

**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/2018/10
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/23)

Date : 9.04.2018

Name and address of the applicant	:	M/s. Inox India Pvt. Ltd. Boru Road, Near Narmada Colony, Village – Katol, Taluka Katol, Dist. Panchmahal – 389 330 (Gujarat)
GSTIN of the applicant	:	24AAACI4416P1ZH
Date of application	:	06.11.2017
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	:	04.1.2018
Present for the applicant	:	Shri Hardik Modh, Advocate Shri Ashish S. Agarwal, CA

The applicant M/s. Inox India Pvt. Ltd. has submitted that the range of products manufactured and supplied by the company *inter alia* includes Cryo Container, also known as Liquid Nitrogen Containers (subject product), which is essentially a container with double walls made of aluminum and the mechanism of this container is such that the space between two walls is vacuum and super insulated. The applicant submitted that vacuum and super insulation helps maintain temperature around minus 196 degree which can be used for transportation of liquefied nitrogen, storage of semen used in artificial insemination of animals etc. A sample copy of the information brochure containing the technical specification and features of the subject product is submitted with the application.

2. The applicant submitted that the subject product is presently being classified under Entry No. 9617 00 12, which covers in its scope ‘Vacuum Flask and other vacuum Vessels, Complete with cases parts thereof other than glass inner’. However, the applicant on a detailed analysis has also identified a competing Entry No. 7613 00 19 which covers in its scope ‘Aluminum container for compressed or liquefied gas’ which appropriately appears to be more suitable for the subject goods given the use of aluminum in its manufacture and usage of the subject product itself.

3. The applicant submitted following question for advance ruling –

“Whether supply of Cryo Container (Liquid Nitrogen Containers) is classifiable under HSN 7613 0019 or HSN 9617 0012 in the GST regime ?”

4. The applicant referred to Chapter Heading 7613, Tariff Entry No. 7613 0019 and the explanatory note to heading 7613 under the HSN Explanatory Notes and submitted that in view of the scope of heading 7613 and the nature of subject product, it appears that the subject product is well covered by heading 7613.

5. The applicant also referred to Tariff Entry No. 9617 00 12 and relevant HSN Explanatory Notes and submitted that in view of the difference in the nature of product and the key features of the scope of Entry No. 9617 00 12, the subject product may not merit classification under HSN 9617 00 12.

6. The Central Goods & Services Tax and Customs Commissionerate, Vadodara – II, *inter-alia* informed that the description under Heading 7613 is ‘Aluminum containers for compressed or liquefied gas; that though the product manufactured by the applicant is made up of Aluminum, it is also used for the purpose of storage / transport of semen, biological samples / vaccine preservation whereas the Heading specifically mentions ‘Aluminum containers for **compressed or liquefied gas**’. It has also been informed by the Commissionerate that the ‘Cryo containers’ manufactured by the applicant appears to show more resemblance with the goods classified in HSN 9617 which describes ‘Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners’ as the inner part of the subject goods is made up of Aluminum (not glass) and it can be categorized as ‘Vacuum Flasks’ which is complete with cases made up of Aluminum.

7. We have considered the submissions made by the applicant in their application and at the time of personal hearing. We have also considered the views of the Central Goods & Services Tax and Customs Commissionerate, Vadodara-II

8. The issue involved in this case is regarding classification of the product ‘Cryo Container’ being supplied by the applicant.

9.1 It is observed that the Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 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.”

9.2 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.”

10.1 Chapter Heading 7613 of the First Schedule to the Customs Tariff Act, 1975 is as follows :-

HS Code	Description of goods	Unit
(1)	(2)	(3)
7613	Aluminium containers for compressed or liquefied gas	
7613 00	- Aluminium containers for compressed or liquefied gas :	
	--- Low pressure cylinders :	
7613 00 11	---- Plain	Kg.
7613 00 12	---- Lacquered	Kg.
7613 00 13	---- Printed	Kg.
7613 00 19	---- Other	Kg.
	--- High Pressure Cylinders :	
7613 00 21	---- Plain	Kg.
7613 00 22	---- Lacquered	Kg.
7613 00 23	---- Printed	Kg.
7613 00 29	---- Other	Kg.
	--- Other	
7613 00 91	---- Plain	Kg.
7613 00 92	---- Lacquered	Kg.
7613 00 93	---- Printed	Kg.
7613 00 99	---- Other	Kg.

10.2 Chapter Heading 9617 of the First Schedule to the Customs Tariff Act, 1975 is as follows :-

HS Code	Description of goods	Unit
(1)	(2)	(3)
9617	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners	
9617 00	- Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners :	
	--- Vacuum flasks and other vacuum vessels, complete with case	
9617 00 11	---- Vacuum flasks having a capacity not exceeding 0.75 l	Kg.
9617 00 12	---- Vacuum flasks having a capacity exceeding 0.75 l	Kg.
9617 00 13	---- Casserol and other vacuum containers	Kg.
9617 00 19	---- Other	Kg.
9617 00 90	--- Parts (other than glass inners)	Kg.

11.1 The applicant has submitted that the subject product is manufactured out of Aluminum and is constructed in the form of a container. The technical specifications of the container, submitted by the applicant, are as follows :-

- Double walls of aluminum, where the inner wall functions as inner vessel and outer wall functions as outer shell;
- Vacuum and Super insulation between inner vessel and outer vessel provides long term storage of liquid Nitrogen;
- Once manufactured, the subject product becomes capable to maintain the temperature as low as minus 196 degree Celsius (-196° C);
- The subject product can be manufactured to suit the; either of transport, storage or portability purposes;
- Based on its design, the subject product finds its utility in following sectors (i) use for transportation of liquid nitrogen, industrial testing and shrink fitting, (ii) dairy organizations, animal husbandries, cattle breeding farms, infertility clinics for semen preservation for artificial insemination / livestock breeding; (iii) pharmaceutical companies for storage of biological samples for medical research / vaccine preservation;

11.2 On the brochure of the subject product, submitted by the applicant, it is *inter-alia* mentioned as follows :-

- Serves dairy organizations, animal husbandries, cattle breeding farms, infertility clinics for semen preservation for artificial insemination / livestock breeding
- Serves pharmaceutical companies for storage of biological samples for medical research / vaccine preservation
- Utilized for small quantity transportation of Liquid Nitrogen, industrial testing & shrink fitting.

12. The subject product (cryo containers) primarily serves dairy organizations, animal husbandries, cattle breeding farms, infertility clinics for semen preservation for artificial insemination / livestock breeding and serves pharmaceutical companies for storage of biological samples for medical research / vaccine preservation. Thus, these 'cryo containers' are meant primarily for preservation or storage of semen, biological samples etc. Though the 'cryo containers' can be utilized for small quantity transportation of Liquid Nitrogen, as mentioned in the brochure of the product, it cannot be said to be primarily used for transport or storage of compressed or liquefied gases.

13. Chapter Heading 7613 covers 'Aluminium containers for compressed or liquefied gas'. As already noted, the 'cryo containers' are not primarily used for compressed or liquefied gases, the same would not be covered by Chapter Heading 7613.

14.1 On the other hand, heading 9617 covers 'Vacuum flasks and other vacuum vessels, complete with cases'. The Explanatory Notes of Harmonized System of Nomenclature for Chapter Heading 9617 are as follows –

“This heading covers :

(1) Vacuum flasks and other similar vacuum vessels, provided they are complete with the cases. This group includes vacuum jars, jugs, carafes, etc., designed to keep liquids, food or other products at fairly constant temperature, for reasonable periods of time.

These articles consist of a double-walled receptacle (the inner), generally of glass, with a vacuum created between the walls, and a protective outer casing of metal, plastics or other material, sometimes covered with paper, leather, leathercloth, etc. The space between the vacuum container and the outer casing may be packed with insulating material (glass fibre, cork or felt). In the case of vacuum flasks the lid can often be used as a cup.

14.2 As per the technical specifications of 'cryo containers' submitted by the applicant, it has double walls of aluminum, where the inner wall functions as inner vessel and outer wall functions as outer shell; Vacuum and Super insulation between inner vessel and outer vessel provides long term storage of liquid Nitrogen and such 'cryo containers' are capable to maintain the temperature as low as minus 196 degree Celsius (-196° C).

14.3 Thus, the 'cryo containers' are vacuum vessels wherein vacuum and super insulation between inner vessel and outer vessel provides long term preservation or storage of semen, biological samples etc.

14.4 The applicant has submitted that the nature of products covered under heading 9617 is more of for domestic articles such as jars, jugs, carafes, etc. and are used for storage of liquids and food stuff whereas the subject product is used purely for industrial usage. However, the heading 9617 or Explanatory Notes of HSN for heading 9617 does not restrict the coverage of said heading to domestic articles.

14.5 In view thereof, we find that the product 'cryo container' is appropriately classifiable under Heading 9617.

15. The subject product was being classified by the applicant under Tariff Entry 9617 00 12 in the Central Excise regime. Though the Central Excise Tariff Act, 1985 has been repealed and classification of goods under Goods and Services Tax regime is governed by the Customs Tariff Act, 1975, the heading 7613 and 9617 are identical under the Central Excise Tariff Act, 1985 and the Customs Tariff Act, 1975.

16. The Government of India, Ministry of Finance (Department of Revenue), New Delhi vide F.No. 154/6/88-CX.4 dated 29.12.1988 clarified that high vacuum cryogenic containers are appropriately classifiable under heading 96.17 of Central Excise Tariff.

17. In view of the foregoing, we rule as under -

RULING

The product 'Cryo Container' being supplied by M/s. Inox India Pvt. Ltd. (GSTIN 24AAACI4416P1ZH) is classifiable under Heading 9617.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date : 9.04.2018.