



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)
Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)

A.R.Com/11/2020

Date:29 .03.2022

TSAAR Order No.17/2022

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. Agro Tech Foods Limited, 31, Sarojini Devi Road, Secunderabad, Rangareddy, Telangana - 500 003 (36AAECA0303M1Z0) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted
4. **Brief facts of the case:**

The applicant M/s. Agro Tech Foods Limited is selling readymade popcorn. According to him ready to eat (RTE) popcorn is obtained by popping the maize corn by using heating process which are subsequently coated with the palmolene oil, salt natural or artificial flavouring and spices.

In his opinion, Heading 1904 includes Prepared foods obtained by swelling or roasting of cereals or cereal products are covered under Tariff Heading 1904. Thus, the popcorn being manufactured by the Applicant by using the process of swelling by heating would merit classification under Heading 1904. That the same classification has been confirmed by the Courts in India and overseas.

However that, in certain cases, RTE popcorn has also been held to be classified under Tariff Heading 2008 i.e., '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'.

Further that the tariff heading 2106 is a residuary entry which covers food preparations which are not covered elsewhere like mithai, mishtans, sweetmeats, namkeen etc. Thus, for an item to be classified under this entry, it must not be falling under any other chapter heading. Thus, the popcorn containing an element of flavor (strawberry/chocolate) may also merit classification under Heading 2106.

Therefore they are desirous of clarification regarding their products' classification in view of the above (3) tariff codes.

5. **Questions raised:**

What would be the correct HSN classification and consequently rate of GST applicable on 'Ready to Eat' popcorn sold in retail packages?

6. **Personal Hearing:**

The Authorized representatives of the unit namely Sri. Vikas Agarwal, AR attended the personal hearing held on 24.03.2022. The authorized representatives reiterated their averments in the application submitted and requested to dispose their application based on merits at the earliest.

7. **Discussion & Findings:**

The applicant is in the business of selling among other commodities Ready to Eat (RTE) popcorn. These popcorn are usually flavoured with salt or caramen or strawberry or chocolate or kettled popcorn without any flavour. By his own admission, the applicant submits that the popcorn is basically prepared by swelling of maize corn. This product is classified under tariff heading '1904' which is enumerated at Serial No. 15 of Schedule III of Notification No. 01/2017 dated: 28.06.2017. The tariff head '1904' reads as follows:

"Prepared foods obtained by the swelling or roasting of cereals or cereal products (for eg. Corn flakes); cereals {Other than maize(corn)} in grain form or in the form of flakes or other worked grains (except flour, groats & meal), pre-cooked, or otherwise prepared, not elsewhere specified or included".

The Serial No. 15 referred above excludes tariff item '1904 10 20' which is 'prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals'.

As seen from the above entry and applying the facts of the case supplied by the applicant it is clear that the RTE popcorn falls under tariff heading '1904' as it is prepared by swelling the corn by a process of heating the same.

It is the opinion of the applicant that in certain cases, RTE popcorn was treated to fall under tariff heading '2008' i.e., 'preparations of vegetables, fruits, nuts or other parts of plants' and in certain other items it was treated under tariff heading '2016' i.e., residuary entry covering food preparations which are not covered elsewhere.

As seen from the facts of the case the tariff heading '2008' pertains to a class of commodities covering fruits, nuts and other parts of plants and not the preparations pertains to cereals etc., which are enumerated in the competing tariff entry '1904'. Therefore the commodity under question clearly does not fall under tariff head '2008'.

Regarding the contention of the applicant with respect to classification of RTE popcorn under a general tariff heading '2016' it is to inform that, the Hon'ble Supreme Court of India in a catena of case laws held that a general entry or a residual entry will be preferred for a classification of commodity only in the absence of a specific entry.

The Apex Court of India in the case of Indian Metals & Ferrous alloys Vs CCE AIR (1991) SC 1020 held that in classification of goods a specific entry will be preferred to a general entry. Similarly the Hon'ble Supreme Court in the case of State of Karnataka Vs Durga projects (2018) 4 SCC 633 in its (3) member bench judgment held that only such goods which cannot be brought under specific entries in the tariff could be attempted to be brought in residual entry.

Hon'ble Supreme Court of India in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Ors. (1976)2SC C 241 held that "when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause.

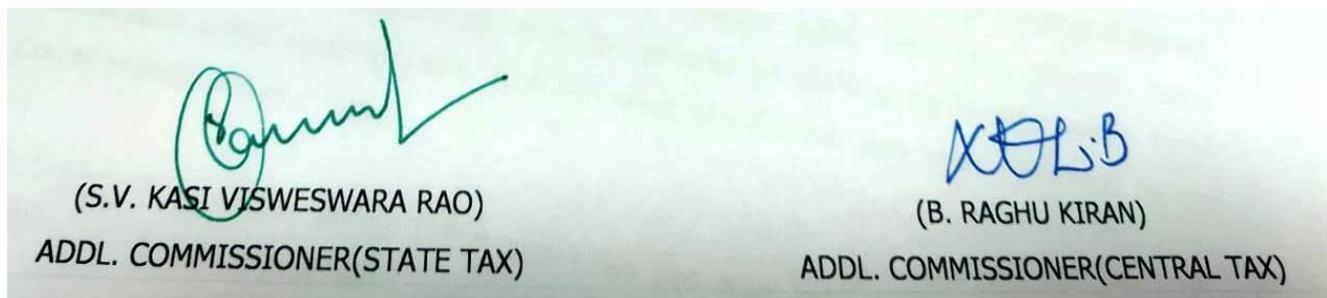
Thus when a specific entry is available for enumerating the commodity 'RTE popcorn' to relegate it to the orphanage of the residuary entry will be against the principle of classification as held by Hon'ble Apex Court in the above precedents. Hence RTE popcorn is classifiable under tariff head

'1904' enumerated at Serial No. 15 of Schedule III of Notification No. 01/2017 dated: 28.06.2017.

8. **The ruling is given as below:**

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
What would be the correct HSN classification and consequently rate of GST applicable on 'Ready to Eat' popcorn sold in retail packages?	HSN classification is '1904' and the rate of tax is 9% SGST & CGST each.



[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
M/s. Agro Tech Foods Limited,
31, Sarojini Devi Road, Secunderabad,
Rangareddy, Telangana - 500 003.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Secunderabad Commissionerate, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad 500 004.

Copy to:

1. The Superintendent (Central Tax), Begumpet-I Range.
//t.c.f.b.o//

Superintendent (Grade-I)