

**AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS & SERVICE TAX)
NEW DELHI**

PRESENT

**Mr. Justice P.V. Reddi (Chairperson)
Mr. J.K. Batra (Member)**

The 18th day of September 2009

Ruling No. AAR/CEX/04/2009
in
Application No. AAR/CEX/02/2009

Applicant : M/s Guthy Renker Marketing
Private Limited, Level 5,
Incube Business Centre,
18, Nehru Place, New Delhi-19.

Commissioner concerned : Commissioner of Central Excise,
Thane -1, Dadar (W), Mumbai-28.

Present for the applicant : Mr. V. Lakshmi Kumaran, Advocate
Mr. Puneet Bansal, Advocate
Mr. Ashok Dhingra, Consultant
Ms. Charanya L.
Mr. Vinod Agarwal, VP(Finance)
Mr. P.S. Krishnan, VP(Operations)
Ms. Priya Ghai, Country Head
Mr. Amos Chin, Div. Bus. Analyst

Present for the Department : Mr. V.K.Saxena, Jt. CDR
Mr. Sumit Kumar, SDR

**R U L I N G
(By J.K.Batra, Member)**

1. The applicant claims to be a subsidiary company of a foreign holding company namely M/s Guthy Renker India. Ltd., Port Louis, Mauritius. The applicant proposes to manufacture various skin care products in India. For this purpose the applicant proposes to import four products, namely, Proactiv Solution Revitalizing Toner, Proactiv Solution Renewing Cleanser, Proactiv

Solution Repairing Lotion and Proactiv Solution Refining Mask. “Proactiv Solution” appears to be a brand name. These products are claimed to be effective for treatment of a skin disease commonly known as acne.

2. The applicant states that it proposes to effect the sales of the four imported products individually as well as in kits. The products which would be sold individually and separately in the form they are imported (after statutory labelling) have been named as Category I products by the applicant. In Category II are the same individual products which are proposed to be packed in two types of kits at the applicant’s factory from where the kits will be sold to the ultimate consumers through the distributors’ network.

3. In the original application the applicant has stated that the Category-I products will be imported in the form of bottles or tubes separately in consignments exclusively intended for retail sale individually. The goods were proposed to be labelled at the port and then taken to the applicant’s factory for further labelling, packing etc., for being sold to consumers through the distribution network of the applicants. However, at the time of hearing, the applicant stated that the Category-I products intended for retail sale individually would be appropriately labeled before clearance from customs at the port itself and “no labelling whatsoever will be undertaken at the factory premises”. The applicant confirmed this view vide the counsel’s letter dated 4th August, 2009 and requested that “the original application filed by the applicant may be treated as modified to this extent”.

4. The applicant has stated that the individual products intended for being packed into kits (Category-II products) would on importation be labeled with a declaration that these are not to be sold individually and will be sold as a kit which will contain the individual products. The aforesaid labelling will be undertaken at the port itself. These products will be taken to the applicant’s factory where the following activities will take place -

- (a) Labelling of products
- (b) Putting of the product literature into the kits
- (c) Packing of products into two types of kits
- (d) Labelling including declaration of maximum retail price on the kits

The two types of kits will comprise of the following individual products.

Proactiv Solution Kit - I

- (1) Proactiv Solution Revitalizing Toner
- (2) Proactiv Solution Renewing Cleanser
- (3) Proactiv Solution Repairing Lotion
- (4) Proactiv Solution Refining Mask

Proactiv Solution Kit-II

- (1) Proactiv Solution Revitalizing Toner
- (2) Proactiv Solution Renewing Cleanser
- (3) Proactiv Solution Repairing Lotion

5. The applicant has provided the function/use of the individual products in the application seeking advance ruling and has also submitted samples of the kit (comprising of the four products)

6. Questions raised in the application relate to the classification of the individual products, excisability of kits and their classification, method of valuation of the kits, eligibility for credit of duty paid on the imported inputs etc.

7. The applicant has simultaneously filed an application seeking an advance ruling on the classification of the individual products under the Custom Law and other related issues. The Authority has given its Ruling No AAR/Cus/03/2009 today. The classification of the four individual products has been determined to be as follows:

	<u>Name of the Product</u>	<u>Tariff item</u>
(1)	Proactiv Solution Revitalizing Toner	: 3304 91 90 (as a skin

- care product)
- (2) Proactiv Solution Renewing Cleanser : 3004 90 99 }
 - (3) Proactiv Solution Repairing Lotion : 3004 90 99 } (as medicaments)
 - (4) Proactiv Solution Refining Mask : 3004 90 99 }

8. In this background the questions raised by the applicant in its application relating to Central Excise are analyzed and answered as follows:

Question (1) Whether the activities of labelling(including declaration of MRP) of individual containers namely Proactiv Solution Revitalizing Toner, Proactiv Solution Renewing Cleanser, Proactiv Solution Repairing Lotion and Proactiv Solution Refining Mask at applicant's factory amounts to manufacture under the excise law?

In view of the clarification provided by the applicant during the course of hearing and confirmed by the applicant's counsel in his letter dated 4th August, 2009, since the labelling operation on the individual containers meant for retail sale separately (Category –I products) would be carried out at the port of import itself and no labelling is proposed to be carried out at the factory premises, this question is not anymore relevant.

Question (2) What is the classification of the four individual products namely Proactiv Solution Revitalizing Toner, Proactiv Solution Renewing Cleanser, Proactiv Solution Repairing Lotion and Proactiv Solution Refining Mask?

Since the aforesaid four products would be labelled at the port of import and would not be taken to the applicant's factory for labelling and for clearance individually, strictly speaking, there is no need to determine the classification of the products under the Central Excise Tariff. However, it has been determined by the Authority in Ruling No AAR/Cus/03/2009 dated 18th September, 2009 that the four products would merit classification as under:-

	<u>Name of the Product</u>	<u>Tariff item</u>
(1)	Proactiv Solution Revitalizing Toner	: 3304 91 90
(2)	Proactiv Solution Renewing Cleanser	: 3004 90 99
(3)	Proactiv Solution Repairing Lotion	: 3004 90 99
(4)	Proactiv Solution Refining Mask	: 3004 90 99

It may be noted that the chapter headings and tariff items in both the Tariff Acts are the same.

Question 3. Whether the activities of labelling of the individual products, putting of the product literature into the kits, packing of the individual products into Proactiv Solution Kit-I and Proactiv Solution Kit-II, labelling including declaration of MRP on the kits at applicant's factory amounts to manufacture under the excise law?

Since the individual products are proposed to be labelled at the port itself and are not intended to be brought into the applicant's factory for any processing, the question whether labelling of such individual products would constitute manufacture under the excise law is not required to be answered.

In so far as preparation and labeling of kits is concerned, as per note 6 to Chapter 30, in relation to products of heading 3003 or 3004, conversion of powder into tablets or capsules, labelling or re-labelling of containers intended for consumers or re-packing from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer would be construed as manufacture. Similarly the aforesaid processes have been specified to be amounting to manufacture in relation to products of heading 3303, 3304 & 3305 by virtue of note 5 to Chapter 33. The process of putting 3 or 4 individual products into a kit along with requisite literature and labelling the kit is appropriately covered under the scope of the expression "adoption of any other treatment to render the products marketable to the consumer" and hence is to be

construed as 'manufacture' in terms of the aforesaid chapter notes read with sub clause (iii) of clause (f) to Section 2 of the Central Excise Act, 1944.

Question 4. What is the classification of the Proactiv Solution Kit-I and Proactiv Solution Kit –II ?

The classification of the four individual products when imported into India has been determined by this Authority in the ruling given today under the Customs Act. The details thereof have been set out above while discussing Question No. 2.

The Proactiv Solution Kit-I comprising of all four products has three products which contain active ingredients for the treatment of acne. Applying the General Rules for Interpretation of the Central Excise Schedule, the classification of goods put up in sets for retail sale is to be done with reference to the material or component which gives them their essential character. In the present case the Proactiv Solution Kit-I is meant for treatment of the acne and 3 of the 4 products contain active ingredients for such treatment. Applying the aforesaid rule the kit merits classification under tariff item 3004 90 99 of the Central Excise Schedule.

Applying the same principles, Proactiv Solution Kit-II comprising of

- (1) Proactiv Solution Revitalizing Toner
- (2) Proactiv Solution Renewing Cleanser
- (3) Proactiv Solution Repairing Lotion

would also merit classification as a medicament under tariff 3004 90 99 of the Central Excise Schedule, since two of the three products are specifically designed for treatment of acne. The fact that one of the products(Toner) in the kit has no therapeutic effect, but is a step in aid for the usage of other medicinal products does not in anyway affect the classification under the heading 3004.

Question. 5 Whether the four individual products namely Proactiv Solution Revitalizing Toner, Proactiv Solution Renewing Cleanser, Proactiv Solution Repairing Lotion and Proactiv Solution Refining Mask as well as the Proactiv Solution Kit-I and Kit-II containing four/three individual products to be cleared from the applicant's factory will be assessed to excise duty under Section 4 or Section 4 A of the Excise Act?

Since the four individual products proposed to be imported would be labelled for clearance from the port of import itself and they are not intended to be brought to the applicant's factory for clearance in individual packs as clarified by the Counsel for the applicant, the question of assessing these individual products to excise duty under Section 4 or Section 4 A of the Central Excise Act, 1944 does not arise.

Since Proactiv Solution Kit-I and Proactiv Solution Kit-II are medicaments, the provisions of the Drugs (Prices Control) Order, 1995 in so far as the requirements of labeling and display of maximum retail price are concerned become applicable. Clause 15 of the Drugs Prices Control Order casts an obligation on every manufacturer or importer or distributor of a non-scheduled formulation intended for sale to display on the label of the container of formulation and the minimum pack thereof offered for retail sale, the retail sale price of that formulation. Accordingly the provisions of Section 4A of the Central Excise Act, 1944 would get attracted and the said kits would be liable to be assessed to excise duty on the basis of maximum retail price printed thereon minus the abatement of 35% for the time being available on such medicament in terms of Notification No. 49/2008-Central Excise (NT) dated 24th December, 2008). In this context, our ruling in the connected application under the Customs Act i.e. AAR No. 1/2009(Cus) may be referred to. It is relevant to mention that the applicant has also stated in the Application that "duty would be payable based on MRP less 35% abatement".

Question 6. In case the activities mentioned at (a) and (c) above amount to manufacture, whether the applicant can take credit of CVD & SAD paid on the imported inputs and capital goods, excise duty paid on the indigenous inputs & capital goods and service tax paid on input services under Rule 3 of the Credit Rules? Whether the credit can be utilized for the payment of excise duty on the final products (kits or individual products)?

Since the activity of putting the individual products into kits, packaging and labeling of the kits has been held to amount to manufacture, the process of preparation of such kits is excisable and the kits are liable to excise duty under Section 3 of the Central Excise Act, 1944. It follows therefrom that the applicant will be eligible to take credit of the additional duties of customs paid on the imported inputs and capital goods, excise duty paid on the indigenous inputs and capital goods and service tax paid on input services as permissible in terms of the Cenvat Credit Rules, 2004. Further, the said credit can be utilized for payment of excise duty on the final products namely Proactiv Solution Kit-I or Proactiv Solution Kit-II.

Accordingly, the ruling is given and pronounced on this the 18th day of September, 2009.

Sd/-
(J.K.Batra)
Member

Sd/-
(P.V.Reddi)
Chairperson

Registered /A D

(A) This copy is certified to be a true copy of the Ruling and is sent to :-

1. M/s Guthy Renker Marketing Private Limited, Level 5, Incube Business Centre, 18 Nehru Place, New Delhi-19.
2. Commissioner, Central Excise, Office of the Commissioner of Central Excise, Thane-1, Navprabhat Chambers, Ranade Road, Dadar (W), Mumbai-28
3. Mr.V.K.Saxena, Jt.CDR, Customs, Excise & Service Tax Appellate Tribunal, West Block-2, R.K.Puram, New Delhi-66.
4. Member (Central Excise), Central Board of Excise & Customs, North Block, New Delhi.
5. Individual Folders of Chairman/Members
6. Guard File

Sd/-
(Krishna A.Mishra)
Additional Commissioner