

**THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING
OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW,
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007**

BEFORE THE BENCH OF

- (1) Shri V.K. SAXENA, MEMBER
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/02/2020 DATE...21.08.2020

Name and address of the appellant	M/s.ALISHA FOODS 24, Mirzawadi, Ujjain Madhya Pradesh 456006
GSTIN or User ID	23ABBFA7513N1ZI
Order of AAR under Appeal before AAAR	20/2019/A.A.R/R-28/43 dated 28.11.2019

PROCEEDINGS

(Under section 101 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MPGST Act are mirror image of each other except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.
2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter also referred to as "the CGST Act and MPGST Act"] by M/s. Alisha Foods (hereinafter also referred to as the "appellant") against the order of Authority for Advance Ruling No.20/2019/A.A.R/R-28/43 dated 28.11.2019.

3. BRIEF FACTS OF THE CASE

1. The Appellant i.e. M/s Alisha Foods is a partnership Concern having its place of business at 24, MirzaWadi, Ujjain-456006, inter-alia engaged in the. Manufacturing and trading of Fried Fryums, Namkeens and Popcorns which are ready to eat under the brand name of Target & School Times. The Appellant is a registered concern in GST Act, 2017 having GSTIN – 23ABBFA7513N1ZI.

2. That the Appellant filed an application seeking advance ruling under section 97 (2) of CGST Act, 2017 MPGST Act, 2017 and IGST Act, 2017 for correct classification of "Papad and Papad Fryums of different shapes, sizes and varieties (commonly known as Fried Fryums)" manufactured by Appellant and thereafter sold to intra-State and inter-State persons and for determination of HSN Code and GST Applicable rate on such fried fryums.
3. The Ld. Advance Ruling Authority vide order dated 28/11/2019, passed in Appeal No. 20/2019 u/s 98 (2) of CGST Act, 2017, has held as under :
 - *The product 'fried Fryums' manufactured and supplied by M/s. Alisha Foods (GSTIN 23ABBFA7513N1ZI) is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.*
 - *Goods and Service Tax rate of 18% (CGST 9% + SGST 9% or IGST 18%) is applicable to the product 'fried Fryums' as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the SGST Act, 2017 or IGST Act, 2017.*
4. The Appellant being aggrieved by the above impugned order dated 28/11/2019, passed in Appeal No. 20/2019 u/s 98 (2) of CGST Act, 2017, has filed this Appeal u/s 100 of CGST Act, 2017 before the Authority.
5. That it is submitted that the Appellant has raised following questions for advance ruling u/s 97 (2) of CGST Act, 2017 :

What is the correct classification of "Papad and papad pipes" of different shapes, sizes and varieties (commonly known as Fryums) manufactured by the applicant and thereafter sold and its HSN code?

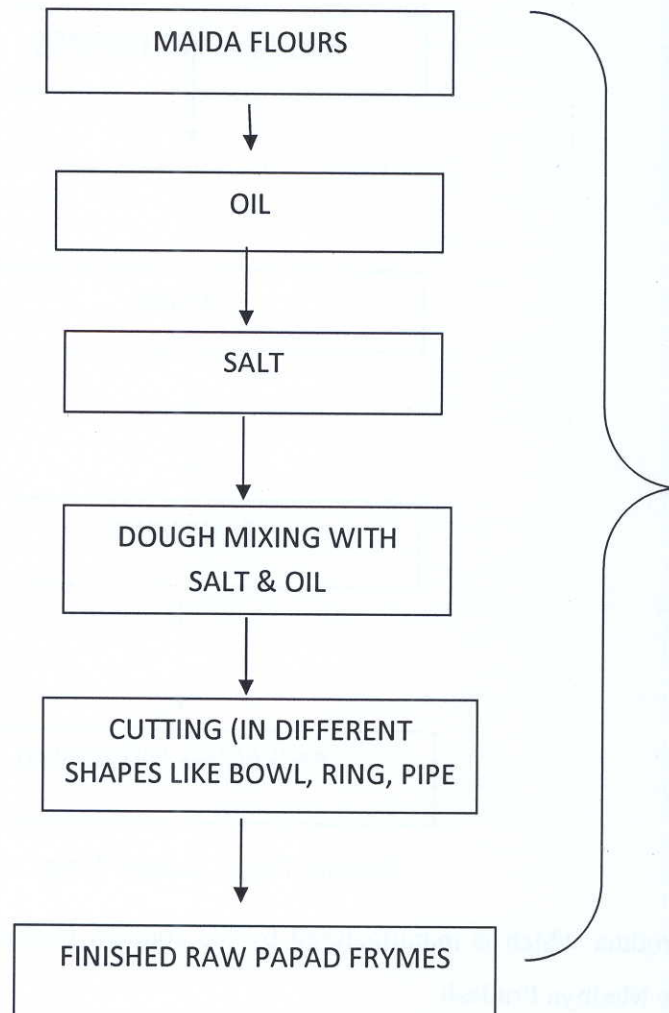
What is the applicable rate of CGST payable on such "Papad and papad pipes of different shapes, sizes and varieties (commonly known as Fryums)?"
6. That in the background of the above, it is submitted that the Appellant is manufacturer of Fried Fryums of different shapes, sizes and varieties which are ready to eat. It is relevant to reproduce the **Flowchart for the process involved in manufacture of Fried Fryums which is as follows:-**

RAW PAPAD FRYUMS PRODUCTION PROCESS

FLOW CHART

RAW MATERIAL

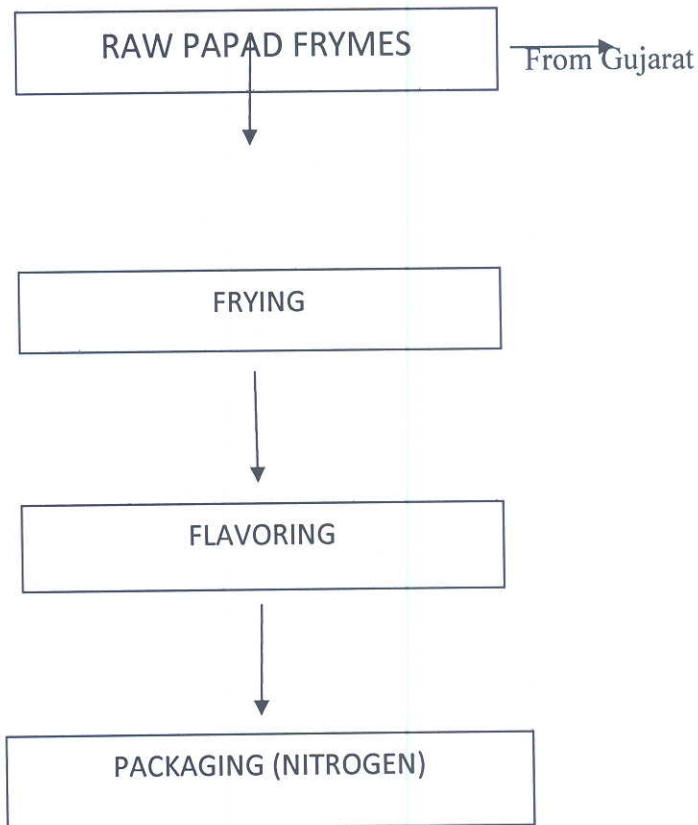
Purchased from Gujarat
(where these items are
Tax free as these
are Papad Products.)



7. That the above mentioned process of **Manufacture of Fried Fryums** is similar to the process used in making papad although papad are made of many other ingredients like besan, moong dal, chana dal, (Other than maida flour) etc. It is submitted that fried Fryums contain all the ingredients of Papad and are also of the same taste as of papad. Thus it's a papad with different size and shape as the ingredients and processes are similar to each other.
8. That thereafter, once the Appellant has finished the process of Raw Papad Fryums, then finished Papad Fryums production process is started.

FINISHED PAPAD FRYUMS PRODUCTION PROCESS

FLOW CHART



Brands: Target, School Time.

9. The product which is manufactured by the concern is sold in Madhya Pradesh as well as outside Madhya Pradesh.
10. It is submitted before the Authority for advance ruling that as per Appellant's belief and opinion "Papad and papad" pipes of different shapes, sizes and of all varieties (commonly known as Fried Fryums) would be classified under sub-heading 1905 90 40 which reads as under:

Chapter 19

Heading No. 1905 : - Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products

Sub-heading No. 1905 90 40 – Papad

Sub-heading No. 1905 90 90 – Others

11. It is submitted that Papad even after roasting or frying are known and used as Papad only. Therefore, after applicability of test of commercial or trade parlance also, the Fryums can only be said to be known as Papad because of similar and identical process of manufacturing of both. Thus the fryums will be covered under Chapter 19 Heading No. 1905 sub heading 1905 90 40 as Papad. The Ld. AAR without even taking into consideration the aforesaid submission has erroneously held that :

- *The product 'fried Fryums' manufactured and supplied by M/s. Alisha Foods (GSTIN 23ABBFA7513NIZI) is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975*
- *Goods and Service Tax rate of 18% (CGST 9% + SGST 9% or IGST 18%) is applicable to the product 'fried Fryums' as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the SGST Act, 2017 or IGST Act, 2017.*

12. That it is submitted that in terms of *Explanations (iii) and (iv)* to Notification No. 1/2017 - Central Tax (Rate) dt. 28-06-2017, tariff heading, sub-heading, heading and chapter shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 and the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall be applied for the interpretation and classification of goods. The analysis of the relevant chapter heads are as under:

Chapter 1905 of Customs Tariff states:

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 05 40 - Papad

Chapter heading 21 of Customs Act covers "Miscellaneous edible preparations"

Chapter Note 6 of Chapter 21 states as under:

Tariff item 2106 90 99 includes sweet meats commonly known as "Misthtans" 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- leadings irrespective of the nature of their ingredients

Chapter 2106 of Customs Tariff states

Food preparation not elsewhere specified or included

2106 90 99 - other

13. In the instant case, the product in question, fried Fryums, are made of Maida, Sugar and Vanaspathi, Edible Salt, preservatives and dried in oven. They become edible only after frying in oil but it is similar to Papad since Papad even after roasting or frying are known and used as 'Papad'. Similarly un- fried Fryums or fried Fryums can only be classified as papad because the process and ingredients of both are similar. Therefore fried fryums are covered and classifiable under chapter 19 heading 1905 sub heading is 1905 05 40.
14. That it is further submitted that it has already been held by Hon'ble High Court in case of *Shivshakti Gold Finger v. Asstt.CCT* [CA No. 7094 of 1961, dated 10-5-1996] that Fryums are papads with different size and shape.
15. Without prejudice to above and alternatively it is further submitted that as per Sl. No. 46 of Schedule II of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017 where in the levy of 12 % is applicable under tariff head 2106 90- the entry reads as under :

"Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form".
16. In light of above it is submitted that Ld. Authority, while passing the advance ruling order for classification of 'fried Fryums' not as papad and its applicability of rate of tax @ 18%, has erred in law and under facts as the classification done by the Ld. lower authority is contrary to the settled principle of interpretation i.e. while classifying the goods wherever ambiguities have arisen, courts have adopted different tests for arriving to the true meaning and their placement in the Schedule Entries. Generally, the tests adopted are the

popular meaning test, common parlance test, trade or commercial parlance test, technical or scientific meaning test, end-user test (a.k.a. dominant user test) and the test of product description. In construing the provisions of a statute, it is essential at the first instance to give effect to the natural meaning to the words therein, if these words are clear enough then other test are not required just like in present case wherein the word Fryums are clear by its natural meaning that it is a papad because fryums are considered as papad in various regions of India and secondly the manufacturing process of papad and Fryums are similar and identical to each other.

17. Being aggrieved by the impugned order dated 28/11/2019 passed in Appeal No. 20/2019 u/s 98 (2) of CGST Act, 2017, the Appellant has filing present Appeal u/s 100 of CGST Act on mentioned grounds.

4. QUESTIONS RAISED BEFORE AUTHORITY FOR ADVANCE RULING (AAR)-

Relevant questions which have been decided against the appellant which were raised before the AAR are as under: -

- What is the correct classification of "Papad and papad pipes" of different shapes, sizes and varieties (commonly known as Fryums) manufactured by the applicant and thereafter sold and its HNS code?
- What is the applicable rate of CGST payable on such "Papad and papad pipes of different shapes, sizes and varieties (commonly known as Fryums)?"

5. RULING PRONOUNCED BY AUTHORITY FOR ADVANCE RULING (AAR)

The Ld. Advance Ruling Authority, vide order dated 28/11/2019 passed in Appeal No. 20/2019 u/s 98 (2) of CGST Act, 2017, has held as under:

- The product 'fried Fryums' manufactured and supplied by M/s. Alisha Foods (GSTIN 23ABBFA7513N1ZI) is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.
- Goods and Service Tax rate of 18% (CGST 9% + SGST 9% or IGST 18%) is applicable to the product 'fried Fryums' as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the SGST Act, 2017 or IGST Act, 2017.

6. QUESTIONS RAISED BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR) -

The following questions have been posed before the Appellate Authority with reference to the activity undertaken by the Appellant: -

- What is the correct classification of "Papad and papad pipes" of different shapes, sizes and varieties (commonly known as Fryums) manufactured by the applicant and thereafter sold and its HNS code?
- What is the applicable rate of CGST payable on such "Papad and papad pipes of different shapes, sizes and varieties (commonly known as Fryums)?"

7. GROUNDS OF APPEAL-

- a) Because the order dated 28/11/2019 passed in Appeal No. 20/2019 u/s 98 (2) of CGST Act, 2017 by the Ld. Advance Ruling Authority is perverse, arbitrary and without application of mind as the authority has failed to appreciate that for classification of a product under GST number of factors has to be taken into consideration such as- statutory fiscal entry, the basic character, function and use of the goods has to be taken into consideration but the Ld Authority without even taking into consideration the aforesaid factors has passed the order which is erroneous both on facts and in law.
- b) Because the authority was not justified in classifying the product in question i.e. 'fried Fryums under Tariff Item 2106 90 99 when the same should have been classified under Chapter 19 Heading No. 1905 Sub-heading No. 1905 90 40 relating to Papad.
- c) Because the Ld authority has failed to apply the settled principle that for classification of goods the words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer and in market "fryums" are understood in trade as being the smaller size of "papad". Because "fryums" are made in different size and type in order to attract the customers but "fryums" contain all the ingredients of papad and are of the same taste. The only difference is that "fryums" are made in different sizes and shapes, such as mini checks, buttons, short tubes, O rings, stars and mini wheels. It is semi-cooked food and it has to be deeply fried in the edible oil, then

only it can be eaten. Similarly papad can be used by deep frying as well as by flame frying. Thus it is clear and evident that fryums and papad are similar.

- d) Because Hon'ble Apex Court in case of *Shiv Shakti Gold Finger v. Assistant Commissioner, Commercial Taxes* [1996] 9 SCC 514 (SC) has clearly held that all varieties of the papad whether they are circular or flat in shape consisting of all ingredients whether it is pulse, rice, maida, etc., are entitled for exemption. The Hon'ble Supreme Court was examining the matter under the Rajasthan Sales Tax Act and the question was "whether gole papad manufactured out of maida, salt and starch are the papad or not". The Hon'ble Supreme Court clearly held that size or shape is irrelevant and papad of all shapes and sizes are covered under the entry "papad". Paragraphs 2 to 4 of the judgment read as under :

"2. . . The respondent-State exercising the power under section 4(2) of the Rajasthan Sales Tax Act, 1954 (29 of 1954), (for short, 'the Act') by a notification dated March 9, 1970 had exempted pappad and badi, i.e., mangori from sales tax. When the appellant made an application for exemption of gole pappad manufactured out of maida, salt starch, pappad soda, alum and food colour from sales tax under the above notification, the Additional Commissioner by proceedings dated August 27, 1982 held that gole pappad was not covered by the notification. When the appeal came to be filed, the Sales Tax Tribunal by its order dated March 17, 1986 allowed the appeal and held that the notification would govern all varieties of pappad, whether they are circular or flat in shape consisting of all the ingredients whether it is pulses, rice, maida, etc., when the State carried the matter in revision, it came to be allowed by the High Court and was held that the appellant is not entitled to the exemption. Thus this appeal is allowed by special leave.

3. It is seen that the notification clearly mentions that the word 'pappad' has been used a genus and its species are made from pulses, rice, maida, potato, sago, etc. In the notification the words 'pappad and badi', i.e., mangori have been used while in entry No. 3 of the notification after the words 'letterhead pads' the words 'other stationery articles made of handmade paper' have been used meaning

thereby that entry No. 3 is not restricted to only invitation cards, envelopes, file covers, letterhead pads but also includes other stationery articles made of handmade paper. Similarly, the question is: whether the ingredients of pappad are exclusively composed of pulses or maida or rice, etc. When the notification mentions pappad and badi, i.e., mangori it would appear that they did not intend to differentiate between gole or flat pappad made of any ingredient.

4. Under those circumstances it appears that the interpretation given by the High Court is not correct and that of the Tribunal is correct."

- e) Because the Ld authority failed to apply the test of classification i.e. popular meaning test, common parlance test, trade or commercial parlance test in its right perspective. It failed to appreciate that "fryums" are the smaller size of "pappad". It is merely made in different size and type in order to attract the customers. "Fryums" contain all the ingredients of "pappad" and is of the same taste. Merely they are made in different sizes and shapes, such as mini checks, buttons, short tubes, O rings, stars and mini wheels. It is the semi-cooked food and it has to be deeply fried in the edible oil. Then only it can be eaten. Similarly pappad can be used by deep frying as well as by flame frying. Thus it is clear and evident that fryums and pappad are similar.
- f) Because Ld. Authority has wrongly stated that 'Fried Fryums' cannot be considered or equated with papad for classification. The classification reached by the authorities is based on the applicability of the test known as common parlance test but test has been applied on product in question without any evidence or documentary finding that why the 'Fried Fryums' cannot be considered as papad when the process or ingredients are similar. That the Authority also failed to consider that as per popular sense 'Fried Fryums' is considered as small size of papad in market. Moreover it is settled law that a particular article will fall within a particular tariff heading or not is to be decided on the basis of the tangible material or evidence to determine how such an article is understood in "common parlance" or in "commercial world" or in "trade circle" or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted.

- g) Because it is settled law of interpretation that any entry of the Schedules of an Act must be given wide import so as to take within its fold all varieties of articles indicated therein. As in the instant case, the word Papad mentioned in the Entry No. 96 of Notification No. 02/2017 -CT (Rate) dt 28.06.2017, should have to be given wide import so as to take within its fold all varieties of articles indicated therein. Thus, by this process of interpretation, the entry "Papad" should be held to include Fryums.
- h) Reliance is placed on case of *Agrawal Tyre Stores v. Commissioner of Sales Tax, Madhya Pradesh* as reported in (2014) 25 STJ 329 (MP), wherein Hon'ble Court held that "the words in any entry of the Schedules of an Act must be given wide import so as to take within its fold all varieties of articles indicated therein. It is not possible to give a limited or restricted meaning to the words used in any Entry"
- i) Because the Ld Authority erred in law in classifying the product i.e. "Papad and papad pipes" of different shapes, sizes and varieties (commonly known as Fryums) under residuary entry i.e. under serial No. 23 of Notification No.1/2017-Central Tax (Rate) and thereby levying GST @ 18 %. that when there is specific entry in the schedule i.e. entry no. 96 of Notification No. 02/2017 -CT (Rate), dated 28.06.2017 which covers papad in its ambit.

Reliance is placed in the case of *Union of India v. Garware Nylons Ltd.* (2015) 27 STJ 545 (SC), wherein the Hon'ble Supreme Court relied on its own judgment in the case of *Dunlop India Ltd.* as reported in AIR 1977 SC 597, wherein it is held that when an article, by all standards, has a reasonable claim to be classified under a specific entry, it will be against the principle of interpretation to classify the same under residual entry.

- j) Because as per "Principles of Statutory Interpretation" (Sixth Edition - 1996) by Justice G.P. Singh, at pages 67, 70, 72 and 73, wherein it has been stated :

*"..... So in construing entries of goods in Excise, Customs or Sales Tax Acts resort should normally be had not to the scientific or technical meaning but to their popular meaning viz. the meaning attached to the expressions by those dealing in them.
..... The popular meaning in the context of a Sales Tax Act is that meaning which is*

popular in commercial circles for the Act essentially, in its working, is concerned with dealers who are commercial men."

"The justification of the rule that the words are to be understood in their natural, ordinary or popular sense is well expressed by JUSTICE FRANKFURTER: "After all legislation when not expressed in technical terms is addressed to common run of men and is therefore to be understood according to sense of the thing, as the ordinary man has a right to rely on ordinary words addressed." In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which everyone conversant with the word and the subject - matter of statute and to whom the legislation is addressed, will give if the problem were put to him."

"As a necessary consequence of the principle that words are understood in their ordinary or natural meaning in relation to the subject- matter, in legislation relating to a particular trade, business, profession, art or science, words having a special meaning in that context are understood in that sense. Such a special meaning is called the technical meaning to distinguish it from the more common meaning that the word may have. The Supreme Court "has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff Schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The reason is that it is they who are concerned with it, and, it is the sense in which they understand it which constitutes the definitive index of legislative intention". "

- k) Because even if two views are possible, the view which is favorable to assessee must be accepted while constructing the provision /entries of a taxing statute. Further, a provision or entry of a taxing statute can be reasonably interpreted in two ways that interpretation which is favorable to the assessee has to be accepted.
- l) Because in the instant case, the product in question Fried Fryums are made of Maida, Sugar and Vanaspathi, Edible Salt, preservatives and dried in oven. They become edible only after frying in oil. Thus the ingredients and the process is similar to Papad. Papad even after roasting or

frying are known and used as 'Papad' just like the un-fried Fryums or fried Fryums can only be classified as papad because the process and ingredients of both are similar. Therefore fried fryums are covered and classifiable under chapter 19 heading 1905 sub heading 1905 05 40. That it is further submitted that Fryums is papad with different size and shape as held by Hon'ble High Court in case of *Shiv Shakti Gold Finger v. Asstt. CCT* [CA No. 7094 of 1961, dated 10-5-1996]

- m) It is further submitted that the commodity "Fryums" is admittedly a papad with different size and shape thus for classification of said goods, entry No. 96 of Notification No. 02/2017 -CT (Rate) dt 28.06.2017 would be correct as it a special entry in which the said goods would fall because Hon'ble Apex court has held that Fryums are equated to Papad as only size and shape are changed which is irrelevant as process of manufacturing of both are identical and similar to each other.

It is also settled legal position in law, that if in a Statutory Rule or Statutory Notification, there are two expressions used, one in General Terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a Statute contains both a General Provision as well as specific provision, the latter must prevail. The Court should examine every word of a statute in its context and must use context in its widest sense.

The maxim generaliaspecialibus non derogant is dealt with in Volume 44 (1) of the 4th ed. of Halsbury's Laws of England at paragraph 1300 as follows:

"The principle descends clearly from decisions of the House of Lords in *Seward v. Owner of "The Vera Cruz"*, (1884) 10 App Cas 59 and the Privy Council in *Barker v Edger*, [1898] AC 748 and has been affirmed and put into effect on many occasions.... If Parliament has considered all the circumstances of, and made special provision for, a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision; and therefore, if such an enactment, although inconsistent in substance, is capable of reasonable and sensible application without extending to the case in question, it is prima facie to be construed as not so extending. The special

provision stands as an exceptional proviso upon the general. If, however, it appears from a consideration of the general enactment in the light of admissible circumstances that Parliament's true intention was to establish thereby a rule of universal application, then the special provision must give way to the general."

In *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P.*, (1961) 3 SCR 185, this Court has clarified that not only does this rule of construction resolve the conflicts between the general provision in one statute and the special provision in another, it also finds utility in resolving a conflict between general and special provisions in the same legislative instrument too and observed that:

*"9. ...We reach the same result by applying another well-known rule of construction that general provisions yield to special provisions. The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In *Pretty v. Solly* (quoted in *Craies on Statute Law* at p.m. 206, 6th Edn.) Romilly, M.R., mentioned the rule thus:*

*"The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply." The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned: *De Winton v. Brecon*, *Churchill v. Crease*, *United States v. Chase and Carroll v. Greenwich Ins. Co.**

10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that clause 5(a) has no application in a case where the special provisions of clause 23 are applicable."

- n) Alternatively without prejudice to the aforesaid grounds even if it is held that un-fried Fryums or fried Fryums is not papad and are not classifiable under chapter 19 heading 1905 sub heading is 1905 05 40, then this product has to be covered under Sl. No. 46 of Schedule II of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No.1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the SGST Act, 2017 or IGST Act, 2017 under tariff heading 2106 90.

As per Sl. No. 46 of Schedule II of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017 where in the levy is 12 % - the entry reads as under :

"Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form"

8. PERSONAL HEARING

The appellant was called for personal hearing on 22.07.2020 and was deferred for 28.07.2020. On 28.07.2020 the appellant was heard through Shri Sumit Nema, Senior advocate, Mrs. Pooja sureka, Chartered Accountant and Shri Gagan Tiwari Advocate. After hearing the appellant has expressed his satisfaction through a letter and asked for decision.

9. DISCUSSION AND FINDINGS

- We have carefully gone through the submissions made by the appellant in their application as well as the submission made at the time of personal hearing.
- As per the written submission made by the appellant at the time of personal hearing the main issue involved in the case is regarding classification of fried **fryums** and GST rate applicable on it.
- The appellant in his submission has tried to equate fried **fryums** with "papad" under tariff item as 1905 90 40.

- Here it is important to observe the explanation (iii) and (iv) of the notification no.1/2017 - Central Tax (Rate) dated 28.6.2017 which provides as follows :-

"Explanation - for the purposes of this notification, -

(i).....

(ii).....

(iii) "tariff item", "sub heading", "heading " and "chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the first schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) including the section and chapter notes and the general explanatory notes of the first schedule shall, so far as may be, apply to the interpretation of this notification".

- Now the question arises what is "Papad". "Papad" as such has not been defined or clarified under Customs Tariff Act, 1975, GST Act or the Notifications issued under the CGST Act, 2017 / SGST Act, 2017.
- It is now well settled principle of interpretation of statute that the word not defined in the statute must be construed in its popular sense, meaning, that sense which people conversant with the subject matter with which the statute is dealing would attribute to it. It is to be construed as understood in common language. This view has been upheld by the Honorable Supreme Court in the case of Indo International Industries Vs Commissioner of Sales Tax, U.P. [1981 (8) E.L.T. 325 (S.C.)], Oswal Agro Mills Ltd. Vs Collector of Central Excise (1993 (66) E.L.T. 37 (S.C.) and in the case of Commissioner of Central Excise Vs Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.)].
- It needs to be therefore examined whether "**Fried Fryums**" would be covered by the term "**Papad**" as understood in common parlance and as decided by higher judicial authorities.
- The issue of proper classification of the product "Fry Snack Foods called Fryums "and admissibility of exemption notification under Central Excise regime was examined by the Hon'ble Customs, Excise and Gold Appellate Tribunal (CEGAT, as it was known then) in the case of T.T.K. Pharma Ltd. Vs Collector of Central Excise [1993 (63) E.L.T. 446 (Tribunal)]. In this case, the Hon'ble Tribunal, inter-alia, observed as follows:-

6. A reading of these sub-headings makes it clear that the product is not a Prasad or Prasadam, Sterilized or pasteurized miltone. Therefore, it will not come within the sub-headings 2107.10 or 2107.20. As the item is not put in a unit container and ordinarily intended for sale, it will not come within the Heading 2107.91. Therefore, the product has to be bought under the residuary sub heading 2107.99 as .." other carrying nil rate of duty. As we have classified the product under the residuary product under the heading "Edible preparations not elsewhere specified or included which carries nil rate of duty, the question of raising any demand or of Excise duty may not arise. However, as arguments have been adduced with regard to the Notification No. 12/90 dated 20-03-1990, it would be proper for us to give finding in regard to the same.

7.....

8.....

The Sl.No .8 reproduced above mentions about various goods coming within sub heading 2107.91. It has given illustration to the items Namkeens such as Bhujia, Chabena. Now the question is whether these namkeens given in the notification is a general one including all types of namkeens or only to the type given therein like Bhujia, Chabena by illustration. The learned Collector has interpreted the word, such as" to mean namkeen should be of a kind of Bhujia and Chabena. Although it is not in dispute that the item in question is a Namkeen. As can be seen from various items given in Sl. No. 8 namely Papad, Idli-mix , Vada-mix, Dosa-mix, Jalebi-mix, Gulab jamun-mix are all of a type which cannot be eaten straight away but it requires to be fried. Chabena also comes in type of item which requires to be chewed like Potato chips or fried Channa Masala or various types of fried masala dals. There can be any number of examples of namkeens in the form of Chabena which are mostly taken as a side dish. It can also be preferred to be eaten after sweetmeat. The item in question being like a Chabena is also a namkeen. The learned Collector's placing restriction that it is to be eaten only after frying and therefore, it is not covered under the notification is a very strict way of reading a notification. The notification cannot be read in a way as to whittle down its expression or to make the notification otiose. The words , such as" is only illustrative and not exhaustive so long as the item satisfies the term Namkeen, the benefit of notification cannot be denied on the ground that it requires to be fried before use. There is no such understanding placed in the notification with regard to the frying of the item. Even if that be so, then the same would apply to all other items which are namkeens like Papad, Idli mix, Dosa mix, Jalebi -mix, etc. which are required to be fried before they can be eaten.

- Thus, in the aforesaid decision, the product "Fry Snack Foods called Fryums" have been considered as "Namkeen" and not as "Papad".
- It is observed that Fried Fryums are eatable and used as food articles or eatables and such fried, salted Fryums are found to be commonly known and used as "Namkeen". Further it can be seen that "Papad" even after roasting or frying are known and used as "Papad" only. Whereas, in commercial or trade parlance also, the "Fried Fryums" cannot be said to be known as "Papad".
- The appellant has relied upon the judgment of Hon'ble Supreme Court in the case of Shiv shakti Gold Finger wherein the Hon'ble Supreme Court examined the matter under Rajasthan Sales Tax Act, whether "Gol Papad" manufactured out of Maida, Salt and Starch are Papad or not and held that size or shape is irrelevant and that Papad of all shapes and sizes are covered under the entry "Papad". In the case of Shivshakti Gold Finger, Hon'ble Supreme Court has not examined the issue of "Fried Fryums" and therefore the said case is not found to be applicable in the facts of the present case. Therefore, the "Fried Fryums" are not classifiable as "Papad" under Tariff item 1905 90 40.
- Now the question arises what will be the classification of "Fried Fryum".
For the purpose of proper appreciation of the issue, the relevant portion of chapter Note are reproduced below-
Chapter Note 5 and 6 of Chapter 21 provides as follows-

"5. heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter-alia includes

(a).....

(b) Preparations for use, either directly or after processing (such as cooking dissolving or boiling in water, milk or other liquids), for human consumption;

(c)

(d)

"6. Tariff item 2106 90 99 so includes sweet meats commonly known as 'Misthans' or 'Mithai' or called by any other name. They also include products commonly known as 'Namkeen', 'Mixtures', 'Bhujia', 'Chabena' or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients."

- Thus, Heading 2106 is an omnibus heading covering all kind of edible preparations, not elsewhere specified or included. Chapter Note 5 provides an inclusive definition of this heading **and covers preparations for use either directly or after processing, for human consumption**. In 5(b) above, preparation for use after processing has been included and mentioned therein **such as** cooking, dissolving or boiling in water, milk or other liquids. Obviously, the term "**such as**" is purely **illustrative but not exhaustive** and therefore processing includes frying also, hence fried goods are also covered under chapter head 2106 which is ready for human consumption. Further, Chapter Note 6 pertaining to Tariff item 2106 90 99 also provides inclusive definition and products mentioned therein are illustrative only.
- Taking all these aspects into consideration, it is held that the product "Fried Fryum" is appropriately classifiable under Tariff item 2106 90 99.
- Sl. No. 23 of Schedule III of issued under the CGST Act, 2017 and corresponding Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the SGST Act, 2017 covers "Food preparations not elsewhere specified or included (other than roasted gram, sweetmeats, batters including idli/dosa batter, namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, khakhra, chutney powder, diabetic foods)" falling under Heading 2106. Therefore, Goods and Service Tax rate of 18 % (CGST 9% + SGST 9% or IGST 18%) is applicable to the product "Fried Fryums" as per Sl. No. 23 of Schedule III of Notification No. 1/2017 Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the SGST Act. 2017 or IGST Act, 2017.

In view of the foregoing, we decide the classification and rate of tax as under:

(i) The product 'fried Fryums' manufactured and supplied by M/s. Alisha Foods (GSTIN 23ABBFA7513N1ZI) is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.

(ii) Goods and Service Tax rate of 18% (CGST 9% + SGST 9% or IGST 18%) is applicable to the product 'fried Fryums' as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the SGST Act, 2017 or IGST Act, 2017.

10. ORDER

In light of the above, we find nothing objectionable in the order given by the M.P. Advance Ruling Authority and accordingly, dismiss the appeal of the Appellant.



V.K. Saxena
(Member)

Madhya Pradesh Appellate Authority



Raghendra Kumar Singh
(Member)

Madhya Pradesh Appellate Authority

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Indore, dated - 27/08/2020

Copy to:-

1. The Appellant
2. The AAR, Madhya Pradesh
3. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
4. The Commissioner of State Tax, Madhya Pradesh
5. The Commissioner, CGST and Central Excise, Ujjain
6. The Jurisdictional officer State/ Central
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