

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2019/03
(IN APPLICATION NO. Appellate Advance Ruling/SGST & CGST /2018/AR/6)

Date:28.2.2019

Name and address of the Appellant	:	M/s. House of Marigold 22, New Alkapuri Society, Opp. Emerald Honda Showroom, Gulbai Tekra, Ahmedabad – 380 015.
GSTIN of the Appellant	:	24AFBPS1985E1ZG
Advance Ruling No. and Date	:	GUJ/GAAR/R/2018/20 dated 10.10.2018
Date of filing appeal	:	05.12.2018
Date of Personal Hearing	:	29.1.2019
Present for the applicant	:	Shri Pravin Soni, Advocate Ms. Shilpaben Choksi, Proprietor Ms. Shilpaben Desai, Accountant

The Appellant M/s. House of Marigold (Prop. Ms. Shilpa Sanjay Choksi) is engaged in supply of articles, consisting of gold, diamond, precious stones like ruby, emerald, sapphire, pearls etc., wherein a watch movement is fitted. The various kinds of such articles sold by the applicant along with watch are as under:

- (a) Butterfly with a ring
- (b) Bracelet
- (c) Bangle
- (d) Necklace
- (e) Ring

2. The appellant filed an application for advance ruling before the Gujarat Authority for Advance Ruling (herein after referred to as the 'GAAR'), requesting to hold that the above articles fall under entry 13 of Schedule V to Notification No. 1/2017– Central Tax (Rate) dated 28/6/17 prescribing rate of 1.5% CGST and 1.5% SGST. It was argued by the appellant that the cost of the jewellery includes cost of Gold, Silver, Diamond etc. of very high value but a watch is fitted in the jewellery selected by the customer, the cost of which is very nominal i.e. not even 1% of total value. It was submitted that the customers intend to buy jewellery only. The appellant referred to the definition of the term 'jewellery' given in various dictionaries and submitted that the articles dealt with by the appellant fully satisfy the definition of the term 'jewellery'. The appellant referred to Chapter

Note 9 of Chapter 71 of the Customs Tariff Act, 1975. They relied upon the judgement of Hon'ble High Court of Gujarat in the case of State of Gujarat Vs. Titan Industries Ltd. and Determination Order issued under Gujarat VAT Act in their own case. The appellant submitted that as per 'common parlance' test also, the articles sold by them are nothing but articles of jewellery. It was also submitted that the articles sold by them are expensive not because of their superiority as time keeping devices, but because of their ornamental value and essential character of the articles is as articles of jewellery and not as watch. They also submitted that on application of Rule 3(b) of 'General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975', the articles fall under entry 13 of Schedule V to Notification No. 1 of 2017 dated 28.06.2017.

3. The GAAR, vide Advance Ruling No. GUJ/GAAR/R/2018/20 dated 10.10.2018, ruled as follows :-

“The product Marigold Butterfly Bridal with Watch and similar other products supplied by M/s. House of Marigold (GSTIN 24AFBPS1985E1ZG) are classifiable under Heading 9101.”

4. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal on 05.12.2018, along with request for condonation of delay in filing the appeal.

5. During the course of personal hearing held on 29.01.2019, the appellant reiterated the submissions made in the appeal dated 05.12.2018 and also requested for condonation of delay. They had nothing further to state.

6.1 The appellant has submitted that Advance Ruling dated 10.10.2018 was received on 15.10.2018 and there has been delay of 21 days. It has been submitted that the GST Act being new law, they were not aware about the procedure to be followed for challenging the Advance Ruling. It has also been submitted that in view of the then ensuing Diwali festival, they were fully engrossed in business and therefore could not pay attention towards the filing of appeal. The appellant requested to condone the delay and admit the appeal.

6.2 There is delay of 21 days in filing of this appeal. We take into consideration the fact that the Goods and Services Tax is a new tax regime and there may be *bona-fide* mistake on the part of registered person. Therefore, the delay in filing of appeal in this case is condoned in exercise of the powers contained in proviso to the sub-section (2) of Section 100 of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017').

7.1 The appellant have argued that the GAAR has erred in holding that articles sold by the appellant are covered by Heading 9101 relating to watches and Chapter Note to Heading 7113 of the Customs Tariff Act has been wrongly ignored. It is submitted that in the Note to Chapter 71, 'articles of jewellery' have

been defined to mean small objects of personal adornment and illustrations given in the note fully covers the various articles manufactured and sold by the appellant. It has been submitted that the products have been misconstrued as watches and hence held as falling under Heading 9101 by relying upon the Chapter Notes of that Heading. It is also submitted that essentially the good sold by the appellant are articles of jewelry.

7.2 We have examined the issue. The meaning of expression 'articles of jewellery' for the purpose of heading 7113 has been given at Chapter Note 9 of Chapter 71 of the Customs Tariff Act, 1975. However, the said Chapter Note does not include the objects of personal adornment or articles of personal use containing 'watch movement'. On the other hand, Chapter Note 3(l) of Chapter 71 of the Customs Tariff Act, 1975 specifically excludes articles of Chapter 91 (clocks and watches). The Chapter Notes of Chapter 91 of the Customs Tariff Act, 1975 as well as Explanatory Notes of Harmonised System of Nomenclature of Heading 9101 and 9102 covers watches with case wholly of precious metal or of metal clad with precious metal, or of the same materials combined with natural or cultured pearls, or precious or semi-precious stones (natural, synthetic or reconstructed). Wrist-watches, pocket-watches, **fob-watches, watches for carrying in handbags, watches mounted in brooches, rings etc.** are covered under Chapter 91 of the Customs Tariff Act, 1975. Therefore, on the basis of relevant Chapter Notes of Customs Tariff Act, 1975 and Explanatory Notes of Harmonised System of Nomenclature, we find that products supplied by the appellant are appropriately classifiable under Chapter Heading 9101 of the Customs Tariff Act, 1975 and the GAAR has rightly held so.

8.1 The appellant have advanced another argument in their appeal. It has been submitted that if at all their contention that the articles sold are articles of jewellery is not accepted then also they can fall both under Heading 7113 and Heading 9101 and therefore by applying Rule 3 of the Rules of Interpretation, the product would fall under Heading 7113.

8.2 It is observed that the very same contention was advanced by the appellant before the GAAR. The GAAR has noted the Rule 1 and Rule 3 of 'General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975' and held that the product in question is specifically covered under heading 9101 in view of the terms of that heading read with the relevant Chapter Note, therefore, the product is not required to be classified in accordance with Rule 3(b) of the 'Rules of Interpretation'. These findings of the GAAR have not been controverted by the appellant. We agree with the findings of GAAR in this regard.

9.1 In another argument made in the appeal, the appellant have submitted that the judgement of Hon'ble Gujarat High Court in the case of Titan Industries Ltd. as well as the Determination Order under VAT Act passed in the case of the appellant clearly supports the contention of the appellant relating to the essential character of the products and therefore these decisions have been wrongly ignored. It is also submitted that the reliance on the decision of the Hon'ble Tribunal in the

case of Titan Industries Ltd. is without appreciating the ratio of that decision based on the admitted fact that the product in dispute in that case was a watch with a precious metal case.

9.2 It is observed that the appellant has relied upon these judgements before the GAAR also. While holding that the judgement dated 03.02.2017 of the Hon'ble High Court of Gujarat in Tax Appeal No. 46 of 2017 in case of State of Gujarat Vs. M/s. Titan Industries Limited and Order dated 10.01.2011 issued under Section 80 of the Gujarat Value Added Tax Act, 2003 in the appellant's own case are not applicable in the facts of the present case, the GAAR observed that the said judgement and Order pertain to classification of goods under Entry 13(ii) of Schedule-II of the Gujarat Value Added Tax Act, 2003. The GAAR noted that the scheme of classification of goods under the Gujarat Value Added Tax Act, 2003 was different than the scheme of classification of goods for the purpose of Notifications issued under the CGST Act, 2017 and the GGST Act, 2017, which is based on the First Schedule to the Customs Tariff Act, 1975. The appellant has also not disputed these facts. It is settled principle of law that the judgement rendered in different context cannot be applied to another fact scenario.

10.1 We have also gone through the decision of Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in case of Titan Industries Ltd. Vs. Commissioner of Central Excise, Chennai [Final Order No. 861/2006 dated 04.09.2006 in Appeal No. E/1284/99 reported at 2006 (204) E.L.T. 435 (Tri. – Chennai) relied upon by the GAAR. In the said case, the appellant therein argued before the Hon'ble CESTAT that the customer purchased those articles not because he was interested in a watch but because he was keen to wear a jewellery item to adorn his wrist; that customer sought the item for its ornamental value and not for its time keeping function; that in the mind of the customer, the association between the subject article and the need it supplied in his life, was as an ornament. It was also argued that the dominant character and purpose, functionality, treatment of the goods by the trade etc. supported its classification as an ornament. It was also submitted that the lower authorities had overlooked the fact that CSH 9101.00 was confined to watches which had cases wholly of precious metal, alone. It was further argued that their watches were expensive not because of their superiority as time keeping devices but because of their ornamental value. It was also submitted that items like a table stand, a pen, or an instrument panel which might incorporate a time keeping device were not classified under Chapter 91; that on the same analogy their watches had to be classified as jewellery. It was also claimed that the Department had not discharged its onus to prove that the item was watch and not jewellery. They argued that the essential character of the article was as an item of jewellery and not as a time keeping device, therefore, applying Rule 3(b) of rules of interpretation, the product had to be classified as jewellery

10.2 In the said case of Titan Industries Ltd. (*supra*), the Hon'ble CESTAT held that as per interpretative Rule 1 for classification of goods under CETA, 1985, the goods have to be classified in terms of the heading and any relative Section or Chapter Notes. Hon'ble CESTAT observed that the argument that the subject

watches are purchased by a customer to serve his need to adorn himself and not or its function as a time keeping device cannot be countenanced. It was also observed that the dominant character, functionality and purpose of the subject watches cannot be categorically claimed to be to serve only as an item of jewellery. It was also held that the argument that CSH 9101 confined to watches which had cases wholly of precious metal alone is misconceived. Hon'ble CESTAT also held that the argument that items such as a table, a pen, or an instrument panel incorporating a time keeping device do not get classified as watch but as the respective article does not advance the appellant's case that a watch having a case with precious metal and bracelet with precious metal studded with precious stones is not a watch. It was also held that Rule 3(b) of the interpretative rules is resorted to only if the rules preceding it do not help classify an item, therefore, the necessity of resorting to classification with reference to material or component which gives the item its essential character is not relevant in the instant case. Hon'ble CESTAT also referred to Chapter Note 1(k) to Chapter 71 providing that Chapter does not cover articles of Chapter 91, and held that therefore a watch made of precious metal also cannot be classified under Chapter 71. It was further held that the HSN explanatory notes to Chapter 91 clarify that articles of precious metals decorated with precious stones will remain classified under Chapter 91; that notes under heading 91.01 contain in its Note (2) the stipulation that watches of the said heading must have cases wholly of precious metals or of metal clad with precious metal; that such watches may be set with gems, pearls, and may be fitted with a cover or have a bracelet of precious metal. The Hon'ble CESTAT held that the goods in question fully satisfy the description contained in CSH 9101

10.3 We find that all the arguments advance by the present appellant were raised before the Hon'ble CESTAT in the case of Titan Industries Ltd. (*supra*). Hon'ble CESTAT, after referring to relevant Chapter Notes and Explanatory Notes of HSN, held that the goods in question fully satisfy the description contained in Chapter Heading 9101. We find that the said decision is squarely applicable in the facts of the present case.

11. The appellant have relied upon the judgement of Hon'ble Supreme Court in the case of Commissioner of Wealth Tax, Orissa, Bhubaneswar Vs. Smt. Binapani Chakravarty [1995 AIR 1380]. It has been argued that as per the common parlance meaning of the term 'jewellery', the articles sold by them are 'articles of jewellery'. We find that the judgement referred by the appellant deals with Section 5(1)(viii) of the Wealth Tax Act, 1957. The issue involved in that case was whether only those items of jewellery which were studded with precious or semi-precious stones or whether all ornaments and jewellery made out of precious metals (such as gold, silver or platinum or alloys with precious metals) were excluded from exemption, although they might not be studded with precious or semi-precious stones. It is apparent that the issue involved in the present case is totally different and therefore the said judgement of Hon'ble Supreme Court is not applicable in the facts of the present case.

12. Therefore, we find that various arguments put forth by the appellant in their appeal are devoid of any merit and the advance ruling given by the GAAR does not suffer from any infirmity.

13. In view thereof, we confirm the Advance Ruling No. GUJ/GAAR/R/2018/20 dated 10.10.2018 of the Gujarat Authority for Advance Ruling and reject the appeal filed by House of Marigold (Prop. Ms. Shilpa Sanjay Choksi).

(Ajay Jain)
Member

(Dr. P.D. Vaghela)
Member

Place: Ahmedabad
Date:28.2.2019.