

**APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA
PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE RULING
U/s.101 OF THE KERALA STATE GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Pullela Nageswara Rao, IRS

Chief Commissioner,

Central Tax, Central Excise and Customs

2. Rajan N.Khobragade IAS.

Principal Secretary & Commissioner

State Taxes, Kerala

**Sub: GST Act, 2017 - Appellate Authority for Advance Ruling
constituted U/s 99 of the Kerala State Goods and Services Tax
Act, 2017 - Rate of Tax Of 'Ada' - Orders issued- reg.**

**Read: Application for Advance Ruling dated 20.02.2018 by
M/s. Ramachandran Bror., Kollam**

M/s. Ramachandran Bror, Kollam, a wholesale distributor of Ada in Kollam District (hereinafter called the applicant) is a registered person having GSTIN 32AAJFM1969P1ZP. The applicant had preferred an application on 20.02.2018 for Advance Ruling on the rate of tax of the commodity 'Ada'.

2. The applicant had argued that usage of Ada is same as that of "seviyan (vermicelli) i.e., to make sweet kheer or palada payasam or ada pradhanam. Ada is one of the grocery goods, mainly used by Keralites to prepare a sweet kheer or payasam otherwise called pradhanam. The ada is produced from rice flour or maida and no other ingredients are added.

3. In support of their claim, the applicant had produced a copy of the judgment dated 23.04.1987 of Tamil Nadu Sales Tax Appellate Tribunal, Madurai

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Bench in the case of Meenakshi Cottage Industries Vs State of Tamil Nadu wherein it was held that ada and vermicelli are one and the same.

4. The authorised representative of the applicant was heard in the matter on 13.03.2018 and the contentions raised were examined. The Member, CGST was of the view that the commodity "ada" is appropriately classifiable under **HSN 1902 of the 1st Schedule [Sl No. 97 - Seviyan (Vermicelli)]** of Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017 and the State Government Notification No. 360/2017 attracting 5% GST. However, the Member, SGST was of the opinion that since the commodity "ada" is not specifically mentioned in any of the Tariff heads, it would be taxable under the **residual entry at Sl.No. 453 of the Third Schedule of Central Government Notification No.1/2017** and the concomitant State Government Notification No. 360/2017 at the rate of 18%

5. In view of the fact that the members of the Advance Ruling Authority differed on the question of classification of the commodity "Ada", the matter has been referred to the Appellate Authority for Advance Ruling in terms of subsection (5) of Section 98 of the CGST/KGST Act, 2017 for hearing and decision on the classification of the said commodity.

6. A personal hearing was granted to the applicant on 13.09.2018. On the basis of the facts disclosed in the application and the oral/written submissions made at the time of personal hearing, it was decided to admit the application and the contentions raised by the applicant were examined.

7. Seviyan (Vermicelli) is a commodity produced from maida and is used for the purpose of giving richness to Kheer / Payasam. "Ada" is also a commodity produced from maida or rice flour or a mixture of maida and rice flour and is used for the purpose of giving richness to some regional varieties of payasams; known as "Ada Pradhaman" and "Palada Pradhaman". In other words, "Seviyan (Vermicelli)" and "Ada" are produced from maida or rice flour and are essentially used for giving richness to different varieties of Kheer / Payasams. The only difference is that Seviyan (Vermicelli) is prepared in the form of sticks and "Ada" is prepared in the form of thin pieces, making use of different dies. In payasams, where "Vermicelli" is used "Ada" is not used. Hence, essentially "Ada" is a

substitute for "Vermicelli" used for giving richness to certain regional varieties of payasams called "Ada Pradhama" and "Palada Pradhama", which are popular in Kerala and some parts of Tamil Nadu. Both "Vermicelli" and "Ada" are made of similar ingredients and serve the same purpose namely; giving richness to different varieties of payasams.

8. The question now arises for consideration is whether the commodity "Ada" should be classified under the HSN Code 1902 along with "Seviyan (Vermicelli)" attracting GST at the rate of 5% or should be classified under residual entry at Sl No. 453 of the Third Schedule of Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017 and State Government Notification No. 360/2017 attracting 18% GST.
9. Sl No. 453 of Third Schedule reads as follows; **"Any Chapter – Goods which are not specified in Schedule I, II, IV, V or VI."** Therefore, it is evident that the entry is a residuary entry to classify commodities that are not classifiable under any of the other entries.
10. The Explanation appended to the Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;
"Explanation:-
(1) In this Schedule, tariff item, heading, sub-heading and Chapter shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 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 above table."
11. In view of the above provisions, the rules for interpretation of the First Schedule of the Customs Tariff Act, 1975 including the Section and Chapter Notes and the General Explanatory Notes are applicable for interpretation of the GST Tariff / Rate Schedule.

12. Accordingly, the ratio of various judgments of the Supreme Court, High Court and Tribunals regarding classification of commodities under the Customs Tariff and Central Excise Tariff are equally applicable and have precedent value in relation to the classification of goods under the GST Tariff/Rate Schedule as the classification under the Customs and Central Excise Tariffs and the GST Tariff/Rate Schedule are aligned and based on the Harmonised System of Nomenclature Codes [HSN Codes].

13. The General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 is as follows;

Classification of goods in this Schedule shall be governed by the following principles:

1. *The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

(b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*

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.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

14. A perusal of the para supra and the application of the same with respect to the facts in the instant case, it is evident that the applicable rule in this case is Rule 4 and as per the same, 'Ada' is to be classified under the heading appropriate to the goods to which it is most similar in character.

15. The Hon'ble Supreme Court in the case of **Dunlop India Ltd and Madras Rubber Factory Ltd Vs Union of India and others reported in 1983 (13) ELT 1566 (SC)**, has, inter alia, observed as follows;

"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. The question of competition between two rival classifications will, however, stand on a different footing.”

16. The Hon'ble Supreme Court in the case of **CCE Vs Jayant Oil Mills Pvt Ltd reported in 1989 (40) ELT 287 (SC)** observed, inter alia, as follows;

“It is well settled that resort could not be had to the residuary item if the product comes within the ambit of any other tariff item.”

17. In **Bharat Forge and Press Industries (P) Ltd Vs CCE, Baroda reported in 1990 (45) ELT 525 (SC)**; the Hon'ble Supreme Court in Para 3, inter alia, observed as under;

“The question before us is whether the department is right in claiming that the items in question are dutiable under Tariff Entry 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item.”

18. In the case of **Western India Plywoods Ltd Vs Collector of Customs reported in 2005 (188) ELT 365 SC** the Honble Supreme Court, inter alia, held that;

“Application of residuary item only when no other heading expressly or by necessary implication applies.”

19. In the case of **COMMISSIONER OF CENTRAL EXCISE Vs M/s WOCKHARDT LIFE SCIENCES LTD reported in 2012 (277) ELT 299 (SC)**; the Hon'ble Supreme Court, inter alia, laid down the following principles for classification of goods;

- There is no fixed test for classification of a taxable commodity. This is probably the reason why the 'common parlance test' or the 'commercial usage test' is the most common. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the basis of the

tangible material or evidence to determine how such an article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted.

- However, there cannot be a static parameter for the correct classification of a commodity. The process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff.
- Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance.
- A commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense. A residuary entry can be taken refuge of only in the absence of a specific entry; that is to say, the latter will always prevail over the former.
- The combined factor that requires to be taken note of for the purpose of the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put.

20. In the light of the discussion above, it can be seen that the product, "Ada", in sum and substance, is something akin, i.e., similar in character to "Vermicelli". Both are made from 'maida or rice flour' or 'maida and rice flour' and are manufactured through an identical process and "ada" is used for giving richness to certain regional varieties of payasams called "Ada Pradhama" and "Palada Pradhama", which are popular in Kerala and certain parts of Tamil Nadu. There is indeed nothing to differentiate "ada" from "vermicelli" except for the dies that are used in the manufacturing process which gives it a different shape.

21. Therefore, applying Rule 4 of the General Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 and the principles of classification of goods as settled by the various judgments of the Hon'ble Apex Court as discussed above, "Ada" merits classification under **HSN 1902 of the 1st Schedule [Sl No. 97 - Seviyan (Vermicelli)]** of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 and State Government Notification No. 360/2017 attracting 5% GST.

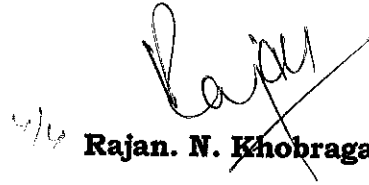
22. In view of the above, we rule as under;

Order No. CT/3368/2018-C3 Dated: 25.09.2018

"Ada" is rightly classifiable under **HSN 1902 of the 1st Schedule [Sl No. 97-Seviyan (Vermicelli)]** of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 and State Government Notification No. 360/2017 dated 30.06.2017 attracting 5% GST .



**Pullela Nageswara Rao, IRS
Chief Commissioner,
Central Tax, Central Excise & Customs**



**Rajan. N. Khobragade, IAS
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State Goods & Service Tax Dept.,**

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To

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