

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan , 8th floor, New building, Mazgaon, Mumbai-400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AADCS2306R1Z1
Legal Name of Applicant		Shah Nanji Nagsi Exports Private Limited
Registered Address/Address provided while obtaining user id		Shital Sadan, Anaz bazar, Itwari, Nagpur-440008
Details of application		GST-ARA, Application No. 93 Dated 22.11.2018
Concerned officer		Asstt. Commissioner CGST & Central Excise, Division – City Nagpur - II
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing
B	Description (in brief)	Applicant is engaged into import of maize of popcorn variety (Popcorn maize) in bulk. After import, this popcorn maize is fumigated and cleaned prior to packing. This processed clean popcorn maize, along with edible oil and salt is mixed together and packed in a pouch of fixed weight of say 350 gram, which are sold to restaurant owners and small popcorn vendors, who ultimately prepares ready to eat instant popcorn for customers.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by Shah Nanji Nagsi Exports Private Limited , the applicant, seeking an advance ruling in respect of the following question.

What will be the correct HSN code and consequently rate of GST applicable on “Ready to cook



popcorn premix i.e. Popcorn Maize with edible oil and salt”, sold in retail pack size ranging from 30 grams to 350 grams.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the “GST Act”.

FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

Applicant is engaged into import of maize of popcorn variety (Popcorn maize) in bulk. After import, this popcorn maize is fumigated and cleaned prior to packing. This processed clean popcorn maize, along with edible oil and salt is mixed together and packed in a pouch of fixed weight of say 350 gram, which are sold to restaurant owners and small popcorn vendors, who ultimately prepares ready to eat instant popcorn for customers.

The individual HSN Code of these ingredients are as under:

- a. Popcorn Maize (HS Code – 10059000 & GST rate – Nil)
- b. Edible Palm oil (HS Code – 15119020 & GST rate - 5%)
- c. Flavour Salt (HS Code – 21039040 & GST rate - 12%)

STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED .

As per appellant’s view popcorn maize packed with edible oil and salt will merit classification under HSN 2008 which read as under.

2008 FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR SPIRIT, NOT ELSEWHERE SPECIFIED

Popcorn maize is nothing but an edible part of the plant which is prepared along with oil and salt. The eight digit HSN code for above product will be 20081990: Other

03. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

It is submitted that, Issue on which advance ruling is required:

Please refer to your letter dated 27/11/2018, wherein information in respect of an Advance Ruling Application was given by M/s Shah Nanji Nagasi Exports Pvt Ltd., Anaj Bazar, Itwari, Nagpur.

In this regard, on going through the application it is seen that the Applicant is engaged in import of **maize of popcorn variety (Popcorn maize) in bulk**. After import the popcorn maize undergoes fumigation and cleaning. The processed clean popcorn maize, along with edible oil and salt are packed in pouch of fixed weight (say 350grams) which are then sold.

The Applicant's views are that the above product will meet classification under HSN 2008 which reads as under

2008- FRUITS, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR SPIRIT NOT ELSEWHERE SPECIFIED.

The Applicant has submitted that maize is nothing but an edible part of the plant which is prepared along with oil and salt. The eight digit HSN code for above product will be 20081990. The GST Tariff rate is 12% IGST [6% CGST+6% SGST].

It is further seen that the product Maize (corn) may meet classification under falling Chapter Heads also:

S.No.	Chapter Heading	Description (along with applicable GST rates)
1)	CH 10059000 - other a) if not packed in unit container, b) if put up in unit container and bearing a registered brand name or bearing brand name on which an actionable claim or enforceable right in a court of Law is available [other than those where any actionable claim or enforceable right in respect of such brand has been forgone voluntarily] subjected to the conditions in Ann of Notification No 1/2017-C.T.(Rate) dated 28/6/2017	Maize(corn) a) GST leviable is – NIL b) GST leviable is - IGST-5% [CGST-2.5%+ SGST-2.5%]
2)	CH 11022000 a) if not packed in unit container, b) if put up in unit container and bearing a registered brand name or bearing brand name on which an actionable claim or enforceable right in a court of Law is available [other than those where any actionable claim or enforceable right in respect of such brand has been forgone voluntarily] subjected to the conditions in Annexure of Notification No 1/2017 C.T.(Rate) dated 28/6/2017	Maize Corn (flour) a) GST leviable is – NIL b) GST leviable is - IGST-5% [CGST-2.5%+ SGST-2.5%]
3)	CH 11081200	Maize (Corn) starch GST leviable is IGST-12% FCGST-2.6%+ SGST-2.6%]



04. HEARING

The Preliminary hearing in the matter was held on 19.12.2018, Sh. Anand Dhoka, C.A. appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer was not appeared.

The application was admitted and called for final hearing on 15.01.2019, Sh. Anand Dhoka, C.A. appeared made oral and written submissions. The Jurisdictional Officer was not present but written submission was sent by post on 20.12.2018.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant and the department. The main and only issue before us is classification of 'maize of popcorn variety'.

Maize is a cereal plant that yields large grains (corn or sweetcorn) which are set in rows on a cob. There are many varieties of maize, some varieties are used for human consumption in the form of corn/sweet corn, oil etc and some varieties are used as stockfeed for animals. As per Wikipedia Maize, also known as corn is a staple food in many parts of the world but little of this maize is consumed directly by humans, most is used for corn ethanol, animal feed and other maize products, such as corn starch and corn syrup. There are different varieties of maize and the six major types of maize are dent corn, flint corn, pod corn, popcorn, flour corn, and sweet corn. We are, in this application, dealing with maize which is imported by the applicant and used for making popcorn, a popular snack in this country and elsewhere in the world.

The applicant is importing maize under Chapter Heading 1005 90 00 of the Customs Tariff which is the correct classification code for the product. However the said product imported by the applicant is not sold in the same form as it is imported. The applicant, after importing the maize of popcorn variety (Popcorn maize) in bulk, fumigates and cleans the same and mixes it along with edible oil and salt and then packs the said mix in pouches of fixed weight, which are sold to restaurant owners and small popcorn vendors, who ultimately prepare ready to eat instant popcorn for customers.

The applicant has submitted that Popcorn maize is nothing but an edible part of the plant which is prepared along with oil and salt. We agree with the contention that maize is a plant and the same are grown in fields. It is the kernel of maize which are used as sweet corn or popcorn. In the case of sweet corn, the kernels are generally soft and are consumed by steaming, boiling, etc. and consumed with or without butter, condiments, etc. However we find that the popcorn variety of maize generally has hard kernels which swell up and burst open when heated. These hard kernels can be mixed with butter, salt, caramel etc which gives rise to flavoured popcorn.

We find that while maize is covered under 10059000, maize flour is covered under 1102 20 00. Thus the same maize in different forms is covered under different Chapter Headings.

We find that maize/corn is considered as cereal under the GST Laws. The product imported by the applicant in the subject case is nothing but ready to use Popcorn mixed with salt and oil and needs only

to be Microwaved/heated, etc for direct consumption. We now reproduce the provisions of Chapter No. 2008 of the GST tariff (as claimed by the applicant).The broad head of Chapter 2008 is as under:-

“FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR SPIRIT, NOT ELSEWHERE SPECIFIED OR INCLUDED”

They have further gone out to state that their product falls under Sub Heading 2008 19 90. From their submission the implication is that they are treating their product as ‘Nut, ground nuts, and other seeds, whether or not mixed together’. We find that the kernels of corn/maize are edible parts of a plant and the same are mixed with oil and salt in order to be used for making of popcorn. Thus we agree with the contention of the applicant that their product in question is covered under Chapter 2008 19 90 of the GST Tariff and attracts IGST @ 12% and CGST & SGST @ 6 % each.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 93/2018-19/B- 19 Mumbai, dt. 16/02/2019

For reasons as discussed in the body of the order, the questions are answered thus –

Question :- What will be the correct HSN code and consequently rate of GST applicable on “Ready to cook popcorn premix i.e. Popcorn Maize with edible oil and salt”, sold in retail pack size ranging from 30 grams to 350 grams.

Answer :- The correct HSN code would be 2008 19 90.



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B. TIMOTHY
(MEMBER)

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B. V. BORHADE
(MEMBER)
CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State tax , Mahavikas for Website.

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MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.