M/s Dabur India Ltd.

Authority for Advance Ruling — Uttar Pradesh

Order No. 25, dated 20.02.2019 (Authority for Advance Ruling, Uttar Prad… Dated **20.02.2019**

Q Questions Before the Authority

- What is the correct classification of the product Odomos, sold by the applicant, under the Customs Tariff Act, 1975 as applied for GST: Chapter 30 (medicament, HSN 3004) or Chapter 38 (HSN 3808)?

F Facts

The applicant, a manufacturer of FMCG products, makes Odomos, a cream applied to human skin to protect against mosquito bites. It is manufactured in Jammu and Kashmir and Dadra and Nagar Haveli and sold across India, including Uttar Pradesh. The applicant states that its active ingredient is NNDB (12% w/w), that it works by blocking mosquitoes' olfactory detection of human skin odour, and that it is licensed as a drug under the Drugs and Cosmetics Act, 1940.

H Ruling

Classification of Odomos (mosquito-bite protection cream) under Chapter 30 (medicament) or Chapter 38 (pest repellent)	**Chapter 38, HSN 38089191**	The applicant's contention for heading 3004 (sub-heading 3004 90 99) was rejected. The order does not state the GST rate applicable to HSN 38089191.

The Authority ruled that Odomos is **well covered under Chapter 38** of the Customs Tariff Act and is classified under **HSN 38089191** . It rejected the applicant's claim that Odomos is a medicament under heading 3004 (sub-heading 3004 90 99). The Authority held that Odomos works by odour, a method listed for pest repellents in the Explanatory Note to heading 38.08.

R Reasoning

The Authority applied the Explanatory Note to heading 38.08, which covers products intended to repel pests, including mosquitoes, and states that such products may achieve their result **by odour** . It found that Odomos works by making the skin unattractive to mosquitoes through odour, so it falls within heading 38.08. It held that the Allahabad High Court decision in CST v. Balsara Hygiene Products (1986), which classed Odomos as a medicament, was decided under the U.P. Sales Tax Act on common parlance and does not govern classification under the GST law. It also held that the Supreme Court's ICPA Health Products decision on 'prophylactic' does not help, because Odomos prevents mosquito bites rather than diseases. The Authority therefore found no merit in the applicant's heading 3004 argument.

P Provisions Relied On

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

Section 98 of the Central Goods and Services Tax Act, 2017 (advance ruling proceedings)

Notification No. 1/2017-Central Tax (Rate), Sl. No. 63 (heading 3004), and its direction that Customs Tariff headings, notes a…

Customs Tariff Act, 1975: Chapter 38, heading 38.08, and its Explanatory Note

Customs Tariff Act, 1975: Chapter 30, heading 3004, and its Explanatory Note

Concise Oxford English Dictionary definitions of 'medicine' and 'prophylactic' (as quoted by the parties)

Sujanil Chemo Industries v. CCE, 2005 (181) ELT 206 (SC) (cited by the applicant)

ICPA Health Products Ltd. v. CCE, Vadodara, 2004 (4) SCC 481 (cited by both sides)

CST v. Balsara Hygiene Products Ltd., 1986 UPTC 367 (All.) (distinguished)

! For the Practitioner

This ruling is useful for any topical or skin-applied mosquito repellent, which the Authority classed under heading 38.08 rather than as a medicament, even where the product is licensed as a drug. A practitioner can use it to resist heading 3004 claims for pest-repellent products that work by odour and do not treat disease. It does not state the GST rate for HSN 38089191, does not decide whether other repellent formats fall under the same heading, and is an advance ruling on the applicant's own facts. The full order should be read before relying on the reasoning, particularly the treatment of the Balsara decision.

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_->_up_aar_25_20.02.2019_dil.pdf

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