

Madras HC allows writ on 'flavoured milk' classification dispute, holding GST Council cannot determine classification

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Summary

The Madras High Court (HC) has held that 'flavoured milk,' which is made from dairy milk extracted from milch cattle/dairy animals, shall be classified under Heading 0402, which explicitly covers 'dairy produce' taxed at the rate of 5%. Invoking the principle of '**Noscitur a sociis**,' the HC held that the same cannot be classified under Heading 2202, specifically under the sub-heading 'beverages containing milk' because its ambit is restricted only to such beverages containing plant/seed-based milk having specified alcoholic content. Accordingly, it was clarified that the GST Council had wrongly classified flavoured milk under Heading 2202. It was further highlighted that the provisions do not permit the GST Council to determine classification and that the decisions of the GST Council are merely recommendatory in nature and do not have a binding effect on the government.

Facts of the case

- M/s. Parle Agro Private Limited (the petitioner) assailed the decision of the GST Council to classify 'flavoured milk' under HS Code 2202 instead of HS Code 0402 for being against the set decision of the Supreme Court in the case of Amrit Food and violative of the Constitution of India.
- Further, the petitioner also challenged the ruling of the Tamil Nadu AAAR in the case of *Britannia Industries*, which affirmed the AAR ruling to classify 'flavoured milk' under HS Code 2202 in accordance with the above decision of the GST Council.
- Pertinently, the tax rate applicable under HS Code 2202 is 12% as against the 5% under HS Code 0402.

Petitioner's arguments

- The petitioner asserted that the GST Council can only recommend the rate of goods or services and is not empowered to determine the classification of goods or services.
- Further, the petitioner brought on record the settled jurisprudence under the Central Excise Act to assert that

'flavoured milk' was naturally classified under Heading 0402.

- Moreover, for licencing purposes, the Food Safety and Standards Act, 2006 (FSS), also classified the same under 'dairy products,' which falls categorically under the ambit of Heading 0402.

Respondents' arguments

- The department (respondents) pointed out that the decisions, including in the case of Amrit Food, which have been rendered in the context of the Central Excise Act, do not have a precedential value under GST. Accordingly, the same cannot be applied to determine classification under GST.
- Further, it was contended that the determination of classification, which comprises the rate of duty and valuation, is a power vested upon the authorities under tax enactments, the Tribunal and Supreme Courts. Accordingly, being a constitutional body, the powers vested in the GST Council cannot be diluted merely to benefit the petitioner.
- Further, it was pointed out that mandamus, as sought by the petitioner, can only be issued to enforce the performance of the statutory obligation

or in matters pertaining to policy decisions.

Madras HC's observations and judgement [WP Nos. 16608 & 16613/2020; Order dated 31 October 2023]

- **Function of GST Council is not to determine classification:** The HC explicitly highlighted the trite position that the decisions of the GST Council are in the nature of recommendations and do not have a binding effect on the government.
- **No standalone enactment to govern classification under GST:** The HC observed that, unlike the erstwhile regime, the classification of goods and services is not governed by a standalone enactment under GST. Instead, the applicable tax rates have specifically been notified under the respective goods and services rate notifications, and due reference has been drawn to the classification as per the Customs Tariff Act, 1974 (Customs Tariff), specifying the adoption of the same to classify goods and services under GST.
- **'Flavoured milk' was classified as 'flavoured milk of animal origin' under HSN classification:** W.e.f. 28 February 2005, the scheme of classification as applicable in the Central Excise Act underwent a transition when an 8-digit code system was introduced, in consonance with the Harmonised System of Nomenclature (HSN). Prior to such an amendment, flavoured milk was classified under Chapter Heading 0404 of the Central Excise Act, which covered 'dairy produce' such as buttermilk, cream, yoghurt, etc., as also decided by the SC in the case of Amrit Food. Upon amendment, flavoured milk was categorised under Chapter 2202 of the Central Excise Act, which covered 'flavoured milk of animal origin.' Accordingly, the HC opined that the SC's decision in the case of Amrit Food and similar decisions that decided classification based on the prevailing and unamended scheme of classification under the Central Excise Act would not be relevant or applicable under GST.
- **'Flavoured milk' made out of dairy milk cannot be classified under 'beverages containing milk':** The HC clarified that flavoured milk that is prepared from milk extracted from milch cattle/dairy animals shall be classified under Tariff Heading 0402 of the Customs Tariff that explicitly covers 'dairy produce.' Further, the same cannot be classified under Heading 2202, which covers within its ambit non-alcoholic beverages having specified alcohol content, specifically under sub-heading 2202 90 'beverages containing milk'. The HC applied the principle of *Noscitur a Sociis*, i.e., the words must take colour from associated words, and held that the sub-heading would cover only beverages containing plant/seed-based milk with specified alcoholic content. The HC also relied upon the provisions under the FSS, which categorically grouped and classified dairy products together. Basis the above, the HC stated that the GST Council had wrongly recommended the classification of flavoured milk under Heading 2202.

Our comments

The issues pertaining to determining classification had consistently cropped up and deliberated in the erstwhile regime and the same have been persistent under GST as well.

Although the authorities under tax statutes are empowered to determine classification, the apex court, in the case of Mohit Minerals, had conclusively clarified that the recommendations of GST Council do not bind the government.

It is pertinent to note that the GST Council, pursuant to their decision, had classified 'flavoured and coated ilaichi' under Chapter 21, thereby leviable to 18% GST. The same has been challenged before the Allahabad HC in the case of M/s. Dharampal Satyapal Limited, wherein the HC has affirmed that the matter requires deliberation.

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