

Uttar Pradesh State Appellate Authority for Advance Ruling
(Constituted under Section 99 of Uttar Pradesh State Goods and Services Tax Act 2017)

Date: 27-08-2024

BEFORE THE BENCH OF

Sh. Pramod Kumar Pr. Chief Commissioner of CGST Lucknow & Member, Appellate Authority for Advance Ruling, Uttar Pradesh	Dr. Nitin Bansal Commissioner SGST, & Member, Appellate Authority for Advance Ruling, Uttar Pradesh
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Appeal Order No. 03/AAAR/27-08/2024

(Passed by the Appellate Authority for Advance Ruling under Section 101(1) of Uttar Pradesh Goods and Services Tax Act, 2017)

Name and address of the Appellant	M/s S.S. Traders, 04, Rajat Vihar Colony, Pani Ki Tanki, Bareilly, Uttar Pradesh - 243122
GSTIN or User ID	09DZNP4562A1Z9
Advance Ruling Order which appeal is filed	UP ADRG – 01/2024 dated 15.04.2024
Date of filing appeal	11.07.2024
Represented by	Sri Kapil Vaish, CA
Jurisdictional Authority-Centre	Range – Rajendra Nagar, Division- Division I Bareilly, Commissionerate – Gautam Budh Nagar, Uttar Pradesh
Jurisdictional Authority -State	Sector-Bareilly, Sector-8, Range-Bareilly (B) Zone- Bareilly, Uttar Pradesh
Whether payment of fees for filing appeal is discharged.	Rs. 20000/- i.e. Payment of Rs. 10000/- made towards SGST and Rs. 10000/- towards CGST

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Uttar Pradesh Goods and Service Tax Act are *pari-materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Uttar Pradesh State Goods and Service Tax Act, 2017.

2.1. This appeal has been filed by M/s S. S. Traders, 04, Rajat Vihar Colony, Pani Ki Tanki, Bareilly, Uttar Pradesh - 243122, registered vide GSTIN 09DZNP4562A1Z9 (hereinafter referred to as 'Appellant') against the advance ruling no. UP ADRG – 01/2024 dated 15.04.2024, made by the Uttar Pradesh State Authority for Advance Ruling.

2.2 The appellant is a proprietorship firm engaged in trading of packaged food items and is proposing to set up a unit to manufacture a new product 'Cream' to be used in kitchen as an ingredient in food preparations or cakes etc. It is a liquid product with smooth white texture to give creamy taste and texture to the gravy in dishes. It will not contain any dairy fat and will contain vegetable fat to the extent of 23%.

The ingredients, as per the lab test report dated 18.11.2023, are Edible Vegetable Fat, Milk Solids, Sugar and Iodized Salt with constituents being Protein (2.26%), Fat (22.94%) and Sodium (0.06985 %) besides Water 67.3%, Sugar (1%) and premix of emulsifiers, stabilizers, acidity regulators etc (5.5%).

2.3 The Appellant had submitted application for Advance Ruling before the Authority of Advance Ruling for determination of following questions.

(i) What is the appropriate Chapter Heading under which the product proposed to be manufactured by the appellant is classifiable under GST Law?

(ii) What is the appropriate rate of GST applicable on the goods proposed to be manufactured by the appellant?

2.4 The application was disposed by Advance Ruling No. UP ADRG 01/2024 dated 15.04.2024 wherein the Authority held –

(i) In respect of Question No. 1 Ruled that appropriate chapter heading is 2106.

(ii) Answered to Question No. 2 that applicable rate of GST is @ 18% (CGST @ 9% & SGST @ 9%).

3. Grounds of appeal:

Being aggrieved by the aforesaid ruling, the Appellant has preferred instant appeal on the following grounds-

3.1 Being a vegetable oil-based preparation, the impugned product is appropriately classifiable under Chapter sub-heading no. 15179090, chargeable to tax @ 5% in terms of S. No. 89 of Schedule-I to Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.

3.2 Main observation of the authority for ruling out the classification of the proposed product from Chapter 1517 is that after the manufacturing process, individual identity of all the mixtures is lost and what, emerges is totally a different item, a new product having different name, character and use. Thus, said 'Cream' cannot be said to be merely a mixture of vegetable oil with other ingredients, but a totally new product. This observation of the authority is not correct, as the proposed product is a preparation of vegetable oil and adding small quantities of other ingredients such as sugar and premix (emulsifiers, stabilizers, acidity regulators and preservatives) does not change the basic character of the product and it is the vegetable oil that gives the essential character to the product 'Cream'.

3.2 That different ingredients are mixed together to manufacture 'cream' and out of all the ingredients, the content of vegetable oil (comprising of 23%) being higher and essential for manufacture of 'Cream', therefore, it becomes a preparation of vegetable oil.

3.3 That the process of preparation of vegetable oil by the appellant tallies with the process regarded to in the chapter notes to Harmonized Commodity Description & Coding System with respect to chapter heading 1517 90 90.

3.4 That the Authority for Advance ruling observed that what other ingredients, besides fats or oils may contain in small quantities, to classify the product under chapter heading 1517. Sugar and premix (emulsifiers, stabilizers, acidity regulators and preservatives) as ingredient has not been found mentioned in the HSN explanatory notes in respect of preparation of vegetable oil in the nature of an emulsion of water-in-oil, though it may resemble like a regular cream. But in order to fall under Chapter heading 1517, sugar and premix cannot be understood to be included in the above combination of ingredients. Thus, the proposed product cannot be classified under Chapter heading 1517.

3.4.1 With respect to above para the appellant referred to the HSN explanatory note to chapter heading 1517 which read as under:

"The products of this heading, the fats or oils of which may previously have been hydrogenated, may be worked by emulsification (e.g. with skimmed milk), churning, texturation (modification of the texture or crystalline structure), etc., and may contain small quantities of added lecithin, starch, colouring, flavouring, vitamins, butter or other milkfat (subject to the restrictions in Note 1(c) of this chapter)."

3.4.2 That the sugar content is only 1% and premix comprises 5.5% of the impugned product. The premixes (emulsifiers, stabilizers, acidity regulators and preservatives) in the proposed product serves as lecithin and starch, which are mentioned in the HSN explanatory note to chapter 1517 and the flavouring component, which is a Vanilla flavour in appellant case is itself included in the HSN Notes. Addition of sugar will not change the character of the impugned product. Further, technologically they have been advised that the product can be manufactured even without adding sugar.

3.4.3 That in view of the foregoing paras, the Authority for Advance Ruling has erred in observing that the impugned product would not fall within the purview of the chapter 1517, as its ingredients has not been found mentioned in the HSN explanatory note to Chapter 1517.

3.4.4 That the other ingredients being added in the manufacture of proposed product i.e. 'Cream' are not prohibited ingredients for the purpose of classification under chapter heading 1517. That there is no exclusion in the chapter notes that by adding sugar and premix (emulsifiers, stabilizers, acidity regulators and preservatives) the final product is not classifiable under chapter heading 1517.

3.5 Because the Authority for advance rulings has erred in classifying the impugned goods under chapter heading 2106 90 99.

3.5.1 That the chapter 21 covers Miscellaneous Edible Preparations and the description to heading 2106 is 'Food preparation not elsewhere specified or included'. Thus, where goods are not specifically mentioned but are covered under the genus inscribed under some other heading, the said goods 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.

3.5.2 That, the Rule 3(a) of General rules of interpretation provides that where the goods are classifiable under two headings, the heading which is specific in nature prevails over the heading which is by its nature general. The Chapter heading 2106 is the residuary entry, whereas, heading 1517 forms the specific entry. Hence, chapter heading 1517 shall prevail and the proposed product is not classifiable under chapter heading 2106.

3.6 Also, because as per common parlance test, the proposed product i.e. 'Cream' contains added sugar with fat content of 25%, is appropriately classifiable under Chapter Heading 0402, as the intention of the buying cream is for use in culinary/kitchen

preparations to use milk product to add creamy milky flavour to the dishes being prepared. That, it is understood that the end use of the proposed product is intended to be used as a milk cream. That it has been a settled principle of law that taxing statute, the principle of common parlance should be followed for classification of product and in the present case, the dispute is regarding classification of 'Cream' which in common parlance is considered as a milk product.

3.7 Decision issued by AAAR for the State of Haryana in the case of M/s Khera Trading Company, Panipat, Haryana that the such product 'Cream' should be classified under Chapter 2106 is not binding in terms of Section 103 of CGST Act, 2017 on the appellants. That the appellant and Khera Trading are separate taxpayers and therefore, the appellant's case should be independently examined.

4. Reason for delay in filing appeal before the Appellate Authority.

The appellant vide application for the condonation of delay received on 19.07.2024 submitted that Shri Surendra Kumar (Prop. M/s S.S. Traders) had remained out of station during 01.07.2024 to 07.07.2024 and requested for condonation of delay of 5 days in filing the appeal.

5. Personal Hearing

The Authorised representative, Shri Kapil Vaish, C.A. of the party M/s S.S. Traders, 04, Rajat Vihar Colony, Panki Ki Tanki, Bareilly, U.P.-243122, appeared for personal hearing on 07.08.2024 and submitted written defence submissions/synopsis and reiterated the same before the Appellate Authority.

6.0 Discussion and Findings

6.1 We have carefully gone through the records of the case and the submissions made by the Appellant in their application. Before getting into the discussion of the issue in the appeal, we find that there is a delay in filing the appeal. Hence the same needs to be examined first before moving forward to decide the issue raised in the Appeal

6.2.1 We find that in terms of Section 100 of the CGST Act, 2017, an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. As per the Appellant, the advance ruling dated 15.04.2024 was served to them on 06.06.2024 and the instant appeal has been received in the office on 11.07.2024. We find that the proviso to Section 100(2) of CGST Act, 2017, states that-

"Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days."

6.2.2 In the instant case, after going through the application of the appellant and in terms of the proviso to Section 100(2) of the CGST Act, 2017, we condone the delay.

6.3 Coming to the issue of Classification of the product in question, the appellant has claimed the classification to be under Chapter Sub-heading No. 1517 or 0402, whereas the Authority for Advance Ruling has held it to be under 2106. To appreciate the issue, the contending entries need consideration and are re-produced as below:

Tariff Item	Description of Goods
0402	Milk and Cream, concentrated or containing added sugar or other sweetening matter

0402 10	- <i>In powder, granules or other solid forms of a fat content, by weight not exceeding 1.5 %</i>
0402 10 10	--- Skimmed Milk
0402 10 20	--- Milk food for babies
0402 10 90	--- Other
	- <i>In powder, granules or other solid forms, of a fat content, by weight exceeding 1.5%</i>
0402 21 00	-- Not containing added sugar or other sweetening matter
0402 29	-- Other :
0402 29 10	--- Whole Milk
0402 29 20	--- Milk for babies
0402 29 90	--- Other
	- Other
0402 91	-- Not containing added sugar or other sweetening matter :
0402 91 10	--- Condensed milk
0402 91 90	--- Other
0402 99	-- Other
0402 99 10	--- Whole milk
0402 99 20	--- Condensed milk
0402 99 90	--- Other

1517	Margarine; edible mixture or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading 1516
1517 10	- <i>Margarine, excluding liquid margarine</i>
1517 10 10	--- Of Animal origin
	---- Of vegetable origin
1517 10 21	---- Edible grade
1517 10 22	---- Linosyn
1517 10 29	---- Other
1517 90	- Other
1517 90 10	--- Sal fat (processed or refined)
1517 90 30	--- Imitation lard of animal origin
1517 90 40	--- Imitation lard of vegetable origin
1517 90 90	--- Other

2106	Food preparations not elsewhere specified or included
2106 10 00	- <i>Protein concentrates and textured protein substances</i>
2106 90	- <i>Other :</i>
	--- Soft drink concentrates
2106 90 11	---- Sharbat
2106 90 19	---- Other
2106 90 20	--- 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 dextrine syrup
2106 90 50	--- Compound preparations for making non-alcoholic beverages
2106 90 60	--- Food flavouring material
2106 90 70	--- Churna for pan
2106 90 80	--- Custard powder
	--- Other
2106 90 91	---- Diabetic foods
2106 90 92	---- Sterilized or pasteurized millstone
2106 90 99	---- Other

6.4. The notes covered under chapter 4 describe the expression milk as full cream milk or partially or completely skimmed milk. On going through the ingredients/composition of the

proposed product 'Cream' as claimed by the appellant, it is seen that edible vegetable fat is 23% and milk solids content is only 3.2%, thus, we agree with the findings in the impugned order passed by the Authority that the proposed product does not fall under Chapter Heading 0402.

6.5.1 Next, we observe that Chapter 15 of the Tariff Act covers chapter headings related to Animal, Vegetable or Microbial Fats and Oils and their cleavage products, prepared edible fats, animal or vegetable waxes. Chapter 15 does not cover the edible preparations containing by weight more than 15% of the products of heading 0405 (generally Chapter 21).

6.5.2 We find from the description of the product, as provided by the appellant, that the percentage of edible vegetable fat is 23% and water is 67.3 % whereas, the milk solids (without animal fat) is 3.2%. The other ingredients are sugar (1%) and premix (emulsifiers, stabilizers, acidity regulators and preservatives) being 5.5%. All these ingredients are emulsified in water to make an edible preparation based on vegetable fat. It is clear that the main constituent of the final product i.e. 'Cream' is vegetable fat/oil without which the proposed product will not get its character of fat emulsion. Thus, different ingredients are mixed together to manufacture 'Cream' and out of all ingredients, content of vegetable oil (comprising of 23%) is the highest and also essential for manufacture of 'Cream', therefore, the said product becomes a preparation of vegetable oil.

6.5.3 Chapter subheading 1517 covers 'Margarine; edible mixture or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading 1516'.

6.5.4 Chapter sub-heading 1517 10 covers 'Margarine, excluding liquid margarine'. As per the HSN explanatory notes, margarine (other than liquid margarine) is a plastic mass, generally yellowish, obtained from fats or oils of animal or vegetable origin or from a mixture of these fats or oil. It is an emulsion of the water-in-oil type, generally made to resemble butter in appearance, consistency, colour etc.

6.5.5 Further, we find that as per the General standards for Milk and Milk Products as provided in the 'Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011' the margarine means:

I. *Table Margarine – an emulsion of edible oils and fats with water and it shall be free from rancidity, mineral oil and animal body fats. It may contain common salt not exceeding 2.5 per cent, skimmed milk powder not exceeding 2 per cent and it may contain food additives permitted in these regulations and appendices. It shall conform to the following specifications, namely,*

a) *Fat - Not less than 80 per cent mass/mass*

II. *Bakery and Industrial Margarine – an emulsion of vegetable oil product with water and it shall be free from added colour and flavour, rancidity, mineral oil and animal body fats. It may contain common salt not exceeding 2.5 per cent. However, it may contain food additives permitted in these Regulations and Appendices. It shall conform to the following standards, namely :-*

a) *Fat - Not less than 80 per cent mass/mass*

6.5.6 From the above, we find that the food product is either Table Margarine or Bakery & Industrial Margarine, if the fat content is not be less than 80 per cent mass/mass. The impugned product is indicated to have fat content of 22.94%. Thus, as per 'Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, the impugned product 'Cream' cannot be classified as Margarine under chapter heading 1517 10.

6.6.1 Next, we observe that the Authority in its findings have found that the other ingredients, i.e. sugar and premix (emulsifiers, stabilizers, acidity regulators and preservatives) are not been found mentioned in the HSN explanatory notes in respect of

preparations of vegetable oil in the nature of an emulsion of water-in-oil, though it may resemble like a regular cream and it can't be understood to be included in the proposed product to fall under chapter heading 1517. In this regard we find that the appellant has submitted that sugar contains only 1% and premix (emulsifiers, stabilizers, acidity regulators and preservatives) comprises 5.5% if the impugned product.

6.6.2 We find that the HSN explanatory notes of chapter heading 1517 provides that the

"the products of this heading, the fats or oils of which may previously have been hydrogenated, may be worked by emulsification (e.g. with skimmed milk), churning, texturation (modification of the texture or crystalline structure) etc., any may contain small quantities of added lecithin, starch, colouring, flavouring, vitamins, butter or other milk fat (subject to the restriction in Note 1 (c) to this chapter)".

6.6.3 We observe that the Lecithin works as an *emulsifier and a preservative*, while starch regulates viscosity and functions as a binding force between the ingredients. We find that the appellant has claimed that the premix (emulsifiers, stabilizers, acidity regulators and preservatives) serve a similar role as lecithin and starch, and the flavouring component i.e. vanilla flavour is itself included in the HSN notes.

6.6.4 On basis of the HSN explanatory notes and the submissions of the appellant, we hold that the ingredients i.e. sugar & premix (emulsifiers, stabilizers, acidity regulators and preservatives) though are not mentioned in the notes/explanatory notes to the chapter heading 15, final product being a preparation, the said ingredients mentioned under sub-headings of chapter 15 may be inclusive or exclusive of the said ingredients i.e. sugar & premix (emulsifiers, stabilizers, acidity regulators and preservatives).

6.7 We find that the general rule of interpretation of provide the methodology of classification of products under various chapters. Classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3 that reads:

"When by application of rule 2(b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be effected as follows –

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of material or component which gives them their essential character, in so far as this criterion is applicable."

6.8.1 As discussed in foregoing paras, we find that the proposed product is a preparation of vegetable oil is not margarine. We also find that the impugned product is neither Sal fat not imitation lard. Therefore, the impugned product 'Cream' appears appropriately covered under 1517 90 90.

6.8.2 We find that the Chapter heading 2106 covers 'Food preparations not elsewhere specified or included'. Thus, the chapter heading 2106 is a residual entry and covers those miscellaneous edible preparations which are not specifically mentioned or covered under the genus inscribed under some other chapter heading. It seems to cover the food preparations that are ready to be consumed without any further processing.

6.8.3 In view of the foregoing discussions, we find that when the proposed product 'Cream' is a preparation of vegetable fat more specifically covered under 1517 90 90, therefore classifying the same under residuary chapter heading 2106 is not warranted.

6.8.4 Since the proposed product is preparation of vegetable oil and does not contain animal fat, therefore GST rate applicable on the proposed product shall be 5% in terms of S. No. 89 of Schedule I to Notification No. 1/2017 – IGST(Rate) dated 28.06.2017.

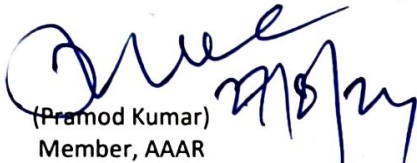
7. In view of the foregoing, we make the following order:

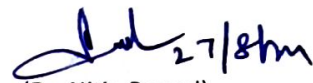
(i) We set aside the impugned ruling given vide UP ADRG – 01/2024 dated 15.04.2024~~4~~ passed by the Authority for Advance Ruling against the Appellant.

(ii) We hold that appropriate chapter heading for the product proposed to be manufactured is 1517 90 90 and appropriate rate of GST applicable is @ 5%.

8.1 The Ruling given hereinabove applies to the unique facts and circumstances of the appellants' matter in appeal and is based upon the submissions and evidences made available in this regard.

8.2 This ruling is valid only within the jurisdiction of Authority for Advance Ruling, Uttar Pradesh in terms of the provisions of The Central Goods and Services Tax act, 2017 and Uttar Pradesh Goods and Services Tax Act, 2017.


(Pramod Kumar)
Member, AAAR
CGST


(Dr. Nitin Bansal)
Member, AAAR
SGST

To,

M/s S.S. Traders,
04, Rajat Vihar Colony, Pani Ki Tanki,
Bareilly, Uttar Pradesh- 243122

Copy to:

1. The Pr. Chief Commissioner, CGST & CX, Lucknow, Member Appellate Authority of Advance Ruling Uttar Pradesh.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling, Uttar Pradesh.
3. The Principal Commissioner, CGST & C. Ex. G.B. Nagar, 3rd Floor, Wegmans Business Park, K.P.-III, Greater Noida-201306, Uttar Pradesh
4. The Deputy/Asst. Commissioner, CGST & C.Ex. Division – Bareilly I, CR Building, Rampur Garden, Bareilly – 243001, Uttar Pradesh.
5. Through the Additional Commissioner, Gr.-I, Commercial Tax, Zone Bareilly, Uttar Pradesh to the jurisdictional tax assessing officers.