M/s Strides Emerging Markets Limited, Strides House, Bilekanahally, Bannerghatta Road, Bengaluru-560076 (GSTIN 29AARCS5667D1ZQ)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 18/ 2019, Date: 07-08-2019 Dated **07.08.2019**

Q Questions Before the Authority

- What is the appropriate classification of Nicotine Polacriliex Lozenge (NCT) manufactured by the Company, and the rate of tax applicable thereupon under Notification 01/2017-Central Tax (Rate), dated 28-06-2017?

F Facts

The applicant, a pharmaceutical company and 100% EOU, manufactures Nicotine Polacriliex Lozenge (NCT), which is used to wean off withdrawal symptoms during nicotine cessation. The product contains nicotine in measured doses of 2 mg (over the counter) and 4 mg (on prescription), mixed with colours and flavours. The applicant claimed heading 3004 at 12% under entry 63 of Schedule II, while the competing entry for nicotine polacrilex gum under Chapter 30 attracts 18% under entry 41 of Schedule III.

H Ruling

Classification of Nicotine Polacriliex Lozenge (NCT) and applicable rate under Notification 01/2017-Central Tax (Rate) dated 28-06-2017	**Heading **38.24**; Serial No. 97 of Schedule III; GST **18%** (9% CGST + 9% SGST)**	Not heading 3004 (entry 63, Schedule II, 12%). The ruling is limited to the applicant's product as described in the application. Heading 21.06 was rejected because nicotine is not an edible or food preparation.

The Authority held that the product is not classifiable under heading 3004 and is not covered by entry 63 of Schedule II. It held that the product is rightly classifiable under heading 38.24 and is covered by **Serial No. 97 of Schedule III** , attracting **GST at 18% (9% CGST and 9% SGST)** .

R Reasoning

The Authority relied on the explanatory notes to heading 30.04, which exclude preparations such as tablets, chewing gum or patches intended to assist smokers to stop smoking, and on Chapter 30 Chapter Note 1(b), which also excludes such preparations. It read the words 'such as' as covering any form, so the lozenge falls within the exclusion regardless of its being a tablet rather than gum. Under the interpretation clause in the explanations to Notification 01/2017-Central Tax (Rate), the Customs Tariff rules and explanatory notes apply. Because the product is intended to assist smokers to stop smoking, the Authority then considered heading 21.06 and rejected it as the product is not edible, leaving heading 38.24.

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

P Provisions Relied On

- Section 97 of the CGST Act 2017, KGST Act 2017 and IGST Act 2017 (advance ruling)
- Section 98(4) of the CGST Act 2017 and KGST Act 2017 (order under sub-section (4))
- Rule 104 of the CGST Rules 2017 and KGST Rules 2017
- Notification No. 01/2017-Central Tax (Rate) dated 28-06-2017: Schedule II entry 63 (heading 3004, 12%), Schedule III entry…
- Explanations (iii) and (iv) to Notification 01/2017-Central Tax (Rate) dated 28-06-2017
- First Schedule to the Customs Tariff Act 1975 and its interpretation rules, Section and Chapter Notes
- Chapter 30 Chapter Note 1(b) (preparations such as tablets, chewing gums or patches intended to assist smokers to stop sm…
- HSN Explanatory Notes to heading 30.04, exclusion (f), and to headings 21.06 and 38.24

! For the Practitioner

A practitioner advising on nicotine-based smoking-cessation products can use this ruling to see how the Karnataka Authority treated a nicotine lozenge: heading 38.24 at 18%, with the heading 3004 argument rejected because of the smoking-cessation exclusion. It settles the classification of this product as described. It does not decide the treatment of other nicotine replacement products, such as gums, patches or products with a different composition or claimed use. The order is also a ruling issued to this applicant, and the reasoning on the 'such as' exclusion may be persuasive for similar products.

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_aar_18_2019_seml_07.08.19.pdf

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