

	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Shri. Sivaprasad.S, IRS &
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	Shri. ASWATH MANOHARAN
GSTIN	Unregistered
Address	47/499, Shivaji Road, Moothanthara, Vadakkanthara – P.O., Palakkad – 678012.
Advance Ruling sought for	<p>i) What is the rate of tax and classification applicable to the supply of banana chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?</p> <p>ii) What is the rate of tax and classification applicable to the supply of jackfruit chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?</p> <p>iii) What is the rate of tax and classification applicable to the supply of tapioca chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?</p> <p>iv) What is the rate of tax and classification applicable to the supply of jaggery coated banana chips that is sarkaraupperi, in Malayalam (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?</p>

Date of Personal Hearing	05.01.2021
Authorized Representative	Sivadas Chettoor, CA

ADVANCE RULING No. KER/120/2021 Dated 31-05-2021

The applicant is an unregistered person. The Applicant is in the process of setting up a unit to carry on the business as manufacturer of banana chips, jack fruit chips, jaggery coated banana chips (sarakaraupperi in Malayalam), masala kadala (masala coated fried groundnut).

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. The applicant submits that they intend to use the brand name "AYYAPPA" without taking registration of the brand under the Trade Marks Act, 1999 for conducting the business of banana chips, jack fruit chips, jaggery coated banana chips (sarakaraupperi in Malayalam), masala kadala (masala coated fried groundnut). The brand name shall be printed only on the retail packs though supply is intended to be made to wholesalers also. The applicant also submits that they do not wish to raise any actionable claim on the above brand name "AYYAPPA". The Applicant was informed that there is confusion regarding the classification as well as the rate of GST applicable on the above products. While most of the dealers are paying GST at the rate of 5%, it is learnt that some departmental officers have contacted a few dealers and insisted for payment of tax at the rate of 12%. In the circumstances there is uncertainty in the market regarding the classification and rate of tax applicable on the above products. Hence the applicant wishes to start the business after getting the correct information regarding the classification and rate of tax applicable on the above products.

4. Accordingly, the applicant requested for advance ruling on the following:

1. What is the rate of tax and classification applicable to the supply of banana chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?

2. What is the rate of tax and classification applicable to the supply of jackfruit chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?

3. What is the rate of tax and classification applicable to the supply of tapioca chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?

4. What is the rate of tax and classification applicable to the supply of jaggery coated banana chips that is sarkaraupperi, in Malayalam (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?

5. Contentions of the Applicant:

5.1. The applicant purchases raw banana from various sources, peel off the skin and slice the raw banana into small chips, purchase the flesh part of unripened / raw jackfruit in slice from various sources without seeds, purchase the flesh part of unripened / raw tapioca in slice from various sources. The applicant may use turmeric powder for getting the yellow colour to banana chips and jackfruit chips and chilly powder for getting the colour and taste in tapioca chips. The applicant intends to use coconut oil or palm oil for the purpose of frying the chips. During the process of frying, salty water is added to the oil so that the fried banana chips, jackfruit chips and tapioca chips get the salty taste. The chips are then taken out using the fry strainer for removing excess oil. It is submitted that the jaggery coated banana chips are made out of the un-ripened / raw banana. The skin of the banana is peeled off and is cut length wise in small pieces. The pieces are fried in oil and is drained using a fry drainer. Those fried pieces are mixed with melted jaggery syrup along with cumin powder, cardamom etc.

5.2. The applicant submits that they propose to market the fried banana chips, jackfruit chips, tapioca chips and jaggery coated banana chips to wholesalers and retailers / bakeries. The wholesale package would be usually in 10 kgs or 5 Kgs packets and the retail packs will be in 1 kg and ½ kg packets. Those packets would contain the name, address and other particulars of the applicant to meet the requirement of various applicable laws like Legal Metrology Act, 2009, Food Safety and Standards Act, 2006 etc. It is also submitted that the applicant does not wish to raise any actionable claim before any court of law on its unregistered brand name "AYYAPPA" and they are prepared to execute affidavits affirming the same.

5.3. The applicant is of the view that the Tapioca Chips are taxable at 5% as it falls under Sl.No.98 of Schedule I of Notification No. 01/2017 CT(Rate) dated 28.06.2017 under the Chapter Heading 1903. Alternatively, the applicant is of the view that the Tapioca Chips are taxable at the rate of 5% as it would fall under Sl No. 101A of the 1st Schedule to the Notification No. 01/2017 CT(Rate) dated 28.06.2017 as inserted by Notification No. 34/2017 CT (Rate) dated 13.10.2017. Further, the applicant submits that the Banana Chips and Jackfruit

Chips are taxable at the rate of 5% as it would fall under Sl.No.101A of the First Schedule to the Notification No. 01/2017 CT(Rate) dated 28.06.2017 as inserted by Notification No. 34/2017 CT (Rate) dated 13.10.2017.

5.4. The applicant submits that according to their view Banana Chips, Jackfruit Chips and Tapioca Chips would clearly fall in the category of namkeens. The word "namkeen" is a Hindi word which means salty. Therefore, any food product which is salty would be prima facie classifiable as namkeen. The banana chips is basically a salty product and therefore classifiable as namkeen. Most of the leading dealers in namkeens in the Hindi speaking areas have classified and identified banana chips as namkeens. Banana Chips are exhibited in their websites under the head "namkeens". For example, Chheddas, a leading dealer in namkeens have classified banana chips under the head namkeens. The classification under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (which is the basic law relating to the supply of food) Banana Chips, Jackfruit Chips and Tapioca Chips have been grouped along with namkeens such as mixture, bhujia, chabena etc). The applicant invited attention to Serial No.3.1.1 in the Chapter 3 of the above regulation which is reproduced below;

"3.1.1:1) Use of Food Additives in Food Products: The food products may contain food additives as specified in these Regulations and in Appendix A. 2) Use of food additives in traditional foods. - The traditional foods namely, - snacks of savouries (Fried Products), such as Chiwda, Bhujia, Dalmoth, Kadubale, Kharaboondi, Spiced and fried dals, banana chips and similar fried products sold by any name, sweets, carbohydrates based and milk products based, such as Halwa, Mysore pak, Boondi, Ladoo, Jalebi, Khoya Burfi, Pedda, Gulab Jamun, Rasogolla and similar milk product based sweets sold by any name, instant mixes powders only of Idli Mix, Dosa Mix, puliyogare mix, pongal mix, gulabjmoon mix, jalebi mix, vada mix, Rice and Pulses based papads, ready to serve beverages (tea / coffee based only) may contain food additives permitted in these regulations and in Table 2 of Appendix A."

Thus it is clear that the Parliament itself identified, recognized and classified banana chips, jackfruit chips and tapioca chips as falling in the category of "namkeens".

5.5. The applicant would like to classify the banana chips, jackfruit chips in the residuary category mentioned in Sl.No.101A of the Notification No. 01/2017 CT (Rate) dated 28.06.2017; i.e., "similar edible preparations in ready to consumption form". Accordingly, the applicant is of the view that the Banana Chips, Jackfruit Chips and Tapioca Chips proposed to be supplied is taxable at the rate of 5% as per Sl No. 101A of 1st Schedule to Notification No.01/2017 CT (Rate) dated 28.06.2017 as amended by Notification No. 34/2017 CT (Rate) dated 13.10.2017. The applicant does not intend to raise any sort of actionable claim

on the brand name till it is registered and also prepared to execute affidavits or similar undertakings stating that the applicant shall not raise any actionable claim in respect of the branded banana chips, branded jackfruit chips and branded tapioca chips. The rate of 12% will be applicable to the Banana, Jackfruit and Tapioca Chips only if the same are supplied in packets containing registered brand name.

5.6. Jaggery coated banana chips are sweet in taste and sweetness predominates. Therefore, the applicant is of the view that jaggery coated banana chips squarely falls in the category of "Sweetmeats" under Serial No.101 in Schedule I of the Notification No.01/2017 dated 28.06.2017 and is liable to tax at the rate of 5%. The term "sweetmeat" means food rich in sugar and prepared with sugar. Jaggery is made out of sugarcane and sugar is obtained on further crystallising and refining sugarcane. Sweetness is the predominant distinguishing feature of Jaggery Coated Banana Chips and the common man would identify them as Sweetmeat. The Hon'ble CESTAT in Hindustan Lever Ltd Vs CCE, Mumbai [2005 (189) E.L.T (Tr- Mumbai)] observed that; "Thereafter by going through the meaning of "Sweet meat" in various dictionaries, it was found that products rich in sugar, prepared with sugar is called as sweet meats". The observation was subsequently followed in MTR Foods Ltd Vs CCE, Bangalore [2010 (252) E.L.T 580 (Tri - Bangalore)] and Shaiq Iqbal Vs CCE [2019 (25) G.S.T.L 545 (Tri- Hyd)].

6. Personal hearing:

The applicant was granted opportunity for personal hearing on 05.01.2021. The applicant was represented by Shri. Sivadas Chettoor, Chartered Accountant. He reiterated the contentions made in the application.

7. Discussion and conclusion:

7.1. The matter was examined in detail. The issue to be determined is the classification and rate of tax of Banana Chips, Jackfruit Chips, Tapioca Chips and Jaggery Coated Banana Chips proposed to be supplied by the applicant. The contention of the applicant is that Banana Chips, Jack fruit Chips fall under the category of "Namkeens" and hence is appropriately classifiable under Customs Tariff Heading 2106 90 and is liable to GST at the rate of 5 % as per entry at Sl No. 101A of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017. The Tapioca Chips are classifiable under Customs Tariff Heading 1903 or alternatively under Customs Tariff Heading 2106 90 and liable to GST at the rate of 5% as per Sl.No.98 or Sl No. 101A of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017. The Jaggery Coated Banana Chips are classifiable as "Sweetmeats" under Customs Tariff Heading 2106 90 and liable to GST at the rate of 5% as per Sl.No.101 of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017.

7.2. The products included in Chapter 19 of the Customs Tariff are preparations of cereals, flour, starch or milk and pastrycooks' products. The products falling under Tariff Item 1903 00 00 are Tapioca and substitutes therefor prepared from starch in the form of flakes, grains, pearls, siftings or in similar forms. The Tariff Item only covers Tapioca products in the form of flakes, grains, pearls, siftings or similar forms not fried products and hence Tapioca Chips does not qualify to be classified under the Tariff Item.

7.3. Chapter 21 of the Customs Tariff covers "Miscellaneous edible preparations". The Heading 2106 of the Chapter 21 covers food preparations not elsewhere specified or included. Those food preparations not specified or included elsewhere in the tariff being preparations for use either directly or after processing for human consumption are to be classified under this head. Therefore, it is evident that the entry is a residuary entry in respect of edible preparations and hence the edible preparations shall be classified under this entry only if the same are not classifiable under any of the other specific entries for edible preparations.

7.4. 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."

7.5. In view of the above, 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. The General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 are as follows;

Rule 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;

Rule 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.

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

(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, insofar 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.

Rule 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.

7.6. Chapter 20 of Customs Tariff specifically covers 'Preparations of vegetables, fruits, nuts or other parts of plants. As per Chapter Note 1 (a) to Chapter 20, the Chapter does not cover vegetables, fruits or nuts prepared or preserved by the processes specified in Chapter 7, 8 or 11. Therefore, all the vegetable, fruit or nut products or preparations made other than by the processes specified in Chapters 7, 8 or 11 are included in the Chapter 20. The processes specified in Chapters 7,

8 or 11 mainly include freezing, steaming, boiling, drying, provisionally preserving and milling. Therefore, any vegetable, fruit, nut or edible parts of plant which is prepared or preserved by any other process than these are liable to be classified under Chapter 20. Chapter Heading 2008 of the Customs Tariff covers all roasted and fried vegetable products. Frying and roasting are two popular cooking methods that both use high temperature. It is not necessary that both the conditions are to be cumulatively satisfied for classifying a product under the category of roasted and fried products. When according to chapter notes and description of tariff items the products are classifiable under specific headings of Chapter 20 they cannot be classified under Heading 2106 as food preparations not elsewhere specified or included.

7.7. Accordingly, applying the principles of interpretation in Rule 2 of the General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 the Banana Chips, Jackfruit Chips, Tapioca Chips and Jaggery Coated Banana Chips are classifiable under Tariff Heading 2008 19 40 of the Customs Tariff Act, 1975. The products falling under this Heading 2008 may be sweetened by adding sweetening agents or other substances like starch may also be added to the products. However, they do not alter the essential character of the product and they continue to be classifiable under Chapter Heading 2008. "Sweetmeat" means food rich in sugar or made of or covered in sugar or any sweet food or delicacy prepared with sugar. Therefore, sugar is one of the essential ingredients for classification of any sweet food item as sweetmeat. The findings in the decisions quoted by the applicant are also on the same lines that sweetmeats are sweet edible preparations rich in sugar or prepared with sugar. Therefore, only sweet edible preparations containing sugar can be considered as sweetmeats. The product in dispute in the case of Hindustan Lever Ltd Vs CCE, Mumbai [2005 (189) E.L.T (Tr- Mumbai)] contained 23% sugar and hence it was classified as "sweetmeat" whereas it is an admitted fact that the Jaggery Coated Banana Chips do not contain any sugar and it is neither known in commercial or common parlance as a sweet edible preparation containing sugar. Hence Jaggery Coated Banana Chips do not merit classification as "Sweetmeat". The contention of the applicant is that both jaggery and sugar are manufactured from sugarcane and the initial process for manufacture of both is the same and therefore the jaggery coated banana chips is to be considered as sweetmeat. It is evident from Annexure - M and N of the application itself that jaggery is manufactured from sugarcane by a simple process which can be done in the farms by the farmers themselves but the manufacturing of sugar involves many processes that cannot be carried out in a farm. The only process that is common for manufacture of jaggery and sugar is the extraction of juice from sugarcane and its concentration. Moreover, Jaggery and Sugar are commercially distinct products having individual characteristics and economic value and both cannot be equated. Hence by no stretch of imagination Jaggery Coated Banana Chips be considered as a sweet edible preparation containing sugar.

7.8. Having come to the conclusion that the products are classifiable under Tariff Item 2008 19 40 of Chapter 20 of the Customs Tariff Act, 1975 we proceed to determine the rate of GST applicable on the products. The entry at Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;

Sl No.	Chapter / Heading / Sub-Heading / Tariff Item	Description of goods
40	2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included; such as Ground-nuts, Cashew nut, roasted, salted or roasted and salted, Other roasted nuts and seeds, squash of Mango, Lemon, Orange, Pineapple or other fruits.

On a plain reading of the above entry it is evident that all the products that fall under Chapter Heading 2008 of the Customs Tariff Act, 1975 attract GST at the rate of 12 % [6% CGST + 6% SGST].

In view of the observations as above, the following rulings are issued;

RULING

1. What is the rate of tax and classification applicable to the supply of Banana Chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?

Banana Chips are classifiable under Customs Tariff Heading 2008.19.40 and is liable to GST at the rate of 12% [6% - CGST + 6% - SGST] as per Entry at Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.

2. What is the rate of tax and classification applicable to the supply of Jackfruit Chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?

Jackfruit Chips are classifiable under Customs Tariff Heading 2008.19.40 and is liable to GST at the rate of 12% [6% - CGST + 6% - SGST] as per Entry at

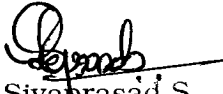
Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.

3. What is the rate of tax and classification applicable to the supply of Tapioca Chips (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?

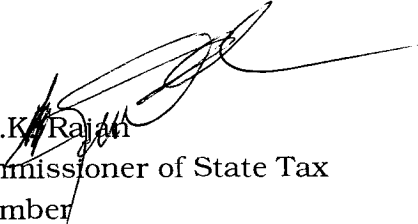
Tapioca Chips are classifiable under Customs Tariff Heading 2008.19.40 and is liable to GST at the rate of 12% [6% - CGST + 6% - SGST] as per Entry at Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.

4. What is the rate of tax and classification applicable to the supply of Jaggery Coated Banana Chips that is sarkaraupperi, in Malayalam (without registration of brand name) under the CGST Act, 2017 and Kerala GST Act, 2017 which the applicant intends to manufacture and deal with?

Jaggery Coated Banana Chips [Sarkaraupperi] are classifiable under Customs Tariff Heading 2008.19.40 and is liable to GST at the rate of 12% [6% - CGST + 6% - SGST] as per Entry at Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.


Sivaprasad S

Joint Commissioner of Central Tax
Member


Senil A.K. Rajan
Additional Commissioner of State Tax
Member

To

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