M/s Savencia Fromage and Dairy India Private Limited, A 41, Hoseiry Complex, Phase-2 Extension, Noida, Uttar Pradesh (GSTIN 09AACD3039P1ZD)

Authority for Advance Ruling — Uttar Pradesh

Order No. 17 dated 10.12.2018 (Authority for Advance Ruling, Uttar Prad… Dated **10.12.2018**

Q Questions Before the Authority

- Whether the product 'Breaded Cheese' (impugned goods) is classifiable as 'cheese' under Heading 0406, and accordingly subject to CGST and SGST at 6 percent each under S. No. 13 of Schedule II to Notification No. 1/2017-Central Tax (Rate) dated 28 June 2017 and Notification KA.NI.-2-836/XI-9(47)/17-U.P.Act-1-2017-Order-(06)-2017 dated 30 June 2017.

F Facts

The applicant manufactures a product it describes as 'Breaded Cheese', made by cutting processed cheese into small pieces, forming them, coating them with batter and bread crumbs, partially frying them in vegetable oil, and then freezing them. The ingredients include cheese, milk solids, bread crumbs, batter and vegetable oil, with permitted preservatives, emulsifiers, stabilizers and acidity regulator. The packaging sells the goods as 'Cheese Balls (Garlic n Herbs)' under the category 'Snacks and Savories', and the applicant states that cheese always forms a higher proportion than bread crumbs.

H Ruling

Whether Breaded Cheese / Cheese Balls is classifiable as cheese under Heading 0406 at 6% CGST and 6% SGST (S. No. 13, Schedule II)	**No. Classified under Heading 2106 as 'Food preparations not elsewhere specified or included', taxable at 18% (9% CGST + 9% SGST).**	The order's ruling text refers to 'Schedule III of GST Laws'. The jurisdictional officer had suggested sub-heading 21069099, but the Authority ruled at heading level 2106. The ruling is confined to the goods as packaged and sold by the applicant.

The Authority held that the impugned goods are not classifiable as cheese under Heading 0406 and so do not attract the 6 percent rate. The goods are 'Cheese Balls' that have lost the character of cheese and are a food preparation, classifiable under Heading 2106 as 'Food preparations not elsewhere specified or included' and taxable at 18 percent (9 percent CGST and 9 percent SGST).

R Reasoning

The Authority applied the HSN explanatory note to Chapter 4, which keeps cheese coated with batter or bread crumbs in the heading only 'provided that the goods retain the character of cheese'. Since neither the HSN, the Customs Tariff nor the GST provisions prescribe a test for this, the Authority treated identification as cheese in the

commercial market as the relevant factor. The label and packaging sold the goods as snack foods, and the cheese content was at most 55 percent with about 45 percent other ingredients, so the goods had lost the character of cheese. The Authority distinguished the U.S. Customs rulings relied on by the applicant because the conditions and goods were materially different. As the cheese balls are admittedly a food preparation, they fell to the residual heading 2106.

P Provisions Relied On

- Section 98 of the CGST Act, 2017 (advance ruling proceedings)
- Heading 0406 of the Customs Tariff / HSN (cheese)
- Explanatory Notes to HSN, Section 1, Chapter 4 (cheese coated with batter or breadcrumbs)
- Heading 2106 (food preparations not elsewhere specified or included)
- Schedule III, GST rate schedule (18%), as referred to in the ruling
- S. No. 13 of Schedule II to Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017
- Notification KA.NI.-2-836/XI-9(47)/17-U.P.Act-1-2017-Order-(06)-2017 dated 30.06.2017

! For the Practitioner

This ruling helps where a coated or breaded cheese product is marketed and packaged as a snack and has a substantial proportion of other ingredients, as the Authority found that such goods lose the character of cheese and fall under Heading 2106 at 18 percent. It settles that, for these products, packaging, commercial identity and cheese content can outweigh the 6 percent cheese entry. It does not decide the classification of coated cheese products that are sold as cheese or contain a predominant share of cheese, and it does not decide the correct sub-heading, which the Authority did not fix. It is an advance ruling on the applicant's product and should be checked against the full order before reliance.

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_17_10.12.2018_sfdipl.pdf

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