M/s. Hindustan Coca-Cola Beverages Private Limited (GSTIN 24AAACH3005M1ZX)

Appellate Authority for Advance Ruling — Gujarat

Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2019/5 dated 23.7.20… Dated **23.07.2019**

Q Questions Before the Authority

- Whether 'Fanta Fruity Orange' is classifiable under CH 22029920 (Sl. No. 48, Schedule II) as 'Fruit pulp or fruit juice based drinks'?
- Or whether it is classifiable under CH 22029990 (Sl. No. 24A, Schedule III) as 'Other non-alcoholic beverages'?
- Or whether it is classifiable under 220210 (Sl. No. 12, Schedule IV) as 'All goods [including aerated waters], containing added sugar or other sweetening matter or flavoured'?

F Facts

The appellant manufactures 'Fanta Fruity Orange', an aerated carbonated beverage made from orange juice concentrate (1.6% on the label) reconstituted to 10.5% orange juice content, with carbonated water, sugar, sweetener, acidity regulators, preservatives, stabilisers, synthetic colour and added orange flavours. It is sold in PET bottles. The product was launched in August 2017, and the appellant sought a ruling on whether it falls under the fruit-juice-based drinks entry, the residuary entry, or the aerated-water entry.

H Ruling

Classification: Sub-heading 2202 10 (aerated waters, sweetened or flavoured) versus 2202 99 20 or 2202 99 90	**Classifiable under Sub-heading 2202 10**	The HSN Explanatory Notes for 2202 10 cover orangeade flavoured with fruit juices or essences and often aerated with carbon dioxide. Carbon dioxide used only as a preservative does not take the product out of 2202 10.
Tariff Item 2202 99 20 (fruit pulp or fruit juice based drinks)	**Not classifiable under 2202 99 20**	Concentrate-based drinks are not covered. The Tribunal's earlier decision in the appellant's own case was followed, and the Parle Agro decision was distinguished on its facts.
Tariff Item 2202 99 90 (residuary, other non-alcoholic beverages)	**Question does not arise**	Because the product falls under Sub-heading 2202 10, the residuary entry was not considered further.
GST rate applicable to the product	**28% (CGST 14% + SGST 14%) under S. No. 12, Schedule IV, Notification No. 1/2017-Central Tax (Rate) and corresponding Notification No. 1/2017-State Tax (Rate)**	Compensation cess of 12% under S. No. 2 of the Schedule to Notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017 also applies.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

The Appellate Authority held that the product is classifiable under Sub-heading 2202 10 and attracts GST at 28% (CGST 14% and SGST 14%) plus compensation cess at 12%. It confirmed that the product does not fall under Tariff Item 2202 99 20, and held that the residuary Tariff Item 2202 99 90 does not arise. It modified the GAAR ruling accordingly, which had placed the product under 2202 99 90 at 18%.

R Reasoning

The Authority read the HSN Explanatory Notes to heading 2202, which it treated as a dependable guide under the L.M.L. Ltd. decision of the Supreme Court. The product's composition (sweetened, flavoured with orange juice concentrate and orange flavours, aerated, bottled) matches the description of orangeade in the Explanatory Notes under 2202 10. The GAAR's reliance on the affidavit that carbon dioxide is added only as a preservative was rejected, because the Notes state that such products are often aerated and nothing in the tariff excludes preservative-only carbonation. On 2202 99 20, the Authority followed the CESTAT decision in the appellant's own case (2017 (6) GSTL 200), held that the Parle Agro decision turned on its own facts, and relied on Alnoori Tobacco and Connaught Plaza for the proposition that another statute's definitions (here the Food Safety regulations) cannot be applied mechanically. The Authority also noted that the Explanatory Notes to 20.09 on concentrated juices apply only to that heading.

P Provisions Relied On

- Customs Tariff Act, 1975: Heading 2202, Tariff Items 2202 10 10, 2202 10 20, 2202 10 90, 2202 99 20, 2202 99 30 and 2202…
- HSN Explanatory Notes to Heading 2202 (including Notes on 2202.10 and Other non-alcoholic beverages) and to Heading 20…
- Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, S. No. 12 of Schedule IV, as amended
- Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended
- Notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017, S. No. 2 of the Schedule
- CESTAT decision in Hindustan Coca Cola Beverages P. Ltd. v. CCE, Chennai-IV (2017 (6) GSTL 200)
- CCE Bhopal v. Parle Agro Pvt. Ltd. (2008 (226) ELT 194 (Tri.)); Parle Agro v. CCT Trivandrum (2017 (352) ELT 113 (SC))
- L.M.L. Ltd. v. Commissioner of Customs (2010 (258) ELT 321 (SC)); CCE New Delhi v. Connaught Plaza Restaurant (2012 (…

! For the Practitioner

This order is useful for practitioners advising on orange-juice-concentrate-based aerated drinks, since it places such a product under 2202 10 at 28% plus cess and rejects the fruit-juice-based-drink argument at 10.5% reconstituted juice. The adverse rate change from the GAAR's 18% should be noted, since the appellate authority raised the rate on the same product. The order does not lay down a minimum juice percentage for 2202 99 20, and it does not decide whether a product with a higher reconstituted juice content, or one made from fresh juice, would be treated differently. Check whether a further appeal to the Supreme Court or a writ has been filed before relying on the rate.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> gujaaar_appeal_no._05-2019_dated_23.07.2019.pdf

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