

ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2019/5
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/02)

Date :23.7.2019

Name and address of the appellant	:	M/s. Hindustan Coca-Cola Beverages Private Limited VilageGoblej, Tal, Matar, Distt. – Kheda – 387 440 (Gujarat)
GSTIN of the appellant	:	24AAACH3005M1ZX
Advance Ruling No. and Date	:	GUJ/GAAR/RULING/07/2019 dated 30.03.2019
Date of appeal	:	30.04.2019
Date of Personal Hearing	:	14.06.2019
Present for the appellant	:	Shri B.L. Narasimhan, Advocate Shri Anand Nainawati, Advocate Shri Hamit Kumar Luthra

The appellant M/s. Hindustan Coca-Cola Beverages Private Limited has submitted that it is engaged in the manufacture of aerated drinks and fruit pulp or fruit juice based drinks under different brand names, classifying the same under Chapter 22 of the First Schedule to the Central Excise Tariff Act, 1985 / Customs Tariff Act, 1975.

2. The Appellant commenced manufacturing of a new product “Fanta Fruity Orange” on 10th August, 2017 and made first supply of the said product on 24th August, 2017. The appellant submitted that the major ingredients for the manufacture of “Fanta Fruity Orange” are Orange Juice consisting 10.5% fruit juice content, Carbonated Water, Sugar, Acidity Regulators, Preservatives, Stabilizers, Sweeteners, and Synthetic Food Colour. The manufacturing process starts with procurement of Orange juice concentrate from approved vendor and stored in -18 C cold storage which forms the base of product. This juice concentrate is then blended with sugar syrup which is prepared by mixing granulated sugar with treated water, additives and preservatives to form the beverage. Thereafter, this beverage is carbonated before being filled in bottles. It has submitted the details of the ingredients used for the manufacture of “Fanta Fruity Orange” and the process involved for manufacturing of the said product.

3. The appellant filed an application for Advance Ruling before the Gujarat Authority for Advance Ruling (hereinafter referred to as the ‘GAAR’) and sought ruling on following questions -

Whether “FANTA FRUITY ORANGE” product is classifiable under CH 22029920 at Sl. No. 48 under Schedule - II as "Fruit pulp or fruit juice based drinks", or under CH 22029990 at Sl. No. 24A under Schedule - III as "Other non-alcoholic beverages" or under 220210 at Sl. No. 12 under 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- StateTax (Rate) dated 30.06.2017 (as amended) ?

4. The appellant submitted that the product "Fanta Fruity Orange" with 10.5% Orange juice, would be classifiable under Tariff Item 2202 99 20 as "*Fruit pulp or fruit juice based drinks*". It submitted that "Fruit pulp or fruit juice based drinks" are specifically covered under tariff item 2202 99 20 under the sub-heading 2202 99 which covers other non-alcoholic beverages.

5.1 The GAAR, in Advance Ruling No. GUJ/GAAR/RULING/07/2019 dated 30.03.2019 has observed that as per the label of the product, Orange Juice Concentrate is 1.6% of the product and that the Orange Juice is reconstituted out of this Orange Juice Concentrate. It has been observed that the terms used in the said tariff item is 'Fruit pulp' or 'fruit juice' based drinks and the said entry do not refer to the term 'Fruit juice concentrate' based drinks. Therefore, the said entry would cover the 'Fruit pulp based drinks' or 'Fruit juice based drinks' only. The 'Fruit juice concentrate based drink' are not covered under the said entry. Under the circumstances, the said product do not fall under the Tariff Item 2202 99 20.

5.2 The GAAR also referred to the decision of Hon'ble Central Excise and Service Tax Appellate Tribunal in the appellant's own case (though for different product), reported as Hindustan Coca Cola Beverages P. Ltd. Vs. Commissioner of Central Excise, Chennai – IV.

5.3 The GAAR further observed that even if the 'common parlance test' is applied, the industry refers the 'fruit pulp or fruit juice based drinks' differently than the 'fruit juice concentrate based drinks'. Therefore even by applying the 'common parlance test', the product 'Fanta Fruity Orange' would not fall under Tariff Item 2202 99 20.

5.4. It was observed that Carbon dioxide is added to the beverage as a preservative only and not for any other purpose, therefore, the product 'Fanta Fruity Orange' would not fall under Tariff Sub Heading 2202 10 – 'All goods including aerated waters containing added sugar or other sweetening matter or flavoured'.

5.5 The GAAR vide aforesaid Advance Ruling, ruled as follows :-

"The product 'Fanta Fruity Orange' manufactured and supplied by M/s. Hindustan Coca-Cola Beverages Private Limited (GSTIN 24AAACH3005M1ZX) is classifiable under Tariff Item 2202 99 90 and Goods and Service Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the said product as per Sl. No. 24A of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017.

6. Aggrieved by the aforesaid Advance Ruling, the appellant has filed the present appeal.

7.1 The appellant has submitted that the GAAR has failed to appreciate scope of Chapter Heading 2202 and mis-classified 'Fanta Fruity Orange' under the residuary entry. It has been submitted that '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'. It has been further submitted that the intention of the Legislature is to include those beverages under Tariff Item No. 2202 90 20, wherein the fruit imparts the essential character of the beverage. The appellant referred to the dictionary meaning of the term "base" given in different dictionaries.

7.2 The appellant has submitted that 'Fanta Fruity Orange' is prepared with orange juice as its base, which is added to the syrupy liquid consisting of water, sugar and other constituents. The percentage of orange juice is 10.5% of the total beverage. It is the active ingredient of the product in question, and imparts the basic attribute to the drink, including the taste and characteristics. Therefore, the product in question will be an 'orange juice based drink', qualifying as 'fruit juice based drink' under the Tariff Item No. 2202 99 20.

7.3 In support of the above interpretation, the appellant placed reliance upon 'D. Hicks (ed.), Production and Packaging of Non-carbonated Fruit Juices and Fruit Beverages, 1990'. The appellant submitted that Shri Rajesh Nair, Associate Vice-President – Quality Assurance & Product Integrity of the Appellant Company, in his affidavit, had categorically clarified that total orange juice content in 'Fanta Fruity Orange' is 10.5% of the total beverage and this forms the base of the beverage, however, the GAAR ignored this aspect of the affidavit in its impugned ruling. It is further submitted that the appellant submitted certificates from eminent persons viz. Dr. Lambert Rodruigues, Former Reader in Food Technology, Food and Fermentation Technology Department, Institute of Chemical Technology (ICT), University of Mumbai and Dr. Madhukar Bhotmange of Laxminarayan Institute of Technology, Nagpur University, however, the GAAR not only failed to appreciate these certificates, but also failed to discuss these in the impugned ruling.

7.4 The appellant relied upon the decision of CESTAT in the case of CCE, Bhopal V. Parle Agro Pvt. Ltd. [2008 (226) ELT 194 (Tri.)] affirmed by the Hon'ble Supreme Court [2010 (254) ELT A13 (SC)] and judgement of Parle Agro (P) Ltd. V. Commissioner of Commercial Taxes, Trivandrum [2017 (352) ELT 113 (SC)].

7.5 The appellant also submitted that the Additional Commissioner, Central Tax & Central Excise, Vadodara-I vide letter dated 15.12.2018 to the GAAR opined that 'Fanta Fruity Orange' is classifiable under Schedule-II of Notification No. 1/2017-CT (Rate) dated 28.06.2017 (as amended) and attracts CGST of 6%.

7.6 As regards the conclusion of the GAAR that Tariff Item 2202 99 20 will not cover drinks made from fruit juice concentrates, the appellant has submitted that as long as beverages are 'based' on fruit juices and such fruit juices impart the essential character to the beverage, they will continue to fall under Tariff Item No. 2202 99 20 as a 'fruit pulp or fruit juice based drink', even though they are produced from fruit juice concentrates. The appellant submitted that frozen Orange juice is specifically classified under Tariff Item No. 2009 11 00 which includes Orange juice concentrate within its ambit. Therefore, 'fruit juice based drinks' under Tariff Item No. 2202 90 20 will also include 'fruit juice concentrates based drinks' within its ambit. The appellant also referred to Explanatory Notes to the Harmonized Commodity Description and Coding system of Chapter Heading 20.09.

7.7 The appellant has further submitted that in classification disputes, a specific entry is to be preferred over a general entry. Therefore, when the Customs Tariff Act, 1975 provides for a specific Tariff Entry No. 2202 99 20 for 'fruit pulp and fruit juice based drinks', there is no need to place reliance on the residuary entry for classification of a product, if such entry is self sufficient to classify a particular product. The appellant also referred to Rule 3(a) of the General Rules for Interpretation of the Customs Tariff Act, 1975.

7.8 The appellant has submitted that the product 'Fanta Fruity Orange' satisfies the common parlance test inasmuch as its label reads 'FANTA FRUITY ORANGE WITH FRUIT JUICE' and the label clearly also specifies that 'ORANGE JUICE CONTENT IN THE BEVERAGE IS 10.5%. CONTAINS FRUIT'. The appellant has further submitted that the GAAR has held that even if the 'common parlance test' is applied, the industry refers the 'fruit pulp or fruit juice based drink' differently from the 'fruit juice concentrate based drink' and therefore, the product would not fall under Tariff Item No. 2202 99 20, however, the GAAR has not led in any evidence to substantiate its bald claim that industry refers to fruit juices and fruit concentrates differently.

7.9 As regards the reliance by the GAAR upon appellant's own case[Hindustan Coca Cola Beverages P. Ltd. Vs. Commissioner of Central Excise, Chennai – IV – 2017 (6) GSTL 200 (Tri. – Chen)] in the Advance Ruling, the appellant has submitted that the said decision is inapplicable to the instant case, as the products 'Maaza Orange and Maaza Pineapple' are completely different from 'Fanta Fruity Orange, inasmuch as 'Maaza Orange and Maaza Pineapple' are non-aerated drinks, whereas 'Fanta Fruity Orange' is fruit juice based drink which is aerated. It has been submitted that the Hon'ble Tribunal, in reaching the conclusion that the products are not 'fruit juice based drinks' held that 'Maaza Orange and Maaza Pineapple' were manufactured from fruit concentrate and not from fruit juice itself, has drawn inference from a redundant Board Circular No. 309/25/97-CX dated 21.03.1997.

FINDINGS :-

8. We have considered the submissions made by the appellant in the appeal, further submission dated 21.06.2019 as well as submissions at the time of personal hearing.

9. The main issue involved in this case is the correct classification of the product 'Fanta Fruity Orange' being manufactured and supplied by the appellant i.e. whether 'Fanta Fruity Orange' is classifiable under Sub-heading 2202 10 at S. No. 12 under Schedule IV as "All goods [including aerated waters], containing added sugar or other sweetening matter or flavoured", or under Tariff Item 2202 99 20 at S. No. 48 under Schedule II as "Fruit pulp or fruit juice based drinks" or under Tariff Item No. 2202 99 90 at S. No. 24A under Schedule III as "Other non-alcoholic beverages".

10.1 The appellant has submitted that the manufacturing process starts with procurement of Orange juice concentrate from the vendor and the same is stored in -20°to -16°Celsius cold storage. Orange juice (which constitutes 10.5% of the total beverage) is then obtained by adding water to the Orange juice concentrate. Thereafter, sugar syrup (which is prepared by mixing granulated sugar with treated water), along with flavor, additives and preservatives is blended with Orange juice base to obtain the final mixture. This mixture is then carbonated, before being filled in PET bottles. It is submitted that Orange juice concentrate is produced from real orange juice after extraction of water and

is easier to transport. It is for this reason i.e. to facilitate ease of transportation that the appellant procures Orange juice concentrate instead of orange juice for manufacturing 'Fanta Fruity Orange'.

10.2 On the label of the product, it is mentioned as follows :-

"CARBONATED FRUIT BEVERAGE

INGREDIENTS : CARBONATED WATER, SUGAR, ORANGE JUICE CONCENTRATE (1.6%), ACIDITY REGULATOR (330), PRESERVATIVES (202,211), STABILIZERS (414, 445), SWEETENER (960), CONTAINS PERMITTED SYNTHETIC FOOD COLOUR (110) AND ADDED ORANGE FLAVOURS (NATURAL AND NATURE-IDENTICAL FLAVOURING SUBSTANCES).*

**ORANGE JUICE CONTENT IN THE BEVERAGE IS 10.5%. CONTAINS FRUIT."*

11.1 In order to examine the classification of product 'Fanta Fruity Orange', it will be useful to refer to Explanatory Notes of Harmonised System of Nomenclature (HSN) for Tariff Heading 2202 and also Heading 2202 of Customs Tariff.

11.2 The Explanatory Notes of HSN for Tariff Heading 2202 are reproduced 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

2202.90 - 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.*

This heading does not include:

- (a)
- (b)
- (c)
- (d) ”

11.3 TheTariff Heading 2202 in the Customs Tariff Act, 1975 has also 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 90 which covers “other”. The Tariff Heading 2202 in the Customs Tariff Act, 1975 is reproduced herein below :-

Tariff Item	Description of goods	Unit
(1)	(2)	(3)
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	- Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured:	
2202 10 10	--- Aerated Waters	1
2202 10 20	--- Lemonade	1
2202 10 90	--- Other	1

	- Other :	
2202 91 00	-- Non-alcoholic beer	
2202 99	-- Other:	
2202 99 10	--- Soya milk drinks, whether or not sweetened or flavoured	1
2202 99 20	--- Fruit pulp or fruit juice based drinks	1
2202 99 30	--- Beverages containing milk	1
2202 99 90	--- Other	1

It is apparent that Tariff Heading 2202 at sub-heading level (at 6 digit level) is same in the Customs Tariff and Harmonised System of Nomenclature, though the sub-headings have been further divided in the Customs Tariff. Therefore, the Explanatory Notes can be relied to determine proper classification of the product under Tariff Heading 2202.Hon’ble Supreme Court in the case of L.M.L. Ltd. Vs. Commissioner of Customs [Civil Appeal No. 3764 of 2003, decided on 21.09.2010 reported at 2010 (258) ELT 321 (S.C.)] has held that there can be no doubt that the HSN Explanatory Notes are a dependable guide while interpreting the Customs Tariff.

12. In the backdrop of the aforesaid factual and legal position, we proceed to examine whether the product 'Fanta Fruity Orange' being manufactured and supplied by the appellant is appropriately classifiable under Sub-heading 2202 10 or under Tariff Item 2202 99 20 or 2202 99 90. The findings of the GAAR as well as grounds of appeal are also discussed at appropriate places.

Sub-heading 2202.10

13.1 As per Explanatory Notes of HSN for Sub-heading 2202 10, it includes beverages such as orangeade, consisting of ordinary drinking water, sweetened or not, flavoured with **fruit juices** or essences, or compound extracts; that they are often **aerated with carbon dioxide** gas, and are generally presented in bottles or other airtight containers.

13.2 On examining the contents of the product 'Fanta Fruity Orange', as submitted by the appellant and appearing on the label of the product, it contains Carbonated Water, Sugar, Sweetener, Orange Juice Concentrate and added Orange flavours (natural and nature-identical flavouring substances). 'Fanta Fruity Orange' also contains Acidity Regulator, Preservatives, Stabilizers and permitted synthetic food colour. The product 'Fanta Fruity Orange' is presented in the PET bottles.

13.3 Thus, on going through the Explanatory Notes of HSN and the contents of the product 'Fanta Fruity Orange' it is evident that the product 'Fanta Fruity Orange' fully conforms to the description given in Explanatory Notes of HSN for Sub-heading 2202 10. Therefore, the said product is found to be appropriately classifiable under Sub-heading 2202 10.

14.1 The appellant has submitted that the organization and scheme of Customs Chapter Heading 2202 demonstrates that Tariff sub-heading 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. It is submitted by them that Tariff sub-heading 2202 99 covers other non-alcoholic beverages and the drinks covered under this sub-heading would be imparted their essential character by another substance.

14.2 As already noted, as per the contents of 'Fanta Fruity Orange', the said product is sweetened (with Sugar and Sweetener) and flavoured (with Orange Juice Concentrate and added Orange flavours -natural and nature-identical flavouring substances). The same is also aerated as well as presented in PET bottles. As per explanatory notes referred to above, the Sub-heading 2202 10 covers products flavoured with fruit juices or essences or compound extracts. Thus, 'Fanta Fruity Orange' flavoured with Orange Juice Concentrate and added Orange flavours would fall under sub-heading 2202 10 in view of the explanatory notes of HSN.

15.1 The GAAR in its Advance Ruling has referred to the affidavit filed by Shri Rajesh Nair, Associate Vice President – Quality Assurance & Product Integrity, wherein it is stated that during the process of manufacture of 'Fanta Fruity Orange', Carbon Dioxide equal to 5.148 grams per Litre is added as a preservative only and not for any other purpose. On the basis of this affirmation, it is held in the Advance Ruling that the product 'Fanta Fruity Orange' would not fall under Tariff Sub Heading 2202 10.

15.2 However, we observe that there is nothing in the Customs Tariff or Explanatory Notes of HSN pertaining to Heading 2202 to suggest that the product containing Carbon Dioxide as preservative only would not fall under Tariff Sub Heading 2202 10. On the contrary, Explanatory Notes of HSN for Sub Heading 2202 10 specifically mentions that

the products of this Sub heading are often aerated with carbon dioxide gas. Therefore, the product 'Fanta Fruity Orange' is not excludible from Sub Heading 2202 10 on the ground that the product contains Carbon Dioxide as preservative only.

Tariff Item 2202 99 20

16. We may now examine the Tariff Item 2202 99 20 which covers 'Fruit pulp or fruit juice based drinks' to see whether the product 'Fanta Fruity Orange' can be classified under this Tariff Item as contended by the appellant.

17.1 It is the submission of the appellant that the percentage of reconstituted Orange juice (out of Orange juice concentrate 1.65) in 'Fanta Fruity Orange' is 10.5%. An affidavit of Shri Rajesh Nair, Associate Vice President – Quality Assurance & Product Integrity of the appellant company and certificates of Dr. Lambert Rodrigues and Dr. Madhukar Bhotmange to this effect have been submitted. The appellant has also placed reliance upon D. Hicks (ed.), Production and Packaging of Non-carbonated Fruit Juices and Fruit Beverages, 1990 and dictionary meanings of the term "base". On the basis of the fact that the product contain 10.5% of the orange juice as base and relying on Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 / Food Safety and Standards (Food Products Standards and Food Additives) Regulations Eleventh Amendment Regulations, 2016, CGST Vaodadara – I Commissionerate has opined that the product falls under Tariff Entry 2202 99 90 (*sic*).

17.2 In this regard, an issue arises whether the definition of another statute can be applied for determination of classification of product under Customs Tariff Act, 1975 or under GST Law. Hon'ble Apex Court in the case of Commissioner of Central Excise, New Delhi Vs. Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.) – para 43] has held that 'it is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute'. The same view was held by Hon'ble High Court of Bombay in the case of Kaira Dist. Co. Op. Milk Producers' Union Ltd. Vs. U.O.I. [1989 (41) E.L.T. 186 (Bom.) – Para 7 and 8].

17.3 As regards the reliance on the judgement of Hon'ble Supreme Court in the case of Parle Agro (P) Ltd. Vs. Commissioner of Commercial Taxes, Trivandrum [2017 (352) E.L.T. 113 (S.C.)], we agree with the view of the GAAR that the issue involved in that case was related to the classification under Kerala Value Added Tax Act, 2003 wherein the scheme of classification was different than the classification under Customs Tariff Act, 1975. As regards the decision of Hon'ble CESTAT in the case of CCE, Bhopal Vs. Parle Agro Pvt. Ltd. [2008 (226) ELT 194 (Tri.)], it is observed that in that case, the product Appy Fizz contained a far more higher and significant percentage of Apple juice i.e. 23% whereas in the case of appellant, product 'Fanta Fruity Orange' contains only 1.6% Orange Juice Concentrate, which is said to be reconstituted to 10.5% Orange juice. The decision in the case of Parle Agro Pvt. Ltd. [2008 (226) ELT 194 (Tri.)] is given in specific facts of that case. Ministry of Food and Processing Industry had given certificate in that case. There is no general finding that juice concentrate based product with specific minimum volume of juice concentrate may be covered under 'Fruit pulp or fruit juice based drinks'. As held by Hon'ble Apex Court in the case of Collector of Central Excise, Calcutta Vs. Alnoori Tobacco Products [2004 (170) ELT 135 (SC)], circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases; that disposal of cases by blindly placing reliance on a

decision is not proper. Therefore, the decision in the case of Parle Agro Pvt. Ltd. [2008 (226) ELT 194 (Tri.)] cannot be applied to the facts of the present case.

18.1 The appellant has submitted that the GAAR has incorrectly concluded that Tariff Item No. 2202 99 20 will not cover drinks made from fruit juice concentrates.

18.2 However, we observe that the GAAR has, among other aspects, relied upon the decision of Hon'ble CESTAT in the appellant's own case [Hindustan Coca Cola Beveages P. Ltd. Vs. Commissioner of Central Excise, Chennai-IV – 2017 (6) GSTL 200 (Tri.-Chennai)] to arrive at the conclusion that Tariff Item No. 2202 99 20 would not cover 'Fanta Fruity Orange' which is not manufactured from 'Fruit pulp' or 'Fruit juice', but is undisputedly manufactured from 'Orange Juice Concentrate'. It is not the case of the appellant that the said decision has been stayed or reversed by higher judicial forum. Further, the submission of the appellant that the Hon'ble CESTAT in that case drew inference from a redundant Board Circular No. 309/25/97-CX dated 21.03.1997 also do not hold any water. The appellant in that case had pleaded before the Tribunal that classification adopted by Revenue was baseless since that was based on Circular No. 309/25/97-CX. However, Hon'ble CESTAT has arrived at the conclusion that 'concentrate' based drink will not be covered under 'Fruit pulp or fruit juice' based drink by taking all relevant aspects into consideration and had not drawn any support from the Board's Circular dated 21.03.1997.

19.1 The appellant has referred to Explanatory Notes of Heading 20.09, wherein it is mentioned that the term "frozen orange juice" also covers concentrated orange juice" to buttress the argument that "fruit juice based drinks" under Tariff Item 2202 99 20 will also include "fruit juice concentrates based drinks" within its ambit.

19.2 In the said Explanatory Notes, it is mentioned that the juices of **this heading** may be concentrated (whether or not frozen) or in the form of crystals or powder. Thus, this clarification is applicable to the Heading 20.09 only and cannot be applied to other Headings. Similarly, the sub-heading note for sub-heading 2009.11 providing that the term 'frozen orange juice' also covers concentrated orange juice' will be applicable to that sub-heading only. These explanatory notes only reiterate the fact that the 'concentrated juices' are known differently from 'juices' and therefore the explanatory notes clarify that 'juices' of heading 20.09 would cover 'concentrated juices'.

20.1 The appellant has submitted that the GAAR has not led in any evidence to substantiate its finding that even if the 'common parlance test' is applied, the industry refers the 'fruit pulp or fruit juice based drinks' differently than the 'fruit juice concentrate based drinks'.

20.2 In this regard, suffice it to say that the Hon'ble CESTAT in appellant's own case [Hindustan Coca Cola Beveages P. Ltd. Vs. Commissioner of Central Excise, Chennai-IV – 2017 (6) GSTL 200 (Tri.-Chennai)] has decided this issue.

21. Therefore, we confirm the view of the GAAR that the product 'Fanta Fruity Orange' do not fall under Tariff Item 2202 99 20.

Tariff Item 2202 99 90

22. As regards the third limb of the question raised for classification of 'Fanta Fruity Orange', it is observed that the GAAR concluded that the said product would not fall

under Sub heading 2202 10 but would fall under Sub heading 2202 99. As the GAAR further concluded that the said product would not fall under Tariff Item 2202 99 20 as 'Fruit pulp or fruit juice based drinks', it held that the product would fall under residuary entry of Tariff Item 2202 99 90. However, as we have already discussed that the product 'Fanta Fruity Orange' is appropriately classifiable under Sub heading 2202.10, the question of classifying it under residuary entry of Tariff Item 2202 99 90 does not arise.

23. In view of foregoing, we modify the Advance Ruling No. GUJ/GAAR/RULING/07/2019 dated 30.03.2019 by holding that –

The product 'Fanta Fruity Orange' manufactured and supplied by M/s. Hindustan Coca Cola Beverages Private Limited (GSTIN 24AAACH3005M1ZX) is classifiable under Sub heading 2202 10 and **Goods and Services Tax rate of 28%** (CGST 14% + GGST 14%) as per S. No. 12 of Schedule IV of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and corresponding Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 and **Goods and Services Tax Compensation Cess rate of 12%** as per S. No. 2 of Schedule of Notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017, are applicable to the said product.

(Ajay Jain)
Member

(Dr. P.D. Vaghela)
Member

Place : Ahmedabad
Date : 23.07.2019.