

**BEFORE THE HON'BLE APPELLATE AUTHORITY FOR ADVANCE  
RULING, GOODS AND SERVICE TAX, UTTAR PRADESH  
4, VIBHUTI KHAND GOMTI NAGAR LUCKNOW-006010**

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Appeal Order No. 8/AAAR/-9/22-/2023

Dated: .....09-08-2023

**Before the Bench of:**  
**Dr. Uma Shanker**  
**Member, Central Tax**  
**Smt. Ministhy S,**  
**Member, State Tax**

Legal Name of the Appellant	M/s Pandey Traders
Trade Name of the Appellant	M/s Pandey Traders
GSTIN Number of the Appellant	GSTIN-09FOSPP6028C1ZI
Registered address	M/s Pandey Traders Siyapuram, Station Road, Mainpuri -205001(U.P)
Order of Advance Ruling Against which the appeal is filed	UP ADRG-21/2023 dated 02.03.2023

**[ Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh State Goods and Service Tax Act, 2017]**

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 ( here-in-after referred to as " the CGST Act and UPSGST Act") by M/s Pandey Traders, Siyapuram, Station Road Mainpuri, Uttar Pradesh-205001(here-in-after referred to as the " Appellant") against the Advance Ruling Order No. UP ADRG-21/2023 dated 02.03.2023 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPSGST Act, are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean

a reference to the same provisions under UPSGST Act, 2017 and the vice versa.

### **1.0 Brief facts of the case**

The instant appeal has been preferred against Advance Ruling No. UP ADRG-21/2023 dated 02.03.2023 passed in the case of Appellant i.e. M/s Pandey Traders, Siyapuram, Station Road Mainpuri, Uttar Pradesh-205001

The Brief facts of the case are as under:

**1.1** The Appellant is a proprietorship concern registered under GST vide GSTIN-09FOSPP6028C1ZI having its principal place of business at Siyapuram Station Road Mainpuri, Uttar Pradesh. The Appellant is engaged in the manufacturing of unbranded unmanufactured tobacco from unmanufactured raw tobacco dust after procuring it from various traders and subsequently selling it to various customers on B to B and B to C basis after mixing of scent and ensuring packing from third party.

**1.2** As per Appellant understanding raw tobacco dust which is result of screening of raw tobacco through which leaves, its stem, and other tender parts are separated through the process drying, winnowing, crushing and separating through sieving and better part are used for chewing tobacco and remaining parts in form i.e. stem, hard veins, and leaves of tobacco plant are then crushed in dust form and sold as such for human consumption. Mixing of scent/ treatment with a touch of perfume has not undergone any proven irreversible change and it remains unmanufactured raw tobacco and therefore merits classification under Chapter 2401 of the GST Tariff.

**1.4** In the backdrop of aforementioned facts the appellant had presented following questions before the Authority for Advance Ruling to seek advance ruling .

(a). “ Whether mixing of scent (mixture of various perfumes and not Jarda Scent ) in raw unmanufactured tobacco dust by the Appellant after procuring the same from various traders and, and its subsequent sale to customers on B to B and B to C basis, after ensuring packing from third party, would change the character of unmanufactured tobacco to manufactured tobacco.”



(b) Whether processing of manufactured Tobacco dust by add mixing the scent (mixture of various perfumes and not Jarda Scent) would change the character of unmanufactured tobacco to manufactured Tobacco.

The Authority for Advance Ruling in its Impugned Ruling relying upon the decision of Hon'ble Apex Court in the case State of Madras Vs Bell mark Tobacco Company [ (Laws) (SC) -1966-10.4] wherein it was held that " cumulative effect of various processes to which Tobacco was subjected before it was sold amount to manufacturing process" ruled that addition of scent to the raw tobacco leaf changes the characteristics of unmanufactured tobacco to manufactured tobacco.

**1.5** The appellant being aggrieved by the aforesaid ruling has preferred an appeal before the Appellate Authority for Advance Ruling and prays to set aside/modify the impugned Advance Ruling Order No. UP ADRG 12/2023 dated 02.03.2023 passed by the Authority for Advance Ruling.

## **2.0 Grounds of Appeal**

Appellant has submitted following grounds of appeal -

**2.1** The order passed by the Authority is manifestly erroneous and has given the findings on the facts which were apparently misplaced. The Appellant relied upon the Tribunal's decision in the case of Yogesh Associates Vs CCE Surat II reported in 2006(195) ELT 196 (Trib-Mumbai) which was also upheld by the in 2006 (199) ELT A 221(SC) but the Authority for Advance Ruling has flouted judicial discipline and simply ignored it.

**2.2** The Hon'ble Tribunal in case of Yogesh Associates Vs CCE Surat II referred above held that " Tobacco- Unmanufactured tobacco-Raw leaf treated with tobacco solution Quimam and other flavors including saffron water-Raw Tobacco leaf not undergone any irreversible change and remains raw leaf tobacco unmanufactured- Mixture too concentrated for comfortable consumption by human beings and fails to meet test of marketability of product as 'Chewing Tobacco'- Classification under sub-heading 2401.10 of Central Excise Tariff appropriate."This decision of the Tribunal is squarely applicable to the present case.

**2.3** The Appellant relies upon the decision of Hon'ble Tribunal in the case of Suresh Enterprises Vs Commissioner of Central Excise Pune, reported in 2006 (203) ELT 432 (Tri-Mumbai) wherein it was held by the



Hon'ble Tribunal "Tobacco-Raw Tobacco with Quimam and perfumes-classifiable under sub-heading 2401.10 of Central Excise Tariff and not under sub-heading 2404.40."

**2.4** The Appellant has submitted that the Authority for Advance Ruling has failed to adduce any material to conclude that Raw Tobacco Leaves have undergone any proven irreversible change. In fact, raw tobacco leaf after addition of perfume (not Jarda Scent) remains raw leaf tobacco unmanufactured.

**2.5** The mixing of scent does not changes its essential characteristics or make any irreversible change that gives emergence of a new product having a distinct name, character and use which is being recognized in common parlance. The tobacco dust remains tobacco dust for chewing needs.

**2.6** The Authority has wrongly proceeded to discuss whether the product is chewing tobacco or not and has not focused on the core issue of the case as to whether the process relating to the product leads to manufactured tobacco ( Ch-2403) or unmanufactured tobacco (Ch-2401). The Authority has proceeded with pre-conceived notion that chewing tobacco has to be manufactured only, ignoring the fact that there can unmanufactured chewing tobacco too.

**2.7** The Appellant submits that their product is classifiable under Chapter sub-heading 2401. Ch.2401 which covers unmanufactured tobacco; tobacco refuse as given under-

2401.10- Tobacco, not stemmed/stripped

2401.20- Tobacco, partly or wholly stemmed/stripped

2401.30-Tobacco refuse

This heading covers:

(1)Unmanufactured Tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking.)

Tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also preserve the flavour are also covered in this heading.

(2) Tobacco refuse, e.g; waste resulting from the manipulation of tobacco leaves, or from the manufacture of tobacco products(stalks, stems, midribs, trimmings, dust, etc.).

The process adopted by the appellant does not amount to manufacture as defined under Section 2(72) of CGST Act, 2017 since, it does not bring into existence, a fresh new finished product, which is a distinct commodity and has a different commercial value. Raw Tobacco Leaf cannot be transformed from unmanufactured Tobacco to manufactured tobacco and the correct classification for the product manufactured by them stands to be 'unmanufactured tobacco' and merits classification under Chapter 2401 of the GST Tariff.

The Authority has failed to appreciate the fact that Explanatory Notes to Chapter Heading 2403 of GST Tariff makes it amply clear that this chewing tobacco is highly fermented and liquored so as to merit its classification under Ch-2403. Thus for tobacco product to be classified under Ch-2403 higher fermentation and liquoring are the basic requirements whereas in the present case the process intended to be adopted is mixing of slight perfume only to give flavor to the raw tobacco dust and does not involve fermentation at all.

**2.8** The Appellant has relied upon the judgment of AAR : Gurjart Co-operative Milk Marketing Federation Ltd.. reported in 2021 (53) GSTL368(A.A.R.-GST-Guj) wherein it has been held that- *"adding flavors to milk does not change essential character of milk; flavored milk, a substitute for milk, being simple preparation of milk and no manufacturing process is involved nor does milk change its composition in any way- Classifiable under Tariff item 2202 99 30 of First Schedule to Customs Tariff Act, 1975 as a Beverage containing milk"*

**3.0** The Appellant was granted the opportunity of personal hearing on 27.06.2023. Shri, Rajeev Pandey, the proprietor of M/s Pandey Traders, appeared before the Authority. He reiterated the submission already made by them vide their application and argued the appeal. He submitted a written brief prepared by their counsel and assured to submit some additional submission on the matter which was submitted by them on 06.07.2023.

#### **4.0 Discussion and Findings**



We have considered the submissions made by the Appellant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the Appellant and relevant facts along with the arguments made by the Appellant during P.H. held on 27.06.2023 and the additional submissions made by them on 06.07.2023.

We find that the appellant has submitted that they are engaged in mixing scent in the raw/unmanufactured tobacco dust, procured from various traders and the said raw tobacco dust after mixing of scent (mixture of various perfumes and not jarda scent) is sent for packing along with packing rolls to the third party, who with the help of pouch packing machine ensures packing of pouches bearing no marking or brand name, whatsoever, and returns it to the Appellant. The Pouches being supplied for packing contain statutory marking only in terms of Prohibition of Advertisement & Regulation of Trade and Commerce production, Supply and Distribution Act, 2003 along with marking of Rate and weight in terms of legal and Metrology Act. The product manufactured by the appellant is then supplied on B to B and B to C basis classifying it under Goods and Service Tax Tariff sub-heading 24012090, as unmanufactured tobacco, under cover of proper tax invoice and on payment of applicable duty as per law.

We also find that as per Appellant understanding/interpretation of law, raw unmanufactured tobacco dust which is result of screening of raw tobacco through which tobacco leafs, its stem, and other tender parts are separated through the process drying, winnowing, crushing and separating through sieving, and the better part are used for chewing tobacco and remaining part in raw form i.e. stems, hard veins and leaves of tobacco plant are then crushed in the dust form, and the dust is also sold as such for human consumption, mixing of scent (mixture of various perfumes and not Jarda Scent) by the Appellant in the said raw unmanufactured tobacco dust does not make any irreversible change and remains raw unmanufactured tobacco dust only and the same cannot be equated to manufactured tobacco.

**4.1** Before we proceed further we find that under Goods and Service Tax Regime for the purpose of classification the First Schedule to the Customs Tariff Act is made applicable. Further, the First Schedule to the Customs Tariff Act, 1975 and the Rules of interpretation therein are to

be followed for classifying a product in terms of Explanation 1 and 2 to the Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017. For the sake of reference, the Customs Tariff Classification in respect of Chapter 2401 is reproduced below-

2401	<b>Unmanufactured Tobacco; Tobacco refuse.</b>
240110	--Tobacco not stemmed or stripped
24011010	--Flue cured Virginia Tobacco
24011020	---Sun cured country (natu) tobacco
24011030	---Sun cured Virginia Tobacco
24011040	--Burley Tobacco
24014050	---Tobacco for manufacture of biris, not stemmed
24011060	...Tobacco for manufacture of chewing tobacco
24011070	---Tobacco for manufacture of Cigar and cheroot
24011080	--Tobacco for manufacture of Hookah Tobacco
24011090	Other
240120	----Tobacco, partly or wholly stemmed or stripped;
24012090	---Unmanufactured tobacco; tobacco refuse-tobacco, partly or wholly stemmed or stripped; other

Further as per Explanatory Note (1) Chapter 2401 covers Unmanufactured Tobacco in the form of whole plants or leaves in the nature state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking).

Tobacco leaves, blended stemmed/stripped and "cases" ( " sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavor are also covered in this heading.

A plain reading of Ch-2401 clearly reveals that it covers tobacco unmanufactured which is naturally cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking).

Further Chapter 2403 of the First Schedule to Customs Tariff Act, 1975 is also reproduced as under-



2403	<b>Other Manufactured Tobacco and Manufactured Tobacco substitutes “ Homogenized or “ reconstituted” Tobacco; Tobacco Extracts and essences</b>
	-Smoking tobacco, whether or not containing tobacco substitutes in any proportion;
240311	
24031110	
24031190	
240319	
24031910	
24031921	...Other than paper rolled biris, manufactured without the aid of machine
24031929	...Other
24031990	....Other
	Other
24039100	...”Homogenized” or “recognized” tobacco
240399	...Other
24039910	...Chewing Tobacco
24039920	...Preparations containing chewing tobacco
24039930	...Jarda scented tobacco
24039940	...Snuff
24039950	....Preparations containing snuff
24039960	....Tobacco extracts and essence
24039970	--Cut-Tobacco
24039980	--Other

**4.2** We find that the Appellant claims their product to be covered under Chapter Heading 24012090 -unmanufactured tobacco; tobacco refuse-tobacco, partly or wholly stemmed or stripped; other. The Appellant has submitted that raw unmanufactured tobacco dust is the result of screening of raw tobacco through which tobacco leaves, its stem, and other tender parts separated through the process of drying winnowing, crushing and separating through sieving and the better part are used for chewing tobacco and remaining part in raw form i.e. stems, hard veins and leaves of tobacco plants are then crushed in the dust form which is sold as such for human consumption.

**4.3** We find that it is evident from Explanatory Notes to Chapter Heading 2403 of GST Tariff that this chewing tobacco is highly fermented and liquored so as to merit its classification under Ch-2403. Thus for tobacco product to be classified under Ch-2403 higher fermentation and liquoring are the basic requirements whereas in the present case the process intended to be adopted



mixing of perfume only ( Not Jarda Scent) to give flavor to the raw tobacco dust and does not involve fermentation at all.

**4.4** We find that under Notification No. 01/2017-Centra Tax (Rate) no definition of manufactured or unmanufactured tobacco has been provided and accordingly we have to mainly rely upon the decision of Hon'ble Court and the Tribunals decisions in the matter. There is no doubt that chewing tobacco may be both manufactured and unmanufactured. The difference between the manufactured and unmanufactured tobacco is dependent on the process being undertaken to prepare the product. In the present case the process being undertaken by the Appellant involves screening of raw tobacco through which tobacco leaves, its stem, and other tender parts separated through the process of drying winnowing, crushing and separating. Reference is made to the order CEGATE in the case of CCE, Pune Vs M/s Jai Kisan Tobacco Co. wherein it was held by the Tribunal " raw tobacco crushed in the form of flakes when packed into smaller packets without adding any ingredients and sold (under a brand name or not) should not be classifiable as manufactured chewing tobacco."

**4.5** We find that the Authority for Advance Ruling have relied upon the decision of the Apex Court in the State of Madras Vs Bell mark Tobacco Company [(loss) (SC) -1966-10.4] dated 04.10.1966 wherein it was held by the Hon'ble Court that cumulative effect of various processes to which Tobacco was subjected, before it was sold, amount to the manufacturing process. We have gone through the referred order we find that in the referred case the processing of raw tobacco included high fermentation and sprinkling of jaggery water (liquoring) whereas in the instant case the process adopted by the appellant does not involve fermentation and liquoring at all. The process adopted by the appellant involves mixing of perfumes (not Jarda scent) to preserve flavour only and thus it does not undergo a set of process/changes and accordingly, the referred case law on which the Authority for Advance Ruling have relied upon is not relevant to the present case.

**4.6** The Appellant has relied upon the decision of Hon'ble Tribunal in the case of Yogesh Associates Vs CCE Surat II reported in 2006(195) ELT 196 (Trib.-Mumbai) wherein the Tribunal held " *Tobacco-Unmanufactured tobacco-Raw leaf treated with Quimam and other flavors including saffron water -Raw tobacco leaf not undergone any irreversible change and remains law leaf tobacco unmanufactured- Mixture too concentrated for conformable consumption by human beings and fails to meet test of marketability of product as 'chewing*



*‘Tobacco’ –Classification under sub-heading 2401.10 of Central Excise Tariff appropriate.”*

**4.7** We find that in the above case law referred by the Appellant the Hon’ble Tribunal held that ‘Mixture too concentrated for comfortable consumption by human being and failed to meet the test of marketability of product as chewing tobacco.”

The Appellant has also relied upon the decision of CCE Kanpur Vs Ravindra U& Co. in case of ‘Bandar Dholak Chhap and Hari Chhap wherein the Tribunal held that “ *Tobacco –Branded Chewing Tobacco prepared by beating, crushing and sieving the tobacco leaves purchased by the Assessee from market without adding any foreign material therein-Classifiable under sub-heading 2401 of Central Excise Tariff Act, 1985 as unmanufactured tobacco and not under sub-heading 2404.41 ibid.*”

**4.8** Having gone through the above referred case law we find that in the referred cases it has been clearly held by the Hon’ble Court that mere mixing of flavours ( not Jarda Scent) to preserved raw tobacco does not convert it to manufacturing tobacco.

**5.0** From the discussions in foregoing paras we find that case laws cited by the Appellant hold ground in favour of the appellant and the process carried out by the Appellant does not amount to manufacture as defined under Section 2(72) of the CGST Act-

(72) ‘Manufacture’ means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the ‘Manufacturer’ shall be construed accordingly.”

Undoubtedly, in the present case the raw tobacco dust is the result of screening of raw tobacco through which tobacco leaves, its stem, and other tender parts are separated through the process of drying, winnowing, crushing and separating through sieving and the better parts are used for chewing tobacco and remaining part in raw form i.e. stems, veins, and leaves of tobacco plant are then crushed in the dust form and the dust is sold as such for human consumption. There is nothing on record which proves that mere mixing of various flavors( Not Jarda Scent) results in irreversible change and converts the nature of raw unmanufactured tobacco to manufactured tobacco.

**6.0** We find that the Authority for Advance Ruling has wrongly held that process adopted by the appellant amounts to manufacture and their product to be classifiable under Ch-2403 of GST Tariff. In fact the process adopted by the appellant does not involve fermentation at all and accordingly their

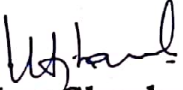



Product may be appropriately classified under Ch-2401 of GST Tariff subject to the process adopted by the appellant as provided under Explanatory Note to Ch- 2401.

**7.0** In view of above we modify the impugned ruling UP ADRG-21/2023 dated 02.03.2023 passed by the Authority for Advance Ruling to the extent that the product of the appellant is appropriately classifiable under Ch-2401 of GST Tariff subject to the process adopted by the appellant as provided under Explanatory Note to Ch-2401.

**Ruling:**

We modify the impugned ruling classifying the product of the appellant under Ch-2401 of GST Tariff subject to the process adopted by the appellant as provided under Explanatory Note to Ch-2401.

  
**(Dr. Uma Shanker)**  
**Member, AAAR (Central Tax)**

  
**(Smt. Ministhy S)**  
**Member, AAAR (State Tax)**

To,  
M/s Pandey Traders, Siyapuram,  
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Uttar Pradesh-205001

**The Appellate Authority For Advance Ruling**  
**Goods & Service Tax Uttar Pradesh**

Copy to-

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4. The Deputy/Asst. Commissioner, CGST & Central Excise Division- Farrukhabad, Civil Lines, Fatehgarh, Farrukhabad-209601
5. Through the Additional Commissioner, Gr-I, Commercial Tax, Etawah Zone, Etawah, Uttar Pradesh to the jurisdictional Tax Assessing Officer.