

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULINGS FOR  
THE STATE OF UTTARAKHAND GOODS & SERVICE TAX, E-BLOCK,  
NEHRU COLONY, DEHRADUN-248001

PRESENT:

Shri S.H Hasan (CGST Member)

Shri DILIP JAWALKAR (SGST Member)

The 30<sup>th</sup> day of March, 2019

Appeal No. UK/07/03-01-2019/18-19

1.	Name and Address of Applicant	M/S Sam Overseas, 32, VIM Square, Rudrapur
2.	Appeal No/Date	UK/07/03-01-2019/18-19
3.	Order No.	08/18-19/30-03-19
4.	Jurisdictional Officer	CGST Range Kicha, Division Rudrapur D C-1, State Tax Department, Rudrapur
5.	Date of Personal hearing	28-03-2019
6.	Concerned Officer	Smt Preeti Manral(Dc Tax Review State tax)
7.	Applicant Represented by	NIL
8.	Date of Reg.of Appeal	03-01-2019



## ORDER

### (Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttarakhand Goods and Service Tax Act, 2017)

The present proceedings are in consequence to a reference to the Appellate Authority for hearing and decision, by the Authority on Advance Rulings for the State of Uttarakhand, in terms of Section 98(5) of the Central Goods and Service Tax Act and Uttarakhand Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UKGST Act"), vide Ruling No.13/2018-19 dated 18.12.2018 passed against application no. 12 made by M/s Sam Overseas.

An opportunity of personal hearing was granted to the applicant on date 13-02-2019, but no one was present on behalf of the firm. An adjournment application was submitted by the partner of the firm on the date of hearing. In order to give another chance to the firm again, a second notice was issued for hearing on date 28-03-2019. Again no one appeared on behalf of the firm but a mail was received with the message "Please do the needful". In light of the above the appeal reference is being decided ex-party.

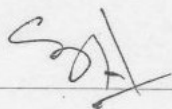
At the outset, we would like to make it clear that the provisions of both the CGST Act and the UKGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions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

### BRIEF FACTS OF THE CASE

In the instant case the Party M/s Sam Overseas, vide their application under sub-section (1) of Section 97 of the CGST/SGST Act, 2017 sought an Advance Ruling on classification and applicability of GST rate on the 'Rejected Wheat Seed' and 'Rejected Paddy Seed'. Therefore, in terms of said Section 97(2)(a) & (e) of CGST/SGST Act, 2017, the said application was admitted.

2. Following the personal hearing given to the applicant on 30.10.2018, the members of the Advance Ruling Authority for the state of Uttarakhand viz. Shri Vipin Chandra and Shri Amit Gupta differed in their views and opined as follows-

(A) Shri Vipin Chandra observed that: *"the wheat seed and Paddy seed, rejected as seed, does not remain seed anymore. Further, Rejected Wheat Seed and Rejected Paddy Seed cannot be termed as cereals either as during the process, it has to undergo the chemical treatment, therefore does not remain fit for human consumption as well. I have observed that there is no entry in the name of Rejected Wheat Seed or Rejected Paddy Seed in the GST Tariff, however, there is a description of 'All goods other than Seed quality' at Sl.No. 63 in the Schedule-1 of the said Tariff in the GST Tariff. Accordingly the tax is leviable at the rate of 5% on supply of these Rejected Wheat Seeds and Rejected Paddy Seed."*



(B) Shri Amit Gupta observed that: *"To avoid classification disputes, notifications issued by the government indicate that Customs Tariff has been adopted for descriptive classification of goods under GST. The section notes, chapter notes and Rules of interpretation of Customs Tariff have also been adopted.*

*On Going through the relevant HS Code of the Customs Tariff, I observe that the 'seed of wheat and Meslin' has been given under the HS Code 10011100 and also, under HS Code 10061010, Rice in the Husk (paddy or rough) of 'seed quality' has been given, however, it is nowhere mentioned in said HS code whether it covers either the rejected or the non rejected Wheat Seed and Paddy Seed. Hence, in general, the HS Code 1001 and 1006 under the Customs Tariff covers all the 'Wheat Seed' and 'Paddy Seed' irrespective of the fact that whether it is rejected or non-rejected.*

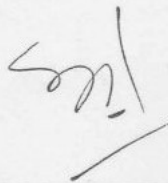
*In view of the above, I observe that the Rejected Wheat Seed and Rejected Paddy Seed is classified under HS Code 1001 and 1006 of the Customs Tariff and, as per Chapter Note of GST Tariff, the tax is leviable at the 'Nil' rate on the supply of the Rejected Wheat Seed and Rejected Paddy Seed in question."*

**RULING:-** In light of the aforementioned facts, as regards to classification and leviability of GST on supply of 'Rejected Wheat Seed' and 'Rejected Paddy Seed', as both the members have divergent views, as discussed supra, a ruling has been made, whereby, in terms of Section 98(5) of the Act *ibid*, a reference to the Appellate Authority for hearing and decision on said issue has been made.

#### **DISCUSSION AND FINDINGS**

We have gone into the ruling of the AAR at the very outset, Ld. AAR as well as his reasoning for placing 'rejected wheat seeds' and 'rejected paddy seeds' under *Sl.No. 63 in the Schedule-1 of the said Tariff in the GST Tariff*, for the reasons discussed herein. The heading of Chapter 12 of the GST Tariff reads – **"Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruits; industrial or medicinal plants; straw and fodder"**. Even cursorily, wheat and paddy (rice) do not appear to be covered by the description of this Chapter heading. They could have been included under this chapter only if there was no specific entry elsewhere in the tariff. On the contrary, we find that Chapter 10 of the said tariff specifically covers all cereals and both wheat and rice. Being undoubtedly cereals, will appropriately be covered by this chapter.

The very fact that the tariff uses the term 'seed quality' clearly proves that these goods are distinct and different from regular wheat or rice grains. Seed quality grains are controlled cultivated and a lot of research goes to produce a particular grain type which is of seed quality. Some of the basic characteristics of a wheat or paddy seed are that-





- Seed purity

It should have genetic purity. —

It should have physical purity (no mix of other crop seed, weed seed, & inert matter).

- It should have high germination vigour, germination rate and sprouting capacity.
- It should be free from seed born disease and pests.
- It should be good seed shape, size and weight for producing good seedlings.
- It should be healthy and shining without any spot and weakness on looking.
- It should be in equal size and weight, which should have uniformity on germination after sowing.
- It should have standard moisture level (maximum 12%) in wheat seed, which should clink while biting and shaking by hand.

A seed is liable to be rejected for not fulfilling any or all of the above characteristics. But this rejection only means that it has failed to pass the set parameters for a good quality seed. Such rejections cannot change its inherent character of being a grain of 'seed quality'. A pair of shoes manufactured by a branded company often gets rejected on quality issues, but it still will remain a pair of shoes, albeit with an added adjective 'rejected'. So, Sri Chandra's reasoning that once the seed is rejected it no longer remains a seed, is also not acceptable. For these reasons, 'rejected wheat or paddy seeds' cannot be covered by Entry Serial 63 covering Chapter 12 of the GST Tariff. The seeds of both wheat and paddy, rejected or otherwise, are also appropriately classifiable under Chapter 10 of the tariff *ibid*.

We are partially in agreement with the views and reasoning of Sri Amit Gupta, Ld. AAR that 'rejected wheat seeds' and 'rejected paddy seeds' fall under Chapter sub headings 1001 and 1006 respectively. In fact there are specific entries in the tariff. Chapter sub heading 1001 11 00 covers seeds of Durum wheat while 1001 91 00 covers seeds of other varieties of wheat. Similarly, Chapter sub heading 1006 10 10 covers paddy (rice) of seed quality. However, we find that 'NIL' rate of GST is applicable on these goods. If the rejected seeds are put up in a unit container and bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, then the effective CGST & SGST rate on both will be 2.5% & 2.5%.

### RULING

In view of the foregoing discussions and findings, we give the ruling as follows-

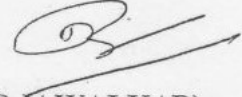
1. Rejected wheat seeds are classified under Chapter sub heading 1001 11 00 (Durum) and 1001 91 00 (Others) of the GST Tariff 2017.
2. Rejected paddy seeds are classified under 1006 10 10 of the GST Tariff 2017.



3. The applicable CGST & SGST rate on both the above goods is "NIL". However if the rejected seeds are put up in a unit containers and bearing a registered brand name or a brand name on which an actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, then the effective CGST & SGST rate on both will be 2.5% & 2.5.

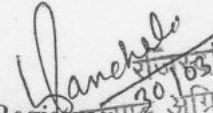


(S.H. HASAN)  
CGST MEMBER



(DILIP JAWALKAR)  
SGST MEMBER

I am directed to transmit herewith a certified copy of the order passed by the Appellate Authority for Advance Ruling for the State of Uttarakhand, Goods & Service Tax under Section 101 of the CGST/SGST Act 2017.

  
30/03/19  
Registration अधिकारी  
AAAR Uttarakhand प्राधिकारी

Copy To:- 9286<sup>11</sup>/30-3-19

1. The Chief Commissioner, CGST, Meerut Zone, Meerut.
2. The Commissioner, CGST, Commissionerate Dehradun.
3. The Commissioner, SGST, Uttarakhand.
4. Members of Advance Ruling Authority.
5. Concerned Officer, State Tax, Dehradun.
6. Jurisdictional Officers.
7. Applicant M/s Sam Overseas, 32 Vim Square, Rudarpur, Uttarakhand,.
8. Guard File.

