


<p><b>GUJARAT AUTHORITY FOR ADVANCE RULING,</b>  <b>GOODS AND SERVICES TAX,</b>  A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD  – 380 009.</p>	
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ADVANCE RULING NO. GUJ/GAAR/R/40/2020  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/66)

**Date: 03.07.2020**

Name and address of the applicant	:	<b>M/s. Jain Dairy Products Pvt. Ltd., 1, Anupam Building, Swastik Cross Road, Navrangpura, Ahmedabad- 380009. Factory at: 202/P,G.I.D.C., Phase- II, Near Hans Chemical, Ahmedabad, Gujarat-382230.</b>
GSTIN of the applicant	:	24AADCJ0803G1ZS
Date of application	:	30.12.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	b). Applicability of a notification issued under the provisions of CGST Act.
Date of Personal Hearing	:	18.06.2020 (through Video Conferencing)
Present for the applicant	:	Shri Alap Shah

**BRIEF FACTS**

The applicant is doing business of manufacturing and selling of products of paneer, cheese and other milk products and also trading of other food items. They are registered under the GST Act, 2017.

2. At present, they are selling Paneer packed in unit container i.e. vacuum pouch (with Brand Name) and also in loose form/in plastic bags without sealing of packet/in loose carry bags and bearing details like name of manufacturer or branches or others as required by the Food Safety and Standards Act, 2006(FSSAI) or other relevant Acts, to consumers.

3. In view of above backdrops, the applicant raised Question, as below:

***Whether the benefit of exemption of GST at 0% is applicable for the***

***invoices raised to the end use users in case of selling of paneer in loose form without sealing of packet/in loose carry bags and bearing details like name of manufacturer and branches or others as required by FSSAI or other relevant Acts?***

4. Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of aforesaid question(s):

4.1 The applicant submitted that vide Notification No.1/2017-CT (Rate) dated 28<sup>th</sup> June, 2017 following conditions were prescribed for taxability of goods like Chena or Paneer etc. @5% GST:

- I. Put up in unit container **and**
- II. Bearing a registered brand name.

4.2 However, Notification No.2/2017-Central Tax (Rate) dated 28.06.2017 through entry no. 27 has prescribed that Chena or Paneer, other than put up in unit container and bearing a registered brand name, is exempted from the levy of GST.

4.3 Further, 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 pre-determined quantity or number, which is indicated on such package.

4.4 From the reading of Notification No.1/2017-Central Tax (Rate), it appears that both the conditions as laid down by the above cited Notification (i.e. packing in unit container and a bearing a brand name) has to be cumulatively satisfied for the captioned food item for attracting incidence of GST.

4.5 In their case, since the company is selling the food items not packed in unit container as defined in GST provision and but containing the details like name of manufacturer or branches or other, as required by FSSAI or other relevant Acts, one of the condition precedent is not fulfilled and, hence there is no incidence of GST on sale of cited transactions.

4.6 Their interpretation of both the captioned Notifications are rational in nature and the intent of the Notification No.1/2017 -Central Tax is very clear. They are relying on interpreting in the essence in which it has been drafted. Further, they would like to draw the attention towards the fact that beneficial construction involves giving widest meaning possible to the statutes. When

there are two or more possible ways of interpreting a section or a word, the meaning which gives relief and protects the benefits which are purported to be given by the legislation, should be chosen. A beneficial statute has to be construed in its correct prospective so as to fructify the legislative intent.

4.7 The liberal construction can only flow from the language of the Act and there cannot be placing of unnatural interpretation on the words contained in the enactment. Also, beneficial construction does not permit rising of any presumption that protection of widest amplitude must be deemed to have been conferred on those for whose benefit the legislation may have been enacted.

4.8 Also they are of the view that the provision of one of section cannot be used to defeat the provision contained in another. When it is impossible to completely reconcile the differences in contradictory provisions, the aspects have to be interpreted considering rationale of the provision and it must be interpreted in duh way so that effect is given to both the provisions as much.

5. At the time of personal hearing held through Video Conferencing on 18.06.2020, the Authorised Representative of the applicant, Shri Alap Shah reiterated the facts as stated in the Application.

#### **DISCUSSION & FINDINGS:**

.6 We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the question/issue on which advance rulings have been sought for by the applicant, relevant facts having bearing on the questions/ issues raised and the applicant's understanding/interpretation of law in respect of the issue. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 GGST Act.

7. The applicant stated that they are engaged in manufacturing and selling of products of paneer, cheese and other milk products and trading of other food items also. They are registered under the GST Act, 2017.

8. At present, they are selling Paneer packed in unit container i.e. vacuum pouch (with Brand Name) and also in loose form in plastic bags without sealing

of packet and bearing details like name of manufacturer or branches or others, as required by FSSAI or other relevant Acts, to consumers.

9. In this case, the moot point is to be decided regarding the taxability of paneer when sold in loose form in plastic carry bags and bearing the details like name of manufacturer and branches or others, as required by FSSAI or other relevant Acts.

10. Both the Notification No.1/2017-Central Tax (Rate) dated 28<sup>th</sup> June 2017 (which notified the CGST rates of intra-state supply of goods) and the Notification No. 2/2017-Central Tax (Rate), dated 28th June, 2017 (exempted intra-state supply of the specified goods) are relevant to decide the issue. Relevant portions of the notifications are reproduced herein below:

**I. Notification No. 1/2017 – Central Tax (Rate) dated 28<sup>th</sup>June, 2017, as amended by Notification No. 27/2017-Central Tax (Rate) dated 22<sup>nd</sup> September, 2017:**

**Schedule I**

Sl. No.	Chapter/Heading/Sub-heading/Tariff heading	Description of services	Applicable tax rate
11	0406	<p><i>Chena or paneer put up in unit container and –</i></p> <p><i>(a) bearing a registered brand name; or</i></p> <p><i>(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE].</i></p>	5%

**Explanation:**

*(a) The phrase “brand name” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such*

specified goods and some person using such name or mark with or without any indication of the identity of that person.

(b) The phrase “registered brand name” means,-

(i) a brand registered as on the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;

(ii) a brand registered as on the 15th May 2017 under the Copyright Act, 1957(14 of 1957);

(iii) a brand registered as on the 15th May 2017 under any law for the time being in force in any other country.”

**II. Notification No. 2/2017 – Central Tax (Rate) dated 28<sup>th</sup>June, 2017, as amended by Notification No. 28/2017-Central Tax (Rate) dated 22<sup>nd</sup> September, 2017:**

**Schedule**

Sl. No.	Chapter/Heading/Sub-heading/ Tariff	Description of services	Applicable tax rate
27	0406	Chena or paneer, <b>other than</b> put up in unit container and –  (a) bearing a registered brand name; or  (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE].	Exempted

**Explanation:**

(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 pre-determined quantity or number, which is indicated on such package.

(ii) (a) The phrase “**brand name**” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

(b) The phrase “**registered brand name**” means,-

(i) a brand registered as on the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;

(ii) a brand registered as on the 15th May 2017 under the Copyright Act, 1957(14 of 1957);

(iii) a brand registered as on the 15th May 2017 under any law for the time being in force in any other country.

10.1 As per Notification No. 2/2017 – Central Tax (Rate) dated 28<sup>th</sup> June, 2017, as amended, there is no levy of CGST on supply of paneer, other than those put up in unit container and bearing a registered brand name or a brand name as explained therein. However, the supply of such goods, when put up in a unit container and bearing a registered brand name or a brand name, as explained in Notification No. 1/2017 – Central Tax (Rate) dated 28<sup>th</sup> June, 2017, as amended, attract CGST @ 2.5%.

11. To enhance the taxability of brands registered under other Acts also, amendment vide Notification No. 27/2017- CT (R) dated 22<sup>nd</sup> September, 2017 was introduced to Notification No. 1/2017- CT (R) dated 28<sup>th</sup> June, 2017. Through this notification, following conditions were prescribed for taxability of goods–

*I. Put up in unit container **and***

*II. Bearing a registered brand name; or*

*bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily forgone, subject to the conditions as in the ANNEXURE.*

12. Hence, from 22<sup>nd</sup> September 2017 onwards, where goods, as prescribed in the schedule, put up in unit container and bearing a registered brand name

or even if brand name is not registered but on which an actionable claim or enforceable right in a court of law is available, are taxable at the rate specified. Thus, following two conditions are required to be fulfilled for taxability of goods like Chena or Paneer etc. @5% GST under said Notification:

- I. Put up in unit container **and**
- II. bearing a registered brand name or *bearing a brand name on which an actionable claim or enforceable right in a court of law is available.*

13. Now, we examine the first condition whether such supply is covered by the expressions 'unit container' as defined in the notifications mentioned. The expression 'unit container' as defined in the notifications is below:

*Explanation- For the purpose of this schedule (Notification No. 1/2017 and 2/2017-Central Tax-(Rate) both dated 28<sup>th</sup> June, 2017 as amended):*

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 pre-determined quantity or number, which is indicated on such package.

13.1 For the purpose of above definition, for a package to be called "unit container" has to satisfy following conditions simultaneously-

- (i) Package may be large or small;
- (ii) Package designed to hold a pre-determined quantity or number;
- (iii) Such pre-determined quantity or number is indicated on such package.

13.2 From the facts submitted by the applicant, we find that the supply paneer in loose form in plastic bags without sealing of packet containing different weight as required by the customers. It is not forthcoming from the facts stated by the applicant that whether such Packages are designed to hold a pre-determined quantity or not and such pre-determined quantity is indicated on such package or not.

13.3 If such package is containing different weight and no weight is mentioned on packages, then we can conclude that impugned supply would not satisfy the requirement of the definition of 'unit container' as found in both the notifications cited supra.

13.4 In such situation, we hold that the supply of paneer in loose form in plastic bags without sealing of packet, which do not indicate any information

related to weight, would tantamount to being as a product not put up in a 'unit container' for the purpose of Notifications No. 1/2017 and 2/2017-Central Tax-(Rate) both dated 28<sup>th</sup> June, 2017.

14. Now, we examine the second condition whether such supply is covered by the expression, '*bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available*', as per the notifications mentioned.

14.1 Admittedly, the brand name of the applicant is already registered under the specified Act, as they are regularly discharging tax on paneer supplied in a unit container and bearing a registered brand name of the applicant thereon, under GST.

14.2 Even though, if their brand name is not registered but on such brand name on which an actionable claim or enforceable right in a court of law is available. In such situation, second condition of the notifications cited, also hold to be satisfied.

14.3 Now, we examine as to whether the said package bearing the details like name of manufacturer and branches or others, as required by FSSAI or other relevant Acts thereon, can be considered as "not bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available" and, hence, eligible for exemption from payment of GST?

14.3.1 In this regard, we note that in terms of section 18 of the Food Safety and Standards Act, 2006, *no person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations*. Further, Rule 6 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, in turn mandates provision of details of the manufacturer of the product on the food package.

14.3.2 We find that in case of brand names, which are not covered under definition of 'registered brand name', even a brand name on which an actionable claim or enforceable right in a court of law is available, shall be considered as 'brand name' for the purpose of taxability of product in question, in terms of Notification No. 01/2017-Central Tax (Rate) date 28<sup>th</sup> June, 2017, as amended.

14.3.3 In view of the above discussion, we conclude that mentioning the name and registered address of the supplier as the manufacturer, as per the



statutory requirement, is also to be considered as “bearing a brand name” and, hence, second condition is satisfied.

15. In view of the above, we hold that the benefit of the exemption provided vide entry at Sr. No. 27 of the Notification No.02/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017, as amended, can be extended to the applicant’s product subject to the fulfilment of two conditions viz. (i) ‘Paneer’ is not put up in 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 pre-determined quantity or number, which is indicated on such packages and (ii) said unit container is not bearing a registered brand name or a brand name on which an actionable claim or enforceable right in a court of law is available.

16. In light of the foregoing, we rule as under –

### **R U L I N G**

***Question-1: Whether the benefit of exemption of GST at 0% is applicable for the invoices raised to the end use users in case of selling of paneer in loose form without sealing of packet / in loose carry bags and bearing details like name of manufacturer and branches or others as required by FSSAI or other relevant Acts?***

Answer: The benefit of the exemption provided vide entry at Sr. No. 27 of the Notification No.02/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017, as amended, can be extended to the applicant’s product subject to the fulfilment of two conditions viz. (i) ‘Paneer’ is not put up in 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 pre-determined quantity or number, which is indicated on such packages and (ii) Unit container is not bearing a registered brand name or *a brand name on which an actionable claim or enforceable right in a court of law is available.*

**(SANJAY SAXENA)**

**MEMBER**

**(MOHIT AGRAWAL)**

**MEMBER**

Place: Ahmedabad

Date: 03.07.2020.