

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 21/2021

Dated : 06-04-2021

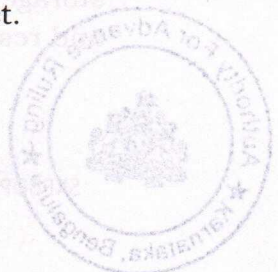
Present:

1. Dr. M.P.Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State Tax)
2. Sri.Mashhood Ur Rehman Farooqui,
Joint Commissioner of Central Taxes Member (Central Tax)

1.	Name and address of the Applicant	M/s. SKF Boilers and Driers (P) Ltd., #129, Bannadka, Belvai-574213, Moodabidri, Dakshina Kannada District.
2.	GSTIN or User ID	29AAHCS9043D1Z6
3.	Date of filing of Form GST ARA-01	27-10-2020
4.	Represented by	Sri. Surendran Thumboochetty, Advocate& DAR
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Mangalore GST Commissionerate
6.	Jurisdictional Authority - State	VAT Sub Office -291, Moodabidri
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide CIN No. 20102900449773, dated. 21.10.2020

**ORDER UNDER SECTION 98(4) OF CENTRAL GOODS AND SERVICES TAX
ACT, 2017 AND UNDER SECTION 98(4) OF KARNATAKA GOODS AND
SERVICES TAX ACT, 2017**

1. M/s SKF Boilers and Driers (P) Ltd., #129, Bannadka, Belvai-574213, Moodabidri, Dakshina Kannada District having GSTIN number-29AAHCS9043D1Z6, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017, read with Rule 104 of the CGST Rules and Section 97 of the KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The applicant is a registered person under the provisions of the Central Goods and Services Tax Act, 2017 as well as the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act" and the "KGST Act/SGST Act" respectively) engaged in the manufacture and sale of drier and parboiling plant for the rice milling industry.

3. The applicant has sought advance ruling in respect of the following question:

1. Whether parboiling and drier plant is part of rice milling machinery as specified in the Notification dated 28-06-2017 under HSN 8437 issued under the CGST Act, 2017 taxable at 5% (2.5% CGST + 2.5% SGST)?

2. If the above mentioned plant/machinery is not classified under HSN 8437, whether the same is to be taxed under HSN 8419 at the rate of 18% in the Notification dated 28-06-2017 (9% CGST + 9% SGST)?

4. **Admissibility of the application:** The question is about "determination of the liability to pay tax on any goods or services or both;" and hence is admissible under Section 97(2)(e) of the CGST Act 2017.

5. The applicant furnishes some facts relevant to the issue:

5.1 The applicant has submitted that a paddy processing plant consists of various sections which are involved with the activities of parboiling rice, drying, rice milling and polishing. Parboiling is a process of soaking, steaming and drying prior to milling.

5.2 The process of parboiling of paddy is carried out as under.

Soaking:

Paddy is required to be soaked in water in order to get a moisture content of about 30-36 percent. When the paddy is soaked in water, minerals and nutrients such as sugars and amino acids are absorbed into the starch. The said process is carried out for about 36-48 hours in a soaking tank.

Steaming:

Once the soaking is done, the paddy undergoes a process of steaming which requires heating up the grain to make it harder. Steaming of paddy is done by applying saturated steam at a pressure and is required to achieve partial gelatinization.

Drying:

This is the most critical operation after harvesting of the rice crop. Drying is the process that reduces the moisture content of rough rice to enable a safe level for storage or milling. A delay in drying or incomplete drying will reduce grain quality and result in losses.



5.3 The applicant has contended that the parboiling is a process which leads to improving the nutritional value of rice post-milling with increased head rice yield. Minerals such as *phytin phosphorous*, *potassium* and *magnesium* are migrated to the interior of the rice kernel during the process of soaking and steaming. Hence, the removal of the bran layer during milling without parboiling will result in the reduction of minerals in the milled rice product. In other words, the milling of paddy without any pre-treatment such as parboiling would be highly susceptible to breakage and loss of minerals and vitamins and hence, the said process was developed to reduce the breakage and loss of minerals and vitamins. The parboiling machinery includes a packaged boiler, pre-cleaner, holding bins, soaking tank, cooking tanks and drier. It is submitted that although the parboiling plant is involved in a process anterior to the process of milling of rice, the said plant would constitute a part of rice mill machinery.

5.4 The applicant further contended that vide CGST Notification bearing No.1/2017 dated 28-06-2017 which is issued in exercise of the powers vested in it under Section 9(1) and Section 15(5) of the CGST Act, in Schedule I appended to the said notification dated 28-06-2017 enumerates the list of goods taxable at 2.5%. Sl.No.233 refers to machines for cleaning, sorting or grading seed etc; machinery used in milling industry has been classified under heading 8437 of the Goods and Service Tax Tariff Schedule. Therefore, the machinery classified under heading 8437 of the GST Tariff would be exigible to GST at the rate of 5% (2.5% CGST + 2.5% SGST). Further, Schedule III of the notification dated 28-06-2017 refers to goods taxable at the rate of 9% CGST. Sl.No.320 of the said Schedule refers to machinery, plant or laboratory equipment inter-alia for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting etc classified under heading 8419 of Chapter 84 of the GST Tariff. Therefore, the machinery classified under heading 8419 of the GST Tariff would be exigible to GST at the rate of 18% (9% CGST + 9% SGST).

5.5 The applicant submits that Section XVI of the GST Tariff refers to "Machinery and Mechanical Appliances; Electrical Equipment" etc. Chapter 84 of Section XVI of the GST Tariff refers to "Nuclear Reactors, Boilers, Machinery and Mechanical, Appliances; parts thereof". The applicant has submitted that for the periods prior to 01-05-2017, the applicant was clearing its product viz., parboiling plant under the Tariff item 8419 89 90 - "Other" of Heading 8419 of Chapter 84 of the Central Excise Tariff Act, 1985. Also, Heading 8437 of Chapter 84 of the Excise Tariff Act relates to (inter-alia) - "machinery used in the milling industry". Further, the entries in headings 8419 and 8437 in the Excise Tariff Act are *pari materia* with those found in Chapter 84 of the GST Tariff.

5.6 The applicant has submitted that Explanation (iv) appended to the Notification dated 28-06-2017 provides for the interpretation of the Notification and the same being relevant to this application is reproduced hereunder for the purposes of immediate perusal:



“(vi) 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”.

As per Rule 1 of the “General Rules for the Interpretation of this Schedule” appended to the GST Tariff, classification, for legal purposes shall be determined according to the terms of the Headings and any relative Section or Chapter Notes and, provided such Headings or Notes do not otherwise require.

5.7 The applicant states that while coming to the aspect of interpretation of the entries 8419 and 8437 as found in the GST Tariff read with Rule 1 of the Rules for interpretation cited above, Note 2 appended to Chapter 84 of the GST Tariff reads as under:

“2. Subject to the operation of Note 3 to Section XVI and subject to Note 9 to this Chapter, a machine or appliance which answers to a description in one or more of the headings 8401 to 8424, or heading 8486 and at the same time to a description in one or other of the headings 8425 to 8480 is to be classified under the appropriate heading of the headings 8401 to 8424 or under the heading 8486, as the case may be, and not under the headings 8425 to 8480”.

5.8 The applicant states that he has understood that as per Note 2 appended to Chapter 84 of the GST Tariff, in the event a machine or appliance answers to a description in one or more of the Headings 8401 to 8424 (such as the machinery in question which was earlier classified under Heading 8419 of the Excise Tariff Act) and also answers to a description under the Headings 8425 to 8480, the machine is to be classified under Headings 8401 to 8424 only. However, the said Note opens with the phraseology “Subject to the operation of Note 3 to Section XVI”. Therefore, it becomes relevant to extract the language used in Note 3 to Section XVI of the GST Tariff which is reproduced hereunder for the purposes of immediate reference:

“3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function”.

The applicant submits that from a reading of Note 3 appended to Section XVI of the GST Tariff, what emerges is that composite machines consisting of two or more machines fitted together to form a whole are to be classified as that machine which performs the principal function.

5.9 The parboiling and drier plant were classified by the applicant under Tariff item 8419 89 90 under the Excise Tariff Act. Alternatively, machinery used in the milling industry including rice mill machinery are classified under Heading 8437 and more specifically Tariff item 8437 80 20. By application of the language employed in Note 2 appended to Chapter 84 of the GST Tariff, the plant in question



ought to be classified only under Heading 8419 and not under Heading 8437. However, the said Note is issued subject to the operation of Note 3 to Section XVI. Thus, from a reading of Note 3 to Section XVI, since the parboiling and drier plant is a composite machine consisting of machinery for soaking, steaming and drying fitted together to perform a principal function, namely as parboiling plant used in conjunction with rice milling machinery, the appropriate classification would be under Heading 8437 and Tariff item 8437 80 20, in the understanding of the Applicant.

5.10 The applicant contends that while coming to the aspect of classification of the parboiling plant under the Excise Tariff Act, Circular bearing No.924/14/2010-CX dated 19-05-2010 issued by the Central Board of Excise and Customs ("Board" for short), clarifies as under:

"Chapter Note 2 provides that if a machine can be classified based on description under heading 8419 and also under 8437, in that case it should be classified under 8419 only. Therefore, it would be seen that as per Chapter Note 2, the parboiling machine merit classification under heading 8419 but as per Section Note 3 and 4, the machinery merit classification under heading 8437. The Board observes that this controversy has been perceived by the HSN and at pages 1235 it has been mentioned that Chapter Note 2 which is known as rule of precedence for heading 8401 to 84.24 applies only to machines considered as whole. Composite machines or multifunction machines are required to be classified in accordance with Note 3 and Note 4 of Section XVI. As per this clarification available in the HSN, the parboiling machine and dryers which are part of composite machine (rice mill) would be correctly classified in terms of Section Notes 3 and 4 and therefore, the correct classification should be under heading 8437. Further, grain dampening machine has been excluded from the purview of heading 8419 and placed under heading 8437. One of the functions of rice parboiling machinery is soaking of grain, which is in nature of dampening; hence this also supports the classification of parboiling machinery under heading 8437.

5.11 The applicant has brought to notice the decision of the Central Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore in their own case reported in **2011 (264) ELT 425-SKF Boilers and Driers (P) Ltd., Vs CCE**, Mangalore wherein setting aside the adjudication order classifying the product under various headings of 8419 has remanded the case to finalize the classification based on Board Circular dated 19-05-2010. They have also referred to a subsequent decision of the CESTAT, Principal Bench, New Delhi in the case of **Jyoti Sales Corporation -Vs- CCE reported in 2011 (272) ELT 689** wherein it was held that, merely because such a plant is used along with the rice mill that itself will not transform it into a composite machinery inclusive of rice mill. Further, they have stated that the SLP filed by Jyoti Sales Corporation against the said decision was disposed by Hon'ble Apex Court vide order dated 11.02.2016 in Civil Appeal No.8612/2011.

5.12 The applicant has stated about the decision dated 11.02.2016 of the Hon'ble Apex Court, directing to get the conflict resolved by a Larger Bench of the Tribunal.



It is also stated that the Circular dated 19-05-2010 was rescinded vide Circular No.982/06/2014-CX dated 15-05-2014 to the effect that classification of rice parboiling machine and drier may be made under Central Excise Tariff Heading 8419.

5.13 The applicant further referred to the decision of the Larger Bench of the Tribunal in **Jyoti Sales Corporation -Vs- CCE, Panchkula in 2016 (341) ELT 328** holding that parboiling machinery cannot be construed as part of rice milling machinery and when examined and assessed independently, the machinery will compulsorily fall under Heading 8419 of the Excise Tariff Act.

5.14 The applicant is contending that, notwithstanding the above decision of the Larger Bench of the CESTAT, parboiling and drier plant will be classified under Heading 8437 of the GST Tariff. This stand of the applicant is supported by the language employed in Rule 1 of the General Rules for the interpretation read with Note 2 to Chapter 84 and Note 3 to Section XVI.

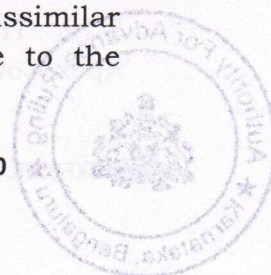
5.15 The applicant has drawn attention to another decision rendered by the CESTAT, Chandigarh in the case **of Alpsco Grintech (P) Ltd -Vs- CCE, Chandigarh reported in 2019 (365) ELT 944** holding that "rice bucket elevator" and "rice conveyor" used in the rice milling industry, supplied along with other rice milling machinery is a combination of machine which ultimately performs the function of rice milling and hence merits classification under Heading No.8437 of the Excise Tariff. It is also stated by them that the appeal filed against the said decision was dismissed by the Hon'ble Supreme Court vide Civil Appeal No.5518 to 5520/2019. Drawing analogy to the above decision, the applicant has contended that parboiling and drier plant is used along with rice milling machinery and is specifically manufacture for use in rice milling industry and said machinery is a combination of machines which ultimately performs the function of rice milling and hence is classifiable under Heading 8437 of the GST Tariff attracting levy of GST at 5% under Sl.No.233 of Schedule I of the Notification dated 28-06-2017.

PERSONAL HEARING: / PROCEEDINGS HELD ON 16-12-2020

6. Sri. Surendran Thumbboochetty, Chartered Accountant and Duly Authorized Representative of the applicant appeared for personal hearing proceedings held on 16.12.2020 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in *pari-materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.



8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing.

9. The main contention of the applicant is that whether parboiling and drier plant is part of rice milling machinery as specified in the Notification dated 28-06-2017 under HSN 8437 issued under the CGST Act, 2017 taxable at 5% (2.5% CGST + 2.5% SGST), If the above mentioned plant/machinery is not classified under HSN 8437, whether the same is to be taxed under HSN 8419 at the rate of 18% in the Notification dated 28-06-2017 (9% CGST + 9% SGST).

9.1 In view of the above, the issue before us to decide, so as to give the ruling to the question sought by the applicant, is whether the product of the applicant falls under HSN 8437 or 8419. Therefore, we proceed to examine the issue so as to arrive at the appropriate classification of the said product of the applicant.

9.2 The Jurisdictional Authority of the applicant which is The Commissionerate, Mangalore North Division vide their letter dated 03-12-2020 have submitted comments that the prayer of the applicant seeking issue of ruling pertains to parboiling and drier plant used in the rice milling industry is to be classified under heading 8437 of GST Tariff liable to GST @ 5% (2.5% CGST and 2.5% SGST) under Sl.No.233 of Schedule I of Notification dated 28-06-2017 and corresponding Notification issued under the provisions of KGST and is liable for rejection.

9.3 The applicant has reproduced the classification of goods under Schedule I and Schedule III under Notification No.1/2017-Central Tax (Rate) dated 28th June, 2017 as amended vide Notification No.41/2017-Central Tax (Rate) dated the 14th November, 2017 as under:

Sl.No.	Chapter/Heading/Subheading/Tariff item	Description of Goods
(1)	(2)	(3)
233	8437	<i>Machines for cleaning, sorting or grading, seed grain or dried leguminous vegetables; machinery used in milling industry or for the working of cereals or dried leguminous vegetables other than farm type machinery and parts thereof</i>
320	8419	<i>Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting,</i>



		<i>distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vapourising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric [other than Solar water heater and system]";</i>
--	--	--

The applicant has stated about Section XVI and Chapter 84 of the Central Excise Tariff. Further, he has quoted Note 2 to Chapter 84, as under:

"Subject to the operation of Note 3 to Section XVI and subject to Note 9 to this Chapter, a machine or appliance which answers to a description in one or more of the headings 8401 to 8424, or heading 8486 and at the same time to a description in one or other of the headings 8425 to 8480 is to be classified under the appropriate heading of the headings 8401 to 8424 or under the heading 8486, as the case may be, and not under the headings 8425 to 8480"

and states that the above refers to Note 3 to Section XVI as under:

"Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function"

and contends that, composite machines consisting of two or more machines fitted together to form a whole are to be classified as that machine which performs the principal function.

9.4 In view of the above findings and submissions of the applicant, the Authority is of the following view:

Initially CBEC vide its Circular No.924/14/2010-CS, dated 19-05-2010 [F.No.167/42/2009-CX.4], had clarified that Rice parboiling machinery and drier which are essentially for use in conjunction with the rice mill merit classification under heading 8437.

9.5 The Hon'ble Tribunal in the case of *S.K.F Boilers and Dryers Pvt. Ltd., Vs CCE, Mangalore reported in 2011(264) E.L.T 425 Tri -Bang.*) held that in view of the Department conceding that Board's Circular dated 19-05-2010 classifying produce under Heading 8437 ibid binding on Department, set aside the impugned order classifying product under Tariff Items 8419 and remanded the matter back to finalise classification bearing in mind the Board Circular ibid.

9.6 The Hon'ble Tribunal in the case of *Jyoti Sales Corporation Vs Commissioner of Central Excise, Panchakula reported in 2011 (272) E.L.T 689 (Tri-Del)*, upheld the classification of the product in question (Par-boiling plant and drying plant) under Chapter Heading 8419 of Central Excise Tariff.



9.7 Consequent to the above Tribunal judgment, the CBEC issued Circular No.982/06/2014-CX, dated 15-05-2014 [F.No.167/42/2009-CX.1], classifying rice par-boiling machine and dryer under Central Excise Tariff Heading 8419 as per Note 2 to Chapter 84.

9.8 As there was conflicting judgments on the issue in the case of *Jyoti Sales Corporation Vs Commissioner of Central Excise Panchkula reported in 2011 (272) E.L.T. 689 (Tri.Del.)*, classifying par-boiling machine and dryer under 8419 of Central Excise Tariff and in the case of *SKF Boilers and Driers Private Limited V. Commissioner of Central Excise, Mangalore reported in 2011 (264) E.L.T. 425 (Tri-Bang.)*, classifying the same machines under 8437, the Hon'ble President of CESTAT constituted a Larger Bench as per the directions of the Hon'ble Supreme Court in Civil Appeal No.8612/2011, to resolve this conflict and to decide the appropriate classification of the par boiling machine and drier.

9.9 The Larger Bench of Hon'ble Tribunal vide order dated 27.09.2016 decided the issue in favour of the Heading 8419. This order has been appealed against and the Hon'ble Supreme Court has admitted the appeal as reported in [2018 (360) E.L.T A172 (S.C)]. However, it appears that there is no stay against the operation of the Tribunal judgment.

9.10 The applicant has cited the CESTAT decision in the case of *Alpsco Graintech (P) Ltd., Vs CCE, Chandigarh 2019 (365) ELT 944* in support of their contention wherein classification of "rice bucket elevator" and "rice conveyor" used in the rice milling industry, was the issue. Since the decision in *Jyoti Sales Corporation reported in 2016 (341) E.L.T.328 (Tri-LB)* is specific to the subject under reference viz., classification of parboiling and drier plant, that too by a Larger Bench, based on the direction from the Apex Court, would be relevant rather than the decision in the case of *Alpsco Graintech (P) Ltd.*

9.11 Considering the fact that the Hon'ble Tribunal Larger Bench judgment in the case of *Jyoti Sales Corporation reported in 2016 (341) E.L.T 328 (Tri-LB)* held that par boiling machine and dryer is classifiable under Heading 8419 of the Central Excise Tariff and there being on stay on the order by the Apex Court which is also in conformity with the Board's Circular No.982/06/2014-CX, dated 15-05-2014 issued in F.No.167/42/2009-CX.1, we observe that the goods under reference merits classification under 8419 attracting 9% CGST and 9% SGST.

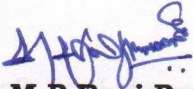
10. In view of the foregoing, we rule as follows

R U L I N G

Parboiling and Drying plant is classified under HSN 8419 Entry No.320 at the rate



of 18% as per Notification No. 01/2017 - Central Tax (Rate) dated 28-06-2017 (9% CGST + 9% SGST) as amended vide Notification No.41/2017 - Central Tax (Rate) dated the 14-11-2017.



(Dr. M. P. Ravi Prasad.)

Member

Karnataka Advance Ruling Authority

Place : Bengaluru - 560 009

Date : 06-04-2021



(Mashhood Ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Mangalore GST Commissionerate
4. VAT Sub Office - VSO 291 - MOODBIDRI.
5. Office Folder.

