

Appellate Authority for Advance Ruling for Goods and Service Tax,

Uttar Pradesh

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Order No. 8 /AAAR/ 19/8 /2019

19/8
Dated: ..2019

Before the Bench of:-

Shri Rajeev Tandon, Member

Smt. Amrita Soni, Member

GSTIN Number	09AAACD0474C1Z3
Legal name of the Applicant	M/s.Dabur India Ltd.,
Trade Name of the Applicant	M/s.Dabur India Ltd.,
Registered address/Address provided while obtaining user ID	Khasra No. 2834, 2835, 2836, Amka Road, DhoomManikpur, off NH-91, Dadri, Gautam Buddha Nagar, U.P. - 203207
Order of Advance Ruling Against which the appeal is filed	Order No.25dated 20.02.2019 by the Authority of Advance Ruling, Uttar Pradesh

**(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017
and Uttar Pradesh Goods and Service Tax Act, 2017)**

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as 'the CGST Act' and the 'UPGST Act', respectively) by M/s.Dabur India Ltd., Khasra No. 2834, 2835, 2836, Amka Road, DhoomManikpur, off NH-91, Dadri, Gautam Buddha Nagar, U.P. -203207 (hereinafter referred to as the "Applicant") against the Advance Ruling Order No.25 dated 20.02.2019 by the Authority for Advance Ruling, Uttar Pradesh.

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 provisions under the UPGST Act and vice versa.

Brief Facts of the Case

1) M/s.Dabur India Ltd., Khasra No. 2834, 2835, 2836, Amka Road, DhoomManikpur, off NH-91, Dadri, Gautam Buddha Nagar, U.P. -203207 (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 submitted application for Advance Ruling dated 26.12.2018, with an issue:-for the classification of the product Odomos being manufactured and supplied by them.

4) The Applicant was granted hearing on 08.02.2019. Shri Atul Gupta, Advocate and Shri Padmesh Dubey, Senior Associate Manager, Authorized representatives appeared for hearing.

5) After going through the submissions of the applicant and the jurisdictional office, the Authority for Advance Ruling (AAR) ruled as under:-

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

6) Being aggrieved with the Order no.25 dated 20.02.2019, M/s. Dabur India Ltd., filed appeal application before us.

Grounds of appeal submitted by the appellant:

7) The Applicant submitted the grounds of appeal as Annexure- II. The grounds for appeal are as under:-

A. The impugned order is illegal and not sustainable because the Authority ignored the comments submitted by the department in response to the Application filed by the Appellant.

B. The impugned order is illegal as the same has not followed the binding precedent for the same product as decided by the Hon'ble Allahabad High Court.

C. The impugned order is based on extraneous consideration; therefore, the same is not sustainable.

D. The product in question is not repellent but medicine; therefore, the same is not classifiable under Chapter 3808 of the Customs Tariff Act adopted for the purpose of classification of products under GST Law.

8) Applicant was granted personal hearing on 16.07.2019,

Personal Hearing

9) Mr. Atul Gupta, Advocate, Mr. Padmesh Dubey, Senior Associate Manager and Naveen Goyal, Taxation Head, appeared in PH on behalf of M/s. Dabur India Ltd., Ghaziabad.

During the PH, they submitted a compilation of case laws and details of classification. They specifically relied on the decision of 'CST Vs Balsara Hygiene Products Ltd.', 1986 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. They also relied on 'Sujanil Chemo industries v CCE', reported in 2005 (181) ELT 206 (SC) and 'CCE v Wockhardt Life Science Ltd.', 2012 (277) ELT 299 (SC). Therefore, they submitted that the product Odomos is classifiable under sub-heading 3004 90 99 as medicament. Further, they assured to submit within two days literature regarding NNDB as drug.

Further, through email dated 17.07.2019, the applicant forwarded additional written submissions with a copy of literature showing the active ingredient DEET having been mentioned in US Pharmacopoeia and Indian pharmacopoeia, Allahabad High Court decision in the matter of 'M/s Baidyanath Aurved Bhawan (P) Ltd Vs CST' reported in 2004 NTN (Vol-24)436, High Court Delhi decision in case of 'M/s Mahinder Kumar Chaudhary Vs Balsara Hygiene Products Ltd' dated 19.12.2001 and copy of VAT invoices in state of Delhi on the subject product Odomos showing as medicine only.

Discussion and Findings

10) We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the appeal in the instant case is mainly based upon the grounds stated in para 7 above. The appellant vide his application has prayed :

- i) To modify the impugned Advance Ruling Order No. 25 dated 20.02.2019 and allow the appeal holding that the product Odomos is to be classified as 'medicine' under sub-heading 3004 90 99 of the Customs Tariff Act, 1975
- ii) To declare that only 12% GST is payable on the said product as applicable on medicaments.

iii) To pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

11) We have gone through the submissions and grounds of appeal of the Applicant and therefore, we discuss the issue point wise:

12.1) The first issue to be decided is whether the order passed by the Authority for Advance Ruling is illegal and not sustainable because the authority ignored the comments submitted by the department in response to the Application filed by the Applicant.

12.2) It is observed that the case was duly represented by the jurisdictional Superintendent during the proceedings and the Authority for Advance Ruling has passed the ruling after taking due consideration of the submissions of the departmental representative. Normally, in such proceedings, the comments of all stakeholders are taken so that a holistic picture may be obtained which helps the concerned authority in arriving at a considered decision. However, such comments are not of a binding nature and every authority is required to decide the cases before them by diligently applying the facts thereof to the issue at hand. The ruling has been given by the AAR by way of a speaking order and there is no evidence that it has been passed in an arbitrary manner. Therefore, the impugned Order passed by the Authority cannot be held unsustainable on this ground.

13.1) The second issue raised by the Applicant is that the impugned order is illegal as the same has not followed the binding precedent for the same product as decided by Hon'ble Allahabad High Court in the case of M/s Balsara Hygiene Products Limited reported at 1986 UPTC 367 (All.), which was also upheld by Hon'ble Supreme Court vide decision dated 23.02.1987.

13.2) We find that the instant case involves deciding the correct classification of the product from, inter alia, the two rival headings- one preferred by the Applicant, i.e., Heading No. 30049099 (as 'other medicament for therapeutic or prophylactic uses and put up in forms or packings for retail sale') and the other, favoured by the Authority for Advance Ruling, i.e., Heading No. 38089191 (as 'mosquito repellent', which itself is a sub-subheading under the subheading of 'insecticide' in the main heading). We have gone through the cited judgment of the Hon'ble High Court in the case of M/s Balsara Hygiene Products Limited reported at 1986 UPTC 367 (All.) and observe that it was passed in the context as to whether the said product fell within the ambit of Entry No. 29 of Notification No. ST-II-5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981 issued under Section 3-A of the U.P. Sales Tax Act, 1948. The description of the goods under the said entry reads as-

“Medicines and pharmaceutical preparations including insecticides and pesticides” (emphasis supplied). Thus, the said entry included insecticides and pesticides within the broader category of medicines and pharmaceutical preparations. Here it is also pertinent to note that, as also mentioned earlier in this paragraph, ‘insecticides’ and ‘pesticides’ are classified under Customs Tariff Heading No. 3808 and ‘mosquito repellants’ are further classified therein as ‘insecticides’. Thus, it is evident that the relevant notification entry comprised the goods of both the rival headings of the Customs Tariff germane to the instant case. In the context of the above, it may be further noted that the Hon’ble High Court held that the said product was used as a mosquito repellant and is a preventive medicine (emphasis supplied), preventing the body from being infected by the bite of mosquitoes. Thus, we observe that in the above cited case, there was no occasion for the Hon’ble High Court to examine and give a decision on the relative merits of the two rival classifications presented before us (medicament vs mosquito repellant) and the Hon’ble Court held that the subject product would be covered by a notification entry which included within its’ ambit both the types of goods – as covered by the two rival classification headings. Furthermore, while applying the ratio of the cited judgment to the present case, the importance of the Hon’ble High Court’s observation that the subject goods were used as a mosquito repellant cannot be lost sight of as, prima facie, it signifies that, in the context of what is stated earlier in this paragraph, that judgment does not hold that their classification as ‘medicaments’ was preferable over that as ‘mosquito repellant (insecticide)’, especially when the relevant entry treated insecticides as medicines/pharmaceutical preparations. In other words, the Hon’ble Court had decided that the subject goods would be covered by a notification entry which included products of both the present rival classifications and observed that these were medicine and used as mosquito repellant. Therefore, no clear distinction between ‘medicine’ and ‘mosquito repellant’ vis-à-vis the subject classification was drawn by the Hon’ble Court. Hence, it cannot be said that the order of the AAR, classifying the subject goods as ‘mosquito repellant’ under Customs Tariff Heading No. 3808/191, was in defiance of the cited judgment of the Hon’ble High Court and we do not find any infirmity in the said ruling of the AAR on this ground.

13.3) As far as the third issue raised by the Applicant is concerned, i.e., that the order of the AAR was based on extraneous considerations, we observe that the appellant has failed to detail such alleged extraneous consideration, nor do we find anything in the impugned order which may give rise to such an inference. We, therefore, disregard this ground, apparently being an unsupported and vague charge.

13.4) Now, we come to the final and all important issue of the correct classification of the appellants’ product “Odomos” in terms of the Customs Tariff. We observe that

the Applicant was clearing the same goods i.e. 'Odomos' as mosquito repellent under Chapter heading 3808 before the advent of GST, i.e., under the Central Excise regime. Further, there is no change in the composition or intended usage of these goods after the introduction of GST and the packing thereof bears a clear declaration that the product therein is a mosquito repellent cream. Regarding the technical aspect of classification, "The General Rules for the Interpretation of Import Tariff" stipulate [in Rule 3(a) thereof] that the heading which provides the most specific description shall be preferred to headings providing a more general description. Undoubtedly, the description under heading no. 38089191, i.e., "Repellants for insects such as flies, mosquito" is far more specific as compared to the description under the other heading under consideration, i.e., heading no. 30049099 which is "Other" (meaning medicaments other than all those explicitly specified in the other sub-headings of heading no. 3004). Evidently, the latter heading is a residual classification while the former is specific and conforms to the description of the goods adopted by the appellants themselves for the purposes of packing as well as advertisement and publicity. Moreover, besides the stipulation of the aforesaid interpretation rules, the Hon'ble Supreme Court also, in their judgment in the case of '**H.P.L. Chemicals Ltd. Vs. CCE, Chandigarh**' [2006 (197) E.L.T. 324 (S.C.)], have held that specific heading is preferable over residuary heading for classification. Therefore, in terms of the aforesaid rules for interpretation, heading no. 38089191 will prevail over 30049099.

13.5) Furthermore, in matters of classification of goods under taxation statutes, all the judicial forums, including the Apex Court, have stressed upon the importance of the identity of the goods in common parlance and there is a plethora of case law which hold that for classification of goods under statutes for taxation of commercial supplies thereof, the primary test is their identity in the market, or in other words, in common parlance. Some such judgments are as follows:

- i. **Deena Jee Sansthan vs. CCE, Meerut** [2019(365) E.L.T. 353 (S.C.)]
- ii. **CCE, New Delhi vs. Connaught Plaza Restaurant (P) Ltd.** [2012 (286) E.L.T. 321 (S.C.)]
- iii. **CCE, Nagpur vs. Shree Baidyanath Ayurved Bhawan Ltd.** [2009 (237) E.L.T. 225 (S.C.)]

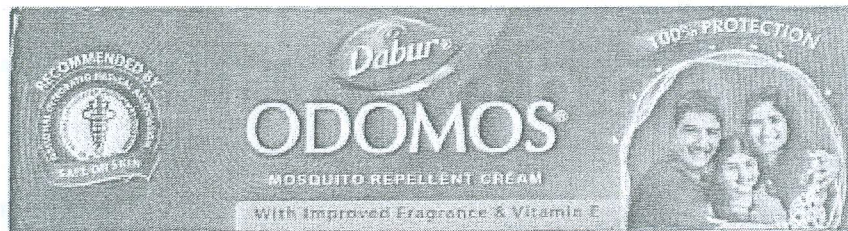
13.6) As stated in preceding paragraphs, the appellant declare prominently on the packing of the goods under reference that it is "mosquito repellent cream". The

advertisement and publicity of these goods is also done as a mosquito repellent. It would also not be out of place to mention that the appellant's own website www.dabur.com, describes Odomos as a 'mosquito repellent'. No doubt, that characteristic of these goods, which aid in prevention of vector borne diseases by preventing mosquito bites, is also mentioned; however, it is a matter of common knowledge that public or market identity of the product is as a mosquito repellent. Here, it is pertinent to mention that mosquito bite, since time immemorial has been an irritant and source of discomfort to humankind and individuals want to safeguard themselves of the irritation and itchiness of a mosquito bite. This holds true for almost everybody anywhere on the planet, irrespective of whether the place/locality they inhabit has prevalence of mosquito borne diseases or not. Moreover, even in the past, when the role of mosquitoes in spreading of certain diseases was not known, humankind has always endeavoured to prevent mosquito bites by using mosquito nets and paste or smoke of certain herbs and spices. All of the above to state the common truth that the primary motive of the common person, for using materials like the subject goods, is to save and protect themselves from mosquito bites even if there is no or negligible incidence of mosquito borne diseases in their localities. This is also borne out by the fact that odomos is not normally prescribed as a medicine by a registered medical practitioner and is available in stores and establishments of all types including "kirana stores", their sale not being restricted to chemists/druggists alone. It neither controls the disease for which mosquitoes are carrier nor develops preventive characteristics inside human body to fight against vector borne diseases. Therefore, the market identity in common parlance of the subject goods is as a mosquito repellent and their usefulness in preventing mosquito borne diseases (again derived from their characteristic quality of being a mosquito repellent) is of a subsidiary/supplementary nature.

13.7) The Applicant have laid much stress on the fact that the manufacture of the subject goods is regulated under the "Drugs and Cosmetics Act, 1940" (Drugs Act) to contend that these are medicaments. However, first of all, as stated hereto before, the primary test of classification is that of common parlance, applying which, we unequivocally arrive at the identity of the product as a mosquito repellent. Secondly, regulation under the Drugs Act does not ipso facto mean that the product automatically becomes a medicine. The term 'drug' includes, besides medicines, any substance which affects the structure or functions of the human body while the term

'medicine' is used for a substance which is used to prevent or cure any illness. Thus, there are a number of substances/materials/products which are regulated by the Drugs Act though they are not used or recognized as medicines. Here, it is extremely pertinent that even mosquito repellents fall within the ambit of the statutory definition of drugs, as given in Section 3(b)(ii) of the Drugs Act and therefore, the fact of regulation under that statute does not, by itself, lead to any conclusion regarding their classification as medicament vis-à-vis mosquito repellent. We also observe, that the appellants have stated that the active ingredient in their product is NNDB which is an improved version/formula of DEET, the active component of many mosquito repellents. The substance DEET is mentioned in the schedule to the "Insecticides Act, 1968" as an insecticide and by corollary, its improved version, i.e., NNDB would also be an insecticide. In this context, it is pertinent that mosquito repellents are classified at heading no. 38089191 of the Customs Tariff as a sub-category of insecticides. Thus, this again indicates that even by applying the yardstick of chemical composition, heading no. 38089191 is most specific for the classification of the subject product.

13.8) The Applicants have also stated that their product is not a mosquito repellent as, while such products achieve their desired result by nerve poisoning, stomach poisoning, asphyxiation or by odour, the subject product prevents mosquito bites by interfering with their olfactory receptors. Firstly, we observe that there is no authoritative literature which declares that mosquito repellents can work only in the above stated manner and any product preventing mosquito bites through any other method will not fall in the category of repellents. In fact, Olfactory receptors are the odour perceiving receptors of mosquitoes and by interfering with their function, their ability to smell out the human body is impaired. Thus, the factor of odour is brought into play by the subject product, albeit indirectly. Furthermore, since, in the above manner, the subject goods make the human body unattractive, as a source of food, to the mosquito, it effectively repels a mosquito from a human being, thereby working as a mosquito repellent. Above all is also the test as to how they themselves identify & sell the product in the market i.e. "mosquito repellents"



13.9) In light of the foregoing discussions, we observe that all the factors relevant for classification under the Customs Tariff lead to the classification of the Applicants' product "Odomos" under heading no. 38089191, be it the rules for interpretation of the said tariff, the common parlance test, its chemical composition or its usage and way of working. Hence, we conclude that Odomos is a mosquito repellent and has to be classified under Chapter Heading 3808 9191 of the Customs Tariff Act and thus, we pass the order as:-

Ruling

In view of the foregoing discussions and findings we hereby uphold the Ruling in Order No.25 dated 20.02.2019 of the Authority for Advance Ruling that "Odomos is well covered under Chapter 38 of Customs Tariff Act and is classified under HSN 38089191".

8/19/18
(Shri Rajeev Tandon)
Member for AAAR
CGST

19-8-19
(Smt. Amrita Soni)
Member for AAAR
SGST

To,

M/s Dabur India Ltd.,
Khasra No. 2834, 2835, 2836,
Amka Road, DhoomManikpur, off NH-91,
Dadri, Gautam Buddha Nagar, U.P. -203207

APPELLATE AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 8

Date: 19/8/19

Copy to –

1. The Joint Commissioner, CGST & Central Excise, Lucknow, Member, Authority for Advance Ruling.
2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.
3. The Commissioner, CGST & Central Excise, Ghaziabad.
4. Through the Additional Commissioner, Grade – I, Commercial Tax, Ghaziabad to jurisdictional tax assessing officers.