

JHARKHAND AUTHORITY OF ADVANCE RULING

GOODS AND SERVICES TAX

DIVISIONAL OFFICE OF STATE TAX, CIVIL COURT COMPOUND,

NEAR JAIPAL SINGH STADIUM, RANCHI, 834001 JHARKHAND

Advance Ruling Order No. JHR/AAR/2022-23/02, Dated 27th April, 2022

Sri M V Badari Prasad, Additional Commissioner, Office of the Pr. Commissioner, CGST and CX Commissionerate, Ranchi - Jharkhand.	Member (Centrals Tax)
Sri Pradeep Kumar, Joint Commissioner (Administration), Ranchi Division, Ranchi-Jharkhand.	Member (State Tax)
Name and address of the applicant	M/s HR Food Processing (P) Ltd, Registered Address: House No 448/A, Ground Floor, Road NO. 4, Ashok Nagar, Ranchi - 834002, Jharkhand, India. Correspondence Address: House No 448/ A, Ground Floor, Road NO. 4, Ashok Nagar, Ranchi - 834002, Jharkhand, India.
GSTIN of the applicant	20AACCH5561N1ZK
Application No. and Date	Advance Ruling/ SGST & CGST/2021-22/ AR/ AD200921001275Q dated 21/09/2021.
Clause(s) of Section 97(2) of (CGST/SGST/UGST) Act, 2017 under which the question(s) raised	(A) Classification of any goods or service or both; (E) Determination of the liability to pay tax on any goods or service or both;
Date of Personal hearing/V.C.	03-02-2022/04-02-2022.
Present for the applicant	1. Sri Aditya Shah, Chartered Accountant;

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

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Jharkhand Goods & Service Tax Act, 2017)

The present application has been filed under Section 97(1) of the Central Goods and Services Tax Act, 2017 and the Jharkhand Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and JGST Act"] by H K Food Processing (P) Ltd, House No 448/ A, Ground Floor, Road NO. 4, Ashok Nagar, Ranchi - 834002, Jharkhand, India. The Company is engaged in processing of milk and milk products under the Brand name OSAM'. The applicant, seeking an advance ruling in respect of the following questions:-

(a) What would be the classification of Flavored Milk for Tea Preparation?

(b) What would be the rate of GST Applicable on the said product?

2. At the outset, we would like to make it clear that the provisions of both the CGST Act and the JGST 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 provision under the JGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act/JGST Act would be mentioned as being under the "GST Act".

HEARING

3. The case was taken up for preliminary hearing on 03.02.2022/ 04.02.2022 with respect to admission or rejection of present application wherein Shri Aditya Shah, Chartered Accountant attended the proceeding physically and made submissions as per contentions made in Application for Advance ruling. The application was admitted being questions related to 'Classification of goods and rate of GST on said product' and final hearing was concluded accordingly on the same date.

OBSERVATIONS

4. We have gone through the facts of the case, documentary evidences like Judgements of Various Courts in matter of taxation of "Flavoured Milk", proposed product brochures; interpretation of word "Beverages", Rate of GST of 'MILK' submitted by the applicant. We find that the applicant is registered under Goods and Services Tax ('GST') Act, 2017. As per their submission, the applicant intends to process the milk and sell it as Milk which shall be used for Tea Preparation only under the product name "OSAM Samridhi". The basic ingredient of the said products are : Milk and Milk Solids, Permitted Food Stabilizer, tea enhancing flavour like Ginger. No sugar or sweetener is added in the products. The product "Osam Samridhi" will be sold in 1 litre polypack and will have shelf life of 1 day under prescribed storage condition. As per the submission, the product "Osam Samridhi" will help Tea Vendors to prepare milk more conveniently and will help the vendors to prepare more cups of tea and helping them to reduce the cost of vendors and increase their income.

5. The applicant submitted the percentage wise composition of the said product, which is as under:

Component	% of component
Milk (2% Fat and 9% SNF)	99.85%

Stabiliser- Xanthan Gum(E 425) - Carrageenan (E 407)	00.10%
Flavour	00.05%

6. The applicant submitted the process detail of preparing "Osam Snmridhi", which is as under:-

(a) Cow milk procured from farmers is standardized to 2 percent fat and 9 percent SNF.

(b) Flavors and stabilizers are added to the batch as per our specifications.

(c) Milk is pasteurized.

(d) Milk is packed and stored at 4 degree Celsius.

(e) Milk is dispatched.

(f) On the basis of research made, the applicant found that in cities at least 30-35 % of milk gets consumed for tea making. After doing different R&D activities, the applicant has come out with a recipe, where they add flavor & certain combination of stabilizers. (Allowed to be added by FSSAI) thus improving the taste & the viscosity of milk without changing the basic characteristics of milk. The trials were taken in market & this product has shown a good acceptability among the tea vendors.

(g) The company intends to sell such milk targeting Tea Vendors as their 13213 customers.

7.1 The applicant with regard to the preparation of the said product submitted that the process of preparing Tea Milk:-

(i) does not change the essential characteristics of the milk.

(ii) It is simple preparation of milk.

(iii) No manufacturing process is involved and milk does not change its characteristics in any manner.

7.2 The applicant submitted that Tea Milk is made up of milk added with permitted stabilizers and flavours. The essential characteristic of milk does not change even after adding permitted flavours and stabilizers. It still retains all essential characteristics of milk. Hence, it should be classified under chapter 4 only under Tariff item 0401: 20:00.

7.3 The applicant submitted that the process of Tea 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 various stabilizers and flavours and finally packaging. The reason for adding stabilizers and flavours is to improve the texture of milk suitable for tea making and increase the taste.

7.4 The applicant submitted that the essential constituents of the milk does not change even after adding stabilizers and permitted flavours and still retain its essential characteristics of milk.

7.5 The applicant submitted that the word 'milk' is statutorily defined under Note 1 to Chapter 4, and according to Note 1, the expression 'milk' means full cream milk or partially or completely skimmed milk.

7.6 The applicant submitted that under Heading Nos. 0401 and 0402 would therefore, cover milk, that is to say, full cream milk or partially or completely skimmed milk. Since our product does not contain added sugar or other sweetening matter nor it is concentrated, the applicant is of the view that tariff item/HSN code 04012000 is applicable to Tea Milk and accordingly the said item should be exempted from GST

8. The applicant further submitted the judicial pronouncement in the matter of:-

(a) Hon'ble Allahabad High Court in the case of Gujrat Co-op Milk Marketing Federation Ltd. Vs State of U.P. 2017 (5) GSTL 351 (All): 2017 Tax Pub (ST) 1622 has held that "Flavoured Milk is a form of milk as it is neither a derivative of the milk or a milk product. It is like hot and cold milk which remains milk even if sugar is added to it. It does not lose its basic characters of milk by heating or cooling or addition of sugar or any permitted colour, essence or flavour. The addition of permitted colour or flavour does not transform the milk into any other thing."

(b) Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs Amrit Foods 2015 (324) ELT 418 (SC) has held that "Main purpose of stabilizer was to maintain the product consistency during storage and transportation as well as to improve the shelf life and merely because it improved the body and texture of the product and added some smoothness thereto, that would not change the basic character of the product"

ANALYSIS AND FINDINGS

9. We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing. The issue involved in this case pertains to 'Classification of goods and rate of GST on said product (Flavoured Milk for tea Preparation)'.

10. We have considered the submissions made by the Applicant in their application for Advance Ruling during Personal Hearing/ Video Conferencing. We also considered the questions/issues on which Advance Rulings have been sought for by the applicant, relevant facts having bearing on the questions/issues raised.

Classification

11. In the present case the dealer is intending to prepare Tea Milk. This milk comprises of 99.85% Milk, Flavor (Ginger) 0.05% and Stabiliser 0.1%. It has fat content of 2%, as declared by the applicant. No sugar or sweetening matter has been added to the said product. The said product is neither UHT Milk nor it is a concentrated milk. The main purpose of this milk is to prepare tea and the dealer intends to sell it to the Tea Vendors and Hotels, Restaurants, Catering (HORECA) segment. Due to its ingredients, stabilizer and Ginger Flavor, its vendors will be able to prepare milk improving the taste and viscosity which will help in preparing more cups of tea with the same amount of milk.

It is also seen that the product is having a shelf life of 1 day only under prescribed storage conditions.

During the course of hearing it was further submitted by the authorized representative of the dealer, that the said product is purely milk and it shall be used for preparing of Tea. Though tea which is a beverage is taxable, but the milk which is an ingredient of the said product cannot be taxable. The Tea Milk which contains ginger as a flavor is not a ready to use product meaning thereby the consumer will not prefer to consume it directly. Rather, it is intended to prepare Tea from the said product.

The authorized representative further reiterated that the product shall be sold unlike any other milk in plastic bags and has also submitted the sample proforma of the packaging. The said packaging is in a polypack and it is not in any form of tetra pack nor does it have any slot in the packing in which the straw can be inserted.

We find that the Hon'ble Allahabad High Court in the case of Gujrat Coop Milk Marketing Federation Ltd. Vs State of U.P. 2017 (5) GSTL 351 (All): 2017 Tax Pub (ST) 1622 has held that: "Flavoured Milk is a form of milk as it is neither a derivative of the milk or a milk product. It is like hot and cold milk which remains milk even if sugar is added to it. It does not lose its basic characters of milk by heating or cooling or addition of sugar or any permitted colour, essence or flavour. The addition of permitted colour or flavour does not transform the milk into any other thing."

Also, the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs Amrit Foods 2015 (324) ELT 418 (SC) held that "Main purpose of stabilizer was to maintain the product consistency during storage and transportation as well as to improve the shelf life and merely because it improved the body and texture of the product anti added some smoothness thereto, that would not change the basic character of the product".

Further, Chapter 4 of Customs Tariff Act, 1975 reads as under:

Tariff	Description
0401	Milk And Cream, Not concentrated nor containing added sugar or other Sweetening Matter
0401 20 00	Of a fat content, by weight, exceeding 1% but not exceeding 6%

Under Chapter 22, heading no. 2202 ("Waters, including mineral water and aerated waters, containing added sugar or other sweetening matter or flavoured and other non alcoholic beverages, not including fruit or vegetable juices of heading 2009") of the Custom Tariff Act, 1975, subheading no. (2202) 99:30 is found where "Beverages containing milk" is mentioned.

Now we proceed to examine whether "flavored milk for Tea preparation" 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 flavorings, heating, admixing) before being consumed. The Instant Product, "flavored milk for Tea Preparation" can't be consumed instantly and it does not contains any additives like sugar or sweeteners for direct consumption.

It is moreover, a 'preparation' made as per the description given by the applicant in the flow chart submitted by them. The applicant's product was found to be "Tea Milk" rather than 'Flavored Milk for Tea Preparation' from which Tea shall be prepared. The final product Tea can be said to be a beverage but not the raw material i.e. "Tea Milk".

In view of the above, we find that the product of the applicant, mentioned above, is appropriately classifiable under Chapter 04 under heading 0401 20 00.

Rate of GST

12. We have gone through the provisions laid down and notification issued with regard to Milk and Milk products. As per serial number 25 of Notification 2/2017 Central Tax (Rate) dated 28-06-2017 issued by the Central Government the following kinds of milk, under heading 0401 of GST, is exempted if and only if it is,-

- i. Fresh milk and pasteurized milk
- ii. Milk and Cream
- iii. Not concentrated nor containing added sugar or other sweetening matter excluding Ultra High Temperature (UHT) Milk.

SI. No. 25 of Not. No. 2/2017-Central Tax (Rate) dated 28-06-2017 reads as under:

Sl. No.	Chapter Heading	Description of Goods
25.	0401	Fresh milk and pasteurized milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk

Since, the product of the applicant, classifiable under Chapter Sub-Heading No. 0401 20 00, is pasteurized milk which is neither concentrated nor contains added sugar or other sweetening material and it is not Ultra High Temperature Milk, as declared by the applicant, it is eligible for the benefits under Notification No. 2/2017-Central Tax (Rate) dated 28-06-2017.

ORDER

13. For reasons as discussed in the body of the order, the question is answered thus, -

Question :- What would be the classification of 'Flavored Milk for Tea Preparation'?

Answer:- As per discussion above, the product 'Flavored Milk for Tea Preparation' is found to be "Tea Milk" and it should be classified under Chapter 04 under heading 0401 20 00.

Question :- What would be the rate of GST applicable on the said products?

Answer:- The said product is exempted from GST vide SI. No 25 of Not. No. 2/2017-Central Tax (Rate) dated 28-06-2017.

This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

M V Badari Prasad	Pradeep Kumar
Member	Member
(Central Tax)	(State Tax)

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