

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata – 700015

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| Name of the applicant | M D Mohta |
| Address | 3 rd Floor, 201A, Sadasukh Katra, Mahatma Gandhi Road, Kolkata-700009 |
| GSTIN | 19AAEFM4026E1ZJ |
| Case Number/ ARN | 11 of 2018 |
| Date of application | 09 th April, 2018 |
| Order No. & date | 08/WBAAR/2018-19 dated 05/07/2018 |
| Applicant's representative heard | Rahul Dhanuka, Legal Representative |

1. The Applicant, stated to be a Manufacturer of the item “Rakhi”, is seeking a Ruling on classification of “Rakhi”, on whether exemption under Notification No. 2/2017-Central Tax (Rate) dated 28/06/2017 (1126-FT dated 28/06/2017 of State Tax), (hereinafter referred to, collectively, as “Exemption Notification”) is applicable for such manufacture, and if not, the taxability of the same.

Advance Ruling is admissible on this question under Section 97(2) (a) of the CGST/WBGST Acts, 2017 (hereinafter referred to, collectively, as “the GST Act”).

The Applicant further submits that the question raised in the Application is neither decided by nor pending for decision before any authority under any provisions of the GST Act.

The officer concerned raises no objection to admission of the Application.

The Application is, therefore, admitted.

2. The Applicant states that :-

- a) As Manufacturer the intention is to supply “Rakhi”, including but not limited to, Decorative “Rakhi”, Designer “Rakhi”, & Fancy “Rakhi” (hereinafter referred to, collectively, as “Rakhi”) and these “Rakhi”s consist of, *inter alia*, Cotton thread, Zari thread, Silk Thread, Nylon Thread, Glass Beads, Plastic Beads, Coloured Stones, Metal Pendants and Rudraksha;
- b) The “Rakhi”s shall be manufactured in-house as well on job-work basis. Most of the people employed in the “Rakhi” industry belong to economically weaker sections and *inter alia* include housewives and widows who manufacture “Rakhi”s to earn a livelihood. Traditionally “Rakhi” has been considered a handicraft item and the manufacture or making of “Rakhi” invariably involves skilful pasting or attaching decorative items to threads;
- c) “Rakhi” is an ancient festival;
- d) Traditionally “Rakhi” used to be made up only of *Kalava* (i.e. cotton threads of red/orange colour);
- e) “Rakhi” was exempt from payment of VAT under several States, as well as from Central Excise duty under the earlier Tax Structure since it was considered as “handicraft”;
- f) The Exemption Notification exempts *Kalava* (raksha sutra) from payment of GST since it is listed as “puja samagri”;

- g) Reference has been made on FAQ published on CBEC website dated 03.08.2017;
- h) Reference has been made to Rule 3(b) of the Rules for Interpretation of the Customs Tariff Act, 1975 (hereinafter referred to as “the Interpretation Rules”);
- i) Various judgements have been referred to;
- j) If “Rakhi” is not considered to be exempt then it may be classifiable under and taxability determined in accordance to Serial No 224 or Schedule I and Serial No 171 of Schedule II of Notification No 1/2017-CT(Rate) dated 28.06.2017 (1125 – FT dated 28/06/2017 of State Tax), (hereinafter referred to as the “Rate Notification”)

3. The above points of the Applicant are being taken up for careful consideration and discussion, though not in the same order as listed above.

4. The Application states that the manufacture of “Rakhi” is intended to be taken up by the Applicant. All references to the manufacture and supply of “Rakhi” are in the future tense, eg “*intends to manufacture*”, “*shall be manufactured*”, “*traditionally*” “Rakhi” is considered a handicraft, etc. Nowhere does the Applicant state the actual process undertaken at its unit for making “Rakhi”. It is not clear from the Application whether or not “Rakhi”s are already being manufactured by them, whether or not craftspeople from economically backward classes are being employed by them or the process undertaken for the manufacture of “Rakhi”s.

However, on being specifically asked the Applicant has stated that till the time of filing the Application for Advance Ruling the manufacturing of “Rakhi” had not been begun by the unit. However, the Applicants admitted, that the manufacturing process of “Rakhi” has been started in their unit.

Hence, all references in the Application of the Applicant “intending to manufacture” is being taken up in the spirit of “already manufacturing” and discussed accordingly.

It appears from the Partnership Deed dated 31.03.2008 submitted by the Applicant that M/s M D Mohta has been in existence from 13.04.1987, if not earlier, and Partnership Deed dated 31.03.2008 submitted by the Applicant incorporates M/s M D Mohta Rakhi Pvt Ltd as the third Partner with claim to 50% of the share of the profits of the partnership. It appears from the Partnership Deed dated 31.03.2008 submitted with the Application that M/s M D Mohta Rakhi Pvt Ltd with an annual turnover of 10-25 crores is the controlling Partner of M/s M D Mohta.

On being specifically asked the Applicant has stated that till F/Y 2017-18 M/s M D Mohta was in the business of trading and the Turnover for the F/Y 2017-18 was less than Rupees 150 lakhs. The Applicant also informed that their majority partner, M/s M D Mohta Pvt Ltd clears “Rakhi” under Tariff Heading 6307.

5. The Applicant has stated that traditionally “Rakhi” has been considered as a handicraft item and invariably involves skilfully pasting or attaching decorative items to threads and that “Rakhi” was exempt from payment of VAT under several States, as well as from Central Excise duty under the earlier Tax Structure since it was considered as “handicraft”.

The Applicant, here, refers to “Rakhi” being traditionally referred to as “handicraft”.

Applicability of Notifications and Taxability of supplies are to be considered in the context of GST. Any reference to Notifications and Taxability of the earlier Tax regimes are to be considered only insofar as they have relevance in the GST regime.

Notification No 32/2017-Central Tax dated 15.09.2017, later amended as Notification No 38/2017-Central Tax dated 13.10.2017, provides a list of articles which are to be considered

as “handicraft goods” for the purpose of GST when made predominantly by hand by the craftsmen even though some machinery may also be used in the process.

“Rakhi” does not feature in this list.

Hence, “Rakhi” cannot be considered as “handicraft” for the purpose of GST.

6. The Applicant suggests that if “Rakhi” is not considered to be exempt then it may be classifiable under and taxability determined in accordance to Serial No 224 of Schedule I and Serial No 171 of Schedule II of the Rate Notification.

The Applicant, on being specifically asked, has also stated that one of its partners, M/s M D Mohta Pvt Ltd clears “Rakhi” under Tariff Heading 6307.

As per Rule 1 of the Interpretation Rules the titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In other words, even if a Heading or Sub-Heading apparently classifies a product, the article may be included or excluded as per the Section and Chapter Notes, i.e. 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, then only the Heading applies. So the Section and Chapter notes are to be referred to determine if the product is mentioned specifically as being included or excluded even if the Heading appears to be describing the product.

Section Notes of Chapter XI of Textile and Textile Articles covering Chapters 50 to 63, Note (II) states that for the purposes of this section, the expression "made up" means: (a) Cut otherwise than into squares or rectangles; (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets); (c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means; (d) Cut to size and having undergone a process of drawn thread work; (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or (f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

Clearly, “Rakhi” cannot be described as a “made up article” under Chapter 63 as per the above Section Note

7. The Applicant has referred to Rule 3(b) of the Interpretation Rules.

Rule 3(b) of the Interpretation Rules states that “*Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable*”.

“Rakhi” is an independently identifiable item. It is neither a mixture, nor a composite goods nor goods put up in sets for retail sale.. Rule 3(b) is not applicable in this case.

Unlike a chemical formula where the ingredients and their ratio are fixed and/or pre-determined “Rakhi” can be made up of innumerable materials in as many permutations and combinations as the manufacturer wills.

8. "Rakhi" is referred to as a festival by the Applicant. *Raksha Bandhan* (and not "Rakhi"), is the festival which is observed on the last day of the Hindu lunar calendar month of Shraavana, and on this day, sisters of all ages tie a "Rakhi", around the wrists of their brothers, traditionally investing the brothers with a share of the responsibility of their potential care. The expression "*Raksha Bandhan*," Sanskrit, literally, "the bond of protection, obligation, or care," is now principally applied to this ritual. "Rakhi", which the Applicant intends to manufacture, is this object which symbolises the bond of protection and is tied round the wrist of the brother.

History records variations of this ritual, but whatever the variation the emphasis is to denote the bond between the protector and the person in need of protection. Notable among these variations is the tying of "Rakhi"s among Muslims and Hindus as a form of protest against the Partition of Bengal in 1905. Leonard Elmherst's memoir *Poet and Plowman* records that Tagore transformed the religious tradition of *Raksha Bandhan* to a secular motif of unity among diversity and resisted *Banga Bhanga*, the Partition of Bengal, along communal lines. Newspaper annals, like *The Indian Express* refer to how Tagore deftly used the concept of brotherhood, togetherness and 'the thread of protection' as a medium to protest against British's partition policy by showing a picture of unity among the two communities. R. Siva Kumar in his book "Abanindranath: From Cultural Nationalism to Modernism" reproduces Abanindranath's recollection of his uncle's famous "*Rakhi*" *bandhan* day, during which Rabindranath transformed a holiday that usually involved ceremony only between siblings to include literally everyone he and his procession encountered, regardless even of religion, in an ecstatic expression of *swadeshi*.

It is clear that when Tagore masterfully used the "Rakhi" as a medium to protest against British's partition policy by showing a picture of unity among the two communities, in this variation too, the emphasis was on the feeling of brotherhood and the need to protect the weak by the strong.

Traditionally, and in all its variations, it is thus seen that the "Rakhi" is an object symbolising a sentiment and/or conveying a message. By no stretch of imagination can a "Rakhi", or the ritual of "Rakhi" be linked to religious ceremonies or rituals involving deities. References have been found to Sri Radha tying "Rakhi" on Shri Krishna. But here again, the reference is to the symbolic gesture of the need of protection.

"Rakhi", in other words, is not an essential part of any Puja or Religious Ceremony to pay obeisance to any deity. Mere inclusion of "Rakhi" in a Puja Thali at the discretion of either the Customer or the Supplier does not make it an integral and essential part of Puja Samagri.

Serial number 148 of the Exemption Notification lists the items to be considered as Puja Samagri and "Rakhi" is not listed therein.

"Rakhi", therefore, cannot attract NIL rate of duty under Serial No 9(1) of FAQ dated 03.08.2017 (later, Serial No 92(1) of F. No 332/2/2017-TRU issued by the Tax Research Unit, Govt of India, Ministry of Finance, Department of Revenue) (hereinafter referred to as the "TRU Clarification").

Nor can it be considered exempt in terms of Serial no. 148 of the Exemption Notification.

9. Serial No 92(2) of the TRU Clarification states that "Rakhi" *in form of Kalava* will attract NIL GST. Kalava is the sacred Hindu thread also called *mauli* or *charadu* in Hindi. It is tied by a priest or an older family member, typically grandparents or parents on the wrists of all the people attending the prayer ceremony. Cotton strings in form of yarn in full red are most common as is red with small bits of yellow. It is important to note here that i) Kalava is tied by a priest or senior family member during a prayer ceremony ii) a Kalava is made of Cotton Strings *in the form of a yarn* and iii) The colours of a Kalava are red and yellow.

The Application is clear in stating that the “Rakhi” which are being manufactured are not always of Cotton thread. Other elements mentioned are Zari, Nylon and Silk Threads. Even these are not exhaustive. The Applicant may use other forms of material to enable the “Rakhi”s being tied on the wrist.

The “Rakhi”s which are being manufactured include Decorative “Rakhi”, Designer “Rakhi”, & Fancy “Rakhi”. This again, is not an exhaustive list of the kind of “Rakhi”s being manufactured. The Applicant may manufacture other variants of “Rakhi” too.

The mention of Glass Beads, Plastic Beads, Coloured Stones, Metal Pendants and Rudraksha also clearly points to the fact that what the Applicant intends to manufacture *are not* merely Cotton threads in the form of yarn of specifically red and yellow in colours, in other words these rachis are not in the form of “Kalava”.

This is also obvious from the pictures submitted by the Applicant of the “Rakhi”s that will be manufactured by them.

Serial No 92(2) of the TRU Clarification is not applicable to the “Rakhi”s manufactured by the Applicant.

10. The Application, however, states that the Applicant intends to manufacture, *inter alia*, Decorative “Rakhi”, Designer “Rakhi”, & Fancy “Rakhi”. Although this is not an exhaustive list of the kinds of “Rakhi” the Applicant intends to manufacture, it is clear that these “Rakhi”s will be marketed with the emphasis on the Designer/Fancy/Decorative part of the “Rakhi” or even, designed in such a way as to be attractive to children for “Kids “Rakhi”, if intended. Hence, it is clear that the Decorative/Designer/Fancy is the factor on which “Rakhi”s will be supplied to consumers.

11. The Constitution (One Hundred and First Amendment) Act, 2016, introduces new Articles 246A and 269 A empowering the Centre and State of levy GST on *supply* of goods and services in terms of limitations prescribed therein. Moreover, the main focus of the GST Act is to tap in all the points of supply and the characteristic which *defines* an item at the *point of supply* is of paramount importance.

In the case of “Rakhi”, the item is supplied by the Applicant, as Decorative/Designer/Fancy/Kids “Rakhi” and customers are being motivated to buy the “Rakhi”s due to the specific characteristic which makes the “Rakhi” Decorative/Designer/Fancy/Kid’s and not merely to put round the wrist.

12. The various components which go into the making of “Rakhi” are innumerable of no fixed or predetermined ratio and both, the variety and the proportion in which they are used do not follow any fixed formula but are at the Manufacturer’s will. The resultant products are identifiable as new items, independent in manner and form of its constituent materials, and cannot be stated to be a mere assemblage of its constituent materials.

In other words, “Rakhi” retains its specific identity as a symbol of a bond involving the potential care of the sister by the brother, and not merely a conglomeration of discrete materials, is clearly not classifiable under a single Tariff code.

Moreover, under the GST Act the identity of an item at the *point of supply* is of paramount importance.

In this case “Rakhi” appeals to the end-consumers because of its specific characteristics which gives the identity of Decorative/Designer/Fancy/Kids “Rakhi”

13. Serial No 92(3) of the TRU Clarification states that “any other “Rakhi” [*i.e those which are not puja samagri or in the form of Kalava*] would be classified as per its constituent materials and attract GST accordingly”.

It is clear from Serial No 92(3) of the TRU Clarification that it is not the intention under GST to make “Rakhi” duty-free or non-taxable under a general clause but all other “Rakhi”s, i.e those which are not puja samagri or in the form of Kalava are to attract GST.

It is significant that the TRU Clarification does not mention the word “predominant” either in material content or in determining the value of the product. All the constituent materials are to be considered of equal importance irrespective of their ratio in terms of material content and/or final value of the product.

It is also clear from the TRU Clarification that it is a recognised and admitted fact that numerous materials are used in the making of “Rakhi” and *in the absence of any specific Tariff Code a “Rakhi” can be considered an article of any of these constituent materials.*

Rule 3(c) of the Interpretation Rules, requires to be resorted to, then, for the classification of “Rakhi”.

Rule 3(c) of the Interpretation Rules, states that “*When goods cannot be classified by reference to 3(a) [heading most specific] or 3(b) [applicable to mixture, composite goods and goods put up in sets for retail sale] they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration*”.

A typical “Rakhi”, as evidenced in the pictures submitted by the Applicant of “Rakhi”s intended to be manufactured by them, will have a i) cord/twine or any material to enable it to be put round the wrist; ii) one or many items made of different materials which will form the part of the embellishments of the “Rakhi” and give the “Rakhi” its defining characteristic as Decorative or Designer or Fancy, or even decide that the target consumer is a child for Kid’s “Rakhi”, as the manufacturer wills.

In accordance to Serial No 92(3) of the TRU Clarification, read with Rule 3(c) of the Rules for Interpretation of the Customs Tariff Act, 1975, the Tariff code of the “Rakhi” will be related to the item who’s Tariff occurs last in the numerical order of all the constituent materials.

For example, with reference to the pictures of the “Rakhi”s intended to be manufactured as provided by the Applicant, Fancy “Rakhi” of item number: RR-L 788 (OR1318) the declared constituent materials are glass beads, stone, cotton thread and plastic beads which fall under Chapter 70, Chapter 70/71 (depending on the nature of the stone), Chapter 52, Chapter 39, respectively. Assuming that there are no other constituent materials undeclared in the literature submitted by them, under Rule 3(c), this “Rakhi” will be classifiable under Chapter 70/71 and will attract GST accordingly.

Again, in item number RR-757, the declared constituent materials are metal pendant, stone ring, metal moti, cotton thread and plastic beads falling under Chapter 71 to 81 (depending on the metal), Chapter 70/71 (depending on the nature of the stone), Chapter 52, Chapter 39. Assuming that there are no other constituent materials undeclared in the literature submitted by them, under Rule 3(c) this “Rakhi” will be classifiable under Chapter 71 to 81 (depending on the metal) and attract GST accordingly.

14. The Applicant states that the intention is to supply “Rakhi”, *including but not limited to*, decorative “Rakhi”, Designer “Rakhi”, & Fancy “Rakhi” and these “Rakhi”s consist of, *inter alia*, Cotton thread, Zari thread, Silk Thread, Nylon Thread, Glass Beads, Plastic Beads, Coloured Stones, Metal Pendants and Rudraksha.

On being asked specifically whether or not the list of materials constituting the “Rakhi”s is a complete list, the Applicant has admitted that the list provided in the Application is not a complete list and while it more or less covers most of the materials that are being used it does not rule out the use of materials not included in the list.

It is, thus, clear from the Applicant’s statement that other forms of “Rakhi” may be manufactured and that a complete “Rakhi” may constitute materials other than those listed.

Since the Applicant is unable to provide an exhaustive and definite list of the constituent materials of the “Rakhi”s which are intended to be manufactured Serial No 92(3) of the TRU Clarification, read with Rule 3(c) of the Interpretation Rules, will have to be applied in the classification of the item.

15. The Applicant has referred to various case laws which appear to have relevance on the instant case.

The judgment in the case of Commissioner, VAT vs Taneja Mines Pvt Ltd [2011 (273)ELT 228 (Del)] is not relevant to the instant case since “Rakhi” is an independently identifiable item and the materials that go into the making of a “Rakhi” cannot be held as mere accessories.

The judgement in the case of A V Venkateswaran, Collector of Customs, Bombay vs Ramchand Sobhraj Wadhvani And Another [1983 (13) ELT (1327 (SC))] too, is not relevant to the instant case since “Rakhi” is an independently identifiable item and it is not a case of a general classification gaining precedence over a specific classification.

The judgement in the case of A. Nagaraju Bros vs State of Andhra Pradesh [1994 (72)ELT 801 (SC)] again, is not relevant to the instant case since “Rakhi” is known as such in both, common and commercial parlance and the predominant material that goes into the making of a “Rakhi” varies at the manufacturer’s will.

The judgement in the case of Kemrock Industries & Exports Ltd vs Commr of C. Ex, Vadodara [2007(210)ELT 497(SC)] held that composite goods are to be classified on the basis of material or component that gives the product its essential character. As has been discussed in the earlier paragraphs the essential character of “Rakhi” though traditionally may be for putting round the wrist, descriptions like Decorative/Designer/Fancy/Kids’ clearly state that the embellishments used will play an important role in determining the characteristics of the “Rakhi”. Hence, this judgement is not squarely applicable.

The judgment in the case of Karamchand Appliances Pvt Ltd vs Commr of C Ex, Chandigarh [2012 (284) ELT 692 (Tri-Del)] is not relevant because “Rakhi” is not a combination pack but an independently identifiable product.

In the case of Collector of Central Excise vs Fusebase Eltoto Ltd [1993 (67) ELT 30 (SC)] it was held that in the absence of statutory definition of an article its classification is to be based on understanding in common parlance. This is squarely applicable with the case of “Rakhi”.

16. As is evident from the above discussion and considerations, “Rakhi” is an independently identifiable product which may be made up of innumerable materials of no fixed or predetermined ratio, and yet retain its specific identity as a symbol of a bond involving the potential care of the sister by the brother, and not merely an assemblage of discrete materials. “Rakhi” cannot be termed as a “handicraft” item under GST under Notification No 32/2017-Central Tax dated 15.09.2017, (later amended as Notification No 38/2017-Central Tax dated 13.10.2017).

It is also seen that “Rakhi” is not purely *puja samagri* as it is not an *essential and integral* part of any Puja or Religious Ceremony to pay obeisance to any Hindu deity, and that “Rakhi” has

been historically used to emphasise the bond between Hindus and Muslims. “Rakhi”, therefore, cannot attract NIL rate of duty under Serial No 92(1) of the TRU Clarification, nor can it be considered “exempt” in terms of Serial no. 148 of the Exemption Notification since it is not listed therein.

With reference to the list of various materials submitted along with the Application for the “Rakhi” the Applicant intends to manufacture, though it is stated that the list is not an exhaustive one, and also with reference to the pictures provided by the Applicant of “Rakhi” intended to be manufactured, it is clear that a “Rakhi” may be made of innumerable materials at the manufacturer’s will and that it will not be restricted to mere yellow and red yarn of “Kalava”. The “Rakhi” the Applicant intends to make, therefore, are not in the form of “kalava” and hence, cannot attract NIL rate of duty under Serial No 92(2) of the TRU Clarification.

The list of materials provided includes Silk, Nylon, Zari and Cotton threads, as well as other materials such as Glass Beads, Plastic Beads, Coloured Stones, Metal Pendants and Rudraksha. As stated in the Application, the “Rakhi” the Applicant intends to manufacture may be of a variety of materials, as well as be marketed as designer/decorative/fancy. So all the constituent materials are to be considered under Serial No 92(3) of the TRU Clarification and “Rakhi” is to be classified in terms of Rule 3(c) of the Interpretation Rules and will be leviable to GST accordingly.

17. The case laws referred to by the Applicant have been considered carefully. It is seen that “Rakhi” is an independently identifiable product and is also known to be so in common and commercial parlance. The multifarious constituents that go into the making of the “Rakhi” cannot be considered as accessories; the material which provides the essential character to “Rakhi” is varied and the buyer may also be motivated to purchase the same as much for its designer/decorative/fancy part, as for its symbolic characteristic of a bond of protection.

In view of the foregoing we rule as under

RULING

The Applicant has to classify the goods “Rakhi” as per its constituent materials in accordance with Rule 3(c) of Rules for Interpretation of the Customs Tariff Act, 1975, as laid down in Explanatory Notes (iv) of Notification No 1/2017-CT(Rate) dated 28.06.2017 (Note (v) of 1125 – FT dated 28/06/2017 of State Tax).

Rakhi will attract GST in accordance to its classification as stated above.

Exemption under Notification No. 2/2017-Central Tax (Rate) dated 28/06/2017 (1126-FT dated 28/06/2017 of State Tax) is not applicable for “Rakhi”.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

Sd-

(VISHWANATH)
Member

West Bengal Authority for Advance Ruling

Sd-

(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling