CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

MUMBAI

REGIONAL BENCH, COURT NO. 4

CUSTOMS APPEAL NO. 87352 OF 2025

(Arising out of Order-in-Appeal No.711(Gr.IB)/2025/JNCH/Appeals/JNCH dated 23/06/2025 passed by the Deputy Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

FORTUNE GOURMET SPECIALITIES PVT LTD
107 Adhyaru Industrial Estate Sunmil Compound
Lower Parel West, Mumbai **.....Appellant**

Vs.

COMMISSIONER OF CUSTOMS, NHAVA SHEVA-I **.....Respondent**
JNPT Custom Hose, Nhava Sheva
Raigad

Appearance:
Shri Anirudh Nansi, Advocate for the Appellant
Shri C.S. Vinod, Asst. Commissioner (AR) for the Respondent

CORAM:
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing : 14/10/2026

Date of Decision: 13/11/2026

FINAL ORDER No: 86402/2026

Per Sanjiv Srivastava

This appeal is directed against order in appeal No.711 (GR 1B)/2025(JNCH)/Appeals dated 23.06.2025 of the Commissioner (Appeal) Custom Nhava Sheva. By the impugned order Commissioner (Appeal) has upheld assessment made by the Deputy Commissioner Customs GR 1B, JNCH Nhava Sheva on Bill of Entry No.8757295 dated 20.05.2022, by classifying the imported goods under CTH 2202 99 90 subjected to IGST @ 28%.

2.1 Appellant, they are importers of Starbucks Frappucino, in 3 flavours, viz. Coffee, Mocha and Caramel, which is a ready to drink milk based beverage for sale in the domestic market. They filed a Bill of Entry No. 8757295 dated 20.05.2022 with reference to their subject import consignment and there was

a query under faceless assessment that item is caffeinated beverage and IGST should be levied @ 28% as per Sr. No. 12A of Schedule IV of GST Tariff.

2.2 Appellant, appropriately replied to the querry. Bill of Entry was assessed, under faceless assessment, with IGST @ 28% for BE item Sr. No. 1, viz. 49820-DK-4506-EC SBUX FRAP COFFEE (8 X 250ML) (MILK BASED BEVERAGES) having a total quantity of 1020.60 LTR with Assessable Value INR 261862.61. This resulted in levy of IGST of INR 97517.60 @ 28%

2.3 Subsequently, appellant realized that the there goods were to be classified under CTH 2202 99 30 attracting IGST of INR 41793.27 @ 12%. The appellants were denied the option of provisional clearance against bond and security under Section 18 of the Customs Act, 1962 and were directed to proceed with clearance.

2.4 Being aggrieved by the above impugned assessment order, the appellant filed the present appeal on various grounds. The appeal was dismissed as per the impugned order referred in para 1 above.

2.5 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Anirudh Nansi, Advocate for the appellant and Shri C S Vinod, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submitted that:

- Imported goods are milk based flavoured beverages and classified under FSSAI standards 2.1.3 and 1.1.2(5), i.e. Flavoured Milk.
- It is already established by FSSAI Delhi that this product is covered under the aforesaid FSSAI Flavoured Milk category through the review petition order dated 27th February 2018 granted by FSSAI Delhi for the initial import consignment vide Bill of Entry 4869830 Dt 19/01/2018 under FSSAI consignment ID no.: ICA20180100002171.
- the declaration from the manufacturer and the COA which establishes that the said products are Milk based Beverages with natural coffee extract.
- As per FSSAI Standards and Additives Regulations, 2011, the standards for "Dairy based drinks Flavoured Milk" are defined under FSSAI category 2.1.3 and Additives as per 1.1.2. Whereas, the standards for "Caffeinated Beverage" are defined under FSSAI category 2.10.6(2). Therefore, both items are recognised by FSSAI as being completely independent and separate categories from each other.
- Refer sr.2(a) under FSSAI standard of Flavoured Milk, which requires that the raw material of the product, i.e. the base, is MILK. It also states

that the General Standards for Milk and Milk Products as per 2.1.1 will also apply being a milk based product. Further in sr.2(b), the permitted ingredients include Coffee, thereby making it a Coffee flavoured milk based beverage.

- Refer sr. (1) under FSSAI standard of Caffeinated Beverage, which clearly states that it is a WATER based beverage and the water should conform to the standards of packaged drinking water as per 2.10.08. Further in sr.(IV), it states that the ingredients, flavours, additives and so on, the product shall conform to the standards for carbonated water.
- it is unambiguous and clear that Flavoured Milk must be MILK based and Caffeinated Beverage must be WATER based.
- As per Customs Tariff, for Flavoured Milk, there is a specific HS code 2202 9930, i.e. Beverages with Milk: Whereas for Caffeinated Beverages, there is a specific HS code 2202 9990. Therefore, under no circumstances can a Caffeinated Beverage include a beverage which is Milk based and for a product to qualify as a Caffeinated Beverage, it essential for it to be water based only.
- Imported goods are correctly classifiable under HS Code 2202 9930, i.e. Beverages containing Milk and IGST @ 12% is correctly filed by the appellant.
- The 28% IGST for caffeinated beverages will not apply for the subject products. The assessment order be amended with IGST @ 12% under IGST schedule II sr. 50, so that they can apply for the refund of the excess IGST of INR 55724.36 thereafter.

3.3 Authorized representative reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"5. I have carefully gone through the facts and records of the case, impugned Order-in-Assessment and the submissions made by the appellant in the grounds of appeal and during the Personal Hearing. The main point for determination in the said appeal is whether the Ld. Original Authority has rightly levied IGST @28% on the impugned goods, under Sr. No. 12A of the IV Schedule of IGST Levy Notification No. 01/2017-Integrated Tax (rate) dated 28.06.2017, or not.

5.2 I find that the appellant had filed a Bill of Entry No. 8757295 dated 20.05.2022 for import of the goods "43820-DK-4506-EC SBUX FRAP

COFFEE (8 X 250ML) (MILK BASED BEVERAGES)" declared under CTI 22029930. The importer/ appellant received a query under faceless assessment that the subject item is caffeinated beverage and IGST should be levied @ 28% as per Sr. No. 12A of Schedule IV of GST Tariff

5.3 I find that as per the submissions, the query was appropriately replied by the appellant. Subsequently, it was realized by the appellant that the aforesaid Bill of Entry has been incorrectly assessed with IGST @ 28% for BE item Sr. No. 1 viz. "49820-DK-4506-EC SBUX FRAP COFFEE (8 X 250ML) (MILK BASED BEVERAGES)" having a total Assessable Value Rs. 261862.61/-. This resulted in levy of IGST @ 28% instead of IGST @12%, thereby, the differential excess IGST being INR 55724.36 was paid. Being aggrieved by the above impugned Order-in-Assessment, the appellant has filed the present appeal,

5.4 I find that in terms of Explanation (iii) and (iv) to Notification No. 1/2017-Integrated Tax (Rate), dated 28-6-2017: "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 and 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.

5.5 I find that the appellant has classified the impugned goods under CTI 22029930. It is therefore imperative to discuss the relevant entries for CTI 22029930 and the same are reproduced from the Customs Tariff, as below:

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*		*IGST rate*
2202 10	*-*	*Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured:*	
2202 10 20	*---*	*Aerated waters*	*28%*
2202 10 10	*---*	*Lemonade*	*28%*
2202 10 90	*---*	*Other*	*28%*
	-	*Other:*	
2202 91 00	*---*	*Non alcoholic beer*	*18%*
2202 99	*--*	*Other:*	
2202 99 10	*---*	*Soya milk drinks, whether or not sweetened or flavoured*	*12%*
2202 99 20	*---*	*Fruit pulp or fruit juice based drink*	*12%*
2202 99 30	*---**	*Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice*	*28%*

2202 99 30	*---*	*Beverages containing milk*	*12%*
2202 99			
2202 99 90	*---*	*Other*	*18%*
2202 99 90	*---**	*Caffeinated Beverages*	*28%*
2202 99 90		*Caffeinated beverages*	*28%*

From the above, I find that the Beverages containing milk are classifiable under CTI 22029930 and the same are leviable IGST @12% as per Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017. Further, it is also clear that the are classifiable under CTI 22029990 and the same are leviable IGST @28%.

I have also gone through the HSN explanatory notes and the relevant part of the same is reproduced as below:

HSN Explanatory Notes to Chapter 2009 states

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) 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) 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.

This heading does not include:

(a) Liquid yogurt and other fermented or acidified milk and cream containing cocoa, fruit or flavourings (heading 04.03).
(b) Sugar syrups of heading 17.02 and flavoured sugar syrups of heading 21.06.
(c) Fruit, nut or vegetable juices, whether or not used as beverages (heading 20.09).
(d) Medicaments of heading 30.03 or 30.04.

To further classify the impugned goods, I have also resorted to the FSSAI regulations to understand what caffeinated beverages are and as per category 2.10.6 (2) of the FSSAI standards:

2. Caffeinated Beverage.

The following are the standards for Carbonated and Non- Carbonated caffeinated beverages

(I) Water used in preparation of caffeinated beverages should conform to the standards of packaged drinking water as prescribed in regulation 2.10.8 72[or mineral water as prescribed in regulations 2.10.7] of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.
(II) Essential Composition: It shall contain not less than 145 mg per liter and not more than 300 mg per litre total caffeine from whatever sources it may be derived in the formulation of the product.
(III) Optional ingredients: It may contain the following: Any of the substances listed in column (1) of the table given below provided that the amount of that substance is not more than the amount specified in relation to that substance in column (2) of the table:

(A) Any additional item or ingredient proposed to be added (other than the substances prescribed in the said table will be subject to approval by the Food Authority after safety assessment and substantiating scientific evidence.

(i) A declaration "consume not more than 500 ml per day" shall be made on the label that represents the per day quantity.

(ii) The per day quantity is the maximum amount of caffeinated beverage (as package or serves) that is consumed in one day and determined as in sub-clause (ill).

(iii) Where any one of the substances given in column (1) of the following table is consumed at the maximum level given in column (2), it shall represent the per day quantity and the declaration shall be made on the basis of the number of packs of serves that cumulatively delivers his amount when consumed in a day.

Explanation: if taurine is used at 1000mg and D-glucurono-Y-lactone at 300mg in a 250ml pack the per day quantity is reached by consuming 2x250ml packs and represents the one-day quantity. If the pack size is a 125ml bottle, then the per day quantity is reached by consuming 4x125ml bottles."

(B) The vitamins namely, thiamine, riboflavin, niacin, vitamin B6, vitamin B12 may be added at one Recommended Daily Allowance level (100% Recommended daily allowance)

(IV) In respect of ingredients, flavors, sweeteners, food additives, contaminants and microbiological requirement the product shall conform to the standards for carbonated water.

(V) Labelling: The product shall comply with all provisions of General Labelling requirements of Food Safety and Standards (Packaging and Labelling) Regulations, 2011, for pre-packaged foods, with the following additional provisions: a) High Caffeine: "X mg/serving size" (where X is the amount of caffeine in milligrams per pack/serve; b) Prominent display of caution "Not recommended for children, pregnant or lactating women, persons sensitive to caffeine.]

It can be seen from the above that waters with added caffeine and certain other optional ingredients which may contain added preservatives and flavoring, sugars are separately classified under Para 2.10.6 (2) as 'Caffeinated Beverages' of FSSAI regulations. I find that

the appellant has submitted the ingredient list of the impugned goods along with the other documents of the Appeal memo. The same is reproduced as under:-

(a) Milk
(b) Water
(c) Sugar
(d) Coffee (100%)
(e) Organic fat-reduced cocoa powder
(f) Potassium carbonate (E501)
(g) Natural coffee flavouring

From the above ingredient list, it is clear that the product in question is having caffeine contents along with other products. Therefore, the Ld. OA has rightly classified the impugned goods as caffeinated beverages and levied IGST@28% under Sr. No. 12A of Schedule IV of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017."

4.3 Appellant has along with their appeal filed the pictures of packing and labeling of the imported goods along with the packing and labeling of the goods which are declared as. The same are reproduced below:

Imported Goods	Caffeinated Beverages



4.4 From the perusal of the above the distinction between the imported goods and the goods termed and declared as caffeinated Beverages is quite evident. Imported product as per specifications mentioned on the package is a milk based beverage, while those declared as caffeinated beverages are water based. Impugned order reproduces the provisions from Food safety and Standard on the basis of the said standard product specifications mentioned on the product. Under the rules outlined by the **Food Safety and Standards Authority of India (FSSAI)**, a prepared, milk-based Starbucks coffee drink (such as a Latte, Macchiato, or Cappuccino) are evaluated under a mix of product-specific standards, labeling mandates, and generic category systems. Under the **Food Safety and Standards Act (FSSAI)** regulations, packed energy drinks and packed coffee drinks cross into completely distinct regulatory vertical lines. FSSAI statutory enforcement directives have drawn a strict boundary between products that use synthetic/added caffeine versus those containing naturally derived agricultural caffeine.

1. Prescription II.1.1.2 & II.2.1.3.2 (b): Food Category System (FCS)

These references correspond to the specialized sub-sections under the **FSSAI Food Category System (FCS)** hierarchy, which mandates how products are tracked for licenses and additive compliance.

- Primary Classification: A milk-based Starbucks coffee falls under FCS 14.1.5: Coffee, coffee substitutes, tea, herbal infusions, and other hot cereal and grain beverages, excluding cocoa.
- Sub-classification under II.2.1.3.2 (b): This specifically indexes "Ready-to-drink coffee and tea beverages" or "Fluid coffee/tea preparations." Because a milk-based coffee blends a dairy component with a coffee extract base, it is licensed under the beverage hierarchy rather than dairy products (which sit under FCS 01.0).

2. Prescription 2.10.6: Non-Alcoholic Beverages (Water-Based/ Caffeinated)

Under the **Food Safety and Standards (Food Products Standards and Food Additives) Regulations**, sub-regulation **2.10.6** governs Non-Alcoholic Beverages.

- The "Caffeinated Beverage" Rule (2.10.6(2)): This clause regulates formulated, water-based energy drinks containing between 145 mg/L and 300 mg/L (or 320 mg/L) of total caffeine.
- Exclusionary Application: A standard milk-based Starbucks coffee is exempt from the tight synthetic formulations governed by 2.10.6(2) because its caffeine is naturally derived from the agricultural bean substrate (coffee extract) rather than added synthetic caffeine anhydrous. Instead, its coffee core is checked against standard Coffee Identity Specifications (Regulation 2.4).

3. Prescription II.2.(I): Labelling, Display, and Restaurant Disclosures

If a beverage contains caffeine, it automatically triggers specific declaration clauses under **Schedule II** of the FSS (Labelling and Display) Regulations.

- Menu Labelling Mandate: Because Starbucks operates as a retail food service establishment, it is governed under the FSS (Labelling and Display) Regulations. It must state nutritional info (Energy/Calories, Allergen declarations, and Caffeine thresholds) directly on its menu boards or point-of-sale materials.
- Warning Declarations: If a drink crosses typical safety parameters for vulnerable groups, the prescription requires a clear notice at the counter

stating: *"Contains Caffeine. Not recommended for children, pregnant or lactating women."*

4.5 A packaged Starbucks Frappuccino coffee drink is fundamentally classified under Food Category System (FCS) 14.1.5 (Coffee, coffee substitutes, tea, herbal infusions) or FCS 1.1.2 (Dairy-based Drinks) depending on whether the dairy or water-extract component serves as the characterising base formulation. It is governed by Regulation 2.4 (Cereals, Legumes, and Coffee Standards) and standard proprietary food protocols rather than the caffeinated beverage rules.

Compliance Metrics & Packaging Prescriptions:

- Exempt from Regulation 2.10.6(2): Even though a Frappuccino contains more than 145 mg/L of caffeine, it is exempt from the "Caffeinated Beverage" category. This is because its caffeine is 100% naturally inherent to the agricultural raw material (coffee beans), rather than added synthetic caffeine anhydrous.
- Labeling Identity: It does not carry the "Caffeinated Beverage" label title. It uses standard descriptive identity tags such as *"Packaged Coffee-Milk Drink"* or *"Milk Beverage with Coffee Extract"*.

Menu/Package Disclosure: It does not require the strict "500 ml per day maximum" text block required for energy drinks. However, under general Food Safety and Standards (Labelling and Display) Regulations, it must cleanly display standard nutritional declaration boxes, declaration of milk/dairy allergens, and the standard shelf-stable processing certifications.

4.6 Thus on the basis of the prescriptions, specifications and label we draw the comparative classification matrix as per FSSAI in table below:

Direct Comparative Classification Matrix as per FSSAI				
Product Matrix	**Legal Product Designation**	**FSSAI Food Category System (FCS)**	**Core Governing Regulation**	**Critical Package Declaration**
Red Bull	Caffeinated Beverage (Carbonated)	**FCS 14.1.4.1**	Regulation 2.10.6(2)	"High Caffeine", Max 500 ml per day warning, "Energy Drink" term barred.
Hell Energy	Caffeinated Beverage (Carbonated)	**FCS 14.1.4.1**	Regulation 2.10.6(2)	"High Caffeine", Max 500 ml per day warning, "Energy Drink" term barred.
Cloud 9	Caffeinated Beverage (Carbonated)	**FCS 14.1.4.1**	Regulation 2.10.6(2)	"High Caffeine", Max 500 ml per day warning, "Energy Drink" term barred.
Starbucks Frappuccino	Milk-Based Coffee Beverage / Dairy-Based Drink	**FCS 14.1.5** or **FCS 1.1.2**	Regulation 2.4 (Coffee) & Standard Proprietary Norms	Milk/Dairy Allergen warning, standard nutritional values, free from synthetic energy warnings.

4.5 Impugned order have copied the tariff headings and HSN explanatory notes but has conveniently sought to ignore them while determining the correct classification and applicable rate of IGST in respect of the impugned goods on the basis of the product description, specification and label. No discussion is available in the impugned order in this respect.

4.6 Correct HSN Tariff Classification for IGST: As per the HSN classification table available on https://services.gst.gov.in/services/searchhsnsac, the classification for the levy of IGST has to be determined amongst the headings of Chapter 2202.99. The descriptions and classification as per the said headings are reproduced below:

220299	OTHER:
22029910	Soya milk drinks, whether or not sweetened or flavoured
22029920	Fruit Pulp Or Fruit Juice Based Drink
22029930	Beverages containing milk
22029990	Other

As the impugned imported goods undisputedly are milk based or are beverages containing milk they would be appropriately be classified under heading 22029930 which is more specific to the product rather than than the residuary entry a i.e. 22029990. It is basic principle of the classification that classification of the good is to be determined in terms of description of the tariff entries and the entry giving more specific description should be preferred over the residuary entry. In the case of Hamdard (Waqf) Laboratories [2026 (396) E.L.T. 3 (S.C.)] Hon'ble Supreme Court has held as follows:

> ***30.*** *It is equally settled that where a commodity reasonably falls within a specific enumerated entry, recourse to the residuary entry is impermissible. In Dunlop India Ltd. v. Union of India [(1976) 2 SCC 241 =1983 (13) E.L.T. 1566 (S.C.)] this Court cautioned against consigning goods to the "orphanage of the residuary clause" when they bear a reasonable claim to a specific entry. It was held thus :*
>
> > *"35. When an article has, by all standards, a reasonable claim to beclassified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause."*

4.7 Further we determine the classification of the impugned imported goods after determining the following which align our classification with the prescription in FSSAI;

- Dairy Substrate Base: The primary characterizing ingredient of the product is milk/dairy components, not carbonated or plain water.
- Naturally Inherent Caffeine: The caffeine present in Starbucks Frappuccino is 100% naturally inherent to the agricultural raw material substrate—namely, roasted Arabica coffee bean extract. There is zero added synthetic caffeine anhydrous in the product formulation.
- FSSAI Categorization: The product is licensed and monitored under FCS 14.1.5 (Coffee preparations) or FCS 1.1.2 (Dairy-based Drinks). It does not carry—nor is it legally allowed to carry—the mandatory warning labels prescribed for synthetic energy drinks under Regulation 2.10.6(2).

4.8 Thus we find that IGST rate under S. No. 12A of Notification No. 14/2019-Integrated Tax (Rate) and FSSAI classifications, the impugned imported goods are structurally isolated from the 28% luxury/sin tax brackets using its physical packaging characteristics and ingredient profile. S. No. 12A of Notification No. 14/2019-IT (Rate) explicitly defines the description of goods as "Caffeinated Beverages" classifiable under head 22029990. Since we find that the impugned goods are “Beverages Containing Milk” they are appropriately classifiable under heading 22029930 and will be outside the purview of entry 12A of the Notification No 14/2019-IT.

4.9 We do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Order pronounced in open court on 13.11.2026)

(SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)