

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under Section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Shri Sydney D'Silva, Joint Commissioner, CGST & CX
Shri Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such Appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Shiva Writing Company Pvt. Ltd.
Address	S K Industrial Plaza, Sankaripota Road, Kalagachia, Thakurpukur, Kolkata-700063
GSTIN	19AAECS4199P1ZE
Case Number	01 of 2019
Date of application	January 7, 2019
ARN	AD191218951806J
Order No. & date	44/WBAAR/2018-19 dated 13/03/2019
Applicant's representative heard	Shri Akshat Agarwal, Authorized Representative

1. Admissibility of the Application

1.1. The Applicant is stated to be in the business of manufacturing and supplying of ball point pens, for which pen tips and balls to be used inside the tips are required in order to make the same tips working, and also trades and supplies ball point pen tips and refills to various dealers.

The Applicant seeks a Ruling on

- a) Whether tips and ball, both being pen parts under HSN Chapter Head 9608, used in manufacturing process of ball point pens, are taxable at the rate of 12%;
- b) If the tips and balls used in the manufacturing of ball point pens are not taxable at the rate of 12% under HSN 9608, then at what rate shall they be taxable and under which HSN.

1.2. Section 97(2) (a) & (b) of the GST Act empower this Authority to pronounce a ruling on the classification of any goods or on the applicability of a notification issued under the GST Act. Classification refers to determination of the nature and character of the goods being supplied. The purpose of the exercise is to ascertain the applicability of any entry of the notifications issued under the GST Act, specifying the rate of tax or exemption from payment of tax [Rate of tax on supply of goods is specified under Notification No. 1/2017-CT (Rate) dated 28/06/2017 of the Centre and Notification No. 1125-FT dated 28/06/2017 of the State, as amended from time

to time, and hereinafter collectively called the Rate Notification]. Explanation to the Rate Notification clearly mentions that Tariff item, sub-heading, heading and Chapter in the Rate Notification refer to those specified in the First Schedule to the Customs Tariff Act, 1975 (hereinafter called the Tariff Act). For the purpose of interpreting the Rate Notification, so far as may be, the Rules of Interpretation, Section and Chapter Notes and the General Explanatory Notes to the Tariff Act may be applied.

1.3 The questions raised by the Applicant involve classification for the purpose of ascertaining applicability of the Rate Notification. The questions are, therefore, admissible for advance ruling under section 97 (a) & (b) of the GST Act.

1.4. The Applicant states that the questions raised in the Application have neither been decided by nor is pending before any authority under any provision of the GST Act.

1.5. The officer concerned has raised no objection to the admission of the Application.

1.6. The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1. In the Application dated 17.01.2019 the Applicant has sought a ruling on ball point pen balls and "Tips", but during Hearing and in both, the oral and written submissions filed, the Applicant referred to the products as ball point pen balls and "Nibs". It appears that the Applicant is using the words "Tip" and "Nib" interchangeably, and to clear the confusion the Authority then asked the Applicant to submit samples of the products on which the Ruling has been sought for. Samples were submitted during Final Hearing.

3. Submissions of the Revenue

3.1. The "Ball Point Pens" are classified under Sub-heading no. 960810 of GST Tariff, attracting CGST @6% and SGST @ 6%, while "Refills for ball point pens, comprising the ball point and ink-reservoir" are classified under Sub-heading no. 960860 of GST Tariff attracting CGST @ 9% and SGST @ 9%. Tips and balls are the parts of refill, and since there is no specific sub-heading allotted to these parts these may be classified under residuary sub-heading as 'others' in 960899 specifically under Tariff item Sub-heading no. 96089990 of GST Tariff, which attracts GST at a rate of 18% (CGST 9% and SGST 9%).

4. Observation & Findings of the Authority

4.1. A "Nib" is the part of a quill, dip pen, fountain pen, or stylus which comes into contact with the writing surface in order to deposit ink. The anatomy of a pen nib is very different from the anatomy of a pen tip. An essential feature of a pen nib is a slit from the extreme point to the centre to enable smooth flow of ink. This is why users are often cautioned not to lend or borrow fountain pens as the nib "wears in" at an angle unique to each individual person. A different user is likely to find that a worn-in nib does not write satisfactorily in their hand and, furthermore, creates a second wear surface, ruining the nib for the original user.

4.2. A ballpoint pen, on the other hand, is a pen that dispenses ink (usually in paste form) over a metal ball at its point, i.e. over a "ball point". The ink is placed in a thin tube whose end was blocked by a tiny ball, held so that it cannot slip into the tube or fall out of the pen. Because of a

ballpoint pen's reliance on gravity to coat the ball with ink, most cannot be used to write upside-down.

4.3. Standard components of a ballpoint "Tip" include the freely rotating *ball* itself (distributing the ink on the writing surface), a *socket* holding the ball in place, small *ink channels* that provide ink to the ball through the socket, and a self-contained *ink reservoir* supplying ink to the ball.

4.4. So it is evident, that though often used interchangeably by the Applicant, the two words (nib and tip) refer to two different genres and styles of pen in which they are used, with distinctly different ways of channelling the ink.

4.5. As is clear from the discussion above, "Nibs" and "Tips" of pens are completely two different products with distinguishable anatomy catering to different kinds of ink and hence, use. While the split down the centre is the essential and salient feature of a "Nib", the ball at the end of the refill is the essential and salient feature of a "Tip". The two terms cannot be used synonymously and/or as substitutes of each other.

4.6. Based on the terminology stated in the Application, as well as on examination of the samples provided by the Applicant, the Authority satisfies itself that the product on which Ruling has been sought is pen balls and "tips" and takes up the matter of classification and applicability of the Rate Notification, as amended, as applicable.

4.7. The Rules For Interpretation of the Tariff Act clearly states in General Explanatory Notes 1 that *"Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub classification of the immediately preceding description of the article or group of articles which has "-" or "--"."*

4.8. In other words, descriptions under "-" (single dash) are first to be considered for sub-classification under a Heading first, before proceeding to further classify under "--" (double dash). Articles whose description are preceded by a "---" (triple dash) or "----" (quadruple dash) are sub classifications of the immediately preceding single dash or double dash, as the case may be.

4.9. Chapter Heading 9608 includes "Ball point pens; felt tipped and other porous tipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen holders, pencil holders and similar holders; **parts** (including caps and clips) of the foregoing articles, other than those of heading 9609".

4.10. Chapter Heading 9609 includes "Pencils (other than pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks" and are clearly out of the purview of the present discussion.

4.11. The "-" of Chapter 9608 states

9608 10 - Ball point pens

9608 20 - Felt tipped and other porous-tipped pens and markers

- 9608 30 - Fountain pens, stylograph pens and other pens:
- 9608 40 - Propelling or sliding pencils
- 9608 50 - Sets of articles from two or more of the foregoing sub-headings
- 9608 60 - Refills for ball point pens, comprising the ball point and ink-reservoir
 - Other

4.12. Since the Applicant seeks ruling on classification of 'tips and ball of pens', essentially "parts" of refills, it is clear that the same cannot be classified either as Ball point pens (960810) or Felt tipped and other porous-tipped pens and markers (960820) or Fountain pens, stylograph pens and other pens (960830) or Propelling or sliding pencils(960840) or Sets of articles from two or more of the foregoing sub-headings (960850) or Refills for ball point pens, comprising the ball point and ink-reservoir (960860).

4.13. Hence, it has to be classified under "-Other", which includes:

- 9608 91: Pen nibs and nib points
- 9608 99: Other

4.14. Since, nibs and nib points are not similar to tips and the Applicant is in the business of manufacturing "ball-point pens" and not "fountain pens", the classification of "tips and balls for pen" should fall under --9609 99: Other, which includes

- 9608 99 10: Pen holders, pencil holders and similar holders
- 9608 99 90: Others

4.15. Since, "tips and balls of pens" are definitively not considered as part of "Pen holders, pencil holders and similar holders" they are to be classified under 9608 99 90: Others, under HSN 9608 and are to be taxed accordingly.

4.16. In the Rate Notification ball point pens, classified under HSN 9608, are included under SI No. 232 of Schedule II under the description: "pens other than fountain pens, stylograph pens". The same Notification also mentions "fountain pens, stylograph pens" under SI No. 447 of Schedule III. However, parts of pen, including "tips and balls of pens", classifiable under HSN 9608 as discussed above, are not exempted or specifically included under entries of any other schedules. They are, therefore, to be included under SI No. 453 of Schedule III and taxable @ 9% CGST and 9% SGST.

In view of the foregoing, we rule as under.

RULING

"Tips and Balls" of Ball Point Pens are to be classified under GST Tariff Heading 9608 99 90 and included under SI No. 453 of Schedule III of Notification No. 01/2017–Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1125-FT dated 28/06/2017).

This Ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

(SYDNEY D'SILVA)

Member

West Bengal Authority for Advance Ruling

(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling