

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/54/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/55)

Date: 30.07.2020

Name and address of the applicant	:	M/s Sterling Biotech Ltd., Jambusar State Highway, Vill : Masar, Ta Padra, Vadodara.
GSTIN/ User Id of the applicant	:	24AABCS1946H3ZG
Date of application	:	14.09.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	a) Classification of goods and/or services or both. b) Applicability of a notification issued under the provisions of the Act.
Date of Personal Hearing	:	02.07.2020 (Through Video Conferencing)
Present for the applicant	:	Shri Rakesh Modi

M/s. Sterling Biotech Ltd., Jambusar State Highway, Vill : Masar, Ta Padra, Vadodara having a GSTIN : 24AABCS1946H3ZG, is a company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the GGST Act.

2. M/s. Sterling Biotech Ltd. an applicant is engaged in the manufacture of pharmaceutical products viz. Bulk Drugs located at Village masar, Dist Jambusar in the state of Gujarat. Masa plant mainly manufacture bulk drugs which are consumed in manufacture of life saving drugs and medicaments for treatment of cancer, etc.

3. The applicant submitted that they are manufacturing bulk drugs namely Danorubicin, Epirubicin, Idarubicin and Zoledronin Acid and supplying presently under general heading at Sr. No. 40 covered under chapter 29 of Schedule-III of the Not. No. 01/2017-Ct (rate) dated 28.06.2017 as well as State Notification and Integrated Tax Notification.

4. The applicant further submitted that description of four bulk drugs as stated above specifically not mentioned at Sr. No. 40 of Chapter 29 of Schedule-III of Notification No. 01/2017-CT(Rate) dated 28.06.2017. However, specific reference is

made about the said four bulk drugs viz. Danuorubicin, Epirubicin, Idarubicin and Zoledronin in List 1 appended to Schedule I which are covered as drugs or medicine including their salts and esters at Sr. No. 180 of the Schedule I of the Notification No. 01/2017-CT (Rate) dated 28.06.2017.

5. The applicant has stated that relevant entries provided under Schedule I and Schedule-III of the Notification No. 01/2017-CT (Rate) dated 28.06.2017 is reproduced, as under:

Schedule I- 5%

Sl. No.	Chapter Heading/Sub-heading/Tariff Item	Description of goods
180	30 or any chapter	Drugs or medicines including their salts and eaters and diagnostic test kit, specified in List I appended to this Schedule

Sr. No. 180 of List I appended to Schedule I of the said Notification is as under :

(14) Daunorubicin (155) Epirubicin (169) Idarubicin (229) Zoledronic Acid

Schedule III- 18%

Sl. No.	Chapter Heading/Sub-heading/Tariff Item	Description of goods
1	2	3
40	29	All organic chemicals other than giberellic acid

6. In view of the above, the applicant sought for the Advance Ruling in respect of the following question:

Whether the applicant is eligible to claim the benefit of lower rate of 5% {CGST- 25.% + SGST-2.5%} under Sr. No. 180 of Schedule I of the rate schedule for goods under Not. No. 01/2017-CT (Rate) dated 28.06.2017 as well as of State Tax Notification.

Applicant's Interpretation of Law/Taxation under GST Regime

7. The applicant has submitted that as mentioned above, Chapter 30of GST Tariff of India covers Drugs or Medicines including their salts and esters. According to their interpretation, the word Drugs is not qualified by any other word which would restrict its coverage and therefore in their humble submission the said word

“Drugs” should be interpreted in the widest sense to cover all type of drugs including Bulk Drugs.

8. The applicant further submitted that in view of aforesaid interpretation for the definition of the word “Drugs”, four bulk drugs manufactured and supplied by them namely Danuorubicin, Epirubicin, Idarubicin and Zoledronin would be covered under the definition of Drugs as per entry under Sr. No. 180 of the Schedule I of the Notification No. 01/2017-CT (Rate) dated 28.06.2017.

9. The applicant further submitted that moreover, it is settled law, that the specific entry in the tariff over-rides the general entry and therefore the above referred four products manufactured and supplied by them should be covered under List 1 which specifies the names of the products covered as per entry under Sr. No. 180 of the Schedule-I of the aforesaid three notifications as mentioned above.

10. The applicant further submitted that the aforesaid four products have been specifically mentioned in list 1 appended to the notifications at entry under Sr. No. 180 of Schedule I of the above referred notification, they submit that the said rate 5% falling under Sr. No. 180 of Ch. 30 or any other chapter should be applicable for supply of their products as against the rate of 18% levied under general category of Bulk Drugs as mentioned as per entry under Sr. No. 40 of Schedule III of the above notification. Moreover when the products under reference viz. Danuorubicin, Epirubicin, Idarubicin and Zoledronin Acid are falling under two chapters 29 and 30, then they should be permitted to take the benefit of charging lower rate of 5% for the supply of aforesaid four products as per entry under Sr. No. 180 of Schedule I of the Notification No. 01/2017-CT (rate) dated 28.06.2017.

11. The applicant in their support of claim that lower rate of 5% should be applicable for supply of aforesaid four products has placed reliance on Order No. AAR/AP/03(GST)/18 dated 28.03.2018 issued by Andhra Pradesh Authority for Advance Ruling where the products under reference were also Bulk Drugs similar to their four products under reference and Advance Ruling Authority has ruled that the products covered by specific entries the rate of tax applicable is the rate specified against the specific entry only. The Ruling given by the Authority for Advance Ruling is as under,

“The applicant is eligible to claim the benefit of lower rate of GST @5% under Sr. No. 180 of Schedule-I of the rate schedule under Not. No. 01/2017-CT (Rate) Dated 28.06.2017 read with corrigendum dated 30.06.2017 on supply of 1. Efavirenz 2. Emetricitabine 3. Sunitinib Malate 4. Raltegravir Potassium 5. Latanoprost.”

12. The applicant further submitted that based on the aforesaid submission, as per the Notification No. 01/2017-CT (Rate) dated 28.06.2017 and Order No. AAR/AP/03 (GST)/18 dated 28.03.2018 issued by Andhra Pradesh Authority of Advance Ruling, they may be allowed to supply of their buyers the four products namely Danuorubicin, Epirubicin, Idarubicin and Zoledronin Acid at the lower rate of 5% to be covered as per entry under Sr. No. 180 of Schedule I of the Not. No. 01/2017-CT (Rate) dated 28.06.2017

Personal Hearing

13. Personal hearing in the matter was held on 02-07-2020. Authorised representative of the company appeared on behalf of the applicant and re-iterated the submission made in the Application.

DISCUSSION & FINDINGS

14. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

15. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the GGST Act.

16. We observe that the applicant is engaged in the manufacture of bulk drugs namely Danuorubicin, Epirubicin, Idarubicin and Zoledronin Acid. The main issue is to decide whether the bulk drugs are eligible of GST rate @5% in terms of Sr. No. 180 of Schedule I of Notification No.01/2017 (Rate) dated 28.06.2017, as amended.

17. To examine the eligibility of lower rate of GST 5%, we refer the relevant Sr. No. 180 of Schedule-I of Notification No. 01/2017-CT (Rate) dated 28.06.2017. The said entry is read, as under:

Schedule I- 5%

Sl. No.	Chapter Heading/Sub-heading/Tariff Item	Description of goods
180	30 or any chapter	Drugs or medicines including their salts and eaters and diagnostic test kit, specified in List I appended to this Schedule

18. As per the above entry, Drugs or medicines including their salts and esters specified in List I appended to this Schedule are eligible for GST @5%. In CGST Act 2017, the terms “Medicine” or “Drugs” have not been defined. We consider the definition “Drugs” given in Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940). Section 3(b) of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940) defines a “drug” in the following terms:

“(i) All medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings, or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

Clause (i) of Section 3(b) defines a ‘drug’ as all medicines for internal or external use of human beings or animals and all substances “intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human being, or animals”, including specified preparations.

19. In *Ishwar Singh Bindra Vs. The State of UP* [(1969) 1 SCR 219], the central question before a three judge Bench of this Court was the interpretation of Section 3(b)(i) of the 1940 Act. The Hon’ble Court held,

16. The term ‘medicine’ is not defined in the 1940 Act. It is a trite principle of interpretation that the words of a statute must be construed according to the plain, literal and grammatical meaning of the words. Justice G.P. Singh in his seminal work Principles of Statutory Interpretation states:

“The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary...in the statement of the rule, the epithets ‘natural’, ‘ordinary’, ‘literal’, grammatical’ and ‘popular’ are employed almost interchangeably.

...

It is often said that a word, apart from having a natural, ordinary or popular meaning (including other synonyms i.e. literal, grammatical and primary), may have a secondary meaning which is less common e.g. technical or scientific meaning. But once it is accepted that natural, ordinary or popular meaning of the word is derived from its context, the distinction drawn between different meanings loses much of its relevance.”

Similarly, Craies on Statute Law states :

“One of the basic principles of interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If

that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.”

20. The words of a statute should be first understood in their natural, ordinary or popular sense and phrases and sentences should be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. Where a word has a secondary meaning, the assessment is whether the natural, ordinary or popular meaning flows from the context in which the word has been employed.

21.1 The word ‘medicine’ is defined in Black’s Law Dictionary thus:

“Medicine - the science and art dealing with the prevention, cure and alleviation of diseases; in a narrower sense that part of science and art of restoring and preserving health which is the province of the physician as distinguished from the surgeon and obstetrician.”

21.2 Collins Dictionary for Advanced Learners defines ‘medicine’ thus:

“Medicine is the treatment of illness and injuries by doctors and nurses; is a substance that you drink or swallow to cure an illness.”

21.3 Cambridge Dictionary defines ‘medicine’ as:

“A drug that is used to treat illness or injury; the science dealing with the preserving of health and with preventing and treating disease or injury.”

The ordinary or popular understanding of the term medicine or drugs is characterized by its curative properties in general and specifically, its use for or in diagnosis, treatment, mitigation or prevention of any disease or disorder.

22. Note I of SECTION VI of “PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES” of the Customs Tariff Act, 1975 reads as under:

2. Subject to Note 1 above, goods classifiable in heading 3004, 3005, 3006, 3212, 3303, 3304, 3305, 3306, 3307, 3506, 3707 or 3808 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of this Schedule.

23. In view of the above deliberate discussion, it is crystal clear that under Sr. No. 180 of Schedule-I of Not. No. 01/2017-Ct (Rate) dated 28.06.2017, as amended, only such medicine and drugs are covered, which can be used for or in diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings.

24. The term “bulk drugs” is not defined in CGST, Act 2017. Therefore, we take the reference from DRUGS (PRICES CONTROL) ORDER, 1979. In the said Order, definition of bulk drugs is defined as,

*(f) "bulk drug" means any substance including pharmaceutical, chemical, biological or plant product or medicinal gas conforming to pharmacopoeial or other standards accepted under the Drugs and Cosmetics Act, 1940 (23 of 1940), which **is used** as such or **as an ingredient in any formulations**;*

From the plain reading of said definition, it is crystal clear that bulk drugs are raw material /ingredient of pharmaceutical and they are the Active Pharmaceutical Ingredients (i.e. API) of the medicine. In other words, it is the substance responsible for the product being a medicine. The bulk drug would inevitably remain the same as it is the identity of the medicine. When the bulk drug is absent, the product is no longer a medicine and when it is changed, it is a new medicine. Bulk drugs is not defined in GST, therefore, in common parlance we can say that Bulk drugs is basically an Active Pharmaceutical Ingredients (API) meaning any pharmaceutical, chemical, biological or plant product, which is used as such or as an ingredient in any formulation.

25. In view of the foregoing, it is an admitted fact that the product being supplied by the applicant cannot be directly administered in a human being. The concessional rate of GST is applicable only to the medicine or drugs, which are ready for administering in the human being or person. In the instant case, the applicant supplies bulk drug to their customers and hence the said bulk drug becomes raw material to the said customers. The applicant contention is that their bulk drug i.e. Danuorubicin, Epirubicin, Idarubicin and Zoledronin Acid is covered under the entry No. 180 of Not. No. 01/2017-CT (Rate) dated 28.06.2017 and eligible for concessional rate of GST. In the said entry No. 180 of said Notification word “Bulk Drugs” would have been included, had the intention of the Government been to extend the benefit of concessional rate to the bulk drugs/raw material. Therefore 5% GST is not applicable to the bulk drug Danuorubicin, Epirubicin, Idarubicin and Zoledronin Acid, in terms of List I to Entry No. 180 of Schedule I to the Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017.

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

RULING

Q. Whether the applicant is eligible to claim the benefit of lower rate of 5% { CGST- 2.5% + SGST-2.5%} under Sr. No. 180 of Schedule I of the rate schedule for goods under Not. No. 01/2017-CT (Rate) dated 28.06.2017 as well as of State Tax Notification.

Ans. Negative in view of the above discussion.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 30.07.2020.