


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/80/2020
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/58)
 Date: 17.09.2020

Name and address of the applicant	:	M/s Shukla Ashar Impex Pvt. Ltd., 205, Nr. Vivekananda Statue, Yagnik Road, Rajkot-360021 (Gujarat)
GSTIN of the applicant	:	24AAJCS4670G1Z9
Date of application	:	01.11.2019
Clause(s) of Section 97(2) of CGST/IGST Act, 2017, under which the question(s) raised.	:	(a) Classification of goods and/or services or both.
Date of Personal Hearing	:	17.08.2020 (Through Video Conferencing)
Present for the applicant	:	Rushi Ashokbhai Upadhyay

B R I E F F A C T S

The applicant, M/s. Shukla Ashar Impex Private Limited, 205, Nr. Vivekananda Statue, Yagnik Road, Rajkot (herein after referred to as the “applicant” for the sake of the brevity) is engaged in the manufacturing of Mosquito Repellent, named it as “AAYUDH- MOSX”, which is their brand name. They are manufacturing the above item for the purpose of use on the skin toward off mosquitoes.

2. For the purpose of manufacturing the product, they have used all the natural plant extracts. They have applied for the certification from Ayurvedic Department and the same has been granted. (Certificate from Ayurvedic Department attached herewith).

Section 3(a) of Drugs & Cosmetics Act, 1940 states that ‘Ayurvedic, Siddha or Unani drugs includes all medicaments intended for internal or external use (Diagnosis) mitigation or prevention of diseases or disorder in human beings, animals and manufactured exclusively in accordance with the formulae described in authoritative books of ayurvedic/ siddha and Unani Tibb system of medicine, specified in the First Schedule.

3. On going through the HSN specified for the Mosquito Repellent, they have found 30049011 for Ayurvedic Medicaments. However, for Mosquito Repellent, they have also found HSN 38089191.

4. Now, they are not in a position to classify the same under which of the heading same may be classified and, therefore, they have filed this Advance Ruling application to avoid the future litigations and long appeal procedures.

Grounds of Application:

5. They are going to start the manufacturing of the above product and as earlier stated that they are classifying the same under the tariff heading 3004 as they are considering it as a 'Ayurvedic product' and classifiable under the tariff sub heading 3004.

6. As they all know that main aim of GST is One Nation, One Tax and One Market and which will create the healthy competition in the market and every seller is selling the same product at same price so that the consumer will get benefit of the same.

7. Manufacturing Industry is very well established in India, more so in case of Mosquito Repellent and specifically in Gujarat, and considering the aim of GST any difficulty in operating the business should be nullified as early as possible and therefore filling this application

8. They have narrated some of the facts of the Product AAYUDH-MOSX (i.e. Aayurvedic Mosquito Repellent) as under:

(i) ***Product Description:***

AAYUDH-MOSX is a certified Ayurvedic mosquito repellent (certification attached as annexure-A). Unlike other mosquito repellents in the market, AAYUDH-MOSX is made from all-natural plant extracts and does not contain DEET (N, N-Diethyl-meta-toluamide). Users can simply spray AAYUDH-MOSX on exposed skin and surrounding areas toward off mosquitoes. AAYUDH-MOSX is safe on sensitive skin and does not sweat easily like other cream-based repellents. In addition, AAYUDH- MOSX is safe for new-borns and infants and safe upon accidental ingestion.

(ii) ***Ingredients used to manufacture-AAYUDH-MOSX:***

- I. Coconut extracts: (Cocos Nucifera): Coconut oil is also a main ingredient in Ayurvedic oils used for Mycobacteris TB, Topical Applications.
- II. Sugar Cane Extracts: Saccharum officinarum.
- III. Corn Extracts: Ref: Protection of Environment, EPA on Alkanolamines and Esters.
- IV. Lemongrass Oil: Cymbopogon Citratus.
- V. Citronella Oil.

- VI. EDTA: Could be used as an Active Excipient.
- VII. Water.

Product AAYUDH-MOSX is manufactured from above Ingredients and it can be seen that all the ingredients are natural extracts which is also certified by the Food and Drug Control Department, Gandhinagar. Form 25-D i.e. Licence to Manufacture Ayurvedic drugs and List of Ingredients certified by the said Department are attached herewith as Annexure-B. The said licence has been issued under the Drugs and Cosmetics Act, 1940.

(iii) **Process in Brief:**

The Corn, Sugarcane and Coconut Extracts are blended in a sequence at varied temperatures and pressures to ensure an even mix. Palm Fatty Oils help blending. EDTA could be added as a Chelating agent. Essential oils, namely lemon grass oil and citronella oil, may then be added as per need of application for added affectivity to the mix. Water is added to ensure good solubility and evenness along with Sugarcane and the Coconut processed extracts. The process is finally ended with a process for binding these molecules into colloids and converting them into Nano particles of 2-50 nano meters for far greater affectivity.

This would form a totally natural, non-toxic, biodegradable and a non-carcinogenic, food grade and Ayurved certified (certification attached) mosquito repellent, AAYUDH-MOSX.

9. Relevant Portion of Chapter 3004 reproduced hereunder:

30.04 MEDICAMENTS (EXCLUDING GOODS OF HEADING 30.02, 30.05 OR 30.06): CONSISTING OF TWO OR MORE CONSTITUENTS WHICH HAVE BEEN MIXED TOGETHER FOR THERAPEUTIC OR PROPHYLACTIC USES, PUT UP IN MEASURED DOSES (INCLUDING THOSE IN THE FORM OF THOSE IN THE FORM OF TRANSDERMAL ADMINISTRATION SYSTEMS) OR IN FORMS OR PACKAGING FOR RETAIL SALE.

3004.90— Other

---of Ayurvedic, Unani, Homeopathic, Siddha or Bio-chemic systems Medicaments-put up for Retail Sale;

30049011— of Ayurvedic System.

The heading also excludes:

(a)-----

(b)-----

(c)-----

(d)-----

(e) Insecticides, disinfectants, etc., of heading 38.08, not put for internal or external use as medicines.

The heading includes:

Mixed medicinal preparations such as those listed in an official pharmacopoeia, proprietary medicines, etc., including those in the form of gargles, eye drops, ointments, liniments, injections counter-irritant and other preparation not falling in heading 30.02, 30.05 or 30.06”

10. Product AAYUDH-MOSX is a medicinal preparation and ingredients is also mentioned in the book “BHAVA PRAKASHA”. Book is popularly known as “BHP”. BHP book reference is also given by the Food and Drug Control Department, Gandhinagar while granting the Ayurvedic License for their said product. (Refer to Annexure-B-Page No.22). BHP Book is also mentioned at Schedule 1 against Serial Number 11 of the Drugs and Cosmetics Act, 1940 (Schedule is attached as Annexure C) and therefore it can be said that it is authoritative book and all the ingredients mentioned in the book are Aayurvedic and, therefore, their product contains the ingredients mentioned in the said book and therefore it can be said that product AAYUDH-MOSX is AAYURVEDIC medicaments and properly classifiable under heading 3004.

11. Further, they have submitted Study of Citronella leaf (One of the ingredients used to manufacture AAYUDH-MOSX) based herbal mosquito repellents using natural binders authored by renowned personalities in the Technology and Research organisations. It has been said in the said article that Citronella grass has been serving from years as a mosquito repellent in the field of ancient and modern medicine. **Commercially available mosquito repellents are chemical based and disastrous to human health.** It has been concluded in the said article that addition of Citronella oil showed lesser residual percentage with average burning time of 20 minutes and can be considered as good mosquito repellent.

12. As regards Lemongrass (One of the ingredients used to manufacture AAYUDH-MOSX), they have submitted research paper on ‘Investigation of the Repellence Activity of BIO-OUT, A natural Mosquito Repellent’, as Annexure E. In the said research paper, Lemongrass essential oil has been investigated for its repellent activity against mosquitoes. It has been concluded from the tests performed that the results obtained show that lemon grass essential oil provide great protection against mosquitoes like that of DEET based ones. To make a good natural repellent that will last up to 6 hours per application it is hoped that mixing lemon grass oil with other herbal oils like neem, eucalyptus, etc.. It is recommended in the said research paper that people should consider the use of lemon grass oil as mosquito repellent **apart from using chemical based repellents.**

13. Applicant has also got tested the said product with Saurashtra University, Central of Excellence, Government of Gujarat and they have studied Herbal Nano Particles manufactured by applicant and it has been concluded that Herbal Nano Particles manufactured by Applicant based computational docking and simulation studies against mosquito protein shows it can work as Repellent and Larvicide both. (Research study also submitted by them, as Annexure-F).

14. Relevant Portion of Chapter 38.08:

38.08 INSECTICIDES, RODENTICIDES, FUNGICIDES, HERBICIDES, ANTI - SPROUTING PRODUCTS AND PLANT-GROWTH REGULATORS, DISINFECTANTS AND SIMILAR PRODUCTS, PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE OR AS PREPARATIONS OR ARTICLES (FOR EXAMPLE, SULPHUR-TREATED BANDS, WICKS AND CANDLES, AND FLY-PAPERS) (+).

15. They have also referred Chapter heading 3808 91 91 Repellents for insects such as flies, Mosquito which is being manufactured from various chemicals, whereas products manufactured by applicant is not being manufactured from any chemicals. The product does not kill the flies or mosquito, it just prevents. Hence, it cannot be considered as insecticide or pesticide and does not cover under insecticides Act, 1940. The products manufactured by them are as per the ingredients prescribed in "BHAVA PRAKASHAN" authoritative books under Ayurvedic systems.

16. Further, they have referred Chapter Note 1 to Chapter 38 under which some products have been excluded from Chapter 38. At (d) of Chapter Note 1 to Chapter 38, it has been mentioned that this chapter does not cover medicaments falling under Chapter heading No.3003 or 3004. Further in case of M/s Monita Containers V CCE (2007) 213 ELT 262, CESTAT held that chapter note prevails over heading of chapter. The products manufactured by applicant falls under 3004 90 11- Ayurvedic, Unani, Homeopathic, Siddha or Bio-Chemic Systems Medicaments-put up for retail sales (of Ayurvedic Systems). Hence, cannot be covered under Chapter heading 38089191 by virtue of (d) of Chapter Note 1 of Chapter 38.

17. Further, they have referred the HSN 38.08 and it has been described as under:

"This heading covers a range of products (other than those having the character of medicaments, including veterinary medicaments-heading 30.03 or 30.04) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classifiable here.

These insecticides, disinfectants, herbicides, fungicides etc. are applied by spraying, dusting, sprinkling, coating, impregnating etc. or may necessitate combustion.

They achieve their results by nerve poisoning, by stomach-poisoning, by asphyxiation or by odour, etc.

The heading further covers anti-sprouting products and plant-growth regulators intended to inhibit or promote physiological processes in plants. Their modes of application ruction of the plant to enhanced growth-vigour and improve crop-yield.

The products of heading 38.08 can be divided into the following groups:

- (I) *Insecticides*

- (II) *Fungicide*

- (III) *Herbicide*

- (IV) *Disinfectants*

This heading excludes:

- (a)-----
- (ii) -----
- (iii) -----
- (iv) -----
- (vi) -----
- (b)-----
 - (i) -----
 - (ii) -----
 - (iii) -----
- (c) *Disinfectants, insecticides, etc., having the essential character of medicaments, including veterinary medicaments (heading 30.03 or 30.04).*
- (d) -----."

18. By going through both the Chapters Viz. 3004 and 3808 it is to state that product if having the medicinal properties and having the therapeutic or prophylactic uses, the same may be classifiable under heading 3004.

Furthermore, by going through chapter 3004, it has been given that heading covers medicinal preparations for use in internal or external treatment or prevention of human or animal ailments.

Product AAYUDH-MOSX is used for the external treatment for prevention of the body from being infected by the bite of the mosquitos.

19. Further, they have taken the report of the laboratory named Accuprec Research Labs Pvt. Ltd., approved by the Food & amp; Drug Administration, Gujarat State, Gandhinagar having Licence No. GTL/37/31 and they have certified that the test material "AAYUDH-MOSX" supplied by the applicant was tested for the Mosquito repellent activity and it can be concluded

that AAYUDH-MOSX when applied at dose of 3.25 and 6.5 gm (on Forearm) possess 100% repellency. (Report Attached herewith as Annexure G).

19.1 Test carried out by the above laboratory named as "Comparative mosquito repellent efficiency of AAYUDH-MOSX and Standard Mosquito repellent against Local mosquito" and for the purpose of the same standard repellent was taken from the market i.e. "ODOMOS". Experiment was carried out by applying 3.25 gm of AAYUDH-MOSX and ODOMOS on forearm.

19.2 In the case of Commissioner of Sales Tax V S.S. Balsara Hygien Products Ltd. reported in 1986 UPTC 367, Odomos has been held as a medicine. The Court held as under:

"There cannot be dispute about the fact that Odomos is used only as mosquitoes repellent. The purpose is to save the human skin from mosquitoes which results in several infectious disease; and mostly Malarial Fever etc. It is true that it is not used as a medicine to cure some disease or to heal up some wound but it is certainly a preventive medicine which prevents the body from being infected by the bite of the mosquitoes. One redeeming feature which has also been mentioned by the Tribunal in its order is that manufacturing of this commodity is controlled by the authorities under the Drugs and Cosmetics Act, 1940, which also lends support to the contention of the respondent-assessee that it is used like a medicine".

"It has been contended by the department that Odomos is available even in general stores merchandise shops and is not sold at the Chemist shop exclusively. In my opinion, the mere fact that Odomos is available even in general merchandise shops will not detract the substance from being used as a preventive medicine. It is well settled that common parlance meaning has to be applied while interpreting entries under the fiscal statute and Courts have said time and again that it is not safe to be always guided by the dictionary or technical meanings. It is, therefore, not necessary to deal with various authorities cited by the learned Counsel for the assessee on the point. Since in common parlance Odomos is used as a medicine and is known as a medicine, in my opinion."

19.3. By going through the above, it can be said that AAYUDH-MOSX is also a Medicament used to prevent the body from being infected by the bite of the mosquitoes and, therefore, same is also a medicine merit classification under the heading 3004 as like ODOMOS.

20. Further, they have also taken the certification from the Ayurveda that it is an Ayurvedic product. Furthermore, AAYUDH-MOSX is prepared from Ayurvedic ingredients and having Therapeutic or Prophylactic uses and, therefore, the same is classifiable under heading 3004.

21. Further, by going through the heading and chapter notes 1 (d) of chapter Heading 38.08, it clearly mentioned that heading covers range of products

other than those having character of medicaments, deluding veterinary medicaments of heading 30.03 or 30.04.

22. Product AAYUDH-MOSX is having the Character of medicaments and, therefore, they are of the considered opinion that the same is classifiable under heading 30.04.

23. In view of the above, they want to rely on some of the Case Laws in which the product is prepared from Ayurvedic ingredients and having therapeutic or Prophylactic Quality, same is classifiable under Chapter 30, which are as under:

- (i) Global Tele Mall Vs Union of India reported at 2018 (18) G.S.T.L. 227 (M.P.), it has been held that *product prepared from Ayurvedic Ingredients and having therapeutic quality classifiable as Ayurvedic Medicine under Chapter 30* (Attached as Annexure H).
- (ii) Commissioner of Central Excise Pondicherry Vs Vale Exports (P) Ltd. reported at 2018 (359) E.L.T. 211 (Tri. Chennai) in the said order at Para No.7 reference has been given of the Apex Court decision in case of Ciens Laboratories reported at 2013 (295) E.L.T. 3 (S.C.). The Prescription of the Apex Court is that *a product that is used in curing or treating ailments or disease and contains curative ingredients even in small quantities is to be classified as medicaments and merit Classification under Chapter 30.* (Attached as Annexure-I).
- (iii) Hon'ble Supreme Court while deciding the issue in case of State of UP v Malik Zarid Khalid- AIR 1988 SC 123 held that *Ayurvedic, Unani, Siddha, Homeopathic or Bio chemic medicines manufactured exclusively in accordance with formulae described in authoritative books specified in the First Schedule to Drug and Cosmetics act, 1940 were classifiable under sub-heading no. 3003 CET and that test for medicaments under chapter Note 2 to Chapter 30 were not required to be satisfied.*

24. Now, therefore, in view of the above submission, the applicant finds that the appropriate heading for their product, AAYUDH-MOSX is heading 3004 and not under the heading 3808. However, for the clarification in the matter and removed the doubt, they are here before Advance Ruling authority for clarification in the matter for avoiding future legal battle and simultaneous Consequences.

25. All the documents including Report of Center of Excellence, Lab Report, Study of Citronella Leaf, Research Paper on Lemon Grass oil, Ayurveda Licence, Schedule 1 to Drug and Cosmetics Act, 1940, Relied upon Judgements, Product Literature and Sample Product attached herewith requesting the authority to give the classification as regards their Product AAYUDH-MOSX.

26. In view of above backdrops, the applicant has put forward his question on which advance ruling is required, as under:

“Product Mosquito Repellent, “Aayudh-Mosx” whether classifiable under Heading 30049011 or 38089191?”

27. At the time of personal hearing held through Video Conferencing on 17.08.2020, the Authorised Representative of the applicant, Rushi Ashokbhai Upadhyay, reiterated the facts as stated in the Application.

27.1 Further, the applicant has furnished an additional submission dated 19.08.2020 wherein they stated that during the course of PH, they have relied upon the decision of State of UP v. Malik Zarid Khalid (AIR 1988 SC 132) which has been referred in case of Shree Baidyanath Ayurved Vhavan Ltd. V. Commissioner-2003 (157) E.L.T. A260 (S.C.) and it has been asked to submit the same. In this regard, the applicant stated that Shree Baidyanath case has been finally decided by the Supreme Court reported at 2009 (237) E.L.T. 225 (S.C.) and same has been distinguished vide decision in the case of Commissioner of Central Excise V. Wockardt Life Science Ltd., reported at 2012 (277) E.L.T. 299 (S.C.), while deciding the issue Supreme Court had held as under:

“HELD : Purpose of use was primarily prophylactic and to prevent infection or disease - In that view, it was classifiable as medicament under Heading 3003 of Central Excise Tariff, a specific entry and not under sub-heading 3402.90 thereof, a residuary entry - Note 2(i) of Chapter 30 ibid made it clear that products, comprising two or more constituents which have been compounded together either for therapeutic or prophylactic uses, would fall within meaning of expression ‘Medicament’ - Revenue plea that since impugned product was primarily used as detergents/cleansing preparation, they cannot be brought under definition of medicaments, rejected. [paras 15, 29, 34]

Classification of goods - Determination of - Factors to be considered are product composition, its literature, label, character and user - Process of manufacture and end use, is not necessarily determinative - What is more important is whether broad description of article fits in with expression used in Tariff - Functional utility and predominant usage of commodity must be taken into account, apart from understanding in common parlance - However, there cannot be static parameter for correct classification. [paras 31, 32, 34]

Classification of goods - Determination of - There is no fixed test - ‘Common parlance test’ or ‘commercial usage test’ are most common - Whether particular article will fall within particular Tariff heading or not has to be decided on basis of tangible material or evidence to determine how it is understood in ‘common parlance’ or in ‘commercial world’ or in its popular meaning or in ‘trade circle’; they are concerned with product and their understanding constitutes definitive index of legislative intention, when statute was enacted. [para 30]

Classification of goods - Under Chapter 30 of Central Excise Tariff - One essential factor is whether article is understood as pharmaceutical product in common parlance - However, quantity of medicament used in particular product is not relevant - Normally, extent of use of medicinal ingredients is very low because larger use may be harmful for human body. [para 30]”

DISCUSSION & FINDINGS:

28. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

28.1 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.

29. In the instant case, the applicant has sought advance ruling in respect of following question:

30. On going through the submission given by the applicant, we find that the applicant is engaged in the manufacturing of Mosquito Repellent, named as "AAYUDH-MOSX".

31. The applicant has submitted that:

- (i) the product, AAYUDH-MOSX is a certified Ayurvedic mosquito repellent. Unlike other mosquito repellents available in the market, AAYUDH-MOSX is made from all-natural plant extracts and does not contain DEET (N, N-Diethyl-meta-toluamide);
- (ii) the said product is manufactured from natural extracts, viz. Coconut extracts, Sugar Cane extracts, Corn extracts, Lemongrass oil, Citronella oil, EDTA & Water, which is also certified by the Food and Drug Control Department, Gandhinagar;
- (iii) the manufacturing process of said product is as below:

The Corn, Sugarcane and Coconut Extracts are blended in a sequence at varied temperatures and pressures to ensure an even mix. Palm Fatty Oils help blending. EDTA could be added as a Chelating agent. Essential oils, namely lemon grass oil and citronella oil, may then be added as per need of application for added affectivity to the mix. Water is added to ensure good solubility and evenness along with Sugarcane and the Coconut processed extracts. The process is finally ended with a process for

binding these molecules into colloids and converting them into Nano particles of 2-50 nano meters for far greater affectivity.

- (iv) This would form a totally natural, non-toxic, biodegradable and a non-carcinogenic, food grade and Ayurved certified mosquito repellent, 'AAYUDH-MOSX'.
- (v) the said product is used on the skin toward off mosquitoes;
- (vi) the said product is safe on sensitive skin and does not sweat easily like other cream-based repellents. In addition, said product is also safe for new-borns and infants and safe upon accidental ingestion;
- (vii) AAYUDH-MOSX is also a Medicament used to prevent the body from being infected by the bite of the mosquitoes and, therefore, same is also a medicine, merits classification under the heading 3004 as like ODOMOS;
- (viii) Further, they have also taken the certification from the Ayurveda that it is an Ayurvedic product. Furthermore, AAYUDH-MOSX is prepared from Ayurvedic ingredients and having Therapeutic or Prophylactic uses and, therefore, the same is classifiable under heading 3004;
- (ix) Further, by going through the heading and chapter notes 1 (d) of chapter Heading 38.08, it clearly mentioned that heading covers range of products other than those having character of medicaments, deluding veterinary medicaments of heading 30.03 or 30.04;
- (x) they placed reliance upon the following case laws in which the product is prepared from Ayurvedic ingredients and having therapeutic or Prophylactic Quality, same is classifiable under Chapter 30:

(a) Global Tele Mall Vs Union of India, reported at 2018 (18) G.S.T.L. 227 (M.P.);

(b) Commissioner of Central Excise Pondicherry Vs Vale Exports (P) Ltd., reported at 2018 (359) E.L.T. 211 (Tri. Chennai); and

(c) State of UP v Malik Zarid Khalid- reported at AIR 1988 SC 123.

- (xi) In view of the above, the applicant stated that the appropriate heading for their product, 'AAYUDH-MOSX' is 3004 and not 3808.

32. We find that the product in question i.e. 'AAYUDH-MOSX' is a Ayurvedic mosquito repellent made from all-natural plant extracts and does not contain DEET (N, N-Diethyl-meta-toluamide). Said product is used for prevention of the body from being infected by the bite of the mosquitos. The applicant refers Section 3(a) of the Drugs and Cosmetics Act, 1940 defines "Ayurvedic, Siddha or Unani drug".

33. The definitions of terms in statutes having different objectives, purposes and schemes cannot be applied mechanically to fiscal statutes. The Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited**, reported at **(2009) 12 SCC 419** held thus:

"55. True it is that Section 3(a) of the Drugs and Cosmetics Act, 1940 defines "Ayurvedic, siddha or unani drug" but that definition is not necessary to be imported in the new Tariff Act. The definition of one statute having different object, purpose and scheme cannot be applied mechanically to another statute. As stated above, the object of the Excise Act is to raise revenue for which various products are differently classified in the new Tariff Act."

34. By drawing inference from above, we find that the definition of the Drugs and Cosmetics Act, 1940 having different object, purpose and scheme cannot be applied mechanically to GST law. The object of the GST Act is to raise revenue for which various products are differently classified in the Customs Tariff Act, as also applicable to GST.

35. We find that the applicant pitched the product in their sale material and advertisements as a mosquito repellent. Various mosquito repelling qualities are identified as defining characteristics of the subject goods in the market.

36. We further note that the said product is not normally prescribed as a medicine by medical practitioner as a drug. There is no restriction on sales. The product is sold on demand at the counters in shops and establishments. Sales are not restricted to chemists/druggists alone.

37. We further note that the product is a mosquito repellent by virtue of its mosquito repelling characteristics and is so understood in common parlance. The dealers identify and sell the product as a mosquito repellent. Customers purchase the same and use it in the like manner.

38. In the wake of the said facts and findings, the common parlance test or the market identity test for classification of the product is satisfied. We, therefore, conclude that the product is a mosquito repellent.

39. The interpretation of various entries and headings relating to classification of goods is guided both by the rules framed in that regard and judicial authority in point.

40. In order to determine the classification and the tax liability under GST in respect of supply of the said goods, we are 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 GST applicable to various goods, which are covered under 6 Schedules, as below:

- (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, Explanations (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.

41. The relevant entries under Heading 3808 of the Customs Tariff Act are as under:

Tariff Item	Description of goods
3808	<i>Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products</i>
3808 91 91	<i>Repellents for insects such as flies and- mosquitoes</i>

42. The tariff heading, being favoured by the applicant is reproduced hereunder:

Tariff Item	Description of goods
3004	<i>Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration</i>

	<i>systems) or in forms or packings for retail sale</i>
3004 90 99	Other

43. The General Rules for Interpretation of Import Tariff which guided us in determination of the classification of the goods, will also aid this discussion. The relevant rules are set out hereunder for ease of reference:-

“3. When by application of rule 2(b) or 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, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

44. Under rule 3 of the general interpretation rules, resort cannot be had to a general entry called “others” or any other heading when the product clearly falls under a specific classification heading.

45. In this regard, we place reliance of case laws in the case of **Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited**, reported at **(2009) 12 SCC 419**, wherein the Hon'ble Supreme Court while interpreting the Rule 3 (a) of the aforesaid Rules held as under:

“56. There is no doubt that a specific entry must prevail over a general entry. This is reflected from Rule 3(a) of the general Rules of interpretation that states that Heading which provides the most

specific description shall be preferred to Headings providing a more general description.”

46. A perusal of the classification heading no. 38089191 shows that the product in question is a neat fit into the description of products laid down therein. No laboured process of reasoning is required since the heading No. 38089191, is clear as day light.

47. The invocation of the general entry called “others” by the applicant is clearly misconceived, since the product in question is covered by a specific description in the heading under which the product has been classified.

48. The preceding discussion establishes that all attributes of mosquito repellents relevant for a judicial enquiry of this nature are found in the product in question.

49. The reliance placed by the applicant on the judgment of the High Court rendered in the case of Commissioner of Sales Tax Vs. **M/s S.S. Balsara Hygiene Products Limited**, reported at 1986 UPTC 367 (All.), wherein Odomos has been held as a medicine, is misplaced. The entry which was under consideration before said Court in M/s Balsara Hygiene Product Limited (supra) issued under Section 3 of the Uttar Pradesh Sales Tax, 1948 and reads as “Medicines and pharmaceutical preparations including insecticides and pesticides. The said entry included insecticides and pesticides within the broader category of medicines and pharmaceutical preparations. This is incomplete contradistinction to the entry under the tariff heading no. 3808 which is in issue in this application. The rival classifications of medicament vs mosquito repellent were not examined by said Court in the case of M/s Balsara Hygiene Products Limited (supra) while the same are directly in issue in the instant application before us.

49.1 In this regard, it is pertinent to mention that recently, in the case of **M/s Dabur India Ltd.**, the Hon’ble High Court of Allahabad, vide its **Order dated 17.01.2020** upholds the order of Appellate Authority for Advance Ruling of Uttar Pradesh, holding “Odomos” to be a ‘mosquito repellent’ classifiable under HSN 38089191 of Chapter 38 of Customs Tariff Act, 1975 (CTA) and not as a ‘medicament’ under Heading No. 3004.

50. We find that undoubtedly, the description under Heading No. 3808 91 91, i.e., “Repellents for insects such as flies, mosquito” is far more specific as compared to the description under the other heading under consideration, i.e., Heading No. 3004 90 99 which is “Other” (meaning

medicaments other than all those explicitly specified in the other sub-headings of Heading No. 3004). Evidently, the latter heading is a residual classification while the former is specific and conforms to the description of the goods adopted by the applicant themselves for the purposes of packing as well as advertisement and publicity.

51. The Hon'ble Supreme Court also, in their judgment in the case of HPL CHEMICALS LTD. VERSUS CCE, CHANDIGARH [2006 (4) TMI 1 – SUPREME COURT]], have held that specific heading is preferable over residuary heading for classification. Therefore, in terms of the aforesaid rules for interpretation, Heading No. 3808 91 91 will prevail over 3004 90 99.

52. The appellant declares prominently on the packing of the goods under reference that it is "mosquito repellent". The advertisement and publicity of these goods is also done as a mosquito repellent. It would also not be out of place to mention that the applicant, themselves, describes 'AAYUDH-MOSX' as a 'mosquito repellent' – the market identity in common parlance of the subject goods is as a 'mosquito repellent' and their usefulness in preventing mosquito borne diseases (again derived from their characteristic quality of being a mosquito repellent) is of a subsidiary/ supplementary nature.

53. We further note that the product, 'AAYUDH-MOSX' is not known in the market as an 'Ayurvedic medicine' and the same is also not ordinarily prescribed by a Physician as a medicine for prevention of the body from being infected by the bite of the mosquitos.

54. It is pertinent that mosquito repellents are classified at Heading No. 3808 91 91 of the Customs Tariff as a subcategory of insecticides. Thus, this again indicates that Heading No. 3808 91 91 is most specific for the classification of the subject product.

55.1 We have also perused the case laws cited by the applicant. In the case of M/s Global Tele Mall Vs Union of India, reported at 2018 (18) G.S.T.L. 227 (M.P.), the dispute before High Court of MP was related to categorization of the goods, viz. "Kashyog Oil and Keshyog Herbal Powder Hair Wash/Shampoo" either as Ayurvedic medicine or cosmetic/toilet preparation and whether or not the processes undertaken by the vendor will amount to manufacture. Hence, ratio of this case is not applicable to the case before us being facts are distinguishable.

55.2 In the case of Commissioner of Central Excise Pondicherry Vs Vale Exports (P) Ltd. reported at 2018 (359) E.L.T. 211 (Tri. Chennai), the dispute, before the CESTAT, Chennai was related to classification of 'Fair Plus Herbal

Face Cream’ and ‘Fair Plus Face Lotion’ during Central Excise Regime. Hence, the ratio of subject case will also not be applicable to the facts of the case before us.

55.3 Further, they have also relied upon the decision of State of UP v. Malik Zarid Khalid (AIR 1988 SC 132) which has been referred in case of Shree Baidyanath Ayurved Vhavan Ltd. V. Commissioner-2003 (157) E.L.T. A260 (S.C.). In this regard, the applicant stated that Shree Baidyanath case has been finally decided by the Supreme Court reported at 2009 (237) E.L.T. 225 (S.C.) and same has been distinguished vide decision in the case of Commissioner of Central Excise V. Wockardt Life Science Ltd., reported at 2012 (277) E.L.T. 299 (S.C.). In the case of Wockardt Life Science Ltd. supra, we find that the Hon’ble Supreme Court has dealt with the classification of the classification of two products viz. ‘Povidone Iodine Cleansing Solution USP and Wokadine Surgical Scrub for the purpose of levy of duty under the provisions of Central Excise Tariff Act, 1985 and not of Mosquito Repellent, hence, same is not applicable to the facts of the present case.

56. All the factors relevant for classification under the Customs Tariff lead to the classification of the Applicant’s product “AAYUDH-MOSX” under Heading No. 3808 91 91, be it the rules for interpretation of the said Tariff, the common parlance test, or its usage and way of working.

57. In view of the above, we, therefore, hold that the product in question i.e. ‘AAYUDH-MOSX’, is a mosquito repellent used on the skin toward off mosquitoes and, hence, same is classifiable under Chapter Heading No. **3808 91 91** of the Customs Tariff Act, 1985 and not as a ‘medicament’ under Heading No. 3004. AAYUDH-MOSX’, being a mosquito repellent, attracts GST @18% (CGST-9%+ SGST-9%), as per Sl. No. 87 of Schedule-III to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017, which reads as under:

Schedule III- 9%

Sl. No.	Chapter/Heading/ Sub Heading/ Tariff Item	description of the goods
87.	3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products.

58. In light of the above discussions, we rule as under –

R U L I N G

Question: *“Product Aayudh-Mosx whether classifiable under Heading 30049011 or 38089191?”*

Answer: The product i.e. ‘AAYUDH-MOSX’, is a mosquito repellent and hence, it is classifiable under Chapter Heading No. 3808 91 91 of the Customs Tariff Act, 1985, attracting GST @18% (CGST-9%+ SGST-9%).

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 17.09.2020.