

Taxability of “Appy Fizz” to be decided by Rajasthan HC

In *M/s Epicu Agro Products Pvt. Ltd. v. Dy. Commissioner (State Tax) Circle - Anti Evasion & Anr. [S.B. Civil Writ Petition No. 9149/2021 dated August 24, 2021]*, the current petition has been filed against the notices issued by Dy. Commissioner (State Tax) Circle - Anti Evasion & Anr. (“**the Respondent**”) which treated the beverage “Appy Fizz” as a non-alcoholic beverage under the heading of 2202 99 90 making it liable to 18% Goods and Services Tax (“**GST**”).

M/s Epicu Agro Products Pvt. Ltd (“**the Petitioner**”) has relied on the case of *CCE, Bhopal vs. Parle Agro Pvt. Ltd [CIVIL APPEAL NO.,6468-, 6469, 6471-, 6472 and 6470 OF 2017 dated May 09, 2017]* which held Appy Fizz shall fall under the category of “fruit pulp and fruit juice based drink” under heading 2202 99 20 thereby being liable to GST at the rate of 12%.

The Hon’ble Rajasthan High Court has subsequently issued notice in the writ returnable on October 21, 2021. For the time being, has ordered stay on the notices issued in this context by the Respondent.

Our Comments

In the Pre-GST Era, there have been several rulings pertaining to stated issue which have been dealt as mentioned below:

1. In *CCE vs Parle Agro Pvt. Ltd. [2008 (226) ELT 194 (Tri. Del) dated March 18, 2008]*, it was held that the drinks based on fruit juice are specifically classifiable under Heading No. 22029020 of the Tariff as the product in question contains 23% Apple Juice. The same was also affirmed by the Supreme Court.
2. In 2017, in the context of Value Added Tax (“**VAT**”), the case of *CCE, Bhopal vs. Parle Agro Pvt. Ltd [CIVIL APPEAL NO.,6468-, 6469, 6471-, 6472 and 6470 OF 2017 dated May 09, 2017]* which has been relied in the current petition, held ‘Appy Fizz’ as ‘fruit juice based drink’ under Entry 71 of Notification issued under Section 6(1)(d) of Kerala Value Added Tax Act, 2003 to be liable to tax at 12.5%.

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