

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



ADVANCE RULING NO. GUJ/GAAR/R/22/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/43)

Date: 02.07.2020

Name and address of the applicant	:	M/s. Shivani Scientific Industries pvt.ltd., Plot No.233, Commercial plot, Khergam road, Gundlav, Valsad ,Gujarat, Valsad-396035.
GSTIN of the applicant	:	24AADCS8734K1Z1
Date of application	:	02.08.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a)Classification of Goods and/or services or both.
Date of Personal Hearing	:	11.06.2020 (Through video Conferencing)
Present for the applicant	:	Shri N.K. Gupta.

B R I E F F A C T S

The applicant vide their application for Advance Ruling has submitted that they are engaged in the supply of medical equipment viz. ‘Micro-manipulator System’ which is “Intracytoplasmic Sperm Injection (ICSI) with ejaculated, epidymal or testicular spermatozoa used in Assisted Reproductive Technology Procedures’ (hereinafter referred to as MM System). The applicant have stated that they have received the orders for supply of ‘MM System’ from various customers and is selling the same to them with reference to their purchase orders. The applicant has put up the following question for determination before AAR:

“Whether ‘Micro-manipulator system’ which is “Intracytoplasmic Sperm Injection (ICSI) with ejaculated, epidymal or testicular spermatozoa used in Assisted Reproductive Technology Procedures’ is classifiable under tariff heading 9018 or 9011, that is, what is the rate of tax on ‘Micro-manipulator System’?”

2. The applicant has stated the Micro-manipulator system (‘MM system’ in short) is also known as IVF technology’ in the medical world and in common/trade parlance, it is also called “Micro manipulator”; that globally micro-manipulator falls under the HSN 9018 but in India there is confusion as to whether it falls under HSN 9018 or 9011; that they are of the view that the product in question should be classified under CH-9018 and not under CH-9011. The applicant submits that a micromanipulator is a device which is used to physically interact with a sample under a microscope, where a level of precision of movement is necessary which cannot be achieved by the unaided human hand and may typically consist of an input joystick (a mechanism for reducing the range of movement) and an output section with the means of holding a microtool to hold, inject, cut or otherwise manipulate the object as required; that mechanism for reducing the movement usually requires the movement to be free of backlash which is achieved by the use of kinematic constraints to allow each part of the

Mechanism to move only in one or more chosen degrees of freedom, which achieves a high precision and repeatability of movement, usually at the expense of some absolute accuracy.

3. The applicant has further stated that Micromanipulator is used to perform “Intra Cytoplasmic Sperm Injection (ICSI) procedure to overcome human infertility problems; that as per Wikipedia “Micromanipulators are usually used in conjunction with microscopes and depending on the application, one or more Micromanipulators may be fitted to a microscope stage or rigidly mounted to a bench next to a microscope; that a typical application of micromanipulation is human intra cytoplasmic sperm injection(ICSI); that the applicant has stated that ICSI procedure is an in-vitro fertilization (IVF) procedure and a type of assisted reproductive technology (ART); that ART procedures involve surgically removing eggs from a woman’s ovaries, combining them with sperm in the laboratory, and returning them to the woman’s body or donating them to another woman. The applicant has listed the 5 basic elements required by an IVF lab to correctly perform ICSI technique as under:

- (a) **Laminar flow cabinet:** It has to contain a hot surface and an environment with 5% of CO₂.
- (b) **Inverted microscope:** It should have 20X and 40X lens, with Hoffman optics, and a 37degree centigrade surface to have an optimal maintenance of the biological material.
- (c) **Micromanipulators (micro manipulation device):** They allow us to move in three dimensions, so that there will be one on the left to control the holding of the micropipette and another to the right for the injection micropipette. In addition, there is an electric manipulator for large movements and a hydraulic one for the finest (adjustment of the pipettes is done with the hydraulic and quick movements to place them with the electric).
- (d) **Micro injectors (micro manipulation device):** There are hermetic syringes filled with mineral oil controlled by the micromanipulators and connected to the microinjection pipettes (to aspirate and inject the spermatozoa) by a flexible tube.
- (e) **Anti-vibration table:** It has to contain hydrogen to assure the optimal work conditions.

4. The applicant has submitted the procedure of Invitro fertilization in brief as under:

- A holding stabilizes the mature oocyte with gentle suction applied by the micro-injector.
- From the opposite side, a thin hollow glass micropipette is used to push a single sperm, having immobilized it by cutting its tail with the point of the micropipette.
- The sperm is then released into the oocyte.
- The pierced oocyte has an excluded polar body at about 12’o clock indicating its maturity. The polar body is positioned at the 12’o’clock or 6 ’o’clock position to ensure that the inserted micropipette does not disrupt the spindle inside the egg.
- After the procedure, the oocyte will be placed into cell culture and checked on the following days for signs of fertilization.

Thus, it can be seen that a complex process of in-vitro fertilization (IVF) is carried out by the Micromanipulator through the most recognized procedure called ICSI.

5. The applicant has briefly described the guiding principles determining the classification of a product under GST law as: (a) Classification under the Customs Tariff Act, 1975 along with relevant chapter notes pertaining to relevant chapter.(b) General Rules for interpretation of First Schedule to the Customs Tariff Act and (c)

HSN explanatory notes released by the World Customs Organization. He has also stated that the aforementioned principles have been laid down on the basis of explanation (iii) and (iv) of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017. The headings 9018 and 9011 respectively under GST law and Customs Tariff Act, 1975 are as under:

Schedule	S.No.	HSN	Description	Remarks
II-12%	218	9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus and sight-testing instruments.	

Schedule	S.No.	HSN	Description	Remarks
II-18%	411F	9011	Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection.	Inserted vide Notification No.43/2017-IGST (Rate) dated 14.11.2017 w.e.f. 15.11.2017.
IV-28%	184	9011	Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection.	Omitted vide Notification No.43/2017-IGST (Rate) dated 14.11.2017 w.e.f. 15.11.2017.

The applicant has described the classification of the above sub-headings under the First Schedule of the Customs Tariff Act, 1975 as under:

9011		Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection.			
90118000	-	Other microscopes	u	7.5 %	
9018		Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus and sight-testing instruments.			
901890	-	Other instruments and appliances			
90189099	-----	Others	u	7.5%	

6. The applicant has described the classification of “MM System” under heading 9018 of the Customs Tariff Act stating that their product is classifiable under Sub-heading 9018 and defined as “instruments and appliances used in medical sciences and has defined Instrument, apparatus and appliance as per medilexicon.com as under:

- (i) Instrument: a tool or implement.
- (ii) Apparatus: A collection of instruments adapted for a special purpose.
- (iii) Appliance: A device used to improve function of a part, or for therapeutic purposes.

The applicant has defined the above terms as per dictionary definitions as under:

- (i) Instrument: Instrument is an implement or apparatus especially used for delicate or scientific works and denotes surgical instruments, optical instruments, musical instruments, measuring devices and the like.
- (ii) Apparatus: apparatus denotes a set of instruments used for purposes like scientific experiments, e.g. laboratory apparatus.

The applicant has also defined the above terms as per Advance lexicon also. He has concluded that the above mentioned definitions gives an impression that an apparatus is a wider term than instrument and appliance and it consists of both. MM System has been designed to carry out a specific function of in-vitro fertilization with the help of various equipment like microscope, micromanipulator, micropipette and micro injector wherein microscope is a tool and multiple-micromanipulators are devices.

7. The applicant has stated that ICSI procedure as a part of IVF performed by using MM System can be said to be related to medical science because of the following reasons:

- (a) It is a part of the curriculum of | "Doctor of Medicine" course which is a medical degree.
- (b) Applicant has got its product registered under ISO 13485 which is for medical degrees.
- (c) The developer of this technique, Mr.Robert G.Edwards, was awarded the Nobel Prize for Physiology or medicine in 2010.
- (d) It has been described in Part 4.5. of draft "Assisted Reproductive Technologies(Regulation) Rules-2010 prepared by the Ministry of Health and Family Welfare, Government of India, New Delhi.

8. The applicant has given the definition of 'medical device' by World Health organization (WHO), Geneva as under:

"The term 'medical devices' includes everything from highly sophisticated computerized medical equipment down to simple wooden tongue depressors and the intended primary mode of action of a medical device on the human body, in contrast with that of medical products, is not metabolic, immunological or pharmacological. 'Medical devices' includes a wide range of products such as medical gloves, bandages, syringes, condoms, contact lenses, disinfectants, X-ray equipment, surgical lasers, pacemakers, dialysis equipment, baby incubators and heart valves. 'Medical device' means any instrument, apparatus, implant, machine, appliance, implant, in vitro reagent or calibrator, software material or other similar or related articles, intended by the manufacturer to be used, alone or in combination, for human beings for one or more of the specific purposes of:

- Diagnosis, prevention, monitoring, treatment or alleviation of disease;
- Diagnosis, monitoring, treatment, alleviation of or compensation for an injury;
- Investigation, replacement, modification or support of the anatomy or of a physiological process;
- Supporting or sustaining life;
- Control of conception.
- Disinfection of medical devices and
- Providing information for medical purposes by means of in vitro examination of specimens derived from the human body and does not achieve its primary intended action in or on the human body by pharmacological, immunological or metabolic means, but may be assisted in its function by such means.
- Products which may be considered to be medical devices in some jurisdictions but not in others include disinfection substances, aids for persons with disabilities and devices incorporating animal and/or human tissues.

- Devices for in-vitro fertilization or assisted reproduction technologies.

The applicant has further stated that since the MM system is being certified under ISO 13485 and the study device has been made as a part or curriculum of 'Doctor of Medicine' course and the definition given by WHO also considers it, it is clarified beyond doubt that MM system is a medical device and hence classifiable under CH-9018 and that therefore it is an instrument for medical science which includes apparatus. The applicant has further mentioned that the impugned item is classifiable under CTH 9018 in terms of Chapter Notes to chapter 90 which reads as under:

“3.1 Chapter Note 3 of this chapter mentioned that “the provisions of Notes 3 and 4 to Section XVI apply also to this Chapter” which is as under:

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole fails to be classified in the heading appropriate to the function.

9. The applicant has further submitted that even if it is presumed that other devices of MM system are designed for the purpose of carrying out two or more complementary or alternative functions, even then from an analysis of the above Section Note 3 and its application to the Micromanipulator equipped with Inverted Microscope, it can be seen that as the principal function, which is to carry out the in-vitro fertilization by ICSI procedure with the help of micromanipulator, the said device although equipped with the inverted microscope, shall not be classifiable under SH 9011 under “Surgical microscope” as the main function is not magnification but the ICSI procedure which is carried out by the Micromanipulator and the microscope merely magnifies the objects so as to carry out the procedure in a proper manner; that from application of Section Note 3 to Section XVI, the impugned goods merit classification under SH 9018 and not under SH 9011; that from an analysis of the above section note 4 and its application to the micromanipulator equipped with inverted microscope, it can be seen that as the micromanipulator and the inverted microscope are individual components of the micromanipulator system and are both meant to contribute to the principal function of the micromanipulation system, which is to carry out the in-vitro fertilization by ICSI procedure and it does not matter whether they are separate or joined in any manner; that the inverted microscope which is equipped along with the micromanipulator contributes to the main function of in-vitro fertilization by way of magnification of the objects for the ICSI procedure which is carried out by micromanipulator and thus the microscope merely magnifies the objects so as to carry out the main procedure in a proper manner; that thus even by application of Section Note 4 to Section XVI, the impugned goods merit classification under SH 9018 and not under SH 9011.

10. The applicant has submitted that even in terms of use of equipment, the goods are classifiable under SH 9018; that Nikon inverted Microscope Eclipse TI-U with micromanipulator are used only in hospitals in IVF labs/test tube baby centres as a medical device for ICSI procedure to overcome fertility problems; that the said ICSI procedure is done under a microscope using the multiple manipulation devices such as Micromanipulator, micro-injector, micropipettes; that the use of the microscope is merely incidental and the main function remains

invitro fertilization which is a well-documented fact; that inverted microscope is just one of the components of the apparatus as the entire process has to be done on minute particles and the said microscope is used merely as a visual aid and does not interfere with the main procedure which is Intra Cytoplasmic Sperm injection (ICSI); that in view of these facts, micromanipulator has pre-dominant function but not the microscope; that even as per General rules for interpretation, impugned item fosters classification under CH- 9018; that the MM system in terms of heading and chapter notes merits classification under CH- 9018. The applicant has referred to Rule 3 of the General Rules for Interpretation which reads as under:

3. When--- for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

11. The applicant has stated that CH- 9011 is general in nature and that 9018 is specific in nature and therefore the heading which provides the most specific description shall be preferred i.e. 9018. In this regard, the applicant has placed reliance on the following judicial pronouncements:

- (a) In the case of Sanwar Aggarwal v/s The Commissioner of Customs (Port) reported in 2016(336) ELT 42(Cal)-2016(4) TMI621-Calcutta High Court, it was held that "just as a special law in a particular field would prevail over a general law that may be operation in that field, a heading with a more specific description would prevail over a heading with a more general description; that Rule 3(a) of the General Rules for interpretation of the First Schedule to the Customs Tariff Act makes it very clear that the heading which provides the most specific description shall be preferred to headings providing a more general description."
- (b) In the case of Flora Agrotech v/s the Commissioner of Central Excise, Vapi reported in 2015(319) ELT.333(Tri.-Ahmd)-2014(11) TMI114-CESTAT, Ahmedabad, it was held that "a specific entry in the CETA, 1985 has to be the proper classification than a general entry in Chapter 39 of the CETA, 1985 as per the rules of interpretation to the CETA, 1985."
- (c) As per the judgement In the case of The Commissioner of Central Excise, Aurangabad v/s IVP Ltd. reported in 2004 (173) ELT.128(Tri.-LB)-2004(9) TMI 135-CESTAT, New Delhi, a specific heading takes precedence over the general one; that heading 6901 is a specific heading for nozzles whereas its classification under heading 8515 is as general as parts of welding machines; that Rule 3 of the Interpretative Rules also provides that heading which provides the most specific description shall be preferred to headings providing a mere general description; that applying rules of interpretation and specific mentioning of nozzles in Chapter 69, it was held that nozzles are classifiable under SH 6901.

12. The applicant has further submitted that in light of the above judicial precedents, it is clear that in case a specific entry exists, goods must be classified in that entry even though there is a general entry as well; that since CH- 9011 covers only a standalone microscope, MM system comprising

microscope as a tool to enhance the magnification embedded with multiple manipulator systems should be considered as a instrument and appliances used in medical sciences; that even if MM system is a composite supply and two headings refer to part only of the materials i.e. 9011 refers to standalone microscope and 9018 refers to manipulator system then even in terms of Rule 3(b), classification shall be made under CH- 9018 i.e. heading which gives it its essential character; that in the present case, micromanipulator has the predominant function because of the following reasons:

- (i) The weight of the microscope is 19 kgs.(approx.) whereas weight of manipulator is 21 kgs.(approx.).
- (ii) The value of microscope is YEN 8 lakhs .(approx.) whereas value of manipulator is YEN 13 lakhs.(approx.)

The applicant has submitted that the trade practice does not practically permit a person to buy these products separately because it leads to cost difference to the extend of 70%; that when a person is getting out of market due to 6% GST rate differential, then difference of 70% becomes highly unimaginable and trade parlance theory should be invoked here to consider this classification; that ICSI procedure can be performed only if micro manipulator is there and standalone microscope cannot perform this function as it is used as a tool in the entire system; that in view of the above, it is beyond doubt that impugned item is classifiable under SH 9018. The applicant has also stated that due consideration should be given to how the product is known in common trade parlance while classifying it and has relied upon the judgement in the case of Atul Glass Industries ltd. v/s Collector of Central Excise reported in 1986 (25) ELT.473 (SC)-1986(7) TMI 90-SUPREME COURT OF INDIA. They have stated that in common trade parlance, the product in question is known as 'Micro-manipulator system' and not as a 'standalone microscope' hence going by the general trade understanding the said product ought to be classified under HSN 9018 as "Instruments for Medical Science". The applicant has also stated that the explanatory notes to SH 9018 clearly mentioned that the instruments/apparatus under this heading may be equipped with optical device and that even the explanatory notes recognize the fact that just because the apparatus/device is equipped with an optical device i.e. inverted microscope in this case, cannot be a reason to take the said device out of this classification but would continue to be classified under CH- 9018.

13. The applicant has further submitted that the other heading that has been disputed for classification is 9011 of the Customs Tariff Act which covers "compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection" ; that the impugned item is not a microscope but a complete system designed to carry out micromanipulation function; that the Chapter notes and General Rules for interpretation also bears the classification of the said item under SH 9018. The applicant has drawn attention to the explanatory notes of SH 9011 which mentions that *"this heading covers microscopes used by amateurs, teachers, etc. and those for industrial use or for research laboratories, they remain classified in the heading whether or not they are presented with their optical elements (objectives, eyepieces, mirrors, etc.). This heading also includes universal microscopes, polarizing microscopes, metallurgical microscopes, stereoscopic microscopes, phase contrast and interference microscopes, reflecting microscopes, microscopes with drawing attachments; special microscopes for examining clock or watch jewels; microscopes with heating or freezing stages."* Explanatory notes to CH- 9011 also describe Special purpose microscopes covered under CH-9011 which include Trichinoscopes, Microscopes for measuring or checking operations in certain manufacturing processes, laboratory measuring microscopes for separation of spectrograms and surgical microscopes. The applicant has stated that each of the above different microscopes are standalone microscopes whose principal function is magnification, are used without any medical device and are used by amateurs and teachers and not by professionals like the medical devices under CH- 9018.

14. The applicant has submitted that the distinction between CH 9011 and 9018 is the CH 9011 essentially refers to stand-alone microscopes whose principal function is magnification; that any medical, surgical or veterinary device (such as micromanipulator) even if fitted or equipped with an optical device such as a microscope, continues to be classified under CH 9018 only as their main function is not magnification but to carry out specific medical and surgical procedures for which optical devices fitted or equipped with such devices may be used as an aid to the principal function of such device/instrument or apparatus and thus the function of magnification in such instruments fitted with optical devices, is only secondary in nature to the principal function of that medical, surgical or veterinary device/instrument or apparatus.

15. The appellant has made another submission on 16.06.2020 enclosing a judgement of CESTAT, Mumbai's Order No: A/88111-88116/2018 dated 14.1.2018 in a case of appeal filed by the applicant against the Commissioner of Customs(Import), ACC, Mumbai. The issue was that the appellant, M/s Shivani Scientific Instruments Pvt Ltd, claimed to have imported goods that are classifiable under heading no. 90189099 of the First Schedule to Customs Tariff Act, 1975 as 'instruments and appliances used in medical, surgical, dental or veterinary sciences, including scientigraphic apparatus, other electro medical apparatus and site testing instruments'; whereas it was the contention of the customs authorities that the goods are 'microscopes classifiable under heading no 90118000 of the First Schedule to Customs Tariff Act, 1975 in the residual sub-heading within the heading 'compound optical microscopes, including those for photo microgravity, cinephotomicrography or micro projection.' CESTAT, Mumbai after hearing both the sides ruled in favour of the applicant and reads as under:

"12. It is not the case of the customs authorities that the goods, as presented, is only a microscope. Neither is it their case that the microscope can, on its own, perform the tasks necessary for in vitro fertilisation. We have rendered the finding supra that the 'micromanipulator' is an essential implement for in vitro fertilisation for which the imported goods are to be utilised. The heading proposed by customs authorities is that of 'parts and accessories' under 'microscope'. In the context of the functions performed by 'micromanipulator', it can, by no stretch, be considered to be an accessory of 'microscope'. No distinction has been carved out between the two articles in the impugned order. In the absence of such distinction, the attempt to classify the goods, as presented, under heading no 90118000 of the First Schedule to Customs Tariff Act, 1975 suffers from inconsistency as 'microscope' cannot be an accessory of 'microscope'. Had it been the intent of the lower authorities to accord a separate and distinct classification to each of the two articles, it was necessary to ascertain the separate assessable values also. No exercise has been undertaken in that direction.

13. From the above, we conclude that the classification of the impugned goods under heading no 90118000 of First Schedule to the Customs Tariff Act, 1975 fails and, in the face of such failure and want of an alternative classification in the show cause notice, the declared classification must be accepted. We also do not find any reason to discard the declared classification as, contrary to the presumption of customs authorities, the impugned goods are instruments used for surgical therapy to overcome a physiological problem in a human body, viz., inability to conceive. It is not a diagnostic instrument that, in the medical field, a microscope is.

14. Thus, by application of rule 1 and rule 2 of General Interpretative Rules, we set aside the impugned order and allow the appeals."

Discussion & findings

16. We have considered the submissions made by the applicant in their application for advance ruling, the arguments/discussions made by their representative Shri N.K.Gupta at the time of personal hearing as well as the submission given by the applicant on 16.06.2020. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

17. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 GGST Act.

18. On going through the submission given by the applicant, it is found that they are engaged in the supply of medical equipment viz. 'Micro-manipulator System', which is "Intracytoplasmic Sperm Injection (ICSI) with ejaculated, epidymal or testicular spermatozoa used in Assisted Reproductive Technology Procedures' (hereinafter referred to as MM System). The applicant has stated that the Micro-manipulator system ('MM system' in short) is also known as IVF technology' in the medical world and in common/trade parlance, it is also called "Micro manipulator"; that globally micro-manipulator falls under the HSN 9018 but in India there is confusion as to whether it falls under HSN 9018 or 9011 and submitted that they are of the view that the product in question should be classified under CH-9018 and not under CH-9011. The applicant has put up the following question for determination before AAR:

" Whether 'Micro-manipulator system' which is "Intracytoplasmic Sperm Injection (ICSI) with ejaculated, epidymal or testicular spermatozoa used in Assisted Reproductive Technology Procedures' is classifiable under tariff heading 9018 or 9011, that is, what is the rate of tax on 'Micro-manipulator System'?"

19. In order to determine the classification of 'Micro-manipulator system', we will be required to refer to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 containing the sub-headings as well as the rates of Central Tax GST applicable to various goods, which are covered under schedules therein, as under:

- (i) 2.5 per cent. in respect of goods specified in Schedule I,
- (ii) 6 per cent. in respect of goods specified in Schedule II,
- (iii) 9 per cent. in respect of goods specified in Schedule III,
- (iv) 14 per cent. in respect of goods specified in Schedule IV,
- (v) 1.5 per cent. in respect of goods specified in Schedule V, and
- (vi) 0.125 per cent. in respect of goods specified in Schedule VI

Further, Explanation (iii) and (iv) of the said Notification read, as under:

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), 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.

20. We find that the applicant in his submission has focussed on the main function of his product 'micromanipulator' i.e. how it is used, what are the elements forming the micromanipulator system, how the Invitro fertilization procedure is conducted etc. They have given the definitions of various terms

(which form the part of the description of Sub-heading 9018) like instrument, appliance, apparatus, medical device etc. They have referred to Rules-1 and 3 of the General Rules for Interpretation and have stated that the aforementioned product falls under Sub-heading 9018, as their product has a specific entry in the said sub-heading since their product is an instrument/appliance used in medical sciences. They have also stated that the use of the microscope is merely incidental and the main function of the micromanipulator remains invitro fertilization, that inverted microscope is just one of the components of the apparatus as the entire process has to be done on minute particles and the said microscope is used merely as a visual aid and does not interfere with the main procedure and that even as per General rules for interpretation, impugned item fosters classification under CH- 9018. They have also relied on various judgements such as:

(a) In the case of Sanwar Aggarwal v/s The Commissioner of Customs (Port) reported in 2016(336) ELT 42(Cal)-2016(4) TMI621-Calcutta High Court, it was held that “a heading with a more specific description would prevail over a heading with a more general description as per Rule 3(a) of the General Rules for interpretation of the First Schedule to the Customs Tariff Act”.

(b) In the case of Flora Agrotech v/s the Commissioner of Central Excise, Vapi reported in 2015(319) ELT.333(Tri.-Ahmd)-2014(11)TMI114-CESTAT, Ahmedabad, it was held that “a specific entry in the CETA, 1985 has to be the proper classification than a general entry in Chapter 39 of the CETA, 1985 as per the rules of interpretation to the CETA, 1985.

(c) As per the judgement In the case of The Commissioner of Central Excise, Aurangabad v/s IVP ltd. reported in 2004 (173) ELT.128(Tri.-LB)-2004(9) TMI 135-CESTAT, New Delhi, a specific heading takes precedence over the general one.

The applicant have further stated in their submission that although globally micro-manipulator falls under the HSN 9018 but in India there is confusion as to whether it falls under HSN 9018 or 9011.

20.1 In view of the above, it appears that the applicant considers that the sub-heading 9018 provides a more specific description for their product ‘micromanipulator’. Therefore, in order to confirm as to whether the said product is actually covered under the said sub-heading 9018 or 9011, a reference is required to be made to the explanatory notes to the Harmonized Commodity Description and Coding System. But, prior to that, it is necessary to find out as to what a ‘Micro-manipulator’ is. We find that a **micromanipulator** is a device, which is used to physically interact with a sample under a microscope, where a level of precision of movement is necessary that cannot be achieved by the unaided human hand.

20.2 From the above, it can be derived that in the absence of a microscope, a micromanipulator cannot function i.e. a micromanipulator is dependent on the microscope to do the function that it is created for i.e. micromanipulation. However, since the applicant has time and again stressed on the point that the aforementioned product is correctly classifiable under Sub-heading 9018 and not under Sub-heading 9011 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), we need to examine each of the sub-headings in detail in order to find out under which sub-heading ‘micromanipulator’ would be correctly classified. Let us first examine the sub-heading 9011.

21. In order to examine the aspect as to whether the product ‘micromanipulator’ finds mention under sub-heading 9011, we would be required to go through the sub-heading 9011 as appearing in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), which reads as under:

9011 COMPOUND OPTICAL MICROSCOPES, INCLUDING THOSE FOR PHOTOMICRO-GRAPHY, CINEPHOTOMICROGRAPHY OR MICROPROJECTION

9011 10 00 - Stereoscopic microscopes

9011 20 00 - Other microscopes, for photomicrography, cinephotomicrography or microprojection

9011 80 00 - Other microscopes

9011 90 00 - Parts and accessories

21.1 Also, the explanatory notes to the Harmonized Commodity Description and Coding System with respect to Sub-heading 9011 (which covers all the products falling under the sub-heading No.9011) and may help us in understanding the products covered under the said heading are described hereunder:

“Whereas magnifiers of heading 90.13 have only a single stage of magnification of relatively low power, the compound optical microscope of this heading has a second stage of magnification for the observation of an already magnified image of the object.

A compound optical microscope normally comprises:

- (I) An optical system consisting essentially of an objective designed to produce a magnified image of the object, and an eyepiece which further magnifies the observed image. The optical system usually also incorporates provision for illuminating the object from below (by means of a mirror illuminated by an external or an integral light source), and a set of condenser lenses which direct the beam of light from the mirror on to the object.*
- (II) A specimen stage, one or two eyepiece-holder tubes (according to whether the microscope is the monocular or binocular type), and an objective holder (generally revolving).*

The whole is fixed to a stand to which a limb or bracket and various adjusting accessories may be attached.

This heading covers microscopes as used by amateurs, teachers etc. and those for industrial use or for research laboratories, they remain in the heading whether or not they are presented with their optical elements (objectives, eyepieces, mirrors etc.). The heading includes universal microscopes; polarising microscopes; metallurgical microscopes; stereoscopic microscopes; phase contrast and interference microscopes; reflecting microscopes; microscopes with drawing attachments; special microscopes for examining clock or watch jewels; microscopes with heating or freezing stages.

21.2 *Special purpose microscopes include:*

- (1) **Trichinoscopes**, a type of projection microscope, used for examining pork suspected of threadworm.*
- (2) **Microscopes for measuring or checking operations** in certain manufacturing processes; these may be of the conventional types or may be special models designed for fitting to machines. These appliances include comparison microscopes (for comparing the surface finish of precision articles with that of a standard article); co-ordinate reading microscopes (for locating the position of clock or watch parts); tool makers or other measuring microscopes (for checking threads, profiles, gear-cutters or cutting tool profiles, etc.); small portable microscopes for placing directly on the object to be examined (for the Brinell hardness test, for printers’ type, printing blocks etc.); centring microscopes (fitted on spindles of machine tools, instead of the tool, to bring the work into the correct position before working); etc. Some of the last mentioned instruments (e.g. those for checking the profile of worked parts), may be fitted with projection devices which are usually in the form of a small circular screen fitted on top of the microscope.*

- (3) **Laboratory measuring microscopes** e.g. for measuring line separation in spectrograms.
- (4) **Surgical microscopes for use by surgeons** when operating on a very small portion of the body. Their light sources result in independent light paths which provide a three-dimensional image.

This heading also covers:

- (A) **Microscopes for photomicrography and microscopes for cinephotomicrography.** In addition to the visual observation of the specimen, these also permit the photographic recording of magnified images. They may be composed either of a microscope permanently incorporating a photographic or cinematographic camera (usually specially designed for this purpose), or of a conventional microscope to which a conventional photographic or cinematographic camera can be temporarily fixed by means of a simple attachment.

Separately presented photographic or cinematographic cameras for photomicrography or cinephotomicrography are excluded (heading 90.06 or 90.07, respectively)

- (B) *Microscopes for microprojection with compound magnification. These are used for the horizontal or vertical projection of images magnified by a microscope incorporated in the apparatus. They are equipped with special microscopes enabling rapid change of focus, and are used in education, scientific and medical demonstration rooms, technical laboratories etc."*

21.3 We have gone through the above explanatory notes to the Harmonized Commodity Description and Coding System with respect to Sub-heading 9011 (which covers all the products falling under the sub-heading No.9011). We have also gone through the details/functions of the various microscopes enlisted in the above explanatory notes. The definition of a micromanipulator itself speaks about it being a device, which is used to physically interact with a sample under a microscope, where a level of precision of movement is necessary that cannot be achieved by the unaided human hand. This means that in the absence of a microscope, a micromanipulator cannot function i.e. a micromanipulator is dependent on the microscope to do the function that it is created for i.e. micromanipulation. From the above, it can be seen that microscope is the primary and essential constituent of micromanipulator. Further, looking at the procedure of IVF described by the applicant in his submission at para-4 above, it appears that the entire procedure needs precision and perfection, for which a microscope with extremely powerful objective lenses and high magnification would be required. In view of the above, it appears that the 'micromanipulator' is nothing but a surgical microscope and should be rightly classified under the heading of 'microscope'. Further, Rule 2 of the General Rules for Interpretation to the First Schedule to the Customs Tariff Act, 1975(51 of 1975) reads, as under:

"2(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential characteristic of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

2(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3."

Also, as per the explanatory notes to Harmonized Commodity Description and Coding System for Chapter, 90, the classification of incomplete or unfinished machines, apparatus etc. is to be done as under:

(II) *Incomplete or unfinished machines, apparatus etc.*
(See General Interpretative Rule 2(a))

Provided they have the essential character of the complete or finished article, incomplete or unfinished machines, appliances, instruments or apparatus are classified with the complete or finished articles (for example, a photographic camera or a microscope presented without it's optical elements or an electricity supply meter without it's totalling device)."

21.4 Further, Rule 3 of the General Rules for Interpretation to the First Schedule to the Customs Tariff Act, 1975(51 of 1975) reads, as under:

3. When--- for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be affected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as the criterion is applicable.

21.5. From the submission given by the applicant, the only ground which the applicant has given for 'micromanipulator being classified in Sub-heading 9018 is that it is a instrument/appliance or apparatus used in the medical sciences, however, not much details vis-a-vis classification have been provided. Thus, the said classification has been entirely based on a general entry '*instruments and appliances used in medical science*'. They have also gone on to describe in great detail, the procedure followed for IVF but have failed to justify how their product merits classification under Sub-heading 9018. However, as discussed above, since the procedure of micromanipulation cannot be carried out in the absence of a microscope and that the micromanipulator would be an incomplete product without a microscope, it can safely be concluded that the 'micromanipulator' is nothing but a microscope and should be rightly covered under the head of 'microscope'. Therefore, in view of the above discussions and in light of Rule 3(a) of the General Rules for Interpretation to the First Schedule to the Customs Tariff Act, 1975(51 of 1975), which very clearly stipulates that a specific description shall be preferred to headings providing a more general description, it can be concluded that in the instant case, the heading 'microscope' provides a more specific description of the product 'micromanipulator' than the general description given in sub-heading 9018. Therefore, we conclude that the said product would be rightly classified under 'microscope'. Also, in view of the above, the following judgements relied upon by the applicant, which specifically states that a more specific description would prevail over a heading with a more general description as per Rule 3(a) of the General Rules for interpretation of the First Schedule to the Customs Tariff Act, are very much applicable in the instant case:

(a) In the case of Sanwar Aggarwal v/s The Commissioner of Customs(Port) reported in 2016(336) ELT 42(Cal)-2016(4) TMI621-Calcutta High Court, it was held that "a heading with a more specific description would prevail over a heading with a more general description as per Rule 3(a) of the General Rules for interpretation of the First Schedule to the Customs Tariff Act.

(b) In the case of Flora Agrotech v/s the Commissioner of Central Excise, Vapi reported in 2015(319) ELT.333(Tri.-Ahmd)-2014(11)TMI114-CESTAT, Ahmedabad, it was held that “a specific entry in the CETA, 1985 has to be the proper classification than a general entry in Chapter 39 of the CETA, 1985 as per the rules of interpretation to the CETA, 1985.

(c)As per the judgement In the case of The Commissioner of Central Excise, Aurangabad v/s IVP ltd. reported in 2004 (173) ELT.128(Tri.-LB)-2004(9) TMI 135-CESTAT, New Delhi, a specific heading takes precedence over the general one.

22. Now, the only thing that needs to be ascertained under the above circumstances is as to under which microscope, a ‘micromanipulator’ would be covered? In the instant case, as submitted by the applicant, the micromanipulators are used to carry out the procedure of invitro fertilization (IVF) under a microscope. From a plain reading of the procedure of IVF described by the applicant in his submission (please refer para-4), it appears that the entire procedure needs precision and perfection for which a microscope with extremely powerful objective lenses and high magnification would be required. As per the explanatory notes mentioned above, the Compound Optical Microscope consists of an objective designed to produce a magnified image, an eyepiece which further magnifies the observed image, has a provision to illuminate the object from below (by means of a mirror illuminated by a light source) and a set of condenser lenses which directed the beam of light onto the object. Thus, the micromanipulator would be rightly classified under the head ‘Compound Optical Microscope’ falling under Sub-heading 9011. But, we need to find out as to under which specific microscope covered under the Sub-heading 9011 would micromanipulator be classified. From the procedure of micromanipulation described, it appears that the same can be compared to surgery. As can be seen from the explanatory notes to the Harmonized Commodity Description and Coding System, surgical microscopes find mention under the Sub-heading 9011 and tariff item no.90118000 i.e. other microscopes. Surgical microscopes are described as under:

“Surgical microscopes for use by surgeons when operating on a very small portion of the body. Their light sources result in independent light paths which provide a three-dimensional image.”

22.1 From the above, it can be concluded that the said product would be rightly classifiable as ‘Surgical microscope’ (Tariff item No.90118000) under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) covered under the Sub-heading “Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection.”

23. Next, we are required to examine the aspect as to whether the product ‘micromanipulator’ finds mention under sub-heading 9018 for which we would be required to go through the sub-heading 9018 as appearing in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), which reads as under:

9018 INSTRUMENTS AND APPLIANCES USED IN MEDICAL, SURGICAL, DENTAL OR VETERINARY SCIENCES, INCLUDING SCIENTIGRAPHIC APPARATUS, OTHER ELECTROMEDICAL APPARATUS AND SIGHT-TESTING INSTRUMENTS

Electro-diagnostic apparatus (including apparatus for functional exploratory examinations or for checking physiological parameters) :

9018 11 00 -- Electro-cardiographs

9018 12 -- Ultrasonic scanning apparatus :

9018 12 10 --- Linear ultrasound scanner

9018 12 90 --- Other

9018 13 00 -- Magnetic resonance imaging apparatus

9018 14 00 -- Scientigraphic apparatus
 9018 19 -- Other :
 9018 19 10 --- Electro encephalographs
 9018 19 20 --- Echo cardiograph
 9018 19 90 --- Other
 9018 20 00 - Ultra-violet or infra-red ray apparatus
 - Syringes, needles, catheters, cannulae and the like :
 9018 31 00 -- Syringes, with or without needles
 9018 32 -- Tubular metal needles and needles for sutures :
 9018 32 10 --- Needles for suture
 9018 32 20 --- Hollow needles for injection, aspiration, biopsy and transfusion
 9018 32 30 --- Hilerio venus fistula needles
 9018 32 90 --- Other
 9018 39 -- Other :
 9018 39 10 --- Catheters (for urine, stool)
 9018 39 20 --- Cardiac catheters
 9018 39 30 --- Cannulae
 9018 39 90 --- Other
 - Other instruments and appliances, used in dental sciences :
 9018 41 00 -- Dental drill engines, whether or not combined u 7.5% -on a single
 base with other dental equipment
 9018 49 00 -- Other
 9018 50 - Other ophthalmic instruments and appliances :
 9018 50 10 --- Ophthalmoscopes.
 9018 50 20 --- Tonometers
 9018 50 30 --- Ophthalmic lasers
 9018 50 90 --- Other
 9018 90 - Other instruments and appliances :
 -- Diagnostic instruments and apparatus :
 9018 90 11 ---- Instrument and apparatus for measuring blood pressure
 9018 90 12 ---- Stethoscopes
 9018 90 19 ---- Other
 ---- Surgical tools :
 9018 90 21 ---- Bone saws, drills and trephines
 9018 90 22 ---- Knives, scissors and blades
 9018 90 23 ---- Forceps, forcep clamps, clips, needle holders,
 -introducers, cephalotribe bone holding and other holding
 instruments
 9018 90 24 ---- Chisel, gauges, elevators, raspatones osteotome, craniotome, bone
 cutters

9018 90 25 ---- Retractors, spatulaprobes, hooks dialators, sounds, mallets

9018 90 29 ---- Other

----- Renal dialysis equipment, blood transfusion apparatus and haemofiltration

 Instruments.

9018 90 31 ---- Renal dialysis equipment(artificial kidneys, kidney machines and dialysers)

9018 90 32 ---- Blood tranfusion apparatus

9018 90 33 ---- Haemofiltration instruments.

----- Anesthetic apparatus and instruments, ENT precision instruments, acupuncture apparatus, and endoscopes :

9018 90 41 ---- Anesthetic apparatus and instruments.

9018 90 42 ---- ENT precision instruments.

9018 90 43 ---- Acupuncture apparatus

9018 90 44 ---- Endoscopes

----- Other :

9018 90 91 ---- Hilerial or venous shunts

9018 90 92 ---- Baby incubators

9018 90 93 ---- Heart-lung machines

9018 90 94 ---- Defibrillators

9018 90 95 ---- Fibrescopes

9018 90 96 ---- Laproscopes.

9018 90 97 ---- Vetrasonic lithotripsy instruments

9018 90 98 ---- Apparatus for nerve stimulation

9018 90 99 ---- Other

23.1 Also, the explanatory notes to the Harmonized Commodity Description and Coding System with respect to Sub-heading 9018 (which covers all the products falling under the sub-heading No.9018) and may help us in understanding the products covered under the said heading are described hereunder. Portions of notes pertaining to Dental instruments and appliances and Veterinary instruments and appliances have not been described, as micromanipulators would not, by any stretch of imagination, be covered under these headings. Further, parts and accessories have also not been described as they pertain to objects like electro-diagnostic ultrasonic scanning apparatus (SH-9018.12), electro-diagnostic magnetic resonance imaging apparatus (SH-9018.13) and electro-diagnostic apparatus (SH-9018.14). The explanatory notes read as under:

“This heading covers a very wide range of instruments and appliances which in the vast majority of cases are used only in professional practice e.g. (by doctors, surgeons, dentists, veterinary surgeons, midwives) either to make a diagnosis, to prevent or treat an illness or to operate etc, Instruments and appliances for anatomical and autoptic work, dissection etc. are also included as are under certain conditions, instruments and appliances for dental laboratories. The instruments of the heading may be made of any material (including precious metals).

The heading does not cover:

- (a) *Sterile catgut and other sterile material for surgical sutures, sterile laminaria and sterile laminaria tents.(heading 30.06).*

- (b) *Diagnostic or laboratory reagents of heading 38.22.*
- (c) *Hygienic or pharmaceutical articles of heading 40.14.*
- (d) *Laboratory, pharmaceutical or hygienic glassware of heading 70.17.*
- (e) *Sanitary ware of base metal (in particular, headings 73.24, 74.18 and 76.15).*
- (f) *Manicure or pedicure sets and instruments (heading 82.14).*
- (g) *Carriages for disabled persons (heading 87.13).*
- (h) *Spectacles, goggles and the like, corrective, protective or other (heading 90.04).*
- (i) *Photographic cameras (Heading 90.06)unless incorporated permanently in the instruments or appliances of this heading.*
- (j) *Microscopes etc. of heading 90.11 or 90.12.*
- (k) *Disc calculators used for calculating lung function, body mass index, etc. of heading 90.17.*
- (l) *Mechano-therapy, oxygen therapy, ozone therapy, artificial respiration, aerosol therapy, message apparatus etc. of heading 90.19.*
- (m) *Orthopaedic appliances, artificial parts of the body and fracture appliances, including those for animals (heading 90.21).*
- (n) *X-ray apparatus (whether medical or not) of heading 90.22.*
- (o) *Clinical thermometers (Heading 90.25).*
- (p) *Instruments and appliances used in laboratories to test blood, tissue fluids, urine etc., whether or not such tests serve in diagnosis (generally heading 90.27).*
- (q) *Medical or surgical furniture, including that for veterinary use (operating tables, examination tables, hospital beds, dentists chair not incorporating dental appliances of this heading etc. (heading 94.02).*

23.2 *On the other hand, this heading includes specialised measuring instruments used exclusively in professional practice, such as cephalometers, dividers for measuring cerebral lesions, obstetrical pelvimeters etc. It should also be noted that a number of the instruments used in medicine or surgery (human or veterinary) are, in effect, tools (e.g. hammers, mallets, saws, chisels, gouges, forceps, pliers, spatula, etc.), or articles of cutlery (scissors, knives, shears etc.). Such articles are classified in this heading only when they are clearly identifiable as being for medical or surgical use by reason of their special shape, the ease with which they are dismantled for sterilisation, their better quality manufacture, the nature of the constituent metals or by their get-up (frequently packed in cases or boxes containing a set of instruments for a particular treatment: childbirth, autopsies, gynaecology, eye or ear surgery, veterinary cases for parturition etc.. The instruments and appliances classified here may be equipped with optical devices; they may also make use of electricity, either as motive power or for transmission, or as a preventive, curative or diagnostic agent. This heading also covers instruments and appliances operated by laser or other light or photon beam processes and ultrasonic instruments and appliances.*

INSTRUMENTS AND APPLIANCES FOR HUMAN MEDICINE AND SURGERY:

This group includes:

- (A) *Instruments which may be used under the same names for several purposes(for example):*
 - (i) *Needles (for sutures, ligatures, vaccination, blood tests, hypodermic needles etc.)*
 - (ii) *Lancets (for vaccination, blood letting etc.).*
 - (iii) *Trocars (for puncturing) (gall bladder, general purpose etc., types).*
 - (iv) *Surgical knives and scalpels of all kinds.*
 - (v) *Sounds (prostatic, bladder, urethral etc.).*
 - (vi) *Specula (nasal, mouth, laryngeal, rectal, vaginal etc.)*
 - (vii) *Mirrors and reflectors (for examining eye, larynx, ear etc.).*
 - (viii) *Scissors, shears, pliers, forceps, chisels, gouges, mallets, hammers, saws, scrapers, spatula.*

- (ix) Cannulae, catheters, suction tubes etc.
- (x) Cauteries (thermo, micro, galvano etc.).
- (xi) Tweezers, dressing, swab, sponge or needle holders (including radium needle holders).
- (xii) Retractors (lip, jaw, abdominal, tonsil, liver etc.).
- (xiii) Dilators (laryngeal, urethral, oesophageal, uterine etc.).
- (xiv) Wire guides used for the placement for catheters, needles, tissue dilators, endoscopes, and atherectomy devices.
- (xv) Clips, (suture etc).
- (xvi) Syringes (glass, metal, glass and metal, plastics etc.) of all kinds e.g. injection puncture, anaesthesia, irrigation, wound washing, .suction (with or without pump), eye, throat, uterine, gynaecological etc.
- (xvii) Surgical staplers for inserting staples to close a wound.

(B) Special Diagnostic instruments and apparatus:

These include:

- (i) Stethoscopes.
- (ii) Instruments to measure rate of breathing (to determine basal metabolism.).
- (iii) Sphygmomanometers, tensiometers, oscillometers,(to measure blood pressure).
- (iv) Spirometers (to assess lung capacity).
- (v) Cephalometers.
- (vi)** Pelvimeters.

(C) Ophthalmic instruments: These fall into various categories:

- (i) Surgical instruments** such as corneal trephines, keratomes.
- (ii) Diagnostic instruments** such as ophthalmoscopes; binocular loupes with head bands and binocular type microscopes, consisting of a microscope, an electric lamp with a slit, and a head rest, the whole being mounted on an adjustable support, for the examination of the eyes; tonometers(for testing the intra-ocular tension) eye specula.
- (iii) Orthoptic or sight setting apparatus** including ambyloscopes, retinoscopes, skiascopes, strabometers, keratometers, keratoscopes, eye measurement meters designed to measure the distance between the pupils, trial cases (of lenses) and trial frames (for carrying the trial lenses), optometric scales, test charts. However, optometric scales and charts on paper, paperboard or plastics, used for colour perceptions are excluded. (Chapter 49).

This heading also covers electrically heated compresses for the eyes, and electromagnets designed for removing metallic particles from the eyes.

(D) Ear instruments e.g. auriscopes. However tuning forks, whether or not for medical use are excluded (heading 92.09).

(E) Anaesthetic apparatus and instruments (Face masks, face-piece harness, intratracheal tubes etc.).

(F) Instruments for nose, throat or tonsil treatment: clamps (for straightening the nasal cartilage); transillumination apparatus (for sinuses and nasal fossae); tonsilotomes, guillotines; direct laryngoscopes, laryngeal brushes etc.

(G) **Pharyngeal, oesophageal, stomach or tracheotomy instruments:** oesophagoscopes, bronchoscopes, stomach pumps, intubation tubes etc.

(H) **Urinary canal or bladder instruments:** urethromes, lithotripsy instruments, bladder grid suction apparatus, instruments for prostratotomy.

(I) **Artificial kidney-dialysis apparatus.**

(J) **Gynaecological or obstetrical instruments:** vaginal retractors; hysterectomy instruments; Obstetrical stethoscopes; specialised optical instruments for examination of the genital organs; forceps; perforators; embryotomy instruments (for dissection of the foetus); cephalotribs and cranioclasts (instruments to crush the head of a child which has died in the uterus); instruments for taking internal measurements etc.

(K) **Portable pneumo thorax apparatus, blood transfusion apparatus, artificial leeches.** The heading also covers sterile hermetically sealed containers of plastics, from which air has been evacuated but containing a small quantity of anti-coagulant and fitted with an integral donor tube and a phlebotomy needle, used for the collection, storage and transfusion of whole human blood. However, special blood storage bottles of glass are excluded (heading 70.10).

(L) **Chiropodists electric grinders.**

(M) **Acupressure needles:** gold, silver, steel.

(N) **Endoscopes:** gastroscopes, thoracoscopes, peritoneoscopes, bronchoscopic telescopes, cystoscopes, urethoscopes, resectoscopes, cardioscopes, colonoscopes, nephroscopes, laryngoscopes, etc. Many of these have an operating channel large enough to perform surgery via remote controlled instruments. However, endoscopes for non-medical purposes (fibroscopes) are excluded (heading 90.13).

(O) **Apparatus incorporating an automatic data processing machine** and designed solely for calculating the dose and distribution of therapeutic radiation.

(P) **Hyperbaric chambers** (also known as decompression chambers) which are specially equipped pressure vessels to administer oxygen at elevated atmospheric pressure levels. They are used for the treatment of conditions such as decompression sickness, air embolism, gas gangrene, carbon monoxide poisoning, refractory osteomyelitis, skin grafts and flaps, actinomycosis, and exceptional blood loss anaemia.

(Q) **Lamps** which are specially designed for diagnostic, probing, irradiation etc. purposes. Torches, such as those in the shape of a pen are excluded (heading 85.13) as are other lamps which are not clearly identifiable as being for medical or surgical use (heading 94.05).

(IV) SCINTIGRAPHIC APPARATUS:

These are apparatus which scans parts of the body and creates image of an organ or record of its functioning. It includes apparatus incorporating a scintillation counter the data from which is converted into analogue signals for

the purpose of making medical diagnosis (e.g. gamma camera, scintillation scanner).

(V) OTHER ELECTRO-MEDICAL APPARATUS:

This heading also covers electro-medical apparatus for preventive, curative or diagnostic purposes, other than X-ray etc. apparatus of heading 90.22. This group includes:

(1) Electro-diagnostic apparatus which include:

- (i) **Electro-cardiographs** (apparatus, which by means of currents produced by contractions of the cardiac muscles, records heart movements as electrocardiograms.).
- (ii) **Phonocardiographs** (specially designed to register heart noises as phonocardiograms; they may also be used as electrocardiographs).
- (iii) **Cardioscopes** (used in conjunction with the two preceding instruments to enable simultaneous observation of cardiograms and phonocardiograms)
- (iv) **Rheocardiographs** (electrical apparatus for measuring changes of electrical resistance due to the functioning of the heart).
- (v) **Electroencephalographs** (for examination of the brain).
- (vi) **Electrosphygmographs** (for registering artificial pressure and volume).
- (vii) **Electrotonographs** (for registering variations in arterial, intravenous or intracardial pressure).
- (viii) **Electroretinographs** (for measuring strain in the retina).
- (ix) **Audiometers and similar apparatus** (for hearing tests based on frequency variations).
- (x) **Diagnostic apparatus** incorporating or operating in conjunction with an automatic data processing machine for processing and visualising clinical data etc.).
- (xi) **Ultrasonic diagnostic equipment** used for representation of organs, e.g. on a display tube, by means of ultrasonic waves.
- (xii) **Nuclear Magnetic Resonance (NMR) apparatus** used to represent the characteristics of tissues and organs inside the human body, using the magnetic properties of body atoms, such as hydrogen atoms.

(2) Electrotherapy apparatus: Apart from its use in diagnosis, this apparatus is employed to treat diseases such as neuritis, neuralgia, hemiplegia, phlebitis, endocrinal anaemia. Certain of these appliances can be combined with electro-surgical instruments referred to paragraph (7) below.

(3) Iono therapy apparatus used to administer active medicaments (sodium or lithium salicylate, potassium iodide, histamine etc.) through the skin by the aid of an electric current.

- (4) **Diathermy apparatus** to treat certain diseases which require heat (e.g. rheumatism, neuralgia, dental ailments). These operate by the use of high frequency (shortwave, ultrasonic, ultra shortwave etc.) currents, and employ electrodes in a variety of forms (e.g. plates, rings, tubes).
- (5) **Electric shock treatment apparatus** to treat mental or nervous diseases.
- (6) **Cardiac defibrillators** for defibrillating the heart by the application of electric current.
- (7) **Electro-surgical apparatus.** These utilise high frequency electric currents, the needle, probe, etc., forming one of the electrodes. They can be employed to cut tissues (electrocuting) with a lancet (electric lancet), or to coagulate the blood (electrocoagulation). Certain combined instruments may, by the use of control pedals, be made to act interchangeably as electrocutters or electrocoagulators.
- (8) **Actinotherapy apparatus:** These employ radiations within, or more generally, just outside, the visible spectrum (infra-red, ultra-violet) for treatment of certain diseases or for diagnostic purposes (special lighting to reveal skin diseases). This apparatus generally incorporates lamps though infra-red apparatus may be fitted with heating resistances or heating panels with reflectors.
- (9) **Artificial incubators for babies:** Basically these consist of a transparent cubicle of plastics, electrical heating equipment, safety and warning devices, and oxygen and air filtering and regulating apparatus. In most cases they are mounted on a trolley and have built-in baby scales.

Cases containing electrodes or other devices for use with the apparatus described above are also included in this group. This heading also excludes prenatal listening apparatus for non-medical use of heading 85.18 (see the explanatory notes to that heading)."

23.3 We have gone through the above explanatory notes to the Harmonized Commodity Description and Coding System with respect to Sub-heading 9018 (which covers all the products falling under the sub-heading No.9018). We have also gone through the entire list of all the instruments/apparatus/appliances listed therein covered under the Sub-heading No.9018. The product 'micromanipulator' does not find mention in the said list. Now, since micromanipulator does not appear in the list of instruments/apparatus/appliances listed above, it can be safely concluded that the said product is not classified/ classifiable under Sub-heading No.9018 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Thus it cannot be inferred on the basis of a general entry in the Sub-heading '*Instruments and appliances used in medical science*' that a product which the applicant construes as an instrument/ appliance used in the field of medical science should find a specific entry within that sub-heading. In view of the above, we can safely conclude that the product 'micromanipulator' is rightly classified under the **Sub-heading 9011 - Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection.**

23.4 Further, on going through the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017, it is found that the said entry of compound optical microscopes (SH-9011) appears at entry No.184 of Schedule-IV of the said notification. The entry appears, as under:

S.No.	Chapter / Heading/ Subheading/ Tariff item	Description of Goods
184	9011	Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection.

However, the said notification has been amended vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017 vide which entry No.184 has been omitted with effect from 15.11.2017 and an entry No.411F has been inserted for the same product in Schedule-III of the said notification with effect from 15.11.2017. The same reads, as under:

S.No.	Chapter / Heading/ Subheading/ Tariff item	Description of Goods
411F	9011	Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection.

23.5 In view of the above, we come to the conclusion that ‘micromanipulator system’ falls under the Tariff item No.9011 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). The same is covered under Entry No.184 of Schedule-IV of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 upto 14.11.2017 and covered under Entry No.411F of Schedule-III of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 (as amended) from 15.11.2017 onwards. The rate of GST applicable would be 28% (14% SGST + 14% CGST) upto 14.11.2017 and 18% GST (9% SGST + 9% CGST) with effect from 15.11.2017.

24. In view of the discussions as detailed above, we rule as under –

R U L I N G

The product ‘Micromanipulator system’ manufactured and supplied by M/s. Shivani Scientific Industries pvt.ltd. is classifiable under Tariff item no.9011 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). The said product is covered under Entry No.184 of Schedule-IV of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 (upto 14.11.2017) and under Entry No.411F of Schedule-III of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 (as amended) (w.e.f. 15.11.2017) issued under the CGST Act, 2017. Applicability of the rate of GST on the said product would be 28% (14% SGST + 14% CGST) upto 14.11.2017 and 18% GST (9% SGST + 9% CGST) with effect from 15.11.2017.

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 02.07.2020.