

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING FOR THE STATE OF**  
**HARYANA, FOR GOODS AND SERVICES TAX,**  
**VANIJYA BHAWAN, PLOT NO I-3, SECTOR 5,**  
**PANCHKULA-134151 (HARYANA)**

**Appeal Case No. HAAAR/2018-19/07**

**Dated: 20.11.2019**

GSTIN of the Appellant	:	06ABLPK0558P2Z5
Legal Name of the Appellant	:	M/s Bhaktawar Mal Kamra & Sons
Registered Address of the Appellant	:	M/s Bhaktawar Mal Kamra & Sons, Shop No. 109, New Grain Market, Mandi Dabwali, District – Sirsa.
Appellant represented by	:	Sh. Gurdeep Kamra, Proprietor Sh. Manish Bansal, CA.

**Order under Section 101 of the Central Goods and Services Tax Act, 2017/the Haryana Goods and Services Tax Act, 2017.**

The present appeal has been filed under Section 100(1) of the Central Goods and Services Tax Act, 2017/the Haryana Goods and Services Tax Act, 2017 [hereinafter referred to as the “CGST Act” and “HGST Act” respectively] by M/s Bhaktawar Mal Kamra & Sons, Shop No. 109, New Grain Market, Mandi Dabwali, District, Sirsa [hereinafter referred to as the “Appellant”] against the Advance Ruling No. HAR/HAAR/R/2018-19/10, dated 30.08.2018.

A copy of order dated 30.08.2018 of the Advance Ruling Authority was received by the appellant on 05.12.2018 and the appeal has been filed on 07.01.2019, which is in time.

**Brief Facts of the case:**

The appellant namely M/s Bhaktawar Mal Kamra & Sons, Shop No. 109, New Grain Market, Mandi Dabwali, District Sirsa is a proprietorship firm. The Appellant is engaged in the business of providing services of commission agent in respect of agricultural produce at Mandi Dabwali, Sirsa. The Appellant had sought Advance Ruling on the following question:

“Whether commission agent, providing services in relation to sale or purchase of agriculture produce, is liable to obtain registration and is liable for tax under reverse charge mechanism on services provided in sale of raw cotton vide notification No. 121/ST-2, dated 14.11.2017 issued under Haryana Goods and Services Tax Act, 2017 read with corresponding notification No. 43/2017, dated





14.11.2017 issued under the Central Goods and Services Tax Act, 2017.”

After notice and opportunity, the Advance Ruling Authority pronounced the impugned ruling on 30.08.2018 against which the present appeal has been filed by the appellant.

**Pleadings of the Appellant:**

1. The Advance Ruling issued by the Ld. Advance Ruling Authority is against the law and facts.
2. The applicant had applied for applicability of the notification No. 121/ST-2, dated 14.11.2017 and vis-à-vis which whether the commission agent may be treated as the recipient. However the Ld. AAR had instead adjudicated the matter on the basis of turnover and treated the turnover made by the principal as turnover made by the commission agent and thus made him liable for registration.
3. The provisions of CGST/HGST Act and the definition of turnover as contained therein, nowhere prescribe that the person transferring the property in goods through issue of forms prescribed by some other Acts will make that person liable for registration because that invoice will be considered as his turnover which is against the law and established practice.
4. It is an established fact that commission agents only account for the commission as his income and value of goods do not form the part of his turnover. The appellant has placed reliance on circular No. 452, dated 17.03.1986 by the Central Board of Direct Taxes which had clearly defined the relation of Kachha Arhtiya and established that turnover of Kachha Arhtiya is only his commission and not the goods supplied by the agent on behalf of farmer.
5. While issuing the Advance Ruling, the Ld. AAR had over-sighted the principle of composite supply. Even if for the sake of merit, the commission agent is treated as supplier it will be a composite supply because providing the services to agriculturist is principal supply and supply of goods by farmer to the buyer is outcome of said supply. Therefore, the rate of tax as applicable on principal supply will be the applicable rate of second supply, which is exempted.






6. That the Central Board of Indirect Taxes and Customs vide circular No. 57/31/2018-GST dated 04.09.2018, read with corrigendum dated 05.11.2018, had prescribed that commission agent will not be required the registration until he is liable for registration under reverse charge mechanism. Under reverse charge mechanism, the commission agent will be liable only if he is treated as recipient and registered person. On this matter the advance ruling was requested and nowhere the Ld. AAR had adjudicated the matter.

**Record of personal hearing:**

Sh. Gurdeep Kamra, Proprietor (the appellant) and Sh. Manish Bansal, CA authorized representative are present today on behalf of the appellant M/s Bhaktawar Mal Kamra & Sons. Sh. Manish Bansal, CA has reiterated the grounds taken in the memorandum of appeal and has also advanced oral arguments.

We have heard Sh. Gurdeep Kamra, Proprietor (the appellant) and Sh. Manish Bansal, CA authorized representative in detail and have perused the relevant record of the case thoroughly. Reiterating his arguments, the appellant has prayed that the appellant is not required to be compulsorily registered being a commission agent (Kachha Arhtiya).

The appellant has contended that the advance ruling authority has wrongly treated the turnover made by the principal as turnover made by the commission agent thereby making him liable for registration. In support of this he has referred to the circular dated 04.09.2018 issued by the CBIC wherein the term agent has been clarified showing that a commission agent who issues invoice is covered under the category provided in schedule 1 and else not. The appellant has argued that the provisions of CGST/HGST Act and the definition of turnover as contained therein, nowhere prescribe that the person transferring the property in goods through issue of forms prescribed by some other Acts will make that person liable for registration because that invoice will be considered as his turnover which is against the law and established practice. The appellant has taken a plea that the Advance Ruling Authority has ruled that commission agent is liable for reverse charge without discussing whether he can be deemed as recipient. In view thereof, the appellant is not liable for registration because he is issuing only form I to the recipient and the same cannot be taken at par with the invoice under the GST Act, 2017. With these arguments the appellant has prayed that the Advance Ruling dated 30.08.2018 issued by Advance Ruling Authority may be set aside and the appeal be accepted.





### **Discussion and findings:**

The appellant is engaged in the business of commission agent i.e. supplying the services for selling the agricultural produce of farmers to various buyers being traders, manufacturers etc. Such goods brought by farmers for sale are also purchased by the Government through its various agencies. In view of entry at Sr. no. 54 of CGST Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 (the corresponding HGST Notification No. 36/ST-2, dated 30.06.2017), the services provided by a commission agent for sale or purchase of agricultural produce are exempted from levy of GST. Besides, supplying the services in respect of sale of exempted agricultural produce, the appellant also provides its services for sale of taxable agricultural produce i.e. raw cotton and oil seeds.

The appellant had sought a ruling on whether commission agent, providing services in relation to sale or purchase of agriculture produce, is liable to obtain registration and whether the commission agent is liable for tax under reverse charge mechanism on services provided in sale of raw cotton vide notification No. 121/ST-2, dated 14.11.2017 issued under Haryana Goods and Services Tax Act, 2017 read with corresponding notification No. 43/2017, dated 14.11.2017 issued under the Central Goods and Services Tax Act, 2017.

Clause (vii) of Section 24 of the CGST/HGST Act provides that a person who, whether as an agent or otherwise, makes taxable supply of goods or services or both on behalf of other taxable persons, are compulsorily required to obtain registration under the said Acts. Further, clause (b) of sub-Section 23(1) of the Acts *ibid* provides that an agriculturist, to the extent of supply of produce out of cultivation of land, shall not be liable to registration. The advance ruling authority in its order has held that a commission agent who is making supplies on behalf of such agriculturist, who is not a taxable person, is not liable for compulsory registration under clause (vii) of Section 24 of the CGST/HGST Act.

The Advance Ruling Authority has further held in its ruling that in case the aggregate turnover of supply of exempted as well as taxable turnover by a commission agent (Kachha Arhtiya) exceeds the threshold limit as provided under Section 22(1) of the CGST/HGST Act, such commission agent shall be liable for registration.

In reference to the above, the provisions of Sections 7(1)(c) of the CGST/HGST Act are relevant. The provisions of the Section 7(1) clause (c) provide that the activities specified in schedule I shall be treated as supply under GST, even if made without consideration. One such activity, as detailed in Para 3 of schedule I, is in relation to the activities between the principal and his agent. The scope of principal-agent



relationship in the context of Schedule I of the CGST Act is clarified by circular No. 57/31/2018-GST dated 04<sup>th</sup> September, 2018 (to be read with the corrigendum dated 05<sup>th</sup> November, 2018). As clarified vide above circular, the crucial component for covering a person within the ambit of the term 'agent', as contained in sub Section (5) of Section 2 of the CGST Act, is corresponding to the representative character identified in the definition of agent under the Indian Contract Act, 1872. The said circular further clarifies that a key ingredient for determining whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal would be whether invoice for further supply or goods on behalf of the principal is being issued by the agent or not. Since, a commission agent 'Kachha Arhtiya' supplies goods to the buyers against 'Form I' as prescribed under the APMC Act of the State, vide which the titled of goods is passed on to the buyer against an agreed upon rate of the goods. The commission agent also charges its commission and other incidental charges through the said Form I under the APMC Act. The said Form I issued under the APMC Act is therefore sufficient test to hold that the commission agent i.e. 'Kachha Arhtiya' is supplying goods on behalf of agriculturists and is covered under the definition of 'agent' as contained in sub Section (5) of Section 2 of the CGST/HGST Act.

In view of the above discussion, there is no merit in the argument of the appellant that he cannot be treated as recipient in terms of definition of recipient, as contained in Section 2(93) of the Acts *ibid*. Further, the reliance on circular No. 452, dated 17.03.1986 by the Central Board of Direct Taxes on this issue is also misplaced as the said instructions are issued under the provisions of different law.

The entry at Sr. No. 4A of the table in HGST notification No. 38/ST-2 dated 30.06.2017 and CGST notification No. 4/2017-Central Tax (Rate), dated 28.06.2017 (inserted vide HGST notification No. 121/ST-2 dated 14.11.2017 and CGST notification No. 43/2017-Central Tax (Rate), dated 14.11.2017 respectively) is reproduced as under:-

Sr. No.	Tariff item, sub-heading, heading or chapter	Description of supply of Goods	Supplier of Goods	Recipient of supply
4A	5201	Raw cotton	Agriculturist	Any registered person

The notification specifies that the tax on the supply of goods (raw cotton) by an agriculturist shall be payable on reverse charge basis by any registered person as the recipient of supply. The advance ruling authority in view of above provisions has rightly observed that a commission agent who becomes liable for registration under



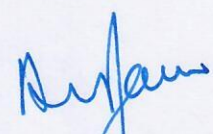
Section 22(1) of the Acts *ibid*, shall also become liable to pay tax on supply of raw cotton by an agriculturist on reverse charge basis being a registered person.

The Advance Ruling Authority has observed in relation to a 'Pucca Arhtiya' i.e. a commission agent, who does not inform his constituent as to the third party with whom he has entered into a contract himself as the recipient of goods, has a personal interest of his own when he enters into a transaction in as much as he can also supply his own goods to the principal. The advance ruling authority has therefore rightly held that such commission agents are liable for registration since they qualify as agents under schedule I subject to the provisions of Section 22(1) of the Acts *ibid* where the aggregate turnover of supply of exempted as well as taxable goods or services exceeds the threshold limit and that such commission agents shall also be liable for compulsory registration as per provisions of Section 24 (vii) of the Acts *ibid* and they shall be liable to charge tax on RCM basis on supply of 'raw cotton'.

In view of the above discussions and findings, we have no hesitation in dismissing the appeal and the Advance Ruling dated 30.08.2018 does not suffer from any infirmity or illegality and the same is upheld.

Decided accordingly.

  
(Dr. Amit Kumar Agrawal)  
Member

  
(Anil Kumar Jain)  
Member