Reserved On : 22/06/2026
Pronounced On : 18/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 690 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
CAD MAK CHEW FOODS

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Appearance:
DR POOJA ASHAR, AGP for the Appellant(s) No. 1
MR SN SOPARKAR, SENIOR ADVOCATE WITH MR UCHIT N SHETH(7336) for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Assistant Government Pleader Dr.Pooja Ashar appearing for the appellant-

State and learned Senior Counsel Mr.S.N.Soparkar with learned advocate Mr.Uchit Sheth appearing for the respondent.

2. This Tax Appeal is filed under Section 78 of the Gujarat Value Added Tax Act, 2003 (For short “VAT Act”) against judgment and order dated 23.12.2014 passed by the Gujarat Value Added Tax Tribunal at Ahmedabad (For short “the Tribunal”) in Second Appeal No. 96 of 2013.

3. This appeal was admitted by order dated 29.09.2015 for consideration of the following substantial questions of law :

> “(i) Whether the Gujarat Value Added Tax Tribunal was justified in holding that chewing gum is taxable as “sweet and sweetmeat” under entry 74A of Schedule-II of Gujarat Value Added Tax Act, 2003?
>
> (ii) Whether the Gujarat Value Added Tax Tribunal was justified in deleting levy of interest and penalty?”

Facts:

4. Brief facts of the case are that the assessee is a registered dealer under the VAT Act as well as under the Central Sales Tax Act and is engaged in the business of manufacturing peppermint, sugar candy, sakariya and chewing gum.

5. The Commercial Tax Officer (2), Enforcement Division-2, Ahmedabad visited the premises of the assessee on 21.02.2007 and books of accounts were seized by the said authority.

6. After scrutiny and verification of the books, the assessee was issued notices under VAT Act and under CST Act.

7. The Assessing Officer passed the assessment order dated 31.03.2011 holding that assessee was liable to pay tax at 4% on sales of Sakariya which the assessee has sold as tax free goods and the sales of chewing cum are liable to tax at 12.5% instead of 4%. The Assessing Officer also levied interest under section 42(6) of the VAT Act and imposed penalty under section 34(7) and section 34(12) of the VAT Act. Thus the Assessing Officer raised total demand of Rs.9,83,471/- against the assessee which included tax demand of Rs.2,76,256/-, interest under section 42(6) of Rs. 2,23,767/-, penalty under section 34(7) of Rs. 4,14,384/- and penalty under section 34(12) of Rs.69,064/- at the rate of 25%.

8. Being aggrieved, the assessee preferred an appeal before the Deputy Commissioner of Commercial Tax who vide order dated 08.01.2013 partly allowed the appeal of the assessee holding that the sales of Sakariya were exempt from tax in view of Public Circular No.135/116 dated 01.08.2012 and therefore, the additional demand which was raised was deleted. The Deputy Commissioner also reduced the amount of penalty levied under section 34(7) from 150% to 50% and penalty under section 34(12) from 25% to 10%. The Deputy Commissioner however, confirmed the assessment order in respect of levy of tax at the rate of 12.5% on sales of chewing gum.

9. Being aggrieved, the assessee preferred Second Appeal before the Tribunal. The Tribunal by the impugned judgment and order dated 23.12.2014 allowed the Second Appeal filed by the assessee by holding that tax assessed at 12.5% on sales of chewing gum be held as liable at 4% considering the same as covered under Entry 74A of Schedule II of the VAT Act and to calculate interest being consequential accordingly. The Tribunal also set aside the penalty imposed under section

34(7) and section 34(12) of the VAT Act.

10. The Revenue being aggrieved by the order passed by the Tribunal has preferred the present Tax Appeal.

Submissions of the appellant:

11. Learned Assistant Government Pleader Dr. Pooja Ashar appearing for the State Government submitted that the present appeal pertains to classification of product of the respondent which is not classified anywhere in the Schedules of VAT Act and, therefore, product ought to have been classified in Entry No. 87 being residuary entry.

12. Learned AGP Ms. Ashar submitted that the tax appeal pertains to classification of Chewing Gum and that the Chewing Gum should be classified under residuary entry i.e. Entry No. 87 whereas, the Tribunal has erroneously held that the Chewing Gum should be classified under Entry no. 74A of Schedule -II of VAT Act i.e. under ‘sweets & sweetmeats’. Reliance was place on Entry 74A to submit that the entry does not mention or bear the product “chewing gum” which reads as under:

> “74A Sweets and sweetmeats (including Chiiki and Revdi) Four paise in the rupee.”

13. Learned AGP Ms. Ashar submitted that the Tribunal itself in Paragraph no. 12 of the impugned judgment has placed reliance upon Chapter 17 of the Tariff Act to hold that the tariff entry under the Excise Act wherein in Chapter 17 relating to Sugar and Sugar Confectionery, it is mentioned that tariff item is 1704 for Sugar Confectionery and includes Chewing Gum whether or not, sugar coated. By placing reliance on the Supplementary Notes of Chapter 21 of the

Tariff Act, it was submitted that Sr. No. 6 of the Supplementary Notes prescribes that ‘sweetmeats’ commonly known as "Misthans" or "Mithai" or by any other name and also include products commonly known as "Namkeens", "mixtures", "Bhujia", "Chabena" or by any other name. However, Sr. No. 6 does not prescribe or define that ‘sweetmeats’ includes ‘chewing gum’ of any kind. It was therefore, submitted that the order of the Tribunal classifying chewing gum as ‘sweets & sweetmeats’ is erroneous.

14. Learned AGP Ms. Ashar placed reliance on the decision of Hon’ble Apex Court in the case of **Commissioner of Trade Tax, U.P. v. Associated Distributors Ltd.** reported in **(2009) taxmann.com 967 (SC)** wherein it was held that a common parlance test is required to be undertaken to examine whether a particular item falls under a specific entry or not.

15. Learned AGP Ms. Ashar submitted that the Tribunal in paragraph no. 21 of the impugned judgment has erroneously held that the appeal before the Tribunal, did not entail the issue of interpretation of ‘sweets and sweetmeats’ and classification of chewing gum as ‘sweets or sweetmeats’ and has wrongly held that the case of **Associated Distributors Ltd (supra)** was not applicable. It was further submitted that the decision of Hon’ble Apex Court in the case of **Associated Distributors Ltd (supra)** and the test of common parlance as discussed in the said case would squarely be applicable to the facts of the present case as the issue in this case belongs to classification of ‘chewing gum’.

16. Learned AGP Ms. Ashar placed reliance on the decision of Hon’ble High Court of

Allahabad in the case of **General De Confiteria India Ltd. v. State of U.P.** reported in **(2010) 3 taxmann.com 566 (Allahabad)** and submitted that the Hon'ble High Court of Allahabad has relied upon the decision of Hon'ble Apex Court in the case of **Associated Distributors Ltd (supra)** and held that the chewing gum & bubble gum are taxable as unclassified items. The Hon'ble Supreme Court held as under:

> "**16**. Having said as above, we are of the view that in the case on hand, the law that chewing gum and bubblegum are taxable as unclassified items and, therefore, liable to be taxed at the rate of 10% has been the law throughout with effect from the date of enforcement of the relevant notification. It shall be deemed to be from the date of notification and as such, it is but a clear case of escapement of turnover as these items have been taxed at a lower rate. Learned Senior Counsel could not dispute that even today a notice for reassessment subject to period of limitation may be issued to tax these items accordingly. But he maintains that the impugned notices

are bad, specially in view of the pronouncement of the Apex Court in the case of Shree Chamundi Mopes Ltd., referred to above. Reference was made to paragraph 10 of the judgment wherein the difference in between an 'interim order' staying operation of the order under challenge and a 'final order' has been noticed by the Apex Court. There is no quarrel to the said proposition but its applicability to the facts of the present case is altogether a different aspect. In the case on hand, the appeal has been allowed by the Apex Court and the interim order by fiction of law stood merged with the final order. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It is the duty of every court, High Court or subordinate courts and the authorities to follow the decision of the Apex Court. It would amount to judicial impropriety for the courts and the authorities below to the Apex Court, to ignore a well settled position of law as a result of judicial pronouncement of the Supreme Court and pass a judicial order contrary to it. See *Dwarkesh Sugar industry Ltd.* v. *Prem Heavy Engineering Works Pvt. Ltd.,* (1997) 6 SCC 450 (para 32)."

<u>Submissions of the respondent</u>:

17. On the other hand, learned Senior Advocate Mr. S.N. Soparkar with learned advocate Mr. Uchit Sheth appearing for the respondent submitted that the main argument of the appellant is that the case of **Associated Distributors Ltd (supra)** will be applicable to the case of the present respondent and that the chewing gum should be classified in the residuary entry and not ‘sweets or sweetmeats” only because in the said decision it is observed that as a matter of fact, no person will say that a chewing gum is a sweet or sweetmeat in common parlance or even in trade parlance whereas the facts of the case of the assessee stands on different footing while subjected to provisions of Gujarat Sales Tax Act and VAT Act.

18. Learned Senior Advocate Mr. Soparkar placed reliance on Schedule II of the Gujarat Sales Tax Act, 1969 to demonstrate as to how law has progressed since 1970 onwards. Reliance was placed on Entry 50 of the said schedule for period 06.05.1970 to 31.07.1977 and then from 01.08.1977 onwards to submit that the product of the respondent i.e. chewing gum was being classified under the head at Entry 50 bearing heading “sweets & sweetmeats”. Further reliance was placed on Circular dated 02.05.1970 which was a clarificatory circular wherein for Entry 50, it was clarified that toffee, chocolate & peppermint were to be included in this entry being Entry No 50. It was therefore submitted that considering long drawn practice under both the Gujarat Sales Tax Act & VAT Act, there is no reason to put chewing gum in the Residuary Entry of the VAT Act.

19. Reliance was placed on the decision of the Hon’ble Apex Court in the case of **Ponds India Limited** (supra) to submit that when an entry has been interpreted consistently in a particular manner for several assessment years, it would not be permissible for the Revenue to depart therefrom, unless there is any material change and in the present case, nothing was produced on record to show that there was any kind of material change in the product of the respondent and therefore, now after years of classifying chewing gum as ‘sweets and sweetmeats’, the Revenue cannot contend that the chewing gum should be classified under the residuary entry. In support of such submission, reliance was placed on the following paragraphs:

> “**60.** In determination of the question involved herein, we cannot be oblivious of the fact that Revenue itself thought 100 per cent pure white petroleum jelly of I.P. grade (non-perfumed) to be a pharmaceutical preparation from 1981

to 1989. No material change has occurred after the said period.

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76. If an entry had been interpreted consistently in a particular manner for several assessment years, ordinarily it would not be permissible for the Revenue to depart therefrom, unless there is any material change. (See Bharat Sanchar Nigam Ltd. and Another V/s. Union of India and Others, 2006 3 SCC 1.)

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78. In Bharat Sanchar Nigam Ltd. and Another V/s. Union of India and Others, 2006 3 SCC 1, with respect to the dominant intention test vis-a-vis the aspect theory, this Court held:

> "...The Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why Courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi judicial or judicial can generally be permitted to take a different

> view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a coordinate bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a bench of superior strength or in some cases to a bench of superior jurisdiction."

20. Learned Senior Advocate Mr. Soparkar placed reliance on various Determination Orders dated 17.09.1990, 29.02.2008 and 27.08.2009 (Pg. 18, 20 & 21 of the compilation) wherein the products being toffee, chocolate, candy, lollypop etc. of different manufacturers have been identified as ‘sweets & sweetmeats’. It was submitted that in the order dated 27.08.2009 passed by Commissioner of Commercial Taxes, where the products in question were lollypop, candy and toffee, the department has held that all these products are Confectionery/Boiled Sugar which will fall within the definition of ‘sweets and sweetmeats’. Further reliance was also placed on Determination Order dated 18.09.2009 passed by the Joint Commissioner of Commercial Tax in the case of Glaxo Smythkline wherein it was held that the products of the manufacturer being Horlicks Nutri Bar Cereal n Milk, Horlicks Nutri Bar Choco Crispy and Horlicks Nutri Bar Nuts & Raisins were to be classified in Entry 74A of Schedule II to VAT Act. It was further submitted that in order dated 18.09.2009, the department has also held that sweetmeat means an item of confectionery or sweet food. Reliance was also placed on order dated 15.10.2010 (Pg 25 of compilation) wherein department has held that Nutella & Kinder Joy are both sweetmeats. Further reliance was also placed on order dated 09.08.2011 wherein department held that Ferrero Rocher chocolate is a sweetmeat. It was therefore submitted that the department has considered wide variety of similar items as ‘sweets & sweetmeats’. Similarly considering these orders, the present product of the respondent i.e. ‘chewing gum’ is also required to be classified as sweet & sweetmeats under Schedule II Entry 74A of VAT Act.

21. Learned Senior Advocate Mr. Soparkar placed reliance on the decision of this Court in the case of **Godrej Consumer Product Ltd. v. State of Gujarat** reported in **(2019) 66 GSTR 182** to submit that a Determination Order is binding upon the parties unless either side has chosen to dispute such order in terms of appeal or revision provisions made under the Act. In other words, in relation to the same product, if some other dealer or manufacturer wishes to dispute the classification, the Department cannot cite the Determination Order in case of some other assessee. However, unless the Department has questioned the order of determination passed by the Commissioner, it would bind the Department in relation to other assessee also. It was therefore submitted that by series of Determination Orders the term “sweets and sweetmeats” has been given a wide interpretation by the department and the test that has been held out by the department is whether the product is sweet & capable of being eaten. In the present case, the Determination Orders will be binding on the department, and they are not entitled to argue that Chewing Gum will not fall under the heading ‘sweets & sweetmeats’. Reliance was placed on the following paragraphs of the judgment:

> “7. During the course of assessment, the petitioners relied on such determination order. The Assessing Officer; as noted, distinguished it by recording that

the petitioners' product is used more as a hairdye or as a hairtonic, and whereas, consideration before the Commissioner of the product, it is stated to be used as Mehendi on hands and feet. In our opinion, the Assessing Officer committed serious error in discarding the determination order passed by the Commissioner. Section 80 of the VAT Act pertains to determination of disputed questions. Subsection [1] of Section 80 authorizes the Commissioner to pass an order determining the question inter alia as to whether any tax is payable in respect of any particular sale or purchase or if tax is payable, the rate thereof. Once such a determination order is passed by the Commissioner, it would bind the parties before the Commissioner, which would include the assessee who might have urged the Commissioner to make the determination and necessarily the Department; unless of course either side has chosen to dispute such order in terms of appeal or revision provisions made under the Act. The Courts have held that in so far as assessee is concerned, the said order can bind only the parties before the Commissioner. In other words, in relation to the same product, if some other dealer or manufacturer wishes to dispute the classification, the Department cannot cite the determination order in case of some other assessee. However, unless the

Department has questioned the order of determination passed by the Commissioner, it would bind the Department in relation to other assesses also. Division Bench of the Bombay High Court in the case of Kulko Engineering Works Limited v. The State of Maharashtra, reported in [1980] 46 STC 454 held and observed that if a particular question submitted to the Commissioner for his determination under the Bombay Sales Tax Act has been determined by him upon an interpretation of a provision in the Act or the Rules made under it, it is not open to a Sales Tax Officer in another proceeding to ignore that interpretation and place his own interpretation upon that particular provision contrary to or different from the interpretation placed by the Commissioner. Similarly, if a question has been decided on certain facts, and in another proceeding identical facts arises, the Sales Tax Officer cannot take a different view from what the Commissioner had taken.

9. The Division Bench of this Court in the case of State of Gujarat vs. Mahavir Engineering & Electric Stores, in its decision dated 13th October 2006, rendered in the context of Section 62 of the Gujarat Sales Tax Act, 1969 which was a provision similar to Section 80 of the VAT Act, held and observed as under :

"Section 62 of the Gujarat Sales Tax Act, 1969 relates to determination of disputed questions. For our purpose, Clause [e] of subsection [1] of Section 62 would be material which reads as under:

"62. Determination of disputed questions [1] If any question arises, otherwise than in proceedings before a Court, or proceedings under Section 41 or 44, whether for the purposes of this Act,

(e) any tax is payable in respect of any particular [sale, specified sale or purchase], or if tax is payable the rate thereof, the Commissioner shall make an order determining such question."

Under the Act, the final authority to determine the dispute is conferred upon the Commissioner or any of his authorized representatives. Such an order would be binding between the parties and if any of the parties are aggrieved by the order, then it has to challenge the said order before the appellate forum. Undisputedly, the above referred two orders still stre in the eyes of the Department. It is to be noted that the said orders have yet not been challenged by the Department before any Appellate forum. Under the circumstances, the orders would not only bind the applicant who made the reference but would also bind the

> State Sales Tax Department which was a party before the Commissioner of Sales Tax. Under the circumstances, we must hold that the Tribunal was justified in holding that "toolbits" would be taxable under Entry 3 [ix] of Schedule IIA of the Act."
>
> 10. The Division Bench of this Court in the case of West Coast Waterbase Private Limited & Anr. vs. State of Gujarat & Anr., reported in [2016] 95 VST 370 (Guj.), after referring to various judgments, held that the Assessing Officer was bound by the order of determination passed by the Deputy Commissioner and could not have taken a different view unless there had been any material change."

22. Learned Senior Advocate Mr. Soparkar placed reliance on Notes of Chapter 17 of Tariff Act (pg. 11 of compilation) whereby chewing gum whether or not sugar coated is needed to be classified under Heading 1704 as 'Sugar confectionary (including white chocolate), not containing cocoa'. However, for the chewing gum to be classified as 'sweets and sweetmeats' a Statutory Circular dated 06.12.2012 was issued by the

Commissioner of Commercial Taxes whereby in order to enable traders to use E-Services in a better way, the department decided to assign commodity codes to trade items. Accordingly, a list of commodity codes assigned to some commodities was prepared and the traders were asked to use commodity codes wherever the names of their items were mentioned to speed up their day-to-day operations. In the said list, at Sr No. 145 under Heading ‘sweetmeat’ at item No.1 (a) was mentioned chewing gum whether or not, sugar coated bearing code 1704 10 00. It was therefore submitted that the as per the said Circular adopted by the department itself says that sweetmeat contains chewing gum and therefore, the department now cannot raise a contention that the chewing gum is to be classified in the residuary list instead of the ‘sweets & sweetmeats’. It was pointed out that this circular was issued by the department after the decision of Apex court in the case of **Associated Distributors Ltd (supra).** It was therefore submitted that in view of circular dated 06.12.2012, order of the Tribunal is correct.

23. Learned Senior Advocate Mr. Soparkar placed reliance on Circular dated 01.08.2011 of the Ministry of Health and Family Welfare (Pg.3 of compilation) issued under Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and specifically Sr. No. 2.7.3 therein was referred to which deals with Chewing Gum and Bubble Gum and the ingredients/standard which the Chewing Gum and Bubble Gum shall conform to that is for Chewing Gum Reducing Sugar shall not be less than 4.5 per cent by weight and Sucrose shall not be more than 70 per cent by weight. It was therefore submitted that when in view of such circular, the department has been classifying the chewing gum as ‘sweets and sweetmeats’, it is not open for the department to change the classification that too when there is no modification in the product of the respondent.

24. Learned Senior Advocate Mr. Soparkar submitted that the case of the respondent is that the product falls within a specific Entry and not residuary entry and therefore the converse is not of competing entries but whether the product falls in a main entry or not. It was therefore submitted that law of interpretation needs to be taken into consideration as to when the recourse to Residuary Entry can be taken by the department. Learned Senior Advocate Mr. Soparkar placed reliance on para no.34 of the decision in case of **Mayuri Yeast** (supra) wherein it was held by Hon’ble Apex Court that it is now a well-settled principle of law that in interpreting different entries, attempts shall be made to find out as to whether the same answers the description of the contents of the basic entry and only in the event it is not possible to do so, recourse to the residuary entry should be taken by way of last resort. It was submitted that the Hon’ble Apex Court also held in para no. 46 of the judgment that when two views are possible, one which favours the assessee should be adopted.

25. Learned Senior Advocate Mr. Soparkar also placed reliance on the decision of the Hon’ble Apex Court in the case of **State of Maharashtra v. Bradma of India Limited** reported in **(2005) 2 SCC 669** wherein it was held that resort has to be made to the residuary heading only when by a liberal construction the specific heading cannot cover the goods in question.

26. Learned Senior Advocate Mr. Soparkar placed reliance on the decision of Hon'ble Apex court in the case of **Commissioner of Trade Tax, U.P. v. S. S. Ayodhya Distillery and others** reported in **(2009) 19 VST 251 (SC)** more particularly, paragraph no. 33 which reads as under:

> "**33.** Two expressions having been used ordinarily two different meanings should be assigned thereto. If by reason of a notification, taxes are sought to be imposed upon a new commodity applying **Heydon's Rule** (3 Co. Rep. 7a; 76 E.R. 637), it must be held that the mischief was sought to be remedied thereby."

27. Learned Senior Advocate Mr. Soparkar placed reliance on the judgment of the Hon'ble Bombay High Court in the case of **Commissioner of Sales Tax v. Mangharam and Company** reported in **(1976) 37 STC 599** (pg. 121 of the compilation) wherein the terms ‘sweets and sweetmeats’ were discussed and differentiated and it was held that the term "sweets" is a wider generic term, which comprehends within it the species of sweets known as sweetmeats, but from this it does not follow that every sweet is a sweetmeat. The Shorter Oxford English Dictionary defines "sweetmeat" as "preserved or candied fruits, sugared nuts, etc.; also, globules, lozenges, 'drops', or 'sticks' made of sugar with fruit or other flavouring or filling". The Concise Oxford Dictionary defines "sweetmeat" as "shaped morsel of confectionery, usu., consisting chiefly of sugar or chocolate, a fruit preserved in sugar, bon bon, sugarplum, goody". It is undoubtedly true that a sweet, which is not a sweetmeat, and a sweetmeat both normally taste sweet, but all that tastes sweet is not and cannot be sweetmeat. It was therefore submitted that the product of the respondent i.e. chewing gum meets the standard of ‘sweets and sweetmeats’ as per the circular of the department dated 06.12.2012 which is not withdrawn and various determination orders and judgments of Hon’ble Apex Court and High Courts also supports the findings recorded by the Tribunal.

28. Learned Senior Advocate Mr. Soparkar placed reliance on the judgment of the Hon’ble Kerala High Court in the case of **State of Kerala v. M. J. Joseph** reported in **(2012) 56 VST 356** wherein it was held that in order to identify the relevant entry under which tax is to be levied on a product, the product needs to be identified with reference to the ingredients used in the manufacture and the nature of use of the product. It was therefore submitted that while interpreting this decision combined with aforesaid circular dated 01.08.2011 of the Ministry of Health and Family Welfare (Pg.3 of compilation) issued under Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 specifically Sr. No. 2.7.3 therein which deals with Chewing Gum and Bubble Gum and the ingredients/standard which the Chewing Gum and Bubble Gum, contain i.e. Reducing Sugar shall not be less than 4.5 per cent by weight and Sucrose shall not be more than 70 per cent by weight, the product of the respondent is rightly classified by the Tribunal as sweet and sweetmeat as the main ingredient of the product is sugar.

29. Learned Senior Advocate Mr. Soparkar submitted that the product needs to be classified based upon the marketing channel. As a shopkeeper of Pan shop/ Kirana store who sells peppermint, toffee, candy, lollypop etc. which are classified as sweet and sweetmeats, the chewing gum which is also being sold by the same shopkeeper of Pan shop/ Kirana store along with peppermint, toffee, candy, lollypop etc. needs to be classified as ‘sweets and sweetmeats’ and not in the residuary entry. In support of his submission reliance was placed on the decision of this Court in the case of **State of Gujarat v. B. G. Batwara & Co.** reported in **(1968) 22 STC 202** wherein reliance was placed on the decision of the Hon’ble Apex Court in the case of **Commissioner of Sales Tax v. Jaswant Singh Charan Singh** reported in **(1967) 19 STC 469** and it was held that the Hon’ble Supreme Court had resort not to the scientific or technical meaning of the term describing the items for the sales tax in question but had resort to the popular meaning or the meaning attached to them in the commercial sense. It was further held that if an article is sold as an article belonging to one category, it must be treated as a sale of an article of that category even though it answers the description of another category. If therefore an article is capable of being used as a chemical and also as a colour, the answer to the question what was sold would depend upon how it was treated by the vendor and if the vendor sold it as a chemical, it would be a sale of chemical and more so if it was bought by the vendee also as such. This test known as the ‘test of the vendor’, will be applicable when goods are doubted to fall in two categories as per classification. However, when there is no conflict between two specified entries but there is a question whether the sale in question would fall within a specified entry or within the residuary entry, it is obvious that if any particular article falls within any specified entry, it can never fall in the residuary entry. It was therefore held that the correct test would be to find out whether the sale in question would fall within a specific entry and if it cannot fall in that entry, then necessarily on the facts and circumstances of the case, it would fall within the residuary entry.

30. Learned Senior Advocate Mr. Soparkar relied upon the judgment of Hon’ble Apex Court in the case of **Associated Distributors (supra),** which is being relied upon by the appellant and submitted that in the said judgement reliance is placed on the decision in the case of **Collector of Central Excise v. Parle Exports (P.) Ltd.** reported in **(1989) 1 SCC 345** wherein it was held that the words used in the provision, imposing taxes or granting exemption should be understood in the same way for which they are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It was further submitted that in the case before Apex Court, the issue did not pertain to whether the bubble gum is a sweetmeat or not. The High Court had given a specific finding that bubble gum cannot be treated as a sweetmeat however the said finding was not challenged before the Apex Court. Ultimately, the Apex Court in paragraph no. 23 of the judgment held that toffee cannot be considered as a sweetmeat in Uttar Pradesh being a specific part of the country. Similarly, bubble gum can also not be considered as a Mithai in State of Uttar Pradesh. It was therefore, submitted that the case of **Associated Distributors (supra)**, will not be applicable in the facts of the present case and is not significant. However, in the present case as far as state of Gujarat is concerned, the Determination Orders, HSN Entries, Excise Entries, Circulars of the department would prevail.

31. Learned Senior Advocate Mr. Soparkar placed reliance on the decision of Hon’ble Allahabad High Court in the case of **Gujarat Co-operative Milk Marketing Federation v. Assistant Commissioner (Assessment) Trade Tax and others** reported in **(2004) 137 STC 307** wherein reliance was placed on the decision of the Hon’ble Apex Court in the case of **CIT v. Sun Engineering Works (P) Ltd.** reported in **(1992) 198 ITR 297 (SC)** wherein it was held that a decision of the Apex Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration, to support their reasoning. It was therefore submitted that it is not correct to say that the Hon’ble Apex Court in **Associated Distributors (supra),** considered the issue as to whether chewing gum is a sweetmeat or not.

32. Learned Senior Advocate Mr. Soparkar submitted that the reliance placed by appellant on the decision in case of **General De Confiteria India Ltd. (supra)** is not applicable in the facts of the present case, as the Hon’ble Allahabad High Court in the said judgment had relied upon the decision of Hon’ble Apex Court in **Associated Distributors (supra),** to allow reopening on assessment and nothing has been held on merits which can be made applicable to the facts of the present case.

33. Learned Senior Advocate Mr. Soparkar submitted that the reliance placed by the appellant on notes of Chapter 21 will hold no value as Heading of Chapter 21 is Miscellaneous Edible Preparations and heading of Chapter 17 is Sugar and Sugar Confectionery and therefore, when one items falls under chapter 17, it cannot be said to fall under chapter 21 and therefore notes of chapter 21 cannot be relied upon.

34. Learned Senior Advocate Mr. Soparkar with regard to substantial question of law No.2 placed reliance on the decision of the Hon'ble Apex Court in the case of **Commissioner of Central Excise, Delhi v. Ishaan Research (P) Ltd. and others** reported in **2008 13 SCC 349** (Para 44) to submit that penalty cannot be levied in the present case.

Rejoinder:

35. In rejoinder, learned AGP Dr. Pooja Ashar submitted that amongst all the Determination Orders relied upon by the respondent only one determination order deals with bubble gum i.e. order dated 05.12.2007 passed under Section 80 of the VAT Act, 2003 in case of M/s. Kumar sweets and biscuit company wherein the product at Sr. No. 4 i.e. bubble gum was classified under residuary entry and not sweets and sweetmeats. Therefore, the said determination order is binding upon the department.

36. Learned AGP Dr. Pooja Ashar submitted that Assessment Year in case of the present respondent is 2010-2011 i.e. from 01.04.2006 to 31.03.2007 and the circular relied by the respondent is dated 06.12.2012 whereby the chewing gum was to be classified as ‘sweets and sweetmeats’ and therefore the said statutory circular cannot be applied retrospectively.

37. Learned AGP Ms. Ashar submitted that the decision in case of **Ponds India Limited (Merged with H.L. Limited) v. Commissioner of Income Trade Tax, Lucknow** reported in (2008) 8 Supreme Court Cases 369 would not be applicable in the facts of the present case as the case of Ponds India dealt with Drugs and therefore, differs factually from the present case as Drugs are specifically mentioned in the Entry No. 5 of Schedule II to Drugs and Cosmetics Act, 1940 (the Act). However, Para 77 of the judgment would be applicable wherein the Hon’ble Apex Court has referred to para 4 of the decision of Apex Court in case of **United Offset Process (P) Ltd. v. Collector of Customs** reported in **1989 Supp (1) SCC 131** wherein it was held that if no meaning is attributed to the expressions used in the particular enacted statute then the items in the customs entries should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or how these are dealt with by the people who deal in them, provided that there is a market for these types of goods. It was further held that this principle is well known as classification on the basis of trade parlance which means that if the definition of a particular expression is not given, it must be understood in its popular or common sense viz. in the sense how that expression is used every day by those who use or deal with those goods.

38. Learned AGP Ms. Ashar submitted that the decision in case of **Mayuri Yeast India Private Limited v. State of Uttar Pradesh & Anr.** reported in **(2008) 5 SCC 680** would not be applicable in the facts of the present case as the case of **Mayuri Yeast** (Supra) dealt with Yeast and chemicals involved in production of yeast and therefore differs factually from the present case. It was submitted that the Tribunal in the impugned judgment at paragraph no.17 has erroneously held that since chewing gum can be classified under the entry relating to sweets and sweetmeats, its classification under the residuary entry is contrary to the decision of Hon'ble Apex Court in the case of **Mayuri Yeast India Pvt. Ltd** (supra). Learned AGP Ms. Ashar submitted that applying the common parlance test, trade parlance test and the decision of apex court in case of **Associated Distributors Ltd (supra), United Offset Process (P) Ltd.**, it is clear that in no certain terms, chewing gum can be classified as ‘sweets or sweetmeats’.

Analysis:

39. Considering the submissions made by learned advocates for both the sides, the short question which arises for consideration is whether chewing gum is taxable as “sweets and sweetmeats” under entry 74A or under residuary Entry 87 of Schedule-II of the VAT Act.

40. It would therefore, be necessary to refer to relevant entries of Schedule II of the VAT Act which read as under:

> “74A. Sweets and sweetmeats (including Chiiki and Revdi) Four paise in the rupee.

87. All goods other than those specified in [Schedule I or III] and in the preceding entries of this schedule”	Twelve and a half paise in the rupee

41. On perusal of the above entries, literal application of “sweets and sweetmeats” would not include chewing gum. Therefore, it is necessary to find out how the chewing gum and bubble gum are treated under the Food Safety and Standards (Food Products Standards and Foods Additives) Regulation, 2011. Clause

2.7.3 of the said Regulation refers to chewing gum and bubble gum as under:

> "2.7.3: Chewing gum and bubble gum
>
> Chewing gum and bubble gum shall be prepared from chewing gum base, or bubble gum base, natural or synthetic, non-toxic; cane sugar and liquid glucose (corn syrup).
>
> The following sources of gum base may be used:-
>
> (1) Babul, Kikar (gum Arabic)
> (2) KHAIR
> (3) Jhingan (Jael)
> (4) Ghatti
> (5) Chiku (Sapota)
> (6) Natural rubber latex
> (7) Synthetic rubber latex
> (8) Glycerol ester of wood resin
> (9) Glycerol ester of gum resin
> (10) Synthetic resin
> (11) Glycerol ester or partially hydrogenated gum or wood resin.
> (12) Natural resin
> (13) Polyvinyl acetate
> (14) Agar (food grade)
> It may also contain any of the following ingredients, namely:-
> (a) Malt
> (b) Milk powder
> (c) Chocolate
> (d) Coffee
> (e) Gelatin, food grade
> (f) Permitted Emulsifiers
> (g) Water, potable
> (h) Nutrients like Vitamins, minerals, proteins

It shall be free from dirt, filth, adulterants and harmful ingredients. it shall also conform to the following standards, namely: -

Ingredients	Chewing gum	Bubble gum
(i) Gum	Not less than 12.5 per cent by weight	Not less than 14.0 per cent by weight
(ii) Moisture	Not more than 3.5 per cent by weight	Not more than 3.5 per cent by weight
(iii) Sulphated Ash	Not more than 9.5 per cent by weight.	Not more than 11.5 per cent by weight.
(iv) Acid insoluble ash	Not more than 2.0 per cent by weight.	Not more than 3.5 per cent by weight
(v) Reducing sugars (calculated as dextrose)	Not less than 4.5 per cent by weight.	Not less than 5.5 per cent by weight
(vi) Sucrose	Not more than 70.0 per cent by weight.	Not more than 60.0 percent by weight.

Provided that it may contain food additives permitted in and these regulations Including Appendix A

Provided further, if artificial sweetener has been added as provided in Regulation 3.1.2 (1), it shall be declared on the label as provided in Regulation 2.4.5 (24, 25, 26, 28 & 29) of Food Safety and Standards (Packaging and Labeling) Regulations, 2011.

Provided also, that, if only artificial sweetener is added in the product as sweeteners the parameters namely, reducing sugars and sucrose prescribed in the table above shall not be applicable to such product.”

42. From the above Food Regulation Standard, it appears that chewing gum and bubble gum are prepared from the chewing gum base, or bubble gum base, natural or synthetic, non-toxic, along with cane sugar and liquid glucose (corn syrup) under the specifications mentioned in the said clause having about 60 to 70% sucrose.

43. Under the Central Excise Tariff Act, Chapter-17 pertains to Sugar and Sugar Confectionery and Entry no. 1704 10 00 pertains to chewing gum whether or nor sugar coated under the Heading Sugar confectionery (including white chocolate), not containing cocoa as under:

> “1704 Sugar confectionery (including white chocolate), not containing cocoa.
>
> 1704 10 00 – Chewing gum, whether or not sugar coated.”

44. The Commercial Tax Commissioner vide public circular dated 06.12.2012 has published a list of Commodity Codes to be used in e-services and Entry No.144 refers to sweets and sweetmeats and Entry (1)(a) under the sub-heading sweetmeats of Entry No.144, refers to chewing gum as per the Central Excise Tariff Act under the Heading 1704 10 00.

45. It would therefore, be necessary to refer to the past history of Gujarat Sales Tax Act as to how the sweets and sweetmeats are considered. Entry 50 of Schedule II of the Gujarat Sales Tax Act pertains to ‘sweet and sweetmeats’ and includes Shrikhand, Basudi and Doodpak from 6.5.70 to 31.7.77 and by circular dated 02.05.1970, it is clarified that Entry 50 also includes toffee, chocolate and peppermint.

46. Accordingly, the Sales Tax department considered bubble gum as toffee/chocolate to be classified as sweetmeat and various appellate orders are also passed considering toffee/chocolate as sweetmeat. However, it is pertinent to note that there is no appellate or assessment order passed considering chewing gum/bubble gum as “sweetmeat” except in the present case wherein the issue is considered by the Assessing Officer by not classifying ‘chewing gum’ as ‘sweetmeat’.

47. Reliance placed by learned AGP Ms. Ashar on the decision of **Associated Distributors Ltd.**(supra) is sought to be distinguished by the learned Senior Advocate for the assessee on the ground that the said decision cannot be applied in facts of the present case.

48. It would therefore, be necessary to refer to the facts of the case before the Hon’ble Apex Court and whether the same would be applicable in the facts of the present case or not. The issue involved before the Hon’ble Apex Court was rate of tax applicable on the sales of bubble gum. According to the Commissioner of Trade Tax, UP, bubble gum was taxable as an unclassified goods and would attract the duty at the rate of 10% inclusive of surcharge whereas Hon’ble Allahabad High Court held that the bubble gum is a confectionery item and, therefore, to be taxed at the rate of 6.25 per cent. In the present case, the Assessing Officer has levied tax at the rate of 12.5% under Entry 87 instead of 4% under Entry 74A as claimed by the assessee. The Hon’ble Supreme Court has referred to decision in case of **Pappu Sweets and Biscuits Vs. Commissioner of Trade Tax, U.P. Lucknow** reported in (1998) 7 SCC 228 wherein it is held that how the word “Mithai” – “sweetmeats” is defined. Reliance was also placed by the assessee on the decision in case of **Collector of Central Excise Vs. Parle Exports (P) Ltd.** (1989) 1 SCC 345 referred therein to submit that the provision imposing taxes or granting exemption should be understood in the same way in which they are understood in ordinary parlance in the area in which the law is in force. It was contended that in the State of Gujarat, bubble gum is considered as toffee and is sold in the market along with toffee and chocolate and once toffee and chocolate are considered as ‘sweetmeats’ then in the same manner, chewing gum is required to be considered as ‘sweetmeats’. However, the Hon’ble Apex Court after considering the ratio laid down in case of **Pappu Sweets and Biscuits** (supra) has held as under:

> “**9**. If the ratio of the aforesaid judgment is properly comprehended then bubble gum in the common parlance cannot be construed a mithai (sweetmeat). When we apply common parlance test and in fact ask someone to bring the sweets from the market, he will never bring bubble gum. In common parlance, even items of confectionery will not be construed as sweetmeat (mithai). In fact, bubble gum is not an item for eating. It is kept in the mouth and after chewing the same is thrown out. The bubble gum while kept in the mouth by the children is also inflated as a balloon. In fact, it is used as a "mouth freshener". It is not made only of sugar. It contains gum base, vexes, etc., along with sugar.
>
> **10**. According to Wikipedia, the encyclopedia, bubble gum is a type of chewing gum especially designed for blowing bubbles.
>
> **11**. The Commissioner, Sales Tax, UP., has relied on the judgment in **Nutrine Chewing Gum Products Co. P. Ltd., Arya Nagar, Lucknow** (1985) STI 21 and observed that:
>
> > "In chewing gum, sugar is an almost insignificant over it is not eatable.

> Its use is entirely different. Children use it just for a fun and athletes for controlling the breath. In common parlance also nobody treats it as an item of confectionery. I, therefore, hold that chewing gum is an unclassified item."

12. Thus, it is clear that chewing gum and bubble gum do not fall in the category of sweetmeat (mithai). The learned appellate court has relied on the judgment dated April 4, 1998 delivered by the Sales Tax Tribunal in Second Appeal No. 449 of 1992 titled **Gum Products Pvt. Ltd., Ghaziabad Vs. Commissioner, Sales Tax.** The Tribunal also relied on the judgment delivered by the High Court in the case of **Pappu Sweets & Biscuits Vs. Commissioner of Trade Tax** (1995) UPTC 1089, **Annapurna Biscuit (Mfg.) Co. Ltd. Vs. State of U.P.** (1975) UPTC 620 and the judgment of the Sales Tax Tribunal, Kanpur in **Gum India Limited, Kanpur Vs. Commissioner of Trade Tax** (1996) STD 124 (Trib.-Kanpur Bench). According to these judgments, "chewing gum and bubble gum", etc., are taxable as "sweetmeat" and confectionery items. The Tribunal also considered the judgment delivered in the case of **Pappu Sweets** (1995) UPTC 1089.

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23. In **Pappu Sweets** (1998) 7 SCC 228, this court in order to give meaning to the notification issued by the State of Uttar Pradesh has laid great emphasis on the common parlance test. The court gave an apt illustration of a toffee. Toffee in the country of origin may be considered as sweetmeat but it cannot be considered as mithai in this part of the country (Uttar Pradesh). Similarly, by no stretch of imagination, can bubble gum be considered as mithai in the State of Uttar Pradesh. Consequently, "bubble gum" is taxable as an unclassified goods."

49. Considering the above dictum of law, the Hon'ble High Court of Allahabad in case of **General De Confiteria India Ltd.** (supra), applied the decision of Hon'ble Apex Court in case of **Associated Distributors Ltd.**(supra) holding that chewing gum and bubble gum are taxable as unclassified items and therefore, are liable to higher rate of duty. The department has considered toffee and chocolate as sweetmeat in its order passed for classifying the same under Entry 74A as it emerges from the record. However, there is no adjudication by the authority as to whether chewing gum would be considered at par with toffee/chocolate which are considered as sweetmeat and hence the contention raised on behalf of the respondent assessee that revenue cannot adopt different yardstick for not classifying ‘chewing gum’ as ‘sweetmeats’ is not tenable.

50. In view of ratio of the decision of the Apex Court in case of **Associated Distributors Ltd.**(supra), it emerges that test of common parlance is required to be applied to find out whether the chewing gum can be considered as ‘sweetmeats’ so as to classify under Entry No. 74A or not. In such circumstances, the Hon’ble Apex Court in para no.9 of the decision in case of **Associated Distributors Ltd.**(supra) has succinctly observed that the bubble gum/chewing gum is not an eatable item. It is kept in the mouth and after chewing, the same is thrown out and the bubble gum while kept in the mouth by the children is also inflated as a balloon and in fact is used as 'mouth freshener'. It is not made only of sugar, but it also contains gum base, vexes, etc., along with sugar. Therefore, the chewing gum is not an eatable product. Even Food Safety Standard Regulations reproduced here-in-above clearly demonstrates the ingredients of chewing gum/bubble gum. Therefore, though chewing gum and bubble gum may be considered at par with toffee and chocolate, however, in view of the decision of the Apex Court, chewing gum which is not admittedly an eatable item, cannot be classified as 'sweet or sweetmeats' applying Entry No.74A of Schedule II of the VAT Act.

51. In view of decision of Hon'ble Apex Court in case of **Associated Distributors Ltd.** (supra), reliance placed on behalf of the assessee on various decisions as to how the decision of Hon’ble Supreme Court is to be considered and applied, would not be relevant in the facts of the case. Reliance placed on the decision of **Ponds India Limited**(supra) to submit that restrictive definition cannot be applied while defining a product but in the said case, extensive definition of “drug” as per section 3(b) of the Drugs and Cosmetics Act, 1940 was applied instead of restrictive definition of “cosmetic”. The Hon’ble Apex Court has laid down different tests for interpretation of an Entry in a taxing statute namely, dictionary meaning, technical meaning, users point of view, popular meaning, etc. However, in the facts of the present case, the Hon’ble Apex Court has categorically held that chewing gum/bubble gum is not an eatable item and cannot be considered as ‘sweetmeat’. In view of the decision of Hon’ble Apex Court on the same point, chewing gum cannot be classified as 'sweetmeats' even if Entry 74A has been applied to include chewing gum/bubble gum for several assessment years.

52. Similarly, a well settled principle of law in interpreting different entries, description of contents of the basic entry is required to be considered but at the same time, when it is held by the Apex Court that chewing gum/bubble gum is not an eatable item, it would never become a 'sweetmeat' i.e. Mithai. Therefore, the decisions relied upon on behalf of the assessee in case of **Godrej Consumer Product Ltd.**(supra), **M. J. Joseph** (supra) and **Mayuri Yeast India Private Limited** (supra), would not be applicable in the facts of the case.

53. In view of above analysis and on perusal of the impugned order of the Tribunal, it appears that the Tribunal has committed an error in holding that chewing gum is consumed for the sweet juice in them and therefore, they qualify as sweets to be classified under Entry 74A by comparing chewing gum with chocolates and lollipops which are eatable items. It appears that the Tribunal has distinguished the decision of **Pappu Sweets and Biscuits** (supra) of Hon’ble Apex Court on the ground that it pertains to the notification granting incentives to new industries pertaining to sweetmeats and it was a case relating to an industry manufacturing toffees and there was no dispute of classification of bubble gum or chewing gum. The Tribunal has also committed an error in distinguishing the decision of the Hon’ble Apex Court in case of **Associated Distributors Ltd.**(supra) on the ground that the dealer did not challenge the judgment of Hon’ble Allahabad High Court that the bubble gum did not fall under entry of ‘sweetmeat’ and therefore, whether bubble gum was sweetmeat or not was not the question for consideration before the Hon’ble Apex Court. However, on perusal of the decision in case of **Associated Distributors Ltd.**(supra), the Hon’ble Apex Court has considered the issue as to whether chewing gum/bubble gum would attract lower tax as sweetmeat or higher rate of tax as unclassified item which is clear from the findings of the Apex Court wherein it has been categorically held that bubble gum cannot be considered as sweetmeat (Mithai) after referring to the decision in case of **Pappu Sweets and Biscuits** (supra), more particularly, when the notification issued under the UP Sales Tax Act also did not include bubble gum as sweetmeat or confectionery.

54. In view of foregoing reasons, in our opinion, the Tribunal has committed an error in not applying the decision of Hon’ble Apex Court in its true perspective to the similar facts of the present case. Moreover, there is no conflict between the two entries as only entry which is in dispute is Entry No. 74A which classifies ‘sweets and sweetmeats’ and whether chewing gum can be considered as sweetmeat or not. Admittedly, the Hon’ble Apex Court has answered this question in case of **Associated Distributors Ltd.**(supra). The Tribunal has therefore, committed an error in considering the distinguishing features pointed out on behalf of the assessee to believe that the decision of Apex Court in case of **Associated Distributors Ltd.**(supra) is not applicable to the facts of the present case. However, in our opinion none of the distinguishing features which were sought to be highlighted on behalf of the assessee would lead any reasonable person to believe that the findings of the Apex Court that chewing gum/bubble gum is an eatable product and by no stretch of imagination, it can be considered as 'sweetmeats' and could have been distinguished to classify as 'sweetmeats'. In our view, the decision of the Apex Court in case of **Associated Distributors Ltd.**(supra) is squarely applicable for classification to the effect that chewing gum cannot be considered as 'sweets or sweetmeats' and in absence of any other entry which includes chewing gum, same can be considered as unclassified and duty would be payable under residuary Entry 87 of Schedule II of the VAT Act.

55. The Tribunal in para no.21 has recorded the findings contrary to the findings of the Apex Court to the effect that *"the product is consumed for the sweet juice and therefore even though at the end, rubber is thrown out they do not cease to be eatables"*. This finding of Tribunal is contrary to the findings of the Apex Court which categorically held that “chewing gum is not an eatable product”. Merely, classification of chewing gum was considered under the entry 74A as sweets and sweetmeats before the binding decision of the Apex Court in case of **Associated Distributors Ltd.**(supra), the same could not have been continued by the Tribunal by trying to distinguish the same. The Tribunal has further committed an error in relying upon the decision of Hon’ble Apex Court in case of **Mayuri Yeast India Private Limited** (supra) to hold that by not accepting classification under the entry of ‘sweets and sweetmeats’, duty cannot be levied under the residuary entry. However, there is no other entry in Schedule II of the VAT Act to levy the duty except residuary Entry 87. Merely because the Commissioner of Commercial Tax has given code of chewing gum under Entry of ‘sweets and sweetmeats’ for proper e-services, that would not make any difference as the said code is as per Excise Tariff Act which classifies chewing gum under the Heading 1704 10 00 and rate of duty under the Excise Act is 12.5% which is equivalent to rate prescribed under residuary entry 87 in Schedule-II of the VAT Act.

56. In view of foregoing reasons, we are of the opinion that the Tribunal has committed an error in holding that chewing gum is taxable as “sweets and sweetmeats” under Entry 74A of the Schedule II of the Gujarat Value Added Tax Act, 2003 and consequently, deleting the interest and penalty. We, therefore, answer both the questions in favour of the Revenue and against the assessee and hold that ‘chewing gum’ cannot be classified as “sweets and sweetmeats” under Entry 74A of the Schedule II of the

Gujarat Value Added Tax Act, 2003.

57. Appeal is accordingly allowed and disposed of.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR