


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2021/19
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/14)

Date : 28.06.2021

Name and address of the appellant	:	M/s. Piyush Jayantilal Dobaria (Jay Khodiyar Agency), “Mantraom”, Block No. 76, 10 Janta Society, Opp. LIC H.O., Tagore Road, Rajkot
GSTIN of the appellant	:	24AJCPD002OG1Z9
Advance Ruling No. and Date	:	GUJ/GAAR/R/60/2020 dated 30.7.2020
Date of appeal	:	29.08.2020
Date of Personal Hearing	:	15.12.2020
Present for the appellant	:	Shri Nishant Shukla, Avocate

At the outset we would like to make it clear that the provisions of Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017 and SGST Act, 2017) are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the SGST Act.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and SGST Act, 2017 by M/s. Piyush Jayantilal Dobaria (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/60/2020 dated 30.7.2020.

3. The appellant has raised the following question for advance ruling in the application for Advance Ruling filed by it.

“Under which tariff Heading PAPAD of different shapes and sizes manufactured/ supplied by the appellant would attract CGST and SGST”?

4. The appellant has submitted that they are engaged in the business of manufacturing and trading of “Papad” of different shapes and sizes which is raw pellet that are neither

fully cooked nor ready to eat and needs to be cooked first either by frying or roasting before consuming. 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. The shape and size may vary but the ingredients, the proportion of ingredients, the composition and the recipe remains similar, if not exactly the same. The appellant has submitted that 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. 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. The appellant further submitted that their product “Papad” of different shapes and sizes that are neither fully cooked nor ready to eat condition eligible to be classified under Chapter Tariff Heading- 1905 of Customs Tariff Act, 1975 accordingly, vide entry at Sr. No. 96 under Not. No. 02/2017-CT (Rate) dated 28.06.2017 product in question is exempted from the levy of tax.

5. The Gujarat Authority for Advance Ruling (herein after referred to as ‘the GAAR’), vide Advance Ruling No. GUJ/GAAR/R/60/2020 dated 30.7.2020, inter-alia observed that ‘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), or the Notifications issued under the CGST Act, 2017/GGST Act, 2017/IGST Act, 2017. It is 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. Further, it is observed that 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. It is also observed that in common parlance or in market, Fryums are not sold as “PAPAD” instead of “PAPAD” sold as papad and Fryums are sold as “Fryums”. Both the products are different and have their individual identity. Accordingly, in common parlance test, the appellant’s product i.e. “different shapes and sizes of Papad” is not “Papad” but is “Un-fried Fryums”. 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. In view of the foregoing, the GAAR ruled as follows :-

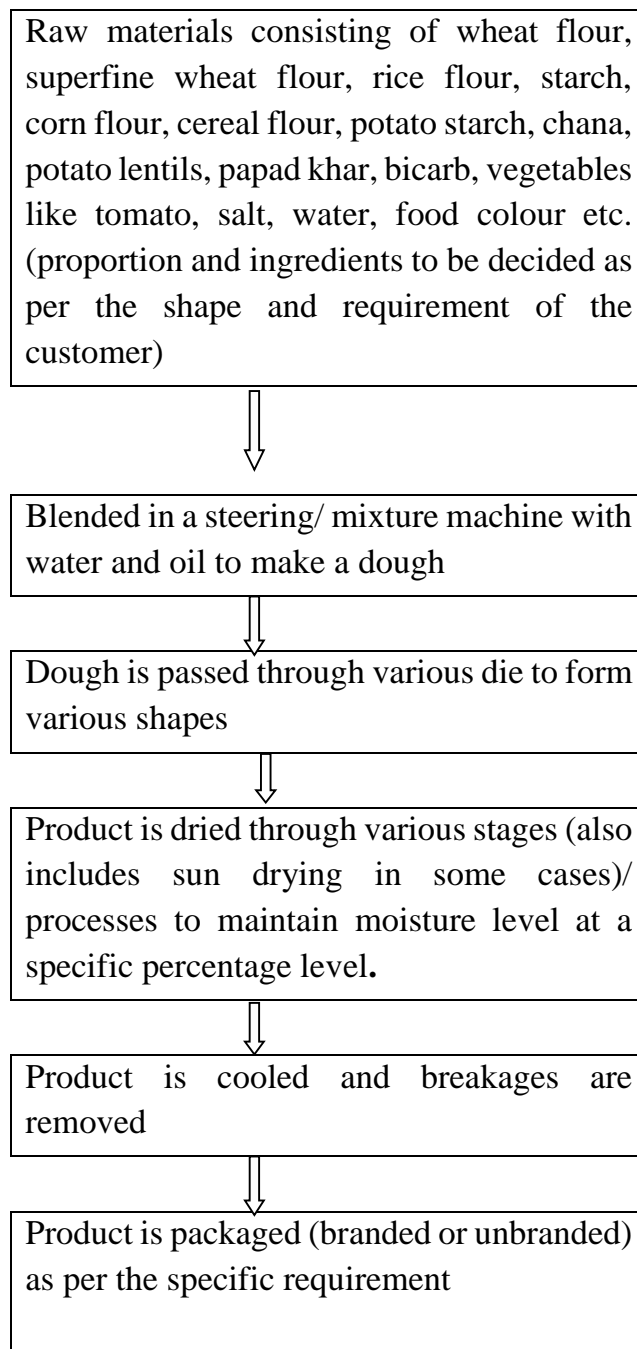
Question: Under which tariff Heading PAPAD of different shapes and sizes manufactured/ supplied by the appellant would attract CGST and SGST?

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

6. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

7. During the course of personal hearing held on 15.12.2020, the appellant reiterated the submissions made in the appeal dated 29.08.2020.

8. The appellant in the ground of appeal has submitted that they are in the business of manufacturing and trading of “Papad” of different shapes and sizes. 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. The dough remains the same with minor variations in proportion of ingredients and the dough is moulded in the desired shape and size may be round, square, semi circle, hollow circle with bars in between or may be square with bars in between intersecting each other or may be of the 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. The different shapes and sizes are obtained with the help of a die and there is no difference in either the ingredients used or in the process of manufacture. A pictorial representation providing overview of papad product manufacturing process is reproduced hereunder.



9. The appellant has submitted that principal raw materials for their product i.e. different shapes and sizes papad are: rice flour, corn flour, wheat flour, super fine wheat flour, cereal flour, tapioca starch, potato starch, salt, water and flavour, as the case may be. Similar raw-materials including pulses, salt, water etc. are used for making papad. They manufacture Papad of different shape and size that are in neither fully cooked form nor ready to eat form till it reaches the actual consumer. When the consumer desires to consume/eat, the consumer needs to either fry it or bake it before consumption.

10. The appellant has submitted that as per their understanding their product in question of different shapes and sizes papad that are in neither fully cooked nor ready to eat condition seems squarely eligible to be classified under Chapter Tariff Heading –1905 and covers under Entry number 96 of Notification No.2/2017 –Central Tax (Rate) Dt:- 28/06/2017 which exempts the supplies from the levy of tax, reads as under:-

S. No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
96.	1905	<i>Papad, by whatever name it is known, except when served for consumption</i>

11. The appellant further submitted 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.

12. The appellant has submitted that in GST for determination of classification of goods Custom Tariff Act, 1975 is relevant and the classification in Customs is driven by the ingredients used in the products. Predominant content in the product helps in the determination of the classification of the products. In the case of *Manilal Commodities Pvt. Ltd. Vs. Collector of Customs [1992-59-ELT-189-Tribunal]*, the Honourable Tribunal was of the view that the classification on the basis of predominant contents is generally accepted as proper test. Further, Honourable Allahabad High Court in the case of *Commissioner of Customs, C.G.O. Vs. Sonam International [2012-275-ELT-326-ALL]* upheld that assessment of goods with regard to payment of customs duty is to be made based on contents involved. The Chapter Notes in the Customs Tariff also prescribed the contents or ingredient of the products in order to include or exclude specific products within a given Chapter Heading. Moreover, Explanatory Notes to Chapter 19 of Harmonized Commodity Description & coding system by World Customs Organization specifies that Chapter 19 covers preparation, generally used for food, which are made either directly from the cereals of Chapter 10, from the products of Chapter 11 or from food flour, meal and powder of vegetable origin of other Chapters.

13. The appellant has submitted that considering the ingredients used and the process followed for manufacture of product read with Chapter Headings and Tariff entries, the products manufactured by them should merit classification under tariff heading 1905 90 40 as ‘PAPAD’.

14. The appellant has placed reliance on the Ruling passed by the *Authority for Advance Rulings, Tamilnadu* in *Subramani Sumathi –Order No. 7/AAR/2019 Dt:-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**.

15. The appellant has submitted that today PAPAD does not resemble the same age old traditional round shaped papad anymore. Today, due to huge change in the market demand, huge change in the taste buds of the masses and huge change in the technology, they able to bring some change in the shapes and sizes of traditional papad and the same is accepted and appreciated in the market. Due to advancement of technology, it has become possible to bring change/modification in the mindset 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. Hon'ble Courts including Honourable Supreme Court have resorted to encouragement of development of principles of interpretation according to the changing scenario and placed reliance on the following judgments:

- In the case of **State of Punjab Vs. Amritsar Beverages Ltd. –[2006] 147 STC 657 (SC)**, Honourable Supreme Court observed that –*Creative interpretation had been resorted to by the court so as to achieve a balance between the age old and rigid laws on the one hand and the advanced technology, on the other. The judiciary always responds to the need of the changing scenario in regard to development of technologies. It uses its own interpretative principles to achieve a balance when Parliament has not responded to the need to amend the statute having regard to the developments in the field of science.*
- In the case of **M/s. J. K. Cotton Spinning and Weaving Mills Ltd. Vs. Union of India –[1988] 68 STC 421 (SC)**, relying upon the observation made by Apex Court itself in another judgment in the case of **Senior Electric Inspector v. Laxminarayan Chopra [1962] 3 SCR 146**, Honourable Supreme Court observed that –*in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made and, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations.*
- 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.*

16. The appellant has submitted that traditional PAPAD is known by different nomenclature in different parts of the country e.g. PAPAD, PAPPAD, PAPPADAM, APLAM, KHICHIYA, etc. Similarly, the modern day PAPAD with different shapes and sizes is also known and recognized by different nomenclature in different parts of the country e.g. PAPAD, FRYUMS, BHUNGLA, NADDA, GONGO, PONGA, GOLD FINGER, WHITE FINGER, FINGER, NALI, etc. Specifically keeping in mind the

different nomenclature given to same commodity in different parts of the country and to avoid probable litigations, the entry relating to PAPAD has been deliberately worded as “PAPAD, BY WHATEVER NAME IT IS KNOWN” and not as only “PAPAD”.

17. The appellant has submitted that for various shapes and size of Papad one more common nomenclature used is “FRYUMS” though FRYUMS is a registered brand name of TTK Healthcare Ltd. and not the name of any of product of PAPAD, would be eligible to be considered as and falling under the entry of PAPAD or not has been very well settled far back by Honourable Supreme Court in the case of *Shiv Shakti Gold Finger Vs. Assisstant Commissioner, Commercial Tax, Jaipur –(1996) 9 SCC 514* wherein Honourable Supreme Court has clearly observed and held that irrespective of the shape of PAPAD and irrespective of ingredients used, the PAPAD still remains PAPAD. Further, in the case of *State of Karnataka Vs. Vasavamba Stores –[2013] 65 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. In this matter M/s. TTK Healthcare Ltd. was also one of the petitioners.

18. 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 *M/s. Swethin Food Products Vs. State of Gujarat –2016 GSTB –I 296*, Honourable Tribunal has considered the issue about classification of PAPAD of different shapes and sizes and clearly held that Fryums are nothing but PAPAD falling under entry 9(2) in schedule I to the GVAT Act and exempt from payment of tax. The determination order passed u/s. 80 of the Gujarat Value Added Tax Act, 2003 in the cases of *Jay Khodiyar Agency (2007-D-98-103 Dt:-11/09/2007) and Kansara Trading Co. (2011-D-356-357 Dt:-11/02/2011)* wherein FRYUMS have been held to be falling under entry 9(2) in Schedule I to the GVAT Act as PAPAD.

19. The appellant has submitted that merely because the law has changed from VAT to GST, the classification should not have any impact so far when the entries remain similar if not exactly the same. Under the erstwhile VAT Act if a product is considered as PAPAD then the product does not cease to be a PAPAD merely because VAT Act is no more in existence and has been replaced by GST Act. In this regard the said principle has been laid down by Honourable High Court that when there is no material change in the entries, the classification adopted in earlier law should continue to prevail and accepted. {*West Coast Waterbase Pvt. Ltd. Vs. State of Gujarat –(2016) 95 VST 370 (Guj.)*}

20. The appellant has submitted that the 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 their knowledge and subject to verification, Honourable Supreme Court has neither granted any stay on operation and execution of the decision of Honourable Karnataka High Court. 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. Reliance is placed on the case law of *Collector of Customs, Bombay Vs. Krishna Sales (P) Ltd. – AIR 1994 SC 1239* and *Kalyani Global Engineering Pvt. Ltd. Vs. Assistant Commissioner of Commercial Tax –SCA No. 7391/2016 Dt:-04/08/2016*.

21. The appellant has further submitted that in the present case, 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 recognizes it as PAPAD. So, the common parlance test as well as the user test leads to the conclusion that the products in question are nothing but PAPAD of different shapes and sizes. In this regard 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)*.

22. The appellant has submitted that a particular classification once accepted and adopted for years in a particular law cannot be change merely on account of repeal of said Act and replaced by new Law unless there is 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)*.

23. The appellant has submitted that they deal with the product in the market and disturbance in the classification may lead to an anomalous situation for the assessee having business throughout the country. Further, submitted 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 {*Commissioner of Central Excise, Bhopal Vs. Minwool Rock Fibers Ltd. –2012 (278) ELT 581*}.

24. The appellant has further submitted that there is no such word as “FRYUMS”. The word “FRYUMS” is a brand name of the product manufactured and marketed by TTK Healthcare Ltd. which means that the product which is sold by TTK Healthcare Ltd. in the name and style of “FRYUMS” is sole right and authorization of TTK Healthcare Ltd. only. Thus, M/s. TTK Healthcare Ltd. owns the right to sell PAPAD manufactured by it under the brand name of “FRYUMS”. So, “FRYUMS” is not a distinct type of product but it is PAPAD sold under the brand name of “FRYUMS” owned by TTK Healthcare Ltd. Hence, for the purpose of classification the issue cannot be that whether a product is “FRYUMS” or PAPAD or whether FRYUMS can be considered or classified as PAPAD because there is no such product with the name of FRYUMS and hence there remains only one product i.e. PAPAD.

25. The appellant has submitted that the decision of Honourable Authority for Advance Ruling (AAR) given in the case of *M/s. Sonal Products on 22/02/2019* cannot be relied upon as a precedent in order to classify PAPAD sold by them because the entry in question before Honourable CEGAT in the case of *M/s. T.T.K. Pharma Ltd. Vs. Collector of Central Excise –1993 (63) ELT 446 (Tribunal)* and entry in question in present application are completely different and more specifically when Honourable CEGAT had no occasion to consider two entries separately as PAPAD and NAMKEEN were covered under same entry. Further submitted that decision referred in the above paras which deals with an entry identical to the entry under GST Act i.e. PAPAD and classify the similar product like of appellant, more reliance should be placed and more weightage should be given on aforesaid decision and not to the decisions where entries for consideration were completely different.

26. The appellant has submitted that the observation of learned Gujarat Authority of Advance Ruling in the appellant case was erroneous on the following grounds:

(i) The appellant never referred to its products as FRYUMS but mentioned its product as either PAPAD or PAPAD product. They have submitted that there is no such word as FRYUMS but it is the brand name of TTK Healthcare Ltd. given to its products similar to their product. Hence, the observation of the learned AAR is erroneous as far as mentioning and recognizing the product as UNFRIED FRYUMS.

(ii) The decision of *T.T.K. Pharma Ltd. Vs. Collector of Central Excise –1993 (63) ELT 446 (Tribunal)* is not applicable in the appellant case because the consideration for entry before Hon'ble CEGAT was, "*Papad, Idli-Mix, Vada-Mix, Dosa-Mix, Jalebi-Mix, Gulabjamun-Mix or Namkeens such as Bhujia, Chabena*". In the relevant time Papad and Namkeens were in same entry. Subsequently, the entries were changed and then came into existence two different entries for PAPAD and NAMKEEN. The said judgement cannot be relied upon in as much as the entry in question before Honourable CEGAT and entry in question in present application of the appellant are completely different and more specifically when Honourable CEGAT had no occasion to consider two entries separately as PAPAD and NAMKEEN were covered under same entry.

(iii) The judgment of Honourable Supreme Court in the case of *Commissioner of Commercial Tax, Indore Vs. M/s. T.T.K. Healthcare Ltd. –2007 (211) ELT 197 (SC)* is not applicable in the present case as such at no point of time there was any question before Honourable Supreme Court as to whether the product FRYUMS could be considered as PAPAD or not. The issue for consideration before Honourable Court was whether FRYUMS would be classified under the entry of "COOKED FOOD" or "RESIDUARY ENTRY". Thus, there was no occasion for Honourable Supreme Court to consider the issue of classification of FRYUMS under entry of PAPAD.

(iv) The observation that shape of appellant's product is different from PAPAD and hence cannot be considered as PAPAD is not true and correct and most importantly not well founded. Further, submitted that the observation of AAR that when a customer asked for PAPAD he gives traditional round shape PAPAD but it is equally true that when asked FANCY Papad shopkeeper gives appellant like product. Therefore, it cannot be said that products of the appellant do not pass the common parlance test. Further, applicant has submitted that one of the common parlance test is that in the marriage function and social function products similar to that of appellant are served along with traditional round shape PAPAD. Thus, the persons using this product do not differentiate between the products similar to appellant and traditional round shape PAPAD because both the products are known, understood, recognized and used as PAPAD.

(v) The observation of GAAR that looking to the photograph provided by the appellant it is evident that the shape of products of appellant and shape of PAPAD is different and hence both are distinct commodities. The appellant has submitted that they fails to understand as to how can the shape of a product can be determining factor for the purpose of classification or whether it has to be its basic ingredients,

characteristics and use to be taken into consideration for classification. If for classification of product the shape of the product is accepted then the basic principle of classification would be required to be rewritten and majority of the items will be required to be reclassified. Therefore, basis adopted by the learned GAAR is unjustifiable and most importantly far from the basic principles of classification.

(vi) The observation of GAAR that the judgment of Honourable Supreme Court relied upon by the appellant in the case of *Shiv Shakti Gold Finger Vs. Asst. Commissioner, Commercial Taxes, Jaipur* –(1996) 9 SCC 514 is not applicable to the appellant, has been wrongly understood and erroneously interpreted by the learned GAAR.

(vii) The observation of the learned GAAR that as the SLP before Honourable Supreme Court is preferred against the judgment of Honourable Karnataka High Court in the case of *State of Karnataka Vs. Vasavamba Stores* –(2013) 60 VST 19 (Karn.). This judgment cannot be taken into consideration leads to one presumption that this judgment is directly and squarely applicable to the case of the appellant.

(viii) The observation of the learned GAAR that the judgments of GVAT Tribunal and orders u/s. 80 of the GVAT Act which were submitted and relied upon by the appellant are not applicable as they have been delivered under the GVAT Act which is not in existence anymore and they are not related to First Schedule of Customs Tariff is completely unlawful and far from the settled principles of law in as much as classification cannot be disturbed or changed merely because the governing law has changed. It is very well settled principle of law that if the entries are similar in earlier law and current law then merely because there is change in law classification cannot be disturbed. Thus the judgments and determination orders passed under the GVAT Act and relied upon by the appellant, being on the same products and being in relation to similar entry are required to be followed.

(ix) The observation of the learned GAAR that the *judgment of Honourable Supreme Court in the case of Commissioner of Commercial Tax, UP Vs. A. R. Thermosets (P) Ltd.* –AIR 2016 SC 321 is not applicable because the commodity in the said judgment is different from commodity of appellant. The appellant has submitted that the judgment of Hon'ble Supreme Court was relied upon by them on the principle of interpretation laid down by Hon'ble Supreme Court and not on the commodity. In this case Hon'ble 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 appellant, PAPAD is a generic expression which would include different types of PAPAD irrespective of its form, shape, size and ingredients.

(x) The GAAR has placed reliance on the decision of Madhya Pradesh Advance Ruling Authority in Alisha Foods. The said ruling does not apply to the case of appellant on following grounds :(a) The product referred therein and answered therein is FRYUMS while appellant has never mentioned that its product is FRYUMS but mentioned as different shapes and sizes of PAPAD. (b) The product in question before MP Advance Ruling Authority was FRIED FRYUMS in ready to eat condition whereas the appellant products are PAPAD and in ready to cook condition but never in ready to eat condition.

(xi) The learned GAAR has completely misconstrued the principles of classification in sheer ignorance of the submissions of the appellant. The appellant has submitted that the first and foremost rule of interpretation and classification is that when a product is eligible to be classified under specific entry then classification under general entry should not be preferred. It is submitted that in case of present appellant, the product is squarely eligible to be classified under 1905 90 40 as PAPAD while 2106 is residuary entry which itself says that Food preparations not elsewhere specified or included. So, tariff heading 1905 90 40 is specific heading for classification of products of appellant. In this regard, the appellant has placed reliance on the decision of *M/s. Bradma of India Ltd. Vs. State of Maharashtra – 140 STC 17 (SC) and Mauri Yeast India Pvt. Ltd. Vs. State of UP –2008 (225) ELT 321 (SC)*.

(xii) The appellant has submitted that another principle of rule of interpretation and classification is *noscitur a sociis* which means that meaning of a word is to be judged by the company it keeps. Applying the said principle by no means it can be said that appellant product is eligible to be classified under heading 2106 because by no stretch of imagination the product of the appellant can be equated with either “Misthan” or “Mithai” or “Namkeen” or “Chabena” or “Bhujia”. As such the product of the appellant can neither be consumed by human in the form it is sold which means that is not ready to eat product for human consumption. Thus, heading 2106 90 99 even as general entry is not capable of including the product of the appellant and 1905 90 40 is the only entry and most specific entry where the product manufactured by the appellant would fall.

(xiii) The various issues and decisions relied upon by the appellant have neither been controverted nor distinguished nor dealt with and no reasons have been advanced for the same. As such the learned AAR is completely silent on the issue regarding creative interpretation in light of advancement of technology and advancement of market trends, not considered the decision of Advance Ruling Authority of Tamilnadu in the case of Subramani Sumathi Order No. 07/AAR/2019 dated 21/01/2019 which was relied upon by the appellant; the decision of CESTAT in the case of *Commissioner of Central Excise, Bangalore Vs. T.T.K. Pharma Ltd. –2005 (190) ELT 214 (Tribunal)* relied upon by the appellant was not relied upon.

27. The appellant has submitted that Considering the overall facts and circumstances of the case vis-à-vis the entries in question and the settled law on the subject, the product i.e. PAPAD of different shapes and sizes manufactured and supplied by the appellant, 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 “**PAPPAD by whatever name it is known, except when served for consumption**” as specified at serial number 96 under Notification No.2/2017 –Central Tax (Rate) Dt:-28/06/2017 and thus attracts NIL rate of tax under the IGST, CGST and SGST.

28. The appellant has prayed the following:

[1] The impugned order dated:-30/07/2020 passed by the learned Gujarat Authority for Advance Ruling, may kindly be quashed and set aside.

[2] It may kindly be held that products of the appellant are nothing but PAPAD and PAPAD Products eligible and entitled to be classified under Tariff Heading 1905 90 40 and taxable at NIL rate of tax under IGST, CGST and SGST.

FINDINGS :-

29. We have carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

30. The main issue here is to decide the classification of the appellant's products termed as 'different shapes and sizes of PAPAD' and applicable rate of Goods and Services Tax of the said products.

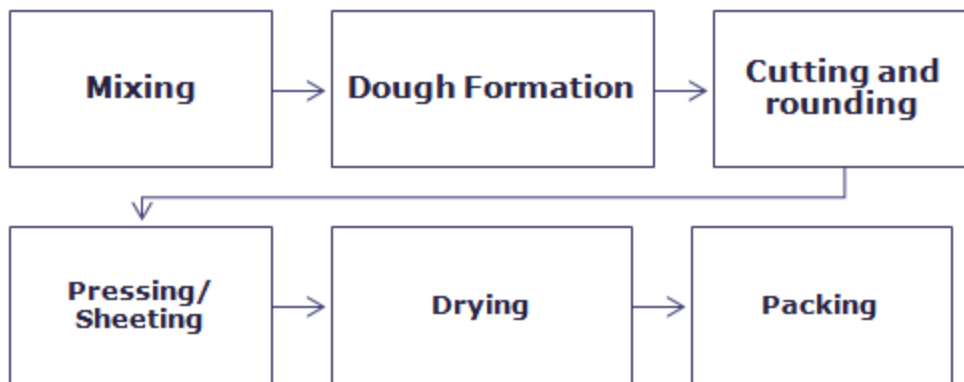
31. The appellant has submitted that they are engaged in the manufacturing and trading of "Papad" of different shapes and sizes which is raw pellet that are neither fully cooked nor ready to eat and needs to be cooked first either by frying or roasting before consuming. The shape and size may vary but the ingredients, the proportion of ingredients, the composition and the recipe remains similar, if not exactly the same. The said product "Papad" of different shapes and sizes that are neither fully cooked nor ready to eat condition, are according to the appellant, eligible to be classified under Chapter Tariff Heading- 1905 of Customs Tariff Act, 1975 accordingly, vide entry at Sr. No. 96 under Not. No. 02/2017-CT (Rate) dated 28.06.2017 product in question is exempted from the levy of Goods and Service Tax.

32. To decide the classification of the product in question i.e. PAPAD of different shapes and sizes, it would be prudent to know what PAPAD is, what the main ingredients of PAPAD are and how it is manufactured. The term PAPAD has not been defined in the CGST Act, 2017 therefore we resort to the common sense and meaning that sense by which the people are conversant. It is observed that traditionally when we talk about the PAPAD, in the first instance an image of thin round shape flatbread appears in mind. Traditionally PAPAD is thin Indian wafer and served as an accomplishment to Indian meal or as a snack. The appellant has submitted that due to advancement of technology, PAPAD does not resemble the same age old traditional round shaped papad anymore but now PAPAD can be in any desired shape and size. We agree with the said argument of the appellant that it is not necessary that to call or consider a product "PAPAD", the shape should only be "Round". In the old era, usually PAPAD was manufactured manually, therefore it was easy for them to manufacture the Round Shape PAPAD. In the modern era, by the advent of technology, the product is being manufactured by machines and dies of different shape and size is used in the machine. Therefore, with the help of dies of various size and shapes, it is convenient to manufacture the different shape and sizes of PAPAD.

33.1 The ingredients of the PAPAD varies but by and large main ingredient are as cereal flour, pulse flour, soya flour, rice flour, salt, Papad Khar and Asafoetida. The appellant has submitted that main ingredients of their product 'different shape and size Papad' are also wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour, potato starch, chana, potato lentils, papad khar, bicarb, vegetables like tomato, salt, water, food, colour etc. The main ingredient of PAPAD and impugned product are more or less similar. The main difference appears to be of ancillary used to give both the product different colour and taste according to demand of customers otherwise there is no difference in the

ingredient used for manufacturing of PAPAD and impugned product i.e. different shapes and sizes of papad.

33.2 The manufacturing process of PAPAD has been taken from the internet and for ready reference same is reproduced as under:



In the making of PAPAD, ingredients are mixed in machine with water and dough is made, then dough is divided into small pieces and kept in the machine to press OR dough is passed through the machine having round shape die and round shape PAPAD are manufactured and then dried and Packed for supply. The manufacturing process of the impugned products as submitted by the appellant is similar in as much ingredients are mixed in machine with water and oil, dough is prepared and passed through die of different shapes and size to manufacture different shapes and size of papad and then dried through various stages. In both the cases, dough is made, passed through machines and different type of dies and the product is dried.

34. We find that the classification of goods under GST regime has to be done in accordance with the Customs Tariff Act, 1975, which in turn is based on Harmonised System of Nomenclature, popularly known as 'HSN'. The rules of interpretation, section notes and chapter notes as specified under the Customs Tariff Act, 1975 are also applicable for classification of Goods under GST regime. However, once an item is classified in accordance with the Customs Tariff Act, 1975, the rate of tax applicable would be arrived at on the basis of notifications issued under GST by respective governments.

35. Now, we discuss the appropriate classification of the impugned product i.e. different shapes and sizes of PAPAD. The appellant claims that their product merit classifiable under CTH No. 1905 of Custom Tariff Act, 1975. We refer relevant chapter Note, headings, HSN Explanatory Notes to examine the appellant's claim. Chapter 19 of Custom Tariff Act, 1975 covers all the products which are prepared of cereals, flour, starch or milk and pastrycook's product.

CTH No. 1905 of the Custom Tariff Act, 1975 is as:

1905 BREAD, PASTRY, CAKES, BISCUITS AND OTHER BAKERS' WARES, WHETHER OR NOT CONTAINING COCOA; COMMUNION WAFERS, EMPTY CACHETS OF A KIND SUITABLE FOR PHARMACEUTICAL USE, SEALING WAFERS, RICE PAPER AND SIMILAR PRODUCTS

1905 90 Other :

1905 90 10 --- Pastries and cakes

1905 90 20 --- Biscuits not elsewhere specified or included

1905 90 30 --- Extruded or expanded products, savoury or salted

1905 90 40 --- Papad

1905 90 90 --- Other

The General NOTES of HSN of Ch. 19 are as under :

This chapter covers a number of preparations, generally used for food, which are made either directly from the cereals of chapter 10, from the products of chapter 11 or from food flour, meal and powder of vegetables origin of other chapters (Cereal flour, groats and meal, starch, fruit vegetables flour, meal and powder) or from the goods of headings 04.01 to 04.04. The chapter also covers pastrycooks products and biscuits even when not containing flour, starch or other cereal products.

CTH No. 1905 of HSN are as under:

19.05 - Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products.

1905.10 - Crispbread

1905.20 - Gingerbread and the like

- Sweet biscuits; waffles and wafers :

1905.31 - - Sweet biscuits

1905.32 - - Waffles and wafers

1905.40 - Rusks, toasted bread and similar toasted products

1905.90 - Other

The heading includes the following product :

(1) to (14) _____

(15) **Crispy savoury food product**, for example, those made from a dough based on flour, meal or powder of potatoes, or maize (corn) meal with addition of a flavouring consisting of a mixture of cheese, monosodium glutamate and salt, fried in vegetable oil, ready for consumption.

36. From the above, the following are deduced:

- This chapter covers the product which are made either directly from the cereals of chapter 10, from the products of chapter 11
- Crispy savoury food product made from a dough based on flour and meal.

37. From the ingredient of the product in question as submitted by the appellant, it is seen that the impugned product are manufactured from the wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour and all these products are covered under Chapter 10 and 11 of Customs Tariff Act. The said product can be categorized as crispy savoury food product as such it is made from the dough based on flour like wheat flour, rice flour, starch, corn flour and cereal flour. Therefore, the products of the appellant fall under the Chapter Heading 1905. However, the question still remains whether the products of the appellant can be termed as 'Papad'. The product 'Papad' is an eatable item, originated and mainly consumed in India. Therefore, there is no mention of the product 'Papad' in the Explanatory Notes of the HSN. The term 'Papad' has neither been defined in the Customs

Tariff Act, 1975 nor under the CGST Act, 2017 or the Notifications issued there under.

38. We find that for determination of the correct classification of any product ingredient used in the manufacture of the said product are decisive factor. In the case of *Manilal Commodities Pvt. Ltd. Vs. Collector of Customs [1992-59-ELT-189-Tribunal]*, the Honourable Tribunal was of the view that the classification on the basis of predominant contents is generally accepted as proper test. Further, Honourable Allahabad High Court in the case of *Commissioner of Customs, C.G.O. Vs. Sonam International [2012-275-ELT-326-ALL]* upheld that assessment of goods with regard to payment of customs duty is to be made based on contents involved. The main ingredients of the appellant product are flour, like wheat flour, rice flour, starch, corn flour and cereal flour and in the Ch. 19 of the Custom tariff Act 1975 all the product which are made of *either directly from the cereals of chapter 10, from the products of chapter 11 or from food flour are covered.*

39. We find that the appellant contends that their impugned product falls under the entry No. 96 of Not. No. 02/2017- CT (rate) dated 28.06.2017 which attracts NIL rate of GST. The relevant entry No. 96 of Not. No. 2/2017-CT (Rate) dated 28.06.2017 is reproduced as under:

S. No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
96.	1905	<i>Papad, by whatever name it is known, except when served for consumption</i>

40.1 From the above entry, it can be deduced that all types of “Papad” which are popular in trade/common parlance are covered under the said entry. As we have already discussed in the above para that term “Papad” has not been defined in GST Act, 2017, therefore, we take the recourse of trade/common parlance test so that Papad can be defined. In the matters of classification of goods under taxation statutes, all the judicial forums, including the Apex Court, have stressed upon the importance of the identity of the goods in common parlance and there is a plethora of case laws which hold that for classification of goods under statutes for taxation of commercial supplies thereof, the primary test is their identity in the market, or in other words, their common parlance in the market. The Hon’ble Supreme Court in the case of *CCE, New Delhi v. Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.)]* has held that,

“Classification - Common parlance test - It is extension of general principle of interpretation of statutes for deciphering mind of law maker - It is attempt to discover intention of legislature from language used by it, keeping in mind, that language is at best imperfect instrument for expression of actual human thoughts - In absence of statutory definition in precise terms, it is construction of words, entries and items in taxing statutes in terms of their commercial or trade understanding, or according to their popular meaning - It operates on standard of average reasonable person who is not expected to be aware of technical details of goods - It is construction in sense that people conversant with subject-matter of statute, attribute to it - Rigid interpretation in terms of scientific and technical meanings is to be avoided - However, when legislature has provided a statutory definition of particular entry, word or item in specific, scientific or technical terms,

then, interpretation ought to be in accordance with that meaning and not according to common parlance. [paras 18, 31, 34]”

40.2 The Hon’ble Supreme Court of India in case of ***CCE, Nagpur v. Shree Baidyanath Ayurved Bhawan Ltd. [2009 (237) E.L.T. 225 (S.C.)]*** has held that, *Common parlance test continues to be one of the determinative tests for classification of a product whether medicament or cosmetic. What is important to be seen is how the consumer looks at a product and what is his perception in respect of such product. The user’s understanding is a strong factor in determination of classification of the products”.*

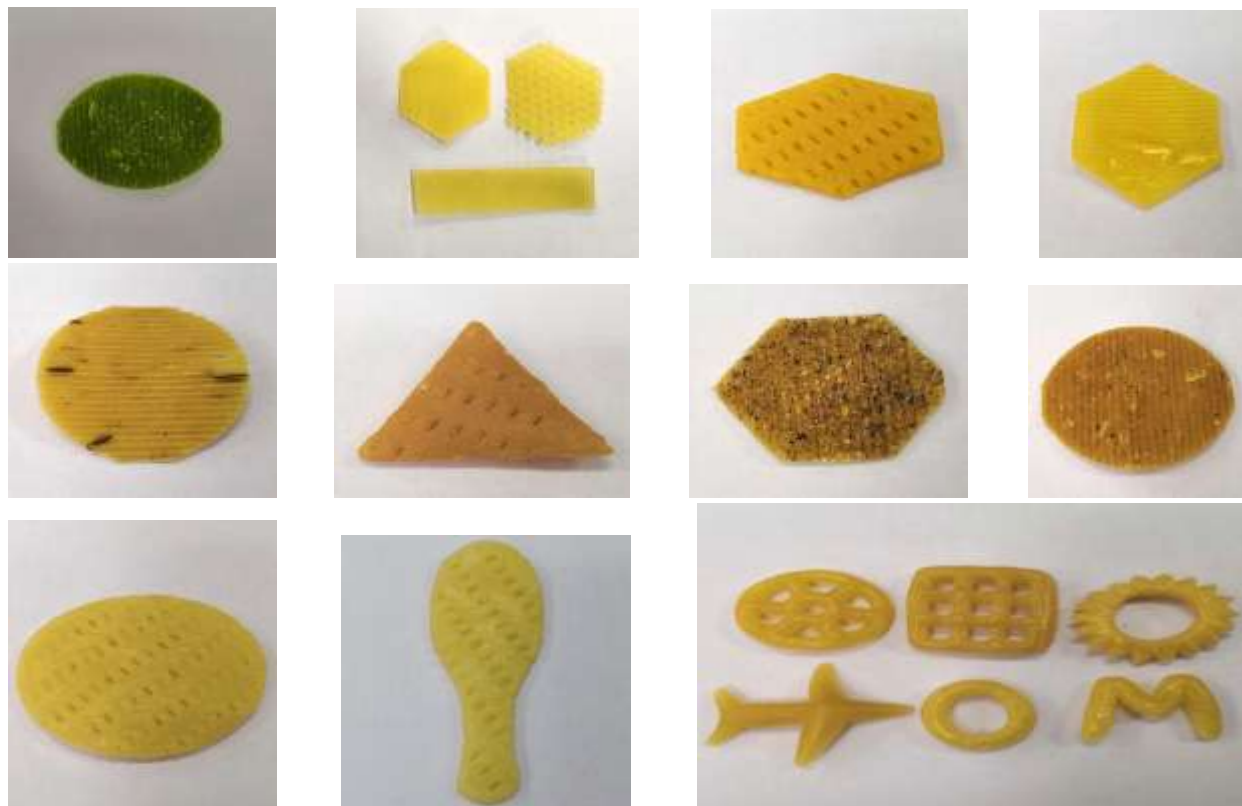
40.3 We find that the appellant has submitted that the impugned product of different shapes and sizes PAPAD are known by different nomenclature in different parts of the country whereby more common nomenclature used is FRYUMS though FRYUMS is a registered brand name of TTK Healthcare Ltd. and not the name of any of product of PAPAD. Whereas the GAAR in his ruling has held that the 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 are known in the market as “Fryums” and not “PAPAD”; that Papad is a distinct commodity and it cannot be equated with the Fryums. We have visited the website of M/s. TTK Foods (<http://ttkfoods.com/products>) and found that the company manufactures ready to fry extruded products (papads) and sells under the brand name Fryum's. Therefore, it can be said that “Fryums” is brand name of a company and not the generic name of the impugned product, therefore it would not be logical to hold that the appellant’s product is “Fryums”. However, in general public, “Fryums” is popular word for 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. Similarly, calling product in question of different shapes and sizes by Fryums does not change the basic character of the product and the product in question remains papad. We accept that traditionally PAPAD is round shaped but the PAPAD is ready to cook product and can be consumed after roasting or frying in oil and consumed as snacks with the Indian meal or soup. Similarly, the product in question of different shape and size is a ready to cook product and can be consumed after roasting or frying in oil and consumed as snack. Further cereal flour of Chapter 10 and 11 of Customs Tariff Act, 1975 are the ingredients of both the product. Both the products i.e. “PAPAD” and product in question are same except they are known by different name in general public i.e. as “PAPAD” and “Fryums”.

41.1 It may be easier for the people to say whether a product is or is not ‘Papad’ than to define what ‘Papad’ is. However, when one refers to the product ‘Papad’, the product which comes into mind generally has the following main characteristics –

- (i) The ingredients of Papad are flours, mainly of pulses, rice, sago and other cereals in which edible oil, salt, Papad khar, asafoetida and other spices (black pepper etc.) are added.
- (ii) The Dough is prepared from the ingredients. The dough is divided in small pieces, out of which thin, wafer like product is made, which is called Papad.
- (iii) Papad can be eaten either after roasting or after frying, but not in uncooked form.

- (iv) Papad becomes crispy after roasting or frying. People savor the Papad, only when Papad is crispy.
- (v) Papad is an accomplishment to Indian meal.

41.2 We have seen the samples of appellant's products, which are in various sizes and shapes. The pictures of these products are reproduced herein below for ease of reference.



42.1 The appellant has submitted that main ingredients of their products 'different shape and size Papad' are wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour, potato starch, chana, potato lentils, papad khar, bicarb, vegetables like tomato, salt, water, food, colour etc. The main ingredient of PAPAD and impugned products of the appellant (different shape and size Papad) are more or less similar.

42.2 The manufacturing process of the products under consideration has been submitted by the appellant. It has been submitted that ingredients are mixed in machine with water and oil, dough is prepared and passed through die of different shapes and size to manufacture different shapes and size of papad and then dried through various stages. The product of the appellant, thus prepared, is thin and wafer like product. At this stage, the product is not ready for consumption. Though, traditionally Papad has been prepared manually, in round shape. However, when ingredients and process are similar in case of PAPAD and impugned product, then the product in question is nothing but a kind of PAPAD irrespective of their shape and sizes.

42.3 As submitted by the appellant, when the consumer desires to eat the said products of the appellant, the said products are required to be fried or roasted before consumption. Thus, these products are not meant to be eaten without frying or roasting.

42.4 The products under consideration become crispy when these products are fried or roasted.

42.5 The products of the appellant has found its use as an alternative to regular round shaped Papad or as an additional variety of Papad in the Indian meal, especially the meals served during the community functions. The caterers, who prepare the meals for the community functions, as well as the people in general, consider such products as a different type or variety of Papad only.

42.6 Therefore, we are of the view that applicant's products of different shapes and sizes of papad, whose pictures are reproduced above, are nothing but Papad, classifiable under Tariff Item 1905 90 40 of the Customs Tariff Act, 1975.

43. Now, the question which arises is, would it be judicious to stick that the product which are having Round shape, manufactured by using ingredient of cereal flour only are PAPAD and the products having the same characteristic and uses but shape and size is different cannot be termed as "PAPAD". We find that for classification of product, the ingredient, uses and common parlance test is decisive factor and not the name. The appellant has relied upon the decision of the various courts in their support.

(a) *Hon'ble Supreme Court of India in case of Shiv Shakti Gold Finger Vs. Assistant 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.*

(b) *In the case of State of Karnataka Vs. Vasavamba Stores –[2013] 60 VST 19 (Karn.), Honourable Karnataka High Court has clearly dealt with the issue whether Fryums in an uncooked/unfried form sold would qualify as PAPAD and it has been held by Honourable Karnataka High Court that FRYUMS fall under the entry of PAPAD irrespective of their shapes and sizes and irrespective of the ingredients used.*

(c) *In 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 M/s. Swethin Food Products Vs. State of Gujarat –2016 GSTB –I 296, Honourable Tribunal has clearly held that Fryums are nothing but PAPAD falling under entry 9(2) in schedule I to the GVAT Act and exempt from payment of tax.*

44. The above decisions are squarely applicable in the instant case as such the impugned product having different shapes and size PAPAD as compared to round shape Papad however are similar to Papad in respect of the ingredient, manufacturing process and use.

45. Further, in entry No. 96 of Notification No. 02/2017-CT (Rate) dated 28.06.2017, the description of the product is "PAPAD by whatever name called". To understand the term "whatever name called" the principle of "*Noscitur a sociis*" is to be applied. As per the said principle, the meaning of an unclear word or phrase must be determined by the words that surround it. In other terms, the meaning of a word must be judged by the company that it keeps. Therefore, in this entry, only a product called by name of PAPAD would not be covered but all types of product which are similar to PAPAD in respect of ingredient, manufacturing process, use and common parlance would be covered irrespective of their shape and size and even name. As such, the appellant's product is

similar to the traditional round shaped Papad in all respect, therefore, we are of the view that the impugned product i.e. different shapes and sizes of papad is eligible to be covered under entry No. 96 of Notification No. 02/2017-CT (Rate) dated 28.06.2017.

46. Gujarat Authority of Advance Ruling in their ruling has ruled that the product in question 'different shapes and size Papad' merit classifiable under CTH No. 21069099 of Customs Tariff Act, 1975 on the grounds that PAPAD is a thing entirely different and distinct from FRYUMS. Therefore, in common parlance or in market, Fryums are not sold as "PAPAD" instead of "PAPAD" sold as papad and Fryums are sold as Fryums. Both the products are different and have their individual identity. Accordingly, in common parlance test, the applicant's products i.e. "different shapes and sizes of Papad" is not "Papad" but is "Un-fried Fryums". In the aforementioned paras, we have already discussed that the Fryums is a brand name and not a generic name of the product therefore, impugned product "different shapes and size of papad", known as Fryums, is nothing but Papad.

47. We find that CTH No. 2106 of Customs Tariff Act, 1975 covers the ***Food preparations not elsewhere specified or included*** means under this heading all types of foods preparation are covered which are not covered under the specific heading of tariff. It is important to refer to Chapter Notes of Heading #21 wherein under clause 5 (b) it is stated that Heading 2106 includes preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption and under clause 6 it has been stated that Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" 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. We find that Rule 3(a) of General Rule of Interpretation of the first schedule of Tariff states that the heading which provides the most specific description shall be preferred to heading providing a more general description. Hence the rule of interpretation for classification is that when a product is eligible to be classified under specific entry then classification under general entry should not be preferred. We find that in the case at hand, the product "different shapes and sizes Papad" is "Papad" of different shapes and size and find specific entry at CTH No. 19059040, therefore as per rule of interpretation, the product is to be classified under CTH No. 19059040 only and not under CTH No. 21069099 of the Customs Tariff Act, 1975 as classified by the GAAR.

48. Taking all these aspects into consideration as discussed above, we hold that the product 'different shapes and sizes Papad' involved in the present case merit classification under Tariff heading No. 19059040 of the Customs Tariff Act, 1975. As we have already held that the product in question is classifiable under CTH No. 1905 of the Customs Tariff Act, 1975, the said CTH No. 1905 is covered under entry No. 96 of Notification No. 02/2017-CT (Rate) dated 28.06.2017 and accordingly chargeable to NIL rate of Goods and Services Tax.

49. In view of the foregoing, we modify the Advance Ruling No. GUJ/GAAR/R/60/2020 dated 30.07.2020 of the Gujarat Authority for Advance Ruling in the case of M/s. Piyush Jayantilal Dobaria (Jay Khodiya Agency) and hold that –

- (i) The product "different shapes and sizes Papad" involved in the present case merit classification under Tariff heading No. 19059040 of the Customs Tariff

Act, 1975 and chargeable to NIL rate of Goods and Services Tax as per Sl. No. 96 of Notification No. 02/2017-CT (Rate) dated 28.06.2017 and Notification No. 02/2017-IGST (Rate) dated 28.06.2017.

(J. P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date : 28.06.2021.