

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 31/ 2020

Date : 04-05-2020

Present:

1. **Dr. Ravi Prasad M.P.**
Additional Commissioner of Commercial Taxes Member (State Tax)
2. **Sri. Mashhood ur Rehman Farooqui,**
Joint Commissioner of Central Tax Member (Central Tax)

1.	Name and address of the applicant	M/s Biocon Limited (DTA), 20 th K.M., Hosur Road, Electronic City, Bengaluru-560 100, Karnataka
2.	GSTIN or User ID	29AAACB7461R1ZZ
3.	Date of filing of Form GST ARA-01	18.10.2019
4.	Represented by	Sri Harish Bindumadhavan, Advocate & Authrorised Representative.
5.	Jurisdictional Authority – Centre	The Principal Commissioner of Central Tax, Bangalore South Commissionerate.
6.	Jurisdictional Authority – State	LGSTO - 25, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act vide CIN HDFC19102900107917 dated 15.10.2019 & Rs.5,000/- under KGST Act vide CIN SBIN19092900346781 dated 25.09.2019.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

1. M/s Biocon Limited (DTA), (called as the 'Applicant' hereinafter), 20th K.M., Hosur Road, Electronic City, Bengaluru-560 100, Karnataka, having GSTIN number 29AAICM3930G1ZD, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules 2017 & Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The applicant (DTA unit) is engaged in manufacture of generic active pharmaceutical ingredients (APIs), novel biologics, biosimilar insulins and antibodies. The applicant purchases "Micafungin Sodium" from the SEZ unit of M/s Biocon, who imports and sells the same, after processing, as bulk drug. The

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applicant sells the bulk drug, so purchased, to third party customers, who in turn uses for preparations of injections.

3. In view of the above, the applicant sought for advance ruling in respect of the following question:

Whether the sale of Micafungin sodium by the DTA unit of the applicant is covered under Serial No.114 of Entry No.180 of the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 and therefore, is leviable to GST at the rate of 5%?

4. Admissibility of the application: The question is about “applicability of a notification” and hence is admissible under Section 97(2)(b) of the CGST Act 2017.

5. Applicant’s interpretation of Law:

5.1 The applicant (DTA unit) procures the product *Micafungin sodium* from SEZ unit of the applicant, on filing of Bill of Entry, as required under rule 48 of SEZ Rules 2006, which is assessed as per Customs Law & levied to Customs duty, including IGST as applicable in terms of Section 3(7) of Customs Tariff Act 1975. The IGST is leviable on import of goods, in terms of Section 5 of the IGST Act, 2017, at the rate notified by the Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017.

5.2 The applicant contends that the product is classified under tariff heading 2941 9090, being the drug or medicine, falls under Sl.No.114 of the List I pertains to Entry No.180 of Schedule I of the notification supra; the product is leviable to GST @ 5% (CGST 2.5% & KGST 2.5%) and accordingly they are discharging IGST @ 5% to procure the said product & supplying the same on charging 5% GST, to the customers, who use the said product for injection.

5.3 The applicant contends that though they supply the said product as bulk drug to their customers, said drug is used by the customers for supply of the same for injection. The term ‘bulk drug’ is not defined under the GST law and hence if it is capable of being utilized for injection, it gets covered under Sl.No.114 of List I, specified under Entry No.180 of Schedule I of the Notification supra and therefore is leviable to GST @ 5%.

5.4 The applicant, in this regard, draws reference to the Nomenclature guidelines provided by the US Pharmacopeia which states/gives the meaning of the phrase “for injection” and contends that “*any drug in the form of dry solids which conforms with the requirements of injection on addition of a suitable vehicle are covered under the category of [Drug] for injection*”.



5.5 The applicant relies on the Hon'ble Supreme Court's judgment in the case of **Indian Chamber of Commerce Vs CIT, West Bengal II, Calcutta**, wherein the usage of the word 'for' has been noted, and thereby contends that "*the word 'for' is succeeded by the purpose for which it is meant to be used*" and therefore their product is eligible for reduced rate of GST as it is meant for the use specified in the notification, i.e. for injection.

6. In view of the above, the applicant submits that the impugned product (bulk drug) would be used by their customers to manufacture formulations or vials; the product may not be used directly for injection but in the form of formulations or vials which cannot be manufactured without using the impugned product. The applicant also furnished technical write-up on the product. The applicant, concluding, prays that their product qualifies to be covered under Sl.No.114 of List I specified under Entry No.180 of Schedule I to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017.

PERSONAL HEARING / PROCEEDINGS HELD ON 09.01.2020.

7. Sri Harish Bindumadhavan, Advocate and duly authorised representative of the applicant appeared for personal hearing proceedings held on 09.01.2020 & reiterated the facts narrated in their application.

8. FINDINGS & DISCUSSION:

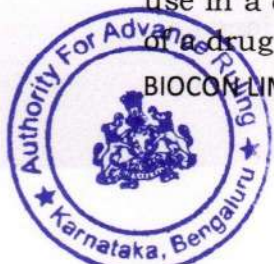
8.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Harish Bindumadhavan, Advocate & duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

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

8.3 The applicant is engaged in procuring 'Micafungin Sodium' from their SEZ unit after paying IGST at the rate of 5% and selling the same as Bulk Drug to Third Party DTA units, who in turn use it for injections. The applicant submitted that Micafungin Sodium is an organic antifungal chemical and have provided a technical literature on it.

8.4 The applicant relied upon the United States Food and Drug Administration Regulations which defines, "Bulk Drugs" as any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of a drug, but the

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term does not include intermediates in the synthesis of such substances. They have further relied upon United States Pharmacopeia (USP) to argue that the term, "for injection" can also connote dry solids which upon addition of suitable liquid yield solutions confirming in all respects to the requirement for injections. The applicant in the instant case supply Micafungin Sodium as Bulk Drug to their customers, which may not be used directly for injection. However, they assert that invariably the final formulations of Micafungin Sodium for Injection cannot be manufactured without using Micafungin Sodium as sold by the applicant. Micafungin Sodium supplied by the applicant is used by their customers to manufacture formulations or vials which are labelled as "Micafungin Sodium for Injection".

8.5 The applicant contended that they are eligible to avail the benefit of serial no. 114 of List I relevant to entry No. 180 of Schedule I of Notification No. 01/2017-CT (R) dated 28.06.2017 which mentions the rate of CGST for "Micafungin Sodium for Injection" as 2.5%, on the basis of the judgment of Hon'ble Supreme Court of India in the case of **Indian Chamber of Commerce Vs CIT West Bengal II, Calcutta.**

The aforesaid SC judgment is in relation to the Income Tax Act and the Hon'ble Supreme Court, while discussing the Income Tax exemption, under 'charitable purpose' whether the activity (of Income Tax Payer) is for profit or not, have noted the meaning of 'for' as under:

Further, what is an activity for profit depends on the correct connotation of the preposition. 'For' used with the active participle of a verb means 'for the purpose of (See judgment of Westbury C., 1127) 'For' has many shades of meaning. It connotes the end with reference to which anything is done. It also bears the sense of 'appropriate or 'adopted to': 'suitable to purpose' vide Black's Legal Dictionary. An activity which yields a profit or gain in the ordinary course must be presumed to have been done for profit or gain. Of course, an extreme case could be imagined where without intent or purpose an activity may yield profit. Even so, it may legitimately be said that the activity is 'appropriate or adapted to such profit'.

8.6 At this juncture, it is pertinent to mention here that the Larger Bench consisting of Five Judges of the Hon'ble Supreme Court in the case of CIT Vs Surat Arts & Silk Cloth Manufacturers Association did not agree with the view expressed by the Hon'ble Supreme Court in the case of Indian Chamber of Commerce Vs CIT and declined to follow the said judgment.

8.7 However, even if the Hon'ble SC Judgment, which gives the meaning of the word 'for', is considered it could be observed that the same is applied to a particular transaction that whether the activity of a tax payer is for profit or not. In the instant case, as per GST Act, the impugned issue involves two transactions i.e.



(i) the supply of the bulk drug by the applicant to their customers and (ii) the supply by the customers of the applicant to the end users. The transaction relevant to the instant case is the supply of bulk drug by the applicant to their customers and GST is leviable on every transaction that amounts to supply, in terms of CGST Act 2017.

8.8 The phrase "Micafungin Sodium for Injection" very clearly specifies the manner of administering Micafungin Sodium in the body. The applicant, during the personal hearing, with regard to possibility of administering Micafungin Sodium by any way other than injection, have not put anything on record but have stated that they take a certificate/ undertaking from their customers that they would use it only for injections.

8.9 In view of the foregoing the question before us to decide is whether the bulk drug 'Micafungin Sodium' being supplied by the applicant qualifies to be 'Micafungin Sodium for injection', so as to attract the concessional rate of GST i.e. 5% GST. It is an admitted fact that the product being supplied by the applicant can not be directly administered as injection. The concessional rate of GST is applicable only to the product Micafungin Sodium which is ready for administering by way of injection. In the instant case the applicant supplies bulk drug Micafungin Sodium to their customers and hence the said drug becomes raw material to the said customers. The applicant contends that their bulk drug is essential for 'Micafungin Sodium for injection' and hence their bulk drug gets covered under the entry for concessional rate of GST. The entry would have been 'Micafungin Sodium', had the intention of the Government been to extend the benefit of concessional rate to the bulk drugs/raw material. Therefore 5% GST is not applicable to the bulk drug Micafungin Sodium, in terms of Sl.No.114 of List I to Entry No.180 of Schedule I to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017.

9. In view of the foregoing, we pass the following

R U L I N G

The sale of Micafungin sodium by the DTA unit of the applicant is not covered under Serial No.114 of Entry No.180 of the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 and therefore, is not entitled for concessional rate of GST at the rate of 5%


(Dr.Ravi Prasad.M.P.)
Member


(Mashhood ur Rehman Farooqui)
Member

Place : Bengaluru
Date : 04-05-2020
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Karnataka Advance Ruling Authority
Bengaluru - 560 009



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To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Principal Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-25, Bengaluru

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In view of the foregoing, the question arises as to whether the only thing standing in the way of the applicant's application to be admitted to the list of eligible persons for the purpose of the 100% exemption under section 10A of the Income Tax Act, 1961 is the fact that the applicant is not a resident of India. It is submitted that the applicant is a resident of India and the only thing standing in the way of the applicant's application to be admitted to the list of eligible persons for the purpose of the 100% exemption under section 10A of the Income Tax Act, 1961 is the fact that the applicant is not a resident of India. It is submitted that the applicant is a resident of India and the only thing standing in the way of the applicant's application to be admitted to the list of eligible persons for the purpose of the 100% exemption under section 10A of the Income Tax Act, 1961 is the fact that the applicant is not a resident of India.

LIST

The list of eligible persons for the purpose of the 100% exemption under section 10A of the Income Tax Act, 1961 is as follows:

(Name of the Applicant)	(Signature)

Karnataka Advance Ruling Authority
Bengaluru - 560 009

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

