


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/61/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/65)
Date: 17.09.2020

Name and address of the applicant	:	M/s Altis Finechem Pvt. Ltd., Plot No. 192, Ground Floor, Nr. Katwad Patiya , B/h. VRN Ceramics Ltd., At-Dalpur, Sabarkantha-383120
GSTIN/ User Id of the applicant	:	24AACCD0786H1ZS
Date of application	:	28.12.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	a) Classification of any goods or services or both. b) Applicability of a notification issued under the provisions of the Act. e) Determination of the liability to pay tax on any goods or services both g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that item.
Date of Personal Hearing	:	17.08.2020 (through Video Conferencing)
Present for the applicant	:	Dinesh Patel ,Director

Statement of Facts

M/s. Altis Finechem Pvt. Ltd., Plot No. 192 Ground Floor, Nr. Katwad Patiya ,B/h. VRN Ceramics Ltd., At-Dalpur, Sabarkantha having a GSTIN : 24AACCD0786H1ZS, is a company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the GGST Act.

2. M/s. Altis Finechem Pvt. Ltd. an applicant is engaged in the manufacture and supply of pharmaceutical products viz. Bulk Drugs and intermediates viz. Alpha-Ketoanalogue Isoleucine Calcium Salt, Alpha-Ketoanalogue Valine Calcium Salt, Alpha-Ketoanalogue Leucine Calcium Salt, Alpha-Ketoanalogue Methionine Calcium Salt, Alpha-Ketoanalogue phenylalanine Calcium Salt.

3. The applicant submitted that they supply their above product @18% but their customer stated that their product attract 5%. They requested to determine the tax liability of their product falling under HSN 2919.

4. Accordingly, applicant sought Advance Ruling on the following question :

1. Classification of goods and determination of tax liability of product under HSN 2919 of following goods :

Calcium-3-methyl-2oxo-valerate (Alpha-Ketoanalogue Isoleucine Calcium Salt),

Calcium-3-methyl-2oxobutyrate (Alpha-Ketoanalogue Valine Calcium Salt),

Calcium-4-methyl-2oxo-valerate (Alpha-Ketoanalogue Leucine Calcium Salt),

Calcium-DL-2-hydroxy-4(methylthio) butyrate (Alpha-Ketoanalogue Methionine Calcium Salt),

Calcium -2 oxo-3-phenyl propionate (Alpha-Ketoanalogue phenylalanine Calcium Salt)

Applicant's interpretation of law and/or facts

5. The applicant submitted that as per Notification No. 01/2017-Ct (Rate) dated 28.06.2017 their products is liable to GST @ 5% in respect of goods specified in Schedule-I under Sr. No. 180 under Ch. 30 and under Schedule-1 List -1 Sr. No. 54 as such their product name is "Ketoanalogue preparation of essential amino acids".

Personal Hearing

6. Personal hearing in the matter was held on 06-08-2020. Authorised representative of the company appeared on behalf of the applicant and re-iterated the submission made in the Application.

DISCUSSION & FINDINGS

7. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

8. 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.

9. We observe that the applicant is engaged in the manufacture/supply of bulk drugs and intermediates viz. Alpha-Ketoanalogue Isoleucine Calcium Salt, Alpha-Ketoanalogue Valine Calcium Salt, Alpha-Ketoanalogue Leucine Calcium Salt, Alpha-Ketoanalogue Methionine Calcium Salt, Alpha-Ketoanalogue phenylalanine Calcium Salt. The applicant submitted that they are presently supplying the said goods under HSN 2919 and paying GST @ 18 %. Whereas the applicant contended

that their product would classify under CTH No. 30 and liable to pay @5% as per Sr. No. 180 of Not. No.01/2017-CT (Rate) datd 28.06.2017. Now, the main issue is to determination of classification and tax liability of their product i.e. bulk drugs and intermediate supply by the applicant.

10. To examine the eligibility of lower rate of GST 5%, we refer the relevant Sr. No. 180 of Schedule-I of Notification No. 01/2017-CT (Rate) dated 28.06.2017. The said entry is read, as under:

Schedule I- 5%

Sl. No.	Chapter Heading/Sub-heading/Tariff Item	Description of goods
180	30 or any chapter	Drugs or medicines including their salts and eaters and diagnostic test kit, specified in List I appended to this Schedule

11. As per the above entry, Drugs or medicines including their salts and esters specified in List I appended to this Schedule are eligible for GST @5%. In CGST Act 2017, the terms “Medicine” or “Drugs” have not been defined. We consider the definition “Drugs” given in Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940). Section 3(b) of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940) defines a “drug” in the following terms:

“(i) All medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings, or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

Clause (i) of Section 3(b) defines a ‘drug’ as all medicines for internal or external use of human beings or animals and all substances “intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human being, or animals”, including specified preparations.

12. In *Ishwar Singh Bindra Vs. The State of UP* [(1969) 1 SCR 219], the central question before a three judge Bench of this Court was the interpretation of Section 3(b)(i) of the 1940 Act. The Hon’ble Court held,

16. The term ‘medicine’ is not defined in the 1940 Act. It is a trite principle of interpretation that the words of a statute must be construed according to the plain, literal and grammatical meaning of the words. Justice G.P. Singh in his seminal work Principles of Statutory Interpretation states:

“The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to

their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary...in the statement of the rule, the epithets 'natural', 'ordinary', 'literal', grammatical' and 'popular' are employed almost interchangeably.

...

It is often said that a word, apart from having a natural, ordinary or popular meaning (including other synonyms i.e. literal, grammatical and primary), may have a secondary meaning which is less common e.g. technical or scientific meaning. But once it is accepted that natural, ordinary or popular meaning of the word is derived from its context, the distinction drawn between different meanings loses much of its relevance."

Similarly, Craies on Statute Law states :

"One of the basic principles of interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

13. The words of a statute should be first understood in their natural, ordinary or popular sense and phrases and sentences should be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. Where a word has a secondary meaning, the assessment is whether the natural, ordinary or popular meaning flows from the context in which the word has been employed.

14. The word 'medicine' is defined in Black's Law Dictionary thus:

"Medicine - the science and art dealing with the prevention, cure and alleviation of diseases; in a narrower sense that part of science and art of restoring and preserving health which is the province of the physician as distinguished from the surgeon and obstetrician."

14.1 Collins Dictionary for Advanced Learners defines 'medicine' thus:

"Medicine is the treatment of illness and injuries by doctors and nurses; is a substance that you drink or swallow to cure an illness."

14.2 Cambridge Dictionary defines 'medicine' as:

"A drug that is used to treat illness or injury; the science dealing with the preserving of health and with preventing and treating disease or injury."

The ordinary or popular understanding of the term medicine or drugs is

characterized by its curative properties in general and specifically, its use for or in diagnosis, treatment, mitigation or prevention of any disease or disorder.

15. Note I of SECTION VI of “PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES” of the Customs Tariff Act, 1975 reads as under:

2. Subject to Note 1 above, goods classifiable in heading 3004, 3005, 3006, 3212, 3303, 3304, 3305, 3306, 3307, 3506, 3707 or 3808 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of this Schedule.

16. In view of the above deliberate discussion, it is crystal clear that under Sr. No. 180 of Schedule-I of Not. No. 01/2017-Ct (Rate) dated 28.06.2017, as amended, only such medicine and drugs are covered, which can be used for or in diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings.

17. The term “bulk drugs” is not defined in CGST, Act 2017. Therefore, we take the reference from DRUGS (PRICES CONTROL) ORDER, 1979. In the said Order, definition of bulk drugs is defined as,

*(f) "bulk drug" means any substance including pharmaceutical, chemical, biological or plant product or medicinal gas conforming to pharmacopoeial or other standards accepted under the Drugs and Cosmetics Act, 1940 (23 of 1940), which **is used as such or as an ingredient in any formulations;***

From the plain reading of said definition, it is crystal clear that bulk drugs are raw material /ingredient of pharmaceutical and they are the Active Pharmaceutical Ingredients (i.e. API) of the medicine. In other words, it is the substance responsible for the product being a medicine. The bulk drug would inevitably remain the same as it is the identity of the medicine. When the bulk drug is absent, the product is no longer a medicine and when it is changed, it is a new medicine. Bulk drugs is not defined in GST, therefore, in common parlance we can say that Bulk drugs is basically an Active Pharmaceutical Ingredients (API) meaning any pharmaceutical, chemical, biological or plant product, which is used as such or as an ingredient in any formulation.

18. In view of the foregoing, it is an admitted fact that the product being supplied by the applicant cannot be directly administered in a human being. The concessional rate of GST is applicable only to the medicine or drugs, which are ready for administering in the human being or person. In the instant case, the applicant supplies bulk drug to their customers and hence the said bulk drug becomes raw material to the said customers. The applicant contention is that their

bulk drug i.e. Alpha-Ketoanalogue Isoleucine Calcium Salt, Alpha-Ketoanalogue Valine Calcium Salt, Alpha-Ketoanalogue Leucine Calcium Salt, Alpha-Ketoanalogue Methionine Calcium Salt, Alpha-Ketoanalogue phenylalanine Calcium Salt is covered under the entry No. 180 of Not. No. 01/2017-CT (Rate) dated 28.06.2017 and eligible for concessional rate of GST. In the said entry No. 180 of said Notification word “Bulk Drugs” would have been included, 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 Alpha-Ketoanalogue Isoleucine Calcium Salt, Alpha-Ketoanalogue Valine Calcium Salt, Alpha-Ketoanalogue Leucine Calcium Salt, Alpha-Ketoanalogue Methionine Calcium Salt, Alpha-Ketoanalogue phenylalanine Calcium Salt, in terms of List I to Entry No. 180 of Schedule I to the Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017. Further the applicant in his submission has stated that their product i.e. bulk drugs fall and intermediate under HSN 2919 and accordingly sought the ruling regarding rate of GST tax of the said goods.

19. The applicant has referred to Advance Ruling in the case of M/s. LAURUS LABS LTD {Order No. AAR/AP/03(GST)/2018, dated 28-3-2018} reported in 2018 (18) GSTL 58 (AAR-GST), wherein the Andhra Pradesh Authority for Advance Ruling held that,, “Pharmaceutical products - Efavirenz, Emtricitabine, Sunitinib Malate, Raltegravir Potassium and Latanoprost - Rate of tax - Products though bulk drug covered under List 1 under Serial No. 180 of Schedule-I to Notification No. 1/2017-C.T. (Rate) and taxable @ 5% GST”. The said Ruling is not applicable in the applicant case because the goods supplied by the applicant are different from the goods on which the said Ruling is given. Further, as per Section 103 of the CGST Act, any Advance Ruling is binding on the Applicant who has sought it and on the concerned officer or the jurisdictional officer in respect of the Applicant. Accordingly, AARs Ruling as cited above can’t be relied upon in the present case of the Appellant.

20. We observe that applicant in his application has stated that they are supplying their bulk drug and intermediate product under HSN 2919 and paying GST @18%. Accordingly applicant sought clarification regarding the Rate of GST under HSN 2919 of Customs Tariff Act, 1975. In order to determine the tax liability of bulk drugs and intermediate product manufactured and supply by the applicant classified under HSN 2919, we have to refer 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 6 schedules 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 reads 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

21. The relevant entry No. 40 of Notification No. 01/2017-Ct (Rate) dated 28.06.2017 is read as under :

SCHEDULE III - 9%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
40.	29	All organic chemicals other than giberellic acid

21.1 In view of the entry No. 40 of Notification No. 01/2017-Ct (Rate) dated 28.06.2017 the goods viz. bulk drugs and intermediate i.e. Alpha-Ketoanalogue Isoleucine Calcium Salt, Alpha-Ketoanalogue Valine Calcium Salt, Alpha-Ketoanalogue Leucine Calcium Salt, Alpha-Ketoanalogue Methionine Calcium Salt, Alpha-Ketoanalogue phenylalanine Calcium Salt classifiable under HSN 2919 attract GST @ 18% { 9% CGST + 9% SGST}.

22. In view of the foregoing, we rule as follows :

RULING

Q. 1. Classification of goods and determination of tax liability of product under HSN 2919 of following goods :

Calcium-3-methyl-2oxo-valerate (Alpha-Ketoanalogue Isoleucine Calcium Salt), Calcium-3-methyl-2oxobutyrate (Alpha-Ketoanalogue Valine Calcium Salt),

Calcium-4-methyl-2oxo-valerate (Alpha-Ketoanalogue Leucine Calcium Salt),
Calcium-DL-2-hydroxy-4(Methylthio) butyrate (Alpha-Ketoanalogue Methionine
Calcium Salt),

Calcium -2 oxo-3-phenyl propionate (Alpha-Ketoanalogue phenylalanine Calcium
Salt)

Ans. The above product are classifiable under HSN 2919 and liable to GST @
18% {9% CGST +9% SGST} in terms of Notification No. 01/2018-CT (Rate) dated
28.06.2017 as well as corresponding SGST Notification.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 17.09.2020.