

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

Date: 12/02/2021

A.R.Appeal No. 09/2020/AAAR

BEFORE THE BENCH OF

1. **Thiru G.V.KRISHNA RAO, MEMBER**

2. **Thiru M.A. SIDDIQUE, MEMBER**

ORDER-in-Appeal No. AAAR/03/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b). On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s. S.A.Safiullah and Co., PB No.14, Rajagopalapuram Main Road, Pudukottai – 622 033
GSTIN or User ID	33AANPS2471E1ZO
Advance Ruling Order against which appeal is filed	Order No. 34/ARA/2020 dated 21.10.2020
Date of filing appeal	19.11.2020
Represented by	G.Natarajan, M/s. Swamy Associates
Jurisdictional Authority-Centre	Trichy Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST) Pudukottai-1 Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 20113300292445 dated 19/11/2020

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s. S.A Safiullah & Company (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AANPS2471E1ZO. The appeal is filed against the Order No.34/ARA/2020 dated 21.10.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The Appellant is a Proprietary concern owned by Shri. A.R.Safiulla, They are engaged in trading of Areca nuts / Betel nut, under the name and style "Nizam Pakku" and the said brand name is owned and registered in favour of the Appellant. "Nizam Pakku" is manufactured by M/s Azam Laminators Pvt. Ltd. and sold exclusively to the Appellant, which is marketed by the Appellant

through Dealers and Distributors network. The process involved in the making of "Nizam Pakku" is as below:

Dried areca nut / betel nut is procured and broken into pieces of smaller sizes, pulverized and then gently heated with Vanaspati, so as to ensure that vanaspati is spread evenly on the surface of the betel nuts; Sugar, glucose syrup, menthol and spices, viz., cardamom and cloves are also added; the use of glucose syrup and sugar which contains moisture can form fungus and hence a meagre quantity of saccharin to the extent of 1000 Parts per million is added purely for preservation purposes; the resultant product is packed in small pouches under the name and style of NIZAM PAKKU.

The Appellant made an application to ORIGINAL AUTHORITY on the following question:

Whether the "Nizam Pakku" bought and sold by the Appellant, the manufacturing process of which has been explained by them, is classifiable under Chapter heading 0802 8030 of the Customs Tariff and hence attract 2.5 % CGST as per S.No. 28 of Schedule I of Notification 1/2017 Central Taxes (Rate) Dt. 28.06.2017 and equal rate of SGST?

3. The Original Authority has ruled as follows:

"Nizam Pakku" traded by the appellant merits classification under Chapter 0802 80 90 of the Customs Tariff and attracts 6 % CGST as per S.No. 15 of Schedule II under Notification 1/2017-Central Tax (Rate) Dt. 28.06.2017 and 6 % SGST under Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended.

4. Aggrieved by the above decision specifically on the issue of rate of Tax, the appellant has filed the present appeal. The grounds of appeal are as follows:

Issue of Classification:

- The appellant has referred to Chapter 8 of Customs Tariff. They have submitted that the only reason adduced by the original authority in support of the decision to classify the subject product under Chapter 0802 8090 is that in the decision of the Hon'ble CESTAT in the case of Azam Laminators Pvt. Ltd. very same product has been held to be classifiable under Chapter 0802 8090.

- They have submitted that all through the Chapter 8, it may be observed that the goods are classified at sub heading level, not based on the processes undertaken thereon. In respect of almonds, hazelnuts, wall nuts, pistachio and macadamia nuts, the further classification is based only on whether such nuts are in shell or shelled. In so far as areca nut is concerned the further classification at 8 digit level is based only on the physical form, i.e. whole, split or ground and not based on any processes undertaken thereon. Even if various processes as specified in Note 3 of this Chapter are undertaken on the goods of this chapter, their classification would remain the same. In the instant case, since the areca nut is broken into smaller pieces, by a process of pulverization, the same merits classification under sub-heading 0802 8030 only as areca nut — ground and not under the residual entry 0802 8090. Once the subject product is specifically covered under heading 0802 8030 there is no need to classify them under the residual category. As per Rule 3 (a) of the Interpretative Rules, specific classification has to be preferred over the generic heading. Further, they have placed reliance on the decision of the Hon'ble Supreme Court in the case of Dunlop India Ltd. Vs UOI - 1983 (13) ELT 1566 SC, wherein it has been held as "When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause", Reliance is also placed on the decision of the Hon'ble SC in Plasmac Machine Mfg. Co. Ltd. Vs CCE - 1991 (51) ELT 161 SC, wherein it has been held "We find no justification for classifying those in the residuary Item 68. As was held in Dunlop India Ltd. v. Union of India (supra) if an article is classifiable under a specific item, it would be against the very principle of classification to deny it the proper parentage and consign it to the residuary item".

Issue of rate of Tax:

- GST has been introduced by subsuming various indirect tax levies, such as Central Excise duty, Service Tax, Value Added Tax, Central Sales Tax, etc. As a prelude to the introduction of GST, various provisions of the Constitution were amended through Constitution (One hundred and first amendment) Act, 2016. Article 279 A was introduced and it provides for the setting up of a

GST Council and also lays down the composition of the council. In clause (4) of the Article, the issues in respect of which the Council can make recommendations to the Government are enumerated, which, inter alia includes, "the rates including floor rates with bands of goods and services tax"

- When so many indirect taxes levied both by the Central Government and the State Governments are subsumed into a single tax, arriving at a proper GST rate for all goods and services was a challenge. On the one hand the revenues from the old levies accruing to the Government (Both Centre and State) should not suffer on account of such subsuming; on the other hand, such subsuming should not lead to any significant distortion in the pre-existing rates (along with their cascading effect) and post GST rates.
- The issue of finalization of a Band of GST rates was first discussed in the 3rd GST Council meeting held during 18th to 19th October 2016. It may be observed from Agenda Item 4 of the minutes, that a detailed presentation was made on the subject and the following criteria were identified which shall guide the fixation of rates of GST for different goods and services. (i) Present tax incidence on the goods and services in the country; (ii) Need to protect the present tax revenues of the Centre and States; (iii) Inflation impact of the proposed GST rate structure; and (iv) Mode of raising resources for paying compensation.
- Accordingly, it was proposed to have the following rate slabs.
 - (i) 6% (to cover those goods presently attracting combined tax rate of Central Excise and VAT between 3% and less than 9%);
 - (ii) 12% (to cover those goods presently attracting combined tax rate of Central Excise and VAT between 9% and less than 15%);
 - (iii) 18% (to cover those goods presently attracting combined tax rate of Central Excise and VAT between 15% and less than 21 %);
 - (iv) 26% (to cover those goods presently attracting combined tax rates of Central Excise and VAT equal to or more than 21 %)
- The issue was again discussed in the 4th GST Council meeting held between 3rd and 4th November 2016 (Agenda item 3). From para 29 thereof, it may be observed that the council had resolved to have the following rates of GST, viz., Nil, 5% (which would generally cover goods which presently attract combined tax rate of Central Excise and VAT, including cascading on

account of these two taxes between 3% and less than 9%); 12% (which would generally cover goods which presently attract combined tax rate of Central Excise and VAT, including cascading on account of these two taxes between 9% and less than 15%); 18% (which would generally cover goods which presently attract combined tax rate of Central Excise and VAT, including cascading on account of these two taxes between 15% and less than 21%); 28% (which would generally cover goods which presently attract combined tax rate of Central Excise and VAT, including cascading on account of these two taxes equal to or more than 21%). In line with the above policy decisions, a Fitment Committee comprising of the officers of the Central Government and State Governments was set up to recommend the rates of GST for various Goods and Services who recommended various rates of GST for various goods and services, in line with the above directions of the GST Council. These suggestions were placed before the 14th meeting of GST Council held on 18th and 19th May 2017 (Agenda Note No.9). Fitment Committee has inter alia recommended NIL rate for various goods mentioned in Annexure I, 5% rate for various goods mentioned in Annexure II and 12% rate for various goods mentioned in Annexure III. The relevant entries are as below:

Annexure I LIST OF GOODS AT NIL GST RATE

Sl.No	Chapter	Description
8	8-Edible fruits and nuts, peel of citrus fruits or melons	Fresh Fruits other than in frozen state or preserved

Annexure II LIST OF GOODS AT 5% GST RATE Chapter

Sl.No	Chapter	Description
4	8 - Edible fruits and nuts, peel of citrus fruits or melons	Edible fruits and nuts other than in frozen state or preserved (Other than dry fruits)

Annexure III LIST OF GOODS AT 12% GST RATE

Sl.No	Chapter	Description
5	8 - Edible fruits and nuts, peel of citrus fruits or melons	Dry fruits

- The recommendations of the Fitment Committee, as to the proposed rates of GST for various goods was considered by the GST Council in its 14th

Meeting held on 18th and 19th May, 2017. It may be observed from the entries reproduced above that while fresh fruits falling under Chapter 8 are proposed to be exempted from levy of GST; edible fruits and nuts under Chapter 8 other than dry fruits are proposed to be taxed at the rate of 5%; and dry fruits falling under Chapter 8 are proposed to be taxed at the rate of 12%. There was no clarity as to the rate of tax applicable for Dried Areca nuts, after drying. It was in this context, that the Hon'ble Minister for Karnataka, which State accounts for major production of areca nut, has raised the issue, which has been recorded in the minutes of the meeting. The Minister pointed out that while fresh areca nut harvested from trees was proposed to be taxed at NIL rate, the dry and processed areca nut was proposed to be taxed at the rate of 12%. He stated that the weighted average of the combined tax incidence today would not be more than 5% and hence, the rate of tax on the dried areca nuts sold by the farmers should not be more than 5%. This was also agreed to by the Hon'ble Minister from Meghalaya, who stated that areca nut was a perishable product and green areca nut should be taxed at 0% and dried areca nut should be taxed at 5%. In response to these observations the Secretary of the GST Council stated that in Chapter 8 of the HSN, a carve out could be considered for dried, unprocessed areca nut to be taxed at 5%, which should not be called betel nut. Accordingly, it was proposed that dried areca nut, whether or not shelled or peeled might be kept at 5%. The GST Council agreed to this proposal. It may be observed from the relevant portion of the minutes of the meeting that the final decision of the council reads that the rates proposed by the Fitment Committee are approved with certain modifications, one of which being,

(xvii) Areca nut : Dried Areca nuts, whether or not shelled or peeled, to be taxed at the rate of 5 %.

- In line with the decisions of the GST Council with regard to fixation of rate of GST for different goods and services, upon introduction of GST with effect from 01.07.2017, Notification No. 1/2017 Central Tax (Rate) dated 28.06.2017 has been issued prescribing the GST rate for various goods and Notification 2/2017 Central tax (Rate) Dt. 28.06.2017 has been issued granting exemption from payment of GST for various goods. While considering the applicable rate of tax for the subject goods, the original

authority has come to the conclusion that only those dried areca nut, not called as betel nut is subjected to 5% GST as per Serial No. 28 of Schedule I of Notification of 1/2017 and the product in hand being betel nut, the applicable rate is 12% as per Serial No. 15 of Schedule II of Notification No.1/2017.

- With reference to the above conclusion of the original authority, the appellant submitted the following:

The terms "Areca nut and Betel Nut" are always used interchangeably and understood as such. While the name "Areca nut" has its origin to the fact that the said nut is derived from the Palm Tree which is known as "Areca Catechu", belonging to the family of "Arecaceae", the term "Betel Nut" is derived from the fact that the said product is conventionally used along with betel leaves as masticatory. In this connection reference can be made to the HSN Notes for Chapter 0802 90 which also uses these expressions together as synonyms:

This heading also covers areca (betel) nuts used chiefly as a masticatory, cola (kola) nuts used both as a masticatory and as a base in the manufacture of beverages, and an edible, nutlike, spiny-angled fruit of the species Trapa ,ratans, sometimes referred to as a water chestnut.

- The appellant also wishes to draw attention to the observations/decisions made in the following cases:

- i. Hon'ble CESTAT in para 10 of its decision in the case of Azam Laminators Pvt. Ltd. referred supra, has stated that the term areca nut is nothing but scientific name of betel nuts.
- ii. Hon'ble CESTAT in the case of CC Vs Shounik Export 2010 (261) ELT 501 Tri-Kol, where the Customs Department itself has argued that "areca nut" is the botanical name for "betel nuts".
- iii. Hon'ble Tribunal in the case of G.K. Enterprises Vs CC - 1996 (83) ELT 369 Tribunal, wherein the issue has been dealt with in detail and the fact that the terms betel nut and areca nut refer to the same product is recognized.
- iv. Hon'ble CESTAT in the case of CC Vs Pioneer Spices - 2007 (207) ELT 542 Tri-Chennai, wherein also it has been observed that

"it is not open to the appellant (department) to say that 'betel nuts' are not covered by the expression areca nuts".

- They have also stated that the relevant extracts from S.B. Sarkar's Words and Phrases of Excise & Customs, would support this view. Further, the above facts and judicial pronouncements and HSN Notes as well as the common parlance test would reveal neither the terms "Areca Nut" and "Betel Nut" refer to different commodities; nor one of them a genus and the other being its species; but both these terms are always used interchangeably. This common fact has to be kept in mind while interpreting the discussion of the 14th Meeting of the GST Council.
- It may be observed that while fixing the GST rate for different Goods and Services, the GST Council has followed the basic guideline that the GST Rates for any goods should more or less be, near to the sum total of different taxes leviable on such good prior to introduction of GST and the cascading effect thereof. As the multitudes of rates under the erstwhile regime are done away with and the rates of GST are finalized at 0%, 5%, 12%, 18% and 28%, it was decided that the goods attracting a cumulative tax rate between 3% to 8% under erstwhile regimes are to be placed in 5% under GST and so on. In this connection it is relevant to note that under Central Excise, the tariff rate for Chapter 8 itself is NIL and hence the subject product is not liable to any excise duty. The subject product was subjected to VAT by the State Governments either at 4% or 5%.
- In this connection, they had made reference to para 5.1 of the impugned order of the original authority, wherein the submission of the jurisdictional State officer to the effect that the subject product is liable to 5% VAT in the State of Tamil Nadu, as per S.No. 6 of Part B of Schedule I to the TN VAT Act has been recorded.
- They have also placed reliance on the order passed by the Commissioner of Commercial Taxes, Tiruvananthapuram, Kerala bearing No. C3/7632/13/CT Dt. 03.03.2015, in pursuance of the directions of the Hon'ble High Court of Kerala, where it is held that the subject product was classifiable under heading 0802 9013 of the then tariff and attract 5 % VAT in the State of Kerala. The appellant has also submitted copy of Third schedule of the Kerala VAT Act. The corresponding new heading for 0802 9013 is 0802 8030.

- Further, reliance is placed on the decision of the Hon'ble Karnataka VAT Tribunal 18.12.2019, in the case of the appellant themselves that during the period 2009-10, 2010-11 and 2011-12, the subject goods are to be taxed at 2% under Karnataka VAT Act. As per third schedule to the Karnataka VAT Act, the subject product attracts 5 % GST
- The appellant has also submitted that products similar to that of the subject product are widely used in the southern States and even in the States of Telangana and Karnataka it attracted VAT at 4% or 5%. Hence, as per the general guidelines framed by the GST Council, the subject product should be taxed under GST only at the rate of 5%, in the absence of any discussion in any of the meetings of the GST Council to deviate from the above guideline of the GST Council in respect of the subject product.
- Further, they have stated that it may be observed from the minutes of 14th Meeting of the GST Council that the point raised by the Minister of Karnataka, was only with reference to placing the areca nut, in the form in which it was normally sold by the farmers at 5%. A perusal of Annexure I, II and III prepared by the Fitment Committee, which was being discussed in the 14th Meeting of the GST Council it may be observed that the Committee has prescribed Nil rate for "Fresh Fruits", 5% for "Edible Fruits and Nuts other than dried fruits" and 12% for "Dry Fruits", all falling under Chapter 8. It was not clear from the above entries as to the rate of GST applicable for dried areca nut-sold by the farmers. They have also stated that, in the 14th Meeting of GST Council there has never been any discussion as to the rate of GST applicable for subject products, which have been subjected to certain processes permitted under Note 3 to Chapter 8 and not beyond, which hitherto attracted only 4 to 5 % VAT.
- The appellant has submitted that if the exclusion under S.No.15 of Schedule II of Notification 1/2017, i.e. "Other than dried areca nuts" was not inserted, the subject product would very much be covered under the said S.No.15 of Schedule II and not anywhere else. But, once, "dried areca nut" is excluded from the ambit of said S.No.15 and placed specifically under S.No.28 of Schedule I, there is no reason as to why the subject, which is also "dried areca nut" is not entitled for 5 %. Further the

exclusion under S.No. 15 of Schedule II is for "dried areca nuts" without any further qualification.

- Heading 0801 reads as "Coconuts, Brazil Nuts and Cashew Nuts, Fresh or dried whether or not shelled or peeled"; and Heading 0802 reads as "Other nuts, fresh or dried whether or not shelled or peeled". It may be further observed that heading 0802 is further sub-divided into various sub-headings, viz "Almonds, Hazel nuts or filberts, Chestnuts, Pistachios, Macadamia Nuts, Kola Nuts and Areca Nuts", the residual entry "Others" being covered under 0802 90 00. Sub-heading 0802 80 covering areca nuts have been further sub-divided into Whole (0802 80 10), split (0802 80 20), ground (0820 80 30) and others (0820 80 90). Heading 0802 covers both fresh or dried nuts whether or not shelled or peeled. At sub-heading level, separate sub-headings are prescribed in respect of "In Shell" and "Shelled" Almonds, Hazel nuts or filberts, Chestnuts, Pistachios, and Macadamia Nuts. In respect of areca nut sub-heading level classification refers to its physical form, viz., Whole, Split, Ground and Others. But no distinction has been made at sub-heading level between fresh and dried nuts in respect of any of the nuts specified therein.
- While heading 0801 covers specifically "coconuts, brazil nuts and cashew nuts, fresh or dried", heading 0802 covers "Other nuts, fresh or dried". At sub heading level several nuts are identified separately and those which are not so specifically identified would fall under 0802 9000. It may be noted that there is no distinction even at sub heading level between fresh nuts and dried nuts, but such distinction is necessary only for the purpose of determining the rate of tax applicable. It may be noted that full exemption from tax has been prescribed for the entries in Sl.No 49 of Notification 02/2017. The word "Other nuts" appearing first in the above sl.no would refer to those unspecified nuts, falling under sub heading 0802 9000; and the succeeding words "Other nuts, fresh" would refer to various nuts in fresh form, falling under Chapter 0802. Thus fresh almonds, fresh hazelnuts, fresh walnuts, fresh chestnuts, fresh pistachios, fresh macadamia nuts, fresh kola nuts, fresh areca nuts are entitled for exemption, under the above entry. While heading 0802 covers both fresh and dried nuts once all fresh nuts falling under Chapter 0802

are exempted from payment of tax, what remains is only those nuts, which are dried, for which rate of tax has to be prescribed. Only Dried Areca Nuts and Dried Chestnuts have been specifically identified and placed under 5 % rate vide S.No.28 and 29 of the Schedule I to Notification 1/2017 and all other nuts are placed under S.No. 15 of the Schedule II to Notification 1/2017. The said S.No.15 specifically excludes "Dried areca nuts". Thus, from a plain reading of the relevant entries in the notification, it is very clear that the subject product, which is not fresh, is not entitled for exemption but, being dried areca nut, is taxable only @ 5%.

- To further elaborate, as per Serial No. 28 of Schedule I of Notification No. 01/2017, the rate of 5% shall apply in respect of "Dried Arced Nuts, whether or not shelled or peeled" falling under Heading No 0802. As per Serial No.15 of Schedule II of Notification No. 01/2017, the rate of 12% shall apply in respect of "Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (*Coryius* spp.), walnuts, Chestnuts (*Castanea* spp.), Pistachios, Macadamia nuts, Kola nuts (*Cola* spp.) other than dried areca nuts". Thus, the short question to be answered now is, as to whether, the subject product "Nizam Pakku" supplied by them can be covered in the expression "Dried Areca Nut" or not.
- It is relevant to recall the manufacturing process from the stage of raw areca nut, till the stage of obtaining the final product, viz Nizam Pakku, which involves, applying vegetable oil to broken pieces of areca nut, mild heating, addition of sugar, glucose syrup, menthol and spices. These processes are those covered under Chapter Note 3 of Chapter 8. In all the decisions in the context of classification under Central Excise law referred to earlier in this Appeal, these processes were considered and it has been emphatically held that the above process are well within those prescribed in Chapter Note 3 to Chapter 8 and hence, even after the said processes, the resultant product would continue to be classifiable under Heading 0802 as the essential character of betel nut is not lost. There is no dispute that the processes undertaken continue to be the same even now. Hence, the subject product which retains the essential character of the areca nut (betel Nut) continues to be areca Nut (betel Nut). Hence, the

subject product is very much covered within the expression "Dried Areca Nut" used in Serial No.28 of Schedule II of Notification 1/2017. Further, the said S.No.28 covers "Dried Areca Nut" and does not contain any exclusion.

- They have relied on the observations made by the Hon'ble Supreme Court in the case of Crane Betel Nut Powder Works Vs Commissioner - 2007 (210) ELT 171 SC, where the subject product has all along been referred to as betel nut.
- They have viewed that, the process of manufacture employed by their company did not change the nature of the end product, which in the words of the Tribunal, was that in the end product the 'betel nut remains a betel nut'. They have stated that it is clear from the above that the subject product, viz., Dried areca nut / dried betel nut, remains the same even after the processes undertaken by the appellant and the same cannot be excluded from the ambit of S.No. 28 of Schedule I of Notification 1/2017.
- Having concluded that the classification of the subject product under four digit level is under 0802, the only question before original authority was whether the subject product can be covered under the expression "Dried Areca Nut" or not, which is mentioned in Serial No 28 ibid. The discussion in the 14th meeting of the GST Council was not at all with reference to fixing the GST for the subject goods. As already explained, the draft GST rates placed before the meeting by the Fitment Committee has proposed to exempt all "fresh fruits" under Chapter 8; and to tax all "edible fruits and nuts" under Chapter 8 @ 5 %, and prescribed 12% rate for all "dry fruits" failing under Chapter 8. It was represented that dried areca nut, which was hitherto attracting 5% tax under the erstwhile regime should be placed under 5% under GST also, more specifically.
- They submitted that in the absence of any justification in support of placing the subject product under 12%, in deviation of the general guidelines framed by the GST Council that all goods attracting taxes between 3% to 8% under the erstwhile regime shall be kept under 5% rate, the above said discussions of the 14th Meeting of GST Council cannot be used against the appellant to deny the 5% rate for the subject goods.

- The conclusion of the discussions of the 14th meeting of the GST Council, is reflected in the sentence "Accordingly, it was proposed that dried areca nuts, whether or not shelled or peeled might be kept at 5 %". This conclusion has been put into effect by suitably wording the relevant entries in Notification 1/2017. The fact that in the minutes it has also been observed that the said 5% rate shall not be applicable for the products known as betel nuts do not have any significance, as already explained, the terms areca nut and betel nut are always used as synonyms interchangeably. If so, prescribing 5% rate for dried areca nuts (which terms also means dried betel nut), other than those products, which are known as betel nuts, does not make any sense. Rightly so, while putting into effect the decision of the GST council by issuing Notification 1/2017, under S.No. 28 of Schedule I, there is no mention of any exclusion for "products known as betel nuts".
- Further, to determine the rate of tax applicable, what's relevant is only the language used in the relevant notification and whether the subject product can be covered within the expression used in S.No. 28 of Schedule I of Notification 1/2017 or whether the subject goods are specifically excluded from the ambit of coverage of S.No. 28 of Schedule I of Notification 1/2017. The term used in S.No. 28 of schedule I is "Dried Areca nuts, whether or not shelled or peeled" and neither it restricts the scope of the term with reference to any processes applied on the said areca nut nor excludes anything from its scope. Further, dried areca nut falling under heading 0802, can fall under any of the sub headings of the Chapter at eight digit level, based only on their physical form. In such circumstances, no external aid in the form of minutes of the GST Council meetings could be relied upon to interpret these entries of the relevant notification.
- Reliance placed on the decision of the Hon'ble CESTAT in the case of Sree Balaji Transport Vs Commissioner of ST - 2015 (38) STR 651 Tri-Bang, wherein by following the decisions of the Hon'ble Supreme Court in Doypack Systems Pvt. Ltd. Vs UOI - 1988 (36) ELT 201 SC and J.K. Cotton Spinning & Weaving Mills Ltd. Vs UOI - 1987 (32) ELT 234 SC, it has been that when the words used in the statute are clear and unambiguous no external guides for interpretation such as Finance

Minister's speech or Parliamentary proceedings could be resorted to. Hence, the impugned Ruling of the ORIGINAL AUTHORITY, to the effect that the subject goods attract 12 % GST, by relying upon the minutes of the GST Council meeting is not at all sustainable in law and liable to be set aside.

- For all the above reasons, they submitted that the impugned Order of the original authority, holding that the subject goods, viz., "Nizam Pakku" would merit classification under Chapter 0802 8090 and attract 6 % CGST as per S.No. 15 of Schedule II of Notification 1/2017 and same rate of SGST under relevant State Notification is not at all sustainable in law.

The appellant requested to set aside/modify the ruling of the lower authority and hold that the subject goods are classifiable under CTH 08028030 and attract total 5% GST as per Sl.No. 28 of Schedule I of Notification No. 01/2017-C.T.(Rate) dated 28.06.2017.

PERSONAL HEARING:

5.1 Due to the prevailing PANDEMIC situation, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital mode. The appellant provided their consent to be heard through virtual mode. Accordingly, the hearing was held virtually on 18th December 2020. Shri. G.Natarajan, Advocate and the authorized representative appeared for Virtual hearing. The Authorized Representative reiterated the written submission made along with the appeal application. He stated that 'areca nut' & 'betel nut' refers the same product. He stated that they are not aggrieved with the classification of their product under CTH 0802 as held by the Lower Authority though the classification on the 8-digit level, there is difference between their claim and that decided by the Lower Authority, which they do not press and leave the decision to the bench. On the applicable GST rate, the representative stated that their product is to be subjected @5% as per Sl.No. 28 of Schedule-I of Notification No. 01/2017-C.T.(Rate) dated 28.06.2017. He drew the attention of the bench to the minutes of the 3rd & 4th GST Council Meeting and stated that as per the decision of the council, the rates to be fixed in the GST regime should be @5% in respect of the products which suffered a total tax incidence of 3% to 9%. In the pre-GST regime, the tax incidence of their product

was only around 5%. He further stated that the words of notification speak of dried Areca nuts, which is their product and at the entry Sl.No. 15 of Schedule-II it is specifically excluded. He claimed that the words of notification is clear and unambiguous and the Lower Authority has relied only on the minutes of the 4th Council Meeting and has decided the applicable rate as 12%. He undertook to furnish the copies of Shipping Bills and also documents on the rate at which their competitors pay GST

5.2 They furnished copies of Shipping Bills/Export invoices as undertaken by them during the hearing. They claimed that the subject goods "Nizam Pakku" is described commonly as "Nizam Betelnut(Areca Nut)", which proves that the two terms, viz., Betel nut and Arecanut refer to the same product and used interchangeably.

DISCUSSIONS:

6. We have carefully considered the oral and written submissions of the Appellant, the ruling of the lower authority and the applicable statutory provisions. We find that the issue for decision before us is mainly on the rate applicable to the product of the appellant, whether the same is to be subjected @ 12% GST as held by the lower authority or @5% as claimed by the appellant. Further on classification of the product which was also a part of ruling, the appellant has claimed that while they agree the classification upto 4 digit level, they do not agree to the classification at 8 digit level but they do not press the same and it is for us to decide.

7. The facts of the case as seen from the various submissions is that the product marketed by the appellant, "Nizam Pakku" is manufactured by M/s. Azam Laminators Pvt Ltd who sell the product exclusively to the appellant and the appellant markets the product through Dealers and Distributors network. On the issue of classification of the product, we find that the said issue has been raised in the case of the manufacturer of the product, M/s. Azam Laminators Pvt Ltd (A.R.S. Company (earlier name of Azam Laminators)) under Central Excise and stands decided by the Hon'ble Supreme Court that the said product merits classification under Chapter 0802 of Central Excise as against the competing CETH 2106. After long drawn litigation, the classification of the product has attained finality under CETH 0802 8090 in the case of M/s. Azam Laminators (P) Ltd, vide Final Order No. 40455-40456/2019 dated 12th March 2019 of Hon'ble CESTAT Chennai, who has concluded the classification relying on the decision of the Apex

Court in their own case and in the case of M/s. Crane Betel Nut Works. The Central Excise Tariff based on which the classification is settled and the prevailing Customs Tariff are aligned. The Classification is decided as '08028090-Other' in the '---' level and the tariff do not have a '-' level but only has '-' 'Areca nuts' level. Thus we find that the classification of the product has attained finality. With no new changes in either the manufacturing process or the statute on classification there is no further need to litigate. We also take note that for the purposes of GST, the classification at 4 digit level suffice as irrespective of whether the product falls under 08028030 or 08028090, the applicable rate stands decided by the description of the products and the Chapter Heading/Sub-heading CTH 0802. The Lower Original Authority has classified the product under the said CTH 0802 and the appellant also accepts the classification in this level. The disagreement is only in the 8th digit level classification which had already been held to be under 08028090 following the decision of Hon'ble CESTAT Chennai vide its Order dated 12.03.2019 under CTH 08028090 relying upon the decision of Hon'ble Apex Court in the case of the Present appellant and also of M/s. Crane Betel Nut Powder Works. We do not find any reason to differ from this since there is no change either in the description or in the process of the subject product. Now, we proceed to determine the applicable rate of the product.

8.1 On the applicable rate, it is the contention of the appellant that

- As per the decisions of the 4th GST council meeting, the council resolved to have the following rates of GST viz., Nil, 5% (which would generally cover goods which presently attract combined tax rate of Central Excise and Vat, including cascading on account of these two taxes between 3% and less than 9%); 12% (which would generally cover goods which presently attract combined tax rate of Central Excise and VAT, including cascading on account of these two taxes between 9% and less than 15%); 18% (which would generally cover goods which presently attract combined tax rate of Central Excise and VAT, including cascading on account of these two taxes between 15% and less than 21%); 28% (which would generally cover goods which presently attract combined tax rate of Central Excise and VAT, including cascading on account of these two taxes equal to or more than 21%).

- The product in hand suffered a total tax of about 4 to 5 % (Central Excise-Nil; VAT- 4 to 5%). In the absence of any justification in support of placing the subject product under 12%, in deviation of the general guidelines framed by the GST Council that all goods attracting taxes between 3% to 8% under the erstwhile regime shall be kept under 5% rate, the discussions of the 14th Meeting of GST Council relied by the LA, cannot be used against them to deny the 5% rate for the subject goods.
- When the wordings of the notification are clear and unambiguous, no external guides for interpretation such as Finance Minister's speech or Parliamentary proceedings could be resorted to.
- 'Areca nut' and 'Betel nut' indicates the same product and are used interchangeably.

8.2 We find that the Lower Authority relying on the Minutes of the 14th GST Council Meeting has decided that the product being betel nut, the applicable GST rate is @12% as per Sl.No. 15 of Schedule-II of the rate notifications. The relevant minutes of the 4th GST Council meeting, 14th GST Council Meeting and the entries of the Notifications are as under:

4th GST Council Meeting:

Agenda Item 3: Finalisation of the bands of tax rates under GST regime (Outstanding agenda item from the 3rd GST Council Meeting)

29. In view of the above discussions, for Agenda item 3, the Council adopted the following decisions in respect of bands of rates of tax in the GST regime and the compensation mechanism for five years:

- (i) There shall be a category of goods which shall be exempt from GST and this would include items like food grains.
- (ii) There shall be a low band of tax rate of 5% and would generally cover goods which presently attract combined tax rate of Central Excise and VAT (including cascading on account of these two taxes) between 3% and less than 9%. Such goods are normally consumed by the vulnerable sections of the society or have high impact on inflation.
- (iii) There shall be a standard tax rate of 12% and would generally cover goods which presently attract combined tax rate of Central Excise and VAT (including cascading on account of these two taxes) between 9% and less than 15%.
- (iv) There shall be another standard tax rate of 18% and would generally cover goods which presently attract combined tax rate of Central Excise and VAT between 15% and less than 21% (including cascading on account of these two taxes).

(v) There shall be a higher band of tax rate of 28% and would generally cover goods which presently attract combined tax rate of Central Excise and VAT equal to or more than 21% (including cascading on account of these two taxes).

(xiv) A Committee of officers of the Central Government and the State Governments shall carry out an exercise of fitment of goods in the various slab rates, namely exempted category, lower rate, the two standard rates and the higher rate on the basis of the principles enumerated at serial number (i) to (v) above, which are indicative in nature and are not fixed rules. While doing the fitment in the slab rates of 12% and 18%, the Committee of officers shall take into account the current economic and social realities. This Committee of officers shall also examine as to what items are presently attracting combined VAT and Central Excise tax rate of 28% or above and could be put into 18% rate slab taking into account the present context in which goods earlier considered as luxuries are now largely used by all segments of the society. The Committee shall bring the outcome of this exercise to the Council for further decision.

14th GST Council Meeting:

Discussion on GST rate for Goods

15.9. Starting the discussion on the proposed rates of GST on goods, the Secretary stated that discussion would be limited to those goods in each Annexure where an Hon'ble Member wanted the proposed rates to be revisited. He stated that except for such goods, the proposed rates for the rest of the goods in various Annexures could be deemed to be approved by the Council. The Hon'ble Chairperson stated that any suggested modification in rates should be discussed in terms of five criteria, namely, (i) revenue impact; (ii) impact on domestic manufacturing; (c) the existing combined rate of tax; (iv) the relevance of the product for consumers; and (v) optical perception of GST. The following goods were mentioned Annexure-wise by the Hon'ble Members for discussion: -

Annexure I (List of goods at nil GST rate):

.....
(xxxviii) **Areca nut:** The Hon'ble Minister from Karnataka stated that fresh areca nut harvested from trees was proposed to be taxed at Nil rate, the dry and processed areca nut was proposed to be taxed at the rate of 12%. He stated that the weighted average of the combined tax incidence today would not be more than 5%. He stated that farmers sold dried areca nut and its rate of tax should not be more than 5%. The Hon'ble Minister from Meghalaya stated that areca nut was a perishable agricultural product and green areca nut should be taxed at zero per cent and dried areca nut should be taxed at 5%. The

Secretary stated that in Chapter 8 of the HSN, a carve out could be considered for dried, unprocessed areca nut to be taxed at 5% which should not be called betel nut. Accordingly, it was proposed that dried areca nuts, whether or not shelled or peeled, might be kept at 5%. The Council agreed to this proposal.

The rate in respect of HSN 0802 is available in three entries (Sl.No. 28, 29 of Schedule-I & Sl.No. 15 of Schedule II) of Notification No.01/2017 and under Sl.No. 49 of Notification No. 02/2017. The entry covered under Notification No. 02/2017 covers all fresh nuts, whether or not shelled or peeled falling under 0802 and exempts the same. The Dried Nuts are listed under Notification No. 01/2017. The relevant entries of Notification No. 01/2017-C.T.(Rate) are as follows:

Schedule I-2.5%

Sl.No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
28.	0802	Dried areca nuts, whether or not shelled or peeled
29	0802	Dried chestnuts (singhada), whether or not shelled or peeled

Schedule II-6%

Sl.No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
15	0802	Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (Corylus spp.), walnuts, Chestnuts (Castanea spp.), Pistachios, Macadamia nuts, Kola nuts (Cola spp.) [other than dried areca nuts]

8.3 4th GST Council Meeting, has decided on a clear mandate for fixing the rates of the goods under GST. As per this mandate, the goods which suffered tax(cumulative) in the band of 3% to 9% are to be taxed at 5% GST. State Jurisdictional Officer who has the administrative jurisdiction over the appellant in their remarks to the Lower authority as is seen in Para 5.1 of the ruling of the lower authority has stated that the scented betel nut under the erstwhile TNVAT Act 2006 was taxable at 5% vide Serial No.6 of Part B of I Schedule to TNVAT Act 2006. The Central Excise Duty on the said product under CETH 0802 was 'NIL'. Thus, the cumulative tax incidence of the said product in the Pre-GST regime is 5% only. Further, on perusal of the recommendation of the Fitment committee and considered by the 14th GST Council Meeting, it is seen that the Fitment Committee has proposed 3 slabs of rates for the products under Chapter 8 which are as below:

List of Goods at Nil GST rate:

8.	8 (Edible fruit and nuts; peel of citrus fruit or melons)	Fresh fruits other than in frozen state or preserved
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List of Goods at 5% GST rate

4.	8 (Edible fruit and nuts; peel of citrus fruit or melons)	Edible fruit and nuts, in frozen state or preserved <u>[other than dry fruits]</u>
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List of Goods at 12% GST rate

5.	8 (Edible fruit and nuts; peel of citrus fruit or melons)	1. Dry fruits
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Thus, Fresh fruits other than in frozen state or preserved and covered under Chapter 8 were proposed to be charged at 'Nil' rate; Edible fruits and nuts, in frozen state or preserved (other than dry fruits) falling under Chapter 8 were proposed to be taxed at 5%; Dry fruits falling under Chapter 8 were proposed to be taxed at 12%. The 14th GST Council Meeting which approved the proposed rates, has in respect of Dried Areca nuts agreed to tax it @ 5% considering that the weighted average of the combined tax incidence in the Pre-GST regime would not be more than 5%. Accordingly the rate Notifications have been issued. While Sl.No. 28 of Annexure-I of the Notification notifies 'Dried areca nuts, whether or not shelled or peeled'-falling under 0802 to be taxed @ 5%; Sl.No.15 of Annexure-II of the Notification provides the rate @ 12% in respect of 'Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (*Corylus* spp.), walnuts, Chestnuts (*Castanea* spp.), Pistachios, Macadamia nuts, Kola nuts (*Cola* spp.) **[other than dried areca nuts]**' (emphasis supplied). Thus, we find that the 'Dried areca nuts' are to be taxed to GST at the rate of 5% only as the words of the description in the Notification No. 01/2017-C.T.(Rate) dated 28.06.2017 is clear in as much as 'Dried Areca nuts whether or not shelled or peeled' are to be subjected to GST @ 5% and simultaneously 'Other Nuts(other than Areca Nuts)' are to be taxed @ 12%.

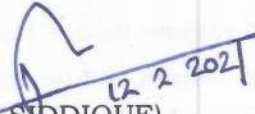
8.4 The Lower Authority has inferred that the betel nuts are different from Areca nuts and based on the minuted decision of the 14th GST Council Meeting, has

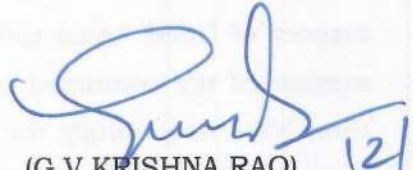
held that the applicable rate for the product in hand is 12%. We find from the Commercial Invoice No. E006/2017-2018 dated 08.03.2018 and the related Shipping Bill for Export, the product is described as 'Nizam BetelNut(Arecanut)'. Thus, it is seen that the product of the appellant is known as Betel nut(Areca nut) and assessed accordingly by the Customs. Considering this and going by the decisions of the judicial fora cited by the appellant as mentioned in para 4 supra to claim the terms 'betel nut' and 'areca nut' are the same and used interchangeably, we hold that the applicable tax rate for the product is @ 5% only.

9. In view of the above discussions, in terms of Section 101(1) of the CGST/TNGST Act 2017, we modify the ruling of the Original Advance Ruling Authority and rule as under

ORDER

The product of the appellant 'Nizam Pakku' classifiable under CTH 0802 8090 is leviable to 2.5% CGST as per Sl.No.28 of Annexure-I of Notification No. 01/2017-C.T.(Rate) dated 28.06.2017 and 2.5% SGST under Sl.No. 28 of Annexure -I of Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended.


(M.A.SIDDIQUE)
Commissioner of State Tax
Tamilnadu / Member AAAR


(G.V.KRISHNA RAO)
Pr.Chief Commissioner of GST & Excise
Chennai Zone/Member AAAR

To
M/S. S.A. Safiullah & Company
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Pudukottai 622 003.



Copy to

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2. Additional Chief Secretary/Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-5.
3. Authority for Advance Ruling,

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3. The Commissioner of GST &Central Excise, Trichy Commissionerate.
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4. The Assistant Commissioner (ST), Pudukottai-1 Assessment Circle ,
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