


<b>GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2020/  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/4)

Date : 04.09.2020

Name and address of the Appellant	:	M/s. Jay Jalaram Enterprises, Beside Astha Petrol Pump, Plot No. 67-68, Jalaram Industries Estate, Surat.
GSTIN of the Appellant	:	24ASNPS4231L1ZD
Advance Ruling No. and Date	:	GUJ/GAAR/R/02/2020 dated 11.03.2020
Date of filing appeal	:	07.07.2020
Date of Personal Hearing	:	28.07.2020
Present for the applicant	:	Shri Nishant C. Shukla, Advocate

**BRIEF FACTS :-**

The Appellant Jay Jalaram Enterprises is engaged in manufacture of ‘Popcorn’, which is sold in sealed plastic bag bearing registered Brand Name ‘J.J.’s POPCORN’. The manufacturing process, as submitted by the appellant, is that the raw corn – grains are heated in an electric machine / oven at 180 /200 degree temperature; that due to the heat so given to the grains, they turn into puffed corns / popcorns, which are known in Gujarati language as “Dhani”; that thereafter, they are sieved, so as to remove some grains which are left un-puffed; that during the process, Salt, Edible Oil and Turmeric Powder are mixed in required quantity; that thereafter, the product is packed in a plastic pouch in quantity of 15 gms.

2.1 The appellant submitted an application before the Gujarat Authority for Advance Ruling (herein after referred to as the ‘GAAR’), and raised the following question for advance ruling :-

*“Classification, under which Schedule / Sr. No. / Chapter heading / Sub heading/ Tariff Item (HSN) the rate of CGST / SGST would be applicable on the supply made by the applicant on [J.J.’s] Popcorn, vide Tax Invoice No.GT/411 Dt. 24-02-2018?”*

2.2 The appellant submitted that in their opinion, Sr. No. 50 of Schedule-I of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, which covers the product

“Maize (corn) put up in unit container” of Chapter Heading 1005, would be the most appropriate one. It was submitted that in case this contention was not accepted for any reason, then they find another similar entry at Sr. No. 57 of Schedule-I of the said Notification, which covers “Cereal grains otherwise worked” of Chapter Heading 1104, as in their case also, maize / corn as grain is worked with heating and then it is known as Popcorn.

3.1 The GAAR has gone through the manufacturing process and has arrived at the conclusion that the product is ready to eat prepared food and fits the description as ‘prepared foods obtained by the roasting of cereal’ classifiable under Chapter sub heading 1904 10 of the First Schedule to the Customs Tariff Act, 1975 (herein after referred to as the “CTA, 1975”). The GAAR also concluded that since the product is not Corn flakes (Tariff Item 1904 10 10), Paws, Mudi and the like (Tariff Item 1904 10 20) or Bulgur wheat (Tariff Item 1904 10 30), it would fall under the residual Tariff Item 1904 10 90 of the CTA, 1975. The GAAR also observed that though there is no specific entry for the product ‘Popcorn’ in Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, there is an entry most akin to the product and process (Chapter Heading 1904) at Sr. No. 15 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, which attracts 9% Central Goods and Services Tax (CGST) and 9% State Goods and Services Tax (SGST) or 18% Integrated Goods and Services Tax (IGST).

3.2 The GAAR also examined the entry pertaining to Chapter Heading 1005 of the CTA, 1975, which is meant for Maize (corn) and observed that Note 1.(A) to the Chapter 10 of the CTA, 1975 clearly mentions that ‘the products specified in the headings of this Chapter are to be classified in those headings only if grains are present, whether or not in the ear or on the stalk’; and that since the product in question loses the presence of grain in it, it does not deserve to be classified in that heading.

3.3 As regards the entry at Sr. No. 57 of Schedule I of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 pertaining to Chapter Heading 1104 for the product ‘Cereal grains otherwise worked’, the GAAR observed that Note 1 to Chapter 11 of the CTA, 1975 clearly mentions that this Chapter, *inter-alia*, does not cover ‘corn flakes or other products of heading 1904’, and since the product in question matches the description at heading 1904, it does not deserve to be classified in Chapter 11 of the CTA, 1975.

3.4 The GAAR also examined the entry at Sr. No. 95 of Schedule under Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017 pertaining to the product Puffed rice, Parched rice etc. falling under Chapter Heading 1904. The GAAR also held that the judgement of the Hon’ble Apex Court in the case of M/s. Alladi Venkateshwaralu [(1978) 41 STC 394 (S.C)] and that of the Hon’ble High Court of Gujarat in the case of M/s Vadilal Wafers Company [S. T. Reference No. 31 of 1980 dated 24.02.1982] cannot be applied here due to the fact that those decisions were not only in respect of separate set of laws i.e. the ‘Central Sales Tax Act 1956’ and the ‘Gujarat Sales Tax Act 1969’ respectively but also the system of classification of products under ‘the Goods and Services Tax’ is quite different and is based upon the international Harmonised System of Nomenclature (HSN).

3.5 The 'GAAR', vide Advance Ruling No. GUJ/GAAR/R/03/2020 dated 11.03.2020, ruled as follows :-

*"The product namely '[J.J.'s] POP CORN', manufactured from raw corn / maize grains, which, by heating turn into puffed corns / popcorns and then to make it palatable other ingredients like salt and turmeric powder along with oil are added to it fits the description as 'Prepared foods obtained by the roasting of cereal'. This description attracts classification under Chapter Sub-Heading 1904 10 of the First Schedule to the Customs Tariff Act, 1975. Since it is not Corn flakes (Tariff Item 1904 10 10), Paws, Mudi and the like (Tariff Item 1904 10 20) or Bulgur wheat (Tariff Item 1904 10 30), it will fall under the residual Tariff Item 1904 10 90 of the First Schedule to the Customs Tariff Act, 1975. By virtue of this, the said product falls under entry at Sr. No. 15 of Schedule III of Notification No. 1/2017 CENTRAL TAX (Rate) Dated 28-6-2017 and attracts 9% CGST and 9% SGST or 18% IGST."*

4. Aggrieved by the aforesaid ruling, the appellant has filed the present appeal.

5.1 The appellant has submitted that the 'Popcorn' prepared and sold by them is squarely eligible to be classified under Tariff Sub Heading 1904 10 (Prepared foods obtained by the swelling or roasting of cereals or cereal products) and to be specific under Tariff Item 1904 10 20 (Paws, Mudi and the like). It has been submitted that the relevant entry uses the words "and the like" which means that food items prepared in the similar manner as Paws (Poha) and / or Mudi (Murmura / Mamra) are prepared. It has been submitted that Poha is prepared by roasting rice cereal and adding salt, turmeric and/ or chilli powder as per taste and requirement. Similarly, Mamra is prepared by roasting rice cereal and adding salt, turmeric and / or chilli powder as per taste and requirement. Similarly, Popcorn is prepared by roasting maize cereal and adding salt, turmeric and / or chilli powder as per taste and requirement. Thus, preparation process of all three products is the same irrespective of the cereal being used. It has been submitted that the words used "and the like" in the entry are of much relevance, because these words means the products like Paws and Mudi would be covered under this sub-heading. The contention clearly reveals that legislature does not intend to include only Paws and Mudi under the said Tariff Item but also intends to include similarly prepared items and from such intention, it is evident that Popcorn, which is similarly prepared, is eligible to be classified alongside Paws and Mudi under Tariff Item 1904 10 20. It has been submitted that the expression "and the like" would require to be construed *ejusdem generis*; that the genus or the class of items envisaged by the preceding words not having been exhaustive of the genus or the class, the legislature, therefore, has supplied the words "and the like" so as to bring in any other item of the same class or genus. The appellant relied upon the decision of the Hon'ble Supreme Court in the case of Express Hotels Pvt. Ltd. Vs. State of Gujarat [(1989) 3 SCC 677 (SC)] and State of Karnataka Vs. Balaji Computers [(2007) 2 SCC 743 (SC)]. The appellant, therefore submitted that Popcorn prepared and sold by them is eligible to be classified under Tariff Item 1904 10 20 alongside Paws, Mudi and the like but not under Tariff Item 1904 90 00 (*sic* 1904 10 90) as held by learned AAR.

5.2 The appellant has further submitted that Chapter Heading 1005 reads as “Maize (Corn)” without any specification about the form and type of Maize, which is followed by two sub-headings viz. sub-heading 1005 10 00 reads “Seed” while sub heading 1005 90 00 reads as “Other”. It has been submitted that the entry deals with “Maize” in two forms, one in “Seed” form and second is any other form than Seed, without any restrictions. It has been submitted that as the product of the appellant is nothing but Maize Seed, which is subjected to process of roasting by adding some salt and spices, the Popcorn so manufactured and supplied by the appellant would be eligible to be classified under Tariff Item 1005 90 00 and as it is sold in a sealed container under a brand name, it would be taxable at 5% (2.5% CGST + 2.5% SGST). The appellant has relied upon the judgements of the Hon’ble Apex Court in the case of M/s. Alladi Venkateshwaralu [(1978) 41 STC 394 (S.C)] and that of the Hon’ble High Court of Gujarat in the case of M/s Vadilal Wafers Company [S. T. Reference No. 31 of 1980 dated 24.02.1982] in this regard and has submitted that merely because the Sales Tax Act is no more in existence and the current issue of classification is under the GST Act, the interpretation in relation to classification done under the earlier laws does not become *otiose per se*.

5.3 The appellant has also submitted that the Tariff Item 2008 19 20 reads as “Other roasted nuts and seeds” which means the form present after roasting nuts and seeds. It has been submitted that in the case of the appellant, after roasting maize seeds, the form which emerges is Popcorn and thus it shall not be wrong to say that Popcorn prepared by the appellant makes itself eligible to be classified under this Tariff Item. The appellant has relied on the decision of the Maharashtra Authority for Advance Ruling in the case of M/s. Shah Nagji Nagsi Exports Pvt. Ltd. [Order No. GST-ARA-93/2018-19/B-19 Mumbai in Application No. 93 dated 16.02.2019] and the decision of the Hon’ble CESTAT in the case of Agro Tech Foods Ltd. Vs. Commissioner of Customs [2016 (337) ELT 436 (Tribunal – Mumbai)].

5.4 The appellant has also submitted that if at all it is concluded that ‘Popcorn’ dealt in by them is not eligible to be classified under any of the Tariff Items submitted by the appellant above, i.e. 1005 90 00 or 1904 10 20 or 2008 19 20 or 2008 19 90, then Chapter Heading 2106, which covers ‘Food preparations not elsewhere specified or included’, would be the appropriate Tariff Heading.

6.1 The appellant submitted further written submission after the Personal Hearing, which has been held in this case on 28.07.2020. With respect to the issue whether the Tariff Item 1904 10 20 is specific to a particular cereal i.e. ‘Rice’ or not, the appellant has submitted that main heading 1904 10 reads as “Prepared foods obtained by the swelling or roasting of cereals or cereal products”, therefore, considering the main heading, it cannot be said that Tariff Item 1904 10 20 would be specific to a cereal i.e. Rice. It has been submitted that in other Tariff Items, like Corn Flakes or Bulgar Wheat, there is specific mention of Cereal, Corn and Wheat, but in Tariff Item 1904 10 20, there is nothing mentioned about the type of cereal. It is mentioned Paws, Mudi and ‘the like’. It has been submitted that looking to the main sub heading i.e. 1904 10 read with 1904 10 20, it can be conveniently said that the words “and the like” mentioned in 1904 10 20 speaks about the process i.e. the preparations made by a similar process like Paws (Poha) and Mudi (Mamra) and does not speak about the preparations made from Rice. The appellant has further submitted that the intention of the legislature can be

gathered from the language used, and the settled principle of law is that what is not specifically mentioned, is not intended by the legislature, because wherever the legislature has intended to put specific product, it has been prompt enough to mention it specifically. The appellant has submitted that the product Popcorn, which is prepared from Maize (cereal) by process of roasting maize seed, which is similar process like preparation of Paws by roasting Rice or Mudi by roasting Rice, would fall under Tariff Item 1904 10 20 and not under Tariff Item 1904 90 00 (*sic* 1904 10 90) as held by the learned AAR.

6.2 As regards the applicability of the judgement of the Hon'ble Apex Court in the case of M/s. Alladi Venkateshwaralu [(1978) 41 STC 394 (S.C)] and that of the Hon'ble High Court of Gujarat in the case of M/s Vadilal Wafers Company [S. T. Reference No. 31 of 1980 dated 24.02.1982] in the present case, the appellant has relied upon the decision of the Hon'ble Gujarat High Court in the case of West Coast Waterbase Pvt. Ltd. Vs. State of Gujarat [(2016) 95 VST 370 (Guj.)], wherein the Hon'ble High Court has laid down the principle that when there is no material change in the entries, the classification adopted in earlier law should continue to prevail and accepted.

6.3 The appellant has further submitted that it is very well settled position of law that in the case of classification, the entry most beneficial to the assessee needs to be adopted, and has relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bhopal Vs. Minwool Rock Fibers Ltd. [2012 (278) ELT 581).

#### **FINDINGS :-**

7. We have carefully gone through and considered the submissions made by the appellant in the grounds of appeal, in the further written submission and at the time of personal hearing as well as Advance Ruling given by the GAAR and other materials available on record.

8. The present appeal has been filed on 07.07.2020. The appellant has submitted that Advance Ruling No. GUJ/GAAR/R/03/2020 dated 11.03.2020, forwarded on 18.03.2020, was received by them on 28.05.2020. As per sub-section (2) of section 100 of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017'), the applicant aggrieved by the Advance Ruling may file appeal before the Appellate Authority within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicant, which period can be extended by the Appellate Authority by a further period not exceeding thirty days. However, we note that the time limit for filing of appeal under the CGST Act, 2017 has been extended to 31<sup>st</sup> of August, 2020 vide Notification No. 35/2020-Central Tax dated 03.04.2020, as amended vide Notification No. 55/2020-Central Tax dated 27.06.2020 issued under the provisions of Section 168A of the CGST Act, 2017 inserted vide section 8 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020. Therefore, the present appeal has been filed within the prescribed time limit.

9. The issue involved in this case is the correct classification of the product ‘J.J.’s brand Popcorn’ being manufactured and supplied by the appellant. The connected issue is the rate of CGST and SGST or IGST applicable on the supply of the said product.

10. We have gone through the manufacturing process of the ‘J.J.’s brand Popcorn’, submitted by the appellant, according to which the raw corn – grains are heated in an electric machine / oven at 180 /200 degree temperature. Due to the heat so given to the grains, they turn into puffed corns / popcorns, after which they are sieved, so as to remove some grains which are left un-puffed. During the process, Salt, Edible Oil and Turmeric Powder are mixed in required quantity and thereafter, the product is packed in a plastic pouch in quantity of 15 gms.

**Chapter Sub Heading 1904 10**

11.1 The first and foremost submission of the appellant is that their product is classifiable under Chapter sub heading 1904 10 of the CTA, 1975, but not under Tariff Item 1904 10 90, as held by the GAAR. In the submission of the appellant, their product is classifiable under Tariff Item 1904 10 20. As the dispute is regarding correct Tariff Item under which the said product is covered, it will be useful to refer to Tariff sub heading 1904 10 of the CTA, 1975, which is reproduced below –

<i><b>Tariff Item</b></i>	<i><b>Description of goods</b></i>		<i><b>Unit</b></i>
(1)	(2)		(3)
1904	<i><b>Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); Cereals [other than Maize (Corn)] in grain form or in the form of flakes or other worked grains (except Flour, Groats and Meal), Pre-cooked or otherwise prepared, not elsewhere specified or included</b></i>		
1904 10	-	<i>Prepared foods obtained by the swelling or roasting of cereals or cereal products :</i>	
1904 10 10	---	<i>Corn flakes</i>	<i>Kg.</i>
1904 10 20	---	<i>Paws, Mudi and the like</i>	<i>Kg.</i>
1904 10 30	---	<i>Bulgur wheat</i>	<i>Kg.</i>
1904 10 90	---	<i>Other</i>	<i>Kg.</i>
1904 20 00	-	<i>Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals</i>	<i>Kg.</i>
1904 30 00	-	<i>Bulgur wheat</i>	<i>Kg.</i>
1904 90 00	-	<i>Other</i>	<i>Kg.</i>

11.2 In order to further examine the scope of sub heading 1904 10, the said sub heading and its Explanatory Notes in the Harmonised System of Nomenclature are relevant, which are reproduced below :-

***“(A) Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes).”***

*This group covers a range of food preparations made from cereal grains (maize, wheat, rice, barley, etc.) which have been made crisp by swelling or roasting. They are mainly used, with or without milk, as breakfast foods. Salt, sugar, molasses, malt extract, fruit or cocoa (see Note 3 and the General Explanatory Note to this Chapter), etc., may have been added during or after their manufacture.*

*The group also includes similar foodstuffs obtained, by swelling or roasting, from flour or bran.*

*Corn flakes are made from grains of maize by removing the pericarp and the germ, adding sugar, salt and malt extract, softening with steam and then rolling into flakes and roasting in a rotary oven. The same process may be applied to wheat or other cereal grains.*

*" Puffed " rice and wheat also fall in this group. These products are prepared by subjecting the grains to pressure in a moist, heated chamber. Sudden removal of the pressure and ejection into a cold atmosphere causes the grain to expand to several times its original volume.*

*This group further includes crisp savoury food products, obtained by submitting moistened cereal grains (whole or in pieces) to a heating process which makes the grains swell, these being subsequently sprayed with a flavouring consisting of a mixture of vegetable oil, cheese, yeast extract, salt and monosodium glutamate. Similar products made from a dough and fried in vegetable oil are excluded (heading 19.05).*

*(B) .....*

*(C) .....*

*(D) .....*

*The heading does not cover cereal grains merely worked or treated by the processes specified in Chapter 10 or Chapter 11.*

*The heading also excludes :*

*(a) .....*

*(b) .....*

*(c) Prepared edible maize (corn) cobs and grains (Chapter 20).*

11.3 It is apparent that Tariff Heading 1904 at sub-heading level is same in the Customs Tariff and Harmonised System of Nomenclature, though the sub-heading 1904 10 has been further divided in the Customs Tariff. Therefore, the Explanatory Notes can be relied to determine proper classification of the product under Tariff Heading 1904.

11.4 As per Explanatory Notes of HSN for sub heading 1904 10, it covers a range of food preparations made from cereal grains (maize, wheat, rice, barley, etc.) which have been made crisp by swelling or roasting; that they are mainly used, with or without milk, as breakfast foods; that salt, sugar, molasses, malt extract, fruit or cocoa etc., may have been added during or after their manufacture. It is also provided that this group further includes crisp savoury food products, obtained by submitting moistened cereal grains (whole or pieces) to a heating process which makes the grains swell, these being subsequently sprayed with a flavouring consisting of a mixture of vegetable oil, cheese, yeast extract, salt and monosodium glutamate.

11.5 On going through the manufacturing process and contents of the 'J.J.'s brand Popcorn' submitted by the appellant, it is apparent that the raw corn –grains are heated in an electric machine / oven at 180 / 200 degree temperature, which make such corn into puffed corns / popcorn, which are mixed with Edible Oil, Salt and Turmeric Powder. The resultant product is thereafter packed in a plastic pouch in quantity of 15 gms. Thus, it is evident that the manufacturing process and contents of the 'J.J.'s brand Popcorn' fully conforms to the description given in Explanatory Notes for sub heading 1904 10.

#### **Tariff Item 1904 10 20 or 1904 10 90**

12.1 The sub heading 1904 10 of the CTA, 1975 is further divided to cover 'Corn flakes' under Tariff Item 1904 10 10, 'Paws, Mudi and the like' under Tariff Item 1904 10 20, 'Bulgur wheat' under Tariff Item 1904 10 30 and 'Other' under Tariff Item 1904 10 90.

12.2 The appellant has submitted that the 'Popcorn' prepared and sold by them is covered under Tariff Item 1904 10 20, which covers 'Paws, Mudi and the like', as the Popcorn is prepared by them in the similar manner in which Paws or Mudi is prepared and the said Tariff Item uses the term 'and the like'. It will, therefore, be useful to understand how the term 'and the like' used in Tariff Item 1904 10 20 needs to be construed.

12.3 The Hon'ble Supreme Court, in the case of Parle Agro (P) Ltd. Versus Commissioner of Commercial Taxes, Trivandrum [Civil Appeal Nos. 6468-6469 of 2017 with C.A. Nos. 6471-6472 and 6470 of 2017, decided on 9-5-2017 reported as 2017 (352) E.L.T. 113 (S.C.)], has held as follows :-

*"40. .... Justice G.P. Singh in 'Principles of Statutory Interpretation, 14th Edition, has explained the 'noscitur a sociis' in the following words :*

*"(b) Noscitur a Sociis*

*The rule of construction noscitur a sociis as explained by LORD MAC-MILLAN means : "The meaning of a word is to be judged by the company it keeps". As stated by the Privy Council : "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them". It is a rule wider than the rule of ejusdem generis; rather the latter rule is only an application of the former. The rule has been lucidly explained by GAJENDERAGADKAR, J., in the following words : "This rule, according*



*to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases.”*  
*“Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim ejusdem generis.” In fact the latter maxim “is only an illustration or specific application of the broader maxim noscitur a sociis’. It must be born in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied.”*

41. This Court in *Pardeep Aggarbatti v. State of Punjab - 1997 (96) E.L.T. 219 (S.C.)*, considering Entry 16 of Schedule A of Punjab General Sales Tax Act, 1948, in paragraph 9 has laid down following :

*“9. Entries in the Schedules of Sales tax and Excise statutes list some articles separately and some articles are grouped together. When they are grouped together, each word in the Entry draws colour from the other words therein. This is the principle of noscitur a sociis.”*

12.4 The Hon’ble Customs, Excise and Gold Control Appellate Tribunal (CEGAT), while examining the then existing entry at sub heading 2103.11 as ‘sauces, ketchup and the like and preparations thereof’ in the case of *Hari Chand Shri Gopal Versus Collector of Central Excise Meerut [1996 (83) E.L.T. 281 (Tribunal)]*, has observed as follows :-

*“6. It is a legitimate rule of construction under the Doctrine of Noscitur A Sociis to construe words in an Act of Parliament with reference to the words found in immediate connection with them i.e. when two or more words which are susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general is restricted to a sense analogous to a less general. The expression ‘and the like’ had to be interpreted in the context of the items listed specifically to which this expression [qualifies].”*

12.5 In the case of *Express Hotels Pvt. Ltd. Vs. State of Gujarat (supra)*, in the context of definition of “charges for lodging” under the Gujarat Tax on Luxuries (Hotels & Lodging Houses) Act, 1977, which provided to ‘include charges for air conditioning, telephone, television, radio, music and extra beds and the like but do not include any charges for food, drink or other amenities’, an issue was raised before the Hon’ble Supreme Court that the expression ‘and the like’ in the definition of “charges for lodging” in Section 2(a) is vague and irrational and read with the explanation, which renders the decision of the State Government on what constitutes “lodging charges” final, is unreasonable restriction, violative of Article 19(1)(g). In this context, Hon’ble Supreme Court *inter-alia* held that the expression ‘and the like’ would require to be construed *ejusdem – generis*; that the genus or the class of items envisaged by the preceding words

not having been exhaustive of the genus or the class, the legislature, therefore, has supplied the words ‘and the like’ so as to bring in any other item of the same class of genus; that this by itself, is a clear guide for the exercise of the power.

12.6 In the case of State of Karnataka Vs. Balaji Computers (*supra*), the issue involved was whether parts of computer and parts of computer peripherals were liable to payment of turnover tax under the provisions of Karnataka Sales Tax Act, 1957 (KST Act, 1957), in the context of an entry in exemption notification. “Computers, computer peripherals, computer consumables and computer cleaning kits falling under Serial Number 20 of Part ‘C’ of Second Schedule” were exempted vide item 9 of the said exemption notification. The item indicated at Serial No. 20 of Part ‘C’ of second Schedule of the KST Act, 1957 reads as – “20(i) Computers of all kinds namely – main frame, mini, personal, micro computers and the like and their parts (ii) peripherals, that is to say – (a) All kinds of printers and their parts, namely DOT matrix, ink jet, laser, line, Line matrix and the like, (b) Terminals, scanners, multi Media kits, plotters, modern and their parts. The Hon’ble Court *inter-alia* held that ‘after the words ‘Computers of all kinds’, the word ‘namely’ is used setting out the various types of computers like main frame, mini, personal, micro computers and the like; that the words ‘and the like are indicating of the fact that various types of computers, similar to main frame, mini, personal and micro computers have been exempted from payment of tax under Section 8A of the KST Act.

12.7 Now, coming back to Tariff Item 1904 10 20, we observe that this Tariff Item covers ‘Paws, Mudi and the like’. The Project Profile of ‘Beaten Rice’ is given on the website of Technology Innovation Management & Entrepreneurship Information Service [a project in collaboration with the Government of India, National Science and Entrepreneurship Development Board (NSTEDB), Department of Science & Technology and Federation of Indian Chambers of Commerce & Industry (FICCI)]. As mentioned in the said Project Profile, ‘Beaten Rice’ is popularly known as ‘Poha’, ‘Chira’, ‘Chirva’ etc. The manufacturing process is described in the said Project Profile as - ‘to remove impurities and then soaked in hot water for 30-40 minutes; the soaked paddy is dried and roasted to make flakes; the flakes are passed through sieves to remove uneven and unwanted material and to segregate flakes of even size; finally they are packed’. The puffed rice is commonly known as Mudi, Mudhi, Murai, Murmure, Mamra etc. It has been described in the Explanatory Notes of HSN that puffed rice are prepared by subjecting the grains to pressure in a moist, heated chamber; that sudden removal of the pressure and ejection into a cold atmosphere causes the grain to expand to several times its original volume. Though the manufacturing process of Paws and Mudi are different and the nature of the resultant products is also different, the fact remains that both of these products are manufactured from ‘Rice’. Therefore, the expression ‘and the like’ needs to be interpreted in the context of the words ‘Paws’ and ‘Mudi’ appearing before it. The decisions cited by the appellant in Express Hotels Pvt. Ltd. case and Balaji Computer case are given in the context of specific entry and have no general application to an entry which is entirely differently worded. As such, the said expression ‘and the like’ appearing in Tariff Item 1904 10 20 would be applicable to products of ‘Rice’ only. In our considered opinion, therefore, the Popcorn manufactured by the appellant from Maize / Corn is not classifiable under Tariff Item 1904 10 20. As the product ‘Popcorn’ manufactured by the appellant admittedly do not fall under Tariff Item 1904 10 10

covering ‘Corn flakes’ or Tariff Item 1904 10 30 covering ‘Bulgar wheat’, we hold that the product ‘Popcorn’ manufactured by the appellant is rightly classifiable under Tariff Item 1904 10 90 as ‘Other’ under the sub heading 1904 10 covering ‘prepared foods obtained by the swelling or roasting of cereals or cereal products’.

13.1 At this stage, we may also refer to the relevant entry of Notifications issued under the CGST Act, 2017 and the GGST Act, 2017, prescribing rates of Goods and Services Tax as also entry of Notifications providing exemption from Goods and Services Tax. In Schedule III (9%) of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 (and similar Notification issued under the GGST Act, 2017), as amended, it is mentioned at Sr. No. 15 as follows :-

Schedule III – 9%		
S. No.	Chapter/ Heading/ Sub heading/ Tariff Item	Description of Goods
15	1904 [other than 1904 10 20]	All goods i.e. Corn flakes, bulgar wheat, prepared foods obtained from cereal flakes [other than Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki]

In Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, as amended, it is mentioned at Sr. No. 95 as follows :-

Sr. No.	Chapter/ Heading/ Sub-heading/ Tariff Item	Description of Goods
95	1904	Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki

13.2 The products of Tariff Item 1904 10 20 are excluded from Sr. No. 15 of Schedule-III of Notification No. 1/2017-Central Tax (Rate) providing for Goods and Services Tax Rate of 9% CGST + 9% SGST. The description of goods against the said Sr. No. 15 covers ‘all goods i.e. Corn flakes, bulgar wheat, prepared foods obtained from cereal flakes other than ‘Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki’. The very same products, which have been mentioned in the ‘description of goods’ as excluded from the coverage of said Sr. No. 15, are mentioned at Sr. No. 95 of Schedule to Notification No. 2/2017-Central Tax (Rate) providing exemption from Goods and Services Tax. All these products are related to Rice or Paddy and no other cereal.

13.3 It will not be out of place here to mention that the description of goods at Tariff Item 1904 10 20 in the CTA, 1975 mentions “Paws, Mudi and the like”. However, the

description of products mentioned against Sr. No. 95 of Schedule to Notification No. 2/2017-Central Tax (Rate) prescribing full exemption is different. The exactly same description of goods has been excluded from the coverage of Sr. No. 15 of Schedule – III of Notification No. 1/2017-Central Tax (Rate). The entry at Sr. No. 95 contains a specific list and the words “and the like” has not been used in this entry of Notification. Therefore, the products mentioned at Sr. No. 95 of Schedule to Notification No. 2/2017-Central Tax (Rate) only will be exempted from Goods and Services Tax. Therefore, as the product ‘Popcorn’ being manufactured and sold by the appellant do not find mention in the list of products described against Sr. No. 95 of Schedule to Notification No. 2/2017-Central Tax (Rate), the same would not be exempted from payment of Goods and Services Tax.

13.4 Here we may point out that the appellant has vehemently argued that the item “Popcorn” manufactured by him is classifiable under Tariff Item 1904 10 20 and therefore exempted, to which we do not agree. We have already held that “Popcorn” is correctly classifiable under Tariff Item 1904 10 90. But even if, for argument’s sake, it is agreed that the item “Popcorn” is covered under Tariff Item 1904 10 20, even then whatever items of Tariff Item 1904 10 20 are not covered by specific entry of Sr. No. 95 of Schedule to Notification No. 2/2017-Central Tax (Rate) will be covered under residual Entry No. 453 of Schedule – III of Notification No. 1/2017-Central Tax (Rate) chargeable to Goods and Services Tax of 18% [CGST 9% + SGST 9%].

13.5 As the product ‘Popcorn’ manufactured by the appellant is rightly classifiable under Tariff Item 1904 10 90 as ‘Other’, we hold it to be covered under Sr. No. 15 of Schedule – III of Notification No. 1/2017-Central Tax (Rate) attracting Goods and Services Tax of 18% [CGST 9% + SGST 9%].

### **Chapter Heading 1005**

14.1 Chapter Heading 1005 of the CTA, 1975, covering ‘Maize (corn)’ is divided under Tariff Item 1005 10 00 to cover ‘seed’ and Tariff Item 1005 90 00 to cover ‘Other’.

14.2 It is the submission of the appellant that the Chapter Heading 1005 of the CTA, 1975 covers Maize in ‘seed’ form and in any ‘other’ form than seed, without any restrictions, therefore, ‘Popcorn’ would be classified under Tariff Item 1005 90 00 of the CTA, 1975.

14.3 We observe that Chapter Note 1 of Chapter 10 (Cereals) of the CTA, 1975 reads as follows :-

*“1.(A) The products specified in the headings of this Chapter are to be classified in those headings only if grains are present, whether or not in the ear or on the stalk.*

*(B) The Chapter does not cover grains which have been hulled or otherwise worked. However, rice, husked, milled, polished, glazed, parboiled or broken remains classified in heading 1006.”*

Thus, the Chapter Note 1(A) provides that the products specified in the headings of Chapter 10 are to be classified in those headings **only if** grains are present, whether or not in the ear or on the stalk. Further, Chapter Note 1(B) provides that the Chapter 10 **does not cover grains which have been hulled or otherwise worked**. In the present case, as the Maize (corn) is processed to make Popcorn, it is clear that the Maize (corn) has been worked and the Maize (corn) do not remain in the ear or on the stalk. As such, in view of the Chapter Note 1(A) and (B) of Chapter 10 of the CTA, 1975, the product 'Popcorn' cannot be classified under Chapter 10 of the CTA, 1975.

14.4 In the case of Alladi Venkateswarlu Vs. Government of Andhra Pradesh (*supra*), in the context of the entry 66(b) of Schedule 1 of the Andhra Pradesh Central Sales Tax Act, 1957, Hon'ble Supreme Court held that the term "rice" as ordinarily 'understood in English language would include both parched and puffed rice. Hon'ble Supreme Court, therefore, held that Atukulu parched rice and muramaralu (puffed rice) are rice within the meaning of entry 66(b) of Schedule 1 of the Andhra Pradesh Central Sales Tax Act, 1957. Similarly, the judgement of the Hon'ble High Court of Gujarat in the case of State of Gujarat Vs. Vadilal Wafers Company (*supra*) pertains to interpretation of entry in Gujarat Sales Tax Act.

14.5 The appellant has submitted that merely because the Sales Tax Act is no more in existence and current issue of classification is under the GST Act, the interpretation in relation to classification under the earlier laws does not become *otiose per se* and relied upon the case of West Coast Waterbase Private Limited Versus State of Gujarat [Judgement dated 28.07.2016 in Special Civil Application No. 7171 of 2016] in support of this contention. On going through the said judgement of the Hon'ble High Court of Gujarat, we observe that in that case, the Deputy Commissioner of Sales Tax, vide Determination Order dated 18.06.2001, determined that 'Prawn Feed' would be covered within Entry No. 14 of Schedule – I to the Gujarat Sales Tax Act, 1969 concerning 'Cattle Feed'. The authorities continued to grant exemption on the basis of Determination Order dated 18.06.2001 even after introduction of the Gujarat Value Added Tax Act, 2003 (VAT Act), which contained similar exemption Entry No. 11 in the First Schedule referring to 'Cattle Feed'. When specific entry was added with effect from 31.03.2012 exempting 'Aquatic Feed', the authorities carried belief that prior to 31.03.2012, 'Aquatic Feed' invited VAT under residuary clause. Under these fact situations, Hon'ble High Court of Gujarat has held that the Assessing Officer was bound by the order of determination passed by the Deputy Commissioner and could not have taken a different view unless of course, there had been any material change.

14.6 In the present case, the classification of the product is required to be determined in accordance with the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and General Explanatory Notes of the First Schedule in view of Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and 1/2017-State Tax (Rate) dated 30.06.2017, which was not the case under the Andhra Pradesh Central Sales Tax Act, 1957, the Gujarat Sales Tax Act, 1969 or the Gujarat Value Added Tax Act, 2003. Therefore, the decisions in the case of Alladi Venkateswarlu (*supra*) and Vadilal Wafers Company (*supra*) are not applicable in the facts of the present case. Even the principle

laid down in West Coast Waterhouse Private Limited will not be applicable as no binding order of any authority in respect of the product “Popcorn” has been cited by the appellant.

### Chapter Heading 2008

15.1 Chapter Heading 2008 of the CTA, 1975 covers ‘Fruit, nuts and other edible parts of plants, **otherwise prepared or preserved**, whether or not containing added sugar or other sweetening matter or spirit, **not elsewhere specified or included**’.

15.2 As per Chapter Heading 2008 itself, the said heading covers fruit, nuts and other edible parts of plants, which are prepared or preserved otherwise than by any of the processes specified or included in other Chapters. This is also clarified in the Explanatory Notes in the Harmonised System of Nomenclature as follows :-

*“This heading covers fruit, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.”*

15.3 As already discussed, ‘prepared foods obtained by the swelling or roasting of cereals or cereal products’ are covered under Chapter Sub Heading 1904 10. As the ‘Popcorn’ is prepared by the appellant by the process of swelling or roasting of Maize (corn), which process is specifically covered under Chapter Sub Heading 1904 10, the same would not be covered under Chapter Heading 2008.

15.4 The appellant has relied upon the decisions in the case of Agro Tech Foods Ltd. Versus Commissioner of Customs, JNCH, Nhava Sheva [2016 (337) E.L.T. 436 (Tri. – Mumbai)] and in the case of Shah Nanji Nagsi Exports Private Ltd. [2019 (24) G.S.T.L. 317 (A.A.R. – GST)] in support of the contention that ‘Popcorn’ would be classified under Chapter Heading 2008. We have gone through these decisions. In the case of Agro Tech Foods Ltd. (*supra*), it has been mentioned that the imported goods “Act-II Mocrowave Popcorn” were ready to use Popcorn mixed with butter, **which needed to be microwaved** for direct consumption. In the case of Shah Nanji Nagsi Exports Private Ltd. (*supra*), it has been mentioned that the applicant was engaged into import of maize of popcorn variety (Popcorn maize); that after import, this popcorn maize was fumigated and cleaned prior to packing; that this processed clean popcorn maize, along with edible oil and salt was mixed together and packed in a pouch of fixed weight of say 350 gram, which were sold to **restaurant owners and small popcorn vendors, who ultimately prepared ready to eat instant popcorn for customers**. Thus, in both these cases relied upon by the appellant, the nature of products involved was different than the product involved in the present case inasmuch as the products involved therein were maize (corn) with butter / edible oil and salt, which were not yet roasted or swelled. Those products were required to be microwaved by the customers before consumption or were required to be prepared by the restaurant owners and small popcorn vendors for sale to the customers as ready to eat instant popcorn. On the other hand, the product ‘J.J.’s brand Popcorn’ is prepared by the appellant themselves by heating raw corn – grain in an electric machine / oven at 180 / 200 degree temperature, which make such corn into puffed corn / popcorn, which are mixed with Edible Oil, Salt and Turmeric Powder and

packed in a plastic pouch in quantity of 15 gms. Therefore, the decisions relied upon by the appellant are not applicable to the product 'J.J.'s brand Popcorn' manufactured and sold by them as the products considered in those decisions are different.

### **Chapter Heading 2106**

16.1 Chapter Heading 2106 of the CTA, 1975 covers the 'food preparations not elsewhere specified or included'.

16.2 It is evident from the description of the Chapter Heading 2106 itself that this is a residuary Chapter Heading for 'food preparations'. Only those 'food preparations' are covered under Chapter Heading 2106, which are not specified or included elsewhere. As already discussed, the product 'J.J.'s brand Popcorn' are covered under Chapter sub heading 1904 10 as 'prepared foods obtained by the swelling or roasting of cereals or cereal products', the said product is not covered by Chapter Heading 2106 as 'food preparations not elsewhere specified or included'.

17. In the case of Commissioner of Central Excise, Bhopal Versus Minwool Rock Fibres Ltd. [2012 (278) E.L.T. 581 (S.C.)] cited by the appellant, Hon'ble Supreme Court held the goods to be classifiable under sub heading 6807.10, *inter-alia* observing that when entries are equally applicable, an entry which is beneficial to the assessee requires to be applied; and that a tariff heading, based on composition of goods, is also specific heading like a heading based on commercial nomenclature. In the present case, the product 'J.J.'s brand Popcorn' is appropriately classifiable under Tariff Item 1904 10 90 and not under other Chapter Heading / sub heading / Tariff Items suggested by the appellant, due to reasons elaborately discussed herein above. Therefore, the question of classification under the entry which is beneficial to the assessee, does not arise in the present case.

18. In view of foregoing, we confirm the Advance Ruling No. GUJ/GAAR/R/03/2020 dated 11.03.2020 of the Gujarat Authority for Advance Ruling and reject the appeal of the appellant M/s. Jay Jalaram Enterprises.

**(J. P. Gupta)**  
Member

**(Ajay Jain)**  
Member

Place : Ahmedabad  
Date : 04.09.2020