M/s PRABHAT GUDAKHU FACTORY, Jyoti Mill Campus, Souraguda, Jeypore, Koraput, Odisha-764005 (GSTIN 21AACHA8243B272)

Authority for Advance Ruling — Odisha

ORDER NO.06/ODISHA-AAR/2018-19 DATED 05.02.2019 (File No. V (1) A… Dated **05.02.2019**

Q Questions Before the Authority

- What is the appropriate classification of Gudakhu under the GST Tariff heading: is it 2403 11 10 (Hookah or Gudakhu tobacco) as the applicant contends, or 2403 99 90 (Other) as the jurisdictional officer contends?
- Whether the applicant is liable to pay NCCD (National Calamity Contingency Duty).

F Facts

The applicant manufactures Gudakhu in paste form, which is used orally as a tooth paste, and has been clearing it as branded Gudakhu under CETH 2403 99 90 since obtaining central excise registration on 01.10.2002. After GST came in, it sought to reclassify the product under 2403 11 10, arguing that tobacco is only about 20% of the composition and that Gudakhu is a tobacco product. The jurisdictional CGST officer contended that the product is a tobacco-molasses-lime-soil-water mixture closer to gutkha, applied to teeth and chewed, and so belongs under 2403 99 90.

H Ruling

Classification of Gudakhu manufactured by the applicant (paste form)	****2403 99 90** (GST Tariff heading, 'Other')**	Not 2403 11 10, which the applicant had sought. The paste is not water pipe tobacco as defined in the Chapter 24 sub-heading note, so 2403 11 does not apply.
Liability to pay NCCD	**No ruling given. The Authority held the question outside its jurisdiction.**	This is recorded in para 4.7 of the reasoning, not in the operative RULING paragraph, which deals only with classification.

The Authority held that **Gudakhu manufactured by the Applicant is to be classified under GST Tariff Heading 2403 99 90** . It declined to give a ruling on the applicant's liability to pay NCCD, holding that NCCD is a levy under the Central Excise Act and falls outside the scope of Section 97(2) and the Authority's competence under Section 96.

R Reasoning

The Authority held that the applicant's Gudakhu paste is sold for use as a tooth paste and is not water pipe tobacco intended for smoking in a water pipe, so it cannot fall under sub-heading 2403 11 as defined in the sub-heading note to Chapter 24. Sub-heading 2403 99 is a residual entry covering all other tobacco products, and

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

it includes cut tobacco, tobacco extracts and snuff, not only chewing tobacco such as gutkha or zarda. The applicant's ejusdem generis argument was therefore rejected, because the general 'Other' entry is not confined to the chewing-tobacco family. As the product matches no specific sub-heading under 2403, it falls under the residual 2403 99 90. On NCCD, the Authority held that the duty is levied under the Central Excise Act and not under the CGST/OGST/IGST Act, so it is outside the scope of Section 97(2) and the Authority's competence under Section 96.

P Provisions Relied On

- Section 97 of the CGST Act, 2017 and OGST Act, 2017 (application for advance ruling; sub-section (2) scope)
- Section 98 of the OGST/CGST Act, 2017 (advance ruling)
- Section 96 of the OGST Act, 2017 (constitution of the Authority for Advance Ruling)
- Section 100 of the OGST/CGST Act, 2017 (appeal to the State Appellate Authority)
- Rule 104 of the CGST Rules, 2017 and OGST Rules, 2017 (Form GST ARA-01)
- GST Tariff heading 2403, sub-heading 2403 11 (water pipe tobacco) and its sub-heading note in Chapter 24
- GST Tariff sub-heading 2403 99 90 ('Other')
- Central Excise Act (NCCD levy, referred to only to hold it outside the Authority's scope)
- Judgment of Odisha High Court in Shamsuddin Akbar Khan and Co., 35 STC 179 (cited by the applicant)

! For the Practitioner

This order is useful for a practitioner dealing with Gudakhu or similar tobacco-based paste products: it confirms that a product sold for oral or tooth use, and not for smoking in a water pipe, cannot be placed under 2403 11, and that the residual 2403 99 90 applies. It also shows that the ejusdem generis argument will not succeed where the 2403 99 entry expressly covers several non-chewing categories. The order does not decide the NCCD liability, which must be taken up under the Central Excise framework, and it binds only the applicant, subject to appeal within 30 days.

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 -> odisha aar-06-2018 dtd 05.02.19-pgf.pdf

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