5. The extract of Note 2 is as follows:

"2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

•••

#### (g) Articles of chapter 90;

..."

- 2.3 Further, Note 3 provides that 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. The extract of Note 3 is as follows:
- "3. References in chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory."
- 2.4 Therefore, from a combined reading of Note 2 and Note 3, it can be inferred that for a part to be classified under Chapter 87 (i.e. Section XVII), it has to satisfy the test of Note 2 and Note 3. In this regard, the applicant referring to the submission made in Para 1.1 to Para 1.8 is of the view that ECUs are classifiable under Chapter 90 and therefore it will fall under the exclusion category of Note 2 of Section XVII. Once the product falls under exclusion category of Note 2, test for a product to be classified as parts and accessories of motor vehicle under Chapter 87 is not satisfied.
- 2.5 Given the above, the applicant submits that since the ECU imported by ZF is classifiable under Chapter 90 and articles of Chapter 90 are excluded from Note 2 of Section XVII, it is reasonable to conclude that product automatically becomes excluded to be classified a part and accessories of motor vehicles under Chapter 87 of Section XVII.
- 2.6 Reliance is placed on Hon'ble Supreme Court decision in case of CCE Aurangabad versus M/s. Videocon Industries Ltd. (CIVIL APPEAL NO(S). 5622 OF 2009 and CIVIL APPEAL NO(S), 8026 OF 2022) wherein the Hon'ble Supreme Court has upheld the decision of CESTAT providing that where the goods are excluded from a particular chapter, the "pull in" through a note has to be narrowly construed, as otherwise, the basis of exclusion would be defeated, and the earlier note (of exclusion) rendered redundant. It further held that headings that are specifically provided, should be preferred over the general ones, is decisive.

Thus, it was held the revenue's contention that by virtue of Note 2(b) to Chapter 85, the goods are to be classified based on their principal or sole use is insubstantial because of the clear mandate of Note 1(m), which excludes Chapter 90 goods (which includes LCD panels). More importantly, Note 2 opens

with the expression "subject to Note 1". This subordinates the entire subject matter in Note 2; it is only where the article is a "part" which acts as an accessory, that the enumerated portions of Chapter 85 come into play. Such an interpretation is plainly untenable. Accordingly, it was held that LCD sets were classifiable under Chapter 90, i.e. Entry 90138010. The Copy of same has been enclosed by the applicant as Annexure-6.

- 2.7 The Applicant places reliance in the case of Customs Advance Ruling No. CAAR/MUM/ARC/07/2022 of M/s. Tata Motors Limited wherein the Differential Pressure Sensors ('DPS') and Tyre Pressure Monitoring Sensors ("TPMS"), it has been ruled by Hon'ble AAR ruled that the classification of the said products is under subheading 9026 00 00 of the First Schedule of the Customs Tariff Act 1975. The Copy of ruling has been enclosed by the applicant as Annexure-7.
- 2.8 In the above backdrop, it is also relevant to note that post the Supreme Court decision in Westinghouse Saxby Farmer Limited Vs Commissioner of Central Excise, Calcutta (2021 (376) E.L.T.14(S.C), the CBIC issued Instruction No.01/2022-Customs dated 5th January 2022). In the said CBIC instructions, citing practical difficulties that have arisen in the course of assessment of automobile parts, the following was inter alia clarified as follows:
- In similar matters, the Supreme Court had in the past applied divergent principles to determine classification and that the collective wisdom emerging from all judgments should be holistically looked at to determine product classification.
- Classification of all parts of Section XVII to the Customs Tariff is to be determined considering all facts, details and all applicable judgements as well as after making references to the relevant section notes as well as relevant HSN explanatory notes.

Further, pursuant to dismissal of Revenue's review petition filed against the Supreme Court Judgement in Westinghouse Saxby, the CBIC has issued another Instruction (Instruction No.25/2022-Customs dated October 3, 2022) to clarify that the aforesaid CBIC Instructions remains valid and does not require any changes since the law continues to remain the same. The copy of CBIC Instructions has been enclosed by the applicant as Annexure-8.

Therefore in the view of the above, it is relevant note that even in the present case, classification is required to be determined on the basis of facts, circumstances, applicable section/chapter notes, explanatory notes, judgements, etc. holistically.

Therefore, it can be seen that the articles of the Chapter Heading 9032 cannot be regarded as "parts and accessories" of motor vehicles classifiable under Chapter 87.

## 3. International Classification - Classification of ECU obtained from different feedstock as adopted by international agencies

- 3.1 As Harmonized System of Nomenclature (HSN) is adopted internationally for classification of goods, classification adopted in other countries can be relied upon to arrive at the Tariff heading in India. In this context we submit decision of Customs classification confirming Tariff heading of ECU in the Chapter 90.32 of HSN, adopted by Customs Authorities of United States of America (USA).
- 3.2 In case of US cross Ruling No. HQ 954950 dated 23 December 1993 where an Electronic Control Unit (ECU) for an automobile was classified under Tariff Item 90328960 of the US Customs Tariff Schedule. Copy of ruling is enclosed as Annexure-9. Relevant extract is reproduced below:

"The electronic control unit (ECU) in issue is provided for in heading 9032. It is classifiable in subheading 9032.89.60, HTSUS, as automatic regulating or controlling instruments and apparatus".

3.3 From the above ruling, from the above cited US Cross ruling, it can be said that even internationally ECUs are classified under Chapter Heading 9032.

#### II.GST rate for the ECU

- 1. Based on the above mentioned submissions, the applicant is of the view that ECUs are classifiable under Chapter 9032.
- 2. CGST rates are provided in Notification No.01/2017/-Central Tax (Rate) dated 28th June 2017. As per the said notification, HSN 9032 is taxable at 9% rate of CGST vide Entry No.422 of Schedule III.

Relevant Extract is reproduced below:

S. No.	Chapter/Heading/ Subheading/ Tariff item	Description of Goods
422	9032	Automatic regulating or controlling instruments and apparatus

3. Further, the applicant have also referred the Notification No.1/2017-Integrated Tax (Rate) dated 28th June 2017, where Integrated Goods and Services Tax (IGST) rates are provided. As per the said notification HSN 9032 is taxable at 18% of IGST vide Entry No 422 of Schedule-III.

S. No.	Chapter/Heading/ Subheading/ Tariff item	Description of Goods
422	9032	Automatic regulating or controlling instruments and apparatus

- 4. Therefore, the applicant is of the view that ECUs are taxable at 18% rate (CGST 9% and SGST 9%; IGST 18%)
- 5.1 The applicant is under the administrative control of Center Tax Authority. The concerned Authorities of the Centre and State were addressed to report the detailed remarks and no pendency report on the questions raised by the applicant in their ARA application.
- 5.2 The concerned Central Authority has not reported anything, hence it is construed that there are no pending proceedings against the applicant on the questions raised by the applicant in the ARA application.
- 5.3 The State Authority has not reported anything, hence it is construed that there are no pending proceedings against the applicant on the questions raised by the applicant in the ARA application.
- 6. In these circumstances, the applicant was given an opportunity to be heard in person on 20.08.2024 vide this office memorandum No.343/2023, dated 12.08.2024. In pursuance to this, the Applicant vide their letter dated 14.08.2024, received through e-mail dated 16.08.2024, have informed that they have decided to withdraw their ARA application and requested to consider the same.

#### **DISCUSSION AND FINDINGS:**

7. After due consideration, the Applicant's letter dated 14.08.2024, received through e-mail dated 16.08.2024 is taken on record, wherein the applicant has informed that they have decided to withdraw their ARA application. Accordingly, the Applicant's request is considered and the application is disposed as withdrawn without going into the merits or detailed facts of the case.

In view of the above, we rule as under:

#### RULING

The ARA Application received from the applicant on 28.06.2023 is disposed as withdrawn as per the request of the Applicant.

M/s. ZF Commercial Vehicle Control Systems India Limited Plot No. 3, South phase, Third Main Road, Ambattur Industrial Estate, Chennai – 600 058. (By RPAD)

#### Copy submitted to:

- 1. The Principal Chief Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034.
- 2. The Commissioner of Commercial Taxes, 2<sup>nd</sup>Floor, Ezhilagam, Chepauk, Chennai 600 005.
- 3. The Principal Commissioner of GST & Central Excise, Chennai (North) Commissionerate, 26/1, Uthathamar Mahatma Gandhi Road, Nungambakkam, Chennai 600 034.

#### Copy to:

- The Assistant Commissioner (ST),
   Ambattur Assessment Circle,
   Integrated Building for Commercial Taxes and Registration Dept.,
   Nandanam, Chennai 600 035.
- 2. Master File / spare 2.

