M/s. A.M. Abdul Rahman Rowther & Co (appellant), No.4, Old Palace Building, Pudukkottai

Appellate Authority for Advance Ruling — Tamil Nadu

ORDER-in-Appeal No. AAAR/07/2019 (AR), A.R. Appeal No. 8/2019/AAAR Dated **21.10.2019**

Q Questions Before the Authority

- Classification of the product 'Chewing Tobacco' manufactured by the applicant, and the applicability of Notification No. 01/2017-Compensation Cess (Rate), were the questions on which advance ruling was sought. The Lower Authority did not reach them.
- Whether the Lower Authority was right to reject the application under the first proviso to Section 98(2) on the ground that the same issue was already pending before the department, and whether that rejection was made in accordance with law and the principles of natural justice.

F Facts

The appellant manufactures tobacco products without added flavouring, essence or chemical substances under the brand 'Nizam Lady' and sought an advance ruling on the classification of its 'Chewing Tobacco' and the applicability of the compensation cess notification. The Lower Authority rejected the application under the first proviso to Section 98(2), relying on comments from the Trichy Commissionerate that a summons had been issued on 9 January 2019 and an offence case booked on the same issue before the application was filed on 6 February 2019. The appellant contends that the summons concerned short payment of GST and was not about the product's description, and that it was not heard on those comments before rejection.

H Ruling

The Appellate Authority set aside the Lower Authority's order No. 37/AAR/2019 dated 27.08.2019. It held that the Lower Authority had received the department's comments and rejected the application without giving the appellant an opportunity to respond. The matter was remanded so that the Lower Authority can decide, after hearing the appellant, whether the question raised was already pending before the department.

R Reasoning

The Appellate Authority found that the Lower Authority heard the appellant before the jurisdictional comments arrived, and then rejected the application on those comments without a further hearing. It accepted that a rejection under the first proviso to Section 98(2) for a pending question turns on whether the pending proceedings concern the same question, and the appellant's contention that the summons related to short payment rather than classification was not dealt with on the record. Applying the principles of natural justice, the Authority held that remand was the proper course. It relied on its power under Section 101(1) to pass such order as it deems fit. It did not decide the classification or cess question.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

P Provisions Relied On

Section 98(2), first proviso, CGST/TNGST Act 2017 (ground of rejection applied by the Lower Authority)

Section 98 (opportunity of hearing before the Lower Authority)

Section 101(1) (power of the Appellate Authority to pass such order as it deems fit)

Section 100(1) (basis of the appeal)

Notification No. 01/2017-Compensation Cess (Rate) (referred to in the question sought; not analysed)

Section 70 and Section 73(1) (referred to in the appellant's submissions and the show cause notice; not decided)

! For the Practitioner

This order is useful for a practitioner facing a Section 98(2) rejection based on pending proceedings. It confirms that the Lower Authority must give the applicant a hearing on departmental comments before rejecting on that basis, and that the pending question must be shown to be the same question as the one raised in the application. It does not decide the classification of chewing tobacco or whether Notification No. 01/2017-Compensation Cess (Rate) applies. The remand is still open, so the Lower Authority's eventual decision on pendency is not yet known.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> tn_aaar_07_2019_21.10.2019.pdf

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