

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/34/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/14)

Date: 03.07.2020

Name and address of the applicant	:	Nishith Vipinchandra Shah Pooja Enteroprise, 1 st Phase, J-14, Old Type Shed, GIDC, Vapi, Gujarat-396191
GSTIN/ User Id of the applicant	:	24AAGPPS6774E1ZV
Date of application	:	26.02.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	i) Classification of goods and/or services or both.
Date of Personal Hearing	:	11.06.2020 (through Video Conferencing)
Present for the applicant	:	Mr. Nishith V. Shah

BRIEF FACTS OF THE CASE:

M/s. Pooja Enteroprise, 1st Phase, J-14, Old Type Shed, GIDC Vapi, Gujarat, having a GSTIN No.24AAGPPS6774E1ZV, 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 SGST Act.

2. The applicant has submitted that they are engaged in importing “Plastic Mechanical Liquid Dispensers” from China and sell them in local market since 2011. These dispensers are used as the caps of bottles. They are used for dispensing liquid either through direct discharge or spray type discharge or foam type of discharge.

3. The applicant further submitted that till 30.06.2017, they were importing this material under HS Code 3923 (Caps & closure). But after implementation of GST, they were asked to clear the goods under HSN 3926 (Other articles of

Plastics) bearing GST of 28%. The applicant further submitted that they were not certain about HSN of the said imported goods and other competitors were supplying same product under HSN 8424 and 9616. So, it leads to confusion and, hence, they applied for Advance Ruling on the classification of the imported goods.

4. The applicant submitted that they are dealing in the following items and their utility are given below:

I. **Lotion Pump (HS Code 84242000):** This type of pump is hand operated mechanical appliances for dispensing liquid or gel lifted through a plastic pipe goes inside the bottle. In this type of Pump Liquid dispense from Bottle through actuator by pressing piston by finger up and down, which is mechanical in Nature. This pump cannot be used without bottle and is packaging item.

a) Material used: Poly Propylene, LDPE, Glass Ball and SS Spring.

b) Usage: On Bottle of Hand Disinfectant, Hand Sanitizer Gel, Hand Wash Soap (Dettol Hand Wash), Tomato Soap Dispenser etc. This product can be used for multiple usages and is not related to a specific purpose.

II. **Fine Mist Sprayers (HS Code 84242000):** This type of pump is hand operated mechanical appliances for spraying liquid or gel lifted through a plastic pipe goes inside the bottle. In this type of Pump, Liquid dispense from Bottle through actuator by pressing piston by finger up and down, which is mechanical in Nature. This pump cannot be used without bottle and is packaging item.

a) Material used: Poly Propylene, LDPE, Glass Ball and SS Spring.

b) Usage: On Bottle of spraying liquid, like Operation Preparation Glass/Spectacle Lens Cleaner, Mouth Freshener, Hair Growth Medicine Spray, Nasal Spray, Car Freshener etc.. This product can be used for multiple usages and is not related to a specific purpose.

III. **Foam Pump (HS Code 84242000):** This type of pump is hand operated mechanical appliances for dispensing foam from liquid soap lifted through a plastic pipe goes inside the bottle. In this type of Pump, foam is dispensed from Bottle through actuator by pumping piston up and down, which is mechanical in Nature. This pump cannot be used without bottle and is packaging item.

- a) Material used: Poly Propylene, LDPE, Glass Ball and SS Spring.
- b) Usage: On Bottle of Medicated Foam wash& Medicated Hand wash Soap.

IV. **Cream Pump (HS Code 84242000):** This type of pump is hand operated mechanical appliances for dispensing liquid or gel lifted through a plastic pipe goes inside the bottle. In this type of Pump, Liquid dispense from Bottle through actuator by pumping piston up and down, which is mechanical in Nature. This pump cannot be used without bottle and is packaging item.

- a) Material used: Poly Propylene, LDPE, Glass Ball and SS Spring.
- b) Usage: On Bottle of Hair Serum for hair growth, Hand Disinfectant, Hand Sanitizer Gel etc. This product can be used for multiple usages and is not related to a specific purpose.

V. **Trigger Sprayer (HS Code 84242000):** This type of pump is hand operated mechanical appliances for spraying/streaming liquid lifted through a plastic pipe goes inside the bottle. In this type of Pump, Liquid dispense from Bottle through actuator by pressing by finger backward and forward, which is mechanical in Nature. This pump cannot be used without bottle and is packaging item.

- a) Material used: Poly Propylene, LDPE, Glass Ball and SS Spring.
- b) Usage: On Bottle of Glass cleaner, Car Cleaner, Air Freshener, Pesticides, Pharmaceutical Sprays etc.. This product can be used for multiple usages and is not related to a specific purpose.

5. Accordingly, the applicant sought Advance Ruling on the following question:

What is the HSN code and rate of tax for Plastic Mechanical Liquid Dispenser?

Applicant's Interpretation of Law/Taxation under GST Regime:

6. The applicant submission regarding the classification of the different type of Dispenser, Pumps, Sprayers, made of plastic, is as under:

6.1 The Chapter / Headings relevant to the classification of the subject goods are Chapter 84 and 96 of the Custom Tariff read with HSN.

Chapter 84 covers Machinery and Mechanical appliances: parts thereof.

Tariff item No. 8413 covers PUMPS FOR LIQUIDS, WHETHER OR NOT FITTED WITH A MEASURING DEVICE;

Tariff Item 8424 covers MECHANICAL APPLIANCES (WHETHER OR NOT HAND OPERATED) FOR PROJECTING, DISPERSING OR SPRAYING LIQUIDS OR POWDERS; FIRE EXTINGUISHERS, WHETHER OR NOT CHARGED; SPRAY GUNS AND SIMILAR APPLIANCES; STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES.

CTH 84248990 COVERS OTHER MECHANICAL APPLIANCES, WHICH IS RELEVANT TO SOME OF THE GOODS UNDER CONSIDERATION.

CHAPTER 96 COVERS MISCELLENEOUS MANUFACTURED ITEMS:

96.16 - SCENT SPRAYS AND SIMILAR TOILET SPRAYS, AND MOUNTS AND HEADS THEREFOR; POWDER-PUFFS AND PADS FOR THE APPLICATION OF COSMETICS OR TOILET PREPARATIONS:

9616.10 Scent sprays and similar toilet sprays, and mounts and heads therefor:

9616.20 Powder-puffs and pads for the application of cosmetics or toilet preparations:

This heading covers:

- (i) 'Scent, brilliantine and similar toilet sprays, whether of the table or pocket type and whether for personal or professional use. They consist of a reservoir, generally in the form of a bottle, (of glass, plastics, metal or other material), to which is fixed the mount; this mount incorporates the head (with its spray-forming mechanism) and a pneumatic pressure bulb (sometimes enclosed in a textile net) or a piston device.*
- (ii) Mounts for toilet sprays.*
- (iii) Head pieces for toilet sprays.*
- (iv) Powder-puffs and pads for the application of cosmetics or toilet preparation (face powder, rouge, talcum-powder etc.). They may be made of any material (swan's or eider-down, skin, animal hair, pile fabrics, foam rubber, etc.) and they remain in this heading whether or not they have handles or trimmings of ivory, tortoise-shell, bone, plastics, base metal, precious metal or metal class with precious mental.*

7. The applicant further submitted that classification aspect of pumps and sprays has been under judicial scrutiny in Courts and Tribunals. The applicant has placed reliance on the following decision which was based on the erstwhile regime of Central Excise Tariff Act, 1985.

i) MKP DISTRIBUTORS PVT. LTD. Vs. COMMR. OF CUS., AIRPORT, MUMBAI reported in ELT 2010 (255) E.L.T. 286 (Tri. - Mumbai):

“Perfumes/scents with spray packs - Classification of - Goods imported in containers with spray mechanism attached thereto - Perfumes and scents imported without spray mechanism covered under Heading 33.03 of Customs Tariff Act, 1975 - Scents sprays with mounts and heads for spray covered under Heading 9616.10 ibid - Factual position admitted by appellant under Section 108 of Customs Act, 1962 - View taken by authorities below on classification issue is sustainable - Classification under sub-heading 9616.10 ibid upheld - Section 108 of Customs Act. - Perfumes and toilet waters were covered under heading 33.03 while scent sprays and similar toilet sprays were covered under heading 96.16 [para 3].

Valuation (Customs) - Loading of value, evidence - No cogent reason given by Commissioner (Appeals) for loading the value of goods to the extent of 160%/100% - Commissioner (Appeals) merely affirmed the statement made by lower authority - Valuation aspect to be considered afresh by Commissioner (Appeals), following principles of natural justice and pass speaking order - Remanded to lower appellate authority - Section 14 of Customs Act, 1962. [para 4]

3. *On going through the records, we find that the appellant has disputed both the classification and valuation. According to them, the goods are classifiable under CTH 3303.00 and not under CTH 9616.10. In the memorandum of appeal, they undertook to explain their case with brochures, invoices, pamphlets, previous bills of entries, etc. at the time of hearing. Today, the appellant is not present nor is any such brochure, invoice, pamphlet, bill of entry available on record. It appears from the available materials on record that the imported goods were in containers with a spray mechanism attached thereto. On going through the rival entries of the Customs tariff schedule, we find that perfumes and toilet waters were covered under heading 33.03 while scent sprays and similar toilet sprays were covered under heading 96.16. The latter heading also covered mounts and heads for scent sprays and similar toilet sprays. It would, therefore, appear that perfumes/scents imported in containers with spray mechanism attached thereto would squarely get covered under heading 96.16. Heading 33.03, on the other hand, appears to cover perfumes/scents imported without spray mechanism. The appellant described the goods in the bill of entry clearly indicating that they were imported in small containers of volume ranging from 40 ML to 100 ML with provision for spray. This factual position was clearly admitted by the appellant under Section 108 of the Customs Act. In their appeal filed with the lower appellate authority also, they never denied that the goods were imported in the aforesaid form. In the circumstances, the view taken by the lower authorities on the classification dispute can only be sustained. Accordingly, we uphold the classification of the goods under CTH 9616.10.*

Accordingly, it was held that the classification of the goods (Mount spray) will be under CTH 9616.10”

(ii) COMMISSIONER OF CUSTOMS, MUMBAI Vs. SPECIALITY VALVES reported in ELT 2006 (202) E.L.T. 785 (Tri. - Mumbai)

“Pump - Part of spray pumps - Head 16 mm, ball sale assembly, accumulators, large piston M08, flange filament M08 - Importer manufacturing spray pumps, admitted that the manufactured items will be sold as sprays that can be used for spraying scents, toiletries or other chemicals - Such admission compel to classify the impugned items under Heading 9616 of Customs Tariff Act, 1975 and not under Heading 8424 ibid .

5. After reading the explanatory note under the two competing headings, we find that heading 9616 would be *more appropriate to cover the impugned inputs. The grounds taken by the Revenue as regards to the admission of the importer about the use of these goods would compel us to classify them under chapter heading 9616. The finding of the Commissioner that the goods are not exclusively meant for scent sprays but could be used as well for chemicals and Pharmaceuticals will not rule out classification under Chapter heading 9616. The Commissioner has noted that explanatory notes under heading 8424 does not include scent sprays and similar toilet sprays. He also found that the goods were not having technical characteristics for use as scent or similar sprays. In the above said circumstances the learned Commissioner ought to have taken a view that 9616 would be more appropriate because the goods are not included by the notes under Chapter 8424 and these are not technical parameters in the notes for the goods to fall under 9616, therefore, the impugned order is liable to be set aside. As we find merits in Revenue appeal, the same is allowed.”*

iii) COLLECTOR OF C. EX., BANGALORE Vs. DYNAMATIC HYDRAULICS LTD. reported in ELT 1999 (109) E.L.T. 927 (Tribunal)

Pump - Dynamatic hand pump - Distinct from hydraulic accumulator - Classifiable under specific Heading 84.13 of Central Excise Tariff Act, 1985.

It has been explained that Heading 84.13 covers pumps for liquids, whether or not fitted with a measuring device; liquid elevators. It is stated that all pumps for liquid and liquid elevators fall under this heading. Hand pump is unambiguously specified and included in this heading only. They state that hand pump is known in both commercial and common parlance as hand pump. The pump, by itself, without an external source of force is not capable of doing any work. The hydraulic accumulator on the other hand is a device for storing hydraulic energy and releasing it on demand and its use is to smoothen the demand fluctuation in a hydraulic circuit. The hand pump is

incapable of doing this function. A hand pump therefore cannot be considered a hydraulic accumulator. On a reading of the entire literature, it is clear that the item in question does not fall within the ambit of hydraulic accumulator. Therefore, the classification to be adopted under Heading 84.79 gets excluded in terms of Explanatory Notes to HSN (page 1317). The item not being a hydraulic accumulator but only a hand pump is classifiable under the specific entry under Heading 84.13. [paras 7, 13].”

iv) HMT LTD. VERSUS COMMISSIONER OF C. EX. & CUS., AURANGABAD reported in ELT 2006 (194) E.L.T. 121 (Tri. - Mumbai)”

“4. We also find that as per HSN explanatory note to Chapter Heading 84.34, that machines for processing milk depend on the principle of heat exchange and they are excluded from coverage under Chapter Heading 84.34 and the heading also excludes refrigerating appliance (whether or not specially designed for cooling or keeping milk and milk cooling vats incorporating evaporator of a refrigerating unit) from Chapter Heading 84.34. HSN Explanatory note also excludes machines for wrapping or weighing a product from Chapter Heading 84.34.

5. Further in the case of Dairy Development Corporation v. Collector of Customs, Bombay - 2000 (119) E.L.T. 629, the Tribunal held that butter packing machine is classifiable under Heading 84.22 of the Customs Tariff Act, 1975 and not under Heading 84.34.

6. In the light of the Note No. 2 to Chapter Heading 84.34 and HSN explanatory notes to Chapter 84.34 and the Tribunal’s decision cited supra, we reject the contentions of the appellants that pasteurizing machines in question are dairy machines for classification under Chapter Heading 84.34 (although they are dairy machines) and uphold the findings of the authorities below, as regards classification under different headings of Chapter 84. In the result, we uphold the impugned order and reject the appeal.”

(v) Similar view has been held in the following cases also:

(a) PROCESS PUMPS INDIA PVT. LTD. Versus COMMISSIONER OF C. EX., BANGALORE-II reported in ELT 2005 (190) E.L.T. 235 (Tri. - Bang.)

“Pumps for liquids classifiable under Heading 84.13 of Central Excise Tariff which carries nil rate of duty - Question of granting or denying benefit of Notification No. 38/97-C.E. does not arise. [para 3]

Pump parts-Spares used as parts of pumps, classifiable under Heading 84.13 of Central Excise Tariff and not under Chapter 73 or Chapter 40 ibid. [para 3].”

(b) PAVRON SPRAYTECH PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI reported in COMMISSIONER OF CUSTOMS, CHENNAI

“Pumps - Spray pumps - 32 MS Modular spray pumps being in the nature of pump, not classifiable under Heading 96.16 of Customs Tariff Act, 1975 which is a specific entry for scent sprays - Subsequent to the present import, goods were being classified by the authorities themselves under Sub-heading 8413.20 ibid as claimed by appellants - Lower authorities directed to consider the classification issue afresh in order to determine whether sub-heading 84.13 or 84.24 ibid would be more appropriate. [paras 8, 9]

8.It is clear from a perusal of the contending chapter sub-heading that sub-heading 9616 is specific to scent sprays and does not cover generic goods. Therefore, we are in agreement with the appellant that the classification under 9616 would not be appropriate. The findings in the impugned orders also justify the exclusion of sub-heading 9616. As already noted, Order-in-Original has classified the goods under tariff Heading 9616 on a presumption that the use of the goods in perfumes or toiletries cannot be ruled out. The finding in the OIA also is not any more in favour of classification under 9616, as that order notes that the item is in the nature of a pump. Obviously, what is in the nature of a pump should be classified under the heading for pumps and not under the heading for scent sprays. Accordingly, we set aside the classification order for classification of the product under 9616 and the consequent duty demand and confiscation of the goods.

9.With regard to classification under Chapter 84, we note that subsequent to the present import in 1996, the goods were being classified by the authorities themselves under 8413.20 which was a classification claimed by the appellants. Thus, the present order confines only to the present consignments as already pointed out by the ld. Consultant. Classification of the goods under 8424 has been canvassed by the ld. Consultant for various reasons. These have not been correctly considered by the lower authorities. We, therefore, consider it appropriate that the lower authorities consider the classification issue afresh in order to consider whether sub-heading 8413 or 8424 would be more appropriate. For this purpose, the matter is remanded to the original authority and the appeal is disposed of on the above terms.”

8. The applicant further submitted that in the above background, the appropriate classification of the subject goods appears to be as follows:

I. Lotion Pump- (Screw type):

It is plastic device intended to be screwed on the bottle. The function and

use of the above pump is for pumping/ dispensing liquid or lotion from a bottle and serves for the depletion of the contents, viz. liquid, gel, cream etc. The tariff item No. 8413 though covers pumps, the HSN, has provided that *“This heading covers most machines and appliances for raising or otherwise continuously displacing volumes of liquids (including molten metal and wet concrete), whether they are operated by hand or by any kind of power unit, integral or otherwise”*. Heading 8413 describes pumps that are larger and used in an industrial or similar activity. A primary characteristic of these pumps is that they are used for continuously displacing volumes of liquid. The pumps in question here are not of the same class or kind as the pumps for liquid described in heading 8413. Being so this product will not fall under Tariff heading 8413.

The pumps are solely used to disburse liquid/gel products. The disbursing by the pumps is not a “spray” within the common meaning of the term. It is not scent sprays or similar toilet sprays described by the Tariff heading 9616. The pumps project and disburse liquid, gel cream as the case may be. Such a projection or dispensation is more appropriately covered by the terms of heading 8424 (This view also takes support from ruling in the case of CLA-2 CO: R:C:M 088500 JMH dated 04.04.1991 in the case of SCAC Transport (USA), Inc. NY 11430).

Considering the aforesaid provision of the HSN and Custom Tariff, the appropriate classification of this item appears to be under 8424 as the HSN has provided that heading No. 8424 covers “machine and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g. sand, powder, granules, grit or metallic abrasive) in the form of a jet, a dispersion (whether or not in drips) or a spray”.

II. Fine Mist Sprayer:

The function and use of the above Fine Mist Sprayer is to spray liquid of general use and it seems to be appropriately classifiable under CTH 8424. It is submitted that the Fine Mist sprayer cannot be used as Perfume Sprayer because of following reasons:

- a) Dispensing perfumes Sprayer is 0.05ml to 0.07 ml. Whereas in case of Fine Mist sprayer dispensing is 0.25 ml to 0.70 ml., which is very high.
- b) Perfume Sprayer Pumps are of one time uses, hence, it is crimped and mount is of Aluminum which cannot be removed. Whereas in case of

- c) Fine Mist Sprayer, it having thread. So, it can be used number of time by screwing and unscrewing.
- d) Neck size of Perfume Sprayer is generally 12mm to 15-16 mm depending upon capacity of bottle. Whereas in case of Fine Mist Sprayer same is 12mm to 28 mm. We plan to import 20mm, 24mm & 26mm.

The applicant has submitted that the meaning of toilet spray is liquid contains alcohol with variable percentage of perfume. So, trigger sprayer which is used on Glass Cleaner and Fine Mist Sprayer with neck size 20mm and above which are used for various purpose does not fall in Chapter 96.

Similarly, **Mini Trigger Sprayer** generally used for Room Freshener does not fall under this HS code. As Room Freshener with trigger Sprayer though contains Perfume but it generally water based. Hence, as per their contention, it cannot be terms as Perfume Sprayer and it cannot be classified under CTH No. 9616, rather it is appropriately classifiable under CTH 8424.

III. Foam Pump:

As stated above at Sr. No. I, the function and use of the above pump is for pumping/ dispensing liquid or lotion from, as such, in terms of the above provisions of the HSN and Customs Tariff, the appropriate classification appears to be 8424 as heading No. 8424 covers “machine and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g. sand, powder, granules, grit or metallic abrasive) in the form of a jet, a dispersion (whether or not in drips) or a spray”.

They further submitted that Foam pumps are solely used to disburse liquid, majorly in pharma products. The disbursing by pump is not a “spray” within the common meaning of the term. It is not scent sprays are similar toilet sprays described by the Tariff heading 9616. The pumps project and disburse liquid, gel, cream as the case may be. Such a projection or dispensation is **more appropriately covered by the term of heading 8424**. (This view also takes support from ruling in the case of CLA-2 CO: R:C:M 088500 JMH dated 04.04.1991 in the case of SCAC Transport (USA), Inc. NY 11430).

IV. Cream Pump:

As stated above at Sr. No. 1, the function and use of the above pump is for pumping/ dispensing liquid or lotion from, as such, in terms of the above provisions of the HSN and Customs Tariff, the appropriate classification appears to be 8424 as heading No. 8424 covers “machine and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g. sand, powder, granules, grit or metallic abrasive) in the form of a jet, a dispersion (whether or not in drips) or a spray”.

They further submitted that this type of Cream pump is solely used to disburse liquid, serum (semi liquid) products. The disbursing by pump is not a “spray” within the common meaning of the term. It is not scent sprays are similar toilet sprays described by the Tariff heading 9616. The pumps project and disburse liquid, gel, cream as the case may be. Such a projection or dispensation is **more appropriately covered by the term of heading 8424**. (This view also takes support from ruling in the case of CLA-2 CO: R:C:M 088500 JMH dated 04.04.1991 in the case of SCAC Transport (USA), Inc. NY 11430).

V. Trigger Sprayer:

The merchandise under consideration described as a plastic trigger sprayer, is composed of a trigger, a nozzle and a plastic tube. The plastic trigger sprayer is designed to spray or stream liquid when the user squeezes the hand-operated trigger. Liquid is then raised upward through the plastic tube, into its valve and out of the nozzle. The nozzle may be adjusted to disable or enable the trigger sprayer.

As per the HSN, the tariff Heading 8424 provides for mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders spray guns and similar appliances: simple piston pump sprays and powder bellows. Further, Sr. No. B specifically covers Spray guns and similar appliances. Therefore, the applicable subheading for the plastic Trigger Sprayer will be 8424.

The other contentious tariff item relating to this product could be 9616. However, the said heading viz. 9616 has specifically provided some exclusion as per the HSN. The said heading does not apply to dispersing or spraying appliances of heading 8424 {Clause (C)}. Besides, the exclusion pertaining to heading 8424 is scent sprays and similar toilet sprays and similar toilet sprays

which would merit classification under heading 9616. In this backdoor, the appropriate classification of this item seems to be under heading 8424.

9. The applicant, vide their letter dated 24.04.2019, made further submission, wherein they stated that HS Code 9616 is related to Scent Sprayers and similar Toilet Sprayers and Mount and Heads therefore-----
Explanatory notes on HS code states that this heading covers:

- I. Scent, Brilliantine and similar toilet sprays, whether of the table of pocket type, whether for **personal or professional use. They consist of a reservoir, generally in the form of a bottle, to which is fixed the mount.** This mount incorporates the head (with its spray forming mechanism) and a premature pressure bulbs) or a piston drive.

As described above, head should be of Spray Forming Mechanism and as per the Oxford Dictionary, word **Spray means “Liquide that is blown or driven through the air in the form of tiny drops”.**

As they have imported “**Lotion Pump**”, whose main function is to dispense liquid out of reservoir through dip tube by applying thumb pressure. The head (Actuator) does not have any mechanism to spray liquid. **Actuator is just guiding liquid to desired direction (Hand or any utensil). Hence, they feel that Head of Lotion pump cannot be termed as Heads of Toilet Spray.**

- II. Lotion Pump are designed to dispense (Not Spray), semi solid material like gel and emulsions. Though, it can dispense aqueous liquid but **will not spray.**

III. **Heads of Toilet Spray:**

HS Code 9616 covers Heads of Toilet Spray. Oxford Dictionary word “Toilet” describes as “objects and substances that you use in washing yourself and preventing the body from smelling unpleasant.” In their opinion products like Perfume, Scent, After Shave Lotion, Deodorants are basically made of fragrance and alcohol and either it is sprayed on human body or clothes or applied on skin, which is aqueous in nature. In that case, spray quantity required will be very less and mounts are fixed like Crimp Pump or Aerosol Valve on to reservoir. For reference, they have enclosed herewith photo of Advertisement of “AXE” Pocket sprayer which has capacity of 17ml. and can spray 250 times. Hence, it dispenses just 0.07ml. per Stroke. Secondly, in case of other Toilet spray dispensing is not more than 0.1ml. per stroke.

Whereas Lotion Pump have dispensing capacity of 1ml. to 50ml. per stroke and it’s diameter of neck is from 20mm to 48mm. Lotion

Pumps are general purpose dispenser to dispense gel or other liquid (including Aqueous Liquid) of different nature. Basic purpose of Lotion Pump is to dispense liquid from container without spill and in desired quantity as per capacity of Piston housing.

- IV. Explanatory Note in HS Code 9616 states that “The heading does not apply to Dispersing or Spraying appliances of heading 84.24.
- V. HS Code 8424 is related to Mechanical Appliances (Whether or not hand operated) for projecting, dispersing or spraying liquid or Powder.
- VI. Lotion Pump & Cream Pump consist of parts, viz. (a) Dip tube to lift the liquid; (b) Spring Loaded Piston Pump; & (c) Actuator to dispense liquid. Lotion Pump & Cream Pump brings gel or emulsion up and out from the inside of the container. The pumps thrust the gel or emulsion outward or forward. Thus, Lotion Pump and Cream Pump project the Gel or Emulsion. Lotion/ Cream pump do not breakup and scatter the gel or emulsion in various direction by the Dictionary meaning of Spray.
- VII. For HS Code 9616, they made references of following Rulings of American Customs:
 - (i) American Customs Ruling No. HQ088982 dated 17th May, 1991;
 - (ii) American Customs Ruling No. NY G86184 dated 24th January, 2001;
 - (iii) American Customs Ruling No. NY N059597 dated 29th May, 2009.

In all above ruling, Dispenser Pumps and Bottles, both are imported together and, hence, it has been classified under 9616.

- VIII. For HS Code 8424, they made references of following:
 - (i) American Customs Ruling No. NY N284981 dated 2nd May, 2017 for Sprayer Components;
 - (ii) American Customs Ruling No. NY N047916 dated 22nd June, 2009 for Lotion or Soap Dispensers from China;
 - (iii) American Customs Ruling No. NY N003133 dated 8th December, 2006 for Trigger Sprayers and Liquid Soap Dispensers from China;
 - (iv) American Customs Ruling No. NY M83453 dated 6th June, 2006 for Lotion Dispensers from China;
 - (v) American Customs Ruling No. NY 894786 dated 22nd February, 1994 for Sprayers and Dispensers from Germany;
 - (vi) American Customs Ruling No. NCLA-2 Co:R:C:M088500 JMH dated 4th April, 1991. **This is very exhausting ruling on Cosmetic Pump, wherein it has been examined thoroughly for Cosmetic Pump under HS Code 8413, 8424 & 9616;**
 - (vii) Invoice copy of National Plastics, a Local Manufacturer is manufacturing and supplying Plastic Dispensers like Lotion Pump,

Trigger Sprayers and Fine Mist Sprayers under description “Pumps and Sprayers” under HS Code 8424.2000;

(viii) Certificate of Origin Received from China for concern consignment.

In all above rulings, only Dispenser Pumps are imported without bottle and, hence, it has been classified under 8424.

IX. For reference, they have attached Advance Ruling given by US Customs department as mentioned above and Screenshot of Oxford Dictionary for meaning of word Toilet and Spray, which is self-explanatory.

X. Secondly, they understand that as per WCO, first 6 digits of HS Code of all the Countries should be common. Copy of the same is enclosed herewith.

XI. Lastly, they requested to give esteem opinion on HS code for Plastic Dispensers.

10. At the time of personal hearing held through Video Conferencing on 11.06.2020, the Authorised Representative of the applicant, Mr. Nishith V. Shah reiterated the facts as stated in the Application and the subsequent submission dated 24.04.2020.

DISCUSSION & FINDINGS:

11. We have considered the submissions made by the applicant in their application for advance ruling, subsequent submission dated 24.04.2020 and submission made at the time of personal hearing. We also considered the question/issue on which advance ruling has been sought for by the applicant, relevant facts having bearing on the question/issue raised, Case laws and the applicant’s understanding/interpretation of law in respect of the issue. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant’s interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act 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 same provisions under the GGST Act.

12. In this case, the moot point is to be decided is that:

What is the HSN Code and rate of tax for Plastic Mechanical Liquid Dispenser?

13. The applicant is engaged in importing various types of plastic devices intended to be screwed/fitted on the bottle/containers. These plastic devices

are used for pumping/ dispensing liquid or lotion from a bottle and serves for the depletion of the contents, viz. liquid, gel, cream etc..

14. The applicant further submitted that till 30.06.2017, they were importing this material under HS Code 3923 (Caps & closure). But after implementation of GST, they were asked to clear the goods under HSN 3926 (Other articles of Plastics) bearing GST of 28%. The applicant further submitted that they were not certain about HSN of the said imported goods and other competitors were supplying same product under HSN 8424 and 9616. So, it leads to confusion and, hence, they applied for Advance Ruling on the classification of the imported goods.

15. We note that the classification of goods under GST regime has to be done in accordance with the Customs Tariff Act, 1975, which is in turn based on Harmonised System of Nomenclature popularly known as 'HSN'. The rules of interpretation, section notes and chapter notes as specified under the Customs Tariff Act, 1975 are also applicable for classification of Goods under GST regime. However, once an item is classified in accordance with the Customs Tariff Act, 1975, the rate of tax applicable would be arrived at on the basis of notifications issued under GST by respective governments.

16. Now, we come to the classification of said plastic devices, which are being imported from China by the applicant- whether it should be classified as parts of scent spray falling under **CTH 9616.10** or as parts of an appliance falling under **CTH 8424.90** i.e. as parts of an appliance other than agriculture or horticulture classifiable under CTH 8424.89 or Chapter heading **(HSN) 3926** (Other articles of Plastics).

CHAPTER HEADING 9616:

17. The applicant submitted that the imported pumps/sprayers are solely used to disburse liquid/gel products. The disbursing by the pumps is not a "spray" within the common meaning of the term. It is not scent sprays or similar toilet sprays described by the Tariff heading 9616. The pumps project and disburse liquid, gel cream as the case may be. Such a projection or dispensation is more appropriately covered by the terms of heading 8424, this view also takes support from ruling in the case of CLA-2 CO: R:C:M 088500 JMH dated 04.04.1991 in the case of SCAC Transport (USA), Inc. NY 11430).

17.1 In this regard, we find that Chapter Heading 9616 deals with Scent Sprays and Similar Toilet Sprays, and Mounts and Heads therefor; Powder-Puffs and Pads for the application of Cosmetics or Toilet Preparations. Further,

Chapter sub-heading 9616.10 deals with Scent sprays and similar toilet sprays, and mounts and heads therefor. Further, Chapter sub-heading 9616.20 deals with Powder-Puffs and Pads for the application of Cosmetics or Toilet Preparations.

17.2 It is clear from a perusal of the contending chapter sub-heading that chapter sub-heading 9616 is specific to scent sprays and similar toilet sprays and does not cover generic goods. Therefore, we are in agreement with the applicant that the classification of the imported plastic devices under Chapter Heading 9616 would not be appropriate.

CHAPTER HEADING NO. 8424:

18. We further find that Chapter Heading No. 8424 deals with mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; Fire extinguishers, whether or not charged; Spray guns and similar appliances; Steam or sand blasting machines and similar jet projecting machines. The items in question are neither a mechanical appliance, Fire extinguisher, Spray guns and similar appliances, Steam or sand blasting machines and similar jet projecting machines nor it can be classified under CTH 8424.89 because CTH 8424.89 refers to other than agricultural or horticultural appliances, industrial bellows and similar other products having same type of functioning are covered. Further, Chapter Heading 8424.90 refers to '**Parts**'. As per explanatory Note to HSN of this chapter heading, the heading (8424.90) includes parts for the appliances and machineries of this heading (8424) only. Further, this chapter does not cover parts of general use as defined in Note 2 to Section XV of base metal or similar goods of plastics (Chapter 39). Imported items in question are parts of general use of plastics (chapter 39) and, hence, these cannot be construed as parts for the appliances and machineries of chapter heading 8424. Accordingly, these plastic devices do not merit classification under Chapter Heading 8414.90.

Chapter heading (HSN) 3926 (Other articles of Plastics)

19. We find that Chapter Heading 3926 deals with "Other articles of plastics and articles of other materials of heading 39.01 to 39.14". Further, as per HSN,

Chapter sub-heading **3926.90- "Others"** covers "articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or other materials of heading 39.01 to 39.14". As mentioned in foregoing paras that the applicant is importing the plastic devices intended to be screwed/fitted on the

bottle/containers. These plastic devices are used for pumping/ dispensing liquid or lotion from a bottle and serves for the depletion of the contents, viz. liquid, gel, cream etc.. Thus, these are generic goods of plastics. These are not elsewhere specified or included in Customs Tariff and, hence, we conclude that the plastic items in question are correctly classifiable under **Chapter sub-heading 3926 90 90- “OTHERS”**, as **“articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or other materials of heading 39.01 to 39.14”**, as also presently Customs Authorities allowing imports of the applicant’s items in question under 3926.90, as applicant submitted in the statement of facts of the application.

20. After deciding classification of their products, now, we discuss about the rate of GST leviable on “Other articles of plastics” falling under Chapter Heading 3926, which would be arrived at on the basis of notifications issued under GST by respective governments. Rates of CGST provided for said products prevailing at different times, are as below:

I. During the period from 01.07.2017 to 14.11.2017:

20.1 Notification No.1/2017-Central Tax (Rate) dated 28th June 2017, as amended, is notified the CGST rates of intra-state supply of goods. During the period from 01.07.2017 to 13.11.2017, the Notification No.1/2017-Central Tax (Rate) dated 28th June 2017, provided rate of CGST @14% for ‘Other articles of plastics and articles of other materials-HSN 3926), vide Entry/S. No. of 45 of Schedule IV of said Notification, as reproduced herein below:

SCHEDULE IV

Sl. No.	Chapter/Heading/Sub-heading/Tariff heading	Description of services	Applicable tax rate of CGST
45	3926 [Other than 3926 40 11, 3926 90 10]	Other articles of plastics and articles of other materials of headings 3901 to 3914 [other than bangles of plastics, PVC Belt Conveyer, plastic beads and plastic tarpaulins]	14%

Thus, till 14.11.2017, items in question were levied GST @ 28% (CGST @14%+SGST@14%).

II. During the period from 15.11.2017 and onwards

20.2 Further, vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017, the following amendments were made in the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017:

(C) in Schedule III- 9%,-

(xxxvi) in S. No. 111, for the entry in column (3), the entry **“Other articles of plastics and articles of other materials of headings 3901 to 3914 [other than bangles of plastics, plastic beads and feeding bottles]”** shall be substituted.

(D) in Schedule-IV-14%,-

(i) S. No. 45 and the entries relating thereto, shall be omitted.

Thus, w. e. f. 15.11.2017, the items in question were levied GST @ 18% (CGST +SGST).

21. In view of the above, we hold that the imported Plastic Items, (stated as **Plastic Mechanical Liquid Dispenser**) shall be classified, under **Chapter sub-heading 3926.90- Others**, as “articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or other materials of heading 39.01 to 39.14”. Accordingly, the said product is liable to GST @ 28% (CGST@14% +SGST@14%) till 14.11.2017 and @ 18% (CGST@9% +SGST@9%) w. e. f. 15.11.2017.

22. In light of the foregoing, we rule as under –

R U L I N G

Question: **What is the HSN Code and rate of tax for Plastic Mechanical Liquid Dispenser?**

Answer: Imported Plastic Items, (stated as **Plastic Mechanical Liquid Dispenser**) shall be classified, under HSN **Chapter sub-heading 3926.90- Others**, as “articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or other materials of heading 39.01 to 39.14”. Accordingly, the said products are liable to GST @ 28% (CGST@14% +SGST@14%) till 14.11.2017 and @18% (CGST@9% +SGST@9%) w. e. f. 15.11.2017.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 03.07.2020.