

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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Atal Nagar, District-Raipur (C.G.) 492002
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

Subject :-Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 sought by M/s Popular Paints & Chemicals, Tendua, Raipur, Chhattisgarh (GSTIN-22AAGFP4930N1Z3) on HSN Code and GST Rate applicable on commercial production of hand rub solution traditionally called hand sanitizer.

Read :-Application dated 28/06/2020 from M/s Popular Paints & Chemicals, Tendua, Raipur Chhattisgarh (GSTIN-22AAGFP4930N1Z3)

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/06/2020/37

Raipur Dated08./10/2020

M/s Popular Paints & Chemicals, Tendua, Raipur Chhattisgarh [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling on :-

- (a) Appropriate HSN Code applicable on commercial production of hand rub solution traditionally called hand sanitizer.
- (b) Appropriate GST Rate applicable on commercial production of hand rub solution traditionally called hand sanitizer.

2. Facts of the case:-

The applicant is a registered tax payer under circle-9 Raipur engaged in the manufacturing of paints, varnishes etc. having license from the office of the Controller, Food & Drugs Administration, Chhattisgarh bearing license No CG/25/14/2020/PRO valid upto 28.05.2021 and have started commercial production of hand rub solution

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traditionally called Hand Sanitizer containing (1) Isopropyl Alcohol- IP 75.15%(V/V) (2) Hydrogen peroxide- IP 0.125% (V/V) (3) Glycerin- IP 1.45% (V/V) (4) DM Water IP QS and (4) Added Flavour and Colour- IP QS. The applicant is of the opinion that their item fall under **Chapter Head 30**, HSN Code **30049087** levying GST @ CGST 6% + SGST 6% or IGST 12%, the product name being "Hand Sanitizer".

3. Contentions of the Applicant:- The applicant's contention is as under :-

3.1 Handrub (sanitizers): Hand rub is a substance that reduces bacteria on surface upto 99.9%. Hand rub is generally used to clean our hands and it is a liquid, gel or foam very useful in decreasing foreign microbes in our hands. People mostly prefer handwash or soap for washing their hands. As hand sanitizers are considered less effective than handwash or soap, hand rub is particularly used for cleaning hands only from germs and it does not clean dirt.

3.2 The stated word 'HAND RUB' has a narrow and specific meaning (directly applicable on the skin without causing any harm) and so generally used for sanitizing our hands.

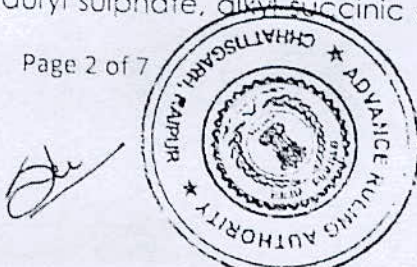
Hand rub or hand sanitizers are generally of two types:-

- (i) Alcohol based
- (ii) Gel based

3.3 Alcohol-based sanitizers typically contain between 70 to 95 percent alcohol, usually in the form of ethanol, isopropanol, or n-propanol and at those concentrations, alcohol immediately denatures proteins effectively neutralizing certain types of microorganisms.

Alcohol-free products are generally based on disinfectants, such as benzalkonium chloride (BAC), or on antimicrobial agents, such as triclosan. The activity of disinfectants and antimicrobial agents is both immediate and persistent.

3.4 Disinfectant: - It is a chemical liquid that destroys bacteria. Generally all surfaces are cleaned manually or by pressure washer while using disinfectant. Disinfectants are basically used for cleaning bathroom floors or kitchen floors that is commonly known as bleach or bleaching powder. These substances can be poisonous if ingested and cause irritation and damage to your skin and eyes. Therefore, it is guided that Bleach and disinfectant should be used carefully to disinfect surfaces only but not directly on the skin surface. The disinfecting component of this wide spectrum composition comprises oxidizing agents, like hydrogen peroxide, sodium hypochlorite, lactic acid and halogen salts (Br, I) and/or heavy metals, plus surfactants, that is: ... b) anionic surfactants, like lauryl sulphate, alkyl succinic or dodecyl sulphate



sals, these chemicals are not at all preferable for the direct application on the skin as they cause many skin problem such as skin irritation, redness and also may lead to the skin cancer.

3.5 Requirement that ought to be in a hand sanitizer for becoming a medicament are -

- i. Prophylactic Use - A prophylactic is a medication or a treatment designed and used to prevent a disease from occurring. When we apply hand rub on hand it prevents the disease COVID-19 and another germ to spread.
- ii. Period of Use- It is preventive medication therefore the period of use is regularly.
- iii. Preventive ingredients- Alcohol are ingredient that reduce or kills the virus, germs and bacterial through corrosion process.
- iv. Trade parlance- before outbreak of COVID-19 usually people were asking for Hand Rub in medical hall only rather than asking for it in grocery shop or other small outlets say pan palace. Therefore, in trade parlance it is also medicament.

3.6 Thus the applicant is of the opinion that the above product should be covered under Chapter Head 30, HSN Code 30049087 "anti bacterial formulations not elsewhere specified or included".

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant and accordingly their authorized representative Shri M.R. Dewangan, C.A. appeared before the authority for hearing on 16/07/2020 and reiterated their contention. They also furnished a written submission dated 16/07/2020 which has been taken on record.

5. The legal position, Analysis and Discussion:-

5.1 At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

In response to the पत्र क्रमांक/राकआ/अविप्रा/06/2020/20 नवा रायपुर अटल नगर, दिनांक 03.09.2020 issued to the Assistant Commissioner, State Tax, Raipur Circle-9, Chhattisgarh, the jurisdictional officer vide क्रमांक/रा.आ.रा.क./रा-नौ/अविप्रा/2020/935 रायपुर दिनांक 05.10.2020 opined that hand sanitizer deserves classification under HSN code 3808 attracting 18% GST.



5.2 The applicant sought advance ruling to the points which could be discussed as under:-

As per Sec. 9(1) of the CGST Act, 2017 the levy of tax is on the supply of goods or services "at such rates" as may be notified by the Government on the recommendations of the Council. Accordingly Notification No. 1/2017-Central Tax (Rate) dt. 28-Jun-2017 has been issued to notify the rates. Entry No. 87 of Schedule III of the said notification which stipulates the rate of 18% reads as under:

S. No.	Chapter Heading / Sub- heading / Tariff item	Description of Goods
87	3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products

5.3 Alternately Entry No. 63 of Schedule II of the said notification which stipulates the rate of 12% reads as under:

S. No.	Chapter Heading / Sub- heading / Tariff item	Description of Goods
63	3004	Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale, including Ayurvedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale

5.4 Thus the issue under consideration is whether sanitizers will fall under entry no. 87 of Schedule III as "disinfectants and similar products" attracting GST @ 18% or whether the same shall fall under entry no. 63 of Schedule II as "medicaments" attracting GST @ 12%.



5.5 To ascertain the correct classification, it is necessary to first examine as to whether sanitizers fall under the heading "3808" provided under entry no. 87 or not and also as to whether the sanitizers satisfy the description "Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products" mentioned there in the said entry. For determination of the same reference is required to heading 3808 as specified under the Customs Tariff Act, 1975 and to also refer to the rules of interpretation made in this regard following the provisions stipulated in the first paragraph of the given notification. Heading "3808" under the Customs Tariff Act, 1975 also covers the goods of the same description as provided under entry no. 87 except with the condition that such goods shall be put up in forms or packings for retail sale or as preparations or articles. Further Rule 1 of rules for the interpretation provides that the classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Now to determine the meaning of the term "disinfectants and similar products" as mentioned in the heading under 3808 recourse to the Explanatory Notes under HSN is to be taken. Reference to the explanatory notes is necessitated as the tariff is patterned on the HSN formulated by WCO for which the said notes are issued. Relevant portion of the said notes under heading 3808 in context of sanitizers is as under:

"(IV) Disinfectants

Disinfectants are agents which destroy or irreversibly inactivate undesirable bacteria, viruses or other micro-organisms generally on inanimate objects.

Disinfectants are used, for example, in hospitals for cleaning walls, etc., or sterilising instruments. They are also used in agriculture for disinfecting seeds and in the manufacture of animal feeds to control undesirable microorganisms.

The group includes sanitisers, bacteriostats and sterilisers."

5.7 It can hence be observed that although the term "disinfectants" appears to be limited to agents which are generally applied on inanimate objects, it also includes "sanitizers" expressly. Therefore the ambit of the terms used in the heading 3808 extends to even those goods such as sanitizers which are applied on the human hands and not just on an inanimate objects

5.8. On the other hand, the Explanatory Notes also provides that the said heading 3808 shall exclude "Disinfectants, insecticides, etc. having the essential character of medicaments, including veterinary medicaments (heading 30.03 or 30.04)." Thus, the question is to ascertain as to whether sanitizers are in the nature of medicaments and hence excluded from heading 3808 and covered under heading 3004 or not.

5.9. The term "medicaments" has not been defined in the CGST Act, 2017 or the Rules. Explanatory Notes on HSN defines the said term under heading 3003 as under:



5.10. This heading covers medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments. These preparations are obtained by mixing together two or more substances."

5.10. Said medicaments when put up in packings for retail sale are covered under heading 3004. It can thus be observed that the term "medicaments" do not cover only these medicinal preparations which are meant for the treatment of human ailments but also cover even these medicinal preparations which are meant to prevent human ailments. Explanatory Notes under heading 3003 in the context of "medicaments" stipulate that it shall not cover goods (such as herbal infusions or herbal "teas" or food supplements) which are meant to contribute to general health and prevent possible nutritional deficiencies. Thus, preparations meant for general hygiene aimed at preventing infection cannot be considered as a medicament.

5.11. Medicaments are sold under medical prescriptions of Doctors and sanitizers cannot be medicaments in as much sanitizers are even easily available at all stores and not exclusively in medical stores, it being meant for general hygiene or well-being of a person use of which may incidentally lead to the prevention of a host of illnesses or ailments. Thus, sanitizers, despite the fact of it being manufactured based on formulations recommended by WHO and that its manufacture and supply are regulated under the provisions of the Drugs and Cosmetics Act, 1940 as also since sanitizers can aid in the prevention of human ailment / infection in COVID-19, cannot be treated as medicaments. Besides this, although WHO has prescribed the standard formulations to prepare the sanitizers during the COVID-19 outbreak, this can by no stretch of imagination be a criteria for categorizing sanitizers as medicaments, as WHO itself recommends washing the hands with plain soap and water for at least 20 seconds to prevent the spread of infections and decrease the risk of getting infected and that if soap and water are not available, use of sanitizers is recommended. Hence the use of hand sanitizers (even if manufactured as per the standard formulations) is only meant to prevent the spread of various infections including the current pandemic COVID-19 and the same cannot be the factor to claim classification of the same as a medicament especially when the same is aimed for general hygiene and not as a cure or prevention of a specific ailment. Hon'ble Supreme Court in the case of P.L. Pharmaceuticals Ltd. v. CCE (1995 Supp. (3) SCC 1) has held that the product Selenium Sulfide Lotion will be classified as a Pharmaceutical Product under Chapter 30 as the dominant use of the product was medicinal and was sold only on medical prescription as a medicine for the treatment of disease known as Seborrhoeic Dermatitis. The aforesaid finding of Hon'ble Supreme court is squarely applicable in the context of hand sanitizers as well. Based on the Explanatory Notes as well as the referred case, for the goods in question to be treated as "medicament" it should cure or prevent a specific ailment and items which are meant for general hygiene or well-being of a person which may incidentally lead to the prevention of a host of illnesses or ailments cannot be considered as a medicament. It is for this reason that goods like soaps, ordinary shampoos, etc. are not



referred as medicaments. In other words just because the manufacture of the goods in question is regulated under the Drugs and Cosmetics Act, 1940 or because of the formulations used, alone cannot be the decisive criteria to classify the same as a medicament as the classification under law is based on the nature of the goods in question.

5.12 It is also seen that in its press release dated 15.7.2020, Ministry of Finance Government of India has clarified that hand sanitizers attract GST at the rate of 18% being classifiable under the category of disinfectants like soaps, anti-bacterial liquid, Dettol etc. The press release states that reducing the GST rate to 12% will be a disadvantage to the domestic manufacturers as it will lead to the inverted rate structure as the inputs used for the manufacture of sanitizers attract GST rate of 18%. The Press Release further states that the same would be against the nation's policy on Atmanirbhar Bharat as imports will become cheaper if the rate is reduced to 12%. It therefore, concludes that the consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure.

Thus we come to the considered conclusion that hand sanitizers shall attract the tax @ 18% (CGST + CCGST) or IGST @ 18% (ref: Circular no. 3808).

6. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAR/6/2020/38

Raipur Dated08/10/2020

The ruling so sought by the Applicant is accordingly answered as under:

RULING

1. Appropriate HSN Code applicable on commercial production of hand rub solution traditionally called hand sanitizer is 3808 of tariff.
2. Appropriate GST Rate applicable on commercial production of hand rub solution traditionally called hand sanitizer is 18% (9%CGST and 9%CCGST) or 18% IGST.

-sd-
Sonal K. Mishra
(Member)

-sd-
Rajesh Kumar Singh
(Member)

Place: - Raipur
Date:-
Seal: -



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