M/s Oriental Carbon & Chemicals Ltd.

Authority for Advance Ruling — Haryana

ADVANCE RULING NO.HAR/HAAR/R/2018-19/27 dated 22.11.2018 (In Ap… Dated **22.11.2018**

Q Questions Before the Authority

- Whether Applicant can classify and clear "Insoluble Sulphur" for export under tariff heading ITC HS 3812 39 30, ITC HS 3824 90 90, ITC HS 2503 00 10, ITC HS 2503 00 90 and ITC HS 4005 91 90 (Pre-dispersed Insoluble Sulphur) as desired by the customers from Thailand, Mexico, Espania (Spain) and Europe respectively?

F Facts

The applicant manufactures Insoluble Sulphur, a vulcanising agent used mainly in the rubber and tyre industry, at its Dharuhera units and at its SEZ unit in Mundra. It clears the product in the domestic market under ITC HS 2802 00 10 at 18% GST and exports it under the same heading. Some overseas customers in Thailand, Mexico, Spain and Europe have asked for different tariff entries, and the applicant wants to export under those entries in line with each country's customs requirements.

H Ruling

Whether the applicant can classify and clear Insoluble Sulphur for export under ITC HS 3812 39 30 (Thailand), 3824 90 90 (Mexico), 2503 00 10 (Spain), 2503 00 90 (Europe) and 4005 91 90 (Europe, pre-dispersed)	**No. Answered in Negative.**	The authority did not decide the merits of the correct classification. The order's own tariff table lists 3812 39 30 and 3824 90 90 at 18%, 2503 00 10 and 2503 00 90 at 5%, and 4005 91 90 at 18%. The authority said different GST rates for the same good were clearly not intended.

The authority answered the question in the negative. It held that the goods cannot be classified under more than one heading under the General Rules of Interpretation, and that the applicant gave no logical reason why the same goods should fall under different headings. It also found no reason to permit different HS codes for the same product when exported to different countries.

R Reasoning

The authority noted that the CGST and IGST rate notifications, through Explanations (iii) and (iv), apply the Customs Tariff Act 1975 First Schedule and its General Rules of Interpretation to classification. Applying GIR 1 to 6, it found no basis on which the goods could fall under more than one heading or sub-heading. It treated the proposal as illogical because the same product would carry different GST rates and different HS codes depending only on the export destination. The applicant had not shown any interpretive basis for the multiple entries, and the jurisdictional officer had said the matter was complex and for higher authorities. The authority therefore declined to answer affirmatively.

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

P Provisions Relied On

- CGST Act, 2017, Section 97(2)(a) (classification of goods and/or services, as the question admitted)
- CGST Act, 2017 and HGST Act, 2017, Section 98(4) (order under sub-section (4) of Section 98), and Section 98(1) (commen…
- CGST Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017
- HGST Notification No. 35/ST-2 dated 30.06.2017 (as printed in the order)
- IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017
- Explanations (iii) and (iv) to the rate notifications
- Customs Tariff Act, 1975, First Schedule, including the Section and Chapter Notes and General Explanatory Notes
- General Rules for the Interpretation of the Import Tariff (GIR 1 to 6)

! For the Practitioner

Exporters seeking to use different HS codes for the same product for different importing countries should note that this authority refused to permit it where the product is the same and the applicant offered no interpretive basis for multiple headings. The ruling does not decide what the correct HS heading for Insoluble Sulphur is, because the authority declined to examine the merits. Practitioners should look at the applicant's flow-chart and chemical-process arguments in paragraph 13 if the underlying classification question is to be pursued.

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 -> har_aar_27_2018-19_22.11.2018_occl.pdf

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