



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D.No.12-468-4, Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Sri. K.Ravi Sankar, Commissioner of State Tax (Member)
2. Sri. R V Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

AAR No.10 /AP/GST/2023 dated:26.05.2023

| | | |
|---|--|--|
| 1 | Name and address of the applicant | M/s. Sri Venkateswara Cashew Chikky Manufacturers |
| 2 | GSTIN | 37ABYPV0474E1Z1 |
| 3 | Date of filing of Form GST ARA-01 | 28.02.2023 |
| 4 | Personal Hearing | 29.03.2023 |
| 5 | Represented by | T. Bhanu Purdhviraj, CA |
| 6 | Jurisdictional Authority – Central | Chirala Range, Nellore Division |
| 7 | Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised | a) Classification of any goods or services or both |

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Sri Venkateswara Cashew Chikky Manufacturers (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

3.1 M/s Sri Venkateswara Cashew Chikky Manufacturers (hereinafter referred to as "applicant") is engaged in manufacturing and supply of an edible product under the name "Crackle", which is, as per applicant, identically known and recognised as 'N.B.S Crackle' and contains ingredients in following proportion. Applicant is having GST Registration number 37ABYPV0474E1Z1

| S. No | Particulars | Proportion |
|--------------|--------------------|-------------------|
| 1 | Sugar | 68% to 72% |
| 2 | Cashew Nuts | 28% to 30% |
| 3 | Butter | 1% to 2% |
| 4 | Glucose | 1% to 2% |

Manufacturing Process of N.B.S.Crackle: step-by-step manufacturing process of, 'N.B.S. Crackle as per the applicant is tabulated here as under:

| Particulars | Particulars |
|--------------------|--|
| 1 | To begin with, water should be taken in a vessel and to that vessel sugar be added |
| 2 | After that, the mixture of those ingredients should be boiled until the mixture is caramelized |
| 3 | Once the mixture is caramelized, Cashew Nuts, Butter and Liquid glucose should be added |
| 4 | After that, the mixture should be cooled down and mixed in S.S Table |
| 5 | After that, the mixture is now converted in to papads. Now these papadas are processed in Chilky/Butterscotch Nuts/NBS Crackles Machine. |
| 6 | After that, they are packaged in polythene bags, and sent for metal detection |
| 7 | Finally, they are packaged in corrugated boxes and dispatched to customers |

The above product manufactured by the applicant was supplied as industrial raw material to the manufacturer of ice creams i.e. Hindustan Unilever Limited, Dairy Classic Ice Creams (P) Ltd etc. The said product is used as toppings in ice creams.

The Applicant has been classifying the impugned product under Chapter 17049020 till date and discharging GST at the rate of 18% The Applicant wish to seek a ruling from the AAR on appropriate classification of the impugned product

4. Questions raised before the authority:

The applicant seeks advance ruling on the following:

1. Whether the product by name "Crackle", manufactured and supplied by the applicant containing the ingredients Sugar, Cashew Nuts, Butter, Liquid glucose and other permitted Flavours , should be classified under the Tariff Heading 1704 enumerated at Serial number 32AA of Schedule III of Notification No. 01/2017 as a Sugar boiled confectionery.?

On Verification of basic information of the applicant, it is observed that the applicant is under Central jurisdiction i.e, Chirala Range , Nellore Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the Central jurisdictional officer concerned stating that no proceedings lying pending with the issue, for which the advance ruling sought by the applicant.

5. Applicant's Interpretation of Law:

5.1 The applicant submits that impugned product i.e. NBS Crackle is classifiable under tariff head 11704' enumerated at Serial number 32AA of Schedule II of Notification No. 01/2017, dated 28-6-2017.

The Chapter 17 of the HSN is for '**Sugar & Sugar Confectionery**'. While 1701 to 1703 headings relate to Sugars in different forms, the Heading 1704 mentions 'Sugar Confectionery'. 'Sugar Confectionery' or 'Confectionery' has nowhere been specifically defined under the GST law or for that matter under HSN and therefore, one has to go by the plain or dictionary meaning.

5.2 Dictionary meaning of the phrase 'confectionery'

Oxford English Dictionary, Second Edition, Part III, where the word is defined as of the nature of confection, cornfit or sweetmeat or pertaining to confections or

confectioner's work. As per this Dictionary, the word 'confection' means to prepare for use with sugar, syrup, or the like; to make into a confection; to mix, make up as a condiment or seasoned delicacy. We find that in the same Dictionary, the words "confectionery preparation" are defined as a sweetmeat. The word 'sweetmeat' is defined in the Webster's Encyclopaedic Unbridged Dictionary as sweet delicacy, prepared with sugar, honey or the like, as preserves candy, or formerly cakes or pastry.

In Fund All Wagnalls New Standard Dictionary confectionary is defined as-
"Confectionary is defined as sweet meat. Collectively, that a confectionary makes or sells as candy or other articles made of sugar, sirup honey or the like"

In '**Word Origins and their Romantic Stories**' by **Wilfred Funk**, on page 346, the Word 'Confetti' is given. We reproduce the relevant portion from the said book:

5.3 "CONFETTI: was once candy Confetti is an Italian word for candies or sweetmeats; and the corresponding French word is bonbon, literally 'good-good'. On carnival days the merrymakers in Italy used to have fun pelting each other with this candy, those who could afford it throwing money too. Later on, an enterprising and thrifty storekeeper made imitation sweetmeats, or confetti, out of plaster and pasteboard. To day little bits of colored paper, still called confetti, have been substituted for the pasteboard ones. When we city folks are celebrating the arrival of some great hero, we tear up the pages of the telephone books and throw the pieces out of, the windows as symbolic offerings of candies and money. The word 'confetti' is originally from Latin *confectus*, 'put together, "prepared". This word also gave us our word confection which is another term for confetti and bon-bons."

As per the above dictionary meaning the word 'confectionery' connotes any eatables which is made by compounding or mixing with sugar ingredients. The applicant submits that NBS Crackles manufactured by the assessee contain admittedly sweet ingredients.

5.4 Judicial Interpretation of the phrase 'Confectionery' The applicant, submits a case law to advance his arguments.

In the case of **Annapurna Biscuit (Mfg.) Co & another v. The State of U.P and another (1975) 35 STC 127 (ALL)** the Hon'ble Allahabad High Court held that biscuits were not confectionery. While dealing with the dispute the court observed as follows:

"The question with which we are concerned is whether biscuit can be said to be confectionery. The history of confectionery industry indicates that it developed with the cultivation of sugarcane. Many kinds of sweetmeats and candy were made by moulding sugar, nuts and fruits of various kinds into fanciful forms, One of the main ingredients used for manufacturing confectionery is sugar. Confectionery is essentially a sweetmeat. In certain preparations to the sweet base are added chocolate, fruits, nuts and peanuts, eggs, milk products, flavours and colours. In certain other preparations,

like cakes and pastries, wheat flour (maids) and sugar form the main ingredients to which other items are added. Biscuit on the other hand, is a kind of dry bread in which sugar is almost insignificant ingredient. In salted biscuits sugar is not at all used"

5.5 In the light of the aforesaid discussion, the applicant submits that confectionery comprises articles in which the main ingredients is sugar, although other articles may be added for enhancing its taste. It thus comprises essentially only these articles which are commonly called sweetmeats. Thus, it is clear that it is food chiefly made of sugar. Normally it is made by cooking process, other than baking. Impugned product manufactured by the Applicant contain substantial amount of sugar, and are not made out of the baking process. Therefore, the impugned product primarily falls under the ambit of 'confectionery' products.

5.6 Principles and Classification of Confectionery Products

The applicant submits that, confectionery is an important food item of great popularity among wide range of population. It has been enjoyed as a major food delicacy from ancient times. The term confectionery is ambiguous and describes a spectrum of sweet goods and takes on different meaning depending on the country in which it is used, for example in the United Kingdom the term applies to any sweet product including cakes. Globally, confectionery foods represent 50% by volume of foods produced and 60% by value. The Indian confectionery market is estimated to be 1,38,000 metric tonnes (in 2005) and is segmented into sugar-boiled confectionery, chocolates, mints and chewing gums. Sugar-boiled confectionery- consisting of hard-boiled candy, toffees and other sugar-based candies

5.7 Classification of Confectionery

Confectionery can be classified into four major groups. They are as follows:

| Particulars , | Description |
|-------------------------|--|
| Sugar confectionery | It includes products using mainly sugar such as boiled sweets, fondants, fudge, jellies, toffees, etc. |
| Chocolate confectionery | It includes mainly cocoa, chocolate and chocolate products. Sugar confectionery coated with chocolate is also included in it |
| Flour confectionery | It includes such as cakes, cream rolls, etc. Traditional Indian cereal and legume flour based sweets such as mysorepak, soaripapdi, badushah, jalebi, etc. are also included in this category. |

| | |
|--------------------------|---|
| Milk based confectionery | It includes mainly Indian traditional milk-based sweets such as burfi, peda, rasogolla etc. |
|--------------------------|---|

In sugar confectionery, sugar is the main or principal ingredient while in other confectionery sugar is used as one of the ingredient.

5.8 Sugar Boiled Confectionery:

Sugar Confectionery includes Sugar Boiled Confectionery_ As per Indian Standard IS 1008: 2004, sugar boiled confectionery includes following type of food products

- a) Hard Boiled Sugar Confectionery
- b) Pan Goods Confectionery (Dragees)
- c) Toffees

Sugar boiled confectionery sold as hard boiled confectionery, pan good confectionery and toffee is a processed composite food article made from sugar with or without doctoring agents, such as liquid glucose and/or cream of tartar by a process of boiling whether panned or not with or without the addition of colour, flavour, fillings (in the form of liquid, semi-solid or solid) with or without coating of sugar or chocolate or both and other edible materials and made into any desired shape and size.

As mentioned above, the N.B.S. Crackle manufactured by the Applicant is caramelized by boiling the sugar with the water. Subsequently, other edible products viz. cashew nuts and butter are coated and made into desired size and shape by N.B.S. Crackle machine. Therefore, the impugned product manufactured by the Applicant is "Sugar Boiled Confectionery"

The Applicant in this regard also obtained technical test report from Food Testing Laboratory, School of Food Technology, Kakinada, Andhra Pradesh wherein the impugned product N.B.S. Crackle manufactured by the Applicant has satisfied all the parameters laid down under Indian Standard IS 1008:2004 in the said technical test report. Copy of technical test report is enclosed as **Annexure-1**.

5.9 Classification of NBS Crackle under GST Act:

GST Notification 1 of 2017 enlists the rate of tax on goods falling within the ambit of GST. The said Notification has undergone various amendments since inception of GST. Presently, in the above notification, the goods falling under **HSN Code 1704** are primarily covered under three schedules i.e. Schedule I, Schedule II and Schedule III with 5%12% and 18% rates of tax respectively.

Items of HSN Code 1704 falling under Schedule I of GST Notification 01/2017:

As per **GST Notification 41/2017** dated 15.11.2017 read with GST Notification 01/2017, the following items pertaining to HSN Code 1704 are falling under serial number 92 of Schedule I of GST Notification 01/2017 with 5% rate of Tax. The relevant extract of serial number 92 is as under:

Schedule I -2.5%

| S.No | Chapter Heading/ Tariff Item | Description of Goods |
|------|------------------------------------|---|
| (1) | (2) | (3) |
| 92 | 1702 or 1704 | Palmyra sugar, mishri, Natasha, Kura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, tit patti, til revdi, sugar makhana, groundnut sweets, gajak, khaja, khajuli, anarsa |

Similarly, as per **GST Notification 06/2018 dated 25.01.2018** read with GST Notification 01/2017, the following items pertaining to HSN Code 1704 are falling under serial number 32AA of Schedule II of GST Notification 01/2017 with 12% rate of Tax. The relevant extract of serial number 32AA is as under:

Schedule II -6%

| S.No | Chapter Heading/ Tariff Item | Description of Goods |
|------|------------------------------------|----------------------------|
| (1) | (2) | (3) |
| 32AA | 1704 | Sugar Boiled confectionery |

Items of HSN Code 1704 falling under Schedule III of GST Notification 01/2017:

The Items neither falling under serial number 92 of Schedule I nor under serial number 32AA of Schedule II in GST Notification 01/2017 are covered under serial number 12 of Schedule III of GST Notification 01/2017 with 18% rate of tax. The relevant extract of serial number 12 is as under:

Schedule III -9%

| S.No | Chapter Heading/ Tariff Item | Description of Goods |
|------|------------------------------------|--|
| (1) | (2) | (3) |
| 12 | 1704 | Sugar confectionery [other than mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, |

| | | |
|--|--|---|
| | | elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets, gajak and sugar boiled confectionery] |
|--|--|---|

As stated above, NBS Crackle is a Sugar Boiled Confectionery and therefore the impugned product is classifiable under tariff head '1704' enumerated at Serial number 32AA of Schedule II of Notification No. 01/2017, dated 28-6- 2017 and chargeable at 12% rate of GST.

5.10 B. Specific Entry prevails over general entry

The Applicant submits that the impugned products dealt by the Applicant are classifiable under "Sugar Boiled Confectionery" there are catena of case laws held in Supreme Court of India that a general entry or a residual entry will be preferred for a classification of commodity only in the absence of a specific entry.

The Apex Court of India in the case of **Indian Metals & Ferrous Alloys v. Collector of Central Excise** 1991 taxmann.. corn 71 held that in classification of goods a specific entry will be preferred to a general entry. Similarly the Honible Supreme Court in the case of State of **Karnataka v. Durga Projects Inc.** [2018] 91 taxmann.com 54 in its (3) member bench judgment held that only such goods which cannot be brought under specific entries in the tariff could be attempted to be brought in residual entry.

5.11 Hon'ble Supreme Court of India in the case of **Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India** [1976] 2 SCC 241 held that "when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause.

Thus when a specific entry is available for enumerating the commodity NBS Crackle to relegate it to the orphanage of the residuary entry will be against the principle of classification as held by Hon'ble Apex Court in the above precedents. Hence NBS Crackle is classifiable under tariff head '1704' enumerated at Serial number 32AA of Schedule II of Notification No. 01/2017, dated 28-6-2017.

6. Personal Hearing:

The proceedings of Personal Hearing were conducted on 29.03.2023, for which the authorized representative, T. Bhanu Purdhviraj, CA attended and reiterated the submissions already made.

7. Discussion and Findings:

We have examined the issues raised in the application in light of the facts and arguments submitted by the applicant. We have considered the submissions made by the applicant in their application for Advance Ruling. We have considered the issues involved from which advance ruling is sought by the applicant and the relevant facts along with arguments made by the applicant and also their submissions made during the time of the personal hearing.

The applicant is engaged in the business of manufacturing and supply of an edible product under the name "Crackle", which is, as per applicant, identically known and recognised as 'N.B.S Crackle' and which contains sugar ,butter,cashew,glucose in different proportions. The Applicant hereby briefly explain the step-by-step manufacturing process of 'N.B.S. Crackle:

- Mixture of sugar and water is boiled until it is caramalised.
- Once the mixture is caramelized, Cashew Nuts, Butter and Liquid glucose should be added.
- After that, the mixture should be cooled down and mixed in S.S Table.
- After that, the mixture is now converted in to papads. Now these papadas are processed in Chilky/Butterscotch Nuts/NBS Crackles Machine.
- After that, they are packaged in polythene bags, and sent for metal detection and finally packed in corrugated boxes for dispatch.

The applicant specifically sought advance ruling in respect of classification of the impugned product identified under the name " NBS Crackle ".According to the applicant ,the impugned product manufactured by them is a format of 'sugar boiled confectionery' since their product under the name 'NBS Crackle' also employ the same ingredients, formulations and the same processes. Thus ,according to the applicant, the impugned product has the ingredients, formulations, processes which are similar to ingredients/formulations/processes employed with what is traditionally classified as 'sugar boiled confectionery' and therefore the subject product needs to be classified as 'Sugar boiled confectionery' falling under Chapter Heading 1704 and covered by Schedule II,Sr.No.32AA,attracting 12% GST of Notification No.01/2017 dated 28.06.2017 as amended from time to time pertaining to rate of GST on goods.

In view of the above, the primary issue before us to decide is the classification of the impugned product which is marketed in the name " N B S Crackle" .Thus we proceed to examine, discuss and decide the classification of the afore mentioned product.

We invite reference, with regard to the classification of goods under GST, to the notification No.1/2017-Central Tax (Rate) dated 28.06.2017,chapter heading

1704 and relevant tariff entries therein which are modified vide **Notification 41/2017 dated 15.11.2017 and Notification 06/2018 dated 25.01.2018**.

We find that the Chapter 17 of the HSN is for 'Sugar & Sugar Confectionery'. While 1701 to 1703 headings relate to Sugars in different forms, the Heading 1704 mentions Sugar Confectionery. Sugar Confectionery has nowhere been specifically defined under GST law or under HSN. However, going by the trade parlance and prevailing practice, the Sugar Confectionery has been classified under:

| Chapter/Heading/Sub-Heading/Tariff Item | Description of goods | GST Rate |
|---|--|----------|
| 1704 | Sugar boiled confectionery | 12% |
| 1704 | SUGAR CONFECTIONERY (INCLUDING WHITE CHOCOLATE), NOT CONTAINING COCOA | 18% |
| 17041000 | SUGAR CONFECTIONERY (INCLUDING WHITE CHOCOLATE), NOT CONTAINING COCOA - CHEWING GUM, WHETHER OR NOT SUGAR COATED | 18% |
| 170490 | OTHER | 18% |
| 17049010 | SUGAR CONFECTIONARY (INCLUDING WHITE CHOCOLATE), NOT CONTAINING COCOA - OTHER : JELLY CONFECTIONARY | 18% |
| 17049020 | SUGAR CONFECTIONARY (INCLUDING WHITE CHOCOLATE), NOT CONTAINING COCOA - OTHER : BOILED SWEETS, WHETHER OR NOT FILLED | 12% |
| 17049030 | SUGAR CONFECTIONARY (INCLUDING WHITE CHOCOLATE), NOT CONTAINING COCOA - OTHER : TOFFEES, CARAMELS AND SIMILAR SWEETS | 18% |
| 17049090 | SUGAR CONFECTIONARY (INCLUDING WHITE CHOCOLATE), NOT CONTAINING COCOA - OTHER : OTHER | 18% |

As per HS explanatory notes, Heading 1704 of HSN covers most of the sugar preparations which are marketed in a solid or semi-solid form and generally suitable for immediate consumption thus collectively referred to as sweetmeats, confectionery or candies (based on C.B.E & C FAQs issued on 29-09-2-17), Where as , 'Sugar boiled confectionery' is sugar and water, etc, boiled at such a temperature that practically no water remains and a vitreous mass is formed ,is bought and consumed by end users.

In the present scenario, the impugned product is sold only to icecream manufactures. As per the submissions of the applicant, the impugned products are not meant for consumption by the end users directly but are used in the process of icecream making, specifically used as toppings only. Hence, the impugned product under the name "N.B.S. Crackle "which is an industrial input cannot be classified under "suger boiled confectionery"

Hence, we rule as under

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question: Whether the product by name "Crackle", manufactured and supplied by the applicant containing the ingredients Sugar, Cashew Nuts, Butter, Liquid glucose and other permitted Flavours , should be classified under the Tariff of Heading 1704 enumerated at Serial number 32AA of Schedule III of Notification No. 01/2017 as a Sugar boiled confectionery.??

Answer : Negative

Sd/-K.Ravi Sankar
Member

Sd/- RV Pradhamesh Bhanu
Member

//t.c.f.b.o//


Deputy Commissioner (ST)
Registrar
Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)
Andhra Pradesh, Vijayawada.

To

M/s Sri Venkateswara Cashew Chikky Manufacturers, 13/192, Sarvodaya Colony, Vetapalem, Prakasham Distirct , A.P., 523187 **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Chirala Circle, Guntur-II Division **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Chirala Range, Nellore Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, within a period of 30 days from the date of service of this order.

SAG
SAG