GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	

ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2021/31
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/24)

Date : 02.11.2021

Name and address of the appellant	:	M/s. Shree Swaminarayan Foods Pvt.Ltd., Survey No.88, P2 Rajkot Bhavnagar Highway, Jasdan Rajkot – 360 060
GSTIN of the appellant	:	24AAPCS5408N1ZU
Advance Ruling No. and Date	:	GUJ/GAAR/R/81/2020 dated 17.09.2020
Date of appeal	:	15.10.2020
Date of Personal Hearing	:	22.01.2021
Present for the appellant	:	Advocate Apurva N Mehta

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Shree Swaminarayan Foods Pvt. Ltd. (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/81/2018 dated 17.09.2020.

3. The appellant has raised the following question for advance ruling in the application for Advance Ruling filed by it.

> *"Whether any tax is payable in respect of sale of Fryums manufactured by the applicant? And if answer is in affirmative, the rate of tax thereof"?*

4. The appellant has submitted that they are engaged in the business of manufacturing and supply of Fryums and different type of Namkeen/Farsan. Fryums are "Papad" of different shapes and sizes in ready to eat form. **Fryums prepared from maida, in un-**

fried form, is purchased by the appellant from the market as raw material. The same is first fried and various masala powders are applied and packed in small packets for being sold in market. The aforesaid fryums are sold by the applicant in different shapes and sizes such as alphabets, rings, stars etc.

5. The appellant has submitted that it is a settled legal position that Fryums are papad and since Papad is tax free/exempt as per tariff item 19059040, the Fryums manufactured and sold by the applellant would also be exempt from payment of any tax. Entry at S.No. 96 of the Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017 speaks of 'Papad by whatever name called, except when served for consumption'; that the entry makes no distinction between fried or un-fried papad and even after frying, it still retains its original character of that of a papad; that the term "by whatever name called" would include within its sweep all types of papad known by whatever name in the common parlance and the only category of papad excluded by Entry at Sr.No. 96 is when it is served for consumption; that it is a settled legal position that served for consumption means served in hotel, eating house and meant for consumption at the place itself.

6. The Gujarat Authority for Advance Ruling (herein after referred to as 'the GAAR'), vide Advance Ruling No. GUJ/GAAR/R/81/2020 dated 17.09.2020, *inter-alia* observed that 'Papad' has not been defined or clarified under the Customs Tariff Act, 1975, the CGST Act, 2017, or the Notifications issued under the CGST Act, 2017/ GGST Act, 2017/ IGST Act, 2017. It is well settled principle of interpretation of statute that the word not defined in the statute must be construed in its popular sense, meaning 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it'. It is to be construed as understood in common language. **It is also observed that in market, Papad commonly are sold in ready to cook condition and not "fried" or "baked" form whereas appellant's product are sold in market as fried Fryums in ready to eat and not ready to cook condition.** In terms of Gujarati language, it can be said that cooked or fried Fryums are served as "Farsan" and not as "Papad", whereas cooked or fried Papad is served as only "Papad". Hence 'Papad' even after roasting or frying are known and used as 'Papad' only whereas the fried Fryums with masala are known as "Fryums" only. Therefore, in commercial or trade parlance also, the 'fried Fryums with masala' cannot be said to be known as 'Papad'. Both the products are different and have their individual identity. Accordingly, in common parlance test, the appellant's product i.e. "different shapes and sizes of fried fryums" is not "Papad" but is "Fryums". The applicant himself has mentioned the fact in their application that they are engaged in the manufacture of fried Fryums with masala. This facts indicate that applicant's product in market are called as Fryums. Thus, Heading 2106 is an omnibus heading covering all kind of edible preparations, not elsewhere specified or included. Chapter Note 5 provides an inclusive definition of this heading and covers preparations for use either directly or after processing, for human consumption. Chapter Note 6 pertaining to Tariff Item 2106 90 99 also provides inclusive definition and products mentioned therein are illustrative only. In view of the foregoing, the GAAR ruled as follows :-

Question: whether any tax is payable in respect of sale of Fryums manufactured by the applicant? And if the answer is in affirmative, the rate of tax thereof?

Answer: The product 'fried Fryums' manufactured and supplied by applicant is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975. Goods and Services Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the product 'fried Fryums' as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate), dated 30-6-2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017.

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

8. During the course of personal hearing held on 22.01.2021, the appellant reiterated the submissions made in the appeal dated 15.10.2020.

9. The appellant in the ground of appeal has submitted that they are in the business of manufacturing and trading of "Papad" of different shapes and sizes in ready to eat form. The same is first fried and various masala powders are applied and packed in small packet for being sold in the market. The appellant submits that papad whether in ready to cook /un-fried form or ready to eat /fried form remains papad only. Even after frying, it still retains its original character of papad. The Papad, turns out to be a papad when the dough is moulded and given the shape, usually a palm size round or may be smaller or bigger. The advent of technology innovation and different demand of different class of customer Papad comes in different shapes and sizes. The dough remains the same with minor variations in proportion of ingredients and the dough is moulded in the desired shape and size may be round, square, semi circle, hollow circle with bars in between or may be square with bars in between intersecting each other or may be of the shape of any instrument, equipment, vehicle, aircraft, animal, etc. The different shapes and sizes are obtained with the help of a die and there is no difference in either the ingredients used or in the process of manufacture.

10. The appellant has submitted that the principal raw materials for their papad products are rice flour, corn flour, wheat flour, superfine wheat flour, cereal flour, tapioca starch, potato starch, salt, water and flavor as the case maybe. Similar raw-materials including pulses, salt, water etc. are used for making papad.

11. The appellant has submitted that as per their understanding their product in question i.e. Papad of different shapes and sizes papad in ready to eat condition seems squarely eligible to be classified under Chapter Tariff Heading –1905 and covers under Entry number 96 of Notification No. 2/2017 –Central Tax (Rate) dated 28/06/2017 which exempts the supplies from the levy of tax, reads as under:-

96.	***1905***	***Papad, by whatever name it is known, except when served for consumption***

12. The appellant has further submitted that people in different parts of the country know Papad by different names and forms but irrespective of such names and forms a

Papad remains papad and is exempted from payment of tax under the GST Act. The aforesaid entry does not make any distinction between fried or un-fried papad. The only category of papad excluded by Entry at Sr. No. 96 is when it is served for consumption. It is settled legal position that served for consumption means served in hotel, eating house and meant for consumption at the place itself which is not the case in present matter. [Reference of a determination order dated 20.08.2006 in the case of M/s. Gaylord Restaurant.]

13. The appellant has submitted that in GST regime, for determination of classification of goods, the Custom Tariff Act, 1975 is relevant and the classification in Customs is driven by the ingredients used in the products. Predominant content in the product helps in the determination of the classification of the products. In the case of ***Manilal Commodities Pvt. Ltd. Vs. Collector of Customs [1992-59-ELT-189-Tribunal]***, the Honourable Tribunal was of the view that the classification on the basis of predominant contents is generally accepted as proper test. Further, Honourable Allahabad High Court in the case of ***Commissioner of Customs, C.G.O. Vs. Sonam International [2012-275-ELT-326-ALL]*** upheld that assessment of goods with regard to payment of customs duty is to be made based on contents involved. The Chapter Notes in the Customs Tariff also prescribed the contents or ingredient of the products in order to include or exclude specific products within a given Chapter Heading. Moreover, Explanatory Notes to Chapter 19 of Harmonized Commodity Description & coding system by World Customs Organization specifies that Chapter 19 covers preparation, generally used for food, which are made either directly from the cereals of Chapter 10, from the products of Chapter 11 or from food flour, meal and powder of vegetable origin of other Chapters.

14. The appellant has submitted that considering the ingredients used and the process followed for manufacture of product read with Chapter Headings and Tariff entries, the products manufactured by them should merit classification under tariff heading 1905 90 40 as 'PAPAD'.

15. The appellant has placed reliance on the Ruling passed by the ***Authority for Advance Rulings, Tamilnadu*** in ***Subramani Sumathi – Order No. 7/AAR/2019 Dt:-22/01/2019*** wherein the issue of classification of ***PAPAD made of maida*** was for consideration before Advance Ruling Authority and it has been held therein that the product in question was eligible to be classified as PAPAD under ***Tariff Heading 19050540.***

16. The appellant has submitted that today PAPAD does not resemble the same age old traditional round shaped papad anymore. Today, due to huge change in the market demand, huge change in the taste buds of the masses and huge change in the technology, they are able to bring some change in the shapes and sizes of traditional papad and the same is accepted and appreciated in the market. Due to advancement of technology, it has become possible to bring change / modification in the mindset of the people also that now PAPAD does not resemble the traditional round shape but now PAPAD can be in any desired shape and size. Considering the same, the rules of viewing a product and interpretation about its classification also need to be modified and upgraded with the overall advancement of commercial scenario. Hon'ble Courts, including Honourable Supreme Court, have resorted

to encouragement of development of principles of interpretation according to the changing scenario and placed reliance on the following judgments:

- In the case of ***State of Punjab Vs. Amritsar Beverages Ltd. –[2006] 147 STC 657 (SC)***, Honourable Supreme Court observed that –*Creative interpretation had been resorted to by the court so as to achieve a balance between the age old and rigid laws on the one hand and the advanced technology, on the other. The judiciary always responds to the need of the changing scenario in regard to development of technologies. It uses its own interpretative principles to achieve a balance when Parliament has not responded to the need to amend the statute having regard to the developments in the field of science*.

- In the case of ***M/s. J. K. Cotton Spinning and Weaving Mills Ltd. Vs. Union of India –[1988] 68 STC 421 (SC)***, *relying upon the observation made by Apex Court itself in another judgment in the case of* ***Senior Electric Inspector v. Laxminarayan Chopra [1962] 3 SCR 146***, Honourable Supreme Court observed that - *in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made and, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations.*

- In the case of ***M/s. Chaudhary Tractor Company Vs. State of Haryana –[2007] 8 VST 10 (P&H)*** wherein it has been observed by Honourable High Court that -*while construing the provisions of a statute, the principle of 'updating construction' should be adopted. It means that 'a construction that continuously updates' the working of an on-going Act has to be followed. In other words, it means that 'in its application on any date, the language of the Act though necessarily embedded in its own time is nevertheless to be construed in accordance with the need to treat it as current law*.

17. The appellant has submitted that traditional PAPAD is known by different nomenclature in different parts of the country e.g. PAPAD, PAPPAD, PAPPADAM, APLAM, KHICHIYA, etc. Similarly, the modern day PAPAD with different shapes and sizes is also known and recognized by different nomenclature in different parts of the country e.g. PAPAD, FRYUMS, BHUNGLA, NADDA, GONGO, PONGA, GOLD FINGER, WHITE FINGER, FINGER, NALI, etc. Specifically keeping in mind the different nomenclature given to same commodity in different parts of the country and to avoid probable litigations, the entry relating to PAPAD has been deliberately worded as "PAPAD, BY WHATEVER NAME IT IS KNOWN" and not as only "PAPAD".

18. The appellant has submitted that for various shapes and size of Papad, one more common nomenclature used is "FRYUMS" though FRYUMS is a registered brand name of TTK Healthcare Ltd. and not the name of any of product of PAPAD, would be eligible to be considered as and falling under the entry of PAPAD or not has been very well settled far back by Honourable Supreme Court in the case of ***Shiv Shakti Gold Finger Vs. Assistant Commissioner, Commercial Tax, Jaipur –(1996) 9 SCC 514*** wherein Honourable Supreme Court has clearly observed and held that irrespective of the shape of

PAPAD and irrespective of ingredients used, the PAPAD still remains PAPAD. Further, in the case of ***State of Karnataka Vs. Vasavamba Stores – [2013] 60 VST 19 (Karn.)***, Honourable Karnataka High Court has clearly dealt with the issue whether Fryums in an uncooked / un-fried form sold would qualify as PAPAD and it has been held by Honourable Karnataka High Court that FRYUMS fall under the entry of PAPAD irrespective of their shapes and sizes and irrespective of the ingredients used. In this matter, M/s. TTK Healthcare Ltd. was also one of the petitioners. In the said judgment, the Hon'ble Karnataka High Court relied upon the judgment of Hon'ble Supreme Court in the case of Shiv Shakti Gold Finger v/s Assistant Commissioner, Commercial Tax [1996] 9 SCC 514 whereas the judgment of Hon'ble Supreme Court in the case of Commissioner of Commercial Tax v/s TTK Health Care Ltd. [2007] 7VST 1 (SC) came to be distinguished. The applicant has submitted that the Hon'ble Supreme Court in the case of TTK Health Care Ltd. (Supra) has held that Fryums are not cooked food. The said decision is not applicable to the present case as the issue herein is not as whether Fryums are cooked food or not but is as to whether Fryums are papad or not.

19. In the case of ***M/s. Avadh Food Products Vs. State of Gujarat –First Appeal No.1/2015 read with Rectification Application No. 31/2015 in First Appeal No. 1/2015 Dt;-03/07/2015 reported in 2015 GSTB –II –405*** and in ***M/s. Swethin Food Products Vs. State of Gujarat –2016 GSTB –I 296***, Honourable Tribunal has considered the issue about classification of PAPAD of different shapes and sizes and clearly held that Fryums are nothing but PAPAD falling under entry 9(2) in schedule I to the GVAT Act and exempt from payment of tax. The determination order passed u/s. 80 of the Gujarat Value Added Tax Act, 2003 in the cases of ***Jay Khodiyar Agency (2007-D-98-103 Dt:-11/09/2007) and Kansara Trading Co. (2011-D-356-357 Dt:-11/02/2011)*** wherein FRYUMS have been held to be falling under entry 9(2) in Schedule I to the GVAT Act as PAPAD. The determination order in the case of Jay Khodiyar Agency was in connection with ready to cook / un-fried Fryums whereas that in case of Kansara Trading Co. was regarding ready to eat / fried Fryums.

20. The appellant has submitted that merely because the law has changed from VAT to GST, the classification should not have any impact so far when the entries remain similar if not exactly the same. Under the erstwhile VAT Act if a product is considered as PAPAD then the product does not seize to be a PAPAD merely because VAT Act is no more in existence and has been replaced by GST Act. The said principle has been laid down by Honourable High Court that when there is no material change in the entries, the classification adopted in earlier law should continue to prevail and accepted. {***West Coast Waterbase Pvt. Ltd. Vs. State of Gujarat –(2016) 95 VST 370 (Guj.)}***

21. The appellant has submitted that the decision of Honourable Karnataka High Court in ***State of Karnataka Vs. Vasavamba Stores –[2013] 60 VST 19 (Karn.)*** has been carried by State of Karnataka before Honourable Supreme Court. However, as per their knowledge and subject to verification, Honourable Supreme Court has neither granted any stay on operation and execution of the decision of Honourable Karnataka High Court. As per settled legal position, till a judgment is stayed or reversed, it is the authority prevailing and the judicial discipline demands that the said judgment be honoured and followed. Reliance has been placed on the case law of ***Collector of Customs, Bombay Vs. Krishna Sales (P)***

Ltd. –AIR 1994 SC 1239 and ***Kalyani Global Engineering Pvt. Ltd. Vs. Assistant Commissioner of Commercial Tax –SCA No. 7391/2016 Dt:-04/08/2016.***

22. The appellant has further submitted that in the present case, PAPAD is a generic expression which would include different types of PAPAD irrespective of its form, shape, size and ingredients. Even the commercial market which deals with the products in question recognizes it as PAPAD. So, the common parlance test as well as the user test leads to the conclusion that the products in question are nothing but PAPAD of different shapes and sizes. In this regard refer to the decision of Honourable Supreme Court in the case of ***Commissioner of Commercial Tax, UP Vs. A. R. Thermosets (P) Ltd. –AIR 2016 SC 321 : (2016) 94 VST 258 (SC).***

23. The appellant has submitted that a particular classification once accepted and adopted for years in a particular law cannot be change merely on account of repeal of said Act and replaced by new Law unless there is material and substantial change in the entry to depart from the previous classification which was adopted earlier. In the present case, the products in question have been classified as PAPAD since many years and there is no substantial change in the entry under the GST Law as compared to erstwhile Gujarat Value Added Tax Act, 2003. So, there appears to be no valid reason for departing from the classification adopted, accepted and followed for years. ***Ponds India Ltd. Vs. Commissioner of Trade Tax, Lucknow –(2008) 15 VST 256 (SC)***.

24. The appellant has submitted that there has to be consistency in law and if the same issue of classification is dealt with in different manner with every change of law without any substantial change in the entry, the commercial market dealing with the particular commodity will be in tumultuary and the same shall be deleterious to public at large. The principle of finality of litigation is based on a sound firm principle of public policy. In absence of such principle, great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of res-judicata has been evolved to prevent such anarchy. The judgement of the court and particularly the Apex Court of country cannot and should not be unsettled and ignored. The doctrine of stare decisis promotes a certainty and consistency in judicial decision and this helps in the development of the law. **{Union of India and Ors. Vs. S.P.Sharma and Ors.-(2014) 6 SCC 351: MANU/SC/0191/2014}**

25. The appellant has submitted that they deal with the product in the market and disturbance in the classification may lead to an anomalous situation for the assessee having business throughout the country. 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 {***Commissioner of Central Excise, Bhopal Vs. Minwool Rock Fibers Ltd. –2012 (278) ELT 581}.***

26. The appellant has further submitted that there is no such product as “FRYUMS”. The word “FRYUMS” is a brand name of the product manufactured and marketed by TTK Healthcare Ltd. which means that the product which is sold by TTK Healthcare Ltd. in the name and style of “FRYUMS” is sole right and authorization of TTK Healthcare Ltd. only. Thus, M/s. TTK Healthcare Ltd. owns the right to sell PAPAD manufactured by it under

the brand name of "FRYUMS". So, "FRYUMS" is not a distinct type of product but it is PAPAD sold under the brand name of "FRYUMS" owned by TTK Healthcare Ltd. Hence, for the purpose of classification, the issue cannot be that whether a product is "FRYUMS" or PAPAD or whether FRYUMS can be considered or classified as PAPAD because there is no such product with the name of FRYUMS and hence there remains only one product i.e. PAPAD.

27. The appellant has submitted that Honourable Authority for Advance Ruling (AAR) has passed an order in the case of ***M/s. Sonal Products on 22/02/2019*** wherein it has been held that "un-fried Fryums" falls under Tariff Heading 21069099 and taxable at 18%. In the said order it has been recorded that "thus, the appellant themselves have submitted that fried, salted or spiced Fryums are commonly known and used as Namkin". The appellant has submitted that in their case, this is neither their case nor submission.

28. Further, the appellant has submitted that the ruling of Hon'ble AAR given in the case of M/s. Sonal Product cannot be applied in the appellant's case due the reasons and grounds as stated below :

(i) AAR has referred and relied upon the judgment of Honourable Customs Excise and Gold Appellate Tribunal (CEGAT) in the case of M/s. T.T.K. Pharma Ltd. Vs. Collector of Central Excise – 1993 (63) ELT 446 (Tribunal). The said judgment cannot be relied upon as a precedent in order to classify PAPAD sold by them because in the said judgment the entry for consideration before Honourable CEGAT was "Papad, Idli-Mix, Vada-Mix, Dosa Mix, Jalebi-Mix, Gulabjamun-Mix or Namkeens such as Bhujia, Chabena". Hence at the relevant time, PAPAD and NAMKEEN were in same entry. So, there was no occasion for Honourable CEGAT to consider and differentiate between PAPAD and NAMKEEN. Subsequently, the entries were changed and then came into existence two different entries for PAPAD and NAMKEEN.

(ii) The AAR has relied upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Commercial Tax, Indore Vs. M/s. TTK Healthcare Ltd.- 2007 (211)ELT 197 (SC). It is to submit that the issue for consideration before Honourable Court was whether FRYUMS would be classified under the entry of "COOKED FOOD" or "RESIDUARY ENTRY". Thus, there was no occasion for Honourable Supreme Court to consider the issue of classification of FRYUMS under entry of PAPAD. The Hon'ble Karnataka High Court in the case of Vasavamba Stores (supra) has rightly observed that the Apex Court has nowhere stated that fryums are not papad. Hence, Honourable AAR has completely erred in placing reliance upon the said judgment in the case of Sonal Products.

(iii) The AAR had not taken into consideration the determination order passed u/s 80 of Gujarat Valuation Added Tax Act, 2003 on which reliance was placed by the applicant.

(iv) The ruling has relied upon common parlance test to conclude the classification and manner of determining classification has undergone complete

change and common parlance test cannot be the sole test for determining classification of a product.

(v) The product in question is squarely eligible to be classified under 1905 90 40 as PAPAD while 2106 is residuary entry which itself says that Food preparations not elsewhere specified or included. So, tariff heading 1905 90 40 is specific heading for classification of products of appellant. This aspect has not been considered in the decision of Sonal Product. Amongst numerous judgments on this principle, it would be profitable to refer Bradma of India Ltd. Vs. State of Maharashtra – 140 STC 17 (SC) wherein it has been held that - A specific entry in the schedule to a taxing statute would override a general entry. But, resort has to be had to the residuary heading only when a liberal construction of the specific heading cannot cover the goods in question. It is well settled that if there are two entries—one general and the other special, the special entry should be applied for the purpose of levying tax. The general entry should give way to the special entry. The *ratio decidendi* in the case of Mauri Yeast India Pvt. Ltd. Vs. State of UP – 2008 (225) ELT 321 (SC) is that – If there is conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred.

(vi) The another principle of rule of interpretation and classification is *noscitur a sociis* which means that meaning of a word is to be judged by the company it keeps. Applying the said principle while classifying the product of the present appellant, by no means it can be said that it is eligible to be classified under heading 2106 because by no stretch of imagination the product of the appellant can be equated with either "Misthan" or "Mithai" or "Namkeen" or "Chabena" or "Bhujia". Thus, heading 2106 90 99 even as general entry is not capable of including the product of the appellant and 1905 90 40 is the only entry and most specific entry where the product manufactured by the appellant would fall.

29. The appellant has submitted that they would like to counter the observations, findings and conclusions arrived at by the learned AAR in the case of the present appellant on the following grounds:

(i) The appellant has never referred to its products as FRYUMS but mentioned its product as either PAPAD or PAPAD product. They have submitted that there is no such word as FRYUMS but it is the brand name of TTK Healthcare Ltd. given to its products similar to their product. Hence, the observation of the learned AAR is erroneous as far as mentioning and recognizing the product as UNFRIED FRYUMS.

(ii) The decision of ***T.T.K. Pharma Ltd. Vs. Collector of Central Excise –1993 (63) ELT 446 (Tribunal)*** is not applicable in the appellant's case because the consideration for entry before Hon'ble CEGAT was, "***Papad, Idli-Mix, Vada-Mix, Dosa-Mix, Jalebi-Mix, Gulabjamun-Mix or Namkeens such as Bhujia, Chabena***". In the relevant time Papad and Namkeens were in same entry. Subsequently, the entries were changed and then came into existence two different

entries for PAPAD and NAMKEEN. The said judgement cannot be relied upon as a precedent in order to classify PAPAD sold by the appellant because the entry in question before Honourable CEGAT and entry in question in present application of the appellant are completely different and more specifically when Honourable CEGAT had no occasion to consider two entries separately as PAPAD and NAMKEEN were covered under same entry.

(iii) The judgment of Honourable Supreme Court in the case of ***Commissioner of Commercial Tax, Indore Vs. M/s. T.T.K. Healthcare Ltd. –2007 (211) ELT 197 (SC)*** is not applicable in the present case as such at no point of time there was any question before Honourable Supreme Court as to whether the product FRYUMS could be considered as PAPAD or not. The issue for consideration before Honourable Court was whether FRYUMS would be classified under the entry of "COOKED FOOD" or "RESIDUARY ENTRY". Thus, there was no occasion for Honourable Supreme Court to consider the issue of classification of FRYUMS under entry of PAPAD.

(iv) The observation that shape of appellant's product is different from PAPAD and hence cannot be considered as PAPAD is not true and correct and most importantly not well founded. Further, submitted that the observation of AAR that when a customer asked for PAPAD shopkeeper gives traditional round shape PAPAD but it is equally true that when asked FANCY Papad shopkeeper gives appellant like product. Therefore, it cannot be said that products of the appellant do not pass the common parlance test. Further, applicant has submitted that one of the common parlance test is that in the marriage functions and social functions products similar to that of appellant are served along with traditional round shape PAPAD. Thus, the persons using this product do not differentiate between the products similar to appellant and traditional round shape PAPAD because both the products are known, understood, recognized and used as PAPAD.

(v) The observation of GAAR that looking to the photograph provided by the appellant it is evident that the shape of products of appellant and shape of PAPAD is different and hence both are distinct commodities. The appellant has submitted that they fail to understand as to how can the shape of a product be determining factor for the purpose of classification or whether it has to be its basic ingredients, characteristics and use to be taken into consideration for classification. If for classification of product the shape of the product is accepted then the basic principle of classification would be required to be rewritten and majority of the items will be required to be reclassified. Therefore, basis adopted by the learned GAAR is unjustifiable and most importantly far from the basic principles of classification.

(vi) The observation of GAAR that the judgment of Honourable Supreme Court relied upon by the appellant in the case of ***Shiv Shakti Gold Finger Vs. Asst. Commissioner, Commercial Taxes, Jaipur –(1996) 9 SCC 514*** is not applicable to the appellant case. The principal laid down in the said judgment squarely applies to the case of appellant.

(vii) The observation of the learned GAAR that as the SLP before Honourable Supreme Court is preferred against the judgment of Honourable Karnataka High Court in the case of ***State of Karnataka Vs. Vasavamba Stores –(2013) 60 VST 19 (Karn.).*** This judgment cannot be taken into consideration leads to one presumption that this judgment is directly and squarely applicable to the case of the appellant.

(viii) The AAR has conveniently avoided mentioning the following judgment: Collector of Customs, Bombay Vs. Krishna Sales (P) Ltd.- AIR 1994 SC 1239 and M/s. Kalyani Global Engineering Pvt. Ltd. Vs. Asstt. Commissioner of Commercial Tax-SCA No. 7391/2016 datd 04.08.2016.

(ix) The observation of the learned GAAR that the judgments of GVAT Tribunal and orders u/s. 80 of the GVAT Act which were submitted and relied upon by the appellant are not applicable as they have been delivered under the GVAT Act which is not in existence anymore and they are not related to First Schedule of Customs Tariff is completely unlawful and far from the settled principles of law in as much as classification cannot be disturbed or changed merely because the governing law has changed. It is very well settled principle of law that if the entries are similar in earlier law and current law then merely because there is change in law classification cannot be disturbed. Under GVAT Act, the entry was Khakra, papad and Papad Pipes, considering this entry, the GVAT tribunal has held that the product similar to that of appellant to be eligible for classification under said entry as PAPAD. It is evident that there is no material change in the entry under the GVAT Act and GST Act. Thus the judgments and determination orders passed under the GVAT Act and relied upon by the appellant, being on the same products and being in relation to similar entry, are required to be followed. The AAR has not referred the judgement of Hon'ble High Court of Gujarat in the case of West Coast Waterbase Pvt. Ltd. Vs State of Gujarat- 2016 (95) VST 370(Guj.).

(x) The learned AAR has held that the judgment relied upon by the appellant are inapplicable on the ground that they belong to earlier laws i.e. VAT Act and also they are not in relation to First Schedule of Customs Tariff and on the other hand the learned AAR places reliance upon the judgments which are under the Sales Tax Act which was prior even to VAT Act and on the Tariff entries prior to 2005 i.e. old entries.

(xi) The observation of the learned GAAR that the ***judgment of Honourable Supreme Court in the case of Commissioner of Commercial Tax, UP Vs. A. R. Thermosets*** *(P)* ***Ltd. –AIR 2016 SC 321*** is not applicable because the commodity in the said judgment is different from commodity of appellant. The appellant has submitted that the judgment of Hon'ble Supreme Court was relied upon by them on the principle of interpretation laid down by Hon'ble Supreme Court and not on the commodity. In this case Hon'ble Supreme Court held that narrow interpretation as sought by Revenue could not be done because bitumen is a generic expression which would include different types of bitumen in any form. Similarly, in the present case of the appellant, PAPAD is a generic expression which would include different types of PAPAD irrespective of its form, shape, size and ingredients.

(xii) The GAAR has placed reliance on the decision of Madhya Pradesh Advance Ruling Authority in Alisha Foods. The said ruling does not apply to the case of appellant because the product referred therein and answered therein is FRYUMS while appellant has never mentioned that its product is FRYUMS but mentioned as different shapes and sizes of PAPAD.

(xiii) The learned GAAR has completely misconstrued the principles of classification in sheer ignorance of the submissions of the appellant. The appellant has submitted that the first and foremost rule of interpretation and classification is that when a product is eligible to be classified under specific entry then classification under general entry should not be preferred. It is equally settled that resort to residual entry has to be made with extreme caution and that too only when no other provision expressly or by necessary implication applies to the goods in question. The appellant's product is papad which is exempted from payment of GST in view of Entry at S. No. 96 of Not. No. 02/2017-CT (Rate) dated 28.06.2017. Thus if the same is not considered as "papad" only then a resort can be made to the heading 2106 given at Sr. No. 23 of Schedule III of Not. No. 01/2017-CT Rate) dated 28.06.2017 which is general in nature as it includes food preparations not elsewhere specified or included. It is submitted that in case of present appellant, the product is squarely eligible to be classified under 1905 90 40 as PAPAD while 2106 is residuary entry which itself says that Food preparations not elsewhere specified or included. So, tariff heading 1905 90 40 is specific heading for classification of products of appellant. In this regard, the appellant has placed reliance on the decision of ***M/s. Bradma of India Ltd. Vs. State of Maharashtra –140 STC 17 (SC) and Mauri Yeast India Pvt. Ltd. Vs. State of UP –2008 (225) ELT 321 (SC).***

(xiv) The appellant has submitted that another principle of rule of interpretation and classification is *noscitur a sociis* which means that meaning of a word is to be judged by the company it keeps. Applying the said principle by no means it can be said that appellant's product is eligible to be classified under heading 2106 because by no stretch of imagination the product of the appellant can be equated with either "Misthan" or "Mithai" or "Namkeen" or "Chabena" or "Bhujia". Thus, heading 2106 90 99 even as general entry is not capable of including the product of the appellant and 1905 90 40 is the only entry and most specific entry where the product manufactured by the appellant would fall.

(xv) The various issues and decisions relied upon by the appellant have neither been controverted nor distinguished nor dealt with and no reasons have been advanced for the same. As such the learned AAR is completely silent on the issue regarding creative interpretation in light of advancement of technology and advancement of market trends, not considered the decision of Advance Ruling Authority of Tamilnadu in the case of Subramani Sumathi Order No. 07/AAR/2019 dated 21/01/2019 which was relied upon by the appellant; the decision of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bhopal Vs Minwool Rock Fibres Ltd. -2012 (278) ELT 581 and decision of CESTAT in the case of

Commissioner of Central Excise, Banglore Vs. T.T.K. Pharma Ltd. –2005 (190) ELT 214 (Tribunal) relied upon by the appellant was not discuss.

30. The appellant has submitted that Considering the overall facts and circumstances of the case vis-à-vis the entries in question and the settled law on the subject, the product i.e. PAPAD of different shapes and sizes manufactured and supplied by the appellant, irrespective of their shapes, sizes, ingredients, form and nomenclature is entitled to be classified under the ***Tariff Heading No.***1905 and more precisely ***1905 90 40*** as "***PAPPAD by whatever name it is known, except when served for consumption***" as specified at serial number 96 under Notification No.2/2017 –Central Tax (Rate) Dt:-28/06/2017 and thus attracts NIL rate of tax under the IGST, CGST and SGST.

31. The appellant has prayed the following:

[1] The impugned order dated 17/09/2020 passed by the learned Gujarat Authority for Advance Ruling, may kindly be quashed and set aside.

[2] It may kindly be held that products manufactured and supplied by the appellant would be classifiable as PAPAD and PAPAD Products as per Entry at Sr. No. 96, Tariff Item 1905 of Not. No. 02/2017-CT (Rate) dated 28.06.2017 as well as Notification No. 02/2017-ST (Rate) dated 30.06.2017 and would be exempt from whole of Central, State and Integrated Tax payable.

FINDINGS :-

32. We have carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

33. The main issue here is to decide the classification of the different shapes and sizes of PAPAD and applicable rate of Goods and Service Tax of the product.

34. The appellant has submitted that they are engaged in the business of manufacturing and trading of "Papad" of different shapes and sizes in ready to eat form. **Papad in ready to cook/un-fried form is purchased by the appellant from the market. The same is first fried and various masala powders are applied and packed in small packets for being sold in market**. The shape and size may vary but the ingredients, the proportion of ingredients, the composition and the recipe remains similar, if not exactly the same. The said product "Papad" of different shapes and sizes that are ready to eat condition eligible to be classified under Chapter Tariff Heading - 1905 of Customs Tariff Act, 1975 accordingly, vide entry at Sr. No. 96 under Not. No. 02/2017-CT (Rate) dated 28.06.2017 product in question is exempted from the levy of Goods and Services Tax.

35. To decide the classification of the product in question i.e. PAPAD of different shapes and sizes in ready to eat form, it would be prudent to know what PAPAD is, what the main ingredients of PAPAD are and how it is manufactured. The term PAPAD has not been defined in the CGST Act, 2017, therefore we resort to the common sense and meaning

that sense by which the people are conversant. It is observed that traditionally when we talk about the PAPAD, in the first instance an image of thin round shape flatbread appeared in mind. Traditionally PAPAD is thin Indian wafer and served as an accompaniment to Indian meal or as a snack. The appellant has submitted that due to advancement of technology, PAPAD does not resemble the same age old traditional round shaped papad anymore but now PAPAD can be in any desired shape and size. We agree with the said argument of the appellant that it is not necessary that to call or considered a product "PAPAD" the shape should only be "Round". In the old era, usually PAPAD was manufactured manually, therefore it was easy for them to manufacture the Round Shape PAPAD. In the modern era, by advent of technology, the product is being manufactured by machines and dies of different shape and size is used in the machine. Therefore, with the help of dies of various size and shapes it is convenient to manufacture the different shape and sizes of PAPAD.

36. The ingredients of the PAPAD varies but by and large main ingredient are as cereal flour, pulse flour, soya flour, rice flour, salt, Papad Khar and Asafoetida. The appellant has submitted that main ingredients of the their product different shape and size Papad are also wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour, potato starch, salt, and flavour etc. The main ingredient of PAPAD and impugned product are more or less similar. The main difference appears to be of ancillary used to give both the product different colour and taste according to demand of customers otherwise there is no difference in the ingredient used for manufacturing of PAPAD and impugned product i.e. different shapes and sizes of papad.

37. We find that the classification of goods under GST regime has to be done in accordance with the Customs Tariff Act, 1975, which in turn is based on Harmonised System of Nomenclature, popularly known as 'HSN'. The rules of interpretation, section notes and chapter notes as specified under the Customs Tariff Act, 1975 are also applicable for classification of Goods under GST regime. However, once an item is classified in accordance with the Customs Tariff Act, 1975, the rate of tax applicable would be arrived at on the basis of notifications issued under GST by respective governments.

38. Now, we discuss the appropriate classification of the impugned product i.e. different shapes and sizes of PAPAD in ready to eat form. The appellant claims that their product merit classifiable under CTH No. 1905 of the Customs Tariff Act, 1975. We refer relevant chapter Note, headings, HSN Explanatory Notes to examine the appellant's claim. Chapter 19 of Custom Tariff Act, 1975 covers all the products which are prepared of cereals, flour, starch or milk and pastrycook's product.

CTH No. 1905 of the Custom Tariff Act, 1975 is as:

1905	*BREAD, PASTRY, CAKES, BISCUITS AND OTHER BAKERS' WARES, WHETHER OR NOT CONTAINING COCOA; COMMUNION WAFERS, EMPTY CACHETS OF A KIND SUITABLE FOR PHARMACEUTICAL USE, SEALING WAFERS, RICE PAPER AND SIMILAR PRODUCTS*
1905 90	*Other :*

1905 90 10 --- Pastries and cakes
1905 90 20 --- Biscuits not elsewhere specified or included
1905 90 30 --- Extruded or expanded products, savoury or salted
1905 90 40 --- Papad
1905 90 90 --- Other

The General NOTES of HSN of Ch. 19 are as under :
This chapter covers a number of preparations, generally used for food, which are made either directly from the cerelars of chapter 10, from the products of chapter 11 or from food flour , meal and powder of vegetables origin of other chapters (Cereal flour, groats and meal, starch, fruit vegetables flour, meal and powder) or from the goods headings 04.01 to 04.04. The chapter also covers pastrycooks products and biscuits wven when not containing flour, starch or other cereal products.

CTH No. 1905 of HSN are as under:

19.05 - Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products.

1905.10 - Crispbread

1905.20 - Gingerbread and the like

- Sweet biscuits; waffles and wafers :

1905.31 - - Sweet biscuits

1905.32 - - Waffles and wafers

1905.40 - Rusks, toasted bread and similar toasted products

1905.90 - Other

The heading includes the following product :

(1) to (14) _____

***(15) <u>Crispy savoury food product</u>, for example, those made from a dough based on flour, meal** or powder of potatoes, or maize (corn) meal with addition of a flavouring consisting of a mixture of cheese, monosodium glutamate and salt , fried in vegetable oil, ready for consumption.*

39. From the above, the following are deduced :

- This chapter covers the product which *are made either directly from the cereals of chapter 10, from the products of chapter 11*
- *Crispy savoury food product made from a dough based on flour and meal.*

40. From the ingredient of the product in question as submitted by the appellant, it is seen that the impugned product are manufactured from the wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour and all these products are covered under

Chapter 10 and 11 of Customs Tariff Act. The said product can be categorized as crispy savoury food product as such it is made from the dough based on flour like wheat flour, rice flour, starch, corn flour and cereal flour. Therefore, the products of the appellant fall under the Chapter Heading 1905. However, the question still remains whether the products of the appellant can be termed as 'Papad. The product 'Papad' is an eatable item, originated and mainly consumed in India. Therefore, there is no mention of the product 'Papad' in the Explanatory Notes of the HSN. The term 'Papad' has neither been defined in the Customs Tariff Act, 1975 nor under the CGST Act, 2017 or the Notifications issued there under.

41. We find that for determination of the correct classification of any product ingredient used in the manufacture of the said product are decisive factor. In the case of ***Manilal Commodities Pvt. Ltd. Vs. Collector of Customs [1992-59-ELT-189-Tribunal]***, the Honourable Tribunal was of the view that the classification on the basis of predominant contents is generally accepted as proper test. Further, Honourable Allahabad High Court in the case of ***Commissioner of Customs, C.G.O. Vs. Sonam International [2012-275-ELT-326-ALL]*** upheld that assessment of goods with regard to payment of customs duty is to be made based on contents involved. The main ingredients of the appellant's product are flour, like wheat flour, rice flour, starch, corn flour and cereal flour and in the Ch. 19 of the Custom tariff Act 1975 all the product which are made of *either directly from the cereals of chapter 10, from the products of chapter 11 or from food flour are covered.*

42.1 As we have already discussed in the above para that term "Papad" has not been defined in GST Act, 2017, therefore, we take the recourse of trade/common parlance test so that Papad can be defined. In the matters of classification of goods under taxation statutes, all the judicial forums, including the Apex Court, have stressed upon the importance of the identity of the goods in common parlance and there is a plethora of case laws which hold that for classification of goods under statutes for taxation of commercial supplies thereof, the primary test is their identity in the market, or in other words, their common parlance in the market. The Hon'ble Supreme Court in the case of ***CCE, New Delhi v. Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.)]*** has held that,

> ***"Classification - Common parlance test*** *- It is extension of general principle of interpretation of statutes for deciphering mind of law maker - It is attempt to discover intention of legislature from language used by it, keeping in mind, that language is at best imperfect instrument for expression of actual human thoughts -* ***In absence of statutory definition in precise terms, it is construction of words, entries and items in taxing statutes in terms of their commercial or trade understanding, or according to their popular meaning - It operates on standard of average reasonable person who is not expected to be aware of technical details of goods - It is construction in sense that people conversant with subject-matter of statute, attribute to it - Rigid interpretation in terms of scientific and technical meanings is to be avoided*** *- However, when legislature has provided a statutory definition of particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with that meaning and not according to common parlance. [paras 18, 31, 34]"*

42.2 The Hon'ble Supreme Court of India in case of ***CCE, Nagpur v. Shree Baidyanath Ayurved Bhawan Ltd. [2009 (237) E.L.T. 225 (S.C.)]*** has held that, *Common parlance test continues to be one of the determinative tests for classification of a product whether medicament or cosmetic.* ***What is important to be seen is how the consumer looks at a product and what is his perception in respect of such product. The user's understanding is a strong factor in determination of classification of the products".***

42.3 We find that the appellant has submitted that the impugned product of different shapes and sizes PAPAD are known by different nomenclature in different parts of the country whereby more common nomenclature used is FRYUMS though FRYUMS is a registered brand name of TTK Healthcare Ltd. and not the name of any of product of PAPAD. Whereas the GAAR in its ruling has held that the different shapes and sizes like round, square, semi-circle, hollow circle with bars in between or square with bars in between intersecting each other or shape of any instrument, equipment, vehicle, aircraft, animal type Papad are known in the market as "Fryums" and not "PAPAD"; that Papad is a distinct commodity and it cannot be equated with the Fryums. We have visited the website of M/s. TTK Foods (http://ttkfoods.com/products) and found that the company manufactures ready to fry extruded products (papads) and sells under the brand name Fryum's. Therefore, it can be said that "Fryums" is brand name of a company and not the generic name of the impugned product, therefore it would not be logical to hold that the appellant's product is "Fryums". However, in general public, "Fryums" is popular word for different shapes and sizes like round, square, semi-circle, hollow circle with bars in between or square with bars in between intersecting each other or shape of any instrument, equipment, vehicle, aircraft, animal type Papad. Similarly, calling product in question of different shapes and sizes by Fryums does not change the basic character of the product and the product in question remains papad. We accept that traditionally PAPAD is round shaped but the PAPAD is ready to cook product and can be consumed after roasting or frying in oil and consumed as snacks with the Indian meal or soup. Similarly, the product in question of different shape and size is a ready to cook product and can be consumed after roasting or frying in oil and consumed as snack. Further cereal flour of Chapter 10 and 11 of Customs Tariff Act, 1975 are the ingredients of both the product. Both the products i.e. "PAPAD" and product in question are same except they are known by different name in general public i.e. as "PAPAD" and "Fryums".

43.1 It may be easier for the people to say whether a product is or is not 'Papad' than to define what 'Papad' is. However, when one refers to the product 'Papad', the product which comes into mind generally has the following main characteristics –

(i) The ingredients of Papad are flours, mainly of pulses, rice, sago and other cereals in which edible oil, salt, Papad khar, asafoetida and other spices (black pepper etc.) are added.

(ii) The Dough is prepared from the ingredients. The dough is divided in small pieces, out of which thin, wafer like product is made, which is called Papad.

(iii) Papad can be eaten either after roasting or after frying, but not in uncooked form.

(iv) Papad becomes crispy after roasting or frying. People savor the Papad, only when Papad is crispy.

(v) Papad is an accompaniment to Indian meal.

43.2 The appellant has submitted that main ingredients of their products 'different shape and size Papad' are wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour, potato starch, tapioca starch and flavours etc. The main ingredient of PAPAD and impugned products of the appellant (different shape and size Papad) are more or less similar.

43.3 The manufacturing process of the products under consideration has been submitted by the appellant. It has been submitted that ingredients are mixed in machine with water and oil, dough is prepared and passed through die of different shapes and size to manufacture different shapes and size of papad and then dried through various stages. Thereafter, the appellant product is fried and masala powder is applied. The product of the appellant, thus prepared, is thin and wafer like product. At this stage, the product is ready to eat for consumption. Though, traditionally Papad has been prepared manually, in round shape. However, when ingredients and process are similar in case of PAPAD and impugned product, then the product in question is nothing but a kind of PAPAD irrespective of their shape and sizes.

43.4 As submitted by the appellant, when the consumer desires to eat the said products of the appellant, the said products can be eaten or consumed immediately as it is fried with masala. Thus, these products are meant to be eaten as it is fried.

43.5 The products under consideration is crispy as such these products are fried.

43.6 The products of the appellant has found its use as an alternative to regular round shaped Papad or as an additional variety of Papad in the Indian meal, especially the meals served during the community functions. The caterers, who prepare the meals for the community functions, as well as the people in general, consider such products as a different type or variety of Papad only.

43.7 Therefore, we are of the view that applicant's products of different shapes and sizes of papad, are nothing but Papad, classifiable under Tariff Item 1905 90 40 of the Customs Tariff Act, 1975.

44. Now, the question which arises is, would it be judicious to consider that the product which are having Round shape, manufactured by using ingredient of cereal flour only are PAPAD and the products having the same characteristic and uses but shape and size is different cannot be termed as "PAPAD". We find that for classification of product, the ingredient, uses and common parlance test is decisive factor and not the name. The appellant has relied upon the decision of the various courts in their support.

(a) ***Hon'ble Supreme Court of India in case of Shiv Shakti Gold Finger Vs. Assisstant Commissioner, Commercial Tax, Jaipur –(1996) 9 SCC 514*** *wherein Honourable Supreme Court has clearly observed and held that irrespective of the*

shape of PAPAD and irrespective of ingredients used, the PAPAD still remains PAPAD.

(b) ***In the case of State of Karnataka Vs. Vasavamba Stores –[2013] 60 VST 19 (Karn.),*** *Honourable Karnataka High Court has clearly dealt with the issue whether Fryums in an uncooked/unfried form sold would qualify as PAPAD and it has been held by Honourable Karnataka High Court that FRYUMS fall under the entry of PAPAD irrespective of their shapes and sizes and irrespective of the ingredients used.*

(c) ***In M/s. Avadh Food Products Vs. State of Gujarat –First Appeal No. 1/2015 read with Rectification Application No. 31/2015 in First Appeal No. 1/2015 Dt;-03/07/2015 reported in 2015 GSTB –II –405*** and in ***M/s. Swethin Food Products Vs. State of Gujarat –2016 GSTB –I 296****, Honourable Tribunal has clearly held that Fryums are nothing but PAPAD falling under entry 9(2) in schedule I to the GVAT Act and exempt from payment of tax.*

45. The above decisions are squarely applicable in the instant case as such the impugned product having different shapes and size PAPAD as compared to round shape Papad however are similar to Papad in respect of the ingredient, manufacturing process and use.

46. The appellant has contended that their product covers under Entry number 96 of Notification No.2/2017 –Central Tax (Rate) Dt:-28/06/2017 which exempts the supplies from the levy of tax, reads as under:-

96.	*1905*	*Papad, by **whatever name it is known**, except when served for consumption*

47.1 We find that the entry No. 96 of the Notification No. 02/2017-CT (Rate) dated 28.06.2017 covers only such type of Papad products which are supplied in ready to cook condition because such type of un-cooked Papad cannot be served for consumption without applying the process either of "Roasting" or "Frying". Whereas the appellant's product is different shapes and sizes of Papad are available in ready to eat i.e. "fried Fryums" with masala, packed in small packet and do not require any further process of "Roasting" or "Frying" because these are already fried with masala and can be served for consumption immediately. Therefore, the appellant's product i.e. different shapes and sizes Papad in ready to eat form do not fall under the said entry.

47.2 The appellant has contended that only category of papad excluded by Entry at Sr. No. 96 is when it is served for consumption and it is settled legal position that served for consumption means served in hotel, eating house and meant for consumption at the place itself which is not the case in present matter. We have examined this contention and observe that the appellant's contention is not supported by any authority, as such in the Notification any condition or explanation for the said entry has not been provided wherein it is mentioned that "served for consumption" means served in hotel, eating house etc. The term "served for consumption" is not followed by like places hotels and eating house but it refers to the products ready to consumption and it means that under the said entry only those

products are covered which cannot be served without applying any process like papad i.e. ready to cook and not ready to eat. The appellant's impugned product is fried with masala and ready to eat and can be served without undergoing any process, therefore is excluded from Entry No. 96 of Notification No. 02/2017-CT (Rate) dated 28.06.2017. Accordingly, the applicant's product in question 'different shapes and size of fried with masala papad' are covered under Schedule-III of entry No. 16 of Notification No. 1/2017-CT (Rate) dated 28.06.2017 which attract GST rate @18 % {CGST 9% + SGST 9%} . The relevant entry No. 16 of Noti. No. 1/2017-CT (Rate) dated 28.06.2017 is reproduced as under:

16	1905	Pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products[other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products.

48. Gujarat Authority of Advance Ruling in their ruling has ruled that the product in question 'different shapes and size Papad' merit classification under CTH No. 21069099 of Customs Tariff Act, 1975 on the grounds that PAPAD is a thing entirely different and distinct from FRYUMS. Therefore, in common parlance or in market, Fryums are not sold as "PAPAD" instead of "PAPAD" are sold as papad and Fryums are sold as Fryums. Both the products are different and have their individual identity. Accordingly, in common parlance test, the applicant's products i.e. "different shapes and sizes of Papad" is not "Papad" but is "fried Fryums". In the aforementioned paras, we have already discussed that the Fryums is a brand name and not a generic name of the product, therefore, impugned product "different shapes and size of papad", known as Fryums, is nothing but Papad.

49. We find that CTH No. 2106 of Customs Tariff Act, 1975 covers the ***Food preparations not elsewhere specified or included*** means under this heading all types of foods preparation are covered which are not covered under the specific heading of tariff. It is important to refer to Chapter Notes of Heading 2106 wherein under clause 5 (b) it is stated that Heading 2106 includes preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption and under clause 6 it has been stated that Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" or "Mithai" or called by any other name. They also include products commonly known as "Namkeens", "mixtures", "Bhujia", "Chabena" or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients. We find that Rule 3(a) of General Rule of Interpretation of the first schedule of Tariff states that the heading which provides the most specific description shall be preferred to heading providing a more general description. Hence the rule of interpretation for classification is that when a product is eligible to be classified under specific entry then classification under general entry should not be preferred. We find that in the case at hand, the product "different shapes and sizes Papad" is "Papad" of different shapes and size and find specific entry at CTH No. 19059040, therefore as per rule of interpretation, the product is to be classified under CTH No. 19059040 only and not under CTH No. 21069099 of the Customs Tariff Act, 1975 as classified by the GAAR.

50. Taking all these aspects into consideration as discussed above, we hold that the product ‘different shapes and sizes Papad’ involved in the present case merit classification under Tariff heading No. 19059040 of the Customs Tariff Act, 1975. As we have already held that the product in question is classifiable under CTH No. 1905 of the Customs Tariff Act, 1975, the said CTH No. 1905 is covered under entry No. 16 of Schedule-III of Notification No. 1/2017-CT (Rate) dated 28.06.2017 and accordingly chargeable to 18% {9% CGST +9% SGST} rate of Goods and Services Tax.

51. In view of the foregoing, we modify the Advance Ruling No. GUJ/GAAR/R/81/2020 dated 08.10.2020 of the Gujarat Authority for Advance Ruling in the case of M/s. Barkatbhai Noordinbhai Velani (legal Name) - M/s. Shree Swaminarayan Foods Pvt. Ltd (Trade Name), and hold that –

(i) The product “fried - different shapes and sizes Papad” involved in the present case merit classification under Tariff heading No. 19059040 of the Customs Tariff Act, 1975 and chargeable to 18% rate of Goods and Services Tax as per Sl. No. 16 of Schedule-III of Notification No. 1/2017-CT (Rate) dated 28.06.2017 and Notification No. 1/2017-IGST (Rate) dated 28.06.2017.

(J. P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date :02. 11.2021.