

**ASSISTED BY:**

K.NANCY B.COM, B.L. (HONS.),

R.MANSOOR ILAHI, B.COM, B.L.

VINUPRIYA MUTHURAMALINGAM, B.A., L.L.B. (HONS.)

**CONSULTANTS:**

GST, CUSTOMS,

FOREIGN TRADE LAWS,

FOREIGN EXCHANGE MANAGEMENT ACT.

## OPINION

1. **Queriest :**

M/s. Diabliss Consumer Products Pvt. Ltd.,  
Type II, Unit-20, Dr.VSI Estate,  
Thiruvanmiyur,  
Chennai – 600 041.

2. **Facts :**

2.1 The queriest intends to manufacture and market the product described as “Health Bliss”. It is stated that this is a herbal blend for blood glucose management.

2.2 It is reported that 7 to 15 herbs are soaked in water. According to the queriest the water is filtered and color, taste compounds are removed through well known processes such as ion exchange or carbon absorption etc. No chemicals or solvents are used in the process. The resultant water contains the goodness of all these herbs. It is essentially and majority water, compositionally, and the important health benefits causing ingredients contained in herbs present in a Bio available form. 15 ml. of this Herbal Water is mixed with 500 ml. of water and consumed throughout the day to deliver benefits.

2.3 The queriest has taken a licence under Food Safety and Standards Act 2006 and according to them this product will come under “Non Carbonated Water Based Beverages (Non Alcoholic)”.

3. **Query :**

3.1 In the above context, the queriest would like to know the appropriate classification of the product under GST and the rate of tax applicable.

3.2 The queriest has made available a copy of the proposed label to be used with the product. The product label states the following.

“Herbal Blend for Blood Glucose Management

- Effective in Managing Blood Sugar
- Clinically Tested by Physicians
- Safe for Diabetics and pre-Diabetics
- No Side Effects



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Directions of use:

Do not drink the blend directly

Add 15 ml (one cap full) of Health Bliss to 500 ml of water and drink it throughout the day.”

The label further states as follows:

“If you are struggling to manage your blood sugar levels, here is a safe and effective way to deal with it. HEALTH BLISS is a clinically tested herbal blend that helps in managing your blood sugar levels. It is a water-based blend with the goodness of 8 carefully chosen herbs to provide you with the best efficacy in dealing with the problem. Health Bliss can be consumed safely by Diabetics and pre-Diabetics. It has no side effects. Use Health Bliss regularly and lead a healthy life.”

- 3.3 There is also a pictorial representation in the label to the effect that the product is made from these natural things :

(1) Black Jamun, (2) Clove, (3) Fenugreek, (4) Gooseberry (Amla), (5) Cinnamon, (6) Black Pepper, (7) Ginger and (8) Turmeric.

#### 4. Opinion :

- 4.1 From the information provided, it is clear that the product contains certain spices, herbs and fruit. It is a blend and in concentrated form. 15 ml. is to be mixed with 500 ml. of water and then consumed. There is a specific indication that it cannot be taken directly ‘as such’.
- 4.2 By taking into account the product composition and the form in which it is produced and sold, it will be clear that it cannot be treated as ‘water’ as such. It is a concentrate or preparation claiming to manage blood glucose levels. It is also stated that it is safe for diabetics and pre-diabetics.
- 4.3 Such products will be appropriately covered under Heading 2106 as “Food preparations not elsewhere specified or included”. In the HSN Explanatory Notes under Heading 2106, the following two types of products, among others, are covered.

“(7) Non-alcoholic or alcoholic preparations (**not based** on odoriferous substances) of a kind used in the manufacture of various non-alcoholic or alcoholic beverages. These preparations can be obtained by compounding vegetable extracts of heading 13.02 with lactic acid, tartaric acid, citric acid, phosphoric acid, preserving agents, foaming agents, fruit juices, etc. The



preparations contain (in whole or in part) the flavouring ingredients which characterize a particular beverage. As a result, the beverage in question can usually be obtained simply by diluting the preparation with water, wine or alcohol, with or without the addition, for example, of sugar or carbon dioxide gas. Some of these products are specially prepared for domestic use; they are also widely used in industry in order to avoid the unnecessary transport of large quantities of water, alcohol, etc. As presented, these preparations are not intended for consumption as beverages and thus can be distinguished from the beverages of Chapter 22.”

“(16) Preparations, often referred to as *food supplements*, based on extracts from plants, fruit concentrates, honey, fructose, etc. and containing added vitamins and sometimes minute quantities of iron compounds. These preparations are often put up in packagings with indications that they maintain general health or well-being. Similar preparations, however, intended for the prevention or treatment of diseases or ailments are **excluded (heading 30.03 or 30.04).**”

- 4.4 In this context, we also would like to refer to the Classification Ruling under reference NY F82237 dated 08.02.2000 given by the US Trade Commission in respect of a Chinese product marketed as ‘Herbal Tea’. This opinion states as follows:

*“A sample was submitted with your letter. Kam Wo Tea is a mixture of dried Chinese herbs packed in boxes containing 6.8 grams, net weight, 10 small boxes to a larger box. The “tea” is combined with boiling water and allowed to stand for 15 minutes before drinking.*

*The applicable subheading for this herbal tea will be 2106.90.9987, Harmonized Tariff Schedule of the United States (HTS), which provides for food preparations not elsewhere specified or included...other... other...herbal teas and herbal infusions comprising mixed herbs. The rate of duty will be 6.4 percent.”*

Copy of the Ruling is attached as **Annexure-1**.

- 4.5 Once it is decided that the product falls under Chapter 2106 as a “food preparation” then the sub-heading-under that chapter heading has to be decided. Heading 2106 covers various products at 6 and 8 digit levels. “2106 9050” covers ‘compound preparations for making non-alcoholic beverages’ and “2106 9091” covers “diabetic foods”. The present product, as such, does not appear to be covered by the description “Diabetic Food”.
- 4.6 Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food) Regulations 2016, as notified in terms of Notification dated

23.12.2016 stipulates certain conditions and parameters for considering a food as 'Diabetic Food'. The link for the above Notification is given below:

[https://www.fssai.gov.in/upload/uploadfiles/files/Nutraceuticals\\_Regulations.pdf](https://www.fssai.gov.in/upload/uploadfiles/files/Nutraceuticals_Regulations.pdf)

Para.8 of the above notification refers to "Food for special dietary use" and indicates what are the requirements to be complied by the manufacturer/processor and what ingredients are to be included in the product. In the present case, there is no evidence to indicate that the product is registered as a 'special dietary' product under FSSAI regulations.

- 4.7 In addition to the above, we also would like to refer to the decision of the Authority for Advance Ruling given in the case of Sun Pharmaceutical Industries Ltd. for the product Prohance-D. This ruling is reported in **2019 (27) G.S.T.L. 76 (A.A.R. - GST)** and a copy of the same is attached as **Annexure-2**. This product is specifically designed to serve as a nutritional powder for people with diabetics and is to be mixed with drinking water and used as partial meal replacement / breakfast replacement. After considering the general definition of "Diabetic Food" and the specific requirements to be complied with under FSSAI regulations, the Advance Ruling Authority has held that this product cannot be classified as 'Diabetic Food' but as a 'food preparation' falling under "2106 9050".
- 4.8 Considering all the above, in our view, this product also will fall under Heading '2106 9050' as 'compound preparations for making non-alcoholic beverages'. As on date the tax rate is 18% GST (9% SGST + 9% CGST or 18% IGST).



**S. MURUGAPPAN**

sm/ss

**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.