

[2022] 142 taxmann.com 535 (Andhra Pradesh)/[2022] 65 GSTL 4 (Andhra Pradesh)/[2022] 94 GST 385 (Andhra Pradesh)[14-09-2022]

GST : All forms of dried mangoes (other than mangoes sliced, dried) falling under Heading 0804, including mango pulp, attract 12 per cent GST

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[2022] 142 taxmann.com 535 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Foods and Inns Ltd.

v.

Union of India*

C. PRAVEEN KUMAR AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 17267 OF 2022

SEPTEMBER 14, 2022

Mango pulp/puree - Heading No. 0804 - Classification - Rate of GST - All forms of dried mangoes (other than mangoes sliced, dried) falling under Heading 0804, including mango pulp, attract 12 per cent GST in view of amendment of Entry at Sl. No. 16 of Schedule-II of [Notification No. 1/2017-Central Tax \(Rate\), dated 28-6-2017](#) vide [Notification No. 6/2022-C.T. \(Rate\), dated 13-7-2022](#) and clarified by C.B.I.&C. [Circular No. 179/11/2022-GST, dated 3-8-2022](#) [Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 6, 7 and 8] [In favour of assessee]

Circulars and Notifications : C.B.I.&C. [Circular No. 179/11/2022-GST, dated 3-8-2022](#); [Notification No. 2/2017-CT \(Rate\), dated 28-6-2017](#) and [Notification No. 1/2017-CT \(Rate\), dated 28-6-2017](#)

CASE REVIEW

Foods and Inns Ltd., In re [\[2022\] 139 taxmann.com 464/60 G.S.T.L. 468 \(AAAR - A.P.\)](#) (para 5) *modified*.

CASES REFERRED TO

Foods and Inns Ltd., In re [AAR No. 16/AP/GST/2021, dated 7-7-2021] (para 5).

Mahesh Rai Chanda Nai and **G. Arun Showri**, Ld. Counsels *for the Petitioner*. **Y.N. Vivekananda**, Ld. Govt. Pleader and **Suresh Kumar Routhu**, Ld. Standing Counsel *for the Respondent*.

ORDER

C. Praveen Kumar, J. - Heard Sri Mahesh Rai Chanda Nai, learned counsel representing Sri G. Arun Showri, learned counsel for the petitioner, Sri Y.N. Vivekananda, learned Government Pleader for Commercial Taxes appearing for respondents 2, 5 & 6, and Sri Suresh Kumar Routhu, learned standing counsel appearing for respondents 3 & 4. Perused the record.

2. The present writ petition came to be filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondents 5 & 6 to declare the goods manufactured by the petitioner as classifiable under Chapter Heading 0804 50 40 and exempt from GST in terms of entry 51 of Notification No. 2/2017-CT(Rate) dated 28-6-2017, apart from other reliefs.

3. As seen from the record, by an order dated 27-7-2022, this Court, taking into consideration the submissions made across the Bar, directed the respondents herein not to take any coercive steps for recovery of GST @ 18% as contemplated by them in respect of past transactions and insofar as future transactions are concerned, in view of the dispute as to whether 'mangoes' mentioned in the notification include 'mango pulp', directed that petitioner shall pay GST @ 18%.

4. The question that arises for consideration in the present writ petition is: Whether the authorities were right in charging GST, in respect of 'Mango Pulp', @ 18%?

5. Before going into the said aspect, it is to be noted here that on an application made by the petitioner before the Authority For Advance Ruling, Andhra Pradesh, in *Foods and Inns Ltd.*, In re AAR. No. 16/AP/GST/2021, an order came to be passed on 7-7-2021 wherein it was held that the 'Mango pulp/puree' falls under the entry no. 453 of Schedule-III of Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, attracting GST @ 18%. Aggrieved by the same, petitioner herein preferred an appeal before the Appellate Authority for Advance Ruling. An order came to be passed by the appellate authority on 20-1-2022, which reads as under:

"We hereby modify the Order passed by the Authority for Advance Ruling vide AAR. No. 16/AP/GST/2021 dated 7-7-2021 and hold that the 'Mango Pulp/Puree' is classifiable under Tariff Item 0804 50 40 and chargeable to GST @ 18% by virtue of entry No. 453 of Schedule III in Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017."

6. Referring to the order passed by the Appellate Authority, learned counsel for the petitioner would submit that pending the writ petition, the Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit), issued a Circular dated 3-8-2022 wherein while referring to Mangoes under CTH 0804, stated as under:

"4. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

4.1 Representations have been received seeking clarification regarding the applicable GST rate on different forms of Mangoes including Mango Pulp.

4.2 On the basis of the recommendation of the GST Council in its 22 Meeting, the GST rate on Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.

4.3 Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022.

4.4 Fresh mangoes, falling under heading 0804, continue to remain exempt from GST (S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017]."

7. From a reading of the above, it is very clear now that on the basis of recommendation of GST Council in its 22nd meeting, the GST rate on 'Mangoes sliced, dried' falling under heading 0804 was reduced from 12% to 5% while GST rate on all forms of dried mangoes (other than sliced and dried mangoes) falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%. Therefore, the petitioner is liable to pay GST on Mango pulp @ 12%.

8. In view of the above, orders passed by the Appellate Authority for Advance Ruling imposing GST in respect of 'mango pulp' @ 18% is incorrect and it is made clear that the petitioner is liable to pay GST in respect of Mango pulp @ 12%.

9. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

*In favour of assessee.