M/s Sri Chakra Milk Products LLP (appellant before the Appellate Authority; applicant before the Authority for Advance Ruling)

Appellate Authority for Advance Ruling — Andhra Pradesh

Order /AAAR/AP/04(GST)/2019 dated 9th December 2019, in Application… Dated **09.12.2019**

Q Questions Before the Authority

- What is the GST rate applicable on outward supply of 'flavoured milk'? (Question as put before the AAR, A.P.)
- Whether flavoured milk is classifiable under HSN 0402 9990 at 5% under Notification No. 1/2017-Central Tax (Rate), as contended by the appellant, or under tariff item 2202 (beverage containing milk) at 12%, as held by the AAR? (Question in the appeal.)

F Facts

The appellant processes and sells milk and milk products, including flavoured milk (badam flavour). Its process is standardisation, heating, filtration, pasteurisation and homogenisation of fresh milk, followed by adding sugar and flavours and bottling. The appellant argues this is a simple modification of milk with no manufacturing process, and that the product falls under HSN 0402 rather than Chapter 22.

H Ruling

GST rate and classification of flavoured milk (appellant's claim: HSN 0402 9990 at 5%)	**Classifiable as beverage containing milk under tariff item 2202 90 30 (order text; the Chapter 22 extract prints 2202 99 30); GST rate 12% (6% CGST + 6% SGST) under entry 50, Schedule II**	The order does not decide the 5% claim in the appellant's favour. The appeal is dismissed and the AAR ruling confirmed. The code is printed inconsistently in the order (2202 9930 in the AAR summary, 2202 90 30 in the text, 2202 99 30 in the Chapter 22 table), so the code should be checked against the original.

The Appellate Authority upheld the AAR ruling and dismissed the appeal. Flavoured milk is classifiable under tariff item 2202 90 30 as a beverage containing milk, not under Chapter 4, and attracts GST at 12% (6% CGST and 6% SGST) under entry 50 of Schedule II of Notification No. 1/2017-Central Tax (Rate). The appellant's 5% claim under HSN 0402 9990 was rejected.

R Reasoning

The Authority held that the Chapter 4 description 'not elsewhere specified or included' excludes goods already covered by Chapter 22. It treated flavoured milk as a 'beverage containing milk' using the dictionary meaning of beverage, and as a prepared product per the appellant's own process flow chart. It relied on the GST Council

minutes (31st meeting) and the Central Excise history, where flavoured milk of animal origin was placed under Chapter 22. It considered the Madras High Court, Kerala High Court (interim order) and Gujarat High Court decisions cited by the appellant, and the Supreme Court decision in CCE v. Amrit Food, and found them not to support the appellant's position.

P Provisions Relied On

- Customs Tariff Act, 1975, First Schedule: Chapter 4 (heading 0402) and Chapter 22 (tariff item 2202 90 30 / 2202 99 30, bev…
- Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017: Schedule I entry 8 (heading 0402, 5%) and Schedule II entry 50…
- Notification No. 3/2005-Central Excise (N.T.) dated 24.02.2005, entry 11A (flavoured milk of animal origin, under 2202 90 30),…
- GST Council 31st meeting minutes and agenda (22.12.2018), Serial No. 18
- Explanatory Notes to HSN heading 0402

! For the Practitioner

This order is useful for practitioners advising dairy manufacturers on flavoured milk. It confirms the department's position that flavoured milk falls under Chapter 22 at 12% GST, and gives reasons for rejecting a 5% HSN 0402 claim. It does not bind a court, and the order relies on Council minutes whose quoted text the appellant disputed. It does not address flavoured milk products other than milk-based beverages, or any HSN code change after 2019.

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 -> ap_aaar_04_2019_09.12.2019_scmp.pdf

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