M/s. Hindustan Coca-Cola Beverages Private Limited

Authority for Advance Ruling — Gujarat

Advance Ruling No. GUJ/GAAR/R/07/2019 (in Application No. Advance R… Dated **30.03.2019**

Q Questions Before the Authority

- Whether the product 'FANTA FRUITY ORANGE' is classifiable under CH 22029920 at Sl. No. 48 of Schedule II as 'Fruit pulp or fruit juice based drinks', under CH 22029990 at Sl. No. 24A of Schedule III as 'Other non-alcoholic beverages', or under 220210 at Sl. No. 12 of Schedule IV as 'All goods [including aerated waters], containing added sugar or other sweetening matter or flavoured', under Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 (as amended) and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017 (as amended)?

F Facts

The applicant manufactures aerated drinks and fruit-pulp or fruit-juice based drinks at its Goblej (Kheda) factory and began making 'Fanta Fruity Orange' on 10 August 2017, with first supply on 24 August 2017. The product is made by reconstituting orange juice from orange juice concentrate, blending it with sugar syrup, and carbonating it; the label states 10.5% orange juice and orange juice concentrate at 1.6% of the product. The applicant claimed the product falls under the fruit-juice based drinks entry at 6%, while the Vadodara-I Commissionerate took a different view.

H Ruling

Classification of 'Fanta Fruity Orange' among 2202 99 20 (Sch. II), 2202 99 90 (Sch. III) and 2202 10 (Sch. IV)	**Classifiable under Tariff Item 2202 99 90; GST 18% (CGST 9% + SGST 9%) under Sl. No. 24A of Schedule III**	Not under 2202 99 20 (fruit pulp or fruit juice based drinks) because the product is made from orange juice concentrate, and not under 2202 10 (flavoured waters, Sch. IV). Soya milk drinks and milk beverages (2202 99 10 and 2202 99 30) were also excluded.

The Authority ruled that 'Fanta Fruity Orange' is classifiable under Tariff Item 2202 99 90 as other non-alcoholic beverages, other than tender coconut water. It attracts GST at 18% (CGST 9% plus SGST 9%) under Sl. No. 24A of Schedule III of the two notifications. The product is not a 'fruit pulp or fruit juice based drink' because it is made from orange juice concentrate, not from fruit pulp or fruit juice.

R Reasoning

The Authority applied Explanation (iii) and (iv) to the notifications, which import the Customs Tariff headings and the General Rules and Section and Chapter Notes of the First Schedule to the Customs Tariff Act, 1975. It held that the entry for 'fruit pulp or fruit juice based drinks' refers to fruit pulp or juice as the base, and not to concentrate-based drinks, so a product reconstituted from concentrate with 1.6% concentrate content does not fall within it. It relied on the CESTAT decision in the applicant's own case, which required proof that the base was fruit pulp or juice, and it held that the common parlance test pointed the same way. It distinguished the Supreme

Court's Parle Agro decision as a Kerala VAT case and noted that exemption notifications are construed strictly. An affidavit on carbon dioxide used as a preservative was also taken into account in excluding Sub-heading 2202 10.

P Provisions Relied On

- Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 (as amended), Schedule II (Sl. No. 48), Schedule III (Sl. No. 24…
- Notification No. 1/2017-State Tax (Rate) dated 30.06.2017 (as amended)
- Explanation (iii) and (iv) to Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017
- First Schedule to the Customs Tariff Act, 1975: Heading 2202 and Tariff Items 2202 10 10, 2202 10 20, 2202 10 90, 2202 99…
- Section 97(2)(a) of the CGST Act, 2017 and GGST Act, 2017 (classification of goods)
- Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and Eleventh Amendment Reg…
- Rule 63 of the Prevention of Food Adulteration Rules, 1955 (as cited by the applicant)
- CESTAT decision in Hindustan Coca Cola Beverages P. Ltd. v. CCE, Chennai-IV (applicant's own case)
- CESTAT decision in CCE Bhopal v. Parle Agro Pvt. Ltd., 2008 (226) ELT 194 (Tri.), affirmed by the Supreme Court, 2010 (25…
- Supreme Court decision in Parle Agro (P) Ltd. v. Commissioner of Commercial Taxes, Trivandrum, 2017 (352) ELT 113 (SC)
- Principle from Dilipkumar & Co. that exemption notifications are interpreted strictly

! For the Practitioner

This ruling is useful for any manufacturer of juice-flavoured carbonated drinks made from concentrate, since it places such products in the 18% residual entry rather than the 6% fruit-juice entry. It settles that concentrate-based reconstitution, with a low juice content, does not qualify as a fruit-juice based drink. Practitioners should note that the ruling is binding only on the applicant, and that the reasoning leans on the applicant's own CESTAT order and on the absence of any fruit-pulp or fruit-juice purchase evidence. It does not decide the position for drinks made from fresh or pulp-based juice, or for products with different juice content or ingredient sourcing.

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 -> guj_aar_07-2019_coca_cola_30.03.2019.pdf

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