

**TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Goods and Services Tax)**

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AAAR.COM/01/2020

Dated: 12th July 2021

Order-in-Appeal No. AAAR/01 /2021

(Passed under Section 101 (1) of the Telangana Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Telangana Goods and Services Tax Act, 2017 (TGST Act, 2017 or the Act), 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 applicant or 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 original 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 ab-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.

Subject: GST – Appeal filed by M/s.Sushi Pet Nutriscience, Secunderabad under Section 100 (1) of TGST Act, 2017 against Advance Ruling TSAAR Order No.04/2020 dated 24.6.2020 passed by the Telangana State Authority for Advance Ruling - Order-in-Appeal passed – Regarding.

1. The subject appeal has been filed under Section 100 (1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as "TGST Act, 2017" or "the Act", in short) by M/s.Sushi Pet Nutriscience, Plot No.1&2, No.2-10-26/3, Sri Sai Surya Enclave, Machabollarum, Secunderabad having GSTIN No. 36ABWFS7447NIZZ (hereinafter referred in short as "M/s.Sushi" or "the appellant") against the Order No.04/2020 dated 24.06.2020 ("impugned order") passed by the Telangana State Authority for Advance Ruling (Goods and Services Tax) ("Advance Ruling Authority" / "AAR" / "lower Authority") in respect of an application filed by the appellant seeking Advance Ruling with regard to HSN Codes and rate of tax in respect of (i) "Poultry meal" & (ii) "Poultry Fat" manufactured and supplied by them.

2. Vide the impugned order, the Advance Ruling Authority had given the following advance rulings:

"1. The product 'poultry meal' is classifiable under Chapter Sub Heading No.2301 10 90 of the first schedule to the Customs Tariff Act, 1975 and the supply of the same attracts GST rate of 5% (2.5% CGST + 2.5% SGST) under Sl.No. 103 of the Schedule-I of the Not. No.01/2017-CT (R) dated 28.06.2017 (as amended).

2. The product "poultry fat" is classifiable under Chapter Subheading No.1501 90 00 of the first schedule to the Customs Tariff Act, 1975 and the supply of the same attracts GST rate of 12% GST (6% CGST + 6% SGST/UTGTS) vide entry No.19 of the Schedule-II of the Not. No.01/2017-CT (R) dated 28.06.2017 (as amended)".

The present appeal challenges the ruling (1) above in respect of "poultry meal". The ruling (2) on 'Poultry Fat' has not been disputed by the appellant.

Whether the appeal is filed in time:

3. In terms of Section 100 (2) of the Act, an appeal against Advance Ruling passed by the Advance Ruling Authority, has to be filed within thirty (30) days from the date of communication thereof to the applicant. The impugned Order dated 24.06.2020 was received by the appellant on 14.07.2020 as mentioned in their Appeal Form GST ARA-02. They filed the appeal on 05.08.2020, which is within the prescribed time-limit.

Brief Facts:

4.1. The facts in brief, are as follows:

M/s Sushi Pet Nutriscience, is a partnership firm engaged in manufacturing / rendering of 'Poultry Meal' and 'Poultry Fat'. Both these products are used as one of the protein raw material in the manufacturing of animal feed and aqua feed by these industries. The major raw material for manufacturing poultry meal and poultry fat is chicken wastages such as chicken legs, chicken head, intestine, feathers, skin etc. which is bought from the chicken stall owners in twin cities and other parts of Telangana State. The manufacturing process was detailed as follows:

(i) The poultry offal is dumped in to the batch cookers through screw conveyer, Cooker operator cook for 30 minutes and dry the resulting for 4 hours in same cooker, then the resulting material is put in storage bins which is in the semi-finished stage.

(ii) The semi-finished product contains a high level of fat which will be separated by using a fat press/screw press. Poultry meal coming from screw press will be sent to the hammer mill for making size reductions and then it is passed through a sieve.

(iii) The supplement is sent to a blender where anti-oxidants are added to prevent the supplement from oxidation. The supplement is then packed in HDPE bags and stored for sale. Final product is in brown color. The product contains Minerals, proteins and amino acids and is used as one of the raw ingredients by animal/aqua feed manufacturers. It is not fit for human consumption.

(iv) The fat oil collected in above process is filtered and further processed till emergence of final product i.e., poultry fat, which is in liquid state and reddish yellow in color; this is used as one of the raw ingredients by animal/aqua feed manufacturers and it is not fit for human consumption. (There is no dispute on classification / rate of tax on this Poultry fat).

(v) After processing waste materials such as chicken heads, legs, intestine etc., they lose their essential characteristics of original material and a new product emerges in powder form.

(vi) In respect of "poultry meal" their major customers are aqua/poultry/animal feed manufacturers viz.,

- (i) M/s Mars International India Private Limited.
- (ii) M/s NG Feeds Private Limited.
- (iii) M/s ABIS Exports India Private Limited.
- (iv) M/s Kwaliti Feeds Limited.

4.2. With the above background, the applicant had sought for ruling with regard to the HSN codes and the rate of tax in respect of "poultry meal".

4.3. The appellant has also furnished a technical explanation / write up on 'Concentrates for compound animal feed', as under:-

The final output i.e., - poultry meal as explained is a product which comes under the category of protein "concentrates", used as an ingredient for compound animal feed, fish feed. The rational reason for defining it as "concentrate" comes from the process as how poultry meal is produced. In the process of production of poultry meal where the poultry waste like heads, legs, intestine and feathers are pressure cooked and dried under very high temperature, whereby if we use the raw material of chicken wastage of 1000 kilograms, (i.e., legs, heads, intestine and feathers) then the same is further concentrated with the process as briefed above and the output of that process is the final product called poultry meal which will be around 250 to 300 kilos depending on the quality of chicken wastage. The product of poultry meal is produced by concentration of the soft poultry waste offal such as intestine, heads, legs, feathers using the process as explained with the removal of water and moisture the same is placed as concentrate for compound animal feed, fish feed (prawns etc.,) which is as per HSN code 2309 2090.

Compounded animal feed is a mixture of product of vegetable or animal origin in their natural state fresh or preserved or products derived from the industrial processing of organic or inorganic substances, whether or not containing additives for oral feeding in the form of complete feed. Concentrates provide essential extra energy and protein. In the product of poultry meal which is a concentrate contains proteins, some fat, minerals and

amino acids. The animal feed manufacturers use the product as per their standard formula in their manufacturing process of compound animal feed so that the feed will become whole some or complete feed which will help improve the health of the animal.

They also referred to the definition of Concentrate feeds, as PER FAO (Food and agriculture Organization) as under:

Feeds may be broadly classified as concentrate and roughages, depending on their composition. Concentrate are feeds that contain high density of nutrients, usually low in crude fiber content (less than 18% of dry matter) and high in total digestible nutrients. Roughages are feeds with low density of nutrients with crude fiber content over 18% of dry matter including most fresh and dried for ages and fodders.

Concentrates maybe high in energy referred to as energy concentrates such as cereals and milling by products, or high in protein, with over 20% crude protein referred to as protein concentrates. Concentrates may be fed in raw or milled forms as individual feeds (sometimes referred to as straights) or maybe blended or formulated into balance ratios for particular production purposes.

4.4. They further stated that the process of manufacture of 'poultry meal' is similar to the description under Explanatory notes to Chapter 23 which reads as *"Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing."*

4.5. The appellant has been selling poultry feed as 'animal feed supplement' under HSN Code 2309 90 20 at NIL rate of duty under GST Act, 2017 since it is exempt under Entry 102 of Notification 2/2017 (Central Tax-Rate) dated 28.06.2017. However, in respect of their application for Advance Ruling, the lower authority has held that the poultry meal is classifiable under Chapter Heading 2301 10 90 with GST rate of 5%.

5.1. Aggrieved by the above ruling, the present appeal has been filed by the appellant on the following grounds:

- (i) The Advance Ruling Authority (AAR) erred in determining the classification of poultry meal under HSN 2301 attracting GST @5%.
- (ii) The poultry meal manufactured and sold by the appellant is in the nature of a concentrate which is further used in obtaining compound animal feed. The poultry meal, which is obtained from poultry offal (intestines, feather, feet, skin, head) contains significant amount of amino acids, proteins and minerals which are essential for the growth in the animals that consume them. The poultry meal, when combined with fibre/ roughages, forms a whole meal for the animals. Without the addition of poultry meal, the fibre/roughages would not contribute to the growth of the animals while without the fibre/roughages, it would be difficult for the animals to digest the poultry meal. Therefore, the poultry meal is essentially an animal feed.
- (iii) Poultry meals are directly edible by animals and it provides essential growth nutrition. However, when combined with fibre and other substances, the resultant Compound would be optimum to aid the animals in consumption and digestion. The finding that poultry meals are not directly used as feed to animals is erroneous and without consideration of basic aspects of animal feeding.
- (iv) Even otherwise, the observation of the AAR that poultry meal is not directly fed to the animals and therefore, is not covered within the language of the Heading of Chapter 23 is erroneous. The Heading of Chapter 23 nowhere

states that the preparations/products of a kind must itself be directly fed to animals. On the contrary, it states that the products may be "used in animal feeding". The expression is wider and would encompass concentrates such as poultry meal which may be used in whichever form for the purpose of animal feeding.

- (v) The AAR has selectively interpreted the fact that the poultry meal is used as raw material for manufacture of animal feed against the appellant without considering the fundamental nature of poultry meal. Although poultry meal is applied as an ingredient in further manufacture of animal feed, that does not imply that poultry meal itself is not animal feed or concentrate for compound animal feed. The AAR could not appreciate the basic aspect that, like humans, animals need a balance of nutrients, protein and fibre in their meal. Poultry meal can undeniably be administered directly to animals but that would only satiate the growth and protein needs of the animals and not aid in digestion. Therefore, for a wholesome process of digestion and nutrition, the concentrate of proteins and amino acids which is in poultry meal needs to be compounded with other fibres before being given as feed to animals. Merely because a product is capable of being used as a raw material, it does not imply that it cannot be classified under entries which otherwise accurately cover them.
- (vi) The AAR failed to appreciate that the inclusion of 2309 90 20 i.e. "Concentrates for compound animal feed" would itself be redundant if the main Heading is interpreted as done by the AAR i.e. products directly fed to animals. Compound animal feed is the feed that is blended from various nutrient sources and additives so that feed with specific requirements is obtained to suit the target animal. In compounding such animal feed, concentrates are applied which could be concentrates for protein, fibre etc. The poultry meal, in this case, is the concentrate for protein in the compound animal feed. In the industry, it was popular practice for several years to simply mix the concentrates with other fibre etc., and give to animals. However, with advancement, the concentrates and fibres are subject to further processing to blend and integrate them firmly into compound pellets or crumbles instead of a simple mixture.
- (vii) The AAR erred in placing reliance upon Circular dated 31.12.2018 issued by Tax Research Unit. The tax research unit is not empowered or competent to issue any clarificatory circulars for the purpose of assessments or classification of goods under the GST Law since it has not been issued under Section 168 of the CGST Act. It is an extra legal circular. It appears that the Unit received certain representations from dealers seeking clarification. However, the appellant has never applied for any clarification and the circular dated 31.12.2018, will not apply to the appellant nor is it binding for the purpose of determining a question raised before the AAR. Similarly, the appellate authority of the AAR i.e., this forum is also not bound by the circular dated 31.12.2018.
- (viii) The AAR erred in placing reliance upon the decision of Hon'ble Supreme Court in the case of *Dilip Kumar* (2018) 361 ELT 577 as if a ratio was laid down that inputs for animal feed are different from animal feed. The reliance placed is misconceived and misleading. The decision in *Dilip Kumar* was rendered by a Constitution Bench of Hon'ble Supreme Court with the limited purpose of answering a specific reference as to whether the ambiguity arising out of an exemption notification issued by the Government as against a Legislative Provision should be settled in favour of an assessee or not. The Hon'ble Supreme Court merely dealt with this legal principle, but did not render or approve any finding or any principle relating to the classification of

animal feed or inputs on merits. The extract referred to by the AAR is misunderstood since the facts arising from the case, which gave rise to the reference, were merely recorded by the Five Judge Bench and no finding or determination was rendered by the Five Judge Bench.

- (ix) The AAR erred in brushing aside the decision relied upon by the appellant in the case of M/s. Supreme Suguna Foods Company Limited (2015 316 ELT 341 Tri. Chennai). The Tribunal had found that high protein poultry mash is classifiable as a preparation of a kind used in animal feeding. The poultry meal that is the subject matter of the question before the AAR is similar in nature to the high protein poultry mash. Since poultry meal is a concentrate for compounded animal feed falling under Chapter-2309, the heading of which is preparations of a kind used in animal feeding, the decision of CESTAT is in favour of the Petitioner and ought to have been applied by the AAR.
- (x) The AAR's error in judgment is evident from a reading of Entry 102 of Notification No.2/2017 dated 28.06.2017 itself. Entry 102 contemplates that supplements, husks, concentrates and additives are included within the meaning of aquatic, poultry and cattle feed. If the interpretation of the AAR is accepted, the inclusion of concentrates within the scope of feed would be erroneous since concentrates, being what they are, are difficult to be digested when fed directly. To aid the digestion of the same, the concentrates are subjected to further processing before being fed to the animals. The intention of the policy maker is that concentrates, without any qualification of whether used for further processing or not, fall within the scope of feed.
- (xi) Therefore, poultry meal manufactured and sold by the appellant is classifiable under Chapter 23 (2309 9020) as Concentrates for Compound Animal Feed.
- (xii) Accordingly, it was prayed that the impugned order be set aside and poultry meal be declared as exempt from GST as per Entry No.102 of Notification No.2/2017 (Central Tax-Rate) dated 28.06.2017.

Personal Hearing:

5.1. In terms of Section 101(1) of the Act, the appellant was given personal hearing, in virtual mode on 26.03.2021. Sri S. Dwarakanath, Advocate appeared for the appellant. He reiterated the written submissions given in their appeal and requested to consider the same. He drew attention to the judgment of Hon'ble Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai Bench in Supreme Suguna Foods Co. Ltd. vs CCE, Coimbatore 2015 (316) ELT.341 (Tri-Chennai). The said industry/unit manufactured High Protein Poultry Mash (HPPM) which is similar to their product Poultry Meal ("impugned product" or "product"). The Hon'ble Tribunal rejected the party's claim that it was classifiable under Chapter Heading 2301 of the Central Excise Tariff and held that it is classifiable under chapter 2302 of CETA (Central Excise Tariff) and 2309 of CTA (Customs Tariff). Though the said decision has been cited and relied by them, the Advance Ruling Authority has not considered or addressed the same; nor stated why it is not applicable or how it is distinguishable. To his knowledge, the said decision of Hon'ble Tribunal has not been appealed by Revenue. The classification ordered by Advance Ruling Authority is exactly opposite to the Hon'ble Tribunal's judgment.

5.2. He also referred to Note 1 to Chapter 23 of the Customs Tariff which read as: "*Heading 23.09 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of*

the original material, other than vegetable waste, vegetable residues and by-products of such processing". The product manufactured by them is from the process specified above and the essential characteristics of original waste material is lost totally, the product is in powder form and in the form of concentrate which has to be mixed with starch and other feed items etc. for feeding to the animal. He submitted that Heading 2309 9020 covers 'concentrates for compound animal feed' and therefore, their product falls under this head and is straightaway exempt under entry No.102 of Notification no.2/2017-Central Tax (Rate) dated 28.06.2017 which covers 'aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de oiled cake'. The Advance Ruling Authority has erred in holding that the product is not directly fed to the animals but is a raw material of animal feed and therefore not eligible for the benefit of exemption. Whereas the product is covered by Heading 2309 which applies to 'Preparations of a kind used in animal feeding', which is also supported by Hon'ble Tribunal's judgment. The Authority however has not relied upon the judgment of the Tribunal.

5.3. The learned Advocate further stated that the Advance Ruling Authority has referred to Hon'ble Supreme Court judgment in Dilip Kumar & Company [2018 (361) ELT.577 (S.C.)]. However, in the said judgment, the question was not about classification of the product, but on the norms to be followed when there is ambiguity in exemption Notification. The Hon'ble Court has held that when there is ambiguity in exemption Notification, the benefit should go to the State. The said decision has no application whatsoever to the instant case of classification of 'poultry meal' manufactured by them. He therefore prayed that the impugned Advance Ruling be set aside and their appeal be allowed by classifying the Poultry Meal under Heading 2309 as 'Preparation of a kind used in animal feeding' and specifically 2309 90 20 as 'concentrate for compound animal feed'.

Discussion, Findings and Determination of the Appeal:

6. We have carefully considered the facts on record, the relevant entries in the Customs Tariff and the exemption Notification No.2/2017 –Central Tax (Rate) dated 28.06.2017, the impugned order passed by Advance Ruling Authority, the appellant's grounds of appeal and submissions during personal hearing.

7. We find that there are two issues for determination in the subject appeal.

- Firstly, the correct classification of the product 'poultry meal' whether it falls under Tariff Item No. 2301 10 90 of the Customs Tariff Act, 1975 as held by the lower authority in the impugned order or whether it falls under Tariff Item No. 2309 90 20 as 'Concentrates for compound animal feed' as contended by the appellant.
- Secondly, whether the said product is eligible for exemption in terms of entry Sl.No.102 of Notification No.2/2017-Central Tax (Rate) dated 28.06.2017 (as amended), as claimed by the appellant or the same is not eligible for the said exemption and hence chargeable to 5% GST as held by the lower authority in the impugned order.

8. For determining the above, the relevant entries in the First Schedule to the Customs Tariff Act, 1975 ("Customs Tariff" in short) merit a reference, since in terms of Explanation (iii) and (iv) to Notification No.1/2017-Central Tax (Rate) dated 28.6.2017, the classification of goods has to be done as per the Chapters, Headings, sub-headings and Tariff Item numbers of the Customs Tariff and also

applying the Rules for Interpretation of the Schedule including the Section and Chapter Notes and the General Explanatory Notes.

9.1. The relevant entries under Headings 2301 and 2309 of the Customs Tariff, read as follows:-

Heading 2301:

Tariff Item	Description of goods
2301	<i>Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves</i>
2301 10	<i>- Flours, meals and pellets, of meat or meat offal; greaves</i>
2301 10 10	<i>--- Meat meals and pellets (including tankage)</i>
2301 10 90	<i>--- Others (including greaves)</i>
2301 20	<i>- Flours, meals and pellets, of fish or of crustaceans..</i>

Heading 2309:

Tariff Item	Description of goods
2309	<i>Preparations of a kind used in animal feeding</i>
2309 10 00	<i>- Dog or cat food, put up for retail sale</i>
2309 90	<i>-Other:</i>
2309 90 10	<i>---Compound animal feed</i>
2309 90 20	<i>---Concentrates for compound animal feed</i>
	<i>---Feeds for fish (prawn, etc.)</i>

9.2. Note to Chapter 23 of the Customs Tariff, reads as follows:

Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.

9.3. It is also pertinent to refer to the Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 (specified in the Explanation (iv) to Notification No.1/2017- Central Tax (Rate) dated 28.06.2017), which read as follows:

“GENERAL RULES FOR INTERPRETATION OF THE SCHEDULE

Classification of goods in this Schedule shall be governed by the following principles:

1. *The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

(b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to principles of rule 3.*

3. When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.....".

9.4. The HSN (Harmonised System of Nomenclature) contains the following description and Explanatory Notes in respect of Heading 23.01:

"23.01-Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves.

...

This heading covers:

(1) *Flours and meals, unfit for human consumption, obtained by processing either the whole animal (including poultry, marine mammals, fish or crustaceans, molluscs or other aquatic invertebrates) or animal products (such as meat or meat offal) other than bones, horns, shells, etc. These products (obtained mainly from slaughter houses, floating factories which process fishery products, canning or packing industries etc.) are usually steam-heated and pressed or treated with a solvent to remove oil and fat. The resultant product is then dried and sterilised by prolonged heating, and finally ground.*

The heading also covers the above products in the form of pellets (see the General Explanatory Note to this Chapter).

The flours, meals and pellets of this heading are used mainly in animal feeding, but may also be used for other purposes (e.g., as fertilisers).

(2) *Greaves...."*

The description and Notes with regard to Heading 23.09 in the HSN are as under:

"23.09 – Preparations of a kind used in animal feeding.

2309.10 – Dog or cat food, put up for retail sale

2309.90 – Other.

..

The heading includes products of a kind used in animal feeding, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, for example, in case of products obtained from vegetable materials, those which have been treated to such an extent that the characteristic cellular structure of the original vegetable material is no longer recognisable under a microscope...."

10.1. On examining the description, process and usage of the impugned goods "poultry meal", vis-à-vis the above Tariff entries, Interpretative Rules and

Explanatory Notes, it appears that the goods in question meet the description of the goods "poultry meal" falling under Tariff Item 2301 covering "meals of meat or meat offal". The process of manufacture described by the appellant is similar, rather identical to the process described in the HSN Explanatory Notes, under Heading 2301.

10.2. With regard to the appellants' claim for classifying the impugned goods as 'concentrates' falling under Heading 2309 of the Customs Tariff, we find the same is legally untenable due to the following reasoning.

10.3. In order to fall under Heading 2309, the goods should be "Preparations of a kind used in animal feeding". Considering the said specific phrase used as the terms of the heading and also considering the various types of goods mentioned thereunder i.e., Dog or cat food, in retail form, compound animal feed, Fish, prawn feed etc., and also taking into account the HSN Explanatory Notes for the Heading 2309 *supra*, it is evident that the said Heading is applicable to finished products which are as such fed to the animals. To further elaborate, the Heading contains the wording as "...used in animal feeding" and not as "...used in animal feed(s)". The phrase 'used in animal feeding' has a distinct connotation to denote goods which are fed to animals in a ready to eat condition, whereas the latter phrase 'used in animal feeds' will cover raw-materials or ingredients which are used in further manufacture / preparations of animal feeds. The impugned goods 'poultry meal' are not marketed or sold for feeding to animals as such, as per the record available before us. On the contrary, these are sold/supplied to manufacturers of animal feed/aqua feed.

10.4. The appellant has also contended that the 'poultry meal' is known in the trade as 'animal feed supplement' and further that these are in the nature of 'concentrates' and therefore they will fall under Heading 2309 90 20 as 'concentrates for compound animal feed'. We have considered the submissions in this regard. Primarily, except for a mention that the product 'poultry meal' is known in trade as 'Animal feed supplement', the appellant has not adduced any documentary or material evidence to support / establish the said claim. **On the other hand, it is an un-disputed rather admitted position that the poultry meal is a raw-material used in manufacture of animal feed / aqua feed and it is supplied by the appellant as such to manufacturers of animal feed/aqua feed.**

10.5. The word 'concentrates' is not defined in the Act. As per standard dictionary meanings (Oxford, Collins, Webster Merriam etc.), the meaning of 'concentrates' noun form is 'it is a substance made by removing or reducing diluting agent, a concentrated form of something' etc. Thus, in order to fall under the description 'concentrates', it should be shown to be a particular substance which is in concentrated form. In the given context of Heading 2309, the phrase 'concentrates for compound animal feed' therefore would apply to goods/products which contain a given substance(s) in concentrated form and which is used in a compound animal feed. The phrase 'compound animal feed', in common trade parlance, is a mixture of various concentrate feed ingredients in suitable and defined proportions; such ingredients commonly including grains, brans, protein meals/cakes, minerals and vitamins etc. The appellant however has not adduced any material or evidence, including technical literature etc., to show and establish that the poultry meal fulfils the above criteria so as to qualify as 'concentrates'. Hence, we find the appellants' claims to be unsubstantiated and therefore not acceptable.

10.6. It is further observed that in terms of the Chapter Note to Ch.23 in the Customs Tariff, as referred *supra*, the products under Heading 2309 include those which are processed to such an extent that the essential characteristics of the original material is lost. The HSN Notes elaborate on this aspect showing that the extent of processing should be that the characteristic cellular structure of the

original vegetable material is no longer recognizable under a microscope. The appellants have laid much emphasis that the process of manufacture of poultry meal is the same as mentioned in the Chapter note, whereby the characteristics of the chicken legs, intestines etc., are lost and a totally new product emerges in the powder form. As per the description of manufacturing process given by the appellants, the poultry meal emerges from sequence of cooking, separation of fat, pressing and sieving; which are plain physical processes whereby it cannot be said that the essential characteristic of original material is lost. This position will also not change by addition of anti-oxidants, which is only to prevent the oxidation leading to decay/degeneration of the animal material content. Hence, on this count also, we find that the classification of poultry meal under Heading 2309 does not arise, since the stipulation in the relevant Chapter Note is not fulfilled.

10.7. As already delineated supra, for classification under Heading 2309 and the sub-headings/Tariff Items thereunder, the goods must be preparations of a kind used in animal feeding; which is admittedly not fulfilled in respect of the impugned poultry meal. The appellant, though stated in the grounds of appeal that the poultry meal is directly edible by animals, however they have not adduced any material to show or substantiate the said position.

11.1. The appellant have relied on the Hon'ble Tribunal decision in the case of Supreme Suguna Foods Co. Pvt. Ltd. vs CCE, Coimbatore 2015 (316) E.L.T. 341 (Tri. - Chennai) by citing that in the said case, the goods viz., HPPM (High Protein Poultry Mash) similar to the impugned Poultry Meal, were held to be classifiable under Heading 2309 of the Customs Tariff. The appellants contended that the said decision squarely applies to them, however that the Advance Ruling Authority has not considered the same despite their submissions and citation of the said case law.

11.2. We have perused the above referred case law. We find that the relevant Central Excise Tariff entries under consideration before the Hon'ble Tribunal in the said case were different from the entries in the subject appeal. In the said case law, the two competing entries (as per Central Excise Tariff) are seen to be as follows:

Heading No.	Sub-heading No.	Description of goods
23.01	2301.00	Residues and waste from food industries, including bagasse, other waste of sugar manufacture and oil cakes
23.02	2302.00	Preparations of a kind used in animal feeding, including dog and cat food

Relevant extract of the Hon'ble Tribunal's analysis is also reproduced as under:

6. We find that Chapter 23 covers the various residues and wastes from food industries also includes prepared animal fodder, certain products of animal origin., Chapter 23 of CETA is comprising of only two headings. Heading No. 23.01 covers the residues and wastes arises during the process of manufacture of final product from food industry. The clearance of residues and wastes above would be Nil rate of duty under Heading No. 23.01. The other Heading No. 23.02 covers preparation of a kind used in animal feeding. There is no dispute that heading 23.02 of CETA corresponds to Heading No. 23.09 of CTA. ...

11.3. Thus, in the above case law, the Heading 2301 of Central Excise Tariff which was considered by the Hon'ble Tribunal covered "Residues and waste from food industries, including bagasse, other waste of sugar manufacture and oil cakes". The same is not at all comparable with the situation in the instant case wherein the Heading 2301 of Customs Tariff covers "Flours, meals and

pellets... of meat and meat offal...". Hence, the above case law is clearly distinguishable on the facts and context of statutory text / classification entries involved, whereby it cannot be said to be a binding precedent to be applied to the present case. Accordingly, we find the appellant's arguments in this regard to be legally not tenable.

12. Further, in terms of Rule 1 of the Interpretative Rules, the "terms of the headings" are the primary and the paramount criterion for classification. Heading 2301 covers "meals.. of meat or meat offal" and admittedly the impugned goods are "poultry meal" made from chicken wastages etc. Thus, we find that the appropriate classification is under Tariff Item 2301 10 10 covering "Meat meals and pellets" and not under Tariff Item 2301 10 90 - 'Other'. Since 'meat meal' finds a specific mention in TI 2301 10 10 they will merit classification under this heading as opposed to 2301 10 90 which is a generic entry. Therefore, the lower Authority's ruling to this extent, merits to be modified in accordance with Section 101 (1) of the GST Act, 2017 which specifically empowers modification of the ruling appealed against.

13. In the light of the above, insofar as the first issue in the appeal dealing with classification of the product "Poultry Meal" is concerned, we hold that the same falls under Heading 2301 of the Customs Tariff (applicable for GST purposes) and in particular, under Tariff Item No. 2301 10 10, as detailed supra.

14. The second issue for determination is whether the poultry meal is covered by the exemption entry Sl.No. 102 of Notification No.2/2017-C.T. (Rate) dated 28.06.2017 as claimed by the appellant or not.

15.1. The said exemption entry (as amended) reads as under:-

Sl. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
102	2301, 2302, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake.

15.2. The entry refers to both the classification i.e., Chapter Heading / Subheading / Tariff Item and also specified description, in Col. (2) & (3) respectively. The impugned goods viz., 'Poultry meal' have been held to be classifiable under Heading 2301 of the Customs Tariff. The said Heading figures in Column (2) of the entry No.102. However, the goods 'poultry meal' does not figure in the list of goods specified by description in Column (3) above. Hence, the 'poultry meal' is not eligible for the above exemption.

15.3. The appellant has claimed the exemption on the basis of their contention that the poultry meals is classifiable as 'concentrates', which is appearing in the exemption entry. We have already examined the said claim and negated the same vide our findings and discussion, supra. The same holds good and applies in this context also.

15.4. The appellant has also put forth other contentions in this regard i.e., the lower authority has referred to the Hon'ble Supreme Court judgment in the case of Dilip Kumar & Company, which is not at all applicable nor relevant; the lower authority erred in relying upon a TRU-Circular which does not have statutory backing etc.

We find that these contentions do not have any bearing vis-à-vis the issue of eligibility to an exemption Notification. Even otherwise, we find that the reference to the Hon'ble Supreme Court judgment in Dilip Kumar & Co., finds mention in the TRU Circular dated 31.12.2018. It has been further held in a catena of judgments that TRU Circulars however have persuasive value and aid in interpreting the scope / text of Notification-entries etc. being contemporaneous exponentio. Reliance in this regard is placed on Shahnaz Ayurvedics vs Commissioner of Central Excise, Noida 2004 (173) ELT. 337 (All.), - which was upheld by the Hon'ble Supreme Court - , wherein the Hon'ble Allahabad High Court has inter alia held as follows:

67.....*Apart from the fact that circulars of the Board are binding on the Tax Department, they are in the nature of contemporanea expositio furnishing legitimate aid in the construction of the relevant provisions.*

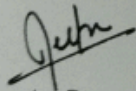
16. In the light of the foregoing, we pass the following:

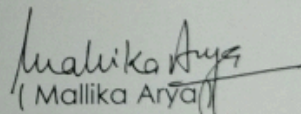
ORDER

Issue 1: The product 'poultry meal' manufactured and supplied by appellant falls under Tariff Item No. 2301 10 10 of the Customs Tariff Act, 1975. The impugned order is modified accordingly.

Issue 2: The product 'poultry meal' manufactured and supplied by appellant is not eligible for the exemption contained in entry Sl.No.102 of Notification No.2/2017-Central Tax (Rate) dated 28.06.2017 (as amended).

The subject appeal is disposed accordingly.


(Neetu Prasad)
Commissioner
State Tax,
Telangana State


(Mallika Arya)
Chief Commissioner
Central Tax
Hyderabad Zone

To:

✓ M/s.Sushi Pet Nutriscience, Plot No.1&2, No.2-10-26/3, Sri Sai Surya Enclave,
Machabollarum, Secunderabad [GSTIN No.36ABWFS7447NIZZ] (By Regd Post)

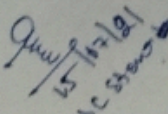
DESPATCHED

Copy to:
DATE: 14.07.2021

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.

2. Chief Commissioner of Central Tax & Customs, Hyderabad Zone - for information and for forwarding copies of the order to the concerned / jurisdictional officer of Central tax.

न. रावेंद्र कुमार
N. RAVINDRA KUMAR
सहायक आयुक्त
Asst. Commissioner


15/07/21
ABC 34567

3. Commissioner of State Tax, Telangana State - for information and for forwarding copies of the order to the concerned / jurisdictional officer of State tax.