

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, VibhutiKhand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG- 03/2024/

DATED 06-6-2024

PRESENT:

1. Shri Amit Kumar

Joint Commissioner, Central Goods and Service Tax
Commissionerate, LucknowMember (Central Tax)

2. Shri Harilal Prajapati

Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name and address of the Applicant	M/s Pooja Solvent Private Limited, Jainpur, Kanpur Dehat-209311
2.	GSTIN or User ID	09AAICP0428Q1ZW
3.	Date of filing of Form GST ARA-01	29.03.2024(received on 01.04.2024)
4.	Represented by	Mr. Santosh Kumar Sahu, Director
5.	Jurisdictional Authority-Centre	Range-XXI, Div.-Kanpur Dehat , Commissionerate -Kanpur
6.	Jurisdictional Authority-State	Sector – Kanpur Dehat AC, Range- Kanpur(B), Zone-Kanpur I State –Uttar Pradesh
7.	Whether the payment of fees discharged and if yes, the amount CIN	SBIN24030900101677

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98 (4) OF THE UPGST ACT, 2017**

M/s Pooja Solvent Private Limited., having registered office at Sikandra, Jainpur, Kanpur Dehat-209311, U.P. (hereinafter referred as "the applicant") having GSTIN-09AAICP0428Q1ZW, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of UPGST Act, 2017 read with Rule 104 of the UPGST Rules, 2017 in Form GST ARA-01 (the application form for Advance Ruling), discharging the fee of Rs. 5,000/-each under the CGST Act and the UPGST Act.

- The applicant is into manufacturing of neem cake and chemically modified non-edible neem oil (hereinafter referred to as non-edible neem oil) used as fertilizers in crop irrigation for essential nutrients (nitrogen, phosphorus, potassium, etc.) fixation to upgrade the quality of soil, also used as pesticides for protection of crops from insects, worms, termites, etc. at facilities situated at Jainpur, Hardauli, Marka Road Shastri Nagar. The oil produced from various processes at various facilities which includes, drying neem seeds, thereafter dried seeds are further crushed to obtain neemgiri, then the neemgiri is further cold pressed to obtain neem oil, which is of high

density, which cannot be used for soil irrigation. As per the specification of buyers the density of neem oil is modified by adding various chemicals such as mixed solvent, reducer oil, cashew nutshell liquid, etc. hence making it chemically modified and unfit for human consumption (nonedible). The chemically modified neem oil is transported through tankers for consumption.

3. The applicant has sought advance ruling in respect of the following questions:

1. Under which HSN code the non-edible to be classified?

2. Whether notification no. 09/2022- Central Tax (Rate) dated 13.07.2022 issued under the Provisions applicable on the applicant?

4. The question is about applicable GST rate under the provisions of CGST Act and liability to pay GST, hence is admissible under Section 97(2)(a) of the CGST Act 2017. Further, as per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

5. Statement of relevant facts having a bearing on the question(s) raised :

- i. Because the applicable GST rates on inputs, input services and outputs, for the applicant comes under inverted duty structure as per first proviso to section 54(3)(ii) of CGST act 2017, as the chemicals (inputs) mentioned the application i.e like nitrogen, phosphorous , potassium, etc. are taxed at 18% and 12% and the final output i.e. nonedible neem oil and neem cake are taxed at 5 %, thus leading to large amount of input tax credit getting blocked and not refunded due to applicability of Notification no 09/2022 – Central Tax (Rate) on HSN 1515.
- ii. Also 50% of the cash credit limit facility availed by the applicant from the bank is blocked with government in the form of accumulated GST ITC not refunded back, causing genuine, serious financial crisis & mental hardship to the applicant. If such financial crisis & hardship continues then the applicant might have to shut down its business and become bankrupt. Seeking the hardship & the financial crisis faced by the applicant kindly address the issue at the earliest and issue a favorable ruling.

6. The applicant has submitted their interpretation of law as under-

Because refund on accumulated ITC on account of inverted duty structure are allowed as per the provisions of the CGST act 2017, but the same got specifically denied on **HSN 1515** vide **Notification no 09/2022- Central tax dated 13.07.2022**. On further deep dive into the HSN classification of neem oil it was found that HSN 1515 is for neem oil not chemically modified. But the applicant's neem oil is chemically modified to be used as fertilizers and pesticides. Therefore, as per applicant's viewpoint correct HSN code for chemically modified neem oil should be under chapter 31 of HSN codes.

7. The application for advance ruling was forwarded to Assistant Commissioner, Central Tax & Central Excise, Division- Kanpur Dehat Kanpur vide letter dated 08.04.2024 to offer his comments/views/verification report on the matter. Reply for the same has been received vide letter C.No. 13/CGST/R-XXI/PSPL/2024 /145 dt.26.04.2024. Assistant Commissioner, CGST & Central Excise, Dehat, Kanpur has held that Neem Oil (Non –edible) falls in HSN 1515 and Applicant's request to classify it in Ch. 31 of HSN code is not justifiable as chapter 31 classifies

“Fertilizers” whereas the applicant is requesting ruling for **Neem Oil**. It was further stated that as per the declaration of the Unit available at the GST portal, the applicant is into manufacturing of – “Oil cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading 2304 or 2305 of Cotton seeds : Oil cake and Oil cake meal, decorticated expeller variety” Therefore, the Applicant’s view that chemically modified neem oil to be classified in chapter 31 does not seem correct.

8. The applicant was granted personal hearings on 09.05.2024 which was attended by Mr. Santosh Kumar Sahu, Director during which he reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

9. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the ‘CGST Act’.

10. We have gone through the submissions made by the applicant and have examined the same. The applicant in the present application has sought advance ruling on following question/clarification-

1. Under which HSN code the non-edible to be classified?

2. Whether notification no. 09/2022- Central Tax (Rate) dated 13.07.2022 issued under the Provisions applicable on the applicant?

11. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling is required-

- (i) Classification of goods and/or services or both.

- (ii) Applicability of a notification issued under the provisions of the Act

At the outset, we admit both questions related to the applicant is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

12. On going through the documents provided by the party, the brief facts of the case, as submitted by the applicant, is as under:

The applicant is into manufacturing of neem cake and chemically modified non-edible neem oil (hereinafter referred to as “**non-edible neem oil**”) used as fertilizers in crop irrigation for essential nutrients (nitrogen, phosphorus, potassium, etc.) fixation to upgrade the quality of soil,

also used as pesticides for protection of crops from insects, worms, termites, etc. at facilities situated at Jainpur, Hardauli, Marka Road Shastri Nagar. The oil produced from various processes at various facilities which includes, drying neem seeds, thereafter dried seeds are further crushed to obtain neemgiri, then the neemgiri is further cold pressed to obtain neem oil, which is of high density, not fit for soil irrigation. As per the specification of buyers the density of neem oil is modified by adding various chemicals such as mixed solvent, reducer oil, cashew nutshell liquid, etc. hence making it chemically modified and unfit for human consumption (nonedible). The chemically modified neem oil is transported through tankers for consumption.

13. Here reference may be made to Assistant Commissioner, CGST & Central Excise, Dehat, Kanpur letter dt. 26.04.2024 wherein the applicant has declared its product as "*Oil cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading 2304 or 2305 of Cotton seeds : Oil cake and Oil cake meal, decorticated expeller variety*" which falls in **HSN code 23061010**. Thus the product manufactured by the applicant in no way falls under Chapter heading 31.
14. Reference may also be made to Deputy Commissioner State Tax, Kanpur Dehat, Kanpur letter dt. 04.05.2024 wherein it is stated that the commodity of the Applicant i.e. Neem Oil falls under HSN code 15159020 which is as follows: "*Fixed vegetable oils, namely the following neem seed oil, karanj oil, silk cotton seed oil. Khakhon oil, water melon oil, rubber seed oil, dhup oil, undi oil, maroti oil, pisa oil, naharoil*". Hence, as per Notification No. 09/2022-Central Tax (Rate) dt.13.07.2022, no refund of unutilized input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies).
15. Here it may be pointed out that the applicant appears to be in the business of extraction of neem oil falling under HSN code 15159020 and the residue falling under HSN code 23061010.
16. The applicant is into business of production of neem oil, which in turn is used for coating urea. As per the tender document submitted by the applicant, it is seen that the specification of the item to be supplied by the applicant is neem oil. The detail is as under:

Neem Kernel Oil / Depulped neem seed oil for urea coating as per specifications as follows :

Purity Test – Azadirachtin Content shall be 150 PPM minimum

Moisture and Insoluble matter per cent by wt. Max : 1.0

Specific gravity at 30 degc : 0.85- 0.95

Iodine value : 65-95

Saponification value : 160-205

Physical appearance –clear yellowish liquid, double filtered without any sediments and moisture toxicology- non toxic to plant and soil, eco friendly and biodegradable (Test certificate from govt. approved lab for each supplied consignment shall be submitted along with delivery challan).

Here it may be further pointed out that Azadirachtin is a naturally occurring insecticide which is extracted from the Neem tree seed.

17. Neem oil, a wholly organic product, had the quality that could both slow down nitrogen release from urea to soil thus increasing nutrient use efficiency, decreasing soil and water contamination and reducing appreciably the chances of diversion of agricultural grade urea for many non-agricultural uses. In case of India, instead of chemical inhibitors, use of organic neem as coating of urea was more beneficial.
18. The Applicant came into existence since 2015 and its effective date of registration in GST is 01.07.2017. It had classified its product "Neem Oil" under HSN code 15159020 and was paying duty @ 5%. It was only after the coming of Notification No. 09/2022-Central Tax dt. 13th July 2022 which is amendment to earlier Notification No. 05/2017- Central Tax dt. 28th June 2017, that the applicant is contesting that his product fall in HSN code 1515 rather than CH heading 31
19. Now, the question is whether the product under question is classified under Chapter Heading 15 or Chapter 31 or under any other Chapter Heading.

As General Rules of interpretation of tariff 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, according to the following provisions*"

We find that neem seed oil is mentioned under Chapter Sub-heading 1515 90 20. Thus, the neem oil is classifiable under HSN code 15159020. However, as per applicant their product in question i.e. "non-edible Neem Oil" are chemically modified and it should be classified as fertilizer under chapter 31 of HSN codes. As per applicant, naturally produced neem oil by them is having Azadirachtin content of 100-900 ppm, whereas they are supplying to their buyers having Azadirachtin content of around 150 ppm. PPM of Azadirachtin is modified/reduced to 150 PPM by adding mixed solvent, reducer oil, cashew nutshell liquid, etc. As per applicant this reduction in concentration is nothing but chemical modification and hence their product is chemically modified neem oil.

20. As per technical specification of product is "NEEM KERNEL OIL/DEPULED NEEM SEED OIL....". Then the product is supplied in name of "neem kernel oil" only. It is also observed that the addition of solvent does not alter the essential character of the neem oil.

Further, Chemical modification refers to a number of various processes involving the alteration of the chemical constitution or structure of molecules. Example of chemical modification is hydrogenation, esterification etc. Here, only Azadirachtin concentration is getting reduced but product remain essentially neem oil. Hence, the product "non-edible Neem Oil" cannot be said to be chemically modified. It is only concentration of Azadirachtin, which gives it essential character, is getting reduced.

Now we refer to the General Rules of interpretation of tariff Rule 2 (b) which provides that classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

Rule 3 - "*When by application of rule 2(b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be effected as follows-*

- (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”.

- (b) *Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of material or component which gives them their essential character, in so far as this criterion is applicable.”*

Since, the product is neem oil mixed with different solvents resulting to new product which remain neem oil in its essential character. Thus, as per rule 3(b) of General Rules for the interpretation of the Harmonized System, the product “non-edible Neem Oil” is classified under HSN code 15159020. The product do not classified as fertilizer under chapter 31 of HSN codes

21. Vide Notification No. 09/2022/Center Tax (rate) dt. 13.07.2022, under the powers conferred by clause (ii) of the first proviso to sub section(3) of section 54 of the CGST Act 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilized input tax credit shall be allowed , where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies).
22. “Non-edible Neem Oil” manufactured by the applicant having HSN code 1515 is covered by Notification No. 09/2022/Center Tax (rate) dt. 13.07.2022 and thus the applicant is not entitled to any refund of unutilized input tax credit, which is accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods.
23. In view of the above discussions, we, both the members unanimously rule as under;

RULING

Question1. Under which HSN code the non-edible to be classified?

Answer: 1515

Question 2. Whether notification no. 09/2022- Central Tax (Rate) dated 13.07.2022 issued under the provisions applicable on the applicant?

Answer: Yes

24. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Harilal Prajapati)

Member of Authority for Advance Ruling


(Amit Kumar)

Member of Authority for Advance Ruling

To,

M/s Pooja Solvent Private Limited,
Plot No. M18, UPSIDC factory area, Jainnpur,
Kanpur Dehat, Uttar Pradesh-209311

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, Kanpur, 117/7, SarvodayaNgar, Kanpur-208005, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Kanpur Dehat-II, 117/7, SarvodayaNgar, Kanpur-208005, Uttar Pradesh.
5. Through the Additional Commissioner.....*KANPUR-ZONE-1*....., Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, VibhutiKhand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.