

ODISHA AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICE TAX

GST & CENTRAL EXCISE, RAJASWAVIHAR, BHUBANESWAR-751007 (ODISHA)  
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING  
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017



Members present are:

1. Sri Anand Satpathy, OFS(SAG), Addl. Commissioner of CT&GST, Office of the Commissioner, CT&GST, Odisha Baniyakar Bhawan, Old Secretariate Compound, Cuttack-753001-Odisha.
2. Sri Nilanjan Pan, IRS, Joint Commissioner, Office of the Audit Commissionerate GST & Central Excise, Bhubaneswar

1	Name and Address of the Applicant	M/s PRABHAT GUDAKHU FACTORY, JYOTI MILL CAMPUS, SOURAGUDA, JEYPORE, KORAPUT, ODISHA-764005.
2	GSTIN or User ID	21AACHA8243B272
3	Date of Filing of Form GST ARA-01	08.11.2018
4	Present for the Applicant	RAVI SHANKAR SISTLA, CA
5	Date of Personal Hearing	03.01.2019

ORDER NO.06/ODISHA-AAR/2018-19 DATED 05.02.2019

Subject: GST Act, 2017-Advance Ruling U/s 98 on 'Classification of GUDAKHU'

1.0 M/s Prabhat Gudakhu Factory, Jeypore, Koraput, Odisha, 764005 (hereinafter referred to as the 'Applicant') assigned with GSTIN 21AACHA8243B272 having registered address At-Jyoti Mill Campus, Souraguda, Jeypore, Koraput, Odisha-764005 have filed an application on 08.11.2018 under Section 97 of CGST Act, 2017 & OGST Act, 2017 read with Rule 104 of CGST Rules 2017 & OGST Rules, 2017 in Form GST ARA-01 seeking an Advance Ruling on (i) 'Appropriate Classification of Gudakhu' under the GST Tariff Heading and (ii) 'Determination of the liability to pay NCCD (National Calamity Contingency Duty). The applicant enclosed copies of challans as proof of payment of Rs.5,000/- for SGST bearing CIN No.SBIN1808210000103 dated 01.08.2018 and Rs.5000/- for CGST under Account No.00000011312321408 dated 06.11.2018 towards the fee for Advance Ruling. The applicant submits that the question raised in the application has neither been decided by nor is pending for adjudication before any authority under any provisions of the

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GST Act. The concerned jurisdictional officer raised no objection to the admission of the application. The application is therefore, admitted.

2.0 The applicant inter-alia submitted that the applicant is engaged in the business of manufacture and sale of 'Gudakhu', a tobacco product in a paste form which is generally used as a Tooth paste. The main ingredients of gudakhu are tobacco, molasses, lime, red soil, and water etc. It is classified as a 'tobacco product'. The applicant is of the view that gudakhu is covered under the classification code 2403 11 10. The applicant substantiated such view as below.

2.1 . The Hon'ble Odisha High Court has held in the case of Shamsuddin Akbar Khan and Co. as reported in 35 STC 179 that "gudakhu is a kind of manufactured tobacco like cigarettes, cigars, cheroots, biri, chewing tobacco, and snuff and was very much akin to hookah tobacco". Placing reliance on the aforesaid observations of the Hon'ble Court the applicant is of the view that Gudakhu should be classified under the HSN Code 2403 11 10 and having been specifically covered under this code, the same cannot be classified under the residual code of 2403 99 90 (All other products).

2.2 The residual code of 2403 9990 contains all other tobacco products in the nature of *gutkha* which are meant for chewing. The description of HSN classification 2403 9990 reads as "All goods, other than *pan masala* containing tobacco '*gutkha*'... Therefore, the said classification of 2403 99 90 covers tobacco products meant for chewing only, such as pan masala, *gutkha* and other similar tobacco products which are distinctly different from '*gudakhu*' which is not meant for chewing but only applied to the teeth orally like a tooth paste for cleansing teeth. Even in jurisprudence and in statutory construction, as per the Rule of "*ejusdem generis*", where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. Therefore, the general words, 'all other goods...' in the Tariff heading 2403 9990 would take their meaning from the specific words (i.e. *gutkha*, pan masala etc. which are meant for chewing only.

3.0. Personal Hearing was fixed on 03.01.2019. Shri Ravi Shankar Sistla, CA appeared for personal hearing and he filed a written submission reiterating the stand taken earlier. In his considered opinion "Gudakhu" should be classified under the tariff heading '240311 10' and substantiated the argument by placing reliance upon a case decided by Hon'ble High Court of Odisha reported in 35 STC 179 in the case of Shamsuddin Akbar Khan and Co.

4.0 We have considered the submissions made by the applicant in its application for advance ruling as well as the submissions made by the representative during personal hearing. We also considered the question & issues on which advance ruling is sought for by the applicant, relevant facts having bearing on the question / issue raised and the Applicant's understanding/interpretation of law in respect of the issue.



4.1 In the instant application, Ruling has been sought for (i) 'appropriate classification of Gudakhu' under GST Tariff heading and (ii) 'Determination of the liability to pay NCCD (National Calamity Contingency Duty)'. *The applicant contended that "gudakhu" is categorized as a tobacco product even though the tobacco content in gudakhu is merely 20% while molasses accounts for about 50-60%. Gudakhu is commercially available in a paste form as well as in a granular form and the composition of both of these products is the same. However, while the paste is used orally as toothpaste, the substance in a granular form is used for smoking as hookah. The applicant in the instant case is engaged in the manufacture of gudakhu in paste form only.*

4.2 It is seen that the applicant has been clearing the product as Branded Gudakhu' with CETH No-2403 99 90 right since the day of taking Central excise registration w.e.f.01.10.2002. Though, the product remained same under the GST regime, the applicant now wants to reclassify it under the code '24031110'. The concerned jurisdictional officer of CGST contended that Gudakhu is not entirely tobacco but rather a product consisting of tobacco, molasses, lime, red soil, water etc. Most of its composition materials are similar to Gutkha except areca nut. It is primarily applied on teeth and pressed and chewed. So, it should be, and rightly classified, under heading 'Other' with Sub- heading 'Other--2403 99' and 'Tariff-head 'Other---2403 99 90' since it is entirely different by essential character by following general rules of interpretation from the tariff items 2403 11 10.

4.3 For ease of reference the classification of both the Tariff-item heading is reproduced below:

"2403 Other manufactured tobacco and manufactured tobacco substitutes;  
"Homogenized" or "Reconstituted" tobacco; tobacco. extracts and essences

-Smoking tobacco, whether or not containing tobacco substitute in any proportion:

2403 11 --Water pipe tobacco specified in Sub ,heading Note to this chapter:

2403 11 10 ---Hookah or Gudakhu Tobacco

-Other

2403 99 --Other

2403 99 10 – Chewing tobacco

2403 99 20 – Preparations containing chewing tobacco



2403 99 30 – Zarda scented tobacco

2403 99 40 – Snuff

2403 99 50 – Preparation containing snuff

2403 99 60 – Tobacco extracts and essence

2403 99 70 – Cut tobacco

2403 99 90 ---Other

4.4 It has been explained in sub heading note to chapter 24 that for the purposes of sub-heading 2403 – 11, the expression “water pipe tobacco” means tobacco intended for smoking in a water pipe and which consists of a mixture of tobacco and glycerol, whether or not containing aromatic oils and extracts, molasses or sugar and whether or not flavored with fruit. The tariff item ‘2403 11 10’---Hookah or Gudakhu Tobacco bearing a brand name refers to Hookah or Gudakhu Tobacco (branded) used as a smoking tobacco in a water pipe as explained in the sub heading note of Chapter 24, under sub heading 2403 11. In no way it refers to the non-smoking tobacco irrespective of the nomenclature and composition. Commercially Hookah or Gudakhu Tobacco is sold in granular form which is not the case in gudakhu manufactured by the applicant. Gudakhu manufactured by the applicant is sold as a paste and is used as a tooth paste. Hence, it is distinctly different from hookah tobacco by its essential character and use. While hookah or gudakhu tobacco as classified under 2403 11 10 is used as a smoking tobacco through a water pipe, gudakhu manufactured by the applicant is sold in the form of a paste for use as a tooth paste and not as a smoking tobacco. In the scheme of classification of tobacco product for the purpose of assigning HSN Code under tariff sub-heading 2403 11, only water pipe tobacco intended for smoking in a water pipe are included and not any other form of tobacco. As explained above, the applicant is engaged in the manufacture of gudakhu in paste form only which is used only as a tooth paste and never used for smoking in a water pipe. As a result, it can never be classified under tariff sub-heading 2403 11.

4.5 As per the scheme of classification, tariff sub-heading 2403 99 is a residual sub-heading under which all forms of chewing tobacco and other forms of tobacco not specified under other sub-headings of Chapter heading 2403 are classified. The said sub-heading is not just confined to chewing tobacco only such as khaini, gutkha and zarda etc. it also includes cut tobacco, tobacco extracts and snuffs which do not belong to the family of chewing tobacco. The sub-heading which reads as ‘2403 99 – other’ bears the essential character of a residual entry so as to classify all other forms of tobacco not specified in the preceding sub-headings. No doubt it classifies certain known chewing tobacco





products under the sub-heading but, it also includes cut tobacco, tobacco extracts, snuff and other. The entry 'other' appearing against 2403 99 90 is intended to cover all other tobacco products not specified under the preceding sub-headings under chapter 24 and also not specified under the tariff items specified under sub-heading 2403 99. Thus, the contention of the applicant that a tariff item can be classified under the sub-heading 2403 99 only if the said item belongs to the family of chewing tobacco like 'gutkha', zarda or khaini is totally misplaced in as much as the said sub-heading also specifies other tobacco products such as cut tobacco, tobacco extracts and snuff etc. Therefore, the general rule of classification as relied upon by the applicant cannot be applied in the case of gudakhu as manufactured and sold by the applicant simply because it does not belong to the family of chewing tobacco such as zarda and gutkha.

4.6 Gudakhu as manufactured by the applicant is certainly not classified under any specific tariff item in any of the sub-headings under the Heading 24 03. Accordingly, it can be classified and rightly so under the residual tariff item '2403 99 90 – other' of the said Chapter Heading because of its composition, character and use.

4.7 As regards 'Determination of the liability to pay NCCD (National Calamity Contingency Duty)', it is clarified that the aforesaid duty is a levy under the Central Excise Act and not under the CGST/ OGST/IGST Act. The scope of issuing a ruling u/s 98 of the OGST/CGST Act is limited to the extent prescribed in sub-section (2) of Section 97 of the OGST/CGST Act. NCCD being not a levy under the OGST/CGST Act, it is not within the competence and mandates of the Authority of Advance Ruling constituted u/s 96 of the OGST Act to give a ruling on the liability of the applicant to pay NCCD.

#### RULING

In view of the foregoing discussion, we pass the following:

'Gudakhu' manufactured by the Applicant, be classified under GST Tariff Heading '2403 99 90'.

The applicant or the jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for Advance Ruling under Section 100 of the OGST/CGST Act, 2017 within 30 days from the date of receipt of the Advance Ruling.



Nilanjan Pan  
Member CGST



Anand Satpathy  
Member SGST



File No. V (1) ARA/Odisha/BBSR/2018/06/ 2059A-61A dated-05.02.2019

To

M/s Prabhat Gudakhu Factory, At-Jyoti Mill Campus, Souraguda,  
Jeypore, Koraput, Odisha, 764005.

**Copy Forwarded to:-**

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2. The Commissioner, GST Odisha, Baniyakar Bhawan, Old Secretariat Compound, Cuttack, Odisha, 753001.
3. ✓ Office Copy.

(Adhir Kumar Das)  
Superintendent (CGST),  
Advance Ruling Authority, Odisha.



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