



सत्यमेव जयते

BEFORE THE AUTHORITY FOR ADVANCE RULINGS
for the State of Andhra Pradesh (Goods and Service Tax)
(5th Floor, O/o Chief Commissioner of Commercial Taxes, D.No:5-56, Block-B, R.K
Spring Valley Apartments, Edupugallu, Vijayawada-521151.)

Present:

Sri. J.V.M Sarma (Member)

Sri.Amaresh Kumar (Member)

The Eighth day of June, 2018

Order No. 03 /AAR/AP/GST/2018

In

Application No.06 /AAR/GST/2018

1	Applicant	M/s JAYALAKSHMI TOBACCO COMPANY (GSTIN:37BIWPS7726L1Z2) D.No. 11-60-39, WAIZULLA SAHEB STREET, VIJAYAWADA
2	Jurisdictional Officer	Assistant Commissioner, Indrakeeladri Circle
3	Present for the Applicant	Sri.Vallabhaneni Mohan Rao,
4	Present for the Jurisdictional Officer	Remarks Received
5	Date of Personal hearing	04.04.2018

Note: Under Section 100 of the APGST Act'2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section 99 of APGST Act'2017, within a period of 30 days from the date of service of this order.

1.M/s JAYALAKSHMI TOBACCO COMPANY, (hereinafter also referred as an applicant), having GSTIN:37BIWPS7726L1Z2 are commission agents dealing with tobacco leaves. The applicant has various business activities, such as procuring tobacco leaves from farmers as well as from traders and acting either as commission agent or as seller as the case may be.

2. The applicant has filed an application in Form GST ARA-01, dated 14.03.2018, for seeking advance ruling on 'tax liability for certain business activities'. The questions are as follows..

1. Will GST be applicable on sale of tobacco leaves received from farmers made by Commission Agent in an auction and his turnover is less than Rs.20 Lakh?
2. In case, there is GST in the above situation, who has to pay the tax?
3. Will reverse charge provisions applicable for tobacco leaves or not?
4. Who has to pay GST when commission agent sell the tobacco leaves received from trader in an auction? Can commission agent collect GST from buyers and pay or not?
5. The Commission Agent receives tobacco from farmers and sell them within the state. He takes commission from farmers for his services and it is less than Rs. 20 Lakh in a year. Will the Commission Agent is liable to collect GST in this situation?

3.In the light of above, the application has been forwarded to both the jurisdictional officers (State Tax & Central Tax) to offer their remarks as per the Sec. 98(1) of CGST / APGST Act'2017, and requested for their remarks and also for relevant records. In response, the jurisdictional officer i.e Assistant Commissioner(ST), Indrakeeladri Circle, No.I Division, Vijayawada offered their remarks through an e-Mail, dated : 29th March 2018. In their remarks the jurisdictional officer stated that, there is no proceedings passed by the authority and no proceeding pending before any authority/forum relating to the applicant.

4. Based on the remarks received from the jurisdictional officer, this authority feels necessary to hear the applicant for admitting the application and to pronounce the advance ruling. Accordingly,a personal hearing was fixed on 04.04.2018. In response to the notice, Sri.Vallabhaneni Mohana Rao, authorized representative on behalf of the applicant, had attended and made oral submissions, and submitted a copy of procurement invoice and also a copy of sale invoice.

For the purpose of advance ruling, the applicant has to pay Rs.5,000/- as fee against CGST and Rs.5000/- as fee against APGST (A total of Rs. 10000/-)(as prescribed in the respective Acts), but the applicant had initially paid Rs.5000/- against SGST only with CPIN 18033700030030, dated : 14.03.2018 and mentioned the same in their application i.e ARA-01, after an intimation to the applicant about the same, he had paid the fee under CGST on 20.03.2018 with CPIN 18033700073365, and submitted the copies of payment receipts at the time of personal hearing.



Due verification made, the material on record i.e copies of invoices, raised by the applicant on receipt of the goods towards the owner of the goods along with the letter of the owner(farmer) of the goods, and the invoice raised against the recipient of the goods (trader) were scrutinized as per the provisions of law, by both the members and order issued accordingly .

ORDER :

After having several deliberations basing on the material on record, the members of this authority expressed different views on the issues raised by the applicant and found no consensus to pronounce any ruling.

As per sub-section 2 of section 98 , CGST / AP GST Act,2017, this authority is referring this application to the Appellate Authority for further action on the issues raised by the applicant. Hence, to be treated as '*ruling is not issued*' on this application. Accordingly the application disposed off.



(J.V. M .SARMA)

Member – State Tax

Joint Commissioner (State Taxes),
Authority for Advance Ruling,
Andhra Pradesh.



(AMARESH KUMAR)

Member – Central Tax

Joint Commissioner (Central Taxes),
Authority for Advance Ruling
Andhra Pradesh.

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Assistant Commissioner (GST)(ST)

Findings of the State Member :

1.M/s JAYALAKSHMI TOBACCO COMPANY, (hereinafter also referred as an applicant), having GSTIN:37BIWPS7726L1Z2 are commission agents dealing with tobacco leaves. The applicant has various business activities, such as procuring tobacco leaves from farmers as well as from traders and acting either as commission agent or as seller as the case may be.

2. The applicant has filed an application in Form GST ARA-01, dated 14.03.2018, for seeking advance ruling on 'tax liability for certain business activities'. The questions are as follows..

1. Will GST be applicable on sale of tobacco leaves received from farmers made by Commission Agent in an auction and his turnover is less than Rs.20 Lakh?
2. In case, there is GST in the above situation, who has to pay the tax?
3. Will reverse charge provisions applicable for tobacco leaves or not?
4. Who has to pay GST when commission agent sell the tobacco leaves received from trader in an auction? Can commission agent collect GST from buyers and pay or not?
5. The Commission Agent receives tobacco from farmers and sell them within the state. He takes commission from farmers for his services and it is less than Rs. 20 Lakh in a year. Will the Commission Agent is liable to collect GST in this situation?

Section 2(5): "agent" means a person, including a factor, broker, **commission agent**, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

Section 2(6) : "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess

Sec 24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

Section 7(1) : for the purpose of this act, the expression 'supply' includes :-

(c) The activities specified in schedule I, made or agreed to be made without a consideration.

According to Schedule I of CGST / AP GST Act,2017, activities to be treated as supply even if, made without consideration.

3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

And as per Section.15 of CGST/APGST Act'2017 :



(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

After due verification of the material on record i.e copies of invoices raised by the applicant on receipt of the goods towards the owner of the goods along with the letter of the owner(farmer) of the goods, and the invoice raised against the recipient of the goods (trader), the following ruling is issued accordingly.

Issue.No. 1 Will GST be applicable on sale of tobacco leaves received from farmers made by Commission Agent in an auction and his turnover is less than Rs.20 Lakh?

Ruling : GST is not applicable on, receipt of tobacco leaves by the applicant from farmers as a commission agent on behalf of farmer (Agriculturist), provided the aggregate turnover which is including the value of the tobacco leaves and the commission received is not exceeded the threshold limit i.e Rs.20 lakhs.

Issue.No.2 In case, there is GST in the above situation, who has to pay the tax?

Ruling : Not Applicable with reference to the first question.

Issue.No.3 Will reverse charge provisions applicable for tobacco leaves or not?

Ruling : As per S.No 3 of Notification 04/2017 – Central Tax (Rate), Dated :28th June 2017, Reverse Charge is applicable on tobacco leaves on receipt of the goods, by a registered person from agriculturist.

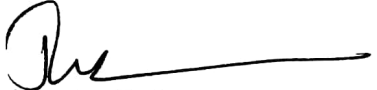
Issue.No.4 Who has to pay GST when commission agent sell the tobacco leaves received from trader in an auction? Can commission agent collect GST from buyers and pay or not?



Ruling : The transaction referred to in falls under 'acting as an agent' on behalf of other taxable persons, who makes taxable supply of goods as an agent. As per clause VII of Section 24 of CGST/ APGST Act'2017, the Commission Agent has to get registered under the Act and has to pay GST when sell the tobacco leaves received from trader in an auction, and can collect GST from buyers.

Issue.No.5 The Commission Agent receives tobacco from farmers and sell them within the state. He takes commission from farmers for his services and it is less than Rs. 20 Lakh in a year. Will the commission Agent is liable to collect GST in this situation.

Ruling : As per the proviso 3 of schedule I, read with Section 7 of CGST/ APGST Act'2017, if his aggregate turnover including the value of commission and the value of the tobacco leaves is less than Rs.20 lakhs, he need not be registered and the commission agent shall not collect any GST. If the aggregate turnover is more than Rs.20 lakhs, the commission agent shall be registered and liable to collect GST, but the commission received from the farmer for the services rendered are exempted vide S.No. 24, Heading No.9986, clause (g) 'services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce', of Notification No.11/2017 - Central Tax (Rate), Dated : 28th June,2018.


(J.V. M .SARMA)
Member - State Tax
Joint Commissioner (ST)
Andhra Pradesh

Central Tax Member Views

Findings:

M/s JAYALAKSHMI TOBACCO COMPANY, (hereinafter also referred as an applicant), having GSTIN:37BIWPS7726L172 are commission agents dealing with tobacco leaves. The applicant is a dealer receives tobacco from farmers and traders and sell them in an auction and takes commission for his services. The applicant has raised following questions before the Authority for Advance Ruling:

1. Will GST be applicable on sale of tobacco leaves received from farmers made by Commission Agent in an auction and his turnover is less than Rs.20 Lakh?
2. In case, there is GST in the above situation, who has to pay the tax?
3. Will reverse charge provisions applicable for tobacco leaves or not?
4. Who has to pay GST when commission agent sell the tobacco leaves received from trader in an auction? Can commission agent collect GST from buyers and pay or not?
5. The Commission Agent receives tobacco from farmers and sell them within the state. He takes commission from farmers for his services and it is less than Rs. 20 Lakh in a year. Will the Commission Agent is liable to collect GST in this situation?

2.1 I have gone through the facts of the case as given by the applicant i.e. the applicant is **commission agent** dealing with tobacco leaves. The applicant is a dealer who **receives tobacco leaves from farmers and traders and sell them in an auction and takes commission for his services**. I will analyse the provisions of GST based on above facts. The Notification No:11/2017- Central Tax(Rate) dated : 28.06.2017 notifies the rate of Central Tax on supply of various services. Against Sl No 24 of the referred Notification, the rate of tax is **NIL**. The relevant extract is reproduced hereunder:

(i) Support services to agriculture, forestry, fishing, animal husbandry.
Explanation.

"Support services to agriculture, forestry, fishing, animal husbandry" mean -

- (i) Services relating to cultivation of plants and rearing of all life forms or animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of
 - (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
 - (b) supply of farm labour;
 - (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (d) renting or leasing of agromachinery or vacant land with or without a structure incidental to its use

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(e) loading, unloading, packing, storage or warehousing of agricultural produce;

(f) agricultural extension services;

(g) services by any Agricultural Produce Marketing Committee or Board or **services provided by a commission agent for sale or purchase of agricultural produce.**

2.2 As seen from above, services provided by a commission agent for sale or purchase of agricultural produce is having NIL rate of GST. Further the definition of agricultural produce as given in Explanation to the Notification is

"agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

Undoubtedly, tobacco leaves are agricultural produce and therefore, a commission agent dealing in sale and purchase of tobacco leaves shall be exempted from GST.

2.3 In my view and understanding, the above NIL rate of GST on services provided by a commission agent for sale and purchase of agricultural produce is irrespective of who is the principal i.e. whether it is a farmer or a trader. As long as the applicant works as a commission agent for sale and purchase of tobacco leaves, his supply of service shall be exempted vide above referred Notification.

3. It would be pertinent for me discuss another entry in the same Notification 11/2017-Central Tax (Rate), dated 28.06.2017. SI No. 5 having 9% rate of CGST (18% GST). The same reads as:

"Services in wholesale trade

Explanation

*This service does not include sale or purchase of goods **but includes:-Services of commission agents, commodity brokers, and auctioneers and all other traders who negotiate whole sale commercial transactions between buyers and sellers, for a fee or commission'- Services of electronic whole sale agents and brokers, Services of whole sale auctioning houses"***

I find that SI No 5 of referred Notification is for services of Commission agents, which is pegged at 18% GST (9+9). However, applicant being a Commission Agent dealing in sale and purchase of agricultural produce (tobacco leaves), I find SI No. 24 of the Notification having NIL rate of Tax is applicable on them.

4. As far as Registration is concerned, Section 23 of CGST Act stipulates that a person who is exclusively supplying exempted services shall not be required to take Registration.

5. In view of above discussion and findings, I answer the questions of the applicant as under:

Issue.No. 1 Will GST be applicable on sale of tobacco leaves received from farmers made by Commission Agent in an auction and his turnover is less than Rs.20 Lakh?

As per entry No:24 Notification No:11/2017- Central Tax(Rate) dated : 28.06.2017, Commission agent dealing with agricultural produce like tobacco attracts Nil rate of duty

Issue.No.2 In case, there is GST in the above situation, who has to pay the tax?

Not Applicable

Issue.No.3 Will reverse charge provisions applicable for tobacco leaves or not?

The reverse charge provision has not been notified yet.

Issue.No.4 Who has to pay GST when commission agent sell the tobacco leaves received from trader in an auction? Can commission agent collect GST from buyers and pay or not?

Please refer to Issue No.1. The activity is exempted from GST

Issue.No.5 The Commission Agent receives tobacco from farmers and sell them within the state. He takes commission from farmers for his services and it is less than Rs. 20 Lakh in a year. Will the commission Agent is liable to collect GST in this situation.

As the above service is exempt from tax by the entry No:24 of Notification No:11/2017-Central Tax(Rate), hence, the commission agent is not liable to collect GST.

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-08/06/18
(AMARESH KUMAR)
Member - Central Tax
Joint Commissioner (Central Taxes).