

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. ShriVirendra Kumar Jain

Additional Commissioner

Office of the Commissioner CGST and Central Excise(Audit), Indore

2. ShriManoj Kumar Choubey

Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

GSTIN Number, if any / User-id	23AACCI2746NIZG
Name and address of the applicant	M/S ITALIAN EDIBLES PVT. LTD.309/1/8/8, BLOCK 3, MANGAL UDHYOG NAGAR, PALDA, INDORE, Indore, Madhya Pradesh, 452001
Clause(s) of Section 97(2) of CGST / SGST Act, 2017 under which the question(s) raised	Classification of goods(Section 97(2)(a) of CGST Act, 2017)
Present on behalf of applicant	SHRI PRADEEP ASAWA AND SHRI PALKESH ASAWA Cherered Accountant
Case Number	15/2021
Order dated	03/03/2022
Order Number	03/2022

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods and Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by **M/S ITALIAN EDIBLES PVT. LTD.309/1/8/8, BLOCK 3, MANGAL UDHYOG NAGAR, PALDA, INDORE, Indore, Madhya Pradesh, 452001**(hereinafter referred to as the Applicant), registered under the Goods & Services Tax.

The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act or MP GST Act would be mentioned as being under the GST Act.

3. **BRIEF FACTS OF THE CASE AND SUBMISSION OF THE APPLICANT ARE AS UNDER :-**

3.1 The applicant is engaged in the manufacture of an edible product under the brand name "Ber Berry", and it contains the following ingredients:

- Jujube Fruit
- Sugar

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- c. Salt
- d. Permitted Preservatives
- e. Mixed spices

3.2 The product consists of Jujube fruit commonly known as "Berphal" in India. It is basically the fruit itself which is packed in crushed/softened form and mixed with sugar and salt for flavouring. The steps involved in its preparation are as below:

- 3.2.1 Firstly, fresh jujube fruits are sorted, cleaned, and then soaked in hot water.
- 3.2.2 The soaked fruit is then transferred to a centrifugal machine and then to a steam jacketed tank where it is cooked with steam. At this stage the other ingredients i.e., sugar, salt, preservatives, and some spices are added for flavouring.
- 3.2.3 Once the fruit is cooked, it is transferred to small containers of 20 kgs each for cooling, and then it is packed into small sachets of around 11 grams each.

3.3 That, the product is packed into small sachets of around 11 grams each. 60 such sachets are packed into a larger pack for selling to the distributors and retailers. The end consumer would buy the small sachets and consume it after opening the same.

3.4 The product is in the form of the original jujube fruit itself which also contains the seeds and retains the essential taste and character of the fruit. It is cooked with the help of steam and mixed with sugar as a flavouring substance only.

4. Submission of the Applicant :-

STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS (I.E. THE APPLICANT'S VIEWPOINT AND SUBMISSIONS ON ISSUES ON WHICH ADVANCE RULING IS SOUGHT)

The applicant submits that, in their view the product should be treated as a fruit classified under Tariff Heading 0810. The applicant following points, in support of their view:

A] The product is like the original fruit only

1. The applicant submits that our product is essentially like jujube fruit only; and is also presented and marketed as such. It is just that the product has been prepared after treating the raw fruit to steam and adding some salt and sugar for flavouring purposes only. The process of steam treating and exposure to heat results in some pieces getting crushed, but otherwise the essential characteristics remain the same.
2. That merely heating / packing the fruit does not change its essential characteristics. The packed fruit still contains all the defining characteristics of the jujube fruit, such as it still contains the seed of the fruit and its outer peel, which signifies that the applicant has not processed the fruit resulting in any change in its essential nature and that the fruit remains clearly identifiable in the sachet. The addition of sugar and other spices is only undertaken to enhance its flavour and does not serve any other purpose.



3. The applicant believes that it should be classified under tariff item 0810 90 50, which is the appropriate classification for bore fruit also known as Jujube fruit.
- B] **The Applicant submitted that their product may also be classified as a fruit cooked by steaming or boiling in water, whether containing sugar or other sweetening matter**
4. Applicant submitted that the said product should be classified as fruit but if the said product may not be classified as a raw/fresh fruit, then they submit that it may be classified under tariff heading 0811 as a fruit cooked by steaming containing sugar.
5. The Tariff Heading 0811 includes following products:

0811		Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter
0811 10	-	<i>Strawberries:</i>
0811 10 10	---	Containing added sugar
0811 10 20	---	Not containing added sugar
0811 10 90	---	Other
0811 2010	-	<i>Raspberries, blackberries, mulberries, logan-berries, black, white, or red currants, and gooseberries:</i>
0811 20 10	---	Containing added sugar
0811 20 20	---	Not containing added sugar
0811 2090	---	Other
0811 90	-	<i>Other:</i>
0811 90 10	---	Containing added sugar
0811 90 90	---	Other

6. Applicant submits that, under the above heading, the "Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter" is covered. The procedure for preparation of the product under question "Ber Berry" involves cooking the fruit through steaming, which is on exact same lines with the procedure as specified above. Applicant further submitted while cooking, sugar, salt, and other spices are added to the heat-treated fruit to enhance its flavours. It is submitted that addition of salt to the product does not affect its classification under this heading. Further, fruits and nuts of this chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled, or shelled. Therefore, such treatment on the fruit does not affect its classification under this heading as long as the essential conditions for the classification in this heading are met. In this context, reliance is placed on the decision of the **Appellate Authority of Advance Ruling**, Uttar Pradesh in the case of **HarithBudhraja (M/S. Bharat Agro)**, the facts of which are summarised below:

- a. *The appellant was engaged in supply of peeled sliced pineapple put up in airtight containers in sugar syrup. Applicant vide their application dated 28-*



3-2018 sought Advance Ruling in respect of the HSN classification for peeled sliced Pineapple, put up in airtight unit container in sugar syrup.

- b. The Uttar Pradesh Goods and Services Tax, Advance Ruling Authority passed the order on 21-5-2018 holding that "Canned pineapple slices, dipped in sugar syrup" are covered under Tariff Item No. 2008 and are leviable to 6% CGST and 6% SGST under Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 (as amended).
- c. Aggrieved by this order, the appellant had filed an appeal dated 20-06-2018 before the Appellate Authority for Advance ruling.
- d. The appellant contended that their product qualifies for proper classification under CTH-0811 90 90, as fruit and nuts, cooked or uncooked, by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening agent. In the instant case the pineapple is peeled and cut into slices, steamed/boiled, cooked and packed in sugar syrup.
- e. The appeal was heard in person and the following discussions and findings were noted:
- i. It is noted in the instant case as submitted by the appellant that the sugar is being used as only a sweetener and not as a preservative i.e., for the purpose of preserving the inherent nature of pineapple.
- ii. That, the products classifiable under **Chapter 20 do not cover fruits which are prepared or preserved by the processes specified in Chapter 8**, as per Chapter Note 1(a) of Chapter 20 of Customs Tariff. Under Tariff item 0811, the fruits are cooked by steaming or boiling in water, which is also the case with the appellant's product.
- iii. Further, under Chapter 20, the products are generally having longer shelf life and the fruits are not clearly identifiable being preparations of fruits, in case of Chapter '8' the goods have a short shelf life, once the can is opened and the fruit i.e., pineapples slices, are **clearly identifiable** as such. (Emphasis added)
- f. Finally, modifying the ruling given by AAAR, Uttar Pradesh as per their Order No. 5, dated 21-5-2018, it was held that the product in question i.e., "Canned Pineapple Slices dipped in sugar syrup" is covered under the Tariff Item No. 0811.

7. Therefore applicant submits that it is clear from the above decision of Hon'ble Appellate Authority of Advance Ruling that in order for a product to be classified under the tariff heading 0811, it should fulfil the following conditions:

- a. It should be prepared by the process specified in Chapter 8



- b. The product should be clearly identifiable as a preparation of fruit.

Applicant submits that their product fulfils both the conditions and should therefore be covered under the same tariff heading. In support of this, submit as follows:

Process of preparation of the product is covered by Chapter 8

General Note 1(a) of Chapter 20 clearly specifies that Chapter 20 shall not include vegetables, fruits, or nuts, prepared, or preserved by processes specified in Chapter 7, 8 or 11. Therefore, Chapter 8 is overriding Chapter 20. Hence if a product is prepared through any process covered under Chapter 8, then by virtue of this clause the product cannot be classified under Chapter 20.

Tariff heading 0811 includes fruits that are cooked by steaming or boiling in water, whether or not containing added sugar. The applicant submits that the product in question is prepared by cooking it by steaming which is the exact same procedure as specified under the said heading. Therefore, it would be unquestionably classified under Chapter 8 and therefore not under Chapter 20.

The fruit should be clearly identifiable as such

For a product to be classified under Chapter 8, it should be identifiable as a fruit. In this context the applicant submits that, the product is made using the fruit 'Jujube' or as it is commonly known 'Bore' or 'Ber'. The final product contains all the defining characteristics of the Jujube fruit such as its seed and its outer peel through which it can be clearly identified to be Jujube fruit. The taste of the Jujube fruit also remains intact as the added sugar, salt, and spices only function to enhance the flavour, therefore, the essential taste and characteristic of the product remains the same. The product is nothing but the fruit itself in crushed form. All the other ingredients, which are insignificantly smaller proportions, are added only to complement the flavour of the fruit.

C] The applicant submitted that the said product cannot be classified under Chapter 20 in view of the submission given below:-

(i) The applicant is of a firm opinion that their product should not be classified under heading 2008, because that tariff heading only covers fruit preparations prepared by processes not specified or included elsewhere.

(ii) As submitted above, Chapter 20 specifically excludes fruits that are prepared using procedures specified under Chapter 7, 8 or 11. Following are some examples of processes that are covered under Chapter 7, 8 or 11:

- Chapter 7 includes vegetables that are chilled or dried
- Chapter 8 includes fruits that are dried, or provisionally preserved, or cooked by steaming or boiling in water
- Chapter 11 includes products of milling industry that have undergone specified processes like powdering, roasting, or drying which are covered in that chapter.

Hence if any vegetables, fruits, or nuts have undergone above processes then they are specifically excluded from Chapter 20. The said chapter only includes products that have been prepared using other processes not covered above, for example products preserved by sugar, or preserved by vinegar, or fruit jellies, or fruit juices etc.

(iii) In this context reliance is placed on the decision of the Hon'ble CESTAT, New Delhi in the case of **PREMIER MUSHROOM FARMS VERSUS COMMISSIONER OF C.**



EX., HYDERABAD, wherein it was held that Note to Chapter 20 excludes provisionally preserved vegetables from that chapter which is for prepared vegetables. Technical opinion obtained by both sides confirm the provisionally preserved nature of the vegetable. HSN note to Chapter 7 includes both cooked and uncooked vegetable under that heading. Thus, the entire material on record support classification under Chapter 7. Therefore, the Hon'ble Tribunal opined that the correct classification of button mushroom in brine is under Chapter 7.

8. The applicant submits, reliance is placed on the decision of Hon'ble Tribunal in case of **NORTHLAND INDUSTRIES Versus Collector of Central Excise - 1988 (37) E.L.T. 229 (Tribunal)**, wherein it is noted in para 10 as follows: -

[In this case] fresh fruits purchased from the market are washed, the inedible portions are taken out and the edible portions of the fruits are put into cans after adding sugar. The cans are then sealed.

Looking to the process of manufacture, and applying the principles laid down by the Supreme Court in the PIO Food Packers case and the Sterling Foods case, there can be no doubt that essentially the canned fruit is not different from the naturally occurring fruit. The latter has been made more presentable by removal of the inedible portions of the fruit and, by canning, the fruit has been made more long-lasting. But the canned fruit nevertheless is only fruit. It is not something else. In this view of the matter, and considering the words employed in sub-heading No. 0801.10, the subject fruit put up in unit containers would prima facie fall under the heading. The lower authorities have, however, classified the goods under sub-heading No. 2001.10. Prima facie Chapter 20 covers preparations of fruits, not fruits themselves. The subject goods do not seem to be preparations in the sense jams, jellies, marmalades, juices etc., are. But the lower authorities have placed reliance on Chapter Note 1 to Chapter 20 (reproduced earlier). The subject canned fruits are no doubt not provisionally preserved. For the reasons stated above, they cannot be brought under Chapter 20 unless they are preparations of fruit which, in our opinion, they are not. Chapter 8 seems more apt. For ruling out Chapter 8, the lower authorities have invoked the aid of the Explanatory Notes to Chapter 8 of the H.S.N. These notes have no statutory force and can be looked at only for their persuasive value provided, of course, they do not point to a different result than the one dictated by the Headings and the Statutory Chapter and section notes. We have already extracted the relevant explanatory notes. The very opening sentence states that Chapter 8 covers fruits generally intended for human consumption whether as presented or after processing. That is to say, fruits and processed fruits, as in the instant case, are covered by the chapter.

5. **QUESTIONS RAISED BEFORE THE AUTHORITY:**

Whether the product marketed under brand name "Ber Berry", manufactured, and supplied by the applicant, containing the ingredients jujube fruit, sugar, salt, permitted preservative (E-211) and mixed spices, should be classified under the Tariff Heading 0810 as Jujube fruit (Ber/Bore)



or under Tariff Heading 0811 as fruits cooked by steaming, or under the Tariff Heading 2008 as fruits, otherwise prepared or preserved containing added sugar?

5. RECORD OF PERSONAL HEARING

5.1 Shri Pradeep Asawa and shri Palkesh Asawa, Cherered Accountant/ Authorized Representative of the applicant appeared for personal hearing on behalf of the applicant and reiterated the submissions made in the application and also submitted AAAR, Uttar Pradesh decision given in case of HarithBudhraj(M/s Bharat Agro) vide order No.01/AAAR/17/9/2018 dated 17.09.2018.

6. COMMENTS OF THE JURISDICTIONAL OFFICER :

The Deputy Commissioner, State Tax, Circle-13, Indore vide his letter No.DC/State Tax/2021/13/641-A dated 15.12.2021 addressed to Advance Ruling authority, Indoresubmitted his view that the product is not covered under the chapter 20 and is covered under chapter No.8.

7. DISCUSSIONS AND FINDINGS:

7.1 We have gone through the submissions made by the applicant in his application and during the time of personal hearing, view of the Jurisdictional officers. The question raised by the applicant is squarely covered under Section 97(2)(a) of the CGST Act, 2017 being a matter related to classification of goods. We, therefore admit the application for consideration on merit.

7.2 We observe that the question before us is whether the product marketed under brand name "Ber Berry", manufactured, and supplied by the applicant, containing the ingredients jujube fruit, sugar, salt, permitted preservative (E-211) and mixed spices, should be classified under the Tariff Heading 0810 as Jujube fruit (Ber/Bore) or under Tariff Heading 0811 as fruits cooked by steaming, or under the Tariff Heading 2008 as fruits, otherwise prepared or preserved containing added sugar?

7.3 We observe that the Applicant have submitted the process of manufacture of product "Ber Berry" in which they used Jujube Fruit, Sugar, Salt, permitted preservatives and mixed spices. The process of manufacture are as under :-

- "(i) Firstly, fresh jujube fruits are sorted, cleaned, and then soaked in hot water.
(ii) The soaked fruit is then transferred to a centrifugal machine and then to a steam jacketed tank where it is cooked with steam. At this stage the other ingredients i.e., sugar, salt, preservatives, and some spices are added for flavouring.
(iii) Once the fruit is cooked, it is transferred to small containers of 20 kgs.each for cooling, and then it is packed into small sachets of around 11 grams each."

7.4. The Chapter heading 0810 is related to "other fruit, fresh" without process, we find that the product under question is processed and not covered under the tariff heading no.0810. Now the question is whether the product is covered under the Tariff Heading No. 0811 as fruits cooked by steaming, or under the Tariff Heading 2008 as fruits, otherwise prepared or preserved containing added sugar?. The Tariff heading of chapter heading 0811 and 2008 is reproduced below:

0811	Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter
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2008	Fruit, nuts, and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included
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- 7.5 We observe that the chapter 8 is covered either fresh fruit or fruit cooked by steaming/boiling in water only whereas the process of the applicant is more than the process covered under chapter 0811. In the applicants case, after the product soaked in hot water, transferred to steamed jacketed tank where it is cooked with steam and at this stage other ingredients i.e. sugar salt, preservative and some spices are added. The process of manufacture of product of the Applicant is not simple to cover in the chapter 0811. The process of the applicant is preparation of fruit which contained preservative and other ingredients i.e. sugar, salt and some spices also. We find that as per the ingredients and process for manufacture of product in question given by the Applicant, the said product is not covered under the chapter 0811 and rightly classified/covered under the chapter heading number 2008 of the tariff.
- 7.6 We observe that the order No.01/AAAR/17/19/2018 passed by the Appellate Authority for Advance ruling, UP in case of HarithBudhraj (M/s Bharat Agro) is not applicable as in the instant case, the process of manufacture and ingredient of product i.e. "Bery Berry" is entirely different. The other referred judicial decisions is also not applicable in this case.
- 7.7. In view of above, we find that the product "Ber Berry", is rightly classifiable under the chapter heading 2008.

8. RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

- 8.1 The Authority rules that the product marketed under brand name "Ber Berry" manufactured and supplied by the applicant is covered/classifiable under the GST Tariff heading 2008.
- 8.2 The ruling is valid subject to the provisions under section 103(2) until and unless declared void under section 104(1) of the GST Act.

(Manoj Kumar Choubey)
(Member)

(Virendra Kumar Jain)
(Member)

Copy to:- No. 15/2021/A.A.R/R-28/08

INDORE dated 03/03/2022

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore/Bhopal
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

सत्यप्रतिलिपि

Manoj

