

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD2702200211700
GSTIN Number, if any/ User-id	27ABPPP6076P1ZK
Legal Name of Applicant	M/s. NITIN BAPUSAHEB PATIL
Registered Address/Address provided while obtaining user id	Plot No. 271, APMC Yard, Sangli, MAHARASHTRA, 416416.
Details of application	GST-ARA, Application No. 108 Dated 17.02.2020
Concerned officer	SAN-VAT-C001, Sangli, Kolhapur Division
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
	Rendering services as a commission agent on behalf of the farmers for the supply of turmeric (Agricultural produce) to the traders in the APMC, Sangli, Maharashtra.
Issue/s on which advance ruling required	<ul style="list-style-type: none">➤ Classification of any goods or services or both.➤ Determination of the liability to pay tax on any goods or services or both.➤ Whether applicant is required to be registered.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below

NO.GST-ARA- 108/2019-20/B- 115

Mumbai, dt. 22.12.2021

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Nitin Bapusaheb Patil, the applicant, seeking an advance ruling in respect of the following questions.

- Q.1** *Whether the Turmeric (Turmeric in Whole form - not in powder form) is covered under the definition of 'Agriculture Produce' and exempted from GST? If not, what is the HSN code of Turmeric and the rate of GST on the Turmeric?*
- Q.2** *Whether services rendered by Applicant as a Commission Agent in APMC, Sangli are liable to GST in terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017?*

Q.3 *Whether the applicants required to be registered under the CGST Act, 2017 for his activities specified under Annexure-I? If yes, under which section of the GST Act, he is required to be registered?*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by Shri. Nitin Bapusaheb Patil, Proprietor of M/s. N. B. Patil, the applicant is as under:-

2.1 *The Applicant, a registered person under GST Act, 2017, as a 'Commission Agent' in APMC, Sangli, Maharashtra, renders his services to the farmers in relation to the supply of 'Turmeric' (Whole Turmeric - Not in powder form) to traders in APMC, Sangli. Applicant is also registered as a 'Commission Agent' under the APMC Rules and Regulation. Based on the tender / auction, if farmer and buyer mutually agree to sale and purchase, the Applicant, as a commission agent, facilitates activities ancillary to supply of agriculture product 'Turmeric' in APMC, for which he gets a fixed commission @3% as per APMC regulations. Applicant does not do any sort of trading of turmeric.*

2.2 The Functions of Applicant are as under:

(i) Awak of Turmeric – Farmers bring polished turmeric to the Applicant who gives this awak detail to concerned APMC.

(ii) Souda (Auction) of turmeric – Applicant then calls for an auction, where any trader can participate. Auction is conducted under supervision of APMC officer and in the presence of Applicant, traders and farmers.

(iii) Confirmation of souda – After open auction, if the farmer accepts the rate then Applicant gives confirmation to the trader on behalf of the farmer. If rate is not accepted by the farmer, then the said lot of turmeric is placed for auction again. If the farmer is not satisfied with the rate offered in auction or the services rendered by the Applicant, he can take back his lot of turmeric from the Applicant and engage some other Commission Agent because ownership of Turmeric always lies with the Farmer until it is finally sold out to some trader / buyer.

(iv) Weighing of Turmeric – Once the auction rate is accepted by the farmer and turmeric is sold to the trader, ownership of turmeric is transferred to buying trader after which, Trader visits the godown of Applicant located inside the APMC market for weighment of the said lot of turmeric sold which is done in presence of Applicant, trader, Farmer and the APMC officer. On verification of weighment, the said lot of turmeric is picked up by trader. At time of delivery of turmeric to the Trader, bill is issued to the Trader by the Applicant (commission agent) on behalf of farmer as per APMC Rules and Regulations.

(v) Payment to farmer – After receipt of sale proceeds from the Trader, Applicant makes payment to the farmer as per APMC Rules & Regulations. Invoice is raised on behalf of the Farmer as a Seller and

is signed by the Farmer, Applicant and the Buyer. On receipt of invoice amount from the buyer, the Applicant deducts his commission and passes on the balance of sale proceeds to the Farmer.

(vi) Payment to commission agent – For these services rendered by the Applicant as a registered Commission Agent, he gets a commission @3% fixed under the APMC Rules and Regulations.

2.3 **Nature of Services rendered by Applicant:**

(i) Applicant is rendering service to farmers in relation to supply of Turmeric (i.e. agricultural produce) and can be treated as rendering service of supplying agriculture produce on behalf of the farmers to the traders,

(ii) The price or consideration for the Turmeric is fixed by the Traders through the process of auctions where the commission agent has no role to play and for the supply of above mentioned service, the commission agent charges only 3% as commission from the Trader.(As per APMC, Maharashtra Act)

(iii) The applicant does not maintain the inventory or stock of Turmeric since the trader will take the delivery of Turmeric on the same day from the commission agent.

(iv) Applicant does not issue invoice to traders in his own name and thus does not fall within the ambit of Schedule I of CGST act. (Refer circular No. 57/31/2018-GST dated 4th September 2018 issued vide F. No. CBEC/20/16/4/2018-GST)

2.4 **Process on Product - in respect of which services rendered by the Applicant**

Sowing and harvesting of turmeric crop is done by the farmer. Then, the crop of fresh turmeric is cleaned with normal water and thereafter boiled in a movable boiler by farmer at his farm land. Boiled turmeric is spread in the natural sun light for drying purpose and for making it marketable, the dried turmeric is polished through moveable polish machines by the farmer only. Such polished turmeric is packed in gunny bags and brought by the farmer to the APMC for sale.

B. APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS

2.5 **Whether 'Turmeric' is exempted from GST**

2.5.1 The definition of "agricultural produce" has not been provided in CGST Act; However, as per the definition of the term "agricultural produce" in Notification No. 11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), both dated 28-6-2017; **"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.**

2.5.2 **Processes that do not alter essential characteristics of product**

As per Sl. No. 54(c) of the said Notification No. 12/2017-Central Tax (Rates) dated 27th June, 2017; Services relating to cultivation of plants or agricultural produce by way of : (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."

- 2.6.1 The Hon'ble AAR, Gujarat, has held that Turmeric on which 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 would fall within the definition of agriculture produce.
- 2.6.2 In the case of M/s Vivek Trading and M/s Naresh Warehousing, Hon'ble Commissioner (Appeals) held that 'Turmeric' is an 'Agriculture Produce' and Commission Agent rendering services incidental to sale of 'turmeric' is an exempted service.
- 2.6.3 In the case of M/s. D.S. Bist & Sons, Nainital – 1979 (004) SCC – 0741, the Hon'ble Supreme Court observed that, in the case of certain kinds of agricultural produce which require some more processing to make it marketable, what one to judge is to find out whether in relation to that agricultural produce the process applied was minimal or was it so cumbersome or long-drawn that either, in common parlance or in the market, or even otherwise, anybody would not treat the produce as an agricultural produce.....'
- 2.6.4 In the case of Crane Betel Nut Powder Works v. Commissioner, 2007 (210) E.L.T. 171 (S.C.), it was observed that betel nuts could be consumed by human beings only after a process of cutting them into smaller pieces and sweetening them with oil and held that the said process would not amount to manufacture as betel nuts continued to be the same even after the aforesaid process resulting in no transformation of the commodity in question.
- 2.7 Hence, Applicant submits that the above mentioned processes applied on the said 'Turmeric', makes the agricultural produce marketable and do not alter characteristics of 'Turmeric' as a agricultural produce. Hence, it is submitted that 'Turmeric' may be held as an 'Agriculture Produce'

Whether Applicant' services are liable to GST in terms of Notification No.12/2017 CT(R) dated 28.06.2017

2.8 Applicant submits that he is a Commission Agent covered under Sec. 2(5) of CGST Act, 2017. Further, as per Sl.no. 54 of Notification No.12/2017 CT(R) dated 28.06.2017 and Sr. No. 24 Notification No. 11/2017-C.T. (Rate) dated 28.06.2017, "Support services to agriculture, forestry, fishing, animal husbandry" mean –

(i) 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)

(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;

(d) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(e) Loading, unloading, packing, storage or warehousing of agricultural produce;

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

(ii)

(iii)

2.9 The Hon'ble AAR Chennai, vide its ruling IN RE : ERODE MANJAL VANIGARKAL MATRUM KIDANGU URIMAIYALARGAL SANGAM [Advance Ruling Nos. 6/AAR/2018 dated 30.08.2018] held that services of Commission Agent, being incidental to buying and selling 'Turmeric', are 'Support service to agriculture', and thus are exempted and classifiable as 'support service to agriculture' under SAC Heading 9986.

2.10 **Whether the applicant is required to be registered:**

2.10.1 As per sec 23 of CGST Act, persons engaged exclusively in supplying goods/services/both not liable to tax or persons engaged exclusively in supplying goods/services/both which are wholly exempt from tax or Agriculturist to the extent of supply of produce out of cultivation of land are not required to obtain GST registration.

2.10.2 As per provisions of the GST Act, a commission agent, making supplies on behalf of an agriculturist, who is not a taxable person, is not liable for compulsory registration under clause (vii) of section 24 of the CGST/HGST Act, 2017. (In re M/s Bhaktawar Mal Kamra & Sons (GST AAR Haryana)).

2.11 Vide Additional Submission dated 09.11.2021, applicant has reiterated the earlier submissions and has also stated that he does not issue invoice in his own name. Invoice is issued by the Sangli APMC itself as per APMC Rules & Regulations, which mentions names of Commission Agent, Buyer and Farmer. Further, Applicant does not have right to pass or reject title of goods from Farmer to Buyer and applicant does not do any sale in his own name.

2.12 The CBIC has clarified, vide Para 9 of the CBIC Circular No. 57/31/2018-GST dated 4.9.2018, that services provided by a Commission Agent for sale or purchase of agricultural produce is exempted. Such Commission Agent (even when they qualify as agent under Schedule-I) are not liable to be registered according to Sec.23 (1)(a) of the CGST Act, 2017, if the supply of the agricultural produce, and / or other goods or services supplied by them are not liable to tax or wholly exempt under GST.

2.13 The CBIC has further clarified, by issuing corrigendum to above circular, vide F. No. CBEC/20/16/04/2018-GST dated 5.11.2018, that a Commission Agent under APMC Act makes supplies on behalf of an agriculturist. Further as per Sec. 23(1)(a) of CGST Act, 2017, an agriculturist is not liable for registration and so he is not a taxable person. Thus, a Commission Agent who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under Sec. 24 (vii) of the CGST Act.

03. **CONTENTION – AS PER THE CONCERNED OFFICER:**

OFFICER SUBMISSIONS dated 13.10.2021:-

3.1 Turmeric is classified under tariff heading 0910 and is taxable at the rate of 5%.

3.2 The supply of goods by the commission agent on the behalf of the farmer (principle to the trader/purchaser) is a taxable supply in terms of definition as per Section 2 (108) of MGST ACT 2017.

3.3 The applicant is liable to the register in terms of the subsection 1 of section 22 of MGST ACT 2017.

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 21.01.2020. Sh. Nitin B Patil and Shri. Sanjay Kalra, Advocate, appeared and requested for admission of the application. Jurisdictional Officer Shri. Vikas Pawar, ACST, Sangli and Shri. Amar Jagtap, STO also appeared.
- 4.2 The application was admitted and called for final e-hearing on 09.11.2021. The Authorized representative of the applicant, Shri. Sourabh Patil, Applicant and Shri. Sanjay Kalra, learned Advocate were present. The Jurisdictional officer Shri Vikas Pawar, ACST, Sangli and Shri. Amar Jagtap, STO, Sangli were also present.
- 4.3 The Case was heard.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have gone through the facts of the case, written and oral contentions made by the applicant and also the brief written submissions made by the jurisdictional officer.
- 5.2 The primary issue before us is whether the 'product 'Turmeric' can be considered to be an agricultural produce and whether the services provided by the applicant as a 'commission agent' in the sale of the said 'Turmeric' in the APMC, Sangli is liable to GST under the GST Laws and finally whether the applicant is required to get registered under the provisions of the GST Act, 2017.
- 5.3 The applicant has submitted that, first and foremost, harvesting of turmeric crop is done by farmer. Then the crop of fresh turmeric is cleaned up with normal water and thereafter boiled in a movable boiler by farmer at his farm land. The Boiled turmeric is then spread in the natural sun light for drying purpose by the farmer in the farm land. Finally, for making it marketable, the dried turmeric is polished through moveable polish machines by the farmer only. Thus, the applicant has submitted that all the said processes are carried out by the farmer who is also the cultivator of the said Turmeric.
- 5.4 We find that, the above mentioned processes, of drying and polishing of the Turmeric makes it sustainable and marketable. Such drying and polishing of Turmeric are specialized processes and other than simply mentioning that, the farmer is conducting the said process and **that too on movable machines**, the applicant has not produced any evidence to show that the farmer has carried out such processes on his own in his land. The processes carried out as mentioned by the applicant, adds to the marketability and value of Turmeric and make them suitable for sale directly to the consumer. Thus such processed Turmeric does not fall under the definition of an 'agricultural produce' as defined in Notification No. 11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), both dated 28-6-2017.
- 5.5 Chapter 9 covers Coffee, Tea, Mate and Spices, Further, it is observed that Turmeric is covered under Chapter Heading 0910 of the GST Tariff. Tariff Item 0910 covers Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices. **Under Chapter 0910 Ginger (other than fresh ginger), saffron, turmeric (curcuma) (other than fresh turmeric), thyme, bay leaves, curry and other spices are chargeable to GST @ 5%.** Thus it is clear that **Turmeric is considered as a Spice.** We find that Fresh Turmeric other than in processed form falling under HSN 0910 30 10 attracts NIL Rate of GST and Dried Turmeric (subject Goods) is covered under HSN Code 0910 30

20 taxable at the rate of 5% GST. Thus, it is seen that the subject produce is a Spice and is not covered under the definition of an "agricultural produce".

- 5.6 In view of the above, we find that the impugned services supplied by the applicant are not covered under clause (g) of Sr. No. 54 of Notification No. 12/2017-Central Tax (Rates) dated 27th June, 2017, which is as under:-

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

- 5.7 Hence the impugned services of the applicant, as a 'commission agent', will not be exempt under the provisions of Notification No. 11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), both dated 28-6-2017.

- 5.8 We refer to the decision of the Rajasthan Appellate Authority for Advance Ruling in the case of M/s Sardar Mal Cold Storage & Ice Factory (Order No. RAJ/AAAR/01/2018-19 dated 15.10.2018), wherein the Hon'ble Authority has held that processed Turmeric (dried and polished Turmeric) does not fall under the definition of an 'agricultural produce' as defined in Notification No. 11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), both dated 28-6-2017. The said decision is very aptly applicable to the present case.

- 5.9 We also rely on Circular No. 16/16/2017-GST dated 15.11.2017 wherein it is clarified that processed products such as, processed spices (in the subject case, Turmeric), etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT(Rate) and 12/2017-CT(Rate) and corresponding notifications issued under IGST and UGST Acts and **that any clarification issued in the past to the contrary in the context of Service Tax or VAT/ Sales Tax is no more relevant.**

- 5.10 Hence, we find that, the impugned services supplied by the applicant are not exempt in terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017. In other words the said Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017/SI. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 is not applicable in the applicant's case and therefore the applicant is required to pay GST on the commission amounts received by him.

- 5.11 Since the services supplied by the applicant are not exempt in the instant case, the corollary to it is that, the impugned services are taxable and accordingly, the applicant has to get registered under the provisions of the GST Laws.

06. In view of the above discussions, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question No.1 Whether the Turmeric (Turmeric in Whole form - not in powder form) is covered under the definition of 'Agriculture Produce' and exempted from GST? If not, what is the HSN code of Turmeric and the rate of GST on the Turmeric?

Answer:- Dried and Polished Turmeric as in the instant case, is not covered under the definition of 'Agriculture Produce' and is not exempted from GST. The HSN code of the impugned product is 0910 30 20 and the rate of GST is 5% (2.5% each of CGST and SGST)

Question No.2 Whether services rendered by Applicant as a Commission Agent in APMC, Sangli are liable to GST in terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017?

Answer:- The impugned services rendered by the applicant are taxable under GST and not exempt terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017

Question No.3 Whether the applicants required to be registered under the CGST Act, 2017 for his activities specified under Annexure-I? If yes, under which section of the GST Act, he is required to be registered?

Answer:- The applicant is required to be registered under the relevant provisions of the CGST Act, 2017 for his impugned activities.




RAJIV MAGOO
(MEMBER)


T.R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.