

[2023] 154 taxmann.com 413 (Andhra Pradesh)/[2023] 99 GST 1026 (Andhra Pradesh)/[2023] 78 GSTL 14 (Andhra Pradesh)[06-09-2023]

GST : Rate of GST on fruit pulp would be 12 per cent and not 18 per cent

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[2023] 154 taxmann.com 413 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sri Varsha Food Products India (P.) Ltd.

v.

Assistant Commissioner (ST)*

U. DURGA PRASAD RAO AND SMT. VENKATA JYOTHIRMAI PRATAPA, JJ.
WRIT PETITION NO. 13934 OF 2023
SEPTEMBER 6, 2023

Mango pulp - Edible fruits and nuts - Heading No. 0804 - Classification - Period 2017-18 to 2020-21 - Circular dated 3-8-2022 issued by Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit) deals with charging GST in respect of mango pulp and states that on basis of recommendation of GST Council in its 22nd Meeting, GST rate on Mangoes sliced, dried, falling under heading 0804, was reduced from 12 per cent to 5 per cent [S.No. 30A of Schedule I of [Notification No. 1/2017-Central Tax \(Rate\), dated 28-6-2017](#)]; however, 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 rate of 12 per cent and impugned circular cannot be said to be only prospective in nature [Section 9 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 7 and 8] [In favour of assessee]

Circulars and Notifications : Circular dated 3-8-2022 issued by Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit)

CASE REVIEW

W.P.No.17267 of 2022 of Division Bench of High Court of Andhra Pradesh (para 8) *followed*.

ORDER

U.Durga Prasad Rao, J. - The petitioner prays to set aside the impugned Assessment Order passed by the 1st respondent in Form GST DRC-07, dated 30-7-2022, in Order No. ZH370722OF80604 in GSTIN No. 37AAMCS995H1ZL, for the tax period 2017-18 to 2020-21 read with the Endorsement dated 27-3-2023, issued by the second respondent in confirming the levy of tax on Fruit Pulp manufactured by the petitioner to 18% as against 12% as clarified by the 4th and 5th respondents herein as illegal and for a consequential direction.

2. Heard learned counsel for petitioner Sri Suri Babu and Sri P.Shreyas Reddy, learned Government Pleader Commercial Tax representing respondents 1 to 3, Sri Suresh Kumar Routhu, learned Senior Standing Counsel for CBIC representing respondent 4 and Sri N.Harinath, learned Deputy Solicitor General for respondent 5.

3. After making preliminary arguments, learned counsel for petitioner referring to the order dated 14-9-2022 in W.P.No.17267 of 2022 passed by a Division Bench of this High Court, would submit that the said order squarely applies to the case on hand and requested to pass the order accordingly.

4. In W.P.No.17267 of 2022 a Division Bench of this High Court was dealing with the question whether the authorities were right in charging GST in respect of mango pulp at the rate of 18%. Answering the aforesaid question, the Division Bench of this High Court passed the following order:

"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 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 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%."

5. Learned Government Pleader while admitting the above ruling being applicable to the case on hand, and also further admitting that to his knowledge no appeal is filed against the said order, however would submit that the Circular issued by the Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit), applies prospectively *i.e.*, from 3-8-2022 and as the tax period in the instant case is being 2017-18 to 2020-21, the said Circular will not operate retrospectively and therefore, the petitioner cannot claim any advantage on the strength of aforesaid Circular. Thus, though the learned Government Pleader admitted that the order in the W.P.No.17267 of 2022 has some bearing with the case on hand, however, the same cannot be relied upon by the petitioner, since the Circular dated 3-8-2022 has only prospective application, but not retrospectively.

6. We are unable to accept the above contention of the learned Government Pleader. The Circular which was reproduced above, contains a mentioning at Para 4.2 as follows which is being extracted for convenience sake:

"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%."

7. Thus, in the above Circular, it was pellucidly mentioned that "including mango pulp was always meant to be at the rate of 12%". Considering such mentioning, the Division Bench of this High Court, which was also dealing with the case falling prior to the date of Circular, held that the petitioner therein was liable to pay GST

on mango pulp at the rate 12% only and passed the order accordingly. It would show, a Division Bench of this High Court has ultimately held that since the Circular reads to the effect that the GST rate including mango pulp was always meant to be at the rate of 12%, the same has to be taken as, for all the times the rate was only 12% so far as mango pulp is concerned.

8. In that view, we cannot accept the argument of learned Government Pleader that the Circular is only prospective in nature. The said argument is accordingly set aside and for the reasons stated above and following the order in W.P.No.17267 of 2022 and for the reasons mentioned therein, the writ petition is allowed as prayed for. No costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.

SB

*In favour of assessee.