

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 68 /2020 DATED 11.12.2020
PRESENT:

1. **Shri Abhishek Chauhan**
Joint Commissioner, Central Goods and Service Tax
Audit Commissionerate, LucknowMember (Central Tax)
2. **Shri Dinesh Kumar Verma**
Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s Tulsiram Food Products Khasra No. 3279, Near Nadarganj Ancillary Estate, Amausi, Lucknow 226008
2.	GSTIN or User ID	09AAPFT2102F1ZB
3.	Date of filing of Form GST ARA-01	15.09.2020
4.	Represented by	Shri Loveish Shahdarpuri (Partner) & Shri Pushkar Raj Jotwani (Authorized representative)
5.	Jurisdictional Authority-Centre	Range-IV, Division-Lucknow-I
6.	Jurisdictional Authority-State	Lucknow Sector-11
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes HDFC20090900121865

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017**

1. M/s Tulsiram Food Products, Khasra No. 3279, Near Nadarganj, Ancillary Estate, Amausi, Lucknow-226008, (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAPFT2102F1ZB.
2. The applicant is engaged in manufacturing and supply of "Namkeen" duly sealed & packed in printed pouches containing the details of the manufacturer. The applicant also plans to manufacture and sell raw extruded stick (when fried becomes similar to kurkure) out of corn, rice grits etc.
3. The applicant has submitted application for Advance Ruling dated 15.09.2020 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following questions-

1. What will be the applicable CGST & SGST Tax rate on the final product namely "Namkeen" in the circumstances after fulfilling the condition of affidavit for disclaimer, use of unregistered brand, name, symbol etc and use of such disclaimer in the final product?
2. What will be CSH/HSN Code alongwith applicable Tax rate of the final product namely "Extruded raw stick"?
4. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.
5. The applicant has submitted that-
 - (i) They are a manufacturer of "Namkeen" (HSN Code:210690) which is sold in printed pouches of MRP normally varying from Rs. 1/- to Rs. 5/-. The principal ingredients of "Namkeen" (packed in sealed pouch) are normally processed besan/matar aataa/rice aataa/corn grit/rice grit/maida, edible oil, spices etc. Such Final products are ready to eat. The said printed pouches contain the details of the manufacturer viz name & address of the manufacturer and unregistered brand name. At present they are billing Namkeen @ 12% GST (6%-CGST & 6%-SGST) without any disclaimer. Presently they are unable to complete/survive in the market on payment of 12% GST.
 - (ii) Now they are in the process of introducing disclaimer on each retail pack to the effect that they will voluntarily forego any actionable claim or enforcement right in respect of brand name printed on the product. Further, they shall not be using any registered trademark, any registered brand name, registered symbol etc under copyright act or any other act in reference to their aforesaid products. They are ready to give relevant affidavit to the Commissioner, CGST, Lucknow in this regard. In these circumstances they feel that the benefit of notification no. 34/2017 Central Tax (rate) dated 13.10.2017 can be taken by them.
 - (iii) Besides above they are planning to manufacture and sell raw extruded stick (when fried becomes similar to kurkure) out of corn, rice grits etc. The process of manufacture of the said product is as under:-
 - (a) Grit of Corn, rice etc are mixed together with water and fed in an batch mixture.
 - (b) The mixer is then fed in an extruder which delivers extruded sticks.
 - (c) Such sticks will be packed in pack of 10 or 15 Kg loose bags without any brand but containing the details of the (viz name & address) manufacturer. The applicant also annexed photograph of the said extruded sticks.
 - (iv) The applicant has requested to take reference of the Order No. 36 of Authority for Advance Ruling Lucknow dated 05.08.2020 in case of M/s Atul Kumar Rajpal and also take

reference of GST Circular No. 02/2017 issued under F.No. F17(1234)ACCT/GST/2017/2627 dated 29.09.17 issued by Commissioner, State Tax, Jaipur, Rajasthan.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Deputy Commissioner, CGST & Central Excise Division Lucknow I, Lucknow vide her letter C.No.CGST/Lko/Tech/Misc(23/10/2019)/10694 dated 02.12.2020 submitted that :-

(a) If the applicant voluntarily forgoes brand name, the applicable rate on the final product Namkeen will be 5% (2.5% CGST & 2.5% SGST).

(b) The final product 'extruded raw sticks' will fall under category of Namkeen under HSN code 210690 and Tax rate of 12% will be applicable if sold under brand name a rate of 5% without brand name. She has also informed that no such proceedings are pending for decision as on date.

7. The applicant was granted a personal hearing on 04.12.2020 which was attended by Shri Loveish Shahdarpuri (Partner) and Shri Pushkar Raj Jotwani (Authorized Representative) during which they reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(a),(b)&(e) of the CGST Act 2017 being a matter related to classification of goods, applicability of a notification and determination of the liability to pay tax on any goods. We therefore, admit the application for consideration on merits.

10. The applicant in his application submitted that they manufacture and sell "Namkeen" duly sealed & packed in printed pouch 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 varies from Rs. 1/- to Rs. 5/-. The applicant also plans to manufacture and sell raw extruded stick (when fried becomes similar to kurkure). Such sticks will be packed in pack of 10 or 15 Kg loose bags without any brand but containing the details of the (viz name & address) of manufacturer. The ingredients as per applicant of the "Namkeen" (packed in sealed pouch) is processed besan/matar aataa/rice aataa/corn grit/maida, edible oil, spices etc and the ingredients of extruded raw stick will be corn, rice grits.

11. Now, coming to the first question raised by the applicant regarding applicable C GST & SGST Tax rate on the final product namely "Namkeen" in the circumstances after fulfilling the condition of affidavit for disclaimer, use of unregistered brand, name, symbol etc and use of such disclaimer in the final product, we find that schedule I of the Notification No. 01/2017-CT(Rate) dated 28.06.2017 contains list of goods attracting 2.5% rate of Central Tax and Sl. No. 101A of the schedule I (inserted by Notification No. 34/2017-CT(Rate) dated 13.10.2017 reads as under-

S.No.	Chapter Heading/ Subheading/ Tariff Item	Description of goods
101A	2106 90	Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, 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]"

The phrase brand name has been defined in the Notification No. 01/17-CT(Rate) dated 22.06.2017 (inserted by Notification No. 27/2017-CT(Rate) dated 22.09.2017) as the "*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.

The Annexure of the Notification No. 01/2017-CT(Rate) dated 22.06.2017 {inserted by Notification No. 27/2017-CT(Rate) dated 22.09.2017 and Notification No. 34/2017-CT(Rate) dated 13.10.2017} reads as under-

"ANNEXURE

For foregoing an actionable claim or enforceable right on a brand name,-

(a) the person undertaking packing of such goods in unit containers which bear 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); and

(b) the person undertaking packing of such goods in unit containers which bears a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii)(a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily."

"Provided that, if the person having an actionable claim or enforceable right on a brand name and the person undertaking packing of such goods in unit containers are two different persons, then the person having an actionable claim or enforceable right on a brand name shall file an affidavit to that effect with the jurisdictional Commissioner of Central tax of the person undertaking packing of such goods that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and he has authorised the person [undertaking packing of such goods in unit containers bearing said brand name] to print on such unit containers in indelible ink, both in English and the local language, that in respect of such brand name he [the person owning the brand name] is voluntarily foregoing the actionable claim or enforceable right voluntarily on such brand name."

12. The applicant have submitted that they are using unregistered brand name on the "Namkeen" manufactured and packed by them. In view of the above, the answer of the first question of the applicant that if they voluntarily forego their actionable claim or enforceable right on such brand name in the manner as prescribed under the Notification No. 01/2017-CT(Rate) dated 28.06.2017, the applicable rate of Central Tax and State Tax would be 2.5% each (cumulatively 5%).

13. The applicant have sought to know CSH/HSN Code alongwith applicable Tax rate of the final product namely "Extruded raw stick. The applicant have submitted that they are planning to manufacture and sell raw extruded stick (when fried becomes similar to kurkure) out of corn, rice grits etc. The process of manufacture of the said product is as under:-

- (a) Grit of Corn, rice etc are mixed together with water and fed in an batch mixture
- (b) The mixer is then fed in an extruder which delivers extruded sticks
- (c) Such sticks will be packed in pack of 10 or 15 Kg loose bags without any brand but containing the details of the (viz name & address) manufacturer. The applicant also annexed photograph of the said extruded sticks.

14. The Chapter Heading 2106 of the First Schedule to the Customs Tariff Act, 1975 is as follows :-

HS Code	Description of goods	Unit
(1)	(2)	(3)
2106	Food preparations not elsewhere specified or included	
2106 10 00	— Protein concentrates and textured protein substances	kg.
210690	— Other :	
	— Soft drink concentrates :	
2106 90 11	— Sharbat	kg.
2106 90 19	— Other	kg.
2106 90 20	— Pan masala	kg.
2106 90 30	— Betel nut product known as "Supari"	kg.

2106 90 40	— Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrin syrup	kg.
2106 90 50	— Compound preparations for making non-alcoholic beverages	kg.
2106 90 60	— Food flavouring material	kg.
2106 90 70	— Churna for pan	kg.
2106 90 80	— Custard powder	kg.
	— Other	
2106 90 91	— Diabetic foods	kg.
2106 90 92	— Sterilized or pasteurized millstone	kg.
2106 90 99	— Other	kg.

15. Chapter Note 5 and 6 of Chapter 21 provides as follows –

“5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter-alia includes:

(a)

(b) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;

(c)

(d)

(e)

(f)

(g)

(h)

(i)

6. Tariff item 2106 90 99 includes sweet meats commonly known as “Misthans” or “Mithai” or called by any other name. They also include products commonly known as “Namkeens”, “Mixtures”, “Bhujia”, “Chabena” or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.”

16. Thus, Heading 2106 is an omnibus heading covering all kind of edible preparations, not elsewhere specified or included. Chapter Note 5 provides an inclusive definition of this heading and covers preparations for use either directly or after processing, for human consumption. Chapter Note 6 pertaining to Tariff Item 2106 90 99 also provides inclusive definition and products mentioned therein are illustrative only. Taking all these aspects into consideration, we hold that the product ‘raw extruded stick’ is appropriately classifiable under Tariff Item 2106 90 99.

17. Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 issued under the CGST Act, 2017, issued under the GGST Act, 2017 covers “Food preparations not elsewhere specified or included [other than roasted gram, sweetmeats,

batters including idli/dosa batter, namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, khakhra, chutney powder, diabetic foods]" falling under Heading 2106. The product raw extruded stick is not ready for consumption and the same has to be fried before consumption. Therefore, Goods and Service Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the product 'raw extruded stick' as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 issued under the GGST Act, 2017

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

RULING

19.

Que 1. What will be the applicable CGST & SGST Tax rate on the final product namely "Namkeen" in the circumstances after fulfilling the condition of affidavit for disclaimer, use of unregistered brand, name, symbol etc and use of such disclaimer in the final product?

Answer- If the applicant *voluntarily forego their actionable claim or enforceable right on brand name* on the final product namely "Namkeen" in the manner as prescribed under the Notification No. 01/2017-CT(Rate) dated 28.06.2017, the applicable rate of Central Tax and State Tax would be 2.5% each (cumulatively 5%).

Que 2. What will be CSH/HSN Code alongwith applicable Tax rate of the final product namely "Extruded raw stick"?

Answer- The CSH/HSN code of the Final Product namely "Extruded raw stick" is 21069099 attracting rate of tax @ 9% each under Central and State Tax (cumulatively 18%).

20. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.



(Dinesh Kumar Verma)
Member of Authority for Advance
Ruling



(Abhisek Chauhan)
Member of Authority for Advance
Ruling

To,

M/s Tulsiram Food Products
Khasra No. 3279,
Near Nadarganj Ancillary Estate
Amausi Lucknow 226008

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

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 & C. Ex, 7A, Ashok Marg, Lucknow 226001.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division I, 12th floor, Kendriya Bhawan, Aliganj, Lucknow 226024.
5. Through the Additional Commissioner, Gr-I, 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 Khnada, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.