

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)

GSTIN Number, if any/ User-id	27AAACN2329NIZA
Legal Name of Applicant	M/s. Nilkamal Limited
Registered Address/Address provided while obtaining user id	77/78, Nilkamal House, 13/14th Road, MIDC Andheri East, Mumbai City, Maharashtra, 400093
Details of application	GST-ARA, Application No. 49 Dated 29.10.2020
Concerned officer	Division-X, Commissionerate Mumbai East
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
	Classification matter
	The applicant is engaged in manufacture of various products including the impugned product "poultry crates" which is used for safe and convenient transportation of live birds and have asked for classification of the said product under the GST Tariff.
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- 49/2020-21/B- 29

Mumbai, dt. 08.03.2022

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. Nilkamal Limited** the applicant, seeking an advance ruling in respect of the following questions.

- Whether product poultry crate is falling under chapter 84, chapter heading- 8436, sub heading 843610 and Tariff item 84362900 as **Poultry keeping machinery**, attracting rate of tax @ 6% each under Central and State Tax?
- Whether the above mentioned item is falling under chapter 39 "Articles for the conveyance or packing of goods, of plastics" chapter heading 3923, subheading 392310 and Tariff item 39231090 as "Others" attracting rate of tax @ 9% each under Central and State Tax?



3. If the above product is not falling either under chapter 84 OR chapter 39, what is the appropriate classification of poultry crates and what is the rate of tax under Central, and State Tax?

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

- 2.1 M/s Nilkamal Limited, GSTIN: 27AAACN2329N1ZA, situated at 77/78, Nilkamal House, MIDC, Andheri East, Mumbai City, Maharashtra, 400093 is engaged in manufacturing of wide range of products used for storage, handling and transportation of goods, including products like plastic crates, poultry crates, plastic pallets, insulated ice boxes & fish tubs, waste management tools, road safety products, hospitality solutions, aquaculture fish cages, manhole chambers, ripening solutions, material handling equipment, metal shelving & racking systems.

- 2.2 The present application has been filed in respect of classification of the product "poultry crates" which is used for safe and convenient transportation of live birds.

Detailed concept of poultry crates and its usage

- 2.3 Poultry crate is used for transportation of live birds from farm to processing plant. To move them, however industry is faced with several challenges as birds have to be gathered, loaded and transporting and unloading into a complete new environment. Some of the challenges include harvesting the birds, feed withdrawals and temperature variation during transport. If control in transportation is poor it will result into decreased meat quality. The concept of poultry crates came into existence looking into the safety, lowering mental stress, reduce human contacts and hygiene of birds transported into it. The crates are made from hygienic food grade HDPE material which is rust free and safe for usage. The smoother inner surface, scientific design makes the crate, Injury-free and can be easily cleaned and washed. During vehicle-breakdown, crates can be easily shifted to another vehicle without harms to chicks inside this and any normal vehicle can be used to load Nilkamal Poultry Crates. The crates have smart locking system which helps to prevent birds from coming out and saving loss of life during transportation.

2.4 Types of crates and containers used in the Industry

The industry uses two major types of containers to transport poultry to the plant: a) Loose crates (plastic, wood, metal), b) fixed crates on a truck

Loose crates

These are the oldest type of transport container. They were initially made out of wood and later from metal wire. They are still common today, but are often made of plastic and they come in varying sizes. A small size crate (e.g., 80 × 60 × 30 cm) can hold about 12-15 broilers. Loose crates are easy to handle and can either be taken into the barn during loading or birds can be carried out of the barn during manual loading. In other scenarios, crates can be placed on a palette and moved by a tractor. Birds are placed into the crates through an opening at the top. The opening can be of different sizes, but if it is too small there is a chance for physical injury, especially to the wings (Kettle well et al., 2000). Overall, the crate system offers a flexible, low equipment cost approach to manual loading and transportation of birds to the processing plant, but manual labour required is higher than in the other systems.

Fixed crates

Fixed crates are built into a truck and are an integral part of the trailer. In that case the birds have to be brought to the truck either manually or with a loader. The crates on the truck are usually arranged in two banks; each covers half of the truck's width. The number of crates depends on the size of the birds (e.g., chickens, turkeys). A common crate arrangement for broilers is eight layers of 12 crates each, or 96 crates total. The loading is done from each side of the trailer and requires that the birds be carried or walked from the barn and then either loaded directly or passed to another person positioned on the truck to allow filling of upper level crates.

- 2.5 In the case of turkeys, a conveyor system (loader), is commonly used to move the heavy birds to different crates by moving and elevating the end of the belt. Turkeys can usually walk on the conveyor belt while broilers tend to sit. According to the manufacturer, the system can handle 1,000- 2,000 heavy turkeys per hour. It should be noted that the system is also used to move pullets from the growing farm to the egg laying farm. Relative to moving hens, Kettlewell et al. (2000) observed that there was a much lower level of injury moving pullets. This is in part due to the higher tolerance of pullets to handling and transporting as compared to laying hens, which are more prone to osteoporosis.
- 2.6 In any case, care should always be taken to reduce injury and equipment should be kept in good shape (e.g., no place for wing catching, no sharp corners). At the processing plant trucks are



unloaded close to the shackle line with the help of hydraulic platforms that assist the unloading crew in reaching the birds at the different levels.

Classification of product under Chapter 84, CTH 84362900

8436- Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.

84361000- Machinery for preparing animal feeding stuffs

Poultry-keeping machinery; poultry incubator, and brooders:

84362900- Others

CTH 84362900 of the GST Tariff covers Poultry-keeping machinery which is used for transportation of live birds from farm to plants.

2.7 As per Section 3 (C) of General Rules for the interpretation of the Harmonized system (HSN), if an item is prima facie classifiable under two or more headings, the same shall be classified under the heading which occurs last in numerical order. In the matter of **Sun Export Corporation Vs. Collector of Customs, Bombay [1997 (93) ELT 641 (SC)]** it was held that if an item is prima facie classifiable under two or more headings, it shall be classified under the heading which occurs last in numerical order and when two views are possible, the one favorable to the assessee has to be adopted.

2.8 The tariff item 84362900 specifically covers Poultry-keeping machinery into its scope hence the item should be taxable at the rate of 12% i.e. CGST-6% and MGST-6%.

Conflict between Chapter 84 CTH 8436 and Chapter 39 CTH 3923

2.9 Rule 3(a) of the Interpretative Rules states, 'heading which provides the most specific description shall be preferred to headings providing a more general description'. The said goods are correctly classifiable under Chapter 84 of the GST Tariff as the same are differentiable from the general plastic containers for the following reasons:

- ❖ The said goods are specifically designed to transport live birds from farm to plants.
- ❖ The said goods are used exclusively in poultry industry and not elsewhere.
- ❖ The said goods are designed keeping into mind safety and other aspects related to live birds.

2.10 As per the judgment of **C.C.E. v. Sharma Chemical Works 2003 taxmann.com 1240 (SC)** it was observed by the court that "the main criteria for determining classification is normally the use it

is put to by the customers who use it. In this case the above product is put to use as an appliance for transportation of live birds which classify it under heading 8436.

Hence, it can be said that the product Poultry crate is not classifiable under Chapter 39 as plastic container /crates hence appropriate classification for the same is Chapter 84 sub heading 8436 attracting rate of tax @ 6% each under Central and State Tax.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS

- 2.11 The impugned poultry crates are manufactured specially for the purpose of use in carrying and transporting live birds from farm to plants hence they are different from ordinary crates /containers hence classifiable under chapter heading 8436 as poultry-keeping machinery. These poultry crates are manufactured keeping into consideration the safety, hygiene and reduced mental stress to live birds hence classifiable under chapter 84, chapter heading 8436 and tariff item 84362900 and attracting rate of tax as 6% under CGST and MGST respectively.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER SUBMISSION DATED 13.09.2021:-

- 3.1 Chapter heading 8436 covers- "*Other agricultural, horticultural, forestry, **poultry-keeping or bee keeping machinery**, incl. germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.*". Poultry keeping machinery includes feeding, drinking, monitoring systems. This machinery plays a very important part of poultry set-up. Among various poultry keeping machineries, incubator is a device which helps in maintaining the ideal temperature for hatching of eggs.

"Poultry Crates" is not a Poultry-keeping machinery, Hence, "Poultry Crates" is not falling under chapter heading-8436.

- 3.2 It is observed that Section XVI of CETA,1985 covers Chapter 84 and 85 and covers following items :- **Machinery and Mechanical Appliances: Electrical Equipment; Parts thereof; sound Recorders and Reproducers, Television Image and Sound Recorders and reproducers, Television Image and sound Recorders and Reproducers, and Parts and Accessories of such articles.** The item "Poultry Crate" does not appear to be covered under Machinery or Mechanical appliance.

- 3.3 Chapter Heading 3923 covers- "*Articles for the conveyance or packaging of goods, of plastics, stoppers, lids, caps and other closures, of plastics.*"

Sub-heading 392310 stands for "*Boxes, Cases, Crates and Similar Articles.*"

A Crate is a container which is used for transportation or storage. Crates can be made of wood, plastic, metal or other materials. Poultry Crates is also a Crate having many pores or apertures which is favourable for small birds. Hence, "Poultry Crates" is falling under Chapter Heading-3923 attracting rate of tax @ 18% (9% each under Central Tax and State Tax).

Further, the judgments of Sun Export Corporation vs. Collector of Customs, Bombay [1997 (93) ELT 641 (SC) and C.C.E. Vs. Sharma Chemical Works 2003 taxmann.com 1240 (SC) are not applicable in this case.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 14.09.2021. Authorized representative of the applicant, Shri. Vinod Kaushik, C.A., appeared, and requested for admission of the application. The Concerned jurisdictional officer was absent.

4.2 The application was admitted and called for final hearing on 08.02.2022. The Authorized representative of the applicant, Shri. Vinod Kumar, CA, was present. The Jurisdictional officer Shri. Praveen Kumar, Superintendent, Division-X, Commissionerate Mumbai East was also present. Both the parties made oral submissions. The matter was heard.

05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the case, written and oral contentions made by both, the applicant and jurisdictional officer at the time of preliminary as well as the final hearings.

5.2 The basic issue before this authority is of classification of "poultry crates", manufactured by the applicant.

5.3 The primary contention of the applicant is that the impugned product falls under Chapter 8436 as poultry-keeping machinery because the impugned poultry crates are manufactured specially for the purpose of use in carrying and transporting live birds from farm to plants; that they are different from ordinary crates /containers and further these poultry crates are manufactured keeping into consideration the safety, hygiene and reduced mental stress to live birds. The main thrust of the applicant's argument supporting their contention for the product to be classifiable under Chapter 8436 is that the crate made from hygienic food grade HDPE material, is rust free and safe for usage and has smoother inner surface, scientific design which makes the crate, Injury-free and further the crate can be easily cleaned and washed ; the said goods are used exclusively in poultry industry and not elsewhere and designed to transport live birds from farm

to plants; the said goods are designed keeping into mind the safety and other aspects related to live birds.

5.4.1 Chapter 84 of the GST Tariff covers *Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof*. Chapter 8436 covers *Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery,; poultry incubators and brooders*.

5.4.2 Poultry keeping machineries are very important requirement in poultry set up. Poultry keeping machineries includes feeding, drinking, monitoring systems which are installed in order to improve productivity and create an ideal environment for the poultry. Thus poultry machinery includes items like ventilation equipment, nest laying equipment, egg washers, heat managing systems like use of heat bulbs, and other equipment. The said equipments are a necessity in a poultry set up and are covered under Chapter 8436.

5.4.3 The applicant has not brought out anything on record to even remotely suggest that the impugned goods can be considered as a machinery. The applicant's submission that the crates can be considered as a poultry keeping machinery because they are made from hygienic food grade HDPE material, are rust free and safe for usage and have smoother inner surface, scientific design which makes the crate, Injury-free and are washable. We therefore do not agree with the contention of the applicant that the impugned goods are poultry keeping machinery/equipment to be covered under Chapter 8436 of the Tariff.

5.5.1 We now take up the next question raised by the applicant i.e. whether the impugned products are classifiable under Chapter 3923 of the Tariff.

5.5.2 Chapter 39 of the Tariff covers '*Plastics and Articles thereof*'. Chapter 3923 of the Tariff covers '*Article for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics*'. Further, Sub-heading 392310 covers "*Boxes, cases, crates and similar articles*". As per Explanatory Notes to Heading 39.23, this heading covers all articles of plastic commonly used for the packing or conveyance of all kinds of products.

5.5.3 The impugned product i.e. poultry crate is an article of plastic. It is used for the conveyance of poultry and from a reading of para 5.5.2 above it is clear that the said product is clearly covered under sub heading 392310 of the Tariff. However it is seen that the subject product does not fall under the T.I. 39231010; 39231020; 39231030; and 39231040. Thus, the impugned product will be covered under the residual T.I. i.e. 39231090 of the Tariff.

5.6.1 From the above discussions we conclude that the impugned product is correctly covered under T.I. 39231090 and not at all covered under T.I. 84362900. The applicant has contended that, as



per section 3(c) of general rules for the interpretation of the harmonized system (HSN) If an item is prima facie classifiable under two or more headings, the same shall be classified under the heading which occurs last in numerical order and when two views are possible, the one favorable to the assessee has to be adopted.

5.6.2 In the subject case the impugned product i.e. poultry crate is seen to be classifiable exclusively under Chapter 39231090 and therefore the question of taking into account, the general rules for the interpretation of the harmonized system (HSN), does not arise at all.

5.7 In view of our decision that the impugned product is classifiable under Chapter 39231090, we do not discuss the third question raised by the applicant.

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 1:- Whether product poultry crate is falling under chapter 84, chapter heading- 8436, sub heading 843610 and Tariff item 84362900 as **Poultry keeping machinery**, attracting rate of tax @ 6% each under Central and State Tax?

Answer:- Answered in the negative.

Question 2:- Whether the above mentioned item is falling under chapter 39 “Articles for the conveyance or packing of goods, of plastics” chapter heading 3923, subheading 392310 and Tariff item 39231090 as “Others” attracting rate of tax @ 9% each under Central and State Tax?

Answer:- Answered in the affirmative.

Question 3:- If the above product is not falling either under chapter 84 OR chapter 39, what is the appropriate classification of poultry crates and what is the rate of tax under Central, and State Tax?

Answer:- Not answered in view of answer to question number 2 above.




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. 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.

