

AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-6

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

Members present are:

1. Ms. Manasa Gangotri Kata IRS., Joint Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai.

2. Thiru S. Vijayakumar, M.Sc., Joint Commissioner (CT)/Member(FAC),
Office of the Joint Commissioner (ST), Enforcement /
Inter-State Investigation Cell, Chennai-6

ORDER No. 6 /AAR/2018 DATED 30.08.2018

<i>GSTIN Number, if any / User id</i>		Not Registered
<i>Legal Name of Applicant</i>		M/s. Erode Manjal Vanigarkal Matrum Kidangu Urimaiyalargal Sangam
<i>Registered Address/Address provided while obtaining user id</i>		85, Manjal Valagam, Nasiyanoor Road, Erode-638 107.
<i>Details of Application</i>		GST ARA – 01 Application No. 8 dated 16.03.2018
<i>Concerned Officer</i>		State : The Assistant Commissioner (ST) Erode Rural Assessment Circle, C.T.Buildings, Brough Road, Erode-638 001. Centre : Salem Commissionerate, Erode Division
<i>Nature of activity(s) (proposed / present) in respect of which advance ruling sought</i>		
A	<i>Category</i>	Services to Agricultural Produce
B	<i>Description (in Brief)</i>	Services by the commission agent for sale or purchase of agricultural produce (turmeric) through the Regulated Market committee.
<i>Issue/s on which advance ruling required</i>		--
<i>Question(s) on which advance ruling is required</i>		Applicability of exemption notified in 11/2017Central Tax (Rate) dt.28.06.2017.

Note : Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Erode Manjal Vanigarkal Matrum Kidangu Urimaiyalargal Sangam, No.85, Manjal Valagam, Nasiyanoor Road, Erode-638 107 (hereinafter called the applicant) is not a registered concern under GST Act, 2017. The applicant has submitted the copy of application in Form GST ARA – 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017. The applicant has raised the following question for advance ruling:-

“Whether service by the commission agents to the agriculturists for their sale or purchase of their produce not involving the agents as either a recipient of goods or as a supplier of goods are liable to tax or not”.

2. The applicant have stated that they are registered Sangam with 357 members under the Tamilnadu Societies Registration Act 1975. Their activities as agents and Service are regulated and permitted by the Erode Marketing Committee (hereinafter referred as EMC) Erode. The members permitted by EMC as agents own their godowns where the agriculturists produce are kept, stored in safe custody. A tender is conducted at the premises/ yard of the EMC. The tender is concluded when the selling price is agreed by the agriculturists. Thereafter the buyer raise a bill on the basis of weighment receipt in favour of the agriculturists with full details. An agreement among and between agriculturists, agents and buyer is executed for payment. The buyer issues a cheque for the sale of the agricultural produce to the agents as per the agreement. On realization, the agent takes his commission for service rendered, balance being returned to agriculturist. They have stated that the

agent is neither a seller nor a buyer but is a supplier of service done to agriculturalist/producer and is exempt. The applicant stated that he is supplying service to agriculturist which is exempt under Heading 9986(i)(g) of Notification No 11/12 of 2017 Central Tax(Rate) dated 28.06.2017 Heading 9986(i)(g).

3. The applicant was heard in the matter. They stated that they are Commission agent exclusively in respect of their product i.e. Turmeric and charge the agriculturist by providing storage service in warehouses owned or rented by the applicant. The charges are a certain percentage of the sale price of goods. They do not identify the buyers. The actual charges are in line with Erode Marketing Committee norms. They undertook to provide write-up on the activities, criteria for charges, contract copies, invoices etc. Accordingly, they furnished EMC Weighment Slip, Commission bill, Agreement, EMC Commission Agent Receipt, Criterial for the commission, Copy of By-laws of the EMC, TN Govt. Gazette No. 194/part IV Sec 2 Dated July 5, 1989 with reference to Sec 2(7) and Section 8(1) (C) on the license granted by the Marketing Committee.

4. On scrutiny of the various submissions of the applicant, it is seen that the applicant is society registered under Tamilnadu Societies Registration Act 1975 whose members are governed by Erode marketing Committee which an Agricultural is marketing committee licensed under Tamilnadu Agricultural Produce Marketing (Regulation) Act 1987.

Section 2(7) of 'The Tamilnadu Agricultural Produce Marketing (Regulation) Act 1987, defines 'Commission agent' in respect of agricultural produce marketing as follows:

2. (7). "Commission Agent" means a person who by himself or through his servants, buys and sells agricultural produce for another person keeps it to his custody and controls it during the process its purchase and sale, and collects payment therefore from the buyer and pays it to the seller, and receives by way of remuneration a commission or percentage upon the amount involved in each transaction.

Section 7(8) specifies that no person shall

- (a) Set up , establish or use, or continue or allow to be continued any place for the purchase or sale , storage, weighment, measurement or processing of any notified agricultural produce,
- (b) Operate as a broker, weighman measure, trader, warehouseman or any other capacity in the relation to buying and selling of any notified agricultural produce.

Except under a license granted to him by market committee.

Chapter –IV of the By-law of Erode Marketing Committee deals with Markets & Procedure of Business therein. Sub-clause 24(14), states that

Commission chargeable in respect of any Agricultural Produce shall not exceed the amount set forth in column (3), which includes remuneration for services rendered, charges for the facilities offered like Godown accommodation, cash credit without interest, use of gunnies loaned, handling and weighment and all other charges incidental to buying and selling.

As per By-Law 24(14) of Erode Marketing Committee, a maximum commission of Rs 5 per 100 rupees worth is prescribed for turmeric in all forms.

Sub clause 24(15) states

In the case of commission sales, no allowance other than a trade allowance separately prescribed shall be charged either to seller or to buyer. If commission is charged to both buyer and seller, the total thereof shall not exceed the maximum prescribed in sub –clause (14).

The applicant submitted the criteria for the Commission Charges subject to the Bye-

Laws 24(14) are as follows:

<i>Sl. No.</i>	<i>Month</i>	<i>Commission Amount</i>
1.	<i>Up to 12 Months</i>	3%
2.	<i>Up to 24 Months</i>	4%
3.	<i>Above 24 Months</i>	5%

Also from the agreement note between agriculturist, buyer and agent, weighment slip and invoices furnished, it is seen that the invoice is raised by the agent on the buyer wherein the agriculturist is mentioned as the seller and is signed by the Farmer, agent and the buyer. All the three documents mention the weight of the goods and the sale price and separately indicate the commission amount. Further, it is seen that the buyer pays the agent who after deducting his commission for the services rendered passes on the sale proceeds to the farmer.

5.1 The issue to be decided before us is to decide the tax liability of the services in question. Sl. No. 24 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 issued under the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') is reproduced below :

Sl. No.	Chapter, Section or Heading	Description of Services	Rate (Percent)	Condition
24	Heading 9986	<p>(i) Support services to agriculture, forestry, fishing, animal husbandry.</p> <p><i>Explanation.</i> - "Support services to agriculture, forestry, fishing, animal husbandry" mean -</p> <p>(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—</p> <p>(a),</p> <p>(b).</p> <p>(c).....,</p> <p>(d).</p> <p>(e).....,</p> <p>(f).</p> <p>(g) "Services by an Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce"</p>	NIL	

Explanation 4 (vii) and (viii) of the Notification No. 11/2017-CT (Rate) states that

(vii) "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."

(viii) "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force of the purpose of regulating the marketing of agricultural produce.

Section 2(5) of CGST Act defines 'agent' as

(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;

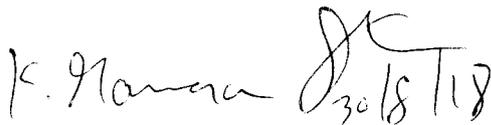
5.2 On scrutiny of the various submissions of the applicant, it is clear that the agent, who is a member of the applicant stores the turmeric in their godown, the sales of which is as per the guidelines of EMC. Also from the invoices furnished, it is seen that the invoice is raised by the agent on the buyer wherein the agriculturist is mentioned as the seller and is signed by the Farmer, agent and the buyer. Further, it is seen that the buyer pays the agent who after deducting his commission for the services rendered passes on the sale proceeds to the farmer. It is evident that these activities of the applicant are those covered by the definition of 'Commission agent' under 'The Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987'. Section 7(8) of this Act also states that trading in agricultural produce must take place on in notified areas which are licensed from a Market Committee under that Act. These Commission agents provide the space for storage, weighment and facilitate buying and selling of the produce. The word 'Commission agent' under Sl.No. 24 of the Notification No. 11/2017-CT (Rate) is not specifically defined in the said notification but Section 2(5) of the CGST Act defines 'agent' as a person,

including commission Agent who carries on the business of supply or receipt of goods or services or both on behalf of another. From the supporting documents and materials filed by the applicant and the various statutory provisions discussed above, it is clear that the activities of the applicant are those services provided by an agent to the farmer, generally provided in relation to agricultural produce in the primary market regulated by a marketing committee. Sub clause 24(14) of the Bye-Laws also specifies that the commission charges are towards Godown accommodation, cash credit without interest, use of gunnies loaned, handling and weighing and all other charges incidental to buying and selling and sets a maximum for such Commission. In conclusion, the applicant is only a Commission Agent providing support services for Agricultural produce and the services extended are rightly classifiable as 'Support service to agriculture..' under the Heading 9986 and the activity of the applicant attract 'NIL' rate as per Sl. No. 24 (i) (i) (g) of the Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended and 'NIL' rate of SGST as per Sl.No. 24 (i) (i) (g) of G.O.(Ms) No 72 dated 29.06.2017 No.II(2)/CTR/532(d-14)/2017 as amended.

7. In light of the above, we rule as under

RULING

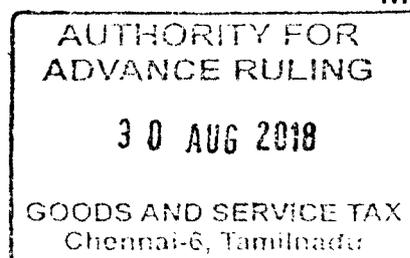
The service by the Commission Agents as per the submissions of the applicant to the agriculturists of turmeric is service under the Heading 9986 and is taxed to 'NIL' rate of CGST as per Sl.No. 24 (i) (i) (g) of the Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended and 'NIL' rate of SGST as per Sl.No. 24 (i) (i) (g) of G.O.(Ms) No 72 dated 29.06.2017 No.II(2)/CTR/532(d-14)/2017 as amended.



Ms. Manasa Gangotri Kata, IRS
Member , CGST



Shri. S.Vijayakumar, M.Sc.,
Member (FAC), TNGST



To

M/s. Erode Manjal Vanigarkal Matrum
Kidangu Urimaiyalargal Sangam,
85, Manjal Valagam, Nasiyanoor Road,
Erode-638 107.

/By SPAD/

Copy Submitted to:

1. The Additional Chief Secretary/Commissioner of Commercial Taxes, II Floor,
Ezhilagam, Chepauk, Chennai-5.
2. The Principal Chief Commissioner of GST & Central Excise, 26/1,
Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

Copy to:

3. The Assistant Commissioner (ST)
Erode Rural Assessment Circle,
C.T.Buildings, Brough Road, Erode-638 001.
4. The Commissioner of GST & C.Ex., Salem Commissionerate, NO.1 Foulkes
Compound, Anaimeedu,
Salem- 636001.
5. Master File/ Spare – 2.