



**HARYANA AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICE TAX,**



**HARYANA VANIJYA BHAWAN, PLOT NO. 1-3,**

**SECTOR 5, PANCHKULA-134151 (HARYANA)**

**ADVANCE RULING NO. HR/HAAR/04/2022-23 DATED**

Name & Address of the Applicant.	M/s 100X Circle Pvt. Ltd. 398, Sector 7, IMT Manesar Gurugram, Haryana 122001
GSTIN of the Applicant.	06AABCZ5152E1ZH
Date/Receipt of Application:	22.06.2022
Provisions under which the advance ruling has been sought by the applicant	Section 97(2) Clauses – (a) Classification of goods and/or services or both. (b) Applicability of a notification issued under the provisions of this Act;

Memo 293

Dated: 16.09.2022

**APPLICANT'S ELIGIBILITY FOR SEEKING AN ADVANCE RULING:-**

To file an application before the Authority of Advance Ruling, the applicant must satisfy the conditions prescribed under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as HGST Act, 2017). Since the provisions of both the Acts are parimateria, any reference to provisions of CGST Act, 2017 in this order should be construed as a reference to corresponding provisions in HGST Act, 2017 as well.

Sections 97(2) of the CGST Act, 2017 prescribes that Advance Ruling may be sought inter alia on the question of (b) Applicability of a notification issue under the provisions of this Act within the meaning of that term. And proviso with reference to the Section 98(2) of CGST Act, 2017 states that where the questions raised in the application are already pending or decided in any proceedings in the case of the applicant under any provision of this Act, the application may be rejected by the Advance Ruling Authority after providing an opportunity of being heard to the applicant. In this reference, the applicant has undertaken in form ARA-01 that the issue is neither pending nor decided in any proceedings under any of the provisions of the Act. Besides the applicable fees in the case has been paid. So, he is eligible to seek an Advance Ruling under the above provisions and the case is being heard on merits.

**Statement of facts submitted alongwith ARA-01:-**

The Applicant is a manufacturer of fogging machines operating in the market of B2G (Business to Government Sector) which are being used for the purposes of mosquito control/ Health/pest/vector control and similar applications.

The applicant has been applying for government tenders and charging GST @ 18% rate on all their tax invoices while the competitors are charging GST @ 12% on the same product which has resulted in ambiguity and confusion in the marketplace regarding the correct GST rate over the concerned product. Further, since the applicant is charging tax at a higher rate compared to their competitors, the applicant is becoming costly and is losing on various bids and tenders.

Further, on few occasions, due to high quantum of the tender, the PSUs and Government Departments issues Purchase order in favour of more than one bidder. Where one bidder i.e. competitor is charging 12% GST while applicant is charging 18%. The applicant charges 18% tax in their invoice, declares the same in their GSTR 1 and E way bill and dispatches material. At the time of payment, the PSUs and Government units withholds the tax payment of 6% (18% - 12%) of the applicant after observing the tax rate difference in their internal audit/ check between the competitor and applicant tax invoice due to which applicant faces working capital shortage as the applicant has to pay the differential tax of 6% from their own pocket.

### **STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND FACTS:-**

#### **History of amendments in the GST rate wrt the fogging machines:-**

The original entry of the HSN code 8424 was under S.no- 324 of Schedule III of Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017 as follows:- *"Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines (other than fire extinguishers, whether or not charged)"*

Subsequently vide notification 6/2018-Central Tax (Rate), dated 25 January 2018, mechanical sprayers were removed from the above entry and entered under 195B of Schedule II of Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017 and entry no. 325 of schedule II of Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017 was substituted by following:-

*"Mechanical appliances (whether or not handoperated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines (other than sprinklers; drip irrigation systems including laterals; mechanical sprayer; norks for drip irrigation equipment or nozzles for sprinklers)"*

#### **Applicant's Interpretation of the product being manufactured**

#### **What are fogging machines? How they operate and its application:-**

**Bureau of Indian Standards: IS 14855 part 1 "PLANT PROTECTION AND VECTOR CONTROL EQUIPMENT SPECTIFICATION- PART 1-PULSE JET TYPE THERMA FOGGER"**

The applicant is manufacturing thermal fogging machines which are being used for mosquito/health/ pest/ vector control. The machine being so manufactured uses thermal

heat energy to convert the chemical liquid into fog using a pulse jet engine inside the machines, the diesel mixed with medicine/chemical is converted into fog which is disbursed/ projected into the affected area.

### What are Mechanical Sprayers?

**Bureau of Indian Standards: IS 3906:1995 REAFFIRMED 2001 "CROP PROTECTION EQUIPMENT HAND OPERATED KNAPSACK SPRAYER, PISTON TYPE-SPECIFICATION"**

The mechanical sprayers are simple machines either hand operated/ battery operated/ power operated or foot sprayers which with the assistance of spring level disburse the liquid chemical into the nature without performing any chemical reaction or change in the form of liquid. The mechanical sprayers are the most primitive form of sprayers being used for sprinkling pesticides/ chemicals/ plain water etc without changing the form of the liquid. Application of the same are in crop protection, Drip Irrigation etc.

The entry no 195(A) under schedule II "Mechanical Sprayer consists only of sprayers while all the other mechanical appliances used for projecting, dispersing or spraying liquids or powders were covered under entry no 325 of Schedule III. The machine being so manufactured by the applicant are not mechanical sprayers but machines to convert the liquid in another state i.e. Fog (close to Gas) before dispersing the same into the air.

As per Dictionary, the meaning of a sprayer is as follows: "a device for spraying liquid, especially chemicals". Spraying means dispersing small liquid drops that end up on the surface which makes the surface wet. While the definition of Fog machine is as follows: "a machine that produces a gas that looks like fog or smoke". While fogging, the machine creates particles that are so small that they float in the air. Contrary to spraying, fogging is "dry", Bureau of Indian Standards covers both items in separate specification called IS. Sprayers are covered in IS: 3906 whereas Fogging machines are covered under IS: 14855 Part I.

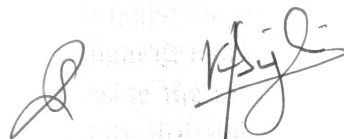
The mechanical sprayers whether or not hand operated are generally used for spraying water based chemicals in the field crop. The appliance disburse/ projects/ sprays liquid in its original form without interfering with the chemical structure of the liquid inside. These sprayers do not convert the liquid inside in another state prior to disbursing/projecting/spraying and this particular feature distinguishes them from fogging machines.

Whereas, the applicant is manufacturing thermal fogging machines which uses the thermal energy to convert the chemical liquid inside the machine to be converted into high density chemical based fog being used for disbursing in nature of vector/ mosquito / pest control.

**These Fog machines are not used to disburse the chemical liquid in its original state as a result, these machines cannot be covered under the mechanical sprayers.**

Entry no 325 of Schedule III mentions steam or sand blasting machines and other similar jet projecting machines, while no such reference has been made in this context in entry no. 195B of Schedule II.

So, fogging Machine can never be categorized as Sprayer as both products are different.



Drawing inference from the above, the applicant submits that the fogging machine is not a mechanical sprayer and hence is charging 18% tax rate as per Entry no. 325 of schedule III and not under entry no. 195B of the schedule II of the Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017.

**Questions on which Advance Ruling is being sought:-**

1. Whether the thermal based fogging machines used for mosquito/health/ pest/ vector control can be classified as mechanical sprayers under entry no. 195B of Schedule II of Notification no 1/2017 Central Tax (Rate) dated 28th June 2017 as amended from time to time or under entry no. 325 of schedule III-"Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers whether or not charged, spray guns and similar appliances, steam or sand blasting machines and similar jet projecting machines (other than sprinklers; drip irrigation systems including laterals; mechanical sprayer, nozzles for drip irrigation equipment or nozzles for sprinklers]?
2. Based upon the answer to above question, what is the tax rate chargeable to thermal based fogging machine?

**PERSONAL HEARING:**

Sh. Saurabh Gupta, Chartered Accountant(authorized representative) alongwith Sh. Sulabh Mangal appeared on behalf of the applicant on 14.07.2022 and enumerated the details of the case.

**DISCUSSION AND FINDING:**

The matter is being examined by the authority in detail. It is observed that the applicant is a manufacturer of the fogging machines and operationalise in the market mainly in B2G model. These fogging machine are used for the purpose of mosquito control, pest, vector control and in health sector. He is manufacturing portable pulse jet type fogging machine operated manually as well as electrically besides double barrell power fogging machine and these are thermal fogging machines which are suitable for vehicle mounting too. During the proceedings, the applicant has apprised that on the said goods they are charging GST rate at 18 % whereas his competitors are charging 12 % on the same product which has resulted into the ambiguity regarding the classification of the goods under the provisions of the GST Act, 2017. So, he has sought an advance ruling on the matter. The basic question of the applicant is that whether the fogging machine manufactured by them comes in the category of mechanical appliances (entry no. 325 of Schedule III) or mechanical sprayers (Entry No. 195 of Schedule II)? There is no entry of fogging machine per se in the schedules whereas there are entries of mechanical sprayer and appliances.

The relevant entry as per the notification dated 25.01.2018 with reference to these goods is as under:-

In Sr. No. 325, for the entry in column (3), the entry "Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powder; fire extinguishers, whether or not charged; spray guns and similar



appliances; steam or sand blasting machines and similar jet projecting machines[other than sprinklers; drip irrigation systems including laterals; mechanical sprayers; nozzles for drip irrigation equipment or nozzles for sprinklers]" shall be substituted.

The entry is very clear regarding the classification of mechanical appliances which are to be taxed at 18 % and mechanical sprayers has been excluded from this entry. Now, we have to check what is difference between a sprayer and a fogging machine or what is difference between mechanical sprayer and mechanical appliances?

#### **Sprayer:-**

A sprayer is a device used to spray liquid which are commonly used for projection of water, weed killers, pest maintenance chemicals and fertilizers. Sprayers range in size from man-portal units (typically backpacks with spray gun) to trailed sprayers that are connected to a tractor, to self propelled units similar to tractors with boom mounts. It is a simple machine varying in size and structure, and can be categorized as mechanical sprayers in common parlance.

**Mechanical appliances:-** To understand this term we need to refer to the dictionary meaning of the word Mechanical, Machine and Appliances.

**Machine:-** A machine is a physical system using power to apply forces and control movement to perform an action.

**Mechanical:-** 1 made, performed, or operated by or as if by a machine or machinery. a mechanical process. 2 concerned with machines or machinery. 3 relating to or controlled or operated by physical forces.

**Appliances:-** An implement, an instrument or apparatus designed (or at least used) as a means to a specific end.

**And Mechanical appliance has been defined as a device usually having multiple parts that move while it is working often using power from an engine or electricity.**

From these definitions, we can say that in general and technical terms a fogging machine is a mechanical appliance. As a fogging machine convert the liquid inside it in another state of matter before disbursing the same in the form of haze. These vapours are transported via the machine's nozzle and released into the atmosphere. The disinfectant or chemical liquid administered through a fogging machine spreads on both surfaces as well as in air itself. The micro-droplets of disinfectant or chemical solution remain on surfaces for a longer period. The thin fog penetrates smaller and hidden surfaces and even reaches into corners and difficult regions.


So, from the process of fogging it can be said that fogging machine are appliances with convert the state of matter from one to another i.e. liquid to gas and not just spray the liquid. From above, it can be concluded that fogging machine are to be classified as mechanical appliances.

**Ruling:**

Whether the thermal based fogging machines used for mosquito/health/ pest/ vector control can be classified as mechanical sprayers under entry no. 195B of Schedule II of Notification no 1/2017 Central Tax (Rate) dated 28th June 2017 as amended from time to time or under entry no. 325 of schedule III-"Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers whether or not charged, spray guns and similar appliances, steam or sand blasting machines and similar jet projecting machines (other than sprinklers; drip irrigation systems including laterals; mechanical sprayer, nozzles for drip irrigation equipment or nozzles for sprinklers]?	The thermal based fogging machine are covered under the entry no. 325 of schedule III.
Based upon the answer to above question, what is the tax rate chargeable to thermal based fogging machine.	18 %

  
(Sunder Lal)

Member CGST

  
(Kumud Singh)

Member SGST

**Regd. AD/Speed Post**

M/s 100X Circle Pvt. Ltd.,  
398, Sector 7, IMT Manesar,  
Gurugram, Haryana 122001

**Copy to:**

1. The Additional Commissioner, Central Goods & Service Tax Commissionerate, Plot No. 5, Sector 25, Panchkula (Haryana).
2. The Deputy Excise and Taxation Commissioner (ST), Range- Gurgaon, Ward-3, District- Gurgaon (West), Haryana.
3. The Deputy/ Assistant Commissioner, Central Goods & Service Tax, Commissionerate:- Gurugram, Division:- West-2, Range:- R-54, Haryana.

**Note: An Appeal against this advance ruling order lies before the Haryana Appellate Authority for Advance Ruling for Goods and Service Tax Haryana Vanijya Bhawan, Plot No. 1-3, Sector 5, Panchkula-134 151 (Haryana), within 30 days from the date of service of this order.**