

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Marggaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. P Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AABCS4338MIZI
Legal Name of Applicant	M/s. Saint-Gobain India Private Limited
Registered Address/Address provided while obtaining user id	5th floor, Leela Business Park, Andheri-Kurla Road, Near Airport Road Metro Station, Mumbai - 400059
Details of application	GST-ARA, Application No. 51 Dated 10.10.2019
Concerned officer	Division – V, Commissionerate Mumbai East.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Factory / Manufacturing
B Description (in brief)	Applicant is engaged in the manufacturing & trading of glass and gyproc products. The applicant is proposing to manufacture a glass-fibre reinforced gypsum board.
Issue/s on which advance ruling required	(ii) Applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **Saint-Gobain India Private Limited**, the applicant, seeking an advance ruling in respect of the following question.

1. Whether the proposed product is classifiable as "Glass-fibre Reinforced Gypsum Board" and the applicant can avail the benefit of the concessional rate of tax under Schedule II of Notification no - 1/2017 - Central Tax?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant is as under:-

- 2.1 M/s Saint Gobain India Private Limited, the Applicant, engaged in the manufacturing and marketing of both, paper reinforced and glass reinforced gypsum boards falling under Chapter 68 of the Customs Tariff Act, 1975 is proposing to manufacture a new category of product under Glass reinforced gypsum board ("GRG") which is essentially going to be a gypsum plaster, reinforced with glass-fibre with 94% of gypsum and adhesives; approximately 5% of paper; and > 1% of glass fibre, whose stated purpose is to produce a strong composite material having improved tensile and impact properties which shall increase the flexural, tensile, compressive and impact strength of this glass fibre composite.
- 2.2 Applicant feels that the impugned product is classifiable under Heading No: 6809 of the Customs Tariff Act and as per Serial No. 180C to Schedule III of the Notification No. 1/2017 – C.T. (Rate) dated 28,06,2017, such goods are subject to the levy of GST at the rate of 18%.
- 2.3 However, Notification No. 1/2017–C.T. (Rate) dated 28.06.2017 provides for concessional rate of GST @ 12% on supply of "Glass-fibre Reinforced Gypsum Board". As per Sr. No.92 of the said Notification, to claim the benefit of concessional rate of GST, the two

conditions required to be satisfied are that (i) The goods should be classified under Chapter 44 or any chapter; AND (ii) The goods should qualify with the nomenclature mentioned in column (3) of the notification.

2.4.1 It is submitted that there is no dispute regarding the classification of the proposed product, since Sr. No.92 of the Schedule -III of the Notification is applicable to goods falling under 'any chapter'. Thus, the first condition as mentioned in point (i) above stands satisfied.

2.4.2 The applicant contends that the subject product can be classified as GRG. Applicant proposes to add glass-fibre upto one percent of the total weight of the ingredients of the gypsum board in order to increase flexural, tensile, compressive and impact strength of the board to give reinforcement to the resultant product and therefore applicant is of the opinion that the proposed product is a 'Glass-Fibre Reinforced Gypsum Board' and is covered under Sl. No.92 of Notification No. 1/2017 mentioned above. Applicant has also stated that the percentage of glass fibre to be used in the gypsum board is immaterial for the product to be classified under Sr.No. 92 mentioned above.

2.5 Thus, the impugned product could be considered as GRG in order to avail the benefit of concessional rate of GST in terms of Sl. No.92 to Schedule - II of the Notification no. 1/2017- CT(R) even if such resultant product does not conform with IS standards as proscribed by the government for a GRG board. The adding of lower percentage of glass-fibre to the proposed product shall not exclude it from being identified as GRG. It can be inferred that the intention of the Legislature is to provide the benefit of concessional rate of tax to gypsum board reinforced with glass-fibre, containing any quantity of glass-fibre, however miniscule it may be and providing reinforcement ability. The benefit of such notification cannot be denied to the applicant simply on the criteria of quantity of glass-fibre, when such disqualification is not provided under the notification. Applicant has cited case laws to support their contention.

2.6 It is further submitted that, applying the Literal Rule of Interpretation, it can be said that where no quantity of glass-fibre is specified in the notification for qualifying it as GRG, presence of any amount of glass-fibre in the gypsum board, giving it reinforcement, shall make it eligible to be classified as GRG.

2.7 In the alternative, even if it is argued that Serial No. 180C to Schedule III of Notification No. 1/2017 – C.T. (Rate) & Sr. No. 92 to Schedule II of the same notification are competing

entries, then the appropriate classification of the above-mentioned products shall be determined as per the General Rules of Interpretation and as per Rule 3(a) of the General Rules of Interpretation, the heading which provides the most specific description and provides for the essential characteristic of the product shall be preferred to headings providing a more general description. Hence, Sr. No. 92 to Schedule II of Notification No. 1/2017 – C.T. (Rate) provides the most specific description for gypsum boards reinforced with glass-fiber and hence the impugned products qualify for concessional rate of tax under the said entry of the notification.

2.8 Citing case laws, applicant has submitted that where two interpretations are possible, the interpretation beneficial to the assessee should be adopted and since the entry "*Glass-fibre reinforced gypsum board*", which attracts 12% rate of tax, is more beneficial to the applicant than the entry "*Faced or reinforced with paper or paperboard only*" which attracts 18% rate of tax, the applicant can classify its product under the former entry.

2.9 Subject product in commercial/market parlance is identified as GRG board irrespective of the quantity of glass-fibre present in the product. Reference in this regard is made to the decision of the Hon'ble Supreme Court in the case of CCEZ, New Delhi vs Connaught Plaza Restaurant (P) Ltd reported at 2012 (286) ELT 321 (SC), and applying the principles of commercial/market parlance, it is submitted that the proposed product in question is rightly classifiable under Serial No. 92 to Schedule II of the Notification No. 1/2017 – C.T. (Rate) as 'Glass-fibre Reinforced Gypsum Board' even though such resultant product does not conform with IS standards as prescribed by the government for a GRG board.

2.10 Applicant vide letter dated 06.11.2019 submitted that proposed product will fall under Heading No.68.09 of the Customs Tariff Act and similar products in the market are cleared at 12% GST claiming benefit of the above said notification.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER

3.1 The proposed product is not yet manufactured and hence in absence of any sample of said product being tested from accredited laboratory to determine exact nature of the product, its classification cannot be arrived, at this stage. As such no comment can be offered on the said matter.

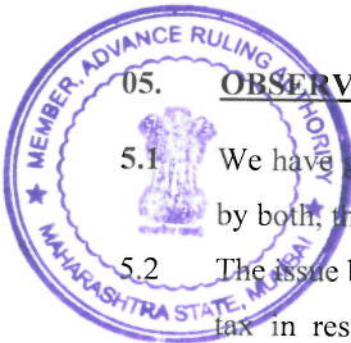
- 3.4 As regards to the applicability of concessional rate of tax under Notification No. 01/2017-C.T. (Rate) dated 28.06.2017, in relation to supply of "Glass-fiber Reinforced Gypsum Board", it is submitted that, once the product is manufactured, the same will be got tested from accredited laboratory to determine exact nature of the product so that proper conclusion can be arrived at.

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 10.12.2019. Shri Nirav Karia, and Shri Vatsal Bhansali, both Advocates, appeared, and requested for admission of their application. Jurisdictional Officer Shri Vijay Lande, Superintendent, Division-V, Range-V, Mumbai East, CGST also appeared.
- 4.2 The application was admitted and called for final hearing on 11.02.2019. Shri Nirav Karia and Shri Vatsal Bhansali, both Advocates, appeared along with, Ms. Ida Gonsalwis and Shri Prashant Patil, both, Authorized Representatives and made oral and written submissions. Jurisdictional Officer Shri Vijay Lande, Superintendent, Division-V, Range-V, Mumbai East, CGST also appeared and made submissions. We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.
- 5.2 The issue before us pertains to applicability of Notification for ascertaining correct rate of tax in respect of Glass Reinforced Gypsum Board (GRG) which is proposed to be manufactured by the applicant. On one hand the Applicant has submitted that they are currently manufacturing both paper reinforced and glass reinforced gypsum boards falling under Chapter 68 of the CTA, 1975 and on the other hand they have submitted that manufacture of Glass Reinforced Gypsum Board is a proposed manufacturing activity to be undertaken by the applicant. Therefore no samples have been submitted.
- 5.3 We observe that the applicant has made technical submissions with respect to contents of the impugned product. They are intending to manufacture the said goods and are seeking classification of the same but have not submitted any samples of the impugned product.



5.4 Further, Section 97 (2) (a) of the CGST Act, states that the question on which the advance ruling is sought under the CGST Act, shall be in respect of classification of any goods or services or both. Thus, questions may be raised by an applicant in respect of classification of goods, supply of which is being undertaken or proposed to be undertaken. To classify the impugned product, in light of the submissions made by the applicant, it is imperative that the samples of the same are produced before this authority in order to enable us to take a balanced view in the matter especially since the applicant has made technical submissions as well regarding the contents of the impugned product.

5.4.1 The applicant has not submitted any samples of the products, classification of which is sought by them. In the absence of non-submissions of samples of the impugned product we are not able to arrive at any conclusions with respect to the questions being raised by them. We agree with the submissions made by the jurisdictional officer that the proposed product is not yet manufactured and hence in absence of any sample of said product being tested from accredited laboratory to determine exact nature of the product, its classification cannot be arrived, at this stage.

5.5 As per Section 95 of the CGST Act, (a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5.6 Hence for the purpose of applying for advance ruling, one must raise questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken. Thus, the said section says that, in the case of goods, it is the supply being undertaken or proposed to be undertaken. It is not the case that the manufacture of goods may be undertaken or proposed to be undertaken. Thus, goods in respect of which supply being undertaken or proposed to be undertaken, should be existing. In the subject case applicant has submitted that they are proposing to manufacture the impugned product, which are presently not in existence. Thus their application is also barred under Section 95 of the CGST Act.

5.7 In view of the above we find that the subject application is non-maintainable and is therefore liable to be rejected.

06. In view of the above, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 51/2019-20/B-

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Mumbai, dt.

17/03/2020

For reasons as discussed in the body of the order, the subject application for advance ruling made by the applicant is rejected under the provisions of sub-section 2 of Section 98 of the CGST Act, 2017.



—sd—
A. A. CHAHURE
(MEMBER)

—sd—
P VINITHA SEKHAR
(MEMBER)

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 5th floor, Air India building, Nariman Point, Mumbai – 400021.