

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/ 10 /2018-19

Date- 11.09.2018

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAAAA2054R1ZL
Legal Name of Appellant	M/s. Ahmednagar District Goat Rearing and Processing Co-Op Federation Ltd.
Registered Address	21, Kisan Kranti Building, Station Road, Market Yard, Ahmednagar -414001, Maharashtra.
Details of appeal	Appeal No. MAH/GST-AAAR-10/2018-19 dated 14.06.2018 against Advance Ruling No. GST-ARA-21/2017/B-27 dtd. 21.04.2018
Jurisdictional officer	Ahmednagar-I, Range, Ahmednagar Division, Nasik

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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. Ahmednagar District Goat Rearing and Processing Co-Op Federation Ltd. (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-21/2017/B-27 dtd. 21.04.2018.



BRIEF FACTS OF THE CASE

A) The appellant is engaged in slaughtering & processing of Sheep/Goat meat and supplies these products to Army against tenders issued by the Indian Army.

B) The appellant supplies to the Army, Sheep/ Goat meat in carcass form i.e. the whole animal carcass in its natural shape in frozen state. The carcass would be in different weight & sizes as no animal would have uniform weight and size as that of the other. Further, there is no fixed quantity & size in which these carcasses are dispatched to Army, as the said dispatches are made on the basis of the weight of the frozen carcass which varies in every case, depending upon the weight of the animal's carcass packed in different consignments. Further, the consideration also is charged on the basis of weight of the meat supplied which is not uniform and not pre-determined in each consignment. The packaging and the marketing pattern on illustrative basis is explained as below:-

Mutton: - Each frozen carcass is put in LDPE Bag (Primary Packing) which is not sealed & no weight is mentioned on such LDPE Bag. Thereafter, generally two of such LDPE Bags are put in HDPE Bag (Secondary Packing) and the weight of the two carcass packed in two individual LDPE bags is manually mentioned by marker. The reason of mentioning the weight manually by an ink marker is that the weight of each packaging is not pre-determined and uniform and varies in every consignment so dispatched, since no two animals are of same weight and size. For instance, if one of the carcass weighs 7 Kg & other one weighs 6.5 Kg, the HDPE Bag would bear the marking as "8+7.5 = 15.5 Kg".

C) The Four digit HSN of the Subject Product is given below:-

HSN	Product
0204	Meat of Sheep or Goats

The IGST rate schedule as notified by the Government in respect of subject product is as under



i. W.e.f. 1st July, 2017 till 14th November, 2017

a. Schedule II of the Notification No 1/2017-Integrated Tax (Rate) dated 28th June,2017 deals with the products which are subject to 12 % GST and entry No 4 which pertain to sheep/Goat meat respectively is provided below:

S. No.	Chapter / Heading/Sub- heading / Tariff item	Description of Goods
4	0204	Meat of sheep or goats, frozen and put up in unit containers

b. The above entry provided for levy of GST @12% where the meat of sheep or goats in frozen form was put in unit containers.

c. Further, Notification No. 2/2017- Integrated Tax (Rate) dated 28.06.2017 vide Sr. No. 10 provided for exemption from whole of the integrated tax leviable thereon as reproduced under :

Schedule

S. No.	Chapter/ Heading/ Sub- heading / Tariff item	Description of Goods
10	0204	Meat of sheep or goats, [other than frozen and put up in unit containers]

Therefore, the tax on items of chapter sub heading 0204 was leviable only where the frozen meat of sheep or goats was put up in 'unit containers'.



ii. Thereafter, an amendment was carried out in the schedule II of Notification No. 1/2017 dated 28th June 2017 - Integrated Tax (Rate) vide Notification No, 43/2017 Integrated Tax (Rate) dated 14th November 2017 w.e.f 15th November 2017 onwards, and the following entry was inserted which relates to taxability of the subject products. The Schedule I of the Notification No 43/2017-Integrated Tax (Rate) dated 14th November 2017 deals with the products which are subject to 5 % GST and entry No 1 which pertain to sheep/Goat meat respectively is reproduced as below:

Schedule I

S. No.	Chapter/ Heading/ Sub- heading / Tariff item	Description of Goods
1	0204	All goods (other than fresh or chilled) and put up in unit container and, - (a) bearing a registered brand name; or a)) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANEXURE 1]

Therefore with the present amendment dated 14.11.2017, the rate of tax was reduced from 12% to 5% on the subject products and another condition was introduced so as to be exigible to tax that the product should be branded.

Further, Notification No. 44/2017-Integrated Tax (Rate) dated 14.11.2017 exempted inter-State supplies of goods from the whole of the integrated tax leviable thereon and the relevant entry is reproduced as below:

Schedule



S. No.	Chapter/ Heading/ Sub- heading / Tariff item	Description of Goods
8	0204	All goods, fresh or chilled
9	0204	All goods (other than fresh or chilled) other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available father than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I]";

Now a diligent perusal of the above relevant entries reproduced above brings out that GST is chargeable only when the following conditions are met

- **Up till 14th November 2017, if product is "Frozen" and put up in "Unit container"**
- **On or after 15th November 2017, if the product is "Frozen", put up in "Unit Container" and is "Branded"**.

D). In the present facts of the case, since the meat supplied by the appellant was not in pre-determined quantities in each consignment, the supply could not be construed as *in unit containers* as defined in the explanation to the notification 01/2017 –Integrated Tax (Rate) dated 28.06.2017 and accordingly the supplies effected by the appellant were duly eligible for the exemption under Notification 02/2017- Integrated Tax(Rate) dated 28.06.2017.

E). The appellant, as a matter of abundant caution, applied for the Advance Ruling on the subject to obtain clarity as to whether the interpretation entertained by the appellant was in consonance with the provisions of the law and accordingly the appellant under Section 97



of the CGST Act, 2017 read with relevant provisions of the Maharashtra Goods and Services Act, 2017 sought Advance ruling on the following limited questions:

- i) Whether the packaging being used for dispatch to Army shall qualify as "Unit Container" under the GST law?
- ii) Whether the product, i.e. sheep/Goat meat in frozen state and packed as mentioned in the facts stated above sheet shall be liable to be taxed under GST or would it be treated as exempted?

F). The Maharashtra Authority for Advance Ruling, vide order no GST-ARA-21/2017-18/B-27 dated 21/04/2018, decided that the supplies made by the appellant were in unit containers and accordingly were chargeable to tax under schedule II entry No. 4 of the Notification 01/2017-Integrated Tax (Rate) dated 28.06.2017 for the period 01.07.2017 to 13.11.2017 and thereafter under schedule I entry No. 1 of the Notification 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended vide Notification 43 of 2017- Integrated Tax (Rate) dated 14.11.2017.

G). Being aggrieved by the orders of the Maharashtra Authority for Advance Ruling, the appellant has preferred the present appeal before this appellate authority on the following grounds which are without prejudice to each other.

GROUND OF APPEAL

1. The authority for advance ruling has grossly erred in concluding that the clearances of the appellant are in unit containers, which is contrary to the judicial discipline on the subject and is in utter mis-interpretation of the definition of unit container as given in the statute on the subject. Here the appellant craves leave to reproduce the definition of unit container as provided in notification 1/2017- Integrated Tax (Rate) dated 28/06/2017 as amended.



Explanation. - For the purposes of this Schedule, -

- (i) *The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package.*

Now diligent perusal of the above definition clearly brings out beyond iota of doubt that the unit container defined here is one which would hold a pre-determined quantity or the sole determinative factor for a packaging to be a unit container is that it should hold a predetermined quantity or number. The packaging should always have a predetermined quantity or number, which alone is the guiding pole star for ascertaining as to whether the packing is in a unit container or not.

In the present case, the carcass of animal is packed into one LDPE bag and two such LDPE bags are then packed into one HDPE bag which is used as master packing to hold the two individual LDPE bags and no one packaging would match in weight as the weight of an animal carcass would never be same as that of the another. Therefore, by no stretch of imagination it could be concluded that the packaging holds predetermined quantity as the weight varies in each and every individual packaging and is depended upon the weight of the animal carcass which is packed in to the individual LDPE bags. Therefore the conclusion drawn by the authority of advance ruling that the packing is in a unit container is highly misconceived and contrary to the facts on records and according may kindly be quashed in entirety.

2. The authority of advance ruling failed to assail the definition of "UNIT" before drawing their final conclusion on the matter. The Merriam Webster Dictionary defines 'unit' as 'a determinate quantity (as of length, time, heat, or value) adopted as a standard of measurement such as an amount of work used in education in calculating student credits or an amount of a biologically active agent (such as a drug or antigen) required to produce a specific result. The Business Dictionary defines the term to mean a definitive or determinate quantity adopted as a standard of measurement and exchange. Therefore, where the term 'unit' is affixed to a



container, it would mean a container containing a 'unit' of a particular commodity i.e. a determinate quantity of goods contained therein, It should be designed to contain such determinate quantity of units of goods.

3. The expression 'unit container' was the subject of many judicial interpretations before different legal fora under the erstwhile Central Excise law. The food products put up in a 'unit container' were chargeable to central excise duty. Therefore, the interpretations drawn by different legal forums on the subject would be a guiding pole star to arrive at a fair and true conclusion.

The expression 'unit container' was first used in Tariff item. No 1B in the old Central Excise Tariff which reads as under:

"1B Prepared or preserved foods **put up in unit containers and ordinarily intended for sale**, including preparations of vegetables, fruit milk cereals, flour, starch, birds, eggs, meat offals, animal blood, fish, crustacean or molluses, not elsewhere specified."

Thus, under the old Central Excise Tariff, prepared/ preserved food put up in 'unit container' and ordinarily intended for sale were exigible to central excise duty. Therefore there were twin requirements to be satisfied for the levy of duty, firstly the goods should be put up in unit container and secondly, they should have ordinarily been intended for sale.

The expression "unit container" was not defined in the old Central Excise Tariff but instructions in this regard were issued by **Central Board of Excise and Customs** vide letter M.F. (D.R.I.) No. B/5/1169-CX-I., dated 3-4-1969, clarifying the meaning of the term 'unit container' as under:

Meaning of Unit Containers. The expression 'unit container' used in Tariff Item 1B means a container in which prepared or preserved food is intended to be sold by the manufacturer. It may be a small container like tin, can, box, jar, bottle or bag in which the product is sold by retail, or it may be a large container like drum, barrel or



cannister in which the product is packed for sale to other manufacturers or dealers. In short 'unit container' means a container, whether large or small, designed to hold a pre-determined quantity or number which the manufacturer wishes to sell whether to a whole sale or retail dealer or to another manufacturer."

The clarification issued by the CBEC on the meaning of unit container also endorses the substantive factum that to qualify as unit container the packaging should hold a predetermined quantity or number which the manufacturer wishes to sell to his customers. However, in the instant case, even the appellant manufacturer does not know the weight of the animal carcass until it is weighed and eventually packed. It is not a case where soap cakes or washing powder is packed in predetermined quantity in its containers as there the manufacturers know as how much quantity they intend to pack in the respective unit containers and the unit containers are also designed to hold the specific predetermined quantity for example; 1 kg, 5 kg or 10kg etc. and the unit containers would have the predetermined quantity preprinted on the container. In the instant case each and every packaging would vary in weight as the weight of the content to be packed is not predetermined and would entirely depend upon the weight of the animal carcass which is packed in the LDPE bags and no two animals would have the same weight. Therefore the interpretation forwarded by the Authority of Advance Ruling is under misinterpretation of the definition and the facts on the record.

4. The appellant further cited Hon'ble Tribunal's judgment in the case of:

Collector of Central Excise

Vs

Himachal Pradesh Horticulture Produce Marketing & Processing Corporation Ltd.

1998 (34) E.L.T. 160 (Tribunal), wherein the Tribunal while assailing the definition of unit container ordained in unequivocal terms that:

"45. At the basis of this entire system of marketing and consumer satisfaction is the method of packing in "unit containers". In most cases (if not all) the container is not returnable; in many cases it is not durable, particularly if it is of cardboard or aluminum foil. For obvious reasons the container has to be just large enough to hold



the predetermined quantity of the contents. To pack half a litre of fruit syrup in a bottle which can hold one litre would not only be wasteful but would also subject the contents unnecessary movement, perhaps with a loss of quality. Further, it would arouse doubts in the customer that he is being cheated. It can therefore be very well understood that no intelligent manufacturer would pack prepared or preserved foods (or indeed any similar product of common consumer use) in a container which is not full or practically so. Nor would a prudent customer readily buy a product in a container which does not appear to be full.

46. The above observations on the methods of marketing of common consumer products, do not require any special knowledge because they are a matter of common experience. The tariff item and the Finance Ministry's instructions are consistent with the general experience and practice as mentioned above. General experience would certainly show that prepared and preserved foods and the like, as they are ordinarily sold in the market are packed in containers which contain a specific and clearly marked quantity of the goods. The quantity may vary according to the product and the manufacturer, but even then there are many standard quantities common to different manufacturers, such as 100 gms, 500 gms, 1Kg, 100 ml, 200 ml. Such products are sold in what may appropriately be called "unit container" which can conveniently contain that particular quantity. It is also a matter of common knowledge and experience that in such cases the container is normally not returnable, and in many cases not durable.

The judgment of the Tribunal is eloquent enough to conclude that 'unit container' is to be interpreted to mean a container that holds a predetermined quantity which is clearly indicated and is standardized i.e. it is standardized for a particular commodity like packages of 1 kg, 100 ml, 200 ml, etc. and such standardized quantity is missing in our case as the weight of the animal carcass cannot be standard and would vary in each case.

Further, under the new Central Excise Tariff Act, 1985 (which replaces the old Tariff) also, certain products cleared and manufactured and put up in a 'unit container' were exigible to



excise duty. The term 'unit container' under the New Central Excise Tariff Act, 1985 was defined to mean as under:

"Container whether large or small (for examples, tin, can, box, jar, bottle, bag or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number."

In the context of new Central Excise Tariff Act, 1985, in the case of **Agro Foods Punjab Ltd. v. Collector of Central Excise, 1990 (49) E.L.T. 404**, the tribunal observed as below:

"We hold that there is no difference either in the entry, in between 1B of the old Tariff and new Tariff 2001.10 or in the issue involved in both the cases, Following the ratio of the decision in the case of M/s. HPMC we hold that clearance in barrels does not amount to sale of the contents as put in a unit container. Accordingly, the goods in question are not classifiable wider sub-heading 2001.10 but they are classifiable under sub-heading 2001.90,"

The Hon'ble Tribunal in another judgment in the case of **MP Vegetable Fruit Products v. Collector of Central Excise, Raipur, 1995 (76) E.L.T. 393 (Tribunal)** held that Jerry cans of tomato puree of 35 litre capacity being supplied to manufacturers of tomato ketchup was not a 'unit container'.

5. However, in the ease of **CCE v Simba Chips, 1997 (96) E.L.T. 381 (Tribunal)**, the Tribunal held that the fact that packets did not bear indication of the weight of the goods has no significance to determine whether it is a 'unit container' or not so long as the packet contained a predetermined quantity. Therefore, the fact that that container did not bear indication of weight of goods is no significance to determine if a container is a 'unit container' or not so long as the said container contained a predetermined quantity. That similar view was expressed by the Hon'ble Tribunal in the case of **CCE Vs. Shalimar Super Foods [2007 (210) ELT 695 (Tri.-Mumbai)**, wherein the tribunal held that meat articles packed in loose plastic bags which were not in uniform quantities cannot be held to be a Unit container. The bags in this case were not sealed similar to the LDPE bags in the present case and weight of the animal carcass is also varied in each and every consignment of ours.



6. The explanation to the notification 01/2017 Integrated Tax(Rate) and 02/2017 Integrated Tax (Rate) both dated 28/06/2017 as amended defines 'Unit Container' in the similar tone and phraseology as to the definition under the old and new Central Excise Tariff and accordingly the judicial precedents ordained in context to the Central Excise provisions in relation to unit containers would very well apply to the present controversy in hand and therefore it can be safely concluded that the contents of appellant's products being not uniform in size and weight in not predetermined quantity and accordingly not packed in unit containers and the appellant is entitled to the exemption as provided in the notification 02/2017 Integrated Tax (Rate) dated 28/06/2017 as amended

7. It is a settled law by now for that an exemption notification has to be interpreted by taking into consideration the language of the notification which has to be given its due effect. If the tax payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exemption authority. There are catena of judgments that have ordained that the reading of the notification cannot be done in a manner so as to give it some meaning other than what is clearly and plainly flowing from it. Here the appellant has the benefit of the Hon'ble Supreme Court's judgment in the case of:

COLLECTOR OF C. EX. Vs HIMALAYAN CO-OP. MILK PRODUCT UNION LTD 2000 (122) E.L.T. 327 (S.C.)

wherein the Hon'ble Apex Court has ordained in unequivocal terms in para 8 of their judgment, " 8. *Such Notifications by which exemption or other benefits are provided by the Government in exercise of its statutory power normally have some purpose and policy decision behind it. Such benefits are meant to be provided to the investors and manufacturers. Therefore, such purpose is not to be defeated nor those who may be entitled for it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it.*

Further the Hon'ble Tribunal in the case of:



DHL LEMUIR LOGISTICS PVT. LTD. Versus COMMISSIONER OF C. EX., MUMBAI 2012 (284) E.L.T. 505 (Tri. - Mumbai) has ordained in unequivocal terms in para 5.2 of their judgment as under :

5.2 Any exemption notification has to be interpreted based on the language used therein. The Supreme Court in the case of Hemraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise & Customs [1978 (2) E.L.T. (J350) (S.C.)] laid down the principle as follows :-

"It is well-established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority."

The same view was re-iterated by the Hon'ble Apex Court in the case of :

Gujarat State Fertilizers Co. V/s C.C.E. 1997 (91) E.L.T. 3 (S.C.)

wherein it was held that -

"an exemption notification has to be interpreted by taking into consideration, the language of the notification which has to be given its due effect. Supposed object and purpose of the exemption has to be culled out from the said language."

Therefore keeping with the ratio of the law laid down by the judgments referred to supra, it can be safely concluded that the interpretation forwarded by the Authority of Advance ruling is in utter misinterpretation of the facts on record and is in utter disregard to the judicial discipline on the subject and accordingly may kindly be quashed in entirety.

PERSONAL HEARING

8. The personal hearing in the matter was fixed on 14.08.2018 which was attended by Sh. Gautam Chugh, Advocate and Sh. Ashok Mishra, C.A., on behalf of the appellant who reiterated their written submissions and also presented two rulings from Haryana State



Advance Ruling Authority given in favour of the applicants (other than appellant) in similar matters. They further argued that even the number of carcass was not fixed in every package and many times there was only one carcass supplied depending upon the weight and size of the animal. The appellant submitted the sample packing material being used for the inner and outer packing of the carcass. They confirmed that in pre-GST regime the frozen meat in sealed container was levied to VAT in some states.

The jurisdictional officer, attending the hearing, reiterated their submissions made before the AAR.

Discussion and Findings

9. We have heard both parties and gone through the submissions made by the appellant in written form as well as during hearing of the matter. The appellant has also made additional submissions after hearing which included the copies of invoices raised by them regarding the supplies made to Army, the tender document floated by Army for the said supplies containing the general as well as specific conditions for the supplies.

10. The issue before us to decide is whether the supplies being made by the appellant to Army in respect of meat of sheep/goat in packages (a sample of packing material was produced before us) can be considered as supplies in unit containers or not in terms of the explanation under Notification No. 1/2017- Integrated Tax (Rate) dated 28/06/2017 as amended. At the cost of repetition, the said explanation is reproduced hereunder-

Explanation. - For the purposes of this Schedule, -

- (ii) ***The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package.***



The facts of the case are such that if the said supplies are in unit container than same are chargeable to GST @12% for the period from 1st July 2017 to 14th November 2017 and @5% thereafter (provided they bear brand for this period). The issue of branding of the said goods is not before us as the appellant had sought advance ruling only on the issue of 'Unit Container' and they are in appeal for the same.

11. We observe that the definition of Unit Container is provided under the CGST Act as an explanation to the exemption Notification and we do not see any reason to resort to the similar definitions available in other Acts/Statutes. So, we will concentrate and restrict our scope to the definition available under the CGST Act which is the subject matter of this appeal.

In terms of the said definition, we observe that for any package (irrespective of size, nature and shape) to be a unit container, the following two criteria need to be fulfilled—

- (i). It should be designed to hold a pre-determined quantity or number.
- (ii). That pre-determined quantity or number should be indicated on the package.

12. We have carefully gone through the submissions made by the appellant and also the tender of supplies floated by Army. The nature of supplies is such that it is not possible to decide the exact quantity (either weight or volume) or the number in advance in respect of the packages to be sent to Army as the goods of supply are natural, not man made, and no two animals are same. Also, there is no such requirement from the buyer side i.e. Army who have floated the tender on total weight basis and the payments are also made monthly/fortnightly and not as per packages or consignments. The concept of 'pre-determined' quantity or number is possible when the buyer/customer/consumer/recipient is aware in advance i.e. before the purchase/receipt of the said goods about the fixed quantity/weight/number contained in the package which is not the case here. We have gone through the conditions specified in the tender document of Army and found that at nowhere it is mentioned that the said bags (LDPE or HDPE) should



contain any fixed weight/quantity or number of the goods to be supplied. Just by mentioning the weight of the carcass (which may be one or two in number) on the outer packing in no way can be considered as the pre-determined quantity of the package. There is no doubt that the samples of bags produced before us during hearing are covered under 'package' as per the definition given in explanation to the notification but that package is not designed to hold any predetermined quantity. In the specifications mandated by the Army for the packing following is mentioned---

"Packing- Each dressed carcass subsequent to chilling and before freezing shall be individually packed into suitable sized oxygen-water impermeable heat shrink food grade colourless LDPE bags of minimum 75-100 micron thickness. These LDPE packages will then be packed into a dust proof, moisture and heat resistance food grade HDPE bag bearing thermal stability of minus 50 degree C to plus 50 degree C, capable of holding 10kg to 20 kg or suitable plastic crates"

Regarding marking and labeling also, Army has prescribed certain details to be printed/ mentioned on the packages like date of manufacture, lot number/batch number, firm's name and address, storage instructions, thawing instructions, for defence purpose only etc. It has not been prescribed that the actual number of carcass inside the HDPE bag or the individual weight of the carcass is required to be indicated/mentioned on the HDPE bag.

13. The appellant has also submitted that not only the quantity(weight) even the number of carcass is not pre determined as sometimes there is only one carcass inside the HDPE bag and some other times these are two. AAR, Maharashtra, has also not ruled that the quantity in the package is pre-determined. They, however, observed that the number is pre-determined which is known to the Army that each HDPE bag will contain two LDPE bags. This observation of AAR is contrary to the wordings of question No. 1 posed before them which clearly indicates that '**one or two such LDPE bags further packed in HDPE bags**'. As claimed by the appellant, even the number is not pre-determined as the carcass may be one or two depending upon the size of the animal but it can never be more than two. Regarding the observation of AAR that Army is aware about the pre-determined number, we have



seen that Army is not concerned about the number as they have neither floated tender on the basis of number nor are they making payment to appellant based on numbers. The number of carcasses is of no importance to the Army as their contract is based on weight. Also, the indication of weight of two carcasses or one carcass on the HDPE bag cannot be inferred as indication of 'number' of carcass on the package. There does not appear to be any strong basis for conclusion of AAR that the indication of weight of carcass on HDPE bag is indication of number which in any case is not a pre-determined one.

14. From the submissions of the appellant, tender document of Army and nature of transaction involved in the supplies, we are of the considered view that there cannot be any pre-determined quantity or number in the packages and when there cannot be any pre-determined quantity or number inside the package there is no question of indication of the same on the package. Therefore, we hold that the frozen meat of goat/sheep supplied by the appellant to Army in HDPE bags does not qualify for the supplies made in unit containers as per definition provided in the explanation to the notification no. 01/2017-IGST (Rate) dt. 28-06-2017 as amended.

15. The jurisdictional officer, during the hearing, had pointed out that the appellant was paying VAT in pre-GST era on the same activity. We have seen the copies of contract of the appellant with Army of pre- GST era and the invoices raised by the appellant. It is true that the contract was awarded for the basic rate and VAT was shown separately. The invoices confirm that the appellant was collecting and paying VAT at that time as the VAT was applicable on the 'Frozen meat in sealed containers'. The new contract under GST regime is also on similar lines i.e. on basic rates and GST is shown as separate. But the invoices produced by the appellant shows that they have collected only basic rates from Army and not charged the GST as the concept of unit container was not under VAT. Here we observe that applicability of VAT on said activities in pre-GST regime would not render the supplies chargeable to GST as we have to examine the issue in light of GST Acts, Rules, Notifications etc. The conditions of chargeability to tax under GST are different from conditions under VAT. The said packages which fulfilled the conditions



of 'Frozen and sealed' under VAT are now not fulfilling the condition of 'Unit Container' under GST.

16. The appellant had also produced two rulings in similar cases given by Haryana Authority of Advance ruling. We are not referring the same here as we are not privy to the records pertaining to the said rulings even though the appellant has claimed the same in their favour based on similar circumstances. We are concerned about the submissions made before us, documents available on record and the sample of bags produced before us during the hearing.

In view of the above discussions, we pass the following order—

ORDER

Based on the available records, we hold that the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by appellant against tender shall not qualify as product put up in "Unit Container".

The Ruling given by AAR, Maharashtra, stands modified in view of the above and appeal is allowed.

sd/-
(RAJIV JALOTA)
MEMBER



sd/-
(SUNGITA SHARMA)
MEMBER

Certified True copy

[Signature]

सी. पी. एच. चौहान / C. P. S. CHAUHAN
उप आयुक्त / DEPUTY COMMISSIONER
कस्तुर एवं सेवा कर अधिनियम अर्धील प्राधिकरण, महाराष्ट्र
The Maharashtra Appellate Authority
for Advance Ruling for Goods & Services Tax

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