

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD270220021491Q
GSTIN Number, if any/ User-id	27AAACC2407L1ZU
Legal Name of Applicant	M/s. Dlecta Foods Pvt Ltd.
Registered Address/Address provided while obtaining user id	36, Gokuldharm Shopping Centre, Goregaon East, Mumbai-400063.
Details of application	GST-ARA, Application No. 115 Dated 24.02.2020
Concerned officer	Division-VII , CGST Commissionerate, Mumbai East
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
	<p>Factory/ Manufacturing</p> <p>The Applicant is engaged in manufacturing products:</p> <ol style="list-style-type: none"> 1. DAIRY PRODUCTS – Milk, Butter, Cheese, Ghee, Cream (Milk Origin). 2. BAKERY PRODUCTS – Dairy Whipping Cream (Milk Origin), Non Dairy Whipping Cream (Veg Oil Base). 3. OTHER- Dark Ganche.
Issue/s on which advance ruling required	➤ Classification of goods
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 115/2019-20/B- 01

Mumbai, dt. 04.01.2022

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by M/s. Dlecta Foods Pvt Ltd. , the applicant, seeking an advance ruling in respect of the following question.

Whether the product ‘Non-Dairy Cream’ manufactured by the Applicant is covered under CH 1517 90 90 or under CH 2106 90 99 of the GST Tariff?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions of the applicant, M/s. Dlecta Foods Private Limited are as under:-

- 2.1 *The Applicant, is a manufacturer of goods falling under Chapter 04, 15 and 21 of the Tariff (equivalent to the Customs Tariff Act, 1975 and erstwhile Central Excise Tariff Act, 1985), like Milk, Cream, Cheese & Butter as well as Products such as Dairy Whipping Cream, Non-Dairy Whipping Cream and other (Dark Ganache) and are supplying the same in bulk as well as retail packing.*
- 2.2 *Applicant introduced the product “Non Dairy Whipping Cream” (‘NDW Cream’) since December 2010. The said NDW Cream is obtained from Vegetable Fats and manufactured using Vegetable Fats, Sugar, Emulsifiers, Stabilisers, Additives/Flavors, Sugar and Water in desired proportion.*
- 2.3 *The said NDW Cream is used in Bakery / Confectionary product as Topping Cream or Filling Cream, as such the said NDW Cream is to be consumed in the manufacture of Cakes, Pastry and Confectionary as enhanced value and not directly for human consumption as ‘ready to eat’.*
- 2.4 *The product NDW Cream, since its inception in the product list, is classified under Central Excise Tariff Head 1517 90 90 as the said NDW Cream originated primarily from “Vegetable Fats”. The Applicant was regularly discharging Central Excise Duties on the said NDW Cream at applicable rate and the same was duly reflected in monthly returns in form ER-1 then being filed under erstwhile regime. The said classification of the product under CH 1517 90 90 continued in the present era of GST Regime and are being shown in GSTR-1 and GSTR-3B Returns.*
- 2.5 *The Central Excise Authorities as well the Audit Team who carried out EA 2000 Audit on the records of the Applicant in 2014 & 2016, after due inquiry about the composition and manufacturing process as well as the ingredients thereof, did not find any irregularity in classification of said NDW Cream, as well GST Authorities also did not find any irregularity for the said product.*
- 2.6 *The Directorate General GST Intelligence, Pune Regional Unit raised a dispute with the classification of said NDW Cream seeking classification of the said product Non-Dairy*



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Cream under Tariff Head 2106 on the basis that one of the manufacturer viz. M/s. RICH GRAVISS PVT LTD with whom identical dispute was raised applied for closure of their case under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and settled the matter.

- 2.7 The Applicant, however, does not agree with the dispute of reclassification of product NDW Cream under Tariff Head 2106 from settled classification under Tariff Head 1517, purely on the basis that some other manufacturer settled the matter under the SVS Scheme.

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

- 2.8.1 **SETTLEMENT OF CASE BY ANOTHER MANUFACTURER OF SAME PRODUCT CANNOT BE GROUND FOR CLASSIFICATION OF THE APPLICANT'S PRODUCT:**

- 2.8.2 Applicant, without prejudice, submits that merely on the grounds that, M/s. RICH GRAVISS PVT LTD approached the department under SVS to settle the issue cannot be the ground for the DGGI, Pune to consider the classification of NDW Cream under Tariff 2106. The Finance Act, 2019 at Section 131 clearly clarifies as under:

131. For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (1) of section 124, **nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to the matter and time period to which the declaration has been made.** Thus, the SVS is limited to the benefit, concession or immunity on the Declarant for which declaration is made. Therefore, application made by M/s. RICH GRAVISS PVT LTD under the said Scheme cannot be read as acceptance of classification of the product. The said Scheme envisages settlement of disputes in legacy cases without going into the merits or de-merits and hence cannot be a parameter to decide any classification against the Applicant per se.

- 2.9 **THE PRODUCT MANUFACTURED BY THE APPLICANT:**

- 2.9.1 The product manufactured by the Applicant is known as "Non-Dairy or Analogue creams/ toppings". The Applicant manufactures analogue dairy creams or non-dairy creams which are replicas/substitutes of dairy creams where milk fat is replaced by vegetable oil based fats for the purpose of either cost reduction, or functionality or nutritional benefits. The creams made by the Applicant are of two types:

a) Whip Toppings: For whip topping application, wherein they are whipped and used for garnishing and decoration of cakes.

b) Cooking creams: For cooking application, wherein they substitute the dairy cream in normal cooking applications like gravies, pastas etc.

- 2.10 **The technology, ingredients and processes involved in manufacture of the applicant's product:**

2.10.1 These products are essentially classified as oil-in-water emulsions. Wikipedia defines an emulsion as a mixture of two or more liquids that are normally immiscible (unmixable or unbendable). Water and oil are generally immiscible. They can be combined into an emulsion only by use of special technology. The technology revolves around ingredients and processes.

2.10.2 To form this functional emulsion it is necessary to use the right type of fat. For whipped toppings, hydrogenated palm kernel oils are used. For cooking cream, hydrogenated vegetable fat is used.

2.10.3 To form the emulsion it is necessary to use emulsifiers, which are essentially molecules that are water loving at one end and oil loving at the other end. With proper choice and dispersion of emulsifiers we can expect the emulsion to form, to be stable and also to give the required functionality like whipping etc. Every company zealously guards their emulsifier selection and recipe. Applicant also adds stabilizers to improve the stability. It is the objective of stabilisers to keep the oil well dispersed into water and not to allow oil molecules to coalesce together.

2.10.4 Typically, Non-dairy whipping creams are composed of: Hydrogenated Vegetable Oils (20%); Sugars (20%); Emulsifiers/Stabilizers/Other additives (<3%) and Water Balance.

2.10.5 Typically Non-dairy cooking creams are composed of : Hydrogenated Vegetable Oils (20 – 22%); Milk Solids (6 – 10%); Liquid Glucose (8 – 10%); Emulsifiers/Stabilizers/Other additives (<3%); Water Balance

2.11.1 The emulsifiers and stabilizers will generally be either water soluble or oil soluble. Two fractions are formed – oil soluble and water soluble fractions.

2.11.2 To bring these fractions together into an emulsion, we need an emulsification process which creates the emulsion by high speed mixing/dispersion of oil fraction into water fraction. We also homogenise the emulsion to break oil into smaller droplets and to further improve stability. The high speed dispersion and homogenization together constitute the emulsification process.

2.12 THE CLASSIFICATION OF THE PRODUCT BY THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA IS EQUIVALENT TO AN EXPERT'S OPINION:

The Applicant, without prejudice to whatever is stated herein, submits that the classification dispute of the product NDW Cream is raised without any authority of law or Experts' Opinion and without giving any reason but only ground that M/s. RICH GRAVISS PVT LTD had accepted the liabilities and approached under SVS. The settled classification cannot be disputed unless supported by legal backing and Opinion from an Expert. This is especially so in case of technical products like the product in question.

2.13 In this regard, FSSAI, which is the premier regulatory authority for all Food Products in India, has created a FOOD CATEGORY SYSTEM for classification of all foods and classified the Applicant's Product 'Non-Dairy Creams' as under:

- a. The non-dairy creams are classified under Food Category 2.3 "Fat emulsions mainly of type oil-in-water, including mixed and/or flavoured products based on fat emulsions". All of the Applicant's non-dairy creams have been declared accordingly on the pack as well as in the FSSAI license.
- b. Non-dairy creams are not standardized products. No standards are laid out for them. They are 'proprietary products' under FSSAI and have to be approved by them beforehand.
- c. Each proprietary product manufactured by the food business operator has to go through the scrutiny of FSSAI, particularly the category in which it is classified. Category is very important because additives are accordingly specified.

Thus, the premier Regulatory Agency for Food Products, FSSAI, without whose certification and approval, no food product can be sold to consumers, has classified the Applicant's product as above. Now, above classification under FSSAI vis-à-vis the classification under the Customs Tariff and the GST Tariff has to be seen.

2.14 **CLASSIFICATION OF THE PRODUCT UNDER CUSTOMS TARIFF AND GST TARIFF MORE SPECIFIC UNDER CH: 1517 90 90:**

2.14.1 The present classification of 'Non-diary Cream' under the Customs Tariff Act, 1975, is as under:

1517 : MARGARINE; EDIBLE MIXTURE OR PREPARATIONS OF ANIMAL OR VEGETABLE FATS OR OILS OR OF FRACTIONS OF DIFFERENT FATS OR OILS OF THIS CHAPTER, OTHER THAN EDIBLE FATS OR OILS OR THEIR FRACTIONS OF HEADING 1516

1517 10 - Margarine, excluding liquid margarine:

1517 10 10 --- Of animal origin .

--- Of vegetable origin:

1517 10 21 ---- Edible grade

1517 10 22 ---- Linoxyn

1517 10 29 ---- Other

1517 90 - Other:

1517 90 10 --- Sal fat (processed or refined)

1517 90 30 --- Imitation lard of animal origin

1517 90 40 --- Imitation lard of vegetable origin

1517 90 90 --- Other

2.14.2 The Harmonized System of Nomenclature (HSN) Explanatory Notes for CH 1517 clearly stipulates as under:

"The products of this heading, the fats or oils of which may previously been hydrogenated, may be worked by emulsification....."

The heading also covers edible preparations made from a single fat or oil (or fractions thereof), whether or not hydrogenated, which have been worked by emulsification, churning, texturation, etc.”

2.14.3 *It can be seen from the above that the preparation of animal or vegetable fats or oils, which are obtained through the process of ‘Emulsification’ are squarely covered under this Heading. Thus, the Applicant has correctly classified their product under CH 1517 90 90.*

2.15 **THE CLAIM FOR CLASSIFICATION OF THE APPLICANT’S PRODUCT UNDER CH. 2106 90 99 IS BASELESS AND TOTALLY INAPPLICABLE:**

2.15.1 *The alternative classification sought by the Department under CH 2106 90 99 on the grounds that the same covers ‘Food Preparations’ is hardly of any substance.*

A close look at the Description reveals that CH 2106 covers “Food Preparation not elsewhere specified or included”. This means that if there is any food preparation which is specified or included elsewhere in the Tariff Schedule, then the same would by default, not be covered under CH 2106. In the case of the Applicant’s product, the same is already specified and included under CH 1517 by virtue of being a specific entry covering the description and process covering the Applicant’s product. It is the cardinal principle of classification of goods that the classification giving a more specific description should be preferred over the one giving a more general description.

2.15.2 *Conversely, as per Supplementary Note 5 to Chapter 21, CH 2106 (except 2106 90 20 & 2106 90 30), inter alia, includes: (a) Protein concentrates and textured protein substances; (b) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids) for human consumption; (c) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages of food preparations for human consumption; (d) Powders for table creams, jellies, ice-creams and similar preparations, whether or not sweetened; (e) Flavouring powders for making beverages, whether or not sweetened; (f) Preparations consisting of tea or coffee or milk powder, sugar and any other added ingredients; (g) Preparations (for example, tablets) consisting of saccharin and foodstuff, such as lactose, used for sweetening purposes; (h) Pre-cooked rice, cooked either fully or partially and their dehydrates; and (i) Preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients.*

2.15.3 *It can be seen that the product of the Applicant i.e. ‘Non-dairy Cream’ does not fit into any of the description of preparations listed above under Chapter Heading 2106.*

2.15.4 Further, Supplementary Note 6 reads as under:

“Tariff item 2106 90 99 includes sweet meats commonly known as “Mishtans” or “Mithai” or called by any other name. They also include products commonly known as “Namkeens”, “Mistures”, “Bhujia”, “Chabena” or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.”

2.15.5 It is crystal clear that the above listed products covered under CH 2106 90 99 are way different than the Applicant’s product. Although the above list in Supplementary Note 6 may be indicative, it is logical that only similar products to those listed patently would be includible under CH 2106 90 99. Thus, the Applicant’s product does not even get remotely covered under CH 2106 90 99.

7. From the above, it is clear that, ‘Non-Dairy Cream’ squarely falls under CH 1517 90 99.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional/concerned officer has not made any submissions.

04. HEARING

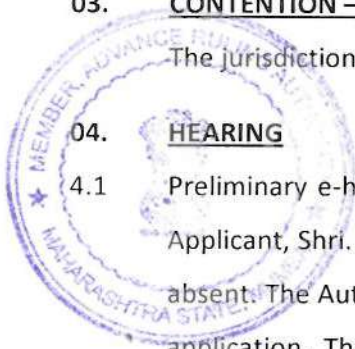
4.1 Preliminary e-hearing in the matter was held on 14.09.2021. Authorized representative of the Applicant, Shri. Neerav Mainkar, Advocate was present. The concerned jurisdictional officer was absent. The Authorized representative made oral submissions with respect to admission of their application. The authorised representative’s request to withdraw Question Nos 2 & 3 was accepted and question-1 was admitted, subject to condition that applicant shall clarify whether any notice or adjudication or investigation proceeding regarding Question No.-1 was initiated in their case.

4.2 The application was admitted and called for final hearing on 09.11.2021. The Authorized representative of the applicant, Shri. Neerav Manikar, Learned Advocate was present. The Jurisdictional officer was absent.

4.3 We heard the matter.

05. OBSERVATIONS AND FINDINGS:

5.1 We have perused the records on file, considered the facts of the matter and submissions, both oral and written, made by the applicant.



5.2 We observe that, in their written submission, the applicant has stated as under:-

"The Directorate General GST Intelligence, Pune Regional Unit raised a dispute with the classification of said NDW Cream seeking classification of the said product Non-Dairy Cream under Tariff Head 2106 on the basis that one of the manufacturer viz. M/s. RICH GRAVISS PVT LTD with whom identical dispute was raised applied for closure of their case under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and settled the matter"

5.3 The applicant has further in their application stated as under:-

"The Applicant, however, do not agree with the dispute of reclassification of product NDW Cream under Tariff Head 2106 from settled classification under Tariff Head 1517, purely on the basis that some other manufacturer settled the matter under the SVS Scheme".

5.4 The applicant, in their submissions has also stated that, *"The Applicant, without prejudice to whatever is stated herein, submits that the classification dispute of the product NDW Cream is raised without any authority of law or Experts' Opinion and without giving any reason but only ground that M/s. RICH GRAVISS PVT LTD had accepted the liabilities and approached under SVS. The settled classification cannot be disputed unless supported by legal backing and Opinion from an Expert".*

5.5 From the submissions made by the applicant, it clearly appears that they were in a dispute with the Directorate General GST Intelligence, Pune Regional Unit with regards to classification of the impugned product prior to the filing of the subject application and this is the precise reason that they have approached this Authority for decision in the said classification matter.

5.6 In this connection we reproduce the relevant provisions of Section 98 of the CGST Act, 2017, which is as under:-

Section 98: Procedure on receipt of application.

(1) *On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records: Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.*

(2) *The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:*

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Provided.....

Provided.....

5.7 From the above, it is very clear that the subject classification matter is pending as a dispute in proceedings initiated by the Directorate General GST Intelligence, Pune Regional Unit and therefore in view of the first proviso to Section 98 of the CGST Act, we refrain from answering the question raised by the applicant and reject the application

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question: - Whether the product 'Non-Dairy Cream' manufactured by the Applicant is covered under CH 1517 90 90 or under CH 2106 90 99 of the GST Tariff?

Answer :- In view of the discussions made above the subject application is not maintainable in view of the first proviso to Section 98 of the CGST Act, 2017 and is being rejected.




RAJIV MAGOO
(MEMBER)


T.R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.