

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2018/20
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/29)

Date : 10.10.2018

Name and address of the applicant	:	M/s. House of Marigold 22, New Alkapuri Society, Opp. Emerald Honda Showroom, Gulbai Tekra, Ahmedabad – 380 015.
GSTIN of the applicant	:	24AFBPS1985E1ZG
Date of application	:	06.12.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both
Date of Personal Hearing	:	5/02/2018 and 12/09/2018
Present for the applicant	:	Shri P.K. Soni, Advocate

The applicant, M/s. House of Marigold (Prop. Ms. Shilpa Sanjay Choksi) purchases gold, diamond, precious stones (Ruby, Emerald, Sapphire, etc.) pearls and watch. Thereafter, these are handed over to job worker who is a specialized job worker for making jewellery and carrying out such work. The buyers who intend to purchase jewellery is shown various types of jewellery and propose order of it and according to customers desire, work is entrusted to job worker. The cost of the jewellery includes cost of Gold, Silver, Diamond, etc. of very high value but a wrist watch is fitted in the jewellery selected by customer. The cost of wrist watch is very nominal i.e. not even 1% of total value and customer's intention is to buy jewellery only.

2.1 The applicant has submitted application for advance ruling for classification of goods. The applicant referred to Chapter Heading 7113 and submitted that the rate of tax applicable would be 1.5% CGST + 1.5% SGST.

2.2 It is further submitted that the applicant is dealer in such goods since 2010 and at the relevant time, the applicant had obtained determination under Section 80 of the VAT Act, 2003. It is further submitted that the learned Joint Commissioner of Commercial Tax (Legal), Gujarat State, Ahmedabad, by order dated 10.01.2011 under section 80 of the VAT Act, 2013 had determined the product as jewellery and relevant entry at the relevant time was as under -

Schedule II – 13(2)

Articles of jewellery made of gold or silver or both or of other precious metals (studded or not studded with precious stones or pearls whether real, artificial or cultured)

Accordingly applicable rate was @ 1% vat.

2.3 It is further submitted that the Hon'ble Gujarat High Court in the case of State of Gujarat Vs. Titan Ind. Ltd., in Tax Appeal No. 46 of 2017 dated 03.02.2017 reported in (2017 GSTB - 1- GH 32), in which the company had sold NABULA WATCH, Hon'ble Gujarat High Court confirmed the order of the Hon'ble Tribunal holding as jewellery covered by entry 13 (ii) of schedule – II of VAT Act.

2.4 The applicant further submitted that such jewellery are prepared and sold by jewellery show room only. Such jewelelry are prepared by the job worker who is having technique of preparing such costly jewellery in which apart from high cost of gold, diamond, etc., cost of watch is very nominal.

2.5 The applicant submitted that item sold by the applicant is falling in chapter 71 tariff item 7113 liable to 1.5% CGST + 1.5% SGST for sale within state of Gujarat.

3.1 In the further written submission, it has been submitted that the applicant is engaged in the manufacture of various articles of jewellery. Amongst others, the applicant also sells jewellery articles in which a watch is fitted for a value addition. As per the desire and requirement of the customers, the applicant gets the jewellery prepared by artisans. Such jewellery articles consist of gold, diamond, precious stones like ruby, emerald, sapphire etc. and pearls. After the jewellery is prepared and approved by the customer a small watch is fitted in it for value addition.

3.2 It has been submitted that the value of gold and precious stones is almost 90 to 95%, while the value of watch is hardly Rs. 1,000 to Rs. 2,000. Thus value of jewellery article is very high and the value of watch is minimal, in as much as the value of watch is even less than 1% of the total value of the article. The various kinds of jewelry articles sold by the applicant along with watch are as under:

- (a) Butterfly with a ring
- (b) Bracelet
- (c) Bangle
- (d) Necklace
- (e) Ring

The applicant submitted photographs of the products sold by it.

3.3 The applicant submitted that the above articles fall under entry 13 of Schedule V to Notification No. 1/2017– Central Tax (Rate) dated 28/6/17 prescribing rate of 1.5% CGST and 1.5% SGST.

3.4 As the entry 13 of Schedule V of Notification No. 1/2017-Central Tax (Rate) is for articles of jewellery, the applicant referred to definition of the term 'jewellery' given in various dictionaries and submitted that the articles dealt with by the applicant fully satisfies the definitions of the term "jewellery" given in various dictionaries and therefore it is submitted that the articles sold by the applicant fall under entry 13 of Schedule V to the Notification dated 28/6/17.

3.5 The applicant referred to Chapter Note 9 of Chapter 71 of the Customs Tariff Act, 1975 and submitted that as per the said Chapter Note, articles of jewellery means small objects of personal adornment and the illustrations given in the note fully cover various articles manufactured and sold by the applicant. It is therefore submitted that all the articles of jewellery sold by the applicant fall under Chapter 7113 of the Customs Tariff Act, 1975 and accordingly fall under entry 13 of Schedule V of Notification No. 1 of 2017 and hence liable to 1.5% CGST and SGST respectively.

3.6 The applicant relied on the judgement of Hon'ble High Court of Gujarat in the case of State of Gujarat V/s. Titan Industries Ltd. [103 VST 270 (Guj.)]. The applicant also referred to determination order in its own case passed under the VAT Act, reported as Marigold Watches [2011 GSTD 3].

3.7 The applicant submitted that common parlance test is the primary principle to be adopted for classification and referred to the judgements of Hon'ble Supreme Court in the case of Ramavatar Budhiaprasad Vs. Assistant Sales Tax Officer, Akola and another [12 STC 286 (SC)], Real Optical Co. Vs. Appellate Collector of Customs and Another [122 STC 555 (SC)], Commissioner of Commercial Tax U.P. Vs. A.R. Thermosets Pvt. Ltd. [94 VST 258 (SC)], Commissioner of Wealth Tax, Orissa, Bhubaneswar Vs. Smt. Binapani Chakravarty [AIR 1995 SC 1380]. It is submitted that apart from the Chapter Note 9 of Chapter 71, as per the common parlance meaning also, the articles sold by the applicant are nothing but articles of jewellery and hence they fall in entry 13 of Schedule V of the Notification No. 1 of 2017 dated 28.06.2017.

3.8 The applicant admitted that as per Chapter Note 3 of Chapter 71, there is an exclusion clause, *inter-alia* providing that this chapter does not cover articles of Chapter 90, 91 or 92 (Scientific instruments, clock and watches, musical instruments).

3.9 The applicant referred to Entry 423A and 423B of Schedule III of Notification No. 1/2017-Central Tax (Rate) as amended vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. It is submitted that since entry 423A refer to heading 9101 and cover watches with case of precious metal or metal clad with precious metal, the question is whether the jewellery articles with

watches sold by the applicant specifies the description of this entry and hence liable to 18% GST being covered by entry 423A of Schedule III to the notification dated 28/6/17 as amended w.e.f. 14.11.17.

3.10 The applicant referred to Note 1(b) and Note 2 of Chapter 91 and submitted that heading 9101 covers only watches with case wholly of precious metals or of metal clad with precious metal. It is submitted that the articles sold by the applicant does not consist of only the watches with case wholly of precious metals or metal clad with precious metal, the entire article is of precious metal with watch fitted in it. It is submitted that the watch movement does not contain any jewel or precious metal and it is a very simple machine. Therefore, it is submitted that the articles sold by the applicant are jewellery articles and not watches with case of precious metal. It is submitted that in view of Note 2 of Chapter 91 of the Customs Tariff Act, 1975, the articles sold by the applicant do not fall under Chapter 91 and consequently under entry 423A and 423B of Schedule III to the Notification dated 28.6.17 as amended w.e.f. 14.11.17.

3.11 It is submitted that Note 1(b) of Chapter 91 expressly excludes watch chain, which is indicative of the fact that articles of precious metal holding watch are not covered by Chapter 91. Similarly, as watch chain is not covered by Chapter 91, various articles of jewellery specifically covered by Chapter 71 which holds the watch are not covered by Chapter 91.

3.12 The applicant referred to rules of interpretation of the First Schedule to the Customs Tariff Act, 1975 and submitted that when an article is classifiable under 2 or more headings then Rule 3(b) of the General Rules for the interpretation of the First Schedule is very relevant. Thus, if the articles sold by the applicant are considered as either jewellery or watch and hence not falling under any specific heading, the question which is required to be addressed for its classification as laid down in rule 3(b) is what is the essential characteristic of the articles sold by the applicant. It is submitted that the articles sold by the applicant are expensive not because of their superiority as time keeping devices but because of their ornamental value. The essential character of the articles is as articles of jewellery and not as watch. Thus the goods sold by the applicant are primarily jewellery articles and their time keeping function is only incidental. It is further submitted that a customer purchases these articles not because it is interested in a watch but because it is keen to wear it as a jewellery article. The articles are purchased for their ornamental value and not for their function of showing time. In the mind of the customer, the association is with jewellery and not watch. Thus the dominant and essential character and purpose as well as functionality of the articles sold by the applicant is jewellery and therefore on application of rule 3(b) of the rules for interpretation of the First Schedule to the Customs Tariff Act, 1975, the articles fall under entry 13 of Schedule V to Notification No. 1 of 2017 dated 28.6.17.

3.13 The applicant referred to the judgements of Hon'ble Supreme Court in the case of Xerox India Ltd. v/s Commissioner of Customs [(2010) 260 ELT 161 (S.C.)], Commissioner of Central Excise, Trichy v/s Naga Ltd. [(2007) 212 ELT

452 (S.C.)], Sprint R.P.G. India Ltd. v/s Commissioner of Customs [(2000) 116 ELT 6 (S.C)] and Mauri Yeast India Pvt. Ltd. Vs. State of U.P. [14 VST 259 (S.C.)] and submitted that the major component of cost and price is the jewellery article, the price of watch is very negligible therefore essentially the articles sold by the applicant are articles of jewellery.

4. We have considered the submissions made by the applicant in their application for advance ruling, further written submission as well as at the time of personal hearing.

5. The issue involved in this case is regarding classification of the product being supplied by the applicant.

6.1 The Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 issued under the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017 issued under the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017) provides as follows :-

"Explanation. - For the purposes of this notification, -

(i)

(ii)

(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."*

6.2 Further, Hon'ble Supreme Court in the case of L.M.L. Ltd. Vs. Commissioner of Customs [Civil Appeal No. 3764 of 2003, decided on 21.09.2010 reported at 2010 (258) ELT 321 (S.C.)] has held as follows :-

"12. In Collector of Central Excise, Shillong v. Wood Crafts Products Ltd. reported in (1995) 3 SCC 454, it was held by this Court that as expressly stated in the statements of objects and reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on the Harmonious System of Nomenclature (HSN) and the internationally accepted nomenclature was taken into account to reduce disputes on account of tariff classification. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the Harmonious System of Nomenclature (HSN). Although, the decision in the case of Woodcraft Products (supra) dealt with the interpretation of the provisions of the Central Excise Tariff there can be no doubt that the HSN Explanatory Notes are a dependable guide even while interpreting the Customs Tariff."

7. The applicant sells jewellery articles in which a watch is fitted. As per the desire and requirement of the customers, the applicant gets the jewellery prepared by artisans. Such jewellery articles consist of gold, diamond, precious stones like ruby, emerald, sapphire etc. and pearls. After the jewellery is prepared and approved by the customer, a small watch is fitted in it. It is the submission of the applicant that these items fall under Chapter Heading 7113.

8.1 The description of goods under Chapter Heading 7113 of the Customs Tariff Act, 1975 is as follows :-

“Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal”

8.2 Chapter Note 3 of Chapter 71 of the Customs Tariff Act, 1975 *inter-alia* provides as follows :-

“3. This Chapter does not cover :
 (a)
 (b)

 (l) articles of Chapter 90, 91 or 92 (scientific instruments, clocks and watches, musical instruments)

”

9.1 As the Chapter Note 3(l) of Chapter 71 specifically mentions that Chapter 71 does not cover the articles of Chapter 91 (clocks and watches), it would be useful to refer to relevant Chapter Heading and Chapter Notes of Chapter 91 of the Customs Tariff Act, 1975. The description of goods under Chapter Heading 9101 of the Customs Tariff Act, 1975 is as follows :-

“Wrist-watches, pocket-watches and other watches, including stop-watches, with case of precious metal or of metal clad with precious metal”

9.2 Chapter Note 2 of Chapter 91 of the Customs Tariff Act, 1975 provides as follows:-

“2. Heading 9101 covers only watches with case wholly of precious metal or of metal clad with precious metal, or of the same materials combined with natural or cultured pearls, or precious or semi-precious stones (natural, synthetic or reconstructed) of headings 7101 to 7104. Watches with case of base metal inlaid with precious metal fall in heading 9102.”

9.3 Explanatory Notes to heading 9101 of Harmonised System of Nomenclature are as follows :-

“The Explanatory Note to heading 91.02 applies, mutatis mutandis, to this heading.

In accordance with Note 2 to this Chapter, watches of this heading must have cases wholly of precious metal or of metal clad with precious metal. They may be

set with gem stones or with natural or cultured pearls and may be fitted with a cover or have a bracelet of precious metal (gem set or not).

In accordance with Note 7 to Chapter 71, the expression “metal clad with precious metal” means material made with a base of metal upon one or more surfaces of which there is affixed by soldering, brazing, welding, hot-rolling or similar mechanical means, a covering of precious metal.

However, watches with case of precious metal or of metal clad with precious metal, having a steel back, fall in heading 91.02, as do watches with case of base metal inlaid with precious metal.”

9.4 Explanatory Notes to heading 9102 of Harmonised System of Nomenclature *inter-alia* provides as follows :-

“This heading covers mechanical and electrical (mostly electronic) timekeeping instruments with case and movement, of a kind intended to be worn or carried and designed to function in all positions, which indicate the time or measure intervals of time, regardless of the thickness of the movement. These include wrist-watches, pocket-watches, fob-watches, watches for carrying in handbags, watches mounted in brooches, rings, etc.

.....”

10. In respect of the product in question, the applicant gets the jewellery prepared by artisans, which consist of gold, diamond, precious stones like ruby, emerald, sapphire etc. and pearls. A small watch is fitted in it. As per the Explanatory Notes to heading 9101, watches of this heading must have cases wholly of precious metal or of metal clad with precious metal, which may be set with gem stones or with natural or cultured pearls and may be fitted with a cover or have a bracelet of precious metal (gem set or not). The product of the applicant is thus undisputedly watch with case of precious metal and covered by Chapter Heading 9101 in view of Chapter Note 2 of Chapter 91 as well as Explanatory Notes to heading 9101. Further, in view of the Explanatory Notes to heading 9101 read with Explanatory Notes to Heading 9102, timekeeping instruments with case and movement, of a kind intended to be worn or carried and designed to function in all positions, which indicate the time or measure intervals of time are covered under the said heading, which include wrist-watches, pocket-watches, fob-watches, watches for carrying in handbags, watches mounted in brooches, rings, etc. Therefore, the watches in the design of butterfly with a ring, bracelet, bangle, necklace, ring etc. supplied by the applicant are covered under heading 9101.

11. Chapter Note 1(b) of Chapter 91 provides that this chapter does not cover watch chains (heading 7131 or 7117, as the case may be). However, the products being supplied by the applicant are not ‘watch chains’ and therefore the Chapter Note 1(b) of Chapter 91 is not attracted to the product of the applicant. Further, as the articles of Chapter 91 (clocks and watches) are not covered under Chapter 71 in view of Chapter Note 3(l) of Chapter 71, the meaning of the term ‘Jewellery’ given in various dictionaries or Chapter Note 9 of Chapter 71 will not be of any assistance to the case of the applicant. The test of common parlance is also not applicable in this case as the product is classifiable in appropriate heading in accordance with the description of heading and relevant Chapter Notes.

12. Rule 1 of the ‘General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975’ (herein after referred to as the ‘Rules for Interpretation’) *inter-alia* provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Rule 3 of the ‘Rules for Interpretations’, provides that when by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as provided under the said Rule 3. Sub-rule (b) of said Rule 3 provides for classification with reference to material or component which gives the item the essential character. However, as already noted, the product in question is specifically covered under heading 9101 in view of the terms of that heading read with the relevant Chapter Note. Therefore, the product is not required to be classified in accordance with Rule 3(b) of the Rules for Interpretation.

13. In respect of similar products, Hon’ble Customs, Excise and Service Tax Appellate Tribunal in case of Titan Industries Ltd. Vs. Commissioner of Central Excise, Chennai [Final Order No. 861/2006 dated 04.09.2006 in Appeal No. E/1284/99 reported at 2006 (204) E.L.T. 435 (Tri. – Chennai)] has held that the product is classifiable under Heading 9101. In the said case, it has been held as follows :-

“ 5. *Heard both sides. It is not disputed that the product in question is a watch with its case made wholly of precious metal and that the same also has a bracelet of precious metal. The article is studded with precious stones like emerald, ruby and diamond. As per interpretative Rule 1 for classification of goods under CETA 1985, the goods have to be classified in terms of the heading and any relative Section or Chapter Notes. The argument that the subject watches are purchased by a customer to serve his need to adorn himself and not for its function as a time keeping device cannot be countenanced. The dominant character, functionality and purpose of the subject watches cannot be categorically claimed to be to serve only as an item of jewellery. The argument that CSH 91.01 confined to watches which had cases wholly of precious metal alone is misconceived. The tariff entry CSH 9101.00 is reproduced below :*

91.01 : *Wrist watches, pocket-watches and other watches, including stop-watches, with case of precious metal or of metal clad with precious metal.*

Note 2 to Chapter 91 reads as follows :

“Heading No. 91.01 covers only watches with case wholly of precious metal or of metal clad with precious metal, or of the same materials combined with natural or cultured pearls, or precious or semi precious stones (natural, synthetic or reconstructed) of Chapter 71. Watches with case of base metal inlaid with precious metal fall in heading 91.02”

On a reading of the tariff entry and the above Chapter Note it is obvious that watches with case of precious metal or of metal clad with precious metal are covered by the said heading. It is not the assessee’s case that the impugned item is not a watch with case of precious metal. The argument that items such as a table, a pen, or an instrument panel incorporating a time keeping device do not get classified as watch but as the respective article does not advance the appellant’s case that a watch having a case with precious metal and bracelet with precious

metal studded with precious stones is not a watch. Rule 3(b) of the interpretative rules is resorted to only if the rules preceding it do not help classify an item. Therefore, the necessity of resorting to classification with reference to material or component which gives the item its essential character is not relevant in the instant case. As per Chapter Note 1(k) to Chapter 71, that Chapter does not cover articles of Chapter 91. Therefore, a watch made of precious metal also cannot be classified under Chapter 71. The HSN explanatory notes to Chapter 91 clarify that articles of precious metals decorated with precious stones will remain classified under Chapter 91. Further, notes under heading 91.01 contain in its Note (2) the stipulation that watches of the said heading must have cases wholly of precious metals or of metal clad with precious metal. Such watches may be set with gems, pearls, and may be fitted with a cover or have a bracelet of precious metal. It is very plain that the goods in question fully satisfy the description contained in CSH 9101.00. The Commissioner has rightly relied on the explanatory notes in HSN under Chapter 91 which fully supports the above classification.”

14. The judgement dated 03.02.2017 of the Hon’ble High Court of Gujarat in Tax Appeal No. 46 of 2017 in case of State of Gujarat Vs. M/s. Titan Industries Limited pertains to classification of goods under Schedule-II to the Gujarat Value Added Tax Act, 2003. It is pertinent to note that the scheme of classification of goods under Gujarat Value Added Tax Act, 2003 was different than the scheme of classification of goods for the purpose of Notifications issued under the CGST Act, 2017 and GGST Act, 2017, which is based on the First Schedule to the Customs Tariff Act, 1975. Therefore, the said judgement is not applicable in the facts of the present case. For the same reasons, Order dated 10.01.2011 issued under Section 80 of the Gujarat Value Added Tax Act, 2003 in the applicant’s own case is not applicable in the facts of the present case.

15. As the scheme of classification of goods for the purpose of GST is based on the first schedule to the Customs Tariff Act 1975, the judgement delivered by the Hon’ble Customs, Excise & Service Tax Appellate Tribunal in case of Titan Industries Ltd. Vs. Commissioner of Central Excise, Chennai [Final Order No. 861/2006 dated 04.09.2006 in Appeal No. E/1284/99 is more relevant to the case under hand. It is also not out of place to mention that the case pertains to Jewellery Division of M/s Titan Industries Ltd.

16. In view of the foregoing, we rule as under –

RULING

The product Marigold Butterfly Bridal with Watch and similar jewellery products containing watch supplied by M/s. House of Marigold (GSTIN 24AFBPS1985E1ZG) are classifiable under Heading 9101.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date : 10.10.2018.