

 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN) Email : aaarjpr@gmail.com	
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**Proceedings under Section 101 of the Central GST Act, 2017 read with
Rajasthan GST Act, 2017**

Before the Bench of

1. Sh. Pramod Kumar Singh, Member (Central Tax)
2. Dr. Preetam B. Yashvant, Member (State Tax)

ORDER NO. RAJ/AAAR/6/2019-20 DATED 01.04.2020

Name and address of the Appellant	:	M/s. JVS Foods Pvt. Ltd., G-220, Sitapura Industrial Area, Jaipur
GSTIN of the appellant	:	08AAACJ4620Q1ZA
Issues under Appeal	:	Whether the goods manufactured and sold by the appellant, i.e. Fortified Rice Kernels, will fall under Chapter Heading 10, Tariff item 1006 as Rice and description of goods 10061090 other (IGST Nil/5%, CGST Nil/2.5%, SGST Nil/2.5%) ?
Date of Personal Hearing	:	17.03.2020
Present for the appellant	:	(i) Shri Samir Jain, Advocate (ii) Shri Sumit Bhargava, CA
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/04/2019-20 against Advance Ruling No. RAJ/AAR/2019-20/27 dated 28.11.2019

(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as 'the RGST Act'**) by M/s JVS Foods Pvt. Ltd., G-220, Sitapura Industrial Area, Jaipur, Rajasthan (**hereinafter also referred to as 'the Appellant'**) against the Advance Ruling No. RAJ/AAR/2019-20/27, dated 28.11.2019.

CONDONATION OF DELAY

3.1 The first issue relates to the delayed filing of appeal under Section 100(2) of the CGST Act. The said Advance Ruling dated 28.11.2019 was received by the appellant on 03.12.2019. Thus, the prescribed time limit of 30 days from the receipt of the Advance Ruling ended on 01.01.2020. However, the appeal has been submitted by the appellant electronically on GST portal on 06.01.2020 with a delay of 05 days. The appeal has been submitted physically also before this forum on 13.01.2020. As per the proviso to the Section 100(2) of CGST Act, 2017, the Appellate Authority has the discretion to extend the appeal filing time by further 30 days if satisfied with the reasons for the delayed filing of appeal.

3.2 The appellant has attributed the delay in filing of appeal to the difficulty faced by them in filing the appeal online due to technical glitches on the portal.

3.3 The appellant has requested to condone the delay as the circumstances were beyond their control and accept the appeal.

3.4 Considering the circumstances stated by the appellant, we condone the delay in filing the appeal and admit it for final disposal, on merits.

SUBMISSIONS AND INTERPRETATION OF THE APPELLANT

4.1 The appellant, i.e. M/s. JVS Foods Pvt. Ltd., is registered under GST Law with GSTIN 08AAACJ4620Q1ZA, having its registered office at G-220, RIICO, Sitapura Industrial Area, Jaipur-302022. The appellant is producer of the Institutional Foods in the State of Rajasthan, catering to the requirement of United Nation Food Aid Agency, World Food Program not only in India but also in the neighboring country as well. The appellant is also one of the suppliers to the State Nodal Departments like Women & Child Development Department for distribution to beneficiaries of the Central Government approved Integrated Child Development Service Scheme (ICDS) and Mid-Day Meals (MDM) etc.

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- 4.2 The appellant is also manufacturer and supplier of Energy Food, Babymix, Indiamix, Paushtik Puffs, Halwa premixes, Khichdi Premixes, Barfi Premix etc., all these products are made of various food grains and fortified with vitamins & minerals.
- 4.3 The appellant preferred an application for Advance Ruling before the Rajasthan Authority for Advance Ruling (hereinafter referred to as the 'AAR'), for declaring the goods manufactured and sold by the appellant i.e., Fortified Rice Kernels (hereinafter referred to as 'FRK' in short), to be taxable under Chapter Heading 10 tariff item 1006 as Rice and description of goods 10061090 other (IGST NIL/5%, CGST NIL/2.5%, SGST NIL/2.5%). The process to fortify rice was also comprehensively laid before the AAR along with the statutory and mandatory requirement of Food Safety and Standards Authority of India, Ministry of Health and Family Welfare, whereby the appellant tried to convince that the FRK is nothing but a better nutritional form of Rice.
- 4.4 The Rajasthan Authority for Advance Ruling, vide Advance Ruling No. RAJ/AAR/2019-20/27 dated 28.11.2019, has held that-

Fortified Rice Kernels (FRK), manufactured and supplied by the applicant is classifiable under HSN 19049090 and attracts GST @ 18% (SGST 9% + CGST 9%).

- 4.5 Aggrieved by the aforesaid Ruling above, the appellant has preferred the present appeal before this forum.

GROUND OF APPEAL

5. The appellant in its Appeal has, inter alia, mentioned the following grounds of Appeal:

- 5.1 The decision passed by the Ld. AAR is bad in law, as the same is without jurisdiction as the Ld. AAR has no jurisdiction on deciding the rate of duty on particulars goods, because the rationale and reasoning in fixing quantum of levy is a policy decision of Government(s)/GST Council and thus, is beyond the scope and domain of Ld. AAR.
- 5.2 While holding the goods manufactured and supplied by the appellant under HSN 19049090, the Ld. AAR has failed to give any cogent reasoning much less any reasoning whatsoever in this regards.

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- 5.3 The GST Council vide **Circular No. 52/26/2018-GST dated 09.08.2018**, has taken decision with regards to the taxability of Fortified Toned Milk and clarified that toned milk fortified (with vitamins 'A' and 'D') attracts NIL rate of GST under HSN Code 0401."
- 5.4 That whilst considering the taxability of similar kind of product i.e., Fortified Milk, milk having additional or enriched with minerals and vitamins, the Council has held that the same should be classified under the tariff heading of Milk only. The Ld. AAR, ought to have considered the decisions taken by the GST Council, which can not only be applied in the present case but is also binding on the Ld. AAR.
- 5.5 The Ld. AAR, while considering the Circular dated 09.08.2018 (supra), has drawn a distinction between the Fortified Toned Milk and FRK. The Ld. AAR has held that fortified milk is final consumable product however, the FRK is not. Such distinction is erroneous, not tenable in law inasmuch as without application of mind. It is submitted that consumption of any product is no basis for taxability of the final product. So far as the said contention of the Ld. AAR is concerned, it is submitted that even FRK is a marketable product and is being sold in market separately without blend the same in rice.
- 5.6 The Rice is specified in Chapter 10 of the Tariff and further includes Rice in husk (paddy or rough), husked (brown) rice, semi-milled or wholly-milled whether polished or glazed, basmati rice, broken rice parboiled rice. Therefore, from the said it is apparently clear that Chapter 10, apart from the natural form of rice also contains processed rice. Accordingly, the contention of the Ld. AAR that rice in its natural form with its essential characteristics as intact is classified in Chapter 10 and FRK is not covered in the said chapter, cannot be accepted.
- 5.7 The reference is drawn to Chapter Note 1(B) appended to the Chapter 10, which reads as under:

"(B) The Chapter does not cover grains which have been hulled or otherwise worked. However, rice, husked, milled, polished, glazed, parboiled or broken remains classified in heading 1006."

The Chapter Note, itself is categorically clear that otherwise worked grains are not included, however, rice otherwise worked are included in heading 1006. FRK being fortified rice cannot be expelled from the said category and therefore, even if FRK does not finds its mention under the said heading in specific terms cannot be held to be classified under other Chapter.

- 5.8 The contentions of the Ld. AAR holding preparations/processes on rice which are beyond the scope of Chapter 10 have been classified in Chapter 19 of the GST Tariff, is based on absolutely wrong interpretation of the tariff entry. The Ld. AAR, has classified the goods manufactured and supplied by the appellant under the Chapter heading 1904, which reads as under:

"Prepared foods obtained by the swelling or roasting of cereals or cereals product (for example cornflakes); cereals [other than maize (corn)] in grain form or in the form of flaked or other worked grains (except flour, groats and meal), precooked or otherwise prepared, not elsewhere specified and included"

Further the relevant extract of said chapter note (Chapter 19) is as below:

"For the purpose of heading 1904, the expression "otherwise prepared" means prepared or processed to an extent beyond that provided for in the heading of, or Notes to, Chapter 10 or 11."

- 5.9 That the Ld. AAR has classified the goods manufactured and supplied by the appellant under the Chapter heading 1904, based on the Chapter note. It is submitted that FRK by no stretch can be held to be prepared food or food otherwise prepared rather FRK cannot be held to be a food.
- 5.10 Because it is the basic principle that the interpretation and classification has to be given as per Chapter heading and sub-heading. Chapter 19 i.e., "Preparation of cereals, flour, starch or milk; pastrycooks' products" as the heading suggest preparation of cereals, flour, starch or milk into pastry products, bakery products or confectionary products, the same has no connect whatsoever with fortification and therefore, the FRK cannot be classified under the Chapter heading 1904.
- 5.11 That as general rule, classification is determined by the words (terms) in the Headings and the Section and Chapter Notes that apply to them unless the terms of the heading and the notes say otherwise. In other words, if the goods to be classified are covered by the words in a heading and the Section and Chapter Notes do not exclude classification in that heading, the heading applies. It is submitted that in the present case when heading itself does not cover the goods intended to be classified, sub-heading, chapter note cannot be applied. Therefore, when the heading of Chapter 19 itself, does not cover the goods, resorting to chapter note is nothing but absolute wrong interpretation.

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- 5.12 It is again one of the general rule of interpretation that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It has already been clarified that FRK has the essential characteristics of rice rather it nothing but fortification of natural rice thereby making it more nutritious keeping intact its essential characteristics and form as well as the use. Therefore, FRK albeit if not mixed with rice, then also can be classified under Chapter 10 because when FRK being mixed with the rice the end use, characteristics and form would be exactly the rice.

PERSONAL HEARING

6. A personal hearing in the matter was held on 17.03.2020. Shri Samir Jain, Advocate, and Shri Sumit Bhargava, authorized representatives of the appellant, appeared for personal hearing on 17.03.2020. They reiterated the submissions already made under grounds of appeal. They also submitted following additional submission:

- (i) That the question for determination before the learned Authority whether the Fortified Rice Kernels (FRK) will fall under classification 10061090 @ 5% or 190400090 @ 18%.
- (ii) That on the analysis of tariff read with Chapter notes and section notes and rules of interpretation which are part of the tariff; the products in question will fall under 10061090 as per Chapter -10 Note 1(B) which reads as *the chapter does not cover grains which have been hulled or otherwise worked. However, rice, husked, milled, polished, glazed, parboiled or broken remains classified in heading 1006.*
- (iii) That on perusal of above definition, it is very clear that rice is specifically mentioned and any husked, milled, polished rice etc. will fall under 1006 and the product in question is a milled rice as per expert opinion also and as per applicant and on analysis of manufacturing process.
- (iv) That the Chapter19 pertains to preparations or ready to eat food and the present goods in question are not the same, Chapter Heading 1904 is an two parts end the learned authority has not considered the heading pertaining to "puffed" rice rice quoted with sugar or Gur, commonly known as "murki" which attracted Nil rate of duty and is addition to HSN in GST Tariff.
- (v) That Chapter Heading 1904 pertaining to prepared foods..... cereals or cereal products (for example cornflakes... or included and Chapter

Heading 19049000 will not include FRK in it as per expert opinion and the reasons stated in their appeal.

- (vi) That jurisdictional High Court Judgment In D.B. Civil Writ Petition No.7091/2019 has issued notices on the constitutional validity of section 96(2) pertaining to AAAR authority which may be taken note of in the light of Apex Court Judgment 2010(11) SCC Page No. 1.
- (vii) That during the pendency of present application the DGGI authorities have conducted a search and in spite of matter being sub-judice wrongly got reversal of ITC on the said account which is opposed by the applicant by filing a requisite application. Neither the statements nor the deposit was voluntary. The said fact needs to be brought to the knowledge of the authority as all the records pertaining to FRK are resumed by them and the same may be called from them.

DISCUSSION AND FINDINGS

7. We find that the appellant vide its application filed before the Rajasthan Authority for Advance Ruling, had requested for Advance Ruling on the following point:-

Whether the goods Fortified Rice Kernels ('FRK'), manufactured and sold by M/s JVS Foods Pvt. Ltd. will be fall under Chapter-10, Tariff item 1006 as Rice and description of goods 10061090 others (IGST NIL/5%, CGST NIL/2.5%, SGST NIL/2.5%)?

8. In pursuance of the aforesaid application, the Rajasthan Authority for Advance Ruling in its Ruling No. RAJ/AAR/2019-20/27 dated 28.11.2019, has pronounced its Ruling as under:

'Fortified Rice Kernels (FRK), manufactured and supplied by the applicant is classifiable under HSN 19049090 and attracts GST @ 18% (SGST 9% + CGST 9%).'

9. The appellant is not satisfied with the above Ruling and has therefore, filed the present Appeal before this forum.

10. During the course of the personal hearing the appellant reiterated the points as stated in Grounds of Appeal and also submitted additional submissions.

11. We have carefully gone through the appeal papers filed by the appellant, the Ruling of the Rajasthan Authority for Advance Ruling, written as well as oral submissions



made by the authorized representative of the appellant at the time of personal hearing held on 17.03.2020

12. As regards the first contention of the appellant that the decision passed by the Ld. AAR is without jurisdiction as the Ld. AAR has no jurisdiction on deciding the rate of duty on particulars goods, we find that the appellant has not correctly understood the decision of the Ld. AAR. In fact, the AAR in its order has given ruling over the classification of the goods manufactured by the appellant with an indication of present duty rate structure.

13. It is further observed that the Appellant's main contention is that the Fortified Rice Kernels has the essential character of Natural Rice and classifiable under HSN 1006 as Rice. To arrive at any conclusion of the said claim of the appellant, we find it imperative to go through the process of manufacturing of FRK. We find that, first, the natural rice is converted to flour form, then, the premix of vitamin-mineral is added to it. Post mix, the prepared material is passed through a machine which converts it back in to granule shape similar to rice, which are known as Fortified Rice Kernel (FRK). The FRK is packed in a 25Kg bag to be further supplied to various millers/suppliers with instruction *"this product should be first mixed (blended) with traditional rice in ratio of 1:100 and then the mixed rice is cooked and consumed."*

Further Chapter 1006 which has been claimed by the appellant to be proper classification for FRK reads as under:

1006	Rice			
1006 10	- Rice in the husk (paddy or rough):			
1006 10 10	--- Of seed quality	kg.	80%	-
1006 10 90	--- Other	kg.	80%	-
1006 20 00	- Husked (brown) rice	kg.	80%	-
1006 30	- Semi-milled or wholly-milled rice, whether or not polished or glazed:			
1006 30 10	--- Rice, parboiled	kg.	70%	-
1006 30 20	--- Basmati rice	kg.	70%	-
1006 30 90	--- Other	kg.	70%	-
1006 40 00	- Broken rice	kg.	80%	-

While going through the above classification of Rice under Chapter 10, we find that rice in natural form including rice after certain processing like husking, milling, parboiling etc. fall within the ambit of Chapter Heading 1006. We find that rice in its natural form with its essential characteristics as intact is classified in Chapter 10, and FRK is not covered in the said chapter. We find support from the Chapter Note 1 of Chapter 10 which mentions as below-

1. (A) ***The products specified in the headings of this Chapter are to be classified in those headings only if grains are present, whether or not in the ear or on the stalk.***

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(B) The Chapter does not cover grains which have been hulled or otherwise worked. However, rice, husked, milled, polished, glazed, parboiled or broken remains classified in heading 1006.

From the manufacturing process, it is noted that to manufacture FRK, the natural rice has to be converted into Rice Flour. The moment the Rice is converted into Flour, essential characteristics of rice is changed and no grain remain present in the product and therefore, the same cannot be classified in any of the heading of Chapter 10 in terms of Chapter Note 1(A) *ibid*. Further, consequent upon changing from rice grains to rice flour and then preparation of any product out of rice flour, whether similar to Rice or not in shape, the resultant product does not fall in the inclusive part of the Chapter note 1(B) of Chapter 10, which specifically mentions Rice (i) Husked, (ii) milled, (iii) polished, (iv) glazed, (v) parboiled or (vi) broken as in all such form of Rice, natural grains are present in the product. Thus, we are of considered opinion that FRK is out of the ambit of Chapter 10.

14. It is further noted that the Chapter 1904 covers the otherwise worked preparations of the articles classified in Chapter 10 or 11 to the extent beyond that provided in the headings of or notes to Chapter 10 or 11. To determine the exact classification, the relevant portion of the Chapter heading 1904 of GST tariff is as below-

Chapter/Heading/ Subheading/Tariff item	Description of Goods
(1)	(2)
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals [other than maize (corn)] in grain form or in the form of flakes or other worked grains (except flour, groats and meal), precooked or otherwise prepared, not elsewhere specified or included
190410	-Prepared foods obtained by the swelling or roasting of cereals or cereal products
19041010	---Corn flakes
19041020	---Paws, Mudi and the like
19041030	---Bulgur wheat
19041090	---Other
19042000	-Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals
19043000	-Bulgur wheat
19049000	-Other

The relevant extracts of Note to Chapter 19 are as below:

'4. For the purposes of heading 1904, the expression "otherwise prepared" means prepared or processed to an extent beyond that provided for in the headings of, or Notes to, Chapter 10 or 11.'


15. We also note that the appellant supplied the FRK to various millers/suppliers with instruction *"this product should be first mixed (blended) with traditional rice in ratio of 1:100 and then the mixed rice is cooked and consumed."* This is an admission of fact by the appellant that FRK is a product different from the traditional rice and to be used for blending in traditional rice.

16. The appellant has also contended that the AAR has not considered the heading pertaining to "Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki" which attracted Nil rate of duty and is addition to HSN in GST Tariff. We find that the product FRK does not fall in the category of "Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki".

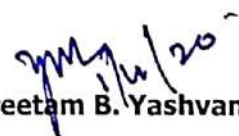
17. In view of above we arrive at the conclusion that the FRK manufactured by the appellant do not have essential character of natural Rice and also does not merit classification under Chapter 10 in terms of Chapter Note 1(A) of the said Chapter. It is appropriately classifiable under the sub-heading of Chapter 19 i.e. under Chapter sub-heading 19049000.

18. While arriving to the above conclusion, we have considered all the relevant arguments and submissions put forth by the appellant. We don't find their submissions, mentioned at Para 6 (vi and vii) above, relevant to the present appeal.

19. The appeal stands disposed accordingly.


11/4/2020
(Pramod Kumar Singh)
Member (Central Tax)




(Dr. Preetam B. Yashvant)
Member (State Tax)

To

M/s. JVS Foods Pvt. Ltd.,
G-220, Sitapura Industrial Area,
Jaipur, Rajasthan

F.No. IV(16)AAAR/RAJ/04/2019-20/3057

Dated. 01.04.2020

Copy to :-

1. The Chief Commissioner of CGST & Central Excise (Jaipur Zone), NCR Building, Statue Circle, Jaipur-302005.
2. The Chief Commissioner of RGST & Commercial Taxes, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Commissioner, CGST & Central Excise Commissionerate, Jaipur, NCR Building, Statue Circle, Jaipur-302005.
4. The Deputy Commissioner, State Tax, Special Circle -7, Jaipur Zone-II, Zonal Kar Bhavan, Jhalana Doongari, Jaipur - 302004.
5. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005
6. Guard File



Umesh Kumar Agrawal
01/04/2020

(Umesh Kumar Agrawal)
Superintendent