

Appellate Authority for Advance Ruling for Goods and Service Tax,
Uttar Pradesh

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Order No. 01/AAAR/_____/01/2018.

Dated: 17.09.2018

Before the Bench of :-

Shri S.H. Hasan, Member

Smt. Kamini Chauhan Ratan, Member

GSTIN Number	09AGUPB8298F1ZQ
Legal name of the Applicant	HARITH BUDHRAJA
Trade Name of the Applicant	M/s BHARAT AGRO
Registered address/Address provided while obtaining user ID	PLOT NO. C1, SECTOR-B3, TRONIC CITY, UPSIDC INDUSTRIAL AREA, LONI, GHAZIABAD, U.P.
Order of Advance Ruling Against which the appeal is filled	ORDER NO.05 DATED 21.5.2018 PASSED BY THE AUTHORITY OF ADVANCE RULING, UTTAR PRADESH

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as “the CGST Act and UPGST Act”) by M/s Bharat Agro (hereinafter referred to as the “Appellant”) against the Advance Ruling Order No. 05 dated 21.05.2018 passed by the Authority for Advance Ruling, Uttar Pradesh.

The provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the UPGST Act.

Brief Facts of the Case

A. The brief facts of the case are that the appellant is engaged in selling of Pineapple Slices dipped in Sugar Syrup and packed in airtight tin containers. Applicant vide their application dated 28.03.2018 sought Advance Ruling as mentioned below:-

“HSN classification for peeled sliced Pineapple, put up in air tight unit container in sugar syrup.”

B. The Pineapple slices are washed in water and graded for uniformity in size, color and ripeness. After steaming process they are packed in air tight containers and dispatched for consumption.

C. The Appellant is of the view that during the entire process the basic nature of the ‘pineapple’ remains unchanged and it is used as ‘fresh pineapple’ and therefore their product should be classifiable under HSN Code 0804 which is exempted under Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017 and UPGST notification No. KANI-2/837/XI-9(47)/17-U.P. XR-1-2017-Order-(07)-2017 dated 30.06.2017.

D. Personal Hearing was granted and Shri Deepak Sindhu, Authorized Representative had appeared for personal hearing and informed about the processing of pineapple by the process flow chart and produced various case laws in support of their claim.

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ORDER PASSED BY THE AUTHORITY FOR ADVANCE RULING

The Uttar Pradesh Goods and Service Tax, Advance Ruling Authority passed the order on 21.05.2018 holding that "Canned pineapple slices, dipped in sugar syrup" are covered under Tariff item no. 2008 and are leviable to 6% CGST and 6% SGST under notification no. 01/2017-Central Tax (Rate) dated 28.06.2017 (as amended) and Schedule-II of UPGST notification no. KANI-2-836/XI-9(47)/17-U.P. Act-1-2017-Order-(06)-2017 dated 30.06.2017 (as amended).

Aggrieved by this order, the Appellant has filed appeal dated 20.06.2018 before the Appellate Authority for Advance Ruling based on the following grounds -

Grounds of Appeal

- A. The Impugned Advance Ruling has been passed on an incorrect reading of the legal provisions and on the basis of presumption.
- B. The Advance Ruling Authority has failed to appreciate that product in question is not different from fresh/frozen pineapple and cannot be treated as a prepared product.
- C. The both head 2008 & 0811 contain added sugar, therefore reason that product contains added sugar is inconclusive on standalone basis to classify in either headings.
- D. The learned Authority has failed to observe that the product even though has a shelf life inside the can only and outside the same it would spoil within 02 days or less hence it cannot be treated as 'permanently preserved'.
- E. The learned Authority has not appreciated the process of manufacture and the product made out by the appellant which should be classified under HSN 0811, instead of chapter 2008 as the goods are provisionally preserved as per the label and process.

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F. The learned Authority has failed to consider all rules & interpretations. A per the General Rules for interpretation of the harmonized system (GIR)

Rule 1 (V) (a) , Indicates that the SECTION and CHAPTER heading are paramount and the 1st consideration in classification

GIR - Rule 2 (a) (iii) , Indicates that it is not applicable to sections II and IV under discussion.

Rule 3 (a) , indicates "-.....The item.....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 a precise description of goods "in the instance 0804 3000 with a single dash entry for the word "-pineapples" is disregarded for this reason and the entry 0811 9010 is preferred as " - Other" as the item is ready for Retail.

Rule 3 (c) (XII) Indicates goods be classified - within a heading - the heading which occurs last in numerical order. In this case the last numerical order within is Section II of Heading 08 of the HSN between specific heading 08043000 and 08119010 , the later is preferable as the product is also put up in retail containers.

Rule 3 (B) (X) (c) with example (1) "... The rule does not however cover selection of products put up together and consisting for example of a can of shrimps, a can of sliced bacon and I can a cocktail sausages in the case of these two examples and similar selections of products each item is to be classified separately in its own appropriate heading."

GIR - Rule 4 (1) indicates "This rule relates to goods which cannot be classified in accordance with rules 1 to 3 it provides that such goods be classified under the heading appropriate to the goods to which they are most Akin."

G. Judgments by various Tribunals up held by Hon'ble Supreme Court have not been considered which are binding.

H. Opinion of Trade body Ref No. 85-GST/2017 dated 04.07.2017 by Dr. S. Jindal, President AIPPA is important as the classification is based on terms used in common parlance.

I. Exports of same similar product under Chapter 0811 as basis for kinship and their respective MEIS licenses also issued by Government

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of India. There cannot be two classifications for the purpose of exports/ imports or say customs and GST.

Therefore the goods under consideration are merit proper classification under CTH 08119090 and not under CTH 2008, that belongs to start with a completely different Section IV, made for preparations. The appeal may be allowed to that extent.

Personal Hearing

Personal Hearing was granted to the appellant on 12.09.2018, Shri Harith Budhraj, Prop. M/s Bharat Agro, appeared for personal hearing and reiterated the points made in the ground of appeal. He explained, by way of video the process of making of the 'canned pineapple slices' and also produced before the appellate authority a sample of similar product.

Appellant also referred to the decision of CEGAT in the case of Northland Industries Vs Collector of C. Ex 1988(37)E.L.T.2229 (Tribunal), which was approved by the Hon'ble Supreme Court; wherein it was held that canned fruit in syrup are classified under sub heading 0801.10 of CETA 1985. The appellant stated that their product is properly classified under tariff item 0811, as fruit and nuts, cooked or uncooked, by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening agent.

Appellant further stated that the products under Chapter 20 are more complex in nature like fruit jams and jellies, which use sugar as preservative to preserve the inherent nature and are preparations of fruit & not fruit themselves. They promised to submit the photocopies of various case laws cited by them. Appellant later submitted the photocopies as promised in evening on 12.09.2018.

Discussion and Finding

A. We have heard the case in person, gone through the grounds of appeal as well as the submissions made by the appellant during the personal

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hearing. We find that the Appellant is engaged in supply of peeled sliced pineapple put up in air tight containers in sugar syrup.

The Appellant contended vide their application for advance ruling ARA-01 as well as in Annexure-A Page-1 of their appeal application that their product falls under CTH-0804 which has been later changed by the appellant himself in their appeal as mentioned at Point (vi) of their grounds of appeals and the appellant has requested in their written submission that their product qualifies for proper classification under CTH-0811 9090.

B. The original question on which advance ruling was required as reflected through the ARA – 01 (Application form for Advance Ruling) mentioned at Sl No 14 “HSN Classification for peeled sliced pineapple, put up in air tight container in sugar syrup”; and as per para 6.5 of the supportive material as provided by the appellant, they were of the view that Canned Pineapple Slice, dipped in Sugar Syrup, appears to be classified under Tariff Heading 0804 and hence fully exempted from GST vide Sr. No. 51 of Notification No.02/2017 Central Tax (Rate) and asking for confirmation of the same.

C. We on perusal of the Notification No. 02/2017-Central Tax (Rate), find that the exemption from levy of GST is applicable in the case of ‘fresh pineapples’ only. The entry at Sl. No. 51 of the aforesaid Notification, in respect of tariff item 0804 reads as under-

“Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh.”

D. In the instant case the pineapple is peeled & cut into slices, steamed/boiled, cooked and packed in air tight containers in sugar syrup. Hence, the view of the appellant that the basic nature of their product remains unchanged is not acceptable.

E. Now we come to the Tariff Head-0811 as provided under Schedule I of the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017. The CTH 0811 specified at Sl. No. 32 reads as under—

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"Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter."

F. Here we find that the product of the Appellant, under question, is being prepared by using following manufacturing process:-

- (a) Receiving of raw material (Pineapple),
- (b) Manual removal of crown,
- (c) Washing through running water,
- (d) Peeling & decoding of pineapple,
- (e) Cutting of pineapple into thick slices,
- (f) Again washing,
- (g) Preparation of sugar syrup,
- (h) Weighing and filling of pineapple slices,
- (i) Hot filling of syrup at 80⁰ -85⁰,
- (j) Exhausting 85⁰-90⁰ C for 10-15 minutes),
- (k) Steaming,
- (l) Boiling in open cooker at 100⁰C for 30 minutes,
- (m) Cooling in cold water (Atmospheric temperature),
- (n) Drying and cleaning of cans,
- (o) Stacking,
- (p) Lab cutout of cans for Physiochemical and microbiological testing,
- (q) Labeling and packing and dispatch.

G. We have also gone through the case laws cited by the appellant i.e. (1) Northland Industries *versus* Collector of Central Excise reported at 1988 (37) E.L.T. 229 Tri Del, upheld by the Hon'ble Supreme Court in the judgment of Hamdard (WAKF) Laboratories *Versus* CCE Meerut reported at 1999(113)ELT20(SC), (2) Premier Mushroom Farms *versus* Collector of Central Excise 2008(183) E.L.T. 252 Tri Del.

H. Now we come to the ruling given by the AAR in their order classifying the product under question under CTH-2008. The Tariff Head 2008 reads as under:-

"Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter"

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or spirit, not elsewhere specified or included; such as Ground-nuts, Cashew-nuts, roasted, salted or roasted and salted, Other roasted nuts and seeds, squash of Mango, Lemon, Orange, Pineapple or other fruits."

It is noted in the instant case as submitted by the appellant that the sugar is being used as only a sweetener and not as a preservative i.e. for the purpose of preserving the inherent nature of pineapple. Besides, products classifiable under Chapter-20 do not cover fruits which are prepared or preserved by the processes specified in Chapter-8, as per chapter note 1(a) of Chapter-20 of Customs Tariff. Under Tariff item 0811, the fruits are cooked by steaming or boiling in water, which is also the case with the appellant's product. Under Chapter-20, the products are generally having longer shelf life and the fruits are not clearly identifiable being preparations of fruits. In case of Chapter '8' the goods have a short shelf life, once the can is opened and the fruit i.e pineapples slices, are clearly identifiable as such.

I. Finally, on examination of the grounds of appeal made by the appellant and submissions made during the personal hearing and their submissions of photocopies thereafter, we find that the product supplied by the appellant is covered under tariff item No.0811 and not Under tariff item 2008.

Accordingly, we pass the following order-

Order

We modify the Ruling given by AAAR, Uttar Pradesh as per their Order No.5 dated 21.05.2018 and hold that the product in question i.e. "Canned Pineapple Slices dipped in sugar syrup" is covered under the Tariff item No. 0811.


(Shri S.H. Hasan)
Member for AAAR


(Smt. Kamini Chauhan Ratan)
Member for AAAR

Copy to—

1. The Appellant, M/s BHARAT AGRO, Plot No. C-1, SEC-B3, Tronica City, UPSIDC Industrial Area, Loni, Ghaziabad, Uttar Pradesh-201102;
2. The Joint Commissioner (Law), Commercial Tax & UPGST, Member, Advance Ruling Authority, Uttar Pradesh;
3. The Additional Commissioner, CGST & Central Excise Zone, Lucknow Member, Advance Ruling Authority, Uttar Pradesh;
4. The Joint Commissioner, CGST, Commissionerate, Ghaziabad;
5. The Addl. Commissioner, Grade-1, Commercial Tax Zone-1 Ghaziabad.