A.M. Abdul Rahman Rowther & Co (trade name: Nizam Tobacco Factory)

Authority for Advance Ruling — Tamil Nadu

Order No.37/AAR/2019 Dated **27.08.2019**

Q Questions Before the Authority

- Classification of the goods: under which heading the applicant's manually packed wet 'nattu' chewing tobacco falls.
- Application of Notification No.01/2017-Compensation Cess (Rate) to that product, including whether it attracts compensation cess under the 'with lime tube' or 'without lime tube' entries or nil rate.

F Facts

The applicant manufactures wet-form chewing tobacco under the brand 'Nizam Lady', packed by hand and sold in small retail packets without chemical flavouring. Jurisdictional GST officers treat the product as 'chewing tobacco (without lime tube)' liable to compensation cess, while the applicant contends it falls under no entry of the cess notification and attracts nil cess. Before the application was filed, the Divisional Preventive Unit had registered an offence case, and a Show Cause Notice No. 07/2019-GST dated 01.07.2019 demanding Rs. 5,61,498 for July 2017 to March 2019 was pending adjudication.

H Ruling

The application was rejected and the merits were not decided. The authority held that the issue raised was already pending before the jurisdictional officer when the application was filed on 06.02.2019, so it could not be admitted under the first proviso to Section 98(2). The order therefore gives no view on the classification or on the applicability of the cess notification.

R Reasoning

The authority noted that the offence case (O.R. No. 17/2018-19 (DPU-GST), dated 09.01.2019) and the show cause notice dated 01.07.2019 concerned the same classification and cess question. The application was filed after these proceedings began. Under the first proviso to Section 98(2) of the CGST/TNGST Act, 2017, the authority must not admit an application where the question is already pending or decided in proceedings under the Act. The authority therefore rejected the application without examining the merits.

P Provisions Relied On

Section 98(2), first proviso, CGST/TNGST Act, 2017

Section 73(1), CGST Act, 2017 (as cited in the show cause notice)

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

Section 11, Central Goods and Services Tax (Compensation to States) Act, 2017 (as cited in the show cause notice)

Notification No. 01/2017-Compensation Cess (Rate) (the subject of the question, not interpreted)

Section 100(1), CGST/TNGST Act, 2017 (appeal period noted)

! For the Practitioner

This order is useful mainly as a procedural warning: an advance ruling application will be rejected if the same question is already under adjudication or in an enforcement case against the applicant when it is filed. It does not decide whether wet manually packed chewing tobacco is classified as 'with' or 'without lime tube' or attracts nil compensation cess. A practitioner should check for pending notices or offence cases before filing and should read the full order for the applicant's arguments on the Central Excise history.

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_aar_37_2019_27.08.19_amarr_c.pdf

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