

	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Shri. Sivaprasad .S, IRS &
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	M/s. Neogen Food and Animal Security (India) Private Ltd.
GSTIN	32AADCG2428A2ZD
Address	Uchikkal Lane, Poonithura – P.O., Cochin – 682038.
Advance Ruling sought for	Whether Entry No. 80 in Schedule II to the Notification No.1/2017- Integrated Tax (Rate) dated 28-06-2017 (as amended) is applicable for import as well as supply of “Laboratory reagents for rapid testing of food safety parameters”, attracting a levy of integrated tax at the rate of 12% or Entry No.453 to Schedule III, attracting a levy of integrated tax at the rate of 18%?
Date of Personal Hearing	06-01-2021
Authorized Representative	Shri. Prabhat .B.K, Chartered Accountant

ADVANCE RULING No. KER/106/2021 Dated 25-05-2021

M/s. Neogen Food and Animal Security (India) Private Ltd (hereinafter referred to as the applicant) is incorporated under the Indian Companies Act, with its registered office at Cochin in the State of Kerala.

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. The applicant requested for advance ruling on the following;

Whether Entry No. 80 in Schedule II to the Notification No.01/2017-Integrated Tax (Rate) dated 28-06-2017 (as amended) is applicable for import as well as supply of "Laboratory reagents for rapid testing of food safety parameters", attracting a levy of integrated tax at the rate of 12% or Entry No.453 to Schedule III, attracting a levy of integrated tax at the rate of 18%?

4. Brief facts of the case:

4.1. The applicant is engaged in contract of chemical and microbiological testing services and trading (import and sale) of Neogen Group products in the Indian market. The range of trading items includes Neogen's food safety products comprising of kits and laboratory reagents for dangerous or unintended substances' testing for food safety parameters. Their products are used by food processing companies, regulatory bodies etc to manage the risk in food caused by pathogens and toxic substances. The exhaustive list of about 254 products dealt by them that are predominantly used for food testing in lab / field / mobile vans/ for testing of processed and unprocessed foods, juices, cereals, nuts, spices etc and raw materials like wheat, rice, corn, fruits, and also milk (aflatoxin), poultry (egg allergen) and fish products in some cases (histamine) was enclosed as Annexure - I to the application.

4.2. Presently, at the time of import they are classifying these products as "Laboratory reagents" under the Tariff Item 3822 00 90 of the Customs Tariff Act. The issue for consideration is one of rate of GST on import and supply of the laboratory reagents classifiable under Tariff item 3822 00 90, in terms of GST rate notification. Sl.No. 80 of the 2nd Schedule of the IGST Notification No. 01/2017- Integrated Tax (Rate) dated 28-06-2017 (as amended) provides IGST rate to the goods as under:

2nd Schedule - 12%		
Sl. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
80	3822	All diagnostic kits and reagents

Further, entry at Sl No. 453 of 3rd Schedule, a residuary entry, provides applicable rate of GST at 18% on all goods that are not specified in Schedule I, II, IV, V or VI. The relevant entry reads as follows:

3rd Schedule – 18%		
Sl. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
453	Any chapter	Goods which are not specified in Schedule I, II, IV, V or VI.

4.3. They have filed this application seeking clarity on whether the laboratory reagents classifiable under the Tariff Item 3822 00 90 shall be covered under entry at Sl No. 80 of Schedule II to the Notification No. 01/2017-Integrated Tax (Rate) dated 28-06-2017 (as amended) which covers “All diagnostic kits and reagents” falling under Chapter Heading 3822 and is subject to 12% rate of integrated tax or will be covered under Sl.No.453 of Schedule III to the Notification No. 01/2017-Integrated Tax (Rate) dated 28-06-2017 (as amended), which covers the goods of any chapter which are not specified in Schedule I, II, IV, V or VI and consequently subject to higher rate of tax at 18%.

5. Contentions of the Applicant:

5.1. Chapter 38 of the Customs Tariff Act, 1975 provides for classification of “Miscellaneous chemical products”. Chapter Heading 3822 covers; “Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials.

5.2. The Hon’ble Karnataka Appellate Authority for Advance Ruling in Order No. KAR/AAAR-08/2019-20 dated 14.01.2020 in the appeal filed by M/s Chromachemie Laboratory Private Ltd held that all reagents falling under Chapter Heading 3822 of the Customs Tariff are covered under the entry at Sl No. 80 of the Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017. The decision is squarely applicable to their case.

5.3. The entry at Sl No. 453 of Schedule III of Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017 is a general / residuary entry. It is a well settled principle that in the case of classification of goods, the specific entry shall be preferred over a general entry. The laboratory reagents have specific entry at Sl No. 80 of Schedule II of the said Notification and hence cannot be classified under residuary entry at Sl No. 453 of Schedule III of the said notification. They placed reliance on the judgments of the Hon'ble Supreme Court in the cases of Commissioner Vs Wockhardt Life Sciences Ltd [2012 (3) TMI 40] and Mauri Yeast India Pvt Ltd Vs State of UP [2008 (4) TMI 101].

6. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has not offered any comments and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that there are no proceedings pending on the issue against the applicant.

7. Personal Hearing:

The applicant was granted opportunity for personal hearing on 06.01.2021. The authorised representative of the applicant attended the personal hearing. He reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application. Subsequent to the hearing the applicant produced copy of Bill of Entry evidencing that the products imported by them were classified under Customs Tariff Heading 3822 by the Customs authority at Cochin International Airport.

8. Discussion and Conclusion:

8.1. The matter was examined in detail. The issues to be decided are the classification and rate of GST of the laboratory reagents for rapid testing of food safety parameters supplied by the applicant. The laboratory reagents are predominantly used in food testing lab or in the field for testing of processed and unprocessed food, juices, cereal, wheat, rice, milk, egg, fish etc. The question that arises for consideration is whether the laboratory reagents should

be classified under the HSN Code 3822 – Diagnostic or laboratory reagents attracting GST at the rate of 12% or should be classified under entry at Sl No. 453 of the Third Schedule of Notification No. 01/2017 – Integrated Tax (Rate) dated 28.06.2017 as goods which are not specified in Schedule I, II, IV, V or VI attracting 18% GST.

8.2. The entry at Sl No. 453 of the said notification is a residuary entry to classify commodities that are not specified under any of the other entries. The Explanations (iii) and (iv) appended to the Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017 reads as follows;

“Explanation: -

(iii) Tariff item, sub-heading, heading and Chapter shall mean respectively a tariff item, sub- heading, 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 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.”

8.3. In view of the above provisions, the rules for interpretation of the First Schedule of the Customs Tariff Act, 1975 including the Section and Chapter Notes and the General Explanatory Notes are applicable for interpretation of the GST Tariff / Rate Schedule. Accordingly, the ratio of various judgments of the Supreme Court, High Court and Tribunals regarding classification of commodities under the Customs Tariff and Central Excise Tariff are equally applicable and have precedent value in relation to the classification of goods under the GST Tariff / Rate Schedule as the classification under the Customs and Central Excise Tariffs and the GST Tariff / Rate Schedule are aligned and based on the Harmonised System of Nomenclature Codes. [HSN Codes].

8.4. The General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 are as follows;

Rule 1: The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions;

Rule 2: (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

Rule 3: When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Rule 4: Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

8.5. The Hon'ble Supreme Court in the case of Dunlop India Ltd and Madras Rubber Factory Ltd Vs Union of India and others reported in 1983 (13) ELT 1566 (SC), has, inter alia, observed as follows;

"When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing."

8.6 The Hon'ble Supreme Court in the case of CCE Vs Jayant Oil Mills Pvt Ltd reported in 1989 (40) ELT 287 (SC) observed, inter alia, as follows;

"It is well settled that resort could not be had to the residuary item if the product comes within the ambit of any other tariff item."

8.7. In Bharat Forge and Press Industries (P) Ltd Vs CCE, Baroda reported in 1990 (45) ELT 525 (SC); the Hon'ble Supreme Court in Para 3, inter alia, observed as under;

"The question before us is whether the department is right in claiming that the items in question are dutiable under Tariff Entry 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item."

8.8. In the case of *Western India Plywoods Ltd Vs Collector of Customs* reported in 2005 (188) ELT 365 SC the Hon'ble Supreme Court, inter alia, held that;

“Application of residuary item only when no other heading expressly or by necessary implication applies.”

8.9. In the case of *Commissioner of Central Excise Vs M/s Wockhardt Life Sciences Ltd* reported in 2012 (277) ELT 299 (SC), the Hon'ble Supreme Court, inter alia, laid down the following principles for classification of goods;

- *There is no fixed test for classification of a taxable commodity. This is probably the reason why the 'common parlance test' or the 'commercial usage test' is the most common. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted.*
- *However, there cannot be a static parameter for the correct classification of a commodity. The process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff.*
- *Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance.*
- *A commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense. A residuary entry can be taken refuge of only in the absence of a specific entry, that is to say, the latter will always prevail over the former.*

- *The combined factor that requires 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.*

9. In order to decide the issue, it is to be analysed in the light of the settled principles of classification of goods under the Customs Tariff as explained above; whether the products supplied by the applicant qualify to be classified under Customs Tariff Heading 3822 and is included in the purview of entry at Sl No. 80 of Schedule II of Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017.

9.1. Chapter 38 of the Customs Tariff pertains to miscellaneous chemical products. The Heading 3822 of the Customs Tariff is reproduced below;

Tariff	Description of goods
3822	Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials
3822 00	Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials
	--- For medical diagnosis:
3822 00 11	---- Pregnancy confirmation reagent
3822 00 12	---- Reagent for diagnosing AIDS
382200 19	---- Other
3822 00 90	--- Other

9.2. On a plain reading of the Heading and the sub-headings as extracted above it is evident the Heading 3822 includes;

- Diagnostic reagents on a backing;
- Laboratory reagents on a backing;

- (c) Prepared diagnostic reagents on a backing;
 - (d) Prepared diagnostic reagents without a backing;
 - (e) Prepared laboratory reagents on a backing;
 - (f) Prepared laboratory reagents without a backing;
- other than those of heading 3002 or 3006.

9.3. Therefore, the reagents referred to in Heading 3822 of the Customs Tariff includes both diagnostic and laboratory reagents. The Tariff Heading 3002 pertains to human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products and the Tariff Heading 3006 pertains to pharmaceutical goods specified in note 4 of chapter 30. Admittedly, the products supplied by the applicant are laboratory reagents which are predominantly used in food testing lab or in the field for testing of processed and unprocessed food. Hence, they do not fall under any of the sub - headings / tariff items under Heading 3002 or 3006 and therefore, they are appropriately classifiable under Customs Tariff Heading 3822 00 90.

9.4. The entry at Sl No. 80 of Schedule II of Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017 reads as follows;

Sl No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
80	3822	All diagnostic kits and reagents

The description in the above entry is "All diagnostic kits and reagents". Hence, it is evident that all reagents falling under Customs Tariff Heading 3822 are covered under the entry at Sl No. 80 of Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017 extracted above.

9.5. On the basis of the discussion as above, we conclude that the laboratory reagents for rapid testing of foods safety parameters supplied by the applicant is appropriately classifiable under Customs Tariff Heading 3822 00 90 and is liable to GST at the rate of 12% as per entry at Sl No. 80 of Schedule II of Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017.

In view of the observations stated above, the following ruling is issued;

RULING

Whether Entry No. 80 in Schedule II to the Notification No.01/2017-Integrated Tax (Rate) dated 28-06-2017 (as amended) is applicable for import as well as supply of "Laboratory reagents for rapid testing of food safety parameters", attracting a levy of integrated tax at the rate of 12% or Entry No.453 to Schedule III, attracting a levy of integrated tax at the rate of 18%?

The laboratory reagents for rapid testing of foods safety parameters supplied by the applicant is appropriately classifiable under Customs Tariff Heading 3822 00 90 and is liable to GST at the rate of 12% as per entry at Sl No. 80 of Schedule II of Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017.



Sivaprasad.S
Joint Commissioner of Central Tax
Member



Senil A.K. Rajan
Additional Commissioner of State Tax
Member

To,

M/s Neogen Food and Animal Security (India) Pvt Ltd,
Uchikkal Lane, Poonithura – P.O,
Cochin – 682038.

Copy to;

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Buildings, I.S.Press Road, Cochin- 682018. [E-mail ID: cccochin@nic.in]

2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.

3. The Assistant / Deputy Commissioner of Central GST, Ernakulam Division, Ernakulam. [E-mail ID: cgst.ti04@gov.in]

4. The Superintendent of Central GST, Ernakulam 4 Range, Ernakulam. [E-mail ID:cgst.ti0404@gov.in]