



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)

A.R.Com/15/2020

Date:23 .02.2022

TSAAR Order No.09/2022

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. Applicant Smt. Rama Devi Guttikonda and trade name M/s. Spansules Formulations, Plot No 154 A/4, SVCIE Industrial Estate, IDA Bollaram, Jinnaram Mandala, Medchal - Malkajgiri, Telangana- 502325 (36AFTPG0523Q2ZZ) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted
4. **Brief facts of the case:**
M/s. Spansules Formulations have represented that they are holding manufacture license for manufacturing sale of pharmaceutical pellets and granules for treatment of various ailments. They have submitted that these pellets and granules are at a pre stage and ready to be filled into capsules are compressed into tablets. That these are not in measured doses which can be sold in retail markets. That they are paying 18% tax on these goods under CGST & SGST and that they are of the opinion that they have to pay 12%. Hence the application.
5. **Questions raised:**
Whether the pharmaceutical Pellets and Granules manufactured by the applicant can be classified as Medicaments under Sl.No.62 of Schedule II of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and subject to GST at the rate of 12%.
6. **Personal Hearing:**
The Authorized representatives of the unit namely Satya Sai, Advocate and K. S. Prasad, GM Taxation attended the personal hearing held on 25-11-2021. The authorized representatives reiterated their averments in the application submitted and contended as follows:

1. That, they are presently supplying their goods at a higher rate of 18% treating them as falling under Chapter 29.33(HSN).
2. That, after reviewing the classification in light of Notification No.1 of 2017 they are of the opinion that their supplies fall under Sl.No.62 of Schedule II of the said notification.
3. That, they are seeking clarification regarding their opinion on the lower rate of tax.

7. **Discussion & Findings:**

The applicant has submitted that they are into manufacturing of pharmaceuticals granules from active pharmaceutical ingredients which are in the form of pellets and granules and that these are not put in measured doses which can be used in retail sale.

The applicant has given a list of (15) products manufactured by them and also their constituents. As seen from the list, these are pharmaceutical products with necessarily one active ingredient and more than one excipient.

The contention of the applicant is that, these (15) products have more than one constituents and are not readily usable for retail sale and therefore they are eligible to be classified under the entry in Serial No. 62 of the 2nd Schedule to the Notification No. 01/2017 dated:28.06.2017. This entry reads as follows:

S.No	Chapter / Heading / Sub-heading / Tariff item	Description
62	3003	Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale, including Ayurvedic, Unani, Siddha, homoeopathic or Bio-chemic systems medicaments.

The conditions which have to be satisfied by a product to fall under this head are:

- i. It shall be a medicament falling under customs tariff head 30.02, 30.05 or 30.06.
- ii. Such medicament should consist of two or more constituents.
- iii. Such constituents should be mixed together for therapeutic or prophylactic uses.
- iv. Such medicament should not be put in measured doses or in forms or packages for retail sale.

As seen from the table provided by the applicant, each of the products has a therapeutic or prophylactic uses such as treatment of fungal infection, muscle relaxing for prostate, treatment of nausea, parkinsons, depression, gastro esophageal reflux disease, hay fever, pain and fever, strokes, joint stiffness, inflammation, headache and high blood sugar. However, for one product by name Orlistat, the use is given as weight loss and not treatment of any disease.

In this connection, the judge made law of the Hon'ble Supreme Court of India in the case of Commissioner of Central Excise Vs Wockhardt Life Sciences Ltd 2012 (277) ELT 299 (SC) needs mention with regards to the meaning of the words "therapeutic or prophylactic", wherein it was held that these words would apply to substances used,

"To prevent, to guard against it, before, in medicine, preventive protecting against disease."; "Guarding against disease, a preventive of disease; a condom; preventive treatment against disease." And; "Serving to cure or heal, Curative concerned in discovering and applying remedies for disease."

Obesity is not a disease and hence reduction of weight cannot be seen as a treatment against a disease.

Therefore except the product Orlistat which does not fit into the above definition, others fall under medicaments used in therapeutic or prophylactic applications.

Further as seen from the submissions made by the applicant, these products are made up of two or more constituents i.e., one active ingredient and one or more excipient.

Further as seen from the submissions made by the applicant, these are not put up in measured doses or in forms or packages for retail sale.

Therefore the commodities dealt by the applicant except Orlistat qualify to fall under Serial No. 62 of the 2nd Schedule to the Notification No. 01/2017 dated:28.06.2017 and therefore are liable to be taxed at the rate of 12%.

8. The ruling is given as below:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
Whether the pharmaceutical Pellets and Granules manufactured by the applicant can be classified as Medicaments under Sl.No.62 of Schedule II of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and subject to GST at the rate of 12%.	The pharmaceutical Pellets and Granules except Orlistat pellet manufactured by the applicant can be classified as medicaments under Sl.No.62 of Schedule II of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and subject to GST at the rate of 12% as discussed above.



[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
Applicant Smt. Rama Devi Guttikonda
and trade name M/s. Spansules Formulations,
Plot No 154 A/4, SVCIE Industrial Estate,
IDA Bollaram, Jinnaram Mandal, Medchal - Malkajgiri,
Telangana- 502 325.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Medchal Commissionerate, Room No. 813, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad 500 004.

Copy to:

1. The Assistant Commissioner (ST) Medak Circle.

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Superintendent (Grade-I)