

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	ITC Limited
Address (correspondence)	37, ITC Limited, JL Nehru Road, Kolkata-700071
GSTIN	19AAAC15950L1Z7
Case Number	13 of 2020
ARN	AD1908200029451
Date of application	September 02, 2020
Order number and date	11/WBAAR/2020-21 dated 12/10/2020
Applicant's representative heard	Mr J.P. Khaitan, Senior Advocate Mr Tanmoy Chakravarty, Advocate

1. Admissibility of the application

1.1 The applicant intends to supply a variant of ready to consume pouch milk fortified with vitamins A and D and small quantities of turmeric (Haldi) and black pepper extracts. It wants to know whether the product can be classified under HSN 0401 and exempt under Serial No. 25 of Notification No. 2/2017- Central Tax (Rate) dated 28/06/2017 (hereinafter Exemption Notification). An advance ruling is admissible on these questions under section 97(2) (a) & (b) of the GST Act.

1.2 The applicant declares that the issues raised in the application are not pending nor decided in any proceedings under any provisions of the GST Act. The officer concerned from the revenue has not objected to the admission of the application. The application is, therefore, admitted.

2. Submissions of the applicant

2.1 The applicant submits a print-out of the pack design, which describes the product as pasteurised milk with Haldi, fortified with vitamins A and D. Ingredients of the product are toned

milk, turmeric and black pepper extract powders, vitamins A and D. It is to be sold under the brand name 'Aashirvaad svasti'. The applicant also submits an Analysis Report, prepared by ITC Life Sciences & Technology Centre, of a 100 gm sample of the product, stating that total curcuminoids present in the sample are 0.0161%. Vitamin A and D added are 45.50 mcg and 0.96 mcg, respectively. Fat content is 3.60%.

2.2 The applicant refers to the General Explanatory Note to Chapter 4, which states that milk may contain in addition to natural milk constituents, small quantities of stabilising agents, as well as very small quantities of anti-oxidants or vitamins not normally found in the product.

2.3 Curcumin is a yellowish pigment extracted from turmeric, believed to have therapeutic potential as anti-oxidant. Its absorption in the human system, the applicant claims, is enhanced when combined with a small quantity of piperine available in black pepper. The applicant refers to several articles published in established science journals in support of its claim. These additives, the applicant argues, increase the nutritional value but do not transform the substance of the product. It remains milk, as defined in Chapter Note 1 of Chapter 4 of the First Schedule of the Customs Tariff Act, 1975 (hereinafter Tariff Act).

2.4 In support of its argument, the applicant provides a flow chart of the production process. It is argued that the process is nothing different from what is involved in producing pasteurised milk fortified with vitamins except blending of the turmeric extract with water, which is then added to the raw milk before it is sent to the pasteurisation plant. The end product can be used like any other toned milk, and commercially offered as milk as understood in common parlance.

2.4 The product is, therefore, classifiable under HSN 0401 and exempt under Entry No. 25 of the Exemption Notification.

3. Submissions of the revenue

3.1 The concerned officer from the revenue refrains from offering an opinion.

4. Observations and findings of the Authority

4.1 Chapter 4 of the Tariff Act deals with dairy products, of which HSN 0401 and 0402 classify milk as distinguished from milk products. Unconcentrated milk without sugar or other sweetening matter is classified under HSN 0401. Concentrated milk and milk containing added sugar or other sweetening matter are classified under HSN 0402. The applicant's product is being offered and understood in common parlance as unconcentrated milk. Its production process and end uses are also no different from that of other pasteurised unconcentrated milk. The question, therefore, is whether the product gets removed from HSN 0401 for the use of the additives like the vitamins and turmeric extracts.

4.2 Explanatory Note concerning HSN 0401 says, "products of this heading may be frozen and may contain the additives referred to in the General Explanatory Note to this Chapter." The said General Explanatory Note states that Chapter 4 covers milk (full cream milk and wholly or partially skimmed milk), cream, buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, whey, the products consisting of natural milk

constituents, not elsewhere specified or included, butter and other fats and oils derived from milk, dairy spreads, cheese and curd.

4.3 The products mentioned above, the Note continues, may contain, in addition to natural milk constituents (i.e., milk enriched in vitamins or mineral salts), small quantities of stabilising agents which serve to maintain the natural consistency of the product during transport in a liquid state, as well as very small quantities of anti-oxidants or of vitamins not normally found in the product.

4.4 Circular No. 52/26/2018-GST dated 09/08/2018 of TRU, Department of Revenue, Government of India (Trade Circular No. 11/2018 dated 13/08/2018 of the State Government) already clarifies that milk fortified with vitamins A and D is classifiable under HSN 0401. The above Explanatory Note further explains that such milk remains classified under HSN 0401 even if a small quantity of items containing anti-oxidant properties are added. The applicant's product, therefore, remains classifiable under HSN 0401 even after a small quantity of curcuminoids, having ant-oxidant properties, are added, provided the Analysis Report referred to in para 2.1 is accurate. It follows that the product is exempt under Entry No. 25 of the Exemption Notification.

Based on the above discussion, we rule as under

RULING

The applicant's product, as described in para 2.1 of this order is classifiable under HSN 0401 and is exempt under Serial No. 25 of Notification No. 2/2017- Central Tax (Rate) dated 28/06/2017 (1126-FT dated 28/06/2017 of the State Notification), as amended from time to time.

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

(SUSMITA BHATTACHARYA)
Member

(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling

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