

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



ADVANCE RULING NO. GUJ/GAAR/R/28/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/29)

Date: 19.07.2021

Name and address of the applicant	:	M/s. Gajanand Foods pvt.ltd., 232/8, Gajanand Building, Opp.Rannapark Bus stop, Ghatlodia, Ahmedabad-380061.
GSTIN of the applicant	:	24AAACG7007N1ZM
Date of application	:	22.07.2020
Clause(s) of Section 97(2) of CGST/ GGST Act, 2017, under which the question(s) raised.	:	(a)Classification of any goods or services or both.
Date of Personal Hearing	:	30.06.2021
Present for the applicant	:	Shri Nishant Shukla,C.A.

#### **A. BRIEF FACTS**

The applicant M/s. Gajanand Foods pvt.ltd. supplies varieties of instant mix flours under the brand name of Gajanand-Handvo, Vada, Gota, Khaman, Dalwada, Dahiwada, Dhokla, Idli, RavaIdli, Dosa, Upma and Gulab Jamun Flour. As per the applicant, the above flours fall under HSN 1102. The applicant submits that the composition and ingredients contained in the different types of flours clearly reveals that it does not contain maize flour or wheat flour; that the products mentioned above are nothing but flours; that the applicant also supplies a small pack of masala(spices) necessary to prepare a particular food item from that flour but that does not make any difference in the main product as the small pack of masala is placed in the packet of flour for the convenience of the customer; that as per their understanding the above flours fall under HSN 1102 and are taxable at 2.5% CGST + 2.5% SGST.

2. The applicant referred to the various determination orders passed under section 80 of GVAT Act, 2003 i.e. Determination Order No.2010/D/171-177/No.356-359 dated 12-8-10 in Kitchen Overseas ltd., Determination Order No.2010/D/55-62/No.45-48 dated 27-5-11 of Vitagreen products pvt.ltd., and Determination Order No.2013/D/197/2019 in the case of M.T.R. foods pvt.ltd. dated 20-12-13 wherein different varieties of flour i.e. GotaFlour, KhamanFlour, DalwadaFlour, DahiwadaFlour, DhoklaFlour, IdliFlour and Dosa Flour have been considered to be flours and held to be falling under Entry 12 in Schedule I to the GVAT Act under 'Flour of Cereal and Pulses'; that in spite of there being a change in law i.e. the time when that determination order was passed the GVAT Act was prevailing and currently GST Act is in force but if there is no substantial change in the schedule entries then the classification and interpretation adopted in the earlier law needs to be followed; that the applicant relies upon the decision of the Hon'ble High Court of Gujarat in the case of West Coast Waterbasepvt.ltd. vs. State of Gujarat wherein the said principal has been laid down by the Hon'ble High Court that when there is no material change in the entries, the classification adopted in earlier law should continue to prevail and be accepted; that considering the overall facts and circumstances of the case vis-a-vis the entries in question and the settled law on the subject, the applicant submits that flours as stated above are eligible to be classified under the Tariff Heading No.1102 and liable to GST at 5%(2.5% CGST + 2.5% SGST). The applicant's question for Advance Ruling is-

“Under which Chapter, Tariff Heading and HSN, the different varieties of Flours i.e. Handvo Flour, Vada Flour, Gota Flour, Khaman Flour, Dalwada Flour, Dahiwada Flour, Dhokla Flour, Idli Flour, Rava Idli Flour, Dosa Flour, Upma Flour, Gulab Jamun Flour manufactured and supplied by the applicant will attract CGST/SGST?”

3. The applicant has filed amendment application dated 2-9-20 wherein the Question was re-framed as follows:

*“The applicant seeks Advance Ruling for classification and determination of rate of tax for following items:*

*Gota Mix Flour, Dakor Gota Mix Flour, Methi Gota Mix Flour, Khaman Mix Flour, Dhokla Mix Flour, Idli Mix Flour, Rava Idli Mix Flour, Dosa Mix Flour, Upma Mix Flour, Dahiwada Mix Flour, Dalwada Mix Flour, Menduvada Mix Flour, Handvo Mix Flour and Khichu Mix Flour.”*

4. The applicant submits that the different varieties of flours, salt and spices mixed together and sold by the applicant are commonly known as Mix Flours which are in ready to cook condition but not in ready to eat condition where the customer can follow the recipe and instructions mentioned on the packing of the respective product. The applicant has submitted the process of manufacture of different varieties of flours as under:

- {i} The applicant purchases food grains and pulses from open market.
- {ii} Such pulses are sorted and washed and then send to grinding machine.
- {iii} Pulses are grinded into flour in grinding machine for e .g. where Grams are purchased it results into gram flour by following grinding process. In certain cases, applicant also purchases grinded flour directly from the vendors.
- {iv} After grinding process, certain spices are mixed in flour and such mixed flour is packed in various packings.
- {v} Mixed flours of different varieties manufactured (commercially known as 'Instant Mix Flour') are sold in open market or through distributors to consumers.
- {vi} The consumer of such instant mix flour is required to follow the recipe and instructions stated on the packing for food preparation process before such product can be consumed as eatable.
- {vii} Hence, mix flour cannot be consumed as it is, but it is required to follow certain cooking procedures before consumption. Hence the product manufactured and sold by the applicant is not 'ready to eat' but can be said as 'ready to cook'.

5. The applicant further submits that the manufacturing process of all the mix flours is more or less similar with necessary changes in type of flour and composition and proportion of other ingredients and in any case the main ingredient remains flour which may be either rice flour, grams flour, paddy flour etc. The manufacturing process is submitted as follows:

- {i} Ready to mix/Instant mix flour contains mainly flours of grains and/ or pulses like bengal gram dal, gram dal, udad dal, chana dal, Moong dal, Paddy, Sago, wheat granule, rice etc. where the content of 'flour' is having major weightage. Most of the mixed flour products have 'flour' content more than 70-90%.

- {ii} Powder of spices like pepper, red chilli, coriander, ajma, sounf, jeera, turmeric, tamarind, iodised salt, sugar, mustard, lemon, condiments, citric acid, sodium bicarbonate, turmeric, cumin, clove, curry leaves, asafoetida, baciliyam, black pepper, tejpatta, curry leaves bundian, fennel seeds, anise seeds, bay leaf, neem leaves(sweet), flavours etc. are added in a very little quantity to make the product tasty and delicious.
- {iii} At the processing unit, the applicant is not carrying any process of cooking. The applicant carries out only mixing process, whereby spices, condiments and flavours are mixed with flour of grains, cereals and pulses. Flour of grains, cereals and pulses are used in its basic form.
- {iv} Instant mix/Ready to mix flour is packed in sealed packing of 60/200/250/400/500 grams and in 1 kgs and 5 kgs. For convenience of the customer, preparation process/recipe to prepare food from such instant mix flour is printed on the packing.
- {v} Instant mix/Ready mix flour is by all means not a processed food, neither cooked food, nor semi-processed food, nor semi cooked food, nor preserved food or not a ready-to-eat food. Instant mixed flour is a flour of grains and pulses mixed with spices, condiments and flavours which needs to be cooked for consumption.

5.1 The applicant provides the details of ingredients used in manufacture of different types and varieties of Instant mix flours:

Sr No.	Product	
1	Gota Mix Flour	Split Bengal Gram Flour, Wheat Flour, Sugar, Semolina, Iodised Salt, Sesame Seed, Sodium bicarbonate, Citric Acid (E330), Black Salt, Fennel Seed, Bishop's Weed Seed, Coriander Seed Red, Chilli Powder, Black Pepper, Garam Masala Powder
2	Khaman Mix Flour	Bengal Gram Flour, Sugar, Iodised Salt, Turmeric Powder, Sodium bicarbonate, Citric Acid (E 330), Black Salt
3	Idli Mix Flour	Rice flour, Split Black gram flour, Iodised salt, Citric Acid (E 330), Sodium bicarbonate
4	Dakor Gota Mix Flour	Split Bengal Gram Flour, Wheat Flour, Sugar, Semolina, Iodised Salt, Sesame Seed, Sodium bicarbonate, Citric Acid (E330), Black Salt, Fennel Seed, Bishop's Weed Seed, Coriander Seed Red, Chilli Powder, Black Pepper, Garam Masala Powder
5	Dalwada Mix Flour	Split Green gram flour, Split black gram flour, Iodised salt, Sodium bicarbonate, Citric acid (E 330)
6	Dhokala Mix Flour	Rice Flour, Split Bengal Gram Flour, Split Black Gram Flour, Iodised Salt, Citric Acid (E 330) Sodium bicarbonate
7	Dahi wada Mix flour	Split Black gram flour, Garbanzo beans flour, Iodised salt, Citric Acid (E 330) Sodium bicarbonate
8	Dosa Mix Flour	Rice flour, Split Black gram flour, Refined wheat flour, Iodised salt, Citric Acid (E 330), Sodium bicarbonate
9	Methi Gota Mix Flour	Split Bengal gram Flour, Sugar, Wheat flour, Semolina, Iodised salt, Dried Fenugreek leaves, Coriander seed, Red chilli powder, Citric acid (E 330), Sodium bicarbonate, Turmeric Powder, Black pepper, Bishop's weed seed, Asafoetida, Garam masala powder
10	Handavo Mix Flour	Rice flour, Split Bengal gram flour, Split black gram flour, Wheat flour, Iodised salt, Sodium bicarbonate, Citric Acid (E 330), Red chilli powder, Turmeric powder Asafoetida
11	Rava Idli Mix flour	Semolina, Vegetable oil, Iodised Salt, Split Bengal Gram, Cashew Nuts, Sodium bicarbonate Mustard Seeds, Curry Leaves, Citric Acid (E 330), Dried Ginger Powder
11	Meduvada Mix Flour	Split Black Gram Flour, Refined Wheat Flour, Wheat Flour, Vegetable oil, Iodised Salt, Sodium bicarbonate, Citric Acid (E 330), Semolina, Rice Flour, Asafoetida
13	Upama Mix flour	Semolina, Vegetable oil, Split Bengal gram, Split Black gram, Iodised salt, Mustard seeds dried ginger powder, Sugar, Green chilli, Curry leaves, Citric Acid (E 330), Asafoetida

14	Khichu Mix flour	RiceFlour,SagoFlour,IodisedSalt,CuminSeeds,BishopWeed,SodiumBicarbonate(E500), Red Chilly Powder, Coarse Fenugreek, Coarse Mustard,Asafoetida
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5.2 The applicant has submitted that considering the overall facts and circumstances of the case vis-a-vis the entries in question and the settled law on the subject, the flours of different varieties as stated above are eligible to be classified under the Tariff Heading No.1102 and liable to GST at 5%(2.5% CGST + 2.5% SGST).

5.3 The applicant submits that in the alternative, without prejudice to any of the submissions above, the products of the applicant are equally eligible to be classified under Tariff heading 1106. The said Tariff Heading reads as follows:-

*Flour, Meal and Powder of the dried leguminous vegetables of heading 0713 (pulses) [other than guar meal 1106 10 10 and guar gum refined split 0713], of sago or of roots or tubers of heading 0714 or of the products of chapter 8 put up in a unit container and -*

- (a) bearing a registered brand name; or
- (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE].

5.4 The Tariff heading 0713 as referred in above 1106 Tariff heading reads as under:-

*Dried leguminous vegetables, shelled, whether or not skinned or split put up in unit container and,-*

- (a) bearing a registered brand name; or
- (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE].

5.5 The applicant further submits that content of pulse flour is considerable and as per the common parlance test, said products are known as instant mix flour in the market and taking into consideration the process of preparation of instant mix flour and proportion of ingredients used in preparation, it is evident that flour of grains and pulses are the major components of the said finished products; that the said grains and pulses shall very well cover under heading '0713' having brief description 'Dried Leguminous vegetables' and accordingly, instant mixed flour made from such dried leguminous vegetables are eligible to be classified under heading '1106' having brief description 'Meal and powder of the dried leguminous vegetables of heading 0713 and taxable accordingly. The applicant has produced the percentage ratio of the grains and pulses in the products which shall make it clear that major contents of the products of the applicant are flours of grains and pulses:

Sr. No.	Product	Dried leguminous vegetable flours				Rice and wheat flours					Total flours	Spices and other ingredients
		Chana Dal flour	Udad dal flour	Moong /Math Dal flour	Total leguminous flours	Soji flour (wheat granules)	Rice flour	Wheat flour	Sabu Dana flour	Total of rice flours/ wheat flours		
1.	Gota Mix Flour	34	0	0	34	11	0	18	0	29	63	37
2.	Khaman Mix Flour	75	0	0	75	0	0	0	0	0	75	25
3.	Idli Mix Flour	0	18	0	18	0	76	0	0	76	94	6
04.	DakorGota Mix Flour	34	0	0	34	11	0	18	0	29	63	37
5.	Dalwada Mix Flour	0	5	87	92	0	0	0	0	0	92	8
6.	Dhokla Mix Flour	12	10	0	22	0	70	0	0	70	92	8
7.	Dahi-wada Mix Flour	0	65	29	94	0	0	0	0	0	94	6
8.	Dosa Mix	0	20	0	20	0	59	16	0	75	95	5

	Flour											
9.	MethiGota Mix flour	55	0	0	55	10	0	10	0	20	75	25
10.	Handavo Mix Flour	25	8	0	33	0	47	11	0	58	91	9
11.	Ravaldli Mix Flour	2	0	0	2	87	0	0	0	87	89	11
12.	Meduvada Mix Flour	0	62	0	62	1	0	23	0	24	86	14
13.	Upama Mix Flour	1	3	0	4	79	0	0	0	79	83	17
14.	Khichu Mix Flour	0	0	0	0	0	90	0	4	94	94	6

5.6 The applicant submits that they gain direct support from the recent decision of Gujarat Advance Ruling Authority's order No.GUJ/GAAR/R/43/2020 dated 30-7-20 wherein classification of exactly same products was in question before the said authority. They have submitted a copy of the said decision.

6. The applicant has given their additional submission dated 29-6-21. They have referred to the judgement of Hon. Gujarat High Court in the case of Samsung India Electronics Pvt. Ltd. v/s State of Gujarat Special Civil Application No. 6109 of 2019 decided on 28.3.2019 wherein circular issued under the Central Excise Act, 1944 was held to be binding for the purpose of classification under the Vat Act since the Excise Tariff had been incorporated in the Vat Notification; that hence, it is not open for anyone to say that classification adopted under the VAT Act cannot be applied under GST Act because even under the VAT Act classification was based on HSN Codes and under the Schedule Entries under the VAT Act reference was made to the HSN codes of relevant products for determination of rate of tax.

7. The applicant submits that flour remains flour even after mixing it with some spices and condiments and the basic characteristics of flour does not change; that the customer purchases flour mixed with spices and condiments but it does not purchase a ready to eat product of the shelf; that the applicant could supply spices and condiments in separate sachets and could sell pure flour but for the ease and convenience of customer and to relieve the customer from going through the process of mixing of those spices and condiments with the flour, the applicant does that job and mixes flour with spices and condiments in such proportion to get best taste; that customer purchases Instant Flour Mixes of the applicant exactly in the similar manner it may purchase other flours from a flour mill; that flours available at the flour mill are flours without the spices and condiments mixed with it while the flours of the applicant are mixed with spices and condiments; that except this, there is no other difference in the flours available at flour mill and flours manufactured and sold by the applicant. So, mere mixing of flour with spices and condiments does not change basic character and form of flour so as to consider it as an entirely different product i.e. The FLOUR remains FLOUR.

7.1 The applicant is further supported in its submission by *Circular No. 80/54/2018-GST dated 31.12.2018* issued by the *Central Board of Indirect Taxes and Customs* wherein the following has been clarified with regard to classification of "Sattu";

"3. *Applicability of GST on Chhatua or Sattu:*

3.1 *Doubts have been raised regarding applicability of GST on Chhatua (Known as "Sattu" in Hindi Belt).*

3.2 *Chhatua or Sattu is a mixture of flour of ground pulses and cereals. HSN code 1106 includes the flour, meal and powder made from peas, beans or lentils (dried leguminous vegetables falling under 0713).*

*Such flour improved by the addition of very small amounts of additives continues to be classified under HSN code 1106. If unbranded, it attracts Nil GST (S. No. 78 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017) and if branded and packed it attracts 5% GST (S. No. 59 of schedule I of notification No. 1/2017-Central Taxes (Rate) dated 28.06.2017)."*

7.2 The applicant submits that it is thus, expressly clarified that mixture of flour of ground pulses and cereals will fall under HSN code 1106 and addition of small amount of additives will not change the classification; that same principle of interpretation and classification applies in the present case of the applicant and merely because the product is different, principles of interpretation and classification does not vary; that the principles of interpretation remain the same irrespective of the products and it is very well settled position of law that interpretation given by Board in the circulars is binding to the authorities and this is been confirmed by Honourable Supreme Court in numerous judgments. Amongst others the applicant gains support from the judgment of Constitution Bench of Honourable Supreme Court in the case of Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries – AIR 2002 SC 453 : (2002) 149 ELT 3 (SC) wherein Honourable Supreme Court has held that - If the CBEC has issued circulars which place a different interpretation upon the said phrase than that in a judgment, then that interpretation in the circulars will be binding on the Revenue.

7.3 The applicant has submitted that the percentage ratio of the grains and pulses in the products shall make it clear that major contents of the products of the applicant are flours of grains and pulses; that this proportion is authentic as the same is drawn from the inhouse laboratory of the applicant and being in food industry, for hygiene as well as to maintain the standard and taste, the applicant is bound to carry out the test results first in laboratory and thereafter only the grains, pulses and other ingredients are moved forward for processing and mixing, hence there remains no doubt about the authenticity of the percentage ratio report.

7.4 The applicant submits that their products are “ready to cook” and not “ready to eat” and after the products are purchased by the customer, some processes need to be carried out and thereafter it is cooked and made ready for consumption’ and that it can be said that applicant is selling it in raw form which needs further process of cooking to make it consumable; that as per their understanding, the products in question i.e. Flours Mix of different types that are in neither cooked nor ready to eat condition seems squarely eligible to be classified under Chapter Tariff Heading – 1106; that Chapter Tariff Heading 2106 is a residuary entry meaning thereby that it is a general entry which includes the products which do not fall anywhere else in any other Chapter Tariff Heading; that effective 2005, India has adopted 8 digit classification coding and the manner of determining classification has undergone complete change and common parlance test cannot be the sole test for determining classification of a product; that with respect to classification in Heading 2106, it is important to refer to Chapter Notes of Heading 21 wherein under clause 5 (b) it is stated that Heading 2106 includes preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption and under clause 6 it has been stated that Tariff item 2106 90 99 includes sweet meats commonly known as “Misthans” or “Mithai” or called by any other name; that they also include products commonly known as “Namkeens”, “Mixtures”, “Bhujia”, “Chabena” or called by any other name and such products remain classified in these sub-headings irrespective of the nature of their ingredients.

7.5 The applicant submits that the first and foremost rule of interpretation and classification is that when a product is eligible to be classified under specific entry then classification under general entry should not be preferred and in case of present applicant, the products are squarely eligible to be classified under 1106 as Flours while 2106 is residuary entry which itself says

that Food preparations not elsewhere specified or included, hence, tariff heading 1106 is specific heading for classification of products of applicant; that amongst numerous judgments on this principle, they refer *Bradma of India Ltd. Vs. State of Maharashtra – 140 STC 17 (SC)* wherein it has been held that – A specific entry in the schedule to a taxing statute would override a general entry. But, resort has to be had to the residuary heading only when a liberal construction of the specific heading cannot cover the goods in question. It is well-settled that if there are two entries—one general and the other special, the special entry should be applied for the purpose of levying tax. The general entry should give way to the special entry. The ratio decidendi in the case of *Mauri Yeast India Pvt. Ltd. Vs. State of UP – 2008 (225) ELT 321 (SC)* is that – If there is conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred.

7.6 The applicant further submits that yet another principle of rule of interpretation and classification is *noscitur a sociis* which means that meaning of a word is to be judged by the company it keeps and applying the said principle while classifying the products of the present applicant, by no means it can be said that it is eligible to be classified under heading 2106 because by no stretch of imagination the products of the applicant can be equated with either “Misthan” or “Mithai” or “Namkeen” or “Chabena” or “Bhujia”; that their products are not ready to eat products for human consumption and thus, heading 2106 90 99 even as general entry is not capable of including the products of the applicant and 1106 is the only entry and most specific entry where the products manufactured by the applicant would fall; that in GST regime, the Customs Tariff has become relevant for the purpose of determination of classification for any supply of goods wherever the rate schedule is aligned with Customs Tariff. From perusal of Customs Tariff Act, 1975 read with interpretation Rules & judicial precedent, we understand that the classification in Customs is driven by the ingredients used in the products. Predominant content in the product would help in determining appropriate classification; that in the case of *Manilal Commodities Pvt. Ltd. Vs. Collector of Customs [1992-59-ELT-189-Tribunal]*, the Honourable Tribunal was of the view that the classification on the basis of predominant contents is generally accepted as proper test. Further, Honourable Allahabad High Court in the case of *Commissioner of Customs, C.G.O. Vs. Sonam International [2012-275-ELT-326-ALL]* upheld that assessment of goods with regard to payment of customs duty is to be made based on contents involved. The Chapter Notes in the Customs Tariff also prescribe the content or ingredients of products in order to include or exclude specific products within a given Chapter Heading.

8. The applicant further submits that since the Instant Flour Mixes are mixtures of various products, the different headings would only refer to part of the materials and therefore the relevant rule will be Rule 3(b) of the rules of Interpretation of the First Schedule to the Customs Tariff according to which mixtures shall be classified as if they consisted of material or component which gives them their essential character; that in the present case of the applicant the essential character of the Instant Flour Mixes is given by the Flour and if Flour is not present as essential and primary ingredient, the product would not exist; that the other ingredients are added only for flavours and therefore Rule 3(b) supports the classification of Instant Flour Mixes under Chapter 11 of the HSN Code under headings 1101, 1102 or 1106 as the case may be.

8.1 The applicant has referred to the case of *Collector of Central Excise Vs. Wood Polymers Ltd. – AIR 1998 SC 1493:1998 (97) ELT 193 (SC)*, wherein the Honourable Supreme Court has held that –

*“In view of the rules regarding Interpretation which are contained in New Tariff the matter of classification has to be considered in the light of the said rules. As indicated earlier, Rule 3 of the said rules contains the principles to be applied for classification of goods which are prima facie classifiable under two or more headings. According to the said rule, composite goods consisting of different materials or made up of different components which cannot be classified by reference to sub-rule (a) shall be classified as if they consisted of the material or components which gives them their essential character insofar as this criterion is applicable.”*

8.2 The applicant has stated that it is very well settled position of law that when the issue is of interpretation of entries and classification of a product, the entry most beneficial to the tax payer has to be preferred and in the present case of the applicant, the entries most beneficial to the applicant are 1102 and 1106 as the case may be and thus relying upon the said principle, the General Residuary Entry 2106 must be avoided and should make way for the entries 1102 and 1106 which are most beneficial to applicant; that in this regard, applicant gains strong support from the decision of Honourable Supreme Court in the case of Commissioner of Central Excise, Bhopal Vs. Minwool Rock Fibers Ltd. – 2012 (278) ELT 581 wherein Honourable Supreme Court has held that – *In case of classification, entry which is beneficial to the assessee requires to be applied.*

8.3 The applicant has concluded his submission by stating that considering the overall facts and circumstances of the case vis-à-vis the entries in question and the settled law on the subject, the applicant submits that MIX FLOURS of different varieties as stated above are eligible to be classified under the Tariff Heading No.1106 and thus attract GST at 2.5% CGST + 2.5% SGST i.e. 5% GST.

### **Personal hearing:**

9. Shri Nishant Shukla, C.A. appeared for the hearing in person on 30-6-21 and reiterated the contents of the application and the contents of submission dated 29-6-21.

### **FINDINGS:**

10. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST Act, 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

11. We have carefully considered all the submissions made by the applicant.

12. We hold that Classification of goods under GST is based on HSN. The customs Tariff is based on HSN. The general Interpretative Rules are to be sequentially followed as the way to classify the goods. We are to classify within the confines of law and procedure as laid down in GST regime. The Section notes and chapter notes of Custom Tariff are part and parcel of the Custom Tariff Act, 1975 which is to say, part and parcel of law enacted by the competent Union Legislature and therefore, we are obliged in GST regime to follow the classification based on HSN as per law. The Explanatory notes to HSN have guidance value to classify goods. The contention of the applicant to take into account Vat Determination order and the case laws cited by the applicant pertaining to VAT regime does not hold ground in wake of GST classification based on Harmonised System of Nomenclature ( HSN) and the Rules framed for classification, which was not the case with the Schedule-I of the Gujarat Value Added Tax Act, 2003. We are to classify goods based on HSN.

13. The applicant submits that Instant mix flours of the above 14 products merit classification under HSN 1102. Chapter Heading 1102 covers “Cereal Flours other than that of wheat or meslin”.

### **1102 CEREAL FLOURS OTHER THAN THAT OF WHEAT OR MESLIN**

*1102 20 00 -- Maize (corn) flour*

1102 90 - Other :

1102 90 10 - - - Rye flour

1102 90 90 - - - Other

Explanatory notes to HSN in respect of Heading 1102 reads as under:

11.02 Cereal flours other than of wheat or meslin.

*This heading covers flours (i.e. the pulverised products obtained by milling the cereals of chapter 10) **other than** flours of wheat or meslin. Products of the milling of rye, barley, oats, maize (corn) (including whole cobs ground with or without their husks) grain sorghum, rice or buckwheat are classified in this heading as flours if they fulfil the requirements as to starch content and ash content set out in paragraph (A) of Chapter Note 2 (see General Explanatory Note) and comply with the criterion of passage through a standard sieve as required by paragraph (B) of that Note. Flours of this heading may be improved by the addition of very small quantities of mineral phosphates, anti-oxidants, emulsifiers, vitamins or prepared baking powders (self raising flour). The heading also covers 'swelling' (pregelatinised) flours which have been heat-treated to pregelatinise the starch. They are used for making preparations of heading 19.01, bakery improvers or animal feeds or in certain industries such as the textile or paper industries or in metallurgy (for the preparation of foundry core binders). Flours which have been further processed or had other substances added with a view to their use as food preparations are excluded (generally heading 19.01). This heading also excludes flours mixed with cocoa (heading 18.06 if they contain 40% or more by weight of cocoa calculated on a totally defatted basis, or heading 19.01, if less).*

14. In respect of Chapter Heading 1102, it has been mentioned in the Explanatory Notes of HSN that "Flours of this heading may be improved by the addition of very small quantities of mineral phosphates, anti-oxidants, emulsifiers, vitamins or prepared baking powders (self-raising flour)"; that "Flours which have been further processed or had other substances added with a view to their use as food preparations are excluded (generally heading 19.01). Thus, the Flours may remain classified in Chapter Heading 1102 if the flour has been improved by the addition of very small quantities of specified substances. However, if other substances (other than specified substances) are added to the flours with a view to use as 'food preparations', then the same gets excluded from the Chapter Heading 1102.

15. The various products being supplied by the applicant contain Spices and other ingredients apart from flour of dried leguminous vegetables, rice, wheat and sabudana in different proportions. The Spices and other ingredients contained in these products include pepper, red chilli, coriander, ajma, sounf, jeera, turmeric, tamarind, iodised salt, sugar, mustard, lemon, condiments, citric acid, sodium bicarbonate, turmeric, cumin, clove, curry leaves, asafoetida, baciliyam, black pepper, tejpatta, curry leaves bundian, fennel seeds, anise seeds, bay leaf, neem leaves (sweet), flavours etc. These Spices and ingredients are other than those substances mentioned in the Explanatory Notes of HSN for Chapter Heading 1102 which could be added in very small quantities to improve or enrich the flours and the resultant product still remain classified in those Chapter Headings. The proportion of Spices and other ingredients contained in these products ranges from 5% to 37%. The proportion of Spices and other ingredients is 37% in Gota Instant mix flour, 37% in Dakor Gota Instant mix flour, 25% in Methi Gota Instant mix flour, 25% in Khaman Instant mix flour, 8% in Dhokla Instant mix flour, 6% in Idli Instant mix flour, 11% in Rava Idli Instant mix flour, 5% in Dosa Instant mix flour, 17% in Upma Instant mix flour, 6% in Dahi wada Instant mix flour, 8% in Dal wada Instant mix flour, 14% in Mendu wada Instant mix flour, 9% in Handvo Instant mix flour and 6% in Khichu Instant mix flour. It is also evident from the recipe submitted by the applicant that the Spices and other ingredients have been added to the flours with a view to their use as food preparations. As such, in view of the Explanatory Notes of the HSN, these products are excluded from the Chapter Heading 1102.

16. The applicant submits that in the alternative, without prejudice to any of the submissions above, the products of the applicant are equally eligible to be

classified under Tariff heading 1106. Chapter Heading 1106 covers “Flour, Meal and Powder of the dried leguminous vegetables of Heading 0713, of sago or of roots or tubers of Heading 0714 or of the products of Chapter 8”.

Chapter Heading 1106 as per Customs Tariff:

*1106 FLOUR, MEAL AND POWDER OF THE DRIED LEGUMINOUS VEGETABLES OF HEADING 0713, OF SAGO OR OF ROOTS OR TUBERS OF HEADING 0714 OR OF THE PRODUCTS OF CHAPTER 8:*

*1106 10 00- Of the dried leguminous vegetables of heading 0713*

*1106 20- Of sago or of roots or tubers of heading 0714:*

*1106 20 10--- Of sago*

*1106 20 20 --- Of manioc (cassava)*

*1106 20 90--- Of other roots and tubers*

*1106 30 - Of the products of Chapter 8:*

*1106 30 10--- Of tamarind*

*1106 30 20--- Of singoda*

*1106 30 30--- Mango flour*

*1106 30 90--- Other*

As per Rule 1 of the General Rules for the Interpretation of CTA, 1975, for legal purposes, Classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Thus, the classification of the product is required to be determined in accordance with the terms of the headings. As per Chapter Heading 11.06, it covers Flour, Meal and Powder of the dried leguminous vegetables of Chapter Heading 07.13 and other specified products. On inspection of the Packets of each product, we find that each of the packet is marked ‘ Mix Flour’. Although, the word ‘Instant’ has not been mentioned on the packets of their products, the applicant submits that their products are ‘Instant Mix Flour’ and these products are known in the market as ‘Instant Mix Flour’ only. On examination of the list of ingredients we find that Spices and other ingredients apart from flour of dried leguminous vegetables, rice, wheat and sabu dana are contained in different proportions. The Spices and other ingredients contained in these products include pepper, red chilli, coriander, ajma, sounf, jeera, turmeric, tamarind, iodised salt, sugar, mustard, lemon, condiments, citric acid, sodium bicarbonate, turmeric, cumin, clove, curry leaves, asafoetida, baciliyam, black pepper, tejpatta, curry leaves bundian, fennel seeds, anise seeds, bay leaf, neem leaves(sweet), flavours etc. The proportion of Spices and other ingredients contained in these products ranges from 5% to 37% as discussed earlier. As the products of the applicant contain Spices and other ingredients in different proportions, which are not mentioned in the Chapter Heading 1106 or the relevant Explanatory Notes of HSN, the said products are not covered under Chapter Heading 1106.

17. The applicant has referred to CBIC Circular No. 80/54/2018-GST dated 31-2-18, which has *inter-alia* clarified the applicability of GST on ‘Chhatua or Sattu’. The CBIC has clarified in the aforesaid Circular that the flour of ground pulses and cereals, improved by the addition of very small amounts of additives continues to be classified under HSN Code 1106. On examination of the percentage breakup of the subject products and the composition of the products, we find that this is not the case of addition of very small amounts of additives in subject products. We hold that the subject Circular is not applicable in present case as the said products are different from Sattu and have spices and ingredients in varying proportions as cited by the applicant and are in the nature of instant mix. Therefore, as per our findings, we are not inclined to admit CTH 1106 for said products

18. We note that HSN 2106 covers Food Preparations not elsewhere specified or included. The Explanatory Notes of HSN for Chapter Heading 2106 provides as follows :-

“Provided that they are not covered by any other heading of the Nomenclature, this heading covers :

A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).  
.....”

18.1 The subject 14 products of Mix Flour/ Instant Mix Flour are preparations for use, after processing, such as cooking, carrying out the detailed procedure for cooking as mentioned on the packets of all the said products, then ready for human consumption. The applicant submitted that the products are not ‘in ready to consume form’ but needs to be subjected to further processing and cooking for conversion into ‘ready to eat food’. We find that Chapter Heading 2106 is not confined to processed or semi processed food, cooked or semi cooked food, preserved food and ready to eat food. In fact, any product which is a food preparation and which is not elsewhere specified or included in the CTA, 1975, gets covered under HSN 2106. On the packets of all the above products-Category : Mix Flour has been printed on the packets and the detailed procedure recipe is printed on back side of the packets.

18.2 Further applicant vide subject application submits that products are commercially known as Instant Mix Flour. We find no merit to treat the subject goods as flour. Further as these products are not specifically mentioned under any specific Tariff item, we are of the view that the 14 products of Mix Flour/ Instant Mix Flour are appropriately classifiable under HSN 2106.

19. We note that Central Excise Tariff 2106 is also based on HSN. We find that our stand is in compliance and consonance with the case law- **Commissioner of Central Excise, Ahmedabad Vs. R.M. Foods [2010 (249) E.L.T. 363 (Tri. - Ahmd.)]**, wherein Hon’ble CESTAT held that the products (Gota Mix, Khaman Mix, Dal Wada Mix etc.) were entitled to benefit of Sl. No. 28 of Notification No. 3/2006-Central Excise. The said Sl. No. 28 of Notification No. 3/2006-Central Excise reads as follows –

S. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
28	2106	Texturised Vegetable Proteins (Soya bari), and instant food mixes such as Pongal mix, Vadai mix, Pacoda mix, Payasam mix, Gulab jamun mix, Rava Dosa mix, Idli mix, dosai mix, Murruku mix, and Kesari mix.	8%	-

20. Though the issue involved in that case was regarding admissibility of Sl. No. 28 of Notification No. 3/2006-Central Excise to the Instant Food Mixes (Gota Mix, Khaman Mix, Dal Wada Mix etc.), the fact that in the said Sl. No. 28, the description of goods mentioned against Chapter Heading 2106 included Instant Food Mixes such as Pongal mix, Vadai mix, Pacoda mix, Payasam mix, Gulab Jamun mix, Rava Dosa mix, Idli mix, Dosa mix, Murruku mix, and Kesari mix, supports our view that various Instant Food Mixes (Instant Mix / Ready Mix Flour) being supplied by the applicant are classifiable under HSN 2106. The Central excise Tariff Heading 2106 was based on HSN and applies to subject matter.

## APPLICABLE RATE OF GOODS AND SERVICES TAX

21. The various Instant Mix/ Ready Mix Flour being supplied by the applicant classifiable under HSN 2106 and in precise subheading 2106 90.

21.1 Notification No. 1/2017-Central Tax (Rate) dated 28-6-17, as amended, entry at Sr. No. 23 of Schedule - III reads as follows -

S. No.	Chapter/ Heading/ Sub-heading/Tariff item	Description of Goods
23.	2106	<i>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]</i>

21.2 Thus, 'Food preparations not elsewhere specified or included' falling under Chapter Heading 2106 are covered under the aforesaid Entry at Sr. No. 23 of Schedule- III of Notification No. 1/2017-Central Tax, as amended, attracting Goods and Services Tax @ 18% (CGST 9% + SGST 9%), though some of the specific products of Chapter Heading 2106 excluded from this entry are covered under different entries of Schedule-I or Schedule-II, attracting Goods and Services Tax @ 5% or 12%. None of the aforesaid 14 products of various Instant Mix / Ready Mix Flour being supplied by the applicant are the products which have been excluded from the entry at aforesaid Sr. No. 23 of Schedule – III or which have been specifically included in any other entry of other Schedule of Notification No.1/2017-Central Tax(Rate), as amended or in any of the entries of Notification No. 2/2017-Central Tax(Rate).

22. Further, the applicant has requested to consider the ruling of the Gujarat Advance Ruling Authority issued vide its Order No. GUJ/GAAR/R/43/2020 dated 30-7-20 in the case of Dipakkumar Kantilal Chotai (TalodGruhUdhyog). In this regard, it is pertinent to mention that the said Ruling is not applicable in the applicant's case because as per Section 103 of the CGST Act, any Advance Ruling is binding on the Applicant who has sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. Also it is on record that the said Advance Ruling dated 30-7-20 has been appealed before the Appellate Authority for Advance Ruling vide Application number Advance/SGST & CGST/2020/AR/17 and decided by the Gujarat Appellate Authority for Advance Ruling vide Order GUJ/GAAR/APPEAL/2021/17 dated 21-5-21 accordingly, AAR Ruling dated 30-7-20 as cited above, cannot be relied upon in the present case of the applicant.

23. In Conspectus of above findings, we issue the Ruling:

### **RULING**

The Instant Mix Flours/Mix Flours of: (i)Gota (ii) DakorGota (iii) MethiGota (iv) Khaman (v) Dhokla (vi) Idli (vii) RavaIdli, (viii) Dosa (ix) Upma (x) Dahiwada (xi) Dalwada (xii) Menduvada (xiii) Handvo and (xiv) Khichu are classifiable under HSN. 2106 90(Others) attracting 18% GST (9% CGST + 9% SGST).

**(SANJAY SAXENA)**  
**Member(S)**

**(ARUN RICHARD)**  
**Member(C)**