

GST – TAXABILITY ON ESSENTIAL ITEMS

Under the goods and services tax (GST), the list of items are exempted from the GST, which contains essential items like milk and its by-products, papad etc. However, the recent rulings of the Authority of Advance Ruling (AAR) have raised objections with regard to the treatment of the exempted products, as such ruling make arbitrary difference among the exempted products and their by-products.

The latest example in this regard is lassi, inspite of exemption of milk from the taxation, multiple rulings of AAR has treated flavoured lassi and flavoured milk as taxable. The ruling of AAR in the cases involving Britannia and Gujarat Cooperative Milk Marketing Federation¹ has levied taxes at 12% on the flavoured milk. However, the Gujarat AAR in Sampoorna Dairy and Agrotech LLP², has ruled that the flavoured lassi have curd, water and spice as ingredients, therefore flavoured lassi is outside the framework of GST.

Another, arbitrary ruling of the Gujarat AAR in Global Gruh Udyog³, wherein the irrespective of the shape and size of conventional papad and other by-product of papad.

Similarly, in the case of Krishna Bhavan Foods and Sweets⁴, the Tamil Nadu AAR arbitrarily ruled that since the applicant is selling ready-to-eat powder mix for dosa, idli and other products, therefore tax chargeable shall be at 18% on account of the powder mis is different from the batter, which is charged at 5%. Such differential interpretation even though the end product is same is creating ambiguity among the advance tax payers.

It is important to underline the alarming rulings of the taxation authorities of bringing the essential products within the GST regime, which would cause financial burden on the consumers. Additionally, the ambiguity surrounding the levy of tax on the products has caused the businesses lose confidence, due to the uncertainty and high penalty.

Therefore, in order to boost-up the economy and also provide adequate financial relief to the consumers in post-pandemic times, it is necessary to not pressurise the stakeholders

¹ 2021 SCC OnLine Guj AAR-GST 6

² Advance Ruling No. GUJ/GAAR/R/30/2021, In Application No. Advance Ruling/SGST&CGST/2021/AR/15

³ Advance Ruling No. Guj/GAAR/R/21/2021, In Application No. Advance Ruling/SGST&CGST/2020/AR/53

⁴ Order No. 24/ARA/2021, dated 18.06.2021

and also remove the ambiguity and uncertainty in the GST regime, by adopting the harmonised system of nomenclature while reading the list of exempted products from the GST.

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⁵ Majesty legal is law firm, established in 2013 and aim of the present article is to provide recent legal development. The opinions presented in the article are personal in nature and not to be deemed as legal advice.