

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	27AAACP2678Q1ZQ
Legal Name of Applicant	Aditya Birla Retail Limited
Registered Address/ Address provided while obtaining user id	Skyline Icon, 6 th floor, 86/92 – Andheri-Kurla Road, Marol Naka, Near Mittal Industrial Estate, Andheri(E), Mumbai – 400059.
Details of application	GST-ARA, Application No. 13 Dated 26.12.2017
Concerned officer	Commissionerate – Mumbai East, Division V, Range - I
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory / Manufacturing, Retail Business
B Description (in brief)	A brief description of the nature of activity in respect of which advance ruling is sought is <i>inter alia</i> mentioned in Annexure - I
Issue/s on which advance ruling required	(ii) applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

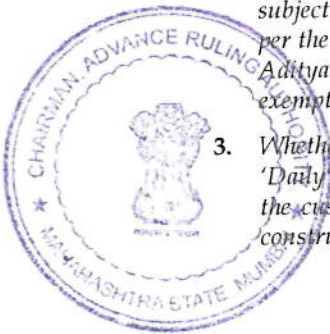
PROCEEDINGS

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

NO.GST-ARA-13/2017/B- - Mumbai, dt. 23/3/2018

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 Aditya Birla Retail Limited, the applicant, seeking an advance ruling in respect of the following questions :

1. Whether the subject goods, proposed to be sold under Stream 1 (refer Annexure I), where the package of the subject goods would merely have a declaration mentioning the name and registered address of the Applicant as the manufacturer, as per the statutory requirement under Subject Statutory Provisions, can be considered as ‘not bearing a brand name’, and, accordingly eligible for exemption from GST in terms of relevant entries to Notification No.2/2017 Central tax (Rate) dated 28th June 2017 (‘CGST Notification’), and, the corresponding entries under Notification No.2/2017-Integrated tax (Rate) dated 28th June 2017 (‘IGST Notification’) and Notification No.2/2017-State Tax (Rate) dated 29th June 2017) [collectively referred to as ‘the Exemption Notifications’]?
2. Whether the subject goods proposed to be sold under Stream 2 (refer Annexure I), where the package of the subject goods would have a declaration mentioning the name and registered address of the manufacturer as per the statutory requirement under the Subject Statutory Provisions as also the declaration ‘Marketed by-Aditya Birla Retail Limited’ can be considered as ‘not bearing a brand name’, and, accordingly eligible for exemption in terms of relevant entries to the Exemption Notifications?
3. Whether the declarations made on the package, by inter alia using common/generic terms viz. ‘Value’, ‘Daily’, ‘Superior’ and ‘Choice’, for the sole purpose of indicating the quality of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences can be construed to be a ‘brand name’ for the purpose of the Exemption Notifications?



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

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

"Annexure I - STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED"

1. Aditya Birla Retail Limited ('the Applicant') is *inter alia* engaged in the processing and/or trading of a wide range of cereals, pulses and flour classifiable under Chapter 10 of the First schedule to the Customs Tariff Act, 1975 ('subject goods'). The subject goods are sold by the Applicant at its supermarket and hypermarket format stores, namely 'More Stores', located in various states, including Karnataka, Andhra Pradesh, Delhi, Kerala, Maharashtra, Telangana, Tamil Nadu and West Bengal, Punjab, Haryana, UP, MP, Chandigarh, Puducherry.
2. The Applicant sells the subject goods under the following brand names, 'More for you', 'More Selecta' and 'More value' (collectively referred to as 'More trademarks'), which are registered trademarks (in the name of the Applicant) under the Trade Marks Act, 1999 ('the Trade Marks Act'). Further, the packaging of the subject goods also bears the 'Aditya Birla' logo which is the registered trademark of Aditya Birla Management Corporation Pvt. Limited, under the Trade Marks Act, which trademark has been licensed to the Applicant for specified purposes.
3. The subject goods are either processed and packed 'in-house' by the Applicant (Stream 1) or are procured in processed and packed form from third party vendors (Stream 2). The *modus operandi* followed by the Applicant in respect of the said transaction streams, and, the nature of details disclosed on the packaging of the subject goods under such streams is as follows:
 - (i) Stream 1- Subject goods processed and packed in-house by the Applicant:
 The Applicant procures unprocessed food products from various vendors and undertakes processing and packing in its own units. Such processing would generally involve sorting, quality assessment, grading etc. The subject goods would thereafter be sold by the Applicant from its More Stores.
 The list of subject goods which are sold under Stream 1, together with the list of processing units of the Applicant located across India, are collectively enclosed as Exhibit A.
 The package of subject goods sold by the Applicant under Stream 1 *inter alia* bears the name of the Applicant as being the manufacturer and the registered trademarks viz. 'More trademarks' and the 'Aditya Birla' logo. A sample package thereof is enclosed as Exhibit B.
 - (ii) Stream 2- Subject goods are procured in processed and packed form from third party vendors:
 Unprocessed food products are procured by third party vendors and subsequently processed and packed, in terms of the quality standards fixed by the Applicant. The subject goods are thereafter procured by the Applicant for being sold from its More Stores.
 The list of subject goods which are sold under Stream 2 is enclosed as Exhibit C.
 The package of subject goods sold by the Applicant under Stream 2 *inter alia* bears the name of the manufacturer, the declaration 'Marketed By – Aditya Birla Retail Limited' and the registered trademarks viz. 'More trademarks' and the 'Aditya Birla' logo. A sample package thereof is enclosed as Exhibit D.
 It is relevant to note that some of the subject goods are sold by the Applicant in different quality variants, determined based on various parameters including the quality or size of grains or seeds, nature of processing undertaken, nutritional content, sourcing, etc. It therefore becomes essential for the Applicant to have appropriate disclosures on the package of such subject goods so as to enable the customers to identify and buy products based on their requirements, budget and preferences. Therefore, in respect of such subject goods, under both streams, the package also bears a declaration which acts as a quality indicator (e.g. whether the product is of standard quality, premium quality or superior quality).
4. In the State of Maharashtra, the Applicant sells the subject goods under Stream 1 and Stream 2 from around twenty five More Stores located across the State. As regards the subject goods under Stream 1, the same are either processed at its processing unit located in Pune or are sourced from processing units located in other States. As regard the subject goods under Stream 2, the same are procured from various third party vendors located within or outside Maharashtra.
5. In terms of the present packaging adopted by the Applicant for the subject goods sold by it under both Stream 1 and Stream 2, the same *inter alia* bear the trademarks registered under the Trade Marks Act, viz. 'More trademarks' and the 'Aditya Birla' logo. In terms of the relevant entries under Schedule 1 to Notification No.1/2017-Central Tax (Rate) dated 28th June 2017 ('CGST Rate Notification'), and, corresponding entries under Schedule 1 to Notification No.1/2017-Integrated (Serial no. 46, 48, 50, 51, 53) tax, dated 28th June 2017 ('IGST Rate Notification') and under Schedule 1 to Notification No.1/2017-State tax, dated 29th June 2017 ('SGST Rate Notification'), the supply of subject goods, when put up in unit containers and *inter alia* bearing a 'registered brand name', attract GST at the rate of 5%. The Applicant, in respect of supply of the subject goods under either streams, is presently discharging GST at the rate of 5%.
6. It is relevant to note that the requirement to have specific declaration on the package of the subject goods, as regards its manufacturer, is a statutory requirement in terms of the Legal Metrology Act, 2009 read with the Legal Metrology (Packaged Commodity) Rules, 2011, and, the Food Safety and Standards Act, 2006 read with Food Safety and Standards (Packaging and



Labelling) Regulations, 2011, the relevant extracts of which legislations [collectively referred to as 'Subject Statutory Provisions'] are provided below-

Legal Metrology Act, 2009	'Section 18. Declarations on pre-packaged commodities. - (1) No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed. '
Legal Metrology (Packaged Commodity) Rules, 2011	'CHAPTER II- Provisions Applicable To Packages Intended For Retail Sale Rule 6. Declarations to be made on every package - (1) (a) the name and address of the manufacturer , or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned on every package'
Food Safety and Standards Act, 2006	'23. Packaging and labelling of foods (1) No person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations... '
Food Safety and Standards (Packaging and Labelling) Regulations, 2011	'CHAPTER-2: Packaging and Labelling 6. Name and complete address of the manufacturer- (i) The name and complete address of the manufacturer and the manufacturing unit if these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be shall be declared on every package of food '

7. The Applicant intends to revise the packaging of the subject goods and the manner in which the subject goods are put up for sale, to exclude from the packages the registered trademarks, namely 'More trademarks' and the 'Aditya Birla' logo. The proposed packaging of subject goods under both streams would accordingly bear the following details:

- Subject goods sold under Stream 1:- The packaging would bear only details of the Applicant as the manufacturer, as mandated under the Subject Statutory Provisions.
- Subject goods sold under Stream 2:- The packaging would bear details of the manufacturer, as mandated under the Subject Statutory Provisions, and would have a declaration- 'Marketed by Aditya Birla Retail Limited'.

Under both the streams, for some of the subject goods, the package would also bear a certain declaration for the sole purpose indicating the quality variant of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences. In this regard, the Applicant intends to make the following indicative declarations on the product package by using common/ generic words-

- The term 'Value' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a standard quality;
- The term 'Choice' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a premium quality.
- The term 'Superior' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a superior quality.

The sample artwork for the packages intended to be adopted for the subject goods to be sold under Stream 1 and Stream 2 are annexed herewith as Exhibit E and Exhibit F respectively.

8. Vide this Application, the Applicant is seeking an advance ruling on the question of applicability of certain Notifications in respect of the subject goods intended to be sold by the Applicant in the proposed packaging, which issue is more particularly described in Annexure II hereto.

Annexure II - STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

1. Submissions of Applicant

1.1. The applicant's submissions as regards the two questions raised in the present application are set out herein under.

Question I – Where the packaging of subject goods merely mentions the name and registered address of the manufacturer, in terms of the requirement under subject statutory provisions, whether the same can be construed to be a 'brand name':

- 1.2. For the purpose of the determination of the questions under this application, which would require reference to be made to the Exemption Notifications, the relevant entries under the CGST Notification have been considered in this application, which are identical to the corresponding entries under the SGST Notification and the IGST Notification.
- 1.3. The relevant part of the CGST Notification is extracted below-

[TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA, EXTRAORDINARY]
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No 2 2017-Central Tax (Rate)
New Delhi, the 28th June, 2017

G.S.R. (E) - In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods, the description of which is specified in column (3) of the Schedule appended to this notification, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, from the whole of the central tax leviable thereon under section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017).

S. No	Chapter heading	Heading Tariff item	Sub-Heading	Description of Goods
65.	1001			Wheat and meslin [other than those put up in unit container 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]

For the purpose of the exemption notifications, the terms 'unit containers', 'brand name' and 'registered brand name' have been defined to mean as follows:

(i) "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

(ii) (a) The phrase "brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

(b) The phrase "registered brand name" means:-

(A) a brand registered as on the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered.

(B) a brand registered as on the 15th May 2017 under the Copyright Act, 1957 (14 of 1957).

(C) a brand registered as on the 15th May 2017 under any law for the time being in force in any other country."

The range of cereals, pulses, etc. (subject goods), being supplied by the Applicant are covered under the various headings/sub-headings of Chapter 10 to the First Schedule to the Customs Tariff Act, 1975. The said goods would be covered under different serial numbers of the Exemption Notifications. However, as the conditions for applicability of the exemption are similar for each of such serial numbers, for ease of reference and for brevity, Sr.No.65 of the CGST Notification is reproduced above.



- 1.4. In terms of the relevant entries to the CGST Notification, the exemption thereunder would be available to supplies of the subject goods where the following conditions are satisfied:
- Where the subject goods fall under the tariff item, sub-heading, heading or Chapter as specified in the column (2) of the CGST Notification, and;
 - Where the subject goods are other than those put up in unit containers, **and** bearing a registered brand name; or bearing a brand name on which an actionable claim or an enforceable right in the court of law is available, other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, [subject to the conditions as set out in the Annexure to the CGST Notification].
- 1.5. The wide range of subject goods supplied by the Applicant fall under the heading / sub-heading, tariff item mentioned at column (2) of the CGST Notification (refer **Exhibit G**) and accordingly condition (a) above is satisfied.
- 1.6. As regards condition (b), as is evident from a plain reading of the provisions, the requirement of goods being 'put up in unit container', **and**, 'bearing a registered brand name' or 'brand name on which an actionable claim or enforceable right in a court of law is available', would have to be cumulatively satisfied so as to exclude the corresponding goods from the purview of the exemption.
- 1.7. Accordingly, where any one of the stated conditions is not met, the goods would be eligible for the said exemption. For example, where the subject goods are put up in unit containers but do not bear a 'registered brand name' or a 'brand name on which an actionable claim or enforceable right in a court of law is available', the same would fall within the purview of the Exemption Notifications.
- 1.8. In Applicant's case, under both Stream 1 and Stream 2, the subject goods would be put up in a unit container. The Applicant would be eligible for the said exemption where the declarations made on the package of the subject goods sold under Stream 1 and Stream 2 do not bear (a) 'registered brand name', or, (b), 'brand name on which an actionable claim or enforceable right in a court of law is available'.
- 1.9. The definition of the term 'registered brand name', as provided in the CGST Notification, covers brands which were registered under the specified legislations as on 15th May 2017. Considering that under the proposed transaction, the registered trademarks, namely 'More trademarks' and the 'Aditya Birla' logo would not be mentioned on the packaging of the subject goods marketed under both the transaction streams, the packages cannot be said to be bearing any 'registered brand name'.
- 1.10. It therefore needs to be examined whether, in terms of the declarations that would be made on the packages to be sold under Stream 1 and Stream 2, the subject goods can be said to be 'bearing a brand name on which an actionable claim or enforceable right in a court of law is available'. In terms of the CGST Notification, where the goods bear a brand name on which an actionable claim or an enforceable right is available in the court of law, the Applicant can file an affidavit with the jurisdictional commissioner of Central tax to the effect that it is voluntarily foregoing its actionable claim or enforceable right on such brand name, and is claiming exemption. However, under the present Application, the question merely being examined is whether the said goods bear a 'brand name' in respect of which an actionable claim or an enforceable right is available under the court of law.
- 1.11. On plain reading of the aforesaid provision, it is evident that bearing a brand name is a pre-requisite to the subsequent determination of whether 'an actionable claim or enforceable right in a court of law is available' in respect of such brand name. Where the subject goods do not bear a brand name, such subsequent determination would not arise.
- 1.12. In terms of the above meaning, a name or a mark would become a 'brand name', for the purpose of the CGST Notification, only when the following conditions are satisfied:
- When such name or mark is used in relation to specified goods; and
 - When such name or mark is used for the purpose of indicating a connection in the course of trade between such specified goods and the person using the name or mark, with or without any indication of the identity of that person.
- In this regard, it is to be noted that for any name to qualify as a brand name, it must be used in relation to specified goods indicating a connection in the course of trade between the said goods and the person, with or without indicating the identity of such person. In other words, the use of the name should be to associate specified goods with the person, in a manner that the customer would identify the specified goods with that person. Mere mention of the name of the manufacturer would not constitute a brand name as the customer would obviously not identify the goods with the name of the manufacturer. The above can be further explained by way of the following illustrations:
- The products 'noodles' is manufactured and sold by Nestle India Limited, under the brand name 'Maggie'. It is well known that the customers identify the brand name 'Maggie' with the product noodles and not the name of the Company, manufacturing and selling it. It is the brand name 'Maggie' that indicates a connection in the course of trade between the goods and the person using such name.
 - The product 'Milk Chocolate' is manufactured and sold by Mondelez India Foods Private Limited, under the brand name 'Cadbury Dairy Milk'. It is evident that the brand name indicating a connection in the course of trade between the product, namely 'Milk Chocolate' is 'Cadbury Dairy Milk' and not 'Mondelez India Foods Private Limited'.
- Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **Astra Pharmaceuticals (P) Ltd. vs Collector of C. Ex, Chandigarh** [1995 (75) E.L.T. 214 (S.C.)], wherein, the Hon'ble Court, while examining the scope of certain Central Excise Notification *inter alia* noted that brand name is invariably a word or a combination of a word and letter or numeral by which the product is identified and asked for.
- 1.13. With the above in view, reliance is further placed on the following decisions of the Courts wherein the issue under consideration was whether the name of the manufacturer / packer, which is required to be mentioned on the package of the product in terms of a statutory requirement, can be considered to be a 'brand name':
- In case of **Tarai Foods Limited Vs CCE, Meerut-II 2006 (198) E.L.T. 323 (S.C.)**, the Hon'ble Supreme Court has *inter alia* examined whether the definition of 'brand name', would include the name of the manufacturer printed on the package in terms of a legal requirement. The relevant entry to the First Schedule to the Central Excise Tariff Act, 1985, which was under consideration is as follows:

Heading No.	Sub-heading No.	Description of goods	Rate of Duty
(1)	(2)	(3)	(4)
20.01		Preparations of vegetables, fruit, nuts or other parts of plants including jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, fruit juices and vegetable juices, whether or not containing added sugar or other sweetening matter	



2001.10	- Put up in unit containers and bearing name	8%
2001.90	- Other	- Nil

As regards this case, it is relevant to note the following:

- The issue under consideration was the classification of goods under sub-heading 2001.10 of Chapter 20 of the Central Excise Tariff (where the conditions required to be fulfilled were, (i) that the product must be put up in unit containers, and (ii) the same must bear a brand name), or, sub-heading 2001.90 of the said chapter (which covered "others")
- The assessee was engaged in the manufacture of vegetable preparation i.e. French Fries and Frozen foods. They had been using two types of packaging for the sale of their product. First packing carried the name "Inland Valley" along with other details, i.e. the name and registered address of the manufacturer, while the second packing bore all other details except the words "Inland Valley". They classified their first packing under sub-heading No. 2001.10 and cleared the same from the factory by paying duty at the rate of 8% as prescribed in that sub-heading. But the second packing had been classified by them under sub-heading 2001.90 and cleared at nil rate of duty.
- The definition of 'brand name' considered in this case was similar to the definition as stated in the Exemption Notifications.
- The department had contended that the definition of 'brand name' would include the name of the manufacturer which was printed on the products.
- In the above context, the Hon'ble Supreme Court on the issue as to whether the name of the manufacture can be considered to be a 'brand name' held as follows:

"Under the Standard Weights and Measures (Packets Commodities) Act, 1977 every packet is required to bear thereon or on a label squarely affixed thereto a definite, plain and conspicuous declaration as to, inter alia, the name and address of the manufacturer (see Rule 6 & 10). In other words, unit containers would have to bear the name of the manufacturer. If the name of the manufacturer were to be a brand name then this would mean, that there would be no unbranded unit container at all in law and the distinctiveness of T.H. 2001.10 would be meaningless.

9. Furthermore the definition of the words 'brand name' shows that it has to be a name or a mark or a monogram etc. which is used in relation to a particular product and which establishes a connection between the product and the person. This name or mark etc. cannot, therefore, be the identity of a person itself. It has to be something else which is appended to the product and which establishes the link

11. There is a value attached to the brand name, a value which has been recognized in the tariff entry by providing for levy of excise duty on goods bearing a brand name. It may be that the appellant had deliberately omitted the brand name in selling the 'French Fries' to avail of the nil rate of tariff. This cannot detract from the consequences which would follow in law. If the assessee opts not to take advantage of the brand name in its trade, it could at least have the benefit of the rate of duty applicable to unbranded product."

- (ii) In the case of *CCEx. Vs Pepsi Foods Ltd.*, [2015 (322) ELT A325 (SC)], the issue under consideration was whether the printing of the name of the brand owner, could be construed to make the package a branded product. The Hon'ble Supreme Court while taking note of the definition provided to the phrase 'brand name' (which is similar to meaning provided to the phrase under the Exemption Notifications), and the decision in the case of *Tarai Foods (supra)*, upheld the decision of the Hon'ble Tribunal in the assessee's own case, *CCEx Vs Pepsi Foods Ltd.*, [2003 (156) E.L.T. 1013 (Tri. - Del.)] and in the case of *Nirula and Company Pvt. Ltd. Vs CCEx* [2005 (186) E.L.T. 412 (Tri. - Del.)], stating that mere printing of the name of the company on unit container does not make the package branded, unless brand itself is printed specifically.

It is well settled that in terms of Article 141 of the Constitution of India, the law laid down by the Hon'ble Supreme Court is binding on all the Courts and authorities in the country. Accordingly, in terms of the above decisions of the Hon'ble Supreme Court, mere mention of the name and address of the manufacturer as per the requirement under the Subject Statutory Provisions, without actually printing the brand on the product packaging, would not render the product as bearing a 'brand name'.

1.14. In this regard, reliance is further placed on the decision of the Courts on similar issue, in the following cases:

- (i) In the case of *CCEx. Vs CESTAT Chennai*, [2015 (318) ELT 238 (Mad)], the issue pertained to denial of SSI exemption on account of the assessee clearing manufactured goods using the superscription 'manufactured and packed by SVS & Sons', which was contended to be an affixation of 'brand name', by the Department. The Hon'ble Madras High Court while taking note of the definition of 'brand name' (which is similar to the meaning provided to the phrase under the Exemption Notifications) held that the superscription 'manufactured and packed by SVS & Sons' cannot be considered as a brand name or a trade name.

- (ii) The Hon'ble Tribunal in the case of *Commissioner of Central Excise v. Synotex Industries*, [2012 (278) ELT 90 (Tri-Kolkata)], while examining the scope of the definition of 'brand name' (which definition was similar to the definition adopted in the Exemption Notifications) held that since there is a statutory requirement that manufacturer's or packer's name and address should be indicated on the package of goods under the Standards of Weights & Measures Act, 1976 and Rules made thereunder, the indication of manufacturer's name on the package would not render the goods as branded goods. The relevant extract is as follows:

"If the Revenue's plea that indicating the manufacturer's name would amount to affixing brand name is accepted, then all the goods containing manufacturer's name would be branded goods which is highly illogical. In fact in respect of the packaged goods, there are statutory requirements that the manufacturer's or packer's name and address should be indicated on the packages of the goods under the standards of Weights & Measures Act, 1976 and the rules made thereunder. Indicating the names and address of the manufacturer on the packages cannot be construed as affixing the brand name"

In addition to the above, reference is made to the following circulars:

- (iii) Circular No. 1031/19/2016-CX, dated 14th June 2016, which was issued as regards the levy of Excise duty on readymade garments and made up articles of textiles bearing brand name or sold under a brand name having retail sale price of Rs.1,000 or more. The Board vide the said circular clarified that "merely because the outlets (shop) of a retailer, from where readymade garments or made ups are sold, has a name, say, M.s. XYZ and Sons, the readymade garments or made ups sold from such outlet (shop) cannot be held as branded readymade garments or made ups and become liable to excise duty. Needless to say, deemed manufacture and liability to excise duty will arise only if such retailer affixes a brand name on the readymade garments and affixes a label bearing the RSP on the packages containing the readymade garments of Rs. 1000 or above."

- (iv) Circular No.947/8/2011-CV dated 21st June 2011, which was issued as regards levy of Excise duty on branded readymade garments, (where the definition of 'brand name' was similar to the definition applicable in the present case), it was clarified therein that the mere mention of the name of the tailor or manufacturer would not render the product as branded product.

1.15. Further, in terms of the generally followed practice in the industry wherein the goods are manufactured and packed by a third party / job worker, the name and registered address of the manufacturer / packer is required to be declared on the packaging of such products in terms of the Subject Statutory Provisions. The declaration of such name of the manufacturer / packer would not necessarily establish a connection in the course of trade between the goods and the person actually



selling the goods (i.e. the principle on whose behalf the goods are manufactured). Therefore to proceed on the basis that the declaration of name of manufacturer as per the Subject Statutory Provisions, could be construed as 'brand name' would be erroneous.

- 1.16. Accordingly, based on the above analysis, it can be said that mere mention of the name of the manufacturer and / or packer, which is a statutory requirement, onto the packaging of subject goods, without actually affixing the company logo, cannot render the product to be construed as bearing a 'brand name'.
- 1.17. The supply of subject goods under Stream 1 should accordingly be leviable to GST at 'Nil' rate in terms of the relevant entries in the Exemption Notifications, as specifically highlighted in Exhibit G to this Application.

Question II - Where the packaging of subject goods mentions the declaration 'Marketed by Aditya Birla Retail Limited' in addition to the name and registered address of the manufacturer, whether the same would be construed to be a 'brand name':

- 1.18. As submitted in the forgoing paragraphs, as held by the Hon'ble Supreme Court in the case of *Tarai Foods (Supra)*, the name of a company, which is its identity, cannot be construed to be a 'brand name', in view of the meaning provided to the phrase. It has to be something apart from the name of the company, which is appended to the product to establish a connection in the course of trade. Further, in the case of *Pepsi Foods (supra)*, the Hon'ble Supreme Court has held that mere printing of the name of the company on unit container does not make the package branded, unless brand itself is printed specifically.
- 1.19. Accordingly, where the declaration 'Marketed by Aditya Birla Retail Limited' is made onto the packaging of the products, without actually affixing the logo / brand of Aditya Birla Retail Limited, the same would not amount to branding of subject goods.
- 1.20. Reliance in the above regard is further placed on the following decisions:
 - (i) In the case of *CCEx. Vs West Bengal Chemical Industries Limited*, [2006 (200) E.L.T. 68 (Tri. - Kolkata)], the issue under consideration was as to whether the declaration, 'Marketer by Mother Dairy' on the packaging of mineral water sold by the assessee, could be construed to be sold under a 'brand name', (which meaning is similar to the meaning provided to the term under the Exemption Notifications). The Hon'ble Tribunal therein held that such a declaration indicating that a product is marketed by Mother Dairy cannot be said to be a 'brand name'.
 - (ii) In the case of *CCEx. Vs Paul Aquomin & Foods (P) Ltd.*, [2009 (244) E.L.T. 278 (Tri. - Kolkata)], on a similar issue, the decision of the Hon'ble Tribunal in the case of *West Bengal Chemical Industries (supra)* was followed and it was held that a declaration indicating that a product is marketed by Mother Dairy cannot be said to be a 'brand name'.
- 1.21. In terms of the above decisions, the declaration, 'Marketed by Aditya Birla Retail Limited' printed on the packaging of the subject goods cannot be construed to be a 'brand name'. The supply of subject goods would therefore attract GST at 'Nil' rate in terms of the relevant entries to the Exemption Notifications, as specifically highlighted under Exhibit G to this Application.

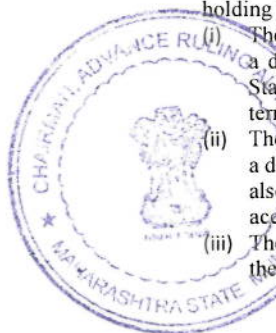
Question III: (a) Whether the declarations made on the package, by *inter alia* using common/ generic terms viz. 'Value', 'Choice' and 'Superior', for the sole purpose of indicating the quality of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences can be construed to be a 'brand name' for the purpose of the Exemption Notifications?:

- 1.22. As stated, for some of the subject goods, the package would also bear a certain declaration by using common/ generic words for the sole purpose of indicating the quality of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences. Such declarations made on the package by *inter alia* using common/ generic words viz. 'Value', 'Choice' and 'Superior' are only aimed at creating a clearly identifiable distinction between different quality versions of the same product. Considering that the said terms would therefore not indicate any connection in the course of trade between the Applicant and the products, but would only reflect its quality versions, the same would not qualify as a 'brand name'.
- 1.23. In this regard, it is also relevant to refer to Section 9 of the Trade Marks Act, which lays down the 'absolute grounds of refusal of registration' of a name or mark or a logo, as a trademark under the said Act. Section 9(1)(b) states that a trade mark 'which consist exclusively of marks or indications which may serve in trade to designate the kind, **quality**, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service', shall not be registered. The definition of 'trademark' as provided in Section 2(zb) of the Trade Marks Act is broadly similar to the definition of the term 'brand name' under the Exemption Notifications to the extent it includes a mark or a name that indicates 'a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark'. In view of the same, a name, which merely indicates quality parameters of the goods, should also not be construed to be a 'brand name'.
- 1.24. Accordingly, the declarations *inter alia* using common/ generic terms viz. 'Value', 'Choice' and 'Superior', for reflecting the quality of the subject goods, cannot be construed to be 'brand name' for the purpose of the Exemption Notifications. The supply of subject goods would therefore attract GST at 'Nil' rate in terms of the relevant entries to the Exemption Notifications, as specifically highlighted under Exhibit G to this Application.
- 1.25. Accordingly, based on the above submissions and analysis thereof, it can be concluded that the subject goods proposed to be sold under Stream 1 and Stream 2, can be considered to be not bearing a 'brand name' and would accordingly be eligible for exemption from GST in terms of relevant entries to the Exemption Notifications."

2. Prayer

In the light of the above, the Applicant prays that the questions referred to this Hon'ble Authority be decided in the affirmative, holding the following:

- (i) The subject goods proposed to be sold by the Applicant under Stream 1, where the package of the subject goods would have a declaration mentioning the name and registered address of the Applicant as the manufacturer, in terms of the Subject Statutory Provisions, can be considered as not bearing a brand name, and, accordingly eligible for exemption from GST in terms of relevant entries of the Exemption Notifications.
- (ii) The subject goods proposed to be sold by the Applicant under Stream 2, where the package of the subject goods would have a declaration mentioning the name and registered address of the manufacturer, in terms of the Subject Statutory Provisions as also the declaration 'Marketed by- Aditya Birla Retail Limited' can be considered as not bearing a brand name, and, accordingly eligible for exemption in terms of relevant entries to the Exemption Notifications.
- (iii) The declarations made on the package, by *inter alia* using common/ generic terms viz. 'Value', 'Choice' and 'Superior', for the sole purpose of indicating the quality of the product/ variant of the product so as to enable the customers to identify and



buy products based on their requirements, budget and preferences cannot be construed to be a 'brand name' for the purpose of the Exemption Notifications.

Exhibit A

1. List of subject goods which are sold under Stream 1

Sr No	Broad Product description	HSN Code
1	Bajra	100821020 10082920
2	Barley	10039000
3	Basmati rice	10063020
4	Boiled Rice	10063010
5	Brown Rice	10062000
6	Jowar	10082910 10082110
7	Matze	10059000
8	Ragi	10082930 10082130
9	Rice- Others	10063090
10	Wheat	10019910

2. Location of Applicant's processing locations

Sr No	Location
1	Bangalore
2	Delhi
3	Hyderabad
4	Pune
5	Chennai
6	Cochin
7	Kolkata

Exhibit C

List of subject goods which are sold under Stream 2

Sr No	Broad Product description	HSN Code
1	Barley	10039000
2	Boiled Rice	10063010
3	Rice- Others	10063090
4	Matze	10059000
5	Brown Rice	10062000

Exhibit G

Classification of subject goods under the corresponding entries to the CGST Notification

Sr No	Broad Product description	Streams	HSN Code	Sr No as per Notification no 02 2017 - Central Tax (Rate)
1	Bajra	Stream 1	100821020 10082920	72
2	Basmati rice	Stream 1	10039000	70
3	Jowar	Stream 1	10063020	72
4	Ragi	Stream 1	10063010	72
5	Brown Rice	Stream 1	10062000	70
6	Barley	Stream 1 and 2	10082910 10082110	67
7	Boiled Rice	Stream 1 and 2	10059000	70
8	Brown Rice	Stream 1 and 2	10082930 10082130	70
9	Matze	Stream 1 and 2	10063090	69
10	Rice- Others	Stream 1 and 2	10019910	70

Submission dt.27.02.2018

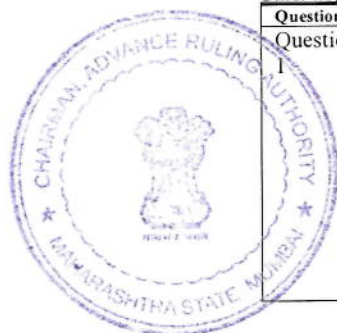
2. Summary of submissions-

In the facts and circumstances of the present case, the name of the Applicant does not constitute 'brand name' as defined in the Exemption Notifications-

- In terms of the definition of the term 'brand name', it can be a name, mark, etc. which necessarily establishes 'a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person'. In Applicant's case, the subject goods are presently sold under the brand name 'More' from its 'More' Stores. However, from the 'More' stores, several similar products, manufactured by different companies, are also sold. Such products may or may not be bearing a brand name. The present package of the products *inter alia* bearing the 'More' trademarks are enclosed as **Exhibit B** (page 21-22) and **Exhibit D** (page 24-25) of the ARA. Sample pictures of the 'More' stores is enclosed herewith as **Annexure G**.
- Customers of the subject goods who enter the 'More' stores to purchase the subject goods, associate the subject goods with the 'More' brand name, and, do not necessarily associate/ connect the subject goods with the name of the Applicant. Accordingly, it is the 'More' trademarks which establishes a connection in the course of trade between the subject goods and the Applicant. The definition itself indicates that brand name is one which establishes the said connection with or without indicating identity of such person. Therefore, in the present case, where the product packaging, though having its name, will not have the brand name of the Applicant (i.e. 'More' trademarks), it cannot be construed to be branded.
- There are several practical illustrations which would establish that a product is recognised in the market through its brand name and may not be directly associated or identified with its manufacturer/brand owner. An illustrative list in this regard is enclosed as **Annexure H**. This supports the case of the Applicant, considering that the brand name vide which its products are recognised in the market are proposed to be removed from its packaging, and, its name, which would be mentioned in the proposed packages, is not identified with its product.
- Further, there would also be such illustrations where the product is identified with the name of the company. An illustrative list in this regard is enclosed as **Annexure I**. As evident, this strictly holds true in case where the product is eponymous to the manufacturer, which is not the case of the Applicant.

Other key submissions

Question	Submissions
1	<p>(a) It is a settled law, <i>inter alia</i> in terms of the following decisions that mentioning of the name of the manufacturer on the package of a product, in terms of statutory requirements, cannot render the product branded-</p> <ul style="list-style-type: none"> • Tarai Foods Limited Vs CCE, Meerut-II 2006 (198) E.L.T. 323 (S.C.)- 'Under the Standard Weights and Measures (Packets Commodities) Act, 1977 every packet is required to bear thereon or on a label squarely affixed thereto a definite, plain and conspicuous declaration as to, <i>inter alia</i>, the name and address of the manufacturer (see Rule 6 & 10). In other words, unit containers would have to bear the name of the manufacturer. If the name of the manufacturer were to be a brand name then this would mean, that there would be no unbranded unit container at all in law and the distinctiveness of T.H. 2001.10 would be meaningless' • Commissioner of Central Excise v. Synotex Industries 2012 (278) ELT 90 (Tri-Kolkata)- 'If the Revenue's plea that indicating the manufacturer's name would amount to affixing brand name is accepted, then all the goods containing manufacturer's name would be branded goods which is highly illogical. In fact in respect of the packaged goods, there are statutory requirements that



the manufacturer's or packer's name and address should be indicated on the packages of the goods under the standards of Weights & Measures Act, 1976 and the rules made thereunder'

(b) Construing name of the manufacturer as a brand name would render certain parts of the Exemption

Notifications redundant-

- In terms of the Exemption Notifications, exemption is admissible for goods other than those put up in unit container and bearing a brand name. Further the term 'unit container' is defined to mean '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 terms of the language employed, the requirement of goods being 'put up in unit container', and, bearing a 'brand name' would have to be cumulatively satisfied so as to exclude the corresponding goods from the purview of the exemption.
- In terms of Section 18 of the Food Safety and Standards Act, 2006 ('FSSA') 'no person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations'. Rule 6 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 ('FSS Regulations') in turn mandates provision of details of the manufacturer of the product on the corresponding package. Relevant extract of the FSSA and FSSA Regulations are enclosed as **Annexure L**.
- Therefore, in case it is construed that name of the manufacturer is a brand name in itself, then every food product which is sold in packed form would be considered as branded. To this extent, the requirement that the product should bear a brand name would be rendered redundant, considering that a product sold in a unit container (and therefore being governed by FSSA and FSSA Regulations) would necessarily disclose the name of the manufacturer in every case.
- It is a settled law that the courts should always presume that the legislature inserted every part in a statute/ notification for a purpose and the legislature's intention is that every part of a statute should have effect and that a construction which results in redundancy of some part of a statute, must not be accepted. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **Bansal Wire Industries Ltd vs State of U.P.** [2011 (269) E.L.T. 145 (S.C.)] wherein the Hon'ble Court laid down that it 'is a settled principle of law that the words used in the section, rule or notification should not be rendered redundant and should be given effect to. It is also one of the cardinal principles of interpretation of any statute that some meaning must be given to the words used in the section'
- Reliance in this regard is also placed on the decision of the Hon'ble Bombay High Court in the case of **Bharat Cottage Industries vs Union of India** [1992 (59) E.L.T. 30 (Bom.)] wherein it was held that it 'is not permissible for the Court to treat the words of the exemption notification as a mere surplus'

Question
1 and 2

(a) In terms of definition of the term 'brand name', the same must be 'used in relation to such specified goods', based on which such goods are asked for by the customer. Therefore, name of manufacturer, which is used across range of products, would not qualify as brand name-

- **Commissioner of C. Ex., Mumbai vs Kalvert Foods India Pvt. Ltd** [2011 (270) E.L.T. 643 (S.C.)]- 'In the book of "Trade Marks" by Sarkar, the distinction between the expressions "House mark" and "Product mark" or "Brand name" has been clearly brought out by way of reference to the decision in **Astra Pharmaceutical Pvt. Ltd. (supra)**. It is stated therein that "House mark" is used on all the products of the manufacturer and that it is usually a device or a form of emblem of words or both. It was also pointed out that for each product a separate mark known as a "Product mark" or "Brand name" is used which is invariably a word or combination of word and letter or numeral by which the product is identified and asked for...In the book of "Law of Trade Marks" by K.C. Kailasam and Ramu Vedaraman the distinction between 'Product mark' and 'House mark' has been beautifully delineated, which is as under : "It is possible that the proprietor may use several trade marks in respect of his goods (known as Product mark), besides using a common mark in all his products to indicate the origin of the goods from the enterprise (known as House mark). This practice is more predominant in the pharmaceutical trade. Though both are trade marks and are registrable as such, each has its own distinct function. While the House mark represents the image of the enterprise from which the goods emanate, the Product mark is the means by which goods are identified and purchased in the market place and it the focal point of presentation and advertisement."'
- **Astra Pharmaceuticals (P) Ltd. vs Collector of C. Ex, Chandigarh** [1995 (75) E.L.T. 214 (S.C.)] 'The 'AP' or 'Astra' on the container or packing was used to project the image of manufacturer generally. It did not establish any relationship between the mark and the medicine. For instance, if the appellant instead of using Dextrose injections would have described it as Astra injections or Astra Dextrose injections then it could be said that a relationship between the monograph and the medicine was established. In the case of appellant it was only a monograph to identify the manufacturer'
- **CCEX. Vs West Bengal Chemical Industries Limited**, [2006 (200) E.L.T. 68 (Tri. - Kolkata)]- 'The Commissioner (Appeals) has also observed in the impugned Order that no consumer asks for 'Mother Dairy' when he or she wants to buy Mineral Water by referring to a specific brand - 'Aquaflina' or 'Kinley' or 'Bisleri'. I also find that 'Mother Dairy' even if it is taken as a Brand Name, does not amount to a single product, which rather refers to a basket of products that include milk, butter, cheese, mineral water and what not. Taking into account the fact that the label clearly indicates that the product in question is marketed by 'Mother Dairy', it cannot be said that the brand name - 'Mother Dairy' - has been used.'

(b) Further, in terms of the said definition, brand name is used for the purpose of indicating 'a connection in the course of trade between such specified goods and some person using such name. Therefore, name of a company cannot be a brand name-

- **Tarai Foods Limited Vs CCEX. Meerut-II** 2006 [(198) E.L.T. 323 (S.C.)]- 'Furthermore the definition of the words 'brand name' shows that it has to be a name or a mark or a monogram etc. which is used in relation to a particular product and which establishes a connection between the product and the person. This name or mark etc. cannot, therefore, be the identity of a person itself. It has to be something else which is appended to the product and which establishes the link'
- **CCEX. Vs Pepsi Foods Ltd.** [2015 (322) ELT A325 (SC)]
- **Nirula and Company Pvt. Ltd. Vs CCEX** [2005 (186) E.L.T. 412 (Tri. - Del.)] (Affirmed in 2015 (322) ELT A325 [Supreme Court])-'The impugned order has in terms stated that the goods in question were packed and cleared in packages mentioning..... "except the brand name 'Nirula's'". In the present case, the appellant company's name and brand name are quite separate and it is not in dispute. The only brand name is 'Nirula's'. This brand name is a registered brand name and the certificate of the Trade Mark Registry states the brand name as 'Nirula's'. Since the packages in question do not bear this brand name, there could be no doubt about identity of the goods, that they do not bear a brand name'

Question
3

(a) Section 9 of the Trade Marks Act lays down that a trade mark which serves in trade to *inter alia* designate quality of the goods shall not be registered



	<p>(b) Further, generic terms, which only indicate quality of the product and are not, in any way, used in relation to specified goods or for indicating a relationship between the product and the person, cannot fall within the ambit of the term 'brand name'.</p> <p>(c) In terms of the decision of the Hon'ble Supreme Court in the case of <i>Tarai Foods (Supra)</i>, 'brand name connotes such a mark, symbol, design or name <u>which is unique to the particular manufacturer</u> which when used on a particular product would establish a connection between the product and the manufacturer. Therefore, generic words cannot be construed to be a brand name.</p>
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Submissions in relation to the Written Submissions filed by the Departmental Representative

Submissions made by the Departmental Representative	Responses of the Applicant
Para 2(i)- Details proposed to be disclosed on the packages have not been provided.	In course of the admission hearing it was revealed that the said submission was made owing to the fact that the office of the AAR had inadvertently missed in providing the Departmental Representative with the copy of the annexures to the Application. It was therefore stated that the Applicant would provide the Departmental Representative with a complete set of the Application. The same has been filed thereafter and corresponding acknowledgment.
Para 2(ii)/(iii)- It is not clear as to whether details to be disclosed on the proposed packages were registered under the Trade Marks Act/ Copyright Act, as on 15 th May 2017.	The Applicant proposes to remove from the package of subject goods all of its registered trade marks [Annexure V]. It is confirmed that disclosures proposed to be made in the packages do not pertain to any of Applicant's trademarks registered under the Trade Marks Act/ Copyright Act, either before or after 15 th May 2017.
Para 2(iv)- For being eligible for exemption under the Exemption Notifications, it is necessary that the Applicant forges the enforceable right/ actionable claim available in respect of its name, which apparently would be mentioned in the proposed packaging. If such rights are not forgone, exemption would be inadmissible.	On a plain reading of GST Exemption Notifications, it is evident that bearing a brand name on the unit container is a pre-requisite to the subsequent determination of whether 'an actionable claim or enforceable right in a court of law is available' in respect of such brand name. As name of the person cannot be considered to be a brand name, such subsequent determination would not arise.
<p>In terms of the decision of the Hon'ble Supreme Court in the case of <i>Commissioner of Central Excise, Trichy vs Grasim Industries Ltd</i> [2005 (183) E.L.T. 123 (S.C.)] 'even the name of some other company, if it is used for the purposes of indicating a connection between the product and that company, would be sufficient' to constitute a brand name.</p> <p>The said decision rendered by three member bench of the Hon'ble Supreme Court would have precedence over the decisions of the Hon'ble Supreme Court (rendered by two member bench), relied upon by the Applicant i.e. in the case of <i>Tarai Foods (Supra)</i> and <i>Pepsi Foods (Supra)</i>.</p>	<p>• In context of Question 1- The question which the Hon'ble Supreme Court was seized with in <i>Tarai Foods (supra)</i> was not before the Hon'ble Supreme Court in the case of <i>Grasim (supra)</i> i.e. whether mentioning of the name of the manufacturer on the package of a product, in terms of statutory requirements, would constitute a 'brand name'. In <i>Grasim (supra)</i>, the Hon'ble Court was concerned with whether use of the words 'A Subsidiary of <i>Grasim Industries Ltd</i>', by the manufacturer, can be construed to be a 'brand name'. To this extent, both the said decisions operate in different domains. It is a settled principle of law that a judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges-</p> <ul style="list-style-type: none"> • <i>Bhavnagar University v. Palitana Sugar Mill (P) Ltd.</i>, (2003) 2 SCC 111- 'A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See <i>Ram Rakhi v. Union of India</i> AIR 2002 Del 458 (db), <i>Delhi Admn. (NCT of Delhi) v. Manohar Lal</i> (2002) 7 SCC 222, <i>Haryana Financial Corpn. v. Jagdamba Oil Mills</i> (2002) 3 SCC 496 and <i>Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation)</i> (2002) 257 ITR 123 (Del).]' • <i>Armaendra Pratap Singh v. Tej Balendar Prajapati</i> - 2004 (10) SCC 65= 'A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges' • Reliance is also placed on the decision of the Hon'ble Tribunal in the case of <i>CCE, Thiruvananthapuram vs Jaya Stores</i> [2010 (251) E.L.T. 145 (Tri. - Bang.)] wherein the decision of the Hon'ble Supreme Court in <i>Grasim</i> was distinguished and it was held that 'the Commissioner (Appeals) was correct in his finding that the particulars tentatively held to constitute a brand name in the Show Cause Notice were actually particulars of the manufacturer packer of a food product statutorily bound to be displayed on the package of refined oil' • In the context of Question 2- In <i>Grasim's case (supra)</i>, the Hon'ble Court was concerned with the scope of the term 'brand name' in context of a Central Excise Notification. For this reason, the Hon'ble Court, in its wisdom, cautioned that the interpretation adopted by it may not be applied as a thumb rule in all situations. The Hon'ble Court went on to state that mere mentioning of the name of the marketer may not be sufficient to render the product branded- 'Of course this being a Notification under the Excise Act, the connection must be of such a nature that it reflects on the aspect of manufacture and deal with quality of the products. No hard and fast rule can be laid down however it is possible that words which merely indicate the party who is marketing the product may not be sufficient. As we are not dealing with such a case we do not express any opinion on this aspect.' To this extent, the said decision is not applicable for determining Question 2.



	<ul style="list-style-type: none"> Reliance in this regard is also placed on the decision in the case of CCEx. Vs Paul Aquomin & Foods (P) Ltd., [2009 (244) E.L.T. 278 (Tri. - Kolkata)], wherein the Tribunal held that a declaration indicating that a product is marketed by 'Mother Dairy' cannot be said to be a 'brand name', specifically stating that Revenue's reliance on the decision of the Hon'ble Supreme Court in the case of Grasim is misconstrued owing to the aforesaid extracted findings.
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Copyright related disclosure / ©Aditya Birla Retail Limited/-

In course of the hearing it was enquired as to whether the name of the Applicant is registered under the Copyright Act. In this regard it is confirmed that the same is not registered thereunder. It is further clarified that the said disclosure in the proposed packaging pertains to the artwork used in the said packaging, which artwork is also not registered under the Copyright Act. To this extent, as the packaging would not reflect a name which is registered under the Copyright Act, the same would not constitute a brand name for the purposes of the Exemption Notifications. In any case, the Applicant confirms that it would not be reflecting the said disclosures in the proposed packages, in terms of enclosed proposed packaging, which have also been separately filed by the Applicant vide its letter dated 27th February 2018."

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

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

"2. It is submitted at the outset that the applicant ought to have furnished all the relevant information and details in his application necessary to decide the issue. However scrutiny of the documents received has revealed that the applicant has not provided following information/details which are crucial for taking decision in the matter:-

i) Though the applicant has informed which details would not be given on the packaging, no clear and unequivocal information has been given in clear terms about the details which would be displayed on the packages. Moreover the applicant ought to have made available the samples of intended packaging to the respondent to examine the facts and issue. No such samples have been provided to the respondent.

ii) The applicant has not informed whether the details he intends/proposed to give on the packages i.e. his name and address, were registered as on the 15 th May 2017 under the Trade Mark Act, 1999. These details are relevant considering the meaning of the term 'registered brand name' given under the exemption notifications which includes a brand registered as on 15/05/2017 under the Trade Mark Act, 1999 irrespective of whether or not the brand is subsequently deregistered.

iii) The applicant has not informed whether the details he intends/proposes to give on the packages i.e. his name and address, were registered as brand as on the 15 th May 2017 under the Copyright Act, 1957 or under any Law for the time being in force in any other country. This information is also very important considering the meaning of the term 'registered brand name' given under the exemption notifications.

iv) As detailed in Annexure-I to the Notification No.2/2017 CT (rate) dated 28/6/2017 as amended, for foregoing an actionable claim or enforceable right on brand name the person undertaking packing of such goods which bears a brand name is required (i) to file an affidavit before the jurisdictional Commissioner that he is voluntarily foregoing his actionable claim or enforceable right on brand name (ii) and on each such unit container he has to declare these facts i.e. foregoing his actionable claim or enforceable right on brand name. On this back ground the applicant ought to have clarified whether he intends to forego such rights over the details proposed to be furnished on the packages i.e. his name/address. Though it has not been clearly mentioned yet it appears that name of the applicant is 'Aditya Birla Retail Limited'. Foregoing, any actionable claim on the said name of the applicant would mean that they allow any other person to unconditionally use their said name for any purpose. It seems impossible that the applicant would allow any other person to use his name/and address in the said manner. It appears to be an absurd proposal. Therefore it appears that the applicant is not in a position to fulfill the condition of the subject notification to be eligible for the exemption from the payment of GST.

3. Since the applicant has not provided the vital information as discussed above in paragraph 2 necessary to decide the issue, it is prayed that the application may be rejected ab initio in terms of Section 98(2) of the Central Goods and Services Act, 2017.

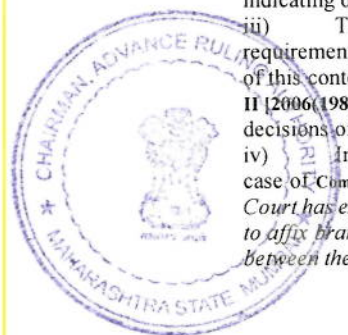
4. With reference to said application of the applicant following further submissions are made as preliminary submissions and detailed response would be submitted at later stage :-

i) The main issue involved in this application is that whether furnishing details of the applicant i.e.name and registered address, in capacity as the manufacturer or in capacity of marketing concern, on the packages of goods packed in unit container, without affixing any brand name/logo, can be considered as 'not bearing a brand name' and whether accordingly the applicant would be eligible for exemption from payment of GST in terms of relevant entries in Notification No.2/2017 CT (rate) dated 28/6/2017 as amended and corresponding entries under Notification No.2/2017 Integrated Tax (rate) dated 28/6/2017 and Notification No.2/2017 State Tax (rate) dated 28/6/2017 (collectively referred to as 'the exemption Notifications')

ii) The attention is invited towards the Explanation appended to said Exemption Notifications where in meaning of the term 'brand name' has been explained which even includes 'name' which is used in relation to specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some person using such name.

iii) The main contention of the applicant is that mere mention of name of the manufacturer and/or packer, which is a statutory requirement, on to the packaging of subject goods, cannot render the product to be construed as bearing the brand name. In support of this contention the applicant has relied upon the decisions of Hon'ble Supreme Court in case of **Tarai Foods Limited V Meerut-II** [2006(198) E.L.T.323 (S.C.)], and that delivered in case of **CCEx. V Pepsi Foods Limited** [2015(322) ELT A 325 (SC)] and also certain decisions of Hon'ble High Court of Madras and CESTAT.

iv) In this regard, the applicant has totally ignored the judgment of the same Court which was delivered on 12-4-2005 in case of **Commissioner Of Central Excise, Trichy Vs M/S Grasim Industries** (2005 (183) E.L.T.123 (S.C.)). In this judgment the Hon'ble Supreme Court has examined the very same issue whether merely furnishing name of any concern on the package of the goods would amount to affix brand name and held that 'even the name of some other company, if it is used for the purposes of indicating a connection between the product and that company, would be sufficient. It is not necessary that the name or the writing must always be a brand



name or a trade name in the sense that it is normally understood.' A copy of said judgment dated 12-4-2005 delivered in case of Commissioner Of Central Excise, Trichy V/s M/S Grasim Industries (2005 (183) E.L.T.123 (S.C.), is enclosed as Annexure 'A' to these submissions.

v) The said judgment of dated 12-4-2005 has been delivered by the three member bench of the Hon'ble Supreme Court where as judgment of S.C. in case of Tarai Foods Limited V Meerut-II relied upon by the applicant, has been delivered by the two member Bench. As discussed by the applicant the decision of Hon'ble Supreme Court in case of CCEX. V Pepsi Foods Limited is based on the said decision of Supreme Court in case of Tarai Foods Limited V Meerut-II. The judgment in said case of CCEX. V Pepsi Foods Limited has also been delivered by the two members Bench of the Hon'ble Supreme Court. Being the facts ratio of the judgment delivered by the three Member bench of Hon'ble Supreme Court in case of Commissioner Of Central Excise, Trichy V/s M/S Grasim Industries (2005 (183) E.L.T.123 (S.C.) would have precedence value over that delivered by two member Bench and those delivered by the lower Courts.

vi) From the information given by the applicant in application and annexures to it, there appears to be no statutory requirement to disclose the details of the person who is marketing the goods on the packages. The only requirement is relating to furnish details of manufacturer and packer of the goods. Still the applicant intends and proposes to furnish his name/address on the packages of subject goods procured from third parties, as 'marketing concern'. Hence it's obvious that the applicant desires to furnish these details on his own. The purpose of the same is obvious i.e. to impress upon the consumers the important fact that the subject goods are of the applicant. This also makes it clear that in case of the subject goods proposed to be processed and packed by the applicant himself also, besides statutory requirements, the applicant intends to derive the benefit of associating his name with subject goods by declaring his name as manufacturer on packages. This further strengthen the argument that the name of the applicant furnished on the packages, whether as a manufacturer or marketing concern, is used in course of trade to connect the subject goods with his name and therefore in both these cases, declaration of name on package would amount to use of brand name.

5. In view of the facts discussed in foregoing paragraphs, it is submitted that the name and address proposed to be furnished on the packages of goods by the applicant would amount to use of brand name and in turn he would not be entitled for the exemption under the Exemption Notifications as being claimed.

PRAYER

6. It is prayed that,

- i) Since the applicant has not provided the vital information as discussed above in paragraph 2 necessary to decide the issue, it is prayed that the application may be rejected at this stage only.
- ii) considering the facts discussed in foregoing paragraphs, the questions framed by the applicant may be decided ruling that the use of name by the applicant on packages would amount to use of brand name and therefore he would not be entitled for any exemption under the said exemption notifications."

04. HEARING

The case was taken up for preliminary hearing on dt.31.01.2018 when Sh. Anay Banhatti, Advocate, alongwith Sh. Supreme Kothari, Chartered Accountant and Sh. Manoj Jaipatkar, Indirect Tax Manager attended and orally argued for admission of their Advance Ruling application. Sh. S. S. Bhide, Superintendent, Mumbai-East attended and made oral submission with respect to admission claim of the applicant. In the final hearing on dt.27.02.2018, all the aforementioned attended alongwith Sh. Gopal Nayak, Sr. V.P and reiterated the contention as made in the written submission. None was present on behalf of the concerned jurisdictional authority. However, a written submission has been tendered which has been reproduced above.

05. OBSERVATIONS

We have gone through the facts of the case. The issue before us is a future transaction of supply of goods by the applicant. The mechanism of supply as explained in the application is thus -

STREAM 1

- The applicant procures unprocessed food products from various vendors and undertakes processing and packing in its own units. Such processing would generally involve sorting, quality assessment, grading etc.
- The subject goods would thereafter be sold by the applicant from its More Stores.
- The package of subject goods sold by the applicant under Stream 1 inter alia bears the name of the applicant as being the manufacturer and the registered trademarks viz. 'More trademarks' and the 'Aditya Birla' logo.



STREAM 2

- Subject goods are procured in processed and packed form from third party vendors:
- Unprocessed food products are procured by third party vendors and subsequently processed and packed, in terms of the quality standards fixed by the Applicant. The subject goods are thereafter procured by the applicant for being sold from its More Stores.
- The package of subject goods sold by the Applicant under Stream 2 inter alia bears the name of the manufacturer, the declaration 'Marketed By – Aditya Birla Retail Limited' and the registered trademarks viz. 'More trademarks' and the 'Aditya Birla' logo.

In the application, it has, also, been informed thus -

- The Applicant intends to revise the packaging of the subject goods and the manner in which the subject goods are put up for sale, to exclude from the packages the registered trademarks, namely 'More trademarks' and the 'Aditya Birla' logo. The proposed packaging of subject goods under both streams would accordingly bear the following details:
 - Subject goods sold under Stream 1:- The packaging would bear only details of the Applicant as the manufacturer, as mandated under the Subject Statutory Provisions.
 - Subject goods sold under Stream 2:- The packaging would bear details of the manufacturer, as mandated under the Subject Statutory Provisions, and would have a declaration- 'Marketed by Aditya Birla Retail Limited'.
- Under both the streams, for some of the subject goods, the package would also bear a certain declaration for the sole purpose indicating the quality variant of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences. In this regard, the Applicant intends to make the following indicative declarations on the product package by using common/ generic words-
 - The term 'Value' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a standard quality;
 - The term 'Choice' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a premium quality.
 - The term 'Superior' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a superior quality.

In a later submission, the applicant has informed thus -

- The applicant proposes to remove from the package of subject goods all of its registered trade marks [Annexure V]. It is confirmed that disclosures proposed to be made in the packages do not pertain to any of Applicant's trademarks registered under the Trade Marks Act/ Copyright Act, either before or after 15th May 2017.

Since it is a future transaction, we proceed with the above submission that -

- The goods would be packed in a unit container.
- None of the registered trademarks of the applicant would appear on the packages in respect of both the Streams.
- Common/ generic terms viz. 'Value', 'Choice' and 'Superior' for the sole purpose of indicating the quality of the product/variant of the product would be used.
- In respect of Stream 1 [procuring unprocessed food products and undertaking processing (involving sorting, quality assessment, grading etc.) and packing in own units], the package would have the details of "Manufactured and packed by Aditya Birla Retail Limited". It would also have the details of "Pkg. Material Mfg. by XXX".

In respect of Stream 2 [procuring goods in processed and packed form in terms of the quality standards fixed by the applicant for being sold], the package would have the details of "Manufactured and packed by XXX" and the declaration 'Marketed By – Aditya Birla Retail Limited (ABRL)'. It would also have the details of "Pkg. Material Mfg. by XXX".



The applicant contends the applicability of certain entries of the Notification No.2/2017 - Integrated /Central / State Tax (Rate) dated 28th June 2017 with regard to the goods supplied. This Notification exempts the goods enlisted therein from the applicability of the GST. The products are different but these entries, as claimed to be applicable, are framed in a certain manner. The applicant has taken the example of the entry no.65 of the aforesaid Notification. We shall have a look at the same :

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
65.	1001	Wheat and meslin <u>other than those put up in unit container and, -</u> (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]

The goods would be sold in unit containers. However, it is the contention that the condition after 'and' is not being satisfied as the mention of the name of "Aditya Birla Retail Limited", either as a manufacturer or as the one undertaking marketing, would not amount to bearing a brand name as such declarations are in keeping with the provisions of some statutes. Hence, the claim that the concerned entries in the Schedule of exempted goods would be applicable to the supplies made by the applicant. To ascertain the correctness of the claims, we would have a look as to what is meant by a 'brand name'. The very Notification No.2/2017 - Integrated /Central / State Tax (Rate) dated 28th June 2017 (as amended from time to time) on which reliance has been placed has details thus -

• **Explanation. -**

(ii) (a) The phrase "brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

(b) The phrase "registered brand name" means, -

- (A) a brand registered as on or after the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;
- (B) a brand registered as on or after the 15th May 2017 under the Copyright Act, 1957(14 of 1957);
- (C) a brand registered as on or after the 15th May 2017 under any law for the time being in force in any other country

• **ANNEXURE I**

For foregoing an actionable claim or enforceable right on a brand name, -

(a) the person undertaking packing of such goods in unit containers which bears a brand name shall file an affidavit to that effect with the jurisdictional commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and

(b) the person undertaking packing of such goods in unit containers which bear a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii)(a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily.

Provided that, if the person having an actionable claim or enforceable right on a brand name and the person undertaking packing of such goods in unit containers are two different persons, then the person having an actionable claim or enforceable right on a brand name shall file an affidavit to that effect with the jurisdictional Commissioner of Central tax of the person undertaking packing of such goods that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and he has authorised the person [undertaking packing of such goods in unit containers bearing said brand name] to print on such unit containers in indelible ink, both in English and the local language, that in respect of such brand name he [the person owning the brand name] is voluntarily foregoing the actionable claim or enforceable right voluntarily on such brand name.

Since the notification has defined the meaning of 'brand name', we refer to the same. As can be seen, the 'brand name' is defined to mean a "brand name or trade name". The definition



makes use of the words "that is to say". Therefore, the following would be a "brand name or trade name" –

- a name or a mark, such as symbol, monogram, label, signature or invented word or writing
 - which is used in relation to such specified goods
 - for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

We see that the above definition of 'brand name' says that the name or mark may indicate the identity of the person. The definition of "trade description" under the Trade Marks Act, 1999 also means any description as to the identity of the manufacturer or of the person providing the services as can be seen below –

"(za) "trade description" means any description, statement or other indication direct or indirect

(i) as to the number, quantity, measure, gauge or weight of any goods or

(ii) as to the standard of quality of any goods or services according to a classification commonly used or recognised in the trade: or

(iii) as to fitness for the purpose, strength, performances or behaviour of any goods, being "drug" as defined in the Drugs and Cosmetics Act, 1940 or "food" as defined in the Prevention of Food Adulteration Act, 1954; or

(iv) as to the place or country in which or the time at which any goods or services were made, produced or provided as the case may be: or

(v) as to the name and address or other indication of the identity of the manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services are provided: or

(vi) as to the mode of manufacture or producing any goods or providing services: or

(vii) as to be material of which any goods are composed: or

(viii) as to any goods being the subject of an existing patent, privilege or copyright, and includes

(a) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters:

(b) the description as to any imported goods contained in any bill of entry or shipping bills:

(c) any other description which is likely to be misunderstood or mistaken for all or any of the said matters:

In the present case, we find that there is mention of the name "Aditya Birla Retail Limited". It is indicative of the situation that the product belongs to Aditya Birla Retail Limited which is a big name in the business world, world over. The website of the company says thus –

Aditya Birla Group

A US \$43 billion corporation, the Aditya Birla Group is in the League of Fortune 500. Anchored by an extraordinary force of over 120,000 employees, belonging to 42 nationalities. Over 50 per cent of its revenues flow from its overseas operations spanning 35 countries.

The Aditya Birla Group has been ranked fourth in the world and first in Asia Pacific in the 'Top Companies for Leaders' study 2011, conducted by Aon Hewitt, Fortune Magazine and RBL (a strategic HR and leadership advisory firm). The Group has topped the Nielsen's Corporate Image Monitor 2014-15 and emerged as the 'No.1 Corporate', the 'Best in Class', for the third consecutive year. Among the most trusted business houses in India, Aditya Birla Group is well known for its corporate governance and financial management.

Our logo

The name Aditya Birla exemplifies integrity, quality, performance, perfection and above all character. Our logo is the symbolic reflection of these traits. It is the cornerstone of our Corporate Identity. It helps us leverage the unique Aditya Birla brand and endows us with a distinctive visual image.

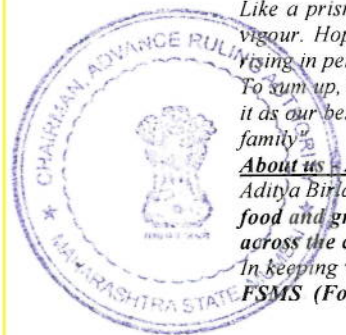
On the imagery and the nuances of the new mark: The bright colourful sun at the base forms its solid foundation in a bolder and more forceful global version. The crisscrossing sunbeams connote the vibrant internal and external movement of energy. Like a prism, it refracts the multi-dimensional facets of our Group. A deep sense of simplicity, solidity, permanence. Vim and vigour. Hope. Our timeless values. Our boundless optimism. And all these culminate in the dramatic ascension of our Group, rising in perpetuity, reaching higher peaks.

To sum up, our new mark embeds a sense of pride, unity and belonging in all of us. In our Chairman's words again: "I look upon it as our best calling card as we move onto a brave new horizon, big on growth, based on strong fundamentals, and as One ABG family."

About us – Aditya Birla Retail Limited

Aditya Birla Retail Limited (ABRL) is the retail arm of Aditya Birla Group, a \$43 billion corporation. The company ventured into food and grocery retail sectors in 2007 with the acquisition of Trinethra Super Retail and subsequently expanded its presence across the country under the brand 'more' with two formats – Supermarkets and Hypermarkets.

In keeping with our motto 'Quality 1st', ABRL takes pride in being the first ever Indian food and grocery retailer to receive the FSMS (Food Safety Management System) certification. The company received this certification for ensuring that the



manufacturing, storage, distribution and sale of food adheres to the highest quality standards. ABRL's Re-Processing Centres are also FSMS certified. The Aditya Birla Science and Technology Centre in Talaja drives our quest for world-class quality through extensive research and development across food and non-food categories.

Through Clubmore and its comprehensive range of brands, including power brands — VOW, Feasters and Kitchen's Promise — that offer unbeatable value for homemakers, the company aims to create customers who keep on returning for more. In all, the company's family of Clubmore members has grown to 20 million, all of whom enjoy a host of customised offers and great savings.

Supermarkets

More Quality 1st Supermarkets — Conveniently located in neighbourhoods, More Quality 1st Supermarkets cater to the daily, weekly and monthly shopping needs of consumers. The product offerings include a wide range of fresh fruits and vegetables, groceries, personal care, home care, general merchandise and a basic range of apparels. Currently, there are 523 supermarkets across the country.

Hypermarkets

More Megastore is a one-stop shopping destination for the entire family. Besides a wide range of products comprising fruits and vegetables, groceries, FMCG products, More Megastore also has a strong emphasis on general merchandise, apparel, consumer durables and IT goods. Currently, there are 20 hypermarkets across the country.

Own Brands

more strives to delight customers through a wide range of brands that deliver high quality at attractive prices across ready-to-eat food, beverages, tea, staples, cereals, instant mixes, papad, pickles, apparel, footwear, household cleaning essentials, personal care and devotional products. The power brands — VOW, Kitchen's Promise and Feasters — deliver world-class quality to discerning consumers. All these brands are developed in-house.

In addition, our Own Brands across categories include Prarthana, More Choice, More Daily, More Life, Bluearth, Karinee, Kruff, Incheels, TRU, Chatter Kids and Yo. ABRL aspires for our range of brands to be a customer's most preferred brand across product categories.

Clubmore

With the strength of around 20 million members, Clubmore has gone mobile. It leverages the power of marketing analytics to deliver meaningful and tailor-made offers to individual customers based on their shopping history. Thus, creating loyal customers every time.

Customer-friendly, free-to-use and completely intuitive, Clubmore is easy to understand. It strives to be a notch above the industry standard. This is achieved with its mobile identifier system.

more Choice and more Value products help you meet the daily needs of your family with a wide selection of everyday essentials across categories like pulses, tea, home essentials and napkins, which offer incredible value and savings. Now that's a win-win situation that's too good to pass up!

As can be seen the name Aditya Birla is a benchmark in itself and is associated with a certain trust and quality. Now, we see the definition of 'brand name' includes a name or a mark. This concept of 'mark' stems from the Trade Marks Act, 1999 where we have the following definition –

(m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof:

It can be seen that a 'mark' includes a 'name'. Further, it also includes a combination of colours. In the present case, we see that the packaging for both the Streams would be using a combination of colours from the logo of the Aditya Birla Group. And we see that the name Aditya Birla also appears on the package. The name "Aditya Birla" is more than sufficient to establish an identity with the goods. The Hon. Supreme Court decision in CCE v. Grasim Industries Ltd. [CCE v. Grasim Industries Ltd., (2005) 4 SCC 194] has observed that the words 'any writing' in the definition of 'brand name' are wide enough to include the name of a company. Besides the goods under both the Streams would be available in the More Stores. It was confirmed during the hearing that these goods are not available in any other stores except the More Stores. It has been argued that along with these products, the More Stores also have products of other manufacturers, too. We find that this fact in fact helps to distinctly identify these products as being the More products which aren't available elsewhere. On this issue of availability of the products of the applicant only at the More Stores, it would be relevant to refer



to the decision of the Hon. Supreme Court in CCE v. Australian Foods India (P) Ltd., (2013) 12 SCC 468 : (2014) 1 SCC (Civ) 701 : 2013 SCC OnLine SC 58 at page 474 . We reproduce herein the observations thus –

“12. We are unable to appreciate as to how a compulsory requirement of physical manifestation of a brand name on the specified good, for it to be construed as a branded good, can be derived from the above passage. The decision in the above case simply recognises that the benefit would be lost only if a manufacturer affixes the specified goods with a brand or trade name of another who is not eligible for the exemption under the notification. It does not state that the specified good must itself bear or be physically affixed with the brand or trade name. Such an interpretation would lead to absurd results in case of goods which are incapable of physically bearing brand names. For instance, the goods which, due to their very nature and structure, are incapable of bearing brand names, would always be deemed unbranded. Liquids, soft drinks, milk, dairy products, powders, edible products, salt, pepper, sweets, gaseous products, perfumes, deodorants, etc., to name a few, are either liquids, gases or amorphous/brittle solids, making it impossible for the goods to be affixed with a brand name. In some situations, such an affixation may be impossible, in which case, it would be permissible for the specified good to continue being a branded good, as long as its environment conveys that it is branded. By environment we mean packaging and wrapping of the good, accessories it is served with, uniform of vendors, invoices, menu cards, hoardings and display boards of the outlet, furniture and props used, the specific outlet itself in its entirety and other such factors, all of which together or individually or in parts, may convey that a good is a branded one, notwithstanding that there is no physical inscription of the brand or trade name on the good itself. Further, a specific, dedicated and exclusive outlet from which a good is sold is often the most crucial and conclusive factor to hold a good as branded. The decision referred to above only made a limited point that invoices alone cannot be the sole basis of construing whether a good is a branded good or not; it does not hold that a specified good itself must be stamped with a brand name. It is, therefore, permissible to look into the environment of the good. However, like in the case of Kirloskar generators (Superex Industries [CCE v. Superex Industries, (2005) 4 SCC 207]), invoices bearing brand name could not be the sole basis of construing whether goods are branded or not. That decision would depend on the facts and circumstances of the case. There can be no precise formula for such a determination: in some cases certain factors may carry more weight than in other situations. However, in most circumstances, an exclusive branded outlet from which the good is sold, would be a crucial factor in determining the question.

13. The learned counsel strongly relied on another decision of this Court in Kohinoor Elastics (P) Ltd. v. CCE [Kohinoor Elastics (P) Ltd. v. CCE, (2005) 7 SCC 528] for the proposition that only the “specified good” in question must be scrutinised and the expression cannot be expanded to mean “specified outlets” or other surrounding circumstances. To bring home his point, reliance was placed on the following paragraphs from the said decision: (SCC pp. 530-33, paras 5 & 7)

“5. Clause 4 of the notification is unambiguous and clear. It specifically states that the exemption contained in the notification shall not apply to specific goods which bear a brand name or trade name (registered or not) of another person. It is settled law that to claim exemption under a notification one must strictly comply with the terms of the notification. It is not permissible to imply words into the notification which the legislature has purposely not used. The framers were aware that use of a brand/trade name is generally to show to a consumer a connection between the goods and a person. The framers were aware that goods may be manufactured on order for captive consumption by that customer and bear the brand/trade name of that customer. The framers were aware that such goods may not reach the market in the form in which they were supplied to the customer. The framers were aware that the customer may merely use such goods as an input for the goods manufactured by him. Yet Clause 4 provides in categorical terms that the exemption is lost if the goods bear the brand/trade name of another. Clause 4 does not state that the exemption is lost only in respect of such goods as reach the market. It does not carve out an exception for goods manufactured for captive consumption. The framers meant what they provided. The exemption was to be available only to goods which did not bear a brand/trade name of another. The reason for this is obvious. If use of brand/trade names were to be permitted on goods manufactured as per the orders of customers or which are to be captively consumed then manufacturers, who are otherwise not entitled to exemption, would get their goods or some inputs manufactured on job-work basis or through some small party, freely use their brand/trade name on the goods and avail of the exemption. It is to foreclose such a thing that Clause 4 provides, in unambiguous terms, that the exemption is lost if the ‘goods’ bear a brand/trade name of another.

7. ... Now in this case there is no dispute on facts. The ‘course of trade’ of the appellants is making elastics for specified customers. It is an admitted position that the appellants are affixing the brand/trade name of their customers on the elastics. They are being so affixed because the appellants and/or the customer wants to indicate that the ‘goods (elastic)’ have a connection with that customer. This is clear from the fact that the elastics on which brand/trade name of ‘A’ is affixed will not and cannot be used by any person other than the person using that brand/trade name. As set out hereinabove once a brand/trade name is used in the course of trade of the manufacturer, who is indicating a connection between the ‘goods’ manufactured by him and the person using the brand/trade name, the exemption is lost. In any case it cannot be forgotten that the customer wants his brand/trade name affixed on the product not for his own knowledge or interest. The elastic supplied by the appellants is becoming part and parcel of the undergarment. The customer is getting the brand/trade name affixed because he wants the ultimate customer to know that there is a connection between the product and him.”

14. We feel that to hold from the above passages that every good must be physically stamped with a brand or trade name to be considered a branded good in terms of the notification, and that, one is forbidden to look beyond the specified good into the surrounding environment of the good in construing if it is a branded good or not, would be a complete misunderstanding of the above judgment in Kohinoor Elastics case [Kohinoor Elastics (P) Ltd. v. CCE, (2005) 7 SCC 528] and a distortion of the concept of a brand or trade name. The above judgment makes no such observation and was delivered on a completely different set of facts and circumstances.

15. Kohinoor Elastics case [Kohinoor Elastics (P) Ltd. v. CCE, (2005) 7 SCC 528] involved a case of undergarments manufactured by a producer P2, which used branded elastics produced by P1, and retained the brand name of P1 in the final product. P2 was denied exemption under the same notification involved in the present case because of the appearance of brand name of another i.e. P1, not covered by the same notice. P2 argued that the presence of P1's brand name should not be taken as a basis for disqualification from the benefits of the exemption since the customer buying the good would continue to associate the good with P2 and not P1, thus making it a branded good of only P2. This Court rejected the contention and held that P1 is providing a stamped input for captive consumption to P2 “because he wants the ultimate customer to know that there is a connection between the product and him”. The Court further observed that the term “specified goods” is used without any caveats and hence rejected the contention that some consideration should be given to the fact that P1 was used only as an input in the making of the final product of P2. It is in this background that this Court in Kohinoor Elastics case [Kohinoor Elastics (P) Ltd. v. CCE, (2005) 7 SCC 528] observed that the requirement of the notifications must be adhered to strictly and cannot be diluted



by substituting the term "specified goods" with the nature of goods or the manner of disposal. In case the specified good clearly exhibits a brand name of another not covered by the notification, it would squarely fall within the confines of Para 4 of the notification; looking beyond the specified good to consider whether it is an input or not is not necessary in case of a conspicuous brand name. However, to apply this principle to the scenario of a specified good that does not contain a brand name at all would be equivalent to fitting a square peg in a round hole. **If a final product is marked or stamped with a brand name, it is clearly a branded good; to stretch this principle to imply that one not marked by any brand is an unbranded good, is untenable. In case a scrutiny of the good itself fails to reveal a brand name then the search must not end there; one ought to look into the surrounding circumstances of the good to decipher, if it is in fact branded or not.**

16. We are of the opinion that such an approach is necessary to maintain the essence of the concept of a brand name. A brand/trade name must not be reduced to a label or sticker that is affixed on a good. The test of whether the good is branded or unbranded, must not be the physical presence of the brand name on the good, but whether it, as Explanation IX reads, "is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of the person". Therefore, whether the brand name appears in entirety or in parts or does not appear at all cannot be the chief criterion; primary focus has to be on whether an indication of a connection is conveyed in the course of trade between such specified goods and some person using the mark.

17. Highlighting this principle, this Court in *CCE v. Rukmani Pakkwell Traders* [(2004) 11 SCC 801] observed thus: (SCC p. 804, para 6)

"6. The Tribunal had also held that under the notification the use must be of 'such brand name'. The Tribunal has held that the words 'such brand name' show that the very same brand name or trade name must be used. The Tribunal has held that if there are any differences then the exemption would not be lost. We are afraid that in coming to this conclusion the Tribunal has ignored Explanation IX. Explanation IX makes it clear that the brand name or trade name shall mean a brand name or trade name (whether registered or not), that is to say, a name or a mark, code number, design number, drawing number, symbol, monogram, label, signature or invented word or writing. This makes it very clear that even a use of part of a brand name or trade name, so long as it indicates a connection in the course of trade would be sufficient to disentitle the person from getting exemption under the notification. In this case, admittedly, the brand name or trade name is the word 'ARR' with the photograph of the founder of the group. Merely because the registered trade mark is not entirely reproduced does not take the respondents out of Clause 4 and make them eligible to the benefit of the notification."

18. Similarly, in *CCE v. Mahaan Dairies* [(2004) 11 SCC 798], it was noted as follows: (SCC p. 800, paras 6 & 8)

"6. We have today delivered a judgment in *CCE v. Rukmani Pakkwell Traders* [(2004) 11 SCC 801] wherein we have held in respect of another notification containing identical words that it makes no difference whether the goods on which the trade name or mark is used are the same in respect of which the trade mark is registered. Even if the goods are different, so long as the trade name or brand name of some other company is used the benefit of the notification would not be available. Further, in our view, once a trade name or brand name is used then mere use of additional words would not enable the party to claim the benefit of the notification.

8. It is settled law that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in *Rukmani Pakkwell Traders v. CCE* [(1999) 109 ELT 204 (CEGAT)]. We have already overruled the decision in that case. In this case also we hold that the decision of the Tribunal is unsustainable. It is accordingly set aside."

19. As aforesaid, once it is established that a specified good is a branded good, whether it is sold without any trade name on it, or by another manufacturer, it does not cease to be a branded good of the first manufacturer. Therefore, soft drinks of a certain company do not cease to be manufactured branded goods of that company simply because they are served in plain glasses, without any indication of the company, in a private restaurant. The good will continue to be a branded good of the company that manufactured it. The same principle would apply in the case of potato chips, chocolates, biscuits, wafers, powders and other such goods often sold from various locations.

20. In case of goods sold from exclusive single brand retail outlets or restaurants or stores, the fact that a good is sold from such a store ought to be a relevant fact in construing if the good is its branded good or not. In the case of such goods, perhaps a rebuttable presumption arises in favour of such goods being branded goods of the specified store. Such a presumption can be rebutted if it is shown that the specified good being sold is in fact a branded good of another manufacturer. Thus, branded potato chips, soft drinks, chocolates, etc. though sold from such outlets, will not be considered to be goods of such outlets. However, all other goods, sold without any appearance of a brand or trade name on them, would not be deemed unbranded goods; to the contrary, they may be deemed to be branded goods of that outlet unless a different brand or trade name appears.

21. Hence, we hold that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods under the SSI notification discussed above. A scrutiny of the surrounding circumstances is not only permissible, but necessary to decipher the same; the most important of these factors being the specific outlet from which the good is sold. However, such factors would carry different hues in different scenarios. There can be no single formula to determine if a good is branded or not; such determination would vary from case to case. Also, our observations must be limited to this notification and not supplanted to other laws with similar subject-matter pertaining to trade names and brand names."

As observed in the above case, the observation as to whether the brand name appears in entirety or in parts or does not appear at all cannot be the chief criterion; primary focus has to be on whether an indication of a connection is conveyed in the course of trade between such specified goods and some person using the mark. We have seen here that the impugned goods are available only at the More Stores. We have seen from the website of the applicant that the applicant ventured into food and grocery retail sectors under the brand 'more' with two formats — Supermarkets and Hypermarkets. In *CCE v. Stangen Immuno Diagnostics*, (2015) 11 SCC 761 : 2015, it has been observed that —



"The central idea contained in the definition is that the mark is used with the purpose to show connection of the said goods with some person who is using the name or mark. Therefore, in order to qualify as "brand name" or "trade name" it has to be established that such a mark, symbol, design or name, etc. has acquired the reputation of the nature that one is able to associate the said mark, etc. with the manufacturer."

In the present case, the applicant also has a family of customers purchasing from the More Stores and associating the Brand with some quality standards. Thus, the customers are aware of the More brand as well as the products of the More brand which are available in the More Stores alongwith products of other manufacturers. Therefore, a new strategy, all of a sudden, in view of the provisions of the GST Act, to discontinue the earlier practice of mentioning the Aditya Birla logo or the More brand would not mean that the customers would have any difficulty in associating or identifying the products with the More brand.

Therefore, the entries which are claimed applicable would not be applicable as -

- a) Indisputably, the applicant is supplying the goods in a unit container.
- b) Supply of the goods at the "More Stores" would amount to the goods being supplied by a particular supplier and under a brand name.

In view of above, we hold that when the position is as at above (a) and (b), the supplies of the products under Stream 1 or Stream 2 would not fit into the scheme of the entries requiring the following underlined condition -

XXXX other than those put up in unit container 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]

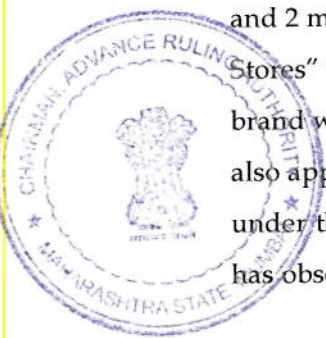
Explanation. -

(ii) (a) The phrase "brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

(b) The phrase "registered brand name" means, -

- (A) a brand registered as on or after the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;
- (B) a brand registered as on or after the 15th May 2017 under the Copyright Act, 1957 (14 of 1957);
- (C) a brand registered as on or after the 15th May 2017 under any law for the time being in force in any other country

We find that the applicant has argued that the mention of the name of the applicant is with regard to the mandatory requirements of some other statutes and therefore the goods being supplied by the applicant under Stream 1 and 2 would not be considered as branded. However it is clearly visible that the applicant though is proposing to make changes as per the Stream 1 and 2 mentioned above, it is equally clear that the goods are being supplied through the "More Stores" which is a registered brand as on the 15th May 2017 irrespective of whether or not the brand would be subsequently deregistered and further, the name "Aditya Birla Retail Limited" also appears on the unit container. Therefore, the applicant would not be eligible for the benefit under the entries requiring the fulfillment of the above conditions as the Hon. Supreme Court has observed that whether the *brand name appears or does not appear at all cannot be the chief criterion; primary*



focus has to be on whether an indication of a connection is conveyed in the course of trade between such specified goods and some person using the mark. And we have shown above that people are aware of the fact that More brand products are available at the More Stores alongwith the products of other manufacturers or brands. There is an identity established with the products which are available at no place other than the More Stores. We have come to the conclusion which is fortified by decisions of the Hon. Courts that the products supplied under Stream 1 and Stream 2 would amount to supply under a brand name on the basis of all the above factors and the attending circumstances.

Stream 3

The question in respect of Stream 3 needs details and facts as are submitted in respect of the Streams 1 and 2. The question cannot be raised in isolation and with an incomplete set of facts. Further, from the sample packaging pictures submitted, the question is found to be linked to the Streams 1 and 2. The words 'Value', 'Choice' and 'Superior' would be in addition to the facts as found in the Streams 1 and 2. In view thereof, having answered the questions in respect of the Streams 1 and 2, there arises no occasion to visit the question in respect of Stream 3. The applicant can refer to the answers in respect of the Streams 1 and 2.

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

ORDER

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

NO.GST-ARA-13/2017/B- 16 Mumbai, dt. 23/3/2018

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

Q.1 *Whether the subject goods, proposed to be sold under Stream 1 (refer Annexure I), where the package of the subject goods would merely have a declaration mentioning the name and registered address of the Applicant as the manufacturer, as per the statutory requirement under Subject Statutory Provisions, can be considered as 'not bearing a brand name', and, accordingly eligible for exemption from GST in terms of relevant entries to Notification No.2/2017 Central tax (Rate) dated 28th June 2017 ('CGST Notification'), and, the corresponding entries under Notification No.2/2017-Integrated tax (Rate) dated 28th June 2017 ('IGST Notification') and Notification No.2/2017-State Tax (Rate) dated 29th June 2017) [collectively referred to as 'the Exemption Notifications']?*

A.1 *Answered in the negative.*




Q.2 Whether the subject goods proposed to be sold under Stream 2 (refer Annexure I), where the package of the subject goods would have a declaration mentioning the name and registered address of the manufacturer as per the statutory requirement under the Subject Statutory Provisions as also the declaration 'Marketed by- Aditya Birla Retail Limited' can be considered as 'not bearing a brand name', and, accordingly eligible for exemption in terms of relevant entries to the Exemption Notifications?


A.2 Answered in the negative.

Q.3 Whether the declarations made on the package, by inter alia using common/generic terms viz. 'Value', 'Daily', 'Superior' and 'Choice', for the sole purpose of indicating the quality of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences can be construed to be a 'brand name' for the purpose of the Exemption Notifications?

A.3 The question cannot be raised in isolation. Refer to the answers in respect of the Streams 1 and 2.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
3. The Jurisdictional Commissioner of Central Tax

CERTIFIED TRUE COPY


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