M/s General Mills India Pvt. Ltd.

Authority for Advance Ruling — Uttar Pradesh

Order No. 21, dated 25.01.2019 (Authority for Advance Ruling, Uttar Prad… Dated **25.01.2019**

Q Questions Before the Authority

- Whether the use of the applicant's name 'General Mills India Pvt. Ltd' on packaging of products, used solely to comply with the mandatory labelling requirement under Chapter 2 of the FSSAI Regulations and not to indicate a connection in the course of trade, amounts to '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' under S. No. 73 of Notification No. 2/2017-Central Tax (Rate) as amended.
- Alternatively, if such use does amount to a brand name, whether the applicant may voluntarily forgo its enforceable right in that name, in the manner prescribed by the amending notification, and thereby claim exemption from GST on the products under S. No. 73.

F Facts

The applicant procures wheat from local vendors in Uttar Pradesh and Madhya Pradesh and sends it to job workers in those states. The job workers clean, temper and mill the wheat into wheat flour, meslin, atta and maida, and supply the finished products back to the applicant. The applicant then sells these products to its own locations by interstate stock transfer, to commercial customers, and to retail customers through wholesalers and distributors, and packs wheat and meslin flour in unit containers bearing the applicant's own name.

H Ruling

Whether use of the applicant's name on packaging, solely for FSSAI compliance, is a 'brand name' under S. No. 73 of Notification 2/2017-CT(Rate)	****Yes, construed as a brand name; the supply is not exempt under S. No. 73** (the order states the answer to the first question is in the negative)**	Reasoning rests on the manufacturer's name indicating a connection in the course of trade, which falls within the notification's definition of 'registered brand name'. Rate not stated in the order.
Whether the applicant may voluntarily forgo its enforceable right in the name and claim exemption under S. No. 73	****Yes, the applicant will be exempt from tax****	Conditional on fulfilling the Annexure-I conditions of Notification 28/2017-CT(Rate) dated 22.09.2017: an affidavit to the jurisdictional Central tax Commissioner, and indelible printing on each unit container in English and the local language that the brand name rights have been foregone voluntarily.

The authority held that the applicant's name on the packaging, used for FSSAI compliance, would be construed as a 'brand name' for the purpose of the exemption notification, so the supply of these products is not exempt under S. No. 73 on the first question. On the second question, it held that if the applicant voluntarily foregoes its enforceable right in that brand name and satisfies the conditions in Annexure-I of Notification 28/2017-Central Tax (Rate), the applicant will be exempt from tax. The order does not state a rate of tax.

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

R Reasoning

The authority first considered the definition of 'registered brand name' inserted by the amending notification, which includes the name of the manufacturer, and held that a manufacturer's name on a product indicates a connection in the course of trade. It relied on the Maharashtra Authority for Advance Ruling decision in Aditya Birla Retail Ltd. (2018 (15) GSTL 742) for the same view. On the alternative question, it examined the Annexure-I conditions for foregoing an actionable claim or enforceable right in a brand name and held that compliance with them makes the packaged goods eligible for exemption. The order makes clear that the exemption is limited to goods in unit containers and that the foregoing must be voluntary and documented.

P Provisions Relied On

- Section 98 of the Central Goods and Services Tax Act, 2017 (advance ruling)
- Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, S. No. 73 (as cited in the order)
- Notification No. 28/2017-Central Tax (Rate) dated 22.09.2017 (amending notification) and its Annexure-I conditions
- Definition of 'registered brand name' in the amended notification, with reference to the Trade Marks Act, 1999
- Corresponding notification under the UPGST Act, 2017 (referred to in the order)
- Chapter 2 of the FSSAI Regulations (labelling requirement)
- Ruling of the Authority for Advance Ruling, Maharashtra, in Aditya Birla Retail Ltd., 2018 (15) GSTL 742

! For the Practitioner

This order is useful for food manufacturers that pack goods in unit containers bearing only the company name, because it treats a manufacturer's name as a brand name for the exemption and sets out the route to exemption through voluntary foregoing of rights. A practitioner would use it to advise on the Annexure-I affidavit and the indelible printing requirement. It does not decide the applicable rate of tax, the valuation of job-work supplies, or whether the name is a registered trade mark, and it binds only the applicant.

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_21_25.01.2019_gmipl.pdf

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