

**Excise & Customs: Test to be applied for determining whether goods which fall broadly within description of skin care preparations are to be classified as medicaments is whether they are intended primarily for use in treatment of skin disorder or diseases and whether ingredients therein have sufficient therapeutic value. If potential of a product as a medicament to cure any skin ailments is not clear or is not established, it cannot be placed under Chapter 30 as a Medicament**

• Thus, preparations Rupam (Pimple Pack) and Pailab (Anti-Crack Cream), in list submitted by applicant are offered for treatment or prevention of specific skin disorders and are thus classifiable as Medicament under heading 3004 of the Customs Tariff Act, 1975.



**[2018] 92 taxmann.com 213 (AAR-WEST BENGAL)**  
**AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL**  
**Akansha Hair & Skin Care Herbal Unit (P.) Ltd., *In re***  
**VISHWANATH AND PARTHASARATHI DEY, MEMBER**  
**CASE NO. 1 OF 2018**  
**APRIL 9, 2018**

**Anjan Dasgupta**, Adv. and **P.K. Mukherjee** *for the Applicant.*

**RULING**

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1. The Applicant manufactures skin care preparations and wants an Advance Ruling on the Classification of 33 of its products. The Applicant declares that the question raised in this Application is not pending or decided in any proceedings under the CGST / WBGST Act, 2017 (hereinafter the GST Act). The officer concerned has not objected to the admission of the application. As such, the question raised is admissible for Advance Ruling under section 97 (2) (a) of the GST Act. The Application is, therefore, admitted.

2. The Applicant argues that its skin care preparations are Ayurvedic Medicaments. They are meant for therapeutic or prophylactic uses, put up in packaging for retail sale and entirely correspond to the description of goods under HSN 3004 [serial no. 63 of Notification No. 1/2017-CT(Rate) dated 28/06/2017], and, therefore, taxable under Schedule II.

3. The Applicant has submitted a list of these 33 manufactured products and their description as per the product label for review in **Annexure X** of their submission, which is given below:

<i>Name of the product</i>	<i>Nature of the product</i>	<i>Description</i>
Baranga	Face & Body Grain	Brightens the skin all the more without black heads, pimples and scars
Tanuruchi	Face Pack for Oily Skin	Control excessive oil secretion and takes care of scar free face
Twakamadhuri	Face Pack for Normal & Dry Skin	Keeps skin glossy without freckles and spots
Subarna	Face Wash for Oily Skin	Removes dead cells and black heads for oily skin
Angarag	Black Patch Pack	Beautifies the skin of sun-burn and black patches, ensures dazzling liveliness. Enhances glamour and

Rupam Tanurima Romancho (lavender)	Pimple Pack Baby Skin Care Body Talc	beauty Glossy skin without pimples and rashes Fair and glossy skin for your baby Soothing agent having anti-bacterial, anti-fungal anti-septic activity. Prevents excessive perspiration. Feeling of freshness, increases lustre of skin, gives relief from itching sensation and irritation of prickly heat, very helpful remedy in summer boils and pimples.
Romancho (Vanilla)	Body Talc	Soothing agent having anti-bacterial, anti-fungal anti-septic activity. Prevents excessive perspiration. Feeling of freshness, increases lustre of skin, gives relief from itching sensation and irritation of prickly heat, very helpful remedy in summer boils and pimples.
Romancho (Kewra)	Body Talc	Soothing agent having anti-bacterial, anti-fungal anti-septic activity. Prevents excessive perspiration. Feeling of freshness, increases lustre of skin, gives relief from itching sensation and irritation of prickly heat, very helpful remedy in summer boils and pimples.
Swarnabho	Skin Polishing and fairness oil	Keeps skin soft, fair, glowing, stops pre-mature ageing and wrinkling of skin, prevents sun burn rashes, dryness, discolouration and burning sensation of skin. Also helps growing of your baby.
Komal Shree	Growing & Skin Glowing oil for baby	Keeps skin soft, fair, glowing, stops pre-mature ageing and wrinkling of skin, prevents sun burn rashes, dryness, discolouration and burning sensation of skin. Also helps growing of your baby.
Nabaroop (Aloe Vera and Chandan)	Face & Body Wash	Properly cleanses, exfoliate and moisturizes the skin. Helps for removing make-ups and sunscreen which, clog pores. Strengthens the natural protection of the skin. Instantly enhances glow and fairness. Improves the skin texture of skin and body
Nabaroop (Rose and Cucumber)	Face & Body Wash	Properly cleanses, exfoliate and moisturizes the skin. Helps for removing make-ups and sunscreen which, clog pores. Strengthens the natural protection of the skin. Instantly enhances glow and fairness. Improves the skin texture of skin and body
Nabaroop (Lemon)	Face & Body Wash	Properly cleanses, exfoliate and moisturizes the skin. Helps for removing make-ups and sunscreen which, clog pores. Strengthens the natural protection of the skin. Instantly enhances glow and fairness. Improves the skin texture of skin and body
Nabaroop (Neem)	Face & Body Wash	Properly cleanses, exfoliate and moisturizes the skin. Helps for removing make-ups and sunscreen which, clog pores. Strengthens the natural protection of the skin. Instantly enhances glow and fairness. Improves the skin texture of skin and body
Nabaroop (Orange)	Face & Body Wash	Properly cleanses, exfoliate and moisturizes the skin. Helps for removing make-ups and sunscreen which, clog pores. Strengthens the natural protection of the skin. Instantly enhances glow and fairness. Improves the skin texture of skin and body
Swarnali	Fairness Cream	Improve the skin complexion. Removes acne, pimples, black spot, black heads, hyper pigmentation. Make the skin glossy and shiny
Tanujjal	Fairness Face and Body Scrubber	Gently scrubs away skin scars, white & black heads, dead cells, makes skin smooth, healthy and glowing
Twaka Snigdha (Lemon)	Skin Toner	Helps in the normal firming and toning of skin along with hydrating the skin to make it glow, fresh and smooth. Helps to skin and tighten skin pores. Make skin

Twaka Snigdha (Orange)	Skin Toner	soft and more elastic, reduces skin oiliness. Helps in the normal firming and toning of skin along with hydrating the skin to make it glow, fresh and smooth. Helps to skin and tighten skin pores. Make skin soft and more elastic, reduces skin oiliness.
Twaka Snigdha (Neem)	Skin Toner	Helps in the normal firming and toning of skin along with hydrating the skin to make it glow, fresh and smooth. Helps to skin and tighten skin pores. Make skin soft and more elastic, reduces skin oiliness.
Twaka Snigdha (Rose)	Skin Toner	helps in the normal firming and toning of skin along with hydrating the skin to make it glow, fresh and smooth. Helps to skin and tighten skin pores. Make skin soft and more elastic, reduces skin oiliness.
Sukhparash	Face & Body Cream	Prevents from pimples, blemishes and skin rashes. Helps to cure minor and sunburn quantity
Namrata	Moisturizer for normal to dry skin	Helps to moisturize, soften and hydrate the skin. Prevents skin from rashes and burning sensation
Pailab Aadrita	Anti-Crack cream Moisturizer for Oily skin	antibacterial & anti-septic for removal of cracked feet helps to moisturize, soften and hydrate the skin. Prevents the skin from rashes and burning sensation
Komal Parash	Baby Body Talc	Soothing agent having anti-bacterial, anti-fungal anti-septic activity. Prevents excessive perspiration. Feeling of freshness, increases lustre of skin, gives relief from itching sensation and irritation of prickly heat, very helpful remedy in summer boils and pimples.
Tanutra	Sun & Pollution Protection Base	protects skin from scorching sun and environmental pollution and hazards of heavy make-up
Tanumitra 40	Sunscreen Cream	Protects from sun-burn injury.
Tanumitra 60	Sunscreen Cream	Protects from sun-burn injury.
Swarnajyoti	Face Wash	Removes skin impurities, black heads, dead skin cells, pimples and scars
Sunayana	Dark Circle reducing cream	Reduces dark circles and puffiness of the skin around the eyes. Softens fine lines and removes wrinkles

4. The Applicant refers to the ruling of the Authority for Advance Ruling, Central Excise, Customs & Service Tax, New Delhi (hereinafter the AAR) [2009 (248) ELT 932 (AAR)] in the matter of M/s Guthy Renker Marketing Pvt Ltd. The petitioner therein was the Indian subsidiary of a Mauritius based company and intended to import revitalising toner, repairing lotion, cleanser, and refining mask of 'Proactive' brand. According to the petitioner, the cleanser and the repairing lotion contain almost 2.5% Benzoyl Peroxide as an ingredient, which has immense potential to cure acne. The fourth product, namely the mask, contains 6% sulphur as an ingredient, which too has therapeutic value. The first product, namely the toner, does not contain any active ingredient for curing the disease but is used for cleansing the skin as an aid to acne treatment. The petitioner sought an Advance Ruling on commodity Classification. After that, the AAR refers to several decisions of the Apex Court that have laid down common parlance as the appropriate test for determining the meaning or connotation of words or expressions describing an article in a Tariff Schedule. According to the AAR, common parlance test is not a rigid formula capable of being applied in all situations. The test ceases to be applicable if the products referred to are couched in technical/scientific language, or there is a definite indication in the Tariff Schedule negating application of this standard test.

5. The AAR also points out that most of the skin care or toilet preparations containing some recognized medical ingredients and professing to cure or mitigate the skin diseases for which drug licenses have been obtained are held by the apex court as medicaments notwithstanding the fact that they have cosmetic value too (for example, prickly heat powder, anti-dandruff shampoo, anti-pimple herbal powder etc.). If the product can be used for the treatment of specific ailments and the ingredients used are those specified in the medical or pharmacology books, a strong case exists for it being classified as a

medicament.

**6.** There is an apparent contradiction between Note 1 to Chapter 30 and the language of the heading 3304 in excluding medicaments from the skin care products falling there under. The AAR resolves the contradiction by retaining in 3304 such skin care preparations as having only incidental or subsidiary therapeutic or prophylactic value. Other skin care preparations having substantial therapeutic or prophylactic use should be treated as medicaments under heading 3004. In other words, it is not sufficient that a skin care preparation incidentally or in a small way helps in controlling skin disease. Its curative or preventive value must be substantial, and the product must be manufactured primarily to control or cure a skin-related disease. That is to say, if preparations for the care of skin contain sufficient medical ingredients to offer a cure for skin ailments, they stand excluded from the purview of 3304.

**7.** While discussing Note 1 to Chapter 30 in *Puma Ayurvedic Herbal Pvt Ltd (supra)* the Supreme Court observes, "Thus preparations falling in Chapter 33 even if they have therapeutic or prophylactic properties will not fall under Chapter 30 which deals with pharmaceutical products. The reason for this appears to be that even cosmetics may have something to improve skin or other parts of the body where they are used. In that sense, they may have some therapeutic value, yet they remain cosmetic." The Supreme Court further observes that preparations falling under heading 3304 are primarily beauty or makeup preparations. They may incidentally help in protection against skin irritants. They may help as a skin tonic, yet they are cosmetics because skin protection is a subsidiary benefit.

**8.** The AAR, therefore, concludes that the test to be applied for determining whether the goods which fall broadly within the description of skin care preparations are to be classified as medicaments is whether they are intended primarily for use in the treatment of skin disorder or diseases and whether the ingredients therein have sufficient therapeutic value. If the potential of a product as a medicament to cure any skin ailments is not clear or is not established, it cannot be placed under Chapter 30 as a Medicament.

**9.** The AAR's observations are primarily based on *Puma Ayurvedic Herbal Pvt Ltd* [2006 (196) ELT 3 (SC)]. In its written submission the Applicant also refers extensively to the above judgment, which has traversed the history of Supreme Court's observations on the related questions and issues while deciding upon the classification of the petitioner's skin care products. It has direct relevance to the Applicant's case and needs to be discussed in some detail for clarity on the legal position regarding classification of goods in the present context.

**10.** In *Puma Ayurvedic Herbal Pvt Ltd (supra)* the Court observes, "In order to determine whether a product is a cosmetic or a medicament a twin test has found favour with the Courts. The test has the approval of this Court also vide *Collector v. Richardson Hindustan Ltd* [1989(42) ELT A100 (SC)/2004 (9) SCC 156]. There is no dispute about this as even the Revenue accepts that the test is determinative for the issue involved. The tests are I. *Whether the item is commonly understood as a medicament which is called the common parlance test* (emphasis added). For this test, it will have to be seen whether in common parlance the item is accepted as a medicament. *If a product falls into the category of medicament, it will not be an item of common use* (emphasis added). A user will use it only for treating a particular ailment and will stop its use after the ailment is cured. The approach of the consumer towards the product is very material. One may buy any of the ordinary soaps available in the market. But if one has a skin problem, he may have to buy a medicated soap. Such soap will not be an ordinary cosmetic. It will be medicament falling in Chapter 30 of the Tariff Act. II *Are the ingredients used in the product mentioned in the authoritative textbooks on Ayurveda? What is to be seen is whether the products are likely to be in common use by normal consumers. Common parlance meaning and understanding is a strong factor in the determination of the classification of products. One need not resort to the scientific or technical meaning of the terms used* (emphasis added). So far as the other test is concerned, the

learned counsel for the appellant has placed on record material from the Ayurvedic texts or Pharmacopoeia in support of each product which is the subject matter of the present appeal to show that the ingredients of each product are independently mentioned in the Ayurvedic texts."

**11.** In *Puma Ayurvedic Herbal Pvt Ltd (supra)* the Appellant had a license to manufacture Ayurvedic products obtained from the Drug Controller under the Drugs and Cosmetics Act, 1940. All the items under appeal before the Supreme Court were produced from ingredients found in Ayurveda textbooks. They are manufactured as per the Ayurveda pharmacopoeia and had curative, therapeutic or prophylactic value. They were meant to give relief from body ailments. As such, all ingredients were Ayurvedic raw material. Besides this, the evidence produced by the appellant before the authorities in the shape of letters from consumers, from doctors and from Ayurvedic physicians, according to the Apex Court, satisfied the common parlance test. *The Court refers to Richardson Hindustan Ltd. [1989 (42) ELT A100], where the court has held that the articles enumerated in the tariff schedules must be construed as far as possible in their ordinary or popular sense, that is, how the common man and persons dealing with it understand it (emphasis added).* If the customers and the practitioners in Ayurvedic medicine, the dealers and the licensing officials treat the products in question as Ayurvedic medicines that fact gives an indication that they are exclusively Ayurvedic medicines or that they are used in the Ayurvedic system of medicine. This is especially so when all the ingredients used are mentioned in the authoritative books on Ayurveda. From the above and other judgments, the Apex Court observes that *the law is settled on the applicability of the twin test for determination of the classification of a product (emphasis added).*

**12.** In its judgment dated 13/04/2009 in Baidynath Ayurved Bhawan Ltd (CA No. 4048 of 2001), the Apex Court revisited the question of the twin test for determining whether the product is an Ayurvedic Medicament or not. It observes that the twin test noticed in Puma Ayurvedic Herbal (P) Ltd continue to be relevant. The court holds *that classification should be based on the popular meaning and understanding attached to such products by those using them and not the scientific and technical meaning of the terms and expressions used (emphasis added).* "The approach of the consumer or user towards the product, thus, assumes significance. What is important to be seen is how the consumer looks at a product and what is his perception in respect of such product. The user's understanding is a strong factor in the determination of the classification of the products."

**13.** In the light of the above discussion, we should now find out what are parameters and their relative importance in deciding whether a product should fall under subhead 3004 as an Ayurvedic Medicament or be classified as a skin care preparation (other than medicaments) under subhead 3304. Medicaments are not defined under the GST Act or in the First Schedule of the Customs Tariff Act, 1975 (hereinafter the Tariff Act), with which the GST Act has been aligned for the purpose of classification. The methods settled by the apex court for determining whether a product is to be classified as medicaments for fixing the tariff should be followed as the only lawful course. The Apex Court has settled for a twin test method. It means how the product is understood in common parlance and whether the product has been manufactured using ingredients and formula provided in the authoritative textbooks of Ayurveda are the two parameters for such classification. Other parameters like classification in the license issued by the competent authority are relevant only in relation to and subject to the twin tests discussed above. It may be mentioned in this connection that different parameters can be used based on the purpose for the classification. The Apex Court has long settled that classification for fixing tariff should be based on how the goods are understood in common parlance in the commercial world.

**14.** In subhead 3004 the emphasis is on therapeutic or prophylactic uses. Even if a product is manufactured using ingredients and according to the formula prescribed in the authoritative textbooks of Ayurveda, it should not be classified as a medicament under heading 3004 unless it is meant for therapeutic or prophylactic uses. In other words, it is not sufficient that a skin care preparation,

manufactured following a formula in an authoritative textbook of Ayurveda, helps in controlling skin disease. Its curative or preventive value must be substantial, and the product must be manufactured primarily to control or cure a skin-related disease, and the consumers use it primarily for treatment, mitigation, cure or prevention of specific skin disease or skin disorder.

**15.** Note 1 (e) to Chapter 30 states that the Chapter does not cover preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties. In the present context, it means a skin care preparations, if it otherwise falls under heading 3304, shall be excluded from Chapter 30, even if it has therapeutic or prophylactic properties. But what should be the yardstick to determine whether a product qualifies to be included under heading 3304?

**16.** The discussion in *Puma Ayurvedic Herbal Pvt Ltd (supra)* is relevant. The apex court says, "The learned counsel for the respondent drew our attention to Note 2 of Chapter 33 of the Central Excise Tariff which is as under: 'Note 2. Heading Nos.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 with labels literature or other indications that they are for use as cosmetics or toilet preparations or put up in a form clearly specialized to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents, or are held out as having subsidiary curative or prophylactic value.' On the basis of this Note it was argued that even if a product has some curative or prophylactic value, it will still be cosmetic. We cannot accept this argument. The learned counsel has overlooked the use of the word 'subsidiary' in the said note from which it follows that a subsidiary curative or prophylactic use will not convert a cosmetic into a medicament. We have tried to illustrate this by giving the example of a bald man treating his baldness by use of the Ayurvedic product. The curative use of the product is primary in that example and not subsidiary. The subsidiary result is an improvement in appearance. Therefore, in our view, Note 2 to Chapter 33 does not help the respondent. Rather Note 5 to the said Chapter, makes it clear that the products which fall under heading 33.04 are primarily beauty or make up preparations. They may incidentally help in protection against skin irritants. They may also help as a skin tonic, yet they are cosmetics because skin protection is a subsidiary benefit."

**17.** The above judgment of the Apex Court is based on specific Notes to Chapter 33 of the Excise Tariff Act, 1985. Applicability of the apex court's observations in the present context is, therefore, subject to the Notes and entries in the Tariff Act, as it stands today after the GST Act comes into effect. Note 2 to Chapter 33 of the Tariff Act is completely rephrased. Note 3 to Chapter 33 of the Tariff Act now stands as under: "Heading Nos.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." Note 5 to Chapter 33 of the Tariff Act does not exist anymore. It, therefore, appears that the phrase 'suitable for use as goods of these headings and put up in packings with labels literature or other indications that *they are for use as cosmetics or toilet preparations* (emphasis added) or put up in a form clearly specialized to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents, or are held out as having *subsidiary* (emphasis added) curative or prophylactic value' in Note 2 to Chapter 33 and also the Note 5 do not exist for the purpose of the GST Act.

**18.** Conclusions reached in *Puma Ayurvedic Herbal Pvt Ltd (supra)* and followed by the AAR in *M/s Guthy Renker Marketing Pvt Ltd [2009 (248) ELT 932 (AAR)]*, based on earlier constructions of Notes 2 and 5 to Chapter 33 in the Excise Tariff Act, 1985 are, therefore, need to be revisited in the context of the GST Act. In the absence of the restrictive phrases attributed to Notes 2 and 5 to Chapter 33, heading 3304 should now include all preparations for the care of skin, whether cosmetics or not or having therapeutic or prophylactic properties of whatever degree, excluding the ones that are medicaments covered by Chapter 30. A preparation for care of skin, unless already specified under heading 3304,

should, therefore, first be examined concerning its suitability for inclusion as a medicament in heading 3004 by applying the twin tests set out in *Puma Ayurvedic Herbal Pvt Ltd (supra)* and *Baidynath Ayurved Bhawan Ltd (supra)*. If it fails the test, it should be classified under heading 3304. On the other hand, if the skincare preparation is specifically included under heading 3304 (for example sunscreen or suntan preparations, talcum powder, face powder, moisturizing lotion etc.), it is not to be classified as a medicament under heading 3004 in terms of Note 1(e) to Chapter 30, even if it has therapeutic or prophylactic properties of whatever degree.

**19.** It is acknowledged that nearly all proper skin care preparations have therapeutic or prophylactic properties, as they help in maintaining or improving the health of the skin. On the other hand, skin care preparations that are used as medicaments may have the effect of enhancing appearance and beauty by restoring skin health. The essential difference, therefore, lies in the user's perception of a particular product. If the user consumes the product primarily for cure from or treatment or mitigation of or for prevention of a specific skin disease or disorder, it should be treated as a medicament classifiable under heading 3004 (unless, of course, it has been specifically included under heading 3304). The effect of enhancing appearance of the skin or beauty is not what the product is offered for or used by the consumer.

**20.** In the context of the present application, there is no dispute that the products are manufactured under valid drug license and following the formula prescribed in the authoritative textbooks of Ayurveda. A few ingredients may have been added for preservation of the quality of the product, which, as settled by the apex court on several occasions, should not be considered material while ascertaining the underlying Ayurvedic nature of the product. The Applicant has also furnished various documents for facilitating the common parlance test. They include photocopies of prescriptions indicating that several products are being prescribed by the medical practitioners. A CD containing video and also the English transcript of a popular TV programme where consumers are describing their experience in using a few of the products, is also submitted. Finally, the Applicant has submitted the labels containing a description and use of the products and physical samples.

**21.** The label contains indication and method of use for each of the products. They are compared with the indication as per the list provided in the application. The prescriptions and also information available in the English Transcript are taken into account wherever relevant, subject to the limitation that the CD contains only snippets of different episodes of a TV show where the users are uniformly endorsing the Applicant's products as showing good results. It is not clear whether the 'good results' relate to enhancing appearance of the skin or treatment of a disease. We are not to involve ourselves in examining efficacy of the Applicant's products. Our focus will be to ascertain from available materials what the Applicant is offering and consumer is using. A more objective way to examine it is to analyse the information contained in the labels attached to the product when offered in retail set up. The information provided on the labels may be considered as written communication from the manufacturer to the consumer as to what is being offered. If a customer purchases the product it may be presumed that he or she accepts the offer and believes in the information contained in the label.

**22.** In response to an enquiry made regarding the products in communication dated 03.04.2018 the Applicant has stated that three (03) of the products in the list submitted by the Applicant, namely, Swarnajyoti, Sunayana and Tarumitra-60, are yet to be manufactured by them and are presently not in existence. This was also admitted by the Applicant during Personal Hearing on 04.04.2018.

**23.** In light of the above discussion, it appears only the products, Rupam (Pimple pack) and Pailab (Anti-crack cream) of the list of their products are offered for treatment or prevention of specific skin disorders. The products, namely, Swarnajyoti, Sunayana and Tarumitra-60 have not yet come into existence, and, therefore, excluded from the ambit of examination for the purpose of this ruling. The

other products are either already specified under heading 3304 (like talcum powder, sunscreen, moisturising lotion etc.) and, therefore, cannot be considered for inclusion under heading 3004. The remaining products mentioned in the list submitted by them are not offered primarily as medicaments and, therefore, not to be included under heading 3004.

In view of the foregoing we rule as under

## **RULING**

**1.** Preparations for the care of the skin namely, Rupam (Pimple Pack) and Pailab (Anti-Crack Cream), in the list submitted by the Applicant of the Application are classifiable as Medicament under heading 3004 of the Customs Tariff Act, 1975. Preparations listed as Swarnajyoti, Sunayana and Tarumitra-60 have not yet come into existence, and, therefore, no rulings are pronounced on their classification. The remaining products mentioned in the list submitted by them are not offered primarily as medicaments and, therefore, not to be included under heading 3004.

**2.** This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

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