

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2018/18
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/30)

Date :30.8.2018

Name and address of the applicant	:	M/s. Gokul Agro Resources Limited B-402, Shapath Hexa, Near Ganesh Meridian, Opp. Gujarat High Court, Sola, Ahmedabad – 380 060.
GSTIN of the applicant	:	24AAFCG6591A1ZT
Date of application	:	07.12.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both
Date of Personal Hearing	:	05.02.18
Present for the applicant	:	Shri Ankit Parikh, CA

The applicant, M/s. Gokul Agro Resources Limited, is engaged in the business of Oil Seed Crushing (Oil Mills), Refining Oil, Solvent Extraction, Fractionation, Hydrogenation and Packing. The applicant is dealing in edible oil such as Soyabean Oil, Cottonseed Oil, Mustard Oil, Groundnut Oil, Palm oil (Palmolein), Sunflower Oil, Vanaspati and Industrial Oil such as Castor Oil.

2.1 The applicant has submitted that it purchases Crude Palm Oil (HSN 1511 10 00) from either a foreign vendor or local vendor. Thereafter, the said Crude Palm Oil is refined in the storage tank from which Refined Palm Oil (HSN 1511 90 10) is generated. Along with the Refined Palm Oil, there is a by-product which gets automatically generated which is called Palm Fatty Acid (HSN 3823 19 00).

2.2 The Refined Palm Oil (HSN 1511 90 10) is then further processed in Fractionation Plant (which includes Crystallization and Filtration process) from which following two products are generated –

- (a) Palmolein Oil
- (b) RBD (Refined Bleached Deodorised) Palm Stearin.

3. The applicant has sought advance ruling on the question –

Whether RBD Palm Stearin would fall under Chapter 1511 – ‘Palm Oil and its fractions, whether or not refined but not chemically modified’ or under

Chapter 382311 'Industrial monocarboxylic fatty acid, acid oils from refining, stearic acid, Palm Stearin.

4. The applicant has submitted the process for getting RBD Palm Stearin as follows:-

Crude Palm Oil is imported and then manufactured / refined to Refined Palm Oil.

Crystallization Section

RBD Palm oil is first pre-heated through a plate heat exchanger before being fed into the crystallizer. The feeding of oil into the crystallizers is more or less continuous. Once the oil reaches high level, the crystallizer is ready for the cooling programme.

The cooling cycle for each crystallizer is being controlled by an individual microprocessor – based programmable controller. Cooling tower water is used for initial pre-cooling, thereby saving energy. Due to the large cooling surface in crystallizer in relation to the volume of oil, the applicant is able to obtain crystallized slurry, which are proven to be most suitable for the membrane filtration system.

The cooling cycle for each crystallizer is completed within a few hours. The crystallized slurry is then ready to be filtered at the membrane filtration system.

Filtration Section

The partially crystallized RBD palm oil is fed to membrane filter press by filter feed pump. The filter is of mixed packed type and 3-piece detachable type of rubber membrane with individual squeezing air / hose connection, closed delivery, hydraulic press closing type. The filtrate, i.e. olein passes through a filter cloth of suitable porosity, and flows along the corrugated channels of a rubber membrane, which wraps behind the filter cloth, and guide the olein out of the filter frame into a channel for closed discharge into a olein receiver tank. When the chambers are filled with cake, i.e. stearin, the feed is topped and high pressure fluid (usually compressed air) is admitted behind the membrane which being elastic, presses or squeezes the stearin mass in the chamber free of liquid olein entrained within the inter-spaces of the crystals out into the discharge channel following the path of the filtrate. When the squeezing operation is done, the frames are hydraulically opened and solid stearin drops into a stearin melting tank. The filter press is then closed for the next cycle of operation.

5. The applicant has submitted that RBD Palm Stearin will fall under Chapter 1511 as it is an outcome of Refined Palm Oil undergoing fractionation process. Also, Chapter 3823 mainly deals with the products which are more from the perspective of industrial use and not used for food application meant for human consumption. The applicant submitted that the RBD Palm Stearin which is manufactured by it is completely used for food applications meant for human consumptions. Hence, the applicant is of the view that RBD Palm Stearin should fall under Chapter 1511 and not under Chapter 3823.

6.1 The applicant, vide their letter dated 04.01.2018, submitted sample copies of Central Excise Invoices issued during April, 2017 and May, 2017 and copy of Central Excise Return for the month of June, 2017 wherein Central Excise Duty was paid under Chapter 38231900. It is further submitted that during the earlier law, the applicant was of the opinion that RBD Palm Stearin would fall under Chapter 3823 1112 and 3823 1119 and had raised the invoices by charging Excise Duty at the rate of 12.5%.

6.2 The applicant further submitted that the Budget, 2017 was introduced on 1st February, 2017 wherein the amendment came in First Schedule of Customs Tariff Act, 1975 where a new tariff was created under HSN 1511 90 30 for 'Refined Bleached Deodorised Palm Stearin' to harmonise the Customs Tariff in accordance with WCO classification decision [clause No. 109(b) of the Finance Act, 2017]. The applicant submitted that with this amendment, there is lack of clarity as to whether Palm Stearin would fall under 1511 9030 or 3823 1112.

6.3 The applicant also submitted that in the Notification No. 18/2017-Customs, dated 9th May, 2017, RBD Palm Stearin was introduced by Customs in Chapter 1511. It is submitted that the Central Excise Tariff also includes RBD Palm Stearin both in Chapter 1511 and 3823 and as per the GST Tariff, the product RBD Palm Stearin also falls in both Chapter 1511 and Chapter 3823.

6.4 The applicant submitted that because of the Custom amendment, there is confusion as to whether the product falls under Chapter 15 or Chapter 38 of the GST Tariff.

7. The Central Goods and Services Tax and Central Excise Commissionerate, Ahmedabad North *inter-alia* referred to Circular No. 81/2002-Customs dated 03.12.2002 wherein CRCL has advised that 'palm stearine' falling under heading 15.11 is basically triglyceride (Esters) of fatty acids and 'Stearin' falling under heading 38.23 is basically a free fatty acid. It is submitted that the triglyceride of fatty acids (esters) and free fatty acids are two different organic compounds and distinguishable by chemical tests i.e. by determining the ester value.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing and views of Central Goods and Services Tax and Central Excise Commissionerate, Ahmedabad North.

9. The issue involved in this case is regarding classification of the product 'RBD (Refined Bleached Deodorised) Palm Stearin' being supplied by the applicant.

10. The Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017 provides as follows :-

"Explanation. - For the purposes of this notification, -

(i)

(ii)

(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.”

11.1 The relevant entries for Chapter Heading 1511 and 3823 of the First Schedule to the Customs Tariff Act, 1975, prior to enactment of the Finance Act, 2017 were as under-

HS Code	Description of goods	Unit
(1)	(2)	(3)
1511	Palm oil and its fractions, whether or not refined, but not chemically modified	
1511 10 00	- Crude oil	kg.
1511 90	- Other	
1511 90 10	--- Refined bleached deodorized palm oil	kg.
1511 90 20	--- Refined bleached deodorized palmolein	kg.
1511 90 90	--- Other	kg.

HS Code	Description of goods	Unit
(1)	(2)	(3)
3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols	
	- Industrial monocarboxylic fatty acids; acid oils from refining :	
3823 11	-- Stearic acid :	
	--- Palm stearin :	
3823 11 11	---- Crude	kg.
3823 11 12	---- RBD	kg.
3823 11 19	---- Other	kg.
3823 11 90	--- Other stearic acid or stearin	kg.
3823 12 00	-- Oleic acid	kg.
3823 13 00	-- Tall oil fatty acids	kg.
3823 19 00	-- Other	kg.
3823 70	- Industrial fatty alcohols	kg.
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11.2 The First Schedule to the Customs Tariff Act, 1975 has been *inter-alia* amended as follows; vide Section 110(b) read with the Third Schedule of the Finance Act, 2017

In the First Schedule to the Customs Tariff Act –

- (1)
- (2)
- (3) in Chapter 15, after tariff item 1511 90 20 and the entries relating thereto, the following tariff item and entries shall be inserted, namely : —

1511 90 30	--- Refined bleached deodorized palm stearin	Kg.	100%	90%
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- (4) in Chapter 38, —

- (a) in heading 3823, for sub-heading 3823 11 and tariff items 3823 11 11 to 3823 11 90 and the entries relating thereto, the following shall be substituted, namely:—

3823 11 00	--- Stearic acid	Kg.	30%	-
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11.3 In the Annexure IV (Legislative Changes), Part A (Customs), Sub-part III (Amendment in the First Schedule to Customs Tariff Act, 1975) of the D.O. F.No. 334/7/2017-TRU dated 01.02.2017 of the Joint Secretary (TRU-I), it has been mentioned as follows :

S. No.	Amendment	Clause of the Finance Bill, 2017
1	To: (i) (ii) Create new tariff item 1511 90 30 for Refined bleached deodorised palm stearin” to harmonize Customs Tariff in accordance with WCO classification decision. (iii) Substitute tariff items 3823 11 11 to 3823 11 90 and entries relating thereto with tariff item 3823 11 00. (iv)	[109(b)]

11.4 Therefore, the relevant entries for Chapter Heading 1511 and 3823 of the First Schedule to the Customs Tariff Act, 1975 are now as under -

HS Code	Description of goods	Unit
(1)	(2)	(3)
1511	Palm oil and its fractions, whether or not refined, but not chemically modified	
1511 10 00	- Crude oil	kg.
1511 90	- Other	
1511 90 10	--- Refined bleached deodorized palm oil	kg.
1511 90 20	--- Refined bleached deodorized palmolein	kg.
1511 90 30	--- Refined bleached deodorized palm stearin	kg.
1511 90 90	--- Other	kg.

HS Code	Description of goods	Unit
(1)	(2)	(3)
3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols	
	- Industrial monocarboxylic fatty acids; acid oils from refining :	
3823 11 00	--- Stearic acid	kg.
3823 12 00	-- Oleic acid	kg.
3823 13 00	-- Tall oil fatty acids	kg.
3823 19 00	-- Other	kg.
3823 70	- Industrial fatty alcohols	kg.
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12. Thus, now there is specific Tariff Item 1511 90 30 for ‘Refined bleached deodorized palm stearin’. Therefore, the product ‘Refined bleached deodorized palm stearin’ is classifiable under Chapter Heading 1511 with Tariff Item 1511 90 30 in view of Rule 1 and Rule 3(a) of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975.

13. It is observed that CBEC Circular No. 81/2002-Customs dated 3.12.2002 was issued in the context of the then existing entries in the First Schedule to the Customs Tariff Act, 1975. Similarly, in the judgement of Hon'ble Supreme Court, in the case of Commissioner of Central Excise, Customs & Service Tax, Vishakhapatnam Vs. Jocil Ltd. [2011 (263) E.L.T. 9 (S.C.)], it was held that 'palm stearin' is specifically identified in Chapter sub-heading No. 3823 11 as 'Palm Stearin', and further differentiated as 'Crude' and 'RBD' in sub-heading Nos. 3823 11 11 and 3823 11 12 respectively. However, the said judgement was rendered for the period August, 2003 to November, 2004, in the context of entries in the First Schedule to the Customs Tariff Act, 1975 existing during that period. As the relevant entries for Chapter Heading 1511 and 3823 have been amended vide Finance Act, 2017, the CBEC Circular No. 81/2002-Customs dated 3.12.2002 and the Hon'ble Supreme Court's judgement in the case of Jocil Ltd. (supra) are not applicable in the present case.

14. In view of the foregoing, we rule as under –

R U L I N G

The product Refined Bleached Deodorised Palm Stearin, supplied by M/s. Gokul Agro Resources Ltd. (GSTIN 24AAF6G6591A1ZT) is classifiable under Heading 1511.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date : 30.8.2018.