



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2017-18/7

(In Application No.: 7, dated 12.01.2018)

| | |
|--|--|
| Name & Address of the Applicant | : M/s AOV Agro Food Pvt. Ltd., Mewat, Haryana |
| GSTIN of the Applicant | : 06AAHCA9670N1Z2 |
| Date of Application | : 12.01.2018 |
| Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised. | : (b) applicability of a notification issued under the provisions of this Act. |
| Date of Personal Hearing | : 09.04.18 |
| Present for the Applicant | : Sh. Ashok Misra, C.A., Sh. Aman Sharma, Manager |
| Present for the department. | : Sh. Rakesh Dahiya, ETO, Mewat. |

Factual Background

M/s AOV Agro Food Pvt. Ltd. ('AOV') is engaged in slaughtering and processing of poultry/sheep/goat meat and supplies these products to export and domestic market and Army against tender.

M/s AOV supplies to Army sheep/goat meat in carcasses of different weight and size in frozen State and similarly whole chicken of different weight and size is also supplied in frozen State. The packing and dispatch pattern for both mutton and chicken is claimed to be as under:-

(i) Mutton

Each frozen carcass is put in LDPE bag (primary packing) which is not sealed and no weight is mentioned on such LDPE bags. Thereafter, generally two of such LDPE bags are put in HDPE bags (secondary packing) and manually the weight of both the packed carcasses is mentioned on the secondary packing by a marker.

(ii) Poultry

Each frozen chicken is packed in LDPE bag (primary packing) which is not sealed and no weight is mentioned on such LDPE bags. Thereafter, such LDPE bags are put in HDPE bags (secondary packing) which do not contain fixed number of primary packing and also no quantity is mentioned.

In the above backdrop of facts, the applicant has submitted the application for advance ruling on the following:-

The product meat of sheep/goat attracts HSN 0204 and for meat and edible offal of the poultry the four digit HSN code is 0207.

W.e.f 1st July, 2017 to 14th November, 2017 the provision relating to taxability/exemption under GST law was as under:-



Sangram

Vide schedule-II of notification 1/2017 Integrated Tax (rate) dated

28.06.2017 the product of chapter heading 0204 and 0207, frozen and put in unit containers were taxable @12%.

Vide schedule-I of notification no. 43/2017 Integrated Tax (rate) dated 14.11.2017 the product of chapter heading 0204 and 0207, other than fresh or chilled and put in unit container and bearing a registered brand name or bearing a brand name on which actionable claim is available, were made taxable @5%.

In view of the above, it is the applicant's case that the dispatches made by them in LDPE/HDPE bags, both primary as well as secondary packing do not qualify as unit container and therefore their product is not leviable to tax under GST.

Comment of the Officer under section 98 (1) of the CGST, HGST Act 2017

The Deputy Excise & Taxation Commissioner (ST), Nuh (Mewat) vide his letter no. 577, dated 8.03.2018 as stated that the applicant dealer supplies frozen meat backed in PDPE bags in the shape of unit container. Since the applicant is supplying his goods packed in bags hence it qualifies as supply of goods in unit container.

Record of Personal Hearing

The applicant was afforded a personal hearing for 09.04.2018. The issue raised by the applicant for advance ruling, whether their product can be said to be packed in a unit container to fall under the scope of notification no. 1/2017 or 2/2017 - Integrated Tax (rate) dated 28.06.2017 and further under the scope of notification no. 43/2017 or 44/2017 - Integrated Tax (rate) dated 14.11.2017 is covered under the scope of section 97 of CGST/HGST Act 2017 and therefore, the application was admitted.

As regard the classification of their product, the departmental representative had stated that the applicant firm is packing the animal carcasses and the whole chicken in bags for supplying to their customers, i.e. Army, in unit containers and therefore it attracts GST @ 12% upto 14.11.2017 and thereafter @ 5%.

The applicant had strongly argued that the packing done by them cannot be said to be unit containers as it is defined in the explanation to mean a package designed to hold a pre-determined quantity or number which is indicated on such package. The applicant had cited several case laws where the definition of unit container had been discussed and adjudicated.

After hearing and discussion in detail, the decision was reserved which is being released today.

Discussion and finding of the authority

GST is chargeable as reference to value and at applicable rates. For the purpose of building a point of view reference is made to the IGST rate schedule.

W.e.f. from 1st July, 2017 till 14th November, 2017

Schedule II of the Notification no. 1/2017 -- Integrated Tax (rate) dated 28th June 2017 deals with the products which are subject to 12 % GST and entry No. 4 and 7 which pertain to sheep meat and poultry meat respectively are provided below:-

Schedule-II



Sujeet

| Sr. No. | Chapter/Heading/Sub-heading/Tariff item | Description of Goods |
|---------|---|--|
| 4. | 0204 | Meat of sheep or goats, frozen and put up in unit containers |
| 7. | 0207 | Meat and edible offal, of the poultry of heading 0105, frozen and put up in unit containers. |

A reading of the above-mentioned entries in the above reproduced notification would reveal that if the items mentioned in Tariff heading 0204 or 0207 are frozen and put up in a 'unit container, it would be exigible to tax @12%.

Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government vide notification no. 2/2017-Integrated Tax (rate) New Delhi dated 28.06.2017 has exempted, Inter-State supplies of goods, from the whole of the Integrated Tax leviable thereon. Relevant extract is reproduced below:

Schedule-

| Sr. No. | Chapter/Heading/Sub-heading/Tariff item | Description of Goods |
|---------|---|--|
| 10. | 0204 | Meat of sheep or goats, [other than frozen and put up in unit containers] |
| 7. | 0207 | Meat and edible offal, of the poultry of heading 0105, [other than frozen and put up in unit containers] |

W.e.f. from 15th November, 2017 onwards.

Schedule I of the Notification no. 43/2017 – Integrated Tax (rate) dated 14th November, 2017 deals with the products which are subject to 5 % GST and entry No. 1 which pertain to sheep meat and poultry meat are provided below:-

Schedule-I

| Sr. No. | Chapter/Heading/Sub-heading/Tariff item | Description of Goods |
|---------|---|--|
| 1 | 0204 0207 | All goods (other than fresh or chilled) and put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the annexure I]”; |



Sanyal

A reading of the above mentioned entries would reveal that the items mentioned in tariff heading 0204 or 0207 [other than fresh or chilled] would be exigible to tax @ 5% if these are put up in a 'unit container' and bears a brand name or bears a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the annexure I to the said notification.

✦ Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017 the Central Government via notification no. 44/2017 - Integrated Tax (rate) New Delhi dated 14.11.2017 has exempted, Inter-State supplies of goods, from the whole of the integrated tax leviable thereon. Relevant extract is reproduced below:

Schedule-

| Sr. No. | Chapter/Heading/Sub-heading/Tariff item | Description of Goods |
|---------|---|--|
| 8 | 0204 0207 | All goods, fresh or chilled |
| 7. | 0204 0207 | All goods (other than fresh or chilled) other than those put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the annexure I]"; |

A conjoint reading of the extracts of the above mentioned notifications reveal that on products of Chapter/Heading/Sub-heading/Tariff item 0204 and 0207 GST is chargeable subject to fulfilment of conditions as tabulated below:

W.e.f. 1st July, 2017 to 14th November, 2017

- Must be frozen
- Must be packed in unit container

W.e.f. 15th November, 2017

- Must be frozen
- Must be packed in unit container
- Must bear a brand.



Since the applicant has sought advance ruling only on the question of taxability of the product viz a viz the packing being considered as unit container or not, it is worth understanding the meaning of the word unit container. As per the explanation appended with the above stated notification:-

S. Singh

'the phrase 'unit container' means a package, whether large or small (for example tin, can, jar, box, bottle, bag, carton, drum, barrel or canister) designed to hold a pre-determined quantity or number, which is indicated on such package.'

It is the case of the applicant that they supply to Army sheep/goat meat in carcasses of different weight and size in frozen State and similarly whole chicken of different weight and size is also supplied in frozen State. Each frozen carcass is put in LDPE bag (primary packing) which is not sealed and no weight is mentioned on such LDPE bags. Thereafter, generally two of such LDPE bags are put in HDPE bags (secondary packing) and manually the weight of both the packed carcasses is mentioned on the secondary packing by a marker. Similarly, each frozen chicken is packed in LDPE bag (primary packing) which is not sealed and no weight is mentioned on such LDPE bags. Thereafter, such LDPE bags are put in HDPE bags (secondary packing) which do not contain fixed number of primary packing and also no quantity is mentioned. Thus, the packing of the frozen carcasses and chicken done by them is only a medium of delivery and since these are not in pre-determined units, these packing cannot be termed as 'Unit Containers'.

To substantiate their view regarding unit container the applicant had cited several case laws. Reliance is placed on the case of CCE Vs Shalimar Super Foods [2007(210)ELT695(Tri.-Mumbai)] and Surya Agro Oils Ltd. Vs CCE, Indore, 2000(116) ELT, 514.

In CCE Vs Shalimar Super Foods [2007(210)ELT695(Tri.-Mumbai)], the Hon'ble bench had considered the question of 'Unit Container' and observed in para 3:

"3.....However, unit container, as per the definitions contained in several dictionaries, is a container containing pre-determined uniform quantities of contents whereas the items cleared by the respondents were not of uniform quantities. For this reason the goods in question which were cleared in plastic bags not sealed and not containing pre-printed quantities thereon, cannot be treated as unit containers for the purpose of classification of meat articles packed therein under CET sub heading 1601.10."

In Surya Agro Oils Ltd. Vs CCE, Indore, 2000(116) ELT, 514, The Hon'ble bench had held the HDPE sack weighing 20 Kg each of *pasta* comprising of 2 LDPE bags weighing 10 Kg each was held to be a 'Unit Container' by observing that the HDPE bag contained LDPE bags of 10 Kg each, which were standardised.

In view of the above decisions of the Hon'ble Tribunals and the understanding of definitions of 'Unit Container' we are of a considered view that the packaging of frozen sheep/goat carcasses and frozen chicken for delivery in primary LDPE bags further packed in secondary HDPE bags of non-standardised quantity done by the applicant cannot be regarded as 'Unit Container' since it is not standardised to hold a uniform pre-determined quantity. Also in the explanation appended to the Notification No.1/2017-Integrated Tax (Rate) dated 28th June 2017 a unit container means a package, whether large or small (for example tin, can, jar, box, bottle, bag, carton, drum, barrel or canister) **designed to hold** a pre-determined quantity or number, which is indicated on such package. The explanation itself suggests that the make of the container should be such which can hold a predetermined quantity or number. It should be such that when packed it holds the predetermined quantity or the number for which it is designed. As shown to us the packaging by the applicant can weigh 10 Kgs or 11 Kgs or for that matter 10.5 or 10.25 Kgs depending upon the weight of two frozen carcasses or weight of 20-25 frozen



Surya

chickens, as the case may be, packed in secondary packaging. Neither the packaging is uniform or standardised nor the packages are designed to hold a predetermined quantity.

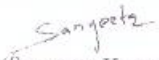
Advance ruling under section 98 of the CGST/HGST Act 2017

In the backdrop of above discussion and findings it is ruled that

- (a) The whole (sheep/goat) animal carcass in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags having mention of varying actual total weight of the carcasses packed in each such HDPE bags and supplied to Army shall not qualify as product put up in 'Unit Container'.
- (b) The whole chicken in frozen state in different weight and size packed in LDPE bags and then 20-25 such LDPE bags further packed in HDPE bags having mention of varying actual total weight of birds packed in each such HDPE bags and supplied to Army shall not qualify as product put up in 'Unit Container'.
- (c) The products as mentioned at (a) and (b) above fall under exemption list as per entry no.10 and 13 of notification No. 2/2017-Integrated tax (Rate) dated 28th June 2017 upto 14th November 2017 and thereafter as per entry No. 9 of Notification No. 44/2017- Integrated Tax (Rate) dated 14th November 2017.

Ordered accordingly.
To be communicated.

11.04.2018
Panchkula.


(Sangeeta Karmakar)
Member CGST


(Vijay Kumar Singh)
Member SOST

Regd. AD/Speed Post

M/s AOV Agro Food Pvt. Ltd.,
Khasra No. 20,21,22 Tapkan, Mewat,
Haryana 122107

Copy to

1. Deputy Excise & Taxation Commissioner (ST), Mewat
2. The Assistant Commissioner, Central Tax Division, Mewat

