

TAMILNADU ADVANCE RULING AUTHORITY

**Office of the Integrated Commercial Taxes Complex, Chennai North Divisions,
Survey No.1275/3,5th floor, Elephant Gate Bridge Road, Chennai-600003**

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

Members present are:

1. Thiru B.Senthilvelavan, IRS, Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai.

and

2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A., Joint Commissioner (ST)/Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

ORDER No. 34/ARA/2020 Dated: 21.10.2020

GSTIN Number, if any / User id	33AANPS2471E1Z0
Legal Name of Applicant	Shri Abdul Razak Safiullah
Trade Name of the Applicant	M/s. S.A. Safiullah & Company
Registered Address / Address provided while obtaining user id	PB No.14, Rajagopalapuram Main Road, Pudukottai 622 003.
Details of Application	Form GST ARA-001 Application Sl. No. 43/2019, Date: 24.10.2019.
Concerned Officer	State :The Assistant Commissioner (ST), Pudukottai-1 Assessment Circle 5893/3, Kattupudukulam, Pudukottai- 622 001. Centre : Tiruchirapalli Commissionerate Division: Tiruchirapalli I Division
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	Supply of Goods.
B Description (in brief)	The applicant is engaged in trading of betel nut.
Issue/s on which advance ruling required	1.Classification of the goods 2. Applicability of a notification issued under the provision of the Act.

Question(s) on which advance ruling is required	1. Whether the "Nizam Pakku" bought and sold by the Applicant, the manufacturing process of which has been explained by them, is classifiable under Chapter heading 0802 8030 of the Customs Tariff and hence attract 2.5 % CGST as per Sl.No.28 of Schedule I of Notification 1/2017 Central Taxes (Rate) Dt. 28.06.2017 and equal rate of SGST?
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Note: Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed 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.

M/s. S.A. Safiullah & Company PB No. 14, Rajagopalapuram Main Road, Pudukottai 622 003 (hereinafter referred as 'Applicant') is registered under the GST Act 2017 vide GSTIN No. 33AANPS2471E1Z0. The Applicant has sought Advance Ruling on

Whether the "Nizam Pakku" bought and sold by the Applicant, the manufacturing process of which has been explained by them, is classifiable under Chapter heading 0802 8030 of the Customs Tariff and hence attract 2.5 % CGST as per Sl. No. 28 of Schedule I of Notification 1/2017 Central Taxes (Rate) Dt. 28.06.2017 and equal rate of SGST?

The applicant 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 a Proprietary concern and is engaged in trading of Betel nut, under the name and style "Nizam Pakku" and the said

brand name is owned and registered in favour of the Applicant. "Pakku" is a tamil word for "betel nut". The said "Nizam Pakku" is manufactured by M/s Azam Laminators Pvt. Ltd. who sells the "Nizam Pakku" exclusively to the Applicant, which is marketed by them through Dealers and Distributors network. The manufacturing process of "Nizam Pakku" submitted by the applicant is as below:

Dried betel nut is procured and broken into pieces of smaller sizes, pulverized and then gently heated with Vanaspati, so as to ensure that vanaspati is spread evenly on the surface of the betel nuts; Sugar, glucose syrup, menthol and spices, viz., cardamom and cloves are also added; the use of glucose syrup and sugar which contains moisture can form fungus and hence a meager quantity of saccharin to the extent of 1000 Parts per million is added purely for preservation purposes; the resultant product is packed in small pouches under the name and style of NIZAM PAKKU.

The same is used by people for chewing either along with betel leaves or as such. The essential character of betel nut is preserved as such and the product has not ceased to be a betel nut. It is still known only as betel nut (Pakku in Tamil) in the market and marketed as such.

2.2 The Applicant has made reference to Chapter 8 of Customs Tariff Act 1975, which includes edible fruit and nuts; peel of citrus fruit or melons and chapter note 3 of Chapter 8 which states that dried fruits and dried nuts of this chapter can even be partially dehydrated or treated for the purposes of additional preservation or stabilization, to improve or maintain their appearance. The applicant has stated that the manufacturing process of Nizam pakku undertaken by M/s Azam Laminators Pvt Ltd are exactly the same as contemplated in Chapter Note 3 of Chapter 8. To explain further,

Sl. No.	Process done	How covered under Note 3
1	Gentle heating	For additional preservation or stabilisation (for example by moderate heat treatment , sulphuring, the addition of sorbic acid or potassium sorbate)
2	Addition of vanaspati	To improve or maintain their appearance (for example by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

3	Addition of sugar / glucose syrup	To improve or maintain their appearance (for example by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.
4	Addition of meager quantity of Saccharin (1000 PPM) (To avoid fungus formation)	For additional preservation or stabilisation (for example by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate)
5	Addition of menthol and spices	Addition of small quantities of these items to add taste and aroma to the product, does not in any way dilute the character of the product, which remains and understood as “pakku”, i.e. betel nut only.

Further, they have submitted that they have been exporting the subject goods, viz., Nizam Pakku to various countries and in order to determine its correct classification, the Customs Department has drawn sample of the product and tested by the Chemical Examiner in the Customs House Laboratory which observed that “The sample is in the form of brown coloured small betel nut pieces together with sugar, menthol, cardamom; It is dried edible betel nut”. Accordingly, the Applicant as well as other similar exporters has been classifying the same under Chapter 0802. Also, the Tamil Nadu Food Safety and Drug Administration Department has granted license to the Applicant to deal with the subject Nizam Pakku as Distributor, Wholesaler and Transporter. It may be observed from the license that the subject product, Nizam Betelnut is classified under HSN 0802 9013 (corresponding to 0802 8030 prior to the amendments with effect from 2011).

2.3. Further, the Applicant submitted that the issue of classification of the subject goods, under Kerala VAT Act has arisen and culminated in Order No.C3/7632/13/CT Dt. 03.03.2015 passed by the Commissioner of Commercial Taxes, Kerala, where the product has been held to be falling under HSN Code 0802 9013. The applicant has stated that Central Excise Tariff is also aligned to Customs Tariff and HSN, but for certain differences. For example, in as much as the duty of excise is on “manufacture” certain processes carried out on certain goods would be declared as “manufacture” by way of Section Notes / Chapter Notes in the Central Excise Tariff. Such provisions are not relevant under Customs Tariff. As GST is also based on Customs Tariff only, such provisions relating to deemed manufacture are not relevant for GST purposes also. Keeping this principle in mind, the classification disputes under Central Excise law for the subject product,

and its relevance for GST purposes would not be discussed. The classification of the subject product under Central Excise Tariff has got a chequered history, where the rival claims being Chapter 8 and Chapter 21.

2.4 The applicant has stated that it has been the case of the department that after the amendments are carried out in the Tariff with effect from 07.07.2009, the subject product would get classified under Chapter 2106 9030, though the same was classifiable under Chapter 0802 9019 prior to 07.07.2009, for the reasons, viz.,

(i) As per Note 1 (b) of Chapter 8, this Chapter does not cover “betel nut product known as supari” of item 2106 9030; and

(ii) As per Note 6 to Chapter 21, “In relation to product of tariff item 2106 9030, the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than lime, katha (catechu) or tobacco to betel nut, in any form, shall amount to manufacture”.

It was argued by the applicant that a careful reading of the above tariff headings would reveal that as per Note 3 (b) of Chapter 8, dried nuts of this Chapter may be partially rehydrated, or treated for the purposes of additional preservation or stabilization; to improve or maintain their appearance provided they retain the character of dried fruit or dried nuts; but they will continue to be classified under Chapter 8, provided they retain the character of dried nuts. This Chapter Note is present both prior to and post 07.07.2009. Hence, as per this note, even if moderate heat treatment, addition of vegetable oils, addition of glucose syrup are undertaken, the product will remain classified under Chapter 8, if the essential character of betel nut is retained. It was claimed that the product in question, which was nothing but betel nut, was recognized as such in the market and retains its essential character of being betel nut. The various process undertaken, as narrated above, did not at all dilute the essential character of the product and the product remains as betel nut and consumed as betel nut. Further, the processes undertaken by the applicant were the ones which are contemplated in Note 3 (b) of Chapter 8 only. With effect from 28.02.2005, the entry under Chapter 21, which read as “betel nut powder known as supari” has been changed to “Betel nut product known as supari” and both these phrases have been defined in same manner, which indicates that there is no difference between these phrases. It may be observed from the definition that “betel nut product known as supari” is first of

all a preparation containing betel nut, i.e apart from betel nut, there would be further ingredients in the preparation. Further, the said preparation should not contain lime, katha and tobacco, in which case, it cannot be called as “betel nut product known as supari”. But the presence or absence of other ingredients such as cardamom, copra and menthol are not at all relevant to call a product as “betel nut product known as supari”. The applicant argued that the product in question contained only betel nut, which is dried, broken into small pieces and pulverized and small quantity of Vanaspati is added to spread the same on the pieces and small quantities of sugar, glucose syrup, menthol and spices, viz., cardamom and cloves are also added; the use of glucose syrup and sugar which contains moisture can form fungus and hence a meager quantity of saccharin to the extent of 1000 Parts per million is also added for preservation purposes. Thus, it was argued that the product was only betel nut and the essential character of betel nut was retained as such and it was not a preparation containing betel nut and other products.

2.5 With effect from 07.07.2009, the following changes have been made in the Central Excise Tariff.

- In Chapter 8, a note has been added to the effect that “betel nut product known as supari” is excluded from Chapter 8.
- Note 3 (b) under chapter 8, which laid down that moderate heading, addition of vegetable oil, glucose, etc. would not change the classification of products under this chapter, so long as the character of the product is retained, continued as such.
- In Chapter 21, a note has been added to the effect that in relation to product of tariff item 2106 9030, the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than lime, katha (catechu) or tobacco to betel nut, in any form, shall amount to “manufacture”.

A careful reading of the above changes would reveal that what was specifically excluded from Chapter 8 is “betel nut product known as supari” which was also defined. Though even without this note, a product which satisfies the definition of “betel nut product known as supari” could not be classified under Chapter 8 but under Chapter 21 only, which has a specific heading for this, this note has been added to bring more clarity. It may also be noted that Note 3 (b) of Chapter 8 is

retained, according to which so long as the essential character of the betel nut is maintained, the same shall remain classified under Chapter 8 even if some minor processes like moderate heat treatment or addition of preservatives, sweeteners are undertaken. Further, a Chapter note has been introduced in Chapter 21, whereby certain specified processes undertaken on goods falling under Chapter 2106 9030 are deemed to be manufacturing processes. It was further argued that in order to apply Note 6 of Chapter 21, which lays down certain processes as amounting to manufacture, first of all the classification of the product has to be determined and only if the product can be classified under Chapter 2106 9030, the said Note 6 can be applied. Once the product is classifiable under Chapter 8, the said Note 6 in Chapter 21 is not at all relevant. The subject product is not a preparation containing betel nut, but betel nut itself, which has been subjected only to processes envisaged in Note 3 (b) of Chapter 8 and retained its character as betel nut. The only ingredient present in the product was betel nut and addition of Vanaspati, glucose syrup, menthol, spices and saccharin were only for purposes of preservation, sweetening and perfumery. It was not a preparation containing betel nut and other products. In view of the foregoing, it was argued that the subject product was classifiable only under Chapter 0802 9013 and not under 2106 9030, in as much as,

- The subject product retained its essential character as betel nut.
- Dried betel nut was subjected only to moderate heat treatment, application of Vanaspati, addition of small quantities of sugar, glucose, spices and saccharin.
- It was not a preparation containing betel nut, but betel nut, treated for preservation only.
- The same was known as betel nut in the market and not as 'supari'.
- Note 6 of chapter 21 was not at all relevant in this case, as the product was not classifiable under Chapter 2106 9030 at the first place.
- The changes made in the tariff with effect from 07.07.2009 would not at all alter the situation as prevalent prior to this date.

2.6 The applicant has made reference to some judicial precedents on the subject:

- (i) CCE Vs Crane Betel Nut Powder Works, [2005 (187) ELT 106 Tri-Bang];
- (ii) Crane Betel Nut Power Works Vs CCE [2007 (210) ELT 171 SC];

- (iii) Crane Betel Nut Power Works VS CCE [2001 (131) ELT 479 Tri-Chennai];
- (iv) CCE VS Crane Betel Nut Powder Works [2007 (216) ELT A 54 SC];
- (v) CCE VS Crane Betel Nut Powder Works [2008 (221) ELT 99 Tri-Bang.];
- (vi) CCE VS Crane Betel Nut Powder Works [2010 (256) ELT A 17 SC];
- (vii) CCE, Trichy Vs A.R.S. Company Ltd. [2006 (206) ELT 1027 Tri-Chennai];
- (viii) A.R.S. Company Ltd. Vs CCE, Trichy [2015 (324) ELT 30 SC];
- (ix) M/s Azam Laminators Pvt. Ltd. Vs CCE, Trichy – Chennai Bench of CESTAT's Final order No. 40455 & 40456/2019 Dt. 12.03.2019.

The applicant has stated that the ratio of all these decisions would apply in the context of determining classification of the subject goods for the purpose of GST under the Customs Tariff. Thus the applicant has stated that the subject product, viz., "Nizam Pakku" dealt with by them merits classification under Chapter 0802 8030 of the Customs Tariff and applicable rate of GST is 5%.

3.1 The Applicant was given an opportunity to be personally heard on 06.11.2019. The authorized representative appeared before the authority and stated that they are trading the product which is manufactured by a related company. They stated that areca nut are crushed and then vegetable oil is added and heated, followed by menthol, glucose, cardamom to this to create fused product. They also stated that they sell only upto Rs. 2 pouches (25p, 50p, Re.1) with the words "Nizam Pakku"/Nizam betelnut. They stated that the correct classification should be 0802 80 30 as they are permitted to do the above process as per the Chapter Note. They also submitted various Tribunal/S.C. Judgments to support their stand. They submitted purchase and sale invoices. They undertook to submit detailed manufacturing process giving the proportion of all ingredients used to manufacture, latest test report, difference between "Supari" and their product within 3 weeks.

3.2 As undertook in the Personal hearing the applicant filed the following on 21.11.2019.

- i. Detailed manufacturing process followed in Areca/betel nuts by 'Nizam Pakku' - The ripened areca/betel nuts are harvested and cut into two equal halves and boiled in the water and then sun dried for many days to make them edible by farmers/sellers. The sun-dried areca/betel nuts are bought

by them and cut into small pieces. The cut small pieces of Areca/betel nuts are mildly heated with vegetable oil and vanaspati and after the heat is reduced, it is coated with cardamom/menthol/saccharin/glucose and perfume to preserve the Areca/betel nuts from forming fungus and for appearance and then packed into small pouches.

ii. Comparison of Nizam Betel Nut and Supari Products

	Nizam Betel Nut	Betel Nut Product known as supari
1.	The dried edible Areca/Betel Nut is the only raw material used	Many raw materials are used such as, aniseed, dry date, betel leave, coconut powder, bold sugar balls and other similar items are used together with areca nut.
2.	Here, the only raw material Areca/betel nut is mildly heated with vanaspathi, edible oil and then coated with cardamom (Powder), menthol and sweetening agent to preserve the dried edible areca/betel nut from fungus and for appearance	By adding many raw materials along with Areca nut, a new product comes into existence which can be termed as 'betel nut product known as Supari"
The Appearance		
3.	The preservatives merge with the edible betel nut and preserve it	The ingredients added are not preservatives; hence they do not merge with areca nut. They remain as a new product known as Supari
The Test of Preservatives		
4.	The preservatives added shall evaporate after certain period of time, leaving behind only the dried edible areca/betel nut.	There is no change in the product after any period of time, as the added various materials are not preservatives, but the additions that make its new product. Each of the raw materials has got its own characteristics.

iii. Test Certificate issued by M/s Excellence Laboratory, certifying the contents of "Nizam Pakku"- It is certified that Betel Nut consists of 92%; cardamom-0.9%; Sugar 1.9% and Vanaspati/Edible Oil 4.7%

iv. Test Certificate issued by M/s Bureau Veritas India Pvt Ltd, certifying the contents of "Nizam Pakku"

v. Copies of sale invoices issued by M/s Azam Laminators Pvt Ltd., in favour of the applicant for sale of "Nizam Pakku"

vi. Copies of sales invoices issued by the applicant

vii. Purchase invoices of M/s Azam Laminators Pvt Ltd., for purchase of Arecanut and ingredients.

4.1 Effective 19.05.2020, there was change in the authority and Shri.B.Senthivelavan, Additional Commissioner was appointed as CGST Member of the Authority. In view of change in the Authority and due to the prevailing pandemic, the applicant was offered to be heard through Digital media and the applicant acceded to the same. The applicant was heard on 15.10.2020. The Authorised representative of the applicant participated in the hearing process. He reiterated the written submissions and stated that the classification issue of their product based on the Central Excise Tariff is settled by the Hon'ble Supreme Court in the case of Azam Laminators, who are their suppliers as falling under CETH 0802 . They requested an early ruling.

5.1 The applicant is under the administrative Jurisdiction of State Tax Officer and the comments of the state jurisdictional officer on the issue raised by the applicant in the Advance ruling Application is given below:

- The applicant is engaged in making scented betel nut. Dried betel nut is procured and broken into pieces, pulverized and heated with vanaspathi, added with sugar, glucose syrup, menthol and spices like cardamom and cloves and then packed in small pouches as per market requirement.
- The scented betel nut under the erstwhile TNVAT act 2006 was taxable at 5% vide serial No. 6 of Part B of I schedule to the TNVAT Act 2006.
- Under the present Goods and services Tax Act 2017, areca nuts are classified under two categories vide Sl. No. 49 under the head Exempted goods and vide Sl. No. 28 under the head of Goods taxable at 5%. Both of these categories are allotted with the HSN Code No. of 0802 only.
- In order to confirm the correct classification as to whether the commodity in question viz., Nizam betel nut is falling under which category, the only way as prescribed in Serial(iii) and (iv) at the bottom of the rate of tax schedules under the GST Act, is as under:

(iii) "Tariff item:", "Sub-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 I (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.

- In view of the above explanations appended at the bottom of the rate of tax schedule, the only alternate provision is the Customs Tariff Act only, since the erstwhile Central Excise Tariff Act has been repealed, on implementation of the GST Act with effect from 1-7-2017.
- It is seen that the nomenclature as mentioned in the HSN code in the schedule under the GST Act and in the Customs Tariff Act are one and the same, without any simple deviation in respect of Code 0802. Whereas the HSN Code as per GST Act in respect of ARECA NUTS, fresh, whether or not shelled or peeled and ARECA NUTS, dried, whether or not shelled or peeled is one and the same of 0802, such HSN codes as per the Customs Tariff Act contains various numbers. As the alternate method to find the rate of tax under the GST Act is only to refer the Customs Tariff Act, comparison of the relevant entry in the GST schedule with that of the Customs Tariff Act is necessitated. HSN Code number has been adopted as 0802 by the applicant in this case, narrating the name of the commodity as Nizam Betel Nut and the rate of tax has been adopted at 5%. HSN code as adopted in the GST Act is only aligned with the Customs Tariff Act, the purposed/allowances which are narrated in Note No. 3 of Chapter 8 can squarely be applied under the GST Act also.
- There is clear indication as narrated in the explanations given at the bottom of the rate of tax schedule which goes to say that the “Tariff item”, “sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) only.
- Moreover 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 the notification issued under the GST Act also.
- The Honorable Supreme Court has decided in the case of Crane Betel Nut Powder Works Vs. CCE – reported in 6 VST 532 (S.C) that the end product would fall under 0801.

- In the dealer's own case also the same product "Nizam Pakku" manufactured by them, in their earlier name of A.R.S Company Ltd., and also by Azam Laminators (p) Ltd., on appeal, the Hon'ble Supreme Court has confirmed the relevant HSN as 0802 vide its order in Civil Appeal No. 4915/2006 dated 8-9-2015 in respect of Azam Laminators (P) Ltd., relying upon the earlier judgment of Supreme Court in the case of Crane Betel Nut Powder Works – 2007 (210) ELT 171 (SC)/(2007) 6 VST 532 (S.C.)
- In the instant case the applicant has done only the process mentioned in Note3 of Chapter 8 of Customs Tariff Act and hence the product remains as betel nut only and identified by public as betel nut only.

5.2 The Central Tax Authorities were addressed to inform whether any proceedings are pending in respect of the applicant. The information was required under Section 98(1) of the Act. The Authorities vide their letter dated 04.08.2020, stating the facts involved, has opined that the aproduct of the applicant, is rightly classifiable under Chapter 8. It is also informed that there are no proceedings pending against the applicant on the issue raised before this authority.

6. We have considered the application filed by the applicant and various submissions made by them as well as by the State Jurisdictional officer. The issue involved in this case is

Whether the "Nizam Pakku" bought and sold by the Applicant is classifiable under Chapter heading 0802 8030 of the Customs Tariff and hence attract 2.5 % CGST as per S.No. 28 of Schedule I of Notification 1/2017 Central Taxes (Rate) Dt. 28.06.2017 and equal rate of SGST.

We proceed to examine the issue in detail.

7.1 The applicant is engaged in trading of Betel nut, under the name and style "Nizam Pakku". The said "Nizam Pakku" is manufactured by M/s. Azam Laminators Pvt. Ltd. who sell to the applicant and is marketed by the Applicant through Dealers and Distributors network. The applicant has submitted that the manufacturing process of the product under consideration is Dried betel nut which is procured and broken into pieces of smaller sizes, pulverized and then gently heated with Vanaspati, so as to ensure that vanaspati is spread evenly on the surface of the betel nuts; Sugar, glucose syrup, menthol and spices, viz.,

cardamom and cloves are also added; packed in small pouches under the name and style of 'NIZAM PAKKU' and the same is used by people for chewing either along with betel leaves or as such. They claim that their product is classifiable under CTH 0802 8030 and the applicable rate of CGST is 2.5% as per S.No. 28 of schedule I of Notification No. 01/2017-C.T.(Rate) dated 28.06.2017.

7.2 From the submissions, it is seen that the product is marketed as 'NIZAM PAKKU'. From the 'Tax Invoice' furnished [Invoice No.783 dt. 12-Nov-2019,729 dated 24-Oct-2019,680 dated 29.10.2019], it is seen that the description is 'NIZAM BETELNUT GRADE II', 'BETELNUT GRADE II 250 PCSX20PKTS, LOOSE BETELNUT 100X50, etc, the HSN code is specified as '0802' and the rate of tax charged is CGST @ 2.5% & SGST @ 2.5%. The product is said to be used for chewing with or without betel leaves.

7.3 Under GST, the applicable rates of CGST are notified by Notification No. 01/2017-C.T.(Rate) dated 28.06.2017 and explanation (iii) and (iv) to the said Notification, states as follows:

(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.

Thus for the purposes of classification under GST, the First Schedule to Customs Tariff Act is only applicable. From the submissions, it is seen that the competing headings for the product under consideration are CTH 0802 and CTH 2106.

7.4 The relevant Customs Tariff item and the related Chapter/Section notes along with the Explanatory Notes of HSN are examined as under:

Notes to Chapter 8:

NOTES :

1. This Chapter does not cover inedible nuts or fruits.

2. Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.

3. Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:

(a) for additional preservation or stabilization (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate);

(b) to improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

CTH 0802 80

0802

**OTHER NUTS, FRESH OR DRIED, WHETHER
OR NOT SHELLLED OR PEELED**

.....

0802 80	-	Areca nuts :
0802 80 10	---	Whole
0802 80 20	---	Split
0802 80 30	---	Ground
0802 80 90	---	Other
0802 90 00	-	Other

The relevant HSN Notes is as below:

0802.61 -- In shell
0802.62 -- Shelled
0802.70 - Kola nuts (*Cola spp.*)
0802.80 - Areca nuts
0802.90 - Other

The principal nuts of this heading are almonds (sweet or bitter), hazelnuts or filberts, walnuts, chestnuts (*Castanea spp.*), pistachios, macadamia nuts, pecans and pignolia nuts (seeds of the *Pinus pinca*)

This heading also covers areca (betel) nuts used chiefly as a masticatory, cola (kolu) nuts used both as a masticatory and as a base in the manufacture of beverages, and an edible, nutlike, spiny-angled fruit of the species *Trapa natans*, sometimes referred to as a water chestnut

CTH 2106:

2106 9030

Supplementary Notes to Chapter 21

1.

2. In this Chapter "betel nut product known as Supari" means any preparation containing betel nuts, but not containing any one or more of the

following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom, copra or menthol.

2106	FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED
2106 10 00	- Protein concentrates and textured protein substances
2106 90	- Other:
	--- Soft drink concentrates :
2106 90 11	---- Sharbat
2106 90 19	---- Other
2106 90 20	--- Pan masala
2106 90 30	--- Betel nut product known as "Supari"

From the above, it is evident that CTH 21069030 covers 'Betel nut product known as "Supari", while Areca (betel) nuts Whole, Split, Ground, Other are specifically mentioned as classified under sub-heading 08028010, 08028020, 08028030 and 08028040 of Chapter head 0802.

7.5 In the case at hand, the applicant's product is marketed as 'Nizam Pakku'. The betelnut/arecanut(broken/pulverised) is heated with Vegetable oil, menthol for the purpose of preserving and Sugar, glucose syrup, menthol and spices, viz., cardamom and cloves are added. As per the test reports furnished by the applicant, (from the excellence Laboratory dated 13.11.2019) the percentage content of betel nut is 92% & the other ingredients are cardamom(0.9%),Sugar(Betel Nut)-1.9%; Vanaspati/Edible Oil-4.7%, which are the admissible ingredients as per Chapter Note 3 of Chapter 08 of the Customs Tariff. Also, the test report of 'Bureau Veritas India Pvt Ltd' states that 'The sample is cut pieces of dried edible Betelnut'. Thus it is seen that the essential character of betel nut (arecanut) remains the same in the product supplied by the applicant. Therefore, following Rule 1 of General principles of Interpretation of the Tariff, the product merits classification under Chapter head 080280 and not under CTH 2106.

7.6 The applicant has claimed that the product falls under Chapter heading 0802 8030 of the Customs Tariff. For arriving at the 8 digit level classification, the following facts are considered. It is seen that the classification of the product in hand, traded by the applicant and manufactured by M/s. Azam Laminators (P) Ltd has attained finality as falling under Central Excise Tariff Heading 0802 8090 in the case of M/s. Azam Laminators(P) Ltd, vide Final Order No. 40455-40456/2019

dated 12th March 2019 of Hon'ble CESTAT, Chennai. Hon'ble CESTAT has dealt on whether the said product merits classification under Chapter 08('08029019-Other') of Central Excise Tariff as claimed by Azam Laminators or Chapter 21(21069030-Betel nut product known as "Supari") of Central Excise Tariff(CET) as claimed by the Department. CESTAT relying on the decision of Hon'ble Supreme Court in respect of the very same product 'NIZAM PAKKU' manufactured by Azam Laminators in their earlier name(A.R.S. Company Ltd), has held that the product is classifiable under CET heading 08028090 of the Central Excise Tariff entry prevailing from 01.03.2012. Following the ratio of the said CESTAT decision which has been accepted by the Department, the demands raised on M/s. Azam Laminators (P) Ltd for the subsequent periods of 01/2015 to 06/2017 has been dropped by the Jurisdictional Commissioner who also held that the product is classifiable under CETH 08028090. The entries in Central Excise Tariff prevailed during the period of dispute for which the Hon'ble CESTAT has decided the classification and the entries in the prevailing Customs Tariff relating to the entries of Chapter 0802 08 are similar. Further, the applicant has not stated that the product for which clarification on classification is sought is different from the one for which the classification stands decided in the case of M/s. Azam Laminators, the manufacturer of the product and their supplier. Therefore, we hold that the product 'NIZAM PAKKU', manufactured by Azam Laminators and traded by the applicant is classifiable under CTH '08028090-Other' and not under CTH '08028030-Ground' as claimed by the applicant.

8.1 Having decided the classification of the applicant's product under CTH '0802 80 90-Other', the applicable rate of GST is taken up for consideration. The rate of CGST is notified vide Notification No. 01/2017-C.T.(Rate) dated 28.06.2017 as amended in respect of goods and that of SGST is notified vide Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended. The rate pertaining to Chapter Head 0802 are available at Sl.No 28, 29 of Schedule I-2.5% of the Notifications, and Sl.no.15 of Schedule II-6% of the Notifications. The relevant entries are as follows:

Schedule I-2.5%

Sl.No	Chapter / Heading / Sub-	Description of Goods
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	Tariff item	
28.	0802	Dried areca nuts, whether or not shelled or peeled
29	0802	Dried chestnuts (singhada), whether or not shelled or peeled

Schedule II-6%

Sl.No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
15	0802	Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (<i>Corylus</i> spp.), walnuts, Chestnuts (<i>Castanea</i> spp.), Pistachios, Macadamia nuts, Kola nuts (<i>Cola</i> spp.) [other than dried areca nuts]

From the above, it can be seen that while Dried areca nuts, whether or not shelled or peeled are subjected to GST @5% [CGST-2.5% & SGST-2.5%] as per Sl.No. 28 of Schedule I; those products classified under 0802 other than dried areca nuts are subjected to GST @ 12%[CGST-6% & SGST-6%] as per Sl.No. 15 of Schedule II.

8.2 As per the Notification No. 01/2017-C.T.(Rate), the rates are notified on the recommendation of Council. It is seen that the rate leviable on various goods were discussed in the 14th GST Council Meeting held on 18 and 19 May 2017. Para15.9 of the Minutes gives the discussion on GST rate for goods. The GST Rate to be levied on Areca nut is minuted under (xxxviii) of Annexure I of Para 15.9, the same is reproduced under:

(xxxviii) **Areca nut:** The Hon'ble Minister from Karnataka stated that fresh areca nut harvested from trees was proposed to be taxed at Nil rate, the dry and processed areca nut was proposed to be taxed at the rate of 12%. He stated that the weighted average of the combined tax incidence today would not be more than 5%. He stated that farmers sold dried areca nut and its rate of tax should not be more than 5%. The Hon'ble Minister from Meghalaya stated that areca nut was a perishable agricultural product and green areca nut should be taxed at zero per cent and dried areca nut should be taxed at 5%. The


Secretary stated that in Chapter 8 of the HSN, a carve out could be considered for dried, unprocessed areca nut to be taxed at 5% which should not be called betel nut. Accordingly, it was proposed that dried areca nuts, whether or not shelled or peeled, might be kept at 5%. The Council agreed to this proposal.

From the above, it is evident that only those dried areca nut, not called as betel nut is subjected to 5% GST under Sl. No. 28 of Schedule I. The product in hand being betel nut, the applicable rate is 6% CGST as Per Sl. No. 15 of Schedule II of the said Notifications.

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

RULING

“Nizam Pakku” traded by the applicant merits classification under Chapter 0802 80 90 of the Customs Tariff and attracts 6 % CGST as per Sl.No.15 of Schedule II under Notification 1/2017-Central Tax (Rate) Dt. 28.06.2017 and 6 % SGST under Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No: 62 dated 29.06.2017 as amended.


21-10-2020
Shri Kurinji Selvaan V.S
Member, SGST




21/10/20
Shri B.Senthilvelavan
Member, CGST

To

M/S. S.A. Safiullah & Company
PB No. 14, Rajagopalapuram Main Road,
Pudukottai 622 003.

/By RPAD/

Copy submitted to :-

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

Copy to:

3. The Commissioner of GST & Central Excise, Trichy Commissionerate.
No.1, Williams Road, Cantonment, Trichy 620 001.
4. The Assistant Commissioner (ST),
Pudukottai-1 Assessment Circle, 5893/3, Kattupudukkulam,
Pudukottai- 622 001.
5. Master File / spare - 1.