

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH**

4, Vibhuti Khand, Gomti Nagar, Lucknow-

ADVANCE RULING NO. UP ADRG 77 /2021

DATED 27.05.2021

PRESENT:

1. Shri Abhishek Chauhan

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... Member (Central Tax)

2. Shri Vivek Arya

Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s Surya Ayurved 110A(1), Patel Nagar, GT Road, Kanpur- 208007
2.	GSTIN or User ID	09ATXPS8213K1ZP
3.	Date of filing of Form GST ARA-01	22.02.2021
4.	Represented by	Mr. Anurag Singh (C.A.)
5.	Jurisdictional Authority-Centre	Kanpur, Range-XIII, Division-II
6.	Jurisdictional Authority-State	Kanpur, Sector-26
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes CBIN18100900692960 & CBIN21020900382111

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

1. M/s Surya Ayurved, 110A(1), Patel Nagar, GT Road, Kanpur-208007 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09ATXPS8213K1ZP.

2. The applicant has sought advance ruling on following question-

(1) Applicable GST rate on Himsa Plus Oil, which is a ayurvedic hair oil used for various hair disease and headache.

3. 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.

4. As per statement of facts submitted by the applicant-

(1) The applicant is manufacturer of ayurvedic medicine under license of Drug Licensing Authority, UP.

(2) the applicable tax rate on ayurvedic medicine is 12%.

5. As per product label attached with the application, the Himsa Plus Oil is Prop. Ayur. Medicine and is a herbal cool oil for effective relief from-

- (a) Physical and Mental stress and strain
- (b) Heating sensation in brain and tension
- (c) Bodyache and Joint pain
- (d) Loss of memory
- (e) Sleeplessness
- (f) Premature hair fall
- (g) Dandruff and itching
- (h) Muscular and nervous strain and pain
- (i) Headache, Sinus and Migraine
- (j) Bruises
- (k) Boil and Pimple
- (l) Poisonous insect bite.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Additional Commissioner, Grade-1, Commercial Tax, Kanpur Zone-Second, Kanpur vide his letter C. No. 1408/सर्वश्री सूर्या आयुर्वेदिक/2020-21 dated 27.03.2021 has opined that Himsa Plus Oil falls under Chapter Heading 330590 and taxable @ 18% citing as under:-

"The taxability of product manufactured by firm is clearly mentioned on notes for Chapter-30 (HSN Classification)

As read Chapter-30 Pharmaceuticals product

Notes:

1. This Chapter does not cover:

9(a)(d)

(e) preparation of headings 3303 to 3307 even if they have therapeutic or prophylactic properties;

.....(h)

The product Himsa plus oil clearly falls under Chapter-33 subheading 330590-Hair Oil thus taxable 18% (@9% CGST & @ 9% SGST)."

It was also confirmed that no proceedings is pending under UPGST Act regarding question raised in application of advance ruling.

7. The applicant was granted a personal hearing on 25.05.2021 which was attended by Shri Anurag Singh, Chartered Accountant/Authorized representative. During personal hearing, he reiterated the submissions made in the application of advance ruling and explained the composition of product.

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 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-

(1) Applicable GST rate on Himsa Plus Oil, which is a ayurvedic hair oil used for various hair disease and headache.

11. As per Section 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) dated 28-Jun-2017** has been issued to notify the rates. This notification divides all the goods into 6 Schedules, as follows:

i. 2.5% (Schedule I);

ii. 6% (Schedule II);

iii. 9% (Schedule III);

iv. 14% (Schedule IV);

v. 1.5% (Schedule V); and

vi. 0.125% (Schedule VI)

12. The Explanation (iii) of the said notification No. 01/2017-Central tax (Rate) dated 28.06.2017 states that "Tariff item", "sub-heading" "heading" and "Chapter" shall mean as specified in the First Schedule to the Customs Tariff Act, 1975 and Explanation (iv) of the said notification states that the rules for the interpretation of the First Schedule to the said Act including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

13. The applicant has submitted that the applicable rate on ayurvedic medicines is 12% and Himsa Plus Oil is a ayurvedic hair oil used for various hair disease and headache. To determine the rate of tax on the products in question we need to examine the relevant competing entries concerning the product in question. The relevant entries of notification No. 01/2017-Central tax (Rate) dated 28.06.2017 are reproduced hereunder: –

Schedule II- 6%

S.No	Chapter / Heading / Subheading /Tariff Item	Description of Goods
(1)	(2)	(3)

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, homeopathic or Bio-chemic systems medicaments.
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, homeopathic siddha or Bio-chemic systems medicaments, put up for retail sale.

Schedule III – 9%

S.No.	Chapter / Heading / Subheading /Tariff item	Description of Goods
(1)	(2)	(3)
59	3305 9011, 3305 9019	<u>01-07-2017 to 14.11.2017</u> Hair oil
	3305	<u>*15-11-2017 to 24-01-2018</u> Preparations for use on the hair. <u>**25-01-2018 onwards</u> Preparations for use on the hair. [except Mehendi pate in Cones]

14. We shall now refer to the relevant Entries/tariff items in the First Schedule to the Customs Tariff Act 1975. Chapter 30 and Chapter 33 thereof are relevant for our purpose.

CHAPTER 30 Pharmaceutical products

Notes : 1. This Chapter does not cover :

(a)

(b)

.....

(e) preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties;

15. Now, we shall refer to Chapter 33 on which the jurisdictional officer seeks to place reliance.

CHAPTER 33 Essential oils and resinoids; perfumery, cosmetic or toilet preparations

Notes :

1.
2.
3. Headings 3303 to 3307 apply, inter alia, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as beauty & cosmetic preparations of a kind sold by retail for such use.

16. The word, 'medicament' has not been defined anywhere in the Drugs and Cosmetics Act 1940, the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017, the Customs Tariff Act, 1975, or rules framed there under. The term 'medicament' as defined in the *Oxford Dictionary* is 'a substance used for medical treatment'. As per *McMillan Dictionary* medicament is 'a substance used for treating an illness or injury'. The *American Heritage Medical Dictionary* defines it as 'An agent that prompts recovery from injury or ailment. The term therapeutic as defined in the *Oxford Dictionary* is a treatment designed to help/treat an illness. As per *Collins Dictionary*, therapeutic treatment is designed to treat an illness or to improve a person's health, rather than to prevent an illness. Similarly, the *dictionary meaning* of Prophylactic Uses is a substance or device used for preventing disease. In other words, to determine whether or not a product or a formulation is to be labelled as a 'medicament' it is necessary to consider its efficacy in treating or remedying an 'injury' an 'ailment' an 'illness' or a 'disease'. Hence, it becomes imperative to look into the definition of 'injury'. *Miller-Keane Encyclopaedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition* defines 'injury' as 'harm or hurt; usually applied to damage inflicted on the body by an external force'. Again, in Medical terms 'illness' or 'ailment' is often defined as 'a physical or mental disorder'.

17. It is observed that Chapter 30 prescribes the tariff for "Pharmaceutical Products". Heading No. 3003 speaks of medicaments 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, homeopathic or Bio-chemic systems medicaments. Heading No. 3004 speaks of medicaments 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, homeopathic siddha or Bio-chemic systems medicaments, put up for retail sale. This Chapter 30 has to be read with the Chapter Note 1(e) which states that this Chapter (i.e. Ch. 30) does not cover preparations of heading 3303 to 3307, even if they have therapeutic or prophylactic properties.

18. Note 1(e) to Chapter 30 was considered by the *Supreme Court in Puma Ayurvedic Herbal (P) Ltd. Case Vs Commissioner of Central Excise (2006)196ELT3(SC)*. It was observed that

"Thus preparations falling in Chapter 33 even if they have therapeutic or prophylactic properties will not fall under Chapter 30 which deals with pharmaceutical products. The reason for this appears to be that even cosmetics may have something to improve skin or other parts of the body where they are used. In that sense they may have some therapeutic value, yet they remain cosmetic."

19. Thus on reconciling the Chapter Heading with Chapter Note, it indicates that only those products whose curative or preventive value is substantial and the product is manufactured primarily with a view to control or cure a disease by adding suitable pharmaceutical ingredients shall be covered under Chapter 30. All other preparations and cosmetics even if they have therapeutic or prophylactic properties would not fall within the meaning of medicaments under the GST regime.

20. We find that the label of Himsa Plus Oil describes it a herbal cool oil for effective relief from-

- (a) Physical and Mental stress and strain
- (b) Heating sensation in brain and tension
- (c) Bodyache and Joint pain
- (d) Loss of memory
- (e) Sleeplessness
- (f) Premature hair fall
- (g) Dandruff and itching
- (h) Muscular and nervous strain and pain
- (i) Headache, Sinus and Migraine
- (j) Bruises
- (k) Boil and Pimple
- (l) Poisonous insect bite.

21. The aforesaid problems (as stated in Para 20) are not considered to be disease or illness, or even injury. Providing relief from aforesaid problems does not amount to treatment of the disease or the illness or the injury of human beings. Further the label of the product Himsa Plus Oil does not contain dosage (or a mention of 'as advised by the physician') which is essentially mentioned on the label of medicaments. The said fact indicates that the said product is not a medicament.

22. We have also gone through the definition of Ayurvedic drugs as explained in Section 3(a) of The Drugs and Cosmetics Act, 1940 which is as under:-

"Ayurvedic, Siddha or Unani drug includes all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of disease or disorders in human beings or animals and manufactured exclusively in accordance with the formulae described in authoritative books of Ayurveda, Siddha and Unani Tibb systems of medicines specified in the First Schedule."

Heading 'A' of the said schedule appended to the Act enumerates name of those books which are authoritative sources of formulae according to which Ayurvedic drugs are manufactured. But the applicant has failed to showcase any authoritative book which describes the formulae for manufacturing of Himsa Plus Oil. As such, the product Himsa Plus Oil cannot be categorized as Ayurvedic drugs as per the definition given in Section 3(a) of the Drugs and Cosmetics Act, 1940.

23. The Drugs and Cosmetics Act, 1940, defines cosmetic under clause (aaa) of Section 3 as under-

"cosmetic" means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to the human body or any part thereof or cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic;

24. The product Himsa Plus Oil is poured on hair for beautification or promoting attractiveness as the same is in the nature of cosmetics defined as above. Moreover as per Chapter Note 1(e) of Chapter 30 of the Customs Tariff Act, 1975, Chapter 30 does not cover

preparations of heading 3303 to 3307, even if they have therapeutic or prophylactic properties. As such, the product Himsa Plus Oil is predominantly a hair oil (i.e. preparations for use on the hair) meriting classification under Chapter sub-heading 330590 and attracts GST @ 18% (CGST 9% and SGST 9%).

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

RULING

26.

Question Applicable GST rate on Himsa Plus Oil, which is a ayurvedic hair oil used for various hair disease and headache)?

Answer:- Himsa Plus Oil merits classification under Chapter heading 3305.90 and attracts GST @ 18% (CGST 9% and SGST 9%).

27. 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.


(Vivek Arya)

Member of Authority for Advance
Ruling


(Abhishek Chauhan)

Member of Authority for Advance
Ruling

To,

M/s Surya Ayurved
110 A(1), Patel Nagar
GT Road
Kanpur-208007

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, Kanpur, 117/7, Sarvodaya Nagar, Kanpur, 208005.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-Kanpur Dehat, 117/7, Sarvodaya Nagar, Kanpur, 208005.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, Kanpur Zone-Second, 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.