

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	TAMAL KUNDU
Address	40A, WC BANERJEE STREET, GIRISH PARK, KOLKATA, WEST BENGAL – 700006
GSTIN	19ALQPK8796A1ZG
Case Number	WBAAR 18 of 2023
ARN	ADI 90623014144D
Date of application	July 04, 2023
Jurisdictional Authority(State)	TAMLUK CHARGE
Jurisdictional Authority(Central)	HALDIA-II DIVISION, HALDIA COMMISSIONERATE
Order number and date	21/WBAAR/2023-24 dated 13.09.2023
Applicants representative heard	Shri Subhash Chandra Khaure, Advocate

1.1 At the outset, we would like to make it clear that the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a

reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be engaged in the manufacturer of rice. It is submitted by the applicant that fragments of the whole round rice grain is generated in the rice milling process which is commonly known as broken rice.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following question vide serial number 14 of the application in FORM GST ARA-01:

“Whether sale of unbranded /non packaged Broken Rice generated from manufacturing process will be charged to Tax @5%”.

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The application is, therefore, admitted.

2. Submission of the applicant

2.1 The applicant submits that he has entered into agreements for custom milling of paddy with the State Government. The applicant procures paddy from the farmers as per the direction obtained from the Food & Supply Department, Government of West Bengal without making payment of any consideration. The price of the paddy so procured is directly reimbursed to the farmers by the Government of West Bengal. On receiving the paddy, it passes through different process and generates around 68 kg of rice (considering 1 quintal of paddy are processed). The rest 32% are generated as Bhusi and Tush which are used as cattle feed and charged to GST at nil rate.

2.2 The applicant further submits that out of 68 kgs rice so produced, 2% rice are gets damaged during the process of polishing stage. Such damaged rice is termed as “Broken Rice”. The broken rice so generated is sold in the market in a totally unbranded and un-packaged manner which is generally used for animal feeding.

2.3 The HSN Code applicable to Broken Rice is 10064000 which is covered under Chapter 10 and chargeable to Tax @ 5%. Prior to 18th of July, 2022, GST applied on specified goods when they were put up in a unit container and were bearing a registered brand name or were bearing brand name in respect of which an actionable claim or enforceable right in a court of law is available. With effect from the 18th July 2022, this provision undergoes a change and GST has been made applicable on supply of such "pre-packaged and labelled" commodities attracting the provisions of Legal Metrology Act.. For example, items like pulses, cereals like rice, wheat, and flour (Atta), etc., earlier attracted GST at the rate of 5% when branded and packed in unit container (as mentioned above). With effect from 18.7.2022, these items would attract GST when "pre-packaged and labelled".

2.4 For the purposes of GST, the expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009, where the package in which the commodity is pre-packed, or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act and the rules made thereunder.

Clause (l) of section 2 of the Legal Metrology Act reads as below:

(l) "pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre- determined quantity.

2.5 Thus, supply of such specified commodity having the following two attributes would attract GST:

(i) It is pre-packaged; and

(ii) It is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.

2.6 However, if such specified commodities are supplied in a package that do not require declaration(s)/compliance(s) under the Legal Metrology Act, 2009 (1 of 2010), and the rules made thereunder, the same would not be treated as pre-packaged and labelled for the purposes of GST levy.

2.7 The applicant submits that the item "Broken Rice" as supplied by him is neither pre-packed nor labeled and the applicant therefore is making supply of the said item without charging any tax.

3. Submission of the Revenue

3.1 The officer concerned from the revenue has not expressed any view in this regard.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised advocate of the applicant during the course of personal hearing. The issue before us is to determine whether the supply of 'broken rice' is exempted from payment of tax and for that purpose, we find it necessary to determine the classification of 'broken rice'. In terms of Explanation (iii) appended to Notification No.1/2017 - Central Tax (Rate) dated 28-06-2017, "*Tariff item*", "*sub-heading*" "*heading*" and "*Chapter*" shall mean respectively a *tariff item*, *sub-heading*, *heading* and *chapter* as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Further, as per Explanation (iv) of the said Notification, '*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, so far as may be, apply to the interpretation of this notification.*'

4.2 Heading 1006 of the Customs Tariff covers 'RICE'. Further, note 1(b) of Chapter 10 speaks that this Chapter does not cover grains which have been hulled or otherwise worked. However, rice, husked, milled, polished, glazed, parboiled or broken remains classified in heading 1006. For the sake of convenience, products under tariff item 1006 are reproduced below:

1006	RICE
1006 10	<i>Rice in the husk (paddy or rough):</i>
1006 10 10	Of seed quality
1006 10 90	Other
1006 20 00	Husked (<i>brown</i>) rice
1006 30	<i>Semi-milled or wholly-milled rice, whether or not polished or glazed :</i>
1006 30 10	Rice, parboiled
1006 30 20	Basmati Rice
1006 30 90	Other
1006 40 00	Broken rice

4.3 Going by the notes under Chapter 10, we thus find that the product 'broken rice' is classifiable under Chapter Heading 1006. Therefore, the rate of tax on supply of 'broken rice'

would be same as in case of supply of rice. In terms of Notification No. 06/2022- Central Tax (Rate) dated 13.07.2022, 'Rice, pre-packaged and labelled' attract tax @ 5% with effect from 18.07.2022. On the other hand, Notification No. 07/2022-Central Tax (Rate) dated 13.07.2022 exempts supply of 'Rice, other than pre-packaged and labelled' with effect from 18.07.2022. In a Press Release posted on 18.07.2022 on the subject matter 'FAQ on GST applicability on 'pre-packaged and labeled goods', it has been clarified that *"In the context of food items (such as pulses, cereals like rice, wheat, flour etc), the supply of specified pre-packaged food articles would fall within the purview of the definition of 'pre-packaged commodity' under the Legal Metrology Act, 2009, and the rules made there under, if such pre-packaged and labelled packages contained a quantity up to 25 kilogram [or 25 litre] in terms of rule 3(a) of Legal Metrology (Packaged Commodities) Rules, 2011, subject to other exclusions provided in the Act and the Rules made there under."* In the said Press Release, it has further been clarified that *'Supply of packaged commodity for consumption by industrial consumer or institutional consumer is excluded from the purview of the Legal Metrology Act by virtue of rule 3 (c) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, if supplied in such manner as to attract exclusion provided under the said rule 3(c), it will not be considered as pre-packaged and labelled for the purposes of GST levy.'*

4.4 We therefore hold that the applicant shall be liable to pay tax @ 5% on supply of 'broken rice' if the item is supplied as 'pre-packaged and labeled '. Otherwise, such supply shall be exempted from payment of tax.

In view of the above discussions, we rule as under:

RULING

Tax is not payable by the applicant on supply of 'broken rice' if the same is supplied 'other than pre-packaged and labeled' as specified in Notification No. 07/2022-Central Tax (Rate) dated 13.07.2022.

(Dr TANISHA DUTTA)
Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 13th September, 2023

To

Shri Tamal Kundu,

40A, WC Banerjee Street,

Girish Park, Kolkata, West Bengal – 700006.

Copy to:-

(1) The Principal Chief Commissioner, CGST &CX, Kolkata Zone, 180, Shantipally, R.B. Connector, Kolkata-7000107.

(2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015.

(3) The Commissioner, Haldia Commissionerate, 7th floor , 15/1 Strand Road, M.S. Building, Kolkata-700001

(4) The Senior/ Joint Commissioner, Tamluk Charge, New Administrative Complex , Block C, 1st floor, Nim Touri, Tamluk, Purba Medinipur, Pin Code -721648

(5) Office Fodder.