

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG - 19/2023

DATED 27-01-2023

PRESENT:

1. Shri Rajendra Kumar

Additional Commissioner, Central Goods and Service Tax
Audit Commissionerate, Lucknow

.... ...Member (Central Tax)

2. Shri Harilal Prajapati

Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s GOBIND SUGAR MILLS LIMITED Aira Estate, Khamaria Pandit, Lakhimpuri Kheri, Uttar Pradesh-262722
2.	GSTIN or User ID	09AABCG0947N1ZA
3.	Date of filing of Form GST ARA-01	02.11.2022
4.	Represented by	Mr. Dharmendra Roy, CFO & Shri Satyajeet Tripathi AGM (Ind Taxation)
5.	Jurisdictional Authority-Centre	Range Lakhimpur Range, Division Sitapur, Lucknow
6.	Jurisdictional Authority-State	Sector-Corporate Circle Lucknow II, Range- Lucknow (C)
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes SBIN21110900040796

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017**

1. M/s Gobind Sugar Mills Ltd is registered under GSTIN 09AABCG0947N1ZA under trade name of M/s Gobind Sugar Mills Ltd having principal address at Aira Estate, Khamaria Pandit, Lakhimpuri Kheri, Uttar Pradesh-262722 (hereinafter referred as "the applicant"). The applicant is manufacturer of Sugar, Molasses and Ethanol.

2. The applicant has submitted application for Advance Ruling dated 02.11.2022 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following question/clarification-

1. *Classification of Sugarcane Juice*
2. *Rate of GST applicable on sale of Sugarcane Juice.*
3. *Applicability of a notification which affects the rate of tax (If Any).*

3. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

4. The applicant has submitted that-

- (1) We M/s Gobind Sugar Mills Ltd. having GST No 09AABCG0947N1ZA are manufacturer of Sugar, Molasses and Ethanol. Our main Raw Material is Sugarcane which is a agricultural produce and is exempted from GST. We Purchase Sugar Cane from Farmers and extract juice from cane and stored in steel tanks. We manufactured Sugar from this Sugarcane Juice and Molasses come out as by product after extracting sugar. This Molasses send to our Distillery where after further processing we manufacturing Ethanol
- (2) We pay GST on our final product i.e Sugar, Molasses and Ethanol on the appropriate rate as per GOVT Norms. (5% on Sugar and 28% on Molasses, and 5% on Ethanol)
- (3) Now we wants to sale sugarcane Juice to the Distillery within state where they may produce Ethanol or any other Sprit.

We wants clarification on following point regarding sale of Sugarcane Juice.

1. Classification of Sugar Cane Juice.
2. Rate of GST applicable on sale of Sugarcane Juice.
3. Applicability of a notification which affects the rate of tax (If Any).

5. The applicant have submitted their interpretation of law as under-

- (1) We M/s Gobind Sugar Mills Ltd. having GST No-09AABCG0947N1ZA involved in Manufacturing of Sugar and Molasses. The main raw material used in manufacturing of sugar is Cane. We purchase sugar cane directly from farmers and extract juice from the sugarcane and after further processing we manufactured sugar and the remaining juice is sold as Moasses. We paid GST @ 5% on our finish Product i.e. Sugar and @ 28% on Molasses i.e. our byproduct emerges during the production of Sugar.
- (2) Now further we are going to sold sugarcane juice without doing any further process to distilleries where they manufactured Ethanol falling under Chapter heading 2207 attract GST @5%. Only raw material for manufacturing of Sugar is sugarcane, falling under Chapter Heading 1212 and attract Nil rate of GST, and also classified under agriculture produce.
- (3) **Relating to Services & Classification of Goods under the definition of agricultural produce.**

In view of the Notification No.2/2017-Central Tax (Rate) most of the items related to agricultural produce or of the said category has been classified under the goods listed from SI. Nos. 1 to 137 of Schedule of Goods Rates to Chapter Heading Nos. 101 to 8201 has been declared as Nil-rated. This clearly implies that produce out of cultivation or produced by agriculturist is exempted from tax. We can see some more entries in the Notification No. 12/2017 dt. 28.05.2017 vide entry no. 21 under the heading of 9965 or 99667 providing exemption in transportation of services, in products called food grains but they don't termed as agricultural produce. Goods Transport Agency services- Transportation of cotton seed oil cake (Khali) - Taxability under RCM-Applicant engaged in trading of said item, pleading that since transportation of food grains, milk and agricultural produce are exempted from GST, transport of his product is also exempted.

- (4) Section 9 of Central Goods and Services Tax Act, 2017 we can understand that those goods on which GST is not applicable or the goods mentioned in the Notification No.2/2017-Central Tax (Rate) in which most of the items related to agricultural produce or of the said category has been classified under the goods listed from Sl. Nos. 1 to 137 of Schedule of Goods Rates to Chapter Heading Nos. 101 to 8201 has been declared as Nil-rated or clearly implies that produce out of cultivation or produced by agriculturist is exempted from tax, then we can avail the benefit for exemption on the services relating to the transportation of the same goods/products. As per Notification No. 12/2017-Central Tax (Rate)/SRO. No. 371/2017 Government has exempted intra-state supply of services covered under Heading 9986. As per this notification services relating to cultivation of plants or agricultural produce by way of 'vacant land with or without a structure incidental to its use' is exempted from tax liability.

Thus imposing GST on agricultural produce as well as Services related to agricultural produce is unjustified.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Joint Commissioner, (Corporate Cell), State Tax, Lucknow Zone-II vide his letter dated 28.12.2022 submitted following points-

(i) Sugarcane is an agricultural product, but the juice (Sugar Syrup) that comes out of sugarcane. It will not come under the category of fruit/vegetable juice. The juice (Sugar Syrup) extracted from sugarcane is Sugar Syrup which is classified under Chapter-17 and HSN Code-17022090 on which GST @18% (SGST 9% + CGST 9%) will be applicable.

(ii) GST @18% (SGST 9% + CGST 9%) will be applicable as noted in point-1 above.

7. The applicant was granted a personal hearing on 12.01.2023 which was attended by Mr. Dharmendra Roy, CFO & Shri Satyajeet Tripathi AGM (Indirect Taxation) Authorized Representatives during which they reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 would also mean a reference to the same provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the submissions made by the applicant and have examined the interpretation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2) (a) of the CGST Act 2017 being a matter related to classification of goods. We therefore, admit the application for consideration on merits.

10. The applicant M/s Gobind Sugar Mills Ltd. having GST No-09AABCG0947NIZA is engaged in manufacturing of Sugar and Molasses. The main raw material used in manufacturing of sugar is sugarcane. They have sought clarification on following points:-

1. Classification of Sugarcane Juice.
2. Rate of GST applicable on sale of Sugarcane Juice.
3. Applicability of a notification which affects the rate of tax (If Any).

11. For in-depth analysis of present matter, we proceed to discuss the classification, taxability and relevant Notification applicable in the impugned issue. Sugarcane juice cannot be classified as Agricultural produce because agricultural produce is defined under explanation (vii) under para 4 of the Notification No.11/2017 Central Tax (Rate) dated 28.6.2017 as *"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. "*

Agricultural produce as per the definition given in above mentioned notification should necessarily contain three essential elements:

- (i) It must be produced out of cultivation of plant and rearing of all life forms of animal.
- (ii) On which no further processing is done or such processing is done as usually done by cultivator or producer which does not alter its essential characteristics i.e. product broadly retain its physical and chemical form/Constitution.
- (iii) Most importantly the processing done should be in such a manner which is usually done by a cultivator & producer which should only help it to attain marketability at primary market. i.e. definition limits the scope of processing and allows only those activities which help produces to attain the condition of its first marketability in primary market.

In the present case sugarcane juice is produced by way of crushing of sugarcane and hence not produced by farmer. Also process changes its form and constitution alongwith changes are of such nature that if it is to be attain the secondary market for use and become raw material for production of sugar, molasses etc.

Since all the three Conditions of agricultural produce is not fulfilled by sugarcane juice and hence it is not considered to be agricultural produce.

The next question arises that if it is not agricultural produce how will it be classified. In this context study shows that sugarcane is neither a fruit nor a vegetable. Sugarcane is usually a type of grass/plant, sugarcane is not the result of flowering plant nor does it develop through seeding. So sugarcane can not be considered as fruit. Sugarcane fiber and stalks can not be eaten or digested, so it does not qualify as a vegetable either. In GST Tariff, goods under chapter 20 is preparation of vegetables, fruits, nuts or other parts of plants. Sugarcane is neither fruit nor vegetable nor nuts but it is covered under other parts of plants. Chapter heading 2009 is as follows. *"Fruit juices (including grape must) and vegetable juices,*

unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.” Since sugarcane is not fruit or vegetable. Hence it shall fall into tariff item 20098990 “others”.

12. THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

As per Rule 3 (a) of the above said rule “The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

The Tariff item 2009 contains specific description of Fruit and Vegetable Juices Sugarcane is neither fruit nor vegetable nor nuts but it is covered under other parts of plants as such Rule 3(a) of General Rules for the Interpretation of Import Tariff will apply and the same merits classification under HSN 20098990.

Hence sugarcane juice is classified under chapter 20 and tariff item 20098990 which falls in Notification No. 1/2017 Central Tax (Rate) dated 28-06-2017 covered in schedule 2, Sr. No. 41 and taxable at a rate of 6% CGST & 6% SGST or 12 % IGST.

13. Although, there is no specific entry for the product ‘Sugarcane Juice in **Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017**, there is an entry most akin to the product and process (at Sr. No. 41 of Schedule II of **Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017** and attracts 6% CGST and 6% SGST or 12% IGST. The Entry, at Sl. No. 41, in the Schedule II is as follows:

SCHEDULE II – 6%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
41	2009	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.

14. Hence we are of the considered views that the Sugarcane Juice merits to be classified under heading 20098990.

15. In view of the above discussions, we, both the members unanimously rule as under;

RULING

Question 1. Classification of Sugar Cane Juice.

Answer: Sugarcane juice is classifiable under chapter 20 and tariff item 20098990.


Question 2. Rate of GST applicable on sale of Sugarcane Juice.


Answer: Sugarcane Juice is taxable at a rate of 6% CGST & 6% SGST or 12 % IGST

Question 3. Applicability of a notification which affects the rate of tax (If Any).

Answer: Notification no 1/2017 central tax (rate) dated 28/6/2017 would be applicable.

17. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Harilal Prajapati)
Member of Authority for Advance
Ruling


(Rajendra Kumar)
Member of Authority for Advance
Ruling

To,

M/s GOBIND SUGAR MILLS LIMITED
Aira Estate, Khamaria Pandit,
Lakhimpuri Kheri, Uttar Pradesh-262722

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, GST Bhawan, 7-A, Ashok Marg, Lucknow-226001.
4. The Deputy/Assistant Commissioner, CGST & Central Excise Division-Sitapur, Near Eye Hospital, Sanjay Nagar, Sitapur-261001.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, Lucknow Zone II, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnada, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.