

AUTHORITY FOR ADVANCE RULING - KERALA
Tax Tower, Killippalam, Karamana P. O, Thiruvananthapuram - 695 002

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/s.97 OF THE GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Senthil Nathan S, IRS
Joint Commissioner,
Office of the Commissioner of Central Tax & Central Excise,
Thiruvananthapuram.

2. N. Thulaseedharan Pillai.
Joint Commissioner (General),
Office of the Commissioner of State Taxes, Thiruvananthapuram

Sub:- GST Act, 2017 - Advance Ruling U/s 97 - rate of tax of implants for joint replacements - Orders issued.

Read:-Application dated 05.03.2018 from Shri. Gopal Gireesh, Veena Chemicals, Thiruvananthapuram.

ORDER No. CT/4683/2018-C3 DATED 29/05/2018

1. Shri. Gopal Gireesh, Veena Chemicals, Thiruvananthapuram a retail dealer of implants for joint replacements (**hereinafter called the applicant**) is a registered person having GSTIN 32ADXPG4961E1ZF. The applicant has preferred an application for Advance Ruling on the rate of tax in respect of the commodities listed in the Annexure to the Application.

2. The applicant has stated in the application that all the commodities listed in the Annexure are implants for handicapped patients in the nature of Joint Replacements falling under HSN Code 90213100 and are included under Schedule I. The applicant further stated that the items mentioned in the Annexure are included under Schedule I; Serial No.257 - List 3E(9) - Implants for handicapped patients, joint replacements etc and the rate of GST is 5%. As per Order No. C7 4264/06/CT dated 14.12.2007 of the erstwhile KVAT Act, these items i.e.; Total Knee Implants and Total Hip Implants were falling under First Schedule of the KVAT Act and hence, were exempt from tax.

3. A personal hearing was granted to the applicant on 17.05.2018. Shri. Lalji Vijayan, Chartered Accountant represented the applicant in the personal hearing and made the following written submissions on behalf of the applicant.

4. The applicant is, inter alia, engaged in the distribution and trading of implants for Joint Replacement purchased by the applicant from M/s Johnson & Johnson Pvt Ltd. The lists of products enclosed as Annexure are implants for joint replacements falling under HSN Code 90213100. The question to be decided is whether the products get covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5% or Serial No. 221 of Schedule II of the Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 12%. The products listed in Annexure are falling under Customs Tariff Head 90213100 - Artificial Joints. Such implants for joint replacement are specifically covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017.

Sl. No.	Chapter / Heading / Sub - Heading / Tariff Item	Description of goods
(1)	(2)	(3)
257	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule

List 3:

E(9): Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement.

Schedule with identical entry is notified under SGST Act by G.O. (P) No. 64/2017/TAXES dated 30.06.2017.

On the contrary, Serial No. 221 of Schedule II attracting 12% GST is a general entry with the following description;

“Splints and other fracture appliances, artificial parts of the body, other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts and trusses, hearing aids].”

Entry 221 of Schedule II is a generic and wider entry covering items like fracture appliances, artificial parts of the body, etc.

5. For the purpose of classification and the determination of applicable rate for a supply of goods under the CGST Act, 2017, the various Chapter Headings, sub – headings, Interpretative Rules and Chapter Notes under the Customs Tariff Act, 1975 has been adopted by Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017. The Explanation appended to the Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;

“Explanation:-

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

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 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 above table.”

Accordingly, the appropriate classification as determined under the Customs Tariff Act, 1975 including on an application of the Chapter Notes and General Explanatory Notes, would apply for the purpose of levy of GST.

6. As per Rule 3 of the General Rules for Interpretation of Import Tariff the heading that provides the most specific description shall be preferred to headings providing a more general description. Rule 3 reads as follows;

“Rule 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.”

In view of the above, implants for joint replacement is clearly and most specifically covered under Sl No. E(9) of List 3 of Entry 257 of Schedule I attracting 5% GST. Further, there is a similar entry under Sl No. 578 - List 30 Entry E(9) of Notification No. 50/2017 - Customs dated 30.06.2017 where under the effective rate of Basic Customs Duty is Nil. The entry is reproduced below;

Sl. No.	Chapter / Heading / Sub - Heading / Tariff Item	Description of goods
(1)	(2)	(3)
578	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30

List 30:

E(9): Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement.

The industry dealing in joint replacement products also avails benefit of Nil BCD on import of implants for joint replacement under the above entry. There needs to be harmonization in the interpretation / applicability / coverage of entries under the Customs Tariff and GST. Shri. Lalji Vijayan, Chartered Accountant representing the applicant further reiterated and confirmed that all the commodities as listed in the Annexure to the application by their technical / trade names are nothing but implants for joint replacement falling under Customs Tariff Heading 90213100 - Artificial Joints. In support of the above, the applicant produced sample copies of the invoices issued by M/s Johnson and Johnson Pvt Ltd in which the items are described as per their technical / trade name and the HSN Code shown as 90213100.

7. On the basis of the facts disclosed in the application and the written and oral submissions made at the time of personal hearing, it was decided to admit the application.

8. The question that arises for consideration is whether the implants for joint replacements falling under HSN Code / Chapter Sub-Heading 90213100 - Artificial Joints of the Customs Tariff Act, 1975 is covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5% or Serial No. 221 of Schedule II of the Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 12%.

9. On a plain reading of entry at Serial No. E(9) of List 3 of Entry 257 of Schedule I and entry at Serial No. 221 of Schedule II of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017, it is evident that joint replacements are specifically covered under the entry at Serial No. E(9) of List 3 of Entry 257 of Schedule I whereas the entry at Sl. No. 221 of Schedule II is a general entry that covers artificial parts of body. Therefore, applying the principle under Rule 3 of the General Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975; that the heading which provides the most specific description shall be preferred to headings providing a more general description we hold that the joint replacements falling under HSN Code 90213100 are covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5%.

RULING

The implants for joint replacements falling under **HSN Code 90213100** are covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5%.


Senthil Nathan S, IRS
Member, CGST


N. Thulaseedharan Pillai
Member, SGST

To
Shri. Gopal Gireesh,
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