



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH

Goods and Service Tax

D.No.12-468-4, Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Sri. K.Ravi Sankar, Commissioner of State Tax (Member)
2. Sri.B. Lakshmi Narayana, IRS, Joint Commissioner of Central Tax (Member)

AAR No.10/AP/GST/2024 dated: 26.06.2024

1	Name and address of the applicant	M/s Asvini Fisheries Private Ltd
2	GSTIN	37AAACA2931P1ZI
3	Date of filing of Form GST ARA-01	05.04.2024
4	Personal Hearing	02.05.2024
5	Represented by	Arihanth Kumar Jain G, CA
6	Jurisdictional Authority – Centre	Bhimavaram Range, Eluru Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) Applicability of a notification issued under the provisions of the act;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and APGST Act, 2017 are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the APGST Act, 2017.

2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act and APGST Act respectively) by M/s. Asvini Fisheries Private Ltd(hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

- i). M/s Asvini Fisheries Private Limited (the Applicant/the Company), has been engaged in the business of exporting processed shrimps for over three decades. The Applicant sources shrimps locally from farmers, which undergo further processing in the factory such as receiving, washing, de-veining, peeling, de-heading, tail removal, sorting, grading and freezing.
- ii). Processing steps performed by the applicant is entirely dependent on the customer's requirements/ order. Based on the customer requirement, one or more processing steps can be performed independently to produce the desired results.
- iii). As part of the freezing process, the Applicant, uses two different types of freezing methodology to freeze the processed shrimps.
 - a) Individual quick freezing (IQF)
 - b) Block freezing
- iv). Processed raw material is thereby packed immediately as per the buyer's instructions. The Applicant uses the following types of packaging:
 - a) Primary packaging or inner packing i.e., packaging of inner boxes or pouches
 - b) Secondary packaging or outer packing i.e., packaging of master carton.
- v). The primary packaging is based on the technique used by the Applicant for the order. The products are weighed and packed into food grade polythene pouches/boxes. The sealed pouches are further packed into the master cartons, both are as per the specification and requirements of the buyer.

- vi). The weight of the individual inner packaging generally ranges from about 250 grams to 2 Kilograms which are further packaged in master cartons with a maximum weight of up to 25 Kilograms.
- vii). The Applicant is hereby filing an application before the Authority to understand whether in the case of export of pre-packaged and labelled processed shrimps by the Applicant, attracts GST, in view of the amendment in tax rate as per Notification No 6/2022 dated 13 July 2022, Central tax (CGST) at 2.5% and State tax (SGST) at 2.5%.

4. Questions raised before the authority:

The applicant sought advance ruling on the following:

- i) Whether the export of processed frozen shrimps (HSN:0306), packed in individual printed pouch/box, further packed inside a printed master carton (of up to 25 kgs each) containing the design, label and other particulars provided by the buyer, attracts GST.
- ii) Whether the export of processed frozen shrimps (HSN:0306), packed in individual plain pouch/box, further packed inside a plain master carton (of up to 25 kgs each), attracts GST.

On Verification of basic information of the applicant, it is observed that the applicant is under Central jurisdiction i.e, Bhimavaram Range, Eluru, Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the Central jurisdictional officer concerned stating that no proceedings lying pending with the issue, for which the advance ruling sought by the applicant.

5. Applicant's Interpretation of Law:

- i). The Appellant is engaged in the processing of shrimps and supplying the processed shrimps in domestic market and also export to other countries by sourcing locally from farmers, which undergo further processing in the factory such as receiving, washing, de-veining, peeling, de-heading, tail removal, sorting, grading and freezing.
- ii). The appellant is classifying the above commodities under chapter 3 under sub heading 0306 and discharging tax as per S.No.4 of schedule 1 of notification 01/2017-central tax (rate) dated 28th June 2017 up to 12/07/2022.

S.No	Chapter/ Heading/ Sub-heading / Tariff item	Description of Goods
4	0306	Crustaceans whether in shell or not, frozen, dried, salted or in brine; crustaceans, in shell, cooked by steaming or by boiling in water, frozen, dried, salted or in brine; flours, meals and pellets of crustaceans, fit for human consumption.

- iii). Further the appellant would like to inform that Entry No. 4 of Schedule | of the Notification No. 1/2017-Central Tax (Rate) was amended by Notification No. 06/2022-Central Tax (Rate) dated 13-07-2022 whereby GST at the rate of 5% was made applicable to supply of "pre-packaged and labelled" Crustaceans (i.e., shrimps).
- iv). Further as per explanation (ii) of Notification No. 06/2022-Central Tax (Rate), the expression "pre-packaged and labelled" means a pre-packaged commodity as defined under section 2 of the Legal Metrology Act, 2009 where the package in which the

commodity is pre-packed or a label is securely affixed there to is required to bear the declaration under the provisions of the said Act and the rules made there under.

v). Further Section 2(1) of the legal metrology Act, 2009 defined 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"

vi). The appellant submits that legal metrology Act will apply to the commodities packed in India where the ultimate consumer details are not available at the time of sale irrespective of the fact whether the goods are sold in India or exported outside India.

vii). Further the appellant submits that, in the instant case the appellant is pre-packing the products as per the customer requirements ranging from ½ kg to 2 KGs in primary packs by printing the customer brand name and other details as provided by the customer for the export sale.

viii). Further the appellant submit that the clarification released by ministry of finance regarding the GST Levy on pre-packaged and labelled goods vide press release dated 18thJuly 2022 as

A. If specified commodities are supplied in a package that do not require declaration(s) / Compliances under the Legal Metrology Act, 2009 and the rules made there under, the same would not be treated as pre-packaged and labelled for the purposes of GST Levy.

B. 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.

ix). Further the appellant wants to rely on the following decisions in support of the case, The authority for advance ruling of Andhra Pradesh in the case of M/s Sarala Foods Private Limited vide reference number 03/AP/GST/2024 dated 30/01/2024 and M/s Sri Seetharamanjaneya Sortex vide reference number 08/AP/GST/2023 dated 08/05/2023 where it was held that GST would be leviable on export of pre-packaged and labelled rice up to 25Kgs to foreigner buyer.

6. The Applicant further interpreted above provisions of the Act as follows:

- i) GST would be applicable on specified goods (namely shrimps) where the pre-packaged commodity is supplied in packages containing a quantity of less than or equal to 25 kgs.
- ii) Pre-packaged and labelled commodities processed exclusively for exports have not been excluded from the Legal Metrology Act, 2009 and rules made there under.
- iii) Therefore, we understand that GST would be applicable on the supply of processed frozen shrimps in packages of up to 25 kgs, irrespective of the fact that the said supply is for domestic sale or for exports.

Advance Ruling sought on

Whether GST is applicable on the export of Crustaceans (shrimps) which are packed and labelled as per the customer requirements.

7. Personal Hearing:

The proceedings of Personal Hearing was conducted on 02.05.2024, for which the authorized representative, Sri, Arihanth Kumar Jain G, CA, Chennai has appeared and reiterated the facts narrated in their application.

8. Discussion and Findings:

- i) We have carefully gone through the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal

hearing and judgements made by the Hon'ble Courts in the same issue .

ii) From the submissions made at the time of filing the application, it is seen that the applicant M/s Asvini Fisheries Private Limited, Bhimavaram, Andhra Pradesh registered under GST Act with registration 37AAACA2931P1ZI, on the rolls of Eluru Division.

iii) The applicant is engaged in the business of exporting processed shrimps and sources the same from local farmers and further undergoes processing in the factory such as receiving, washing, de-veining, peeling, de-heading, tail removal, sorting, grading and freezing, as per the requirement of customers.

The applicant uses different types of packing such as

- a) Primary packaging or inner packing i.e., packaging of inner boxes or pouches
- b) Secondary packaging or outer packing i.e., packaging of master carton.

The primary packaging is based on the technique used by the Applicant for the order. The products are weighed and packed into food grade polythene pouches/boxes. The sealed pouches are further packed into the master cartons, both are as per the specification and requirements of the buyer.

The weight of the individual inner packaging generally ranges from about 250 grams to 2 Kilograms which are further packaged in master cartons with a maximum weight of up to 25 Kilograms

iv) The applicant has sought the advance ruling, as to

- a) Whether the export of processed frozen shrimps (HSN:0306),packed in individual printed pouch/box, further packed inside a printed master carton (of up to 25 kgs each)containing the design, label and other particulars provided by the buyer, attracts GST.

- b) Whether the export of processed frozen shrimps (HSN:0306), packed in individual plain pouch/box, further packed inside a plain master carton (of up to 25 kgs each), attracts GST.

The question raised as above appeared to fall within under section 97(2) of CGST/SGST Act, 2017. Hence the application admitted.

- v) Now it is relevant to mention the Provisions of the GST Act – 2017, as per Section 2(5) of the IGST Act, 2017.

"export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India".

Further, vide Section 7(5), read with Section 11 of the IGST Act, 2017, export of impugned product shall be treated as a supply of goods in the course of inter-State trade or commerce. Section 5 of the IGST Act, 2017, envisages that

"Subject to the provisions of sub-Section (2), there shall be levied a tax called the integrated goods and services tax on all inter-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 of the Central Goods and Services Tax Act and at such rates, not exceeding forty 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."

Accordingly, it may be noted that all exports are to be deemed as inter-state supplies', and as per Section 16 of the IGST Act, 2017, export of goods or services or both are to be treated as Zero Rated Supplies'. It may be noted here that the exporter has the option either to export under Bond/Letter of Undertaking without payment of tax and claim refund of unutilised input tax credit or pay IGST at the time of export and claim refund of the same, as the case may be.

- vi) The point for determination herein is as to whether the export of specified pre-packaged and labelled frozen Shrimp meant for export would fall within the

meaning of the definition of 'pre-packaged and labelled commodity' under the Legal Metrology Act, 2009, and the rules made there under, as defined under explanation (ii) of the respective Notifications, which is reproduced below :-

"The expression pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (l) sub section (1) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) 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, 2009 (1 of 2010) and the rules made there under."

Further, Section 2(1) of the Legal Metrology Act, 2009 (1 of 2010), defines the term "pre-packaged commodity" as follows:

*"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**.*

- vii) Therefore, we find that according to the above provisions, a commodity to be considered as Pre-packed and labelled' shall associate with the following features, viz.,
- a. that which comprises a pre-determined quantity as circumscribed under the meaning of "pre-packaged commodity" vide Section 2(1) of the Legal Metrology Act, and
 - b. that which is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made there under.
- Viii) We take note of the fact that out of the two queries raised by the applicant, the first query relates to processed frozen shrimps packed in individual printed pouch/box, further packed inside a printed master carton (of up to 25 kgs each) containing the design, label, and other particulars provided by the buyer.

Under the statement of facts, as in para 6 of SI.No. 15 of the application for advance ruling furnished by the applicant, it is seen that they have stated as follows :-

"The weight of the individual inner packaging generally ranges from about 250 grams to 2 Kilograms which are further packaged in master cartons with a maximum weight of up to 25 Kilograms."

As per the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made there under, since the inner packing is printed and is having pre-determined quantity it immediately attains the characteristics of pre-packaged and labelled' category, meant for retail sale, irrespective of the fact whether the outer packaging is printed or not. Under these circumstances, the inner packaging which ranges from 250 grams to 2 kilograms becomes liable to GST, as the same fall within the ambit of 'pre-packaged and labelled' category which is mandated to bear the declarations.

The above fact regarding the levy of GST as "pre-packaged and labelled" gets validated through the FAQs dated 18.07.2022 issued by the CBIC which has a persuasive value while interpretation the legal provisions. Under the said "FAQs on GST applicability on 'pre-packaged and labelled' goods", the relevant clarification under SI.No.4, goes as below:-

S.No	Question	Clarification
4	<i>Whether GST would apply to a package that contains multiple retail packages. For example, a package containing 10 retail packs of flour of 10 Kg each?</i>	<i>Yes, if several packages intended for retail sale to ultimate consumer, say 10 packages of 10 Kg each, are sold in a larger pack, then GST would apply to such supply. Such package may be sold by a manufacturer through distributor. <u>These individual packs of 10 Kg each are meant for eventual sale to retail consumer.</u> However, a package of say rice containing</i>

		<p><i>50 Kg (in one individual package) would not be considered a pre-packaged and labelled commodity for the purposes of GST levy, even if rule 24 of Legal Metrology (Packaged Commodities) Rules, 2011, mandates certain declarations to be made on such wholesale package.</i></p>
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- ix) We invite reference to the Notification no 06/2022 (CT Rate), dated 13th July 2022 wherein, GST has been made applicable on supply of “pre-packaged and labelled” commodities attracting provisions of Legal Metrology Act, 2009.

G. after the Schedule VII, in the Explanation, for clause (ii) and the entries relating thereto, the following clause shall be substituted, namely:-

(ii) The expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (1) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) 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, 2009 (1 of 2010) and the rules made there under.

- x) The applicant also made a reference to the clarifications issued by Ministry of Finance which is stated as under:

Ministry of Finance clarification on doubts/queries regarding the GST levy on 'pre-packaged and labelled' goods vide Press Release dated 18th July 2022.

a) If 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 there under, the same would not be treated as pre-packaged and labeled for the purposes of GST levy.

b) 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 upto 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.

9. The applicant submits that Notification No.6 of 2022-CTR dated 13.7.2022 enumerates that “GST is applicable on the export of ‘pre-packaged and labelled’ commodities as per the provisions of the Legal Metrology Act w.e.f 18.07.2022”. In this regard a) notification no 6/2022 dated 13.07.2022, or b) the Legal Metrology Act 2009 has not made any differentiation with regard to applicability of GST on exports of goods/ mentioning of declarations or pre packed commodities for export.

In the instant case, the authorities observation after going through the content of the matter is that the supply of shrimps in pouches or boxes of upto 25kg, which duly pre-packaged and labelled as per Legal Metrology Act 2009 and the rule made there under is a taxable event and it is not an exempted / nil rated supply. Besides Ministry of finance Govt of india clarified the applicability of GST on pre packaged and labelled goods through FAQs, which were uploaded online on 18. 07.2022 w.r.t. the notification no 6/2022 (CGST RATE).

And also, in this case, the ultimate buyer is not present when commodity is placed in package and the commodity is being pre-packed for an unknown ultimate buyer, who may be indigenous or outside the country. Therefore, where the quantity involved is 25Kgs or less in respect of specified commodities including shrimps (HSN 0306, as per S.No.4 of schedule 1 of notification 01/2017-central tax (rate) dated 28th June 2017) which are pre-packed, they would mandatorily get covered within the ambit of Legal Metrology Act, 2009, and the rules made there under. Accordingly, we are of the considered view that GST would be applicable on the supply of “pre-packaged and labelled” shrimps, capacity upto 25 kgs, it will be liable for GST @ 5%, irrespective of the fact whether it is for domestic supply or for exported outside the country, as long as they are specified commodities that are pre-packaged.

The advance ruling authority agrees with the observation regarding the applicability of GST levy @5% on “pre packaged and labelled” irrespective of the fact that whether it is for domestic sale or exported out side the country.

In view of the above discussions, we pass the following orders:

RULING

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

Question: Whether the export of processed frozen shrimps (HSN:0306), packed in individual printed pouch/box, further packed inside a printed master carton (of up to 25 kgs each) containing the design, label and other particulars provided by the buyer, attracts GST.

Answer : Affirmative.

Question Whether the export of processed frozen shrimps (HSN:0306), packed in individual plain pouch/box, further packed inside a plain master carton (of up to 25 kgs each), attracts GST.

Answer : Affirmative.

**Sd/- K.Ravi Sankar
Member**

**Sd/-B.Lakshmi Narayana
Member**

//t.c.f.b.o//

Deputy Commissioner (ST)

Eward B.
Registrar
Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)

To

M/s. Asvini Fisheries Private Ltd, R.S.No-626/1, Yanamaduru Post, Disrusumarru Road, Bhimavaram, West Godavari, Andhra Pradesh, 534239. **(By Registered Post)**

Copy to

1. The Superintendent, Central Tax, CGST, Bhimavaram Range, Eluru Division. **(By Registered Post)**
2. The Commissioner of Central Tax, CGST, GST Bhavan, Central Revenue Buildings, Kannavari Thota, Guntur – 522 004 **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.