

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2021/28
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/38)

Date : 18.08.2021

Name and address of the appellant	:	M/s. J K Papad Industries, Plot No. 268-270, Sarthi Industrial Park, NH No. 8, Sanki, Surat, Gujarat-394 315
GSTIN of the appellant	:	24AAOFJ8306Q1ZP
Advance Ruling No. and Date	:	GUJ/GAAR/R/77/2020 dated 17.09.2020
Date of appeal	:	03.11.2020
Date of Personal Hearing	:	Appellant waived Personal Hearing
Present for the appellant	:	---

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. Papad Industries (hereinafter referred to as the “Appellant”) against the Advance Ruling No. GUJ/GAAR/R/77/2020 dated 17.09.2020.

3. The appellant 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 CGST and SGST 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 semi-circle, 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, are eligible to be classified under Chapter Tariff Heading - 1905 of the Customs Tariff Act, 1975 accordingly, vide entry at Sr. No. 96 under Not. No. 02/2017-CT (Rate) dated 28.06.2017, product in question is exempted from the levy of tax.

6. The GAAR, vide Advance Ruling No. GUJ/GAAR/R/77/2020 dated 17.09.2020, *inter-alia* observed that ‘Papad’ has not been defined or clarified under the 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 ingredient of the product but use of the product, common parlance test and marketability of the product is equally a deciding factor. It is also observed that in common parlance or in market, Fryums are not sold as “PAPAD”; instead, “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 is “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.*

Ans: 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. After issuance of the aforesaid advance ruling, the appellant, vide letter dated 10.10.2020, submitted that the GAAR has not taken into record and has not given any finding on whether the summons issued and statement taken by the Directorate General of GST Intelligence (DGGI), Surat Zonal Unit, Surat is proceedings pending under any of the provisions of the CGST Act, 2017 / GGST Act, 2017 or not. The appellant further submitted that the authorized representative started the oral representation in personal hearing before the GAAR with this thing only but nothing has been mentioned regarding this matter in the advance ruling issued by the GAAR. The appellant requested to consider the same and rectify the advance ruling after considering this fact.

8. The appellant has filed the present appeal on 03.11.2020 against the aforesaid advance ruling and further written submissions dated 17.01.2021. The appellant has challenged the advance ruling on various grounds and has submitted that the trade parlance theory has been wrongly applied by the GAAR; that when a product can be classified under a specific chapter heading, residuary entry cannot be resorted to; that Rules of Interpretation have not been followed while deciding the classification; that the advance ruling is based on wrong interpretation of the legal precedents, relying on judgements on different facts and without considering the submissions of the appellant; that the decision is biased, preconceived and without proper application of mind, and; that the department cannot change the classification of the product which was followed earlier, without any change in the product.

9. The appellant has *inter-alia* mentioned in e-mail dated 01.04.2021 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.

10.1 The appellant made further submission vide letter dated 15.07.2021. It has been *inter-alia* submitted that during the hearing before the GAAR, the authority enquired that the question raised in the application is already pending before the DGGI, Surat Zonal Unit in search proceeding dated 17.02.2020, to which the appellant answered that (i) the application for advance ruling was ready and soon the search took place, so it was filed belatedly by few days, without any ulterior motive or *mala-fide* intention; and that (ii) for *bona-fide* dispute with regard to classification for supply of goods and its rate of tax, the inference drawn through the search proceedings vide section 67 of the CGST Act, 2017 is untenable.

10.2 The appellant has submitted that it appears that both these particulars have not been recorded either in the proceeding sheet or in the body of the order, possibly keeping in mind that the third proviso warrants it only in case if the given reason is rejected. It has been submitted that the legality and propriety of the order in terms of section 98(2) of the CGST Act, 2017 has been thought to be examined and again the decision to be taken whether the said order is maintainable in the eye of law or *void ab initio* and deserves to be set aside.

10.3 The appellant has submitted that for the term ‘proceedings’ and related proviso, the law makers have considered Chapters III, IV and V; that to be precise, Chapter IV onwards do not fall for the scope and ambit of Section 98. The appellant has cited several case laws relating to interpretation of proviso.

10.4 The appellant has submitted that the process of investigation carried out vide section 67, which falls under Chapter XIV of the CGST Act, 2017, is altogether distinct proceeding, do not fall within ambit and scope of section 98. The appellant has submitted that keeping in mind the object of AAR, the Legislature has selected specific instances as enumerated in clauses (a) to (g) and these are easily identifiable on cursory glance through the relevant Chapters III to V.

10.5 It has been submitted that there is nothing in the provisions of Section 67 of the CGST Act, 2017 which signals that the authority is empowered to classify the commodity and HSN, therefore, the exercise is futile and has nothing to do with proceedings as referred in section 98(2). The appellant has further submitted that commencement of investigation in terms of Section 67 of the CGST Act, 2017 can be said to be the start of a proceeding to safeguard the Government revenue; that in the entire search proceeding, the issue involved and allegation that on product PAPAD of different shape and size, no tax has been admitted in GSTR-1 or GSTR-3B and paid the tax, has nothing to do with proceeding as referred in Section 98(2).

10.6 The appellant has submitted that after the completion of investigation, they had submitted affidavits dated 20.02.2020 and 07.03.2020, duly signed by the partner, retracting their earlier statements recorded on 17.02.2020 and 06.03.2020, objecting to invocation of section 67(1) of the CGST Act, 2017, without establishing tax evasion. It has been submitted that the appellant thereafter filed another affidavit on 14.03.2020, wherein it was stated that statement obtained in forceful manner was not binding. The

appellant has further submitted that a confession made, which was subsequently retracted, should not have been accepted as an evidence, as there is self-evidence of taxable transactions. It has been submitted that the DGGI authorities have not taken the retraction and all other evidence in consideration and demanded tax and penalty, is bad and illegal; that confession made earlier on 17.02.2020 and 06.03.2020 are the result of threat, inducement or pressure and hence, the investigating authority cannot act on such confessions. It has been further submitted that the year is over, the DGGI has not called the appellant for further proceeding.

10.7 The appellant has submitted that this authority has been conferred with discretionary power to either allow or reject the application on the ground no other than those prescribed by the proviso to sub-section (2) of Section 98 of the CGST Act, 2017.

FINDINGS :-

11. 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.

12. We observe that as provided under the first proviso to sub-section (2) of section 98 of the CGST Act, 2017 and the GGST Act, 2017, the application for advance ruling cannot be admitted 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 the said Acts. The said provisions are 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:

13. We have perused the application for advance ruling in Form GST ARA-01 dated 01.03.2020 filed by the appellant and observe that when the appellant submitted the application before the GAAR on 04.03.2020, 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 thereby 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 on 17.02.2020, 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 on 04.03.2020, 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 vide letter dated 10.10.2020 submitted that they informed the Advance Ruling Authority that their representative during the personal hearing had mentioned the fact but the Advance Ruling Authority has not mentioned the said fact in the Advance Ruling pronounced vide Order No. GUJ/GAAR/R/77/2020 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. The issue in the present case is not whether the application for advance ruling was ready or otherwise when the proceedings against the appellant were initiated by the DGGI, Surat and whether there was any ulterior motive or *mala-fide* intention in belatedly filing of such application before the GAAR. It is undisputed fact that the DGGI, Surat conducted search proceeding on 17.02.2020 and recorded a statement of the partner of the appellant on the very same issue in respect of which application was subsequently filed by the appellant before the GAAR on 04.03.2020. Therefore, the application filed by the appellant before the GAAR was covered under the first proviso to sub-section (2) of Section 98 of the CGST Act, 2017.

17. The appellant has contended that the proceedings under section 67 or Chapter XIV of the CGST Act, 2017 are not covered under the term 'proceedings' used in the first proviso to sub-section (2) of section 98 of the CGST Act, 2017. We find that this contention of the appellant is not borne out from the plain reading of the said proviso. As per the said proviso, 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. The term 'any' used in the said

proviso before the term ‘proceedings’ and before the phrase ‘the provisions of this Act’ leaves no room for any doubt and make it amply clear that the scope of the proviso is wide and it covers any proceedings under any of the provisions of the CGST Act, 2017 with the conditions that such proceedings should be related to the question raised in the application and such proceedings should be in the case of the applicant. In the present case, the proceedings initiated by the DGGI, Surat was in the case of the appellant and it was precisely related to the question raised in the application filed before the GAAR. Therefore, the application of the appellant could not have been admitted by the GAAR in view of the first proviso to sub-section (2) of Section 98 of the CGST Act, 2017.

18. As regards the statements of the partner of the appellant recorded before the DGGI, Surat and affidavits filed by the appellant retracting those statements, we make it clear that neither we are going into those aspects nor into the merit of the case, as the same are beyond the scope of the present proceedings.

19. The GAAR as well as this authority are the creature of the statute and are required to act and exercise the powers conferred in accordance with the provisions of the law. Once it is clear that the application of the appellant could not be admitted in view of the provisions of first proviso to sub-section (2) of section 98 of the CGST Act, 2017, neither the GAAR nor this authority has any discretion to allow such application.

20. Thus, it is evident that the appellant has 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 the 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.

21. 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 the 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*.

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

23. In view of the foregoing, we modify the Advance Ruling No. GUJ/GAAR/R/77/2020 dated 17.09.2020 of the Gujarat Authority for Advance Ruling in the case of M/s J. K. Papad Industries and declare it void *ab-initio*.

(J. P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date : 18.08.2021.