

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 09.05.2019 from M/s Atul Kumar Rajpal, Lucknow, Uttar Pradesh – Order– Reg.

1) M/s Atul Kumar Rajpal, 44CA, Rajpal Plaza, Sringer Nagar, Kanpur Road, Alambagh, Lucknow 226005 (here in after called the applicant) is a registered assessee under GST having GSTN: 09ADXPR2479Q123.

2) The applicant plans to manufacture and sell “Namkeen” duly sealed & packed in printed pouches containing the details of the manufacturer.

3) The Applicant has submitted application for Advance Ruling dated 09.05.2019 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexure and attachments.

4) The Applicant in his application sought clarification and Advance Ruling as follows: –

- i) What shall be the present applicable CGST & SGST tax rate on their final product i.e., “Namkeen” duly packed & sealed in printed pouches?
- ii) Whether their proposed plan to sell the said final product on payment of tax @ 5% is proper/legal or not?

5) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report.

6) The applicant was granted an opportunity to be heard in person fixed on 04.07.2019. Mr. Atul Rajpal, Applicant, appeared for hearing on the date of Personal Hearing.

During the hearing they stated that they have already written their facts and findings in application. They have nothing more to add. They requested that advance ruling on requested question may be entertained as soon as possible.

DISCUSSION AND FINDING

7) We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the question sought by the applicant to decide before us are:-

- i) What shall be the present applicable CGST & SGST tax rate on their final product i.e., "Namkeen" duly packed & sealed in printed pouches?
- ii) Whether their proposed plan to sell the said final product on payment of tax @ 5% is proper/legal or not?

8) The Applicant in his application submitted the description of work that he plans to manufacture and sell "Namkeen" duly sealed & packed in printed pouches containing the details of the manufacturer. Pack is the retail pack which is ultimately sold to the final consumer. Further, they do not have any registered trademark or registered brand name or registered symbol (under copyright act). Hence no trademark or registered brand name or registered symbol shall be printed on the retail pouch of the final product i.e. "Namkeen". Also no such brand name or trademark or symbol shall be printed on the wholesale pack. MRP of such product is likely to be Rs 1/-, 2/- & 5/-.

The ingredients as per applicant of the "Namkeen" (packed in sealed pouch) will be processed Besan/Matar Atta/Rice Atta/Corn/Grit/Rice Grit/Fry Kachari. Final product will be ready to eat.

9) As per the understanding of the applicant, they think that they shall classify the final product under 210690 and shall pay total tax @ 5% (CGST

@2.5% & SGST @ 2.5%). Further, it is requested by the applicant to clarify following issues:

- a) What shall be the present applicable CSGST & SGST Tax rate on their final product i.e. "Namkeen" duly packed & sealed in printed pouches (unit container) as detailed above?
- b) Whether their proposed plan to sell the said final product on payment of tax @ 5% is proper / legal or not?

10) Now, coming to the first question raised by the applicant regarding applicability of CGST & SGST Tax Rate on the final product, for that, firstly final product needs to be classified under proper Heading, after going through Notification No. 01/2017-Central Tax (Rate), dated 28th June, 2017 goods describes under Chapter/heading/ sub heading /tariff item 2106 90 as *Namkeens, bhujia, mixture, chabena and similar edible preparations is ready for consumption form.*

From the above, it can be observed that the impugned goods are more appropriately classifiable under Heading 2106 90, from the details provided by the applicant such as picture of the covering of the package, ingredients of the product etc.

As per current Tariff 12 % IGST or (6 % CGST & 6 % SGST) is applicable on 2106 90.

Now, coming to the second question raised by the applicant is whether their proposed plan to sell their final product @ 5 % is proper/Legal?

11) The Notification No. 01/2017-Central Tax (Rate), dated 28th June, 2017 (and corresponding notifications under SGST Acts and IGST Act) is the central point of discussion here. The said notification notifies the rate of the central tax on recommendations of the Council.

Vide Notification 34/2017-Central Tax (Rate) dated 13.10.17 the words "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 any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE]”, were substituted.

Therefore, for availing reduction in rate of the duty, the goods shall be other than those goods fulfilling the said conditions mentioned in (a) and (b).

12) The brand name, as defined under the said GST notification, includes any name, which may be name of the manufacturer as well, which may be seen as under:-

“The phrase "registered 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, and which is registered under the Trade Marks Act, 1999.”

It is common knowledge that the name of a manufacturer, mentioned on a product, duly indicates a connection in the course of trade between the goods in question and such manufacturer; therefore, in view of the above definition, the name of the applicant mentioned on the packaging of the goods under reference as the manufacturer thereof, qualifies as a brand name on which an actionable claim or enforceable right in a court of law is available.

13) In view of the above, the answer to the second question raised by the applicant that, if their proposed plan to sell their final product @ 5 % is proper/Legal is if the Applicant voluntarily forego the enforceable right to such brand name (i.e. the expression of ‘*details of manufacturer*’), in the manner as prescribed under the Amended Notification and claim reduction in payment of duty on supply of Products under S. No. 46 of said amended Notification, the applicant will be eligible for payment of reduced rate of duty under the said notification.

In the instant case, the applicant is packing their product in unit containers/ retail pouches with the details of the manufacturer on the packaging for supply of Products. Since, namkeens, bhujia mixture, chabena and similar edible products

packed in unit containers/retail pouches are taxed at the rate of 12 % GST (6% CGST + 6% SGST) under the said notification. To avail reduction in duty, if the manufacturer fulfills the condition of the notification 28/2017-Central Tax (Rate) dated 22.09.2017 subject to the condition (a) as in the Annexure-I which is as follows:-

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);

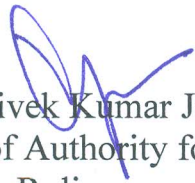
Therefore, it is clear that if the applicant voluntarily foregoes the brand name (Name of the manufacturer in this case) used by them subject to conditions as in the Annexure of the said notification, the applicant shall be eligible for reduced rate of from duty under the said notification.


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

RULING

In respect of question (i) applicable CGST & SGST tax rate on the final product i.e. "Namkeen" duly packed & sealed in printed pouches will be 12 % GST (i.e. 6 % CGST + 6 % SGST).

In respect of question (ii), we hold that if the Applicant voluntarily forego the enforceable right to such brand name subject to fulfillment of the condition (a) in Annexure I of the Notification No. 28/2017-Central Tax (Rate) dated 22.09.2017, in that case proposed plan to sell the said final product on payment of tax @ 5 % will be proper/legal.


Vivek Kumar Jain
Member of Authority for Advance
Ruling


Sanjay Kumar Pathak
Member of Authority for Advance
Ruling

To,

M/s Atul Kumar Rajpal,
44CA, Rajpal Plaza, Sringer Nagar,
Kanpur Road, Alambagh,
Lucknow 226005

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 36

Date: 05.03.2019

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 Commissioner, CGST & CEX, Lucknow, Uttar Pradesh.
4. The Deputy Commissioner, CGST & Central Excise, Division-II, Lucknow, Uttar Pradesh;
5. Through the Additional Commissioner, Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.