

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING GST Bhavan, Room No.107, 1st floor,
B-Wing, Old Building, Mazgaon, Mumbai – 400010.**

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. M. Rammohan Rao, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD2704220205389
GSTIN Number, if any/ User-id	27AACCH5228A1Z1
Legal Name of Applicant	M/s. HEALTHY LIFE FOODTECH PRIVATE LIMITED
Registered Address/Address provided while obtaining user id	Gala No. 18/2, 18/3, Samrat Silk Mill Compound, LBS Marg, Vikhroli west, Maharashtra, Mumbai, 400079
Details of application	GST-ARA, Application No. 06 Dated 19.04.2022
Concerned officer	MUM-SUR-E-002,NODAL-13
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
	Factory/Manufacturing
	The company incorporated under the Companies Act 1956 having its registered office at 18/2, Samrat Mill Compound, Vikhroli (W), Mumbai 400079. The applicant is registered in the state of Maharashtra under Maharashtra Goods and Service Tax Act, 2017 having GST registration number 27AACCH5228A1Z1 and the Applicants principal place of business being same as its Registered office.
Issue/s on which advance ruling required	➤ Classification of goods and/or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 06/2022-23/B- 113 Mumbai, dt. 01/12/2022

PROCEEDINGS

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. HEALTHY LIFE FOODTECH PRIVATE LIMITED**, the applicant, seeking an advance ruling in respect of the following questions.

1] To answer in affirmative or negative that the impugned product **GLAZE GELS** is classifiable under chapter heading as under:

SCHEDULE II – SR. NO 32AA – SUGAR BOILED CONFECTIONERY. 6% MGST



(Signature)

2] If the answer to question 1] is in negative, then under which Chapter Heading the impugned product GLAZE GEL is to be classified.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT:

- 2.1 *The present Advance Ruling application is filed by M/s Healthy Life Foodtech Pvt. Ltd., the Applicant, registered under MGST Act, 2017 with GST registration number 27AACCH5228A1Z1 with its principal place of business at 18/2, Samrat Mill Compound, Vikhroli (W), Mumbai 400079.*

BACKGROUND OF THE APPLICANT

- 2.2 *Applicant manufactures the impugned product namely GLAZE GELS and markets it to Bakeries all across India.*

BACKGROUND OF PRODUCT USAGE

- 2.3 *Cake/ Pastry making involves stacking of slices of sponge cake in layers which are sandwiched with Creams mixed with fruits/ nuts/ crumbs/gems and/or pieces of "Sugar boiled confectionery" (SBC) to give it unique features. The typical taste & colour of 'SBC' is delightful to children in that particular embodiment of the Cake/Pastry. In many embodiments of the said cake/pastry, pieces of SBC are put on top and in between the cakes/pastry for taste, colour and decorative purposes.*
- 2.4 *A need was felt by the confectionery industry for a format of 'SBC' which was more pliable and workable but was essentially the same as 'SBC' in taste/ colour etc. & this need evolved into the present format of 'SBC' i.e. the impugned product called 'GLAZE GELS'. Glaze gels also employ same ingredients, formulations & same processes (i.e., 'BOILING') & also employs similar equipment's to manufacture the Glaze gels which is a format of 'Sugar Boiled Confectionery'.*
- 2.5 *Impugned Product has ingredients, formulations, processes which are similar (not same) to ingredients/formulations/processes employed with what is traditionally classed as 'SBC'.*
- 2.6 *Impugned Product is Same as 'SBC' save for the modified rheology of 'GLAZE GELS' in as much as 'SBC' in some embodiment may be totally Brittle and /or hard and solid, but may equally not be 'Brittle Hard' and solid but be 'hard chewy' /chewy/soft chewy/soft, whereas the impugned product is 'semi solid' to confirm to the need of the confectionery industry to have a pliable 'SBC'; for example, one embodiment of SBC which is 'filled hard candy' and the filling for such candies is a 'semi-solid gel type mass', and the formulation of which, that of the hard crust and the inside semi-solid part essentially remains the same save for the difference in moisture content of each respectively. The soft filling inside has more water content than the hard crust outside whereas both may have the same formulation and process of manufacture but save*



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for final water content may be identical in all other respects. This also demonstrates that the impugned product is an accepted format of 'SBC'

About the Product – GLAZE GEL

- 2.7 'GLAZE GEL' is made up of : Sucrose (45% to 65%), Glucose (40% to 60%), Water (20% to 30%), Humectants like Sorbitol (01% to 02%), Agar, Pectin's, Starches (Singly or in any combination and ratioed to each other) (0.5% to 02%), Food Acids (0.5% to 01%) (citric, acetic, tartaric, lactic, malic). (Singly or in combination) and Preservatives (0.05) (salts of Benzoic and Sorbic acid).

MANUFACTURING PROCESS

- 2.8 The said glaze gel is processed in a manner similar to Boiled Sugar Confectionery. Our typical process is illustrated here:
- Mixing Sucrose, Glucose, water, sorbitol in a steam jacket vessel.
 - Adding stabilizers, colors and flavours (or only flavours if desired)
 - Boiling
 - Adding preservatives and food acids
 - Filling in plastic pails.

Properties of final cooled product:

- a) Semisolid mass, which takes shape of the plastic Pail when cooled.
- b) Typical 'boiled sugar confectionery' taste (of different flavours respectively)

Varieties of flavour:

- a) All fruit colours & flavours e.g. – Strawberry, Mango, berries & more such flavours
- b) All Nut colour and flavours, e.g. – Almond, Pistachio and more such nuts.
- c) All Mithai colours and flavours for e.g. – milk, khoya, and more such products
- d) All typical Indian colours and flavours such as khus, kewra and more such flavours
- e) Transparent/Neutral, plain (no colour & flavour of Lemons, vanilla as case may be)
- f) Any combination of above.

All flavours above are synthetic and no fruits/nuts/milk products are employed.

Target Market:

- 2.9 The target end user of the impugned product GLAZE GEL is Bakeries. Synonyms in industry: Glaze gels, Geli, Glaze

Discussion on 'Sugar Boiled Confectionery'

- 2.10 SBC, as a Tariff item, appears in Schedule 2, entry 32AA and Chap. Hdng 1704. As can be brought out from plain reading of the entry 'SBC' it is apparent that it denotes:

A] The essential character should be of 'sugars' (Such as sucrose, glucose etc.)

B] It should have undergone 'boiling' process.

In the present context of 'Sugar boiled', mere boiling of water with sugars suffices, as any other qualification is absent.

C] It should be a 'preparation' or an 'item' and as sugar is employed it shall mean a sweet preparation/item. It is informative to note here, that the verb form of the noun 'confectionery' is CONFECT which means:

confect

verb

confected; confecting; confects

Definition of confect

transitive verb

1: to put together from varied material

2a: PREPARE



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b: PRESERVE

(Source: Copy paste from- Webster Merriam Online Dictionary)

Hence the word 'confectionery' shall mean a preparation with mixtures of ingredients which shall form a PRODUCT/ITEM.

The tariff item may be interpreted to mean as such

- 2.11 A PREPARATION /PRODUCT WHOSE ESSENTIAL CHARACTER IS SUGARS, WATER & ALLIED INGREDIENTS & WHICH IS MANUFACTURED SOLELY EMPLOYING A BOILING or AKIN to BOILING PROCESS, where the said boiling process enables the sugars to undertake a physical change and due to the said physical change becomes an Integrated boiled sugars solution, where the allied ingredients may be any ingredient listed in IS 1008:2004, a booklet published in 2004 by 'Bureau of Indian standards'.
- 2.12 Nowhere in the Chap. Hdng, SBC is qualified by any words such as HARD, SOFT, PULLED etc. It is also noteworthy that BIS standard ISI1008:2004 in clause 3, Ingredients; clause 3.1, Essential Ingredients - lists only A] sugars and B] water; as essential ingredients and clause 3.3] forms a list of exhaustive optional ingredients or allied ingredients.
- 2.13 Applicant states that anything contained in "Foreword" of the document ISI 1008:2004 is general in nature and by way of General introduction and is not an exhaustive list of products but is a mere Illustration, and needs specific elaboration to answer specific questions. To be exhaustive and elaborate is not the mandate of any 'Foreword' and further it is an Introductory and indicatory writeup of an individual mind and it should not be constructed as collective wisdom of the committee which formulated the said standards' and nothing contained therein the "Foreword" is binding and only the Standards as enumerated therein in the main body of the booklet starting from page 1, which are legally binding , as far as the specifications are concerned to understand the contents of a product, for which the standards purports to specify.
- 2.14 Applicant further asserts that ISI standards do not specify any final moisture content in the finished product but merely lists 1] sugars & 2] water as essential ingredients, & if by adaptation of the said standard, if an allegedly new product, without prejudice, is generated and if such a resulting product, which conforms to the very specific ingredient requirement of the ISI 1008:2004 along with the specified processes as therein enumerated in the said standards, shall be deemed to qualify as the product enumerated in chapter heading 'SBC', which by itself is a tariff item under GST act.
- 2.15 The Applicant also submits that "sugar boiled" will mean SUGAR BOILED IN WATER, although water is not mentioned specifically, and as sugar will be unable to boil itself by itself, the word 'sugar boiled' will have to be inferred as 'sugar boiled in water'. Hence for 'SBC' to be manufactured - Water along with sugars is an essential ingredient.

Classification of Glaze gel.

- 2.16 The impugned product conforms to the minimum requirement of specification of ISI 1008:2004 for SBC & does not exceed any requirement of ISI 1008:2004 as far as ingredients and processes of SBC are concerned and is therefore a reflection of 'sugar boiled confectionery' with slightly enhanced moisture to induce pliability.
- 2.17 Impugned product follows requirement of the essential 'boiling process' as enumerated in ISI 1008:2004 for SBC & seeks to provide the same gratification to target consumers adapted to confectionery industry in this format.
- 2.18 Without prejudice to the above, even if the impugned Product is considered a JELLY, specifically a NON-FRUIT JELLY, it still retains the embodiments of 'SBC' as can be



deduced from ISI 1008:2004. The essential character of the impugned product is boiled sugars hence it shall be classified as 'SBC'. The impugned product does not pose to be an alternative to 'SBC', but purports to be a type of 'SBC' save for added functionality of enjoying pliability by retention of additional moisture in finished product by physical manipulation, not by any chemical manipulation of formulation

- 2.19 Applicant asserts that no greater authority than BIS can be brought to establish any specification and standards claims in India, and the mere fact that BIS has established a standard for 'SBC' the same shall prevail over any other standards or devices like common/trade parlance test, common sense test, end user test etc.

Common Parlance Test:

- 2.20 Without prejudice to anything said anywhere, Applicant submits that Common parlance test shall be of no benefit at arriving at the correct classification of the impugned product, as the term 'SBC' is a barely known term in the citizenry of India. A sample of a group of lay persons including children will never ask a question as under: ' - 'Papa gets me an Orange sugar boiled confectionery', but will put the same demand as under:

'-- 'Papa gets me an orange goli (col.)/ orange peeper (col.) or orange candy but never the term 'orange SBC' will be used by laymen.

The express problem is caused by the term SBC encompassing many embodiments and many spin off products, and the said sub categories of product is known but the main category i.e., SBC is not well known

- 2.21 GLAZE GEL is an industrial product; hence any Common Parlance Test is Repugnant to the context. GLAZE GEL is not used by the general public directly rendering the said test ineligible. Applicant submits that's 'SBC' are not words of everyday use.

- 2.22 Hon'ble Supreme Court, in the case of Commr. of CX v/s. Connaught Plaza Restaurant (P) Ltd (2012) has observed that Applicability of Common parlance Test may not be identical in all conditions:

Time and again, the principle of common parlance as the standard for interpreting terms in the taxing statutes, albeit subject to certain exceptions, where the statutory context runs to the contrary, has been reiterated. The application of the common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law maker; "it is an attempt to discover the intention of the Legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts."

- 2.23 Without Prejudice to anything submitted anywhere, Applicant submits that even if a common Parlance test is undertaken, impugned product will pass the test as in any sample size of testers. Majority shall feel that orange glaze gel and orange candy (SBC) are akin in taste and experience as orange candy is a well settled type of 'SBC'.

- 2.24 Further, Trade Parlance Test shall be of no benefit and is not appropriate test at arriving at the correct classification of the impugned product, as the term 'SBC' is a barely known term if not altogether unknown in the Bakery Industry, which is the target market for Applicants Product & usage of the tariff entry 'SBC' in the Bakery trade is absent. The Trade does not use the term SBC to denote to GLAZE GELS or for that matter, for any of the traditional embodiments of SBC. If the trade requires a particular embodiment of SBC, the Trade uses the nomenclature of the sub category but never the term SBC.



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- 2.25 The term SBC is not a term used in general trade & is solely used by manufacturers sometimes on their label declarations and that too merely to assert their claim of being a participant in the tariff item 'SBC'. In the Indian Context of General and Confectionery/Bakery trade, the term SBC does not denote any product, & not even a class of many products as may be generally recognized by Trade & in Indian context, more of a technical term for grouping similar products and a Taxation term and does not enjoy any general usage apart from scientific /technical people and taxation.
- 2.26 In the perception of the Bakery Trade, Definition or perception or cognizance of SBC is not existent. For such a Trade Test to be eligible, the cognizance of SBC is necessary among the tradespeople otherwise the said trade test will be rendered ineligible. Further, SBC is not a name of any particular products but a category of products and is a coined word by Techno/ scientific people, which the Taxation statutes have borrowed from technical journals.
- 2.27 To undergo a Common /Trade parlance test, it is incumbent of the Tariff Heading to be Popular and be in usage amongst the common/trade people. Applicant submits that general invoices of companies selling SBC products do not use the term SBC and use other trade terms but are still classified under chapter heading 'SBC' & Applicant reasserts that the term 'sugar boiled confectionery is unknown in Bakery trade.

End Use/User Test :

- 2.28 The applicant submits that it is well settled in law that taxation statutes do not distinguish tariff on the basis of end use/user of any Finished product.
- 2.29 In Pharm Aromatics v MCGM, in Bombay High Court, it was observed that :
Another test, which is sometimes applied by the Courts is "user test". According to this test the use to which the goods can be put can also be considered in interpreting an item. However, this rule of interpretation has got its own limitations because certain goods may be put to certain uses by different persons. That, however, cannot entitle the revenue to apply different rates of tax to the sales of same goods by different persons depending upon the use to which they will be put by the purchasers. To apply this test, therefore, the deciding factor has to be predominant or ordinary purpose or use...
- 2.30 In Aluva Sugar Agency V State of Kerela (2011,sept 7) in a two judge bench judgement in Supreme Court It was held... 'For the afforested reasons, we are of the view that the conclusion arrived at by the Tribunal to the effect that **margarine is an edible oil** is correct and, therefore, the appellant is entitled to benefit of reduced rate of 4%.'
EDIBLE OIL is 100 % Lipid-oils; i.e., it is 100% moisture free and does not contain a drop of water or any other soluble matter whereas MARGARINE and its embodiments are a mixture of a] edible oil (60%-80%), b] water (20%-40%) and c] Additionally contains - Milk Powder/Proteins, Colours, Flavours, Stabilizers, Emulsifiers, salt etc.
Margarine was held to be edible oil, as the essential character and main ingredient of Margarine is edible oil inspite of Margarine containing a mix of oil, water, milk powder, emulsifiers, stabilizers, salt, colours, flavours.
- 2.31 The ratio of the above judgment is congruent to the letter and spirit to demonstrate 'whether glaze gels is essentially boiled sugar preparation and the applicant has no hesitation is submitting that GLAZE GEL is nothing but 'Boiled Sugar Confectionery'
- 2.32 Applicant further applies the Test of Ejusdem Generis to **read in conjunction** with the Judgement of Aluva Sugar Agency V State of Kerela (2011, sept 7) vis a vis the submission in para 2.29 above.



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In Maharashtra University of Health ... vs Satchikista Prasarak Mandal & Ors on 25 February, 2010, the Hon'ble Judge in Supreme Court observed and explained the principle of Ejusdem generis:

The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context." It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication (See Glanville Williams, 'The Origins and Logical Implications of the Ejusdem Generis Rule' 7 Conv (NS) 119).

- 2.33 Without Prejudice to anything contained anywhere in this Application, Applicant submits that the impugned Product is nothing but 'SBC'.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

- 2.34 Applicant humbly submits that the impugned product, being a SBC with added moisture to impart pliability is nothing but 'SBC' as in the Chap. Hdng 'sugar boiled confectionery' of schedule II, Sr no. 32AA under MGST and taxable at 6% state tax. In support of this contention the applicant submits the following grounds as under.

[1] The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall apply to this interpretation by the Applicant.

Without prejudice to the applicants' assertions and claims and beliefs, the following averments are made to arrive at the correct classification by **Technical Approach**.

[2] Section 4 of **Harmonized Commodity Description and Coding System of tariff Nomenclature** comprises of chapters numbering 16 to 24 and these stated chapters comprises all of Food Products. Chapter 17 specifically comprises of SUGAR AND SUGAR CONFECTIONERY.

[3] Under MGST Act, Chap. Heading 1704 appears in both Schedule II as well as Schedule III.

[4] The specific entry in both schedules being pasted from CBIC site as 31/3/2021 as follows.

[4.1] Sr no .32AA. - 1704 - Sugar boiled confectionery 6% (Schedule 2) (Exhibit-1).

[4.2] Sr no 12. 1704 Sugar confectionery 9% (schedule 3) [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**] (Exh-6)

Application of GIR rules in sequence as prescribed:

[1] RULE 1: GLAZE GEL is not classifiable in neither chapter heading 1704 – Schedule 2 and 3, as the name GLAZE GELS does not appear EXPLICITLY in any of the two entries respectively and hence does not confirm to RULE 1

[2] RULE 2A: GLAZE GEL is not classifiable in neither chapter heading _ schedule 2 or 3 as glaze gels are not in unfinished, incomplete, unassembled /disassembled format, but are finished products and hence does not confirm to RULE 2A

[3] RULE 2B: GLAZE GELS are classifiable in both chapter heading 1704-schedule 2 and 3 as both entries pertain to and contain 'sugar confectionery' and as the ingredients



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of GLAZE GELS matches with both the entries, The questioned Product GLAZE GELS confirms to the requirements of both the chapter heading respectively.

[4] RULE 3A: Provides that the MOST SPECIFIC DESCRIPTION TO BE PREFERRED and prevail. The impugned product GLAZE GEL being 'sugar boiled confectionery' is an exact match in both letter and spirit to the entry in schedule II, chapter heading – SUGAR BOILED CONFECTIONERY **THAN** the general entry in schedule III, sr.no 12. Which reads : 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]

[5] Applicant submits that SUGAR CONFECTIONERY is a general Heading and SUGAR BOILED CONFECTIONERY is a specific heading. The Applicant submits that SUGAR BOILED CONFECTIONERY is a part of broader category of SUGAR CONFECTIONERY.

[6] The Applicant submits that the entry chapter heading SUGAR CONFECTIONERY does not exclude products made from non –boiling process such as (examples below are not limited to only those enumerated below)

A] White Chocolate – Processed in a ball Mill

B] Lozenges – Processed in tableting machine

C] Printable Sugar sheets – Processed in Rollers (with heat or without)

D] Colourful Sugar strands – Processed in Extruders (with or without heat), hence the aforesaid entry SUGAR CONFECTIONERY is General in nature compared to the entry BOILED SUGAR CONFECTIONERY which is specific and restrictive in nature as products made essentially from Sugars and their mixtures and which undergo a Boiling Process only can be classified as 'sugar boiled confectionery'

[7] As per Rule 3A of GIR rules, where a SPECIFIC ENTRY SHOULD PREVAIL OVER GENERAL ENTRY, the applicant submits the impugned product GLAZE GELS should be classified under schedule II chapter heading 1704 which reads as "sugar boiled confectionery" and to interpret it in any other manner shall induce violence to the plain and unambiguous language of the said Rule.

[8] Without prejudice to anything submitted by the applicant anywhere, Applicant asserts that it is not incumbent on the applicant to prove that the impugned product GLAZE GEL is nothing but 'SBC' as enumerated in ISI1008:2004 or any other standards which may be brought forward or recourse is taken to any other material. It is well settled that fiscal statutes should be read in a restrictive sense as to the written word and letter. Various Judgements of the Apex Court proscribe attribution of meanings and sense to taxation statutes apart from what is apparent from the construction of the given text.

[9] The Applicant submits that any product which meets the requirement of

A] essential character of sugars

B] processed using boiling method as an essential cooking process

C] is a confection i.e., a preparation, meaning it is 'manmade' and not a naturally occurring item is eligible to be classified under the entry 'sugar boiled confectionery'

[10] Applicant thus believes after careful interpretation that GLAZE GELS is nothing but 'SBC' and thus classifiable under schedule II chapter heading 'SBC'

[11] Without prejudice to any of Applicant submission anywhere Applicant submits that in the event The Revenue asserts that the impugned Product in some parts is



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a 'sugar confectionery' and in some parts a 'Boiled Sugar confectionery', and that a specific view cannot be reasonably taken, the benefit should be given to the Applicant wherein two views are possible for classification of goods and the impugned product be classified as 'SBC' in sr. no. 32AA-1704 of sch 2. (EX. 7)

It was held by Hon'ble Gauhati High Court in the matter of Shri Chitta Ranjan Saha vs State Of Tripura And Ors. on 9 June, 1989 Equivalent citations: 1990 79 STC 51 Gauhati by referring to various judicial decision further held that benefit should be given to the consumer wherein two views are possible for classification of goods.

It is also by now well-settled that if two views are possible regarding classification of certain goods the benefit must go to the tax payer. If a tax payer seeks advantage, which was not intended by the legislature, but to which he was entitled on a construction of the statute he must be given that advantage [See Atkinson v. Good lass Wall and Lead Industries Ltd. [1950] 31 TC 447 (HL) at page 472; Commissioner of Income-tax v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC) ; State of Bombay v. Automobile and Agricultural Industries Corporation [1961] 12 STC 122 (SC) and Commissioner of Incometax v. M.P. Jatia [1976] 105 ITR 179 (SC) ; (1976) 4 SCC 92 at page 96]."

PRAYER

In view of the facts of the case and submissions made it is humbly prayed that the hon'able authority kindly Declare GLAZE GEL to be classified under Entry 32AA of schedule II under the MGST Act 2017.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

Officers submission dated:-30.09.2022

- 3.1 The applicant submits that their product namely 'Glaze gels', also known by its various synonyms in Trade namely 'Geli', 'Coldgeli', 'Glaze' etc is made of various sugars (mainly sucrose & glucose), water, thickening agents, colours and flavours and it is submitted by Applicant that the same ingredients may also be used for making 'sugar boiled confectionery' (SBC). Applicant also submits that the process of manufacturing of their product 'glaze gels' is also similar to process of Manufacture of 'SBC' & hence pleads to classify their product as "SBC" under Chap Hdng 1704 sr.no 32AA in sch 2.
- 3.2 After Careful examination I have come to the view that as it is a Non Fruit sugar based product it shall fall under chapter 17 & by nature of the specific product as enumerated in clause 1 above by the Applicant himself it falls specifically under chapter Heading 1704.
- 3.3 As the applicant themselves submit that their product has more moisture in the form of water, and their product is of semi-solid consistency and is without fruit juice, in my view there is a specific entry for this product namely Chapter Heading: 1704 9010---Jelly confectionery. The applicant submission that their product is of semi-solid consistency and is non fruit based will render it a non-fruit based jelly confectionery and in my view the above classification may apply.
- 3.4 In my view the applicant pleading of classification of their product under Chapter Heading 'Sr.no 32AA in schedule 2 -Sugar Boiled Confectionery' doesn't seems to be acceptable and classification under chapter Heading 17049010 may be considered.



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04. HEARING

4.1 Preliminary hearing in the matter was held on 07.06.2022. Shri. Manish Khanna Appeared, and requested for admission of the application. Jurisdictional Officer was absent. The application was admitted and called for final hearing on 30.09.2022. The Authorized representative of the applicant, Shri. Minish Khanna, Director was present. The Jurisdictional officer was absent. The Applicant explained that goods sold by applicant is raw material for bakery and supply is to bakeries. It is raw material for bakeries and this is admitted by applicant. Applicant admits that bakeries do not sale these goods as it is after buying from applicant. Applicant requests that applicant does not want to file reply in response to the reply filed by the Jurisdiction officer and case be finalized on the basis of final hearing. We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have understood the facts of the matter, perused the documents on record and submissions, both oral and written made by the applicant.
- 5.2 We observe that, Applicant, a GST registered person in Maharashtra, manufactures & sells GLAZE GELS to various bakeries across India. The issue before this Authority is one of classification of the said product i.e GLAZE GELS under the GST Tariff.
- 5.3 The applicant has stated that Cake/ Pastry making involves stacking of slices of sponge cake in layers which are sandwiched with Creams mixed with fruits/ nuts/ crumbs/gems and/or pieces of sugar boiled confectionery for taste, colour and decorative purposes. According to the applicant, the impugned product manufactured by them is a format of 'Sugar Boiled Confectionery' since GLAZE GELS also employ the same ingredients, formulations and the same processes (i.e., 'BOILING') and also employs similar equipment's to manufacture as is done in the case of 'Sugar Boiled Confectionery'. Thus, according to the applicant, the impugned product has the ingredients, formulations, processes which are similar to ingredients/formulations / processes employed with what is traditionally classed as 'Sugar Boiled Confectionery' and therefore the subject product needs to be classified as 'Sugar Boiled Confectionery' falling under Chapter Heading 1704 and covered by Schedule II, Sr. No. 32AA, attracting 12% GST of Notification No. 01/2017 dated 28.06.2017 as amended from time to time pertaining to rate of GST on goods.
- 5.4.1 The jurisdictional officer has submitted that the impugned product, known by its various synonyms in Trade namely 'Geli', 'Coldgeli', 'Glaze' etc., is made of various



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sugars (mainly sucrose and glucose), water, thickening agents, colours and flavours and the said product is a Non Fruit sugar based product liable to fall under Chapter 17 of GST Tariff and by nature of the specific product as enumerated by the Applicant itself, it falls specifically under chapter Heading 1704.

- 5.4.2 As per the jurisdictional officer, since the impugned product has more moisture in the form of water, and is of semi-solid consistency and without fruit juice, there is a specific entry for this product as under:

Chapter Heading 1704 9010---Jelly confectionery. Hence, applicant's pleading for classification of their product under Chapter Heading 'Sr.no 32AA in schedule 2 -Sugar Boiled Confectionery' doesn't seems to be acceptable and classification under chapter Heading 17049010 may be considered.

- 5.5.1 'Sugar Confectionery' as the name suggests is nothing but confectionery which is rich in sugars. In the subject case we find that the product is a 'Sugar Confectionery', a fact accepted by both, the applicant as well as the departmental officer, the only difference being that, while the applicant submits that the impugned product (which is semi solid in nature) is 'Sugar Boiled Confectionery' attracting GST @ 12%, the jurisdictional officer has maintained that the impugned product is 'Jelly Confectionery' attracting GST @ 18%.

- 5.5.2 Further, 'Sugar Boiled Confectionery' is Sugar and water, etc, boiled at such a temperature that practically no water remains and a vitreous mass is formed. As per the submissions made by the applicant it is clear that the impugned product is not a vitreous mass, rather it is a semi solid mass which, as per the applicant's submissions, takes the shape of the pail in which it is poured. This semi solid property is what helps the impugned product to be used in cakes as a filling between the sponge layers of a cake.

- 5.5.3 Also, it is seen that 'Sugar Boiled Confectionery' is bought and consumed by end users, whereas the impugned products are sold only to bakeries/cake manufacturers. As per the submissions of the applicant, the impugned products are not meant for consumption by the end users directly but are used in the process of cake making only. The applicant has correctly stated that lay persons will never ask for 'Orange sugar boiled confectionery', but will put the same demand asking for 'Orange goli/orange candy'. However, even though such lay persons may not know the product as 'Orange



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sugar boiled confectionery', fact will remain that an 'Orange Goli/Orange Candy' is nothing but an 'Orange sugar boiled confectionery', a vitreous product. From the copy of invoices submitted by the applicant, it is seen that the impugned products are mentioned as Glaze Gels even though the applicant is claiming the impugned product to be Sugar Boiled Confectionery. With these observations, applicant's opposition to use of common parlance test in their application is also disposed.

5.5.4 In view of the above, we find that the impugned product (which is semi solid in nature) is definitely a 'Sugar Confectionery' but cannot be termed as a 'Sugar Boiled Confectionery'.

5.6 Notes to Chapter No. 17.04 of the Tariff states that "This heading covers most of the sugar preparations **which are marketed in a solid or semi-solid form**, generally suitable for immediate consumption and collectively referred to as sweetmeats, confectionery or candies.

5.7 We take into account the applicant's submissions which states that the impugned product is a "semi solid mass" and since the impugned product is a type of confectionery made of sugar, we agree with the applicant's contention that the impugned product falls under Chapter Heading 17.04, which covers 'Sugar Confectionery (including white chocolate), not containing cocoa.

5.8 As per Sr. No. 12 of Schedule III of Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017, 'Sugar confectionery (excluding white chocolate and bubble / chewing gum) [other than bura, batasha]' falling under Chapter Heading 1704 attracted GST at 18%.

Sr. No. 12 was amended vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 and the amended version read as follows : "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 and gajak]".

Further vide Notification No. 06/2018 dated 25.01.2018 amendment was carried out to Sr. No. 12 as follows: "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**']".



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- 5.9 However Notification No. 06/2018 dated 25.01.2018 also introduced Sr. No. 32AA in Schedule II (attracting 12%GST) for **Sugar Boiled Confectionery**. Herein lies the basic contention of the applicant that since their product has ingredients, formulations, processes which are similar (not same) to ingredients/formulations/processes employed with what is traditionally classed as 'Sugar Boiled Confectionery (SBC)', so also the impugned product be also treated as SBC. Accordingly, the applicant points out to the fact that the impugned product is similar to Sugar Boiled Confectionery even though the product is semi solid in nature and should therefore be treated as SBC.

We do not agree with this view of the applicant because the applicant have themselves stated that the impugned product is in a semi solid form and not in vitreous form as Sugar Boiled Confectionery. Further we also find that while Sugar Boiled Confectionery are directly sold to end ultimate end users for consumption, whereas the impugned product are not consumed by the end consumers, rather their product is used by cake manufacturers as a filling between sponge layers of cakes.

- 5.10 In view of the above discussion, we hold that the impugned product cannot be considered as a Sugar Boiled Confectionery and there fore the Sr. No. 32 AA (Schedule II) of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 is not applicable to the said product.

Further, since we have already opined herein above that the impugned product is 'Sugar Confectionery" the said product falls under Sr. No. 12 of Schedule III of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 attracting GST rate of 18% .

- 5.11 The second question raised by the applicant is under which Chapter Heading should the impugned product fall.

- 5.11.1 The various sub headings of Chapter Heading 1704 are as under:

1704 10 10 - 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 --- Other.



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5.11.2 We observe that the impugned product cannot be treated as chewing gum, boiled sweets, toffees, caramels etc.

As per the definition in Britannica, "Jelly is a semitransparent confection consisting of the strained juice of various fruits or vegetables, singly or in combination, sweetened, boiled, slowly simmered, and congealed, often with the aid of pectin, gelatin, or a similar substance". Congealment, which is a very important property of Jelly, is usually achieved by using pectin, gelatin or any similar substance and from the submissions made by the applicant, it is clear that the impugned product is semi solid in nature and is not congealed and it is also seen that there is no usage of congealing agencies like pectin, gelatin or similar substances. Therefore we are of the opinion that the impugned product cannot be considered as a Jelly Confectionery and accordingly we disagree with the submissions made by the jurisdictional officer on this count.

5.11.3 In view of the above discussions, we feel that the impugned product cannot be covered under Chapter Headings 1704 10 10, 1704 90 10, 1704 90 20 or 1704 90 30. Therefore we hold that the impugned product is covered by the undermentioned Chapter Heading :

1704 90 90 --- Other.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

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

For reasons as discussed in the body of the order, the question is answered thus –

Question 1: To answer in affirmative or negative that the impugned product GLAZE GELS is classifiable under chapter heading as under:

SCHEDULE II – SR. NO 32AA – SUGAR BOILED CONFECTIONERY. 6% MGST

Answer: - Answered in the negative.

Question 2: If the answer to question 6.1] is in negative, then under which chapter heading the impugned product GLAZE GEL is to be classified.

Answer: - As per the above discussions, the impugned product i.e. Glaze Gels is covered under Chapter 1704 9090 i.e. Others, of the GST Tariff and falls under Sr. No. 12



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of Schedule III of Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017
as amended from time to time, attracting 18% GST.




M. RAMMOHAN RAO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.