



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D.No.12-468-4,
adjacent to NH-16, Service Road, Kunchanapalli, Guntur District, AP-522501)

Present:

Sri Sanjay Pant (Member) (Central Tax)
Sri M.Girija Shankar (Member) (State Tax)

The 22nd day of December, 2023

Order /AAAR/AP/01 (GST)/2023

1	Name and address of the appellant	M/s. Sri Venkateswara Cashew Chikky Manufacturers D.No.13/192, Sarvodaya Colony, Vetapalem, Prakasam District, A.P.,- 523187
	GSTIN	37ABYPV0474E1Z1
3	Date of filing of Form GST ARA-02	26.09.2023
4	Hearing (Virtual)	22.11.2023
5	Authorized Representative	T. Bhanu Purdhviraj, CA
6	Jurisdictional Authority - Centre	Chirala Range, Nellore Division

(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act).

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

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and APGST Act"] by M/s. Sri Venkateswara Cashew Chikky Manufacturers (herein after referred to as the

"Appellant") against the Advance Ruling No. AAR No.10/AP/GST/2023 dated 26.05.2023 issued by Authority for Advance Ruling, Andhra Pradesh.

1. **Background of the Case:**

The appellant, M/s. Sri Venkateswara Cashew Chikky Manufacturers Manufactures is engaged in manufacturing and supply of an edible product under the name "Crackle", with the following ingredients.

S. No	Particulars	Proportion
1	Sugar	68% to 72%
2	Cashew Nuts	28% to 30%
3	Butter	1% to 2%
4	Glucose	1% to 2%

The Appellant sought clarification with regard to the product is supplied as raw material to the manufacturer of ice creams i.e. Hindustan Unilever Limited, Dairy Classic Ice Creams (P) Ltd etc., and is used as toppings in ice creams. The Applicant classified the product under Chapter 17049020 till date and discharged GST at the rate of 18% and approached the Authority for Advance Ruling on the following question:

Question: Whether the product by name "Crackle", manufactured and supplied by the applicant containing the ingredients Sugar, Cashew Nuts, Butter, Liquid glucose and other permitted Flavours , should be classified under the Tariff Heading 1704 enumerated at Serial number 32AA of Schedule III of Notification No. 01/2017 as a Sugar boiled confectionery.?

The Authority for Advance Ruling Andhra Pradesh in its orders in AAR No.10/AP/GST/2023 dated 26.05.2023 held:

Answer: Negative

Aggrieved by the impugned order, the appellant has filed the present appeal on the following grounds.

2. Grounds of Appeal:

A. THE IMPUGNED ORDER PASSED BY THE ADVANCE RULING AUTHORITY HAS CONSIDERED NONE OF THE MAIN SUBMISSIONS FILED BY THE APPELLANT IN ADVANCE RULING ORDER AND THEREFORE THE IMPUGNED ORDER HAS BEEN ISSUED IN VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE

A.1 The Appellant in Advance Ruling Application and in additional submissions replies dated 28.02.2023 and 29.03.2023 has referred to manufacturing process of impugned product, Food Safety and Standards (Food products Standards and Food Additives) Regulations, 2011, Indian Standard IS 1008:2004 and Food Testing Laboratory Certificate issued by JNTUK. None of these documents have been analysed and discussed by the Ld. Advance Ruling Authority while passing impugned order dated 26.05.2023. If the intention of the law is to issue mechanical proceedings, then the requirement of personal hearing proceedings is not warranted under GST Law.

A.2 The Appellant submits that the Impugned order passed by the Advance ruling Authority is arbitrary, illegal, and has been issued in gross violation of principle of natural justice inasmuch as the said Advance Ruling authority has failed to appreciate the submissions made by the Appellant and without appreciating the correct factual and legal position. Further, the Advance Ruling Authority had not dealt with the main technical submissions of the Appellant and impugned order has been passed in a mechanical manner.

A.3 In this regard, the Appellant rely on the judgment of the Hon'ble Supreme Court in the case of **Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan 2011 (273) ELT 345 (SC)** wherein it has been held that reasons are required in both administrative and quasi-judicial orders affecting rights of parties prejudicially; that reasons give appearance that justice is being done, prevent arbitrary exercise of power, ensure that discretion has been exercised on relevant grounds, facilitate judicial review, accountability and transparency; that reasons in support of decisions must be cogent, clear and succinct; that **pretense of reasons or 'rubber-stamp reasons' is not to be equated**

with a valid decision making process. The relevant portion of the judgment is extracted hereunder for ready reference:

"51. Summarizing the above discussion, this Court holds:

....

(1) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

...."

A.4 The Appellant also rely on the judgment of the Hon'ble Gujarat High Court in the case of **Vadilal Gases Limited Vs. Union of India 2016 (332) ELT 625 (Guj.)** wherein it has been held that the quasi-judicial authorities should give sufficient reasons to demonstrate that relevant factors having considered objectively which is a primary requirement. The relevant portion of the judgment is reproduced below for ready reference:

"10. At this juncture, reference may be made to the decision of the Supreme Court in the case of Assistant Commissioner of Commercial Tax Department v. Shukla and Brothers, (2010) 4 SCC 785 - 2010 (254) E.L.T. 6 (S.C.) - 2011 (22) S.T.R. 105 (S.C.), on which reliance has been placed by the learned counsel for the petitioner wherein the Court has held that the principles of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing; and secondly, the orders so passed by the authorities should give reasons for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case vitiate the order itself.

11. Examining the facts of the present case in the light of the above decision, while it cannot be said that the impugned orders are totally non-reasoned orders, at the same time, the main contention advanced on behalf of the petitioner has not been dealt with and no reasons have been assigned for not accepting the same. The impugned order does not show that the authority concerned has applied its mind to the contention raised by the petitioner. Therefore, as held by the Supreme Court in the above decision, the principles of natural justice would stand violated in the light of the fact that the concerned authority has not applied its mind to the principal contention raised by the petitioner, inasmuch as, it has not given any reason in respect thereof."

A.5 The Appellant submits that it is a settled law that any authority is bound to refer to the pleadings of the case, submissions of the counsel, necessary points

for consideration, discuss the evidence, and then to dispose of the matter by giving valid reasons. The Appellant in this regard places reliance in the case of ***Shaurya & Company v. State of Bihar (2022) taxmann.com 256 (Patna)***

B. IMPUGNED PRODUCT i.e. NBS Crackle is classifiable under tariff head '1704' enumerated at Serial number 32AA of Schedule II of Notification No. 01/2017, dated 28-6-2017.

B.1 The Appellant submits that impugned product 'N.B.S Crackle' is classifiable under Serial number 32AA of Schedule II of the GST Act 2017. The Appellant in this regard submits that Chapter 17 of the HSN is for 'Sugar & Sugar Confectionery'. While 1701 to 1703 headings relate to Sugars in different forms, the Heading 1704 mentions '**Sugar Confectionery**'. 'Sugar Confectionery' or 'Confectionery' has nowhere been specifically defined under the GST law or for that matter under HSN and therefore, one has to go by the plain or dictionary meaning.

B.2 Dictionary meaning of the phrase 'confectionery'

Oxford English Dictionary, Second Edition, Part III, where the word is defined as of the nature of confection, cornfit or sweetmeat or pertaining to confections or confectioner's work. As per this Dictionary, the word 'confection' means to prepare for use with sugar, syrup, or the like; to make into a confection; to mix, make up as a condiment or seasoned delicacy. We find that in the same Dictionary, the words "confectionery preparation" are defined as a sweetmeat. The word 'sweetmeat' is defined in the *Webster's Encyclopaedic Unbridged Dictionary* as sweet delicacy, prepared with sugar, honey or the like, as preserves candy, or formerly cakes or pastry.

In Fund All Wagnalls New Standard Dictionary confectionary is defined as-

"Confectionary is defined as sweet meat. Collectively, that a confectionary makes or sells as candy or other articles made of sugar, sirup honey or the like"

In "**Word Origins and their Romantic Stories**" by **Wilfred Funk**, on page 346, the Word 'Confetti' is given. We reproduce the relevant portion from the said book:

"CONFETTI: was once candy

Confetti is an Italian word for candies or sweetmeats; and the corresponding French word is *bonbon*, literally 'good-good'. On carnival days the merry-makers in Italy used to have fun pelting each other with this candy, those who could afford it throwing money too. Later on, an enterprising and thrifty storekeeper made imitation sweetmeats, or *confetti*, out of plaster and pasteboard. To day little bits of colored paper, still called *confetti*, have been substituted for the pasteboard ones. When we city folks are celebrating the arrival of some great hero, we tear up the pages of the telephone books and throw the pieces out of the windows as symbolic offerings of candies and money. The word '*confetti*' is originally from Latin *confectus*, 'put together,' 'prepared'. This word also gave us our word confection which is another term for confetti and bon-bons."

B.3 As per the above dictionary meaning the word 'confectionery' connotes any eatables which is made by compounding or mixing with sugar ingredients. NBS Crackles manufactured by the assessee contain admittedly sweet ingredients.

Judicial Interpretation of the phrase 'Confectionery'

B.4 In the case of ***Annapurna Biscuit (Mfg.) Co & another v. The State of U.P and another (1975) 35 STC 127 (All.)*** the Hon'ble Allahabad High Court held that biscuits were not confectionery. While dealing with the dispute the court observed as follows:

" The question with which we are concerned is whether biscuit can be said to be confectionery. The history of confectionery industry indicates that it developed with the cultivation of sugarcane. Many kinds of sweetmeats and candy were made by moulding sugar, nuts and fruits of various kinds into fanciful forms, One of the main ingredients used for manufacturing confectionery is sugar. Confectionery is essentially a sweetmeat. In certain preparations to the sweet base are added chocolate, fruits, nuts and peanuts, eggs, milk products, flavours and colours. In certain other preparations, like cakes and pastries, wheat flour (maida) and sugar form the main ingredients to which other items are added. Biscuit on the other hand, is a kind of dry bread in which sugar is almost insignificant ingredient. In salted biscuits sugar is not at all used"

B.5 In the light of the aforesaid discussion it can be said that confectionery comprises articles in which the main ingredients is sugar,

although other articles may be added for enhancing its taste. It thus comprises essentially only these articles which are commonly called sweetmeats. Thus, it is clear that it is food chiefly made of sugar. Normally it is made by cooking process, other than baking. Impugned product manufactured by the Appellant contain substantial amount of sugar, and are not made out of the baking process. Therefore, the impugned product primarily falls under the ambit of 'confectionery' products.

Principles and Classification of Confectionery Products

B.6 Confectionery is an important food item of great popularity among wide range of population. It has been enjoyed as a major food delicacy from ancient times. The term confectionery is ambiguous and describes a spectrum of sweet goods and takes on different meaning depending on the country in which it is used, for example in the United Kingdom the term applies to any sweet product including cakes. Globally, confectionery foods represent 50% by volume of foods produced and 60% by value. The Indian confectionery market is estimated to be 1,38,000 metric tonnes (in 2005) and is segmented into sugar-boiled confectionery, chocolates, mints and chewing gums. Sugar-boiled confectionery consisting of hard-boiled candy, toffees and other sugar-based candies

Classification of Confectionery

B.7 Confectionery can be classified into four major groups. They are as follows:

Particulars	Description
Sugar confectionery	It includes products using mainly sugar such as boiled sweets, fondants, fudge, jellies, toffees, etc.
Chocolate confectionery	It includes mainly cocoa, chocolate and chocolate products. Sugar confectionery coated with chocolate is also included in it.
Flour confectionery	It includes such as cakes, cream rolls, etc. Traditional Indian cereal and legume flour based sweets such as <i>mysorepak</i> , <i>soanpapdi</i> , <i>badushah</i> , <i>jalebi</i> , etc. are also included in this category.
Milk-based	It includes mainly Indian traditional milk-based sweets such

confectionery	as burfi, peda, rasogolla etc.
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In sugar confectionery, sugar is the main or principal ingredient while in other confectionery sugar is used as one of the ingredient.

Sugar Boiled Confectionery:

B.8 Sugar Confectionery includes Sugar Boiled Confectionery. As per Indian Standard IS 1008: 2004, sugar boiled confectionery includes following type of food products

- a) Hard Boiled Sugar Confectionery
- b) Pan Goods Confectionery (Dragees)
- c) Toffees

B.9 Sugar boiled confectionery sold as hard boiled confectionery, pan good confectionery and toffee is a processed composite food article made from sugar with or without doctoring agents, such as liquid glucose and/or cream of tartar by a process of boiling whether panned or not with or without the addition of colour, flavour, fillings (in the form of liquid, semi-solid or solid) with or without coating of sugar or chocolate or both and other edible materials and made into any desired shape and size.

B.10 As mentioned above, the N.B.S. Crackle manufactured by the Appellant is caramelized by boiling the sugar with the water. Subsequently, other edible products viz. cashew nuts and butter are coated and made into desired size and shape by N.B.S. Crackle machine. Therefore, the impugned product manufactured by the Appellant is "Sugar Boiled Confectionery"

Classification of NBS Crackle under GST Act:

B.11 GST Notification 1 of 2017 enlists the rate of tax on goods falling within the ambit of GST. The said Notification has undergone various amendments since inception of GST. Presently, in the above notification, the goods falling under **HSN Code 1704** are primarily covered under three schedules i.e. Schedule I, Schedule II and Schedule III with 5%, 12% and 18% rates of tax respectively.

Items of HSN Code 1704 falling under Schedule I of GST Notification 01/2017:

B.12 As per **GST Notification 41/2017** dated 15.11.2017 read with GST Notification 01/2017, the following items pertaining to HSN Code 1704 are falling under serial number 92 of Schedule I of GST Notification 01/2017 with 5% rate of Tax. The relevant extract of serial number 92 is as under:

3. Schedule I -2.5%

S.No.	Chapter Heading/ Tariff Item	Description of Goods
(1)	(2)	(3)
92	1702 or 1704	<i>Palmyra sugar, mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets, gajak, khaja, khajuli, anarsa</i>

Items of HSN Code 1704 falling under Schedule II of GST Notification 01/2017:

B.13 Similarly, as per **GST Notification 06/2018** dated 25.01.2018 read with GST Notification 01/2017, the following items pertaining to HSN Code 1704 are falling under serial number 32AA of Schedule II of GST Notification 01/2017 with 12% rate of Tax. The relevant extract of serial number 32AA is as under:

4. Schedule II -6%

S.No.	Chapter Heading/ Tariff Item	Description of Goods
(1)	(2)	(3)
32AA	1704	Sugar Boiled confectionery

Items of HSN Code 1704 falling under Schedule III of GST Notification 01/2017:

B.14 The Items neither falling under serial number 92 of Schedule I nor under serial number 32AA of Schedule II in GST Notification 01/2017 are covered under serial number 12 of Schedule III of GST Notification 01/2017 with 18% rate of tax. The relevant extract of serial number 12 is as under:

5. Schedule III -9%

S.No.	Chapter Heading/ Tariff Item	Description of Goods
(1)	(2)	(3)
12	1704	<i>Sugar confectionery [other than mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets, gajak and sugar boiled confectionery]</i>

The Impugned Product "N.B.S. Crackle" is a Sugar Boiled Confectionery

B.15 As stated above, NBS Crackle is a Sugar Boiled Confectionery and therefore the impugned product is classifiable under tariff head '1704' enumerated at Serial number 32AA of Schedule II of Notification No. 01/2017, dated 28-6-2017 and chargeable at 12% rate of GST.

B.16 The Appellant submits that the N.B.S.Crackle manufactured by them satisfies the technical parameters laid down under the FSSAI Regulations 2011 and IS 1008:2004 which are discussed in detailed in ensuing paragraphs

1. Food Safety and Standards (Food products Standards and Food Additives) Regulations, 2011

Food Safety and Standards (Food products Standards and Food Additives) Regulations, 2011 inter alia deals with "Sugar Boiled Confectionery" under Chapter 2 of Food Product Standards in Para 2.7 of

Sweets & Confectionery. Relevant extract of FSSAI Regulations 2011 is enclosed as **Annexure-1**

Particulars	Sugar Boiled Confectionery as per FSSAI Regulations 2011	Applying FSSAI Regulations 2011 in present case
Meaning	Sugar boiled confectionery means a processed food article made from sugar with or without doctoring agents by process of boiling whether panned or not	As submitted earlier, the impugned product "N.B.S.Crackle" was a processed food article made from 68% to 72% of sugar with doctoring agents of butter and glucose and the same was manufactured through boiling process.
Types of Sugar Boiled Confectionery	<p>1. Hard Boiled Sugar Confectionery means a supercooled solution with a combination of sucrose and liquid glucose or sucrose treated with an acid doctor such as cream of tartar (potassium acid tartrate)</p> <p>2. Pan Goods Confectionery made by the panning process in revolving pans/drums by using either hot coating or cold coating and this process is assisted by blowing air.</p> <p>3. Toffees or milk toffees are boiled sugar confectionery made out of sugar, edible fat, water and other ingredients.</p>	The impugned product "N.B.S.Crackle" is a Hard boiled Sugar Confectionery because after caramelization of sugar, the super-cooled solution was made by cooling down sugar mixture in S.S.Table after combination of doctoring agents butter and glucose.
Physical form of Sugar Boiled Confectionery	<p>Sugar Boiled Confectionery may be in</p> <ol style="list-style-type: none"> 1. Solid 2. Semi-Solid 3. liquid <p>With or without coating sugar or</p>	N.B.S. Crackle is in solid form

	chocolate or both													
Technical Specifications of Sugar Boiled Confectionery	As per FSSAI Regulations 2011, Sugar Boiled Confectionery should conform with following parameters:	As per Food Testing Laboratory report of JNTU Rakinada dated 01.12.2022, the impugned product "NBS Crackle" was confirmed with the technical parameters laid down under FSSAI Regulations 2011, the relevant extract of test result is as under:												
	<table border="1"> <thead> <tr> <th>Test Parameter</th> <th>Specified Value</th> </tr> </thead> <tbody> <tr> <td>Ash Sulphated (on salt free basis)</td> <td>Not more than 2.5 percent by weight</td> </tr> <tr> <td>Ash Insoluble (in dilute Hydrochloric acid)</td> <td>Not more than 0.2 percent by weight</td> </tr> </tbody> </table>	Test Parameter	Specified Value	Ash Sulphated (on salt free basis)	Not more than 2.5 percent by weight	Ash Insoluble (in dilute Hydrochloric acid)	Not more than 0.2 percent by weight	<table border="1"> <thead> <tr> <th>Test Parameter</th> <th>Test Result</th> </tr> </thead> <tbody> <tr> <td>Ash Sulphated (on salt free basis)</td> <td>0.4%</td> </tr> <tr> <td>Ash Insoluble (in dilute Hydrochloric acid)</td> <td>Below 0.1%</td> </tr> </tbody> </table>	Test Parameter	Test Result	Ash Sulphated (on salt free basis)	0.4%	Ash Insoluble (in dilute Hydrochloric acid)	Below 0.1%
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		Copy of the JNTU Food testing report is enclosed as Annexure-2 .												

2. Indian Standard IS 1008 : 2004

Indian Standard IS 1008:2004 deals with "Sugar Boiled Confectionery" which was incorporated by amalgamation of erstwhile three food standards i.e.

- IS 1008:1981- Specification for hard boiled confectionery
- IS 1667: 1981- Specification for toffees
- IS 8806: 1978- Specification for pan goods confectionery

Relevant extract of IS 1008:2004 is enclosed as **Annexure-3**.

Particulars	Sugar Boiled Confectionery as per IS 1008:2004
Scope	IS 1008:2004 prescribes the requirement and method of sampling and

	test for hard boiled confectionery, pan goods confectionery and toffees.																					
Essential Ingredients	The essential ingredients of Sugar Boiled Confectionery are a) Sugar and b) Water																					
Types of Sugar Boiled Confectionery	<p>1. Hard Boiled Sugar Confectionery means a supercooled solution with a combination of sucrose and liquid glucose or sucrose treated with an acid doctor such as cream of tartar (potassium acid tartrate)</p> <p>2. Pan Goods Confectionery made by the panning process in revolving pans/drums by using either hot coating or cold coating and this process is assisted by blowing air. Pan Goods Confectionery are classified into Hard Dragees, Soft Dragees, Chocolate Dragees, Pearled Dragees. The pan goods confectionery (Dragees) shall be hard or soft, rough or smooth depending on the type.</p> <p>3. Toffees or milk toffees are boiled sugar confectionery made from sugar, edible fat, water and other ingredients. Toffees are classified into plain toffees, milk toffees, modified toffees and centre filled toffees. Toffees may be cut, formed or cast. It shall have a bite ranging from hard and chewy to soft eating.</p>																					
Technical Specifications of hard Boiled Confectionery and Pan goods Sugar Confectionery	<p>As per IS 1008:2004, Sugar Boiled Confectionery should confirm with following parameters:</p> <table border="1"> <thead> <tr> <th>Sl.No</th> <th>Characteristic</th> <th>Requirement</th> </tr> </thead> <tbody> <tr> <td>I</td> <td>Ash Sulphated, percent by mass, Max</td> <td>15</td> </tr> <tr> <td>ii</td> <td>Acid insoluble ash, percent by mass, Max</td> <td>2</td> </tr> <tr> <td>iii</td> <td>Sulphur dioxide, mg/kg, Max</td> <td>350</td> </tr> <tr> <td>iv</td> <td>Arsenic</td> <td>10</td> </tr> <tr> <td>v</td> <td>Lead , mg/kg, Max</td> <td>20</td> </tr> <tr> <td>vi</td> <td>Copper , mg/kg, Max</td> <td>5</td> </tr> </tbody> </table>	Sl.No	Characteristic	Requirement	I	Ash Sulphated, percent by mass, Max	15	ii	Acid insoluble ash, percent by mass, Max	2	iii	Sulphur dioxide, mg/kg, Max	350	iv	Arsenic	10	v	Lead , mg/kg, Max	20	vi	Copper , mg/kg, Max	5
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In light of the above submissions, we request your good office to kindly classify the impugned product N.B.S. Crackle under Serial number 32AA of Schedule II of Notification 01/2017.

C. Specific Entry prevails over general entry

C.1 The Appellant submits that the impugned products dealt by the Appellant are classifiable under "Sugar Boiled Confectionery" there are catena of case laws held in Supreme Court of India that a general entry or a residual entry will be preferred for a classification of commodity only in the absence of a specific entry.

C.2 The Apex Court of India in the case of ***Indian Metals & Ferrous Alloys v. Collector of Central Excise*** 1991 taxmann.com 71 held that in classification of goods a specific entry will be preferred to a general entry. Similarly the Hon'ble Supreme Court in the case of ***State of Karnataka v. Durga Projects Inc.*** [2018] 91 taxmann.com 54 in its (3) member bench judgment held that only such goods which cannot be brought under specific entries in the tariff could be attempted to be brought in residual entry.

C.3 Hon'ble Supreme Court of India in the case of ***Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India*** [1976] 2 SCC 241 held that "when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause.

C.4 Thus when a specific entry is available for enumerating the commodity NBS Crackle to relegate it to the orphanage of the residuary entry will be against the principle of classification as held by Hon'ble Apex Court in the above precedents. Hence NBS Crackle is classifiable under tariff head '1704' enumerated at Serial number 32AA of Schedule II of Notification No. 01/2017, dated:28-6-2017.

3. Additional Submission

A. CLASSIFICATION SHALL BE DETERMINED BY APPLYING THE COMMON PARLANCE TEST

A.1 The Appellant submits that 'N.B.S.Crackle' are generally used by the trade as "Butterscotch Nuts". Therefore, it has to be classified as "Butterscotch Nuts" based on the common parlance meaning.

A.2 The Hon'ble Supreme Court in the case of **Commissioner of Trade Tax, U.P. Vs. Kartos International Etc (2011) 40 VST 210 (SC)** observed that classification of any commodity cannot be made on its scientific and technical meaning. It is only the common parlance meaning of the term which should be taken into consideration for the purpose of determining the tax liability.

A.3 The Apex Court in the case of **Mukesh Kumar Aggarwal & Co. v. State of Madhya Pradesh (1988) 68 STC 324 (SC)** observed that in a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance, i.e., 'that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it'. Such words must be understood in their 'popular sense'. The particular terms used by the Legislature in the denomination of articles are to be understood according to the common, commercial understanding of those terms used and not in their scientific and technical sense 'for the Legislature does not suppose our merchants to be naturalists or geologists or botanists'.

A.4 The Apex Court in the **Mauri Yeast India Pvt. Ltd. v. State of Uttar Pradesh (2008) 14 VST 259 (SC)** while answering the question of classification of 'yeast' observed that the trade or commercial meaning or the end-user context would be a relevant factor in construing the fiscal statute.

A.5 The Hon'ble High Court of Andhra Pradesh in the case of **Reckitt Benckiser (India) Limited Vs. State of A.P. (2012) 56 VST 1 (AP HC)**

observed that usual method adopted by an assessment officer, or a dealer would provide the popular meaning, or the meaning attached to the products by those who deal in them and this has to be considered while interpreting the entries in Sales Tax Act.

A.6 Considering the above, the Noticee wishes to submit that the impugned product 'N.B.S. Crackle' is in Pari-Materia with Butterscotch nuts, the same shall be used by the trade for toppings in ice creams, cakes, home goods, shakes. The ingredients of the impugned product and utilities of impugned product are also one and the same. In this regard, the Noticee has obtained tax invoices of butterscotch nuts from the traders in online platform (Amazon) levying 12% rate of GST on butterscotch nuts, the details of the same are tabulated as under for ready reference:

A.7 The Apex court in the **Commissioner of Sale Tax, U.P, Lucknow v. Triloki Nath & Sons [1984] 57 STC 322** observed that if there are two competing entries covering the same item, entry more beneficial to the assessee should be held to applicable.

A.8 In view of the above it can be said that "N.B.S. Crackle" used for topping ice creams, cakes can be classified as "butterscotch nuts" which is classifiable under Serial number 32AA of Schedule II of Notification 01/2017 dated 28.06.2017. Without prejudice to our earlier submissions, the impugned product of the Appellant is liable to 5% rate of GST.

B. Specific Submissions to the findings of the Ld. Advance Ruling Authority

B.1 The Appellant submits that in the impugned order, the Ld. Advance Ruling Authority alleged that the Appellant has supplied the impugned product N.B.S Crackle to ice cream manufacturers meant for ice cream topping only and not meant for consumption by end users.

B.2 This is place on record that during the impugned period, the Appellant has not only supplied impugned products to ice cream manufactures but also to regular traders who in turn supply our impugned products to end customers

without any further process. Copy of the tax invoices raised on regular traders by the Appellant and copies of tax invoices raised by regular traders on end customers are enclosed as **Annexure-8** and **Annexure-9** respectively. It is also not out of place to mention that any levy of 18% rate of GST on the impugned product hinders our business and may result in the closure of our business as our competitors are levying lower rate of taxes i.e. 5% or 12% respectively.

4. Virtual Hearing:

The proceedings of hearing were conducted through video conference on 22.11.2023. The authorized representative Sri. T. Bhanu Purdhviraj, C.A attended and reiterated the submissions already made.

5. Discussion and Findings:

We have gone through the submissions made by the appellant in light of the ruling pronounced by the Authority for Advance Ruling. On perusal of the elaborate submissions made by the appellant at the time of hearing and taking into consideration the facts of the case, we make the following observations.

5.1 The short question posed to this Authority is whether the product "Crackle" manufactured and supplied by the appellant containing the ingredients sugar, cashew nuts, butter, liquid glucose and other permitted flavours would be classified under Sl. No.32AA of Schedule -III (sic) of Notification No.1/2017-Central Tax (Rate) as Sugar Boiled Confectionery, chargeable to tax at the rate of 12% (6% CGST and 6% SGST).

5.2 We have perused the ruling of the Authority for Advance Ruling, Andhra Pradesh (AAR). It is seen that the AAR had replied in the Negative to the question posed before the AAR. The AAR relied upon the HS Explanatory Notes for products under Chapter Heading 1704 read with the CBEC FAQs issued on 29-9-2017 which requires that for products to be classified under this heading of 1704, the same are to be marketed in a solid or semi-solid form and generally suitable for immediate consumption. The AAR specifically held that the impugned products are not meant for consumption by the end users directly but

are used in the process of ice-cream making, specifically used as toppings only. The AAR found that the product "NBS Crackle" is an industrial input and cannot be classified under "Sugar Boiled Confectionery".

5.3 On examination of the nature of classification of products under Chapter Heading 1704 it was found that there were entries for products falling under Chapter Heading 1704 under Schedule -I (5%), Schedule -II (12%) and Schedule -III (18%). Thus, all the 3 Schedules had an entry for products under 1704 heading. The chronology and description of each of the entries under the cited Schedules of Notification No.01/2017-Central Tax (rate) are as follows:

(i) **Schedule I -2.5%**

Notification No.01/2017-Central Tax(Rate) dated 28-6-2017 was amended by **GST Notification 41/2017** dated 14.11.2017, to include the following entry pertaining to HSN Code 1704 under serial number 92 of Schedule I of the said GST Notification 01/2017 with a tax rate of 5%(CGST 2.5% & SGST 2.5%). The relevant extract of serial number 92 is as under:

S.No.	Chapter Heading/ Tariff Item	Description of Goods
(1)	(2)	(3)
92	1702 or 1704	<i>Palmyra sugar, mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets, gajak, khaja, khajuli, anarsa</i>

(ii) **Schedule II -6%**

Notification No.01/2017-Central Tax (Rate) dated 28-06-2017 was amended by **GST Notification 06/2018** dated 25-01-2018, to include the following entry pertaining to HSN Code 1704 under serial number 32AA of Schedule II of the said GST Notification 01/2017 with a tax rate of 12% (CGST 6% & SGST 6%). The relevant extract of serial number 32AA is as under:

S.No.	Chapter Heading/ Tariff Item	Description of Goods
(1)	(2)	(3)
32AA	1704	Sugar Boiled confectionery

(iii) **Schedule III -9%**

Notification No.01/2017-Central Tax (Rate) dated 28-06-2017 was amended by **GST Notification 41/2017** dated 14-11-2017 and **GST Notification No.06/2018** Central Tax (Rate) dated 25-01-2018, to include the following entry pertaining to HSN Code 1704 under serial number 12 of Schedule III of the said GST Notification 01/2017 with a tax rate of 18% (CGST 9% & SGST 9%). The relevant extract of serial number 12 is as under:

S.No.	Chapter Heading/ Tariff Item	Description of Goods
(1)	(2)	(3)
12	1704	<i>Sugar confectionery [other than mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets, gajak and sugar boiled confectionery]</i>

It can therefore be seen that in 2018 (w.e.f 25-01-2018) a new entry was added to Schedule -II viz., Sl.No.32AA with the description "*Sugar Boiled Confectionery*" with a rate of tax of 12% (CGST 6% and SGST 6%).

5.4 The taxpayer claims to be paying taxes under CH 1704 90 20 at the rate of 18%. The taxpayer now seeks a ruling on whether their product "Crackle" a claimed sugar boiled confectionery, would fall under Sl.No.32AA of Schedule -II @ 12% GST (the appellant appears to have wrongly quoted the Schedule as Schedule-III instead of Schedule -II). Having seen that there is now a specific entry under Notification No.01/2017-CT(rate) to cover "Sugar Boiled Confectionery", what remains to be seen is whether the product "Crackle" is a sugar boiled confectionery.

5.5 "Crackle" appears to be brand name. The Appellant has explained the manufacturing process and have relied upon the **Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011** to describe the product "Sugar Boiled Confectionery". They have further referred to Indian Standard **IS 1008: 2004 SUGAR BOILED CONFECTIONERY – SPECIFICATION**.

5.5.1 The description of "Sugar Boiled Confectionery" provided under the FSSAI Regulations cited above is as under:

CHAPTER 2 FOOD PRODUCT STANDARDS

2.7. SWEETS & CONFECTIONERY:

2.7.1 Sugar boiled confectionery:

"Sugar boiled confectionery whether sold as hard boiled sugar confectionery or pan goods confectionery or toffee or milk toffee or modified toffee or lacto-bon-bon or by any other name **shall mean a processed composite food article made from sugar with or without doctoring agents such as cream of tartar by process of boiling whether panned or not. It may contain centre filling, or otherwise, which may be in the form of liquid, semi-solid or solids with or without coating of sugar or chocolate or both. It may also contain any of the following: -**
(i) ..."

5.6 As per the Appellant, the main ingredients of the product is "Sugar" @ 68% to 72%, Cashew Nuts accounts for 28% to 30% followed in a small measure, butter and Glucose. The description of the product manufactured by the Appellant and that described in the FSSAI Regulations and Indian Standard 1008:2024 support the claim of the Appellant that the product "Crackle" manufactured by them is a "Sugar Boiled Confectionery". It must be stated that this Authority is basing its findings on the submissions and literature regarding the manufacturing process of "Crackle" as provided by the Appellant. Any suppression, misrepresentation of facts would be dealt with in terms of Section 104 of the CGST / SGST Act 2017.

5.7 As per clause (IV) of the "Explanation" in Notification No.01/2017-CT(Rate) dated 28-6-2017 "The rules for the interpretation of the First Schedule to the

Customs Tariff -6-2017, Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification."

Accordingly, Rule 3 of the *General Rules of Interpretation of the Customs Tariff Act 1975* as made applicable to GST Matters vide Notification No.1/2017-CT(Rate) reads as follows:

Rule 3: *When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

5.8 In the case at hand, there is a specific entry for "Sugar Boiled Confectionery" under SI.No.32AA of Schedule -II of Notification No.01/2017-CT(Rate). Based on the literature and claim made by the Appellant in their submissions, it is seen that the product "Crackle" would fall under the category of "Sugar Boiled Confectionery". As such, the product "Crackel" would rightly be classified under Schedule-II SI.No.32AA chargeable to a tax rate of 12% (CGST 6% and SGST 6%).

5.9 As regards the finding of the AAR that only products generally meant for **immediate consumption** are to be classified under CH 1704, we find that the same has an inherent flaw. If the said HS Explanatory provisions of immediate consumption is to be made applicable to "Crackle", then the same is equally applicable to all the products falling under Chapter Heading 1704 which are covered under Schedule -I, Schedule -II and Schedule -III as all these products are grouped under CH 1704. It cannot be said that products falling CH 1704 of Schedule -II only are hit by the said clause of immediate consumption and those falling under CH 1704 of Schedules I and III are not affected. Further, No alternative HSN was suggested by the AAR.

5.10 In view of the above findings, the Committee opines that the Advance Ruling No.10/AP/GST/2023 dated 26.05.2023 passed by the Authority for Advance Ruling for the State of Andhra Pradesh is not in order. Therefore, the Committee sets aside the ruling pronounced vide Advance Ruling No.10/AP/GST/2023 Dated 26.05.2023.

Accordingly, this Appellate Authority for Advance Ruling for the State of Andhra Pradesh holds as follows:

Question: Whether the product by name "Crackle" manufactured and supplied by the appellant containing the ingredients Sugar, Cashew Nuts, Butter, Liquid glucose and other permitted Flavours, should be classified under the Tariff Heading 1704 enumerated at Serial Number 32AA of Schedule -II (wrongly mentioned as Schedule -III) of Notification No.01/2017-CT(Rate) as a Sugar Boiled Confectionery"?

Answer: Affirmative.

Sd/- Sanjay Pant
Sanjay Pant
Chief Commissioner (Central Tax)
Member

Sd/- M. Girija Shankar
M. Girija Shankar
Chief Commissioner (State Tax)
Member

//t.c.f.b.o//


Deputy Commissioner (ST) 27/12/2023

Registrar
Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)
Andhra Pradesh, Vijaya Colony,

To

M/s Sri Venkateswara Cashew Chikky Manufacturers, 13/192, Savitraya Colony,
Vetapalem, Prakasham Distirct , A.P., 523187 **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Chirala Circle, Guntur-II Division
(By Registered Post)
2. The Superintendent, Central Tax, CGST Chirala Range, Nellore Division.
(By Registered Post)