

GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.



ADVANCE RULING NO. GUJ/GAAR/R/20/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/05)

Date: 02.07.2020

Name and address of the applicant	:	M/s. Dipakkumar Ramjibhai Patel (Shree Mahalaxmi Cement products), Highway Road, Khimana, Banaskantha, Gujarat-385555.
GSTIN of the applicant	:	24AKFPP3403K1ZA
Date of application	:	22.01.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) Classification of any goods or services or both. (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	11.06.2020 (Through video Conferencing)
Present for the applicant	:	Shri Sameer Siddhpuriya, Advocate

BRIEF FACTS

The applicant M/s. Dipakkumar Ramjibhai Patel (Shree Mahalaxmi Cement products), vide their application for Advance Ruling has submitted that they are a proprietorship concern, engaged in manufacturing of Fly Ash Bricks and Fly Ash Blocks. They are manufacturing 'Fly Ash Bricks' and 'Fly Ash Blocks' by using the following raw materials:

- (a) Cement (5% to 20%).
- (b) Fly Ash (40% to 60%).
- (c) Sand (35% to 55%).
- (d) Lime (5% to 20%).
- (e) Water- (As per requirement).

The applicant has further submitted that the above products are manufactured from the mixer which is prepared by mixing the aforesaid raw materials in desired proportion and The HSN code of both the products is 68159910; that they are paying GST @ 5% on 'Fly Ash Bricks' and 12% on 'Fly Ash Blocks' till notification No:24/2018-Central Tax(Rate) date 31.12.2018.

The applicant has submitted the following question for the purpose of advance ruling:

“Whether supply of Fly Ash Bricks and Fly Ash Blocks are covered under Chapter heading 68159090 and liable to taxed @ 5% and @ 12% respectively under the GST Act?”

2. The applicant have enclosed copies of Sales invoice in respect of Fly Ash Bricks and Fly Ash Blocks. They have also stated that the above question posed for advance ruling is neither pending nor decided in any proceedings in

the case of the applicant under any of the provisions of the GST Acts and have requested to decide the question posed for advance ruling at the earliest possible.

DISCUSSION & FINDINGS

3. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Shri Sameer Siddhpuriya at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

4. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 GGST Act.

5. The applicant has submitted the following question for the purpose of advance ruling:

“Whether supply of Fly Ash Bricks and Fly Ash Blocks are covered under Chapter heading 68159090 and liable to taxed @ 5% and @ 12% respectively under the GST Act?”

6. On going through the submission given by the applicant, we find that they are engaged in the manufacture of Fly Ash Bricks and Fly Ash Blocks. They are manufacturing ‘Fly Ash Bricks’ and ‘Fly Ash Blocks’ by using the following raw materials:

- (a) Cement (5% to 20%).
- (b) Fly Ash (40% to 60%).
- (c) Sand (35% to 55%).
- (d) Lime (5% to 20%).
- (e) Water- (As per requirement).

The applicant has also submitted photocopies of two sales invoices issued by them, the details of which are as under:

Sr.No.	Name of the buyer	Invoice No. & date	Commodity	SH number	SGST + CGST
01.	Bhaveshbhai Chandubhai Patel	1128 dt.1.12.2018	Fly Ash Bricks	68199910	2.5% + 2.5%
02.	Amratbhai Chandulal Patel	1127 dt.1.12.2018	Fly Ash Blocks	68199910	6% + 6%

From the above invoices both dated 01.12.2018, it can be seen that the applicant is classifying both ‘Fly Ash Bricks’ and ‘Fly Ash Blocks’ under SH-68199910. They are paying 5% GST (2.5% SGST + 2.5% CGST) on supply of ‘Fly Ash Bricks’ and 12% (6% SGST + 6% CGST) on supply of ‘Fly Ash Blocks’.

7. In order to determine the tax liability on the supply of ‘Fly Ash Bricks’ and ‘Fly Ash Blocks’ by the applicant, we will be required to refer to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 containing the

sub-headings as well as the rates of Central Tax GST applicable to various goods which are covered under 6 schedules as under:

- (i) 2.5 per cent. in respect of goods specified in Schedule I,
- (ii) 6 per cent. in respect of goods specified in Schedule II,
- (iii) 9 per cent. in respect of goods specified in Schedule III,
- (iv) 14 per cent. in respect of goods specified in Schedule IV,
- (v) 1.5 per cent. in respect of goods specified in Schedule V, and
- (vi) 0.125 per cent. in respect of goods specified in Schedule VI

Further, Explanation (iii) and (iv) of the said Notification reads as under:

(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

8. On going through the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), it is observed that Fly Ash Bricks and Fly Ash Blocks fall under the Sub-heading 6815 of the Customs Tariff Act, 1975. The said entry as appearing in the Customs Tariff is described hereunder:

6815 ARTICLES OF STONE OR OF OTHER MINERAL SUBSTANCES (INCLUDING CARBON FIBRES, ARTICLES OF CARBON FIBRES AND ARTICLES OF PEAT), NOT ELSEWHERE SPECIFIED OR INCLUDED

6815 10 - Non-electrical articles of graphite or other carbon :

6815 10 10 --- Graphite filter candle

6815 10 20 --- Non-electrical articles of graphite

6815 10 90 --- Other

6815 20 00 - Articles of peat

Other articles :

6815 91 00 -- Containing magnesite, dolomite or chromite

6815 99 – Other :

6815 99 10 --- Bricks and tiles of fly ash

6815 99 20 --- Sanitary wares, kitchen wares and other made up articles of fly ash

6815 99 90 --- Other.

On going through the above details, we find that ‘Fly Ash Bricks’ is specifically covered under Tariff item no.68159910 whereas ‘Fly Ash Blocks’ are covered under the Tariff item no. 68159990(others).

9. Further, on going through the entry of the above two items in the Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(hereinafter referred to as the said notification), we find that the same appears at entry

No.177 in Schedule-II of the said notification on which the applicable rate of GST is 12% (6% SGST + 6% CGST). The same reads as under:

S.No.	Chapter/Heading/ Subheading / Tariff item	Description of goods
177.	6815	Fly Ash Bricks and Fly Ash Blocks.

10. Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 has been amended vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017 (effective from 15.11.2017) wherein the following amendment has been made in respect of entry no.177 of Schedule-II of said notification.

“(xix) in S. No. 177, in column (3), the words, “Fly ash bricks” shall be omitted;”

Further, the following entry has been inserted vide Notification No: 41/2017-Central Tax (Rate) dated 14.11.2017 in Schedule-I of Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 which reads as under:

(xxvi) after S. No. 225 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

S.No.	Chapter/Heading/ Subheading / Tariff item	Description of goods
225A.	6815	<i>Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content” ;</i>

11. Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 has been further amended vide Notification No:24/2018-Central Tax (Rate) dated 31.12.2018 (effective from 01.01.2019) wherein the following amendment has been made in respect of Sr.No.177 of Schedule-II of said notification:

“(v) S. No. 177 and the entries relating thereto, shall be omitted;”

Further, the following amendment has also been made vide Notification No:24/2018-Central Tax (Rate) dated 31.12.2018 in Schedule-I of Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 as under:

(vi) for S. No. 225A and the entries relating thereto, the following serial numbers and entries shall be substituted, namely:

S.No.	Chapter/Heading/ Subheading / Tariff item	Description of goods
225A	66020000	<i>Walking sticks including seat sticks.</i>
225B	6815	<i>Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash blocks”;</i>

12. In view of the above, it is observed that ‘Fly Ash Bricks’ has been omitted from entry No.177 with effect from 15.11.2017. Further, it is also seen that

Notification No.1/2017-Central Tax (Rate) has been amended vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017 vide which Entry No.225A has been inserted in Schedule-I of the said notification wherein 'Fly Ash Bricks' with 90% or more content finds mention. However, since the 'Fly Ash Bricks' manufactured by the applicant are containing Fly Ash content of only 40 to 60%, the same will not be covered under the said entry number. Therefore, since the 'Fly Ash Bricks' manufactured by the applicant does not find mention in any of the Schedules of the said notification from 15.11.2017 onwards, we conclude that the same would be covered under Entry No.453 of Schedule-III of Notification No:01/2017-Central Tax(Rate) with effect from 15.11.2017 onwards. The same reads as under:

S.No.	Chapter/Heading/ Subheading / Tariff item	Description of goods
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

Thus the GST rate on 'Fly Ash Bricks' will be 18% (9% SGST + 9% CGST) with effect from 15.11.2017.

13. It is further observed that the entry No.177 in Schedule-II of Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 (under which only 'Fly Ash Blocks' found mention with effect from 15.11.2017) has been omitted with effect from 01.01.2019. It is also seen that 'Fly Ash Blocks' has been inserted in Entry No.225B of Schedule-I of Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 with effect from 01.01.2019. We therefore conclude that the 'Fly Ash Blocks' would be covered under Entry No.225B of Schedule-I of Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 and the rate of GST on the same will be 5% (2.5% SGST + 2.5% CGST) with effect from 01.01.2019.

14. In view of the discussions as detailed above, we rule as under –

R U L I N G

- (1) The product 'Fly Ash Bricks' manufactured and supplied by Dipakkumar Ramjibhai Patel (M/s. Mahalaxmi Cement products) are classifiable under Tariff item No.68159910 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975) . Applicability of GST rate on the said product would be 12% GST (6% SGST + 6% CGST) upto 14.11.2017 and 18% GST (9% SGST + 9% CGST) with effect from 15.11.2017 as per Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 (as amended from time to time) issued under the CGST Act, 2017
- (2) The product 'Fly Ash Blocks' manufactured and supplied by Dipakkumar Ramjibhai Patel (M/s. Mahalaxmi Cement products) are classifiable under Tariff item No.68159990 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Applicability of GST rate on the said product would be 12% GST (6% SGST + 6% CGST) upto 31.12.2018 and 5% GST (2.5% SGST + 2.5% CGST) with effect from 01.01.2019 as per

Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 (as amended from time to time) issued under the CGST Act, 2017..

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 02.07.2020.