Switz Foods Pvt Ltd

Authority for Advance Ruling — West Bengal

37/WBAAR/2019-20 Dated **09.12.2019**

Q Questions Before the Authority

- Whether the 21 products listed in para 1.5 of the order (baked flour-based products containing chicken, drawn from Annexure B), which the applicant currently classifies under HSN 2106, are classifiable under HSN 1601 as preparations of meat.

F Facts

The applicant manufactures confectionery such as cakes and rusks, and some of its products contain cooked chicken, fish or egg. It has so far classified its products under HSN 2106. It argues that the chicken products contain more than 20% by weight of chicken meat, as shown by a NABL-accredited test report, and are distinct food preparations such as chicken kebab or chicken burger, so they fall under HSN 1601.

H Ruling

Baked flour-based products containing chicken (Sl Nos 1 to 5 and 11 to 25 in the ruling; see note on Sl No 10)	**Not classifiable under HSN 1601. They are bakers' wares, and the chicken filling does not make them food preparations based on meat.**	The ruling's Sl Nos (1 to 5 and 11 to 25) differ from para 1.5, which says 1 to 5 and 10 to 25. The ruling text also gives chicken sandwich (Sl No 10) as an example, so the omission of Sl No 10 looks like a drafting error. The ruling does not state the HSN heading for these products; the reasoning points to HSN 1905.
Products that would not survive as food preparations if the chicken were removed (examples given: chicken cutlet, chicken finger, chicken seekh kebab)	**May be classifiable under HSN 1601.**	Only if they contain more than 20% by weight of meat. The order says the Revenue officer may examine the test report and decide on the facts. Products with fish or egg (Sl Nos 6 to 9 and 26 to 28) were outside the admitted scope and were not decided.

The Authority admitted the application only for the baked flour-based products containing chicken and held that these are bakers' wares and not food preparations based on chicken meat, so they cannot be classified under HSN 1601. It held that a few products which would not survive as food preparations without the chicken, such as chicken cutlet, chicken finger and chicken seekh kebab, may fall under HSN 1601 if they contain more than 20% by weight of meat.

R Reasoning

The Authority followed the WBAAR instruction that an application covering several products must be confined to a single category with common attributes, and so limited the ruling to the baked, flour-based, chicken-containing products. Relying on Chapter Note 1(a) to Chapter 19 of the Customs Tariff Act, 1975 and the HSN Explanatory

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

Notes, it held that baked flour products are bakers' wares under HSN 1905 unless they contain more than 20% by weight of meat. It applied the Dodsal Corporation test, under which a food based on meat must have meat as its starting point, and distinguished the Venky's Fast Food decision, which rested on the pre-2005 Excise Tariff heading. The survival test was applied to each product to decide whether it is a food based on meat.

P Provisions Relied On

- Section 97(2)(a) of the GST Act (advance ruling on classification of goods)
- Section 100(1), 100(2) and 100(3) of the GST Act (appeal provisions in the preamble)
- Section 99 and Section 96 of the WBGST Act, 2017 (constitution of appellate and advance ruling authorities)
- Section 103 and Section 104(1) of the GST Act (validity of the ruling)
- First Schedule to the Customs Tariff Act, 1975, Chapter 19 Chapter Note 1(a)
- Chapter 16 Chapter Note 2 to the Customs Tariff Act, 1975 (weight of meat assessed at the finished-food stage)
- HSN heading 1601 and heading 1905 (HSN Explanatory Notes, Third Edition)
- Excise Tariff Act heading 1601 as it stood before the 2005 amendment (considered, not relied on)

! For the Practitioner

A practitioner dealing with bakery or snack products with meat fillings can use this ruling to argue that baked flour items such as patties, burgers, sandwiches and rolls remain bakers' wares under HSN 1905 even where chicken is a filling. It does not settle the 20% weight question for borderline items, which is left to Revenue verification. Fish and egg products, and the Sl No 10 discrepancy, are not decided, and the ruling 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 -> order_no_37_of_fy_20_dated_09122019_sfpl.pdf

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