


<b>GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.</b>	
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ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2021/17  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/17)

Date : 21.05.2021

Name and address of the appellant/jurisdictional officer/ concerned officer	:	Assistant Commissioner, Central Goods and Services Tax, Division – Himmatnagar, Commissionerate – Gandhinagar.
Name and address of the applicant	:	Shri Dipakkumar Kantilal Chotai (Talod Gruh Udyog), 13, 8/9A, Purushottam Industrial Estate, College Road, Mahiyal, Talod, Sabarkantha – 383 215. (Gujarat)
GSTIN of the applicant	:	24AATPC3543K1ZL
Advance Ruling No. and Date	:	GUJ/GAAR/R/43/2020 dated 30.07.2020
Date of appeal	:	04.09.2020
Date of Personal Hearing	:	10.11.2020
Present for the applicant	:	Shri Amish Khandhar
Present for the Department	:	Shri Bhushan Gupte

Shri Dipakkumar Kantilal Chotai (Prop. of Talod Gruh Udyog) (herein after referred to as the applicant) filed an application for advance ruling before the Gujarat Authority for Advance Ruling (herein after referred to as the ‘GAAR’) wherein it was *inter-alia* submitted that the applicant is selling ‘Mixed Flour’ which is used for preparing different traditional Indian dishes such as Khaman, Gota, Dhokla, Handwa, Rice & Rava Idli, Dosa, Dahi wada, Dalwada, Menduwada, Bhajjiya, Vada Masala, Khichu, Upma, Muthiya, Pudla, Gulab Jamun, Moong Bhajjiya and Chola fali. It was submitted that in a nutshell, the said ‘Mixed Flour’ is used for preparing ‘Instant Farsan’ or eatable and a special mention can be made of Khaman, Gota and Handwa Mix which has been accepted in the market as a product leader. The applicant has been selling varied types of ‘Mixed Flour’ under the ‘Talod’ brand name.

2. The applicant submitted that ready to mix/instant mix is a flour of grains and pulses mixed with spices and condiments; that recipe for preparing farsan/eatables is printed on the packet of product and by following the direction of recipe,

farsan/eatables can be prepared instantly after adding such other ingredients as required. The process followed by the applicant (Talod) was narrated as under:

- (a) Talod purchases food grains and pulses from open market.
- (b) Such pulses are sorted and washed and then send to grinding machine.
- (c) Pulses are grinded into flour in grinding machine e.g. where Grams is purchased, it results into gram flour by following grinding process. In certain cases, Talod purchases grinded flour directly from the vendors.
- (d) Now, certain spices are mixed in flour and such mixed flour is packed in various packings.
- (e) Mixed Flour (commercially known as 'Instant Mix Flour') are sold in open market or through distributors to consumers.
- (f) End consumer of such 'Instant Mix Flour' is required to follow certain food preparation process before such product can be consumed as eatable.
- (g) Hence, 'Instant Mix Flour' cannot be consumed as it is, but it is required to follow certain cooking procedures before consumption. Hence the product manufactured and sold by the applicant is not 'ready to eat' but can be said as 'ready to cook'.

3. The applicant submitted an activity-wise manufacturing process flow chart for preparing final mixed flours in a diagrammatic manner and explained the manufacturing process as under -

- (a) Ready to Mix/Instant Mix Flour contains mainly flours of grains and/or pulses like Bengal Gram Dal, Gram Dal, UdadDal, Chana Dal, Moong Dal, Paddy, Sago, Wheat granule, Rice etc. where the content of 'flour' is having major weightage. Most of the Mixed Flour products have 'flour' content of more than 70-90%.
- (b) Powder of spices like Pepper, Red Chilli, Coriander, Ajma, Sounff, Jeera, Turmeric, Tamarind, Iodised Salt, Sugar, Mustard, Lemon, Condiments, Citric Acid, Sodium Bicarbonate, Turmeric, Cumin, Clove, Curry Leaves, Asafoetida, Baciliyam, Black Pepper, TejPatta, Curry Leaves Bundian, Fennel Seeds, Anise Seeds, Bay Leaf, Neem Leaves(Sweet), Flavours etc. are added in a very little quantity to make the product tasty and delicious.
- (c) At the processing unit, the applicant is not carrying out any process of cooking. The applicant carries on only mixing process, whereby spices, condiments and flavours are mixed with flour of grains, cereals and pulses. Flour of grains, cereals and pulses are used in its primary form.
- (d) Instant Mix/Ready to Mix Flour is packed in sealed packing of 50/90/200/250/500 grams and in 1 kgs. On packing material,

preparation process/recipe is printed to prepare food from such Instant Mix.

- (e) Instant Mix/Ready Mix Flour is by all means not a processed food, neither cooked food, nor semi-processed food, nor semi cooked food, nor preserved food or not a ready-to-eat food. Instant mixed flour is a flour of grains and pulses mixed with spices, condiments and flavours.

4. The applicant gave the details of raw materials used in various products manufactured and flour of grains and pulses and other condiments contained in the products, as follows:

Sr. No.	Product	Ingredients used
1.	Khaman Mix Flour	Grams Flour, Sugar, Iodised Salt, Citric Acid, Sodium Bicarbonate, Turmeric.
2.	Gota Mix Flour	Grams Flour, Sugar, Iodised Salt, Chili Powder, Garam masala (powder of Chili, Cloves, Baciliyam, Black Pepper, Coriander, TejPatta (Clove Leaves), Sodium Bicarbonate, Citric Acid, Asafoetida, Ajma, Sounff, Chutney powder contacts, Wood Apple powder form (Limonia Acidissima).
3.	Dhokla Mix Flour	Rice, Udad dal, Chana dal, Sugar, Iodised Salt, Sodium Bicarbonate, Citric Acid, Asafoetida.
4.	Handwa Mix Flour	Rice, Udad dal, Chana dal, Sugar, Iodised salt, Sodium Bicarbonate, Citric Acid, Turmeric, Chillies, Garam Masala (powder of Curry Leaves Bundian, Fennel Seeds, Black Pepper, TajPatta, Clove Leaves).
5.	Idli Mix Flour	Rice, Udad dal, Iodised Salt, Sodium Bicarbonate, Citric Acid.
6.	Dosa Mix Flour	Rice, Udad dal, Iodised Salt, Sodium Bicarbonate, Citric acid.
7.	Dahi-wada Mix Flour	Moong dal, Udad dal, Iodised Salt, Sodium Bicarbonate, Citric Acid.
8.	Dalwada Mix Flour	Moong dal, Udad dal, Iodised Salt, Sodium Bicarbonate, Citric Acid.
9.	Khichu Mix Flour	Paddy & Sago (in powder form), Iodised Salt, Cumin Seeds, Carbonate of Soda.
10.	Upma Mix Flour	Wheat Granule, Iodised Salt, Sugar, Gram dal, Udad dal, Mustard Seeds, Cummin Seeds, Neem Leaves (Sweet), Green Chilli, Hydrogenated Vegetable Oil, Citric Acid.

11.	RavaIdli Mix Flour	Gram dal, Udad dal, Rava, Citric Acid, Iodised Salt, Green Chilli, Curry Leaves, Mustard Seeds.
12.	Medu Vada Mix Flour	Udad dal, Gram dal, Rice, Iodised Salt, Sodium Bicarbonate, Citric acid.
13.	Muthiya Mix Flour	Wheat Flour, IodisedSalt, Citric Acid, Red Chilli, Asafoetida, Cumin seeds, Ajwain, Sugar, Turmeric, Garam Masala.
14.	Pudla Mix Flour	Gram Flour, Iodised Salt, Red ChilliPowder, Asafoetida, Coriander,Cumin Powder, Turmeric.
15.	MoongBhajiya Mix Flour	Moong dal, Udad dal, IodisedSalt, Citric Acid, Sodium Bicarbonate, Red Chilli, Saunf, Asafoetida.
16.	Chorafali Mix Flour	Chana dal, Udad dal, Chola dal, IodisedSalt, Chillies, Black Salt.
17.	Bhajiya Mix Flour	Bengal Gram flour, Sugar, IodisedSalt, Citric Acid, Ajwain, Mari, Sodium Bicarbonate, Asafoetida, Coriander Seeds.
18.	Chutney Powder	Wood Apple Powder, Sugar, Iodised Salt, Chilli Powder, Coriander,Cumin Powder.

5. The applicant also submitted Percentage-wise break-up of the flours and other ingredients as under :

Sr. No.	Product	Dried leguminous vegetable flours				Rice and wheat flours					Total flours	Spices and other ingredients
		Chana Dal flour	Udad dal flour	Moong/Math Dal flour	Total of leguminous flours	Soji flour (wheat granules)	Rice flour	Wheat flour	Sabu Dana flour	Total of rice flours/wheat flours		
1.	Khaman Mix Flour	66%			66%					0%	66%	34%
2.	Gota Mix Flour	75%			75%					0%	75%	25%
3.	Dhokla Mix Flour		45%		45%		45%			45%	90%	10%
4.	Handwa Mix Flour	5%	45%		50%		35%			35%	85%	15%
5.	Idli Mix Flour		45%		45%		45%			45%	90%	10%
6.	Dosa Mix Flour		45%		45%		45%			45%	90%	10%
7.	Dahi-wada Mix Flour		75%	19%	94%		0%			0%	94%	6%
8.	Dalwada Mix Flour		10%	85%	95%					0%	95%	5%
9.	Medu Vada Mix Flour	2%	84%		86%		9%			9%	95%	5%
10.	Pudla Mix Flour	96%			96%					0%	96%	4%
11.	MoongBhajiya Mix Flour		10%	85%	95%					0%	95%	5%
12.	Chorafali Mix Flour	98%			98%					0%	98%	2%

13.	BhajiyaMix Flour	93%			93%					0%	93%	7%
14.	Upma Mix Flour	10%	10%		20%	70%				70%	90%	10%
15.	RavaIdli Mix Flour	10%	10%		20%	70%				70%	90%	10%

16.	MuthiyaMix Flour				0%			90%		90%	90%	10%
17.	Khichu Mix Flour				0%		95%		2%	97%	97%	3%

Sr. No.	Product	Wood Apple powder	Spices	Total
18.	Chutney Powder	90%	10%	100%

6. The applicant raised the following questions for which Advance Ruling was sought -

- (1) *“Whether on the basis of facts of the case narrated above, Mix flour mentioned above in Sr.No.1 to 17 in above table are classified under Tariff Item 1106 vide Entry No.59 of Schedule-I of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 and Notification No.01/2017-State Tax (Rate) dated 30.06.2017, Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (collectively referred to as the ‘Rate Notifications’).*
- (2) *Whether on the basis of facts of the case narrated above, Chutney Powder mentioned above in Sr.No.18 in above table can be classified under Tariff Item 2106 vide Entry No.100A of Schedule-I of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 and Notification No.01/2017-State Tax (Rate) dated 30.06.2017, Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (collectively referred to as the ‘Rate Notifications’).*
- (3) *If not, whether on facts and circumstances of the case, Mixed flour and Chutney Powder mentioned above are to be classified in any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit.”*
- (4) *Chutney powder when supplied with Gota Mix flour and Bhajiya Mix flour, should be considered as Composite Supply having HSN of principal supply i.e. 1106 and 5% GST should apply.*

7.1 The GAAR, *inter-alia* referred to Notification No. 1/2017-Central Tax (Rate) and corresponding Notification No. 1/2017-State Tax (Rate) dated 30.06.2017 (the Central Tax (Rate) Notification referred herein after includes the reference to corresponding State Tax (Rate) Notification also], various Chapter Headings, Sub Headings and Tariff Items as well as Chapter Notes of Chapter 11 of the First Schedule to the Customs Tariff Act, 1975 (herein after referred to as the ‘CTA, 1975’), Explanatory Notes of Chapter 11 of the Harmonized System of Nomenclature (HSN – Harmonized Commodity Description and Coding System)and Central Board of Indirect Taxes & Customs (CBIC) Circular No. 80/54/2018-GST dated 31.12.2018.

7.2 The GAAR, observed that unprocessed flour obtained only by the milling and sieving of cereals, leguminous vegetable including peas, lentils etc. are to be classified under Chapter 11 alone; that in the instant case, the product has a mixture of various flours such that multiple tariffs are involved i.e. headings 11.01, 11.02, 11.03 and 11.06. The GAAR thereafter referred to Rule 3 of the General Rules for the Interpretation of CTA, 1975 and noted that as per Rule 3(b), mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale which cannot be classified by reference to (a), shall be classified as if they consisted of the material or components which gives them their essential character, in so far as the criterion is applicable. Accordingly, as the products mentioned at Sl. No. 1, 2, 4 and 7 to 13 above have essential characters of leguminous flour and therefore the GAAR held those products to be classifiable under Tariff Item 1106 10 00 of the CTA, 1975 attracting Goods and Services Tax @ 5% as per Sl. No. 59 of Schedule – I of Notification No. 1/2017-Central Tax (Rate).

7.3 As regards the products mentioned at Sl. No. 3, 5 and 6 above, the flour content of leguminous flour and rice flour is equal, therefore, the GAAR held that Rule 3(c) of General Rules for the Interpretation of CTA, 1975 is applicable according to which when goods cannot be classified by reference to Rule 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. As Rice Flour is classifiable under Heading 11.02 whereas Leguminous Flour is classifiable under Heading 11.06 and specific Tariff Item 1106 10 00, therefore these products mentioned at Sl. No. 3, 5 and 6 above have been held by the GAAR to be classifiable under Tariff Item 1106 10 00 of the CTA, 1975 attracting Goods and Services Tax @ 5% as per Sl. No. 59 of Schedule – I of Notification No. 1/2017-Central Tax (Rate).

7.4 As the Upma Mix Flour and Rava Idli Mix Flour (Sl. No. 14 and 15 above) contain 70% Suji Flour (Wheat Granules), these products were found classifiable under Chapter Heading 11.03; Muthiya Mix Flour (Sl. No. 16) containing 90% Wheat Flour was found classifiable under Chapter Heading 11.01; and Khichu Mix Flour containing 95% Rice Flour was found classifiable under Chapter Heading 11.02. Thereafter, the GAAR referred to Chapter Notes of Chapter 11, according to which products falling under Heading 11.01 to 11.04 have to meet some criteria of Starch Content, Ash Content, Rate of passage through a sieve with an aperture of 315 micrometers / 500 micrometers, in order to be classified under the said headings, otherwise they fall under Chapter Heading 23.02. As the details in respect of Starch Content, Ash Content, Rate of passage through a sieve in respect of these products were not furnished by the applicant, the GAAR concluded that the said products would be classifiable under Chapter Heading 23.02 of the CTA, 1975 attracting Goods and Services Tax @ 5% as per Sl. No. 103A of Schedule – I of Notification No. 1/2017-Central Tax (Rate).

7.5 As regards the Chutney Powder (Sl. No. 18 above), the GAAR observed that it contains 90% Wood Apple Powder and 10% Spices; that Chutney Powder being a

food preparation (as chutney can be prepared instantly by simply adding/mixing water to it and stirring) is classifiable under heading 2106 90 99 of CTA, 1975 attracting Goods and Services Tax @ 18% up to 14.11.2017 as per Sl. No. 23 of Schedule – III and 5% with effect from 15.11.2017 as per Sl. No. 100A of Schedule – I of Notification No. 1/2017-Central Tax (Rate).

7.6 The GAAR further held that the Chutney Powder, when supplied with Gota Mix Flour and Bhajiya Mix Flour, is not a composite supply of goods, but it will be considered as a mixed supply of goods.

7.7 The GAAR, vide Advance Ruling No. GUJ/GAAR/R/43/2020 dated 30.07.2020 ruled as follows -

- (a) *Khaman mix flour, Gota mix flour, Handwa mix flour, Dahiwada mix flour, Dalwada mix flour, Meduvada mix flour, Pudla mix flour, Moongbhajiya mix flour, Chorafali mix flour, Bhajiya mix flour, Dhokla mix flour, Idli mix flour and Dosa mix flour are classifiable under sub-heading 11061000 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975). They appear at Entry No.59 of Schedule-I of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 and the GST liability on all these products is 5%(2.5% CGST + 2.5% SGST).*
- (b) *Upma mix flour, Ravaidli mix flour and Muthiya mix flour are classifiable under sub-heading 23023000 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) whereas Khichu mix flour is classifiable under sub-heading 23024000 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). They appear at Entry No.103A of Schedule-I of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 and the GST liability on these products is 5%(2.5% CGST + 2.5% SGST).*
- (c) *Chutney powder is classifiable under Sub-heading 21069099 of the First Schedule to the Customs Tariff Act, 1975(1 of 1975). The said product appeared at Entry No.23 of Schedule-III of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 till 14.11.2017 and at Entry No.100A of Schedule-I of the said notification with effect from 15.11.2017. The GST liability on the said product was 18%(9% CGST + 9% SGST) upto 14.11.2017 and 5%(2.5% CGST + 2.5% SGST) with effect from 15.11.2017.*
- (d) *The supply of Gota Mix and Chutney powder will be considered as a 'mixed supply' of goods and will be considered as a supply of Gota Mix (falling under Sub-heading 11061000 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)) on which the GST liability will be 5%(2.5% CGST + 2.5% SGST). The supply of Bhajiya Mix and Chutney powder will be considered as a 'mixed supply' of goods and will be considered as a supply of Bhajiya Mix (falling under Sub-heading 11061000 of the First Schedule to the*

*Customs Tariff Act, 1975 (51 of 1975)) on which the GST liability will be 5%(2.5% CGST + 2.5% SGST).*

8.1 Aggrieved by the aforesaid ruling, the Assistant Commissioner, Central Goods and Services Tax, Division – Himmatnagar, Gandhinagar Commissionerate (Jurisdictional Officer) (herein after referred to as the “appellant”) has filed the present appeal wherein it has been *inter-alia* submitted that the subject advance ruling is erroneous inasmuch as the GAAR has erroneously classified the Instant Food Mix under sub-heading 1106 10 00 of CTA, 1975 instead of Chapter Heading 21.06 which covers the said products more appropriately.

8.2 It has been submitted that the advance ruling has been given on the basis of submission of details of raw materials / ingredients and percentage of break-up of the ingredients constituting their product by the applicant, not backed by any scientific test report / result by authorized agency, is itself bad in law and cannot be accepted.

8.3 The appellant has referred to various entries of Chapter Heading 11.06 and Explanatory Notes of HSN related to it as well as various entries of Chapter Heading 21.06, Supplementary Note 6 of Chapter 21 of CTA, 1975 and Explanatory notes to HSN in respect of Chapter Heading 21.06.

8.4 The appellant has submitted that as per Supplementary Note 6 of Chapter 21 of the CTA, 1975, 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; that such products remain classified in these sub-headings irrespective of the nature of their ingredients.

8.5 It has also been submitted that it is mentioned in the Explanatory Notes to HSN in respect of heading 21.06 that – “provided that they are not covered by any other heading of the Nomenclature, this heading covers – preparation for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.) for human consumption.

8.6 The appellant has further submitted that for manufacture of products in question, various ingredients such as Chick Peas Flour, Bengal Gram Dal, Green Gram Dal, Black Gram Dal, Wheat Flour, Rice, Sugar, Dry Mango Powder, Iodised Salt, Red Chili, Garam Masala, Black Pepper, Coriander, Cumin, Ajwain, Fennel, Raising Agent [(INS 500 (ii)] and Acidity Regulator (INS 300) are being used in various proportion by the applicant. Thus, after mixing products *viz.* various spices such as Turmeric, Salt, White / Black Pepper, Asafoetida, Coriander-Cumin Powder, Garam Masala, Curry Leaves etc. and certain preservatives like Citric Acid, Sodium Bicarbonate and Common Salt, in various flours, the characteristics of the products changes from ‘Flour Mix’ to ‘Instant Mix’. It has further been submitted that the applicant himself has admitted that the aforesaid products are commercially



known as 'Instant Mix Flour' in the market and the end consumer of such Instant Mix Flour is required to carry out food preparation process prescribed on food packet such as boiling in water, frying or cooking etc. for preparation of products / Indian dishes before such products can be consumed as eatable. Thus, the aforesaid products are not to be categorized as "Flour Mix" but are "Instant Food Mix" / "Mixture" of various flours, spices and preservatives, which is being used for preparation of Indian dishes viz. Khaman, Gota, Dahi Wada, Dal Wada, Dhokla, Idli and Dosa, after processing, such as cooking, frying or boiling in water etc., for human consumption. It has, therefore been submitted that these products are to be classified as "Food Preparation" / "Instant Food Mix" under Chapter Sub Heading 2106 90 99 (others) of the CTA, 1975, as per the Supplementary Note 6 of Chapter 21 of the CTA, 1975 read with Explanatory Notes to HSN of Heading 21.06. The reliance was also placed on the judgement of the Hon'ble Supreme Court in the case of CCE Vs. INARCO [(2015) 318 ELT 604 (SC)].

9.1 The applicant has submitted counter reply / cross objection vide letter dated 02.11.2020. The applicant has *inter-alia* submitted that looking to the process of preparation of Instant Mixed Flour and proportion of ingredients used in preparation, it is deduced that flours of grains and pulses are the major component of the said finished products. It has been submitted that the said grains and pulses are very well covered under heading '0713' having brief description 'Dried leguminous vegetables'; accordingly, Instant Mixed Flour made from such dried leguminous vegetables shall be classified under heading '1106' having brief description 'Meal and powder of the dried leguminous vegetables of heading 0713'. It has further been submitted that some of the products which are prepared from wheat granules shall be classified under Heading '1103' and 'Khichu Mix Flour' prepared from Rice Flour shall be classified under Heading '1102'.

9.2 As regards Heading '2106' having brief description 'Food preparation not elsewhere classified', the applicant has submitted that the following type of transactions can be included in the said entry –

- (a) Ready for consumption form
- (b) Food preparations where there is minimal process required or no process required for human consumption
- (c) Residual entry; if not classified in any other chapter.

The applicant has submitted that the Instant Mixed Flour cannot be classified under Chapter Heading '2106' due to following reasons –

- (a) The said Mixed Flour sold to customers are not in the form of ready to eat.
- (b) For preparing various Indian dishes, one has to not only carry out mixing process but also need to add spices, condiments and flavours etc. and other things as may be required. The recipe of preparing various Indian dishes by using the said Mixed Flour is also described

on packet itself. In nutshell, for preparing Indian dishes, one has to carry out process prescribed on food packet. Further, significant process is required to be carried out on Mixed Flour to prepare final Indian dish.

- (c) As the description stated in heading 1106 suits for the said products i.e. instant mixed flour, there is no need to go under residual entry.

9.3 The applicant has referred to the CBIC Circular No. 80/54/2018-GST dated 31.12.2018 and submitted that the Circulars and Orders issued by the CBIC are binding on CBIC and its officers. In support of this contention, the applicant has relied upon the decisions in the cases of (a) Jindal Vijaynagar Steels Ltd. Vs. Commissioner of Central Excise, Mangalore [2008 (11) STR 108 (Tri. – Bang.)]; (b) Union of India Vs. Arviva Industries Ltd. [2007-TMI-1095-Supreme Court of India; (c) Paper Products Ltd. Vs. Commissioner of Central Excise [(1999) 7 SCC 84].

9.4 The applicant has also submitted that the decision in the case of CCE Vs. INARCO (*supra*) relied upon by the appellant department is clearly distinguishable on the basis of facts of the case and not applicable to applicant's case. The applicant has relied upon the following decisions –

- (a) M/s. Mahalakshmi Store, Shri Chellasamy Nadar Deivarajan [Order No. TN/55/AAR/2019 dated 23.12.2019 of the Tamilnadu Authority for Advance Ruling.
- (b) M/s. ITC Limited [Order No. 11/WBAAR/2020-21 dated 12.10.2020 of the West Bengal Authority for Advance Ruling.

The applicant has also relied upon the following Determination Orders under VAT regime in relation to classification of cereal or pulse flour.

- (a) Kitchen Express Overseas Ltd., Santej [Determination Order No. 2010/D/171-177/No. 356-359 dated 12.08.2010.
- (b) Vitagreen Products Pvt. Ltd. –Matoda, Rajkot [Determination Order No. 2010/D/55-62/No. 45-48 dated 27.05.2011]
- (c) M.T.R. Foods Pvt. Ltd., Ahmedabad [Determination Order No. 2013/D/197/219 dated 20.12.2013]

9.5 As regards the submission in the appeal filed by the department that no scientific report has been provided by the applicant for giving break-up of the ingredients of different Flour Mix, the applicant has contended that the percentage-wise break-up of ingredients has been provided based on actual practice followed by him; that at the time of hearing as well, Ld. Authority had not demanded any scientific report related to it.

9.6 The applicant has submitted that the Chutney Powder should be classified under HSN 2106 and GST Rate applicable should be 5%. It has been submitted that

he supplies Chutney Powder in a pouch along with Gota Mix and Bhajiya Mix, and no extra amount is collected for such Chutney Powder, hence supply of Gota Mix and Bhajiya Mix Flour along with Chutney Powder should be considered as Composite Supply. It has further been submitted that Chutney Powder when supplied with Gota Mix Flour and Bhajiya Mix Flour, should be considered as Composite Supply having HSN of principal supply i.e. 1106 and 5% GST should apply.

9.7 The applicant has also submitted recipe of four products and submitted that the products are neither ready to eat nor a food preparation as mentioned in HSN 2106, but the products are merely mixture of flours with some additives in it.

### **FINDINGS :-**

10. We have carefully gone through and considered the appeal filed by the appellant CGST department, written submission filed by the applicant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other materials available on record.

11. The issue involved in this case is regarding proper classification of various products of Mix Flour / Instant Mix Flour mentioned at Sl. No. 1 to 17 above and applicable rate of Goods and Services Tax on those products. In respect of Chutney Powder (product at Sl. No. 18), the GAAR has ruled that it is classifiable under Tariff Item 2106 90 99 of the CTA, 1975 attracting Goods and Services Tax @ 5% (CGST 2.5% + SGST 2.5%), which has neither been challenged by the CGST Department nor disputed by the applicant.

### **CLASSIFICATION OF THE PRODUCTS**

12. In respect of aforesaid 17 products of Mix Flour / Instant Mix Flour, the GAAR has ruled that some of the products are classifiable under Tariff Item 1106 10 00 of the CTA, 1975 and the remaining products are classifiable under Tariff Item 2302 30 00 / 2302 40 00 of the CTA, 1975. In the appeal filed by the CGST Department, it has been contended that all these products are classifiable as “Food Preparation” / “Instant Food Mix” under Tariff Item 2106 90 99 of the CTA, 1975 whereas the applicant has contended that these products are classifiable under Chapter 11 (Chapter Heading 1106, 1103, 1102) of the CTA, 1975.

13.1 We observe that as per Para 2(A) of the Explanatory Notes of HSN for Chapter 11, products from the milling of the cereals listed in the table (Wheat and Rye, Barley, Oats, Maize and Grain, Sorghum, Rice, Buckwheat) fall in this chapter if they satisfy some characteristics. Further, as per Para 2(B) of the Explanatory notes of HSN for Chapter 11, products falling in this Chapter under the provisions of Para 2(A) shall be classified in Heading 11.01 or 11.02 if the percentage passing through a woven metal wire cloth sieve with the aperture of 315 micrometers (microns) / 500 micrometers (microns), is not less, by weight than that shown

against the cereal concerned, otherwise, they fall in heading 11.03 or 11.04. It has also been *inter-alia* mentioned that this Chapter includes products obtained by submitting raw materials of other Chapters (dried leguminous vegetables, potatoes, fruit, etc.) to processes similar to those indicated in paragraph (1) or (2) mentioned therein. Thus, the products from the milling of the cereals, dried leguminous products etc. are covered in Chapter 11 of the CTA, 1975.

13.2 In respect of Chapter Heading 11.01, the Explanatory Notes of HSN *inter-alia* provides as follows -

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

*Wheat flour may be further enriched by an addition of gluten, generally not exceeding 10 %.*

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

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

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

In respect of Chapter Heading 11.02 also, it has been *inter-alia* mentioned in the Explanatory Notes of HSN that “Flours of this heading may be improved by the addition of very small quantities of mineral phosphates, anti-oxidants, emulsifiers, vitamins or prepared baking powders (self-raising flour)”; that “Flours which have been further processed or had other substances added with a view to their use as food preparations are excluded (generally **heading 19.01**).

[underlining supplied]

Thus, the Flours may remain classified in Chapter Heading 11.01 or 11.02 if the flour has been improved by the addition of very small quantities of specified substances. However, if other substances (other than specified substances) are added to the flours with a view to use as ‘food preparations’, then the same gets excluded from the Chapter Heading 11.01 or 11.02.

13.3 The various products being supplied by the applicant contain Spices and other ingredients apart from flour of dried leguminous vegetables, rice and wheat, in different proportions. The Spices and other ingredients contained in these products include Sugar, Iodised Salt, Chili Powder, Garam Masala [powder of Chili, Cloves,

Baciliyam, Black Pepper, Coriander, TejPatta (Clove Leaves)], Sodium Bicarbonate, Citric Acid, Asafoetida, Ajma, Sounff, Mustard Seeds, Cummin Seeds, Neem Leaves (Sweet), Green Chilli, Hydrogenated Vegetable Oil, Citric Acid etc. These Spices and ingredients are other than those substances mentioned in the Explanatory Notes of HSN for Chapter Heading 11.01 and 11.02 which could be added in very small quantities to improve or enrich the flours and the resultant product still remain classified in those Chapter Headings. The proportion of Spices and other ingredients contained in these products ranges from 2% to 34%. The proportion of Spices and other ingredients is 34% in Khaman Mix, 25% in Gota Mix, 15% in Handwa Mix, 10% in Dhokla Mix, Idli Mix, Dhosa Mix, Upma Mix, Rava Idli Mix, Muthiya Mix, 7% in Bhajiya Mix, 6% in Dahiwada Mix, 5% in Dalwada Mix, Meduvada Mix, Mung Bhajiya Mix, 4% in Pudla Mix, 3% in Khichu Mix and 2% in Chorafali Mix. It is also evident from the recipe submitted by the applicant that the Spices and other ingredients have been added to the flours with a view to their use as food preparations. As such, in view of the Explanatory Notes of the HSN, these products are excluded from the Chapter Heading 11.01 and 11.02 as well as from the Chapter Headings 11.03 and 11.04.

13.4 Further, the Chapter Heading 11.06 covers “Flour, Meal and Powder of the dried leguminous vegetables of Heading 0713, of sago or of roots or tubers of Heading 0714 or of the products of Chapter 8”. As per Rule 1 of the General Rules for the Interpretation of CTA, 1975, for legal purposes, classification shall be determined according to the terms of the headings and any relative Section of Chapter Notes. Thus, the classification of the product is required to be determined in accordance with the terms of the headings. As per Chapter Heading 11.06, it covers Flour, Meal and Powder of the dried leguminous vegetables of Chapter Heading 07.13 and other specified products. As the products of the applicant contain Spices and other ingredients in different proportions, which are not mentioned in the Chapter Heading 11.06 or the relevant Explanatory Notes of HSN, the said products are not covered under Chapter Heading 11.06.

13.5 The applicant has referred to CBIC Circular No. 80/54/2018-GST dated 31.12.2018, which has *inter-alia* clarified the applicability of GST on ‘Chhatua or Sattu’ as follows -

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

*3.2 Chhatua or Sattu is a mixture of flour of ground pulses and cereals. HSN code 1106 includes the flour, meal and powder made from peas, beans or lentils (dried leguminous vegetables falling under 0713). Such flour improved by the addition of very small amounts of additives continues to be classified under HSN code 1106. If unbranded, it attracts Nil GST [S. No. 78 of notification No. 2/2017-Central Tax (Rate), dated 28-6-2017] and if branded and packed it attracts 5% GST [S. No. 59 of schedule I of notification No. 1/2017-Central Taxes (Rate), dated 28-6-2017].*

The CBIC has clarified in the aforesaid Circular that the flour of ground pulses and cereals, improved by the addition of very small amounts of additives continues to be classified under HSN Code 1106. However, the said clarification is not applicable in the present case as the products being supplied by the applicant contain Spices and other ingredients, which is not the case with the 'Chhatua or Sattu'.

13.6 The applicant has also relied upon the advance ruling No. TN/55/AAR/2019 issued by the Tamilnadu Authority for Advance Ruling in the case of M/s. Mahalakshmi Store (Shri Chellasamy Nadar Deivarajan). The question raised in that case was as follows –

*“Whether the unbranded mixture of flour of pulses and grams i.e. leguminous vegetables and cereal flours fall under the HSN Code 1106 and 1102 respectively through blending of leguminous flour added with very small quantity of rice flour or maize flour (without adding salt or any masala product) fall under exemption as per the circular no. 80 dated 31.12.2018 ?”*

As the products involved in the case of M/s. Mahalakshmi Store contained mixture of flour of pulses and grams only without adding salt or any masala product, the said advance ruling is not applicable in the present case where various products contain Spices and other ingredients in different proportions, apart from flour of dried leguminous vegetables, rice and wheat.

13.7 The issue involved in the case of ITC Limited [Order No. 11/WBAAR/2020-21 dated 12.10.2020], relied upon by the applicant, was regarding classification of pasteurized Milk with Haldi, fortified with Vitamin A and Vitamin D. As the product involved in that case was different, that Advance Ruling is also not applicable in the present case.

13.7 In view of the foregoing, we hold that none of the products of the applicant merit classification under Chapter 11 of the CTA, 1975 and specifically under Chapter Headings 11.01, 11.02, 11.03, 11.04 or 11.06 of the CTA, 1975.

14.1 The GAAR found that the Upma Mix Flour and RavaIdli Mix Flour contain 70% Suji Flour (Wheat Granules), hence these products are classifiable under Chapter Heading 11.03; Muthiya Mix Flour contain 90% Wheat Flour, hence it is classifiable under Chapter Heading 11.01; and Khichu Mix Flour contain 95% Rice Flour, hence it is classifiable under Chapter Heading 11.02. However, as the details in respect of Starch Content, Ash Content, Rate of passage through a sieve in respect of these products were not furnished by the applicant, the GAAR concluded that the said products would be classifiable under Chapter Heading 23.02 of the CTA, 1975.

14.2 We have already held that the products of the applicant, including Upma Mix Flour, RavaIdli Mix Flour, Muthiya Mix Flour and Khichu Mix Flour, are not

classifiable under Chapter 11 of the CTA, 1975. Therefore, the view of the GAAR to initially classify these products under Chapter Heading 11.01 and 11.02 of the CTA, 1975 and thereafter holding these products as classifiable under Chapter Heading 23.02 of the CTA, 1975 on the ground of non-furnishing of details of Starch Content, Ash Content, Rate of passage through a sieve in respect of these products, does not appear proper.

14.3 Even otherwise, classifying the products Upma Mix Flour, RavaIdli Mix Flour, Muthiya Mix Flour and Khichu Mix Flour under Chapter Heading 23.02 of the CTA, 1975 does not appear correct. It has been mentioned in the Explanatory Notes of HSN for Chapter 23 that this Chapter covers the various residues and wastes derived from vegetable materials used by food-preparing industries, and also certain products of animal origin; that the main use of most of these products is as animal feeding stuffs, either alone or mixed with other materials, although some of them are fit for human consumption; that certain products (e.g. wine lees, argol, oil-cake) also have industrial uses. Obviously, the products Upma Mix Flour, RavaIdli Mix Flour, Muthiya Mix Flour and Khichu Mix Flour are not residues and wastes derived from vegetable materials used by food-preparing industries.

14.4 Chapter Heading 23.02 of the CTA, 1975 covers “Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants”. Thus, it is evident that the Chapter Heading 23.02 covers Bran, sharps and other residues of cereals or of leguminous plants whereas the products Upma Mix Flour, RavaIdli Mix Flour, Muthiya Mix Flour and Khichu Mix Flour cannot be said to be containing bran, sharps and other residues of cereals or of leguminous plants. The applicant has neither submitted that these products are made from bran, sharps and other residues of cereals or of leguminous plants nor claimed these products to be classifiable under Chapter Heading 23.02 of the CTA, 1975.

14.5 Therefore, we hold that the products Upma Mix Flour, RavaIdli Mix Flour, Muthiya Mix Flour and Khichu Mix Flour are not classifiable under Chapter Heading 23.02 of the CTA, 1975.

15.1 We may now examine whether the subject products are appropriately classifiable under Chapter Heading 21.06 of the CTA, 1975, which covers “Food Preparations not elsewhere specified or included”, as proposed in the appeal filed by the CGST Department.

15.2 The Explanatory Notes of HSN for Chapter Heading 21.06 provides as follows :-

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

*A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.*

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

Thus, in view of the Explanatory Notes of HSN, the preparation for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.) for human consumption, and preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption, are classifiable under Chapter Heading 21.06 of the CTA, 1975.

15.3 As per the information provided by the applicant in respect of aforementioned 17 products of Mix Flour / Instant Mix Flour and recipe of some of the products, these products are preparations consisting wholly of foodstuffs viz. flours of leguminous vegetables and cereals as well as spices and condiments, and these products are used in the making of food preparations (Khaman, Gota, Dhokla, Handwa, Idli, Dosa, Dahi Wada, Dalwada, Khichu, Upma, Gulab Jamun, Rava Idli, Medu Wada, Muthiya, Pudla, Bhajjiya, Chorafali) for human consumption. Further, these products are preparations for use, either directly or after processing, such as cooking, dissolving or boiling in water, milk, etc., for human consumption. Therefore, we are of the view that all the aforementioned 17 products of Mix Flour / Instant Mix Flour are appropriately classifiable under Chapter Heading 21.06 of the CTA, 1975. As these products are not specifically mentioned under any specific Tariff Item of Chapter Heading 21.06 of the CTA, 1975, these products are classifiable under the residuary entry i.e. Tariff Item 2106 90 99 as “Other”.

15.4 The applicant has submitted that the Instant Mix / Ready Mix Flour is by all means not a processed food, neither cooked food, nor semi-processed food, nor semi cooked food, nor preserved food or not a ready-to-eat food. Instant Mixed Flour is a flour of grains and pulses mixed with spices, condiments and flavours. It has also been submitted by the applicant that the end consumer of such instant mix flour is required to follow certain food preparation process before such product can be consumed as eatable, hence Instant Mix Flour cannot be consumed as it is, but it is required to follow certain cooking procedures before consumption. Hence the product manufactured and sold by the applicant is not ‘ready to eat’ but can be said as ‘ready to cook’. In this regard, we observe that Chapter Heading 21.06 and specifically Tariff Item 2106 90 99 is not confined to processed or semi processed food, cooked or semi cooked food, preserved food and ready to eat food. In fact, any product which is a food preparation and which is not elsewhere specified or



included in the CTA, 1975, gets covered under Chapter Heading 21.06 of the CTA, 1975. Therefore, merely because the end consumer of the Instant Mix Flour is required to follow certain food preparation processes before such product(s) can be consumed, is no ground to take these products out of Chapter Heading 21.06 of the CTA, 1975.

15.5 The applicant has relied upon the Determination Orders issued by the Gujarat VAT authorities in the cases of Kitchen Express Overseas Ltd., Santej, Vitagreen Products Pvt. Ltd., Matoda and M T R Foods Pvt. Ltd., Ahmedabad wherein the Instant Mix Products (Gota Flour, Khaman Flour, Dalwada Flour, Dahiwada flour etc.), similar to the products of the applicant, were held to be covered under Entry 12(ii) of Schedule-I of the Gujarat Value Added Tax Act, 2003, covering “Flour of cereals and pulses except Maize Flour”. In this regard, it is pertinent to note that for the purpose of Goods and Services Tax, classification as per CTA, 1975 has been adopted, which in turn is based on the Harmonised System of Nomenclature, which was not the case with the Schedule-I of the Gujarat Value Added Tax Act, 2003. Therefore, the Determination Orders issued under the Gujarat VAT Act, 2003 are not applicable in the present case.

15.6 it is also observed that in the case of Commissioner of Central Excise, Ahmedabad Vs. R. M. Foods [2010 (249) E.L.T. 363 (Tri. – Ahmd.)], Hon’ble CESTAT held that the products (Gota Mix, Khaman Mix, Dal Wada Mix etc.) were entitled to benefit of Sl. No. 28 of Notification No. 3/2006-Central Excise. The said Sl. No. 28 of Notification No. 3/2006-Central Excise read as follows –

<i>S. No.</i>	<i>Chapter or heading or sub-heading or tariff item of the First Schedule</i>	<i>Description of excisable goods</i>	<i>Rate</i>	<i>Condition No.</i>
28	2106	<i>Texturised Vegetable Proteins (Soya bari), and instant food mixes such as Pongal mix, Vadai mix, Pacoda mix, Payasam mix, Gulab jamun mix, RavaDosa mix, Idli mix, dosai mix, Murruku mix, and Kesari mix.</i>	8%	-

Though the issue involved in that case was regarding admissibility of Sl. No. 28 of Notification No. 3/2006-Central Excise to the Instant Food Mixes (Gota Mix, Khaman Mix, Dal Wada Mix etc.), the fact that in the said Sl. No. 28, the description of goods mentioned against Chapter Heading 21.06 included Instant Food Mixes such as Pongal mix, Vadai mix, Pacoda mix, Payasam mix, Gulab Jamun mix, RavaDosa mix, Idli mix, Dosai mix, Murruku mix, and Kesari mix, supports our view that various Instant Food Mixes (Instant Mix / Ready Mix Flour) being supplied by the applicant are appropriately classifiable under Chapter Heading 21.06 of the CTA, 1975.

15.7 In view thereof, we hold that the aforementioned 17 products (various Instant Mix Flour / Ready Mix Flour) of the applicant are classifiable under Chapter Heading 21.06 and Tariff Item 2106 90 99 of the CTA, 1975.

**APPLICABLE RATE OF GOODS AND SERVICES TAX**

16.1 The various Instant Mix / Ready Mix Flour being supplied by the applicant are classifiable under Chapter Heading 21.06 and Tariff Item 2106 90 99 of the CTA, 1975.

16.2 In the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, entry at Sr. No. 23 of Schedule - III read as follows -

<i>S. No.</i>	<i>Chapter/ Heading/ Sub- heading/ Tariff item</i>	<i>Description of Goods</i>
23.	2106	<i>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]</i>

Thus, 'Food preparations not elsewhere specified or included' falling under Chapter Heading 2106 are covered under the aforesaid Entry at Sr. No. 23 of Schedule- III of Notification No. 1/2017-Central Tax, as amended, attracting Goods and Services Tax @ 18% (CGST 9% + SGST 9%), though some of the specific products of Chapter Heading 2106 excluded from this entry are covered under different entries of Schedule-I or Schedule-II, attracting Goods and Services Tax @ 5% or 12%. None of the aforesaid 17 products of various Instant Mix / Ready Mix Flour being supplied by the applicant are the products which have been excluded from the entry at aforesaid Sr. No. 23 of Schedule – III or which have been specifically included in any other entry of other Schedule of Notification No. 1/2017-Central Tax, as amended or in any of the entries of Notification No. 2/2017-Central Tax. We, therefore hold that the products of various Instant Mix / Ready Mix Flour being supplied by the applicant and classifiable under Chapter Heading 2106 of the CTA, 1975 are covered by aforesaid entry at Sr. No. 23 of Schedule – III of Notification No. 1/2017-Central Tax (Rate), as amended, and are leviable to Goods and Services Tax @ 18% *ad-valorem* (9% CGST + 9% SGST).

17. In view of the foregoing, we allow the appeal, modify the Advance Ruling No. GUJ/GAAR/R/43/2020 dated 30.07.2020 of the GAAR to the extent it has been appealed against, and rule that -

- (i) The products (a) Khaman Mix Flour, (b) Gota Mix Flour, (c) Dhokla Mix Flour, (d) Handwa Mix Flour, (e) Idli Mix Flour, (f) Dosa Mix Flour, (g) Dahi Wada Mix Flour, (h) Dalwada Mix Flour, (i) Khichu Mix Flour, (j) Upma Mix Flour, (k) Rava Idli Mix Flour, (l) Medu Wada Mix Flour, (m) Muthiya Mix Flour, (n) Pudla Mix Flour, (o) Moong Bhajiya Mix Flour, (p) Chorafali Mix Flour, and (q) Bhajiya Mix Flour being supplied by Shri Dipakkumar Kantilal Chotai (Talod Gruh Udyog) is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.
- (ii) The products (a) Khaman Mix Flour, (b) Gota Mix Flour, (c) Dhokla Mix Flour, (d) Handwa Mix Flour, (e) Idli Mix Flour, (f) Dosa Mix Flour, (g) Dahi Wada Mix Flour, (h) Dalwada Mix Flour, (i) Khichu Mix Flour, (j) Upma Mix Flour, (k) Rava Idli Mix Flour, (l) Medu Wada Mix Flour, (m) Muthiya Mix Flour, (n) Pudla Mix Flour, (o) Moong Bhajiya Mix Flour, (p) Chorafali Mix Flour, and (q) Bhajiya Mix Flour being supplied by Shri Dipakkumar Kantilal Chotai (Talod Gruh Udyog) are covered under entry at Sr. No. 23 of Schedule – III of Notification No. 1/2017-Central Tax (Rate), as amended and Notification No. 1/2017-State Tax (Rate), as amended and are leviable to Goods and Services Tax @ 18% *ad-valorem* (9% CGST + 9% SGST).

**(J. P. Gupta)**  
Member

**(Seema Arora)**  
Member

Place : Ahmedabad  
Date : 21 .05.2021.