

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO.503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

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

Members present are:

Shri. R.Gopalsamy, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600034	Tmt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600003
---	--

ORDER No. 38 /AAR/2022 DATED: 30 .11.2022

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.
2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the 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. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void *ab-initio* in accordance with Section 104 of the Act.
5. 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.

GSTIN Number, if any / User id		33ABMFM3879J1ZP
Legal Name of Applicant		MADURAI FAMOUS JIGARTHANDA LLP
Registered Address/Address provided while obtaining user id		4/799, Thasildhar Nagar, Vandiyur, Madurai-625020
Details of Application		GST ARA- 01 Application Sl. No. 22/2022/ARA dated: 11.04.2022
Concerned Officer		Centre: Madurai Commissionerate State: Madurai Rural East Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory/Manufacturing
B	Description (in Brief)	The applicant is manufacturing dairy products in the name of "Jigarthanda" in packed unit container i.e Vacuum Pouch (with Brand name) and also in loose form/ in bottles without sealing of packet/in loose carry bags.
Issue/s on which advance ruling required		Classification of goods
Question(s) on which advance ruling is required		- Whether the product manufactured as pasteurized milk and milk cream but named "Jigarthanda" can be classified as Jigarthanda under description of goods? - Is the goods taxable or exempted? - If exempted, HSN of the product and rate of tax on product - If taxable, HSN of the product and rate of tax on product

MADURAI FAMOUS JIGARTHANDA LLP, No.4/799, Thasildhar Nagar, Vandiyur, Madurai-625020 (hereinafter called the Applicant) are registered under GST with GSTIN:33ABMFM3879J1ZP. The applicant has sought Advance Ruling on the following questions:

- Whether the product manufactured as pasteurized milk and milk cream but named "Jigarthanda" can be classified as Jigarthanda under description of goods?
- Is the goods taxable or exempted?
- If exempted, HSN of the product and rate of tax on product.
- If taxable, HSN of the product and rate of tax on product.

1.2 The Applicant has submitted the copy of application in Form GST ARA - 01 and also 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.

2.1 The applicant has stated that they are manufacturing dairy products in the name of "Jigarthanda" packed in unit container i.e Vacuum Pouch (with Brand name) and also in loose form/ in bottles without sealing of packet/in loose carry bags and bearing details like name of manufacturer or branches or others as required by the Food Safety and Standards Act 2006(FSSAI) or other relevant Acts, to consumers. The manufacturing process of Jigathanda is as follows:

The Raw milk is converted to Pasteurized Milk by continuous process and collecting the Milk cream (Paladai) and it is mixed with pasteurized milk adding padam pisin, natural nannari syrup to make semi solid jigarthanda which is chilled in cold storage and marketed.

2.2 On interpretation of law, the applicant has stated that their product may fall under heading 0402 'Milk and cream concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies (other than condensed milk) or 0403 'Cream, yogurt, kephir and other fermented milk and cream concentrated or containing added sugar or other sweetening matter, or flavored or containing added fruit, nuts or cocoa.'

3.1 Due to the pandemic situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 17.05.2022. The Authorized Representatives (AR) Shri. S.Abdul Navas, Advocate and Shri. K.Srinivasan, Advocate appeared for the hearing and reiterated the submissions made. The AR submitted that the base ingredient of their product is milk. He was asked to submit the following details/ documents.

1. Detailed write up on the ingredients used and manufacturing process of the commodity along with photographs of all stages of preparation and the final product.
2. Whether the final product is milk product or fermented milk product?
3. Vacuum Pouch with brand name/loose carry bag bearing details.
4. FSSAI Certificate.
5. Present practice of classification and invoice copies.

3.2 The applicant vide letter dated 02.06.2022 submitted the following documents:

- Detailed write up on the ingredients used and manufacturing process of "JIGARTHANDA":

They have stated that their products are sold under three flavours /key ingredients:

- i. Jigarthanda
- ii. Milk Kova with Jigarthanda
- iii. Basundhi (" Palaadai"-milk cream)

3.3 They have stated that their product is sold under the name "JIGARTHANDA", where it was named by their ancestor who had prepared JIGARTHANDA during their olden days. The manufacturing process involves the following steps:

- i. Receiving raw milk in silos
- ii. Pasteurization: Raw milk that has been heated to a specified temperature and time to kill pathogens that may be found in the raw milk (90°C for 10 minutes)
- iii. Sugar Syrup Preparation: Sugar and nannari syrup are added in boiling water which is made to boil for some time to make the sugar syrup. This is for sweetening and flavoring the 'Jigarthanda'
- iv. Milk cream (Basundhi-Paaladai) preparation: Pasteurized milk is boiled for collecting fresh milk cream. This process is done continuously for preparing basundhi-palaadai.
- v. Badam pisin: It is soaked for some time in clean water which will become as a suitable substance for further preparation of Jigarthanda
- vi. Chilling/texturizing & storage (below 5°C)
- vii. Packing: packed in unit container i.e Vacuum pouch and also in loose form
- viii. Dispatch through refrigerated van

3.4 Thus, the main ingredient of "Jigarthanda" is pasteurized milk with added sugar & nannari syrup, badam pisin and milk cream. They have also stated that their final product is not fermented but pasteurized milk product. They have further stated that currently they are classifying their product 'JIGARTHANDA' at 5% GST under the HSN 0402.

3.5 They have submitted the following documents:

- Copy of FSSAI Certificate
- Test report of their product issued by Enviro Care India Pvt Ltd, Accredited by NABL
- Invoice copy for supply of 'BASANTHI'
- Pictures of stages of preparation and final product

3.6 Consequent to change of members of Authority, a fresh personal hearing was extended to the Applicant. Shri.S.Abdul Navas, Advocate appeared for the virtual hearing on 09.11.2022, and stated that they had already given elaborate submission and additional submissions vide letter dated 26.06.2022 and 02.07.2022. On query, he stated that the basic ingredient is pasteurized milk to which sugar & nannari syrup, badam pisin and milk cream are added. The final product is not fermented but pasteurized milk product with no added preservatives and has shelf life of one day.

3.7 The Advocate vide email dated 10.11.2022 requested another opportunity to explain in person and appeared for physical hearing along with Shri K.Srinivasan, Advocate on 29.11.2022. They expressed their desire to physically demonstrate the manufacturing process involved in the manufacture of Jigarthanda and demonstrated the appearance of already prepared ingredients in chilled form viz pasteurized milk, sugar & nannari syrup, badam pisin and milk cream. After mixing the said ingredients in proportion, the resultant product the final product Jigarthanda emerged. They further stated that various preparations viz pasteurized milk, sugar & nannari syrup, badam pisin and milk cream are sent in separate packing under the nomenclature as "Jigarthanda" in the Invoice issued to dealers outlet through refrigerated vehicle. Mixing of various ingredients takes place at the sales outlet, since jigarthanda has no shelf life after mixing. Milk Cream also known as Basanthi used as an ingredient in the preparation of Jigarthanda is also sold separately as Basanthi with GST.

3.8 The Advocates in the written submission, inter alia, stated that Jigarthanda cannot be said as 'Beverage of Milk' as it is excluded as per the Explanatory Notes to Chapter 22 of

HSN; the ratio of ingredients in Jigarthanda is Milk cream 50%, Badam Pisin 35% and Pasteurized milk added with sugar and nannari syrup 15%; since, Milk cream and Badam Pisin are in solid consistency, pasteurized milk is added to make it semi solid; Sugar, Milk cream, Badam Pisin, Nannari and Milkova attract 5% GST and Milk 0% GST are mixed together and served as Jigarthanda would qualify as 'mixed supply and attract 5% GST. Currently, 5% GST is being collected on 1. Jigarthanda, 2. Jigarthanda with Milkova scoop and 3. Basundhi (Milk Cream – Paladai).

4. The Centre Jurisdictional Authority, Madurai Commissionerate, who has administrative jurisdiction over the applicant was addressed vide this office letter dated 22.04.2022 requiring to furnish comments on the issue raised by the applicant and report whether any proceedings are pending on the issue in respect of the applicant. The said authority has stated that no proceedings in the applicant's case on the issues raised by the applicant are pending and not offered any comments on the issues raised by the applicant.

5. The State Jurisdictional Authority has not informed about any proceedings pending against the applicant in respect of the issue raised.

6. We have carefully considered the statement of facts, supporting documents filed by the Applicant, all the additional submissions made during the hearings and the submissions of the Jurisdictional authorities. We find the issue before us for decision is whether the product manufactured and claimed by the applicant as pasteurized milk and milk cream named as 'Jigarthanda' is classifiable as "Goods", if goods, whether it is exempted or taxable and its HSN and rate of tax.

7.1 From the submissions, we find that the manufacturing process of the product involves heating the raw milk to a specified temperature and time to kill pathogens; Sugar and nannari syrup are added and boiled with water to make sugar syrup for sweetening and flavoring; Badam pisin is soaked for some time in clean water to make it a suitable substance for further preparation of Jigarthanda. Pasteurized milk is boiled for collecting fresh milk cream for preparing basundhi-palaadai. Some quantity of sugar syrup, badam pisin, milk cream (basundi-paladai), milk kova and pasteurized milk are mixed well to prepare semi solid "Jigarthanda". Jigarthanda stored below 5 centigrade is packed in unit container and dispatched through refrigerated van.

7.2 We find that the short issue to be decided is whether the ready to drink Jigarthanda sold in unit container by the appellant is "goods", if so, whether to be classified as 'Milk and Cream' covered under HSN 0402 as claimed by the applicant, if not, to decide the appropriate HSN and the rate of tax.

8.1 The question, whether "Jigarthanda" is goods or not, can be answered by analyzing the definition of "goods" defined under Section 2(52) of CGST Act, 2017 which reads as "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. Jigarthanda manufactured by using various ingredients or inputs is in the form of semi-solid form, as stated by the applicant, satisfies the definition of "goods" and accordingly, we hold that "Jigarthanda" is goods.

8.2 We next take up the classification of Jigarthanda. We find that the classification of goods under GST regime has to be done in accordance with the Customs Tariff Act, 1975, which in turn is based on Harmonized System of Nomenclature, popularly known as 'HSN'. The rules of interpretation, section notes and chapter notes as specified under the Customs Tariff Act, 1975 are also applicable for classification of Goods under GST regime. However, once an item is classified in accordance with the Customs Tariff Act, 1975, the rate of tax applicable would be arrived at on the basis of notifications issued under GST by the respective Governments.

8.3 The applicant has claimed that 'Jigarthanda' is pasteurized milk with added sugar-nannari syrup, patham-pisin and milk cream (paladai) classifiable under HSN 0402 of Customs Tariff Act, 1975, which is reproduced below:

0402	MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER
0402 10	- <i>In powder, granules or other solid forms, of a fat content, by weight not exceeding 1.5% :</i>
0402 10 10	--- Skimmed Milk
0402 10 20	--- Milk food for babies
0402 10 90	--- Other
	- <i>In powder, granules or other solid forms, of a fat content, by weight exceeding 1.5% :</i>
0402 21 00	-- Not containing added sugar or other sweetening matter
0402 29	-- <i>Other :</i>
0402 29 10	--- Whole milk
0402 29 20	--- Milk for babies
0402 29 90	--- Other
0402 91	-- <i>Not containing added sugar or other sweetening matter :</i>
0402 91 10	--- Condensed milk
0402 91 90	--- Other
0402 99	-- <i>Other :</i>
0402 99 10	--- Whole milk
0402 99 20	--- Condensed milk
0402 99 90	--- Other

Chapter Note I to Chapter 4 of the Customs Tariff Act, 1975 reads as under:

1. The expression "milk" means full cream milk or partially or completely skimmed milk.

The relevant explanatory note of Customs Tariff Heading 0402 as per HSN is given below:

This heading covers milk (as defined in Note 1 to this Chapter) and cream, concentrated (for example, evaporated) or containing added sugar or other sweetening matter, whether liquid, paste or solid (in blocks, powder or granules) and whether or not preserved or reconstituted.

Milk powder may contain small quantities of starch (not exceeding 5% by weight) added, in particular, to maintain the reconstituted milk in its normal physical state.

The Heading does not cover:

(a) Curdled, fermented or acidified milk or cream (heading 04.03).

(b) Beverages consisting of milk flavoured with cocoa or other substances (heading 22.02).

Sub-heading Explanatory Note:

Sub-Headings 0402.10, 0402.21 and 0402.29:

These sub-headings do not cover concentrated milk or cream in the form of paste (sub-headings 0402.91 and 0402.99).

8.4 From the explanatory notes, which is a guide to understand the scope of the entries, it is seen that above heading covers milk as defined in Note 1 to this chapter and means full cream milk or partially / completely skimmed milk. The production process of Jigarthanda submitted by the applicant indicates that pasteurized milk is added with various ingredients, such as badam pisin, milk cream (basundi), milk kova, sugar syrup obtained by nannari syrup added in boiling water with sugar for flavor and sweetener. Therefore, 'Milk and Cream' referred to in HSN 0402 and Jigarthanda manufactured by the applicant are not the same and on this ground alone the product Jigarthanda is not covered under HSN 0402. Further, the relevant explanatory notes of CTH 0402 of the HSN clearly state that beverages consisting of milk flavoured with cocoa or other substances is specifically excluded from this chapter heading.

8.5 The applicant categorically stated that their product "Jigarthanda" is not fermented milk, but pasteurized milk product. Therefore, classification of Jigarthanda under HSN 0403, which covers goods subjected to fermentation of milk, does not arise.

8.6 As the explanatory note of HSN 0402 does not cover beverages consisting of milk flavoured with cocoa or other substances covered under heading 22.02, the relevant chapter notes, tariff entry and HSN Explanatory note of HSN 2202 is given below to decide the appropriate HSN for Jigarthanda.

2202 - WATERS, INCLUDING MINERAL WATERS AND AERATED WATERS, CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED, AND OTHER ALCOHOLIC BEVERAGES, NOT INCLUDING FRUIT OR VEGETABLE JUICES OF HEADING 2009

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 Beverage containing milk

2202 99 90 Other

The explanatory notes as per HSN is as below

(A)...

....

(B) Other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009

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.

8.7 A perusal of the above tariff entries, and explanatory notes of the HSN indicates that beverages with a basis of milk and cocoa which are ready for consumption is covered under tariff item 2202 99 30 as beverage containing milk. The Hon'ble Madras High Court in the case of the State of Tamil Nadu Vs TVL. Ganesh Corporation, vide Order dated 3 April, 2012, recorded that "as per the Oxford Dictionary "beverage" means "a type of drink except water". In Webster's 3rd International Dictionary, "beverage" has been described as "liquid for drinking especially such liquid other than water (as tea, milk, fruit juice, beer) usually prepared (as by flavouring, heating, admixing) before being consumed". As per the Oxford Dictionary "beverage" means a type of drink except water. The word 'beverage' though not defined under the CGST Act, 2017, is considered, in common parlance, as a drink that can be consumed directly and the instant product 'Jigarthanda' can be consumed as it is and hence is a beverage with a basis of milk. Further, on conjoint reading of Chapter heading 0402 and 2202 and relevant explanatory notes, it is clear that milk flavoured with cocoa or other substances are specifically excluded from Chapter heading 0402 and included under Chapter heading 2202.

8.8 Various ingredients prepared and packed separately are sold and invoiced to dealers and outlets as "Jigarthanda" in units of liter and the same are mixed at the retail outlet as a cold beverage before sale to customers / consumers. Therefore, various ingredients cannot be classified as such and treated as mixed supply as claimed by the applicant. The goods has to be classified on the basis and form in which it is bought and sold in the market and not on the basis of packing for transportation and preservation from being decayed.

9. Jigarthanda, which qualify as goods merit classification under HSN 2202 99 30, is neither finding place in Schedule III of the CGST Act, 2017 as non-supply nor exempted under Notification No.2/2017 CTR dated 28.06.2017. Therefore, it is a taxable goods covered under Notification No.1/2017 CTR dated 28.06.2017 vide serial No.50 of Schedule II as "Beverages containing milk" attracting CGST of 6% and attracting SGST of 6% vide serial No.50 of Schedule II of G.O. (Ms.) No. 62 dated 29.06.2017 for intra state supply. It attracts 12% IGST vide serial No.50 of Schedule II of Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017, for interstate supply.

RULING

1. Whether the product manufactured as pasteurized milk and milk cream but named "Jigarthanda" can be classified as Jigarthanda under description of goods?

"Jigarthanda" manufactured by the applicant is covered under the description of goods.

2. Is the goods taxable or exempted?

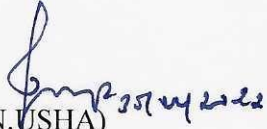
"Jigarthanda" manufactured by the applicant is taxable goods.

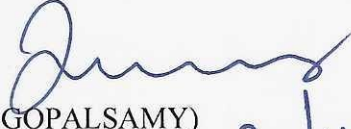
3. If exempted, HSN of the product and rate of tax on product.

“Jigarthanda” manufactured by the applicant is not exempted.

4. If taxable, HSN of the product and rate of tax on product.

“Jigarthanda” manufactured by the applicant is taxable goods. It is covered under Notification No.1/2017 CTR dated 28.06.2017 vide serial No.50 of Schedule II as “Beverages containing milk” attracting CGST @ 6% and SGST @ 6% vide serial No.50 of Schedule II of G.O. (Ms.) No. 62 dated 29.06.2017 for intra state supply. It attracts 12% IGST vide serial No.50 of Schedule II of Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017 under HSN 2202 99 30.


(N. USHA)
Member (SGST)


(R. GOPALSAMY)
Member (CGST) 30/11/2022



To

M/s Madurai Famous Jigarthanda LLP,
No.4/799, Thasildhar Nagar,
Vandiyur,
Madurai-625020

// BY REGISTERED POST WITH ACK.DUE //

Copy Submitted 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/Member,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Madurai Commissionerate, Central Avenue Building,
No.4, Lalbahadur Shastri Road,
Bibikulam, Madurai 625002
4. The Assistant Commissioner (ST),
Madurai Rural (East) Assessment Circle,
Ground Floor, Commercial Tax Building,
Dr.Thangaraj Salai, KK Nagar,
Madurai 625020
5. Master File/ Spare – 2.

