

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 89/ 2019

Date: 26-09-2019

Present:

1. Sri. Harish Dharnia,
Joint Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Sringeri Yogis Pai, Flat No.501, 5 th Floor, Vinayaka Apartments, Microwave Station Road, Hathill, Mangaluru - 5750006
2.	GSTIN or User ID	291800000244ARQ
3.	Date of filing of Form GST ARA-01	11.03.2019
4.	Represented by	Sri Yogis Pai, Proprietor
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Mangalore Commissionerate, Mangaluru.
6.	Jurisdictional Authority - State	LGSTO-260, Mangalore
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act 2017 vide CIN RBIS18032900066576 dated 14.03.2018 & Rs.5,000/- under CGST Act 2017 vide CIN RBIS18032900066576 dated 14.03.2018

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. Sri. Sringeri Yogis Pai, (called as the 'applicant' hereinafter), Flat No. 501, 5th Floor, Vinayaka Apartments, Microwave Station Road, Hathill, Mangaluru - 560004, is an unregistered dealer under provisions of GST Act and filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 & KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



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2. The Applicant is an unregistered dealer engaged in trading of tobacco leaves. He procures the same from wholesalers and sells it in the retail market. The applicant has sought advance ruling in respect of the following question:

Whether the Tobacco leaves attracting tax at the rate of 5% on forward charge or whether such Tobacco leaves can be classified as Unmanufactured tobacco ;tobacco refuse (other than tobacco leaves) (other than bearing brand name)

*Unmanufactured tobacco (without Lime tube)-bearing a brand name
Unmanufactured tobacco (with lime tube)-bearing brand name other
manufactured tobacco and manufactured tobacco substitutes: "Homogenized"
or "reconstituted" tobacco: tobacco extracts and essences (including biris)
which attract a rate of tax 28%.*

3. The applicant furnishes some facts relevant to the stated activity:

- a) The applicant states that he is a dealer in the tobacco leaves and he used to purchase the same from the wholesalers in Andhra Pradesh and sell it in the retail market. The sellers in Andhra Pradesh have been selling the material describing the same as "Tobacco Leaves" at a rate of 5% GST under forward charge. The retails in the city where the applicant resides also have been selling the same product as "Tobacco Leaves" after charging GST at 5% under forward charge.
- b) The applicant states that he had approached the Superintendent, CGST, Central Revenue Building, Attavar, Mangaluru, who had opined that the material that the applicant is selling is tobacco leaves liable to tax at 5% under forward charge. Then the applicant approached the Superintendent SGST, V.T. Buildings, Maidan Road, Mangaluru who opined that 5% charge is applicable only for a sale between the grower/ agriculturist and the first purchaser and the sale of material in question is liable to tax at 28% as there is no 5% forward charge.
- c) The applicant states that in Chapter 24 of the Central Excise Tariff Act, such material attracted Excise Duty and was classified as "sun-cured country tobacco" under the tariff heading 2401 10 20.
- d) The applicant is apprehensive of conducting trade in view of the confusion as regard to the rate of tax and the liability that could arise in case the lower rate is applied.

4. Regarding the applicant's interpretation of law or facts, the applicant submits that it is his considered opinion that 5% GST is applicable only on reverse charge for the first transaction between the grower/ agriculturist/ cultivator and the first purchaser and is termed as "raw tobacco". He further submits that he would like to know the right classification of the material in question such that he can get

registered under the Act and start trading in the material. He stated that while registering under GST on the GST portal, the 5% forward charge rate does not reflect.

PERSONAL HEARING: / PROCEEDINGS HELD ON 17.11.2018.

5. Sri Yogis Pai, the applicant attended the personal hearing before the Authority, explained about his business and stated that he intends to know the classification of the aforesaid commodity and the corresponding rate of GST in respect of each of the products. The applicant had brought sample piece of tobacco leaves for demonstration before the members at the time of the hearing and reiterated the submissions made in the application.

FINDINGS & DISCUSSION:

6. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by the Applicant firm during the personal hearing. We also considered the issue/s involved on which advance ruling is sought by the applicant along with relevant facts of the issue/s.

6.1 The applicant stated that the said tobacco leaves (tobacco leaves means leaves of tobacco as such or broken tobacco leaves or tobacco leaves stem) are purchased from wholesale dealers in Andhra Pradesh who in turn procure the same from farmers/growers/cultivators.

6.2 The applicant has drawn attention to the Order of Advance Ruling issued by the Advance Ruling Authority, New Delhi, in the case of Shalesh Kumar Singh wherein it is held that dried tobacco leaves after curing process were unmanufactured tobacco leaves and were taxable at 28% GST.

6.3 The applicant agrees that the commodity in question is sun cured tobacco leaves and is covered under the heading 2401 10 20. The process was examined and found, to which the applicant also agrees, that the goods are cured once and hence are no longer plain tobacco leaves. The goods undergo the process of curing and hence are rightly covered under tariff heading 2401 10 20.

6.4 The issue before the Authority to decide is whether the commodity in question is covered under entry no. 109 of Schedule I of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017 or Entry No. 13 of Schedule IV of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017.

The issue is examined and observed that the product the applicant is dealing with is undoubtedly a sun-cured country tobacco which is covered under tariff heading 2401 10 20. The commodity is not tobacco leaves which are raw, but are cured tobacco and hence are covered under entry no. 13 of Schedule IV of



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Notification No. 1/2017 – Central Tax (Rate) dated 28.06.2017 attracting a tax of 14% under the CGST Act and similarly attracting a tax of 14% under SGST Act.

6.5 Regarding the applicability of Notification No.4 /2017 – Central Tax (Rate) dated 28.06.2017, since the goods in question are not tobacco leaves and hence are not covered under entry no. 109 of Schedule I of Notification No. 1/2017 – Central Tax (Rate) dated 28.06.2017 and hence is not liable to reverse charge. Further the applicant is not purchasing the same from agriculturists and hence on this account also, he is not covered under this notification.

7. In view of the above, we pass the following

RULING

The commodity in question is covered under the tariff heading 2401 10 20 and is covered by entry no. 13 of Schedule IV of Notification No. 1/2017 – Central Tax (Rate) dated 28.06.2017 attracting a tax of 14% under the CGST Act and similarly attracting a tax of 14% under KGST Act.

The transactions of the applicant in question is not covered under Notification number 4 /2017 – Central Tax (Rate) dated 28.06.2017 and hence not liable under reverse charge mechanism.




26.09.2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad.M.P.)
Member

Place: Bengaluru,
Date: 26.09.2019

To,

The Applicant

Copy to:

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Mangalore Commissionerate, Mangalore.

The Asst. Commissioner, LGSTO - 260, Mangalore.

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