

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.102 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 /ARA/2021 – RECTIFICATION of MISTAKE DATED:31.05 .2022

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, Ayeepalayam, Athanur, Rasipuram, Nammakkal-636301
Details of Application	1.GST ARA- 01 Application Sl.No.04/2021 ARA dated: 25.02.2021 2. Order No.39/ARA/2020 Dated 21.10.2021
Concerned Officer	State: Rasipuram Assessment Circle Centre: Salem Commissionerate

Rasi Nutri Foods, 1/67A, 1/67B, Salem Trichy Main Road, Ayeepalayam, Athanur, Rasipuram, and Namakkal-636301 (hereinafter called the 'Applicant') filed an application, under section 102 of the CGST Act for rectification of certain errors noticed by them in the order ARA No.39/2021, dated 21/10/2021 as per their prayers below:

- (i) The Order of this Hon'ble Advance Ruling Authority dated 21st October, 2021 to the extent it holds that the benefit of Notification no. 39/2017-CT (R) dated 18th October 2017 read with G.O. Ms. No. 140 dated 17th October 2017 is unavailable for the period pre October 2021 may be set aside and the Hon'ble Advance Ruling Authority may be pleased to clarify and state that the Petitioner is entitled for the benefit of Notification No. 39/2017-CT® dated 18th October 2017 read with G.O. Ms. No. 140 dated 17th October 2017 on the clearances of FRK made to the Tamilnadu Civil

Supplies Corporation pursuant to the pilot scheme on fortification of rice and its distribution under the public distribution project launched by the Central Government in respect of clearances made prior to 1st October 2021

- (ii) The Hon'ble Advance Ruling Authority may be pleased to rectify its order dated 21st October 2021 rendered in Form GST ARA 001-Application Sl.No. 04/2021/ARA dated 25th February 2021, requesting to consider afresh the decisions of the larger bench of the Tribunal in the case of Mahavir Food Products Vs. CCE, which deals with the classification under Chapter 11 or 19 and the Hon'ble Rajasthan High court in the case of Union of India Vs. Hindustan Zinc Ltd which deals with "intention to use", which were placed earlier by them before this Authority

2. The applicant in their application seeking rectification has stated that the authority has not considered the Judgment of the Larger Bench of the Tribunal in the case of Mahavir Food Products Vs. CCE[(2007) 211 ELT 29] which deals with classification under Chapter 11 or 19 and the judgment of the Hon'ble Rajasthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd[2005 (192)ELT 768] which deals with 'intention to use'. They have stated that it is a settled legal principle that the non-consideration of the judgment of the Larger Bench(Tribunal) of High Court or Supreme Court would constitute an error apparent on the face of the record.

3. Section 102 of the CGST/TNGST Act provides for Rectification of Mistakes advance ruling, which states as follows:

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard'

The impugned Order is communicated on 21.10.2021 and the applicant has sought rectification of error apparent on record on 28.03.2022. Thus, the rectification is

sought within the statutory time limit specified under Section 102 of the Act. As per the proviso to Section 102, personal hearing is to be extended only in cases where the rectification has the effect of enhancing the tax liability. However, abiding the General Principles of Natural Justice, the applicant was extended the opportunity to be heard and was heard on 17.05.2022.

4.1 Shri. N. Prasad, Authorised Representative (AR) appeared for the hearing virtually. He stated that they have filed an additional submission through e-mail and requested to take the same on record. He reiterated the submissions. The Member asked to point out the 'Rectification of Mistake which is apparent on record' sought for rectification. The AR referred to the decision of the Tribunal dated 9th January 2020 and stated that if any subsisting decision is there which has not been placed originally, then as ROM, the same may be placed and the authority can take note of such decisions and rectify the Original Ruling. The AR further stated that he will file a written submission, which he requested to be taken on record.

4.2 The AR on 23.05.2022, vide e-mail furnished the written submission, wherein he has stated that the impugned Order holds that the applicant is entitled for the benefit of the concessional rate on the sales of FRK only from 01.10.2021 on the amendment brought-out in the Notification No. 39/2017-CT (R) dated 30.09.2021 & that prior to the said period, the applicant is not entitled for the benefit of the concessional rate. It is stated that

- Notification No. 39/2017-CT (R) dated 18.10.2017 grants concessional rate on, food preparation put up in unit containers and "intended" for free distribution to Economically Weaker Section of the Society under the Programme duly approved by the Central Government or any State Government
- The order dated 21.10.2021 has found that FRK per-se is not a food preparation, which is contrary to the decision of Hon'ble Appellate Authority for Advance Ruling in the case of JVS Foods Private Limited rendered in Order No. RAJ/AAAR/6/2019-20 dated 01.04.2020, wherein it is held that FRK will fall under Chapter 1904 & the question dealt with in the said case is not the availability of benefit under Notification No. 39/2017 dated 18.10.2017. FRK by itself is a Food Preparation in terms of Chapter 19
- The Order does not deal with the contentions that the expression, "intended" for free distribution connotes that, the very subject matter of what is supplied

by them need not be the subject matter of free distribution. They had relied on the following decisions, which are subsisting decisions of the Court which existed on the day of the Order:

- (i) Hindustan Zinc Limited Vs. CCE (2005)-192 ELT 768 (Tri-LB)
 - (ii) Union of India Vs. Hindustan Zinc Limited – (2009)236 ELT 633(Raj)
 - (iii) State of Haryana Vs. Dalmia Dadri Cement Limited (2004) 178 ELT 13
- Notification No. 11/2021-CT® dated 30.09.2021 amends Notification No. 39/2017-CT ® dated 18.10.2017 by way of “Substitution”. When an amendment is carried out to a provision granting abatement by way of substitution to extend larger relief, that substitution will relate back[refer judgment in 2019(1) TMI 498-TRI]
- When subsisting judgments have not been taken note of while passing an order, that order can be rectified and relief extended to the Assessee. The legal position emerges from the judgments in
- (i) 1975-100 ITR page 651 (GUJ)
 - (ii) 1978-42 STC page 233 (P&H)

5. We have considered the submissions made by the Applicant in the application for Rectification of the Advance ruling, their Oral Submission and the written submissions made by them. The applicant has stated that rectification can be sought in the ruling extended, when subsisting judgments have not been taken note of, while passing Orders relying on the legal position emerging from the judgments of High Court in Parshuram Pottery Works Co. Ltd Vs. D.R.Trivedi , Wealth –Tax Officer; Jagajit Distilling and Allied Industries Limited Vs. the Assessing Authority, Kapurthala and Others. In the case of Jagajit Distilling and allied Industries, the appeals to the Tribunal against its assessment to sales tax for the assessment years 1959-60, 1960-61, 1962-63,1964-65 and 1965-66 had been dismissed by the Tribunal prior to the decision of the High Court and the Tribunal has stated that they do not have power of review on the applicant’s request to ‘Rectify the Order’ of the Tribunal in the lines of decision of High Court. Hon’ble High court considering the facts of the case, has stated that

‘The net result of these findings is that even though the assessee in law admittedly is not liable to pay the sales tax, but in fact he is being charged with the same The only question is of rectification of the mistake of law which is apparent on the record’.

In the case of Parshuram Pottery Works, the High Court of Gujarat has stated that

“The fact that those decisions were not before the Wealth-tax Officer when he made the orders of assessment had no material bearing on the question whether the said orders disclose any mistake apparent from the record. Therefore, the assessment orders, in so far as they disallowed the claim of the petitioner for deduction in respect of the amount of provision from taxation, proceeded on a wrong view of the law and the said orders were bad at their very inception, on the date on which they were made. The orders of assessment thus disclosed a mistake apparent from the record and were liable to be rectified...”

On perusal of these decisions, it is seen that in the cases cited, the Hon'ble High Court has held that the decision extended by the Tribunal is found to be incorrect based on the decision of the higher appellate forum, even though such decision has been extended after the decision of the Tribunal, the Tribunal has jurisdiction to Rectify its Mistake, on being pointed out. In this context, it is pertinent to mention that the Hon'ble High Court of Madras, in the case of PENTA MEDIA GRAPHICS LTD. Versus CESTAT, CHENNAI [2021 (377) E.L.T. 251 (Mad.)], on 'Rectification of Mistake', has stated as follows:

11. The concept of mistake, which is capable of being rectified under Section 129B(2) of the Act has been explained to mean that it is not confined to clerical or arithmetical mistakes alone. At the same time, the mistake to be rectified must be one apparent from the record and it should not be a mistake, which can be discovered by long drawn reasoning. While analyzing the legal principle for exercise of power under Section 129B of the Act in the said decision, the Court also noted the power given under the Civil Procedure Code where the words are “an error apparent on the face of the records”. It was pointed out that the power of Tribunals under Section 129B(2) of the Act to rectify “any mistake apparent from the record” is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of “an error apparent on the face of the record”. Further, it was pointed out that mistake is an ordinary word, but in taxation laws, it has a specific and special significance, that it is not an arithmetical or clerical error alone that comes within its purview and that it comprehends errors which, after a judicious probe into the record from which it is supposed to emanate, are discerned. It was also held that in order to attract the power to rectify under Section 129B(2) of the Act, it is not sufficient if there is merely a mistake in the order sought to be rectified; and the mistake to be rectified must be one apparent from the record.

Thus, it is deduced that the mistake to be rectified must be one apparent from the face of the record. In the case at hand, the applicant has sought rectification with the contention that the decisions relied upon by them were not considered which had resulted in the decision that the concessional rate is not applicable to the


applicant for the period before the notification was amended. The contentions raised are analysed to discern whether there is an error to be rectified.


6.1 It is their contention that the Order dated 21.10.2021 has found that FRK per-se is not a food preparation, which is contrary to the decision of Hon'ble Appellate Authority for Advance Ruling in the case of JVS Foods Private Limited rendered in Order No. RAJ/AAAR/6/2019-20 dated 01.04.2020 and that the decision of the Larger Bench in the case of Mahavir Food Products relied upon by them is not considered. In the case of JVS Foods relied upon, the question raised is seeking classification of 'Fortified Rice Kernels' under Chapter 1006 as 'Rice' and in the case of Mahavir Food Products, the Larger Bench has decided the classification of "Makai poha". The above decisions has been referred to by the applicant to state that as per these decisions, 'when there is no process beyond that which is mentioned in Chapter 11, the item cannot be classified under Chapter 19', whereas their product involves steps that go beyond the process mentioned in Chapter 11 and therefore merits classification under Chapter 19. In the case at hand as seen from Para 9 pf the Order, the ruling holds that the product has been established to fall under Chapter 19 after considering the submissions of the applicant. Therefore, there is no error apparent on record for rectification.

6.2 The second contention is that the Order does not deal with the contentions that the expression, "intended" for free distribution connotes that, the very subject matter of what is supplied by them need not be the subject matter of free distribution & had relied on the decision of Larger Bench (Tribunal), High Court. The Order has dealt with the essentials of the Notification & has concluded the eligibility of the applicant for the benefit of concessional rate as per the Notification. The product per-se is not supplied to the economically weaker section is an undisputed fact. The applicant here claims that the 'intended' should have been considered based on the ratio of the decisions relied upon by them. In the case of Hindustan Zinc relied by the applicant, the product sulphuric acid is exempted when manufactured & cleared to manufacturers of fertilizers on conversion into phosphoric Acid. The exemption is for the intermediate specific product, which is not the case in hand until the amendment in the notification claimed and this is fairly stated in the Order. Here, the applicant manufactures 'FRK(Pre-mix)' & the benefit to such Premix stands extended only effective from 01.10.2021 as has been ruled. Thus, there is no mistake for rectification in this count also.

6.3 The applicant has stated that when an amendment is carried out to a provision granting abatement by way of substitution to extend larger relief, that substitution will relate back for which they have relied on the Decision of CESTAT in the case of BG Shirke Construction Technology Pvt. Ltd Vs. CCE. In the case at hand, the notification No. 39/2017-C.T.(Rate) is amended vide Notification No. 11/2021-C.T.(Rate) dated 30th September 2021 and the amending notification is not substituting the entire Notification No. 39/2017-C.T.(Rate) but only amends certain words in the existing entry and has inserted an entry in respect of "FRK(Pre-Mix)" specifically and has stated that the amendment will be effective from 1st day of October 2021. Therefore the relied upon decision is not applicable to the case at hand and hence there is no mistake for rectification in this count also.

7. In view of the foregoing, we hold that the Order dated 21.10.2021 requires no rectification and the Rectification application is disposed of accordingly


Smt. K.LATHA
(Member SGST)


Shri T.G.VENKATESH
(Member CGST)



To
RASI NUTRI FOODS
1/67A, 1/67B, Salem Trichy Main Road,
Ayeepalayam, Athanur,
Rasipuram, Namakkal-636301 //BY RPAD//

Copy Submitted to:

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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),
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5. Master File/ Spare-2

