

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 88/ 2019

Date : 26-09-2019

Present:

1. Sri. Harish Dharnia,
Addl. Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Karnataka Co-operative Milk Producers Federation Ltd., (Formerly known as KMF) KMF Complex, Dr.M.H.Mari Gowda Road, Bengaluru 560029
2.	GSTIN or User ID	29AAAAK1110G1Z7
3.	Date of filing of Form GST ARA-01	20.03.2019
4.	Represented by	Sri Lokesh Reddy, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Commissioner of Commercial Tax, Bangalore South Commissionerate.
6.	Jurisdictional Authority - State	LGSTO-040, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act vide CIN CNRB19032900137148 dated 16.03.2019 & Rs.5,000/- under KGST Act vide CIN CNRB 19032900191646 dated 19.03.2019

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

1. M/s Karnatka Co-operative Milk Producers Federation Ltd., (formerly known as Karnataka Milk Federation (KMF)) (called as the 'Applicant' hereinafter), having GSTIN number 29AAAAK1110G1Z7, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in FORM GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is an Association of persons and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:



Whether the Flavored Milk is liable to be classified under HSN 0402 99 90 or under 2202 99 30 or under any other Chapter?

3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant states that they are engaged in the business of processing of milk and milk products. They are manufacturing and marketing Flavoured Milk and classified the same under Chapter 4 with HSN 0402 99 90 taxable at 5%.
 - b. The applicant states that as per the Food Safety and Standards Authority of India, flavoured milk means "the product prepared from milk or other products derived from milk or both and edible flavourings with or without addition of sugar, nutritive sweeteners, other non-dairy ingredients, stabilizers and food colours. Flavoured milk shall be subject to heat treatment.
 - c. Flavoured milk, if dried or concentrated, then dried or concentrated product on addition of prescribed amount of water shall give a product conforming to the requirements of Flavoured milk.
 - d. The applicant states that as per Harmonised System of Nomenclature, Chapter 4 covers Dairy products
 - i. Milk (i.e. Full Cream Milk, and partially or completely skimmed milk)
 - ii. Cream
 - iii. Butter milk, Curdled milk and cream, yogurt, kephir and other fermented acidified milk and cream
 - iv. Whey
 - v. Products consisting of natural milk constituents, not elsewhere specified or included
 - vi. Cheese and curd.
 - e. The applicant also states that Chapter 4 does not cover
 - i. Food preparations based on dairy products
 - ii. Products obtained from milk by replacting one of more of the natural constituents (eg. Butyric fat) by another substance (eg. oleic fats)
 - iii. Ice creams and other edible ice
 - iv. Medicaments
 - v. Casein, milk albumin and hardened casein
 - f. The applicant states that the composition of the Flavoured Milk, as per the test reports issued by Independent Laboratory Institute, is as under:



Component	% of component in flavoured milk
Milk	91.44%
Sugar	8.5%
Flavour	0.05%
Colour	0.01%
Total	100%

- g. The applicant states that as per the Customs Tariff Act, 1975, Chapter 4 is specifically covers Dairy products, bird's eggs, natural honey, edible products of animal origin, not elsewhere specified or included. Further sub-heading 0402 covers "Milk and Cream, concentrated or containing added sugar or other sweetening matter". As per Chapter Note 4(b) of Chapter 4 of First Schedule to the Customs Tariff Act, 1975, "this chapter does not cover products obtained from milk by replacing one or more of its natural constituents (for example butyric fats) by another substance (for example oleic fats).
- h. The applicant states that flavoured milk is made from milk added with sugar and permitted flavours, which do not alter its essential character of milk. If the natural constituents of the milk are replaced with any other substance, flavoured milk could not fall under Chapter 4.
5. Further the applicant states that Chapter 22 of Customs Tariff Act covers Beverages, Spirits and vinegar. As per note 3 of Chapter 22 of First Schedule to the Customs Tariff Act, 1975, "for the purpose of heading 2202, the term non-alcoholic beverages mean beverages of an alcoholic strength by volume not exceeding 0.5% volume. Alcoholic beverages are classified in heading 2203 to 2206 or heading 2208 as appropriate".
- 5.1 Further, the applicant states that Chapter 22 does not cover liquid dairy products of Chapter 4 as per Chapter Notes of Chapter 22 & also they understand that Chapter 2202 covers beverages made up of a concentrate manufactured or prepared with an alcoholic content less than 0.5% of volume.
- 5.2 The applicant contends that in the instant case, the flavoured milk is a natural dairy milk, and does not have any alcoholic content as certified in the laboratory report. Further ICAR-National Dairy Research Institute Southern Regional Station has confirmed that flavoured milk is a dairy product.
- 5.3 Further, the applicant states that as Chapter 22 specifically excludes liquid dairy products falling under Chapter 4 as per Chapter Note 22, the same cannot be classified under Chapter 22.

The applicant has cited the rules prescribed under the Customs Tariff Act, 1975 applicable for classification of the goods and stated that as per rule 1, one



has to see the chapter notes for determining the classification. Chapter 4 specifically covers Dairy produce, bird's eggs, natural honey, edible products of animal origin, not elsewhere specified or included. As per note 1 of Chapter 4, milk means full cream milk or partially or completely skimmed milk. The applicant again refers to the note 4 of the Chapter Notes.

6.1 The applicant states that flavoured milk is made up for milk added with sugar and permitted flavours. The reason for adding sugar and flavour is to improve the shelf life and increase the taste. The essential constituents of the milk have not changed even after adding sugar and permitted flavours and still retains its essential character of milk. The applicant hence feels that flavoured milk is required to be classified under Chapter 4 only.

6.2 The applicant states that National Dairy Research Institute, Bangalore has also confirmed that flavoured milk falls under Dairy produce as per the FSSAI, 2006. As per the FSSAI regulations 2011, section 2.1.3 has defined flavoured milk as a "product prepared from milk or other products derived from milk, or both, and edible flavourings with or without addition of sugar, nutritive sweeteners, other non-dairy ingredients, including stabilizers and food colours. Flavoured milk shall be subjected to heat treatment as provided in sub-regulation 2.1.1 (general standards for milk and milk products). Where flavoured milk is dried or concentrated, the dried or concentrated product on addition of prescribed amount of water shall give a product conforming to the requirements of flavoured milk.

6.3 The applicant takes the reference of the judgement of the Hon'ble Supreme Court in the case of Board of Revenue, Ernakulam v. PIO Food Packers 46 STC 63 (SC) in support of their contention. They also state that the Supreme Court had further held that commonly manufacture is the end result of one or more processes through which the original commodity experiences a change and the processed commodity should be recognised as a new and distinct article. The applicant states that in view of the aforesaid judgement, they believe that flavoured milk would continue to be milk despite the fact that sugar, flavour and colour have been added for increasing the palatability.

7. The applicant further states that they believe that the item will not fall under tariff item 0402 99 20 as condensed milk means cow's milk from which water has been removed from milk. As the applicant is not removing water content from flavoured milk, the same could not be classified as condensed milk.

8. The applicant states that Chapter 22 covers Beverages, Spirits and Vinegar and refers to the note 3 of Chapter 22. They state that Chapter 22 covers beverages made up of a concentrate manufactured or prepared with an alcoholic content less than 0.5% of volume. Further, Chapter 22 covers "waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009. Further as per the HSN, the products of chapter 22 constitute a

group distinct from the food stuffs covered by the preceding chapters of the nomenclature.

8.1 The applicant further states that Chapter 22 does not cover:

- a. Liquid diary products of Chapter 4
- b. Products of this Chapter prepared for culinary purpose and thereby rendered unsuitable for consumption as beverages
- c. Medicaments of heading 30.03 or 30.04
- d. Perfumery or toilet preparations.

8.2 The applicant states that they believe that flavoured milk could not fall under chapter 22 as liquid diary products of chapter 4 are specifically excluded from the purview of chapter 22 as per chapter note.

8.3 Tariff Item 2202 99 30 covers "beverages containing milk". The applicant states that the term "beverage" is not defined in the GST Act. As per the dictionary meaning, beverage means "a drink other than water". The term beverage is a wider term which covers everything right from fruit juices, alcohol, milk, soft drinks, etc.

8.4 As per rule 3(a) of the Customs Interpretation Rules, "the heading which provides the most specific description shall be preferred to headings providing a more general description". In the instant case, heading for Chapter 22 is "Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009". As the heading does not cover any milk or milk-based product, the applicant states that they feel that there is no requirement to go into the sub-heading and tariff item level classification.

8.5 Further, the applicant states that they understand that for classifying the product, one has to identify the heading in the chapter where the product could fall and then sub-heading and finally tariff item has to be identified. As there is no specific heading in Chapter 22 which covers milk and milk products, classifying the same in Chapter 22 may not be correct.

8.6 The applicant states that as Chapter 4 provides more specific description than Chapter 22, classifying flavoured milk in Chapter 4 could be more appropriate.

9. The applicant states that Hon'ble Allhabad High Court in the case of Gujarat Co-op Milk Marketing Federation Ltd. v. State of U.P 2017(5) GSTL 351 (All) has held that Flavoured Milk is a form of milk as it is neither a derivative of the milk or a milk product. The Court further held that "in common understanding "flavoured milk" is a form of milk and is not a derivative of milk or a milk product. It is like hot cold milk which remains milk even if sugar is added to it, it does not lose its



basic characters of milk by heating or cooling or addition of sugar or any permitted colour, essence or flavour. The addition of permitted colours or flavour does not transform the milk into any other thing.

10. The applicant states that Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Amrit Foods 2015(324) ELT 418 (SC) in a dispute concerning to classification of two products namely "milk shake mix" and "soft serve mix" held as under

"Main purpose of the stabilizer was to maintain the product consistency during storage and transportation as well as to improve the shelf life and merely because it improved the body and texture of the product and added some smoothness thereto, that would not change the basic character of the product".

11. Further, Hon'ble High Court of Kerala in the case of Gujarat Co-operative Milk Marketing Federation Ltd. v. State of Kerala (2008) 15 VST 384 (Ker) has held that mere addition of Vitamins A and D to the milk pasteurized, would not make the milk any less pasteurized milk and by such addition milk retains its natural characteristics.

PERSONAL HEARING: / PROCEEDINGS HELD ON 29.04.2019.

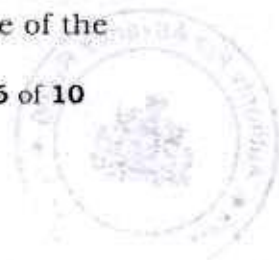
12. Sri. Lokesh Reddy, Chartered Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings held on 29.04.2019 & reiterated the facts narrated in their application and also submitted copies of judgements that they intend to rely on. Further the applicant were requested to submit the process of manufacture of flavoured milk and normal milk. The applicant vide their letter dated 03.05.2019, submitted the flow charts related to the aforesaid manufacturing activity.

13. FINDINGS & DISCUSSION:

13.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Lokesh Reddy, C.A. and authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

13.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

13.3 The Applicant seeks advance ruling in respect of the classification of the product "Flavoured Milk". The contentions of the applicant and the nature of the



product have been examined. The product "flavoured milk" is supplied as a ready to consume drink in tetrapack containers or bottles". The FSSAI describes "Flavoured Milk" as under:

"Flavoured Milk" means the product prepared from milk and other products derived from milk, or both, and edible flavourings with or without addition of sugar, nutritive sweeteners, other non-diary ingredients including, stabilisers and food colours. Flavoured milk shall be subjected to heat treatment as provided in sub-regulation 2.1.1".

It could be inferred from the above description that the instant product "Flavoured Milk" is prepared or manufactured from

- (a) Milk and other products derived from milk; and
- (b) Edible flavourings

and it may also contain, but not compulsorily, sugar, nutritive sweeteners, other non-diary ingredients, stabilisers and food colours.

13.4 The applicant submitted the composition of the instant product and the percentage of the said constituents in it, which are as under:

Component	% of component in flavoured milk
Milk	91.44%
Sugar	8.5%
Flavour	0.05%
Colour	0.01%
Total	100%

The applicant submits that due to the aforesaid composition of their product "flavoured milk", it is fit to be consumed as it is.

13.5 In view of the above, the applicant contends that their product "Flavoured Milk" merits classification under 0402 99 90. We proceed to examine the instant issue. In this regard it is pertinent to mention here that in respect of Tariff Headings and determination of Classification, Explanations (iii) and (iv) appended to the Notification No. 01/2017- Central Tax (Rate), dated 28.06.2017 are relevant. The said explanations are reproduced below for ease of reference.

- (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.



Accordingly we make a reference to the Section Notes and Chapter Notes of the relevant Chapters of the Customs Tariff and also the corresponding Explanatory Notes.

13.6 Milk and Milk products are classified in Chapter 4 as under:

Tariff Item	Description of goods
0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter
0403	Buttermilk, Curdled milk and cream, yogurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa
0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents whether or not containing added sugar or other sweetening matter, not elsewhere specified or included
0405	Butter and other fats and oils derived from milk; dairy spreads
0406	Cheese and Curd

It could be seen from the above tariff headings that the headings 0401 is not relevant as it is related to *milk & cream that is neither concentrated nor containing sugar or other sweetening matter* and does not cover the flavoured milk. Tariff heading 0403 is also not relevant as the said heading is related to fermented or acidified milk, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa and the instant product is neither fermented nor acidified. Further, the tariff headings 0405 & 0406 are also not relevant as they are related to butter/fats derived from milk and cheese & curd respectively and does not cover the instant product.

13.7 Further Tariff heading 0404 covers two items, as under:

- (a) Whey, whether or not concentrated or containing added sugar or other sweetening matter; and
- (b) Products consisting of natural milk constituents whether or not containing added sugar or other sweetening matter, not elsewhere specified or included

The product in question i.e. "flavoured milk" cannot be covered under "whey" and hence it is not covered under HSN 0404 10. The residual entry of heading 0404 is tariff heading 0404 9000 which is related to the products having constituents of natural milk, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included. In the instant

case, the "Flavoured Milk" is made out of milk (pasteurized / standardized) added with sugar, colour and flavor. Therefore predominant part of the product is milk and naturally contain the constituents of natural milk. The said heading does not cover flavoured products. Therefore the only issue to be examined is whether the instant product is specified or included elsewhere or not.

13.8 In this regard, we draw attention to **The Food Safety and Standards Act, 2006**, as the applicant has relied upon the description of FSSAI on "Flavoured Milk". Though the said Act deals with food safety and standards, it contains, under Schedule-II, The Milk and Milk Products Order, 1992, in accordance to which, under Section 2(f) "*milk means milk of cow, buffalo, sheep, goat, or a mixture thereof, either raw or processed in any manner and includes pasteurised, sterilized, recombined, flavoured, acidified, skimmed, toned, double toned, standardised or full cream milk.*"

It could be seen from above that "Milk" includes *pasteurised, sterilized and flavoured milk*. Therefore, the product of the applicant is covered under "Milk".

13.9 Now we proceed to examine the alternate / competing entry under Chapter 22 under tariff heading 2202, which reads as under

Tariff Item	Description of goods
2202	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of Heading 2009
2202 10	- <i>Waters, including mineral waters and aerated waters, containing added sugar or other sweetened matter or flavoured</i>
	- Other
2202 91 00	Non alcoholic beer
2202 99	Other
2202 99 10	--- Soya milk drinks, whether or not sweetened or flavoured
2202 99 20	--- Fruit pulp or fruit juice based drinks
2202 99 30	--- Beverages containing milk
2202 90 90	--- Tender coconut water
2202 99 90	--- Other

The only relevant entry under tariff heading 2202 is 2202 99 30 that covers "beverages containing milk". The word "beverage", though not defined under CGST Act 2017, is considered, in common parlance, as a drink that can be consumed directly and the instant product "flavoured milk" can also be consumed as it is and hence can be considered as a beverage. Also, since it does not contain any alcohol, it is covered under non-alcoholic beverage, as per the note 3 to the Chapter 22 of the Customs Tariff Act, which reads as under:

"3. For the purpose of heading 2202, the term "non-alcoholic beverages" means beverages of an alcoholic strength by volume not exceeding 0.5%



The instant product "flavoured milk" is undoubtedly a beverage and the alcoholic content is absent which means that the alcoholic content is less than 0.5% by volume.

13.10 The "flavoured milk" is not a water based drink whereas the tariff heading 2202 deals with water based beverages and other non alcoholic beverages. Therefore it could be inferred that the pre-dominant part of the beverages covered under the heading 2202 is water. In the instant case the pre-dominant constituent is milk and hence the "flavored milk" does not merit classification under beverage containing milk, under tariff heading 2202 9930, but merits classification as milk, under tariff heading 0402.


13.11 Tariff heading 0402 covers "milk and cream, concentrated or containing added sugar or other sweetening matter". The instant product 'flavoured milk' is covered under 'milk' as discussed already. Therefore the instant product merits classification under tariff heading 0402 99 90.


13.12 We also take note of the fact that the Hon'ble High Court at Allahabad in the matter of Gujarat Coop. Milk Marketing Federation Ltd. Vs State of UP vide 2017(5)GSTL 351(All) dated 31.05.2017, has decided that flavoured Milk is a form of Milk. The Court has also specifically observed that flavoured milk is a form of milk as it is neither a derivative of milk nor a milk product.

14. In view of the foregoing, we pass the following

RULING

1. The commodity "Flavoured Milk" is classified under the Tariff heading 0402 99 90.


(Harish Dharnia)
Member


(Dr. Ravi Prasad.M.P.)
Member

Place: Bengaluru,
Date: 26.09.2019

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-40, Bengaluru.
5. Office Folder