

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	27AACCC4033C1Z9
Legal Name of Applicant	MOSAIC INDIA PVT. LTD.
Registered Address/ Address provided while obtaining user id	2 ND FLOOR, 215, GERA JUNCTION, LULLA NAGAR, KONDHA, PUNE 411048.
Details of application	GST-ARA, Application No. 32 Dated 26.02.2018
Concerned officer	CENTRAL GST, PUNE-II COMMISSIONERATE
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	-
B Description (in brief)	As reproduced in para 02 of the Proceedings below.
Issue/s on which advance ruling required	Classification of goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 02 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by MOSAIC INDIA PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following questions connected to the issues mentioned in para 02 below :

Q. 1. Whether the subject goods proposed to be supplied by the applicant merits classification under the Heading 2309, (Sr. No. 102) in terms of Notification No. 2/2017 – Central Tax (Rate) dated 28.06.2017 and is therefore exempt from the levy of Central Goods and Services Tax (CGST) under the Central Goods and Services Tax Act, 2017 (CGST Act)?

Q. 2. Whether the subject goods proposed to be supplied by the applicant merits classification under the Heading 2309, (Sr. No. 102) in terms of Notification No. 2/2017 – Integrated Tax (Rate) dated 28.06.2017 and is therefore exempt from the levy of Integrated Goods and Services Tax (IGST) under the Integrated Goods and Services Tax Act, 2017 (IGST Act)?

Q. 3. Whether the subject goods proposed to be supplied by the applicant merits classification under the Heading 2309, (Sr. No. 102) in terms of Notification No. 2/2017 – State Tax (Rate) dated 29.06.2017 and is therefore exempt from the levy of Maharashtra Goods and Services Tax (SGST) under the Maharashtra Goods and Services Tax Act, 2017 (MGST Act)?

Q. 4. Further, if the Subject product is not classifiable under any of the aforesaid entries (Heading 2309) what would be the appropriate classification for the same and at what tax rate would CGST, SGST and IGST be imposable on its supply?"



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

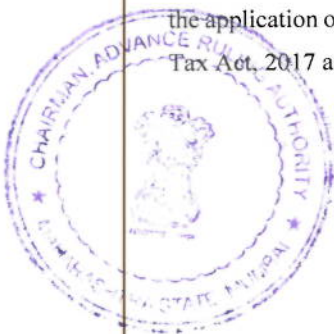
The applicant has submitted as follows:

The applicant, registered in terms of the Central Goods and Service Tax Act, 2017, imports BIOFOS Monocalcium Phosphate (hereinafter referred to as "the subject goods", from USA and sells it to wholesalers or manufacturers of animal feed. The subject goods are used as an animal/poultry feed supplement/additive that is added to an animal/poultry feed to enhance its nutritional value. They have submitted that the subject feed acts as a source of phosphorus and calcium and fluorine that helps meet animal/poultry requirements for these essential nutrients. The applicant, on the basis of their submissions made in Annexure II to their application dated 22.02.2018, have arrived at a conclusion that the subject goods would be covered under the Heading 2309 of the First Schedule to the Customs Tariff Act, 1975 (CTA). The applicant has further submitted that, being a poultry feed and the fact of being covered under Heading 2309, the subject goods would fall within Sr. No. 102 of Notification No. 2/2017 – Central Tax (Rate) dated 28.06.2017 and therefore GST would not be payable on the supply of the subject goods. Hence the following questions have been raised by the applicant before us, for determination:

03. CONTENTION - AS PER THE CONCERNED OFFICER

The jurisdictional Deputy Commissioner, vide letter dated March, 2018 has submitted that : on the similar issue a Show Cause Noticed dtd.02.05.2017 has been issued to the applicant and the same has been confirmed by the Principal Commissioner, Vishakhapattanam, Central GST Commissionerate, vide OIO NO.VSP-WXCUS-001-COM-023-17-18 dtd.13.02.2018 ; similar case of applicant has been pending for decision with different forums of the Department ; the said dispute relates to Mono Calcium Phosphate [with a brand name BIOFOS] which was imported during the period 2012-2013 to 2016-2017 by the applicant at Kakinada by classifying the same under Customs Tariff Heading No. 28352610 ; the product Biofos (Mono Calcium Phosphate) was imported under Customs Tariff Heading No. 28352610 and the same goods were classified by the applicant under Customs Tariff Heading No.2309 by way of distributing to their customers ; the Board while issuing exemption notification under Section 11 C vide No.4/2016- C.E.(N.T) dt.12.02.2016 had classified Di-calcium Phosphate (animal feed grade) under Chapter Heading No.2835 ; Further, exemption Notification No. 03/2014 CE, dtd 3-2-2014 has been issued for the subsequent period allowing exemption to Di-calcium Phosphate classified under Chapter 28 and thus as per Board's notifications, mono calcium phosphate would also be classifiable under Chapter Heading No.28 of the CETA, 1985. In view of the above, it is clear that the product Calcium Phosphate is classifiable under Chapter Heading 28.35 of the Central Excise Tariff and not under Chapter Heading No. 23.09 of the Central Excise Tariff as claimed by the applicant and has therefore become a matter of litigation and the same is still pending with different forums in the department..

Therefore, the departmental representative is of the opinion that Advance Ruling Authority shall not admit the application of the applicant as per the provisions of Sub-Section 2 of Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017.



04. HEARING

The case was taken up for preliminary hearing on dt.28.03.2018 with respect to admission or rejection of the application when Sh. Harsh Shah, Advocate, duly authorized along with Shri Saurabh Saboo, General Manager Finance appeared and made contentions for admission of application as per their written submission.

During hearing, Sh. Ziaur Rahman, (Inspector), Jurisdictional Officer appeared, made written submissions and contended that proceedings have been initiated against the applicant as per the details made in the submissions and that the application needs to be rejected.

The applicant also confirmed that proceedings under Central Excise Act were there but the same would not debar them from ARA. The applicant further confirmed that their import consignments were being provisionally assessed under the Customs Act, after coming into effect of GST, for the issue of classification of the subject goods, which is also the issue in the subject application.

05. OBSERVATIONS

We have gone through the facts of the case and the submissions made by both, the applicant and the department.

We find that the application has been made with reference to classification dispute in respect of the subject goods and the similar issue of applicant is a matter of dispute in the various forums of the department under the earlier Central Excise and Customs regime as per details given by the jurisdictional officer in his submissions.

Further we find that the applicant himself, also, during the course of hearing before this authority has admitted and confirmed that their import consignments are being provisionally assessed under the Customs Act after coming into effect of GST for classification of subject goods which is the same issue that has been raised by them in this application before us.

We find that Section 98 of the CGST Act provided as under:-

98 Procedure on receipt of application

98. (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:



Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

In view of admission by the applicant at the time of Personal Hearing that in the present GST regime also, their import consignments have been provisionally assessed for classification and accordingly, applicability of Customs duty and IGST on the same, their application is liable for rejection as per proviso to section 98 (2) of the CGST Act referred above and therefore cannot be entertained by this authority and is accordingly rejected.

ORDER


(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 32/2017-18/B-40

Mumbai, dt. 25/05/2018

For reasons as discussed in the body of the order, the subject application for advance ruling made by the applicant is rejected under the provisions of sub-section 2 of Section 98 of the CGST Act, 2017.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

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, Churchgate, Mumbai
5. The Jurisdictional Commissioner of Central Tax

Note :-

Appeal against this order would lie to The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.

CERTIFIED TRUE COPY


ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI