



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2019-20/15
(In Application No.: 15/2019-20, dated 14.10.2019)

| | | |
|--|---|--|
| Name & Address of the Applicant | : | M/s Imperial Life Sciences Pvt. Ltd., Plot No. 463, Sector-367, Pace City-2, Gurgaon, Haryana. |
| GSTIN of the Applicant | : | 06AABCI5252Q1Z8 |
| Date of Application | : | 14.10.2019 |
| Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised. | : | Clause(b)- applicability of a notification issued under the provisions of this Act. |
| Date of Personal Hearing | : | 09.01.2020 |
| Present for the Applicant | : | Sh. Tarun Kumar Sharma (C.A) and Sh. Rajesh Soota (Advocate). |

Memo No.: 1055/AAR
Dated: 28/8/2020

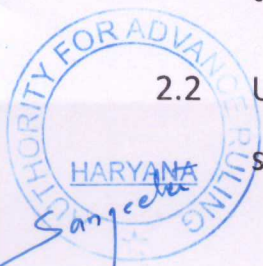
1.1 The applicant, Imperial Life Sciences Pvt. Ltd., Gurgaon is registered under the CGST/HGST Act, 2017 with GSTIN 06AABCI5252Q1Z8. The company is engaged in the business of importing and supplying the laboratory reagents to Government Research Institutions for scientific and laboratory research purposes. The applicant has filed an application for advance ruling before this Authority seeking ruling on the following issue:

1.2 *Whether "LABORATORY REAGENT" is classifiable under Tariff Heading 38220090 at S.No.80 of Schedule II oras "Goods which are not specified in Schedule I, II, IV, V or VI" at Sl. No. 453 of Schedule III under the CGST Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017 (as amended) and Notification No. 35/2017- State Tax 2 dated 30.06.2017 (as amended).*

2. Submissions made by the Applicant:

2.1 The Applicant is engaged in the business of importing and supplying the laboratory reagents to Government Research Institutions for scientific and laboratory research purposes. The Applicant has been importing the reagents under Tariff Heading 3822 since the pre-GST regime and supplying the same to government research institutions.

2.2 Under the erstwhile Central Excise Tariff regime, Chapter 3822 of CETA was structured similarly with Customs Tariff. With effect from 1st July, 2017,



under the new GST Regime, Central Excise Tariff Act, 1985 has been repealed by sub-section (1) of section 174 of the Central Goods and Services Act, 2017 and the products imported and supplied by the Applicant are covered under Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 35/2017- State Tax (Rate) dated 30.06.2017(as amended) which has been issued under Section 9(1) of the CGST Act and HGST Act respectively. The classification and the applicable rate of GST on products supplied are determined under the said Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 read with Notification No. 35/2017- State Tax (Rate) dated 30.06.2017(as amended).

- 2.3 The laboratory reagents imported and supplied under Chapter 3822 are covered under the said Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 35/2017- State Tax (Rate) dated 30.06.2017(as amended), are specified under Schedule – II, S.No. 80 as under:

| | | | |
|-----|------|----------------------------------|----|
| 80. | 3822 | All diagnostic kits and reagents | 6% |
|-----|------|----------------------------------|----|

Till the end of June 2019, IGST had been levied on the import of laboratory reagents @ 12% under S.No. 80 of Schedule II to the CGST Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017.

- 2.4 Recently, the Customs Appraising Department, has observed that the laboratory reagents classified under Tariff Heading 3822 for customs purposes cannot be classified under the same Tariff head for the purpose of levy of IGST. As per the Customs Appraising Department S.No.80 of Schedule II to the CGST Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017 describes “All diagnostic kits and reagents” which covers only diagnostic reagents and not laboratory reagents. According to them, IGST should be charged @18% under the residuary S.No. 453 of the Schedule III of CGST Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017, “Goods which are not specified in Schedule I, II, IV, V or VI”.



3. Applicant's interpretation of law and facts:

3.1 Chapter 38 of the HSN Classification covers Miscellaneous Chemical Products. Tariff Heading No. 3822 of custom tariff act reads as under:

| Tariff Item | Description of goods | Unit |
|-------------|--|------|
| 3822 | Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials | |
| 382200 | Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials ---For medical diagnosis ---Pregnancy confirmation reagents ---Reagents for diagnosing AIDS | |
| 3822 00 11 | ---Other | |
| 3822 00 12 | ---Other | |
| 3822 00 19 | | |
| 3822 00 90 | | |

It is to be noted that laboratory reagents are specifically covered in tariff heading 3822 which is further classified under two sub headings; *for medical diagnosis* and *other*. The Custom Classification of tariff heading 3822 is absolutely clear to include laboratory reagents under heading 3822 00 90.

3.2 The S.No.80 of Schedule II of the CGST Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017 (as amended) and Notification No. 35/2017-State Tax dated 30.06.2017 (as amended) reads as under:



| | | | |
|-----|------|----------------------------------|----|
| 80. | 3822 | All diagnostic kits and reagents | 6% |
|-----|------|----------------------------------|----|

S.No. 80 covers all diagnostic kits and reagents under Tariff Heading 3822.

3.3 In order to interpret the CGST and SGST notification, it is important to read explanation to the above notification.

Explanation to CGST Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017 which very clearly states as under:

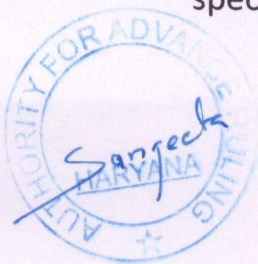
Explanation. –

- (1) In this Schedule, tariff item, heading, sub-heading and Chapter shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 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 above table.

The organisation and scheme of Customs tariff heading 3822 demonstrates that tariff sub-heading 3822 00 90 covers laboratory reagents. Based on Explanation 1, it has submitted that the “Tariff item”, “sub-heading” “heading” and “Chapter” shall be looked into GST by reference to what has been specified in the First Schedule to the Customs Tariff Act, 1975.

Tariff Item No. 3822 is specifically covered in S.No. 80 of II Schedule to the CGST Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017. Explanation 1 gives cross reference to First Schedule to the Customs Tariff Act, 1975 for the purpose of interpreting GST Tariff.

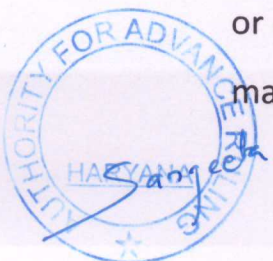
Therefore, any item in Tariff Heading 3822 cannot be classified under “Goods which are not specified in Schedule I, II, IV, V or VI” when it is specifically covered in Schedule II.



- As per explanation 2 above, for interpretation of classification of a commodity under the CGST/SGST Notification, the rules of Interpretation of Customs Tariff Act including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall be applicable.
- The applicant has also referred to General Rules for the interpretation of the Harmonised system. Rule 3(a) states that “the heading which provides the most specific description shall be preferred to headings providing a more general description.”
- The impugned interpretation by the Customs Appraising Department is blatantly contrary to the said Rule. The applicant has also placed reliance on the decision of the Hon'ble Supreme Court in the case of HPL Chemicals Ltd.-vs.-Commissioner of Central Excise, Chandigarh, 2006 wherein it was held that classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the department has to adduce proper evidence and discharge the burden of proof. It was also held that since the goods were covered by a specific heading, in that case Heading No. 25.01, the same could not be classified under the residuary heading. Rule 3(a) of the Interpretative Rules was referred to and the Supreme Court reiterated that the Heading which provides the most specific description shall be preferred to the Heading providing a more generic description.
- Based on the above submission, as the tariff item is specifically covered at S.No. 80 of Schedule II, it cannot be covered under general heading at S.No. 453 of Schedule III “Goods which are not specified in Schedule I, II, IV, V or VI”.

3.4 Anomaly in GST Classification and HSN Classification under Customs: The HSN classification reads as under:

3822: Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, and certified reference materials; and



GST Notification reads as under:

| | | | |
|-----|------|----------------------------------|----|
| 80. | 3822 | All diagnostic kits and reagents | 6% |
|-----|------|----------------------------------|----|

- The applicant has also argued that the GST council in its 16th meeting change the description from “Diagnostics or laboratory reagents, etc. (decided in 14th GST Council Meeting) to all diagnostics kit and reagents, while lowering the rate of tax from 18% to 12%.
- The applicant has interpreted that the intention behind changing the language was explanatory in nature so as to include all items of Tariff Heading 3822 in S.No. 80 of Schedule II while issuing Notification No.1/2017-Central Tax (Rate).

4. Discussion:

4.1 The submission of the applicant is that the product i.e. laboratory reagents (other than diagnostic reagents is covered under Tariff Heading 3822 of the GST Tariff of Goods and is taxable at 12%. The applicant has also been heard at length in person and the comments of the Jurisdictional Officer were also sought. The comments of the Jurisdictional Officer have been perused and placed on file. The additional submissions dated 09.01.2020 made by the applicant have also been perused and placed on file. In the additional submission, the applicant has contended that Entry No. 80 of Schedule II of rate Notification reads “All diagnostic kits and the reagents”. The expression “and” is conjunctive and as such the term reagents has to be treated separately. The applicant further adds that there is no specific exclusion or qualification for the term reagents used in Entry No. 80 of Schedule II of rate Notification which leads to conclusion that the Entry covers the reagents which may be either used in the laboratory or diagnosis.

4.2 In essence, the issue before this Authority is whether the term reagents used at Serial No. 80 Tariff Heading 3822 of Notification No. 1/2017-Integrated Tax (Rate), New Delhi dated 28.06.2017 covering description “All diagnostic kits and reagents”, covers only diagnostic reagents or both



diagnostic as well as laboratory reagents. It is important to differentiate between a diagnostic and a laboratory reagent. A diagnostic reagent is a reagent used for evaluation of physical, bio-physical or bio-chemical process in human being and animals whereas prepared laboratory reagents includes other reagents also, besides those used for the purpose of diagnosis.

- 4.3 After perusing the documents placed on record, this Authority is of the unanimous view that the description "All diagnostic kits and reagents" mean all diagnostic kits and all diagnostic reagents. It does not include the laboratory reagents as argued by the applicant. Further, the configuration of diagnostic kits reveal that some reagents are also essential parts of the diagnostic kits. If these diagnostic reagents are removed/ separated from the kit, the kit will lose the utility of diagnosis. For example Ouchterlony Double Diffusion kit has Agarose as reagent. The term "and" used in the Entry No. 80 of Schedule II of rate Notification all diagnostic kits and reagents in this Entry essentially means diagnostic reagents. The Tariff Heading 3822 00 11 and 3822 00 12, 3822 00 19 and 3822 00 90 also applies to goods for medical diagnostic. So, it is clear from the above discussion that the term diagnostic kits and reagents does not include the laboratory reagents imported and supplied by the applicant.

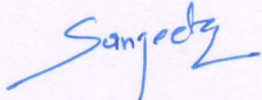
5. **Ruling:**

- 5.1 The "LABORATORY REAGENT" are Goods which are not specified in Schedule I, II, IV, V or VI of Notification No. 1/2017-Central Tax (Rate) and Integrated Tax (Rate), dated 28th June, 2017 and as such it is covered under Serial No. 453 of Schedule III of Notification No. 1/2017-Central Tax (Rate) and Integrated Tax (Rate) of HGST Act.

Ordered accordingly.
To be communicated.

15.01.2020
Panchkula.




(Sangeeta Karmakar)
Member CGST


(Madhubala)
Member SGST

Regd. AD/Speed Post

M/s Imperial Life Sciences Pvt. Ltd.,
Plot No. 463, Sector-367, Pace City-2,
Gurgaon, Haryana.

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, GST Bhawan,
Plot No. 36-37, Sector-32, Gurugram, Haryana.

o/c 2. Deputy Excise and Taxation Commissioner (ST), Gurugram (West).