KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR/02/2020-21 **DATE: 21.09.2020**

Sl. No	Name and address of the appellant	M/s ID Fresh Food (India) Pvt. Ltd., # 37, Doddenakundi Industrial Area, Whitefield Road, Mahadevapura, Bengaluru-560 048, Karnataka
1	GSTIN or User ID	29AAICM3930G1ZD
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 38/2020 Dated: 22nd May 2020
3	Date of filing appeal	23-06-2020
4	Represented by	Shri. Lakshmikumaran & Associates Authorised representative
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Bangalore East Commissionerate. (BED8)
6	Jurisdictional Authority- State	LGSTO 030-A, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Challan CPIN No 20062900174164 dated 20-06-2020 for Rs 20,000/-

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of 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

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particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s ID Fresh Food (India) Pvt. Ltd., # 37, Doddenakundi Industrial Area, Whitefield Road, Mahadevapura, Bengaluru-560 048 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 38/2020 dated: 22nd May 2020.

Brief Facts of the case:

3. The Applicant is a food products company involved in preparation & supply of wide range of ready to cook, fresh foods including idli & dosa batter, Parotas, Chapatis, curd, paneer, whole wheat parota and Malabar parota. The Appellant manufactures Parotas using natural ingredients as tabulated below:

Ingredients of Wheat Parota
Wheat flour (Atta)
RO-purified water
Edible vegetable oil (Sunflower)
Edible hydrogenated vegetable fat
Iodized salt

Ingredients of Malabar Parota
Refined wheat flour (Maida)
RO-purified water
Edible vegetable oil (Sunflower)
Edible hydrogenated vegetable fat
Iodized salt

** These parotas do not contain any artificially added preservatives or flavours.*

The parotas need to be heated on a pan or tawa, before consumption, for improved taste and crispiness. In summary, the parotas are in ready to cook condition. The parotas have a shelf life ranging from 3-7 days. The Malabar parotas can be stored in a cool and dry place and have a shelf life of up to 4 days. The wheat parotas are recommended to be refrigerated for retaining the freshness up to 7 days. These products are not frozen products but only needs to be refrigerated to retain its freshness for its stated shelf life of 7 days.

4. In the GST rate Notification No. 1/2017-Central Tax (Rate) dated June 28, 2017, SL.No 99A was inserted in Schedule I vide Notification No 34/2017 -Central Tax (Rate)

dated October 13, 2017 wherein goods described as 'Khakhra, plain chapatti or roti' were chargeable to tax at 5%.

5. In view of the above entry, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

"Whether the preparation of Whole Wheat parota and Malabar parota be classified under Chapter heading 1905, attracting GST at the rate of 5%?"

6. The AAR vide its order dated 22nd May 2020 gave the following ruling:

"The product 'parota' is classified under Chapter Heading 2106 and is not covered entry No.99A of Schedule I to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No.34/2017-Central Tax (Rate) dated 13.10.2017."

7. Aggrieved by the said ruling, the appellant has filed this appeal on the following grounds.

7.1. The product "Parota" merits classification under heading 1905 under the product description of 'Khakhra, plain chapatti or roti' and benefit of entry 99A to Schedule-I vide the notification is applicable. The notification No 01/2017 CT (R) dated 28-06-2017 and its amendment Notification No 34/2017 CT (R) dt 13-10-2017 does not define the term 'Khakhra, Plain Chapatti or roti'. The appropriate classification of the product can be analysed based on below three parameters:

- Reference to general rules for the Interpretation of Tariff embedded in the Customs Tariff Act;
- Judicial Precedents;
- Reference to explanatory notes issued by WCO;

They submitted that, the first step in classification of product is identifying the Section in which the product is likely to be found. With the product in hand being a ready to cook food, on a combined reading of the general rules of interpretation along with the explanatory notes published by the WCO, the Section heading that merits consideration is — Section IV- "Prepared Food Stuffs, Beverages, Spirits and Vinegar, Tobacco and Manufactured Tobacco Substitutes". The Appellant submits that, on analysing the various description of the Chapters along with the explanatory notes, the Chapter that merits consideration is "Chapter

19: Preparations of cereal, flour, starch or milk; pastrycooks' products". Further, on a combined reading of general rules of interpretation and the explanatory notes with respect to Chapter 19, the relevant Chapter heading that merits classification would be "1905 - Bread, pastry, cakes, biscuits and other baker's wares, whether or not containing Cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, Sealing wafers, rice paper and similar products".

7.2. The Appellant submitted that chapter 19 does not provide any clarification with respect to the terms 'Khakhra, Plain Chapatti or Roti' in form of chapter notes, heading notes. Thus, the said terms would need to be understood as known in common parlance. Parathas are one of the most popular unleavened flatbreads in the Indian Subcontinent, made by baking or cooking whole wheat dough on a tava, and finishing off with shallow frying. Parota is described in Wikipedia as: A paratha is a flatbread native to the Indian subcontinent, prevalent throughout the modern-day nations of India, Sri Lanka, Pakistan, Nepal, Bangladesh, Maldives, and Myanmar, where wheat is the traditional staple. Paratha is an amalgamation of the words parat and atta, which literally means layers of cooked dough. They submitted that the Appellant follows similar processes while manufacturing parotas as is followed in the manufacture of chapattis and other unleavened flatbreads. The products are manufactured by the Appellant using various ingredients including wheat flour (atta)/ refined wheat flour (maida), RO purified water, edible hydrogenated vegetable fat, edible vegetable oil (sunflower) and iodized salt. The ingredients used and the processes followed while manufacturing Parotas and Chapati are similar. Both chapathi and parotas are different varieties of Indian bread with mostly similar ingredients used except for some minor variants. They submitted that infact, most of the ingredients used in Parotas are also used in manufacture of Chapati. Parotas also contain similar ingredients that are generally present in any other "unleavened Indian bread". The only change is in the process of manufacture with regard to layering which is essential for parota as against a chapathi where layering is not necessary. Thus, owing to the fact that the process of manufacture as well as the ingredients used in both Chapathi and Parotas are mostly same, the Appellant is of the belief that parotas should also be classified under Entry No. 99A of Schedule-I of Rate Notification as 'Khakra, Plain Chapatti or Roti' and be leviable to GST accordingly.

7.3. They relied on the order of the Appellate Authority for Advance Ruling sought by M/s Ramachandran Bror for classification of Ada wherein, it was held that *the product,*

"Ada", in sum and substance is something akin i.e., similar in character to "Vermicelli". In the above ruling also, it can be seen that classification has been determined based on the ingredients used in the product and the process of manufacture. Therefore, products of similar character having similar ingredients and manufacturing process should carry the same classification. Similar observations have been made by the Hon'ble Supreme Court of India in the case of ***SHIVASHAKTHI GOLD FINGER v/s ASSISTANT COMMISSIONER, COMMERCIAL TAXES, JAIPUR [(1996) 9 SCC 514]*** and the Hon'ble Karnataka High Court in the case of ***State Of Karnataka vs. M/s. Vasavamba Stores [(2013) 60 VST 19 (Karn)],*** wherein the Courts have held that while classifying any products, **the ingredients tests is very important** and the shape, size, etc. cannot be a basis for determining the correct classification of a product. In view of the above, the Appellant submits that the conclusion made by the authority, purely based on nomenclature and without appreciating the ingredients of the product, is grossly erroneous and unlawful.

7.4. The Appellant further contended that in the absence of a statutory definition, a word is to be interpreted by understanding its meaning. From a commercial parlance perspective, all such products like, rotis, chapattis, parotas, etc. are treated as "unleavened flatbreads", which can be known by different names and can be of various types. Heading 1905 of Schedule-I of the notification deals with all such unleavened flatbreads. They submitted that another test of interpretation evolved by Courts is that of the end-user. Parota or paratha are staple food across the length and breadth of India and they are known by different names across the country such as parota, parantha, lachha parantha, etc; that people use plain chapatti, roti, parotas or variants of these type of breads as the staple underlying carrier in one's meal. It is usually accompanied by protein or vegetables and sauce/curry; that the term chapati or roti as appearing in the schedule does not refer to a single type of Indian bread but it covers all types of Indian breads as long as they are made of same or similar ingredients and in similar processes. Hence, it is the Appellant's humble submission that the relevant entry is not restrictive but covers all types of Indian breads such as phulka, naan, laccha parantha and includes parota as well. In view of the above, they contended that the parotas manufactured and supplied by them should be classified as 'Plain Chapatti or Roti' and should accordingly be levied to GST.

7.5. The Appellant submitted that an advance ruling on a similar issue has been passed by the Maharashtra Authority for Advance Ruling in the case of **Ms. Signature International**

Foods India Private Limited [2018 (12) TMI 892]. In this case, the Hon'ble Maharashtra Authority of Advance Ruling while concluding that the product 'paratha' is covered by entry no. 99A of the notification, has also categorically mentioned that various types of Unleavened Indian breads are called by different names by different users depending upon the regions where the food is consumed, like, roti, phulka, bhakari, rotla etc. Accordingly, the classification of a product should not merely be guided by the name or nomenclature it carries. As long as the products contain similar/same ingredients, manufacturing process and are used as staple food item in meal, they should be classified just like any other Indian bread. The facts of the case cited above are exactly the same as that of the Appellant and accordingly, the decision in the case cited above squarely applies in the Appellant's instant case also and the Appellant submits that the product merits classification under the chapter heading "1905".

7.6. The Appellant further submitted that that the parotas manufactured by them should be classified under heading 1905 covering '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' as it is a kind of Indian bread. In this regard, they relied on the ruling passed by the Hon'ble Andhra Pradesh High Court in the case of Kayani & Co. v/s Commissioner of Sales Tax wherein it was stated that a parota fairly falls under the definition of bread and should be classified under the heading 1905. As parota is fairly classifiable under heading 1905, contention of Authority of Advance Ruling classifying the same under heading 2106 of Schedule-III of the notification does not hold good, as reference to residuary heading can be made only if a product is not classifiable under any other specific entry. They submitted that that 1905 is a more specific entry for the product "Parotas" than the heading 2106, as it covers various other forms of Indian breads like rotis, chapattis, etc. In this regard, in view of Rule 3(a) of the Principles of Interpretation for classification, *"the heading which provides the most specific description shall be preferred to headings providing a more general description."*

7.7. They submitted that the Authority for Advance Ruling in the impugned order has mentioned that the parotas sold by the Appellant need to be processed for human consumption and has accordingly passed its decision based on this fact, among others. This is grossly incorrect, because the parottas sold by the Appellant is ready to cook and merely needs heating. Heating is a common requirement for all ready to cook food products. Even

chapathis are required to be heated before consumption, so is the case with milk and various other products. The mere process of heating cannot be considered as further processing. They further submitted that the parota that the Appellant deals in is neither a frozen product nor a product that contains any preservatives. Malabar parotas are only required to be stored in a 'cool and dry' place and wheat parotas are required to be refrigerated for retaining freshness. There are no criteria for freezing the parotas that the Appellant deals in, to retain its shelf life. As a matter of fact, the products in the present case cannot be in a frozen state, because articles which are required to be frozen for storage have a completely different set of manufacturing and packaging process, which is not followed in the instant case. Notwithstanding the above, the Appellant drew attention to the fact that there is no requirement for the classification in entry 99A of Schedule I covering chapter heading 1905 for the goods to be 'ready to eat'; that there is no mention of whether the products should be raw, partially cooked or fully cooked in the Notification No. 34/2017 dated 13 October 2017, inserting the entry no. 99A covering 'Khakhra, plain chapatti or roti'. Accordingly, the Appellant submitted that the primary factor determining the classification of products should be the ingredients, process for manufacture, functionality, usage etc. The classification of a product should not merely be based on the storage requirements.

7.8. The Appellant further submitted that in the erstwhile VAT regime also, the rate of VAT applicable on the product was 5% in the state of Karnataka. As per notification no. II No. FD 57 CSL 2012 dated March 31, 2012 issued by the Government of Karnataka, the rate of VAT applicable on "ready to cook chapathi and parotas" was 5%. Further, they submitted that the rate of tax derived under GST regime is influenced by the tax rates prevalent under the erstwhile tax regime; that the applicable tax rates of 5%, 12%, 18%, 28% etc. under GST have been calculated considering the rates of Central excise, VAT and service tax as applicable on a particular product or service under the earlier tax laws and the GST rate have been computed accordingly. In this regard, they submitted that the VAT rate on parotas was ranging from 4% to 6% in most of the states and therefore, considering the same, the rate of GST applicable on the product should also be 5%.

7.9. They submitted that parotas being a food item is available for mass consumption in common understanding and consumed across millions of households (including, lower and middle class) daily; that reference is also made to entry number 99 of Schedule I of the notification, wherein the product "pizza bread" has been specified to be taxed at 5%; that if

the rate of tax on pizza bread (which is not a product commonly consumed by a lower class or middle-class household in regular course) can be 5%, then, the GST rate of "parotas" should not be 18% by any stretch of imagination. Therefore, the entry no 99A covering term 'khakhra, plain chapatti & roti' should be interpreted in a wide manner to cover all types of Indian breads and mere nomenclature should not determine the classification, especially when all such bread are unleavened flatbreads and a daily source of consumption of a common man.

7.10 They argued that the impugned order has erred in concluding that non-inclusion of the word parota in HSN 1905, excludes it from being classified under 1905 and availing the benefit of entry No 99A; that that the authorities in the impugned order, has applied only the 'nomenclature test' while classifying Parotas while it has not given any importance to the End User Test, which is also relevant in the underlying case. They submitted that the entry no 99 A only mentions khakhra, plain chapati or roti and does not describe the meaning of the same. Also, there is no mention in the heading 1905 that the product classified should not be subject to any human processes; that reference can be made to explanatory notes to Chapter 19.01 under point II wherein it can be seen that even preparations that require further cooking before consumption is covered under heading 1905. Therefore, the observation made by the Advance ruling authorities that the product "Parota" cannot be classified under heading 1905 since it requires processing for human consumption is baseless; that heading 1905 also contains "Pizza bread" under serial number 99 of Schedule-I of the Notification; that pizza bread also requires processing like, heating or baking for the product to be fit for human consumption. Therefore, it also evidences the fact that the observation made by the Advance ruling authorities in the impugned order, that Parotas cannot be classified under heading 1905 because they require processing for human consumption, appears to be unacceptable; that, as per the general explanatory notes to Chapter 19, the Chapter covers preparations made from the cereals falling under Chapter 10 and Chapter 11. In the given case, the product Parota is made up of wheat which finds mention in Chapter 10 and, wheat flour and maida flour which finds mention in Chapter 11. In this view, the Appellant submitted that since the product in question "Parota" meets the criteria for classification under Chapter 19, the Appellant should be entitled to classify the product under serial number 99A - HSN 1905 of Schedule-I taxable at 5%.

7.11. The Appellant also put forth the argument that 'Roti'/ 'Parota' are species of 'Bread' and hence fall under Entry 97 of the Exemption Notification and eligible for full exemption from payment of tax. The relevant entry of the Exemption Notification reads as under:

S. No.	Chapter, Section, Heading, Tariff	Description of goods
97	1905	**Bread** (branded or otherwise), except when served for consumption and pizza bread

They submitted that to fall within the scope of the aforesaid entry, the Product 'Parota' would have to be:

a) Classifiable under Tariff heading 1905;
b) Fall within the description 'bread'; and
c) Not be excluded i.e. served for consumption and pizza bread

As discussed elaborately *supra*, the Tariff classification of 'Parotas' is tariff item 1905 90 90 and by application of general explanatory notes to the rules of interpretation of Customs Tariff would be covered within the scope of 4-digit heading i.e. 1905. Thus, the first requirement is satisfied. They further submitted that the Product 'Parota' would fall well within the description of 'Bread'; that 'Bread' has not been per se defined under the Section Notes or Chapter Notes of the Customs Tariff; that when a term is not defined in the Section or Chapter notes, recourse may be had to the dictionary meaning of the term. The term 'Bread' is defined in various dictionaries as under:

The Chambers Dictionary	Food made of a baked dough of flour or meal, usually with yeast or other raising agent.
Chambers Dictionary of Science and Technology	The product of baking a dough made from cereal (usually wheat or rye) flour and water *(unleavened bread)* to which a small amount of salt and fat may also be added. It is usually leavened by the fermentation of bakers yeast (*Saccharmyces*

	cervisiea) and may be produced from white flour or flours containing wheatmeal, wholemeal, wheatgerm, malt and protein enrichment.
Illustrated Oxford Dictionary	baked dough made from flour usually leavened with yeast and moistened.
Academic Press Dictionary of Science and Technology	Food made of flour or meal that is mixed with water or milk, usually kneaded into dough with a leavening agent, and then baked.
The Cambridge Dictionary	a food made from flour, water and usually yeast, mixed together and baked.
The Merriam-Webster Dictionary	a usually baked and leavened food made of a mixture whose basic constituent is flour or meal.
P. Ramanatha Aiyar's Advanced Law Lexicon	Bread includes *all forms or kinds of bread* which is prepared by moisturising kneading, baking, frying or roasting meal or flour with or without the addition of yeast, leaven or any other substance for puffing or lightening the articles
Webster Collegiate, 1949	An article of food made from flour or meal by moistening, kneading and baking
International Self Pronouncing Reference Library – Encyclopaedia Volume 1, 1910	Is the flour or meal of grain kneaded with water into a tough and consistent paste and baked. *There are numerous kinds of bread according to materials and methods of preparation; but all may be divided into two classes: fermented, leavened, or raised, and unfermented, unleavened, not raised.* The latter is exemplified by the oat cakes of Scotland, the corn-bread of America, the dampers of the Australian colonies. All the cereals are used in making bread, each zone using those which are native to it. Thus, maize, millet and rice are used for the purpose in the

	hotter countries, rye, barley, and oats in the colder, and, and wheat in the intermediate or more temperate regions
A-Z Vegetarian Food, Harper Collins, 1993, 1996	Any of a great variety of foods made from flour dough

It is evident from the dictionaries that 'bread' means a baked dough made from flour which is *usually leavened (with yeast or other raising agent).* However, the term is also defined expansively to include all forms of bread - *leavened or unleavened.* The Concise Oxford Dictionary defines 'unleavened' as *made without yeast or other raising agent.* The Merriam-Webster Dictionary defines 'unleavened' as *made without leaven (such as yeast or baking powder).* Therefore, in terms of the dictionary meaning, 'Bread' can be said to include all forms of 'bread' whether **leavened or unleavened**. Indian breads fall within the category of unleavened bread and hence would be covered within the scope of Tariff heading 1905 and consequently under entry 97 of Exemption Notification; that the HSN explanatory notes to heading 1905 itself specifically provides that the heading includes **unleavened bread** in addition to other types such as ordinary bread, ginger bread etc., thereby providing an expansive scope to Tariff heading 1905.

7.12. Finally, they submitted that the products do not fall within the exclusions contained in the entry. i.e., the products sold by the Appellant are not served for consumption. Rather, they are sealed and packed in containers to be sold to customers through various retail outlet. The products are also not 'pizza bread' and hence would not fall foul of the exclusions. In view of the aforesaid, they submitted that the Product *viz* 'Wheat Parotta and Malabar Parotta' satisfy all the requirements to be covered by scope of Entry 97 of Exemption Notification and are entitled to full exemption of GST. They further put forth the argument that a claim for exemption can be made at any stage of proceedings as it is the duty of authorities functioning under taxing statutes to ensure that an assessee is being assessed to tax accurately and as per provisions of the statue. Therefore, if a statue confers benefit to the assessee, the authorities are bound to extend the same notwithstanding the fact that no claim or belated claim has been made by the assessee; that an assessee cannot be estopped from claiming the benefit merely because it did not do so at an earlier stage. In this regard, they placed reliance on the decision

in case of ***Unichem Laboratories Ltd. v. Collector of Central Excise, Bombay 2002 ECR 913 (SC)***, wherein the Apex Court held that if no time is fixed for the purpose of getting benefit under the exemption notification, it could be claimed at any time. If the notification applies, the benefit thereunder must be extended to the appellant.

7.13. In view of all of the submissions made above, the Appellant submitted that the products viz 'Whole-Wheat Parota' and 'Malabar Parota' manufactured by them and in dispute in the present case are classifiable under Tariff heading 1905; that the tariff rate of tax payable on these two products will be in 5% in terms Entry No. 99A of Notification No. 1/2017-CT (Rate) dated 28.06.2017 and the effective rate would be zero or Nil in terms of Entry No. 97 of Notification No. 2/2017-CT(Rate) dated 28.06.2017.

PERSONAL HEARING

8. The appellant was called for a virtual hearing on 9th Sept 2020 but they sought an adjournment citing the difficulties faced in collating the required documentation, as their staff and consultants were working from remote locations due to Covid-19. Accordingly, the Appellants were called for another virtual hearing on 21st September 2020.

8.1. The hearing on 21st September 2020 was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Advocates Mr V. Lakshmikumaran, Mr Ravi Raghavan and Ms. Charanya Lakshmikumaran as authorised representatives. The Department was represented by Mr Saji Jacob, Superintendent of Central Tax, Bangalore East Commissionerate.

8.2. Shri. Lakshmikumaran, explained the gist of the reasoning given by the lower Authority regarding the classification of the impugned product i.e "Parotta". He also explained in great detail the nature of the items figuring under entry 99A of the rate Notification and the Chapter Headings 1905 and 2106. He stressed on the fact that the finding of the lower Authority that the impugned product is not classifiable under 1905 because it has to be heated before eating is incorrect. He submitted that the impugned product is pre-cooked and merely because the product is heated before consuming will not render the product uncooked. He emphasised the fact that in order to classify a product under Chapter Heading

2106, as held by the lower Authority, it should not be classifiable under any other heading; that 2106 is a residuary heading and goods can be classified under the said heading only when they cannot be classified anywhere else. In their case, the Parotta is covered as breads under 1905 and hence the classification under 2106 is incorrect. He relied on the HSN Notes as well as the Rules of Interpretation to buttress the argument that the impugned product is classifiable under Chapter Heading 1905 and not under 2106 as held by the lower Authority. He submitted that Parotta is commonly understood as Indian bread and categorised as Roti. He placed on record the menu card of restaurants wherein Parotta is indicated under the category of Rotis. He submitted that it is akin to roti as the ingredients are the same but only the process of making the parotta is different. He summed up his submissions to state that the impugned product "Parotta" is correctly classifiable as "Bread" under Chapter Heading 1905 and is eligible for exemption under Sl.No 97 of rate Notification No 02/2017 CT(R) dated 28-06-2017 and therefore pleaded that the order of the lower Authority may be set aside.

8.3. Shri. Saji Jacob, Superintendent of Central Tax, Bangalore East Commissionerate, the departments' representative, submitted that the DGGI, Chennai had initiated an investigation against M/s ID Fresh Food (India) Pvt Ltd on the issue of misclassification of "Parotas" under HSN 19059090 instead of 2106 and consequently paying GST at the lesser rate of 5% instead of 18%. In this connection, DGGI issued summons dated 21.06.2019 and 09.07.2019 to M/s ID Fresh Foods and statements were recorded on 02.07.2019 and 09.07.2019.

8.4. He submitted that during the pendency of the investigation, M./s ID Fresh Foods had applied for an Advance Ruling on the same issue of classification of Parota and the Authority vide order No 38/2020 dated 22.05.2020 has given a ruling that the product in question is classifiable under Chapter Heading 2106. The department representative submitted that the Appellant has obtained the ruling by not revealing the fact of the ongoing investigation on the same subject matter which is violative of Section 98(2) of the CGST Act. He pleaded that the ruling given by the lower Authority be held as void ab-initio in terms of Section 104 of the Act in as much as the ruling has been obtained by suppressing facts. The Department's representative also brought to the notice of the Members, the ruling passed by the Authority of Advance Ruling, Kerala in the matter of ***In Re: Modern Food Enterprises Private Limited, supra*** wherein the authority had classified 'Classic Malabar Parota' and 'Whole Wheat Malabar Parota' under the Head 2106 as 'Food preparations not elsewhere specified or included' and taxed the same at 18%.

8.5. In his rebuttal, the authorised representative for the Appellant submitted that the provisions of the proviso to Section 98(2) of the CGST Act will be attracted only when a show cause notice has been issued or when an order is already passed on the question on which a ruling is sought; that in their case, the matter was only under investigation and no show cause notice was issued; that matters under investigation will not attract the provision of the proviso to Section 98(2).

8.6. In the written submissions made in rebuttal to the objection raised by the Department representative, the Authorised representative contended that the investigation initiated by the DGGI is not within the ambit of the term 'proceedings' for the purpose of Section 98(2) of the CGST Act; that the proviso to Section 98(2) bars the AAR from admitting an application where the *question raised is already pending or decided in any proceedings* under any of the provisions of the Act; that mere initiation of an investigation or pendency of proceedings under the Act by itself would not exclude the jurisdiction of the AAR. They placed reliance on the decision of the Hon'ble High Court of Delhi in the matter of ***Commissioner of Income Tax – I (International Taxation) v. Authority of Advance Ruling*** reported at ***[2020] 119 Taxmann.com 80 (Delhi)*** wherein the Court analyzed the Advance Ruling provisions under Income Tax Act, 1961 and held that a mere notice issued by an authority cannot be considered to be a jurisdictional bar on the assessee for raising the question before the AAR. They also relied on the decision of ***Sage Publication Ltd. v. Deputy Commissioner of Income-Tax (International Taxation)*** reported at ***[2016] 387 ITR 437 (Delhi),*** which was later affirmed by the Supreme Court in ***[2017] 246 Taxman 57 (SC)***, wherein the High Court held that a mere notice that does not even visibly cover the issue raised before the Authority for Advance Ruling cannot act as a bar for on the AAR.

8.7. They further submitted that the term *'proceedings'* as mentioned in the proviso, does not cover any and all steps / actions that the Department may take under the Act; that by applying the principle of *noscitur a sociis,* it can be said that the term 'pending' has to derive color from the term 'decided'. Since a 'question' is only capable of being decided by an authority empowered to adjudicate an issue, the pendency of the proceedings should also be before such authority that is empowered to decide such an issue. Thus, they submitted that the term 'proceedings' only includes within its ambit any proceedings that may result in a 'decision' i.e. in the nature of show cause notice or order etc. which can be decided by the competent authority and cannot include proceedings initiated by investigating agencies, such as DGGI, who are merely empowered to investigate and issue a show cause notice setting out

allegations regarding non-payment or evasion of tax under the Act pursuant to such investigations; that that show cause notice is the point of commencement of any proceeding is fortified by the ***Master Circular on Show Cause Notice, Adjudication and Recovery (Circular No. 1053/02/2017-CX dated 10.03.2017)*** issued by the CBIC wherein it has been clearly stated that the Show Cause Notice is the starting point of any proceedings against the party; that show cause notice has not been issued in the present case relating to the issue of classification of disputed products..

8.8. They further submitted that the sequence of events in the present case indicates that the investigation initiated against the Appellant in June, 2019 was at a preliminary stage at the time of filing the application before the AAR. The Senior Intelligence Officer had issued summons on 21.06.2019 and 09.07.2019 merely calling for details and documents such as returns, audited financials, audit reports and HSN wise details of clearances along with duty paid. The reason for such investigation, the issue proposed to be covered therein etc. were not even made known in any of the correspondences by the DGGI. The issue of classification of disputed products was also not raised specifically by DGGI in the summons or any allegation made that the classification adopted by the Appellant was incorrect; that the investigation initiated was clearly at a preliminary stage and no show cause notice was issued under Section 73 or 74 of the CGST Act for any proceeding to have commenced or decided. In fact, no show cause notice has been issued by the Department till date. Therefore, the allegation of the Department that the impugned ruling has been obtained by suppression of facts is unfounded and without substance. They also contended that the application for advance ruling filed before the Hon'ble AAR was well within the knowledge of the Department; that the application was filed on 09.10.2019 and personal hearing in the matter was held only on 09.01.2020; that there is further gap of five months for the advance ruling to be issued and as-such there was enough time for the Department to highlight the issue before the Hon'ble AAR. Having not done so, it cannot now be alleged that the Appellant has suppressed information from the Hon'ble AAR to obtain the ruling.

8.9. They also submitted that the issue of jurisdiction cannot be raised at a belated stage before the Hon'ble Appellate Authority. Since the issue was not raised during the pendency of the application before the Hon'ble AAR, nor at the time of hearing before the AAR, it cannot be allowed at the stage of the appellate proceedings. They placed reliance on the decision of ***Sangameshwar Pipe and Steel Traders v. Commissioner of Central Excise,***

Belgaum reported at ***2002 (141) E.L.T. 252 (Tri. – Del.)*** wherein the Hon'ble Tribunal held that a jurisdictional objection has to be raised at the earliest opportunity. Once such objections are not raised at the preliminary stage, the party is estopped from challenging the same at the appellate stage. They also relied on the decision of ***Chirspal Shipping Co. Pvt. Ltd. v. Commissioner of Service Tax, Mumbai III*** reported at ***2014 (35) STR 1000 (Tri.-Mumbai),*** which was affirmed in ***2015 (38) S.T.R. 453 (Bom.)*** wherein the Hon'ble High Court held that the jurisdiction of the Adjudicating Authority cannot be questioned at the Appellate stage when the issue was not raised before. When a party has acquiesced to the jurisdiction of the adjudicating authority, they are estopped from raising the said issue at the appellate stage, more so in the appeal filed by the appellant. They also contended that there is no appeal filed by the department against the order of the Hon'ble AAR. In such a situation the issue of jurisdiction raised by the Government Representative at the time of personal hearing is ex-facie perverse and cannot be entertained. Reference can be drawn to the decision of ***Jaipur Udhyog Limited v. Commissioner of Income Tax*** reported at ***[1992] 198 ITR 282 (Raj.)*** wherein the Hon'ble High Court observed that it is well-settled that a person who does not raise an objection with regard to jurisdiction of a Tribunal and permits the Tribunal to adjudicate under the hope that the decision may be in his favour cannot be permitted to assail the said decision when it goes against him

8.10. It is also submitted by the Appellant, that the present appeal has been filed by the assessee, i.e. the Appellant against the impugned ruling and hence, any point raised by the Department in the absence of an appeal of their own, cannot be entertained by the Hon'ble Appellate Authority. They relied on the decision of the Apex Court in the matter of ***State of Kerala v. Vijaya Stores*** reported at ***(1978) 42 S.T.C. 418 (S.C.)*** and on the decision of ***Srinivas Traders v. State of Odisha*** reported at ***2014-VIL-376-ORI*** wherein the Courts had held that in the absence of any appeal or cross appeal by the Revenue, the Tribunal ought not to travel beyond the dispute raised by the appellant.

8.11. With regard to the Department representative's reference to the Kerala Advance ruling given in the case of Modern Food Enterprises wherein the Authority had classified 'Classic Malabar Parota' and 'Whole Wheat Malabar Parota' under the Head 2106 as 'Food preparations not elsewhere specified or included' and taxed the same at 18%, they submitted that the ruling passed by the Hon'ble AAR, Kerala is *per incuriam* as the same has been rendered without due regards to the settled principles of law and the technical details

submitted and relied upon by the appellants during the course of the hearing and also in the detailed written submissions filed before hearing. The Authority has failed to take note of the fact that 'bread' as mentioned in the Notification No. 2/2017-CT (R) has to be interpreted in the widest sense possible, so as to include all the variants of bread within its ambit. It is also submitted that the ruling passed by the Hon'ble AAR, Kerala is not binding or applicable to the Appellant and is specific to the Applicant of the ruling.

8.12. In view of the above, the Appellant contended that arguments advanced by the Department's Representative are without merits and does not affect the sum and substance of the Appellant's case. Therefore, it is prayed that the Hon'ble Appellate Authority may take on record the aforesaid rebuttal submissions and pass the ruling as it may deem fit.

DISCUSSIONS AND FINDINGS

9. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing. The submissions made by the Department at the time of the personal hearing and the detailed rebuttal by the Appellant are also taken on record.

10. Briefly stated the facts are that the Appellant had applied for an advance ruling on the question of classification of the items "Whole Wheat Parota" and " Malabar Parota" i.e whether they are classifiable under Chapter Heading 1905 attracting GST at 5%. The Authority for Advance Ruling vide its ruling dated 22nd May 2020 held that the impugned products are classifiable under Chapter Heading 2106 and are not eligible for GST rate at 5% in terms of entry Sl.No 99A of Schedule I to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No.34/2017-Central Tax (Rate) dated 13.10.2017.

11. Being aggrieved by the said ruling, the Appellant is before us in appeal. The Appellant had argued at great length as to why the impugned products should be more appropriately classified under Chapter Heading 1905 attracting 5% GST in terms of entry Sl.No 99A of Schedule I to Notf No 01/2017 CT (R) dt 28-06-2017 as amended by Notf No 34/2017 CT (R) dt 13-10-2017. However, before we approach the issue of classification, we must first address the objection raised by the Department. It has been brought to our

notice by the Department that the impugned advance ruling has been obtained by the Appellant by suppressing the fact of an investigation by the DGGI against them on the very same issue of classification of Whole Wheat Parota and Malabar Parota. It has been urged by the Department that the ruling of the lower Authority is to be held as void ab initio since the same has been obtained by suppression of the material fact of the ongoing investigation against them and is therefore in violation of the provisions of Section 98(2) of the CGST Act.

12. We find that the objection raised by the Department points to the very maintainability of the advance ruling in question. The Department has submitted that certain crucial facts have been brought to their notice by the DGGI, Chennai Zonal Unit which implies that the lower Authority had been misled into admitting the application in as much as the applicant (now Appellant) had withheld information regarding the commencement of investigations against them on the issue of classification of the impugned products.

13. The relevant Section 98 (2) of the CGST Act is reproduced here under:

> *98(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application :*
>
> *Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.*
>
> *Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant.*
>
> *Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.*

14. It has been argued by the Appellant in their counter to the Department's objection that the term " proceeding" as mentioned in the proviso to Section 98(2) does not cover any and all steps/actions that the Department may take under the Act; that the term " proceeding" only includes within its ambit any proceeding which may result in a ' decision' i.e in the nature of show cause notice or order, etc which can be decided by the competent authority and cannot include proceedings initiated by investigating agencies such as DGGI who are merely

empowered to investigate and issue a show cause notice. We are not impressed by this argument. The term '**proceeding**' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which a judicial action is invoked. The process of investigation in tax administration is such a step towards the action of issuing a show cause notice which culminates in a decision. Investigation is activated when there is enough predication to show that there is an alleged tax evasion. The essence of investigation is to carry out an in-depth review of the taxpayer's records and activities to ensure that the tax due to the government is not lost in evasion. Therefore, commencement of investigation in terms of Section 67 of the CGST Act, can be said to be the start of a proceeding to safeguard the government revenue. We are therefore of the view that the usage of the words "any proceeding" in the proviso to Section 98(2) of the CGST Act will encompass within its fold the investigation launched by the agencies.

15. The Appellant has also argued that the issue of classification of the disputed products was not raised specifically by DGGI in the summons. We find from the records that the DGGI, Chennai Zonal Unit had issued a summons dated 21st June 2019 under Section 70 of the CGST Act, to the Appellant calling for certain details/documents in connection with the enquiry undertaken by them. One such area on which documents were called for was "Major input details with gist of manufacturing activity". Shri. Yugandhar J, appeared before the DGGI on 2nd July 2019 in response to the above summons and tendered a preliminary statement on the activities of the Appellant Company. Thereafter another summons dated 9th July 2019 was issued directing the Appellant to produce a write-up of the activities involved in manufacturing various types of parotas. Shri. Hedge Vice-President (Finance) honoured the summons dated 9th July 2020 and appeared before the DGGI on 15-07-2020 and tendered his statement. In his statement, Shri. Hedge has responded to specific questions posed by the DGGI with regard to the manufacturing process of the different types of parotta, why the parotas manufactured by them were being classified under Chapter Heading 1905 and not under 2106, how they are eligible for the benefit of concessional rate under entry Sl.No 99A of the Notf No 01/2017 CT (R) as amended by Notf No 34/2017, the difference between parotas and chappatis, etc. This clearly evidences that the DGGI were conducting their investigation on the issue of classification of parotas and the eligibility of concessional rate of 5% as per entry Sl.No

99A. We are therefore not inclined to accept the argument of the Appellant that the classification of the disputed products was not raised specifically by the DGGI.

16. The Appellant has placed reliance on the Delhi High Court orders in the case of Commissioner of Income Tax-I (International Taxation) vs Authority of Advance Ruling as well as Sage Publication Ltd vs Deputy Commissioner of Income Tax (International Taxation) to buttress their case that commencement of investigations cannot be considered to be a jurisdictional bar on the assessee for raising the question before the AAR. We have gone through the said decisions of the Delhi High Court which were rendered in respect of the provisions of the Income Tax Act, 1961. The case of the petitioner (Income Tax Department) in the case of Commissioner of Income Tax-I (International Taxation) vs AAR was that the respondent AAR had no jurisdiction to deal with the case of the respondent Applicant since the Assessing Officer had issued a scrutiny notice and the main issue before the Assessing Officer in the scrutiny proceedings is the same as before the Authority for Advance Rulings. The AAR in the said case had not agreed with the objections raised by the Income Tax Department and had proceeded to give a ruling. The ruling was challenged by the Income Tax Department by filing a writ petition before the Delhi High Court. In this background the Hon'ble High Court had observed from the records that the revised return has been selected for scrutiny under computer aided selection system (CASS) and a notice dated 16th August, 2018 under Section 143(2) of the Act had been issued by the petitioners. The admitted reason for selection of respondent's case for scrutiny is "taxable income shown in revised return is less than the taxable income shown in the original return and large refund has been claimed". In contrast the question admitted for Ruling is "Whether on the facts and circumstances of the case and in law, the Royalty receivable by the Applicant from Crocs India Private Limited ("Crocs India") for use of intellectual property rights ("IPR") relating to design, development, marketing, distribution etc would be taxable in the hands of Applicant only at the time of actual receipt under Article 12 of Agreement between India and Netherlands for avoidance of double taxation and prevention of fiscal evasion ("Treaty")? The Hon'ble High Court drawing attention to its decision in the case of Sage Publication Ltd vs Deputy Commissioner of Income Tax (International Taxation), therefore agreed with the AAR decision that the notice under section 143(2) merely asks the applicant to produce any evidence on which it may like to rely in support of its return. It does not even remotely disclose any application of mind to the return filed by the applicant. For this reason, AAR is correct in holding that that

question cannot be said to be pending to attract the bar under clause (i) of the proviso to Section 245R(2) of the Act.

17. The above case does not find favour with us for the reason that in this case the summons dated 09-07-2019 issued by the DGGI clearly stated that the manufacturing process of parotas was one of the matters being investigated and the deposition made by Shri. Hedge Vice-President (Finance) of the Appellants Company before the DGGI on 15-07-2019 was specifically on the subject matter of classification of Whole Wheat Parota and Malabar Parota and the eligibility of the concessional rate of GST in terms of entry Sl.No 99A of the rate notification. We, therefore, hold that the decisions of the Delhi High Court in the Income Tax cases cited supra do not come to the aid of the present Appellant in the matter before us. It is clear from the submissions of the Department that proceedings were pending against Appellant before the DGGI and the issue taken up by the DGGI in the proceedings related to the classification of the impugned products. We also take note of the fact that the application for advance ruling on the issue of classification of Whole Wheat Parota and Malabar Parota was made on 9th October 2019 and the applicant had categorically declared that the question raised in the application is not already pending in any proceeding in their own case under any of the provisions of the Act. It becomes clear from the above that the Appellant had made an application for advance ruling on 9th October 2019 all the while being aware of the investigation being conducted against them by the DGGI, Chennai Zonal Unit. The Appellant chose to keep this fact away from the Authority for Advance Ruling at the time of filing the application. We find that the application for advance ruling could not have been made in this case as it is hit by the provisions of Section 98 (2) of the CGST Act in as much as an investigation was already initiated against them by DGGI on the very same issue that was raised before the Authority for Advance Ruling. We therefore hold that the order of the lower Authority is *void ab initio* as it was vitiated by the provisions of Section 98(2) of the CGST Act.

18. The Appellant has also argued that the issue of jurisdiction cannot be raised at a belated stage before the Appellate Authority. The view of the Appellant that the issue of jurisdiction could only have been raised before the lower Authority and not having been raised before it, the Department had waived its rights to raise the same is not entirely correct. We find that the proceedings before the lower Authority had been conducted without any participation of the jurisdictional officer. The jurisdictional officer was not asked to furnish comments nor was the jurisdictional officer present at the time of the personal hearing. The

impugned ruling was given based only on the submissions made by the applicant. As such it was not possible for the jurisdictional officer to put forth any views / objections as to the admissibility of the application for advance ruling. Be that as it may, it is well settled that reason to believe that the question on which an advance ruling was sought was not pending in any proceedings in the case of the applicant under the Act is a jurisdictional fact and only on its satisfaction, the lower Authority acquires jurisdiction to give a ruling on the question. An objection to it can be raised at any time even in appeal proceedings. The mere fact that no objection was taken before the lower Authority would not by itself bestow jurisdiction to the said Authority. Moreover, the Apex Court in its decision in ***Kanwar Singh Saini V/s. High Court Of Delhi*** reported in ***2012(4) SCC 307*** has held that it is settled position that conferment of jurisdiction is a legislative function and cannot be conferred by consent of petitioner. An issue of jurisdiction can be raised at any time even in appeal or execution. We therefore, dismiss this argument of the Appellant.

19. Another argument of the Appellant is that any point raised by the Department in the absence of an appeal of their own cannot be entertained by the Appellate authorities. We find that Section 100 of the CGST Act provides for an appeal to be filed by any party who is aggrieved by the advance ruling given by the lower Authority. In this case, the Department is not aggrieved by the ruling given by the lower Authority. It is also observed that there is no provision in the statute for a cross appeal/cross objection to be filed before the Appellate Authority in the appeal against the advance ruling. While Section 112(5) of the CGST Act explicitly provides that the party against whom an appeal has been filed before the GST Appellate Tribunal may file a cross objection/cross appeal notwithstanding that they may not have appealed against that order, there is no such similar provision for filing a cross appeal in the case of an appeal against an advance ruling. The Department has brought to our notice the fact that the advance ruling has been obtained by suppression of material facts and we are inclined to take cognisance of this information placed before us. It is trite law that when one comes for justice one should come with clean hands. This is not the case here. The Appellant is indeed guilty of having not revealed the fact of an investigation pending against them by the DGGI, Chennai Zonal Unit on the issue of classification of Parota at the time of applying for an advance ruling. We, therefore, invoke the provisions of Section 104 of the CGST Act, and declare the advance ruling order dated 22nd May 2020 as void ab initio.

20. Having held that the order of the lower Authority is void ab initio, the question of addressing *"Whether the preparation of Whole Wheat parota and Malabar parota be classified under Chapter heading 1905, attracting GST at the rate of 5%?"* does not arise.

21. In view of the above discussion, we pass the following order

ORDER

We dismiss the appeal filed by M/s ID Fresh Foods (India) Pvt Ltd on all counts. The order No KAR ADRG 38/2020 dated 22.05.2020 passed by the Authority for Advance Ruling is declared *void ab initio* as it is vitiated by the process of suppression of material facts. We, however, do not give a ruling on the question *"Whether the preparation of Whole Wheat parota and Malabar parota be classified under Chapter heading 1905, attracting GST at the rate of 5%?"* since the matter is pending in a proceeding under this Act.

(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

(M.S. SRIKAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Bangalore East Commissionerate
4. The Assistant Commissioner, LGSTO-030-A, Bangalore
5. Office folder

APPELLATE AUTHORITY FOR ADVANCE RULING BANGALORE