



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2019-20/05
(In Application No.: 05/2019-20, dated 11.06.2019)

Name & Address of the Applicant	:	M/s Mcdonald Pelz Global Commodities India Pvt. Ltd., C-501, M3M Urban, Golf Course Extension Road, Sector-67, Gurgaon, Haryana.
GSTIN of the Applicant	:	06AAJCM2608Q2Z1
Date of Application	:	11.06.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(b)-applicability of a notification issued under the provisions of this Act.
Date of Personal Hearing	:	02.08.2019
Present for the Applicant	:	Sh. Manish Bansal (C.A) and Sh. S.C Kansal (C.A).

Memo No.: 1045/AAR
Dated: 28/8/2020

1. The applicant is a private limited company, registered under the Haryana Goods and Services Tax Act/ Central Goods and Services Tax Act-2017 with registration number 06AAJCM2608Q2Z1. One of its offices is located at Gurgaon, Haryana.

2. **Applicant's submission:**

2.1 The applicant is engaged in provision of the Brokerage services/ intermediary services in relation to sale and purchase of commodities mainly agricultural produce. In provision of Brokerage Services, the company sources the buyer and seller for each other's product and in turn-charges brokerage/ commission from both the parties. The applicant is mainly engaged in services related to sale and purchase of agriculture produce mainly Wheat, Maize & Pulses. The recipients of the services of the company are located Intra-State as well as Inter-state.

2.2 The agricultural produce is first cultivated by the farmer and it is sold in Market Committee notified area, managed under the aegis of State Government established under the Agriculture Produce Market Committee Act (APMC). As per the said Act, the agricultural produce is bought and sold at Grain Market. This market is called as Primary Market. Thereafter,



agricultural produce is traded further and changes hands between the stockiest, traders, industries, importer or exporters etc.

- 2.3 The applicant only facilitates the execution of trade and never deal with the goods and the purchase and sales transactions are independent between buyer and seller and once the contract is executed, the brokerage becomes due and the service is completed. The Notification No. 11/2017 provides for nil rate and 12/2017 dated 28.06.2017 provides for exemption, of services provided by commission agent in relation to sale and purchase of agricultural produce.

3. **Applicant's interpretation of law and facts:**

- a. As per section 2(5) of GST Act, " 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 the behalf of another;
- b. Section 2(13) of IGST Act defines "Intermediary" as a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;
- c. As per Section 2(83) of GST Act, "Outward Supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such persons in the course of furtherance of business;
- d. Section 2(88) of GST Act says that "Principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;



- e. Section 2(102) of GST Act reads: "Services" means anything other than goods, money and securities but includes activities relating to use of money or its conversion by cash or by any their mode, from one form , currency or denomination, to another form, currency or denomination for which separate consideration is charged;
- f. Relevant Entry No. 54 of Notification No. 12/2017 dated 28.06.2017 is as under:

Sl. No.	Chapter, Section Heading, Group or Service Code Tariff	Description of Services	Rate (percent.)	Condition
(1)	(2)	(3)	(4)	(5)
54	Heading 9986	Services relating to 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 or agricultural produce by way of- (a) Agricultural operation directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) Supply of farm labour; (c) Processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristic of	Nil	Nil



		<p>agricultural produce but make it only marketable for the primary market;</p> <p>(d) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) Loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) Agricultural extension services;</p> <p>(g) Service by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</p>		
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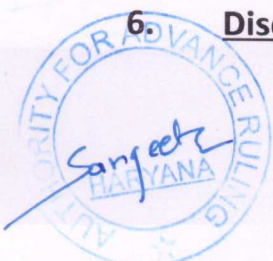
4. Based on its submissions and interpretation of law, the applicant is of the view that:

- a. Broker is an intermediary and not an agent.
- b. Broker is dealing on principal to principal basis and does not supply goods on behalf of principal.
- c. Broker services had no relation with cultivation of plant and it merely helps in facilitation of purchase and sales.
- d. The services provided by the applicant is not covered in exemption notification and liable to charge the tax.

5. **Question on which Advance Ruling is sought:**

5.1 Whether the services of supplier are exempt in purview of exemption notification no 12/2017 (CT Rate) dated 28.06.2017.

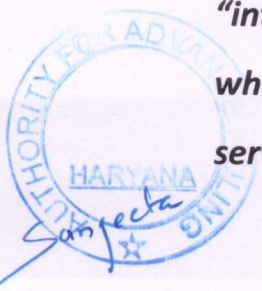
6. **Discussion:**



- 6.1 The applicant firm Mcdonald Pelz Global Commodities India Private Limited is engaged in provisions of brokerage/ intermediary services in relation to sale and purchase of commodities mainly agriculture produce. The applicant sources the supplier and the buyer and charges brokerage charges from both the parties. The main commodities in relation to which the applicant provides its services are agricultural produce, particularly wheat, maize and pulses. The applicant facilitates the execution of trade but never deals with the goods itself. The applicant has sought a ruling whether the services of the applicant are exempt in light of the exemption Notification No. 12/2017(CT rate) dated 28.06.2017. More precisely, the applicants query is whether the services of the applicant fall under the description of the services covered under point (g) of heading 9986 mentioned at Serial No. 54 i.e. ***services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.***
- 6.2 The applicant has himself given a detailed interpretation of various provisions of law. While deciding the issue, it is important to refer to some of the provisions of Central/ Integrated Goods and Services Tax Act, 2017.
- 6.3 As per Section 2(5) of the CGST Act, 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.***

Section 2(120) of the CGST Act reads: ***words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts.***

As per Section 2(13) of the IGST Act, intermediary means a broker, an agent ***“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not***



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include a person who supplies such goods or services or both or securities on his own account.

Section 2(24) of the IGST Act reads: *words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts.*

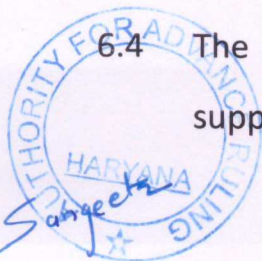
As per the definition contained in Notification No. 12/2017 CT (Rate) dated 28.06.2017, *"agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which 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.*

The Circular No. 57/31/2018-GST dated 04th September, 2018 elaborately deals with the scope of Principal-Agent relationship discussed. Although this circular defines the Principal-Agent relationship in the context of Schedule I appended to CGST Act but, it throws light on the Principal-Agent relationship in general. It deals with certain scenarios describing as to when a person can be taken to be acting as an agent on behalf of his principal and when not.

Scenario 1 is reproduced as under:

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.

6.4 The applicant has submitted that it is neither acting as an agent for the supplier nor for the buyer (recipient). The tax invoices are issued by the



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supplier in the name of the recipient. The applicant merely acts as a facilitator between the buyer and the recipient and charges its brokerage/ commission. It has nothing to do with the goods supplied or received. The nature of services provided by the applicant is identical to scenario 1 discussed above and as such the applicant is not a commission agent in view of the conjoint reading of Section 2(5) of the CGST Act, 2017 and the CBIC Circular No. 57/31/2018-GST dated 04th September, 2018. It is an intermediary as defined in Section 2(13) of the IGST Act, 2017. It is worth mentioning here that the term intermediary has not been defined under the CGST Act, but in view of the provisions of Section 2(120) of the CGST Act, 2017, it has the same meaning as defined in the IGST Act, 2017.

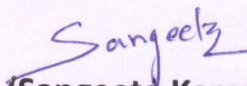
- 6.5 Since, the applicant is not a commission agent, the services rendered by it are not covered under point (g) of the description of services mentioned at Serial No. 54 of exemption Notification 12/2017 CT (Rate) dated 28.06.2017.

7. Ruling:

- 7.1 The services of the applicant (supplier) are not exempt under the purview of exemption Notification No. 12/2017 CT (Rate) dated 28.06.2017.

Ordered accordingly.
To be communicated.

16.08.2019
Panchkula.


(Sangeeta Karmakar)
Member CGST




(Madhubala)
Member SGST

Regd. AD/Speed Post

**M/s Mcdonald Pelz Global Commodities India Pvt. Ltd.,
C-501, M3M Urban, Golf Course Extension Road,
Sector-67, Gurgaon, Haryana.**

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
- o/c 2. Deputy Excise and Taxation Commissioner (ST), Gurugram (East).