

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

e-mail :aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229

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

Members Present

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore
2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number, If any/User-id	23AAOCA4722A3Z5
Name and address of the applicant	M/s Anik Milk Products Private Limited, 2/1, South Tukoganj, Behind High Court, Indore Madhya Pradesh,452001
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of flavoured milk under GST;
Present on behalf of applicant	Shree Sandeep Kumar Pandey, Accounts Manager and Authorised representative
Case Number	16/2019
Order dated	18/10/2019
Order Number	19/2019

PROCEEDINGS

**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act,
2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods and Services Act,2017 and MP Goods and services Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s Anik Milk Products Private Limited (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.

2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

3.1 The Applicant is engaged in processing of milk and milk products including flavoured milk. As per applicant, flavoured milk is a sweetened dairy drink made with milk, sugar, permissible colours and artificial or natural flavours.

3.2 The applicant has sought advance ruling on appropriate classification of flavoured milk citing various judgments of Hon'ble Supreme Court and Hon'ble High Court of Karnataka.

3.3 Before venturing into merits of the case, it is pertinent to mention here that the Authority is in receipt of a letter F.No.DGGI/BhZU/12003/07/2019/45504 dtd.31.07.2009 issued by the Joint Director, Directorate General of GST Intelligence, Bhopal Zonal Unit, Bhopal with reference to the instant application. It has been informed in the above mentioned letter that DGGI, Bhopal has initiated an enquiry against the applicant under summons proceedings in the matter of classification of Flavoured Milk. It has been mentioned that the summons were issued to the applicant on 15.07.2019 for appearance on 18.07.2019, and during currency of enquiry, the applicant have preferred this application for advance ruling. It has, accordingly, been pointed out that the application is hit by provisions of Section 98(2) of the CGST Act 2017 as the matter is already pending before DGGI.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

Whether flavoured milk is taxable at the rate of 5% under Schedule IV of the GST Act.

5. RECORD OF PERSONAL HEARING:

5.1. Shree Sandeep Kumar Pandey, Accounts Manager and Authorised Representative of the applicant appeared for personal hearing on behalf of the applicant and reiterated the submissions made in the application.

5.2. At the time of personal hearing the authorised representative of the party also submitted challan dtd.14.10.2019 for payment of Rs.5000/- towards CGST as at the time of applying online they had only paid Rs.5000/- towards SGST.

5.3. It was also revealed at the time of personal hearing that DGGI, Bhopal has issued a summons to the applicant under Section 70 of the CGST Act 2017 in relation to the issue raised before the Authority. It was also informed that after attending the enquiry, the instant application has been preferred before the AAR by the applicant.



5.4. On being pointed out by the Authority that as per provisions contained in Section 98(2) of the CGST Act 2017, that if the issue is pending before any other authority, the application shall not be admitted, the representative of the party had nothing to comment.

6. DISCUSSIONS AND FINDINGS:

6.1 We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

6.2 We find that the question before us essentially pertains to classification of the goods under the Act. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a). However, we also take a note of the letter of the Joint Director DGGI, where in it has been informed that the enquiry on this issue had been initiated by DGGI prior to filing of instant application.

6.3. At the time of personal hearing, the authorised representative of the applicant also confirmed that they were in receipt of summons issued by DGGI in this matter and the application before AAR had been preferred subsequent to initiation of proceedings at DGGI Bhopal. Although it was incumbent upon the applicant to disclose this fact in the application under Serial Number 17, but we find that nothing has been mentioned against Sr.No.17. In fact, the applicant have intentionally avoided disclosing this fact in the application just to avoid the provisions of Section 98(2).

6.4. First proviso to Section 98(2) stipulates, *'Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.'*

6.5. We find that the summons was issued by DGGI in the case on 15.07.2019 and applicant for appearance on 18.07.2019. Meanwhile, the applicant filed the application on 22.07.2019 online (though the date on the body of application is mentioned as 17.07.2019) with an obvious intention to circumvent the proceedings before DGGI. We also observe that the applicant failed to deposit the requisite fee for filing application and only paid Rs.5000/- towards SGST. The remaining amount of Rs.5000/- under CGST was paid subsequently vide challan dtd.14.10.2019 and was produced at the time of personal hearing.

6.6. In view of the above, we have no hesitation in concluding that the instant application is not maintainable in as much as it is hit by the provisions contained in first proviso to Section 98(2) of the Act. Accordingly, without going into the merits of the case, the application deserves to be rejected as not admissible in terms of first Proviso to Section 98(2) of the Act.

RULING/ORDER



(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

7. The application filed by the applicant is rejected as not admissible in terms of first Proviso to Section 98(2) of the GST Act 2017, since the issue was already pending before another authority when the application was made before AAR.

This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

RAJ
RAJIV AGRAWAL
(MEMBER)

SK
MANOJ KUMAR CHOUBEY
(MEMBER)

Copy to:- NO.16/2019/AAR/IR-23/36

INDORE dt. 15/10/2019

1. Applicant
2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner (SGST) Indore
4. The Commissioner, CGST & Central Excise, Ujjain
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

सत्यप्रतिलिपि

Manoj

