



24th December, 2020 / 18369

Ms. Seema Arora
Commissioner
CGST
Gujarat State,
Ashram Road,
Ahmedabad.

Respected Madam,

Sub.: Request to instruct field officers for not taking coercive recovery action including threat of arrest by raising dispute of classification of flours

We most respectfully submit as under:

1. Dealers engaged in the business of producing flours from various cereals and pulses are members of the Gujarat Chamber of Commerce and Industry. We have received representation from the association of such dealers that their members are registered under the Central/Gujarat Goods and Services Tax Acts, 2017 (herein after collectively referred to as "the GST Acts") and many of them are facing dispute of classification of flours manufactured and sold by them.
2. We have perused their grievances and have found substance in their submission. We firmly believe that in cases of bonafide disputes of classification, harsh actions should not be taken against genuine dealers regularly doing their businesses.

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Sr. Vice President

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Pathik S. Patwari
Hon. Secretary

V. P. Vaishnav
Hon. Secretary (R)

Sachin K. Patel
Hon. Treasurer

3. We have noticed that the Central and the State Governments have by exercising powers under section 11(1) of the GST Acts issued Notification No. 2/2017 - Central/Gujarat Tax (Rate) dated 28.6.2017 notifying goods whose intra-State supplies shall be exempt from whole of tax leviable thereon under section 9 of the GST Acts. There are various entries in this Schedule viz. entry 73, 74, 75, 78 etc. which exempts flours made from different cereals and leguminous vegetables. By an amendment dated 22.9.2017 certain exception to such exemption from tax has been notified. Accordingly, while flours in general are exempt from tax under GST Acts, the benefit of such exemption from whole of tax is not admissible to the following categories of goods namely:

- (i) Flours put up in unit container and, -
 - (a) bearing a registered brand name; or
 - (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditions as in the Annexure I].

4. As per the Explanations at the end of the notification and Annexure I to the notification, if a brand is registered under the Trade Marks Act, Copy Right Act or under any law on or after 15th May, 2017 then sales of flours in a unit container bearing such registered brand are liable to tax under the GST Acts. Similarly, even if a brand is not registered under any Act but in respect of which an actionable claim or enforceable right is available in a court of law then in order to claim exemption from tax, a dealer

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has to fulfill twin conditions of filing an Affidavit foregoing an actionable claim or enforceable right in respect of such brand name in any court of law and printing a declaration to that effect on every unit container in which the flour is packed and sold.

5. It has so happened that many dealers who were or are holding registered brand/s are also selling flours in unit containers bearing a brand name different than the one which is already registered under either Trade Mark Act or Copy Right Act or any other law in force in any other country. Such brands are not registered under any Acts. Admittedly in respect of most of the cases the dealers have also fulfilled the twin conditions of filing an Affidavit and printing on unit containers about foregoing the actionable claim or enforceable rights in relation to their brands.
6. When the sales of flours are made under a registered brand tax is paid under the GST Acts and there is no dispute about the same. However in respect of sales of flour under a brand which is not registered under any Act exemption from tax is claimed by the dealers but disputed by the Officers.
7. It has been brought to our notice that principally following disputes are raised in cases of such dealers selling flours under unregistered brand and claiming exemption from tax:
 - (a) The sales are made in a packing having design, write up etc. which is similar to the brand which was or is registered and therefore the benefit of exemption from tax is not admissible.

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- (b) The sales are made under an unregistered brand but in some cases Affidavit is not filed or statutory printing is not done on packing on the ground that it is a new brand and therefore no right in favour of the dealer is created by such brand so as to give up the actionable claim in respect thereof.
- (c) Though sales are made under unregistered brand, reference to registered brand is found in invoice or in the office of the dealer
8. In cases where such disputes are raised, the Officers are coercing the dealers to make immediate payment of total tax along with interest and penalty. Not only that dealers are threatened with arrest and in fact one of such dealers was also arrested by raising such disputes of classification.
9. We clearly believe that the above disputes raised are pure legal disputes of classification. These are not the cases where dealers have evaded the tax payable by them under the GST Acts by adopting any mal practices. In fact it is found that selling flours as exempt from tax under one or more of the above circumstances is the market practice adopted by many dealers. It is also a fact that on such sales, tax has not been collected under the GST Acts from the customers.
10. In our humble submission, the high-handed approach of the Officers in such disputes of classification is absolutely unwarranted and unjustified. You may kindly appreciate that at present trade and industries are struggling to survive the onslaught of Covid pandemic. In this scenario, self restraint on the part of the learned Officers is the need of the hour. If at all in any case such

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dispute of classification is raised then proceedings for adjudication of liability can be undertaken as per the provisions of the GST Acts.

However, coercing such dealers to make immediate payment of huge amount and threatening them for arrest needs to be stopped.

11. We therefore humbly request that instructions should be issued to the field officers that in cases where disputes are raised about classification based on sales of flours in unit containers bearing a brand which is not registered under any Act, if required, proceedings may be undertaken for assessment but dealers should not be compelled to deposit any amount forthwith or threatened with actions of imprisonment.

An immediate action in the matter shall be highly appreciated.

Thanking you,

Yours sincerely,

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Shri Ajay Bhushan Pandey, IAS

Revenue Secretary
Ministry of Finance
128 A, north block
New Delhi - 110 001

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