M/s. Italian Edibles Private Limited, 309/1/8/8, Block 3, Mangal Udhyog Nagar, Palda, Indore - 452001 (GSTIN 23AACCI2746N1ZG)

Authority for Advance Ruling — Madhya Pradesh

Order Number 13/2018, dated 18-09-18 (Case Number 09/2018; Order No.… Dated **18.09.2018**

Q Questions Before the Authority

- Whether the product 'Militry Malai Mithai', containing sugar, vegetable fat, skimmed milk powder, whey powder, emulsifiers and permitted flavours, which is identical to the commonly known sweet 'Rabdi', should be classified under Tariff Heading 2106 as Sweet Meats, under Tariff Heading 0404 as another dairy product consisting of natural milk constituents, or under Tariff Heading 1704 as sugar confectionery?

F Facts

The applicant manufactures confectionery and dairy/sweet products and sells 'Militry Malai Mithai', a semi-liquid product of sugar, vegetable fat, skimmed milk powder, whey powder, emulsifiers and flavours. It is packed in sachets of about 4 grams, 58 of which go into a larger pack for distributors and retailers. The applicant had been paying GST at 18% under heading 1704 and sought a ruling on the correct classification and rate.

H Ruling

Classification of 'Militry Malai Mithai' (Rabdi-type sachet product): 2106 (sweet meats) vs 0404 (dairy) vs 1704 (sugar confectionery)	**Chapter Heading 2106 90 99 as 'Sweetmeat'. Not 0404; not 1704.**	Rate read in the order as 5% under Sr. No. 101 of Schedule I to Notification No. 01/2017-CT(Rate) dated 28.06.2017 (2.5% CGST + 2.5% SGST, or 5% IGST), with corresponding MPGST notification. Ruling is prospective; no refund of tax already paid. Valid under s.103(2) until declared void under s.104(1).

The product merits classification under Chapter Heading 2106 90 99 of the GST Tariff as 'Sweetmeat', not under Chapter 04 or heading 1704. It is chargeable to GST at the rate prescribed for that entry, which the order reads as 5% under Sr. No. 101 of Schedule I to Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017, with corresponding MPGST notification. The classification applies prospectively and does not entitle the applicant to a refund of tax already paid.

R Reasoning

The authority held that the product is not dairy under Chapter 04, because its predominant ingredients are sugar and fats and it does not consist of natural milk constituents alone. It is not a sugar confectionery under heading 1704, because it is not chewing gum, jelly, boiled sweet or toffee, and its semi-liquid, sachet-packed form takes it outside the solid or semi-solid confectionery family. As a miscellaneous edible preparation not specified elsewhere, it falls in Chapter 21, and after examining the entries the residual sub-heading 2106 90 99 was held to

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fit. The departmental opinion, which relied on past practice, was treated as merely reiterating the status quo. The authority also said that tax rate considerations should not drive the classification.

P Provisions Relied On

- Section 97(2)(a) of the CGST Act, 2017 (classification of goods, as the question raised)
- Section 98 of the CGST Act, 2017 (proceedings of the Authority for Advance Ruling)
- Section 103(2) of the CGST Act, 2017 (binding effect of the ruling)
- Section 104(1) of the CGST Act, 2017 (ruling declared void)
- Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017, Sr. No. 101 of Schedule I, as cited in the order
- Corresponding notification under the MPGST Act, 2017 (as cited in the order; number not legible)
- GST Tariff / HSN Chapter 04 (Chapter Note 4, heading 0404), as considered and rejected
- GST Tariff / HSN heading 1704 and sub-headings 1704 10 00, 1704 90 10, 1704 90 20, 1704 90 30 and 1704 90 90, as consi…
- GST Tariff Chapter 21, heading 2106 and sub-heading 2106 90 99 (residual 'Others'; sweetmeats), as the classification adopt…

! For the Practitioner

The order is useful for manufacturers of semi-liquid, milk-solid and sugar-based sweets packed in sachets, which may be classed in the residual entry of heading 2106 rather than under heading 1704. It settles the classification and the 5% rate for this product in the applicant's hands, and it is binding on the applicant and the jurisdictional officer. It does not decide how other products with different ingredient profiles will be classified, and it gives no refund right for tax already paid. Because the rate is read from a 2018 notification, anyone relying on it today should check the current entry in the GST rate schedule.

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 -> 13-2018_iepl.pdf

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