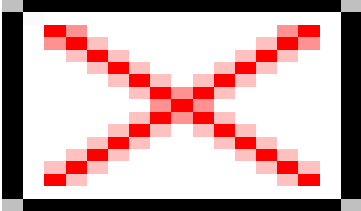


Henna powder - classification under GST regime

OCTOBER 20, 2020

By Narendra Singhvi, Joint Partner & Priyamvada Joshi, Consultant, Lakshmikumaran & Sridharan, Jaipur



THE

controversy around classification of Henna products has been doing the rounds for quite some time. In the context of Henna powder, the issue of its classification under Chapter 14 as a 'vegetable product' or under Chapter 33 as a 'Preparation for use on hair' prevailed during the pre-GST regime. Though settled by various decisions in the pre-GST regime, the controversy has gained a fresh lease of life with the department raising the same dispute in the GST regime now. Amendments in the rate notifications and a recent ruling of the Authority for Advance Ruling, Rajasthan have added to the pain of the assesseees.

An application for advance ruling was filed before the Authority for Advance Ruling, Rajasthan in ***M/s. Sunil Kumar Gehlot, - 2020-TIOL-120-AAR-GST***

, seeking the ruling on classification of Henna powder for purposes of GST. The Applicant was of the view that it is covered under Heading 1404 attracting GST @ 5%, based on the following grounds:

- a) While filing application for registration under GST laws, the list of goods covered under Chapter 14 included Henna powder.
- b) The fact of applicable rate of GST on Henna powder as 5% is clear from the inception of GST, as confirmed vide Agenda Item No. 10 of the issues recommended by the Fitment Committee for the consideration of GST Council.

In its comments, the jurisdictional officer commented that ***artificial henna and henna products***, being cosmetic items, are classifiable under Heading 3305 and attract GST @ 18%.

In this background, the Authority ruled that Henna powder is classifiable under Entry No. 59 of Schedule III of the rate notification as a 'Preparation for use on the hair' falling under Chapter 33 and attracts GST @ 18% (9% CGST + 9% SGST), on basis of the following findings:

- a) The tariff items 1404 1011 to 1404 1090, which specifically referred to Henna powder, of the Customs Tariff Act, 1975 (CTA) have been omitted therefrom vide the Finance Act, 2006 and thus, Henna powder cannot be classified under Chapter 14.
- b) Henna powder has a natural property of dye/tanning and is generally used as a hair dye, thus covered as a 'Preparation for use on hair'.

Though technically in terms of Section 103(1) of the CGST [Act, 2017](#)

, the ruling is binding only on the Applicant and his jurisdictional officer, the ruling is being made use of by the field formations to entertain the view that Henna powder is liable to GST @ 18%.

The classification of any product has to be based on the characteristics of the product under question. In the context of Henna powder, the issue of classification had already come for consideration of courts in the pre-GST regime, where characteristics of the product and the form, in which it is sold, were considered for resolving the disputes. Henna powder has variety of forms and uses, and the same must form basis of its classification. This aspect seems to have been ignored in the aforesaid application, comments from the jurisdictional officer as well as the

ruling.

The uncertainty created on classification of Henna powder in the GST regime is, thus, far from being answered and is likely to witness litigation.

[The views expressed are strictly personal.]

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)