

**AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICE TAX  
UTTAR PRADESH  
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG **67** /2020

DATED **17.11** 2020

**PRESENT:**

**1. Shri Abhishek Chauhan**

Joint Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... ..Member (Central Tax)

**2. Shri Dinesh Kumar Verma**

Joint Commissioner, State Goods and Service Tax .....

Member (State Tax)

1.	Name of the Applicant	M/s Nilkamal Limited Plot No. 26 B & C, Sector-31, Surajpur Kasna Road, Surajpur, Greater Noida, Gautam Budh Nagar 201315
2.	GSTIN or User ID	09AAACN2329N1Z8
3.	Date of filing of Form GST ARA-01	26.08.2020
4.	Represented by	Shri Vinod Kumar, Chartered Accountant/Authorized signatory
5.	Jurisdictional Authority-Centre	Range-5, Division-1, GB Nagar
6.	Jurisdictional Authority-State	Corporate Circle, Greater Noida-2
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes UTIB20060900203964

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

1. M/s Nilkamal Limited, Plot No. 26B & C, Sector-31, Surajpur Kasna Road, Surajpur, Greater Noida, Gautam Budh Nagar- 201315 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAACN2329N1Z8.

2. . The applicant is engaged in manufacturing of cold chain equipments which are used in vaccination/ immunization programs for transporting vaccines, specimens, blood samples, etc.

3. The applicant has sought advance ruling on following questions-

1. Whether Vaccine Carrier & Vaccine Cold Box is falling under chapter 90-MEDICAL OR SURGICAL INSTRUMENTS AND APPARATUS under chapter heading- 9018, sub heading 901890 and Tariff item 90189099 Other instruments

and appliances used in medical science and attracting rate of tax @ 6% each under Central, State Tax?

2. Whether the above mentioned items are falling under chapter 39 PLASTICS AND ARTICLES THEREOF chapter heading 3923, subheading 392310 and Tariff item 39231030 as "Insulated ware" attracting rate of tax @ 9% each under Central and State Tax?
3. If the above products are not falling either under chapter 90 OR chapter 39, what is the appropriate classification of Vaccine Carrier & Vaccine Cold Box and what is the rate of tax under Central, State Tax?
4. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.
5. The applicant have submitted that-
  - (i) As per World health organization's (WHO) literature "**Immunization in Practice**" **2015 update**, the purpose of the vaccine "cold chain" is to maintain product quality from the time of manufacture until the point of administration by ensuring that vaccines are stored and transported within WHO-recommended temperature ranges.
  - (ii) Vaccine Carrier and Vaccine Cold Box is a special container that can be lined with frozen ice packs to keep vaccines. Vaccine Carrier & Vaccine Cold Box is used by health centre staff to collect and transport monthly vaccine supplies from district stores till its end use.
  - (iii) Both the products i.e. Vaccine Carrier and Vaccine Cold Box are same in its use except that Vaccine Carrier comes with an additional strap which is used to transport the carrier from one place to another.
  - (iv) Vaccine Carrier and Vaccine Cold Box are manufactured by using the materials of High Density Polyethylene. The same are insulated with Polyurethane Foam (PUF) which protects it from external heat. The inner walls of the product are covered with ice packs which are designed according to the size of Carrier /Box. Complete product is designed as per the specification approved by World health organization's (WHO).
  - (v) Different models of vaccine carrier have different vaccine storage capacities. Health centers usually need one or more vaccine carrier that can hold:
    - A one-month supply of vaccines; and
    - A one- to two-week reserve stock of vaccines.
  - (vi) In addition to their vaccine storage capacity, vaccine carrier are selected according to their cold life, the time taken for the temperature inside a vaccine carrier or vaccine carrier to rise from +2° C to +8° C without the lid being opened. Different models have a cold life of two to six days. They are classified as Long range and short range Box.



(vii) These products are used either by health workers for transportation of vaccines to last mile destinations or for storage of vaccines at health care centers. The use of above products is limited to medical staff only and they have no ordinary usage in homes or offices. They cannot be used as a normal picnic box due to size and specification.

(viii) The products mentioned above are non electrical and they keep the temperature of carrier at its desired range hence they are instrument/ appliances which are used in medical sciences for transportation and safe storage.

(ix) The product is Designed and manufactured as per specification of World health organization (WHO) and UNICEF.

(x) the Applicant is manufacturing the said goods conforming to the standards prescribed for various models of insulated containers, vaccine carrier, water/ coolant packs, etc. Purchase orders placed by the Ministry of Health and Family Welfare, GOI WHO/ UNICEF require strict adherence to the PQS standards.

(xi) Since the said goods are manufactured as per the strict requirements of World health organization (WHO) and used specifically for vaccination programs, it has to be classified as appliances used for medical science under CTH 90189099 attracting rate of tax @6% under both Central and State Tax.

(xii) The CTH 90189099 of the GST Tariff covers 'other instruments, appliances and apparatus' used for medical purpose. The term 'instruments' has not been defined under the GST Tariff. In the matter of **Star Paper Mills vs. Collector of Central Excise [1989 (43) ELT 178 (SC)]** the Hon'ble Supreme Court has laid down that when a term is not defined in a statute, its dictionary meaning may be referred. As per web dictionary merriam-webster.com instrument is a "means whereby something is achieved, performed, or furthered". As regards "apparatus" it has been defined in the Concise Oxford Dictionary as equipment for doing something. Webster's Dictionary describes the term as an instrument or appliance designed for a specific operation. Likewise the expression appliance has been defined in the Concise Oxford Dictionary as utensil, device or equipment. Dictionary meaning of the term "appliance" is "a device or piece of equipment designed to perform a specific task"

(xiii) In **Star Radio Electric Co. vs. Commissioner of Sales Tax [1971 (27) STC 367]** it was observed that appliance is a mechanical thing, an apparatus or device.

(xiv) From the above discussion it is clear that Vaccine Carrier and Vaccine cold box is a medical appliance /device or piece of equipment designed to perform a specific task of transportation and storage of vaccines under controlled temperature hence classified under CTH 90189099 attracting rate of tax @6% under both Central and State Tax.

(xv) As per Chapter Note 2(u) of Chapter 39 of GST Tariff, the Chapter 39 does not cover articles classifiable under Chapter 90. Thus, even if any goods are capable of



being classified under Chapter 39, the same have to be classified under Chapter 90 if they satisfy the criteria laid therein. The goods classifiable under Chapter 39 are goods of general use.

(xvi) Rule 3(a) of the Interpretative Rules states, 'heading which provides the most specific description shall be preferred to headings providing a more general description'. The said good are correctly classifiable under Chapter 90 of the GST Tariff as the same are differentiable from the general term of insulated wear for the following reasons:

- ❖ The said goods are specifically designed to protect vaccines from variation in weather and temperature.
- ❖ The said goods are used exclusively in hospitals and medical centers.
- ❖ The goods are manufacture with strict conformation to the WHO PQS specifications.
- ❖ The said goods are supplied to the WHO, UNICEF and Ministry of Health, and Hospitals exclusively for medical use.

(xvii) As per section 3(c) of general rules for the interpretation of the harmonized system (HSN) if an item is prima facie classifiable under two or more headings, the same shall be classified under the heading which occurs last in numerical order and when two views are possible, the one favorable to the assessee has to be adopted.

(Xviii) the basis of above it can be said that the products Vaccine Carrier and Vaccine Cold Box is not classifiable under Chapter 39 as insulated container hence appropriate classification for the same is Chapter 90 sub heading 9018 attracting rate of tax @ 6% under both Central and State Tax.

(xix) The said goods have been regularly classified under Chapter 90 while exporting from major ports by other exporters. The similar issue has been decided by "**THE COMMISSIONER OF CUSTOMS**" KANDLA in favor of importer wherein department has disputed the classification of above said products under chapter 90.

(xx) In the matter of **Commissioner of Central Excise Vs. Connaught Plaza Restaurant (P) Ltd.** [2012 (286) ELT 321 (SC)] it was held that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning.

(xxi) In **Indian Aluminum Cables Ltd. v. UOI 1985 (21) E.L.T. 3 (SC)** Chandrachud, CJ speaking for a three Judge Bench observed: "This Court has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a Tariff Schedule, one principle which is fairly well-settled is that those words and expressions should be construed in the sense in which they are **understood in the trade, by the dealer and the consumer**. The reason is that it is they who are concerned with it and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention.



(xxii) **C.C.E. v. Sharma Chemical Works 2003 taxmann.com 1240 (SC)** it was observed by the court that "the main criteria for determining classification are normally **the use it is put to by the customers who use it**. In this case the above products are put to use as an appliances for storage and transportation of vaccines which classify it under heading 9018 appliances used in medical science.

(xxiii) In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. In view of the above discussed facts about nature of the impugned goods and, following the above ratio it can be said that the subject goods are covered under the terms "instruments and appliances".

(xxiv) In the matter of **Sun Export Corporation Vs. Collector of Customs, Bombay [1997 (93) ELT 641 (SC)]** it was held that if an item is prima facie classifiable under two or more headings, it shall be classified under the heading which occurs last in numerical order and when two views are possible, the one favorable to the assessee has to be adopted.

(xxv) The impugned Vaccine Carrier and Vaccine Cold Box are manufactured specially for the purpose of use in carrying and transporting vaccines at maintaining desired temperature for considerable/ particular time period hence they are different from ordinary ice Box or picnic Box and classifiable under chapter heading 9018.

(xxvi) The purchase order given by the customers and supply invoice issued by the supplier's uses the word as "Vaccine Carrier / Vaccine Cold Box" which is an appliance used in medical science to store and transport the vaccines safely from one destination to another.

(xxvii) These Box are not ordinary plastic Box / insulated wares which are made available at any furniture or appliances shop but the same is manufactured as per performance quality standard (PQS) of WHO and to be procured through a specific order by the customers such as Govt. Departments, WHO and Hospitals hence appropriate classification for the same is chapter heading- 9018; sub heading 901890 and Tariff item 90189099-other instruments and appliances used in medical science.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Assistant Commissioner, CGST & Central Excise Division I, Gautam Budh Nagar vide his C.No.V(30)Tech/Misc. Report/D-I/GBN/18/2018/818 dated 07.10.2020 submitted that Vaccine Carrier and Vaccine Cold Box are manufactured using High Density Polyethylene (HDPE) and it is insulated with Polyurethane Foam (PU Foam) which protects it from external heat. Thus, the Vaccine Carrier and Vaccine Cold Box appears to be covered under chapter sub heading 39231030 (insulated ware). Though, Vaccine Carrier and Vaccine Cold Box are manufactured as per PQS specification prescribed by WHO, temperature in the same is controlled by placing ice box inside it as such the same are nothing but insulated box. He also informed that no such proceedings are pending for decision as on date.



7. The applicant was granted a personal hearing on 06.11.2020 which was attended by Shri Vinod Kumar, Chartered Accountant /Authorized Representative through video conferencing during which he reiterated the submissions made in the application of advance ruling.

### **DISCUSSION AND FINDING**

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(a) of the CGST Act 2017 being a matter related to classification of goods. We therefore, admit the application for consideration on merits.

10. We observe that the applicant has sought advance ruling on the issue of classification Vaccine Carrier and Vaccine Cold Box under Chapter subheading 90189099 or 39231030 or any other chapter and rate of tax in case of same falling in any other chapter. The applicant has arrived the classification of the same under Chapter subheading 90189099.

11. As per Customs Tariff Act, 1975, the HSN 9018 covers INSTRUMENTS AND APPLIANCES USED IN MEDICAL, SURGICAL, DENTAL OR VETERINARY SCIENCES, INCLUDING SCIENTIGRAPHIC APPARATUS, OTHER ELECTROMEDICAL APPARATUS AND SIGHT-TESTING INSTRUMENTS Electro-diagnostic apparatus (including apparatus for functional exploratory examinations or for checking physiological parameters). The chapter subheading 90189099 covers other instruments and appliances as detailed below.

9018 90 - Other instruments and appliances

9018 90 99 ---- Other

12. The applicant have submitted that in the matter of **Star Paper Mills vs. Collector of Central Excise [1989 (43) ELT 178 (SC)]**, the Hon'ble Supreme Court has laid down that when a term is not defined in a statute, its dictionary meaning may be referred. As per web dictionary merriam-webster.com instrument is a "means whereby something is achieved, performed, or furthered". As regards "apparatus" it has been defined in the Concise Oxford Dictionary as equipment for doing something. Webster's Dictionary describes the term as an instrument or appliance designed for a specific operation.

13. As per the literature of Unicef on 'Introduction to Vaccine Carriers and Cold Boxes ([unicef.org/supply/media/4411/file/E004-cold-boxes-vaccine-carrier%20-procurement-guidelines.pdf](http://unicef.org/supply/media/4411/file/E004-cold-boxes-vaccine-carrier%20-procurement-guidelines.pdf)) *Cold boxes, vaccine carriers and coolant packs are used for keeping vaccines*



*cold during transportation. In comparison with cold boxes, vaccine carriers have a smaller volume, suitable for use by health workers during immunization campaigns and out-reach services. As these are passive devices, coolant packs are accessories for both cold boxes and vaccine carriers proving the cooling energy/warming for a limited time period.*

.....

*Cold Boxes are insulated containers that can be lined with coolant packs to keep vaccines and diluents cold during transportation and/or short period storage.*

14. We find that the Vaccine Carrier or Vaccine Cold Box as such is not capable of keeping the vaccines and diluents cold unless the coolant packs or ice packs are placed inside Vaccine carrier or Vaccine Cold Box. As per the literature of UNICEF, the Vaccine Carriers and Cold Boxes are insulated containers. As per the description of vaccine carrier and vaccine cold box submitted by the applicant as well as available on UNICEF website, we are of the firm opinion that the same do not merit for classification as instrument and appliances used in medical science. As such, in our view, the Vaccine carrier and vaccine cold box do not merit classification under chapter subheading 9089099.

15. We find that chapter subheading 39231030 covers insulated ware as detailed below-  
**Chapter 39- PLASTICS AND ARTICLES THEREOF**

3923 ARTICLES FOR THE CONVEYANCE OR PACKING OF GOODS, OF PLASTICS;  
STOPPERS, LIDS, CAPS AND OTHER CLOSURES, OF PLASTICS

3923 10 - Boxes, cases, crates and similar articles:

3923 10 10 --- Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles

3923 10 20 --- Watch-box, jewellery box and similar containers of plastics

3923 10 30--- Insulated ware

16. The applicant had submitted that the Vaccine Carrier and Vaccine Cold Box are manufactured by using the materials of High Density Polyethylene and the same are insulated with Polyurethane Foam (PUF) which protects it from external heat. The UNICEF had also treated the same as insulated container. As the vaccine Carrier and Cold box are manufactured from the HDPE and PUF and the same is an insulated container, it is appropriately classifiable under chapter subheading 39231030.

17. As per note 1(f) of the Chapter 90, parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV) or similar goods of plastics (Chapter 39) are not covered in Chapter 90. As the Vaccine Carrier and Vaccine Cold Box being manufactured from HDPE and PUF are goods of plastics, the same is not covered in Chapter 90.

18. As per Rule 3a of the General Rules for interpretation of the first schedule (Import Tariff), the heading which provides the most specific description shall be preferred to heading having more general description. According to Rule 3b of the Rules of interpretation, in case Rule 3a is not applicable, the goods shall be classified as if they consisted of the material/ raw material which give their essential character. In the applicant's case, the essential character of

Vaccine Carrier and Vaccine Cold Box is insulated ware. As such, Vaccine Carrier and Vaccine Cold Box merit classification in chapter subheading 39231030.

19. In view of the above discussions, we, both the members unanimously rule as under;

**RULING**

20.

**Que 1.** Whether Vaccine Carrier & Vaccine Cold Box is falling under chapter 90-MEDICAL OR SURGICAL INSTRUMENTS AND APPARATUS under chapter heading- 9018, sub heading 901890 and Tariff item 90189099 Other Instruments and appliances used in medical science and attracting rate of tax @ 6% each under Central, State Tax.

Answer- No.

**Que 2.** Whether the above mentioned items are falling under chapter 39 PLASTICS AND ARTICLES THEREOF chapter heading 3923, subheading 392310 and Tariff item 39231030 as "Insulated ware" attracting rate of tax @ 9% each under Central and State Tax?

Answer- Yes, Vaccine Carrier & Vaccine Cold Box fall under chapter subheading 39231030 attracting rate of tax @ 9% each under Central and State Tax.

**Que 3-** If the above products are not falling either under chapter 90 OR chapter 39, what is the appropriate classification of Vaccine Carrier & Vaccine Cold Box and what is the rate of tax under Central, State Tax?

Answer- Not applicable.

**21.** This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.



(Dinesh Kumar Verma)  
Member of Authority for Advance  
Ruling



(Abhisek Chauhan)  
Member of Authority for Advance  
Ruling

To,

M/s Nilkamal Limited,  
Plot No. 26B & C, Sector-31,  
Surajpur Kasna Road, Surajpur,  
Greater Noida, Gautam Budh Nagar-  
201315



## AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

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 & C. Ex, Gautam Budh Nagar, Uttar Pradesh.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division I, Gautam Budh Nagar .
5. Through the Additional Commissioner, Gr-I, Commercial Tax, *G.B. Nagar* Uttar Pradesh to jurisdictional tax assessing officers.

**Note:** An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, VibhutiKhnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.