

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY**

PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-6

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, I.R.S., Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai -34

2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (CT) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No.2g/ARA/2019 Dated 25.07.2019

GSTIN Number, if any / User id	33AAJHS5092M1ZL
Legal Name of Applicant	M/s. S.P. Jeyapragasam(HUF)
Trade Name of the Applicant	M/s. S.P. Jeyapragasam(HUF)
Registered Address / Address provided while obtaining user id	No: 76, Amman Sanathi. Madurai - 625 001.
Details of Application	Form GST ARA - 001 Application SI.No.15 Dated 28.03.2019
Concerned Officer	State: The Assistant Commissioner(ST), Vengalakadai Assessment Circle ,Madurai Centre: Madurai Commissionerate- Division- Madurai I
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	Factory/Manufacturing
B Description (in brief)	Carbonated Beverages with Fruit Juice
Issue/s on which advance ruling required	1. Classification of any goods and /or services or both. 2. Determination of the liability to pay tax on any goods or services or both 3. Whether applicant is required to be registered

Question(s) on which advance ruling is required	<ol style="list-style-type: none"> 1. What is the rate of tax and HSN Code for fruit beverages or drinks with HSN Code? 2. The definition under the FSSAI Act in section 2.3.3.A can be taken as an aid to classify the product? If so kindly clarify. 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.
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Note : Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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.

M/s. S.P. Jeyapragasam (HUF) No: 76, Amman Sanathi, Madurai - 625 001. (hereinafter referred to as 'Applicant') is a registered taxable person. They are registered under GST vide GSTIN No. 33AAJHS5092M1ZL. The Applicant has preferred an application seeking Advance Ruling on the following Question:

1. What is the rate of tax and HSN Code for fruit beverages or drinks with HSN Code?
2. The definition under the FSSAI Act in section 2.3.3.A can be taken as an aid to classify the product? If so kindly clarify.
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 Applicant has submitted the copy of application in Form GST ARA – 01 and submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under Sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2. The applicant in the statement of facts has stated that they are going to manufacture beverages with fruit juices and without milk. Some of the industries in this field informed that fruit pulp or fruit juice based drinks fall under HSN Code

22029020 liable to be taxed at 12%. Recently the fruit juice based drinks shall be called as “Carbonated beverage with fruit juice” as per the definition available under the FSSAI Act. The relevant definition is extracted below:

“3A. In case the quantity of fruit juice is below 10.0 percent, but not less than 5.0 percent (2.5 percent in case of lime or lemon), the product shall be called ‘Carbonated beverage 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”.

Hearing:

3. The applicant was heard on 28.03.2019. They appeared and gave a written submission. They stated that they are intending the manufacture through 3rd party a fruit juice based aerated drink. They stated that they will submit accredited laboratory testing, FSSAI or State Government Notification along with samples, procurement invoices/agreement for the product which they intend to sell in two weeks time. Another hearing is requested in this case. The Jurisdiction central Authority submitted that if fruit content is less than 10% it should be 22021010 at 28% and more than 10% as 22029920 @12%.

3.1 In the written submissions, the applicant has inter-alia stated that:-

- they are going to manufacture fruit drink/fruit juice without adding milk. The following will be the method of preparation of carbonated beverages with fruit juice.

MANUFACTURING PROCESS;

Processing RO Water -----> Preparation of sugar Syrup Solution -----> Thermal Process -----> Add Concentrate (Recipe) ----- > Add Thermally Processed fruit Juice Concentrate ----- >Blending ----- >Carbonization ----- >Filling ----- > Capping ----- >Labelling -----> Shrink Wrapping

- The ingredients of the manufactured carbonated fruit juice as follows:

S.No.	Ingredients Name	UOM	Percentage (%)
1	Sugar Quantity	gms	17%
2	Sugar Syrup	ml	21.59286%
3	Bovonto Concentrate	ml	0.62936%
4	Sodium Benzoate	Gms	0.01234%
5	Citric Acid	Gms	0.08997%
6	Fruit Juice	ml	10%
7	Water	ml	51.1937%

- FSSAI Act also defines the Carbonated beverages with fruit juice. As per the definition the carbonated fruit beverages are specifically explained in chapter 2.3.30 and 2.3.3A of the FSSAI Act. It is just and necessary to extract the definition of carbonated beverages of fruit juice or fruit drinks as per FSSAI Act.

“2.3.30 Carbonated fruit beverages or fruit drinks:

- 1. Carbonated fruit beverages of 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 10.0Percent*
- 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 percent, but not less than 5.0 percent. (2.5 percent, in case of lime or lemon), the product shall be called ‘Carbonated beverage 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 it could be evidenced from the above said definition both categories of carbonated beverages of fruit juice or fruit drink are treated as one and the same having the same meaning.

- As per the GST Act and its schedule the rate of tax on the fruit pulp or fruit juice based drink alone classified under the HSN code 2202 liable to be taxed at 12%.
- They had requested for expert opinion for classification under the FSSAI Act and request to clarify the classification of above these products. Accordingly the consultant also classified that the carbonated beverage with fruit juice and fruit based drink are grouped with some category, but according to the content of the total soluble solids (m/m as defined in chapter 2.2.30 of the FSSAI Act).

- According to the norms of the FSSAI Act their manufactured product carbonated beverage with fruit or fruit drink having the fruit content of 10% i.e. say approximately ranging from 11 to 14%. Thus they are in view that the carbonated beverages with fruit juice or fruit juice drinks having the fruit content not less than 10%, but not less than 5.0 percent in the case of lemon shall fall under the HSN 2202 liable to be taxed at 12%. They are making this point and make a strong hold believe that the FSSAI Act being the central enactment themselves categories the carbonated beverages with fruit juice on par with fruit juice drinks.
- The facts and circumstances and the legal interpretation of the entry discussed by Hon'ble supreme court of India in the matter of M/s. Parle Agro Private Limited Vs Commissioner of Commercial Taxes, Trivandrum reported in 106 VST page 1 are exactly applicable in their issue. In the said judgment the main issue is whether their product "APPYFIZZ" would fall under fruit based drink or aerated branded soft drinks. The Hon'ble Judges has thoroughly interpreted the entry and finally held that it is only a fruit based drink falling under HSN Code 2202 90. The Hon'ble Supreme Court framed 9 issues and out of which the 7th issue framed by them is most relevant here also. The 7th issue is - "Whether the decision and opinion of Food Safety Authorities on the product in question were relevant?". While deciding the above issue the Hon'ble Court elaborately discussed and gone through the various reports and materials given by the authorities issued under FSSAI Act and also held that the opinion and orders of the food safety authority were relevant for the purpose of interpretation of entry and finally held that the product:"APPY FIZZ" is only a fruit based drink even though carbon content is there which is only used as preservation purpose.
- Based on the above said finding, they are of the opinion that their fruit drink having fruit content of more than 10% shall be considered as fruit based drink/fruit juice bearing HSN Code 2202 90 falling under 48th item of II schedule to the notification no.1/2017 (Central rate) dated 28.06.2017 and liable to be tax @ 12%.

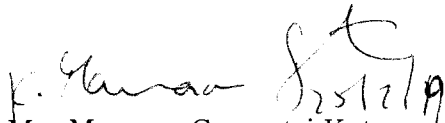
3.2 The applicant was granted second opportunity of personal hearing as requested by them on 24.07.2019. The applicant in their undated memo received on 17th July 2019 submitted that they are not willing to proceed further in the said

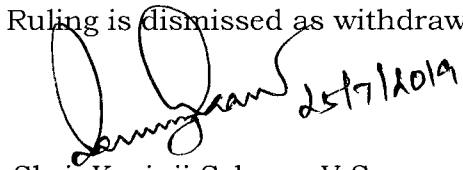
application due to personal reasons and therefore withdraw their application in AAR No.15/2019 and requested to withdraw their application. The applicant appeared in the personal hearing and reiterated their willingness to withdraw their application. Therefore, the applicant is allowed to withdraw their application and ordered accordingly

4. In view of the above, we rule as under:

Ruling

The application filed by the Applicant for Advance Ruling is dismissed as withdrawn.

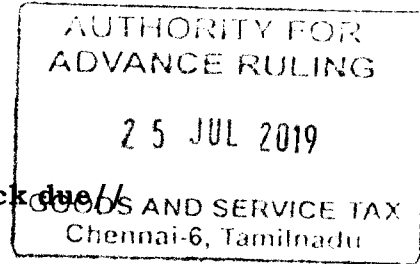

Ms. Manasa Gangotri Kata,
Member, CGST


Shri Kurinji Selvaan V.S.,
Member, TNGST

To

M/s. S.P. Jayaprakasam(HUF)
No: 76, Amman Sanathi.
Madurai - 625 001.

// By Speed Post with Ack due //



Copy submitted to :-

1. The Additional Chief Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.
2. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Ch – 600 034.

Copy to:

3. The Commissioner of GST & Central Excise.,
Madurai Commissionerate.
Central Revenue Building,
No. 4, Lal Bahadur Shastri Road,
Bibikulam, Madurai 625 002.
4. The Assistant Commissioner (ST)
Vengalakadai Assessment Circle ,
Commercial Taxes Building ,
Dr. SVKS Thangaraj Salai,
Madurai – 625 020.
5. Master file / Spare