

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:

Mr. A.P.S Suri, Member

Ms. Smaraki Mahapatra, Member

In the matter of

Appeal Case No. 06/WBAAAR/APPEAL/2019 dated 17.04.2019

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by M/s Shiva Writing Company Pvt Ltd. S K Industrial Plaza, Sankaripota Road, Kalagachia, Thakurpukur, Kolkata-700063 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. 44/WBAAR/2018-19 dated 13.03.2019.

Present for the Appellant: Sri Sandip Choraria, Advocate &
Sri Akshat Agarwal, Advocate

Present for the Respondent: Sri Sujan Shome, Superintendent, Range I, Maheshtala
Division, Central Tax

Matter heard on: 03.07.2019

Date of Order: 11.07.2019

1. This Appeal has been filed by M/s Shiva Writing Company Pvt. Ltd. (hereinafter referred to as "the Appellant") on 17.04.2019 against Advance Ruling Order No. 44/WBAAR/2018-19 dated 13.03.2019, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the 'WBAAR') in the matter of M/s. Shiva Writing Company Pvt. Ltd.
2. The Appellant holding GSTIN 19AAECS4199P1ZE is stated to be in the business of manufacturing and supplying of ball point pens, for which pen tips and balls to be used inside the tips are required in order to make the same tips working. The Appellant also trades and supplies ball point pen tips and refills to various dealers.

3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as “the GST Act”) on the following questions:
 - a) Whether tips and balls, both being pen parts under HSN Chapter Head 9608, used in manufacturing process of ball point pens, are taxable at the rate of 12%;
 - b) If the tips and balls used in the manufacturing of ball point pens are not taxable at the rate of 12% under HSN 9608, then at what rate shall they be taxable and under which HSN Chapter.
4. The WBAAR passed an advance ruling by an order dated 13.03.2019, wherein it been pronounced *inter alia* that “Tips and Balls” of Ball Point Pens are to be classified under GST Tariff Heading 9608 99 90 and included under SI No. 453 of Schedule III of Notification No. 01/2017–Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1125-FT dated 28.06.2017).
5. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR or pass any such further or other orders as may deemed fit and proper in the facts and circumstances of the case, on the following grounds:
 - a) The Appellant stressed on the Notification No 12/2017-CT dated 28.06.2017 (corresponding State Notification No. 1152-FT dated 29.06.2017) where it has been specifically stated that HSN codes are to be mentioned only up to the first 4 digits on a tax invoice and no more than that. Minutes of the 14th GST Council Meeting Para 29.1 clearly stated that GST Rates would generally be prescribed at the 4 digit HS Classification unless it is required to specify the rate for a good at 6 or 8 digit levels. This would mean that different rates of tax are applicable for items at 6 or 8 digit levels, otherwise prescribed rate at 4-digit HSN Code shall be applicable for all goods. The WBAAR had gone beyond such rule of law and arbitrarily stated that pen tips and balls were to be classified under HSN 9608 99 90 and taxable at the rate of 18% which is completely vindictive and bad in law. The WBAAR has erred in its judgement and classified tips and balls at a higher rate of tax.
 - b) The Appellant is only in the business of manufacturing ball point pens and does not manufacture fountain pens and other pens which are taxable at the rate of 18%. Ball point pens are taxable at the rate of 12%. Being the manufacturer of ball point pens it imports and manufactures pen parts only usable in the ball point pens. The said parts cannot be used in the manufacturing of fountain pens. Therefore, the pen tips and balls can only be taxable at the rate of 12% since the same are used only in the manufacturing of ball point pens. Had they been used in the manufacturing of fountain pens, the same would have also been taxable at the rate of 18% according

to the manufacturing ratio, but this is not so in the Appellant's case. If a specific rate has not been provided for the parts of pen used for manufacturing ball point pens, then the rate of tax applicable on the finished product should be made applicable on the said raw materials, as both the raw materials and the finished goods are under the same Chapter Heading of 9608. The Appellant also submitted that as per the Engineering Export Promotion Council of India, which is sponsored by the Ministry of Commerce and Industry, Government of India, under the Chapter Heading of 9608, pen tips are declared to be taxable at the rate of 12%.

- c) The Appellant also stated that it is no longer *res integra* that if a particular entry or a provision has two interpretations, the interpretation which is beneficial to the assessee shall be taken into consideration. Based on this very judicial precedent, the rate of tax of pen tips and balls should be taxable at the rate of 12% . Initially, the Customs Authorities also allowed imports and exports at the rate of 12% but from December 2018 onwards, the Customs Authorities started questioning such rate of tax and then levied IGST at the rate of 18% without any cogent and valid reason. In such a case, due to such excess levy of IGST, the cost of each ball point pen has increased which in turn, has made the pen tips and the pen itself costlier. Further, various competitors of the Appellant are importing balls and selling the pen tips at lower rate of 12% which is hampering the business of the Appellant.
6. During the course of the hearing the Appellant reiterated the points as stated in Grounds of Appeal. Further, the representatives of the Appellant stressed that tips and balls are parts of the refill which in turn is a part of the ball point pen. Hence, tips and balls are parts of the ball point pen. In support of their claim they cited the judgment of the Hon`ble Customs, Excise and Gold Tribunal – Delhi in the case of Nalanda Pen Mfg. Co. Pvt. Ltd vs. Collector of Central Excise, Baroda [1998(102)ELT 289].
 7. The Respondent made a written submission commenting on the “Grounds of Appeal” submitted by the Appellant, wherein he stated that:
 - a) The Appellant mis-interpreted the Notification No. 12/2017-CT dated 28.06.2017 (corresponding State Notification No. 1152-FT dated 29.06.2017). In the said notification, Department of Revenue on the basis of recommendation of GST Council issued guidelines regarding mentioning the HSN codes on the face of the invoice issued by the class of registered person depending upon the Annual Turnover in the preceding financial year. As per this notification, use of “Nil”, “2-digits” or “4-digits” HSN code simply indicates the range of annual turnover in the preceding financial year of the registered person who has issued the invoice. This notification has no relation with classification of goods. Hence Appellant’s representation regarding use of 4- digit HSN code for classification only for “Tips and balls” is completely wrong.

- b) The appellant stated that since ball point pens are taxable at the rate of 12%, parts of ball points pen specifically ‘tips and balls’ should be classified in such a manner so that rate of tax on these items would also be 12%, as there is no specific rate prescribed for parts of ball point pens vide Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1125-FT dated 28.06.2017). The Appellant’s submission is not correct due to the following reasons:
- (i) Under 04-digits heading 9608, ball point pens have been classified along with other pens, pencils, pen/pencil holders and parts of the said articles;
 - (ii) Ball point pens are specifically classified under 6-digits sub-heading 9608 10 having rate of duty 12% (CGST -6% & SGST -6%);
 - (iii) Refills for ball point pens are classified under 6-digits sub-heading 9608 60 having rate of duty 18% (CGST-9% & SGST-9%);
 - (iv) Tips and balls are sometimes used directly in some ball point pens and sometimes used in refills. So, tips and balls are parts of both ball point pens and refills having different 6-digits sub-headings;
 - (v) Now, there is no specific 8-digits “Tariff Item” HSN code for ‘tips and balls’ – which are parts of both ball point pens and refills, though these have been classified under 4-digits heading 9608. Hence as per system of classification, ‘tips and balls’ are classifiable under residuary sub-heading 9608 99 as “Other” and specifically under 8-digits “Tariff item heading” 9608 99 90 as “Other”, having rate of tax of 18% (CGST-9% & SGST-9%).
8. The matter is examined and written and oral submissions made before us are considered. It is observed that the Appellant filed Appeal against the order of the WBAAR based on two aspects, whether the tips and balls, both being pen parts under HSN Chapter Head 9608, used in manufacturing process of ball point pens are taxable at the rate of 12%, and if the tips and balls used in the manufacturing of ball point pens are not taxable at the rate of 12% under HSN 9608, then at what rate they shall be taxable and under which HSN Chapter they will be classified.
9. For the sake of clarity these entries of the following Chapter Headings are reproduced below:

Chapter Heading	Description of Goods
9608	Ball point pens; felt tipped and other porous tipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen holders, pencil holders and similar holders; <i>parts</i> (including caps and

	clips) of the foregoing articles, other than those of heading 9609
9608 10	Ball point pens
9608 30	Fountain pens, stylographic pens and other pens
9608 60	Refills for ball point pens, comprising the ball point and ink reservoir
9608 91	Pen nibs and nib points
9608 99	Other
9609	Pencils (other than pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks

10. The Appellant's interpretation of Notification no. 12/2017-Central Tax dated 28.06.2017 (corresponding State Notification No. 1152-FT dated 29.06.2017) for classification of any item up to 4 digits and not beyond is on the wrong footing as the said Notifications were issued for mentioning of HSN codes on the invoice by the registered person depending on the Annual Turnover in the preceding financial year and hence, not applicable in their present case.
11. For clarity the following entries of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1125-FT dated 28.06.2017) as amended are reproduced below:

Schedule No.	Serial No.	Chapter Heading	Description of Goods
II	232	9608	Pens [other than Fountain pens, stylograph pens]
II	233	9608, 9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk
III	447	9608	Fountain pens, stylograph pens and other pens [other pens omitted vide Corrigendum dated 27.07.2017 (corresponding State Notification No. 1351-FT dated 27.07.2017)]
III	453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

12. From the written and oral submission of the Appellant it is observed that the 'tips and balls of ball point pens' are essentially 'parts of refills' and the refills are parts of ball point pens. "Ball point pens" are classified under Sub-heading no. 9608 10 attracting tax @ 12% while "Refills for ball point pens comprising the ball point and ink-reservoir" are classified under Sub-heading no. 9608 60 attracting tax @ 18%. Pen

nibs and nib points as per HSN entry 9608 91 are very different from ball point tips and balls as used by the Appellant. Primarily 'Tips and balls' are parts of refill, and since there is no specific Sub-heading allotted to these parts, these should be classified under residuary Sub-heading as 'Others' in 9608 99, attracting tax @ 18%. It is clear from the table in para 11 that the tips and balls dealt with by the Appellant fall under entry no. 453 of Schedule III.

13. The judgment of the Hon'ble Customs, Excise and Gold Tribunal – Delhi in the case of Nalanda Pen Mfg. Co. Pvt. Ltd vs. Collector of Central Excise, Baroda [1998(102)ELT 289] as cited by the appellant is not applicable in the present case as the said case law related to the extension of exemption Notification to parts of refills in period prior to enactment of the GST Act.

14. The Advance Ruling Authority has gone into the matter thoroughly and passed a well reasoned speaking Order and hence, there is no reason to interfere with the Order.

In view of above discussion we find no infirmity in the ruling pronounced by the WBAAR. The appeal thus fails and stands disposed accordingly.

Send a copy of this order to the Appellant and the Respondent for information.

S.M.

(Smaraki Mahapatra)
Member
West Bengal Appellate Authority
for Advance Ruling

S.A.—

(A.P.S Suri)
Member
West Bengal Appellate Authority
for Advance Ruling