

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)
ORDER NO. MAH/AAAR/SS-RJ/13/2018-19 **Date- 10.12.2018**

BEFORE THE BENCH OF

- (1) Smt. Sungita Sharma, MEMBER
(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAACN7084L2ZZ
Legal Name of Appellant	M/s. Nutan Warehousing Company Pvt. Ltd.
Registered Address/Address provided while obtaining user id	1379, KrishiBhawan, BhawaniPeth, Pune, Maharashtra- 411002, India.
Details of appeal	Appeal No. MAH/GST-AAAR-13/2018-19 dated 14.09.2018 against Advance Ruling No. GST-ARA-30/2017-18/B-38 dated 23.05.2018
Concerned officer/Jurisdictional Officer	Commissioner, Central Tax, Pune-II

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 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"] by Nutan Warehousing Company Pvt Ltd (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-30/2017-18/B-38 dated 23.05.2018

BRIEF FACTS OF THE CASE

- A. M/s Nutan Warehousing Company Pvt Ltd, 1379, Krishi Bhawan, Bhawani Peth, Pune, Maharashtra- 411002 (hereinafter referred to as appellant) is a company registered under GST vide registration No. 27AAACN7084L2ZZ.



- B. Appellant company was formed for the following main objective-
- a) To carry out the business of warehousing, cold storage and refrigeration in all its branches and activities and sphere.
 - b) To carry out the business of storage of fertilizers, insecticides, quality seeds, agricultural and horticultural equipment, tools and machineries.
 - c) To carry out the business of quality seeds and develop quality seeds, acquire suitable lands and carry on agriculture.
 - d) To produce material and fertilisers and insecticides and to acquire agency in the above lines and act as commission agents.
 - e) To act as clearing and godowns for proper and safe storing of valuable agricultural and horticultural produce and to provide goods and services of all kinds in connection therewith.
 - f) To provide godowns and warehousing facilities for goods of all descriptions of agricultural and allied products.
 - g) ----
- C. Appellant had been granted license for carrying out business of warehousing under the Bombay Warehousing Act, 1959. Accordingly, Appellant had constructed Warehouses at various places including warehouse at Fursungi, Pune (hereinafter referred to as the said warehouse). The Appellant had given on rent the said warehouse to M/s Unilever India Exports Ltd (hereinafter referred to as Unilever) on specific compensation allowed under Bombay Warehousing Act.
- D. M/s Unilever India Exports Limited (herein after referred to as "Unilever") **procures** tea of various qualities in bulk either from public tea auctions or directly from manufacturers of tea in 50 Kg bags and **stores** them in the said warehouse. Procured tea leaves normally undergo following standard processes prior to procurement-

"Tea leaves are plucked from the tea plants and the green leaves, plucked from the plants are not fit for the human consumption, it cannot be sold in the open market for human consumption. The raw tea leaves are withered by exposure in the shadow of the sun or by heating in trays until pliable. Thereafter the leaves are rolled by hand or machine in order to break the leaf cells and liberate the



juices and enzymes. Finally, the leaves are completely dried either by further exposure to the sun, over fires, or in a current of hot air and then the tea leaves are fermented in baskets, glasses and in clothes. Thereafter the leaves were subjected to grading with sieves of various sizes. The said leaves are finally roasted with charcoal for obtaining suitable flavour and colour. Thereafter the said tea is packed in the bulk packs.

The processing of the tea makes it marketable by minimal process and they are made fit for human consumption. All the above processes are necessary for the purpose of saving the tea leaves from perishing. In case the above process is not carried out immediately, the entire tea leaves would be perished. The process, as indicated above, at no point of time, crossed that limit and robbed the tea leaves of their character of being and continuing as such substantially. "

The process undertaken on green leaves consists of only above processes and not beyond them.

- E. The said procurement was undertaken during season. As per the specific order, M/s Unilever undertook blending and packing of the same at the said warehouse. After packing, tea was exported to overseas countries.
- F. Appellant is of strong view that the tea, procured in bulk, either from public tea auctions or directly from manufacturers of tea is an agricultural produce as defined in clause 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017 because, it was not losing the essential characteristics of tea.
- G. Appellant claims that the storage and warehousing of tea is exempted vide Serial No 54(e) of Notification No. 12/2017- Central tax (rate). The said entry is reproduced as under-

54.	Heading 9986	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	Nil	Nil
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(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;

(b) supply of farm labour;

(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;

(f) agricultural extension services;



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

H. The Appellant considers tea as an agricultural produce. Agricultural produce is defined as per clause 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017 as under-

“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;

I. Even though the blended and packed tea was kept for a very brief period but also the said activities of blending and packing were not taking away the essential characteristics of tea. Based on this understanding, the appellant were of the view that their activities of providing storage facilities of tea, an agricultural produce was exempted under E.No. 54(e) of the Notification No. 12/2017-C.T. (Rate) dated 28.6.2017.

J. The Appellant, due to insistence from their client viz M/s Unilever India Exports Ltd has taken the registration of GST and is paying the GST liability regularly. However, the appellant strongly feel that the services supplied by the appellant are for agricultural produce (Tea). Hence the application for advance ruling was filed by the appellant.

K. As the Appellant had a serious reservation regarding taxability of renting of warehouse as the warehouse was used for warehousing of tea, an agricultural produce. Under this background, the Appellant had requested for advance ruling vide their application dated 16.1.2018 on the following issue-



"Whether the supply of warehouse services used for packing & storage of tea, under above mentioned facts & circumstances was/is exempted vide Serial No 54(e) of Notification No. 12/2017- Central tax (rate) or otherwise."

- L. The advance Ruling authority had passed their order vide order No. GST-ARA-30/2017-18/B- 38, Mumbai dated 23.5.2018 denying the benefit of Serial No. 54 of Exemption Notification No. 12/2017-CT (Rate). Aggrieved by the said order, appellant has preferred the present appeal.

Grounds of Appeal

1. Appellant warehouse had been used for storage of theprocured bulk tea in 50 Kg bags for most of the time and not the blended and packed tea.
2. The authorities had held that the appellant warehouse had been used for storing tea after blending and packing by M/s Unilever. The said observation is factually incorrect. The appellant had clearly mentioned that M/s Unilever was procuring the tea from public auction in bulk in 50 Kg bags. After procurement, bulk tea was stored for a long time. When order is received, blending and packing is done and the packed products are despatched within 7-10 days. Based on this observation, decision had been made. Thus, decision is made on the basis of wrong facts and needs to be set aside.
3. Even after blending and packing, the essential characteristics of tea as agricultural produce had not ceased.
4. The process of tipping and perforated messing are mechanical processes for removal of any impurities and removal of dust. Under the process of blending, teas of different varieties were mixed in a particular proportion and no other activity under this head had been taken. The process of blending is not changing essential characteristic of tea. Similarly, the process of packing is also not changing essential characteristic of tea. Thus, none of the processes carried out either separately or jointly is capable of changing the essential characteristics of the tea. Authorities had not provided any reasoning or explanation, whether these processes are changing the essential characteristics of tea or not? Hence, order needs to be set aside.



5. The authorities have conveniently recorded that the case law relied by the appellant were not relevant, without discussing the same.
6. The appellant had relied on the several decisions including decision of the Supreme Court. The authorities have conveniently recorded that the case law relied by the appellant were not relevant without differentiating or recording any reason for non-relevance of the same, based on facts or interpretation. Hence, the order passed is not a reasoned order and needs to be set aside.
7. The case law of Union of India VsBelgachit Tea Co and Brook Bond Lipton India Ltd are clearly distinguishable.

In the case of Union of India VsBelgachit Tea Co and Brook Bond Lipton India Ltd, issue before the Hon'ble Supreme Court was to ascertain whether the activity of M/s Belgachit Tea Co was taxable under the Bengal Agricultural Income Tax (Amendment) Act, 1980 or not? The issue before the Apex court was not whether tea is an agricultural produce or not? Hence, the case law relied by the authorities is clearly distinguishable. Therefore order needs to be set aside.

8. The case law of Narendra Tea Co (P) Ltd is clearly distinguishable and not relevant.

In the case of Narendra Tea Co (P) Ltd, issue before the Kolkata ITAT was to ascertain whether the activity of blending and processing of tea and export thereof, amounts to manufacture of tea or not for the purpose of Section 10A/10B of the Income Tax Act ? The issue before the Tribunal was not whether tea is an agricultural produce or not? Hence, the case law relied by the authorities is clearly distinguishable. Therefore, order needs to be set aside.

9. The Supreme Court decision in case of COMMISSIONER OF SALES TAX, LUCKNOW Vs. D. S. BIST & ORS had settled the issue of tea as an agricultural produce.

The Hon'ble Supreme Court in case of COMMISSIONER OF SALES TAX, LUCKNOW Vs. D. S. BIST & ORS., while deciding issue under UP Sales Tax Act, 1948 had upheld that Tea leaves after drying and processing remained agricultural produce. Similar view had been expressed by the Hon'ble Uttaranchal High Court



in case of Dehradun Tea Company Ltd. vs State Of Uttaranchal And Ors.[2006 148 STC 56 Uttra].

10. Relevant issue is not the ascertainment of income viz. agricultural or business but the retention of essential characteristic of tea even after various processes undertaken.
11. The authorities had heavily relied on the facts that whether the income arising out of the activity of the appellant is assessable as agricultural income or not? Though the income arising out of activity of trading of agricultural produce is not assessable as income from agricultural produce but the activity of trading is not changing the essential characteristics of the agricultural produce. Hence, assessment of income as agricultural income or otherwise is not relevant for ascertaining whether the activity carried out is changing the essential characteristics of the agricultural produce or not. Hence, the order of the authority is based on wrong surmise and needs to be set aside.
12. Tea as an agricultural produce and defined under clause 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017 as under-

“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;

13. The definition of Agricultural produce as defined under clause 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017 has three ingredients-
 - a) The produce must emerge from cultivation of plants or rearing of all life forms of animals.
 - b) Either no further processing is done or such processing is done as is usually done by a cultivator or producer on the said produce.
 - c) The process undertaken does not alter its essential characteristics but makes it marketable for primary market.



14. The process undertaken on green leaves consists of only above processes and not beyond them. All the three ingredients are fulfilled in the present case.

a) The produce must emerge from cultivation of plants or rearing of all life forms of animals- Green leaves are plucked from the tea plant. Hence the first condition is undoubtedly fulfilled.

b) Either no further processing is done or such processing is done as is usually done by a cultivator or producer on the said produce.

a. Tea leaves are plucked from the tea plants and the green leaves, plucked from the plant are not fit for the human consumption and it cannot be sold in the open market for human consumption. The raw tea leaves are withered by exposure in the shadow of the sun or by heating in trays until pliable. Thereafter the leaves are rolled by hand or machine in order to break the leaf cells and liberate the juices and enzymes. Finally, the leaves are completely dried either by further exposure to the sun, over fires, or in a current of hot air, then the tea leaves are fermented in baskets, glasses and in clothes. Thereafter the leaves were subjected to grading with sieves of various sizes. The said leaves are finally roasted with charcoal for obtaining suitable flavour and colour. Thereafter the said tea is packed in the packets.

b. The processing of the tea makes it marketable by minimal process and they are made fit for human consumption. All the above processes are necessary for the purpose of saving the tea leaves from perishing. In case the above process is not carried out immediately, the entire tea leaves would be perished. The process, as indicated above, at no point of time crossed that limit and robbed the tea leaves of their character of being and continuing as such substantially.

c. Unlike many agricultural products, tea-leaves are not marketable in the market, fresh from the tea gardens. Nobody eats tea-leaves. It is meant to be boiled for extracting juice out of it to make tea liquor. Tea-leaves



are, therefore, only fit for marketing when by a minimal process, they are made fit for human consumption. Processes were necessary for the purpose of saving the tea-leaves from perishing, making them fit for transporting and marketing them. The process applied was minimal. Withering, crushing and roasting the tea-leaves will be surely necessary for preserving them. The process of fermentation or final roasting with charcoal for obtaining suitable flavour or colour and also the process of grading them with sieves were all within the region of minimal process and at no point of time it crossed that limit and robbed the tea-leaves, the agricultural produce, of their character of being and continuing as such substantially.

These processes are normally done by the cultivator or the producer, hence the second ingredient is also satisfied.

- c) The process undertaken does not alter its essential characteristics.

The tea leaf remained what it always was. It was tea leaf when selected and plucked and it continued to be tea leaf when after the process of withering, crushing and roasting, it was sold in the market. The process applied was intended to bring out its potential qualities of flavour and colour. The potential inherited in the tea leaf from the outset when still a leaf on the tea bush. The potential surfaced in the tea leaf when the mechanical processes of withering, crushing and roasting, fermenting by covering with wet sheets and roasting again were applied. The tea leaf was made fit for human consumption by subjecting it to those processes. At no stage, did it change its essential substance. It remained a tea leaf throughout. In its basic nature, it continued to be an agricultural produce."

Thus, the condition of processes, not altering the essential characteristics of the agricultural produce is also satisfied. The processes undertaken makes it marketable for primary market.

Primary Market had not been defined in the GST Act. In case of tea, primary market is a sale and purchase of tea in bulk from cultivator or producer. The said term primary market is indirectly defined in the definition of "Buyer", given in Tea



(Marketing) Control Order, 2003. The term buyer is defined under Rule 2(m) of the Tea (Marketing) Control Order, 2003 as under-

*** "Buyer" means any person, firm, company, corporate body, cooperative society etc., including a consignee or commission agent, who receives tea by way of stock transfer from the manufacturer, with a place of business in tea in India, engaged in purchasing or procuring tea either from public tea auctions or directly from manufacturers of tea but excludes those who buy only instant tea and other value added products of tea viz., tea bags, packet tea, flavoured tea, quick brewing black tea etc., and also excludes the secondary buyers who do not source their teas either from auctions or from manufacturers ;*

According to the above definition buyer is a person, who is sourcing tea by way of stock transfer from the manufacturer, with a place of business in tea in India, engaged in purchasing or procuring tea either tea either from public tea auctions or directly from manufacturers of tea but excludes those who buy only instant tea and other value added products of tea viz., tea bags, packet tea, flavoured tea, quick brewing black tea etc., and also excludes the secondary buyers who do not source their teas either from auctions or from manufacturers. Thus, buyer as defined in the order issued under the Tea Act, 1953, operates only in primary market.

15. Notifications are issued using the subordinate legislative power and are tabled in parliament. Circulars are issued for clarifying the issue, which had been dealt in the Act/rule/notification in a legal language. Circulars are issued by authority expressing their view point. It cannot override the Notification. Any circular contrary to the law (including notification) is nonest in the eye of the law. It is neither binding on the department nor on the Assessee. The applicant intend to rely on the five member Hon'ble Supreme Court decision in case of CCE Bolpur Vs Ratan Melting & Wire Industries [2008 (231) ELT 22 (SC)].



16. Circular No. 16/16/2017-GST dated 15.11.2017 is contrary to the Notification No. 12/2017-CT (Rate) dated 28.6.2017, hence not legal.

The CBEC had issued Circular No. 16/16/2017-GST dated 15.11.2017 clarifying the scope of Entry at Sr.No. 54 of the Notification No. 12/2017-CT (Rate) dated 28.6.2017. The said circular had clarified that the "Tea is not an agricultural produce", hence loading, unloading, packing, storage or warehousing of tea is not exempted under Notification No. 12/2017-CT (Rate) dated 28.6.2017. The said view expressed by the CBEC is contrary to the Notification No. 12/2017-CT (Rate) dated 28.6.2017 as explained supra. The taxability cannot be fastened by issuance of a circular, if some activity is exempted by the Notification.

17. Each word used in an enactment must be allowed to play its role howsoever insignificant it may be in achieving legislative intent and promoting legislative object. Therefore, the proper effect to the phrase that "which does not alter its essential characteristics but makes it marketable" must be given, while interpreting the definition of 'Agricultural produce'. In the entire order, there is no finding/observation in respect of this phrase. Appellant intend to rely on the Supreme Court decision in case of Union of India Vs Brigadier P.S. Gill [2012 (279) ELT 321 (SC)]. Hence, the order is not correct and needs to be set aside.
18. In 2002, an order No. 1/2002 was issued vide *M.F. (D.R.) Order No. 1/2002-Service Tax, dated 1-8-2002 defining the agricultural produce and also specifically mentioning tea as an agricultural produce.. The said order is reproduced as under-*

In exercise of the powers conferred by sub-section (1) of section 95 of the Finance Act, 1994 (32 of 1994), (herein after referred to as the said Act), the Central Government hereby makes the following Order, namely :-

1. (1) This order may be called the Service Tax (Removal of Difficulty) Order, 2002.
(2) This Order shall come into force on the 16th day of August, 2002.
2. (A) For the purposes of clause (87) of section 65 of the said Act, the expression "agricultural produce" means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its



essential characteristics but make it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food, processed tobacco.

(B) In 2004, Notification No. 8/2004-ST dated 9.7.2004 was issued amending the Notification No. 13/2003-ST dated 20.06.2003, vide which definition of agriculture produce was inserted in the by adding explanation to Notification No. 13/2003-ST dated 20.06.2003. The said definition is reproduced as under-

"agricultural produce" means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but makes it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco."

(C) The above definition is same as given in Order No. 1 of 2002. The explanation inserted in the Notification No. 13/2003-ST dated 20.06.2003 had remain in effect till 30.6.2012.

From 1.7.2012, agricultural produce was defined in clause 65(B)(5) as under-

(5) "agricultural produce" means any produce of agriculture 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;

The exclusion and inclusion mentioned in the definition prior to 1.7.2012 were removed and the processes mentioned were mentioned in the negative list entry no. (iii) of Section 66D as under-

(iii) 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;



Both the entries mentioned above viz clause 65(B)(5) and entry no. (iii) of Section 66D requires that the processes carried out on the agricultural goods do not alter the essential characteristics of agricultural produce. Thus main part of definition prior to 1.7.2012 and definition from 1.7.2012 are practically the same. Further, another change was insertion of words marketable in primary market instead of marketable. As far as tea is concerned, this change again did not make any difference.

19. The definition of "agricultural produce" is reproduced as under-

"agricultural produce" means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but makes it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco."

The above definition had three parts-

- a) Main part of definition
- b) Illustrative products by way of inclusion and
- c) Exclusion part

The entries made in inclusive part of definition are only illustrative and do not expands the scope of the definition. Similarly exclusion part is also illustrative, which is not restricting the scope of the main definition.

In certain situations, the nature of included items would not only partake of the character of the whole, but may be construed as clarificatory of the whole. In the present case, considering the list of the product in the inclusive part such as fruits, vegetables, cereals,, which are coming directly from plants, it is amply clear that the entire list mentioned in the inclusive part is mere illustrative.



In the exclusion part of definition, manufactured items were mentioned and excluded from the scope. "Such as" is appearing in the exclusion clause makes it illustrative also. Thus, both the parts- inclusion as well as exclusion parts are neither expanding nor restricting the scope of the main definition.

Tea is appearing in this list along with the fruits, vegetables, cereals, which means that the tea is at par with the fruits, vegetables, cereals as an agricultural produce. Further, tea had been included in the inclusion part in spite of the presence of 'manufactured products' in the exclusion part. Thus, as far as definition of agricultural produce is concerned, tea is not considered to be as manufactured product. Thus, tea was an agricultural produce covered in the main definition and continued to remain agricultural produce even after exclusion of the two parts (inclusion & exclusion) from 1.7.2012.

20. In light of the above, tea is an agricultural produce and its warehousing is exempted under E.No. 54(e) of the Notification No. 12/2017-CT.

Personal Hearing

21. A personal Hearing in the matter was conducted on 20.11.2018 wherein Shri G.L. Navlakha and Shri Suresh Singh appeared on behalf of the appellant and reiterated the written submissions made at the time of the appeal. Shri Madan Deshmukh, Supdt., Division -II, Pune -II Commissionerate appeared on behalf of the respondent to defend the case and reiterated the same arguments which were earlier made before the Advance Ruling Authority.

Discussion and findings

22. Heard the representatives of both sides. On examination of the written as well as oral submissions made by the appellant and the counter arguments in this regard made by the representative of the Department, the moot issue before us to decide upon is whether the tea leaves of the various qualities, which is precisely black tea, procured in bulk either from public tea auctions or directly from manufacturers of tea in 50 Kg bags, after undergoing various stages of the processing as detailed above, by the appellant's client i.e. Unilever, for storage in the warehouse owned by the appellant are agricultural produce or otherwise.



23. First, we set out to determine the essential character and the nature of the green tea leaves, which are plucked from the tea garden and those of the tea which are procured by Unilever for storage into the warehouses.

It has repeatedly been submitted by the appellant that the green tea leaves which are plucked from the tea gardens are not suitable for human consumption due to the presence of bitter taste inhered into it. The appellant further submitted that it is made suitable for consumption by subjecting the same under the various stages of processing, which are enumerated hereinbelow:

- (a) Exposing of the tea leaves under the sun or heating of the tea leaves for drying up;
- (b) Rolling of the dried up tea leaves by hand or machines to break the leaf cells and extracting juices or enzymes inhered into it;
- (c) Complete drying up by heating under the fire or sun or current of the hot air;
- (d) Fermentation of the tea leaves;
- (e) Sieving;
- (f) Roasting of the tea leaves with the charcoal to obtain the suitable flavour and colour.

All these above processes are mostly carried out by the manufacturers after procuring the green tea leaves from the producers of the green tea leaves. Thus, as a result of the above enumerated processes, the tea leaves acquire the new flavour and colour and are now suitable for the human consumption. Thus, we could say that now the tea leaves are not acrid as in the case of the unprocessed or original tea leaves directly packed from the tea gardens. The nomenclature of the tea have also undergone change from the green tea leaves to the black tea. This change in the name is also exhibited and confirmed by the Appellant's client i.e. Unilever in their letter dated 09.07.2014, wherein they have given the details of the product stored in the appellant's warehouse and the activities undertaken there before exporting the product to the overseas market. Vide the above said letter, Unilever have stated that their main and sole ingredients are black tea of various qualities, which are blended in the specific proportion as per the specific orders received from their respective customers before packing the same.

Thus, from the above discussion, it can amply be inferred that the product being stored



in the warehouse has got different name, character and uses from the green tea leaves which are cultivated in the tea gardens. Thus, the tea procured by Unilever is the manufactured product obtained from the different manufacturers as per the submission made by the appellant themselves at para D above. Thus, there is absolutely no doubt that the processes or treatments which are performed upon the green tea leaves amounts to manufacture as per the definition provided in the clause 72 of Section 2 of the CGST Act, 2017, which are reproduced herein below:

(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of new product having a distinct name, character and use

The above fact is also acknowledged by the appellant in their submissions, wherein they have submitted that **Unilever**, their client to whom the warehouse is being rented out, have been procuring the tea of the various qualities either from the public tea auctions or directly from the manufactures of tea.

24. Now, we have to determine whether this manufactured product i.e. the black tea can be construed as agricultural produce or not. For this, we reproduce the definition of the agricultural produce as provided in clause 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017 as under-

"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;

Now, we will examine the product in question i.e. black tea in light of the above definition of the agricultural produce to arrive at the conclusion regarding its status as agricultural produce or otherwise. We list out the following two characteristic parameters which will determine any goods to be the agricultural produce or otherwise.

- (i) It should be 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 similar products;



- (ii) It should be subjected to either no further processing or such processing by the cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

Now, subjecting the product in the question under the gauge of the above listed parameters, it is observed that though the product is a produce out of cultivation of the plants, the same is obtained as a result of the specific manufacturing processes, carried out by the manufacturers on the original agricultural produce i.e. green tea leaves for making them suitable for consumption by imparting the desired flavor and colour by the above discussed methods. All these processes, which change the characteristics of the green tea leaves, are carried out by the manufacturers and not the cultivators or the producers of the green tea leaves as envisaged under the definition of the agricultural produce. Thus, the manufactured products do not fulfill the above prescribed criteria of the agricultural produce, and thus cannot be considered as agricultural produce.

25. Since, it is adequately clear from the above discussion that the said processes carried out on the green tea leaves do have bearing on the taste and colour of the tea, the appellant's contention that the above discussed processes carried out on the green tea leaves does not alter the characteristics of the tea is devoid of any merit and thus is not sustainable.
26. *The notification no. 12/2017-CT (Rate) exempts from GST certain services in relation to agricultural produce. If Tea stored in appellant's warehouse is agricultural produce, same should be covered under the said notification without any doubt. But the processes carried out by the client of the appellant (and not the cultivator or producer), as submitted by the appellant, leaves no doubt in one's mind that they have lost the nature and characteristics of an agricultural produce in terms of the definition of 'agricultural produce' and are ready for secondary or tertiary market. The intention of legislature has never been to exempt agricultural produce at every stage. Had it been the case, then all agricultural produce, processed or manufactured by the person other than the cultivator or producers, would have been exempted from GST. However, that is not the case. As the unprocessed green tea leaves are exempted, while the Tea, whether or not flavoured (other than unprocessed green leaves of tea) are exigible to 5% GST.*



27. The above findings is also amply substantiated by the fact that the "unprocessed green leaves of tea" falling under heading 0902 is subject to Nil rate of duty as per the Notification No. 2/2017-C.T. (Rate) dated 28.06.2017, while the processed tea which include the black tea, the product in question, falling under the heading 0902 30 attract 5 % of GST(2.5% CGST + 2.5% SGST) in terms of its entry at Sr. 36 of the Schedule I to the Notification 1/2017-C.T.(Rate) dated 28.06.2017. On perusal of the list of the exempted goods notified by the Notification No. 2/2017-C.T. (Rate) dated 28.06.2017 and also the earlier notifications issued under the pre GST regime, it can adequately be deduced that it has never been the intention of the legislature to tax the primary agricultural produce on which no processing is done or such processing is done either by the cultivator or the producers which does not alter the *essential characteristics but makes it marketable for primary market*. Thus, the above notification levying GST on the processed tea product including black tea is clearly indicate that the disputed product is not an agricultural produce, rather the same is a manufactured produce.
28. It is contended by the appellant that the advance ruling authority had made the decision on wrong facts, as it was held by the advance ruling authority that the appellant warehouse had been used for the storage of the procured bulk tea after blending and packing by Unilever. The appellant has further contended that the warehouse had been used for storage of the bulk tea in 50 kg bags for most of the time and not for the blended and packed tea. However, as discussed in the above paragraphs, the bulk tea procured by Unilever before blending and packing itself does not fall within the definition of 'agricultural produce' as what is procured is black tea which is processed out of green leaves.
29. In addition to the above discussions, we observe that in the said warehouses rented out by the appellant, the appellant's client Unilever have also been blending the tea of the various qualities and packing the same in the packets of specified quantity as per the order received from their overseas buyers of the tea product. The blending of tea of various qualities into different proportion depending upon the requirements of their overseas customers may be construed as manufacturing process as the said process imparts different flavour, colour to suit the need for their customers. Thus, the appellant's client Unilever is undertaking the said manufacturing process, thus changing the essential characteristics of agricultural produce further, in the warehouse rented



out by the appellant. Further, these processes of the blending and packaging are being performed by the appellant's client, which is certainly not the cultivator or producers of the tea. Thus, the blended and packaged product, which are to sold to the overseas markets, which are definitely not the primary markets as envisaged in the definition of the agricultural markets, reproduced above.

The above finding further entrenches our opinion that the stored products are not the agricultural produce as being projected by the appellant.

30. In the submission made by the appellant before us, they have argued that *the case law of Union of India Vs Belgachit Tea Co and Brook Bond Lipton India Ltd, cited by the respondent* is clearly distinguishable as the issue before the Apex court was not to decide whether tea is an agricultural produce or otherwise. In this regard, it is observed that though the issue was not to decide whether tea is an agricultural produce or otherwise, the Apex court had held that the activity of cultivation and sale of green tea leaves is falling under the agricultural activity and the activity of purchasing tea leaves and manufacture and sale of tea is falling under Business Activity for the purpose of computation of Income Tax under Income Tax Act. Thus, vide this judgement, the Apex court has clearly put the manufacturing activity in relation to the tea which include the various processes like drying, heating, fermentation, sieving etc. as discussed above, out of the ambit of the agricultural activity and recognised the same as business activity. This clearly exhibits that the manufactured tea is not agricultural produce. Thus, our findings in the present case is in consonance with this very judgement of the Supreme Court. Just because the said judgment does not explicitly cover the issue under the question i.e. "the tea stored in the warehouse is agricultural produce or not", this does not mean that the ratio of this judgment cannot be applied in the present dispensation. As judgement passed by the Supreme Court grossly covers the facts and circumstances of the case in question, which is the storage of the manufactured tea by the appellant's client, there is no reason that the same cannot be applied in the present case.

31. In their submissions, the appellant have relied upon the Supreme court decision in case of COMMISSIONER OF SALES TAX, LUCKNOW Vs. D. S. BIST & ORS pleading that the Apex court has settled the issue of tea as an agricultural produce vide this judgment. On

going through the above cited Apex court judgement, it is observed that the facts and circumstances covered under the said Apex court judgment is entirely different from the facts and circumstances of the case in question as the party/assessee involved in the cited case was agriculturist, who was also the owner the tea gardens and was involved in the processes being performed on the green tea leaves produced by him, while in the present case, it is the manufacturers other than the cultivator or producers of the tea, who is undertaking various manufacturing processes to convert green tea leaves to the tea fit for human consumption. It is only after the manufacturing of the black tea from the green tea leaves, that Unilever is procuring the same for storage in the warehouse for further processing the same by way of blending and packaging prior to exporting the same to the overseas market.

Thus, the above cited judgement relied upon the appellant is not applicable to the present case and hence is clearly distinguishable.

32. *Regarding the argument of the appellant that the explanation by virtue of Circular No. 16/16/2017-GST dated 15.11.2017 is contrary to the Notification No. 12/2017-CT (Rate) dated 28.6.2017, it is observed that the clarification is not contrary rather it clarifies the doubts of trade and department on certain issues and is consistent with the said notification. The Board is empowered under section 168 of the CGST Act 2017 to issue such circulars for the purpose of uniformity in the implementation of the Act and all officers and all other persons employed in the implementation of the Act shall observe and follow such orders/circulars.*

33. Now, after we conclude that the products stored in the warehouse of the appellant are not the agricultural produce, we come to the question asked in the advance ruling application filed by the them i.e. "Whether the supply of warehouse services used for packing & storage of tea, under above mentioned facts & circumstances was/is exempted vide Serial No 54(e) of Notification No. 12/2017- Central tax (rate) or otherwise.". The answer to this question will be negative as the said exemption granted vide the above notification is provided to the storage and warehousing services when provided in relation to the agricultural produce.



In view of the above discussion, we pass the following order:

ORDER

We do not find any reason to interfere with the ruling given by Authority for Advance Ruling vide No. GST-ARA-30/2017-18/B-38 dated 23.05.2018.

Thus, the appeal is rejected in terms of the above order.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

Copy to- 1. The Appellant

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3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
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