KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR/ 07/2021 **DATE:30-06-2021**

Sl. No	Name and address of the appellant	M/s Wipro Enterprises Pvt Ltd, Wipro House, Consumer Care & Lighting Division, 6th Floor, No 8, 7th Main Road, 80ft Road, Koramangala 1st Block, Bangalore, 560034
1	GSTIN or User ID	29AAJCA0072C1Z1
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 08/2021 Dated: 26thFebruary 2021
3	Date of filing appeal	16-04-2021
4	Represented by	Sri G.Shivdass, Senior Advocate and authorised representative
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Bangalore North-West Commissionerate.
6	Jurisdictional Authority- State	LGSTO 15, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN HDFC21042900119559 dated 15-04-2021 for Rs 20,000/-.

APPELLATE AUTHORITY FOR ADVANCE RULING BANGALORE

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is

particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Wipro Enterprises Pvt Ltd, Wipro House, Consumer Care & Lighting Division, 6th Floor, No 8, 7th Main Road, 80ft Road, Koramangala 1st Block, Bangalore, 560034 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 08/2021 dated: 26th February 2021.

Brief Facts of the case:

3. The Appellant is engaged in the manufacture of toilet soaps, LED bulbs and fittings, other toiletries and other consumer products and manufacturing and marketing Hand sanitizer at a large scale at their various factories primarily to combat the situation arising on account of pandemic COVID-19. The Appellant is currently manufacturing and marketing the Alcohol-based n=hand sanitizer and charging GST at 18% under HSN 3808.94. However, it is the Appellant's understanding that the said goods would fall under HSN 3004 with a GST rate of 12%.

4. In order to obtain a clarification regarding their understanding, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

> *"What is the appropriate classification of the hand sanitizer for the purpose of GST?*
>
> *What is the applicable rate of GST?"*

5. The AAR vide its order KAR ADRG No 08/2021 dated 26th February 2021 held as under:

> *"The hand sanitizers are classifiable under Heading 3808 under the Customs Tariff Act.*
>
> *The hand sanitizers are liable to tax at the rate of 9% under CGST Act and at the rate of 9% under the KGST Act."*

6. Aggrieved by the ruling given by the AAR, the Appellant has filed this appeal on the following grounds.

6.1. The Appellant submitted that they had obtained a drug licence under the provisions of the Drugs and Cosmetics Act, 1940 for the purpose of manufacturing and selling the product Alcohol-based hand sanitizer; that the hand sanitizer manufactured by the Appellant contains 95% v/v of ethyl alcohol, which is within the standard prescribed by the Indian Pharmacopoeia; that the said hand sanitizer is meant for use as an antibacterial gel to keep hands clean and protected having a property to kill 99.99% of germs; that on perusal of the Tariff entry and Explanatory Notes, Chapter Heading 3004 is the most appropriate chapter heading to cover medicaments which are used for therapeutic or prophylactic value; that the term "therapeutic" and "prophylactic" has not been defined under the Tariff or Explanatory Notes and hence they place reliance on the definition as contained in P RamanathaIyer's Advanced Law Lexicon wherein the word "prophylactic" is defined as "Done or used as preventive against disease. Formulated to prevent something". They also placed reliance on the decisions of the Supreme Court in the case of Sujanil Chemo Industries vs Commissioner of C.Ex&Cus, Pune – 2005 (181) ELT 206 (SC), Commissioner of Central Excise vs Wockhardt Life Sciences Ltd – 2012 (277) ELT 299 (SC) and Commissioner of C.Ex, Mumbai I vs Ciens Laboratories, Mumbai - 2013 (295) ELT 3 (SC) wherein it was uniformly held that if a product is used for preventing spread of disease, the same would be considered to be of prophylactic use therefore qualifying as a medicament.

6.2. They also submitted that the World Health Organisation has also specifically recognised the use of alcohol-based hand-rub for hand hygiene and this has been specifically stated in their publication "WHO Guidelines on Hand Hygiene in Health Care". The relevant portion reads as follows:

"Use of alcohol-based hand-rub as the preferred means for routine hand antisepsis in all other clinical situations described in items D(a) to D(f) listed below if hands are not visibly soiled. If alcohol-based hand-rub is not obtainable, wash hands with soap and water.

They submitted that the product in question is undoubtedly anti-infective in nature and hence the same would qualify as a product used for prophylactic use and in turn merits classification as Medicament under Chapter Heading 3004.

6.3. They drew attention to the Tariff entry 3808 of the Customs Tariff and the explanatory Notes to emphasise that the disinfectants referred in Chapter Heading 3808 are agents that destroy or irreversibly inactivate undesirable bacteria, viruses or other micro-organisms, generally on inanimate objects; that the use of the phrase 'generally on inanimate objects' also indicates the intention to include only such items which are used as cleaning agents on non-living objects and if they are used on living objects, they would not qualify as disinfectants as they are in the nature of medicaments; that it is clarified in the explanatory notes that disinfectants referred in Chapter 3808 are used in hospitals for cleaning walls, etc or sterilising instruments; that the disinfectants having the essential character of medicaments, including veterinary medicaments are to be classified under the respective heading and not under Chapter 3808. They submitted that the hand sanitiser supplied by them is a product specifically used by living beings for killing bacteria and would clearly fall outside the ambit of 'disinfectants' referred to in Chapter Heading 3808.

6.4. The Appellant submitted that common parlance test must be conducted before classifying goods under a particular heading; that goods must be classified based on the common understanding of the purpose of the product which results in eliminating any confusion regarding the nature and purpose of the said product. In this regard, they placed reliance on P Ramanatha Aiyar's Advanced Law Lexicon wherein the term Common Parlance test is defined as follows:

> *"Common Parlance Test – It is settled position in law that while interpreting the entry for the purpose of taxation recourse should not be made to scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them, by those dealing in them. It is known as Common Parlance Test".*

They also relied on the decisions rendered in the case of Commissioner of Customs & Excise, Nagpur vs Shree BaidyanathAyurved Bhawan Ltd 2009 (237) ELT 225 (SC), Dabur (India) Ltd vs Commissioner of Central Excise, Jamshedpur – 2005 (182) ELT 290 (SC) and Commissioner of Sales Tax vs Balsara Hygiene Products Ltd – 1985-VIL-09-ALH, wherein it has been uniformly held that any product which is made available for purchase to the general public, must be classified in such a manner that is commonly understood and perceived since it takes precedence over the scientific and technical terminology used to describe the goods. They submitted that alcohol-based hand sanitizer is perceived as a hand-

rub medication that kills the germs thereby preventing diseases and hence, the common parlance test results in the said product in question to be classified under the Heading 3004 as a medicament.

6.5. The Appellant submits that the Director General of Foreign Trade (DGFT) vide Notification No 08/2015-2020 dated 01-06-2020, has prohibited the exports of products under 4 headings viz; 3004, 3401, 3402 and 380894; that the products covered under HSN 3401 and 3402 are primarily soap, organic surface-active products which are used for washing the skin, whether in the form of bars, cream or otherwise; that the said description does not match the product in question supplied by the Appellant; that the products covered under the Heading 3808.94 are Insecticides, Rodenticides, Fungicides, Herbicides, Disinfectants and other similar products which are not intended for contact with human skin; that since the product supplied by the Appellant is intended for human skin contact, the said HSN cannot be made applicable to the same. Therefore, the Appellant submitted that the alcohol-based Hand Sanitizers are classifiable under Heading 3004 and it is the intention of the DGFT to identify the same as Medicaments.

6.6. The Appellant submits that in the efforts to combat the ongoing COVID-19 pandemic, many variants of Hand Sanitizer were manufactured and distributed. However, with an intention to manufacture and distribute inexpensive and effective products, the Appellant had obtained the requisite license from the Drugs Control Department under the Drugs and Cosmetics Act, 1940 for manufacturing the alcohol-based hand sanitizer which is an approved drug; that they had been granted a fresh manufacturing license in this regard; that subsequently, the Ministry of Health and Family Welfare had issued a Notification dated 27-07-2020 wherein they had expressly exempted a drug from the requirement of sale license as per the Drugs and Cosmetics Act, 1940 since it was necessary for widespread availability; that the said drug was the same alcohol-based hand sanitizer the Appellant had begun to manufacture and distribute. They submitted that it is clear from the Notification that the Ministry of Health and Family Welfare considers the product in question to be a drug under the Drugs and Cosmetics Act and that its availability in the market is critical in the combat of the COVID-19 pandemic.

6.7. The Appellant submits that as per Sl.No 63 in Schedule II of Notification No 01/2017 CT (Rate), the products covered under the Heading 3004 are subject to tax at a rate of 6% under CGST and SGST respectively. They further placed reliance on the judgment rendered

in the case of Commissioner of Sales Tax vs S.S. Balsara Hygiene Products Ltd – 1986 UPTC 367 wherein it was held that a product which saves the human skin from being infected, is a drug as per the Drugs and Cosmetics Act, 1940. They also submitted that the lower Authority's comparison of the product in question as an alternative to soap has no technical basis as there is no requirement to use water, nor there is a lather in the operating procedure and outcome of the usage of hand sanitizer; that soap is a class of anionic surface-active agent with an alkaline reaction, which lather abundantly in aqueous solutions; that the product in question is not an anionic surface-active agent and does not require the use of water nor does it produce lather in aqueous solutions; that a biologic, chemical or mechanical agent which prevents the spread of an infection, occurrence of disease or guarding from the spread of disease is a product that can be defined as having a character of "prophylactic use"; that though sanitizers are not available as tablets or ampoules, etc., it is packed for retail sale for eliminating germs and harmful bacteria on the surface of the hands for which particular and appropriate indications, method of application and recommended dose is mentioned. They submitted that the lower Authority has rightly pointed out that the main activity of the disinfectant is to disinfect surfaces; that the human skin cannot be considered to be a 'surface' per se for the use of the above-mentioned disinfectants as they are harmful by nature which causes skin damage and so the product in question cannot be identified to be a disinfectant in respect of application on human skin.

6.8. The Appellant submits that in the case of Commissioner of Sales Tax vs S.S Balsara Hygiene Products Ltd – 1986 UPTC 367 -, the Court has held that Odomas is a medicament as it prevents several dangerous diseases and infections caused by mosquito bites and that it is a medicament though it does not cure the disease since it is a preventive measure; that it also held that the manufacturing of this commodity was also controlled by the authorities under the Drugs and Cosmetics Act, 1940 and hence it lends support to the assessee that it is used like a medicine. Hence, they submitted that as the product in question is also being manufactured under the control of the authorities under the Drugs and Cosmetics Act, 1940 and that the chemical composition is also as per the prescribed proportions as per the Indian Pharmacopoeia 2018, the hand sanitizer can be classified under Heading 3004.

6.9. In view of the above, the Appellant submits that the appropriate classification for alcohol-based hand sanitizer would be under Heading 3004 and the applicable GST rate on the Hand Sanitizer would be 12% in terms of Sl.No 63 of Schedule II of Notification No 01/2017-CT (Rate) dated 28-06-2017.

6.10. The Appellant also made an application for condonation of 12 days delay in filing this appeal on the grounds that due to the ongoing 2nd wave of the pandemic, there was a delay in communicating the impugned order to the relevant department of the Appellant and the Authorised signatory was himself under quarantine and therefore there was a delay in filing of the appeal.

PERSONAL HEARING

7. The appellant was granted a virtual hearing on 25th June 2021. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Shri. G. Shivadass, Senior Advocate and Shri. Rishab J, authorised representative.

7.1. The Advocate sought for condonation of 12 days delay in filing the appeal. On the merits of the matter under appeal, he explained the facts of the case and submitted that dispute is with regard to classification of hand sanitizer i.e whether under Heading 3004 as contended by them or under Heading 3808.94 as held by the Lower Authority. While reiterating the submissions made in the grounds of appeal, the Advocate took the Bench through the various provisions of the HSN notes pertaining to Chapter Headings 3004 and 3808 as well as the provisions of the Drugs and Cosmetics Act, 1940 to substantiate their claim that the alcohol-based hand sanitizer manufactured by the Appellant qualifies to be classified as a medicament under Heading 3004. He submitted that based on the definition of 'drug' as per Section 3 of the Drugs and Cosmetics Act and the standard of quality of the impugned products which are as per the Indian Pharmacopeia, it is evident that the hand sanitizer manufactured by the Appellant is for topical use and is ant- infective in nature and hence the same qualifies as a medicament.

7.2. Reliance has also been placed on the DGFT Notification dated 6th May 2020 which indicates that Alcohol based hand sanitizers are classifiable under 4 different headings and not only under 3808.94. He submitted that the sanitizer mentioned in Chapter Heading 3808.94 refers to the disinfectant which is not used on animate objects and not in contact with the skin. He also placed reliance on several decisions of the Supreme Court to buttress the argument that the impugned products manufactured by the Appellant are correctly classifiable as a 'medicament' under Chapter Heading 3004.

DISCUSSIONS AND FINDINGS

8. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal, the additional submissions as well as the submissions made at the time of personal hearing.

9. The Appellant has sought for condonation of delay of 12 days in filing the present appeal citing the reason that there was a delay in communicating the advance ruling to the concerned department and also that the authorised signatory was himself under quarantine. In terms of Section 100(2) of the CGST Act, every appeal to this Authority should be filed within a period of 30 days from the date on which the Advance Ruling order is communicated to the aggrieved party. The proviso to Section 100(2) empowers this Authority to condone the delay in filing the appeal by another period of 30 days. In this case, the Appellant received the order of advance ruling on 05.03.2021. The statutory due date for filing an appeal against the advance ruling order was 04.04.2021. However, the appeal has been filed on16-04-2021 after a delay of 12 days from the due date. Considering the submissions made by the Appellant, the delay in filing the appeal is hereby condoned in exercise of the power vested in terms of the proviso to Section 100(2) of the CGST Act.

10. The issue for determination in this appeal is the classification of the product "Alcohol-based hand sanitizer". The lower Authority has held that the said product is classifiable under Chapter Heading 3808.94 and this has been assailed by the Appellant who has argued that the product would merit classification under Chapter Heading 3004 as a medicament. The primary reason for the appellant's claim to classify the product under Chapter Heading 3004 is on account of its characteristics and operating procedure and the fact that they have been granted a licence to manufacture the same in terms of the Drugs & Cosmetics Act, 1940. In addition, they have placed reliance on judgments rendered in classification matters wherein it has been held that common parlance test takes precedence over scientific and technical specifications as well as the DGFT Notification which refers to the product 'hand sanitizer' under Heading 3004.

11. According to Britannica.com, 'Hand sanitizer' is defined as a cleansing agent, hand antiseptic, hand rub agent applied to the hands for the purpose of removing common

pathogens (disease-causing organisms). Hand sanitizers typically come in foam, gel, or liquid form. Hand sanitizer is employed as a simple means of infection control in a wide variety of settings. Hand sanitizers can be alcohol-based or alcohol free. The product manufactured by the Appellant is an alcohol-based hand sanitizer and hence we will restrict our discussion to this category of hand sanitizers. Alcohol-based hand sanitizers typically contain between 60 to 95% alcohol (usually in the form of ethanol, isopropanol or *n*-propanol). At this concentration, the active ingredient alcohol immediately denatures proteins effectively neutralising certain types of micro-organisms.According to the World Health Organization (WHO), alcohol-based hand sanitizers have an excellent property of inactivating certain viruses, bacteria and fungi. Alcohol-based hand sanitizers have been in use for many decades but its use has mostly been restricted to medical settings such as hospitals and healthcare facilities. However, the onset of the COVID-19 pandemic has popularised the use of hand sanitizer and made it into a household name. This is primarily on account of the WHO guidelines stating that hand hygiene is the primary measure proven to be effective in preventing the spread of the COVID-19 virus. The WHO has also issued guidelines for improving hand hygiene practices and this includes the use of alcohol-based hand rubs/sanitizers to be used for 20-30 seconds when hands are not visibly dirty. In line with these guidelines, various governments around the world, including India, have promoted the use of ethyl alcohol or isopropyl alcohol-based hand sanitizers for hand hygiene. In the current pandemic scenario, the use of a hand sanitizer is a recommended and acknowledged method of hand hygiene.

12. Chapter 3004 of the Customs Tariff covers medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses. Though the terms 'therapeutic and prophylactic' have not been defined in either the Customs Tariff or the GST law, a common understanding of the term 'therapeutic' is treatment of a disease whereas 'prophylactic' is preventing the onset or progression of a disease. For a product to be classified as a medicament under Chapter Heading 3004, it is important that the product has either of the two qualities i.e therapeutic or prophylactic. Even if a product is manufactured using ingredients regulated under the Drugs and Cosmetics Act and according to the formula prescribed in the Pharmacopeia, it cannot be classified as a medicament under Heading 3004 unless it is meant for therapeutic or prophylactic uses. Its curative or preventive value must be substantial, and the product must be manufactured primarily to control or cure a disease, and the consumers use it primarily for treatment, mitigation, cure or prevention of specific

disease or disorder. We find that the alcohol-based hand sanitizer does not have either therapeutic or prophylactic properties. It is at best a substance which has disinfectant properties as it prevents the spread and transmission of germs/bacteria/viruses. Prevention of transmission of disease-causing micro-organisms is not the same as preventing the onset or progression of a disease. A drug which is used for the prevention of the onset or progression of a disease or ailment can be called a drug having prophylactic properties. However, an alcohol-based hand sanitizer containing the drug ethanol, is used for preventing the transmission of disease-causing germs/bacteria/viruses and this does make it a prophylactic drug. As already mentioned by us, the use of an alcohol-based hand sanitizer neither controls the diseases caused by the viruses/bacteria nor does it develop preventive characteristics inside the human body to fight the disease caused by the viruses/bacteria. It is merely a product recommended for use in hand hygiene practices. For this reason, we hold that the alcohol-based hand sanitizer cannot be considered as a 'medicament' classifiable under Chapter Heading 3004. We have also gone through the judicial decisions relied upon by the Appellant in support of their claim for classification of the impugned product as a medicament. We are however unable to appreciate the relevance of the said decisions since the nature and use of the products in those decisions have no similarity or likeness to the alcohol-based hand sanitizer.

13. The Appellant has laid much stress on the fact that they have been issued a license under the Drugs and Cosmetics Act, 1940 for the manufacture and sale of 'alcohol-based hand sanitizer'. The primary objective of the Drugs & Cosmetics Act is to ensure that the drugs and cosmetics sold in India are safe, effective and conform to the quality standards as prescribed in the Second Schedule of the said Act. Regulation under the Drugs Act does not *ipso facto* mean that the product automatically becomes a medicine. They have also relied on the Notification dated 27.07.2020 issued by the Ministry of Health and Family Welfare to advance their argument that the impugned product is a drug and therefore to be considered as a medicament. The term 'drug' which is defined in Section 3(b) of the said Drugs & Cosmetics Act includes not only medicines but also any substance which is used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals. While all medicines are drugs, all drugs are not medicines. There are a number of substances/materials/products which are regulated by the Drugs Act though they are not used or recognized as medicines.The hand sanitizer manufactured by the Appellant contains the drug ethyl alcohol in a concentration of 95% v/v, which is within the standard prescribed by

the Indian Pharmacopoeia. But the presence of a drug by itself will not make the impugned product a medicament. For this one has to apply the test of common parlance to arrive at the identity of the product i.e whether it is a medicine. In matters of classification of goods under taxation statutes, all the judicial forums, including the Apex Court, have stressed upon the importance of the identity of the goods in common parlance and there is a plethora of case laws which hold that for classification of goods under statutes for taxation of commercial supplies thereof, the primary test is their identity in the market, or in other words, in common parlance. Some such judgments are as follows :

(i) *Deena JeeSansthan* v. *CCE, Meerut* [2019 (365) E.L.T. 353 (S.C.)]

(ii) *CCE, New Delhi* v. *Connaught Plaza Restaurant (P) Ltd.* [2012 (286) E.L.T. 321 (S.C.)]

(iii) *CCE, Nagpur* v. *Shree BaidyanathAyurved Bhawan Ltd.* [2009 (237) E.L.T. 225 (S.C.)]

In fact, the Appellant has also advanced the plea of 'common parlance test' to support their claim that alcohol-based hand sanitizer is a medicament. In our view, the alcohol-based hand sanitizers are commonly understood as hand hygiene product used to disinfect the hands from disease spreading germs. It is not commonly considered as a medicine used for the treatment or prevention of any disease or ailment. Even during the current pandemic, the use of alcohol-based hand sanitizer has been propagated only as a good hand hygiene practice which will prevent the transmission of the virus from one human being to another. Our view is supported by a questionnaire survey conducted in India and published in the International Journal of Current Research and Review on the 'Knowledge and awareness on the role of hand sanitizer in prevention of COVID-19'. The survey conducted among a cross section of people from different age groups showed that almost 79% were aware that hand sanitizer is used for maintaining good hand hygiene and to prevent the spread of disease during the Covid pandemic. Therefore, applying this test of common parlance and the fact that the impugned product does not have any therapeutic or prophylactic properties, we hold that the alcohol-based hand sanitizer cannot be classified as a medicament under Chapter Heading 3004 as claimed by the Appellant.

14. Having concluded that the product Alcohol-based hand sanitizer is not classifiable under Chapter Heading 30.04, we move on to determine the Chapter Heading under which the product can be classified. Chapter Heading 38.08 of the Customs Tariff covers a range of

products intended to destroy pathogenic germs and which do not qualify as medicaments under heading 30.03 and 30.04. The products under Heading 38.08 are divided into the following groups:

(a) Insecticides

(b) Fungicides

(c) Herbicides, anti-sprouting products, plant growth regulators; and

(d) Disinfectants

The Explanatory Notes to the HSN Heading 38.08 states that disinfectants are agents which destroy or irreversibly inactivate undesirable bacteria, viruses or other micro-organisms, generally on inanimate objects. It is also stated that this group includes sanitizers, bacteriostats and sterilisers. The Appellant has contended that this description of disinfectants in the Explanatory Notes to Heading 38.08 indicates that the sanitizers mentioned therein are those which are used on inanimate objects where contact with the skin is not involved; that since the impugned product is used on human skin, it will not get covered under this group as a disinfectant. We are unable to appreciate this argument. The use of the phrase "generally on inanimate objects" in the Explanatory Notes does not mean that a product having disinfecting properties which is made suitable for use on human skin is not disinfectant. We draw support from the judgement of the *Kerala High Court in the case of Reckitt Benckiser (India) Ltd. [2011 (270) ELT 25 (Ker)*. In the said case, the question that arose was whether 'Dettol' is a Disinfectant. The Kerala High Court after considering other precedents and authorities, ultimately held that Dettol is indeed a Disinfectant. The Hon'ble High Court also remarked that no doubt the function of a 'Disinfectant' is the destruction of micro-organisms particularly on inanimate objects, but that does not mean that a Disinfectant could be used only on inanimate objects and the moment it could be used on animate objects also, it ceases to be a 'Disinfectant'. The Court observed that its use on animate objects is only external with the same purpose – destruction or making inert microorganisms". Drawing a parallel from the above judgment, we agree with the ruling given by the lower Authority that Alcohol-based Hand Sanitizer is used to disinfect externally and hence would fall within the meaning and ambit of 'Disinfectant' classifiable under Heading 3808.94.

15. The Appellant has expressed his objection to the lower Authority's finding that hand sanitizer is an alternative to soap. We clarify that hand sanitizers do not serve as a replacement for through handwashing with soap and water. Instead, the alcohol-based hand sanitizers are thought to bring the consumers some of the benefits of handwashing when washing hands with soap and water is not practical in certain settings. In fact, alcohol-based hand sanitizers are usually preferred to handwashing with soap in occupational health care setting and in community settings. They are faster, more efficient and easier on the skin than repeated handwashing with soap and water. However, hand sanitizers are not suitable for all settings. They are not recommended for use on hands that are soiled with visible amounts of dirt or grease and are also found to be ineffective at removing some kinds of pathogens. In such instances, handwashing with soap and water is the recommended method to clean hands. Therefore, we disagree with the lower Authority's observation that hand sanitizer is an alternative to soap. Both 'hand sanitizer' and 'soap and water' are recommended methods in hand hygiene practices and each method is effective in certain situations.

16. The Appellant has alsoattempted to advance his case by claiming support from the DGFT Notification dated 6-5-2020 which prohibits the export of Alcohol-based hand sanitizers falling under ITC HS Codes 3004, 3401, 3402 and 3808.94. It is their claim that Chapter Headings 34.01 and 34.02 pertains to soaps and other organic surface-active products used for washing the skin and Chapter Heading 3808.94 covers insecticides and disinfectants generally used on inanimate surfaces; that the product manufactured by them does not fit into the description of any of the above three Headings and hence Chapter Heading 30.04 is the most appropriate heading which covers alcohol-based hand sanitizers. At the outset, we state that a DGFT Notification is not an authority for determining the classification of goods under GST law. Classification of goods is to be determined based solely on the description of goods given in the First Schedule to the Customs Tariff Act read together with the relevant Section Notes and Chapter Notes. Moreover, the conditions and restrictions contemplated by one statute having a different object and purpose should not be mechanically imported and applied to a fiscal statute. The reference to the ITC HS Code for Alcohol-based hand sanitizers which has been made in the DGFT Notification dated 6-5-2020 is not a standard for interpreting the classification of goods as per the Customs Tariff Act. We therefore, reject this submission of the Appellant.

APPELLATE AUTHORITY FOR ADVANCE RULING BANGALORE

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17. As regards the rate of tax on alcohol-based hand sanitizer, the goods falling under Chapter Heading 3808 attract a tax rate of 9% CGST and 9% SGST in terms of entry Sl.No 87 of Schedule III of Notification No 11/2017 CT (R) dated 28-06-2017. With effect from 14th June 2021 up to 30th September 2021, the GST rate on hand sanitizer falling under Chapter Heading 3808.94 has been reduced to 5% GST (i.e 2.5% CGST and 2.5% SGST) vide Notification No 05/2021 CT (R) dated 14th June 2021.

18. In view of the foregoing, we pass the following order.

ORDER

We uphold the order NO.KAR ADRG 08/2021 dated 26/02/2021 passed by the Advance Ruling Authority and the appeal filed by the appellant M/s. Wipro Enterprises Pvt Ltd, stands dismissed on all accounts.

(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

(M.S. SRIKAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Bangalore North-West Commissionerate
4. The Assistant Commissioner, LGSTO-15, Bangalore
5. Office folder