M/s Anik Milk Products Private Limited (printed as "Anik" in the order; the listing gives "Anil")

Appellate Authority for Advance Ruling — Madhya Pradesh

ORDER NO. MP/AAAR/04/2020, dated 14.01.2020 (copy-to reference No.… Dated **14.01.2020**

Q Questions Before the Authority

- Whether flavored milk is taxable at the rate of 5% under Schedule IV of the CGST Act?

F Facts

The appellant processes milk and milk products, including flavored milk, which it describes as a sweetened dairy drink made with milk sugar, permissible colours and artificial or natural flavours. While the DGGI, Bhopal zonal unit, was conducting a summons-based inquiry into the classification of flavored milk (summons dated 15.07.2019, appearance fixed for 18.07.2019), the appellant applied for an advance ruling on the same question. The Authority for Advance Ruling rejected the application under the first proviso to section 98(2).

H Ruling

The appeal is dismissed on all counts. The Appellate Authority held that the application was not maintainable because the question raised was already pending before DGGI, so the first proviso to section 98(2) applied. It therefore did not go into the merits of the 5% classification question.

R Reasoning

The Appellate Authority accepted that the question is one of classification of goods and so falls under section 97(2)(a). It relied on the DGGI letter dated 31.07.2019 and on the appellant's representative confirming at the personal hearing that summons had been received before the advance ruling application was filed. It found the appellant had not disclosed the pending summons in its application. It then held that **the first proviso to section 98(2) bars the authority from admitting an application where the same question is already pending in proceedings against the applicant** . The appellant's argument that a DGGI enquiry is not a "proceeding" was not accepted, and the appeal was rejected without a merits decision.

P Provisions Relied On

Section 97(2)(a) of the CGST Act, 2017 (classification of goods)

Section 98(2) of the CGST Act, 2017, including the first proviso

Section 100 of the CGST Act, 2017 (appeal)

Section 101 of the CGST Act, 2017 (appellate authority)

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

Corresponding provisions of the MPGST Act, 2017

Section 73 of the CGST Act, 2017 (referred to in the appellant's grounds, not decided)

! For the Practitioner

This order is useful mainly as authority that a pending departmental enquiry or summons proceeding on the same question will bar admission of an advance ruling application under the first proviso to section 98(2), and that non-disclosure of such proceedings will weigh against the applicant. It does not decide whether flavored milk attracts 5% under Schedule IV, so it gives no classification answer. For a client facing a DGGI summons on a classification point, the practical lesson is to disclose the pending matter and assess the proviso before filing.

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 -> mp aaar 04 2020 anik milk 1.pdf

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