


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
---	---

ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2021/12
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/01)

Date:08.03.2021

Name and address of the appellant	:	M/s. Pratham AgroVat Industries Survey No.193 P, At & Po Indrad, Ta. Kadi, Mehsana - 382715.
GSTIN of the appellant	:	24AAHFP0758M1ZY
Advance Ruling No. and Date	:	GUJ/GAAR/R/05/2020 dated 17.03.2020
Date of appeal	:	22.06.2020
Date of Personal Hearing	:	13.10.2020
Present for the appellant	:	Shri N.N.PATEL Advocate

M/s. Pratham Agro Vat Industries (hereinafter referred to as the “appellant”) filed an application for advance ruling before the Gujarat Authority for Advance Ruling (herein after referred to as the ‘GAAR’) wherein it requested to decide the tariff heading under which the product ‘Rice Bran (22+ Oil)’ is covered and also to decide the rate of Goods and Services Tax (GST) applicable on the said product.

2.1 The GAAR, *inter-alia* observed that the product is not ‘Rice Bran’ within the meaning of ‘Rice Bran’. It further observed that in absence of actual process undertaken on the raw materials, it could only be concluded that product is a combination of Rice Husk of Poha – Mamra and Sludge / Oil Wax Oil; that from the scarce information provided in the application, it is understood that the appellant is a chemical or allied industries; that the actual processes undertaken and the resultant product had not been accurately specified and as such, the only option available was to classify the said product in the residual entry of Chapter 38 pertaining to Miscellaneous Chemical Products.

2.2 The GAAR, vide Advance Ruling No. GUJ/GAAR/R/05/2020 dated 17.03.2020 issued the following ruling -

“ The product Rice Bran (22+Oil) shall be classified under Chapter heading 38259000 and attracts rate 9% CGST and 9% SGST under vide Sr.No.98 of Schedule III of Notification No. 1/2017- Central Tax (Rate) of CGST Act and corresponding notification of SGST Act.”

3.1 Aggrieved by the aforesaid ruling, the appellant has filed the present appeal.

3.2 The appellant has submitted that it purchases husk of Poha and Mamra (byproduct generated during manufacturing of Poha and Mamra from paddy) having oil content approximately 5% and different kinds of sludge/wax oil. Both the above products are mixed in a vessel and by centrifugal process, the oil and the rice bran i.e. husk of Poha and Mamra gets separated from the mixture. During this process, the oil content present in the sludge/wax oil gets transferred in the husk of Poha and Mamra, increasing it from 5% to 22% approximately and Rice Bran is generated. The appellant sells this Rice Bran to the persons engaged in the business of selling of cattle feed as well as to manufacturer. The oil received as a result of centrifugal process is Non Edible Oil used in the manufacturing of oil based soap. Accordingly, the Rice Bran is used as 'cattle feed' or in the manufacturing of 'cattle feed' and the Non-Edible Oil is used in the manufacturing of oil based Soap.

3.3 The appellant has submitted that the product 'Rice Bran' was exempted from GST vide Sr. No. 102 of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017 and corresponding Notification No. 2/2017-State Tax (Rate) dated 30.06.2017 (the Central Tax (Rate) Notification referred to herein after includes the reference to corresponding State Tax (Rate) Notification also), however, confusion was created due to addition of words "other than Rice Bran" in the said Sr. No. 102 vide Notification No. 7/2018-Central Tax (Rate) dated 25.01.2018, as the said product could be covered under Sr. No. 103B inserted vide Notification No. 6/2018-Central Tax (Rate) dated 25.01.2018 inasmuch as the said product was used as 'cattle feed' or as an ingredient in the manufacturing of 'cattle feed'.

3.4 The appellant, vide further written submissions dated 26.08.2020, relied upon the Advance Ruling No. KAR ADRG 23/2020 dated 23.04.2020 in the case of Shri MukthenahallyShivakumarChannabasavaiah. The appellant also submitted further written submissions dated 13.10.2020

FINDINGS :-

4. There has been change in one of the two Members of this authority consequent upon the transfer and posting of the Chief Commissioner, Central Goods and Services Tax, Ahmedabad Zone after Personal Hearing has been held in this case. However, the appellant has specifically requested vide e-mail dated 02.12.2020 to decide the appeal on the basis of their various written submissions and the submissions made during personal hearing on 13.10.2020.

5. We have considered the submissions made by the appellant in the appeal filed by them, further written submissions as well as submissions at the time of personal hearing and Ruling given by the GAAR.

6. The issue involved in this case is the classification of the product being manufactured and supplied by the appellant, which is termed as 'Rice Bran (22+Oil)', and the applicable rate of GST on the said product.

CLASSIFICATION OF THE PRODUCT

7.1 The appellant has submitted that it is purchasing Rice Husk of Poha and Mamra (byproduct generated during manufacturing of Poha and Mamra from paddy), which is mixed in a vessel with the sludge / wax oil and the resultant product is termed as 'Rice Bran (22+Oil)'.

7.2 The Explanatory Notes of Harmonised System of Nomenclature (herein after referred to as HSN) for Chapter 23 provides that - "This Chapter covers the various residues and wastes derived from vegetable materials used by food-preparing industries, and also certain products of animal origin. The main use of most of these products is as animal feeding stuffs, either alone or mixed with other materials, although some of them are fit for human consumption. Certain products (e.g., wine lees, argol, oil-cake) also have industrial uses."

7.3 The product being supplied by the appellant is obtained by mixing Rice Husk of Poha and Mamra, a byproduct generated during manufacturing of Poha and Mamra from paddy, and Sludge / Wax Oil (Rice Bran Wax / Sunflower Wax Oil). Further, the appellant has submitted that its product can be used as cattle feed or in the manufacturing of cattle feed. Thus, from the details provided by the appellant, the said product conforms to the general Explanatory Notes of HSN for Chapter 23.

7.4 Further, the Chapter Heading 2302 of the First Schedule to the Customs Tariff Act, 1975 (herein after referred to as the 'CTA, 1975') covers "Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants".

7.5 The Explanatory Notes of HSN for Chapter Heading 2302, provides as follows :-

"This heading covers :

(A) Bran, sharps and other residues from the milling of cereal grains.

This category essentially comprises by-products from the milling of wheat, rye, oats, maize (corn), rice, grain sorghum or buckwheat, which do not comply with the requirements of Note 2(A) to Chapter 11 as regards starch content and ash content.

These are, in particular :

- (1) Bran consisting of the outer skins of cereal grains with a small proportion of the adhering endosperm and a little flour.*
- (2) Sharps (or middlings), obtained from ground cereals as a by-product in the manufacture of flour and consisting largely of the finer portions of the skins left after screening and sieving and of a little flour.*

(B) Residues from the sifting or other working of cereal grains. *Sifting residues, obtained during pre-milling operations, consist essentially of:*

- *grains of the basic cereal, smaller, mis-shapen, broken or crumbled;*
- *seeds of various stray plants mixed with the basic cereal;*
- *fragments of leaves, stalks, mineral, etc.*

This category further includes :

- (1) Residues from the cleaning of silos, ships' holds, etc., which have much the same composition as the above.*
- (2) The pericarp removed from the rice grain during the bleaching operation.*
- (3) Residues resulting from hulling, rolling, flaking, pearling, slicing or kibbling of cereal grain.*

(C) Residues and waste of a similar kind resulting from the grinding or other working of leguminous plants

.....”

7.6 The product of the appellant consists mainly of Rice Husk – a byproduct generated during manufacturing of Poha and Mamra from paddy, which already contains up to 5% oil content, wherein Sludge / Wax Oil (Rice Bran Wax / Sunflower Wax Oil) is added to raise the oil content up to 22%. As the main ingredient is the Rice Husk and the other minor ingredient i.e. Sludge / Wax Oil (Rice Bran Wax / Sunflower Wax Oil) is also of rice bran / sunflower origin, the resultant product of the appellant clearly falls under Chapter Heading 2302 and is appropriately classifiable under Tariff Item 2302 40 00 of the CTA, 1975, which covers bran, sharps and other residues – ‘of other cereals’.

7.7 In the case of Shri Mukthenahally Shivakumar Channabasavaiah [Advance Ruling No. KAR ADRG 23/2020 dated 23.04.2020], Karnataka Advance Ruling Authority has ruled that the product in that case was classifiable under Tariff Item 2302 40 90 (sic 2302 40 00) of the CTA, 1975, however, the product in the present case is slight different inasmuch as in the present case, sludge / Was Oil is mixed in Rice Husk to raise the oil content to 22%.

8.1 The GAAR has held the product of the appellant classifiable under Tariff Item 3825 90 00 of the CTA, 1975 on the ground that the actual process undertaken and the resultant product had not been accurately specified by the appellant and as such the only option available was to classify the said product in the residual entry of Chapter 38 pertaining to Miscellaneous Chemical Products as it was understood that the appellant is a chemical or allied industry.

8.2 We have already held, on the basis of the details submitted by the appellant, that the product of the appellant is classifiable under Tariff Item 2302 40 00 of the CTA, 1975. Even otherwise, in our considered view, the product of the appellant

cannot be classified under Chapter Heading 3825 of the CTA, 1975 which covers Residual products of the chemical or allied industries, not elsewhere specified or included, Municipal waste, sewage sludge, clinical waste, waste organic solvent, wastes of metal pickling liquors etc.

APPLICABLE RATE OF GOODS AND SERVICES TAX

9.1 The appellant has claimed that its product be held as cattle feed falling in entry at Sr. No. 102 of Notification No. 2/2017-Central Tax (Rate), which reads as follows :-

S. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description of Goods
102.	2301, 2302, 2304, 2305, 2306, 2308, 2309	<i>Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake</i>

In the aforesaid entry, in column 2, the entries ‘2301, 2302, 2308, 2309’ were substituted vide Notification No. 28/2017-Central Tax (Rate) dated 22.09.2017.

9.2 The aforesaid entry at Sr. No. 102 was further amended and a new entry at Sr. No. 102A was inserted vide Notification No. 7/2018-Central Tax (Rate) dated 25.01.2018, as follows -

S. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description of Goods
102.	2301, 2302, 2304, 2305, 2306, 2308, 2309	<i>Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake other than Rice Bran</i>
102A	2302	<i>De-oiled rice bran</i>

The aforesaid entry at Sr. No. 102A was further amended vide Notification No. 19/2018-Central Tax (Rate) dated 26.07.2018

9.3 The appellant has submitted that its product is used as ‘cattle feed’ or in the manufacturing of ‘cattle feed’. Thus, the appellant has not submitted that its

product is ‘cattle feed’ and no evidence has been submitted which may support the claim that the product is ‘cattle feed’. There is difference between ‘cattle feed’ and ‘ingredient used for manufacturing cattle feed’. The entry at Sr. No. 102 of Notification No. 2/2017-Central Tax (Rate), *inter-alia* exempts ‘cattle feed’ and not the ‘ingredient used for manufacturing cattle feed’.

9.4 Admittedly, the product of the appellant does not conform to any other description of the said entry at Sr. No. 102 of Notification No. 2/2017-Central Tax (Rate) viz. Aquatic feed, Poultry Feed etc.

9.5 It is settled principle of law that the exemption notification needs to be construed strictly and the burden to prove its entitlement is on the person (assessee/ appellant) claiming it. We may refer to the Hon’ble Supreme Court’s judgement in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company reported at 2018 (361) E.L.T. 577 (S.C.) in this regard.

9.6 Therefore, we hold that the product ‘Rice Bran (102+ Oil)’ of the appellant is not covered by entry at Sr. No. 102 of Notification No. 2/2017-Central Tax (Rate), as amended.

10.1 In the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as corrected vide M.F. (D.R.) Corrigendum F.No. 354/117/2017-TRU Pt. dated 12.07.2017, entry at Sr. No. 103A of Schedule - I read as follows :-

S. No.	Chapter/ Heading/ Sub- heading/ item	Description of Goods
“103A	2302	<i>Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]”;</i>

10.2 In the said Notification No. 1/2017-Central Tax (Rate), Sr. No. 103B was inserted in the Schedule – I vide Notification No. 6/2018-Central Tax (Rate) dated 25.01.2018 as follows :-

S. No.	Chapter/ Heading/ Sub- heading/ item	Description of Goods
---------------	---	-----------------------------

103B	2302	Rice bran (other than de-oiled rice bran)";
------	------	---

10.3 In order to decide whether the product of the appellant can be termed as "Rice Bran", we may refer to the meaning of relevant terms. Indian Standard on 'Glossary of Terms for Animal Feeds and Feeding stuffs' (IS : 9703 : 1980) describes these terms as follows :-

2.49 **Husks** – Outer covering of kernels / seeds.

2.78 **Rice Bran** – The pericarp or bran layer and germ of rice, with only such quantity of hull fragments and chipped or broken rice as is unavoidable in the regular milling of edible rice.

2.79 **Rice Bran, Solvent Extracted** – Product obtained by removing oil from rice bran by the solvent extraction process.

10.4 It is evident from the meaning of the terms 'Husk' and 'Rice Bran' that these are two different products and 'Rice Bran' is not prepared from 'Husk' of Rice (or Rice Husk of Poha and Mamra).

10.5 Though the appellant has submitted that they mix up Rice Husk with the sludge / wax oil in the vessel, whereby the oil content is increased from 5% to 22% and 'Rice Bran' is generated, no supporting evidence / literature has been submitted in support of this contention that the resultant product can be termed as 'Rice Bran'. On the other hand, as can be seen from the meaning of the term 'Rice Bran', it is not obtained by mixing up of Rice Husk with the sludge / wax oil in the vessel. The Indian Standard 'Specification for Rice Bran as Livestock Feed' [IS : 3648 : 1975] also contains various details, including description, of Rice Bran, which also does not support the contention of the appellant. Even the mixing up of the sludge / wax oil and raising the oil content up to 22% also changes the character of the product. Therefore, the product of the appellant cannot be termed as 'Rice Bran' within the meaning of the said term as understood in the common or industry parlance. Merely because the appellant has given the name 'Rice Bran (22+ Oil)' to its product, which otherwise is not 'Rice Bran', the said product cannot be held to be 'Rice Bran'. Therefore, the product of the appellant is not covered by Sr. No. 103B of Schedule – I of Notification No. 1/2017-Central Tax (Rate), as amended.

10.6 The product of the appellant is classifiable under Chapter Heading 2302 and conforms to the description 'Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants'. Therefore, we hold that the said product is covered by entry at Sr. No. 103A of Schedule – I of Notification No. 1/2017-Central Tax (Rate), as amended and is leviable to Goods and Services Tax @ 5% *ad-valorem* (2.5% CGST + 2.5% SGST).

11. In view of the foregoing, we modify the Advance Ruling No. GUJ/GAAR/R/5/2020 dated 17.03.2020 of the GAAR, and rule that -

- (i) The product “Rice Bran (22+ Oil) being supplied by M/s. Pratham Agro Vat Industries is classifiable under Tariff Item 2302 40 00 of the First Schedule to the Customs Tariff Act, 1975.
- (ii) The product “Rice Bran (22+ Oil) being supplied by M/s. Pratham Agro Vat Industries is covered under entry at Sr. No. 103A of Schedule – I of Notification No. 1/2017-Central Tax (Rate), as amended and Notification No. 1/2017-State Tax (Rate), as amended and is leviable to Goods and Services Tax @ 5% *ad-valorem* (2.5% CGST + 2.5% SGST).

(J. P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date : 08.03.2021.