

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560009**

Advance Ruling No. KAR ADRG 43/2020

Date : 02-09-2020

Present:

1. Dr. Ravi Prasad M.P.
Additional Commissioner of Commercial Taxes Member (State Tax)
2. Sri. Mashhood ur Rehman Farooqui,
Joint Commissioner of Central Tax, Member (Central Tax)

1.	Name and address of the applicant	M/s Tirumala Milk Products Pvt. Ltd., 4 BC 301, The Summit, 3 rd Floor, 3 rd Main, 4 th B Cross, Kasturi Nagar East, Ramamurthy Nagar, Bangalore-560016.
2.	GSTIN or User ID	29AABCT7907M1ZR
3.	Date of filing of Form GST ARA-01	14 th February 2020
4.	Represented by	Sri. M.N. Shankare Gowda, Advocate & Authorized Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bengaluru East Commissionerate.
6.	Jurisdictional Authority – State	LGSTO-35, Bangalore (Benz Circle Range)
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 CNRB20012900467197 dated. 27.01.2020 and Rs. 5,000/- under KGST Act vide CIN HDFC19042900464859 dated.27.04.2019.

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

M/s. Tirumala Milk Products Pvt. Ltd., (called as the 'Applicant' hereinafter), 4 BC 301, The Summit, 3rd Floor, 3rd Main, 4th B Cross, Kasturi Nagar East, Ramamurthy Nagar, Bangalore-560016, having GSTIN 29AABCT7907M1ZR, have filed an application for Advance Ruling under Section 97 of 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 engaged in processing and manufacturing of Milk & Milk products in the state of Andhra Pradesh. The Applicant processes various Milk and

Milk products including flavored milk. The applicant is carrying on the activity of selling the above said products in the State of Karnataka.

3. The applicant sought advance ruling in respect of the following question, in relation to the classification of "flavoured milk" and the applicable GST rate thereon.

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

PERSONAL HEARING: / PROCEEDINGS HELD ON 28.07.2020

4. Sri. M.N. Shankare Gowda, Advocate & Authorized Representative, along with the applicant appeared for personal hearing proceedings held on 28.07.2020, appraised the facts furnished in the application and furnished the written submissions with regard to admissibility of the instant application, in support of their argument, inter alia stating as under:

4.1 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 the Acts, in terms of the 1st proviso to Section 98(2) of the CGST / KGST Act 2017.

4.2 The Authority on receipt of an application shall preliminarily send a copy of the application to the concerned officer and if necessary direct him to produce the relevant records, in terms of Section 98(1) of CGST/KGST Act 2017. Further, this authority, in terms of Section 98(2), after examining the application and the records received from concerned officer and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, order can be passed either admitting or rejecting the application.

4.3 By careful reading of sub-section 1 & 2 of Section 98, it is categorical that at the threshold the Hon'ble Authority has not only been empowered to call for the records from the concerned officer but also duty has been cast upon to admit or reject the application after perusing the records. The legislature in these two provisions has not stated anywhere the criteria on which the application can be admitted or rejected. But the legislature is categorical that the Hon'ble authority has to call for the records from the concerned officer but for what purpose is not forthcoming in these two provisions.

4.4 However, by reading the 1st proviso to sub-section (2) one can understand that the Hon'ble Authority shall not admit the application if question raised in the application is already pending or decided in any proceedings in the case of particular applicant under any of the provisions of the CGST/KGST Acts. As per sub-section 1 & 2 the authority is empowered to call for records from the concerned authority only to know whether any proceedings are pending or decided with respect to the question raised in the application. Then only the Hon'ble Authority will come to know with respect to the pendency or decision taken under the provisions of the Act with respect to the question raised in the application. By

over all reading of the proviso to sub-section 2 and sub-sections, it is unambiguous that the Hon'ble Authority has to take a preliminary decision either to admit or reject the application after perusing the records received from concerned officer under any of the provisions of the CGST/KGST Acts. The phrase "under any of the provisions of this Act" confines to the proceedings or decisions taken by the concerned officer, but not the proceedings pending or decision taken by any other officer under CGST/KGST Acts. Under sub-section 2 the Hon'ble Authority immediately after perusing the records received from concerned officer is bound to take decision to admit or reject the application. This Hon'ble authority will come to know only after perusing the records of the concerned officer with respect to the condition prescribed under 1st proviso for sub-section 2, therefore, proviso is to be read and understood keeping in the background the intention of the legislature under both sub-sections 1 & 2. The 1st proviso cannot be read independently. This Hon'ble Authority cannot traverse beyond the legislative intention which is conspicuous under sub-sections 1 & 2. It is submitted that before the concerned officer no proceedings is pending or no decision has been taken by the concerned officer in the applicant's case. Therefore, the applicants application is maintainable.

4.5 It is submitted that the summons issued u/s 70 on various dates namely 18.02.2019, 15.03.2019 cannot be a criteria to decide whether question raised in the applications is already pending or decided in any proceedings in the case of the applicant.

4.6 The "concerned officer" as per the guidelines issued by the Director General of Tax Payer Services, Central Board of Excise and Custom means an officer who has been designated by the CGST/SGST administration in regard to application for Advance Ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST / SGST officer. It is submitted that this is found in Advance Ruling Mechanism in GST, a copy of which has been produced before this Hon'ble Authority by the applicant on the day the argument was addressed. So the "concerned officer" referred under Section 98 is nothing but a jurisdictional officer in normal circumstances.

4.7 Under Section 70, the "proper officer" has empowered to issue summons directing any person to appear before the authority either to give evidence or to produce documentary evidence. The proper officer has been defined u/s 2 (91) of CGST/KGST Acts. As per the definition the proper officer is the one in relation to any function to be performed under this Act, means Commissioner or the officer of the Central Tax who is assigned that function by the commissioner in the board. It is submitted that for the purpose of maintaining application for Advance Ruling, as per Section 98, before the concerned officer. Under Section 98 there is no reference to the "proper officer". Under 1st proviso to Section 98(2), of course, it refers to, any proceedings or decision taken in the case of an applicant under any provisions of the Acts, if it is with respect to the same question raised in the application, consequently, leads to rejection of the application. The Proviso cannot be read solitarily, but it has to be read along with sub-sections 1 & 2. If that it is so,

proviso operates within the scope of sub-section 1 & 2. Therefore, summons issued u/s 70 of the Acts will not come within the purview of proviso read with sub-sections 1 & 2. Hence, it is respectful submission of the applicant that the application filed for Advance Ruling is maintainable.

4.8 Without prejudice to the above contention, it is further submitted that, by careful perusal of summons referred to above, it is seen that the proper officer has summoned the applicant to be present before him for giving evidence and to produce the documents, which is general in nature. Nowhere in the summons, the question raised before this Hon'ble Authority namely, under which entry and schedule "Flavoured Milk" is taxable, has been referred/mentioned. There is no discussion in the summons that the records have been called for, to decide the rate of tax of "Flavoured Milk", which is under dispute. The summons are absolutely silent with respect to entry and schedule of the "Flavoured Milk". It cannot be made out by reading the summons, for what reason the presence of the applicant has been ordered and documents to be produced. In the absence of specific issue in the summons, namely under which entry and schedule the "Flavoured Milk" is falling, the applicant's case is not hit by 1st proviso to sub-section 2 of Section 98. It is mandatory under the proviso to say that the application is not maintainable, if the proceedings or decision is taken under the provisions of the Acts. In the summons issued by the proper officer absolutely there is no reference with respect to rate of tax of "Flavoured Milk" and under which entry and schedule it is falling. Therefore, the applicant's application is maintainable.

4.9 It is further submitted the applicant has appeared before the proper officer and given a statement, a copy of which has not been served on the applicant. Wherefore for the reason stated above the applicant prays that this Hon'ble Authority may be pleased to admit the application for consideration on merits, in the interest of justice.

5. DISCUSSION & FINDINGS:

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the issues involved & relevant facts having a bearing on the questions in respect of which advance ruling is sought by the applicant.

5.2 At the outset, we would like to state that the provisions of both the CGST Act, 2017 and the KGST Act, 2017 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 corresponding similar provisions under the KGST Act.

5.3 The admissibility of the application is governed by the first proviso to Section 98(2) of the CGST Act 2017, which reads as under:

"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 applicant under any provisions of this Act".

Thus the conditions to be considered before admission of application, on the basis of above proviso are as under:

- i. Whether the question raised is pending or decided in any proceedings
- ii. Whether the question raised is pending or decided in the case of applicant
- iii. Whether the question raised is pending or decided under provisions of this Act

5.4 It is very clear from the above that the first proviso to Section 98(2) of the CGST Act 2017 does not specify as to with whom the issue pertaining to the question raised has to be pending, but merely specifies that it has to be pending or decided under the provisions of this Act. Hence the argument of the applicant that the issue must be pending before the jurisdictional officer is not tenable under the law.

5.5 In the instant case, the Deputy Commissioner, Office of the Principal Commissioner of Central Tax, Bangalore East Commissionerate, Bangalore have reported vide their letter dated 18.08.2020 that the Directorate of GST Intelligence, Bangalore Zonal Unit have initiated the investigation against the applicant, with regard to mis-classification of "flavoured milk", under Incident Report No.35/2019-20, which is under progress. DGSTI has recorded the statements of the authorised representatives of the applicant and the applicant has also paid Rs.2.97 Lacs towards pre-deposit. Further it is an admitted fact that the initiation of investigation was done prior to filing of the instant application, by issuing summons dated 18.02.2019, 15.03.2019 & 14.08.2019. Thus all the required three conditions have been satisfied in the instant case and hence the application is liable to be treated as inadmissible.

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

RULING

The application is rejected as "inadmissible", in terms of first proviso to Section 98(2) of the CGST Act 2017.

(Dr. Ravi Prasad.M.P.)

Member

Karnataka Advance Ruling Authority

Place : Bengaluru

Date : 02-09-2020

(Mashhood ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-35, Benz Circle Range, Bengaluru

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It is very clear from the facts that the first proviso to Section 98(1) of the CGST Act 2017 does not apply as to when the issue pertaining to the question raised has to be decided, but merely states that it has to be decided or decided under the provisions of the Act. Hence the argument of the applicant that the issue must be pending before the jurisdictional officer is not tenable under the law.

2.5 In the instant case, the Deputy Commissioner, Office of the Principal Commissioner of Central Tax, Bangalore East Commissionerate, Bangalore have reported vide their letter dated 18.08.2019 that the Director of GST Intelligence, Bangalore Zonal Unit have initiated the investigation against the applicant with regard to mis-classification of "sterilized milk", under Incident Report No.32/2019-20, which is under progress. DOST has recorded the statements of the authorized representatives of the applicant and the applicant has also paid Rs.2.97 Lacs towards pre-deposit. Further it is an admitted fact that the initiation of investigation was done prior to filing of the instant application, by summons dated 18.02.2019, 18.03.2019 & 14.08.2019. Thus all the required three conditions have been satisfied in the instant case and hence the application is liable to be treated as inadmissible.

In view of the foregoing, we pass the following

RULING

The application is rejected as "inadmissible" in terms of last proviso to Section 98(1) of the CGST Act 2017.

(Mashood Ar Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority
Bangalore - 560 002

(Dr. Ravindra M.P.)
Member
MEMBER
Karnataka Advance Ruling Authority
Bangalore - 560 002
Date : 02.09.2019