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/66/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/67
Date: 17.09.2020

Name and address of the applicant	:	M/s. Barakatbhai Noordinbhai Velani (legal Name), **Alisha Gruh Udyog (Trade Name)** Plot No. 281, GIDC Wadwan, Surendranagar.
GSTIN/ User Id of the applicant	:	24ADWPV1483D1Z5
Date of application	:	08.12.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	a) Classification of any goods or services or both. b) Applicability of a Notification issued under the provisions of this Act e) Determination of the liability to pay tax on any goods or services or both:
Date of Personal Hearing	:	17.08.2020 (through video Conferencing)
Present for the applicant	:	Shri Apoorva Mehta Advocate

M/s. Barakatbhai Noordinbhai Velani (legal Name), M/s. Alisha Gruh Udyog (Trade Name), Plot No. 281, GIDC Wadwan, Surendranagar having a GSTIN: 24AAFFG8784L1ZT, is a proprietorship company 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 manufacture of Fryums. The said Fryums are prepared from maida is purchased as raw material from market which is in un-fried form. The same is first fried and various masala powders are applied and thereafter it is packed in small packets for being sold. The aforesaid fryums are sold by the applicant in different shapes and sizes such as alphabets, rings, stars etc.

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

(i) Whether any tax is payable in respect of sale /supply of Fryums manufactured by the applicant? And if the answer is in affirmative, the rate of tax thereof?

Applicant's interpretation of law :

4. The applicant submitted that it is settled legal position that Fryums are Papad. Since Papad is exempt as per entry at Sr. No. 96 of Tariff item No. 1905 of Not No. 02/2017-CT (rate) dated 28.06.2017, the Fryums manufactured and sold / supplied by the applicant would also be exempt from payment of tax.

5. The applicant has placed reliance on the following judgements of VAT era.

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.*

6. The applicant submitted the additional submission on 18.08.2018 wherein they submitted that though in the case of M/s. Sonal Products, this Hon'ble Authority for Advance Ruling had vide order dated 22.02.2019 held that Fryums are not Papad and are classifiable under Tariff Item 21069099 warranting tax at the rate of 18%, the said ruling is contrary to the order dated 22.01.2019 passed by Tamilnadu Advance Ruling Authority in the case of M/s. Subramani Sumathi wherein it has been held that Fryums are papad and are classifiable under tariff Item 1905 05 40 and that the same are exempted from payment of any tax in view of Entry at S. No. 96 of Not. No. 02/2017-CT (Rate) dated 28.06.2017. Further submitted that it is true that in the case of M/s. Subramani Sumathi (supra), the issue was pertaining to unfried Fryums/Papad, however the Entry at S. No. 96 of the Notification dated 28.06.2017speaks of Papad, by whatever name called, except when served for consumption. Thus the entry made no distinction between fried or unfried papad. Even after frying, it still retains its original character of that of a Papad. Further, the term "by whatever name called" would include within its sweep all types of papad known by whatever name in the common parlance. The only category of papad excluded by Entry at S. No. 96 is when it is served for consumption means served in hotel, eating house and meant for consumption at that place itself. Reference may be made to a determination order dated 20.08.2006 in the case of M/s. Gaylord Restaurant. The order in the case of M/s. Sonal Products (supra) is also erroneous on several other counts which are discussed herein below.

7. The applicant submitted that it is legal position that a specific description shall be adopted in place of a general description. It is equally settled that resort to residual entry has to be made with extreme caution and that too only when no other provision expressly or by necessary implication applies to the goods in

question. It is the case of the applicant that Fryums are papad which is exempt from payment of any tax in view of Entry at S. No. 96 of Not. No. 02/2017-CT (Rate) dated 28.06.2017. Thus, if the same are not considered as "papad" only then a resort can be made to the heading 2106 given at Sr. No. 23 of Schedule III of Not. No. 01/2017-Ct (rate) dated 28.06.2017 which is general in nature as it includes food preparations not elsewhere specified or included. Several determining authorities, Honble GVAT Tribunal, Hon'ble Karnatak High Court and Hon'ble Supremee Court of India had an occasion to consider this issue and as all the authorities and Hon'ble Courts have ultimately come to a conclusion that Fryums are papad. The determination orders and judgements have not been reversed by any authority and Court and therefore it has a binding force. The applicant further submitted that whether the relied upon judgements have considered the Customs Tariff Act, 1975 or not is hardly relevant as it is plain interpretation that Fryums are papad. Even if law is amended or new law is enacted, the said interpretation will still hold the field since the Entry No. 96 of Papad is retained. The product under the earlier law would not become something else simply because there is a new law in place.

8. The applicant submitted that Hon'ble Karnataka High Court in the case of State of Karnataka Vasavamba Stores [(2010) 60VST 19 (Kar)] has held that Fryums are Papad. It must also be noted that the said judgement was in the context of Entry at Sr. No. 40 of Schedule-I to the KVAT Act, 2003 which granted exemption to "Papad". The description under tariff entry 19059040 also carries the same word " Papad". In the said judgement the Hon'ble Karnataka High Court relied upon the judgement of Hon'ble Supreme Court in the case of Shiv Shakti Gold Finger v/s Assistant Commissioner, Commercial Taxes [1996] 9 SSC 514 whereas the judgement of Hon'ble Supreme Court in the case of Commercial Tax v/s TTK Health Care Ltd. [2007] 7 VST 1 (SC) came to be distinguished. It is true that the aforesaid judgement is subject matter of appeal before Hon'ble Supreme Court and the issue can be decided one way or the other. However, the fact of the matter is that the aforesaid judgement has not been stayed by the Hon'ble Apex Court. Therefore, no authority can refuse to follow such binding judgement simply on the ground that the same is in jeopardy in view of the settled legal position. Further, the judgement of Hon'ble Apex Court in the case of Union of India v/s West Coast Paper Mills Ltd. [2004] 164ELT375 (SC) deals with issues such as execution of suit, doctrine of merger, etc. It does not lay down the proposition that a judgement in jeopardy has to be ignored by the authorities. The said judgement which is even totally distinguishable on facts could not have been thus relied upon in the case of Sonal Products (supra).

9. The applicant further submitted that the Hon'ble Apex Court in the case of TTK Health Care Limited (supra) has held that Fryums are not cooked food. The said decision has no applicability to the present case as the issue herein is not as

to whether the Fryums are papad or not. The Hon'ble Karnataka High Court in the case of Vasavamba Stores (supra) has rightly observed that the Apex Court has nowhere stated that Fryums are not papad.

10. The Hon'ble Supreme Court in the case of Shiv Shakti Gold Finger (supra), in the context of the issue as to whether Gol Papad manufactured out of Maida, Salt Starch, Papad Soda, Alum and food colour can be considered as "papad" or not in the context of exemption granted to "papad and Badi" u/s 4 (2) of the Rajasthan Sales Tax Act, 1954 has held that the Notification exempting papad would govern all the varieties of papad, whether they are circular or flat in shape consisting of all the ingredients whether it is pulses, rice, maida etc.

11. The applicant further submittted that the decision of Hon'ble CEGAT in the case of TTK Pharma Ltd. [1993] 63 ELT 446 (Tribunal) relied upon in the case of Sonal Products (supra) wherein it has been held that Fryums put up in unit containers and ordinarily intended for sale are classifiable under sub-heading 2107.91 as a namkeen. The said judgement of Hon'ble CEGAT has no applicability for several reasons. One, it is with respect to the interpretation of sub-heading 2107. Which no longer forms part of the tariff and hence the goods falling therein have been included elsewhere including heading 1905 which covers "papad". Secondly, it is with respect to interpretation of an exemption notification which referred to the goods falling under 2107 which is not the issue at hand. Lastly, the present issue is concerning the interpretation of the term "papad" and whether the same requires further frying or not and hence whether the same is "namkeen" or not as was the issue in the said judgement.

12. The applicant also submitted that the Hon'ble Apex Court in the case of Ponds India Ltd. Vs. Commissioner of Trade Tax (2008) 15 VST 256 (SC) held that the classification of goods followed by the department for a number of years cannot be departed unless new material or cogent reasons are available for changing the classification. Reference may also be made to Circular No. 27/3686-TRU dated 04.08.1986 wherein it has been clarified that papad shall be rightly classifiable under heading No. 19.05 of the Central Excise Tariff. Thus, Fryums have been treated as "papad" by the revenue since number of years and hence it would not be justifiable to depart from the said settled position without any extraordinary reasons.

13. The applicant submitted that under the circumstances, the only conclusion that can be drawn is if the ingredients for the manufacturer of the Fryums in question are maida mixed with other additives, the same shall be considered as papad only irrespective of its shape and size and it would also make no difference as to whether the same are fried or un-fried.

Personal Hearing

14. 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.

Findings and Discussion

15. 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.

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

17. 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."

18. 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.

18.1 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. ……"*

19. 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)]."*

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

20. 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]

20.1 Thus, in the aforesaid decision, the product 'Fry Snack Foods called Fryums' have been considered as 'Namkeen' and not as 'Papad'. In the instant case, the applicant is manufacturing "fried Fryums" on which masala is applied therefore the aforesaid decision is squarely applicable in the applicant case as such in the aforesaid case the assessee was manufacturing the Fryums and Hon'ble CEGAT has decided that Fryums are Namkeen. Hence in view of the Hon'ble CEGAT decision the applicant product can be equated with "Namkeen" and not with Papad.

20.2 The applicant has contended that the above judgement has no applicability for following reasons that, it is in respect of interpretation of sub-heading 2107 which is no longer forms part of tariff; that it is with interpretation of exemption Notification which referred to the goods falling under 2107 and the present issue is concerning the interpretation of the term "papad" and not whether the same requires further frying or not. **The applicant said arguments are 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) emphasised 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. The assessee in the said case has correctly defined their product Fryums as Namkeen. Therefore, in this case the issue was to interpretation of goods covers under the exemption entry irrespective of tariff heading so that the assessee can get the benefit of duty and also in the case assessee do not make any argument with regard to the tariff heading as such the assessee(M/s TTK Pharma) wants to know whether his product falls under the exemption entry of the Notification by treating Fryums as "Namkeen" or not and Hon'ble CEGAT has decided that the Fryums are "Namkeen". Hence in view of the above discussion applicant contention are 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". Therefore, in the applicant case the aforesaid judgement is squarely applicable as such the applicant is engaged in the manufacture of fried Fryums and same is not like papad as claimed by the applicant.

21. 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".*
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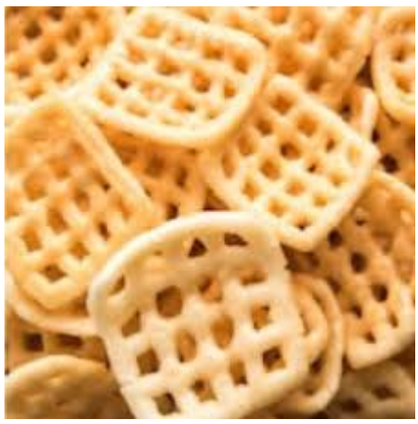
> *[underlining supplied]*

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

22. The applicant in their application has submitted that such 'different shapes and sizes Fryums are fried and masala powder is added. 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. Also in the market Papad commonly are sold in ready to cook condition and not "fried" or "Baked" form whereas applicant product is sold in market as fried Fryums i.e. ready to eat and not ready to cook. Whereas 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 whereas the fried Fryums with masala are known as "Fryums" only. Therefore, in commercial or trade parlance also, the 'fried Fryums with masala' cannot be said to be known as 'Papad'. This can be understood by visualizing the photograph of both the product i.e. "Papad" and "Fryums".

PAPAD

FRYUMS



22.1 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, fried 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 fried Fryums" is not "Papad" but is "Fryums".

22.2 Further, the applicant himself has mentioned the fact in their application that they are engaged in the manufacture of fried Fryums with masala. Hence this fact indicates that applicant himself knows that in the market in common parlance 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".

23. 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 decide 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.

24. Further it is state that the main ingredient of their product i.e. so called Papad of different shapes and sizes i.e. "Fryums" is wheat flour, superfine wheat flour, whereas 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 some sort of moisture are maintained at specific temperature and then fried the Fryums and applied Masala then put in a unit container for sale 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 Papad are commonly sold in ready to cook condition and not fried or baked whereas applicant product sold as ready to eat. Hence the applicant’s claim that their product fried Fryums are known as “papad” is totally baseless and misleading.

25. 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’.

25.1 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.

26. 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.

26.1 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.

27. 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.

Further, all the above decision/judgement on which applicant relies are all related to erstwhile VAT Laws whereas issue of classification/ rate of tax involved in the case of applicant is related to newly implemented GST laws, hence all the judgement/decision of the erstwhile laws are not appears to be applicable in the case of the applicant.

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

28.1 The next issue which arises for consideration is appropriate classification of 'fried Fryums'.

28.2 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	kg.

		malto dextrin syrup	
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.

28.3 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."

28.4 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. In 5(b) above preparation for use after processing has been included and mentioned therein such as cooking, dissolving or boiling in water, milk or other liquids. Obviously, the term 'such as' is purely illustrative but not exhaustive and therefore processing includes frying also, hence fried goods are also covered under chapter head 2106 which is ready for human consumption. Chapter Note 6 pertaining to Tariff Item 2106 90 99 also provides inclusive definition and products mentioned therein are illustrative only. The applicant contention that a specific description shall be adopted in place of general description is not acceptable in view of the above discussion as such the Tariff heading No.1905 is for "papad" and not for Fryums. Therefore, goods Fryums do not cover under any specific entry in the Tariff, therefore it is required to take resort of residual entry to decide the HSN code of " fried Fryums'.

29. 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' in the

heading 1905 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.

29.1 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."

29.2 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 "fried Fryums" is to be classified under CTH No. 2106 and not under CTH No. 1905 of Custom tariff Act, 1975.

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

31. 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 '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.

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

(i) Madhya Pradesh Advance Authority **in case of M/s. Alisha Foods** {Order No. 20/2019 dated 28.11.2019} 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. [paras 7.8, 7.9, 7.10, 7.11, 7.12, 7.14]*

(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".*

32.1 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 "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.

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

RULING

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

Answer : The product 'fried Fryums' manufactured and supplied by applicant is

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

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad
Date: 17.09.2020.