

No.- KAR ADRG 38/2020

Dated.- May 22, 2020

Citations:

1. [COMMISSIONER OF CENTRAL EXCISE Versus M/s WOCKHARDT LIFE SCIENCES LTD - 2012 \(3\) TMI 40 - Supreme Court](#)
2. [BHARAT FORGE & PRESS INDUSTRIES \(P\) LTD. Versus COLLECTOR OF C. EX. - 1990 \(1\) TMI 70 - Supreme Court](#)
3. [COLLECTOR OF C. EX. Versus JAYANT OIL MILLS PVT. LTD. - 1989 \(3\) TMI 132 - Supreme Court](#)
4. [DUNLOP INDIA LTD. & MADRAS RUBBER FACTORY LTD. Versus UNION OF INDIA AND OTHERS - 1975 \(10\) TMI 94 - Supreme Court](#)

**DR. RAVI PRASAD M.P. AND SRI. MASHHOOD UR REHMAN FAROOQUI,
MEMBER**

Represented by : Sri Ankush Surana, C.A., M/s. Pricewaterhouse & Co., LLP & Authorised Representative.

**ORDER UNDER SECTION 98(4) OF THE CGST TAX ACT, 2017 & UNDER 98(4)
OF THE KGST ACT, 2017**

1. M/s. ID Fresh Food (India) Pvt. Ltd., (called as the 'Applicant' hereinafter), # 37, Doddenakundi Industrial Area, Whitefield Road, Mahadevapura, Bengaluru-560 048, Karnataka, having GSTIN number 29AAICM3930G1ZD, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of ₹ 5,000/- each under the CGST Act and the KGST Act.

2. 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 instant application pertains to classification of whole-wheat parota & Malabar parota and the question for which advance ruling is sought is as under:

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

Admissibility of the application: The question is about classification of the goods and hence is admissible under Section 97(2)(a) of the CGST Act 2017.

3. Applicant's interpretation of Law:

The Applicant stated that the product Whole Wheat parota and Malabar (refined flour) parota is available in ambient and frozen form with a shelf life of minimum 3 days and maximum 7 days. The applicant supplies the product to distributors, retailers and other foodservice operators located in India and overseas. The product consists the ingredients of refined wheat flour (maida), RO purified water, edible

vegetable oil, edible vegetable fat & edible vegetable salt. After adding all the ingredients, the product will be subjected to heat treatment on a pan or tawa, for making it available for consumption.

The applicant contends that the product merits classification under Chapter heading 1905, under the product description of 'Khakhra, plain chapatti or roti'.

The applicant, quoting the Notification No. 1/2017-Centra1 Tax (Rate) dated 28.06.2017, as amended by Notification No.34/2017-Central Tax (Rate) dated 13.10.2017, stated that a new entry No.99A has been inserted with the description "Khakhra, plain chapatti or roti", without defining the said description. The applicant further quotes the aforesaid notification and claims the applicability of Customs Tariff Act 1975, explanatory notes (HSN notes) to arrive at the classification of a product, which can be analyzed on the basis of the three parameters i.e.

i. Reference to general rules for the interpretation of tariff embedded in the Customs Tariff Act 1975.

ii. Judicial Precedents

iii. Reference to explanatory notes issued by World Customs Organisation.

4. The applicant submits that the Customs Tariff Act 1975 (CTA) consists 6 rules of interpretation that are need to be adopted for classification of goods; rules 1 to 4 are related and must be applied in sequence, whereas rules 5 & 6 are independent and are to be applied based on the facts. In the instant case the product is made up of wheat or maida flour, refined oil, salt and vegetable fat and is not readily consumable but to be heated before consumption.

The applicant contends that the first step is to identify the section of the custom tariff to which the instant product belongs, which is ready to eat food. On combined reading of the general rules of interpretation along with the explanatory notes, the section heading that merits consideration is - "Section IV" which deals with the "prepared foods stuffs, beverages, spirits and vinegar, tobacco & manufactured tobacco substitutes". The instant product falls under "Prepared Food Stuffs".

The next step is to identify the relevant chapter and on analyzing various descriptions of the chapter along with explanatory notes, the chapter that merits consideration is "Chapter 19" which deals with preparations of cereal, flour, starch or milk; pastrycook's products. Further chapter notes also do not exclude / disqualify the instant product.

The next step is to find the appropriate chapter heading in 4 digits. The explanatory notes relevant to the chapter stipulates as under:

This chapter covers a number of preparations, generally used for food, which are made of either directly from the cereals of chapter i.e. from the products of chapter 11 or from food flour, meal and powder of vegetable origin of other Chapters (cereal flour, groats and meal, starch, fruits or vegetable flour, meal and powder) or from the goods of headings 0401 to 0404. The chapter also

covers pastrycook's products and biscuits, even when not containing flour, starch or other cereal products.

.....”

5. The explanatory notes also provides that the expression 'provided such headings or notes do not otherwise require' is intended to make it clear that the terms of the heading and any relative section or chapter notes are paramount i.e. they are the first consideration in determining classification.

In the instant case, the cereal used for making the product is wheat, falling under chapter 10 and wheat flour & maida flour falls under chapter 11. Further the product requires cooking before consumption. Accordingly, on combined reading of general rules of interpretation & explanatory notes with respect to chapter 19, the relevant chapter heading that merits classification of the instant product 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.”*

The next level of classification is 6 digit one. All the products at this level may not be explicitly listed with their description and the said description is illustrative but not exhaustive. Accordingly some products may be named explicitly and the rest would be referred to as “Other”. It is evident from explanatory notes to chapter heading 1905 that the said heading covers all the bakers wares, the common ingredients of which are cereal flours, leavens, salt and others. The instant product is not covered explicitly under chapter heading 1905 and hence the right classification would be “1905 90-Other”.

The last level of classification is 8 digit one. On perusal of various subheadings enlisted in the chapter, the tariff item that merits the classification of the instant product is “1905 90 90 - Other.”

The applicant intend to place reliance on the ruling passed by the Advance Ruling Authority, Maharashtra, in the case of M/S Signature International Foods India Private Ltd., wherein it is held that paratha & paratha wraps are covered by the scope of entry 99A of Notification 34/2017-Centra1 Tax (Rate) dated 13.10.2017.

6. In view of the above, the applicant contends that their product merits classification under Chapter heading 1905.

Further, the applicant also contends, without prejudice, that their product should not be classified under residual entry at Sl.No.453 of Schedule III to Notification No.01/2017-Central Tax (Rate) dated 28.06.2017, on the basis of the following grounds:

i. Application of Residual entry to an item can be resorted to, only when no other heading expressly or by necessary implication applies to the product. The instant product is classifiable under chapter heading 1905 & Sl.No.453 of Schedule III reads as “Any chapter-Goods which are not specified in Schedule

I,II,IV,V or VI” and hence it is evident that the SI.No.453 is a residual entry to classify commodities that are not classifiable under any of the other entries.

ii. The ratio of various judgements of the Supreme Court, High Court and Tribunals regarding classification of commodities under Customs Tariff / Central Excise Tariff are equally applicable and have precedent value in relation to classification of goods under GST Tariff/ Rate Schedule, which are aligned and based on the HSN.

iii. The applicant contends that it has been consistently held by courts that application of residuary item can be resorted to only when it is not possible to classify the goods under specific entries in the tariff. The applicant places reliance on the following judgements.

[a. CCE vs Jayant Oil Mills Pvt. Ltd., 1989 \(40\) ELT 287 \(SC\) = 1989 \(3\) TMI 132 - SUPREME COURT](#)

[b. Dunlop India Ltd., & Madras Rubber Factory Ltd., Vs Union of India and others 1983 \(13\) ELT 1566 \(SC\) = 1975 \(10\) TMI 94 - SUPREME COURT](#)

[c. Bharat Forge and Press Industries \(P\) Ltd., Vs CCE, Baroda 1990 \(45\) ELT 525 \(SC\) = 1990 \(1\) TMI 70 - SUPREME COURT](#)

[d. CCE vs Wockhard Life Sciences Ltd., 2012 \(277\) ELT 299 \(SC\) = 2012 \(3\) TMI 40 - SUPREME COURT](#)

In view of the above, the applicant contends that the product whole-wheat parota and Malabar (refined flour) parota, in sum and substance akin to ‘Roti’ and are manufactured / prepared through an identical process and hence can not be classified under the residual entry.

PERSONAL HEARING / PROCEEDINGS HELD ON 09.01.2020.

7. Sri Ankush Surana, C.A., M/s. Pricewaterhouse & Co., LLP, and duly authorised representative of the applicant appeared for personal hearing proceedings held on 09.01.2020 & reiterated the facts narrated in their application.

8. FINDINGS & DISCUSSION:

8.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Sri Ankush Surana, C.A., M/s. Pricewater house & Co., LLP & duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

8.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

8.3 The applicant is engaged in the preparation / manufacture and supply of the products whole wheat parota and Malabar (refined flour) parota, which are made up of whole wheat flour and refined flour (maida) respectively. The other common ingredients are RO purified water, edible vegetable oil or refined oil, edible common salt and edible vegetable fat. The products are not readily consumable (ready to eat), but need to be heated before consumption.

8.4 The applicant contends that their products merit classification under heading 1905, whose description akin to “Khakhra, plain chapatti or roti” and therefore are taxable at 5% GST, in terms of 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.

8.5 In view of the above the question before this authority to decide is whether the impugned products are classifiable under heading 1905 or not. We proceed to examine, discuss & decide the right classification of the impugned products. In this regard we draw reference to the Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, specifically to explanation (iii), which stipulates that “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), and explanation (iv), which stipulates that 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.

8.6 The applicant contended that as per General Chapter Note in Chapter 19, the product falls under Chapter heading 1905 since it is made from cereals of chapter 11 or from food flour of other Chapters (including cereal flour). They further rely upon General Rules of Interpretation to state that since Chapter 19 specifically mentions, “Preparation of Cereals, flour the product should fall under Chapter Heading 1905. Lastly they contend that the product should not be classified under the residual entry at Sr. No. 453 of the 3rd Schedule of Notification No. 01/2017-CT (R) dated 28.06.2017 since the product merits classification under Chapter Heading 1905.

8.7 The applicant contended that their products merit classification under heading 1905 90 90, whose description is as under:

Tariff Heading	Description
1905	<i>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.</i>
1905.90	<i>Other</i>
1905.90.90	<i>Other</i>

It could be easily inferred from above that Chapter 19 covers preparations of flour, generally used for food, which are made from the products of chapter 11. The product wheat flour is covered under chapter 11 and the impugned products are made up of the same (wheat flour), which is the predominant ingredient. Heading

1905 covers Bread, Pastry, Cakes etc., which are completely cooked foods and ready for consumption.

8.8 The impugned products having description “parota” do not have any specific entry in the Customs Tariff Act, 1985/ GST Tariff. The products covered under heading 1905 are already prepared or completely cooked products and no further process is required to be done on them for consumption and hence they are ready to use food preparations. In the instant case the impugned products are admittedly not ready for consumption, but need to be heated before consumption. Thus the impugned products do not merit classification under heading 1905.

8.9 The applicant, with regard to the competing tariff entry for classification of the impugned products, contends that their products are specifically covered under heading 1905 and hence should not be classified under the residual entry at Sl. No. 453 of the Schedule III to the Notification No. 01/2017-CT (R) dated 28.06.2017, as amended, as the goods falling under any chapter and not specified under schedule I, II, IV, V or VI of the said Notification.

In view of the above, we proceed to examine the right classification of the impugned products. In this regard we draw attention to chapter 21, which covers Miscellaneous Edible Preparations and heading 21.06 covers food preparations not elsewhere specified or included. Further Explanatory Notes to the **Harmonized Commodity Description and Coding System**, with regard to heading 2106, at clause (A) specify that the said heading 2106 90 covers Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption, provided that they are not covered by any other heading of the Nomenclature. In the instant case the impugned goods i.e. ‘parota’ are not covered under any other heading and also need to be processed for human consumption. Therefore the impugned goods are rightly classifiable, more specifically, under heading 2106 90.

8.10 In this regard, to conclude the classification, we draw attention to the General Rules of Interpretation for classification of goods under Schedule I to the Customs Tariff Act 1975, which are as under:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance

with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

It could be seen from the above that Rule 1 is not applicable since no Heading, Chapter Note or Section Note mention 'porota'. Rule 2 is also not applicable since there is no mention of the finished article, i.e. 'porota' anywhere in the tariff. Rule 3 is about classification of mixed or composite goods, prima facie, classifiable under two or more headings. In the instant case the product 'porota' is though, made up of whole wheat flour or refined flour (maida) along with common ingredients like RO purified water, edible vegetable oil or refined oil, edible common salt and edible vegetable fat, there is no specific entry competing against a general entry (Rule 3 (a)); or has any specific essential characteristic by which we can describe the product (Rule 3 (b)).

Rule 3 (c) provides that when goods can't be classifiable under Rule 3(a) or 3(b), then they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. Thus even if the applicant's argument of classification of impugned products under heading 1905 as well as the classification under heading 2106 are considered as two relevant headings, the heading 2106 occurs last in numerical order and hence the heading 2106 would be more appropriate and right classification by virtue of Rule 3(c) supra.

8.11 Now the remaining issue to be discussed, as the classification issue has been resolved, is the applicability of the benefit of 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, which specifies the applicable rate of GST as 5%, in respect of the goods covered under heading 1905 or 2106 and having description as “Khakhra, plain chapatti or roti”

8.12 It could be seen from the foregoing that the GST rate of 5% is applicable to the products subject to fulfillment of the conditions that (i) they should be classified under heading 1905 or 2106 and (ii) they must be either khakhra, plain chaptatti or roti. In the instant case the first condition of classification is fulfilled as the classification of the impugned products has been resolved as 2106. As for as the second condition is concerned the impugned products are described as “parota” and hence are neither khakhra, plain chaptatti nor roti. Further the products khakhra, plain chaptatti or roti are completely cooked preparations, do not require any processing for human consumption and hence are ready to eat foods preparations, whereas the impugned products are not only different from the said khakhra, plain chaptatti or roti but also are not like products in common parlance as well as in respect of the essential nature of the product. These products also require further processing for human consumption, as admitted by the applicant. Thus the benefit of 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 is not applicable to the instant case and the applicant is not entitled for the same.

In view of the foregoing, we pass 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.