



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present:

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No. 20 /AP/GST/2020 dated:17.07.2020

1	Name and address of the applicant	M/s. Heritage foods limited, Main dairy Plant-Gokul, Chandragiri- Mandal, Kasipentla Village, Chittoor District -517112, Andhra Pradesh.
2	GSTIN	37AAACH2778K1Z8
3	Date of filing of Form GST ARA-01	20.01.2020
4	Date of Personal Hearing	05.02.2020
5	Represented by	Sri Mohd. Irshad Ahmed, FCA, LLB
6	Jurisdictional Authority – Center	Superintendent, Tirupathi-3 Range, Tirupathi CGST Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(a) classification of any goods or services or both

ORDER

(Under sub-section (4) of Section 98 of Central Goods And Services Tax Act, 2017 and sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Heritage Foods Limited, (hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST 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 APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

M/s. Heritage Foods Limited, (herein referred to as applicant), holding GSTIN 37AAACH2778K1Z8, is primarily engaged in the business of processing and marketing full line of dairy products including fresh milk, curd, buttermilk, lassi, ice-cream, paneer, ghee, table butter, cooking butter, milk powder, flavoured milk, UHT milk and dairy whitener.

The applicant submits that their product, i.e., Flavoured milk is prepared from fresh and pure double toned milk with different food-grade nature identical flavours such as badam, strawberry, pineapple, vanilla etc., and colours. Being a milk based drink, the product is ready to drink and marketed in glass and PP bottles.

4. Questions raised before the authority:

What is the appropriate chapter under the customs Tariff Act, 1975 (51 of 1975) under which the product "Flavoured Milk" can be classified as per the explanation (iv) of the Notification No.1/2017 – Central Tax (Rate) dated 28 June 2017?

On Verification of basic information of the applicant, it is observed that the applicant falls under Central jurisdiction, i.e. Superintendent, Tirupathi -3 Range, Tirupathi CGST Division. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the State tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017. In response, no remarks are received from the jurisdictional officer concerned, but the state tax authorities responded mentioning that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.



5. Applicant's submission of facts and interpretation of Law:

The applicant submits the following aspects with respect to the product under question, i.e., flavoured milk.

1) In this regard the National Dairy Research Institute (NDRI), the Flagship Dairy Research Institute of the Government of India had also stated about the nature of product flavoured milk as follows;

“ 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 flavouring 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.”

1) Currently, flavoured milk is classified under chapter 4 under the heading 04029990 of the Customs Tariff Act, 1975 (51 of 1975).

The applicable tariff rate in respect of the above HSN code 0402 99 90 as per the Notification 1/2017 Central Tax (Rate) dt: 28 June 2017 as amended is 5%.

The expression flavoured milk is not specifically defined in either the section or the chapter notes of the Customs Tariff Act, 1975 (51 of 1975) (CTA). The product may fall either under the chapter 4 or 22 of the CTA. Chapter 4 covers “Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included” and chapter 22 covers Beverages, spirits and vinegar. The relevant headings under chapter 4 of the CTA is as under:



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b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable.

c) when goods cannot be classified by reference to (a) or (b) they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Since, flavoured milk comprises mixture of different materials and none of them gives a more complete or precise description of the flavoured milk, applying the principle under rule 3(b), classification shall be the material which gives flavoured milk its essential character.

Chapter 22 not applicable

Chapter 22 deals with Beverages, spirits and vinegar and heading 2202 99 30 deals with beverages containing milk.

a) Since heading 2202 99 30 covers beverages containing milk, whether flavoured milk is beverage containing milk?

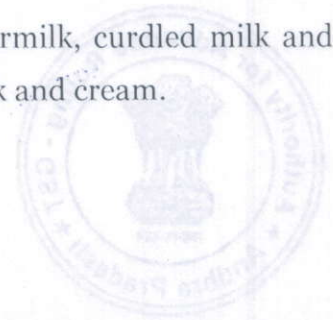
b) The term beverage is not defined in CTA. However as per note 3 of chapter 22 of the CTA.

For the purposes of heading 2202 the term "non-alcoholic beverages" means beverages of an alcoholic strength by volume not exceeding 0.5 % . vol. Alcoholic beverages are classified in headings 2203 to 2206 or heading 2208 as appropriate.

c) heading 2202 99 30 specifically covers beverages and a beverage product as per heading 2202 could be alcoholic and non-alcoholic, therefore as per note 3 of chapter 22 of the CTA, the term non-alcoholic, beverage includes alcoholic strength by volume not exceeding 0.5%. Flavoured milk cannot be classified under this heading as there is no alcoholic content in flavoured milk.

Chapter 4 – Heading 0402 or 0403

- Therefore, flavoured milk shall fall under chapter 4 in view of the submissions in para 12 supra.
- As referred to in para 7 ibid Heading 0403 covers buttermilk, curdled milk and cream, yogurt, kephir and other fermented or acidified milk and cream.



- Flavoured milk does not contain any of the base materials referred to in 0403 supra.
- Since none of these materials are included in flavoured milk, heading 0403 does not apply to flavoured milk.
- As per the General Rule 1 of Section 2 of the CTA the General Rules of Interpretation

The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purpose classification shall be determined according to the terms of the headings and any relative section or chapter notes and provides such headings or notes do not otherwise require, according to the following provisions:

The terms of headings and any relative section or chapter notes are relevant for classification which clearly indicates that flavoured milk is not classifiable under heading 0403 as none of the materials listed in the heading 0403 are included in flavoured milk.

Therefore, applying the principle under Rule 3(b) of section 2 of the CTA, the General Rules of interpretation 0402 is more relevant as the essential character of flavoured milk is milk.

Since none of the entries in heading 0402 covers flavoured milk specifically, the same shall be classified under the general entry 0402 99 90.

The Allahabad high court in M/s. Gujarat Coop Milk Marketing Federation Ltd Vs State of UP & Others (2017-TIOL -1247-HC-ALL-CT) has held that flavoured milk is milk. The extract of the judgement is reproduced below:

Now without going into the binding nature of the aforesaid circular, as the opinion of the expert referred therein is in dispute and there is no contrary opinion, milk sold either after boiling, cooling or mixing sugar or any flavor would not take away the basic characteristic of the milk so as to make it a new product and it will remain to be a milk.

In view of above, as flavoured milk is basically a milk that stands exempted under section 4 of the Act read with notification dated 31.01.1985 whether sold in open form or in sealed containers.



As per the internal certification a copy of which is enclosed and marked as Exhibit A the main ingredient in flavoured milk is milk itself i.e. 90.96 % as per the below table which further confirms the contention of the applicant that the more specific heading for flavoured milk is 0402 and not 2202 as the essential character of the flavoured milk is milk.

Component	% of component in flavoured milk
Milk	90.96 %
Sugar	9.00 %
Flavor	0.03%
Colour	0.01%
Total	100.00 %

6. Record of Personal Hearing:

The authorized representative of the applicant, Sri Mohd. Irshad Ahmed, FCA, LLB appeared for Personal Hearing on 05.02.2020 and reiterated the submission already made in the application.

7. Discussion:

We have examined the issues raised in the application with reference to the relevant provisions of the Act and the submissions of the applicant as well. At this juncture, we received a plea made by the Revenue, wherein the Directorate General of GST Intelligence, Visakhapatnam Zonal Unit had informed that an investigation had already been initiated against the same issue through summons dated 07-11-2019 for misclassification of flavoured milk under HSN 0403 instead of HSN 2202 in his



letter numbered F.No. DGGI/VZU/INV/GST/104/2019 dated 24-02-2020 requesting for rejection of the applicant's plea for admission for advance ruling in terms of provisions of subsection(2) of section 98 of CGST Act, 2017.

This authority after examining the relevant proviso to sec98(2), which reads as under,

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:"

makes the following observation that it is a fit case for rejection as the applicant approached the Authority for Advance Ruling for clarification while the case is still pending with the Revenue on the same issue i.e., with respect to the classification of the product under question.


ORDER

In view of the foregoing, the application is not admitted.

Sd/-D.RAMESH
MEMBER

Sd/-M. SREEKANTH
MEMBER

//t.c.f.b.o//


Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

TO

1. M/s. Heritage Foods Limited, Main dairy Plant- Gokul, Chandragiri- Mandal, Kasipentla Village, Chittoor District- 517112 Andhra Pradesh. **(By Registered Post)**

2. M/s. Heritage Foods Limited, 6-3-541/c, Panjagutta, Hyderabad-500082. **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Tirupathi-II Circle, Chittoor Division. **(By Registered Post)**



2. The Superintendent, Central Tax Tirupathi-III Rang, CGST Tirupathi Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.

(By Registered Post)

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

