

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

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

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id	27AACCA3117H1Z2
Legal Name of Applicant	M/s. A.W. Faber-Castell (India) Pvt. Ltd.
Registered Address/Address provided while obtaining user id	801, KAMALA EXCEUTIVE PARK, NR. VAZIR GLASS, OFF M V ROAD, J B NAGAR, ANDHERI (EAST) 400059
Details of application	GST-ARA, Application No. 31 Dated 23.02.2018
Concerned officer	Central GST, Div-V, Mumbai East.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory/Manufacturing
B Description (in brief)	That applicant is engaged in the manufacture of stationery items, educational items and toys for kids.
Issue/s on which advance ruling required	(i) Classification of goods and 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 the 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 M/s. A.W. Faber-Castell (India) Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following question :

Whether the product of the applicant i.e. "Modelling dough" will be covered under Chapter 34 or Chapter 95 under the Customs Tariff Act, 1975.

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

1. M/s A.W. Faber-Castell (India) Pvt. Ltd. (hereinafter referred to as 'Applicant') having its corporate head office at 801, Kamla Executive Park, Near Vazir Glass Works, J. B. Nagar, Andheri (east), Mumbai and having various regional offices located at



Bhiwandi (Maharashtra), Chennai, Delhi, Kolkata and Goa, is *inter-alia* engaged in the manufacture of various products taxable under GST law.

2. The present application is filed in respect of one of its products - "Modelling Dough" which is a specially manufactured semi-solid, clay-like structure to be used as a toy for kids to make various shapes, things, caricatures of animals etc. It is made up of 'maida' i.e. 'refined wheat flour' or 'white flour'. Modelling dough is usually supplied in packs containing multiple such dough in various colours to attract kids.
3. The applicant submits that there appears to be an anomaly in the Customs Tariff as well as in the GST Tariff Schedules in so far as 'modelling dough' is concerned. The term 'Modelling pastes, including those put up for children's amusement' finds a mention in Chapter Heading No. 34.07 as Tariff Item No. 34.07 00 10. "Modelling paste" of Chapter Heading No. 34.07 is specified under Sl. No. 63 of Schedule-III to Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 41/2017- Central Tax (Rate) dated 14.11.2017 which reads as under:

Sl. No.	Chapter Heading/ Sub-Heading	Description of Goods	Rate of Tax (CGST)
63.	3407	Modelling pastes, including those put up for children's amusement; Preparations known as —dental wax or as —dental impression compounds , put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate)	9%

Therefore, the applicable rate of GST (CGST+SGST or IGST) amounts to 18% on the concerned product.

4. The present ambiguity arises due to the fact that Chapter Heading No. 34.07 falls under Section VI of the Customs Tariff which provides for 'PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES'. However, it is observed that the applicant's product is neither a chemical, nor a product of any such allied industry. The applicant's product is made up of 'maida' which is neither a chemical nor any allied industrial product. Therefore, to classify the product in the concerned Section of Customs Tariff and applying the rate of tax applicable to Chemicals cannot be construed to be the intention behind the Tariff.
5. Furthermore, it has been recently brought to the applicant's notice that competitors of the applicant (who are branded players in the stationery items and children's goods sector) are clearing identically placed products under the category of 'Toys' by classifying the same under Chapter 95 (Heading No.95.03) of the Customs Tariff (under the GST regime) and charging CGST @6%. Thus, effective rate of GST on the said product is 12%.
6. The present ambiguity regarding product-in-question is because of the aforementioned factors and the mismatch usage and composition of the applicant product in relation to Chapter Heading No. 34.07 of the Customs Tariff. The applicant's product may fall under Chapter 34.07 which covers 'modelling pastes'. However, the same product is actually used as a 'toy' for kids and maybe more aptly covered under Chapter 95 of the Customs Tariff which covers *Toys, games and sports requisites; parts and accessories thereof*.
7. The prevailing ambiguity has led to two separate Tariff Item Nos. being used for the product in question with contradictory usages thereby levying two different rates of CGST applicable on them. While some cautious sellers are charging CGST @9% on the product in question whereas some registered persons are using the ambiguity to charge CGST @6% only. The above ambiguity results in unfair market practices being adopted by certain registered persons in an attempt to reduce effective price of product and increase their market share and profits. Further, it shall be noted that many unorganized and un-registered players (having meager market share) are also taking undue advantage of the above and clearing similar products by charging CGST @6% only.
8. Under the above circumstance, we are left with no option but to supply our product currently by charging CGST @9% in order to avoid any possible litigation with the department, whereas some of our competitors have already started charging CGST @6%, to take benefit of lower GST rates, which is affecting fair competition, not allowing a level playing field, resulting in loss of market share and financial loss to us. This can also cause confusion amongst consumers, as there are different GST rates being applied in the market for essentially the same product, under different classification / codes for different brands, in different distribution channels.
9. Under the aforesaid circumstances, the ambiguity regarding the applicable taxation rate on the product in question is affecting our business significantly and hitting our industry badly. Under such circumstances, we reiterate our request to expedite the matter at hand and issue a clarification regarding the same and also grant us with a personal meeting to represent our case in detail.

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

A. APPLICANT'S ELIGIBILITY TO FILE PRESENT ADVANCE RULING APPLICATION.

- A.1 That the sub-section (c) of Section 95 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), defines the term 'applicant' as under:-

"applicant" means any person registered or desirous of obtaining registration under this Act"

Emphasis Supplied

- A.2 A perusal of the above clarifies that scope of the term 'applicant', as defined under sub-section (c) of Section 95 of the CGST Act shall include both, the person registered under the CGST Act and also the person who is not registered as on date of applying for the advance ruling, but is desirous of seeking registration under the CGST Act, in the state where advance ruling is sought.

- A.3 Further, Section 22 of the CGST Act, specifies the person liable for registration and reads as under:-

"22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

(Emphasis Supplied)

- A.4 The above referred section can be vivisected into following essentials: -

- a. A supplier shall be liable to be registered under CGST Act in the State or Union Territory, from where he makes taxable supply of goods or services or both;
- b. If the aggregate turnover in the financial year exceeds rupees twenty lakh.

- A.5 The Applicant submits that as on date, it is registered in Maharashtra and also making taxable supplies of goods from the same to its customers located in State of Maharashtra. Further, the turnover of the Applicant exceeds rupees twenty lakhs in



the financial year. Given this, it is submitted that Applicant clearly satisfies to be 'applicant' in terms of sub-section (c) of the Section 95 of the CGST Act.

A.6 That sub-section (1) of the Section 95 of the CGST Act defines the term 'advance ruling' as under:-

"(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant."

Emphasis Supplied

A.7 Perusal of the above clarifies that the advance ruling can only be sought on the issues, as are specified under Section 97(2) of the CGST Act, which reads as under:-

"97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of, -

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."

Emphasis Supplied

A.8 In view of the above, it is submitted that advance ruling may be sought by the Applicant on the questions concerning classification of goods or services or both, on the question involving determination if anything done by the applicant with respect to a good or services or both amounts to or results in a supply of goods or services or both. The Applicant submits that the questions for determination in the instant advance ruling application concerns with determination of the correct classification of goods or services supplied by the Applicant

A.9 Further, Section 96 of the CGST Act provides for appointment of advance ruling authority and reads as under:-

"96. Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory."

Emphasis Supplied

A.10 Hence, an Advance Ruling Authority appointed by the concerned State or Union Authority Government under concerned State or Union Territory Goods and Service Tax Act, shall be the deemed to be the Advance Ruling Authority for the purpose of CGST Act. The Section 96 of the Maharashtra Goods and Service Tax Act, 2017, reads as under:-

"SECTION 96

(1) The Government shall, by notification, constitute an Authority to be known as the Maharashtra Authority for Advance Ruling;

Provided that the Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for the State.

(2) The Authority shall consist of-

(i) one member from amongst the officers of central tax; and

(ii) one member from amongst the officers of State tax.

to be appointed by the Central Government and the State Government respectively.

(3) The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.

Emphasis Supplied

A.11 The Applicant submits that in terms of the above referred section 96 of the Maharashtra Goods and Service Tax Act, 2017, the Government of Maharashtra has issued a Notification No. MGST-1017/CR 193/Taxation dated 24.10.2017, which constitutes this authority as Maharashtra Authority for Advance Ruling. The Applicant submits that by virtue of Section 96 of the Maharashtra Goods and Service Tax Act, 2017, the questions for determination in advance ruling lie before the Maharashtra Authority for Advance Ruling.

A.12 In view of the foregoing, the Applicant submits that it is eligible to file the present advance ruling application before the Maharashtra Authority for Advance Ruling, Mumbai, appointed vide Notification No. MGST-1017/CR 193/Taxation, dated 24.10.2017 read with Section 99 of Maharashtra Goods and Service Tax Act, 2017.

QUESTIONS REQUIRING ADVANCE RULING

B. The question on which Advance Ruling is sought by the Applicant is as under:-

a. What is the appropriate classification and rate of GST applicable on the supply of product – "**Modelling Dough**" under Central Goods and Service Tax Act, 2017 ('CGST').

Or

Whether Modelling Dough would correctly be classifiable under heading No.3407 or 9503 of Customs Tariff?

APPLICANT'S INTERPRETATION

C. **'MODELLING DOUGH' AS MANUFACTURED AND SUPPLIED BY THE APPLICANT ARE CLASSIFIABLE UNDER CHAPTER 95 OF THE CUSTOMS TARIFF AND COVERED BY SL. NO. 228 OF SCHEDULE-II TO NOTIFICATION NO. 1/2017-CENTRAL TAX (RATE) DATED 30.06.2017**

C.1 In terms of Section 9(1) of CGST Act subject to Section 9(2), there shall be levied a tax called the Central Goods and Service Tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

C.2 The Central Government has issued Notification No.1/2017-Central Tax (Rate) dated 28.6.2017 in exercise of the powers under Section 9(1). This Notification in Schedule I to VI specifies goods which will be levied to tax at the rate of 2.5%, 6%, 9%, 14%, 1.5% and 0.125%. The Notification was further amended from time to time.

C.3 Chapter Heading No. 34.07 and 95.03 of the Customs Tariff are the relevant headings for the present matter and reads as under:

Chapter Heading No. 34.07

Tariff Item	Description of goods	Unit	Rate	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
3407	MODELLING PASTES, INCLUDING THOSE PUT UP FOR CHILDREN'S AMUSEMENT; PREPARATIONS KNOWN AS "DENTAL WAX" OR AS "DENTAL			



		IMPRESSION COMPOUNDS", PUT UP IN SETS, IN PACKINGS FOR RETAIL SALE OR IN PLATES, HORSESHOE SHAPES, STICKS OR SIMILAR FORMS; OTHER PREPARATIONS FOR USE IN DENTISTRY, WITH A BASIS OF PLASTER (OF CALCINED GYPSUM OR CALCIUM SULPHATE)			
3407 00	-	Modelling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate):			
3407 00 10	---	Modelling pastes, including those put up for children's amusement			
3407 00 90	---	Other			

Chapter Heading No. 95.03

Tariff Item	Description of goods	Unit	Rate	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
9503	TRICYCLES, SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLLS' CARRIAGES; DOLLS; OTHER TOYS; REDUCED-SIZE ("SCALE") MODELS AND SIMILAR RECREATIONAL MODELS, WORKING OR NOT; PUZZLES OF ALL KINDS			
9503 00	- Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds:			
9503 00 10	--- Of wood			
9503 00 20	--- Of metal			
9503 00 30	--- Of plastics			
9503 00 90	--- Other			

- C.4 The relevant entries in the respective Schedules of Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017 as amended till Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, for the purpose of the applicant's product in question, read as under:

Sch.	Sl. No.	Chapter Heading/ Sub-Heading	Description of Goods	Rate of Tax (GST)
II.	228.	9503	Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof) [other than electronic toys]	6%
III.	63.	3407	Modelling pastes, including those put up for children's amusement; Preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate)	9%

- C.5 The aforesaid Notifications contains the following explanation:

- (i) ---
(ii) ---
(iii) "Tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, heading, sub-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 said Customs Tariff Act, 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.

- C.6 A perusal of the aforesaid provisions read with explanation to the Notification No.1/2017-Central Tax (Rate) shows that in order to determine the rate of CGST leviable on the product in question, it is paramount to determine the classification of the product in question under Customs Tariff Act, 1975.

- C.7 The Custom Tariff is generally based on the tariff classification adopted by World Customs Organisation in its Harmonized Commodity Description of Coding System (hereinafter referred to as "HSN"). Hence, wherever a Chapter of Custom Tariff is fully aligned with the corresponding Chapter of HSN, then the HSN explanatory notes explaining the scope of headings of that Chapter would have persuasive value in the determination of scope of headings of correspondence Chapter of Central Excise Tariff. The aforesaid position has been laid down by the Hon'ble Supreme Court in the following decisions:

- (a) Camlin Limited Vs. CCE - 2008 (230) ELT 193 (SC)
(b) Coen Bharat Limited Vs. CCE - 2007 (217) ELT 165 (SC)
(c) CCE Vs. Bakelite Hylam Limited - 1997 (91) ELT 13 (SC)

- C.8 Explanatory Notes for Chapter Heading No. 34.07 of the HSN read as follows:

“(A) **Modelling Pastes**

These are plastics preparations generally used by artists or goldsmiths for making models and also by children for amusement purposes. The most common are those with a basis of zinc oleate. These also contain waxes, white oil and kaolin and are slightly greasy to the touch. Others are mixtures of cellulose pulp and kaolin with binders. These pastes are usually coloured and are presented in bulk or in cakes, sticks, plates, etc. Assorted modelling pastes, including those put up in sets for the amusement of children, are also covered by this heading.”
----- emphasis supplied

- C.9 From a perusal of the above, it is observed that the goods of Chapter Heading No.34.07 are preparations of plastics or plastic preparation generally used by artists or goldsmiths. Even those modelling pastes which are used by children for amusement purposes are classifiable under this Heading only. However, Chapter Heading No. 34.07 only covers goods made of plastics and not of other materials. Therefore, it can be said that the modelling pastes that are used by children for amusement purposes and made specifically from plastics shall only be covered by Chapter Heading No. 34.07.

- C.10 However, it is clear that the modelling pastes generally of a plastics in nature would be covered under Heading No. 3407 of the Customs Tariff Act. To understand the meaning of term 'plastic' as mentioned in Explanatory Notes to Heading No. 3407, we may refer and rely on Chapter Note No.1 to Chapter No. 39 of the Customs Tariff Act which covers PLASTICS AND ARTICLES THEREOF. The Chapter Note No.1 read as under:

1. Throughout the Nomenclature the expression "plastics" means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat



and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

- C.11 On reading of Chapter Note No.1 to Chapter No.39, it is clear that the definition of term 'plastics' is not restricted to goods covered under Chapter No. 39 only but the said definition is applicable throughout the nomenclature. Therefore, if any goods covered under Heading No.3407 generally be preparations of plastics or plastics preparation shown content the ingredients from materials of Heading No.3901 to 3914. In the present case, the product in question is made entirely out of maida i.e. preparations of wheat flour and none of the contents/materials as covered under Heading No.3901 to 3914 are present. Thus, the question of product in question falling under Heading 3407 is clearly ruled out.
- C.12 It is pertinent to note that the applicant's product i.e. Modelling Dough is a clay-like semi-solid product which is primarily made of 'maida' or refined wheat flour. Although it is made for the use of children as a growth stimulating, creativity toy and may be termed to be for the amusement of children; it is specifically made from edible substances including maida so as to make it safe for children and not have any harmful effects even if accidentally consumed by the children. The ingredients of the product are specifically selected and no plastics are added to the product. Therefore, the product cannot be said to be classifiable under Chapter Heading No. 34.07 which specifically includes goods made of plastics only.
- C.13 Further, Chapter 34 of the Customs Tariff includes: "Soap; organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster". Chapter Heading No. 34.07 is a sub-heading of Chapter No.34 itself. The broad spectrum of goods covered under Chapter 34 are all chemicals and similar preparations. It shall be unfair to state that goods made of edible stuff like maida are classifiable under the same Chapter as that of the chemicals like soap and surfactants.
- C.14 Furthermore, Chapter 34 falls within Section VI of the Customs Tariff which provides for 'Products of the Chemical or Allied Industries'. Section VI covers chemicals or allied industry products only and not children educational products. Therefore, it shall be wrong to classify the applicant's product which is an educational toy made of maida under Section VI of the Customs Tariff along with other products of Chemicals or other allied industries.
- C.15 The principle of *ejusdem generis* specifies that like items should be treated likely i.e. goods of the same kind should be clubbed and treated similarly. Extending the same principle to 'modelling dough', it is submitted, that modelling dough should not be treated in law as to be of the same kind as other plastic preparations and chemicals. Rather, it is submitted, that the applicant's product i.e. modelling dough should be classified along with similar educational toys for kids and clubbed with the same for the purpose of taxation under GST.
- C.16 Chapter Heading No. 9503 covers toys of various kinds for children. Tariff Item Nos. 9503 00 10, 9503 00 20 and 9503 00 30 cover toys made of wood, plastics and metals. Tariff Item No. 9503 00 90 is the residuary entry under which other toys for children of similar nature (but not made of metal, wood or plastics) can be classified. Therefore, it is submitted, that the applicant's product i.e. Modelling Dough, which is essentially a toy made of maida, should be classified with other toys under Tariff Item No. 9503 00 90 itself.
- C.17 In light of the above, the appellant understands that the product in question i.e. Modelling Dough can be treated as the same as toys for children classifiable under Chapter Heading No. 95.03.

D. ISSUES RELATING TO ADVANCE RULING AND APPLICANTS UNDERSTANDING.

Question

- D.1 What is the appropriate classification and rate of CGST on the supply of the product in question- *Modelling Dough*.
Applicants understanding
- D.2 That the correct classification of the product in question i.e. *Modelling Dough* should be under the Chapter Heading No.95.03 of the Customs Tariff Act, 1975 attracting CGST on supply of such goods @6% by virtue of Sl. No. 228 of Schedule – II to Notification No.1/2017-Central Tax (Rate) dated 30.06.2017 as amended by Notification No. 41/2017- Central Tax (Rate) dated 14.11.2017."

03. CONTENTION – AS PER THE CONCERNED OFFICER

The relevant portion of the submission, as reproduced verbatim, could be seen thus-

"2. It is submitted at the outset that the applicant ought to have furnished all the relevant information and details in his application necessary to decide the classification issue. For determination of classification number of factors are required to be examined like raw materials/inputs used and their proportion; desired characteristics of the final product and in turn function, essential characteristics of different raw materials used /the purpose of using each input; manufacturing process, intended as well as alternate use of the product, manufacturing process, machinery and equipments used etc. However scrutiny of the application and Annexure to it has revealed that the applicant has not provided following information/details which are crucial for taking decision in the matter. :-

- i) samples, photographs, types, range of the product, catalogue about the product or whatever material available on the same to understand the product
- ii) function and the purpose of using each such raw material/input.
- iii) essential characteristics of the product 'modeling/moulding dough' and the raw material/process which provide such characteristics to the said product.
- iv) raw materials/inputs used in manufacture of the said product.
- v) manufacturing process and machinery used.
- vi) other uses of resultant product, if any.

3. Since the applicant has not provided the vital information, samples and material as discussed above in paragraph 2 necessary to decide the issue, it is prayed that the application may be rejected ab initio in terms of Section 98(2) of the Central Goods and Services Act, 2017 of at least may be kept in abeyance till all essential information/material is produced before the Authority and made available to the Respondent.

4. With reference to said application of the applicant following further submissions are made as preliminary submissions and detailed response would be submitted at later stage after getting above discussed information from the applicant :-

- a) It may be true that the product "moulding/modelling dough is manufactured by the applicant using wheat flour. But wheat flour used appears to be a base material. To enable any material to be used as 'moulding /nodelling dough', that too which shall



- be reusable, it must have elasticity, pliability and non perishable nature. These three characteristics appear to be essential for any material for using it as 'moulding/modelling dough'. Wheat flour/Maida does not contain any of these characteristics. As such mere use of wheat flour in product, even if predominant considering the weight/quantity used, would not be base of the classification. The material used to give above discussed three essential characteristics may decide the classification of goods.
- b) There are various articles available on net containing information about making such modelling dough at home. One such article is reproduced in Annexure "A" enclosed. It appears from the information available that for preparation of such modelling dough any grain flour which is not sticky can be used e.g. corn flour. Vegetable oil is used to make the dough easier to work i.e. for pliability and elasticity. 'Alum' is added which act 'alum' as preservative. From the article at Wikipedia about (<https://en.wikipedia.org/wiki/Alum>) relevant information is reproduced below:-
- "An alum is a type of chemical compound, usually a hydrated double sulfate salt of aluminum with the general formula XAl(SO₄)₂·12H₂O, where X is a monovalent cation such as potassium or ammonium. By itself, "alum" often refers to potassium alum, with the formula KAl(SO₄)₂·12H₂O. Other alums are named after the monovalent ion, such as sodium alum and ammonium alum. The name "alum" is also used more generally, for salts with the same formula and structure, except that aluminum is replaced by another trivalent metal ion like chromium(III), and/or sulfur is replaced by other chalcogen like selenium. The common of these analogs is chrome alum KCr(SO₄)₂·12H₂O. In some industries, the name "alum" (or "papermaker's alum") is used to refer to aluminum sulfate Al₂(SO₄)₃·nH₂O. Most industrial flocculation done with "alum" actually uses aluminum sulfate. In medicine, "alum" may also refer to aluminum hydroxide gel used as a vaccine adjuvant. [2] ***
- c) From above it appears that while manufacturing 'moulding /modelling dough' on commercial basis, certain chemical must be being used to give essential characteristics like elasticity, pliability and non perishable nature to the emerging product. It further appears that such chemical used providing essential characteristics to the product is a principal raw material and crucial in deciding the classification of the product.
- d) About classification of the product 'moulding/modelling dough' claimed by the assessee under heading 9503 as 'toy' it is submitted that description 'toy' is of general nature/description where as heading 3407 ("Modelling pastes, including those put up for children's amusement) is a specific entry. Hence, if it is found that the product of the applicant is classifiable under chapter 95 as well as chapter 34, then as per the rules of classification, the product would be classified under more specific head i.e. 3407.
- e) However, the above reply is only a tentative and interim reply as the final comments may be given only if the applicants provides the complete information, samples and details about the range of the products of the applicant.

PRAYER

6. It is prayed that,
- i) Since the applicant has not provided vital details essential to determine classification, as discussed above at paragraph 2 above the application filed may be rejected or it shall not be admitted till the applicant furnishes full facts.

04. HEARING

The case was taken up for preliminary hearing on dt.28.03.2018 with respect to admission or rejection of the application when Sh. Nirav Karia, Advocate appeared and orally contended for admission of application as per their contentions made in the Advance Ruling application and additional written submissions made. Sh. S. S. Bhide, Superintendent GST/CX, Mumbai East Commissionerate, Mumbai Zone, Jurisdictional Officer appeared and made written submissions and orally stated that the applicant has not given detailed contents of the product and should not be therefore admitted till full details of product are given.

The application was admitted and a final hearing was held on dt.17.04.2018 when Sh. Nirav Karia, Advocate alongwith Sh. R. Nambirajan, Advocate and Sh. Ashish Philip Abraham, Advocate appeared and submitted copies of invoices of other resellers i.e. M/s. Crossword Bookstores Ltd., and Big Bazar in respect of products of Camlin, Funskool, etc. Further they requested that the issue be decided on merits please. Jurisdictional Officer, Sh. S. S. Bhide stated that the issue be decided on merits.

05. OBSERVATIONS

We have gone through the facts of the case. The applicant seeks to have the classification of the product 'modelling dough'. From the oral and written submission, it is understood that the applicant seems to convey that there are two Custom Tariff Headings under which the impugned product could be said to fall. We have been informed that the impugned product is -



- is made up of 'maida' i.e. 'refined wheat flour' or 'white flour'.
- a specially manufactured semi-solid, clay-like structure to be used as a toy for kids to make various shapes, things, caricatures of animals etc.
- is usually supplied in packs containing multiple such dough in various colours to attract kids.

During hearing, the applicant was asked to submit the ingredients of the product which have been informed as being thus –

CONTENTS	% CONSUMPTION
HYDANTOIN DMDM (PRESERVATIVE)	**0%
POLYSORBATE 80	**0%
MD-002- POTTASIAM DIHYDROGEN ORTHO PHOSPATE	**0%
MD-003(SODIUM CHLORIDE)	**0%
MD-004- MAIDA	47.57%
MD-006- CALCIUM CHLORIDE DIHYDRATE	**0%
MD-008- BUTYL STEARATE	**0%
PETROLIUM JELLY - OP - 304	**0%
CR-010-LIQUID PARAFFIN OIL	**0%
PC-005-SODIUM BENZOATE	**0%
PG-002-ALUMINIUM SULPHATE	**0%
HEATED DM WATER	34.58%
POLYBUTENE -950	**0%
FLUORO ROYAL BLUE – IXT	**0%
VANILLA SP FLAVOUR	**0%
DRM-105 (2 PHYNOXY ETHANLO) - LOCAL	**0%
TOTAL	100.00%

The Table above reveals that the ingredients consist of maida, water and chemicals. The percentages of various chemicals used by the applicant in manufacture of their product was submitted by the applicant to us as per table above but we are not revealing the exact percentage of various chemicals used in manufacture of the product in the table above to protect the applicant's trade secret. We understand that the product is being used by children to prepare some shapes from the dough. We would now go through the Custom Tariff Headings (CTH) 34.07 and 95.03 as are being debated upon.

Heading 3407

3407		MODELLING PASTES, INCLUDING THOSE PUT UP FOR CHILDREN'S AMUSEMENT; PREPARATIONS KNOWN AS "DENTAL WAX" OR AS "DENTAL IMPRESSION COMPOUNDS", PUT UP IN SETS, IN PACKINGS FOR RETAIL SALE OR IN PLATES, HORSESHOE SHAPES, STICKS OR SIMILAR FORMS; OTHER PREPARATIONS FOR USE IN DENTISTRY, WITH A BASIS OF PLASTER (OF CALCINED GYPSUM OR CALCIUM SULPHATE)
3407 00	-	<i>Modelling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate):</i>
3407 00 10	---	Modelling pastes, including those put up for kg. 10% - children's amusement
3407 00 90	---	Other

Heading 9503

9503		TRICYCLES, SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLLS' CARRIAGES; DOLLS; OTHER TOYS; REDUCED-SIZE ("SCALE") MODELS AND SIMILAR RECREATIONAL MODELS, WORKING OR NOT; PUZZLES OF ALLKINDS
9503 00	-	<i>Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds:</i>
9503 00 10	---	Of wood
9503 00 20	---	Of metal
9503 00 30	---	Of plastics
9503 00 90	---	Other

As can be seen, the CTH 34.07 covers modelling pastes and includes modelling pastes for children's amusement. While Heading 9503 is about toys. A toy is an object for a child to play with. The modeling pastes are such that these help the children to make various shapes and remain amused while making the different objects from the modelling pastes. The present



product is a dough from which various shapes can be modelled. A *prima-facie* reading would give but obvious an inference that the impugned product would be covered by the CTH 3407. However, we find that the applicant has pointed to the following, to claim inapplicability of the CTH 3407 –

- Chapter Heading No. 34.07 falls under Section VI of the Customs Tariff which provides for '*PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES*'. The applicant's product is neither a chemical, nor a product of any such allied industry. The applicant's product is made up of '*maida*' which is neither a chemical nor any allied industrial product.
- Competitors of the applicant (who are branded players in the stationery items and children's goods sector) are clearing identically placed products under the category of '*Toys*' by classifying the same under Chapter 95 (Heading No.95.03) of the Customs Tariff (under the GST regime) and charging CGST @6%.
- The applicant's product may fall under Chapter 34.07 which covers '*modelling pastes*'. However, the same product is actually used as a '*toy*' for kids and maybe more aptly covered under Chapter 95 of the Customs Tariff which covers *Toys, games and sports requisites; parts and accessories thereof*.
- The prevailing ambiguity has led to two separate Tariff Item Nos. being used for the product in question with contradictory usages thereby levying two different rates of CGST applicable on them. While some cautious sellers are charging CGST @9% on the product in question whereas some registered persons are using the ambiguity to charge CGST @6% only. The above ambiguity results in unfair market practices being adopted by certain registered persons in an attempt to reduce effective price of product and increase their market share and profits. Further, it shall be noted that many unorganized and un-registered players (having meagre market share) are also taking undue advantage of the above and clearing similar products by charging CGST @6% only.

As observed earlier, we are of the *prima facie* opinion that the impugned product would be covered by the CTH 3407. However, we would now look at the matter in view of the issues raised above.

Chapter 34 of the Customs Tariff falls in Section VI which is for "Products of the Chemical or Allied Industries". The Heading of Chapter 34 reads as "Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster". We have seen above that the impugned product contains several chemicals and not "*maida*" *per se*. There is no question that anybody would purchase this product for being used as "*maida*" as so many other chemicals as given in table above are also added to it. Neither can "*maida*" alone be used for preparing the various shapes as various chemicals are needed to be added to "*maida*" for it to be used and reused as modelling dough for making the various shapes. These chemicals are needed to give the needful firmness, elasticity, plasticity and non perishability to the shapes. The dough needs to be mouldable and flexible to make the various shapes. There needs to be some safeguard against cracking, crumbling. [I GOT THIS FROM A PATENT RELATED ARTICLE - A MODELING DOUGH COMPRISING A POLAR POLYMERIC RESIN, WATER, A GELLANT, AND A FILLER PROVIDES A DOUGH RESISTANT TO FLAKING, CRACKING, AND CRUMBLING. SO NOT COPIED IT ENTIRELY]. In view thereof, the use of chemicals in the modelling dough is significant. And therefore, the product can very well fall in the Section VI for "Products of the Chemical or Allied Industries".

Then we come to the Harmonized Commodity Description and Coding System Explanatory Notes (HSN) to heading 34.07 which say thus –

“(A) **Modelling Pastes**

These are plastic preparations generally used by artists or goldsmiths for making models and also by children for amusement purposes.

The most common are those with a basis of zinc oleate. These also contain waxes, white oil and kaolin and are slightly greasy to the touch.



Others are mixtures of cellulose pulp and kaolin with binders.

These pastes are usually coloured and are presented in bulk or in cakes, sticks, plates, etc.

Assorted modelling pastes, including those put up in sets for the amusement of children, are also covered by this heading."

We find that the applicant is pointing at the words "plastic preparations" to place a point that the impugned product is not such a preparation. And hence, a reference is made by the applicant to the meaning assigned to the word "plastics". "Plastics and articles thereof" are covered by Chapter 39. The notes to this Chapter say thus -

1. Throughout the Nomenclature the expression "plastics" means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

It is essential here to mark the difference in the words used. Chapter 39 says "plastics" while Chapter 34 says "plastic". "Plastics" is not the same as "plastic". The meaning of "plastic" is not given by the HSN and nor the Customs Tariff Act of India. Hence, we refer to the meaning of "plastic" as normally understood thus -

We find that the word Plastic is a noun as well as an Adjective.....

AS NOUN.....

noun **plastic**; plural noun: **plastics**

1. a synthetic material made from a wide range of organic polymers such as polyethylene, PVC, nylon, etc., that can be moulded into shape while soft, and then set into a rigid or slightly elastic form.
"mains pipes should be made of plastic or copper"
 - *informal*
credit cards or other types of plastic card that can be used as money.
"he pays with cash instead of with plastic"

AS ADJECTIVE PLASTIC HAS MAINLY TWO MEANINGS

1. made of plastic.

"plastic bottles"

- **artificial or unnatural..... This is the one meaning**
"a holiday rep with huge white teeth and a plastic smile"

<i>synonyms:</i>	artificial, false, synthetic, fake, superficial, pseudo, sham, bogus, ersatz, assumed, spurious, specious, unnatural, insincere; More
<i>antonyms:</i>	genuine

2. (of substances or materials) easily shaped or moulded.

"rendering the material more plastic" This is the second meaning

<i>synonyms:</i>	malleable, mouldable, shapable, pliable, pliant, ductile, flexible, soft, workable, supple, bendable; <i>informal</i> bendy; <i>rare</i> fictile "at very high temperatures, rocks may become plastic"
<i>antonyms:</i>	rigid

- offering scope for creativity.
"the writer is drawn to words as a plastic medium"
- relating to moulding or modelling in three dimensions, or to produce three-dimensional effects.
"the plastic arts"

In view of the above meanings of the word PLASTIC and PLASTICS we find that in the HSN Explanatory notes of the CTH 3407 under the heading "Modelling pastes" it is stated that these are "Plastic Preparations" generally used by Artists or goldsmiths for making models and also by children for amusement purposes. Here in these explanatory notes it is apparent that the word "Plastic" used in phrase "Plastic preparations" is used as an Adjective which denotes the Plastic property of modelling pastes i.e. their malleability, mouldability, shapability, pliability, flexibility etc as per synonyms of this property mentioned under its meaning above when used as an adjective.

From the extracts reproduced and detailed discussions above it is clear that the meaning of 'plastic' is not just restricted to the polymer 'plastic' but rather it refers to various properties



with respect to malleability and flexibility. We now refer to Hawley's Condensed Chemical Dictionary which also defines thus -

plastic. (1) Capable of being shaped or molded with or without the application of heat. Soft waxes and moist clay are good examples of this property.

Thus, we see that the Chemical Dictionary has defined that plastic would mean the capability of being shaped or moulded. We have not an iota of doubt as to the correctness of our view that 'plastic' is not the same as 'plastics'. Chapter 34 uses the word "plastic" whereas Chapter 39 uses the word "plastics". The word "plastic" as found in the HSN Notes to CTH 3407 should be read in the context in which the same has been used. The same rule applies to the HSN Notes to Chapter 39. Further, it should not be lost sight of that the word which should be understood in the same sense, throughout the Nomenclature, is the word "plastics". The Notes to Chapter 39 say that the expression "plastics" means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence. Whereas Notes to Heading 3407 say that modelling pastes are plastic preparations generally used by artists or goldsmiths for making models and also by children for amusement purposes.

Thus we find that the applicant in their contentions have taken "Plastics" and "Plastic" as one and the same and are therefore not able to be certain of the correct classification of their product which would be under CTH 3407 as per detailed discussions above once we are able to differentiate between the word "Plastic" and "Plastics".

The impugned product is a mixture of maida and other chemicals. It can be molded or given shapes for the amusement of children. And therefore, the description against the CTH which most accurately fits the bill is thus -

Modelling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate):

There being an apparent difference in the use of the word 'plastic' and 'plastics', we are not convinced by the arguments and case laws tendered by the applicant as to the inapplicability of the CTH 3407. Now the other CTH that has created some confusion, as is informed, is the Heading 9503. We have observed earlier that the Heading 9503 is for 'toys'. And CTH 3407 covers modelling pastes, for amusement of children. The impugned product being a dough used for amusement of children, the Heading 3407 would be the correct classification. The description against CTH 3407 being applicable to the impugned product, we refrain from engaging ourselves in any exercise of what constitutes a "toy" and whether the impugned product is a "toy".



We find that the CTH 3407 is covered by the Schedule III of the Notification No. 1/2017-Central / State Tax (Rate) [as amended from time to time] thus -

63	3407	Modelling pastes, including those put up for children's amusement; Preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate)
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06. In view of the deliberations as held hereinabove, we pass an order as under :

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-31/2017-18/B- 39 Mumbai, dt. 23.05.2018

For reasons as discussed in the body of the order, the question is answered thus -

Question : Whether the product of the applicant i.e. "Modelling dough" will be covered under Chapter 34 or Chapter 95 under the Customs Tariff Act, 1975.

Answer : "Modelling dough" will be covered under CTH 3407 under the Customs Tariff Act, 1975.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
3. The Chief Commissioner of Central Tax, Churchgate, Mumbai

Appeal to:-

Appeal against this order would lie to The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI