

WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015

Before:
Shri A.P.S Suri, Member
Shri Devi Prasad Karanam, Member

In the matter of

Appeal Case No. 01/WBAAAR/APPEAL/2020 dated 09/01/2020

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/
Central Goods and Services Tax Act, 2017, by M/s Switz Foods Pvt. Ltd., PH-1, P-36 & 41,
Kasba Industrial Estate, E M Bypass, Kolkata-700107

Present for the Appellant: Shri Souvik Banerjee, Authorised Signatory

Present for the Respondent: Shri Debdut Das, Superintendent,
CGST & CX, Tollygunge Division.

Matter heard on: 17.03.2020

Date of Order: 19.03.2020

1. This Appeal has been filed by M/s. Switz Foods Pvt. Ltd. (hereinafter referred to as the Appellant) on 09.01.2020 against Advance Ruling No. 37/WBAAAR/2019-20 dated 09/12/2019, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR).

2. The appellant, holding GSTIN No.19AACS1805N1Z3 is a manufacturer of confectionery products like cakes, rusks, patties etc. Some of its products have fillings of cooked chicken, fish or eggs.

3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act") on whether the products in the Table below containing portions of cooked chicken, mutton, fish, eggs etc. as fillings are classifiable under HSN 1601 as they contain more than 20% by weight of meat.

Table

Sl. No.	Name of the Product	Cereal component	Non-vegetarian component	Method of cooking
1	Chicken Internet	Flour	Chicken	Baking
2	Chicken Patties	Flour	Chicken	Baking
3	Chicken Sausage Roll	Flour	Chicken	Baking
4	Chicken Cheese Wrap	Flour	Chicken	Baking
5	Chicken Tikka Pizza	Flour	Chicken	Baking
6	Chicken Singara	Flour	Chicken	Frying
7	Fish Spring Roll	Flour	Fish	Frying
8	Chicken Cutlet	Flour	Chicken	Frying
9	Chicken Finger	Flour	Chicken	Frying
10	Chicken Sandwich	Flour	Chicken	Baking
11	Chicken 65	Flour	Chicken	Baking
12	Chicken Cheese Ball	Flour	Chicken	Baking
13	Shahi Chicken Fold	Flour	Chicken	Baking
14	Methi Chicken Pie	Flour	Chicken	Baking
15	Cheesy Chicken Sub	Flour	Chicken	Baking
16	Chicken Seekh Kebab	Flour	Chicken	Baking
17	Smoky Chicken	Flour	Chicken	Baking
18	Chicken Olive Sub	Flour	Chicken	Baking
19	Mini Chicken Roll	Flour	Chicken	Baking
20	Mini Chicken Croissant	Flour	Chicken	Baking
21	Mini Chicken Burger	Flour	Chicken	Baking
22	Chunky Chicken Burger	Flour	Chicken	Baking
23	Chicken Claws	Flour	Chicken	Baking
24	Chicken Drumstick Patties	Flour	Chicken	Baking
25	Chicken Cheese Swirls	Flour	Chicken	Baking
26	Dimer Devil	Flour	Egg	Frying
27	Fish Chop	Flour	Fish	Frying
28	Fish Envelop	Flour	Fish	Baking

4. The WBAAR considered only twenty one items of baked products (Sl. No. 1 to 5 and 10 to 25 of the Table) of the Table above for Ruling, citing order of the West Bengal Appellate Authority for Advance Ruling (hereinafter referred to as the WBAAAR) in the matter of Akansha Hair & Skin Care Herbal Unit Pvt. Ltd. in Appeal Case No. 2/WBAAAR/Appeal/2018 dated 01.08.2018 where the WBAAAR cautioned the WBAAR against accepting a single application for classification of multiple products, where such products could not be clubbed together into a single category. Thus in its ruling the WBAAR categorized the products by methods of cooking and took up only the baked products leaving out the fried products (Sl. No. 6 to 9 and 26 to 28 of the Table)
5. The WBAAR, based its Ruling No. 37/WBAAAR/2019-20 dated 09.12.2019 on the observations in the matter of Dodsai Corporation Pvt. Ltd. [2011 (263) ELT 719 (tri-Bang)] and opined that in the instant case as the meat is used for filling only and the base product being either bread or flour, such baker's product will survive even if the filling is removed. So the patty, burger, puff etc. are not food preparations based on meat and thus cannot be classified under HSN 1601.
6. The Appellant has filed the instant Appeal petition against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR on the following grounds:
 - (a) The WBAAR did not pronounce ruling for all the twenty eight products on which ruling was sought. WBAAR differentiated products on the basis of methods of cooking – frying or baking and took up only the baked products for discussion which is unjustified. WBAAR further erred in concluding that the baked products cannot be classified under HSN 1601. The WBAAR contradicted in its own order in that it admitted only baked products for ruling but made observations on fried products like chicken cutlet, chicken finger, etc. and opined that they may be classified under HSN 1601.
 - (b) The WBAAR failed to appreciate the fact that if the filling is removed from the burger, patty, puff etc. it loses its identity and no longer are the products which are marketed by the Appellant.
 - (c) The WBAAR did not consider the composition and manufacturing process submitted the appellant. The main ingredient in most cases is chicken and the manufacturing process establishes that the product is a preparation of meat.

(d) The WBAAR failed to consider the test report done by National Collateral Management Services Ltd. certifying that the final finished product contained more than 20% by weight of chicken meat or fish or eggs.

7. During the course of hearing the Appellant reiterated their submissions. The authorized person appearing on behalf of the Appellant reiterated their grounds of appeal. He submitted that so far the Appellant has been classifying the products under HSN 2106. However the products contain more than 20% by weight of chicken meat or fish or eggs, where the fillings are cooked preparations of non-vegetarian components instead of raw meat or fish. They emerge as distinct food preparations through cooking when other ingredients and condiments are added giving each a distinct flavor so that the products like Chicken Kebab or Chicken Burger, etc. are easily identifiable in their taste and flavor. The Appellant submitted test reports done by National Collateral Management Services Ltd. accredited by the National Accreditation Board for Testing and Calibration Laboratories, establishing that the products contain more than 20% by weight of chicken meat/fish/egg. The Appellant citing the decisions of CESTAT in Venky's Fast Food [2000 (124) ELT 939 (Tri-Del)] argued that the products are classifiable under HSN 1601 as they contain more than 20% by weight of chicken meat/fish/egg instead of HSN 2106, the latter being the residual entry.
8. The Appellant further argued that the products are marketable as chicken patties, chicken sandwich, chicken singara etc. and they are distinguishable for their fillings. The customers on their purchase expect the products with their fillings intact. If the fillings are removed they cease to be the products that have been promised to the customers. Products as enumerated in the table sans their filling are no products. They may be edible but not marketable and so the observations made in the matter of Dodsal Corporation Pvt. Ltd. [2011 (263) ELT 719 (tri-Bang)] are not applicable.
9. The Respondent did not have any comment to offer except that the products do not fall under HSN 1601 and are rightly classified under 2106.
10. The matter is examined and written and oral submissions made before us are considered. The WBAAR classified only the baked products out of the twenty eight products grouping them under a single category. However we find that all twenty eight products can be clubbed under a single category irrespective of their cooking methods as they have a common criteria being products with fillings prepared with chicken meat or fish or eggs as main ingredients. The moot question is thus whether the products for which classification has been sought contain more than 20% by weight of chicken meat or fish or eggs as claimed by the Appellant, and if so whether they fall under Chapter 16. The WBAAR ought to have considered this point when admitting the products for classification. So all twenty eight products are taken up for discussion now.

11. Food preparations containing more than 20% by weight of sausage meat, meat offal, fish etc. are included in Chapter 16 (Chapter Note 2 to Chapter 16). According to Chapter Note 2 to Chapter 16 and Explanatory Note to Chapter 16 the weight of meat ought to be considered at the stage when it is presented to the customer as foodstuff and not at the ingredient level before preparation of the food. It is clear from the test reports submitted during the course of hearing that the tests were conducted on the final marketable products and in each of the twenty eight products the quantity of chicken meat or fish or eggs is found to be more than 20% by weight. No arguments were put forward by the Respondents in contrary to the test reports.
12. The decision in Venky's Fast Food (supra) is based on the Excise Tariff Act (hereinafter referred to as "ETA"), as it stood before 2005. For the sake of clarity extracts from Heading 1601 of ETA before amendment in 2005 is reproduced below:

"Preparations of meat, of fish or other aquatic invertebrates, including sausages and similar products, extracts and juices, prepared or preserved fish and caviar and caviar substitutes - put up in unit containers and ordinarily intended for sale".

HSN 1601 in the Tariff Act reads today as below:

"Sausages and similar products of meat, meat offal or blood, food preparations based on these products".

The WBAAR rightly pointed out the significant distinctions in HSN 1601;

- (i) Meat is now clearly spelt out as the base of the food preparation and preparations of fish etc. are excluded from 1601, and
- (ii) The condition of putting up in unit containers is done away with.

So even if Appellant's arguments are taken into consideration, products of Sl. No. 7 and 26 to 28 cannot be classified under HSN 1601 as it stands today.

13. In the matter of Dodsall Corporation Pvt. Ltd. [2011 (263) ELT 719 (tri-Bang)] the CESTAT examined that when food preparations classifiable as other bakers' ware" qualified to be treated as food preparations based on meat. The appellant therein manufactured pizza sometimes with toppings containing more than 20% by weight of chicken meat. However the major components of a pizza are the pizza base and cheese. Toppings do not necessarily contain meat and can be a mixture of a variety of ingredients. In the instant case of the Appellant, all products have fillings containing more than 20% by weight of chicken meat or fish or eggs. The product names are distinct and eloquent and the customers have no doubt as to the fact that Chicken Sausage Roll will contain chicken sausage and Chicken Cutlet on the other hand will have main ingredient as chicken mixed with condiments. The WBAAR observed in its

ruling that the products will survive as "bakers' products" if the filling is taken out of patties, burger, sandwich etc. but this is not tenable. A burger or a sandwich without fillings is nothing but pieces of bread which are distinct marketable products. Sandwich Bread and Chicken Sandwich are two separate marketable products. Similarly Burger Bread and Chicken Sausage Burger are different and distinct marketable products. Further Chicken Singara without its filling cannot even retain its distinct triangular shape of singara and is nothing but an empty flour mould. Singara or samosa is distinct for its filling and singara without its filling ceases to be a singara in the common parlance. So the observations made by CESTAT in the matter of Dodsal Corporation Pvt. Ltd. are not applicable in the instant case. Rather it can be said that the products on which classification is sought can be termed as meat based products as without the meat fillings they cease to be marketable products of the said names.

14. Further food preparations containing more than 20% by weight of sausage meat, meat offal, fish etc. are included in Chapter 16 and the weight of meat ought to be considered at the stage when it is presented to the customer as foodstuff and not at the ingredient level before preparation of the food. The test reports clearly certifies that the final products except products of Sl. No. 7 and 26 to 28 contain more than 20% by weight of chicken and they are marketed as non-vegetarian confectionery or chicken based confectionery. Chicken Cutlet cease to be a cutlet if chicken is removed and thus is clearly a meat based product. Thus it can be concluded that the chicken based products are classifiable under HSN 1601 and not under the residual entry of 2106.
15. From the above discussion and findings, we hold that the products with main component of filling of chicken except products of Sl. No. 7 and 26 to 28 are classifiable under HSN 1601. Accordingly, the Advance Ruling No. 37/WBAAR/2019-20 dated 09.12.2019 is modified to this effect and the Appeal stands disposed.

Send copy of this order to the Appellant and the Respondent for information.

Sd/-

(Devi Prasad Karanam)

Member

West Bengal Appellate Authority
for Advance Ruling

Sd/-

(A.P.S Suri)

Member

West Bengal Appellate Authority
for Advance Ruling