

L+No. 60610/02/12/2019

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULINGS FOR
THE STATE OF UTTARAKHAND GOODS & SERVICE TAX, E-BLOCK,
NEHRU COLONY, DEHRADUN-248001

PRESENT:

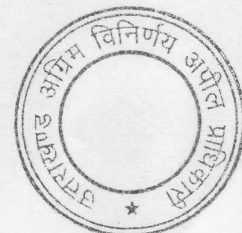
Shri O.P.DADHICH (CGST Member)

Smt SOWJANYA (SGST Member)

The 02nd day of December, 2019

Appeal No. UKGSTARA 03/02/15-11-19

1.	Name and Address of Applicant	Shri Rajeev Kumar, Assistant Commissioner (Review CGST Commissionerate)/concerned officer CGST
2.	Appeal No/Date	UKGSTARA 03/02/15-11-19
3.	Order No.	02/19-20/02.12.2019
4.	Jurisdictional Officer	Range-II Roorkee CGST Sector-2, Roorkee State Tax Department
5.	Date of Personal hearing	15-11-2019
6.	Concerned Officer	Shri. Manish Mishra, Deputy Commissioner State Tax, Dehra dun.
7.	Party Represented by	Shri S.P Bathla(Advocate) Mr. Saurabh Garg (Chartered Accountant)
8.	Date of Registration of Appeal	15-11-2019



Proceedings under section 101 of the Central goods and Services tax act, 2017 and Uttarakhand Goods and Services Tax act, 2017.

RULING

The present appeal has been filed under section 100 of the Central Goods and Services Tax Act and Uttarakhand Goods and Service Tax act, 2017 (here in after referred to as "the CGST Act and UkGST Act") by the concerned officer of the Central Goods and Services Tax, Dehradun (here in after referred to as the "Applicant") against the Advance ruling order No. 18/2018-19 date 06.02.2019 by the authority for Advance Ruling Uttarakhand in an application made by them.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UKGST Act are the same except for certain provision. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding provisions under the UKGST Act.

BRIEF FACTS OF THE CASE

1. In the instant case M/s Elefo Biotech Pvt. Ltd., Plot No. 135, Khasra N. 92, Jhabreda Road, Narsan Kalan, Haridwar, Uttarakhand (hereinafter also referred to as the Party) vide their application under sub-section (1) of Section 97 of the CGST/SGST Act, 2017 sought an Advance Ruling on "*Recommendation on the HSN Code and applicable tax rate to be used under GST for their product i.e. AMI (Anaerobic Microbial Inoculums).*" Therefore, in terms of said Section 97(2)(a) & (e) of CGST/SGST Act, 2017, the said application was admitted.

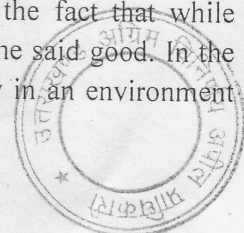
2. Following the personal hearing given to the applicant on 11.01.2019, the members of the Advance Ruling Authority for the state of Uttarakhand vide Advance Ruling No. 18/2018-19 dated 06.02.2019 ruled that:

Anaerobic Microbial Inoculums (AMI) will be classified under chapter sub-heading 31010099 of the heading 3101 of the GST Tariff and accordingly, the supply of these products will attract GST @ 5% [CGST @ 2.5% + SGST @ 2.5%] as on date.

3. GROUNDS OF APPEAL:-

3.1 Aggrieved by the said order passed by the Authority for Advance Ruling for the State of Uttarakhand, the department, represented by Shri Rajeev Kumar, Assistant Commissioner (Review), CGST Commissionerate, Dehradun, has filed the instant appeal dated 28.03.2019 on the following grounds:

a. Hon'ble Advance Ruling Authority, (Uttarakhand) has overlooked the fact that while classifying any goods we have to look into the name, character and use of the said good. In the instant case the AMI are colony of micro-organisms that can live and grow in an environment



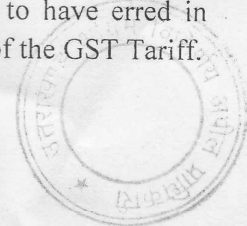
b. Hon'ble Advance Ruling Authority, (Uttarakhand) overlooked the fact that AMI decomposes biological waste generated by humans into useable water and gases in an eco-friendly manner. These bacteria inoculums or AMI are specially developed in a monitored and controlled environment. In a way AMI works as a enzyme which decomposes biological waste and enzymes are classified under chapter sub-heading 35079069 of heading 3507 in GST Tariff heading as under:-

Chapter/ Heading/ Sub- heading/ Tariff Item	Description of goods	Unit	GST Rate of tax			
			Central CGST	State/ UT/ SGST/ UTGST	Inter- State IGST	Compensation Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)
3507	Enzymes; prepared enzymes					
350710	-Rennet and Concentrates thereof	Kg.	9%	9%	18%	Nil
35071010	---Microbial rennet					
35071019	--Animal Rennet--	Kg.	9%	9%	18%	Nil
350790	--other--	Kg.	9%	9%	18%	Nil
35079061	--other--					
35079062	--Streptokinase--	Kg.	9%	9%	18%	Nil
35079069	--Amylases enzymes--	Kg.	9%	9%	18%	Nil
	other	Kg.	9%	9%	18%	Nil

c. The party misrepresented the nature of AMI by quoting the alternate use as 'Organic Manure' while the AMI is primarily used in the decomposition of biological waste generated by humans into useable water and gases in an eco-friendly manner. This character of AMI is of enzyme and same should be classifiable under the chapter heading 3507 of Goods and Service Tax Tariff, 2017. Therefore the Advance Ruling Authority, Uttarakhand appears to have erred in classifying the AMI under chapter sub-heading 31010099 of the heading 3101 of the GST Tariff.

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d. Hence in the view of the above of facts, it appears that AMI has been wrongly classified under chapter sub-heading 31010099 of the heading 3101 of the GST Tariff.

3.2 Accordingly, in light of the aforementioned submissions, the department has sought relief from the Appellate Authority for Advance Ruling, Uttarakhand, in the following terms:

- (i) Setting aside/modifying the impugned Advance Ruling passed by the Advance Ruling Authority (Uttarakhand) which classifies "Anaerobic Microbial Inoculums (AMI)" under chapter sub-heading 31010099 of the heading 3101 of the GST Tariff attracting GST @ 5% [CGST @ 2.5% + SGST @ 2.5%] as on date."
- (ii) Passing necessary order holding that the AMI is classifiable under 'other enzymes of microbial origin' 'other' falling under chapter sub-heading 35079069 of heading 3507 in GST Tariff heading and supply of these products will attract GST @ 18 % [CGST @ 9% + SGST @ 9%] as on date or pass any other order as deemed appropriate in the matter.

PERSONAL HEARING:

4. An opportunity of personal hearing was granted to the appellant on 15-11-2019 which was attended by Shri Rajeev Kumar, Assistant Commissioner (review), CGST Commissionerate/ the concerned Officer CGST Dehradun. During the course of the personal hearing Shri Rajeev Kumar reiterated the points covered in the grounds of appeal. He further stated that the said product is an enzyme and a catalyst and accelerates the rate of decomposition and hence gets covered under chapter sub heading 35079069 & attracts 18% GST rate. On behalf of the party Shri S.P. Bathla (Advocate) and Mr Saurabh Garg (Chartered Accountant) were present before the appellate Authority and made written submissions. In their arguments, while reiterating their earlier contentions, they further stated that the said product is dung and after mixing the Bactria it remains dung only which can also be used as fertilizer. Hence it gets covered under HSN code 3101 and attracts tax rate 5%. Shri Bathla also stated that the product AMI does not get covered under heading 3507 as stated by the department but gets covered as live bacteria. In support of their claim they also submitted a copy of opinion issued to them by Dr Lokendra Singh, retired Director in Defence Research and Development Organisation and an eminent scientist who was a part of the team who developed this technology.

DISCUSSION AND FINDINGS:

5. Main appeal memorandum against advance ruling order No. 18/2018-19 date 06-02-2019 was submitted by the concerned officer CGST on 28-03-2019 with an application of condonation of Delay, so this appeal could not be registered.

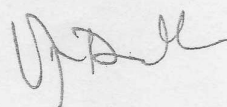
6. Since there has been a delay of only 14 days in fling appeal against the Advance Ruling Authority order which has been attributed to engagement of the concerned officers in election related duties we condone the delay in terms of proviso to sub section (2) of the Section 100 of the CGST Act, 2017. The appeal is registered as UKGSTARA03/02/15.11.2019.



7. The point of contention is the correct classification of 'Anaerobic Microbial Inoculum' (hereinafter referred to as 'AMI') and the applicable GST rate. We find that the manufacturers, in their application before the AAR, had contended that one of the uses of their said product i.e. AMI was as organic manure. The Ld. AAR, appear to have been influenced by this contention of the party and thereby deciding to classify AMI under HSN code 3101 which covers animal or vegetable fertilizers or organic fertilizers.

8. At the very outset, we find that though the authorized representatives of the party had contended that the alternate use of AMI was as organic manure, the website of the party viz. www.elefbiotech.com, does not show organic manure as one of its manufactured products. The said website, while describing AMI, states inter alia- "AMI are bacterial consortium which converts fecal matter into gases and water." From the same site also states inter alia- "During the Bio-degradation of the faecal matter, CO₂, Methane and water are generated along with very little sludge." The capability of AMI to bio-degrade faecal matter is the reason why AMI is used in Bio digester toilets by Indian Railways. The whole process is eco-friendly and waste is broken down into gases and water. The remaining sludge is minimum quantity which may or may not be used as organic manure. The contention put during the time of hearing that the dung with AMI can be used as fertiliser appears to be a weak attempt to justify their claim of the product as fertilizer. The dung is used as the base for the culture of AMI and this AMI growth in no way adds to the fertilizing property of dung. Moreover, the company is manufacturing and selling AMI for bio degrading human waste and not AMI infused dung as fertilizer. Thus, **it is not the AMI which is organic manure but at the most the products resulting out of its actions which can be put into use as manure, though that too has not been claimed.** What we have to classify is the product as it is supplied and not what it would transform some to other product into. We find that though the Ld AAR has discussed the nature of AMI in their ruling quite elaborately, but appear to have failed to understand the issue in the proper perspective. Obviously, the contention of the authorized representatives is wrong and the inference drawn by the Ld. AAR on the issue is also completely inaccurate and misconceived. Therefore, by no stretch of imagination can AMI be considered as organic manure and hence it cannot be classified under HSN 3101.

9. Now coming to the grounds of appeal submitted by the appellant, we find that they are based on sound reasoning and prima facie AMI does not seem to act as catalysts in the process of breaking down of waste products in as much as the AMIs themselves facilitate the process without being consumed or destroyed in the process. Therefore the appellant's contention for classifying AMI under HSN 3507 (Enzymes; prepared enzymes) carries some force and is partially correct for the reason that enzyme is a substance **produced by a living organism** which acts as a catalyst to bring about a specific biochemical reaction. Thus an enzyme has to be a product of living cell. However, in the present case, on a detailed scrutiny of the details of AMI as submitted by the party as well as the description given on their website and other relevant information, it is found that the product 'AMI' are not any product of living cell or organism, **rather they are themselves culture/colonies of bacteria put in the medium of dung.** They are also not acting as a catalyst in the strict sense rather they digest the waste products releasing water and gases as by-products.

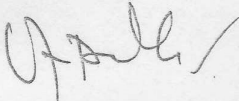


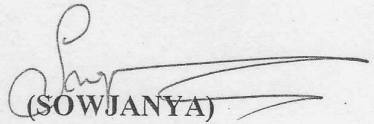
Therefore, 'AMI' cannot be classified under the heading of 'Enzyme' as contended in the appeal filed by the CGST officer. During the hearing the party's representative Shri Bathla also stated that their product may get covered as live bacteria.

10. After a careful study of the GST Tariff, we find that it contains a specific entry which appropriately applies to products having properties of AMI and accordingly conclude that AMI is classifiable under Sl. 61 of **notification No.1/2017-Central Tax (Rate), dated 28th June, 2017**, [as amended from time to time] HSN 3002 [**cultures of micro-organisms (excluding yeasts) and similar products**] on which the applicable GST rate will be 12% (6% CGST+ 6% SGST) and not 18% as contended by the department in their appeal by proposing the classification under heading 3507.

Ruling

We hold that Anaerobic Microbial Inoculum (AMI) is to be classified under GST Tariff heading No. 3002(Sub heading 30029030) on which the applicable rate of GST is 12% (6% CGST+ 6% SGST). The Ruling no. 18/2018-19 dated 06.02.2019 passed by AAR, Uttarakhand is accordingly set aside and modified in above terms.

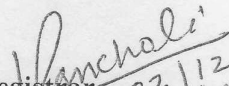

(O.P.DADHICH)
CGST MEMBER


(SOWJANYA)
SGST MEMBER

I am directed to transmit herewith a certified copy of the order passed by the Appellate Authority for Advance Ruling for the State of Uttarakhand, Goods & Service Tax under Section 101 of the CGST/SGST Act 2017.

Copy To:- 6061(1)/02/12/2019

1. The Chief Commissioner, CGST, Meerut Zone, Meerut.
2. The Commissioner, CGST, Commissionerate Dehradun.
3. The Commissioner, SGST, Uttarakhand.
4. Members of Advance Ruling Authority.
5. Concerned Officer, State Tax, Dehradun.
6. Appellant Concerned officer CGST Commissionerate Dehradun.
7. Jurisdictional Officers.
8. M/s Elfo Biotech Pvt. Ltd. Plot No.135 Khasra no. 92 Jhabreda Road Haridwar, Uttarakhand,.
9. Guard File.


Registrar (02/12/19)
(हिमा पचोली)
रजिस्ट्रार
उत्तराखण्ड अग्रिम विनिर्णय
अपीलीय प्राधिकारी

