



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



ADVANCE RULING NO.HAR/HAAR/R/2018-19/27 dated 22.11.2018

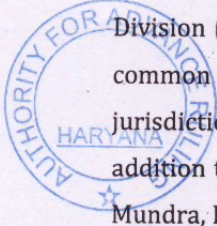
(In Application No.: 27 dated 31.08.2018)

Name & Address of the Applicant	:	M/s Oriental Carbon & Chemicals Ltd. Plot No. 3-4, Industrial Area, Dharuhera, Distt. Rewari, Haryana-122100
GSTIN of the Applicant	:	06AAACO3006F2Z1
Date of Application	:	31.08.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	(a) Classification of goods and/or services or both
Date of Personal Hearing	:	23.11.2018, 29.11.2018 & 11.12.2018
Present for the Applicant	:	Sh. Rupender Sinhmar and Sh. Abhinav Kansal, both advocates from M/s BSM Legal (PoA) Sh. Antony Almeida, Sr. Vice President - Finance & Accounts of the applicant company

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND SUB-SECTION (4) OF SECTION 98 OF THE HARYANA GOODS AND SERVICES TAX ACT, 2017

Factual Background

1. M/s Oriental Carbon & Chemicals Ltd. [hereinafter referred to as the "Applicant"], having registered as well as correspondence address at Plot No. 3-4, Industrial Area, Dharuhera, Distt. Rewari, Haryana-122100 is a company registered under the Goods and Services Tax regime in Haryana with GSTIN-6AAACO3006F2Z1.
2. The Company is having two manufacturing units at Dharuhera, Haryana, namely (1) Chemicals Division which manufactures Sulphuric Acid & Oleum (2) Insoluble Sulphur Division (DTA Unit), which manufactures "Insoluble Sulphur", both of which are under common GST registration No. 6AAACO3006F2Z1 and are currently assigned to State jurisdiction of Proper Officer of ward 5, Rewari in the office of DETC (ST), Rewari. In addition to the above two units, the Company is having one manufacturing unit at SEZ, Mundra, Kutch, Gujarat which also manufactures "Insoluble Sulphur".
3. As submitted in the application for advance ruling, applicant is sole manufacturer of "Insoluble Sulphur" in India and is clearing this item in domestic market as well as exporting it under ITC HS 2802. As further submitted by the applicant, some of its overseas customers from countries like Thailand, Mexico, Espania and Europe have raised concern that they are facing problem in clearing "Insoluble Sulphur" under ITC HS 2802 00 10 from their respective custom authorities which are insisting to change the classification to other tariff entries.



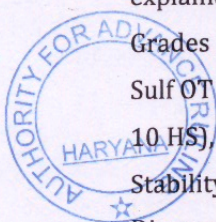
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4. The applicant states that custom authorities in different countries are clearing "Insoluble Sulphur" under following tariff entries:-

Thailand	3812 39 30
Mexico	3824 90 90
Espania (Spain)	2503 00 10
Europe	2503 00 90 & 4005 91 90 (pre-dispersed Insoluble Sulphur)

It is also stated by the applicant that its competitor i.e. Flexsys America L.P. is exporting "Insoluble Sulphur" to various countries by using different HSN codes as per the requirements of different customers in different countries. The applicant has submitted Bills export data of USA and import data in India for "Insoluble Sulphur" from USA and Malaysia in support of this claim.

5. The applicant further explains that "Insoluble Sulphur" is primarily used in rubber industry. Its advantage over ground natural Sulphur is that it does not cause bloom and that it does not dissolve and migrate in rubber. It allows the chains of Sulphur to combine with one another to form polymeric Sulphur, which is insoluble in organic solvents and elastomers. In a rubber compound, it is suspended similar to inert filler, though exhibiting thermoplastic behaviour, softening to a degree at processing temperature. That most Insoluble Sulphur commercially available contains over 90% of polymeric sulphur and less than 10% soluble sulphur. These products often have very fine particles that tend to agglomerate under the influence of a static charge, which are in turn difficult to disperse in rubber.
6. As further submitted by the applicant, the most important use for Insoluble Sulphur is as a vulcanizing agent in the rubber making industry. It is used as a cross-linking (vulcanizing) agent in rubber compound formulations. It is an important raw material for tyre industry. Apart from tyres, it is widely used in the rubber industry for manufacture of different rubber products. Therefore, its use is wide and diversified, where it is used in manufacture of various consumer products made up of rubber.
7. Regarding the various grades of Insoluble Sulphur manufactured by the applicant, it is explained that applicant manufactures different grades of Insoluble Sulphur i.e. Regular Grades [Diamond Sulf OT 10 (DS OT 10), Diamond Sulf OT 20 (DS OT 20) and Diamond Sulf OT 33 (DS OT 33)]; High Stability Grades [Diamond Sulf OT 10 High Stability (DS OT 10 HS), Diamond Sulf OT 20 High Stability (DS OT 20 HS) and Diamond Sulf OT 33 High Stability (DS OT 33 HS)]; Special Grades [Diamond Sulf OT 20 HD (DS OT 10 HD), Diamond Sulf OT 25 AS (DS OT 25 AS) and Diamond Sulf 90 (DS 90)] and Pre-dispersed Grades [Diamix S-80 and Diamix IS-65]. These products vary in their physical and chemical properties though all are vulcanizing agents but have different usage based upon the requirements of customers.
8. It is also stated by the applicant that it shall keep on classifying Insoluble Sulphur cleared in domestic area under ITC HS 2802 00 10. However, since different HSN codes are stated to be used for Insoluble Sulphur in different countries, the applicant also wishes to use different ITC HS code for different countries based upon the requirement



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of customers from different countries. It is apprehended by the applicant that in the absence of change in ITC HS codes, it will suffer an irreparable loss in business.

9. The applicant has stated that all the domestic clearances shall be continued to be made under the ITC HS Code 2802, which attracts GST @ 18%. It is also stated by the applicant that it is not getting any additional export benefit by changing the classification of these products based upon the requirements of different customers in different countries. In case any additional benefit is available on the basis of changed classification, applicant undertakes in the application to relinquish such benefit.

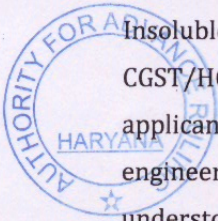
Question for Advance Ruling

10. In the backdrop of above stated factual position, applicant has submitted following question for advance ruling:-

Whether Applicant can classify and clear "Insoluble Sulphur" for export under tariff heading under ITC HS 3812 39 30, ITC HS 3824 90 90, ITC HS 2503 00 10, ITC HS 2503 00 90 and ITC HS 4005 91 90 (Pre-dispersed Insoluble Sulphur) as desired by the customers from Thailand, Mexico, Espania (Spain) and Europe respectively?

Opportunity of Personal Hearing

11. The case was initially taken up for hearing on 23.11.2018. On 23.11.2018, Sh. Abhinav Kansal, advocate from M/s BSM Legal (PoA) appeared before the authority and submitted an application for adjournment on behalf of applicant. The request of the applicant was acceded to and case was adjourned to 29.11.2018.
12. On 29.11.2018, Sh. Rupender Sinhmar assisted by Sh. Abhinav Kansal, advocates from M/s BSM Legal (PoA) and Sh. Antony Almeida, Sr. Vice President – Finance & Accounts of the applicant company appeared before the authority. Sh. Neeraj Garg, ETO from the office of DETC (ST), Rewari appeared on behalf of the department. All the issues involved were discussed in detail. The question, regarding classification of their product Insoluble Sulphur, being covered under clause (a) of sub section (2) of section 97 of the CGST/HGST Act, was admitted for ruling. Regarding the merits of issue involved, the applicant was asked to submit detailed flow chart duly certified by the chemical engineers so that the product obtained from sulphur (chapter 25) could be better understood for the purpose of classifying it. Those present requested for a week's time to submit the documents, which was allowed.
13. Case was finally fixed for 11.12.2018, on which date again Sh. Rupender Sinhmar assisted by Sh. Abhinav Kansal, advocates from M/s BSM Legal (PoA) and Sh. Antony Almeida, Sr. Vice President – Finance & Accounts of the applicant company appeared before the authority. They submitted a flow chart towards the process adopted by them for obtaining Insoluble Sulphur. Case was discussed again in detail. It was argued by the applicant company's representatives that naturally sulphur is available S₈ form. By way of sublimation process to obtain Insoluble Sulphur, the sulphur gets polymerised into long chain allotropes of ³⁰S or ³⁶S etc. It was their argument that such long chain polymerised sulphur can only be used by rubber industry for giving strength to their



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products, especially the tyre manufacturing industry which use these as vulcanising agents. In this way the product is correctly classifiable under heading HSN 3812 39 30 as vulcanising agent for rubber. The applicant was asked to submit written documents, duly signed by competent authorised person, in support of its averments, which were duly submitted and placed on record after thorough examination. The judgment was reserved in the matter, which is released today.

Comments of the concerned Officer under sub-section (1) of section 98 of the CGST/HGST Act, 2017

14. The concerned officer was asked to submit his comments on the application. In response, DETC (ST), Rewari submitted his comments vide his office memo number 4004/DTI, date 16.11.2018. In his comments, DETC (ST), Rewari confirmed the factual position as narrated by the applicant. Regarding merits, he stated that the matter is of complex nature and is to be decided by higher authorities, hence beyond his jurisdiction.

Discussions and Findings of the Authority

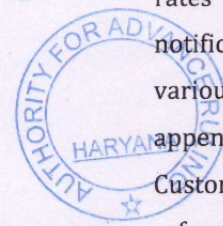
15. Coming to the question raised in the application, a clarification is sought that whether Applicant can classify and clear "Insoluble Sulphur" for export under tariff heading under ITC HS 3812 39 30, ITC HS 3824 90 90, ITC HS 2503 00 10, ITC HS 2503 00 90 and ITC HS 4005 91 90 (Pre-dispersed Insoluble Sulphur) to various countries, which are Thailand, Mexico, Espania (Spain) and Europe respectively.
16. The CGST Notification No. 01/2017-Central Tax (Rate), dated 28th June, 2017 (and the corresponding HGST Notification No. 35/ST-2 dated 30.06.2017) specifies the rates of tax applicable on Intra-State supplies of goods under GST regime. Likewise, the IGST Notification No. 01/2017-Integrated Tax (Rate), dated 28th June, 2017 specifies the rates of tax applicable on Inter-State supplies of goods under GST regime. These notifications specify the rates of GST on different goods by classifying these under various Chapters / Headings / Sub-headings / Tariff items. The explanations (iii) & (iv) appended to the above notifications provide that rules of interpretation followed in the Customs Tariff Act 1975 shall be applicable for classification of goods in GST. The above referred explanations (iii) and (iv) are reproduced below:-

Explanation (iii)

"(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)."

Explanation (iv)

"(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."



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17. As per first schedule to the Customs Tariff Act, 1975, the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters. The terms Heading / Sub-heading / Tariff item respectively are specified as under:-

(a) "Heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "Sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "Tariff item" means a description of good in the list of tariff provisions accompanying eight digit number and the rate of customs duty.

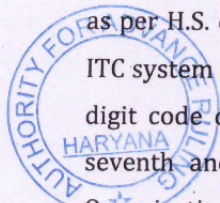
18. Now, it is also important to understand the scheme of classification of goods by used by various custom authorities across the world. The Harmonised System of coding of Goods (H.S. Code) is a universal coding system that has been developed by World Customs Organization which is now uniformly applied by more than 200 countries worldwide. The Harmonised system comprises of "General Rules for the interpretation of the Harmonised System", "Section and Chapter Notes, including Sub-heading Notes" & "A list of headings arranged in systematic order and, where appropriate, subdivided into subheadings".

This code classifies goods at 4 digit level called heading and further at 6 digit level called sub-heading (four digit heading followed further by two digits). Customs department of more than 140 major countries have been functioning on the basis of the said 6 digit tariff code.

The Indian Trade Classification, also known as Indian Tariff Code (ITC) has 8 digit classification, which has been designed in a way without any modification of first 6 digit as per H.S. code system, but followed by another two digit classified as 'tariff item'. So ITC system classifies the goods under first four-digit code called 'heading' and every six digit code called 'sub-heading' and 8-digit code called 'Tariff Item'. This addition of seventh and eighth digit is done, within the permissible limit of World Customs Organization, without any changes in H.S. code system.

19. The objective of HS Codes is to provide a classification system that associates each individual product with a single heading (and, as the case may be, single sub-heading), to which that product can be simply and unequivocally assigned. It also contains certain interpretation rules designed to ensure that a given product is always classified in one and the same heading (and sub-heading), to the exclusion of any others which might appear to merit consideration. As per guidelines by WCO, all classification decisions must be based upon the application of these rules.

There are six of these rules, known as the General Rules for the Interpretation, which are applied in hierarchical fashion, i.e., Rule 1 takes precedence over Rule 2, Rule 2 over Rule 3, etc. The General Interpretative Rules are explained at the beginning of Volume 1 of the Explanatory Notes to the Harmonized System. These rules are also adopted for interpretation of Customs Tariff by India.



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20. The general rules for the interpretation of HS classification and which are also adopted for the import tariff of India are reproduced as under:-

"THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. 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 follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

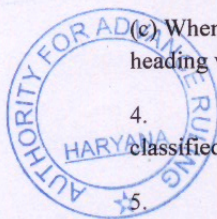
4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the



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same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

21. As submitted above, H.S. code system seeks to provide a universal system of classification and purpose is to ensure that each product can be simply and unequivocally assigned under a single heading and sub-heading and the general rules of interpretation are provided to achieve this objective.

General Interpretative Rule 1 is the foremost rule of classification. It specifies the elements that can legally be used to classify products. These identified elements are the terms of headings, Section or Chapter Notes, and if not classified by the two elements above, the remaining General Interpretative Rules.

General Interpretative Rule 2 is in two parts. It seeks to ensure that articles and products are not left unclassifiable by reason of being incomplete, unfinished, unassembled or disassembled, mixed or made of multiple materials.

General Interpretative Rule 3 provides classification principles for goods which, prima facie, fall under two or more headings. It has three parts which are applied sequentially until a classification is determined.

General Interpretative Rule 4 deals with goods which (for example because they have just appeared on the world market) are not covered by any heading of the Harmonized System, even by the material that they are made from. In the unlikely event it is needed, this GIR provides for classification with the goods to which are most similar in nature.

General Interpretative Rule 5 relates to containers and packaging for goods.

Finally, General Interpretative Rule 6 requires the whole process to be repeated again as a separate exercise to choose the five-digit subheading and then again for the six-digit subheading level as required.

In light of application of above rules, there seems no possibility that any goods may be classified under more than one heading / sub-heading and therefore, there seems no rationale to allow use of different codes for a commodity while exporting.

22. Moreover, as submitted earlier, CGST notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017 and the corresponding HGST notification specify GST rates on intra-state supplies of Goods. As per these notifications, above mentioned tariff items attract the following rates of GST:-

Tariff Item	Rate of GST (CGST + HGST)
3812 39 30	18%
3824 90 90	18%
2503 00 10	5%
2503 00 90	5%
4005 91 90	18%

Prescribing different GST rates (5% and 12%, as shown in table) for any good is definitely not the intention of government and it is imperative that the item should be classified properly in view of applicable classification rules.

Although, the applicant has submitted that it is supplying the goods in question in domestic market (i.e. within the Country) under the heading 2802 and charging GST @

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18% and intends to continue doing same yet it doesn't seem logical that the same good for the purpose of export out of country may be classified under different headings. Moreover, the applicant has failed to provide any logical reason on which basis his goods may be said to fall in more than one heading even under the application of interpretation rules. Thus, there seems no reason for the authority to answer the question in affirmative.

23. In view of the foregoing, authority rules as under:

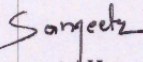
QUESTION

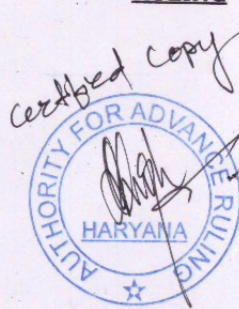
Whether Applicant can classify and clear "Insoluble Sulphur" for export under tariff heading under ITC HS 3812 39 30, ITC HS 3824 90 90, ITC HS 2503 00 10, ITC HS 2503 00 90 and ITC HS 4005 91 90 (Pre-dispersed Insoluble Sulphur) as desired by the customers from Thailand, Mexico, Espania (Spain) and Europe respectively?

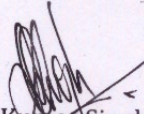
RULING

Answered in Negative.

Ordered accordingly.
To be communicated.
Dated: 22.11.2018
Panchkula.


(Sangeeta Karmakar)
Member CGST




(Vijay Kumar Singh)
Member SGST

Regd. AD/Speed Post

M/s Oriental Carbon & Chemicals Ltd.
Plot No. 3-4, Industrial Area, Dharuhera,
Distt. Rewari, Haryana-122100.

Copy to

1. Deputy Excise & Taxation Commissioner (ST), Rewari
2. The Assistant Commissioner, CGST, Sector-3, Rewari.
3. Commissioner of CGST, GST Bhavan, New C.G.O. Complex, N.H. 4, Faridabad.