

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT,2017

Members Present

1. Shri Virendra Kumar Jain

Additional Commissioner

Office of the Commissioner CGST and Central Excise(Audit), Indore

2. Shri Manoj Kumar Choubey

Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23ABMPB3908R1ZE
Name and address of the applicant	M/S ANAND PRODUCTS Khasra no. 329/2, PaldaNemawar Road, Near Mamaji Toll KantaGali, Indore (M.P) Indore- 452020
Point on which advance ruling sought	a. Classification of any goods or services or both
Present on behalf of applicant	Shri Krishan Garg, CA. and Shri Mrinal Garg, CA
Case Number	18/2021
Order dated	12/04/2022
Order Number	05/2022

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods and Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s ANAND PRODUCTS Khasra no. 329/2, PaldaNemawar Road, Near



Mamaji Toll KantaGali, Indore (M.P) 452020 (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.

The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

2. BRIEF FACTS OF THE CASE AND SUBMISSION OF THE APPLICANTS IN THEIR APPLICATION IS AS UNDER -

- 2.1. The Applicant is engaged in the manufacture and supply of confectionary and dairy/sweet products. The applicant primarily manufactures dairy/sweet products and confectionery items like milk chocolates, milk compound chocolates, candies and lollypops.
- 2.2. One of the products that the applicant manufactures and sells the same under the brand name "Anna Malai Mithai". As per the applicant, it is "Rabdi" recognized as a 'Mithai' or 'Misthan' in the common parlance. It contains the following ingredients:
 - i. Sugar
 - ii. Vegetable Fats
 - iii. Skimmed Milk Powder
 - iv. Whey Powder
 - v. Emulsifiers
 - vi. Flavours
- 2.3. The product "Anna Malai Mithai" is marketed in small sachets of around 3.5 to 4 grams each. 58 such sachets are then packed into a larger pack which are sold to distributors and retailers and the end customer then buys such small sachets for consumption. The Nutritional Information per 100g of product is approx. as under:

Energy	545.19 kcal
Carbohydrates	69.44 gm
Protein	0.46 gm
Fat	29.51 gm



Saturated Fat	14.28 gm
Monounsaturated Fat	12.46 gm
Polyunsaturated Fat	2.65 gm
Trans Fat	BLQ (LOQ 0.1)
Cholesterol	Nil

3. QUESTION RAISED BEFORE THE AUTHORITY -

Whether the product "Anna Malai Mithai", manufactured and supplied by the applicant containing the ingredients Sugar, Vegetable Fat, Skimmed Milk Powder, Whey Powder, Emulsifier and other permitted Flavor's, which is identical to the commonly known Indian sweet "Rabdi", should be classified under the Tariff Heading 2106 as Sweet Meats or under Tariff Heading 0404 as other dairy product consisting of natural milk constituents ?

4. RECORD OF PERSONAL HEARING

- 4.1 Shri Krishan Garg and Shri Mrinal Garg, Chartered Accountant/ Authorized Representative of the applicant appeared for personal hearing on behalf of the applicant and reiterated the submissions made in the application and also submitted a written submission. The Applicant submitted that the impugned product "Anna Malai Mithai", should be treated as 'sweet meat', classifiable under Tariff Heading No. 2106 90 99.

In support of their view the applicant submitted following arguement.

A. That the product falls under the category of Sweet Meat -

1. The dictionary definition of the word "sweetmeat" is "a food rich in sugar.." and thus, sweetmeats include any product which includes sugar as an ingredient. That there are no set ingredients for the composition of sweet meats and any sweet product can be called a sweet meat if they are known, sold and consumed as sweets.
2. That as per the observation of the Hon'ble tribunal in case of *Hindustan Lever Ltd. v. CCE, Mumbai* [2005 (189) E.L.T. 53 (Tri. - Mumbai)], wherein the Tribunal held that sweet meats are now being sold at grocery stores and general departmental stores and that it is not necessary that any product must be sold at traditional 'halwai' shops in order to be classified as a sweet meat.

We further submit that many famous brands such as Haldiram, Bikanerwala, Milan Mithai etc. are sold in such ready to consume packets in departmental stores, local *kirana* stores and even on e-commerce marketplaces.

3. That the only difference between the product that is commonly sold in the market as 'Rabdi' and our product is that our product is packed in small sized sachets. We



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submit that merely packing the product in smaller quantities does not alter the inherent nature or identity of the product. Thus, even if it is packed in sachets which are easily marketable, it still remains a sweet meat. Packing the said product in such small sachets is useful in consuming the product readily.

4. The Applicant is marketing the said product as *Mithai* which is also evident from the name of our product ('Anna Malai Mithai').
5. Further, the *CBE*, vide its FAQ on classification dated 29-9-2017, clarified that products like halwa, barfi (i.e. Khoa product), laddus, falling under HS Code 2106 are sweet meats and attract 5% GST. An abstract of the said FAQs is as follows:

30	What is the HS Code and GST rate on chena products, halwa, barfi (i.e. khoa product), laddu?	Products like halwa, barfi (i.e. khoa product), laddus falling under HS code 2106, are sweetmeats and attract 5% GST.
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Accordingly, we submit that the above FAQ supports our view that our product, being a sweet meat, is classifiable under HSN 2106

6. The Applicant further submitted that we have got our product tested and verified in an approved laboratory. The findings of the laboratory are enclosed herewith.

B. Chapter 21 specifically includes sweet meats -

1. As per supplementary note 6 to chapter 21 of the GST tariff in India, '*Tariff Item 2106 90 99 includes sweet meats commonly known as misthan or mithai or called by any other name. They also include products commonly known as 'Namkeens', Mixtures', 'Bhujia', 'Chabena' or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.*'
2. That, it is to be noted that any products which are commonly known as *Mithai* or *Mishthan* remain classified in Chapter 21, irrespective of the nature of their ingredients. That the intention of the chapter note is to remove any doubts as to the classification of such products and to include all such products regardless of their nature of ingredients in Tariff Heading 2106 90 99.
3. In this context we invite the kind attention of this Hon'ble Authority to the case of *Globe Confectionery v. CCE, Allahabad* [2005 (190) E.L.T. 239 (Tri - Del.)], wherein the Hon'ble Tribunal held in Para 4 as follows :

'The dispute is not whether the item is Rasgulla or Peda. Nor is classification dependent upon composition. Composition is irrelevant, since Note 10 reproduced above states that 'products remain classified under 2108' irrespective of the nature of their ingredients. The scheme of the classification is to place all Mishthan or Mithai under 2108. The terms of the note are



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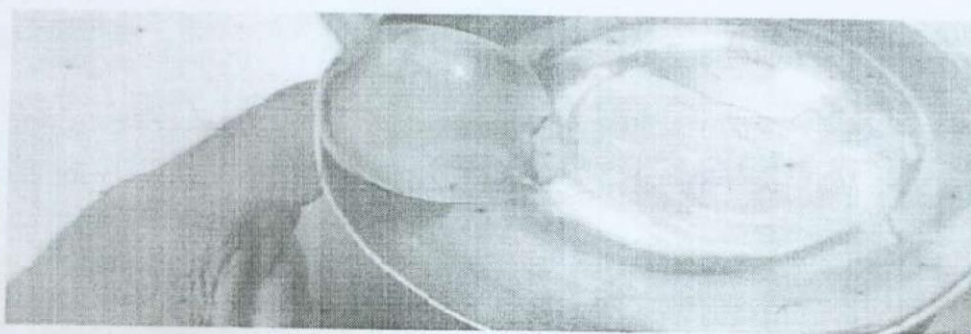
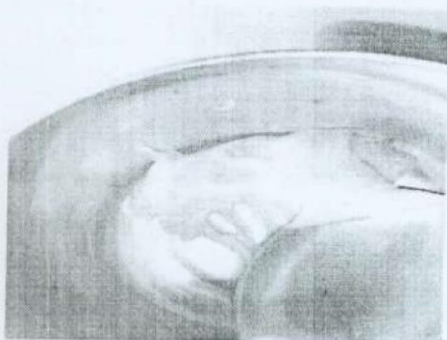
'include sweet meats commonly known as Mishthan or Mithai or by any other name'. In view of such broad scope of the note, the appellant's claim for classification has to be accepted, because there could be no doubt that the items are sweet meat. Dictionary refers to sweet meat as 'food rich in sugar'. Thus, despite sugar being the predominant ingredient, in view of the note the items can't go under sugar confectionery.

C. Alternatively, the same may be classified as a dairy product:

The Applicant also submitted that their product closely resembles a dairy product and on the assumption that if the Hon'ble Authority deems that the said product is not classifiable as a Sweet Meat product, then the same may be classified as a dairy product. The product in question is almost completely a milk-based item which is only subjected to addition of certain flavours to skimmed milk powder, whey powder and sugar. Thus, the impugned product may be considered for classification under Chapter Heading 0404 90 00 since it contains natural milk constituents i.e. skimmed milk powder, whey powder along with sugar.

D. Further the applicant also in support of the argument gave example of the ruling passed by this authority in M/S ITALIAN EDIBLES PVT. LTD. Dated 18-09-2018

4.2. The Applicant also gave a sample of the impugned product and also photograph of the product, how it's looks like



- 4.3. The applicant on the basis of above argument is of view that their product "Anna Malai Mithai" is classifiable under the HSN 2106 90 99 and chargeable to GST @ 5% (2.5% CGST + 2.5% SGST)

5. DISCUSSIONS AND FINDINGS:

The arguments and assertions made by the applicant along with supporting case laws and documents in support of such claims are examined, and the following are noted:

- 5.1. We have considered the submissions made by the applicant in the application and the pleadings on behalf of the Applicant made during the course of personal hearing. At the outset, we find that the issue raised in the Application is squarely covered under Section 97(2)(a) of the CGST Act 2017 being a matter related to classification of goods, and the applicant have complied with the all the requirements for filing this application as laid down under the law. We therefore admit the application for consideration on merits.
- 5.2. We find that the present application seeks Ruling on appropriate classification of goods manufactured by the Applicant and marketed and supplied as **Anna Malai Mithai**. The Applicant have given detailed description of the product in question along with chemical examination report, obtained by the Applicant on their own, giving the composition of the impugned product. However, we find that the certificate only gives a circumspect description of the impugned goods and that too as declared by the Applicant before respective authorities. We thus do not find these reports/certificates of much help for arriving at the correct classification of the impugned product particularly for taxation purpose.
- 5.3. The applicant has, on his own understanding of the issue, pushed forward two alternate classifications of the impugned product. One as a Dairy Product covered under Chapter 04 and the other as Sweet Meat covered under Chapter 21. We would like to examine each of these alternate classifications and also Chapter 17.
- 5.4. Chapter 04 essentially covers dairy products and as per Chapter Note 4 of Chapter 04, the heading 0404 applies interalia to products consisting of natural milk constituents whether or not containing added sugar or other sweetening matter or flavoured or containing added fruit or cocoa. Now while chapter head 0401 to 0406 are meant for natural dairy products viz. Milk, Cheese, Butter Milk, Butter, Whey etc. and other products made out of such items, the product in question i.e. **Anna Malai Mithai** contains Skimmed Milk Powder, Whey Powder, Sugar, Emulsifiers etc. as predominant ingredients, which would not make it appropriate to be classified as a product of natural milk constituents as has been pleaded by the Applicant. By no stretch of imagination, the product in question can be brought under the ambit of



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Chapter 04 of the HSN. Thus, we definitively rule out the classification of the impugned product under Chapter 04 of the HSN.

- 5.5. Now we proceed to examine the classification of the product under Chapter 1704. We find that the Chapter 17 of the HSN is for 'Sugar & Sugar Confectionery'. While 1701 to 1703 headings relate to Sugars in different forms, the Heading 1704 mentions Sugar Confectionery. Sugar Confectionery has nowhere been specifically defined under the GST law or under HSN. However, going by the trade parlance and prevailing practice, the Sugar Confectionery has been classified as under:

1704		Sugar Confectionery (Including white chocolate), not containing cocoa
1704 10 00	-	Chewing Gum, whether or not sugar coated
1704 90	-	Other:
1704 90 10	----	Jelly Confectionery
1704 90 20	----	Boiled Sweets, whether or not filled
1704 90 30	----	Toffees, Caramels and similar sweets
1704 90 90	----	Others

- 5.6. Now, putting the impugned product to test against each of the entries above, we find that the product 'AnnaMalai Mithai' cannot be terms as 'Chewing Gum' (1704 10 00) or Jelly Confectionery (1704 90 10) or Boiled Sweet (1704 90 20) or Toffee, caramel etc (1704 90 30). Clearly the product is neither a gum nor boiled sweet nor toffee or caramel. That leaves residual entry 'Others' (1704 90 90) if at all the impugned product is to be brought under the purview of Chapter 17.

- 5.7. In other words, there is no specific entry under Chapter 17 which would encompass the impugned product even by a remote chance. Moreover, the residual entry i.e., 'Others' (1704 90 90) is to take care of other similar products of the same family viz. Sugar Confectionery which do not find specific mention against rest of the sub-headings. The impugned product i.e., 'Anna Malai Mithai' is made of Skimmed Milk Powder, Sugar, Whey Powder, Emulsifiers & flavours etc. mixed together in a semi-liquid form and packed in elongated pouches/sachets and ready for consumption. The ingredients, process and final shape of the impugned product takes itself out of family of Sugar Confectionery.

- 5.8. We find that another important distinction is that "confectionary" is generally a wider term that refers to a large range of products. The word "confectionary" is derived from 'confection' which only means the act of mixing things. Thus, the term



confectionary can be used to refer to a large number of products. In common parlance, confectionary may include chocolates, pastries, cakes, toffees, caramels, fudges, honey syrups, candies, lollypops, ice creams etc. However, the traditional Indian sweets (commonly known as 'mithai') is more specific than this.

- 5.9. In this context, Food Safety and Standards Regulations, 2011 may be considered relevant, wherein clause 2.7 provides for the items that are classified as confectionary and includes the following:

- 2.7.1 Sugar boiled confectionery
- 2.7.2 Lozenges
- 2.7.3 Chewing gum and bubble gum
- 2.7.4 Chocolate
- 2.7.5 Ice lollies or edible ices

Therefore, in light of the above sugar confectionery seems to cover category of items similar to the above list, and traditional Indian sweets cannot be said to form a part of "confectionary" in the traditional sense of the word. Hence, the others category of chapter 17 for sugar confectioneries should not be extended to cover all other traditional Indian sweet items and can only include such other similar confectionery items as defined above.

- 5.10. Furthermore, in the aforementioned FSSAI regulations, in several places **Traditional Indian Sweets in general and Halwa, Mysore paag, boondiladdoo, jalebi, khoya barfi, peda, gulab jamun, rasgulla and similar milk-based sweets sold by any name, in specific, have been used together depicting them as a single category of food items.** This signifies that such items fall under similar category of food products i.e., traditional Indian sweets. **Hence, milk-based sweets are classified as traditional Indian sweets** and should therefore be classified in the same manner as traditional Indian sweets are generally classified.

- 5.11. At this note, we proceed to examine the impugned product vis-à-vis heading 2106. We observe that Chapter 21 essentially covers 'Miscellaneous Edible Products'. Obviously, the term 'Miscellaneous' indicates that this particular chapter would contain all such edible products which are not specifically covered elsewhere under the Tariff. The Chapter Headings further describes various edible preparations such as extracts of Coffee, tea, Yeast, Soups, broths, Sauces etc under Heading 2101 to 2105. Further as is the convention, heading 2106 has been given to include all those items which are not elsewhere specified. Furthermore, 2106 further sub-divides various edible items like Protein Concentrates, Pan Masala, Sharbats, Supari, Custard Powder etc. under Sub-headings 21061000 to 21069080 and to conclude there is a residual entry as 'Others' under 2106 90 99.



5.12. More importantly, Chapter Note 6 to the said chapter clearly mentions that – ***"Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" or "Mithai" or called by any other name. They also include products commonly known as "Namkeens", "mixtures", "Bhujia", "Chabena" or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients."*** It is telling that the said chapter note clearly includes sweet meats which states that these sweet meats commonly known as "Mithai" shall be classified in tariff item 2106 90 99. In order to remove any doubts, the chapter note also states that such products remain classified here irrespective of the nature of their ingredients. Hence, it is clear that products commonly known as "Mithai" shall be classified in 2106 90 99 regardless of the nature of ingredients.

5.13 We also find that the product in question i.e., 'Anna Malai Mithai' is a product made out of Skimmed Milk Powder, Sugar & Whey Powder as main ingredients with Emulsifiers etc. put up in small sachet/pouch in semi-liquid (paste) consistency, ready for consumption. The product cannot be termed as Dairy Product or Sugar Confectionery as already discussed above. However, there is no doubt that being edible preparation, manufactured under due license issued by concerned Government authorities, it would merit classification under Chapter 21 i.e., 'Miscellaneous Edible Products'. Once the chapter is decided, a careful examination of different entries under Chapter 21, the quest for appropriate classification rests finally at 2106 90 99, the residual entry, as the product itself does not find specific place anywhere else in the Chapter 21. We thus conclude that the impugned product viz. 'Anna Malai Mithai' would merit classification as Miscellaneous Edible Product under Chapter Heading 2106 90 99, as 'Sweetmeat' and chargeable to GST as applicable.

5.14. Applicant reference to the ruling passed by this authority in M/S ILLIAN EDIBLES PVT. LTD. Dated 18-09-2018 cannot be taken into consideration as per section 103 of GST Act.

5.14. Having observed as above, we further hold that the impugned goods shall be aptly classifiable under Chapter Head 2106 90 99 as 'Sweetmeats' We also find it necessary to mention here that the classification decided by this Ruling shall be effective prospectively and this ruling shall not entail any right of the Applicant to claim refund of any tax which they may have paid prior to this Ruling.



6.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

6.1 On question that Whether the product "Anna Malai Mithai", manufactured and supplied by the applicant be classified under the Tariff Heading 2106 as Sweet Meats or under Tariff Heading 0404 as other dairy product consisting

of natural milk constituents, this authority is of opinion that the impugned product "AnnaMalai Mithai" as described in the Application will merit classification under Chapter Heading 2106 90 of the GST Tariff as 'Sweetmeat'

6.2 The ruling is valid subject to the provisions under section 103(2) until and unless declared void under section 104(1) of the GST Act.

SS
(Manoj Kumar Choubey)
(Member)

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(Virendra Kumar Jain)
(Member)

Copy to:- No. 18/2021/A.A.R/R-28/11 INDORE dated 12/04/2022

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore/~~Bhopal~~
5. The Concerned Officer
6. The Jurisdictional Officer - State/Central

सत्यप्रतिलिपि
Manoj

