



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16172 of 2021

With
R/SPECIAL CIVIL APPLICATION NO. 3711 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 7107 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 7114 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 8502 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 8504 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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J. K. PAPAD INDUSTRIES & ANR.
Versus
UNION OF INDIA & ORS.

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Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

GOVERNMENT PLEADER for the Respondent(s) No. 2,5



MS HETVI SANCHETI for the Respondent(s) No. 1,3,4
NOTICE SERVED for the Respondent(s) No. 6
NOTICE UNSERVED for the Respondent(s) No. 7

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 11/09/2024

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Uchit Sheth for the petitioner and learned advocate Ms. Hetvi Sancheti for the respondent.

2. By these petitions under Article 227 of the Constitution of India, the petitioners have challenged the show cause notice dated 07.02.2024 under section 74 of the Central/Gujarat Goods and Services Tax Act, 2017 (for short "the GST Act") as being wholly without jurisdiction.



3. The impugned show cause notice is issued to levy GST at the rate of 18% as the petitioner is engaged in manufacture of un-fried or un-cooked snack pellets through the process of extrusion and supplying the same without payment of GST by classifying it under HSN 19059040 instead of HSN 19059030.

4. These petitions are raising the similar issue of classification of the product manufactured by the petitioner under HSN 19059040 instead of HSN 19059030.

5. Having regard to the controversy involved in these petitions which is in a very narrow compass, with the consent of the learned advocates for the respective



parties, matters are taken up for hearing.

6. Rule returnable forthwith. Learned advocate Ms. Sancheti waives service of notice of rule on behalf of respondent.

7. For the sake of convenience, Special Civil Application No.3711 of 2024 is treated as the the lead matter.

8. Facts of Special Civil Application No.3711 of 2024 are as under:

1) The petitioner is a private limited company and is engaged in the business of edible food products and is duly registered under the GST Acts.

2) One of the products manufactured and



sold by the petitioners are unfried fryums. The manufacturing process involves different cereals and pulses like wheat, adad, rice etc. added with edible starch, salt preservatives and water. The same are then packaged in retail packs for onward supply. Pre-formulated mix of raw materials are weighted separately and mixed well. Mixed formulation is cooked and mixed by steam cooker or extruder machine to prepare dough of desired consistency. Dough is then passed through the sheeting machine/dye to give it desired shape. These products of different shape are directly fed into drying machine to be dried. Thereafter they are cooled by passing through cooling conveyor. The finished products are packed in bag or carton and then sold.



3) It is the case of the petitioner that prior to 1.7.2017 the 'Fryums' were covered under the entry for 'Papad' under the Gujarat Value Added Tax act, 2003 as per the judgment of the Gujarat Value Added Tax Tribunal in case of **Avadh Food Products v. State of Gujarat** (judgment dated 26.02.2015 rendered in First Appeal No.1 of 2015) which was followed by the Tribunal in case of **Swethin Food Products v. State of Gujarat** reported in 2016 GSTB 296.

4) It is the case of the petitioner that when the GST regime was implemented with effect from 1.7.2017, there was confusion prevailing in the State of Gujarat with regard to classification of 'Fryums',



however, a manufacturing unit by the name of M/s Sonal Product filed an application for advance ruling under section 97 of the GST Act seeking ruling on applicable rate of tax on supply of 'Papad' of different shapes and sizes which were commonly known as unfried fryums wherein it was held that unfried fryums are not 'papad' and therefore, exempt from tax and further it was held that unfried fryums are taxable at the rate of 18% under the GST Act.

5) The petitioner also filed application in the year 2019 for advance ruling in respect of applicable tax rate on unfried fryums.

6) It is the case of the petitioner that the Advance Ruling Authority vide order



dated 17.09.2020 adopted the same line of reasoning as in the case of M/s. Sonal Products and took a view that unfried fryums attracted tax rate of 18%.

7) The petitioner therefore, filed an appeal challenging the advance ruling order. The Advance Ruling Appellate Authority vide order dated 28.06.2021 allowed the appeal and held that 'papad' of different shapes and sizes are classifiable under heading 1905 which is covered by Entry no. 96 of the exemption notification and therefore, chargeable to Nil rate of tax.

8) It is the case of the petitioner that while the issue of classification was settled in case of the petitioners, the



Central Board of Indirect Taxes and Customs issued impugned circular dated 13.01.2023 wherein it was clarified in para 5 that snack pellets such as fryums would be classifiable under Custom Tariff Heading 19059030 and they would be taxable at the rate of 18%.

9) It is the case of the petitioner that the authorities of Central GST department conducted audit of the returns of the books of accounts of the petitioner under the GST Act on different dates from February to April 2023 and the issue of classification of unfried fryums was raised in audit and it was alleged that tax was payable under the GST Act on supply of unfried fryums at the rate of 18% by relying upon the impugned circular



dated 13.01.2023.

10) The petitioner objected to such classification and proposed demand by relying upon the advance ruling appellate order passed in case of the petitioner.

11) The audit authority however vide audit report dated 24.04.2023 rejected the objection by relying upon the impugned circular dated 13.01.2023 and initiated process of demand on sales of unfried fryums by the petitioner.

12) Thereafter in the 50th Council meeting held on 11.07.2023 it was decided to recommend that the tax rate for uncooked/unfried snack pellets manufactured through extrusion process was



to be fixed at 5% and it was recommended that the issue for past period was to be regularised on 'as is where is' basis.

13) Pursuant to such recommendation of Central Board of Indirect Taxes and Customs issued circular dated 1st August, 2023.

14) It is the case of the petitioner that despite such express clarification and direction by GST Council as well as Central Board of Indirect Taxes and customs, the respondent authority issued intimation in Form GST DRC-01A proposing to demand tax on unfried fryums for the past period from 1.7.2017 to 31.3.2020.

15) The petitioner therefore, vide



reply dated 27.9.2023 relying upon the circular dated 1st August, 2023 requested for closure of the proceedings.

16) The respondent authority however, issued the impugned show cause notice dated 7.2.2024 proposing to demand tax with interest and penalty on supply of unfried fryums at the rate of 18% for the past period i.e. from 1.7.2017 to 31.3.2019.

17) Being aggrieved by the impugned notice, the petitioner has preferred the present petition.

9. Learned advocate Mr. Uchit Sheth for the petitioners submitted that in view of the circular dated 1st August, 2023, the



controversy which was prevailing has now been reduced to payment of GST @ 5% instead of 18% as sought to be levied by the impugned show cause notice.

10. It was submitted that para 2.2 of the Circular No.18/2023 clearly stipulates that in view of prevailing genuine doubts regarding applicability of GST rate on the product manufactured by the petitioners for the past period upto 27.07.2023 is regularised on "as is" basis. It was therefore, submitted that in case of the petitioners "as is" basis criteria is required to be applied and the petitioner may be subjected to levy of Nil rate of GST as per the returns filed by the petitioners classifying the product under HSN 19059040.



11. In the alternative it was further submitted that Gujarat Appellate Authority for Advance Ruling while considering the issue of taxability of product 'Papad' manufactured by the petitioners has held to be classifiable under HSN 19059040 of the Customs Tariff Act, 1975 after considering the ingredients, the manufacturing process as well as its understanding in common parlance.

12. It was submitted that as per section 103 of the GST Act, Advance Ruling Appellate order is binding on the petitioners as well as jurisdictional officer and therefore, the product 'Papad' manufactured by the petitioners is liable



to GST at Nil rate. It was therefore, submitted that the impugned notice is without any jurisdiction wherein it is alleged that correct manufacturing process was not pointed out by the petitioners before the Advance Ruling Authority, however, in fact the manufacturing process submitted before the Advance Ruling Appellate Authority and the process which was observed by the Audit authority is the same and therefore, the respondent authority are bound to follow the binding judgment of Advance Ruling Appellate Authority.

13. Reliance was placed on the decision of this Court in case of **West Coast Waterbase Pvt. Ltd. v. State of Gujarat** reported in (2016) 95 VST 370 (Guj.), wherein it is



held that an assessment order passed contrary to the bidding determination order under the Gujarat Value Added Tax Act, 2003 which is akin to the advance ruling order under the GST Acts, is wholly without jurisdiction and illegal. It was pointed out that the decision of this Court was subsequently confirmed by the Hon'ble Supreme Court.

14. Reliance was also placed on the decision of the Gujarat Value Added Tax Tribunal in case of **Avadh Food Products v. State of Gujarat** (judgment dated 26.02.2015 rendered in First Appeal No.1 of 2015) and in case of **Swethin Food Products v. State of Gujarat** reported in 2016 GSTB 296 in context of VAT Act to contend that fryums are classifiable under the entry of



'Papad' and such judgments were accepted and had attained finality. It was therefore, submitted that even though both the judgments were rendered in context of VAT Act, dispute was identical inasmuch as whether fryums can be considered as 'Papad' or not. It was further submitted that such binding judgments are required to be followed and applied in territorial jurisdiction and contrary view sought to be taken by the adjudicating authority by issuing the impugned notification is without jurisdiction.

15. It was submitted that reliance placed on para no. 5 of circular dated 13.01.2023 issued by the Central Board of Indirect Taxes and Customs in the impugned notice is contrary to Entry No.96 of Notification



No.2/2017-Central Tax (Rate) dated 28.06.2017 as the Board has ignored the specific entry for "Papad by whatever name it is known" qua HSN 1905 in Entry 96 of Notification No.2/2017 Central Tax (Rate) and its interpretation by orders of the Gujarat Advance Ruling Appellate Authority in various cases relating to unfried fryums. It was therefore, submitted that the petitioners are not liable to pay any GST on the product 'Papad' till 27.07.2023 and the returns filed by the petitioners are required to be regularised on "as is" basis. It was further submitted that the impugned notice is also without jurisdiction as there is no intention on part of the petitioners of committing any fraud, willful suppression, misstatement of facts or evasion as there was a pure



dispute of legal interpretation as the petitioners *bonafide* believe that their products were exempt from tax under the GST Act which is fortified by further issuance of the notification by the Board on the basis of Minutes of GST Council which has accepted that there were genuine doubts which existed with respect to classification of the product manufactured by the petitioners in addition to Advance Ruling of the Appellate Authority holding that the goods were exempt from tax. It was therefore, submitted that the impugned notice is liable to be quashed and set aside.

16. On the other hand, learned advocate Ms. Hetvi Sancheti for the respondent submitted that the petitioners could not



have challenged the vires of para no. 5 of CBIC Circular No.189/09/2023-GST dated 13.01.2023 in view of Article 279A of the Constitution of India which provides for constitution of GST council for recommending the rate and exemptions and issuance of classification on any matter relating to GST Act.

17. It was submitted that Circular dated 13.01.2023 was issued on recommendation of GST Council and it is only a clarificatory circular.

18. It was further submitted that the petitioners did not mention the stage of extrusion process in manufacturing process chart furnished by them before the Gujarat Appellate Authority for Advance Ruling and



as such, the petitioners suppressed such facts regarding the fryums manufactured and supplied by them through extrusion process. It was submitted that by suppressing such material facts, the petitioners obtained Advance Ruling of classifying the product manufactured by them under the Tariff Heading 19059040 instead of correct classification of product under Tariff Heading 19059030 attracting GST rate at the rate of 18% as per Serial No.16 of Schedule-III to Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017.

19. It was further submitted that the decisions relied upon by the petitioners are not applicable in facts of the case inasmuch as the same were rendered under



the provisions of the VAT Act on different parameters which cannot be applied to the provisions under the GST Act wherein the product in question has more specific classification entry under Tariff item no. 19059030 which is for extruded or expanded product.

20. Learned advocate Ms. Hetavi Sancheti further submitted that the petitioners have misinterpreted the Notification dated 1st August, 2023 for regularizing the past transaction on "as is" basis. It was further submitted that phrase "as is" has to be read in the context of the facts of the case of classifying the product manufactured by the petitioners under Tariff Item No. 19059030 attracting GST at 18% had the petitioners mentioned



correctly in the extrusion process before the Appellate Authority. It was therefore, submitted that the petitioners have misled the Appellate Authority of Advance Ruling by suppressing that the product in question had gone through extrusion process and that they had extrusion machines installed in their factory and therefore, the product manufactured by them would be covered by Tariff Item No. 19059030 attracting GST @ 18%.

21. Learned advocate Ms. Sancheti also referred to decision of Kerala VAT Tribunal under Kerala Value Added Tax, 2003 wherein it is held that 'Papad' and 'Fryums' are both different product and 'Fryums' cannot be classified or treated as 'Papad'. It was therefore, submitted



that as per the manufacturing process explained by the petitioners before the Appellate Authority, it clearly shows that there is extrusion process involved for manufacturing 'Fryums' and therefore, the impugned show cause notice has been issued invoking jurisdiction under section 74 of the GST Act calling upon the petitioners as to why GST at the rate of 18% should not be levied classifying the product manufactured by the petitioners under Tariff Item no. 19059030 till 27.07.2023.

22. Learned advocate Ms. Sancheti relied upon the decision of the Apex Court in case of **Commissioner of Customs (Import) Mumbai v. Dilip Kumar & Company** reported in 2018 (361) ELT 577 (SC) wherein it is held that Tariff notifications are to be strictly



interpreted and the Courts cannot expand the scope of any tax concession.

23. Reliance was also placed on the circular No.200/12/2023-GST issued with the approval of the Board on the recommendation of the GST Council in its 50th meeting held on 11th July, 2023 clarifying that GST rate on un-fried or un-cooked snack pellets by whatever name called, manufactured through process of extrusion, the issue for past period upto 27.07.2023 in view of the prevailing genuine doubt, is to be regularised on 'as is' basis.

24. It was therefore, submitted that upto 27.07.2023 the petitioners are liable to pay GST at the rate of 18% on the product



manufactured by them instead of Nil rate as claimed by the petitioners.

25. Having heard the learned advocates for the respective parties and having perused the documents placed on record, it would be germane to refer to the observations made by the Gujarat Appellate Authority for Advance Ruling in case of M/s. Jayant Snacks and Beverages Pvt. Ltd. vide order dated 28.06.2021 classifying the product manufactured by them under Tariff Heading 19059040 instead of Tariff Heading 19059030 as under:

"42.1 The appellant has submitted that main ingredients of their products 'different shape and size Papad' are wheat flour, superfine wheat flour, rice flour, starch, corn flour, cereal flour, potato starch, chana, potato lentils, papad khar, bicarb, vegetables like tomato, salt, water, food, colour etc. The main ingredient of



PAPAD and impugned products of the appellant (different shape and size Papad) are more or less similar.

42.2 The manufacturing process of the products under consideration has been submitted by the appellant. It has been submitted that ingredients are mixed in machine with water and oil, dough is prepared and passed through die of different shapes and size to manufacture different shapes and size of papad and then dried through various stages. The product of the appellant, thus prepared, is thin and wafer like product. At this stage, the product is not ready for consumption. Though, traditionally Papad has been prepared manually, in round shape. However, when ingredients and process are similar in case of PAPAD and impugned product, then the product in question is nothing but a kind of PAPAD irrespective of their shape and sizes.

42.3 As submitted by the appellant, when the consumer desires to eat the said products of the appellant, the said products are required to be fried or roasted before consumption. Thus, these products are not meant



to be eaten without frying or roasting.

42.4 The products under consideration become crispy when these products are fried or roasted.

42.5 The products of the appellant has found its use as an alternative to regular round shaped Papad or as an additional variety of Papad in the Indian meal, especially the meals served during the community functions. The caterers, who prepare the meals for the community functions, as well as the people in general, consider such products as a different type or variety of Papad only.

42.6 Therefore, we are of the view that applicant's products of different shapes and sizes of papad, whose pictures are reproduced above, are nothing but Papad, classifiable under Tariff Item 1905 90 40 of the Customs Tariff Act, 1975.

43. Now, the question which arises is, would it be judicious to stick that the product which are having Round shape, manufactured by using ingredient of cereal flour only are PAPAD and the products having the same characteristic and uses



but shape and size is different cannot be termed as "PAPAD". We find that for classification of product, the ingredient, uses and common parlance test is decisive factor and not the name. The appellant has relied upon the decision of the various courts in their support.

(a) Hon'ble Supreme Court of India in case of Shiv Shakti Gold Finger Vs. Assistant Commissioner, Commercial Tax, Jaipur-(1996) 9 SCC 514 wherein Honourable Supreme Court has clearly observed and held that irrespective of the shape of PAPAD and irrespective of ingredients used, the PAPAD still remains PAPAD

(b) In the case of State of Karnataka Vs. Vasavamba Stores - [2013] 60 VST 19 (Karn.), Honourable Karnataka High Court has clearly dealt with the issue whether Fryums in an uncooked/unfried form sold would qualify as PAPAD and it has been held by Honourable Karnataka High Court that FRYUMS fall under the entry of PAPAD irrespective of their shapes and sizes and irrespective of the ingredients used.

(c) In M/s. Avadh Food Products Vs. State of Gujarat-First Appeal



No. 1/2015 read with Rectification Application No. 31/2015 in First Appeal No. 1/2015 Dr;- 03/07/2015 reported in 2015 GSTB-11-405 and in M/s. Swethin Food Products Vs. State of Gujarat-2016 GSTB-1296, Honourable Tribunal has clearly held that Fryums are nothing but PAPAD falling under entry 9(2) in schedule 1 to the GVAT Act and exempt from payment of tax.

44. The above decisions are squarely applicable in the instant case as such the impugned product having different shapes and size PAPAD as compared to round shape Papad however are similar to Papad in respect of the ingredient, manufacturing process and use.

45. Further, in entry No. 96 of Notification No. 02/2017-CT (Rate) dated 28.06.2017, the description of the product is "PAPAD by whatever name called". To understand the term "whatever name called" the principle of "Noscitur a sociis" is to be applied. As per the said principle, the meaning of an unclear word or phrase must be determined by the words that surround it. In other terms, the meaning of a word must be judged by the company that it keeps. Therefore, in this entry, only a product called by name of PAPAD would not be covered but all types



of product which are similar to PAPAD in respect of ingredient, manufacturing process, use and common parlance would be covered irrespective of their shape and size and even name. As such, the appellant's product is similar to the traditional round shaped Papad in all respect, therefore, we are of the view that the impugned product i.e. different shapes and sizes of papad is eligible to be covered under entry No. 96 of Notification No. 02/2017-CT (Rate) dated 28.06.2017.

46. Gujarat Authority of Advance Ruling in their ruling has ruled that the product in question 'different shapes and size Papad merit classifiable under CTH No. 21069099 of Customs Tariff Act, 1975 on the grounds that PAPAD is a thing entirely different and distinct from FRYUMS. Therefore, in common parlance or in market, Fryums are not sold as "PAPAD" instead of "PAPAD" 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 applicant's products i.e. "different shapes and sizes of Papad" is not "Papad" but is "Un-fried Fryums". In the aforementioned paras, we have already discussed that the Fryums



is a brand name and not a generic name of the product therefore, impugned product "different shapes and size of papad", known as Fryums, is nothing but Papad.

47. We find that CTH No. 2106 of Customs Tariff Act, 1975 covers the Food preparations not elsewhere specified or included means under this heading all types of foods preparation are covered which are not covered under the specific heading of tariff. It is important to refer to Chapter Notes of Heading #21 wherein under clause 5 (b) it is stated that Heading 2106 includes preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption and under clause 6 it has been stated that Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" 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-headings irrespective of the nature of their ingredients. We find that Rule 3(a) of General Rule of Interpretation of the first schedule of Tariff states that the heading which provides



the most specific description shall be preferred to heading providing a more general description. Hence the rule of interpretation for classification is that when a product is eligible to be classified under specific entry then classification under general entry should not be preferred. We find that in the case at hand, the product "different shapes and sizes Papad" is "Papad" of different shapes and size and find specific entry at CTH No. 19059040, therefore as per rule of interpretation, the product is to be classified under CTH No. 19059040 only and not under CTH No. 21069099 of the Customs Tariff Act, 1975 as classified by the GAAR.

48. Taking all these aspects into consideration as discussed above, we hold that the product 'different shapes and sizes Papad' involved in the present case merit classification under Tariff heading No. 19059040 of the Customs Tariff Act, 1975. As we have already held that the product in question is classifiable under CTH No. 1905 of the Customs Tariff Act, 1975, the said CTH No. 1905 is covered under entry No. 96 of Notification No. 02/20178-CT (Rate) dated 28.06.2017 and



accordingly chargeable to NIL rate of Goods and Services Tax.”

26. It appears that in case of other petitioners, the Appellate Authority of Advance Ruling has arrived at a contrary decision and therefore, the petitions were filed before this Court in the years 2021 and 2022.

27. Be that as it may, in the 48th meeting of GST council, it was clarified that the snack pellets such as 'fryums' which are manufactured through the process of extrusion, are appropriately classifiable under Tariff Item No. 19059030 which covers the goods with description 'Extruded or expanded products, savoury or salted' and thereby attract GST at the rate of 18% vide Sr. No.16 of Schedule-III of Notification No.1/2017-Central Tax



(Rate), dated the 28th June, 2017.

28. Thereafter, in view of recommendation of GST Council in its 50th meeting, supply of un-cooked/un-fried extruded snack pellets by whatever name called, falling under CTH 1905 it was decided to reduce the rate from 18% to 5% by observing as under:

"5.5 The first issue pertained to tax rate change on uncooked/unfried snack pellets manufactured through extrusion process where the Fitment Committee recommended to reduce GST to 5% on uncooked/unfried extruded products by whatever name called. Fitment Committee also recommended to regularize for past period on 'as is where is basis due to genuine doubts. She further informed that the said issue was also discussed in detail in the Officer's Meeting on 10.07.2023 and no objections were raised."

29. On the basis of the above minutes of the meeting dated 11th July, 2023 of GST



Council in its 50th meeting, CBIC issued Circular No. 200/12/2023-GST dated 1st August, 2023 wherein it is stated as under with regard to product in question:

"2. Applicability of GST on unfried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion:

2.1 In the 48th meeting of the GST Council, it was clarified that the snack pellets (such 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

2.2 In view of the recommendation of the GST Council in the 50th meeting, supply of un-cooked/un-fried extruded snack pellets, by whatever name called, falling under CTH 1905 will attract GST rate of 5% vide S. No. 99B of Schedule I of notification no. 1/2017-Central Tax (Rate), dated



the 28th June, 2017 with effect from 27th July, 2023. Extruded snack pellets in ready-to-eat form will continue to attract 18% GST under S. No. 16 of Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

2.2 Further, in view of the prevailing genuine doubts regarding the applicability of GST rate on the un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion, the issue for past period upto 27.7.2023 is hereby regularized on "as is" basis."

30. In view of above minutes of the meeting of GST Council and circular dated 1st August, 2023, question arises as to what rate the GST is payable by the petitioners upto 22.07.2023 as both the GST Council as well as the Board were of the opinion to regularise the issue for the past period on 'as is where is' basis meaning thereby



whatever situation was prevailing with regard to the status of payment of GST by the petitioners shall continue to prevail upto 22.07.2023 and the petitioners have claimed their product to be exempt from GST, therefore, the petitioners cannot be subjected to levy of GST in order to regularise their returns which have been filed at Nil rate of GST.

31. It appears that the respondents have misinterpreted the words "as is" basis by issuing the impugned notices to levy GST at 18% on applicability of Tariff Item No. 19059030 ignoring the binding decision of Gujarat Appellate Authority for Advance Ruling under section 103 of the GST Act.

32. Therefore, when the petitioners have



claimed exemption under the Tariff Item no. 19059040 by claiming exemption to pay GST on the product manufactured by them, the same is required to be regularised on 'as is' basis as per the minutes of the meeting of GST Council as well as the notification issued by the Board on 1st August, 2023 coupled with binding ruling of appellate authority of advance ruling.

33. In view of the foregoing reasons, all these petitions succeed and are accordingly allowed. The impugned notice dated 7.02.2024 issued under section 74 of the GST Act are hereby quashed and set aside. The respondents are directed to regularise the past returns filed by the petitioners on 'as is' basis accepting the same as it is filed at Nil rate upto



22.07.2023.

34. Petitions are accordingly disposed of.
Rule is made absolute to the aforesaid
extent. No order as to cost.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

RAGHUNATH R NAIR