

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2025/08
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2024/AR/18)

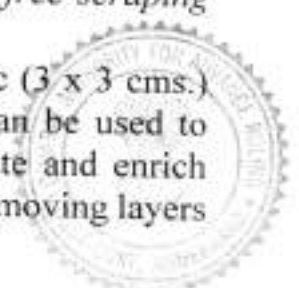
Date: 22/03/2025

Name and address of the applicant	:	M/s. Hindustan Pencils Private Limited, Plot No. 217/2, GIDC Estate, Umbergaon, Valsad, Gujarat- 396171
GSTIN of the applicant	:	24AAACH0401R1ZT
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-74, Range-18, Division-8, Vapi.
Date of application	:	26-07-2024
Clause(s) of Section 97(2) of CGST/IGST Act, 2017, under which the question(s) raised.	:	(a)
Date of Personal Hearing	:	03-01-2025
Present for the applicant	:	Shri Parind Mehta, CA, Shri Sanjay Gupta, CFO.

Brief facts:

M/s. Hindustan Pencils Private Limited, Plot No. 217/2, GIDC Estate, Umbergaon, Valsad -396171 [for short –‘applicant’] is registered under GST and their GSTIN is 24AAACH0401R1ZT.

2. The applicant is engaged in the manufacturing and supply of stationary products like pencils, sharpeners, erasers, mathematical and drawing instruments, ball point pens, wax crayons and oil pastels and wide range of student art materials under the brand names 'Apsara' and 'Nataraj'.
3. The facts leading to the filing of the present application is as under:
 - they sell 'Apsara Oil Pastels' which is a pack of 12 or 26 or 51 units of oil pastels with different colour shades, which are used for colouring the sketches and drawings and the product is classified under HSN 9609 9030 leviable to GST @ 12% as per entry No. 233 of schedule-II of CGST Act, 2017;
 - the applicant intends to insert a 'Scraping Tool' in the said pack of oil pastels & has re-labelled it as '*Apsara Oil Pastels with free scraping tool*';
 - the scraping tool is a small tailor-made product of plastic (3 x 3 cms.) and comes in fancy shapes like Duck or Bird; that it can be used to scratch the surface coloured with the oil pastels to create and enrich designs, drawings, and patterns in the coloured areas by removing layers



of oil pastels from a drawing and reveal a different colour or layer underneath; that the picture of the scraping tool is as under:



- that the scraping tool is independently classified under 3926 9080 and taxed at 18% as per entry 111 of schedule-III of CGST Act, 2017.

4. The applicant is further of the view that though the supply of oil pastels includes the scraping tool, there is no supply of scraping tool since they are making only one supply *i.e.* supply of oil pastels which is classifiable under 9609 9030 & is leviable to GST @ 12% under entry 233 of schedule-II of CGST Act, 2017, owing to the following:

- that no consideration is charged for scraping tool, as it is given free of cost along with oil pastels;
- that as per section 9 read with section 7 of the CGST Act, 2017, for any transaction to qualify as supply, the existence of a consideration is must;
- that in the instant case, as the scraping tool is given free & there being no consideration, it would not qualify as supply;
- that the distributor, retailers and the applicant are not related;
- that they wish to rely on the below mentioned rulings *viz*
 - M/s Page Industries Ltd¹
 - M/s Surfa Coats (India) Pvt Ltd²

5. Alternatively, in terms of section 2(30), 2(90) and section 8(a) of the CGST Act, 2017, the applicant feels that even if it is held that there is a supply of the 'scraping tool' when they supply of *Apsara oil pastels with free scraping tool*, it would be 'composite supply' as all the conditions for a supply to qualify as composite supply are satisfied *viz*

- the **first condition** that there must be two or more taxable supplies of goods or service or any combination thereof stands satisfied in so far as the product pack comprises of two constituents *i.e.* oil pastels and scraping tool both of which are leviable to GST;
- the **second condition** that the supplies are naturally bundled & are made in conjunction with each other in an ordinary course of business stands satisfied in so far as
 - in the pack 'Apsara oil pastels with free scraping tool', oil pastel is the main product which is complimented by scraping tool which allows the user or customer to use oil pastels in a better manner;
 - it is the general perception of the customer to buy the oil pastel where scraping tool is included. Similar products sold by other manufacturers also include scraping tool in the pack of the said oil pastels;
 - there is a single price which the customer is required to pay while buying the pack of oil pastels, which are advertised as such.

¹ KAR/AAAR/05/2021, dated 16.04.2021

² KAR ADRG 28/2019, dated 12.09.2019



- o the **third condition** that one of the supplies is principal supply which gives the composite supply, its essential characteristics stands satisfied in so far as oil pastels provide the essential character to the complete set supplied to the customers as it is a main supply and scraping tool included in the pack is an accessory. The customers can use oil pastels without the scraping tool but not vice versa. The scraping tool is integral to the use of the principal product, ie oil pastels. The scraping tool compliments the use of oil pastels by enhancing the beauty and aesthetics of the drawing and sketches coloured by using the oil pastels. Other than being used along with the oil pastels, the scraping tool does not have any utility by itself.

6. In view of the aforementioned facts, the applicant has asked following question in their application for advance ruling *viz*

- i. Whether inclusion of a free 'Scraping Tool' in the pack of Apsara Oil Pastels amounts to independent 'supply' of the scraping tool under Section 7 of the CGST Act, 2017?;
- ii. What will be the classification and rate of tax on supply of the 'Apsara Oil Pastels with Free Scraping Tool' under the provisions of the CGST Act, 2017 and the GST Act, 2017?

7. Personal hearing was granted on 03.01.2025 wherein Shri Parind Mehta, CA along with Shri Sanjay Gupta, CFO appeared on behalf of the applicant and reiterated the facts as stated in the application. During the course of the personal hearing, the applicant submitted a brief write-up, seeking correction/ up-dation in respect of paragraph C.5 of the original application *viz*:

Particulars	Oil Pastels	Scraping Tool
Nature of Product	Colour Pastels	Miscellaneous article made of Polypropylene Powder (Plastic)
Custom Tariff Heading (CTH) and HSN	9609 9030 "Pastels, drawing charcoals and writing or drawing chalks and tailors chalks"	3926 9080 "Polypropylene articles, not elsewhere specified or included"
HSN (Eight Digit)	9609 9030	3926 9080
GST Schedule Entry and Description	Entry No. 233 of Schedule II 9609-Pencils (including propelling or sliding pencils), crayons, pastels , drawing charcoals and tailor's chalk	Entry No. 111 of Schedule III 3926- Other articles of plastics and articles of other materials of headings 3901 to 3914 (other than bangles of plastic, plastic beads and feeding bottles)"
GST Rates	Taxable at 12 percent	Taxable at 18 percent
Cost/Price of the item (Rs.) (Excluding sales, distribution and overheads)	Direct Manufacturing cost: Rs 56.44	Direct Manufacturing cost: Rs 0.34
Proportionate share in the manufacturing product / cost of product	99.40 percent	0.60 percent
Stock Transfer Price	Rs.55.70	-
Sale Price	Rs.120.00	Free

They further submitted, the following documents with the write-up *viz*

- Copy of CTH 9609 9030 & 3926 9080;



- Copy of entry no. 233 & 111 of Schedule III under notification No. 1/2017-CT(R) dtd 30.6.2017;
- Copy of stock transfer invoice no. ST1005000088 dtd 22.4.2024 from manufacturing location Silvassa to depot at Valsad;
- Sale invoice no. 24001007617 dtd 12.3.2024;
- Copies of ruling in the case of M/s. Page Industries and Surfa Coats, supra;
- Extract of Service Tax Education guide and copy of circular dated 12.2.2018.

Discussion and findings

8. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 GGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

10. Before advertng to the submissions made by the applicant, we would like to reproduce the relevant provisions for ease of reference:

• Section 2. Definitions

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

(74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration.- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

• Section 8. Tax liability on composite and mixed supplies



The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

11. We find that the applicant intends to supply *Apsara oil pastels with free scraping tool*. The primary averments raised are [a] that there is no supply of scraping tool in the aforementioned supply; and [b] even if it is held that there is a supply of the 'scraping tool', it would be considered as 'composite supply' as all the conditions for the supply to qualify as composite supply are met.

12. Moving on to the first averment of the applicant that there is no supply of scraping tool; that the only supply is of oil pastel since scraping tool is supplied free of cost and that there is no consideration as far as scraping tool is concerned. Section 7, *ibid*, deals with scope of supply viz

Section 7. Scope of supply.- [relevant extract]

(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

As is evident, supply includes all forms of supply of goods, such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Now, applicant's contention is that the scraping tool, included in the supply of Apsara oil pastels, since it is a free supply without any consideration, should not be considered as a supply. They have tried to substantiate this *via* the table under paragraph C-5, which is reproduced *supra*. We however, find the averment not tenable owing to the following:

- [a] that it is factually undisputed that there is inclusion of scraping tool in the kit containing 'Apsara oil pastels with free scraping tool';
- [b] that there is a supply of scraping tool involved in the sale of 'Apsara oil pastels with free scraping tool';
- [c] that the aforementioned sale of entire kit is for a consideration, which is an undisputed fact;
- [d] singling out an element in a kit to hold that there is supply of all the elements in the kit **except** scraping tool on the ground that no consideration was charged, is not a rational argument which is even otherwise not supported by section 7, *ibid*.

In view of the foregoing, we hold that there is a supply of scraping tool which is very much a part and parcel of the kit containing 'Apsara oil pastels with free scraping tool'.

13. To substantiate our finding, we would like to rely on the below mentioned circular viz

Circular No. 92/11/2019-GST dated 7.3.2019 [relevant extracts]

Subject: Clarification on various doubts related to treatment of sales promotion schemes under GST - Reg.

Various representations have been received seeking clarification on issues raised with respect to tax treatment of sales promotion schemes under GST. To ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the said Act") hereby clarifies the issues in succeeding paragraphs.

2. It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability or otherwise of Input Tax Credit in the hands of the supplier (hereinafter referred to as the "ITC") in relation to the said schemes are detailed hereunder:

A. Free samples and gifts:

.....

B. Buy one get one free offer:

*i. Sometimes, companies announce offers like 'Buy One, Get One free' For example, 'buy one soap and get one soap free' or 'Get one tooth brush free along with the purchase of tooth paste'. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said Act). **It may appear at first glance that in case of offers like 'Buy One, Get One Free', one item is being 'supplied free of cost' without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.***

ii. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

[emphasis supplied]

14. The applicant, we find has relied on two rulings [a] M/s. Page Industries Ltd; [b] M/s. Surfa Coats (I) P Ltd. On going through both the rulings, we find that the facts of the matters are totally different, having no similarity to the present facts at hand. We would like to reproduce the questions on which the ruling in the aforementioned cases were sought, just to clarify the matter:

[a] M/s. Page Industries Ltd;

The question on which ruling sought was as under:

"Whether in the facts & circumstances of the case the promotion products/materials & marketing item used by the appellant in promoting their brand and marketing their products can be considered as 'inputs' as defined u/s 2(59) of the CGST Act, 2017 & GST paid on the same can be availed as ITC in terms of section 16 of the CGST Act, 2017 or not?"

[b] M/s. Surfa Coats (I) P Ltd.



“ Whether the applicant is eligible to claim the GST ITC on the items purchased for furtherance of business?

Hence, the reliance sought to be placed on the above rulings is not tenable.

15. The second averment of the applicant is that even if it is held that there is a supply of the ‘scrapping tool’, it would still be considered as ‘composite supply’ as all the conditions for the supply to qualify as composite supply is met. The applicant has stated that they qualify all the condition to be considered as a “composite supply”.

16. We find that for a supply to considered as a composite supply, the following conditions must be satisfied:

- There must be two or more taxable supplies of goods or services or any combination thereof;
- Such supplies of goods or services must be naturally bundled;
- Such supplies of goods or services are made in conjunction with each other in an ordinary course of business; and
- One of such combination of supplies of goods or services is principal/ predominant supply to others which are ancillary to such principal element.

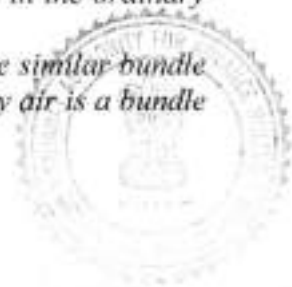
17. While undisputedly, the first condition stands satisfied, as far as the other conditions are concerned, we are unable to agree with the applicant for the reasons depicted below.

18. The second & the third condition, as listed *supra*, that goods or services are naturally bundled & that such supplies are made in conjunction with each other in an ordinary course of business, as far as the present product is concerned, is not a plausible argument. We find that the supply of scraping tool along with oil pastels is not an essential element. The scraping tool at best is used for enhancing the aesthetics of the coloured area. Thus, scraping tool and oil pastels are not naturally bundled but are distinct to each other. The Taxation of Services: An Education Guide dated 20.6.2012, which has been relied upon by the applicant states as follows:

9.2.4 Manner of determining if the services are bundled in the ordinary course of business

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- *The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.*
- *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.*



• The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –
- There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- The elements are normally advertised as a package.
- The different elements are not available separately.
- The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

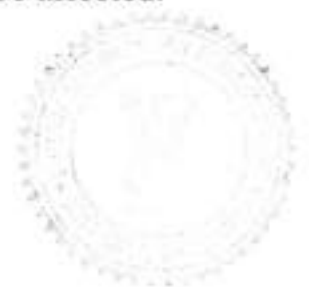
No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

The applicant, we find, has not been in a position to convince us that large number of customers of such goods reasonably expect this to be provided as a package. Further the averment that majority of the supplier supply similar bundle of goods; that the oil pastels and the scraping tool are not available separately & that both the oil pastels and the scraping tool are integral to one overall supply, is not supported by factual data/proof.

19. We find that the applicant in his application has stated that the scraping tool included in the pack is an accessory. The meaning of 'accessory' as defined in various dictionaries is as follows:

- Definition as per Merriam- Webster (<https://www.merriam-webster.com/>): (a) an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else
- Definition as per Collins : **Accessories** are items of **equipment** that are **not usually essential**, but which can be used with or **added** to something else in order to make it more efficient, useful, or decorative.
- Definition as per Dictionary.com : **an extra item** that is **added to something** and is useful or attractive **but not of great importance**

The averment of the scraping tool being an accessory to the main product, does not fulfil the criterion set forth that the oil pastel and the scraping tool are integral to the overall supply ie if the scraping tool is removed, the nature of the supply would be affected.



20. Further, we are also not convinced that the combination of oil pastels is principal/ predominant supply and scrapping tool is ancillary to such principal element. This is more so since these goods are separately available in the market. The argument that other than being used along with oil pastel the scrapping tool has no utility is again not a plausible argument.

21. At best it can be stated that the main objective behind supply of free scraping tool with oil pastels is to increase the sales.

22. Having said so we hold that that the product of the applicant *Apsara Oil Pastels with free scraping tool* would not fall under the ambit of **composite supply**.

23. The supply we find is a mixed supply, as defined under section 2 (74) of CGST Act, 2017. The definition of mixed supply is reproduced *supra*. In-fact we find that the supply of the applicant fulfils the conditions of mixed supply, viz

- i. there should be two or more individual supplies of goods or services or in any combination thereof;
- ii. Such supply should be made in conjunction with each other for a single price
- iii. such supply does not constitute a composite supply.

As is already mentioned the applicant supplies two products in a single pack/box for a single price. Further as already discussed *supra* such supply does not constitute composite supply. Therefore, we hold that applicant's product is covered under the category of 'mixed supply' as defined under section 2(74) of CGST Act, 2017.

24. Now, tax liability in respect of a supply falling under the ambit of mixed supply is governed by section 8(b) of CGST Act, 2017, which is already reproduced *supra*.

25. The above provision specifies that the tax liability of a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the higher rate of tax in the mixed supply. We therefore, hold that the product *Apsara Oil Pastels with free scraping tool* is classifiable under HSN 3926 and would attract GST @ 18% in terms of entry no 111 of schedule-III.



26. In the light of the foregoing, we rule as under:

RULING

- (i) Inclusion of a free 'Scraping Tool' in the pack of Apsara Oil Pastels amounts to independent 'supply' of the scraping tool under Section 7 of the CGST Act, 2017.
- (ii) 'Apsara Oil Pastels with free Scraping Tool' is classifiable under HSN 3926 and is leviable to GST @ 18%.


(Kamal Shukla)
Member (SGST)


(P.B. Meena)
Member (CGST)

Place: Ahmedabad
Date: 21.03.2025

