THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 08 / 2021
Date : 26-02-2021

Present:

1. Dr. Ravi Prasad M.P.
   Additional Commissioner of Commercial Taxes . . . . Member (State Tax)

2. Sri. Mashhood Ur Rehman Farooqui,
   Joint Commissioner of Central Tax, ... Member (Central Tax)

1.	Name and address of the applicant	M/s Wipro Enterprises Private Limited, Consumer Care & Lighting Division, SJP1, 'C' Block, 2nd Floor, Sarjapur Road, Doddakkanelli, Bangalore-560035.
2.	GSTIN or User ID	29AAJCA0072C1Z1
3.	Date of filing of Form GST ARA-01	20th June 2020
4.	Represented by	Sri Rishab, Advocate & Authorised Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bangalore North West Commissionerate (Range - CNWD2)
6.	Jurisdictional Authority – State	LGSTO 15, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs.5,000/- under KGST Act vide CIN HDFC20062900091945 dated 12.06.2019

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER 98(4) OF THE KGST ACT, 2017

M/s Wipro Enterprises Private Limited, Consumer Care & Lighting Division, SJP1, 'C' Block, Sarjapur Road, Doddakkanelli, Bangalore-560035 having GSTIN number 29AAJCA0072C1Z1, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of the KGST Rules in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

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Wipro

2. The applicant is engaged in the manufacture of toilet soaps, LED bulbs and fittings, other toiletries, and other consumer products and manufacturing & marketing Hand Sanitizer at a large scale at their various factories primarily to combat the situation arising on account of pandemic COVID – 19. Thus the applicant has sought advance ruling in respect of the following questions:

a. What is the appropriate classification of Hand Sanitizer for the purpose of GST?

b. What is the applicable rate of GST?

3. BRIEF FACTS OF THE CASE :

a. The applicant is engaged in the manufacture of toilet soaps, LED bulbs and fittings, other toiletries, and other consumer products at their various factories. In relation to the said business, the Applicant has obtained registration under various laws and is in strict compliance of all such laws.

b. The applicant herein is manufacturing and marketing Hand Sanitizer at a large scale primarily to combat the situation arising on account of pandemic COVID–19.

c. Section 16 of the Drugs and Cosmetics Act, 1940 provides that 'standard quality' of drug would mean a drug which complies with standard set forth in Schedule II and the said schedule provides for Drugs included in the 'Indian Pharmacopoeia'.

d. The Hand Sanitizer manufactured by the Applicant contains 95% v/v of ethyl alcohol, which is within the standard prescribed by the Indian Pharmacopoeia, the Applicant have rightfully obtained a drug license under the provisions of the Drugs and Cosmetics Act, 1940.

e. The applicant submits that on a perusal of the Tariff Entry and Explanatory Notes, Chapter Heading 3004 is the most appropriate chapter heading to cover medicaments used for therapeutic or prophylactic value.

f. The applicant submit that definition of the term 'Prophylactic' as contained in P Ramanatha Iyer's Advanced Law Lexicon and the same reads as follows-

"Done or used as preventive against disease. Formulated to prevent something"

g. The applicant submits that in the case of *Sujanil Chemo Industries v. Commissioner of C. Ex., & Cus., Pune*, wherein the Court has held that an hair oil used for killing lice would be considered to be prophylactic use as it prevents disease which will follow from infestation of lice.

h. The applicant submits that in the case of *Commissioner of Central Excise v. Wockhardt Life Sciences Ltd*, the Court was deciding the classification of Povidone Iodine Cleansing Solution USP and Wokadine Surgical Scrub, which are used as antiseptic or disinfectant solution. The Court in this case held that the product is used for preventing disease and hence the same has prophylactic use qualifying as medicament.

i. The Applicant submits that in the case of *Commissioner of C. Ex., Mumbai-I v. Ciens Laboratories, Mumbai*, the Apex Court held that there were 3 main tests which were to applied for determining if any product qualifies as medicament, *viz.* Firstly, when a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably decisive. It is important that the curative attributes of such ingredients should render the product a medicament and not a cosmetic. Secondly, the product may be sold with/without prescription of a medical practitioner. Selling without medical prescription does not lead to the immediate conclusion that all products that are sold over/across the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments. Thirdly, if a product's primary function is "care" and not "cure", it is not a medicament. Cosmetic products are used in enhancing or improving a person's appearance or beauty, whereas medicinal products are used to treat or cure some medical condition. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities, is to be branded as a medicament.

j. The applicant submits that in light of the ratios set out in aforesaid case laws, it can be observed that if a product is used for preventing spread of disease, the same would be considered to be of prophylactic use qualifying as medicament.

k. The applicant also submits that the World Health Organization has also specifically recognized the use of alcohol based hand rub for hand hygiene and this has been specifically stated in their publication "WHO Guidelines on Hand Hygiene in Health Care".

l. The applicant submits that the Hand Sanitizer is manufactured and supplied by them under a valid drug license and is used for killing bacteria, as indicated on the packaging and also in the Indian Pharmacopoeia. It is considered to be anti-infective and hence the same would qualify as a product used for prophylactic use and in turn merits classification as a Medicament under Chapter 3004.

m. The applicant submits that on a perusal of the entries, Tariff Heading 30049087 includes antibacterial formulation not elsewhere specified or included and Tariff Heading 38089400 includes disinfectants but excludes such of those disinfectants having the essential characteristics of medicament falling under Chapter Heading 30.03 or 30.04.

4. PERSONAL HEARING

Sri. Rishab J. Authorized Representative of the Applicant appeared for personal hearing proceedings on 16-12-2020 before this authority and reiterated the submissions made in the application.

5. FINDINGS & DISCUSSION:

5.1 At the outset we would like to make it clear that the provisions of CGST Act 2017 and KGST Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

5.2 We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by Sri. Rishab J, Advocate & Authorized Representative of the applicant during the personal hearing. We also considered the issues involved, on which advance rulings are sought by the applicant, relevant facts & the applicant's interpretation of law.

5.3 On examination of the nature of the activity carried out by the applicant it is observed that the applicant is engaged in the manufacture of toilet soaps, LED bulbs and fittings, other toiletries, and other consumer products and also manufacturing & marketing Hand Sanitizer at a large scale at their various factories primarily to combat the situation arising on account of pandemic COVID – 19.

5.4 The applicant seeks advance ruling with regard to the issue of appropriate classification of Hand Sanitizer for the purpose of GST and the applicable GST rate thereon. In this regard it is to be noted that hand sanitizers are used to disinfect the skin surfaces from microbes and viruses. All disinfectants have a property of killing disease causing agents and can claim to be prophylactic in nature. But the main activity of the disinfectant is to disinfect the surfaces.

5.5. Disinfectants are chemical agents designed to inactivate or destroy microorganisms on inert surfaces. Disinfectants kill more germs than sanitizers. Disinfectants are frequently used in hospitals, dental surgeries, kitchens, and bathrooms to kill infectious organisms.

6. The HSN Code 3808 94 00 clearly covers all disinfectants. When there is a specific entry covering disinfectants, the impugned product needs to be classified under the said heading 3808 94 00. Further the Chapter Note 1 to the Chapter 38 clearly states that this Chapter does not cover medicaments (Heading 3003 or 3004). Hence, it is be decided whether the product in question is covered under HSN 3003 or 3004 or not. HSN 3004 reads as under:

"Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in

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measured doses (including those in the form of transdermal administration systems) or in the forms of packings for retail sale, including Ayurvedic, Unani, Siddha, homoeopathic or bio-chemical systems medicaments, put up in retail sale".

6.1 It is clear from the above, for any goods to be covered under HSN 3004, the said goods should be for "therapeutic use" or for "prophylactic use". It is seen that the agent would be called a therapeutic agent only if it has a curative effect against a disease. Since the product in question is not used for treatment of an already prevalent disease in a patient, the same cannot be said to have a therapeutic use.

6.2 Further, according to Oxford Dictionary, the term "prophylactic" has the following meaning: "Protecting against or tending to prevent a disease". The term prophylaxis has the meaning "Treatment intended to prevent disease". The product in question, no doubt is used as an alternative to soap, it can't be said to have a prophylactic use in COVID Infection as the impugned produce is not specific to COVID-19 infection. The same cannot be compared with Polio drops or covaxin, wherein the Polio drops have a prophylactic use in preventing Polio myelitis disease or covaxin helps in preventing COVID -19 infection. In the instant case, the impugned product is not specific to any disease. Hence the goods in question cannot be covered under HSN 3004.

6.3. Further, as per explanatory notes to HSN of WCO, Heading 3004 is given as under:

This heading covers medicaments consisting of mixed or unmixed products, provided they are:

(a) Put up in measured doses or in forms such as tablets, ampoules (for example, re-distilled water, in ampoules of 1.25 to 10 cm3, for use either for the direct treatment of certain diseases, e.g., alcoholism, diabetic coma or as a solvent for the preparation of injectible medicinal solutions). capsules. cachets, drops or pastilles, medicaments in the form of transdermal administration systems, or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use.

The heading also includes measured doses in the form of transdermal administration systems which are generally put up in the form of self-adhesive patches (usually rectangular or round) and which are applied directly to the skin of patients. The active substance is contained in a reservoir which is closed by a porous membrane on the side entering into contact with the skin. The active substance released from the reservoir is absorbed by passive molecular diffusion through the skin and passes directly into the bloodstream. These systems should not be confused with medical adhesive plasters of heading 30.05.

The heading applies to such single doses whether in bulk, in packings for retail sale, etc.; or

(b) In packings for retail sale for therapeutic or prophylactic use. This refers to products (for example, sodium bicarbonate and tamarind powder) which, because of their packing and, in particular, the presence of appropriate indications (statement of disease or condition for which they are to be used, method of use or application, statement of dose, etc.) are clearly intended for sale directly to users (private persons, hospitals, etc.) without repacking, for the above purposes.

These indications (in any language) may be given by label, literature or otherwise. However, the mere indication of pharmaceutical or other degree of purity is not alone sufficient to justify classification in this heading.

From the above also, it is clear that sanitizers are not available as tablets, ampoules etc. Therefore, it is not classifiable under Heading 3004.

7. HSN 3003 reads as under:

"Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic use, not put up in measured doses or in forms or packings for retail sale, including Ayurvedic, Unani, Siddha, homoeopathic or bio-chemical systems medicaments".

Even here, the same logic which is applicable to HSN 3004 applies and hence it cannot be said to be for therapeutic or prophylactic use and hence cannot be covered under HSN 3003.

8. The Disinfectants, in relation to the meaning, are those goods used for disinfection. The disinfect has the meaning "to get rid of infection" or "cleanse by destroying infecting micro-organisms especially by chemical means. Disinfectant is any substance that is used to kill germs, such as viruses, bacteria, and other microorganisms that can cause infection and disease. Further as per the common parlance also, the Alcohol based hand sanitizers are never classified as Medicaments.

8.1 The applicant has taken support of the *Sujanil Chemo Industries v. Commissioner of C. Ex., & Cus., Pune* and the product in question in the said case was a anti-lice agent. The same was ordered to be classified under Heading 3003. But alcohol based hand sanitizers donot act against any particular organism and hence the argument of the applicant cannot be considered favourably.

8.2 Further, the applicant has taken the support of the judgement of the Hon'ble Supreme Court in the case of *Ciens Laboratories, Mumbai* to claim that the impugned goods are classifiable as medicaments. In fact the said case law goes against them as the Apex Court had ruled that if a product's primary function is care and not cure then it is not a medicament. In the instant case, sanitizers are primarily used for care rather than cure for COVID-19.

8.3 The applicant, further, has taken the support of the judgement of the Hon'ble Supreme Court in the case of *Wockhardt Life Sciences Ltd*, in support of their contention that the goods are classifiable under Heading 3004. The Apex Court relied upon common parlance test to decide the issue. Similarly, the Hon'ble Supreme Court, in the case of State of Goa and Another v. M/s Colfax Laboatories Ltd, has clearly stated that the intention of the user should be given importance while classifying the product. In the present case, it is seen that the alcohol-based hand sanitizers, as the name itself suggests, are to sanitize the hands and disinfect them and hence cannot be covered under Medicaments.

9. In view of the above, We conclude that the impugned goods are covered under heading 3808, which in turn is covered under entry no. 87 of Schedule III of Notification No.01/2017 – Central Tax (Rate) dated 28.06.2017 and hence are taxable at the rate of 9% under the CGST Act. Similarly, the goods are taxable at the rate of 9% under the KGST Act.

10. In view of the foregoing, we pass the following

R U L I N G

1. The hand sanitizers are classifiable under Heading 3808 under the Customs Tariff Act.

2. The hand sanitizers are liable to tax at the rate of 9% under CGST Act and at the rate of 9% under the KGST Act.

(Dr.M.P.Ravi Prasad)
Member

(Mashhood Ur Rehman Farooqui)
Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place: Bengaluru,
Date : 26-02-2021

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

3. The Principal Commissioner of Central Tax, Bangalore North West Commissionerate, Bengaluru.

4. The Asst. Commissioner, LGSTO-15, Bengaluru.

5. Office Folder.

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