

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING(APPEAL) NO. GUJ/GAAR/APPEAL/2024/06
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/01)

Date : 30.12.2024

Name and address of the appellant	:	M/s. Aorom Herbotech Sr. No. 654/1 Paiki, Plot No. 17, Nr Ladbinala, Deesa Highway, Palanpur, Banaskantha – 385 001
GSTIN of the appellant	:	24ABSFA6807C1ZJ
Advance Ruling No. and Date	:	GUJ/GAAR/R/58/2021 dated 29.10.2021.
Jurisdiction Office	:	Center Commissionerate –Ahmedabad Division Palanpur Range - Palanpur-I
Date of appeal	:	11.03.2022
Date of Personal Hearing	:	15.10.2024
Present for the appellant	:	Shri Amish Khandhar, CA Ms. Dhvani Shah Ms. Amrin Alwani, CA Ms. Bhagyashree Dave, CA

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘CGST Act, 2017’ and the ‘GGST Act, 2017’) are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Aorom Herbotech, (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/58/2021 dated 29.10.2021.

3. Briefly, the facts are enumerated below for ease of reference:

- the appellant is engaged in the supply of ‘*Aorom Herbal Smokes*’ which according to them is classifiable under 30049011;



- the ingredients used in manufacturing the goods are tendu leaves, nutmeg, fennel powder, liquid glucose, propylene glycol, sorbital, menthol, baking soda, flavoring additive [clove, paan, mint, chocolate, vanilla, etc], empty paper tubes & filter;
- consequent to manufacturing, the processed material is injected in the empty paper tube with filter;
- that the final packing is of 10 herbal smokes/20 herbal smokes;
- that herbal smoking is an ancient practice to cure many diseases from root mentioned in Ayurveda known as *dhumapana*, a common practice in ayurvedic treatment/therapy such as panch-karma.

4. In view of the foregoing facts, the appellant had sought Advance Ruling on the below mentioned questions viz

1. *Determination of the liability to pay Tax on Sales of Aorom Herbal Smokes - (regular flavour) as per Tax Invoice No.: AH/GST/80 dt. 07/06/2021 made to : M/s. Sonde Exim Pvt. Ltd., Lohegon Maharashtra, regarding. - IGST.*

2. *Determination of the liability to pay Tax on Sales of Aorom Herbal Smokes (regular flavour) as per Tax Invoice enclosed herewith of Gujarat Sales regarding CGST and SGST.*

5. Consequent to hearing Aorom Herbotech, the Gujarat Authority for Advance Ruling [GAAR], recorded the following findings viz

- that in terms of section note 1(b) of chapter 30, the chapter does not cover, preparations such as tablets, chewing gum or patches [transdermal systems] intended to assist smokers to stop smoking;
- the appellant has not made a case that the subject goods are ayurvedic medicines manufactured in accordance with the Authoritative Ayurvedic books as specified in the first schedule to the Drugs and Cosmetic Act, 1940;
- that in common parlance, goods are bought as cigarettes without tobacco/nicotine & not as an ayurvedic medicament; that applicant's proposed HSN 3004, is not applicable to the goods;
- that explanatory notes to chapter 24 specifies that it covers not only unmanufactured and manufactured tobacco but also manufactured tobacco substitutes, which do not contain tobacco;
- that cigarettes of tobacco substitutes are covered at Sr. No. 14 of Schedule IV to notification No. 1/2017-CT (R) & is leviable to GST @ 28% & CGST Compensation cess of Rs 4,006/- per thousand.

6. The GAAR, vide the impugned ruling dated 22.3.2022, held as follows:



RULING

The said goods are leviable to:

1. 28% IGST on inter state supply along with Compensation Cess of Rs. 4006 per thousand
2. 14% CGST + 14% SGST on intra state supply along with Compensation Cess of Rs. 4006 per thousand

7. Aggrieved by the aforesaid advance ruling, the appellant is before us, raising the following contentions, viz

- substituted goods should have similar characteristic which is replaceable one and serve the same purpose;
- Herbal smoke cannot be considered as substitutes to cigarettes since;
 - tobacco/nicotine is missing in herbal smoke;
 - usage of both the products are totally different & they are not identical;
 - tobacco cigarettes are not replaceable with herbal smokes;
 - attributes of herbal smoke do not match with listed goods that are globally considered as substitutes of tobacco cigarettes.
- chapter note of chapter 24 clearly states that it does not cover medicinal cigarettes;
- that cigarettes having medicinal property shall be classified as medicinal cigarettes;
- that the product herbal smokes are not intended to assist the smokers to stop smoking;
- that *wef* 1.1.2022, chapter note of chapter 30 as amended states that products, such as tablets, chewing gum or patches [transdermal systems], containing nicotine & intended to assist tobacco use cessation [heading 2404];
- that the products containing nicotine can only be considered as intended to assist tobacco use cessation & is covered under chapter heading 2404;
- that product involves inhaling herbal smoke; it helps cure cough, cold, bronchitis, asthma; it also helps increase kapha and vata for treating or preventing the diseases;
- that dhumapana literally means smoking medicinal drugs; that dhumapana in ayurveda is recognized as approved method by Ministry of Ayush as well as National Institute of Ayurveda;
- that the product 'herbal smoke' is manufactured in accordance with authoritative ayurvedic books;
- that the appeal is not hit by limitation; in case where limitation expired during the period 15.3.2020 till 14.3.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.3.2022; that the appeal is submitted within extended time period.

8. Personal hearing in the matter was held on 15.10.2024, wherein Shri Amish Khandhar, CA, Ms. Dhvani Shah, Ms. Amrin Alwani, CA, Ms. Bhagyashree Dave, CA, appeared and reiterated the submissions made in the



appeal. During the course of personal hearing the authorized representative submitted a case summary, reiterating the averments already raised, as listed out *supra*. They also submitted a certificate of analysis of their product issued by M/s. Accupret Research Labs P Ltd, Ahmedabad.

FINDINGS

9. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the Advance Ruling given by the GAAR and other materials available on record.

10. Before advertng on to the main issue, we note that the appellant has filed the appeal against the impugned ruling dated 29.10.2021 on 12.3.2022. section 100 of the CGST Act, 2017, which deals with appeal to appellate authority states as under: [relevant extracts]

Section 100 Appeal to Appellate Authority. -

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

In terms of section 100, *ibid*, every appeal shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicant. The applicant in Form GST ARA -02, in Sr. No. 2 has informed that the date of communication of the impugned ruling is 29.10.2021. Therefore, the appeal should have been filed by 28.11.2021. The proviso to section 100, *ibid*, gives the Appellate Authority power to grant condonation for a further period of 30 days in case of sufficient cause.

11. The appellant has however relied upon the order dated 10.1.2022 of the Hon'ble Apex Court in the Suo Moto Writ Petition (C) No. 3/2020, wherein the Hon'ble Court held as under:

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the MA No. 21 of 2022 with the following directions:

1. The order dated 23.03.2020 is restored and in continuation of the subsequent



orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

In view of the foregoing, we find that the appeal has been filed within the period of limitation.

12. The primary issue to be decided is the rate of GST to be paid by appellant on sales of Aorom Herbal Smokes. While determining the rate of GST, the impugned ruling classified the appellant's product under IISN 24029010. It is the appellant's claim that their product should be classified under IISN 3004.

13. Before recording our findings, we would like to reproduce the relevant portions of the Customs Tariff Act and the Explanatory notes of the IISN, in respect of the rival chapters/entries, viz

Chapter Notes of Customs Tariff Act, 1975

[1]

SECTION-IV

CHAPTER-24

CHAPTER 24

Tobacco and manufactured tobacco substitutes; products, whether or not containing nicotine, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body

Note :

- (1) This Chapter does not cover medicinal cigarettes of Chapter 30.
- (2) Any products classifiable in heading 2404 and any other heading of the Chapter are to be classified in heading 2404.
- (3) For the purposes of heading 2404, the expression "inhalation without combustion" means inhalation through heated delivery or other means, without combustion.



[II]

SECTION-VI

CHAPTER-30

CHAPTER 30

Pharmaceutical products

NOTES:

1. This Chapter does not cover:

- (a) foods or beverages (such as dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters), other than nutritional preparations for intravenous administration (Section IV);
- (b) products, such as tablets, chewing gum or patches (transdermal systems) containing nicotine or intended to assist tobacco use cessation (heading 2404);
- (c) plasters specially calcined or finely ground for use in dentistry (heading 2520);
- (d) aqueous distillates or aqueous solutions of essential oil, suitable for medicinal uses (heading 3301);
- (e) preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties;
- (f) soap or other products of heading 3401 containing added medicaments;
- (g) preparations with a basis of plaster for use in dentistry (heading 3407);
- (h) blood albumin not prepared for therapeutic or prophylactic uses (heading 3502); or
- (i) diagnostic reagents of heading 3822.

[III]

Chapter 24

Tobacco and manufactured tobacco substitutes

Note.

1. This Chapter does not cover medicinal cigarettes (Chapter 30).

GENERAL

Tobacco is obtained from various cultivated varieties of the genus *Nicotiana* of the *Solanaceae* family. The size and shape of the leaves differ from one variety to another.

The harvesting method and curing process depend on the variety (type) of tobacco. The plant may be cut whole, at average maturity (stalk cutting), or the leaves may be picked separately, according to their state of maturity (priming). Thus, tobacco may be cured either as whole plants (on the stalk) or as separate leaves.

The various methods of curing are sun curing (in the open air), air curing (in closed sheds with free circulation of air), flue curing (in hot air flues), or fire curing (with open fires).

Before packing for shipment, the dried leaves are treated in order to ensure their preservation. This may be done by controlled natural fermentation (Java, Sumatra, Havana, Brazil, Orient, etc.) or by artificial re-drying. This treatment, and the curing, affect the flavour and aroma of tobacco, which undergoes spontaneous ageing after packing.

Tobacco so treated is packed in bundles, bales (of various shapes), in hogsheads or in crates. When so packed, the leaves are either aligned (Orient) or tied in hands (several leaves tied together with a band or with another tobacco leaf), or simply left as loose leaves. They are always tightly compressed in order to ensure preservation.

In some cases, in addition to (or instead of) fermentation, flavouring or moistening substances are added (casing) in order to improve the aroma or keeping qualities.

This Chapter covers not only unmanufactured and manufactured tobacco but also manufactured tobacco substitutes which do not contain tobacco.

14. The appellant has submitted brochure in respect of their products. The relevant extracts, is reproduced below for ease of reference.



Why Smoke AOROM?



Our Flavours



Paan | Chocolate | Clove | Regular

0% Nicotine | 0% Tobacco | 100% Freshness

For More Information Or For Placing Order, Kindly Reach Out To Us On Email: info@aorom.in | Phone: +91-8798024020

15. The appellant has mentioned the list of ingredients used, the manufacturing process as under, viz

- The appellant is start-up and is engaged in manufacturing of herbal smoke, which is free from nicotine and tobacco. List of ingredients used, and manufacturing process thereof is explained as under:

List of Ingredients used to manufacture herbal smoke:

Tendu leaves, Nutmeg, Fennel powder, Propylene glycol, Menthol, Flavoring additive (Clove, paan, mint, chocolate, Clove etc.), Empty paper tubes with filter. (Neither Tobacco nor Nicotine is used)

Manufacturing process:

- **Leaves washing:**
Tendu Leaves are first washed in a vacuum washer at applicant's facility, and they are kept in the water for overnight before processing further.
- **Leaves Cutting:**
Leaves that are kept in water overnight are drained off water and then cut in the fine size of: 0.8 mm to 1.0 mm.
- **Leaves Drying:**
These cut-rags are then dried in a natural setting. The drying takes about 2 – 3 hours.
- **Base flavoring:**
For each kilogram of dried tendu leaves, a mixture of 4 liters of water, 200 grams of nutmeg powder, 200 grams of fennel powder and 8 grams of baking soda is heated on a medium flame on a stove for half an hour. After filtering this mixture, the leaves are dampened in it for about half an hour.
- **Roasting:**
After half an hour, these leaves are squeezed off the mixture and then put into the roasting machine where they are given even heat till they attain 0% moisture.



- **Flavoring:**

The roasted leaves are then put into the mixture where for each kilogram; 50 grams of PG, 200 grams of liquid (1000 g water: 550 g Liquid Glucose), 1 g menthol, 3 g Sorbitol and 5 g of flavoring additive is added and mixed for about half an hour. After this process the material is ready to inject / ready for herbal smokes making.

- **Injection:**

The processed material is then injected in the empty paper tube with filter. This is how herbal smoke is made. Then, these herbal smokes are packed into the final packing of 10 herbal smokes / 20 herbal smokes a pack, ready to be sold.

The herbal smoke is totally different from regular cigarettes which is available in the market. The major difference between herbal smoke and regular cigarettes is that the regular cigarettes contain tobacco or nicotine and are regulated by THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003. Regular Cigarettes are harmful to health, while Herbal Smokes manufactured by the appellant are used as medicines for ailing various respiratory disorders.

16. The first averment raised by the appellant is that their product viz Aorom Herbal Smokes, is not a substitute of cigarettes. GAAR had classified the goods under HSN 2402 while determining the GST rate. We would like to reproduce the HSN explanatory notes to the said heading, for ease of understanding, viz

24.02 Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

2402.10 - Cigars, cheroots and cigarillos, containing tobacco

2402.20 - Cigarettes containing tobacco

2402.90 - Other

This heading is restricted to cigars (wrapped or not), cheroots, cigarillos and cigarettes, made of tobacco or of tobacco substitutes. Other smoking tobacco, whether or not containing tobacco substitutes in any proportion, is excluded (heading 24.03).

This heading covers :

(1) **Cigars, cheroots and cigarillos, containing tobacco.**

Such products may be made wholly of tobacco or of mixtures of tobacco and tobacco substitutes, regardless of the proportions of tobacco and tobacco substitutes present in the mixture.

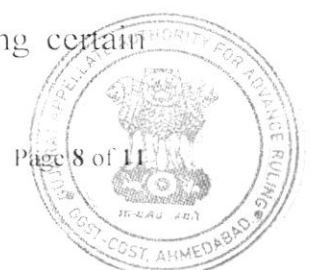
(2) **Cigarettes containing tobacco.**

Apart from cigarettes containing only tobacco, this heading also includes those made from mixtures of tobacco and tobacco substitutes, regardless of the proportions of tobacco and tobacco substitutes in the mixture.

(3) **Cigars, cheroots, cigarillos and cigarettes of tobacco substitutes, for example, "cigarettes" ("smokes") made from specially processed leaves of a variety of lettuce, containing neither tobacco nor nicotine.**

The heading does not cover medicinal cigarettes (Chapter 30). However, cigarettes containing certain types of products specifically formulated to discourage the habit of smoking but which do not possess medicinal properties remain classified in this heading.

What is evident from the above is that the heading excludes medicinal cigarettes (chapter 30). It is further stated that cigarettes containing certain



type of products specifically formulated to discourage the habit of smoking but which do not possess medicinal properties remain classified in his heading.

17. The first question that arises based on the above, is whether the product is a medicinal cigarettes? The appellant's claim is that herbal smoking is an ancient practice to cure many diseases from root mentioned in Ayurveda and that this practice specifically under a procedure of Dhoompana. We find that in para 10.2 of the impugned ruling, GAAR reproduced section 3(a) of the Drugs and Cosmetics Act, 1940, which states that Ayurvedic, Siddha or Unnai Drug, includes all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, and **manufactured exclusively in accordance with the formulae described in the authoritative books of Ayurved, Siddha and Unani Tibb systems of medicine, specified in the First Schedule.** GAAR, further goes on record that the appellant was not in a position to substantiate/pin point the authoritative books of Ayurved, according to which the subject goods have been manufactured. On being specifically asked during the course of personal hearing, the appellant failed to inform the name of the authoritative book of Ayurved. Further, during the course of personal hearing it was also informed that they do not hold any license permitting them to manufacture the said goods. This being the fact, leads us to a conclusion the appellant has failed in making out a case of their product falling under the category of 'medicinal cigarettes'. This view is further substantiated from the letter dated 1.1.2021, addressed to The Director, Ayush Mantralay, New Delhi, wherein the appellant in paragraph 2 states as under:

"We have already acquired machinery & some of it is in transit. We invested an approx. amount of Rs. 50 lakh. We met the Joint Commissioner, FDCA (Ayurvedic) for information regarding Ayurvedic license. But they have refused to grant us Ayurvedic license stating our product does not fall under any category in Ayurvedic books."

[emphasis supplied]

18. The second question that arises is whether the cigarettes manufactured by the appellant, containing certain types of products are specifically formulated to discourage the habit of smoking. In the brochure submitted by the appellant during the course of personal hearing, under the question "**Who are we**", it *inter alia* states as follows : [relevant extracts]



"After doing intensive research on the smoking pattern & behaviours of chain smokers, we come to the conclusion that its not only the nicotine that makes avoiding smoking difficult, rather it is the sensation of the smoking which at times forces the newly quitters to start smoking again.

Our goal is to provide a solution to those who just want to smoke because it will look cool & to those addicts who really want to quit but are a victim of the sensation and the habit."

This clearly shows that the product of the appellant is a substitute of cigarette and is also manufactured and marketed with the said aim in mind. Therefore, the averment of the appellant in para 13 to the effect that *"It is submitted that such understanding is factually incorrect as the herbal smokes manufactured by the appellant are not intended to assist the smokers to stop smoking"*, belies fact.

19. In view of the foregoing, we concur with the finding of GAAR that the product is classifiable under HSN 24029010 more so since it is not a medicinal cigarette and secondly since the appellant himself, in his brochure claims that the product in question, is a substitute to cigarette and is also intended to addicts who really want to quit the smoking habit.

20. The next averment of the appellant is that the chapter note of chapter 24, reproduced *supra*, states that it does not cover medicinal cigarettes; that cigarettes having medicinal property shall be classified as medicinal cigarettes. We have already held in paragraph 17, that the appellant has not succeeded in establishing that their product is medicinal cigarettes. This being the case, the question of relying on the note of chapter 24, is not tenable.

21. The appellant's next averment is that *wef* 1.1.2022, chapter note 1(b) of chapter 30, as amended, states that the chapter does not cover products, such as tablets, chewing gum or patches [transdermal systems], containing nicotine & intended to assist tobacco use cessation [heading 2404]. The averment put forth is that since their product does not contain nicotine, it should fall within the ambit of chapter 30 and not chapter 24. While the amended chapter note states that it does not contain products *viz* tablets, chewing gum or patches, containing nicotine, intended to assist tobacco use cessation, the fact is that the product of the appellant, is neither of the above. This does not mean that for a tobacco substitute to fall within the ambit of chapter 24 it should necessarily contain, nicotine. That, we believe, is not a

correct reading of the chapter note in question. Relying on the IISN notes of 24.02, we have held that the product in question would fall within its ambit. Nothing, has been produced, as is already mentioned *supra*, to substantiate the fact that it would fall under chapter 30, where the appellant intends to classify his product.

22. Lastly, we find that the appellant has raised an averment that product involves inhaling herbal smoke; it helps cure cough, cold, bronchitis, asthma; it also helps increase kapha and vata for treating or preventing the diseases; that dhumapana literally means smoking medicinal drugs; that dhumapana in ayurveda is recognized as approved method by Ministry of Ayush as well as National Institute of Ayurveda. However, the appellant in the additional submission, vide email dated 18.10.2024 to the Registry, has stated as follows:

Registration with Aayush and MSME:

- o The Appellant submitted an email with Aayush Department for requirement of registration of products manufactured whereas no further communication on the email is received till date.
- o Alongside, the email was submission was done with Industrial Commissionerate to inquire on all industrial licenses required by the Appellant for listed products whereby a letter was received from the Office of MSME Commissionerate stating the Appellant is required to obtain registration from UDYAM and no other certification / licensing is required to be obtained.
- o Considering the guidelines from MSME Commissionerate, an application was made with Ministry of Micro Small and Medium Enterprise and the Appellant was awarded with UDYAM Registration No. "UDYAM-GJ-04-0003206" with classification of activity under "Manufacture of pharmaceuticals, medicinal chemical and botanical products"


What this re-confirms is what was stated during the course of personal hearing -that the appellant does not hold any license for manufacture of Ayurvedic medicine from any regulatory body, permitting them to manufacture the said goods, which as per their claim is a medicine.

23. In view of the above findings, we reject the appeal filed by appellant M/s M/s. Aorom Herbotech, against the Advance Ruling No. GUJ/GAAR/R/58/2021 dated 29.10.2021 of the Gujarat Authority for Advance Ruling.


(Rajeev Topno)
Member (SGST)

Place: Ahmedabad
Date: 30.12.2024




(B V Siva Naga Kumari)
Member (CGST)