

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

Advance Ruling No. KAR ADRG 59/2020

Date : 16-12-2020

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 Dempo Diary Industries Limited, # 1, River Road, Asangi, Bagalkot, Karnataka – 587 317
2.	GSTIN or User ID	29AAACD8018J1ZI
3.	Date of filing of Form GST ARA-01	08.10.2020
4.	Represented by	Sri N Lokesh Reddy, C A & Authorised Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Belagavi Commissionerate.
6.	Jurisdictional Authority – State	LGSTO-430, Jamakhandi.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs.5,000/- under KGST Act vide CIN SBIN20082900112747 dated 13.08.2020.

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

M/s Dempo Diary Industries Limited, # 1, River Road, Asangi, Bagalkot, Karnataka – 587 317 (hereinafter referred to as “the applicant”) and having a GSTIN 29AAACD8018J1ZI, have filed an application for Advance Ruling under Section 97 of the CGST Act,2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and KGST Act.



2. The Applicant projects themselves as a registered society under Co-operative Act 1959 in Karnataka. They are engaged in processing of milk and milk products. They also manufacture flavoured milk & classify the same under tariff heading 0402 99 90, taxable at 5%. They learnt that few of the industry partners have reclassified the said product "flavoured milk" from heading 0402 99 90 to 2202 99 30. Thus the applicant filed the instant application seeking advance ruling in respect of the following question:

Whether the Flavored Milk is liable to be classified under HSN 0402 99 90 or under 2202 99 30 or under any other Chapter?

3. **Admissibility of the application** : The applicant filed the instant application, in relation to the classification of the product "flavoured milk" and sought advance ruling in respect of the question on the issue covered under Section 97(2)(a) of the CGST Act 2017.

4. The applicant manufacture & supply the impugned "flavoured milk" under the brand name "Nandini", to the owner of the said brand M/s Karnataka Co-operative Milk Producers Federation Ltd.,(KMF) against whom an offence case is pending before the DGGI, Bengaluru. Thus a personal hearing was granted on the question of admissibility of the instant application.

PERSONAL HEARING: / PROCEEDINGS HELD ON 15.12.2020.

5. Sri. Lokesh Reddy, Chartered Accountant & duly authorised representative of the applicant appeared for personal hearing proceedings held on 15.12.2020 & submitted the arguments with regard to admissibility of the instant application.

6. **FINDINGS & DISCUSSION:**

6.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Lokesh Reddy, C.A. & authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

6.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act 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 same provisions under the KGST Act.



6.3 The Applicant sought advance ruling in respect of the classification of the product "Flavoured Milk" and the rate of GST thereon. It is an undisputed fact that the applicant supplies the impugned product under the brand name "Nandini", to the owner of the said brand M/s KMF, against whom an offence case is pending before DGGI, Bangalore.

6.4 The applicant submits the following arguments, in support of admissibility of the instant application.

- a. The issue raised in the application i.e. classification of "Flavoured Milk" is not pending / decided in any proceedings, in the case of applicant, under any provisions of the CGST / KGST Act 2017.
- b. The applicant and M/s KMF ('Nandini' brand owner) are two different legal entities having separate registrations under Co-operative Societies Act as well as under GST Acts.
- c. The applicant does not have its own brand but manufactures & supplies the product 'flavoured milk' under 'Nandini' brand to the brand owner M/s KMF. The applicant pays royalty for using the brand name to M/s KMF, owner of the said brand. The applicant also supply the said product in open market.
- d. M/s KMF owns 90% shares in the applicant company. Thus M/s KMF have management control over the applicant organization as they have 90% share holding.

6.5 The applicant themselves admitted that M/s KMF hold 90% shares and hence have management / administrative control over the applicant. M/s KMF are the owners of 'Nandini' brand, against whom an offence case is pending before DGGI, Bengaluru on classification of flavoured milk. Thus it is very clear that the applicant, being the job worker to M/s KMF, becomes part of M/s KMF, as they also supply the same product of 'flavoured milk' and hence is bound to oblige the conclusion of the proceedings in this regard. Hence the pendency of the proceedings automatically applies to the applicant also. Therefore the instant application is liable for rejection, under first proviso to Section 98(2) of the CGST Act 2017.



7. 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 MEMBER
Karnataka Advance Ruling Authority
Place : Bengaluru Bengaluru - 560 009


(Mashhood Ur Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 16-12-2020

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Belgavi Commissionerate, Belgavi.
4. The Asst. Commissioner, LGSTO-430, Jamakhandi
5. Office Folder.

