

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

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

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 12.09.2018 from M/s Savencia Fromage and Dairy India Private Limited, Noida, Uttar Pradesh – Order– Reg.

- 1) M/s Savencia Fromage and Dairy India Private Limited, A 41, Hoseiry Complex, Phase-2 Extension, Noida, Uttar Pradesh, 201305 (here in after called the applicant) is a registered assessee under GST having GSTN : 09AAACD3039P1ZD.
- 2) The Applicant intends to Manufacture 'Breaded Cheese'.
- 3) The Applicant has submitted application for Advance Ruling dated 12.09.2018 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexure and attachment.
- 4) The Applicant in his application sought following question for determination by the Authority –

Classification of 'Breaded Cheese'

- i) Question on which advance ruling is required:- Whether the product '**Breaded Cheese**' ('impugned goods') is classifiable as 'cheese' under Heading 0406, and accordingly, subject to CGST and SGST at the rate of 6 percent each under S. No. 13 of the Schedule-II appended to Notification No. 1/2017- Central Tax (Rate) dated June 28, 2017

('Notification No. 1/2017- CT(R)') and Notification KA.NI.-2-836/XI-9(47)/17-U.P.Act-1- 2017-Order-(06)-2017 dated June 30, 2017 ('Notification No. 836/17') respectively.

ii) Brief details about impugned goods

a) M/s Savencia Fromage and Dairy India Private Limited, situated at A 41, Hoseiry Complex, Phase-2 Extension, Noida, Uttar Pradesh-201305 ('Applicant') is registered with jurisdictional authorities vide GSTIN 09AAACD3039P1ZD The Applicant is *inter alia* engaged in manufacture and supply of impugned goods.

b) The ingredients employed for preparing impugned goods are tabulated as under:

| Ingredients |
|----------------------------|
| Cheese |
| Milk Solids |
| Bread Crumbs |
| Batter for coating |
| Vegetable Oil (for frying) |

The impugned goods also contain permitted quantity of preservative, emulsifiers, stabilizers and acidity regulator.

c) The process employed for making impugned goods is elaborated as under:

| | |
|--------|---|
| Step 1 | Raw processed cheese is cut into small pieces and may or may not be mixed with spices, seasonings and or vegetable pieces |
| Step 2 | The smaller pieces of cheese are formed and coated with batter and breaded with bread crumbs |



| | |
|--------|---|
| Step 3 | The battered and breaded cheese are then partially fried in vegetable oil |
| Step 4 | The partially fried breaded cheese pieces are then frozen and |

- d) To ensure quality, the Applicant ensures that the content of cheese in impugned goods always remains higher than content of bread crumb used for coating.

5) The application for advance ruling was forwarded Dated 13.11.2018 to the Jurisdictional GST Officer to offer their comments/views/verification report. The report/reply received via C.No. V(30)Tech./CGST-Noida/Div-VI/Misc.Report/52/2018 Dated 28.11.2018, as under:

i) Impugned goods i.e. Breaded Cheese is not classifiable as cheese under heading 0406 @6%CGST + @6%SGST as impugned items is different from cheese classified under heading No. 0406. As per Chapter 4 “ All other goods of this chapter not specified above are subject to GST@18%, therefore the impugned item needs to be taxed @ 9% CGST +@9% SGST. The impugned item may be classified under Tariff 21069099 which includes Sweet meats commonly known as ‘Misthan’ or Mithai or called by any other name. They also include products commonly known as “Namkeen, Bhujia, Chabena or called by any other name. Such products remain classified in these subheadings irrespective of the nature of their ingredients.

ii) After going through the manufacturing process impugned item remains cheese, it becomes snacks which is just ready to eat after reheating and is classified under tariff heading 21069099.

iii) As per Explanatory Notes to HSN issued by “Cheese which have been coated with batter or bread crumbs remains classified in this chapter i.e. 0406 whether or not they have been pre-cooked provides that the goods remain the character of cheese but the impugned item as per manufacturing/preparation process seems not to be in character of cheese



but emerges as a snack i.e. Cheese Balls and ready for consumption after re- heating.

iv) 8In the light of the above mentioned submissions, the impugned item "Breaded Cheese/Cheese Balls" needs qualify for classifying under tariff sub heading 21069099.

6) The applicant was granted a personal hearing on 04.12.2018. Miss Shruti Karnatak, Advocate and Miss Sneha Gosh, Advocate, Authorized representatives appeared for hearing. During the personal hearing party submitted/intended:-

that their product under discussion falls under 0406- cheese and as per submission of departmental representative it shall fell under CTH- 21069099- other. Food preparation not elsewhere specified or included.

Advocates stated that in support of their claim they have submitted detailed submission dated 13/05/18 in which they have made description of goods clear. In their opinion though they have submitted detailed wrote up, however they would like to submit the certain images of product to support their case.

DISCUSSION AND FINDING

We have heard the Case, gone through the grounds of the appeal as well as the submissions made during the personal hearing.

We observe that the applicant sought Advance Ruling on the following issue:-

Classification of 'Breaded Cheese'

The authority for advance ruling examined the case meticulously. It is noticed from their label and packaging that the impugned goods are being sold in the name of "Cheese Balls (Garlic n Herbs) - Proprietary food: Snacks and Savories-Potato

cereals, Flour or Starch Bread” which indicates that they are being sold in the category of snacks.

It is pertinent to mention that the applicant has not produced on record any Test Report specifying the ingredients and process undertaken for preparation of the impugned goods: neither with the enclosure of application for advance ruling nor at the time of personal hearing. It was informed through E-mail dated 08.12.2018 by the applicant that the third party test report is a time-taking procedure and it was not possible for them to arrange for it at such short notice.

The applicant has sought ruling that whether the goods under reference were classifiable as 'cheese' under Heading 0406, and accordingly, subject to CGST and SGST at the rate of 6 percent each under S. No. 13 of the Schedule-II appended to Notification No. 1/2017- Central Tax (Rate) dated June 28, 2017 ('Notification No. 1/2017- CT(R)') and Notification KA.NI.-2-836/XI-9(47)/17-U.P.Act-1- 2017- Order-(06)-2017 dated June 30, 2017 ('Notification No. 836/17') respectively. For the goods to be classifiable under heading No.0406, the following is the relevant condition:-

“Cheese which have been coated with batter or breadcrumbs remain classified in the heading whether or not they have been pre-cooked, provided that the goods retain the character of cheese.” (Explanatory notes to HSN Section-1, Chapter-4).

From the above it is seen that the crux of the matter revolves around the issue that whether the subject goods retain the characteristics of cheese even after being coated with batter and bread crumbs and pre-cooked partially, as is done in the case of the subject goods.

In the above context, no method/test has been prescribed in the relevant provisions (HSN, Custom Tariff, GST Provisions) to determine the character of



cheese. In such a situation and in the context of a taxation statute like GST which taxes the supply of goods/services, the relevant factor for determining the characteristics of cheese would be its identification as cheese per se in the commercial market. In other words, if the cheese balls under reference are bought and sold as cheese per se, then that should be sufficient ground to hold that subject goods are indeed nothing else but cheese.

However, we find from the manufacturing process described as well as from label and packaging of goods that these are not cheese per se but have been converted into an article of cheese having the identity and characteristics of snack foods. Here it will be pertinent to mention that a number of similar items are available in the market which are normally based on flour, potatoes, soybeans, pulses etc. but all such items are not bought and sold as the ingredients of which they are predominantly composed (Potatoes, Flour etc.) but as distinct snack food articles. Similar is the case of subject goods as after undergoing the manufacturing process and packaging, they lose the identity of cheese and acquire that of a snack food article made from cheese.

Further, we find from the label/packaging of the goods that the percentage of cheese is not more than 55%, which indicates that though cheese is the major component of the goods but it cannot be said to be present in such quantity that it predominates or overwhelms the presence of other ingredients. It is observed that the percentage of other ingredients is as high as 45%, which should prevent the goods from retaining the character of cheese. Therefore acceptance of these goods as cheese would not be the correct position.

The applicant has produced certain rulings of U.S. Customs in favor of classification under heading 0406 but in our opinion, since the conditions prevailing



in both the countries are vastly different and it is also not clear that the goods under consideration before the U.S. Customs were identical to the instant goods, we are unable to apply the ratio of these rulings. Since, the cheese balls themselves are not specified in the tariff and they are admittedly a food preparation, hence they are classifiable as 'Food preparations not elsewhere specified or included' under heading No. 2106.

In view of the above, both the members unanimously rule as under;

RULING

"Cheese Balls' under reference are classified under Schedule III of GST Laws, vide heading 2106 as 'Food preparations not elsewhere specified or included' and taxable @ 18% GST (9%CGST + 9%SGST).


Vivek Kumar Jain

Member of Authority for Advance
Ruling


R K Khandelwal 10/12/18

Member of Authority for Advance
Ruling

To,

M/s Savencia Fromage and Dairy India (P) Limited,
A 41, Hoseiry Complex, Phase-2 Extension,
Noida,
Uttar Pradesh 201305.

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 17

Date: 10.12.2018

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Assistant Commissioner, CGST & Central Excise, Division-6, In-charge Range- 26 Noida, Uttar Pradesh.
4. Through the Additional Commissioner, Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

