

APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA
PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE RULING
(U/s. 101 OF THE KERALA / CENTRAL GOODS AND SERVICES TAX ACT, 2017)

Members present:

Shyam Raj Prasad, IRS
Chief Commissioner
Central Tax, Central Excise & Customs
Thiruvananthapuram Zone

Dr. Rathan U. Kelkar, IAS
Commissioner
State Goods & Service Tax
Kerala

Name and Address of the Appellant	Sri. Abdul Aziz, M/s. GLOW WORM CHIPS 12/34, Kurichamkullam, Kallekkad, Palakkad - 678006
GSTIN	32BBHPA7155F1Z2
Advance ruling against which appeal is filed	KER/113/2021 dated 26/05/2021
Date of filing Appeal	17/06/2021
Date of Personal Hearing	02/11/2021
Authorized Representative	CA Shri. C. Seshadri Nadan

ORDER No. AAR/15/2021 dated 14/12/2021

1. The appeal stands filed under section 100(1) of the GST Act, 2017, by Sri. Abdul Aziz, Prop. M/s. GLOW WORM CHIPS having a registered office at 12/34, Kurichamkullam, Kallekkad, Palakkad - 678006, bearing GSTIN 32BBHPA7155F1Z2 (hereinafter referred as the appellant). The appeal stands filed against the Advance ruling Order No: KER/113/2021 dated 26-05-2021 pronounced by the Kerala Authority for Advance ruling.



2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. **Brief facts of the case:**

3.1. The appellant is engaged in business as a supplier of goods such as Jackfruit Chips, Banana Chips (salted and masala), and Sharkaraivaratty. The appellant make supply of these items without brand name. Jack Fruit chips are made by frying the fruit in edible oil. Potato and Tapioca Chips are also made by frying in edible oil. Salt is applied at the stage of frying. These will be sold as salted chips. If the chips are applied with masala after frying, it becomes masala chips. Banana Chips are made by slicing banana to thin round pieces and fried in edible oil. Salt and turmeric powder are also applied. In case of masala chips, appropriate type of masala is added. Sharkaraivaratty is made by frying, in edible oil, thick pieces of banana slices. Thereafter, they are mixed thoroughly in dense syrup of jaggery and thereafter in powder of dried ginger (chukku) and cardamom. As banana chips (salted and masala), jack fruit chips, and sharkaraivaratty are edible preparations, the appellant claims that the first two are savory and sharkaraivaratty is a sweetmeat.

The appellant is levying CGST / SGST / IGST @5% by classifying the commodities under Entry 101 A and 101 of Schedule I to Notification No. 1/2017-Central Tax (Rate).

3.2. Further the appellant intend to deal in salted and masala chips made of potato and Tapioca. Tapioca and potato are sliced into round pieces and fried in edible oil, salt is applied at the time of frying. After frying the same is packed and sold as such or after mixing with masala. Similarly, the appellant are also preparing roasted and salted/salted/roasted preparations of ground nuts, cashew nuts and other seeds and propose to sale them as Namkeens. They seek to classify these items as Namkeens under heading 2106.90 in view of Entry 101A of Schedule 1, to Notification No. 1/2017-CT(rate) and



supplementary notes 6 of chapter 21 of Customs Tariff Act. The appellant is levying CGST / SGST / IGST @5% by classifying the commodities under Entry 101 A and 101 of Schedule I to Notification No. 1/2017-Central Tax (Rate).

3.3. The appellant raised following queries before Honourable Advance Ruling Authority, Kerala for its Ruling: -

Query 1: Whether Jack Fruit Chips and Banana Chips (salted and masala varieties) made out of raw as well as ripe banana and sold without BRAND NAME are classifiable as NAMKEENS and are covered by HSN Code 2106.90.99 and taxable under Entry 101 A of Schedule of Central Tax (Rate) Notification 1 of 2017?

Query 2: Whether Sharkaraivaratty sold without BRAND NAME is classifiable as SWEET MEATS and covered by HSN Code 2106.90.99 and taxable under Entry 101A of Schedule of Central Tax (Rate) Notification 1 of 2017?

Query 3: Whether Roasted and salted / salted / roasted preparations such as of Ground-nuts, Cashew nut and other seeds are NAMKEENS and when sold without a brand name can they be classified under HSN 2106.90.99 and taxed under Entry 101 A of Schedule 1 of Central Tax (Rate) Notification 1 of 2017?

Query 4: Whether salted and masala chips of Potato and Tapioca are classifiable as Namkeens and when sold without a brand name can they be classified under HSN 2106.90.99 and taxed under Entry 101 A of Schedule 1 of Central Tax (Rate) Notification 1 of 2017?

3.4. After due process of law, the Hon'ble Advance Ruling Authority of Kerala vide Order No. KER/113/2021 dated 25.05.2021 held that all the products involved in the application are not classifiable under heading 2106.90 as claimed by the appellant but are classifiable under heading 2008.19 of Customs Tariff and TAXABLE UNDER Entry Sl. No. 40 of Schedule II to Notification No.1/2017-CT (rate) dated 28.06.2017 and leviable to GST @12% (6%-CGST +6% SGST).

4. Grounds of Appeal: Being aggrieved of the advance ruling order, the appellant has filed the instant appeal seeking setting aside of the said rulings on the following grounds:



4.1. The Order of Learned Authority for Advance Ruling, Kerala, in so far as it is prejudicial to the appellant, is opposed to facts and law of the case. Learned Authority for Advance Ruling failed to consider the facts and legal aspects stated in the application for advance ruling.

4.2. Supplementary Note No. 6 in Chapter 21 of Customs Tariff Act says "Tariff item 2106.90.99 includes sweetmeats 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". So, Learned Authority for Advance Ruling ought to have classified chips made from banana (salted, masala or made from raw or ripe banana), jackfruit, tapioca, chernbu, potato and kovakkai and pavakkai vattal as NAMKEENS under HSN 2106.90.99 and Entry 101 A of Schedule 1 of Central Tax (Rate) Notification 1 of 2017.

4.3. Learned Authority ought to have applied the order in Pepsico India Holdings Pvt. Ltd. V/s. Commissioner of Central Excise & Service Tax, Chandigarh-I, [2015 (318) E.L.T. 278 (Tri. - Del.)] wherein it was held that salted food preparations are "namkeen" (paragraph 8 of the order). Further Learned Authority for Advance Ruling ought to have considered Para 3.1.1 of Chapter 3 of Food Safety And Standards (Food Products Standards And Food Additives) Regulations, 2011, which lays down that banana chips and similar fried products such as Chiwda, Bhujia, Dalmoth, Kadubale, Kharaboondi, Spiced and fried dals, sold by any name are traditional foods i.e., Snacks of Savouries (Fried Products).

4.4. In common / commercial parlance, NAMKEEN is a ready to eat SAVOURY / SNACK and is a product prepared by applying salt, masala and the like. As the term "NAMKEEN" is not defined under CGST Act, common parlance test ought to have been applied. That common parlance meaning has to be applied is clear from the wordings of Supplementary Note No. 6 of Chapter 21 - "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". Therefore chips made from banana, jackfruit, tapioca, chembu and potato and kovakkai and pavakkai vattal are NAMKEENS and classifiable under HSN 2106.90.99 and Entry 101 A of Schedule 1 of Central Tax (Rate) Notification 1 of 2017.

4.5. Supplementary Note No. 6 in Chapter 21 makes HSN 2106.90.99 a specific entry. So, chips made from banana (ripe as well as raw), tapioca, jack fruit, potato and chembu and kovakka and pavakka vattal, ought to have been held as NAMKEENS and liable for tax under Entry No. 101 A of Central Tax (Rate) Notification No. 1/ 2017 dated 27/06/2017. So, the question of including them under any other Chapter like Chapter 20 does not arise. Similarly, Sharkaraivaratty and Halwa are sweetmeats by application of common parlance test and Supplementary Note No. 6 of Chapter 21, as is evident from the words "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". Therefore, Sharkkaraivaratty and Halwa, made with jaggery as sweetener, are also sweetmeats. Neither the Customs Tariff Act nor the GST laws lay down that sweetmeats should be prepared only with sugar as the sweetener. Jaggery is a commonly used sweetener. This submission is fortified by supplementary Note 6 in Chapter 21 as well as the press release dated 29/09/2017 of CBIC containing an FAQ relating to GST Rates. Hence, the question of including Sharkkaraivaratty and Halwa under HSN 2008 does not arise. Relevant portion of FAQ is extracted below:-

"What is the HS Code and GST rate on chena products, halwa, barfi (i.e. khoya product), laddu?"

Products like halwa, barfi (i.e. khoya product), laddus falling under HS Code 2106, are sweetmeats and attract 5% GST."

4.6. It is further submitted that the learned Authority for Advance Ruling failed to consider that in the Advance Rulings in KER/53/2019 Dated 21/06/2019 and KER/66/2019 dated 30/09/2019 did not involve the legal and factual issues raised by this appellant. Applicants in those cases had



classified their products under HSN 2008 and their application was for a confirmation of their classification.

4.7. The appellant contends that application of Rule 2 (a) of the General Rules for the Interpretation of Import Tariff by the Learned Authority for Advance Ruling is unwarranted and unsustainable as Supplementary Note 6 of Chapter 21 squarely covers chips made from banana, tapioca, jack fruit, potato and chembu and kovakka and pavakka vattal and sharkkaraivaratty and halwa. As these products are covered by above supplementary note, it should be straight away classified with HSN 2106.90.99 and taxed under Entry 101 and 101 A of Schedule 1 of Notification No. 1 / 2017 - Central Tax (Rate). Moreover from a plain reading of latter part of the description of Entry 40 of Schedule 2 of Central Tax (Rate) Notification No. 1 of 2017 it emerges that it covers only Ground-nut, Cashew nut, other roasted nuts and seeds, SQUASH of Mango, Lemon, Orange, Pineapple or other fruits. As what is sold is not a "NUT" or "SQUASH" of any fruit, this entry is not attracted.

4.8. Further by applying the principles of para 3.3 and 3.4 of Circular No. 113 / 32 / 2019 -GST [F.NO. 354/131/2019-TRU], dated 11-10-2019, Sharkkaraivaratty and Halwa are sweetmeats and chips of banana, jackfruit, tapioca, chembu, potato, kovakkai and pavakkai vattal and similar preparations are namkeen. In Paragraph 3.4 of the Circular, it is stated that "However, if the above dried leguminous vegetable is mixed with other ingredients (such as oil, salt etc) or sold as namkeens then the same would be classified under Sub heading 2106 90 as namkeens, bhujia, chabena and similar edible preparations and attract applicable GST rate".

4.9. It is also highlighted that GST Rate for the fruits or tubers [Banana (HSN 0803), Jackfruit (HSN 0810.90.90), Potato (HSN 0701) and tapioca (HSN 0714.90.90)] GST Rate is NIL and they attract 5% GST when sold as ready to eat food preparations.

Chapter 21 includes items processed out of vegetables like tomato, soya etc., as can be seen from 2103.20.00 (tomato ketchup and other tomato sauces). Therefore a product made out of fruit or vegetable need not necessarily fall under Chapter 20 if they are included under any other chapter by specific inclusion.



4.10. On the basis of above, the appellant prayed that this Appellate Authority for Advance Ruling may hold that sharkkaraivaratty, halwa, chips made of banana (salted, masala or made from raw or ripe banana), jackfruit, tapioca, chembu, potato and kovakkai and pavakkai vattal are classifiable under HSN 2106.90.99 and liable for tax under Entries 101 and 101 A of Schedule I of Notification No.1 / 2017 - Central Tax (Rate), Dated 28-6-2017

4.11. In addition to above submissions, the appellant also submitted the following in their favour:

- Supplementary Note No.5 (b) of Chapter 21 of Customs Tariff Act states that Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption. Supplementary Note No. 6 of Chapter 21 of Customs Tariff Act states that HSN 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 and remain classified in these subheadings irrespective of the nature of their ingredients. So, NAMKEENS and SWEETMEATS are specifically included in HSN 2106.90.99 and hence cannot be classified under any other Chapter.
- Banana and Jackfruit are mentioned in **CHAPTER 8 [EDIBLE FRUIT AND NUTS; PEEL OF CITRUS FRUIT OR MELONS]**. Chapter 21 includes items processed out of vegetables like tomato, soya etc., (HSN 2103.20.00). Therefore, a product made out of fruit or vegetable need not necessarily fall under Chapter 20 if they are included under any other chapter by specific inclusion.
- It is further submitted by the appellant that application of *Rule 2(a) of the General Rules for the interpretation of Import Tariff* by Learned Authority for Advance Ruling is unwarranted for the following reasons:-
 - Application of Rule 2 was made by disregarding Rule 1 of the General rules of Interpretation. *Supplementary Note 6 of Chapter 21 established that chips made from banana, tapioca, jack fruit,*



potato, chembu, kovakka and pavakka and sharkkarai varatty are Namkeens / Sweetmeats and hence classifiable under HSN 2106.90.99. HSN 2008 stipulates that it takes into its fold fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, *not elsewhere specified or included*. It is submitted that the words "*not elsewhere specified or included*" is material as Supplementary Note No. 6 of Chapter 21 stipulates that products now under consideration are covered by HSN 2106.90.99.

- Further in para 29 of the judgment in H.P.L Chemicals Ltd. v. Commissioner of Customs, Chandigarh (2006) 2006 taxmann.com 42 (SC), if Revenue is resorting to a classification different from that of the assessee, burden of proof is on the Revenue. In the impugned order, learned Authority has not adduced any reason for not classifying chips made from banana, tapioca, jack fruit, potato, chembu, kovakka and pavakka and sharkkarai varatty as NAMKEEN. As the products sold are salted preparations (savouries/snacks) and sweet meats, as understood in common parlance, FOOD SAFETY AND STANDARDS (FOOD PRODUCTS STANDARDS AND FOOD ADDITIVES) REGULATIONS, 2011 by CSTAT, it is prayed that this Honourable Kerala Appellate Authority for Advance Ruling may kindly classify the products under HSN 2106.90.99 and Entry 101 A/ 101 of Schedule I of Central Tax (Rate) Notification 1 of 2017.

5. PERSONAL HEARING:

The appellant was afforded an opportunity of personal hearing via virtual media on 02/11/2021. The authorized representative of the appellant CA Shri.C. Sheshadrinadan appeared before the authority and reiterated the contentions raised in the appeal memorandum. They also submitted additional submission in their favour for consideration, which was also taken on record.

6. DISCUSSION & FINDINGS

6.1. We have carefully gone through the facts of the case, the order issued by the Authority for Advance ruling vide order no: KER 113/2021 dated



26/05/2021, the appeal memorandum filed by the appellant and other submissions made by them during the course of personal hearing and other evidences on record. The issue to be determined is the classification and rate of tax of Jackfruit Chips, Banana Chips, Tapoica Chips, Potato Chips, Chembu Chips, Pavakka Chips and roasted / salted / roasted and salted preparations of Ground nuts, Cashew nut and other seeds supplied or proposed to be supplied by the appellant.

6.2. The contentions raised by the appellant were examined in seriatim. The first claim of the appellant is that the impugned products ought to have been classified as Namkeens or sweetmeats under the HSN 2106.90.90 of the Customs tariff and taxed to GST @5% as per entry 101A of Schedule I to Notification No. 1/2017-CT(rate) dated 28.06.2017. The relevant entry as specified under schedule I to the notification no: 1/2017 - CT (rate) dated 28-06-2017 reads as follows:-

Entry 101 A of Sch. I of Notification 1 of 2017	HSN 2106.90	Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, other than those 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 conditions as specified in the ANNEXURE
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6.3. The appellant has relied upon Supplementary Note No. 5 (b) of chapter 21 to claim classification under heading 2106.90, which provides as under:

"Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes: (b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption".

The appellant has contended that Supplementary Note No.5 (b) of Chapter 21 of Customs Tariff Act states that Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption. Supplementary Note No. 6 of



Chapter 21 of Customs Tariff Act states that HSN 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 and remain classified in these subheadings irrespective of the nature of their ingredients. So, NAMKEENS and SWEETMEATS are specifically included in HSN 2106.90.99 and hence cannot be classified under any other Chapter.

6.4. The appellant has also referred to Supplementary Note No. 6 of chapter 21 in their favour, which provides as under:

"Tariff item 2106.90.99 includes sweet meat 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 ingredient".

The appellant has submitted that Supplementary Note No. 6 in Chapter 21 makes HSN 2106.90.99 a specific entry. So, chips made from banana (ripe as well as raw), tapioca, jack fruit, potato and chembu and kovakka and pavakka vattal, ought to have been held as NAMKEENS and liable for tax under Entry No. 101 A of Central Tax (Rate) Notification No. 1/ 2017 dated 27/06/2017. So, the question of including them under any other Chapter like Chapter 20 does not arise. Similarly, Sharkaraivaratty and Halwa are sweetmeats by application of common parlance test and Supplementary Note No. 6 of Chapter 21, as is evident from the words "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". Therefore, Sharkaraivaratty and Halwa, made with jaggery as sweetener, are also sweetmeats. They contended that this submission is fortified by supplementary Note 6 in Chapter 21 as well as the press release dated 29/09/2017 of CBIC containing an FAQ relating to GST Rates. Hence, the question of including Sharkaraivaratty and Halwa under HSN 2008 does not arise. Relevant portion of FAQ is extracted below:-



"What is the HS Code and GST rate on chena products, halwa, barfi (i.e. khoya product), laddu?"

Products like halwa, barfi (i.e. khoya product), laddus falling under HS Code 2106, are sweetmeats and attract 5% GST."

6.5. We find that Chapter 21 of the Customs tariff covers "Miscellaneous edible preparations" and the relevant entries of heading 2106 are as under:

21.06 – Food preparations not elsewhere specified or included.

2106.10 – Protein concentrates and textured protein substances

2106.90 – Other

The explanatory notes to the heading 2106 further excludes :

- (a) *Preparations made from fruits, nuts or other edible parts of plants of heading 20.08, provided that the essential character of the preparations is given by such fruit, nuts or other edible parts of plants (heading 20.08)*

Similarly, the chapter note 1 to Chapter 21 provides as under:

"1.- This Chapter does not cover :

- (a) *Mixed vegetables of heading 07.12;*
- (b) *Roasted coffee substitutes containing coffee in any proportion (heading 09.01);*
- (c) *Flavoured tea (heading 09.02);*
- (d) *Spices or other products of headings 09.04 to 09.10;*
- (e) *Food preparations, other than the products described in heading 21.03 or 21.04, containing more than 20 % by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);*
- (f) *Yeast put up as a medicament or other products of heading 30.03 or 30.04; or*



*(g) Prepared enzymes of heading 35.07.**

From the plain reading of the contents of chapter 21, it reveals that it includes the food preparations which are not elsewhere specified in the customs tariff. Those food preparations not specified or included elsewhere in the tariff being preparations for use either directly or after processing for human consumption are to be classified under this heading 2106. Further the heading 2106 specifically excludes the preparations made from fruit, nuts or other edible parts of plants of heading 2008, provided that the essential character of the preparations is given by such fruit, nuts or other edible parts of plants. Therefore, it is evident that the entry 2106.90 is a residuary entry in respect of edible preparations and hence the edible preparations shall be classified under this entry only if the same are not classifiable under any of the other specific entries for edible preparations. Therefore, we need to examine if these products are not elsewhere covered or specified in the customs tariff.

6.6. The rival entries of Tariff which have been relied upon by the Advance Ruling authority are chapter 20 (which covers Preparations of vegetables, fruit, nuts or other parts of plants) and heading 2008, the relevant contents of which are reproduced below:

20.08 - Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirits, not elsewhere specified or included.

- Nuts, ground-nuts and other seeds, whether or not mixed together :

2008.11	Ground-nuts
2008.19	Other, including mixtures

6.7. We find that the General explanatory notes to chapter 20 provides that this Chapter includes:

(a) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by vinegar or acetic acid.



- (b) Vegetables, fruits nuts, fruit-peel and other parts of plants preserved by sugar.
- (c) Jams, fruit jellies, marmalades, fruit or nut purees, fruit or nut pastes, obtained by cooking.
- (d) Homogenized prepared or preserved vegetables and fruit.
- (e) Fruit or vegetable juices, neither fermented nor containing added alcohol, or of an alcoholic strength by volume not exceeding 0.5 % vol.
- (f) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by other processes not provided for in Chapter 7, 8 or 11 or elsewhere in the Nomenclature.
- (g) Products of heading 07.14, 11.05 or 11.06 (other than flour, meal and powder of the products of Chapter 8), which have been prepared or preserved by processes other than those specified in Chapter 7 or 11.
- (h) Fruit preserved by osmotic dehydration.

Further the explanatory notes to heading 2008 reads as follows:-

This heading covers fruit, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, inter alia:

- (1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil-roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.
- (2) "Peanut butter", consisting of a paste made by grinding roasted ground-nuts, whether or not containing added salt or oil.
- (3) Fruit (including fruit-peel and seeds) preserved in water, in syrup, in chemicals or in alcohol.
- (4) Fruit pulp, sterilised, whether or not cooked.



- (5) Whole fruits, such as peaches (including nectarines), apricots, oranges (whether or not peeled or with the stones or pips removed) crushed and sterilised, whether or not containing added water or sugar syrup but in a proportion insufficient to render them ready for direct consumption as beverages. When rendered ready for direct consumption as beverages by addition of a sufficient quantity of water or of sugar syrup, these products fall in heading 22.02.
- (6) Cooked fruit. However, fruit cooked by steaming or boiling in water and frozen remains in heading 08.11.
- (7) Stems, roots and other edible parts of plants (e.g., ginger, angelica, yams, sweet potatoes, hop shoots, vine leaves, palm hearts) conserved in syrup or otherwise prepared or preserved.
- (8) Tamarind pods in sugar syrup.
- (9) Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables), preserved by sugar and put up in syrup (e.g., marrons glaces or ginger), whatever the packing.
- (10) Fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content.

The products of this heading may be sweetened with synthetic sweetening agents (e.g., sorbitol) instead of sugar. Other substances (e.g., starch) may be added to the products of this heading, provided that they do not alter the essential character of fruit, nuts or other edible parts of plants.

The products of this heading are generally put up in cans, jars or airtight containers, or in casks, barrels or similar containers. The heading also excludes products consisting of a mixture of plants or parts of plants (including seeds or fruits) of different species or consisting of plants or parts of plants (including seeds or fruits) of a single or of different species mixed with other substances such as one or more plant extracts, which are not consumed as



such, but which are of a kind used for making herbal infusions or herbal "teas" (e.g., heading 08.13, 19.09 or 21.06). The heading does not cover fruit, nuts or other edible parts of plants transformed into sugar confectionery (including those based on natural honey), of heading 17.04. The heading further excludes mixtures of plants, parts of plants, seeds or fruit (whole, cut crushed, ground or powdered) of species falling in different Chapters (e.g., Chapters 7, 9, 11, 12) not consumed as such, but of a kind used either directly for flavouring beverages or for preparing extracts for the manufacture of beverages (Chapter 9 or heading 21.06).

6.8. Further the entry at Sl. No. 40 of Schedule II to Notification No. 1/20017-CT (rate) dated 28.06.2017 reads as follows:

Sl. No.	Chapter/heading/ sub- heading/Tariff item	Description of goods
40	2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirits, not elsewhere specified or included; such as Ground nuts, Cashew nut, roasted, salted or roasted and salted, Other roasted nuts and seeds, squash of mango, lemon, Orange, Pineapple or other fruits.

6.9. It is noticed that as per chapter note 1(a) to chapter 20, the chapter does not cover vegetables, fruits or nuts prepared or preserved by the processes specified in chapter 7, 8 or 11. It means that these items not being processed or preserved by the said processes shall be covered in chapter 20. The processes specified in chapter 7, 8 or 11 are freezing, steaming, boiling, drying, provisionally preserving and milling. Chapter heading 2008 covers roasted, salted or roasted and salted nuts and fruits such as ground nuts, cashew nuts, other seeds and nuts and these are specifically covered under said heading vide sl. No. 40 of schedule II to notification No. 1/2017-CT (rate). Hence there remains no doubt that the roasted/salted/roasted and salted ground nuts, cashew nuts and other seeds/nuts shall be appropriately classifiable under heading 2008 of customs tariff. Even otherwise also, heading 2106.90 being a residuary heading shall not stand against a specific heading 2008 as per Rules of interpretation of the tariff.



6.10. Regarding other items under dispute viz. banana chips, tapioca chips, potato chips, jackfruit chips and sharkara varatty, the manufacturing process applied by the appellant in making these items is not in dispute. These chips are made by slicing, frying, adding salt or masala or jaggery syrup before packing and supply. It is not the case of the appellant that the essential characteristics of the fruits or vegetables are getting changed by applying the processes. As far as the essential nature of the products remains unchanged, the edible parts of plants are appropriately classifiable under heading 2008. In this case, the raw banana or potato or jackfruit or tapioca even after going through the process of frying and salting remain as vegetables and fruits only. The process of frying in oil and roasting are cooking methods wherein high temperature is used for processing of the edible parts of the fruit or vegetables as in this case. According to the World Book Dictionary "Preparation" means the "act of preparing, making ready a medicine, food, or mixture of any kind made by a special process". The process of roasting and frying has not been excluded in Note 1 to Chapter 20 and as such Note 1 is applicable to Roasted and fried vegetables, fruits, nuts and edible parts of plants. Further the explanatory notes to heading 2008 specify that this heading covers fruit, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter. When according to chapter notes and description of tariff items, the products are classifiable under specific headings of Chapter 20, they cannot be classified under Heading 2106 as food preparations not elsewhere specified or included or under Chapter 8 as claimed by the appellant.

6.11. The appellant had raised a contention that Application of rule 2(a) of the general rule of interpretation of the import tariff by the learned authority for advance ruling is unwarranted. In this regard, reference is made to the provisions of Notification 1/2017, CT (rate) dated 28-6-2017 which specifies about tax rate of goods and classification applicable to them. The Explanation appended to the Notification No: 01/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;



"Explanation:-

(1) In this Schedule, tariff item, heading, sub-heading and Chapter shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 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 above table."

6.12. In view of the above legal provisions, the rules for interpretation of the First Schedule to the Customs Tariff Act, 1975 including the Section and Chapter Notes and the General Explanatory Notes are squarely applicable for interpretation of the GST Tariff / Rate Schedule. Hence, the contention of the appellant in this regard is baseless and is accordingly rejected. The General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 are as follows:

"Rule 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;

Rule 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.

Rule 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, insofar 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.

Rule 4: Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin."

6.13. By applying the rules for interpretation of the tariff, specially rule 1, 2 and 3 of the same, it is evident that the impugned goods are appropriately classifiable under heading 2008 and not under heading 2106. Rule 2(a) provides that 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...according to which the chips of jackfruit, potato, banana or tapioca gets also appropriately classifiable under heading 2008 along with specifically covered goods viz. Roasted and salted nuts under examination (which is covered by Rule 3(a) of the said rules for interpretation). Further, chapter 21 covers Miscellaneous edible preparations, whereas chapter 20 specifically covers 'Preparations of vegetables, fruits, nuts or other parts of plants. Hence, when there is a specific entry providing for the most specific description in the heading 2008 to the impugned products over the residuary heading description of heading 2106.90, the said impugned goods is held appropriately classifiable under heading 2008, by virtue of rule 3(a) of the rules for interpretation. In view of clear provisions in GST laws for interpretation of tariff, the contention of the appellant regarding common parlance understanding of a goods does not hold water, as is therefore rejected.



6.14. The case laws pointed out by the appellant are not applicable in the current case due to following reasons. The Hon'ble High court of Kerala in case of P Bashir vs State of Kerala 1993 91 STC 291(Ker) had held that due to the mere fact that banana chips, murukku, achappam, pakkavada and mixture were sold or marketed by a dealer who is really a baker cannot bring these items under the entry bakery products within the meaning of those words as baking in entries 9 and 15 of the first schedule to the KGST Act 1963. This decision is based on the schedule of KGST Act which was the taxation law applicable then . In GST, there is no separate entry for classification of bakery products. Instead, the classification under GST laws is based on customs tariff, which has been applied properly as detailed above. Therefore, this case law is not applicable to the case in hand.

Another case relied upon by the appellant is the decision in case of Pepsico India holdings P Ltd Vs Commissioner of Central Excise and ST Chandigarh 2015 (318) ELT 278. It was held that potato wafers packaged in retail packing are prima facie classifiable under item number 2005 20 00 of chapter 20 hence eligible for exception under notification issued under Central Excise Tariff Act 1985. Further, the contention of the departments to classify same under heading 2106 90 99 was not held appropriate as against heading 2005 20 00 as far as classification is concerned. This instead re-enforces the decision taken in this case by the lower authority.

6.15. Moreover, we rely upon the following case laws:

(1) Hon'ble Supreme Court in the case of CCE v. Jayant Oil Mills Pvt. Ltd. reported in 1989 (40)E.L.T. 287 (S.C.) observed, inter alia, as follows;

"It is well settled that resort could not be had to the residuary item if the product comes within the ambit of any other tariff item."

(2) In the case of Western India Plywoods Ltd. v. Collector of Customs reported in 2005 (188) E.L.T. 365 S.C. the Hon'ble Supreme Court, inter alia, held that;

"Application of residuary item only when no other heading expressly or by necessary implication applies."



(3) In the case of Commissioner of Central Excise v. M/s. Wockhardt Life Sciences Ltd. reported in 2012 (277) E.L.T. 299 (S.C.); the Hon'ble Supreme Court, inter alia, laid down the following principles for classification of goods;

- There is no fixed test for classification of a taxable commodity. This is probably the reason why the 'common parlance test' or the 'commercial usage test' is the most common. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted.
- However, there cannot be a static parameter for the correct classification of a commodity. The process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff.
- Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance.
- A commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense. A residuary entry can be taken refuge of only in the absence of a specific entry; that is to say, the latter will always prevail over the former.
- The combined factor that requires to be taken note of for the purpose of the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put."

6.16. The case of Advance ruling authorities RE: MR. P.M. SANKARAN [KER/53/2019 Dated 21 June 2019] and KER/66/2019 dated SEPTEMBER 30, 2019, it is held that Jackfruit Chips, Banana Chips and Sharkaraivaratty



fall under HSN 2008.19.40 and have to be classified under Entry 40 of Schedule 2 of Notification No. 1 of 2017 and tax at 12% is to be paid.

6.17. Accordingly, on the basis of the above stated law and facts, all the other contentions of the appellant are rejected being not tenable and impugned goods viz. Jackfruit Chips, Banana Chips, Tapoica Chips, Potato Chips, Chembu Chips and Pavakka Chips (Bittergourd) (Whether salted/ masala or otherwise) are held classifiable under Tariff Heading 2008 19 40 of the Customs Tariff Act, 1975. Regarding classification of roasted /salted / roasted and salted Cashew nuts, Ground nuts and other nuts, there are specific headings under Chapter 20 that covers the products. Accordingly, roasted /salted / roasted and salted Cashew nuts are held classifiable under Tariff Heading 2008 19 10, and other roasted /salted / roasted and salted nuts and seeds are classifiable under 2008 19 20 of the Customs Tariff Act, 1975.

6.18. In the light of the discussion above, it can be seen that the impugned products are classifiable under different Tariff Items of Heading 2008 of Chapter 20 of the Customs Tariff Act, 1975. Regarding rate of GST applicable to the said goods, the entry at Sl. No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;

Sl No.	Chapter / Heading / Sub-Heading / Tariff Item	Description of goods
40	2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included; such as Ground-nuts, Cashew nut, roasted, salted or roasted and salted, Other roasted nuts and seeds, squash of Mango, Lemon, Orange, Pineapple or other fruits.

On a plain reading of the above entry, it is evident that all the products that fall under Chapter Heading 2008 of the Customs Tariff Act, 1975 attract GST at the rate of 12 % [6% CGST + 6% SGST].

7. In view of the observations as above, the following orders are issued;



ORDER

1. Whether Jackfruit chips and Banana chips (salted and masala varieties) made out of raw as well as ripe banana and sold without BRAND NAME are classifiable as NAMKEENS and are covered by HSN code 2106.90.99 and taxable under Entry 101A of schedule of Central Tax (Rate) Notification No.1 of 2017?

No. The Jackfruit Chips and Banana Chips are classifiable under Customs Tariff Heading 2008.19.40 and liable to GST at the rate of 12% [6% - CGST + 6% - SGST] as per Entry at Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.

2. Whether Sharkara Varatty sold without BRAND NAME is classifiable as SWEET MEATS and covered by HSN code 2106.90.99 and taxable under Entry 101A of Schedule of Central Tax (Rate) Notification 1/2017?

No. Sharkara Varatty is classifiable under Customs Tariff Heading 2008.19.40 and is liable to GST at the rate of 12% [6% - CGST + 6% - SGST] as per Entry at Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.

3. Whether roasted and salted / salted / roasted preparations such as of Ground nuts, Cashew nut and other seeds are NAMKEENS and when sold without a brand name can they be classified under HSN 2106.90.99 and taxed under Entry 101A of Schedule 1 of Central Tax (Rate) Notification No.1/2017?

No. Roasted / salted / roasted and salted Cashew nuts are classifiable under Customs Tariff Heading 2008.19.10 and roasted / salted / roasted and salted Ground nuts and other nuts are classifiable under Customs Tariff Heading 2008.19.20 and is liable to GST at the rate of 12% [6% - CGST + 6% - SGST] as per Entry at Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.





4. Whether salted and masala chips of Potato and Tapioca are classifiable as Namkeens and when sold without a brand name can they be classified under HSN 2106.90.99 and taxed under Entry 101A of Schedule 1 of Central Tax (Rate) Notification No.1 of 2017?

No. The salted and masala chips of Potato and Tapioca are classifiable under Customs Tariff Heading 2008.19.40 and is liable to GST at the rate of 12% [6% - CGST + 6% - SGST] as per Entry at Sl No. 40 of Schedule II of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.

8. In nut shell, the Advance Ruling No. KER/113/2021 dated 26/5/2021 of the Advance Ruling Authority, Kerala stands upheld with aforesaid modification and consequently the appeal filed by the appellant is rejected.


Shyam Raj Prasad, IRS
Chief Commissioner

Central Tax, Central Excise & Customs
Thiruvananthapuram Zone


Dr. Rathan U. Kelkar, IAS
Commissioner
State Goods & Service Tax
Kerala



To

Sri. Abdul Aziz,
M/s. GLOW WORM CHIPS
12/34, Kurichamkullam, Kallekkad,
Palakkad - 678006