

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

**PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S. 98 OF
THE GOODS AND SERVICES TAX ACT, 2017**

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 26.12.2018 from M/s Dabur India Ltd., Ghaziabad, Uttar Pradesh – Order– Reg.

1) M/s Dabur India Ltd., Khasra No. 2834, 2835, 2836, Amka Road, Dhoom Manikpur, off NH-91, Dadri, Gautam Buddha Nagar, Uttar Pradesh (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAACD0474C1Z3.

2) The Applicant is a Private Limited Company, resident in India, and is engaged in the manufacture of various Fast-Moving Consumer Goods (FMCGs) under various product categories such as Hair Care, Oral Care, Health Care, Skin Care, Home Care, Foods etc.

3) The Applicant has submitted application for Advance Ruling dated 26.12.2018 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexure and attachment.

4) The Applicant in his application has sought clarification and Advance Ruling for classification of the product Odomos being manufactured and supplied by them.

5) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report which was received in this office vide C. No. 20- CGST/R-34/DIV- VII/GZB/03/2019/28 and 34 dated 29.01.19.

6) The applicant was granted a personal hearing on 08.02.2019. Shri Atul Gupta, Advocate and Shri Padmesh Dubey, Senior Associate Manager, Authorized representatives on behalf of applicant appeared for hearing. During the personal hearing they submitted/stated that they have already submitted views in their letter dated 26/12/18 and they would like to reiterate the same.

During the PH, party also submitted compilation of case law and details of classification, they specifically relied on the decision of CST vs Balsara Hygiene products Ltd. UPTC 367 (All.) passed by Allahabad High Court holding odomos as medicament. They also submitted that the said decision Allahabad High Court was upheld by Hon'ble Supreme Court vide decision dated 23.02.1987. In S.L.P. (civil) No. 9950 of 1986. Therefore, they submitted that the product Odomos is classifiable under sub – heading 3004 90 99.

Department was represented by Shri Milan Tyagi, Supdt., range – 34, Division – II, Ghaziabad.

DISCUSSION AND FINDING

7) We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the question sought by the applicant is to classify the product Odomos sold by the Applicant.

8) Brief details submitted by the applicant along with the application are as follows-

i) The Applicant is a Private Limited Company, resident in India, and is engaged in the manufacture of various Fast-Moving Consumer Goods (FMCGs) under various product categories such as Hair Care, Oral Care, Health Care, Skin Care, Home Care, Foods etc.

ii) One of the products being manufactured by the Applicant company is 'Odomos'. This product is being manufactured by the applicant in the state of J&K and union territory of Dadra and Nagar Haveli. Further, this product is being sold across the country including the state of Uttar Pradesh. Essentially, Odomos is a cream meant for application on the skin being claimed to provide 100% protection from deadly

mosquitoes which cause life-threatening diseases such as Dengue, Malaria, Chikungunya etc.

Odomos and the like product are generally referred to in the market as 'mosquito repellents'. To understand the classification of Odomos, it is imperative to understand the meaning, scope and working of the expression 'mosquito repellents'.

iii) According to '*Study of Safety of Mosquito Repellents*', Volume 14, Issue 1 Version-II (January 2015), PP 42-45, 'mosquito repellents' can be of the following types:-

- a) **Natural/plant repellents** - Marigold, Thai lemongrass and Catnip;
- b) **Plant derivatives** - Citronella, Neem, Peppermint, Eucalyptus etc.; and
- c) **Synthetic chemicals** - Diethyl Toluidine (DEET) or NNDB, Allethrin, Bio-allethrin etc.

iv) It is submitted that most 'mosquito repellents' available in the market are in the form of roll-on sticks, lotions, liquid vapors, sprays, coils, mats etc. which are meant to repel mosquitoes in a closed environment and are not meant for application on human body. However, Odomos is a product which is applied on human body to prevent mosquito bite.

v) The Applicant submits that Odomos contains NNDB as an active ingredient which works by interfering with the mosquito's olfactory receptors. When Odomos is applied to human skin, it acts as a bar to the olfactory receptors of the mosquitos for 1-octen-3-ol, a volatile substance secreted by humans and thus, prevents them from detecting and biting humans. In other words, Odomos does not kill/attract/repel mosquitoes but prevents mosquitoes from detecting foods source i.e. human blood.

vi) NNDB forms active compound in Odomos. An active ingredient imparts its essential character to the product. Therefore, Odomos, being a preparation from NNDB, qualifies as a drug under Indian pharmacopoeia. Moreover, Odomos is also manufactured and sold under the license granted under Drugs and Cosmetics Act, 1940. Drug Controller of various State Authorities has recognized Odomos as a drug and granted license to the Applicant to this effect.

9) As per the understanding of the applicant, in its submission, applicant

submitted that, the product 'Odomos' containing NNDB - 12% w/ w., is classifiable under Chapter Heading 3004 (Si. No. 63 of Schedule-II) as "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 packing for retail sale, including Ayurvedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up in retail sale" for the reasons furnished herein below.

Applicable Provisions and analysis: Notification No. 1/2017:- It specifies that applicable rate of tax that shall be levied on inter-state supply of goods:-

| <i>S. No.</i> | <i>Chapter Heading/ Subheading/ Tariff item</i> | <i>Description of Goods</i> |
|---------------|---|--|
| 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 packing for retail sale, including Ayurvedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale. |

10) Reasons for the falling of the Odomos (medicament) under the chapter heading 3004:-

i) Heading 3004 of the Customs Tariff Act covers 'medicaments'. The term 'medicament' is not defined in the Customs Tariff Act. Thus, it is apposite to refer to the dictionaries to ascertain the natural meaning of expression 'medicament'.

ii) The definition of the term 'medicament' as obtained from various sources is as under:-

The term 'medicament' refers to a substance relating to medicine. The term 'medicine' has been defined in Concise Oxford English Dictionary [12th Edition (2011), Oxford University Press, refer page 888] as practice of diagnosis, treatment or prevention of a disease; and in the case of *Sujanil Chemo Industries v. CCE, 2005 (181) ELT 206 (SC) (Full Bench: 3 Judges)*, the Apex Court held that the term refers to a product comprising of two or more constituents which have been mixed or compounded together for therapeutic or prophylactic use.

iii) The above definitions reveal that 'medicaments' include substances of prophylactic use. Simply put, substances used to prevent diseases are covered within the scope of expression 'medicaments'.

iv) It is submitted that diseases are classified based on the medium, for e.g. vector borne diseases, water and air borne diseases etc. The term 'vector borne diseases' refer to illnesses transmitted by vectors, such as mosquitoes, ticks and fleas etc.

v) It is further submitted that even itching, redness and swelling caused in skin upon mosquito bite is because of an allergic reaction to anticoagulants and enzymes present in mosquitoes' saliva. Thus, mosquito bites inevitably lead to allergies even where the harmful diseases are not transmitted. From the above, it is clear that mosquito bites form a cause of diseases.

vi) Odomos aids in preventing life threatening diseases as well as in protecting human skin against the effects of a mosquito bite. Thus, it would be covered under the scope of the expression 'medicament'.

11) The Applicant relies on the HSN Explanatory Notes of Chapter Heading 3004 which are:-

"This heading covers medicaments consisting of mixed or unmixed products, provided they are:- (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 for 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 pharmaceuticals or other degree of purity is not alone sufficient to justify classification in this heading.

On the other hand, even if no indications are given, unmixed products are to be regarded as being put up for retail sale for the or prophylactic use if they are put up in a form clearly specialised for such use. This heading also excludes:

Insecticides, disinfectants, etc. of heading 38.08, not put up for internal or external use as medicines"

12) From a perusal of HSN Explanatory Notes reproduced above, Chapter Heading 3004 primarily includes products which fulfil the following criteria:-

- i) they are sold in packings for retail sale, and
- ii) they are put up in form clearly specialized for therapeutic or prophylactic uses.

13) From the retail packaging of the product, it clearly indicate the disease or condition for which they are to be used, method of use, statement of use etc. Thus, the first criteria are fulfilled by Odomos.

Regarding the second condition of Odomos having 'therapeutic' or 'prophylactic' properties, the Applicant submits that the expression 'therapeutic' or 'prophylactic' has not been defined either under the Customs Tariff Act, 1975 or Explanatory Notes to HSN. Here, reliance is placed on the decision of the Supreme Court in the case of *ICPA Health Products Ltd. (P) Ltd. v. CCE, Vadodara, 2004 (4) SCC 481*, wherein the Court after noting the meaning of the word 'prophylactic' from Concise Oxford Dictionary, 9th Edition., held that the expression prophylactic means a "medicament intended to prevent diseases, a preventive medicine or course of action". Therefore, from the above, products qualifies as prophylactic product.

14) We have gone through the submission made by the Applicant and case laws submitted by them in their support. We find that heading 3808 of Chapter 38 of Customs Tariff Act covers a range of products (other than those having the character of medicaments, including veterinary medicaments-heading 30.03 or 30.04) intended to destroy pathogenic germs, insects, (mosquitoes, moths, Colorado beetles, cockroaches, etc.) mosses and moulds, weeds, rodents, wild birds, etc. products intended to repel pests.

As far as the decision of Hon'ble High Court reported at CST Vs S/S Balsara Hygiene Products Limited, 1986 UPTC 367(All.), is concerned we find that Hon'ble Court has passed the judgment under section 11(1) of the U.P. sales Tax Act, where the process of assessment is different, and in that case classification was decided, on the basis of common parlance, to fix the rate of sales tax applicable on Odomos, whereas in this case classification of the goods in question is to be decided under GST Law where all goods have been notified by the government under six schedules for various rates vide Notification no 1/2017-central Tax (Rate) and under the notification it is categorically mentioned that tariff item, sub heading, heading and chapter shall mean respectively a tariff item, sub heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply for the interpretation of the notification.

Similarly, in the case of M/s ICPA Health Products (P) Ltd. vs CCE Vadodara reported in 2004 (167) E.L.T. 20(S.C.) on which the appellant has mainly relied upon, the Apex Court has clearly observed that "Prophylactic" would mean "Intending to prevent disease, a preventive medicine or course of action."

This makes amply clear that any product which is intended to prevent against the diseases and has therapeutic properties is to be classified under chapter 30.03 or 30.04 whereas in the instant case Odomos does not contain any such property. It prevents against the mosquitoes only and not against

the diseases and accordingly the case law, cited and relied upon by the applicant does not hold ground in the instant case.

In view of the above, the issue presented before us, the classification of 'Odomos' has to be examined under the relevant provisions of the Customs Tariff Act, 1975, as to whether the product 'Odomos' should be classified under Chapter-38 or under Chapter 30 of the Customs Tariff Act, 1975. We find that statute is very clear as far as the classification of items intended to repel pests is concerned and same evident from explanatory note to Chapter 38.08 of Customs Tariff which reads as under:

"This heading covers a range of products (other than those having the character of medicaments, including veterinary medicaments-heading 30.3 or 30.4) intended to destroy pathogenic germs, insects, (*mosquitoes*, moths, Colorado beetles, cockroaches, etc.) mosses and moulds, weeds, rodents, wild birds, etc. products intended to repel pests.

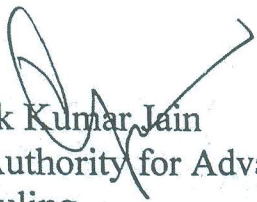
These insecticides, disinfectants, herbicides, fungicides etc., are applied by spraying, dusting, sprinkling, *coating*, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc."

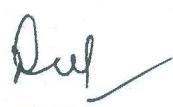
From the above it is explicitly clear that the product 'odomos' achieves its result by *odour* which makes the conditions unattractive for *mosquitoes* when *coated* on human body and accordingly it appears well covered under chapter 38.08 of Customs Tariff Act adopted for the purpose of classification of products under GST Law. Further, the Applicant has been constantly supplying the said product under chapter 38.08 (as per the Jurisdictional report). Accordingly, we find no force in the contention of the applicant that 'odomos' falls under HSN 30.04 of Customs Tariff Act.

Accordingly, we, unanimously rule as under-

RULING

“Odomos is well covered under Chapter 38 of Customs Tariff Act and is classified under HSN 38089191”


Vivek Kumar Jain
Member of Authority for Advance
Ruling


Hari Ram
Member of Authority for Advance
Ruling

To,

M/s Dabur India Ltd.,
Corporate Office,
Kaushambi, Ghaziabad,
Uttar Pradesh, 201010.

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 25

Date: 20.02.2019

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & CX, Ghaziabad, Uttar Pradesh.
4. The Deputy Commissioner, CGST & Central Excise, Division-VII, Ghaziabad, Uttar Pradesh;
5. Through the Additional Commissioner, Commercial Tax, Ghaziabad, Uttar Pradesh to jurisdictional tax assessing officers.