

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S. 98 OF
THE GOODS AND SERVICES TAX ACT, 2017

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 29.10.2018 from M/s General Mills India Pvt. Ltd., Ghaziabad, Uttar Pradesh – Order– Reg.

1) M/s General Mills India Pvt. Ltd., 121 Brindaban Garden, Sahibabad, Ghaziabad Uttar Pradesh, 201005 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAACG1773B1ZY.

2) The applicant is engaged in the manufacture and sale of various types of food products including Atta, Wheat flour, Meslin flour, Maida, Cake mixes, Ready to Eat products, etc. The key brands of General Mills include Pillsbury, Betty Crocker, Parampara, Haagen Dazs, etc,

3) The Applicant has submitted application for Advance Ruling dated 29.10.2018 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexures and attachment.

4) The Applicant in his application sought clarification and Advance Ruling as follows: –

i)The use of the name of the Applicant *i.e.* 'General Mills India Pvt. Ltd on the packaging for supply of Products by the Applicant solely for the limited purpose of complying with the mandatory requirement under Chapter 2 of FSSAI Regulations and not for the purpose / with the intention of indicating a connection in the course of trade between the Products and the Applicant, does not amount to 'bearing a registered brand name' or 'bearing a brand name on which an actionable claim or enforceable right in a court of law is available' in terms of S. No. 73 of the

Notification No 28/2017-Central Tax (Rate) dated 22 September 2017 (Amending Notification).

Therefore, the supply of Products by the Applicant is covered within the scope of S. No. 73 of the said Amended Exemption Notification and hence the Applicant is entitled to claim exemption from payment of GST on supply of Products under the said S. No. 73 of Amended Exemption Notification.

ii) Without prejudice to the above, assuming that use of the name of the Applicant *i.e.* 'General Mills India Pvt. Ltd' on the packaging for supply of Products by the Applicant solely for the limited purpose of complying with the mandatory requirement under Chapter 2 of FSSAI Regulations, amounts to 'bearing a registered brand name' or 'bearing a brand name on which an actionable claim or enforceable right in a court of law is available' in terms of S. No. 73 of the Amended Exemption Notification, then the Applicant is eligible to voluntarily forego the enforceable right to such brand name (*i.e.* the expression 'General Mills India Pvt. Ltd'), in the manner as prescribed under the Amended Exemption Notification and claim exemption from payment of GST on supply of Products under said S. No. 73 of Amended Exemption Notification.

5) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report.

6) The applicant was granted an opportunity to be heard in person fixed on 03.01.2019. Mr. Aslam, manager taxation and Mr. Amar Nanda, C.A. & consultant SRBC & Associates LLP Authorized representatives on behalf of applicant appeared for hearing on the date of Personal Hearing. Mr. Shalab Bindal, Inspector, Div-IV, CGST, Ghaziabad appeared on behalf of Department during the personal hearing. They submitted/intended/stated:-

That they had already submitted their views in their letter dated 29/10/18 and would like to reiterate the same.

DISCUSSION AND FINDING

7) We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the question sought by the applicant to decide before us are:-

i) The use of the name of the Applicant *i.e.* 'General Mills India Pvt. Ltd' on the packaging for supply of Products by the Applicant solely for the limited purpose of complying with the mandatory requirement under Chapter 2 of FSSAI Regulations and not for the purpose / with the intention of indicating a connection in the course of trade between the Products and the Applicant, does not amount to 'bearing a registered brand name' or 'bearing a brand name on which an actionable claim or enforceable right in a court of law is available' in terms of S. No. 73 of the Amended Exemption Notification.

Therefore, the supply of Products by the Applicant is covered within the scope of S. No. 73 of Amended Exemption Notification and hence Applicant is entitled to claim exemption from payment of GST on supply of Products under the said S. No. 73 of Amended Exemption Notification.

ii) Without prejudice to the above, assuming that use of the name of the Applicant *i.e.* 'General Mills India Pvt. Ltd' on the packaging for supply of Products by the Applicant solely for the limited purpose of complying with the mandatory requirement under Chapter 2 of FSSAI Regulations, amounts to 'bearing a registered brand name' or 'bearing a brand name on which an actionable claim or enforceable right in a court of law is available' in terms of S. No. 73 of the Amended Exemption Notification, then the Applicant is eligible to voluntarily forego the enforceable right to such brand name (*i.e.* the expression 'General Mills India Pvt. Ltd'), in the manner as prescribed under the Amended Exemption Notification and claim exemption from payment of GST on supply of Products under said S. No. 73 of Amended Exemption Notification.

8) It is to note that the applicant is engaged in procuring wheat from local vendors located in the states of Uttar Pradesh and Madhya Pradesh. Subsequently, the Applicant undertakes supply of wheat to its job worker located in the states of Uttar Pradesh and

Madhya Pradesh, respectively, for manufacture of finished product i.e. Wheat flour, Meslin, Atta and Maida.

The job worker undertakes the following activities on the wheat received from the Applicant:

- a) The wheat is cleaned with the help of various machines such as reel machine, separator, destoner and cockle cylinder, to remove foreign material and poor quality or infested kernels
- b) Subsequently, the wheat is tempered and conditioned for 38 hours at 16% moisture. After tempering, the wheat undergoes the milling process of break and reduction roll to produce the finished product i.e. Wheat flour. Meslin, Atta and Maida
- c) The finished product is then subject to a stream selection process before being packed in to wheat bags and undergoing metal detection
- d) Pursuant to the above, the job worker supplies the finished product ie Wheat flour, Meslin, Atta and Maida manufactured ('Products') to the Applicant in the state of Madhya Pradesh and Uttar Pradesh, respectively.

Subsequently, the Applicant undertakes supply of said products either to its own locations (by way of interstate stock transfer) or to its customers located across India i.e. commercial entities who use the products as raw material/ inputs in their final product. Further, these Products other than Maida are also sold by the Applicant to retail customers through wholesalers, distributors, retailers etc. or to various businesses.

The applicant is packing their product which are classifiable as Wheat or Meslin flour in unit containers using the name of the applicant i.e. M/s General Mills India Pvt. Ltd.

9) The Notification No. 2/2017-Central Tax (Rate), dated 28th June, 2017 (and corresponding notifications under SGST Acts and IGST Act) is the central point of discussion here. The said notifications exempt various goods and services from the payment of duty.

Vide Notification 28/2017-Central Tax (Rate) dated 22.09.17 the words "other than those put up in unit container and bearing a registered brand name", the words, brackets and letters "other than those put up in unit container and,- (a) bearing a registered brand

name; or (b) bearing a brand name on which an actionable claim or enforceable right in a 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 the conditions as in the ANNEXURE I]”, were substituted. Therefore, for availing exemption from whole of the duty, the goods shall be other than those goods fulfilling the said conditions mentioned in (a) and (b).

10) During the hearing, the Authorized representatives for the Applicant had drawn our attention to the fact that to discourage the circumvention of the conditions of the notifications by the ploy of deregistering of brand names while continuing to mention the same on goods in order to avail the exemption, the said notification has been subsequently amended by Notification No 28/2017 –Central (Rate), dated 22nd Sept. 2017, resulting in exclusion of the said goods from the exemption available under the said notification if the same are put up in a unit container and bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available (other than those where act actionable claim or enforceable right in respect of such brand has been foregone voluntarily, subject to the conditions as in the Annexure-I). It is seen therefore that the said exemption is targeted for reduction in prices of unbranded goods for the purpose of exemption from GST, since branded goods carry value addition which is intended to be taxed.

The brand name, as defined under the said GST notification, includes any name, which may be name of the manufacturer as well, which may be seen as under:-

“The phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.”

It is common knowledge that the name of a manufacturer, mentioned on a product, duly indicates a connection in the course of trade between the goods in question and such manufacturer; therefore, in view of the above definition, the name of the applicant mentioned on the packaging of the goods under reference as the

manufacturer thereof, qualifies as a brand name on which an actionable claim or enforceable right in a court of law is available.

11) Further, the ruling of the Authority for Advance Ruling under GST, Maharashtra reported at 2018 (15) G.S.T.L. 742 (App. A.A.R. - GST) in the case of M/s ADITYA BIRLA RETAIL LIMITED also supports the said view wherein it was held that "Thus proposed change of removing brand name "MORE" and logo "Aditya Birla Retail" and replacing it with name 'Aditya Birta Retails Ltd.' is not going to make any difference so far as establishing connection of goods with manufacturers"

In the instant case, the applicant is using their name in place of any logo or brand name, which enables the customers to connect the product of the applicant with the name of the manufacturer i.e. General Mills India Pvt. Ltd. Therefore, the above rulings of the Authority for Advance Ruling also applicable in the instant case.

In view of the above, the answer to the first question is in the negative, i.e., the supply of the said product by the applicant is not exempted under the heading no. 73 of notification no. 2/2017- Central tax (rate) dated 28th June, 2017 and the corresponding notification issued under the UPGST Act, 2017.

12) Now, coming to the second point raised by the applicant that, if the Applicant voluntarily forego the enforceable right to such brand name (i.e. the expression '*General Mills India Pvt. Ltd*'), in the manner as prescribed under the Amended Exemption Notification and claim exemption from payment of GST on supply of Products under said S. No. 73 of Amended Exemption Notification, the applicant will be eligible for exemption under the said notification.

In the instant case, the applicant is packing their product in unit containers with the name '*General Mills India Pvt. Ltd*' on the packaging for supply of Products. Since, Wheat or Meslin flour packed in unit containers are exempted under the said notification only if the manufacturer fulfills the condition (b) of the said notification subject to the conditions as in the Annexure-I which are as follows:

For foregoing an actionable claim or enforceable right on a brand name,-

(a) the person undertaking packing of such goods in unit containers which bears a brand name shall file an affidavit to that effect with the jurisdictional

commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and

(b) the person undertaking packing of such goods in unit containers which bear a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii)(a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily.


Therefore, it is clear that if the applicant voluntarily foregoes the brand name used by them subject to conditions as in the Annexure-I of the said notification, the applicant shall be eligible for exemption from duty under the said notification.

In view of the above, both the members unanimously rule as under;

RULING

In respect of point (i) to the grounds of Appeal, we hold that the use of the name of the Applicant *i.e.* 'General Mills India Pvt. Ltd on the packaging for supply of Products by the Applicant solely for the limited purpose of complying with the mandatory requirement under Chapter 2 of FSSAI Regulations on the proposed packing, would be construed as 'brand name' for the purpose of Exemption Notification.

In respect of point (ii) to the grounds of Appeal, we hold that if the Applicant voluntarily forego the enforceable right to such brand name subject to fulfillment of the conditions in Annexure-I of the Notification No. 28/2017-Central Tax (Rate) dated 22.09.2017, in that case applicant will be exempted from the tax.


Vivek Kumar Jain
Member of Authority for Advance
Ruling


Hari Ram
Member of Authority for Advance
Ruling

To,

M/s General Mills India Pvt. Limited,
902, 9th Floor Ventura, Hiranandani Business Park,
Central Avenue, Powai, Mumbai
Maharashtra, 400076.

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 21

Date: 25/01/2019

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
- ✓ 2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & CEX, Ghaziabad, Uttar Pradesh.
4. The Deputy Commissioner, CGST & Central Excise, Division-IV, Ghaziabad, Uttar Pradesh;
5. Through the Additional Commissioner, Commercial Tax, Ghaziabad, Uttar Pradesh to jurisdictional tax assessing officers.