HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 20935 OF 2025 (T-RES)

BETWEEN:

M/S. DODLA DAIRY LIMITED
(INCORPORATED UNDER COMPANIES ACT, 1956)
NO. 104/A, BEHIND PADMAVATI KALYANA MANDAPAM,
3RD MAIN ROAD, RAJAJINAGAR INDUSTRIAL AREA,
BENGALURU, KARNATAKA -560 044.

REPRESENTED BY :
USHA UPPALA,
MANAGER, TAXATION
D/O SRI. RAMESH UPPALA
NO. G5, SRI SAI RESIDENCY,
NIZAMPET, HYDERABAD - 500090.

...PETITIONER

Digitally signed by AASEEFA PARVEEN
Location: HIGH COURT OF KARNATAKA

(BY SRI. T. SURYANARAYANA, SR. COUNSEL
APPEARING FOR SRI. S.G. PRASHANTH MURTHY
AND SRI. SAHIL AFNAN S., ADVOCATES)

AND:

1. THE UNION OF INDIA
   REPRESENTED BY ITS SECRETARY MF (DR)
   MINISTRY OF FINANCE, NORTH BLOCK,
   NEW DELHI-110 011.

2. THE ADDITIONAL COMMISSIONER
   (APPEALS) MYSURU
   NO. S-1 AND S-2, VINAYA MARGA

SIDDHARTHA NAGARA, MYSURU - 570 011.

3. THE ASSISTANT COMMISSIONER OF CENTRAL TAX
DIVISION II, BANGALORE WEST COMMISSIONERATE,
1ST FLOOR, BMTC-TTMC COMPLEX,
BANASHANKARI,
BENGALURU - 570 011.

4. THE STATE OF KARNATAKA,
REPRESENTED BY ADDITIONAL CHIEF SECRETARY ROOM
NO. 255, VIDHANA SOUDHA,
DR. AMBEDKAR ROAD, SAMPANGI RAMA NAGARA
BENGALURU - 560 001.

...RESPONDENTS

(BY SRI.ARAVIND V. CHAVAN, ADVOCATE FOR R1, R2 AND R3;
SMT. JYOTI M. MARADI, HCGP FOR R4)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER OF RESPONDENT NO.2 IN ORDER IN APPEAL NO.MYS-SPP-ADC/JC(A)-012-2022-23-GST DATED 25.04.23 (ANNEXURE-E), AS BEING ARBITRARY, ILLEGAL, AGAINST JUDICIAL DISCIPLINE, AS BEING OPPOSED TO ORDERS OF HONOURABLE SUPREME COURT AND HONOURABLE HIGH COURTS.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING B-GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition petitioner seeks the following reliefs:

(a) Issue a writ of Certiorari, or such other Writ, Order or direction in the nature of a writ of certiorari, quashing the order of Respondent No.2 in Order in

Appeal No. MYS-SPP-ADC/JC(A)-012-2022-23-GST dt.25.04.23 ***(Annexure E)****, as being arbitrary, illegal, against judicial discipline, as being opposed to orders of Honourable Supreme Court and Honourable High Courts;*

(b) Issue a writ of Mandamus to declare that flavoured milk merits classification under GST Tariff Heading 0402 and accordingly be subject to GST @ 5% (2.5% CGST and 2.5% SGST)

(c) Issue a writ of Mandamus or such other Writ, Order or direction, as this Honourable Court may deem fit, consequently, directing Respondent No.3 to refund Rs.74,99,474/-, paid by the Petitioner vide two DRC 03 Challans dt.13.07.22 ***(Annexure D1, D2),*** *against illegal demand made by Respondent No.3 and confirmed by Respondent No.2;*

(d) To pass such other orders, directions and writs as this Honourable High Court may deem fit in the facts and circumstances of the case, and in the interests of justice, including the costs of this writ petition.

For which Act of kindness, the petitioner shall as in duty bound, ever pray."

2. Heard learned counsel for the petitioner, learned counsel for the respondents No.1 to 3 and learned HCGP for respondent No.4 and perused the material on record.

3. A perusal of the material on record will indicate that pursuant to proceedings conducted by the respondents, show cause notice dated 10.11.2021 was issued by respondent No.3 to the petitioner under Section 74 of the CGST Act to which, the petitioner submitted a reply dated 29.11.2021 and the same having been culminated in the adjudication order dated 19.05.2022. Subsequently, the petitioner deposited the GST amount of Rs.74,99,474/- on 13.07.2022 under protest and filed an appeal, which was also dismissed by the first appellate Authority. Aggrieved by the impugned adjudication orders of the adjudicating Authority and the first appellate Authority, petitioner is before this Court by way of the present petition.

4. Per contra, learned counsel for the respondents submits that there is no merit in the petition and the same is liable to be dismissed.

5. A perusal of the material on record would indicate that in the petitioner's own case, i.e. in Writ Petition No.5699/2025, the Division Bench of the Andhra Pradesh High Court ruled in favour of

the petitioner vide 'Annexures - Q1, Q2 and Q3' dated 19.03.2025 as hereunder.

"***Annexure-Q1:***

The petitioner is a registered dealer, under the GST Act, dealing with milk and milk products. The assessment of the petitioner, for the period 2017-18, was completed and an assessment order has been passed by the 2nd respondent, on 09.03.2021. The petitioner was aggrieved by two components of the assessment order. The Assessing Officer had held that the flavoured milk sold by the petitioner would fall within the tariff heading CH 2202 instead of 0402. The Assessing Officer had also held that the conversion of milk into milk powder and the charges collected on such conversion was chargeable at the rate of 18%.

2. The petitioner being aggrieved by the two components of the assessment order had filed an appeal before the 1st respondent which came to be dismissed on 16.12.2024.

3. Aggrieved by these two orders, the petitioner has approached Court, by way of the present Writ Petition on the ground that the second appeal, which would normally be filed before the Tribunal, could not be filed as the GST Tribunal has not come into existence.

4. The learned counsel for the petitioner would now rely upon the Judgment of a Division Bench of this Court, dated 10.12.2024, in W.P.No.254 of 2024 wherein this Court had held that flavoured mifk would fall within the tariff heading 0402 and would not fall under the tariff heading 2202.

5. On the question of conversion charges and taxability of conversion charges from milk to milk powder,

the learned counsel for the petitioner would contend that the said issue was considered again in the appeal filed for the subsequent period of 2019-2020 wherein the appellate authority has accepted the contention of the petitioner that such conversion charges would not attract interest at 18%, but would attract tax at the rate of 5%.

6. Accordingly, following the earlier order of this Court in W.P.No.254 of 2024, this Writ petition is disposed of in the following manner:

> *1) The order of assessment, dated 09.03.2021, and the order of appeal dated 16.12.2024 are set aside and the matter is remanded back to the Assessing Officer for passing a fresh assessment order;*
>
> *2) The assessing officer shall levy tax on the sale of flavoured milk by the petitioner, by treating the flavoured milk to be under tariff heading No.0402;*
>
> *3) The question of taxability of conversion charges from milk to milk powder and the rate of tax, is left open for consideration by the Assessing Officer keeping in view the above submissions made by the petitioner.*
>
> *There shall be no order as to costs.*
>
> *As a sequel, miscellaneous petitions, pending if any, shall stand closed."*

Annexure-Q2:

The petitioner deals with milk and milk products. The turn-over of the petitioner, relating to the sale of flavoured milk, for the year 2018-19, was taxed @ 12%, by way of an assessment order, dated 09.03.2021.

2. Aggrieved by the said order of assessment, the petitioner moved an appeal before the 1st respondent, who dismissed the said appeal on 16.12.2024.

3. The question of rate of tax payable on the sale of flavoured milk, In the State of Andhra Pradesh, under the GST Act, came to be decided by this Court, by an order, dated 10.12.2024, in W.P.No.254 of 2024. This Court had held that flavoured milk would fall under the tariff Item No.0402, which would attract tax @5%.

4. In view of the said Judgment, this Writ Petition is allowed, setting aside the order of assessment, passed by the 2nd respondent, and the order of appeal passed by the 1st respondent, dated 16.12.2024. Needless to say, the rate of tax payable to the sale of flavoured milk, for the assessment year 2018-19, would be 5%. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed."

Annexure-Q3:

The petitioner, which is in the business of sale of milk and milk products, was subjected to proceedings, dated 16.12.2024, passed by the 1st respondent, confirming tax @ 12% and 18%, on sale of flavoured milk, including Almond and Badam flavoured milk, instead of taxing the same @ 5%, for the tax period 2019-20, under the CGST/SGST/IGST Acts, 2017.

2. This Court had earlier considered similar cases relating to the question of rate of tax payable on sale of flavoured milk, including Almond and Badam flavoured milk. This Court, in its order, dated 10.12.2024, in W.P.No.254 of 2024, had held that the relevant entry, under which the rate of tax on sale of flavoured milk should be taxed, was under entry No.0402 in the exercise tariff and consequently, the rate of tax payable on sale of such flavoured milk would be 5%.

3. Following the said Judgment, this Writ Petition is allowed, setting aside the assessment order, dated 24.01.2022 and the appellate order, dated 16.12.2024, and remanding the matter back to the Assessment Authority to issue fresh proceedings by applying the rate of tax @ 5% on the sale of flavoured milk. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed."

So also under identical circumstances in the case of ***Sri Vijaya Vishakha Milk Producers Company Ltd. Vs. Assistant Commissioner of Central Tax and others, in Writ Petition No.254/2024 dated 10.12.2024,*** the Division Bench of the Andhra Pradesh High Court, vide 'Annexure - R', are held as under:

"Annexure-R:

"The petitioner is a registered dealer under the GST Act, dealing with milk and milk products. As part of its business, the petitioner processes and sells, flavoured milk, to customers within and outside the State of Andhra Pradesh. For the purpose of payment of tax, on the sale of flavoured milk, the petitioner had filed its returns by placing the product "flavoured milk" in Tariff Heading No.0402 99 90 (hereinafter referred to as 402). The 1st respondent, while considering the returns filed by the petitioner for the period July, 2017 to July, 2019 had rejected the classification placed by the petitioner and held that flavoured milk would fall under GST Tariff Heading No.2202 9930 (hereinafter referred to as 2202). The 1st respondent had accordingly passed orders, by way of an order in Original No.14/2023-24 GST-AC (SS)-2023-24, dated 03.10.2023. In this order the 1st respondent noticed

that the petitioner was earlier classifying flavoured milk under 2202 and had deliberately tried to pass it off as a product falling under 0402, to evade tax. On this basis the 1st respondent not only raised a demand for shortfall of tax but also a penalty under Section 122(2) (b) and Section74 of the Central GST act, and corresponding Sections of APGST Act and Integrated GST Act. This order is assailed before this Court, by way of this Writ Petition.

2. Heading 0402 99 90 reads as follows:

8.	*0402*	*Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies (other than condensed milk)*	*2.50%*	*2.50%*	*5%*

Tariff item 2202 90 30, reads as follows:

50	2202 99 30	Beverages containing milk	6%	6%	12%

3. The 1st respondent applying the general rules for interpretation of the Customs Tariff Act, 1975, held as follows:

The description of goods under Chapter Heading No.0401/0402 under GST Tariff and that of CH 2202 are to be compared to arrive at the most specific description between the two Chapter Headings. Chapter 0401/02 mentions milk or cream of milk, concentrated or otherwise, with or without sweetening matter. However, in the present case the goods in question is 'flavoured milk. Here, Badam

flavour is present in additional to milk and Sugar. Under Chapter Heading 22029030 is the description is "Beverages containing Milk'.

It is general understanding that in public parlance 'Flavoured Milk' is distinguished from normal Milk. It is consumed as a drink, and not merely as milk. Though added in a small quantity, the added flavour changes the public perception to a special drink from mere milk. The Oxford dictionary meaning of 'beverage' is 'any type of drink except water'. Thus, the Impugned goods are drink containing milk i.e. a beverage containing Milk Therefore, I hold that classification under Chapter Heading 22029030 is the most specific description as per the guideline given under Rule 3(a) of General rules of Interpretation of Customs Tariff Act, 1975.

4. The 1st respondent passed the impugned order on the following grounds:

1) Flavoured milk not only contains sugar and sweetening matter but also Badam flavour which takes it out outside 0402. Entry 2202 is "beverages containing milk' which would mean that flavoured milk would fall within this entry;

ii) Entry 0402 relates to milk. Flavoured milk cannot be treated as milk, as addition of Badam flavour changes it from milk to a special drink. Consequently flavoured milk cannot be classified under Entry No.0402;

iii) The rules for interpretation of the First Schedule to the Custom Tariff Act, 1975 would be applicable for interpretation of the classification of goods under the GST Regime. Rule 3(a) of the Customs Tariff Act specifies that where goods can be classified under two or more headings, the heading which provides the more specific discrepancy shall be preferred to the heading providing a more general discrepancy. As flavoured milk would amount to a beverage, 2202 is more specific and flavoured milk should be classified under this tariff heading.

5. The petitioner, having classiffled favoured milk under 2202 before the GST regime had come into effect had changed the classification, under the GST regime to Tariff Entry No 0402 99 90. This change was done without any change in the manufacturing process. in the absence of any special reasons given for such change, the petitioner would have to be treated as having deliberatelly avoided payment of proper tax and consequently, the provisions of Section 122(2)(b) read with Section 74 of the GST Act would be applicable, making the petitioner liable to pay penalty under these two provisions, on the short fall of tax paid

6. The petitioner, relying upon the Food Safety and Standards (Food Products Standards & Food additives) Regulations, 2011 contends that 'flavoured milk' would fall within the meaning of "Milk" set out in 0402 The petitioner would contend that the Tariff Heading, claimed by the petitioner, includes milk containing sugar or other sweetening mater, and since flavoured milk, processed by the petitioner, consists of approximately 90.5% of milk and 9% of sugar apart from 0.5% of artificial natural flavourings and permitted colour, the same would fall within the meaning of 'milk under the said Tariff Heading. The petitioner contends that 2202 "beverages containing milk" would not cover 'favoured milk'. The contention of the petitioner is that firstly, flavoured milk would fall within 0402 as flavoured milk is predominantly milk with some sweetening matter added to it whereas beverages containing milk would mean beverages where one of the components is milk. The petitioner would also contend that when a product can fall into two categories, wherein one category is a special category as opposed to the 2nd category which is a general category, it would be the special entry that would be applicable. Learned counsel for the petitioner would also submit that the common man test, when applied to the present case, would also require flavoured milk to be classified under 0402.

7. Sri Y.N. Vivekananda, the learned Standing Counsel appearing for the Assessing Authority would contend that even the petitioner had accepted that flavoured milk would fall within 2202 and had, earlier, paid taxes on that basis. However, the petitioner deliberately sought to pay tax by classifying flavoured milk under 0402 even though flavoured milk would not fall within that category. The learned Standing Counsel would contend that the change in classification clearly amounts to an attempt to evade payment of tax and Sections 122 (2)(b) and 74 of the GST Act would be applicable.

8. A preliminary objection, as to the maintainability of the writ petition, has also been raised on the ground that questions of classification should be left to the tribunals, set up under taxation statutes. and the scope of judicial review should not be extended to such issues.

Consideration of the Court:

9. At the outset, the preliminary objection relating to the maintainability of the writ petition needs to be addressed. Though, the contention of the respondents that matters of classification should be best left alone to the tribunals does bear consideration, the fact remains that the writ petition has been pending before this court for the past one year and it would not be fair to relegate the petitioner to the remedy of appeal, especially when the period for filing such an appeal has lapsed. In any event, the existence of an alternative remedy does not bar judicial review, under Article 226 of the Constitution of India. The decision, whether such a review is to be taken up or not, is within the sole purview of this court. Accordingly, this objection is rejected.

10. The petitioner was earlier taxed under the Central Excise Act. At that stage, the petitioner paid tax on 'flavoured milk' under 2202. The petitioner, after the GST regime came into effect, paid tax by classifying 'flavoured milk' under 0402. This change of classification is said to have been done as the

petitioner had realized that it had classified flavoured milk under the wrong tariff entry. The description of the relevant entries during Pre and Post GST Regime are as follows:

Chapter Heading	*Description during Pre-GST Regime (Central Excise Tariff Act)*	*Description during Post GST Regime (GST Tariff)*
First Schedule of Section -I Tariff Item - 0401	*Milk and cream, not concentrated nor containing added sugar or other sweetening matter*	*Milk and cream, not concentrated nor containing added sugar or other sweetening matter.*
First Schedule of Section-I Tariff item - 0402	*Milk and cream, concentrated or containing added sugar or other sweetening matter*	*Milk and cream, concentrated or containing added sugar or other sweetening matter <u>including skimmed milk powder, milk food for babies (other than condensed)</u>*

11. The primary finding of the 1 'flavoured milk' from tariff heading 0402 99 90 is that flavoured milk,

with the addition of Badam flavour, ceases to be milk and becomes a special drink. Entry 0402 at the cost of repetition, reads as follows:

First Schedule of Section -I Tariff Item - 0402	*Milk and cream, concentrated or containing added sugar or other sweetening matter.*	*Milk and cream, concentrated or containing added sugar or other sweetening matter <u>including skimmed milk powder, milk food for babies (other than condensed)</u>*

12. The first issue that comes up is whether only milk is to be treated under 0402. The said entry not only enumerates milk per se but also cream, skimmed milk powder, milk food for babies etc. It includes even plain or concentrated milk containing sugar or other sweetening matter. This entry clearly incorporates milk and milk products. For example milk food for babies, by normal standards, is not milk. However It is treated as falling in 0402. Thus, the test propounded by the 1 respondent that only plain milk is to be treated as falling under 0402 is not correct. The finding of the 1 respondent that flavoured milk goes out of this entry by addition of Badam flavour also cannot be accepted. Though the entry speaks only of milk containing added sugar or other sweetening matter, flavoured milk cannot be taken out of tariff heading 0402 merely because of addition of 0.5% of Badam flavour.

13. The second ground taken by the 1 respondent is that "beverage" is any type of drink

except water and as such any milk drink, would fall within 2202. This ground is also not available if the earlier entry in Tariff Item 2202 is seen. The entries under Chapter heading 22 read as follows:

Tariff item	*Description of goods*
2202 10	*--Waters, including mineral waters and aerated waters, containing added sugar or other sweetened matter or flavored*
	-other
2202 91 00	*-- Non alcoholic beer*
220299	*--other*
2202 99 10	*--Soya milk drinks, whether or not sweetened or flavored*
2202 99 20	*---Fruit pulp or fruit juice based drinks*
2202 99 30	*---Beverages containing milk*
2202 90 90	*---Tender coconut water*
2202 99 90	*---Other*

The entries, under this chapter heading, enumerate water, mineral water, aerated water and other beverages which can be made only by using water. Except entry 2202 90 90, "Tender coconut water", water is an essential part of the beverages mentioned therein. Applying the principle of Nocitur a Sociis, the placement of Tariff Item 2202 90-30 in

the same tariff heading would mean that entry 2202 99 30. would cover beverages which contain milk as well as water.

14. Another way of looking at this issue is to consider sweetened milk. In a case where sweetened milk is to be sold, after bottling the same, it would fall within the meaning of Milk containing added sugar or other sweetening matter, under 0402. This drink could also be called a beverage, containing milk, falling under 2202. The entry, in 0402, is the special entry and the entry, under 2202, is the general entry and would have to give way to entry 0402. The same principle would apply to flavoured milk.

15. The Hon'ble High Court at Madras, in it's judgement, dated 31.10.2023, in W.P. No. 16608 and 16613 of 2020, in the case of M/s Parle Agro Pvt. Limited Vs. Union of India, after reviewing the law and the changes in the tariff entries, had come to the conclusion, on similar lines, that flavoured milk would fall under 0402 and not under 2202. We are fortified, in our conclusion, by this judgment.

16. The 1st respondent also sought to levy penalty against the petitioner, on the ground that the petitioner had deliberately sought to evade payment of tax, in terms of Section 122(2)(b) read with Section 74 of the Central GST Act and other related Acts. In view of the fact that this Court is of the view that flavoured milk cannot be treated to fall under the Tariff Heading 2202, the question of penalty under any of the aforesaid provisions would not arise. In any event, the question of whether a penalty can be levied, even if flavoured milk falls within 2202, merely on the ground that the dealer changed his classification of goods from one entry to another is left open.

17. Accordingly, the Writ Petition is allowed, setting aside the impugned order in Original No.14/2023-24 GST-AC (SS)-2023-24, dated 03.10.2023, passed by the 1" respondent. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed."

The said judgment in *Sri. Vijaya Vishakha Milk Producers Company Ltd.* was confirmed by the Apex Court in SLP (Civil) Dairy No.17602/2025 vide 'Annexure-S'.

"ORDER

Delay condoned.

We are not inclined to interfere with the impugned judgment; hence, the present special leave petition is dismissed.

Pending application(s), if any, shall stand disposed of."

So also the Madras High Court in the case PARLE AGRO PVT. LTD. VS. UNION OF INDIA reported in 2024(81) G.S.T.L. 283 (Mad.) / (2023) 12 Centrax 199 (Mad.) vide 'Annexure T' held as under:

"Flavoured milk - Heading 6402 of Customs Act - Classification - Petitioner assessee, had challenged decision of Authority for Advance Ruling (AAR), in case of Britannia Industries Ltd. (2020 (36) G.S.T.L. 582 (A.A.R.- GST-TN [2020] 116 taxmann.com 572 (AAR Tamilnadu)] based on recommendation of GST Council held that UHT sterilized flavoured milk is not 30 ibid Question arose as to whether flavoured milk fell under category of classifiable under Heading 0402/0404 but classifiable under Heading 2202 99 (Heading 0402, GST rate 5%) - HELD: 'Flavoured milk derived from dairy milk beverage containing milk (Heading 2202, GST rate 12%) or 'milk and cream' of milch cattle or dairy animals cannot fall within Chapter 22 ibid. As per principle of 'Nosciter a sociss (meaning that words derive meaning from associated words),

phrase 'Beverage containing milk can only encompass beverages with plant or seed-based milk, incidentally containing specified-strength alcohol Thus, 'Flavoured milk' should be classified under Tariff Heading 0402 of Customs Tariff Act, 1975, and is, hence, subject to Central Tax at 2.5% as per Sl. No. 8 in First Schedule to Notification No. 1/2017-C.T. (Rate), dated 28-6-2017 Section 9 of Central Goods and Services Tax Act, 2017-Section 9 of Tamil Nadu GST Council's recommendation was incorrect Goods and Services Tax Act, 2017. (paras 93, 97,104 and 118]

Levy and Collection of tax Classification - Power of GST Counsel - GST Council can recommend rate only but cannot determine classification of goods or services - Section 9 of Central Goods and Services Tax Act, 2017 - Section 9 of Tamil Nadu Goods and Services Tax Act, 2017. (para 10)"

6. In view of the aforesaid factual circumstances which clearly indicate that the issue in controversy is directly and squarely covered by the judgment of the Andhra Pradesh High Court in the petitioner's own case and other identical cases as well as by the Madras High Court and the judgment of the Andhra Pradesh High Court, in *Sri.Vijaya Vishakha Milk Producers Company Ltd., supra* having been confirmed by the Apex Court, I am of the view that the impugned orders vide 'Annexure-C' dated 19.05.2022 and 'Annexure-E' dated 25.04.2023 deserves to be quashed.

7. In the result, I pass the following:

ORDER

(i) The writ petition is hereby ***allowed.***

(ii) The impugned orders dated 19.05.2022 and 25.04.2023 at Annexures C and E respectively passed by the respondents are hereby quashed.

(iii) The respondents are directed to refund the amounts paid by the petitioner vide Challans at 'Annexures - D1 and D2' dated 13.07.2022 together with applicable interest within a period of three months from the date of receipt of a copy of this order.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

AP
List No.: 2 Sl No.: 4.1