

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore

2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	UNREGISTERED; PAN: AILPJ3090N
Name and address of the applicant	M/s. PRAKASH CHAND JAIN 209, M.G.ROAD, NEAR CANARA BANK, INDORE
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of any goods or services or both; e) determination of the liability to pay tax on any goods or services or both
Present on behalf of applicant	Shree Sunil P Jain, CA
Case Number	05/2019
Order dated	08/05/2019
Order Number	07/2019

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. PRAKASH CHAND JAIN (hereinafter



referred to as the Applicant) , not registered but desirous of obtaining registration under the Goods & Services Tax.

2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

- 3.1 The Applicant intend to trade and/or manufacture/assemble solar LED Torch, used generally in agriculture/ rural area.
- 3.2 Such torch has internal assembly to charge battery through solar panel and also with AC adaptor, solar panel is also provided. Sometimes it is supplied without solar panel, but with solar charging socket.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority in the application:-

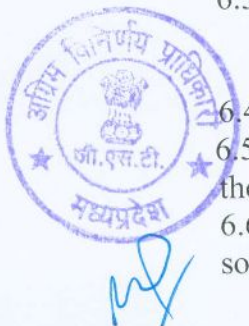
- What shall be GST rate on such product?
- What will happen, if torch is having solar panel input socket, but provided without solar charging panel?

5. CONCERNED OFFICER'S VIEW POINT:

The Concerned Officer Submitted that the product in the question is not a solar based device so it will not be entitled to concessional rate of GST @5% under Sr.No.234 of Schedule-I to Notification No.01/2017-CT(Rate) dtd.28.06.2017 .

6. RECORD OF PERSONAL HEARING:

- 6.1 Shree Sunil P Jain, CA of the applicant for personal hearing the submissions already made in the application. The Applicant states that –
- 6.2 The product “Solar Powered Torch is classified under HSN 8469/8513 and applicable tax rate is 5%.
- 6.3 In market both type of product i.e. Solar LED Torch with solar panel, and solar LED Torch without solar panel (charging socket is there on its body) is charged with GST @ 5% under HSN 8469/8513. Both kind of sample invoices enclosed.
- 6.4 Relevant extract of Not. 1/2017 dated 28-6-17 as amended enclosed.
- 6.5 The applicant reiterated the submissions he already made in the application during the course of hearing and made additional submission later on -
- 6.6 Product number 1(b) above is torch with solar panel and internal assembly with socket to recharge it with solar panel. This has about 5-meter cable as well to connect



solar panel with torch. Buyer can alternatively recharge it through AC by buying and charging through AC adapter.

6.7 Almost all product which are solar based e.g. solar water heater, solar street light, solar traffic signal always comes with separate panel, but usually supplied together. They have alternative system of AC charging, still known as solar devices as normal trade practice, though panel is available in market separately. Moreover, product like torch which is basically of plastic material, if kept in direct sunlight will be damaged. Therefore 5-meter cable is provided to put panel in sun and torch is shade.

6.8 There are other products also which are solar based besides mentioned in Para 2 above and over years it is being supplied in **ordinary course of trade** and basically covered in Government Supply and treated as Solar based devices only. In many a case even, government is giving subsidy on such products. There is plethora of Court decisions to held that when legislature language is not conclusive, then trade parlance must be seen and classified and technical meaning is not desirable. **Few of such decisions are mentioned in annexure including jurisdictional court.**

6.9 Government has reduced GST to 5% vide **notification no. 1/2017** on such solar based devices through corrigendum dated 12/07/2017 for all items covered under Chapter 84, 85 or 94.

Since mentioned product is covered under Chapter 84 hence squarely eligible for GST rate @5%.

Jurisdictional court has even a step ahead mentioned that ambiguity to be decided in favour of tax payer.

[1984] 1984 taxmann.com 9 (Madhya Pradesh) Hind Syntex Ltd. V. Union of India*

Benefit of doubt: Ambiguity in a taxing provision must be interpreted in favour of the subject

6.10 Similarly product no.1(a) above is especially designed for solar recharging, though being sold without solar panel is also eligible for the same classification.

We have submitted photographs of the product also and also invoice showing market trend i.e. trade parlance including sales at Amazon which is also @ 5% (evidences already submitted).

If your honor requires further clarification, we can further clarify the facts by another personal hearing.

7. DISCUSSIONS AND FINDINGS:

7.1 We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

7.2 We find that the question before us essentially pertains to classification of the product in question viz. LED Torches, and the rate of duty applicable on such products. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) and therefore we admit the application for consideration.



[Handwritten signature]

7.3. We find that the applicant has sought ruling on the following products which are being traded by them:

- i. Torch with input socket to recharge from solar panel;
- ii. Torch with solar panel, having alternate socket to recharge from Alternating current (AC)

7.4. It has been argued by the applicant, through the written submission, additional submission and also at the time of personal hearing, that the product at (ii) above is a torch with solar panel and internal assembly with socket to recharge it with solar panel. This has about 5-meter long cable as well to connect solar panel with torch. Buyer can alternatively recharge it through AC by buying and charging through AC adapter. It has been further argued that *'almost all products which are solar based e.g. solar water heater. Solar street light, solar traffic signals always come with a separate panel, but usually supplied together. They have alternative system of AC Charging, still known as solar devices as normal trade practice, though panel is available in market separately. Moreover, product like torch which is basically of plastic material, if kept in direct sunlight will be damaged. Therefore, 5-meter cable is provided to put panel in sun and torch in shade.'* It has been argued by the counsel of the applicant that *'..... when the legislature language is not conclusive, then trade parlance must be seen and classified and technical meaning is not desirable.'*

7.5. We have given a careful consideration to the arguments adduced by the applicant and the counsel and also various legal citations mentioned by them. As we can gather from the facts put forth by the applicant, the product in question is essentially a Rechargeable LED Torch Light (as also mentioned on the packing of the product provided by the applicant). It comes equipped with an inbuilt rechargeable battery with AC adapter for recharging purpose. The product, thus, unquestionably merits classification under 85131010 of the GST Tariff.

7.6. Now, coming to the issue raised by the applicant we have to examine whether the product can be brought under the ambit of 'Solar Powered Device' in order to make it eligible for concessional rate of tax @5% in terms of Serial Number 234 of Schedule-I of Notification no.01/2017-CT(Rate) dtd.28.06.2017 and concurrent notification issued by the State Tax. We find that the product in question i.e. Rechargeable LED Torch, though essentially and primarily rechargeable through an AC adapter, also has mechanism which can be put to use for charging through solar power. The product is provided with a socket and a 5-meter long cable for the purpose, and in some cases a solar panel is also supplied with the product. While the product is also having capability and facility of being charged through solar power, it remains a fact on record that the product is essentially and predominantly made to be charged through AC adapter. Thus, we find the argument of the applicant a bit too overstretched to call it and classify it as Solar Based Device.



7.7. The Serial Number 234 of Schedule-I to Notification No.01/2017-CT (Rate) dtd.28.06.2017, provides concessional rate of GST @5% to 'Renewable Energy Devices & parts for their manufacture', and it incorporates 'Solar Based Devices'. The product in question cannot be termed as solar based device, as solar power mechanism has been provided as an alternate to AC charging. The product i.e. Rechargeable LED Torch is therefore not a solar based device *per se*, though it can *also* be charged with a solar panel which is to be attached externally through a power cable. The solar panel is not an integral part of the device and the product can be perfectly put to use even without such solar panel. Even the applicant have admittedly mentioned that in one case the product is sold without solar panel and in other case solar panel is also provided separately, not naturally bundled with the product. We, therefore, do not find any force in the arguments of the applicant that the impugned product is a solar bases device.

7.8. In addition to our observations above, we also wish to discuss the argument of the counsel of the applicant regarding taking into consideration the trade parlance for deciding classification when the legislature language is not conclusive. The learned counsel has attempted to fortify his argument citing various case laws and judicial pronouncements. We have carefully gone through the case laws cited by applicant and we find that these citations do not come to their rescue as the circumstances and facts of the instant issue are clearly distinguishable. In the instant case, we do not find any ambiguity in the GST legislation in as much as it clearly provides concessional rate of tax to 'Solar power based devices' being 'Renewable energy devices'. The applicant have made a vague and vain attempt to get their product within the ambit of 'Solar power based devices', while as we have already discussed above, the product merely provides solar power as an alternate source to predominantly AC power sourced device. We also find it interesting to note that even the packing of the impugned product does not intend to describe it as solar power based device. That being the case we find the argument of the applicant outlandish and arbitrary and a weak attempt to avail concessional rate.

7.9. In view of our findings above, we do not see any reason to term the impugned product as a 'Solar Power Based Device' for the purpose of Serial Number 234 of Schedule-I to Notification 01/2017-CT(R) dtd.28.06.2017. The product merits classification under Chapter Head 8513 and chargeable to GST @18%.

8. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)



- 8.1 In respect of the question raised by the applicant we hold that the product Nano Rechargeable LED Torch Light is classifiable under Chapter Head 8513 presently attracting GST @18%.
- 8.2 We also hold that the product in the question will not be entitled to concessional rate of GST @5% under Sr.No.234 of Schedule-I to Notification No.01/2017-CT(Rate) dtd.28.06.2017 as the same is not a 'Solar Based Device'.
- 8.3 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

RAJIV
RAJIV AGRAWAL
(MEMBER)

Copy to:- No. 05/2019/A.A.R./R-28/16

MANOJ
MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE dt. 08/05/2019

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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Manoj

