

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 73 /2021

Dated: 06-12-2021

Present:

1. Dr. M.P.Ravi Prasad
Additional Commissioner of Commercial Taxes . . . Member (State Tax)
2. Sri. T. Kiran Reddy,
Joint Commissioner of Customs & Indirect Taxes. . . Member (Central Tax)

1.	Name and address of the Applicant	M/s. Hindustan Agencies, 306/1, OFFICE NO.205, Centenary Building, 2nd Floor, Albert Victor Road, Chamarajapet, Bangalore-18.
2.	GSTIN or User ID	29AAKPV6622R1ZL
3.	Date of filing of Form GST ARA-01	18-08-2021
4.	Represented by	Sri Om Prakash Vaishnav, Proprietor
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Taxes, Bangalore West GST Commissionerate, West Division-1,RANGE-CWD 1
6.	Jurisdictional Authority - State	ACCT, LGSTO-100, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act vide CIN SBIN21082900222262, dtd: 18.08.2021 & Rs.5,000-00 under SGST Act vide CIN HDFC20012900008573 Dtd: 02.01.2020

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

M/s Hindustan Agencies, 306/1, Centenary Building, 2nd Floor, Albert Victor Road, Chamarajapet, Bangalore-580018 having GSTIN 29AAKPV6622R1ZL, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of the KGST Act,



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2017 read with Rule 104 of the 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 provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The Applicant is a Rice canvassing commission agent for rice millers and traders and are selling Agricultural Produce (Rice) as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State.

3. The applicant has sought advance ruling in respect of the following questions:

1. *Whether the applicant is entitled to collect GST on Supply of services which pertains to selling of agricultural produce as per APMC Act?*

2. *Is there any special case where the applicant has to collect GST on the Service provided (Branded and unbranded)?*

4. **Admissibility of the application:** The question is about “determination of the liability to pay tax on any goods or services or both” and hence is admissible under Section 97(2)(e) of the CGST Act 2017.

5. **Brief Facts of the case:** The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that he is rice canvassing commission agent for Rice millers and traders. They are selling agricultural produce (rice) as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State.

5.2 The applicant contends that they are not raising any sale invoices other than commission bill for their services rendered. Paddy and Rice are the Food Crops as per the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. Paddy is a produce out of cultivation of paddy plants and it is meant for food. Rice is fashioned by nature in the form of paddy and it is embedded within paddy by outer covering of husk and the processing usually done by a cultivator or producer of paddy to separate rice from the outer covering of husk and this process is de husking or hulling of paddy into rice. Thus, de husking or hulling of paddy would be within the phraseology “such processing is done as is usually done by a cultivator or producer”. The next phraseology in the definition in clause (d) “which does not alter its essential characteristics but makes it marketable for primary market” would require to be construed by a combined reading i.e., “does not alter its essential characteristic” combined with the words “makes it marketable for primary market”.

5.3 The applicant further submits that de husking or hulling of paddy into rice, make the paddy marketable and it is from the point of view of the fact that paddy as such is not a marketable commodity and it is rice obtained out of paddy that is the marketable commodity. Therefore, the processing of de husking or hulling of paddy into rice does not alter the essential characteristic of paddy, it is submitted



that the essential characteristic of paddy is that it is an agricultural produce meant for 'food' and this characteristic is not altered but retained even after the paddy is processed by de husking / hulling into rice.

5.4 The applicant contends that the language employed in the definition of 'agricultural produce' in clause (d) is that "which does not alter its essential characteristics but makes it marketable for primary market", meaning that if the processing carried out is to make paddy marketable, it would not amount to altering its essential characteristic. The expression 'marketable' is qualified by the words 'for primary market'. In respect of agricultural produce, the APMC Yards are the primary markets and de husking of paddy into rice satisfies the requirement that it is to make it marketable for the primary market of APMC Yards.

5.5 The applicant further places emphasis on the wordings in the definition in paragraph 2 (d) of the notification – "does not alter its essential characteristics" and submit that the wordings are not "does not alter its essential identity" so as to postulate a contention that the process of de husking alters the identity of paddy into that of rice, a different commodity.

5.6 The applicant also relies on the ratio of judgment of the Hon'ble Supreme Court of India by larger bench of Hon'ble three Judges in the case of Deputy Commissioner of Sales Tax (Law) Board Revenue (Taxes), Ernakulam vs Pio Food Packers (1980) 46 STC 63 in which the decision of the Hon'ble Supreme Court is that pineapple fruit even after it is processed into slices, added with sugar as a preservative and canned, the essential characteristic of pineapple as a fruit is not altered:

"In the present case, there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. On a total impression, it seems to us, the pineapple slices must be held to possess the same identity as the original pineapple fruit."

5.7 Thus, the applicant submits that its commission agency service for supply of rice to rice millers and traders would fall within clause (g) of Sl No. 54 – Heading 9986 read with the definition in paragraph 2 (d) of Notification No. 12 / 2017 – Central Tax (Rate) dated 28-6-2017 as Services by any Agricultural Produce Marketing Committee or Board or Services provided by a commission agent for sale or purchase of agricultural produce" there is no GST on the service provided by them i.e., "canvassing of rice" is exempt from GST.

6. This office has received the comments from the office of the Joint Commissioner of Central Tax (Legal) vide letter C.No IV/16/32/2017 Legal West 5379/3 dated 27-09-2021 which reads as under:



1. M/s Hindustan Agencies (Legal name: Shri. Om Prakash Vaishnaw), Flat No.306/1, Centenary Building, 2nd Floor, Albert Victor Road, Chamarajapet, Bangalore-560018, having GSTIN 29AAKPV6622R1ZL, have filed an application for Advance Ruling under Section 97 of CGST/KGST Act, 2017, in form GST ARA-01. They are functioning as Rice canvassing commission agent for Rice millers and traders and are selling Agricultural Produce (Rice) as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State.

2. The applicant was registered under the Goods and Services Act, 2017, as commission agent involved in supply of services under Service Code-SAC 998619 (i.e., other support services to agriculture, hunting, forestry and fishing). The applicant has sought advance ruling on the following issues;

a. Whether their activity of Rice canvassing as commission agent for Rice millers and traders and selling of Agricultural Produce (Rice) as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State is exempted Clause Sl.No.54 under heading "Services by any Agricultural Produce Marketing Committee or Board or Services provided by a commission agent for sale or purchase of Agricultural Produce".

b. Are they required to collect GST under any of the provisions for Branded and un-branded goods?

c. Whether the said exemption is applicable for the activity of Commission Agent for Branded Rice canvassing done by them, which is Taxable under GST Act.

3. As stated by the applicant they are acting as "Commission Agent" i.e, services provided for commission towards sale or purchase of agricultural produce. The said activity falls under Service Code (SAC)/Heading 998619 of Section 8 and chapter 99 of GST Tariff and the same reads as "Supporting services to agriculture, hunting, forestry and fishing – other support services to agriculture, hunting, forestry and fishing".

4. The effective rates for the services are notified under Notification No.11/2017-C.T.(Rate) and 12/2017-C.T. (Rate), both dated 28.06.2017 and the said notifications list the activity of "Commission Agent" under clause (g) of Sl.No.24 and Sl.No.54 of the said notifications and description of the mentioned as "Services by any Agricultural Produce Marketing committee or Board or Services Provided by a commission agent for sale or purchase of agricultural produce".

5. The terms "agricultural produce" has been defined under notifications No.11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), both dated 28.06.2017 and the relevant portion is reproduced as under;



Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
54	Heading 9986	<p>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—</p> <p>(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(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 characteristics of 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) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</p>	Nil	Nil



“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.

In the light of the aforesaid definition, any products in order to be called an agricultural produce must satisfy the following criteria;

(i) Any produce out of cultivation of plants and rearing of all life forms of animals.

(ii) No further processing is done and if any processing is done, it is usually done by the producer or the cultivator.

(iii) The said processing does not alter the essential character of such produce/product.

(iv) Such initial processing render the product marketable.

6 In the instant case of product viz., Rice is the final product obtained by milling the paddy by the rice milers. When we apply the above criteria to qualify ‘Rice’ as agricultural produce, the criteria(i) stated above has been fulfilled as rice is a product obtained from paddy cultivation. When we examine with reference to the second criteria in the case of rice, it is seen that in addition to further processing by the cultivator, ‘milling’ is done by the millers, which is normally neither done by the producer nor the cultivator. The essential character of paddy has also been changed to ‘Rice’, which is readily consumable, but paddy is raw and requires certain milling process including husking, steaming, de-browning, polishing, sorting etc., these processes are paddy harvesting, cutting, handling thrashing and cleaning. Thus all the above three criteria to be satisfied to be called “Agricultural produce” were not fulfilled and therefore goods/Rice being dealt by the applicant cannot be termed as “Agricultural Produce”.

7. Thus the activity of the applicant in the instant case viz., the activity of canvassing for Rice as ‘Commission Agent’ is not covered under clause(g) of Sl.No.24 of the notification No.11/2017-Central Tax dated 28.06.2017 and the services of ‘Commission Agent’ for rice millers and traders is falling under SAC 9961. Hence the activities of Commission Agent by canvassing for Rice of the applicant attract Central Tax-CGST @ 9% and KGST @ 9%(IGST-18%). As the said activity attract Central Tax, the applicant is required to collect Central Tax from their clients (i.e., Rice millers or agents) for the activity of ‘Commission Agent’ performed towards marketing of ‘Rice’ including ‘branded Rice’.

8. Considering the above notifications/legal position, it is amply clear that if the taxpayer is providing the service of Commission Agent for Rice milers and traders, supplying both branded and unbranded rice on a commission basis, the activity is taxable in terms of the provisions of Central



Tax discussed supra and the service provider is required to register in terms of section 22 of CGST Act, 2017 and is also required to discharge Central Tax-CGST @ 9% and KGST @ 9% of the transaction value.

PERSONAL HEARING / PROCEEDINGS HELD ON 08-09-2021

7. Shri Om Prakash Vaishnaw, Proprietor of the concern appeared for personal hearing proceedings held on **08-09-2021** and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We also considered the issue involved on which advance ruling is sought by the applicant and relevant facts.

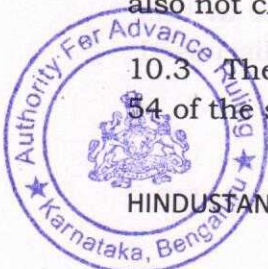
10. The transaction relating to the first question sought by the applicant is verified. It is an admitted fact that the activity carried out by the applicant is Rice canvassing commission agent for Rice millers and traders and selling of Agricultural Produce (Rice) as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State.

10.1 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;

10.2 In the instant case, the applicant is engaged in providing the services of 'Commission Agent' for rice millers and traders, where in applicant is of the opinion that the said transaction falls under entry at Sl No. 54 of the Notification No12/2017-C.T. (Rate), dated 28.06.2017, and exempted from levy of GST. Clauses (a) to (f) of Sl No. 54 cover the services relating to agricultural operations, supply of farm labour, processing of agricultural produce, leasing of agro machinery and land, services relating to agricultural produce and agricultural extension services. Commission agent services do not fall in any of the said clauses, and the same is also not claimed by the applicant.

10.3 The applicant claims that the services are covered under clause (g) of Sl No. 54 of the said Notification, which reads as:



“(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.”

10.4 The crux of the issue to decide is whether ‘rice’ can be treated as agricultural produce in terms of the subject Notification, and the commission agent services provided by the applicant to rice millers and traders for sale or purchase of rice falls within the ambit of the above clause. In this regard, the applicant contends that both paddy and rice are food crops and are agricultural produce as per APMC Act of the State. However it is seen that term ‘agricultural produce’ is specifically defined for the purpose the Notification 12/2017-CT(Rate) dated 28.06.2017, hence there is no scope to rely on the definition of the same under any other Act. At para 2(d) of the above Notification, ‘agricultural produce’ is defined as:

‘(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 a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;’

10.5 From the above, for any product to be called as agricultural produce, it must satisfy the following criteria:

- (i) Any produce out of cultivation of plants and rearing of all life forms of animals.
- (ii) No further processing is done and if any processing is done, it is usually done by the producer or the cultivator.
- (iii) The said processing does not alter the essential character of such produce/product.
- (iv) Such initial processing to render the product marketable.

In the instant case the product viz., rice is a product of milling process involving de-husking, steaming, de-browning, polishing, sorting etc. of paddy, which is a produce out of cultivation of plants. Thus, both rice and paddy are produce out of cultivation of plants. But rice and paddy are not the same as rice is the outcome of milling process of paddy. While rice is readily consumable, paddy when subjected to milling processes yield rice, husk and rice barn. Milling process is not normally done by the paddy producer or cultivator, but is undertaken by the millers. Milling process also changes the essential characteristics of the produce from paddy to rice, which are both distinctly identifiable and separately marketable commodities. Thus, the criteria (ii), (iii) and (iv) above are not satisfied in the instant case, in as much as the processing is not done by the cultivator or the producer and the essential character of the produce has also undergone change. Therefore, rice cannot be treated as agricultural produce in terms of para 2(d) of the said Notification, and the commission agent services for sale or purchase of rice does not fall in the ambit of Sl.No. 54 of the Notification 11/2017-CT(Rate) dtd 28.06.2017 and therefore not eligible for any exemption from levy of GST. The supporting judgments mentioned by applicant are not squarely applicable in this scenario as paddy and rice are distinctly identifiable commodities as discussed above.



10.6 Further to be covered under the entry, the services by a commission agent should be directly linked to the services relating to the cultivation and this is made amply clear by the use of the words "by way of" which links the cultivation process and the marketing process. The applicant is not assisting the cultivators of paddy, instead is assisting the manufacturers of rice/rice millers and traders, and hence the link is not established in this case. Hence the activity of the applicant is not covered under clause (g) of Entry No.54 of Notification No.12/2017- CT (rate) dated 28.06.2021 and hence is not exempted.

11. The activity of the applicant in the instant case viz., the activity of canvassing for Rice as 'Commission Agent' is covered under SAC 9961. Further, the applicant is only charging service charges and not issuing sale invoices on behalf of the principals. Hence the activities of Commission Agent by canvassing for Rice by the applicant attracts Central Tax-CGST @ 9% and KGST @ 9% towards marketing of 'Rice' including 'branded Rice' also.

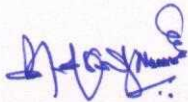
12. Considering the above notifications/legal position, it is pertinent to note that the applicant is providing the marketing service for Rice millers and traders supplying both branded and unbranded rice on a commission basis, the activities rendered by the applicant is taxable in terms of the provisions of CGST/KGST Act as discussed supra. Hence the applicant is required to register in terms of section 22 of CGST Act, 2017 and is also required to discharge -CGST @ 9% and KGST @ 9% for which commission is received.

13. In view of the foregoing, we rule as follows

RULING

1. *The applicant is liable to collect CGST @ 9% and KGST @ 9% on supply of services relating to sale or purchase of rice.*

2. *The applicant by canvassing for Branded and unbranded rice of millers and other traders is liable to pay CGST @ 9% and KGST @ 9% on the consideration received or receivable as commission from the rice miller or traders.*

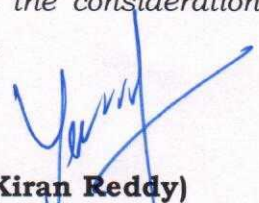


(Dr.M.P.Ravi Prasad)

Member
MEMBER

Karnataka Advance Ruling Authority
Place: Bengaluru, 560 009

Date: 06-12-2021



(T. Kiran Reddy)

Member
MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant



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Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Bangalore West GST Commissionerate. Bangalore
4. The Assistant Commissioner of Commercial Taxes, LGSTO-100, Bangalore.
5. Office Folder.



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