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/77/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/14)
Date: 17.09.2020

Name and address of the applicant	:	**M/s. J K Papad Industries,** **Plot No. 268-270, Sarthi Industrial Park,** **NH No.8, Sanki, Surat, Gujarat-394 315**
GSTIN/ User Id of the applicant	:	24AAOFJ8306Q1ZP
Date of application	:	04.03.2020
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.
Date of Personal Hearing	:	17.08.2020 (Through Video Conferencing)
Present for the applicant	:	Shri Ishwarkumar Ramjibhai Jivani

BRIEF FACTS OF THE CASE:

M/s. J K Papad Industries, Plot No.268-270, Sarthi Industrial Park, NH No.8, Sanki, Surat, Gujarat- 394315 (herein after referred to as the "applicant" for the sake of brevity) is a partnership firm and registered under GST Act, 2017-24AAOFJ8306Q1ZP 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 marketing of "Papad" of different shapes and sizes. Papad is crunchy snack that is conceptualised as a product that is raw pellet yet semi-cooked/un-cooked 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. It does not require any extra effort to do the same i.e. change the shape and size of a Papad. The dough remains 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 square, 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.

4. 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 shape and size, which remains in an un-cooked/semi-cooked 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 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.

5. In view of the above backdrops, the applicant sought Advance Ruling on the following questions :

(i) *Under which Tariff Heading, the product dealt in by the applicant, i.e. PAPAD of different shapes and sizes are eligible to be classified?*

(ii) *What is the applicable rate of SGST and CGST on supply of such Papad of different shapes and sizes?*

Applicant's interpretation of law :

6. The applicant submitted that as per their understanding the product in question i.e. PAPAD of different shapes and sizes in un-cooked condition seems squarely eligible to be classified under Chapter Tariff Heading- 1905.

6.1 Entry at Sr. No. 96 under Notification No.02/2017-Central Tax (Rate) dated 28.06.2017 which exempts the supplies from the levy of tax, reads as under:-

Sl. No.	***Chapter/Heading/ Subheading / Tariff item***	***Description of goods***
96.	*1905*	*Pappad, by whatever name it is known, except when served for consumption*

6.2 Entry at Sr. No. 96 under Notification No.02/2017-Integrated Tax (Rate) dated 28.06.2017, which exempts the supplies from the levy of tax, reads as under:-

Sl. No.	***Chapter/Heading/ Subheading / Tariff item***	***Description of goods***
96.	*1905*	*Pappad, by whatever name it is known, except when served for consumption*

6.3 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.

6.4 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.

6.5 The applicant further submitted that today PAPAD does not resemble the same age old traditional round shaped papad. Today, due to huge change in market trend, huge change in the taste buds of the masses and huge change in the technology, the manufactures like applicant are 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 mind-set of the people also that now PAPAD does not resemble the traditional round shape but now Papad can be in any desired shape and size. Considering the same, the rules of viewing a product and interpretation about its classification also need to be modified and upgraded with the overall advancement of commercial scenario.

6.6 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.

6.6.1 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.*"

6.6.2 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."*

6.7 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.*"

6.8 The applicant further submitted that traditional PAPAD is known by different nomenclature in different parts of the country e.g. PAPAD, PAPAD, 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. The applicant 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 OS KNOWN" and not as only "PAPAD".

6.9 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.

6.10 The applicant further submitted that 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 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.

6.11 The applicant has also 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/un-fried form sold, would qualify as PAPAD and it has been held by Honourable Karnataka High Court that FRYUMS fall under the entry of PAPAD irrespective of their shapes and sizes and irrespective of the ingredients used.

(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 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 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.*

As per the knowledge of the applicant and subject to verification, both the above decisions have not been challenged by the State of Gujarat further or at least there is no adverse decision till date from the higher forum in these matters reversing the aforementioned decisions.

6.12 The applicant further submitted 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 would like to place reliance upon the observation made by the Honourable Supreme Court in the case of **Collector of Customs, Bombay Vs. Krishna Sales (P) Ltd. – AIR 1994 SC 1239** wherein Hon'ble Supreme Court has observed that – *Mere filing of appeal does not operate as a stay or suspension of the order appeale*d against.

6.13 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, the 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 recognize 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.

6.14 The applicant further 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).***

6.15 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 an 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.***

6.16 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 applied.

6.17 Lastly, the applicant has submitted that while classifying any product under any HSN code what is to be classified is product as per nomenclature and not as per brand name or trade mark. The word, 'FYRUMS' is trade mark owned by T.T. Narsimhan which represents particular shape of PAPAD (photo of the trade mark named FRYMUS is attached with the application) and it is not a new product itself. The same is also proved by the fact that the word PAPAD is being found in Oxford Dictionary and the word FRYMUS is not found in Oxford Dictionary. If they take an example of toothpaste, in India at many places people use 'Colgate' instead of toothpaste. But, while classifying the product toothpaste, one needs to classify under the category of toothpaste and not in anywhere else not specified as the word Colgate is not found in HSN category of tooth paste. Also it is very well accepted by the Customs authorities while exporting goods that the papad is classified under the HSN code 1905 90 40.

6.18 The applicant further 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 1905 90 40 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.

7. Further, the applicant has furnished the Additional submission dated 06.08.2020, as below:

(i) The issue was already decided in case of M/s. Subramani Sumathi vide Order No. 7/AAR/2019 dated 22.01.2019 by Tamilnadu Advance Ruling Authority, who has held that Maida Vadam/ Papad is classifiable under '109050540'. As GST being promoted as one nation one tax, one needs to follow it by heart and by spirit also by having truly one nation one tax

theory. If different tax rates are there for the same product in different States then there will be clear cut violation of One Nation One Tax theory which is ultimate goal of bringing GST into existence.

(ii) HSN classification is being followed by Customs authorities years before the CGST came into existence and the exporters are exporting the papad under the HSN code 19059040 even under the product description Fryums as they understand that the Fryums is nothing but a brand name and not product nomenclature. They also submitted the copy of Shipping Bill of Export. After going through the same, it will be clear that exporters are clearing these products under the HSN 19059040 since long ago and it is settled position in Customs.

(iii) It is settled principal that it must be proven by the department that the goods cannot be brought under a specific tariff item by no conceivable process of reasoning and only then resort can be had to classifying the goods under a residuary entry. This was held in the case of Bharat Forge & Press Industries (P) Ltd. Vs. CCE-1990 (45) E.L.T. 525 (S.C.). The applicant further submitted that there is a specific heading of Chapter 19 of the First Schedule to the Customs Tariff Act, 1975 as "Preparation of cereals, flour, starch or milk; pastrycooks' products". The applicant further submitted that the Papad and Papad products manufactured by them are made up of Cereals, Flour, Starch etc.. The Papad and Papad products manufactured by them are mainly composed of cereals, flour, starch out of total ingredients in papad and papad product. So, the applicant is of the view that its products fall in the Chapter 19 of the First Schedule to the Customs Tariff Act, 1975.

RECORDS OF PERSONAL HEARING:

8. 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.

8.1 Further, the applicant has furnished the Additional submission dated 17.08.2020 at the time of personal hearing, as below:

(i) The CGST member of Advance Ruling Authority of Tamilnadu has already taken a view that the product for which the applicant is seeking the ruling is classified as papad only under the HSN 1905. This view is also to be taken by the CGST member of Advance Ruling Authority of Gujarat as the both the members represent central government so they cannot have different stand on the same issue and product. So my submission is that the AAR ruling of Tamilnadu is binding on CGST

member of AAR of Gujarat and he cannot take different view in this matter.

(ii) The AAR ruling shall not result into absurdity. For example if the applicant has manufacturing plant in Tamilnadu and one manufacturing plant in Gujarat then if you classify the same product by the same person under two different HSN having different rate of tax then how will this businessmen run his business where there two different rates for same product. This will result in absurdity. So the product manufactured by the applicant shall be classified under HSN 1905 which is already held in case of M/s. Subramani Sumathi vide Order No. 7/AAR/2019 dated 22.01.2019 by Tamilnadu Advance Ruling Authority.

(iii) The statement of objects and reasons of the GST- The constitutional (122nd amendment) Bill, 2014 clearly says that "**The GST shall replace the number of indirect taxes being levied by the union and state governments and to provide for a common national market for goods and services**. The statement of objects and reasons of the CGST clearly states that **The GST is being brought in to mitigate the difficulty of variety of VAT laws in the country with disparate tax rates and dissimilar tax practices divides the country into separate economic spheres.** If this object is to be met then one need to accept the AAR ruling of Tamilnadu Advance Ruling Authority in case of M/s. Subramani Sumathi. If this is not accepted, then the law will result in absurdity as AAR of different states will classify the same product in into many different rates and the object of the constitutional amendment and the CGST and GGST will not be fulfilled.

DISCUSSION AND FINDINGS:

9. We have considered the submissions made by the Applicant in their application for advance ruling as well as additional submissions dated 06.08.2020 and 17.08.2020. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

9.1 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.

10. 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.

11. It is observed that the Explanation (iii) and (iv) of the Notification No. 01/2017-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."*

12. What is 'Papad' has not been defined or clarified under the 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.

12.1 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. ……"

12.2 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)]."

12.3 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.

13. 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]

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

14. 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".

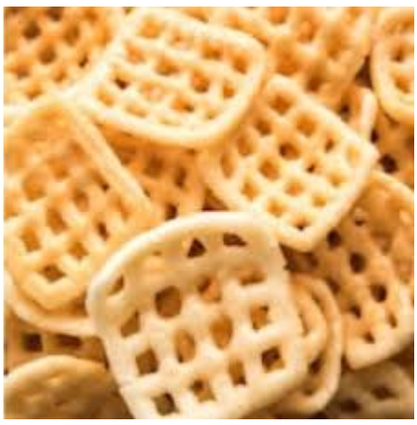
[underlining supplied]

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

15. 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 types 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 products, i.e. "Papad" and "FRYUMS", as below:

PAPAD

FRYUMS



15.1 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 products are different and having 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".**

15.2 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".

16. 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'.

16.1 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.

17. The applicant has also relied upon the judgement of Hon'ble High Court of Karnataka in the case of State of Karnataka v. 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.

17.1 However, 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."*

18. The applicant has also 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 above cases 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) *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.

19. The applicant has also 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 and stated that the AAR ruling of Tamilnadu is binding on CGST member of AAR of Gujarat and he cannot take different view in this matter.

19.1 We have perused the aforesaid Order of the Authority for Advance Ruling, Tamilnadu and find that in this case, the issue of classification of PAPAD made of maida was for consideration before Advance Ruling Authority. Since, the issue of classification of 'Un-fried Fryums' was not under consideration before the said Advance Ruling Authority, the ratio of said order cannot be applied to the facts of the present case. In this regard, it is further worthwhile to refer the provision of Section 103 of the CGST Act, 2017, which provides that "*the advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling; (b) on the concerned officer or the jurisdictional officer in respect of the applicant.*

20. The applicant has claimed that the main ingredient of their products i.e. so called Papad and papad products of different shapes and sizes are Cereals, Flour, Starch etc. and so, the applicant is of the view that its products fall in the Chapter 19 of the First Schedule to the Customs Tariff Act, 1975. We find that main ingredient of Papad is batter of Pulses i.e. Moong dal, Udad Dal, black pepper etc. In the market most popular papad are of "Moong dal Papad" and "Udad dal papad". Therefore, main ingredients of both the Products 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, 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. Further, it is worthwhile to mention that 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. Thus, only ingredient of the products is not the deciding factor for classification and it leads to wrong classification of the product.

21. In view of the above discussion, we come to the conclusion that the 'Un-fried FRYUMS' are not classifiable as 'Papad' under Tariff Item 1905 90 40.

22. The next issue which arises for consideration is appropriate classification of 'Un-fried FRYUMS'.

22.1 Chapter Heading 2106 of the First Schedule to the Customs Tariff Act, 1975 is relevant here, which is reproduced below:-

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.*

22.2 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."

22.3 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.

22.4 Taking all these aspects into consideration, we hold that the product 'different shapes and sizes un-fried FRYUMS' manufactured and supplied by the applicant is appropriately classifiable under Tariff Item 2106 90 99.

23. 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 the 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.

24. 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} wherein it has been 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.) holding 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.*"

25. The above Rulings of Advance Authorities 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 classification under Tariff Heading 21069099 of the Custom Tariff Act, 1975, attracting GST

@ 18% (CGST 9% + GGST 9% or IGST 18%).

26. In light of the foregoing, we rule as under:-

RULING

Question 1: Under which Tariff Heading, the product dealt in by the applicant, i.e. PAPAD of different shapes and sizes are eligible to be classified?

Answer: The product of different shape and sizes manufactured and supplied by applicant is "un-fried FRYUMS" and not "Papad" and is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.

Question 2: What is the applicable rate of SGST and CGST on supply of such Papad of different shapes and sizes?

Answer: 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) **(MOHIT AGRAWAL)**

MEMBER **MEMBER**

Place: Ahmedabad

Date: 17.09.2020.