

# GUJARAT-AAAR

No.GUJ/GAAAR/APPEAL/2021/26

**J.K. Food Industries-Appellant**

**J. P. Gupta and Seema Arora, Member**

**Date of order: 20/07/2021**

**Case referred/cited :-**

1. [J.K. Food Industries](#)

## JUDGMENT

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

2. The present appeal has been filed under [Section 100](#) of the CGST Act, 2017 and the GGST Act, 2017 by *M/s. J. K. Food Industries* (hereinafter referred to as Appellant) against the [Advance Ruling No. GUJ/GAAR/R/76/2020 dated 17.09.2020](#).

3. The appellant has raised the following questions for advance ruling in the application for Advance Ruling filed by it before the Gujarat Authority for Advance Ruling (herein after referred to as the ‘GAAR’).

*1. Under which tariff Heading the product dealt in by the applicant i.e. PAPAD of different shapes and sizes are eligible to be classified?*

*2. What is the applicable rate of SGST and CGST on supply of such Papad of different shapes and sizes.*

4. The appellant has submitted that they are engaged in the business of manufacturing and trading of “Papad” of different shapes and sizes. Papad is crunchy snack that is conceptualized as a product that is raw pallet yet semi-cooked/un-cooked and needs to be cooked first either by frying or roasting before consuming as and when required.

5. The appellant has submitted that Papad turns out to be a papad when the dough is moulded and given the shape, usually a palm size round or may be

smaller or bigger. The dough remains the same with minor variations in proportions of ingredient and the dough is moulded in the desired shapes and size may be round, may be square, may be semicircle, may be hollow circle with bars in between or may be square with bars in between intersecting each other or may be of shape of any instrument, equipment, vehicle, aircraft, animal etc. The shape and size may vary but the ingredients, the proportion of ingredients, the composition and the recipe remains similar, if not exactly the same. However, with changing of time and considering the different demands of different class of consumers innovations are made in shapes and sizes also and now Papad comes in different shapes and sizes. The Papad of different shape and size are not ready and suitable for human consumption till they are fried/baked as deemed fit and as and when deemed fit by the consumer. The appellant further submitted that their product "Papad" of different shapes and sizes that are neither fully cooked nor in ready to eat condition, eligible to be classified under Chapter Tariff Heading - 1905 of Customs Tariff Act, 1975 accordingly, vide entry at Sr. No. 96 under Noti. [No. 02/2017-CT \(Rate\)](#), dated 28.06.2017, product in question is exempted from the levy of tax.

6. The [GAAR, vide Advance Ruling No. GUJ/GAAR/R/76/2020 dated 17.09.2020](#), inter-alia observed that 'Papad' has not been defined or clarified under Customs Tariff Act, 1975, the 'CGST Act, 2017 or the Notifications issued under the CGST Act, 2017/ GGST Act, 2017 / IGST Act, 2017. It is well settled principle of interpretation of statute that the word not defined in the statute must be construed in its popular sense, meaning 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it'. It is to be construed as understood in common language. Further, it is observed that for proper and correct classification, not only ingredients of the product but use of the product, common parlance test and marketability of the product is equally a deciding factor. It is also observed that in common parlance or in market, Fryums are not sold as "PAPAD", instead "PAPAD" are sold as papad and Fryums are sold as "Fryums". Both the products are different and have their individual identity. Accordingly, in common parlance test, the appellant's product i.e. "different shapes and sizes of Papad" is not "Papad" but is "Un-fried Fryums". Thus, Heading 2106 is an omnibus heading covering all kind of edible preparations, not elsewhere specified or included. Chapter Note 5 provides an inclusive definition of this heading and covers preparations for use either directly or after processing, for human consumption. Chapter Note 6 pertaining to Tariff Item 2106 90 99 also provides inclusive definition and products mentioned therein are illustrative only. In view of the foregoing, the GAAR ruled as follows :-

*1. Under which tariff Heading the product dealt in by the applicant i.e. PAPAD of different shapes and sizes are eligible to be classified?*

*Ans. The product of different shape and sizes manufactured and supplied by applicant in "un-fried Fryums" and not "Papad" and is classifiable under Tariff item 21069099 of the First Schedule to the Customs Tariff Act, 1975.*

*2. What is the applicable rate of CGST and SGST on supply of such papad of different shapes and sizes.*

*Answer: Goods and Services Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the product 'Un-fried Fryums' as per Sl. No. 23 of [Schedule III of Notification No. 1/2017-Central Tax \(Rate\)](#), dated 28-6- 2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate), dated 30-6-2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017.*

7. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal on 03.11.2020 and further written submissions dated 17.01.2021.

8. The appellant has inter-alia submitted that the officers of DGGI (Directorate General of Goods and Services Tax Intelligence), Surat Zonal Unit, Surat had visited their premises on 17.02.2020 for search operation under [section 67](#) of the CGST Act, 2017 and recorded the statement of the partners of the Appellant. They have filed the application before the Authority of Advance Ruling on 29.02.2020. They submitted that this fact was mentioned orally during the personal hearing (through video conferencing) by the authorised representative before the Authority for Advance Ruling. After receipt of the Ruling of the Authority they sent a letter to the Authority for Advance Ruling informing that the authority has not acknowledged this fact.

9. The appellant has submitted that [Section 98](#)(2) of the CGST Act, 2017 provides that the authority shall not admit the application where the question raised in the application is already pending in any proceedings under any provision of the Act. [Section 98](#)(2) of CGST Act, 2017 is reproduced here under :

**98. Procedure on receipt of application.-** (1) *On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records: Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.*

(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:*

10. The appellant has submitted that legality and propriety of the impugned order in terms of [Section 98](#)(2) of CGST Act, 2017 is required to be examined and a decision to be taken whether the said order is correct in law or void ab initio and hence deserves to be set aside.

11. The appellant has inter-alia mentioned in e-mail dated 30.03.2021 that they have extensively made the submissions with respect to classification of commodity, with all necessary citations of relevant cases, in memo of appeal; that they had nothing to state besides what has been stated as no new argument remained to be canvassed. It has been submitted that due to Covid 19 situation, it may not be possible to attend personal hearing by their advocate, therefore, it has been requested to pass just and fair order.

#### **FINDINGS :-**

12. We have carefully gone through and considered the appeal and written submissions filed by the appellant, the Advance Ruling given by the GAAR and other material available on record.

13. The appellant in their grounds of appeal has submitted that the officer of DGGI, Surat Zonal Unit, Surat had visited their premises on 17.02.2020, while they submitted the application for Advance Ruling on 29.02.2020 and this fact was stated during the course of Personal Hearing but Members of the Authority of Advance Ruling have not taken cognizance of this fact. We have examined

the said contention of the appellant and observe that when the appellant submitted the application before the GAAR on 29.02.2020, they mentioned in Column 17 of Form GST [ARA-01](#) that “the question raised in the application is not (tick) (a) Already pending in any proceedings in applicant case under any of the provision of the Act”.

As per column No. 17 of the Form GST ARA-01, if the question raised in application is not already pending in any proceedings in the applicant’s case under any of the provisions of the Act, then the applicant is required to “tick” box before item (a) of column 17 of the said Form.

14. The appellant had “ticked” both the items (a) and (b) of column 17 of Form GST ARA-01, in the application filed before the GAAR in Form GST ARA-01, meaning that the question raised in the application is neither already pending nor already decided in any proceedings in applicant’s case under any of the provisions of the Act. However, when the officers of the DGGI Surat had visited the premises of the appellant and recorded the statement of the partners, and proceedings related to question raised in the application for advance ruling was already pending when the application for advance ruling was filed before the GAAR, then the appellant should not have “ticked” the item (a) of column 17 of Form GST ARA-01.

15. Further, the appellant in their Advance Ruling application has not mentioned the abovementioned fact that the proceeding against them has already been initiated and was pending at the material time. The appellant has contended that vide letter dated 10.10.2020, they informed the Advance Ruling Authority that their representative during the personal hearing had mentioned the fact but the Advance Ruling Authority have not mentioned the said fact in the Advance Ruling pronounced vide [Order No. GUJ/GAAR/R/76/2020 dated 17.09.2020](#). In this regard, the record of personal hearing has been perused and it is observed that the virtual Personal hearing (through video conferencing) was conducted and recorded as “During the personal hearing conducted through video conferencing, the representative of the applicant reiterated the submission given by the applicant.” This shows that during the personal hearing, representative of appellant have not informed anything about the proceedings of DGGI, Surat.

16. It appears that had the fact of pending proceedings before the DGGI Surat in applicant’s own case relating to questions raised in the application filed before the GAAR been brought to the notice of the GAAR, the application for advance ruling would not have been admitted in view of the proviso to sub-section (2) of [Section 98](#) of the CGST Act, 2017 and the question of issuing advance ruling would not have arisen.

17. However, the appellant have not informed the aforesaid material facts to the GAAR at any given point of time thereby willfully suppressing the fact from the Authority and obtaining the Ruling by suppressing the facts. [Section 104](#) of CGST Act, 2017 stipulates that any Ruling obtained by the applicant under [Section 98](#)(4) of the CGST Act, 2017 by “fraud or suppression of material facts or misrepresentation of facts”, may be declared void ab-initio. [Section 104](#) of CGST Act, 2017 has been reproduced below for ready reference.

***104. Advance ruling to be void in certain circumstances.- (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of [Section 98](#) or under sub-section (1) of [section 101](#) has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made***

*there under shall apply to the applicant or the appellant as if such advance ruling had never been made:*

*Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.*

18. The appellant has submitted before us that the legality and propriety of the advance ruling issued by the GAAR is required to be examined in terms of [Section 98](#)(2) of the CGST Act, 2017 and decision to be taken whether the said order is correct in law or void ab initio and hence deserved to be set aside.

19. From the facts and records discussed herein above, we are of the view that the appellant has obtained the Advance Ruling by submitting application of advance ruling with suppression of material facts or misrepresentation of facts, and the application was not eligible to be admitted in view of proviso to sub-section (2) of [Section 98](#) of the CGST Act, 2017. Therefore, in terms of [Section 104](#) of CGST Act, 2017, and the GGST Act, 2017, the advance ruling pronounced by the Gujarat Authority of Advance Ruling is liable to be declared as void ab-initio.

20. As such, we do not find it necessary to examine the other arguments canvassed by the appellant in the present case.

21. In view of the foregoing, we modify the [Advance Ruling No. GUJ/GAAR/R/76/2020 dated 17.09.2020](#) of the Gujarat Authority for Advance Ruling in the case of M/s J. K. Food Industries and declare it void ab-initio.