

<b>GUJARAT AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
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ADVANCE RULING NO. GUJ/GAAR/R/2019/03  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/19)

Date:22.02.2019

Name and address of the applicant	:	M/s. Sonal Product Plot No. 810, GIDC Chitra, Bhavnagar
GSTIN of the applicant	:	24AGPPK7290R1ZF
Date of application	:	07.10.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both;
Date of Personal Hearing	:	07.12.17
Present for the applicant	:	Shri Hasmukh Soni, Advocate

The applicant M/s. Sonal Product, Bhavnagar have raised following questions for advance ruling :-

- (a) What is the correct classification of “Papad and papad pipes” of different shapes, sizes and varieties (commonly known as un-fried Fryums) manufactured by the applicant and sold vide Supply Invoice No. 1718/38SP dated 24.09.2017
- (b) What is the applicable rate of CGST payable on such “Papad and papad pipes of different shapes, sizes and varieties (commonly known as un-fried Fryums)?

2.1 In the application for advance ruling, the applicant has narrated the details of raw material required and product profile / manufacturing process as follows :-

- (a) Raw Materials :
  - (i) Maida floor (made of wheat)
  - (ii) Starch powder (of maize, potato and others)
  - (iii) Rice powder, Poha etc.
  - (iv) Salt (as per requirement)
  - (v) Soda by-carb (as per requirement)
  - (vi) Baking powder (as per requirement)
  - (vii) Food colour (as per requirement)
  - (viii) Water (for mixing the raw materials and making dough)
  - (ix) Plastic bags / sacks (for packing)

## (b) Manufacturing process and product profile :

- (i) Maida flour, Starch powder, Rice powder, Salt, Baking Powder, Food colour etc. mixed in a vessel in a fixed / desired proportion.
- (ii) Semi hot water added in vessel.
- (iii) Raw materials and hot water mixed and steered with the help of steering / mixture machine till it converts into dough.
- (iv) Dough is boiled (cooked).
- (v) Boiled / Cooked dough is shaped into different shapes and sizes.
- (vi) Shapes and sizes pass through blower by pipe line, where shapes are semi dried.
- (vii) Semi dried shapes sent to drier through conveyor belt, where shapes are dried completely.
- (viii) Dried shapes are ready for packing
- (ix) Dried shapes are packed in 30 kgs of plastic sacks /bags and are ready to dispatch.
- (x) Packed “papad and papad pipes” stored in a godown.
- (xi) Packed “papad and papad pipes” of different shapes, sizes and varieties sold to intra state and inter-state dealers, retailers.

2.2 The applicant submitted that as per their belief, “Papad and papad pipes of different shapes, sizes and of all varieties (commonly known as un-fried Fryums) would be classified as under :

Chapter 19

Heading No. 1905 - Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products

Sub-heading No. 1905 90 40 – Papad

Sub-heading No. 1905 90 90 – Others

2.3 The applicant submitted that they manufacture papad and papad pipes (commonly known as un-fried Fryums) of different shapes, sizes and varieties like Papad basket, Papad Button, Papad Smile, Papad Sudarshan Chakra, Papad Suryamukhi, Papad Snake and Ladder, Papad Chips, Papad Samosa, Papad Coin, Papad Deer, Papad Animal, Papad Moon, Papad 1-2-3-4, Papad Jali, Papad Wheel, Papad Phabets, Papad Aeroplane, Papad Polo Ring Button, Papad Katori, Papad Bamboo, Papad Badi Sev, Papad Refill, Papad Surya Refil, Papad Square Pipe, Papad Micky Ring, Papad Plus Shape, Papad Star, Papad baby ring, Papad Alphabets and of other shapes and sizes. It is submitted that such papad and papad pipes are –

- (i) Unfried
- (ii) Not a cooked foods
- (iii) Not used as ready to eat foods
- (iv) Not an instant food article or eatable for human consumption
- (v) To make it eatables, deep frying process (in edible oil) is required
- (vi) Only fried papad and papad pipes (fryums) are eatables and used as food articles or eatables
- (vii) Fried, salted or spiced Papad and papad pipes are commonly known and used as “Namkin”.

2.4 The applicant submitted that they sale their product to intra state and inter-state dealers. In inter-state market (different areas / other States of the Country), Papad, Papad pipes, fryums are commonly known as –

- (i) In Gujarat area – Papad, Papad Pipes, Fryums, Bhungla, Bamboo etc.
- (ii) In Maharashtra area – Kabab, Nadda, Fryms, Ponga, Pungli etc.
- (iii) Bihar area – Chusta Papad
- (iv) Delhi area – Gold Finger, Finger
- (v) Tamil Nadu Area – Aplam
- (vi) Telangana (Hyderabad) area – Nala
- (vii) Kerala area – Papadam, Chips
- (viii) Bangal area – Nal papad
- (ix) Guwahati (Assam) area – Gongo
- (x) Chattisgarh area – Nadda
- (xi) Rajasthan – Kicha papad
- (xii) Kashmir area – Kachri
- (xiii) Nepal – Nali

2.5 The applicant submitted that the Hon'ble Supreme Court of India, in the case of Shivshakti Gold Finger clearly held that, all varieties of papad, whether they are circular or flat in shape consisting of all ingredients whether it is of pulse, rice, maida etc. entitled for exemption. The Hon'ble Supreme Court examined the matter under Rajasthan Sales Tax Act, whether "Gole Papad" manufactured out of maida, salt and starch are the Papad or not. The Hon'ble Supreme Court clearly held that size or shape is irrelevant. The Papad of all shapes and sizes are covered under the Entry "Papad".

2.6 The applicant also submitted that Hon'ble Karnataka High Court in the case of State of Karnataka Vs. Vasavamba Stores and others (STRP No. 6/2011, 63/2011, 73/2011, 89/2009 – considering Hon'ble Supreme Court judgement in the case of Shivshakt Gold Finger), held that Papad of all shapes and sizes are covered under the entry "Papad" and exempted from tax.

2.7 The applicant further submitted that the Hon'ble Commissioner of Commercial Tax, Gujarat State, Ahmedabad, in the Determination Order under Section 80 of the VAT Act, 2003 in the case of Jay Khodiyar Agency (2007-D-98-103 dated 11.09.2007) and in the case of Kansara Trading Co. (2011-D-356-357 dated 11.02.2011) held that papad and papad pipes (Fryms) are covered under Entry 9(2) of Schedule-1 appended to the VAT Act, 2003 and exempted from tax.

2.8 The applicant submitted that referring to sub heading No. 1905 90 40 or 1905 90 90 and Hon'ble Supreme Court decision, Karnataka High Court decision and Determination Order under section 80 of the VAT Act, 2003, it is apparently clear that papad, papad pipes (commonly known as un-fried fryms) of all kinds, shapes, sizes and varieties by whatever name called would be classifiable and covered under heading No. 1905 90 40 or 1905 90 90 and exempted from CGST and SGST.

3. It has been informed by the Central Goods & Services Tax and Central Excise Commissionerate, Bhavnagar that no record pertaining to M/s. Sonal Products (applicant) is available with their office as the unit was not registered under the erstwhile Central Excise regime. It has also been informed that as per the GST Tariff, HSN Code '1905 9040' reads as 'papad' and '1905 90 90' as 'other'.

4. We have considered the submissions made by the applicant in their application for advance ruling as well as submissions made at the time of personal hearing. We have also considered the information and views of the Goods & Services Tax and Central Excise Commissionerate, Bhavnagar.

5. We find that the main issue involved in this case is regarding classification of the product 'Un-fried Fryums' being manufactured and supplied by the applicant.

6. It is observed that the Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 provides as follows :-

*“Explanation. - For the purposes of this notification, -*

*(i) .....*

*(ii) .....*

*(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*

*(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.”*

7. The applicant has submitted that the 'Un-fried Fryums' merit classification under Tariff Item 1905 90 40 as 'Papad'.

8.1 What is 'Papad' has not been defined or clarified under Customs Tariff Act, 1975, the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017), the Gujarat Goods and Service Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017'), Integrated Goods and Services Tax Act, 2017 (herein after referred to as the IGST Act, 2017 or the Notifications issued under the CGST Act, 2017 / GGST Act, 2017 / IGST Act, 2017.

8.2 It is now 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. In the case of Indo International Industries Vs. Commissioner of Sales Tax, U.P. [1981 (8) E.L.T. 325 (S.C.)], Hon'ble Supreme Court has held as follows :

*“4. It is well settled that in interpreting Items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted. ....”*

8.3 This view was upheld by Hon'ble Supreme Court in the case of Oswal Agro Mills Ltd. Vs. Collector of Central Excise [1993 (66) E.L.T. 37 (S.C.)]. While reiterating the principle that in absence of statutory definitions, they have to be construed according to their common parlance understanding, Hon'ble Supreme Court, in the case of Commissioner of Central Excise Vs. Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.)], has referred to various decisions on the subject and observed as follows :-

*Common Parlance Test :*

*“18. Time and again, the principle of common parlance as the standard for interpreting terms in the taxing statutes, albeit subject to certain exceptions, where the statutory context runs to the contrary, has been reiterated. The application of the common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law maker; “it is an attempt to discover the intention of the Legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts.” [(See Oswal Agro Mills Ltd (supra)].”*

8.4 It needs to be therefore examined whether ‘Un-fried Fryums’ would be covered by the term ‘Papad’ as understood in common parlance and as decided by higher judicial authorities.

9.1 The issue of proper classification of the product ‘Fry Snack Foods called Fryums’ and admissibility of exemption notification under Central Excise regime was examined by the Hon'ble Customs, Excise and Gold Appellate Tribunal (CEGAT, as it was known then) in the case of T.T.K. Pharma Ltd. Vs. Collector of Central Excise [1993 (63) E.L.T. 446 (Tribunal)]. In this case, the Hon'ble Tribunal, *inter-alia*, observed as follows :-

*6. A reading of these sub-headings makes it clear that the product is not a Prasad or Prasadam, Sterilised or pasteurised miltone. Therefore, it will not come within the sub-headings 2107.10 or 2107.20. As the item is not put in a unit container and ordinarily intended for sale, it will not come within the Heading 2107.91. Therefore, the product has to be brought under the residuary sub-heading 2107.99 as ‘Other’ carrying nil rate of duty. As we have classified the product under the residuary product under the heading “Edible preparations not elsewhere specified or included which carries nil rate of duty, the question of raising any demand or of Excise duty may not arise. However, as arguments have been adduced with regard to the Notification No. 12/90 dated 20-3-1990, it would be proper for us to give finding in regard to the same.*

7. ....

8. ....

*The Sl. No. 8 reproduced above mentions about various goods coming within sub-heading 2107.91. It has given illustration to the items Namkeens such as Bhujiya, Chabena. Now the question is as to whether these namkeens given in the notification is a general one including all types of namkeens or only to the type given therein like Bhujiya, Chabena by illustration. The learned Collector has interpreted the word ‘such as’ to mean namkeen should be of a kind of Bhujiya and Chabena. Although it is not in dispute that the item in question is a namkeen. As can be seen from the various items given in Sl. No. 8 namely Papad, Idli-mix, Vada-mix, Dosa-mix, Jalebi-mix, Gulabjamun-mix are all of a type*

*which cannot be eaten straightaway but it requires to be fried. Chabena also comes in a type of item which requires to be chewed like Potato chips or fried Channa Masala or various types of fried masala dals. There can be any number of examples of namkeens in the form of Chabena which are mostly taken as a side dish. It can also be preferred to be eaten after sweetmeat. The item in question being like a Chabena is also a namkeen. The learned Collector's placing restriction that it is to be eaten only after frying and therefore, is not covered under the notification is a very strict way of reading a notification. The notification cannot be read in a way as to whittle down its expression or to make the notification otios. The words 'such as' is only illustrative and not exhaustive. So long as the item satisfies the term Namkeen, the benefit of notification cannot be denied on the ground that it requires to be fried before use. There is no such understanding placed in the notification with regard to the frying of the item. Even if that be so, then the same would apply to all other items which are namkeens like Papad, Idli-mix, Dosa-mix, Jalebi-mix etc. which are required to be fried before they can be eaten.*

*[underlining supplied]*

9.2 Thus, in the aforesaid decision, the product 'Fry Snack Foods called Fryums' have been considered as 'Namkeen' and not as 'Papad'.

10.1 In the case of Commercial Tax, Indore Vs. T.T.K. Health Care Ltd. [2007 (211) E.L.T. 197 (S.C.)], the issue before the Hon'ble Supreme Court was regarding tax rate of 'Fryums' under M.P. General Sales Tax Act, 1958 / M.P. Commercial Tax Act, 1994. In this case, Hon'ble Apex Court observed as follows :-

*"12. In the present case we have quoted the definition of the term 'cooked food'. It is an inclusive definition. It includes sweets, batasha, mishri, shrikhand, rabari, doodhpak, tea and coffee but excludes ice-cream, kulfi, ice-candy, cakes, pastries, biscuits, chocolates, toffees, lozenges and mawa. That the item 'cooked food' is inclusive definition which indicates by illustration what the legislatures intended to mean when it has used the term 'cooked food'. Reading of the above inclusive part of the definition shows that only consumables are sought to be included in the term 'cooked food'. In the case of 'fryums' there is no dispute that the dough/base is a semi-food. There is also no doubt that in the case of 'fryums' a further cooking process was required. It is not in dispute that the 'fryums' came in plastic bags. These 'fryums' were required to be fried depending on the taste of the consumer. In the circumstances we are of the view that 'fryums' were like seviyan. 'Fryums' were required to be fried in edible oil. That oil had to be heated. There was certain process required to be applied before 'fryums' become consumable. In these circumstances the item 'fryums' in the present case will not fall within the term 'cooked food' under Item 2 Part I of Schedule II to the 1994 Act. It will fall under the residuary item "all other goods not included in any part of Schedule I"."*

*[underlining supplied]*

10.2 In this case, Hon'ble Supreme Court was of the view that 'fryums' were like 'seviyan'.

11.1 The applicant in their application has submitted that such 'Un-fried Fryums' are not a cooked foods, not used as ready to eat food, not an instant food article or eatable for human consumption. It is further submitted that to make the 'Un-fried Fryums' eatable, deep frying process (in edible oil) is required; that only fried fryums are eatable and used as food articles or eatables. It is also submitted by the applicant that fried, salted or spiced fryums (referred as papad and papad pipes by the applicant) are commonly known and used as 'Namkin'.

11.2 Thus, the applicant themselves have submitted that fried, salted or spiced fryums are commonly known and used as 'Namkin'. On the other hand, 'Papad' even after roasting or frying are known and used as 'Papad' only. Therefore, in commercial or trade parlance also, the 'Un-fried Fryums' cannot be said to be known as 'Papad'.

12.1 The applicant has relied upon the judgement of Hon'ble Supreme Court in the case of Shivshakti Gold Finger wherein the Hon'ble Supreme Court examined the matter under Rajasthan Sales Tax Act, whether 'Gol Papad' manufactured out of Maida, Salt and Starch are Papad or not and held that size or shape is irrelevant and that Papad of all shapes and sizes are covered under the entry 'Papad'.

12.2 In the case of Shivshakti Gold Finger, Hon'ble Supreme Court has not examined the issue of 'Un-fried Fryums' and therefore the said case is not found to be applicable in the facts of the present case.

13.1 The applicant has also relied upon the judgement of Hon'ble High Court of Karnataka in the case of State of Karnataka Vs. Visavamba Stores and Others wherein the issue involved was whether the Fryums can be treated as Pappad under Entry 40 of the I Schedule to the KVAT Act.

13.2 The State of Karnataka has filed Special Leave Petitions (C) No. 29023 – 29083/2013 in the Hon'ble Supreme Court against the said judgement of Hon'ble High Court of Karnataka. The Hon'ble Supreme Court has granted leave to the said Special Leave Petitions. Therefore, the aforesaid judgement of the Hon'ble Karnataka High Court is in jeopardy, in view of the judgement of Hon'ble Supreme Court in the case of Union of India Vs. West Coast Paper Mills Ltd. [2004 (164) E.L.T. 375 (S.C.)], wherein it has been held as under –

*“14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.*

.....  
 .....

*38. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit.*

14. The Determination Orders under section 80 of the Gujarat Value Added Tax Act, 2003 were not pertaining to classification under First Schedule to the Customs Tariff Act, 1975 and therefore are not applicable in the present case.

15. Therefore, the ‘Un-fried Fryums’ are not classifiable as ‘Papad’ under Tariff Item 1905 90 40.

16.1 The next issue which arises for consideration is appropriate classification of ‘Un-fried Fryums’.

16.2 Chapter Heading 2106 of the First Schedule to the Customs Tariff Act, 1975 is as follows :-

HS Code	Description of goods	Unit
(1)	(2)	(3)
2106	Food preparations not elsewhere specified or included	
2106 10 00	- Protein concentrates and textured protein substances	kg.
210690	- Other :	
	--- Soft drink concentrates :	
2106 90 11	---- Sharbat	kg.
2106 90 19	---- Other	kg.
2106 90 20	--- Pan masala	kg.
2106 90 30	--- Betel nut product known as “Supari”	kg.
2106 90 40	--- Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrin syrup	kg.
2106 90 50	--- Compound preparations for making non-alcoholic beverages	kg.
2106 90 60	--- Food flavouring material	kg.
2106 90 70	--- Churna for pan	kg.
2106 90 80	--- Custard powder	kg.
	--- Other	
2106 90 91	---- Diabetic foods	kg.
2106 90 92	---- Sterilized or pasteurized millstone	kg.
2106 90 99	---- Other	kg.

16.3 Chapter Note 5 and 6 of Chapter 21 provides as follows –

“5. *Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter-alia includes :*

(a) .....

(b) *Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;*

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

6. *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.”*

16.4 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.

16.5 Taking all these aspects into consideration, we hold that the product 'Un-fried Fryums' is appropriately classifiable under Tariff Item 2106 90 99.

17. Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 issued under the CGST Act, 2017 and corresponding Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 covers "Food preparations not elsewhere specified or included [other than roasted gram, sweetmeats, batters including idli/dosa batter, namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, khakhra, chutney powder, diabetic foods]" falling under Heading 2106. Therefore, Goods and Service Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the product 'Un-fried Fryums' as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017.

18. In view of the foregoing, we rule as under :-

### **RULING**

- (i) The product 'Un-fried Fryums' manufactured and supplied by M/s. Sonal Product (GSTIN 24AGPPK7290R1ZF) is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.
- (ii) Goods and Service Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the product 'Un-fried Fryums' as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017.

**(R.B. Mankodi)**  
Member

**(G.C. Jain)**  
Member

Place : Ahmedabad  
Date :22.02.2019.