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| GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009. |  |
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ADVANCE RULING NO. GUJ/GAAR/R/29/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/03)

Date: 02.07.2020

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| Name and address of the applicant | : | M/s Sayaji Industries Ltd. P.O. Kathwada, Ahmedabad |
| GSTIN/ User Id of the applicant | : | 24AADCS0861R1ZZ |
| Date of application | : | 12.01.2019 |
| Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised. | : | i) Classification of goods and/or services or both. ii) Applicability of Notification issued under the provisions of this Act; iii) 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 Yashashvi Jain |

1. M/s. Sayaji Industries Ltd. P.O. Kathwada, Ahmedabad having a GSTIN : 24AADCS0861R1ZZ, is a company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. M/s. Maize Products an applicant is engaged in the manufacture and taxable supply of Maize Starch and its derivatives in their plant at P.O. Kathwada, Maize Products, A'bad-382430. In the course of manufacture Maize Bran is produced by corn wet milling which is a by-product and is sold as cattle feed.

2.1 Bran is the hard-outer layers of cereal grain. Along with germ, it is an integral part of whole grains and is often is produced as a by-product of milling

during the production of refined grains. Maize Bran is one such inevitable by-product of various maize processing industries.

2.2 The production of Maize bran amounts to 13% of total production of the Applicant. It is usually found in three different forms as mentioned below :

a) Maize Bran dry b) Maize Bran wet c) Maize Bran (CSL mixed)

2.3 Maize Bran theoretically consists of the bran coating removed in the early stages of wet milling.

2.4 Maize Bran is composed of approximately 12-25% starch, 10-13% protein, 33-42% hemicelluloses, 15-18% cellulose, 3-6% oil and 1-2% other components. A maize bran stream coming from dewatering process contain about 30 to 50% solids. The maize bran is usually a mixture of bran fraction and other by-product and is therefore, **a very loosely defined product of highly variable composition usually sold as a major ingredient for cattle feed.**

2.5 The Applicant supply Maize Bran as feed commodities to local farmers and even manufacturers engaged in manufacturing cattle feed who often mix maize bran with other maize processing by-product.

2.6 The applicant further submitted that under the Central Regime they were classifying the Maize bran under CTH No. 23021010 of the First Schedule to CETA, 1985. The applicant submitted the copy of ER-1 Return for the Month of April-2017 to June-2017 filed under the Central Excise regime and marked as Annexure-2.

Taxation under GST Regime

3.1 The applicant has submitted that Central Govt. has issued Not. No. 01/2017 C.T (Rate) dated 28.06.2017 in exercise of power under Section 9(1) of CGST Act, 2017. The said Notification by way of explanation (1) thereto clarifies the term “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).

3.3 Further, applicant submits that the Explanation-2 to the aforesaid Notification clarifies that 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 apply to the interpretation of the aforesaid notification specified under CGST.

3.4 The applicant submits that in the Notification No. 01/2017- CT (Rate) Dated

28.06.2017, an entry 103A was inserted vide Corrigendum F. No. 354/117/2017-TRU Pt.- CT (rate) dated 12.07.2017 is Schedule-I to tax bran, sharps and other residues , whether or not in the form of pellets, derived from the sifting , milling or other working of cereals or of leguminous plants at the rate of 2.5% CGST.

3.5 Relevant entry 103A for the purpose of present application is as under :

Schedule-I

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| 103A | 2302 | Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]”; |
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3.6 Further, the applicant submitted that by the said amendment , goods such as acqutic feed including shrimp feed and prawn feed, pollutry feed and cattle feed including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake were excluded and thus such goods were not chargeable to tax @2.5% CGST.

3.7 The applicant submittted that the above specified goods vide Sr. No. 102 of Noti. No. 02/2017- CT (Rate) dated 28.06.2017 effective rate of GST was provided as NILi.e. specified goods were exempt from whole of CGST. Sr. No. 102 of the Not. No. 02/2017-CT (Rate) Dated 28.06.2017 is re-produced as under :

| | | |
|------|---|--|
| 102. | 2302, 2304, 2305, 2306, 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 |
|------|---|--|

3.8 Further, the applicant submitted that thus goods excluded under Sl. No. 103A of the Not. No. 01/2017-CT (Rate) has been granted exemption under Sl. No. 102 of the Not. No. 02/2017-CT (Rate) dated 28.06.2017. Thus, as per the said Not., cattle feed are chargeable to NIL rate of duty.

3.8 The applicant submits that presently they are supplying the Maize Bran by charging GST at the rate of 5%. (A copy of the sample invoice is submitted).

4. Regarding the interpretation of law/facts in respect of the question on which advance is required, the applicant has quoted Sections 95 to 106 of the CGST Act,

2017 and stated that the question on advance ruling put forward by him is in respect of determination of whether the liability to pay tax on any goods or services or both, and also the applicability of a notification issued under the provisions of the GST Act is covered under Section 97(b) and (e) and therefore the applicant satisfies the criterion required for filing the application for advance ruling.

5. The applicant submitted that the maize bran is supplied by them **to local farmers and manufacturers of the cattle feed for use as cattle feed only; that maize bran is one of the most important cereals used in animal/cattle feed and the same being rich in nutrients forms a major ingredient for cattle feed, is produced in wet or dry form both and is widely used in complete feeds for dairy**, beef cattle, poultry, swine and pet foods; that since the same is understood as a cattle feed in common parlance and is therefore bought and sold as cattle feed in the market, same is rightly eligible for exemption under Sr.No.102 of Notification No.2/201-7-Central Tax (Rate).

6. The applicant has put reliance on the following citations in support of their contention:

- (i) Case of United Copiex (India) Pvt.ltd. v/s CST-94 ELT 28(SC) wherein it was held that classification is to be based on statutory definition, if any, and in the absence thereof on trade or common parlance.
- (ii) As per case of Plasmac Machine Mfg.Co. pvt.ltd. v/s CCE 51 ELT 161 (SC), goods are to be classified according to their popular meaning as understood in the commercial sense and not as per the scientific/technical meaning.
- (iii) As per case of CCE v/s Favourite Industries-2012(278) ELT 145 (SC), it is a well settled legal proposition of law that liberal construction is to be given to beneficial notification and therefore the product should be classified on the basis of its use.
- (iv) As per case of Rhino Machines pvt.ltd. v/s CCE, Vadodara-2005 (181) ELT 63 (T), goods have to be assessed in the form in which they are cleared from the factory.
- (v) As per case of Share Medical Care v/s UOI-2007(209) ELT 321 (SC), if the applicant is entitled to benefit under two different Notifications or under two different heads, he can claim more benefit and it is duty of authorities to grant such benefits if applicant is entitled to such benefit.
- (vi) As per the case of HCL ltd. v/s Collector of Customs, New Delhi-2001 (130) ELT 405 (SC), when pluralities of exemptions are available, the

- (vii) assessee has the option to choose any of the exemptions, even if the exemption so chosen is generic and not specific.

7. Accordingly, the applicant sought the Advance Ruling on the following,

Whether Maize Bran which is a cattle feed is chargeable to CGST @2.5% under Sl. No. 103 A of Not. No. 01/2017-CT (Rate) or Chargeable to NIL rate as per Sl. No. 102 of Not. No. 02/2017.

Personal Hearing

8. Personal hearing in the matter was held on 11-06-2020. Shri Yashashvi Jain, Chartered Accountant appeared on behalf of the applicant and re-iterated the submission made in the Application.

DISCUSSION & FINDINGS

9. 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 Ms. Yashasvi Jain at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

10. 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.

11. On going through the submission given by the applicant, we find that they are engaged in the manufacture and supply of Maize starch and its derivatives in their plant at Village Dalpur, Himmatnagar, Gujarat and during the course of manufacture of the said product, Maize Bran is produced as a by-product by corn wet milling. The applicant has also stated that (i) Bran is the hard-outer layers of cereal grain and along with germ, it is an integral part of whole grains and is often produced as a by-product of milling during the production of refined grains. (ii) Maize Bran is found in three different forms: (a) Maize Bran dry (b) Maize Bran wet (c) Maize Bran(CSL mixed) (iii) Maize Bran consists of the bran coating removed in the early stages of wet milling and is composed of approximately 12-25% starch, 10-13% protein, 33-42% hemiceluloses, 15-18% cell cellulose, 3-6% oil, and 1-2% other components (iv) Maize bran stream coming from dewatering presses contains about 30 to 50% solids. (v) Maize bran is usually a mixture of the bran fraction and other by-products and is, therefore, a very loosely defined product of highly

variable composition usually sold as a major ingredient for cattle feed; that the applicants supply Maize Bran as feed commodities to local farmers and even manufacturers engaged in manufacturing cattle feed who often mix maize bran with other maize processing by-products (vii) Prior to the GST regime, they were clearing 'Maize Bran' for home consumption by classifying the same under heading 23021010 of Central Excise Tariff Act, 1985 and have submitted ER1 returns for the months of April, 2017 to June, 2017 indicating rate of duty of Maize Bran as NIL. (viii) the maize bran is supplied by them to local farmers and manufacturers of the cattle feed for use as cattle feed only and is one of the most important cereals used in animal/cattle feed and the same being rich in nutrients forms a major ingredient for cattle feed, is produced in wet or dry form both and is widely used in complete feeds for dairy, beef cattle, poultry, swine and pet foods (ix) Since Maize Bran is understood as a cattle feed in common parlance and is therefore bought and sold as cattle feed in the market, same is rightly eligible for exemption under Sr.No.102 of Notification No.2/201-7-Central Tax (Rate).The applicant has also submitted a copy of sample invoice vide which they have removed Maize Bran paying GST of 5%. Further, they have also quoted a few citations/judgements to support their contention.

12. In order to determine the tax liability on the supply of 'Maize Brans' 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.

13. On going through the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), it is observed that Bran falls under the Sub-heading 2302 of the Customs

Tariff Act, 1975. The said entry as appearing in the Customs Tariff is described hereunder:

2302 BRAN, SHARPS AND OTHER RESIDUES, WHETHER OR NOT IN THE FORM OF PELLETS, DERIVED FROM THE SIFTING, MILLING OR OTHER WORKING OF CEREALS OR OF LEGUMINOUS PLANTS

2302 10 - Of maize (corn) :

2302 10 10 - Maize bran

2302 10 90 - Others

2302 30 00 - Of wheat

2302 40 00 - Of other cereals

2302 50 00 - Of leguminous plants

On going through the above details, we find that 'Maize Bran' is specifically covered under Tariff item no.23021010.

14. We have also gone through the entire Chapter-23 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and find that it covers "Residues and waste from the food industries; prepared animal fodder ". Further, on going through the various sub-headings enlisted in the said chapter, we find that it contains Sub-headings from 2301 to 2309. Out of these, only two specific Sub-headings i.e. 2308 and 2309 covers materials or preparations of a kind which are used in animal feeding which reads as under:

2308 00 00 VEGETABLE MATERIALS AND VEGETABLE WASTE, VEGETABLE RESIDUES AND BY-PRODUCTS,WHETHER OR NOT IN THE FORM OF PELLETS, OF A KIND USED IN ANIMAL FEEDING, NOT ELSEWHERE SPECIFIED OR INCLUDED

2309 PREPARATIONS OF A KIND USED IN ANIMAL FEEDING

2309 10 00 - Dog or cat food, put up for retail sale

2309 90 - Other :

2309 90 10 - Compounded animal feed

2309 90 20 - Concentrates for compound animal feed

- Feeds for fish (prawn, etc.) :

2309 90 31 - Prawn and shrimps feed

2309 90 32 - Fish meal in powdered form

2309 90 39 - Other

2309 90 90 - Other

15. On going through the entry of the above product 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.103A (after amendment of the said notification vide Corrigendum No.2 dated 12.07.2017 vide which entry No.103A was inserted) which reads as under:

| S.No. | Chapter/Heading/ Subheading / Tariff item | Description of goods |
|-------|---|---|
| 103A | 2302 | Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]”; |

Also, Sr.No.102 of Notification No.2/2017-Central Tax(Rate) dated 28.06.2017 which specified goods in respect of which effective rate of CGST as NIL(as amended vide Notification No.7/2018-Central Tax (Rate) dated 25.01.2018) reads as under:

| Sr. No. | Chapter Heading/Sub- heading/Tariff Item | Description of Goods |
|---------|---|--|
| 01. | 2301, 2302, 2308, 2309 | Aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake(other than rice-bran) |

It can therefore be seen, that the products which were left out from Sr.No.103A of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 have found mention in Sr.No.102 of Notification No.2/2017-Central Tax (Rate) dated 28.06.2017.

16. First of all, we need to know the definition of Maize bran. As per dictionary, Maize Bran is defined as under:

“Maize Bran is a by-product of various maize processing industries, including starch and ethanol production, and the production of maize-based foods. In the case of ethanol production, maize bran is defined as the mixture of the bran fraction and distillers soluble. Maize bran is used as a major supplement for cattle feed.”

16.1 From the above, it is seen that Maize Bran is used as a major supplement for cattle feed. The word ‘supplement’ is defined in dictionary as “a thing added to something else in order to complete or enhance it.” Therefore, Maize Bran is a product which is added to cattle feed to complete it or enhance it. This literally means that Maize Bran is not a cattle feed in itself but is added to cattle feed to enhance or improve its quality/nutritional value or to complete it. It is also seen from the submission of the applicant that they are time and again stressing on the fact that the maize bran produced by them is cattle feed and should be rightly classified on the basis of its use and be exempted under Sr.No.102 of Notification No.2/2017-Central Tax (Rate) dated 28.06.2017. However, they have failed to clarify as to how the said product can be considered as ‘cattle feed’ when the definition itself says that “it is used as a major supplement for cattle feed. Further, they themselves have submitted that maize bran is usually a mixture of the bran fraction and other by-products and a very loosely defined product of highly variable composition usually sold as a major ingredient for cattle feed. They have also stated that they supply Maize Bran as feed commodities to local farmers and even manufacturers engaged in manufacturing cattle feed who often mix maize bran with other maize processing by-products. It can also be construed from the above that the maize bran supplied by them to the farmers would not be directly fed to cattle but be mixed with the cattle feed before feeding it to the cattle. In view of the above, it can be seen that maize bran in itself is not a cattle feed but is a major ingredient used in the manufacture of cattle feed as submitted by the applicant. Thus, the applicant by themselves have contradicted their contention through their submission.

17. We have also gone through the copy of the sample invoice given by the applicant which is detailed hereunder:

| Invoice no.& dt. | Name of the buyer | Name of the product | Classification of the product | Quantity | Rate of SGST + CGST |
|-----------------------------|--|----------------------------|--------------------------------------|-----------------|----------------------------|
| 006617 dated 06.08.2018 | Gopal & Co., Kathwada, Gujarat, India. | Wet Bran | 23021010 | 10.9510 tonnes | 2.5% SGST + 2.5% CGST |

It can be seen from the above, that the applicant has supplied 10.9510 tonnes of Wet Bran to Gopal & Co., Kathwada, Gujarat, India. It can be seen from the above that applicant is classifying their product “Wet Bran” and not as “cattle feed”. It is also seen that ‘Maize Bran’ is specifically mentioned in Sub-heading No.23021010 of the First Schedule to the Custom Tariff Act, 1975 (51 of 1975) and the word

‘Bran’ is specifically mentioned in Sr.No.103A of Notification No.2/2017-Central Tax (Rate) dated 28.06.2017. In view of the above, we are of the opinion that the

product 'maize bran' does not warrant classification under Sr.No.102 of Notification No.2/2017-Central Tax (Rate) as the product does not classify as 'cattle feed' and is correctly classifiable as 'Bran' under Sr.No.103A of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 for the reason that it cannot be considered as a 'cattle feed' by definition..

18. Further, the applicant has mentioned in his submission that in pre-GST era, Maize Bran was cleared by him under Chapter Sub-heading No.23021010 of the Central Excise Tariff Act, 1985 with NIL duty and that the same are reflected in the monthly ER-1 returns submitted by him for the months of April, 2017 to June, 2017. In Central Excise Regime the classification and rate of duty was determined on the basis of Central Excise Tariff Act, 1985. As per CETA, 1985 the rate of duty of the said product was NIL. Whereas in GST regime, classification of the goods is determined on the basis of Customs Tariff Act, 1975 (51 of 1975) and thereafter GST rate is determined on the basis of Notification No. 01/2017-CT (Rate) dated 28.06.2017 as amended from time to time issued under GST Act wherein six Schedules of the GST rates have been prescribed. Therefore, rate of duty determined in Central Excise regimes do not have any legal value as such on inception of the GST Act w.e.f. 1st July, 2017 GST rate and classification of any product is to be determined under the said GST Act. The applicant has also quoted a few citations in support of their contention which are reproduced hereunder:

- (i) Case of United Copiex (India) Pvt.ltd. v/s CST-94 ELT 28(SC) wherein it was held that classification is to be based on statutory definition, if any, and in the absence thereof on trade or common parlance.
- (ii) As per case of Plasmac Machine Mfg.Co. pvt.ltd. v/s CCE 51 ELT 161 (SC), goods are to be classified according to their popular meaning as understood in the commercial sense and not as per the scientific/technical meaning.
- (iii) As per case of CCE v/s Favourite Industries-2012(278) ELT 145 (SC), it is a well settled legal proposition of law that liberal construction is to be given to beneficial notification and therefore the production should be classified on the basis of it's use.
- (iv) As per case of Rhino Machines pvt.ltd. v/s CCE, Vadodara-2005 (181) ELT 63 (T), goods have to be assessed in the form in which they are cleared from the factory.
- (v) As per case of Share Medical Care v/s UOI-2007(209) ELT 321 (SC), if the applicant is entitled to benefit under two different Notifications or under two different heads, he can claim more benefit and it is duty of authorities to grant such benefits if applicant is entitled to such benefit.
- (vi) As per the case of HCL ltd. v/s Collector of Customs, New Delhi-2001 (130) ELT 405 (SC), when pluralities of exemptions are available, the assessee has the option to choose any of the exemptions, even if the exemption so chosen is generic and not specific.

18.1 On going through the above judgments'/cases cited by the applicant it is observed that the same have been quoted for the purpose of using the interpretations contained therein to support their contention i.e. (i) classification is to be based on statutory definition, if any, and in the absence thereof on trade or common parlance (ii) goods are to be classified according to their popular meaning as understood in the commercial sense and not as per the scientific/technical meaning.(iii) it is a well settled legal proposition of law that liberal construction is to be given to beneficial notification and therefore the production should be classified on the basis of it's use. (iv) goods have to be assessed in the form in which they are cleared from the factory. (v) if the applicant is entitled to benefit under two different Notifications or under two different heads, he can claim more benefit and it is duty of authorities to grant such benefits if applicant is entitled to such benefit.(vi) when pluralities of exemptions are available, the assessee has the option to choose any of the exemptions, even if the exemption so chosen is generic and not specific.

18.2 It appears that none of the above are applicable to the applicant in the instant case as (i) there is no confusion with regard to the classification of the product 'maize bran' , (ii) the applicant is not entitled to the benefit of two different Notifications and (iii) no pluralities of exemptions are available to the applicant.

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

R U L I N G

The product 'Maize Bran' manufactured and supplied by M/s. Sayaji Industries Ltd. is covered under Entry Sr.No.103A of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 of the CGST Act, 2017 on which rate of GST chargeable is 5% (2.5% SGST + 2.5% CGST).

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 02.07.2020.