HSN Classification at Surat ICAI on 23.02.2020

Presented by CA Nitin Bhuta

H - Happy

CA Nitin Bhuta

ECG

E- Enjoy

C-Celebration

G - Goodness

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General Disclaimer

- All views stated are my personal views they are not binding on Surat ICAI. My personal views may be correct/incorrect as they are expressed based on my understanding of the subject.
- All members/listeners are requested to go through tax law provisions on their own and advise their clients accordingly as each situations is peculiar in itself.
- All Illustrations provided are imaginary and any resemblance to any situations is purely co-incidental and without any intentions to disclose private and confidential information.

HSN Classification – Current application in GST compliances

- Tax Invoices
- Debit Notes
- Credit Notes
- Advance Vouchers
- Refund Vouchers
- Self Invoices – RCM Supplies
- GSTR 1- documents list
- E Way bill generations
- GSTR 9- Table 17 & Table 18 Reporting's
- E Invoicing using IRP Portal w.e.f 1.4.2020
- New GST Returns w.e.f 1.4.2020

<u>Personal baggage – 2017(353)ELT129SC</u>

<u>Pushpa Lekhumal Tolani</u>

Illustrative

- Packing Industry – **Service or Product**
- Two Wheeler Industry – **Product and Product**
- Frymes Vs. Papad- **Entry 21069099-12% or Entry 19059040- 0%**
- Prepaid Gift Cards

Paper -4911-12%

Plastic Cards – 8523 -18%

ERA BEFORE THE INTODUCTION OF HSN CLASSIFICATION

Era before the introduction of HSN classification

- **Era** refers to **common practices** adopted for **doing a Trade** in **Inbound as well as Outbound territories of the Countries;**

- **Inbound** refers to the trade done **within the domestic territories** of the country whereas **Outbound** refers to the trade done **within different countries usually known as International Trade;**

- Every Country and its economy is varied kinds of required for the resources either in bulk supply or in limited supply or no supply at all;

Era before the introduction of HSN classification

- To satisfy one's resource requirements typically , every country is dependent on their natural resources like Vegetation , Minerals, Iron and Ores, Precious materials etc. or manmade resources by use of their indigenous technology or technology imported from other countries;

- Thus resource requirements can be satisfied internally or externally depending on the advantages and disadvantages blessed on the economy due to its climatic and geographical conditions;

Era before the introduction of HSN classification

- For any kind of Trade between two parties or multiple parties are required which are either located in the Domestic territory or International Territory.
- Trade can be carried out through various means of transport viz. Road, Water , Air or any other means etc.;.
- Every country has its own policies of Trade and policy of levying taxes on such Trade and collecting the taxes for discharging their obligations in general;

Era before the introduction of HSN classification

- Such Trade Practices help country to sustain and survive by taking the advantages vis-a-vis other countries;

- **Typically problem arises** in the **Trade** when each kind of supply (goods or services) is known differently by **different names, nomenclatures and units of measurements** etc. in general;

- **To facilitate the International Trade**, all countries came together and **formulated GATT agreements** under **aegis of WTO specifying schedule of concessions** for doing the ease of business;

Era before the introduction of HSN classification

- In order **to resolve the issues of different names, nomenclatures and units of measurements** etc. in general guidelines and suggestions made GATT/WTO were adopted by the members but still <u>there was a need of common system of nomenclature</u> thus **Concept of HSN (Harmonised System of Nomenclature) was desired, conceptualised and formulated by WTO members (World Trade Organisation)** so that it results of **ease of doing business trade or international trade** in general for all the countries;

Era before the introduction of HSN classification

- Prior to the introduction of the Harmonized System, Contracting Parties to the GATT used different nomenclatures to schedule their concessions, such as the **Brussels Tariff Nomenclature (BTN)** and later on the **Customs Cooperation Council Nomenclature (CCCN).**

- The **divergences in the nomenclatures** used by the Contracting Parties **posed several difficulties for monitoring the implementation of existing GATT concessions** and for conducting further **negotiations**, mainly because there was **limited comparability.**

Schedule of Concessions

SCHEDULES OF CONCESSIONS

- **The GATT/WTO negotiations** result not only in the **adoption of general rules** that apply to all Members, but they also **cover specific commitments** made **by individual Members**.

- For trade in goods, the specific commitments are listed in documents called "**schedules of concessions**", and they reflect specific tariff concessions and other commitments that Members have made in the context of trade negotiations, such as the **Uruguay Round.**

SCHEDULES OF CONCESSIONS

- In the <u>case of agricultural products</u>, these concessions and commitments also relate **to tariff quotas**, **limits on export subsidies**, and **domestic support.**

- The main part in a schedule of concessions is **Part I Most-Favoured-Nation Tariff**, which contains the so-called "**bound tariffs**".

- **Bound tariffs, or bindings**, are the **maximum tariff levels** that a **WTO Member committed to others Members**.

SCHEDULES OF CONCESSIONS

- Once a **tariff is bound**, the Member may not increase the level of its applied tariff, which is the **tariff actually levied on an imported goods**, beyond the level of the bound tariff **without compensating the affected parties**

- **Bound tariffs are normally recorded on line-by-line basis** in accordance with **national nomenclatures** of the **time when the concessions were made.**

SCHEDULES OF CONCESSIONS

- They have been based on the **Harmonized System** since the Uruguay Round.

- For each tariff line, the following information is included in the schedule of concession: **tariff line number, description of the product, base rate duty (rate before any tariff cut is made) rate of bound rate duty, implementation period, initial negotiation rights (INRs) and other duties and charges (ODCs).**

SCHEDULES OF CONCESSIONS

- **The Consolidated Tariff Schedules (CTS)** database contains all WTO Members' concessions **on goods in a standardized format**.

- **The CTS is a consolidation of various legal documents**, such as Uruguay Round Schedules, pre-Uruguay Round Schedules, accession schedules, commitments for the Ministerial Declaration on Trade in Information Technology Products (Information Technology Agreement, or ITA), and Article XXVIII modifications.

SCHEDULES OF CONCESSIONS

- Some of these schedules or documents were based on different versions of HS or earlier nomenclatures such as the CCCN.
- When the CTS were established, commitments in different nomenclatures were converted to HS by the Secretariat following a standard methodology.
- The core of the CTS is the "**Concession table**" which records the most **important concession elements** of the schedule of concessions such as bound duties, product descriptions, implementation period, **INRs (initial negotiation rights) and other duties and charges (ODCs).**

SCHEDULES OF CONCESSIONS

- Those concessions are compiled at the tariff line level together with the **standard HS heading and subheading hierarchy structure**.

- Contracting Parties to the GATT decided to introduce the **HS** in their **schedules of concessions,** with an understanding that "in addition to **the benefits for trade facilitation and analysis of trade statistics**, from the GATT point of view, the adoption of the **Harmonized System** would ensure greater ability for countries **to monitor and protect the value of tariff concession;**

Introduction to HSN Classifications

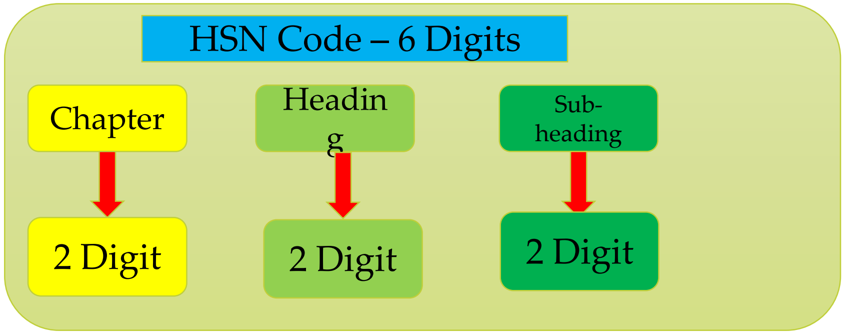
Introduction to HSN Classification

- The Harmonized Commodity Description and Coding System – commonly known as the Harmonized System or HS - is an **internationally standardized nomenclature** for the **description, classification and coding of goods introduced** in **June 1983**;

- It is developed and maintained by the **World Customs Organization** (WCO), **formerly known as the Customs Co-operation Council**. (www.wcoomd.org)

Introduction to HSN Classification

- WCO has 181 members, three-quarters of which are developing countries that are responsible for managing more than 98 percent of world trade.
- HSN standardizes the classification of merchandise under -
  - under - chapters
  - - headings – subheadings



- It's a six-digit code for a commodity
  - 2 Digits - representing the chapter,
  - 2 Digits - heading,
  - 2 Digit – subheading

- In addition to above, additional Two Digits are used for Import and Export of Goods (Cross Border Transactions)

Introduction to HSN Classification

- India is member of WCO since 1971 and has been using **HSN codes since 1986 to classify commodities for Customs and Central Excise.**
- Customs and Central Excise **added two more digits** to make the **codes more precise, resulting in an eight-digit classification**.
- Such HS system is **almost adopted and used extensively** all members countries as well as non members countries if any because it helps each country **to identify the product** according to its **description, classification, characteristics and coding of goods** and it **reduces trade disputes in general** in respect of such supply of goods;

Introduction to HSN Classification

- A decision adopted by the Contracting Parties in July 1983 laid down the main principles and procedures in connection with the introduction of the Harmonized System in national tariffs and schedules of concessions;

- In this context, the main principle to be observed was that the existing GATT bindings should be maintained unchanged

Introduction to HSN Classification

- A detailed procedure has been agreed by Members for the preparation of HS transposition files, multilateral reviews and certification
- Typically HSN codes has been **partially amended every four to six years**. Last changes made in Year 2017.
- The purpose of these amendments **is to bring the HS nomenclature in line with the current international trade patterns, technological progresses and customs practices.**

Introduction to HSN Classification

- The Members concerned are given a certain period of time to review the Secretariat's work and to provide comments.

- After this period, the files including possible modifications by the Members are submitted to a process of multilateral review, where all Members have a say on the proposed HS changes to the schedule.

Introduction to HSN Classification

- Developed Members are expected to prepare their **own HS files**, but these files are also reviewed by the Secretariat against the results of **standard transposition** before they are presented for the multilateral review.

- If there are **no objections to the changes** at the **multilateral review**, the files are **considered approved and the HS changes are issued** under the 1980 **procedures for modification and rectification of schedules**

Introduction to HSN Classification

- These amendments are formally certified by the Director-General as the **legally binding modifications** after a three-month period of time.

- HS amendments **pose considerable challenges** for the WTO and its Members.

- On the one hand, WTO Members **need to periodically update their historical schedules of concessions into the latest nomenclature**

Introduction to HSN Classification

- On the other hand, these **amendments may have implications for the definition** and thus also the implementation of some WTO agreements viz. **GATT agreements where the product coverage is defined in terms of HS codes.**

- **The transposition from old HS to new HS is normally complicated and time consuming and it is often costly in terms of time and human resources.**

HSN Structure Coding and Description

HSN – Structure Coding and Description

- The HS provides a **coding system** that is based on a **hierarchical structure, starting with the Section at the higher level and getting more specific at Chapter, heading and subheading levels.**

- **Chapters, headings and subheadings are coded according to their positions in the hierarchy.**

- An HS code can be **sub-divided into the next lower level to provide greater detail and definition of a product than the higher level.**

Section → Chapter → Heading → Sub Heading → Tariff Notes

HSN – Structure Coding and Description

- The HS consists of around **1244 four-digit headings and 5244 six-digit subheadings**, which are organized in **21 Sections** and **97 Chapters**, which **theoretically cover all commodities in international trade**.

- **These headings and subheadings, along with the General Rules of Interpretation and Section and Chapter Notes comprise the legal text of the Harmonized System.**

Chapter
- Notes

Headings
- Broad descriptions

Sub Headings
- Descriptions

HSN – Structure Coding and Description

- Natural products like animals and vegetables appear in the earlier section man-made or technologically advanced products like machinery appear later.

- **Some HSN codes also use dashes:**

- **Single dash (-) at the beginning of a description denotes an article that belongs to a group covered under a heading.**

HSN – Structure Coding and Description

- Double dash (–) indicates that the article is a sub-classification of the preceding article that has a single dash.

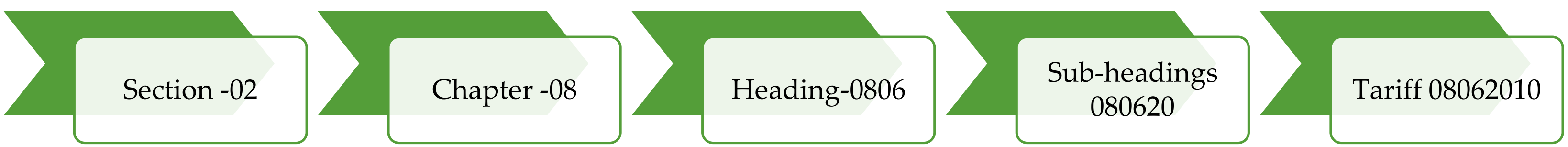
- Triple dash (—) or quadruple dash (—-) indicates the article is a sub classification of the preceding article that has a double dash or triple dash.

HSN – Structure Coding and Description

- As the basic building-blocks of the HS, subheadings are identified by six-digit codes.
- A six digit subheading code comprises three parts which provide information on its three different levels of detail.
- The first two digits represent the Chapter in which the goods are classified, the next two digits identify the heading within the Chapter where the goods are described, and the **last two digits represent the most detailed subdivisions of the HS.**

HSN – Structure Coding and Description

- Lets understand the steps using an example to find Raisins :-
- Section :- 02 :- Vegetable products
  - Chapter :- 08 :- Edible fruit & nuts; peel of citrus fruits or melons
    - Heading :- 0806 :- Grapes, fresh or dried
      - Sub-heading :- 080620 :- Dried
        - Tariff :- 08062010 :- Raisins



HSN – Structure Coding and Description

- Types of HS changes – **clarifying changes** and **structural changes**

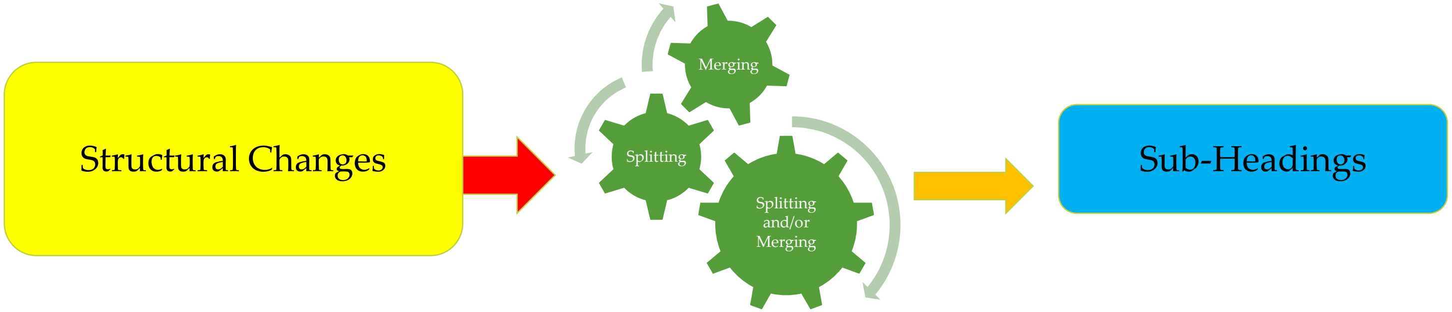
- A clarifying change does not relate to any change of scope of the concerned HS subheadings. Such changes normally take the form of a revision of Section/Chapter notes or product descriptions, or just a correction of typographical errors

HSN – Structure Coding and Description

- Therefore, the applications of clarifying changes are straightforward and can be realized by simply substituting the old texts with the new texts as specified in the HS amendment.
- **A structural change always relates to changes of product coverage of one or more HS subheadings.** It normally takes the form of creating or deleting HS subheadings, or changing the codes or descriptions of HS subheadings.
- In some cases, it could also be a revision of Section or Chapter notes as long as the revision leads to a change of product coverage of the concerned HS subheadings.

HSN – Structure Coding and Description

- Structural changes can be categorized as (1) splitting one existing subheading into two or more new subheadings, (2) merging two or more subheadings into one new subheading, or (3) in some more complex cases, involving both splitting and merging of parts of different subheadings



HSN – Structure Coding and Description

- **A fundamental principle of HS changes, which should be noted here, is that the overall product coverage of the whole HS nomenclature is never changed by any amendments**

HSN – Structure Coding and Description

- It always comprehensively covers all traded products.
- Any change of coverage of a specific subheading is related to a change of another subheading or other subheadings.
- In other words, the products removed from one subheading have to be relocated to one or more other subheadings.

HSN – Structure Coding and Description

- In order **to facilitate** the **implementation o**f the Harmonized System **amendments and to ensure common interpretations,** the WCO Secretariat **publishes correlation tables** for each HS amendment to **be used as a guideline**.
- <u>Although these correlation tables are not to be regarded as classification decisions nor have legal status</u>, they were examined by the Harmonized System Committee of the WCO and were followed by <u>most contracting parties in their implementation of the amendments.</u>

HSN – Structure Coding and Description

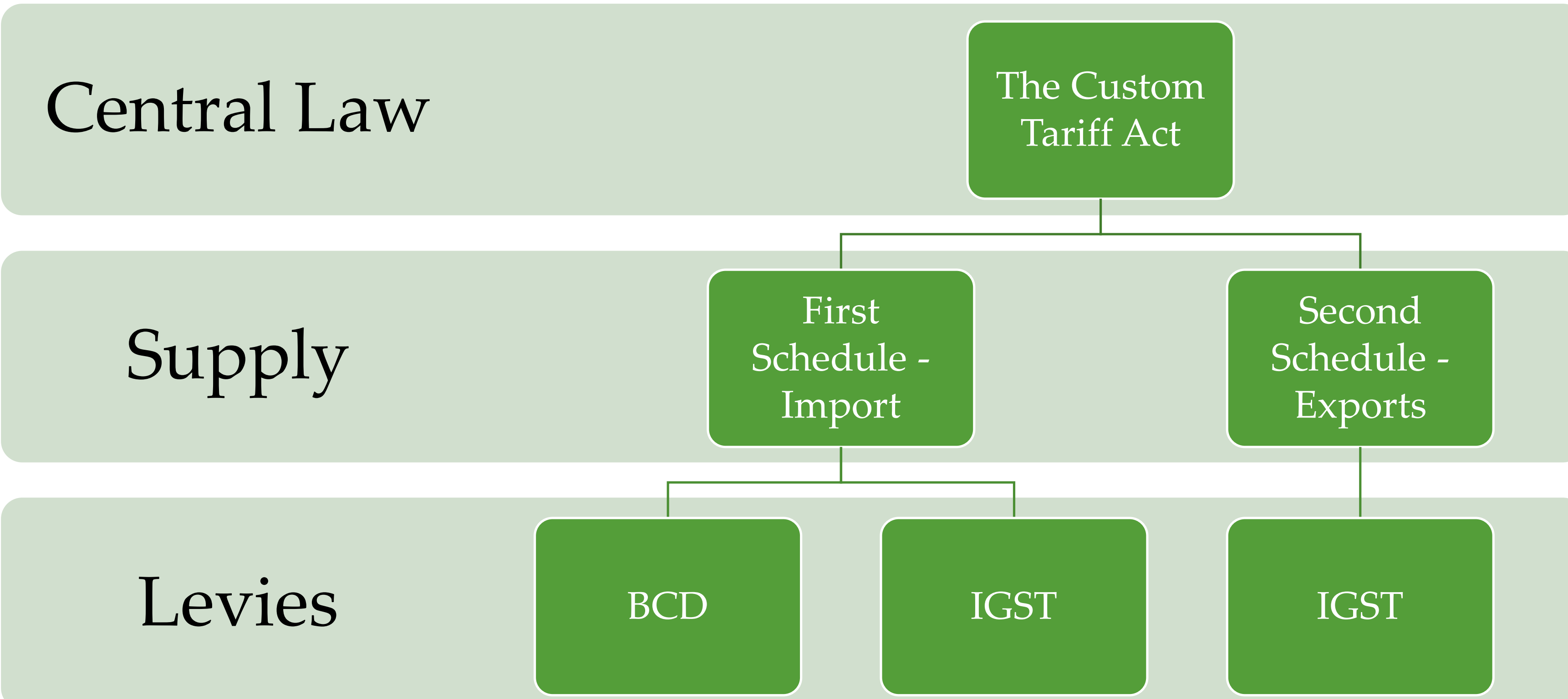
- They are one of the most important pieces of information for countries in implementing HS transpositions.

- The correlation tables establish the correlation between the previous HS version and the new HS version by showing the relationships between subheadings from the two HS versions

HSN – Conclusion

- The Harmonized System plays an important role in the WTO, in terms of providing a uniform structural framework for recording Members' tariff concessions and ensuring clarity of product coverage of WTO agreements.

The Customs Tariff Act


Central Law
The Custom Tariff Act
Supply
First Schedule - Import
Second Schedule - Exports
Levies
BCD
IGST
IGST

The Customs Tariff Act

First Schedule

- Enlist goods liable to import duty viz. Basic Custom Duty (BCD)
- On Imports of Goods apart from BCD, IGST would be leviable as per the provisions of GST Act 2017.
- On Import of Services only IGST would be payable by Service Receiver.

Second Schedule

- Enlist goods liable to Export duty
- Goods can be exported without payment of IGST by obtaining LUT from the GST department
- If Goods are exported with payment of IGST then they can be claimed as refund after realization of dues in convertible foreign currency

The Use of HSN under GST In India

Use of HSN under GST in India

- Under GST, the majority of dealers will need to adopt two-, four-, or eight-digit HSN codes for their commodities, depending on their turnover the year prior.(Notification No 12/2017 dated 28.06.17)

- Dealers with turnover of less than Rs 1.5 Crores will not be required to adopt HSN codes for their commodities but considering E way Bill provisions introduced and New GST Returns proposed to be introduced I personally feel such exemptions is now redundant.

Use of HSN under GST in India

- Dealers with turnover between Rs1.5 Crores and Rs5 Crores shall be required to use two-digit HSN codes for their commodities. ?????

- Dealers with turnover equal to Rs 5 Crores and above shall be required to use four-digit HSN codes for their commodities. ????

- In the case of imports/exports, HSN codes of eight digits shall be compulsory, as GST has to be compatible with international standards and practices

Use of HSN under GST in India

- **? With the implementation of e-way Bill, every RTP needs to quote HSN in respect of any movement of goods exceeding Rs.50000/- for Inter or Intra State?**

- **Practical aspects of finding HSN**
- ◎The sites online available to find HSN Codes include the following :-
- 1. cbec-gst.gov.in
- 2. cbec.gov.in (Booklet)
- 3. cybex.in/HS-Code/Default.aspx
- 4. HSN File of SMA
- ◎ The CBEC has provided the above mentioned sites for finding the HSN Code by description or Code.

HSN Grouping of Goods

- Animal Products (Section I – Chapters 1 to 6)
- Vegetable Products (Section II – Chapters 6 to 14)
- Animal or Vegetable Fats and Oils (Section III – Chapter 15)
- Prepared foodstuffs, beverages (Section IV- Chapters 16 to 24)
- Mineral Products (Section V – Chapters 25 to 27)
- Products of Chemicals and allied industries (Section VI – Chapters 28 to 38)
- Plastic and Rubber and their articles (Section VII –Chapters 39 and 40)

HSN Grouping of Goods

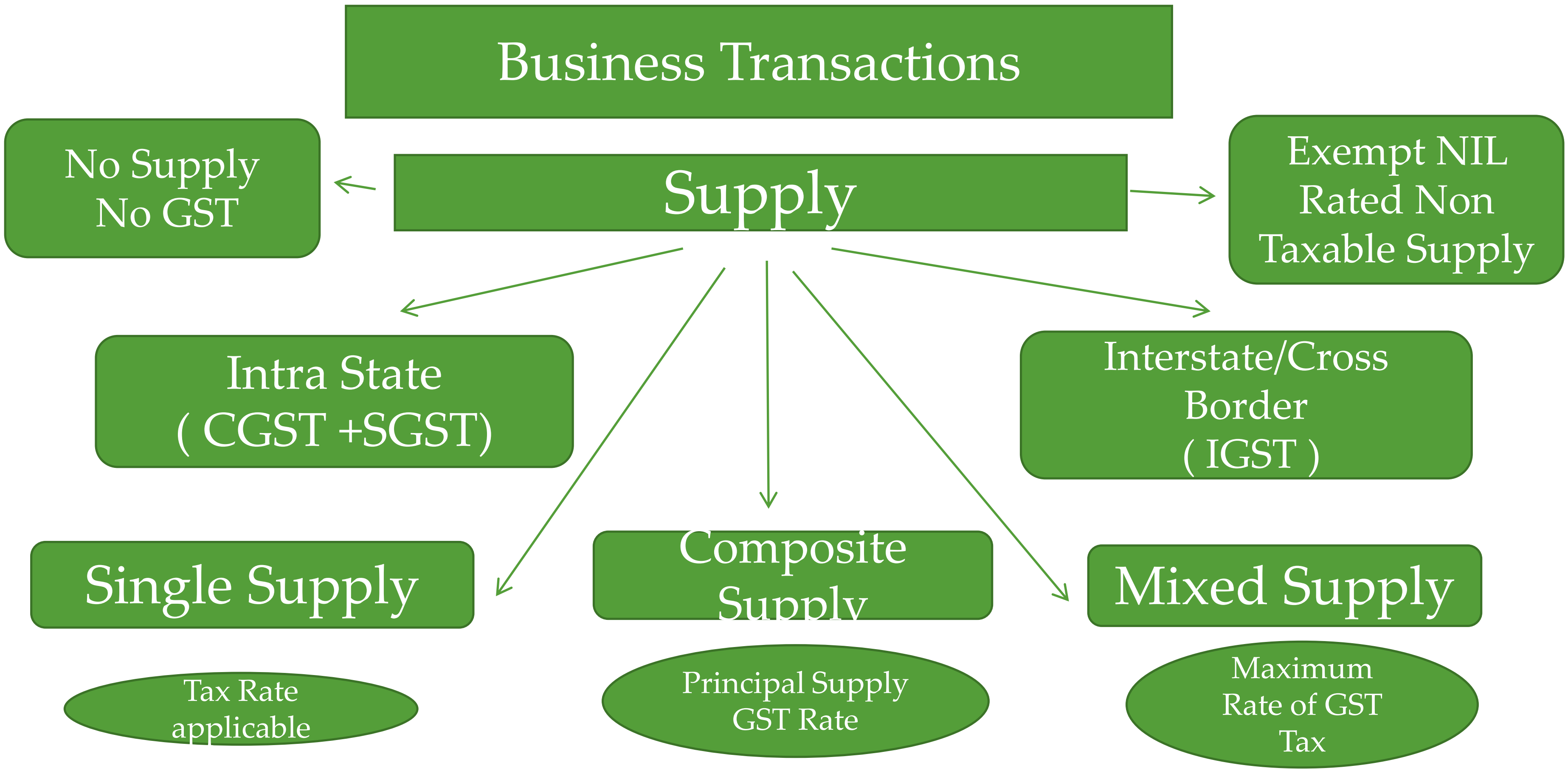
- Raw hides and skins , leather and articles (Section VIII-Chapters 41 to 43)
- Wood, Cork, straw and their articles (Section IX – Chapters 44 to 46)
- Pulp of Wood, Paper, Paper Board and articles (Section X – Chapters 47 to 49)
- Textiles and Textile Products (Section XI- Chapters 50 to 63)
- Footwear, Headgear, Umbrellas , Articles of Human Hair (Section XII- Chapters 64 to 67)
- Articles of Stone, plaster, ceramics, mica, glass (Section XIII-Chapters 68 to 70)

HSN Grouping of Goods

- Pearls and Precious Metals (Section XIV- Chapter 71)
- Base metals and articles of base metal (Iron, Steel, Copper, Nickel, Zinc, Tin etc.(Section XV – Chapters 72 to 83)
- Machinery and mechanical appliances, electrical equipments , television etc. (Section XVI – Chapters 84 to 85)
- Vehicles , Aircrafts, vessels and associated transport equipment (Section XVII – Chapters 86 to 89)

HSN Grouping of Goods

- Optical, photographic, medical, surgical instruments, clocks, musical instruments (Section XVIII-Chapters 90 to 92)
- Arms and Ammunition (Section XIX – Chapter 93)
- Misc. manufactured articles like Furniture, toys etc (Section XX – Chapters 94 to 99)
- Works of Art, collectors pieces and antiques (Section XXI- Chapters 97 to 98)


Business Transactions
Supply
No Supply
No GST
Exempt NIL
Rated Non
Taxable Supply
Intra State
(CGST +SGST)
Interstate/Cross
Border
(IGST)
Single Supply
Composite
Supply
Mixed Supply
Tax Rate
applicable
Principal Supply
GST Rate
Maximum
Rate of GST
Tax

Composite Supply

*Section 2(30) defines "**Composite supply**" means a **supply made** by a taxable person to a recipient comprising **two or more supplies of goods or services, or both** or **any combination thereof,** which are **naturally bundled** and **supplied in conjunction** with each other in the ordinary course of business, one of which is a **principal supply;***

*"**Principal supply**" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary and does not constitute, for the recipient an aim in itself, but a means for better enjoyment of the principal supply;*

Where goods are packed and transported with insurance , the supply of goods , packing materials , transport and insurance is a composite supply and supply of goods is a principle supply.

Mixed Supply

*Section 2(74) "**Mixed supply**" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply – **Will attract the Highest Rate of Tax***

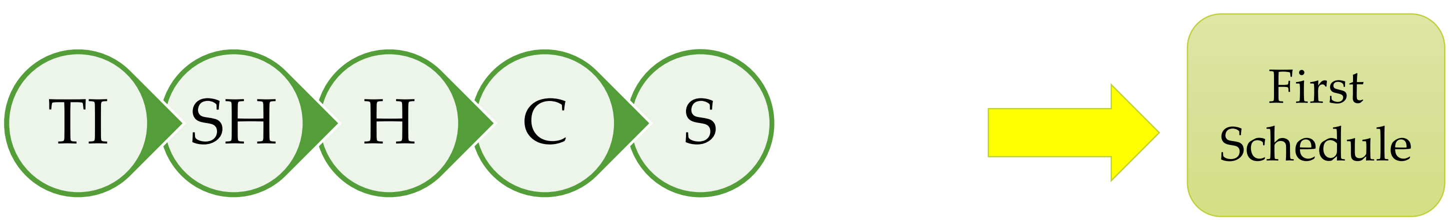
Examples: Supply of soap bars where soap boxes are given free of cost; supply of wheat for which a bottle of honey is given free of cost.

In the above example of honey being supplied with wheat, both wheat and honey will be taxed at the rate of tax applicable for honey (being commodity taxed at higher rate).

Rules of Interpretations

Rules of Interpretations (ROI)

- **Rules of Interpretations under First schedule of List I of Custom Tariff Act for Import of Goods**
- Two basic notes clarified by GST in its notifications for HSN are:-
- 1. **"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).**



Rules of Interpretations (ROI)

- 2. 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**
- In formatting a classification for a particular item, dealers must apply the **General Interpretative Rules (GIR) in a sequential manner**.
- Once **a classification is complete, there's no need to continue applying the remainder of the rules.**
- **Moving on to the next rule is only necessary** if a **complete classification does not result from applying the previous rule.**

Rules of Interpretations (ROI)

- Classification is final once there is no ambiguity or confusion.
- For classification purposes, a word should be construed in its popular sense and not in the strict or technical sense.

✓ For example, "Dabur Lal DantManjan" is not understood as "ayurvedic medicine" in trade parlance but as "toilet preparation" and should be classified accordingly.

When Rules of Interpretation would apply?

If there is clarity – no confusion & no disputes then NA

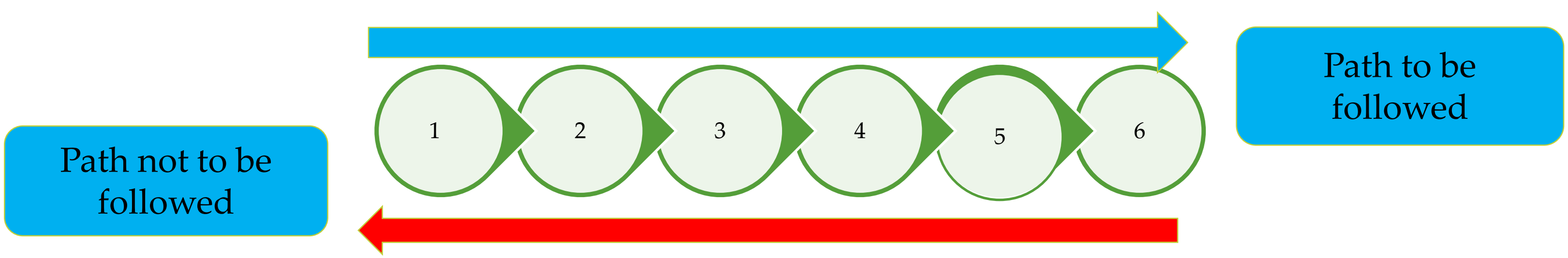
If there is no clarity, confusion & disputes then it will apply

How it will apply – Ascending order only

Can it be applied in descending order ? – Strictly No

Rules of Interpretations (ROI)

- In case of disputes & confusions with regards to HSN, the **General Interpretative Rules (GIR) for interpretation of import tariff of customs** shall be referred to arrive at any conclusions :-
- **Thus if there is no disputes & confusion then one need not use ROI**
- Rules to be followed step wise from 1,2,3,4,5,6……………… & not 6,5,4,3,2,1……………



Rule 1 –heading are for reference only

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

Rule 1 –heading are for reference only

Key Take Aways

- Titles of sections, chapters, and sub-chapters are provided for ease of reference only.
- For legal purposes, refer to headings and sub-headings to drive classification.

Rule 1 –heading are for reference only

- Example: - Christmas tree candles, it would seem logical to classify them with Classification No. 9505: Other, articles for Christmas festivities. However, **when reading the Notes to Chapter 95, it clearly states this Chapter does not cover Christmas tree candles**. In fact, we **must classify** them with the **Classification No. 3406: Candles, tapers and the like**.

Rule 1 –heading are for reference only

Product	Satellite Receivers and Transmission Apparatus or Business satellite receivers having both transmission as well as reception functions
Competitive Headings	85 28 "Reception apparatus" (Dept.) 85 25 Transmission apparatus with reception apparatus (Assessee)
Classification	Transmission apparatus with reception apparatus (Heading 85 25)
Case and Reasoning	Multi-Screen Media Pvt Ltd -2015 SC Since the product has both transmission as well as reception features it is classifiable under sub-heading 85 25 as apparatus having both transmission as well as reception functions

Rule 1 –heading are for reference only

Product	Fruit Juice Beverages (Such as Apple Tree Top, Mango Tree Top etc
Competitive Headings	20 01 Fruit Preparation/Juice 22 02 Non alcoholic beverages excluding fruit juice
Classification	Fruit Preparation Juice (Heading 20 01)
Case and Reasoning	Godrej Hershey Ltd -2015 SC (a) Heading 2202 applies to beverages other than juice beverages (b) There is no distinction between fruit juice and fruit juice beverages (c) Diluted fruit juice never cease to be a fruit juice beverage and continues as preparation of fruit therefore goods were classifiable under heading 20.01

Rule 1 –heading are for reference only

Product	Risograph Machine
Competitive Headings	84 43 Printing Machine -25% Assessee 84 72 Duplicating Machine (65%) Dept
Classification	Printing Machine (Heading 84 43)
Case and Reasoning	HCC Ltd 2015-SC There are special machines which are small office printing machines and they operate by means of printing type or by offset process and they are often confused with duplicating machine. Risograph printing machine process is more akin to screen printing as in Risograph long fibre Japanese type paper is master through ink is pressed to reproduce the image and text. Hence, Risograph machine is in the nature of printing machine and not duplicating machine and would be covered under Heading 84.43 and not 84.72.

Rule 1 –heading are for reference only

Product	Coconut Sweet (Milk& Nut)
Competitive Headings	XX XX Preparation Of vegetable , fruits and nuts YY YY Sugar confectionary
Classification	Vegetable Preparations (heading 20.01)
Cases and Reasoning	S K Industries 2015 SC The product was preparations of vegetables, fruits , nuts and parts of plant.

Rule 2a- article in an entry includes CKD-SKD

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

Rule 2a- article in an entry includes CKD-SKD

Key Take Aways

- If the goods are incomplete/unfinished and have the characteristics of the finished product, classification is the same as that of the finished product (if the classification is known).
- The heading shall also include removed/unassembled or disassembled parts (i.e., SKD/CKD).
- Example SKD – dismantled ceiling fan
- Example CKD – dismantled Lift in a building
- Example:- An automobile missing only its wheels would be classified the same as if it were complete

Rule 2a- article in an entry includes CKD-SKD

Product	Milk Shake Mix and Soft Serve Mix
Facts	Assessee manufactured milk shake mix and soft serve Mix which are basically dairy products. Assessee added stabilizers to improve the consistency and shelf-life. Assessee classified the product as " dairy products" under heading 40.04
Held	Amrit Food 2015 –SC milk shake mix and soft serve Mix continue as dairy products after additions of stabilizers …………….main purpose of addition of stabilizers was to maintain product consistency and to improve shelf life merely because it improves body and texture and adds some smoothness thereto , would not change basic character of produce.

Rule 2b– articles in an entry includes mixtures

- Rule 2 (b) :- Products which are composed of a mixture of materials or substances. It basically states that a Heading referring to a given material or substance includes mixtures of that substance with others. Similarly, a reference to a product composed of a given material or substance includes products composed either wholly or partly of the material or substance. Rule 3 must be used to decide between alternate Headings.

Rule 2b- articles in an entry includes mixtures

Key Take Aways

- Any reference to a material or substance includes a reference to mixtures or combinations of that material or substance with other materials or substances.
- The classification of goods consisting of more than one material or substance shall take place as per Rule 3.

Rule 2b -articles in an entry includes mixtures

- Example: - If you were importing dicalcium citrate, the Tariff does not specifically state this compound. However, it is a compound containing more than one material and its essential character is that of a salt of citric acid. Therefore, dicalcium citrate qualifies as Classification Number 2918: Salts and esters of citric acid, Other.

Rule 2b -articles in an entry includes mixtures

Product	Import of Non Computerised machines + control devices for assembly in India
Facts	Assessee imported Non Computerised second hand embroidery machines with same quantity of control devices reading system to make them computerised by assembly after import Department argued that since goods after assembled in India were to function as Computerised assembly machines hence they are classified as computerised embroidery machines at the time of their import.
Issue	Whether department can invoke Rule 2(a) to treat import of these 2 goods as import of computerised embroidery machines in unassembled form?
Held	Pioneer Embroideries Ltd -SC 2015 Import of Non Computerised Embroidery machines + control devices for assembly in India – both classifiable separately and not as Computerised Embroidery Machines.

Rule 2b -articles in an entry includes mixtures

Product	Import of Non Computerised machines + control devices for assembly in India
Held	Essential character of imported goods is to be determined for classification with reference to their state at the time of importation and not with reference to purpose of import. Hence subsequent use /purpose of import was not relevant Classification as complete machine would arise only if article is complete or finished but presented in unassembled form for reasons of convenience of packing handling or transport and is ready to assemble thereafter with simple fixing devices. In this case principle was in applicable. In this case imported goods were not classifiable as complete computerised assembly machines but required separate classification in terms of general interpretative rule 2(a) and HSN Note to the said Rule………..

Rule 3a -specific description to be preferred over general

- Rule 3 (a) :- The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Rule 3a -specific description to be preferred over general

Key Take aways

- Choosing a specific heading is preferred over a general heading. For example, 85.10 is the classification for “shavers, hair clippers and hair removing appliances, with self-contained electric motor.”
- This is a more specific classification for a handheld electric razor than either: 67: “tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor,” or 09: “electro-mechanical domestic appliances with self-contained electric motors, other than vacuum cleaners”

Rule 3a -specific description to be preferred over general

Product	**Polyester and Nylon Covered Yarns**
Classification	54.02-Synthetic filament yarn (other than sewing thread), including synthetic monofilament of less than 60 Deniers -16% 56.06-*Gimped yarn, and strip and the like of Heading No. 54.04 or 54.05, gimped (other than those of Heading No. 56.05 and gimped horsehair yarn); Chenille yarn (including flock chenille yarn); Loop wale yarn -16%*
Held – Classification	54.02-
Facts	Polyester and Nylon Covered Yarns - Manufactured using Nylon and Lycra yarns - Polyester Covered Yarn having only nine to ten percentage lycra and Polyester/Nylon being 91% to 93% - Concurrent finding of Authorities below was that product was air mingled yarn and assessee's plea that it was gimped yarn classifiable under sub-heading 5606.06 of Central Excise Tariff was rejected as there was no core around which another yarn could be woven - Revenue classification under sub-heading 5402.62/61 ibid was proposed on principle of pre-dominance of textile material used, and assessing authority had upheld it referring to tests report from Man Made Textile Research Association

Rule 3a -specific description to be preferred over general

Product	**Polyester and Nylon Covered Yarns**
Case	SARLA PERFORMANCE FIBERS LTD. Versus COMMISSIONER OF C. EX. & CUS., VAPI -2017 (349) E.L.T. 537 (S.C.)
Reasoning	Appellate Authority had affirmed it referring to Rule 3(a) of Interpretative Rules which stipulates that heading with most specific description is to be preferred - As concurrent finding of Authorities below was supported with cogent and valid reasons, CESTAT findings upheld.

Rule 3a -specific description to be preferred over general

- Example:- Mint tea is not stated specifically, as a product, in the Tariff. Although the product descriptions available are mint and tea, the importer must classify mint tea under the appropriate tea Heading because it provides the most specific product description and mint is only the flavour of the tea.

Rule 3b -material that gives essential character

- Rule 3 (b):- Mixtures, composite goods consisting of <u>different materials</u> or made up of <u>different components,</u> and goods put up in sets for retail sale, which <u>cannot be classified by referenceto 3(a),</u> shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Rule 3b -material that gives essential character – Key Take Aways

- Mixtures/composite goods should be classified per the material or substance that gives them their essential character .
- Example :- An importer bringing in "liquor gift sets" (that include the bottle of liquor and glasses) must classify the goods under the appropriate liquor Heading. The essential character of the item is the liquor itself and not the glasses contained within the set.

Rule 2b -articles in an entry includes mixtures

Product	**Floor Tiles which are composed of Plastic (13.3%) and limestone (84.95%)**
Competitive Headings	68.07 Limestone Tiles 39.18 Plastic Tiles
Upheld classifications	Limestone Tiles (heading 68.07)
Cases & Reasoning	INARCO Ltd 2015 SC Plastic was primarily used as a binder only As per Rule 3(b) of GRI ,test is essential character of product which the given tiles are deriving from lime stone falling under the heading 68.07 and not by plastic materials falling under heading 39.18 **<u>Further Department has failed to produce any evidence to support his contention that goods were known as plastic tiles in market (Trade Parlance Theory)</u>**

Rule 3b -material that gives essential character

- Take another example, a grooming kit consisting of electric hair clippers (85.10), a comb (96.15), and a brush (96.03) inside a leather case (45.02), should be classified under the electric hair clippers heading (85.10)
- All in One Printer Examples – Printer, Scanner & Fax etc. – 85% cost attributable to Printer thus to be classified as Printer only (Xerox India Ltd Case)
- Laminate manufacturing Unit Example – Wood and Plastic Paper. – though plastic paper does not significant cost as compared to wood but it is still essential to maintain the toughness of the such laminate sheets thus to be classified as Plastic Laminate sheets only.

Rule 3c -later-is-better

- Rule 3 (c) :- When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Rule 3c -later-is-better Key Take Aways

- If two headings are equally suited to the item, choose the heading that appears last in numerical order.

- Example:- A gift set which includes socks (Heading number 6115) and ties (Heading number 6117) cannot be classified by the previous rule since neither item gives the gift set its essential character. The gift set must be classified under the Heading number for ties which is the Heading that occurs last in numerical order.

Rule 3c -later-is-better

Product	Liquid Crystal Display (LCD)
Facts	Assessee imported Liquid Crystal Displays (LCDs) for use in manufacture of electricity meters. **Assessee** claimed classification of LCDs under heading 9013.80 (LCD) NIL rate of basis customs duty Department argued that same was classifiable under 9028.90 as parts and accessories of electricity meters applying Rule 3 (c) heading later in order.

Rule 3c -later-is-better

Product	Liquid Crystal Display (LCD)
Held classifications	Other Devices 9013.80
Case and Reasoning	Secure Meters Ltd 2015-SC As per Rule 1 of GRI ,Rule 3 would be seen only if classification cannot be determined as per terms of heading and relevant Section and Chapter Notes thereof. Merely because these LCDs are to be used as part in electricity supply meters it can not be said that they are to be included in Entry as parts of meters. Explanatory notes issued WCO also suggested that LCD would be covered by other devices mentioned in 9013.80. Hence LCDs imported by assessee were classifiable under Heading 9013.80

Rule 3c -later-is-better

Product	Liquid Crystal Display (LCD)
Remarks	What department sought was LCD imported and subsequently used in meters. If this argument is extended then LCD subsequently used for mobiles will be classifiable as Mobiles and so on General Purpose parts are to be classified separately unless they are imported /cleared along with their main product.

Rule 4 – Akin Rule

- Rule 4:- Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.
- If goods cannot be classified as per the above rules, they are to be classified according to the goods to which they are most akin.

Rule 4 – Akin Rule

Product: Plastic Films used to filter or remove the glare of sun light pasted on car glass windows , window panes etc.

Classification: These goods do not a specific entry in the tariff schedule . However heading 3925 3000 Covers Builders wares of plastic not else where specified – shutters, blinds (including venetian blinds) and similar articles and parts thereof. Even though the product in question is not a builder ware they are most akin to plastic blinds and hence it can be classified under 3925 30 00 heading.

Rule 5 – Cases packaging classified with Articles

- Rule 5 (a) :- Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to <u>containers</u> which give the whole its essential character;

Rule 5 – Cases packaging classified with Articles Key Take aways

- Containers specifically designed for the article and suitable for long-term use will be classified along with that article, if such articles are normally sold along with such cases.
- Example:- Rule 5 (a) would apply to flute cases because flutes are normally sold with their cases (due to their specific shape) and are intended for long term use.
- Take another example, a camera case would fall under cameras or Gas Cylinders etc.

Rule 5 – Cases packaging classified with Articles

- Rule 5 (b) :- Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

Rule 5 – Cases packaging classified with Articles Key Take aways

- Packing materials and containers are also to be classified with the related goods except when the packing is for repetitive use.
- Example:- An importer bringing in goods and using styrofoam chips for padding fits well into Rule 5 (b). Styrofoam chips are normally used for the padding and insulation of many goods, however they are rarely reused and are therefore classified with the goods

Rule 6 – Entries at same level to be comparable

- Rule 6 :- For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

Rules of Interpretations

Rule 1 –heading are for reference only

Rule 2a- article in an entry includes CKD-SKD

Rule 2b -articles in an **entry** includes mixtures

Rule 3a -specific description to be preferred over general

Rule 3b -material that gives essential character

Rules of Interpretations

Rule 3C- later is batter

Rule 4- Akin Rule

Rule 5 –cases packaging classified with articles

Rule 6 –entries at same level are comparable

1 to 6 to be followed and not vice versa

Rules of Interpretations (recap)

- Rule 1 –heading are for reference only
- Rule 2a- article in an entry includes CKD-SKD
- Rule 2b -articles in an entry includes mixtures
- Rule 3a -specific description to be preferred over general
- Rule 3b -material that gives essential character
- Rule 3c -later-is-better
- Rule 4 – Akin Rule
- Rule 5 -cases-packaging classified with article
- Rule 6 - entries at same level comparable

Illustrative Bases of Classification

Illustrative bases of classifications

Ingredient or Use	Effect or structure	Relevance of 'name
Scientific understanding	Domain knowledge	User understanding
Non-composite supply	In-transit supplies	Imaginary conflict

Illustrative bases of classifications

- CKD or SKD
- Job-work – SAC or HSN
- Classification change – by Mfg.
- N.E.C–scope and effect
- HSN-free classification

HSN Commodity Description

HSN Commodity Description

- Its relevance to Indian Customs and Excise Tariff
- In 1975, Customs Tariff Act was amended in line with HSN System.
- Impressed with the success of this system and keeping in mind the possible spread of globalisation , Central Excise Tariff Act was enacted in 1985 along the same lines , modified suitably to the needs of India both the Tariff Act.

HSN Commodity Description

- As both the acts are modelled along with HSN system , therefore, in case of any classification disputes , explanatory notes to HSN can be referred to.

- In Scores of decision, Courts have held that these notes constitute an aid to interpretation to tariff entries and can be used as persuasive tool Hon'ble SC has held that " where entry in CETA is completely aligned with HSN , then HSN have very high persuasive value (Reckit & Colman of India 1984-SC)

HSN Relied upon for Product description

Product	Printed Wrappers for Packing Biri
Competitive Headings	Heading : Products of Printing Industry 49.01.10 – Transfers (decalcomanias)-20% 49.01.90 – Others (NIL)
Held classifications	Others
Cases and Reasoning (extended process)	Headway Lithographic Company 2015 SC HSN defines “transfers decalcomanias “ as printing on absorbent, light weight papers or thin sheet of plastic with coating of starch and gum. In this case, simple printing is done on plain paper and then same is cut size for wrapping biris. Therefore , these goods are clearly out of purview of sub-heading 49.01.10 and are classifiable under sub heading 49.01.90.

HSN not Relied upon for Product description

Product	**Close up whitening Dental Cleaner.**
Competitive Headings	Heading 33.06 : Preparations for Oral or Dental Hygiene 33.06.10 – Toothpaste 33.06.90 – Others
Held classifications	Others (33.06.90)
Cases and Reasoning	Global Healthcare Products 2015 SC **Toothpaste vs. Dental Cleaner** **Contents** : Dental cleaner had most ingredients same as those in toothpaste . **There are however additional ingredients used in manufacture of the product in question** which are accepted by the Revenue also and noticed above.

HSN not Relied upon for Product description

Product	**Close up whitening Dental Cleaner.**
Cases and Reasoning	**Stages of Manufacture** : Toothpaste (9 Stages) Vs. Dental Cleaner (11 Stages) **Time for Manufacture :** 120 minutes to manufacture for toothpaste tube and 155 minutes for dental Cleaner. **Food and Drug Authorities :** FDA from where prior permission is needed for manufacturing "toothpaste" and sale thereof , had not registered product in question as toothpaste but as dental cleaner **Common Parlance:** There was no evidence to show that it was known to be toothpaste.

HSN not Relied upon for Product description

Product	Close up whitening Dental Cleaner.
Cases and Reasoning	Conclusions: In view of above differences , dental cleaner was other form of dental hygiene classifiable under sub heading 3306.90 of CETA The HSN for sub heading 3306.10 could not be relied on as it is materially different from Excise Tariff Headings.

HSN cannot override CETA classification. If entries in CETA are not aligned with HSN then preference shall be given to CETA, identical view has been taken by Hon'ble SC in the case of Camlin Ltd -2008-SC

Expert Opinion not a deciding factor

Product	**Caldhan V (Given to cows etc for obtaining high milk yields)**
Competitive Headings	23.02 – Animal Feed Supplement 30.03. – Medicaments **.**
Held Classifications	23.02 – Animal Feed Supplement
Cases and Reasoning	Dabur India Ltd 2015 SC Caldhan for which expert certificates showed that these were not medicaments and printed lables on it also mentioned “not for medical use” would be classified as animal feed supplement. (sub heading 2302 00) and not as veterinary medicaments under 3003 even if Indian Veterinary Research Institute (IVRI) has opined otherwise.

Trade Parlance Theory

Trade Parlance Theory

- Trade Parlance test means that while classifying goods, understanding of goods in trade shall be considered .

- This test says that while interpreting any tariff entry as to coverage of any particular goods therein , regards shall be given to the understanding which the persons dealing in the goods (i.e. traders) keep . This test is preferred over scientific or technical understanding.

Trade Parlance Theory

- "Dabur Lal Dant Manjan" is not understood as "ayurvedic medicine/medical preparations " in trade parlance its understanding in trade is as toilet preparations and thus , it shall be classified accordingly. (Sree Baidyanath Ayurved Bhawan Ltd - 2009 SC
- Soft Serve sold by annought plaza restaurants Ltd (McDonalds) to its various franchisees will be classified as Ice Cream and not as dairy produce(Cannought Plaza Restaurants Pvt Ltd -2012-SC)

Trade Parlance Theory

- It shall be noted that Central Excise Tariff Act provides for general principles to be followed while classifying the goods. These rules are referred as GRI (General Rule of Interpretation). These being statutory principles shall be preferred over trade understanding of the product. But if statutory principles are not clear , then the test of trade parlance shall be given the weightage

Trade Parlance Theory - Soap

Product	Liril Active Shower Gel
Competitive Headings	Classifiable under what heading Heading 34.01 – Soap (in any form) Heading 33.04 – Beauty or Make up preparations for the Skin
Held Classifications	Classifiable as SOAP (34.01)
Cases and Reasoning (Remember Girl Taking a bath with Liril Soap)	Hindustan Unilever Ltd 2013 SC The use of product in this case was for washing of the skin and bath. Thus it is a liquid soap. The advertising of the product that it makes it user feel fresh can by no means justify its classification in Heading in 33.04. Freshness in by no means an expected or desired result of mot of the product of Heading 33.04.

Trade Parlance Theory – Medical Preparations/Toilet Preparations

Product	Nizral Shampoo (containing 2 % ketoconazole) Anti Dandruff Shampoo
Competitive Headings	30.03 Medicaments (16%) 33.05 Preparations for use on Hair (24%)
Held Classifications	Medicaments (Heading 30.03)
Cases and Reasoning	Sarvotham Care Ltd 2015 SC Product was classifiable as medicaments because: •Its pre-dominant use was medicaments •Medicinal properties were adequately emphasized and product was sold that basis •Buyers/consumers were referred to as patients •Product was described as medicine to cure fungal disease viz.dandruff

Trade Parlance Theory – Medical Preparations/Toilet Preparations

Product	Nizral Shampoo (containing 2 % ketoconazole) Anti Dandruff Shampoo
Cases and Reasoning	•Product was suggested as being usable for limited period and there was a warming of adverse reaction in case of longer use •2% ketoconezole was maximum percentage required to treat dandruff •Use was suggested only on advice of doctor and there was a suggestion to consult doctor for further clarification •Affidavits of various doctors submitted by Assessee showed their product was only as medicament for curing dandruff and not for cleaning heir.

Deena Jee Sansthan 2019(365) ELT 353 (SC) – Shampoo whether Ayurvedic Medicine or Cosmetics – it has been held to cosmetics – based on composition and its medical properties.

Trade Parlance Theory/Test

- Other example : Vaseline intensive care heel Guard (HUL 2015-SC) – held as medicaments.
- Cream – dictionary meaning

2018 (362) ELT A111 (SC) Zuari Cement Ltd – Coal imported – whether bituminous or steam coal? Held – Bituminous – held on the basis of functionality of steam coal in Trade Parlance.

- Coconut oil – Hair oil (Chapter 33) or Edible oil (Chapter 15) – Held edible oil (Chapter 15) – Capital technologies Ltd 2015 – circular 890/10/2009-CX – subsequently withdrawn.
- The product "Minute Maid Nimbu Fresh (hereinafter referred to as MMNF) manufactured by Brindavan Beverages Private Limited, and 7UP "Nimbooz Masala Soda" or 7UP "Nimbooz" manufactured by PepsiCo India Holdings Private Limited are classifiable under Tariff Item 2202 90 20 of the Central Excise Tariff Schedule under the category of "fruit pulp or fruit juice based drinks". - 2019 (29) G.S.T.L. 418 (Tri. - LB) - BRINDAVAN BEVERAGES PVT. LTD.Versus COMMR. OF CUS., C. EX. & S.T., MEERUT

Classification of Services

Classification of Services – SAC Code

- There is no international classification of services similar to HSN for goods
- However the principles of classifications or Rules of Interpretations are same i.e.
  - Specific description prevails over general description
  - Predominant nature in case of bundled services
  - Trade Parlance

Classification of Services – SAC Code

- Definitions provided for various services under old service tax regime can be used for determining the classification of services
- Broad Classification of Services
- Mostly divided into 12 categories as business sectors
- Each business sector is divided into sub-sectors according and coding has been done accordingly

Illustrative List of services

Business Services	Communication Services	Construction and Related services
Distribution Services	Educational Services	Environmental Services
Financial Services	Health related and social services	Tourism and Travel related services

Illustrative List of services

Recreational Cultural and Sporting Services	Transport Services	Other Services
Digital Services	?	?
?	?	?

Illustrative Business Sectors

- Business services
  - Professional Services
  - Computer and related services
  - Research and Development Services
  - Real Estate Services
  - Rental leasing services without operators
  - Other Business services

Illustrative Business Sectors

- Communication Services
  - Postal services
  - Courier Services
  - Telecommunication Services
  - Audio Visual Services
  - Others

Illustrative Business Sectors

- Construction and Related services

  - General construction work for building
  - General construction work for civil engineering
  - Installation and assembly work
  - Building Completion and Finishing work
  - Others

Illustrative Business Sectors

- Distribution services
  - Communication Agents services
  - Wholesale Trade Services
  - Retailing Services
  - Franchising
  - Others

Illustrative Business Sectors

- Educational services
- Environment Services
- Financial Services
  - All Insurance and insurance related services
  - Banking and other financial services (excluding insurance)
  - Others

Illustrative Business Sectors

- Health related and social services
- Tourism and Travel related services
- Recreational, cultural and sporting services

Illustrative Business Sectors

- Transport Services
    - Maritime Transport Services
    - Internal Waterways Transport
    - Air Transport Services
    - Space Transport
    - Rail Transport Services
    - Road Transport Services
    - Pipeline Transport Services
    - Services auxiliary to all modes of transport
- Other services not included elsewhere

Classification of Services

- Works Contract Services
  - Carpenter (998724 – Repair Services of Furniture) & Furniture Manufacturing Services (998891)
  - Tailoring Services (Stitching and use of Thread & Buttons etc.)
- Entertainment Industry & Brand Endorsement Services
  - Group 99963 – Services of Performing and other Artists
  - Actor/Actress acting in a movie (999631) and providing Brand Endorsement Services viz. movie would be covered by SAC Code (998397) - whether billing would be done under SAC Code 999631 or 998397 or both the SAC Codes together.

Classification of Services

- Healthcare Services
  - Group 99931 –Human Health Services
  - Medical services (999312) & Stent (90213900)
- Tours and Travel Services
  - Tour Package services (18%) even though he is paying GST @ 28% in case of Hotels where Tariff exceeds Rs.7500 per day per room or providing food on which ITC is payable @ 5%

Recent AAR & Judgements

Recent AAR/Judgements

- **MAHARASHTRA AUTHORITY FOR ADVANCE RULING : CARGILL INDIA PRIVATE LIMITED & Dy Commr. of S. T.(PUN-VAT-E-614), LTU-2,Pune : GST-ARA, Application No. 09 Dated 21.12.2017 : 20th March, 2018**
- The Authority for Advance Rulings (AAR), Mumbai held that Natural Ester Dielectric Fluid (Envirotemp FR3) falls **under the description of 'inedible preparation of vegetable oils' and is taxable at 12% Goods and Services Tax.** The Applicant, Cargill India Private Limited, is a subsidiary of Cargill Inc. and is engaged in the business of processing, refining and marketing imported and indigenous vegetable oils. One of the products manufactured by the applicant is Natural Ester Dielectric Fluid (Envirotemp FR3). The applicant has sought the clarification of the Authority regarding whether Envirotemp FR3 being a chemically modified

Recent AAR/Judgements

Contd………..

vegetable/soybean oil is classifiable under Entry 90 of Schedule I of Notification No.1/2017-State Tax (Rate) issued under the Maharashtra Goods and Services Tax (MGST), 2017 and Notification No.1/2017-Central Tax (Rate) issued under the Central Goods and Services Tax (CGST), Act 2017 <u>is taxable at the rate of 2.5 % (State and Central tax) or Whether it can be said to be a mixture of inedible vegetable oil which is not elsewhere classified, hence fall under entry 27 of Schedule II of Notification No. 1/2017-State Tax (Rate) issued under the MGST Act, 2017</u> and Notification No.1/2017- Central Tax (Rate) issued under the CGST, Act 2017 is taxable at the rate of 6 % (State and Central tax).

Recent AAR/Judgements

Contd…………..

The Authority comprising of Members B.V. Borhade & Pankaj Kumar observed that **the product of the applicant is a preparation from vegetable oil and is derived from soybean Oil. The product being inedible, the authority further observed that it could be covered by the description "inedible preparation of vegetable oils".** Consequently, it held that the product Envirotemp FR3 falls under Serial No 27 of Schedule II of Notification under MGST, Act 2017 and is taxable at the rate of12%.

Recent AAR/Judgements

- **JOINT replacement - 5% GST and not 12% -, AARAAR holds that implants for joint replacements fall under HSN Code 90213100 viz. "Artificial Joints" and are liable to 5% GST** in terms of Sl. No. E(9) of List 3 of Entry 257 of Schedule I to Notification No. 1/2017-Central Tax (Rate**).It rules out applicability of 12% GST under Sl. No. 221 of Schedule II to said Notification viz. "Fracture appliances, artificial parts of the body",** by **applying the principle under Rule 3** of General Rules of Interpretation of First Schedule to Customs Tariff Act. Accordingly, notes that **the heading which provides the most specific description shall be preferred to headings providing a more general description** : Kerala AAR Citation: [TS-236-AAR-2018-NT]

Recent AAR/Judgements

- Rate of tax on Ice Cream making machine

- Applicant company claimed that 'ice cream making machine' manufactured and supplied by it would fall under chapter heading 84.38 of Customs Tariff Act, 1975 and thus, was liable to pay GST at rate of 18 percent on supply of said goods in question - **Since, tariff heading 84.38 covers machinery not specified elsewhere in chapter 84 and 'ice cream makers' were specifically covered under tariff heading 84.18, same would fall under tariff heading 84.18 and not under tariff heading 84.38 of Customs Tariff Act, 1975 and GST rate applicable to tariff heading 84.18 i.e. 28 percent is applicable to said product.**
- Mitora Machinex (P.) Ltd. - [2018] 94 taxmann.com 152 (AAR-GUJARAT)

Recent AAR/Judgements

- Storage of Agriculture produce and benefit of NIL rate tax
- **Loading, unloading, packing, storage or warehousing of agricultural produce provided at Sr. No. 54(e) of N. No. 12/2017 - CTR, such services attracts NIL rate of tax.** <u>A question came up whether this exemptions is eligible to farmers only or traders can also avail the exemption.</u>
- **It has been upheld that notification is service specific and not person specific.** Hence the **entry no 54(e) is equally applicable for agricultural produce of both the farmer as well as the trader**. Further it was upheld that **storage and warehousing of Agriculture produce falls under Service Account Code (SAC) 9986 and not under 9967**.
- S.S.S.V.K. Cold Storage (P.) Ltd. - [2018] 94 taxmann.com 141 (AAR-ANDHRA PRADESH)

Recent AAR/Judgements

- **Supply of printed advertisement materials treated as supply of goods**

- **Applicant are engaged in the business of manufacturing and sale of digital printed materials.** Applicant manufactures printed trade advertising material like banner flex using various inputs namely ink, paper etc. Preparation of such printed material would be undertaken as per the customer specification wherein customers specify the sizes of the advertising material, location of the advertising material to be displayed etc. Except specifying the specifications and designs to be printed, clients/customers of Applicant does not provide any materials and all required materials for the preparation of the advertisement materials are procured by Applicant only. Applicant also recovers the cost incurred towards transportation, installation, packing etc.

Recent AAR/Judgements

- Contd………….
- It was observed on conjoint reading of the definition of "goods" & "services , **'goods' was defined to mean every kind of movable property with specific exclusions and inclusions** (which are not relevant to the present context) and **'service' was defined to mean anything other than goods.** Therefore, **once anything falls under the ambit of 'goods', it does not become 'services' and vice -versa.** Further, the settled legal position under the provisions of Central Excise as well as sales tax is that **things which are capable of being moved from one place to another without any substantial damage to the property while shifting, are not 'immovable property' but is 'movable property'.**

Recent AAR/Judgements

- Contd…………
- Hence, **printed advertisement materials manufactured and supplied by the applicant are classifiable as 'supply of goods' and printed advertisement material are classifiable under chapter heading 4911** of the GST Tariff and the rate of **tax applicable is 6% CGST + 6% SGST** as given in the Notification No. 1/2017. **Macro Media Digital Imaging (P.) Ltd - [2018] 94 taxmann.com 135 (AAR- TELANGANA)**

Recent AAR/Judgements

- **Rate of tax on Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs)**

- It is hereby clarified by **TRU Unit that Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST.** The duty credit scrips covered under Merchandise Export Incentive Scheme, however, attract Nil GST under S.No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017.

- **Earlier, Circular No. 34/8/2018- GST dated 01.03.2018 (S.No.3) was issued clarifying that PSLCs are taxable as goods at a standard rate of 18 % under the residual entry S. No. 453 of Schedule III of notification No. 01/2017-Central Tax (Rate) is now modified.**

- **Circular No. 46/20/2018 - GST - Dated 06-06-2018**

Recent AAR/Judgements

- **Single Tender issued by KPTCL but three separate agreement entered for carrying out the work, amounts to Works Contract? and KPTCL is a State Government or Local Authority**?

- The applicant, Skilltech Engineers, is **engaged in execution of works awarded** by M/s Karnataka Power Transmission Corporation Limited (hereinafter referred to as "KPTCL"), **for construction of power lines**, **erection of transmission towers and transformers**. The contract with KPTCL is a **single composite contract**, but with **three connected agreements for Supply of Materials, Erection & Civil Works respectively.** All the three agreements were **awarded** to the applicant in response to a **single tender notification.**

Recent AAR/Judgements

- Contd………..

- It was upheld that In the instant case, the applicant, being the successful bidder, **got the single composite contract**, but **with three connected agreements for Supply of Materials, Erection & Civil Works respectively.** All the three agreements were awarded to the applicant in response to a single tender notification & the general terms and conditions are commonly applicable to all the three agreements. The applicant **is supplying the material and providing the erection of towers service and also civil works service**. Therefore the contract entered by the applicant is of **the nature of "indivisible' and squarely falls under the works contract, which is a service.**

Recent AAR/Judgements

- Contd…………
- Further it was upheld in respect of whether KPTCL is a State Government, that a statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law (Agarwal v. Hindustan Steel AIR 1970 Supreme Court -1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of local authority'. **Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts. Therefore M/s KPTCL can not be a State Government and hence applicant is not entitled for the benefit of the concessional rate of GST @ 12%, in terms of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017.**

- **Skilltech Engineers & Contractors (P.) Ltd. - [2018] 94 taxmann.com 20 (AAR-KARNATAKA)**

Recent AAR/Judgements

- **LVP FOODS PRIVATE LIMITED -2020 (32) G.S.T.L. 612 (A.A.R. - GST - U.P.)**
- Held - In favour of the applicant
- Tea Whitener (Instant) - **Product made out of standard liquid milk which undergoes various processes and added with some other additives - Main ingredient/essential character of the product in question given by liquid milk and cannot be manufactured without milk and all other ingredients are ancillary in nature** - Even after addition of other additives, it remains to be milk powder and in common parlance, it would be known as 'Instant Tea Whitener/milk powder' - **Classifiable under Heading 0402 of Customs Tariff Act, 1975 and accordingly liable to such GST rate as prescribed under Notification No. 1/2017-C.T. (Rate) (as amended).**
- Para 5.3- Rule 3a -**the heading which provides the most specific description shall be preferred to heading having more general description.**
- Para 5.4- Rule 3b - **in case Rule 3a is not applicable, the goods shall be classified as if they consisted of the material/raw material which give their essential character**. In the applicant's case, the essential character to 'Instant Tea Whitener' is given by liquid milk. The said product cannot be manufactured without milk. All other ingredients are ancillary in nature.

Recent AAR/Judgements

- **As per Sl. No. 8 of Schedule-I of Notification No. 1/2017-Integrated Tax (Rate), dated 28-6-2017, Chapter Heading 0402 covers :**
- **8**
- **0402**
- **Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies (other than condensed milk)**
- we observe that the product in question i.e., **'Instant Tea Whitener'** is a product **made out of standard liquid milk** which undergoes various processes and added with some other additives. Even after addition of other additives, it remains to be milk powder and in common parlance, it would be known as **'Instant Tea Whitener/milk powder**'.
- Held that - The **product 'Instant Tea Whitener**' as described in the application will **merit classification** under Chapter Heading **0402** of the GST Tariff and would be chargeable to **GST at applicable rate** under the said tariff entry, presently read with Notification No. 01/2017-Central Tax (Rate), dated 28-6-2017 (Sl. No. 08 of Schedule-I).

Conclusions

Relevance of HSN/SAC in GST Compliances

- To determine the classification of the product/Services according to ROI , Trade Parlance;
- To determine the chargeable rate of GST on such supply of goods or services & it needs to compared with actual levy of GST. If variance……….
- To help correct reporting of supply of goods and services for Trade Statistics and to determine the contribution by each nature of supply of goods and services to GDP of the Country.

Relevance of HSN/SAC in GST Compliances

- HSN/SAC is required to be quoted on all Tax Invoices, Receipt, Payment, CN DN and other documents;
- Correct reporting of HSN/SAC necessary in the Outward Supplies returns GSTR -1
- Incorrect classification of HSN/SAC may result into non eligibility of ITC admissible as per the provisions of GST Act 2017.

Relevance of HSN/SAC in GST Compliances

- HSN/SAC classification of supply by enterprises needs to be reported under Corporate Law in the Financial Statements drawn by the enterprises.
- HSN/SAC classification of supply by enterprises needs to be reported under Income Tax Law as coding of business/Profession is aligned now.
- In future it can be anticipated that data reported under every law would be matched with HSN/SAC codes reported by the enterprise and if discrepancy found it would result into investigations under every law.

- Looking at the international trade , it is anticipated that all countries including developed , developing and under-developed would try to reconcile their trade data using 360 degree so that if any deviations are reported then such disputes would be taken at Trade Levels including various revenue authorities who would always try to maximise their revenue collection because of uniform levy of taxes.

Food for Thought

What? How ?

E way Bill, E- Invoicing & New Returns

Purpose – E Way Bill ,E- Invoicing & New Returns

- Mis Invoicing causing tax leakages that's the reason by DTAA, MAP, BEPS , MLI etc are introduced.
- According to report by Global Financial Integrity, a US based think tank , Tax revenues to the extent of $13 billion are lost due to mis invoicing
- Mis Invoicing is done through value and volume manipulations
- Trade Data analytics from 2007-2017 analysed from United Nations Comtrade Database shows that **India's exports to china after adjusting Freight and Insurance equals to Chinese Imports from India and data don't match it can concluded that it is case of mis invoicing**
- **Mis Invoicing varies from country to country e.g. Over Invoicing in oil related exports to UAE whereas exports to USA is under invoiced , Coal Imports show over invoicing , Gold Exports from Switzerland showed over invoicing where ultimate aim is shift profits outside India.**
- **Thus need for adoption of E way Bill, E Invoicing , New GST Returns , revamping of accounting standards etc by aligning ourselves to recognised Global Tax standards in felt.**

What? How ?

Food for Thoughts

- Trial Version is available – Should we apply?
- Considering our experience of GST Implementation what can we expect ?
- Will such process work efficiently and effectively?
- Will it create ease of doing business in India or it will disrupt more considering systems issues ?
- Will it result into blocking of working capital facilities for the business ?
- Will it curb the nuisance of Fake invoicing ?
- Will it improve the compliance by business enterprises ?
- Will it ensure more stakeholders get added to the tax administration network?

What? How ?

Food for Thoughts

- Without entry of HSN Code , Return filed won't be validated thus waiver provided for FY 1718 and FY 1819 may not be available in the future.
- 10Th of succeeding month would be considered as relevant date for the claim of ITC as per Rule 36(4) so that limit of 10% claim would be complied automatically thus issue of notices for such recovery of ITC are anticipated to be minimized.
- Considering the recent press release to file GSTR 3B just 3 days before the due date is automatically provided through cut off date of 17th of Succeeding month for ANX-1.
- Interest payable would be auto calculated for the delayed payment of the system itself as per section 50 so no return can be filed without the payment of levies as well as interest payable for the delay in reporting of the information.
- Amendments in respect of any financial year would be permitted only till 30th September of next financial year which are applicable even today for FY 1819 and so on.

What? How ?

Food for Thoughts

- It can be anticipated that information from ICEGATE would synced for the verification for the claim of ITC on Imports as reporting of Shipping Bill or Bill of Entry is provided in the system itself.
- Similarly information in respect of Exports also would be auto populated in the ANX-1 from ICEGATE.
- If Invoices reported in ANX-1 which are auto populated in ANX-2 if they are not accepted or rejected then they are deemed to be accepted by the system after cut off date.
- New GST Forms are formulated in such manner so as to compile and generate the information relevant to filing of GSTR 9 in general.
- Data entered in the new GST Returns would be auto populated in the future GSTR 9 as applicable to relevant financial year.
- If systems work smoothly, effectively and efficiently then we can expect compliance level to improve and it may expedite the Refund processing as well as curbing the menace of Fake invoices for stringent provisions are introduced under Income Tax, GST as well as Customs Law which may extended to PMLA and/or Black Money Act too.

SURROUND YOURSELF WITH PEOPLE WHO TALK ABOUT VISION AND IDEAS NOT PEOPLE

Appreciated all of You.

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