

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 27/2022

Date : 12-08-2022

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes

.... Member (State)

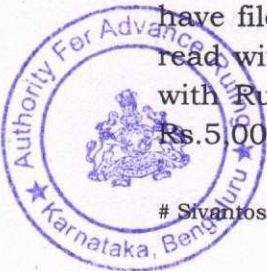
2. Sri. T. Kiran Reddy

Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	M/s. SIVANTOS INDIA PVT. LTD., # 78, Salarpuria Sattva Magnificia – Phoenix, 4 th Floor, Near Tin Factory, Old Madras Road, Doorvani Nagar, Bengaluru – 560 016.
2.	GSTIN or User ID	29AACCS0638P1ZV
3.	Date of filing of Form GST ARA-01	17-05-2022
4.	Represented by	Sri. Sandesh S Kutnikar, C A & Authorised Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bengaluru East Commissionerate, Bengaluru. (Range-EED6)
6.	Jurisdictional Authority – State	ACCT, LGSTO-35, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2904220250343 dated 20.04.2022.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Sivantos India Pvt. Ltd.,(herein after referred to as 'Applicant'), # 78, Salarpuria Sattva Magnificia – Phoenix, 4th Floor, Near Tin Factory, Old Madras Road, Doorvani Nagar, Bengaluru – 560 016, having GSTIN 29AACCS0638P1ZV, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5000/- each under the CGST Act, KGST Act.



2. The applicant is engaged in the business of trading of hearing aids and their parts & accessories; registered in the states of Karnataka, Maharashtra, West Bengal and Delhi.

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- a) Classification of parts & accessories suitable for use solely with the hearing aids
- b) Rate of tax on supply of such parts & accessories which are suitable for use solely with the hearing aids.
- c) Whether such parts & accessories, suitable for use solely with the hearing aids, are exempt by virtue of Sl.No.142 of 2/2017-CT(R) as amended from time to time

4. **BRIEF FACTS OF THE CASE:** The applicant furnishes the following facts relevant to the issue:

4.1 The applicant supplies the parts & accessories to the domestic market, which are said to be suitable for use solely with the hearing aids, which are manufactured by their parent company abroad and imported by the applicant. The applicant claims that the said parts & accessories are designed by their parent company to make them suitable for use solely with the hearing aids with no other alternate use and hence these are suitable for use solely with the hearing aids.

4.2 The applicant is supplying the parts & accessories of hearing aids on classifying the same under heading 90219010 on charging 18% GST, in terms of entry No.453 of Schedule III to the Notification 1/2017-CT (R) dated 28.06.2017.

4.3 The applicant seeks advance ruling on classification and rate of tax on supply of parts & accessories that are suitable for use solely with the hearing aids.

5. **Applicant's Interpretation of Law:**

5.1 The applicant wishes to draw the attention to Explanation (iv) to 1/2017-CTR which provides that "the rules for the interpretation of the First Schedule of 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." Insertion of this Explanation inevitably means that interpretation of First Schedule of Customs Tariff along with its Section that Chapter Notes are borrowed for interpretation and classification of goods under GST Law.



5.2 Hearing aids and parts and accessories of hearing aids find place in Chapter 90 to the Customs Tariff Act. As already stated above, hearing aids supplied by the Applicant are classifiable under HSN 90214090. For classification of parts and accessories suitable for use solely with the hearing aids, we are placing reliance on Note 2 to Chapter 90, which enunciates test to classify parts and accessories. The bare extract of the said Note is reproduced below:

"2. 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."

5.3 Note 2 to Chapter 90 in clear terms states that parts and accessories are to be classified in the following manner:

- a. If parts and accessories are mentioned in any heading, then it has to be classified in that specific heading (Note 2(a));
- b. If parts and accessories are not mentioned in any heading, then:
 - i. If suitable for sole or principal use with a machine or devise, then classify with the machine or device (Note 2 (b));
 - ii. Otherwise, classify under heading 9033 (Note 2(c));

5.4 As the parts and accessories supplied by the applicant is suitable for use solely with hearing aids, taking shelter under Note 2(b) to Chapter 90, the said parts and accessories are also to be classified under Chapter heading 9021 along with hearing aids. Hence, the tax treatment (in terms of classification, rate of tax and exemption, if any) of hearing aids will be applicable to its parts and accessories as well. Having established that parts and accessories are classified as hearings aids under Chapter heading 9021 (4-digit HSN level in 1/2017- CTR and 2/2017- CTR), the next question that needs answer is the classification at 8-digit HSN level.

5.5 Reference is made to 1/2017-CTR and 2/2017-CTR; SI. No. 221 of Schedule II (12% rate of tax) to 1/2017-CTR excludes hearing aids and SI. No. 142 of 2/2017-CTR (exemption entry) exempts hearing aids. Both the entries in respective notifications are at 4-digit HSN level and not at 8-digit HSN level. Therefore, we draw reference to the text of chapter heading 9021 of Customs Tariff for understanding 8-digit HSN level classification of parts and accessories. In this regard, Chapter heading 9021 and two specific tariff entries therein which are relevant are reproduced below:

"HSN 9021: ORTHOPAEDIC APPLIANCES, INCLUDING CRUTCHES, SURGICAL BELTS AND TRUSSES; SPLINTS AND OTHER FRACTURE APPLIANCES; ARTIFICIAL PARTS OF THE BODY; HEARING AIDS AND OTHER APPLIANCES WHICH ARE WORN OR CARRIED, OR IMPLANTED IN THE BODY, TO COMPENSATE FOR A DEFECT OR DISABILITY:

HSN 902140-Hearing aids, excluding parts and accessories:

HSN 90214010: Frequency modulated hearing aid system used for hearing by handicapped persons in group situation

HSN 90214090: Other

HSN 902190-Other:

HSN 90219010: Parts and accessories of hearing aids

HSN 90219090: Other"

5.6 As can be seen above, parts and accessories of hearing aids are not mentioned in the text of the Chapter heading 9021. Since the parts and accessories supplied by the Applicant are suitable for use solely with the hearing aids, in terms of Note 2 (b) to Chapter 90, the said parts and accessories are to be classified along with the hearing aids in Chapter heading 9021. Further, the Applicant believes that reference to hearing aid in the text of Chapter heading 9021 includes reference to the parts and accessories suitable for use solely with hearing aids.

5.7 As discussed above, hearing aids mentioned in text of Chapter heading includes its parts and accessories. Hence, to create two separate tariff entry under Chapter heading 9021, parts and accessories are specifically excluded in tariff entry 902140 and listed in separate tariff entry 90219010. So, the Applicant believes that it is safe to conclude that wherever reference to hearing aids is made (under Customs Tariff and GST notifications) it always includes its parts and accessories unless such parts and accessories is specifically excluded from hearing aids like in case of tariff entry 9021 40 above.

5.8 Based on the above discussion, the Applicant believes that the tax treatment (rate of tax) of parts and accessories suitable for use solely with hearing aids is dependent on tax treatment of hearing aids. Accordingly, it is relevant to understand the tax treatment of hearing aids under the GST Law. The relevant

entries in various notifications where the tax treatment of hearing aids is specified are as under:

Notfn. No.	Sl. No.	Chapter/ Heading/ Subheading/ Tariff item	Description as per Notfn.	Remarks
1/2017 -CTR	Sl. No. 221 (Sch. II)	9021	Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids]	12% rate is decided for various medical devices but hearing aids is excluded from this list.
2/2017 -CTR	SL. No. 142	9021	Hearing aids	Exemption is granted to hearing aids from levy of GST.

5.9 As can be seen above, SL. No. 221 with 12 % rate of tax specifically excludes hearing aids from its ambit by mentioning a 4-digit HSN i.e., 9021 (at Chapter heading level.) As already discussed, hearing aids includes its parts and accessories (more-so in the absence of bifurcation of parts and accessories from hearing aids as done in Customs Tariff0 at Chapter hearing 9021. Consequently, even parts and accessories which are suitable for use solely with hearing aids also gets excluded from the ambit of SL. No. 221 (12% rate of tax). The Applicant considers that Sl. No. 221 of 1/2017-CTR has no relevant to the case in hand. Parts and accessories having been excluded from Sl. No. 221 of 1/2017-CTR and by virtue of Chapter Note 2(b0 already discussed supra, finds a place under Sl. No. 142 of 2/2017-CTR which exempts hearing aids from GST. Since hearing aids is covered under Sl. No. 142 of 2/2017-CTR, and it does not exclude its parts and accessories from the said entry, the Applicant believes that parts and accessories are also covered under the said entry and are exempted from GST.

5.10 The above principle and understanding have been similarly clarified in Para 9 of Circular No. 113/ 32/2019-GST dt. 11.10.2019 (hereon referred to as 'Circular'). The said Para clarifies regarding the classification of parts and accessories suitable for use solely with a medical device, which reads as under:

9. Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device:



9.1 Representations have been received seeking clarification on applicability of GST on the parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment.

9.2 Briefly stated, medical equipment falling under HS 9018, 9019, 9021 and 9022 attract 12 % GST. The imports of parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment, were being assessed at 12 % GST by classifying it under heading 9018. However, objection has been raised by Comptroller and Auditor General of India (CAG) on the said practice, suggesting that since such goods were not specifically mentioned in the GST rate notification, they fall under tariff item 9033 00 00 [residual entry] and should be assessed at 18 % IGST. In this background, representations have been received from trade and industry, seeking clarification in this matter.

9.3 The matter has been examined. As per chapter note 2(b) of the Chapter 90, parts and accessories of the instruments used mainly and principally for the medical instrument of chapter 90 shall be classified with the machine only. Chapter note 2 (b) of Chapter 90) reads as below:-

“ 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;”

9.4 Thus, as per chapter note 2 (b), parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment should be classified with the ophthalmic equipment only and shall attract 12 %.

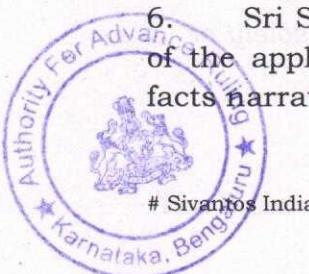
9.5 In view of the above, it is clarified that 12 % GST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022 in terms of chapter note 2 (b).”

5.11 The above clarification was issued relying on Chapter Note 2 (b) to Chapter 90 similar to the Applicant's understanding in the instance case in hand. Accordingly, the Applicant believes that the Circular is squarely covers their case and hence believe that the parts and accessories suitable for use solely with hearing aids are to be classified as hearing aids only.

5.12 Considering all the above submissions, the Applicant believes that the parts and accessories supplied by it (which are suitable for use solely with hearing aids) are exempt from GST and are covered under Sl. No. 142 of 2/2017-CTR.

PERSONAL HEARING PROCEEDINGS HELD ON 22.06.2022

6. Sri Sandesh S Kunikar, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.



FINDINGS & DISCUSSION

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters 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 would also mean reference to the corresponding similar provisions in the KGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

9. The applicant is engaged in the business of trading of hearing aids and their parts & accessories to the domestic market, which are manufactured by their parent company abroad, imported by the applicant and are said to be suitable for use solely with the hearing aids. In view of this, the applicant sought advance ruling in respect of the questions, mentioned at para 3 supra.

10. The applicant specifically sought advance ruling in respect of classification of parts & accessories, suitable for use solely with the hearing aids; the rate of GST thereon and also whether the same are exempt from GST in terms of Sl.No.142 of 2/2017-CT(R) as amended from time to time. The applicant submitted that currently they are classifying the said parts & accessories under heading 9021 9010 and are charging the GST @ 18% in terms of Sl.No.453 of Schedule III to the Notification No.1/2017-CT (R) dated 28.06.2017. However, the applicant contends that the said parts & accessories are designed by their parent company to make them suitable for use solely with the hearing aids with no other alternate use & hence these are suitable for use solely with the hearing aids and accordingly they are classifiable under heading 90219010 & are exempted from GST in terms of Sl.No.142 of 2/2017-CT(R) dated 28.06.2017, as amended from time to time.

11. In view of the above, the primary issue before us to decide is the classification of the parts & accessories, suitable for use solely with the hearing aids. The other issues are the applicable rate of GST thereon and also the applicability of Entry No.142 of 2/2017-CT(R) dated 28.06.2017 to the said parts & accessories of hearing aids, which are based on the classification. Thus we proceed to examine, discuss & decide the classification of the parts & accessories of the hearing aids.

12. We invite reference, with regard to the classification of goods under GST, to the explanation (iii) & (iv) of the notification No.1/2017-Central Tax (Rate) dated 28.06.2017, which is as under:

Explanation. – For the purposes of this notification No.1/2017-Central Tax (Rate) dated 28.06.2017,-



(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

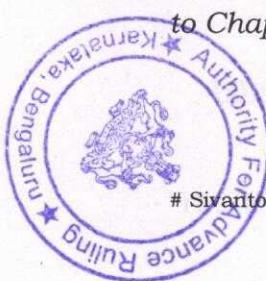
(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

We also invite reference to the Customs Tariff Act 1975, Chapter subheading 9021 and relevant tariff entries therein which are as under:

Tariff Item	Description of goods
9021	ORTHOPAEDIC APPLIANCES, INCLUDING CRUTCHES, SURGICAL BELTS AND TRUSSES; SPLINTS AND OTHER FRACTURE APPLIANCES; ARTIFICIAL PARTS OF THE BODY; HEARING AIDS AND OTHER APPLIANCES WHICH ARE WORN OR CARRIED, OR IMPLANTED IN THE BODY, TO COMPENSATE FOR A DEFECT OR DISABILITY
9021 10 00	- Orthopaedic or fracture appliances - Artificial teeth and dental fittings :
9021 21 00	-- Artificial teeth
9021 29 00	-- Other - Other Other artificial parts of the body :
9021 31 00	-- Artificial joints
9021 39 00	-- Other
9021 40	- Hearing aids, excluding parts and accessories:
9021 40 10	--- Frequency modulated hearing aid system used for hearing by handicapped persons in group situation
9021 40 90	--- Other
9021 50 00	- Pacemakers for stimulating heart muscles, excluding parts and accessories
9021 90	- Other :
9021 90 10	--- Parts and accessories of hearing aids
9021 90 90	--- Other

13. It is seen, from the above, that the hearing aids are covered under heading 9021, under 4-digit classification; Hearing aids, excluding parts and accessories are covered under 9021 40, under 6-digit classification; Frequency modulated hearing aid system used for hearing by handicapped persons in group situation are covered under 9021 4010, under 8-digit classification and remaining are covered as others under 9021 4090. Thus it is clearly evident that the heading 9021 40 covers only the hearing aids but not parts & accessories thereof. The parts & accessories of hearing aids are specifically covered under heading 9021 9010.

14. The applicant contends that the parts & accessories, suitable for use solely with the hearing aids, are to be classified with the hearing aids in terms of Note 2(b) to Chapter 90. The Note 2 to chapter 90 is as under:



2. 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.

15. It could be seen from the above that Note 2(a) clearly specifies that parts and accessories which are goods included in any of the headings of this Chapter (90) 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. In the instant case, the parts & accessories of hearing aids are goods that are specifically covered under heading 9021 9010 and hence they merit classification in their respective heading i.e. 9021 9010. Also Note 2(b) supra implies that it covers only those other parts and accessories which can't be classified in terms of Note 2(a). In other words Note 2(a) is applicable to the instant case and Note 2(b) has to be considered in case Note 2(a) is not applicable. Thus the parts & accessories of hearing aids are rightly classifiable under heading 9021 9010.

16. The applicant sought to rely on the Circular No.113/32/2019-GST dated 11.10.2019, issued with regard to classification of parts of ophthalmic equipment. Clarification provided in the said circular is not relevant to the present facts of the case, in as much as there was no separate tariff heading/item for parts of ophthalmic equipment, where as in the instant case specific tariff heading 9021 9010 is mentioned for the parts and accessories of hearing aids.

17. Now we proceed to examine the applicability of entry number 142 of the Notification No.2/2017-Central Tax (Rate) dated 28.06.2017, which is as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No.2/2017-Central Tax(Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).-In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods, the description of which is specified in column (3) of the



Schedule appended to this notification, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, from the whole of the central tax leviable thereon under section 9 of the Central Good and Services Tax Act, 2017(12 of 2017)

Schedule

Sl.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
142.	9021	Hearing aids

18. It is seen, from the Notification and Schedule supra, that the exemption is applicable only to supply of goods, the description of which is specified at column (3) of the schedule falling under the tariff item, sub-heading, heading & chapter as specified at corresponding entry at column (2). Thus the exemption is applicable only to the supply of goods described under column (3) and not to all the goods falling under the corresponding entry in column (2).

19. It is clearly evident from the entry no.142 that the said entry covers only goods described as "hearing aids" and not the "parts & accessories of the hearing aids". Thus the entry is not applicable to the instant case.

20. Further the entries bearing numbers 221 of Schedule II & 453 of Schedule III, under Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended are relevant entries to the hearing aids and are as under:

Notification No.1/2017-Central Tax (Rate)
dated 28.06.2017, as amended

Schedule II – GST rate – 12%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
221.	9021	Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids]

Schedule III – GST rate – 18%

453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI
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It is clearly evident that hearing aids are excluded from entry no.221 of Schedule II, which attracts GST rate of 12%. The only entry that covers the parts & accessories of hearing aids is 453 of Schedule III, mentioned above, which attracts the GST @ 18%.

21. In view of the foregoing, we pass the following

R U L I N G

- a) The parts & accessories of hearing aids are covered specifically under heading 9021 9010 and thus merit classification under the said heading.
- b) The rate of tax (GST) applicable on supply of such parts & accessories of hearing aids is 18% in terms of entry no.453 of Schedule III to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017.
- c) The entry No.142 of Notification 2/2017-Central Tax (Rate) dated 28.06.2017 is not applicable to the supply of parts & accessories of hearing aids and thus the said goods are not entitled for exemption.



(Dr. M.P. Ravi Prasad)
Member
MEMBER

Karnataka Advance Ruling Authority
Place Bengaluru
Bengaluru - 560 009



(T. Kiran Reddy)
Member
MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 12-08-2022

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-35, Bengaluru.

