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GST: CLASSIFICATION AMBIGUITY FOR PARTS OF MEDICAL DEVICES

AUTHOR :SHWETA JAIN

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The issues in GST do not seem to be paving way for solutions in near future. This article is regarding highlighting the problem in the latest circular issued by the CBIC vide **Circular No. 113/32/2019-GST dated 11.10.2019** in respect of the classification of parts of medical equipments. The issue that has been dealt in point number 9 of the circular relates to applicability of GST on the parts and accessories suitable for use solely or principally with a medical device. Medical devices are majorly covered under HSN 9018. Till now, the parts or accessories of medical devices were classified under HSN 9033 which reads as *"Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90"*.

In this circular, the issue was raised on account of parts and accessories being classified under HSN 9033 which attracts 18% GST whereas the main medical item gets classified under HSN 9018 or 9019 or 9021 or 9022 which attracts 12% GST rate. CBIC relies on chapter note 2(b) of Chapter 90 which reads as under:

"2 (b): other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instruments or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;"

Accordingly, the circular says that the parts of ophthalmic device suitable for use or principally with an ophthalmic device should be classified as the ophthalmic device only. Similarly, all the parts and accessories of medical equipments classified under 9018 should be classified with the main item under their respective heading and accordingly attract 12% GST.

Thus, in essence, the Circular is changing the classification from HSN 9033 to the respective medical equipment only for the parts and accessories of those medical equipments.

There is no corresponding change in Customs law, neither any notification in customs law or GST law. To understand that how the Circular itself is flawed and that how it will have very big nuances for the industry, we need to understand the basic scheme of classification and then the problems that this Circular will pose and what the solution could be.

HSN is a multi-purpose international product nomenclature developed by World Customs Organizations (WCO). More than 200 countries of the world adopt this system. India has developed 8 digit level classification. HSN is amended periodically in a cycle of 4/6 years, taking note of the trade flow, technological advancements etc. Amendments for 2012 have been approved by WCO in 2009 came into force from 1-1-2012. Member countries including India are under obligation to amend the Tariff Schedules in alignment with the HSN. Thus, classification cannot be simply changed on own whims and fancies just by issuing a circular.

Classification of parts is subject to notes in Sections and Chapters. The Circular merely refers to one section note and draws the conclusion. The complete chapter note 2 reads as under:

"subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules:

> *(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84,85 or 91 (other than heading 8487,8548 or 9033) are in all cases to be classified in their respective headings;*
>
> *(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;*
>
> *(c) All other parts and accessories are to be classified in heading 9033."*

Thus, in terms of the above notes, first it has to be seen if the parts can be classified specifically as goods under chapter 84 or 85 or 91. If not specifically, then it has to be classified with the machines or apparatus. If still it cannot be clarified, then all other parts or accessories has to be classified under 9033. Merely 2(b) cannot stand in isolation. It is to be noted that note 2(b) mentions that such parts and accessories to be classified **with the** main machines etc. It does not say that it has to be classified **as the** main machine, instruments or apparatus.

The circular simply takes note 2(b) and says that parts and accessories has to be classified as the main machine, instrument or apparatus itself by giving the example of parts of ophthalmic device. It is to be noted that in HS tariff, in many of the classifications in chapter 90, parts and accessories are separately given along with the main

machine, instrument or apparatus itself. It is in all those cases that note 2(b) would be applicable where 2(a) cannot be applied. For example, the camera is classifiable under HSN 8525. The cameras could be digital cameras or video camera recorders even meant for endoscope. Since the camera is specifically given under 8525, by virtue of note 2(a), it will get classified under chapter 8525 only despite note 2(b) and 2(c). Similarly, if there is a product say trigger of bone drill (bone drill is classifiable under HSN 90189021) which is not specifically classifiable under any HSN of chapter 84, 85 or 91, then one has to see note 2(b) and then note 2(c) respectively.

It is interesting to note that HSN 9018, 9019, 9021, 9022 do not contain any sub heading by the name parts and accessories and hence this circular was issued because note 2(b) could not be made applicable and accordingly the parts and accessories were classified under 9033. Classifying under HSN9033 was in fact the correct practice according to the rules of interpretation.

But now this Circular merely refers to note 2(b) and says that parts and accessories to be not classified under 9033 but under the main equipment only. It has completely overlooked the wordings of the note 2(b) which says that parts to be classified **with the** main machine and not **as the** main machine. One cannot classify the parts with the main machine if there is no heading of parts with the main machine which was the case of the disputed HSNs. If the interpretation of the circular is adopted, then note 2(c) becomes redundant because for 9018, 9019, 9021 and 9022, none of the products can be classified under HSN 9033. Furthermore, the term, say, “Laproscope” cannot include the parts and accessories of laproscope also since it is not mentioned.

So the outcome of the circular which according to the government is that the parts should also be classified under 9018 and accordingly attract 12% GST rate. This is in essence actually changing the classification of the products by way of issuing the circular. India being a signatory, the HSN cannot simply be changed by merely issuance of circular. It has to go through the due process of parliamentary amendments and WCO amendments.

In worst case scenario, even if abiding by the circular, the assesees classify the parts under HSN 9018 and pay GST at 12%, this is bound to have bigger consequence which is not legally correct. The importers of parts of medical machines, instruments and apparatus would be paying customs duties under HSN 9033 (since there is no change in customs tariff or import HSN) but for the sale in the country, they would be using the HSN 9018. This is completely not the intent. One item which is imported for the purposes of resale when imported attracts one HSN and would be sold using different HSN.

Thus, this circular as far as point no.9 is concerned, completely not having the authority of law as it cannot change the classification by this method. Secondly, even if assumed that this is there, the repercussions are severe since one product can have only one classification, but here the classification for import and sale will be different. If the relief was required to be given by way of lowering the **GST rate** on parts of medical devices, then the government should have merely made a change in GST tariff in 9033 stating that parts of devices under classification 9018, 9019, 9021 and 9022 will attract 12% and other parts and accessories will attract 18%. There was no need to get into the classification issue. This should have been the solution, but again, instead of providing relief, they create more problems. On a lighter note, the clarifications which are brought by way of circular create more problem rather than clarifying.

The author can be contacted at shweta@rsalegalsolutions.com