

THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING

**OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW,
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007**

BEFORE THE BENCH OF

- (1) Shri V.K. SAXENA, MEMBER
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/04/2019/

DATE: 14.01.2020

Name and address of the appellant	M/s Anik Milk Products Private Limited, Office No. 801-B, 08 th Floor, "NRK BUISNESS PARK", Block No. B-1, PU-4, Commercial Scheme - 54, Vijay Nagar Square, A.B. Road, Indore-452010 (M.P.)
GSTIN or User ID	23AAOCA4722A3Z5
Advance ruling order against which appeal is filed	19/2019/A.A.R/R-28/36 dated 18.10.2019

PROCEEDINGS

**(Under section 101 of the Central Goods and Services Tax Act, 2017 and the
Madhya Pradesh Goods and Services Tax Act, 2017)**

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MPGST Act are similar except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa.
2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter also referred to as "the CGST Act and MPGST Act"] by Anik Milk Products Pvt.ltd. (hereinafter also referred to as the "appellant") against the order of Advance Ruling No. 12/2018/MP/AAAR/R-28/39 dated 27.08.2018
No. 19/2019/A.A.R/R-28/36 dated 18.10.2019

BRIEF FACTS OF THE CASE-

1. The Appellant is engaged in processing of milk and milk products including flavored milk. As per Appellant, flavored milk is a sweetened dairy drink made with milk sugar permissible colors and artificial or natural flavours.
2. The appellant has sought advance ruling on appropriate classification of flavored milk citing various Judgments of Hon'ble supreme court and hon'ble high court of Karnataka.
3. Question raised before the Authority of Advance Ruling was whether flavored milk is taxable at the rate of 5 %under schedule IV of the CGST Act ?
4. Before venturing merits of the case, it is pertinent to mention here that the Authority of Advance Ruling was in receipt of a letter F.No.DGGI/BhZU/12003/07/2019/45504 Dtd.31.07.2019 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 appellant under summons proceedings in the matter of classification of flavored milk. It has been mentioned that the summons were issued to the appellant on 15.07.2019 for appearance on 18.07.2019. And during currency of inquiry the appellant 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.
5. The application filed by the applicant was rejected by the Authority of Advance Ruling.

QUESTIONS RAISED BEFORE THE APPELLATE AUTHOURITY-

Whether flavored milk is taxable at the rate of 5 %under schedule IV of the CGST Act ?

GROUND OF APPEAL-

The appellant being aggrieved with such an order without conforming to the statutory mandate and without any determination of facts and circumstances in proper perspective, beseeches indulgence in this appeal petition on the following enumerated grounds.

1. That, the appellant submits, the order of rejection of the application has been premised on the inference of the Ld. AAR of the application being non complaint of first proviso to section 98(2) of the act. The said proviso provides-

“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 provisions of the act.”

The appellant further submits, admittedly ; the Ld. AAR came to know about a purported ‘proceeding’ having been initiated by the Directorate General of GST Intelligence, against the appellant from a letter bearing No. DGGI/BhZU/12003/07/2019/45504 dtd. 31/07/2019. Although the appellant is not privy the said extraneous document, the impugned order apparently has acceded to the observation of the said intelligence authorities that the application of the appellant was hit by the provision of section 98(2) of the Act.

i. That, the appellant submits, that Ld. AAR has erred in inferring that a proceeding under the Act had been initiated by the DGGI, per their communication. For –

(a) That the said DGGI had at any stage before the issuance of the summon dtd. 15-07-2019 had initiated the appellant having had initiated an investigation on the impugned subject. There was nothing in record to suggest that the appellant was explicitly informed on the matter as has reportedly been communicate by the DGGI to the Ld. AAR.

(b) That, rather, from the summon, and the appearance before DGGI it appeared to the appellant that the DGGI themselves were unsure of the classification of ‘flavored milk’.

(c) That, therefore, the appellant company decided to go for a ruling from the appropriate authority, as provided under the Act.

(d) That, hence, the DGGI alleging having started an enquiry is far fetched and smacks revenue bias. This is evident from the fact that in the summon itself the DGGI has asked for the manufacturing process of flavored milk. Therefore, the endeavor of DGGI at the stage of the application was manifestedly a fact finding initiative and not a proceeding as has been intended in the said section 98(2). The appellant therefore submits that having no proceeding initiated by the DGGI, the said premise for rejection of the application under section 98(2) is flawed and untenable.

ii. That, apparently [1] the application for advance ruling made by the appellant U/s 97 of the Act, was judicial proceeding. Also, it is a fact that the DGGI had not been a party impleaded in the said proceeding. Therefore, the letter dtd.31/07/2019 of the DGGI is

beyond jurisdiction, consequently; is redundant and non-est in this context. Hence the order rejecting the application, relying on such letter is bad in law and thus unsustainable.

[2] Further, the Ld.AAR having taken the said letter of the DGGI into consideration, unilaterally, is vitiation of the principle of natural justice and as such is untenable.

iii. That, further, the impugned order, vide para – 3.3, has, inter alia, [1] Mentioned that per the letter of the DGGI, it had initiated an enquiry in the matter of classification of flavored milk. It, thus, is established that the Act of the DGGI was merely an enquiry not a proceeding, so as to attract the rigors of the provisions of the section 98(2) of the Act. [2] Further, the said reported averment of the DGGI is merely an unsubstantiated averment before the Ld.AAR. The appellant submits that such unsubstantiated unilateral averment is redundant in the impugned proceedin.

2. That, the appellant submits, at no point in the purported enquiry the DGGI has explicitly informed the appellant about the purpose an intent of the enquiry. It was the appellant who only presumed of such an intent of the DGGI. Therefore, it was not prudent and possible on the part of the appellant to furnish such information, merely on a presumptive basis. Hence, the motive of the appellant as subscribed vide para – 6.3 of the order is incorrect and misplaced. On the contrary, the appellant themselves had decided to move the impugned application to the proper authority under the Act to have authoritative and binding pronouncement. As such, it was the appellant who had approached the Hon'ble forum with clean hand and hence could not be faulted with.

3. That, the appellant further submits that the appellant's contention get augmented from the fact that no sooner than the rejection order of the impugned application of the appellant was passed, the said DGGI has promptly asked the appellant, vide its letter bearing No. 5638 dtd. 06/08/2019, citing the impugned order dtd. 18/10/2019 of the Ld.AAR, to pay the differential tax liability on account of mis-declaration of the impugned commodity with interest and 15% penalty. The appellant submits that the infirmity in the said direction of the DGGI is that;

(a) It has asked for the payment of the purported differential tax with interest and penalty, without even concluding its so called enquiry and issuing any notice U/s 73 of the Act; and,

(b) Despite knowing very well that the impugned application has been rejected on a technical issue and has not been adjudicated on merits of the case.

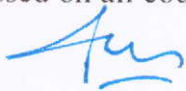
The appellant was called for personal hearing on 10.01.2020. Mr. Sandeep Kumar Pandey CA appeared on behalf of appellant. He reiterated all the issues again

DISCUSSION AND FINDINGS-

1. We have carefully considered the submission made by the appellant in the application and during time of personal hearing.
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.
3. At the time of personal hearing, the authorized representative of the appellant 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 appellant to disclose this fact in the application. In fact, the appellant have intentionally avoided disclosing this fact in the application just to avoid the provisions of section 98(2).
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 case of an applicant under any of provisions of this Act.'
5. 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.

ORDER

We uphold the order 19/2019/A.A.R/R-28/36 dated 18.10.2019 passed by Advance Ruling Authority and appeal filed by the appellant M/S Anik Milk Products Pvt.ltd stands dismissed on all counts.



V.K. Saxena

(Member)

Madhya Pradesh Appellate Authority



Raghendra Kumar Singh

(Member)

Madhya Pradesh Appellate Authority

No. 04/2020/A.A.A.R./..09.....

Indore, dated .14.01.2020

Copy to :-

1. The Appellant
2. The AAR, Madhya Pradesh
3. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal,
4. The Commissioner of State Tax, Madhya Pradesh,
5. The Commissioner, CGST & Central Excise, Indore
6. The Jurisdictional officer State/Central
7. The web manager, www.gstcouncil.gov.in
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