

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id	27AAAAA2054R1ZL
Legal Name of Applicant	M/S Ahmednagar District Goat Rearing and Processing Co - op Federation Ltd.
Registered Address/Address provided while obtaining user id	GAT No 291/2, 292/2, 293/2, A/P Vadgaon Tandali, Ahmednagar - 414006 Maharashtra.
Details of application	GST-ARA, Application No. 21 Dated 23.01.2018
Concerned officer	Ahmednagar -I Range, Ahmednagar Division, Nasik
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory/Manufacturing
B Description (in brief)	<ul style="list-style-type: none"> • Integrated abattoir cum Meat Processing Plant • Manufacturer of Chilled/Frozen Sheep/Goat Meat and Meat Products.
Issue/s on which advance ruling required	(i) 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.

PROCEEDINGS

(under clause (xviii) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with 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 clause (xviii) of section 20 of the Integrated Goods and Services Tax Act, 2017 [hereinafter referred to as "the IGST Act"] read with 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"] by M/S Ahmednagar District Goat Rearing and Processing Co-op Federation Ltd., the applicant, seeking an advance ruling in respect of the following questions:

1. Whether the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by applicant against tender shall qualify as product put up in "unit container"?
2. Whether the products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017- Integrated Tax (Rate) dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 1 of schedule I of the Notification No. 43/2017-Integrated Tax (Rate) dated 14th November 2017 or fall under exemption list as per entry no 10 of Notification No. 2/2017-Integrated Tax (Rate) New Delhi dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 9 of the Notification No. 44/2017-Integrated Tax (Rate) dated 14th November 2017?

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submission, as reproduced verbatim, could be seen thus -

“Statement of Relevant facts having bearing on question raised

- 1) M/S Ahmednagar District Goat Rearing and Processing Co-op Ltd. is engaged in slaughtering & processing of Sheep/Goat meat and supplies these products to Army against tender.
- 2) Ahmednagar District Goat Rearing and Processing Supplies to Army Sheep/ goat meat in carcass form i.e. the whole animal carcass in its natural shape in frozen state. Naturally, the carcass would be in different weight & sizes. Further, there is no fixed quantity & size in which these carcasses are dispatched to Army. The said dispatches are made on the basis of the weight of the frozen carcass. Furthermore, the consideration is charged on the basis of weight. The packing and dispatch pattern is given below:-
Mutton :- Each frozen carcass is put in LDPE Bag (Primary Packing) which is not sealed & no weight is mentioned on such LDPE Bag. Thereafter, generally two of such LDPE Bags are put in HDPE Bag (Secondary Packing) and manually weight of two carcass is mentioned by marker. For instance, if one of the carcass weights 7 Kg & other one weight 6.5 Kg, the HDPE Bag would bear the marking as “8 +7.5 =15.5 Kg”.
- 3) **The four digit HSN of the Subject Product is given below :-**

HSN	Product
0204	Meat of Sheep or Goats

4) **Provision relating to Taxability / Exemption under GST Law**

The IGST rate schedule as notified by the Government in respect of subject product is as under:-

i. W.e.f. 1st July, 2017 till 14th November, 2017

- a. Schedule II of the Notification No 1/2017- Integrated Tax (Rate) dated 28th June 2017 deals with the products which are subject to 12% GST and entry No 4 which pertain to sheep/Goat meat respectively are provided below:

Schedule II

S No	Chapter Heading Sub-heading Tariff item	Description of Goods
4.	0204	Meat of sheep or goats, frozen and put up in unit containers

- b. A reading of the above-mentioned entries in the above reproduced notification would reveal that if the items mentioned in Tariff Heading 0204 are put up in a 'unit container', it would be exigible to tax @ 12%.
- c. Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government via Notification No.2/2017 -Integrated Tax (Rate) New Delhi dated 28.06.2017 has exempted inter-State supplies of goods from the whole of the integrated tax leviable thereon as under. Relevant extract is reproduced below:

Schedule

S No	Chapter Heading Sub-heading Tariff item	Description of Goods
10.	0204	Meat of sheep or goats, [other than frozen and put up in unit containers]

A conjoint reading of the extracts of the above-mentioned notification reveals that GST is chargeable only when the frozen meat is put up in 'unit containers'.

ii. An amendment made in the schedule II of Notification No. 1/2017 dated 28th June 2017- Integrated Tax (Rate) vide Notification No. 43/2017 - Integrated Tax (Rate) dated 14th November 2017, w.e.f 15th November 2017 onwards, the following entry inserted which relates to taxability on subject products.

- a. Schedule I of the Notification No 43/2017-Integrated Tax (Rate) dated 14th November 2017 deals with the products which are subject to 5% GST and entry No. 1 which pertain to sheep/Goat meat respectively are provided below:

Schedule I

S No	Chapter Heading Sub-heading Tariff item	Description of Goods
1	0204	All goods (other than fresh or chilled) and put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I];

- b. Hence, the net impact of the above amendment is as follows :-
 - i. Reduction in rate from 12% to 5% on the subject products.
 - ii. One additional condition for taxability is imposed i.e. product must be branded.
- c. Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government via Notification No.44/2017-Integrated Tax (Rate) New Delhi dated 14.11.2017 has exempted inter-State supplies of goods from the whole of the integrated tax leviable thereon as under. Relevant extract is reproduced below :

Schedule

S No	Chapter Heading Sub-heading Tariff item	Description of Goods
8	0204	All goods, fresh or chilled
	0204	All goods (other than fresh or chilled) other than those put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I];

A conjoint reading of the extracts of the above-mentioned notifications reveals that GST is chargeable only when the following conditions are met

- Till 14th November 2017, if product is "Frozen" and put up in "Unit Container"



- On or after 15th November 2017, if the product is “Frozen” and put up in “Unit Container” and “Branded”.

Annexure B

Statement containing the Applicant Interpretation of Law and Submission on issues on which Advance Ruling is sought

1. Section 9 of the Central Goods and Services Tax Act 2017

“9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.”

Thus, GST is chargeable as a reference to ‘value’ and at applicable rates. For the purpose of building the point of view, reference made to the IGST rate schedule as notified by the Government as under:

2. **W.e.f from 1st July, 2017 till 14th November, 2017**

Schedule II of the Notification No 1/2017-Integrated Tax (Rate) dated 28th June 2017 deals with the products which are subject to 12 % GST and entry No 4 which pertain to sheep/Goat meat respectively are provided below:

Schedule II			
S No	Chapter	Heading	Description of Goods
4.	0204		Meat of sheep or goats, frozen and put up in unit containers

3. A reading of the above-mentioned entry in the above reproduced notification would reveal that if the items mentioned in Tariff Heading 0204 are put up in a ‘unit container’, it would be exigible to tax @12%.

4. Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government via (b) Notification No.2/2017-Integrated Tax (Rate) New Delhi dated 28.06.2017 has exempted, inter-State supplies of goods, from the whole of the integrated tax leviable thereon. Relevant extract is reproduced below:

Schedule			
S No	Chapter	Heading	Description of Goods
10.	0204		Meat of sheep or goats, [other than frozen and put up in unit containers]

5. **W. e. f. 15th November, 2017 onwards,**

Schedule I of the Notification No 43/2017-Integrated Tax (Rate) dated 14th November 2017 deals with the products which are subject to 5 % GST and entry No 1 which pertain to sheep/Goat meat are provided below:

Schedule I			
S No	Chapter	Heading	Description of Goods
1	0202		All goods (other than fresh or chilled) and put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I];

6. A reading of the above-mentioned entries would reveal that the item mentioned in Tariff Heading 0204 would be exigible to tax @ 5% if are put up in a ‘unit container’ and bear a brand name.

7. Correspondingly, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government via Notification No.44/2017-Integrated Tax (Rate) New Delhi dated 14.11.2017 has exempted, inter-State supplies of goods, from the whole of the integrated tax leviable thereon. Relevant extract is reproduced below:

Schedule			
S No	Chapter	Heading	Description of Goods
8	0204		All goods, fresh or chilled
9.	0204		All goods (other than fresh or chilled) other than those put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which actionable claim or enforceable right in court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to conditions as in the ANNEXURE I];

8. **Conditions for Taxability:-**

A conjoint reading of the extracts of the above-mentioned notifications reveals that GST is chargeable subject to fulfillment of conditions as tabulated below.

- W.e.f. from 1st July, 2017 till 14th November, 2017

➤ Must be frozen
➤ Must be packed in unit container
- W.e.f from 15th November, 2017 onwards

➤ Must be frozen
➤ Must be packed in unit container
➤ Must bear a brand

9. Keeping in mind all three conditions extracted from the notifications for the taxability of the products. There is clarity on two conditions i.e. Product is frozen and branded. However Advance Ruling is requested on the Question whether the product is put up in unit container or not.

10. **Applicant’s point of view**

Keeping in mind the facts, definition of unit container given as explanation appended to the IGST notification prescribing rates & notification granting exemption & various judicial pronouncements on and relating to “Unit Container”, the applicant is of view that the packaging being used to supply frozen Sheep/Goat meat to Army against tender does not qualify to be as unit container.

In support of above point of view, following submissions are being made for the kind consideration of the Honorable Advance Ruling Authority.

Unit Container, meaning

Before adverting to the decided case laws and analysis of the term ‘unit container’, it is important to advert to the meaning of the term ‘unit’. Merriam Webster Dictionary defines ‘unit’ as ‘a determinate quantity (as of length, time, heat, or value) adopted as a standard of measurement such as an amount of work used in education in calculating student credits or an amount of a biologically active agent (such as a drug or antigen) required to produce a specific result. The Business Dictionary defines the term to mean a definitive or determinate quantity adopted as a standard of measurement and



exchange. Therefore, where the term 'unit' is affixed to a container, it would mean a container containing a 'unit' of a particular commodity i.e. a determinate quantity of goods contained therein. It should be designed to contain such determinate quantity of units of goods.

11.2 In this background, let us analyse the meaning & scope of the term 'unit container'.

11.3 The interpretation of the expression 'unit container' has been a vexed issue in the context of Central Excise law as under the excise regime prevailing prior to GST.

Food products put up on a 'unit container' were liable to excise duty. Therefore, in this regard, it is important to study the provisions under the old law and interpretation adopted by the Courts.

11.4 The expression 'unit container' was first used in Tariff Item No 1B in the old Central Excise Tariff as under:

"1B Prepared or preserved foods put up in unit containers and ordinarily intended for sale, including preparations of vegetables, fruit milk, cereals, flour, starch, birds, eggs, meat offals, animal blood, fish, crustaceans or molluscs, not elsewhere specified."

11.5 Thus, under the old Central Excise Tariff, prepared/ preserved food put up in 'unit container' and ordinarily intended for sale were exigible for excise duty. Thus, there was a twin requirement viz. goods being put up in 'unit container' and secondly, they should have ordinarily been intended for sale.

11.6 The expression 'unit container' was not defined in the old Central Excise Tariff but instructions in this regard were issued by Central Excise Board's letter M.F (D.R.L) No. B/5/1/69-CX-I, dated 3-4-1969, clarifying the meaning of the term 'unit container' as under:

"Meaning of Unit Containers. The expression 'unit container' used in Tariff Item 1B means a container in which prepared or preserved food is intended to be sold by the manufacturer. It may be a small container like tin, can, box, jar, bottle or bag in which the product is sold by retail, or it may be a large container like drum, barrel or canister in which the product is packed for sale to other manufacturers or dealers. In short 'unit container' means a container, whether large or small, designed to hold a pre-determined quantity or number which the manufacturer wishes to sell whether to a wholesale or retail dealer or to another manufacturer."

11.7 In this background, in the context of old Central Excise Tariff, reference is placed on the following observations of the Special Bench of the Hon'ble CEGAT while interpreting the term 'unit container' in the case of Collector of Central Excise v. Himachal Pradesh Horticulture Produce Marketing & Processing Corporation Ltd., 1998 (34) E.L.T. 160 (Tribunal):

"45. At the basis of this entire system of marketing and consumer satisfaction is the method of packing in "unit containers". In most cases (if not all) the container is not returnable; in many cases it is not durable, particularly if it is of cardboard or aluminum foil. For obvious reasons the container has to be just large enough to hold the predetermined quantity of the contents. To pack half a litre of fruit syrup in a bottle which can hold one litre would not only be wasteful but would also subject the contents unnecessary movement, perhaps with a loss of quality. Further, it would arouse doubts in the customer that he is being cheated. It can therefore be very well understood that no intelligent manufacturer would pack prepared or preserved foods (or indeed any similar product of common consumer use) in a container which is not full or practically so. Nor would a prudent customer readily buy a product in a container which does not appear to be full.

46. The above observations on the methods of marketing of common consumer products, do not require any special knowledge because they are a matter of common experience. The tariff item and the Finance Ministry's instructions are consistent with the general experience and practice as mentioned above. General experience would certainly show that prepared and preserved foods and the like, as they are ordinarily sold in the market, are packed in containers which contain a specific and clearly marked quantity of the goods. The quantity may vary according to the product and the manufacturer, but even then there are many standard quantities common to different manufacturers, such as 100 gms, 500 gms, 1 kg, 100 ml, 200 ml and 500 ml. Such products are sold in what may appropriately be called "unit containers" which can conveniently contain that particular quantity. It is also a matter of common knowledge and experience that in such cases the container is normally nor returnable, and in many cases not durable."

11.8 A perusal of the observations of the CEGAT in the above case reveals that 'unit container' is to be interpreted to mean a container that holds a predetermined quantity which is clearly indicated and is standardized i.e. it is standardized for a particular commodity like packages of 1kg, 100 ml, 200 ml, etc. The said conclusion also follows from the meaning of the term 'unit'.

11.9 Under the new Central Excise Tariff Act, 1985 (which replaces the old Tariff) also, certain products cleared and manufactured and put up in a 'unit container' were exigible to excise duty. The term 'unit container' under the New Central Excise Tariff Act, 1985 was defined to mean as under:

"Container whether large or small (for examples, tin, can, box, jar, bottle, bag or carton, drum, barrel or canister) designed to hold a pre-determined quantity or number."

11.10 In the context of new Central Excise Tariff Act, 1985, in the case of Agro Foods Punjab Ltd. v. Collector of Central Excise, 1990 (49) E.L.T. 404, the tribunal observed as below:

"We hold that there is no difference either in the entry in between 1B of the old Tariff and new Tariff 2001.10 or in the issue involved in both the cases. Following the ratio of the decision in the case of M/s. HPMC we hold that clearance in barrels does not amount to sale of the contents as put in a unit container. Accordingly, the goods in question are not classifiable under sub-heading 2001.10 but they are classifiable under sub-heading 2001.90."

11.11 Relying on the above case law, the tribunal in the case of MP Vegetable Fruit Products v. Collector of Central Excise, Raipur, 1995 (76) E.L.T. 393 (Tribunal) held that jerry cans of tomato puree of 35 litre capacity being supplied to manufacturers of tomato ketchup was not a 'unit container'.

11.12 However, in the case of CCE v Simba Chips, 1997 (96) E.L.T. 381 (Tribunal), the Tribunal held that the fact that packets did not bear indication of the weight of the goods has no significance to determine whether it is a 'unit container' or not so long as the packet contained a predetermined quantity.

11.13 Therefore, the fact that that containers did not bear indication of weight of goods is no significance to determine if a container is a 'unit container' or not so long as the said container contained a predetermined quantity.

11.14 In the context of HDPE and LDPE Bags, in the case of Surya Agro Oils Ltd. v. Commissioner of Central Excise, Indore, 2000 (116) E.L.T. 514, the question arose whether an HDPE sack weighing 20 kg each of Pasta was a 'unit container' or not. It is pertinent to note that the HDPE sack weighing 20kgs comprised of 2 LDPE bags weighing 10kgs each and after putting the said LDPE bags in the HDPE sack, the HDPE sack was stitched and subsequently it was cleared as an HDPE. The tribunal opined as under:

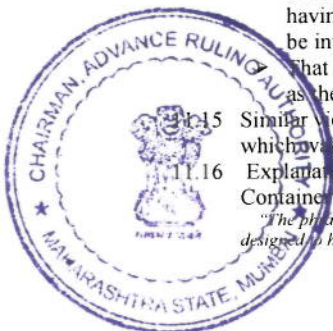
➤ There exists no logic to restrict the scope of the words 'unit container' only to small containers which must have predetermined capacity of 1/2/3/4/ kg., and carry full particulars of the product i.e., date of the manufacture, name of the manufacturer, trademark, price, etc. If the intention of the legislature was to refer only to the small containers having predetermined capacity, it must have so provided specifically. Therefore, the words 'unit container' have to be interpreted in such a manner so as to include not only small but also large containers.

That the sale of pasta products in the big bags known as LDPE and HDPE cannot be said to be a sale of bulk in loose as these bags contained fixed quantity of the product for sale to the distributor/customers.

Similar view was observed in the decision of the Tribunal in the case of Surya Agrooils Ltd. Vs. CCE [2005 (188) ELT 97 (Tri- Del.)] which was later affirmed by the Hon'ble Supreme Court in 2006 (199) ELT A183.

11.16 Explanation appended to the IGST notification prescribing rates and notification granting exemption defines 'Unit Container' similar to the definition under the old and new Central Excise Tariff is provided as under:

"The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package."



12. In view where of the judicial principles evolved for determination of 'unit container' would hold good in the context of GST law as well. We are therefore summarizing the said principles as under:
- In order for a container to be categorized as a 'unit container', the said container should be designed to hold a predetermined quantity and should be standardized i.e. it is standardized for a particular commodity like packages of 1kg, 100 ml, 200 ml, etc.
 - The words 'unit container' does not mean only small containers which must have predetermined capacity of 1/2/3/4/ kg., and carry full particulars of the product i.e., date of the manufacture, name of the manufacturer, trademark, price, etc. A big container designed to hold a pre-determined quantity of goods in bulk will also qualify as 'unit container'.
 - That the sale of a product in big bags such LDPE and HDPE sacks cannot be said to be a sale of bulk in loose but would be a 'unit container' where these bags contain pre-determined quantity of the product for sale to the distributor/customers. However, where such bags don't contain a pre-determined quantity, the same will not qualify as unit container. For instance in the case of *CCE Vs. Shalimar Super Foods [2007 (210) ELT 695 (Tri. - Mumbai)*, the tribunal held that meat articles packed in loose plastic bags which were not in uniform quantities cannot be held to be a unit container. The bags in this case were not sealed similar to the LDPE bags in the present case.
13. In light of the above discussion, we are of the view that Mutton sold by Ahmednagar District Goat Rearing and Processing would not qualify as a 'unit container' for the following reasons:
- LDPE bags are not sealed. Even though the fact as to whether the bags are sealed or not is not decisive in determination whether a container is a 'unit container' or not, we are of the view that the fact that the LDPE bags are not sealed would militate against any contention raised by the department that the said container are designed to hold a pre-determined quantity.
 - That in *Surya Agro Oils Ltd. v. Commissioner of Central Excise, Indore, 2000 (116) E.L.T. 514*, case wherein HDPE sack weighing 20 kg each of Pasta comprising of 2 LDPE bags weighing 10kgs each was held to be a unit container will not be applicable to the present case in as much as in the said case the HDPE bag contained LDPE bags of 10Kgs each, which were standardized whereas in the present case there is no fixed quantity of mutton in the LDPE bags, it can weigh 7 kg or 6.5kg i.e. the said HDPE bags cannot be said to be holding a predetermined uniform quantity. In a nutshell, the bags in the present case do not hold a pre-determined quantity of meat. It is clear from the above factual matrix that carcasses packed in the LDPE sacks and HDPE sacks would be in different weight and sizes. Further, we are also given to understand that there is no fixed quantity and size in which these carcasses are dispatched to the Army against tender. The said dispatches are made on the basis of the actual weight of the frozen carcasses. Furthermore, the consideration is charged by Ahmednagar District Goat Rearing and Processing from the Army on the basis of the weight. Therefore, there is no doubt that the said LDPE/ HDPE bags i.e., primary as well as secondary packing do not qualify as unit container.
 - Further, the meat in the present case is sold by the Ahmednagar District Goat Rearing and Processing on the basis of actual weight of that particular bag. That the case of *CCE vs. Shalimar Super Foods supra* is directly in support wherein bags containing meat which was not of pre-determined quantity was held not to be a 'unit container'.
14. Therefore, we are of the view that the product supplied by Ahmednagar District Goat Rearing and Processing shall not qualify as unit container.
15. **Applicant's point of view on specific queries raised for Advance Ruling:-**
- Whether the packaging being used for despatch to Army shall qualify as "Unit Container" under the GST law?***
Point of view:
In light of the discussion contained in Para 11.1 to Para 11.12, we are of the view that despatches made by the supplier in LDPE/HDPE bags i.e. both primary as well as secondary packing do not qualify as product packed in unit container.
 - Whether the product, i.e. sheep/Goat meat in frozen state and packed as mentioned in the facts stated above sheet shall be liable to be taxed under GST or would it be treated as exempted?***
Point of view:
In light of the discussion contained in Para 11.1 to Para 11.10, we are of the view that despatches made by the supplier in LDPE/ HDPE bags i.e. both primary as well as secondary will not be liable to tax under GST."

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

Submission dt.14.03.2018

- "Whether the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by applicant against tender shall qualify as product put up in "unit container".
Officer Comments :- No - the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by applicant against tender shall qualify as product put up in "unit container". As per purchase order requirement is predetermined & for specific quantity (in Kg.). The said taxable person supplies predetermined units in various quantum which leads to specific weight (units). As per photographs obtained from tax payer, the weight of whole (sheep/goat) animal carcass is mentioned on every HDPE bag. As per explanation appended to notification 2/2017 - Integrated Tax (Rate) dated 28th June 2017 the phrase "unit container" means a package, whether large or small (for example, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a per-determined quantity or number, which is indicated on such package, which is self-explanatory.
Whether the products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017-Integrated Tax (Rate) dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 1 of schedule I of the Notification No. 43/2017-Integrated Tax (Rate) dated 14th November 2017 or fall under exemption list as per entry no. 10 of Notification No. 2/2017-Integrated Tax (Rate) New Delhi dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 9 of the Notification No. 44/2017-Integrated Tax (Rate) dated 14th November 2017



Officer Comments :- Yes – The products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017 - Integrated Tax (Rate) dated 28th June 2017 upto 14th November 2017 & thereafter as per entry no.1 of schedule I of the Notification No. 43/2017-Integrated Tax (Rate) dated 14th November 2017. It is not fall under exemption list as per entry no 10 of Notification no. 2 /2017 -Integrated Tax (Rate) New Delhi dated 28th June 2017 upto 14th November 2017 & thereafter as per entry no 9 of the Notification no 44/ 2017 Integrated Tax (Rate) dt. 14th November 2017.”

04. HEARING

The case was taken up for preliminary hearing on dt.14.02.2018 when Sh. Ashok Kumar Mishra, Chartered Accountant (CA) and Sh. Ashok Ranganath Kale, Chairman appeared and reiterated the contention as made in the written submission. The final hearing was held on dt.13.03.2018 when both of the aforesaid persons appeared and reiterated the contention as made in the written submission. It was mainly contended that theirs was not a unit container and thus, they were exempt from payment of tax. Sh. Ashok Kumar Mishra, C.A. undertook to submit copies of packing list in respect of the product latest by dt.15.03.2018 which has been submitted. The concerned jurisdictional State Tax Officer was present on dt.14.02.2018 only. However, a written submission has been tendered in the matter.

05. OBSERVATIONS

We have gone through the facts of the case. A perusal of the submission reveals that the questions require us to interpret the words ‘unit container’ as found in the schedule entries of the Notifications issued under the provisions of the IGST Act. We begin the discussion as under-

Question 1

Whether the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by applicant against tender shall qualify as product put up in “unit container”?

The words ‘unit container’ have been defined similarly in both the Notification No.1-Integrated Tax (Rate) and Notification No. 2/2017- Integrated Tax (Rate) of the IGST Act as under -

(i) The phrase “unit container” means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package.

The present product, as informed by the applicant, is Sheep/goat meat in carcass form i.e. the whole animal carcass in its natural shape. It is supplied in frozen state in LDPE and HDPE bags. The above definition covers a package and the examples of such a package include a ‘bag’.

The aspects which now need to be seen are -

- *Whether the bag is designed to hold a predetermined quantity or number?*
- *Whether the quantity or number is indicated on the bag?*

The applicant supplies the above product to the Army. We were provided with photo copies of the bags in which the product is supplied. The facts as informed are thus -

a. The ‘Acceptance of Tender’ document copies as supplied by the applicant reveal thus -



CONTRACT FOR SUPPLY OF MEAT DRESSED CHILLED/FROZEN AT SUKNA FOR THE PERIOD FROM 01 APR 2017 TO 31 MAR 2018 (BOTH DAYS INCLUSIVE) ON FORTNIGHTLY PAYMENT BASIS

Rates tendered for delivery at Supply Point ASC Sukna as and when ordered by OC Supply Point ASC, Sukna or his authorised representative:-

Item No	Articles/Services to be supplied	Unit	Quantity in Kgs	Basic Price Per 100 Kgs (In Rs.)	Total Value at Basic Price (In Rs.)	Taxes (CST/VAT) in %	Total Value with Tax (In Rs.)
(a)	Meat Dressed Chilled/Frozen	Kg	35,000	41,000/-	14350000.00	6	15211000.00

CONTRACT FOR SUPPLY OF MEAT DRESSED CHILLED/FROZEN AT RANGIA AND DELIVERY POINT BARAMA FOR THE PERIOD FROM 01 APR 2017 TO 31 MAR 2018 (BOTH DAYS INCLUSIVE) ON FORTNIGHTLY PAYMENT BASIS

Rates tendered for delivery at Supply Point ASC Rangiya as and when ordered by OC Supply Company ASC, Rangiya or his authorised representative:-

Item No	Articles/Services to be supplied	Unit	Quantity in Kgs	Basic Price Per 100 Kgs (In Rs.)	Total Value at Basic Price (In Rs.)	Taxes (CST/VAT) in %	Total Value with Tax (In Rs.)
(a)	Meat Dressed Chilled/Frozen	Kg	18,000	42,600/-	7668000.00	6	8128080.00
Rates tendered for delivery at Delivery Point ASC Barama as and when ordered by OC Supply Company ASC, Rangiya or his authorised representative:-							
(b)	Meat Dressed Chilled/Frozen	Kg	5,100	42,600/-	2172600.00	6	2302956.00
Grand Total			23,100		9840600.00		10431036.00

- b. Each frozen carcass is put in LDPE Bag (Primary Packing) which is not sealed & no weight is mentioned on such LDPE Bag. Thereafter, generally two of such LDPE Bags are put in HDPE Bag (Secondary Packing) and manually weight of two carcass is mentioned by marker. For instance, if one of the carcass weights 7 Kg & other one weight 6.5 Kg, the HDPE Bag would bear the marking as "8 +7.5 =15.5 Kg".
- c. The bags are numbered. Hence, there is a bag number mentioned on each bag.
- d. There is a statement maintained which keeps a cumulative total of the bags sent and the weight of the carcasses as sent in these bags.
- e. The 'Acceptance of Tender' documents reveal that invoices are raised every fortnight. The details in these documents could be seen thus -

"6. Taxes and Levies Payable – As declared in BoQ at the time of submission of bid.

VAT /CST	Chilled	Frozen
	-	6%

Payment Terms

7. Bills & Payment, The bills will be presented by your firm every fortnight which will mention the basic cost of Meat Dressed Chilled/Frozen supplied, followed by the details of all levies & taxes paid by you separately. Contract Operating Officer will make 95% payment of the total billed amount including taxes through electronic transfer :-

- (a) 95% of Basic Cost. Contract Operating Officer will make the payment after verifying the quantity supplied.
- (b) 95% of Taxes and Levies. 95% payment of the taxes and levies will only be paid by the Contract Operating Officer upon production of tax deposit receipts and certificates from Chartered Accountant of your firm and reconciliation with all connected documents."
- f. In the invoice raised on the Army, there is mention of the total number of bags supplied and the total weight contained in these bags on the basis of the statement in point e above.

A perusal of all above makes us infer thus -

- a. The phrase "unit container" is defined as "means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package."
- b. The definition of 'unit container' requires that there should be mention of a **predetermined quantity or number on the package (a package includes a bag).**



- c. The definition has not specified any condition as to sealing of the package.
- d. The words used are "*quantity or number*".
- e. Each LDPE bag would carry one carcass. And each HDPE bag would carry two carcasses.
- f. There is mention of the weight of the two carcasses on the bag in the manner as follows :
$$"8 + 7.5 = 15.5 \text{ Kg}"$$
- g. The above manner of marking on the bag indicates that the sum is of two items. Thus, the manner of marking reveals a "*number*".
- h. The "*number*" in point (f) is a '*predetermined number*' as the concerned persons from the Army are aware that each LDPE bag would carry one carcass and each HDPE bag would carry two carcasses. Thus, the bags are designed to hold a '*predetermined number*'.
- i. The manner of indicating the weight would satisfy the requirement of the words '*predetermined number indicated on such package*'.

In view of all above, we are convinced that the impugned packing would satisfy the requirement of the definition of "unit container" as found in the Notification No.1-Integrated Tax (Rate) and Notification No. 2/2017- Integrated Tax (Rate) issued under the provisions of the IGST Act. In view thereof, the bags being supplied to Army by the applicant against tender qualify as product put up in "unit container".

We find that the applicant has placed reliance on many case laws. Each case law rests on the facts of the referred specific case. And the facts in the instant case are not similar to the facts in the cases cited before us. We see that the reliance on the case laws in the case of CCE v Simba Chips (cited supra) and Surya Agro Oils Ltd. v. Commissioner of Central Excise, Indore (cited supra) would not be applicable herein as the definition under consideration in these cases is not similar to the one that we are dealing with herein. The definition in the said cases was -

The Note to Section IV defines that a "Unit Container" as one whether larger or small (for example tin, can, box, jar, bottle, bag or carton, drum, barrel or canister) designed to hold a (predetermined) quantity or number.

Thus, the aspect of mention of the predetermined quantity or number on the package was not a requirement of the definition. The facts of the instant case before us being distinct, we wish not to deliberate on the arguments and case laws as put forth by the applicant.

Question 2

Whether the products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017- Integrated Tax (Rate) dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 1 of schedule I of the Notification No. 43/2017-Integrated Tax (Rate) dated 14th November 2017 or fall under exemption list as per entry no 10 of Notification No. 2/2017-Integrated Tax (Rate) New Delhi dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 9 of the Notification No. 44/2017-Integrated Tax (Rate) dated 14th November 2017?



To answer the above question, we look at the schedule entries as have been contended to be applicable. Let us reproduce the same as under -

Notification	S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Period	Tax rate
Notification no. 1/2017-Integrated Tax (Rate) dated 28 th June 2017	4 (Schedule II)	0204	Meat of sheep or goats, frozen and put up in <u>unit containers</u>	1-7-2017 TO 13-11-2017	12%
				Deleted w.e.f 14.11.2017	
	1 (Schedule I)	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods [other than fresh or chilled], and put up in <u>unit container</u> and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE]	14-11-2017 ONWARDS	5%
Notification no. 2/2017-Integrated Tax (Rate) dated 28 th June 2017	10	0204	Meat of sheep or goats, fresh, chilled or frozen [other than frozen and put up in unit container]	1-7-2017 TO 13-11-2017	NIL
				Deleted w.e.f 14.11.2017	
	9	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods [other than fresh or chilled] other than those put up in <u>unit container</u> and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]	14-11-2017 ONWARDS	NIL

The applicability of each of the entry could be discussed thus -

FOR THE PERIOD 1-7-2017 TO 13-11-2017

1. Schedule entry no.10 of the Notification No.2-Integrated Tax (Rate) does not cover frozen meat of sheep or goats put up in unit container.
2. Schedule entry 4 of the Notification No.1-Integrated Tax (Rate) covers frozen meat of sheep or goats put up in unit container.
3. In view thereof, the impugned product would be covered by schedule entry 4 of the Notification No.1-Integrated Tax (Rate) during the period 1-7-2017 TO 13-11-2017.

FOR THE PERIOD FROM 14-11-2017 ONWARDS

1. Schedule entry no.9 of the Notification No.2-Integrated Tax (Rate) has conditions regarding unit container and brand name. The applicant has stated that there is clarity on two conditions i.e. product is frozen and branded. We have seen above that the supply by the applicant qualifies as a product put up in "unit container". Now, the Schedule entry no.9 does not cover frozen meat of sheep or goats when put up in unit container and bearing a brand name.
2. Schedule entry 1 of the Notification No.1-Integrated Tax (Rate) also has conditions regarding unit container and brand name. The applicant has stated that there is clarity on two conditions i.e. product is frozen and branded. We have seen above that the supply by the applicant qualifies as a product put up in "unit container". Now, the Schedule



entry no.1 covers frozen meat of sheep or goats when put up in unit container and bearing a brand name.

3. In view thereof, the impugned product would be covered by the schedule entry 1 of the Notification No.1-Integrated Tax (Rate) from 14-11-2017 onwards.

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

ORDER

(under clause (xviii) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-21/2017-18/B- 27 Mumbai, dt. 21/4/2018

For reasons as discussed in the body of the order, the questions are answered thus -

Q.1 Whether the whole (Sheep/Goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags without mentioning the weight and one or two such LDPE bags further packed in HDPE bags being supplied to Army by applicant against tender shall qualify as product put up in "unit container"?

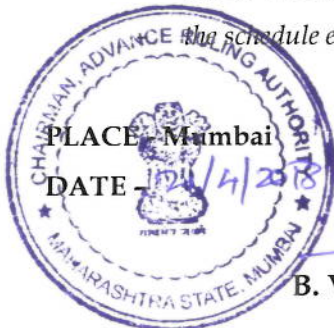
A.1 The question is answered in the affirmative.

Q.2 Whether the products as mentioned in query 1 shall be taxable under GST as per entry no. 4 of schedule II of the Notification no. 1/2017- Integrated Tax (Rate) dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 1 of schedule I of the Notification No. 43/2017- Integrated Tax (Rate) dated 14th November 2017 or fall under exemption list as per entry no 10 of Notification No. 2/2017-Integrated Tax (Rate) New Delhi dated 28th June 2017 upto 14th November 2017 and thereafter as per entry no. 9 of the Notification No. 44/2017-Integrated Tax (Rate) dated 14th November 2017?

A.2 The impugned product would be covered by -

- the schedule entry 4 of the Notification No.1-Integrated Tax (Rate) during the period 1-7-2017 TO 13-11-2017.

the schedule entry 1 of the Notification No.1-Integrated Tax (Rate) from 14-11-2017 onwards.



[Signature]
B. V. BORHADE
(MEMBER)

[Signature]
PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, GST & Central Excise, GST Bhavan,
Churchgate, Mumbai
5. The Jurisdictional Commissioner of Central Tax

