

BEFORE THE AUTHORITY OF: *Shri. S. Anil Kumar IRS &*
: Shri. B.S. Thyagarajababu B.Sc, LL.M

Legal Name of the applicant	M/s. Abad Fisheries Private Limited
GSTIN	32AAFCA6821M1ZO
Address	1 st Floor, S-31, 40/1818-C15, Baypride Mall, Marine Drive, Ernakulam, Kerala – 682031.
Advance Ruling sought for	Whether frozen seafood sold in packages to institutional customers, without bearing the brand name, is eligible for exemption (NIL rate) under Notification No.2/2017 (Central Tax Rate / Integrated Tax Rate / State Tax Rate) dtd.28 th June, 2017?
Date of Personal Hearing	15.06.2019
Authorized Representative	Mr. Naveen Raj Purohit

ADVANCE RULING No. KER/44/2019 Dt. 21.06.2019

The applicant is engaged in the processing and sale of frozen seafood in India as well as export out of India. The locally caught fish are deep frozen and packed in factories and also import seafood for making domestic sales. The company sell the products through retail outlets as well as to institutional customers. Since seafood is highly perishable, and in order to preserve fish from decaying, the seafood is sold in package / unit containers in frozen form. The company is a registered brand name holder and sells the frozen seafood in packed unit containers under the brand name of "Seasparkle / Brillar / Wildfish / ABAD" to retail customers. In addition to this, they sell the seafood in packages / unit containers in frozen form without brand name to institutional customers. They have requested the advance ruling on the following:

Whether the frozen seafood sold in packages to institutional customers, without bearing the brand name, is eligible for exemption (NIL rate) under Notification No.2/2017 (Central Tax Rate / Integrated Tax Rate / State Tax Rate) dtd.28th June, 2017?

The authorized representative was heard and it was pointed out that the primary process involved is filleting and freezing of fish / seafood for onward distribution to retail counters and catering units. The secondary process produces chilled / frozen and canned product for the retail

and catering traders. These products, sold in unit containers, under registered brand name "Seasparkle / Brillar / Wildfish / ABAD" to retail customers are taxable at the rate of 5% GST. The packing and branding of the products to retail customers are made with a view to carve-out brand identity as against the other competing products and to reach the targeted customer.

One of the divisions of the company supplies fish to institutional customers such as hotels, restaurants and catering units. When sold to institutional customers, the company effects sale of frozen seafoods in packages without bearing the brand name. The packing is required only for the limited purpose of freshness and safety. The brand name does not have relevance for the institutional customers and in such cases, in order to distinguish the products; the package would merely contain the inscriptions such as "catering, food service, select or Imperial". These names are neither registered trade mark nor brand name, but for the limited purpose of indicating the quality of the products. The company does not have any actionable claim or any enforceable right for such inscriptions. Such packets contain name of company and contact details for customers which is a statutory requirement as per Legal Metrology Act and Food Safety and Standards Act. As these products are sold to institutional customers without brand name, they are eligible for exemption under Entry 22 of Notification No.2/2017 Central Tax (Rate) dtd.28-06-2017.

The matter was examined in detail. The company is a registered brand name holder. A business name is the name that the legal entity, that owns the business, will use to promote the business. A company name identifies the legal entity that owns the business, as distinct from identification of its products and services. The legal entity that owns the business may be described as a sole trader. If a legal entity wants to call its business something other than its own name, it must register a business name.

The phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

It is established that the goods sold by a brand name holder, without any brand name, has comparable goodwill or reputation in connection with the product, service or business with which it is used.

Thus, it is clear that even by removing the brand names from packaging of the seafoods, the applicant still enjoys the advantage attached to the brand name 'ABAD'. The mention of name 'ABAD' on the packages, as manufacturer of these goods clearly indicates the connection between the said goods with the applicant in the course of trade as they are already having a registered brand in the name of 'ABAD' which was being displayed on the packages of frozen seafood till now. The customers, by reading the name on the packages as 'ABAD', would be in a position to identify the said goods as belonging to the reputed brand 'ABAD' even in the absence of the logo of that brand on the goods. The purpose of applicant for taking advantage of their reputed brand, even in absence of its logo on the package of frozen seafoods, seems to be fulfilled by mention of words 'ABAD'. As the product has direct connection with brand name holder, the use of name 'ABAD' on packages can be considered as brand name. The scrutiny of surrounding circumstances clearly shows that the package of frozen seafoods, even though without affixing a registered brand on them, will be considered as bearing the brand "ABAD". Therefore, visible manifestation of brand name is not compulsory on the package. Even an ordinary name is sufficient. [Australian Foods India (P) Ltd., [2013(287) ELT 385(SC)]].

In the case of **Aditya Birla Retail Limited**, the Appellate Authority for Advance Ruling has held that goods bearing a name and address of manufacturer, as per the statutory requirement, cannot be considered as not bearing a brand name. Reliance was placed by Authority on the decision in case of **Commissioner of Central Excise, Trichy vs Grasim Industries Ltd [2005 (183) E.L.T. 123 (SC)]**, wherein it was held that even the name of some other company, if it is used for the purpose of indicating a connection between the product and that company would be sufficient to constitute a brand name.

As per SRO.No.741/2017, all the 'frozen sea foods', put up in unit container, falling under Chapter heading 0303, 0304, 0305, 0307, 0308, are taxable @ 5%, subject to the condition that it should be a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available (other than those where any actionable claim or enforceable right in respect of such brand name has been foregone

voluntarily), subject to the conditions as in the annexure. As per the annexure, for foregoing an actionable claim or enforceable right on a brand name,-

“(a) the person undertaking packing of such goods in unit containers which bear a brand name shall file an affidavit to that effect with the jurisdictional commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and

(b) the person undertaking packing of such goods in unit containers which bears a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii) (a) printed on the unit containers, he has foregone his actionable claim or enforceable right voluntarily.”.

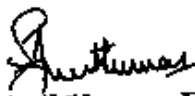
As per S.R.O.No.361/2017, Sl.No.20, and the subsequent amendment by Notification No.42/2017 CT (Rate) dtd.14-11-2017, exemption is eligible only for supply of fresh or chilled fish. Frozen fish sold in unit container under brand name is taxable. The main difference between chilling and freezing is that of temperature. Ice crystals are formed while freezing. This is not so in the case of chilling. Whereas freezing constitutes a long term preservation of food products, chilling is just for short term preservation. Chilling refers to subjecting of food products to low temperature, while freezing refers to subjecting of food products to temperature below their freezing point. The temperature depends according to the food products. It differs from product to product. The averment of the applicant that sale of frozen sea foods in unit containers to institutional customers are not concerned with the branding of the product, has no relevance, since the ultimate consumers are hotels, restaurants and catering houses.

By appointing a 'brand guardian', even institutional customers ensure that nothing goes out to the public without their knowledge. The procurement of sea foods by institutional customers ensure quality standards and trust of their customers. The supply to institutional customers are made by the applicant in packet which contain name of company and contact details for customers, which is a statutory requirement as per Legal Metrology Act and Food Safety and Standards Act. The presence of company name is sufficient to ensure that the product procured belongs to 'brand guardian'; 'ABAD'. The sea food packets bearing name and address of supplier, as per the statutory requirement, cannot be considered as not bearing a brand name. Moreover, the applicant has not furnished any evidence to prove that he has filed an affidavit before the jurisdictional Commissioner to the effect that he was voluntarily foregoing his actionable claim or enforceable right on such brand name.

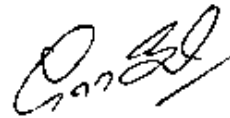
In view of the observations stated above, the following rulings are issued:

Whether the frozen seafood sold in packages to institutional customers, without bearing the brand name, is eligible for exemption (NIL rate) under Notification No.2/2017 (Central Tax Rate / Integrated Tax Rate / State Tax Rate) dtd.28th June, 2017?

No. Supply of frozen seafood in packages by a brand name holder is not eligible for exemption for the mere reason that the supply to a particular category of customers are made without inscription of Brand or Trade Name. M/s.Abad Fisheries Private Limited, the applicant herein, is a registered brand name holder. The company is selling frozen sea food in packed unit containers under the brand name to retail customers and selling the same products to institutional customers without printing brand or trade name in the packet. As to the retail customers, they can choose quality products from the market on seeing the inscription of Brand or Trade Name on package. Brand name establishes a correlation between the products of the company and the minds of the consumer. But as for as an institutional customer is concerned, there is a pre-contract with the brand or trade mark holding company for supply of products to their institution. The institutional customers enter into an agreement with the supplier for the supply of frozen seafood solely for the reason that such company brand acquires distinctiveness and can supply quality products. In such situation, mere inscription of brand on the packet has no significance. However, the supply of frozen seafood in packages to institutional customers contain name of the company and contact details for customers which are statutory requirements. The presence of company name is sufficient to ensure that the product procured belongs to the 'brand guardian' and it cannot be considered as not bearing a brand name.



S. Anil Kumar, IRS
Additional Commissioner of Central Tax
Member



B.S. Thyagarajababu, B.Sc, LL.M
Joint Commissioner of State Tax
Member

To

M/s. Abad Fisheries Private Ltd.
1st Floor, S-31, 40/1818-C15,
Baypride Mall, Marine Drive,
Ernakulam, Kerala – 682031.

