

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:

1. Ms. Manasa Gangotri Kata, I.R.S., Additional 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 (ST) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No.08 /AAR/2020 DATED: 25.02.2020

GSTIN Number, if any / User id	33AABCB2066P1ZM
Legal Name of Applicant	Britannia Industries Limited
Registered Address/Address provided while obtaining user id	One India Bulls Park, 5 th Floor, Tower B, 3 rd Main Road, Ambatur Industrial Estate, Chennai, TamilNadu-600 058.
Details of Application	GST ARA- 01 Application Sl.No.35/2019 ARA dated 04.09.2019
Concerned Officer	State: The Deputy Commissioner (ST)-III Large TaxPayer Unit, Chennai-600008. Centre: North Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	Classification of Ultra High Temperature (UHT) Sterilized Flavoured Milk.
A	Category
B	Description (in Brief)
Issue/s on which advance ruling required	classification of goods and/or services or both
Question(s) on which advance ruling is required	Whether UHT Sterilized Flavoured Milk is classifiable under Chapter 4 (<i>Tariff Heading 0402 which covers 'Milk... containing added sugar or other sweetening matter...' or alternatively, Tariff Heading 0404 which covers 'Other', i.e. 'products consisting of natural milk constituents, whether or not containing added sugar or other sweetening</i>

matter, not elsewhere specified or included')

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. Britannia Industries Limited, One India Bulls Park, 5th Floor, Tower B, 3rd Main Road, Ambattur Industrial Estate, Chennai, TamilNadu-600 058. (hereinafter called the Applicant) are registered under GST with GSTIN. 33AABCB2066P1ZM. The applicant is a leading supplier of dairy products, biscuits, breads, etc. which are available across the country in close to 5 million retail outlets. The applicant has sought Advance Ruling on:

Whether UHT Sterilized Flavoured Milk is classifiable under Chapter 4 (Tariff Heading 0402 which covers 'Milk... containing added sugar or other sweetening matter...' or alternatively, Tariff Heading 0404 which covers 'Other', i.e. 'products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included')

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 manufacture / procure and supply UHT Sterilized Flavoured Milk and market it under the brand name 'Britannia Winkin' Cow Thick Shake' (hereinafter 'the product'). The product is made in multiple flavours and supplied in Tetra Packs. The said product (UHT Sterilized Flavoured Milk) comprise mainly of milk (about 80 - 90%) and sugar (10 - 12%). The list of ingredients is tabulated below.

S.No.	Ingredients	Purpose
1.	Milk (80 - 90%)	Primary and predominant ingredient
2.	Sugar (10-12%)	As a sweetener
3.	Water	For maintaining consistency of the products
4.	Milk solids	Added with (liquid) milk to maintain consistency
5.	Flavours	These could be either Strawberry Puree, Mango extract, Cocoa, Vanilla (depending on the pack) and are added in small quantities (1% or less) for flavour and colour
6.	Emulsifier and stabilizers	To Emulsify and stabilize (small quantity)
7.	Acidity regulator	To regulate acidity (small quantity)
8.	Iodized salt	For taste and balance

The process of manufacture involves heating (UHT sterilization) and cooling of milk. The ingredients as listed above are added to the milk at different points of the heating /cooling process. Thereafter the milk is filtered and de-aerated / homogenised. The UHT Sterilized Flavoured Milk is thereafter packaged. The applicant has stated that the product is being classified by them under Tariff item 2202 90 30 as 'beverages containing milk'. However, judicial precedents and the relevant GST tariff entries support classification under Chapter 4 of Customs Tariff.

2.2 The Applicant on the interpretation of law has stated that the product is UHT (Ultra High Temperature) Sterilized Milk. On the basis of the essential character of the product, the common parlance understanding of the product and judicial precedents, the product in question, i.e. flavoured milk is classifiable under Chapter 4 of the Tariff. The product under consideration, i.e. flavoured milk is a dairy produce. It is essentially milk added with sugar and permitted additives. The single largest ingredient in the product, in quantity and essence, is milk which constitutes more than 80 – 90 % of the product. The remaining ingredients in the product, i.e. sugar, cocoa, vanilla, salt etc. are added for flavour and sweetening and other additives viz. Recodan MS G 4683 and ICL - Joha T New are added for stabilising, buffering, emulsifying and thickening purposes. In other words, the additions to milk are only to ensure that the natural dairy product is flavoured such that it is the most tasty / favoured milk, while the other additives allow for effective packing and shelf-life. These additions do not in any manner change the essential nature of the product, i.e. milk. The product is marketed under the brand

name 'Winkin' Cow thick shake' to make it more attractive to consumers. It is pertinent to mention here that the product is targeted towards children, and hence, the packaging, labelling and marketing of the product as a fun, colourful and tasty drink is essential. At the same time, it is as imperative that the drink holds the necessary nutrition to ensure that it is chosen by purchasers (adults) as a preferred choice for consumption. The Applicant has submitted that the essential nature and character of the product under consideration is milk. They relied upon the decision of the Hon'ble High Court in **Gujarat Coop. Milk Marketing Federation Ltd. vs. State of U.P. [(2017 (5) GSTL 351 (All.))]**.

2.3 The applicant has relied on the position and treatment adopted by the Food Safety and Standards Authority of India, the regulator for the Food sector, and has stated inter-alia, as follows:

- 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. Relevant to the present issue is the following:
 - The FSS Regulations covers Flavoured Milk under the same category as Milk, i.e. under '*Milk and dairy based drinks*' (Category 1.1). The said Regulations define Flavoured Milk as follows: "*Flavoured Milk*", *by whatever name called, may contain nuts (whole, fragmented or ground) chocolate, coffee or any other edible flavour, edible food colours and cane sugar. Flavoured milk shall be pasteurised, sterilized or boiled. The type of milk shall be mentioned on the label*'.
- Evidently, the Food Safety and Standards Authority classifies and treats flavoured milk as Milk / dairy product. On the other hand, '*beverages, excluding dairy products*' is separately classified under Category 14 of the FSS regulations. It is imperative to note that Category 14, i.e. beverages, includes milk-based beverages such as tea and coffee. It is evident that flavoured milk is not considered by the FSS as a beverage containing milk, but as milk / dairy product.

The applicant has thus claimed that in common parlance and also as per the FSSAI (which is the Sector regulator), flavoured milk is essentially milk / dairy product, rather than a beverage made from milk and duly classifiable under Chapter heading 0402.

2.4 The applicant has further stated, that the general rules for interpretation used in Customs Tariff Act, 1975, the Section Notes, Chapter Notes and the General Explanatory Notes are *mutatis-mutandis* applicable to classification under the GST law (for identifying applicable rate under the Rate Notification) and as per the said General Rules for interpretation, the classification is to be determined,

- as a first recourse, according to the description of goods mentioned in the tariff headings or the Section Notes or Chapter Notes contained in the Schedule. The Rules further provide that 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. Accordingly, as milk is specifically covered under the description of Heading 0402, the product will fall for classification under the said heading. Thus, even if flavoured milk is classifiable in two or more headings i.e. under Chapter 4 and Chapter 22, then as per the General Rules, the most specific description shall be preferred over general description. The product is commonly known and understood as 'flavoured milk', as it is essentially a form of milk rather than a derivative of milk or milk product. Therefore, the entry most specifically applicable is under Chapter 4.
- Rule 3(b) of the General Rules [which is applicable in the event that classification cannot be determined under Rule 3(a)] *inter alia* states that mixture and composite goods consisting of different materials shall be classified as if they consist of the material or component which gives them their essential character. In the present case, since milk constitutes the major ingredient and provides the essential character to the flavoured milk, the product merits classification as milk under Chapter 4.
- Further, the general explanatory notes for Chapter 4 under the Harmonized Commodity Description and Coding System permits addition of certain other ingredients which could either work as stabilizers, sweeteners or flavouring agents. Therefore, flavoured milk is classifiable under Chapter 4 even if they contain any of the aforementioned additives. This is in line with the position under the FSS Regulations as well.

2.5 The applicant has relied on Catena of judicial precedents stating to squarely support the view that the flavoured milk is classifiable as milk under Chapter heading 0402 and not under any other heading including under Chapter 22 which are:

- Gujarat Coop. Milk Marketing Federation Ltd. vs. State of U.P. [(2017 (5) GSTL 351 (All.))]
- Commissioner of Central Excise vs. Amrit Food [2015 (324) ELT 418 (SC)]
- Fun foods Pvt. Ltd. vs. Commissioner of Central Excise, Jaipur-I [2017 (348) ELT 357 (Tri-Del.)]
- Nestle India Limited vs. Commissioner of Central Excise [2001 (132) ELT 134 (Tri. Del)]
- Nestle India Limited vs. Commissioner of Central Excise [2018 (8) GSTL 211]
- Advance Ruling in Danone Foods and Beverages [2012 (280) E.L.T. 563]
- Commissioner of Sales Tax vs. Neera Drinks [1999 UPTC 1130]

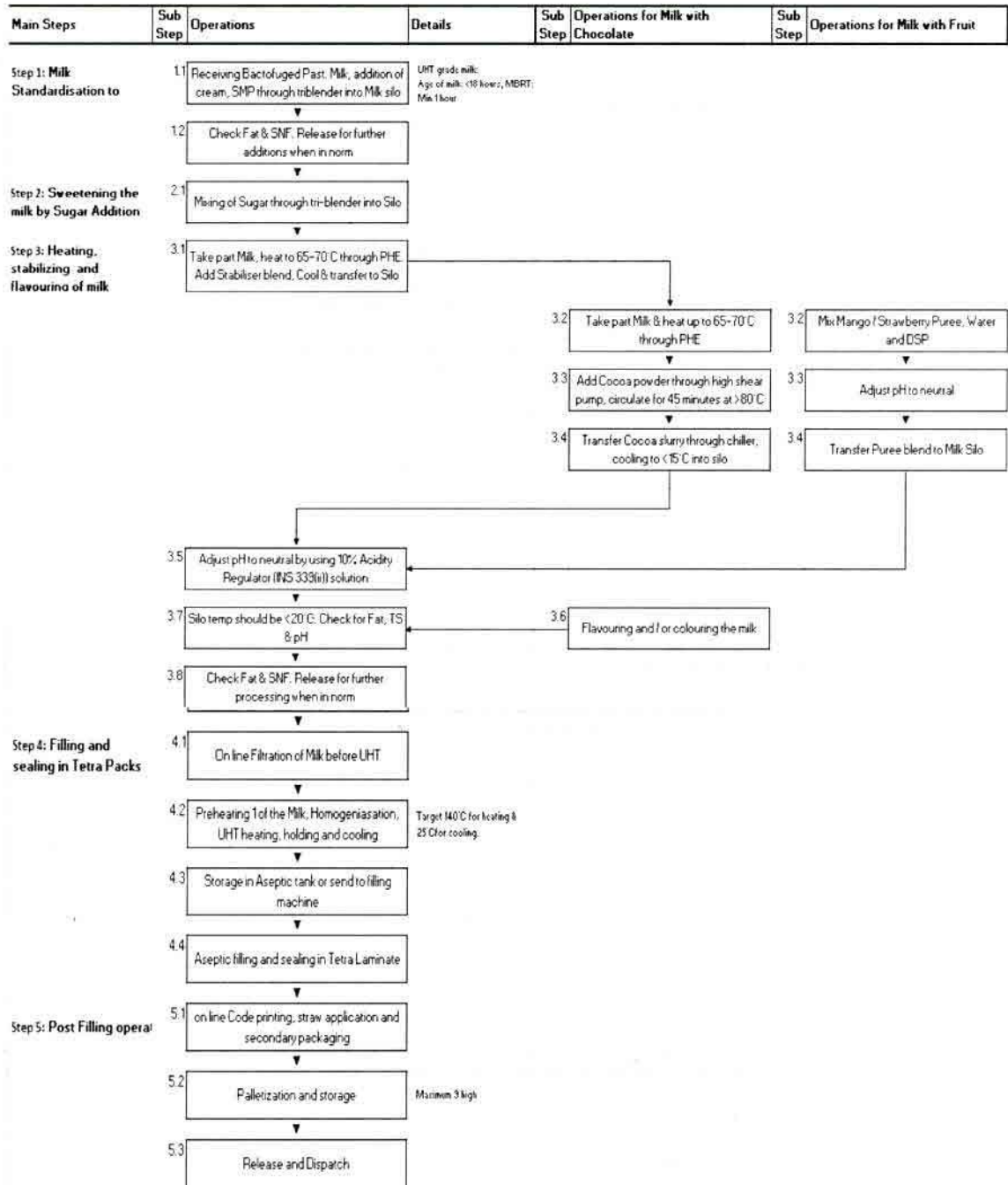
2.6 The applicant has further stated that While in terms of the foregoing submissions, the most appropriate classification of the product in question is 0402, without prejudice, if a view is taken that flavoured milk is not milk itself but a product containing milk / milk constituents, the product would still be classifiable under Chapter 4, specifically under entry 0404 90 00 which covers product consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included. In this regard, reference is made to the decision in **Nestle India Limited vs. Commissioner of Central Excise [2017 (6) GSTL 483 (Tri. – Del.)]**. It was held that Nutritious Milk, a product made up of milk predominantly and small quantity of artificial flavouring substance is classifiable under 0404 90 00 as a product consisting of natural milk constituents. It was also held that the addition of small quantities of other substances will not change the essential character of the product and the product will remain nutritious milk only. Therefore, the Applicant has claimed that the product (flavoured milk) is most appropriately classifiable under Chapter 4, specifically Tariff Entry 0402 99 90, or alternatively, Tariff Entry 0404 90 00.

3.1 The applicant was extended an opportunity to be heard in person on 26.09.2019. The representatives of the applicant company appeared. They gave a written submission and stated that the product 'Winkin' Cow' is flavoured milk which has 80% and more milk along with flavour, sugar and stabilizers. They submitted that the products should be classified under 0402 or 04049000. The product has milk, solids also. They submitted various judgements under VAT and Central Excise where such products were classified under 0404/02. They submitted copies of invoices. They undertook to submit detailed manufacturing

processes and ingredients list with proportion, copies of FSSAI certification for food addition, labelling etc in two weeks time.

3.2 The applicant submitted the Flow Chart of manufacturing process of Britannia UHT Winkin Cow Milk Shake which is reproduced below:

Flow Chart - Britannia UHT Winkin Cow Milk Shake



They also filed Step by Step formulation (approximate quantities in KG) which is produced below:

Step by Step Formulation (Approximate quantities in KG)

	Vanilla	Strawberry	Mango	Chocolate	
Step 1: Milk Standardisation to Toned Milk	Milk 3% Fat	81.5	81.6	81.4	75.7
	Fresh Cream 40% Fat	3.9	3.9	3.9	2.2
	Skimmed Milk Powder	1.5	1.5	1.5	2.2
	Water	2.0	2.0	2.0	7.0
	Milk	88.9	88.9	88.8	87.0
Step 2: Milk sweetening by Sugar Addition	Milk from Step 1	88.9	88.9	88.8	87.0
	Sugar	10.5	10.5	10.5	11.4
	Sweetened Milk	99.4	99.4	99.3	98.4
Step 3: Flavoured Milk Preparation for Processing Remaining Ingredients	Sweetened Milk from Step 2	99.4	99.4	99.3	98.4
	Stabiliser blend	0.3	0.3	0.3	0.3
	Flavours	0.3	0.2	0.2	0.2
	Iodised Salt	0.0	0.0		0.0
	Acidity Regulator (INS 339(ii))	0.1	0.1	0.1	0.2
	Fruit Puree		0.1	0.1	
	Red Colour (INS127/ (INS 160b (ii))		0.0	0.1	
	Cocoa Powder				1.0
	Total	100.0	100.0	100.0	100.0

They furnished the list of equipment used in the manufacturing of the product as below:

Main Equipment Used in UHT Processing

Equipment	Description / Usage
Silo	A large insulated tank for storage of milk
Bactofuge	High speed centrifugal separator to physically remove bacteria and spores from milk
High Shear Pump	High speed and high impact pump used to disperse and dissolve solid ingredients in liquids
Tri-blender	Dissolving unit with high speed agitator
PHE	Plate Heat Exchanger - used for quick heating or cooling of liquids
On line filter	Fine mesh nylon filter inserted in Stainless steel cage for filtration of milk or liquids.
Homogeniser	Equipment to disperse milk fat in very fine droplets in milk to prevent fat layer formation during prolonged storage.
Preheater	Continuous Heat exchanger to increase milk temperature
Holding Tube	Calculated length of pipe for maintaining milk at a particular temperature for a particular length of time.
Aseptic Tank	Specially designed tank which can hold milk in sterile condition for particular length of time.
Aseptic Filler	Specially designed filler to fill sterile milk in pack formed with sterilised laminate in sterile environment and then sealing the package.
Code printer	On line dot matrix printer to print the batch code, MRP, Manufacturing date and time on the pack.
Shrink wrap	Equipment to apply and then shrink special poly film on the card board trays containing the packs.

Certificate of FSSAI issued to Schreiber Dynamix Dairies Private Limited, Mumbai who manufactures Milk products was also submitted.

4. The applicant is under the administrative control of Central Tax. The said jurisdictional authority was addressed to report if there are any pending proceedings in the applicant's case on the issues raised by the applicant in the ARA application and for comments on the issues raised. The said authority did not furnish any report and also has not furnished any comments. Hence, it is construed that there is no proceedings pending in the case of the applicant on the questions seeking Advance ruling before us.

5. The State Jurisdictional Officer vide their letter R.C. No.236979/2019/B3 dated 24.09.2019 submitted that there are no proceedings are pending in the case of the applicant on the issue raised by them in the ARA application.

6.1 We have considered the submissions made by the applicant carefully. The applicants manufacture/procure and supply UHT Sterilised Flavoured Milk and market it under the brand name 'Britannia Winkin' Cow Thick Shake'. The product is made in multiple flavours –strawberry(strawbericious), Mango(mangolicious), Vanilla(vanillicious) and chocolate(chocolicious)(hereinafter referred to as the 'Products'). As per the label, the constituent of the products is tabulated below:

S.No.	Winkin' Cow – Thick shakes	Constituent
1.	strawbericious	Standardised Milk(89%), Sugar, Water, Emulsifier and Stabilizers, Strawberry Puree(0.1%), Acidity Regulator
2.	Mangolicious	Standardised Milk(89%), Sugar, Water, Emulsifier and Stabilizers, Alphonso mango Puree(0.1%), Acidity Regulator
3.	Chocolicious	Toned Milk(87%), Sugar, Water, Milk solids, Emulsifier and Stabilizers, Cocoa powder(1%), Acidity Regulator
4.	vanillicious	Standardised Milk(89%), Sugar, Water, Emulsifier and Stabilizers, Acidity Regulator, Natural and Artificial Vanilla(0.1%)

The manufacturing process involves heating (UHT sterilization) and cooling of milk, to which the constituents are added at different points of the heating/cooling process, filtered and de-aerated/homogenised and thereafter packaged. From the invoices, it is seen that the applicant has classified under CTH 2202 90 30. The applicant has sought advance ruling on the following question:

Whether UHT Sterilized Flavoured Milk is classifiable under Chapter 4 (*Tariff Heading 0402 which covers 'Milk... containing added sugar or other sweetening matter...'* or alternatively, *Tariff Heading 0404 which covers 'Other', i.e. 'products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included'*)

6.2 In terms of explanation (iii) and (iv) to Notification No. 1/2017 - Central Tax (Rate) dt. 28-06-2017, tariff heading, 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 and the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the

Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall be applied for the interpretation and classification of goods.

6.3 The relevant chapter notes of CTH 0402/04 and the Explanatory Notes are examined as under:

CTH 0402:

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
	- <i>Other :</i>
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
0404	WHEY, WHETHER OR NOT CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER; PRODUCTS CONSISTING OF NATURAL MILK CONSTITUENTS, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER, NOT ELSEWHERE SPECIFIED OR INCLUDED
0404 10	- <i>Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter :</i>
0404 10 10	--- Whey, concentrated, evaporated or condensed, liquid or semi-solid
0404 10 20	--- Whey, dry, blocks and powdered
0404 10 90	--- Other
0404 90 00	- Other

The Chapter Note I is as follows:

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

The relevant explanatory notes as per the HSN is as below:

04.02 - Milk and cream, concentrated or containing added sugar or other sweetening matter (+).

0402.10 - In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5 %

- In powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 % :

0402.21 - - Not containing added sugar or other sweetening matter

0402.29 - - Other

- Other :

0402.91 - - Not containing added sugar or other sweetening matter

0402.99 - - Other

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**).

Subheading Explanatory Note.

Subheadings 0402.10, 0402.21 and 0402.29

These subheadings **do not cover** concentrated milk or cream in the form of paste (**subheadings 0402.91 and 0402.99**).

04.04 - Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included.

0404.10 - Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter

0404.90 - Other

This heading covers whey (i.e., the natural constituents of milk which remain after the fat and casein have been removed) and modified whey (see Subheading Note 1 to this Chapter). These products may be in liquid, paste or solid (including frozen) form, and may be concentrated (e.g., in powder) or preserved.

The heading also covers fresh or preserved products consisting of milk constituents, which do not have the same composition as the natural product, provided they are not more specifically covered elsewhere. Thus the heading includes products which lack one or more natural milk constituents, milk to which natural milk constituents have been added (to obtain, for example, a protein-rich product).

Apart from natural milk constituents and the additives mentioned in the General Explanatory Note to this Chapter, the products of this heading may also contain added sugar or other sweetening matter.

The powdered products of this heading, particularly whey, may contain small quantities of added lactic ferments, with a view to their use in prepared meat products or as additives for animal feed.

The heading **does not cover** :

(a) Skimmed milk or reconstituted milk having the same qualitative and quantitative composition as natural milk (**heading 04.01 or 04.02**).

(b) Whey cheese (**heading 04.06**).

(c) Products obtained from whey, containing by weight more than 95 % lactose, expressed as anhydrous lactose, calculated on the dry matter (**heading 17.02**).

(d) Food preparations based on natural milk constituents but containing other substances not allowed in the products of this Chapter (in particular, **heading 19.01**).

(e) Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 % whey proteins, calculated on the dry matter) (**heading 35.02**) or globulins (**heading 35.04**).

From the above, the following are deduced:

- 'Milk', to be covered in this chapter are 'full cream milk or partially or skimmed milk'
- Beverages consisting of milk flavoured with cocoa or other substances(heading 22.02) are not covered under CTH 0402
- CTH 040490 covers fresh or preserved products consisting of milk constituents, which do not have the same composition as the natural product, provided they are not more specifically covered elsewhere

6.4 From the constituents of the product in hand furnished by the applicant, it is seen that the product consists of Standardised/Toned milk (87to 89%) without removal of Fat content thereon, which is sweetened with around 10% of sugar to which stabilizers, flavours, etc are added and is supplied in tetrapacks after necessary processes. The products are marketed as 'Thick shakes' and is ready for consumption as stated by the applicant. Comparing the product and those covered under CTH 0402/0404, it is evident that the product in hand consisting of milk flavoured with vanilla/ strawberry/mango/cocoa powder being ready for consumption beverages based on Milk is specifically excluded under CTH 0402, as seen from the Explanatory notes to HSN of the said chapter and hence not classifiable under CTH 0402; Also the product being not 'Whey', the plausible CTH will be 0404 90 only and there again the Explanatory notes clearly states that this heading includes products which lack one or more natural milk constituents, to which natural milk constituents are added, whereas in the case at hand, the product do not lack any natural milk constituents nor any natural milk constituents is added to the product. Therefore, we hold that the product is not classifiable under either CTH 0402 or 0404.

6.5 Further, the applicant has been classifying the product under CTH 2202 99 30 as seen in the Invoice furnished by the applicant. The applicability of CTH 2202 99 30 to the product is examined as under. The CTH 2202 99 is given as under:

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 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

The relevant 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.

From the above, it is clear that other non-alcoholic beverages, not including fruit or vegetable juice of heading 20.09 are covered under '2202.99 – Other' and as per the explanation at (B) (2), the group covers beverages ready for consumption such as those with a basis of milk. The word "beverage", though not defined under CGST Act, 2017, is considered, in common parlance, as a drink that can be consumed directly and the instant product "flavoured milk" can be consumed as it is and hence is a beverage with a basis of milk. Therefore, the product is appropriately classifiable under CTH 22029930.

6.6 The applicant has relied on the General Rules of Interpretation of Tariff and has contended that the product is classifiable under Chapter 4 of the Customs Tariff made applicable to GST applying Rule 3 of the Interpretation Rules. The General Rules are to be applied seriatim. Rule (1) of the General rules for Interpretation states as follows:

RULE 1

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

As per the above Rule, classification is to be determined based on the terms of the heading and any related Section/Chapter Note. CTH 22029930 specifically covers 'Beverages containing milk' and the explanation notes clarifies that those beverages with a basis of milk are covered under this CTH. Rule 2 and other rules of Interpretation are to be applied only when the goods are classifiable under more than one heading and cannot be classified on application of Rule 1 of GIR above. In the case at hand there is a specific heading for the product and therefore we find no necessity to traverse further and apply the other rules and reject the claim of the applicant.

6.7 We find that the applicant has relied on various decisions from different judicial fora and has claimed that the addition of flavor do not change the characteristics of the product and the product still remains milk and therefore classifiable under CTH 04. We do not disagree with the fact that the product in hand is a form of milk but as brought out supra, the product being a ready for consumption drink, i.e. a beverage with a basis of milk, is specifically classified under CTH 22029930 and excluded from the chapter 04. Further, the decisions in the cases relied upon on the classification, the same is based on the tariff existed before aligning the same with HSN. In this connection it is relevant to note that the classification of 'flavoured milk', has been represented before the GST Council and the Council has considered the same in the 31st GST council Meeting. The Council has accepted the findings of the Fitment committee, which has observed as under:

18.	Flavoured Milk	2202	12%	Clarification that it is classifiable under Chapter 4	<ol style="list-style-type: none"> 1. The Explanatory Notes to HSN describe the goods classifiable under the heading 0402 as under: <i>This heading covers milk (as defined in Note 1 to this Chapter) and cream, whether or not pasteurised, sterilised or otherwise preserved, homogenised or peptonised; but it excludes milk and cream which have been concentrated or which contain added sugar or other sweetening matter (heading 04.02) and curdled, fermented or acidified milk and cream (heading 04.03). The products of this heading may be frozen and may contain the additives referred to in the General Explanatory Note to this Chapter. The heading also covers reconstituted milk and cream having the same qualitative and quantitative composition as the natural products.</i> 2. Flavoured milk is classifiable under HS code 2202. 3. Fitment Committee does not recommend issuance of such clarification.
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The above also supports the classification of the 'flavoured Milk' under CTH 22029930.

6.8 The applicant has relied on the FSSAI regulations and has claimed that the product is a milk and to be classified under CTH 04. We find the classification as available in the Customs Tariff is aligned with the International convention based on Harmonised system of Nomenclature. The product is specifically covered under a specified heading. When this being the fact, there appears to be no relevance to import the ingredients from another legislation/Act. Constitution Bench of the Apex Court in **Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay and another [AIR 1956 SC 559]**, has stated:

"It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia."

In the light of the above it would not be proper to transplant the provisions of FSSAI Act, which has a different object and purposes, for determining the classification under the coded Tariff, when there is no ambiguity.

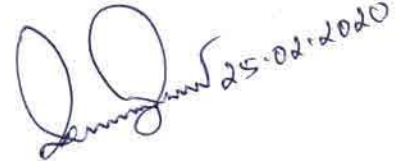
7. In view of the foregoing, We rule as under:

RULING

UHT Sterilized Flavoured Milk marketed under the brand name 'Britannia Winkin' Cow Thick Shake' by the applicant is not classifiable under the Tariff heading '0402 /0404" but classifiable under CTH 22029930.



Ms. Manasa Gangotri Kata,
Member, CGST



Shri Kurinji Selvaan V.S.,
Member, TNGST

To
M/s Britannia Industries Limited,
One India Bulls Park,
5th Floor, Tower B, 3rd Main Road,
Ambattur Industrial Estate,
Chennai, TamilNadu-600 058.

// BY SPEED POST WITH ACK.DUE //

25 FEB 2020

**AUTHORITY FOR
ADVANCE RULING**
GOODS AND SERVICE TAX
Chennai-6, Tamilnadu

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
IInd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & C.Ex., 26/1, Mahatma Gandhi road,
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4. The Deputy Commissioner (ST)-III
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