

In re K. Suresh (GST AAR Tamilnadu)

Advance Ruling is required as to classification of wet wipes and rate of tax on the sales (supply) of the same

1. The product 'Wet Wipes' supplied by the applicant is classifiable under 3307 90 90 of the First Schedule to the Customs Tariff Act, 1975
2. The Rate of tax applicable is 14% CGST and 14% SGST as per SI No 29 of Schedule IV of **Notification no. 01/2017-C.T. (Rate) dated 28.06.2017** and as per SI No 29 of Schedule IV of Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017, respectively upto 14.11.2017. From 15.11.2017, the applicable tax rate is 9% CGST and 9% SGST as per SI No 60A of Schedule III of **Notification No. 01/2017-C.T.(Rate) dated 28.06.2017** amended and as per SI No 60A of Schedule III of Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended, respectively.

FULL TEXT OF ORDER OF AUTHORITY OF ADVANCE RULING, TAMILNADU

Note: Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The Applicant Mr. K. Suresh, No.45/5, P.A.Koil Street, Arumbakkam, Chennai – 600 106 (hereinafter called the Applicant) is not registered under GST. The applicant has stated that he intends to manufacture "Wet Wipes" with 2% Chlorhexidine Gluconate and supply it to the dealers. They have sought Advance Ruling on the following question:

"Applicable rate of tax on the sales (supply) of " Wet Wipes""

The Applicant has submitted the copy of application in Form GST ARA – 01 and also copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of **CGST Rules 2017** and SGST Rules 2017.

2. The applicant has stated that the "Wet Wipes", which they intend to manufacture is made up of Non-Woven Cellulose material. It is an Anti-Bacterial Product which is used as a Sanitary towel to wipe the private parts of Male 86 Female who are bed ridden or old aged people and that this would prolong the occurrence of Bed-sore. They have further stated that this product is different from general wet wipes which are available in all Departmental Stores. This product is used only for specific purpose i.e., only for bed ridden or old aged people and sold in Medical Shop only.; that they came to understand that the dealers who are dealing in "Wet Wipes" are charging 6% CGST + 6%SGST

under Entry 235(HSN Code 9619) of Schedule II of the **Central Goods and Services ACT, 2017**

3. The applicant was personally heard on the matter on 09.04.2019. The Authorised representative of the applicant appeared before the authority and stated that the product, which they will start trading in, is used as a medicated wipes which acts to prevent infections, treating infections and they are sold only under the prescription, the product appears to be classifiable under CTH 3004. They undertook to submit for each product, samples, manufacturing process, details of all raw materials used within 2 weeks time. They furnished a write-up on the product.

3.1 In the said write-up, the applicant has stated that

> The biggest challenge the Health Care Industry faces today is to control the infection in the hospital. One of the major infections is from MRSA (Methycillin resistant Staphylococcus Aureus) and other Hospital acquired infections. The medicated wipes are used in the hospital for patient health care.

> The medicated wipes are made of viscous material impregnated with medicaments such as Chlorhexidine Gluconate 2%, Allantoin 0.5% and Menthol 0.01%. Chlorhexidine Gluconate 2% being the main ingredient of the product has the antiseptic and antibacterial property. Antiseptic and antibacterial property pertains to the reduction and prevention (Prophylaxis) of skin infections and cross infections in patients.

> Allantoin and glycerin is used as an agent to prevent and treat dry, rough, scaly and itchy skin and minor skin irritation (eg; Diaper rashes, Radiation therapy related skin burns etc.) Since Allantoin and glycerin used in the treatment of skin rashes related issues they are therapeutic agents. (Therapeutic agents – relating to treating, remediating or curing a disorder or disease).

> Menthol is used to give a soothing and cooling effect to the skin, Menthol helps in giving the patient a refreshing feel which helps in the betterment of the patient aiding their faster recovery. Hence considering the ingredients and their usage the product helps the patient prophylactically and therapeutically;

> This product is sold only through medical shops/pharmacies under doctor's prescription

> According to CTH 3004 – Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale, including Ayurvedic, Unani, Homoeopathy 86 Siddha or Bio-chemic systems medicaments put up for retail sale.

3.2. The applicant vide their letter dated 25.04.2019 requested for Orders and submitted the following documents (received on 29.04.2019)

i. original article published in " The New England Journal of Medicine" about the effect on the usage of the applicant's product.

ii. Details of raw materials used and the composition in the manufacture of their product

iii. Process Flow Chart

iv. Copy of sale bill issued to a patient by M/s. IP Pharmacy, Dr. V.Balaji Dr. V. Seshiah Diabetes Care and Research Institute, Chennai 600029 in Bill No. C01000774 dated 22/04/2019

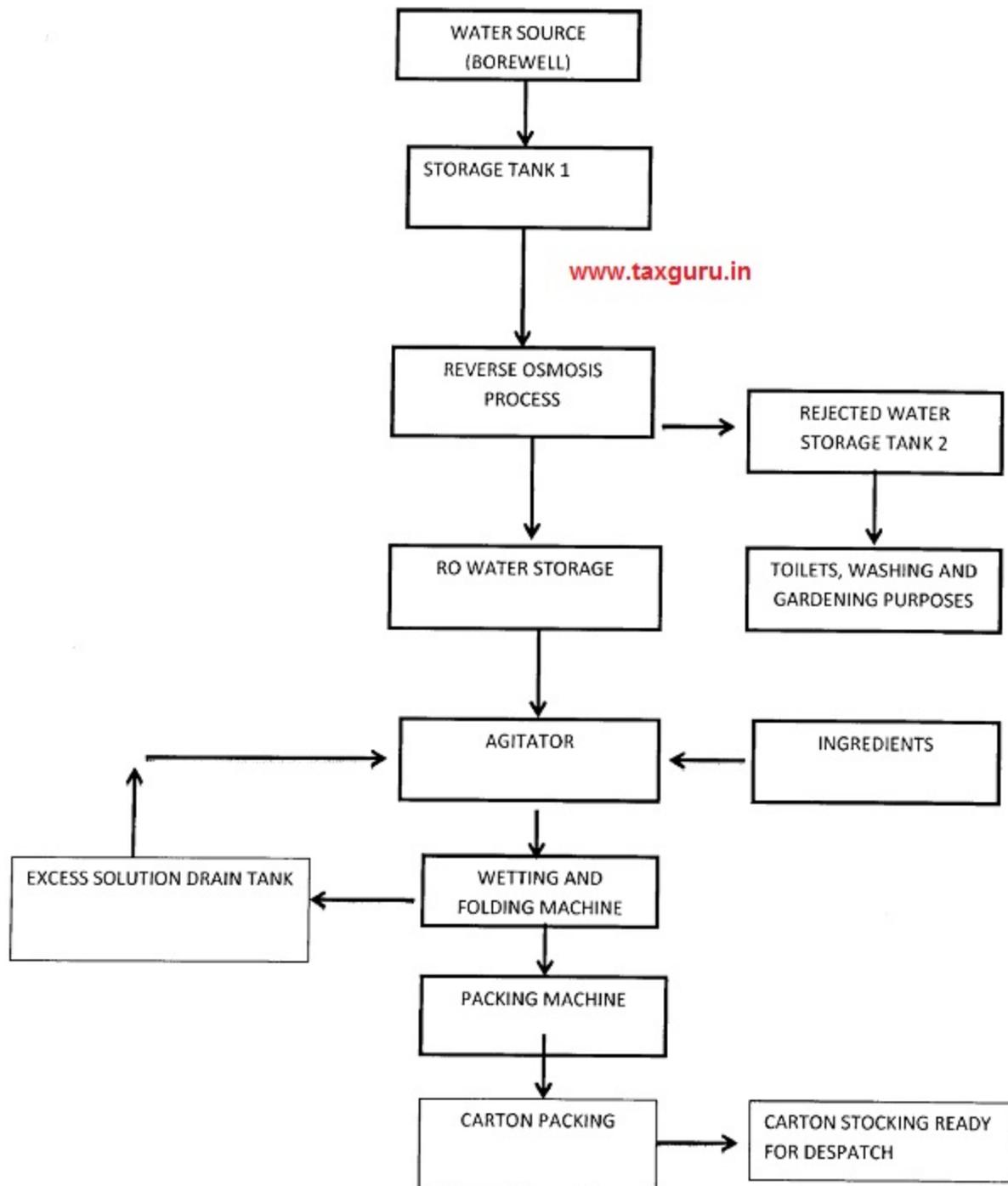
v. Proforma Invoice

3.3 The articles furnished are on the 'Effect of Daily Chlorhexidine Bathing on Hospital-Acquired Infection'. The composition of raw materials used in the manufacturing process of wet wipes as submitted by the applicant is tabled below:

COMPOSITION	
Chlorhexidine Gluconate 2%	Antibacterial
Glycerin 0.5%	Moisturizing agent
Menthol 0.01%	Cooling agent
Allantoin 0.02%	Antibacterial and Healing agent
Fragrance	Refreshing
Aqua (RO treated)	For mixing and blending ingredients

The process Flow Chart submitted by the Applicant is reproduced here under:

PROCESS FLOW CHART SUBMITTED BY THE APPLICANT



The applicant produced purchase invoice for 'non-woven fabric' with HSN 56031400 which is used as the base material for the manufacturing process. A sample sale invoice of a similar product at a pharmacy was submitted where they are referred as "bath wipes".

It is seen that the product the applicant intends to supply are commonly called as "Anti-Bacterial wipes", "Bath wipes", and Chlorhexidine wipes".

4. We have carefully examined the submissions made by the applicant along with the application, during the Personal Hearing and after the hearing. The ruling sought in the case at hand is on the rate of tax applicable to the Supply of Wet Wipes. The applicant has stated that the Dealers who are dealing in “Wet Wipes” are charging 6% CGST +6% SGST under Entry 235(CTH 9619) of Schedule II of the CGST Act 2017. They have claimed that considering the ingredients and their usage, the product is to be classified under the heading 3004.

5. In terms of explanation (iii) and (iv) contained in the **notification no.1/2017-C.T.(Rate), dated 28.06.2017**, “Tariff item”, “sub-heading”, “heading” and “Chapter” shall mean respectively a tariff item, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification. Accordingly, to arrive at the classification, the respective chapter headings, Chapter Note, Section Notes are to be seen.

5.1 The relevant Section notes to Section VI, chapter notes of Chapter 30 of the Customs Tariff and the entries related to CTH3004 are examined as under:

Note 2 to Section VI:

2. Subject to Note 1 above, goods classifiable in heading 3004, 3005, 3006, 3212, 3303, 3304, 3305,3306, 3307, 3506, 3707 or 3808 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of this Schedule.

Note 1(e) of Chapter 30 reads as follows:

1. This Chapter does not cover:

(e) preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties;

CTH 3004 :Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for Therapeutic or Prophylactic uses, put up in the measured doses (including those in the form of transdermal administration systems or in forms or packings for retail sale). The Explanatory Notes(HSN) to Chapter Head 3004 is as follows

This heading covers medicaments consisting of mixed or unmixed products, **provided they are:**

(a) Put up **in measured doses** or in forms such as tablets, ampoules (for example, re-distilled water, in ampoules of 1.25 to 10 cm³, for use either for the direct treatment of certain diseases, e.g., alcoholism, diabetic coma or as a solvent for the preparation of injectible medicinal solutions). cansules_ cachets, drops or pastilles, medicaments in the form of transdermal administration systems, or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use.

The heading also includes measured doses in the form of transdermal administration systems which are generally put up in the form of self-adhesive patches (usually rectangular or round) and which are applied directly to the skin of patients. The active substance is contained in a reservoir which is closed by a porous membrane on the side entering into contact with the skin. The active substance released from the reservoir is absorbed by passive molecular diffusion through the skin and passes directly into the bloodstream. These systems should not be confused with medical adhesive plasters of heading 30.05.

The heading applies to such single doses whether in bulk, in packings for retail sale, etc.; or

From the notes above, it is evident that Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses and put up in measured doses or in form of tablets, ampoules, transdermal applications are classifiable under this CTH. They are meant to be taken into or absorbed the body through any of the above defined means. In the case at hand, from the submissions of the applicant and the proforma invoice submitted by them it is seen that the product manufactured by them, "Wet Wipes" is a non-woven fabric impregnated with antibacterial (Chlorhexidine glutamate), moisturizing, cooling ingredients to help patients prophylactically and therapeutically. From the composition of ingredients submitted by the applicant, it is seen that the major ingredient used in the manufacture of wet wipes is Chlorhexidine Gluconate which is basically a disinfectant consists of about 2%. The wipes are used as a Sanitary towel to wipe the private parts of both (Male & Female) who are bed ridden or old aged people. These ingredients are not meant to be absorbed to taken into the body but for wiping the skin. The ingredients are not 'medicaments under CTH 3004 or are the 'wet Wipes' which are non woven textiles impregnated with these ingredients.

5.3 Further CTH 9619, the heading stated to be adopted by some of the dealers who are dealing in "Wet Wipes", is analyzed as under:

9619	SANATORY TOWELS (PADS) AND TAMPONS, NAPKINS AND NAPKINS LINERS FOR BABIES AND SIMILAR ARTICLES, OF ANY MATERIALS
9619 00	Sanatory Towels (Pads) And Tampons, Napkins And Napkins Liners For Babies And Similar Articles, Of Any Materials
961900 10	Sanatory Towels (Pads) Or sanitary napkins
9619 00 20	Tampons
9619 00 30	Napkins And Napkins Liners For Babies
9619 00 40	Clinical diapers
961900 90	others

The Explanatory Notes to the chapter reads as:

96.19 – Sanitary towels (pads) and tampons, napkins and napkin liners for babies and similar articles, of any material.

This heading covers sanitary towels (pads) and tampons, napkins (diapers) and napkin liners for babies and similar articles, including absorbent hygienic nursing pads, napkins (diapers) for adults with incontinence and pantyliners, of any material.

In general, the articles of this heading are disposable. Many of these articles are composed of (a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer's skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of fluid from the absorbent core. The articles of this heading **are** usually shaped so that they may fit snugly to the human body. This heading also includes similar traditional articles made up solely of textile materials, which are usually re-usable following laundering.

This heading **does not cover** products such as disposable surgical drapes and absorbent pads for hospital beds, operating tables and wheelchairs or non-absorbent nursing pads or other non-absorbent articles (in general, classified according to their constituent material).

From the above, it is clearly evident that the products composed of an inner layer, an absorbent core and an outer layer, usually shaped to fit snugly to the human body are covered under this heading. These products will retain the fluid in the absorbent core and also have an outer layer to prevent leakage of fluid from the core while worn close to the human body. Whereas the product in hand is a "Wet Wipe" used to wipe the parts of the body and does not have an inner layer or absorbent core to retain fluid and then prevent leakage by its outer layer. Hence, this product does not fit in this CTH.

5.4 We find that CBIC vide [Circular No.52/26/2018-GST dated 09/08/2018](#) has clarified the applicability of GST on various goods and services which includes wipes made of spun lace non woven fabric. The clarification is detailed below:

i. Appropriate classification of baby wipes, facial tissues and other similar products: *Varied practices are being followed regarding the classification of baby wipes, facial tissues and other similar products, and references have been received requesting for correct classification of these products. As per the references, these products are currently being classified under different HS codes namely 3307, 3401 and 5603 by the industry.*

ii. Commercially, wipes are categorized into various types such as baby wipes, facial wipes, disinfectant wipes, make-up remover wipes etc. These products are generally made by using non-woven fabrics of viscose and poly viscous blend and are sprinkled with demineralized water and various chemicals and fragrances, which impart the essential character to the product. The base raw materials are moisturizing and cleansing agents, preservatives, aqua base, cooling agents, perfumes etc. The textile material is present as a carrying medium of these cleaning/ wiping components.

iii. According to the General Rules for Interpretation [GRI- 3(b)] of the First Schedule to the [Customs Tariff Act \(CTA\), 1975](#), "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 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.” Since primary function of the article should be taken into consideration while deciding the classification, it is clear that the essential character of the wipes in the instant case is imparted by the components which are to be mixed with the textile material.

iv. As per the explanatory notes to the HSN, the HS code 5603 clearly excludes nonwoven, impregnated, coated or covered with substances or preparations such as perfumes or cosmetics, soaps or detergents, polishes, creams or similar preparations. The HSN is reproduced as follows : “The heading also excludes: Nonwoven, impregnated, coated or covered with substances or preparations [i.e. perfumes or cosmetics (Chapter 33), soaps or detergents (heading 3401), polishes, creams, or similar preparations (heading 3405), fabric, softeners (heading 3809)] where the textile material is present merely as a carrying medium. Further, HS code 3307 covers wadding, felt and non-woven, impregnated, coated or covered with perfumes or cosmetics. The HS code 3401, would cover paper, wadding, felt and non-woven impregnated, coated or covered with soap or detergent whether or not perfumed”.

v. Further, as per the explanatory notes to the HSN, the heading 3307 includes wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics. Similarly, as per explanatory notes to the HSN, the heading 3401 includes wipes made of paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale.

vi. Thus, the wipes of various kinds (as stated above) are classifiable under heading 3307 or 3401 depending upon their constituents as discussed above. Therefore, if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.

5.5 Note 2 to Section VI of Customs Tariff states

2.- Subject to Note 1 above, goods classifiable in heading 30.04, 30.05, 30.06, 32.12, 33.03, 33.04, 33.05, 33.06, 33.07, 35.06, 37.07 or 38.08 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of the Nomenclature.

Note 3 and 4 of Chapter 33 states

3.- Headings 33.03 to 33.07 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

4.- The expression “perfumery, cosmetic or toilet preparations” in heading 33.07 applies, *inter alia*, to the following products : scented sachets; odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

Chapter 3307 covers *pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included, prepared room deodorizers, whether or not perfumed or having disinfectant properties. 33079090 cover others*

Explanatory Notes to chapter 3307 states

(V) **Other products, such as :**

(1) Depilatories

(2) Scented sachets containing parts of aromatic plants used for perfuming linen cupboards.

(3) Perfumed papers and papers impregnated or coated with cosmetics.

(4) Contact lens or artificial eye solutions. These may be for cleaning, disinfecting, soaking or enhancing comfort during wear.

(5) Wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics.

(6) Animal toilet preparations, such as dog shampoos, and plumage-improving washes for birds.

(7) Sodium chloride solutions put up for hygiene use in packings for retail sale, other than medical or pharmaceutical, whether or not sterile.

From the said clarification issued by CBIC based on the decision arrived at the GST Council on wet baby wipes, it is evident that wipes with textile material as a carrying medium will be classified under CTH 3307. In the case at hand it is seen that in the products of the applicant, from the submissions that the Non-woven fabric is the medium used and the composition of the wipes are Chlorhexidine Gluconate, Glycerin, Menthol, Allantoin which undergoes a process in agitator and through Wetting and Folding machine made as Wet Wipes' and packed using the Packing machine and Carton Packing is done. They also perform the same function of anti-bacterial, moist rising , cooling effects to prevent infections, bed sores, rashes etc. though they may be meant for adults . Applying the above clarification to the case at hand, it is beyond doubt that the product Wet Wipes' used to wipe the bed ridden and made of non-woven fabric impregnated with cosmetics and antibacterial agents is appropriately classifiable under CTH 3307 90 90 viz. other products (wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics). Hence, the product manufactured by the applicant is to be classified under Chapter Heading 3307 90 90.

6. On the applicable rate of tax, the product in hand is classified under CTH 33079090 and as per S1 No 29 of Schedule IV of **Notification No. 01/2017-C.T. (Rate) dated 28.06.2017** and as per SI No 29 of Schedule IV of Notification No. 11(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017, the applicable rate is 14% CGST and 14% SGST upto 14.11.2017. This was amended by **Notification No. 41/2017-C.T. (Rate) dated 14.11.2017** and G.O. (Ms) No.157, dated 14.11.2017, so that the rate

applicable is 9% CGST and 9% SGST under Schedule III which is reproduced as follows:

S.No	Chapter Heading/ Sub-heading/Tariff item	Description of goods
"60A	3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorisers, whether or not perfumed or having disinfectant properties [other than odoriferous preparations which operate by burning, agarbattis, lobhan, dhoop batti, dhoop, sambhrani]";

7. In the light of the above, we rule as under:

Ruling

1. The product 'Wet Wipes' supplied by the applicant is classifiable under 3307 90 90 of the First Schedule to the Customs Tariff Act, 1975

2. The Rate of tax applicable is 14% CGST and 14% SGST as per SI No 29 of Schedule IV of **Notification no. 01/2017-C.T. (Rate) dated 28.06.2017** and as per SI No 29 of Schedule IV of Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017, respectively upto 14.11.2017. From 15.11.2017, the applicable tax rate is 9% CGST and 9% SGST as per SI No 60A of Schedule III of **Notification No. 01/2017-C.T.(Rate) dated 28.06.2017** amended and as per SI No 60A of Schedule III of Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended, respectively.