

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD:380009



ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2024/01
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/22)

Date : 29.05.2024

Name and address of the appellant	:	M/s. Kitchen Express Overseas Ltd, 291/P, Santej-Vadsar Road, Opposite Prash Pack Pvt Ltd., Santej, Taluka Kalol- 382721, Gandhinagar, Gujarat.
GSTIN of the appellant	:	24AADCK1847R1Z3
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-5, Division-1, Range-2, Ahmedabad.
Advance Ruling No. and Date	:	Guj/GAAR/R/32/2021 dated 30.7.2021
Date of appeal	:	13.9.2021
Date of Personal Hearing	:	20.02.2024
Present for the appellant	:	Shri B K Patel, CA and Shri Denish Mavani, CA.

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 'GGST Act, 2017') are *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. Kitchen Express Overseas Ltd, 29/P, Santej-Vadsar Road, Opposite Prash Pack Pvt Ltd., Santej, Taluka Kalol- 382 721, Gandhinagar, Gujarat [hereinafter referred to as 'appellant'] against the Advance Ruling No. Guj/GAAR/R/32/2021 dated 30.7.2021, passed by the Gujarat Authority for Advance Ruling [GAAR].

3. The facts briefly are that the appellant is a supplier of Khaman flour, Gota flour, Dalwada flour, Dahiwada flour, Dhokla flour, Idli flour and Dosa flour in a unit container bearing brand name of 'KITCHEN XPRESS'.



4. Before the GAAR, the appellant submitted that the below mentioned process is undertaken for manufacturing & selling the above products, viz:

- (a) They purchase food grains and pulses from open market.
- (b) These pulses are then sorted, cleaned and then sent to grinding machine.
- (c) Pulses are grinded into flour in grinding machine for e.g. where Grams are purchased, it results into gram flour consequent to grinding process. In certain cases, the appellant also purchases grinded flour directly from the vendors.
- (d) Certain spices are mixed in flour and such mixed flour is packed in various packings.
- (e) Lastly, a small packet of spices necessary to prepare food item is supplied in pouch with packing of flour for added taste.
- (f) Mixed flour (commercially known as 'Instant Mix Flour') is sold to consumers in open market or through distributors.
- (g) End consumer of such instant mix flour is required to follow certain food preparation process before such product can be consumed as an eatable.
- (h) Hence, it is the applicant's case that instant mix flour cannot be consumed as such, but is required to undergo certain cooking procedures before consumption. Thus, the product manufactured and sold is not 'ready to eat' but can be said to be 'ready to cook'.

5. The appellant, before the GAAR also submitted the details of raw materials used in various products viz:

Sr. No.	Product	Ingredients
1	Gota flour	(in powder form) Chick Peas Flour, Sugar, Wheat Flour, Iodised Salt, Red Chilli, Garam Masala Raising Agent [(INS 500(ii)], Black Pepper, Coriander, Ajwain, Fennel, Acidity Regulator (INS 330). Chutney Powder: Sugar, Dry Mango Powder, Salt, Red Chilli, Cumin, Coriander, Acidity Regulator (INS 330).
2	Khaman flour	(in powder form)- Bengal Gram Dal, Sugar, Iodised Salt, Raising Agent [(INS 500(ii)], Acidity Regulator (INS 330).
3	Dalwada flour	(in powder form)- Green Gram Dal, Iodised Salt, Raising Agent [(INS 500(ii)], Acidity Regulator (INS 330).
4	Dahi-wada flour	(in powder form)- Black Gram Dal, Green Gram Dal, Iodised Salt, Raising Agent [(INS 500(ii)], Acidity Regulator (INS 330).
5	Dhokla flour	(in powder form)- Rice, Bengal Gram Dal, Black Gram Dal, Iodised Salt, Raising Agent [(INS 500(ii)], Acidity Regulator (INS 330)
6	Idli flour	(in powder form)- Rice, Black Gram Dal, Iodised Salt, Raising Agent [(INS 500(ii)], Acidity Regulator (INS 330).
7	Dosa flour	(in powder form)- Rice, Black Gram Dal, Refined Wheat Flour, Iodised Salt, Raising Agent [(INS 500(ii)], Acidity Regulator (INS 330).

6. The percentage-wise break-up of the flours and other ingredients as submitted before the GAAR, are as follows:



Sr. No.	Product	Chana Dal	Udad dal	Moong Dal	Total of leguminous flours	Suji flour	Wheat flour	Rice flour	Total of Rice flours/ Wheat flours	Total flours	Spices and other ingredients
1	Gota Flour	67%	-	-	67%	6%	-	-	6%	73%	27%
2	Khaman Flour	73%	-	-	73%	-	-	-	0%	73%	27%
3	Dalwada Flour	-	-	93%	93%	-	-	-	0%	93%	7%
4	Dahi-wada Flour	-	86%	8%	94%	-	-	-	0%	94%	6%
5	Dhokla Flour	15%	12%	-	27%	-	-	66%	66%	93%	7%
6	Idli Flour	-	27%	-	27%	-	-	66%	66%	93%	7%
7	Dosa Flour	-	20%	-	20%	-	16%	59%	75%	95%	5%

7. The appellant further submitted that the composition and ingredients contained in the different types of flours does not contain the Maize flour or Wheat flour and hence, sells this flour under the HSN code 1106 wherein the GST is charged @ 2.5% CGST and 2.5% SGST.

8. Relying on the VAT determination orders, passed in the earlier VAT regime, the appellant further stated that the appropriate HSN and GST rate for the products under the consideration ought to be as under:

Sr. No.	Product	HSN Code	Rate	Ingredients
1	Gota Flour	1106	5%	<p>The said instant mixed flour is prepared from the Cereal and pulse only;</p> <ul style="list-style-type: none"> The said products are related to milling industry. Followed legacy of classifying the products as 'mixed flour' as applied in vat regime (relied on Tax Determination Orders passed under VAT Act as mentioned herein above)
2	Khaman Flour			
3	Dalwada Flour			
4	Dahi-wada Flour			
5	Dhokla Flour			
6	Idli Flour			
7	Dosa Flour			

9. Before the GAAR, the appellant also submitted that the said flour cannot be treated as *ready to eat* which can be classified under the heading 2106 owing to the following reasons:

- The said mixed flour sold to customers are not in of ready to eat form;
- For preparing various Indian dishes, consumer has to carry out process prescribed on food packet such as boiling, frying or cooking etc. for preparation and consumption.

Hence, the appellant before the GAAR concluded that it is clear that Khaman flour, Gota flour, Dal Wada flour, Dahi Wada flour, Dhokla flour, Idli flour and Dosa flour



are not ready to eat products but is flour which is mixed with certain spices which make it ready to cook and not ready to eat.

10. The appellant further submitted before the GAAR, as under:

(i) Product manufactured and supplied by them are merely flour of farsan dishes and not ready to eat food preparation;

(ii) The flour of the farsan such as Khaman, Dahi Wada, Gota, Dal Wada, Dhokla etc. should not be taxable at a rate higher than the rate at which, ready to eat prepared farsan is taxable;

(iii) Farsan /preparations of products under consideration when served ready to eat in market /restaurants/food shops, is taxed @ of 5% (2.5%+2.5%);

(iv) Logically, it is consumed by the customer due to various reasons such as;

- good quality of raw materials supplied;
- hygienic preparation as compared to hotels, restaurants or food shops etc.;
- convenience to prepare fresh and eat at home at any time by normal cooking process;
- taste of our products remains same in all services.

(v) Products under consideration are similar to “Sattu” or “Chhatua” which is chargeable @ of 5% (2.5%+2.5%). “Sattu” or “Chhatua” made of flour mixed with spices, pulses etc. is a similar product and therefore their products also needs to be classified under the heading 1106.

(vi) Products under consideration are known as flour of farsan/namkeen in common parlance. Therefore, considering it as instant or ready to eat food preparation, will be different than its actual identification. Hence, the classification should be under chapter 11, more specifically 1106 and should be charged by rate of 5% (2.5%+2.5%).

(vi) The basic character of the products remains “flour” even after addition of spices and salt in very small amount of quantity.

11. The appellant, in his averment before the GAAR further stated that:

(i) The flour falls under the HSN code 1106;

(ii) The tax rate in the GST regime shall be as per tariff rate under HSN code 1106 i.e. 5% (2.5% CGST + 2.5% SGST);

(iii) The Khaman flour, Gota flour, Dal Wada flour, Dahi Wada flour, Dhokla flour, Idli flour and Dosa flour are flours with some added spices and are not ready to eat products and does not fall under HSN code 2106.

12. In view of the foregoing, the appellant raised the following question before the GAAR viz:



Under which Chapter, Tariff Heading and HSN, the different varieties of Flours i.e. Gota Flour, Khaman Flour, Dalwada Flour, Dahiwada Flour, Dhokla Flour, Idli Flour and Dosa Flour manufactured and supplied by applicant will attract CGST/SGST?

13. Vide the aforementioned impugned order dated 30.7.2021, the GAAR ruled as follows viz:

The products i.e. **i.** Gota Flour **ii.** Khaman Flour **iii.** Dalwada Flour **iv.** Dahiwada Flour **v.** Dhokla Flour **vi.** Idli Flour and **vii.** Dosa Flour are classifiable under HSN 2106 90(Others) attracting 18% GST (9% CGST + 9% SGST) as per Sl. No. 23 of Schedule-III to the Notification No. 01/2017-Central Tax (Rate) dated 28-6-2017.

14. For arriving at the aforementioned ruling, the GAAR, gave the below mentioned findings viz:

- The supply of edible food items- Khaman, Gota, Dalwada, Dahiwada, Dhokla, Idli and Dosa by the hotels and restaurants as a part of restaurant service is different than the supply of 'instant mix' as goods; that the classification is to be done based on HSN.
- On inspection, it is observed that each packet is marked as 'Instant Mix'; that, for the packet of Khaman 'Instant Mix' is not marked; that the list of ingredients and preparation of cooking mentioned in the khaman flour packet, is similar to the other products & hence, it appears that the said product too falls under the category of 'Instant Mix'. On examination of the list of ingredients, the proportion of spices and other ingredients contained in these products ranges from 5% to 27%. As the products of the appellant contain spices and other ingredients in different proportions, which are not mentioned in the chapter heading 11.06 or the relevant explanatory notes of HSN, the said products are not covered under chapter heading 1106.
- that CBIC Circular No. 80/54/2018-GST dated 31.12.2018 is not applicable in present case as the products of the appellant are different from Sattu and have spices and ingredients in varying proportions and are in the nature of instant mix; that GAAR is not inclined to admit CTH 1106 for said products;
- that chapter heading 2106 is not confined to processed or semi processed food, cooked or semi cooked food, preserved food and ready to eat food. In fact, any product which is a food preparation and which is not elsewhere specified or included in the Customs Tariff Act, 1975, gets covered under HSN 2106;
- that the application mentions that products are commercially known as Instant Mix Flour; that there is no merit to treat the subject goods as flour. As these products are not specifically mentioned under any specific tariff item of HSN 2106, the products merit classification under the residual entry 'other' at HSN 21069099; that the 7 products of Mix flour/Instant Mix flour are appropriately classifiable under HSN 2106.
- Thus, 'Food preparations not elsewhere specified or included' falling under chapter heading 2106 are covered under the aforesaid entry at Sr. No. 23 of Schedule-III of notification No. 1/2017-Central Tax, as amended, attracting GST @ 18% (CGST 9% + SGST 9%); that none of the aforesaid 7 products of various Instant Mix/Ready Mix flour being supplied by the appellant are the products which have been excluded from the entry at Sr. No. 23 of Schedule-III or have been specifically included in any other entry of other



Schedule of notification No. 1/2017-Central Tax, as amended or in any of the entries of notification No. 2/2017-Central Tax.

15. Feeling aggrieved, the appellant is before us *ie* Gujarat Appellate Authority for Advance Ruling [GAAAR] raising the following averments *viz*

- that the GAAR erred in not considering that the goods supplied are of a nature that one can easily recognize as flour & not instant mix;
- the GAAR classified the goods under 210690 which is not correct as there is a specific head *ie* 1102 or 1106 for the goods in question; that the GAAR failed to apply the General Rules for Interpretation for classification of the goods, which is legally not correct;
- that the products of the appellant are considered as instant, whereas it is not an instant food; that it is *ready to cook food* and not *ready to eat food*;
- that GAAR erred in differing the flours of the appellant from Sattu despite various similarities;
- that the appellant's submission before the GAAR was not fully considered.

In view of the aforementioned averments, the appellant stated that the seven products under question would fall under the heading 1102 or 1106 and should be charged to tax @ of 5% [2.5% CGST & 2.5 % SGST].

16. Personal hearing in the matter was held on 20.2.2024 wherein Shri B K Patel, CA and Shri Denish Mavani, CA, appeared on behalf of the appellant. He reiterated the written submissions made in the appeal.

17. We have carefully gone through and considered the appeal filed by the appellant, their written submission, oral submissions made during the course of personal hearing and the impugned order.

18. The issue involved in this case is regarding proper classification of the products *viz* (i) Gota flour (ii) Khaman flour (iii) Dalwada flour (iv) Dahiwada flour (v) Dhokla flour (vi) Idli flour (vii) Dosa flour and applicable rate of GST on these products. As is already mentioned *supra*, GAAR has held that the aforementioned products are to be classified under HSN 2106 90 (Other) attracting 18% GST (9% CGST and 9% SGST) in terms of Sl. No. 23 of Schedule-III of notification No. 1/2017-CT (Rate) dated 28.6.2017.

19. The appellant's primary claim is that their products are in the nature of flours and not instant mix and that it should fall under HS code 1102. On going



through para 2(A) of the explanatory notes of HSN for Chapter 11, it is observed that the products from the milling of the cereals listed in the table (wheat and rye, barley, oats, maize and grain, sorghum, rice, buckwheat) fall in this chapter if they satisfy some characteristics. Further, in terms of para 2(B) of the explanatory notes of HSN for Chapter 11, products falling in this Chapter under the provisions of para 2(A) shall be classified in Heading 11.01 or 11.02, if the percentage passing through a woven metal wire cloth sieve with the aperture of 315 micro meters (microns) / 500 micro meters (microns) is not less, by weight than that shown against the cereal concerned, otherwise, they fall in heading 11.03 or 11.04. It has also been *inter-alia* mentioned that this Chapter includes products obtained by submitting raw materials of other Chapters (dried leguminous vegetables, potatoes, fruit, etc.) to processes similar to those indicated in paragraph (1) or (2) mentioned therein. Thus, the products from the milling of the cereals, dried leguminous products etc. are covered in Chapter 11 of the Customs Tariff Act, 1975.

20. The appellant also claims that their product was erroneously classified under 2106 09 when it should have been classified under 1102 or 1106. To examine this claim, we think it prudent to reproduce the explanatory notes of both HSN 1102 and 1106, viz

11.02

11.02 - Cereal flours other than of wheat or meslin.

1102.20 - Maize (corn) flour

1102.90 - Other

This heading covers flours (i.e., the pulverised products obtained by milling the cereals of Chapter 10) **other than** flours of wheat or meslin.

Products of the milling of rye, barley, oats, maize (corn) (including whole cobs ground with or without their husks) grain sorghum, rice or buckwheat are classified in this heading as flours if they fulfil the requirements as to starch content and ash content set out in paragraph (A) of Chapter Note 2 (see General Explanatory Note) and comply with the criterion of passage through a standard sieve as required by paragraph (B) of that Note.

Flours of this heading may be improved by the addition of very small quantities of mineral phosphates, anti-oxidants, emulsifiers, vitamins or prepared baking powders (self-raising flour).

The heading also covers "swelling" (pregelatinised) flours which have been heat treated to pregelatinise the starch. They are used for making preparations of heading 19.01, bakery improvers or animal feeds or in certain industries such as the textile or paper industries or in metallurgy (for the preparation of foundry core binders).

Flours which have been further processed or had other substances added with a view to their use as food preparations are **excluded** (generally heading 19.01).

The heading also **excludes** flours mixed with cocoa (heading 18.06 if they contain 40 % or more by weight of cocoa calculated on a totally defatted basis, or heading 19.01 if less).



11.06 - Flour, meal and powder of the dried leguminous vegetables of heading 07.13, of sago or of roots or tubers of heading 07.14 or of the products of Chapter 8.

1106.10 - Of the dried leguminous vegetables of heading 07.13

1106.20 - Of sago or of roots or tubers of heading 07.14

1106.30 - Of the products of Chapter 8

(A) Flour, meal and powder of the dried leguminous vegetables of heading 07.13.

This heading includes the flour, meal and powder made from peas, beans or lentils; they are mainly used for prepared soups or purées.

The heading does not cover :

(a) Non-defatted soya flour (heading 12.08).

(b) Locust bean flour (heading 12.12).

(c) Soups and broths (whether in liquid, solid or powder form), with a basis of vegetable flours or meals (heading 21.04).

(B) Flour, meal and powder of sago or of roots or tubers of heading 07.14.

These products are obtained by the simple grinding or grating of the pith of the sago palm or of the dried roots of the manioc, etc. Some of these products are often subjected to heat treatment in the course of manufacture to eliminate toxic substances; this treatment may entail pregelatinisation of the starch.

The heading does not cover starches obtained from these sources (it should be noted that the starch obtained from sago is sometimes called "sago flour"). These starches fall in heading 11.08 and can be distinguished from the flours of this heading, because flours, unlike starches, do not crackle when rubbed between the fingers. Pelletised flour, meal and powder of sago or of roots or tubers of heading 07.14 are also excluded (heading 07.14).

(C) Flour, meal and powder of the products of Chapter 8.

The principal fruits or nuts of Chapter 8 which are made into flours, meals or powders are chestnuts, almonds, dates, bananas, coconuts and tamarinds.

The heading also includes flour, meal and powder of peel of fruits.

However, the heading does not cover tamarind powder in packings for retail sale for prophylactic or therapeutic purposes (heading 30.04).

Products of this heading may be improved by the addition of very small amounts of anti-oxidants or emulsifiers.

The heading also excludes :

(a) Sago pith (heading 07.14).

(b) Prepared foodstuffs known as tapioca (heading 19.03).

We find that the flours may remain classified in Chapter Heading 11.01 or 11.02, if the flour has been improved by the addition of very small quantities of specified substances. However, if other substances (other than specified substances) are added to the flours with a view to use as 'food preparations', then the same gets excluded from the Chapter Heading 11.01 or 11.02. Further, various products being supplied by the appellant contain spices and other ingredients apart from flour of dried leguminous vegetables, rice and wheat, in different proportions. The spices and other ingredients contained in these products include sugar, iodised salt, red chili powder, garam masala raising agent [INS 500(ii)], black pepper, coriander, ajwain, fennel, acidity regulator. These spices and ingredients are other than those substances mentioned in the explanatory notes of HSN for Chapter Heading 11.01 and 11.02 which could be added in very small quantities to improve or enrich the flours for the resultant product to still remain classified in those Chapter Headings. The proportion



of spices and other ingredients contained in these products ranges from 5% to 27%, which is already mentioned in the table supra in paragraph 6. It is also evident from the recipe submitted by the appellant that the spices and other ingredients have been added to the flours for their use as food preparations. Thus, in view of the explanatory notes of the HSN, these products are excluded from the Chapter Heading 11.01 and 11.02 as well as from the Chapter Headings 11.03 and 11.04.

21. The appellant has further stated that their product would fall under HSN code 1106. The explanatory note to chapter 1106 is reproduced *supra*. However, it would be prudent to reproduce the chapter heading 1106 of Customs Tariff for ease of understanding *viz*

Chapter Heading 1106 as per Customs Tariff:

1106 FLOUR, MEAL AND POWDER OF THE DRIED LEGUMINOUS VEGETABLES OF HEADING 0713, OF SAGO OR OF ROOTS OR TUBERS OF HEADING 0714 OR OF THE PRODUCTS OF CHAPTER 8:

1106 10 00- Of the dried leguminous vegetables of heading 0713

1106 20- Of sago or of roots or tubers of heading 0714:

1106 20 10--- Of sago

1106 20 20 --- Of manioc (cassava)

1106 20 90--- Of other roots and tubers

1106 30 - Of the products of Chapter 8:

1106 30 10--- Of tamarind

1106 30 20--- Of singoda

1106 30 30--- Mango flour

1106 30 90--- Other

Now, as is evident, Chapter Heading 11.06 covers “*Flour, Meal and Powder of the dried leguminous vegetables of Heading 0713, of sago or of roots or tubers of Heading 0714 or of the products of Chapter 8*”. As per Rule 1 of the General Rules for the Interpretation of Customs Tariff Act, 1975, for legal purposes, classification shall be determined according to the terms of the headings and any relative section of Chapter Notes. Thus, the classification of the product is required to be determined in accordance with the terms of the headings. As per Chapter Heading 11.06, it covers Flour, Meal and Powder of the dried leguminous vegetables of Chapter Heading 07.13 and other specified products. As the products of the appellant contain spices and other ingredients in different proportions, which are not mentioned in the Chapter Heading 11.06 or the relevant explanatory notes of HSN, we find that the said products are not covered under Chapter Heading 11.06.



21.1 Though the appellant before us has contended that his goods merit classification under 1102 or 1106, we find that before the GAAR, he had stated that his claim of the goods falling under 1102 was a typographical mistake. We reproduce the relevant para 11 of the impugned order dated 30.7.2021, for ease of reference viz

11. The applicant further submitted that in application for the Advance Ruling filed with the authority, the clarification has been sought for item falling under HSN Code 1102, is in fact typographical mistake that the HSN code has been mentioned in the application was 1102 instead of applicable HSN Code 1106. Accordingly, it is prayed that the modification in the original application be considered for HSN code 1106 and accordingly, wherever HSN code 1102 is mentioned, it should be treated as HSN Code 1106.

22. The appellant's next submission is that the impugned order wrongly differs their flours from 'Sattu'. The appellant has relied upon CBIC's circular No. 80/54/2018-GST dated 31.12.2018 to substantiate his averment. It is the appellant's claim that both their product and sattu have the below mentioned similarities viz

- (i) Both are containing major portion of flour
- (ii) Both are known as flour in parlance
- (iii) Both have minor quantities of spices
- (iv) Both have to be cooked for consumption *ie* 'not ready to eat'
- (v) Both are indigenous local products
- (vi) Both are supplied in unit containers bearing brand name.

23. To examine the claim of the appellant, the relevant portion of the circular relied upon is being reproduced for ease of reference viz

CBIC circular No. 80/54/2018-GST dated 31.12.2018[relevant extracts]

3. **Applicability of GST on Chhatua or Sattu:**

3.1 Doubts have been raised regarding applicability of GST on Chhatua (Known as "Sattu" in Hindi Belt).

3.2 Chhatua or Sattu is a mixture of flour of ground pulses and cereals. HSN code 1106 includes the flour, meal and powder made from peas, beans or lentils (dried leguminous vegetables falling under 0713). Such flour improved by the addition of very small amounts of additives continues to be classified under HSN code 1106. If unbranded, it attracts Nil GST (S. No. 78 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017) and if branded and packed it attracts 5% GST (S. No. 59 of schedule I of notification No. 1/2017-Central Taxes (Rate) dated 28.06.2017).

The CBIC has clarified in the aforesaid circular that the flour of ground pulses and cereals, improved by the addition of very small amounts of additives continues to be classified under HSN Code 1106. However, the said clarification is not applicable in



the present case as the products being supplied by the appellant contain spices and other ingredients, which is not the case with the 'Chhatua or Sattu'.

24. In view of the foregoing, we hold that none of the products of the appellant merit classification under Chapter 11 of the Customs Tariff Act, 1975 and specifically under Chapter Headings 11.01, 11.02, 11.03, 11.04 or 11.06 of the Customs Tariff Act, 1975

25. The appellant we find has also questioned the classification of the products in question by GAAR under HSN 2106 90, which covers "*Food Preparations not elsewhere specified or included*". We find it prudent to reproduce the HSN explanatory notes [relevant extracts] for the ease of understanding viz

21.06 - Food preparations not elsewhere specified or included.

2106.10 - Protein concentrates and textured protein substances

2106.90 - Other

Provided that they are not covered by any other heading of the Nomenclature, this heading covers :

- (A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.
- (B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

However, the heading does not cover enzymatic preparations containing foodstuffs (e.g., meat tenderisers consisting of a proteolytic enzyme with added dextrose or other foodstuffs). Such preparations fall in heading 35.07 provided that they are not covered by a more specific heading in the Nomenclature.

As is evident from the explanatory notes, it covers food preparations not elsewhere specified or included. Further of 21.06 covers the preparation for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.) for human consumption, and preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption, are classifiable under Chapter Heading 21.06 of the CTA, 1975.

26. The appellant has already stated that his 7 products of Mix flour / Instant Mix flour are preparations consisting wholly of foodstuffs viz. flours of leguminous vegetables and cereals as well as spices and condiments, and these products are used in the making of food preparations ((i) Gota flour (ii) Khaman flour (iii) Dalwada flour (iv) Dahi wada flour (v) Dhokla flour (vi) Idli flour (vii) Dosa flour) for human consumption. Further, these products are preparations for use, either directly or after



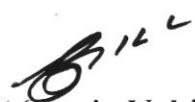
processing, such as cooking, dissolving or boiling in water, milk, etc., for human consumption. Thus, we are of the view that all the aforementioned 7 products of Mix flour / Instant Mix flour are appropriately classifiable under 21.06 of the HSN. As these products are not specifically mentioned under any specific Tariff Item of Chapter Heading 2106 of the CTA, 1975, these products are classifiable under the residuary entry i.e. Tariff Item 2106 90 99 as "Other".

27. The appellant has further also submitted that the Mix Flour / Instant Mix Flour is not a ready-to-eat food. In this regard, we observe that Chapter Heading 21.06 and specifically Tariff Item 2106 90 99 is not confined to processed or semi processed food, cooked or semi cooked food, preserved food and ready to eat food. In fact, any product which is a food preparation and which is not elsewhere specified or included in the CTA, 1975, gets covered under Chapter Heading 2106 of the CTA, 1975. Therefore, merely because the end consumer of the Instant Mix Flour is required to follow certain food preparation processes before such product(s) can be consumed, is no ground to take these products out of Chapter Heading 2106 of the CTA, 1975.

28. The appellant we find has stated that his submissions were not fully considered in true spirit. However, the submission not considered in the impugned order, is not specifically mentioned by the appellant. Hence, this averment is not tenable.


29. We agree with the findings and the ruling of the GAAR vide the impugned order dated 30.7.2021 in so far as classification of the seven products and the rate of GST is concerned. The Appellant, we find has not produced anything compelling us to interfere with the findings of the GAAR.

30. In view of the above findings, we reject the appeal filed by appellant M/s. Kitchen Express Overseas Ltd against Advance Ruling No. Guj/GAAR/R/32/2021 dated 30.7.2021, passed by the Gujarat Authority for Advance Ruling.


(Samir Vakil)
Member (SGST)

Place: Ahmedabad
Date: 29.5.24




(B V Siva Naga Kumari)
Member (CGST)