

**AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH****Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**  
**U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017****Members Present****1. Manoj Kumar Choubey****Joint Commissioner,****Office of the Joint Commissioner of Commercial Tax, Indore Division-1****2. Virendra Kumar Jain****Joint Commissioner,****Office of the Commissioner,CGST and Central Excise, Indore**

<b>GSTIN Number. If any/User-id</b>	<b>23ABBFA7513N1ZI</b>
<b>Name and address of the applicant</b>	<b>M/s ALISHA FOODS 24, mirza wadi Ujjain Madhya Pradesh 456006</b>
<b>Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised</b>	<b>a)Classification of any goods or services or both;  e)Determination of the liability to pay tax on any goods or services or both;</b>
<b>Present on behalf of applicant</b>	<b>MS. POOJA SUHERA</b>
<b>Case Number</b>	<b>14/2019</b>
<b>Order dated</b>	<b>28/11/19</b>
<b>Order Number</b>	<b>20/2019</b>

**PROCEEDINGS****(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

- The present application has been filed u/s 97 of the Central Goods and Services Act,2017 and MP Goods and services Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s ALISHA FOODS (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
- The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the



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MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

**3. BRIEF FACTS OF THE CASE:**

3.1. The Applicant is a partnership firm having two Partners engaged in the manufacturing business of Papad (Fryums), Namkeens and Popcorn under the brand name of Target School Times.

3.2 Applicant has filed an application seeking advance ruling under section 97 of CGST Act, 2017 MPGST Act, 2017 and IGST Act, 2017 for correct classification of Papad and Papad Fryums of different shapes, sizes and varieties (commonly known as Fried Fryums) manufactured by Applicant and sold. The Applicant manufactures Fried Fryums of different shapes, sizes and varieties which are ready to eat.

3.3 An Application was filed regarding Classification of Items manufactured i.e Papad and Papad Fryums by the concern in different shapes and size. But at the time of hearing the applicant reframed the question and clearly stated that *the Question for Advance Ruling is "What is the correct classification of Fried Fryums of different shapes, sizes and varieties which are ready to eat and What is the HSN Code and GST rate applicable on such goods manufactured."*

**4. QUESTIONS RAISED BEFORE THE AUTHORITY:-**

Hence the question posted before the Authority in the application:-

4.1. *What is the correct classification of Fried Fryums of different shapes, sizes and varieties which are ready to eat and What is the HSN Code and GST rate applicable on such goods manufactured.*

**5. CONCERNED OFFICER'S VIEW POINT:**

The concerned officer is his view submitted that Fried Fryum will be classified under Tariff 2016 90.

**6. RECORD OF PERSONAL HEARING:**

6.1. Ms. Pooja Sureka, CA appeared for personal hearing. At the outset they informed that the applicant paid only 5000/- for SGST as fee along with the application and the requisite fee of rupees 5000/- under CSGT was paid on 28.08.19. Accordingly they urged to admit the application. Since the requisite fee has been paid on 28.08.19 the application date shall be 28.08.19 only. This was accepted by her. the applicant reiterated the submissions already made in the application. They reiterated the facts submitted along with the application.

The Applicant states that –

6.2. Applicant, M/s Alisha Foods is doing business at 24, Mirza Wadi, Ujjain-456006, is a registered concern in GST Act, 2017 having GSTIN – 23ABBFA7513N. Applicant is engaged in manufacturing of Fried Fryums, Namkeens and Popcorns which are ready to eat under the brand name of Target School Times.

Applicant has filed an application seeking advance ruling under section 97 of CGST Act, 2017 MPGST Act, 2017 and IGST Act, 2017 for correct classification of Papad and Papad Fryums of different shapes, sizes and varieties (commonly known as Fried Fryums) manufactured by Applicant and sold. The Applicant manufactures Fried Fryums of different shapes, sizes and varieties which are ready to eat. *As such the Question for Advance Ruling is "What is the correct classification of Fried Fryums of different shapes, sizes and varieties which are ready to eat and What is the HSN Code and GST rate applicable on such goods manufactured."*

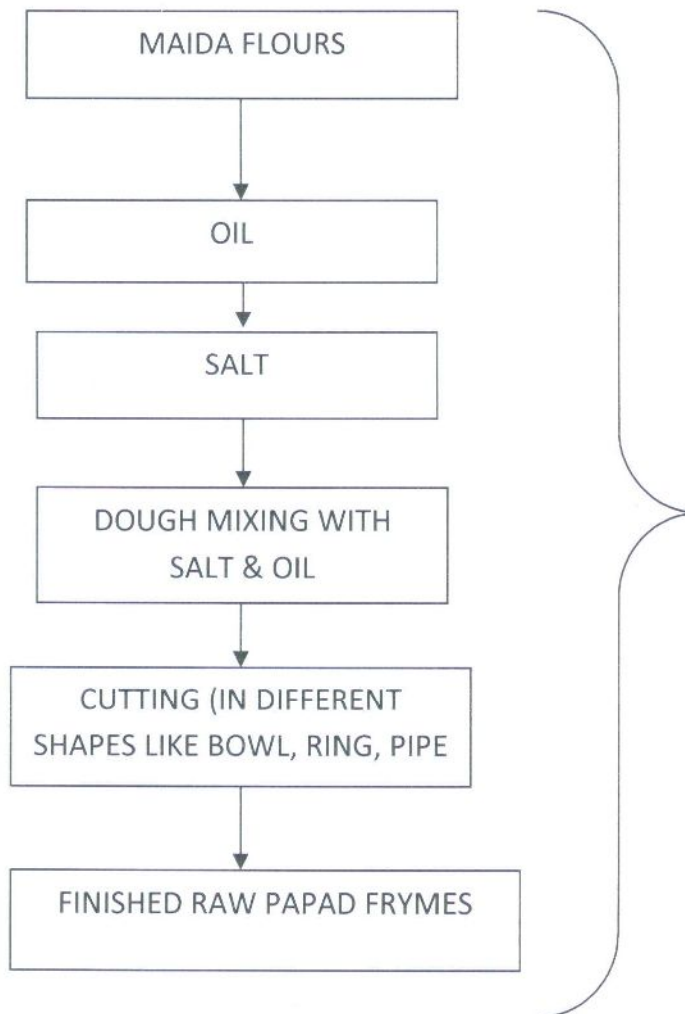


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As per applicant the flowchart for the Process involved in Manufacture of Fried Fryums is as follows:-

**RAW PAPAD FRYMES PRODUCTION PROCESS**  
**FLOW CHART**

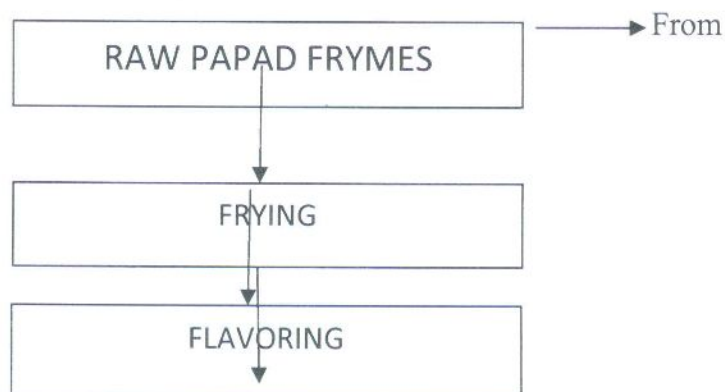
**RAW MATERIAL**  
Purchased from Gujarat  
( where these items are  
Tax free as these  
are Papad Products.)



This same process is used in making papad although papad are made of many other ingredients like besan, moong dal, chana dal etc. Other than maida flour.

**FINISHED PAPAD FRYUMS PRODUCTION PROCESS**  
**FLOW CHART**

Gujarat



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PACKAGING (NITROGEN)

Brands : Target , School Time.

The product which is manufactured by the concern is sold in Madhya Pradesh as well as outside Madhya Pradesh.

Various States are covered

1. Uttar Pradesh State are Jhansi, Lalitpur, Orai, Auriya, Rabrtsganj, Kanpur
2. Rajasthan: Kota, Baran, Ramganjmandi, Bhawani Mandi, Eklera, Khanpur, Jhalawad
3. Madhya Pradesh : Around 130 Cities

Applicant is of the opinion that "Papad and papad pipes of different shapes, size of all varieties (commonly known as Fried Fryums) would be classified as under: Chapter 19 Heading No. 1905 - Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products

Sub-heading No. 1905 90 40 – Papad

Sub-heading No. 1905 90 90 – Others.

Papad even after roasting or frying are known and used as Papad only. Therefore, in commercial or trade parlance also, the Fryums can be said to be known as Papad.

It is humbly submitted that Fried Papad and Fried Papad Pipes of different sizes, shapes, and all of varieties which are ready to eat may kindly be classified under the head 19059040 which is the code of Papad.

Applicant in his favour tried to draw attention to the case law of:

- a) In the case of Shivshakti Gold Finger clearly held that, all varieties of papad, whether they are circular or flat in shape consisting of all ingredients whether it is of pulse, rice, maida etc. entitled for exemption. The Hon'ble Supreme Court examined the matter under Rajasthan Sales Tax Act, whether "GolePapad" manufactured out of maida, salt and starch are the Papad or not. The Hon'ble Supreme Court clearly held that size or shape is irrelevant. The Papad of all shapes and sizes are covered under the Entry "Papad".
- b) In the case of State of Karnataka Vs. Vasavamba Stores and others (STRP No. 6/2011, 63/2011, 73/2011, 89/2009 – considering Hon'ble Supreme Court judgment in the case of Shivshakt Gold Finger), held that Papad of all shapes and sizes are covered under the entry "Papad" and exempted from tax.
- c) The Hon'ble Commissioner of Commercial Tax, Gujarat State, Ahmadabad, in the Determination Order under Section 80 of the VAT Act, 2003 in the case of Jay Khodiyar Agency (2007-D-98-103 dated 11.09.2007) and in the case of Kansara Trading Co. (2011-D-356-357 dated 11.02.2011) held that papad and papad pipes (Fryms) are covered under Entry 9(2) of Schedule-1 appended to the VAT Act, 2003 and exempted from tax.
- d) As per the sub heading No.19059040 or 19059090 the Hon'ble Supreme Court decision, Karnataka High Court. Decision and Determination Order under section 80 of the VAT Act 2003. It is apparently clear that papad, papad Pipes of all kinds, shapes, sizes and varieties by whatever name called would be classifiable and covered under Heading No. 1905 90 40 or 1905 90 90 and exempted from CGST and SGST.



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## 7. DISCUSSIONS AND FINDINGS:

7.1 We have carefully gone through the submission made by the applicant in their application and as well as the submission made at the time of personal hearing.

7.2 As per the written submission made by the applicant at the time of personal hearing the main issue involved in the case is regarding classification of Fried **Fryums** and GST rate applicable on it.

7.3 The applicant in his submission has tried to equate Fried **Fryums** with "Papad" under tariff item as 1905 90 40.

7.4 Here it is important to observe the Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 provides as follows :-

*"Explanation. - For the purposes of this notification, -*

(i) .....

(ii) .....

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

(iv) *The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification."*

7.5 Now the question arises what is "Papad". "Papad" as such has not been defined or clarified under Customs Tariff Act, 1975, GST Act or the Notifications issued under the CGST Act, 2017 / MGGST Act, 2017 .

7.6 It is now well settled principle of interpretation of statute that the word not defined in the statute must be construed in its popular sense, meaning „that sense which people conversant with the subject matter with which the statute is dealing would attribute to it“. It is to be construed as understood in common language. This view has been upheld by the Honorable Supreme Court in the case of Indo International Industries Vs. Commissioner of Sales Tax, U.P. [1981 (8) E.L.T. 325 (S.C.)], Oswal Agro Mills Ltd. Vs. Collector of Central Excise [1993 (66) E.L.T. 37 (S.C.)] and in the case of Commissioner of Central Excise Vs. Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.)].

7.7 It needs to be therefore examined whether "**Fried Fryums**" would be covered by the term "**Papad**" as understood in common parlance and as decided by higher judicial authorities.

7.8 The issue of proper classification of the product "Fry Snack Foods called Fryums" and admissibility of exemption notification under Central Excise regime was examined by the Hon'ble Customs, Excise and Gold Appellate Tribunal (CEGAT, as it was known then) in the case of T.T.K. Pharma Ltd. Vs. Collector of Central Excise [1993 (63) E.L.T. 446 (Tribunal)]. In this case, the Hon'ble Tribunal, *inter-alia*, observed as follows :-

*6. A reading of these sub-headings makes it clear that the product is not a Prasad or Prasadam, Sterilised or pasteurised miltone. Therefore, it will not come within the sub-headings 2107.10 or 2107.20. As the item is not put in a unit container and ordinarily intended for sale, it will not come within the*



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Heading 2107.91. Therefore, the product has to be brought under the residuary sub-heading 2107.99 as „Other“ carrying nil rate of duty. As we have classified the product under the residuary product under the heading “Edible preparations not elsewhere specified or included which carries nil rate of duty, the question of raising any demand or of Excise duty may not arise. However, as arguments have been adduced with regard to the Notification No. 12/90 dated 20-3-1990, it would be proper for us to give finding in regard to the same.

7. ....

8. ....

The Sl. No. 8 reproduced above mentions about various goods coming within sub-heading 2107.91. It has given illustration to the items Namkeens such as Bhujiya, Chabena. Now the question is as to whether these namkeens given in the notification is a general one including all types of namkeens or only to the type given therein like Bhujiya, Chabena by illustration. The learned Collector has interpreted the word „such as“ to mean namkeen should be of a kind of Bhujiya and Chabena. Although it is not in dispute that the item in question is a namkeen. As can be seen from the various items given in Sl. No. 8 namely Papad, Idli-mix, Vada-mix, Dosa-mix, Jalebi-mix, Gulabjamun-mix are all of a type which cannot be eaten straightaway but it requires to be fried. Chabena also comes in a type of item which requires to be chewed like Potato chips or fried Channa Masala or various types of fried masala dals. There can be any number of examples of namkeens in the form of Chabena which are mostly taken as a side dish. It can also be preferred to be eaten after sweetmeat. The item in question being like a Chabena is also a namkeen. The learned Collector’s placing restriction that it is to be eaten only after frying and therefore, is not covered under the notification is a very strict way of reading a notification. The notification cannot be read in a way as to whittle down its expression or to make the notification otios. The words „such as“ is only illustrative and not exhaustive. So long as the item satisfies the term Namkeen, the benefit of notification cannot be denied on the ground that it requires to be fried before use. There is no such understanding placed in the notification with regard to the frying of the item. Even if that be so, then the same would apply to all other items which are namkeens like Papad, Idli-mix, Dosa-mix, Jalebi-mix etc. which are required to be fried before they can be eaten.

7.9 Thus, in the aforesaid decision, the product "Fry Snack Foods called Fryums" have been considered as "Namkeen" and not as "Papad".

7.10 It is observed that Fried Fryums are eatable and used as food articles or eatables and such fried, salted Fryums are found to be commonly known and used as ‘Namkin’. Further it can be seen that ‘Papad’ even after roasting or frying are known and used as ‘Papad’ only. Whereas, in commercial or trade parlance also, the ‘Fried Fryums’ cannot be said to be known as ‘Papad’.

7.11 The applicant has relied upon the judgment of Hon’ble Supreme Court in the case of Shivshakti Gold Finger wherein the Hon’ble Supreme Court examined the matter under



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Rajasthan Sales Tax Act, whether 'Gol Papad' manufactured out of Maida, Salt and Starch are Papad or not and held that size or shape is irrelevant and that Papad of all shapes and sizes are covered under the entry 'Papad'. In the case of Shivshakti Gold Finger, Hon'ble Supreme Court has not examined the issue of 'Fried Fryums' and therefore the said case is not found to be applicable in the facts of the present case. Therefore, the 'Fried Fryums' are not classifiable as 'Papad' under Tariff Item 1905 90 40.

7.11 Now the question arise what will be the classification of "Fried Fryum" .

For the purpose of proper appreciation of the issue the relevant portion of chapter Note are reproduced below:-

Chapter Note 5 and 6 of Chapter 21 provides as follows –

“5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter-alia includes:

(a) .....

(b) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

6. Tariff item 2106 90 99 includes sweet meats commonly known as “Misthans” or “Mithai” or called by any other name. They also include products commonly known as “Namkeens”, “Mixtures”, “Bhujia”, “Chabena” or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.”

7.12 Thus, Heading 2106 is an omnibus heading covering all kind of edible preparations, not elsewhere specified or included. Chapter Note 5 provides an inclusive definition of this heading **and covers preparations for use either directly or after processing, for human consumption**. In 5(b) above preparation for use after processing has been included and mentioned therein **such as** cooking, dissolving or boiling in water, milk or other liquids. Obviously, **the term 'such as' is purely illustrative but not exhaustive** and therefore processing includes frying also, hence fried goods are also covered under chapter head 2106 which is ready for human consumption. Further, Chapter Note 6 pertaining to Tariff Item



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2106 90 99 also provides inclusive definition and products mentioned therein are illustrative only.

7.13 Taking all these aspects into consideration, it is held that the product 'Fried Fryums' is appropriately classifiable under Tariff Item 2106 90 99.

7.14 Sl. No. 23 of Schedule III of issued under the CGST Act, 2017 and corresponding Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 covers "Food preparations not elsewhere specified or included [other than roasted gram, sweetmeats, batters including idli/dosa batter, namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, khakhra, chutney powder, diabetic foods]" falling under Heading 2106. Therefore, Goods and Service Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the product 'Fried Fryums' as per Sl. No. 23 of Schedule III of Notification No. 1/2017 –Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017.

In view of the foregoing, we rule as under :-

8.

### RULING

**(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)**

8.1 The product 'Fried Fryums' manufactured and supplied by M/s. M/s ALISHA FOODS (23ABBFA7513N1ZI) is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.

8.2 Goods and Service Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the product 'Fried Fryums' as enumerated under S.No. 23 of Schedule III of Notification No. 1/2017 –Central Tax (Rate) dated 28.06.2017 since amended, issued under the CGST Act, 2017 and corresponding notification under MPGST Act subject to conditions laid down in that entry.

8.3 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

*SK*  
VIRENDRA KUMAR JAIN  
CHOUBEY (MEMBER)

*SK*  
MANOJ KUMAR  
(MEMBER)

Copy to:- No. 14/2019/A-A-R/R-28/43

INDORE dt. 28/11/19

1. Applicant

2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal



*Manoj*



3. The Commissioner(SGST) Indore
4. The Commissioner, CGST& Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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