KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-08/2020-21 **DATE:22-12-2020**

Sl. No	Name and address of the appellant	M/s Tirumala Milk Products Pvt Ltd, 4BC 301, The Summit, 3rd Floor, 3rd Main, 4th "B" Cross, Kasturi Nagar East, Ramamurthy Nagar, Bangalore 560016
1	GSTIN or User ID	29AABCT7907M1ZR
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 43/2020 Dated: 2nd Sept 2020
3	Date of filing appeal	16-10-2020
4	Represented by	Mr Shankaregowda, Advocate & Authorised representative
5	Jurisdictional Authority- Centre	The Principal Commissioner of Central Tax, Bangalore East Commissionerate.
6	Jurisdictional Authority- State	LGSTO 35, Bangalore (Benz Circle Range
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes, discharged fee of Rs.5,000/-each under CGST/SGST Vide CIN HDFC 20102900094485 dated 08-10-2020 and discharged fee of Rs.5,000/-each under CGST/SGST Vide CIN CNRB 20112900043854 dated 05-11-2020 .

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria*and have the same provisions in like matter and differ

APPELLATE AUTHORITY FOR ADVANCE RULING BANGALORE

TMPR

from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Tirumala Milk Products Pvt Ltd, 4BC 301, The Summit, 3rd Floor, 3rd Main, 4th "B" Cross, Kasturi Nagar East, Ramamurthy Nagar, Bangalore 560016(herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 43/2020 dated: 2ndSept 2020.

Brief Facts of the case:

3. The Appellant, is engaged in processing and manufacturing of milk and milk products in the State of Andhra Pradesh. The Appellant processes various milk and milk products including "Flavoured Milk". The Appellant is carrying on the activity of selling the above said product in the State of Karnataka.

4. In this regard, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

"Whether Flavoured Milk is taxable at the rate of 5% under Schedule IV of the GST Act?"

5. The AAR vide its order KAR ADRG No 43/2020dated 2nd Sept 2020 rejected the application as "inadmissible" in terms of the first proviso to Section 98(2) of the CGST Act, 2017 in as much as an investigation had already been initiated by the Directorate of GST Intelligence, Bangalore Zonal Unit.

6. Aggrieved by the rejection of the application for advance ruling, the appellant has filed this appeal on the following grounds.

6.1. The Appellant submits that the AAR ought not to have dismissed/rejected the application filed for advance ruling as not maintainable; that the AAR failed to understand the intention of the Parliament while framing Section 98 of the CGST Act; that the Section 98 has to be read as a whole in order to interpret the said provision as understood by the legislature. By reading the 1st proviso to Section 98(2) of the CGST Act in isolation, it does not give the right concept the legislature had in mind at the time of enacting the provision. By

overall reading of Section 98, it is categorical that the issue which has been raised before the AAR must be pending before the jurisdictional/concerned officer for the AAR to dismiss /reject the application.

6.2. They submitted that the AAR has completely misconstrued Sections 98(1) and 98(2) and 1st proviso to sub-section (2); that in sub-section (2), the Parliament has empowered the authority either to admit or reject the application after perusing the records called for from the concerned officer; that the legislature has not mentioned the reasons for admitting or rejecting the application in sub-section (2) but has provided the reason for rejection in the 1st proviso and hence the proviso to sub-section (2) should be read with the main Section. They submitted that the first and foremost criterion to reject the application is that proceedings should be pending or decided by the concerned officer as prescribed under Section 98(1) of the CGST Act; secondly, in the pending proceedings or the decision taken, there should be reference to the question which has been raised in the application for advance ruling.

6.3. The Appellant submitted that summons dated 18-02-2019, 15-03-2019 and 14-08-2019 were issued to the Appellant by the Senior Intelligence Officer of Directorate of GST Intelligence, Bangalore Zonal Unit; that the AAR had received the letter dated 18-08-2020 from the Deputy Commissioner, Bangalore East Commissionerate stating that the DGSTI have initiated an investigation against the Appellant with regard to misclassification of "Flavoured Milk" under Incident Report No 35/2019-20 which is under progress; that based on the said report, the AAR has opined that the initiation of investigation was done prior to filing the application and hence rejected the application in terms of the 1st proviso to Section 98(2).

6.4. The Appellant submitted that the phrase "under any of the provisions of this Act" confines to the proceedings or decision taken by the concerned officer, but not the proceedings pending or decision taken by any other officer under CGST/KGST Act; that the 1st proviso to Section 98(2) cannot be read independently. The Appellant submitted that before the concerned officer no proceedings was pending or no decision was taken by the concerned officer in the Appellant's case and hence the application is maintainable. The further submitted that the "concerned officer" as per the guidelines issued by the Director General of Taxpayer Services, CBIC means an officer who has been designated by the CGST / SGST administration in regard to application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the appellant is located. In such

cases, the concerned officer will be the jurisdictional CGST/SGST officer. They further submitted that under Section 70 of the CGST Act, 'proper officer' has been empowered to issue summons; that for the purpose of maintaining application for advance ruling, there should not be any proceeding pending or decision taken by the concerned officer; that there is no reference to the 'proper officer' in Section 98. Therefore, summons issued under Section 70 will not come under the purview of proviso to Section 98(2).

6.5. The Appellant also submitted that mere investigation of certain facts itself cannot be called as proceedings pending; that the investigation has been undertaken by the proper officer who has not been referred to in Section 98(1) of the CGST Act; secondly, the AAR has not been empowered under Section 98 to call for records or report of any nature from the office of the DGSTI to ascertain whether the proceedings are pending or decision is taken with respect to the issue which is raised in the application. The AAR has been empowered to call for the records from the concerned officer and hence it presupposes that only if the proceedings are pending before the concerned officer, the Appellant's application can be rejected.

6.6. The Appellant also submitted that nowhere in the summons, the question raised before the AAR i.e entry and schedule under which Flavoured Milk is taxable, is mentioned/referred; the summons does not indicate for what reason the presence of the Appellant was ordered; that in the absence of specific issue in the summons, the Appellant's case is not hit by the 1st proviso to Section 98(2). In view of the aforesaid, the order passed by the AAR is erroneous and requires to be set aside.

6.7. The Appellant also sought for condonation of delay of 4 days in filing the instant appeal on the grounds that many staff members were affected with Covid and hence the appeal papers could not be prepared in time.

PERSONAL HEARING

7. The appellant was called for a virtual hearing on 6th November 2020 but they sought an adjournment. Accordingly, the Appellants were called for another virtual hearing on 17thNovember 2020.

7.1. The hearing on 17th November 2020 was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by their authorised representatives Mr Shankaregowda, Advocate who explained the facts leading to the appeal and made the following submissions in support of the claim that the decision of the lower Authority is not correct and is liable to be set aside. He submitted that as per Section 98, the issue on which an advance ruling is sought must not be pending before the jurisdictional /concerned officer. In their case, the investigation was initiated by DGSTI, Bangalore Zonal Unit and not by the concerned officer as prescribed under Section 98(1). He submitted that the term "concerned officer" is explained in the flyer issued by the DGTPS on the Advance Ruling Mechanism under GST, wherein it is stated under the para relating to appeals against the order of the AAR, that *"The word prescribed officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer."* Relying on this and on a conjoint reading of the provisions of sub-section (1) and (2) of Section 98 as also the proviso to Section 98(2), he submitted that only if any proceedings are pending in the case of the Appellant before the concerned officer can the proviso to Section 98(2) be invoked; that the lower Authority has erred in reading the proviso in isolation.

7.2. He submitted that mere issuance of summons to the Appellant cannot be called as 'proceedings under the Act'; that it is only when a show cause notice has been issued to the Appellant can it be said that proceedings are pending. Even assuming for the sake of argument that the proviso is applicable in the Appellant case, he submitted that there is nothing to prove that the question raised in the application was the subject matter being investigated. None of the three summons issued to the Appellant had any mention that the classification of Flavoured Milk or its rate of tax was being investigated by the authorities.

DISCUSSIONS AND FINDINGS

8. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as the detailed submissions made at the time of personal hearing.

TMPPL

9. We first address the issue of admissibility of this appeal under Section 100 of the CGST Act. In terms of the said Section an appeal to the Appellate Authority for Advance Ruling may be made by either the applicant, the concerned officer or the jurisdictional officer who is aggrieved by the advance ruling pronounced under Section 98(4) of the said Act. The said Section 98(4) relates to the advance ruling pronounced by the Authority on the questions specified in the application.

10. As per Section 95(a) of the CGST Act, "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or questions specified in sub-section (2) of section 97 or sub-section (1) of section 100,in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. The procedure for obtaining an advance ruling is outlined in Section 98 of the said Act which is reproduced below for reference:

> ***98. Procedure on receipt of application.***—*(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:*
>
> *Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.*
>
> *(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:*
>
> *Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:*
>
> *Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:*

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

11. An advance ruling pronounced by the Authority under Section 98(4) may be appealed against to the Appellate Authority within a period of 30 days from the date on which the ruling sought to be appealed against is communicated to the aggrieved person. However, the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

12. A reading of the above provisions of law makes it clear that an appeal can be filed before the Appellate Authority only against an advance ruling pronounced in terms of Section 98(4). In this case, there is no ruling given by the lower Authority on the question raised in

the application. The application for advance ruling was not admitted and was rejected by order dated 2nd Sept 2020 in terms of Section 98(2) of the CGST Act. Such an order rejecting the application for advance ruling as inadmissible is not an order appealable before us.

13. We also observe that in the instant appeal, the Appellant is aggrieved by the grounds on which the lower Authority has refused to admit the application for advance ruling which is that, the question on which the ruling was sought is a matter that is being investigated by the Directorate of GST Intelligence and hence the application cannot be admitted in terms of the proviso to Section 98(2) of the CGST Act. The Appellant has assailed this reasoning and argued that it is only when the same question is being investigated by the 'concerned officer' that the provisions of the proviso to Section 98(2) will apply; that investigations conducted by any other agency will not attract the said proviso. The Appellant has gone into great length in analyzing the intention of the legislature in framing the provisions of Section 98 and has put forth the view that it is only proceedings which are pending before the 'concerned/jurisdictional officer' which qualify for rejection in terms of the proviso to Section 98(2). We have already reproduced the provisions of Section 98 of the CGST Act and we find that such an interpretation is certainly not implied in the framing of the said Section. The first proviso to Section 98(2) makes an application ineligible for admission if the Authority finds that the question raised in the application is already pending or decided in 'any proceedings' in the case of the applicant under any provisions of this Act. Commencement of investigation in terms of Section 67 of the CGST Act, can be said to be the start of a proceeding to safeguard the government revenue. The investigation can be initiated either by the concerned/jurisdictional officer or by agencies who are empowered under the provisions of the CGST Act to issue summons and investigate. Therefore, the use of the phrase "any proceedings" in the 1st proviso to Section 98(2) encompasses within its fold proceedings pending either before the concerned/jurisdictional officer or before any investigative agency such as DGSTI. We also find from the records that the statement recorded by the DGSTI pursuant to the summons issued, deals mainly with the classification and rate of tax of the product "Flavoured Milk". Therefore, we agree with the decision taken by the lower Authority that the application for advance ruling is inadmissible in terms of the 1st proviso to Section 98(2) of the CGST Act.

14. In view of the aforesaid, we hold that the appeal filed against the non-admittance of the application for advance ruling is not maintainable in as much as the impugned order is not an appealable order under Section 100 of the CGST Act, 2017.Since the appeal itself is not maintainable, the question of condoning the delay in filing the appeal does not arise.

15. In view of the above discussion, we pass the following order

ORDER

We dismiss the appeal filed by M/s Tirumala Milk Products Pvt Ltd, 4BC 301, The Summit, 3rd Floor, 3rd Main, 4th "B" Cross, Kasturi Nagar East, Ramamurthy Nagar, Bangalore 560016 on the ground that it is not maintainable.

22-12-20

(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

22.XII.2020

(M.S. SRIKAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Principal Commissioner of Central Tax, Bangalore East Commissionerate
4. The Assistant Commissioner, LGSTO-35, Bangalore (Benz Circle Range)
5. Office folder

AUTHORITY FOR ADVANCE RULING BANGALORE APPELLATE