

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY**

PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-600 006.

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, IRS Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai.
2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (ST)/ Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

ORDER No. 43 /AAR/2019 DATED 26.09.2019

GSTIN Number, if any / User id	33ABAPM7617A1Z7.
Legal Name of Applicant	Murali Mogan Firm,
Registered Address/Address provided while obtaining user id	No: 77, Kothapetta (Vilage) Nethaji road, Krishnagiri, Krishnagiri - 635 001.
Details of Application	GST ARA- 01 Application SI.No. 18 / 2019 / ARA dated 14.09.2018
Concerned Officer	State : The Assistant Commissioner (ST) 2/172, Bangalore Road, Opp. Old Housing Board, Krishnagiri Assessment Circle, Krishnagiri - 635 001. Centre : Salem Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Whole sale business.
B Description (in Brief)	Tamarind Fruit (undried)
Issue/s on which advance ruling required	Classification of Goods / Services or bo
Question(s) on which advance ruling is required	1. Why not we classify the Tamarind fruit obtained from the farmer under HSN 0810, as fresh fruit since the product does not undergo any process of manufacture or undergo any value addition. 2. Why not the department consider the Tamarind fruit obtained from the farmers classify under HS 0810 as Fresh Fruit.

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai

under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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

M/s. Murali Mogan Firm, No: 77, Nethaji road, Kothapetta Village, Krishnagiri, - 635 001, (hereinafter called the Applicant) is a registered taxable person under GST with GSTIN: 33ABAPM7617A1Z7. The applicant is engaged in procuring Tamarind fruit from the farmers across Tamil Nadu, which is an agro product and supplying the same to the processing units. After completion of procurement the fruits are packed in gunny bags and supplied through transporting agencies to the processing units. The Applicant has sought Advance Ruling on the following questions:

- 1) Why not we classify the Tamarind Fruit obtained from the farmers under HSN 0810, as **“fresh fruit”**, since the product does not undergo any process of manufacture or undergo any value addition.
- 2) Why not the department consider the Tamarind fruit obtained from the farmers classify under HSN 0810 as Fresh Fruit.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant stated that they are engaged in procuring Tamarind fruit from the farmers across Tamil Nadu, which are basically and essentially an agro product and supply the same to the processing units. On procurement, the fruits are filled in gunny sacks and supplied through transporting agencies to the processing units. The processing units collect such fruits from various suppliers like them and process it by removing the shell, the seeds, soil impurities attached to fruits and supply the same as processed Tamarind for consumption by the public either through wholesalers or retailers.

2.2 Vide Notification 1/2017 dated 28.6.2017 & Schedule II under Sl. No.17 HSN Code 0813 namely Tamarind fruit, Dried other than that of headings 0801 to 0806 to 0810 attract a Central Tax of 5 %. Vide Notification 2/2017 dated 28.6.2017 HSN 0810 under serial No 57 exempts from whole of central Tax on Other fruit such as strawberries, raspberries, blackberries, mulberries and loganberries, black, white or red currants and gooseberries, cranberries, bilberries and other fruits of the genus vaccinium, Kiwi fruit, Durians, Persimmons, Pomegranates, Tamarind, Sapota (chico), Custard-apple (ata), Bore, Lichi, fresh. In tune with Notification 2/2017 -Central Tax (Rate) dated 28th June, 2017 as fresh fruits from the tree they have been classifying them under HSN 0810 and are availing tax exemption.

2.3 A squad official had detained their goods and insisted that these goods need to be classified under HSN 0813 as Dried Tamarind that attracts GST of 5 % in terms of Notification 27/2017 dated 22.9.2017 which stipulates that under schedule 1 after sl. no 33 and entries relating thereto, the following serial no. and entries shall be inserted, namely, **“33A 0813 Tamarind, Dried ”**

2.4 The farmers collect ripened Tamarind fruits by shaking and smacking the branches using long clubs/poles. As the fruits fall to the ground the outer shell gets cracked and come in to contact with soil deposits from the ground. They are buying these fruits from the farmers and supply to the processing units as such for further processing. It is pertinent to mention here that they are buying from the farmers the whole fruit along with seed and without subject to any process. These fruits at the consignees end will be subjected to processes such as removal of remnants shells, outer fibrous ribs, removal of other impurities like sand/soil, removal of seeds and finally drying them and generate wads of Tamarind. Only after these processes wads of Dried Tamarind are packed and sold in the market for ready consumption.

2.5 It is their contention that HSN 0813 describes Dried Tamarind as one which is industrially Dried for sale in the market ready for consumption whereas, the HSN 0810 is meant for fruits, harvested by the farmers. The term “Agricultural Produce” has been defined by the Notification No. 9/2017- IGST (R) to mean “any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable

for primary market.” In as much as, the Tamarind fruits obtained from farmers on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market, it cannot be classified as processed product (Dried Tamarind).

3. The applicant was heard in the matter on 19.06.2019. They stated that they supply both processed and fresh Tamarind. They procure from farmers fresh tamarind which they supply for further processing to various traders. This has seeds, shell and fiber. In this case it should be classified under 0810 and exempt from GST. Processed Tamarind which do not have seed, fiber and shell, they classify under 0813 and pay 5% GST. They have submitted purchase and sale invoices for both. In case of fresh Tamarind, it is self-invoice as they buy from farmers /unregistered. They have stated that in Andhra Pradesh and in Dindigul, Tamil Nadu their consignments were detained by the state authorities for HSN clarification for which they paid penalty. However, they state that recent Circular 10/2019 issued by Commissioner, TNGST, roving squads should not verify classification issue but make a reference to jurisdiction Assessment circle. The state jurisdiction officer was present and reiterated the stand as per her written submission and stated that no proceedings /reference on this issue for the taxpayer is pending.

The applicant was heard again on 26.09.2019, where they stated that the product they supply is fresh and they procure as such from farmers without any sun drying.

4. The jurisdictional Officer (State), has furnished the comments on the application, which is given under verbatim:

- The grounds for representing to the Advance Ruling Authority by the wholesale Traders emanated due to a detention of a consignment of Tamarind fruits caused in transit by the roving squad officer and he ruled that the consignment was nothing but dried Tamarind and ought be levied with GST at 5% in terms of Notification 27/2017 dated: 22.09.2017. Though the trader attempted to justify that the consignment is nothing but Tamarind fruits, the officer insisted on classifying them as Dried Tamarind and to pay GST. Therefore, the applicant submitted this application to determine the classification and rate of tax for the Tamarind fruit obtained from farmers”.
- Tamarind which is the subject matter here in, is identified under two different varieties, namely, Tamarind fruits under schedule I and Tamarind schedule II of the GST Tariff.

- The product Tamarind needs a thorough scrutiny under the guidance of the general rule of interpretation Rule 3 as it has been classified under two different headings under the GST Tariff as detailed under.
 - 0810 – Tamarind, Fruit, Fresh
 - 0813 – Tamarind Dried
- Rule 3(a) specifies that where two or more Headings seem to apply, the one which provides the most specific description of the product in question should be used. This means that a Heading which names the natural product should be used in preference to one which only names a category to which the product could belong. Similarly a heading that describes the whole product should be used in preference to one which describes part of it and the actual Tamarind Fruits may not be applied for under HSN 0810 of the GST tariff.
- Similarly Interpretation Rule 3(C) deals with cases in which goods seems to fit in more than one heading and the essential character cannot be determined. In this case product should be classified under the heading which occurs in the last numerical order.
- Essential characters of the Tamarind fruits and Tamarind Dried cannot be separately determined accordingly last numerical order as per this clause HSN 0813 shall be applied.
- The Tamarind fruit obtained from the farmers and supplied to the whole sale traders retain its Form and characters in when it has been harvested from trees.
- Therefore the applicant answer the most specific description as fruits, and therefore the actual product Tamarind Fruits, be used in preference to Dried Tamarind which is only name of a category to which the product belongs. Dried Tamarind is nothing but a processed product from Processing Industry, which is subjected to further processing such as removing of shells or removing of seeds, and drying to remove moisture and making it ready for consumption. However essential characters of Tamarind fruits and Tamarind Dried cannot be classified separately.
- In conclusion, Tamarind fruits procured from farmers and Tamarind Dried after the process of shell removal, seed removal and drying are having same characters and their essential character cannot be determined separately accordingly, the Tamarind fruits and Tamarind Dried are classifiable under HSN 0813 as per Rule 3 (c) of GIR (General Rule of Interpretation).

5. We have carefully examined the Oral and written submissions made by the applicant and the written comments furnished by the Assistant Commissioner(ST), Krishnagiri, the Jurisdictional officer. We find that the applicant is engaged in procuring tamarind fruit from the farmers across Tamilnadu and supply them to the processing units. As stated by the applicant, tamarind is not dried by them or the by the farmers and is supplied as such without sun drying. The question raised by the applicant seeking ruling is :

“Why the tamarind fruit obtained from the farmers be not classified under HSN 0810, as fresh fruit since the product does not undergo any process of manufacture or undergo any value addition.”

6.1 In terms of explanation (iii) and (iv) to Notification No. 1/2017 - Central Tax (Rate) dt. 28-06-2017, tariff heading, sub-heading, heading and chapter shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 and the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall be applied for the interpretation and classification of goods.

6.2 The relevant entries of the Customs Tariff is given under for ease of reference:

CTH: 0810

0810	OTHER FRUIT, FRESH
0810 10 00	- Strawberries
0810 20 00	- Raspberries, blackberries, mulberries and loganberries
0810 30 00	- Black, white or red currants and gooseberries
0810 40 00	- Cranberries, bilberries and other fruits of the genus <i>Vaccinium</i>
0810 50 00	- Kiwi fruit
0810 60 00	- Durians
0810 70 00	- Persimmons
0810 90	- Other :
0810 90 10	--- Pomegranates
0810 90 20	--- Tamarind, fresh
0810 90 30	--- Sapota (<i>chico</i>)
0810 90 40	--- Custard-apple (<i>Ata</i>)
0810 90 50	--- Bore
0810 90 60	--- Lichi
0810 90 90	--- Other

CTH : 0813

0813	FRUIT, DRIED, OTHER THAN THAT OF HEADINGS 0801 TO 0806; MIXTURES OF NUTS OR DRIED FRUITS OF THIS CHAPTER
0813 10 00	- Apricots
0813 20 00	- Prunes
0813 30 00	- Apples
0813 40	- <i>Other fruit:</i>
0813 40 10	--- Tamarind, dried
0813 40 20	--- Singoda whole (water nut)
0813 40 90	--- Other
0813 50	- <i>Mixtures of nuts or dried fruits of this Chapter:</i>
0813 50 10	--- Mixtures of nuts
0813 50 20	--- Mixtures of dried fruits

From the above, it is evident that "Tamarind, fresh" is classified under CTH 0810 90 20 and "Tamarind, dried" is classified under CTH 0813 40 10. Thus, Tamarind fresh and Tamarind dried are two different products classified under two different tariff headings. The task at hand is to determine what is to be classified as 'Fresh' and what is to be classified as 'Dried'.

To have clarity on the products, the corresponding Explanatory Notes(HSN), are examined as under:

Explanatory Notes to CTH 0810:

08.10 - Other fruit, fresh.

- 0810.10 - Strawberries
- 0810.20 - Raspberries, blackberries, mulberries and loganberries
- 0810.30 - Black, white or red currants and gooseberries
- 0810.40 - Cranberries, bilberries and other fruits of the genus *Vaccinium*
- 0810.50 - Kiwifruit
- 0810.60 - Durians
- 0810.70 - Persimmons
- 0810.90 - Other

This heading covers all edible fruits not falling in any preceding heading of this Chapter nor included in other Chapters of the Nomenclature (see the exclusions in the General Explanatory Note to this Chapter).

It therefore includes :

- (1) Strawberries.
- (2) Raspberries, blackberries, mulberries and loganberries.
- (3) Black, white or red currants and gooseberries.
- (4) Cranberries, bilberries, blueberries, myrtle berries and other fruits of the genus *Vaccinium*.
- (5) Kiwifruit (*Actinidia chinensis* Planch. or *Actinidia deliciosa*).
- (6) Durians (*Durio zibethinus*).
- (7) Persimmons (kakis).
- (8) Boysenberries, rowan berries, elderberries, sapodilla (naseberries), pomegranates, cactus figs (prickly pears), rose hips, jujubes, medlars, longans, litchi, soursops, sweetsops and fruit of the species *Asimina triloba* also known as pawpaws.

The heading excludes juniper berries (heading 09.09).

Explanatory Notes to CTH 0813:

08.13 - Fruit, dried, other than that of headings 08.01 to 08.06; mixtures of nuts or dried fruits of this Chapter.

0813.10 - Apricots

0813.20 - Prunes

0813.30 - Apples

0813.40 - Other fruit

0813.50 - Mixtures of nuts or dried fruits of this Chapter

(A) Dried fruit.

This heading includes dried fruits which when fresh are classified in headings 08.07 to 08.10. They are prepared either by direct drying in the sun or by industrial processes (e.g., tunnel-drying).

The fruits most commonly processed in this way are apricots, prunes, apples, peaches and pears. Dried apples and pears are used for the manufacture of cider or perry as well as for culinary purposes. With the exception of prunes, the fruits are usually halved or sliced, and stoned, cored or seeded. They may also be presented (particularly in the case of apricots and prunes) in the form of slices or blocks of pulp, dried or evaporated.

The heading covers tamarind pods. It also includes tamarind pulp, without sugar or other substances added and not otherwise processed, with or without seeds, strings or pieces of the endocarp.

From the Explanatory notes, it is evident that fresh fruits classified in headings 0807 to 0810, when prepared either by direct drying in the sun or by industrial processes, the same is classified as 'dried fruits' under 0813. Further, 'tamarind pods', unprocessed tamarind pulp with or without seeds, strings or pieces of the endocarp are covered under 0813. From the above, it can be inferred that 'tamarind pods' when dried are classified under 0813.

6.3 In the case at hand, we find that the applicant has explained the nature of their product as –the farmers collect ripened tamarind fruits by shaking and smacking the branches using long clubs/ poles.; As the fruits fall to the ground the outer shell gets cracked and come in contact with soil deposits from the ground.; they are buying these fruits from the farmers and supply to the processing units as such, where these fruits will be subjected to processes such as removal of remnants shells, outer fibrous ribs, removal of other impurities like sand/soil, removal of seeds and finally drying them and generate wads of tamarind. The applicant has further stated that the tamarind fruits obtained from farmers are not sun dried. The applicant raises Bill of Supply/invoice on purchase of 'Tamarind Fresh' from the farmers who are unregistered under GST.

6.4 The jurisdictional authority has opined that the essential characters of the Tamarind fruits, and Tamarind dried cannot be separately determined and therefore following General Rule of Interpretation Rule 3(c), the tamarind fruits and tamarind

dried are classifiable under HSN 0813. We don't find merit in this opinion. There are specific headings 'Tamarind fresh-08109020' and 'Tamarind dried-08134010' in the Tariff and as per the Explanatory notes(HSN), dried fruits classifiable under 0813 are those falling under CTH 0806 to 0810, prepared by either direct drying in the sun or by industrial processing. As per General Rule of Interpretation Rule 1, Classification shall be determined according to the terms of the headings and if it cannot be done then the classification is to be arrived at following the further rules. Tamarind fresh and Tamarind Dried are specific tariff headings and what constitutes 'Dried fruit' is clarified in the Explanatory notes(HSN). When a specific Tariff heading is available, there is no necessity to follow further interpretative rules. In the case at hand, the applicant has stated that the 'Tamarind fruit' purchased by the farmers do not undergo any process of drying either by sun or industrial process and is hence, classifiable under CTH 08109020 as 'Tamarind, fresh'.

7. In view of the above, we rule as under.

RULING

Tamarind supplied by the applicant which has not undergone the process of direct drying in sun or by industrial process is classifiable under CTH '08109020'.

K. Manasa
Ms. Manasa Gangotri Kata,
Member, CGST

Shri Kurinji Selvaan V.S.
Shri Kurinji Selvaan V.S.,
Member, TNGST

To
Murali Mogan Firm,
No: 77, Kothapetta (Vilage)
Nethaji road, Krishnagiri,
Krishnagiri - 635 001.

Copy Submitted to:

1. The Additional Chief Secretary/Commissioner of Commercial Taxes,
IInd Floor, Ezhilagam, Chepauk, Chennai - 600 005.
2. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai-600034.



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Krishnagiri Assessment Circle,
Krishnagiri - 635 001.
2. The Commissioner of GST & C.Ex., Salem Commissionerate.
No.1, Foulkes Compound Anaimedu,
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