

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 08.04.2019 from M/s LVP Foods Private Limited, 3 Km Stone, Hasanpur Road, Gajraula, Amroha, Uttar Pradesh, 244 235- Order– Reg.

1) M/s LVP Foods Private Limited, 3 Km Stone, Hasanpur Road, Gajraula, Amroha, Uttar Pradesh (here in after called the applicant) is a registered assessee under GST having GSTN: 09AABCL2517K1ZH.

2) The applicant is a limited company engaged in the processing and packing of milk in pouches. The applicant propose to manufacture and supply a new product– ‘Instant Tea Whitener’ which would be used like any milk powder used in hotels, restaurants, etc. as well as households for making instant tea and coffee and known as “milk powder” in common trade parlance.

3). As per applicant, the main constituent of ‘Instant Tea Whitener’ would be standard liquid milk which would undergone various process like filtration, separation, pasteurization, evaporation, homogenization etc. to obtain ‘Instant Tea Whitener’ in powdered form, which would then be packed in unit container/sachets. For manufacturing of 1kg of ‘Instant Tea Whitener’, following raw materials would be used:-

- i. 2.70 kg of standard liquid milk.
- ii. 160 g of Vegetable fat
- iii. 354 g of Maltodextrin
- iv. 210 g Sugar



[Handwritten signature]
5/11/19

4). The following questions have been posted by the applicant, in its application dated 08.04.2019 (received by the Authority on 14.06.2019), before the Authority: –

- i. What shall be the classification of the above product manufactured and proposed to be supplied by the applicant?
- ii. What shall be the rate of GST on the said product in terms of the above classification?

5). The applicant has further submitted that as per their view the aforementioned product could be most appropriately classifiable under Chapter Heading 0402. In support of their view the applicant have adduced the following points:

5.1) In the common parlance, the product supposed to be manufactured and marketed by the applicant will be known as instant tea milk powder. The HSN code “0402” covers milk concentrated and containing added sugar or other sweetening matter whether liquid, solid or paste.

5.2) As per Rule 2b of The General Rules for interpretation of the first schedule (Import Tariff), any reference in a heading to a material/substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. In the Applicant’s case, the Chapter Heading 0402 covers milk and even in the addition of other material in small quantities it remains to be milk powder classifiable under Chapter Heading 0402.

5.3) As per Rule 3a of the said Rules of interpretation, the heading which provides the most specific description shall be preferred to heading having more general description.

5.4) According to Rule 3b of the Rules of interpretation, in case Rule 3a is not applicable, the goods shall be classified as if they consisted of the material/raw material which give their essential character. In the applicant’s case, the



essential character to 'Instant Tea Whitener' is given by liquid milk. The said product cannot be manufactured without milk. All other ingredients are ancillary in nature.

5.5) The applicant also paid reliance on various case laws to vindicate their stand that the 'Instant Tea Whitener' proposed to be manufactured by them is most appropriately covered under Chapter Heading 0402.

6) The applicant was granted a personal hearing on 05.08.2019. Shri Kapil Vaish, CA, and Shri Ashish Vaish, CA, Authorized representatives of the applicant, appeared for hearing.

During the personal hearing they submitted the copy of relevant Notification, Tariff entries, Explanatory notes and case laws. They also provided RSS of 'T-Rich' manufactured by M/s Goodrich Carbohydrate Ltd, Karnal Haryana and submitted that their product along with ingredients will be similar in nature. Later on, they also provided a copy of Invoice for T-Rich Milk Mix, issued by M/s Lokenath Enterprises, Changrabandha, West Bengal, wherein the classification of said product was made under Chapter Heading 0402.

7) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter, which were received in this office vide letter C. No. 20-CGST/Misc./L.V.P. Foods/R-Gaj/12/2019/188 dated 30.07.2019, wherein he has reported that "the HSN code of milk powder is 40.2, sub code is 04022990 and the GST applicable rate is 5%.

DISCUSSION AND FINDING

8) We have gone through the submissions made by the applicant and have examined the detailed explanation submitted by them. At the outset, we find that the issue raised in the application 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 merits.

9) We observe that the questions sought by the applicant are-

I. What shall be classification of the above product manufactured and proposed to be supplied by the applicant?

II. What shall be rate of GST on the said product in terms of the above classification?

10) Here, we observe that the Chapter heading 0402 of Custom Tariff Act, 1975 reads as under:-

Tariff Item	Description of Goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter			
0402 20	- In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5% :			
0402 10 10	--- Skimmed Milk	kg.	60%	-
0402 10 20	--- Milk food for babies	kg.	60%	-
0402 10 90	--- Other	kg.	60%	-
	-In powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5% :			
0402 21 00	--Not containing added sugar or other sweetening matter.....	kg.	60%	-
0402 29	--Other:			



0402 29 10	---Whole Milk.....	kg.	30%	-
0402 29 20	---Milk for babies	kg.	30%	-
0402 29 90	---Other	kg.	30%	-
	-Other:			
0402 91	--Not containing added sugar or other sweetening matter :			
0402 91 10	---Condensed Milk	kg.	30%	-
0402 91 90	---Other	kg.	30%	-
0402 99	--Other:			
0402 99 10	---Whole Milk.....	kg.	30%	-
0402 99 20	---Condensed Milk.....	kg.	30%	-
0402 99 90	---Other	kg.	30%	-

Further, the exclusion clause under the Chapter 4 of the Customs Tariff Act, 1975, is as follows:

- a. Products obtained from whey, containing by weight more than 95% lactose, expressed as anhydrous lactose calculated on the dry matter (heading 1702);
- b. Products obtained from milk by replacing one or more of its natural constituents (for example, butyric fats) by another substance (for example, oleic fats) (heading 1901 or 2106); or



- c. Albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter) (heading 3502) or globulin (heading 3504).

11) As per Sl. No. 8 of Schedule-I of Notification No. 1/2017-Integrated Tax (Rate), dated 28.06.2017, Chapter heading 0402 covers:

8	0402	Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies (other than condensed milk)
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12) Now, we observe that the product in question i.e. 'Instant Tea Whitener' is a product made out of standard liquid milk which undergoes various processes and added with some other additives. Even after addition of other additives, it remains to be milk powder and in common parlance, it would be known as 'Instant Tea Whitener/milk powder'.

13) We further observe that as per the Rule 3a of the Rules of Interpretation, the heading which provides the most specific description shall be preferred to heading having more general description and according to Rule 3b of the Rules of Interpretations, "Mixtures, composite goods consisting of different material or made up of different components, and goods put up in sets for retail sale, which can not be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable". In the instant case we observe that the main ingredient/essential character of the product in question is given by liquid milk. We are in unison with the contention of the applicant that the said product cannot be manufactured without milk and all other ingredients are ancillary in nature. In view of above discussion, we observe that the impugned product shall be aptly classifiable under Chapter Heading 0402 and accordingly liable to such GST rate as prescribed under Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 (as amended)



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

RULING

14) The advance Ruling on question posed before the Authority is answered as under:

14.1) The product 'Instant Tea Whitener' as described in the application will merit classification under Chapter Heading 0402 of the GST Tariff and would be chargeable to GST at applicable rate under the said tariff entry, presently read with Notification No. 01/2017-Central tax (Rate) dated 28.06.2017 (Sl. No. 08 of Schedule-I).

14.2) This ruling is valid subject to the provisions under Section 130(2) until and unless declared void under Section 104(1) of the CGST Act, 2017.


Vivek Kumar Jain
Member of Authority for Advance
Ruling


Sanjay Kumar Pathak
Member of Authority for Advance
Ruling

To,

M/s LVP Foods Private Limited,
3 Km Stone, Hasanpur Road,
Gajraula, Amroha,
Uttar Pradesh – 244 235.



AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 40

Date: 06.09.2019

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 & CX, Meerut, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Division-Bijnore, Flat No. 5-6, Ankur Apartment, Bijnore, Uttar Pradesh;
5. Through the Additional Commissioner, ^{G-1 MORADABAD} Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow - 226010, within 30 days from the date of service of this order.

