

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

**PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND
ADVANCE RULING**

ACAAR No.148/2014-15.

Dated:06.10.2015

(Acts Cell – II/5393&5401/2015)

- Present:**
1. Thiru. K.Rajaraman, I.A.S.,
Principal Secretary & Commissioner of Commercial Taxes.
 2. Thiru. R.Vayanaperumal,
Additional Commissioner (CT), (Public Relations)
 3. Thiru. Mahalingam,
Additional Commissioner (CT), (Revision Petitions)

1	Name and address of the Applicant	:	Tvl.Glaxo Smithkline consumer Healthcare Limited, KRM Towers, 6 th Floor, No. 1, Harrington Road, Chetpet, Chennai – 600 031.
2.	Registration Certificate No.	:	TIN:33191600002 / CST: 54151
3.	Assessment Circle		Large Tax Payers Unit - III
4.	Date of application	:	19.02.2015
5.	Date of receipt of application	:	19.02.2015
6.	Clarification sought for	:	Rate of Tax on " Mothers' Horlicks "
7.	Date of Personal Hearing	:	10-04-2015
8.	Represented by	:	Thiru. N. Inbarajan (Advocate), N.Sriprakash (Advocate), N.Prasad (Advocate), (Authorized Representative)

ORDER

Tvl. Glaxo Smithkline Consumer Healthcare Limited, KRM Towers, 6th Floor, No.1, Harrington Road, Chetpet, Chennai-600 031, (TIN: 33191600002), the registered dealers in Horlicks, Junior Horlicks, Mothers' Horlicks, and Women's Horlicks, in the files of Large Tax Payers' Unit – III have preferred application in Form 'VV' and

sought for clarification under Section 48-A (1) of the TNVAT Act, 2006, read with Rule 12-A of TNVAT Rules, 2007.

2. The applicant-dealers have sought for clarification concerned with the rate of tax on

"Mothers' Horlicks"

3.1. The applicant-dealers have stated that they are manufacturers of Horlicks, Women's Horlicks, Mother's Horlicks, Viva and Maltova. The applicant-dealers are manufacturing the product, "Mother's Horlicks" under the Certificate issued by the Government of India and Central Registering Authority registering the product as "Milk Product" under Clause 5 of the Milk and Milk Products Order, 1992 (herein after will be referred to as "MMPO, 1992"). The Applicant-dealers have stated that the product "Mother's Horlicks" is liable to be classified as a milk food under Entry 82 of Part-B of First Schedule to the TNVAT Act, 2006.

3.2. It is further stated that in an identical issue, the Hon'ble High Court of Madras, in their own case of HMM Limited vs. Deputy Commercial Tax Officer, reported in 79 STC 421 (Mad.), while construing the expression "milk food" for the purpose of G.O.P. No.253, CT & RE Department, dated 17.03.1986, has held that "Horlicks" which predominated in milk during the relevant period, had to be treated as milk food. It is added further that the Special Leave Petition in SLP No.15973 of 1991, preferred before the Hon'ble Supreme Court of India by the Government of Tamil Nadu had been dismissed, holding that the test laid down by the division bench of the High Court was correct.

3.3. Recently the High Court of Madras, by its order in WP. No.5115/2008 dated 22.12.2014, applying the test laid down in the case of HMM Limited (79 STC 421), has directed the Authority for Advance Ruling to determine the question of classification of another product, "Women's Horlicks". Besides, it is pointed out that the Authority for Advance Ruling in the case of M/s. Abbott Healthcare (P)

Limited, has clarified that their product, "Similac - Advance Infant Formula", shall be classified as Baby milk food on the ground that it contains predominantly milk powder, though it also contains lactose, maltodextrin, edible vegetable oil, vitamins, minerals taurine and L-carnitine. Accordingly, they claim that their product, "Mother's Horlicks" contains milk at the ratio of 58 %, which is specifically mentioned in the label stuck on the bottle. Moreover the 'Mother's Horlicks' contains milk as "milk solids" (Not-Fat) at 19.64 % invariably led to a conclusion that the percentage of milk solids in Mother's Horlicks is around 57.8% as per the technical report of SGS India Private Limited.

As per definition in Para 2 (j) of MMPO, 1992 "*milk solids*" means;

2.j.*anhydrous constituents of milk and milk fat and non-fat milk constituents either singly or in combination in any proportion;*"

Hence, the Mother's Horlicks" contains milk as "milk solids (Not-Fat)" falls within the purview of the above definition on "milk solids" and is also confirmed by the technical report of SGS India Private Limited.

3.4. The applicant-dealers in support of their claim has furnished the copies of the decisions of the High Court in 79 STC 41, in WP No.5115/2008 dated 22.12.2014, MMPO, 1992 Certificate of Registration, Input weight Analysis Report of the R & D Department of the Applicant, the label and the Test Report on Mother's Horlicks by SGS India Private Limited. On the whole, it is claimed that even in terms of weight or cost, the milk is the predominant input and therefore Mother's Horlicks is eligible to be clarified as a milk food falling under Entry 82 of Part-B of First schedule to the Act, 2006.

4.1. The issue has been examined in detail with reference to the provisions of TNVAT Act, 2006 and Rules, 2007 and relative Entries in

the Schedules to the TNVAT Act, 2006 and the clarification is given accordingly as under;

4.2. Section 48-A of TNVAT Act, 2006 provides for clarification on any point concerned with rate of tax for commodities. The applicant-dealers have sought for clarification regarding rate of tax on sale of "**Mother's Horlicks**".

5.1. The relative Entry 82 of Part-B of First Schedule to the TNVAT Act, 2006 reads as extracted below:

Milk food and milk products (including Flavoured milk, skimmed milk powder, tinned, bottled or packed) Baby milk food, paneer, milk powder and UHT milk.

5.2. The Certificate of Registration No. 301/R-MMPO/2002 dated 31.08.2002 and its modification dated 31.08.2007 authorizes the applicant dealers to manufacture Protein Rich Food (Milk Product) in addition to malt based foods allowed. Thus, the applicant-dealers can manufacture only milk foods and milk products under the MMPO, 1992 Certificate of Registration.

5.3. The Input-Weight Analysis for the Milk content in Mother's Horlicks, as given by the Research and Development Department of applicant Company, reveals the details about the contents as below:

Milk solids (58 %), Malt Extract (35 %), Minerals, Wheat Gluten, Salt, Colour (INS 150c), Cocoa Powder, vitamins, Nature Identical Flavouring Substances, Acidity Regulator (INS 501 (ii)) and DHA rich Algal oil.

The label on the bottle or on the refill pack reveals the above details printed.

5.4. The theoretical composition of Mother's Horlicks indicates the milk content at 58 %, with main content being skimmed milk powder, milk solid not fat (SnF) and milk fat. Technically there is no direct estimate of milk content in the product since it contributes to

various nutritional parameters like protein, fat and micronutrients. However it can be measured indirectly by the formula given below:

$$\text{Milk content in Mother's Horlicks} = (\text{Milk Protein in MSNF in Mothers Horlicks} \times 100) / \text{Milk Protein in MSNF in Evaporated / Condensed milk \& Milk Products}$$

Milk protein in MSNF in Mother's Horlicks = 19.64 g/100g.

As per Food Safety Standards (Food Products and food Additives) Regulations 2011, Part-1, Section 2.1, 'Dairy Products and analogues', the milk protein in milk solids not Fat in evaporated or condensed milk and milk products should be at a minimum of 34 gm per 100 gm. Therefore,

Milk protein in MSNF in evaporated /condensed milk = 34 g.

$$\begin{aligned} \text{Milk content in Mother's Horlicks} &= (19.64 \times 100)/34 \\ &= 57.8 \text{ g /100 g} \end{aligned}$$

i.e., 57.8 %

The test report on Milk content as given by M/s. SGS India Private Limited also reveals the same values.

5.5. At this juncture, it is pertinent to refer the court law in this regard. The Hon'ble High Court of Madras in the case of HMM limited vs. Deputy Commercial tax Officer reported in (1990) 79 STC 421(Mad.), while deciding the issue, "whether Horlicks was a milk food or beverage" and whether Horlicks was eligible as being a milk food for concessional rate of tax under G.O.P No. 253, Commercial Taxes & Religious Endowments Department dated 17.03.1986", had held as follows:

"Horlicks", being made predominantly of milk had to be treated as milk food under Entry 103 (viii) of First Schedule, especially in the light of the literature on "malted milk food".

The Hon'ble Supreme Court had dismissed Special Leave Petition in SLP No.15973 of 1991, preferred by the Government of Tamil Nadu, holding that the test laid down by the division bench of the High Court was correct.

5.6. The Hon'ble High Court of Madras again vide its orders in the case of Galxo Smithkline Consumer Healthcare Limited and Others vs. Commercial Tax Officer, Koyampedu Assessment Circle and Others, in W.P. No, 5115 of 2008 dated 22.12.2014, involving an identical question, "Whether Women's Horlicks" is to be taxed at 4% under Part-B of the First Schedule or it should be taxed at 12.5 % /14.5 % applying the residuary entry?", had applied the test laid down by the division bench in the case of HMM Limited reported in (1990) 79 STC 421, has set aside the clarification issued by the Commissioner of Commercial Taxes in Lr. No. VAT Cell/53022/2007 (VCC 1486) dated 25.01.2008 and directed the petitioner-applicant to place the matter before the Authority for Clarification and Advance Ruling. On the basis of the direction, the applicant-company has preferred this application for clarification in rate of tax on Mother's Horlicks and not on Women's Horlicks. In this regard, the learned Counsel for the applicant-dealers has stated that the product 'Women's Horlicks' is in compliance at with the standards specified for MMPO, 1992. As per the definition in Para 2 (g) for "Milk and Milk Products" in MMPO, 1992 is read as below:

2(g). *"Milk product" means cream, malai,, and includes any other substances containing – on a dry weight basis not less than fifty per cent of milk solids (excluding added sugars), or any other substance declared by the central Government, by notification as a "Milk Product".*

Hence, by the above definition on "Milk Product" issued in the MMPO, 1992, the "Mother's Horlicks", which contain approximately 58% of Milk Solids not Fat (MSNF) is construed to be a "Milk Product" by the Authority for Clarification and Advance Ruling.

5.7. From the facts and supportive documents produced, it is evident that the applicant-dealers are authorized manufacturers of milk foods and milk products as per the MMPO, 1992 Registration Certificate above referred. As per Input – weight analysis for milk

content as above referred reveal that the product 'Mother's Horlicks' contains milk protein as in milk solids not fat, skimmed milk powder and milk fat at the ratio of 58 % by weight. The Hon'ble High Court of Madras in the case of HMM Limited reported in 79 STC 421 had adjudged the product "Horlicks" containing milk solids at the ratio of 69 % by weight as milk food. The observation, i.e., if the milk content in a food preparation would be at the ratio of more than 50 % by weight, the product is to be treated as a milk food had also been approved by the Hon'ble Supreme Court. Considering the milk content as milk solids not fat (MSNF) and its ratio by weight at 58 % and applying the court laws above referred, the product "Mother's Horlicks" is construed as that of a Milk Product falling under Entry 82 of Part-B of First Schedule to the Act, TNVAT 2006.

6. The Clarification is therefore that **"Mother's Horlicks" is a milk product which contains more than half of its ingredients as "Milk Solids" is liable to tax @ 5 % under Entry 82 of Part-B of First Schedule to the TNVAT Act, 2006.**

Dated this the Sixth day of October, 2015.

Sd/- R. Vayanaperumal,
Additional Commissioner (PR)

Sd/- K. Mahalingam,
Additional Commissioner (RP)

Sd/- K. Rajaraman,
Principal Secretary/
Commissioner of Commercial Taxes

To
Tvl.Glaxo Smithkline consumer Healthcare Limited,
KRM Towers, 6Th Floor,
No. 1, Harrington Road, Chetpet,
Chennai - 600 031.

Copy to:
The Joint Commissioner (CT),
Large Tax Payers Unit - III

The Joint Commissioner (CS)
To host in the Department Website

The Principal Secretary to Government, Commercial Taxes & Registration Department, Chennai - 9.
All Joint Commissioners (CT) including Enforcement, LTU, MOU and ISIC.

All Deputy Commissioners (CT), Territorial, Assessment and Enforcement

All Head of Offices (Assessment)

The State Representative, Sales Tax Appellate Tribunal, Chennai - 104.

The Addl. State Representative, (AB) Chennai, Madurai and Coimbatore.

The Director, CTSTI, Greams Road, Chennai - 6.

The Executive Officer, Traders Welfare Board, Chennai - 5.

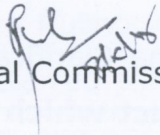
The Accountant General (Audit)-II, No.44, Greams Road, Chennai - 6.

The Additional Commissioners, Deputy Commissioners, Assistant Commissioners, Commercial Tax Officers in CCT's Office.

Personal Clerk to the CCT.

Stock File3 / Acts Cell-II / Spare - 5.

//Forwarded/By order//


Additional Commissioner (PR)