

**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 64/2021

Dated : 26-11-2021

Present:

1. Dr.M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. T. Kiran Reddy
Joint Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. Xtracare Products Private Limited, #725, 6 th B Cross, 3 rd Block, Koramangala, Bengaluru-560 034.
2.	GSTIN or User ID	29AAACX0193J1Z2
3.	Date of filing of Form GST ARA-01	18/08/2021
4.	Represented by	Sri. Sanjay Singhal, C A & Authorised Representative.
5.	Jurisdictional Authority – Centre	The Principal Commissioner of Central Taxes, Bengaluru South Commissionerate, Bengaluru. (Range –DSD5)
6.	Jurisdictional Authority – State	ACCT, LGSTO-015, 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 & Rs.5,000/- under KGST Act vide CIN SBIN18112900365772 dated 30/11/2018.

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

M/s. Xtracare Products Private Limited (herein after referred to as “the applicant”), No.725, 6th B Cross, 3rd Block, Koramangala, Bengaluru-560 034 having GSTIN29AAACX0193J1Z2 have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a Private Limited Company, registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST Act respectively), engaged in Import and trading of baby wipes. A dispute on classification of baby wipes has been settled by the order of Commissioner of Customs (Appeals-II), Chennai as per which the classification of baby wipes is 96190010. The applicant has been classifying the baby wipes under the heading 9619 0010 and discharging the duty accordingly. Meanwhile a Circular bearing No.52/26/2018-GST dated 09.08.2018 was issued by CBIC, which dealt with classification of wipes manufactured using spun lace non-woven fabric and also dealt with HSN codes 3307, 3401 and 5603 and the applicant, on the basis of the said circular & taking cautious view is charging 18% GST from August 2018.

3. The applicant, in view of the above, sought advance ruling in respect of the following questions:

- a. *What is the HSN Code of baby wipes/classification?*
- b. *What is the rate of tax to be levied on baby wipes?*
- c. *If Circular No.52/26/2018 GST-dated 9th August 2018, is not applicable to the applicant, whether the applicant can go back and charge GST @ 12% since there exists ambiguity in this regard.*

4. **Admissibility of the application:** The questions are on the issues of classification of baby wipes and the applicable GST rate thereon, which are covered under "classification of any goods or services or both" & "determination of the liability to pay tax on any goods or services or both" and hence the instant application is admissible under Section 97(2)(a) and 97(2)(e) of the CGST Act 2017 respectively.

5. **BRIEF FACTS OF THE CASE :** The applicant furnishes the following facts relevant to the issue/s :

5.1 The Applicant stated that they are engaged in Import and trading of baby wipes since 2001; they have registered office in Bangalore; they import baby wipes from Malaysia, Singapore and other countries on discharging Customs Duty under Tariff heading 96190010.

5.2 The Applicant has stated that a dispute arose on classification of the said item in 2014 for which they had preferred an Appeal before the Commissioner of Customs (Appeal-II), Chennai, who passed a speaking order vide Order No.56/2014 dated 31st October 2014 and upheld the classification of 99160010. The applicant submitted the following points with regard to the said order:



a. The Bill of Entry was subjected to First check Appraisement to verify the classification and representative samples were drawn for lab testing.

b. The Chemical Engineer vide report No.276/MCH/09.06.2014 has reported that the samples are non-woven articles and the stand taken by Lower Adjudication Authority who had classified the goods under 48189000 was rejected and the goods were re-classified under Tariff heading 96190010.

5.3 The Applicant has stated that after the above said order, they were levying, collecting, discharging and submitting their periodic returns based on the said Tariff heading 96190010 under the Customs Act, VAT Act and now under the GST Law.

5.4 The Applicant has stated that the Department has issued a Circular bearing No.52/26/2018-GST dated 9th August 2018, clarifying the applicable rate of GST on "wipes using spun lace non-woven fabric" under item number (vi) and the relevant points are as furnished below:

- a. This Circular has dealt with HSN Codes namely 3307, 3401 and 5603 applicable to industry.
- b. The above said items have been classified under 18% GST and ambiguity under the said HSN Codes is put to rest vide detailed description under para 8 of this Circular.

5.5 The applicant has stated that on the basis of the aforesaid circular they classify their product under tariff heading 33079090 and are charging GST @ 18%. The applicant has also stated that under the above circumstances, there still exists ambiguity as to whether HSN Code No.9619 will be covered under the above said circular or is outside the above said circular.

6. **Applicant's Interpretation of Law:** The applicant, though has not furnished their interpretation of law and accordingly their contentions, appear to contend that their product is classifiable under tariff heading 9619 0010 & the alternate classification of their product would be 3307 9090, in terms of the circular supra.

PERSONAL HEARING PROCEEDINGS HELD ON 07.10.2021.

7. Sri Sanjay Singhal, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia 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.

9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant is engaged in Import and trading of baby wipes on classifying the same under tariff heading 9619 and charging GST @ 12%, in accordance with the order in Appeal No.56/2014 dated 31.10.2014, passed by the Hon'ble Commissioner of Customs (Appeals-II), Chennai. The applicant consequent upon issuance of the Circular No.52/26/2018-GST dated 09.08.2018, has been classifying their product under tariff heading 3307 9090 and charging GST @ 18% on taking the cautious view.

11. In view of the above, the core issue before us to decide is the classification of the applicant's product i.e. "Baby Wipes" and the applicable rate of GST thereon. We proceed to examine the issue of classification & invite reference to the relevant para/s of the Circular supra, which are as appended below:

8.1 *Appropriate classification of baby wipes, facial tissues and other similar products: Varied practices are being followed regarding the classification of baby wipes, facial tissues and other similar products, and references have been received requesting for correct classification of these products. As per the references, these products are currently being classified under different HS codes namely 3307, 3401 and 5603 by the industry.*

8.2 *Commercially, wipes are categorized into various types such as baby wipes, facial wipes, disinfectant wipes, make-up remover wipes etc. These products are generally made by using non-woven fabrics of viscose and polyviscous blend and are sprinkled with demineralized water and various chemicals and fragrances, which impart the essential character to the product. The base raw materials are moisturising and cleansing agents, preservatives, aqua base, cooling agents, perfumes etc. The textile material is present as a carrying medium of these cleaning/wiping components.*

8.3 *According to the General Rules for Interpretation [GRI- 3(b)] of the First Schedule to the Customs Tariff Act (CTA), 1975, "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 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." Since primary function of the article should be taken into consideration while deciding the classification, it is clear that the essential character of the wipes in the instant case is imparted by the components which are to be mixed with the textile material.

8.4 As per the explanatory notes to the HSN, the HS code 5603 clearly excludes nonwoven, impregnated, coated or covered with substances or preparations such as perfumes or cosmetics, soaps or detergents, polishes, creams or similar preparations. The HSN is reproduced as follows : "The heading also excludes: Nonwoven, impregnated, coated or covered with substances or preparations [i.e. perfumes or cosmetics (Chapter 33), soaps or detergents (heading 3401), polishes, creams, or similar preparations (heading 3405), fabric, softeners (heading 3809)] where the textile material is present merely as a carrying medium. Further, HS code 3307 covers wadding, felt and non-woven, impregnated, coated or covered with perfumes or cosmetics. The HS code 3401, would cover paper, wadding, felt and non-woven impregnated, coated or covered with soap or detergent whether or not perfumed".

8.5 Further, as per the explanatory notes to the HSN, the heading 3307 includes wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics. Similarly, as per explanatory notes to the HSN, the heading 3401 includes wipes made of paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale.

8.6 Thus, the wipes of various kinds (as stated above) are classifiable under heading 3307 or 3401 depending upon their constituents as discussed above. Therefore, if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.

12. The Circular supra clarifies that the classification of "baby wipes" depends on their constituents; they are classifiable under tariff heading 3307 if they are impregnated with perfumes or cosmetics and if they are coated with soap or detergent they would fall under tariff heading 3401; they would attract 18% GST in both cases.

13. We observe from the Customs Tariff Act 1975 that Chapter 96 covers miscellaneous manufactured articles and tariff heading 9619 specifically covers sanitary towels(pads) and tampons, napkins and napkin liners for babies and similar articles of any material as under:

Tariff Item	Description of goods
9619	SANITARY TOWELS (PADS) AND TAMPONS, NAPKINS AND NAPKIN LINERS FOR BABIES AND SIMILAR ARTICLES, OF ANY MATERIAL
9619 00	Sanitary towels (pads) and tampons, napkins and napkin liners for babies and similar articles, of any material:
9619 00 10	Sanitary towels (pads) or sanitary napkins
9619 00 20	Tampons
9619 00 30	Napkins and napkin liners for babies
9619 00 40	Clinical diapers
9619 00 90	Other

Further the Explanatory Notes to the Chapter reads as:

“96.19 – Sanitary towels(pads) and tampons, napkins and napkin liners for babies and similar articles, of any material.

This heading covers sanitary towels(pads) and tampons, napkins(diapers) and napkin liners for babies and similar articles, including absorbent hygienic nursing pads, napkins(diapers) for adults with incontinence and pantyliners, of any material.

In general, the articles of this heading are disposable. Many of these articles are composed of (a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer's skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of fluid from the absorbent core. The articles of this heading are usually shaped so that they may fit snugly to the human body. This heading also includes similar traditional articles made up solely of textile materials, which are usually re-usable following laundering.

This heading does not cover products such as disposable surgical drapes and absorbent pads for hospital beds, operating tables and wheelchairs or non-absorbent nursing pads or other non-absorbent articles(in general, classified according to their constituent material).”

It is seen from the above that the Tariff heading 9619 covers articles having multiple layers designed to absorb and store fluid. Generally, these articles are shaped so as to fit snugly to human body. In the instant case, the impugned article- ‘baby wipes’ are neither designed to absorb and store fluids nor are shaped to fit human body and hence cannot be classified under tariff heading 9619.



Thus the product "baby wipes" merits classification under tariff heading 3307 and attract 18% GST, in terms of Circular supra dated 09.08.2018.

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

RULING

- a. The "baby wipes" merits classification under heading 3307
- b. The applicable rate of tax(GST) on baby wipes is 18%
- c. The Circular No.52/26/2018 GST-dated 9th August 2018, is applicable to the applicant.


(Dr. M.P. Ravi Prasad)

Member
MEMBER

Karnataka Advance Ruling Authority
Place : Bengaluru, 560 009


(T. Kiran Reddy)

Member
MEMBER

Karnataka Advance Ruling Authority
Bengaluru-560 009

Date : 26-11-2021

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 South Commissionerate, Bengaluru South Division-5, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-015, Bengaluru.
5. Office Folder.

