

**GST: Applicant company claimed that 'ice cream making machine' manufactured and supplied by it would fall under chapter heading 84.38 of Customs Tariff Act, 1975 and thus, was liable to pay GST at rate of 18 percent on supply of said goods in question - Since, tariff heading 84.38 covers machinery not specified elsewhere in chapter 84 and 'ice cream makers' were specifically covered under tariff heading 84.18, same would fall under tariff heading 84.18 and not under tariff heading 84.38 of Customs Tariff Act, 1975 and GST rate applicable to tariff heading 84.18 i.e. 28 percent is applicable to said product**



**[2018] 94 taxmann.com 152 (AAR-GUJARAT)**  
**AUTHORITY FOR ADVANCE RULINGS, GUJARAT**  
**Mitora Machinex (P.) Ltd., In re**  
R.B. MANKODI AND G.C. JAIN, MEMBER  
AVANCE RULING NO. GUJ/GAAR/RULING/2018/1  
FEBRUARY 5, 2018

**K.A. Nagar** *for the Applicant.*

**RULING**

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1. The applicant M/s. Mitora Machinex Pvt. Ltd. has submitted that they manufacture and supply the 'Ice Cream Making Machines' in diverse specifications such as Automatic Ice Cream Making Machine, Countertop Ice Cream Making Machine, Soft Ice Cream Making Machine and Fully Automatic Ice Cream Making Machine..

2. The applicant has raised the following questions for Advance Ruling -

- (i) Whether the aforesaid goods fall under Chapter Heading 8438 of GST Tariff ?;
- (ii) Whether the applicant is liable to pay GST at the rate of 18% on supply of goods in question?

3. The applicant submitted that they are of the view that the following description of Chapter Heading 8438 is applicable to the impugned goods, which are being supplied by the applicant at the rate of 18% -

"Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils "

The applicant submitted that the goods in question are the Ice Cream Making Machines primarily designed for manufacture of food i.e. ice cream, which cannot be said to be primarily designed for extracting or preparing of animal or fixed vegetable fats or oils. In the above description, the phrase "Machinery..... for ..... manufacture of food" has been used, which denotes that the machine is used for manufacture/preparation of ice cream i.e. food. Therefore, the impugned goods are specifically covered by the aforementioned description of Chapter Heading No. 8438 of GST Tariff, which attracts the rate of 18%.

4. It is submitted by the applicant that the said goods primarily designed for manufacture of ice cream

i.e. food, thus the same cannot be treated as similar to refrigerator, freezer, heat pumps or other refrigerating or freezing equipments of Chapter Heading No. 8418 of GST Tariff. The description of Chapter Heading 8418 is as under -

"Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 8415".

It is submitted that the aforesaid description of the goods relates to (i) the refrigerators, in which goods can be stored at low temperatures; (ii) freezers which withdraw the heat to change something from a liquid to a solid; change to ice; cause to freeze; and (iii) Heat Pump is a device which draws heat from a suitable heat source and converts it with the assistance of a supplementary energy source into a source of more intense heat. These goods shall attract GST at the rate of 28%. However, this description of the said goods i.e. refrigerator, freezer etc. is not applicable to the Ice Cream Making Machine in question as the goods 'Ice Cream Making Machine' attract the specific description of Chapter Heading No. 8438, which carry GST at the rate of 18%.

**5.** The applicant also submitted that all other goods of Chapter 84 for which GST rates are not specified elsewhere, are subject to GST at the rate of 18%. As the 'Ice Cream Machine which specifically fall under the description 'Machinery, not specified or included elsewhere ..... preparation of animal or fixed vegetable fats or oils' of Chapter Heading 8438, the GST rate of 18% is applicable to the said goods.

**6.** The applicant further submitted that (i) the goods in question are supplied to the registered persons for commercial/business purposes and are not supplied directly to the consumers; that the supply to the registered person/distributor normally attract GST rate of 18%. (ii) The description of Chapter Heading 8438 fits to the Ice Cream Machine. (iii) the impugned goods is not in the category of luxury item like car, which is deemed to be unnecessary or non-essential, or not like sin product 'tobacco' or demerit goods to attract GST rate of 28%. Therefore, the applicant is of the view that the goods in question are specifically covered by Chapter Heading 8438, which attracts the GST rate of 18%.

**7.** The applicant, vide their further submissions dated 30.11.2017, referred to the decision in the case of *Milk Food Ltd. v. Collector of Customs*, New Delhi [1994 (71) ELT 549 (Tri.)] and submitted that the Tribunal has held that a single unit for manufacture of ice cream is classifiable under sub-heading 8438 of the Customs Tariff Act, 1975. The applicant also referred to the decisions in the case of *Collector of Central Excise v. Gakso Refrigeration Engineers* [1993 (63) ELT 568 (Tribunal)] and [1997 (89) ELT A40 (SC)] and in the case of *General Fabricators v. Commissioner of Central Excise, Mangalore* [2006 (193) ELT 323 (Tri. - Bang.)] and submitted that the goods in question are classified under Chapter Heading 8419 with the GST Rate 18%.

**8.** The Goods & Services Tax and Central Excise Commissionerate, Ahmedabad South inter-alia informed that there appear no entry for the description 'Ice Cream Making Machines' under GST Rate Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. It is informed that as per the first Schedule to the Customs Tariff Act, 1975, there is an entry with the description 'Ice Making Machinery' under Tariff Item 8418 69 10 under Chapter Heading 8418 with the Chapter Heading Description 'Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 8415'. It is further informed that there is an entry at Serial No. 120 of Schedule IV - 28%, namely, 'Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 8415' with Chapter Head 8418. As per the description given by the applicant, the product namely, 'Ice Cream Making Machines' appear to be falling under the entry at Serial No. 120 of Schedule IV of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017.

9. We have considered the submissions made by the applicant in their application for advance ruling and additional submissions made vide letter dated 30.11.2017 as well as submissions made at the time of personal hearing. We have also considered the information and views submitted by the Goods & Services Tax and Central Excise, Ahmedabad South Commissionerate.

10. The issue involved in this case is regarding classification of 'Ice Cream Making Machine'.

11.1 It is observed that the Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 provides as follows :-

"Explanation. - For the purposes of this notification, -

(i) & (ii)\*\*

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(iii) "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).

(iv) 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. "~

11.2 Further, Hon'ble Supreme Court in the case of *L.M.L. Ltd. v. Commissioner of Customs* [Civil Appeal No. 3764 of 2003, decided on 21.09.2010 reported at 2010 (258) ELT 321 (S.C.)] has held as follows :-

"12. In *Collector of Central Excise, Shillong v. Wood Crafts Products Ltd.* reported in (1995) 3 SCC 454, it was held by this Court that as expressly stated in the statements of objects and reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on the Harmonious System of Nomenclature (HSN) and the internationally accepted nomenclature was taken into account to reduce disputes on account of tariff classification. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the Harmonious System of Nomenclature (HSN). Although, the decision in the case of *Woodcraft Products (supra)* dealt with the interpretation of the provisions of the Central Excise Tariff there can be no doubt that the HSN Explanatory Notes are a dependable guide even while interpreting the Customs Tariff. "

12.1 The Tariff Heading 8418 reads as follows :-

"Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 8415"

12.2 The Explanatory Notes for 'Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 8415' under Tariff Heading 8418 of the Harmonised System of Nomenclature, inter-alia, provides as follows

**" (I) REFRIGERATORS, FREEZERS AND OTHER REFRIGERATING OR FREEZING EQUIPMENT**

The refrigerators and refrigerating equipment of this heading are in the main machines or assemblies of apparatus for the production, in a continuous cycle of operations, of low temperatures (in the region of 0° C or less) at the active cooling element, by the absorption of the latent heat of evaporation of liquefied gases (e.g., ammonia, halogenated hydrocarbons), of volatile liquids or, in the case of certain marine types, of water.

The heading therefore excludes :

(a) Freezing-salt type freezers (heading 82.10 or 84.19).

(b) & (c)\*\*

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The refrigerators of this heading are of two main types

#### **(A) COMPRESSION TYPE REFRIGERATORS**

Their essential elements are :-

- (1) The compressor which receives expanded gas from the evaporator and delivers it under pressure to
- (2) The condenser or liquefier where the gas is cooled and liquefied, and
- (3) The evaporator, the active cooling element, consisting of a tubular system in which the condensed refrigerant, released through an expansion valve, evaporates rapidly with the absorption of heat from the surrounding air or, in the case of large cooling installations, from brine or a solution of calcium chloride kept in circulation around the evaporator coils.

In the marine type there is no compressor and condenser in the refrigerant (water or brine) circuit, but the evaporation is induced by a vacuum produced by an ejector pump working with a steam condenser.

The later condenses and disposes of the vapours produced, which are not returned to the system.

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#### **(B) ABSORPTION TYPE REFRIGERATORS**

Apparatus of the foregoing kinds are classified in this heading if in the following forms:

(1)\*\*

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(2) Cabinets or other furniture or appliances incorporating a complete refrigerating unit or an evaporator of a refrigerating unit, whether or not equipped with ancillary devices such as agitators, mixers, moulds. These appliances include domestic refrigerators, refrigerated show cases and counters, ice-cream or frozen food storage containers, refrigerated water or beverage fountains, milk cooling vats, beer coolers, ice-cream makers, etc.

(3)\*\*

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**12.3** Thus, it is evident that the Explanatory Notes for Tariff Heading 8418 includes ice-cream makers.

**12.4** It is also observed that in the First Schedule to the Customs Tariff Act, 1975, 'industrial ice cream freezer' is mentioned against Tariff Item 8418 69 50 under Tariff Heading 8418. Therefore, 'Ice Cream Making Machine' manufactured and supplied by the applicant merit classification under Tariff Heading 8418.

**13.1** The applicant has submitted that the 'Ice Cream Making Machine' manufactured and supplied by them fall under Chapter Heading 8438 of GST Tariff. The Tariff Heading 8438 reads as follows :-

"Machinery, nor specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils "~

The Tariff Heading 8438 covers the machinery not specified or included elsewhere in Chapter 84, for the industrial preparation or manufacture of food or drink. As the 'Ice Cream Makers' are specifically

covered under Tariff Heading 8418, the same do not fall under Tariff Heading 8438.

**13.2** In support of the contention that the Ice Cream Making Machine manufactured by them fall under Tariff Heading 8438, the applicant has relied on the decision of Hon'ble CEGAT in the case of *Milk Food Ltd. v. Collector of Customs, New Delhi* [1994 (71) E.L.T. 549 (Tribunal)]. We have gone through the said decision. It is observed that the goods/products under dispute have been described in the first paragraph of the said decision as follows :-

"This appeal is directed against the order-in-appeal passed by Collector of Customs (Appeals), Bombay who has rejected the claim of the classification in respect of two consignments covered by two separate Bills of Entry dt. 22- 111988. By these two consignments under the same IGMNo., the goods have been described as, in so far as Bill of Entry No. 7518 dt. 22-11-1988 is concerned as "product forming, conveyor system and freezing tunnel". The importer has claimed assessment of product forming under Heading 8438.80 of the Customs Tariff, conveyor system under Heading 8428.39 (read with Notification No. 59/87-Cus.) and freezing tunnel under Heading 8418.69 (read with Notification No. 59/87-Cus.). The goods covered under the Bill of Entry No. 7516 have been described as "enrober machine, conveyor system and coating & hardening tunnel"; claiming assessment of enrober machine under Heading 8438.80 (read with Notification No. 59/87-Cus.) and coating hardening tunnel under Heading 8418.69 (read with Notification No. 59/87-Cus.). The Department has not accepted the importer's claim for classification under these headings but has assessed both the consignments under sub-heading 8438.80, as the complete system on the grounds that in the first consignment "product forming system" itself consists of conveyor and freezing tunnel without which it cannot work and in the other consignment, enrobing system also cannot work without the conveyor and coating hardening tunnel".

It is not the case of the applicant that the Ice Cream Making Machines manufactured and supplied by them consists of the above referred products, which were the subject matter of dispute in the case of *Milk Food Ltd. (supra)*. Therefore, the said decision is not found to be applicable in the facts of the present case.

**14.1** The applicant has also submitted that the Ice Cream Making Machine manufactured and supplied by them are classifiable under Chapter Heading 8419 and referred to the decisions in the case of *Collector of Central Excise v. Gakso Refrigeration Engineers* [1993 (63) ELT 568 (Tribunal)] and [1997 (89) ELT A40 (SC)] and in the case of *General Fabricators v. Commissioner of Central Excise, Mangalore* [2006 (193) ELT 323 (Tri. - Bang.)].

**14.2** We observe that in the case of *Gakso Refrigeration Engineers (supra)*, Hon'ble CEGAT took note of the fact that while classifying 'Ice cream machine and Ice candy machine' under sub-heading 8419 and holding that the said products cannot be classified under item 8418, the adjudicating authority took support from the explanatory note of CCSH which states that the said tariff heading specifically excludes freezing salt type freezers which falls under 8410 or 8419.

**14.3** The Explanatory Notes for Tariff Heading 8418 specifically excludes, inter-alia, Freezing-salt type freezers (heading 82.10 or 84.19). However, it is not the case of the applicant that the 'Ice Cream Making Machines' manufactured and supplied by them are 'Freezing-salt type freezers'. Therefore, the decision in the case of *Gakso Refrigeration Engineers (supra)* is not applicable to the present case. For the same reasons, the decision in the case of *General Fabricators (supra)* rendered in respect of products 'fully fabricated insulated tanks and semi finished insulated tanks' by relying on the decision of *Gakso Refrigeration Engineers* is not found to be applicable in the facts of the present case.

**15.** In the copy of Invoice No. 70/17-18 dated 13.06.2017 submitted by the applicant, the Tariff/HSN Classification 8418 5000 has been shown in respect of product 'Soft IceCream Machine SM-301/MGF',

which indicates that the applicant was classifying their product under Tariff Heading 8418 in the erstwhile Central Excise regime.

**16.** In view of the foregoing, we rule as under -

**RULING**

The product "Ice Cream Making Machine" is classifiable under Tariff Heading 84.18 and not under Tariff Heading 84.38 of the Customs Tariff Act, 1975 and Goods and Services Tax rate applicable to Tariff Heading 84.18 is applicable to the said product.

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