M/s Strides Emerging Markets Ltd (appellant; represented by Mr. Abhi Paresh, Chartered Accountant)

Appellate Authority for Advance Ruling — Karnataka

ORDER NO:-KAR/AAAR/04/2019-20, Dated:-03.12.2019 Dated **03.12.2019**

Q Questions Before the Authority

- What is the appropriate classification of Nicotine Polacrilex Lozenge (NCT) manufactured by the appellant, and the rate of tax applicable thereon under Notification 01/2017-Central Tax (Rate) dated 28.06.2017? (The question as put to the Advance Ruling Authority; the appeal challenges its answer.)

F Facts

The appellant, a pharmaceutical company registered as a 100% EOU in Karnataka, manufactures Nicotine Polacrilex Lozenge in 2 mg and 4 mg doses to help addicted smokers cut down or quit smoking. It contended that the lozenge is a medicament under heading 3004 and taxable at 12%, while the Advance Ruling Authority classified it under heading 38.24 at 18%. The dispute turns on whether the Chapter 30 exclusion for preparations intended to assist smokers to stop smoking applies to a lozenge.

H Ruling

Classification of Nicotine Polacrilex Lozenge (2 mg and 4 mg) and GST rate under Notification 01/2017-CT(Rate) dated 28.06.2017	****Heading 38.24**; Sl. No. 97 of Schedule III; **18%** (9% CGST + 9% SGST)**	The order contains no separate item-wise Q/A RULING section; the answer appears in the ORDER paragraph, which upholds the Advance Ruling and dismisses the appeal. The lozenge is not a medicament under heading 3004 (12%) and is not food under 21.06.

The Appellate Authority dismissed the appeal and upheld the Advance Ruling Authority's order. It held that the product is not excluded from Chapter 30 only by reason of its form, but that it is a preparation intended to assist smokers to stop smoking and so falls within Chapter Note 1(b), and that it is not a medicament under heading 3004. It further held that the product is a chemical preparation classifiable under **heading 38.24** , covered by **Sl. No. 97 of Schedule III at 18% GST** (9% CGST and 9% SGST). The 57-day delay in filing the appeal was condoned suo motu.

R Reasoning

The Authority read the GST rate notification together with the First Schedule of the Customs Tariff Act, 1975, including its Section and Chapter Notes, as directed by the Explanation to the notification. It held that Chapter Note 1(b) to Chapter 30 excludes preparations 'such as tablets, chewing gum or patches' intended to assist smokers to stop smoking, that the words 'such as' are illustrative rather than exhaustive (relying on Good Year India v. Collector of Customs), and that a lozenge is therefore covered. It rejected the argument that the product is a medicament under heading 3004, finding that it treats no illness and is only a nicotine replacement aid, and it rejected heading 21.06 because the product is not a food preparation. Heading 38.24 was held to be the residual

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

chemical heading that best fits a nicotine-bound resin preparation.

P Provisions Relied On

- Section 100 of the CGST Act, 2017 and KGST Act, 2017 (appeal to Appellate Authority)
- Section 100(2) and its proviso (time limit for appeal and extension by a further 30 days)
- Section 101 of the CGST Act, 2017 and KGST Act, 2017
- Section 97 of the CGST/KGST Act, 2017 and Rule 104 of the CGST/KGST Rules, 2017 (application for advance ruling, Form…
- Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017: Sl. No. 63 of Schedule II, Sl. No. 41 and Sl. No. 97 of Schedul…
- Explanation (iii) and (iv) to Notification 01/2017-CT(Rate) dated 28.06.2017 (interpretation by reference to the Customs Tariff)
- First Schedule to the Customs Tariff Act, 1975: Chapter 30, Chapter Note 1(b) to Chapter 30, headings 3004, 21.06, 38.24
- Drugs and Cosmetics Act, 1940, Section 2(b) (cited by the appellant)
- Good Year India Ltd. v. Collector of Customs, 1997 (95) ELT 450 (SC) (as relied on by the Authority)
- CC v. Sanghavi Swiss Refills P Ltd, 1997 (94) ELT 644 (CEGAT) (as relied on by the Authority)

! For the Practitioner

This order is useful for any stop-smoking nicotine replacement product sold in measured doses, since it applies Chapter Note 1(b) to Chapter 30 to a lozenge and places it under heading 38.24 at 18%. It supports classifying such products outside the 12% heading 3004 medicament entry, and it confirms that the 'such as' examples in Chapter Note 1(b) are illustrative. It does not resolve the appellant's argument that Schedule III lists 'Nicotine Polacrilex gum' under Chapter 30 and that the tariff item 3004 49 90 would be rendered redundant, which the order does not address in detail. It also does not decide the product's regulatory status under the Drugs and Cosmetics Act beyond noting the appellant's submissions.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> kar_aaar_04_2019-20_03.12.2019.pdf

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