

BEFORE THE BENCH OF

(1) Shri Rakesh Kumar Sharma, MEMBER (Central Tax)

(2) Shri Sanjeev Kumar, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Saint-Gobain India Private Limited, 5 th floor, Leela Business Park, Andheri-Kurla Road, Near Airport Road Metro Station, Mumbai – 400059.
GSTIN Number:	27AABCS4338M1Z1
Clause(s) of Section, under which the question(s) raised:	(b) applicability of a notification issued under the provisions of this Act;
Date of Personal Hearing:	15.10.2020
Present for the Appellant:	Shri R. Nambirajan, Advocate
Details of appeal:	Appeal No. MAH/GST-AAAR-05/2020-21 dated 28.08.2020 against Advance Ruling No. GST-ARA-51/2019-20/B-38 dated 17.03.2020.
Jurisdictional Officer:	Assistant Commissioner CGST & C.Ex., Division V, Mumbai East Commissionerate.

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 provisions under the MGST Act.



2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [**hereinafter referred to as “the CGST Act and MGST Act”**] by **M/s. Saint-Gobain India Private Limited**, 5th floor, Leela Business Park, Andheri-Kurla Road, Near Airport Road Metro Station, Mumbai - 400059 (**hereinafter referred to as “the Appellant”**) against the Advance Ruling No. **GST-ARA-51/2019-20/B-38** dated **17.03.2020**, pronounced by the Maharashtra Authority for Advance Ruling (**hereinafter referred to as “the MAAR”**).

BRIEF FACTS OF THE CASE

- 3.1 M/s Saint- Gobain India Private Limited is engaged in the business of manufacturing and trading of glass and gypsum products. One of the gypsum products manufactured and marketed by the Appellant is the “Gypsum Board”.
- 3.2 Gypsum Board is a board / panel made of calcium sulfate dihydrate (gypsum), with or without additives, typically extruded between thick sheets of facer and backer paper, used in construction of interior walls and ceilings. Gypsum Board may be manufactured as plain, laminated and reinforced board and reinforcing materials used include glass, paper, vegetable fibers etc. Currently, the Appellant is manufacturing both paper reinforced and glass reinforced gypsum boards.
- 3.3 The Appellant is proposing to manufacture a new category of product under “**Glass reinforced gypsum board**” (hereinafter referred to as “**GRG**”) which is essentially going to be a **gypsum plaster, reinforced with glass-fiber**. The composition of the proposed product would be as approximately 94% of gypsum and adhesives; approx. 5% of paper; and >1% of glass fiber. The purpose of the GRG is to increase the flexural, tensile, compressive and impact strength of the new category product.
- 3.4 As per Serial No. 180C of Schedule III of the Notification No. 41/2017 – Central Tax (Rate), which amended the Notification No. 1/2017 – Central Tax (rate), dated 28th June 2017, the goods falling under Heading No.68.09 are subject to the levy of GST at the rate of 18%.



- 3.5 However, Notification No.1/2017 – Central Tax (rate) dated 28th June 2017 provides for concessional rate of GST at the rate of 12% on supply of “Glass-fiber Reinforced Gypsum Board” which is reproduced under for ready reference:

Sl. No	Chapter/ heading/sub- heading/tariff item	Description of goods	GST Rate
(1)	(2)	(3)	(4)
92	44 or any other chapter	The following goods, namely: - <i>a. Cement Bonded Particle Board;</i> <i>b. Jute Particle Board;</i> <i>c. Rice Husk Board;</i> <i>d. Glass-fiber Reinforced Gypsum Board;</i> <i>e. Sisal-fiber Boards;</i> <i>f. Bagasse Board; and</i> <i>g. Cotton Stalk Particle Board</i> <i>h. Particle/ fiber board manufactured from agricultural crop residues</i>	12%

- 3.6 On reading of the above Sl. No.92 of the notification, it is clear that the Entry No.92 does **not** provide any conditions or specifications which are necessary to qualify the product as “Glass-fiber Reinforced Gypsum Board”. Hence, there exists an ambiguity as to the applicability of the Sl. No.92 of the Notification in absence of any specific conditions in the notification.

- 3.7 In view of the above facts and legal position as enumerated above, the Appellant had filed an Advance Ruling Application on the question of eligibility to avail the beneficial rate of GST for the proposed product in terms of Sl. No.92 of the Notification No.1/2017-IT (Rate) dated 28.6.2017 as amended from time to time. For this reason alone, the Appellant had categorically approached the Maharashtra Authority for Advance Ruling (MAAR) to determine/examine the question as to **whether the proposed product to be manufactured by the Appellant would be**

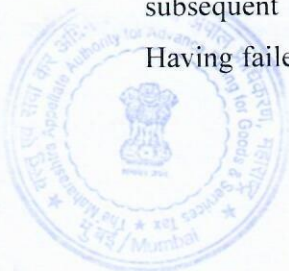


considered/categorized as “Glass-fiber Reinforced Gypsum” or not in terms of Sl. No.92 of the Notification No.1/2017-C.T. (Rate), dated 28.6.2017.

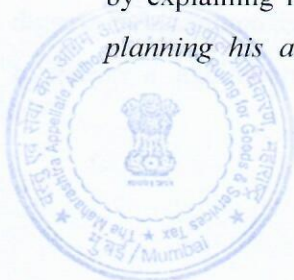
- 3.8 The MAAR, vide the Advance Ruling No. GST-ARA-51/2019-20/B-38, dated 17.03.2020 rejected the application filed by the Appellant by holding that the Appellant was not qualifying the “eligibility test” for filing an Advance Ruling before the Authority in terms of Section 95(a) of the CGST Act, 2017, since the proposed product is not in ‘existence’ at all for obtaining an advance ruling under GST. They further observed that since the issue in the present case pertains to “classification” of a proposed product, they cannot proceed ahead to give the ruling in absence of the physical samples of the proposed product under consideration.
- 3.9 Aggrieved by the aforesaid Advance Ruling Order, dated 17.3.2020 passed by the MAAR, the Appellant has filed this present appeal.

GROUND OF APPEAL

4. The Appellant, in their appeal memorandum, inter alia, has mentioned the following grounds of appeal:
- 4.1 That the issue on which the present appeal is being filed in the instant matter relates to determination of “*applicability of a notification issued under the provisions of this Act*” as covered under Section 97(2)(b) of the CGST Act, 2017 for the product in question namely ‘Glass-Fiber Reinforced Gypsum Board’.
- 4.2 That the Advance Ruling was sought for the product, which was proposed to be manufactured and not in existence. The MAAR was aware of the said fact at the time of the hearing for the admission held on 10.12.2019 and was satisfied that the product in question was eligible for obtaining an Advance Ruling and therefore admitted the appeal.
- 4.3 The MAAR in the impugned order dated 17.03.2020 has held that the sample of the product were not provided and in absence of the samples of the product proposed to be supplied, the classification cannot be determined. However, the MAAR did not direct the Appellant to provide a sample of the goods in question or provided the Appellant an opportunity to provide the samples. Hence, the Appellant was not provided an opportunity of being heard on the question of requirement to produce samples and the subsequent opportunity to manufacture the product to submit before the authority. Having failed to do so the MAAR has violated the principle of natural justice.

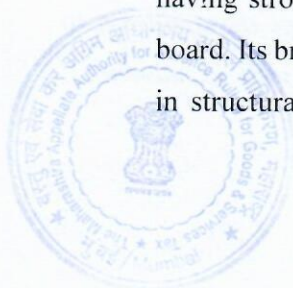


- 4.4 That the MAAR had been provided with the detailed test reports of the other products in the market manufactured by manufacturers other than the appellant, who were classifying the products as “Glass fiber reinforced gypsum board” and availing the benefit of the Sl. No. 92 of Schedule II to the Notification no. 1/2017-C.T. (Rate), 28.06.2017, similar to which the Appellant was proposing to supply the goods.
- 4.5 That the application was never sought for under the provisions of Section 97(2)(a). Rather, it was sought for under Section 97(2)(b) of the CGST Act, 2017 which provides that Advance Ruling can be sought with respect to applicability of a notification issued under the provisions of this Act.
- 4.6 That the provisions of Section 95(a) read with Section 97(2)(a)/(b) of the CGST Act, intend to cover goods in existence or not in existence at the time of obtaining the Advance Ruling. It is pertinent to note that Section 95(a) of the Act prescribes that an Advance Ruling can be obtained for goods and services or both which are supplied or proposed to be supplied. If an interpretation is taken that the goods should be in existence for an Advance Ruling, then the question would arise regarding the services which are proposed to be supplied. The service cannot come into existence till it has been supplied. If a stand is taken that only in case of goods the same should be in existence for obtaining an Advance Ruling, the same would be contrary to the language of the provision which prescribes no bar. Hence, it is submitted that under the GST provisions, an Advance Ruling can also be obtained for a product which is not in existence as on the date of the Advance Ruling and which is proposed to be manufactured and supplied. If the intention of the legislature was to the contrary, the same would have been explicitly provided or clarified by way of a subsequent amendment or circular to this effect. Thus, the MAAR has erred in rejecting the application on the said grounds.
- 4.7 That reference in this regard has been invited to CBIC’s GST Flyer on Advance Ruling Mechanism (Chapter 37), wherein it has been stated that “*definition of Advance Ruling given under the Act is a broad one and an improvement over the existing systems of advance rulings under Customs and Central Excise Laws. Under GST, Advance Ruling can be obtained for a **proposed transaction** as well as a transaction already undertaken by the Appellant.*” Further, the Flyer also explains the importance of Advance Ruling by explaining its objectives. It states that an “*advance ruling helps the applicant in planning his activities, which are liable for payment of GST, **well in advance.***”



Moreover, In GST FAQs, 2nd Edition, issued by the CBIC, it is mentioned that an applicant can apply for advance ruling **even before taking up a transaction**.

- 4.8 That reliance in this regard is also placed to the decision of the West Bengal Appellate Authority for Advance Ruling in the case of *Akansha Hair & Skin Care Herbal Unit Private Limited* reported at *2018 (16) GSTL 277 (West Bengal AAAR – GST)*. The facts of the said case were similar to the case of the Appellant where the authority for advance ruling had refused to classify certain goods which were not in existence. The AAAR in the given case held that the advance ruling shall also be available on products not in existence and proposed to be supplied in the future. Further the AAAR also proceeded to provide classification of the said products proposed to be supplied by the Appellant.
- 4.9 That on reading of Sl. No.92 of the Schedule II to the Notification No. 1/2017-C.T. (Rate), dated 28.06.2017, it can be inferred that to claim the benefit of concessional rate of GST at the rate of 12% on goods mentioned in column (3) of the said notification, following two conditions are required to be satisfied by the registered person:
- (i) The goods should be classified under Chapter 44 or any chapter; and
 - (ii) The goods should qualify with the nomenclature mentioned in column (3) of the notification
- 4.10 That there is no dispute regarding the classification of the proposed product for the reason that Sl. No.92 of the Schedule – II of the Notification is applicable to goods falling under ‘**any chapter**’. Thus, the first condition as mentioned in point (i) above stands satisfied. Here, only the second condition as mentioned in point (ii) above needs to be examined.
- 4.11 That the term “Glass-Fiber Reinforced Gypsum Board” has not been defined under Notification No. 1/2017 – C.T. (Rate), dated 28.06.2017. Thus, reliance has to be placed on the common understanding of the same. Gypsum Board, in general, is referred to a board / panel made of calcium sulfate dihydrate (gypsum), with or without additives, typically extruded between thick sheets of facer and backer paper, used in construction of interior walls and ceilings. The same is characterized with the advantage of being lighter than boards of similar nature. However, they come with their shortcomings of having strong compression yet weak tension and giving a low impact strength to the board. Its brittle properties prevent the effective utilization of high compressive strength in structural applications. In order to overcome the said shortcomings, a variant of



Gypsum board is produced called "Glass-Fiber Reinforced Gypsum Board". The said product is a variant of the original Gypsum board as "Glass-Fiber" is added to the original composition of the product to increase its reinforcement.

4.12 That it is pertinent to understand the meaning of the term "reinforced". The term "reinforced", has been defined in various dictionaries as under:

- The Merriam Webster dictionary defines "reinforce" as '*to strengthen by additional assistance, material or support; make stronger or more pronounced*'.
- The Collins dictionary defines "reinforce" as '*to reinforce an object means to make it stronger or harder*'.
- The Cambridge dictionary defines "reinforce" as '*to make something stronger, usually by adding more material or another piece*'.

4.13 From the above meaning, it is deduced that reinforcement implies strengthening by addition or assistance of some material. In the present matter, the Appellant proposes to add glass-fiber up to one percent of the total weight of the ingredients of the gypsum board in order to increase flexural, tensile, compressive and impact strength of the board. Once certain percentage of glass-fiber is added into the resultant product, the glass-fiber is bound to give reinforcement to the resultant product.

4.14 Thus, the Appellant is of the view that its proposed product shall be classifiable as GRG and shall attract GST at the rate of 12% as per Sr. no. 92 of Schedule II to Notification no. 1/2017 – C.T. (Rate), dated 28.06.2017.

4.15 That reference is made to the relevant entry of the Notification No.6/2002-C.E. as it stood before being rescinded by Notification No.21/2006-C.E., dated 1-3-2006. The same is reproduced hereunder for ease of reference:

Sl. No.	Chapter or heading No or sub-heading No.	Description of goods	Rate under the first Schedule	Rate under the Second Schedule	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
234	Any Chapter	a. Cement Bonded Particle Board b. Jute Particle Board	Nil	-	-

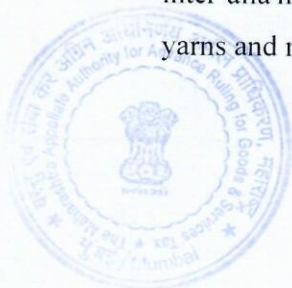
		c. Rice Husk Board			
		d. Glass-fiber Reinforced Gypsum Board (GRG)			
		e. Sisal-fiber Boards			
		f. Bagasse Board			

4.16 That the exemption Entry No.234 under Notification No. 6/2002-CE as prescribed under the pre-GST regime is similar to the Sl. No.92 of Schedule – II to the Notification No. 1/2017- C.T.(R), dated 28.06.2017, as amended, for GRG. The entries under both the notifications do not prescribe any standards or specifications for what would constitute as ‘Glass fiber Reinforced Gypsum Boards’. It is further to be noted that Entry No.234 of Notification No. 6/2002-C.E. covers all the items of Sl. No.92 to Schedule – II of the Notification No. 1/2017- CT(R). Thus, it is clear that the intention of government to grant concessional/exemption benefit to products mentioned in Entry No.234 of Notification no 6/2002-CE is extended / continued by inserting Sl. No.92 of Schedule – II to the Notification No. 1/2017- CT(R) under GST regime too.

4.17 In the absence of any percentage or quantification or condition attached for classification under the above notification, it can be inferred that the **intention of the Legislature is to provide the benefit of concessional rate of tax to gypsum board reinforced with glass-fiber, containing any quantity of glass-fiber, however miniscule, it may be, and providing reinforcement ability.** The benefit of such notification cannot be denied to the Appellant simply on the criteria of quantity of glass-fiber, when such disqualification is not provided under the notification.

4.18 To support the above submission, reliance has been placed on the decision of the Hon’ble Mumbai Tribunal in the case of:

(i) *Khanna Dyeing & Printing Works v/s Commissioner of Central Excise, Mumbai-III* reported at *2000 (118) E.L.T. 637 (Tribunal)*, wherein the Hon’ble Tribunal inter-alia held that the notification shall be applicable to all fabrics containing nylon yarns and not just fabrics in which the nylon yarn predominates the weight.



(ii) **Talbro Automotive Components Limited v/s Collector of Customs, Bombay reported at 1984 (15) E.L.T. 193 (Tribunal)**, wherein the Hon'ble Tribunal held that *"on a literal construction, this expression would cover a manufacture which contained mineral fibers or yarn, irrespective of the percentage of the mineral fibers or yarn, and all such manufactures would be brought within the scope of Item 22F.*

4.19 Thus, it is submitted that a gypsum board containing any percentage of glass fiber which provides reinforcement in any form to the gypsum board, could be considered as GRG in order to avail the benefit of concessional rate of GST @12% in terms of Sl. No.92 of the Schedule – II to the Notification No. 1/2017- C.T.(Rate), dated 28.06.2017, even if such resultant product does not conform with IS standards as prescribed by the government for a GRG board.

4.20 That when the notification granting exemption doesn't stipulate any conditions thereto, the notification should be interpreted as such. When the wording of the notification is clear, the plain language of the notification must be construed strictly and given effect to. Thus, applying Literal Rule of Interpretation, it can be said that where no quantity of glass-fiber is specified in the notification for qualifying it as GRG, presence of any amount of glass-fiber in the gypsum board, giving reinforcement properties, shall make it eligible to be classified as GRG.

4.21 That attention is drawn to the fact that the addition of the glass-fiber to the gypsum board provides reinforcement / strength to gypsum board. To support the same, an internal study was conducted by them for determining the strength of the various gypsum boards. The comparative result of the study is being summarized as under:

Product name	Percentage of glass-fiber	Strength	
		Longitudinal Direction	Transverse Direction
Gypsum Plaster Board -Plain (12.55mm board)	0%	508-545 N	200-224 N

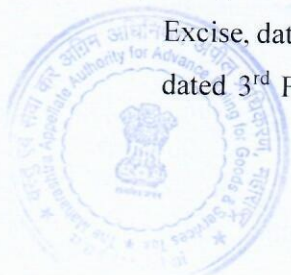


Gypsum Plaster Board -Fireline (12.55mm board)	0.44%	557-631 N	262-326 N
Gypsum Plaster Board -Duraline (12.55mm board)	0.66%	850-873 N	475-480 N

From the above, it can be observed that even with the presence of 0.44% of glass-fiber in the gypsum board, its strength increases in both the direction, i.e. the gypsum board is reinforced even with the addition of such a minuscule amount of the glass fiber, and hence is eligible to be classified as GRG so as to qualify for the concessional rate of duty in terms of the Sl. No. 92 of the Schedule II to the Notification No. 1/2017-C.T. (Rate), dated 28.06.2017

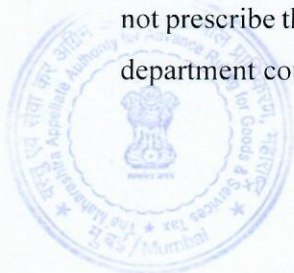
4.22 That whenever the intention of the Legislature is to provide conditional benefits, such conditions or quantifications have been clearly specified while granting concessional benefits, such as;

- (i) entry under Serial No. 3 of Notification No. 69/2004-Customs dated 9 July 2004, which grants exemption to import of goods covered under notification, from levy of Education Cess, clearly specifying quantifications/conditions.
- (ii) Notification No. 38/1993 dated 28th February 1993 issued under Central Excise Act, 1944, granting exemption from payment of excise duty to all goods falling under Chapter 68 (except those falling under Heading 68.04), with specific quantifications/conditions.
- (iii) Notification 12/2012 – Central Excise, dated 17th March 2012 granting exemption from whole of excise duty to specified goods of Chapter 1 to 98. Under Entry 74 of the said notification, exemption is granted to 5% Ethanol blended petrol subject to the condition that the said product should conform to Bureau of Indian Standards specification 2796. Similarly, Entry 75 of the said notification while granting exemption to 10% ethanol blended petrol clearly mentions as a condition, conformance to Bureau of Indian Standards specification 2796.
- (iv) Entry 94A of the abovementioned notification, i.e. Notification 12/2012 – Central Excise, dated 17th March 2012 (inserted by Notification No. 3/2014 – Central Excise dated 3rd February 2014) which provides for exemption from payment of excise



duty to Dicalcium phosphate (DCP) of animal feed grade confirming to IS specification No. 5470: 2002 falling under Chapter 28.

- 4.23 That if the intention of the Legislature was to require compliance with any specific standard, such requirement would have been clearly specified in the notification. Where no such requirement is mentioned in the notification, it can reasonably be presumed that the Legislature doesn't intend conformance to any specific standard in order to avail the benefit of the notification.
- 4.24 That the words of the Legislation must be given effect to **as-it-is**. There is no space for intendment in case of taxing statutes and the matter must be governed wholly by the language of the notification. The said view is reiterated in the case of ***Hemraj Gordhandas vs H. H. Dave Assistant Collector of Central Excise & Customs*** reported at **1978 (2) ELT 350 (SC)**, wherein the Hon'ble Apex court has held that there is no room for any intendment but regard must be had to the clear meaning of the words and if the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority.
- 4.25 That placing reliance on the above notification entries, it is submitted that whenever the Legislature intended conformation to Indian Standards or any specific standards as a necessary condition for availing benefits under any notification, reference to such standard and condition as to compliance with such standard is specifically made in the notification granting such benefits. In other words, where no such condition is mentioned in the notification which require conformation with Indian Standards, the benefit under the notification shall not be denied on the ground of non-conformation to Indian Standards.
- 4.26 That Indian Standards 2095 Part-3-1996 (5.2) gives specification of Glass-Fiber Reinforced Gypsum Boards. It is submitted that there is no requirement in Sl. No.92 of the Notification that GRG should conform to Indian standards 2095 Part-3-1996 specification. It is also mentioned that Judgment passed by the Hon'ble Tribunal in the case of ***Vikash Trading Company v/s Commissioner of Customs, Chennai*** reported at **2019 (365) ELT 584 (Tri-Chennai)** wherein the tribunal in the aforesaid case laid down the principle that in case where the notification (issued by the department) did not prescribe the requirement to conform with any specific standard, the customs/excise department could not mandate the conformance with the same.



4.27 That benefit of the notification should be unconditional in the absence of any specific condition mentioned in the notification. In this regard, reference has been made to Hon'ble Supreme Court Judgment in the case of **Commissioner of Central Excise, Hyderabad Vs. Sunder Steels Limited reported at 2005 (181) E.L.T. 154 (S.C.)**, wherein the Hon'ble Supreme Court, while awarding exemptions benefits to the assessee in absence of any conditions prescribed in the said notification, inter-alia, observed that "the Notification has to be interpreted on its wording. No words, not used in the notification, can be added."

4.28 That under the GST-regime, wherever the intention of the legislature is to grant conditional benefit, the same has been explicitly stated, as is evident from few illustrative entries of the Notification No. 1/2017-C.T. (Rate), dated 28.06.2017 and Notification No. 2/2017-C.T. (Rate), dated 28.06.2017, which have been reproduced as under:

Schedule II to Notification No. 1/2017-C.T. (Rate), dated 28.06.2017 (CGST @ 6 %)

Sl. No. (1)	Chapter/Heading/Sub-heading/Tariff item (2)	Description of Goods (3)
46B	2201	Drinking Waters packed in 20 Ltr. Bottles
191	8408	Fixed Speed Diesel Engines of Power not exceeding 15 HP

Schedule III to Notification No. 1/2017-C.T. (Rate), dated 28.06.2017 (CGST @ 9 %)

Sl. No. (1)	Chapter/Heading/Sub-heading/Tariff item (2)	Description of Goods (3)
308A	84	Parts suitable for use solely or principally with fixed Speed Diesel Engines of power not exceeding 15 HP

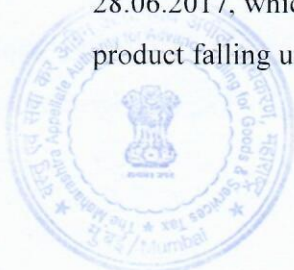


383C	8528	Television Set (including LCD or LED television) of screen size not exceeding 32 inches.
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- 4.29 In case of competing entries, as per the provisions Rule 3(a) of the General Rules of the Interpretation to the first Schedule to the Customs Tariff Act, 1975 as applicable to the GST law, the preference must be given to specific entry over the general entry. In this case, entry at Sl. No. 92 of the Schedule II to the Notification No. 1/2017-C.T. (Rate), dated 28.06.2017 gives the most specific description as far as the essential characteristics of subject product is concerned.
- 4.30 That attention is invited to the fact that the product in commercial/market parlance is identified as GRG irrespective of the quantity of glass-fiber present in the product. Once glass-fiber is reinforced in a gypsum board, it is classified and sold as a GRG board. Therefore, applying the principles of commercial/market parlance, the proposed product can be rightly classified under Sl. No. 92 of the Schedule II to the Notification No. 1/2017-C.T. (Rate), dated 28.06.2017 as 'Glass-fiber Reinforced Gypsum Board, thereby, eligible for the concessional rate of GST at the rate of 12%, and not under Sl. No. 180C of Schedule III to the Notification No. 1/2017-C.T. (Rate), dated 28.06.2017.

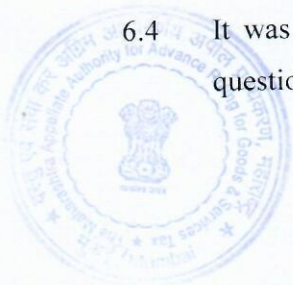
RESPONDENT's /DEPARTMENT's SUBMISSIONS

5. The submissions made by the Department/Respondent are as under:
- 5.1 The Department while appreciating the Ruling passed by the MAAR has submitted that since the proposed product under question is yet to come in existence, and therefore, the same is yet to be examined by the accredited laboratory for its specifications with regard to its composition and its essential characteristics. Hence, it is not possible to classify the proposed product under question under any Tariff Item and therefore, it is not possible to offer any comments in respect of the applicability of the entry at Sl.No.92 of the Schedule II to the Notification No.1/2017-C.T.(Rate), dated 28.06.2017, which provides for the concessional rate of duty at the rate of 12% for the product falling under the category of glass reinforced gypsum board.



PERSONAL HEARING

6. A personal hearing in the matter was held on 15.10.2020, which was attended by Shri R. Nambirajan, Advocate, as the representative of the Appellant, and by Shri Ghanisht Yesu, Deputy Commissioner (Central Tax), as the Jurisdictional officer/Respondent, in the subject appeal matter.
- 6.1 During the course of the said hearing, Shri Nambirajan reiterated the earlier written submissions incorporated in the appeal memorandum. He also referred to the Advance Ruling pronounced by the West Bengal AAAR in the case of, wherein it was held by the WBAAAR that *Akansha Hair & Skin Care Herbal Unit Pvt. Ltd. [2018(16) GSTL 277 (West-Bengal AAAR-GST)]* West Bengal Advance Ruling Authority had erred in not pronouncing its order on the products proposed to be manufactured, which is contrary to the definition of Advance Ruling, as laid down under clause (a) of Section 95 of the GST Act, 2017, which specifically provides that supply of goods, “proposed to be undertaken” by an applicant, also falls under the ambit of Advance Ruling. Relying upon the aforesaid Advance Ruling, the Appellant contended that their proposed product is also eligible for obtaining the Advance Ruling in terms of section 95(a) read with Section 97(2)(b) of the CGST Act, 2017.
- 6.2 He also made a proposition that the Appellate Authority for the Advance Ruling is empowered to pass ruling on the issues raised by the Appellant pertaining to their ‘proposed product under consideration’ by looking into the merits of the Advance Ruling application filed by them, in terms of the Section 101(1) of the CGST Act, 2017, which stipulates that the Appellate Authority has the power to pass such order, as it thinks fit, confirming or modifying the ruling appealed against.
- 6.3 Reliance was placed on the following rulings passed by Advance Ruling Authorities of various States on products, “proposed” to be manufactured, which are mentioned as under: –
- Prayagraj Dyeing & Printing Mills – 2020 (36) GSTL 230 (Guj. AAR- GST)
 - Gaurish Sharma (M/s G K Enterprises) – 2020 (37) GSTL 121 (Raj. AAR- GST)
 - Arumugam – 2020 (38) GSTL 673 (Tamil Nadu – GST - A.A.R.)
 - LVP Foods Private Limited – 2020 (32) GSTL 612 (Uttar Pradesh – GST - AAR)
- 6.4 It was contended by the Appellant that the MAAR could have decided the above question based on the factual matrix provided in the application, i.e., the ingredients of

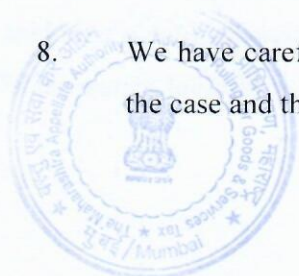


the proposed product and the test reports of existing product containing glass- fibre. The production and submission of the proposed product would be of little to no value addition since it would reflect the same composition in the test reports as furnished by the applicant in the application filed before the MAAR.

- 6.5 It was further contended by the Appellant that if there existed a requirement to have the product in existence prior to obtaining the advance ruling when the question before the MAAR was on the applicability of a concessional notification, then the same should have been incorporated as part of the requirements / checklist prescribed at the time of filing the application for advance ruling or prior to admitting the application as per Section 98(2) of the CGST Act, 2017. It was further submitted that right to file an appeal as per Section 100 of the CGST Act, 2017 by the applicant cannot be casually denied on flimsy grounds of procedural technical glitches without scrutiny at the time of admitting the application for advance ruling and now the said requirement cannot be insisted upon.
- 6.6 It was further submitted by the Appellant that since the matter was not decided on merits by MAAR, therefore, the subject application should be remanded back to the MAAR for reconsideration in terms of Section 101(1) of the CGST Act, 2017 which empowers the Appellate Authority to confirming or modifying the Ruling appealed against.
7. Shri Ghanisht Yesu, appearing in the capacity of the jurisdictional officer, reiterated the earlier submissions, filed before us, wherein it was contended that since the proposed product under question is in hypothetical state, the Advance Ruling as to the classification of the said product, as sought for by the Appellant, cannot be provided as the said 'proposed product under consideration' is yet to be examined by the accredited laboratory for its specifications with regard to its composition and its essential characteristics. Hence, it is not possible to classify the proposed product under question under any Tariff Item and therefore, it is not possible to offer any comments in respect of the applicability of the entry at Sl.No.92 of the Schedule II to the Notification No.1/2017-C.T.(Rate), dated 28.06.2017, which provides for the concessional rate of duty at the rate of 12% for the product falling under the category of glass reinforced gypsum board.

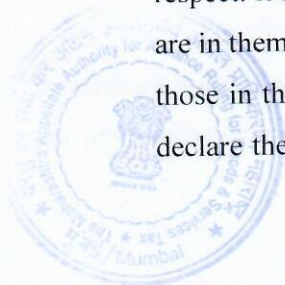
DISCUSSIONS AND FINDINGS

8. We have carefully gone through the appeal memorandum, encapsulating the facts of the case and the grounds of the appeal along with the written submissions made by the



Respondent as well as the other relevant documents. We have also examined the impugned Advance Ruling passed by the MAAR.

9. Having regard to the submissions made by the Appellant as well as by the Respondent, and the Ruling passed by the MAAR on the question raised by the Appellant, the only moot issue before us is whether the Advance Ruling application filed by the Appellant is maintainable in terms of Section 95(a) read with Section 97(2) of the CGST Act, 2017 or not. Thus, we are going to restrict our discussions within the periphery of the aforesaid issue, i.e. the maintainability of the subject Advance Ruling application filed by the Appellant before the Maharashtra Advance Ruling Authority. We will not go beyond the aforesaid issue to decide the question asked by the Appellant as to whether the proposed product under consideration is eligible to the benefit of the concessional rate of tax at the rate of 12 % (CGST @ 6% + SGST @6%) in terms of Sl. No. 92 of the Schedule II to the Notification No. 1/2017-C.T. (Rate), dated 28.06.2017 as amended as we are of the opinion that it would be legal and proper for the Advance Ruling Authority to pass an Advance Ruling on the questions asked by the Appellant after considering the merits of the subject application filed by the Appellant, depending upon the outcome of the maintainability issue of the subject Advance Ruling application, which would eventually be decided by us in this present appeal proceedings.
10. As stated earlier, we have carefully gone through the order passed by the MAAR. As per Section 95 of the CGST Act, 2017 (a) '**advance ruling**' means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100, in relation to the supply of goods or services or both, being undertaken or proposed to be undertaken by the applicant. The section, therefore, envisages that an Advance Ruling can be asked for a transaction undertaken or proposed to be undertaken. Any transaction of supply of goods or services or both, proposed to be undertaken, can be a subject of an application of Advance Ruling. **However, the meaning of the expression 'proposed to be undertaken' cannot be expanded to include manufacturing, proposed to be undertaken.** We agree with the observations of the MAAR in this respect. It is one of the fundamental rules of interpretation that if the words of a statute are in themselves precise and unambiguous, then no more is necessary than to expound those in their natural and ordinary sense as the words themselves in such a case best declare the intention of the legislature. There is no need for an artificial expansion of

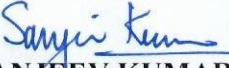


the expression as a result of which the interpretation may well go beyond the intention of the Legislature. The application is therefore barred under Section 95 of the CGST Act, 2017 and we confirm the observations of the MAAR and also dismiss the appeal of the Appellant.

11. However, we find that MAAR has observed that the samples of the product are not submitted and in the absence of non-submission of the samples of the impugned product, they are not able to arrive at any conclusions with respect to the questions being raised in the application. The Appellant have, before us, in turn, submitted that the MAAR never raised the contention or requirement to submit the sample of the product in question for providing the Advance Ruling. The Appellant have further contended that had there been a requirement to physically examine the sample, the MAAR ought to have specifically directed the Appellant to produce the sample and postponed the hearing. In this regard, the Appellant has essentially pleaded that a fair chance of hearing was denied to them.
12. We have taken into consideration the above contention of the Appellant. We wish to note that there is nothing in the provisions of the CGST Act, 2017, which prevents the Appellant from approaching the Advance Ruling Authority with a fresh application along with the sample/reports of the products and seek ruling under Section 97 of the CGST Act, 2017.
13. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

14. We uphold the decision of the MAAR that the application is barred under Section 95 of the CGST Act, 2017 for reasons given in the order. As regards the issue of denial of fair chance of hearing with sample, we hold that the Appellant may approach the Maharashtra Advance Ruling Authority with a fresh application along with the sample/reports of the products and in that case, the MAAR shall decide the issue on merits as per the provisions of law.


(SANJEEV KUMAR) 12/11
MEMBER


12/11/2020
(RAKESH KUMAR SHARMA)
MEMBER



Copy to the:

1. Appellant;
2. AAR, Maharashtra;
3. Pr. Chief Commissioner, CGST and C. Ex., Mumbai Zone;
4. Commissioner of State Tax, Maharashtra;
5. Jurisdictional Officer;
6. Commissioner, CGST, Mumbai East;
7. Web Manager, WWW.GSTCOUNCIL.GOV.IN
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