

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id		27AAACM4332N1ZC
Legal Name of Applicant		M/S Monrovia Leasing and Finance Pvt. Ltd.
Registered Address/ Address provided while obtaining user id		GAT No 360, 368/1 to 368/3, 370 to 372, 545 Bhandgaon, Tal Daund, Dist Pune - 412214
Details of application		GST-ARA, Application No. 20 Dated 08.05.2018
Concerned officer		Asstt. Commissioner of CGST , Division – Baramati, Pune II Central GST Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing
B	Description (in brief)	Slaughtering & Processing of Sheep/Goat meat and supplies to Army against tender.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by M/S Monrovia Leasing and Finance Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following questions.

1. Whether the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by applicant against tender shall qualify as product put up in “unit container”.

2. Whether the products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017-Integrated Tax (Rate) dated 28th June 2017 up to 14th November 2017 and thereafter as per entry no.1 of schedule I of the Notification No. 43/2017-Integrated Tax (Rate) dated 14th November 2017 or fall under exemption list as per entry no 10 of Notification No. 2/2017-Integrated Tax (Rate) New Delhi dated 28th June 2017 up to 14th November 2017 and thereafter as per entry no. 9 of the Notification No. 44/2017-Integrated Tax (Rate) dated 14th November 2017

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act 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 the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT-

- 1) M/S Monrovia Agro Foods is engaged in slaughtering & processing of Sheep / Goat meat and supplies these products to Army against tender.
- 2) Monrovia Agro Foods Supplies to Army Sheep / Goat meat in carcass form i.e. the whole animal carcass in its natural shape in frozen state. Naturally, the carcass would be in different weight & sizes. Further, there is no fixed quantity & size in which these carcasses are dispatched to Army. The said dispatches are made on the basis of the weight of the frozen carcass. Furthermore, the consideration is charged on the basis of weight. The packing and dispatch pattern is given below:-
Each frozen carcass is put in LDPE Bag (Primary Packing) which is not sealed & no weight is mentioned on such LDPE Bag. Thereafter, generally one or two of such LDPE Bags are put in HDPE Bag (Secondary Packing) and no weight is mentioned on such HDPE Bag too. Hence, the invoicing is done for entire weight of the lot and no mention of weight of each bag of the lot.

- i. (A copy of the marking appearing on LDPE Bag attached herewith as Annexure A-I)
(General instructions as given by Army to supplier against tender attached herewith as Annexure A-II)

- 3). The Four digit HSN of the Subject Product is given below:-

HSN	Product
0204	Meat of Sheep or Goats

- 4). Provision relating to Taxability / Exemption under GST Law

The IGST rate schedule as notified by the Government in respect of subject product is as under:-
W.e.f. 1st July, 2017 till 14th November, 2017

- a. Schedule II of the Notification No 1/2017-Integrated Tax (Rate) dated 28th June 2017 deals with the products which are subject to 12 % GST and entry No 4 which pertain to sheep/Goat meat respectively are provided below:

Schedule II

S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
4.	0204	Meat of sheep or goats, frozen and put up in unit containers

- b. A reading of the above-mentioned entries in the above reproduced notification would reveal that if the items mentioned in Tariff Heading 0204 are put up in a 'unit container', it would be eligible to tax @12%.
- c. Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government via Notification No.2/2017-Integrated Tax (Rate) New Delhi dated 28.06.2017 has exempted inter-State supplies of goods from the whole of the integrated tax leviable thereon as under. Relevant extract is reproduced below:

Schedule

S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
10.	0204	Meat of sheep or goats, [other than frozen and put up in unit containers]

A conjoint reading of the extracts of the above-mentioned notification reveals that GST is chargeable only when the frozen meat is put up in 'unit containers'.

- ii. An amendment made in the schedule II of Notification No. 1/2017 dated 28th June 2017 - Integrated Tax (Rate) wide Notification No. 43/2017 - Integrated Tax (Rate) dated 14th November 2017, w.e.f. 15th November 2017 onwards, the following entry inserted which relates to taxability on subject products.



- a. Schedule I of the Notification No 43/2017-Integrated Tax (Rate) dated 14th November 2017 deals with the products which are subject to 5 % GST and entry No 1 which pertain to sheep/Goat meat respectively are provided below:

Schedule I

S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
1	0204	All goods (other than fresh or chilled) and put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I]";

- b. Hence, net impact of the above amendment is as follows:-
- Reduction in rate from 12% to 5% on the subject products.
 - One additional condition for taxability is imposed i.e. product must be branded.
- c. Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government via Notification No.44/2017-Integrated Tax (Rate) New Delhi dated 14.11.2017 has exempted inter-State supplies of goods from the whole of the integrated tax leviable thereon as under. Relevant extract is reproduced below:

Schedule

S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
8	0204	All goods, fresh or chilled
	0204	All goods (other than fresh or chilled) other than those put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I]";

A conjoint reading of the extracts of the above-mentioned notifications reveals that GST is chargeable only when the following conditions are met

- Till 14th November 2017, if product is "Frozen" and put up in "Unit Container"
- On or after 15th November 2017, if the product is "Frozen", put up in "Unit Container" and "Branded".
- Addition submissions -Chapter 2 of Central Excise Tariff deals with the products. The tariff items, description of goods & rate of duty as prescribed under Central Excise Tariff is reproduced below for your ready reference.

Tariff Item	Description of Goods	Rate of Duty
0204	MEAT OF SHEEP OR GOATS, FRESH, CHILLED OR FROZEN	
0204 10 00	- Carcasses and half-carcasses of lamb, fresh or chilled	Nil
0204 22 00	- Other cuts with bone in	Nil
0204 23 00	- Boneless	Nil
0204 30 00	- Carcasses and half-carcasses of lamb, frozen - Other meat of sheep, frozen:	Nil
0204 41 00	- Carcasses and half-carcasses	Nil
0204 42 00	- Other cuts with bone in	Nil
0204 43 00	- Boneless	Nil
0204 50 00	- Meat of goats	Nil

1601 00 00	- SAUSAGES AND SIMILAR PRODUCTS, OF MEAT, MEAT OFFAL OR BLOOD; FOOD PREPARATIONS BASED ON THESE PRODUCTS	6%
0104	LIVE SHEEP AND GOATS	
0104 10	- Sheep:	
0104 10 10	- Sheep including lamb for breeding purpose	
0104 10 90	- 0104 10 90	
0104 20 00	- Goats	

(c) Details of benefit of notification of Central Excise if any availed - NA.

6) (a) Classification of Service / Services as applicable

(b) Rate / Rates of Service Tax as applicable to services provided

Sr. No.	Classification of Services	Accounting Code	Rate of Tax
1	Manpower Recruitment/Supply agency service	00440060	15%
2	Storage and warehousing services	00440193	15%

Statement containing the Applicant Interpretation of Law and Submission on issues on which Advance Ruling is sought

1. Section 9 of the Central Goods and Services Tax Act 2017

"9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Thus, GST is chargeable as a reference to 'value' and at applicable rates. For the purpose of building the point of view, reference made to the IGST rate schedule as notified by the Government as under:

W.e.f from 1st July, 2017 till 14th November, 2017

Schedule II of the Notification No 1/2017-Integrated Tax (Rate) dated 28th June 2017 deals with the products which are subject to 12 % GST and entry No 4 which pertain to sheep/Goat meat respectively are provided below:

Schedule II

No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
4.	0204	Meat of sheep or goats, frozen and put up in unit containers

- A reading of the above-mentioned entry in the above reproduced notification would reveal that if the items mentioned in Tariff Heading 0204 are put up in a 'unit container', it would be eligible to tax @12%.
- Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government via (b) Notification No.2/2017-Integrated Tax (Rate) New Delhi dated 28.06.2017 has exempted, inter-State supplies of goods, from the whole of the integrated tax leviable thereon. Relevant extract is reproduced below:

Schedule

S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
10.	0204	Meat of sheep or goats, [other than frozen and put up in unit containers]

5. W.e.f 15th November, 2017 onwards,

Schedule I of the Notification No 43/2017-Integrated Tax (Rate) dated 14th November 2017 deals with the products which are subject to 5 % GST and entry No 1 which pertain to sheep/Goat meat are provided below:

Schedule I

S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
1	0202	All goods (other than fresh or chilled) and put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I]";

6. A reading of the above-mentioned entries would reveal that the item mentioned in Tariff Heading 0204 would be eligible to tax @ 5% if are put up in a 'unit container' and bear a brand name.
7. Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government via Notification No.44/2017-Integrated Tax (Rate) New Delhi dated 14.11.2017 has exempted, inter-State supplies of goods, from the whole of the integrated tax leviable thereon. Relevant extract is reproduced below:

Schedule

S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
8	0204	All goods, fresh or chilled
9.	0204	All goods (other than fresh or chilled) other than those put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I]";

Conditions for Taxability:-

A conjoint reading of the extracts of the above-mentioned notifications reveals that GST is chargeable subject to fulfillment of conditions as tabulated below.

- W.e.f. from 1st July, 2017 till 14th November, 2017.

- Must be frozen
- Must be packed in unit container

- W.e.f from 15th November, 2017

onwards

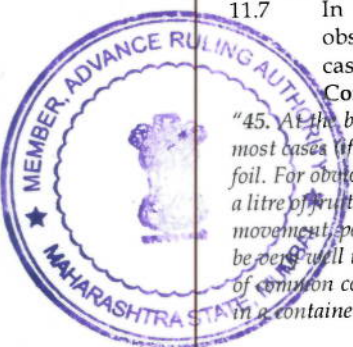
- Must be frozen
- Must be packed in unit container
- Must bear a brand

9. Keeping in mind all three conditions extracted from the notifications for the taxability of the products. Advance Ruling is requested on the Question whether the product is put up in unit container or not.
10. **Applicant's point of view-** --Keeping in mind the facts, definition of unit container given as explanation appended to the IGST notification prescribing rates & notification granting exemption & various judicial pronouncements on and relating to "Unit Container", the applicant is of view that the packaging being used to supply frozen Sheep/Goat meat to Army against tender does not qualify to be as unit container.

In support of above point of view, following submissions are being made for the kind consideration of the Honorable Advance Ruling Authority.

11. Unit Container, meaning---

- 11.1 Before adverting to the decided case laws and analysis of the term 'unit container', it is important to advert to the meaning of the term 'unit'. Merriam Webster Dictionary defines 'unit' as 'a determinate quantity (as of length, time, heat, or value) adopted as a standard of measurement such as an amount of work used in education in calculating student credits or an amount of a biologically active agent (such as a drug or antigen) required to produce a specific result. The Business Dictionary defines the term to mean a definitive or determinate quantity adopted as a standard of measurement and exchange. Therefore, where the term 'unit' is affixed to a container, it would mean a container containing a 'unit' of a particular commodity i.e. a determinate quantity of goods contained therein. It should be designed to contain such determinate quantity of units of goods.
- 11.2 In this background, let us analyse the meaning & scope of the term 'unit container'.
- 11.3 The interpretation of the expression 'unit container' has been a vexed issue in the context of Central Excise law as under the excise regime prevailing prior to GST. Food products put up on a 'unit container' were liable to excise duty. Therefore, in this regard, it is important to study the provisions under the old law and interpretation adopted by the Courts.
- 11.4 The expression 'unit container' was first used in Tariff Item No 1B in the old Central Excise Tariff as under: "1B Prepared or preserved foods put up in unit containers and ordinarily intended for sale, including preparations of vegetables, fruit milk, cereals, flour, starch, birds, eggs, meat offal's, animal blood, fish, crustaceans or molluscs, not elsewhere specified."
- 11.5 Thus, under the old Central Excise Tariff, prepared/ preserved food put up in 'unit container' and ordinarily intended for sale were eligible for excise duty. Thus, there was a twin requirement viz. goods being put up in 'unit container' and secondly, they should have ordinarily been intended for sale.
- 11.6 The expression 'unit container' was not defined in the old Central Excise Tariff but instructions in this regard were issued by Central Excise Board's letter M.F (D.R.I.) No. B/5/1/69-CX-I, dated 3-4-1969, clarifying the meaning of the term 'unit container' as under:
"Meaning of Unit Containers. The expression 'unit container' used in Tariff Item 1B means a container in which prepared or preserved food is intended to be sold by the manufacturer. It may be a small container like tin, can, box, jar, bottle or bag in which the product is sold by retail, or it may be a large container like drum, barrel or canister in which the product is packed for sale to other manufacturers or dealers. In short 'unit container' means a container, whether large or small, designed to hold a pre-determined quantity or number which the manufacturer wishes to sell whether to a wholesale or retail dealer or to another manufacturer."
- 11.7 In this background, in the context of old Central Excise Tariff, reference is placed on the following observations of the Special Bench of the Hon'ble CEGAT while interpreting the term 'unit container' in the case of Collector of Central Excise v. Himachal Pradesh Horticulture Produce Marketing & Processing Corporation Ltd., 1998 (34) E.L.T. 160 (Tribunal):
"45. At the basis of this entire system of marketing and consumer satisfaction is the method of packing in "unit containers". In most cases (if not all) the container is not returnable; in many cases it is not durable, particularly if it is of cardboard or aluminium foil. For obvious reasons the container has to be just large enough to hold the predetermined quantity of the contents. To pack half a litre of fruit syrup in a bottle which can hold one litre would not only be wasteful but would also subject the contents unnecessary movement, perhaps with a loss of quality. Further, it would arouse doubts in the customer that he is being cheated. It can therefore be very well understood that no intelligent manufacturer would pack prepared or preserved foods (or indeed any similar product of common consumer use) in a container which is not full or practically so. Nor would a prudent customer readily buy a product in a container which does not appear to be full.
- 46. The above observations on the methods of marketing of common consumer products, do not require any special knowledge because they are a matter of common experience. The tariff item and the Finance Ministry's instructions are consistent with the general experience and practice as mentioned above. General experience would certainly show that prepared and preserved foods and the like, as they are ordinarily sold in the market, are packed in containers which contain a specific and clearly marked quantity of the goods. The quantity may vary according to the product and the manufacturer, but even then there are many standard quantities common to different manufacturers, such as 100 gms, 500 gms, 1 kg, 100 ml, 200 ml and 500 ml. Such products are sold in what may appropriately be called "unit containers" which can conveniently contain that particular quantity. It is also a matter of common knowledge and experience that in such cases the container is normally not returnable, and in many cases not durable.**
- 11.8 A perusal of the observations of the CEGAT in the above case reveals that 'unit container' is to be interpreted to mean a container that holds a predetermined quantity which is clearly indicated and is standardized i.e. it is standardized for a particular commodity like packages of 1kg, 100 ml, 200 ml, etc. The said conclusion also follows from the meaning of the term 'unit'.
- 11.9 Under the new Central Excise Tariff Act, 1985 (which replaces the old Tariff) also, certain products cleared and manufactured and put up in a 'unit container' were eligible to excise duty. The term 'unit container' under the New Central Excise Tariff Act, 1985 was defined to mean as under:
"Container whether large or small (for examples, tin, can, box, jar, bottle, bag or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number."
- 11.10 In the context of new Central Excise Tariff Act, 1985, in the case of Agro Foods Punjab Ltd. v. Collector of Central Excise, 1990 (49) E.L.T. 404, the tribunal observed as below:
"We hold that there is no difference either in the entry in between 1B of the old Tariff and new Tariff 2001.10 or in the issue involved in both the cases. Following the ratio of the decision in the case of M/s. HPMC we hold that clearance



in barrels does not amount to sale of the contents as put in a unit container. Accordingly, the goods in question are not classifiable under sub-heading 2001.10 but they are classifiable under sub-heading 2001.90."

11.11 Relying on the above case law, the tribunal in the case of **MP Vegetable Fruit Products v/s Collector of Central Excise, Raipur, 1995 (76) E.L.T. 393 (Tribunal)** held that jerry cans of tomato puree of 35 litre capacity being supplied to manufacturers of tomato ketchup was not a 'unit container'.

11.12 However, in the case of **CCE v Simba Chips, 1997 (96) E.L.T. 381 (Tribunal)**, the Tribunal held that the fact that packets did not bear indication of the weight of the goods has no significance to determine whether it is a 'unit container' or not so long as the packet contained a predetermined quantity.

11.13 Therefore, the fact that that containers did not bear indication of weight of goods is no significance to determine if a container is a 'unit container' or not so long as the said container contained a predetermined quantity.

11.14 In the context of HDPE and LDPE Bags, in the case of **Surya Agro Oils Ltd. v. Commissioner of Central Excise, Indore, 2000 (116) E.L.T. 514**, the question arose whether an HDPE sack weighing 20 kg each of Pasta was a 'unit container' or not. It is pertinent to note that the HDPE sack weighing 20kgs comprised of 2 LDPE bags weighing 10kgs each and after putting the said LDPE bags in the HDPE sack, the HDPE sack was stitched and subsequently it was cleared as an HDPE. The tribunal opined as under:

There exists no logic to restrict the scope of the words 'unit container' only to small containers which must have predetermined capacity of 1/2/3/4/ kg., and carry full particulars of the product i.e., date of the manufacture, name of the manufacturer, trademark, price, etc. If the intention of the legislature was to refer only to the small containers having predetermined capacity, it must have so provided specifically. Therefore, the words 'unit container' have to be interpreted in such a manner so as to include not only small but also large containers.

That the sale of pasta products in the big bags known as LDPE and HDPE cannot be said to be a sale of bulk in loose as these bags contained fixed quantity of the product for sale to the distributor/customers.

Similar view was observed in the decision of the Tribunal in the case of **Surya Agro oils Ltd. Vs. CCE [2005 (188) ELT 97 (Tri.- Del.)]** which was later affirmed by the Hon'ble Supreme Court in 2006 (199) ELT A183.

11.16 Explanation appended to the IGST notification prescribing rates and notification granting exemption defines 'Unit Container' similar to the definition under the old and new Central Excise Tariff is provided as under:

"The phrase 'unit container' means a package, whether large or small (for example, tin, Can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a Predetermined quantity or number, which is indicated on such package."

In view whereof the judicial principles evolved for determination of 'unit container' would hold good in the context of GST law as well. We are therefore summarizing the said principles as under: In order for a container to be categorized as a 'unit container', the said container should be designed to hold a predetermined quantity and should be standardized i.e. it is standardized for a particular commodity like packages of 1kg, 100 ml, 200 ml, etc.

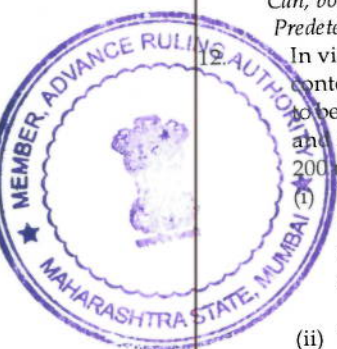
(i) The words 'unit container' does not mean only small containers which must have predetermined capacity of 1/2/3/4/ kg., and carry full particulars of the product i.e., date of the manufacture, name of the manufacturer, trademark, price, etc. A big container designed to hold a pre-determined quantity of goods in bulk will also qualify as 'unit container'.

(ii) That the sale of a product in big bags such LDPE and HDPE sacks cannot be said to be a sale of bulk in loose but would be a 'unit container' where these bags contain pre-determined quantity of the product for sale to the distributor/customers. However, where such bags don't contain a pre-determined quantity, the same will not qualify as unit container. For instance in the case of **CCE vs. Shalimar Super Foods [2007 (210) ELT 695 (Tri. - Mumbai)]**, the tribunal held that meat articles packed in loose plastic bags which were not in uniform quantities cannot be held to be a unit container. The bags in this case were not sealed similar to the LDPE bags in the present case.

13. In light of the above discussion, we are of the view that Mutton sold by Monrovia Agro Foods would not qualify as a 'unit container' for the following reasons:

(i) LDPE bags are not sealed. Even though the fact as to whether the bags are sealed or not is not decisive in determination whether a container is a 'unit container' or not, we are of the view that the fact that the LDPE bags are not sealed would militate against any contention raised by the department that the said container are designed to hold a pre-determined quantity.

(ii) That in **Surya Agro Oils Ltd. v. Commissioner of Central Excise, Indore, 2000 (116) E.L.T. 514**, case wherein HDPE sack weighing 20 kg each of Pasta comprising of 2 LDPE bags weighing 10 kgs each was held to be a unit container will not be applicable to the present case in as much as in the said case the HDPE bag contained LDPE bags of 10Kgs each, which were standardized whereas in the present case there is no fixed quantity of mutton in the LDPE bags, it can weigh 7 kg or 6.5kg i.e. the said HDPE bags cannot be said to be holding a predetermined uniform quantity. In a nutshell, the bags in the present case do not hold a pre-determined quantity of meat. It is clear from the above factual matrix that carcasses packed in the LDPE sacks and HDPE sacks would be in different weight and sizes. Further, we are also



given to understand that there is no fixed quantity and size in which these carcasses are dispatched to the Army against tender. The said dispatches are made on the basis of the actual weight of the frozen carcasses. Furthermore, the consideration is charged by Monrovia Agro Foods from the Army on the basis of the weight. Therefore, there is no doubt that the said LDPE/ HDPE bags i.e., primary as well as secondary packing do not qualify as unit container.

- (iii) Further, the meat in the present case is sold by the Monrovia Agro Foods on the basis of actual weight put up in each bag and such weight is neither pre-determined nor standard/identical at delivery point. That the case of CCE vs. Shalimar Super Foods supra is directly in support wherein bags containing meat which was not of pre-determined quantity was held not to be a 'unit container'.

14. Therefore, we are of the view that the product supplied by Monrovia Agro Foods shall not qualify as unit container.

15. Applicant submitting the two advance ruling by Hon. ARA of Haryana State which is in support of our stand and interpretation that the product we are supplying should not qualify as packed in unit container, should not be subject to tax.

15. **Applicant's point of view on specific queries raised for Advance Ruling:-**

- i. **Whether the packaging being used for despatch to Army shall qualify as "Unit Container" under the GST law?**

Point of view:- In light of the discussion contained in Para 11.1 to Para 11.12, we are of the view that despatches made by the supplier in LDPE/ HDPE bags i.e. both primary as well as secondary packing do not qualify as product packed in unit container.

- ii. **Whether the product, i.e. sheep/Goat meat in frozen state and packed as mentioned in the facts stated above sheet shall be liable to be taxed under GST or would it be treated as exempted?**

Point of view:- In light of the discussion contained in Para 11.1 to Para 11.10, we are of the view that despatches made by the supplier in LDPE/ HDPE bags i.e. both primary as well as secondary will not be liable to tax under GST.

03. **CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

Question 1: Whether the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by applicant against tender shall qualify as product put up in "unit container".

Comments: Attention is invited to Explanation (i) appearing in the Notification 01/2017 Integrated Tax (Rate) dated 28.06.2017, 02/2017 Integrated Tax (Rate) dated 28.06.2017 which is reproduced as under:

Explanation:- For the purposes of this Schedule,-

- (i) The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package.

Thus it can be seen that the above referred Notifications has clearly brought out what a "unit container" means. If the submission made by the tax payer is taken on face value that they are engaged in supply of whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags without mentioning the weight, the goods supplied by the tax payer cannot be construed as a product put up in "unit container" as the package i.e. LDPE bags and HDPE bags even though may be designed to hold a pre-determined quantity/ weight, the same is not indicated on such packages nor the same are numbered. Further on being asked to clarify the weighment procedure adopted by the taxpayer, the taxpayer has submitted that the packed material is weighed as per demand and loaded in refrigerated vehicle for dispatch. For example if Army Demand is 500kgs then the total is weighed and no of bags are noted and individual bags are not weighed and the sticker affixed not carry any registered Brand Name (Annexure-II). The tax payer also furnished a Certificate issued by the Colonel, Hdqrs Southern Command, dated 28.05.2018 (Annexure-III) certifying that the net weight/ Nos of the frozen meat supplied is not required to be mentioned on the packing. The packing sticker affixed to the HDPE bags (Annexure-IV) only mentions the Batch no: Production Date and storage instructions and there is no mention of weight/quantity. As such this office is of the view that the products supplied by the tax payer is not put up in unit container.

Question 2: Whether the products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017-Integrated Tax (Rate) dated 28th June 2017 up to 14th November 2017 and thereafter as per entry no.1 of schedule I of the Notification No. 43/2017-Integrated Tax (Rate) dated 14th November 2017 or fall under exemption list as per entry no 10 of Notification No. 2/2017-Integrated Tax (Rate) New Delhi dated 28th June 2017 up to 14th November 2017 and thereafter as per entry no. 9 of the Notification No. 44/2017-Integrated Tax (Rate) dated 14th November 2017.

Comments: As per the submissions made by the tax payer it appears that they are supplying Sheep/Goat Meat in carcass form i.e. the whole animal in its natural shape in frozen state of different weights. The said products are packed in LDPE bags and then one or two LDPE bags are packed in one HDPE bag. As the packages differ in weight and quantity, no weight is mentioned on the LDPE or HDPE bags and invoicing is done on the entire weight of the lot. It appears that the product involved i.e. Frozen

Sheep/Goat Meat is duly covered under HS Code 02043000 and Chapter Sub Heading 0204. As regarding the rate of tax applicable, reference is made to the Entry No: 4 of Schedule-II in Notification no. 1/2017-Integrated Tax (Rate) dated 28th June 2017 which is reproduced as under:

Schedule II		
S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
4.	0204	Meat of sheep or goats, frozen and put up in unit containers

Accordingly the product attracts tax at the rate of 12% if the same is put up in unit containers. Ongoing through the Explanation given in the notification and the comments given against Question no:1 above, it appears the product is not put in unit containers and therefore appears not covered under Entry No: 4 of Schedule-II in Notification no. 1/2017-Integrated Tax (Rate) dated 28th June 2017 but will fall under Entry no. 10 of Notification No. 2/2017-Integrated Tax (Rate) dated 28th June 2017 which is reproduced below, resulting into a supply on which whole tax thereon is also fully exempted.

Schedule		
S No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
10	0204	Meat of sheep or goats, fresh, chilled or frozen [other than frozen and put up in unit container]

Similarly from 15.11.2017 the said product appears to fall under Entry No: 9 of Notification No: 44/2017-Integrated Tax (Rate) dated 14.11.2017 as the product is not put in unit containers and not bears a registered brand name.

As per the Oral directions issued by the Hon'ble Advance Ruling Authority during the course of hearing held on 27.06.2018 to verify and report whether the applicant M/s Monrovia Leasing Finance Pvt. Ltd was using any brand name on the goods on which the Advance Ruling is sought for, this office had deputed the Jurisdictional Range Superintendent Shri Rajesh Surendran, to physically verify the goods and report. Based on the verification report of the deputed officer, the following submission is placed before the Hon'ble Authority for the perusal:

- The whole (Sheep/Goat) animal carcass in its natural shape in frozen state of different weight and size were packed in LDPE bags. Further a Sticker is affixed on the said bag titled "Meat Dressed Frozen" and contains the Name and address of the Tax Payer, Batch no., Production Date and storage instructions and a marking "FOR DEFENCE SERVICE ONLY". There is no mention of weight/ quantity on the said Sticker. It is found that the said package was again packed in another LDPE bags without any markings. Photographs of a sample package and the sticker affixed on the said packages is attached herewith for reference. It was also made to understand that on receipt of order from the Army establishments, the goods are weighed on the weighing scale and dispatched in refrigerated vehicles under an Invoice showing the total weight, Rate and the total price. Copy of Invoice dated 30.12.2017 (wherein the Taxpayer has paid the tax @5%) and Invoice dated 15.07.2018 where in the goods were cleared at Nil rate are enclosed herewith for ready reference.
- It was also noticed that the Tax payer is also involved in the manufacture of Ready to cook Chicken products, Tray Pack Frozen Pre Cut Chicken Products and Ready to eat Canned Meat Products. The said goods are marketed and sold under a Brand "Punjab Maratha" in retail packs on which the tax payer is paying appropriate GST. The brochure, the packing and the stickers used for the packing are enclosed for ready reference.

04. HEARING

The case was taken up for preliminary hearing on DT. 27.06.2018, with respect to admission or rejection of the application when Sh. Ashok kumar Mishra, Advocate along with Sh. Surender Singh, Director appeared and made contentions as per details in their ARA. The jurisdictional officer, Sh. Rajesh Surendran, Suptt. Division- Baramati Pune - II Central GST Commissionerate appeared and made written submissions.

The application was admitted and final Hearing was held on 24.07.2018, Sh. Ashok kumar Mishra, Advocate along with Sh. Surender Singh, Director appeared made written submissions. The jurisdictional

officer, Sh. Rajesh Surendran, Suptt. Division- Baramati, Pune – II Central GST Commissionerate appeared and stated that they are making submissions with respect to verification part.

05. OBSERVATIONS

We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department. The written contentions was submitted by the applicant and jurisdictional officer are examined and considered, on this issue. The applicant is registered person under GST and is engaged in slaughtering and processing of sheep/goat meat and supplies these products to army against tender.

Monrovia Agro food is a division of Monrovia leasing and finance Pvt. Ltd. Pune. It is an ISO 22000 and HACCP Certified Company. Applicant is engaged in slaughtering and processing of sheep/goat meat and supplies these products to Army against tender. Applicant supplies to Army sheep/goat meat in carcass form i.e. the whole animal carcass in frozen state. Applicant further submit that the carcass would be in different weight and sizes and there is no fix quantity and size in which these carcasses are dispatched to the Army. The said dispatches are made on the basis of weight of frozen carcass. Furthermore the consideration is charged on the basis of weight. As regard packaging and dispatch pattern it is submitted that each frozen carcass is put in LDPE Bag (Primary Packing) which is not sealed & no weight is mentioned on such LDPE Bag. Thereafter, generally one or two of such LDPE bags are put in HDPE Bag (Secondary Packing) and no weight is mentioned on such HDPE Bag too. Hence, the invoicing is done for entire weight of the lot and no mention of weight of each bag of the lot.

The notification no.1/2017 and 2/2017 - Integrated Tax (Rate) both dated 28th June 2017 and further amended by notification no 43/2017 and 44/2017 - Integrated Tax (Rate) both dated 14th November, 2017 are the central point of discussion. In short, if the impugned supply is covered by the description of goods as per notification no. 2/2017 - Integrated Tax (Rate) both dated 28th June, 2017 as amended by notification 44/2017 - Integrated Tax (Rate) both dated 14th November, 2017 then the said supply is exempt from whole of GST. Applicant submits that as per above notification goods are not put up in a unit container and are also not bearing a brand name and hence benefit of notification is available in their case.

During the course of hearing the applicant as well as jurisdictional officer was informed that this authority has already given ruling on the same issue in case of M/s. Ahmednagar District Goat Rearing and Processing Co-operative Federation Ltd. bearing Order No. GST-ARA-21/2017-18/B-27, Mumbai dated 21/04/2018. In this case this authority held that whole animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such bags further packed in HDPE bags being supplied to Army against tender shall qualify as product put up in 'unit container'. It was further held that impugned product will be covered by schedule entry 4 of the notification of 1/2017 - Integrated Tax (Rate) during the period 01/07/2017 to 13/11/2017 and schedule 1 of the said notification for the period from 14th November, 2017 onwards.

Accordingly they were requested to state, similarities or as the case may be dissimilarities between the facts of this ruling and the present ARA application. Applicant has given comparative analysis of facts which are not denied by the jurisdictional officer.

Comparative analysis of facts between M/s. Ahmednagar District Goat Rearing and Processing Co-operative Federation Ltd. and the applicant are as below:

Fact	Ahmednagar Goat Federation	Monrovia Agro Foods
Product and HSN Code	Frozen Goat/Sheep-0204	Frozen Goat/Sheep-0204
Period Relevant to Application for Advance Ruling	1 st July, 2017 till Present and going forward	1 st April, 2018 till present and going forward
Product Supplied to Army	Meat Frozen Goat/Sheep in whole carcass	From April 2018 Onwards, Meat Frozen Goat/Sheep in whole carcass.
Packaging and Marking Pattern	Each Frozen carcass is put in LDPE bag (Primary Packing) which is not sealed and no weight is mentioned on such LDPE bag. Thereafter, such LDPE bags are put in HDPE bag (Secondary Packing) and the weight of the carcass is mentioned by marker. Each bag bears the different weight as meat carcass can't be uniform. There is no mention/markings of number of carcass packed in each bag.	Each Frozen carcass is put in LDPE bag (Primary Packing) which is not sealed and no weight is mentioned on such LDPE bags. Thereafter, generally one or two of such bags are put in HDPE bag (Secondary Packing) There is not printing or marking of weight or number of carcass packed in such bag and there is no mentioning of brand name also.
Requirement of Army for mentioning of weight/number	During the intervening period (i.e. 2017-18) packing conditions mentioned in Terms and Conditions (i.e. RFP) given by Army required mentioning of actual weight on the Secondary packing.	In the current tender against which supplies are being made presently (From April 2018) there is no requirement from Army side regarding mentioning of weight/number on any packing material. It would be important to mention here that a specific letter received from Army that there is no requirement of mentioning the weight/number of carcass packed already provided while filing written submission.
Billing Pattern	A list showing bag wise weight against each bill was being provided to Army as attachment with each invoices.	There is no such list is either made or provided to Army the total weight is mentioned on the invoice and it is not even possible to figure it out the total number of bags in respective truck or weight of carcass/number put in any bag.
Basis of Consideration	The consideration is charged on the basis of weight of the meat supplied and number of carcass have no commercial relevance.	The consideration is charged on the basis of weight of the meat supplied and number of carcass have no commercial relevance.

Now we have been called on to find out whether the facts mentioned above in respect of M/s Ahmednagar District Goat Rearing and Processing Cooperative Federation Limited as presented at the time of proceedings in that case, have any similarity with the facts of the present case. From the facts submitted by the applicant and ascertained and vetted by jurisdictional officer by paying visit to the factory we find that the facts of the present case are partly different from the facts in the case of M/s. Ahmednagar District Goat Rearing and Processing Co-operative Federation Ltd. To summarize the facts we find that the period in case of ARA ruling is from 01/07/2017 till present and going forward whereas ..

in case of appellant it is from 01/04/2018 till present and going forward. The product supplied in both the case is same i.e. frozen goats and sheep carcass. However in respect of packaging of the product supplied which is a crucial aspect with respect to tax liability being there or not, we find that there is a part difference. In case of applicant there is no printing or marking of weight or number of carcass packed in such bags and there is no mentioning of brand name. Further as per the tender pursuant to which impugned supplies are to take place there is no requirement from Army regarding mentioning weight or number on the packaging material. Whereas in case of M/s. Ahmednagar District Goat Rearing and Processing Co-operative Federation Ltd packaging conditions mentioned in Terms and Conditions "RFP" given by Army required mentioning of actual weight on the secondary packaging. In this regard the applicant in the present case has submitted letter dated 28/05/2017 issued by Col. S. HQ Southern Command Pune with following declaration-

"It is certified that chilled/frozen chicken/meat is supplied to the Army by various firms through Annual Contracts. As per order on the subject, the net weight / numbers of the item is not required to be mentioned on the packaging".

Thus the issue before us is whether such supply is covered by the expressions 'unit container' as defined in the notifications mentioned. The expression 'unit container' as defined in the notification is as below:

Explanation- for the purpose of this schedule (Notification 1/2017 and 2/2017-Integrated Tax (Rate) both dated 28th June, 2017

The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package.

For the purpose of above definition, for a package to be called 'unit container' has to satisfy following conditions simultaneously-

1. Package may be large or small
2. Packaging designed to hold predetermined quantity or number
3. Such predetermined quantity or number is indicated on such package.

From the facts submitted by the applicant and as verified by the jurisdictional officer during his factory visit, we find that each package is containing different weight and no weight/number is mentioned on packages. In view of above we are convinced that impugned supply would not satisfy the requirement of the definition of 'unit container' as found in both the notifications cited supra. In view of this, we hold that the supply of whole sheep/goat carcass in frozen state packed in LDPE bag and further packed in HDPE bag which do not indicate any information related to weight / number of the carcass packed in such bags would tantamount to being as a product not put up in a unit container for the purpose of notification 1/2017 and 2/2017- Integrated Tax (Rate) dated 28th June, 2017.

Question 2

Whether the products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017- Integrated Tax (Rate) dated 28th June 2017 up to 14th November 2017 and thereafter as per entry no. 1 of schedule I of the Notification No. 43/2017-Integrated Tax (Rate) dated 14th November 2017 or fall under exemption list as per entry no 10 of Notification No. 2/2017-Integrated Tax

(Rate) New Delhi dated 28th June 2017 up to 14th November 2017 and thereafter as per entry no. 9 of the Notification No. 44/2017-Integrated Tax (Rate) dated 14th November 2017?

Before we answer this question we have a look at the schedule entries that would be applicable in the present case.

Notification	S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Period	Tax rate
Notification no. 1/2017-Integrated Tax (Rate) dated 28 th June 2017	4 (Schedule II)	0204	Meat of sheep or goats, frozen and put up in <u>unit containers</u>	1-7-2017 TO 13-11-2017	12 %
				Deleted w.e.f 14.11.2017	
Notification no. 2/2017-Integrated Tax (Rate) dated 28 th June 2017	1 (Schedule I)	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods [other than fresh or chilled], and put up in <u>unit container</u> and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE]	14-11-2017 ONWARDS	5%
Notification no. 2/2017-Integrated Tax (Rate) dated 28 th June 2017	10	0204	Meat of sheep or goats, fresh, chilled or frozen [other than frozen and put up in unit container]	1-7-2017 TO 13-11-2017	NI L
				Deleted w.e.f 14.11.2017	
Notification no. 2/2017-Integrated Tax (Rate) dated 28 th June 2017	9	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods [other than fresh or chilled] other than those put up in <u>unit container</u> and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]	14-11-2017 ONWARDS	NI L

The period relevant in respect of present application for Advance Ruling as stated by the applicant is from 1st April, 2018 till present and continuing period. We therefore restrict ourselves to the entry as is applicable for the period from 1st April, 2018. We have already held that the supply of whole sheep/goat carcass in frozen state packed in LDPE bag and further packed in HDPE bag which do not indicate any information related to weight / number of the carcass packed in such bags would not be a product put up in a unit container for the purpose of notification 1/2017 and 2/2017- Integrated Tax (Rate) dated 28th June 2017. As such impugned supply is covered by notification 2/2017 - Integrated Tax (Rate) dated 28th June, 2017 as amended by serial 9 of the notification no. 44/2017 - Integrated Tax (Rate) dated 14th November, 2017 and would be exempt from whole of GST as per this Notification.

06. In view of the deliberations as held hereinabove, we pass the order as follows:

ORDER

(Under clause (xviii) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-20/2017-18/B- 83

Mumbai, dt. 04/08/2018

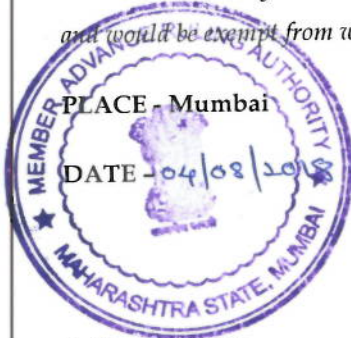
For reasons as discussed in the body of the order, the questions are answered thus -

Q.1 Whether the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by applicant against tender shall qualify as product put up in "unit container"?

A.1 Answered in the negative.

Q.2 Whether the products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017- Integrated Tax (Rate) dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 1 of schedule I of the Notification No. 43/2017-Integrated Tax (Rate) dated 14th November 2017 or fall under exemption list as per entry no 10 of Notification No. 2/2017-Integrated Tax (Rate) New Delhi dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 9 of the Notification No. 44/2017-Integrated Tax (Rate) dated 14th November 2017?

A.2 The impugned product would be covered by notification 2/2017 - Integrated Tax (Rate) dated 28th June, 2017 as amended by serial no.9 of the Notification no.44/2017 - Integrated Tax (Rate) dated 14th November 2017 and would be exempt from whole of GST.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State tax, Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021