

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/RS-SK/ 31 /2020-21

Date- 23.11.2020

BEFORE THE BENCH OF

(1) Shri Rakesh Kumar Sharma, MEMBER (Central Tax)

(2) Shri Sanjeev Kumar, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Madhurya Chemicals, Sr. No. 143 – 144, Industrial Estate, Kopargaon, Dist – Ahmednagar, 423601.
GSTIN Number:	27AAXPR5364F1Z0
Clause(s) of Section, under which the question(s) raised:	(a) Classification of any goods or services or both;
Date of Personal Hearing:	05.11.2020
Present for the Appellant:	Shri Vidhyadhar S. Apte, Advocate
Details of appeal:	Appeal No. MAH/GST-AAAR-07/2020-21 dated 18.09.2020 against Advance Ruling No. GST-ARA-33/2019-20/B-40, dated 18.03.2020.
Jurisdictional Officer:	State Tax Officer, (C-012), Ahmednagar Division

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

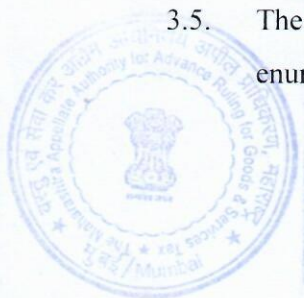
1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.
2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter



referred to as “the CGST Act and MGST Act”] by M/s. Madhurya Chemicals, Sr. No. 143 – 144, Industrial Estate, Kopargaon, Dist – Ahmednagar, 423601. (“the Appellant”) against the Advance Ruling No. **GST-ARA-33/2019-20/B-40, dated 18.03.2020.**, pronounced by the Maharashtra Authority for Advance Ruling (herein after referred to as **MAAR**). The said Appeal has been filed along with the application for the condonation of delay of 30 days from the due date as prescribed under proviso to Section 100(2) of the CGST Act, 2017. The Appellant has attributed the said delay to the closure of their offices on account of the ongoing COVID-19 Pandemic situation.

BRIEF FACTS OF THE CASE

- 3.1 The Appellant is engaged in manufacturing and marketing a product called ‘Shatamrut Chyavan’ which is a supplementary product, which increases the nutritional value of the molasses, and known as ‘compounded animal feed’. The said product improves the production of milk and fat by the cattle and works towards increasing their immunity.
- 3.2 The Appellant from the beginning of the GST era since 01.07.2017 has classified his product under the Heading 2309 of the first Schedule to the Customs Tariff Act, 1975 as applicable to the GST, thereby availing exemption from the payment of GST in terms of Sl. No. 102 of the Notification No. 2/2017-C.T. (Rate), dated 28.6.2017 of the CGST Act, 2017.
- 3.3 There are a number of processes, which are carried out to increase the nutritional value of the molasses to make the subject product. Molasses is a by – product obtained from sugarcane and it contains different types of organic and inorganic ingredients.
- 3.4 While making feed supplement from molasses, first molasses is poured into a mixture, and is subjected to steam coming from the boiler and thus it is diluted to some extent. Extreme care is taken while diluting that it doesn’t get fermented, for this purpose, some chemicals, which are not injurious to health, are added to it and then this mixture is filtered. Then powder of some ayurvedic plants which are essential and beneficial for increasing milk production from the cattle is added to it. This mixture is continuously stirred by stirrer for around 8 – 10 hours, and after becoming completely homogeneous, it is packed into drums of 5 Kg and sold into the market.
- 3.5. The ingredients of a final product ‘Shatamrut Chyavan’ and the benefits thereof, are enumerated in the table below. Based on these ingredients present in the subject



product, it has been stated by the Appellant that the subject product, namely, Shatamrut Chyavan, increases the nutritional value of the molasses, which if fed to the cattle, increases the dairy production and its immunity.

Ingredients	Benefits
Molasses	Essential vitamins, minerals and additives.
Yeast Metabolites	Excellent source of essential vitamins.
Shigru	Rich source of calcium, phosphorus and minerals.
Jatamansi	Anti - stress, Galactagogue.
Hadjog	Rich source of calcium, phosphorus and minerals.
Ahaliv	Galactagogue increases and stimulate milk process.
Kalmegh	Digestive and liver tonic.
Shepa	Galactagogue.
Ashwagnadha	Galactagogue, anti – stress and immunity booster.
Brahmi	Anti – stress and immunity booster.
Sharpunkha	liver tonic and digestive
Shatavari	Galactagogue, anti – stress, stimulates and increasing process of milk formation
Jivanti	Galactagogue, anti – stress, stimulates and increasing process of milk formation
Gulvel	Rich source of vital minerals, Galactagogue
Vidarikand	Rich source of vital minerals, Galactagogue
Methi	Galactagogue, anti – stress, stimulates and increasing process of milk formation
Nagarmotha	liver tonic and digestive
Kamboji	Galactagogue, anti – stress, stimulates and increasing process of milk formation
Guduchi	liver tonic and digestive
Amala	Anti – stress, immunity booster and rich source of Vitamin C

3.6 Based on the above stated facts, the Appellant had applied for the Advance Ruling before the MAAR in respect of the two questions mentioned below:



- A. Whether the classification of 'Shatamrut Chyavan' falling under TSH 2309 90 10 of Customs Tariff Act, 1975 as adopted to GST attracting 'NIL' rate (0%) of IGST, (0%) CGST + (0%) SGST) as per Sr. No. 102 of Notification No. 02/2017 - Central Tax (Rate), dated 28.06.2017 is correct or not?
- B. Whether the goods falling under TSH 2309 90 10 of Customs Tariff Act, 1975 as adopted to GST can be treated as **'waste of sugar manufacture, whether or not in the form of pellets under heading 2303'** attracting 5% of IGST (2.5% CGST + 2.5% SGST) as per Schedule I (Sr. No. 104) of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 or not?
- 3.7 The MAAR vide the order no. GST-ARA-33/2019-20/B-40, dated 18.03.2020 held that the subject product involved in the application is rightly classified by the Appellant under chapter heading 2309, attracting 'NIL' rate as per Sl. No. 102 of the Notification No. 02/2017 C.T. (Rate), dated 28.6.2017 and discarded the second question asked by the Appellant, stating that the same is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the Appellant, thereby, holding that the said question is outside the ambit of Section 97(2) of the CGST Act, 2017, and therefore, need not be answered.
- 3.8 Aggrieved by the aforesaid Advance Ruling passed by the MAAR, the Appellant has preferred the present appeal before the Maharashtra Appellate Authority for Advance Ruling (herein after referred to **MAAAR**).

GROUNDS OF APPEAL

4. The Appellant, in his Appeal memorandum, has, *inter-alia*, mentioned the following grounds of Appeal:
- 4.1 That even after submitting the copy of International Journal of Science, Enviorment and Technology VOL. 5, No. 3, 2016, Page Nos. 1243 to 1250 written by S. Senthil Kumar, T. Suganya, K. Deepa, J. Muralidharan and K. Sasikala of Department of Animal Nutrition is given, the MAAR has not taken the cognizance of the same;
- 4.2 That the conclusion written in said journal has been quoted by the Appellant as under:



(Quote)

"The added benefits of feeding molasses have been quantified by numerous research studies. There is no doubt molasses is excellent source of energy and minerals for ruminants. It can be fed in various ways and is very useful in many situations. Cattle and small ruminant's producers can feel confident feeding molasses, knowing that they are a safe and economical supplement".

(Unquote)

- 4.3 That the Order by the MAAR has been passed without considering submissions made by the Appellant, and hence, the order passed by the MAAR is not relevant.

DEPARTMENT'S SUBMISSIONS

5. The jurisdictional officer, in the subject appeal, has made the following submissions:
- 5.1 That classification of 'Shatamrut Chyavan', falling under TSH 2309 90 10 of Customs tariff act, 1975 as adopted to GST attracting 'nil' rate (0%) of IGST, (0%) CGST + (0%) SGST, as per the list of exempted goods in terms of Sl. No. 102 of Notification No. 02/2017 - Central Tax (Rate), dated 28.06.2017, is correct. The taxpayer is engaged in supply of 'Shatamrut Chyavan' which is a complete animal feed supplement for cattle & ruminants to improve milk & milk fat and increasing resistance to diseases.
- 5.2 That CBIC Circular No. 80/54/2018- GST, dated 31.12.2018 issued on the subject of the clarification of the GST rates and classification of goods stipulates *that while deciding the classification of product claimed as animal feed supplements, it may be necessary to ensure that the said animal feed supplement are ordinarily or commonly known to the trade as products for a specific use in animal feeding. HS Code 2309 would cover only such products, which in the form supplied, are capable of specific use as food supplement for animal and not capable of any general use.*
- 5.3 As the product brochure, leaf-let and online company product advertisement show that it is a complete food supplement used for cattle feed only, and no other use of the product. Though the product is not used in isolation for feeding the cattle, the end use of product is as cattle feed only. As per Sl. No. 102 of the Notification No. 2/2017-C.T. (Rate), dated 28.06.2017, the Heading 2309 includes cattle feed & supplement. Also, the product in question, under the MVAT regime, was claimed under 'compounded animal feed' (Sch. Entry A-4) as tax free. Therefore, the impugned product must be



classified under TSH 2309 90 10 of the Custom Tariff Act, 1975, as adopted to GST, attracting 'Nil' rate (0%) of IGST or (0%) CGST + (0%) SGST.

- 5.4 That, as regards the second question asked by the Appellant as to whether the impugned product can be classified under the Heading 23.03 bearing description 'waste of sugar manufacture, whether or not in the form of pellets, attracting 5% of GST (2.5% CGST + 2.5% SGST) as per Sl. No. 104 of the Schedule I to the Notification No. 01/2017 - Central Tax (Rate), dated 28.06.2017 or not, it is submitted that the goods, falling under Tariff Item 2309 90 10 of the Customs Tariff Act, 1975 as adopted to GST, cannot be treated as 'waste of sugar manufacture in the form of pellets' under the Chapter Heading 23.03 attracting 5% of GST (2.5% CGST + 2.5% SGST) as per Sl. No. 104 of the Schedule I to the Notification No. 01/2017 - Central Tax (Rate), dated 28.06.2017.
- 5.5 That Appellant's interpretation that the basic raw material of 'Shatamrut Chyavan' is molasses (60% of total ingredient as per chemical formula submitted by the Appellant), and hence merit classification under TSH 2303 20 00 bearing description under '*other waste of sugar manufacture*' is wrong owing to the fact that during the manufacturing of sugar from sugarcane in the sugar factory, several valuable by-products, like molasses, bagasse, filter press cake, ash etc. are produced along with the sugar and that among these by-products, molasses & baggage are more valuable raw materials used in different manufacturing industries; that in the process of manufacturing of sugar, sugarcane are crushed to extract sugar juice and bagasse emerges as residue / waste of sugarcane which is neither a manufactured product nor final product of sugarcane industry, and therefore classified under the Tariff Item 2303 20 00 of the Central Excise Tariff Act, 1985 as bagasse & other waste of sugar manufacturing.
- 5.6 That in sugar manufacturing, sugar is the final product and molasses is intermediary product, or by- product. Also, the molasses attracts specific rate of duty under the Heading 17.03 of the first Schedule to the Customs Tariff Act, 1975.

PERSONAL HEARING

6. The personal hearing in the matter was held on 05.11.2020, which was attended by Shri Vidhyadhar S. Apte, Advocate, as the representative of the Appellant, and by Shri Abhijeet Padekar, Assistant Commissioner, as the Jurisdictional officer/Respondent, in the subject appeal matter.



- 6.1 During the course of the said hearing, Shri Apte first requested to condone the delay of 30 days in filing the subject appeal as their office was located in the containment zone, and was closed till the end of the August, 2020 due to the prevailing COVID-19 pandemic. Subsequently, he, while reiterating the submissions made in their appeal memorandum, contended that the impugned product would merit consideration under the Chapter Heading 23.03 attracting 5% of GST (2.5% CGST +2.5% SGST) and not under the Chapter Heading 23.09 as held by the MAAR, which does not attract any GST in terms of the entry enumerated at Sl. No. 102 of the Notification No. 2/2017-C.T. (Rate), dated 28.06.2017.
- 6.2 Shri Abhijeet Padekar, the jurisdictional officer/Respondent in the matter, also reiterated the submissions made in his reply, which has been sent via e-mail dated 29.10.2020, wherein it has been contended that the impugned product would merit consideration under the Chapter Heading 23.09 as the said product is known in the common market as the complete animal food or cattle food supplement, which is known to have specific use in cattle feeding, like increasing the milk production, and strengthening the immunity in the cattle to fight various diseases and the same is not capable of any general use. The aforesaid fact is also supported in the submissions made by the Appellant, wherein the Appellant has furnished impugned product's leaf-let to emphasize that the product under question is 'complete feed supplement'.

DISCUSSIONS AND FINDINGS

7. At the outset of the subject appeal proceedings, it is noticed that the subject appeal has been filed with a delay of 30 days from the due date of the filing of the subject appeal. The Appellant, in his application for the condonation of the delay filed before us, has attributed the said delay to the closure of his office as well as that of his counsel, which was located in the containment zone, designated by the local authority in view of the COVID-19 pandemic, and thereby has requested to condone the said delay.
8. Under the aforesaid compelling circumstances, arisen on account of the ongoing pandemic, which were truly beyond the control of the Appellant, we are of the view that the said delay of 30 days in filing the subject appeal cannot be imputed to the Appellant, and the same needs to be considered liberally. We, therefore, condone the said delay in the filing of the subject appeal, and proceed to discuss the merits of the subject appeal.



9. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with other relevant documents and the written as well as oral submissions made by the Appellant and Respondent during the time of hearing. We have also examined the impugned Ruling passed by the MAAR, wherein it has been held that the subject product, involved in the application, is rightly classified by the Appellant under chapter heading 2309, attracting 'NIL' rate as per Sl. No. 102 of the Notification No. 02/2017- C.T. (Rate), dated 28.6.2017 and discarded the second question asked by the Appellant, stating that the same is not in relation to the supply of goods or services or both, being undertaken or proposed to be undertaken by the Appellant, and thereby, holding that the said question is outside the ambit of Section 97(2) of the CGST Act, 2017, and therefore, need not be answered.
10. On perusal of the above-mentioned documents and submissions, the moot issues, before us, are as under:
- I. Whether the classification of the impugned product, falling under TSH 2309 90 10 of the Customs Tariff Act, 1975, as adopted to the CGST Act, 2017, attracting 'NIL' (0%) of IGST or (0%) CGST + (0%) SGST as per the List of Exempted Goods in terms of Sl. No 102 of Notification No. 02/2017 – Central Tax (Rate), dated 28.06.2017, is correct or not?
 - II. Whether the impugned product can be considered as 'waste of sugar manufacturing' as being purported by the Appellant, and accordingly be classified under the Chapter Heading 2303.
11. To examine the first issue, we have to see whether the impugned product can be construed as cattle feed, and accordingly can be classified under the Chapter Heading 2309. In order to ascertain this aspect, we will analyze the constituents present in the impugned product. On perusal of the list of components present in the impugned product, which has been produced by the Appellant as a matter of fact, it is manifest that besides the molasses, which forms the prime constituent owing to its highest percentage in the said impugned product, there are other ingredients, as enumerated in the table reproduced above, which increases the production of milk, digestion of fodder as well as the immunity of the cattle, and thereby, justifying its status as compounded animal feed. The said fact about the impugned product is also endorsed and validated by the Appellant himself, which is reflected from the leaf-let of the impugned product annexed with the appeal memorandum.



12. The impugned product is also advertised, marketed, and sold, as cattle feed, which when fed in certain doses with other fodder to the cattle, like cows, buffaloes, goat, etc., is purported to increase the production of milk from such cattle along with increasing their immunity against the diseases. Thus, it is evident that the impugned product is perceived as cattle food having the aforementioned specific uses.
13. Now, we seek to classify the said impugned product on the basis of the above said findings. For this, we will first discuss the classification of the impugned product under Chapter 23 which deals in the **“Residues and waste from the food industries; prepared animal fodder”**. On perusal of the said Chapter, it is observed that the impugned product would aptly be classified under the Chapter Heading 2309 and under the Tariff Item 2309 90 10, bearing the description **“compounded animal feed”**, as the said impugned product has been established as compounded animal feed as discussed above.
14. In the Explanatory notes to the HSN to the heading 2309, the following is given: -
‘This heading covers sweetened forage and prepared animal feeding consisting of a mixture of several nutrients
.. ‘Sweetened forage is a mixture of molasses or other similar sweetening substances (generally more than 10% by weight) with one or more other nutrients. It is used mainly for feeding cattle, sheep, horses or pigs. Besides being highly nutritive, molasses enhances the palatability of foodstuffs and thus extends the use of products of low nutritive value such as straw, cereal husks, linseed flakes, and fruit pomace which the animals would otherwise be reluctant to accept. As a rule, these sweetened preparations are fed directly to the animals. However, some of them combine molasses with highly nutritive foods, such as wheat bran, palm kernel or copra oil cake and are used to make complete feeds or supplementary feeds.’
15. Thus, the explanatory notes clearly explain that molasses, combined with other feeds, do come under heading 2309. The Appellant has contended in his grounds of appeal that the question framed by them is whether their product is falling under 2309 90 10 or 2303. As per HSN, Heading 2303 covers **‘Residues of starch manufacture and similar residues, beet pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets’**. The explanatory notes of the HSN says that the heading covers, *inter alia*,
(A) Residues of starch manufacture and similar residues (from maize corn, rice, potatoes), consisting of largely fibrous and protein substances usually presented in



the form of pellets or meal but occasionally as cake. They are used as animal fodder or as fertilizers; some of these residues are used in the production of cultures.

(B) Beet pulp is the residue which remains after the sugar has been extracted from the root of the sugar beet. This pulp is classified in this heading whether wet or dried but, if with added molasses or otherwise prepared as animal food, **it falls in heading 2309.**

(C) Bagasse is a residue consisting of the fibrous portion of the sugar cane after the juice has been extracted. It is used in the paper making industry and in the preparation of animal food.

(D) Other waste products of sugar manufacture covered by this heading include defecation scum, filter press residues etc.

This heading **does not include** (a) Molasses resulting from the extraction or refining of sugar (heading 1703)'.

16. The explanatory notes clearly say that molasses is not covered under heading 2303 but under 1703. A larger part of the Appellant's product consists of molasses and molasses itself are covered under heading 1703. Moreover, at (B) mentioned at para 15 above, it clearly says that molasses prepared as animal food fall in heading 2309. Therefore, it is clear that the product of the Appellant does not fall under Heading 2303 but falls under Heading 2309. The Appellant has, neither in the written submissions nor during the hearing, given any concrete reasons or grounds to support his contention that the product does not fall under Heading 2309 but under Heading 2303. As regards the Appellant's contention that the impugned product is not fed to the cattle in isolation but the same is fed by mixing with the other fodders in fixed prescribed dosage, and thereby, not deserving to be qualified as cattle feed, it is opined that the said fact about the impugned product would not have any bearing, whatsoever, on the status of the said impugned product which remains the "**compounded animal feed**" having specific use in animal feeding, as discussed above.

17. The aforesaid notion is also supported by the CBIC Circular No. 80/54/2018- GST, dated 31.12.2018, issued on the subject of the clarification of the GST rates and classification of goods, which stipulates *that while deciding the classification of product claimed as animal feed supplements, it may be necessary to ensure that the said animal feed supplements are ordinarily or commonly known to the trade as products for a specific use in animal feeding. HS Code 2309 would cover only such products, which in the form supplied, are capable of specific use as food supplement*

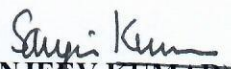


for animal and not capable of any general use. As it has been established that the impugned product is an animal feed having specific use, viz.- increasing the milk production of the cattle and increasing the immunity of the cattle to fight diseases, and the said impugned product is also known in the market as the cattle feed supplement only, therefore, the said impugned product would be classified as animal feed supplement, and accordingly would merit classification under the Chapter Heading 2309 and under the Tariff Item 2309 90 10, and would not attract any GST in terms of Sl. No. 102 of the Notification No. 2/2017-C.T. (Rate), dated 28.06.2017.

18. As regard the second question posed by the Appellant, we agree with the conclusion drawn by the MAAR that the question does not fall within the purview of Section 97 (2) of the CGST Act, 2017. The question is not in relation to supply of goods or services or both, being undertaken or proposed to be undertaken by the Appellant. The MAAR cannot decide whether a specific product can be said to be a waste of sugar manufacture as the said question is not within the scope of Section 97 of the CGST Act, 2017. Also, the Appellant has not given any rebuttal of the finding of the MAAR that the said question does not fall under Section 97 of the CGST Act, 2017.
19. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

20. We, hereby, uphold the Ruling passed by the MAAR vide Order No. GST-ARA-33/2019-20/B-40, dated 18.03.2020, wherein it was held that the subject product, involved in the application, was rightly classified by the Appellant under chapter heading 2309, attracting 'NIL' rate as per Sl. No. 102 of the Notification No. 02/2017 C.T. (Rate), dated 28.6.2017, while in respect of the second question as to whether the impugned product can be treated as **'waste of sugar manufacture, whether or not in the form of pellets under heading 2303'** attracting 5% of IGST (2.5% CGST + 2.5% SGST) as per Schedule I (Sl. No. 104) to the Notification No. 01/2017 - Central Tax (Rate), dated 28.06.2017, it was held by the MAAR that the said question would not come under the purview of the Advance Ruling in terms of Section 97(2) of the CGST Act, 2017, and therefore, is not liable to be answered. Thus, the appeal filed by the Appellant is, hereby, dismissed.


(SANJEEV KUMAR)
MEMBER


(RAKESH KUMAR SHARMA)
MEMBER



Copy to the:

1. Appellant;
2. AAR, Maharashtra
3. Pr. Chief Commissioner, CGST and C. Ex., Mumbai Zone;
4. Commissioner of State Tax, Maharashtra
5. State Tax Officer, (C-012), Ahmednagar Division
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