

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 8th floor, H-Wing, 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		27AAACT1406E1ZV
Legal Name of Applicant		TCPL Packaging Limited
Registered Address/Address provided while obtaining user id		414 Empire Mills Complex , Senapati Bapat Marg, Lower Parel, Maharashtra Mumbai 400013
Details of application		GST-ARA, Application No. 105 Dated 03.01.2019
Concerned officer		State Tax Officer (C-840), Nodal Division - 4, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory/Manufacturing
B	Description (in brief)	TCPL Packaging Limited ("TCPL") is one of India's largest manufacturers of packaging materials using Board, films etc. As a converter of paper Board TCPL manufactures folding cartons, printed blanks & outers, litho lamination, plastic cartons, blister packs and shelf ready packaging. All products manufactured by TCPL, are customized to the requirement of the Customer.
Issue/s on which advance ruling required		(i) classification of goods and/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 TCPL Packaging Limited, the applicant, seeking an advance ruling in respect of the following questions.

1. *Whether the packaging materials viz cut to size blanks manufactured by TCPL with corrugation and having requisite creases at designated places, supplied to the Customers in flat form with folding, can be categorized under Tariff Item Code no 4819 and subject to GST @ 12% ?*
2. *What would be the appropriate categorization and GST Rate of printed materials which are in flat form, e.g. hanging cards, without creases having corrugation and supplied to customer in flat form?*

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".

02 FACTS AND CONTENTION - AS PER THE APPLICANT

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

STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

"TCPL" is one of India's largest manufacturers of folding cartons, printed blanks & outers, litho lamination, plastic cartons, blister packs, and shelf ready packaging. It also manufactures packaging material using films etc.

There appears a doubt on the classification and applicability of GST of items namely (a) packaging materials viz cut to size blanks manufactured by TCPL with corrugation and having requisite creases at designated places, supplied to the Customers in flat form with folding and (b) printed materials which are in flat form, e.g. hanging cards, without creases having corrugation and supplied to customer in flat form.

We require an advance ruling on whether the packaging materials viz cut to size blanks with corrugation and having requisite creases at designated places, supplied to the Customers in flat form with folding will fall under (a) Tariff Item Code [4819] - Cartons, boxes and cases of corrugated paper or paper board [chargeable at 12% GST]; OR (b) Tariff Item Code [4823] - Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres (other than paper pulp moulded trays, Braille paper, kites, Paper mache articles (chargeable at 18% GST) OR any other appropriate Tariff Item Code.

We are apprehensive that the Department may raise a dispute in the near future and endeavor to classify the captioned items under Tariff Item Code 4823 stating that the captioned items are not Cartons, boxes and cases of corrugated paper or paper board by itself as it requires manual or mechanical intervention, by way of folding from the customer's end, to make the same as cartons or boxes to hold goods.

In view of aforesaid interpretational issue, to safeguard ourselves, we were charging 18% on the aforesaid items under Tariff Item Code 4823. However, our competitors are charging GST of 12% on the captioned items owing to which the Company is losing business. Hence, the advance ruling is sought on the captioned issue.

Further, we are charging 18% GST under Tariff Item Code 4823 on printed materials which are in flat form, e.g. hanging cards, without creases having corrugation and supplied to customer in flat form, however, there is disparity in the industry on the appropriate classification of the said items as well as the GST Rate on the same.

In view of aforesaid, the applicant has sought for an advance ruling on the classification as well as GST Rates of items namely (a) packaging materials viz cut to size blanks with corrugation and having requisite creases at designated places, supplied to the Customers in flat form with folding and (b) printed materials which are in flat form, without creases having corrugation and supplied to customer in flat form, from your lordship to avoid any unnecessary dispute arising in the future

A sample of both the categories of items would be produced before your good-self at the time of Personal Hearing.

Additional submissions on 06.02.2019

WRITTEN SUBMISSION TO BE FILED BEFORE THE OFFICE OF ADVANCE RULING AUTHORITY, MAHARASTHRA STATE MUMBAI ON 30-01-2019

- 1.0 TCPL Packaging Limited (here-in-after referred to as "the Applicant") is one of India's largest manufacturers of folding cartons, printed blanks & outers, litho lamination, plastic cartons, blister packs and shelf ready packaging.
- 2.0 ISSUE-T-Classification and applicability of GST on items namely packaging materials viz cut to size blanks manufactured by TCPL with corrugation and having requisite creases at designated places, supplied to the Customers in flat form with folding
- 2.1 The Applicant is engaged in manufacturing of cartons of corrugated paper or paperboard falling under HSN Code 4819 leviable to GST at the rate of 12%. The cartons are folded on three sides and glued on the fourth side. They could be having fock bottom facility with opening at the top. A specimen of carton made of corrugated paper or paperboard is produced before your good-self.

- 2.2 Further, to aforesaid, the applicant is also engaged in manufacturing of cut to size material with corrugation in flat form. Under the said category, the material has corrugation, however the customers are supplied the material in flat form. The customer folds the blanks into carton at the requisite creases manually or mechanically at their place. A specimen of cut to size material with corrugation in flat form is produced before your good-self.
- 2.3 We are also enclosing herewith the captioned classification of Chapter 48 of HSN Code namely "Paper And Paperboard; Articles Of Paper Pulp, Of Paper Or Of Paperboard" for your kind perusal and the same is marked as 'Exhibit - I' for your kind perusal:
- 2.4 Please note that the packaging materials viz cut to size blanks manufactured by TCPL with corrugation and having requisite creases at designated places, supplied to the Customers in flat form, is ultimately used by the Customer as cartons or boxes to hold goods and the same should be appropriately classified under Tariff Item Code. 4819 chargeable at 12%. The essential character of such items remains as cartons or boxes to hold goods, though certain manual or mechanical activity has to be carried out on the same to achieve the required objective.
- 2.5 At the outset; we would like to discuss Rule 2(a) of the General Rules for the Interpretation of the Harmonised System, wherein is elucidated here-in-below for ease of reference -
"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled,"
- Some illustration in HSN Explanatory Notes are (a) Passenger Coach without seats will be a Passenger Coach; (b) Bicycles without saddles and tyres will be classified as bicycles; (c) Scooter body unit without engine is classified as scooter; (d) Belt Conveyor System supplied with all material except belt has to be classified as Belt Conveyor System; etc.
- 2.6 At the outset, please note that the packaging materials supplied to the Customers in flat form cannot be used by the customer in any form other than as cartons or boxes to hold goods. The customer folds the blanks into carton at the requisite creases manually or mechanically at their business premise and use the same as carton to hold goods. The Hon'ble Supreme Court in the case of CC v. Sony India [2008 (231) ELT (SC)] has held that Rule 2(a) of the General Rules for the Interpretation of the Harmonised System would apply when the goods unassembled or disassembled can be put together by simple fixing device or by riveting or welding. It was further observed by the Hon'ble Supreme Court that the goods requiring complicated process to make final products cannot be considered as unfinished goods having essential character of complete articles.
- 2.7 We would like to bring this to your kind notice that in the instant case, the transformation of 'packaging materials in flat form' to its ultimate use i.e. 'cartons or boxes to hold goods' is not at all a complicated process and can be carried out by folding the blanks into carton at the requisite creases manually or mechanically. The said process does not require any technical expertise or sophisticate machineries or multiple processes to yield the required results.
- 2.8 The Hon'ble Madras High court in the case of Motor Industries Co. Ltd. vs Assistant Collector Of Customs [1992 (62) ELT 13] held that Rule 2(a) referred to hereinabove can have application to semi-finished goods, which are capable of being used as such with minor adjustment and it cannot have any application with reference to semi-finished goods, which involved major processes for making the goods fit for use. Unless and until the goods in question are capable of being used after minor adjustment, without involving major process before the goods are being put into use, construed as having essential character of complete and finished articles.
- 2.9 The Hon'ble Apex Court in the case of Atul Glass Industries Private Limited v. CCE [1986 (3) SCC 480] have held that identity of a product is associated in mind of Consumer with its primary function. The consumer buys an article because its perform a specific function for him. The mental association with a product is highly important for classification. The packaging materials in flat form' is perceived by the Customers as cartons or boxes to hold goods and the same constitute its actual identity in the eyes of the Customers.
- 2.10 In view of aforesaid, we most humbly pray before your good-self for an advance ruling holding that the packaging materials viz cut to size blanks and supplied in flat form manufactured by TCPL with corrugation and having requisite creases at designated places, supplied in flat form shall be classifiable under Tariff Item Code 4819 chargeable to GST at 12%.



- 3.0 **ISSUE - || - Classification and applicability of GST on items namely Printed materials which are in flat form, e.g. hanging cards, without creases having corrugation or not and supplied to customer in flat form**
- 3.1 The Applicant is engaged in manufacturing of Printed materials which are in flat form, e.g. hanging cards, without creases having corrugation or not and supplied to customer in flat form. A specimen of such item is being produced before your good-self for your kind perusal.
- 3.2 The Applicant has been classifying the said item under Chapter - 4823 - Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres (other than paper pulp moulded trays, Braille paper, kites, Paper mache articles and paying GST at the rate of 18%.
- 3.3 However, we have observed disparity in the industry on the classification of such items, wherein such items have been classified at 12%. Hence, we most humbly pray before your good-self for an advance ruling on appropriate classification and GST Rate of namely Printed materials which are in flat form, e.g. hanging cards, without creases having corrugation or not and supplied to customer in flat form.

STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

"At the outset, please note that while interpreting a taxing statute, the principle and the object of the Act has to be kept in mind and it has to be seen in the light of the scheme of the Act and the context thereof. If the words of the statute are clear, plain, unambiguous, the courts are bound to give effect to that meaning. To find out the exact connotation of a word in a statute, the context in which it is used is to be looked into. The context would quite often provide the key to the meaning of the word and the sense. it should carry. It's settling would give colour to it and provide clue to the intention of the legislature in using it. However, all such interpretation is to be done only in case of ambiguity.

It is worthwhile to note that the Notification No.1/2017-Central Tax (Rate) New Delhi, the 28th June, 2017 prescribing the rate of GST clearly states that "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) and 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 i.e. GST Rate Notification.

Please note that the packaging materials viz cut to size blanks manufactured by TCPL with corrugation and having requisite creases at designated places, supplied to the Customers in flat form, is ultimately used by the Customer as cartons or boxes to hold goods and the same should be appropriately classified under Tariff Item Code 4819.chargeable at 12%. The essential character of such items remains as cartons or boxes to hold goods, though certain manual or mechanical activity has to be carried out on the same to achieve the required objective.

Without prejudice to aforesaid, in terms with Rule 3(b) of Rules of the interpretation, the heading which provides the most specific description shall be preferred to headings providing a more general description. Since the Tariff Heading '4819' is more specific to Cartons and boxes required to hold items in our humble view, the cut to size blanks with corrugation and having requisite creases at designated places, supplied to the Customers in flat form with folding, should also fall within the Tariff Heading '4819' and accordingly should be taxed at 12%.

In view of aforesaid, we request to your lordship to kindly pass an order classifying 'cut to size blanks with corrugation and having requisite creases at designated places, in flat form' under Chapter Heading 4819 taxable at 6% [CGSTI & 6% [SGST] in case of Local Supply & 12% (IGST] in case of Inter-State Supply: Regarding, printed materials which are in flat form, e.g. hanging cards, without creases having corrugation and supplied to customer in flat form, we are of the view that the captioned items fall under Tariff Item Code (Chapter -- 4823) - Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres (other than paper pulp moulded trays, Braille paper, kites, Paper mache articles and should be chargeable at 18% GST. However, there is disparity in the industry on the classification of such items and hence, we would require an advance ruling on the captioned item as well to avoid any dispute accruing in the future.

Additional submissions on 13.02.2019

- 1.0 This is with reference to Application for Advance Ruling filed by Ms. TCPL Packaging Limited (GSTIN 27AAACT 1406E1ZV) [In short 'Applicant'] bearing Application Reference No. (ARN): AE2712180008832 Dt. 27.12.2018 on the issue of classification of the goods and hearing held on 06-02-2019 before your good-self in this regard, wherein the application was duly admitted.
- 2.0 As sought by your good-self during the course of hearing, we are submitting herewith the photo of (a) Corrugated Box in Flat Form [both front and back] along with a photo of folded Corrugated Box from the Flat Form; as well as (b) Hanging Card [both front and back], for your kind perusal and the same is marked as 'Exhibit - I' for ease of reference. These are the two items which basically required Advance Ruling for your Lordship.
- 3.0 Further, we are also enclosing herewith (a) Copy of Challan evidencing payment of INR 5,000/- under the CGST Head against Advance Ruling Application Filing Fees; and (b) Copy of SGST Credit Ledger wherein INR 5,000/- has been debited against Advance Ruling Application Filing Fees, and the same is collectively marked as 'Exhibit - II' for ease of reference. Further, please note that there is no methodology of generating Challans for payment made through debiting the Credit Ledger in the GST Portal, hence, we are not been able to submit Challan for payment made through debiting the Credit Ledger
- 4.0 Further, during the course of hearing for admittance of the application, it was deliberated to whether the activity carried out by the Applicant of procuring the Raw Materials i.e. Card Boards and printing on the same as per the direction of the customer falls under the category of Supply of Printing Service and not Supply of Boxes per se. In this regard, reliance is placed on the Circular Bearing No. 11/11/2017-GST dated 20-10-2017, wherein it has been clarified that -
"In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content (supplied by the recipient of supply) is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff."
- We are enclosing herewith the Circular dated 20-10-2017 and the same is collectively marked as 'Exhibit - III' for ease of reference.

5.0 Hope the aforesaid suffice your requirement.

03. CONTENTION - AS PER THE CONCERNED OFFICER

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

Submission in case of M/S. TCPL PACKAGING LIMITED

The dealer has applied under Advance Ruling for clarification in respect of the following questions

1. Whether the packaging materials viz cut to size blanks manufactured by TCPL with corrugation and having requisite creases at designated places, supplied to the customers in flat form with folding, can be categorized under Tariff item code no 4819 and subject to GST @ 12%.
2. What would be the appropriate categorization and GST rate of printed materials which are in flat form, e.g. hanging cards, without creases having corrugation and supplied to customer in flat form?

As per the Notification No. 1/2017- Central Tax (Rate) dated 28th June 2017 by Government of India.

1. The packaging material with corrugation manufactured by TCPL can be categorized under Tariff item code no. 4819 and is liable to tax at the rate 12%.
2. Printed material in Flat form having corrugation would be categorized under Tariff code 4819 and GST rate of tax on outward supply is 12%.

04. HEARING

The Preliminary hearing in the matter was held on 06.02.2019, Sh. S. G. Nanavati, Executive Director, along with Sh. Amit Kar, Sr. Gen. Manager Marketing, Sh. Vijay Mane, Asstt. Manager Accounts and Sh. Vikram Khaitan, C.A., appeared and requested for admission of

application as per contentions made in their application. Jurisdictional Officer Sh. Arun S. Lagare State Tax Officer (C-840) Nodal Division-4, Mumbai, appeared and made written submissions.

The application was admitted and called for final hearing on 05.03.2019, Sh. Vikram Khaitan, C.A. along with Sh. S. G. Nanavati, Executive Director, appeared and made oral as well as written submissions. Jurisdictional Officer Sh. Arun S. Lagare State Tax Officer (C-840) Nodal Division-4, Mumbai also appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office. The issue before us is one of classification and GST rate of (i) packaging materials viz. cut to size blanks with corrugation and having requisite creases at designated places and (ii) printed materials which are in flat form, e.g. hanging cards, without creases and having corrugation. From a perusal of the submissions we find that the only two Chapter Headings which can be considered in this case are CH 4819 and CH 4823. The applicants has also submitted samples of the said products before us and based on the same we take up the matter for discussion and therefore we reproduce both Chapter Headings as under:-

Chapter Heading [4819] - *Cartons, boxes and cases of corrugated paper or paper board*

Chapter Heading [4823] - *Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres (other than paper pulp moulded trays, Braille paper, kites, Paper mache articles).*

The applicant has contended that the products mentioned at (i) above are classifiable under Chapter Heading 4819 whereas they have been classifying the same under Chapter Heading 4823. The applicant has also contended that the products mentioned at (ii) above are classifiable under Chapter Heading 4823 and they have been classifying the same under Chapter Heading 4823 but their competitors are classifying the same under Chapter Heading 4819.

We have seen the samples in respect of packaging materials viz. cut to size blanks with corrugation and having requisite creases at designated places and we find that the said products are with corrugations/perforations and therefore foldable on three sides and glued on the fourth side. These blanks can be folded into cartons at the requisite creases manually or mechanically without any further processes. We also find that the said blanks can be used by their customers only as cartons/boxes, after the folding takes place, without the use of technical expertise. We further find that the said products are dispatched by the applicant to their customers only when they receive orders for cartons/boxes for packing in DVD players belonging to their customer. Hence at the time of receiving the order and dispatching of the said products both, the applicant

and their customer are aware that what will be sent by the applicant and received by the customers are cartons/boxes. The said cartons/boxes are probably sent in flat condition is because more cartons can be transported by the applicant in one go. If they prepare the cartons/boxes and dispatch the same then a lot of space will be utilized during transportation and since conversion from flats to cartons/boxes does not need any special and technical expertise it is ideal that the same are transported as cut to size blanks. We agree with the contention of the applicant that the essential character of such items remains as cartons or boxes to hold goods, though certain manual or mechanical activity has to be carried out on the same to achieve the required objective. We also agree the said packaging materials supplied to their customers in flat form cannot be used by the customers in any form other than as cartons or boxes to hold goods.

Rule 2(a) of the General Rules for the Interpretation of the Harmonised System which can throw light on the subject issue is reproduced as below:-

"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled,"

The case laws cited by the applicant in respect of CC v. Sony India [2008 (231) ELT (SC), Motor Industries Co. Ltd. vs Assistant Collector Of Customs [1992 (62) ELT 13] and Atul Glass Industries Private Limited v. CCE [1986 (3) SCC 480] support their contention that the packaging materials viz cut to size blanks and supplied in flat form manufactured by TCPL with corrugation and having requisite creases at designated places, supplied in flat form shall be classifiable under Tariff Item Code 4819 chargeable to GST at 12% and we agree with the same.

Now we take up the classification of printed materials which are in flat form, e.g. hanging cards, without creases and having corrugation. Regarding, printed materials which are in flat form, e.g. hanging cards, without creases having corrugation and supplied to customer in flat form, we find that said items are nothing but articles of paper cut to size or shape and there is no doubt that they are clearly covered under Chapter Heading 4823 and chargeable to GST @ 18%.

We find that the jurisdictional office has not discussed the issue at all and have simply arrived at the following conclusion reproduced as under:-

"As per the Notification No. 1/2017- Central Tax (Rate) dated 28th June 2017 by Government of India.

1. The packaging material with corrugation manufactured by TCPL can be categorized under Tariff item code no. 4819 and is liable to tax at the rate 12%.

2. Printed material in Flat form having corrugation would be categorized under Tariff code 4819 and GST rate of tax on outward supply is 12%.”

We therefore do not take any cognizance of the reply made by the jurisdictional office which is very cryptic and made without any basis.

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- 105 /2018-19/B- 33 Mumbai, dt. 22/03/2019

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

Question :- Whether the packaging materials viz. cut to size blanks manufactured by TCPL with corrugation and having requisite creases at designated places, supplied to the Customers in flat form with folding, can be categorized under Tariff Item Code no 4819 and subject to GST @ 12%?

Answer :- Answered in the affirmative.

Question :- What would be the appropriate categorization and GST Rate of printed materials which are in flat form, e.g. hanging cards, without creases having corrugation and supplied to customer in flat form?

Answer :- In view of the discussions made above, printed materials which are in flat form, e.g. hanging cards, without creases having corrugation will fall under CH 4823 and subject to 18% GST.



sd
B. TIMOTHY
(MEMBER)

sd
B. V. BORHADE
(MEMBER)

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, Churchgate Mumbai
5. Joint commissioner of State Tax , Mahavikas for Website.

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.

CERTIFIED TRUE COPY
sd
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI