M/s Atul Kumar Rajpal, 44CA, Rajpal Plaza, Sringar Nagar, Kanpur Road, Alambagh, Lucknow 226005

Authority for Advance Ruling — Uttar Pradesh

Order No. 36, dated 05.08.2019 (order number and date handwritten on t… Dated **05.08.2019**

Q Questions Before the Authority

- What shall be the present applicable CGST and SGST tax rate on the applicant's final product, "Namkeen", duly packed and sealed in printed pouches?
- Whether the applicant's proposed plan to sell the said final product on payment of tax at 5% is proper or legal?

F Facts

The applicant plans to manufacture and sell Namkeen, sealed and packed in retail printed pouches that carry the manufacturer's details. The applicant holds no registered trademark, brand name or symbol, so none will be printed on the pouch or wholesale pack, and the likely MRP is Rs 1, 2 or 5. The ingredients are processed besan, matar, atta, rice, corn, grit or fry kachari, and the product is ready to eat. The applicant believed the product falls under tariff heading 210690 and should attract a total of 5% GST.

H Ruling

Applicable CGST and SGST rate on Namkeen packed and sealed in printed pouches	**12% GST (6% CGST + 6% SGST)**	The order classifies the goods under heading 2106 90, at the 12% rate for that heading under Notification 01/2017-Central Tax (Rate). The HSN is stated as 2106 90 in the reasoning, not in the ruling clause.
Whether the proposed plan to sell at 5% GST is proper or legal	**Yes, proper and legal at 5%**	Only if the applicant voluntarily foregoes the enforceable right in the manufacturer's name used as a brand, and satisfies condition (a) in Annexure I of Notification 28/2017-Central Tax (Rate) dated 22.09.2017.

The authority held that Namkeen in printed retail pouches attracts **12% GST (6% CGST and 6% SGST)** . It further held that the proposed sale at 5% is proper and legal only if the applicant **voluntarily foregoes its enforceable right in the manufacturer's name** as a brand name and satisfies condition (a) in Annexure I of Notification No. 28/2017-Central Tax (Rate).

R Reasoning

The authority classified the product under heading 2106 90, relying on the description of namkeens, bhujia and similar edible preparations ready for consumption, along with the pouch artwork and ingredients. It then examined the reduced-rate entry, which was amended by Notification 34/2017-Central Tax (Rate) so that goods in unit containers bearing a registered brand name or an actionable brand name are excluded from the reduction. Applying the definition of registered brand name, the authority held that the manufacturer's name printed on the

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

pouch indicates a connection in trade and so qualifies as a brand name carrying an enforceable right. The reduced rate under Notification 28/2017-Central Tax (Rate), read with Annexure I condition (a), therefore depends on the applicant filing an affidavit with the jurisdictional Central tax Commissioner that it is foregoing that right.

P Provisions Relied On

Section 98 of the CGST Act, 2017 (advance ruling)

Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017, heading 2106 90 (12% rate)

Notification No. 34/2017-Central Tax (Rate) dated 13.10.2017 (substitution of words 'other than those put up in unit container…

Notification No. 28/2017-Central Tax (Rate) dated 22.09.2017, S. No. 46 and Annexure I condition (a)

Definition of 'registered brand name' in the GST notification, by reference to the Trade Marks Act, 1999

! For the Practitioner

The order is useful for small food manufacturers who pack under their own name and want to argue for the 5% rate. It shows that the manufacturer's name on a retail pouch counts as a brand name, so the reduced rate depends on a voluntary waiver filed with the Central tax Commissioner. It does not decide the rate for goods without a manufacturer name on the pack, and as an advance ruling it binds only the applicant. Readers should check the full order for the exact wording of condition (a).

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_->_up_aar_36_05.08.2019_akr.pdf

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