

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 21700 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 21706 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	YES
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	YES

VIMAL AGRO PRODUCTS PVT. LTD. & ANR.
Versus
UNION OF INDIA & ORS.

Appearance:

MR UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

MS HETVI H SANCHETI(5618) for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 24/04/2024****CAV COMMON JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

[1] Heard learned advocate Mr. Uchit Sheth for the petitioners and learned advocate Ms. Hetvi Sancheti for the respondents.

[2] Both these petitions are preferred with a common issue challenging the notice issued by the respondent authority and therefore, the prayers made therein are also common. Both these petitions were heard analogously and are being disposed of by this common judgement and order.

[4] Rule returnable forthwith. Learned advocate Ms. Hetvi Sancheti waives service of notice of Rule for the respondents.

[5] Having regard to the controversy in narrow compass, both the petitions are taken up for hearing. For the sake of convenience, Special Civil Application No.21700 of 2022 is treated as the lead matter.

[6] The petitioner supplies “mango pulp” to 100% Export Oriented Unit which further exports such pulp outside the country after minor processing / re-packing.

[7] The petitioners are duly registered under the provisions of the

Central Goods and Services Tax Act, 2017 (for short, “the GST Act”). When the GST regime was implemented with effect from 1st July 2017, fresh mangoes were listed in the exemption Notification No.2/2017, while dried mangoes were listed in the Notification No.1/2017 in Schedule – II, for which rate of tax was 12% (6% CGST + 6% SGST).

[8] The Notifications regarding rates of tax in respect of goods as well as exemption are based on Harmonized System of Nomenclature (HSN) as notified by the World Customs Organization. Each entry has the corresponding HSN mentioned against it. The Heading for mangoes in HSN (HS Code 0804) segregates them into only two broad categories: (1) fresh and (2) dried.

[9] In the 22nd GST Council Meeting held on 6th October 2017, it was decided to reduce the rate of tax on sliced and dried mangoes from 12% to 5% in view of mango flour was taxable at 5%.

[10] On the basis of the decision of the GST Council, dried mangoes were removed from Schedule – II containing goods

attracting tax at the rate of 12% and instead a new Entry 30A was inserted in Schedule – I as “mangoes sliced, dried”, which attracted tax rate at 5% GST vide Notification No.34/2017 dated 13th October 2017.

[11] The petitioners, therefore, discharged tax liability at the rate of 5% on supply of “mango pulp” as “mango pulp” supplied by the petitioners was nothing, but pulp form of sliced mangoes. On inquiry made by the petitioner on CBEC Mitra Helpdesk with regard to rate of tax applicable to “mango pulp”, an E-mail was sent on 19th February 2018 that “mango pulp” (HS Code 0804) GST rate is 5% (including 2.5% CGST and 2.5% SGST).

[12] It appears that thereafter, in the 47th GST Council Meeting convened on 28th and 29th June 2022, it was decided to clarify that there was a third category of mangoes in HSN 0804 other than fresh and dried mangoes and that such mangoes were always intended to be taxed at the rate of 12%. A new entry was recommended to be introduced in the Schedule for 12% tax rate.

[13] On the basis of the above decision of the GST Council,

Notification No.6/2022 dated 13th July 2022 was issued by inserting Entry No.16 of Schedule – II in column (3), after the word “guavas”, the words and brackets “mangoes (other than mangoes sliced, dried)” were inserted.

[14] The Central Board of Indirect Taxes and Customs (CBIC) issued impugned circular dated 3rd August 2022 clarifying that “mango pulp” would be liable to attract GST rate at the rate of 12%. The respondent No.3 – Joint Commissioner of GST, on the basis of such amendment and clarification, issued notice to the petitioners on the ground that “mango pulp” is classified in “Tariff Item” 0804 50 40 and the GST rate was chargeable at 18% from 1st July 2017 to 17th July 2022 by virtue of residuary Entry No.453 of Schedule – III of Notification No.1/2017, as the “mango pulp” was not classified in any other category during the said period . By the said notice, a differential amount of tax at the rate of 18% amounting to Rs.21,15,152/- was sought to be recovered from the petitioner.

[15] The petitioner submitted reply to such show cause notice on 20th September 2022 raising objections that “mango pulp” would

not be covered by the residuary entry attracting 18% tax rate as there are only two types of mangoes covered under HSN 0804; one is fresh and another is dried and therefore, fresh mangoes would be covered under the exemption Notification No.2/2017 and dried mangoes would be covered by the Schedule of 5% and apart from the dried mangoes “mango sliced” is also mentioned in the Rate Schedule of 5%. The petitioners have, therefore, paid tax at the rate of 5% under the GST Act.

[16] As the respondent authorities were not willing to drop the proceedings in view of circular dated 3rd August 2022, the petitioners have prayed for the following reliefs:

“29A. This Hon’ble Court may be pleased to strike down and declare para 4 of Circular No.179/11/2022-GST dated 3.8.2022 issued under Section 168 of the CGST Act to be ultra-vires Section 9 of the CGST Act read with Entry No.30A of Schedule I of Notification No.1/2017 -Central Tax (Rate) dated 28.6.2017 as well as Entry No.51 of Notification No.2/2017 -Central Tax (Rate) dated 28.6.2017 as well as manifestly arbitrary and violating Article 14 of the Constitution of India;

B. This Hon’ble may be pleased to hold and declare that mango pulp was classifiable under Entry 30A of Schedule I of

Notification No.1/2017-Central Tax (Rate) dated 28.6.2017 attracting tax at the rate of 2.5% CGST + 2.5% SGST upto 18.7.2022;

C. Without prejudice to the above and in the alternative, in any case it may please be declared that tax cannot be imposed on mango pulp beyond the tax rate of 6% CGST + 6% SGST even for the period prior to 18.7.2022;

D. This Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside impugned show cause notice dated 14.2.2022 (annexed at Annexure G);.....”

[17] Learned advocate Mr. Uchit Sheth for the petitioners submitted that HSN 0804 includes mangoes, fresh or dried. Explanatory notes to HSN clearly provides that mango in pulp form would be covered under HSN 0804 which inter alia pertains to fresh and dried mangoes. There were only two slab rates available for HSN 0804 for the period in question (i) nil and (ii) 5% which would cover fresh as well as dried mangoes. The petitioner paid tax at the higher rate of 5% as there was no entry for HSN 0804 in the Schedule for 12% slab rate. It was submitted that the impugned circular provides that there was always third category of mango other than mango dried and sliced having rate of 12% for HSN

0804 without there being any specific entry in the Notification no. 34/2017 and therefore the impugned circular dated 03.08.2022 is *ultra vires* to the rate Notification.

[17.1] It was submitted that the amendment to the rate Notification by the Notification dated 13th July 2022 was made with effect from 18th July 2022. It was a substantial change in the rate Notification and therefore, it cannot be treated as clarificatory. The amendment would operate only prospectively. In this regard, reliance was placed upon the following decisions of the Hon'ble Supreme Court:

(a) Commissioner of Income Tax (Central)-1, New Delhi vs. Vatika Township Pvt Ltd reported in 2015 (1) SCC 1.

(b) Commissioner of Income Tax, Mumbai vs. Essar Teleholdings Ltd. reported in 2018 (3) SCC 253.

[17.2] It was submitted that Section 9 of the GST Act does not grant power to amend rate Notification with retrospective effect and therefore, the amendment cannot be considered as retrospective applying rate of 12% from beginning. It was

submitted that delegated legislation cannot be retrospective unless parent legislation gives express power to make amendment with retrospective effect. In this regard, reliance was placed upon the the following decisions of the Hon'ble Supreme Court:

- (a) Bakul Cashew Co and others vs. Sales Tax Officer reported in 1986 (2) SCC 365**
- (b) Cannanore Spinning and Weaving Mills Ltd vs. Commissioner of Customs and Central Excise reported in 1969 (3) SCC 112**

[17.3] It was submitted that the GST tariff is based on Harmonized System of Nomenclature which bifurcated mangoes falling under HSN 0804 into two categories: fresh and dried. It was submitted that with specific rates being prescribed for both such categories, reference cannot be made to residuary entry as is sought to be done by the respondents. It was submitted that proposition that HSN needs to be followed when tariff is based on HSN code is no more *res integra*. Reliance was made upon the following decisions of the Hon'ble Supreme Court:

- (a) Collector of Central Excise vs. Woodcraft Products Ltd**

reported in 1995 (77) ELT 23 (SC)

- (b) Commissioner of Customs and Central Excise vs. D. L. Steels reported in 2022 SCC online SC 863.**

[17.4] It was further submitted that residuary entry can be resorted to only as a last resort even if a liberal interpretation of specific entry cannot cover the goods in question. Reliance was made upon the the following decisions of the Hon'ble Supreme Court:

- (a) State of Maharashtra vs. Bradma of India Ltd reported in 2005 (2) SCC 669.**
- (b) Mauri Yeast India Pvt Ltd vs. State of Uttar Pradesh reported in 2008 (5) SCC 680.**

[17.5] It was submitted that reliance placed on the customs tariff and the Explanation to the GST rate Notification by the respondent is wholly misplaced and the customs tariff contained sub-classification of HSN 0804 upto 8 digits and consequently, there was tariff item for "mango pulp". It was however submitted that the GST tariff has adopted classification only upto 4 digits with

there being no reference to tariff item of “mango pulp”. Therefore, the customs tariff is wholly irrelevant for the controversy in question.

[17.6] It was further submitted that the Central Board of Indirect Taxes and Customs had clarified that during the period in question, the rate of tax applicable on “mango pulp” would be 5% and the Board cannot be allowed to resile from its opinion. Reference is made to the decisions of the Hon’ble Supreme Court in the case of **Commissioner of Central Excise vs. Mysore Electricals Industries Ltd reported in 2006 (12) SCC 448.**

[17.7] It was submitted that the view being canvassed by the petitioner was considered as a plausible view even by the Board and even if it is presumed for the sake of argument that another view is possible, it is well settled that in case of taxing statutes, the view in favour of the assessee should be preferred. Reference is made in this regard to the decision of the Hon’ble Supreme Court in the case of **Mauri Yeast India Pvt Ltd. (supra).**

[17.8] In support of his submissions, reliance was also placed

on the decision of the Hon'ble Supreme Court in the case **Mysore Electricals Industries Ltd (supra)**, wherein the Hon'ble Supreme Court held that reclassification can take effect only prospectively from the date of communication of the show cause notice proposing reclassification. It was, therefore, submitted that prior to 8th July 2022, the respondents authorities cannot recover the GST at the rate of 18% applying the residuary category. Reference was also made to the decision of the Hon'ble Supreme Court in the case of **Vatika Township Private Limited (supra)**, to submit that the Hon'ble Supreme Court has laid down the general principle concerning retrospectivity in the said decision and has held that substantive provision is to be construed as prospective in operation.

[17.9] Learned advocate Mr. Sheth also placed reliance on the decision of the Hon'ble Supreme Court in the case of **Essar Teleholdings Limited (supra)**, wherein the Hon'ble Supreme Court held that ordinarily, a subordinate legislation should not be construed to be retrospective in operation unless there are clear indications to the same.

[18] On the other hand, learned advocate Ms. Hetvi Sancheti for

the respondents submitted that “mango pulp” was not classified anywhere and therefore, the tax is leviable under residuary entry no.453 at 18%. Reliance was placed on the averments made in the affidavit-in-reply filed on behalf of the respondents Nos.1, 2 and 3:

“8. W.r.t. to para 15 and 16, it is stated that GST Council is the Constitutional body to decide issues relating to GST. The recommendation regarding GST Rates of the mango pulp in the 47th GST Council meeting convened on 28th and 29th June 2022 is as under:

“The GST rate on all forms of mango under CTH 0804, including mango pulp (other than mangoes sliced, dried) attract GST at 12%. Entry is also being amended to make this amply clear. Raw or fresh mangoes continue to be exempt.”

The rate of tax for the specified goods under GST has been prescribed under Schedules I to VI and tax rate notifications issued by the government of India.

In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council made the amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June 2017 via notification no 06/2022 Central Tax

(rates) dated 13th July 2022. This amendment notification came into force on the 18th of July 2022.

On the basis of the amendments made under the above notification regarding mango pulp, the GST rates of 12% (6% CGST+6% SGST) on the mango pulp CTH (08045040) are effective from 18th July 2022 and before that applicability of the GST rates on mango pulp is discussed as under:

- (i) There are three entries related to 'Mangoes and Mango Products' that find a mention at various schedules, with different tax rates in the tariff notification.*

Entry No.51 of 0804 of the notification No. 1/ 2017-Central Tax (Rate) dated 28th June 2017 as, 0804 "Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh." The above entry exempts only fresh mangoes from being eligible for tax. It is worthwhile to mention in this context, that there is no dispute with the classification of the product under chapter 8 but the description under entry no.51 of 0804 enlists only fresh Mangoes.

- (ii) The tariff rate changes brought about by Notification No. 35/2017 Integrated Tax Rate) dt: 13.10.2017, amending notification No.1/ 2017- Integrated Tax (Rate), dated: 28.06.2017 added the following entries: "In the said notification (A) In Schedule I - 5%, - After S. No. 30 and the entries relating thereto, the following serial number and the*

entries shall be inserted, namely 304 0804 Mangoes sliced, dried"

(iii) In Schedule II-12% - (i) In S. No. 16, in column (3), for the words and brackets 'Dates (soft or hard), figs, pineapples, avocados, guavas, mangoes and mangosteens, dried, the words and brackets, "Dates (soft or hard), figs, pineapples, avocados, guavas and mangosteens, dried", shall be substituted. The above amended notification reveals that Mangoes sliced, dried are taxable @ 5% while it is silent on "mango Pulp'.

As there is no specific description of "mango pulp/puree", under GST tariff notification, entry no. 453 of Schedule - III of Notification No.1/2017- Central Tax (Rate) dt.: 28.06.2017 is applicable. which is a residuary entry covering goods which are not specified in Schedules I, II, IV, V, VI of the Notification, attracting the tax rate of 18%.

9. W.r.t to Para 17, this is a policy matter therefore no comments are being offered.

10. W.r.t. para – 18, it is pertinent to note that the Explanation to the Rate Notification No.1/2017-Central Tax(Rate) dt: 28.06.2017 reads as under:

"For this Notification:...

(ii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub- heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification."

Therefore, while the Rate Notification under GST provides the rate of tax on goods and services, in order to interpret these Rate Notifications for the purposes of levy of GST, one has to read the same along with the First Schedule (including the Section and Chapter Notes and General Explanatory Notes) of the Customs Tariff Act, 1975 ("Tariff").

Each Section and Chapter under the Tariff is accompanied by notes known as 'Section Notes and Chapter Notes, Classification is to be determined Ne only on the basis of the description of the heading read with relevant section or Chapter notes.

Coming to the product 'Mango Pulp/Puree', it finds a place under chapter heading no.0804 5040 of the Customs Tariff Act, 1975.

Chapter 8

<i>Tariff Item</i>	<i>Description of goods</i>
<i>804</i>	<i>Dates, figs, pineapples, avacados, Mangoes,</i>

and mangosteens, fresh or dries.

0804 50 Guavas, mangoes and mangosteens

0804 50 40 Mango Pulp

In exercise of the powers conferred by sub-section(1) of section 9 and sub-section(5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council made the amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/ 2017-Central Tax (Rate), dated the 28th June 2017 via notification no 06/2022 Central Tax (rates) dated 13th July 2022 This amendment notification came into force on the 18th of July 2022.

On the basis of the amendments made under the above notification regarding mango pulp, the GST rates of 12% (6% CGST+6% SGST) on the mango pulp CTH (08045040) are effective from 18th July 2022 and before that applicability of the GST rates on mango pulp is as under:

At the cost of repetition, it is stated that there are three entries related to 'Mangoes and Mango Products' that find a mention at various schedules, with different tax rates in the tariff notification.

(iv) Entry No.51 of 0804 of notification No.1/2017-Central Tax (Rate) dated 28th June 2017 as 0804 /2017-Central Tax (Rate) dt: 28.06.2017 is applicable, which is a residuary entry covering goods which are not specified in Schedules I, II, IV, V, VI of the Notification, attracting the tax rate of 18%.

11. *W.r.t to Para-19, and 20, it is stated that notices issued to the petitioners were according to the law and provisions as stated herein above.*

12. *W.r.t to Para 21 and 22, it is stated that the notification has been issued in exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), by the Central Government on the recommendation of the GST council. Therefore, no comments are being offered.*

13. *W.r.t. to Para 24, it stated that the clarification sought is the information provided by the CBIC Mitra helpdesk. CBIC Mitra helpdesk is the Central helpline for grievance redressal and information system of Central Board of Excise and Customs, Ministry of Finance, Government of India. It is pertinent to mention that the rate of tax for the specified goods under GST has been prescribed under Schedules I to VI and tax rate notifications issued by the government of India and the same are required to be levied accordingly.*

14. *W.r.t. to Ground A to F, since it's a policy matter, respondent no 1 and 3 have no comments to offer as same will be the domain of CBIC. The respondent reiterates what is stated in the preceding paragraphs "Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh". The above entry exempts only fresh mangoes from being eligible for tax. It is worthwhile to mention in this context, that there is no dispute with the classification of the*

product under chapter 8 but the description under entry no. 31 of 0804 enlists only fresh Mangoes, (v) The tariff rate changes brought about by Notification No. 35/2017 Integrated Tax (Rate) dated: 13.10.2017. amending notification No. 1/2017- Integrated Tax (Rate), dated: 28.06.2017 added the following entries: "In the said notification- (A) In Schedule 1- 5%, After S. No. 30 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: "30A 0804 Mangoes sliced, dried"; In Schedule II-12%, (i) In S. No. 16, in column (3), for the words and brackets "Dates (soft or hard), figs. pineapples, avocados, guavas, mangoes and mangosteens, dried", the words and brackets, "Dates soft or hard), figs, pineapples, avocados, guavas and mangosteens, dried", shall be substituted. The above-amended notification reveals that Mangoes sliced, dried are taxable @ 5%- while it is silent on 'Mango Pulp'. As there is no specific description of "mango pulp/puree", under GST Tariff notification, entry no.453 of Schedule-III of Notification No.1 for justifying the demand made for taxes and same is not repeated herein for sake of brevity."

[18.2] Referring to the above averments, it was submitted that no interference may be made while exercising extraordinary jurisdiction under Article 226 of the Constitution of India at the show cause notice stage. As the petitioners have approached this Court at the show cause notice stage, the petitioners may be

relegated before the respondent authorities for adjudication of the show cause notice.

[19] Having heard the learned advocates appearing for both the sides and considering the issue of rate of tax applicable to the product (mango pulp) supplied by the petitioners to 100% Export Oriented Unit, which, in turn, export the same to such party outside the country after minor processing / re-packing, and in view of the various amendments made in the rate of GST from time to time, by issuance of Notifications by the respondents authorities, it would be futile exercise to send back the petitioners for adjudication process of the issue as the respondent authority has issued notice on the basis of charging 18% GST prior to 18th July 2022 on the ground that “mango pulp” is not classified anywhere and therefore, 18% rate for the residuary entry no.453 is required to be charged.

[20] Section 9(1) of the CGST Act, which is a charging section, provides for levy and collection of the GST as per the rate of tax to be notified by the Government on the recommendations of the Council. Section 9(1) reads as under:

“9. Levy and collection.— (1) *Subject to the provisions of subsection (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.”*

[21] Section 11(1) of the CGST ACT empowers the Government to grant exemption. Section 11(1) reads as under:

“11. Power to grant Exemption.— (1) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.”*

[22] The Government has issued Notification No.1/2017 dated 28th June 2017 in exercise of powers conferred by Sections 9 and 11 of the CGST Act prescribing different rates of tax. The Notification No.2/2017 was issued providing a list of exempted

goods based on Harmonized System of Nomenclature (HSN).

[23] Chapter 8 of HSN is concerning Edible Fruits and Nuts. The General Chapter Note of the said Chapter states that “*Fruits and nuts of this Chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled*”. Heading 0804 HSN includes mangoes along with “*dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried*”. Heading 0804 reads as under:

“0804 - Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried.”

[24] It appears that when the GST Act was implemented with effect from 1st July 2017, fresh mangoes were listed in the exemption Notification No.2/2017 while dried mangoes were listed in rate Notification No.1/2017 in Schedule – II, for which rate of tax was prescribed at 12%, as per the broad classification of mangoes in HSN segregating into fresh and dried.

[25] In the 22nd GST Council Meeting held on 6th October 2017, it was decided to reduce the rate of tax on sliced and dried mangoes

from 12% to 5%. Accordingly, by notification no. 34/17 Entry no.30A was inserted prescribing rate of 5% for “ mango sliced and dried. However, “mango pulp” was not included in the Entry 30A though the General Chapter Note of Chapter 8 of HSN includes fruits, pulps. According to the petitioners, “mango pulp” was nothing, but pulp form of sliced mango. The petitioners therefore considered “mango pulp” as per the Entry 30A of Schedule – II and paid 5% GST on supply of “mango pulp”.

[26] Even the CBIC Mitra Helpdesk, in the E-mail dated 19th February 2018, has confirmed that for “mango pulp”, GST rate is 5%.

[27] The GST Council in its 47th meeting clarified that there was a third category of mangoes in HSN 0804 other than fresh and dried mangoes and that such mangoes were always intended to be taxed at the rate of 12%. Accordingly, Entry no. 16 in Schedule II was introduced by Notification No.6/2022 dated 13th July 2022 as “mangoes other than mangoes sliced, dried”.

[28] The CBIC has issued impugned circular dated 3rd August 2022

and para 4 of the said circular reads 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 22nd 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 exempt; Mangoes, sliced and dried, falling under 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 the 28th June, 2017].”

[29] From the perusal of above clarification issued by the impugned circular dated 3rd August 2022, it explains that Notification No.6/2022 only clarifies that “mango pulp” attracts GST rate at 12%. Therefore, the contention raised by the petitioner is that such Notification cannot be applied retrospectively in view of various decisions cited by the petitioners on the ground that the Notification to amend the rate of tax cannot be applied retrospectively.

[30] However, in the facts of the case, considering the sequence of events which have taken place from 1st July 2017 to 18th July 2022, there was no rate prescribed for “mango pulp” either in the Notification No.1/2017 or Notification No.2/2017. “Mango pulp” cannot be said to be a fresh mango. Therefore, it has to be either sliced or dried mango, but, as per clarification made by the GST Council in its 47th meeting held on 28th June 2022, it was clarified that the third category of mangoes other than fresh and dried mangoes is required to be inserted and accordingly, by Notification

No.6/2022, Entry No.16 is inserted for mangoes other than sliced and dried, which includes “mango pulp” attracting GST rate of 12%. It would be, therefore, germane to refer to the minutes of the 47th meeting of the GST Council, which reads as under:

“4. The GST rate on all forms of mango under CTH 0804, including mango pulp (other than mangoes sliced, dried) attract GST at the 12%. Entry is also being amended to make this amply clear. Raw or fresh mangoes continue to be exempt.”

[31] Considering the above, it is clear that prior to the 22nd meeting of the GST Council, so far as mango sliced and dried are concerned, the GST rate was applicable at 12% from 1st July 2017 as per Notification No.1/2017 in Schedule – II which was reduced to 5% as per recommendations of the GST Council as per Notification No.34/2017 dated 13th October 2017. While the GST Council in its 47th meeting has clarified that only mangoes sliced and dried are liable to reduction of rate of tax at the rate of 5% from 12% and therefore, to clarify that mangoes other than sliced and dried, the third category of entry was inserted in the category vide Entry No.16 of Schedule – II as per Notification No.6/2022 dated 18th July 2022. Therefore, for all purposes and intention

Entry of rate of 12% would govern the product “mango pulp”, which was not specifically included in Entry No.30A, which provides for mango sliced, dried.

[32] The impugned circular dated 3rd August 2022 only clarifies the insertion of Entry No.16 vide Notification No.6/2022 and therefore, the argument and contention raised by the petitioner that by the impugned circular, the GST rate of 12% sought to be introduced is without any basis. For “mango pulp”, the GST rate was 12% from 1st July 2017 as per Notification No.1/2017. It is only the petitioner, who interpreted the Notification No.34/2017 pursuant to the recommendations of the GST Council in its 27th meeting to reduce the GST rate from 12% to 5% on the product “mango sliced, dried. “The “mango pulp” was not included in the Entry No.30A of the Schedule – II, which came into effect by Notification No.34/2017. Therefore, there was a need for clarification by the GST Council in its 47th meeting held on 28th June 2022 to clarify that the third category of mango in HSN 0804 other than fresh and dried mangoes are required to be clarified to be taxed at the rate of 12%.

[33] In view of the above, the impugned Notification and circular are not in the nature of amending the tax rate with increasing the tax rate with retrospective effect. In fact, they are clarificatory so far as the product “mango pulp” is concerned, as admittedly, Entry No.30A does not include the “mango pulp”.

[34] Therefore, the stand of the respondents that “mango pulp” would fall in the residuary category as the same was not included either in the Notification No.1/2017 or covered by the Entry No.30A is also not as per clarification made by the GST Council. Therefore, the respondents are also not justified to apply rate of 18% GST as per residuary Entry no.453 as “mango pulp” would be falling under HSN 0804, which broadly categorized fresh and dried mangoes. Therefore, naturally, “mango pulp” would go with the mango sliced, dried and would be covered by mango sliced, dried attracting 12% rate prior to Notification no.34/17. The GST Council has only clarified that the third category of mangoes other than “mango sliced and dried” would attract 12% of GST. Therefore, the contention of the respondents to tax on “mango pulp” at 18% is also not tenable.

[35] As the petitioners were not liable to pay the GST rate at 12% and it is clarified by the GST Council that mangoes other than sliced, dried are liable to be taxed at 12%, the same would be applicable as per Notification No.1/2017 and the petitioner would not be entitled to have the benefit of reduced rate of GST from 12% to 5%, as claimed in these petitions for the interregnum period from 01.07.2017 to 18.07.2022.

[36] In view of the above, it would not be necessary to refer to the various decisions relied upon by the petitioners on the ground of retrospectivity and/or the principle of promissory estoppel. The petitioners are not covered by the Entry “mango pulp” or “mango sliced, dried” but the petitioners are covered by the third category of mangoes other than sliced and dried, which would attract 12% GST which is clarified as per Entry No.16.

[37] The contention of the petitioners is that in absence of Entry No.16, the petitioners cannot be charged with GST at 12%, which is also not tenable because from 1st July 2012 to 12th October 2017 the petitioners were liable to pay GST at the rate of 12% on mango

pulp.

[38] Therefore, the case of the petitioners that word “mango” was removed from Entry No.16, the petitioners would be liable to pay tax at 5% on mango sliced and dried as the “mango pulp” is neither mangosteens nor dried as per Serial No.16 in Schedule – II under Chapter Heading 0804 nor the petitioners are entitled to exempted category as per Serial No.51 of exemption Notification No.2/2017, which pertains to mango fresh is very attractive at the first blush, however, considering the Notification nos.1/2017, 34/0217 and 6/2022 together, the “mango pulp”, as per the recommendations of the GST Council, was to be taxed at the rate of 12% only as the same would not be falling in Entry No.30A as mango sliced or dried.

[39] In view of the foregoing reasons, there is no retrospective amendment of Entry No.16, but the same is clarificatory only inserted by Notification No.6/2022 and the impugned circular dated 3rd August 2022 where Entry No.16 in Schedule – II has included “mangoes other than sliced, dried” which includes “mango pulp. Therefore rate can be said to be reduced from 12% to

5% only on “ mango sliced, dried” and rate of 12% would continue to be applied to “mangoes other than mangoes sliced, dried” as per notification no. 6/22 as per the clarification of the GST Council as per minutes of the 47 th meeting.

[40] On the basis of the recommendations of the GST Council, Notification No.6/2022 reads as under:

“C. in Schedule II – 6%, -

(i) against S. No. 16, in column (3), after the word “guavas”, the words and brackets, “mangoes (other than mangoes sliced, dried)” shall be inserted;”

[41] To insert words *“mangoes (other than mangoes sliced, dried)”* after the word ‘guavas’, would be clarificatory meaning thereby, mangoes (other than mango sliced, dried) to be considered as part of in Entry No.16 of Schedule – II with effect from 1st July 2017 in the Notification No.1/2017. As such, it was the only clarificatory in nature as per recommendations of the GST Council as the Council intended to reduce the GST rate from 12% to 5% only on “mango sliced, dried” and thereupon, a new Entry No.30A was inserted by Notification No.34/2017. Therefore, the Notification No.1/2017

containing the words “mangoes, mangosteens, dried” were modified as “mangosteens and dried” and the words “mangoes (other than sliced, dried)” missed at the relevant point of time is clarified by the GST Council in its 47th meeting that “mangoes other than mangoes sliced and dried” would be governed by 12% of GST. The petitioner is therefore not right in contending that by Notification No.6/2022 and the circular dated 3rd August 2022, there was a amendment in Entry No.16 to include product like “mango pulp” attracting GST at the rate of 12% with effect only from 18th July 2022 as such substitution by the Notification No.6/2022 is only by way of clarification to apply the GST at 12% on all types of dried mangoes i.e. mangoes (other than mangoes sliced and dried).

[42] In other words, the GST Council has clarified in its 47th meeting that tax rate would continue to apply at 12% other than “mango sliced, dried” for which the GST rate was reduced to 5% as per the recommendations of 27th meeting of the GST Council.

[43] The petitioner is, therefore, liable to pay GST at the rate of 12% as per Entry no. 16 from 01.07.2017 and not 5% as per Entry

No.30A, which provides for “mangoes sliced, dried” only. The contention of the petitioners that there was an amendment to the rate Notification with effect from 18th July 2022 is not tenable. As such the Notification is only clarificatory and would apply with effect from 1st July 2017 as per Notification No.1/2017. It is true that Section 9 of the CGST Act does not grant power to amend the rate Notification. However, in the facts of the case, as analyzed above, the GST Council has only clarified that mangoes (other than mangoes sliced, dried) would attract GST rate at 12% and not 5% and hence, it cannot be said that there is amendment of rate of GST from 5% to 12% by the impugned Notification as well as the circular. The contention of the petitioner that as per HSN 0804, “mango pulp” would be covered by mangoes as per General Chapter Note, which includes fruits and dates, and therefore, only mangoes other than fresh mangoes is required to be considered and as “mango pulp” is not a fresh mango and would be covered by entry no.30A “mango sliced, dried” is not tenable in view of clarification made by the GST Council in its 47th meeting, wherein it is clearly mentioned that only “mangoes sliced, dried” would attract GST at 5% and remaining mango would be attracted GST at 12%.

Therefore, the Notification No.6/2022 is only inserting the word “mango” other than mango sliced, dried so as to clarify that all mangoes would fall in the same category other than “mango sliced, dried”.

[44] With regard to the contention of the petitioner that the CBIC Board cannot resile from its opinion, it is to be noted that E-mail dated 19th October 2018 is only in response to the query raised by the petitioner without there being any analysis or the clarification from the GST Council. Once the GST Council has clarified that the mangoes (other than mangoes sliced, dried) would attract 12% GST and would not attract reduced rate at 5% as recommended by the GST Council in its 22nd meeting, therefore the petitioners would be governed by the GST rate at 12%. The contention of the respondents that the GST would be liable to be charged at 18% on the ground of residuary entry, is also not tenable as explained here in above.

[45] In view of the above discussion, as “mango pulp” would fall under the third category of “mangoes (other than mango sliced, dried)” would be liable to levy at the rate of 12% as per Entry

No.16 which was amended so as to clarify the intention of council to continue to levy GST at 12% on “mangoes (other than mango sliced, dried)” which would include “mango pulp” from 1st July 2017.

[46] For the foregoing reasons, both these petitions are partly allowed. The impugned show cause notice is hereby quashed and set aside and the petitioners would be liable to pay GST at the rate of 12% from 1st July 2017 on the product “mango pulp” and not at the rate of 5% (as claimed by the petitioners) or 18% (as claimed by the respondents) for the period from 01.07 2017 to 18.07.2022. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

CHANDRESH