M/s Khera Trading Company (Appellant), Saloli Road, Near Govind Tobacco Factory, Panipat, Haryana-132103

Appellate Authority for Advance Ruling — Haryana

Appellate order number not printed in the document. It is an appeal agai… Dated **07.08.2019**

Q Questions Before the Authority

- Whether the product "pizza topping" is classifiable under Chapter Heading 0406 (S. No. 13 of Schedule I of Notification No. 1/2017-Integrated Tax (Rate), attracting IGST @ 5%; S. No. 89 of Schedule I of Notification No. 01/2017-Central Tax (Rate), attracting CGST @ 2.5%; and S. No. 89 of Schedule I of Notification No. 35/ST-2, attracting SGST @ 2.5%).

F Facts

The appellant distributes dairy and non-dairy products and sells a product called "Pizza Topping" under the brand Goodrich. Per 100 kg, the recipe uses water 44 kg, vegetable fat 22 kg, mozzarella cheese 14.5 kg, rennet casein (milk solids) 11 kg, skimmed milk powder 4 kg and premix (emulsifier, stabiliser, acidity regulator, preservative) 4.5 kg. The ingredients are mixed, heated at 75-80 degrees C, moulded and packed in pouches of 1 kg and 200 g. The appellant argued that the product is a processed form of cheese.

H Ruling

Whether pizza topping is classifiable under Chapter Heading 0406 (cheese) at the rates claimed by the appellant	**No. Not classifiable under Heading 0406. Classifiable under Heading 2106 (food preparations not elsewhere specified or included), with IGST 18%, CGST 9% and SGST 9% under S. No. 23 of Schedule III.**	The Authority reasoned from the HSN Explanatory Note on processed cheese and the 22 percent vegetable fat content. The order's own text also says the product is chargeable to GST as applicable, and the Authority's 12% reference in paragraph 18.4 is for cheese under Heading 0406 and was not accepted.

The appellate authority dismissed the appeal and upheld the advance ruling. It held that Pizza Topping is not a processed cheese under Heading 0406, because vegetable fat, at 22 percent, is the major constituent and is not an ingredient permitted for processed cheese, while mozzarella is only 14.5 percent. The product is an edible preparation that falls under Chapter 21 and, as a residual entry, under Heading 2106 as food preparations not elsewhere specified or included, at IGST 18%, CGST 9% and SGST 9%.

R Reasoning

The appellate authority applied the common parlance and HSN tests together and treated the HSN Explanatory Note definition of processed cheese as decisive. It held that the permitted additions are cream or other dairy

products, salt, spices, flavouring, colouring and water, and that vegetable fat is not among them. Because vegetable fat is the largest ingredient and mozzarella is only 14.5 percent, the product could not be treated as a type of cheese. The Authority then considered Chapter 21 and its Chapter Notes 5 and 6, found no specific entry, and placed the product in the residual Heading 2106. It distinguished the Uttar Pradesh ruling in Savencia Fromage and the Connaught Plaza decision on facts. The appellant's natural justice argument was not accepted in substance, since the order was upheld on the merits.

P Provisions Relied On

- Section 101 of the CGST Act / HGST Act, 2017 (appellate powers)
- Section 98 of the CGST / HGST Act, 2017 (advance ruling; comments of officer under Section 98(1))
- Section 100(2) of the CGST / HGST Act, 2017 (30-day limit for appeal)
- First Schedule to the Customs Tariff Act, 1975: Chapter 4, Heading 0406 and Chapter 21, Heading 2106 (including tariff item…
- Chapter Notes 5 and 6 to Chapter 21 of the Customs Tariff
- HSN Explanatory Notes to Heading 0406, clause (3) on processed cheese and the note on added ingredients
- Notification No. 1/2017-Integrated Tax (Rate), S. No. 13 of Schedule I and S. No. 23 of Schedule III
- Notification No. 01/2017-Central Tax (Rate)
- Notification No. 35/ST-2 (Haryana)

! For the Practitioner

This order is useful for any cheese-based compound or topping in which vegetable fat or other non-listed ingredients make up a large share of the product. It shows the Authority measuring the processed-cheese definition against the actual ingredient proportions, not the cheese component alone. It does not decide the classification of other cheese products where cheese is the predominant constituent, and it does not set a general test beyond this product's recipe.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> haaar_08_2018-19_khera_trading_company_panipat.pdf

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