KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJIYA 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, Bengaluru, dated 25-04-2018)

BEFORE THE BENCH OF
Shri. D.P.NAGENDRA KUMAR, Member
Shri. M.S. SRIKAR, Member

ORDER NO:-KAR/AAAR/04/ 2019-20 **Dated:-03.12.2019.**

Name and address of the appellant	M/s Strides Emerging Markets Ltd, Strides house, Bilekanahally, Bannerghatta Road, Bengaluru 560076
GSTIN or User ID	29AARCS5667D1ZQ
Advance Ruling Order against which appeal is filed	Advance Ruling No KAR ADRG 18/2019 Dated:07.08.2019
Date of filing appeal	03.10.2019
Represented by	Mr. Abhi Paresh, Chartered Accountant
Jurisdictional Authority – Centre	Commissioner of Central Tax, South Commissionerate
Jurisdictional Authority – State	LGSTO—25, Bengaluru
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details.	Yes. Payment of Rs. 20,000/- made vide Challan CIN SBIN19102900006212 dated 01.10.2019

PROCEEDINGS

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

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017 and KGST 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 corresponding similar provisions under the KGST Act.

The present appeal has been filed under Section 100 of the CGST Act, 2017 and the KGST Act, 2017 by M/s Strides Emerging Markets Ltd (hereinafter referred to as 'Appellant') against the Advance Ruling No KAR ADRG 18/2019 dated 07.08.2019 pronounced by the Karnataka Authority for Advance Ruling.

Brief facts of the case:

1. The Appellant is a pharmaceutical company engaged in the development and manufacture of generic and IP led niche pharmaceutical products. The Appellant is registered as a 100% Export Oriented Unit (EOU) in Karnataka.

2. The Appellant has developed a new product "Nicotine Polacrilex Lozenge" (NPL) which is purportedly used for therapeutic purpose for nicotine consumption cessation. The product is available in dosages of 2 mg and 4 mg depending on the power of the medicine and the manner of intake of NPL is mentioned on the usage manual which is kept inside the NPL packets.

3. The primary ingredient in NPL is nicotine which is mixed with various other ingredients to add colour, flavor, etc and the target customer base of NPL is addicted smokers who wish to give up or reduce the smoking habit. When a person uses tobacco products, there are various harmful chemicals which go inside the human body in addition to nicotine which cause life threatening diseases.

4. The primary effect of nicotine in tobacco products is its stimulant effect which acts as a contributing factor to the addictive properties of tobacco smoking. In other words, the presence of nicotine in tobacco contributes towards addiction of a particular person to smoke tobacco. However, in NPL, the primary ingredient nicotine is present in a non-harmful quantity. NPL when taken in prescribed quantum, provides the body with adequate nicotine intake. However, there is gradual decline in the dependency of the body on nicotine. Given this, the harmful effects of smoking tobacco are nullified by taking NPL.

5. The following entries in the GST rate Notification No 01/2017 CT(R) /IT (R) dated 28.06.2017 prompted the Appellant to seek a ruling before the Karnataka Authority for Advance Ruling:

S.No	Chapter Heading/ Sub heading/ Tariff Item	Description of goods	Rate
		Schedule II	
63	3004	Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems or in forms or packages for retail sale, including Ayurvedic, Unani, homeopathic, siddha or bio-chemic systems medicaments, put up for retail sale.	12%
		Schedule III	
41	30	Nicotine Polacrilex gum	18%

6. In view of the above entries in the GST rate notification, the appellant filed an application on 16.05.2018 before the Karnataka Authority for Advance Ruling under Section 97 of CGST/KGST Act,2017 read with Rule104 of CGST / KGST Rules,2017 in form GST ARA-01, seeking a ruling onthe following question:

> *"What is the appropriate classification of Nicotine Polacriliex Lozenge (hereinafter referred to as "NCT") manufactured by the Company and rate of tax applicable thereupon under Notification 01/2017-Central Tax (Rate) dated 28.06.2017?"*

7. On examination of the issue, the Karnataka Authority for Advance Ruling (AAR), vide Advance Ruling No. ADRG 18/2019 dated 7th August 2019 (hereinafter referred to as 'Impugned Order) held that the Chapter Notes and Explanatory Notes to Chapter 30 specifically excluded "Preparations, such as tablets, chewing gums or patches (transdermal systems), intended to assist smokers to stop smoking (heading 21.06 or 38.024). Therefore, the product NCT is not covered under Sl. No 63 of Schedule II of Notification No 01/2017 CT (R) dt 28.06.2017. Further, the AAR held that the product cannot be classified under Chapter 21.06 which deals with food preparations not elsewhere specified or included since the instant product basically consists of nicotine which is not edible / food preparation. Therefore, the AAR held that the only alternative left for the classification of the instant product is Chapter Heading 38.24. Accordingly, the AAR gave the following ruling:

"The instant product, Nicotine Polacriliex Lozenge, is rightly classifiable under the heading 38.24. Accordingly, the product is covered under serial number 97 of Schedule III to Notification No 01/2017 –Central Tax (Rate) dated 28.06.2017 and attracts GST at the rate of 18% (9% CGSST, 9% SGST)".

8. Being aggrieved by the above-mentioned Ruling of the Authority, an appeal was preferred before Appellate Authority for Advance Ruling under section 100 of the CGST Act, 2017 / KGST Act, 2017 on 03.10.2019 on following grounds:

8.1 The Chapter Heading 3004 covers all medicaments which consists of mixed or unmixed products for therapeutic or prophylactic use, put up in measured doses; that in the instant case, NPL is used for therapeutic or prophylactic purposes in measured dosage of 2mg / 4mg and results in

- Providing relief to the patient against tobacco abuse
- Safeguards the patient against life harming diseases such as chronic obstructive pulmonary disease, heart disease, diabetes, cancers, etc and harm to the reproductive system in women.

8.2. They contended that the product manufactured is not covered by the exclusion from chapter 30 as stated under Chapter Note 1(b) to Chapter 30. The entry at Chapter Note 1(b) to Chapter 30 states that preparations, such as tablets, chewing gum or patches (transdermal systems) intended to assist smokers to stop smoking, are excluded from Chapter 30; that the

product manufactured by the appellant is a lozenge which does not fall under the above category and hence the product manufactured is not excluded from Chapter 30. They submitted that the product manufactured by the Appellant has many more medicinal benefits and is not limited to assist the consumer to stop smoking; that the restriction under Chapter Note 1(b) is not absolute since "Nicotine Polacrilex Gum" is specifically included under Tariff head 3004 49 90. Given the same, the restriction under Chapter Note 1(b) is not binding and applicable in the present case.

8.3. They submitted that the term 'such as' used in the entry at clause 1(b) of Chapter Notes to Chapter 30 is a specific term which restricts the scope of the entry and is to be interpreted to mean that only the items included under the said entry would be covered. They submitted that the product manufactured has therapeutic uses and is hence classifiable under Chapter 30 and is subject to GST at 12%; that the product is a 'lozenge' but not a gum which is used for therapeutic or prophylactic purpose of nicotine consumption cessation that safeguards the patient against life harming diseases such as chronic obstructive pulmonary disease, heart disease, diabetes, etc and therefore it is a medicament in true sense and can be classified under Chapter Heading 3004 at 12% GST in terms of entry no. 63 of Schedule II of Notification No 01/2017 CT (R). They submitted that the product NPL cannot be excluded from heading 3004 because the primary purpose of NPL is to provide therapeutic or prophylactic treatment for addicted smokers to safeguard from life harming diseases as a medicament but not just assist smokers to stop smoking.

8.4 They further submitted that as per the general rules for classification of goods, specific entry needs to be given preference over a generic entry; that given the same, the AAR order which seeks to classify the said product which has therapeutic uses and approved by the regulatory body viz. Drug Controller as a medicine, under the generic heading viz. residuary heading, is illegal and deserves to be set aside.

PERSONAL HEARING: -

9. The appellant was called for a personal hearing on 21.10.2019 and was represented by Shri. Abhi Paresh, Chartered Accountant who reiterated the submissions made in the grounds of appeal. He also submitted that the product NPL is a lozenge and not gum; that the product is a medicament which helps people having a history of smoking abuse to give up smoking and also treats the connected health problems associated with smoking abuse. He stated that although the Chapter Note 1(b) to Chapter 30 specifically excludes preparations such as tablets, chewing gums and patches from the purview of the Chapter 30, the fact that Schedule III to GST Notification No 01/2017 – Central Tax (Rate) dated 28.06.2017 specifically mentions Nicotine Polacrilex Gum under Chapter 30 is evident that the GST rate notification has overridden the Chapter Note. He also submitted that in trade parlance the Nicotine chewable tablets and gum are medicinal products. On a specific query from the Bench regarding the chemical composition of the product Nicotine Polacrilex Lozenge, he agreed to submit the extract of the pharmacopeia and the Drug Controllers approval for the said product within a week's time.

9.1. In their additional submissions made vide letter dated 31.10.2019, the appellant made the following submissions:

9.2. They submitted that, Nicotine Polacrilex Lozenge manufactured by them is a **medicinal product** classifiable under Chapter 30 of the GST Tariff and subject to 12% GST rate under Chapter 3004 by virtue of Notification 11/2017-Central tax (rate) dated 1-7-2017 [Entry 63]; that, composition certificate issued by head of Quality Assurance, clearly states that NPL is medically approved, has therapeutic uses since it forms part of the Nicotine replacement therapy recommended by WHO and USFDA; that, composition certificate issued for NPL states that NPL has USPharmacopeiastandards; that, NPL is a drug approved under the Drugs and Cosmetics Act 1940 and Rules 1945. They submitted that the definition of a drug as per Section 2(b) the said act includes

(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;

(ii) such substances **(other than food)** intended **to affect the structure or any function of the human body or** intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;

(iii) all substances intended for use as components of a drug including empty gelatin capsules; and

(iv) such devices* intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board

9.3. They submitted that, from the above definition it is clear that NPL is certified as a drug and is a Medicine and hence deserves classification under Chapter 3004; that, NPL is a product having therapeutic uses; that, since NPL has therapeutic uses, it qualifies as a medicament under Tariff Head 3004 and thereby would not fit into the exclusion under clause (b) to Note 1 to chapter 30. That the said exclusion is for "preparations in general" and does not apply where the said product qualifies as a medicament and hence deserves treatment as a pharmaceutical product; that considering that "Nicotine Polacrilex Gum" is specifically included under Tariff item 3004.49.90, the interpretation that medicaments helping smokers to quit smoking be covered under the above chapter note would render the said Tariff item "redundant"; that NCL being a medicament would not be covered under the exclusion provided under Chapter Note 1(b) to Chapter 30 and would fall under Tariff item 3004 49 90 "Other" and be subject to 12% GST rate. They submitted copies of the composition certificates and certificate of analysis of the product "Nicotine Polacrilex Lozenge".

DISCUSSION & FINDINGS: -

10. We have gone through the records of the case and taken into consideration the submissions made by the Appellant in their grounds of appeal and at the time of the personal hearing.

11. The Appellant in their additional written submissions dated 31.10.2019 had sought for another opportunity to be heard in person. However, we are not inclined to grant another personal hearing as the issue has been argued at length during the hearing on 21st October 2019 and detailed written submissions have also been made in their grounds of appeal as well as in their additional submissions. We are of the view that another hearing would not bring forth any fresh facts or evidences which have a bearing on this matter and hence we are not inclined to grant another opportunity for hearing but proceed to decide the case on the basis of the submissions made and documents placed on record.

12. Before we proceed with the main issue of classification of the product Nicotine Polacrilex Lozenge, we find that there has been a delay in filing the present appeal. The order of the Authority of Advance Ruling dated 07.08.2019 was admittedly received by the appellant on 7th August 2019. The appeal was filed before this Appellate Authority on 3rd October 2019 after a period of 57 days from the date of receipt of the order of the AAR.

13. The provisions of Section 100(2) of the CGST Act mandates that an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. However,in terms of the proviso to Section 100(2) of the said Act, the Appellate Authority is empowered to allow the appeal to be presented within a further period of 30 days if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the initial period of 30 days.

14. In the instant case, the appeal filed against the Advance Ruling order dated 07.08.2019 is evidently belated by 57 days. The appellant, however, has not explained the reason for the delay in filing the appeal. Be that as it may, in the interest of justice, and considering the fact that the delay is within the condonable powers of this Authority, we are inclined to suo moto condone the delay in filing this appeal and proceed with a decision on the merits of this case.

15. Coming to the issue at hand, the appellant approached the Authority for Advance Ruling with the question regarding the classification of the product "Nicotine Polacrilex Lozenge" and the applicable rate of tax. The Authority for Advance Ruling gave a ruling that the impugned product is classifiable under Chapter heading 38.24 attracting GST at the rate of 18% in terms of Sl.No 97 of Schedule III of Notification No 01/2017-IT (R) dt 28.06.2017. This decision was given in view of the specific exclusion contained in Chapter Note 1(b) to Chapter 30 to preparations, such as tablets, chewing gum or patches (transdermal systems), intended to assist smokers to stop smoking. Since the impugned product is primarily meant to assist smokers to stop smoking, the Authority held that the product cannot be classified under Chapter 30 as a medicament and classified the same under chapter heading 38.24.

16. Aggrieved by the said ruling, the appellant is before us in appeal. In order to decide on the classification of the product"Nicotine Polacrilex Lozenge"we shall start by summarizing in general terms our understanding about tobacco and nicotine addiction. We understand that the nicotine in tobacco is an important part of cigarette addiction. When a smoker stops smoking, the nicotine levels drop quickly. This drop can cause withdrawal symptoms such as craving tobacco, nervousness, irritability, headache, weight gain, and difficulty in concentrating. Nicotine Polacrilex Lozenge is a nicotine replacement therapy that reduces withdrawal symptoms, including nicotine craving, associated with quitting smoking. Nicotine Polacrilex lozenges offer smokers who are trying to quit and ex-smokers, quick relief from cravings that are a part of nicotine withdrawal. Nicotine Polacrilex Lozenge comes in the form of a small, candy-like, tablet in different flavors. When a nicotine lozenge is placed in the mouth and allowed to dissolve over the course of 20 to 30 minutes, nicotine is absorbed into the bloodstream, relieving the short-term cravings to smoke.

17. As seen from the documents submitted by the Appellant, the active ingredient in the product "Nicotine Polacrilex Lozenge" is Nicotine Polacrilex USP. The USPharmacopeia describes Nicotine Polacrilex as a nicotine bound ion-exchange resin which is prepared from methacrylic acid and divinylbenzene. This nicotine containing resin contains not less than 95% and not more than 115% of the labelled amount of nicotine. This is blended with inactive ingredients and delivered in the form of tablets, chewing gum, lozenges or transdermal patches. In the instant case, the Nicotine Polacrilex 2mg and 4mg Lozenge contains the active ingredient Nicotine Polacrilex USP and inactive ingredients like Aspartame (sweetner), Colloidal anhydrous silica (glidant), Flavor modulator, Flavour peppermint, menthol (all flavoring agents), Hydroxy propyl methyl cellulose (release modifier/binder), magnesium stearate (lubricant), sodium bicarbonate (stabilizer/release modifier), Sorbitol, Mannitol (sweetner/diluent), tartrazine, Brilliant blue FCF (colorant) and Xanthan Gum (Release modifier/binder). This product is licensed by the Drugs Control Department.

18. Having seen the composition of the product, let us examine whether the product can be considered as a medicament having therapeutic and prophylactic uses. The word "medicament" has not been defined in the Customs Tariff Act or in the Drug and Cosmetics Act. A common understanding and dictionary meaning of medicament is a substance which treats illness and diseases. We find that Nicotine Polacrilex is used as a stop smoking aid which reduces withdrawal symptoms, including nicotine craving, associated with quitting smoking. It is pertinent to note that the use of Nicotine Polacrilex is indicated as merely an "aid" to stop smoking and a drug which "reduces" withdrawal symptoms in those who desire to quit smoking. It appears that the drug Nicotine Polacrilex does not in any way "treat" the symptoms of nicotine cessation. For a drug to be a medicament, it is essential that there should be a treatment of the illness or disease. In the instant case, the product Nicotine Polacrilex Lozenge is only a preparation which assists smokers to stop smoking. It is a replacement therapy for addicted smokers to wean them away from the smoking habit. Use of Nicotine Polacrilex lozenge will satisfy the nicotine craving of the smoker as measured doses of nicotine are administered into the blood stream. The Nicotine replacement therapy ensures

that the harmful effect of cigarette smoking is minimized in a smoker who will gradually stop the smoking habit. The claim made by the appellant that the impugned product is a medicament as it has therapeutic and prophylactic value is not acceptable because the instant product merely alters the mode of nicotine ingestion into the human anatomy. Smoking a cigarette causes the human body to inhale not only the nicotine present in tobacco smoke but also several harmful chemicals like tar, carbon monoxide, radioactive compounds that are carcinogenic, etc. On the other hand, the products like Nicotine Polacrilex lozenges used as a Nicotine Replacement aid, allows the body to ingest only nicotine without any of the harmful chemicals found in tobacco smoke. There is no therapeutic value in Nicotine Polacrilex Lozenge other than that it is only an aid for cessation of smoking and helps to reduce the withdrawal symptoms. Therefore, the Nicotine Polacrilex Lozenge cannot be considered as a medicament.

19. Coming to the classification of the product "Nicotine Polacrilex Lozenge", it is the case of the Appellant that the impugned products should be classified under Chapter 30.04 as a Medicament. The Central Government, on the recommendations of the GST Council, has issued Rate Notification Number 01/2017-CT (Rate) dated 28.06.2017 prescribing different rates of tax in Schedules for specified goods. The Explanation to the Rate Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 states thus:

> *For the purposes of this Notification: ...*
>
> *(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).*
>
> *(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 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.*

20. Therefore, while the Rate Notification under GST provides the rate of tax on goods and services, in order to interpret these Rate Notifications for purposes of levy of GST, one has to read the same along with the First Schedule of the Customs Tariff Act, 1975(including the Section and Chapter Notes and General Explanatory Notes). The Customs Tariff is structured into Sections, Chapters and sub-chapters, Headings and sub-headings.

21. Each Section and Chapter under the Tariff is accompanied by the notes known as "Section Notes" and Chapter Notes. These are given at the beginning of the Section or Chapter respectively which governs the concerned Section or Chapter as the case may be. In the case of Section Notes, they are applicable to each Chapter which is part of a specific section of the Tariff. Classification is to be determined only based on description of the heading read with relevant section or Chapter notes. Since these notes are part of Tariff itself, these have full statutory backing.

22. Various Tribunals have held that coverage of respective headings must be determined in the light of the respective section and Chapter note. Hence in this sense, the section and Chapter note have overriding force over the respective headings and sub-headings. In CC. v Sanghavi Swiss Refills P Ltd (1997) 94 ELT 644 (CEGAT), it was held that section notes and Chapter notes, being statutory in nature, have precedence over functional test of commercial parlance for the purpose of classification.

23. Chapter 30 of the Customs Tariff Act, 1975 relates to "Pharmaceutical products". Chapter Note 1 to Chapter 30 lists out the goods which are excluded from the purview of Chapter 30. As per Chapter Note 1(b), Chapter 30 does not cover "preparations, such as tablets, chewing gum or patches (transdermal systems) intended to assist smokers to stop smoking (heading 2106 or 3824)". Therefore, any preparation which is intended to assist smokers to stop smoking is excluded from the coverage of Chapter 30. The preparations may be in the form of tablets, chewing gum or patches. In this case, the impugned product is in the form of a Lozenge. Admittedly a lozenge is not a tablet or chewing gum or a patch. However, the use of the words "such as" in the Chapter Note 1(b) signifies that it is only indicative and not exhaustive. The Hon'ble Supreme Court in *Good Year India Ltd* v. *Collector of Customs 1997 (95) ELT 450* on the issue of classification of 'inner tube valves' held that:

> *"...The words 'such as stainless steel, nickel monel, incoloy, hastelloy' in subheading (2) are only illustrative of the various metals from which valves can be made but the said description is not exhaustive of the metals. . . ."*

Therefore, the term "such as' used in Chapter Note 1(b) to Chapter 30 establishes that whatever goods are enumerated in the note are only illustrations of a particular kind of goods and are not exhaustive of it and cannot be construed restrictively. By applying this well settled principle of interpretation, it is clear that, themention of preparations such as tablets, chewing gum or patches referred to in Chapter Note 1(b) to Chapter 30, would also cover within its purview 'lozenges'. In the instant case, the product Nicotine Polacrilex Lozenge is a preparation intended to assist smokers to stop smoking and hence it clearly stands excluded from being classified under Chapter 30 of the Customs Tariff.

24. The appellant has made out an argument that the exclusions in Chapter Note 1(b) to Chapter 30 is for "preparations in general" and does not apply where the said product qualifies as a medicament. They contend that since the Nicotine Polacrilex Lozenge is a medicament, it deserves treatment as a pharmaceutical product and hence it merits classification as a medicament under Chapter Heading 3004. As already mentioned in the aforesaid discussions, the impugned product is merely an aid used in Nicotine Replacement Therapy to assist smokers to quit smoking. The impugned product assists in reducing the withdrawal symptoms. The symptoms of nicotine withdrawal can be physical, mental and emotional. The withdrawal symptoms vary depending on how long and how many packs a day have been smoked. In Nicotine Replacement Therapy, the intensity of the withdrawal symptoms (mainly a craving for nicotine) is reduced. This is because the product used in the Nicotine Replacement Therapy provides the person a small controlled amount of nicotine without any of the other dangerous chemicals found in cigarette smoke. This helps satisfy the craving for nicotine and reduces the urge to smoke thereby helping the person manage the withdrawal symptoms. As already mentioned above, the product is not a medicament used to treat any illness or disease. It is only a preparation used to assist smokers to stop the habit of

smoking. No doubt the product is sold in measured doses of 2mg and 4mg and is to be taken in a prescribed manner as indicated in the label. However, this fact will not categorize the product as a medicament classifiable under Chapter 30. It may be noted that use of this substance for prolonged periods of time may lead to a dependence on nicotine polacrilex. Therefore, the use of the product in the manner prescribed is mainly to transfer the physiologic dependence from 'nicotine contained in tobacco' to 'nicotine bound in a polacrilex'. Such transference minimizes the behavioral aspects associated with cigarette smoking. Thus, the product is not a medicament for the treatment of physiological conditions emanating from cigarette smoking but is a substance containing nicotine used in Nicotine Replacement Therapy. Such stop smoking aids cannot be classified under Chapter 30 in view of the exclusion given in Chapter Note 1(b) to Chapter 30. In view of the aforesaid, we are not inclined to accept this argument of the Appellant.

25. Having concluded that the product Nicotine Polacrilex lozenge is not classifiable under Chapter 30, we move on to determine the Chapter under which the product can be classified. The Chapter Note 1(b) to Chapter 30, while excluding from its purview preparations intended to assist smokers from smoking,proposes to classify such preparations under either 21.06 (Food preparation not elsewhere specified) or under 38.24 (Miscellaneous chemical products).Chapter 21 pertains to miscellaneous edible preparations and Chapter heading 21.06 covers food preparations not elsewhere specified. In this case, the impugned product contains the active ingredient "Nicotine Polacrilex" which, as already stated earlier, is a substance comprising of nicotine which is bound by a resin (Polacrilex). Clearly, the combination of these ingredients cannot be considered asa food preparation. Hence, Nicotine Polacrilex Lozenge is not classifiable under Chapter Heading 21.06.

26. The other alternative chapter heading provided in Chapter Note 1(b) to Chapter 30 for classifying preparations which assist smokers to stop smoking, is Chapter Heading 38.24.Chapter 38 of the Customs Tariff Act relates to "Miscellaneous chemical products" and the Chapter Heading 38.24 covers *"Prepared binders for foundry moulds or cores; Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included."*

27. The active ingredient in "Nicotine Polacrilex Lozenge" is Nicotine which is a natural alkaloid. Nicotine is bound to an ion-exchange resin (polymethacrilic acid) and administered in the form of tablets, chewing gum, lozenge or patches. The chemical formulation of the nicotine bound to the resin polacrilexis such that it provides the user of the product blood nicotine levels via buccal absorption that will approximate those produced by the inhalation of tobacco smoke. We find that the Nicotine Polacrilex Lozenge is a chemical preparation and hence is more aptly classifiable under Chapter Heading 38.24 of the Customs Tariff Act, 1975.

28. In the GST rate Notification No 01/2017-Central Tax (Rate) dated 28.06.2017, the *"Prepared binders for foundry moulds or cores; Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not*

elsewhere specified or included" falling under Chapter Heading 38.24 are covered under entry Sl.No 97 of Schedule III with a GST rate of 18% (CGST 9% plus SGST 9%).

29. In view of the above we pass the following order

ORDER

We uphold the order NO.KAR ADRG 18/2019 dated 07/08/2019 passed by the Advance Ruling Authority and appeal filed by the appellant M/s. Strides Emerging Markets Ltd, stands dismissed on all accounts.

(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority

(M.S. SRIKAR)
Member
Karnataka Appellate Authority

To,

The Appellant

Copy to:

The Member (Central), Advance Ruling Authority, Karnataka.

The Member (State), Advance Ruling Authority, Karnataka.

The Commissioner of Central Tax, South Commissionerate

The Asst. Commissioner, LGSTO-25, Bengaluru.

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