

**THE AUTHORITY FOR ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU – 560 009**

**Advance Ruling No. KAR ADRG 32/2022**

**Date : 14-09-2022**

Present:

**1. Dr. M.P. Ravi Prasad**

Additional Commissioner of Commercial Taxes

... Member (State)

**2. Sri. T. Kiran Reddy**

Additional Commissioner of Customs & Indirect Taxes

... Member (Central)

1.	Name and address of the applicant	M/s. UNITED BREWERIES LIMITED, Level 4, UB Tower, UB City, Vittal Mallya Road, Bengaluru-560 001.
2.	GSTIN or User ID	29AAACU6053C1ZH
3.	Date of filing of Form GST ARA-01	30-10-2021
4.	Represented by	Sri. Darshan Bora, Advocate & DAR along with Sri. Sujana Devaraju, Head of Tax of the Applicant
5.	<b>Jurisdictional Authority – Centre</b>	The Commissioner of Central Tax, Bangalore North West Commissionerate, Bengaluru. (Range-DNWD3)
6.	Jurisdictional Authority – State	ACCT, LGSTO-65A, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2910210386349 dated 29.10.2021.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017**

**& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. United Breweries Limited (herein after referred to as 'Applicant'), Level 4, UB Tower, UB City, Vittal Mallya Road, Bengaluru-560 001, having GSTIN 29AAACU6053C1ZH, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act, KGST Act.





2. The applicant submitted that they are a company, primarily engaged in manufacturing (brewing), bottling, marketing and sale of alcoholic and non-alcoholic beverages. The applicant also registered under CGST/KGST Act 2017. The applicant launched a non-alcoholic malt drink called 'Kingfisher Radler', in 2018, classified the said product under tariff heading 2209 9100, as non-alcoholic beer.

3. In view of the above, the applicant has sought advance ruling in respect of the following question:

*Whether the non-alcoholic malt drink "Kingfisher Radler" is covered as "Carbonated beverages of fruit drink or carbonated beverages with fruit juice" of chapter heading 2202, under Entry 12B of Notification No.1/2017 dated 28.06.2017 (as introduced by Notification No.8/2011-Central Tax (Rate) dated 30.09.2021).*

3(b) **Admissibility of the Application** : The applicant is seeking advance ruling in respect of classification their product "Kingfisher Radler." The advance ruling on the question "classification of any goods or services or both" can be sought by the applicant under Section 97(2)(a) of the CGST Act 2017. Hence the instant application is admissible in terms of Section 97(2)(a) of the CGST Act 2017.

4. **BRIEF FACTS OF THE CASE:** The applicant furnished the following facts relevant to the issue having bearing on the question raised.

4.1 Applicant launched non-alcoholic malts on a commercial basis in 2018 as an alternative to alcoholic beer and sweetened aerated waters. As a manufacturer of alcoholic beer, the Applicant was able to leverage its expertise to create non-alcoholic malt beverages. Non-alcoholic malts are agri-based products containing barley malt and substantially lesser sugar. While beer contains 1.2% to 8% alcohol by volume (ABV), non-alcoholic malt has 0% ABV. They are manufactured out of 100% natural ingredients of agricultural origin such as barley, hops etc along with antioxidants and preservatives.

4.2 The Applicant launched a non-alcoholic malt drink called 'Kingfisher Radler' (hereinafter referred to as '**the product**') in 2018. The product is akin to a beer, albeit without containing alcohol. The product replicates the ingredients, taste, feel and packaging of beer. It caters to the growing consumer market which does not wish to consume alcohol or sweetened aerated beverages but would prefer an alternative drink containing less sugar and carbonation. The product is classified under Tariff Entry 2202 9100 as Non-alcoholic beer.

4.3 The Manufacturing process of the products commences with procurement of barley from farmers. The barley is processed into barley malt and screened to remove dust. Post removal of dust, milling and mashing of the malt is undertaken to obtain wort (liquid extract made from gain). The wort so obtained is filtered and transferred to a tank where it is blended with sugar along with small quantity of





juice compounds, flavors and additives to complete the beverage. The beverage is then either canned or bottled and the same is transferred for pasteurization and final packaging. The manufacturing process of the product is depicted at **Exhibit 'A'**.

4.4 The product is available in three flavours-Ginger lime, Mint Lime and Lemon. Illustrative product images and labels can be referred at **Exhibit - 'B'**. The primary ingredient providing the product its distinct characteristic and flavour is barley malt. Since barley malt has a peculiar bitter taste, sugar and in small quantity juice compounds are added to make it more suitable for the Indian Palate.

4.5 Note that the sugar content in the product is substantially lesser than in sweetened carbonated drinks. To put things in perspective, the product contains up to 32% less sugar as compared to sweetened carbonated waters or carbonated fruit-based beverages. The product is minimally carbonated to add effervescence and freshness to the drink and contains additives to regulate acidity and preserve the drink. A distinction between the product and carbonated beverage of fruit juice is tabulated below:

Particulars	Product	Carbonated beverage
HSN	2202 91 00	2202
Classification	Non-alcoholic beer	Carbonated beverage with fruit juice
Ingredients	Barely Malt, Invert sugar, Mixed fruit juice, flavours, hops and other aditives	Sugar, Apple Juice, flavour and other additives
Calories (per 100 ml)	38 Kcal	54 Kcal
Sugar (per 100ml)	9.3 gms	13.6 gmgs

The Ingredients used in the product are tabulated hereunder:

Sl no	Ingredients	Ginger (in%)	Lime	Lemon (in %)	Mint lime (in %)
1	Barley malt	4.03		2.94	2.77
2	Sugar	9		10.10	9.50
3	Mixed fruit juice (Equivalent reconstituted juice concentrate)	0.05		1.11	1.05
4	Hops	0.01		0.01	0.01
5	Quillaia Extract	0.04		0.02	0.02
6	Carbon Dioxide	0.52		0.52	0.52
7	Water	86.14		85.29	86.12
8	Flavour and other additives	Minimal Quantity		Minimal Quantity	Minimal Quantity

The product is manufactured in a brewery and bottled much like beer in bottles and cans. It is not packaged in PET bottles.





4.6 **Classification under Customs and GST** : Relevant to the present product is Chapter heading 2202, which is extracted from the Customs Tariff Act, 1975 ('CTA') hereunder:

Tariff item	Description of goods
2202	WATERS, INCLUDING MINERAL WATERS AND AERATED WATERS, CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED, AND OTHER NON-ALCOHOLIC BEVERAGES, INCLUDING FRUIT OR VEGETABLE JUICES OF HEADING 2009
2002 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:
<b>2202 91 00</b>	<b>-- Non alcoholic beer</b>
2202 99	--Other:
2202 99 10	-- Soya milk drinks, whether or not sweetened or flavoured
<b>2202 99 20</b>	-- Fruit pulp or fruit juice based drink
2202 99 30	-- Beverages containing milk
<b>2202 99 90</b>	--other

The product being a non-alcoholic malt is classified under tariff entry 2202 9100 which covers 'non-alcoholic beer' attracting a GST rate of 18%

4.7 **Recent amendment to the rate notification** : Recently, vide notification No. 8/2021-CT (Rate) and Notification No. 1/2021-CC (Rate) both dated 30.09.2021 ('the amendment Notification') the GST rate has been increased to 28% and compensation cess at 12% has been levied w.e.f. 01.10.2021, on:

"Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit juice" under tariff Heading 2022

A Plain reading of the above entry suggests that it intends to cover carbonated fruit-based drinks or carbonated beverages with fruit juice.

It is noteworthy that the description of goods covered by the aforesaid entry is aligned with FSSAI category 2.3.30 viz. 'Carbonted fruit Beverages or Fruit Drinks' and 'Carbonated Beverages with Fruit juice.' The said FSSAI category has been consistently referred to and applied by courts including by the Hon'ble Supreme Court for interpretation of the scope of tariff entries under chapter heading 2022.

In the above factual background, the applicant is filling the present application seeking an advance ruling on coverage of the product under the said entry





## 5. Applicant's Interpretation of Law:

5.1 As per Section 9 of the CGST Act, GST is leviable on supply of goods / services at rates as may be notified. The CGST rates are notified under Notification No. 1/2017 – Central Tax (rate) dated 28<sup>th</sup> June 2017 and SGST rates are notified under corresponding State Notification (jointly referred as 'the GST rate Notification'). In respect of certain specified goods, Notification No. 1/2017-Compensation cess (rate) dated 28.06.2017 provides the applicable rate of Compensation cess.

5.2 Principles for interpretation of the tariff : The GST rate Notification(s) are based on the first Schedule to the Customs Tariff Act (CTA). As per Explanation (iv) to the GST rate Notifications, the rules of interpretation and the Section and Chapter Notes of the Schedule to the CTA are applicable for interpretation of the GST rate Notifications. Given this, judicial pronouncements on classification of goods under Customs and Excise laws, and HSN explanatory notes" are relevant guides for determining classification under the GST rate Notifications.

### 5.3 Non-alcoholic malts have a separate and distinct classification under the Tariff viz. 2202 9100 (non-alcoholic beer) carrying GST rate of 18% :

- a. Non-alcoholic malts / beer has a separate and distinct classification Entry under the Tariff viz. 2202 91 00 and is covered by the GST rate Notification at Sr. No. 24A of Schedule III. The same is chargeable to 18% GST.
- b. Note 3 to Chapter 22 of the Customs Tariff states that "for the purposes of heading 2202, the term "non-alcoholic beverages" means beverages of an alcoholic strength by volume not exceeding 0.5% vol."
- c. Further, Explanatory Notes to Chapter heading 2202 from the HSN, 2017, in its definition of non-alcoholic beer specifically covers non-alcoholic beverages made from malt. The relevant extract of the Explanatory Notes is reproduced as under:

*"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).....

#### **(B) Non-alcoholic beer. This group includes:**

- 1) Beer made from malt, the alcoholic strength of which by volume has been reduced to 0.5% vol. or less
- 2) **Ginger beer and herb beer**, having an alcoholic strength by volume not exceeding 0.5% vol.
- 3) **Mixtures of beer and non-alcoholic beverages** (e.g., lemonade), having an alcoholic strength by volume not exceeding 0.5% vol.





(C)....”

- d. On a bare perusal of the HSN Explanatory Note to chapter heading 2202, it is clear that non-alcoholic beer includes malt beverages, the alcoholic strength of which by volume does not exceed 0.5% volume. Given that the product is made from malt and contains 0% alcohol, it merits classification as ‘non-alcoholic beer’ rather than carbonated beverage of fruit juice or fruit drink, liable to GST at 18% under Sr. No. 24A of the GST rate Notifications.
- e. It is therefore submitted that non-alcoholic malts have a separate and distinct classification under the Tariff viz. 2202 9100 (non-alcoholic beer) liable to GST at 18%.

**5.4 In common parlance, the product is referred to and consumed as beer without alcohol (non-alcoholic malt), and not as a carbonated fruit drink or carbonated beverage with fruit juice.**

- a. The Applicant submits that it is well settled law that an article should be classified under the customs Tariff (as applicable to GST) on the basis of its popular sense, i.e., the sense in which people conversant or dealing with the commodity would attribute to it. Reliance in this regard is placed on the decision in **Asian paints India Ltd v. Collector of Central Excise [1988 (35) E.L.T (SC)]** Wherein it was held that while interpreting items in taxing statutes whose primary object was to raise revenue and for which purpose to classify diverse products, resort shall be made to their popular meaning, that is to say, the meaning attached to them by those dealing in them.
- b. It is submitted that the product is marketed and understood in common trade parlance as ‘non-alcoholic beer’ and on this basis alone it deserves to be classified under Tariff item 2202 91 00. Therefore, the product cannot be said to be covered under the amendment Notification as ‘Carbonated beverages of fruit drink or carbonated beverages with fruit juice’.
- c. It is submitted that the product is understood in common trade parlance and marketed as ‘non-alcoholic beer’ and is widely available in retail stores as well as e-commerce platforms such as: ‘alcoholic beer’ on the web browser shows results of wide range of malt-based beverages (including the product) available in varied fruit as well as non-fruit flavours. Result of such search on a web browser is captured at Exhibit ‘C’.
- d. On a perusal of the results shown by the web browser for non-alcoholic beer which includes the product, it is evident that they are marketed and understood in common trade parlance as ‘non-alcoholic beer’.
- e. Further, the test of common parlance to be adopted is essentially associated with the primary function i.e., the use of the product. The Hon’ble Supreme Court in case of **Atul Glass Industries Ltd. V. C.C.E [1986(25) E.L.T.**





**473(S.C.)** inter alia held that the identity of a product is associated with its primary function. When a consumer buys a product, he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between the product and the need it supplies in his life. It is the functional character of the product which identifies it in his mind.

- f. By applying the above ratio to the present case, the product is essentially a beer without alcohol. In other words, it is a mock beer which replicates the ingredients, taste, feel and packaging of beer. As mentioned under Statement of relevant facts, at Para 6 of Annexure I to the application, consumers who do not wish to consume alcohol but would prefer a simulated drink for the purpose of socializing, wanting to taste beer but not consume alcohol, etc. associate themselves with the product. Thus, primarily, the product is used and understood as a non-alcoholic beer.
- g. In view of the above, it is therefore submitted that the amendment Notifications do not apply to the product as it is neither known nor consumed as a carbonated beverage of fruit drink or fruit juice.

**5.5 Product does not qualify as “Carbonated beverages of fruit drink”**

- a. Fruit drink in common parlance means “non-alcoholic beverages that are **obtained by subjecting different types of fruit to certain processes** according to a series of rigid standards to avoid food frauds or the marketing of unguenuine foods”. Collins dictionary (web edition), defines fruit drink as “(non-alcoholic) **beverage made from fruit**”
- b. It is submitted that a ‘fruit drink’ is understood as a drink obtained / made from fruit. Since the product at hand is made from malt and contains traces of fruit only for flavouring purpose, it cannot be considered as “Carbonated beverages of fruit drink”.
- c. Further, a search on the web browser using term ‘fruit drink’ will show results for products like maaza, minute maid, real fruit drinks, etc., while a search of ‘carbonated fruit drink’ will show results for products like Appy Fizz, Shunya Go, Shunya Fizz, Frusia, etc. These searches will not show results of the product at hand. Few links showing these results is given below and search results of the same is captured at **Exhibit ‘D’**.
- d. The description of goods covered by the amendment Notifications under Chapter Heading 2202 ‘Carbonated beverages of Fruit Drink or Carbonated beverages with fruit juice’ is in line with the classification adopted by the Food Safety and Standards Authority of India (‘the FSSAI’), which is the regulator for the Food sector. The Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (‘the FSS Regulations’) set out the categorisation of foods for prescribing Standards and permitted ingredients and additives. Regulation 2.3.30 of the FSS





Regulations, which deals with the FSSAI classification entry for 'Carbonated Fruit Beverages or Fruit Drinks', is extracted below:

" 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**".

e. On a perusal of the above, it is evident that a product to be classified under carbonated fruit beverages or fruit drinks, should contain a minimum of 5% (in case of lime or lemon) juice and 10% (in case of other fruits). The fruit juice content present in the product is in the range from 0.05% to 4.3%, which is well below the threshold of 5% set by FSSAI to qualify as "Carbonated beverage containing fruit juice". It, therefore, cannot even remotely be considered a fruit juice-based drink in terms of the tests laid down under Regulation 2.3.10 of the FSS Regulations.

f. Further, as per the FSS Regulations, for a beverage or drink to be known as carbonated fruit drink, it should be prepared from fruit juice and water or carbonated water whereas in case of the product at hand, it is essentially prepared from wort, i.e., a malt extract, and minimal fruit juice and carbonation is added merely for flavouring and freshness purpose respectively. The product is also marketed as a non-alcoholic drink rather than fruit-based beverage.

g. The Applicant accordingly submits that since the said product contains less than 5% of fruit juice / pulp, it cannot be classified as carbonated fruit beverage or fruit drink as it is a 'malt beverage'.

h. In view of the above, the product at hand is not a fruit drink and is neither understood nor sold as a fruit drink and hence, cannot be termed as carbonated fruit beverage or fruit drink.





5.5 **Product does not qualify as “Carbonated beverages with fruit juice”**

- a. As mentioned at Para 5.4 (c) above, the product is understood and sold as non-alcoholic malt or beer without alcohol. The product at hand was conceived, developed, launched, and is sold as a non-alcoholic alternative to beer. Further, the product is characteristically different from the commonly available “Carbonated beverages with fruit juice”.
- b. In common parlance, the Product is not understood or sold as carbonated beverage with fruit juice. The manufacturing process of carbonated beverages with fruit juice commences with blending sugar syrup with fruit juice, flavours and other ingredients whereas in case of the product, the manufacturing process is similar to that of brewing beer where firstly the malt is extracted and processed at various stages to obtain wort and thereafter sugar, flavour and other ingredients are blended for taste and preservation purposes. This is not the manner in which the product is manufactured – detailed process set out at Para 4.3 supra.
- c. Further, Regulation 2.3.40 of the FSS Regulations, which deals with the category of ‘Fruit Based Beverage Mix/powdered fruit Based beverage’, prescribes that in such beverage(s) the fruit juice content when reconstituted by dilution should not be less than 5% (in case of lemon) and 10% (in case of other fruits). As submitted above, the fruit juice content in the Product, even reconstituted is lower than the prescribed limit of 5% / 10% prescribed under the FSS Regulations. Hence, the product cannot be classified as carbonated beverage with fruit juice since it is a ‘malt beverage’.
- d. Furthermore, the product (non-alcoholic malt) has a separate and specific classification under the CTA. Therefore, the product cannot be classified as carbonated beverage with fruit juice. As per well-settled law, treatment, and classification of fruit juice-based drinks under the FSS Regulations is relevant for determining the scope of entries under Heading 2202
- e. The courts have time and again considered the categorization (and prescriptions such as content of fruit juice / pulp) Under the FSS additive Regulations, for determining the treatment and classification of fruit juice-based drinks under the Customs tariff. The Applicant in this regard refers to the following judicial precedents:

- The Hon’ble Supreme Court in **Parle Agro (P) Ltd. V. Commissioner of Commercial Taxes, Trivandrum [2017-VIL-20-SC]**, observed that “Appy Fizz” an aerated drink, merits classification under the category which inter alia included fruit juice and similar other products under the Kerala VAT Act, 2003 since it contains **12.7% m/m of apple juice content** ( more than the fruit juice quantity prescribed under the FSS Regulations).

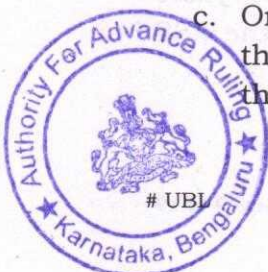




- Similarly, the Larger Bench of the Hon'ble Tribunal in **Brindavan Beverages Pvt. Ltd. VS CCCE&ST, Meerut [2019 (29) G.S.T.L 418]** held that Minute maid nimbu Fresh, Nimbu Masala soda and Nimbooz are classifiable under the tariff item 2202 90 20 as "Fruit pulp or fruit juice based drinks" for the following reasons:
  - The **lemon juice content** specified for lemon juice-based drinks under Regulation 2.3.10 of the Additives Regulations is **more than 5%** and the products under consideration i.e. Minute Maid Nimbu Fresh, Nimbooz Masala Soda and Nimbooz have lemon juice content exceeding 5%
  - As per the **Common parlance test**, the labels of the product clearly indicated that the said products are bought and sold in the market as **"Fruit drink with lemon juice"** having a lemon juice content of 5% or more and are described as Ready to Serve Fruit Drink and not as Lemonades or Lemon / Lime Flavoured Drinks
- f. It is apparent from the above judicial precedents that the criteria uniformly followed to determine whether a product is fruit juice / pulp content in it. In the present case, the product contains maximum 1.11% of fruit juice (reconstituted juice is also a maximum of 4.3%) which is less than the prescribed criteria (minimum of 5% in case of lime and lemon and 10% in other case of fruit pulp or juice). Therefore, the product cannot be classified as carbonated fruit beverage / fruit drink.

**5.6 2202 91 00 is specific entry chargeable to 18% and will not be covered under general entry**

- a. On the basis of common law principles, the product merits classification under an entry which is most akin to its description rather than a generic entry. This principle is enunciated in the General Rules for the Interpretation of Import Tariff ('GRI') as well. The GRI governs the classification of goods under the Customs Tariff, and as per settled law, the relevant rules of the interpretation are to be applied for classification of goods for GST purposes as well. As per Rule 3(a) of GRI, when goods are prima-facie covered under two or more headings, classification shall be affected such that a specific entry will prevail over a general entry.
- b. Chapter heading 2202 covers '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 2209' and tariff item 2202 91 00 reads as 'non-alcoholic beer'.
- c. On a bear perusal the tariff item 2202 91 00 at 8-digit level and Note (B) of the HSN Explanatory Notes (reproduced at Para 5.3 above), it is evident that the product would squarely get covered as 'non-alcoholic beer' being a malt





which contains less than 0.5% of alcohol. Therefore, the Product is classifiable under 2202 91 00.

d. On the other hand, "Carbonated Beverages of fruit drink or carbonated beverages with fruit juice" under Tariff heading 2202", at 4-digit level is a general entry seeking to cover goods which as per their ingredients, process of manufacture and common parlance, are predominantly carbonated and fruit juice-based beverages. The said general entry does not cover malt-based beverages / non-alcoholic beers.

- **SanwarAgarwal vs. Commissioner of Customs [2016(336) E.L.T 42(Cal.)]** – it was inter alia held that "just as a special law in a particular field would prevail over a general law that may be operational in that field, a heading with a more specific description would prevail over a heading with a more general description".
- **Atul Glass Industries Ltd. Vs collector of Central Excise [1986 (25) ELT 473 (SC)]** – It was inter-alia held that in case of specific entry and a general entry, the special must exclude general and therefore, specific would prevail over general.
- **Superintendent of C.E. and others vs. Vac Met Corpn. Pvt. Ltd [1985 (22) ELT 330(SC)]** – it was inter-alia held that " When an article falls within a specific entry such goods must necessarily be excluded from the general entry"

e. Accordingly, since the more specific classification is under entry 2202 91 00 (non-alcoholic beer), and by application of Rule 3(a) of the General Rules and the above judicial ratios, the more specific description will prevail over general, the product cannot be covered under 'Carbonated Beverages of fruit drink or Carbonated beverages with fruit juice under 2202' as mentioned at Entry 12B and Entry 4B of the said amendment Notifications.

f. The Applicant submits that the entry in the amendment Notifications are general entries classifying goods at 4-digit level. On a joint reading of the FSSAI and Tariff classifications, it appears that the amendment Notifications seeks to cover beverages falling under tariff item 2202 99 20 even if they are carbonated and does not seek to cover novel products like malt-based beverage or non-alcoholic beer which has small quantities of fruit juice only for the purpose of flavouring.

g. The purpose of the amendment Notifications appears to tax carbonated and sweetened beverages. However, the product in question is not a sweetened carbonated beverage but rather a malt / grain-based beverage containing much less sugar (32 Calories in 100ml) as compared to typical sweetened carbonated beverages (containing 63 calories in 100ml). This alone distinguishes the product from other sweetened / fruit-based carbonated





beverages that are being classified under the amendment Notifications and, hence, deserves to be classified as a malt beverage / non-alcoholic beer.

- h. Therefore, in common parlance and as per the FSSAI (which is the sector regulator,) the product is a non-alcoholic beer, a beverage made from malt rather than a carbonated beverages of fruit drink or carbonated beverages with fruit juice and is not covered under the amendment Notifications.

6. The Joint Commissioner (Review), Bengaluru North West Commissionerate, Bengaluru, vide their letter dated 23.11.2021, furnished their views inter alia stating as under:

6.1 The applicant have been clearing the product 'Kingfisher Radler' on classifying the same as non-alcoholic beer, under tariff heading 2202 9100 and paying 18% GST, in view of the entry No. 24A of the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No.8/2021-Central Tax (Rate) dated 30.09.2021, effective from 01.10.2021.

6.2 The product "Kingfisher Radler", has the ingredients of sugar, fruit juice used in the manufacture of the non-alcoholic malt drink and is carbonated as described and declared by the applicant, in the application.

6.3 Since the product contains "Carbon di-oxide" and "fruit juice", it is prudent to classify the said product under Sl.No.12B of schedule IV as **"Carbonated beverages of fruit drink or carbonated beverages with fruit juice"**. Hence the product attracts 28% GST (CGST-14% & KGST 14%).

#### **PERSONAL HEARING PROCEEDINGS**

7. Sri Darshan Bora, Advocate & Authorised Representative of the applicant along with Sri Sujana Devaraju, Head of Tax of the Company appeared for personal hearing proceedings held on 10.02.2022, reiterated the facts narrated in their application & requested for additional hearing to submit technical report on the product. The applicant was given an opportunity of additional hearing on 14.03.2022 and the authorised representative along with Sri Sujana Devaraju appeared and submitted the technical report.

#### **FINDINGS & DISCUSSION**

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.





9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant filed the instant application seeking advance ruling with regard to classification of their product "Kingfisher Radler", manufactured & made available in three flavours i.e. Ginger lime, Mint lime and Lemon. The applicant submitted that the said product is a non-alcoholic malt beverage, an agri based product, containing barley malt, lesser sugar, manufactured out of natural ingredients such as barley, hops etc., along with antioxidants and preservatives. Further since the barley malt has a peculiar bitter taste sugar and juice compounds in small quantities are added to make it suitable for the Indian palate.

11. The applicant furnished the details of ingredients used in the product & contends that their product merits classification under tariff heading 2202 9100, as non-alcoholic beer, as it is akin to a beer without alcohol and also replicates the ingredients, taste, feel and packing of beer. Further, they endeavour to substantiate their contention on the basis of the following grounds:

- a) Heading 2202 is divided into two sub-groups and the impugned product is covered under non-alcoholic beverage, not including fruit or vegetable juices of heading 2009 and thereby merits classification as non-alcoholic beer under heading 2202 9100 being a separate, distinct & specific entry.
- b) The GST rate applicable to the product is 18%, in terms of entry number 24A of Schedule III to Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended, as the entry covers the products with headings 2202 9100 & 2202 9990 with a description "other non-alcoholic beverages other than tender coconut water and caffeinated beverages".
- c) The product is being sold as non-alcoholic substitute for beer; the product is malt based but not a drink prepared from fruits; fruit juice extracts added only for flavour.
- d) In term of well-settled law, categorization and prescriptions such as content of fruit juice under the FSS Regulations are relevant for determining the treatment and classification of fruit juice based drinks under the Customs/GST tariff. {referred Parle Agro (P) Ltd., Vs Commissioner of Commercial Taxes, Trivendrum [2017-VIL-20-SC]; Brindavan Beverages Pvt. Ltd., Vs CCCE & ST, Meerut[2019(29)GSTL 418]}
- e) The product does not qualify and is not registered as 'Carbonated Fruit Beverages or Fruit Drink' or 'Carbonated beverage containing fruit juice' which are covered under Regulation 2.3.30 of FSS Standards & Additives Regulations. Product has been registered and classified as 'Proprietary Food' by FSSAI.





- f) Regulation 2.3.30 of the FSS Additive Regulations provides that minimum 10% fruit juice or 5% lime juice is required to qualify as a 'fruit drink'; minimum 5% fruit juice or 2.5% lime/ lemon juice required to be a carbonated beverages with fruit juice. The fruit content of the product is below 5% as prescribed under the said Regulation and therefore the product does not qualify as 'Carbonated Fruit Beverages or Fruit Drinks' or 'Carbonated beverage containing fruit juice'.
- g) Hon'ble Supreme Court in Parle Agro case [2017 (352)113 SC] observed that the use of carbon dioxide to the extent of 0.6% was only for preservation and not sufficient to qualify the product as aerated. The product at hand contains only 0.5% approx. of carbon dioxide, less than the quantity observed by the Hon'ble Supreme Court and hence the product cannot be considered as aerated / carbonated.
- h) Without prejudice, even if the product is considered as 'carbonated beverage with fruit juice', still entry No.24A to be preferred in terms of well settled law. The Hon'ble Supreme Court in the case of CCE Vs Minwood Rock Fibres Ltd.,[2012(278)ELT 581 (SC)] held that in case there are two competitive entries for classification of a product, the heading most beneficial to the assessee is to be adopted.

12. The applicant further, vide their letter dated 22.08.2022, received in this office on 23.08.2022, furnished additional written submissions, without prejudice to their earlier submissions, pursuant to release of agenda and minutes of 45<sup>th</sup> GST council meeting inter alia stating as under:

- a) The amendment notifications bearing No.8/2021-CT(Rate) and No.1/2021-CC(Rate) both dated 30.09.2021, issued on the recommendations of 45<sup>th</sup> GST Council meeting, increased the GST rate to 28% and Compensation Cess levied at 12% with effect from 01.10.2021, on the following goods.

*"Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice, under tariff heading 2202"*

- b) The amendment notifications seek to cover only goods falling under subheading 2202 10. The product at hand (Kingfisher Radler) is a non-alcoholic malt based substitute for beer, which is specifically covered under Sl.No.24A of Schedule III to Notification No.1/2017-CT(R) dated 28.06.2017. Thus the product is not covered by the amended notifications and therefore not chargeable to GST at 28% and Compensation Cess at 12%.

13. We proceed to examine the classification of the impugned product. In this regard we invite reference to Explanations (iii) and (iv) appended to the Notification No. 01/2017- Central Tax (Rate), dated 28.06.2017, which are relevant to determination of Classification of a product & are as under:





(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

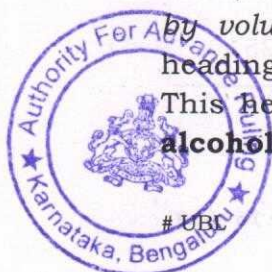
(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Accordingly we make a reference to the Section Notes and Chapter Notes of the relevant Chapters of the Customs Tariff and also the corresponding Harmonised Commodity Description and Coding System Explanatory Notes of World Customs Organisation (WCO).

14. The applicant contended that their product qualifies and merits classification as non-alcoholic beer under tariff heading 2202 9100. We invite reference to the tariff item 2202, relevant to the issue before us, which is as under:

Tariff item	Description of goods
2202	WATERS, INCLUDING MINERAL WATERS AND AERATED WATERS, CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED, AND OTHER NON-ALCOHOLIC BEVERAGES, 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:
<b>2202 91 00</b>	<b>-- Non alcoholic beer</b>
2202 99	--Other:
2202 99 10	-- Soya milk drinks, whether or not sweetened or flavoured
<b>2202 99 20</b>	-- Fruit pulp or fruit juice based drink
2202 99 30	-- Beverages containing milk
<b>2202 99 90</b>	--other

We proceed to examine whether the impugned product qualifies to be a non-alcoholic beer or not. In this regard we invite reference to the Explanatory Note 3 to chapter 2202 wherein it is specified that "for the purposes of heading 2202, the term 'non-alcoholic beverages' means beverages of an alcoholic strength by volume not exceeding 0.5% vol." Further Explanatory Notes to Chapter heading 2202 specify that the said heading covers **non-alcoholic beverages**. This heading consists of three groups (A,B &C) and the group (B) i.e. "**non-alcoholic beer**" includes the following.





- a) Beer made from malt, the alcoholic strength of which by volume has been reduced to 0.5% vol or less
- b) Ginger beer and herb beer, having an alcoholic strength by volume not exceeding 0.5% vol.
- c) Mixtures of beer and non-alcoholic beverages (e.g., lemonade), having an alcoholic strength by volume not exceeding 0.5% vol

It could be inferred from the above that 'non-alcoholic beer' is basically a beer having certain alcoholic strength which is reduced to 0.5% vol or less. It is an admitted fact in the instant case that the impugned product does not contain any alcoholic strength by volume, as it is not fermented and hence the question of reducing the said strength does not arise. Hence the impugned product is neither a beer initially nor its alcoholic strength is reduced to 0.5% vol. Thus the impugned product does not qualify to be a non-alcoholic beer, but it is a non-alcoholic beverage.

15. Now we proceed to examine whether the impugned product qualifies to be a malt based beverage or fruit based beverage. In this regard we invite reference to the ingredients used in the product/its variants, as furnished by the applicant vide their letter dated 18.3.2022, as part of the additional submissions. Further the applicant also submitted they discontinued the production of the variant **Ginger lime**.

Sl. No	Ingredients	Ginger lime (in %)	Lemon (in %)	Mint lime (in %)	Black current (in %)	Strawberry & cranberry (in %)
1	Barley malt	4.03	2.94	2.77	1.00	1.00
2	Sugar	9	10.10	9.50	12.24	12.43
3	Mixed Fruit (Concentrate)	0.05	1.11	1.05	0.47	0.16
	[Equivalent mixed fruit juice content]	[below 0.5]	[4.29]	[4.20]	[2.76]	[2.68]
4	Hops	0.01	0.01	0.01	<0.02	<0.02
5	Quillaia/ Lemon Extract	0.04	0.02	0.02	0.04	0.02
6	Carbon Dioxide	0.52	0.52	0.52	0.50	0.50
7	Water	86.14	85.29	86.12	85.38	85.40
8	Flavour and other additives	Minimal Quantity	Minimal Quantity	Minimal Quantity	0.06	0.04
9	Black carrot Juice Concentrate	--	--	--	0.34	0.25





It is clearly evident from the above table that the %age of Barley malt is less than the mixed fruit juice content in all the product variants. The Ginger lime variant is not considered as its production is discontinued, as per the applicant. Thus it could be inferred that the predominant component of the product is mixed fruit juice content.

16. We also invite reference to the images and labels of the variants of the product, furnished by the applicant as 'Exhibit-B' , in Annexure-I to the application. The details of the product variants have been tabulated as under :

Label	Description	Ingredients	Examination Report
Ginger & Lime	Added Ginger & Lime Flavours	Water, Sugar, Barley Malt, Carbon Dioxide (INS290), Preservative (INS 211), Acidity Regulator (INS 330), Quillia Extract (INS999), Mixed Fruit Juice (0.01%) & HOPS	Discontinued the product.
Fizzy Lemon Malt	Added Lemon Flavour	Water, Invert Sugar, Barley Malt (2.94%), Mixed Fruit Juice (4.3%), Carbon Dioxide (INS 290), Quillia Extract (INS 999) HOPS & Antioxidant (INS 300)	Equivalent mixed fruit juice content is 4.3% as per the report
Fizzy Lemon Malt	Added Mint & Lime Flavours	Water, Invert Sugar, Barley Malt (2.77%), Mixed Fruit Juice (4%), Carbon Dioxide (INS 290), Quillia Extract (INS 999) HOPS & Antioxidant (INS 300)	Equivalent mixed fruit juice content is 4.2% as per the report

It is observed from the aforesaid labels that all the variants have been marked as "Carbonated Non-alcoholic Drink" and not as "non alcoholic beer", as claimed by the applicant. In view of this, the contention of the applicant that the product is marketed and understood in common trade parlance as 'non-alcoholic beer' and on this basis alone it deserves to be classified under tariff item 2201 91 00 is not acceptable.

17. At this juncture we invite reference to the General Interpretation Rules, specifically Rule 2(b), for classification of the product/s, which is given below:

*Rule 2(b) : Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.*





It could be seen from above table at para 14 that the impugned product is a mixture of Barley malt, sugar, mixed fruit juice, hops, lemon extract, carbon dioxide, water, flavor & other additives and Black carrot juice, amongst which the predominant is mixed fruit juice, in all variants of the product. Thus the product needs to be classified on the basis of predominant material/substance in terms of Rule 2(b) of General Interpretation Rules. Further all the variants of the product are admittedly carbonated and hence they are nothing but carbonated beverages.

In view of the above all the variants merit classification as carbonated beverages of fruit drink, covered under tariff heading 2202 99 90. Accordingly the product attract GST @ 28% along with applicable cess of 12% in terms of Sl.No.12B of Schedule IV to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, effective from 01.10.2021.

18. Further, we find that the applicant contended the classification of their product mainly on the basis of Food Safety and Standards Regulations.

Section 168 of the CGST Act 2017 empowers the competent authority with the power to issue instructions or directions as per the GST scheme of law. As per the GST Act and ruled framed thereunder, we do not find FSSAI empowered under GST scheme of law to issue directions/instructions for GST clarification. We hold that the FSSAI has been created for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption and hence cannot be the factor for determination of the classification of goods under the GST scheme of law and procedure.

19. The issue of whether the regulation of other statute can be used for determination of the classification under the different statute, has been addressed by the Hon'ble Apex Court in the case of Commissioner of Central Excise, New Delhi Vs. Connaught Place Restaurant (P) Ltd., [2012 (286)ELT 321 (S.C.)-para 431]. The Hon'ble Supreme Court 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 Products Union Ltd., Vs U.O.I. [1989 (41) ELT 186 (Bom.) – paras 7 & 8].

20. Further the Hon'ble Delhi High Court in Greatship (India) Ltd., Vs UOI – [2016 (338) ELT 545 Del.] has held that an interpretation of statutes, for conflict of views between two Central Government Ministries – In such case, view taken by Ministry that is primarily responsible for policy in question, should prevail. By applying the same ratio, we find it in compliance to judicial discipline and in consonance to the laid ratio decided as cited, that in matters of GST classification, we comply with the General Rules of Interpretation for GST classification and GST scheme of law.

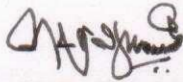




21. In view of the foregoing, we pass the following

**RULING**

*The product "Kingfisher Radler" has different variants and all the variants merit classification as carbonated beverages of fruit drink, all covered under tariff heading 2202 99 90. Accordingly the product attracts GST @ 28% along with applicable Compensation Cess of 12% in terms of Sl.No.12B of Schedule IV to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended.*



**(Dr. M.P. Ravi Prasad)**

**Member**

Karnataka Advance Ruling Authority

Place : Bengaluru - 560 009

Date : 14-09-2022



**(T. Kiran Reddy)**

**Member**

**MEMBER**

Karnataka Advance Ruling Authority

Bengaluru - 560 009

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore North West Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-65 A, Bengaluru.
5. Office Folder.

