

Key Takeaways from Madras HC Judgment on GST Council's Power to Classify Goods

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The Hon'ble Madras High Court has recently pronounced a noteworthy judgment dated 31 October 2023 in *M/s. Parle Agro Pvt. Ltd. vs UOI and Ors.* [\[TS-577-HC\(MAD\)-2023-GST\]](#). The judgment held that the Goods and Services Tax ('GST') Council did not have the power under the Constitution to clarify that 'flavoured milk' must be classified under Harmonized System of Nomenclature Code (HSN Code) 2202 ('Beverages containing milk'), which attracts a GST rate of 12% instead of HSN Code 0402 ('Milk and cream, concentrated or containing added sugar or other sweetening matter'), which attracts a GST rate of 5%. The High Court disagreed on merits too and held that flavoured milk should be classified under HSN Code 0402 attracting 5% GST.

Disputes involving classification of goods is not uncommon in the domain of taxation laws. The Hon'ble Madras High Court's judgment in Parle Agro gains relevance because of a challenge to the very powers of GST Council under Article 279-A of the Constitution to clarify classification of goods, a power which has been frequently exercised in the 6 years of GST. The judgment in Parle Agro therefore merits a closer examination.

These Writ Petitions before Madras High Court were triggered by rulings pronounced by the Authority for [Advance Ruling](#) ('AAR') and the [Appellate Authority for Advance Rulings](#) ('AAAR') in Tamil Nadu [for Britannia industries Ltd., reported in 2022 (56) GSTL 36 (AAAR) and 2020 (36) GSTL 582 (AAR)] which adopted the 3rd GST Council meeting's recommendations dated 22 December 2018, clarifying the classification of flavoured milk.[\[1\]](#)

It was argued by the Revenue that the GST Council is a constitutional body, and the functions of GST Council are clearly delineated under the Constitution [in article 279A (4)(e) read with (6)] which include making recommendations qua rates of GST and a general objective to work towards a harmonized GST framework across India.

The High Court after taking note of Article 279A and the architecture of the GST laws reached the following important conclusions of general relevance:

1. That unlike Customs and Central Excise (where rates of duty emerge from the first schedules of the Customs Tariff Act, 1975 and Central Excise Tariff Act, 1985 respectively), there is no

separate enactment for fixing rate of tax under GST. In fact, as per the Explanations to the rate notification for 'goods' under GST, the rules of interpretation of First Schedule to the Customs Tariff Act, including the Section and Chapter Notes and the General Explanatory Notes of the said Schedule shall, so far as may be applicable has to be relied upon to interpret the GST rate notification. Accordingly, **classification under GST has to be determined strictly in accordance with the classification under the Customs Tariff Act, 1975.**

2. That determination of classification of goods is not within the powers of the GST Council. Further, the view taken by the Hon'ble Supreme Court in UOI vs Mohit Minerals Pvt Ltd [reported in (2022)10 SCC 700] was reiterated - that GST Council recommendations, in any case, are merely recommendatory in nature and not binding on the Central/State Governments.
3. That **classification ought to have been independently determined by assessing officer under GST.**
4. That the taxpayer had not challenged a pre-GST notification under Central Excise classifying the product in question under HSN 2202 (since it was in effect beneficial to the taxpayer) is not relevant and cannot lead to the inference that *"Flavoured Milk" in fact did fall under Heading 2202 of the Customs Tariff Act.*"

On interpretation of the term's 'beverage' and 'milk', in absence of a specific definition under the classification scheme and by applying the principle of noscitur a sociis, the Court concluded that the expression "Beverage Containing Milk" in CTH Code 2202 90 refers to "beverages" containing seed based, fruit based or plant-based milk. It will not extend to "Dairy Milk" from milch cattle. Therefore, "Flavoured Milk" made from dairy milk cannot come within the purview of Chapter 22 of the Tariff.

Finally, while striking down the GST Council's recommendation on classification, the High Court left it open to the Government to issue a fresh notification amending the GST rate of the product in question, based on recommendations of the GST Council or otherwise.

Our Comments:

The verdict given by the Hon'ble Madras High Court is amenable to challenge before the division bench in a writ appeal (or, even directly at a Supreme Court level, through a Special leave Petition - in case the Supreme Court decides to admit the same).

However, notwithstanding Revenue's right to appeal, this judgment in Parle Agro, is of importance in as much as it has been shown that clarifications from the GST Council on classification (and CBIC Circulars based thereon) may not always stand the test of legality.

The judgment is also another reiteration from the judiciary that the GST Council must be mindful of its constitutional limitations while discharging its obligation.

There have been several similar clarifications issued by the GST Council on classification - for illustration, reference may be made to the following:

1. Ice-cream parlours are not 'restaurant service' providers classifiable under CTH 9963 and accordingly must be taxed at 18% for supplying manufactured ice-cream, instead of 5% which is the rate prescribed for 'restaurant service providers' - Decided in the 45th GST Council meeting dated 17 September 2021
2. Services by way of granting mineral exploration and mining rights (classifiable under CTH 9973) must be taxed at 18% and not 5% (i.e., the same rate as on supply of mined goods) - Decided in the 45th GST Council meeting dated 17 September 2021
3. Rab (which is a massecuite prepared by concentrating sugarcane juice on open pan furnaces) is classifiable under CTH 1702 and taxable at 18% instead of CTH 1701, taxable at 5% - Decided in the 48th GST Council meeting dated 17 December 2022

The **most critical take-away from this judgment is that such clarifications on GST classification must be evaluated thoroughly for a possible legal challenge by taxpayers who are adversely affected by such clarifications.**

[1] In Re: Britannia industries Ltd. [\[TS-275-AAR\(TN\)-2020-NT\]](#) [\[TS-369-AAAR\(TN\)-2021-GST\]](#)

