

2024 (85) G.S.T.L. 117 (A.A.R. - GST - Telangana)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, TELANGANA

S/Shri Sahil Inamdar, Member (Central Tax) and S.V. Kasi Visweswara Rao, Member (State Tax)

IN RE : AVINJA BIOTECHNOLOGIES PVT. LTD.

TSAAR Order No. 24/2023, dated 17-11-2023 in A.R.Com/08/2023

Bio-fertilizers - Any Chapter - Classification - Applicant sought to know whether Urban Roots and Bio-Kavach being bio-fertilizers, are classifiable under Tariff Item 3003 90 11 attracting 12% GST or Tariff Item 3101 00 92 attracting 5% GST - *HELD* : No specific entry provided in Notification No. 1/2017-C.T. (Rate) covering bio-fertilizers - Organic fertilizer and bio-fertilizer have been defined separately in Fertilizer (Control) Order, 1985 - Tariff Item 3101 00 92 covers organic fertilizers and not bio-fertilizers - Bio-fertilizers are covered under residuary entry attracting 18% GST - Section 9 of Central Goods and Services Tax Act, 2017 - Section 9 of Telangana Goods and Services Tax Act, 2017. *[para 8]*

Immunity boosters - Any Chapter - Classification - Applicant sought to know whether Immunity Booster is classifiable under Tariff Item 2202 99 attracting 18% GST or Tariff Item 3003 90 11 liable to 12% GST - *HELD* : Description of product does not indicate any cure and therefore does not fall under Chapter 30 and does not attract lower rate of tax - Immunity boosters are not specified in Schedule I or II and therefore would fall in residual entry at Sl. No. 453 of Schedule III of Notification No. 1/2017-C.T. (Rate) and attract 9% CGST and 9% SGST each - Section 9 of Central Goods and Services Tax Act, 2017 - Section 9 of Telangana Goods and Services Tax Act, 2017. *[para 8]*

Ruling in favour of Department

CASES CITED

B. Prabhakar Rao v. State of A.P. — AIR 1986 SC 120 — *Referred*..... [Para 7]

Commissioner v. Ciens Laboratories — 2013 (295) E.L.T. 3 (S.C.) — *Relied on*..... [Para 7]

Commissioner v. Hindustan Lever Ltd. — 2015 (323) E.L.T. 209 (S.C.) — *Relied on*..... [Para 7]

Commissioner v. Wockhardt Life Sciences Ltd. — 2012 (277) E.L.T. 299 (S.C.) — *Relied on* [Para 7]

District Mining Officer v. Tata Iron & Steel Co. — 2001 (7) SCC 358 — *Relied on*..... [Para 7]

Doypack Systems (Pvt.) Ltd. v. Union of India — 1988 (36) E.L.T. 201 (S.C.) — *Relied on*. [Para 7]

S.P. Gupta v. M. Tarkunde — AIR 1982 SC 149 — *Relied on*..... [Para 7]

NOTIFICATION CITED

Notification No. 1/2017-C.T. (Rate), dated 28-7-2017..... [Paras 7, 8]

[Order]. - M/s. Avinja Biotechnologies Private Limited, H. No. 14, AOC Center, Plot No. 3-43-141, Mohammedi Enclave, Wellington Road, West Marredpally, Hyderabad, Telangana-500026 (36AATCA9073F1Z7) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST Act. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act, 2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per Section 98(2) of TGST Act, 2017.

4. Brief facts of the case :

The applicant, M/s. Avinja Biotechnologies Private Limited, Production and manufacturer of Bio Fertilizers and Immunity Boosters Under Bio Fertilizer : They have two segments

- (i) Urban Roots.
- (ii) Bio Kavach.

Urban Roots : Helps in treating the soil to be healthy and free of pollution through bioremediation.

Bio Kavach : Helps in improving the nutrient balance of the soil and restores soil fertility. Immunity Boosters Natural Herbal Supplement for prevention and Protection against viruses. It is made from unique herbs using special biopharmaca Extraction.

5. Questions raised :

- (1) HSN Code of Urban Roots and its Rate of tax.
- (2) HSN Code of - Bio kavach and its Rate of tax.
- (3) HSN Code of Immunity Booster - Avinja 7 and its Rate of tax.

6. Personal hearing :

The Authorized representatives of the unit namely Sri Ramandand Boosa, Chief Technical Officer & AR attended the personal hearing held on 24-5-2023. The authorized representatives reiterated their averments in the application. Further, the Authorised Representative/Applicant M/s. Avinja Biotechnologies Private Limited, reiterated that their case/Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

7. Discussion & findings :

(A) The applicant is in the business of production and manufacture of Bio Fertilizers and immunity boosters. According to their averments :

(i) One of the Products *i.e.*, Urban Roots being Bio Fertilizer acts as a both fertilizer and biological control agent with the below Composition: Ingredients: Total Phosphate Solubilizing bacteria 5.2×10^9 Cells/ml Azadirachtaindica extract, Phyllanththemniruri, Cymbopogonciratthem.

That they request the AAR to let them know the classification of the above product either HSN Code 3003 90 11 (GST rate 12%) or HSN Code 3101 00 92 (GST rate 5%) to be used

(ii) That their Second Product under the bio-fertilizer-Bio kavach which helps in nutrients balance of soil and restores fertility, improves the humthem content of the soil.

Composition : Bacillthem spp, Actinomycetes, Macro and Micro nutrients.

That they request the AAR to let them know the classification of the above product either HSN Code 3003 90 11 (GST rate 12%) or HSN Code 3101 00 92 (GST rate 5%) to be used

(iii) That their product under the Immunity Booster-Avinja 7 is a herbal supplement made from herbs and Biopharmaca Extraction.

Ingredients : Graviola Leaf Extract, Phyllanththemniruri, Garcinia Mangostana Extract, Tinospora Cordifolia & water

That they request the AAR to let them know the classification of the above product either HSN Code 2202 99 (GST Rate 18% or HSN 3003 90 11 (GST rate 12%) to be used.

In their submission they have state their understanding of the legal position as follows :

(a) With respect to Bio Fertilizer they submitted the classification under HSN Code and rate of tax under CGST as follows :

HSN 3101 00 92 (GST Rate 5 %): Description: ANIMAL OR VEGETABLE FERTILISERS, WHETHER OR NOT MIXED TOGETHER OR CHEMICALLY TREATED; FERTILISERS PRODUCED BY THE MIXING OR CHEMICAL TREATMENT OF ANIMAL OR VEGETABLE PRODUCTS ANIMAL OR VEGETABLE FERTILISERS, WHETHER OR NOT MIXED TOGETHER OR CHEMICALLY TREATED; FERTILIZERS PRODUCED BY THE MIXING OR CHEMICAL TREATMENT OF ANIMAL OR VEGETABLE PRODUCTS: OTHER: ANIMAL EXCRETA

They submitted that their product Urban Roots & Bio Kavach can be classified under the above HSN code of 3101 00 92 with a GST rate of 5% which is suitable for the Animal or Vegetable Fertilizers whether or not mixed together or chemically treated.

(b) With respect to Bio Immunity Booster they submitted the classification under HSN Code and rate of tax under CGST as follows :

HS 3003 90 11 (GST Rate 12%) Pharmaceutical products (MEDICAMENTS EXCLUDING GOODS OF HEADING 3002,3005 OR 3006) CONSISTING OF TWO OR MORE CONSTITUENTS WHICH HAVE BEEN MIXED TOGETHER FOR THERAPEUTIC OR PROPHYLACTIC USES, NOT PUT UP IN MEASURED DOSES OR IN FORMS OR PACKINGS FOR RETAIL SALE, Ayurvedic, Unani, siddha, Homoeopathic or bio-chemic systems medicaments, Of Ayurvedic System.

They submitted that their product Immunity booster can be classified under the above HSN Code of 3003 90 11 with a GST rate of 12% which is pharmaceutical-Medicaments with a combination of Ayurvedic herbs, Fruit extracts & Vegetable extracts.

(B) The Notification No. 1/2017, dated 28-7-2017 enumerates certain fertilizers in Schedule-I and prescribes the rate of tax of 2.5% CGST & 2.5% SGST. Certain other are enumerated in Schedule-II and prescribes the rate of tax of 6% CGST & 6% SGST for Schedule-II. These entries include :

		Chapter/ Heading/ Sub-head	Description of Goods
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			ing T a r i f f i t e m	
			3 1 0 1	All goods <i>i.e.</i> animal or vegetable fertilisers or organic fertilisers put up in unit containers and bearing a brand name
			3 1 0 2	Mineral or chemical fertilizers, nitrogenous, other than those which are clearly not to be used as fertilizers
			3 1 0 3	Mineral or chemical fertilizers, phosphatic, other than those which are clearly not to be used as fertilizers
			3 1 0	Mineral or chemical fertilizers,

		4	potassic, other than those which are clearly not to be used as fertilizers
		3105	Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg, other than those which are clearly not to be used as fertilizers.
		28038	Micronutrients, which are covered under serial number 1(g) of Schedule 1, Part (A) of the Fertilizer Control Order, 1985 and are manufactured by the manufacturers which are registered under the Fertilizer Control Order, 1985

As seen from the above there is no specific entry for Bio-fertilizer in the Notification No. 1/2017, dated 28-7-2017. The Hon'ble Supreme Court of India in the case of *B. Prabhakar Rao v State of A.P.* - AIR 1986 SC 120 held that when internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation.

In *Doypack Systems (P) Ltd. v. UOI* - AIR 1988 SC 782 = 1988 (36) E.L.T. 201 (S.C.), it was observed that Dictionaries, earlier acts, history of legislation, parliamentary history. Parliamentary proceedings, state of law as it existed before when the Act was passed, the mischief sought to be suppressed and the remedy sought to be advanced by the Act are external aids'.

In *S.P. Gupta v. M. Tarkunde* - AIR 1982 SC 149 (SC 7 member Bench) , it was held that where the words are clear and cloudless, plain, simple and explicit, there is absolutely no room for deriving support from external aids. And where the words or expressions used in the constitutional or statutory provisions are shrouded in mystery, clouded with ambiguity and are unclear and unintelligible so that dominant object and spirit of the Legislature cannot be spelt out from the language, external aids in the nature of parliamentary debates immediately preceding the passing of statute, the report of the Select Committees or its Chairman, the Statement of Objects and Reasons of the Statute, if any, or any statement made by the sponsor of the statute which is in close proximity to the actual introduction or insertion of the statutory provision so as to become, as it were, a result of the statement made, can be pressed into service in order to ascertain the real purport, intent and will of the Legislature to make the constitutional provision workable.

In *District Mining Officer v. Tata Iron & Steel Co.* - 2001 (7) SCC 358 (SC 3 member Bench), it was observed that, It is a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in *pari materia* and the mischief which the statute intended to remedy'. Most of these external aids can be used with limited purpose of finding out intention of the Legislature and that too only if the words in the Act are not clear.

In view of the above Judge made law and absence of clarity in the Notification No. 1/2017, dated 28-7-2017 regarding bio fertilizer, a reference is made to THE FERTILISER (CONTROL) ORDER, 1985, where in the definitions of bio-fertilizer and organic fertilizer are enumerated as follows :

Section 2(aa) Biofertiliser means the product containing carrier based (solid or liquid) living microorganisms which are agriculturally useful in terms of nitrogen fixation, phosphorus solubilisation or nutrient mobilization, to increase the productivity of the soil and/or crop/;

Section 2(oo) "Organic fertilizer" means substances made up of one or more unprocessed material(s) of a biological nature (plant/animal) and may include unprocessed mineral materials that have been altered through microbiological decomposition process;

As seen from the above definitions in the THE FERTILISER (CONTROL) ORDER, 1985, the HSN 3101 00 92 comprising of animal or vegetable fertilizers qualify to be organic fertilizer and not bio fertilizer as argued by the applicant and therefore their products of bio fertilizers do not fall under this HSN.

Bio fertilizers are not specified either in Schedule I or Schedule II as seen from the above table hence this is a commodity which is not specified in Schedule I, II, IV, V or VI of the Notification No. 1/2017, dated 28-6-2017 and therefore would fall in residuary entry at Serial No. 453 of Schedule III and attract the tax at the rate of 9% CGST & 9% SGST each.

Further the *Explanation* to Notification No. 1/2017 elaborates the procedure to interpret the entries in the Schedules of the Notification as follows :

“*Explanation* -

(1) In this Schedule, “tariff item”, “heading”, “sub-heading” and “Chapter” shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.”

A survey of the material submitted by the applicant reveals that the issue to be determined is whether the products manufactured by them fall under Chapter ‘30’ of the customs tariff code as these products are argued to be medicinal in nature by the applicant.

The Hon’ble Supreme Court of India in the case of *Commissioner of Central Excise, Mumbai IV v. Ciens Laboratories* - (2013) 14 SCC 133 = 2013 (295) E.L.T. 3 (S.C.) = [2013] 38 taxmann.com 337/42 GST 21 (SC) formulated the following principles for determining the nature of a product as to whether it is a medicament or a cosmetic :

“Firstly, when a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably decisive. What is of importance is the curative attributes of such ingredients that render the product a medicament and not a cosmetic.

Secondly, though a product is sold without a prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over/across the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments.

Thirdly, prior to adjudicating upon whether a product is a medicament or not, Courts have to see what the people who actually use the product understand the product to be. If a product’s primary function is “care” and not “cure”, it is not a medicament. Cosmetic products are used in enhancing or improving a person’s appearance or beauty, whereas medicinal products are used to treat or cure some medical condition. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities is to be branded as a medicament.”

Further the Hon’ble Apex Court of India in the case of *Commissioner of Central Excise v. Hindustan Lever Ltd.* (25-8-2015 - SC) (2015) 10 SCC 742 = 2015 (323) E.L.T. 209 (S.C.) = [2015] 60 taxmann.com 470/51 GST 818 (SC) has addressed this issue as follows :

“To put it in a nutshell, if a particular product is substantially for the care of skin and simply because it contains subsidiary pharmaceutical or antiseptic constituents or is having subsidiary

curative or prophylactic value, it would not become medicament and would still qualify as the product for the care of the skin.

There would be certain products which would be purely for the care of skin and certain other products would be clearly medicament and such cases may not pose any problem.

The issue of determination as to whether a particular product falls in Chapter 30 would arise in those cases where certain products have the shades or qualities of both, namely, skin care as well as cure of skin diseases. In such cases, the necessary exercise requires to be undertaken.

Whenever product has curative or prophylactic value as well, but the Department still wants the said product to be brought under Chapter Heading 3304.00, onus is on the Department to show that it is not medicament. For this, it will have to demonstrate that curative or prophylactic value is only subsidiary in nature or that the product is covered by the description under chapter notes 5, namely, either it is chiropody or barrier cream to give protection against skin irritants. If the Department fails to discharge this onus, the product has to be treated as medicament and would be covered under Chapter 30."

The Hon'ble Apex Court in the above case also observed that "What is more relevant is the purpose for which the product is used namely, functional test".

In *Commissioner of Central Excise v. Wockhardt Life Sciences Ltd.* (2012) 5 SCC 585 = 2012 (277) E.L.T. 299 (S.C.) = [2012] 28 taxmann.com 431 (SC) the Hon'ble Apex Court while discussing the Interplay of Chapter 30 vis-à-vis Chapter 34 (which deals with detergent products), observed that :

"In our view, as we have already stated, the combined factors that require to be taken note of for the purpose of the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put."

Drawing from the above and based on the information submitted by the applicant, the undersigned Authority for Advance Ruling propose to classify the products either as a cosmetic whose primary function is care and not cure which is used for enhancing-improving a person's appearance -beauty or on the other hand a medicament used to treat or cure a medical condition by adopting the following parameters :

The product should have a drug license.

The Composition of the product should have medical ingredients.

The product label/character should indicate the function or the purpose for which it is used.

The description of the product by the applicant does not indicate any cure therefore will does not fall under Chapter 30 and hence will not attract a lower rate of tax. Further immunity boosters are not specified either in Schedule I or Schedule II as seen from the above table hence this is a commodity which is not specified in Schedule I, II, IV, V or VI of the Notification No. 1/2017, dated 28-6-2017 and therefore would fall in residuary entry at Serial No. 453 of Schedule III and attract the tax at the rate of 9% CGST & 9% SGST each.

8. In view of the foregoing, we rule as follows :

In view of the above discussion, the questions raised by the applicant are clarified as below :

Questions	Ruling
1. HSN Code of Urban Roots and its Rate of tax.	Serial No. 453 of Schedule III of Notification No. 1/2017. Rate of Tax 9% CGST & 9%SGT.
2. HSN Code of - Bio kavach and its Rate of tax.	Serial No. 453 of Schedule III of Notification No. 1/2017. Rate of Tax 9% CGST& 9%SGT
3. HSN Code of Immunity Booster - Avinja 7 and its Rate of tax.	Serial No. 453 of Schedule III of Notification No. 1/2017. Rate of Tax 9% CGST& 9%SGT.