

## MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

### BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax, ( Member )  
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax, ( Member )

GSTIN Number, if any/ User-id		27AACCH2133E1Z3
Legal Name of Applicant		Signature International Foods India Private Limited
Registered Address/ Address provided while obtaining user id		A-2/245, Shree Samarth Sahakari Audhyogik Vasatad Ltd., Mukhed Road, Pimpalgaon (Baswant), Nashik 422209
Details of application		GST-ARA, Application No. 29 Dated 23.05.2018
Concerned officer		State Tax Officer, NAS-VAT-D-007, Goods and Service Tax, Prashant Nagar, Near Pathardi Phata, GST Bhavan, Nashik.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing
B	Description (in brief)	The Applicant is engaged in the business of, inter alia, manufacturing, trading and exporting bakery products which includes flatbreads.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

### PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Signature International Foods India Private Limited, the applicant, seeking an advance ruling in respect of the following questions.

*"Whether on facts and circumstances of the case, the Unleavened Flatbreads be treated as 'Khakra, plain chapatti or roti under Entry No. 99 A of Schedule I of Notification No. 01/2017-Integrated Tax (Rate) dated 28 June 2017, Notification Number 1/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 1/2017-State Tax (Rate) No. MGST1017/ C.R. 104/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Rate Notifications')*

*If not, whether on facts and circumstances of the case, the Unleavened Flatbreads be classified:*

- (i) *as 'bread' as mentioned under Entry No. 97 of Notification Number 02 Number 2/2017 Integrated Tax (Rate), dated 28 June 2017, Notification Number 2/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 2/2017-State Tax (Rate) No. MGST1017/ C.R. 103(1)/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Exemption Notifications');* or
- (ii) *as Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included [other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905] on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) under Entry No. 13 of Schedule III of Rate Notification or*
- (iii) *Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*



2. *"Whether on facts and circumstances of the case, the Leavened Flatbreads be treated as 'as bread' as mentioned under Entry No. 97 of Exemption Notifications*

*if not, whether on facts and circumstances of the case, the Leavened Flatbreads be classified:*

*(i) Pizza Bread as mentioned under Entry No. 99 of Schedule I of Rate Notifications; or*

*(ii) as Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) under Entry No. 13 of Schedule III of Rate Notification or*

*(iii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

3. *"Whether on facts and circumstances of the case, Corn Chips, Corn Taco and Corn Taco Strips supplied be treated as 'wafer' under Entry No. 16 of Schedule III of Rate Notifications*

*if the same is not classifiable as 'wafer', whether on facts and circumstances of the case, the Corn Chips, Corn Taco and Corn Taco Strips be classified*

*(i) as "Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905)" under Entry No. 13 of Schedule III of Rate Notification; or*

*(ii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

*"Whether on facts and circumstances of the case, Pancakes supplied be treated as All Goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate; biscuits; Pastries and cakes (other than pizza bread, khakhra, plain chapatti or roti, Waffles and wafers coated with chocolate or containing chocolate, papad, bread) as mentioned under Entry No. 16 of Schedule III of Rate Notifications.*

*If not, whether on facts and circumstances of the case, the Pancakes be classified any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

*"Whether on facts and circumstances of the case, Pizza Base supplied be treated as 'Pizza Bread' as mentioned under Entry No. 99 of Schedule I of Rate Notifications.*

*If not, whether on facts and circumstances of the case, the Pizza Base be classified any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

#### **FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

#### **Statement of the relevant facts having a bearing on the aforesaid question/(s)**

The relevant facts of the case are as follows

#### **1. Background of operations**

- 1.1. The Applicant, a private limited company incorporated under the provisions of Companies Act, 1956 holding the GST registration number ('GSTIN') 27AACCH2133E123 with effect from 01 July



2017, is located at A/2, Plot No. 245, Shree Samarth Sahkari Audhyogik Vasahat, Mukhed Road, Pimpalgaon Baswant, Taluka Niphad, Nashik, Maharashtra.

- 1.2. The company is engaged in the business of, inter alia, manufacturing, trading and exporting bakery products which includes flatbreads.
- 1.3. The products are available in an ambient and frozen format with a shelf life ranging from a few days to one year depending on the customers' requirements. The Applicant supplies products to customers and distributors in India and in overseas markets including the Middle East, South East Asia, Africa and Australia.
- 1.4. Presently, the Applicant supplies flatbreads to retailers, canteens, airlines, hotels, hospitals, schools, restaurants, wholesalers, distributors and other foodservice operators located in India and overseas.

***Unleavened Flatbread information***

- 1.5. The Applicant has been engaged in manufacturing and supplying unleavened flatbreads including Plain Chapatti and variants of Chapatti flatbreads referred to internationally in different countries as Tortilla, Tortilla Wraps, Wraps, Roti Rolls, Roti, Chapatti, Paratha and Paratha Wraps.
- 1.6. While manufacturing these unleavened flatbreads, the Applicant uses various raw materials such as atta, maida, water, palmolein oil, salt, sugar, baking powder, wheat gluten etc. The bakery process can be defined as a succession of steps that ensure the proper transformation of basic ingredients into unleavened breads. The baking processes the Applicant uses follow the same basic steps as traditional baking processes used for thousands of years.
- 1.7. The products are manufactured by the Applicant using various ingredients including atta, maida, water, palmolein oil, salt, sugar, baking powder, wheat gluten etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the bread is packed, the packet is labelled and subsequently stored and transported at -18 Degree Celsius temperature or transported ambient.

We have attached herewith the manufacturing process flow as Exhibit 1.

***Leavened Flatbread information ('Bread Products')***

- 1.8. The Applicant has been engaged in manufacturing and supplying leavened flatbreads including Naan, Kulcha and variants of these type of leavened breads referred to internationally in different countries as Pitta bread, Chalupa, Corn bread, Leavened Flatbreads and Unfolded Leavened Flatbread.
- 1.9. While manufacturing these leavened flatbreads, the Applicant uses various raw materials such as maida, tandoori atta, atta, water, rice flour, oil, yeast, salt, sugar etc. The bakery process can be defined as a succession of steps that ensure the proper transformation of basic ingredients into leavened flatbread. The baking processes the Applicant uses follow the same basic steps as traditional baking processes used for thousands of years.
- 1.10. The traditional process of baking bread involves preparation of dough from various ingredients such as maida, tandoori atta, atta, water, rice flour, oil, yeast, salt, sugar etc. The dough is subsequently baked in an oven to produce leavened bread.
- 1.11. The products are manufactured by the Applicant using various ingredients including maida, tandoori atta, atta, water, rice flour, oil, yeast, salt, sugar etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the leavened bread is packed, the packet is labelled and subsequently stored and transported at -18 Degree Celsius temperature or transported ambient.

We have attached herewith the manufacturing process flow as Exhibit 1.

***Wafer's information***

- 1.12. The Applicant also manufactures and supplies Corn Chips, Corn Taco and Corn Taco Strips to its customers and distributors. It uses masa flour and water as the principal ingredients while manufacturing these products.
- 1.13. The products are manufactured by the Applicant using various ingredients including masa flour, water, small quantities of cellulose gum, citric acid, guar gum etc. Upon raw material intake, the ingredients go through various processes including mixing, dough dividing, baking and cooling. After the cooling process, the products are packed, the packets are labelled and subsequently stored and transported at -18 Degree Celsius temperature.



- 1.14. Upon receipt of these products, the customer or end consumer fries the product, which is similar to products such as wafers.

We have attached herewith the manufacturing process flow as Exhibit 1.

**Pancake's information**

- 1.15. In addition to above, the Applicant also manufactures 'pancakes', a flat cake, often thin and round, prepared from a starch-based batter that may contain milk baked on a hot surface such as a griddle or frying pan.

- 1.16. The products are manufactured by the Applicant using various ingredients including wheat flour, water, sugar, salt, milk, syrup, oil etc. Upon raw material intake, the ingredients go through various processes including mixing, dough dividing, baking on a hot plate on both sides and cooling. After the cooling process, the pancake is packed and labelled and subsequently stored and transported at - 18 Degree Celsius temperature. These products are similar to cakes included in entry number 16 of Schedule III to the Rate Notifications.

We have attached herewith the manufacturing process flow as Exhibit 1.

**Pizza bread information**

- 1.17. The Applicant manufactures and supplies Pizza bread which is also called Pizza base. The products are manufactured by the Applicant using various ingredients including flour, water, sugar, salt, baking powder, yeast, oil etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the pizza bread is packed and labelled and subsequently stored and transported at - 18 Degree Celsius temperature.

We have attached herewith the manufacturing process flow as Exhibit 1.

**Questions before AAR**

- 2.1. The Applicant has approached the Hon'ble authority to determine the classification of

- Unleavened Flatbreads such as Plain Chapatti, Tortilla, Tortilla Wraps, Wraps, Roti Rolls, Roti, Chapatti, Paratha and Paratha Wraps
- Leavened Flatbreads such as Naan, Chalupa, Pita Bread, Kulcha, Leavened Flatbread, Unfolded Leavened Flatbread
- Wafer products such as Corn Chips, Corn Taco and Corn Taco Strips
- Pancakes
- Pizza bread

in terms of Rate and Exemption notifications.

- 2.2. The Applicant strongly believes that the products being supplied should be classified under the below mentioned schedule entry:

Sr. No	Product Supplied	Schedule Entry No	Description
	Unleavened Flatbreads	Entry No. 99A of Schedule I	Khakhra, Plain Chapatti or Roti
	Leavened Flatbreads	Entry No. 97 of Exemption Notification	<b>Bread</b>
	Corn Chips, Corn Taco, Corn Taco Strips,	Entry No. 16 of Schedule III	All goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate; biscuits; Pastries and cakes (other than pizza bread, khakhra, plain chapatti or roti, Waffles and wafers coated with chocolate or containing chocolate, papad, bread]
	Pancake	Entry No. 16 of Schedule III	All goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate; biscuits; Pastries and cakes (other than pizza bread, khakhra, plain chapatti or roti, Waffles and wafers coated with chocolate or containing chocolate, papad, bread]
	Pizza Bread	Entry No. 99 of Schedule I	Pizza Bread



- 2.3. The Applicant, being desirous of ascertaining the classification of the bakery products supplied, wishes to submit this application before the Hon'ble Authority of Advance Ruling.
- 2.4. The Applicant reserves the right to submit such further facts at or before the hearing of the application as may be relevant.

**Statement containing the Applicant's interpretation of classification in respect of the aforementioned question/(s) (refer Form ARA-01)**

The Applicant prefers to present the application before this Hon'ble Authority on the following, among other grounds, each of which is taken in separately and without prejudice to the others.

**1. Applicants interpretation of law or facts with regards to Question No. 1**

*"Whether on facts and circumstances of the case, the Unleavened Flatbreads be treated as Khakra, plain chapatti or roti under Entry No. 99 A of Schedule 1 of Notificat 01/2017-Integrated Tax (Rate) dated 28 June 2017, Notification Number 1/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 1/2017-State Tax (Rate) No. MGST1017/ C.R. 104/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Rate Notifications')*

*If not, whether on facts and circumstances of the case, the Flatbreads be classified:*

*(i) as 'bread' as mentioned under Entry No. 97 of Notification Number 02 Number 2/2017 Integrated Tax (Rate), dated 28 June 2017, Notification Number 2/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 2/2017-State Tax (Rate) No. MGST10171 C.R. 103(1)/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Exemption Notifications'); or*

*(ii) as Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) under Entry No. 13 of Schedule III of Rate Notification or*

*(iii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

**Applicant's facts and interpretation of law**

- 1.1. The Department of Revenue, Ministry of Finance, has issued a notification number 01/2017 Central Tax (Rate) dated 28 June 2017 providing taxability on intra-state supplies of goods, the description of which is specified in the corresponding entry in Column (3) of the said schedules, falling under the tariff item, sub-headings, headings or chapter, as the case may be, as specified in column no (2) of the said schedules. Similar notifications have been issued under Integrated Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017.
- In exercise of the power conferred by Section 9(1) of the Act, the Central Government on the recommendations of the councils made further amendments to the above mentioned notification in the form of introducing Entry No. 99A as 'Kharkhra, plain chapatti or roti' vide Notification No. 34/2017 dated 13 October 2017. The said notification does not define the term 'Kharkhra, Plain Chapatti or roti'.

However, it has mentioned that the 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).

**Reference to Customs Tariff Act, 1975 (51 of 1975)**

- 1.3. It is now pertinent to understand the clarification provided under the Customs Tariff Act, 1975 with respect to Heading 1905. The relevant entry is attached herewith as Exhibit 2. The said chapter 19 does not provide any clarification with respect to these terms in form of chapter notes, heading notes. Thus, the said term 'Kharkhra, Plain Chapatti or Roti' would need to be understood as known in common parlance.

**Meaning of the term 'Kharkhra, Plain Chapatti or Roti'**

- 1.4. Given the fact that the terminology 'Kharkhra, Plain Chapatti or Roti' are region specific terms, the dictionary meaning of the same is not available. Thus, we would need to refer to Wikipedial to understand the meaning of the same.



- (i) **Khakhra:**  
*'a thin cracker, made from mat bean, wheat flour and oil'*
- (ii) **Plain Chapatti:** *'an unleavened flatbread, made from whole of flour known as atta salt and water'*
- (iii) **Roti:**  
*'a flatbread made from stoneground whole meal flour, traditionally known as atta'*

1.5. In this regard, we wish to submit that the Applicant follows similar processes while manufacturing unleavened flatbreads. The products are manufactured by the Applicant using various ingredients including atta, maida, water, palmolein oil, salt, sugar, baking powder, wheat gluten etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the unleavened flatbread is packed and labelled and subsequently stored and transported at -18 Degree Celsius temperature or transported ambient.

1.6. Further, we wish to reiterate the fact that the Applicant uses atta, maida, water, palmolein oil, salt, sugar, baking powder, wheat gluten etc. while manufacturing the range of unleavened flatbreads. We have attached herewith Exhibit 3 providing the list of ingredients used for each of the unleavened flatbreads the Applicant produces.

1.7. In the light of the above discussion, we wish to mention that the ingredients used and the processes followed while manufacturing the unleavened flatbreads and Plain Chapatti or Roti are similar. Thus, the Applicant is of the belief that the range of unleavened flatbreads should to be classified under Entry No. 99A of Schedule of Rate Notification as 'Khakra, Plain Chapatti or Roti' and be leviable to GST accordingly.

Common and Commercial Parlance Theory

1.8. Without prejudice to the above submission, the applicant wishes to submit that it is a settled position under common law that in the absence of a statutory definition, a word is to be interpreted by understanding its meaning under the common parlance. This position has been upheld by the Hon'ble Supreme Court in the case of M/s. United Offset Process Pvt. Ltd. V ACC, Bombay & Ors. (1989 Supp.(1) SCC 131). The Apex Court commented:

***If there is no meaning attributed to the expressions used in the particular enacted statute then the items in the customs entries should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words, how these are dealt with by the people who deal in them provided that there is a market for these types of goods. This principle is well known as classification on the basis of trade parlance. This is an accepted form of construction. It is a well-known principle that if the definition of a particular expression is not given, it must be understood in its popular or common sense viz, in the sense how that expression is used everyday by those who use or deal with those goods.***

The copy of the judgement is attached as Exhibit 4.

1.9. The Apex Court has laid down as to when the common parlance test can be used. It has provided that the following conditions need to be satisfied to call for common parlance test. These are:

- No meaning has been attributed in the statute
- There is an open market for such goods

The above position has been succinctly encapsulated by the Hon'ble Bombay High Court in the case of Pharm Aromatic Chemicals v MCGM (1997 (95) ELT 203 Bom). The Bombay High Court commented:

***Various principles or tests have been evolved by the Supreme Court from time to time for interpretation of items of taxable goods. One of the well-known principles of interpretation is that words of everyday use must be construed not in the scientific or technical sense but as understood in the common parlance***

1.10. Another test akin to the common parlance test is the "commercial parlance test". According to this test, items in taxing statutes should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words how these are dealt with by the people who deal in them. Though the common parlance or commercial parlance tests are the generally accepted tests, various other tests have been evolved from time to time to interpret items



of taxing statutes. One of such tests is "commonsense test" or "commonsense rule of interpretation".

On the basis of the above judgments, it can be concluded that either the common parlance or the user test should be applied in interpreting a word not defined by the statute.

- 1.11. In the present instance, the conditions laid down for applying the common parlance test as described above (i.e. not defined in the statute and having an open market) are satisfied. Hence, it is humbly submitted that the word 'Plain Chapatti or Roti' should be understood in the sense in which it is understood by the common man and by any common trader in the food industry.
- 1.12. In this regard, the Applicant wishes to submit that they are engaged in manufacturing and supplying unleavened flatbreads including Plain Chapatti and variants of Chapatti flatbreads referred to internationally in different countries as Tortilla, Tortilla Wraps, Wraps, Roti Rolls, Roti, Chapatti, Paratha and Paratha Wraps.
- 1.13. Basis the above, we wish to further submit that the Applicant has been receiving various order for the above mentioned food items referred to it as Chapatti, Tortilla etc. We wish to further submit that these unleavened flatbreads are generally being used in different regions across the country. Thus, the commercial name for these unleavened flatbreads may vary depending upon the region where the supply is intended. However, we have attached herewith the purchase orders raised by various customers depicting the name usually followed in the industry as Exhibit
- 1.14. On the basis of the above discussion, it is humbly submitted that the above mentioned unleavened flatbreads manufactured and supplied by the Applicant are either known as Plain Chapatti or Roti in commercial parlance as well. Thus, the same should be leviable to GST accordingly.

#### End-user test

- 1.15. Another test of interpretation evolved by Courts is that of the end-user. As discussed above, the Hon'ble Bombay High Court has reiterated the validity of this test in the case of Pharm Aromatic Chemicals (supra). The relevant observations of the High Court are reproduced below:

*Another test, which is sometimes applied by the Courts is "user test". According to this test the use to which the goods can be put can also be considered in interpreting an item. However, this rule of interpretation has got its own limitations because certain goods may be put to certain uses by different persons. That, however, should not entitle the revenue to apply different rates of tax to the sales of same goods by different persons depending upon the use to which they will be put by the purchasers.*

Basis the above observations, it is humbly submitted that the word 'Plain Chapatti or Roti' should be interpreted in light of the end-use made by consumers.

- 1.16. It is humbly submitted that people use plain chapatti, roti or variants of these type of unleavened flatbreads as the staple underlying carrier in one's meal. It is usually accompanied by protein or vegetables and sauce.

In the light of above mentioned discussion and given the fact that the Applicant uses similar ingredients and processes as those used for manufacturing Chapatti or Roti, the Applicant strongly believes that the range of unleavened flatbreads manufactured and supplied by them should be classified as 'Plain Chapatti or Roti' and should accordingly be levied to GST.

- 1.18. Without prejudice to the above mentioned submission, in case the unleavened flatbreads manufactured by the Applicant does not qualify as 'Plain Chapatti or Roti' within the meaning of Rate Notification, we request your good office to provide ruling on its possible alternate classification under below mentioned entry considering the facts and circumstances of the case
  - (i) **Entry No. 97** of Exemption Notification, which stands for Bread (branded or otherwise), except when served for consumption and pizza bread; or
  - (ii) **Entry No. 13** of Schedule III of Rate Notification, which stands for Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905); or
  - (iii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit.



**2. Applicants interpretation of facts or law with regards to Question No. 2**

*Whether on facts and circumstances of the case, the Leavened Flatbreads be treated as 'as bread' as mentioned under Entry No. 97 of Exemption Notifications*

*If not, whether on facts and circumstances of the case, the Leavened Flatbreads be classified:*

- (i) *Pizza Bread as mentioned under Entry No. 99 of Schedule I of Rate Notifications; or*
- (ii) *as Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) under Entry No. 13 of Schedule III of Rate Notification or*
- (iii) *Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

**Applicant's facts and interpretation of law**

- 2.1. The Department of Revenue, Ministry of Finance, has issued a notification number 02/2017 Central Tax (Rate) dated 28 June 2017 providing exemptions on intra-state supplies of goods, the description of which is specified in the schedule appended to the said notification from the whole of the central tax leviable thereon under the section 9 of Central Goods and Service Tax Act, 2017 (12 of 2017). Similar notifications have been issued under Integrated Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017.
- 2.2. The Schedule Entry No. 97 of the above mentioned notification provides the exemption on supply of Bread (branded or otherwise), except when served for consumption and pizza bread classifiable under Chapter Harmonized System of Nomenclature (HSN) 1905. The said notification does not define the term 'bread' and 'pizza bread'. However, it has mentioned that the 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).

**Reference to Customs Tariff Act, 1975 (51 of 1975)**

- 2.3. It is now pertinent to understand the clarification provided under the Customs Tariff Act, 1975 with respect to Heading 1905. The relevant entry is attached herewith as Exhibit 2. The said chapter 19 does not provide any clarification with respect to these terms in form of chapter notes, heading notes. Thus, the said term 'leavened bread' would need to be understood as known in common parlance.

**Dictionary meaning of the term 'bread'**

- 2.4. The Webster Dictionary has defined the term 'bread' as a usually baked and leavened food made of a mixture whose basic constituent is flour or meal. The definition basically consists of two parts, one process of making bread i.e. Baked and leavened and other is ingredient used while manufacturing bread i.e. Flour or meal.

Upon the satisfaction of the above mentioned conditions, the leavened flatbreads would be classified as bread.

- 2.5. In this regard, we wish to submit that the Applicant follows similar process while manufacturing leavened flatbreads. The products are manufactured by the Applicant using various ingredients including maida, tandoori atta, atta, water, rice flour, oil, yeast, salt, sugar etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the leavened flatbread is packed and labelled and subsequently stored and transported at - 18 Degree Celsius temperature or transported ambient.
- 2.6. Further, we wish to reiterate the fact that the Applicant uses maida, tandoori atta, atta, water, rice flour, oil, yeast, salt, sugar etc. while manufacturing the range of leavened flatbreads. We have attached herewith Exhibit 3 providing the list of ingredients used during manufacturing process for each of the leavened flatbreads.
- 2.7. In the light of the above discussion, we wish to mention that the ingredients used and the processes followed while manufacturing the leavened flatbreads and bread are similar. Thus, the Applicant is of the belief that the range of leavened flatbreads should to be classified as 'bread' and be exempted from GST.





## Common and Commercial Parlance Theory

- 2.8. Without prejudice to above submission, the applicant wishes to submit that it is a settled position under common law that in the absence of a statutory definition, a word is to be interpreted by understanding its meaning under the common parlance. This position has been upheld by the Hon'ble Supreme Court in the case of M/s. United Offset Process Pvt. Ltd. V ACC, Bombay & Ors. [1989 Supp.(1) SCC 131]. The Apex Court commented:

*If there is no meaning attributed to the expressions used in the particular enacted statute then the items in the customs entries should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words, how these are dealt with by the people who deal in them, provided that there is a market for these types of goods. This principle is well known as classification on the basis of trade parlance. This is an accepted form of construction. It is a well-known principle that if the definition of a particular expression is not given, it must be understood in its popular or common sense viz. in the sense how that expression is used everyday by those who use or deal with those goods.*

The copy of the judgment is attached as Exhibit 4.

- 2.9. The Apex Court has laid down as to when the common parlance test can be used. It has provided that the following conditions need to be satisfied to call for common parlance test. These are;

- No meaning has been attributed in the statute
- There is an open market for such goods

The above position has been succinctly encapsulated by the Hon'ble Bombay High Court in the case of Pharm Aromatic Chemicals v MCGM (1997 (95) ELT 203 Bom). The Bombay High Court commented:

*Various principles or tests have been evolved by the Supreme Court from time to time for interpretation of items of taxable goods. One of the well-known principles of interpretation is that words of everyday use must be construed not in the scientific or technical sense but as understood in the common parlance*

- 2.10. Another test akin to the common parlance test is the "commercial parlance test". According to this test, items in taxing statutes should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words how these are dealt with by the people who deal in them. Though the common parlance or commercial parlance tests are the generally accepted tests, various other tests have been evolved from time to time to interpret items of taxing statutes. One of such tests is "commonsense test" or "commonsense rule of interpretation".

On the basis of the above judgments, it can be concluded that either the common parlance or the user test should be applied in interpreting a word not defined by the statute.

- 2.11. In the present instance, the conditions laid down for applying the common parlance test as described above (i.e. not defined in the statute and having an open market) are satisfied. Hence, it is humbly submitted that the word 'bread' should be understood in the sense in which it is understood by the common man and by any common trader in the food industry.

- 2.12. In this regard, the Applicant wishes to submit that it has been engaged in manufacturing and supplying leavened flatbreads including Naan, Kulcha, and variants of these type of leavened flatbreads referred to internationally in different countries as Pitta bread, Chalupa, Corn bread, Leavened Flatbreads and Unfolded Leavened Flatbread.

- 2.13. Basis the above, we wish to further submit that the Applicant has been receiving various order for the above mentioned food items referred to it as Naan, Kulcha, etc. We wish to further submit that these leavened flatbreads are generally being used in various regions across the country and are regularly referred to it as bread. Thus, the commercial name for these leavened flatbreads may vary depending upon region where the supply is intended.

- 2.14. On the basis of the above discussion, it is humbly submitted that the above mentioned food items manufactured and supplied by the Applicant are known as 'bread' in commercial parlance as well. Thus, the same should be exempted from GST.

### **Leavened flatbreads not served for consumption**

- 2.15. The Schedule Entry No. 97 of Exemption Notification refer to the breads (branded or otherwise) except when served for consumption. Further, the meaning of the word "served for consumption"



is not defined anywhere including under Customs Tariff Act, 1975. Hence, in this case also, one has to place reliance on the common parlance to understand the said phrase.

- 2.16. The phrase 'Served for consumption' in common parlance indicates 'served in hotels, restaurants, eating houses and meant for immediate consumption. In this regard, the Applicant wishes to submit the fact that it does not serve any of its leavened flatbreads for immediate consumption to its customers.
- 2.17. In this regard, the Applicant places reliance on the judgement delivered by tribunal in case of East India Hotel on 31 March, 2009. The issue before the said tribunal was whether bread sold from the shop in the shopping arcade of the Five Star Hotel as counter sale is covered by the schedule entry A-4 of the BST Act or as covered by the schedule entry C-II-15. The entries A-4 & C-11-15 at the time of decision were as follows

*A-4: "Bread in loaf or rolls or in slices, toasted or otherwise except when "served for consumption" in any public restaurant including any eating house, hotel, refreshment room or boarding establishment or any part thereof which is large or in any club or by a caterer or when sold under a registered trade mark"*

*C-11-15: "Food and the alcoholic drinks 'served for consumption' in any eating house, restaurant, hotel refreshment room or boarding establishment or any part thereof having gradation of the four Star any above or supply by such eating house, restaurant, hotel, refreshment room or boarding establishment"*

*Given the above, the tribunal held that exemption of sales tax on the sale of bread is subject to the condition that it will be tax free except when it is served for consumption in public restaurant including eating house, hotel, refreshment room etc. The Tribunal stated that as bread is sold from the shop as counter sale there is no service of bread for consumption in Five Star Hotel or in any part thereof. Hence it is covered by schedule entry A-4 and not by schedule entry C-14-15.*

- 2.18. In the light the above discussion, we wish to submit that the leavened flatbreads supplied are not served for consumption. Thus, we strongly believe that these products are covered under Schedule Entry No. 97 of Exemption Notification and are eligible for exemption on supply of GST.
- 2.19. We wish to further submit that the Applicant craves leave to make/edit/modify submissions before the hearing or to elaborate upon the above submitted submissions at or before the hearing of the application, as may be relevant.

- 2.20. Without prejudice to the above mentioned submission, in case the leavened flatbreads manufactured by the Applicant does not qualify as 'bread within the meaning of Rate Notification, we request your good office to provide ruling on its possible alternate classification under below mentioned entry considering the facts and circumstances of the case

(i) Entry No. 99 of Schedule of Rate Notification, which stands for Pizza Bread; or

(ii) Entry No. 13 of Schedule III of Rate Notification, which stands for Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905]on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905); or

(iii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit.

Applicants interpretation of facts or law with regards to Question No. 3

*"Whether on facts and circumstances of the case, Corn Chips, Corn Taco and Corn Taco Strips supplied be treated as Wafers under Entry No. 16 of Schedule III of Rate Notifications*

*If the same is not classifiable as 'wafer', whether on facts and circumstances of the case, the Corn Chips, Corn Taco and Corn Taco Strips be classified*

*(i) as "Malt extract, food preparations of flour, groats, meal, starch or mail extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905]on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young*



children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905)" under Entry No. 13 of Schedule III of Rate Notification; or

(ii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit

#### Applicant's interpretation of law or facts

- 3.1 The Department of Revenue, Ministry of Finance, has issued a notification number 01/2017 Central Tax (Rate) dated 28 June 2017 providing exemptions on intra-state supplies of goods, the description of which is specified in the schedule appended to the said notification from the whole of the central tax leviable thereon under the section 9 of Central Goods and Service Tax Act, 2017 (12 of 2017). Similar notifications have been issued under Integrated Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017.
- 3.2 The Schedule Entry No. 16 of Schedule III of the Rate Notifications refers to 'All goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate falling under Chapter 1905 32 90 (i.e. not containing chocolate). The said notification does not define the term 'wafer'. However, it is mentioned that the 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).

#### Reference to Customs Tariff Act, 1975 (51 of 1975)

- 3.3 It is now pertinent to understand the clarification provided under the Customs Tariff Act, 1975 with respect to Heading 1905 32 90. The relevant entry is attached herewith as Exhibit 2. The said Chapter 19 does not provide any clarification with respect to the phrase 'Waffles and Wafers' in the chapter notes, heading notes etc.

#### Dictionary meaning of the term 'Wafers'

- 3.4 The Webster Dictionary has defined the term 'wafers' as a 'thin crisp cracker. In this regard, we wish to draw your kind attention towards the Exhibit 1 wherein we have provided additional information on the manufacturing process for Corn Chips, Corn Taco and Corn Taco Strips. The products are manufactured by the Applicant using various ingredients including masa flour, water, small quantities of cellulose gum, citric acid, guar gum etc. Upon raw material intake, the ingredients go through various processes including mixing, dough dividing, baking and cooling. After the cooling process, the products are packed and labelled and subsequently stored and transported at -18 Degree Celsius temperature.

In case of supply of Corn Chips, Corn Taco and Corn Taco Strips, we wish to bring to your kind attention that the process of making such products involves both baking as well as the use of masa flour, water, small quantities of cellulose gum, citric acid, guar gum etc. Further, customers in the foodservice channel and, in some cases, the end consumer fry the products which makes them crispy similar to products such as wafers, i.e. a thin crisp cracker.

Hence, it can be concluded that Corn Chips, Corn Taco and Corn Taco Strips are classifiable under entry number 16 of Schedule III of the Rate Notification.

#### Common and Commercial Parlance Theory

Without prejudice to above submission, we wish to reiterate our submission with respect to common and commercial parlance theory made under applicants interpretation of fact and law of Question 1:

- 3.8 The courts in various rulings have upheld the position that in the absence of a statutory definition, a word is to be interpreted by understanding its meaning under the common parlance. It has provided that the following conditions need to be satisfied to call for common parlance test.
- No meaning has been attributed in the statute
  - There is an open market for such goods.
- 3.9 Another test akin to the common parlance test is the "commercial parlance test". According to this test, items in taxing statutes should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words how these are dealt with by the people who dealt in them. Though the common parlance or commercial parlance tests are the generally accepted tests, various other tests have been evolved from time to time to interpret items of taxing statutes. One of such tests is "commonsense test" or "commonsense rule of interpretation".



- 3.10 In the present instance, 'wafers' are not defined in the Customs Tariff Act, 1975. Further, there is a common market for trade in such goods. Hence, the present instance is a fit case for usage of the common parlance test.
- 3.11 It is humbly submitted that in the Indian context, wafers refers to chips used as a snack. In fact, wafers and chips terminology are used interchangeably. Further, post the supply by applicant, customers in the foodservice channel and, in some cases, the end consumer fry the products which makes them crispy similar to products such as wafers, i.e. a thin crisp cracker. In addition, some customers add various spices and condiments to the products and pack them in smaller pack sizes for the retail market.
- 3.12 Corn Chips, Corn Taco and Corn Taco Strips are variants of chips eaten as a snack. In any big department store, Corn Chips, Corn Taco and Corn Taco Strips are normally sold in the section dealing with wafers and such snacks.
- 3.13 In the light of the above grounds, wafers would include products such as Corn Chips, Corn Taco and Corn Taco Strips.

#### **End-user test**

- 3.14 As discussed in the foregoing paragraphs, the user test can be used to determine the appropriate classification of a product.
- 3.15 The use of wafers is as an snack. It is generally enjoyed by consumers as a tasty interlude between meals. Corn Chips, Corn Taco and Corn Taco Strips are similarly used as snacks that can be enjoyed in between meals.
- 3.16 It is also worthwhile noting that these products are on sale on online platforms in the same category that wafers like Lays, Kurkure etc. are sold. Hence, it can be inferred that users perceive such products as 'Wafers' and consume them in the same fashion as they consume any other wafers.
- 3.17 Hence, it is humbly submitted that even on the basis of the end-use based test, Corn Chips, Corn Taco and Corn Taco Strips products manufactured by the Applicant should be classified as wafers under Chapter 1905 32 90 subject to GST accordingly.

#### **Contextual interpretation**

- 3.18 Snacks such as Corn Chips, Corn Taco and Corn Taco Strips are seen as an alternative to potato chips, cream wafers, etc. Corn Chips, Corn Taco and Corn Taco Strips are becoming popular amongst consumers with the increasing demand for alternative varieties of wafers and snacking food items.

Hence, considering the context surrounding such products, it should be concluded that they are similar to wafers falling under Chapter 1905 32 90 subject to tax accordingly.

- 3.20 Without prejudice to the above mentioned submission, in case the Corn Chips, Corn Taco and Corn Taco Strips manufactured by the Applicant does not classify as 'wafer' within the meaning of Exemption Notification, we request your good office to provide ruling on its possible alternate classification under

(i) Entry No. 13 of Schedule III of Rate Notification, which stands for Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905); or

(ii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit.

Applicants Interpretation of facts or law with regards to Question No. 4

**Question 4-** "Whether on facts and circumstances of the case, Pancakes supplied be treated as All Goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate; biscuits; Pastries and cakes (other than pizza bread, khakhra, plain chapatti or roti, Waffles and wafers coated with chocolate or containing chocolate, papad, bread] as mentioned under Entry No. 16 of Schedule III of Rate Notifications.

If not, whether on facts and circumstances of the case, the Pancakes be classified any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks



#### **Applicant's interpretation of law or facts**

- 4.1 Basis the plain reading of Rate Notification, the Applicant believes that the Pancake should get classified under the entry number 16 of Schedule III of the Rate Notifications which stands for 'All goods i.e. Waffles and Wafers other than coated with chocolate or containing chocolate; biscuits; Pastries and cakes (other than pizza bread, khakhra, plain chapatti or roti, Waffles and wafers coated with chocolate or containing chocolate, papad, bread).
- 4.2 The term 'cake' has not been defined in the Rate Notification. However, it is mentioned that the tariff item, sub-heading, heading and chapter shall mean respectively a tariff item, subheading, heading and chapter as specified in the first schedule to the Customs Tariff Act, 1975 (51 of 1975)

#### **Reference to Customs Tariff Act, 1975 (51 of 1975)**

- 4.3 It is now pertinent to understand the clarification as provided under the Customs Tariff Act, 1975 to understand the meaning of the term Pancake. However, the said term has not been defined anywhere in Customs Tariff Act, 1975. Thus, it is necessary to refer to meaning of Pancake as known in common parlance as the said term is not defined under Customs Tariff Act, 1975.

#### **Dictionary meaning of term 'Pancakes'**

- 4.4 In this connection, we refer to dictionary meaning of the term 'Pancake'. The Webster Dictionary defines it as 'a flat cake made of thin batter and cooked (as on a griddle) on both sides'. Pancakes are generally prepared from starch based batter.
- 4.5 The products are manufactured by the Applicant using various ingredients including flour, water, sugar, salt, milk, syrup, vegetable oil etc. Upon raw material intake, the ingredients go through various processes including mixing, dough dividing, baking on a hot plate on both sides and cooling. After the cooling process, the pancake is packed and labelled and subsequently stored and transported at - 18 Degree Celsius temperature.

Basically, it is a flat cake, often thin and round, prepared from a starch based batter and is cooked on a hot surface such as griddle or frying pan. It may be served at any time of the day with the variety of the topping or fillings including jam, fruit, syrup or ice cream.

#### **Common and Commercial Parlance Theory**

- 4.7 Without prejudice to above submission, we wish to reiterate our submission with respect to common and commercial parlance theory made under applicants interpretation of fact and law of Question 1.

Even in common parlance, Pancakes are known as 'cakes' in the hotel industry. Thus, the Applicant strongly believes that the same gets covered under Entry Number 16 of Schedule III of Rate Notification which covers cakes,

- 4.9 Without prejudice to the above mentioned submission, in case the pancake manufactured by the Applicant does not qualify as 'cakes' within the meaning of Rate Notification, we request your good office to provide ruling on its possible alternate classification under any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit.

#### **Applicants interpretation of facts or law with regards to Question No. 5**

**Question 5-***Whether based on the facts and circumstances of the case, pizza bread supplied by the Applicant be covered under Entry No. 99 of Schedule I of Rate Notifications*

*If not, whether on facts and circumstances of the case, the Pizza Base be classified any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

#### **Applicant's interpretation of law or facts**

- 5.1 Basis the plain reading of Rate Notification, the Applicant believes that pizza bread should get classified under the entry number 99 of Schedule I of the Rate Notifications
- 5.2 The term 'Pizza Bread' has not been defined in the Rate Notification. However, it is mentioned that the 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).
- 5.3 The products are manufactured by the Applicant using various ingredients including flour, water, sugar, salt, baking powder, yeast, vegetable oil etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the pizza bread is packed and labelled and subsequently stored and transported at -18 Degree Celsius temperature.



Reference to Customs Tariff Act, 1975 (51 of 1975)

- 5.4 It is now pertinent to understand the clarification as provided under the Customs Tariff Act, 1975 to understand the meaning of the term pizza bread. However, the said term has not been defined anywhere in Customs Tariff Act, 1975. Thus, it is necessary to refer to meaning of pizza bread as known in common parlance as the said term is not defined under Customs Tariff Act, 1975.

Common Parlance Theory

- 5.5 It is humbly submitted that the Applicant manufactures 'pizza bread'. The pizza bread is subsequently used as the bread on which toppings such as cheese and sauce are added by the customer or end consumer. Such bread is commonly known as 'pizza bread' in grocery stores across the country. People purchase 'pizza bread' in order to prepare pizzas at home using their own ingredients for toppings. Customers in the foodservice channel, such as restaurants, also purchase pizza bread that they apply a topping to before heating it up or cooking it and serving the finished product to their customers.
- 5.6 Basis the plain reading of the notification and the meaning of the word 'pizza bread' under common parlance, the Applicant submits that entry number 99 of Schedule I to the Rate Notifications should apply and GST to be levied accordingly.
- 5.7 Without prejudice to the above mentioned submission, in case the product manufactured by the Applicant does not qualify as 'pizza bread' within the meaning of Rate Notification, we request your good office to provide ruling on its possible alternate classification any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks

**Further to above submissions, we most respectfully request that:**

- Allow us to reiterate all the submissions without prejudice to one another;
- Grant a personal hearing put forth our contentions and explain our submissions before passing any order in this regard;
- Allow us to amend, alter and add to the present reply;
- Allow us to produce additional documents and other material during the time of Personal Hearing;
- In case the classification and rate argued by the Applicant is not acceptable, provide a ruling on the appropriate classification and rate for the products; and
- In that behalf pass such other orders and directions as may be deemed proper and necessary.

**List of Ingredients.**

**Leavened Flatbread- Naan**

S. No.	Ingredients
1	Maida
2	Water
3	Glycerine
4	Wheat Gluten
5	Salt
6	Sugar
7	Yeast
8	Baking Powder
9	Kalonj Seed
10	Hydroxypropyl Methyl Cellulose
11	Ultrasoft
12	Calcium Propionate
13	Kalonaji Oil

**Unleavened Flatbread- Paratha**

S. No.	Ingredients
1	Maida
2	Atta
3	Water
4	Vanaspoti Ghee
5	Palmolein Oil
6	Glycerine
7	L-Cysteine HCl
8	Salt
9	Powerflex
10	Dimodaan
11	Sugar
12	Sodium Acid Pyro Phosphate
13	Acecol Gaur Gum

**Leavened Flatbread- Unfolded**

S. No.	Ingredients
1	Maida - High Proben
2	Water

**Unleavened Flatbread- Tortilla**

S. No.	Ingredients
1	Maida
2	Water



3	Glycerine		3	Palmolein Oil
4	Wheat Gluten		4	Glycerine
5	Salt		5	L-Cysteine
6	Sugar		6	Sodium Bi Carbonate
7	Yeast		7	Salt
8	Baking Powder		8	Powerflex
9	Kalonji Seed		9	Dimodaan
10	Hydroxypropyl Methyl Cellulose		10	Sugar
11	Ultrasoft		11	Sodium Acid Pyro Phosphate
12	Calcium Propionate		12	Acecol Gaur Gum
13	Kalonaji Oil		13	Calcium Propionate
			14	Fumaric Acid
			15	Grindsted Protex

**Unleavened Flatbread – Chapatti**

**Leavened Flatbread- Chalupa**

S. No.	Ingredients	S. No.	Ingredients
1	Atta	1	Maida
2	Water	2	Sunflower Oil
3	Palmolein Oil	3	water
4	Wheat Gluten	4	Rice Flour
5	Salt	5	TBBI
6	Dimodaan Hp-1	6	Yeast
7	Sugar	7	Salt
8	Baking Powder	8	Sugar
		9	Gluten

**List of Ingredients  
Pizza Bread**

**Corn Chips**

S. No.	Ingredients	S. No.	Ingredients
1	Maida	1	Masa flour Water
2	Water	2	Water
3	Glycerine	3	Cal. Prop
4	Wheat Gluten	4	Citric Acid
5	Salt	5	Cellulose Gum
6	Sugar	6	Guar Gum
7	Yeast		
8	Baking Powder		
9	Sunflower Oil		
10	TBBI		
11	Dotem		
12	Calcium Propionate		
13	Chilli Flakes		
14	Oregano Leaves		

**Corn Taco Strips**

**Corn Bread**

**Pancakes**

S. No.	Ingredients	S. No.	Ingredients
1	Wheat Flour	1	Maida
2	Water	2	Water



3	Vegetable ghee		3	Sugar
4	Whole ground corn		4	Salt
5	Lime juice		5	Sodium bicarbonate
6	Sugar		6	Sodium acid pyrophosphate
7	Salt		7	citric acid
8	Emulsifier		8	calcium propionate
9	Raising Agent		9	Milk
10	Yeast		10	Sunflower Oil
11	Acidity regulator		11	Golden Syrup
12	Preservative		12	Vanilla Flavor
13	Thickener		13	Whey Powder
14	Flour treatment agent		14	Detam

**List of Ingredients**

**Leavened Flatbread-Pita Bread**

S. No.	Ingredients
1	Tandoori Atta
2	Atta
3	Water
4	Wheat Gluten
5	Salt
6	Yeast

**Leavened Flatbread-Chalupa**

S. No.	Ingredients
1	Maida
2	Sunflower Oil
3	Water
4	Rice Flour
5	TBBI
6	Yeast
7	Salt
8	Sugar
9	Gluten Gluten

**Corn Taco**

S. No.	Ingredients
1	Masa flour
2	Water
3	Cal. Prop
4	Citric Acid
5	Cellulose Gum
6	Guar Gum

**Leavened Flatbread- Kulcha**

S. No.	Ingredients
1	Maida
2	Vinegar
3	Water
4	Sugar
5	Salt
6	Yeast
7	Baking Powder
8	Kalonji



**FLOW CHART**







**PROCESS FLOW DIAGRAM (CORN PRODUCTS)**

Raw Material Intake	
Raw Material Storage	
Premixing and sieving	
Mixing	
Dough sheeting	
Oven Bake	
Online Cooling @ Ambient temperature	
Online inspection	
Stacking	
Packaging	
Spiral blast Freezing @ -30 to 35 C	
Metal Detection	CCP
Packaging	
Collation to pallets	
Finished Goods Storage-Cold Room @ <-18 C	
Dispatch	

**PROCESS FLOW DIAGRAM (PANCAKE)**

Raw Material Intake	
Raw Material Storage	
Premixing and sieving	
Mixing	
Oven Bake	
Online Cooling @ < 24 C	
Online inspection	
Stacking	
Packaging	
Metal Detection	CCP
Spiral blast Freezing @ -30 to 35 C	
Packaging	
Collation to pallets	
Finished Goods Storage-Cold Room @ <-18 C	
Dispatch	



**Additional submission to Advance Ruling application submitted by applicant on 23 May 2018**

We, **Signature International Foods India Private Limited** (the "Applicant" or "Company") a private limited company incorporated under the provisions of the Companies Act, 1956 holding GST registration number 27AACCH2133E1Z3, have filed an advance ruling application on 23 May 2018 for the classification of products manufactured by and supplied by the Company.

In this connection, we have attended a personal hearing for the acceptance or rejection of the application of advance ruling under sub section (2) of section 98 of Central and Maharashtra Goods and Service Tax Act, 2017 (the Act) on 3 July 2018. During the course of the personal hearing, the authorized representative of the Office of Assistant Commissioner of State Tax (the Nodal Officer) has submitted a letter providing views on the classification of bakery products manufactured and supplied by the Applicant.

In the letter, the learned Nodal Officer has given his opinion in respect of the classification of bakery products, as under:

- a. *Indian food stuff like Roti, Plain Roti to be classified under tariff heading 2016 under Entry No. 99A and leviable to CGST<sup>1</sup> and MGST<sup>1</sup> at 2.5% each;*
- b. *Paratha Wraps, Paratha, Roti Rolls to be classified under residual entry and leviable to CGST and MGST at 9% each;*
- c. *Chalupa to be classified under residual entry considering it is filled with various ingredients such as chicken, pork, chopped onion etc. and leviable to CGST and MGST at 9% each;*
- d. *Naan to be classified under residual entry considering the fact that it is used as a Roti, eaten with curry in South East Asia and leviable to CGST and MGST at 9% each;*
- e. *Pita Bread and Kulcha to be classified under residual entry considering that these products are ready for consumption and leviable to CGST and MGST at 9% each;*
- f. *Corn Gnoc, Corn Taca, Corn Taco Strips shall be classified under Entry No. 16 of Schedule III of the Rate Notification leviable to tax at CGST and MGST at 9% each;*
- g. *Pancake qualify as cake within the meaning of rate notification classifying the product under Entry No. 16 of Schedule III under Chapter heading 1905; and*
- h. *Pizza Bread qualify as Pizza Bread under Entry No. 99 of Schedule I.*

- i. At the outset, the Applicant most respectfully wishes to submit that the letter has been prepared without giving due regards to all the facts of the case and the submissions made by the Company till date. The Applicant has provided a detailed list of ingredients, manufacturing process charts, purchase orders, tax invoices and detailed interpretation about the proposed classification of bakery products to enable your office to arrive at a conclusion with respect to the classification of the bakery products under consideration.

After reviewing the letter issued by the learned Nodal Officer, we have observed that their interpretation on the classification of bakery products such as Wafer Product, Pancakes and Pizza Bread are in consensus with the Applicant. However, the Applicant has different views to the opinions expressed by the learned



Nodal Officer on the classification of some variants of unleavened flatbreads namely, Paratha, Paratha Rolls, Roti Rolls and all variants of leavened flatbreads.

We have further observed that the learned Nodal Officer has not provided views on some variants of unleavened flatbreads included in the application of advance ruling such as Tortilla, Tortilla Wraps, Wraps, Paratha Wraps and other variants of leavened flatbreads such as leavened flatbreads and unfolded leavened flatbreads.

Without prejudice to submissions made in the advance ruling application, the Applicant wishes to make an additional submission providing a responses to the views provided by the learned Nodal Officer on variants of unleavened flatbreads and all types of leavened flatbreads. It shall be noted that this additional submission shall be considered to be in addition to submissions made in advance ruling application.

#### **Applicants additional submissions--**

### **1. Applicants response to classification of some variants of unleavened flatbreads such as Roti Rolls, Paratha and Paratha Rolls**

1.1 The Applicant wishes to submit that learned Nodal Officer has not considered ingredients and the manufacturing processes used while manufacturing unleavened flatbreads. In the letter, it was mentioned that

*(i) the food stuff such as Paratha, Paratha Rolls, Roti Rolls shall be classified as per the common parlance test as laid down by the Hon'ble Supreme Court of India*

*(ii) Indian food stuff products such as Paratha, Paratha Rolls, Roti Rolls cannot be identified as Plain Roti or Roti.*

*(iii) The manufacturing process and ingredients are different than that of Plain Roti or Roti. Thus, the same would be covered under Residual Entry.*

1.2 Based on the review of submissions of learned Nodal Officer, we have observed that they have applied following tests to classify unleavened flatbreads during GST regime under:

- a. Common Parlance Test;
- b. Ingredient Test; and
- c. Manufacturing process Test.

#### **Common Parlance Test**

1.3 With respect to Common Parlance Test, we wish to reiterate our submissions made in the advance ruling application from Para 1.8 to 1.16 in Annexure III wherein it was mentioned that if the definition of a particular expression is not given, it must be understood in its common sense i.e. in the sense how the expression is being used every day by those who use or deal with those goods. Another test which is used by the courts is the user test. According to this test the use to which the goods can be put can also be considered in interpreting an item. The copy of relevant judicial precedence has already been submitted with your office. A copy of the same is again enclosed as Annexure 1.

1.4 By applying **Common Parlance Test and End User Test**, we wish to humbly submit that many types of unleavened flatbreads including plain chapatti, roti and variants of these types of unleavened flatbreads are a staple underlying carrier in one's meal. It is usually accompanied by protein or vegetables and sauce.



Considering the same, it is clear that the usage or function of variants of unleavened flatbreads such as Roti Rolls, Paratha, Paratha Rolls, Tortilla Wraps, Tortilla, Wraps, Paratha Wraps are the same or similar to Plain Chapatti or Roti.

- 1.5 At this juncture, it is also important to note the ruling of the Apex Court of India in the case of **M/s O K Play (India) Limited V. Commissioner of Central Excise, Delhi-III, Gurgaon<sup>1</sup>** wherein it was mentioned that *"It is important to bear in mind that functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification of an item"*. These aid and assistance of the Apex Court of India would be more important than the names used in the trade or common parlance in the context of Classification. A copy of the same is enclosed as Annexure 2. The size, shape and weight of the unleavened flatbreads produced by the Company are the same or similar and the predominant usage or function of the unleavened flatbreads is as an underlying carrier in one's meal.
- 1.6 Additionally, the learned Nodal Officer has mentioned that *common man cannot say Paratha or Roti Rolls as plain Roti, Roti*. In this regard, we wish to submit that the learned Nodal Officer has applied 'nomenclature test' only while classifying unleavened flatbreads. While it has not given any importance to the End User Test, which is also relevant in the underlying case. In food industry, various types of unleavened flatbreads are called different names by different users depending upon the regions where the food is served or consumed. Variants of Chapatti flatbreads are referred to internationally in different countries as Tortilla, Tortilla Wraps, Wraps, Roti Rolls, Roti, Chapatti, Paratha and Paratha Wraps. Therefore, it is imperative that one shall give due regards to **End User Test** also. Considering the same, we wish to reiterate the fact that various types of unleavened flatbreads like those mentioned in the application are being used in one's daily meal accompanied by protein or vegetables and sauce and hence, shall be classified as **Plain Chapatti or Roti**.

#### **Ingredient Test**

The learned Nodal Officer has further mentioned that the ingredients used for variants of unleavened flatbreads such as Roti Rolls, Paratha and Paratha Rolls are different than Plain Roti or Roti as mentioned under Entry No. 99 A of Schedule I of Notification No. 01/2017-Integrated Tax (Rate) dated 28 June 2017, Notification Number 1/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 1/2017-State Tax (Rate) No. MGST1017/ C.R. 104/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Rate Notifications').

3. We wish to reiterate the fact that the essential ingredients for preparation of Plain Chapatti and Roti are the same as those are used for manufacturing Tortilla, Tortilla Wraps, Wraps, Roti Rolls, Paratha and Paratha Wraps. The essential ingredients shall be taken to mean those ingredients which gives essential and basic character of the product. For the majority of the unleavened flatbreads over 85% of the dough is a combination of flour and water. The Applicant uses additional ingredients for preparation of different types of unleavened flatbreads for improving the texture, softness and increasing the shelf life of unleavened flatbreads.



4. In addition to above, we wish to bring to your notice that many variants of unleavened flatbreads are considered to be the same or similar as Plain Chapatti or Roti because these bakery products act as a near substitute to each other as a carrier for a meal. Thus, the Applicant strongly believes that the same shall be classified as 'Plain Chapatti or Roti' under Entry No. 99A of Rate Notification.

**Manufacturing process Test**

5. The learned Nodal Officer has further mentioned that the manufacturing process of unleavened flatbreads such as Roti Rolls, Paratha and Paratha Rolls are different than Plain Roti or Roti. In this regard, we wish to mention that the Applicant has already submitted manufacturing flow charts in respect of all variants of unleavened flatbread in its original application.
6. The range of unleavened flatbreads manufactured by the Company, including Roti, Roti Rolls, Paratha, Tortilla, Tortilla Wraps and Wraps are produced on the same production line using the same or similar production methods and processes. The flow chart included in the original application shows that the Applicant follows the same or similar processes for all variants of unleavened flatbreads. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the unleavened flatbread is packed and labelled and subsequently stored and transported at -18 Degree Celsius temperature or transported ambient.
7. It shall be noted that the residual category was introduced for those product categories, which cannot be classified under any of the schedules of Rate Notification. The learned Nodal Officer has not given due regard to ingredient test, manufacturing test and end-user test in its submissions. Thus, we wish to continue with the interpretation provided in the advance ruling application.

**8. Applicants response to classification of leavened flatbreads such as Naan, Chalupa, Pita Bread, Kulcha, Unfolded Flatbread**

- 2.1. We wish to re-submit that learned Nodal Officer has not considered ingredients and the manufacturing processes used while manufacturing leavened flatbreads.

In the letter, it was mentioned that:



Sr. No	Name of Leavened Flatbread	Learned Nodal Officer's relevant contentions
1	Chalupta	<ol style="list-style-type: none"> <li>1. Traditional Chalupa are small, thick, boat shaped fried maza topped only with cheese and shredded lettuce</li> <li>2. These are filled with various ingredients such as chicken, pork, chopped onion etc.</li> <li>3. In view of the manufacturing process and type of ingredients used in it, the same cannot be classified under Entry No. 97 of Exemption Notification. Hence, the same shall be covered under residual entry</li> </ol>
2	Naan	<ol style="list-style-type: none"> <li>1. Naan cannot fall under Entry No. 97 of Exemption Notification as it is commonly used as a Roti in South Asia Region</li> </ol>

		<p>2. By applying common parlance test, common man cannot say Naan as Bread</p> <p>3. It is used as a Roti eaten with curry in South East Asia</p> <p>4. Accordingly, the same cannot be classified under Entry No. 97 of Exemption Notification. Hence, the same shall be covered under residual entry</p>
3	Pita Bread and Kulcha	<p>1. Dealer has itself applied tax rate at 2.5% in the invoices raised by him</p> <p>2. Accordingly, the same cannot be classified under Entry No. 97 of Exemption Notification. Hence, the same shall be covered under residual entry</p>

2.2. In addition to above, while denying exemption under Entry No. 97 of Notification Number 02 Number 2/2017- Integrated Tax (Rate), dated 28 June 2017, Notification Number 2/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 2/2017-State Tax (Rate) No. MGST1017/C.R.103(1)/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Exemption Notifications'), it was further mentioned that *'food products like Naan, Pita Bread, Kulcha. Leavened Bread can be served for consumption. These food products are ready for consumption. They are not raw or unfinished form. Ready to serve foods should be construed as a food which is ready to eat. The Schedule Entry No. 97 refers to bread except when served for immediate consumption. However, it is clear that 'ready to serve' means 'ready to eat'. There is no distinction between them. Food is not necessarily served only in Hotel. Food is also served at home. Hence, dealers contention regarding served for immediate consumption is misinterpretation of the term'*

2.3. Basis the review of the submissions of learned Nodal Officer, we wish to submit that the learned Nodal Officer has made classification on the basis of:

- a. Common Parlance Test;
- b. Ingredient Test; and
- Manufacturing process Test.

2.4. At the outset, we wish to reiterate our submissions made in the application for advance ruling from Para 2.1 till Para 2.18 in Annexure III wherein we have provided our submissions with respect to applicability of exemption in respect of all variants of leavened flatbreads considering above mentioned tests. We have provided below our additional responses to the contentions of learned Nodal Officer with respect to the classification of leavened flatbread.

#### **Leavened Flatbread - Chalupa**

2.5. The learned Nodal Officer has mentioned that

*"a Chalupa is a specialty of Mexico. Traditional Chalupa are small, thick, boat shaped fried maza topped only with salsa, cheese and shredded lettuce. These are filled with various ingredients such as chicken, pork, chopped onion etc. So, in view of the manufacturing process and type of ingredients used in it, so the Chalupa could not fall under Entry No. 97 of the Exemption Notification. It would be covered under residual entry and taxable at 9% in CGST and MGST Act".*

2.6. In this connection, we wish to submit that the learned Nodal Officer has not taken the list of ingredients submitted along with the advance ruling application into consideration. We wish to submit that the Applicant does not use Chicken, Pork, Chopped Onion etc. while manufacturing or supplying Chalupa. In fact, it uses maida, sunflower oil, water, rice flour, yeast, salt, sugar, gluten and TBBI.



- 2.7. Referring to the learned Nodal Officer's contention on the usage of additional ingredients such as Chicken, Pork etc., we would like to submit that the Applicant supplies the Chalupa bread flat, unfolded in the base form. The customer receives the bread from the Company frozen at -18°C and the customer subsequently defrosts the bread. After this the customer fries the bread using a U-shaped fryer mold. It is this U-shape fryer mould that gives the Chalupa the U shape which is sometimes referred to as a boat shape. The Chalupa gets the crispy texture and is heated up when the customer fries the product. After this the customer can include their own sauce, filling, protein and vegetables in the bread before serving the final product to the end consumer. Thus, the said contention will not hold good factually.
- 2.8. Additionally, the Applicant follows the same or similar manufacturing processes as those applicable for manufacturing bread. The Applicant strongly believes that all variants of leavened flatbread shall be classified as 'Bread' within the meaning of Entry No. 97 of Exemption Notification.

#### **Leavened Flatbread - Naan**

- 2.9. The learned Nodal Officer has further mentioned that "Naan cannot fall under Entry No. 97 of Exemption Notification as it is commonly used as Roti in South Asia region. By applying common parlance test, common man cannot say 'Naan' as a bread. It is used as a Roti, eaten with curry in South Asia. So, in my opinion Naan cannot be held as leavened flatbread and treated as exempted product. In my opinion the food products ie. Naan would be covered under residual entry and taxable at 9% in CGST and MGST".
- 2.10. In this connection, we wish to highlight the fact that the learned Nodal Officer has not considered manufacturing process test and ingredient test while determining classification of Naan, as made applicable for some variants of unleavened flatbreads.
- 2.11. In fact, it shall be observed that they have given utmost importance to the 'End User Test' while determining the classification of Naan. The Applicant believes that the customer and end consumer considers naan to be a bread. This point is strongly supported by the fact that naan is included under the heading of Bread or Indian Breads on the menu cards of many restaurants across India and internationally.
- 2.12. The range of leavened flatbreads manufactured by the Company, including naan, are produced on the same production line using the same or similar production methods and processes. The flow chart included in the original application shows that the Applicant follows the same or similar processes for all variants of leavened flatbreads. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the leavened flatbread is packed and labelled and subsequently stored and transported at -18 Degree Celsius temperature or transported ambient.
- 2.13. Without prejudice to above mentioned submissions and submissions made in application for advance ruling, we wish to submit that the learned Nodal Officer confirmed that Naan is used as a Roti, which is eaten with curry in South Asia. Considering the same, it shall be classified under Entry No. 99A of Schedule I of Rate Notification ie. Plain Chapatti or Roti. However, the learned Nodal Officer has classified the same under residual category without providing any legal justification to the same.
- 2.14. In addition to above, we wish to further highlight the fact that the learned Nodal Officer did not apply the 'End-User Test' while determining the classification of unleavened flatbreads such as Roti Rolls, Paratha



and Paratha Rolls. By applying the End-User Test, variants of unleavened flatbreads can be treated as the same or as substitutes to each other acting as a carrier to one's meal.

#### **Leavened Flatbread – Pita Bread and Kulcha**

- 2.15. While providing views on the availability of exemption to Pita Bread and Kulcha, the learned Nodal Officer has mentioned that *the Applicant has himself applied tax rate of 2.5% in the invoices raised by them. However, these products could not be classified under Entry No. 97 of the Exemption Notification. Pita Bread and Kulcha cannot be treated as bread.*
- 2.16. In this regard, we wish to mention that the Applicant has submitted an intimation letter with the Central Tax authorities on **20 July 2017** intimating that payment of Central Tax, State Tax and Integrated Tax under protest, in the absence of specific schedule entry with respect to product being manufactured and supplied by the Applicant.
- 2.17. Moreover, the Applicant has discharged GST liability for leavened flatbread to the extent of 2.5% of CGST and MGST on a conservative basis.

#### **Leavened flatbreads not served for immediate consumption**

- 2.18. While denying the exemption under Entry No. 97 of Exemption Notification, it was further mentioned that *'food products like Naan, Pita Bread, Kulcha, Leavened Bread can be served for consumption. These food products are ready for consumption. They are not raw or unfinished form. Ready to serve foods should be construed as a food which is ready to eat. The Schedule Entry No. 97 refers to bread except when served for immediate consumption. However, it is clear that 'ready to serve' means 'ready to eat'. There is no distinction between them. Food is not necessarily served only in Hotel. Food is also served at home. Hence, dealers contention regarding served for immediate consumption is misinterpretation of the term'*
- 2.19. In this connection, we wish to reiterate our submissions made in the application of advance ruling from Para 2.15 till 2.19 in Annexure III wherein we have discussed in detail about the fact that the product supplied by the Applicant cannot be consumed immediately by end consumer as there are certain additional processes such as defrosting, addition of toppings and heating which is carried out before serving for consumption to the end consumer or customer.
- 2.20. The majority of the products supplied the Company are supplied frozen at a temperature of -18°C. It is not possible for the customer or end consumer to eat the product when they receive it at -18°C for a number of reasons. The first reason is that the bread is very hard when it is in a frozen state and the person trying to eat the frozen product could damage their teeth if they try to bite into the frozen product. Frozen bread can be very brittle and there is a risk that the bread breaks into pieces if someone tries to eat it. The bread would not be functional as a carrier in its frozen state. In addition, frozen bread does not taste good. The points above are relevant if the bread is bought by a customer in the foodservice channel such as hotels and restaurants or if the frozen bread is consumed in the home. Therefore, the breads that the Company supplies are not served for immediate consumption and are not ready to serve.
- 2.21. The customer or end consumer thaws the frozen bread and in many cases then heats the bread up using an oven, microwave, tawa or grill. After this customers or the end consumer will add a sauce and filling to the bread which acts as a carrier. The bread does not taste very good if it is supplied without any sauce or a filling because the product would be very dry and not taste good.





- 2.22. Considering the points above, the Applicant strongly believes that it fulfils all the necessary conditions, which are eligible for claiming exemptions under Exemption Notification.
- 2.23. Without prejudice to above submissions, we wish to further submit the fact that learned Nodal Officer has not provided any submissions with respect to its possible classification as Pizza Bread. Pizza bread is a type of leavened flatbreads and the Applicant uses similar manufacturing processes and ingredients for pizza bread and other variants of leavened flatbreads. In case your office differs with the Applicant's view of exemption, we wish to submit that leavened flatbreads can also be treated at par with Pizza Bread after considering manufacturing process test and ingredient test.

9. **Request:**

In the light of above additional submissions, we wish to put forth our contentions below:

- Classification of products as per submissions made in the application of advance ruling
- Treat this submissions as the statement of responses to the submissions made by the learned Nodal Officer
- In case classification of leavened flatbread is not acceptable to your office, request you to consider the request of treating it as 'Pizza Bread' after giving due regard to the manufacturing test and ingredient test. Should your office require any additional information / documentation in order to enable your office to arrive at a final conclusion, we shall be glad to furnish the same.

03. **CONTENTION – AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

It is submitted that, Issue on which advance ruling is required:

M/s. Signature International Foods India Pvt. Ltd. is the company engaged in the business of trading and exporting bakery product including flat breads.

The dealer has been engaged in manufacturing and supplying of the unleavened flat breads, which include plain chappati, Roti, Paratha Wraps, Tortilla wraps, wraps, Roti Rolls.

The dealer also trader in manufacturing of bread products, Pancake, Pizza Bread, wafers, corn chips, corn taco, corn taco strips.

The dealer seeks clarification of tax rate in respect of following commodities.

- 1 Unleavened flat breads
- 2 Leavened flat breads.
- 3 Corn chips, Corn Taco, Corn Taco strips.
- 4 Pan cake. 5 Pizza bread.

I have gone through the submission of documents submitted by the dealer. I will discuss each item one by one and explain my opinion in this regard as below.

Unleavened flat breads -

Dealer is engaged in manufacturing of Unleavened flat breads like Roti, Chappati, Paratha, Paratha wraps, Tortilla, Tortilla wraps, Roti Rolls, etc.

1) Dealer has clarified his product i.e. Unleavened flat breads schedule entry 99 (A) as "Khakhra, pain chappati or roti" so far as Indian food stuffs like Roti, Plain Roti is concerned it can be clarified under Tariff heading 2016 under entry 99 (A) and should be taxed at CGST 2.5% and SGST 2.5%.

But the food stuffs like Paratha wraps, Paratha, Roti rolls cannot clarified in above mentioned entry i.e. entry 99 (A) because as per Hon. Supreme Court guideline these should be common parlance test for determination of tax rate of particular commodity.



So if we apply this common parlance test to these Indian food stuffs like paratha , Paratha rolls, Roti Rolls , we can't identify these food products as plain Roti or Roti. The manufacturing process and ingredients are different than that of plain Roti or Roti. Common man can't say Paratha or Roti Rolls as a plain Roti, Roti. So impugned product Paratha, Paratha Rolls , Roti Rolls would not fall under entry 99(A) of CGST/MGST Act. In my opinion these food products i.e. paratha, Paratha rolls, Roti Rolls would be covered under residuary entry and taxable at 9% in CGST and MGST.

**Leavened flat bread -**

Dealer has treated leavened flat bread under Entry No. 97 of CGST Act. Entry No.97 stands for "Bread (branded or otherwise) except when served for consumption and pizza bread."

In Leavened flat breads such as Naan, Chalupa, Pita bread, Kalucha, unfold leavened flat breads are also manufactured & sold by the dealer.

**Chalupa** -A chalupa is speciality of south central Mexico. Traditional Chalupas are small, thick, boat shaped fried maza topped only with salsa, cheese and shredded lettuce. These are filled with various ingredients such as chicken, pork, chopped onion, etc. So in view of the manufacturing process and type of ingredient used in it so the Chalupa could not fall under entry No.97. It would be covered under residuary entry and taxable at 9% in CGST and MGST Act.

**Naan**-A typical 'Naan' recipe involves mixing white flour with salt, a yeast culture and enough yogurt to make smooth, elastic enough. The dough is kneaded for few minutes. Then dough is divided into balls which are flattened and cooked. The 'Naan' can be said to be a 'Leavened Bread' as that are made from natural leavened like yeast, yogurt and butter milk. So this product 'Naan' can't fall under entry 97 as it is commonly used as Roti in South Asia region. By applying common parlance test to this product, common man can't say 'Naan' as a bread. It is used as a Roti, eaten with curry in South East Asia. So in my opinion Naan cannot be held as leavened bread and treated as exempted product. In my opinion the food products i.e. Naan would be covered under residuary entry and taxable at 9% in CGST and MGST.

**Pita bread and Kulcha** -Pita bread & Kulcha are leavened bread. But dealer himself applied tax rate at 2.5% in the invoices raised by him. But these product could not be classified under entry 97 as exempted goods. Pita bread and Kulcha cannot be termed as bread.

So the products like Naan, Pita Bread, Kulcha, leavened bread can be served for consumption. These food products are ready for consumption. They are not raw or unfinished form. Ready to serve foods should be construed as a food which is ready to eat. The schedule entry No. 97 refer to breads except when served for consumption. Dealer has taken meaning of served for Consumption as in food served in hotel, restaurant etc. However it is clear that 'ready-to-serve' means ready-to-eat'. There is no distinction between 'ready-to-eat foods' and 'ready to serve foods'. Food is not necessarily served only in a Hotel. Food is also 'served in a home. Hence dealers contention regarding 'served for consumption is misinterpretation of the term so all the food product like 'Naan, Chalupa, Pita bread, Kulcha will fall under residual entry and would be taxable at 9% CGST and 9% MGST Act. Corn Chips, Corn Taco, Corn Taco strips -

Dealer is manufactures of food products like corn chips, corn Taco, Corn Taco strips. Dealer has clarified these products under entry No. 16 of schedule III.

Dealer has rightly classified these products. In my opinion the food product like corn chips, Corn Taco & Corn Taco strips also fall under chapter heading 1905, Entry No.16 schedule III having tax rate @9% CGST & SGST.

**Pancake** -Pancake is flat cake, thin & round prepared from starch based butter that contains eggs, milk, butter. Pancake are known as 'cakes'. In many opinion Pancake manufactured by the applicant qualify as 'cakes' within the meaning of Rate notification clarifying the product under entry 16 schedule III under chapter heading 1905.

**Pizza Bread** -Pizza Bread supplied by the applicant is covered under entry No. 99 of schedule I. Dealer has rightly clarified the food product ie. Pizza Bread under entry No.99 of schedule I having tax rate @ 2.5% CGST and 2.5 MGST.

Hence I reproduce following clarification of various food product.



Sr No		Schedule entry	Tax rate
1	Unleavened Flat breads		
	i) Roti, Plain Roti	99 (A)	2.5% CGST 2.5% MGST
	ii) Paratha, Paratha Rolls, Roti Rolls	Residual	9% CGST 9% MGST
2	Leavened Flat breads	Residual	9% CGST 9% MGST
	i)Naan, ii)Chalupa, iii)Pita Bread iv) Kulcha		
3	Corn chips, Corn Taco, Corn Taco Strips	Entry No.16 Schedule III	9% CGST 9% MGST
4	Pancake	Entry No.16 Schedule III	9% CGST 9% MGST
5	Pizza Bread	Entry No.99 Schedule I	2.5% CGST 2.5% MGST

#### Additional submissions made by concern officer on 25.07.2018

The dealer has been engaged in manufacturing and supplying of the unleavened flat breads, which include plain chappati, Roti, Paratha Wraps, Tortilla wraps, wraps, Roti Rolls.

The dealer also trader in manufacturing of bread products, Pancake, Pizza Bread, wafers, corn chips, corn taco, corn taco strips.

The dealer seeks classification of tax rate in respect of following commodities.

I. Unleavened flat breads- Khakhra, plain chapatti,roti, paratha , paratha rolls and roti rolls

II. Leavened flat breads- Naan, kulcha, chalupa and pita bread

III. Corn chips, Corn Taco, Corn Taco strips.

IV.Pan cake.

V. Pizza bread.

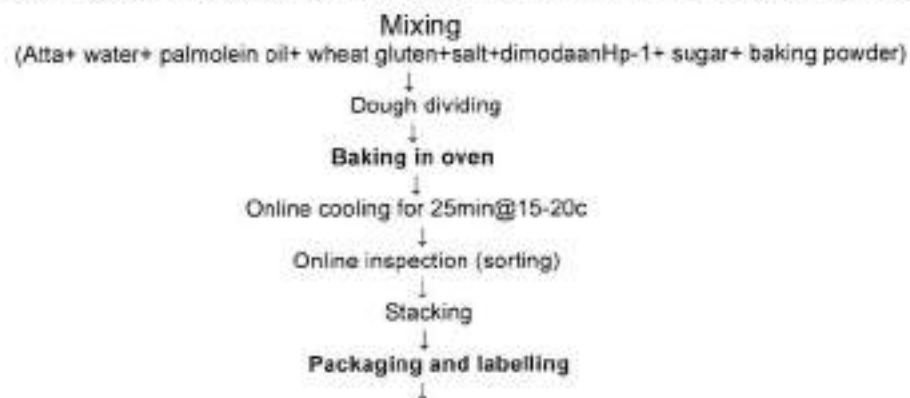
I have gone through the submission of documents submitted by the dealer. I will discuss each item one by one and explain my opinion in this regard as below.

#### I. Unleavened flat breads -

Applicant's interpretation-

Dealer is engaged in manufacturing of Unleavened flat breads like Roti, Chappati, Paratha, Paratha wraps, Tortilla, Tortilla wraps, Roti Rolls, etc. Dealer has classified this product i.e. Unleavened flat breads schedule entry no.99 (A) as "Khakhra, pain chappati or roti"

Manufacturing process- (Chapatti, Roti, Khakhra, Paratha, Paratha rolls, Tortilla, Roti rolls)





- Opinion of Jurisdiction Officer--So far as Indian food stuffs like Roti, Plain Roti is concerned it can be classified under Tariff heading 2106 as per notification no.35/2017 Integrated tax (Rate) Dt. 13/10/2017 under Schedule-I entry no.99 (A) and should be taxed at COST 2.5% and SGST 2.5%.
- So if we apply common parlance test to these Indian food stuffs like paratha , Paratha rolls, Roti Rolls , we can identify these food products as plain roti or roti The manufacturing process is same, but ingredients are different than that of plain Roti or Roti.
- In my opinion these food products i.e. paratha, Paratha rolls, Roti Rolls would be covered under Schedule- I entry no. 99(A) taxable at 2.5% in CGST and MGST.

#### II. Leavened flat bread –

- o Applicant's interpretation--
- Dealer has treated leavened flat bread under Entry no. 97 of Exemption notification no.2/2017 Dt-28/06/2017 of CGST Act.
- Entry no.97 stands for "Bread (branded or otherwise) except when served for consumption and pizza bread." Opinion of Jurisdiction Officer
- In Leavened flat breads such as Naan, Chalupa, Pita bread, Kulcha, unfold leavened flat breads are also manufactured & sold by the dealer.

#### A) Chalupa -

A chalupa is speciality of south central Mexico. Traditional Chalupas are small, thick, boat shaped fried masa (maize) topped only with red salsa(salad), green salsa, chopped onion, cheese and shredded chicken. These are filled with various ingredients such as chicken, pork, chopped onion, etc. So in view of the manufacturing process and type of ingredient used in it, the Chalupa could not fall under Entry no.97 of Exemption notification. It cannot be classified as a bread.

In my opinion this 'chalupa 'would be covered under Schedule- III entry no.453 i.e. residuary entry and taxable at 9% in CGST and MGST.

#### B) Naan –

- o A typical 'Naan' recipe involves mixing wheat flour with salt, a yeast culture and enough yogurt to make smooth, elastic enough. The dough is kneaded for few minutes. Then dough is divided into balls which are flattened and cooked.
- o So this product 'Naan' can't fall under entry no.97 of Exemption notification as it is commonly used as roti in South Asia region.
- By applying common parlance test to this product, common man can't say 'Naan' as a bread. It is used as a Roti,eaten with curry in South East Asia.
- So in my opinion Naan cannot be held as leavened bread and treated as exempted product. In my opinion the food products i.e. Naan would be covered under residuary entry under Schedule --III entry n.453 and taxable at 9% in (GST and MGST).

#### C) Pita bread and Kulcha –

- o Pita bread & Kulcha are leavened bread. But dealer himself applied tax rate at 2.5% in the invoices raised by him. But these product could not be classified under entry no.97 as exempted goods. Pita bread and Kulcha cannot be termed as bread.



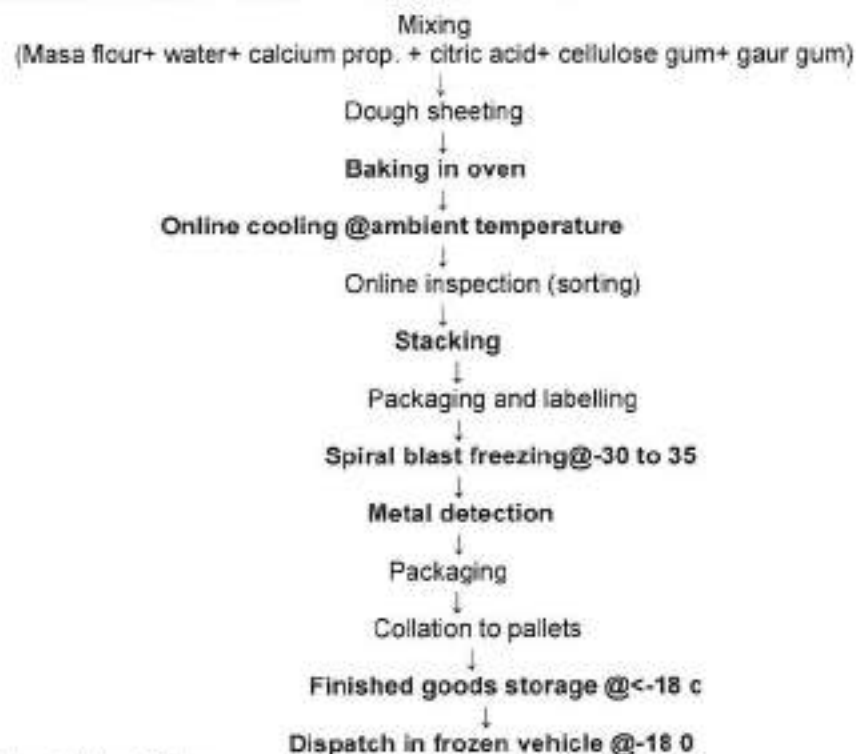
- So the products like Naan, Pita Bread, Kulcha, leavened bread can be served for consumption. These food products are ready for consumption. They are not raw or unfinished form. Ready to serve foods should be construed as a food which is ready to eat.
- The schedule entry no. 97 of Exemption notification refer to breads except when served for consumption. Dealer has taken meaning of served for Consumption as in food served in hotel, restaurant etc. However it is clear that 'ready-to-serve' means ready-to-eat'. There is no distinction between 'ready-to-eat foods' and 'ready to serve foods'. Food is not necessarily served only in a Hotel. Food is also 'served in a home.
- Hence dealers contention regarding 'served for consumption' is misinterpretation of the term so all the food product like 'Naan, Chalupa, Pita bread, Kulcha will fall under residual entry i.e. Schedule -III entry n.453 and would be taxable at 9% CGST and 9% MGST Act.

### III. Corn Chips, Corn Taco, Corn Taco strips –

Applicant's interpretation-

Dealer is manufactures of food products like corn chips, corn Taco, Corn Taco strips. Dealer has classified these products under entry No. 16 of schedule III.

Manufacturing process- (Corn chips, Corn taco, Corn taco strips)



Opinion of Jurisdiction Officer--

Dealer has rightly classified these products. In my opinion the food product like corn chips, Corn Taco & Corn Taco strips also fall under chapter heading 1905, Entry No.16 schedule III having tax rate @9% CGST & SGST.

### IV. Pancake –

Applicant's interpretation--

Dealer has classified Pancake as a cake which is commonly known to everyone and treated the same under Entry no.16 of Schedule-III of CGST Act.

Manufacturing process- (Pan cake)

Mixing

(Wheat flour+ water+ sugar+ salt+ sodium bicarbonate+ sodium acid pyrophosphate+ citric acid+ calcium propionate+ milk+ sunflower oil+ golden syrup + vanilla flavour + whey powder+ detam )



**Opinion of Jurisdiction Officer--**

Pancake is flat cake, thin & round prepared from starch based butter that contains eggs, milk, butter. Pancake are known as 'cakes'. In many opinion Pancake manufactured by the applicant qualify as 'cakes' within the meaning of Rate notification clarifying the product under entry 16 schedule 111 under chapter heading 1905.

**V) Pizza Bread -**

**Applicant's interpretation--**

Dealer has classified Pizza bread as Entry no.99 of Schedule-I of CGST Act. Opinion of Jurisdiction Officer

Pizza Bread supplied by the applicant is covered under entry No. 99 of schedule I. Dealer has rightly classified the food product ie. Pizza Bread under entry No.99 of schedule-I having tax rate @ 2.5% CGST and 2.5%MGST.

Hence I reproduce following clarification of various food product.

Sl No	Product Supplied	Schedule entry	Tax rate
	Unleavened Flat breads		
	i) Roti, Plain Roti	Schedule-1 Entry no.99 (A)	2.5% CGST 2.5% MGST
	ii) Paratha, Paratha Rolls, Roti Rolls	Schedule-1 Entry no.99 (A)	2.5% CGST 2.5% MGST
2	Leavened Flat breads	Schedule-III Entry no.453	9% CGST 9% MGST
	i)Naan, ii)Chalupa, iii)Pita Bread iv) Kulcha		
3	Corn chips, Corn Taco, Corn Taco Strips	Entry No.16 Schedule III	9% CGST 9% MGST
4	Pancake	Entry No.16 Schedule III	9% CGST 9% MGST
5	Pizza Bread	Entry No.99 Schedule I	2.5% CGST 2.5% MGST

**04. HEARING**

The Preliminary hearing in the matter was held on 03.07.2018, Sh. Pratik Shah, C.A. along with Sh. Ramesh Warungare, Finance head appeared and requested for admission of application



as per contentions made their ARA. Jurisdictional Officer Sh. M. R. Shinde, Asstt. Commissioner of State Tax (NAS-VAT-D-009) Nasik appeared and made written submissions.

The application was admitted and called for final hearing on 25.07.2018, Pratik Shah, C.A. along with Sh. Nitin Vijai vrgiya, C.A., Ms. Snehal Gadhawe, C.A., Sh. Yatin Patel, Managing Director, Sh. ABHAY Mundra, C.A. and Sh. Ramesh Warungare, Finance Head appeared made oral and written submissions. Jurisdictional Officer Sh. M. R. Shinde, Asstt. Commissioner of State Tax (NAS-VAT-D-009) Nasik appeared and made written submissions.

#### 05. OBSERVATIONS

We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department. We find that:-

1. The Applicant, a private limited company, holding the GST registration number ('GSTIN') 27AACCH2133E1Z3 with effect from 01 July 2017, is located in Nashik, Maharashtra. The company is engaged in the business of, inter alia, manufacturing, trading and exporting bakery products which includes flatbreads. The Applicant supplies products to customers and distributors in India and in overseas markets including the Middle East, South East Asia, Africa and Australia.

Applicant supplies two types of flatbreads like Unleavened and leavened flatbreads to retailers, canteens, airlines, hotels, hospitals, schools, restaurants, wholesalers, distributors and other foodservice operators located in India and overseas. The details of manufacturing process and ingredients required are in short as thus,

**A) Unleavened Flatbread includes--** Plain Chapatti and variants of Chapatti flatbreads referred to internationally in different countries as Tortilla, Tortilla Wraps, Wraps, Roti Rolls, Roti, Chapatti, Paratha and Paratha Wraps. The products are manufactured by the Applicant using various ingredients including Atta, Maida, water, Palmolein oil, salt, sugar, baking powder, wheat gluten etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the bread is packed, the packet is labelled and subsequently stored and transported at -18 Degree Celsius temperature or transported ambient.

**B) Leavened Flatbread includes ('Bread Products')--** Naan, Kulcha and variants of these type of leavened breads referred to internationally in different countries as Pitta bread, Chalupa, Corn bread, Leavened Flatbreads and Unfolded Leavened Flatbread. The products are manufactured by the Applicant using various ingredients including maida, tandoori atta, atta, water, rice flour, oil, yeast, salt, sugar etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the leavened bread is packed, the packet is labelled and subsequently stored and transported at -18 Degree Celsius temperature or transported ambient.

**C) Wafer's includes the -** Corn Chips, Corn Taco and Corn Taco Strips to its customers and distributors. The products are manufactured by the Applicant using various ingredients including masa flour, water, small quantities of cellulose gum, citric acid, guar gum etc. Upon raw material intake, the ingredients go through various processes including mixing, dough dividing, baking and cooling. After the cooling process, the products are packed, the packets are



labelled and subsequently stored and transported at -18 Degree Celsius temperature. Upon receipt of these products, the customer or end consumer fries the product, which is similar to products such as wafers.

**D) Pancake's includes** - 'pancakes', a flat cake, often thin and round, prepared from a starch-based batter that may contain milk baked on a hot surface such as a griddle or frying pan. The pancakes manufactured by using of ingredients like wheat flour, water, sugar, salt, milk, syrup, oil etc. Upon raw material intake, the ingredients go through various processes including mixing, dough dividing, baking on a hot plate on both sides and cooling. After the cooling process, the pancake is packed and labelled and subsequently stored and transported at - 18 Degree Celsius temperature. These products are similar to cakes included in entry number 16 of Schedule III to the Rate Notifications.

**E) Pizza bread includes** -- Pizza bread which is also called Pizza base. The products are manufactured by the Applicant using various ingredients including flour, water, sugar, salt, baking powder, yeast, oil etc. Upon raw material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. After the cooling process, the pizza bread is packed and labelled and subsequently stored and transported at - 18 Degree Celsius temperature.

Applicant has approached this authority and has raised questions as above with a request to classify the products.

The Central Point of discussion in this application is the applicability of entry No.99A of Schedule to the Notification No. 1/2017 - IGST Act dated 28/06/2017. By virtue of this notification the food products such as Khakara, Plain Chapatti or Roti are liable to GST @ 5%. The Applicant has approached this authority with a prayer to classify the various food products sold by the appellant and the applicable rate of tax. We shall now discuss and examine

each question separately as below:

**Que. 1.** *Whether on facts and circumstances of the case, the Unleavened Flatbreads be treated as Khakra, plain chapatti or roti under Entry No. 99 A of Schedule / of Notification No. 01/2017-Integrated Tax (Rate) dated 28 June 2017, Notification Number 1/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 1/2017-State Tax (Rate) No. MGST1017/ C.R. 104/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Rate Notifications')*

*If not, whether on facts and circumstances of the case, the Unleavened Flatbreads be classified:*

*(i) as 'bread' as mentioned under Entry No. 97 of Notification Number 02 Number 2/2017Integrated Tax (Rate), dated 28 June 2017, Notification Number 2/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 2/2017-State Tax (Rate) No. MGST1017/ C.R. 103(1)/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Exemption Notifications');* or

*(ii) as Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included [other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905] on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) under Entry No. 13 of Schedule III of Rate Notification or*

*(iii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit.*





With respect to this question applicant submits that the company is engaged in the manufacturing trading and exporting of bakery products i.e. on Unleavened Flat Brads such as plain chapatti and variants of chapatti such as Tortilla, Tortilla wraps, roti rolls, wraps, roti, chapatti and paratha and paratha wraps. During the course of final hearing applicant was instructed to provide products, detailed list of ingredients, manufacturing process chart, purchase order, invoice etc. Applicant has submitted all those details. We have gone through the details as above and we find that the ingredients used to manufacture these products, the manufacturing process chart, the packaging and the storage of the products are substantially same. We find that the various ingredients used for manufacturing which are common and forming more than 80% by weight are Atta, Maida and water, The other ingredients are palmoleine oil, salt, sugar, backing powder, wheat butane etc. By resorting to this fact, applicant has laid much stress that these products are covered by the scope entry No.99A and squarely covered by the description 'khakara plane chapatti or roti' vide notification no. 34/2017 dated 13/10/2017.

Per contra the concerned officer for Revenue submitted that so far as Indian food stuffs like roti, plain roti are concerned it can be classified under Tariff heading 2016 and thus are covered under entry 99A and should be taxed @ 2.5% each under CGST and SGST Act. However, with respect to food stuffs such as paratha, paratha wraps, roti rolls, cannot be classified in the above entry and by applying common parlance test these products would be covered under residual entry and taxable @ 9% each under CGST and SGST Act.

From the perusal of notification 1/2017 and 34/2017 cited supra we find that the expression khakara, plain chapatti or roti are stated as covered by these notifications but we find that no details as to what products, apart from these would be covered or, no definition of these products are given in these Notifications. It is therefore necessary to refer to the meaning of this term as per dictionary meaning or Wikipedia

#### **Merriam Webster-**

**Chapatti** -a round flat unleavened bread of India i.e. usually made of whole wheat flour and cooked on a griddle. Chapatti is also called fulka.

**Roti**- a roti is generally made out of refined flour and is cooked in tandoor. This roti may be called tandoori roti.

Applicant has raised question before this authority regarding classification of products such as Tortilla wraps, roti rolls, wraps, chapatti, paratha and paratha wraps.



As averted above we find no difficulty in classifying chapatti, roti and its variants as covered by scope of entry 99A of notification no. 34/2017 which covers khakara, plain chapatti or roti.

As regards Tortilla, Tortilla wraps, paratha and roti rolls revenue submitted that by common parlance test we cannot identify these product as plain roti or roti. We have examined as stated above the ingredients used for manufacturing these products, manufacturing process and the product itself. We find that these products are nothing but simple chapatti. We agree with the contention of the applicant that various types of Unleavened Flat breads are called by different names by different users depending upon the regions where the food is consumed. This can be explained by citing common example such as chapatti is called phulka or roti is called bhakari (in Maharashtra) and Rotla (in Gujrat).

In view of this we agree to the contention that the products such as Tortilla wraps, Roti rolls, paratha and paratha wraps are covered by the scope of entry 99A of notification 34/2017.

During the course of hearing, revenue officer has strongly opposed the contention of the applicant that paratha or paratha wraps are covered by the scope of entry 99A cited supra. However the officer in the additional submissions on 25/07/2018 submitted that in view of common parlance test food stuffs like paratha, paratha rolls, roti rolls, can be identified as plain roti or roti and thus opined that these food products would be covered under entry 99A and taxable @2.5% each.

We find that the food product paratha as is available in hotels and restaurants is in plain, folded or stuffed. By applying the common parlance test we understand paratha as different and distinct food commodity from roti, chapatti etc. The product before us is examined from this view point. The product is plain like a chapatti and unstuffed like Gobhi paratha, Laccha paratha. To us, this is nothing but a plain chapatti and paratha is a misnomer for this food product supplied by the applicant. As such we do not find any difficulty in classifying the product as plain chapatti covered by entry 99A of notification no. of 34/2017.

In the light of above discussion and for the given facts that all the products contain similar/same ingredients, manufacturing process and all the products are used as staple food item in meal we find no difficulty to arrive at a conclusion that the products are covered by entry no. 99A of notification no. 34/2017 and therefore we feel that there is no need to further deal with sub question (i), (ii) and (iii) of this question.



Que 2: 'Whether on facts and circumstances of the case, the Leavened Flatbreads be treated as 'bread' as mentioned under Entry No. 97 of Exemption Notifications

If not, whether on facts and circumstances of the case, the Leavened Flatbreads be classified:

- (i) Pizza Bread as mentioned under Entry No. 99 of Schedule I of Rate Notifications; or
- (ii) as Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) under Entry No. 13 of Schedule III of Rate Notification or
- (iii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit

In connection with the products covered by this question which are leavened Flatbreads including Naan, Kulcha, and variants of these type of Leavened breads referred internationally as pitabread, Chalupa, Cornbread, Leavened Flatbreads and unfolded Leavened Flatbreads applicant submits that similar or same manufacturing process is followed as is applicable for manufacturing of bread and therefore these product be classified as Bread within the meaning of entry no. of 97 of the exemption notification. In this regard, we find that the term mentioned above have not been defined under the Act or the notifications, we therefore refer to Dictionary or Wikipedia to understand these expressions.

**Bread- Wikipedia:**

Bread is a staple food prepared from a dough of flour and water, usually by baking.

Bread may be leavened by processes such as reliance on naturally occurring sourdough microbes, chemicals, industrially produced yeast, or high-pressure aeration. Commercial bread commonly contains additives to improve flavor, texture, color, shelf life, nutrition, and ease of manufacturing. Indian breads are a wide variety of flatbreads and crêpes which are an integral part of Indian cuisine.

**Definition of 'naan' (COLLINS ENGLISH DICTIONARY)**

Naan or naan bread is a type of bread that comes in a large, round, flat piece and is usually eaten with Indian food.

**Source: Wikipedia**

Naan is a leavened, oven-baked flatbread found in the cuisines mainly of Middle East, Central Asia, and Indian subcontinent.

**MERRIAM WEBSTER DICTIONARY**

: a round flat leavened bread especially of the Indian subcontinent



**THE FREE DICTIONARY BY FARLEX:**

A flat, leavened bread of northwest India, made of wheat flour and baked in a tandoor.

Source: Wikipedia

**KULCHA:**

Kulcha is a type of mildly leavened flatbread that originated in the Indian subcontinent. It is a Punjabi variation of naan.

**Recipe**

Kulcha is made from maida flour, water, a pinch of salt and a leavening agent (yeast or old kulcha dough), mixed together by hand to make a very tight dough.

In order to classify the products under a fiscal statute and in the absence of any such definition we are of the opinion that it would be a normal understanding thereof that would govern the classification of the product under issue. In a situation like one at hand we may refer to the decision of Hon'ble Supreme Court in case of M/s. Ramawatar Budiprasad vs Assistant Sales Tax Officer, Akola reported as 12 STC 286.

In this judgement court adopted the following principles in the matter of construction of entries in statutes like the Sales Tax Acts:

"(1) If a statute uses the ordinary words in everyday use, such words should be construed according to their popular sense.

(2) If a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adopted to the fitness of the matter of the statute.

(3) On the other hand, : .... if it is a word which is of a technical or scientific character then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning."

Applying the above principles, we have to find whether the product Naan and Kulcha can be treated as bread and covered by the scope of entry 97 of the exemption notification. It is true that as per dictionary meaning or Wikipedia large number of food items including Naan and Kulcha have been refereed as Indian breads. But the case before us is that the above product has not been defined under the Act or the notifications issued and in the absence of any such definitions it would be advisable to refer to the principals as referred above. Having regard to the principles laid down by the Supreme Court in case of M/s. Ramawatar cited supra we find that while classifying the product under



fiscal statute the resort has to be to their popular meaning or meaning attached to them by those dealing in them or to their commercial sense. Viewing the above products we find that large number of consumers of this product would not regard them as roti, chapatti or as the case may be bread in the ordinary sense. It is our common experience in a restaurant or hotel that a person receiving orders specifically invite attention of the customer about whether he wants Naan, Kulcha, Roti etc. to be served with curry. In view of this we agree with the contention of the officer that by applying common parlance test, common man would not say Naan or Kulcha as a bread. Since we do not find any specific entry for products mentioned in this question and their variants they would be covered under entry no 453 of schedule III of the notification.

In spite of ours above finding we agree with the contention of the applicant with regard to exception provided entry no.97 of exemption notification "when served for immediate consumption" means served for immediate consumption. We also agree with the applicant that the product does not use chicken, pork chopped onion etc. while manufacturing or supplying these products.

Now we turn to another product - CHALUPA:

MERRIAM WEBSTER DICTIONARY

Definition of *chalupa*

A fried corn tortilla sometimes shaped like a boat and usually filled with a savory mixture (as of meat, vegetables, or cheese)

OXFORD ENGLISH LIVING DICTIONARY:

A fried tortilla in the shape of a boat, with a spicy filling

Source: Wikipedia

CHALUPA:

A chalupa (Spanish pronunciation: is a specialty of south-central Mexico, including the states of Puebla, Guerrero, and Oaxaca. Chalupas are made by pressing a thin layer of masa dough around the outside of a small mould, in the process creating a concave container resembling the boat of the same name, and then deep frying the result to produce crisp, shallow corn cups. These are filled with various ingredients such as shredded chicken, pork, chopped onion, chipotle pepper, red salsa, and/or green salsa. They can in many cases resemble tostadas since both are made of a fried or baked masa based dough.

We find that normally the chalupa is a food product which are filled with various ingredients such as chicken, pork, chopped onion etc. However while arguing the matter



and the sample provided to us at the time of hearing applicant has categorically submitted that they are plain products without any filling. Further from the ingredients used and the manufacturing process we do not find any similarity. In common parlance also and as discussed above chalupe is not considered as bread. And as such the product would not fall in the category of bread as covered by entry no. 97 of the exemption notification. As there is no specific entry for this product, it would be covered under residual entry no. 453 of schedule III of the notification.

#### **Pita Bread**

##### **COLLINS ENGLISH DICTIONARY**

Noun: a flat rounded slightly leavened bread, originally from the Middle East, with a hollow inside like a pocket, which can be filled with food

Source: Wikipedia In many languages, the word pita refers not to flatbread, but to flaky pastries. Pita Bread is a yeast-leavened round flatbread baked from wheat flour, sometimes with a pocket.

##### **THE FREE DICTIONARY**

(Cookery) a flat rounded slightly leavened bread, originally from the Middle East, with a hollow inside like a pocket, which can be filled with food. Also called: Arab bread or Greek bread

##### **CAMBRIDGE DICTIONARY**

a round or oval flat bread that is hollow and can be filled with other food

##### **OXFORD ENGLISH LIVING DICTIONARY:**

Flat, hollow, slightly leavened bread which can be split open to hold a filling.

With regards to Pita bread applicant is of the opinion that the product is bread covered by the scope of entry no. 97 of exemption notification.

As per Webster dictionary the term bread has been defined as a usually baked and leavened food made of a mixture whose basic constituent is flour or meal. On the contrary as per definition and meaning given above

Pita is a yeast leavened round flatbread baked from wheat flour, sometimes with a pocket. From the ingredients and the manufacturing chart, we find that applicant uses similar/same ingredients and same manufacturing process as that of bread. The Hon. Bombay High Court in case Commissioner of Sales Tax Vs Aggarwal and Co. (1983 (12) ELT 116) held that a general term used for any commodity in a fiscal statute covers that commodity in all its forms. As there is no difference in the conventional bread and pita bread with respect to ingredients and



manufacturing process, we hold that Pitta bread would squarely fall under entry 97 of the exemption notification.

**Que: 3.** *Whether on facts and circumstances of the case, Corn Chips, Corn Taco and Corn Taco Strips supplied be treated as 'wafer' under Entry No. 16 of Schedule III of Rate Notifications*

*If the same is not classifiable as 'wafer', whether on facts and circumstances of the case, the Corn Chips, Corn Taco and Corn Taco Strips be classified.*

*(i) as 'Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coco or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905)' under Entry No. 13 of Schedule III of Rate Notification; or*

*(ii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

As observed by us in case of other products discussed herein above we also find that the term corn chips, corn taco, corn taco strips have not been defined under the Act or notification issued. It is therefore felt necessary to refer to dictionary meaning.

**Corn chips:** As per Cambridge English Dictionary- Indian English a very thin slice, often round piece of fried potato or other vegetables, sometimes with a flavour added.

**Corn Chips as Wikipedia** - is a snack food made from cornmeal fried in oil or baked usually in the shape of a noodle or scoop.

**Corn Taco-** is a traditional Mexican dish consisting of a corn or wheat Tortilla folded or rolled around a filling.

It is the applicant's contention that above products are covered by the scope of expression wafer and thus classifiable under entry no.16 of schedule III of the rate notification dated 28/06/2017.

The term "wafers" has been defined as per Webster Dictionary as a "thin crispy cracker"

We find that food products are covered under chapter heading 1905 which covers schedule entry no. 16 of schedule III of the rate notification referred above. Same is reproduced along with the details of tariff head as per Customs Tariff Heading as below:

**Entry -16** 'All goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate, biscuits; Pastries and cakes (other than pizza bread, khakra, plain chapatti or roti, Waffles and wafers coated with chocolate or containing chocolate, papad, bread]. The details of tariff head as below,

S. No.	Chape/ Heading/Sub-heading/Tariff item	Description as per Schedule	Heading Description in Custom Tariff	Entire Customs Tariff Heading with sub Heading and Tariff Item	
1	2	3	4	5	
16.	1905	Pastry, cakes, biscuits and other bakers' wares, whether or not	BREAD, PASTRY, CAKES, BISCUITS AND OTHER	1905	BREAD, PASTRY, CAKES, BISCUITS AND OTHER BAKERS' WARES, WHETHER OR NOT CONTAINING COCOA; COMMUNION



	containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products (other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products)	BAKERS' WARES, WHETHER OR NOT CONTAINING COCOA; COMMUNION WAFERS, EMPTY CACHETS OF A KIND SUITABLE FOR PHARMACEUTICAL USE, SEALING WAFERS, RICE PAPER AND SIMILAR PRODUCTS		WAFERS, EMPTY CACHETS OF A KIND SUITABLE FOR PHARMACEUTICAL USE, SEALING WAFERS, RICE PAPER AND SIMILAR PRODUCTS
			1905 10 00	Crispbread
			1905 20 00	Gingerbread and the like
				<i>Sweet biscuits; waffles and wafers:</i>
			1905 31 00	Sweet biscuits
			<b>1905 32</b>	<b><i>Waffles and wafers :</i></b>
				<i>Communion wafers :</i>
			1905 32 11	Coated with chocolate or containing chocolate
			1905 32 19	Other
			1905 32 90	Other
			1905 40 00	Rusks, toasted bread and similar toasted products
			1905 90	<i>Other :</i>
			<b>1905 90 10</b>	<b>Pastries and cakes</b>
			1905 90 20	Biscuits not elsewhere specified or included
			1905 90 30	Extruded or expanded products, savoury or salted
			1905 90 40	Papad
			1905 90 90	Other



In the present case, the term wafer has not been defined under the Act or notification. However, we understand wafer as chips used as a snack. In fact the terms wafers and chips are often used interchangeably. Further from the facts submitted by the applicant that the end consumer fry the chip products which make them crispy similar to the product such as wafers. The Corn chips, Corn taco and corn taco chips are variants



of chips eaten as a snack. Considering the above facts we hold that the term wafers would include impugned products. And therefore these products would be classifiable under chapter 1905 3290 and liable to tax at @ 9% each under CGST and SGST Act.

**Que 4:** *Whether on facts and circumstances of the case, Pancakes supplied be treated as All Goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate; biscuits; Pastries and cakes (other than pizza bread, khakhra, plain chapatti or roti, Waffles and wafers coated with chocolate or containing chocolate, papad, bread) as mentioned under Entry No. 16 of Schedule III of Rate Notifications.*

*If not, whether on facts and circumstances of the case, the Pancakes be classified in any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

**Pan cakes:**

This term is also not defined under the act and therefore we refer to Wikipedia which defines the term as below:

'Pancakes', is a flat cake, often thin and round, prepared from a starch-based batter that may contain milk baked on a hot surface such as a griddle or frying pan.

The pancakes are manufactured by using ingredients like wheat flour, water, sugar, salt, milk, syrup, oil etc. Similarly we find that cake is an item soft sweet food made from a mixture of flour, fat, eggs, sugar, and other ingredients, baked and sometimes iced and decorated.

Thus we find that pancakes are similar to cakes. There is no much difference between cake and pancakes. As mentioned above while dealing with pita bread and relying on Bombay High Court decision in case of Commissioner of Sales Tax vs Aggarwal and Co. cited supra we hold that entry 'cakes', cover pancakes also. We find that, Cake is mentioned under the chapter heading 1905 of customs and tariff Act 1975. The product cake is mentioned in the entry 16 under the head of " All Goods " i.e. waffles and wafers *other than coated with chocolate or containing chocolate*, biscuits; Pastries and cakes (other than pizza bread, khakhra, plain chapatti or roti, Waffles and wafers coated with chocolate or containing chocolate, papad, bread].

Therefore, we are of the view that the impugned the product "Pancakes" is covered under the chapter heading 19059010 under the entry 16 of schedule III of GST ACT and liable to tax at appropriate rate.

**Que 5:** *Whether on facts and circumstances of the case, Pizza Base supplied be treated as 'Pizza Bread' as mentioned under Entry No. 99 of Schedule / of Rate Notifications.*

*If not, whether on facts and circumstances of the case, the Pizza Base be classified in any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

The products are manufactured by the Applicant i.e. pizza base using various ingredients including flour, water, sugar, salt, baking powder, yeast, oil etc. After raw



material intake, the ingredients go through various processes including mixing, proofing, dough dividing, baking and cooling. As per entry number 99 of Schedule I to the Central Rate Notifications, the product description is 'pizza bread'. Having regard to the ratio of the judgement in case of Aggarwal and Company cited supra the schedule entry for pizza bread is wide enough to cover pizza base within its ambit. The Pizza base is required for manufacture of Pizza. It is not used for any other purpose. The manufacturing process and ingredients are different than bread, chapatti or Roti. It would not be covered under Entry 97 of Rate Notification or Exemption Notification.

For above discussion, we conclude that, the impugned product Pizza base is covered under entry 99 of schedule I of GST Act and would be liable to tax rate at appropriate rate.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

**ORDER**

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 26/2018-19/B-

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Mumbai, dt. 20.8.2018

**Question 1:-** *'Whether on facts and circumstances of the case, the Unleavened Flatbreads be treated as 'Khakra, plain chapatti or roti under Entry No. 99 A of Schedule I of Notification No. 01/2017-Integrated Tax (Rate) dated 28 June 2017, Notification Number 1/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 1/2017-State Tax (Rate) No. MGST1017/C.R. 104/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Rate Notifications')*

*If not, whether on facts and circumstances of the case, the Unleavened Flatbreads be classified:*

*(i) as 'bread' as mentioned under Entry No. 97 of Notification Number 02 Number 2/2017 Integrated Tax (Rate), dated 28 June 2017, Notification Number 2/2017-Central Tax (Rate), dated 28 June 2017 and Notification Number 2/2017-State Tax (Rate) No. MGST1017/C.R. 103(1)/Taxation-1, dated 29 June 2017 (collectively referred to as the 'Exemption Notifications'); or*

*(ii) as Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) under Entry No. 13 of Schedule III of Rate Notification or*

**(iv)** *Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit*

**Answer:** - *The Unleavened Flatbreads products such as plain chapatti, Tortilla, Tortilla Wraps, roti, Roti rolls, Wraps, Paratha and Paratha wraps are covered under Entry No. 99 A of Schedule I and they would be liable to tax @ 5% (2.5 % each for CGST and MGST and 5 % for IGST).*



**Question 2:-** "Whether on facts and circumstances of the case, the Leavened Flatbreads be treated as 'as 'bread' as mentioned under Entry No. 97 of Exemption Notifications

If not, whether on facts and circumstances of the case, the Leavened Flatbreads be classified:

(i) Pizza Bread as mentioned under Entry No. 99 of Schedule I of Rate Notifications; or

(ii) as Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905]on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905) under Entry No. 13 of Schedule III of Rate Notification or

(i) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit

**Answer :-** The product Leavened Flatbreads stated in application such as Naan, Kulcha and Chalupa are not covered by the expression 'bread' as mentioned under Entry No. 97 of Exemption Notifications but they would be covered under residual entry 453 of schedule III of GST ACT and they would be liable for taxes @ 18 % ( 9% CGST and 9% MGST ). However Pita Bread is covered by the expression 'bread' as mentioned under Entry No. 97 of Exemption Notifications.

**Question 3:-** "Whether on facts and circumstances of the case, Corn Chips, Corn Taco and Corn, Taco Strips supplied be treated as 'wafer' under Entry No. 16 of Schedule III of Rate Notifications

If the same is not classifiable as 'wafer', whether on facts and circumstances of the case, the Corn Chips, Corn Taco and Corn Taco Strips be classified

(i) as " Malt extract, food preparations of flour, groats, meal, starch or malt extract not containing coca or containing less than 40% by weight of coca calculated on a totally defatted basis, not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905]on a totally defatted basis not elsewhere specified or included (other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905)" under Entry No. 13 of Schedule III of Rate Notification; or

(ii) Any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit

**Answer :-** The products like Corn Chips, Corn Taco and Corn , Taco Strips would be treated as 'wafer' under Entry No. 16 of Schedule III of Rate Notifications and it would be liable for taxes @ 18 % ( 9% CGST and 9% MGST ).

**Question 4:-** "Whether on facts and circumstances of the case, Pancakes supplied be treated as All Goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate; biscuits; Pastries and cakes (other than pizza bread, khakhra, plain chapatti or roti, Waffles and wafers



coated with chocolate or containing chocolate, papad, bread) as mentioned under Entry No. 16 of Schedule III of Rate Notifications.

If not, whether on facts and circumstances of the case, the Pancakes be classified any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit.

**Answer--**The product Pancakes supplied by the applicant would be treated as All Goods as mentioned under Entry No. 16 of Schedule III of Rate Notifications and it would be liable for taxes @ 18 % ( 9% CGST and 9% MGST ).

**Question 5:-** "Whether on facts and circumstances of the case, Pizza Base supplied be treated as 'Pizza Bread' as mentioned under Entry No. 99 of Schedule / of Rate Notifications.

If not, whether on facts and circumstances of the case, the Pizza Base be classified any other Schedule Entry as per Rate Notification or Exemption Notification as your good office thinks fit

**Answer :-** The product , Pizza Base supplied by the applicant would be treated as 'Pizza Bread' as mentioned under Entry No. 99 of Schedule / of Rate Notifications and it would be liable for taxes @ 18 % ( 9% CGST and 9% MGST ).



—sd—  
**B. V. BORHADE**  
(MEMBER)

—sd—  
**PANKAJ KUMAR**  
(MEMBER)

**Copy to:-**

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax
5. Joint commissioner of State Tax, Mahavikas for Website.

**CERTIFIED TRUE COPY**

**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

**Note :-** An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021.