

**PUNJAB AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX, BHUPINDRA ROAD PATIALA
147001, PUNJAB**

ORDER NO. AAR/GST/PB/19

DATED: 20.09.2022

(An Appeal against this order lies with the Appellate Authority in terms of Section 99 and Section 100 of the CGST Act, 2017 and Section 99 and Section 100 of the PGST Act, 2017 within a period of thirty days from the date of communication of this order.)

Present:

1. Ms. Varinder Kaur, Additional Commissioner of Central Tax (Central Tax)
2. Mr. Viraj Shyamkarn Tidke, Additional Commissioner of State Tax-1 (State Tax).

Application Details:

GSTIN	03AAFFK0774N1Z7
Legal Name	M/s Kaka Ram Hari Chand
Trade Name	M/s Kaka Ram Hari Chand Near PNB, BXXXII 741/4A, Bahadur Ke Road, Ludhiana-141008
Issue(s) on which advance ruling is sought.	Are Cotton Seeds "Banaula" included in the list of agricultural produce given vide para 2(d) for exemption in GTA service under Notification No.12/2017-Central Tax Rates dated 28 th June, 2017?
Personal Hearing Date	18.02.2022
Hearing Attended by	Sh. S.L. Goyal, Advocate appeared on 18.02.2022
Order Date	20.09.2022

1. M/s Kaka Ram Hari Chand, Near PNB, BXXXII 741/4A, Bahadur Ke Road, Ludhiana-141008 (GST Registration No. 03AAFFK0774N1Z7) is engaged in the business of receiving Cotton Seeds "Banaula" after being transported by Goods Transport Agencies (GTA) which is classifiable with Chapter Heading 9965/9967 of the GST Tariff Act, 2017 and Goods and Service Tax in respect of said service is payable by the recipient under reverse charge mechanism.

2. Proceedings Under Section 98 of CGST/PGST Act:

The applicant had already submitted his written submissions as annexures with the application for advance ruling. In this regard personal

hearings were held on 18.02.2022 before the Advance Ruling Authority, Punjab. Counsel on behalf of Applicant submitted additional written submissions & document of "Power of Attorney", which are placed on file. The Jurisdictional Authority also submitted their written submissions, which is placed on file. Applicant had deposited only 5,000 for IGST while filling Advance ruling application. In this regard, notice dated 02.03.2022 and 01.09.2022 were issued to the applicant to deposit the requisite fee of Rs. 10,000 (5,000 each for SGST and CGST) as prescribed under the Act, But the applicant has not deposited the pending requisite fee.

3. QUESTION(S) ON WHICH ADVANCE RULING IS SOUGHT:

M/s Kaka Ram Hari Chand is receiving Cotton Seeds "Banaula" after being transported by Goods Transport Agencies (GTA).

Applicability of Notification No.12/2017 dated 28th June, 2017 issued under section 11(1) of the CGST Act, 2017 which exempts the tax on GTA services in relation to "agriculture produce", vide entry No. 21(a) in the table appended to the said Notification read with definition of the term "agricultural produce: given vide para 2 (d) of the said Notification.

Whether there is no liability to pay tax in view of the exemption granted vide Notification No. 12/2017, dated 28th June, 2017.

4. ELIGIBILITY OF THE APPLICATION FOR ADVANCE RULING

The Section 97(2) of the Central Goods and Services Tax Act, 2017, read with Section 97(2) of the Punjab Goods and Services Tax Act, 2017, provides for the issues on which advance ruling can be sought.

97(2) The question on which advance ruling is sought under this Act, shall be in respect of,-

- (a) Classification of any goods or services or both;*
- (b) Applicability of a notification issued under the provisions of this Act;*
- (c) Determination of time and value of supply of goods or services or both;*
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) Determination of the liability to pay tax on any goods or services or both;*
- (f) Whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

It is observed that the query of the applicant in para III is related to the question as to under which provision/ section GST is to be charged on GTA services in respect of Cotton seeds, if they are not exempt, fall under definition

of 'Agriculture Produce' under GST Act. This question falls under the ambit of Section 97(2) of the CGST Act, 2017, read with Section 97(2) of the PGST Act, 2017. Hence, the application of the applicant is eligible for a ruling by the Punjab State Advance Ruling Authority.

5. SUBMISSIONS BY THE APPLICANT: -

5.1 The applicant has made the following submissions at the time of filing of advance ruling application: -

- (a) That they were engaged in the business of receiving Cotton Seeds "Banaula" after being transported by Goods Transport Agencies (GTA) which is classifiable with Chapter Heading 9965/9967 of the GST Tariff Act, 2017 and the said service is payable by the recipient under reverse charge mechanism.
- (b) That GTA services in r/o agricultural produce, is exempt under GST Act vide Notification No.12/2017 dated 28th June, 2017 (Tariff heading 9965/9967).
- (c) That as per definition in para 2(d) of Notification No.12/2017 dated 28th June, 2017 'Agricultural produce' means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary markets."
- (d) That as per definition in para 2(e) of the above Notification, 'Agricultural Produce Marketing Committee or Board' constituted under a state law for the time being in force for the purpose of regulating the marketing of agriculture produce.
- (e) That as per Section 2(a) of The Punjab Agricultural Produce Markets Act, 1961 in its Schedule at Sr. No. 15 incorporates Cotton Seed "Banaula" is an agricultural produce.
- (f) That they cited the judgment of Hon'ble CESTAT Delhi in the case of R. K & Sons Vs. CCE Rohtak-2016(42) STR 314(Tri.Del) where in it was held that 'ginned cotton' is covered by the definition of 'agricultural produce'.
- (g) That they sought information from 42 different authorities under RTI regarding applicability of tax on GST services (under reverse charge mechanism) and supplied copies of reply received.

5.2 Sh. S.L. Goyal, counsel for the appellant submitted the following additional submissions at the time of personal hearing on 18.02.2022, relevant points of submissions are as under: -

(a) Agriculture produce as defined in Section 2 (a) of The Punjab Agricultural Produce Markets Act 1961(herein after referred to as 1961 Act) which reads as under: -

“Agriculture produce means all produce whether processed or not of agriculture, horticulture, animal husbandry or forest as specified to Schedule to this Act.” Further “cotton seed (Banaula)” has been included as ‘agriculture produce’ vide Sr. No. 15 in the said schedule.

(b) Vide Notification No. 12/2017-Central Tax (Rates) dt. 28.06.2017 exemption has been provided in respect of agricultural produce, firstly, vide entry at Sr. No 21(a)-in respect of GTA services and secondly, vide entry at Sr. No. 54(g) in respect of services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of the said ‘agricultural produce.;

(c) That even though the nature of exemption granted vide entries at S.No. 21(a) and 54(g) is different, the definition of the term ‘agricultural produce’ as given vide para 2(d) of Notification dt. 28.06.2017 is common in respect of both the said entries.

(d) That said cotton seeds fall in the ambit of the expression “for.....raw material” as used in the definition of “agricultural produce” as given in para 2(d) in the Notification No.12/2017dated 28thJune, 2017.

(e) That the elementary law relating to interpretation of any statute, including a Notification, is that any interpretation which renders certain words of the statute redundant or purposeless should be eschewed in favour of an interpretation which avoids such a consequence.

(f) That as per information gathered from the RTI, no person similarly situated in the entire country is paying any GST on the said services in respect of Cotton Seed (Banaula).

6. SUBMISSIONS BY THE JURISDICTIONAL AUTHORITY: -

The jurisdictional Assistant Commissioner State Tax, vide letter No. 559, dated 15.02.2022 furnished their comments on 18.02.2022 wherein they inter alia submitted as under: -

That Sl. No. 21 of Notification No. 12/2017-Central Tax (Rates) dt. 28.06.2017 provides the exemption for transportation of agriculture produce by GTA. So, traders are considering oil seeds as agriculture produce and not paying tax on the freight element under RCM i.e on trading of the oil seeds. However, the department disagrees with the above interpretation of the traders and opines that the taxpayers are required to pay tax on the freight element on the purchase of cotton seeds. Further analysis of the issue reveals that the term agriculture produce is defined in the above said notification as, *"Agriculture produce means any produce out of cultivation of plants and rearing of all life form of animals, except rearing of horses, for food fiber, fuel, raw material or other similar products, on which either no 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 its marketable for primary market"*.

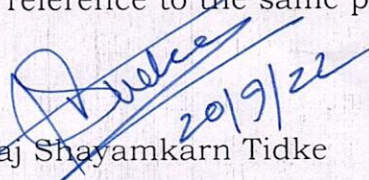
This definition of agriculture produce under GST law is very restrictive in nature. It provides exemption only to those producers which are directly harvested from the farms or on which such processing is done by the cultivator to make it marketable which does not change its basic characteristics. In case of cotton seed, it is derived from the cotton plant which consist of lint and seed which together known as "seed cotton". Seed cotton is ginned for the extraction of fiber and cotton seed from it. So, in the process of ginning, cotton is first dries to remove moisture and then cleaned to remove any foreign particles. Further seed cotton is processed to remove the lint from the seeds. So, cotton seed is obtained from seed cotton by way of industrial processing called ginning which debars it from the definition of agriculture produce as per the Notification No. 12/2017-Central Tax (Rates) dated 28.06.2017.

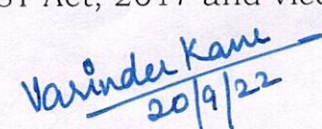
There have been instances when terms in different statutes are interpreted in different manner. It depends upon the objectives of the particular statute with which it was enacted. Thus if cotton seed is interpreted as agriculture produce under other Acts and not under the GST Law could be due to the reason that GST Law is very particular in providing exemptions to certain items only.

7. DISCUSSIONS AND FINDINGS:

The requisite fee for filling Advance Ruling application is Rs. 10,000/- (Rs. 5,000 each for CGST and SGST), but the applicant has deposited only Rs. 5,000/- under IGST Act. Despite giving multiple opportunities, the applicant has not deposited the required pending fee of Rs. 10,000 under (Rs.5,000 each for CGST and SGST). Thus, the application is hereby filed without any ruling.

Note: The provisions of CGST Act, 2017 and PGST Act, 2017 are almost same except a few provisions. Unless specific reference is made to such dissimilar provisions in the two acts, reference to provisions of CGST Act, 2017 would mean a reference to the same provisions of PGST Act, 2017 and vice versa.


Viraj Shayamkarn Tidke
Member, SGST


Varinder Kaur
Member, CGST

Through Regd. Post

To

M/s Kaka Ram Hari Chand
Near PNB, BXXXII 741/4A,
Bahadur Ke Road,
Ludhiana-141008

No.PB/AAR/2022/152-157

Dated: 29/9/2022

Copy to:

1. The Special Secretary, Goods and Service Tax Council, 5th floor, Tower-II, Jeevan Bharti Bldg., Connaught Place, New Delhi w.r.t. F. No. 193/Advance Ruling/ GSTC/2017 dated 01.05.2018.
2. The Commissioner of State Taxes, Punjab.
3. The Commissioner, CGST, Ludhiana, GST Bhawan, Rishi Nagar, Ludhiana.
4. The Commissioner, CGST, Jalandhar, camp office GST Bhawan, Rishi Nagar, Ludhiana.
5. The Assistant Commissioner of State Taxes, Ludhiana-3.