

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 23/2019

Date : 12-09-2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s MORIGERI TRADERS Commission Agents, Survey no.199, Plot No.1, A.P.M.C.Yard, Byadgi-581106.
2.	GSTIN or User ID	29CDPPM6408N1ZP
3.	Date of filing of Form GST ARA-01	18.08.2018
4.	Represented by	Sri V.S.Morigeri, Authorised Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bangalore North West Commissionerate, Bengaluru.
6.	Jurisdictional Authority - State	LGSTO-360, Ranebennur, Dharwad Division
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each under CGST Act under KGST Act vide CIN SBIN18082900135202 dated 17.08.2018.

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS & SERVICES TAX ACT, 2017

M/s Morigeri Traders, (called as the 'Applicant' hereinafter), Commission Agents, Survey No.199, Plot No.1, A.P.M.C. Yard, Byadgi, Haveri District, Karnataka, having GSTIN number 29CDPPM6408N1ZP, have filed an application for Advance Ruling under Section 97 of CGST Act 2017 & KGST Act 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a proprietary concern, registered under the Goods and Services Act, 2017. They are into the business of rendering service of supplying dry chillies on behalf of farmers to the traders in the Byadgi A.P.M.C. Market, Karnataka, as commission agents. They are registered under the APMC Act & also under the GST Acts. They sell goods on behalf of agriculturist principals (farmers) to the traders, issue invoices to the traders/buyers as prescribed under the APMC Act and also issue sale patties to the agriculturist principals. They collect commission on the services provided to the agriculturist principals from the purchasers and the same is also shown in the invoice issued to the purchasers.

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- a) *Whether the applicant is required to be registered under the GST Act?*
- b) *If the answer to the above question is affirmative, then under which section the Commission Agents are to be registered?*
- c) *Whether the notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 as amended and Notification No.9/2017 -Integrated Tax (Rate) dated 28.06.2017 – Serial No. 54(g) issued under section 11 of the CGST Act is applicable to Commission Agents of APMC?*
- d) *If the answer to the above question is negative, then to whom does this Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 as amended and Notification No.9/2017 -Integrated Tax (Rate) dated 28.06.2017 – Serial No. 54(g) issued under section 11 of the CGST Act is applicable and under what circumstances the aforesaid notification is applicable?*
- e) *Whether the Dry Chilly is covered under the definition of agriculture produce?*
- f) *If the answer to the above question is negative, then what kind of produce the dry chilly is? What is the HSN Code of Dry Chilli and what is the rate of GST on Dry Chilli?*

4. The Applicant submits their understanding of the law, with regard to the questions raised, inter alia stating as under:

4.1 The applicant states that they are rendering the service of supplying dry chillies on behalf of farmers to the traders in the Byadgi A.P.M.C. Market of Karnataka as a commission agent.

4.2 The applicant further states that at this juncture it would be important to take note of the non-applicability of GST to the commission agents under section 23 of the CGST Act which specifies as under –

(1) The following persons shall not be liable to registration, namely:-

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) The Government may, on the recommendation of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

The applicant, in relation to the aforesaid issue, submits that the “services by any Agricultural Produce Marketing Committee or Board or services provided by the commission agents for sale or purchase of agricultural produce” are exempted under Section 11 and notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 as amended / Notification No.9/2017 – Integrated Tax (Rate) dated 28.06.2017.

4.3 The Applicant submits that accordingly from the conjoint reading of the aforesaid sections 11 and section 23 of CGST Act and the aforesaid submissions, the activity of rendering service of supplying dry chillies on behalf of the farmers to the traders in the APMC Yard would not be considered as a taxable service under Section 11 of the CGST Act and since it is a non-taxable service, commission agents are not liable for GST Registration under Section 23 of the CGST Act.

4.4 The applicant is of the opinion that they are purely rendering the service of supplying dry chillies (i.e. agricultural produce) on behalf of the farmers to the traders and they are not at all buying and selling any of the goods and hence the applicant cannot be treated as supplying goods rather they can be treated as rendering only the service of supplying agricultural produce on behalf of the farmers to the traders and their nature of activity is



not within the scope of supply as mentioned under section 7(1)(c) – Schedule I of No.3(b) due to the following reasons:

- (a) The applicant does not fix the price or consideration for the dry chilli instead the price or consideration is fixed by the traders through the process of tenders and if the farmer is satisfied with the price for his agricultural produce then only the farmer will sell off his agricultural produce and in this price fixation, the commission agent will not have any role to play and for the activity of rendering the above mentioned service, the commission agent will charge only 2% of commission from the trader.
- (b) The commission agent does not maintain the inventory or stock of dry chillies since the trader will take the delivery of dry chillies on the same day from the commission agent.
- (c) The applicant cannot be considered as the owner of the dry chillies obtained from the farmers since the dry chillies are delivered on the same day to the traders and hence the ownership, risk and rewards of the dry chillies (agricultural produce) will get transferred to the traders on the same day.

4.5 The Applicant submits that by taking into account the above mentioned points, it can be said that the applicant is not at all buying and selling any of the goods, instead the applicant is purely rendering the service of supplying dry chillies on behalf of farmers to the traders and hence this activity will not be covered within the scope of supply as mentioned under section 7(1)(c) Schedule I of No.3(b) of CGST Act and hence the applicant is not liable to get registered under the GST Act.

4.6 The applicant further states that it is also observed that the commission agents of Guntur APMC of Andhra Pradesh, rendering service of supplying dry chillies, have not obtained GST registration from the date of commencement of the GST Act.

4.7 The applicant states that from the above, it is clear that the applicant is rendering service of supplying the dry chillies as a commission agent on behalf of farmers to the traders. Further, Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 as amended/Notification No.9/2017 Integrated Tax (Rate) dated 28.06.2017 at serial no. 54(g), issued under section 11 of the CGST Act, specifies that *“Services by any Agricultural Produce Marketing Committee or Board or service provided by a Commission*

agent for sale or purchase of agricultural produce” and hence is applicable to the applicant.

4.8 The Applicant submits that accordingly from the conjoint reading of the aforesaid sections 11 and Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 as amended/Notification No.9/2017 Integrated Tax (Rate) dated 28.06.2017 in serial no. 54(g) issued under section 11 of the CGST Act and the aforesaid submissions, the activity of rendering service of supplying dry chillies on behalf of the farmers to the traders in the APMC Yard would not be considered as a taxable service under section 11 of the CGST Act and the Commission agents are not liable for GST registration under section 23 of the CGST Act.

4.9 The Applicant made reference to the definition of Agricultural Produce which specifies that :-

“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, fiber, fuel, raw material or other animal products, on which either no further processing is done or such a processing is done as usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market”.

The applicant submits that accordingly from the interpretation of the definition of agricultural produce it may be understood that the dry chillies can also be treated as an agricultural produce since the dry chillies are a produce out of cultivation of plants and a further processes such as drying and sun drying is done as is usually done by the cultivator or producer which does not alter its essential characteristics like usage, odour but makes marketable for primary market (i.e. Agricultural Produce Marketing Committee) and Dry Chillies are notified as agricultural produce by the APMC itself.

4.10 The applicant states by referring to the provision of section 11 of the CGST Act that Central Government has exempted the list of items as notified under section 11(1) of the CGST Act, 2017 and section 6(1) of the IGST Act, 2017. These items have been exempted from the whole of tax. Since GST is a tax for common man, everyday items used by the common man have been included in the list of exempted goods.

4.11 The applicant also refers to the definition of exempt supply under section 2(47) of the CGST Act, 2017 which defines exempt supply as “supply



of any goods or services or both which attracts nil rate of tax or which may be wholly exempted from tax under section 11 or under section 6 of the IGST Act and includes non-taxable supply."

The applicant is of the opinion that they are not only rendering the service which is exempted under section 11 and the Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 as amended/Notification No.9/2017 Integrated Tax (Rate) dated 28.06.2017 at serial no. 54(g) issued under section 11 of the CGST Act but also rendering the service of supplying dry chillies which is an agricultural produce (as notified by the APMC) and dealing in agricultural produce is wholly exempt from tax.

4.12 In view of all the above discussion, the applicant is of the opinion that commission agent of APMC who is rendering the service of supplying agricultural produce that too on behalf of the farmer is not required to obtain registration under section 23 of the CGST Act, 2017. State GST Laws also contain identical provisions granting power to exempt SGST.

PERSONAL HEARING / PROCEEDINGS HELD ON 17.11.2018.

5. Sri V.S. Morigeri, husband of the proprietrix applicant and duly authorised representative of the applicant appeared for personal hearing proceedings held on 17.11.2018 & reiterated the facts narrated in their application.

6. FINDINGS & DISCUSSION:

6.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri V.S. Morigeri, husband of the proprietrix and duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

6.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 provisions under the KGST Act.

6.3 The Applicant seeks advance ruling in respect of the questions mentioned at para 3 supra. The questions are in relation to the

requirement of registration under GST Act by the Applicant being the commission agent and the taxability of their activity under GST Acts. We proceed to examine the activities of the applicant and answer the questions in sequential order. It is an admitted fact that the Applicant is a commission agent involved in the business of receipt of dry chillies from the farmers (principals) and supply of the same to the buyers/traders, on behalf of farmers in the Byadgi A.P.M.C. Market, Karnataka. They are registered under the APMC Act & also under the GST Acts. They sell goods (dry chillies) on behalf of principals to the traders, issue invoices to the traders/buyers as prescribed under the APMC Act and also issue sale patties to the principals. They collect commission, on the services provided to the principals, from the purchasers / buyers and the same is also shown in the invoice issued to the purchasers.

6.4 Section 22 of the CGST Act 2017 stipulates the persons liable for registration, in accordance to which every person that makes taxable supply of goods or services or both shall be liable to be registered under the said Act, if his aggregate turnover in a financial year exceeds the threshold limit, prescribed under the Act. Further Section 24 of the said Act relates to compulsory registration in certain cases. In terms of said Section 24(vii) of the Act notwithstanding anything contained in section 22(1), the “persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise” shall required to be registered under the Act. Furthermore Provisions of **Schedule (I) to CGST Act 2017** prescribes certain “**Activities to be treated as Supply even if made Without Consideration**”, wherein para 3 deals with the supply of goods between principal and agent as under:

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.

6.5 In view of the above the issues before us to decide are whether the applicant qualifies to be an agent in terms of para 3 of Schedule I to CGST Act and also whether the applicant is involved in taxable supply or not.

6.6 Section 2(5) of the CGST Act stipulates the meaning of “agent” which is as under:



“(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;”

The crucial point to decide whether a person qualifies to be an ‘agent’ under para 3 of Schedule I to the CGST Act 2017 is **whether or not the said agent has the authority to pass or receive the title of the goods on behalf of the principal.**

6.7 In the instant case the applicant sells the goods i.e. dry chillies on behalf of the principal, issues invoice to the buyer/trader in his own name, receives commission as per APMC Act of the State of Karnataka. Therefore the applicant has the authority to pass the title of the goods on behalf of the principal to the buyer, as the invoice is raised in their own name and hence qualifies to be an ‘agent’ in terms of para 3 of Schedule I to the CGST Act and also in terms of definition under Section 2(5) of CGST Act 2017.

6.8 The next issue to be decided is whether the applicant is involved in making taxable supply or not. At this juncture the activities of the applicant have been examined and found that the applicant is involved in the following two kinds of supplies.

1. Supply of goods i.e. dry chillies by the applicant to the trader / purchaser.
2. Supply of services to the farmer (principal) as a commission agent for sale of goods i.e. dry chillies.

The supply of goods by the applicant, being commission agent on behalf of the farmer (principal), to the trader / purchaser is a taxable supply in terms the definition as at Section 2(108) of the CGST Act 2017. The goods i.e. dry chillies, are classified under Tariff heading 0904 and are taxable at 5% in terms of Sl.No.38 of Schedule I to Notification 01/2017-Central Tax (Rate) dated 28.06.2017. The applicant has the authority to pass the title of the goods on behalf of the principal to the buyer and also raises the invoice in their own name.

Section 23 of the CGST Act 2017 deals with the persons not liable for registration under this Act and Section 23(1)(b) stipulates that “an

agriculturist is not liable for registration, to the extent of supply of produce out of cultivation of land". In the instant case the principal i.e. farmer is an agriculturist & hence not liable for registration and therefore is not a taxable person.

Further, Section 24(vii) of the CGST Act stipulates that notwithstanding anything contained in Section 22(1) of the CGST Act "persons who makes taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise" shall be required to register under this Act. In other words if both agent as well as principal are taxable persons, then only section 24 is applicable. In the instant case the principal i.e. farmer is not a taxable person and hence the applicant is not involved in supply of goods of another taxable person (farmer). Therefore the applicant does not fall under the category of persons to be compulsorily registered under Section 24(vii) of the CGST Act 2017. However the applicant is liable to get registered under Section 22(i) of the CGST Act 2017.

6.9 With regard to the supply of the services provided by the applicant to the principal, we draw attention to clause (g) to entry No. 54 of the Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 which exempts "the services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce". In this instant case the applicant admittedly is a commission agent and is involved in sale of dry chillies.

6.10 In view of above we proceed to examine whether dry chilli qualifies to be 'agricultural produce' or not. In this regard we draw attention to clause (d) of para 2 of the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 wherein the term "agricultural produce" is defined and the same reads as under:

"(d) "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 the cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market."

In the instant case the dry chillies are produced out of plants and used for food or as raw materials and is a product obtained by drying



the chillies to make it marketable for the primary market and this process does not alter its essential characteristics. Hence dry chillies are covered under the term "agricultural produce". Even the APMC Act considers them as agricultural produce.

6.11 In view of the above, the Applicant is involved in provision of exempted supply of services to the farmers for sale of dry chillies, an agricultural produce, in terms of entry no. 54(g) of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Further a Circular bearing No.57/31/2018-GST dated 04.09.2018 has been issued by the Central Board of Indirect Taxes and Customs with regard to the scope of principal-agent relationship in the context of Schedule I of the CGST Act 2017. Scenario 4 in para 8 of the circular is relevant to the instant issue and reads as under:

"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) does not fall under the category of agent covered under Schedule I."

6.12 Further para 9 of the aforesaid circular concludes the issue relevant to the instant case and the same is as under:

"In respect of scenario 4, notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 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 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 exempted under GST.

6.13 It is evident from the above discussion that the applicant is not liable to be registered in so far as the services provided to the farmer are concerned. However as discussed earlier in Para 6.9, the applicant is also actively involved in the sale of dry chillies to traders on behalf of the farmers. The applicant raises an invoice on the traders in their own name. This activity constitutes supply of goods i.e. dry chillies, classified under Tariff Heading 0904, that are taxable to 5% of GST in terms of Sl.No.38 of Schedule I to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017.

6.14 In view of the above, we conclude that the applicant in the instant case qualifies to be an agent under Schedule I to the CGST Act 2017 and is liable to be registered in terms of sub-section (1) of section 22 of the CGST Act with regard to supply of goods to the buyer on behalf of the principal. Further the services provided by the applicant to the principal, for sale of dry chillies, which is an agricultural produce, to the buyer, on behalf of principal are exempted under Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017.

7. In view of the foregoing, we pass the following


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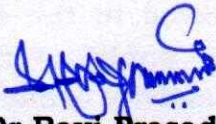
1. The applicant, being a commission agent, is required to be registered under Section 22(1) of CGST Act 2017, as they qualify to be an agent in terms of para 3 of Schedule I to the CGST Act 2017. This answers question numbers 1 and 2.
2. The services provided by the applicant to the principal are covered under “services provided by a commission agent for sale or purchase of agricultural produce”, which are exempted under entry no. 54(g) of the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 and hence the said Notification is applicable to the Applicant, being the commission agent of APMC, Karnataka. However the supply of dry chillies to the traders under the invoice of the applicant is liable to tax as



discussed in Para 6.8 supra. This answers question number 3 and 4.

3. Dry Chillies is covered under the definition of agricultural produce, in terms of definition at para 2(d) of the Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017. This answers questions 5 and 6.


(Harish Dharnia)
Member


(Dr. Ravi Prasad.M.P.)
Member

Place : Bengaluru,

Date : 12-09-2019

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone,
Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore North West Commissionerate,
Bengaluru.

The Asst. Commissioner, LGSTO-360, Ranebennur, Dharwad Division

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