

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



ADVANCE RULING NO. GUJ/GAAR/R/03/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/13)

Date : 11.03.2020

Name and address of the applicant	:	M/s. Jay Jalaram Enterprises, Beside Astha Petrol Pump, Plot no. 67-68, Jalaram Industries Estate, Surat.
GSTIN of the applicant	:	24ASNPS4231L1ZD
Date of application	:	23.03.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both;
Date of Personal Hearing	:	05.03.2020
Present for the applicant	:	Shri Kulin B. Shah, Advocate

BRIEF FACTS

The applicant has submitted that they are a proprietorship concern and manufacture **Pop Corn**, which is sold in a sealed plastic bag bearing a registered brand name as [J.J.'s] POPCORN, under the Trade Marks Act, 1999. They submitted that their product is manufactured by using corn/maize grains. The Raw corn - grains are heated in an electric machine/oven @ 180/200 degree temperature and due to the heat so given to the grains, they turn into puffed corns/popcorns which are known in Gujarati language as "dhani" which is similar to that of puffed rice/ known as murmura. Then after they are sieved so as to remove some grains which are left unpuffed. During the process Salt, Edible Oil and Turmeric Powder are mixed in required quantity. Thereafter the product is packed in a plastic pouch in quantity of 15 gm. The applicant also submitted a Tax Invoice issued by them, bearing No. GT/411 Dt. 24-02-2018 for gross value of Rs.3920/- (Incl. tax CGST @2.5% and SGST @2.5%, collected separately) for supply of goods namely 'POPCORN' and raised the following question for advance ruling in their application:-

“Classification, under which Schedule/Sr. No./Chapter heading/Sub heading/tariff Item (HSN) the rate of CGST/SGST would be applicable on the supply made by the applicant on [J.J.'s] Popcorn, vide Tax Invoice No. GT/411 Dt. 24-02-2018?”

2. The applicant has submitted that in their opinion, Sr. No. 50 of Schedule I of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017 would be most appropriate one and thus, the product Maize/Popcorn put up in unit container and bearing a registered brand name [J.J.'s] POPCORN would attract 2.5% CGST and

2.5% SGST. Schedule I of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017 with an amendment made therein vide Notification No.27/2017-Central Tax (Rate) Dt.22-9-2017, is reproduced as follows:

SCHEDULE I - 2.5%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
50.	1005	Maize (corn) put up in unit container and (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the condition as in the ANNEXURE]

3. The applicant contended that its product which is popularly known as POPCORN is nothing but CORN /MAIZE, which is a CEREAL, falling under Chapter 10. They placed reliance on a judgment delivered by Apex Court in the case of M/s Alladi Venkateshwaralu and Others v. Govt. of A.P. [(1978) 41 STC 394 (S.C)], wherein it was held that the term "Atukulu" (parched rice) and "muramaralu" (puffed rice) are "Rice". Thus applying the same ratio of this judgment, the applicant further submitted that the term used in the above entry as Maize (corn) also included Puffed Maize/POP CORN, as being cereal within its meaning and therefore [J.J.'s] Popcorn is covered in Sr. No./ Entry 50 in the above tariff item **1005** of Schedule I and is taxable accordingly. The applicant also submitted that though this judgment is under the provision of The Central Sales Tax Act 1956, but it is still as relevant as was at earlier time laying down the principle for determining the classification of commodity and the principle laid down therein is that a cereal grain, even after applying a process of heating, it does not lose its basic characteristics and thus it remains the same cereal grain and this principle is applicable squarely also to Maize as popcorn. The applicant also clarified that the above commodity is classified under Chapter 10, which is for CEREALS and as per the above judgment, though a simple process of heating is done on Maize and to make it palatable other ingredients like salt and turmeric powder are added to it, still it remains a Cereal grain and further clarified that the use of negligible quantity of oil is only for the purpose of sticking the salt and turmeric on the maize/corn, and not for cooking/frying.

4. The applicant further placed reliance on a judgment delivered by High Court Gujarat in the case of M/s Vadilal Wafers Company (S. T. Reference No.31 of 1980 Dt. 24-02-1982) which is, in their view, a direct judgment on POPCORN and is applicable squarely to the present case also. The applicant contended that this case directly dealt with by Hon. Guj. H. C. on the issue of interpretation of the term CEREARL as it stood in the entry, at Entry No. 2 of Sch. I of The Gujarat Sales Tax Act 1969, as 'Cereal and pulses in all forms and flour thereof except maize flour'.

5. The applicant further submitted that in view of the above cited two judgments it is very clear and it can beyond doubt be interpreted as and it would mean that (1) by addition of the above ingredients /masala after the process the form of grain can't be said to be changed, it still remains grain and (2) The change in shape due to process of heating also has no relevance, and, therefore, when MAIZE as a grain, even after undergoing the process of heating and addition of masala remains a grain, could very clearly be covered in Sr. No.50/Tariff item 1005 of Sch. I and would be liable to be taxed @2.5% CGST and @2.5% SGST.

6. The applicant also submitted that in case the above contention, for any reason, is not accepted they find another similar entry, at sr. No. 57, in the same Schedule I, under which the product can be covered, as the description in Sr. No. 57 also refers to Cereal, at the same time it also refers to a cereal grain which is 'otherwise worked' and in their case, maize/corn as grain is worked with heating and then it is known as Popcorn. Entry, at sr. No. 57, in the same Schedule I is as follows:

SCHEDULE I - 2.5%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
57	1104	Cereal grains otherwise worked (for example, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground [other than hulled cereal grains]

DISCUSSION & FINDINGS

7. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. The issue involved in this case pertains to classification of the product 'POP CORN' put up in unit container and bearing a registered brand name. On the basis of the classification of the said product, it will be leviable to appropriate rate of Goods and Services Tax prescribed under Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 issued under the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act') and corresponding notifications issued under the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act') or the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the 'IGST Act').

8. It is observed that the Explanation (iii) and (iv) to the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 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.]

9. Further, Hon’ble Supreme Court, in the case of L.M.L. Ltd. Vs. Commissioner of Customs [Civil Appeal No. 3764 of 2003, decided on 21.09.2010 reported at [2010 (258) ELT 321 (S.C.)], has held as follows :-

[12. In Collector of Central Excise, Shillong v. Wood Crafts Products Ltd. reported in (1995) 3 SCC 454, it was held by this Court that as expressly stated in the statements of objects and reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on the Harmonious System of Nomenclature (HSN) and the internationally accepted nomenclature was taken into account to reduce disputes on account of tariff classification. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the Harmonious System of Nomenclature (HSN). Although, the decision in the case of Woodcraft Products (supra) dealt with the interpretation of the provisions of the Central Excise Tariff there can be no doubt that the HSN Explanatory Notes are a dependable guide even while interpreting the Customs Tariff.]

10. It is observed that the product in question i.e. ‘POP CORN’ is manufactured from raw corn/maize grains, by heating in an electric machine/oven at the temperature of 1800 to 2000 centigrade and due to the heat so given to the grains, they turn into puffed corns/popcorns and then to make it palatable other ingredients like salt and turmeric powder are added to it and a negligible quantity of oil is also used for the purpose of sticking the salt and turmeric on the maize/corn. Thus it is a ready to eat prepared food and fits the description as **‘Prepared foods obtained by the roasting of cereal’**. This description attracts classification under Chapter Sub-Heading 1904 10 of the First Schedule to the Customs Tariff Act, 1975. Since it is not Corn flakes (tariff item 1904 10 10), Paws, Mudi and the like (tariff item 1904 10 20) or Bulgur wheat (tariff item 1904 10 30), it will fall under the residual tariff item 1904 10 90 of the First Schedule to the Customs Tariff Act, 1975.

11. It is further observed that the Apex Court in the case of M/s Frito Lay India [2009 (242) ELT 3 (SC)], has, while distinguishing between ordinary popcorn and eclair popcorn, held that an ordinary popcorn as against eclair popcorn would bring out the distinction between the foods obtained by swelling or roasting of cereals and food obtained by process involving use of other ingredients like eclair.

12. It is also observed that there is no specific entry for the product 'POP CORN' in Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. But there is an entry most akin to the product and process (**chapter heading 1904**) at Sr. No. 15 of Schedule III of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017 and attracts 9% CGST and 9% SGST or 18% IGST. The Entry, at sr. No. 15, in the Schedule III is as follows:

SCHEDULE III - 9%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
15	1904	All goods i.e. Corn flakes, bulgar wheat, prepared foods obtained from cereal flakes [other than Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki]

13. The applicant's contention that their product falls under Sr. No. 50 of Schedule I of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017, is not acceptable on the following grounds:-

(a) This entry pertains to Chapter Heading 1005, which is meant for Maize (corn). Note 1.(A) to the Chapter 10 clearly mentions that '*the products specified in the headings of this Chapter are to be classified in those headings only if grains are present, whether or not in the ear or on the stalk*'. Since the applicant's product loses the presence of grain in it, it does not deserve to be classified in that heading.

(b) The applicant contended that its product is similar to parched rice and puffed rice. We see that vide entry at Sr. No. 95 of Schedule under Notification No.2/2017 CENTRAL TAX (Rate) Dated 28-6-2017, '***Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki***' have been classified under **Chapter Heading 1904**.

(c) The ratio of the Apex Court decision in the case of M/s Alladi Venkateshwaralu [(1978) 41 STC 394 (S.C)] and the High Court Gujarat decision in the case of M/s Vadilal Wafers Company (S. T. Reference No.31 of 1980 Dt. 24-02-1982) cannot be applied here due to the fact that these decisions are not only in respect of a separate set of laws i.e. '*the Central Sales Tax Act 1956*' and '*the Gujarat Sales Tax Act 1969*' respectively and classification under those laws but also the system of classification of products under '*the Goods & Service Tax*' is quite different and is based upon international Harmonised System of Nomenclature (HSN).

(d) The very clarification by the applicant that though a simple process of heating is done on Maize and to make it palatable other ingredients like salt and turmeric powder are added to it and a negligible quantity of oil is used for the purpose of sticking the salt and turmeric on the maize/corn, makes it clear that the

product does not remain GRAIN and amounts to have gone under processing/preparation of food.

14. The applicant's further contention that their product may be held to fall under Sr. No. 57 of Schedule I of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017, is not acceptable on the grounds that this entry pertains to Chapter Heading 1104, which is meant for 'Cereal grains otherwise worked'. Note 1 to the Chapter 11 clearly mentions that *'this Chapter does not cover:(a) roasted malt put up as coffee substitutes (heading 0901 or 2101); (b) prepared flours, groats, meals or starches of heading 1901; (c) corn flakes or other products of heading 1904;.....* Since the applicant's product matches the description at heading 1904, it does not deserve to be classified in the chapter 11.

15. In view of the foregoing, we rule as under –

R U L I N G

The product namely '**[J.J.'s] POP CORN**', manufactured from raw corn/maize grains, which, by heating turn into puffed corns/popcorns and then to make it palatable other ingredients like salt and turmeric powder along with oil are added to it fits the description as '**Prepared foods obtained by the roasting of cereal**'. This description attracts classification under Chapter Sub-Heading 1904 10 of the First Schedule to the Customs Tariff Act, 1975. Since it is not Corn flakes (tariff item 1904 10 10), Paws, Mudi and the like (tariff item 1904 10 20) or Bulgur wheat (tariff item 1904 10 30), it will fall under the residual tariff item 1904 10 90 of the First Schedule to the Customs Tariff Act, 1975. By virtue of this, the said product falls under entry at *Sr. No. 15 of* Schedule III of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017 and attracts 9% CGST and 9% SGST or 18% IGST.

(SANJAY SAXENA)
Member

(MOHIT AGRAWAL)
Member

Place : Ahmedabad
Date : 11.03.2020.