BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE OF UTTARAKHAND GOODS & SERVICE TAX, E-BLOCK, NEHRU COLONY, DEHRADUN-248001

PRESENT:

Shri P.k. Goel (CGST Member)

Dr. Ahmed Iqbal (SGST Member)

The..18..day of February, 2022

Appeal No. UK GSTARA 02/01/20-11-2021/2021-22

1.	Name and Address of Appellant	M/S Windlas Biotec Ltd., 40/1 Mohabewala Industrial Area, Dehradun, Uttarakhand.
2.	Name and Address of Respondent	Uttarakhand Advance Ruling Authority, commissioner, State tax, Office, Dehradun
3.	Appeal No/Date	UK GSTARA 02/01/20-11-2021/2021-22
4.	Order No.	02 | 2021-22 | 18.02.22
5.	Date of Personal hearing	05.01.2022
6.	Jurisdictional Office	CGST, Range- V, Dehradun SGST- DC V, Dehradun
7.	Concerned Officer	Smt. Preeti Manral, Deputy Commissioner, State Tax Department, Dehradun.
8.	Appellant Represented by	Mr Rajesh Gupta, FCA, LLB (Advocate)
9.	Date of Reg.of Appeal	20.11.21

(Proceedings under Section 101 of Central Goods & Service Tax Act, 2017 and Uttarakhand Goods & Service Tax Act, 2017 in the matter of M/s Windlas Biotec Ltd, Dehradun, Uttrakhand)

The present appeal has been filed under Section 100 of the Central Goods & Service Tax Act, 2017 and Uttarakhand Goods & Service Tax Act, 2017 (here in after referred to as "the CGST Act and UKGST Act") by M/s Windlas Biotec Ltd, 40/1 Mohabewala Industrial Area, Dehradun, Uttrakhand (herein after referred to as 'Applicant') against the Advance Ruling Order 04/2021-22 dated 02.09.2021 passed by the Authority for Advance Ruling of Uttarakhand in an application made by them.

At the outset, we would like to make it clear that the provisions of the CGST Act and UKGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to CGST Act would also mean a reference to the same provisions under the UKGST Act.

Brief facts of the case:

i. The applicant is registered with the GSTIN having Registration No. 05AAACW3417C1ZV and seek advance ruling on the following question:

"Classification and Rate of Applicable GST on product manufactured by the applicant i.e. "Dry Powders containing Protein Powder with Vitamins & Minerals".

ii. The applicant has obtained Drug Licence bearing number 1/UA/SC/P/2001 and 2/UA/2001 both renewed and valid up to 26.05.2026 and FSSAI licence bearing number 10018012000504 dated 16.06.2020.

iii. The applicant has ventured for manufacture of "Dry Powders containing Protein Powder with Vitamins & Minerals" and has obtained product approval from Drug Controlling & Licencing Authority (Mfg.) of Uttarakhand.

iv. The approval of the said product has been granted in terms of Entry Serial No. 138 of the FDC (Fixed Dose Combination) List dated 12.07.2018 under Category C of the Drugs & Cosmetics Act.

v. Since the product contains Protein Powder as well as Vitamins and Minerals, therefore to seek clarity as to whether the said product is eligible to be classified under HSN 3004 or not, an application was filed by the applicant before the Authority for Advance Ruling, Uttarakhand.

vi. The Authority for Advance Ruling, Uttarakhand, after examining the issue, gave the Ruling that "Dry Powder Containing Protein Powder with Vitamins & Minerals" being manufactured by the applicant under the name 'Protowits' is a Food supplement which is fit to be classified under HSN 2106.

vii. Aggrieved by the said Ruling passed by the Authority for Advance Ruling for the state of Uttarakhand, applicant has filed the instant appeal dated 20.11.2021, seeking the said product

to be classified under chapter 3004 of the GST Tariff Act, 2017 in as much as the said product contains less protein in comparison to other players in the market and they are manufacturing the said product in Fixed Dose Combination as approved by Drug Controlling & Licencing Authority (Mfg.) of Uttarakhand.

Personal Hearing

In the instant case, the personal hearing was fixed on 05.01.2022 and it was attended by Shri Rajesh Gupta F.C.A, LLB on behalf of the applicant and he reiterated the submissions made in the memorandum of appeal during PH.

Ms. Preeti Manral, Deputy Commissioner, SGST-Dehradun, concerned officer from State Authority was present during the hearing proceedings. She argued that the applicant's product is of the category of **food supplement** rather than **medicament.** The applicant has mentioned that the product approval has been granted in terms of entry Serial No.138 of the FDC (Fixed Dose Combination) list dated 12-07-2018 under category C of the Drugs & Cosmetics Act. However, going by the list given by applicant, Protowits- the product under question does not meet the Fixed Dose Combination criteria as laid out in entry 138. She stated that approval under serial No.138 is for a combination of protein hydro lysate 20% 5mg+Calcium 225mg+Phophorus 174mg +Pyridoxine Hydrochloride IP 0.5 mg + Cyanocobalamin IP 1mcg+viatamin D3 IP 100IU + Niacinamide IP 15mg+Folic Acid IP 0.3 + Zinc 5mg + Iron 7.5 mg per 30gm powder. While applicant's product in addition to above combination also contains- Magnesium Sulphate USP 1.5 mcg, Magnesium Oxide IP 4mg, Cupric Sulphate USP 2.5mg, Chromium as Chromium Chloride USP 25mcg, Selenium Dioxide Monohydrate USP 20mcg, Potassium Chloride IP 5mg, Sodium Chloride IP 33mg, Iodine as Potassium Iodide IP 100mcg, Excipients. Therefore, the product in not as per entry No. 138, hence, does not meet the Fixed Dose Combination criteria.

Ms. Preeti Manral further stated that the predominant content of the product is **Protein,** therefore, as per General Interpretation rules of classification, it is appropriate to classify the product under heading 2106. The applicant holds **FSSAI** license also which further fortifies the fact that product in question is a food supplement. Applicant's submission that doctor's prescription is needed for buying product holds no merit as product being in food supplement category like any other protein mix powder can be bought over the counter without doctor's prescription. Therefore, Ld. Authority for Advance Ruling has appropriately held that taxability is decided as per HSN code of the said product and not as per the license issued for manufacture of the said product. Therefore, for all the above reasons the product in question should be classified under heading 2106 attracting tax @ 18%.

Discussion & Findings

We have gone into the Ruling of AAR, memorandum of appeal and submissions made at the time of personal hearing. Now we proceed as under:

i. In the instant case the moot issue to be decided is whether the product '"Dry Powders containing Protein Powder with Vitamins & Minerals" merit classification under chapter 3004 of the GST Tariff Act, 2017 or otherwise.

ii. The applicant in his appeal has contended that the product in question falls under Chapter 30 of the GST Tariff Act, 2017 on the following grounds:

(a) that the product in question has been approved by Drug Controlling & Licencing Authority (Mfg.) of Uttarakhand in terms of Entry Serial No. 138 of the FDC (Fixed Dose Combination) List dated 12.07.2018 under Category C of the Drugs & Cosmetics Act.

(b) since the said product is manufactured in terms of Drug License and that the said product is for 'Prophylactic use', therefore the same merits classification under HSN 3004.

iii. The applicant's claim that the said product has been granted approval in terms of Entry Serial No. 138 of the FDC (Fixed Dose Combination) List dated 12.07.2018 under Category C of the Drugs & Cosmetics Act is not in consonance with the ingredients mentioned in Serial No 138 under Category C as the content of protein hydrolysate 20% is 5mg, while it is actually 5 gm in the product manufactured by the applicant. Further the certificate dated 05.04.21 produced by the applicant also does not match with the entry no 138 and therefore, the certificate dated 05.04.21 cannot be accepted and is hereby rejected. The applicant's contention that the AAR has gone beyond the jurisdiction in rejecting the product approval as granted by the drug authority is not correct as there is error on the face of record of the certificate dated 05.04.21 as stated above. We therefore uphold the rejection of the same by AAR.

As far as the "Prophylactic Use" of the product is concerned it is hereby made clear that once the certificate dated 05.04.21 is not in consonance with the schedule C, whether the product is for "Prophylactic Use" or not is not relevant as it is a food product in terms of FSSAI License bearing number 10018012000504 dated 16.06.2020. Moreover, for the food products FSSAI license is mandatory and food department is the competent authority.

As regard to the applicant's claim that product in question merit classification under Chapter 30 of the GST Tariff Act, 2017 in as much as the same has been approved by Drug Controlling & Licencing Authority, we observe that by mere fact that the product is manufactured under Drug license, the product cannot be classified as medicaments. The classification of the products for GST purpose is to be decided as per Provisions of GST Tariff/HSN only. In the case of Sunny Industries (P) Ltd. v. CCE, it has been observed by Hon'ble Tribunal that mere grant of drug licence by the Drug Controller does not make a product a drug for the Central Excise purposes. The relevant portion of the same is reproduced as under:

> "*The product has to be judged entirely in the light of the words in tariff and not with reference to the licence under the Drug Control Act.*"

Therefore, it is settled law that the Drug License may be used as a guide for the classification of the product but cannot be a determination factor. Thus, since a drug licence has been issued to the applicant, does not ipso-facto lead to the inevitable conclusion that the product in question is a medicament.

iv. As regard to the 'Prophylactic use' of the product in question, on examination of the appellant's label on the product, it is found that the product in question viz 'Protowits' is undoubtedly described more like a food product than the medicine. The product is described as Chocolate flavour. The picture of the product on the label showing a glass containing the preparation of the said product clearly gives the image of a food beverage like Bournvita or Coffee and other various product available in market now-a-days. Taking into view the totality of the label, the whole thrust is on the food value of the product, it's flavour, deliciousness, richness, nourishment, attractiveness and all other qualities for which normal people look to the food for their health, growth and taste. Easy preparation of the said product is also emphasized. Moreover, generally allopathic medicines are consumed by the patients in the form these are available in the market and no such preparation at the level of patients is left. Such preparations are made rather mostly in the case of food items only. The product is described as for prophylactic use' in the label, but the diseases or ailment which can be cured or prevented by use of said product are not mentioned anywhere in the label. The word 'prophylactic' means the medicines or course of action taken for preventing disease. If the broader sense of prophylactic use is taken, then all foods are prophylactic in nature, as all proper food prevents the diseases by providing necessary energy, strength and nutrition to the body which are essential for preventing the diseases. But in the context of medicines, prophylactic medicines are only those, which prevent the specific diseases by enhancing fighting and resistance capacity to the body or by providing safety mechanism. That some foods or beverages can be akin to the prophylactic medicines are recognized in Chapter 30 of the GST Tariff Act, 2017 and to avert the confusion on this point Note 1(a) in Chapter 30 is inserted for exclusion of such food supplements from the purview of medicaments of Chapter 30.

Thus, the submissions made by the applicant are not tenable in this regard.

v. Further as per Rule 1 of General Rules for the Interpretation of the Harmonized System, classification of a product is to be determined according to the terms of the headings and relative Section of Chapter Notes. By application of this principle, the indication in Note 1(a) of Chapter 30 that dietitic, diabetic or fortified foods and food supplements are covered by Section IV is a clear indication of the classification of these products.

As per Rule 2 of General Rules for the Interpretation of the Harmonized System, the classification of goods consisting of more than one material or substance shall be according to the principle contained in Rule 3. As it is not confined to any of the titles, of Sections and Chapters and as it consists of more than one material or substance, Rule 3 of interpretation becomes applicable.

Rule 3(b) of General Rules for the Interpretation of the Harmonized System reads as follows:

"Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets 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."

In view of the following Note 1(a) to Chapter 30, (Pharmaceutical Products), a product like 'Protowits', which is a food supplement, would be classifiable under Section IV, which covers Chapters from 16 to 24. This note is as under:-

"1. This Chapter does not cover:-

a. Foods or beverages (such as dietic, diabetic or fortified foods, food supplements, tonic beverages and mineral water) (Section IV)".

Further, Chapter notes 5(a) of chapter 21 clearly specifies that protein concentrates and textured protein substances to be classified under 2106 only. Since the applicant product is a protein concentrate and having FSSAI License, therefore, products needs to be classified under 2106.

On scrutiny of Chapters 16 to 24 covered by Section IV, we find that there is no other Chapter more appropriate than Chapter 21 (Miscellaneous Edible Preparations) and as such the product in question viz "Protowits" should be classified under Chapter 21 only.

vi. As regards to the further grounds of the applicant regarding HP AAR ruling dated 21.11.19 and the invoices submitted by the applicant are hereby rejected since these grounds are not applicable in the present case as we have gone into the facts of the present case and facts of other cases where full details are not available cannot be examined by us.

Ruling

In view of the above discussion & findings, the Ruling 04/2021-22 dated 02.09.2021 passed by the Authority of Advance Ruling of Uttarakhand is hereby upheld.

(P.K.GOEL)
CGST MEMBER

(Dr. AHMED IQBAL)
SGST MEMBER

I am directed to transmit herewith a certified copy of the order passed by the Appellate Authority for Advance Ruling for the State of Uttarakhand, Goods & Service Tax under Section 101 of the CGST/SGST Act 2017.

Registrar
AAAR Uttarakhand
रजिस्ट्रार
उत्तराखण्ड अग्रिम विनिर्णय
अपीलीय प्राधिकारी

Copy To:- 6712 Date-18-02-2022

1. The Chief Commissioner, CGST, Meerut Zone , Meerut.
2. The Commissioner, CGST, Commissionerate Dehradun.
3. The Commissioner, SGST, Uttarakhand.
4. Members of Advance Ruling Authority.
5. Concerned Officer, State Tax, Dehradun.
6. Jurisdictional Officer.
7. Appellant M/s Windlas Biotec Ltd, 40/1 Mohabewala Industrial Area, Dehradun, Uttrakhand
8. Guard File.