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

A.R.Appeal No. 10 /2019/AAAR Date: 10/03/2021

BEFORE THE BENCH OF

1. Thiru G.V.KRISHNA RAO, MEMBER

2. Thiru M.A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/09/2021 (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. Kalis Sparkling Water Private Limited No. E72-E79 AND E88-E95, SIPCOT INDUSTRIAL COMPLEX, Pallapatti Post, Nilakottai Taluk, Dindugal 624201.
GSTIN or User ID	33AADCK8591Q1ZR
Advance Ruling Order against which appeal is filed	Order No. 48/ARA/2019 dated 17.10.2019
Date of filing appeal	28.11.2019
Represented by	----------
Jurisdictional Authority-Centre	Madurai Commissionerate.
Jurisdictional Authority -State	The Assistant Commissioner (ST), Nilakottai Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 19113300486760 dated 22.11.2019

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 is filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s. Kalis Sparkling Water Private Limited (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AADCK8591Q1ZR. The appeal is filed against the Order No.48/ARA/2019 dated 17.10.2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The Appellant has stated that their company Kalimark, is a 103-year-old beverage manufacturing company. They are engaged in manufacture of new products (carbonated fruit drink/fruit juice without adding milk) and the sample has been taken which will be sold in the market name as 'K Juice Grape'. The method of preparation of the said carbonated beverages with fruit juice is stated as

follows: Processing RO Water Thermal Process Processed Fruit Juice concentrate → --> Blending ----> carbonization ----> Filling ----> Bottling ---→ Capping----> Labelling ---→ Shrink Wrapping. The appellant has stated that carbonated fruit beverages are specifically explained in Chapter 2.3.30 and 2.3.3A of the FSSAI Act. As per the GST Act and its schedule, the rate of tax on the fruit pulp or fruit juice-based drink classified under the HSN Code 2202 is liable to be taxed at 12%. They had sought the Advance Ruling Authority to clarify whether their fruit juice-based drinks should be called as "Carbonated beverage with fruit juice" as per Para 3A definition in FSSAI Act and the applicable GST along with Classification as per HSN.

3. The Original Authorities has ruled as follows:

The product 'K Juice Grape' falls under the category of "Other" under CTH 2202 10 90. The applicable rate of tax is 14% CGST vide Sl.No.12 of Schedule IV under Notification No.II2¦L7-Central Tax (Rate) and 14% under SGST at 14% vide S1.No.12 of Schedule IV under Notification No.II(2) /CTR/532(1-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended.

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

- The Advance Ruling Authority's finding that the appellant's product K Juice Grape which are sold as fruit juice based drinks will fall under serial number serial no.12 of schedule IV under notification no.1/2017(Rate) and thereby leviable at 14% CGST and 14% SGST on the ground that the product falls under the category of 'others" under CTH 2202 10 90, is against the facts and settled proposition of Law laid down by the Hon'ble Supreme Court of India in similar and identical facts of case in the matter of M/s. Parle Agro Private Limited Vs The commissioner of commercial taxes, Trivandrum, Kerala reported in 106 VST Page 1.
- The Authority for Advance Ruling failed to appreciate the fact that there is a specific entry enumerating "Fruit Juice Based Drinks" under the GST schedule attracting 12% tax and the Customs Tariff Head (CTH) also having a similar entry. The relevant entries under the both Acts are extracted below.

  Chapter 2202 OF Customs Tariff Covers:

  2202 99 20 .....Fruit Pulp or Fruit Juice based drinks

Entry under GST Act:

S.No	HSN	Schedule	Commodity Name	Rate of Tax	Notification
47	2202	II	Fruit Pulp or Fruit Juice Based Drinks	12%	1/2017 C. T. (Rate) dated 28.06.2017

The Authority failed to appreciate the above two entries while deciding the issue and unnecessarily gone into and interpreted the entry 2202 99 90 (others) under the Customs Tariff Head when there is specific entry in the GST Act itself.

- The Authority have wrongly come to a conclusion that if the Fruit Juice Based drinks undergone carbonation it will come under the category of "Aerated Water Drinks". Such conclusion is totally against the judgement of the Hon'ble Supreme Court of India in the matter of M/s.Parle Agro Private limited Vs The Commissioner of Commercial Taxes, Trivandrum, Kerala.
- They have started a new venture of manufacturing and marketing of fruit juice based drink without milk named "K juice Grape". They have sent samples to Bureau Veritas India Private Limited, NABL lab who certified that the products are falling under carbonated fruit drink as per FSSAI norms. The K juice grape is a fruit based drink product manufactured using 13 to 15% of Red grape juice concentrate as a fruit juice source. The other major constituent is sugar. These two form the major part of the drink with water which is 78%. The other less than a percentage additives are Sodium Benzoate, Citric acid, sodium citrate, flavouring and colouring agent. Being a fruit based juice it has high risk of spoilage/fermentation in atmospheric storage condition. Therefore, it is carbonated to the extent of 0.6% only for the purpose of preservation in packaging the commodities.

Manufacturing Process — Flow chart:

Processing Flow Chart

↓

Prepare the sugar solution at 75-80 deg Celsius in blending tank

↓

Filter the sugar solution using to remove the unwanted impurities

↓

Addition of citric acid,Tri sodium citrate, sodium Benzoate as per the Formulation and cool it to room temperature

↓

Grape juice concentrate is reconstituted with water for the purpose of

maintaining the quality factors of juice.

↓

Thermal Treatment of grape juice concentrate at 95 deg Celsius (30 sec) (Loss of water — 2 to 3%) and cool it to room temperature

↓

Blending of sugar solution, grape juice, colouring and flavouring agent

↓

Mix it well (circulation for 3hrs)

↓

Addition of 10% sugar solution, 13% grape juice and other additives with purging of carbonation(0.6%) at 20 deg Celsius in beverage mix

↓

Filling at 2-4 deg Celsius, Capping & Shrink wrapping

- The product "K juice Grape" is made from reconstituted natural grape juice made from grape juice concentrate. It contains fruit content and solids content more than 10% and is a Thermally processed fruit beverage / Ready to serve fruit beverage complying with category 2.3.10 as per FSSAI regulations, 2011 despite having carbon dioxide as an ingredient which is used for preservation purpose only. The above-mentioned point is purely based on scientific and technical information
- The Authority has totally failed to follow the finding given by the Supreme Court in the case reported above while deciding "Appy Fizz" a fruit juice based drink. The said judgement is squarely applicable to the subject issue and the authority ought to have followed the same which is binding on them. The Authority has completely failed to consider the above judgement of the Hon'ble Supreme Court which is binding and no discussion whatsoever is made of the same inspite of the fact that it is specifically referred and cited before them. The authority is bound to follow the principles laid down by the Hon'ble Supreme Court while deciding the similar facts and interpretation of entries of classification of goods. But they failed to do so. The Hon'ble Supreme Court had given a finding that Fruit Juice Based Drinks, thus were never treated as "AERATED BRANDED SOFT DRINKS" because of the reason that 'FRUIT JUICE BASED DRINKS' have separate entry under the CTH. Similarly, the 'FRUIT JUICE BASED DRINKS' have a separate entry under the

GST Act and hence the ruling of the Hon'ble Supreme Court in the aforesaid case squarely covers the issue in the present case also and the Authority for Advance Ruling is bound to follow the same. Further the Authority for Advance Ruling failed to consider the finding of the Supreme Court that carbon di—oxide is used for preservation purpose only and the product does not undergo aeration or carbonation.

- The Authority for Advance Ruling gave a factual false finding at page 10 of the order that "the appellant product is not thermally processed fruit juice but covered under para 2.3.30 of the regulation category and category 14.1.4.1 in the food category system in Appendix A to these regulations. The appellant product is thermally processed one and the appellant had filed the detailed process of manufacturing and technical report also indicated that the product undergone thermal treatment.
- The Authority had unnecessarily interpreted the category 14.1.4.1 of Appendix to the regulation. When there is specific entry under 2.3.30, no need to discuss 14.1.4.1 of carbonated water based flavoured drinks. The Hon'ble Supreme Court categorically had given a finding that the appellant product comes under 2.3.30 even if carbonated. Similarly the authority failed to appreciate the lab report and expert opinion given by the experts for classification of goods. The revenue also not filed any technical report in this regard. The Hon'ble Supreme court finding in this regard is extracted below

  " The above materials which were filed by the appellant before the clarification authority were relevant materials for understanding the manufacture process and the nature and contents of ultimate product. The expert authority and its opinion which were relied by the appellant were required to be adverted to both by the clarification authority as well as by the High Court and we are of the opinion that expert opinion and materials have been erroneously discarded. It is further relevant to note that revenue has not filed any material on the record before the clarification authority or before the High Court in support of its view that product is covered under section 6(1)(a) that "aerated branded soft drink? This court in several cases has observed that onus to prove that particular goods fall in particular tariff item is on the Revenue. In this context, in the judgment of this court in Hindustan Ferodo Ltd Vs Collector of Central Excise, Bombay (1997) 89 ELT 16 (SC), in

paragraph 3 it was laid down:

> "3. It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed".

We, thus conclude that orders of foods safety authority and expert opinion regarding process of manufacture relied by the appellant were relevant materials and clarification authority and High Court erred in law in discarding these materials.

- By considering the above facts, statutory provisions and interpretation of entries and the order of the Supreme Court, the order passed by the Authority for Advance Ruling requires reconsideration and liable to be set aside. It is against the finding of the Supreme Court. The appellant's product K Juice Grape is only a fruit juice based drink fall under schedule II having HSN CODE 2202 99 20 liable to be taxed only at 12% and not aerated drinks as decided by the Authority for Advance Ruling.

PERSONAL HEARING:

5.1 Personal hearing was extended to the appellant to be held on 16.12.2019 and the appellant sought adjournment vide their letter dated 07.12.2019 but the scheduled hearing was postponed due to administrative reasons. The postponed hearing was fixed to be held on 22.01.2020 for which intimation was sent on 12.01.2020 and the appellant again sought adjournment vide their letter dated 13.01.2020. Another opportunity was extended for hearing scheduled on 12.02.2020 and intimated on 27.01.2020, the appellant vide their e-mail dated 10.02.2020 sought adjournment again. Due to the prevailing pandemic, the authority started to conduct the hearing in Virtual Mode and the willingness of the appellant was sought to participate in the Virtual Mode of hearing, for which no reply was received from the appellant. The appellant was addressed repeatedly seeking their willingness to participate the hearing in Virtual Mode and vide E-mail dated 09.12.2020, they were again addressed. The appellant vide e-mail dated 14.12.2020 replied that they may be heard in person and they were not willing to

participate in the Virtual Mode of hearing. In person hearing was scheduled to be held on 03.02.2021 and intimation was sent on 22.01.2021. The appellant again sought adjournment vide their letter dated 30.01.2021.

5.2 Section 101(2) of the CGST/TNGST Act 2017, provides the period within which the order is to be passed, which is as below:

> *(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.*

As per the above section, the order is to be passed by this authority within the stipulated statutory time period. We find that the appeal is filed on 28.11.2019 and the authority has extended many opportunities to be heard in person as required under law. The due date for rendering the decision is fast approaching even after excluding the period which was not considered for counting in view of Notification No. 35/2020-C.T. dt. 03.04.2020 amended by 91/2020 dt. 14.12.2020. While seeking adjournments all through, the appellant has stated that since their advocate/director (admin& Tax)/ Tax consultant is out of the station on that date due to personal engagements, they requested for postponement. We find that adhering to the Principals of Natural Justice, the appellant had been extended ample opportunities to present their case in person, which has not been availed by them by citing personal reasons repeatedly. We do not find any reason to still extend any further opportunity to hear in person and proceed to decide the case based on the documents available in file.

DISCUSSIONS:

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

1) Whether their product K Juice Grape fall under category of fruit beverages or fruit based drinks?
2) What is the rate of tax and HSN code for their product?
3) Is there any persevered percentage of fruit or pulp in the beverages to call them as carbonated fruit beverages or drinks under the GST Act?

The Lower Authority has admitted the question (2) and after considering the various submissions of the appellant, legal interpretations, FSSAI regulations, Customs

Tariff Heading, applicable chapter notes of the Customs Tariff and the HSN Explanatory notes, had held that

> 'The product 'K Juice Grape' falls under the category of "Other" under CTH 2202 10 90. The applicable rate of tax is 14% CGST vide Sl.No.12 of Schedule IV under Notification No.1/2017-Central Tax (Rate) and 14% SGST vide Sl.No.12 of Schedule IV under Notification No.II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended.

7.1 The appellant contends that

- K juice grape is a thermally processed fruit beverage / Ready to serve fruit beverage complying with category 2.3.10 as per FSSAI regulations, 2011 despite having carbon-di-oxide as an ingredient which is used for preservation purpose only and they had filed the detailed process of manufacturing and technical report also indicated that the product undergone thermal treatment. The Lower Authority had unnecessarily interpreted the category 14.1.4.1 of Appendix to the regulation when there is specific entry under 2.3.30 and the Hon'ble Supreme Court categorically had given a finding that the product comes under 2.3.30 even if it is carbonated.
- there is a specific entry enumerating "Fruit Juice Based Drinks" under the GST Schedule attracting 12% tax and the Customs Tariff Head(CTH) also have a similar entry at CTH 2202 9920 – 'Fruit Pulp or Fruit Juice Based Drinks and the Lower Authority has failed to appreciate the above two entries while deciding the issue and unnecessarily gone into and interpreted the entry 2202 99 90 (others) under the Customs tariff Head when there is specific entry in the GST Act itself.;
- The Hon'ble Supreme Court while deciding "Appy Fizz" a fruit juice based drink has stated that "Fruit juice Based Drinks, thus were never treated as "Aerated Branded Soft Drinks" because of the reason that 'Fruit juice based Drinks' have a separate entry under the CTH. Similarly the Fruit Juice based drinks have a separate entry under the GST Act and hence the ruling of the Hon'ble Apex Court above, squarely covers the issue in the present case also and the Authority for Advance Ruling is bound to follow the same.

The contentions are discussed as under.

8.1 We find that the appellant contends that their product is 'Thermally processed fruit beverage complying with Para 2.3.10 of the FSSAI regulation and that the lower authority has given a factually false finding that "the applicant product is not thermally processed fruit juice but covered under para 2.3.30 of the regulation category and category 14.1.4.1 in the food category system in Appendix A to these regulations'. We, further find that the Lower Authority has examined the FSSAI regulation under Para 2.3.6-Thermally processed Fruit Juices, Para 2.3.30 - 'Carbonated Fruit Beverages or Fruit Drinks', 2.10.6-Beverages Non-Alcoholic-carbonated and food category 14.1.2.1-Fruit juices and 14.1.4.1 -'Carbonated water-based flavoured drinks', 14.1.1.2- Table waters and soda waters and thereupon concluded that the products are covered under Para 2.3.30 of the regulations and Category 14.1.4.1 in the food category in Appendix A to the regulations. The appellant claims that their product comes under Para 2.3.10 of the Regulation and the same is examined as under:

2.3.10: Thermally Processed Fruit Beverages / Fruit Drink/ Ready to Serve Fruit Beverages

1. Thermally Processed Fruit Beverages / Fruit Drink/ Ready to Serve Fruit Beverages (Canned, Bottled, Flexible Pack And/ Or Aseptically Packed) means an unfermented but fermentable product which is prepared from juice or Pulp/Puree or concentrated juice or pulp of sound mature fruit. The substances that may be added to fruit juice or pulp are water, peel oil, fruit essences and flavours, salt, sugar, invert sugar, liquid glucose, milk and other ingredients appropriate to the product and processed by heat, in an appropriate manner, before or after being sealed in a container, so as to prevent spoilage.

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. The product shall meet the following requirements:—

(i)	Total Soluble solid (m/m)	Not less than 10.0 percent
(ii)	Fruit juice content (m/m)	
(a)	Lime/Lemon ready to serve beverage	Not less than 5.0 percent
(b)	All other beverage/drink	Not less than 10.0 percent

3. The container shall be well filled with the product and shall occupy not less than 90.0 percent of the water capacity of the container, when packed in the rigid containers. The water capacity of the container is the volume of distilled water at 20°C which the sealed container is capable of holding when completely filled.

8.2 From the above, it is evident that the product prepared from juice to which water, peel oil, fruit essences and flavours, salt, sugar, invert sugar, etc appropriate

to the product are added and processed by heat in an appropriate manner so as to prevent spoilage is categorised under para 2.3.10, above and the products under this category are not carbonated. The manufacturing process furnished by the appellant, states that the process involves, addition of Grape juice (13%) to the filtered sugar solution (86%- 76% RO water and 10% Sugar) in a blending tank which is subjected to Mild Thermal Treatment (loss of water by 2 to 3%), cooled to room temperature, to which additives and preservatives as per the formulation and coloring & flavoring agent are added. This is mixed well by circulation for 3 hrs, carbonated at 20 deg Celsius (0.61%) chilled and filled at 2-4 deg Celsius, capped & shrink wrapped and are sold as 'Carbonated Fruit Beverage'. From the regulation at 2.3.10, the product is to be thermally processed whereas in the case at hand, the product is subjected to mild thermal treatment for an effective loss of water by 2 to 3 % and also is a carbonated product sold as Carbonated Fruit Juice. Thus we find this contention of the appellant is not legally sustainable and therefore not acceptable. Also, Para 2.3.30 of the FSSAI Regulation (given below) specifically covers Carbonated Fruit Drinks made of Fruit Juices:

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.

8.3 Thus the products prepared from fruit juice and water or carbonated water with the minimum Fruit content of not less than 10.0 percent in cases of fruits other than Lime or Lemon juice falls under this category. In the case at hand, the

product has a content of fruit juice as required under this Regulation 2.3.30, contains sugar and other ingredients appropriate to the product and is carbonated and therefore we do not find any reason to deviate from the finding of the Lower Authority that the product in hand is 'Carbonated Fruit Beverages or Fruit Drinks'.

9.1 Having clarified that the product is 'Carbonated Fruit Beverage', the classification under Customs Tariff heading, applicable to GST are examined. The appellant claims classification under CTH 2202 9920 and the Lower authority has held classifiable under CTH 22021090. 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	-	*Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured :*
2202 10 10	---	Aerated waters
2202 10 20	---	Lemonade
2202 10 90	---	Other
	-	*Other :*
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.

9.2 From the above provisions, the following are evident

- As per Note A(1) above, CTH 220210 covers-Sweetened or flavoured mineral waters
- 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 (-), 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 (-), CTH 2202 99 20(with a (---)) covers 'Fruit pulp or fruit juice based drink'. 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.

9.3 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 Fruit pulp/juice-based drink [220299]. In the case at hand it is evident that the product contains fruit juice but is not 'Fruit pulp or Fruit juice based drink' but a Carbonated fruit beverage as marketed by the appellant and therefore, the product is not classifiable under CTH 22029920 as claimed by the appellant and is rightly classifiable under CTH '2202 1090-Other' as has been decided by the lower authority who have dealt in detail the applicable Food regulations as per FSSAI and the CTH 2202 readwith the explanatory notes to arrive at the said conclusion.

10. On the contention of the appellant that the decision of the Supreme Court in the case of Appy Fizz is applicable to their case, we find that in the case of 'Appy

Fizz' case as available in Para 51 of the said decision, the appellant(appy fizz) has been labelling the product as "Fruit Drink" and as seen from Para 53 the FSSAI vide its Order dated August 19, 2015 has stated that "It is .....the product "Appy Fizz" in pet bottles under the category 2.3.10, i.e., Thermally Processed Fruit Beverage...with name of the food item as fruit pulp or fruit juice based drinks.....", whereas in the case at hand, the product do not fall under category 2.3.10 of the FSSAI but under 2.3.30 and also marketed as 'Carbonated Fruit Juice'. Therefore, the cited Apex Court decision is not applicable to the facts of the case at hand.

11. The issue of classification of Carbonated beverage with fruit juice and the applicable GST Rate has been dealt with by the committee of Secretaries, Fitment Committee in the GST Regime. 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	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.

From the above table it is seen that Pre-GST Tax incidence on the product was 40% whereas in the GST regime, it was proposed to be taxed at 28%. 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.

12. 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)
Principal Secretary/
Commissioner of Commercial Taxes
Tamilnadu /Membe,r AAAR

(G.V.KRISHNA RAO)
Pr.Chief Commissioner of GST & Excise,
Chennai Zone/Member, AAAR.

APPELLATE AUTHORITY FOR ADVANCE RULING
10 MAR 2021
GOODS AND SERVICE TAX
Chennai-5, Tamilnadu.

To
M/S. Kalis Sparkling Water Private /By Speed Post/
No. E72-E79 And E88-E95
Sipcot Industrial Complex, Pallapatti Post
Nilakottai Taluk, Dindugal- 624 201.

Copy to

1. The Principal Chief Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

2. The Principal Secretary/Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-600 005.

3. Joint Commissioner(ST)/Member,
   Authority for Advance Ruling, Tamil Nadu,
   Room No.503B, 5th Floor,
   Integrated Commercial Taxes Office Complex,
   No.32, Elephant Gate Bridge Road,
   Chennai-600 003.

4. The Commissioner of GST &C.Ex., Madurai Commissionerate.
   Central Revenue Building, No.4, Lal Bahadur Shastri Road,
   Bibikulam, Madurai 625 002.

5. The Assistant Commissioner (ST), Nilakottai Assessment Circle
   No: 1-4-38, B6 & B7, Madurai Road,
   Periyar Colony, Nilakottai-624 208.

6. Master File / spare – 1.