



**AUTHORITY FOR ADVANCE RULING
ANDHRA PRADESH GOODS AND SERVICES TAX**

D No. 5-56, Block-B, R.K. Spring Valley Apartments,
Eduapugallu, Vijayawada-521151

Present:

D. Ramesh, Additional Commissioner of State Taxes...Member(State Tax)

S. Narasimha Reddy, Additional Commissioner of Central Tax...Member(Central Tax)

AAR No.14/AP/GST/2019 Dated:26.03.2019

1	Name and address of the applicant	M/s Polisetty Somasundaram ,08-24-31, Ground, Mangalagiri Road,Guntur-522001
2	GSTIN	37AACFP7251J1Z0
3	Date of filing of Form GST ARA-01	27.11.2018
4	Date of Personal Hearing	01.02.2019
5	Represented by	Y. Srinivasa Reddy, Advocate
6	Jurisdictional Authority - State	Assistant Commissioner (State Tax) Kothapet, Narasaraopet Division,Guntur.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of any goods or services or both b) applicability of a notification issued under the provisions of this Act.

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s Polisetty Somasundaram (hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

The applicant is registered under GST vide GSTIN:37AACFP7251J1Z0. The applicant deals in purchase and sale of tobacco of all varieties and forms. He also undertakes the operations of threshing and re-drying of tobacco leaves to make the agricultural produce marketable, mostly in overseas market.

After the introduction of GST, Tobacco is brought under the taxability from the stage of tobacco leaves. The applicable rates of unmanufactured tobacco are covered under two heads under the tariff which are as under vide Notification No.1/2017-Central Tax (Rate) dt.28.06.2017, both having the same HSN Code of 2401, as shown below:

Sl.No	Schedule	HSN	Product Description	Rate of GST
1	Schedule - I: Sl. No. 109	2401	Tobacco Leaves	CGST 2.5%+SGST 2.5% i.e., total GST % = 5%
2	Schedule - IV; Sl. No. 13	2401	Unmanufactured Tobacco; tobacco refuse (other than tobacco leaves)	CGST 14 % +SGST 14% i.e., total GST = 28%



The applicant opines that though there is clarity as to the product description in the above two headings, since the terms 'Tobacco leaves' and 'Unmanufactured Tobacco (other than tobacco leaves)' are not defined in the Tariff, classification of the commodity at various stages in the above specified heads may be a contentious issue. He, therefore, sought for an Advance Ruling.

4. Activities of the applicant:

The applicant engages in the following activities as far as tobacco is concerned:

- (a) Purchase of the cured tobacco leaves brought by tobacco farmers at the Tobacco Auction Platforms in case of FCV variety or directly from farmers in case of Non-FCV variety of tobacco and selling them to other dealers or exporters or manufacturers of tobacco.
- (b) Purchase of the tobacco leaves from other dealers and sell them to the clients within India and overseas.
- (c) Threshing and re-drying of the tobacco leaves in their threshing premises and selling them to the clients in India and to export to various countries.
- (d) Engaging in threshing and re-drying of tobacco leaves on job work basis for other traders or manufacturers.

In the case of sale of tobacco leaves, the applicant may undertake the following minimal process on the tobacco before supplying as per the requirement of the dealer:

Grading: The applicant may get an order from the buyers to grade the tobacco. In such cases, the applicant engages manual labour to segregate or classify the tobacco leaves into various grades depending on their size (width), length, colour or shade and other physical parameters of the leaf. These activities will be performed manually by unskilled labour and who will open the bale and separate the tobacco leaves to physically grade the tobacco into different categories as stated above. The tobacco leaves so graded, will again be packed into bales and wrapped in Jute bags for onward supply to other tobacco dealers or manufacturers.



Butting: The tobacco leaf when plucked from the plant will have a rough edge on the side it attached to the plant. These rough edges may damage other leaves or make packing difficult. Therefore, the edge of the tobacco leaf, which is called butt of the leaf, is removed by manually chopping them off. This will not alter any other character of the leaves. Butting is a very rare and occasional requirement of the buyer and only 2 to 3% of the total tobacco is ordered for butting. If the buyer requires the leaf to be butted, the same is undertaken along with grading by manual labour and then packed by wrapping jute bags.

The applicant undertakes **threshing and re-drying** activities also at his premises using machines to avoid manual labour. The threshing and re-drying operations on tobacco leaves are necessary to make the leaves marketable and fit for storage. These operations make the leaves free from fungus and foreign materials and also more importantly maintain uniform moisture. The threshed lamina (cut in small pieces) and stem (midrib) in the leaf are separated during these processes and the lamina is re-dried to ensure uniform and homogenized moisture throughout the lot.

5. QUESTIONS RAISED BEFORE THE AUTHORITY:

The applicant had filed an application in form GST ARA-01, dt:27.11.2018, by paying required amount of fee for seeking Advance Ruling on the following issues:

- (a) What is the rate of GST applicable on tobacco leaves procured at tobacco auction platforms or directly from farmers, which are cured and dried by farmers themselves?
- (b) What will be the applicable rate of tax if the applicant purchases tobacco leaves form other dealers who have purchased them from farmers, for the purpose of trading?



- (c) What will be the applicable rate of tax if the applicant segregates the tobacco into grades depending upon their size (width), colour /shade, length, texture of the leaf etc., and sells such graded tobacco leaf?
- (d) What will be the applicable rate of tax if the tobacco leaves are butted and sold to other dealers?
- (e) What is the applicable rate of tax if the applicant gets the tobacco leaves re-dried without getting them threshed?
- (f) What will be the applicable rate of tax if the applicant gets the tobacco leaves threshed and re-dried?
- (g) What will be the applicable rate of tax if the applicant gets the tobacco threshed and re-dried on job work basis at others' premises and then sells such threshed and re-dried tobacco leaves to others?

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner (ST), Kothapet, Narasaraopet Division.

Accordingly, the application has been forwarded to the jurisdictional officers with a copy marked to the Central tax authorities, Deputy Commissioner (Central Tax), Guntur Division, Guntur to offer their remarks as per the Section 98(1) of CGST/APGST Act 2017. The jurisdictional officers responded that no proceedings are passed or pending relating to issue on which Advance Ruling is sought by the applicant.

6. APPLICANT'S INTERPRETATION OF LAW AND FACTS:

Prior to the introduction of GST, the products of Tobacco leaves and unmanufactured tobacco were not leviable to tax under VAT and Central Excise Laws. The Hon'ble Customs, Central Excise and Service Tax appellate Tribunal, Hyderabad had set aside the service tax demand raised on the process of threshing and re-drying of tobacco leaves, saying that these are intermediate production processes carried out in relation to agriculture and are exempt from service Tax.



After the introduction of GST, Tobacco is brought under the taxability from the stage of tobacco leaves itself. The applicable rates of unmanufactured tobacco are covered under two heads under the tariff which are as under vide Notification No.1/2017 – Central Tax (Rate) dt:28.06.2017, both having the same HSN Code of 2401, as shown in Para No 3 above.

Though there is clarity as to the product description in the above two headings, since the terms 'Tobacco leaves and 'unmanufactured Tobacco (other than tobacco leaves)' are not defined in the Tariff, the applicant claims that classification of the commodity at various stages in the above specified heads may be a contentious issue.

The classification of tobacco under GST is not in tune with that of the Customs tariff. The GST tariff mentioned only 4 digits HSN whereas Customs Tariff employs full 8 digit HSN code and as such there is no clarity as to the further sub-classification of the tariff heads under GST. As per the Customs Tariff, the relevant heads are as under:

2401	Unmanufactured tobacco; tobacco refuse.
2401 10	Tobacco, not stemmed or stripped
2401 10 10	Flue Cured Virginia Tobacco
2401 10 20	Sun cured Country (Natu) Tobacco
2401 10 30	Sun cured Virginia Tobacco
2401 10 40	Burley Tobacco
2401 10 50	Tobacco for manufactures of Bidis, not stemmed
2401 10 60	Tobacco for manufactures of Chewing tobacco
2401 10 70	Tobacco for manufactures of cigar and cheroot
2401 10 80	Tobacco for manufactures of Hookah tobacco
2401 10 90	Other
2401 20	Tobacco partly or wholly stemmed or stripped.
2401 20 10	Flue Cured Virginia Tobacco
2401 20 20	Sun cured Country (Natu) Tobacco
2401 20 30	Sun cured Virginia Tobacco
2401 20 40	Burley Tobacco
2401 20 50	Tobacco for manufactures of Bidis, not stemmed
2401 20 60	Tobacco for manufactures of Chewing tobacco
2401 20 70	Tobacco for manufactures of cigar and cheroot
2401 20 80	Tobacco for manufactures of Hookah tobacco
2401 20 90	Other



The tobacco leaves are supplied/ sourced in various stages but in all of which there was no change in form of the leaves except some minimal activities done on them to make them marketable. With the above entries in the tariff and also the clarification of CBIC, it is clear that tobacco leaves in all these stages of trading attracts GST rate of 5% only. However, the Authority for Advance Rulings, New Delhi in its Ruling dt.6.4.2018 in the case of Shalesh Kumar Singh wherein, the facts are different to those in the case of the applicant, gave a ruling that even the dried tobacco is not tobacco leaves and hence nothing is left to be considered as Tobacco leaves, as no trade is done in the green tender leaf. The applicant claims that the above ruling had resulted in multiple interpretations and had resulted in lot of confusion as to the applicable rates of the tobacco leaves. The applicant submits the following legal position with regards to the levy of GST on the tobacco leaves.

The applicant states that all of the tobacco crop that is produced shall have to be cured before it can be marketed commercially in the primary market. And the tobacco that is cured and brought to auction platforms is only called tobacco leaves. In the common parlance, tobacco leaves mean cured (dried) tobacco leaves only as the green tender is unfit for any commercial operations. In this context, the applicant takes shelter under the following case law.

The applicant affirms that his stance is upheld in various celebrated cases like M/s D.S. Bist & sons Nainital 1979(004) SCC 0741 wherein a mention is made about the agricultural produce. It says that it should be remembered that almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself in his farm or elsewhere. In order to bring them to a condition of non-perishability and to make them transportable and marketable, some minimal process is necessary to be applied to many varieties of agricultural produce. But there may be some other kinds of agricultural produce which require some more processing to make it marketable. In the case of such a commodity 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.



Thus, as per the common parlance test, tobacco leaves mean only cured tobacco because it is impossible to undertake any commercial activity on green tobacco as plucked from the crop. From the stage of cured tobacco, the common understanding of the term 'tobacco leaves' stretches upto the stage of threshed and redried tobacco.

As per the GST Tariff both Tobacco Leaves and Unmanufactured tobacco (other than tobacco leaves) fall under the same HSN 2401 and the words are not defined specifically in the said notification. As per explanatory notes to HSN 2401 'Unmanufactured Tobacco' is defined and the same is reproduced below.

2401	-	Unmanufactured tobacco; tobacco refuse:
2401.10	-	Tobacco, not stemmed/ stripped
2401.20	-	Tobacco, partly or wholly stemmed/ stripped
2401.30	-	Tobacco refuse

This heading covers:

Unmanufactured tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/ stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking).

Tobacco leaves, blended, stemmed/ stripped and cased (sauced or liquored) with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavor are also covered in this heading.

The Central Tobacco Research Institute (CTRI), Guntur vide its letter dt.11.12.2012 addressed to the Indian Tobacco Association explained as follows: "The operations of stripping, threshing, re-drying and packing are contributing to the value-addition to the farm produced tobacco by improving the shelf-life and maintaining the quality. Further, export price of tobacco generally influences the farm price. Hence, the above operations are construed as an extension of agricultural activity only as in the case of other commodities like cotton, chillies etc. The threshed and re-dried FCV tobacco has no use as such, hence it can be considered as primary agricultural produce only.



In another letter, the CTRI has opined as follows:

"The curing (drying) is an integral process of agricultural operations, like in case of any other agricultural products. The curing operations followed in India are dependent on several factors such as type of tobacco, convenience, agricultural infrastructure etc. The four prevalent methods of curing are (i) flue-curing (ii) air-curing (iii) fire-curing and (iv) sun-curing. The main characteristics of tobacco leaf viz., Nicotine and sugars will remain unaltered by the process of curing/drying

Further applicant contends that it is a settled legal position that an entry in the tariff has to be read 'as it is' following the principle of literal Rule of interpretation and the 'word', 'term' or a 'phrase' shall not be read by affixing or suffixing another word to it. In the above entry, the term 'Tobacco Leaves' is mentioned without any qualifier attached to it viz., 'dried tobacco leaves', 'undried tobacco leaves', 'cured tobacco leaves' etc., In such cases, it cannot be read that tobacco leaves means only those leaves cut from the plants and tobacco leaves on which certain operations are conducted will not be 'tobacco leaves'. It is also clear that in the absence of the definition given to the term 'tobacco leaves', shall be understood in its natural and commercial meaning.

Further the Tax Research Unit of CBIC in its Circular No.332/2/2017-TRU clarified as under:

"Q.42. Tobacco leaves falling under heading 2401 attracts 5% GST on reverse charge basis in respect of supply by an agriculturist. What is the meaning of Tobacco leaves?

Reply: For GST Rate 5%, tobacco leaves means, leaves of tobacco as such or broken tobacco leaves or tobacco leaves stems".

The applicable rates of GST for goods were mentioned in Notification No.1/2017-CT ibid. It is not mentioned as to who shall be supplier and who shall be recipient. While Notification No.4/2017 - CGST(Rate) dt.28.06.2017 notifies



the cases where the RCM (Reverse Charge Mechanism) shall be applied, it is silent as to the rate. Thus, as long as the product remains the same, it does not matter whether the same is procured from an agriculturist or an unregistered dealer, or registered dealer. The application of RCM is only to prescribe as to who shall pay the tax and it had no bearing on the applicability of the rate of GST.

Thus, the applicant contends that the commodities dealt by him fall under the head Tobacco Leaves only and the applicable rate is 5% only.

The applicant had quoted an instance where the levy of service Tax is set aside on the support services administered on tobacco leaves in a recent case of proposed levy of service tax on the services associated with the threshing, re-drying, transportation, warehousing etc., of this agricultural produce, that various orders passed by the field formations were set aside by Hon'ble Tribunal vide Final Order dt.22.02.2017 clearly holding that the tobacco leaves either before the threshing and re-drying and thereafter and whether before 1.7.2012 or after 1.7.2012 from which date negative list of services was introduced remain to be Tobacco leaves only and the services were not taxable. The Special Leave Petition filed by the revenue was dismissed by Hon'ble Supreme Court vide its order dt.16.07.2018.

Further, the applicant mentions the earlier Ruling No.AAR/AP/17 (GST)/2018 dt.10.10.2018 passed by this Hon'ble Advance Ruling Authority, A.P., in the case of application filed by M/s. Pragathi Enterprises, which has given a ruling that the rate of GST applicable for tobacco supplied at all the below mentioned stages shall be 5% only.

- (i) Tobacco leaves procured at tobacco leaves platforms directly or from farmers;
- (ii) On tobacco leaves purchased from other dealers who has in turn purchased from farmers for the purpose of trading;
- (iii) When tobacco leaves are graded basing on their colour, width etc and when such graded leaves are sold;
- (iv) On tobacco leaves butted and sold to other dealers;
- (v) On tobacco leaves re-dried without threshing.



In view of all the above, the applicant is of the view that the following commodities that the applicant deals with, will fall under the head 'Tobacco Leaves' only and the applicable rate is 5% only:

- (a) Tobacco leaves in Cured form procured from farmers directly in case of Non-FCV tobacco and at Tobacco Auction Platforms in case of FCV tobacco.
- (b) Tobacco leaves traded between dealers of tobacco without rendering any further processes, what so ever.
- (c) Tobacco leaves that are subjected to minimum manual process like grading, butting or re-drying, where no physical or chemical changes are happening to the leaves.
- (d) Tobacco leaves that are threshed and re-dried, where only the tobacco leaves are as such but are in broken form.

7. RECORD OF PERSONAL HEARING:

Sri Y. Srinivasa Reddy the authorized representative of the Applicant company appeared for personal hearing on 01.02.2019 and they reiterated the submission already made in the application.

Further the representative of the applicant, appeared before this authority on 18.02.2019 and submitted additional material along with physical samples of their commodity explaining different stages of processing. The applicant further submitted a costing sheet on 02-03-2019, wherein the value addition made at different levels is presented, of the activities being under taken by him, like butting, threshing, etc.

8. DISCUSSION AND FINDINGS:

We have examined the issues raised in the application. The taxability, classification, applicable rate of tax, for the goods supplied as governed under the provisions of respective GST Acts are examined. The applicant is engaged in the following activities:

- a) Purchase of the cured tobacco leaves brought by tobacco farmers at the Tobacco Auction Platforms in case of FCV variety or directly from farmers in case of Non-FCV variety of tobacco and selling them to other dealers or exporters or manufacturers of tobacco.



- (b) Purchase of the tobacco leaves from other dealers and sell them to the clients within India and overseas.
- (c) Threshing and re-drying of the tobacco leaves in their threshing premises and selling them to the clients in India and to export to various countries.
- (d) Engaging in threshing of re-drying of tobacco leaves on job work basis for other traders or manufacturers

We have gone through the facts of the case as submitted by the applicant with respect to the relevant legal position. As seen from the above it is felt that the transactions of tobacco from auction platform to the supply made to the exporter are to be interpreted in the light of the relevant notifications and to decide the rate of tax accordingly.

As seen from the different stages of commodity i.e., from the leaves stage to the final product (manufactured tobacco), the green leaf plucked from the plant undergoes different types of curing to reduce the level of moisture to the maximum extent for sustainability and to continue as leaf for further process. The tobacco leaf will be entitled as a commercial commodity only drying (Curing) and normally put to trade in form of bundles. The same will be traded between the farmer and the trader and trader to trader/manufacturer and so on.

As envisaged from the entries under GST, there are four different entries for tobacco, one under Schedule-I. Liable @5% (CGST 2.5% and SGST 2.5%) and the remaining heads are in Schedule- IV liable 28% (CGST-14% and SGST 14%). And there is an entry of tobacco leaves under Reverse charge mechanism also as explained below:

As per the notification 4/2017 CGST (Rate), the supply of the Tobacco Leaves shall be under 'Reverse charge'.

No	Tariff item sub-heading, heading or chapter	Description of supply of Goods	Supplier of goods	Recipient of goods
3	2401	Tobacco Leaves	Agriculturist	Any registered person



The commodity "tobacco leaves" shall be interpreted in the light of the entry 109, Schedule- I of Notification No.1/2017-Central Tax (Rate) and the entry no 3 inserted under the notification 4/2017 CGST (Rate) issued for liability under reverse charge mechanism and the relevant HSN code mentioned against the description of the commodity i.e., 2401.

It is to note that though there are different entries with respect to tobacco there is a specific entry in Schedule I of Notification 1/2017 (CGST Rate) as Tobacco leaves, and for the same the liability was brought under reverse charge mechanism. Hence it is clear that the commodity 'tobacco leaves' is distinct from the other entries in this aspect.

As observed from the facts, i.e process of tobacco, from the field to final product, the green leaves undergo curing process, and become eligible commercial commodity, for which the transaction takes place in between the farmer and the trader on the auction platform. Further, as per the clarification issued by The Department TRU(Tax Research Unit)vide circular F.No.322/2/2017/Dec.2017, "Tobacco Leaves" means, leaves of tobacco as such or "broken leaves" or "Tobacco Leaves stems". It clearly expresses that the leaves as long as they do not loose their basic character as 'leaves', shall be considered as tobacco leaves only.

In the present case the applicant purchases the dried leaves on auction platform and trades the same to other dealers or exporters and further engaged in threshing and re-drying of tobacco leaves on job work basis for other traders or manufacturers. In the light of the facts and legal position the ruling is given as under.

RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

- (a) What is the rate of GST applicable on tobacco leaves procured at tobacco auction platforms or directly from farmers, which are cured and dried by farmers themselves?



The GST Rate of tax for the tobacco leaves procured at tobacco auction platforms or directly from farmers, which are cured and dried by farmers themselves is 5% As per the notification 4/2017 Central Tax (Rate), under 'Reverse charge'.

- (b) What will be the applicable rate of tax if the applicant purchases tobacco leaves from other dealers who have purchased them from farmers, for the purpose of trading?
5% (2.5% SGST + 2.5%CGST) as per Sl.No.109 of schedule I Notification No.1/2017 Central Tax (Rate) dated 28.06.2017.
- (c) What will be the applicable rate of tax if the applicant segregates the tobacco into grades depending upon their size (width), colour /shade, length, texture of the leaf etc., and sells such graded tobacco leaf?
5% (2.5% SGST + 2.5%CGST) as per Sl.No.109 of schedule I Notification No.1/2017 Central Tax (Rate) dated 28.06.2017.
- (d) What will be the applicable rate of tax if the tobacco leaves are butted and sold to other dealers?
5% (2.5% SGST + 2.5%CGST) as per Sl.No.109 of schedule I Notification No.1/2017 Central Tax (Rate) dated 28.06.2017.
- (e) What is the applicable rate of tax if the applicant gets the tobacco leaves re-dried without getting them threshed?
5% (2.5% SGST + 2.5%CGST) as per Sl.No.109 of schedule I Notification No.1/2017 Central Tax (Rate) dated 28.06.2017.
- (f) What will be the applicable rate of tax if the applicant gets the tobacco leaves threshed and re-dried?
28% (14% SGST +14% CGST) as per Sl.No. 13 of Schedule IV Notification No.1/2017 Central Tax (Rate) dated 28.06.2017.
- (g) What will be the applicable rate of tax if the applicant gets the tobacco threshed and re-dried on job work basis at others' premises and then sells such threshed and re-dried tobacco leaves to others?



**28% (14% SGST +14% CGST) as per Sl.No. 13 of Schedule IV
Notification No.1/2017 Central Tax (Rate) dated 28.06.2017.**

Sd/-D.Ramesh)
Member (State Tax)

Sd/-S.Narasimha Reddy
Member (Central tax)

// t.c.f.b.o //

Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

To

1. M/s Polisetty Somasundaram ,08-24-31, Ground, Mangalagiri Road,Guntur-522001 .

Copy to

2. Deputy Commissioner (Central Tax), O/o the Assistant Commissioner of Central Tax, Guntur Division, 2/17, Brodipet, Guntur – 522 002.
3. The Assistant Commissioner (ST), Kothapet, Narasaraopet Division.

Copy submitted to

4. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.
5. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam- 530035.

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

