

कार्यालय अग्रिम विनिर्णय प्राधिकरण, छत्तीसगढ़,
तृतीय एवं चतुर्थ तल, वाणिज्यिक कर जी.एस.टी. भवन, सेक्टर -19, नया रायपुर (छ.ग.)
ई मेल - gst.aar-cg@gov.in

क्रमांक/राकआ/अविप्रा/04/2018/ 8231
प्रति,

रायपुर, दिनांक 5/09/2018

Shri Akash Bansal,
Partner,
M/s G.N. Chemicals,
27/13 Nehru Nagar West,
Bhilai, Chhattisgarh (C.G.)

विषय:- छत्तीसगढ़ माल एवं सेवा कर, अधिनियम 2017 की धारा 98 के अन्तर्गत पारित आदेश के संबंध में।

संदर्भ:- आपका पत्र दिनांक 14.06.2018

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उपरोक्त विषयांतर्गत आपके द्वारा छत्तीसगढ़ जीएसटी नियम 104 के अंतर्गत प्रस्तुत आवेदन पत्र के संदर्भ में छत्तीसगढ़ अग्रिम विनिर्णय प्राधिकरण (Chhattisgarh Authority for Advance Ruling) द्वारा पारित आदेश क्रमांक 04/2018 दिनांक 05.09.2018 की प्रति आपकी ओर इस ज्ञाप के संलग्न प्रेषित है।

संलग्न:- उपरोक्तानुसार।

o/c


रजिस्ट्रार

अग्रिम विनिर्णय प्राधिकरण
छत्तीसगढ़, रायपुर

पृष्ठा.क्रमांक/राकआ/अविप्रा/04/2018/ 8232

रायपुर, दिनांक 5/09/2018

प्रतिलिपि:-

1. राज्य कर आयुक्त, छत्तीसगढ़ माल और सेवा कर, अटल नगर, जिला-रायपुर (छ.ग.) की ओर सूचनार्थ प्रेषित है।
2. प्रमुख आयुक्त, केन्द्रीय माल और सेवा कर, टिकरापारा, धमतरी रोड़, रायपुर, (छ.ग.) की ओर सूचनार्थ प्रेषित है।
3. राज्य कर सहायक आयुक्त, दुर्ग वृत्त-दो, दुर्ग (छ.ग.) की ओर सूचनार्थ प्रेषित है।

संलग्न:- उपरोक्तानुसार।

o/c


रजिस्ट्रार

अग्रिम विनिर्णय प्राधिकरण
छत्तीसगढ़, रायपुर

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Shri S.K.Buxy
Joint Commissioner
O/o Commissioner, State Tax
Chhattisgarh, Raipur

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur

Sub:- Chhattisgarh GST Act, 2017 - Advance Ruling U/s 98 - Regarding the GST rates applicable in case of Neem Seed (HSN Code 1211)

Read:- Application dated 14.06.2018 from M/s G.N. Chemicals, 27/13 Nehru Nagar West, Bhilai, (C.G.) 490020

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/04/2018

Raipur, Dated .05./09/2018

The applicant M/s G.N. Chemicals, 27/13, Nehru Nagar-West, Bhilai, (C.G.) GSTIN 22AAFFG5162J1ZJ has filed the application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 requesting advance ruling as regards levy of GST Rate applicable in case of "Neem Seed", classified under HSN Code 1211, placed both under 0% GST Rate and 5% GST Rate, on the condition that "All goods of seed quality" are classifiable under 0% GST Rate, whereas "All goods other than Seed quality" shall be classified under 5% GST Rate. The applicant is of the opinion that Neem Seed is classifiable under 0% GST Rate.

2. Facts of the case:-

- I. M/s G.N. Chemicals, 27/13, Nehru Nagar-West , Bhilai, (C.G.) is a dealer engaged in re-refining of used oil intending to add a new product line under Agro-division whereby they shall trade Neem Seed and at later stage, extract Neem Oil from Neem Seed.
- II. The Applicant before commencing the business wants the clarification regarding tax liability on Neem Seed under GST Act and thus filed the application for the same.



3. Contention of the Applicant:

i. that, the use of Neem Seed need not specifically be only for sowing purpose (for it to be classified under Nil Rate GST), but also for the industrial and medicinal applications as well.

ii. that, classification of Goods and Services under GST Legislation is done as per the Indian Trade Classification (herein referred to as ITC) – HS (Harmonized Commodity Description and Coding System) Nomenclature, which is a standardized & International Product Classification System developed by World Customs Organization (WCO) and this HSN Code is being followed since 1986 to classify commodities for Customs and Central Excise, and now for GST classification as well.

Neem Seed is categorized under HSN Code 12119014 under Indian Trade Classification (HS) – 2017.

Description of the Chapter 12 of ITC – HS Code reads as below :-

"OIL SEEDS AND OLEAGINOUS FRUITS; MISCELLANEOUS GRAINS, SEEDS AND FRUIT; INDUSTRIAL OR MEDICINAL PLANTS; STRAW AND FODDER"

iii. that, on carefully reading the Chapter description the apt placement of semi – colons and commas amply explains the types of goods & application of such goods covered by this classification under chapter 12 and the same is as below:-

Type	Meaning
Oil Seed	Seed that Yields Oil
Oleaginous Fruit	Oily, or Rich in Oil, or Covered with Oil, or Producing Oil An oleaginous fruit is the part of a plant that is used to produce oil. It can be a fruit (for example olives), seed (for example sesame) or nut (for example walnuts)
Grains	Grain is a cereal crop that has been harvested and is used for food.
Seed	the unit of reproduction of a flowering plant, capable of developing into another such plant.
Fruits	the sweet and fleshy product of a tree or other plant that contains seed and can be eaten as food.
Industrial or	The application of goods covered under chapter



medicinal Plants

12 is not confined primarily to their agri-application, but also include their industrial OR medicinal applications.

Straw and Fodder

Various parts of the plant are used as a feed to animals.

iv. that, there is a specific category under chapter 12 which is 1209 which reads as "Seed, Fruit and Spores, of a kind used for Sowing" which specifically categorizes seed which are used for sowing, however, it excludes goods which are explicitly classified under other heading even if they are used for sowing purposes.

Explanatory Notes to Chapter 12 specifically places Neem Seed under HSN Code 12119014.

v. that, had the intention of law-makers was to just exempt Neem Seed used solely for the purpose of sowing, they would have placed Neem seed in HSN code 1209 (which is placed in Nil Rate classification), however, they have placed neem seed in HSN Code 1211 - the Heading title of which explicitly confirms the application of seeds to be not just for sowing purpose.

vi. thus, Neem Seed is to be classified under 12119014 irrespective of whether Neem Seed is used for sowing or for Industrial of medicinal purpose.

vii. Now HSN Code 1211 is placed under Nil GST Rate category as well as 5% GST Rate category with the distinction as below :-

Chapter 12	All goods of Seed quality	All goods other than seed quality
Neem Seed	1211	1211
GST Rate	0%	5%

"The titles of section and chapter are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such heading or notes do not otherwise require, according to the provisions hereinafter contained."

viii. that, since, the chapter heading amply provides the reference of "All goods of Seed Quality" whereby Neem Seed is the "Goods of Seed Quality" which is transacted as seeds in common parlance as well, they are of the opinion that Neem Seed should be classified under Nil GST Rate.

4. Personal Hearing:-

In keeping with the established principles of natural justice, personal hearing in the matter was extended to the authorized representative of the applicant and accordingly, Shri Ishant Bansal (CA) appeared before us for hearing on 31.07.2018 and reiterated their contention. They also furnished a written submission dated 31.07.2018, which has been taken on record.



It was their contention that Neem Seeds belong to goods of seeds quality, however the words "seed quality" has not been defined in GST legislature. In cases where specific words are not defined, common parlance/trade parlance is to be given precedence. Understanding of HSN documents in conjunction with the applicable general interpretational rules have been humbly submitted. Therefore it was their contention that Neem Seed (in all forms) to be classified under 0% GST Tax slab.

5. Thus we find that M/s G.N. Chemicals, 27/13 Nehru Nagar West , Bhilai, (C.G.) 490020, GSTIN 22AAFFG5162J1ZJ, the applicant is seeking clarity as regards the applicable rates for payment of GST on the aforesaid commodity that is Neem Seed, viz. whether the applicable rates should be @ 0 % or 5%.

6. The legal position, Analysis and Discussion:-

6.1 The provisions for implementing the CGST Act and CGGST Act, 2017 are similar. Now we sequentially discuss the provisions that are applicable in the present case.

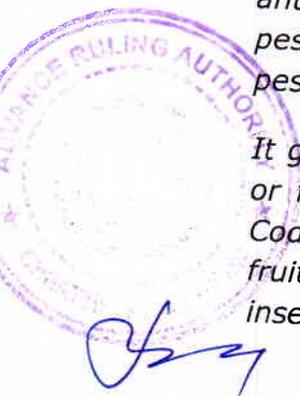
6.2 The following facts have been mentioned in the report received from the jurisdictional office of the applicant i.e. O/o Assistant Commissioner, Circle-2 Durg, with regard to the advance ruling application filed by the applicant :-

This report is with reference to the application for advance ruling received from M/s G.N. Chemical, User ID 221800000070ARD, whereby the applicant sought advance ruling on the rate of tax on Neem Seed. The applicant elaborating his question limited himself within the limits and boundaries of HSN Code 1211. The primary question in this application is followed by sub-questions like the rate of tax on vegetable oil and organic manure primarily made up of Neem.

Since the question primarily revolved around Neem, and the word Neem doesn't find place in the HSN Code List, therefore it is necessary here to elaborate 'Neem'. The botanical name of 'Neem' is 'Azadirachta indica' and it is a tree in the mahogany family Meliaceae. It is one of the two species in the genus 'Azadirachta', and is native to the Indian subcontinent. Its fruits and seeds are the source of Neem oil.

Besides being used in vegetable preparation, Neem is widely used for medicinal properties. Neem products are believed by Siddha and Ayurveda practitioners to be anthelmintic, antifungal, antidiabetic, antibacterial, antiviral, contraceptive and sedative. Neem is a key ingredient in non-pesticidal management (NPM), providing a natural alternative to synthetic pesticides.

It goes beyond doubt that Neem is widely used in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose. Therefore it falls in HSN Code 1211 which contains "Plants and parts of plants (including seed and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, frozen or dried, whether or not



cut, crushed or powdered" and the rate of tax on items falling under this heading is 5% that is 2.5% CGST 2.5% SGST.

However, there are two entries in HSN code 1211, one is of 0% GST and another is of 5% GST. Both of these entries are extracted here for the sake of making matter more clear. These are as follows :

HSN	DESCRIPTION	RATE OF TAX
1211	Plants and parts of plants (including seed and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, frozen or dried, whether or not cut, crushed or powdered.	CGST 2.5% SGST 2.5%
1211	Plants and parts of plants (including seed and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh or chilled.	CGST 0% SGST 0%

Looking at the entries above, it is crystal clear that when goods falling in above entries are sold 'fresh or chilled' it will be taxable at 0% GST but when it is sold 'frozen or dried' it will be taxable at 5% GST.

Apart from this, chapter 12 of HSN code begins with the heading "All goods other than of seed quality". Seed quality here essentially denotes seed which may be used for agricultural purpose. The capacity of the seeds is fully exerted only when it possess its own quality in terms of physical, physiological, genetic and health aspects. Seed quality is a relative term and means the degree of excellence when compared to an acceptable standard. The seeds having required standards of purity, germination and other attributes are referred to as quality seeds. Thus this chapter itself makes a very wide distinction at the outset between seeds per se and seed quality at the outset.

The applicant's other queries are about rate of tax on organic manure made up of Neem cannot be answered here due to lack of disclosure of procedure involved in making of manure. Unless it is determined that the manure made by the applicant is organic, it's needless to give opinion on it.

6.3 To sum up in the opinion of jurisdictional officer following would be the answer of the applicant's queries:-

- i. Trading of Neem Seed in "fresh or chilled" form would attract 0 % of GST, whereas when traded as "frozen or dried" form would attract 5% GST.
- ii. Trading of Neem Seed powder would also attract 5% of GST.

iii. Neem oil extraction and its sale would also attract 5% GST.

6.4 Thus, the applicant and the concerned jurisdictional officer/Circle in charge differ in their opinion regarding tax liability on the said goods to be supplied by the applicant. The applicant has cited following HSN Code advocating applicability of 0% GST in their favour, on the said supply.

1211: Plants and parts of plants (including seed and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh or chilled.

6.5 Applicant also contends that for arriving at the 'meaning of seed quality' while deciding specification of any goods, for commercial identification and its tax rate determination the way in which the said goods are known in 'common parlance' or 'trade parlance' should be made use of and that at present the applicant is known for trading of Neem Seed commercially. The entry in HSN code 1209 (Seeds, fruit and spores of a kind used for sowing) includes all types of Neem Seed, whether for sowing or other uses and should be approved under tax free category.

6.6 The applicant has not come up with any evidence or logical explanation to substantiate their above contention. It has been unambiguously clarified in each entry mentioned in the schedules, issued under State and Central GST Acts as regard the applicable tax rate on any goods/service along with the conditions and circumstances under which such goods/service shall be classified as tax free or taxable under specific tax slab. The following two pre-conditions need fulfillment for categorizing the neem seed so supplied by the applicant as tax free, as stipulated under HSN code 1211 -

HSN	DESCRIPTION	RATE OF TAX
1211	Plants and parts of plants (including seed and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, frozen or dried, whether or not cut, crushed or powdered.	CGST 2.5% SGST 2.5%
1211	Plants and parts of plants (including seed and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh or chilled.	CGST 0% SGST 0%

From the above entries under HSN code 1211 there is no ambiguity that Plants and parts of plants (including seed and fruits) used as "fresh or chilled" would be tax free, whereas plants and parts of plants (including seed and fruits) used as "frozen or dried, whether or not cut, crushed or powdered" would be taxable @5% GST.

6.7 It is also observed that Under HSN code – 1209, the Seed useful for sowing i.e. 'Seeds, fruit and spores of a kind used for sowing' is tax free. The crucial determination point here in this entry is the word 'sowing'. Thus in case the quality of seed is not suitable for sowing, it cannot be treated as of seed quality, thereby making it exigible to GST @ 5%. In this regard, the Government of India has enforced the Seeds Act, 1966 in which section 5 to section 9 clearly stipulate the provisions for authentication of seed quality on the basis of which any seed would be defined as 'tax free seed for sowing.'

6.8 Seeds are the foundation of agriculture. Seed quality plays an important role in the production of agronomic and horticultural crops. Characteristics such as trueness to variety, germination percentage, purity, vigour, and appearance are important to farmers planting crops. Seed quality is the degree of excellence in regard to the characteristics referred to above that determines the seed quality. If the seed lot possesses high genetic purity and high germination percentage and is inter-alia free from diseases, it is categorized as possessing high quality. Generally the standards fixed for certified seeds are considered of having quality standards. It implies that if a seed lot meets the certification standards, it is a good quality seed and if does not meet the certification standards, it is obviously not of seed quality. Thus effectively for the goods placed under HSN code 1211 to be termed as of seed quality, it necessarily must possess the germination capacity.

6.9 The applicant in their defense has put forth the concept of 'common parlance' or 'trade parlance', to bring home their contention. On examination of aforesaid claims by the applicant it is seen that currently in commercial sector 'dry neem fruit' is not identifiable with 'seed for sowing'. The Neem fruit is known as 'Nimouli' in Chhattisgarh and is collected in both fresh and dry forms and is used for making neem oil only, after drying the neem seed. Dry neem fruit is not generally used for trading for horticulture or agro-based commercial purpose i.e. dry neem fruit is not identifiable with seed commercially. Thus on the basis of 'common parlance' or 'trade parlance' theory too propagated by the applicant, the goods intended to be supplied by the applicant can by no stretch of imagination be categorized as those attracting tax @ 0%.

6.10 The applicant during the course of hearing stated that they would make neem oil from the kernel of neem which they would acquire from the collection of dry neem fruits or purchase of the same and they would also sell organic manure made from the De-Oiled Cake and husk of Neem. This clearly goes on to establish that the said goods to be supplied by the applicant does not fulfill the conditions mentioned under HSN code 1209 and 1211 neither in the 'specific form' nor 'specific use', as stipulated under GST Act to be categorized as attracting tax @0%.



In view of the deliberations and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act,2017)

No.STC/AAR/04/2018

Raipur, Dated .05./09/2018

The ruling so sought by the Applicant is accordingly answered as under:-

In terms of Notification No. 1/2017-State Tax (Rate) No. F-10-43/2017/CT/V(69), Naya Raipur, Dated 28.06.2017, Serial No. 73, Chapter 1211 :-

- i. Supply of neem seeds in frozen or dried form for the purpose as specified by the applicant and the said seeds being not of seed quality, supplied by the agro-division business of the applicant (M/s G.N. Chemicals, 27/13, Nehru Nagar-West, Bhilai, Chhattisgarh) would merit being taxable at 2.5% SGST and 2.5% CGST.
- ii. Supply of neem seed powder for the intended purpose as specified by the applicant, supplied by the agro-division business of the applicant (M/s G.N. Chemicals, 27/13, Nehru Nagar-West, Bhilai, Chhattisgarh) would be taxable at 2.5% SGST and 2.5% CGST.

Place:- Raipur

Date:- 05.09.2018

Seal:-



S.K. Buxy
S.K. Buxy
(Member) 5-9-18

TRUE COPY

—Sd—

MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

Rajesh Kumar Singh
Rajesh Kumar Singh
(Member) 5/9/18

TRUE COPY

—Sd—

MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

Copy to:-

1. Applicant,
2. The Commissioner, (CGGST)
3. The Principal Commissioner, (CGST)
4. The jurisdictional officer, Durg Circle-2.