

AUTHORITY FOR ADVANCE RULING, TAMILNADU

DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX

5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,

CHENNAI -600 003.

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Shri T.G.VENKATESH, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K.LATHA, M.sc., (Agri) Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai 6.

ORDER No. 39 /AAR/2021 Dated: 21.10 .2021

GSTIN Number, if any / User id	33AAGFR9140J1Z2
Legal Name of Applicant	RASI NUTRI FOODS
Registered Address / Address provided while obtaining user id	1/67A, 1/67B, Salem Trichy Main Road, Aycepalayam, Athanur, Rasipuram, Namakkal-636301
Details of Application	Form GST ARA - 001 Application Sl.No.04/2021/ARA dated 25.02.2021
Concerned Officer	Centre: Salem Commissionerate State: Rasipuram Assessment circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	Factory/Manufacturing
B Description (in brief)	The applicant is engaged in the business of manufacture and supply of nutrition products such as complementary weaning food, energy food, fortified rice kernel etc., and also engaged in trading of agricultural commodities.
Issue/s on which advance ruling required	Applicability of Notification

Question(s) on which advance ruling is required

Whether Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, would be applicable to the Applicant's activity of manufacture and supply of Fortified Rice Kernels to the Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government.

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

Rasi Nutri Foods, 1/67A, 1/67B, Salem Trichy Main Road, Aycepalayam, Athanur, Rasipuram, and Namakkal-636301 (hereinafter called the 'Applicant') is registered under the GST Vide GSTIN 33AAGFR9140J1Z2. They have sought Advance Ruling on the following question:

Whether Notification No.39/2017 CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, would be applicable to the Applicant's activity of manufacture and supply of Fortified Rice Kernels to the Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on "Fortification of Rice

& its Distribution under the Public Distribution System" project launched by the Central Government.

The Applicant has submitted the copy of application in Form GST ARA-01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The Applicant has stated that they are engaged in the business of manufacture and supply of nutrition products such as complementary weaning food, energy food, fortified rice kernel, etc., and is also engaged in trading of agricultural commodities. The Government of Tamil Nadu had invited tenders from eligible bidders for the supply of 164 MTs of Fortified Rice Kernels ("FRK") per month with content of 3 micronutrients namely Iron, Folic Acid and Vitamin B12, to Trichy District of Tamil Nadu (for issue under public distribution system), vide E-Tender Document dated 11.05.2020. Subsequently, the Applicant has been awarded the contract for supply of FRK. In terms of the tender document, the successful bidder has to supply 164 MTs of FRK to make Fortified Rice at the designated Rice Miller's locations as per the technical specifications mentioned in the tender document, for a period of 2 years. Accordingly, the Applicant is supplying the FRK to the Tamil Nadu Civil Supplies Corporation ("TNCSC") and raises invoices on the TNCSC whereby 5% GST (2.5% CGST + 2.5% SGST) has been charged; subject to the condition that the TNCSC submits the Certificate as mandated in Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, failing which 18% GST (9% CGST + 9% SGST) shall be applicable.

2.2 The applicant has submitted the details of e Pilot Scheme for "Fortification of Rice & its Distribution under the Public Distribution System" viz. as follows:

- (i) The FRK are required to be packed and supplied in 25/50 kg size woven HDPE bag with LDPE inner poly liner of suitable thickness marked with proper labelling i.e., Batch No./Lot No. Name of the Manufacturer as specified in FSSAI (Packaging and Labelling) Regulations;
- (ii) The packed FRK is then supplied to the rice mills specified in the Tender Document, by raising invoices on the Tamil Nadu Civil Supplies Corporation;

(iii) The FRK is then blended with regular rice in the ratio of 1:100, i.e., 10 gms FRK is added to each kilogram of normal rice, which is then ultimately provided to all ration card holders in the district of Tiruchirapalli.

(iv) The rice required for manufacture of FRK is provided by TNCSC at subsidised rate.

2.3 On interpretation of law, the applicant has submitted that the FRK would fall within the ambit of Chapter 19 'Preparations of cereals, flour, starch or milk; pastrycooks' products' and under the Tariff Item 1904 which deals with "Prepared Foods Obtained by the Swelling or Roasting of Cereals or Cereal Products (For Example, Corn Flakes); Cereals [Other Than Maize (Corn)] in Grain Form or in the Form of Flakes or Other Worked Grains (Except Flour, Groats and Meal), Pre-Cooked or Otherwise Prepared, Not Elsewhere Specified or Included". Therefore, the applicable rate of tax would still be 5% (2.5% CGST+2.5% SGST) on account of Notification 39/2017 CT(R) dated 18.10.2017 and G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department. They have stated that though the applicable rate of tax for Tariff Item 1904 in terms of S.No.15 of Schedule - III to Notification No.01/2017-CT(R) dated 28.06.2017 would be 18% (9% CGST + 9% SGST) it is pertinent to note that Notification 39/2017 CT(R) dated 18.10.2017 notified the central tax rate of 2.5%, and G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, notified the State tax rate of 2.5% on the intra-state supply of the below mentioned description of goods falling within Chapters 19 or 20 of the Customs Tariff Act, 1975:

"Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government"

The 5% GST Rate (2.5% CGST+2.5% SGST) shall be subject to the following condition;

"When the supplier of such food preparations produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned to the effect that such food preparations have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State

Government concerned, within a period of five months from the date of supply of such goods or within such further period as the jurisdictional commissioner of the Central tax or jurisdictional commissioner of the State tax, or jurisdictional officer of the Union Territory Tax as the case may be, may allow in this regard."

2.4 The applicant is of the view that notification 39/2017 CT(R) and G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, refers to food preparations that are packed in unit containers with the intention to be distributed freely to the economically weaker sections of the society under a Government programme subject to a certain condition, hence, the Entry provided for in Notification 39 /2017 CT(R) and G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, is applicable to the FRK supplied by them to the Government for the following reasons:

- Clause 19 of the Tender Document deals with 'Packing' and reads as under:
"The Tenderer shall pack the Fortified Rice Kernels (FRK) in 25/50kg size woven HDPE bag with LDPE inner poly liner of suitable thickness marked with proper labelling i.e., Batch No/Lot No. Name of the Manufacturer as specified in FSSAI (Packaging and Labelling) Regulations."
- The term 'unit container' has been explained in Notification No.1/2017 CT(R) dated 28.06.2017 and reads as under:
"The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package".
- Therefore, since the FRK is a 'food preparation' as explained in Chapter 19 of the First Schedule to the Central Excise Tariff Act, 1985, that is packed in bags of specific quantities of 25 kgs or 50 kgs, as applicable to each such tendered, the applicant has submitted that the first condition of Notification 39/ 2017 CT(R) and G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, is fulfilled.
- In respect of supply intended for free distribution to economically weaker sections of the society, the applicant has furnished the following submissions:
- To address anemia and micro-nutrient deficiency in the country, Government of India approved the Centrally Sponsored Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution

System" for a period of 3 years beginning 2019-20 with a total budget outlay of Rs.174.64 crores.

- The Press Information Bureau Chennai, on 25.09.2020, announced that the Fortified Rice Scheme would be implemented in Tiruchirapalli District from 01st October 2020, for all ration card holders in the district. Rice would be fortified with iron, folic acid and Vitamin B 12 to make it nutritious and will be distributed through 1224 ration shops in Trichy district. About 7.5 lakh card holders in Trichy district will benefit under this pilot scheme of supplying fortified rice.
- Moreover, the Tender Document itself calls for online electronic tenders for "Supply of 164 Metric Tonnes of Fortified Rice Kernels (FRK) Per Month with Content of 3 Micronutrients to Trichy District of Tamil Nadu for Issues under Public Distribution System (PDS)".
- Additionally, it is also pertinent to note that the Scheme is implemented by the Government of Tamil Nadu through the TNCSC which is a Government of Tamil Nadu undertaking. The Board of Directors of the TNCSC is appointed by Govt. of Tamilnadu and the Managing Director is not below the rank of Deputy Secretary to the Govt. of Tamilnadu.
- The Government of Tamil Nadu, in its Policy Note of Food and Consumer Protection 2020-21, has categorically noted as follows:

"Rice and wheat in lieu of rice at specified quantity J are supplied at free of cost in PDS with effect from 01.06.2011 and 02.02.2017 respectively."
- The following factors are important to be taken into consideration:
 - a. Suppliers are selected through a process of Tender for procurement of FRK floated by TNCSC in compliance with the provisions of Tamilnadu Transparency in Tenders Act, 1998 and Rules thereon.
 - b. Monthly order for supply of FRK along with the quantity for each delivery location is provided by the TNCSC and the material is delivered accordingly.
 - c. As per the terms of the contract, rice is provided by TNCSC at subsidized rate for manufacturing the Fortified Rice Kernel (FRK).
 - d. As per the terms of the contract the invoice is raised against Tamil Nadu Civil Supplies Corporation;
 - e. The rice mills are a part of the distribution system which ensures the FRK is mixed with regular rice and ultimately distributed to the identified section of the society on free of cost as specified in the Policy Note;

f. There is no diversion of fortified rice from the rice mills to any other destination as these mills are empanelled mills for the exclusive purpose of supplying of rice to TNCSC / PDS outlets. These rice mills also include mills operated by TNCSC as well.

2.5 The applicant has relied upon the decision of the Delhi Bench of the Customs Excise and Service Tax Appellate Tribunal, in the case of Caterpillar India Pvt Ltd. vs. CCE [2005 (185) ELT 430]. The Bench while extending the benefit of the exemption to the Assessee, observed as follows:

"It is not the case of the department that the goods have not been supplied to the Projects financed by International Organizations. The goods were supplied to various sub -contractors for the Golden Quadrilateral Project financed by Asian Development Bank. Goods have also been used for the Project. The notification nowhere stipulates that the excisable goods supplied should be directly paid for by the organization financing the project. Since the goods have admittedly been used for the project, the question of misuse of goods for unintended purposes, as noted by the Commissioner, does not arise."

2.6 In view of the aforesaid decision the applicant is of the view that Notification 39/ 2017 CT(R) read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, nowhere mentions that the food preparations ought to be directly freely distributed to a weaker section of the society; it only uses the phrase "intended for free distribution to economically weaker sections of the society". Hence, their supply is within the scope of the Pilot Scheme for "Fortification of Rice & its Distribution under the Public Distribution System" and the applicant supplies the FRK to the identified Rice Mills, which then blends the FRK with the regular rice and ultimately supplies the blended rice mixture to PDS outlets for free consumption of ration card holders in the District of Tiruchirapalli. Further, they have stated that the pilot scheme is duly approved by the Central Government, funded by the Central Government as well as State Government. They have also stated that in terms of invoice raised by them one of the terms and condition for applicability of GST @5% is submission of certificate by the concerned department as mandated in Notification No.39/2017 dated 18.10.2017. Additionally, the invoice also categorically mentions that failure to produce the certificate would attract 18% GST.

3.1 Due to the prevailing pandemic situation and in order not to delay the proceedings the applicant was addressed through the Email address mentioned in their application to seek their willingness to participate in the hearing in digital mode. The applicant consented and the hearing for the admission of the application was held on 12.03.2021. The authorized representative participated in the hearing and stated that their product is classifiable under 1901 or 1904 and their product is eligible for exemption under Notification 39/2017-CT(Rate). They stated that what they supply is not rice but a pre-mix product to fortify the rice. The Authorised representative stated that their product is not of milling industry and therefore will not fall under Chapter 11. They were asked to provide a test report as per Chapter Note 2 of Chapter 11.

3.2 In furtherance to the hearing held on 12.03.2021, the applicant furnished the following submissions.

➤ Additional Written submission wherein inter-alia they stated

Chapter 11 of the First Schedule to the Customs Tariff Act, 1975 deals with "Products of the milling industry; malt; starches; inulin; wheat gluten". However, the Fortified Rice Kernels ("FRKs") manufactured by them cannot be classified under Chapter 11 since it is simply not a product of the milling industry due to the following reasons:

- They only manufacture the FRKs which cannot be construed to be a product of the milling industry. The FRKs are manufactured by pulverizing rice that is provided by the Tamilnadu Civil Supplies Corporation ("TNCSC"), which is then mixed with a premix containing three micronutrients - Vitamin B12, Folic Acid, and Iron. Subsequently, this mixture of rice flour and the premix of micronutrients are made to go through an extrusion machine which then produces kernels resembling rice grains.
- They have submitted a detailed explanation of the manufacture of FRKs, as prescribed by the Food Safety and Standards Authority of India. The applicant stated that only a facility - either a warehouse or a rice mill that houses a dosing and blending system can produce FRKs. Therefore, it is implied that no ordinary rice mill can produce the FRKs. Moreover, such facilities are mandated to comply with World Health Organization's Good Manufacturing Practices (GMP), and food safety guidelines as per FSSAI standard guidelines.

- It is also pertinent to note that the language used in FSSAI guidelines, reinforces the fact that FRKs are the result of an extremely technical manufacturing process that cannot be carried out in an ordinary rice mill. Upon the manufacture of the FRKs, it is supplied to the rice mills specified in the Tender Document where the FRKs are blended with regular rice in the ratio of 1:100, i.e., 10 gms FRK is added to each kilogram of normal rice, which is then ultimately provided to all ration card holders in the district of Tiruchirapalli. Therefore, it is apparent that the milling industry comes into picture only after the FRKs have been manufactured. As a corollary, the FRKs cannot be said to be a product of the milling industry.
- The applicant has referred to the decision of Advance Ruling Tamilnadu, in the case of In re: Chellasamy Nadar Deivarajan [2020 (33) GSTL 442] while having to decide classification of vegetables and cereal flours, made the following observations after analysing the General notes to HSN explanatory notes of Chapter 11: "It is seen that CTH 1102 covers flours which are pulverized products obtained by milling the cereals other than wheat or meslin including rice, maize etc. However, flours which are further processed or had substances added with a view to use as food preparation are excluded and classified under CTH 1901."
- They have submitted that it is pertinent to note that the Heading No.1104 deals with "Cereal Grains Otherwise Worked (For Example, Hulled, Rolled, Flaked, Pearled, Sliced, Or Kibbled), Except Rice Of Heading 1006; Germ Of Cereals, Whole, Rolled, Flaked Or Ground". Thus, it is apparent that the steps involved in the manufacture of FRKs are not dealt with here. Hence, applying the same observation to the case in hand, the applicant has submitted that the manufacture of FRKs involves certain other steps in addition to pulverizing the raw material rice provided by the TNCSC.
- The applicant has also relied on the following case laws to substantiate their contentions
 - i. Customs Excise Service Tax Appellate Tribunal, in the case of Mahavir Food Products vs. CCE [2007 (211) ELT 29

ii. Appellate Authority for Advance Ruling Rajasthan in the case of In re: FS Foods Pvt. Ltd. [2020 (38) GSTL

Therefore, applying the decision of the Larger Bench and the Appellate Authority for Advance Ruling Rajasthan, to the case in hand, the applicant has submitted that the process of manufacture of FRKs, involves steps that go beyond the process mentioned in Chapter 11. Accordingly, the FRKs cannot be classified under Chapter 11.

They have also furnished NAWAL Analytical Laboratories Test Report dated 20.03.2021. The sample FRK has been tested and the percentage of starch and ash content has been submitted in the report.

4.1 Due to change in the constitution of the Authority, the applicant was again given an opportunity to be heard on 04.08.2021. The Authorised representative Ms. Vipula appeared for the hearing virtually and reiterated their submissions. She stated that they are before this authority seeking clarification on the applicability of Notification 39/2017 to their product viz., Fortified Rice Kernels supplied based on the tender issued by civil supplies. She drew attention to Note 4 of chapter 19 of customs Tariff and stated that their product will be classifiable under chapter 19. The test report furnished by them has been already taken on record. Shri.V.V.Ramkumar, the State Jurisdictional officer appeared and stated that the Notification is applicable only to the final supplier who supplies to the economically weaker sections (EWS) of the society but in this case the applicant is not supplying to EWS. The Authorised representative in this connection relied on the decision of CESTAT Delhi in the case of caterpillar and stated that the notification says only intended for free distribution, and therefore their product being definitely intended for free distribution' the benefit of notification is applicable to them.

4.2 The applicant vide their email dated 11.08.2021 furnished the following additional submissions.

- The applicant has relied on the CBEC letter F.No.345/17/86 TRU dated 12.12.1986(Copy furnished) issued in response to representations received from Hindustan Lever Limited, in the context of Central Excise Duty. They have stated that the CBEC letter was in the nature of a clarification to Notification 81/75 dated 22.03.75 which provided exemption to Sulphuric acid which is intended for use in the manufacture of fertilisers.

- They have also relied upon the following case laws to substantiate their contention
 - i. Hindustan Zinc Ltd vs CCE [2005(192) ELT 768], wherein the CESTAT has relied upon the CBEC letter and held that Sulphuric Acid used in manufacture of Phosphoric Acid which is then cleared to the manufacturer of fertilizer would be exempt from payment of duty. This decision was also affirmed by The Rajasthan High court in the case of Union of India vs Hindustan Zinc Ltd [2009(236) ELT 633], copies of the order has been furnished.
- They have also reiterated on the following factors to prove that FRKs are only intended for free distribution to economically weaker sections of the society.
 - i. The invoice is raised only on Tamilnadu civil supplies corporation and the FRK packed in unit containing “25kg” are delivered to rice mills for mixing with regular rice as per the directions of Government of Tamilnadu
 - ii. The rice mills are a part of the distribution system which ensures that FRK is mixed with regular rice and ultimately distributed to the weaker sections of the society
 - iii. There will not be any diversion from the rice mills to any other destination apart from the PDS outlets.

The applicant vide e mail dated 09.09.2021 furnished copies of the Invoices raised by them on TNCSC; copy of certificate issued by the TNCSC issued as per the requirement of the Notification No. 39/2017 dated 18.10.2017 and the image of a HDPE bag in which they supply the FRKs to the rice mills.

4.3 Due to further change in the Authority, the applicant was heard on 22.09.2021, virtually. The Authorized Representative, Ms. D.S.Vipula, Advocate appeared. She reiterated their submissions and stated that FRK is supplied in 25KG/50 Kg HDPE bags as per the tender condition; the notification states that the supply is to be ‘intended for’ and not ‘for’ distribution to Economically Weaker Sections; the supply is towards the Central Scheme for fortification of rice. The AR was asked to clarify:

1. Whether they are supplying the FRK to rice mills approved by Civil Supplies only
2. as to how the certificate is issued by the Managing Director, whether tax invoice wise or proceeding wise

3. At what stage the sample was drawn and at whose presence.

The AR stated that they would make additional submissions clarifying the above. They were also asked to furnish the FSSAI materials relied upon by them to explain the pulverization and extrusion of kernels.

4.4 In furtherance to the hearing held on 22.09.2021, the applicant submitted the following documents:

1. Copies of monthly indents issued by the TNCSC along with details of mills to which supplies to be made.;
2. Copy of certificate issued by MD, TNCSC along with corresponding invoice;
3. Copy of "Technical handout on Fortification of Rice" issued by the Food Safety and Standards Authority of India, explaining the manufacturing process of FRK in detail.

The applicant has also stated that the sample submitted before the Authority for Advance Ruling was drawn at the destination rice mill. Also, in terms of clause 18(b) of the tender document the FRKs received at the destination are subject to quality check by the purchaser, i.e the TNCSC.

5.1 The State Jurisdictional authority who has the administrative jurisdiction over the applicant stated that the applicant is not eligible to avail the benefit of the concession notification as they are intermediaries to the supply done by a different party which alone is eligible for the concession and that their own supply being an intermediary product, is also not eligible for the concession as per the FSSAI regulations, GST regulations, scope of the concession notification and legal precedents, the product may be classified under HSN 19049090 and taxed accordingly without the provision of availment of concession notification.

5.2 The Centre Jurisdiction authority has reported that there is no pending proceedings in respect of the applicant.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant, all the additional submissions made during the hearing and thereafter and the submissions of the Jurisdictional authorities. The applicant has stated that they have been awarded the contract for supplying 164MTs of Fortified Rice Kernels (FRS) to the Tamilnadu Civil Supplies Corporation pursuant to the Pilot scheme on "Fortification of Rice & Its distribution under the Public

Distribution System”, project launched by the Central Government. As per the scheme, FRK is required to be packed and supplied in 25/50 Kg size woven HDPE Bag with LDPE inner poly liner of suitable thickness marked with proper labelling as specified in FSSAI regulations which is then supplied to the rice mills specified in the Tender document by raising invoices on the Tamilnadu Civil Services corporation. Such FRK is then blended with regular rice in the ratio of 1:100 i.e., 10 gms FRK to 1Kg rice and the rice is then distributed to the ration card holders at subsidised rate. The applicant wishes to obtain ruling on the following question:

Whether Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, would be applicable to the Applicant's activity of manufacture and supply of Fortified Rice Kernels to the Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government.

The question is on the applicability of notification issued under the provisions of the CGST Act, 2017 and so is found admissible under Section 97(2)(b) of the CGST Act, 2017.

7. Applicant has submitted that they are supplying the FRK which would fall within the ambit of Chapter 19 and the applicable rate would be 5% (2.5%CGST + 2.5% SGST) on account of Notification no.39/2017-CT(R) dt. 18.10.2017 and G.O.Ms No.140 dt. 17.10.2017 issued by the Commercial Taxes and Registration Department. With respect to classification under Chapter 19, applicant has submitted that FRK falls under Chapter heading 1904, which reads as under:

“Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals [other than maize (corn)] in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked or otherwise prepared, not elsewhere specified or included”

Applicant has produced a test report from Nawal Analytical Laboratories certifying the ash and starch content in the FRK and they have stated that the sample was drawn at the receivers' end. They have submitted that Notes to Chapter 11 provides that in an event of rice having less than 45% starch and more than 1.6% ash content would result in classification of such product under 23, which deals with 'Residues and wastes from the food

industries; prepared animal fodder' and that it is irrelevant to the FRKs under issue in the present case. They had relied on the Advance ruling of the Authority of Advance Ruling Rajasthan in the case of JVS Foods Pvt Ltd, wherein FRK was classified under Chapter heading 1904. In this regard, it is seen that in the instant case, applicant wishes to obtain ruling whether the said notification is applicable to them and the classification of said product is conceded as falling under Chapter 1904.

8.1 On examining Notification no.39/2017- CT(rate) dated 18.10.2017, it is seen that the notification prescribes central tax rate of 2.5 percent on intra-state supplies of goods, the description of which is specified in column(3) of the Table below, falling under the tariff item, Sub heading, heading or chapter, as the case may be specified in the corresponding entry in column (2), subject to the condition specified in column (4) of the Table below:

Sl. No	Tariff item sub heading, heading or Chapter	Description of Goods	Condition
(1)	(2)	(3)	(4)
1.	19 or 21	Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government	When the supplier of such food preparations produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned to the effect that such food preparations have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, within a period of five months from the date of supply of such goods or within such further period as the jurisdictional commissioner of the Central tax or jurisdictional commissioner of the State tax, or jurisdictional officer of the Union Territory Tax as the case maybe, may allow in this regard.

As seen above, the notification is applicable to

- food preparations classifiable under Chapter 19 or 21 of the Customs Tariff made applicable to GST;
- put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government;
- subject to the condition that the supplier of such food preparations produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned to the effect that such food preparations have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, within a period of five months from the date of supply of such goods.

8.2 The above notification stands amended vide Notification No. 11/2021 C.T.(Rate) dated 30th September 2021, effective from 01st October 2021. The operative portion of the said Notification is as under:

In the said notification, in the Table, against S. No. 1,

(i) in column (3), for the entry, the entry “(a) Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government;

(b) Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government.” shall be substituted;

(ii) in column (4), in the entry, for the words “food preparations” at both the places, where they occur, the word “goods” shall be substituted;

Thus effective 01.10.2021, the table of Notification No. 39/2017 C.T.(Rate) as amended is as follows:

Sl. No	Tariff item sub-heading, heading or Chapter	Description of Goods	Condition
(1)	(2)	(3)	(4)

1.	19 or 21	<p>a) Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government;</p> <p>b) Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government</p>	<p>When the supplier of such goods produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned to the effect that such goods have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, within a period of five months from the date of supply of such goods or within such further period as the jurisdictional commissioner of the Central tax or jurisdictional commissioner of the State tax, or jurisdictional officer of the Union Territory Tax as the case maybe, may allow in this regard.</p>
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8.3 The amendment made vide notification no. 11/2021 (C.T.)Rate dated 30.09.2021, applies to FRK(Premix) falling under CTH 19 and supplied for ICDS or similar scheme duly approved by the Central/State Government. The FRK (Premix) being introduced specifically in the notification and the amendment from 'Food preparations' to 'goods' under column (4), implies that the same was not covered under the notification no. 39/2017 C.T.(Rate) until the said notification is amended.

9. In the case at hand, the applicability of the Notification was raised before us for the FRK(Premix) supplied by the applicant to the Designated Rice Mills for mixing with the Rice in a fixed proportion and distributing the same under the Scheme duly approved by the Government. As per the submissions, it has been established by the applicant, that the product satisfies the conditions for classifying under CTH 19 basis the Laboratory report furnished by them. It is also established that they undertake supply of FRK as per the tender conditions and supplies the same to the Designated Rice Mills for intended supply under the scheme on mixing the FRK with the Rice in the given proportion. It is also seen that the supply is made based on the demand placed on them vide

proceedings issued by the TNCSC and invoice is raised for each such period of supply. The product supplied by the applicant to the rice mills for blending with rice grains is Fortified Rice Kernel (FRK), which per-se is not a 'Food Preparation', in as much as the FRK cannot be consumed as such or after cooking, but FRK is 'goods'. Further the FRK is not directly supplied to the economically weaker sections, but only after blending with rice grains in designated rice mills. The Notification No. 39/2017-C.T.(Rate) dated 18.10.2017 provided the concessional rate to 'Food Preparation' subject to fulfillment of conditions at Column (4) before such amendment. Therefore in our view, the concessional rate under Notification No.39/2017 C.T.(Rate) for the Period 18.10.2017 to 30.09.2021 is not available to the applicant for reasons, that;

- (1) FRK is not a food preparation put up in unit containers for free distribution to Economically weaker sections and;
- (2) Applicants are not involved in free distribution of FRK to Economically weaker sections.

During one of the personal hearings the assessee has informed that what they supply is not rice but a pre-mix product to fortify the rice. Thus, FRK which is blended with rice grains before distribution of the same can be considered as a premix. Vide notification No. 11/2021-C.T.(Rate) dated 30.09.2021, the Notification 39/2017 dated 18.10.2017, was amended effective from 01.10.2021, by including the terms "Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government" in column (3) and also, the words 'Food Preparation' is amended as 'goods' in column (4) of the Notification. Plain reading of the amended notification indicates that the goods are eligible for concession rate if they are:

- 1.FRK(Premix);
- 2.supplied for schemes approved by Central Government/State Government;
3. subject to end use conditions mentioned in column (4).

10. Since the goods supplied satisfy the conditions 1 and 2, we hold that the applicant is eligible for the benefit of Notification No. 39/2017 C.T.(Rate) dated 18.10.2017 as amended by Notification No. 11/2021 C.T.(Rate) dated 30.09.2021, effective from 01.10.2021 only, on fulfilling the conditions stipulated thereon in column (4) for such periodic demand and supply of FRK (Premix) made by them and the concessional rate is not eligible to them for the period upto 30.09.2021.

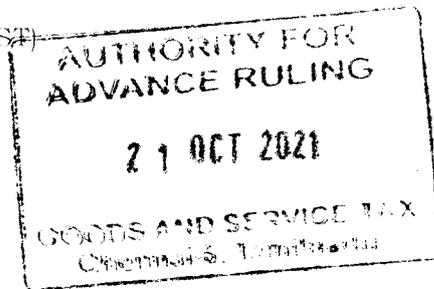
11. In view of the above, we rule as under:

RULING

1. Notification 39/2017 CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, is not applicable to the Applicant's activity of manufacture and supply of Fortified Rice Kernels to the rice mills designated by Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government for the period upto 30.09.2021 for the reasons stated in para 9 above.
2. Notification 39/2017 CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, as amended by Notification No. 11/2021-C.T.(Rate) dated 30.09.2021 is applicable to the supply of Fortified Rice Kernels (Pre-mix), by the applicant, for the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government, from 01.10.2021 onwards, under Sl.No. (b) of Column (3) of the said Notification subject to fulfillment of the conditions stipulated under Column (4) of the said Notification.


Smt. K. LATHA
(Member SGST)


Shri T.G. VENKATESH
(Member CGST)



To
RASI NUTRI FOODS
1/67A, 1/67B, Salem Trichy Main Road,
Aycepalayam, Athanur,
Rasipuram, Namakkal 636301. //BY RPAID// E.Mail.i.d. accounts@rasifoods.com

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Salem Commissionerate. No.1, Foulkes Compound, Anaimedu, Salem-636 001.
4. The Assistant Commissioner (ST),
Rasipuram Assessment circle,
Commercial Taxes Building,
Taluk Office Compound, Athur Main Road,
Rasipuram. 637 408.
5. Master File/ Spare-2

