

# Hand Sanitisers – GST Rate & HSN



## INTRODUCTION

- There has been a lot of confusion regarding the Goods and Services Tax (“GST”) Rate on Hand Sanitisers. Different taxpayers are taking different positions. Majorly, the dispute is between three Tariff Headings (“TH”) namely **3401**, **3808** and **3004**. Export data also shows that exporters have classified it either under TH 3808 or TH 3004.
- We have also understood from our interaction with the GST Department that they are aware of these distinct classifications by the taxpayers.
- In our Post, we have tried to explain why or why not Hand Sanitisers would fall under a particular TH.

## PROVISIONS & ITS ANALYSIS

- GST rate *Notification No. 1/2017-Integrated Tax (Rate) dated June 28, 2017* provides that for the TH specified for GST rates, reference shall be made to TH specified under First Schedule to Customs Tariff Act, 1975 (“CTA Act”).

**Analysis of TH 3401**

- TH 3401 in the First Schedule to CTA Act includes the following three categories of products:
  - (i) soap;
  - (ii) organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap;
  - (iii) organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; and
  - (iv) paper, wadding, felt and nonwovens, impregnated, coated, or covered with soap or detergent.
- For Category (i), HSN Explanatory Notes issued by the World Customs Organisation ('WCO') classify soaps into three broad categories:
  - a) Hard Soaps [**Hand Sanitizer is not covered since it is in liquid form**]
  - b) Soft Soaps [**Hand Sanitizer is not covered since it is in liquid form**]
  - c) Liquid Soaps not exceeding 5 percent of alcohol [**Hand Sanitizers are not covered since it contains more than 5 percent of alcohol**]
- For Category (ii), the TH includes soaps in form of bars, cakes, moulded pieces, or shapes [**Hand Sanitizer is not covered since it is in liquid form**]
- For Category (iii), HSN Explanatory Notes issued by WCO covers the preparation for **washing the skin**. The expression word 'washing the skin' is important.
- Oxford dictionary defines the word 'wash' as '*clean with water and, typically with soap or detergent*'. Hand Sanitiser is not a preparation for cleaning the hands with water. Moreover, it has particularly been made for hands only and not for washing any part of skin on human body. [**Thus, Hand Sanitizer is not covered**]
- Category (iv) includes paper, wadding, felt and nonwovens, impregnated, coated, or covered with soap or detergent. [**Clearly, Hand Sanitizer is not covered**]

**Analysis of TH 3808**

- HSN Explanatory Notes issued by WCO states that products under TH 3808 can clearly be divided into following four groups:
  - a) Insecticides;
  - b) Fungicides;
  - c) Herbicides, anti-sprouting products, plant growth regulators; and
  - d) Disinfectants
- It is very clear that Hand Sanitizer does not fall under any of the first three groups i.e. (a), (b) or (c). Also, HSN Explanatory Notes issued by WCO Specifically include **sanitisers** as falling under Group (d).
- Such explanatory notes are re-produced (verbatim) as below:

*'Disinfectants are agents which destroy or irreversibly inactivate undesirable bacteria, viruses or other micro-organisms, generally on **inanimate objects**.*

*Disinfectants are used, for example, in hospitals **for cleaning walls, etc., or sterilising instruments**. They are also used in **agriculture for disinfecting seeds and in the manufacture of animal feeds** to control undesirable micro-organisms.*

*The group includes **sanitisers, bacteriostats and sterilisers**'*

- Please note that the very definition of 'disinfectants' under TH 3808 states that these are agents applied generally on inanimate objects i.e. non-living objects. Further, reading the entire Group (d), it can be inferred that TH 3808 is not talking about disinfectant used on human body.
- Most importantly, the Explanatory notes clearly excludes '*Disinfectants, insecticides, etc., having the essential character of medicaments, including veterinary medicaments (heading 30.03 or 30.04)*'
- Therefore, if one can prove that the Hand Sanitiser is a medicament under TH 3004, other TH like 3401 or 3808 cannot be applied.

#### **Observation on TH 3004**

We believe that Hand Sanitiser, as currently used **as a protection from Coronavirus** and it is **no more used as a regular hygiene product**, can be considered as a medicament under TH 3004. Interestingly, TH 3004 **specifically includes disinfectants** too. There is abundance of jurisprudence to substantiate that hand sanitisers, in today scenario, be treated as a medicament.

#### **GABA & CO. | CONCLUSION**

- *In our opinion, a taxpayer has a good case to classify the Hand Sanitiser under TH 3004. Thus, we suggest taxpayers to obtain an Advance Ruling for the same.*
- *The following questions of law or facts shall be raised before any Authority or a Court:*
  - *Whether Commercial or Trade Parlance will remain constant across different generations in human mankind?*
  - *If not, whether Courts ruling on **Vaseline** or **Odomos** will apply in today scenario?*
  - *If not, what is the probability that a person hands have got the virus when he touched an object in this pandemic?*
  - *What are experts' opinions?*
  - *Whether Hand Sanitiser really kills coronavirus germs based on any scientific evidence?*

#### **Disclaimer:**

*The views expressed in the update are strictly personal, based on our understanding of the underlying law. We are not responsible for any injury, loss or cost arising to any person who refers this update and acts or refrains from any act accordingly. We would suggest that a detailed legal advice must be sought before relying on this update.*