

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Switz Foods Pvt Ltd
Address	PH-I, P-36 & 41, Kasba Industrial Estate, E M Bypass, Kolkata - 700107
GSTIN	19AAECS1805N1Z3
Case Number	40 of 2019
ARN	AD190819003783N
Date of application	September 18, 2019
Order number and date	37/WBAAR/2019-20 dated 09/12/2019
Applicant's representative heard	Sri Narasingh Patnaik, Authorised Representative Sri Souvik Banerjee, Authorised representative

1. Admissibility of the Application

1.1 The Applicant is stated to be a manufacturer of confectionery products like cakes, rusks etc. Some of its products contain portions of cooked chicken, fish or egg. It seeks a ruling on whether the products listed in para 2 of Annexure B (the Table of para 1.5 below) are classifiable under HSN 1601. An advance ruling is admissible on the classification of any goods under section 97(2)(a) of the GST Act.

1.2 The Applicant declares that the issue raised in the application is not pending nor decided in any proceedings under any provisions of the GST Act. The officer concerned from the revenue has not objected to the admissibility of the Application.

1.3 However, the West Bengal Appellate Authority for Advance Ruling (hereinafter the WBAAAR), while disposing the appeal against the ruling pronounced by this Authority in the matter of Akansha Hair & Skin Care Herbal Unit Pvt Ltd (Appeal Case No. 2/WBAAAR/Appeal/2018 dated 01/08/2018), cautioned this Authority against accepting a single application for classification of multiple products, where such products could not be clubbed together into a single category.

1.4 Section 97(2)(a) of the GST Act allows the filing of an application seeking advance ruling on the classification of any goods or services. In Akansha Hair & Skin Care Herbal Unit Pvt Ltd (supra), the Id WBAAAR does not deny the applicant the right to seek an advance ruling on multiple products. It merely limits the scope of the ruling to a bundle of goods or services that belong to a single category, displaying common attributes.

1.5 Following the instruction of the Id WBAAAR as discussed above, this Authority examines the products of the Applicant in terms of their common characteristics. In Table below the products are analysed in terms of the cereal component, non-vegetarian component and the method of cooking. These parameters are chosen keeping in mind the categories in which food preparations are classified in the First Schedule of the Customs Tariff Act, 1975 (hereinafter the Tariff Act), which is followed in the GST Act for the purpose of classification.

Table

SI No	Name of the product	Cereal component	Non-vegetarian component	Method of cooking
1	Chicken internet	Flour	Chicken	Baking
2	Chicken patties	Flour	Chicken	Baking
3	Chicken sausage roll	Flour	Chicken	Baking
4	Chicken cheese wrap	Flour	Chicken	Baking
5	Chicken tikka pizza	Flour	Chicken	Baking
6	Chicken singara	Flour	Chicken	Frying
7	Fish spring roll	Flour	Fish	Frying
8	Chicken cutlet	Flour	Chicken	Frying
9	Chicken finger	Flour	Chicken	Frying
10	Chicken sandwich	Flour	Chicken	Baking
11	Chicken 65	Flour	Chicken	Baking
12	Chicken cheese ball	Flour	Chicken	Baking
13	Shahi chicken fold	Flour	Chicken	Baking
14	Methi chicken pie	Flour	Chicken	Baking
15	Cheesy chicken sub	Flour	Chicken	Baking
16	Chicken seekh kebab	Flour	Chicken	Baking
17	Smoky chicken	Flour	Chicken	Baking
18	Chicken olive sub	Flour	Chicken	Baking
19	Mini chicken roll	Flour	Chicken	Baking
20	Mini chicken croissant	Flour	Chicken	Baking
21	Mini chicken burger	Flour	Chicken	Baking
22	Chunky chicken burger	Flour	Chicken	Baking
23	Chicken claws	Flour	Chicken	Baking
24	Chicken drumstick patties	Flour	Chicken	Baking
25	Chicken cheese swirls	Flour	Chicken	Baking
26	Dimer devil	Flour	Egg	Frying

27	Fish chop	Flour	Fish	Frying
28	Fish envelop	Flour	Fish	Baking

It is evident from the above table that most of the products (SI Nos 1 to 5 and 10 to 25 of the Table) are baked food preparations made of flour and contain chicken. The Application is, therefore, admitted, limiting the ruling to the classification of the above twenty-one products (hereinafter 'the products').

2. Submissions of the Applicant

2.1 The Applicant submits that it has so far been classifying the products under HSN 2106. The products contain more than 20% by weight of chicken meat. The products are preparations of meat instead of raw meat. They emerge as distinct food preparations through cooking when other ingredients are added and are separately identifiable as Chicken Kebab, Chicken Burger etc. The Applicant, therefore, argues that the products are classifiable under HSN 1601 instead of HSN 2106. In support of its argument, the Applicant refers to the decisions of CESTAT in Venky's Fast Food [2000 (124) ELT 939 (Tri-Del)].

2.2 The Applicant also submits a report on testing of the samples of its products to establish that the products contain more than 20% by weight chicken meat. National Collateral Management Services Ltd, which has a testing laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories, has done and prepared the test report.

3. Submissions of the Revenue

3.1 The concerned officer from the Revenue submits that he has no comment to offer apart from admissibility of the Application, which is considered in para 1.2 above.

4. Observations & Findings of the Authority

4.1 Baked food preparations of flour are classifiable under HSN 1905, which includes bread, pastries, cakes, biscuits and *other bakers' wares*. Explanatory Notes to HSN, Third Edition, published by the World Customs Organization (hereinafter EN) clarifies that the heading 1905 includes all bakers' wares. Any food preparation that involves baking as the method of cooking should, therefore, be included under HSN 1905. EN further elaborates on the commonly used ingredients of such products. They include inter alia flour and meat.

4.2 Chapter Note 1(a) to Chapter 19 of the Tariff Act, however, excludes from the said chapter food preparations containing more than 20% by weight of sausage, meat, meat offal, fish etc. HSN 1905, therefore, includes only those baked food that does not contain more than 20% by weight of sausage, meat, meat offal, fish etc.

4.3 Food preparations, containing more than 20% by weight of sausage, meat, meat offal, fish etc. are included in Chapter 16 (Chapter Note 2 to Chapter 16). According to Chapter Note 2 to Chapter 16 and EN, Chapter 16 the weight of meat to be considered at the stage

when it is presented to the customer as foodstuff and not at the ingredient level before preparation of the food.

4.4 The Applicant argues on the strength of the test report referred to above that the products are preparations of meat, having more than 20% by weight of chicken meat after the ingredients are mixed and prepared into distinct food products. It also refers to the decision in Venky's Fast Food (supra) that the products, being preparations of chicken meat, should be classified under HSN 1601.

4.5 The decision in Venky's Fast Food (supra) is based on the Excise Tariff Act, as it stood before 2005. Extracts from Heading 1601 of ETA before amendment in 2005 is reproduced below:

"Preparations of meat...of fish or other aquatic invertebrates, including sausages and similar products, extracts and juices, prepared or preserved fish and caviar and caviar substitutes put up in unit containers and ordinarily intended for sale."

HSN 1601 in the Tariff Act reads today as below:

"Sausages and similar products, of meat, meat offal or blood; food preparations based on these products."

4.6 The significant distinction lies on two counts: (i) meat is now clearly spelt out as the base of the food preparation and preparations of fish etc. are excluded from 1601, and (ii) the condition of putting up in unit containers is done away with. Difference between the preparations containing meat and food preparations based on meat is significant. In Dodsal Corporation Pvt Ltd [2011 (263) ELT 719 (Tri-Bang)] the CESTAT examined when food preparation classifiable as "other bakers' ware" qualified to be treated as food preparation based on meat. The appellant therein manufactured pizza, sometimes with toppings containing more than 20% by weight of chicken meat. The Revenue believed that chicken pizza, which was a baked food preparation containing more than 20% by weight of meat, should be classified under heading 1601. The court agreed with the appellant that food based on meat must have meat as the starting point. It could not survive as a distinct food product unless the meat were there.

The starting point for the appellant's pizza was wheat flour which was converted into pizza base and later topped either with vegetarian or non-vegetarian toppings or both. Pizza all over the world contained pizza base and cheese as basic ingredients. Use of meat as toppings in a specific variety of pizza did not make it food preparation based on meat, even if the meat content was more than 20% by weight. The court, therefore, upheld the appellant's view that pizza with chicken meat as topping was not to be classified under heading 1601. Venky's Fast Food (supra) was distinguished.

4.7 In the present context, the products that survive as bakers' wares if the chicken meat is removed cannot be labelled food preparations based on meat. Chicken meat is used as a filling in most of the products where bread or baked flour is used as the base. It appears from the description of cooking annexed to the Application that bread or other baked product, prepared from dough of flour, and the filling containing chicken meat are cooked separately. The baked products (sandwich, puff, patty, burger etc.) as distinct food preparations will survive even if the chicken meat is excluded from the filling. They are,

therefore, not food preparations *based* on chicken meat. Such bakers' wares cannot, therefore, be classified under HSN 1601.

4.8 In Venky's Fast Food (supra), the preparations were made of fried chicken like Kebab and Kofta, where the food preparation did not survive if the chicken were removed. A few of the Applicant's products like Chicken Cutlet, Chicken Finger, Chicken Seekh Kebab display similar characteristic. Such products may be classified under HSN 1601, provided they contain more than 20% by weight of meat. The concerned officer from the Revenue may examine the test report and decide based on fact.

In light of the above discussion, we rule as under:

RULING

The Application is admitted for the products that belong to the category of baked food preparations made of flour and contain chicken and mentioned under SI Nos 1 to 5 and 11 to 25 of the Table in para 1.5 above.

Chicken meat is used as a filling in most of the above products where bread or baked flour is used as the base. The baked product (sandwich, puff, patty, burger etc.) as distinct food preparations will survive even if the chicken meat is excluded from the filling. They are, therefore, not food preparations based on chicken meat. Such bakers' wares cannot, therefore, be classified under HSN 1601.

A few of the Applicant's products would not survive as food preparation if the chicken meat were removed. Such products may be classified under HSN 1601, provided they contain more than 20% by weight of meat.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.


(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling