



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri V. Srinivas, IRS, Joint Commissioner (Central Tax)

Sri J. Laxminarayana, Additional Commissioner (State Tax)

A.R.Com/8/2018

Date. 02-07-2018

TSAAR Order No. 5/2018

Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order.

M/s. Lyophilization Systems India Private Limited, Plot No.26/27 , Aleap Industrial Estate, Opp. JNTU Road, Near Pragathi nagar, Kukatpally , Hyderabad (GSTIN No.36AAACL8746M1ZY) has filed an application in Form GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 103 of CGST/TGST Rules, 2017 and sought Advance Ruling on the following issues:

- (i) The rate of tax applicable as on 15.11.2017 on the Lyophilizers- Machinery for the plant which is being cleared under chapter heading 8419.

2. The applicant submitted the application in Form GST ARA-01 and Statement containing the applicant's interpretation of law & relevant facts and requested for advance ruling on the Lyophilizers- Machinery for the plant which is being cleared under chapter heading 8419. They have submitted a copy of Challan evidencing payment of application fee of Rs.5,000/-.

3. The applicant has submitted detailed statement of facts having a bearing on the question on which Advance Ruling is sought for. The Statement of facts are as given below:

3.1 The applicant is a manufacturer of machinery in the name of Lyophilizers. This machinery is used in Drug & Pharmaceutical Industry for manufacture of vaccines which are life saving drugs. Therefore, Lyophilizers in other words can be called as 'Machinery meant for manufacturing life saving drugs'.

3.2 The technical aspects of this machinery are as under:

(a) Application of Lyophilizer:

Lyophilization is a dehydration process typically used to preserve perishable material or make the material more convenient for transport and also to increase the product efficacy with long life. Lyophilization works by cooling the product below eutectic temperature and then reducing the surrounding pressure to allow the frozen water in the material to sublime directly from the solid phase to the gas phase.

(b) Process description:

The Lyophilizer consists of product chamber with shelves and condenser

chamber with cooling coils. The product to be converted is placed on the shelves and cooled below its eutectic temperature. Once the product is below its eutectic temperature, the chambers are evacuated to high vacuum, during this process the water in the product sublimates and condenses on the condenser chamber coils. This process continues for some hours and the product gets dried and all the water removed from the product under heat exchange method. Then the chambers are subjected to steam sterilization by using high pressure steam to sanitize the complete system.

(c) Use in the Industry and classification:

Lyophilizers are considered as capital equipment in Pharma industry. The above machinery is used in drug & Pharmaceutical Industry for the manufacture of vaccines/Injectables which are life saving drugs. Therefore, Lyophilizers in other words can be called as “ Machinery meant for manufacturing life saving drugs”.

HSN Code used for clearance:

The above goods are being cleared under chapter heading 8419.

3.3 From 01.07.2017 to 14.11.2017, the applicant collected and paid GST at the rate of 14% since the above machinery was not finding place in any entry of the goods enumerated in any of the schedules to GST Act attracting less than 14% rate of tax and Chapter heading 8419 was not notified for the levy of GST at a rate lower than 14% in those days.

3.4 However, as on 15.11.2017, the above machinery falls under rate of tax of 9% as per the notification No. 41/2017- Central Tax(rate) dated 14.11.2017 and the customers of the applicant are insisting to charge GST at the rate of 9% only but not at the rate of 14%.

3.5 The following is the text of amendment carried over to Entry No.320 in schedule III to the Notification No.1/2017-Central Tax(Rate), dated. 28.06.2017.

(lxxx) in S. No. 320, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

“8419 Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric [other than Solar water heater and system]”;

4. The applicant therefore seeks to have an advance ruling on the rate of tax applicable as on 15.11.2017 on Lyophilizers-machinery for the plant which is being cleared under chapter heading 8419.

5. Further, the applicant submitted his interpretation of law and/ or facts, as the case may be, on the issue on which advance ruling was sought as follows:

- (a) The above goods are being cleared under chapter heading 8419 which is notified for the levy of GST at 9% vide Notification No.41/2017- Central Tax(rate) dated 14.11.2017 i.e., in respect of the amendments carried to schedule III- 9% vide (lxxx) i.e., in the substituted version of Entry No.320 in the said schedule.
- (b) The above goods falls under ‘Machinery’ in the substituted version of Entry No.320 of schedule III.
- (c) The goods manufactured and cleared by the applicant discharges the function of process involving a change in temperature i.e Heat exchange

which is notified in the above notification against the goods enumerated against chapter heading 8419.

- (d) Apart from the above function, the goods cleared by the applicant discharges the following activities which are mentioned in the above enumeration. Heating, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling. The lyophilizers manufactured by the applicant are not at all falling under the list of goods excluded from the purview of the amended version of Entry No.320 in schedule III.

6. Hence, the applicant is in strong belief that Lyophilizers i.e. Machinery for Plant manufactured by the applicant fall under Entry No.320 of schedule III by following the amendment carried over to it by Notification No.41/2017- Central Tax(rate) dated 14.11.2017.

7. The issues raised in the application has been examined, before deciding the rate of tax applicable for the goods “ Lyophilizers”, we would like to examine the correct classification of the product.

8. The process of Lyophilization, is defined as a freeze-drying process that removes water from a product after it is frozen and placed under a vacuum. It is a low temperature dehydration process which involves freezing the product, lowering pressure, then removing the ice by sublimation. Freeze drying results in a high quality product because of the low temperature used in processing. Even though the applicant has stated that Lyophilizers are considered as capital equipment in drug & Pharmaceutical Industry for the manufacture of vaccines/Injectables which are life saving drugs, the applications of freeze drying is also found in food processing industry as the flavours, smells and nutritional content generally remain unchanged, making the process popular for preserving food. However Pharmaceutical companies often use freeze-drying to increase the shelf life of the products, such as live virus vaccines, biologics and other injectables. By removing the water from the material and sealing the material in a glass vial, the material can be easily stored, shipped, and later reconstituted to its original form for injection. Thus the application of the process of lyophilization is found not only in pharmaceutical industry, but also in various other industries.

9. The goods such as “ Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes” are covered under Tariff heading 8419 of Customs Tariff. On examination of the process of Lyophilization, it is found that the goods “ Lyophilizers” are classifiable under Tariff heading 84198990 as per the Section notes to Section XVI and Chapter notes to Chapter 84 of the Customs tariff. As the rules for interpretation of Customs Tariff Act, 1975 was made applicable to GST Tariff, the goods “ Lyophilizers” are classifiable under heading 8419 of the GST Tariff.

10. As per Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, the central tax rates that shall be levied has been notified amending the earlier Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 which notified the central tax rates that shall be levied on intra-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules .

11. As per S.No.320 to Schedule - III of the Notification No. 41/2017 dated 14.11.2017, ”Machinery, plant or laboratory equipment, whether or not electrically

heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric [other than Solar water heater and system]" falling under heading 8419 of the GST Tariff have been brought under Schedule-III of the Notification, notifying the rate of central tax as 9% as per G.O.Ms No. 250, Revenue (CT-II) Department, Dt. 21-11-2017. As the goods Lyophilizers are classifiable under the heading 8419 of the GST Tariff, the rate of central tax applicable is 9% only.

12. The issue raised in the application has been examined with reference to the provisions of the CGST/TGST Act, 2017 and the Rules made there under and the notifications issued till date; and the Advance Ruling is given as under:

Notification No. 41/2017 – Central Tax (Rate), Date. 14-11-2017
(G.O.Ms No. 250, Revenue (CT-II) Department, Dt. 21-11-2017)

Sl. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate
320 of Sch-III	8419	Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric [other than Solar water heater and system	CGST 9% + TGST 9%

The tax rate leviable on supply of “ Lyophilizers” falling under the tariff heading 8419 of the GST Tariff is 9% CGST + 9% SGST.

The application filed by M/s Lyophilization Systems India Private Limited, Hyderabad, is disposed accordingly.

Sd/- J. Lakshminarayana
ADDL. COMMISSIONER (State Tax)

Sd/- V. Srinivas
JOINT COMMISSIONER (Central Tax)

To
M/s. Lyophilization Systems India Private Limited,
Plot No.26/27 , Aleap Industrial Estate,
Opp. JNTU Road, Near Pragathi nagar,
Kukatpally , Hyderabad.

Copy to:

- 1.The Joint Commissioner (State Tax), Hyderabad (Rural) Division.
- 2.The Assistant Commissioner (State Tax), IDA Gandhinagar Circle.

//t.c.f.b.o//

Additional Commissioner (ST)