



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,
Andhra Pradesh – 521151)

Present:

Sri PEEYUSH KUMAR (Member) (State Tax)

Sri NARESH PENUMAKA (Member) (Central Tax)

The 9th day of December, 2019

Order /AAAR/AP/ 04(GST)/2019

In

Application No. AAAR/10(GST)/2019

1	Name and address of the applicant	M/s Sri Chakra Milk Products LLP., D.No. 23B, Bendapudi vari Street Ramachandra Rao pet, Eluru – 534002 West Godavari District, A.P.
2	GSTIN	37ACOF54636G2ZO
3	Date of filing of Form GST ARA-02	12.09.2019
4	Date of Personal Hearing	19.11.2019
5	Authorized Representative	Sri S.Dwarakanath, Advocate Hyderabad
6	Jurisdictional Authority – State	Assistant Commissioner (ST), Eluru Circle, Eluru Division.

ORDER

M/s Sri Chakra Milk Products LLP., Door No: 23B-2-29B, Bendapudivari Street, Ramachandra Rao Pet, Eluru – 534002, West Godavari District, Andhra Pradesh (hereinafter referred to as appellant) registered under the Goods & Services Tax. The appellant engaged in manufacturing of milk and milk products including flavoured milk. The appellant seeks clarification regarding the HSN code, and rate of duty on their outward supply of “flavoured milk”.

The appellant had filed an application before the Appellate Authority for Advance Ruling in ARA-02 dated 12.09.2019, contending the Ruling passed by the Authority for Advance Ruling, A.P vide Ruling AAR NO. 27/AP/GST/2019, Dated 15.07.2019.

1. Brief History of the Case:

1. The appellant is engaged in the business of processing and sale of milk and milk products including flavoured milk. The appellant submits that flavoured Milk is obtained by adding sugar and different flavours to milk which does not change the essential character of milk. He states that it is a substitute for milk and a

simple modification of milk which involves no manufacturing process. The appellant submits the process of obtaining flavoured milk as follows:

"The process of the flavoured milk is standardization of fresh milk according to the fat contents and then heating at certain temperature followed by filtration, pasteurization, and homogenization and then mixing of sugar and various flavours and finally bottling. As per the flow chart, it involves various operations by RMRD team, weighing team, processing team, packing team and warehousing / dispatch teams and thereby it is a preparation and no more it is fresh milk after adding flavours. The appellant obtains flavoured milk of badam".

The appellant in his plea to the AAR, A.P had raised following question.

(a) What is the rate of GST applicable on outward supply of "Flavoured Milk"?

The Authority for Advance Ruling, A.P, had ruled that 'flavoured milk' is classifiable under tariff item 2202 9930 of the First Schedule to the Customs Tariff Act, 1975 as a "beverage containing milk" under HS code 2202. The rate of tax applicable for the said tariff item is 12% GST (6% CGST + 6% SGST) under entry no. 50 of Schedule II of Notification No.1/2017 - Central (Rate) dated 28.06.2017 as amended.

Aggrieved by the Ruling passed by the AAR, A.P vide CCST Ruling No.27/AP/GST/2019, Dated 15.07.2019, the appellant preferred the present Appeal before the Appellate Authority for Advance Ruling, in ARA-02, with the following contention.

The Appellant prays that the Appellate Authority for Advance Ruling to set-aside the order of the Advance Ruling and declare the GST rate on flavoured milk as 5% as per HSN 0402 9990 under Notification No.1/2017 - Central Tax (Rate).

2. Grounds of appeal:

- 2.1.** The appellant (M/s Sri Chakra Milk Products LLP.,) prays that the AAR has erred in holding that Flavored Milk manufactured is classifiable under HSN Code 2202 and not under HSN Code 0402. The said Ruling is illegal and contrary to law and the HSN Codes.
- 2.2.** The appellants states that, for classifying the commodity under the relevant schedule to the Goods and Services Tax Act, attracting different rates of taxes, one has to look to the HSN Codes, prescribed under the Customs Tariff Act, 1975. The Rules for interpretation of First Schedule to the Customs Tariff Act, including the Section, Chapter notes and general explanatory notes of the first schedule, shall so far as may be applied to the interpretation of Notification 1/2017 Central Tax (Rate), dated 28.6.2017.
- 2.3.** The appellant opines that AAR has unnecessarily placed heavy reliance upon the Minutes of the 31st GST Council Meeting in coming to conclusion of the Ruling. While discussing the rate of tax on flavoured milk in Annexure-3 to the Minutes, at Serial No.18, the conclusion is as under:

1. The Explanatory Notes to HSN describe the goods classifiable under the heading 0402 as under:

This heading covers milk (as defined in Note 1 to this Chapter) and cream, whether or not pasteurised, sterilised or otherwise preserved, homogenised or peptonised; but it excludes milk and cream which have been concentrated or which contain added sugar or other sweetening matter (heading 04.02) and curdled, fermented or acidified milk and cream (heading 04.03).

The products of this heading may be frozen and may contain the additives referred to in the General Explanatory Note to this Chapter. The heading also covers reconstituted milk and cream having the same qualitative and quantitative composition as the natural products.

2. Flavoured milk is classifiable under HS code 2202.
3. Fitment Committee does not recommend issuance of such clarification.

However, the Explanatory note to HSN Code 0402 actually reads as under:

"MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER".

- 2.4. The appellant contends that explanatory note, as extracted against Serial No.18 for flavoured milk in the Minutes is not factually correct and the appellant is categorical about the same. After due verification, the appellant is certain that the above extract as appearing in the Minutes as well as the impugned Ruling is erroneous and not truly contained in the Explanatory Note to HSN 0402. Therefore, no credibility can be acceded to the Minutes or the reliance placed on the same in the impugned Ruling.

- 2.5. The appellant also states that, undoubtedly, flavoured milk will squarely fall within the scope of HSN 0402. It is more specific entry rather than HSN 2202 which deals with beverages, spirits and vinegar. 0402 reads as follows:

0402 "MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER"

0402 10 *In powder, granules or other solid forms, of a fat content, by weight not exceeding 1.5%:*

0402 10 10 --- *Skimmed Milk*

0402 10 20 --- *Milk food for babies*

0402 10 90 --- *Other*

In powder, granules or other solid forms, of a fat content, by weight exceeding 1.5%:

0402 21 00 -- *Not containing added sugar or other sweetening matter*

0402 29 -- *Other:*

0402 29 10 --- *Whole milk*

0402 29 20 --- *Milk for babies*

0402 29 90 --- *Other*

Other:

0402 91 -- Not containing added sugar or other sweetening matter:

0402 91 10 --- Condensed milk

0402 91 90 --- Other

0402 99 -- Other:

0402 99 10 --- Whole milk

0402 99 20 --- Condensed milk

0402 99 90 --- Other

2.6. The appellant takes the reference of Hon'ble Supreme Court in the case of CCE Vs. Amrit Food decided on 3.9.2015 (324 ELT 418) has observed in Paras 5, 6 & 7 as under:

5. Chapter Heading 04.04 deals with other dairy produce; edible products of animal origin not elsewhere specified or included. Thus, all the dairy produce other than those which are specified elsewhere (for example, ice cream is covered by chapter Heading 21) are covered by Chapter Heading 04.04. We would also like to mention here that Heading 04.01 which is the main heading gives the description of goods as:--

- 04.01 Milk and Cream, Concentrated or containing added sugar or other sweetening matter
- In or in relation to the manufacture of which any process is ordinarily carried on with the aid of power:
- 0401.11 - Flavoured milk, whether sweetened or not, put up on Nil unit containers and ordinarily intended for sale
- 0401.12 - Skimmed milk powder, specially prepared for feeding infants
- 0401.13 - Milk powder, other than powder specially prepared for feeding infants, put up in unit containers and ordinarily intended for sale.
- 0401.14 - Concentrated (condensed) milk, whether sweetened or not, put up in unit containers and ordinarily intended for sale
- 0401.90 - Other
- 0401.90 - Other"

6. It is clear from the aforesaid that all the products of milk and cream would be covered by this Chapter Heading and the addition of sugar or other sweetener would not make any difference.

7. Since the products in question are the mix of milk as well as milk powder, as far as milk, viz., flavoured milk is concerned, it is covered by sub-Heading 0401.11 and, skimmed milk powder and milk powder are covered by 0401.12 and 0401.13 respectively.

The appellant states that the observations of Supreme Court are clear to the effect that the products of milk would be covered by this chapter and addition of

sugar or other sweetener would not make a difference. Flavoured Milk is obtained by adding sugar and different flavors to the milk, which does not change the essential character of milk. It is a substitute for milk and a simple modification of the milk, with no manufacturing process involved.

2.7. The Appellant submits the following process of the flavoured milk. Flavoured milk is a result of standardization of fresh milk according to the fat contents and then heating at certain temperature followed by filtration, pasteurization, and homogenization and then mixing of sugar and various flavours and finally bottling. As per the flow chart (attached), it involves various operations by RMRD team, weighing team, processing team, packing team and warehousing / dispatch teams. The appellant renders flavoured milk of badam.

2.8. The appellant contends that AAR has misplaced reliance upon the following decisions:

(1) Decision of Madras High Court in State of Tamilnadu Vs. Tvl. Ganesh Corporation, dated 3.4.2012 wherein it was observed as under:

"As per the Oxford Dictionary "beverage" means "a type of drink except water". In Webster's 3rd International Dictionary, "beverage" has been described as "liquid for drinking especially such liquid other than water (as tea, milk, fruit juice, beer) usually prepared (as by flavouring, heating, admixing) before being consumed".

The appellant opines that the above judgment did not arise under the Customs Tariff Act but under the Sales Tax Act. Since, the interpretation of Tariff Act was not involved, the judgment cannot be said to be a binding or a useful precedent. Chapter Heading 2202 specifically includes water under the category of beverages, spirit and vinegar, whereas the observation of the High Court is that the beverage would not include water. Hence, this decision, which arose under the sales tax provisions could not have been applied in ascertaining the rate of tax on flavoured milk.

(2) Decision of Kerala High Court in Ernakulam Reg. Co-op Milk Products Union Limited Vs. CCE, Kochi (236 ELT 329):

The appellant states that AAR had erred in relying upon this decision since it is only an interim order of the Court but not a final decision. The observation of the Hon'ble Court that Flavoured Milk would prima facie fall under Chapter 22 but not under Chapter 4 was one of the prima facie indicators, while granting stay on payment of Rs.1.00 lakh. The AAR could not have relied on the interim order of the Court since it is not a binding precedent.

(3) Decision of Gujarat in Kiara Dist. Co-op Milk Producers Union Ltd. Vs. Union of India (320 ELT 408):

The appellant states that the decision cited also does not lay down the proposition that Flavoured Milk will fall under Chapter 22 but not under

Chapter 4. The Hon'ble Court recorded the submission of either sides and observed as under:

As regards pendency of the proceedings arising from the show-cause notice, it will be open to the petitioners to make a request before the Commissioner of Central Excise to adjourn the hearing suitably so as to await the decision of the Central Government on the representation. We are sure that such a request will be considered by the Commissioner in the proper perspective when the matter comes up for hearing before the Commissioner on 16-8-2007.

The petition stands disposed of in the above terms.

It is clear that there is no law laid down by the Gujarat High Court in the said decision. The matter was left to be decided by the Central Government on the representation to be filed by the assessee therein.

2.9. The appellant further states that AAR had erred in ignoring the decision of the Supreme Court in CCE Vs. Amrit Food (324 ELT 418) on 3.9.2015 which is directly on the point as discussed above and amounts to a binding precedent under Article 141 of the Constitution of India.

The appellant opines that AAR ought to have seen that the eight digit code introduced from 28.2.2005 will cover flavoured milk under Sub-Heading-0402 9990.

3. Personal Hearing

The Personal Hearing was called on 19th November 2019, for which the authorized representative Sri S. Dwarakanath, Advocate attended and reiterated the written submission. In addition, the appellant made further submissions citing the following judgments and orders at the time of Personal Hearing and the physical copies of the same are submitted on 25.11.2019 to this authority as under:

(1) The decision of Hon'ble Supreme Court in the case of CCE Vs. Amrit Food (324 ELT 418) (SC).

(2) The decision of the Advance Ruling Authority, Karnataka in Advance Ruling No. KAR ADRG 88/2019, dated 26.09.2019 in the matter of Karnataka Cooperative Milk Producers Federation Limited, Bengaluru.

(3) The decision of the Kerala High Court in Ernakulam Reg Cooperative Milk Products Union Limited Vs. CCE, Kochi (236 ELT 329). (An Interim Order but not a final decision);

4. Discussion & Findings:

We have gone through the entire submission made by the appellant along with the Ruling pronounced by the Authority for Advance Ruling. On perusal of the appeal and submission made by the appellant at the time of Personal Hearing, it is observed that the main issue of contention is whether

'flavoured milk' is classifiable under tariff item 2202 9930 of the First Schedule to the Customs Tariff Act, 1975 as a "beverage containing milk" with the rate of tax as 12% GST (6% CGST + 6% SGST), as per the ruling of AAR or it is classifiable under HSN 0402 9990 with the rate of tax as 5% under Notification No.1/2017 – Central Tax (Rate) as per the contention of the appellant.

When we look into the chronology of the events, the flavoured milk was classified under entry 0401.11 under the 6 digit code system prevailing till 27.02.2005 as under:

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
04.01	0401.11	Flavoured milk, whether sweetened or not, put up in unit containers and ordinarily intended for sale.	Nil.

Later on, even under the 8 digit code introduced from 28.02.2005 flavoured milk was categorically placed under chapter IV Heading No.0402 9990 as under

CHAPTER 4

DAIRY PRODUCE; BIRD'S EGGS; NATURAL HONEY; EDIBLE PRODUCTS OF ANIMAL ORIGIN, NOT ELSEWHERE SPECIFIED OR INCLUDED

Notes :-

1. The expression 'milk' means full cream milk or partially or completely skimmed milk.

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter.		
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter.		
0402 91	Not containing added sugar or other sweetening matter.		
0402 99	Other		
0402 99 10	Whole milk	kg.	Nil
0402 99 20	Condensed milk	kg.	16%
0402 99 90	Other	kg.	Nil

Further, the classification of the products in question had been changed, vide the basic Notification No. 3/2005-C.E., which is a general exemption notification prescribing effective rate for various excisable goods, and it is under this general exemption notification that Sr. No. 11A has been inserted from 15-6-2007 thereby specifying nil rate of duty for flavoured milk of animal origin as under

Sr. No.	Notification No. and date	Amendments			
(1)	(2)	(3)			
1.	3/2005-Central Excise dated the 24th February, 2005 [G.S.R. 95(E), dated the 24th February, 2005]	In the said notification, in the Table, after S. No. 11 and the entries relating thereto, the following S. No. and entries shall be inserted, namely :-			
		(1)	(2)	(3)	(4)
		"11A.	2202 90 30	Flavoured milk of animal origin	Nil"

Thus, when we look into the turn of events over a period of time during the Central Excise regime, the goods under dispute had been finally placed under Chapter 22 with a specific entry mentioned as "flavoured milk of animal origin" with classification particulars as falling under 2202 90 30 by way of Notification No. 3/2005-C.E as mentioned above, which makes it evident that it needs no further interpretation in the matters of classification of the goods in dispute.

Now we look into the issue that, in continuation to the Central Excise regime, whether the same interpretation had been applied to the GST regime or otherwise. The product under dispute i.e., 'flavoured milk' as such is not mentioned as a specific entry in any of the schedules as per the Notification No.1/2017 Central Tax (Rate) dt: 28.6.2017. We examine the competing entries under Schedule I with Tax Rate of 5% (CGST 2.5% +SGST 2.5%) and under Schedule II with Tax Rate of 12% (CGST 6% +SGST 6%) as under

Schedule I - 2.5%

S.No	Chapter/Heading/ Sub- Heading/Tariff item	Description of Goods
8	0402	Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies[other than condensed milk]

Schedule II - 6%

S.No	Chapter/Heading/ Sub- Heading/Tariff item	Description of Goods
50	2202 90 30	Beverages containing milk

As there is ambiguity in the classification of the instant product, 'flavoured milk' i.e., whether it is to be considered under either 0402 or 2202 90 30 as mentioned above, the issue has been discussed and recorded in the Agenda for 31st GST Council Meeting Volume-II dt: 22.12.2018 as under, clarifying the classification issue.

S. No	Description	HSN	Present GST Rate (%)	Requested GST Rate (%)	Comments
18	Flavoured Milk	2202	12	Clarification on that it is classifiable under Chapter 4	<p>1. The Explanatory Notes to HSN describe the goods classifiable under the heading 0402 as under:</p> <p><i>This heading covers milk (as defined in Note 1 to this Chapter) and cream, whether or not pasteurised, sterilised or otherwise preserved, homogenised or peptonised; but it excludes milk and cream which have been concentrated or which contain added sugar or other sweetening matter (heading 04.02) and curdled, fermented or acidified milk and cream (heading 04.03).</i></p> <p><i>The products of this heading may be frozen and may contain the additives referred to in the General Explanatory Note to this Chapter. The heading also covers reconstituted milk and cream having the same qualitative and quantitative composition as the natural products.</i></p> <p>2. Flavoured milk is classifiable under HS code 2202.</p> <p>3. Fitment Committee does not recommend issuance of such clarification.</p>

In this regard this authority opines that the contention of the appellant that too much of reliance being placed on the Agenda of the 31st GST Council Meeting volume-II dated: 22.12.2018 clarifying the HSN code and rate of tax of flavoured Milk by the AAR is presumptuous of nature. Moreover the appellant's argument that the extract of the clarification given in the minutes of the GST Council Meeting is not contained in the explanatory note to HSN 0402 and therefore no credibility can be accorded to the minutes is erroneous. The very purpose of mentioning the specific entry of 'Flavoured Milk' in the minutes of GST Council Meeting is meant to give clarification.

The appellant has referred to the decision of the Advance Ruling Authority, Karnataka in Advance Ruling No. KAR ADRG 88/2019, dated 26.09.2019 in the matter of Karnataka Cooperative Milk Producers Federation Limited, Bengaluru. In this context we proceed to examine whether the flavoured milk can be covered under chapter 4 or in its competing entry under chapter 22.

Chapter 4 deals with "Goods of Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included". The qualifier here that it is "not elsewhere specified or included" carries enormous importance. Now we look into the issue whether the product in question is

mentioned elsewhere or not. Chapter 22 dealing with goods /items of "Beverages, spirits and vinegar" carries the following entry as under.

CHAPTER 22
Beverages, spirits and vinegar

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
2202 99 30	Beverages containing milk	1	12%

Now we proceed to examine whether 'flavoured milk' can be considered a beverage containing milk. In common parlance, a beverage is "(chiefly in commercial use) a drink other than water. It is a liquid for drinking especially such liquid other than water (as tea, milk, fruit juice, beer) usually prepared (as by flavouring, heating, admixing) before being consumed". The instant product, the flavoured milk is undoubtedly a beverage containing milk. It is moreover, a 'preparation' made as per the description given by the appellant in the flow chart submitted by him.

It could be inferred from the above discussion that even though the product in question is a dairy produce and also an edible product of animal origin, the qualifier that it is "not elsewhere specified or included" makes it ineligible to be classified under the chapter 4. The product in dispute as it is already specified and included under chapter 22 dealing with goods /items of "Beverages, spirits and vinegar" makes it ineligible to be classified under chapter 4. Thus, the commodity 'flavoured milk' merits classification under beverage containing milk under tariff heading 2202 90 30. The rate of tax applicable for the said tariff item is 12% GST (6% CGST + 6% SGST) under entry no. 50 of Schedule II of Notification No.1/2017 - Central (Rate) dated 28.06.2017 as amended.

In view of the aforesaid, we are of the opinion that the Ruling of the AAR is in tune with legal position and it needs no interference and the appeal is accordingly dismissed.

ORDER

We confirm and uphold the decision of the lower Authority.

Sd/- Peeyush Kumar
Chief Commissioner (State Tax)
Member

Sd/- Naresh Penumaka
Chief Commissioner (Central Tax)
Member

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


Assistant Commissioner (ST)

To:

M/s Sri Chakara Milk Products LLP.,
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West Godavari District (Andhra Pradesh). **(By Regd. Post)**

Copy to:

1. The Assistant Commissioner (ST), Eluru Circle, Eluru Division. **(By Regd. Post)**
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