- pe i i SORE RS SA tt A a A A lt 7 il  
  
erennver ore  
  
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 22™ day of December, 2023  
Order /AAAR/AP/01 (GST)/2023  
  
| M/s. Sri Venkateswara Cashew Chikky’  
1 Name and address of the Manufacturers  
appellant  
D.No.13/192,Sarvodaya Colony,  
Vetapalem, Prakasam\_ District, A.P,-  
523187  
[ 1 GSTIN 37ABYPV0474E1Z1 \_|  
Date of filing of Form GST 26.09.2023  
ARA-02 7  
4 Hearing ( Virtual) 22.11.2023 a  
5 Authorized Representative T. Bhanu Purdhviraj, CA |  
6 Jurisdictional Authority - Chirala Range, Nellore Division  
\_| Centre  
  
(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 ’) saminel the Advance falling No AAR Ne {HVAP/GST/INIT dated  
26.05.9093 lesuREd by Ruthoriby for Advance Rutlng, Andhea Pradesh  
  
a. Rackaround of the Case:  
The appellont, M/s. St Venkateswara Cashew Chikky Manufacturers  
Manufactures is engaged fh manutacturing and supply at an edible araduct under  
  
the name "Crackle", with the following ingrodionts  
  
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 IIL 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  
wr”.  
  
with o& valid decieien making process, The relevant partion af the  
JUGOMERL 1s BetHACIOD Nereunde: for ready roterenee  
  
“S1. Summarizing the above discuceon, thee Court holde:  
  
(1) Reasons in support of decisions nyust be cogent, clear and succinct. A  
Hrerence of reasons or ‘rubber-stamp reasons’ is not to be equated with 4 valid  
  
Pecsion 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  
62S (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 thts 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. 10S  
(S.Cj, 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; firsuy, 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 arnving 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.  
  
J], Examining the facts of the present case in the light of the above decision, while  
u 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. Vherefore, 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  
psec AO i sa at  
  
for consideration, discuss the evidence, and then to dispose of the matter by  
gard places reliance in the case of  
  
Giving valid reasons. The Appellant in this re  
com 256 (Patna)  
  
Shaurya & Company v. State of Bihar (2022) taxmann.  
  
B. IMPUGNED PRODUCT ic. NBS Crackle is classifiable under tariff  
head ‘1704’ enumerated at Serial number 32AA of Schedule II of  
  
Notification No. 01/2017, dated 28-G-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  
‘Sugar Confectionery’. ‘Sugar  
  
forms, the Heading 1704 mentions  
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  
ee  
  
Confetti is an Italian word for candies or sweetmeats; and the corresponding  
French word is bonbon, literally ‘good-good’. On carnival days the merrymakers  
in Italy used to have fun pelling 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.5In 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. Tt 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 mysorepak, soanpapdi, badushah, jalebi, etc. are also  
included in this category.  
  
Milk-based [It includes mainly Indian traditional milk-based sweets such  
  
confectionery as burfi, peda, rasogolla etc.  
  
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.S 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 IJ and Schedule HI with 5%,12% and 18%  
  
rates of tax respectively.  
Items of HSN Code 1704 falling under Schedule I of GST Notification  
01/2017:  
  
B12  
  
As per GST Notification 41/2017 dated 15.1 1.2017 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 : ‘Description of Goods  
Item  
(1) (ff 8 a  
92 1702 or 1704 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  
  
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  
  
4. Schedule II -6%  
  
as under:  
S.No. | Chapter Heading/ Tariff  
Item  
(1) (2) -  
32AA 1704  
  
; Description of Goods»  
  
(3)  
  
Sugar Boiled confectionery 7  
ee \_  
  
os 7 nw wee as nv ee.  
  
10  
Items of HSN Codo 1704 Milling under Schodulo IL of AST Notiflontion  
  
01/2017;  
  
B.14 The Items neither falling under serial number 92 of Schedule [ nor under  
  
serial number 32AA of Schedule 11 In GST Notification 01/2017 are covered  
under serial number 12 of Schedule HI of GST Notification 01/2017 with 18%  
  
rate of tax. The relevant extract of serial number 12 Is as under:  
  
5. Schedule Ill -9%  
Description of Goods  
  
S.No. Chapter Hending/  
Tariff Item  
qQ) | (2) rs (3)  
12 1704 \_— Sugar confectionery fother 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 malkhana,  
sweets, gajak and sugar boiled confectioncry|  
  
The Impugned Product “N.B.S. Crackle” is a Sugar Boiled Confectionery  
  
As stated above, NBS Crackle is a Sugar Boiled Confectionery and  
is classifiable under tariff head '1704'  
  
B.15  
  
therefore the impugned product  
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  
  
groundnut  
  
Sweets &  
  
V4  
  
Confectionery. Relevant extract of  
  
enclosed as Annexure-1  
  
doctoring  
  
FSSAI Regulations 2011 is  
  
Applying FSSAI Regulations 2011 |  
in present case |  
  
As submitted carlicr, the impugned  
product “N.B.S.Crackle” was 4  
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.  
  
Particulars Sugar Boiled Confectioncry as per  
FSSAI Regulations 2011  
  
Meaning — “Sugar “boiled confectionery | mcans a  
processed food article made from  
sugar with or without  
agents by process of boiling whcthcr  
panned or not  
  
Types of | 1. Hard Boiled Sugar Confectionery  
  
Sugar Boiled | means a supercooled solution with a  
  
Confectionery | combination of sucrose and \_ liquid  
  
glucose or sucrose treated with an  
acid doctor such as cream of tartar  
(potassium acid tartrate)  
  
2. Pan Goods Confectionery madc  
by the panning process in revolving  
pans/drums by using either hot  
coating or cold coating and this  
process is assisted by blowing air.  
  
3. Toffees or milk toffees are boiled  
sugar confectionery made out of  
sugar, edible fat, water and other  
ingredients.  
  
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  
  
Sugar Boiled Confectionery may be in  
1. Solid  
2. Semi-Solid  
  
3. liquid  
  
With or without coating sugar or  
  
N.B.S. Crackle is in solid form -  
  
1?  
  
OPHRPHIHIE a HAD  
  
Terral jae pe PRAY Repoianows SONY Ne pee Hand Peetind Cabeserey  
Speifirsinne | Sus) BAKA Qaintecsioneye ebuild report sh INTL Retheietetees feted  
nt Super | Sanhrn with dalinwine Parrarneteye OV 1S DODD, the intepeitted peeetiret  
Boiled ! “NFR S Ceavkle” wae confirmed wrth  
  
Deanfeentanen: the technical parameters laid denver  
| under PSSAL Rewulations JOLT. the  
relevant extract of test reault ie ag  
  
|| Test Parameter | Specified Value | under  
  
] { ‘  
|) Ash Sulphated | Not more than |  
(on salt free | 2.5 percent by || |  
  
|| toemin) weight ||| Test Parameter | Test Result  
[Ash Insoluble (in| Not more than ||| Ash Sulphated | 0.4%  
|| dilute 0.2 percent by | | | oll salt free  
|| Hydrochloric weight einmionee  
| 2 }ys +  
| = HH Ash Insoluble (in Below 0.1%  
“|| dilute |  
| Hydrochloric |  
| acid)  
Copy of the JNTU Food testing,  
| | report is enclosed as Annexure-2.  
B : 4  
  
Indian Standard 1S 1008:2004 deals with “Sugar Boiled Confectionery” which  
was incorporated by amalgamation of erstwhile three food standards i.e.  
  
#) 15 1008:1981- Specification for hard boiled confectionery  
b) 1S 1667: 1981- Specification for toffees  
  
c) 1S 8806: 1978- Specification for pan goods confectionery  
  
Relevant extract of JS 1008:2004 is enclosed as Annexure-3.  
  
| Persone \_ | Sugar Boiled Confectionery as per |S 1008:2004  
Scope 148 1008:2004 prescribes the requirement and method of sampling and  
  
Essential \_  
Ingredients  
  
Types of Sugar  
Boiled  
  
A ATT LNT A Oe Na  
  
test for hard boiled confectionery, pan goods confectionery and toffecs.  
  
The essential ingredients of Sugar Boiled Confectionery arc  
  
a) Sugar and  
  
b) Water  
  
1. Hard Boiled Sugar Confectionery means a supercooled solution with  
  
Confectionery :  
a combination of sucrose and liquid glucose or sucrose treated with an  
acid doctor such as cream of tartar (potassium acid tartrate)  
2. Pan Goods Confectionery made by the panning process in revolving  
pans/drums by using cither 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.  
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.  
Technical As per IS 1008:2004, Sugar Boiled Confectionery should confirm with  
Specifications of | following parameters:  
hard Boiled  
Confectionery  
and Pan goods SI.No | Characteristic Requirement  
Sugar  
Confectionery I Ash Sulphated, percent by mass, Max 15 -  
ii Acid insoluble ash, percent by mass, Max 2 7  
iii Sulphur dioxide, mg/kg, Max 350  
iv Arsenic 10  
v Lead , mg/kg, Max 20  
vi Copper , mg/kg, Max 5  
Po |  
  
ee NE a ee ae ioe aad  
1  
vii Zine , mp/kg, Max 5  
vii Tin , mg/kg, Max 5  
  
B.17 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”  
  
B.18 The Appellant has also obtained technical test report from Food Testing  
Laboratory, School of Food Technology, JNTU Kakinada, Andhra Pradesh  
wherein the impugned product N.B.S. Crackle manufactured by the Appellant  
has satisfied all the parameters laid down under Indian Standard IS 1008:2004  
in the said technical test report. The relevant extract of Food testing report is  
  
extracted as under  
  
POOD TESTING LABORATORY  
POEL OE RAG TRC, STG RAREMAD A AMEVHMLAP EOE SDL  
  
TEST REPORT  
  
15  
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.  
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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)  
Bata bs =  
  
aadst  
  
NAR ed.  
  
17  
  
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  
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without any further process, Copy of the  
  
tax invoices raised on reqular 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, [t 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 SI. 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  
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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 Bolled 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 Description of Goods  
Item  
(1) (2) (3)  
92 = 1702 or 1704 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, tl  
patti, til revdi, sugar makhana, groundnut sweets,  
  
gajak, khaja, khajuli, anarsa  
  
(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:  
  
20  
  
S.No. Chapter Heading/ Tariff Description of Goods  
Item  
(1) (2) (3)  
S2AA 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/ [ Description of Goods  
Tariff Item  
(1) (2) (3)  
r 12 1 1704 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]  
  
t  
  
It can therefore be seen that in 2018 (w.e.f 25-01-2018) a new entry was added  
to Schedule -II viz., SI.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 SI.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.  
a)  
  
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)...”  
  
As per the Appellant, the main ingredients of the product is “Sugar” @  
  
5.6  
followed in a small  
  
68% to 72%, Cashew Nuts accounts for 28% to 30%  
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  
22  
  
Customs Tanff -6-2017, Act, 1975 (51 of 1975), including the Section ang  
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 ere, prima facie, classifiable under two or more headings,  
Classification shall be effected as follows:  
  
(2) 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-  
Ci(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.  
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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 Sd/- M. Girija Shankar  
Sanjay Pant M. Girija Shankar  
Chief Commissioner (Central Tax) Chief Commissioner (State Tax)  
Member Member  
//t.c.f.b.0//  
Poems  
4 71 \v\o  
Deputy Commission ON \  
Registrar  
a Authority for Advance Rt  
  
/o. Chiat Commissioner (State ,  
M/s Sri Venkateswara Cashew Chikky ManufactufUtS'p37amtbsBavijagayadgolony,  
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)