

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/44/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/39)

Date: 30.07.2020

Name and address of the applicant	:	M/s. Jainish Anantkumar Patel, B/11, Pan Market, Kalupur, Ahmedabad-1.
GSTIN of the applicant	:	URD
Date of application	:	14.06.2019.
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. (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	09.07.2020(through Video conferencing).
Present for the applicant	:	Shri Rubbal A.Bhandari.

BRIEF FACTS

The applicant M/s. Jainish Anantkumar Patel, who is an unregistered person in GST has submitted that he wants to carry on the trading activity of Grated Supari, Lime and Tobacco by putting them together in a transparent plastic pouch for the sake of easy carry by the customer. The applicant further states that all the items will be supplied in a single pouch, will have separate price and will be shown in the invoice as a separate bill of item and at no stage will a single price be charged from the customers. He has also stated that the plastic pouch will be used to merely facilitate the customer for easy carry of the products and that each of these items can be supplied separately and is not dependent on each other, so, they cannot be classified as composite supply.

2. The applicant has further submitted that as per definition under Section 2(74) of the CGST Act, 2017, 'mixed supply' means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. He has stated that as per the above definition it can be clearly seen that there should be a single price for two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person and in this case the applicant will charge separate price on all products; that as each of these items can be supplied separately and is not dependent on the other, they cannot be classified as composite supply; that the customer can buy all the three items together or any single item separately and therefore the applicant shall charge tax on each item separately as per the applicable tax rate on such item; that there shall not be a single highest rate of tax charged on total amount of the invoice as per the definition of mixed supply. The applicant has concluded his submission by stating that accordingly, the said supply of goods shall not be treated as 'mixed supply' as per the CGST Act and all the items shall be subject to the tax rate as applicable to each individual item. The applicant has put forward the following question on which advance ruling is required:

“The applicant wants to trade the below mentioned items:-

- 1. Supari in grated form of cut in different shape in a separate pouch packing.*
- 2. Lime(Chuno) in a separate packing.*
- 3. Tobacco in a separate packing.*

All the above three items will be delivered to the customer in a transparent plastic pouch for the convenience of carrying it and the invoice prepared for the same will have three separate line items of the items mentioned above charged separately.

“Will the delivery of items in a single pouch classify the goods as mixed supply as per the definition under Section 2(74) of the CGST Act, 2017 and tax be collected at the rate of tax of highest item in the supply? In this case, the highest rate of tax could be that of Tobacco at 28% alongwith 160% cess.”

DISCUSSION & FINDINGS:

3. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Shri Rubbil A.Bhandari at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

4. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to similar provisions of the GGST Act.

5. Based on the submission of the applicant as well as the arguments/discussions made by the representative of the applicant during the course of personal hearing, we find that the main issue to be decided is whether the delivery of the 3 items Grated Supari, Lime and Tobacco put together in a transparent plastic pouch by the applicant for the sake of easy carry by the customer will be treated as mixed supply or otherwise. We also find that supari is the word used in common parlance for arecanut/ betelnut whereas the lime used (along with tobacco and supari) is slaked lime and is known in common parlance, especially in Gujarat as ‘chuno’. Also the tobacco referred to by the applicant is not the tobacco, which is used in cigarettes or *biris* but chewed or held in the mouth, typically between the cheek and gums and is, therefore, called the Chewing Tobacco. But, before dwelling on the issue of whether the above is a mixed supply in GST or otherwise, we feel it necessary to find out under which sub-headings each of the above 3 items fall and what is the GST liability on each of them.

6. In order to determine the classification of the above 3 items, we will be first required to refer to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 containing the headings, sub-headings as well as the rates of Central Tax GST applicable to various goods which are covered under 6 schedules as under:

- (i) 2.5 per cent. in respect of goods specified in Schedule I,
- (ii) 6 per cent. in respect of goods specified in Schedule II,
- (iii) 9 per cent. in respect of goods specified in Schedule III,
- (iv) 14 per cent. in respect of goods specified in Schedule IV,
- (v) 1.5 per cent. in respect of goods specified in Schedule V, and
- (vi) 0.125 per cent. in respect of goods specified in Schedule VI

Further, Explanation (iii) and (iv) of the said Notification reads, as under:

(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.

7. In order to find out the tariff heading of Supari (betelnuts/arecanuts), we need to refer to Chapter- 8 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which pertains to ‘*Edible fruit and nuts; peel of citrus fruit or melons*’. The said item appears at Heading 0802. Heading 0802 reads as under:

0802 OTHER NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLED OR PEELED

- *ALMONDS*:

0802 11 00 -- In shell.

0802 12 00 – Shelled.

- *Hazelnuts or filberts (Corylus spp.)*:

0802 21 00 -- In shell

0802 22 00 – Shelled.

- *Walnuts* :

0802 31 00 -- In shell.

0802 32 00 – Shelled.

- *Chestnuts (Castanea spp.)*

0802 41 00 -- In shell.

0802 42 00 – Shelled.

- *Pistachios* :

0802 51 00 -- In shell

0802 52 00 -- Shelled

- *Macadamia nuts* :

0802 61 00 -- In shell

0802 62 00 -- Shelled

0802 70 00 - Kola nuts (Cola Spp.)

0802 80 - Areca nuts :

0802 80 10 --- Whole

0802 80 20 --- Split

0802 80 30 --- Ground

0802 80 90 --- Other

0802 90 00 - Other

7.1 From the above, it can be seen that Supari (betelnut/arecanut) appears at Sub-heading No.08028030 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Further, as per Notification No.01/2017-Central Tax (Rate) dated 28.06.2017, the said item appears at Sr. No.28 of Schedule-I of the said notification [on which GST liability is 5% (2.5% CGST + 2.5% SGST)] and reads as under:

Sr.No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of goods
28.	0802	Dried areca nuts, whether or not shelled or peeled

8. In order to find out the tariff heading of Chewing Tobacco, we need to refer to Chapter- 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which pertains to 'Tobacco and manufactured tobacco substitutes'. The said item appears at Heading 2403. Heading 2403 reads, as under:

2403 OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES; "HOMOGENISED" OR "RECONSTITUTED" TOBACCO; TOBACCO EXTRACTS AND ESSENCES

- Smoking tobacco, whether or not containing tobacco substitutes in any proportion :

2403 11 -- Water pipe tobacco specified in Sub-heading

Note to this Chapter:

2403 11 10 --- Hookah or gudaku tobacco

2403 11 90 --- Other

2403 19 -- Other:

2403 19 10 --- Smoking mixtures for pipes and cigarettes

--- Biris:

2403 19 21 ---- Other than paper rolled biris, manufactured without the aid of machine

2403 19 29 ---- Other

2403 19 90 --- Other

- Other :

2403 91 00 -- "Homogenised" or "reconstituted" tobacco

2403 99 -- Other :

2403 99 10 --- Chewing tobacco

2403 99 20 --- Preparations containing chewing tobacco

2403 99 30 --- Jarda scented tobacco

2403 99 40 --- Snuff

2403 99 50 --- Preparations containing snuff

2403 99 60 --- Tobacco extracts and essence

2403 99 70 --- Cut-tobacco

2403 99 90 --- Other

8.1 From the above, it can be seen that Chewing Tobacco appears at Sub-heading No.24039910 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Further, as per Notification No.01/2017-Central Tax (Rate) dated 28.06.2017, the said item appears at Sr. No.15 of Schedule-IV of the said notification [on which GST liability is 28% (14% CGST + 14% SGST)] and reads, as under:

Sr.No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of goods
15.	2403	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences [including biris]

8.2 Over and above the liability of GST, compensation cess is also being levied on chewing tobacco. As per Notification No.01/2017-Compensation Cess(Rate) dated 28.06.2017, Chewing Tobacco appears at Sr. No.26 of the said notification (on which Compensation Cess is 160%) and reads, as under:

Sr.No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description of goods	Rate of goods and services tax compensation cess.
26.	24039910	Chewing tobacco (without lime tube)	160%

8.3 Also, as per Section 136 of the Finance Act, 2001, a National Calamity Contingent Duty (NCCD) of 10% is leviable on Chewing Tobacco as per the Seventh Schedule to the Finance Act, 2001. It reads as under:

Tariff item	Description of goods	Unit	Rate of duty
24039910	Chewing tobacco	Kg.	10%

9. In order to find out the tariff heading of Lime (Slaked lime), we need to refer to Chapter- 25 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which pertains to 'Mineral products'. The said item appears at Heading 2522. Heading 2522 reads, as under:

2522 QUICKLIME, SLAKED LIME AND HYDRAULIC LIME, OTHER THAN CALCIUM OXIDE AND HYDROXIDE OF HEADING 2825

2522 10 00- Quicklime

2522 20 00- Slaked lime

2522 30 00- Hydraulic lime

9.1 From the above, it can be seen that Lime (Slaked lime) appears at Sub-heading No.25222000 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Further, as per Notification No.01/2017-Central Tax (Rate) dated 28.06.2017, the said item appears at Sr. No.131 of Schedule-I of the said notification [on which GST liability is 5% (2.5% CGST + 2.5% SGST)] and reads as under:

Sr.No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of goods
131.	2522	Quicklime, slaked lime and hydraulic lime, other than calcium oxide and hydroxide of heading 2825.

10. Next, we need to find whether the combination of the 3 items discussed above i.e. Grated supari, slaked lime and chewing tobacco shall be considered as a 'mixed supply' (as asked by the applicant). For this purpose, we feel it necessary to go through the definitions of both 'composite supply' and 'mixed supply' as defined under Section 2 of the CGST Act, 2017 in order to find out whether the above would be covered under the definitions of 'composite supply' or 'mixed supply'.

10.1 Composite supply, is defined as per Section 2(30) of the CGST Act, 2017 and reads, as under:

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;”

10.2 As per the submission of the applicant, he wants to carry on the trading activity of Grated Supari, Lime and Chewing Tobacco by putting them together in a transparent plastic pouch for the sake of easy carry by the customer and all the items will have separate price and will be shown in the invoice as a separate bill of item and at no stage will a single price be charged from the customers. Even when the representative of the applicant was asked during the course of personal hearing about the reasons for supplying the 3 items, packed separately, in a single transparent plastic pouch, in reply, he simply reiterated the submissions made earlier by the applicant i.e. it was for easy carry of the customer. However, we find that the very intention of the applicant for supplying the three items i.e. Grated supari, lime and chewing tobacco together to the customer in a single transparent plastic pouch is that the 3 items are not consumed separately but are mixed together before consumption. Even otherwise, ‘*chewing tobacco*’ is rarely consumed in plain form (as it is too strong) and consumed mostly in combination with supari (arecanuts) and slaked lime and there are a lot of examples of such combinations being consumed across India i.e. (i) mawa which is quite popular in Gujarat and surrounding regions is a mixture of chewing tobacco, arecanut shavings and a few drops of watery slaked lime. (ii) In Kerala, chewing tobacco is mixed with betel quid and slaked lime. (iii) Mainpuri tobacco popular in Mainpuri, Uttar Pradesh is mixed with slaked lime, finely cut arecanut, camphor and cloves. (iv) Khaini, a mixture of powdered tobacco and slaked lime is widely used in Maharashtra, Gujarat, Bihar and Uttar Pradesh. One point to be noted in all of the above examples is that chewing tobacco is always the main ingredient and the other two are added to it as per required proportion by the individual before consuming it. However, the very purpose of consuming this combination is that they have both stimulant and relaxation effects but regular consumption of the same leads to addiction. It is believed to produce a sense of euphoria in the body which is akin to that of smoking. It is also believed to produce a sense of well being, warm sensations in the body, sweating, salivation, palpitation and heightened alertness, tolerance to hunger and increased capacity and stamina to work. In this context, we would like to refer to an item known in common parlance as ‘gutkha’, which is a combination of the above 3 products. The said item is defined as under:

“Gutka, ghutka gut kha or betel quid is a chewing tobacco preparation made of crushed areca nut (also called betel nut), tobacco, catechu, paraffin wax, slaked lime and sweet or savory flavourings, in India, Pakistan, other Asian countries, and North America”.

10.3 It can be seen from the above that Gutkha, which in itself is a combination of grated supari, slaked lime, chewing tobacco and some other flavouring ingredients is similar in nature to the combination mentioned hereinabove. Gutkha is an item which is easily available in the open market, is widely popular across the country and consumed by crores of people across the length and breadth of India. Thus, it can be said that the combination formed by mixing required proportions of grated supari and slaked lime with chewing tobacco results in a product similar in nature to gutkha (without the sweet or savoury flavourings). Further, even when an individual goes to a *pan* shop and asks for the above combination known popularly as ‘mawa’ in Gujarat, the pan shop owner will give the 3 items i.e. grated supari, slaked lime and chewing tobacco separately so as to enable the person to mix them as per his requirement before consuming it. We also find that the precise reason why the applicant wants to supply the above 3 items in a single transparent plastic pouch, although packed separately and charged itemwise, to the customers, is to enable them to mix these items as per the required proportion before consuming it. In view of the facts mentioned above, it can be concluded that the 3 items mentioned above are naturally bundled and supplied in conjunction with each other in the ordinary course of business and this combination is nothing but a composite supply of goods, wherein chewing tobacco is the principal supply.

10.4 ‘Mixed supply’ is defined as per Section 2(74) of the CGST Act, 2017 and reads as under:

“ ‘mixed supply’ means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration.— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;”

10.5 As can be seen from the above definition, “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person **for a single price where such supply does not constitute a composite supply**. However, as discussed earlier and admitted by the applicant himself, the aforementioned combination of 3 items is not sold for a single price i.e. each of these items are shown separately in the invoice and separate prices are charged for each item. Also as discussed earlier in para 10.3, since the aforementioned combination constitutes a composite supply of goods, wherein chewing tobacco is the principal supply, it can be safely concluded that the aforementioned combination is not a ‘mixed supply’ of goods.

11. Now, since it has been established that the above supply of combination of 3 items made by the applicant is a ‘composite supply’ of goods with chewing tobacco being the principal supply, we are required to examine the classification and tax liability on the same. For this purpose, we will be required to refer to Section 8 of the CGST Act, 2017, which reads as under:

“The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.”

11.1 So, in view of Section 8(a) above, it can be seen that a composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. Therefore, in the instant case, since chewing tobacco is the principal supply in the composite supply of goods as discussed earlier, the said composite supply of goods would be treated as a supply of chewing tobacco falling under Tariff Item 24039910 of the First Schedule to the Customs Tariff Act, 1975 (1 of 1975). The same appears at Sr.No.15 of Schedule-IV of the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 [on which GST liability is 28% (14% CGST + 14% SGST)]. The same reads, as under:

Sr.No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of goods
15.	2403	Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and essences [including biris]

11.2. Other than the above, a composition cess of 160% is chargeable on chewing tobacco as discussed earlier in light of Notification No.01/2017-Compensation Cess (Rate) dated 28.06.2017, which reads, as under:

Sr.No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of goods	Rate of goods and services tax compensation cess.
26.	24039910	Chewing tobacco (without lime tube)	160%

11.3 Also, as per Section 136 of the Finance Act, 2001, a National Calamity Contingent Duty (NCCD) of 10% is leviable on chewing tobacco as per the Seventh Schedule to the Finance Act, 2001. It reads, as under:

Tariff item	Description of goods	Unit	Rate of duty
24039910	Chewing tobacco	Kg.	10%

12. In light of the foregoing, we rule, as under –

R U L I N G

Question: The applicant wants to trade the below mentioned items:-

1. Supari in grated form of cut in different shape in a separate pouch packing.
2. Lime(Chuno) in a separate packing.
3. Tobacco (Chewing Tobacco) in a separate packing.

All the above three items will be delivered to the customer in a transparent plastic pouch for the convenience of carrying it and the invoice prepared for the same will have three separate line items of the items mentioned above charged separately.

“Will the delivery of items in a single pouch classify the goods as mixed supply as per the definition under Section 2(74) of the CGST Act, 2017 and tax be collected at the rate of tax of highest item in the supply? In this case, the highest rate of tax could be that of Tobacco at 28% alongwith 160% cess.

Answer: The delivery of the aforementioned items by the applicant M/s. Jainish Anantkumar Patel in a single transparent plastic pouch to the customers will be considered as a ‘composite supply of goods’ as per the definition under Section 2(30) of the CGST Act, 2017 with the principal supply of ‘Chewing Tobacco’ falling under Tariff item 24039910 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). The product ‘Chewing Tobacco’ appears at Sr.No.15 of Schedule-IV of the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 issued under the CGST Act, 2017 on which GST liability is 28% (14% CGST + 14% SGST). The said product also appears at Sr.No.26 of Notification No.01/2017- Compensation Cess (Rate) dated 28.06.2017 issued under the CGST Act, 2017 under which a Compensation Cess of 160% is leviable on it. Also, as per Section 136 of the Finance Act, 2001, a National Calamity Contingent Duty (NCCD) of 10% is leviable on chewing tobacco as per the Seventh Schedule to the Finance Act, 2001.

**(SANJAY SAXENA)
MEMBER**

**(MOHIT AGRAWAL)
MEMBER**

Place: Ahmedabad

Date: 30.07.2020.