

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING FOR THE
STATE OF HARYANA, FOR GOODS AND SERVICES TAX, PANCHKULA,
VANIJYA BHAWAN, PLOT NO. I-3, SECTOR-5, PANCHKULA-134151
(HARYANA)**

**Order under Section 101 of the Central goods and Services Tax Act,
2017/ the Haryana Goods and Services Tax Act, 2017**

The present appeal has been preferred by the applicant M/s Khera Trading Company situated at Sanoli Road, Near Govind Tobacco Factory, Panipat, Haryana-132103 ('Appellant') against the Advance Ruling No. HAR/HAAR/R/2018-19/08 Dated 30.08.2018 passed in their application dated 04.06.2018.

BRIEF FACTS OF THE CASE

2. The Appellant is inter alia engaged in the distribution of various dairy and non-dairy products and are registered with the jurisdictional GST authorities vide GSTIN 06AOEPK0998K1ZK. The goods " Pizza Topping" is sold by the appellant under the brand 'Goodrich' is a proprietary food consisting of water, mozzarella cheese, vegetable oil and milk solids along with premixes of emulsifiers and stabilizers. It is ideal for use on pizza as a topping of cheese as it provides smooth lasting taste and stringiness to pizza.

2.1 The impugned good comprises of 14.5 percent mozzarella cheese to which other milk products such as skimmed milk powder and rennet casein are added. The milk ingredients constitute another 15 percent. The composition of impugned good is tabulated as under;

Name of Ingredient/additive	Ratio
Water	44 kg
Vegetable Fat	22kg
Mozzarella Cheese	14.5 kg
Rennet Casein (milk solid)	11 kg
Skimmed milk powder	4 kg
Premix (emulsifier, stabilizer, acidity regulator and preservative)	4.5 kg
Total	100 kg

2.2 Manufacturing process:-

- 1) The ingredients above are poured and mixed together in a Stephens cooker
- 2) The above mixture is heated at 75-80degree C.for about.5— 10 minute
- 3) After heating, the materiel is transferred to a mould of requisite capacity for packing the product into pouches containing smaller quantities (1 kg and 200 grm). These pouches are sealed and packed in an outer carton.
- 4) The pizza topping comprises of 14.5 percent 'Mozzarella cheese to which other milk products such as skilled milk powder and rennet casein are added The proportion of the milk products and other Ingredients constituting 41.5 percent are as under:-

Name of Ingredient/additive	percent
Vegetable Fat	22%
Rennet Casein (milk solid) 11% + skimmed milk powder-4%	15 kg
Premix (emulsifier, stabliser, acidity regulator and preservative)	4.5 kg

2.3 The applicant submitted that the product "Pizza Topping" containing 14.5 per cent Mozzarella cheese and 15 per cent of other milk products along with other ingredients forms a type of cheese. Thus, it is classifiable under Chapter Heading 406 (SI. No. 13 of Schedule -II to Notification No. 1/2017 Integrated Tax/Notification No. 1/2017-Central Tax and Notification No 35/ST-2 as "cheese" and chargeable to GST @ 12%.

2.4 The applicant submitted that mozzarella cheese constitutes 14.5 percent of the total Pizza Topping and it forms the main ingredient to which other ingredients are added in small quantities Pizza Topping contains 15 percent of other milk products such as milk solids and skimmed milk powder (already provided at Para. 2 5 under Annexure)) Thus almost 30 percent {14.5% (mozzarella cheese) + 15% (milk solids and skimmed milk powder)} of product is comprised of cheese and other milk derivate. Thus, the essential character of Pizza Topping is provided by mozzarella cheese without which the Pizza Taping will not achieve its cheesy character. Notable that topping maintains its basic cheesy character even after addition of other ingredients. Accordingly, the pizza Topping is a type of cheese under Heading 0406 which covers cheese.

3. Based on the above submissions, the applicant raised the following question on which advance ruling was sought:

"Whether the product "pizza topping" is classifiable under Chapter Heading 0406 [S. No. 13 of Schedule-I of Notification No 1/2017-Integrated Tax (Rate) dated June 28, 2017, attracting IGST @ 5% / {S.No.89 of schedule-I of Notification No 01/2017 Central Tax (Rate) dt.28.067 attracting CGST 2.5%}/ {S.No.89 of schedule-I of Notification No 35/ST-2 attracting SGST @ 2.5%}"

Comments of the concerned officer U/S 98(1) OF THE CGST/HGST ACT, 2017

4. The Deputy Excise & Taxation Commissioner (ST), Panipat, vide letter No 5339 dated 20.07.18, submitted the requisite comments on the above question raised by the applicant stating therein that after reading the above heading, it cannot be concluded that pizza topping falls under this head. There must be some different procedure adopted while preparation of cheese and pizza topping Heading 0406 clearly mentions cheese which is taxable @ 12%. Pizza Topping is not specified under chapter 4 and hence requires to be subjected to 18% being unclassified in any schedule.

Decision of Authority for Advance Ruling Haryana:

5. Advance Ruling under Section 98 of the CGST/ HGST Act, 2017 was pronounced as under:

The impugned item, i.e., "pizza topping" being manufactured by the applicant cannot be classified as "process cheese" under chapter heading 0406, rather it merits classification under chapter heading 2106 of the schedule to the Customs Tariff Act, 1975, as "Food Preparations not elsewhere specified or included" and chargeable to IGST @ 18%, CGST @ 9% and SGST @ 9%, as specified under S.No.23 of Schedule-III of Notification No.1/2017. Integrated Tax (Rate) dated June 28, 2017, Notification No.01/2017-Central Tax (Rate) dated 28.06.17 and of Notification No.35/ST-2

Submissions made in the Appeal, by the Appellant:

6. The Appellant made the following written submissions in the Appeal:

6.1 At the outset, it is pertinent to highlight that the Authority in its impugned Ruling has failed to take note of the additional submissions furnished and the factum of personal hearing on August 14, 2018. It apparently seems that the Authority did not bother to take into

consideration the submissions advanced vide additional submissions and during the course of hearing.

6.2 In the case of **Dharampal Satyapal Limited v. DCCE, 2015 (320) ELT 3 (SC)**, the Apex Court explaining the concept and contours of principles of natural justice, observed that principles of natural justice include the following: (i) rule against bias, i.e. *memo judex in cause sua*, (ii) opportunity of being heard, i.e. *audi alteram partem*, (iii) passing of a reasoned order. These principles or attributes are natural or fundamental to the exercise of judicial powers.

6.3 The principle of *audi alteram partem*, i.e. right to be heard, forms part of the set of principles of natural justice, indispensable in exercise of the judicial authority. The principle must be applied even in cases where the same has not been expressly provided for in the enactment. The above view was echoed in following judicial precedents:

- Cooper v. Wandsworth Board of Works, [1863] 14C B.N.S. 180; and
- Mrs. Maneka Gandhi v. UOI, AIR 1978 SC 597

6.4 From the above, it is clear that the impugned ruling stands in stark violation to the well-established principles of natural justice. Accordingly, the Impugned Ruling is liable to be set aside and classification adopted by the Appellant accepted.

7. Notification 1/2017-Integrated Tax and Notification 1/2017-Central Tax provide six Schedules which provide the serial number, the Chapter/ Heading / Sub-heading and Tariff item and the description of goods. The goods will have to satisfy the classification and description specified therein in order to be covered under a schedule. Each Schedule carries a rate at which central tax is levied on goods covered thereunder. Similarly, Notification 35/ST-2 provides six Schedules in a similar scheme.

7.1 It is noteworthy that Explanation (iii) appended to Notification 1/2017-Integrated Tax, Notification 1/2017-Central Tax, Notification 35/ST-2, imports Chapter, Heading, Sub-heading and Tariff item as specified in First Schedule of the Customs Tariff Act, 1975 ('Customs Tariff Act') for the purpose of determining classification under Notifications. Similarly, Explanation (iv) adopts the general rules for interpretation, Section Notes and Chapter Notes as provided in Customs Tariff Act for interpreting the Notifications.

7.2 The First Schedule to the Customs Tariff Act is divided into XXI Sections which are in turn divided into 98 Chapters. The dominant constituent in impugned good is cheese topping. Hence, Chapter 4 and Chapter 21 covering 'Dairy produce; birds' eggs; natural honey; edible products of animal' arise for consideration in the present instance.

7.3 In the present case, the Appellant seeks to classify impugned good under Heading 0406 whereas the Authority vide its Impugned Ruling has classified the same under Heading 2106. It is pertinent to extract each of the above headings for ascertaining their scope and determining the classification of impugned good.

Chapter 4		
Dairy produce, birds' eggs, natural honey, edible products of animal		
0406		Cheese and Curd
040610 00		Fresh (unripened or uncured) cheese, including whey cheese and curd
0406 00	20	Grated or powdered cheese, of all kinds
0406 00	30	Processed cheese not grated or powdered
0406 00	40	Blue-veined cheese and other cheese containing veins produced by <i>Penicillium roqueforti</i>
0406 00	90	Other cheese

Chapter 21		
Miscellaneous edible preparations		
2106		Food preparations, not elsewhere specified or included
2106 1000		Protein concentrates and textured substances
210690		Other:
	---	Soft drink concentrates
210690 11	----	Sharbat
21069019	----	Other
21069020	---	Pan Masala
2106 90 30	---	Betel nut product known as "Supari"
2106 90 40	---	Sugar syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrin syrup

2106 90 50	--- Compound preparations for making non-alcoholic beverages
2106 90 60	--- Food flavouring material
21069070	--- Churna for pan
2106 90 80	--- Custard powder
	--- Other.
2106 90 91	---- Diabetic foods
2106 90 92	---- Sterilized or pasteurized millstone
21069099	----- Other

7.4 The Appellant contends that impugned good merits classification under Tariff Item 0406 90 00 bearing description 'Other'. It is a residuary entry which is provided under Heading 0406. Therefore, in order to classify impugned good under the aforesaid Tariff Item, the products must qualify under Heading 0406.

7.5 The Authority in the Impugned Ruling has held that impugned good are classifiable under Heading 2106. The Appellant submitted that the relevant Tariff item under heading 2106 is 2106 90 99 bearing description 'Other' which is a four-dash entry covered under triple-dash entry 'Other'. The triple-dash entry is further covered under Sub-heading 2106 90 bearing description 'Other', which is a single-dash entry covered under Heading 2106. Therefore, the impugned good must answer to the description of goods mentioned against Heading 2106 in Order to merit classification under Tariff item 2106 90 99.

8. A bare perusal of the description of Heading 0406 reveals that it *inter alia* covers different types of 'cheese'. The Customs Tariff Act does not define the expression 'cheese'; hence, it is pertinent to ascertain the general import of this term.

8.1 Definitions of the term 'cheese' as given in various dictionaries are reproduced as under:

The Concise Oxford' English Dictionary, [12th edition (2011), Oxford University Press, refer at page 217], defines the term 'cheese' as 'A food made from the pressed curds of milk, firm and elastic or soft and semi-liquid in texture';

The Collins English Dictionary Complete and Unabridged, [12th edition, (2014)] provides following definitions for the term:

- Cheese is a solid food made from milk. It is usually white or yellow;
- Food made from milk, that can be either firm or soft; and
- Food consisting of the coagulated, compressed, and usually ripened curd of milk separated from the whey.

8.2 A perusal of the above definitions reveals that the term 'cheese' refers to a product made from the milk, by application of the process of coagulation

8.3 The Appellant submitted that the Product contains mozzarella cheese constituting almost 15 percent of the total product. It forms the main ingredient to which other ingredients are added in small quantities. The product contains 15 percent of other milk products such as milk solids and skimmed milk powder. Thus, almost 30 percent {14.5% (mozzarella cheese) + 15% (milk solids and skimmed milk powder)} of product is comprised of cheese and other milk derivatives.

8.4 In addition to above, the Product also contain vegetable fat constituting almost 22 percent of the product. The Appellant submitted that vegetable fat is added only for the purposes of adding texture and providing flavour to the product. The cost of vegetable fat is quite less, hence this results in bringing down the cost of the product.

8.5 Thus, the essential character of impugned good is provided by mozzarella cheese without which the product will not achieve its cheesy character. Further, milk solids and skimmed milk powder falling under Chapter 4 of HSN, also constitutes essential ingredients. Notable that even after addition of other ingredients, the topping maintains its basic cheesy character. Accordingly, the product is a type of cheese classifiable under Heading 0406 which covers cheese and curd.

8.6 The Appellant submitted that above view is supported by the Explanatory Notes appended to the HSN.

8.7 In the case of CCE vs. Wood Craft Products Limited, 1995 (77) ELT 23 (SC), the Apex Court observed that the HSN Explanatory Notes serve as a safe guide for ascertainment of meaning of a term used in the Tariff Schedule in case of doubt the relevant extract has been reproduced as under:

'We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and,

therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself"

8.8 In the case of *Reckitt Benckiser (India) Limited. v. Commissioner, Commercial Taxes*, 2015 (7) SCC 126, the Apex Court held that when the taxation statute is aligned with the HSN codes, then, necessarily the interpretation has to be based on the HSN code, as available in the Customs Act. The judgment has been relied upon in the case of *Parisons Food Private Limited v Joint Commissioner of Commercial Taxes*, 2018 (11) GSTL 44 (Ker.).

8.9 WCO's Explanatory Notes to HSN [Sixth edition (2017), refer page I-0406-1 and I-0406-2] provide that Heading 0406 covers all kinds of cheese, viz., fresh cheese, powdered cheese, processed cheese, blue-veined cheese, soft cheese, medium-hard cheese and hard cheese. Relevant part of HSN Explanatory Notes is extracted below:

"This heading covers all kinds of cheese, viz.:

- (1) Fresh cheese (including cheese made from whey or buttermilk) (e.g., Ricotta, Broccio; cottage cheese, cream cheese, Mozzarella);*
- (2) Grated or powdered cheese;*
- (3) Processed cheese, also known as process cheese. It is manufactured by comminuting, mixing, melting, emulsifying, with the aid of heat and emulsifying or acidifying agents (including melting salts), one or more varieties of cheese and one or more of the following: cream or other dairy products, salt, spices, flavouring, colouring and water.*
- (4) Blue-veined cheese and other cheese containing veins produced by *Penicillium roqueforti*;*
- (5) Soft cheese (e.g. Camembert, Brie);*
- (6) Medium-hard cheese and hard cheese (e.g. Cheddar, Gouda, Gruyere, Parmesan).*

The presence of meat, fish, crustaceans, herbs, spices, vegetables, fruits, nuts, vitamins, skimmed milk powder etc. does not affect classification provided that goods retain the character of cheese.

Cheeses which have been coated with batter or bread crumbs remain classified in this heading whether or not they have been pre-cooked, provided that the goods retain the character of cheese."

8.10 Heading 0406 covers different types of cheese such as fresh cheese, powdered cheese, processed cheese, blue-veined cheese, soft cheese, medium-hard cheese and hard cheese.

8.11 It is submitted that the HSN Explanatory Notes clarify that processed cheese is manufactured by comminuting, mixing, melting and emulsifying, with the aid of heat and emulsifying or acidifying agents (including melting, salts), one or more varieties of cheese and one or more of the following: cream or other dairy products, salt, spices, flavourings, colouring and water.

8.12 In the present instance, the product is manufactured by processing (melting, emulsifying and comminuting) mozzarella cheese in a STEPHAN's cooker and then adding milk derivatives, premixes etc. to the same for the purposes of preservation and adding nutritious value. Thus, the nature and texture of impugned good, the ingredients added to it and the method of its manufacture are in consonance with HSN Explanatory Notes to Heading 0406.

8.13 The appellant submitted that it is pertinent to refer to the meaning of the term process. The term 'process' has been defined in various dictionaries as under:

The Concise Oxford English Dictionary [12th Edition (2011), Oxford University Press, refer at page 1143] defines the term as series of actions or steps; and

Prem & Saharav's Judicial Dictionary of Words and Phrases, [2nd Edition (2016), Thomson Reuters, refer at page 3832] defines the term is a mode of treatment of certain materials in order to produce a particular result.

8.14 A perusal of the above meaning reveals that process means, a procedure or a series of actions to 'achieve a particular end; that the mozzarella cheese is subjected to different processes such a heating, mixing etc, in order to achieve the product. Accordingly, the product qualifies to be processed cheese.

8.15 Additionally, Heading 0406 is broad and non-restrictive regarding ingredients that can be added to cheese. It specifically permits addition of only specific ingredients such as meat, fish, spices, skimmed milk etc. subject to the

condition that the essential character of cheese is retained. Relevant extract is reproduced as under:

"The presence of meat, fish, crustaceans, herbs, spices, vegetables, fruits, nuts, vitamins, skimmed milk powder etc. does not affect classification provided that goods retain the character of cheese."

8.16 Further, it even permits coating of cheese with an entirely different product like bread/batter, the only requirement is that the product should retain the character of cheese despite the addition of other ingredients.

8.17 In the present instance, the Product primarily comprises of mozzarella cheese and other ingredients such as skimmed milk powder, rennet casein, water, stabilizers, emulsifiers, etc. which are specifically permitted under the HSN Explanatory Notes. In addition to this, impugned good also contains vegetable fat which is added to reduce the cost of the product. Even after addition of the above ingredients, impugned good does not lose its character of cheese and maintains the same taste, flavour, appearance and consistency. It is used for the purpose same as mozzarella cheese.

8.18 In view of the above, the appellant submitted that since the Product has the character of cheese and satisfies all the criteria laid down under the HSN Explanatory Notes, it merits classification under Heading 0406.

9. The Appellant submits that impugned good is known and sold in the market like cheese. It is used as a topping over pizza in the same way as mozzarella and cheddar cheese are used. Thus, impugned good is understood as cheese in common parlance.

9.2 In the case of CCE vs Connaught Plaza Restaurant Private Limited, 2012 (286) ELT 321 (SC) wherein the classification of soft serve was disputed, the Hon'ble Supreme Court has held that soft serve was known as 'ice cream' in common parlance. A consumer would not disregard the product as ice-cream, on the basis that it contains only 5 per cent milk. Hence, it was classifiable as ice cream.

9.3 In the case of Travancore Rayons Limited v. UOI and Others, 1985 (19) ELT 354 (Del.), the classification of nitrocellulose lacquer was disputed. The product was composed of paraffin wax, volatile matter and nitrocellulose contents. The percentage of volatile matter was 85.2 per cent whereas the percentage of paraffin wax and nitrocellulose content was only 14.8 per cent. The revenue alleged that the product could not be classified as

nitrocellulose lacquer as the presence of nitrocellulose contents was low. The Tribunal held that traders and consumers know this product as nitrocellulose lacquer and generally do not know the exact materials used in preparing it. The product is known as nitrocellulose lacquer in common parlance. Thus, merely based on lower percentage of nitrocellulose contents, it cannot be disregarded as nitrocellulose lacquer.

9.4 In the case of Akbar Badruddin Jiwani v. CC, 1990 ('47) ELT 161 (SC), the Apex

Court observed that express words of the Tariff Headings and relevant Section and Chapter Notes would take precedence over the commercial or trade parlance test for classifying excisable goods. However, if the specific headings and notes do not cover the excisable goods, then resort must be made to, the commercial or trade understanding of the goods. The above view also resonates in the cases provided as under:

9.5 In the case of CCE vs. Fusebase Eltoro Limited, 1993 (67) ELT 30 ('So, the Apex Court held that in the absence of statutory definition of the goods, the classification is to be done based on the common parlance, primary function and the utility.

9.6 In the present instance, the term 'cheese', has not been defined anywhere in the Customs Tariff Act, 1975. Accordingly, it is pertinent to refer to the use of the term in common parlance, the primary function of the product and its utility.

9.8 In the light of the above, it is submitted that impugned good is a type of cheese. Accordingly, impugned good is classifiable under Heading 0406.

10. The Appellant places reliance upon US Customs Cross Ruling NYK85532 which dealt with classification of battered/breaded mozzarella cheese sticks. The composition of the product is as under:

Ingredient	Percentage
Cheese	17%to23%
Breading	44% to 53%
Others	24% to 39%

It was held that even though the percentage of bread was 44 to 53 percent, i.e. almost twice the amount of cheese, yet the product was classifiable as 'Cheese and Curd' as the essential character of the product is cheese and

the same was retained even after addition of breading. Hence, the product was classifiable under HTS 0406.

10.1 In the US Customs Cross Ruling HQ 9631.75, the classification of battered cheddar cheese balls was under consideration. The composition of the product was as under:

Ingredient	Percentage
Batter	55.6%
Cheedar Cheese	44.4%

It was held that even though the percentage of batter (55.6 percent) was greater than that of cheese (44.4 percent), the product was classifiable as 'Cheese and Curd' under HTS 0406 as the essential character of the product was imparted by cheese.

10.2 In the US Customs Cross Ruling 1(86747, the classification of Assorti Processed Cheese was under consideration. The composition of the product is as under:

Ingredient	Percentage
Rennet Cheese	20.6%
Cheese curd	10.3%
Sugar	25.7%
Water	18.9%
Batter	13.7%
Cocoa powder	4.7%
Whole milk powder	4.1%
Sodium orthophosphate	2%

In this case, it was held that the product was classifiable under HTS 0406 as the same was obtained after processing of cheese.

10.3 In view of the above, the Appellant submitted that impugned good is correctly classifiable under Heading 0406 as a type of cheese.

11. The Authority in its impugned ruling has observed that impugned goods are classifiable under Heading 2106. In order to appreciate the fallacy of such classification, it is important to first venture into the scope of Heading 2106.

11.1 Heading 2106 is the last Heading under Chapter 21 of the First Schedule to the Customs Tariff Act. A bare perusal of the title of Chapter 21 denotes that the products covered thereunder are miscellaneous edible preparations. The term 'miscellaneous' refers to items gathered or considered together which are of various types or from different sources'. Therefore, there is no common thread running through the Headings, Sub-headings and tariff items covered under this Chapter.

11.2 The description to Heading 2106 is 'Food preparations not elsewhere specified or included'. The title makes it plain and clear that the items covered thereunder are foods preparations which are not covered under any other Heading. The description of goods against Heading 2106 employs the terms 'specified' and 'included' While the term 'specify' means to identify clearly and definitely, the term 'include' means to comprise or contain as part of a whole.

Further, the two expressions are joined by the term 'or', which denotes that the conditions comprised therein are disjunctive in nature.

11.3 From the above, it follows that where species are not specifically mentioned but are covered under the genus inscribed under some other Heading, the species will not merit classification under Heading 2106. Therefore, goods, which are neither specifically nor impliedly covered under any other Heading alone are to be covered under Heading 2106.

11.4 In the case of CCE v. Maharshi Ayurveda Corporation Limited, 2006 (193) ELT 10(SC), the product under consideration was herbonic tonic, a mixture of assorted vegetarian and dry fruits and seeds which could be consumed as such. The assessee sought to classify the products under Heading 2008 whereas the revenue sought to classify the product under Heading 2106. The Apex Court observed that product was included under Heading 2008, hence Heading 2106 automatically became inapplicable.

11.5 In the case of CC v. Abott Healthcare Private Limited, 2015 (328) ELT 129 (Tr-Mum.), the product under consideration was 'Mama's Best Premium Chocolate', a nutritional powder. The importer classified under tariff item 1901 90 90 bearing description 'Other' as against revenue's classification under tariff item 2106 90 00 bearing description 'Other'. The Tribunal after considering the nature of goods and HSN Explanatory Notes, noted that the imported goods were classifiable under Heading 1901. It further held that Heading 2106 is a residuary entry. Thus, once goods are classifiable under a particular Heading, the same cannot be classified under Heading 2106

11.6 In the case of Agrotech Foods Limited v. CC, 2017 (337) ELT 436 (Tr-Mum.), the product under consideration was "Act-TI Microwave Popcorn" which was ready-to use popcorn mixed with butter, required to be microwaved before consumption. The assessee claimed classification under Heading 2008 as 'Edible parts of plants, otherwise prepared or preserved', whereas the revenue sought to classify it under Tariff item 2106 90 00. The Tribunal opined that the goods are classifiable under Heading 2008. HSN Explanatory Notes as well as Chapter Notes under Customs Tariff Act to Chapter 21 talk primarily about products which are preparations not elsewhere specified or included. Therefore, if the goods are classifiable under Heading 2008, it will automatically cancel any considerations in favour of Heading 2106.

11.7 In the light of above analysis, it is clear that impugned good squarely qualify under Heading 0406. This understanding has been internationally validated by various rulings of Customs authorities of other nations. Therefore, impugned good are conclusively covered under Heading 0406.

11.8 By application of the above test, it is clear that Heading 2106 being a residuary and miscellaneous entry, is automatically cancelled for considering the classification of impugned good.

11.9 From the above discussion, it is clear that impugned good is not classifiable under Heading 2106. The Authority clearly erred in holding that impugned good are classifiable under Heading 2106 without taking note of the above points. Accordingly, the impugned ruling is liable to be discharged and impugned good held to be classifiable under Heading 0406 on this ground alone.

12. The Explanatory Notes to HSN to be read in entirety.

12.1 In the present instance, the Authority has majorly relied upon the Explanatory Notes to HSN for classification of impugned good under Heading 2106. It is submitted that the Authority has relied upon the definition of 'processed cheese' to reject the classification adopted by the appellant. The relevant extract of the definition is reproduced as under:

"Processed cheese, also known as process cheese. It is manufactured by comminuting, mixing, melting, emulsifying, with the aid of heat and emulsifying or acidifying agents (including melting, salts), one or more varieties of cheese and one or more of the following: cream or other dairy products, salt, spices, flavouring, colouring and water."

12.2 It is noteworthy that the aforesaid explanation / meaning of processed cheese is restricted only to provide a broad scope to the types of cheese that can be covered under Heading 0406. The aforesaid entry facilitates classification of any type of cheese which has been further processed by mixing, melting, emulsification etc. to be classified under Heading 0406. Moreover, the definition of processed cheese does not disallow addition of vegetable oil.

12.3 In addition to above, the Authority has failed to appreciate the Explanatory Notes as appended to Heading 0406 in its entirety. The Explanatory Notes read as under:

The presence of meat, fish, crustaceans, herbs, spices, vegetables, fruits, nuts, vitamins, skimmed milk powder etc. does not affect classification provided that goods retain the character of cheese.

Cheeses which have been coated with batter, or bread crumbs remain classified in this heading whether or not they have been pre-cooked, provided that the goods retain the character of cheese."

12.4 From a perusal of the above, it is clear that Heading 0406 is wide enough to allow addition of meat, fish etc. to cheese and still be classified under Heading 0406 as long as the basic character of cheese is retained.

12.5 In the above backdrop, it is noteworthy that Explanatory Notes whilst providing the scope of expression 'processed cheese' expressly covers 'any kind of addition to cheese as long as the basic character is retained'.

12.6 The Appellant, in preceding paragraphs and the Application had advanced detailed submissions which prove that the impugned goods is a processed form of cheese which even after addition of various ingredients retain the basic character of cheese. Evidently, the Authority failed to consider or counter any of the submissions advanced vide the Application in respect of the same. Accordingly, the Impugned Ruling is liable to be discharged and classification as adopted by the Appellant be accepted on this ground alone.

12.7 From the above discussion, it is clear, that the Impugned Ruling passed by Authority suffers from the above-mentioned defects. Accordingly, the Impugned Ruling is liable to be discharged and impugned goods are classifiable under Heading 0406 on this ground alone.

Whether Appeal filed in time:

13. In terms of Section 100(2) of the Act, an appeal against Advance Ruling has to be filed within thirty (30) days from the date of communication thereof to the applicant. As seen from record, the signed copy of the impugned order dated 30.08.2018 was received by the appellant on 07.12.2018 as mentioned in the appeal. Appellant filed the present appeal on 31.12.2018. Accordingly, the appeal is found to be filed within prescribed time.

Record of Personal Hearing.

14. The personal hearing was fixed for 30.05.2019. The case could not be taken up for hearing on given date due to DETCs meeting and thus the same was adjourned to 25.07.2019. Due to GST Council meeting at New Delhi, the case could not be taken up and adjourned to 07.08.2019. Finally, personal hearing was held on 07.08.2019. Advocates Shri Puneet Bansal, Miss. Anshika Agarwal, Sh. Rakesh Gupta and ETO, Panipat Shri Ajay Kumar, attended the hearing on the fixed date and time.

14.1 During the hearing the appellant while reiterating the submissions made in their appeal papers put forth that the basic emphasis of their submissions was that impugned goods are correctly classifiable under Heading No. 0406.

14.2 Shri Puneet Bansal, Advocate submitted that the Heading No. 0406 covers all kind of cheese including processed cheese, also known as process cheese. It is manufactured by comminuting, mixing, melting, emulsifying, with the aid of heat and emulsifying or acidifying agents (including melting, salts), one or more varieties of cheese and one or more of the following: cream or other dairy products, salt, spices, flavouring, colouring and water.

14.3 He emphasized that Hon'ble Supreme Court of India in the case of Commissioner of Central Excise , New Delhi vs Connaught Plaza Restaurant (P) Ltd reported as 2012 (286) ELT 321 (SC) has held that:

"Time and again, the principle of common parlance as the standard for interpreting terms in the taxing statutes, albeit subject to certain exceptions, where the statutory context runs to the contrary, has been reiterated. The application of the common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law maker; "it is an attempt to discover the intention of the Legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts."

"Therefore, what flows from a reading of the aforementioned decisions is

that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances. This, however, is by no means an absolute rule. When the Legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding."

14.4 Shri Puneet Bansal, Advocate for appellant further relied upon the decision of Appellate Authority for Advance Ruling, Uttar Pradesh in the case of Savencia Fromage & Dairy (P) Ltd 2019 (4) TMI 1545 where the question before the Appellate Authority was whether the product "Breaded Cheese" is classifiable as 'cheese' under Heading 0406-taxable at the rate of 6 percent each under S.No. 13 of the Schedule-II appended to Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. In this case Appellate Authority for Advance Ruling, Uttar Pradesh has held that "*The cheese forms most important constituent (55% of total volume) of the product and the impugned goods cannot be formed cheese. The batter and bread coating are not essential and can be easily substituted. It is only cheese that differentiates the impugned goods from any other product. As Heading 0406 includes 'processed cheese', which may also contain cream or other dairy products, salt spices, flavouring, colouring and water- it is undisputed that impugned goods are neither sweetmeat nor are they in the nature of namkeens, bhujia etc. The impugned goods thus are not covered by Supplementary Chapter Note 6.*

The HSN and Explanatory Notes which form essential guidance for interpretation of any heading make it abundantly clear that cheese which contain various additions that are battered or breaded and pre-cooked are included as 'cheese' under Heading 0406. Ingredients and characteristics of the product with which we are concerned do not contain any material or feature, which will take the said product out of goods falling under Heading 0406."

Discussion and Findings:

15. We have considered the material on record including the appellants grounds, submissions, statutory provisions etc. In terms of Section 101(1) of the Act, this Appellate Authority is mandated to pass such order as it thinks

fit, confirming or modifying the ruling appealed against.

16. We now proceed to record our discussions and findings.

16.1 The appellant has contended that the Product "pizza topping" containing 14.5 percent Mozzarella cheese and 15 per cent of other milk products such as milk solids and skimmed milk powder along with other ingredients forms a type of cheese; that topping maintains its basic cheesy character even after addition of other ingredients. Thus, it is classifiable under Chapter Heading 0406 (SI. No. 13 of Schedule -II to Notification No. 1/2017 Integrated Tax/Notification No. 1/2017-Central Tax and Notification No 35/ST-2 as "cheese" and chargeable to GST @ 12%.

16.2 The question for determination in this appeal is whether the product "Pizza Topping" manufactured/ supplied by the appellant merit classification under Heading 0406 as claimed by the appellant or classifiable under Heading 2106 as determined by the Authority for Advance Ruling, Haryana.

16.3. We found that for any given product, the name, character and use are three important ingredients which decide the classification of any given product. Hence we proceed to examine the classification of impugned item, keeping in mind the above guiding factors.

16.4 The impugned item is being sold by the appellant as "Pizza Topping" which contains water, mozzarella cheese, milk solids, skimmed milk powder and vegetable oil along with premix of emulsifiers, stabilizers, acidity regulators and preservatives, chesses fall under chapter heading 0406, which reads as under:-

Chapter 4		
Dairy produce, birds' eggs, natural honey, edible products of animal		
0406		Cheese and Curd
040610 00		Fresh (unripened or uncured) cheese, including whey cheese and curd
0406 00	20	Grated or powdered cheese, of all kinds
0406 00	30	Processed cheese not grated or powdered
0406 00	40	Blue-veined cheese and other cheese containing veins produced by <i>Penicillium roqueforti</i>

0406	90	Other cheese
00		

16.5 We have gone through the HSN Explanatory notes to chapter heading 0406 which provides as under:

1. The expression "milk" means full cream milk or partially or completely skimmed milk.
2. For the purposes of heading 0405:
 - (a) the term "butter" means natural butter, whey butter or recombined butter (fresh, salted or rancid, including canned butter) derived exclusively from milk, with a milk fat content of 80% or more but not more than 95% by weight, a maximum milk solids-not-fat content of 2% by weight and a maximum water content of 16% by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colours, neutralizing salts and cultures of harmless lactic acid-producing bacteria; (b) the expression "dairy spreads" means a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, with a milkfat content of 39% or more but less than 80% by weight.
3. Products obtained by the concentration of whey and with the addition of milk or milkfat are to be classified as cheese in heading 0406 provided that they have the three following characteristics: (a) a milkfat content, by weight of the dry matter, of 5 % or more;
 - (b) a dry matter content, by weight, of at least 70 % but not exceeding 85 %; and
 - (c) they are moulded or capable of being moulded.
4. This Chapter does not cover:
 - (a) products obtained from whey, containing by weight more than 95% lactose, expressed as anhydrous lactose calculated on the dry matter (heading 1702);
 - (b) products obtained from milk by replacing one or more of its natural constituents (for example, butyric fats) by another substance (for example, oleic fats) (heading 1901 or 2106); or
 - (c) albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter) (heading 3502) or globulin (heading 3504).

SUB-HEADING NOTES :

1. For the purposes of sub-heading 0404 10, the expression "modified whey" means products consisting of whey constituents, that is, whey from which all or part of the lactose, proteins or minerals have been removed, whey to which natural whey constituents have been added, and products obtained by mixing natural whey constituents.
2. For the purposes of sub-heading 0405 10, the term "butter" does not include dehydrated butter or ghee (sub-heading 0405 90).

The above notes categorically state that this heading covers all kind of cheese, viz:

"(3) Processed cheese, also known as process cheese. It is manufactured by comminuting, mixing, melting and emulsifying, with the aid of heat and emulsifying a: acidifying agents (including meltinsalts), one or more varieties of cheese and one or more of the following: cream or other dairy products, salt, spices, flavouring and water."

16.6 In the instant case, the 'Pizza Topping' (impugned item), has been manufactured from, mozzarella cheese, vegetable oil and milk solids along with premix comprising of emulsifiers and stabilizers, in following proportions.

Name of Ingredient/additive	Ratio
Water	44 kg
Vegetable Fat	22kg
Mozzarella Cheese	14.5 kg
Rennet Casein (milk solid)	11 kg
Skimmed milk powder	4 kg
Premixs (emulsifier, stabliser, acidity regulator and preservative)	4.5 kg

16.7 It is the case of the applicant that the 'Pizza Topping' manufactured by it with the above combination of ingredients falls under the category of processed cheese as per HSN 0406 30. The HSN explanatory notes to chapter heading 0406 under clause (3) has clearly defined the product 'processed cheese' wherein the mixing and combination of ingredients are limited to one or more varieties of cheese with one or more of the following only:- cream or other dairy products, salt, spices, flavouring, colouring and water. By any stretch of

imagination 'vegetable fat' cannot be understood to be included in the above combination of ingredients.

17. From the above, it is evident that the impugned item contains "vegetable fat" as a substantial portion being 22% of the ingredients, apart from mozzarella cheese which is only 14.5% of the combination of ingredients. Thus, the impugned item mainly comprises of "vegetable fat". It is apparent from the above definition of "process cheese" as appearing in the HSN explanatory notes, that "vegetable fat" is not a prescribed ingredient for process cheese, hence, the presence of "vegetable fat" in substantial quantity, results the impugned item do not qualify to be categorized as "Process cheese" or a type of cheese.

18. The appellant relied upon the decision of of Appellate Authority for Advance Ruling, Uttar Pradesh in the case of Savencia Fromage & Dairy (P) Ltd 2019 (4) TMI 1545. In this case Appellate Authority for Advance Ruling, Uttar Pradesh has held that the product "Breaded Cheese" is classifiable under Heading 0406.

18.1 We have gone through the said decision of Authority for Advance Ruling Uttar Pradesh. We find that cheese form the most important constituent (55% of total volume). Since the product in question in this case consisting predominantly cheese, hence the Authority has correctly classified the product under Heading 0406. However, in the case before us cheese is not the predominant constituent. Hence the case relied upon by the appellant is not at all applicable in the case before us.

18.2 The appellant also contended that the impugned product is a type of cheese and relied upon the case of CCE vs. Wood Craft Products Limited, 1995 (77) ELT 23 (SC). In this case the Apex Court has observed that the HSN Explanatory Notes serve as a safe guide for ascertainment of meaning of a term used in the Tariff Schedule. We find that it is a well settled principle that HSN Explanatory Notes serve as a safe guide for ascertainment of meaning of term used in Tariff Schedule. However, as discussed herein above, the HSN explanatory notes to chapter heading 0406 under clause (3) has clearly defined the product 'processed cheese'. As per the said definition vegetable fat is not an ingredient of processed cheese. We find that in the impugned product vegetable fat is the major constituent (22%) and the cheese, as per appellants own submissions, constitutes only 14.5%. Hence the impugned product cannot be considered to be a type of cheese. Thus the product " Pizza Topping" do not qualify to be classified under Heading 0406.

18.3 As regards case of CCE vs Connaught Plaza Restaurant Private Limited, 2012 (286) ELT 321 (SC) , we find that the facts of the said case is different than the case before us. Hence the case is not applicable in the instant case.

18.4 In view of above, we are of the considered opinion that the impugned item "pizza topping", is not covered under the Chapter Heading 0406 of the 1st schedule to the Customs Tariff Act, 1975, in the light of HSN explanatory notes, as discussed in preceding paras and accordingly, not covered by serial number S.No 13 of schedule II to Notification No 1/2017-Integrated Tax (Rate), Notification No.1/2017-Central Tax (Rate) and Notification no.35/ST-2 and chargeable to GST @ 12%.

19. Now we come to examine the impugned product vis-à-vis Chapter 2106. We observe that Chapter 21 essentially covers 'Miscellaneous Edible Products'. Obviously, the term 'Miscellaneous' indicates that this particular chapter would contain all such edible products which are not specifically covered elsewhere under the Tariff. The Chapter Headings further describes various edible preparations such as extracts of Coffee, tea, Yeast, Soups, broths, Sauces etc. under Heading 2101 to 2105. Further as is the convention, Heading 2106 has been given to include all those items which are not elsewhere specified. Furthermore, 2106 further sub-divides and classifies various edible items like Protein Concentrates, Pan Masala, Sharbats, Supari, Custard Powder etc. under Sub-headings 2106 10 00 to 2106 90 80 and to conclude there is a residual entry as 'Others' under 2106 90 99.

19.1 Chapter Note 5 of Chapter 21 provides that "Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), *inter alia*, includes:

- (a)
- (b) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;
- (c)
- (d)

Further, Chapter Note 6 of Chapter 21 reads as under:

"Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" or "Mithai" or called by any other name. They also include products commonly known as "Namkeens", "mixtures", "Bhujia", "Chabena" or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.

19.2 We find that the product in question i.e. 'Pizza Topping' is a product made out of mozzarella cheese, vegetable oil and milk solids as main ingredients with premixes of emulsifiers and stabilizers. The mozzarella cheese is blended with other ingredients and heated upto a required degree. After heating, the material is transferred to a mould of requisite capacity for packing the product into pouches containing smaller quantities (1 kg and 200 grm). These pouches are sealed and packed in an outer carton. The product cannot be termed as 'Processed Cheese' as already discussed above. However, there is no doubt that being edible preparation for human consumption, it would merit classification under Chapter 21 i.e. 'Miscellaneous Edible Preparations'. Once the chapter is decided, a careful examination of different entries under Chapter 21, the quest for appropriate classification rests finally at 2106 90 99, the residual entry, as the product itself does not find specific place anywhere else in the Chapter 21. We thus conclude that the impugned product viz. 'Pizza Topping' would merit classification as 'Food preparations not elsewhere specified or included' under Chapter Heading 2106 of the schedule to the Customs Tariff Act, 1975, and chargeable to GST as applicable.

19.3 Having observed as above, we further hold that the impugned goods shall be aptly classifiable under Chapter Head 2106 of the schedule to the Custom Tariff Act, 1975 as 'Food preparations not elsewhere specified or included' and chargeable to IGST @ 18%, CGST @ 9% and SGST @ 9%, as specified under S.No.23 of Schedule-III of Notification No.1/2017. Integrated Tax (Rate) dated June 28, 2017, Notification No.01/2017-Central Tax (Rate) dated 28.06.17 and of Notification No.35/ST-2.

ORDER

The Ruling pronounced by the Authority for Advance Ruling, Haryana is thus correct and justified. Thus, the appeal filed by the appellant fails and the ruling of the Haryana Authority for Advance Ruling pronounced vide Order No. HAR/HAAR/R/2018-19/08 dated 30.08.2018 is upheld. The instant appeal stands disposed of accordingly.


(Dr. Amit Kumar Agrawal)
Member


(Anil Kumar Jain)
Member