

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No. 9/2019/AAAR

Date: 10.02.2020

BEFORE THE BENCH OF

1. Ms. SUNGITA SHARMA, MEMBER

2. Thiru. M. A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/01 /2020 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s. Rich Dairy Products (India) Pvt Ltd SF No. 341 & 342, Akkiyampatty Village, Sendamangalam Post, Namakkal 637 409
GSTIN or User ID	33AADCR3175 K1ZA
Advance Ruling Order against which appeal is filed	Order No. 41/AAR/2019
Date of filing appeal	23.09.2019
Represented by	
Jurisdictional Authority-Centre	Salem Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Rasipuram Assessment Circle.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.SBIN19113300151286 dated 14.11.2019

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 by M/s. Rich Dairy Products (India) Pvt Ltd (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AADCR3175K1ZA. The appeal is filed against the Order No.41/AAR/2019 dated 23.09.2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The appellant manufactures fruit juices and also carbonated fruit juices. They sought ruling on the question

'Whether carbonated fruit juices falls under Fruit Juices or aerated drinks?'

The contentions of the appellant are the drinks are fruit base drinks and Carbon-dioxide is used for preservation purpose. Fruit pulps are in semi liquid form and fruit juice are in liquid form without any addition of sugar or other additives. There is no difference in the usage of fruit pulp or fruit juices used for manufacture of carbonated fruit juices. They submitted copy of Hon'ble Supreme court judgment in classification of 'APPY FIZZ' in case of M/s Parle Agro Ltd Vs Commissioner of Commercial Taxes , Trivandrum in the VAT regime where the Hon'ble Supreme court ruled on the classification as per Kerala VAT notifications. They stated that fruit pulp or fruit juice based drinks should be classified under HSN 22029920 relying on the FSSAI regulations. They have claimed that Appy Fizz drink is being sold at 12 % GST and the same should be permitted for their drinks.

3. The Original Authorities has ruled as follows:

The products 'Richyaa Damer Lemon' and 'Licta Lemon' to be supplied by the applicant are classifiable under CTH 22021020 and all others i.e. 'Richyaa Damer Cola', 'Licta Cola', 'Richyaa Damer Jeera Soda', 'Licta Jeera Masala', 'Richyaa Damer Orange' and 'Licta Orange' are classifiable as 'Other' under CTH 22021090.

4. Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

- Applying FSSAI Regulations, the products in question are classifiable under Tariff Item 22029920 as 'Fruit Juice Based Drinks'- "Fruit juice based drinks are not defined in the Tariff Schedule.
 - Hon'ble Supreme Court in the case of Commissioner Vs. Parle Agro Pvt Ltd [2010 (254) ELT A 13] examined whether the common parlance test was the only test to be applied for understanding the different entries and whether the decision and opinion of Food Safety Authorities on the product in question was relevant. The Hon'ble Court observed that the common parlance test or commercial parlance test were not the only test which can be applied for interpreting the entries; scientific and technical meaning of the word 'aerated' used under different Statutes can also be

- looked into for finding out the real import of the entry; therefore the Supreme Court referred to Regulation 2.3.10 in regard to 'thermally processed fruit beverages/fruit drink, ready to serve fruit beverages'.
- Thus, FSSAI Regulations can definitely be relied upon to understand the scope of 'fruit juice based drinks'. This understanding was also referred to/followed in CESTAT Larger Bench decision in case of M/s. Brindavan Beverages Private Limited Vs. CCE & ST [2019 (10) TMI 792 -CESTAT Allahabad (LB)]. In any case, the Authority in the Impugned Ruling has also relied upon FSSAI Regulations to interpret 'Carbonated Fruit Beverages' etc
 - FSSAI Regulations were amended in year 2016 to state that if the quantity of fruit juice is below 10% but not less than 5.0% (2.5% in case of lime or lemon), the products shall be called 'Carbonated beverage with fruit juice'. Thus the intention of FSSAI is clear that if a beverage contains the specified amount of fruit juice, it shall be called as 'Carbonated beverage with fruit juice'. If that particular quantity was merely used as a flavouring agent in a beverage, then it would not be getting such a categorization by FSSAI.
 - In the instant case, the products are satisfying the requirements of Para 3A of FSSAI regulation 2.3.30, thus merits categorization as 'Carbonated beverage with fruit juice', under the principle categorization of 'Carbonated Fruit Beverages or Fruit Drinks' and therefore would be classified under Tariff item No. 2202 90 20 as fruit juice based drinks.
- Even otherwise, the products in question are classifiable under Tariff Item 2202 9920 as 'Fruit Juice Based Drinks'
- The products in question is undisputedly covered under Chapter Heading No. 2202, which deals with non-alcoholic beverages, other than fruit or vegetable juices, classified under the Chapter Heading No. 2009, which has been accepted in the impugned Ruling as well
 - Chapter Heading No. 2202 has been divided into two sub-headings, viz. Sub-heading 2202 10 which covers "Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter

or flavoured” and sub-heading 2202 99 which covers “other non-alcoholic beverages”. Fruit pulp or fruit juice based drinks are specifically covered under Tariff Item No. 2202 99 20 under the Sub-heading No. 2202 99 as ‘Other non-alcoholic beverages’

- The organisation and scheme of Customs Chapter Heading No. 2202 demonstrates that tariff sub-heading No. 2202 10 covers drinks which are predominantly made up of water, including mineral water and aerated water and are either sweetened or flavoured or both. Tariff Item No. 2202 99 covers other non-alcoholic beverages. The drinks covered under this sub-heading would be imparted their essential character by another substance.
- The goods falling under Tariff item 2202 10 20/2202 10 90 will cover within its ambit those drinks which are made up of water and contain lime /orange -flavour added thereto.
- The expression ‘fruit pulp or fruit juice based drinks’ falling under 22029920 essentially means a drink based on fruit pulp or fruit juice which gives the overall/essential character to the drink.
- The products in question are to be prepared with orange/lime juice as its base, which will be added to the syrupy liquid consisting of water, sugar and other constituents. Thus the same are active ingredient of the product in question, and imparts the basic attribute to the drink, including its taste and characteristics, therefore qualifying as “fruit juice based drink” under the Tariff item No. 22029920.
- Reliance is also placed upon D. Hicks(ed.), Production and Packaging of Non-carbonated Fruit Juices and Fruit Beverages, 1990, Van Nostrand Reinhold, New York, wherein it is stated that the most significant feature of a fruit beverage is not its fruit content but the function for which it is designed and marketed. The fruit is often a dominant ingredient providing its overall character to the drink which cannot be achieved in any other way
- Sub-heading 2202 10 covers waters, including aerated waters, which are either sweetened or flavoured or both. Thus, a flavoured water-based beverage is covered by Sub-heading No. 2202 10. Flavour is a trace

(extremely small amount of a component) of a particular odour or taste in a food substance. Thus flavoured waters contemplated under Sub-heading No. 2202 10 are beverages or preparations which contain flavouring agents, which impart the sensation of a particular taste or odour. A fruit juice based drink not only attributes the essential character of the beverage, but also functions more than as a mere agent imparting the sense of taste.

- Reliance is also placed on the US Customs Ruling No. N122815 in the matter of Ms. Michele Peplinski Parker's Organic Fruit Juice and stated that a beverage could be a fruit juice based drink or a flavoured water but the classification is determined by the presence of the fruit juice to an extent that it attributes the essential character to the beverage, not merely as a flavouring agent. It is the dominant nature of the product which determines the classification under the Sub-heading No. 2202 10 or 220299.
- As per FSSAI, flavouring agents can be natural, nature-identical or synthetic substances. Fruit juice or essence can be said to be a natural flavouring agent. In that sense, any beverage made of fruit juice flavor would be a flavoured water and would be liable for classification under Sub-heading No. 2202.10 However, a closer examination of the scheme of classification under Chapter Heading No. 2202 would reveal that such an interpretation is not what is contemplated in Chapter Heading 2202 and that flavoured water is not the same as a fruit juice-based drink.
- If tariff item 2202 10 90 is treated to include an orange juice based drink, it would mean that any fruit juice based drink would be susceptible to classification under Tariff Item No. 2202 10 90, as being flavoured water, irrespective of the composition, nature and common understanding of the market regarding the nature of the product. However, this is evidently not the intention of the scheme of classification under Chapter Heading No. 2202, which provides a separate entry for classification of fruit juice based drinks.

- Sub-heading 220210 would cover only those beverages which are prepared with flavours and the beverages which are prepared from fruit juice would be classifiable under Tariff item 22029920.
 - From a perusal of the manufacturing process of product in question, it can be seen that apart from Lime juice / Orange juice, they use Carbon di oxide as one of the ingredients to manufacture which is added merely for preservation of the beverage and not for any other purpose. It is 5.00%/2.50% Orange/ Lime juice which gives the beverage its essential character and forms the base of the beverage
 - Reliance is placed on the Carbonated Soft Drinks: Formulation and Manufacture, Edited by David P. Steen and Philip R. Ashurst, 2006 and also on Chemistry and Technology of Soft Drinks and Fruit Juices, Second Edition, edited by Philip R. Ashurst, Ashurst and Associates, consulting Chemists for the Food Industry, Hereford, UK, 2005 by Blackwell Publishing Ltd and stated that Carbon di oxide is a very effective preservative, as it inhibits growth of micro-organisms in the beverage and the Carbon di oxide is for preservation purposes.
 - Applying the hierarchical classification, as set out in the general explanatory notes to the present case, since lemonade figures under “---“ under 2202 10 20, it has to be a sub-classification of the immediately preceding single dash, which is 2201 10. Thus, unless the products satisfy the description of single dash 2202 10 as “Waters including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured”, they cannot be classified under the three dash 22021020 or 22021090. If the flavouring element or agent is lime or lemon and are not bought and sold and commercially known as waters with flavouring element as lime or lemon, those products cannot fall for classification under 2202 10 20, since they would fail the test of classification under 2202 10. Accordingly, the products in question are not classifiable under Tariff item 2202 10 20 and 2202 10 90 respectively as they do not satisfy sub-heading 2202 10.
- As per the General Rules for interpretation, the products in question are classifiable under Tariff item 22029920 –

- there is a specific entry in the Tariff for “fruit pulp/ fruit juice based drinks”. Therefore the products in question clearly satisfies the description of this entry and is accordingly, classifiable under tariff item 2202 90 20, by virtue of Rule 3(a) of GIR.
- Assuming both the headings pertaining to ‘Lemonade’ and the ‘fruit pulp/ fruit juice based drinks’ are equally specific on account of presence of the lime juice concentrate therein, the product would be classifiable under 2202 90 20 by virtue of Rule 3(b) of GIR
- As per the Common Parlance Test, the products in Question are classifiable under Tariff Item 22029920 –
 - understanding of the product in common parlance could be gauged from the way the product in question is marketed. Reliance is based on the decision of Hon’ble Supreme Court in the case of CCE Vs. Connaught Plaza Restaurant (P) Ltd and CCE Vs. Wockhardt Life Sciences Ltd
 - In case of “Licta Cola” and other products, the label reads as “Contain Fruits”. Thus the intent of the appellant in labelling the product in this manner depicts the fact that the product is marketed as ‘fruit juice based beverages’ and not merely as flavoured water. The products in question is purchased by consumers considering it as a fruit juice-based drink, unlike the other aerated beverages marketed under the various brand names, which are commonly understood as ‘soft drinks’ or flavoured aerated water. The same is also supported by the fact that the products are covered by FSSAI Regulation 2.3.30 and are labelled as ‘carbonated beverage with fruit juice’.

PERSONAL HEARING:

5. The Appellant was granted personal hearing as required under law before this Appellate Authority on 22nd January 2020. The Authorized representatives of the Appellant Shri. R. Raghavan, Ms. R. Sahana, Shri. B.Venkatraman Advocates and Authorized representatives and Shri.M. Elangovan of the appellant company appeared for hearing. They reiterated the written submissions filed along with the Appeal. They

submitted a compendium of statutory provisions and case laws relied upon by them. They undertook to submit a written synopsis on the arguments made including on the fitment prevailing and the change solicited within a weeks' time.

6. The appellant as undertook during the hearing furnished a written submission on 30.01.2020. They have inter-alia stated that:

- The product merits classification under CTH 2202 99 20 by virtue of qualifying as a 'Carbonated beverage' which is distinct from 'Waters'/ 'Carbonated water'.
 - A perusal of Heading 2202 would indicate that it is divided into two sub-headings; the first one covers 'waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured', while the second group covers 'Other'.
 - In terms of the General Explanatory Notes, for any article to be classified or covered under three dash "---", it has to first fall under the immediately preceding single dash "-" or double dash "--". Lemonade/others falling under 2202 10 20/2202 10 90, accompanied by three dashes "---" is thus, a sub-classification of the immediately preceding single dash "-" viz., 2202 10 which relates to waters containing added sugar or other sweetened water or flavoured. Thus, for a product to be classified under 2202 10 20/2202 10 90 it must firstly be in the nature of waters.
 - It follows that products which are not essentially in the nature of waters, would not fall for classification under 2202 10 20/2202 10 90. HSN Explanatory Notes of CTH 2202 also supports the said contention. Further, the said view is also affirmed by the Hon'ble Tribunal Larger Bench in the case of Brindavan Beverages Pvt. Ltd. [2019 (10) TMI 762].
- Beverage vs. Water
 - In order to further substantiate their claim that the impugned products do not qualify as 'waters', reference is made to the FSSAI Regulations which lays down the standards for various articles of food. Regulation 2.3.30 deals with 'Carbonated Fruit Beverages or Fruit Drinks'. Further, Regulation 2.10.6 deals with "Carbonated Water". It is apparent from the FSSAI regulations that a 'Carbonated Beverage' is distinct from 'Carbonated Water'.

As stated in the Grounds of Appeal, the impugned products manufactured by the Appellant qualifies as a carbonated beverage with fruit juice as it is squarely covered by Para 3A of Regulation 2.3.30.

- Once the impugned products qualify as a carbonated beverage with fruit juice, it cannot also qualify as a carbonated water under Regulation 2.10.6. In this regard, it is submitted that the Hon'ble Authority for Advance Ruling has acknowledged the fact Viz., the impugned products manufactured by the Appellant does not qualify as a carbonated waters in terms of Regulation 2.10.6. However, the Hon'ble Authority for Advance Ruling went on to place reliance on the Food Category System in Appendix A of the FSSAI Regulations and equated 'Carbonated Fruit Beverages or Fruit Drinks' covered under Regulation 2.3.30 to 'Carbonated Water- Based Flavoured Drinks' (Category 14.1.4.1 Of the Food Category System in Appendix A).
- Only those drinks which are 'water-based' can fall within the scope of Category 14.1.4.1. It is submitted that as noted by the Hon'ble Authority for Advance Ruling themselves, the impugned products qualify as 'fruit juice based drinks' by Virtue of falling within the scope of Regulation 2.3.30 ('Carbonated Fruit Beverages or Fruit Drinks"). Thus, the Hon'ble Authority for Advance Ruling have contradicted their own conclusion that the products are Carbonated Beverages with fruit juice by way of also holding that the products qualify as Carbonated water—based flavoured drinks. It is also highlighted that Hon"ble Authority for Advance Ruling has on one hand recognised that the impugned products will not qualify as 'Carbonated water" in terms of Regulation 2.10.6 while at the same time has observed that the products can qualify as Carbonated water-based flavoured drinks under Category 14.1.4.1. These observations are in no doubt, in direct contradiction with one and another.
- Furthermore, the Hon'ble Authority for Advance Ruling without giving due consideration to the General Explanatory Notes [i.e. interpretation of entries appearing with triple dash ---], classified the impugned products under CTH 2202 10 20/2202 10 90 as lemonade/others, solely based on the entries appearing in the Customs Tariff and on the HSN Explanatory Notes to Chapter 2202 which explained that 'Lemonade/Orangeade' is included in the scope of

'waters'. Such a manner of determining classification is fallacious. Once the Hon'ble Authority for Advance Ruling came to the conclusion that the impugned products do not qualify as 'carbonated waters', classification under 2202 10 is ruled out. Resultantly, the ruling pronounced by the Hon'ble Authority for Advance Ruling that the impugned products are classifiable under 2202 10 20/2202 10 90 is ex facie incorrect. Consequently, since the impugned products are carbonated beverages prepared out of fruit juices, they will be classifiable as fruit juice based drinks under CTH 2202 99 20.

- Merely because the impugned products do not qualify as 'Fruit Juices' of CTH 2009, the same does not debar classification under CTH 2202 99 20 as 'Fruit juice based drinks'.
 - The Hon'ble Authority for Advance Ruling examined the scope of CTH 2009 which encompasses "Fruit Juices" and arrived at the conclusion that the impugned products will not fall within the scope of the Heading.
 - Reliance was placed on the FSSAI Regulations wherein Fruit Juices have been defined to mean unfermented but fermentable product obtained by a mechanical process from sound, ripe fruit or the flesh thereof and processed by heat, in an appropriate manner, before or after being sealed in a container, so as to prevent spoilage and are intended for direct consumption.
 - The Hon'ble Authority for Advance Ruling observed that the impugned products are prepared by adding fruit juices to large quantities of carbonated water and that the fruit juices are not intended for direct consumption but are only used as an ingredient during Preparation of the drinks. Therefore, it was concluded that the impugned products do not qualify as Fruit Juices under CTH 2009 and would merit classification only under CTH 2202.
 - They are also not contending that the Impugned products qualify as Fruit Juices under CTH 2009. On the other hand, the impugned products are classifiable under CTH 2202 only. Consequently, there is no dispute at the four digit level classification. The issue pertains only to classification of the impugned products under CTH 2202 99 20 as 'fruit juice based drinks'.

Merely because the impugned products do not qualify as 'Fruit Juices', the same does not automatically debar the products from being classified as 'fruit juice based drinks' under CTH 2202 99 20 for the reasons explicated above. Thus, the impugned products are rightly classifiable under CTH 2202 99 20 as 'Fruit Juice based drinks'.

➤ **C. Industry practice-**

- Their competitors in the industry who are manufacturing similar carbonated beverages are classifying their products under 2202 99 20 as fruit juice based drinks. In this regard, it is pertinent to refer to the decision of the Ld. Commissioner Appeals, Hyderabad in the case Trinity Beverages Pvt Ltd. [42/19-20 dated 30.09.2019] wherein it was held that the fruit based drinks manufactured by them containing a fruit juice content of around 7% and qualifying as a carbonated beverage with fruit drink as per Para 3A of Regulation 2.3.20 supra are classifiable as fruit juice based drinks under 2202 99 20. The said Order has not yet been appealed against by the Department.
- Consequently, it is submitted that it is a settled principle that in the context of classification, different players in the industry manufacturing similarly placed goods cannot be arbitrarily treated. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Damodar J. Malpani [2002 (146) ELT 483 (SC)]. Therefore, it is submitted that the impugned products manufactured by the Appellant also entails classification under CTH 2202 99 20 as fruit juice based drinks under.

➤ **D. Common parlance test**

- Further, the content of the fruit juice component cannot be a determinative factor for deciding whether the product is a fruit juice based drink or not. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Naturalle Health Products (P) Ltd. [2003 (158) ELT 257 (SC)] wherein it was held that the content of the product is not a determinative factor in the case of classification
- The theory of trade parlance has been widely accepted as a sound test in the context of classification time and again by the Apex Court and Hon'ble High

Courts. Consequently, to qualify as a fruit juice based drink, so long as the essential character of a drink is imparted by the fruit juice component, then such drink will be treated as a fruit juice based drink.

- In the instant case, the essential character for the carbonated beverages is imparted by the lime/orange juice content contained in it. This is evidenced by the fact that in trade parlance, the consumers purchase the said beverages for the fruit juice content contained in it and not for the carbonated water. Therefore, the impugned products are rightly classifiable as fruit juice based drinks under CTI-I 2202 99 20.

➤ **E.Fitment**

- They have commenced manufacturing of the impugned products only from 27th November 2017 onwards. Prior to the said date, they were engaged in manufacturing of carbonated beverages containing artificial flavouring agents which did not contain any fruit juice. Thus, since the impugned products contain lime juice/lime juice concentrate [2.5%]/ orange juice [5%] as the case may be, the tax incidence applicable to the said products cannot be compared with the tax incidence applicable to the above mentioned carbonated beverages with fruit flavours manufactured prior to 27th November 2017.
- In any case, for reference purposes, the tax incidence applicable to the carbonated beverages with fruit flavours and the impugned products [both prior to and after introduction of GST] is tabulated herein below.

Product Manufactured	Period	Tax incidence
Carbonated beverages with fruit flavours (Does not contain any fruit juice. Only artificial flavouring agents added)	Prior to 1 st july 2017 (Pre GST)	38.545% [21% ED + 14.5% VAT]
Carbonated beverages with fruit flavours (Does not contain any fruit juice. Only artificial flavouring agents added)	1 st July 2017 to 26 th November 2017	40%
Carbonated beverages with fruit juice (contains lime juice/lime juice	From 27 th November 2017 onwards	12% (if classified under CTH 2202 99 20 as "Fruit juice based drinks")

concentrate[2.5%]& orange juice[5%]	(After introduction of GST and change in composition of the products manufactured)	Note: There is no comparable tax incidence for this product under the pre-GST regime as the appellant has only begun manufacturing the said products by adding fruit juices from 27 th November 2017 onwards)
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DISCUSSIONS:

7. We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. The appellant has sought ruling on the following question:

Classification of goods manufactured-“Whether Carbonated Fruit Juice falls under Fruit Juices or Aerated drinks?”

The Lower Authority after considering the various submissions of the appellant such as the manufacturing process, test reports of the products as to the contents and nutritive value, legal interpretations, FSSAI regulations, Customs Tariff Heading, applicable chapter notes of the Customs Tariff and the HSN Explanatory notes, had held that the products

“Richyaa Damer Lemon” and “Licta Lemon” are classifiable under CTH 22021020 ; and

“Richyaa Damer Cola”, “Licta Cola”, “Richyaa Damer Jeera Soda”, “Licta Jeera Masala”, “Richyaa Damer Orange” and “Licta Orange” are classifiable as “Other” under CTH 22021090.

We find that the Lower Authority while answering as above has

(1) Considered the FSSAI Regulations 2.3.6-Thermally Processed Fruit Juices; 2.3.30- Carbonated Fruit Beverages or Fruit Drinks and 14.1.2.1-Fruit juices & 14.1.4.1-Carbonated water-based flavoured drinks of Appendix A to these Regulations where there is a food Category system and concluded that fruit juices and carbonated beverages with fruit juice are distinct products under these regulations and that the appellants products are covered under Para 3A of 2.3.30 of the Regulations and Category 14.1.4.1 in the food category system in Appendix A to these regulations as ‘Carbonated Beverages with fruit juice’.

(2) Considered the entries of the Customs Tariff Heading 2009 related to 'Fruit Juice' and the HSN Explanatory notes and as in the instant case water constitutes around 92% in all the products, this large quantity of water results in diluted products and as per the Explanatory Notes gets classified under CTH 2202 as 'Beverages' and are not 'Fruit Juices'.

(3) Considered the tariff entries of CTH 2202 and the HSN Explanatory Notes and applying to the products has held that these beverages are classifiable under CTH '220210-Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured'.

(4) examined the FSSAI Regulation 2.10.6-Beverages Non-Alcoholic-Carbonated and Category 14.1.1- Waters of Appendix A of the Regulations, for arriving at the eight digit level classification under CTH 220210 and concluded that the Beverages under this category(i.e. covered under Regulation 2.10.6) are the 'Aerated Waters' covered under CTH 22021010 while the appellants products which are covered under Para 3A of the Regulation 2.3.30 and Category 14.1.4.1 are either classifiable under CTH 22021020 or CTH 22021090.

The Lower authority has found that the impugned products are neither 'Fruit Juice' classifiable under CTH 2009 or 'Aerated Waters' Classifiable under CTH 22021010 but Carbonated beverages with fruit juice classifiable under CTH 22021020 or 22021090.

7.1 The appellant accept the finding of the Lower Authority that

(1) their products which are 'Carbonated Beverage with Fruit Juice' are not classifiable as 'Fruit Juice' under CTH 2009 and

(2) the products are classifiable under CTH 2202,

The appellant contends before us that their products do not fall under 220210 as 'Waters/Waters flavoured with fruit juice but merits classification under 22029920 as 'Others-Fruit Juice Based Drinks' or under 22029990- 'Others/others'. The contention of the appellant is that the products by virtue of qualifying as a 'Carbonated beverage' and covered under FSSAI Regulation 2.3.30, is distinct from 'Waters'/ 'Carbonated water' and merits classification under CTH 22029920/22029990 and that just because the impugned products do not qualify as 'Fruit Juices' of CTH 2009, the same does not debar classification under CTH 2202 99 20 as 'Fruit Juice based drinks'. They have further based their grounds on Industry Practice of classification of similar

products, Common Parlance test, FSSAI regulations and the General Rules of Interpretations of the Tariff to substantiate their claim. The contentions are discussed as under.

8. Before proceeding further, the CTH 2202, the relevant HSN Explanatory notes are examined as under:

CTH 2202:

2202	WATERS, INCLUDING MINERAL WATERS AND AERATED WATERS, CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED, AND OTHER NON-ALCOHOLIC BEVERAGES, NOT INCLUDING FRUIT OR VEGETABLE JUICES OF HEADING 2009
2202 10	- <i>Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured :</i>
2202 10 10	--- Aerated waters
2202 10 20	--- Lemonade
2202 10 90	--- Other - <i>Other :</i>
2202 91 00	-- Non alcoholic beer
2202 99	-- Other:
2202 99 10	--- Soya milk drinks, whether or not sweetened or flavoured
2202 99 20	--- Fruit pulp or fruit juice based drink
2202 99 30	--- Beverages containing milk
2202 99 90	--- Other

Explanatory Notes as per HSN is as below:

22.02 - Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 20.09.

2202.10 - Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured

- Other :

2202.91 -- Non-alcoholic beer

2202.99 -- Other

This heading covers non-alcoholic beverages, as defined in Note 3 to this Chapter, not classified under other headings, particularly heading 20.09 or 22.01.

(A) **Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured.**

This group includes, *inter alia* :

(1) **Sweetened or flavoured mineral waters** (natural or artificial).

(2) **Beverages such as lemonade, orangeade, cola**, consisting of ordinary drinking water, sweetened or not, flavoured with fruit juices or essences, or compound extracts, to which citric acid or tartaric acid are sometimes added. They are often aerated with carbon dioxide gas, and are generally presented in bottles or other airtight containers.

(B) **Other non-alcoholic beverages, not including fruit or vegetable juices of heading 20.09.**

This group includes, *inter alia* :

(1) **Tamarind nectar rendered ready for consumption as a beverage** by the addition of water and sugar and straining.

(2) **Certain other beverages ready for consumption**, such as those with a basis of milk and cocoa.

From the above provisions, the following are evident

- As per the Notes A(2) above, CTH 220210 covers-Beverages such as lemonade, Orangeade, Cola consisting of drinking water, sweetened or not, flavoured with fruit juices, often aerated with Carbon dioxide and generally presented in bottles or other airtight containers.
- As per Notes B above, CTH 220299 covers – other non-alcoholic beverages, not including Fruit or Vegetable juice under 2009 and ready for consumption

The Customs Tariff under single dash(-)CTH 2202 10 includes Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured and under the said (-), the following are covered:

CTH 2202 10 10(with a (---)) covers Aerated waters;

CTH 2202 10 20(with a (---)) covers Lemonade;

CTH 2202 10 90(with a (---)) covers others

The above heading as per the Explanatory notes covers Beverages that are often aerated with carbon dioxide gas and are generally presented in bottles or other airtight containers.

The Customs tariff under single dash (-) CTH 220299 includes Other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009 and under the said single dash (-), the following are covered:

CTH 2202 9910(with a (---)) covers 'Soya milk drinks, whether or not Sweetened or flavoured';

CTH 2202 99 20(with a (---))covers 'Fruit pulp or fruit juice based drink';

CTH 2202 99 30 (with a (---))covers 'Beverages containing milk' ; and

CTH 2202 99 90(with a (---)) covers Other

Thus, the heading 220299 as per the Explanatory Notes covers non-alcoholic beverages and includes Tamarind nectar rendered ready for consumption, Certain other beverages with the basis of milk and cocoa.

The schema of arrangement in the CTH under consideration is based on whether the product is water/ aerated water flavoured with fruit juices and containing sugar,etc which may be carbonated[220210] or a non-alcoholic beverage of Soya milk drinks, Fruit pulp/juice based drink, beverage containing milk, other non-alcoholic beverage ready for consumption[220299].

8.1 We find that the appellants claim that the Lower authority has found that their products are covered under Para 2.3.30 as 'Carbonated Beverage with Fruit Juice' but has also held to be falling under food category 14.1.4.1 which covers 'Carbonated water-based flavoured drinks' and thereupon concluded that the products are classifiable under CTH 22021020/22021090, which are by itself contradictory. The appellant states that once the products are held to be covered under Regulation 2.3.30 and not under 2.10.6[Beverages Non-Alcoholic – Carbonated], the products are to be classified under CTH 22029920/22029990 as Fruit juice based drink. The relevant Regulations of FSSAI and the Food category under Appendix A are examined as under:

Para 2.3.30 of the FSSAI Regulation:

2.3.30 Carbonated Fruit Beverages or Fruit Drinks:

1. *Carbonated Fruit Beverages or Fruit Drink means any beverage or drink which is Purported to be prepared from fruit juice and water or carbonated water and containing sugar, dextrose, invert sugar or liquid glucose either singly or in combination. It may contain peel oil and fruit essences. It may also contain any other ingredients appropriate to the products.*

2. *The product may contain food additives permitted in these regulations including Appendix A. The product shall conform to the microbiological requirements given in Appendix B. It shall meet the following requirements:*

(i) *Total Soluble Solids(m/m)* *Not less than 10.0 percent*

(ii) *Fruit Content(m/m)*

(a) *Lime or Lemon juice* *Not less than 5.0 percent*

(b) *Other fruits* *Not less than 10.0 percent*

3. *The product shall have the colour, taste & flavor characteristic of the product & shall be free from extraneous matter.*

3A. *In case the quantity of fruit juice is below 10.0 per cent. but not less than 5.0 per Cent. (2.5 per cent. in case of lime or lemon), the product shall be called 'carbonated Beverages with fruit juice' and in such cases the requirement of TSS (Total Soluble Solids) shall not apply and the quantity of fruit juice shall be declared on the label.*

Thus carbonated Fruit Beverage or Fruit Drink is prepared from fruit juice and water or carbonated water and the minimum requirement of the Fruit content is not less than 5.0 percent in the case of Lime or Lemon juice and in cases of other fruits the

content should not be less than 10.0 percent. In case if the quantity of fruit juice (other than lime or lemon) is less than 10.0 percent but not less than 5.0 percent and in case of lime or lemon the same is less than 5.0 percent but not less than 2.5 percent, then the products are called as 'Carbonated Beverages with Fruit Juice' and they are not 'Carbonated Fruit Beverages or Fruit Drinks'. The Regulations differentiates the Beverages based on the content of Fruit juice and it is seen that to be called as 'Carbonated Fruit Beverage or Fruit Drink', the minimum requirement of the fruit content is not less than 10% in the case of all fruits except lime or lemon, where the requirement is not less than 5%. In the case at hand, the products have a content of fruit juice as required under 3A of the Regulation 2.3.30 and therefore are 'Carbonated Beverage with Fruit Juice' and are not carbonated Fruit Beverages or Fruit Drinks. The appellant also accepts this.

8.2 The contention on the classification under the Food Products Category, is examined as under:

Relevant extract of Food Category 14.1 of Appendix A are as under:

14.1.1 Waters

Includes natural waters (14.1.1.1) and other bottled waters (14.1.1.2), each of which may be noncarbonated or carbonated.

14.1.1.2 Table waters and soda waters - *Includes waters other than natural source waters that may be carbonated by addition of carbon dioxide and may be processed by filtration, disinfection, or other suitable means. These waters may contain added mineral salts such as table water, bottled water with or without added minerals, purified water, seltzer water, club soda, and sparkling water. Carbonated and non-carbonated waters containing flavours are found in category 14.1.4(emphasis supplied)*

14.1.2 Fruit and Vegetable Juices

This category applies only to fruit and vegetable juices. Beverages based on fruit and Vegetable juices are found in food category 14.1.4.2.....(emphasis supplied)

14.1.4.1 Carbonated water-based flavoured drinks - *Includes water-based flavoured drinks with added carbon dioxide with nutritive, non-nutritive and/or*

intense sweeteners and other permitted food additives. Includes gaseosa (water-based drinks with added carbon dioxide, sweetener, and flavour), and sodas such as colas, pepper-types, root beer, lemon-lime, and citrus types, both diet/light and regular types. These beverages may be clear, cloudy, or may contain particulate matter (e.g. fruit pieces).....(emphasis supplied).

From the above, it is clear that

- Waters/Mineral waters/ Carbonated waters/Soda are categorized under 14.1.1
- Fruit and Vegetable juices are categorized under 14.1.2
- Carbonated and Non-Carbonated waters containing flavours are found in category 14.1.4
 - Carbonated waters containing flavours are categorized under 14.1.4.1 as 'Carbonated water-based flavoured drinks'
 - Beverages based on fruit and Vegetable juices are found in food category 14.1.4.2, which covers 'Non-Carbonated water-based flavoured drinks, including Punches and Ades'

8.3 The appellant has stated that when it is concluded by the Lower authority that the products are not covered as 'Carbonated Water' under Regulation 2.10.6 [Beverages Non Alcoholic-Carbonated], the same do not fall under the food category at 14.1.4.1. From the categorisation of the Food products above, the Carbonated water is categorised under 14.1.1, while the Carbonated Waters containing flavours are categorised under 14.1.4.1. The Regulation 2.3.30 specifies the requirement of fruit juice content in the Beverages to be termed as either 'Carbonated Fruit Beverages or Fruit Drinks' or 'Carbonated Beverages with Fruit Juice', while the food category under 'Appendix A' provides the categorisation of water-based flavoured drinks based on 'Carbonated' or 'Non-Carbonated'. In the case at hand, it is an admitted fact that the Carbonated water content in the impugned products is around 92.5% and the content of lime juice/lime juice concentrate is 2.5% & Orange juice is 5% and the Beverages are ready to drink beverages supplied in sealed bottles of various capacities after being carbonated. The same is marketed as 'Carbonated Beverage with Fruit Juice'. Thus, the products have the fruit content required under 3A of Regulation 2.3.30 and also satisfies the categorisation under 14.1.4.1. Therefore, the products purported to be prepared from fruit juice, the content of which is 2.5%/5% in respect

of lime/other fruit juices and carbonated water, sugar etc are 'Carbonated Beverages with Fruit Juice' of Para 2.3.30 and food category 14.1.4.1 of Appendix A of the Regulation. We also note that the appellant, while have stated that the products do not fall under the food category of 14.1.4.1, has not come forth with the applicable categorisation. We hold that there is no contradiction in the findings of the Lower authority, in the categorisation of the product under FSSAI.

8.4 The appellant has stated that the products which are not essentially in the nature of waters, would not fall for classification under 22021020/22021090 and that the said view is affirmed by the Hon'ble Tribunal Larger Bench in the case of Brindavan Beverages Pvt Ltd [2019(10) TMI 762]. In the cited decision under Para 66, it is observed as under:

"66. It can however be urged that even when lemon or lime juice is added to water as a flavouring agent, the product can still be called lemonade. Though it has to be seen whether the product is essentially waters with added flavour or whether lemon juice is the basis of the fruit drink, but the answer also lies in the definition of "non-carbonated ready to serve fruit beverages" under Regulation 2.3.10 and "Carbonated fruit beverages and fruit drinks" under regulation 2.3.30. It would follow from these regulations that even when lime juice is added but the fruit content of lime or lemon juice is not less than 5%, the product would be classified as fruit juice based drinks but if the lime or lemon juice content is less than 5%, then it would classify as lemonade." (emphasis supplied)

The Tribunal has concluded that those carbonated beverages wherein the content of lime or lemon juice is less than 5% would classify as lemonade. In the case at hand the content of lime juice/orange juice is 2.5%/5.0% only and therefore the cited decision is not applicable to the case at hand.

9. The appellant has placed reliance on the decision of the Ld. Commissioner Appeals, Hyderabad in the case Trinity Beverages Pvt Ltd[42/19-20 dated 30.09.2019] and have claimed that their competitors in the Industry who are manufacturing similar carbonated beverages are classifying their products under CTH 22029920 as fruit juice based drinks. It is seen that in the said case, the Fruit juice content in the Beverages is around 7% and the Commissioner(Appeal) following the CESTAT Larger

Bench decision in the Case of Brindavan Beverages cited above has held that they are fruit-based and accordingly classified under CTH 22029920. The facts are not similar in as much as the percentage of fruit content in the products at hand are 5% or less and as per the cited Larger Bench decision, the same are not fruit juice based drinks.

10. The applicant has stated that the impugned products are being manufactured by them from 27th November 2017 and before that they were using artificial flavouring which did not contain any fruit juice and the products are not comparable. We find that the issue of classification of the products similar to that in the case at hand has been dealt with by the committee of Secretaries, Fitment Committee in the GST Regime. Discussions in the GST Council meeting though not controlling, has persuasive value. The observation of the Fitment Committee, which recommended for no change in the prevailing rates under Annexure-III of their recommendations placed for consideration by the GST Council during the 37th Council Meeting held on is as under:

Annexure III

Issues where no change has been proposed by the Fitment Committee in relation to goods

S. No.	Description	HSN	Present GST Rate (%)	Requested GST rate (%)	Comments
52.	Carbonated beverage with fruit juice	220210	28%+cess	12% as fruit juice	<ol style="list-style-type: none"> 1. Average pre-GST tax incidence on such goods was about 40%. 2. Keeping in view the pre-GST tax rates, the Council has recommended 28% GST rate and 12% Compensation Cess on Aerated waters containing added sugar or other sweetening matter or flavoured (including lemonade). 3. Earlier, the Committee of Secretaries (CoS) in a meeting held on 29.08.2016 did not agree to the proposal of MoFPI to provide concessional rate of excise duty @ 6% for aerated drinks having fruit juice content of not less than 5% procured from domestic manufacturers. 4. The issue regarding separate classification was earlier examined during the 28th GST Council meeting but the Fitment Committee did not agree with the proposal keeping in mind the domestic fruit processing Industry. 5. Fitment Committee does not recommend any reduction in present GST rate.

GST Council has agreed to the above recommendation as can be seen from the Minutes of the Meeting, the relevant para is given below:

34.31. From item No. 43 to 57 of Annexure-III, the Council had no objection and approved the recommendation of Fitment Committee. The Hon'ble Minister from Uttar Pradesh raised the issue about item at Sl. No. 58 of Annexure III i.e. Extra Neutral Alcohol (ENA). He stated

The above decision of the GST Council also supports the classification ruled by the Lower Authority.

11. In view of the above we, Pass the following Order:

RULING

For reasons discussed above, we do not find any reason to interfere with the Order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.


(M.A. SIDDIQUE)

Commissioner of Commercial Tax
Tamilnadu / Member AAAR


(SUNGITA SHARMA)

Pr.Chief Commissioner of GST & Excise
Chennai Zone / Member AAAR

To

Rich Dairy Products (India) Private Limited // **By Speed Post with Ack. Due** //
Sf No.341 & 342, Akkiyampatty Village,
Sendamangalam Post, Namakkal 637 409.

Copy to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. The Advance ruling Authority
4. The Commissioner of GST & C.Ex., Salem Commissionerate
5. The Assistant Commissioner (ST), Rasipuram Assessment Circle,
Government Building, Taluk Office Compound,
Athur Main Road, Rasipuram, Namakkal 637 408.
6. Master File/ Spare.