



2024:KER:28587

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 2ND DAY OF APRIL 2024 / 13TH CHAITHRA, 1946

WP(C) NO. 13935 OF 2021

PETITIONER/S:

MODERN FOOD ENTERPRISES PRIVATE LIMITED,
EDAPPALLY, NATIONAL HIGHWAY NO.47, KOCHI, KERALA -
682024, REPRESENTED THROUGH ITS ACCOUNTS MANAGER, MR.
SRIJITH M. S.

BY ADVS.

M.GOPIKRISHNAN NAMBIAR

K.JOHN MATHAI

JOSON MANAVALAN

KURYAN THOMAS

PAULOSE C. ABRAHAM

RAJA KANNAN

R.CHETHAN KRISHNA

S.PARVATHI

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE,
(DEPARTMENT OF REVENUE), NO.137, NORTH BLOCK, NEW DELHI
- 110001.
- 2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 3 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REPRESENTED BY ITS CHAIRMAN, NORTH BLOCK, NEW DELHI -
110 001.
- 4 KERALA STATE GOODS AND SERVICES TAX DEPARTMENT
9TH FLOOR, TAX TOWER, KILLIPPALAM, KARAMANA P. O.,
THIRUVANANTHAPURAM - 695 002.
- 5 THE APPELLATE AUTHORITY FOR ADVANCE RULINGS
9TH FLOOR, TAX TOWER, KILLIPPALAM, KARAMANA P. O.,
THIRUVANANTHAPURAM - 695 002.
- 6 THE KERALA AUTHORITY FOR ADVANCE RULINGS
GOODS AND SERVICES TAX DEPARTMENT, TAX TOWER,
THIRUVANANTHAPURAM - 695 002.
BY ADV P.G.JAYASHANKAR

MUHAMMED RAFIQ-SPL.GP(TAXES)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



'C.R'

JUDGMENT

The petitioner, a dealer under the provisions of Central Goods and Service Tax Act / State Goods and Service Tax Act, 2017 ('the CGST / SGST Act' for short) and rules made thereunder, has approached this court challenging the Exhibit P2 order of the appellate authority for Advance Ruling, Kerala dated 19.10.2020, whereby the 5th respondent has held that petitioner's products namely; *Classic Malabar Parota and Whole Wheat Malabar Parota* are exigible for 18% GST as per Rate Notifications issued by the Central / State Goods and Service Tax Act, 2017.

2. The petitioner has also further prayed for a writ of mandamus commanding the respondents to classify the petitioner's products under Tariff item No.1905 9090 of the First Schedule to Customs Tariff Act, 1975, as Indian flat breads are covered by expression 'bread' under Heading 1905 of the said schedule, and further, it has been prayed that the petitioner's product should be declared to be covered under Entry 99A of Notification No.1 of 2017-Central Tax (Rate) dated 20.06.2017 and Entry 99A of Notification No. G.O (P) No.62/2017- Taxes dated 30.06.2017 of the State Government to attract a standard rate of 5% GST (2.5% central tax and 2.5 % State tax).



FACTS

Brief Facts of the case for the purposes of the present writ petition are that;

3. The petitioner is a company engaged in manufacture and supply of foods products; Classic *Malabar Parota* and *Whole Wheat Malabar Parota*. The petitioner filed an application for Advance Ruling under Section 97 of the CGST / SGST Act for the classification and rate of tax on these two products. The petitioner sought advance ruling seeking classification of its products and rate of GST on the understanding that the petitioner's products qualify as 'bread'.

4. The Kerala Authority for Advance Ruling (AAR for short) rendered a ruling on the aforesaid application dated 12.10.2018 and classified the petitioner's aforesaid two products under Chapter Heading 2106 and taxable at 18% GST (9% CGST and 9% SGST) of Schedule III of the Rate Notification. AAR also held that exemption from GST under the notification No. 2/2017-Central Tax (Rate)/ SRO No. 361/2017 would not be applicable in the case of the petitioner's products as it is applicable only for specific commodity 'Bread (branded or otherwise)' covered under Harmonized System of Nomenclature (HSN) 1905.



5. Aggrieved by the AAR, the petitioner preferred an appeal before the Appellate Authority for Advance Ruling. Before the appellate authority, the petitioner contended that ingredients involved in and process employed for preparing the petitioner's two products would merit classification of these products under Tariff item 1905 9090, bearing description 'other'. It is triple - dash entry bearing description 'other'. In order to classify the impugned goods under the aforesaid Tariff items, products must qualify under Sub heading 1905 9090. Bare perusal of description of heading 1905 would reveal that it *inter alia* covers bread. The Customs Tariff does not define the expression 'bread' and the meaning of the 'bread' has to be ascertained from different English dictionaries. The contention in substance was that the 'bread' refers to a product prepared by cooking of dough made from the dough of flour, water and yeast, by application of the process of baking and therefore the impugned products are to be classified under HSN 1905 and consequently under Sl No. 97 of Notification No. 02/2017 liable to be exempted from GST.

6. The appellate authority determined the following points for consideration.

a) Whether the impugned products of the petitioner qualify as 'bread' and are classifiable under the HSN 1905;

b) Whether the products are eligible for full exemption from payment of GST in terms of entry



No.97 of Notification No.2/2017 dated 28.06.2017

Central Tax/ SRO No.361/2017 dated 30.06.2017.

7. On the first issue, the appellate authority considered HSN code Chapter -19, HS Code of Heading 1905 specifies the following commodities;

“Bread, Pastry, cakes, biscuits and other 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.”

8. Considering the said entry, the appellate authority has been of the view that contents of the subheading 1905 would cover products of bakery and all these items covered therein which are in ready-to-eat form. Whereas, Whole wheat Malabar Parota or Classic Malabar Parota manufactured by the petitioner is neither a bakery product nor ready for human consumption as it needs to be heated or further processed for human consumption.

9. In view of the Common parlance test applied by the appellate authority, it has been of the opinion that the bread cannot be equated with Parotas, and the same cannot be classified as ‘bread’. The AAAR therefore, held that the impugned products of the petitioner cannot be classified under Entry 1905 as the products covered under the heading are generally completely prepared and cooked and do not require any further processing for consumption.



10. It has been further held that in order to arrive at the appropriate classification of the impugned products or the general principle of interpretation, explanatory notes, section notes, chapter notes, heading, subheading etc., of the First Schedule to Customs Tariff Act, 1975, have to be applied by virtue of Explanation (iii) and (iv) to the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. The Explanation at the end of notification *inter alia* provides “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, which would imply that the classification of the goods has to be done in accordance with Customs Tariff Act, 1975. However, once the heading / tariff item is arrived at, the rate of the GST would be governed by the GST notifications. After considering the rule of interpretation and explanatory notes to the Harmonized Commodity Description and Coding System with regard to the Heading 2106, the AAAR held that the impugned products of the petitioner are classifiable under Entry 2106 90.

11. In respect of the 2nd issue, the appellate authority has held that other than Entry 23 of Schedule III of the Notification No.1/2017- Central tax (Rate) dated 20.06.2017, no other entry in the notification containing HSN 2106 is appropriate for



classifying the impugned products, and therefore, liable to be taxed to GST at the rate of 18% (9% CGST and 9% SGST).

SUBMISSIONS

12. Sri. Dharmendra Kumar Rana, assisted by Mr. Abhijit Roy has submitted that before advent of GST regime w.e.f 1.07.2017, the indirect tax regime was marred by various event based levies. The Central and State Governments had their respective share of revenue from different taxes such as Excise, Service tax, value added tax. In order to remove the complexity of adjusting indirect tax regime, GST was rolled out w.e.f 01.07.2017, on the principle of 'one nation one tax'. Under the GST taxable event is supply of goods and services, and thus, it is aimed at eliminating barriers of earlier indirect taxes.

13. Section 9 of the CGST is the charging section which provides for levy of central tax on all intrastate supply of goods and services or both. The said provision authorises the Central Government to notify rates at which Central Tax shall be levied. The Central Government has issued Notification No.1/2017-Central tax (Rate) dated 28.06.2017. Correspondingly, the Government of Kerala has also issued notification G.O (P) No. 62/2017- Taxes dated 30.06.2017 prescribing the rates of tax for different supply of goods and services. The rate notification has



various schedules specifying different GST rates as applicable on the products listed in the schedule.

14. The rate notifications and explanations at the end, which make them aligned to the First Schedule of the Customs Tariff Act, 1975 and the General Rules for Interpretation of the First Schedule. The First Schedule to the Customs Tariff Act and the First Schedule to the Excise Tariff Act are based on Harmonized System of Nomenclature ('HSN') of World Trade Organisation (WTO) which is duly accepted in General Agreement on Tariffs and Trade ('GATT'). India being member of WTO and signatory to GATT, has duly adopted the HSN as First Schedule to Customs Tariff Act and First Schedule to Excise Tariff Act. The Explanatory notes issued by the World Customs Organization under the aegis of WTO are used to understand the classification and scope for entries under HSN. The classification of goods needs to be determined as per the First Schedule to Customs Tariff Act r/w General Rules for Interpretation, Explanatory notes and applicable jurisprudence.

15. Section 11 of the CGST Act empowers the Central Government to grant exemption from collection of Central Tax. An exemption grants immunity from the liability to remit taxes. The Central Government has issued Notification No.2/2017 Central Tax (Rate) dated 28.06.2017, in exercise of the powers



under Section 11 of the CGST Act. Consequently, the State Government has issued exemption notification bearing No. G.O(P) No.63/2017/ Taxes, SRO No. 361/2017 dated 30.06.2017, granting similar exemption from State Tax as provided under the Notification No.2/2017- Central Tax (Rate) dated 28.06.2017 issued by the Central Government. The notifications vide Entry 97 grants exemption from GST to 'Bread (branded or otherwise), except when served for consumption and pizza bread' falling under Chapter Heading 1905.

16. Learned counsel for the petitioner has drawn attention of this court to Chapter 19 of the First Schedule to the Customs Tariff Act, 1975 particularly to Heading 1905 (*"Bread, Pastry, cakes, biscuits and other 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."*)

17. Learned counsel for the petitioner has submitted that the ingredients of the petitioner's product and the process involved in their preparation would cover the petitioner's products under Chapter Heading 1905 particularly under 1905 9090. The Heading 1905 nowhere contemplates that the products covered thereunder need to be ready for human consumption and must be bakery products. The ingredients of the products and process



employed are similar to the products covered under barriers of chapter heading 1905 which also has a residual Entry 1905 9090, therefore the said products would be covered under Entry 1905.

18. The explanatory notes to HSN for Chapter 19 clearly provide that the Chapter covers a number of preparations generally used for food, which are made either directly from the cereals of Chapter 10, from the products of Chapter 11 or from food flour, meal and powder of vegetable origin of other chapters. The impugned products are made from the fine flour (Maida) or whole wheat flour (Atta) which are products of Chapter 11, and therefore, are clearly covered under Chapter 19.

19. It is further submitted that the Explanatory Note to HSN for Heading 1905 further provides that the most common ingredients to the products of this Heading are cereal flour, leavens and salt but they may also have other ingredients such as gluten, starch, milk, sugar, fats, improvers etc. like yeast, sour dough, baking soda which facilitate fermentation and improves characteristics and appearance of the products.

20. Learned counsel for the petitioner has submitted that, if the ingredients and nature of the products covered under Heading 1905 are examined, it would be evident that the petitioner's impugned products have also almost same/similar ingredients and somewhat similar process is employed. Petitioner's impugned



products are manufactured from the flour of whole wheat flour dough, water, salt , sugar, milk, solids and yeast or baking soda. Thin round sheets of dough are semi cooked on hot place (Tawa / Skillet) using oil. These are packed and can be consumed after heating them. Impugned products are semi cooked for marketing purposes to retain the optimal shelf life and moisture so that upon pre heating, they remain soft and taste good. The petitioner's products like pappad and pizza base are classifiable under Heading 1905 and not under entry 2106 as held by two authorities.

21. Learned counsel for the petitioner further submits that numerous varieties of bread are made differently in different parts of the world. Flat breads, whether leavened or unleavened are mostly popular in Middle East, Asia and Africa. Pita bread, a leavened flat bread, originated from Lebanon and is now consumed globally. Pizza bread originated in Italy and is consumed across the world. Flat breads are indigenous to Indian sub-continent. Roti is the generic name for Indian flatbreads which has various species cooked differently like phulka, chapati, roomali and parota or puri which is fried in oil, Kulcha, naan, tandoori and missi rotis which are prepared in employed different methods. However, the base of all these species of roti are essentially flour of some cereal (single or mixed). Learned



counsel for the petitioner also submits that Khakhra and Rotla which have longer shelf life are popular in Gujarat and Maharashtra, they are also the species or varieties of roti.

22. The First Schedule to the Custom Tariff Act and Explanatory notes neither carve out any distinction or exception between different types of breads consumed in different parts of the world nor does it specify that only European loaf of bread will get classified under Heading 1905. The common parlance would not prevail on the HSN and Explanatory Notes.

23. The learned counsel for the petitioner also placed reliance on some literature and research papers on Indian flatbread to submit that the impugned products are nothing but Indian flatbreads. It is also stated that all fine dining restaurants would have all Indian flat breads including the Parotas, the category of bread in their menu. Therefore, the consumers treat the impugned products as flat breads.

24. HSN has universal applicability and has been adopted by all member countries of WTO, the customs tariff of those countries are also aligned to HSN just like First Schedule to Customs Tariff Act. Learned counsel for the petitioner has submitted that numerous foreign rulings available on the subject have treated the impugned products as Indian flat breads. When the impugned products have been held to be classifiable under sub heading



1905 9090 by several rulings worldwide, there cannot be two interpretations while interpreting the products under HSN code.

25. Learned counsel for the petitioner has placed reliance on judgment of ***Kayani & Co. v. Commissioner of Sales Tax, [AIR 1953 AP 252]***, where the High court determined, whether double roti, shirmal, parata and chapati etc can be called bread. Hon'ble High Court held that the intention of the legislature was to include all kinds of bread which are consumed by the citizens of India, whether prepared in different ways or called by different names and therefore, there is no justification limiting the scope of the term bread to double roti, which is loaf or bread in European country. Learned counsel for the petitioner has also submitted that the advance ruling appellate authority has erred in applying Rule 3(c) of General Rule of Interpretation to hold that no heading/sub - heading covers the description of impugned products. The impugned products being Indian flat breads are covered under breads specified in heading 1905. Explanatory notes to heading 1905 also gives description of products covered thereunder as impugned products. It is also submitted that Rule 3(c) of the General Rules of Interpretation is not applicable since Heading 2106 comes later. Therefore, the impugned products cannot be said to be covered under Heading 2106. Rule 3(c) can be applied only where there are two equally meritorious



headings, which means that only when both Headings 1905 and 2106 are equally applicable but specific description and essential characteristic tests fails, then resort can be taken to Rule 3(c).

26. Learned counsel for the petitioner submitted that Rule 4 of the GRI would be applicable which provides that '*goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin*'. As impugned products are most akin to 'bread' under Heading 1905, therefore, the same are classifiable under the said sub heading.

27. Learned counsel for the petitioner submits that Chapter 21 Heading 2106 reads with '*Food preparations not elsewhere specified or included*'. The impugned products do not come within any of the entries from 2106 10 and other entries. The impugned products can be classified under Tariff item 2106 9090, which is a residual entry. Heading 2106 is the last Heading in Chapter 21 of the First Schedule to the Customs Tariff Act and title of Chapter 21 denotes that the products covered thereunder are '*miscellaneous edible preparations*'. There is no common thread running through the Headings, sub headings and Tariff items covered under this Chapter. This could mean that the products covered under Heading 2106 are only



those food preparations which are not covered under any other Heading by 'specification' or 'inclusion'.

28. Learned counsel for the petitioner, with great emphasis, has submitted that the bread covered under Heading 1905 is a genus which should cover all forms or types of breads including flat breads by whatever name called. Even if Malabar Parota is not specifically named under Heading 1905, since it is species of bread, Malabar Parota will get classified under Heading 1905 and get excluded from *miscellaneous edible preparations* under Chapter 21 in Entry 2016. Even otherwise, Heading 2106 covers products such as protein concentrates, soft drink concentrates, pan masala, betel nuts, sugar syrups, non-alcoholic beverages, food flavoring materials, churna or pan, custard powder and such products. The impugned products have no ingredients related to any of these products. The Explanatory Notes to Heading 2106 states that '*Provided that they are not covered by any other heading of the Nomenclature, this heading covers Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk etc)* for human consumption.' If the product is covered elsewhere, this clause will not apply. Further, impugned products are covered under 1905, and therefore, there is no question of bringing the product under residual entry 2106. It is also submitted that the



impugned products simply require heating for consumption and are by all means ready-to-use food items. Therefore, the impugned products cannot be considered as 'preparations' and mere heating cannot be considered as 'processing'. The process mentioned in the Explanatory Notes to 2106 is detailed cooking and not mere heating.

29. Note 6 to Chapter 21 specifically provides for inclusion of sweet meats, commonly known as misthans or mithai, namkeens, mixtures, bhujia, chabena under tariff item 2106 90 99, regardless of the ingredients. The impugned products are neither sweetmeats nor are they in the nature of namkeens, bhujia etc, and therefore, they are also not covered by Note 6 to Chapter 21.

30. Learned counsel for the petitioner submits that the impugned products cannot be classified under the Heading 2106 and are specifically included under Heading 1905 (Tariff Item 19059090) and the Schedule 1 of the Rate Notification list the goods which attract standard rate of 5% GST (2.5% CGST and 2.5% SGST). The petitioner's product would attract a standard GST rate of 5% as is provided under the notification for Khakhra, plain chapati or roti, sweetmeats or namkins falling under the Schedule 1. Since entry 99A encapsulates all other forms of Indian flatbreads within this ambit such as Khakhra,



plain chapati or roti under Heading 1905, the impugned products would get covered under Entry 99A and attract the standard rate of GST of 5% and not 18% as held in the impugned judgment.

31. Sri.Mohammed Rafiq, the learned Special Government Pleader submitted that under 101st amendment to the Constitution of India, Article 246 A has been inserted in the Constitution authorizing concurrent and simultaneous levy of tax by the Union and States on supply of goods and services.

32. The parliament has enacted Central Goods and Services Tax Act, 2017 and State of Kerala has enacted the Kerala Goods and Services Tax Act, 2017 for levy of tax on intra-state supply of goods and services by virtue of powers conferred by Article 246A and both legislation came into effect on 01.07.2017. Section 9 of both the statutes authorizes levy of tax on intrastate supply of goods and services except alcoholic liquor for human consumption at such rates, not exceeding 20%, as may be notified by the Government on the recommendations of the Council. Pursuant thereto, the Central Government has notified GST Rate Notification No. 1/2017 (Central) dated 28.06.2017 and the Government of Kerala has notified SRO 360/2017 dated 30.06.2017, prescribing the rates of tax applicable to intrastate



supply of goods as enumerated in Schedule I to VI to those notifications.

33. Column No.2 of each schedule of notification would show the respective tariff item, sub heading, heading or chapter of the Customs Tariff as the case may be to the goods specified in column No.3. In the exemption notification, notified by the Central and State Government, as Notification No.2/2017 and SRO 361/2017 respectively in exercise of the powers conferred under Section 11(1) of the Central / State Goods and Services Tax Act, 2017, the very same scheme and pattern has been followed.

34. Rate / Exemption notifications issued are **item specific**. All items under the HSN may not be notified for exemption under the exemption notification. Even for levy of tax, the specific goods falling under a particular four-digit HSN heading are considered individually and placed in different schedules to those notifications and subjected to different rates of tax or exempted as deemed fit by the competent authorities of Central / State Government.

35. Revenue neutral rate in the Scheme of levy is 18% as envisaged in Entry No. 453 of Schedule -III to the rate notification which reads thus:-



<i>S.No</i>	<i>Chapter/ Heading/Sub Heading/ Tariff item</i>	<i>Description of Goods</i>
(1)	(2)	(3)
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

36. Therefore, it is submitted that if the goods which are not specified Schedule I, II, IV , V or VI under any Chapter, it would attract levy of 18% CGST (9% SGST and 9% CGST) unless it is exempted or different rate of tax is provided. Entry 99A of Schedule I to the rate notification provides 5% GST (2.5% SGST and 2.5% CGST) in respect of Chapter / Heading / Sub heading / Tariff item 1905 or 2106 in respect of the goods such as Kharkha, plain chapatti or roti.

37.The Entry 99A of the Schedule No.I of the rate notifications reads as under:-

<i>S.No</i>	<i>Chapter/ Heading/Sub Heading/ Tariff item</i>	<i>Description of Goods</i>
(1)	(2)	(3)
99A	1905 or 2106	Kharkha, plain chapatti or roti

38. Mr. Mohammed Rafiq, the learned Special Government Pleader has submitted that while looking at the Entry 99A mentioned above, only three specific goods enumerated in



Column 3 namely; Kharkha, plain chapatti or roti falling under HSN heading 1905 or 2106 mentioned in Column No.2. In the absence of words like 'similar products' or 'and the like', the enumeration in the entry is exhaustive and no other item can be included in the 3rd column. He further submitted that the Classic Malabar Parota and Whole Wheat Malabar Parota are either Kharkha, plain chapatti or roti. The petitioner's impugned products are different products other than Kharkha, plain chapatti or roti.

39. The learned Special Government Pleader has further submitted that entry 99A of the Rate Notification No.1/2017 and State Notification No. 360/2017 dated 30.06.2017, are not applicable to goods falling within the ambit of HSN Heading 1905 or 2106 other than three specific goods enumerated in Column No.3. The submission is that even if the petitioner's product fall under HSN Heading 1905, the petitioner's product would not come within the Entry 99A of the Schedule I to the Rate Notification and are not eligible for 5% tax.

40. Learned Special Government Pleader has also placed reliance on the judgment of the Supreme Court in the case of ***Santhosh Maize & Industries Ltd v. State of Tamil Nadu [2023 SCC OnLine SC 764]***. He further submitted that the petitioner claimed for exemption under Entry 97 of Notification



No.2/2017- Central Tax (Rate) and State (Rate) Notification No.361/2017 – State Tax (Rate) also has no merit. Entry 97 of the Rate Notification exempts only one item namely Bread, (branded or other wise), except when served for consumption. Exemption notifications issued under Section 11(1) are also item specific. The Government is empowered to exempt one or more items falling under particular Chapter Heading and unless and until the other items of the Chapter Heading are mentioned in the exemption notification, it cannot be said that the exemption notification would be applicable in respect of all or other items falling within the Chapter Heading.

41. Learned Special Government Pleader submitted that Entry 97 prescribes Chapter Heading and description of goods in Column Nos.2 and 3. In Column No.3, Bread as mentioned above has been exempted from payment of the GST.

42. The Parota does not fit within the description of Bread (branded or otherwise). The Parota is not a bread and therefore, it is not entitled for exemption as claimed by the petitioner. Taxing statutes cannot be interpreted on the basis of any presumption or assumption. The exemption notification is required to be interpreted strictly. The burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or



exemption notification. There is no ambiguity in the exemption notification, which requires an interpretation by this court as Parota is not a bread (branded or otherwise).

43. Bread and Parota are two different goods in commercial parlance as well as common parlance. Their ingredients, the process employed for preparation and baking methods are different. No one mistakes bread with Parota. Therefore, it is submitted that the claim of the petitioner that the products namely; *Classic Malabar Parota and Whole Wheat Parota* are exempted goods as envisaged in Entry 97, is devoid of any merit.

44. Learned Special Government Pleader further submitted that the food preparation of the Parota is not elsewhere specified or included and therefore, it would be classifiable under HSN Heading 2016, which can be placed under Entry 23 of Schedule-III to the Central / State Rate Notifications dealing with goods taxable at 18%. It is further submitted that the petitioner's products namely; *Classic Malabar Parota and Whole Wheat Malabar Parota* are not specifically mentioned under any of the Schedules of the relevant Rate Notifications and they are not exempted. The revenue Neutral Rate of 18% (9% CGST and 9% SGST) can be made applicable as provided in Entry No. 453 of Schedule III of the Rate Notification.



45. I have considered the submissions and pleadings in the writ petition. The question which involves for interpretation in the present writ petition is, what is the rate of GST which will be applicable on the impugned products of the petitioner ie., Classic Malabar Parota and Whole Wheat Malabar Parota?

ANALYSIS

46. The first and foremost aspect which has to be considered is that whether, the petitioner's products Classic Malabar Parota and Whole Wheat Malabar Parota would be covered under Chapter Heading 1905 or same are to be covered under Chapter Heading 2106. If they are covered under Chapter Heading 1905, then what is the rate of GST they would attract on their supply?

47. Chapter Heading 19 reveals that it covers a number of preparations generally used for food, which are made directly from the cereals, starch, milk and pastry cooked products. Though the petitioner's product is not covered as specifically mentioned in sub heading 1905 90, 1905 9040, whether it is paid to be covered under the sub heading 1905 9090 which describes 'other'.

48. The Explanatory Notes to HSN sub heading 1905 provides that the most common ingredients of the products of this Heading are cereal flours, leavens and salt but they



may also contain other ingredients such as gluten, starch, milk, sugar, fats, improvers etc., like yeast, sour dough, baking soda which facilitates fermentation and improve characteristics and appearances of the products. The products of this heading may also be obtained from dough based on the flour of any cereal.

49. Rule 4 of GRI provided that goods which cannot be classified in accordance with the Rules I to III shall be classified under the Heading appropriate to the goods to which they are akin. It cannot be doubted that the products of the petitioner would be in category of Chapter Heading 1905, and therefore, by applying the fourth GRI which provides that goods which cannot be classified in accordance with the above rules shall be classified under the Heading appropriate to the goods to which they are most akin should be applied to see whether the goods should fall under the Chapter Heading 1905 or not.

50. It is also relevant to take note of the fact that Chapter Heading 21 particularly, Entry HSN 2106 prescribes food preparation not elsewhere specified or included and the petitioner product or not akin to any of the products which are mentioned in Chapter Heading 2106. In view thereof, I



am of the considered opinion that the petitioner's product are to be included in Chapter Heading 1905.

51. Once it is settled that petitioner's product comes within the Chapter / Heading , sub heading and tariff item , HSN 1905, the next question which falls for consideration is that what is rate of tax to which the petitioner's products are liable for tax under the GST Act and Rules made thereunder.

52. The two Rate Notification mentioned above would provide that similar products such as Khakhra, plain chapati or Roti are exigible for 5% tax as per 99A of the Schedule I or they are exempted from the payment of GST as per the Rate Notification.

53. It is no doubt that the petitioner's product is not specifically included in the exemption from payment of GST under entry 97 as the exemption notifications are to be constituted strictly and they are item specific. The petitioner's item is not included in the exemption notification, and therefore the petitioner claims the exemption from payment of the GST has no merit.

54. When there is no doubt in any manner that the petitioner's product should fall within the HSN 1905, as the petitioner's products are akin / similar to the products mentioned in the said Chapter Heading 19 and the



ingredients used in and the process applied in their preparations are somewhat similar to the other products which are specifically mentioned there, the tax in the products of the petitioner's at the rate of 18% would not be justified.

CONCLUSION

55. In view thereof, I am of the considered opinion that if the petitioner products are akin / similar to the products mentioned in HSN code 1905 of Chapter 19 with heading Preparations of cereals, flour, starch or milk; pastrycooks' products as the ingredients used and process applied in their preparations are somewhat similar to the products mentioned in Chapter heading HSN Code 1905, excluding the petitioner's products from Entry 99A of the Rate Notifications which are almost similar to the three products mentioned in the said Entry, cannot be justified.

56. In view of the aforesaid discussion, I am of the view that petitioner's products are also exigible at the rate of 5% GST (2.5 % CGST + 2.5 % SGST) and not 18% as contended by the learned Special Government Pleader and held by the Advance Ruling Authority and Advance Ruling Appellate Authority.



Thus, the present writ petition is partly allowed, and it is held that the petitioner's products are liable to be taxed under the GST Acts and rules made under @ 5% GST on their supply i.e., 2.5% CGST + 2.5% SGST.

Sd/-

**DINESH KUMAR SINGH
JUDGE**

SJ

**APPENDIX OF WP(C) 13935/2021****PETITIONER EXHIBITS**

- Exhibit P1** A TRUE COPY OF ORDER A.R.NO.KER/23/2018 DATED 12.10.2018 PASSED BY THE 6TH RESPONDENT.
- Exhibit P2** A TRUE COPY OF ORDER NO.AAR/06/2020 DATED 19.10.2020 PASSED BY THE 5TH RESPONDENT.
- Exhibit P3** A TRUE COPY OF THE PICTURES OF PACKAGING MATERIAL OF THE IMPUGNED PRODUCTS.
- Exhibit P4** A COPY OF RELEVANT EXCERPTS FROM NOTIFICATION NO.1/2017-CENTRAL TAX (RATE) DATED 28.06.2017.
- Exhibit P5** A TRUE COPY OF THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF.
- Exhibit P6** A TRUE COPY OF THE GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM.
- Exhibit P7** A TRUE COPY OF THE SECTION NOTE OF SECTION IV OF THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975.
- Exhibit P8** A TRUE COPY OF THE CHAPTER NOTE OF CHAPTER 19 OF SECTION IV OF THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975.
- Exhibit P9** A TRUE COPY OF THE CHAPTER NOTE OF CHAPTER 21 OF SECTION IV OF THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975.
- Exhibit P10** A TRUE COPY OF THE HSN EXPLANATORY NOTE OF CHAPTER 19.
- Exhibit P11** A TRUE COPY OF THE HSN EXPLANATORY NOTE OF CHAPTER 21.
- Exhibit P12** A COPY OF RELEVANT EXCERPTS OF NOTIFICATION NO.2/2017-CENTRAL TAX (RATE) DATED 28.06.2017.
- Exhibit P13** A REPRESENTATIVE SAMPLE MENU FROM A RESTAURANT DEPICTING ALL KINDS OF FLAT BREADS AS 'BREADS'.