

**PUNJAB AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX, BHUPINDRA ROAD PATIALA
147001, PUNJAB**

ORDER NO. AAR/GST/PB/030

DATED: 10.11.2022

(An Appeal against this order lies with the Appellate Authority in terms of Section 99 and Section 100 of the CGST Act, 2017 and Section 99 and Section 100 of the PGST Act, 2017 within a period of thirty days from the date of communication of this order.)

Present:

1. Ms. Varinder Kaur, Additional Commissioner of Central Tax (Central Tax)
2. Mr. Viraj Shyamkarn Tidke, Additional Commissioner of State Tax-1 (State Tax).

Application Details:

Name and GSTIN of the applicant(s)		M/s Bansal Industries 03AADFB0920D1ZF
Address		Old Fazilka Road, Abohar
Details of application		AAR/GST/PB/017 dated 22/02/2019
Concerned Officer		ACST, Fazilka.
Nature of activity (present/proposed) in respect of which advance ruling sought.		
A	Category	Manufacturing Unit (Ginning & Pressing of Cotton)
B	Description in brief	The applicant is a partnership firm engaged in the business of ginning and pressing cotton as well as crushing of oil seeds. The raw material narma is purchased in the open market from Kacha Arhtiya who is also a registered dealer.
Issue(s) on which advance ruling is required.		(i) Applicability of a notification issued under the provision of the Act.
Question (s) on which advance ruling is required.		(i) Whether Purchase of raw cotton from Kacha Arhtia who is a registered dealer constitutes a purchase from agriculturist so as to attract liability under Reverse Charge Mechanism in view of section 9(3) of CGST/PGST Act, 2017?
Date of Personal Hearing		(i) 18.02.2022 (ii) 05.08.2022 &

	(iii) 16.08.2022
Present for applicant	(i) Advocate Rishab Singla (ii) Advocate Rishab Singla (iii) Advocate Rishab Singla and Advocate Chinansha

1. M/s. Bansal Industries, as detailed in the table above and hereinafter referred to as 'applicant', had submitted an application for advance ruling in form GST ARA-01 dated 22.02.2019 seeking to know whether Purchase of raw cotton from Kacha Arhtia who is a registered dealer constitutes a purchase from agriculturist so as to attract liability under Reverse Charge Mechanism in view of section 9(3) of CGST/PGST Act, 2017?

2. **Proceedings Under Section 98 of CGST/PGST Act:-**

In this regard personal hearings were held on 18.02.2022, 05.08.2022 and 16.08.2022 before the Advance Ruling Authority, Punjab. During proceedings on 18.02.2022, 05.08.2022, Sh. Rishab Singla, Advocate appeared on behalf of the applicant and submitted his oral and written submission on the matter which are placed on file. On 16.08.2022, Sh. Rishab Singla, Advocate and Sh. Chinansha, Advocate appeared on behalf of the applicant and submitted additional submission on the matter which are placed on file.

3. **QUESTION(S) ON WHICH ADVANCE RULING IS SOUGHT:-** Whether Purchase of raw cotton from Kacha Arhtiya who is a registered dealer constitutes a purchase from agriculturist so as to attract liability under Reverse Charge Mechanism in view of section 9(3) of CGST/PGST Act, 2017?

4. **ELIGIBILITY OF THE APPLICATION FOR ADVANCE RULING:-**

The Section 97(2) of the Central Goods and Services Tax Act, 2017, read with Section 97(2) of the Punjab Goods and Services Tax Act, 2017, provides for the issues on which advance ruling can be sought.

97(2) The question on which advance ruling is sought under this Act, shall be in respect of,-

- (a) Classification of any goods or services or both;
- (b) Applicability of a notification issued under the provisions of this Act;
- (c) Determination of time and value of supply of goods or services or both;
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) Determination of the liability to pay tax on any goods or services or both;
- (f) Whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

The question falls under the ambit of Section 97(2) of the CGST Act, 2017, read with Section 97(2) of the PGST Act, 2017. Hence, the application of the applicant is eligible for a ruling by the Punjab State Advance Ruling Authority.

5. SUBMISSIONS BY THE APPLICANT: -

5.1 The applicant has made the following submissions:-

1. In the present case, the assessee purchases Narma from Kacha Arhtiya who is a registered dealer, but is not charging GST. As per Notification dated 14.11.2017, tax on the purchase of raw cotton is to be paid under reverse charge mechanism by a registered dealer when purchased from agriculturist. It is submitted that the same is not applicable on the assessee as the assessee is purchasing cotton from registered dealer and is thus not liable to pay tax under Reverse Charge Mechanism.
2. In this regard, a circular dated 04.09.2018 bearing No.57/31/2018-GST has been issued by the CIBC, wherein scope of Principal-Agent relationship in context of Schedule-I of CGST Act has been explained. In the said circular, it has been clarified that the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of Principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name, then any provision of goods from the Principal to the Agent would fall within the fold of said entry, i.e. Supply of Goods. In the said circular, CBIC has mentioned certain scenarios and according to facts of the present case, the case of the petitioner falls within Scenario 4. It has been further clarified that in cases where the supply of agricultural produce is not exempted and liable to tax, such Commission Agent shall be liable for compulsory registration under sub-section (vii) of Section 24 of the Central GST Act.
3. Further, a Corrigendum dated 05.11.2018 has been issued to the said circular wherein para 9 has been amended and it has been clarified that where a Commission Agent is liable to pay tax under Reverse Charge, such an agent will be required to get registered compulsorily under Section 24(iii) of the CGST Act.
- 3.1 In this regard, an Advance Ruling has already been issued by the Haryana Authority for Advance Ruling Haryana in the case of *M/s Bhaktawar Mal Kamra and sons* in which it has been clarified as under:

"As per the above discussions, 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, 2017. However, if the aggregate turnover of supply of exempted as well as taxable goods by commission agents (Kachha Arhatia) exceeds the threshold limit, such commission agents shall be liable for registration as per Section 22(1) of CGST/ HGST Act, 2017.

As per Notification No. 121/ST-2, dated 14-11-2017 issued under Haryana Goods & Services Tax Act, 2017 read with corresponding Notification No. 43/2017, dated 14-11-2017 issued under Central Goods & Services Tax Act, 2017, raw cotton has been inserted at Sr. No. 4A in the table notified vide Notification No. 381ST -2, dated 30-6-2017 under the HGST Act, 2017 and corresponding Notification No. 4/2017-Central Tax (Rate), dated 28-6-2017 under the CGST Act, 2017, 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 such supply. As discussed supra, 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.

It is however, made clear that a commission agent (Pucca Arhatia) who does not inform his constituent as to the third party with whom he has entered into a contract on his behalf, rather he acts himself as the recipient of goods, has a personal interest of his own when he enters into a transaction inasmuch as he can also supply his own goods to the principal. 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 or both exceeds the threshold limit. Such commission agents shall also be liable for compulsory registration as per provision of Section 24(1)(vii) of the Acts *ibid* and they shall be liable to charge tax or RCM on supply of 'Raw Cotton'."

6. **SUBMISSIONS BY THE JURISDICTIONAL AUTHORITY:-**

ACST, Fazilka has submitted written reply on behalf of the department.

ACST Fazilka as per his reply has stated that, "In order to reach at some conclusion in respect of above said question first of all we will have to analyse the provision and notification regarding levy of Tax on reverse charge basis which have been reproduced below:

Section 9(3) of the CGST/SGST (UTGST) Act, 2017 reads “The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”

Notification No. 4/2017-Central Tax (Rate) New Delhi, the 28th June, 2017 G.S.R. 676 (E). –

In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby specifies the supply of goods, the description of which is specified in column (3) of the Table below and falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table, made by the person as specified in the corresponding entry in column (4), in respect of which the central tax shall be paid on reverse charge basis by the recipient of the intra-state supply of such goods as specified in the corresponding entry.

Sr No	Tariff Item, Sub heading, heading or Chapter	Description of supply of goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
1	0801	Cashew Nuts not shelled or peeled	Agriculturist	Any registered person
2	1404 9010	Bidi wrapper leaves(tendu)	Agriculturist	Any registered person
3	2401	Tobacco Leaves	Agriculturist	Any registered person
4	5004 to 5006	Silk Yarn	Any person who manufactures silk yarn from raw silk or silk warm cocoons for supply of silk yarn	Any registered person
5	–	Supply of Lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent Explanation For the purpose of this entry lottery distributor or selling agent has the same meaning as assigned to it in clause (C) of Rule 2 of the Lotteries (Regulation) Rules, 2010 made under the

The above notification was further amended by CBEC to give effect to 23rd GST council decision regarding reverse charge on raw cotton vide Notification No. 43/2017-Central Tax (Rate) which read as under

**GOVERNMENT OF INDIA MINISTRY OF FINANCE (Department of Revenue)
Notification No. 43/2017-Central Tax (Rate) New Delhi, the 14th November,
2017 G.S.R. 1389(E). -**

In exercise of the powers conferred by sub-section (3) of section 9 of the Central and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 4/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 676 (E), dated the 28th June, 2017, namely:- In the said notification, in the TABLE, – (i) after SI. No. 4 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:

4A	5201	Raw Cotton	Agriculturist	Any registered person
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[F. No. 354/320/2017- TRU] (Ruchi Bisht) Under Secretary to Government of India
Thus from the above notifications it is clear that in case of Raw Cotton when supplier of goods is an agriculturist and recipient of supply is any registered person then the tax is to be paid on reverse charge basis by such registered recipient.

Now in order to answer the question raised in Advance ruling we will have to analyse some other terms also which are as follows:

Kacha Arhtia:-

As per The Punjab Agricultural Produce Markets (General) Rules, 1962 “Kacha Arhtia” means a dealer who, in consideration of commission, offers his service to sell agricultural producer;

Recipient:-

As per the definition contained in section 2(93) of CGST Act, 2017 "recipient" of supply of goods or services or both, means-

- Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- Where no consideration is payable for the supply of service, the person to

whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

Now the question arises that who is liable to pay the consideration?

The Punjab Agricultural Produce Markets (General) Rules, 1962- Rule 24(11) specifies that "The Kacha Arhtiya shall make payment to the seller immediately after the weighment is over."

Further as per Rule 24 (12) Every Kacha Arhtiya shall, on delivery of agricultural produce to a buyer, execute a memorandum in Form I and deliver the same to the buyer on the same day or the following day, mentioning sale proceeds plus market charges admissible under rules and bye-laws. The counterfoil shall be retained by the Kacha Arhtiya:

4[Provided that nothing in this sub rule shall apply where agricultural produce being vegetable or fruit, not exceeding one quintal in weight is delivered.]

As per Rule 24(13) In the absence of any written agreement to the contrary the sale price of agricultural produce purchased under these rules shall be paid by the buyer to the Kacha Arhtiya on delivery of Form I.

So as per above said provisions the Kacha Arhtiya is liable to pay the consideration & thus may be called a registered recipient if registered and thus the liability to pay the Tax on reverse charge basis will lie upon him.

7. DISCUSSIONS AND FINDINGS: -

7.1 We have carefully examined all the relevant records on file alongwith the documents submitted by the Applicant on 24.09.2022.

7.2 The nub of the matter lies in whether the applicant is the person liable to pay GST under RCM in respect of raw cotton purchased by them from grain markets in terms of Notification No.04/2017-CT(Rate) dated 28.06.2017 as amended w.e.f. 15.11.2017 vide Notification No.43/2017-CT(Rate) dated 14.11.2017 or the Kacha Arhtiya. The Applicant in the course of business activities is procuring raw cotton from multiple agriculturists through *Kacha Arhtia* as per provisions of The Punjab Agricultural Produce Markets Act, 1961(**The APMC Act**) .

7.3 Before proceeding further, it would be apposite here to have a closer look at the issue in conjunction with the relevant statutory provisions of the CGST Act, 2017 .

7.4 The Notification No.04/2017-CT(Rate) dated 28.06.2017 is issued under sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 *inter alia* specified the supply of goods made by persons specified in the said

Notification in respect of which the tax shall be paid on reverse charge basis by the recipient on supply of such goods as specified in the said Notification. This Notification was amended w.e.f 15.11.2017 vide Notification No.43/2017-CT(Rate) dated 14.11.2017 which inserted a new Sr. No.4A in the Table to the Notification dated 28.06.2017 by virtue of which any registered person receiving supply of raw cotton from agriculturalist was made liable to pay tax on reverse charge basis. The amendment to the Table of impugned Notification reads as below:-

TABLE

Sr. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
1	2	3	4	5
4A	5201	Raw Cotton	Agriculturalist	Any registered person

The terms “agriculturist” and “registered person” are defined under clauses (7) and (94) of the Section 2 of the CGST Act, 2017 which are reproduced below:

SECTION 2. Definitions —In this Act, unless the context otherwise requires,

(7) “agriculturist” means an individual or a Hindu Undivided Family who undertakes cultivation of land —

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;

(94) “registered person” means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

7.5 From the above, it can be inferred that supplier of goods (in this case raw cotton) should be the agriculturalist itself, i.e. an individual or a Hindu Undivided Family who undertakes cultivation of land and the recipient of goods should be a registered person i.e. a person who is registered under Section 25.

7.6 Thus, liability to pay tax on reverse charge basis in the instant case shall be upon the Applicant in case they are held to be recipients of supply from the agriculturalists.

7.7 Further, the term “supplier” as defined under clause (105) of Section 2 of the CGST Act, 2017 (reproduced below) means the person supplying the said goods or

services or both and includes an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

(105) “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

The term *agent* is defined under clause (5) of Section 2 of the CGST Act, 2017 (reproduced below) and means a person, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another and the term ‘agent’ *inter alia* includes an ‘arhatia’.

(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;

7.8 Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other **notified supplies**, the liability may be cast on the recipient under the reverse charge mechanism. Reverse Charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.

7.9 In terms of Section 2(98) of the Central Goods and Services Tax Act, 2017, “reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9. The relevant part of the said section 9 of the CGST Act, 2017 and PGST Act, 2017 is as under:

Section 9. Levy and collection:-

(3) The Government may, on the recommendations of the Council, by Notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The Government may, on the recommendations of the Council, by Notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act

shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

The present sub-section (4) has been inserted w.e.f. 01.02. 2019. The sub-section (4) as in force prior to 01.02.2019 read as follows:-

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

7.10 Thus, there are two type of reverse charge scenarios provided in law.

First is dependent on the nature of supply and/or nature of supplier. This scenario is covered by section 9 (3) of the CGST Act and PGST Act, 2017. As per the provisions of section 9(3) of CGST Act, 2017 and PGST Act, 2017, the Government may, on the recommendations of the Council, by Notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. The Notification No.04/2017-CT(Rate) dated 28.06.2017 as amended covers this scenario.

Second scenario is covered by section 9 (4) of the CGST Act and PGST Act, 2017 where taxable supplies by any unregistered person to a registered person is covered. Section 9(4) of CGST Act, 2017 and PGST Act, 2017 provides that the tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Accordingly, wherever a registered person procures supplies from an unregistered supplier, he needs to pay GST on reverse charge basis.

7.11 Further, Section 9 of the CGST Act, 2017 and PGST Act, 2017 *inter alia* provides for levy and collection of central goods and services tax on all intra-state supplies of goods or services or both. Section 7 of the CGST Act, 2017 and PGST Act, 2017 deals with the scope of supply according to which the expression "supply" *inter alia*, includes the activities specified in Schedule-I of the Act, made or agreed to be made without a consideration. As per clause (3) of Schedule I, 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 is an activity to be treated as supply even if made without consideration.

7.12 The Notification No. 43/2017-Central Tax (Rate), dated 14-11-2017 had inserted Entry 4A in Notification No. 4/2017-Central Tax (Rate), dated 28-6-2017 to include raw cotton on which tax became payable under reverse charge mechanism by the recipient of supply, i.e., any registered person.

7.13 In the present case, the whole process of purchase of raw cotton is done under APMC Act wherein the *Kacha Arhtia* facilitates the sale of raw cotton from an agriculturist/farmer to the Applicant and every act done during this sale transaction is done as per Bye-Laws of APMC Act. The *Kacha Arhtia* receives by way of remuneration, a commission or percentage upon the amount involved in such transaction. The *Kacha Arhtia*, issues FORM-I to the buyer of the goods and Form-J to the farmer being the seller of the corresponding goods. In other words, the transaction of sale of raw cotton by agriculturist to the Applicant is regulated as per statutory provisions of the APMC Act wherein the seller is the farmer/zimindar i.e., agriculturist and the buyer is the Applicant.

7.14 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.

Sr. No. (3) under Schedule-I (Activities to be treated as Supply even if made without consideration) of the Central GST Act, 2017 and PGST Act, 2017 has the following entry:

"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."

7.15 The applicant has sought a ruling on whether purchase of raw cotton from Kacha Arhtia who is a registered dealer constitutes a purchase from agriculturist so as to attract liability under Reverse Charge Mechanism in view of Section 9(3) of Central GST Act, 2017.

7.16 To understand whether the Kacha Arhtia is liable to pay GST under reverse charge basis, it is pertinent to go through the Circular No. 57/31/2018-GST issued vide CBEC-20/16/4/2018-GST dated 4th September, 2018 (to be read with the corrigendum dated 05th November, 2018) which has explained the Scope of Principal-Agent relationship in the context of Schedule-I of the CGST Act. For reference, Circular No. 57/31/2018-GST is reproduced below for reference:-

Subject: Scope of Principal-agent relationship in the context of Schedule-I of the CGST Act -regarding.

In terms of Schedule-I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), the supply of goods by an agent on behalf of the principal without consideration has been deemed to be a supply. In this connection, various representations have been received regarding the scope and ambit of the principal-agent relationship under GST. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the CGST Act hereby clarifies the issues in the succeeding paras.

2. As per section 182 of the Indian Contract Act, 1872, **an "agent" is a person employed to do any act for another, or to represent another in dealings with third person.** The person for whom such act is done, or who is so represented, is called the "principal". As delineated in the definition, an agent can be appointed for performing any act on behalf of the principal which may or may not have the potential for representation on behalf of the principal. So, the crucial element here is the representative character of the agent which enables him to carry out activities on behalf of the principal.

3. The term "agent" has been defined under sub-section (5) of section 2 of the CGST Act as follows:

"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.

4. The following two key elements emerge from the above definition of agent:

- a) the term „agent" is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship; and
- b) the supply or receipt of goods or services has to be undertaken by the agent on behalf of the principal.

From this, it can be deduced that the crucial component for covering a person within the ambit of the term "agent" under the CGST Act is corresponding to the representative character identified in the definition of "agent" under the Indian Contract Act, 1872.

5. Further, the two limbs of any supply under GST are "consideration" and "in the course or furtherance of business". Where the consideration is not extant in a transaction, such a transaction does not fall within the ambit of supply. But, in certain scenarios, as elucidated in Schedule-I of the CGST Act, the key element of

consideration is not required to be present for treating certain activities as supply. One such activity which has been detailed in para 3 of Schedule-I (hereinafter referred to as "**the said entry**") is reproduced hereunder:

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.

6. Here also, **it is worth noticing that all the activities between the principal and the agent and vice versa do not fall within the scope of the said entry.** Firstly, the supply of services between the principal and the agent and vice versa is outside the ambit of the said entry, and would therefore require "consideration" to consider it as supply and thus, be liable to GST. Secondly, the element identified in the definition of "agent", i.e., "**supply or receipt of goods on behalf of the principal**" has been retained in this entry.

7. It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not. **Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.** Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule-I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

8. Looking at the convergence point between the character of the agent under both the CGST Act and the Indian Contract Act, 1872, the following scenarios are discussed:

Scenario 1

Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this

scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr.B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2

M/s. XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s. XYZ. The invoice for the supply of the goods is issued by M/s. XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr.B is not an agent of M/s. XYZ for the supply of goods in terms of Schedule I.

Scenario 3

Mr. A, an artist, appoints M/s. B (auctioneer) to auction his painting. M/s. B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s. B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s. B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I.

A similar situation can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

Scenario 4

Mr A sells agricultural produce by utilizing the services of Mr B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Schedule I. However, in cases where the invoice is issued directly by

Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I.

9. In scenario 1 and scenario 2, Mr. B shall not be liable to obtain registration in terms of clause (vii) of section 24 of the CGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds the threshold specified in sub-section (1) of section 22 of the CGST Act. In scenario 3, M/s. B shall be liable for compulsory registration in terms of the clause (vii) of section 24 of the CGST Act. In respect of commission agents in Scenario 4, Notification No. 12/2017 Central Tax (Rate) dated 24.06.2017 has exempted "services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce" from GST. Thus, the "services" provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to sub-clause (a) of sub-section (1) of section 23 of the CGST Act, if the supply of the agricultural produce, and /or other goods or services supplied by them are not liable to tax or wholly exempt under GST. However, in cases where the supply of agricultural produce is not exempted and liable to tax, such commission agent shall be liable for compulsory registration under sub-section (vii) of section 24 of the CGST Act.

7.17 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 and PGST Act, 2017, 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.**

7.18 Since the scope of supply under the GST Act also covers the activities specified in schedule-I by or undertaken through an agent, the key ingredient for determining relationship would be whether the invoice for the further supply of goods on behalf of the principal is being issued by agent or not. **In other words, the crucial point is whether or not the agent has the authority to pass on the title of the goods on behalf of the principal.**

7.18.1 In this regard, We observe that Rule 2(4) and Rule 2(9) of the Punjab Agricultural Produce Markets (General) Rules, 1962 distinguishes the term Arhtia as Pacca Arhtia and Kacha Arhtia as below:-

Rule 2(4): **"Pacca Arhtia"** means a dealer, who for himself or on behalf of any other person makes or offers to make a purchase or sale of any

agricultural produce or does or offers to do anything for carrying out such purchase or sale;

Rule 2(9): **“Kacha Arhtia” means a dealer who, in consideration of commission, offers his service to sell agricultural produce;**

From the above, we find that major difference between the above terms is that **Pacca Arhtia** makes sale or purchase for himself whereas the **Kacha Arhtia** in consideration of commission, offers his service to sell agricultural produce.

7.18.2 Further, sale of agricultural produce in Mandi is governed by Rule 24 of Punjab Agricultural Produce Markets (General) Rules, 1962, the relevant extract of which is reproduced below for reference:

“24. Sale of agricultural produce

.....

(1) All agricultural produce brought into the market for sale shall be sold by open auction in the principal or sub market yard.

(2) Nothing in sub-rule (1) shall apply to a retail sale as may be specified in the bye-laws of the committee.

(3) A committee may, and on being directed by the Chairman of the Board or an officer authorized by him shall fix timings for the starting and closing of the auction in respect of any agricultural produce, other than fruits and vegetables.

(4) The price of agricultural produce shall not be settled by secret signs or secret bid and no deduction shall be made from the agreed price of the consignment.

(5) The auction shall not be conducted by any person other than the person engaged by the committee:

Provided that under special circumstances the Chairman of the Board or an officer authorized by him may allow a committee to make or permit any alternative arrangement:

Provided further that nothing in this sub-rule shall apply to the auction of vegetables and fruits.

(6) The highest bid offered by a buyer at an auction and **at which the seller of the produce gives his consent to sell his produce**, shall be sale price of the produce.

(7) The buyer shall be considered to have thoroughly inspected the produce for which he has made a bid and he shall have no right to retract it.

(8) As soon as the auction for a lot is over the auctioneer shall fill in the particulars in a book to be maintained in Form-H **and shall secure the signatures of both the buyer and the seller or their respective representatives, whoever may be present at the spot.**

(8-A) A register in Form-H shall be maintained by the committee wherein the agricultural produce which remained unsold during the course of auction shall be entered and it shall be obligatory for every dealer or Kacha Arhtia, or commission agent, as the case may be, to report about the unsold produce to the committee as soon as his agricultural produce is sold.

(9) The buyer shall be responsible to get the agricultural produce weighed immediately after the auction or on the same day the produce is purchased by him and the seller or the buyer shall be liable for any damage to, or loss of, or deterioration in, the produce after the auction according to the local usage or custom or as per provision of rule 13.

(10) A person engaged by a producer to sell agricultural produce on his behalf shall not act as a buyer either for himself or on behalf of another person in respect of such produce **without the prior consent of the producer :**

Provided that a Co-operative Society shall be exempt from the operation of this rule.

(11) The Kacha Arhtia shall make payment to the seller immediately after the weighment is over....

.....

(12) Every Kacha Arhtia shall, on delivery of agricultural produce to a buyer, execute a memorandum in Form I and deliver the same to the buyer on the same day or the following day, mentioning sale proceeds plus market charges admissible under rules and bye-laws. The counterfoil shall be retained by the Kacha Arhtia:

Provided that nothing in this sub rule shall apply where agricultural produce being vegetable or fruit, not exceeding one quintal in weight is delivered.

(13) In the absence of any written agreement to the contrary the sale price of agricultural produce purchased under these rules shall be paid by the buyer to the Kacha Arhtia on delivery of Form-I.

(14) Delivery of agricultural produce after sale shall not be made or taken unless and until the Kacha Arhtia or, if the seller does not employ a Kacha Arhtia, the buyer has given to the seller a sale voucher in Form-J, the counterfoil who of shall be retained by the Kacha Arhtia or the buyer, as the case may be."

7.18.3 From the above, it comes out that the sale of raw cotton is done at a defined market place and in the presence of authorized representatives of market committee, and that all these terms and procedures are defined in the provisions of APMC Act and Rules made thereunder and the bye-laws which controls the sale-purchase of agriculture produce, raw cotton/ 'narma' in the instant case. When a farmer/agriculturist brings his agriculture produce to a notified market area as per APMC Act and Rules for sale, they approach the *Kacha Arhtia* and get their crop details entered in Heap register/Form-H maintained by *Kacha Arhtia*. Thereafter, the bidders and Mandi Board Employee having 'Register/Form-H' execute the auction process in presence of the sellers and the prospective buyers who bid. The highest bid offered by a bidder at an auction and at which the seller of the produce, i.e. the farmer/agriculturist, gives his consent to sell his produce, shall be sale price of the produce. As soon as the auction for a lot is over, the auctioneer (Market officer) shall fill in the particulars in a book to be maintained in Form-H and shall secure the signatures of both the buyer and the seller or their respective representatives, whoever may be present at the spot. H register will have all details of date, *Kacha Arhtia*, name and address of seller, description of produce, quantity, rate, name of buyer. The responsibility of paying the market fee as prescribed under APMC Act and Rules shall be of the buyer in terms of provision of APMC Act and Rules and M/s Bansal Industries being a buyer in instant case, is liable to pay such fee and not the *Kacha Arhtia* or Agriculturist. *Delivery of agricultural produce is made only after the Kacha Arhtia or the buyer gives to the seller a sale voucher in Form J clearly mentioning the details of the buyer and other details of the produce. On delivery of agricultural produce to a buyer, the Kacha Arhtia executes a memorandum in Form-I and delivers the same to the buyer on the same day or the following day clearly mentioning the name of the buyer corresponding to the Form-J issued to the seller.* The payment can be made by the buyer directly to the seller or through the *Kacha Arhtia* by the buyer, wherein the *Kacha Arhtia* deducts the commission and other expenses as prescribed vide Rule 24-A of The Punjab Agricultural Produce Markets (General) Rules, 1962, before passing on the same to the seller. In terms of Rules 24(12) and Rule 24(13) of the Punjab Agricultural Produce Markets (General) Rules, 1962, the *Kacha Arhtia* issues Form I (Bill of *Kacha Arhtia*) in case, he receives payment from the buyer and issues Form III (Bill of *Kacha Arhtia* for direct payment by buyer to the seller) in case the buyer directly makes payment to the seller. The formats of Forms I and III are given below:

FORM I
[See Rule 24 (12) and 24 (13)]
Bill of Kacha Arhtia
Counterfoil _____

Book No. _____
Serial No. _____
Name of the Market _____
Name of Kacha Arhtia _____
Name of Buyer _____ Dated: _____

Name of Commodity	Weight	Rate	Total	Market Charges	Grand Total
		Rs.	Rs.	Rs. Commission _____ Brokerage _____ Palledari _____ Filling Sewing Charges Other Charges _____ Total _____	Rs.

Acknowledgement by the buyer

Signature of Kacha Arhtia

[FORM III]
[See Rule 24 (12) and 24 (13)]
Bill of Kacha Arhtia for direct payment by buyer to the seller
Counterfoil _____

Book No. _____
Serial No. _____
Name of Market _____
Name of Kacha Arhtia _____
Name of Buyer _____ Dated _____

Name and address of the seller	Name of commodity	Weight	Rate	Total amount	Market charges	Grand Total	The name of the producer seller in whose name the payment is to be made	Name of bank with full address	Account number	IFS Code	Total amount to be paid	Labour charges to be deducted and paid to Kacharhtia, if any	Net amount to be paid
1	2	3	4	5	6	7	8	9	10	11	12	13	14

			Rs.	Rs.	Rs.	Rs.					Rs.	Rs.	Rs.
					Commission								
					Brokerage								
					Palledari								
					Filling & Sewing Charges								
					Other Charges								
					Total								

Signature of Kacha Arhtia.

Acknowledgement by the buyer.

7.18.4 The issuance of different Forms for different modes of payment to the seller and the relevant provisions of law clearly shows that the Form-I and Form-III are not Bill of supply or an invoice issued by the *Kacha Arhtia* rather the same only is a memorandum evidencing the act of sale of agricultural produce and does not serve as an instrument transferring the title of goods sold as the title in goods was never held by the *Kacha Arhtia* or transferred to him by the seller of impugned goods.

7.18.5 It is also evident from the definition of *Pacca Arhtia* and *Kacha Arhtia* as discussed above that transfer of title in goods by seller is made only in case of transaction with *Pacca Arhtia* and not in case of transaction with *Kacha Arhtia* as he only acts as a commission agent who assists and facilitates the sale-purchase transaction between the seller i.e. Agriculturist and the buyer i.e. M/s Bansal Industries in the instant matter. As per the relevant provisions of APMC Act and Rules made thereunder, there is no sale/purchase involved between the *Kacha Arhtia* and Farmer/Agriculturist. *Kacha Arhtia* has no control at any stage of the sale of agriculture produce/raw cotton to change the price of agriculture produce which has been decided at the auction process as per bye laws of APMC act and neither *Kacha Arhtia* has title of the agriculture produce/raw cotton at any stage of transaction. Even during the bidding process, the produce can be sold to a buyer only if the bid price is agreed to by the agriculturist and the *Kacha Arhtia* cannot act on behalf of the agriculturist at any stage. Further, the consent of the agriculturist has to be obtained even before the delivery of the auctioned produce takes place to the buyer, clearly showing that at no stage does the title of goods transfers to the *Kacha Arhtia*.

7.18.6 In view of the facts on record in the instant case as discussed above, We hold that, *Kacha Arhtia* does not fall under the Scenario 4 given in the CBIC

Circular No. 57/31/2018-GST dated 04.09.2018 cited by M/s Bansal Industries in their supports as at no time during the process of sale-purchase of agricultural goods in the grain markets does the Kacha Arhtia have the authority to pass or receive the title of the goods on behalf of the agriculturist. At all times during the purchase of raw cotton at the Mandi, the title of the agricultural produce and the authority to pass on the title of the agricultural produce is vested exclusively with the agriculturist himself. During the auction, it is the agriculturist who has to agree to the price offered by the bidders and thereafter when the delivery of goods is to be made to the successful bidder, i.e. buyer, at that point also the consent of the agriculturist is required before the goods can be transported to the buyer's premises. For this, the Form-J and Form-I have been prescribed by APMC Rules. These forms are statutory records and not invoices as claimed by the Noticee. Further, We observe that the provisions of APMC Rules also provide an opportunity to the buyer to remit money to the seller either directly or via the Kacha Arhtia. It is in fact only as an option of convenience wherein the money is transmitted via Kacha Arhtia after deduction of their commission etc which is the regular market practice.

7.19 From the foregoing, We find that M/s Bansal Industries i.e. the applicant is the recipient of supply of goods(raw cotton) by an agriculturist and not the Kacha Arhtia. As such, the applicant is liable to pay GST under reverse charge basis being a registered person in terms of Notification No. 13/2017- Central Tax (Rate) dated 28th June 2017 as amended vide Notification No. 43/2017-Central Tax (Rate) dated 14th November 2017 read with corresponding Notifications issued under Punjab State GST Act 2017.

Advance Ruling:-

7.20 Further, in their reply, the applicant has sought support from the Advance Ruling No.HAR/HAAR/R/2018-19/10 dated-30.08.2018 announced by Haryana Authority of Advance Ruling in the case of M/s. Bhaktawar Mal Kama and sons. In this context, it is germane to peruse Section 103 of the Central GST Act, 2017 read with relevant provisions of Punjab GST Act, 2017. The relevant portion is reproduced below for reference:-

Section 103 (1) *The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—*

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

7.20.1 From the reading of the above section, it can be easily inferred that the cited Advance Ruling is only binding on the applicant and the concerned officer in

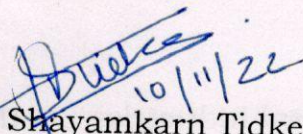
that matter and accordingly, the same does not hold any substance in the instant matter at hand and thus does not merit any examination at all.

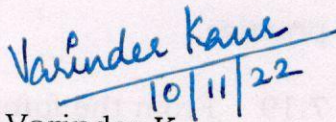
7.21 Accordingly, we pass the following order:

RULING

The applicant is liable to pay GST under reverse charge basis being a registered person in terms of Notification No. 13/2017-Central Tax (Rate) dated 28th June 2017 as amended vide Notification No. 43/2017-Central Tax (Rate) dated 14th November 2017 and not the Kacha Arhtia.

Note: The provisions of CGST Act, 2017 and PGST Act, 2017 are almost same except a few provisions. Unless specific reference is made to such dissimilar provisions in the two acts, reference to provisions of CGST Act, 2017 would mean a reference to the same provisions of PGST Act, 2017 and vice versa.


Viraj Shyamkarn Tidke
Member, SGST


Varinder Kaur
Member, CGST

Through Regd. Post

To

M/s Bansal Industries,
Old Fazilka Road,
Abohar, 160071(PB).

No.PB/AAR/2022/220-224

Dated: 11/11/2022

Copy to:

1. The Special Secretary, Goods and Service Tax Council, 5th floor, Tower-II, Jeevan Bharti Bldg., Connaught Place, New Delhi w.r.t. F. No. 193/Advance Ruling/ GSTC/2017 dated 01.05.2018.
2. The Commissioner of State Taxes, Punjab.
3. The Pr.Commissioner, CGST Commissionerate, F-Block, Rishi Nagar, Ludhiana.
4. The Assistant Commissioner of State Taxes, Fazilka.