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

ADVANCE RULING NO. GUJ/GAAR/R/67/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/11)
Date: 17.09.2020

Name and address of the applicant	:	M/s. Jayant Snacks and Beverages Pvt. Ltd., Plot No. 8, Meera Industrial Udhyog, Nr. Field Marshal, NH 27, Rajkot
GSTIN/ User Id of the applicant	:	24AABCJ3958Q1ZO
Date of application	:	22.02.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	a) Classification of goods and/or services or both. e) Determination of the liability to pay tax on any goods or services or both:
Date of Personal Hearing	:	17.08.2020 (Through video conference)
Present for the applicant	:	Sh. Nishant Shukla Adv.

1. M/s. Jayant Snacks and Beverages Pvt. Ltd., Plot No. 8, Meera Industrial Udhyog, Nr. Field Marshal, NH 27, Rajkot a company having GSTIN: 24AABCJ3958Q1ZO filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. The applicant is engaged in the business of manufacturing and trading of "Papad" of different shapes and sizes. Papad is crunchy snack that is conceptualised as a product that is raw pellet that are neither fully cooked nor ready to eat which can be stored for a longer period and needs to be cooked first either by frying or roasting before consuming as and when required.

3. 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. However, with changing of time and considering the different demands of different class of consumers innovations are made in shapes and sizes also and now Papad comes in different shapes and sizes.

4. The applicant submitted that it does not required any extra effect to do the same with minor variations in proportions of ingredient and the dough is moulded in the desired shapes and size may be round, may be squre, may be semi-circle, may be hollow circle with bars in between or may be square with bars in between intersecting each other or may be of shape of any instrument, equipment, vehicle,

aircraft, animal etc. The shape may vary, the size may vary but the ingredients, the proportion of ingredients, the composition and the recipe remains similar, if not exactly the same.

5. The applicant further submitted that they do not sell the Papad of different shapes and sizes manufactured by it in ready to eat condition. The applicant manufactures Papad of different shapes and size that are in neither fully cooked form nor ready to eat form till reaches the actual consumer. When the consumer desires to consume/ eat, the consumer needs to either fry it or bake it before consumption and upon frying/baking the Papad of different shapes and size sold by the applicant becomes consumable. In other words, the Papad of different shape and size are not ready and suitable for human consumption till they are fried/baked as deemed fit and as and when deemed fit by the consumer.

6. Accordingly, the Applicant seeks Advance Ruling on the following questions:

(i) Under which tariff Heading PAPAD of different shapes and sizes manufactured/ supplied by the applicant would attract CGST and SGST?

Applicant's interpretation of law :

7. The applicant submitted that as per their understanding the product in question i.e. PAPAD of different shapes and sizes that are in neither fully cooked nor ready to eat condition seems squarely eligible to be classified under Chapter Tariff Heading- 1905.

8. Entry at Sr. No. 96 under Not. No. 02/2017-CT (Rate) dated 28.06.2017 which exempts the supplies from the levy of tax reads as under :-

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

9. Entry at Sr. No. 96 under Not. No. 02/2017-Integrated Tax (Rate) dated 28.06.2017 which exempts the supplies from the levy of tax reads as under :-

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

10. The applicant submitted that from the above it can be noticed that supplies of Papad are exempted from payment of tax irrespective of the nomenclature. Thus, it can be conveniently said 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 GST Act.

11. The applicant further submitted that with the changing of time, the market

trends and market demands calls for a change. The different classes of people demand for different types of Papad and to meet with the demand the manufactures like applicant resort to the technological development in machineries which may help in meeting with the market demand of manufacturing and supplying of Papads of different shapes and sizes.

12. The applicant submitted that today PAPAD does not resemble the same age old traditional round shaped papad. The applicant, due to huge demands in the market able to bring the some changes in shapes and sizes of traditional papad and the same is accepted and appreciated in the market. Due to advancement of the technology, it has become possible to bring change/ modification in the mindset of the people also that 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.

13. The applicant has referred a few judicial pronouncements wherein Hon'ble Courts including Hon'ble Supreme Court have resorted to encouragement of development of principles of interpretation according to the changing scenario. In the case of *State of Punjab Vs. Amritsar Beverages Ltd. – [2006] 147 STC 657 (SC)*, Honourable Supreme Court was confronted with the issue of interpretation of a couple of provisions of the Indian Evidence Act and while interpreting the provisions vis-à-vis taking cognizance of technological development, 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, if the words are capable of comprehending them.*.

Various Honourable High Courts have also followed the same principle of updated interpretation but without burdening the record, the applicant would like to point out one observation 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.*

14. The applicant further submitted that traditional PAPAD is known by different nomenclature in different parts of the country e.g. PAPAD, PAPPAD, PAPPADAM, ALAM, KHICHIYA, etc. Similarly, the modern day PAPAD with different shapes and sizes is also known and recognised by different nomenclature in different parts of the country keeping in mind the shape and size thereof e.g. PAPAD, FRYUMS, BHUNGLA, NADDA, GONGO, PONGA, GOLD FINGER, WHITE FINGER, FINGER, NALI, etc. Further, submitted that keeping in mind this diversity in the different nomenclature given to same commodity in different parts of the country and to avoid confusions and probable litigation, the entry relating to PAPAD has been deliberately worded as “PAPAD, BY WHATEVER NAME IT IS KNOWN” and not as only “PAPAD”.

15. The applicant has referred the order passed by the Authority for Advance Ruling, Tamilnadu in the case of Subramani Sumathi- Order No. 07/AAR/2019 dtd. 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 applicant submitted that issue as to whether PAPAD of different shapes and sizes and also known by different nomenclature, 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, 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. 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.

17. The applicant has referred the various case laws of VAT era which are summarised as under :

(i) 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. In this matter M/s. TTK Healthcare Ltd. was also one of the petitioners.

(ii) Even the Highest Fact Finding Authority of the State of Gujarat i.e. Honourable Gujarat Value Added Tax Tribunal has considered the issue about classification of PAPAD of different shapes and sizes in relation to respective entry 9(2) in Schedule I of the GVAT Act wherein the entry in question was [Khakhra, papad, papad pipes].

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 Dtd.03/07/2015 reported in 2015 GSTB – II – 405 and in the case of M/s. Swethin Food Products Vs. State of Gujarat – 2016 GSTB – I 296, Honourable Tribunal has clearly held that Fryums are nothing but PAPAD and clearly fall under entry 9(2) in schedule I to the GVAT Act and hence are exempt from payment of tax.

(iii) 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.

(iv) Honourable Gujarat High Court in the case of West Coast Waterbase Pvt. Ltd. Vs. State of Gujarat – (2016) 95 VST 370 (Guj.) wherein 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.

(v) The applicant submitted that they are aware of the fact that 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 knowledge of the applicant and subject to verification, Honourable Supreme Court has neither granted any stay on operation and execution of the decision of Honourable Karnataka High Court and 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.

The applicant has rely upon the observation made by Honourable Supreme Court in the case of Collector of Customs, Bombay Vs. Krishna Sales (P) Ltd. – AIR 1994 SC 1239 observing that – Mere filing of appeal does not operate as a stay or suspension of the order appealed against.

(vi) On the issue of classification and the principles of classification, it would be profitable to 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) wherein, issue was as to whether BITUMEN EMULSION was eligible to be classified under the entry which read as BITUMEN. The stand of the Revenue was that the concerned entry was restrictive as it used the only word "BITUMEN" while the stand of the assessee was that BITUMEN EMULSION is a different form of BITUMEN, more precisely in liquid form and less hazardous. So, assessee contended it to be classified under the entry of BITUMEN. Therein Honourable 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 applicant, 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 know it and recognise it as PAPAD. So, the common parlance test as well as the user test lead to the conclusion that the products in question are nothing but PAPAD of different shapes and sizes.

(vii) The applicant submitted that a particular classification once accepted and adopted for years cannot be overturned merely because the law under which a product was classified in a particular manner has repealed and is replaced by a new law. There has to be 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).

(viii) There has to be consistency in law and needs the finality of the proceedings at some point of time. 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 the absence of such a 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. It would also nullify the doctrine of *stare decisis* a well established valuable principle of precedent which cannot be departed from unless there are compelling circumstances to do so. The judgments of the court and particularly the Apex Court of a country cannot and should not be unsettled or ignored. Precedent keeps the law predictable and the law declared by Apex Court, being the law of the land, is binding on all courts/tribunals and authorities in India in view of Article 141 of the Constitution. The judicial system "*only works if someone is allowed to have the last word*" and the last word so spoken is accepted and religiously followed.

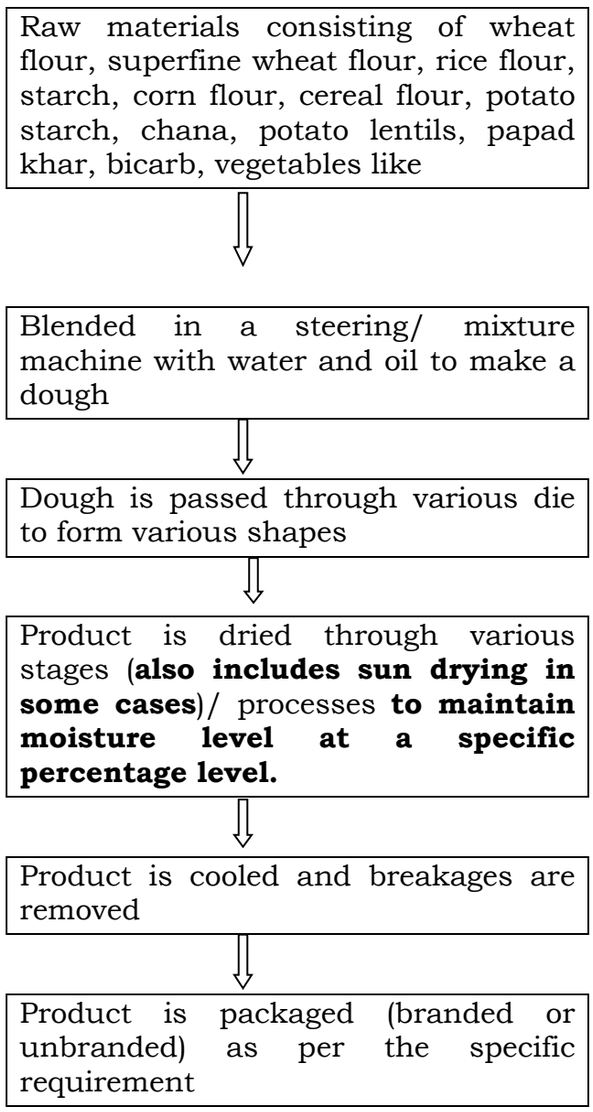
The doctrine of *stare decisis* promotes a certainty and consistency in judicial decisions and this helps in the development of the law. Besides providing guidelines for individuals as to what would be the consequences if he chooses the legal action, the doctrine promotes confidence of the people in the system of the judicial administration. Even otherwise it is an imperative necessity to avoid uncertainty, confusion. Judicial propriety and decorum demand that the law laid down by the highest Court of the land must be given effect to. Union of India (UOI) and Ors. vs. S.P. Sharma and Ors. (2014) 6 SCC 351: MANU/SC/0191/2014.

18. The applicant further submitted that assessee is the person who deals with the product day in day out and who is more conversant with the market. The disturbance in the classification may lead to an anomalous situation for the assessee having business throughout the country. Considering the settled laws on the issue of classification it needs to be appreciated 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. The applicant relied upon 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 wherein Hon'ble Supreme Court has held that- In case of classification, entry which is beneficial to the assessee requires to be adopted.

19. The applicant submitted that thus considering the overall facts and circumstances of the case vis-a-vis the entries in question and the settled law on the subject, PAPAD of different shapes and sizes manufactured and supplied by the applicant irrespective of their shapes, sizes, ingredients, form and nomenclature is entitled to be classified under the Tariff Heading No. 1905 and more precisely 19059040 as " PAPAD by whatever name it is known, except when

served for consumption" as specified at Sr. No. 96 under Notification No. 02/2017-CT (Rate) dated 28.06.2017 and thus attracts NIL rate of tax under IGST, CGST and SGST.

20. The applicant given an additional submission wherein they have submitted that the Papad products are manufactured in various size and shapes as per the requirement of the customer. Further, diverse shapes are obtained with the help of a die and there is no difference in either the ingredients used or in the process of manufacture. For ready reference, a pictorial representation providing overview of papad product manufacturing process is reproduced hereunder:



21. The applicant submitted that principal raw materials for papad products are: rice flour, corn flour, wheat flour, super fine wheat flour, cereal flour, tapioca starch, potato starch, salt, water and flavor, as the case may be. Similar raw-materials including pulses, salt, water etc. are used for making papad. Most of the said raw materials are either exempted from GST or subject to 5%/12% GST.

22. The applicant submitted that papad product, manufactured by above process with the ingredients stated above is then either sold to others entities who specialize in providing the process of frying and roasting these products; or are

sold as such to the consumer or exported in the same condition without frying. The papad product is normally consumed after frying or roasting.

23. The applicant submitted that they do not sell the Papad of different shape and size manufactured by it in ready to eat condition. They manufacture Papad of different shape and size that are in neither fully cooked form nor ready to eat form till it reaches the actual consumer. When the consumer desires to consume/eat, the consumer needs to either fry it or bake it before consumption and upon frying/baking the Papad of different shape and size sold by the applicant becomes consumable. In other words, the Papad of different shape and size are not ready and suitable for human consumption till they are fried/baked as deemed fit and as and when deemed fit by the consumer.

24. The applicant further submitted that as per their understanding, the product in question i.e. PAPAD of different shapes and sizes that are in neither fully cooked nor ready to eat condition seems squarely eligible to be classified under Chapter Tariff Heading –1905.

25. The applicant submitted that from the above, it can be noticed that supplies of Papad are exempted from payment of tax irrespective of the nomenclature. Thus, it can be conveniently said 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.

26. The applicant further submitted that in GST regime, the Customs Tariff has become relevant for the purpose of determination of classification for any supply of goods wherever the rate schedule is aligned with Customs Tariff. From perusal of Customs Tariff Act, 1975 read with interpretation Rules & judicial precedent; they understand that the classification in Customs is driven by the ingredients used in the products. Predominant content in the product would help in determining appropriate classification. 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 prescribe the content or ingredients of products in order to include or exclude specific products within a given Chapter Heading.

27. The applicant submitted that the products are in ready to fry condition for human consumption. 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.

28. The applicant 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 applicant should merit classification under tariff heading 1905 90 40 as 'papad'.

29. The applicant further submitted that apart from above, they would humbly like to bring to kind notice of Honourable AAR that there is no such word 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 authorisation of TTK Healthcare Ltd. only. Thus, 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.

30. The applicant submitted that they are quite aware of the fact that Honourable Authority for Advance Ruling (AAR)has passed an order in the case of M/s. Sonal Productson 22/02/2019 wherein it has been held that "Un-fried Fryums" fall under Tariff Hearing 2106 90 99 and taxable at 18%. However, Honourable Advance Ruling Authority did have opportunity to come across certain facts and certain law in the case of M/s. Sonal Products.

30.1 The applicant submitted that in the case of Sonal Products, Honourable 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).

30.1 The applicant submitted that Honourable AAR has missed out to consider the most important factor in the said judgment. If the judgment is examined then it is noticed that 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, it can be seen that at 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. So, the applicant most respectfully submits that this

judgment cannot be relied upon as a precedent in order to classify PAPAD sold by the applicant because the entry in question before Honourable CEGAT and entry in question in present application of the applicant 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.

30.2 The applicant further submitted that if 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) which is referred in M/s. Sonal Products is examined, it can be noticed that 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. Hence, Honourable AAR has completely erred in placing reliance upon the said judgment in the case of Sonal Products.

31. The applicant submitted that in the case of Sonal Products, the applicant therein had placed reliance upon a couple of Determination Orders passed u/s. 80 of the Gujarat Value Added Tax Act, 2003 but the same were not taken into consideration by Honourable AAR. In para 14 of the order of Sonal Products, Honourable AAR has observed that "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". Hence, Honourable AAR has deemed it fit not to place reliance upon them though they have been rendered exactly on the issue involved and exactly on the products involved.

31.1 The applicant further submitted that with due respect and without any offence, they would like to submit that Honourable AAR had placed strong reliance upon two decisions i.e. ***M/s. T.T.K. Pharma Ltd. Vs. Collector of Central Excise –1993 (63) ELT 446 (Tribunal)*** and ***Commissioner of Commercial Tax, Indore Vs. M/s. T.T.K. Healthcare Ltd. –2007 (211) ELT 197 (SC)***. The decision of CEGAT dealt with completely different entry which by far is not close to the entry currently under the GST Act and decision of Honourable Supreme Court dealt with entry of COOKED FOOD under the MP Commercial Tax Act, 1994 which evidently was not under or related to the Customs Tariff Act.

31.2 So, the learned AAR had completely erred in ruling out the applicability of Determination Orders passed u/s. 80 of the Gujarat Value Added Tax Act, 2003 holding that they were not related to Customs Tariff Act and at the same time place strong reliance upon the decision of Honourable Supreme Court rendered under the MP Commercial Tax Act, 1994 which evidently was not under or related to the Customs Tariff Act and decision of CEGAT which dealt with an entry which by far is not close to the entry currently under the GST Act.

32. The applicant submitted that at the cost of repetition, they once again here submits that on one hand Honourable Supreme Court deals with an entry which is completely different from the present entry under the GST Act while on other hand order of determination u/s. 80 of the Gujarat Value Added Tax Act, 2003 in the case of ***Jay Khodiyar Agency (2007-D-98-103 Dt:-11/09/2007) and Kansara Trading Co. (2011-D-356-357 Dt:-11/02/2011),*** Honourable GVAT Tribunal 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 the case of ***M/s. Swethin Food Products Vs. State of Gujarat –2016 GSTB –I 296,*** Honourable Karnataka High Court in the case of ***State of Karnataka Vs. Vasavamba Stores –[2013] 60 VST 19 (Karn.)***and Honourable Supreme Court in the case of ***Shiv Shakti Gold Finger Vs. Assisstant Commissioner, Commercial Tax, Jaipur –(1996) 9 SCC 514*** deal with an entry identical to the entry under GST Act i.e. PAPAD and classify the similar product like of applicant as PAPAD. So, according to understanding of the applicant, more reliance should be placed and more weightage should be given to the decisions wherein identical or similar entries were involved and with due respect, not to the decisions where entries for consideration were completely different.

33. The applicant submitted that in the case of Sonal Products, the products have been held to be classifiable under Chapter Heading 2106 90 99 i.e. under the residuary entry.

33.1 The applicant submitted that the ruling has relied upon common parlance test to conclude the classification. It is important to note that effective 2005, India has adopted 8digit classification coding. Further, the manner of determining classification has undergone complete change and common parlance test cannot be the sole test for determining classification of a product.

33.2 The applicant further submitted that with respect to classification in Heading 2106, it is important to refer to Chapter Notes of Heading #21 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” of “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.

34. The applicant submitted that 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 needs to be appreciated that in case of present applicant, 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 applicant. 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.*

35. The applicant further submitted that yet 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 applicant, 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 applicant can be equated with either “Misthan” or “Mithai”or “Namkeen” or “Chabena” or “Bhujia”. At the cost of repetition the applicant would like to submit that product of the applicant can neither be consumed by human in the form it is sold which means that is not ready to eat product for human consumption. Thus, heading 2106 90 99 even as general entry is not capable of including the product of the applicant and 1905 90 40 is the only entry and most specific entry where the product manufactured by the applicant would fall.

36. The applicant submitted that with due respect and without any offence, the applicant would like to submit that these all aspects never came for consideration before Honourable Advance Ruling Authority in the case of Sonal Products and thus decision of Sonal Products is silent on the important aspects and rules of interpretation.

Personal Hearing

37. The authorised representative of the applicant appeared for personal hearing. The applicant reiterated the submissions already made in the application. They reiterated the facts submitted along with the application. They submitted the additional reply and showed the samples of product manufactured by them.

Findings and Discussion

38. We have considered the submissions made by the Applicant in their application for advance ruling. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

39. As per the written submission made by the applicant, the main issue involved in the case is regarding classification of "Papad" of different shapes and sizes. The applicant in his submission has tried to equate un-fried Fryums with "Papad" under Tariff Item as 1905 90 40.

40. It is observed that the Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 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."

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

41.1 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 v. 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. ……"

42. This view was upheld by Hon'ble Supreme Court in the case of Oswal Agro Mills Ltd. v. 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 v. 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)]."

42.1 The applicant claimed that the manner of determining classification has undergone complete change and common parlance test cannot be the sole test for determining classification of a product cannot be accepted as such higher judicial authorities in their judgment has ruled that common parlance test is the standard for interpreting terms in the taxing statutes.

43. It needs to be, therefore, examined whether different shapes and size of 'Un-fried Fryums' would be covered by the term 'Papad', as understood in common parlance and as decided by higher judicial authorities.

44. 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. v. 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]

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

44.2 The applicant has contended that in the above case entry for consideration before Honourable CEGAT was "Papad, Idli-Mix, Vada-Mix, Dosa-Mix, Jalebi-Mix, Gulabjamun-Mix or Namkeens such as Bhujia, Chabena"; that at 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. **The applicant said argument is not tenable as such applicant is interpreting the aforesaid judgement as per their convenience because in the said case Hon'ble CEGAT was to decide whether the said Product i.e. "Fryums" can be equate with Namkeen or not so that assessee can get benefit the exemption from payment of duty**. The assessee (M/s. TTK Pharma) in the case had claimed that their product "Fryums" is a Namkeen and **not claimed as "Papad**" where as in the exemption entry **"Papad, Idli-Mix, Vada-Mix, Dosa-Mix, Jalebi-Mix, Gulabjamun-Mix or Namkeens such as Bhujia, Chabena"** both the product i.e. "Papad" and "Namkeen" were exempted. The assessee (M/s. TTK Pharma) emphasis that his

product is Namkeen. It is amply clear that M/s. TTK Pharma was well aware about the nature of the product that their product 'Fryums" cannot be defined as "Papad" instead of it is correctly called as "Namkeen". The assessee (M/s. TTK Pharma) in this case knows that if they claimed their product Fryums as Papad they will not get covered under the said specific entry of exemption Notification. Further, applicant has claimed that assessee M/s. TTK Pharma sold their product Papad under the brand name of 'Fryums' then why before CEGAT they did not make argument/claimed that their product 'Fryums' is actually a "Papad" and not Namkeens. The assessee in the said case has correctly defined their product Fryums as Namkeen. Therefore, by coming in to existence of two different entries of "Papad" and "Namkeen" the classification of the product cannot be changed. Hence in view of the above discussion applicant contention that there was no occasion for Honourable CEGAT to consider and differentiate between PAPAD and NAMKEEN is baseless and misleading because Hon'ble CEGAT has taken account each and every aspect of the product "Fryums" and then considered the said Product "Fryums" as "Namkeen" and not "Papad".

44.3 In the case of Commercial Tax, Indore v. 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]*

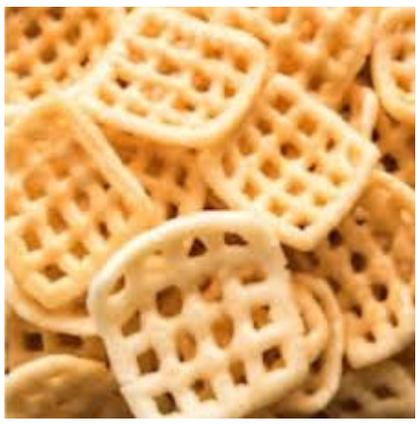
44.4 In this case, Hon'ble Supreme Court was of the view that 'fryums' were like 'seviyan'.

45. The applicant in their application has submitted that such 'different shapes and sizes un-fried Papad is not a cooked food and actually it is ready to cook food. This is a fact that when a person goes in the shop for purchase of Papad, shopkeeper shows him different types of Papad like 'Moong dal Papad' 'Udad dal

Papad', 'Chaval ke Papad' etc. but shopkeeper never shows 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. But, when customer asks the Fryums from the shopkeeper, then he shows all such type of different shape and size of Fryums as mentioned above. The applicant has not mentioned this fact because it is crystal clear that Papad is a distinct commodity and it cannot be equated with the Fryums. 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. Therefore, in commercial or trade parlance also, the 'Un-fried Fryums' cannot be said to be known as 'Papad'. This can be understood by visualizing the photograph of both the product i.e. "Papad" and "Fryums".

PAPAD

FRYUMS



45.1 From the above photos, it can be seen 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" 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 product i.e. "different shapes and sizes of Papad" is not "Papad" but is "Un-fried Fryums".

45.2 Further, the applicant himself has mentioned the fact in their application that in common parlance their product is popularly known as "Fryums" in the market. The applicant fact which is mentioned in the application is reproduced as under,

> *The issue as to whether PAPAD of different shapes and sizes and also known by different nomenclature, **whereby more common nomenclature used is FRYUMS** would be eligible to be considered as and falling under the entry of PAPAD or not has been very well settled.*

This fact indicates that applicant himself knows that in the market their product is called Fryums and not "Papad" as such the fact is that in the market Papad is known as "Papad" and not "Fryums".

46. The applicant has referred to Advance Ruling in the case of Subramani Sumathi- Order No. 07/AAR/2019 dtd. 22/01/2019 wherein Tamilnadu Authority of Advance Ruling held that, "*Papad - Maida Vadam/Papad made of wheat flour, added sugar and vanaspathi and sun dried being unfinished or semi-finished product which is not ready to eat but can be consumed only after being fried by ultimate consumer, is specifically classifiable as 'papad' under Tariff Item 1905 05 40 of GST Tariff which is exempt from CGST/SGST vide Sl. No. 96 of Notification No. 2/2017-C.T. (Rate) as amended and Notification No. II(2)/CTR/532 (d-5)/2017 vide G.O. (Ms) No. 63."* In the said Ruling the Advance Authority was to decided the classification of "Papad" made from "Maida" i.e. fine wheat flour and not the classification of "Fryums". Accordingly, the facts of the said Ruling of the Advance Authority are totally different. Therefore, the said Ruling of Advance Authority is not applicable in the applicant case. Further, as per Section 103 of the CGST Act, 2017 any Advance Ruling is binding on the Applicant who has sought it and on the concerned officer or the jurisdictional officer in respect of the Applicant. Accordingly, AARs Ruling as cited above can't be relied upon in the present case of the Appellant.

47. The applicant has claimed that the main ingredient of their product i.e. so called Papad of different shapes and sizes is wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour, potato starch, chana, potato lentils, papad khar, bicarb, vegetables like and same ingredient is of Papad. This is not correct because main ingredient of Papad is batter of Pulses i.e. Moong dal, Udad Dal, black pepper and not of wheat Flour and Maida. In the market most popular papad are of "Moong dal Papad" and "Udad dal papad". Therefore, main ingredients of both the Product i.e. "Fryums" and "Papad" are not same but are different. Further, the manufacturing processes of both the product have also some differences. In Fryums as claimed by applicant that some sort of moisture are maintained at specific temperature whereas Papad are required to be completely dried in sun light otherwise "Papad" will become rotten if some moisture remains in Papad and cannot be useful for consumption.

48. The applicant has contended that classification in Custom Tariff Act is driven by the ingredients used in the products. Predominant content in the product would help in determining appropriate classification. The applicant this contention is totally wrong as such only ingredients of the product itself cannot be deciding factor for the classification of goods. For proper and correct classification not only ingredient of the product but use of the product, common parlance test and marketability of the product is equally a deciding factor. This fact can be understood by an illustration. If only ingredients of the product are the deciding factor of classification then classification would be same for the "Roti" and "Paratha". Whereas "Roti" is classified under CTH No 1905 and "Paratha" is classified under CTH No. 2106. Similarly the ingredient of Dosa & "Idli" are of Rice flour then Dosa and Idli cannot be called as "Fryums". Therefore the applicant contention that only ingredient of the products is deciding factor for classification is based on wrong perception and lead to wrong classification of the product.

49. The applicant has relied upon the judgment 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. It was held that size or shape is irrelevant and that Papad of all shapes and sizes are covered under the entry 'Papad'.

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

50. 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.

50.1 The State of Karnataka has filed Special Leave Petitions (C) No. 29023-29083/2013 in the Hon'ble Supreme Court against the said judgment of Hon'ble High Court of Karnataka. The Hon'ble Supreme Court has granted leave to the said Special Leave Petitions. Therefore, the aforesaid judgment of the Hon'ble Karnataka High Court is in jeopardy, in view of the judgment of Hon'ble Supreme Court in the case of Union of India v. 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.*

51. The applicant has placed reliance on following case laws of VAT regime:

(i) M/s. Avadh Food Products Vs. State of Gujarat and M/s. Swethin Food Products Vs. State of Gujarat.

These case laws are not applicable in the instant case because facts of the case are different from the applicant and the issue of applicant is to be decided in terms of GST Act, whereas the said case law pertains to VAT Act, which is not in existing after inception of GST Act.

(ii) 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).

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.

(iii) Commissioner of Commercial Tax, UP Vs. A. R. Thermosets (P) Ltd. – AIR 2016 SC 321: (2016) 94 VST 258 (SC).

In this case, Hon'ble Supreme Court of India has decided the issue of classification of BITUMEN EMULSION, whereas in the instant case, issue pertains to determination of classification of un-Fried Fryums. Therefore, this case law is not applicable in the instance case.

52. Therefore, the 'Un-fried Fryums' are not classifiable as 'Papad' under Tariff Item 1905 90 40.

52.1 The next issue which arises for consideration is appropriate classification of 'Unfried Fryums'.

52.2 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.
2106 90	- 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.

52.3 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."

52.4 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.

52.5 The applicant has contended that 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. The said principal of rule of interpretation noscitur a sociis is not applicable. In the instant case the most appropriate rule of interpretation which is to be used while interpreting the phrase 'by whatever name it is known' is the legal principle of Ejusdem Generis. The application of this Rule is necessitated because of the use of a general phrase preceded by specific words. The words 'ejusdem generis' mean 'of the same kind or nature'. Ejusdem generis is a rule of interpretation that where a class of things is followed by general wording that is not itself expansive, the general wording is usually restricted things of the same type as the listed items. The principle of ejusdem generis is applicable in interpreting the CTH No. 1905 whereby the phrase 'by whatever name it is known", should be read in conjunction with the terms 'Papad' and hence the scope of the term "Papad" would get limited to only such word which is similar to Papad or such class of individuals. In the instant case the applicant goods un-cooked Fryums is not similar to Papad or such class of Individuals.

52.6 The Punjab and Haryana High Court in the case of CIT v. Rani Tara Devi[2013] 355 ITR 457 (P & H)held as below:

"The expression 'by any other name' appearing in Item (a) of clause (iii) of Section 2 (14) of the Income Tax Act has to be read ejusdem generis with the earlier expressions i.e. municipal corporation, notified area committee, town area committee, town committee."

52.7 The phrase 'by any other name' and 'by whatever name it is known' have a proximate purpose in a statute and hence the principle laid down by the P&H High Court supra will apply on all squares. Therefore, in the instant Case the goods "Papad" cannot be termed as "Fryums" hence applicant goods is to be classified under CTH No. 2106 and not under CTH No. 1905 of Custom tariff Act, 1975.

52.8 Taking all these aspects into consideration, we hold that the product 'different shapes and sizes un-fried Fryums' is appropriately classifiable under Tariff Item 2106 90 99.

53. Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, 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 30-6-2017, 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 Services 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 28-6-2017, 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.

54. We also refer to the following Rulings of Advance Authority, which are squarely applicable in the instant case:

(i) Gujarat Advance Authority in case of M/s. Sonal Product G {Advance Ruling No. GUJ/GAAR/R/2019/03, dated 22-2-2019} has held that,

> *"Papad and Papad Pipes - Classification of - Products commonly known as unfried Fryums having different shape, sizes and varieties and made from raw materials such as maida floor, starch powder, rice powder, poha, salt, soda by-carb, baking powder, food colour, water and plastic bags for packing - Word 'Papad' not defined either under Customs Tariff or under Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017 or Notifications issued thereunder, therefore, its meaning to be construed in its popular sense as understood in common language - The product is commonly known as 'namkeen' and not as 'papad' and appropriately classifiable under Tariff Item 2106 90 99 of Customs Tariff Act, 1975 and not under Tariff Item 1905 90 40 ibid - Product liable to GST @ 18% (CGST 9% + GGST 9% or IGST 18%) under Serial No. 23 of Schedule III of Notification Nos. 1/2017-C.T. (Rate) as amended and 1/2017-S.T. (Rate) as amended*".

(ii) Madhya Pradesh Advance Authority in case of M/s. Alisha Foods reported in ELT 2020 (33) G.S.T.L. 474 (A.A.R. - GST - M.P.) has held that,

> "*Fryums, fried - Classification - Rate of GST - Applicant pleading that said goods classifiable as Papad under Tariff Item 1905 90 40 of Customs Tariff Act, 1975 - HELD : In common commercial and trade parlance, said goods are considered as Namkeen only and not as Papad - In its decision reported in 1993 (63) E.L.T. 446 (Tribunal), CESTAT had taken similar view in respect of these very goods - Apex Court judgment relied by applicant was in respect of Papad of different shapes and not in respect of Fryums and hence not applicable - Since Heading 2106 ibid covers all kind of edible preparations not elsewhere specified and items and processes specifically mentioned therein are only illustrative, Fried Fryums are appropriately classifiable under Tariff Item 2106 90 99 ibid - Said goods*

chargeable to GST @ 18% (9% CGST + 9% SGST) - Section 9 of Central Goods and Services Tax Act, 2017"

54.1 The above Rulings of Advance Authority are squarely applicable in the applicant case. In view of the said Rulings, it can be concluded that applicant's product of different shape and sizes is "un-fried Fryums" and it cannot be called as "Papad" as claimed in the application and therefore merits classifiable under Tariff Heading 21069099 of the Custom Tariff Act, 1975.

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

RULING

Question: Under which tariff Heading PAPAD of different shapes and sizes manufactured/ supplied by the applicant would attract CGST and SGST?

Answer : The product 'Un-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 'Un-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.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad
Date: 17.09.2020.