

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Central Excise Appeal No.23792/2014**

(Arising out of Order-in-Appeal No.550/2014 dated 17.09.2014  
passed by the Commissioner of Central Excise, Customs and Service  
Tax (Appeals), Bangalore-I)

**M/s. MTR Foods Private Ltd**

Plot No.77 & 78, Bommasandra Indl. Area,  
Bangalore-560 099.

Appellant(s)

*VERSUS*

**The Commissioner of Central Excise,**  
Bangalore-I.

Respondent(s)

**APPEARANCE:**

Mrs. Gomathi Srinivas, Advocate for the Appellant

Shri Akshay Kumar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE DR.D.M.MISRA, MEMBER (JUDICIAL)  
HON'BLE MRS. R. BHAGYA DEVI, MEMBER  
(TECHNICAL)**

**FINAL ORDER NO. 21630 / 2024**

DATE OF HEARING: 12.11.2024  
DATE OF DECISION: 12.11.2024

**PER: D.M.MISRA**

Heard both sides and perused the records.

This is an Appeal filed against the Order-in-Appeal No.550/2014 dated 17.09.2014 passed by the Commissioner of Central Excise, Customs & ST (Appeals), Bangalore-I.

2. Briefly stated the facts of the case that the Appellants are the manufacturers edible preparations, Ice creams, instant food mixes, soup mixes, masala mix, sambar mix etc., falling under Chapter sub-heading 21069099, 21050000 of Central Excise Tariff

Act (CETA), 1985. During the relevant period March, 2011 to December 2011, they have manufactured and cleared "Badam Milk Drink-ready to drink" classifying the same under sub-heading No.0402 9990 of CETA 1985 by claiming benefit of Notification No.1/2011 CE dated 01.03.2011. The Department proposed to classify the same under Chapter sub-heading 2202 9030 of CETA 1985. Accordingly show-cause notice was issued proposing classification of the said product under CSH 2202 9030 on 04.04.2012 and recovery of differential duty of Rs.10,76,478/- with interest and penalty. On adjudication the demand was confirmed and the amount paid under protest was appropriated. Aggrieved by the said order, they filed appeal before the Commissioner of Central Excise (Appeals-I), Bangalore, who in turn rejected the Appeal. Hence, the present appeal.

3. We find that the issue has already been considered by this Tribunal in the Appellant's own case vide Final Order No.21300/2023 dated 21.11.2023 and this Tribunal observed as follows:

*"6. We find that in this the issue is regarding classification of the product manufactured by the appellant i.e. "Badam Milk Drink Ready to Drink". The appellant contends that they have been classifying this item under 0401 11 as flavoured milk is covered under this heading prior to the introduction of 8-digit classification code vide Central Excise Tariff (Amendment) Act, 2004 w.e.f. 28.02.2005. However, post introduction of 8-digit classification, the Department has classified this product/item under CETH 2022 9030 which reads as under:*

*"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" and sub-heading 2202 9030 as beverages containing milk."*

4. Following the aforesaid precedent, the impugned order is upheld and appeal is rejected.

(Operative part of this order was pronounced in  
Open Court on conclusion of the hearing)

**(D.M. MISRA)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

Gm/rv